

resident abroad, have relieved him from the necessity of giving security for costs; to do that it has been held in Ontario and in England that the property must be unincumbered: *Gault v. Spencer*, 3 C.L.J., N.S. 70; *Ganson v. Finch*, 2 Ch. Ch. 296; *Swinburn v. Carter*, 23 L.J.Q.B. 16.

(2) Without going so far as to say that in no case will property subject to an incumbrance be deemed insufficient, yet the incumbrance must be of small amount, and in the present case it was more than three-fifths of the whole purchase price of the property.

(3) In any event, the fact of Sheppard having only an undivided interest in the property, held in common with his son, would render the security insufficient: *Higgins v. Manning*, 6 P.R. 147, affirmed on appeal.

4) The personal property also being held in partnership with his son was insufficient, as all that could be seized and sold under an execution against him would be his unascertained interest in the partnership, a most unsaleable commodity; to realize that interest, whatever it might be, a suit in equity would be necessary, and an interest in an estate which has to be administered by the court will not be regarded as security: *Wilson v. Wilson*, 6 P.R. 152.

*Haggart* for plaintiff.

*Hagel*, Q.C., for petitioner, the married woman, relied mainly on *Storel v. Cole*, 3 Ch. Ch. 421.

Full Court.]

[May 27.]

CHARLEBOIS P. GREAT N.W. CENTRAL R.W. CO. ET AL.

*Practice*—*Staying proceedings on a ver. pending result of another in foreign country.*

Plaintiff having recovered a judgment in Ontario against defendants on September 28, 1891, in May, 1892, began the present suit in Manitoba to enforce such judgment.

In December, 1892, an action was begun by a shareholder of the defendant company on behalf of himself and all other shareholders in Ontario to set aside the judgment of September 28, 1891.

The defendant company made application to stay all proceedings in this suit until the determination of the action pending in Ontario, which was refused by the Referee and affirmed by Barn. J., on appeal; the company then appealed.

*Held*, 1. the ground taken that the plaintiff having brought his action in Ontario has elected his forum and is now entitled to come before this court cannot be maintained, nor can it be said that he is proceeding vexatiously with two actions in different countries at the same time.

(2) Though the court has jurisdiction to stay one of two actions for the same cause proceeding concurrently in different countries—*McHenry v. Lewis*, 22 Ch.D. 297—yet the application here is to stay an action upon the Ontario judgment until an appeal against it is disposed of, for the pending action in Ontario is practically an appeal against the judgment obtained by consent; though the finality of a judgment is not affected by the possibility or likelihood of there being an appeal in the foreign country, nor even by the fact that an