

RIDDELL, J., IN CHAMBERS.

NOVEMBER 8TH, 1912.

LAND OWNERS LIMITED v. BOLAND.

Preliminary Accounts and Inquiries—Con. Rule 645—Corresponding English Rule—Non-Production of Writ—Filing Documents Used on Motions.

Motion by the plaintiffs "for an order that the defendants account to the plaintiffs forthwith for all moneys received by the defendants for the plaintiffs in connection with the sale of lots in Bay View Heights, Port McNicoll, subdivision." It was explained on the motion that this meant an order under Con. Rule 645.

J. J. Gray, for the plaintiffs.

Grayson Smith, for the defendants.

RIDDELL, J.:—The Court of Appeal in England have said: "Under that Rule only those accounts can be directed which are necessarily involved in the relief sought by the writ of summons:" In *re Gyhon, Allen v. Taylor* (1885), 29 Ch. D. 834, at p. 837,, per Cotton, L.J.

The writ of summons is not brought before me; no affidavit is filed as to the manner in which the writ was endorsed. I told counsel definitely and specially that all papers must be put in which were relied upon—it must be taken then that the plaintiffs could not shew that the writ claimed any such relief as is now sought—*de non apparentibus et non existentibus eadem est ratio*—and I must take it that the writ was not so endorsed. We have not here, as in some cases, an admission on the part of the defendants which could help the plaintiffs over the difficulty.

The motion must be dismissed; costs to the defendants in any event of the action.

As, notwithstanding what was said at the argument and what is said in *Welsh v. Harrison* (1912), ante 139, at p. 140, as "to the necessity of filing all the papers which are to be used on motions—it is too much to expect the Court to act the solicitor's clerk and hunt up the missing documents," it may possibly be that the plaintiffs have in fact a writ endorsed as required, this dismissal will be without prejudice to any other application for an order such as is now sought or any other order.