

MAY 12TH, 1905.

DIVISIONAL COURT.

DANIEL v. BIRKBECK LOAN AND SAVINGS CO.

Security for Costs—Absent Plaintiff—Property in Jurisdiction—Burden of Proof—Building Society—Terminating Shares.

Appeal by defendants from order of TEETZEL, J., in Chambers, allowing an appeal by plaintiff from an order of a local Judge refusing to set aside a præcipe order for security for costs obtained by defendants, and holding that defendants had a lien upon 6 shares of terminating stock in their hands for such costs.

C. A. Moss, for defendants, appellants.

J. F. Faulds, London, for plaintiff.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., ANGLIN, J.), was delivered by

STREET, J.:—Plaintiff in this action asks for a declaration that the action of defendants in converting certain terminating stock into permanent shares was irregular, and that the original stock has, therefore, not been in fact converted.

Defendants have power by statute, in certain circumstances, to convert terminating stock into permanent shares, and the question here is, whether these circumstances existed. If the action succeeds, the property in question is worth considerably over \$200; if it fails it is not worth \$200; but it is not shewn what it is in fact worth.

Plaintiff resides out of the jurisdiction, and defendants are, therefore, entitled *prima facie* to retain the order for security for costs which they have obtained; they are entitled to retain it unless plaintiff shews herself possessed of sufficient property within the jurisdiction to answer the costs if the action fails. The onus of shewing this is entirely upon plaintiff, and plaintiff has, in my opinion, not shewn it.

The appeal should be allowed with costs here and below.

Some loose statements in two of the affidavits filed as to the ownership by plaintiff of an equity of redemption in property in Strathroy are not sufficient to justify us in ordering