

TOWN OF STURGEON FALLS V. IMPERIAL LAND CO.—LATCHFORD, J., IN CHAMBERS—NOV. 17.

*Particulars—Statement of Defence—Lien for Taxes—Validity of Assessments.*]—Appeal by the defendants from the order of the Master in Chambers, ante 216. LATCHFORD, J., dismissed the appeal; costs in the cause. H. W. Mickle, for the defendants. G. H. Kilmer, K.C., for the plaintiffs.

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STAVERT V. BARTON—STAVERT V. MACDONALD—MASTER IN CHAMBERS—NOV. 21.

*Parties—Substitution of Plaintiff—Transfer of Cause of Action—Order to Proceed—Motion to Set aside—Con. Rules 396, 398—Validity of Transfer—Locus Standi of New Plaintiff—Pleading—Amendment.*]—In these two actions, on promissory notes, the plaintiff's solicitors, on the 26th October, took out orders under Con. Rule 396, alleging a transfer of the cause of action to a new sole plaintiff, and directing the actions to proceed with the alleged transferee as sole plaintiff. Two days later, notices of setting down the actions for trial were given. On the 4th November, a motion was made by the defendant in each case to set aside the order to proceed, as well as the notice of setting down, and also to stay the trial until after the decision in the similar case of Stavert v. McMillan, now standing before the Privy Council. Counsel for the defendants stated that the motion was made under Con. Rule 398. The Master said that, after consideration, he was not satisfied that that Rule had any application. The whole argument was, that it was not shewn that the cause of action had vested in the assignee of the original plaintiff. No case could be found of a similar motion. It rather appeared that Con. Rule 398 was passed primarily to enable parties wrongly and by mistake added as defendants to have the order rescinded—as, e.g., if they were wrongly alleged to be the personal representatives of a deceased defendant, and no probate or administration had been granted. Where, as in the present cases, there is a substitution of a new plaintiff, by the act of the original plaintiff, it is, in effect, the commencement of a new action, at least to this extent, that the defendant is entitled to amend his statement of defence, as there may be grounds tenable against the new plaintiff that were not available against his predecessor in the action. So, too, the defendant might deny (as here) that the cause of