

for payment out of Court to her of moneys paid in by defendants, and disposing of the costs of the action, which was brought to obtain payment of a debenture for \$1,000 and interest issued by defendants to plaintiff, payable to her order, which she alleged was burned by mistake. Before action plaintiff tendered to defendants her own statutory declaration that the debenture had been inadvertently destroyed by her under circumstances which she detailed, and that she had never indorsed it, and she also tendered a bond to indemnify them for paying to her the amount of the debenture with interest. She demanded payment, but it was not made. Upon being served with the writ of summons, defendants paid into Court the amount of the principal money and the interest upon it, but conditionally on the money not being paid out until a sufficient bond had been furnished. Plaintiff then made this motion.

J. B. Davidson, St. Thomas, for plaintiff.

J. Farley, K. C., for defendants.

Counsel agreed that the Chief Justice should dispose of the whole matter in dispute upon this motion.

MEREDITH, C.J., held that, as plaintiff conceded defendants were entitled to indemnity, both parties were somewhat to blame for the litigation; and, under all the circumstances, the proper order to be made was that the bond of indemnity executed be delivered to defendants, and upon that being done the money in Court be paid out to plaintiff, and the action be discontinued, and that there be no costs to either party of the action or motion.

MEREDITH, C.J.

MARCH, 4TH, 1903.

CHAMBERS.

SMERLING v. KENNEDY.

Security for Costs—Right to Praecipe Order—Waiver by Delivery of Defence—Practice.

Appeal by plaintiff from order of Holt, Local Judge at Goderich, dismissing motion to discharge a praecipe order for security for costs issued by defendant Violet Kennedy. Plaintiff resided in the United States of America, as appeared by the indorsement on the writ of summons, and was not possessed of such property within the jurisdiction as relieved her from the obligation of giving security for costs.

W. Proudfoot, K.C., for plaintiff, contended that defendant had, by delivering her statement of defence before issuing the praecipe order, waived her right to it.

J. H. Moss, for defendant Violet Kennedy.