

motion could succeed, as there was no affidavit from the defendant that he had a good or any defence. The Master was also of opinion that the correspondence between the solicitors shewed that the motion could not succeed; and referred, as to the inference to be drawn from the defendant's solicitors not repudiating a statement that the defendant did not intend to defend, to *Weidman v. Walpole*, [1891] 2 Q.B. 534, 537. So far as appeared, the plaintiff's solicitors had shewn great leniency to the defendant. It did not appear that the defendant had any assets in Ontario, and it was stated that he had none at Seattle, available in execution. Motion refused, unless security is given, to the reasonable satisfaction of the plaintiff, within ten days. In either case, costs to the plaintiff in any event. *Featherston Aylesworth*, for the defendant. *E. D. Armour, K.C.*, for the plaintiff.

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ONTARIO ASPHALT BLOCK CO. v. COOK—DIVISIONAL COURT—  
JAN. 4.

*Account—Reference—Book-accounts—Credits—Absence of Surcharge or Falsification—Payment—Onus—Amounts Received in Excess of those for which Credit Given—Opening up Accounts—Estoppel—Fraud.*—Appeal by the defendants from the order of *MIDDLETON, J.*, 3 O.W.N. 1289. The appeal was heard by *BRITTON, CLUTE*, and *KELLY, JJ.* The members of the Court were unanimously of the opinion that the order appealed from was right. On the argument, the Court was asked to grant leave to the defendants to have the accounts opened up and gone into again. *KELLY, J.*, in a written opinion, said that, having regard to the opportunities afforded of attacking the plaintiffs' accounts during the long time over which the reference extended, there was no good reason for granting that indulgence. *BRITTON, J.*, in a written opinion, said that if either the plaintiffs or their agent had been guilty of fraudulent concealment of any money received by either which should have gone to the credit of the defendants, the defendants would not, by reason of the present decision, be estopped from succeeding, upon establishing such facts, in any action they might bring for the purpose. Appeal dismissed with costs. *F. W. Griffiths*, for the defendants. *D. L. McCarthy, K.C.*, for the plaintiffs.