

[Reference to Re Percy & Co., 2 Ch. D. 531, per Jessel, M.R. at p. 532.]

So far there can in my view be no question.

But the Master of Titles decides that some person named "Lawrence Boyle," if alive, is entitled to one-sixth of the land—not having proper machinery in his own office to determine whether this plaintiff is that "Lawrence Boyle," he refers this to the Court under sec. 93 of the statute. The Court has directed an issue to determine if the person called Lawrence Boyle be the Lawrence Boyle, and made that Lawrence Boyle the plaintiff. Who is now the actor?

I have seen the Master of Titles, and he informs me that, on the evidence he has already had, he must find against the plaintiff. Therefore, if the issue be not proceeded with, the plaintiff must fail. It is accordingly plain that the plaintiff must be the real actor in the issue, as well as being plaintiff in name—the plaintiff must proceed with the issue upon peril of being barred. This in my view making the plaintiff a real, and not merely a nominal actor and plaintiff, the order appealed from is wrong.

I am not at all attacking the authority of the cases cited; but they are distinguishable—the Court would not grant an order for security for costs against a non-resident claimant until enough had been done to throw the onus upon him, so that if he failed to prosecute his claim further he would be barred.

The appeal should be allowed with costs here and below.

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BRITTON, J.

JUNE 12TH, 1911.

RE PITTSBURG COBALT CO. AND ROBBINS.

*Ontario Companies Act—Winding-up—Foreign Action—Application for Leave to Proceed with, Refused—Judgment Obtained Notwithstanding—Claim on, Disallowed by Master—Terms on Filing New Claim.*

Appeal by Harre Robbins from the order of the Master in Ordinary, of the 23rd February, 1911, disallowing his claim, and application by said Robbins to extend the time for appealing from the order of the Master of the 9th December, 1910, particulars of which orders are given in the judgment of BRITTON, J., *infra*.