

Chambers, 4 O. W. R. 221, staying proceedings in two actions (Nos. 188, 189) until the disposition of a certain other action between the same parties, called the "omnibus action." A special case in the omnibus action was heard and disposed of by ANGLIN, J. (4 O. W. R. 330), and proceedings were being taken for an appeal to the Court of Appeal.

The appeal was heard by FALCONBRIDGE, C.J., STREET, J., BRITTON, J.

W. Cassels, K.C., for defendants.

W. E. Middleton, for plaintiffs.

STREET, J.—An examination of the pleadings in these actions has satisfied me that there is no such identity in the subject matter of actions Nos. 188 and 189 with that of the "omnibus action" as would justify us in exercising the discretionary power of staying proceedings in the former until the determination of the latter.

Nor am I able to come to the conclusion that the application of the defendants for a stay in the actions 188 and 189 comes within the provision of the Judicature Act requiring all matters in controversy between the parties to be determined so far as possible in one action.

In the action brought in April, 1903, the omnibus action, the city of Toronto alleges breaches of the agreement by the defendants, asks for an interpretation of the agreement, for specific performance of it, and for damages, those damages being only recoverable, in respect of past breaches, and being recoverable, if at all, under the 46th clause, to the extent of \$10,000 as liquidated damages for the breach of any of the numerous conditions in the agreement. In April, 1904, a new term is added to the agreement by the Legislature, under which an entirely new scale of damages is provided, recoverable, however, only in case of the neglect or refusal of defendants to provide a service "reasonably complying with the provisions of the agreement."

It is clear that the decision of the matters raised by the pleadings in the "omnibus action," no matter whether in favour of plaintiffs or defendants, while it may decide all the matters alleged to be in controversy between the parties at the time it was brought, and according to the law then in force, must be limited to those matters, and cannot determine the right of plaintiffs to recover damages in respect of matters arising a year afterwards and governed by an entirely new state of the law. It is true that the meaning of the