

SECOND DIVISIONAL COURT.

SEPTEMBER 28TH, 1917.

*SMITH v. MERCHANTS BANK OF CANADA.

Stay of Proceedings—Action Brought for Same Causes as Former Actions—Judgment—Impeaching for Fraud—Res Judicata—Former Actions Dismissed for Non-compliance with Orders for Security for Costs—Payment of Costs of Former Actions—Condition of Being Allowed to Proceed.

Appeal by the plaintiff from an order of MASTEN, J., in the Weekly Court, directing a perpetual stay of proceedings in this action, on the grounds that it was frivolous and vexatious and an abuse of the process of the Court.

The appeal was heard by MEREDITH, C.J.C.P., MAGEE, J.A., RIDDELL and ROSE, JJ.

Gideon Grant, for the appellant.

W. N. Tilley, K.C., and G. L. Smith, for the defendants, respondents.

RIDDELL, J., in a written judgment, said that the plaintiff, more than 20 years ago, was a produce-dealer at Prescott and had dealings with the defendants, chartered bankers. In 1895, he brought an action against the defendants, alleging that in 1892, 1893, and 1894, he sold hay in Britain and made drafts on persons in England which with cash cabled he placed in the defendants' bank, and claiming on that account \$978.39 as owing him by the defendants; he also made other claims against the defendants for various sums by way of damages and otherwise, and asked for an account, payment, etc. The defendants denied all charges of impropriety, set up that accounts had been stated from time to time, and counterclaimed on promissory notes and a judgment. The action and counterclaim were tried at Brockville in April, 1897, and judgment was given for the plaintiff for \$58 and \$5 costs and for the defendants for \$18,877.74 and \$595.71 costs. There was no appeal. At the time the present action was brought, more than \$10,000 was unpaid on the judgment recovered against the plaintiff.

In 1913, the plaintiff brought an action against the defendants in a Quebec Court for substantially the same causes as those for which the present action was brought. That action was dis-

* This case and all others so marked to be reported in the Ontario Law Reports.