CARTWRIGHT, MASTER. OCTOBER 14TH, 1903.

CHAMBERS.

SASKATCHEWAN LAND AND HOMESTEAD CO. v. LEADLEY.

Pleading—Defence—Action Brought in Name of Company —Questioning Right to Use Name—Practice—Motion to Stay Proceedings.

Motion by plaintiffs to strike out paragraph 25 of the statement of defence of defendants, the Leadleys, paragraph 9 of the statement of defence of defendant John T. Moore, and paragraph 10 of the statement of defence of defendant Annie A. Moore.

The nature of the action appears from the report of a former motion, ante 745.

J. J. Maclennan, for plaintiffs.

J. W. St. John, for defendants, the Leadleys.

A. J. Russell Snow, for defendants, the Moores.

THE MASTER.—The language of the objectionable paragraphs is varied, but the substance of all is, that the shareholders who are prosecuting the action have no right to use the name of the company; and that, if they have any grievance, they should sue in their own names, framing their action as was ordered in Murphy v. International Wrecking Co., 12 P. R. 423.

To this way of setting up this defence the plaintiffs object. They rely on the case just cited, also on Austin Mining Co. v. Gemmell, 10 O. R. 696, at p. 705. . . . A similar rule was laid down in McDougall v. Gardiner, 1 Ch. D. 13, 22. . . .

These cases seem clear and conclusive of the point at issue. The motion must be allowed with costs to plaintiffs in any event.

The plaintiffs are at liberty to proceed as was done in Murphy v. International Wrecking Co., if so advised. The material used on this motion can be used in that event, and also supplemented by either party.