

BYRNE v. GENTLES—MIDDLETON, J., IN CHAMBERS—MAY 4.

*Costs—Security for—Former Action Involving same Issue—Addition of Necessary Parties—Nominal Plaintiff.*]—Appeal by the defendant Gentles from an order of the Master in Chambers refusing the application of the appellant to stay all proceedings in this action until Matthew B. Whittlesey and A. W. Diack shall be added as parties or until the plaintiff shall give security for the appellant's costs of the action. MIDDLETON, J., in a written judgment, said that he had spoken to LATCHFORD, J., who tried the action of Gentles v. Byrne, and who stated that the whole matter was tried out before him in that action save the allegation now made by the plaintiff (as to which he had no concern) that the defendants defrauded each other. Upon the ground, therefore, that the former action was for the same cause, the proceedings should be stayed until security for costs should be given. The action could not be disposed of in the absence of Whittlesey and Diack, in any way that would be conclusive, and they must be added, as plaintiffs if they consented, as defendants if they did not consent. A case had probably been made for security upon the ground that the plaintiff was a nominal plaintiff only, but it was not necessary to discuss that aspect of the case. Costs in the cause. D. L. McCarthy, K.C., for the defendant Gentles. A. G. Ross, for the plaintiff.