

The motion was heard in the Weekly Court at Toronto.

J. J. Gray, for the defendants.

George Bell, K.C., for the plaintiff.

MIDDLETON, J., in a written judgment, said that the action was against an incorporated company and its secretary to recover \$12,760, the amount of penalties said to have been incurred under the Ontario Companies Act, R.S.O. 1914 ch. 178, sec. 135, which requires certain annual returns to be made, and imposes a penalty of \$20 per day for every day during which a company is in default in making its returns, upon the company and upon every director, manager, or secretary who wilfully authorises or permits such default. Such penalties are recoverable only by the Crown or by a private person suing on his or her own behalf with the written consent of the Attorney-General.

The company had never reached the stage of active operation. The plaintiff was induced by a broker to invest \$3,000 in stock of the company, by fraudulent statements as to its value; and she first brought an action against the broker and the president and secretary of the company to recover her \$3,000 or for damages. In that action, the returns were desired by the plaintiff's solicitor to demonstrate the untruth of the representations on which the stock was sold. When the plaintiff ascertained that no return had been made, she applied to the Attorney-General for leave to sue for the penalties. The Attorney-General gave the company and its officers time and opportunity to remedy their default; but no returns were made and no explanation given; and, after more than 3 months' delay, leave to sue was given (10th October, 1916), and on the 8th November, 1916, this action was begun. On the 10th November, the returns were made.

An application was then made by the defendants to the Attorney-General for the rescission of his leave or for remission of the penalties. This application was refused, the Attorney-General leaving the defendants to such relief as they might be able to obtain in the Court.

The Master in Chambers was right in holding that he had no jurisdiction under the statute: Rules 205, 207. The appeal from the Master's order should be dismissed.

The alternative motion for relief was properly made to the Supreme Court of Ontario, at any time after the commencement of the action: sec. 6 (1) of the Fines and Forfeitures Act: and to a Judge in Court: Rule 205.

Relief should be granted, but only upon terms providing for the restoration of the plaintiff to the position in which she was before she was induced to part with her money: she should be repaid the money received from her for stock, with interest at 6