

BRITTON, J.—Appeal by plaintiff from so much of the order of the Master in Chambers as allows defendants to amend their defence by pleading an attaching order against Robinson and others, obtained by the defendants as judgment creditors in an action against the plaintiff in which defendants recovered judgment. That judgment is in favour of defendants against the plaintiff for \$471.59. This amount, with interest, or any part of it, the plaintiff is willing to allow against corresponding amount he may be entitled to in this action. The defendants say that, in addition to the \$471.59 and interest, which plaintiff in his claim admits and is willing to set off, they are entitled to subsequent costs; if so, the defendants, in the event of plaintiff's recovery herein, should be entitled to set these off; and no doubt an order would be made upon application for that purpose, if plaintiff objected. The only possible object of pleading the attaching order would be to let in evidence of the state of account between plaintiff and Robinson and others, for the purpose of attempting, in that way, to get the alleged subsequent costs of defendants upon their judgment against plaintiff, a part of which costs is for an appeal from the taxation. I am of opinion that the amendment should not be allowed. To plead this attaching order would further complicate a matter already a good deal involved. It is not a plea that can help defendants, but will embarrass the plaintiff. It does not in any way go to the merits or assist in determining the real matters in controversy between the parties.

Appeal allowed. Costs to plaintiff in any event.

DuVernet & Jones, Toronto, solicitors for plaintiff.

Millar, Ferguson, & Hughes, Toronto, solicitors for defendants.