

HON. MR. JUSTICE RIDDELL.

NOVEMBER 9TH, 1912.

CHAMBERS.

CAMPBELL v. VERRAL.

GIBSON v. VERRALS.

4 O. W. N. 300.

*Action—Motion to Stay—Judgment Outstanding in Former Action—  
Res Judicata—Parties—Costs.*

Motion by defendant to stay actions until a former judgment, recovered by plaintiff upon the same cause of action against Taxicabs Verrals Limited, is got rid of in some way. After recovery of the judgment in the former action it was discovered that defendant company, while incorporated, had no assets, and this action was then launched against George W. Verral, trading as the Taxicabs Verral Company.

RIDDELL, J., dismissed motion, costs to plaintiff in any event of cause.

T. N. Phelan, for the motion.

John McGregor, contra.

HON. MR. JUSTICE RIDDELL:—These are two actions but may, for the purposes of this motion, be treated as one.

The plaintiff sued "Taxicabs Verrals, Limited" by writ tested November 30th, 1910, served upon George W. Verral only—pleadings were delivered and the action tried resulting in a verdict for a considerable amount. The plaintiff then found that the company had been incorporated, indeed; but it had done no business and had no assets.

Then an action was brought against "George W. Verral, trading as the Taxicabs Verral Company"—an appearance having been entered, a motion was made to set it aside which failed, 23 O. W. R. 6.

It is plain that the cause of action in both the former and the present action is the negligence of a taxicab driver resulting in injury to the plaintiff.

The defendant moves to stay the action until the former judgment is got rid of in some way.

I do not think the motion can succeed.

The cause of action against the incorporated company no doubt "*transit in rem judicatam*": but that is all. Any cause of action against Verral is still a "cause of action" only—it had not passed into a judgment.

It was determined in the former action that the negligence of the chaffeur was the negligence of the company—