

setting up prior user, want of novelty, that the patent was not a valid and subsisting patent, and also that plaintiff had imported the patented invention or caused it to be imported, contrary to the provisions of sec. 37 (b) of the Patent Act, and other defences. The defendants now sought, after issue joined, to have the trial postponed until they should have proceeded in the Exchequer Court to have the patent set aside on the ground of the contravention of sec. 37 (b).

G. H. Kilmer, for defendants.

J. W. Bain, for plaintiff.

THE MASTER.—Had the defendants brought their action for the purpose indicated, they would have been in a better position to support this application. It may be that their other defences to the action will be successful, and that there need be no further litigation between the parties. It would not be fair to stop plaintiff's proceedings, properly instituted, to enable defendants to defend themselves in another Court, while they have a sufficient defence in this Court. The trial Judge will, no doubt, if applied to at the trial, and if he consider it in the interests of justice, stay any judgment to enable defendants to prosecute their rights in another Court, if they have no right to do so before him.

Motion referred to the trial Judge.

MEREDITH, C.J.

SEPTEMBER 29TH, 1902.

CHAMBERS.

METALLIC ROOFING CO. v. LOCAL UNION No. 30,  
AMALGAMATED SHEET METAL WORKERS'  
INTERNATIONAL ASSOCIATION.

*Parties—Unincorporated Voluntary Association—Motion to Strike out Name—Injunction—Trial.*

Appeal by defendant association from order of Master in Chambers (ante 573) dismissing their application for an order striking their name out of the style of cause.

J. G. O'Donoghue, for appellants.

W. N. Tilley, for plaintiffs.

MEREDITH, C.J., affirmed the order, but added to it a declaration that the dismissal of the appellants' motion is to be without prejudice to their raising any questions as to their status or liabilities on the pleadings, and varied it as to costs by making the costs of the application costs in the cause. Costs of appeal to be costs in the cause also.