

is to be observed that these letters do not contain any admission of liability, nor does there seem to have been any consideration for any promise to pay. The limit was held by the female defendant, and her husband had no interest therein, and there was no privity between the plaintiff and either of the Munns.

The plaintiff came into the matter only as assignee from the lumber company of the mortgage given to them to secure advances made by them to Mrs. Munn; and it cannot be determined on this application whether or not there was any right of action against Mrs. Munn or her husband, who presumably was acting under her instructions. The statement of defence alleges that Mrs. Munn was acting strictly within her rights under the mortgage given to the lumber company. It denies that anything was due to the lumber company, but, on the contrary, asserts that the company are indebted to her, as will appear in the taking of the accounts between them.

If there was no default by Mrs. Munn, there certainly could not be any right of action. How this is as a fact can only be determined after hearing evidence. The motion must therefore fail on that ground.

It is only in such cases as *Armstrong v. Armstrong*, 9 O. L. R. 14, 4 O. W. R. 223, 301, that the plaintiff can be allowed to discontinue without costs. To do so is to deprive a successful defendant of costs, which can only be done for good cause

Here the plaintiff abandoned the claim for payment by the Munns, but proceeded with this action as against them for an injunction.

Whether this was warranted or not cannot be determined here. Nor am I satisfied that the letters of John Munn excuse and justify the issue of a writ, not only against him but also against his wife. It looks as if the plaintiff had been needlessly alarmed and had begun proceedings without sufficient consideration of his rights and consequent remedies.

Under these circumstances this motion must be dismissed with costs to the defendants in the cause.