

believes that defendant intends to move for prohibition; that "I do not care to incur any risk or question of costs, and, as defendant desires that the case should be transferred to the 2nd Division Court of the county of Huron, I am willing that the judgment entered herein should be set aside, and an order made transferring the suit to the 2nd Division Court of the county of Huron." An order was made, upon the application of plaintiff, setting aside the judgment and transferring accordingly. So much appears upon the material filed. . . .

Correspondence took place between the solicitors for the parties as to the costs, and, at the suggestion of plaintiff's solicitor, defendant's solicitor also wrote plaintiff. This came to nothing . . . and so at last a notice of motion was served 21st June, 1907, that plaintiff should pay the costs of the proceedings taken for prohibition. . . .

Defendant is entitled to these costs if prohibition would have been ordered, and certainly there is nothing in the conduct of plaintiff—act or word—which entitles him to the slightest consideration.

Defendant admittedly resides at Seaforth, and he swears that "the transactions in question in said action were arranged at the said town of Seaforth or by correspondence, and during none of the dealings was I at any time within the territory of the said 5th Division Court of the county of Oxford."

Plaintiff. . . swears: "It is entirely untrue . . . that any of the transactions in question in this suit were arranged at the said town of Seaforth. The whole of the goods sued for . . . were sold to defendant on orders received by me therefor at the said town of Ingersoll, where my place of business is, and in no other way; and payments therefor were all to be made at Ingersoll, where the goods were shipped from to defendant, and were so made."

An enlargement was had at the instance of defendant that he might, if so advised, cross-examine Buchanan upon his affidavit. He has not done so. I presume, then, that plaintiff and defendant agree as to the facts, and that defendant was rather swearing to what he considered the legal result of these facts. At all events for the purpose of this motion, I must accept plaintiff's statements. But he cannot complain if the affidavit which he makes to meet the case of defendant is taken strictly. . . .