

This experiment is, I think, entirely unsuccessful. From the earliest times the Court has consistently held that a judgment is conclusive, not only upon all matters which are actually brought forward, but as to all matters which might have been brought forward as part of the subject of the contest; and this view has been recently confirmed both here and in England. See *Henderson v. Henderson*, 3 Hare 100; *Humphries v. Humphries*, [1910] 1 K.B. 796, [1910] 2 K.B. 531; *Cooke v. Rickman*, [1911] 2 K.B. 1125; *Re Ontario Sugar Co.*, 22 O.L.R. 621, 24 O.L.R. 332.

Quite apart from this fundamental aspect of the case, it is obvious that this action is entirely misconceived. Section 57, sub-sec. 9, of the Judicature Act provides: "No cause or proceeding at any time pending in the High Court of Justice or before the Court of Appeal shall be restrained by a prohibition or injunction;" the proviso at the end of this section indicating, in accordance with the general policy of the Judicature Act, that the remedy, if any, must be an application for a stay in the original action.

I determine the matter upon the broad general ground that it is not competent for a defendant who has failed to plead any defence open to him in the original action to obtain any relief by any substantive proceeding. His only remedy would have been by application for indulgence in the original action; and that application was here made and refused.

The motion will be dismissed with costs, and, as the view I take is fatal to the whole action, I think it proper to direct that this motion be turned into a motion for judgment, and that the action be also dismissed with costs.

The amount of the judgment was, I understand, paid into Court as a term of the granting of the ex parte injunction. This may be directed to be paid to the defendants.

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BOYD, C.

SEPTEMBER 19TH, 1912.

\*CAMPBELL v. TAXICABS VERRALS LIMITED.

*Company—Action against—Absence of Organisation—Legal Existence by Virtue of Letters Patent—Companies Act—Authority of Solicitors to Defend Action—Judgment against Company—Absence of Assets—Costs.*

Motion by the plaintiff for an order setting aside an appearance entered in the name of the defendant as a company, and

\*To be reported in the Ontario Law Reports.