

CARTWRIGHT, MASTER.

JUNE 24TH, 1907.

CHAMBERS.

WALLACE v. MUNN.

Costs—Motion for Leave to Discontinue without Costs—Payment of Plaintiff's Money Claim—Injunction—Rule 430 (4).

Motion by plaintiff under Rule 430 (4) for leave to discontinue as against the original defendants without costs.

Grayson Smith, for plaintiff.

W. Laidlaw, K.C., for defendants.

THE MASTER:—The action began on 11th February, 1907. It arises out of a lumber transaction. The writ of summons was indorsed with a claim for payment of nearly \$3,000, and an injunction restraining the defendants from taking lumber from the limits in question. On 10th April an order was made dissolving the interim injunction, and allowing the plaintiff to amend by adding the Echo Bay Lumber Company as defendants. The statement of claim was delivered on 2nd May. In this payment was asked only from the lumber company, and an injunction as against all the defendants.

On 13th May the Munns delivered their statement of defence, in the 8th paragraph of which they deny any right of action in the plaintiff as against them.

On 18th May plaintiff received payment in full of the amount claimed, and now says he has no further reason for continuing the action. Such payment was presumably made by the lumber company, and now the present motion has been made to dispose of the action as against the Munns.

The ground on which the plaintiff relies is, that before action the defendant John Munn had written saying he would pay any claim of the plaintiff, and that it was not his intention to remove any logs from the limits until plaintiff was settled with. And this assurance was repeated in the second letter written on 8th January of this year. But it