

to be confirmed by the decision of Lindley and Lopes, L.JJ., in *Spincer v. Watts*, 23 Q. B. D. 352, 353, reversing the Judge in Chambers and the Divisional Court in the converse case.

There it was said by Lindley, L.J. (p. 253): "I think that the exception throws some light upon the meaning of the words 'before taking any other proceeding in the action,' and having regard to it and to the object of the rule, I think, what is meant is 'taking any proceeding with the view of continuing the litigation with the person against whom the proceeding is taken.'"

To the same effect Lopes, J.: "I think the rule intended a proceeding which is to have the effect of continuing the action—not a proceeding which has the effect of putting an end to the action." In *Vickers v. Coventry*, [1908] W. N. 12, it was held by Warrington, J. (as held in *Schlund v. Foster, supra*), that the delivery of an amended statement of claim came within the above definition of Lindley, L.J.

I have not found any other authority, nor was any other referred to on the argument. The plaintiff may now have leave to discontinue on the terms approved of in *Schlund v. Foster*, 11 O. W. R. 60, 175, 314, in which case the costs of this motion will be in the cause.

If plaintiff desires to proceed then the notice of discontinuance will be set aside with costs to defendant in any event, and the trial should be expedited in view of the age of the defendant and the nature of his defence. I cannot imagine any other proceeding more indicative of a desire to proceed (unless it might be giving notice of trial), than those taken by plaintiff in this case.

HON. MR. JUSTICE RIDDELL.

OCTOBER 5TH, 1912.

WEEKLY COURT.

YOUNG v. PLOTYMEKI.

4 O. W. N. 94.

*Vendor and Purchaser — Contract for Sale of Land — Default —
Rescission — Forfeiture of Sums Paid — Judgment — Costs.*

Motion by the plaintiffs for judgment on the statement of claim in default of defence in an action for a declaration that the plaintiffs (vendors) were entitled to determine an agreement for the sale of two lots of land in Fort William