

plaintiffs had no substantial interest in it, or in the alternative under Rule 1198 for security for costs.

H. E. Rose, for defendants.

A. B. Morine, for plaintiffs.

TEETZEL, J.:—There can be no doubt that the action was begun pursuant to a retainer duly given on behalf of plaintiffs to their solicitor. It is manifest that the Imperial Bank are largely interested in the fruits of the action, but it is also clear, I think, that, while the bank hold transfers of moneys payable under the contract set forth in the statement of claim, plaintiffs are necessary parties to any action on the contract. Notwithstanding the evidence of plaintiff Horn, who seems to have now thrown in his lot with defendants, I do not think it has been made to appear that the action is really the action of the Imperial Bank, or that plaintiffs Illsley and Horn are insolvent. As stated by the Chancellor in *Pritchard v. Pattison*, 1 O. L. R. at p. 41, "Very clear proof should be given of the status and lack of substantial interest of the plaintiff in litigation begun by him, before the Court should intercept it at the outset by an order for security for costs." . . .

[Reference to *Major v. Mackenzie*, 17 P. R. 18; *Gordon v. Armstrong*, 16 P. R. 432.]

On the ground that defendants have not, in my opinion, given clear proof either of the insolvency of all the plaintiffs or that they have no substantial interest in the litigation begun by them—and under the authorities both these conditions must be met by defendants—the appeal must be dismissed with costs to plaintiffs in any event.

FALCONBRIDGE, C.J.

JUNE 12TH, 1907.

CHAMBERS.

HAMILTON v. HAMILTON, GRIMSBY, AND BEAMS-
VILLE ELECTRIC R. W. CO.

*Costs—Taxation—Counsel Fee—Trial or Assessment of Dam-
ages—Special Circumstances.*

Appeal by defendants from the certificate of Mr. Thom, senior taxing officer. The only item complained of was his