ponent the sum he asked as a deposit before commencing this action. He made the affidavit because plaintiff is at present quarantined for smallpox at Carleton Place, and is out of communication with his solicitor. In *Pritchard* v. *Pattison*, 1 O. L. R. 37, it was said that very clear proof must be given that plaintiff has no substantial interest in the action before such an order can be made. See too *Stow* v. *Currie*, 14 O. W. R. 61, and cases cited there. Giving the widest scope possible to the effect of the assignment as set out in 10 Edw. VII. (Ont.), ch. 64, secs. 8, 9, and 14, yet it is by no means clear that the plaintiff has no substantial interest. The contrary would seem to be the fact. In any case that is a matter that cannot be decided on the present material. It is clearly for the benefit of the plaintiff that he should recover anything possible and so reduce or extinguish the claims against him. For all that appears these claims may have not been paid or released or barred by the Statute of Limitations. The necessary enquiry to determine these questions would be foreign to such an application as the present.

In any case the motion must fail under the principle of the decisions under C. R. 440. In the last of these, *Garland* v. *Clarkson*, 9 O. L. R. 281, the Divisional Court decided that in such a case as the present the assignor was a person for whose immediate benefit the action was brought affirming the decisions in the two cases reported in 10 P. R. 462. See too *Major* v. *Mackenzie*, 17 P. R. 18.

No point is raised at present as to the right of the plaintiff to bring the action. That can, however, be taken by way of defence if tenable. As the assignee is apparently acting as plaintiff's solicitor he must be taken to have given his consent to the action in its present form assuming that any consent was necessary and have satisfied himself of plaintiff being *rectus in curia*.

However that may be the motion must be dismissed, but under the peculiar facts the costs will be in the cause to the successful party.