

FALCONBRIDGE, C.J.—Plaintiff has failed to establish the trust set up in the statement of claim, and even if there were evidence to support it, the Statute of Frauds would be an answer. Nor has plaintiff succeeded in proving the charges of fraud. Nor has she established title in John McNeil by length of possession. The defendant has the paper title, and it has not been successfully impugned. The non-production by defendant until the eve of the trial of certain important documents is not very satisfactorily explained; therefore no costs.

Action dismissed without costs.

CARTWRIGHT, MASTER.

OCTOBER 28TH, 1903.

CHAMBERS.

SASKATCHEWAN LAND AND HOMESTEAD CO. v.
MOORE.

*Pleading—Defence—Action Brought in Name of Company
—Questioning Right to Use Name—Practice—Motion
to Stay Proceedings.*

After an order made in this case on the 14th October, 1903 (similar to that in the case of Saskatchewan Land and Homestead Co. v. Leadley, ante 850) the defendant amended his statement of defence by striking out paragraphs 9, 10, 11 and 13, and by adding 16 new paragraphs.

The plaintiffs moved to strike out the added paragraphs as being a repetition of those previously struck out.

J. J. MacLennan, for plaintiffs.

W. H. Blake, K.C., for defendant.

THE MASTER.— . . . The new paragraphs are only an amplification of those which defendant submitted to have struck out. They go very fully into the details of the alleged irregularities and illegal acts of those who are bringing this action, and ask a declaration that the proceedings of 14th July were illegal and void. I am still of opinion that, so far as this action is concerned, the cases cited on the previous motion apply.

[Reference to Austin Mining Co. v. Gemmell 10 O. R. 696; Weaymouth v. Town of Barrie, 15 P. R. 95; and Barrie Public School Board v. Town of Barrie, 19 P. R. 33.]

The paragraphs complained of should be struck out with costs to plaintiffs in any event.