

costs of a motion for an order allowing the company to defend "and proceedings thereof in this action."

After the company was added as a party, it became the active defendant. It appealed to the Court from a ruling of the Master upon a reference directed at the trial; and that appeal was dismissed with costs. The company then applied for leave to appeal to the Appellate Division, and that application was also dismissed with costs. In both instances, it was ordered that the costs should be paid to the plaintiffs by the defendant company forthwith after taxation. These costs were taxed at \$115.

The defendant company contended that, under the terms of the præcipe order, the money in Court was available only for the costs of the motion to allow the company to defend and the proceedings upon such motion. That was too narrow a construction. The \$200 was clearly intended to be security not only for the costs of the motion to allow the company to intervene, but also for the costs consequent upon the intervention.

There were no other assets of the company available out of which the plaintiffs' taxed costs could be made; and it would be manifestly inequitable not to allow the fund to be applied in satisfaction of the costs incurred by the plaintiffs owing to the defence set up by the company.

The plaintiffs' application for payment out of Court of the \$115 should be allowed.

It was contended also that the company should be ordered to give additional security for costs, owing to the fact that costs, as yet untaxed, resulting from the protracted defence of the company, amounted now to upwards of \$1,000; but this contention failed. Since the interim report of the Master (22nd December, 1917), the defendant company had taken no new step. Until it did, an application to increase the security could not properly be made.

Wightwick v. Pope, [1902] 2 K.B. 99, and *Stow v. Currie* (1910), 20 O.L.R. 353, distinguished.

Should the defendant company take any further steps in the case, an order for additional security would undoubtedly be made.

As the plaintiffs had succeeded on the main point of their application, they were entitled to the costs of the motion, which, upon taxation, might be added to the costs previously taxed, and paid out of the fund in Court.