

The motion is on grounds similar to that in the case of *Barrie Public School Board v. Town of Barrie*, 19 P. R. 33, where all the authorities are cited. It is supported by an affidavit of the solicitor for the defendants, to which are annexed, as exhibits, copies of a letter and telegram from the Widell Co., sent before action to plaintiffs' solicitors, disclaiming any right of action against the defendants and notifying them that Johnson had no authority to represent the Widell Co. and Johnson partnership, for the purpose of bringing such action. The writ was issued on 18th April, the letter above mentioned being dated 7th April, and the telegram the following day.

No affidavit has been put in by the plaintiffs and there has not been any cross-examination on the affidavit in support of the motion.

It seems, therefore, that the motion is entitled to prevail—leaving the plaintiff Johnson to proceed as pointed out in *Whitehead v. Hughes*, 2 Cr. & M. 318, and in the very recent case of *Seal & Edgelow v. Kingston*, [1908], A. C. 579. As the Widell Co. is a foreign corporation, there may be some difficulty in carrying the suit to a successful or any conclusion if that company is unwilling to assist either by accepting indemnity now or at any further stage. This, however, can be left for the consideration of the plaintiff Johnson.

On the existing material the order should go as asked, staying the action until the consent of the Widell Co. is obtained. If this is not given the plaintiff Johnson must take such steps as he may be advised to enforce this alleged claim of the partnership.

The costs of this motion will be to the defendants in any event.

HON. MR. JUSTICE MIDDLETON.

MAY 28TH, 1913.

SAUERMAN v. E. M. F. CO.

4 O. W. N.

*Contract—Construction of—Purchase Price—Part Payment in Kind
—Return of—Settlement of Judgment.*

MIDDLETON, J., *held*, upon the settlement of the judgment herein (24 O. W. R. 415), that a return of the purchase price would include a return of an old car taken as part payment therefor.

On the settlement of the judgment herein, 24 O. W. R. 415, a question was raised as to the amount to be recovered.