HON. MR. JUSTICE RIDDELL. NOVEMBER 8TH, 1912.

CHAMBERS.

LAND OWNERS LTD. v. BOLAND ET AL.

4 O. W. N. 242.

Account—Motion under Con. Rule 645—Practice—Non-production of Writ—No Proof of Endorsement—Account Refused—Costs.

RIDDELL, J., dismissed, with costs to defendants in any event, a motion for an account under Con. Rule 645, on the ground that there was no evidence to shew that the accounts sought were necessarily involved in the relief sought in the writ of summons.

In re Gyhon Allen v. *Taylor*, 29 Ch. D. 834, at p. 837, *per* COTTON, L.J., referred to.

A motion by the plaintiffs "for an order that the defendants account to the plaintiffs forthwith for all moneys received by the defendants for the plaintiffs in connection with the sale of lots in Bay View Heights, Port McNicholl, subdivision." It was explained on the motion that this meant an order under Consolidated Rule 645.

J. J. Gray, for the motion.

J. Grayson Smith, contra.

HON. MR. JUSTICE RIDDELL:—The Court of Appeal in England have said "under that rule only those accounts can be directed which are necessarily involved in the relief sought by the writ of summons." In *Re Gybon Allen* v. *Taylor* (1885), 29 Ch. D. 834, at p. 837, per Cotton, L.J.

The writ of summons is not brought before me, no affidavit is filed as to the manner in which the writ was endorsed. I told counsel definitely and specially, that all papers must be put in which were relied upon—it must be taken then that the plaintiff could not shew that the writ claimed any such relief as is now sought—*de non apparentitus et non existentibus eadem est ratio,* and I must take it that the writ was not so endorsed. We have not here as in some cases an admission on the part of the defendants which could help the plaintiffs over the difficulty.

The motion must be dismissed—costs to the defendants in any event of the action.

As notwithstanding what was said at the argument, and to what is said in *Welsh* v. *Harrison* (1912), 4 O. W. N. 139,