

THE  
ONTARIO WEEKLY REPORTER

VOL. 25 TORONTO, FEBRUARY 26, 1914. NO. 14

HON. MR. JUSTICE MIDDLETON. FEBRUARY 6TH, 1914.

DELAP v. CANADIAN PACIFIC R.W. CO.

5 O. W. N. 850.

*Discovery—Privilege — Solicitor and Client — Attempt to Destroy Privilege—Allegation of Fraudulent Conspiracy between Solicitor and Client—Motion to Amend Statement of Defence — Dismissal of.*

MIDDLETON, J., refused to allow a statement of defence to be amended by adding an allegation that the action was brought in pursuance of a fraudulent scheme between plaintiff and his solicitor, the purpose of such amendment being to obtain discovery of communications between solicitor and client otherwise privileged.

Motion for leave to amend by setting up that this action is fraudulently brought, the plaintiff, well knowing that he has no claim, in pursuance of a fraudulent scheme, and for discovery based upon such amendment.

A. M. Stewart, for defendants.

R. McKay, K.C., for plaintiff.

HON. MR. JUSTICE MIDDLETON: — The amendment is in terms vague, but counsel state that what is intended is to charge that the plaintiff and his solicitor have put their heads together and have conspired to bring this action knowing that it has no foundation in fact, relying upon the evidence of the solicitor—an allegation that has no meaning unless it is intended to charge the solicitor upon whose evidence the case must in great part turn with the intention to testify falsely.

Under circumstances referred to in my former judgment the defendant has secured copies of certain letters from the solicitor to the plaintiff, which it is said justify this charge.

The amendment is sought for the purpose of compelling the production of these letters and enabling discovery to be