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HIGH COURT DIVISION.

LOGIE, J. NOVEMBER 6TH, 1919.

RE GARTLAND.

Will—Construction—Bequest to Wife for "Sole Use of herself and my Children"—"Disposing of Property among Children"—Wife and Children Taking as Tenants in Common.

Motion by the widow and executrix of James Gartland, deceased, for an order determining the meaning and effect of the will of the deceased.

The motion was heard in the Weekly Court, Toronto.
F. Denton, K.C., for the executrix.
F. W. Harcourt, K.C., for the infants.

LOGIE, J., in a written judgment, said that the words of the will were the following: "I give devise and bequeath all my property real and personal . . . to my wife Margaret Gartland for the sole use of herself and my children Florence Rosaleen and Madeline and Michael Stanley, my wife to have charge of everything and use her best judgment in disposing of the property among the children after each comes of age."

Looking at this wording of the will, could it be suggested reasonably that the testator expressed an intention that the persons among whom the widow was to dispose of the property were the persons whom the Court was to exclude from all benefit under the will, and that the widow should take all?

Or, conversely, was the person to whom the property was given "for the sole use of herself" and others, to be excluded?

The true construction of these words, considered alone, did not lead to the harshness of excluding either wife or children,

but to the result that she and her children took as tenants in common.

It was contended on behalf of the wife that these words constituted a gift to the parent for the maintenance of the children, and that the parent took absolutely, under the line of cases of which Brown v. Casamajor (1799), 4 Ves. 498, McIsaac v. Beaton (1905), 37 Can. S.C.R. 143, and Re Culbert (1915), 9 O.W.N. 312, are examples.

In the opinion of the learned Judge, this case came rather within Newill v. Newill (1872), L.R. 7 Ch. 253, and Bibby v. Thompson (1863), 32 Beav. 646.

The widow's interest was not cut down to a life-estate, although this case came perilously near the decision in Crockett v. Crockett (1847), 2 Phillips 553. The present case was distinguishable from the Crockett case, in that here the estate was given to the widow for the sole use and benefit of herself and certain named children, who were each to receive their shares on attaining their majority.

The subsequent words "and use her best judgment in disposing of the property among the children" are covered by Re Hislop (1915), 8 O.W.N. 53.

Apart from authority, no sufficient intention appeared on the face of the will that the beneficiaries were to take as joint tenants—rather the reverse, having regard to the direction to dispose of the property among the children after each of them came of age.

Therefore, the widow and children took equally the property of the testator as tenants in common.

MIDDLETON, J. NOVEMBER 6TH, 1919.

*RE MITCHELL AND TOWNSHIP OF SAUGEEN.

Municipal Corporations—By-law Authorising Taking of Gravel from Land of Private Person—Municipal Act, sec. 483 (10)—Taking Unlimited both as to Time and Amount—Sec. 322 (3)—Fixing of Price—Appointment of Arbitrator under sec. 339.

Motion by Mitchell to quash by-law 632 of the Township of Saugeen, being a by-law for the expropriation of gravel for use upon the highways and bridges of the township.

The motion was heard in the Weekly Court, Toronto.

G. H. Kilmer, K.C., for the applicant.

W. R. Fraser, for the respondent.

* This case and all others so marked to be reported in the Ontario Law Reports.

MIDDLETON, J., in a written judgment, said that the by-law was based upon the provision of sec. 483, sub-sec. 10, of the Municipal Act, which authorised a by-law for "entering upon and searching for and taking from land . . . such timber, gravel, stone or other material as may be necessary for constructing, maintaining and keeping in repair the highways and bridges" of the municipality. The compensation to be paid must be agreed upon or ascertained by arbitration before the power to take is exercised, and may be a lump-sum or a sum determined by the quantity taken, or a price by the cubic yard for what may be taken.

This by-law authorised the entry upon the applicant's lands and the taking from the gravel-pit now open, and the gravel-beds adjoining, such gravel as might be necessary for constructing, maintaining, and keeping in repair the highways and bridges under the jurisdiction of the council. Provision then followed for the payment of the price to be agreed upon or determined by arbitration.

The objection upon which most reliance was placed was that the by-law should in some way define that which was to be taken. This might be done by limiting the time or by limiting the amount. It was said that the statute contemplated that there should be one arbitration, and that the arbitrator should fix a price to be paid for that which was to be taken, and that it was essential that the thing for which the price was to be fixed should be certain, or injustice must result.

In this the learned Judge agreed. He did not think that the statute contemplated conferring upon the municipality the power to designate the applicant's gravel-deposit as a source of supply for all time for the repair and construction of roads, and that the price should be then fixed by an arbitration for all time. This would be unfair to the owner and might be unfair to the municipality.

In all cases of expropriation the particular thing to be taken under a general power to take should be clearly defined. The arbitrator has no power or duty save to fix the price of the precise thing defined by the by-law. It may be 1,000 cubic yards of gravel, or it may be such gravel as may be required during the year, or it may be defined in any other way—the essential thing is that the council which has the power to take what it wants should say clearly what it intends to take.

As stated in Cook v. North Vancouver (1911), 16 B.C.R. 129, a case of taking material for road repairs under a similar statute, the municipality expropriating should "shew what is intended to be taken and the extent of the operation to be carried on."

Section 322 (3) of the Municipal Act perhaps applied to this case. Even if it did not apply, it indicated the true principle.

The arbitrator must determine the price having regard to the thing taken. If the right to take for all time is intended, the price must be fixed with that in view; and, if it is shewn that in the future the value of gravel is likely to be greater than at present, the price will no doubt be greater than the present market-value.

It was said that an arbitrator had been appointed under sec. 339. This appointment must fall with the by-law.

Order quashing the by-law with costs.

MULOCK, C.J. EX. NOVEMBER 7TH, 1919.

McKENZIE & KELLY v. AUTO STROP SAFETY RAZOR CO.

Injunction—Interference with Sale by Plaintiffs of Goods Manufactured by Defendants—Defamatory Statements—Claim Made in Bad Faith—Evidence—Interim Injunction—Speedy Trial.

Motion by the plaintiffs for an interim injunction restraining the defendant company from making or publishing any statement to the effect that the plaintiffs, or any purchasers from them, are not entitled to resell certain razors purchased by them from the Department of Militia for Canada, or that no resale of any such razors should be at less than $5 per razor, or that such razors were not for sale to the trade or to the public, or that any such resale was an infringement of the defendant company's patent for such razors, or that any purchaser from the plaintiffs of any such razor was subject to prosecution in the event of a resale at less than $5 per razor, and from interfering with any contract or any customer of the plaintiffs, or procuring or enticing any of the plaintiffs' customers to break their contracts with the plaintiffs, and restraining the defendant company from publishing or continuing to publish libels or slanders concerning the plaintiffs and from interfering with the resale of the razors.

The motion was heard in the Weekly Court, Toronto.

W. R. Wadsworth, for the plaintiffs.

John I. Grover, for the defendant company.

MULOCK, C.J., read a judgment in which, after stating the facts, he said that the evidence shewed that the defendant company's manager notified and was notifying various persons in the

trade and their customers and persons who had purchased some of the razors from the plaintiffs, that they must not sell any of such razors except at a minimum price of $5 each; and that, if they did, they would be liable in damages; that the defendant company would sue them therefor; and that they would also be liable to be prosecuted criminally.

The defendant company put in nothing in answer to the motion except the cross-examination of the plaintiffs on their affidavits; and in that cross-examination the plaintiffs' statements in their affidavits that the defendant company's claim was made in bad faith and with a knowledge that it did not exist, was not shaken. The only justification offered was that the defendant company's claim was made in the interest of its business. That was not a denial of the plaintiffs' statements that the claim was made in bad faith and with the knowledge that it was without foundation. The evidence shewed that the defendant company's conduct had already occasioned damage to the plaintiffs, and, if continued, would cause further damage.

A man who in good faith believes that he has a legal right may, in defence of that right, adopt a course which injuries another, without committing an actionable wrong; but, if he knows that he has no legal right to what he claims, he cannot be acting in good faith if he sets up the claim; and, if his conduct injures the other party, it is actionable: Halsey v. Brotherhood (1881), 19 Ch. D. 386, 393; Hermann Loog v. Bean (1884), 26 Ch. D. 306.

The plaintiffs should have an interim injunction as asked, but they should speed the trial of the action; costs of the motion to be costs in the cause.

LOGIE, J., IN CHAMBERS. NOVEMBER 7TH, 1919.

ALEXANDER v. ALCEMO MANUFACTURING CO.

Writ of Summons—Service out of the Jurisdiction—Order Permitting Service Set aside by Master in Chambers—Appeal from Master's Order—Notice of Appeal—Grounds of Appeal—Sufficiency of Statement—Rule 218—Notice Served not Specifying Return-day—Rule 505 (2)—Extension of Time under Rule 176—Absence of Merits — Cause of Action — Contract — Warranty — Assets in Ontario—Rule 25 (h).

Appeal by the plaintiff from an order of the Master in Chambers setting aside an order allowing service of notice of the writ of summons on the defendant the Alcemo Manufacturing Company out of the jurisdiction.

J. P. MacGregor, for the plaintiff.
E. P. Brown, for the defendants.

LOGIE, J., in a written judgment, said that two preliminary objections to the hearing of the appeal were taken.

The first was that the notice of appeal did not specify the grounds intended to be argued, as directed by Rule 218. The learned Judge was of opinion that the grounds of appeal were sufficiently indicated by the words in the notice of appeal, "upon the grounds set forth and the material filed before the Master in Chambers."

The second objection was that the appeal was launched too late and that the notice of appeal did not specify the day on which it was returnable. In fact, the copy of the notice of appeal served on the defendants' solicitors did not contain a date upon which the notice was returnable; the notice was dated the 27th August, and was served in time. Rule 505 (2) states that the appeal shall be by motion, on notice served within 4 days and returnable within 10 days after the decision complained of. It could not be said that the notice served was good; and, if an extension of time under Rule 176 was sought as an indulgence, it should not be granted.

Reference to In re Manchester Economic Building Society (1883), 24 Ch. D. 488; Union Bank of Canada v. Rideau Lumber Co. (1900), 19 P.R. 106.

There were no merits in the appeal. It was admitted by counsel for the plaintiff that, if the case of the defendant the Alcemo Manufacturing Company could not be brought within clause (*h*) of Rule 25, there could be no remedy against it in Ontario.

For that defendant company it was urged that there was no contract between it and the plaintiff, and that it had no assets, or at all events no sufficient assets, in the Province of Ontario.

The plaintiff's claim against this defendant company was for damages for misrepresentation and breach of warranty. No misrepresentation was shewn. The warranty alleged was said to have been inscribed upon a package of the goods of this defendant company shewn by one Yeo to the plaintiff before he had any dealings with either of the defendant companies. It was alleged but not shewn that Yeo was at this time the agent of the Alcemo company. He was in fact then an independent jobber, but afterwards was the president of the Auto Accessories Company, a co-defendant. It was abundantly clear that the plaintiff never had any contract, express or implied, with the Alcemo company—his contract was with the Auto Accessories Company. The plaintiff's evidence disclosed no warranty given to him by the

Alcemo company. An alleged warranty upon goods shewn to but not purchased by the plaintiff would not entitle him to sue that company in contract.

Reference to Irving v. Callow Park Dairy Co. (1902), 66 J.P. 804, distinguishing it and other "label" cases.

Carlill v. Carbolic Smoke Ball Co., [1893] 1 Q.B. 256, might have some bearing if the plaintiff had bought from the Alcemo company goods upon which a warranty appeared—but he did not.

The goods in Ontario, the only assets alleged to be the property of the Alcemo company, appeared from the plaintiff's own evidence to be the property either of the Auto Accessories Company or of the plaintiff himself. These goods were shipped direct to the plaintiff by the Alcemo company to represent goods bought by the plaintiff from the Auto Accessories Company, the latter having paid the Alcemo company for the original goods. The plaintiff, on the arrival of the replacing goods, refused to accept them and warehoused them in the name of the Alcemo company. He now contended that this refusal to accept brought that company within the purview of Rule 25 (*h*), and made the company the owner of the rejected goods. With that contention the learned Judge did not agree.

The value of the rejected goods appeared to be less than $200, the sum mentioned in the Rule. That another shipment of goods at another time of substantially the same quantity was bought by the plaintiff from the Auto Accessories Company at $201.30 was not evidence of the value of the rejected goods.

The appeal should be dismissed with costs.

MIDDLETON, J., IN CHAMBERS. NOVEMBER 8TH, 1919.

*RE MEAFORD MANUFACTURING CO.

Company—Winding-up—Petition by Person Alleging himself to be a Creditor—Service of Demand for Payment Remaining Unsatisfied—Sole Foundation for Allegation of Insolvency—Reasonable Doubt whether Claim could be Established—Refusal to Retain Petition—Dismissal with Costs—Winding-up Act, R.S.C. 1906 ch. 144, secs. 5, 14.

Petition for the winding-up of the company under the Dominion Winding-up Act, R.S.C. 1906 ch. 144.

A. C. McMaster, for the petitioning creditor.

R. S. Robertson, for the company.

MIDDLETON, J., in a written judgment, said that the petition was presented by one Willson, who alleged that he was a creditor of the company in the sum of $9,000, and that the company was insolvent and liable to be wound up. The only ground of insolvency alleged was that a demand for payment of this claim for $9,000 was served upon the company on the 29th July, 1919, and remained unsatisfied. The petition was supported by a formal affidavit of the petitioner, containing the allegation that he was a creditor of the company in the sum of $9,000, overdue and unpaid, but not disclosing the nature of the claim. He also stated, in general terms, the service of the demand and the failure to pay, and swore that upon this ground the company was insolvent.

Among the papers there was a demand, with a statutory declaration of service—not proper proof, of course—shewing that the claim was for the balance of the petitioners' salary said to be due for the years 1915, 1916, and 1917.

From the affidavits filed in answer to the petition it appeared that the claim was in good faith disputed. Whether any claim could be established was doubtful. The petitioner was the manager of the company. The books kept under his control shewed that his salary, at a much lower rate than was now asserted, was charged against the company and fully paid. It appeared that this claim had only recently been put forward, though the petitioner left the service of the company as long ago as February, 1918.

It further appeared that M., the president of the company, who was very largely interested in it financially, and with whom the petitioner dealt, died suddenly, and this claim was not put forward until after his death; that the claim was inconsistent with a letter written by the petitioner to M's widow in February, 1919. It was also apparently inconsistent with the terms of a written agreement produced.

All this might possibly be explained away satisfactorily, and the claim might in the end be established; but it was obvious that, when the petition was launched, the petitioner could never have thought that his claim would not be seriously and in good faith contested.

The petitioner must be left to establish his claim in the ordinary way in an action against the company, and in the meantime the petition must be dismissed, without prejudice to the petitioner's right to present a new peittion if his claim should eventually be established and should then be unpaid.

It was not seriously suggested that, upon the material, the order should be now made; but it was urged that the winding-up petition should be allowed to stand until either an issue had been

tried and determined or an action had been brought to ascertain the validity of the claim set up. In view of the provision of sec. 5 of the Winding-up Act, that the winding-up shall be deemed to commence at the time of the service of the notice of the petition for the winding-up, the petition should not be allowed to stand. There was no exception in the statute to this absolute provision. Under sec. 14, the Court may perhaps have power to prevent the retroactive effort of a winding-up order upon an adjournment of a winding-up petition; but the learned Judge does not think so; nor does he think that the company, which was shewn to be in active operation and employing a large number of hands, should be placed in the embarrassing position which would follow any order by which the petition should be preserved.

Reference to In re Public Works and Contract Co. Limited (1888), 4 Times L.R. 670; In re Gold Hill Mines (1882), 23 Ch. D. 210, 213, 215.

Petition dismissed with costs.

MIDDLETON, J., IN CHAMBERS. NOVEMBER 8TH, 1919

*HEISTEIN & SONS v. POLSON IRON WORKS LIMITED.

Arbitration and Award—Action Brought after Submission—Motion to Stay Proceedings—Arbitration Act, R.S.O. 1914 ch. 65, sec. 8—Previous Issue and Service of Order for Security for Costs—Election to Proceed with Action—Dismissal of Motion.

Motion by the defendants, under sec. 8 of the Arbitration Act, R.S.O. 1914 ch. 65, to stay proceedings in this action.

J. H. Moss, K.C., for the defendants.
A. C. McMaster, for the plaintiffs.

MIDDLETON, J., in a written judgment, said that objection was taken that the motion could not be now made because the defendants had taken a "step in the proceedings" by issuing and serving an order for security for costs. This, the learned Judge thought, was fatal: Adams v. Cattley (1892), 40 W.R. 570; Bartlett v. Ford's Hotel Co., [1895] 1 Q.B. 850; Ford's Hotel Co. v. Bartlett, [1896] A.C. 1.

Here what was done was no merely formal thing. The order stayed the action and caused the plaintiffs to give security so that the action might proceed. This having been done, there was now

a motion for a further stay. The order, in the language of some of the cases, was an election to proceed with the action and an abandonment of the right to arbitrate. The request for security for costs in the action was an intimation that, security being given, the action might proceed.

The learned Judge had the less regret in giving effect to an objection that was aside from the merits, as he was convinced that the action could be better dealt with by a Judge than by lay arbitrators. There were legal questions which had to be solved.

The motion must be dismissed—costs to the plaintiffs in any event of the cause.

MIDDLETON, J., IN CHAMBERS. NOVEMBER 8TH, 1919.

*REX v. ABRAMS.

Intoxicating Liquors—Order in Council Prohibiting Making or Manufacture of Intoxicating Liquor—Magistrate's Conviction for Violation of—Combination of High Wines with Cherries or Sugar—"Manufacture"—Motion to Quash Conviction—Question of Fact for Magistrate—Evidence to Support Conviction.

Motion to quash the conviction of the defendant, by a magistrate, for unlawfully manufacturing intoxicating liquor, in contravention of sec. 2 of an order of the Governor-General in Council of the 16th March, 1918.

W. D. M. Shorey, for the defendant.
Edward Bayly, K.C., for the Crown.

MIDDLETON, J., in a written judgment, said, that the order in council provided that no person should "make or manufacture intoxicating liquor," save in circumstances which did not exist here.

For the Crown it was urged that on this motion the conviction could not be quashed because the police officer said that, when he found the liquor on the defendant's premises, the defendant said that "it was cherry wine he manufactured for the Jewish festival;" if the magistrate accepted this and rejected all the other evidence, the conviction must stand.

The learned Judge preferred to base his decision upon the broader ground that the argument for the accused was not well-founded.

The accused had procured high wines, and cherries and sugar were added, this making the so-called cherry brandy. The resultant liquor was 25 per cent. proof spirits in one bottle or jar, and 44 per cent. in another.

It was said this was not a making or manufacturing within the prohibition; that the accused did not make the high wines, nor did he make the cherries or the sugar; he formed the happy combination, but did not make or manufacture it.

The learned Judge said that he could not so interpret the order in council or what was done.

What was intended by the order in council, as appeared from the recitals, was the prohibition of intoxicating liquor. What the defendant sought to do was to make a beverage that manifestly was intoxicating. The resultant cherry brandy was made by him. He did not create the ingredients nor manufacture them, but he did make and manufacture the beverage. The baker makes and manufactures bread even though he does not grow or grind the wheat.

In each case it is a question of fact for the magistrate whether what was done amounts to making or manufacturing. Here there was ample evidence to support his finding.

Motion dismissed with costs.

SUTHERLAND, J. NOVEMBER 8TH, 1919.

GIBSON v. McDOUGALL.

Conspiracy—Action for Conspiring to Charge Plaintiff with being the Father of a Bastard—Action not Maintainable without Allegation of Special Damage—Slander—Motion to Set aside Statement of Claim—Leave to Amend—Costs.

Motion by the defendants to set aside the statement of claim delivered by the plaintiff as frivolous and vexatious and disclosing no cause of action.

The motion was heard in the Weekly Court, Toronto.

G. H. Kilmer, K.C., for the defendants.

W. K. Fraser, for the plaintiff.

SUTHERLAND, J., in a written judgment, said that this action was brought by a married man against Colin McDougall and his

daughter Mary. The plaintiff alleged that the defendants wrongfully conspired together falsely and maliciously to assert and declare and to cause it to be believed that the plaintiff was the father of an illegitimate child borne by the defendant Mary McDougall, with intent to extort money from the plaintiff and to injure him in his reputation, credit, and good name, and to bring him into public hatred and contempt, and, in pursuance of the conspiracy, spoke and widely circulated several slanders mentioned. Specific instances of alleged speaking and publication by one or other of the defendants were set out in the pleading. No allegation of special damage was made. The plaintiff claimed $3,000 damages.

It was contended by the defendants that to charge a man with being the father of an illegitimate child was not an actionable wrong, nor was it an actionable wrong to conspire to do so unless special damage was alleged.

There is a distinction between words written and words merely spoken. In so far as spoken defamatory words are concerned, they are actionable only when special damage has resulted from their use. To say of a man that he is the reputed father of a bastard child is not actionable without proof of some special loss: Odgers on Libel and Slander, 5th ed. (1912), p. 72.

If it be not actionable to charge a man with being the father of an illegitimate child, it is not so to conspire as charged in the statement of claim. An attempt to extort money by publishing or threatening to publish or offering to abstain from publishing or prevent the publishing of a defamatory libel is an offence under sec. 332 of the Criminal Code.

If special damage were alleged, the conspiracy might be actionable; but, in the absence of such an allegation, it was not actionable.

Reference to Quinn v. Leathem, [1901] A.C. 495.

The statement of claim, as it now stood, disclosed no cause of action.

The plaintiff should have leave to amend by alleging special damage. If the amendment is made within one week, the defendants should have the costs of this motion payable to them at the end of the action in any event. If the amendment should not be made within the time mentioned, the statement of claim should be set aside with costs.

REX v. THOROLD PULP CO. LIMITED—FALCONBRIDGE, C.J.K.B.—NOV. 4.

Contract—Water Taken from Government Canal—Payment for—Lease—Penalty.]—Action to recover $16,949.33 for excess of water from the old Welland canal, used or wasted by the defendants under their lease from the Dominion Government. The action was tried without a jury at St. Catharines. FALCONBRIDGE, C.J.K.B., in a written judgment, said that there was nothing in the nature of a penalty about article 9 of the lease. It was a contract pure and simple, and the cases cited did not apply. There should be judgment for His Majesty for the full amount claimed, with costs. The sum of $300 was admittedly overcharged. The Local Registrar at St. Catharines should settle the amount for which judgment should be entered. Order for payment out to the plaintiff of the amount paid into Court in satisfaction pro tanto of the judgment. T. F. Battle, for the plaintiff. H. H. Collier, K.C., for the defendants.

RE GOODWIN—SUTHERLAND, J.—NOV. 8.

Will—Construction—Annuity—Income—Deficiency Payable out of Corpus.]—On the 30th June, 1919, SUTHERLAND, J., made an order construing the will of Michael Francis Goodwin, deceased, with reference to certain questions arising thereunder: see Re Goodwin (1919), 16 O.W.N. 339. Some difficulty having arisen in settling the terms of the order, as to whether the widow was entitled to have the "insufficiency" of the income to produce an annuity of $800 made up out of the corpus of the estate, counsel spoke to the minutes; and the learned Judge, in a written judgment, said that, if there were added to the following sentence in his reasons for judgment, "It seems to me that under clause 8 of the will the annuity of $800 per annum, referred to, was payable to the widow only until the youngest surviving child should attain the age of 21 years," the following words, "payable out of the income from the whole estate until that time, and in case of deficiency out of the corpus of the estate, and thereafter out of the income of the one-third of the estate remaining after the realisation and division of the two-thirds of the securities in the executors' hands belonging to the estate referred to in clause 11 of the will," it would obviate any difficulty. W. Lawr, for the Toronto General Trusts Corporation. W. G. Owens, for Kate Goodwin and others. W. H. Gregory, for Mabel Goodwin and others. F. W. Harcourt, K.C., for the infants.

AUTO STROP SAFETY RAZOR CO. v. MCKENZIE & KELLY—MULOCK, C.J.EX.—NOV. 8.

Injunction—Motion for Interim Injunction—Relief Granted in Cross-action—Costs.]—Motion by the defendants for an interim injunction restraining the plaintiffs from slandering the defendants' title to certain razors. The motion was heard in the Weekly Court, Toronto. MULOCK, C.J.Ex., in a written judgment, said that the action was brought for damages for infringement of the plaintiffs' patent, and for an injunction to restrain the defendants from selling Auto Strop safety razors. When the motion came on for hearing, the defendants had not filed a statement of defence or counterclaim, and the objection was taken that, until they had done so, they were not entitled to an injunction. Thereupon the defendants' counsel expressed his intention to institute an action against the company plaintiffs in this action) and in that action to move for an injunction, whereupon it was ordered that the motion should stand over. The threatened action against the company was begun, and the plaintiffs in that action moved for an injunction, and that injunction was granted: see McKenzie & Kelly v. Auto Strop Safety Razor Co., ante 150. It therefore became unnecessary to deal with the motion for an injunction in this case. The costs of the motion should be left to the discretion of the trial Judge. W. R. Wadsworth, for the defendants. John I. Grover, for the plaintiffs.