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HIGH COURT OF JUSTICE.

TEETZEL, J. FEBRUARY 17TH, 1910.

ROSS v. TOWNSEND.

Costs—Scale of—Amount Recovered—Investigation of Accounts Involving Large Sums—Jurisdiction of County Court—Con. Rule 1132—Set-off.

Motion by the plaintiff for judgment on further directions and as to costs.

The plaintiff sued for $505.30 for balance of salary and travelling expenses. Upon a reference directed at the trial, the Master reported that the plaintiff was entitled to recover only $152.85, of which the defendant had paid into Court $107.95, with a plea of tender before action.

J. M. Telford, for the plaintiff.

A. O'Heir, for the defendant.

TEETZEL, J.:—While the total accounts investigated by the Master were large, the result of the report is that the plaintiff should have sued for a balance of $152.85 only. The County Courts having jurisdiction to entertain and investigate accounts and claims of suitors, however large, provided the amount sought to be recovered does not exceed the sum prescribed by the Act, this claim could have been sued for in a County Court: Bennett v. White, 13 P. R. 149. In the result, the case as to costs is governed by Con. Rule 1132.

The order will, therefore, be, that the plaintiff is entitled to judgment against the defendant for $152.85, including the amount paid into Court, and costs on the County Court scale, subject to the set-off to which the defendant is entitled under Con. Rule 1132.

MEREDITH, C.J.C.P., IN CHAMBERS. FEBRUARY 18TH, 1910.

*STOW v. CURRIE.

Security for Costs—Plaintiff out of the Jurisdiction—Order for Increased Security—Jurisdiction of Master in Chambers—Application after Trial and Judgment — Appeal to Divisional Court—Stay of Proceedings—Discretion—Amount of Security—Past and Future Costs—Con. Rules 42 (d), 1204, 1208—Practice.

Appeal by the plaintiff from an order of the Master in Chambers, ante 418, requiring the plaintiff to give further security for the costs of the action.

T. P. Galt, K.C., and Grayson Smith, for the plaintiff.

F. Arnoldi, K.C., for the defendants the Otisse Mining Co.

Eric N. Armour, for the defendants Warren, Gzowski, & Loring.

MEREDITH, C.J.:—By an order made on the 3rd November, 1908, the plaintiff was required to give security to answer the defendants' costs of the action "in the sum of $1,000 to be paid into Court, or otherwise by good and sufficient bond in two sureties in a penalty of $2,000."

The plaintiff gave security by a bond of himself and a guarantee company—the obligors' liability under which, it was said on the argument, was to answer the costs to the extent of $1,000 only. I find, however, on examination of the bond, that the liability of the obligors is to answer the costs to the extent of $2,000.

On the 22nd April, 1909, the defendants the Otisse Mining Co. applied . . . for an order that the plaintiff should give increased security . . and that application was refused . . 13 O. W. R. 997.

The action then proceeded to trial, with the result that it was dismissed with costs.

On the 13th December, 1909, the plaintiff gave notice of appeal to a Divisional Court from the judgment at the trial, and the motion has been set down . . .

On the 17th January, 1910, the defendants the Otisse Mining Co. launched a motion for increased security, and it was on that motion that the order now in appeal was made. . . .

*This case will be reported in the Ontario Law Reports.

I think it clear that the Master had jurisdiction to make the order, and that the application was properly made to him. . . Bentsen v. Taylor, [1893] 2 Q. B. 193 . . .; and Tanner v. Weiland, 19 P. R. 149, decides that Con. Rule 825 does not prevent an order for security for costs being made when the plaintiff is out of the jurisdiction.

The question as to the power of the Master to stay the proceedings is purely academic, as the effect of his order, without any provision of that kind, is to stay the proceedings until the security is given: Con. Rule 1204.

I think, however, that there is no doubt that the Master had this power. Con. Rule 42, clause 17 (d), which excludes from the jurisdiction of the Master "staying proceedings after verdict, or on judgment after trial or hearing before a Judge," can have no application to an order having that effect which the Master has undoubted authority to make, such as an order for security for costs. It was intended to prevent the Master in Chambers from staying proceedings to enforce such a verdict or judgment—in other words, staying the operation or execution of the verdict or judgment.

The objection to the jurisdiction, therefore, fails. . . .

There are, no doubt, to be found in English cases expressions to the effect that increased security should not extend to past costs: Sturla v. Freccia, [1877] W. N. 161; Republic of Costa Rica v. Erlanger, 3 Ch. D. 62, 69. In Brocklebank v. Lynn S. S. Co., 3 C. P. D. 365, it was, however, held that security for costs is not necessarily confined to future costs, but may, when applied for promptly, be extended to costs already incurred. Whatever may be the practice in England, where there is no such Rule as our Con. Rule 1208, there is, I think, under that Rule, power to make the increased security extend to costs already incurred. . . .

It appears to me not unreasonable that the security should be increased.

Having regard to what was said by Osler, J.A., in Standard Trading Co. v. Seybold, 6 O. L. R. 379, 380, . . . in all of which I agree, I think that, if the additional security is fixed at $1,000, it is all that the plaintiff should be required to do to entitle him to proceed with his action.

The order will, therefore, be varied by so providing, and by eliminating the stay of proceedings, leaving that to be governed by Con. Rule 1204, and the costs of the motion and of the appeal will be in the cause.

DIVISIONAL COURT. FEBRUARY 21ST, 1910.

*YOUNG v. MILNE.

Contract—Statute of Frauds—Engagement to Pay Debt of Another—Withdrawal of Execution from Sheriff's Hands—Payment of Part of Execution Debt—Guaranty of Balance—Evidence.

Appeal by the defendant from the judgment of the District Court of Nipissing in favour of the plaintiff in an action on an alleged promise in the nature of a guaranty on the part of the defendant to pay the amount of the plaintiff's judgment against the Charles B. Lentz Lumber Co., if the plaintiff would withdraw his execution against that company from the sheriff's hands. The execution was withdrawn, the plaintiff was paid $250 by a cheque of the company, and now sued the defendant for the balance.

The appeal was heard by BOYD, C., MAGEE and LATCHFORD, JJ.

H. E. Rose, K.C., for the defendant.

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

BOYD, C.:— . . . The defendant says—and he is credited by the solicitor as being a man entitled to respect—that he made no such promise as is relied upon—that he was asked if he would guarantee the balance and he refused. The solicitor for the plaintiff will not deny that he asked Milne for a guaranty. The confusion of evidence and of recollection exemplifies the value of the rule of law which requires that the promise to pay the debt of another should be manifested in writing. The sole question is, does this promise, even giving credit to the solicitor's version, fall within the Statute of Frauds, which is pleaded. The authorities are, according to the latest exposition, in favour of the defendant. When the plaintiff, in consideration of the promise to pay, has relinquished an execution under which some advantage or security exists or is likely to be realised, and when the effect of relinquishment is that such interest or advantage accrues to the defendant who has made the promise, then no writing is required, for the transaction is substantially one for the purchase of the execution. But, if the promise is given in consideration of for-

*This case will be reported in the Ontario Law Reports.

bearance for a time, and the execution is, as here, withdrawn, yet, as no direct benefit therefrom has arisen to or was contemplated by the promisor, it is simply a promise to pay the debt of another, which is valid enough so far as the consideration is concerned, but is not enforceable because not put into writing. These conclusions are based upon the late cases of Beattie v. Dinnick, 27 O. R. 285; Harburg India Rubber Comb Co. v. Martin, [1902] 1 K. B. 778; and Bailey v. Gillies, 4 O. L. R. 182, 190. Of the older cases, see Tomlinson v. Gell, 6 A. & E. 564, 571, judgment of Patteson, J., and Chater v. Beckett, 7 T. R. 201.

The execution against the Lentz Co. is still outstanding and enforceable and that company are liable for this judgment debt.

Upon all the facts, I should conclude that the transaction was rather as put by Milne than as by the solicitor. All the circumstances indicate that it was far from the intention of a stranger, Milne, to shoulder personally the liability in any event.

The judgment should be set aside and the action dismissed with costs.

MAGEE and LATCHFORD, JJ., concurred.

DIVISIONAL COURT. FEBRUARY 21ST, 1910.

*DICKS v. SUN LIFE ASSURANCE CO.

Life Insurance—Policies Payable to Children of Assured—Change by Direction in Will—Appointment of Trustee to Receive Insurance Moneys—Validity of Payment to Trustee—Breach of Trust—Costs.

Appeal by the plaintiffs from the judgment of MACMAHON, J., ante 178.

The appeal was heard by BOYD, C., MAGEE and LATCHFORD, JJ.

A. J. Russell Snow, K.C., for the plaintiffs.

G. F. Shepley, K.C., and W. Mulock, for the defendants.

BOYD, C., referred to the statute governing the case, R. S. O. 1887 ch. 136, sec. 11, whereby the insured may by will appoint a

*This case will be reported in the Ontario Law Reports.

trustee of the money payable under the policy, and it is declared that payment made to such trustee shall discharge the company; and said that he saw no escape from the plain terms of the enactment, that the company, by so paying, had been discharged. There was no breach of trust in making payment to the trustee named in the will, who was also a statutory trustee to give a discharge. The breach of trust might have arisen afterwards through the dissipation of the principal by the trustee, but of this the company had no notice when they made the payment, and they could have no foreknowledge of it. The company could not be regarded, therefore, as participants in any breach of trust.

No cases are against this conclusion. True, there is some language in a judgment of my own, Scott v. Scott, 20 O. R. 315, which, read apart from the subject-matter of decision, may be taken as saying that a trustee appointed by the insured by will was not a competent trustee if he had also other trusts devolved upon him antagonistic to or inconsistent with those to be exercised in regard to the beneficiary insurance moneys. That inconsistency does to some exist in the present will, so that, if the trustee had done with the money as directed, he would have violated the direction of the statute. I refer to the clause which directs the payment of debts to be made in part out of these insurance moneys, which the statute exempts from the payment of the testator's debts. But I must take it that the testatrix knew this, and acted with an intention to trust her husband to do what was right with the insurance money, and that it should be paid into his hands on her death. . . .

[Reference to Scott v. Scott, supra; Campbell v. Dunn, 22 O. R. 98; Dodds v. Ancient Order of United Workmen, 25 O. R. 570; Cleaver v. Mutual Reserve Fund Life Association, [1892] 1 Q. B. 147, 153.]

Appeal dismissed, without costs; this because the trial Judge might well have given no costs on account of the state of the cases herein mentioned.

MAGEE and LATCHFORD, JJ., concurred.

DIVISIONAL COURT. FEBRUARY 21ST, 1910.

*STECKER CO. v. ONTARIO SEED CO. LIMITED.

Contract — Transfer of Assets of Partnership to Incorporated Company—Assumption of Liabilities — Right of Creditor of Partnership to Payment by Company—Promise to Pay Debts —Correspondence—Promissory Notes — Acceptance of Company as Debtor—Novation.

Appeal by the defendant company from the judgment of FALCONBRIDGE, C.J.K.B., in favour of the plaintiffs in an action to recover the amount of the indebtedness of a partnership composed of the defendants Herold and Kusterman, doing business, before the incorporation of the defendant company, under the name of "The Ontario Seed Company," for goods supplied down to the 1st April, 1909. Judgment was given for the plaintiffs against the defendant company for $1,621.50, with interest.

On the 10th April, 1909, an agreement was made by which the partnership was to transfer all its assets and property to a new concern, to be incorporated and called "The Ontario Seed Company Limited"—the present defendants. It was a term of the transfer that it was to be subject to the liabilities of the old partnership, which were to be assumed by the new corporation. The assets and property turned over were valued at $41,000, and the liabilities to be taken over and provided for were ascertained to be $28,175, of which the plaintiffs' claim was one. A bill of sale was duly executed after the incorporation. The patent issued to the defendants on the 15th April, 1909, and they were certificated as entitled to begin business on the 22nd June, 1909. The prospectus of the company, filed in the proper office, set forth that this company had "purchased the former business and assets, subject to the liabilities of the said firm, which are to be assumed by the new company." A copy of this prospectus was sent by the defendant company to the plaintiffs on the 6th May, 1909, with a letter regretting that the new company could not send a cheque, but "expected to be shortly in a position to meet your account," and trusted that an extension of time would be given. The directors of the new company were the defendants Herold and Kusterman and three others.

The appeal was heard by BOYD, C., MAGEE and LATCHFORD, JJ.

*This case will be reported in the Ontario Law Reports.

W. M. Reade, K.C., for the defendants.

M. A. Secord, for the plaintiffs.

BOYD, C. (after setting out the facts and the correspondence between the plaintiffs and the defendant company):—The acts and correspondence of the creditors and the assignees of the original debtors shew, so to speak, an attornment as between them by which the plaintiffs were treated as the direct creditors of the new concern, and the new concern negotiated with the plaintiffs for extension of time, and undertook absolutely to make payment. The giving of the promissory notes is sufficient evidence of the direct relationship of debtor and creditor to give a direct right of action. Even if it be treated as a dealing by one to answer for the debt of another, there is plenty of evidence in writing of such a promise as would satisfy the Statute of Frauds, which, however, is not pleaded. The merits are entirely with the plaintiffs—the line of defence is a technical one and manifestly only to gain time. And though after judgment in the plaintiffs' favour they may be well advised in giving further time to the new and developing company, that is not a legal reason why the intervention of the Court may not be properly claimed. The facts of the case and the direct dealings between the plaintiffs and the defendant company remove this litigation from the authority of Osborne v. Henderson, 18 S. C. R. 698. There is here in the correspondence a direct promise of the new company to pay the old debt which they had assumed.

The judgment may also be supported as against the company on the ground that notice was given of the incorporation of the company and the taking over of the old assets and the assumption of the old liabilities, and in effect the assent of these creditors asked to the change. The plaintiffs do in effect accede to that change, and by their conduct shew that the new liability is accepted, and both parties proceed with the correspondence, and the debtors in effect get some extension of time—from April till October, when the action is brought. The plaintiffs' letter of the 30th August indicates that . . . they could look to both; but the previous dealings afford sufficient evidence to justify a conclusion that they had already elected to look to and exclusively deal with the new concern. See Scarf v. Jardine, 7 App. Cas. 345, at p. 251, and Rolfe v. Flower, L. R. 1 P. C. 27, in which Lord Eldon is quoted as saying that a very little will do to make out an assent by the creditors to the agreement. See also Clark v. Howard, 150 N. Y. 232.

Notwithstanding what is said by one of the Judges in Osborne v. Henderson, I think the assets of the old concern were in this case fixed with a liability to pay the old creditors, so that the agreement between the old partners and the new company could not have been rescinded. The arrangement for a transfer of the whole business and assets, together with the burden of the liabilities, was the basis on which the new concern received its letters of incorporation; it was announced to the public in the prospectus filed in the office of the Provincial Secretary; and it was expressly communicated to these particular creditors, who gave their assent to the transfer of the business on these terms. No longer did they look to the old partners, who became members of the new company, but they relied upon the transfer of assets, which supplied the fund out of which they were to be paid, and upon the express promise of the defendant company to make payment of the claim. . . .

Appeal dismissed with costs.

LATCHFORD, J., concurred.

MAGEE, J., dissented, saying that the difficulty was that the plaintiffs had not abandoned their claim against the original debtors; that there was no consideration moving from the plaintiffs as a consideration for any promise by the new company; and that the company had not, on the facts, become trustees of moneys or property for the plaintiff so as to make the company liable within the authorities.

SUTHERLAND, J. FEBRUARY 23RD, 1910.

RE STRATHROY LOCAL OPTION BY-LAW.

Municipal Corporations—Local Option By-law — Submission to Electors—Scrutiny of Votes Cast—Ballots Marked for Illiterate or Incapable Voters—Inquiry into—Rejection of Evidence —Powers of County Court Judge—Municipal Act, sec. 369.

Motion by James W. Prangley for a mandamus to the Judge of the County Court of Middlesex to compel him to inquire into

and adjudicate upon certain votes cast on the 3rd January, 1910, at the voting upon a proposed by-law of the town of Strathroy to prohibit the sale of spirituous, fermented, or other manufactured liquors in the municipality.

On the 4th January, 1910, the town clerk declared the by-law to have been approved of by a majority of the qualified electors in the municipality, and that three-fifths of the electors voting upon such by-law had approved of the same. The vote as found by him was 477 for and 309 against the by-law.

On the 71th January, 1910, James W. Prangley, a municipal elector of the town, petitioned under sec. 369 of the Consolidated Municipal Act for a scrutiny of the ballot papers, and a scrutiny was held by the County Court Judge on the 31st January. It was said that, if the Judge were to give his final certificate now, it would be to the effect that 471 votes were cast for and 310 against the by-law, and the result would be that two more than the necessary two-fifths of the votes had been cast for the by-law. Upon the scrutiny, however, questions arose as to about a dozen of the votes alleged to have been cast in favour of the by-law, and the County Court Judge permitted evidence to be taken before him upon the scrutiny as to the circumstances under which these particular votes—which were votes of persons claiming to be incapable of marking their ballots through illiteracy or physical inability—were marked. Subsequently he refused to consider this evidence, thinking it should have been rejected, and considering that it was not within his "jurisdiction upon the inquiry to go into the question whether the votes so cast should be thrown out."

It was admitted that no question arose as to the qualification of the electors who cast these votes.

J. C. Judd, K.C., and E. W. Scatcherd, for the applicant.

J. M. Gunn, for the respondents.

SUTHERLAND, J., said that, upon consideration of the section of the Consolidated Municipal Act under which the scrutiny is to be conducted, and the authorities cited, including Re Local Option By-law of the Township of Saltfleet, 16 O. L. R. 293, he had come to the conclusion that the County Court Judge rightly decided that the evidence referred to should be rejected, and that, upon such an inquiry, the Judge had no jurisdiction to go into the question whether the votes cast as alleged should be thrown out.

Motion dismissed with costs.

DIVISIONAL COURT. FEBRUARY 24TH, 1910.

TORONTO FURNACE CREMATORY CO. v. EWING.

Sale of Goods—Conditional Sales Act, sec. 1—Name and Address of Manufacturer to be Stamped upon Manufactured Article—Incomplete Address—Insufficiency.

Appeal by the plaintiffs from the judgment of DENTON, Junior Judge of the County Court of York, dismissing an action in that Court, brought to recover a balance of $165 alleged to be due to the plaintiffs from the defendant Ewing for furnace and fittings, and, in the alternative, for an order to remove the furnace.

The appeal was heard by CLUTE, LATCHFORD, and SUTHERLAND, JJ.

A. C. Macdonell, K.C., for the plaintiffs.

J. T. Loftus, for the defendant Pearcy.

W. A. Proudfoot, for the defendants the Northern Life Assurance Co.

The judgment of the Court was delivered by CLUTE, J.:—The main question argued was as to whether there was a sufficient compliance with the statute (the Conditional Sales Act, R. S. O. 1897 ch. 149), which provides (sec. 1) that "the manufactured article shall have the name and address of the manufacturer . . painted, printed, stamped or engraved thereon or otherwise plainly attached thereto."

In the present case the plaintiffs' name as incorporated is, "Toronto Furnace and Crematory Company Limited." They carry on business at 70 and 72 King street east, Toronto. The words upon the plate attached to the furnace are as follows: "From Toronto Furnace and Crematory Co. Limited, 70 and 72 King street east."

It will be seen that, while the company's name appears upon the plate, the company's address is not given, unless it be implied from the name and the number and street where their business is carried on.

The defendants contend that the address should be given, notwithstanding that the word "Toronto" appears as part of the name of the company as incorporated.

I think that there is no doubt that any person looking at the plate would be led to the conclusion that the company's address was 70 and 72 King street east, Toronto, but the plate does not say so.

The judgment in Mason v. Lindsay, 4 O. L. R. 365, applies with equal force to this case. There Meredith, C.J., says: "I have no doubt that stamping the piano with the name 'Mason & Risch' afforded all the means of information to intending subsequent purchasers or mortgagees that the Legislature intended to be placed within their reach by the requirement of sec. 1 as to the name of the manufacturer, bailor, or vendor, but unfortunately, as I think, the legislation does not permit of the Court holding that anything other than that which it has prescribed as necessary shall be a compliance with the statute, even though what is done is, in the opinion of the Court, as effective for the end which the Legislature intended to attain as that which it has required to be done to protect the common law right of the owner of the chattel. The decided cases on analogous statutes, in my opinion, compel us to give this strict construction to the language of sec. 1."

In that case the name of the company was "The Mason & Risch Piano Co. Limited," and there was painted on the piano the words "Mason & Risch, Toronto."

In the present case the address may be inferred from the name and the street at the bottom, but it is not in fact given. As a matter of fact this company has its head office in Toronto, and, knowing that, the address is readily inferred from the words upon the plate; but the address is not in fact given, and, following the strict construction of the Act, which we are bound to do, as laid down in Mason v. Lindsay ,I am of opinion that the Act has not been complied with, and that the judgment of the Court below is right and must be affirmed.

The appeal is dismissed with costs.

RE BRIDGMAN—SUTHERLAND, J.—FEB. 19.

Settled Estates Act.]—Upon a petition under the Settled Estates Act, an order was made permitting the petitioner to mortgage the premises referred to in the petition for the sum of $660, to be expended on the repairs and alterations therein mentioned.

and for such further sum as might be necessary to pay the costs of the application and the mortgage. T. H. Luscombe, for the petitioner. F. P. Betts, for the infants.

FRASER v. GRAND TRUNK R. W. Co.—FALCONBRIDGE, C.J.K.B.—FEB. 19.

Interpleader—Payment into Court—Costs].—Application by the defendants in the nature of an interpleader. Order made allowing the defendants to pay into Court $1,750, apportioned to Ann Fraser. The defendants to be at liberty to supply any material that may be considered necessary to make their application regular. The defendants to pay the costs of the plaintiff and of Ann Fraser, fixed at $10 and $5 respectively. Frank McCarthy, for the defendants. F. Arnoldi, K.C., for the plaintiff. H. H. Dewart, K.C., for Ann Fraser.

CANADIAN FAIRBANKS Co. v. ST. LAWRENCE BREWING Co.—MULOCK, C.J.Ex.D.—FEB. 19.

Sale of Goods—Right of Vendors to Repossession—Evidence.]—Action to recover possession of two motors sold by the plaintiffs, or, in the alternative, for the value thereof. Held, upon a review of the evidence, that the plaintiffs have no property in the goods in question. Action dismissed with costs. R. A. Pringle, K.C., and R. Smith, K.C., for the plaintiffs. C. H. Cline, for the defendants.

MCKNIGHT v. ROBERTSON—DIVISIONAL COURT—FEB. 19.

Contract—Construction of—Payments Made under.]—An appeal by the plaintiff from the judgment of LATCHFORD, J., at the

trial, in an action to recover 334 shares of the capital stock of a mining company, and for the recovery of $797.05 and interest under an alleged agreement. By the judgment at the trial the action was dismissed without costs, except as to the certificate for the 324 shares, which was to be delivered to the plaintiff. There were two agreements between the parties. The Court (MULOCK, C.J.Ex.D., MAGEE and SUTHERLAND, JJ.), found that the second agreement was in substitution for the first, and was in force at the time that the payments which the plaintiff sued for were made by him. Appeal allowed with costs and judgment to be entered for the plaintiff with costs, with a reference to ascertain what sums of money should have been paid to the plaintiff as reasonable for his care during his illness for the period covered by the claims mentioned in the statement of claim. E. Meek, K.C., for the plaintiff. G. Lynch-Staunton, K.C., for the defendant.

CONMEE v. AMES—MASTER IN CHAMBERS—FEB. 21.

Pleading—Statement of Defence — Res Judicata—Pleading Evidence.]—Motion by the plaintiff to strike out certain allegations in the statement of defence, on the ground that the matters pleaded were res judicata, and on the ground that the defendant was thereby pleading evidence. After the decision of the Supreme Court of Canada in Ames v. Conmee, reported, sub nom. Conmee v. Securities Holding Co., 38 S. C. R. 601, the present action was brought by the defendant in that action to recover two sums of $3,000 and $1,800 paid by him to the defendants in this action, with interest. The allegation of the statement of defence attacked were to the effect that the plaintiff in this action had made statements in his evidence in the first action inconsistent with his present claim. The Master referred to Stratford Gas Co. v. Gordon, 14 P. R. 407, and Millington v. Loring, 6 Q. B. D. 190, and said that it would be improper, at this stage, to strike out the allegations moved against, which, if demurrable, should be dealt with by motion under Con. Rule 261. Motion dismissed, with costs to the defendants in the cause. J. T. White, for the plaintiff. Strachan Johnston, for the defendants.

MACDONELL v. TEMISKAMING AND NORTHERN ONTARIO RAILWAY COMMISSION—MASTER IN CHAMBERS—FEB. 21.

Pleading—Statement of Claim — Anticipating Defence—Alternative Cause of Action.]—Motion by the defendants to strike out paragraphs 8 and 9 of the statement of claim as being prematurely pleaded, because anticipating a defence that no certificate had been given by the engineer, and alleging that this had been wrongfully withheld by him in collusion with the defendants. Held, that what is set up in the paragraphs attacked is a substantive cause of action which the plaintiff may be obliged to prosecute and prove before he can recover: Hudson on Building Contracts, 6th ed., vol. 1, pp. 414, 415; Bullen & Leake, 6th ed., p. 326 (n). It is at least better to allow the pleading to remain, according to the dictum of Bowen, L.J., in Knowles v. Roberts, 38 Ch. D. at p. 270. Motion dismissed with costs to the plaintiff in the cause. Strachan Johnston, for the defendants. A. M. Stewart, for the plaintiff.

CRANE v. MOORE—EAMES v. MCCONNELL—MASTER IN CHAMBERS—FEB. 22.

Interpleader—Money in Court—Intervening Claimants—Status—Issue.]—After the disposition of the motion in these cases, noted ante 417, a motion was made by Peacock, Clemson, and Dickey for leave to intervene as claimants in respect of the $50,000 ordered to be paid into Court. Order made directing an issue between the applicants as plaintiffs and the other claimants as defendants, but in other respects following the previous order, and reserving the question of any further issue, as was done in Nisbet v. Hill, 5 O. W. R. 293, 337, 402. As to the status of the applicants, the Master cited Postlethwaite v. McWhinney, 6 O. L. R. 412. H. E. Rose, K.C., for the applicants. R. McKay, for the plaintiffs in the first action. J. L. Ross, for the plaintiff in the second action. R. H. Parmenter, for some of the defendants.

DEVANEY v. WORLD NEWSPAPER CO.—MEREDITH, C.J.C.P., IN CHAMBERS—FEB. 22.

Parties—Joinder of Defendants—Pleading—Conspiracy—Defamation.]—The order of the Master in Chambers, ante 454, was affirmed. W. N. Ferguson, K.C., for the plaintiff. H. E. Rose, K.C., for the defendant Fasken.