

THE BOSTON RUBBER SHOE COM- } PLAINTIFF;
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1901
 Jan. 30.

AND

THE BOSTON RUBBER COMPANY } DEFENDANT.
 OF MONTREAL (LTD.) }

Security for costs—Order for—Practice.

Under the present practice of the court an order for security for costs may be given at any stage of the proceedings in a cause. *Wood v. The Queen* (7 S. C. R. 634) referred to.

THIS was an application on behalf of the defendant for an order for security for costs.

January 25th, 1901.

C. J. R. Bethune in support of application :

There is not the slightest doubt that the facts warrant the granting of the order asked for, provided the application is made in time. The plaintiff is resident out of the jurisdiction. The statement of claim was served on the 3rd of October, 1900, and on the 15th of that month a demurrer was filed. After the demurrer was disposed of, the plaintiff lost no time in filing and serving his statement of defence within two weeks after the reply was filed. A summons for the order for security was taken out.

No doubt *Wood v. The Queen* (1) will be cited against us, but in answer to that we submit that the English practice has completely changed since that case was decided. The former practice would not allow security to be ordered after defence filed. That was the old Chancery practice. The new practice is established by Rule 981, Order 65. (See *Annual Prac.*

(1) 7 S. C. R. 634.

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tice p. 928). Under the new rule an order for security may be made at any stage of the proceedings. (See *Annual Practice* p. 932.)

To prevent the order going, the other side must show prejudice. There is none here. We are entitled to the order asked. (See *Holm. & Lang. Ont. Jud. Prac.* p. 1333.)

R. V. Sinclair, contra:

The defendant is barred from getting the order by lapse of time and steps in the cause. *Wood v. The Queen* is good law to-day. It is not necessary for the plaintiff to show that it has been prejudiced by the delay.

While it is to be said that there is no special rule of The Exchequer Court in this matter, yet there is a practice of the court in respect of it based upon *Wood v. The Queen*. The new English rules are to prevail only where there is no settled practice of the court.

C. J. R. Bethune in reply cited *Small v. Henderson* (1).

THE JUDGE OF THE EXCHEQUER COURT now (January 30th, 1901) delivered judgment.

This is an application by the defendant for an order that the plaintiff give security for costs. The facts are such that the application should be granted, unless because of the delay in making it and the steps taken in the action, the defendant is not now entitled to security. The statement of claim was served on the 3rd of October last, and on the 15th of that month a demurrer was filed to the statement of claim which was argued on the 25th of October, and judgment overruling the demurrer given on the 15th of November last. The statement in defence was filed on the 5th of December last, on which issue was joined on

the 28th day of the same month. The summons for an order for security was taken out on the 12th of January, 1901.

There can, I think, be no doubt that under the former practice of the court, as illustrated by *Wood v. The Queen* (1), the application would be refused; but the matter is now governed (*The Exchequer Court Act*, s. 21; *Exchequer Court Rules*, I.) by the English rules, by which it is provided (Ord. 65, R. 6), that:

“In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times, and in such manner and form, as the court or a judge shall direct.”

In a case decided in 1896, the Court of Appeal (consisting of Lindley, Lopes and Rigby, L.JJ.) overruling Kekewich, J., held that under this rule there is a judicial discretion to direct security for costs to be given at any stage of the proceedings. (*In re Smith* (2))

There will be an order in this case that the plaintiff company give security in the sum of four hundred dollars for any costs that may hereafter be incurred in the action; the costs of this application to be costs in the cause.

Ordered accordingly.

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(1) 7 S. C. R. 634.

(2) 75 L. T. N. S. 46.