

from plaintiffs' right of way any part of the plant, materials, equipment, horses, etc., used in and upon plaintiffs' works, in alleged breach of a contract between plaintiffs and defendant.

W. N. Ferguson, for plaintiffs.

W. E. Middleton, for defendant.

MABEE, J.:—The interim injunction was granted upon the affidavit of plaintiffs' assistant secretary shewing . . . facts that were probably sufficient to satisfy the Court that plaintiffs would, or might, suffer damages, if defendant were permitted to continue the breaches of his contract, which defendant would not be able to pay. The affidavit of defendant shews that he has ample means at his command to satisfy any loss plaintiffs may sustain from any breach of the contract in question, and at the same time defendant's counsel urges that no breach has been committed.

I should refrain so far as possible upon this motion from dealing with questions affecting the ultimate rights of the parties. The construction of the contract is one of such questions, and as to the rights of the parties under its wide provisions I say nothing, except that to my mind it is not at all clear that defendant has made any breach. But, treating the motion as if defendant had no right to take his horses off the work, the case remains as one of simple breach of contract, plaintiffs having as yet sustained no damage, and defendant being able to compensate plaintiffs if they do sustain such damage. Under these circumstances plaintiffs are not entitled to an injunction.

I am not at all impressed with the case advanced by the affidavit of plaintiffs' assistant secretary. The facts are not given with sufficient detail to enable the Court to judge if reasonable grounds exist for his fear of loss arising to plaintiffs. These facts are more within the knowledge of the engineer named in the contract, but no affidavit is made by him. The affidavit in reply does not advance matters. The affidavit upon which the interim injunction was obtained was sworn at Sudbury on 29th June, and the writ of summons was issued at North Bay on 30th June. So in fact there never was any affidavit upon which plaintiffs had any right to obtain an interim injunction. I feel compelled to dissolve this injunction with costs to defendant in any event. Plaintiffs