

then, or whether anything was said as to plaintiff's right to costs, or his being willing to forego them to have the action set at rest.

As the case now stands, before plaintiff can have the action dismissed without costs, it must be clear that plaintiff was justified in bringing the action; and that defendants acknowledged this by going out of business.

It was on grounds of this character that the cases relied on by plaintiff were decided.

Here, on the contrary, defendants by their affidavits positively deny the validity of plaintiff's patent. They say that they gave up business for reasons of their own and not on account of this action. They assert their right and intention to resume the use of the machinery in question whenever they see fit to do so.

This seems to bring the case within the decision in *Hunter v. Town of Strathroy*, 18 P. R. 127. There the Divisional Court held that there was no jurisdiction in Chambers to dispose summarily of the costs where the object of the action has not been substantially attained. Here the defendants deny that this has been done; and unless the parties can settle the matter otherwise, the plaintiff must now undertake peremptorily and without hope of any further indulgence to go to trial at the next non-jury sittings, and in default that the action be dismissed with costs.

The costs of this motion will be to defendants in any event.

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CARTWRIGHT, MASTER.

OCTOBER 19TH, 1906.

CHAMBERS.

MONTGOMERY v. RYAN.

*Summary Judgment—Rule 603—Suggested Defence—Bank—Account—Reference.*

Motion by plaintiff for summary judgment under Rule 603 in an action on a promissory note given to the Bank of Montreal and assigned to plaintiff subject to its equities.

W. N. Ferguson, for plaintiff.

W. M. Hall, for defendant.