

In this state of facts a motion is made to set aside the order for security for costs, plaintiff's counsel relying on Mr. Winchester's judgment in *Re Solicitor and on Duffy v. Donovan*, 14 P. R. 159.

I think the motion cannot succeed.

The case of *Duffy v. Donovan* is entirely different, as will appear from a perusal of the case. There the receipt of the trust funds was admitted by both defendants; here the very point to be decided is, whether the assignment of the rents to the defendant was absolute or only by way of security. That point cannot be usefully considered at present. If on the filing of the defence any admissions should be made in corroboration of the plaintiff's claim, he might possibly have grounds to renew his present motion. Then there is the question of the judgments of which the defendant is assignee, and which he will no doubt set up by way of counterclaim at the proper time. On the question raised as to this by the plaintiff it would also be premature to express any opinion. If the defendant can successfully maintain his position on either of these points, then the right to security for costs is clear. I am not sure if Mr. Lloyd relied in any way on the concluding paragraph of the judgment in *Sample v. McLaughlin*, 17 P. R. 491. I do not, however, understand that to lay down a general rule. If it did so, it would not have been necessary to the decision of the case, which it has been since held was, that the solicitor, by the use of the names of the plaintiffs (whether authorized or not), had made them parties, and so was himself the actor. This makes a written retainer more a necessary precaution in every case. On the whole facts of this case, I do not think the order for security should be set aside.

Costs of this motion will be in the cause.

TETZEL, J.

JUNE 2ND, 1903.

TRIAL.

REYNOLDS v. TRIVETT.

*Limitation of Actions—Real Property Limitation Act—Enclosing Wild Land—Occupancy—Knowledge of Owner of Paper Title.*

Action for a declaration that a certain deed by one Allen to defendant Trivett dated 29th February, 1888, and a mortgage made by Trivett to the representatives of the Cawthra estate, were a cloud upon plaintiff's title to the north part (114 acres) of the west half of lot 3 in the 9th concession of Gwillimbury, and for other relief.