

cate was fraudulent and from collusion with the defendants—that defendants suffered no damage by the delay in the completion of the work and in any case “by their action,” waived their right to enforce the above-mentioned penalty or to insist on the engineer’s certificate.

Particulars are asked as to the preliminary work referred to in the reply—of the fraud and collusive refusal of the engineer to give his certificate, and of the acts whereby the defendants waived their right to require such certificate or enforce the penalty of \$100 a day.

The issues between the parties seem sufficiently set out in the pleadings even if the statement of defence as well as the reply are somewhat unusual in form. It scarcely seems necessary to make the reply a formal defence to the defendants’ counterclaim. But it can be done if thought safer to do so.

As to the particulars they can probably be obtained on examination for discovery of the defendants’ engineer, who would seem to be the proper person for that purpose (see *Smith v. Clarke*, 12 P. R. 217), as applied to the facts of this case as set out in the pleadings). If sufficient information is not had on discovery, the motion can be renewed. If not renewed the costs of the motion will be in the cause.

MASTER IN CHAMBERS.

DECEMBER 3RD, 1912.

SMYTH v. BANDEL.

4 O. W. N. 425.

Judgment—Speedy Judgment—Motion for—Con. Rule 603—Chattel Mortgage on Licensed Hotel—Alleged Agreement as to—Prima Facie Defence Shewn.

MASTER-IN-CHAMBERS dismissed a motion for speedy judgment in an action for a balance alleged due upon a chattel mortgage upon a licensed hotel where defendant alleged a collateral agreement that the chattel mortgage was to be void if local option came into force, which event happened.

Jacobs v. Booth’s Distillery, 50 W. R. 262, and
Codd v. Delap, 92 L. T. 510, followed.

Motion for summary judgment under Con. Rule 603 in an action for a balance alleged due on a chattel mortgage.

H. S. Merton, for the plaintiff.

J. T. Loftus, for the defendant.