

to the lucerne." This \$16 is shewn by the reasons for judgment to be \$2.00 per ton for 8 tons of lucerne sold to the plaintiff but not accepted. The \$50 is not taken into consideration at all as it should have been.

Accordingly the damages awarded the defendant should be reduced by \$50; and the judgment on the counterclaim will be for \$26 in all with costs on the County Court scale.

"The costs of a counterclaim should be on the scale of the Court in which the action is brought by the plaintiff unless the Judge . . . makes a different order." Court of Appeal in *Foster v. Viegel* (1889), 13 P. R. 133. The appeal should be allowed to that extent.

As to costs, we cannot give the defendant costs—he did not appear on the argument. There is a double reason why the plaintiff should not have costs, he succeeds only in part and he should have applied to the trial Judge to correct what is a mere oversight. There will be no costs of appeal.

HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH, agreed.

MASTER IN CHAMBERS.

NOVEMBER 17TH, 1913.

LOVE v. LOVE.

5 O. W. N. 345.

Pleading—Particulars—Alimony Action—Party not Obligated to get Particulars from an Examination for Discovery.

HOLMESTED, K.C., *held*, that it is no answer to a demand for particulars of a pleading to suggest that the other party can get the information desired from an examination for discovery.

An alimony action.

The defendant demanded particulars of the allegations contained in the 4th, 9th, 10th, and 11th paragraphs of the statement of claim; an answer was made pending the motion refusing particulars of paragraphs 4, 9, and 11, but purporting to give particulars as to paragraph 10.

G. R. Roach, for defendant.

J. I. Grover, for plaintiff.

MR. HOLMESTED, K.C.:—After a careful consideration of the statement of claim, the demand and the answer, I am of