

Doherty, 18 P. R. 243; Standard Drain Pipe Co. v. Town of Fort William, 17 P. R. 404; Berlin Piano Co. v. Truaisch, 15 P. R. at p. 70.] . . .

The sole issue is, has there been any overpayment as alleged by plaintiff, or was there a settlement made in 1898? Why defendants refuse to furnish plaintiff's solicitor with a copy of what must be a very short account in their ledger, I do not understand. The production of this statement even now might very possibly put an end to the action. So far as I can see, only one witness would be required on this head—the account. Then, as to the alleged settlement, it appears it was made on behalf of plaintiff by the gentleman who is now the solicitor for defendants. It is stated that he paid to defendants what was due, as he thought, on the admitted mortgage, and paid the balance on plaintiff's order to another solicitor. Of these facts these two gentlemen would be the only necessary witnesses.

In face of plaintiff's affidavits, the statements as to age and poverty not being denied, I cannot see my way to granting defendants' motion. I do not find any such preponderance as would satisfy the rule laid down by the Court of Appeal in Campbell v. Doherty. The refusal of their motion will perhaps induce defendants to comply with the very reasonable request of plaintiff's solicitor; and in this way the action may come to an end before trial—a result highly beneficial to all concerned. However that may be, I think I must dismiss the motion, leaving the trial Judge to apply the principle of McArthur v. Michigan Central R. W. Co., 15 P. R. 78, and making the costs of this motion costs in the cause to plaintiff.

MEREDITH, C.J.

MAY 11TH, 1903.

CHAMBERS.

DESERONTO IRON CO. v. RATHBUN CO.

Third Parties—Indemnity—Trial of Issues—Discovery—Directions.

An appeal by the Standard Chemical Co., third parties, from order of Master in Chambers (ante 414) giving directions for trial of questions raised.

J. Bicknell, K.C., for appellants.

E. D. Armour, K.C., for defendants.

J. H. Moss, for plaintiffs.

MEREDITH, C.J., varied the order by allowing the third parties to take part in the trial, and directing that they should have notice of all proceedings. Costs reserved.