

effect only for payment of all costs forthwith, instead of giving the costs of the motion to dismiss to the defendant in any event, or even, sometimes, forthwith. [Reference to Finkle v. Lutz (1892), 14 P.R. 446; Milloy v. Wellington (1904), 3 O.W.R. 37.] The best order to make in the interest of both parties, in the Master's opinion, would be to dismiss both the action and counterclaim without costs, which order the plaintiff should take out. But, if this should not be accepted by the parties within a week, an order should go requiring the plaintiff to set the case down and proceed to trial at the next sittings; and, in default of so doing, the action should stand dismissed without further notice. The costs of this motion in that case to be to the defendant in any event. Grayson Smith, for the defendant. D. Inglis Grant, for the plaintiff.

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MORGAN v. GORDON—DIVISIONAL COURT—APRIL 2.

*Sale of Goods—Action for Balance of Price—Evidence—Set-off—Damages—Findings of Trial Judge—Appeal.*—An appeal by the defendant from the judgment of the Judge of County Court of the County of Grey in favour of the plaintiff, in an action in that Court, for the recovery of \$152.48, the balance due on a sale of poles by the plaintiff to the defendant. The appeal was heard by MULOCK, C.J.Ex.D., CLUTE and SUTHERLAND, JJ. CLUTE, J., who delivered the judgment of the Court, said that, on a perusal of the evidence, and having regard to the credit given by the trial Judge to the evidence of the plaintiff as against the defendant, and taking into consideration the surrounding circumstances, there was nothing which would justify an interference with the judgment pronounced by the trial Judge. The defendant made no demand on the plaintiff to replace the rejected poles, nor did he send the plaintiff any statement of account, nor make any effort to replace the poles when he found those delivered not to be up to contract, nor did he give any evidence as to what it would cost to replace the poles at Dundalk, where they were to be delivered free on board. In short, he made no case which could be sustained in law for a set-off or for damages. Appeal dismissed with costs. R. S. Robertson, for the defendant. W. H. Wright, for the plaintiff.