

BOYD, C., IN CHAMBERS.

OCTOBER 21ST, 1914.

BECHER v. RYCKMAN.

Account—Action for Account of Partnership Profits—Construction of Agreement—Provision for Account from Time to Time—Postponement of Trial to Obtain Evidence on Commission—Reversal of Order—Evidence not Necessary at Trial—Reference—Discretion of Trial Judge.

Appeal by the plaintiff from an order of the Master in Chambers directing the issue of a commission to take evidence on behalf of the defendants in England and postponing the trial of the action until after the return of the commission.

E. C. Cattnach, for the plaintiff.

H. E. Rose, K.C., for the defendant Ryckman.

R. H. Parmenter, for the defendant Cronyn.

BOYD, C.:—This litigation is based on an agreement made on the 26th February, 1913, by which the defendants give to the plaintiff one-tenth of the net profits in three specified mining claims which may be or may have been received by the defendants. The second clause of the agreement provides that the defendants shall be free to deal with and dispose of the said mining claims as and when they think fit without notice to and free from the control of the plaintiff—but shall account to the plaintiff from time to time, and such accounting shall include all receipts and expenditures upon or in connection with the said mining claims from the 10th November, 1908.

The statement of claim now seeks for an account of the said receipts and expenditures, and consequential relief thereon.

The defence says that there are not and never have been any profits, and further that a sale of the said claims has not been completed so as to render any profits possible.

From the affidavit of the defendants' solicitor it appears that the three claims have been sold, and that £60,000 paid of the price is made up of shares in a company named, and these shares have not been disposed of, and no profit has been made.

The Master has stayed the action going to trial and ordered a commission to issue for the examination of witnesses in England in order to shew that certain payments made relate in part