

trial, in an action to recover 334 shares of the capital stock of a mining company, and for the recovery of \$797.05 and interest under an alleged agreement. By the judgment at the trial the action was dismissed without costs, except as to the certificate for the 324 shares, which was to be delivered to the plaintiff. There were two agreements between the parties. The Court (MULOCK, C.J.Ex.D., MAGEE and SUTHERLAND, JJ.), found that the second agreement was in substitution for the first, and was in force at the time that the payments which the plaintiff sued for were made by him. Appeal allowed with costs and judgment to be entered for the plaintiff with costs, with a reference to ascertain what sums of money should have been paid to the plaintiff as reasonable for his care during his illness for the period covered by the claims mentioned in the statement of claim. E. Meek, K.C., for the plaintiff. G. Lynch-Staunton, K.C., for the defendant.

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CONNIEE V. AMES—MASTER IN CHAMBERS—FEB. 21.

*Pleading—Statement of Defence — Res Judicata—Pleading Evidence.*—Motion by the plaintiff to strike out certain allegations in the statement of defence, on the ground that the matters pleaded were res judicata, and on the ground that the defendant was thereby pleading evidence. After the decision of the Supreme Court of Canada in *Ames v. Conniece*, reported, sub nom. *Conniece v. Securities Holding Co.*, 38 S. C. R. 601, the present action was brought by the defendant in that action to recover two sums of \$3,000 and \$1,800 paid by him to the defendants in this action, with interest. The allegation of the statement of defence attacked were to the effect that the plaintiff in this action had made statements in his evidence in the first action inconsistent with his present claim. The Master referred to *Stratford Gas Co. v. Gordon*, 14 P. R. 407, and *Millington v. Loring*, 6 Q. B. D. 190, and said that it would be improper, at this stage, to strike out the allegations moved against, which, if demurrable, should be dealt with by motion under Con. Rule 261. Motion dismissed, with costs to the defendants in the cause. J. T. White, for the plaintiff. Strachan Johnston, for the defendants.