

plaintiffs' business, he did so, and denies his having engaged in any other business on his own account.

By these pleadings two issues are distinctly raised: 1. Was there such an agreement between the parties as alleged in the statement of claim? 2. Was defendant guilty of a breach of the same? . . . Plaintiffs must prove both to entitle them to a decree.

The questions which defendant refused to answer were directed to the second point. The refusal was on the ground that plaintiffs were not entitled to an answer until they had proved the agreement.

With this I cannot agree. The rule is well laid down in *Graham v. Temperance and General Life Assce. Co.*, 16 P. R. 536, at p. 539. . . .

The application of this rule to the present case seems to me decisive of the motion, which should be granted, with costs to plaintiffs in any event. Defendant must attend at his own expense and answer the questions so far as necessary to prove the second point. But this would not extend to going into any such detail as will be proper enough on a reference as to profits and damages, nor would defendant necessarily be required to produce his books. But I am not expressing any decided opinion on this point, because defendant has positively denied having had any business dealings with others than plaintiffs during the time of his engagement with them.

Had he rested on the first issue, defendant could not have been compelled to answer, if he had proceeded as indicated by Street, J., in the case above cited, and which was adopted: see S. C., 17 P. R. 271. If this course is thought desirable, defendant can still adopt it, but it will be for him to consider whether or not it is worth while. The issue of this order may be stayed . . . to enable him to take this course.

On the limits of discovery, reference to *Bray on Discovery*, pp. 11, 30, and 31, will be found useful.