

If plaintiff had any rights, he has acted in such a way as to make it fraudulent for him to set them up now: see *Willmott v. Benber*, 15 Ch. D. 96, 105; *Olliver v. King*, 8 De G. M. & G. 110.

Should the Foresters at any time discharge the chattel mortgage, plaintiff may be in a different position from that which he now occupies in regard to the enforcement of his claim.

Action dismissed with costs.

CARTWRIGHT, MASTER.

FEBRUARY 22ND, 1905.

CHAMBERS.

BLUMENSTIEL v. EDWARDS.

*Discovery—Examination of Party—Scope of—Production of Books—Relevancy—Damages.*

Motion by plaintiffs for order requiring defendant to attend for re-examination for discovery and to answer questions and produce books.

G. M. Clark, for plaintiffs.

R. McKay, for defendant.

THE MASTER.—Defendant, who is plaintiff by counterclaim, alleges loss to his business arising from the prosecution which is the subject of the counterclaim. These damages are alleged to have been suffered in his tobacco business, and are so serious that he was obliged to abandon it and become an agent for other commodities.

Plaintiffs desire to shew that it was chiefly owing to this new business that the tobacco business fell off. For this purpose they asked for the production of the books, which defendant refused because he said they had nothing to do with the action.

In Bray's Digest of the Law of Discovery (1904), art. 10, p. 4, it is said that "discovery is relevant or material not only if it is directed to the facts directly in issue, but also if it is directed to . . . damages."

I rule, therefore, that the books asked for should be produced so that plaintiffs can satisfy themselves on the point at issue.

The other branches of the motion fail. . . .