

stock in the defendant company, etc., were not carried out. The president of the company has been examined, but says he knows nothing as to these matters, and that whatever information there may be will be in the books.

In these circumstances, I think plaintiff is entitled *prima facie* to have production, so as to know what evidence the books will furnish, unless they are positively denied to contain any relevant entries.

It was argued that such discovery was only consequential, and could not be had at this stage, as plaintiff was not making any claim to be a shareholder. This, no doubt, correctly lays down the general rule. Here, however, plaintiff is charging defendant company with notice of fraud or breach of contract by Kelly and Bickell, through whom defendant company are alleged to have obtained the documents impeached.

It is well established that information may have to be given in some cases, though doing so may oblige the disclosure of what otherwise would be privileged: see *Marriott v. Chamberlain*, 17 Q. B. D. 165, and *Milbank v. Milbank*, [1900] 1 Ch. 383.

In order to protect the defendant company, I think the better course will be to direct them to file a further affidavit on production. In this the books, etc., should be set out, and it can be said (if the fact is so) that they contain nothing that will assist plaintiff's case or impair that of defendants.

This should be done within a week, and the costs of this motion will be reserved.

The defendant company may be willing to admit the periods during which Kelly and Bickell were directors or members, and the affidavit could be qualified accordingly.

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CARTWRIGHT, MASTER.

APRIL 18TH, 1906.

CHAMBERS.

CONMEE v. LAKE SUPERIOR PRINTING CO.

*Practice—Delay in Prosecuting Action—Dismissal for Want of Prosecution—Motion to Vacate Order—Relief—Terms—Costs.*

The action was commenced on 30th May, 1902. It came on for trial at the autumn sittings, but was postponed at de-