

RIDDELL, J.

DECEMBER 21ST, 1907.

TRIAL.

MCKIM v. COBALT-NEPIGON SYNDICATE.

*Contract—Advertising—Construction of Contract—Moneys
Expended by Advertising Agent—Breach of Contract—
Loss of Profit—Damages—Services—Remuneration—
Quantum Meruit—Evidence—Credibility of Witnesses—
Evasion in Taking Oath—Entire Contract—Failure in
Part—Termination of Contract—Refusal to Pay.*

Action to recover money paid out by plaintiff for defendants in pursuance of an advertising contract, and profits which plaintiff would have made if defendants had carried out the contract. Counterclaim by defendants against plaintiff for damages.

C. P. Smith, for plaintiff.

J. Bicknell, K.C., for defendants.

RIDDELL, J.:—While there are several questions of law involved, the chief question is one of fact, depending upon the relative credit to be given to the witnesses. The chief witness for the defence was detected by the clerk of the Court kissing his thumb instead of the book, and was by him required to take the oath properly. Sometimes there is an objection taken by witnesses on sanitary grounds to kissing the book, and such objections are deserving of all attention and respect. But the present was not a case of that kind. This witness, upon being detected and challenged, kissed the book with alacrity. This is not the only reason for preferring to the evidence of this witness that of those called for the plaintiff. From their conduct and demeanour I am convinced that the facts of the case, where in dispute, are substantially as given by the employees of the plaintiff.

On 14th December, 1906, the manager of the defendants (the witness Campbell) and Somerset, Toronto manager for the plaintiff, met at Campbell's room at a hotel. Campbell handed Somerset a copy of an advertisement and a list of papers in which he wished the advertisement inserted. The plaintiff's business is that of advertising agent. And then and there it was agreed that the plaintiff should at once proceed to have this advertisement inserted in the papers