

CARTWRIGHT, K.C., MASTER:—The plaintiffs seek to enforce an agreement given by defendant for purchase of a traction engine. Default is admitted, but it is said that the engine would not do the work required, and for which it was bought, to the knowledge of the plaintiffs. The venue is laid in London, where the plaintiff company carries on business.

The defendant used the engine for a month or six weeks in threshing for neighbouring farmers. He alleges that the engine used an excessive quantity both of coal and water—and as these are apparently supplied by the customers, this fact would seriously injure his business, now of some 20 years standing. He also counterclaims for \$500 damages for loss of profits and for the custom of his former employers.

In the affidavit in support of the motion he states that he will call three of those who acted as engineers and six of the farmers who employed him to thresh. All the nine will speak of the excessive consumption of fuel and water and of the inability of the machine to do its work properly. These witnesses all live in the township of Scarborough except one, who is a resident of Toronto.

The secretary of the company makes an affidavit in answer in which he says the company will require 10 witnesses all resident at London, where the engine in question also is lying in the G. T. R. yard.

If the matter rested there the motion must fail. Since these affidavits were filed both parties have been examined for discovery. From this it appears that only 3 of the witnesses spoken of by the company's secretary are material. These are Lumley, who went down to see the engine after the defendant had complained of its inefficiency, and two experts, who tested it since this motion was launched, and who are prepared to testify to the character of the engine, and as to the quantity of coal and water required during a continuous test of three hours.

From question 130 in defendant's examination it seems that the agreement he signed had the force of a chattel mortgage, and is registered as such. This fact and the pending litigation will prevent defendant from preparing himself for the coming season, if the action is tried by a jury, as there will be no jury sittings either here or at London until after the long vacation.