

Act, 1890, calling upon the plaintiff to show cause why the latter should not produce certain papers alleged to be in his possession. The defendant's affidavit supporting the summons stated that it was impossible for him to fully answer plaintiff's bill unless these papers were produced for the purpose. The plaintiff denied having the papers in his possession or under his control.

Held, that the correct practice was to have applied for an order under sec. 59 of the Equity Act, 1890, in obedience to which the plaintiff would have been obliged to disclose under oath such papers as he had in his possession relating to the matter in question. If that affidavit were insufficient, then a summons might be taken out compelling further affidavits. When the documents are shown by the affidavit of the party to be in his possession, then under sec. 61 an application may be made for their production.

Held also, that if the defendant could not answer fully without the production of these documents, and the plaintiff on request refused to produce them, the Court would not treat an answer insufficient by reason of the plaintiff's own act.

The following authorities were cited: Daniel's Prac., 1823, *Panfold v. Munn*, 5 Sim. 409; *Kelley v. Eckleford*, 5 Paige, 548.

Application refused without costs.

Curry, Q.C., for applicant.

Coster, contra.

Province of Manitoba.

QUEEN'S BENCH.

KILLAM, J.]

[Feb. 15.]

SYLVESTER *v.* PORTER.

Mistake—Contract—Reforming of agreement—Evidence to rectify agreement—Agreement—Agreement to guarantee notes.

This was an appeal from a judgment of a County Court in favor of defendants.

The plaintiffs, a firm of dealers in agricultural implements, employed the defendants as their agents for the sale of their goods at Portage la Prairie. Their relations for the year 1890 were governed by a formal contract in a printed form, with a few additions and alterations in writing.

Among other provisions of the printed form was an agreement by the defendants to endorse all notes taken in settlement. In 1890 the parties signed another document by which the plaintiffs purported to appoint the defendants as their agents for the year 1891. This instrument, also, was on a printed form, with a few alterations and additions in writing. By one printed clause not found in the contract for 1890, the defendants agreed to guarantee payment of all notes taken in settlement for machinery; but the agreement to endorse, also in the printed form, was struck out, and there was inserted, in writing, a provision that any notes found to be unsatisfactory or uncollectible before the 1st