

was unable to work as cutter, and was dismissed by the defendant on the 18th May, 1912. By the statement of defence the defendant admitted the agreement, but said that for many months before May, 1912, the plaintiff was not able to do his work, by reason of illness, and that the defendant was obliged to dismiss him because he was "still wholly incapable of performing his duties under the agreement." By the reply the plaintiff set up that the agreement was primarily and chiefly for the purchase of the firm's business, the right to use the firm name, and the goodwill; that the defendant had had full enjoyment of these benefits; and that this was the consideration for the employment; and, therefore, the plaintiff was still entitled to the \$40 a week. The Master said that the defendant treated the action as one for wrongful dismissal, while the plaintiff put his claim on the ground of a breach of contract, as in *Caulfeild v. National Sanitarium Association*, 4 O.W.N. 592, 732. The reply was not embarrassing or objectionable as a departure from the statement of claim or otherwise; and the application should be dismissed; but, owing to the peculiar facts, the costs should be costs in the cause. The Master referred to *Hall v. Eve*, 4 Ch. D. 341; *MacLaughlin v. Lake Erie and Detroit River R.W. Co.*, 2 O.L.R. 151; *Smith v. Smith*, 2 O.L.R. 410. *H. S. White*, for the defendant. *H. E. Irwin*, K.C., for the plaintiff.

SHANTZ v. CLARKSON—MASTER IN CHAMBERS—FEB. 24.

Discovery—Examination of Plaintiff—Refusal to Answer—Mental Weakness.]—Motion by the defendants for an order requiring the plaintiff to attend for further examination for discovery and answer questions previously refused. The action was brought by a creditor to set aside a sale of the assets of an insolvent estate, on the ground that one of the inspectors (a brother of the plaintiff) was interested in the purchase, and that the sale was not authorised by the creditors and was made at an undervalue. By the statement of defence the defendant alleged sufficient instructions to sell; that the inspector in question took no part in the arrangements for the sale; and that, if he had any interest in the purchase, the defendant was not aware of it. The defendant also pleaded that the plaintiff had no status to maintain the action. The Master said that he had read the plaintiff's examination: he was plainly mentally affected, though all relevant questions were sufficiently answered. Except