

Under this agreement the defendant caused the plaintiff to be removed from Cobalt to Hamilton, and to be there placed under competent medical attendance. A new agreement, dated the 31st May, 1907, was then prepared by the solicitors for the defendant and executed by both parties, in which, after reciting that the plaintiff "is sick and in need of funds and has applied to Robertson therefor," that he was the owner of certain mineral rights, and had agreed to assign to the defendant a two-thirds interest therein, it was agreed that, in consideration of \$1 and of the defendant agreeing to furnish to the plaintiff from time to time such sums of money as he, the defendant, might think reasonable for the care of the plaintiff "during his present illness," the plaintiff granted, assigned, transferred, and set over unto the defendant a two-thirds interest in the mineral rights. No reference was made in the second agreement to the first, and no explanation was given in the evidence of any reason for its execution.

The action for the recovery of the plaintiff's rights was prosecuted by the defendant, and resulted in a settlement by which the plaintiff was to receive 25,000 shares of "Columbus" stock. The settlement was effected in November, 1907, and the shares were issued in December. Of these it was admitted that the defendant was entitled to 16,666 and the plaintiff to 8,334. The defendant had 8,000 shares transferred to the plaintiff, and retained 334, claiming a lien for subsequent advances.

This action was brought for the 334 shares and for the recovery of \$797.05 and interest for expenses of the plaintiff "during his present illness."

LATCHFORD, J., the trial Judge, was of opinion that the liability intended by both parties to be created by the two agreements was one limited to the period at which the action against the "Columbus" would be concluded; and he dismissed this action without costs, except as to the 334 shares, which he ordered to be delivered to the plaintiff.

The plaintiff appealed to a Divisional Court, which held that the second agreement should be regarded as having been substituted for the first, that the words "present illness" included illness of a permanent as well as of a temporary character, and that the defendant was bound to pay something towards the plaintiff's support, and had broken the agreement by declining, after the Columbus litigation was at an end, to continue to make payment; and the Court directed a reference to the Master to ascertain what sums should have been paid "as reasonable" for the