

he and C. drew a cheque upon their bank account in favour of the defendant J., which was paid.

F. A. Anglin, for the plaintiff.

E. F. B. Johnston, K.C., and C. W. Kerr, for the defendants.

The judgment of the Court (FALCONBRIDGE, C.J., STREET and BRITTON, JJ.) was delivered by STREET, J., holding as follows:—

(1) That the agreements and the cheque and also a certain memorandum prepared by the defendant R., were material to the plaintiff's case, and should be produced or accounted for in the defendants' affidavits on production of documents.

(2) That the defendants R. and C. ought not, as a matter of discretion, to be ordered to disclose, upon their examination for discovery, facts which would become material only when the plaintiff should have established his right to recover damages.

(3) That the plaintiff was entitled to discovery from the defendants R. and C. as to whether they paid money to J.; whether it was their own money or that of other persons, and if the latter, of what persons; and for what it was paid.

(4) That the plaintiff was entitled also to discovery as to the amount paid by R. and C. to the M. company for the bicycle branch of their business; it being alleged by the plaintiff that he and J. had obtained an option to purchase it, and that the defendants had substituted a new option therefor.

(5) That the plaintiff was entitled to know from C. the nature of the agreements made for the purchase of the properties; if they were in writing, and he had access to them in his capacity of director of the company which was formed, he should inform himself of their contents so as to be able to answer as to them, or should produce copies; but, if he had no right of access, he was not bound to state his mere recollection of them.

Stuart v. Bute, 11 Sim. 452, 12 Sim. 461; Taylor v. Rundell, 11 Sim. 391, 1 Cr. & Ph. 104, and Dalrymple v. Leslie, 8 Q. B. D. 5, followed.

*Semble*, that where an examination is unnecessarily long, the costs of it should be entirely disallowed.

Decision of MEREDITH, C.J., *ante* 29, varied.