

says that Mitchell said nothing, and that if Mitchell removed any of the machinery or part of the factory he did so contrary to his agreement, and to plaintiff's express direction.

That is not a full answer, and it leaves the matter in an unsatisfactory state. No affidavit of Mitchell is put in. By the agreement Mitchell was entitled to possession until default, and even if he paid nothing, there was no default until 1st May, 1903.

It is not at all clear that there is no defence to this action. . . . It would have been much more satisfactory if plaintiff had given the time necessary to procure an affidavit from defendant himself.

On the other hand the address of defendant is not given. He is "in the North-west," and his brother is speaking for him, and there are circumstances which point to the possibility of defendant not desiring personally to resist plaintiff's claim. It is a case in which I think the defendant, if let in to defend generally, should be put upon terms, such terms as will to some extent protect plaintiff if he is in the right and will not be oppressive to defendant.

If defendant pays into Court within one month \$150, as security in part to plaintiff, in case plaintiff succeeds, this appeal will be allowed and the order of the local Judge set aside; costs to be costs in the cause to defendant.

If the defendant does not pay the \$150 into Court, then the order is to be varied to the extent of giving the defendant until 1st December next to proceed with the reference under the order of the local Judge, and in other respects appeal to be dismissed without costs.

See Stephenson v. Dallas, 13 P. R. 450; Dunnet v. Harris, 14 P. R. 437; Merchants National Bank v. Ontario Coal Co., 16 P. R. 87.