

The defendants argue that this is not a case which the Court should in its discretion allow to be tried in Ontario, alleging that the facts to be tried and the principal witnesses are in England, and citing *Lopes v. Chavarri*, [1901] W. N. 115.

[*Postlethwaite v. McWhinney*, ante 794, and cases cited at p. 796, referred to.] . . .

In a case in which the facts were similar to those in *Lopes v. Chavarri*, it would be a most proper, if not a necessary, exercise of discretion to remit the parties to the forum of defendants, being also the forum domicilii of both parties. But here there are no such facts as were before Mr. Justice Farewell, and I think the observations of Halsbury, L.C., in *Cunber v. Leyland*, [1898] A. C. 527, may properly be invoked by the plaintiffs. . . . In the present case payment was admittedly to be made, as it was partly made, in this country, and not elsewhere.

The only substantial defence here is the English law of copyright. Assuming that this can be successfully set up here, I do not think it is a ground for requiring plaintiffs to prosecute their claim in England, where the expense will be very much greater and where they would have to give security for costs.

Motion dismissed with costs to plaintiffs in any event.

CARTWRIGHT, MASTER.

OCTOBER, 7TH, 1903.

CHAMBERS.

FULLER v. APPLETON.

Pleading—Counterclaim—Motion to Compel Amendment—Particulars.

Motion by plaintiff for order requiring defendants to amend paragraph 2 of their counterclaim.

The plaintiff's claim was for return of a deposit paid on an option on mining lands. The paragraph of the counterclaim was said to be defective because it alleged only that the plaintiff "has failed to pay to the miners and workmen employed by him their wages, amounting to about \$1,000, and mechanics' liens were filed by such miners and workmen against the property, and the plaintiff has also incurred considerable indebtedness for materials and supplies, a considerable portion of the accounts for which he has neglected and refused to pay."

J. B. O'Brian, for plaintiff, contended that some allegation should be made such as that the land had become liable by reason of the acts of the plaintiffs, and that the defendants