

the proper stage to plead to this second charge, and, if he confessed, to obviate the necessity of producing evidence to support it.

The plan adopted in this case is not, in my opinion, open to any objection, and is quite in harmony with both the letter and the spirit of the law.

I would allow the appeal.

MOSS, C.J.O., MEREDITH and MAGEE, JJ.A., each gave reasons in writing for the same conclusion.

GARROW, J.A., also concurred.

NOVEMBER 12TH, 1910.

McKNIGHT v. ROBERTSON.

Contract—Construction — Surrounding Circumstances — Prior Contract—Enforcement of Obligation to Furnish Money—Discretion of Person Undertaking to Furnish—"During his Present Illness"—Limitation of Period—Duration of Litigation—Release.

Appeal by the defendant from the judgment of a Divisional Court, 1 O. W. N. 469, 679, allowing in part the plaintiff's appeal from the judgment of LATCHFORD, J., at the trial, and directing judgment to be entered for the plaintiff.

The plaintiff, by occupation a cook, had prior to May, 1907, a claim against the "Columbus" in respect of certain mineral lands, which, from ill-health and lack of means, he was unable to establish by a necessary action. The plaintiff was so ill as to be confined to bed much of the time, suffering from two apparent causes, one chronic and probably incurable—the other, and probably the more painful and for the time the more urgent and disabling of the two, an inflammatory condition of the bladder, which was regarded as temporary and curable.

The defendant, a business man, who chanced to meet the plaintiff at the hotel in Cobalt, offered to help him with the litigation for a share in the claim, and an agreement was then prepared and executed, dated the 22nd May, 1907, whereby the defendant undertook to prosecute the action against the "Columbus," supplying the necessary funds, and to take care of the plaintiff until the litigation was over, in consideration of receiving two-thirds of the claim.