

CARTWRIGHT, MASTER.

FEBRUARY 5TH, 1909.

CHAMBERS.

MICHAELSEN v. MILLER.

Security for Costs—Plaintiffs out of the Jurisdiction—Payment of Money into Court by Defendants—Admission of Liability—Con. Rules 419, 420—Reduction of Amount of Security.

Motion by plaintiffs to set aside a præcipe order for security for costs.

R. U. McPherson, for plaintiffs.

Glyn Osler, for defendant.

THE MASTER:—The plaintiffs reside at Havana. Defendant bought cigars at different times from them. One of these purchases was made in November last, and defendant paid \$786.83 for the same. He afterwards claimed that he was entitled to be allowed \$521.07 on account of some of the goods being unsaleable. In the meantime, and before discovering the alleged defect in the previous lot, he made a further purchase to the amount of \$662.72. This he has refused to pay for by reason of his claim to the \$521.07. This action was thereupon brought for \$662.72, and defendant has paid into Court under Con. Rule 419, with his appearance, \$133.68.

It was contended that this is such an admission of liability as entitles plaintiffs to have the order for security set aside.

To this there is this answer: by Con. Rule 420 such payment "shall not be deemed an admission of the cause of action in respect of which it is paid in."

It is not like the case of *Stock v. Dresden Sugar Co.*, 2 O. W. R. 896, where there was an unqualified admission of liability to plaintiff of over \$400. Here the admission is only to pay \$133.68 if plaintiffs would accept this in full and take back the unsaleable cigars.

I think justice will be done by allowing plaintiffs to give security in one-half of the amount specified in the order. Defendant will then have \$233.68 as security if plaintiffs pay in \$100. This will do in the meantime. Later on, if necessary, defendant can move for further security.

Costs of this motion will be in the cause.