

FALCONBRIDGE, C.J.—The affirmance of the Master's order would leave the door open for the consideration of the merits in determining questions of security for costs, which should not be. The present case may result in the Corbetts being mulct in costs, and they should have security for costs, *Sample v. McLaughlin*, 17 P. R. 490, and *Palmer v. Lovett*, 14 P. R. 415, distinguished.

Appeal allowed with costs here and below to the appellants in any event of the petition. Security to be in the sum of \$100.

WINCHESTER, MASTER.

NOVEMBER 5TH, 1902.

CHAMBERS.

PARRAMORE v. BOSTON MFG. CO.

*Discovery—Examination of Parties—Production of Documents—  
Patent Action—Forfeiture—Non-performance of Condition on  
which Patent Granted—Affidavit.*

Motion by defendants for an order that plaintiff do file a further and better affidavit on production and attend for re-examination for discovery, and answer the questions which he refused to answer on his examination, and for an order that the J. B. Kleinert Rubber Company do make discovery of documents, and that the manager of that company in Toronto do attend for examination for discovery.

Action to restrain defendants from infringing a patent for a hose supporter.

G. H. Kilmer, for defendants.

J. Bicknell, K.C., for plaintiff.

W. N. Tilley, for the J. B. Kleinert Rubber Co.

THE MASTER.—The application for further production and examination of plaintiff was opposed on the ground that the defendants have no right to examine into the matters in question, as they desire to do so for the purpose of declaring the plaintiff's patent forfeited under the statute. The defendants do not claim a forfeiture, but properly contend that the rights of plaintiff have been extinguished on non-performance of the condition on which he obtained his patent. *Hoffman v. Postill*, L. R. 4 Ch. 673, *Pye v. Butterfield*, 5 B. & S. 829, 837, *Hambrook v. Smith*, 17 Sim. 209, *In re Haelden's Patent*, 51 L. T. N. S., referred to.

Even if the present case were one of forfeiture, plaintiff should have taken that objection on his examination. Counsel acting for him on that examination makes an affidavit taking this objection, but that is not sufficient; the plaintiff