

Some further correspondence took place. In this on 16th December, plaintiff's solicitors said that unless some security was given the action must proceed.

The defendant's solicitors in answer said in effect this could not be done. Next day, therefore, the plaintiff's solicitors entered judgment—quite rightly in my opinion.

The date asked for on defendant's behalf has now been reached. It does not appear that he has any assets in this province, and it is stated that he has none at Seattle either—available in execution.

Had the plaintiff in this case moved for judgment under Consolidated Rule 603, he would probably have been successful in the absence of any affidavit by defendant, or what would seem likely to have developed on cross-examination if he made one.

So far as appears the plaintiff's solicitors have shewn great and perhaps unauthorized leniency to the defendant. He cannot expect anything more unless he gives security to the reasonable satisfaction of the plaintiff within ten days.

In any case the costs of this motion will be costs to plaintiff in any event.

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DIVISIONAL COURT.

JANUARY 4TH, 1913.

ONTARIO ASPHALT BLOCK CO. v. COOK.

4 O. W. N. 591.

*Account—Reference—Book-accounts—Credits—Absence of Surcharge or Falsification — Payment — Onus on Defendants — Amounts Received in Excess of Those for which Credit Given.*

Appeal by defendants from report of Local Master at Welland upon a reference to ascertain if plaintiffs were creditors of defendants, and if so, in what amount. On the reference, plaintiffs brought in accounts shewing amounts owing to them by defendants as well as certain credits verified by the affidavit of their bookkeeper. Defendants filed no surcharge or falsification and on appeal took exception to the statement of credits furnished and verified by plaintiffs' bookkeeper, claiming that onus was not on them to attack the account.

MIDDLETON, J., *held*, 22 O. W. R. 203; 3 O. W. N. 1289, that onus was on defendants, and moreover no surcharge had been filed as required by Rules.

Appeal dismissed with costs.

DIVISIONAL COURT dismissed appeal from above judgment, with costs.