

These I deem it better to leave open until the damages have been assessed on the basis above indicated. Should defendant be dissatisfied with the new assessment, his right of appeal should be open in respect of all matters argued before me and not now dealt with.

The only other matter upon which it seems desirable now to express an opinion is the question whether plaintiff should be demed entitled to a one-fourth interest in profits, or to a one-third interest as a partner in this business of defendant. There being no evidence that plaintiff elected in any way or at any time to "avail himself of the latter option" (to quote the language of the contract), the Master was, in my opinion, quite right in holding that his interest was one-fourth of those profits in which he should be held entitled to share.

The matters in question will, therefore, be referred back to the Master at Welland to assess plaintiff's damages upon the basis which I have indicated. All costs will be reserved to be disposed of by the Court upon the ultimate motion for further directions, except the costs of this appeal, which must be borne by plaintiff in any event.

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CARTWRIGHT, MASTER.

JUNE 11th, 1906.

CHAMBERS.

CROWN BANK OF CANADA v. BULL.

*Summary Judgment—Rule 603—Defence—Failure to Shew  
—Refusal of Leave to File Second Affidavit—Conditional  
Leave to Defend—Payment into Court.*

Motion by plaintiffs for summary judgment under Rule 603.

F. Arnoldi, K.C., for plaintiffs.

J. F. Hollis, for defendant.

THE MASTER:—The action is on an acceptance of defendant which was due on 8th October, but no proceedings were taken until 15th May. This acceptance was a renewal of one