

WINCHESTER, MASTER.

MARCH 24TH, 1902.

CHAMBERS.

DOMINION PAVING AND CONTRACTING CO. v.
MAGANN.*Summary Judgment—Payment into Court of Amount Admitted to be Due—Payment out to Plaintiffs—Without Prejudice to Defendant's Rights.*

Kane v. Mitchell, 13 P. R. 118, referred to.

Action for return of moneys overpaid to defendant on an account. The defendant, upon being served with the writ of summons, paid \$1,081.66 into Court, under Rule 419, in full satisfaction of plaintiffs' claim. The plaintiffs moved for judgment under Rule 603 for the amount claimed by the writ. The defendant, in an affidavit, admitted the claim to the extent of the amount paid into Court, but disputed the balance.

G. H. Kilmer, for plaintiffs.

J. D. Falconbridge, for defendant.

THE MASTER IN CHAMBERS:—Plaintiffs' counsel asks for judgment for the amount paid into Court. I do not think the plaintiffs entitled to judgment as asked. The Rules under which the defendant has paid what he admits to be due give the defendant some benefits that would be useless if judgment were given for plaintiffs as asked. I think justice will be done to the parties by directing the amount in Court to be paid out to plaintiffs, the defendant admitting same to be due to the plaintiffs in his affidavit. This payment will be without prejudice to whatever rights the defendant may be entitled by reason of his paying same into Court under the Rules. I would refer to the opinion of the late Master in Chambers in Kane v. Mitchell, 13 P. R. 118. Costs in the cause.

Kilmer, Irving, & Porter, Toronto, solicitors for plaintiffs.

Johnston & Falconbridge, Toronto, solicitors for defendant.

MACMAHON, J.

MARCH 24TH, 1902.

TRIAL.

MCCALLAM v. SUN SAVINGS AND LOAN CO.

Company — Shares — Subscription — Misrepresentation — Agent — Settlement Pending Action, Induced by Threats, Set Aside.

Action for the cancellation of the application for 1 share of permanent stock of the defendant company, signed by the plaintiff Margaret McCallam, and of the certificate