

The plaintiff cannot hope to recover otherwise than as he has himself claimed in his pleading. If there was any "misrepresentation, breach of contract, and breach of warranty," it can be evidenced only by what passed between the parties or by what is set out in the catalogues. Those, as I understand, defendants have produced.

The only thing defendants have not done is to comply with the demand to produce "any correspondence or other documents in their possession shewing the manner in which they usually describe vault door No. 67 and shewing whether in selling to others they describe it as a burglar-proof vault door or not." Such evidence would be wholly irrelevant.

[Ferguson v. Provincial Provident Institution, 15 P. R. 366, considered and distinguished.]

The motion must be dismissed with costs to defendants in any event. The plaintiff must first prove his own contract, and then the breach or breaches on which he grounds his right of action. What other contracts may have been made with other customers, and what representations may have been made by defendants in the negotiations leading up to such contracts have not, in my judgment, the slightest bearing on the question at issue between the parties.

CARTWRIGHT, MASTER.

APRIL 21ST, 1903.

CHAMBERS.

CANADA BISCUIT CO. v. SPITTAL.

Pleading—Statement of Defence—Application to Strike out Paragraph—Defence in Bar—Prosecution for Criminal Offence.

Motion by plaintiffs to strike out paragraph 3 of the statement of defence of defendant Smith. The action was brought against defendant Spittal and his sureties to recover moneys alleged to have been received by Spittal for plaintiffs when acting as their agent.

The paragraph complained of was as follows: "The defendant further says that plaintiffs laid a charge of theft to the extent of \$442 in or about the month of December, 1902, in respect of the matters alleged in the statement of claim; that the said Spittal was tried; and that the said charge was dismissed by a court of competent jurisdiction."

A. M. Denovan, for plaintiffs.

A. E. Hoskin, for defendant Smith.

THE MASTER.—Mr. Hoskin was not able to refer me to any authority for such a plea. He invoked the assistance of