

\$18,000 worth of the capital stock of the company without giving any consideration in money or property was a breach of trust, as well as a breach of his contract to pay the value or price of those shares into the capital of the company.

Haverson for the appeal.

Hellmuth and Raney, contra.

Practice.

BOYD, C.]

EATON v. DORLAND.

[Jan. 10.

Judgment—Delay in issuing—Application for leave to issue—Discretion.

In 1880 a bill was filed by the plaintiff for an account in respect of a mortgage, which had been assigned to the defendant as security for advances. A decree was pronounced in June, 1880, directing that the plaintiff might have an account if he desired it, and that the defendant should have his costs to the hearing. The decree was not then drawn up and issued, and in December, 1892, the plaintiff applied for leave to issue it.

The delay was not explained, except by saying that the plaintiff had been out of the jurisdiction, and no details were given of when he went away or when he returned. It appeared that the plaintiff had no beneficial interest upon the footing of the accounts as shown by the assignment and the answer. The defendant swore to the loss of one material witness through death.

Held, that the decree meant that the plaintiff should, within some reasonable time, exercise the option given him of having a reference to take the accounts, at the peril of losing it if changed circumstances worked any prejudice to the defendant; and that, under all the circumstances, the application should, in the exercise of a sound discretion, be refused.

Finkle v. Lutz, 14 P.R. 446, and *Kelly v. Wade*, *Id.* 66, distinguished.

S. M. Jarvis for the plaintiff.

D. C. Ross for the defendant.

DELAP v. CHARLEBOIS.

Evidence—Examination of witnesses de bene esse—Rules 566, 588—Discretion—Appeal.

Rules 566 and 588 are in *pari materia*, and contemplate the examination of a witness *de bene esse* who is about to withdraw from Ontario, or who is residing without the limits thereof.

And where witnesses residing out of Ontario come within the jurisdiction and are about to return to their homes, an order may be made for their examination here before their departure.

Such an order is a discretionary one, and, where the witnesses have been examined under it, will not be reversed on appeal unless a very clear case of error appears.

Bristol for the plaintiffs.

Chrysler, Q.C., for the defendant Charlebois.

Masten for the defendants, the Commercial Bank.