

spring sittings of 1905, as he was obliged to take his daughter to Colorado at the time. He further says that defendants' solicitor agreed to this. Mr. Keefer has replied to that affidavit, but does not dissent from this statement, which I therefore accept.

This disposes of any argument based on that default. The last autumn sittings were fixed for 6th November. As to this plaintiff affirms that about 1st October he was summoned to Colorado to procure a suitable residence for his daughter in the winter. On his return to Toronto about the end of the month he found that no preparations had been made for the trial, and that it was then too late to do so.

He further says that if it had not been for such necessary absence he would have given notice for last sittings, and that he now intends to proceed with the trial as speedily as possible.

He also says that negotiations for a settlement have been pending ever since November, 1903, and have never been finally disposed of. This is denied by defendants, and must therefore be held not proven.

There is no doubt this is an extreme case. It seems prima facie inexcusable that a libel action should still be pending and untried more than 4 years after the issue of the writ. The delay, however, has not been wholly due to plaintiff's inaction. While, therefore, he need not hope for any further indulgence, I think the justice of the case will be met by making him undertake to go to trial at the ensuing June sittings, and pay the costs of and incidental to this motion, within a week after taxation; and in default the action to stand dismissed with costs.

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APRIL 18TH, 1906.

DIVISIONAL COURT.

WHITE v. CAMPBELL.

*Fraudulent Conveyance—Husband and Wife—Parent and Child—Gift—Absence of Insolvency and Fraudulent Intent—Business Carried on by Wife—Attempt to have Stock in Trade Declared Available for Husband's Creditors—Remedy—Sheriff—Interpleader.*

Appeal by plaintiff from judgment of BRITTON, J., ante 146, dismissing action.

F. E. Hodgins, K.C., for plaintiff.

E. C. Kenning, Windsor, for defendants.