

opinion upon the question of fact if he was satisfied that he had no jurisdiction, and a new trial would almost inevitably follow, as an appellate Court would hesitate long before dealing with questions of fact of this nature, depending upon the weight to be given to the evidence of witnesses which it had no opportunity of seeing or appraising.

The merits of this legal question not having been discussed before me, I do nothing more now than determine that the preliminary objection must be overruled, and the motion must be heard upon its merits at some convenient date.

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LANGWORTHY v. McVICAR—KELLY, J. IN CHAMBERS—MAY 18.

*Trial—Postponement.*]—Motion by the plaintiff for an order fixing a day for the trial of this action. The case was entered for trial at the Toronto non-jury sittings. The learned Judge said that his information was that it was likely to be reached in the ordinary course in about ten days; and no reason was shewn why it should not then be proceeded with, and it was desirable that there should not be further delay in bringing it to trial. But counsel for some of the defendants had expressed himself to the effect that, if it should unexpectedly appear on the peremptory list, it would be necessary to apply for a postponement, owing to the great distances witnesses lived from Toronto. That was not a sufficient ground for postponement. The trial should be proceeded with as soon as the case was reached in the ordinary course, but not earlier than Monday the 1st June; thus giving to the parties, in the circumstances, ample time to be ready. Counsel and the parties should govern themselves accordingly. No costs of the motion. J. Haverson, K.C., for the plaintiffs and the defendant Helen Elma McVicar. J. W. McCullough, for the defendant Christina Kains. S. W. McKeown, for the defendant Alexander Crane. No one appeared for the defendant Robert McVicar. Featherston Aylesworth, for the other defendants.

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RE HOGG—KELLY, J.—MAY 18.

*Trustee—Removal from Ontario—Appointment of New Trustee.*]—Petition by John Peter Fisher, the continuing trustee under the will of William Walker Hogg, deceased, for an order appointing a new trustee in the place of Hector Cowan, now resident out of Ontario. The learned Judge made an