

H. E. Rose, K.C., for motion.

W. N. Tilley, contra.

CARTWRIGHT, K.C., MASTER:—The facts of this case appear in the previous report in 22 O. W. R. 219. As that judgment was dated over a year ago it is plain that the action has not proceeded with any great expedition. According to the affidavit filed in support of the motion and not contradicted the particulars then ordered were not given until the end of October.

The plaintiff has been examined very fully for discovery. The examination was held on 13th, 14th, 23rd, and 25th of January, and concluded on 26th of May, extending over 240 pages. On 6th May, plaintiff served notice of setting down. The present notice of motion was served on 29th May.

The statement of claim puts the plaintiff's damages at \$15,000. So that the matter is one of considerable importance. A more serious aspect is that if not the whole claim, at least a very large part of it, is based on alleged representations made to the plaintiff by the directors of the defendant company at their offices in Sheffield, which are said to have been untrue to their knowledge or not to have been fulfilled.

The plaintiff's depositions have been forwarded to the defendant company to see if they are prepared to accept the plaintiff's story or if they wish to give evidence to the contrary either by coming to the trial or by a commission.

It was strongly contended that the delay on the part of the defendants was inexcusable, and that the plaintiff in his present unfortunate condition should not be debarred from a trial at these sittings.

No doubt it is desirable in all cases to have a speedy trial. This is not only in the public interest according to the well known maxim, but also in that of the parties, so that evidence may not be lost nor the memory of witnesses become blurred nor the successful party be deprived of the fruits of victory. But this principle is to be applied subject to that other principle that "a fair trial is above all other considerations." This was in effect the principle followed in regard to commissions in *Ferguson v. Millican*, 11 O. L. R. 35—that defendants ought not to be deprived of "reasonable facilities for making out their defence." It applies