

then motion can be renewed. At present it is premature under *Leyburn v. Knoke*, 17 P. R. 410.

The plaintiff asks to be given a lien on the lands set out in the statement of claim alleging that they were purchased by defendant with money given her by him to invest for his benefit. On these lands he has filed a certificate of *lis pendens*, which certainly cannot be vacated before the trial which is only six or seven weeks off.

Then can Consolidated Rule 616 be applied in favour of defendants? Plaintiff's examination certainly discloses a very unfortunate mental condition. So much so that it is doubtful if he should not be represented by a committee or next friend as provided by Consolidated Rule 217. The affidavit of his physician filed in answer to the motion states that plaintiff "Is over 80 years of age, and is suffering from senile dementia, a disease which affects his mind to the extent of rendering him unable to understand and appreciate the nature of a question or of the answer he may give." Whatever effect should be given to this hereafter it seems sufficient to shew that the action cannot be dismissed on account of the admissions of plaintiff. It was said by Riddell, J., in *Jasperson v. Romney*, 12 O. W. R. 115, at p. 117, that the Master in Chambers in his opinion has no jurisdiction to apply this Rule, or if he has and refuses the application his discretion would not be interfered with. It, therefore appears that the motion cannot succeed in any of its aspects, and must be dismissed with costs in the cause to plaintiff, leaving defendant to take such other steps as she may be advised in view of what has been sworn to be the mental condition of the plaintiff.

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MASTER IN CHAMBERS.

APRIL 4TH, 1913.

SCHOFIELD-HOLDEN v. CITY OF TORONTO.

4 O. W. N. 1040.

*Discovery—Motion to Set Aside Appointment — Appointment Taken out after Trial Begun and Adjourned — Previous Examinations Had — Appointment Set Aside.*

MASTER-IN-CHAMBERS *held*, that a party has no right without special order to discovery after the trial of an action has commenced and been adjourned.

*Wade v. Tellicr*, 13 O. W. R. 1132, followed.

Motion by the defendant to set aside an appointment for examination for discovery.