

defendants' request. At the spring sittings in 1903 it was postponed on plaintiff's affidavit that he was unable to leave the sittings of the Legislative Assembly. It came on again for trial in November, 1903, and after the trial had proceeded for more than a day, it was postponed because a juror had expressed an opinion on the case adverse to plaintiff.

Notice of trial was not given for the spring or autumn sittings of 1904. Defendants moved to dismiss and plaintiff for further postponement; and on 21st October, 1904, an order was made postponing the trial until the spring sittings of 1905.

Nothing further was done in the matter until 5th March, 1906, when defendants moved again to dismiss. No cause was shewn and the order was made, but held until the next day. On March 7th a copy was served on the Toronto agents of plaintiff's solicitor.

On 9th March plaintiff launched a motion to have the matter reconsidered, so that the order to dismiss might be vacated, and the action allowed to proceed, as he was quite unaware of the motion and had never given his solicitor any authority to allow judgment to go by default.

Casey Wood, for plaintiff.

C. A. Moss, for defendants.

THE MASTER:—The facts of this case sufficiently appear from the report in 2 O. W. R. 509. . . . It will be sufficient to take the order of 21st November, 1904, as the starting point, as the delay up to that time had been considered and dealt with. It will also be proper to deal with the motion as if cause was being shewn now to it instead of having been allowed to go by default.

In view of my decision in *Muir v. Guinane*, 10 O. L. R. 367, 6 O. W. R. 64, and cases cited, the oversight or neglect of plaintiff's solicitor should not be allowed to prejudice the client. He is entitled to have the motion decided on its merits.

All motions to dismiss must be decided on their own facts, and precedents are of little use. See *Milloy v. Wellington*, 3 O. W. R. 37, and cases noted there.

The question, therefore, here is whether the delay since November, 1904, has been sufficiently accounted for. Plaintiff states that he was unable to have the action tried at the