

pointed out (p. 219) that the power should be very sparingly exercised, and only in very exceptional cases.

That inherent jurisdiction is partly embodied in Rule 124 of the Rules of the Supreme Court of Ontario. That Rule has been acted upon only in plain and obvious cases. It can hardly be said here that the facts disclosed as to the former action bring the case within such a category that the plaintiffs should be turned out of Court upon an interlocutory motion made in Chambers, though after argument given the status of a Court motion.

On the other ground—that the action is too late—the plaintiffs perhaps are on weaker footing. By Rule 222, a party may, at any stage of an action, apply for such judgment or order as he may, upon any admissions of fact, be entitled to, or where the only evidence consists of documents. The present pleading shews that the fire was more than 3 years before this action. The policies contain statutory condition 24 without any variation. That condition bars any action for the recovery of any claim by virtue of the policy after one year. The plaintiffs allege that they applied for policies subject to these statutory conditions. If, therefore, the policies were rectified, the plaintiffs would still be seeking to recover by virtue of them, and would be too late by their terms.

But it appeared that these policies were issued in 1913 and renewed in 1916, a three years' premium being paid on each occasion. The plaintiffs may be able to shew such facts as to estop the defendants from setting up the time-limitation in the face of the course they pursued. This is not a case in which the defendants should be relieved from pleading in the ordinary way, or the plaintiffs prevented from setting up such reply as the facts might seem to them to justify, and having the issues of law or fact disposed of in the ordinary way.

As to the alternative relief asked by the plaintiffs—damages for loss occasioned by their being induced to receive and act upon policies meaning something different from what they appeared to be—there was no reason why such an action should not lie. To justify the application of Rule 124, a statement of claim should not be merely demurrable; it should be manifest that it is something worse so that it will not be curable by amendment: *Dadswell v. Jacobs* (1887), 34 Ch. D. 278, 281; *Republic of Peru v. Peruvian Guano Co.* (1887), 36 Ch. D. 489; and it is not sufficient that the plaintiff is not likely to succeed at the trial: *Boaler v. Holder* (1888), 54 L.T.R. 298.

On the face of things, these plaintiffs shew a meritorious claim to relief of some sort. It may be that they will not ultimately succeed, but they are entitled to have all the facts dealt with, and not have their action snuffed out thus summarily.

The appeal should be allowed, the defendants should have time