

CARTWRIGHT, MASTER.

MARCH 31ST, 1906.

CHAMBERS.

WILLIAMSON v. PARRY SOUND LUMBER CO.

*Trial—Postponement—Grounds for Motion—View of Locus in quo Necessary for Defence—Impossibility of View at Date of Proposed Trial.*

Motion by defendants to postpone the second trial of the action, which was brought to recover damages for injuries received by plaintiff while working in defendants' saw mill in August, 1905. At the first trial, in November, 1905, plaintiff was nonsuited; but on 27th February, 1906, a Divisional Court set aside the nonsuit and directed a new trial. On 16th March, 1906, plaintiff gave notice of trial for a sitting beginning on 9th April, 1906.

W. R. Smyth, for defendants.

J. E. Jones, for plaintiff.

THE MASTER:—In support of the motion it was argued that it was essential to defendants' case to shew by actual working of the machinery that plaintiff's accident was entirely self-caused. It appears from the material that the mill is shut down in the autumn for refitting and necessary repairs, and it is said that it cannot be in running order before 16th or 20th April. It was, therefore, argued that the case was within the principle of giving to both parties every reasonable facility for a fair trial, and that it is on this ground that a postponement is almost of right when asked for because of the absence or illness of a necessary and material witness. It was contended that this motion was analogous to one based on such absence. I am not, however, convinced that this is so. Plaintiff is admittedly a poor man, who has been seriously disabled, and who will probably have a hard battle if the trial is deferred. He will also run the risk of losing his witnesses, and the facts will almost inevitably grow dim in their recollection.

It is to be remembered also that defendants in moving for a nonsuit took the risks incident to such a course. If they felt so strongly that plaintiff had no case as they now