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No. 20

APPELLATE DIVISION.

JANUARY 24TH, 1913.

HAINES v. MACKAY.

Trial—Dismissal of Action of Crim. Con.—Proceedings at Trial—Motion to Postpone—Refusal—Plaintiff Failing to Give Evidence in Support of Claim—Witness Confined in Asylum for Insane—Evidence as to Chances of Recovery—Particulars of Statement of Claim—Confinement to Charges Specified in Compliance with Order—Practice.

Appeal by the plaintiff from the judgment of LEITCH, J., dismissing an action for criminal conversation.

The appeal was heard by MULOCK, C.J.Ex.D., RIDDELL, SUTHERLAND, and KELLY, JJ.

D. O. Cameron, for the plaintiff.

No one appeared for the defendant.

The judgment of the Court was delivered by RIDDELL, J.:—
The statement of claim, delivered on the 18th December, 1911, alleges that "in or about the year 1905 the defendant did seduce, debauch, and have illicit connection with the plaintiff's wife . . . ;" and \$50,000 damages are claimed. The defence is a simple denial.

The writ of summons was issued on the 18th September, 1911; and, after the action was at issue for some time, nothing was done to bring it to trial. On the 9th October, 1912, a motion was made by the defendant for an order dismissing the action for want of prosecution. The Master in Chambers made an order that particulars should be served within a time limited, certain costs paid, and the case set down for trial, or the action