

The action had been tried, but a new trial had been ordered (ante 724).

W. R. Wadsworth, for plaintiff.

W. R. Riddell, K.C., for defendant.

THE MASTER.—Having regard to the language of Rule 312, as explained in *Williams v. Leonard*, 16 P. R. 544, *Patterson v. Central Canada S. and L. Co.*, 17 P. R. 470, and *Chevalier v. Ross*, 3 O. L. R. 219, the plaintiff must be allowed to make such amendments as he may be advised and set up a claim founded on special damage. The words "at any time" in Rule 312 have never been limited except in such cases as *Johnston v. Consumers' Gas Co.*, 17 P. R. 294, and *Sales v. Lake Erie and Detroit River R. W. Co.*, 17 P. R. 224. It was expressly decided in the *Duke of Buccleuch*, [1892] P. 201, that even after a case had been to the House of Lords a new plaintiff might be substituted for one wrongly so made. The decision was based on this, that the words "at any stage" meant "so long as anything remains to be done." In the present case, if plaintiff can maintain his action, he is entitled to an opportunity of shewing any special damage he may have suffered. But defendant must be fully indemnified.

Order made as asked. Plaintiff to file and serve such amendments as he may be advised within a week. Defendant to have eight days within which to deliver such amended defence as he may be advised. Costs of this motion and all costs lost or incurred by reason of this order to defendant in any event.

MACLAREN, J.A.

NOVEMBER 28TH, 1903.

CHAMBERS.

RE BOYD, BOYD v. BOYD.

Will—Construction—Legacy—Deferred Payment of—Executor—Mortgage—Change of Circumstances.

Motion by plaintiffs for an order on defendant, executor of a joint will made by his father and mother, for an account, and for payment into Court of moneys to which plaintiffs are entitled. The testator and testatrix had, previous to making the will, sold their farm to defendant, and he gave them a mortgage back for \$2,000, with interest at five per cent. This sum was to be divided among the plaintiffs, grandchildren of the testator and testatrix. Defendant paid the interest to his mother until her death in 1886.