

can succeed. Here plaintiff's claim is based on an omission on the part of the corporation which rendered the highway unsafe for those entitled to use it. Had the excavation been alleged to have been unlawful, the matter would have been otherwise.

All the authorities are given in the cases cited.

The motion is granted; costs in the cause.

CARTWRIGHT, MASTER.

DECEMBER 19TH, 1906.

CHAMBERS.

PATTERSON v. TODD.

Practice—Motion to Dismiss Action—Want of Prosecution—Refusal to Dismiss—Terms—Change of Venue—Speedy Trial—Costs.

Motion by defendant to dismiss action for want of prosecution.

The action was commenced on 13th March. The statement of claim was not delivered until 20th June. The statement of defence was delivered on 24th August, and plaintiff joined issue on 1st September. The venue was laid at Brockville, where the jury sittings were held on 1st September. On 10th September notice of trial was given for the non-jury sittings on 6th December instant.

After the examination of plaintiff on 15th November, his solicitor concluded that the action must fail. On 27th November he wrote to defendants' solicitor to that effect, and stated that he would not enter the action for trial, and that he would so inform his client. The 3rd December was the last day for setting down, and the solicitor at once wrote to plaintiff as above stated.

Plaintiff did not acquiesce in this view of his case, which he was ready to have tried on 6th December. He accordingly went back to Brockville and took other advice, and on 12th December an order was taken out appointing a new solicitor. He, however, was not aware that notice of trial had been given when first consulted on 30th November, and accordingly thought the action could not be tried at that sittings. He did not in fact receive the papers until after 3rd December.