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TORONTO, MAY 28, 1903.

No. 20.

CARTWRIGHT, MASTER.

MAY 18TH, 1903.

CHAMBERS.

THIBADEAU v. LINDSAY.

*Action—Dismissal for Default of Delivery of Statement of Claim—Practice—Time—Costs—Terms of Allowing Action to Proceed—Amendment.*

Motion by defendant to dismiss the action for want of prosecution.

W. J. Tremear, for defendant.

J. A. MacIntosh, for plaintiff.

THE MASTER.—The writ of summons was issued on the 5th January, and appearance was entered on the 9th. No statement of claim having been filed, this motion was launched on the 14th April. This was about 5 days after the expiration of the three months. The affidavit of defendant's solicitor filed in support of the motion is dated the 11th April. This would seem to shew that he was on the watch to take advantage of any slip of the plaintiff's solicitor. . . . In the latter part of February negotiations were had with a view to a settlement, which did not result successfully. . . . The plaintiff asks leave to amend the writ of summons by adding a claim in respect of a certain note for \$500 dated 18th March, 1901, and interest thereon. The plaintiff's solicitor states that he was not aware of the existence of this note at the commencement of the present action.

It certainly is a commendable practice that the solicitor for a defendant should call attention to the fact of plaintiff being in any default before moving to dismiss as in the present case. The omission so to do cannot fail to affect the disposition of the costs.