

MIDDLETON, J., IN CHAMBERS.

NOVEMBER 22ND, 1919.

CAMPBELL v. LENNOX.

Practice—Order for Attendance of Plaintiff for Examination for Discovery—Default—Dismissal of Action—Plaintiff Absent out of the Jurisdiction—Solicitor for Plaintiff Unable to Find him—Rules 328, 337.

An appeal by the plaintiff from two orders made by the Master in Chambers, the first on the 26th June and the second on the 7th October.

Ericksen Brown, for the plaintiff.

R. S. Robertson, for the defendant.

MIDDLETON, J., in a written judgment, said that by the endorsement upon the writ of summons the plaintiff was said to be a resident of the city of Toronto—his precise address not being given. In the statement of claim there was no indication of his place of residence.

On the 10th June, 1919, an appointment for the examination of the plaintiff for discovery, before a special examiner, was served by the defendant's solicitor in accordance with the provisions of Rule 337, on the theory that the plaintiff was a party within Ontario.

No one attended upon the appointment, and a motion was made for an order dismissing the action. Upon the return of this motion, an affidavit was filed by the plaintiff's solicitor stating that the plaintiff was unable to appear for examination, as he was out of Ontario and upon a business trip—then being in Boston, Massachusetts. The result was the order of the 26th June, directing the plaintiff to attend for examination before the 30th September, leaving the day of attendance to his discretion and convenience, his solicitor notifying the defendant's solicitor of the time when he proposed to submit himself for examination. No appointment was taken out or anything else done looking to the examination, but an application was made to the Master by the plaintiff for an order extending the time within which the plaintiff should submit himself for examination, and upon this the second order appealed from was made, extending the time to the 31st October, 1919, and providing that, in default of the plaintiff obtaining and serving an appointment and attending and submitting to be examined as provided for in the former order, this action should be dismissed with costs.