

## SUPREME COURT OF ONTARIO.

SECOND APPELLATE DIVISION.

NOVEMBER 13TH, 1913.

## BROOM v. CITY OF TORONTO ET AL.

*Trial—Postponement—Action—Dismissal.*

SUP. CT. ONT. (2nd App. Div.) *held*, that plaintiff cannot choose his own Judge to hear his action, and if he refuses to proceed with his action when it comes on for trial it should be dismissed with costs.

An appeal by the plaintiff from a judgment of HON. MR. JUSTICE LATCHFORD, at trial, dismissing his action with costs.

The case was entered for trial, and notice of trial given, but when the case came on for trial the plaintiff accused His Lordship of being prejudiced against him, and objected to proceeding with the trial, whereupon His Lordship dismissed the action with costs.

The plaintiff's appeal to the Supreme Court of Ontario (Second Appellate Division), was heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

Plaintiff, appellant, appeared in person.

R. B. Beaumont, for the respondent municipality.

THEIR LORDSHIPS' judgment was delivered by

HON. SIR WM. MULOCK, C.J.Ex. (v.v.):—The case was entered for trial, and notice of trial given: so it was upon the list to be tried at that stage.

It was the duty of the plaintiff to proceed with his case. He notified the Court that he would not do so, his reason being that he did not wish to have his case disposed of by the trial Judge.

It is not the practice of the Court to allow suitors to make distinction as to the Judge who shall try the case. If the case is on the list it is the practice to have it proceed without any unnecessary delay.

All Judges administer the same sort of law and the same sort of justice.

It was the duty of the plaintiff, therefore, to proceed with his action.