

The motion was heard by KELLY, J., at a sittings for the trial of actions in Toronto.

H. S. White and H. P. Hill, for the applicant.

R. C. H. Cassels, for the plaintiffs.

KELLY, J., in a written judgment, said that the action was commenced on the 6th November, 1919, to recover the sum of about \$43,000. Judgment was entered on the 8th December, 1919, against the defendant Patricia Syndicate, in default of appearance. On the same date, the action was set down for trial against the defendant Ross, and notice of trial was served on the 9th December, 1919. Then began a long series of attempts by the plaintiffs to procure the attendance of the defendant Ross for examination for discovery and to have the case brought down for trial. Early in September, 1920, the plaintiffs' solicitors requested the defendant Ross's solicitors to name a suitable date for the trial. This was without result. Following their request of the 7th October, 1920, to have the case placed on the peremptory list for trial, the plaintiffs were served, on the 12th October, with notice of a motion for an order postponing the trial. The motion was heard on the 14th October, and an order was made postponing the trial until the sittings of the Court in the present month of January, but on condition that the solicitors for the defendant Ross should make every reasonable effort to take his evidence on commission, so that it might be available for the trial at this sittings of the Court unless he could attend it to give evidence.

On the 7th January, 1921, notice of the present motion was served.

There was an absolute absence of evidence that any effort was made since the order of the 14th October, 1920, to have this defendant's evidence taken on commission, though it appeared from his own affidavit of the 3rd December, 1920, that he was in Scotland and England during the three preceding months. His affidavit offered no explanation of the failure to have his evidence taken on commission, beyond the statement that he believed that his personal attendance for examination was necessary for the fair and proper conduct of the trial, and that he was desirous of attending the trial personally as a witness; and he said that he would not be able to attend until about June, 1921. He had not, however, satisfactorily explained his neglect or failure to accede to the plaintiffs' desire and efforts to have the trial take place during 1920, nor had he shewn any substantial reason for delaying the hearing until June. The sole reason assigned for his non-attendance at the present time was that he was about to start for East Africa on important business, the nature of which he did not disclose beyond mention of the conduct, in conjunction with