

land, vol. 3, p. 168; *Garland Manufacturing Co. v. North-umberland Paper and Electric Co.*, 31 O. R. 40.

Judgment for the plaintiffs for \$1,161, with interest from the 6th February, 1912, and costs of the action down to the time when they received from the defendants a cheque for \$414.26. The plaintiffs' claim for additional extras dismissed without costs; and the defendants' counterclaim dismissed without costs.

MASTER IN CHAMBERS.

MARCH 12TH, 1912.

MCINTOSH v. GRIMSHAW.

3 O. W. N. 848.

Trial — Order to Expedite — Plaintiff not in Default—Con. Rule 243—Costs.

Motion by the defendant under Con. Rule 243 for an order expediting the trial of an action begun on 21st February, 1912, by vendor for cancellation of an agreement for sale of land and for possession of the land.

A. J. Russell Snow, K.C., for the defendant's motion.
Kenneth F. Mackenzie, for the plaintiff, contra.

CARTWRIGHT, K.C. MASTER:—It was open to defendant to have commenced an action for specific performance of the agreement nearly three months ago. There is no reason given for this not having been done.

Counsel for plaintiff stated that he had been expecting this to be done and had only commenced the present action in order to have the matter brought to a termination.

He was not in any way averse to a speedy trial—and offered to have the case tried by a referee—an offer which counsel for defendant was not prepared to accept.

The case of *Armstrong v. Toronto & Richmond Hill St. Rv. Co.*, 15 P. R. 449, shews that an order such as is asked for here may be granted in a proper case. But when the plaintiff is not in any default, it cannot lightly be made against his protest. Here, however, the plaintiff does not object and so an order can be made for delivery of statement of claim in a week or ten days and with such other terms as plaintiff may concede.

Costs of this motion should under its facts be to plaintiff only in the cause.