

set down the case for hearing for the session of the Court which began on the 14th April.

Judgment has been signed and costs of defence taxed at nearly \$700, and an affidavit is filed shewing that the appellant has recently been placing incumbrances on his property and has disposed of the equity of redemption.

If the case had been set down, as it might have been under Rule 812 (2), for the April session, it could have been and probably would have been heard thereat, as the evidence was obtained on the 23rd or 24th April; or the appellant might have moved for a fiat to set down notwithstanding the absence of the evidence, and the Court might have imposed terms. The delay has been very great, and I find nothing which I can lay hold of as an excuse, beyond this, that it has no doubt been the intention of the appellant in good faith to prosecute this appeal, and his solicitor was probably not familiar with the Rule I have referred to. It does seem not to be very generally known, but, on the other hand, the general practice has been to move for a fiat to set down the appeal notwithstanding the absence of the evidence. This precaution was not observed. The respondent has reason to complain of the delay which now throws him over until September, if the appellant's motion is granted, and he is left with the costs of the action unpaid and unsecured, the appellant's property in the meantime having been put out of his hands. While I express no opinion on the merits of the appeal, I cannot but see that it turns very much upon questions and findings of fact, and on the main facts of the case there have been two decisions against the appellant.

On the whole I am of opinion that I should dismiss the motion with costs, unless the appellant, within——days, gives sufficient security for the payment of the costs taxed in the action and interest thereon, and the costs of this motion in case his appeal is unsuccessful.

Ball & Ball, Woodstock, solicitors for plaintiff.

Mabee & Makins, Stratford, solicitors for defendant.

MACLENNAN, J.A.

MAY 31st, 1902.

C. A.—CHAMBERS.

PEOPLE'S BUILDING AND LOAN ASSN. v. STANLEY.

*Appeal—Jury Notice—Jurisdiction of Judge in Chambers as to
—Judicature Act, sec. 110.*

Motion by defendant for leave to appeal from order of a Divisional Court affirming an order of a Judge in Cham-