

Dealing first with the question of the undertaking, it is to be observed that the whole evidence is happily documentary, and no facts of any kind are in dispute. So entirely is this the case that no affidavit has been filed in answer to the motions.

The undertaking was given in the following circumstances. The statements of defence were long overdue when, on 2nd December last, the plaintiff issued the usual order for production by the defendants. The time for defendants to plead had previously been extended until 7th December, and on that day the statements of defence and counterclaims were duly delivered. Two days later, the defendants gave notice of motion for 14th December to set aside this order of 2nd December, on the ground that plaintiff was not entitled to discovery from the defendants (other than Otisse and Currie) until he had established his right as against them. Among the material to be used on this motion was the intended examination of the plaintiff for discovery; and by my direction all proceedings in the action were stayed until this motion should be finally disposed of.

On that 9th December the solicitors then acting for the plaintiff wrote a letter to Mr. Arnoldi, in which, after saying they had received the above notice and had had some conversation with Mr. Arnoldi about it, they continued: "It was agreed between us that the examination for discovery of Mr. Stow and this motion stand indefinitely for the present, and *we agreed that we should take no steps in the action nor make any effort to examine your clients until the examination of Mr. Stow should have been had, so that you might have the opportunity of using same upon the motion*, you to be at liberty to bring on the motion at any time, upon two days' notice; we also to be entitled to give you two clear days' notice of our intention to proceed." The letter concludes with thanks "for your courtesy in acceding to this arrangement at our request under the present circumstances."

Mr. Arnoldi replied, and pointed out that part of the arrangement was that his solicitors were "to produce Stow for examination when required." To this Mr. McKay assented by letter of 12th December.

Had the matter ended here, I do not see how any doubt could have existed that in no circumstances was any further proceeding to be taken by plaintiff until his examination