MIDDLETON, J.:—To avoid misunderstanding, I think it better to place in writing my reasons for the order made—a speedy trial under Rule 221, and injunction continued meantime.

A by-law was submitted in 1913, and did not receive the approval of at least three-fifths of the electors voting thereon, and the statute provides that no similar by-law shall be submitted for three years.

By a consent judgment in an action brought by a ratepayer, it was declared that, notwithstanding this statute, a similar by-law might be again submitted, this being based upon the theory that such irregularities took place in the election that had the by-law been passed in 1913 it would have been quashed.

This proceeding is attacked—it is contended that there is no legislative sanction for the exception sought to be grafted upon the statutory prohibition. The case seems to me to differ materially from cases in which an injunction has been refused when it has been suggested that a by-law, if passed, would be quashed by reason of irregularities.

The parties would not consent to turn this motion into a motion for judgment, and, as a trial can easily be had before the council is called on to act, I thought the balance of convenience indicated an early trial as the best course, leaving the whole matter to be dealt with at the trial, and without in any way determining the questions to be then dealt with—inter alia, the right of the plaintiff to an injunction.

To refuse the motion would be to usurp the functions of the trial Judge, as the by-law would be passed in the interval, and he could then do nothing.

The position of the plaintiff might be prejudiced, as the very extraordinary jurisdiction conferred by sec. 143a of the Liquor License Act, as enacted by 8 Edw. VII. ch. 54, sec. 11, might be held to attach, even though there never was any right to submit the by-law at all. Indeed, it was stated by the plaintiff's counsel that the licenses had already been cancelled, presumably under this section, though no local option by-law has been passed at all, much less quashed on a "technical ground."

MCLEOD v. ROREY—FALCONBRIDGE, C.J.K.B.—JAN. 19.

Contract — Penalty—Breach—Damages—Mortgage Claim — Set-off—Interest—Costs.]—Action on a mortgage to recover $500 and interest and for a sale of the land. The defendant counter-