

January, 1913. Four days later, the plaintiff delivered a reply to this statement of defence. The defendant moved to set this aside as delivered too late without an order allowing it to be delivered. The Master said that when the statement of defence was amended this gave a new right to the plaintiff to reply thereto, if so advised. Even if this was not so, the first reply having been withdrawn by leave, no reply was in effect delivered. *Wright v. Wright*, 13 P.R. 268, shews that such motions are not to be encouraged. That was on a motion similar to the one now in question. It must, therefore, be dismissed with costs to the plaintiff in any event, as was done in that case. L. V. McBrady, K.C., for the defendant. C. W. Plaxton, for the plaintiff.

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McALPINE v. PROCTOR—MASTER IN CHAMBERS—FEB. 3.

*Evidence—Foreign Commission—Motion for—Affidavit in Support—Clerk in Solicitor's Office—Information and Belief—Practice—Con. Rules 312, 518.*]—Motion by the defendant for a commission to take evidence at St. John, New Brunswick. The affidavit in support of the motion was that of a clerk in the office of the defendant's solicitors, who spoke only on information and belief, of which "counsel" was the source. The Master said that this was not desirable, even if it did not in substance contravene Con. Rule 518. That Rule was never intended to allow the too common practice of supporting an interlocutory motion by the affidavit of a clerk in the office of the applicant's solicitor. Here the defendant resided in Toronto, and there was no difficulty in getting him to make the affidavit. For this reason, if the strict practice was followed, the motion should be dismissed with costs. But, following the principle of Con. Rule 312, the Master did not apply the rigour of the Rule; because, first, the case was ready for trial, and it was not in the interest of either party that it should be delayed by requiring another motion to be made; and, second, because in the defendant's depositions he spoke of some arrangement between the plaintiff and the purchaser which would have the effect, if proved, of defeating the plaintiff's claim for a commission upon the sale of land. Under *Ferguson v. Millican*, 11 O.L.R. 35, an order for a commission is almost of right if the requirements there pointed out are complied with, as they had been here substantially. Order made for a commission, returnable in ten days. Costs of the motion to the plaintiff only in the cause,