

The more regular course, no doubt, was to have amended the writ and statement of claim as soon as the time for any further appeal from the judgment of the 16th January, 1911, had expired. That judgment, however, confirmed the order of the 22nd September, 1910, which had made the exploration company a party plaintiff, and the omission to act promptly on the part of the plaintiff's solicitors (as now explained) is not a ground for setting aside the statement of claim and for nullifying the decisions of the Divisional Court and of the Court of Appeal.

It would have been better if the plaintiff's solicitors had moved for an order under Consolidated Rule 353, and had also previously informed the other side of the reason of this delay of somewhere about two years. Therefore, while the statement of claim may be properly validated as of this date, it would seem fair that the question of interest on any sums the plaintiff may ultimately recover be left open to the trial Judge or other tribunal to be dealt with, as in the similar case of *Finkle v. Lutz*, 14 P. R. 446, if it appears right so to direct.

The costs of the motion will be to the defendant in any event; and the trial should certainly not be any longer delayed, as the interest on the sums claimed is nearly \$9,000 a year.

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SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

JANUARY 27TH, 1913.

CHAPMAN v. McWHINNEY.

4 O. W. N. 699.

*Principal and Agent—Real Estate Broker—Action for Commission  
—Purchaser Agreed to Pay—Evidence.*

LENNOX, J., 23 O. W. R. 834, in an action by a real estate broker against the purchaser of certain lands, for a commission agreed upon, found as a fact that defendant had expressly agreed to pay such commission upon being informed by the vendor that he would not pay the agent any sum by way of commission. Judgment for plaintiff for \$6,675 and costs.

SUP. CT. ONT. (1ST. APP. DIV.) affirmed above finding but reduced amount of judgment to \$5,675. No costs of appeal.