

relief claimed and after the argument handed such an affidavit in.

I reserved the matter to see if I could or should make an order which would prevent what has been done being entirely abortive.

Upon consideration I am of the opinion, however, that the irregularities are of such a character that the proper disposition of the matter in the circumstances is to set aside the order and service, leaving the plaintiffs to commence their action afresh, if so advised.

The order and service will, therefore, be set aside with costs.

HON. MR. JUSTICE BRITTON.

APRIL 11TH, 1914.

SOADY v. SOADY.

6 O. W. N. 240.

Money Lent—Action for—Onus—Failure to Discharge—Statute of Limitations.

BRITTON, J., dismissed an action brought by one brother against another for moneys alleged due him for advances made.

Action by a man against his brother to recover \$2,264, made up of ten items of money lent, money paid for the defendant, services, board, etc.

Tried at Toronto without a jury.

W. K. Murphy, for plaintiff.

R. D. Moorhead, for defendant.

HON. MR. JUSTICE BRITTON:—The parties to this action are brothers, residing in Toronto, the plaintiff being an insurance agent, and the defendant a doctor of medicine.

The plaintiff claims \$2,264, made up of the following items:

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|---|-----------|
| 1. Money paid for the defendant for rent of house 402 College street from 7th April, 1907, to 30th June, 1908 | \$ 600 00 |
| 2. Board of defendant for same period..... | 455 00 |
| 3. Paid for telephone for defendant..... | 37 50 |
| 4. Paid for furniture bought by plaintiff for defendant at defendant's request | 196 25 |
| 5. Paid for surgical instruments and stationery for defendant | 62 00 |