

limited and definite period. I do not think I can find that plaintiff's counsel gave any undertaking such as the defendant and his counsel not unnaturally thought plaintiff's counsel was entering into.

On the whole facts of the present case, I do not think it is distinguishable from *McKinnon v. Richardson*, to be found at p. 275 of the current volume of that most useful publication, the *Ontario Weekly Reporter*. Following the decision of Mr. Justice Street in that case, I direct that defendant, on being paid his proper conduct money, do attend for further examination, and that there be no costs of this order.

CARTWRIGHT, MASTER.

MAY 5TH, 1903.

CHAMBERS.

BLACKWELL v. BLACKWELL.

Pleading—Statement of Claim—Non-conformity with Writ of Summons—Amendment — Practice.

Motion by defendants to strike out certain paragraphs of the statement of claim and of the prayer for relief, on the grounds "that thereby is set up a new, distinct, and different claim from that expressed in the writ," and "that, if the paragraphs complained of are allowed to remain on the record, it will be a source of inconvenience at the trial."

M. Wilkins, Arthur, for defendants.

J. H. Spence, for plaintiff.

THE MASTER.—The material is commendably simple. Defendants' solicitor files his own affidavit verifying the writ and statement of claim. The plaintiff's solicitor makes an affidavit to the effect that, whatever may be the technical irregularity of his pleading, the whole matters set out in the statement of claim are all parts of a regrettable family dispute, and Mr. Spence asks to have leave to move *nunc pro tunc* to amend his writ so as to conform to the statement of claim, and to be allowed to add the causes of action set out in the paragraphs objected to by Mr. Wilkins.

I think there is no doubt that Mr. Wilkins's motion was technically right. The present case does not come under the protection of *Smythe v. Martin*, 18 P. R. 227, nor of *Rodger v. Noxon*, 19 P. R. 327. What the plaintiff should have done is sufficiently indicated in *Hogaboom v. McCulloch*, 17 P. R. 377. In that case I allowed the plaintiffs to amend in a way similar to what has been done here. This was affirmed on appeal by Ferguson, J., and the case has been followed ever since. In *Holmsted and Langton*, at