

an affidavit of defendants' solicitor alleging that the president and secretary of the company as well as the great majority of the shareholders reside either in the United States or at Toronto and that this is the fact as to all these persons in respect of whose shares the plaintiff makes his claim in the action.

He further says, as seems reasonably probable, that some at least of these persons must be called as witnesses at the trial.

It is further stated that the head office of the company is at Toronto and that the books and records will be required for use at the trial.

This affidavit is not impeached in any way. The only answer to the motion is an affidavit of the plaintiff that he needs two witnesses both now resident at Cobalt while he himself resides at Cochrane. He does not say if these witnesses have been subpoenaed. On the material and the issues as defined by the pleadings I think the motion should be granted.

Defendants must undertake to produce at the trial either or both of plaintiff's witnesses if in their service as seems most likely. They must also consent to the case being put on the peremptory list in a week after it is set down on the non-jury list here, if plaintiff so desires. In this way no delay will be imposed on plaintiff.

As the cause is at issue the trial might take place if parties are ready some time this month.

Costs of this motion will be in the cause.

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HON. MR. JUSTICE KELLY.

APRIL 3RD, 1913.

ARMSTRONG CARTAGE CO. v. COUNTY OF PEEL.

4 O. W. N. 1031.

*Way—Disrepair of Bridge on Highway—Injury to Motor Truck by Breaking Through — Liability of County—Highway Improvement Act 1912 — Damages — Quantum — Loss of Use of Truck — Liability for.*

KELLY, J., held, that where a motor truck is injured through the negligence of a municipality, the latter are liable in damages for the deprivation of the plaintiffs of the use of the same during the period of repair and the measure of damage is the cost of replacing the same for such period.

*Greta Holme*, [1897] A. C. 596, and *The Argentino*, 14 A. C. 519, followed.

Action tried at Brampton on March 12-13, 1913, for \$1,500 damages to plaintiff's motor truck caused by its