

consent—the necessary license to do business in the Province having also been produced.

The more regular course, no doubt, was to have amended the writ of summons 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 plaintiffs' solicitors had moved for an order under Con. 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.

MIDDLETON, J.

MARCH 4TH, 1913.

# RE PHILLIPS.

*Will—Construction—Legacies to Nephews and Nieces and to Strangers—Subsequent Direction to Divide Fund among “the Aforesaid Heirs”—Meaning of “Heirs”—Restriction to Nephews and Nieces.*

Motion for an order determining a question arising upon the will of Lydia Phillips, deceased.

J. H. Spence, for the executors.

G. H. Kilmer, K.C., for nephews and nieces of the testatrix, legatees under the will.

W. A. Lewis, for other legatees.

MIDDLETON, J.:—The question arises with respect to the following clause, “I also give and bequeath to the following per-