

This is especially the case here. The defendant Stewart is the same S. who is plaintiff in the action of *Stewart v. Henderson*, reported in 23 O. W. R. 414. He was certainly here last month, probably for some time, as his examination and that of defendant Henderson took place then—both at considerable length.

No blame on this account attaches to his present solicitors, who are not his solicitors in his action against Henderson.

There is, therefore, strictly speaking, no material on which the motion can succeed—as there is no affidavit from the defendant that he has a good, or in fact, any defence. He must have known how this action stood in March, and he could have certainly attended to this last month, when here in his action against Henderson for \$500,000.

There is also a further reason why plaintiff should not have his judgment taken away.

On 4th June, 1912, plaintiff's solicitors wrote to defendant's solicitors as follows: "Your Mr. F. A. told our Mr. A. on Saturday last that the latest position taken by you was that you are not going to defend this action. If so, be good enough to let us know, and we will move for judgment." To this no reply was sent, and on 12th June, plaintiff's solicitors wrote again: "Will you please state to-day whether you will defend or not." To this a reply was sent same day; it does not repudiate the statement attributed to F. A. As to the inference to be drawn from this see *Weideman v. Walpole*, [1891] 2 Q. B. 534, at p. 537. It says only that they have "sent a special messenger to defendant pointing out the necessity of his seeing us to-morrow"—and asking "for a delay of a couple of days, when we will have the matter settled one way or the other."

At this stage Mr. Armour went to England. He there found that no settlement could be had there of the matters in controversy between plaintiff and defendant. On his return on 19th November, he so informed defendant's solicitor, and again asked for a consent to judgment. To this as before no answer was sent, and on 9th December inst., another letter was sent saying that if no reply was given plaintiff's solicitors would note the pleadings closed, and move for judgment.

To this on 14th December, an answer was sent saying defendant was at Seattle and would be absent until 1st January, and asking to have the matter allowed to stand until then. To this plaintiff's solicitors replied pointing out in what an unsatisfactory position they were placed with their client.