

particulars that were delivered in pursuance of the order; and those are the only particulars that are before the Court."

Mr. McEvoy: "Then, on the examination for discovery it is admitted that there was no wrong-doing at that time; that the plaintiff's wife was in Owen Sound living; 98½ Denison avenue, the place where they resided, was in Toronto."

Mr. Cameron: "I admit the particulars we served were one year out; and we served them with amended particulars."

Mr. Justice Leitch: "No, I think there has not been a compliance with the order for particulars; and I will dismiss the action."

Mr. Cameron: "Had not your Lordship better wait till we give the evidence?"

Mr. Justice Leitch: "Well, you are not able to give evidence. I will dismiss the action with costs."

Mr. Cameron: "I suppose your Lordship will give us a grant of thirty days' stay?"

It will be seen that Mr. Cameron said that he did not see how he could go on; and that, when a suggestion was made to hear evidence, and the learned Judge said that the plaintiff was not able to give evidence, Mr. Cameron did not contradict the statement or offer any evidence or press that evidence should be taken.

Upon the appeal it was urged that my learned brother dismissed the action because there was no compliance with the Master's order; but this is clearly not so. The action was dismissed because the plaintiff's counsel did not produce evidence. What the learned trial Judge said was a challenge to counsel to produce evidence if he had it.

Counsel now says that he had at the trial eight witnesses who could have given evidence which he hoped would prove a case without the evidence of the plaintiff's wife. No such statement was made at the trial.

In view of what seemed to us the imperfect state of the evidence as reported, we asked the learned trial Judge what took place before him; and he informed us that he asked Mr. Cameron if he had any witnesses who could prove a case, and Mr. Cameron replied in the negative.

It is perfectly plain, even without this statement, that the case was not tried, but was dismissed, simply because the plaintiff did not tender or pretend to have witnesses who could prove a case.

We are not concerned to determine whether the learned trial Judge was right in his impression that only the charges in the