

MASTER IN CHAMBERS.

APRIL 5TH, 1913.

HON. MR. JUSTICE BRITTON.

APRIL 11TH, 1913.

## CINNAMON v. WOODMEN OF THE WORLD.

4 O. W. N. 1042, 1094.

*Trial—Motion to Postpone — Absence of Alleged Material Witness—  
Disregard of Con. Rule 518 — Nature of Expected Evidence not  
Disclosed — Matter Left to Discretion of Trial Judge—Terms.*

MASTER-IN-CHAMBERS refused to postpone a trial on the ground of the absence of a material witness where it was not shewn that the testimony expected was material, but exacted an undertaking from defendants that if in the opinion of the trial Judge the evidence was material, the trial should be postponed until the evidence was had.

*Macdonald v. Sovereign Bank*, 21 O. W. R. 702, followed.

MIDDLETON, J., affirmed above order.

Appeal by plaintiff from the following order of the Master in Chambers, refusing to postpone the trial of an action to the Toronto fall non-jury sittings.

J. M. Ferguson, for plaintiff's motion.

Featherston Aylesworth, for the defendant, contra.

CARTWRIGHT, K.C., MASTER (5th April, 1913):—This action was begun on 18th June last to recover from defendants \$2,000 alleged to be due on a policy issued by them on life of plaintiff's husband on 17th January, 1908, and who died on 29th June, 1911.

The cause was at issue last November. The place of trial named in the statement of claim is Barrie, but apparently this has been changed to Toronto non-jury sittings.

Trial was fixed for 11th March. This was changed to the 17th, so far as appears, without objection by either party. But almost immediately thereafter plaintiff made this motion.

The motion is supported only by an affidavit of plaintiff's solicitor, which displays a disregard of Consolidated Rule 518, which is only too frequent. The ground put forward is that Mr. Daniel Cinnamon is a material witness for the plaintiff, and that on 12th March he left for the Mediterranean and will not return until September.

It is not stated from whom this information was derived nor does it state what evidence he is expected to give. The solicitor says he did not know "nor as I am advised, did the plaintiff know of the intended departure of Daniel Cinnamon until shortly before the 12th of March." Such an affidavit should have been made by plaintiff herself. As in one of the affidavits in answer it is said that Mr. Daniel Cinnamon is an uncle and the administrator of the estate of