

tract: Benjamin on Sale, 5th ed., pp. 200-212; Scott v. Melady, 27 A. R. 193. Whatever was done by defendant to constitute an acceptance within the statute was admittedly done in Belleville, and must be proved by plaintiff as an essential element in support of his right to the judgment of the Court, and is, therefore, a part of his cause of action. See Re Doolittle v. Electrical Maintenance and Construction Co., 3 O. L. R. 460, 1 O. W. R. 202; Bicknell & Seager's Division Courts Act, 2nd ed., pp. 131-2.

Order made for prohibition with costs to be paid by plaintiff.

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BRITTON, J.

NOVEMBER 15TH, 1906.

CHAMBERS.

APPLEYARD v. MULLIGAN.

*Dismissal of Action—Motion to Dismiss for Failure of Plaintiff to Attend for Examination for Discovery—Illness of Plaintiff—Medical Evidence as to—Undertaking to Proceed to Trial—Excuse for Delay—Increased Security for Costs.*

Appeal by defendants from order of Master in Chambers, ante 500.

J. E. Jones, for defendants.

J. Bicknell, K.C., for plaintiff.

BRITTON, J.:—I quite agree with the learned Master in thinking that the excuse of plaintiff, although not completely satisfactory in every respect, for her failure to attend for examination for discovery, must be accepted. Notwithstanding what has been said by the medical men, it is rather difficult for me to understand why this action should cause plaintiff any worry or why she should fear that there would be put upon her any nervous strain or excitement by an examination for discovery. I suppose she knows why she has brought suit, and what she claims from defendants, and whether she owes anything to defendants or not.

It is just as difficult to understand why defendants are so anxious to have plaintiff's examination for discovery. In my opinion, they know as much about this action now as they will know after such examination if it takes place.