

to give the leave. The applicants must do all in their power to expedite the appeal. Costs of the application in the appeal.

CARTWRIGHT, MASTER.

JANUARY 19TH, 1905.

CHAMBERS.

MELDRUM v. LAIDLAW.

Dismissal of Action—Delay in going to Trial—Excuse—Leave to Proceed—Terms—Costs.

Motion by defendants to dismiss the action for want of prosecution.

C. A. Moss, for defendants.

J. H. Spence, for plaintiff.

THE MASTER.—. . . The case was set down for trial first at the winter assizes in 1903, and again at the spring and autumn assizes of the same year. At each of these it was postponed on account of plaintiff's serious illness. It was in the list for January, 1904, but was struck off with leave to plaintiff to apply for re-instatement. Nothing further was done . . . until the present motion was made.

Affidavits in answer are filed by plaintiff and his physician. These state that plaintiff was taken dangerously ill in December, 1902, and has not yet sufficiently recovered to go through the "anxiety and worry of a trial in court which would call upon him to go into the witness box for any length of time." The doctor thinks, however, that within the next 6 months it will be possible for plaintiff to go to trial without "the risk to his health that he would now incur."

Plaintiff is apparently the main, if not the sole, witness on his own behalf. He makes a claim of \$13,000 against defendants, brokers in New York, who obtained leave to enter a conditional appearance. It is not right that such a heavy claim should be allowed to hang over them any longer than is necessary, without prejudicing plaintiff by undue haste.

Plaintiff was in default in not taking any steps for a whole year, and in not filing a better affidavit on production,