

MASTER IN CHAMBERS.

MARCH 4TH, 1913.

BROWNE v. TIMMINS.

*Practice—Delay in Proceeding with Action—Judgment at Trial
Dismissing Action Set aside—Addition of Party Plaintiff—
Leave to Amend—Amended Statement of Claim Delivered
after Lapse of two Years—Motion to Set aside—Validation
—Terms—Interest—Costs.*

This action was brought on the 8th January, 1908, to recover from the defendant \$150,000 and interest from the 8th February, 1907; and also \$23,619.06 and interest from the 28th February, 1907; and for other relief in respect of \$350,000 worth of shares in La Rose Mining Company. The action was tried and judgment given on the 29th April, 1910, dismissing the action with costs, without prejudice to any action the United Cobalt Exploration Company might be advised to bring—it appearing that that company was entitled to the money in question. On the plaintiff's appeal to a Divisional Court on the 22nd September, 1910, the trial judgment was set aside, and the United Cobalt Exploration Company added as a party plaintiff, with liberty to all parties to amend as advised—with costs in the cause. From this judgment the defendant appealed to the Court of Appeal, and on the 16th January, 1911, the appeal was dismissed.

Nothing further was done until the 10th February, 1913, when a new statement of claim was delivered. This the defendant moved to set aside as being filed without leave, and therefore irregular, under Con. Rule 305, the time not having been extended under Con. Rule 353.

Grayson Smith, for the defendant.

R. McKay, K.C., for the plaintiffs.

THE MASTER:—In explanation of the delay, an affidavit has been filed by Mr. McKay, that it was owing to the inability of the plaintiff to get a witness who is at present in California, but with whom the solicitors are now in communication, and whom they will be able to have at the trial.

Against the motion was urged the long silence and delay and also the principle of *Hudson v. Fernyhough*, 61 L.T.R. 722, affirmed in the Court of Appeal, 88 L.T.J. 253, and other cases cited in *Yearly Practice*, 1913 (Red Book), pp. 346, 347.

The present case, however, is, I think, distinguishable, because, by the order of the Divisional Court, the United Cobalt Exploration Company was added as a party plaintiff with its