

HON MR. JUSTICE MIDDLETON:—The Attorney General should have his costs of the commission out of the \$400 paid into Court. The parties agree that the sums named, \$200, and \$40 for the costs of the appeal to Mr. Justice Kelly, are reasonable, and these sums may be paid out of this \$400, and the balance may go to Mrs. Donnelly. The costs not already dealt with, of the applicants and the Attorney General, may come out of the fund; the balance will go to the Crown.

HON. MR. JUSTICE MIDDLETON.

JUNE 19TH, 1913.

PHERILL v. HENDERSON.

4 O. W. N. 1487.

Judgment—Motion for—Default in Delivery of Statement of Defence—Default—Deliberate—Prejudice to Plaintiff—Judgment Granted.

MIDDLETON, J., gave judgment for the plaintiff upon his statement of claim as filed in an action to set aside a deed, where defendant's default was deliberate and he had not taken advantage of a reasonable offer to permit him to plead in consideration of a speedy trial.

Motion by plaintiff for judgment on the statement of claim as filed in default of defence in an action to set aside a deed.

A. J. R. SNOW, K.C., for plaintiff.

O. H. KING, for defendant.

HON. MR. JUSTICE MIDDLETON:—Any accidental default or slip should always be relieved against when a motion is made promptly, and fair terms can be imposed. Here there was no accidental slip in any way, but deliberate default, and when relief was offered upon most reasonable terms, the only condition sought being that the plaintiff should be in the same position as to trial as if the defence had been filed when due—nothing is done for more than two weeks. It is now impossible to have a trial till the fall, and the plaintiff will be prejudiced in many ways that cannot be compensated for by any terms I can impose. If the transaction is not now set aside at the instance of the plaintiff, her creditors will attack it.

There is nothing in the facts shewn calling for indulgence. The defendant may be ill, but her son is not, and he seems to have had the matter in charge for his mother.

There will be judgment as claimed, and the plaintiff is entitled to her costs unless she is ready to waive them.