

MASTER IN CHAMBERS.

JANUARY 3RD, 1913.

HEAD v. STEWART.

4 O. W. N. 590.

Judgment — Default of Defence — Motion to Reopen — Defective Material—Absence of Client no Excuse—Correspondence between Solicitors—Terms—Costs.

MASTER-IN-CHAMBERS refused to permit a defendant to re-open a judgment signed where the statement of defence was in default, where there had been unreasonable and unaccounted for delay on the part of defendant, and no affidavit was made that defendant had a good defence on the merits.

"A litigant is not justified in putting himself out of the reach of his solicitors and then expecting the usual course of an action to be stayed to suit his convenience and allow him to attend to other matters which he thinks of more importance."

This action is brought to recover £670 (\$3,260) lent in England by plaintiff to defendant and acknowledged by him, with interest. The writ issued on 20th February, 1912, and the statement of claim was delivered on 13th March. No statement of defence has ever been delivered. On 17th December inst., judgment was entered for default of defence.

The plaintiff has given security for costs.

The defendant has moved to set this judgment aside and to be allowed to defend at this late hour.

F. Aylesworth, for the motion.

E. D. Armour, K.C., contra.

CARTWRIGHT, K.C., MASTER:—The motion is supported only by Mr. Aylesworth's affidavit, which makes an exhibit of a bundle of correspondence between the solicitors consisting of 21 letters, beginning with March 19th and ending 18th December. There is no affidavit from the defendant who is said in his solicitors' earlier letters to be out of reach of communication—at Seattle or elsewhere. I have no hesitation in saying, and as I have said before, and now say, if necessary to secure attention with increasing emphasis that this is no excuse and is no valid reason for depriving a litigant of any rights given him by the rules of practice or for interfering with their application. A litigant is not justified in putting himself out of reach of his solicitor, and then expecting the usual course of an action to be stayed to suit his convenience, and allow him to attend to other matters, which he thinks of more importance.