

The plaintiff will have the costs of the action against the defendant. The latter has acted in a very extraordinary way. Notwithstanding his knowledge of the commencement of this litigation he has gone away somewhere and his solicitor alleges that he is unable to ascertain his present whereabouts. The writ was issued on the 31st of May, 1913, and the pleadings apparently closed on or about the 18th October, 1913. The action came on for trial on the 4th November, 1913, before Meredith, C.J.C.P., and "on the defendant's application on grounds of absence of material witness" the trial was postponed until the next sittings of the Court; the costs of the application and of the day being given to the plaintiff in any event. The witness then absent was the defendant. A further application was made to me at Ottawa to postpone the trial, but I was unable to see my way to grant it, and I dismissed it with costs.

There will be a stay for 30 days.

HON. MR. JUSTICE MIDDLETON, IN CHRS. FEB. 6TH, 1914.

TRUSTS & GUARANTEE CO. v. GRAND VALLEY
Rw. CO.

5 O. W. N. 848.

Mortgage—Street Railway—Receiver under Second Mortgage—Rights of First Mortgagee—Means of Asserting—Motion to Remove on Ground of Partiality — Leave to Appeal — Postponement of Motion.

MIDDLETON, J., *held*, that a receiver in possession of a property under a second mortgage is responsible to the mortgagor and the second mortgagee, but not to the first mortgagee, and if the latter desires his removal some other steps than a motion for removal on the ground of lack of impartiality must be taken.

Motion for leave to appeal from the judgment of Hon. Mr. JUSTICE LATCHFORD, appointing the manager of the plaintiff company receiver of the defendant company under the plaintiff's mortgage.

J. A. Paterson, K.C., for the National Trust Company.

W. T. Henderson, K.C., for the Corporation of the City of Brantford.

G. H. Watson, K.C., for the Brantford Street Railway Company, the Grand Valley Railway Company, and the receiver.