

MOSS, C.J.O., gave reasons in writing for arriving at the same conclusion.

GARROW and MACLAREN, JJ.A., concurred in the judgment of MOSS, C.J.O.

MEREDITH, J.A., dissented from the judgment of the majority of the Court, giving reasons in writing.

HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

MAY 16TH, 1911.

SHEAHEN v. TORONTO R.W. CO.

New Trial—Absence of Counsel for Defendants at Trial—Plaintiff Electing to Proceed—Verdict for Plaintiff—Setting Aside—Circumstances of Hardship—Terms—Costs.

Action for damages for injuries sustained by the plaintiff while a passenger on a car of the defendants.

The action was entered for trial at the Toronto spring assizes, and was reached on the 16th March, when it was stated that the defendants' counsel, who had been in England, was expected to return in a day or two, and the presiding Judge was requested to put the case on the list for the following Monday, the 20th March, for the purpose of being spoken to, and a day fixed for the trial. The learned Judge thereupon directed that the case should be placed on the list for the 20th.

On Monday the 20th March, the defendants' counsel having returned to Toronto, the case was spoken to, and it was arranged that the jury should be dispensed with, and the action tried on the following Friday, the 24th instant. The learned Judge reserved the whole of that day for the trial.

On Friday morning the plaintiff, with her counsel and witnesses, was in attendance and ready to proceed, when the defendants' junior counsel stated that his senior was engaged on a case at Hamilton assizes, and asked for a postponement. The plaintiff's counsel said that the preparation had been a great strain on the plaintiff, and her condition was such that a postponement and prolongation of the litigation would seriously affect her chances of recovery, and further that, owing to the circum-