The
Ontario Weekly Notes

Vol. III. TORONTO, OCTOBER 4, 1911. No. 3.

HIGH COURT OF JUSTICE.

MIDDLETON, J., IN CHAMBERS. SEPTEMBER 23RD, 1911.

RE BROOM.

Criminal Law—Police Magistrate—Information for Perjury—Refusal to Issue Summons—Criminal Code, sec. 655—Amending Act 8 & 9 Edw. VII. ch. 9—Application for Mandamus—Discretion of Magistrate.

Application by James Broom for a mandamus to compel one of the Police Magistrates for the City of Toronto to issue a summons against one Turner, for perjury.

The applicant in person.
No one contra.

MIDDLETON, J.:—Broom laid an information against Turner for assault, a warrant was issued, and the case heard before the Police Magistrate. There was an issue of fact before the magistrate, and he believed Turner, and did not believe Broom and his wife, and accordingly dismissed the charge.

Broom now seeks to prosecute Turner for perjury; and, a summons (or warrant) having been refused by the magistrate, now moves for a mandamus.

Passing by all other difficulties in the applicant's way, it is, I think, clear that it is the duty of the magistrate, upon receiving an information, to hear and consider the allegations of the informant, and (if he thinks proper) of his witnesses (see the amendment to sec. 655 of the Criminal Code by 8 & 9 Edw. VII. ch. 9, schedule); and, if he is of opinion that there is no case made for the issue of a summons or warrant, to refuse it.

The magistrate's discretion in issuing or refusing to issue a summons is not subject to review in this Court. He can be compelled to do his duty; but in this case he has well discharged

this duty by declining to permit a witness whom he has believed to be prosecuted for perjury, at the instance of a witness whom he did not believe, and where, upon the perjury charge, there could be no further evidence than that given upon the trial of the assault.

It is not in the public interest that the retrial of a trivial assault case should be had in this indirect way.

Rex v. Meehan No. 2, 5 Can. Crim. Cas. 312, Ex p. MacMahon, 48 J.P. 70, and Re Parke, 30 O.R. 498, establish the law governing me.

Motion dismissed with costs.

MIDDLETON, J., IN CHAMBERS. SEPTEMBER 25TH, 1911.

BROOKE v. BROOKE.

Will—Trust—Advancement of Adult—Beneficiary—Application of Capital of Estate—Powers of Trustee—Deed of Appointment—Meaning of "Advancement."

Motion by Harold John Brooke for payment out of Court of $1,000, pursuant to an appointment executed by Emily Brooke, surviving trustee of the will of the late Daniel Brooke.

R. S. Cassels, K.C., for the applicant.
E. C. Cattanach, for the infants.

MIDDLETON, J.:—Daniel Brooke died on the 6th November, 1873, and by his will (clause 3) devised and bequeathed to his son D. O. Brooke and his son's wife, Emily Brooke, all his estate upon trust for the support and maintenance of the said D. O. Brooke and his wife during their joint lives and the life of the survivor, and for the support, education, and maintenance of their children in their discretion, and upon their death to be divided share and share alike between the surviving children and the heirs lawfully begotten of such as may not survive.

The son and his wife, or the survivor, are given power to make any other disposition of the estate between the children and their heirs, and there is given this further power, which I have now to consider: "To convey and make over to any of them" (i.e., the children or their heirs), "by way of advancement, any portion of the same" (i.e., his real and personal estate or the

proceeds thereof), "to become theirs absolutely from thenceforth forever."

By a duly executed deed of appointment of the 1st June, 1904, after reciting that there were four children, issue of the marriage, and that advances had been made to three, Brooke and his wife appoint irrevocably the estate remaining at their death to be divided equally between the four children, the heirs of the body of any not then living to take the parent's share. Any advances theretofore or thereafter to be made are not to be brought into hotchpot or taken into consideration on making the division.

The estate is being realised under an order made in an action in which two of the children, infants at the time of its institution, were plaintiffs, and the son (D. O. Brooke), his wife, and two adult children were defendants.

On the 28th June, 1909, an order was made adding as defendants the five children of Charles Brooke—three, then infants, being represented by the Official Guardian.

There were not, at that date, any issue of any of the children or grandchildren other than the added parties, and the Official Guardian was appointed to represent the "unborn issue" of these parties. Since that order, issue has been born, and I think the Guardian represents them as well as any issue that may yet be born.

Upon the material now before me, no particulars are given; but I am told that much land has been sold, and much yet remains unsold. The sum of $1,983.01 is now in Court.

Considerable money has been paid out on similar applications; but it does not appear that the rights of the parties have, as yet, been fully considered. The two surviving sons of D. O. Brooke, other than the applicant, consent to the order asked, and notice has been given to the adult grandchildren and the Official Guardian.

The deed of appointment is in due form, and appoints the $1,000 to the applicant "by way of advancement."

The question is: "Is the applicant entitled to receive this sum upon production of the appointment in his favour, or must he go further and satisfy the Court that the money is to be paid him 'by way of advancement'?"

The precise question is well discussed in Bailey v. Bailey (1888), 14 Atl. R. 917. There was in that case a trust for twenty-one years, with power of advancement. The trustee thought the best interests of the cestuis que trust would be served by an immediate division of the estate. It is said: "The trustee argues that he has the power, under that clause in the will which gives

him a discretion to convey or pay over to either of the cestuis que trust for his or her advancement in life, the whole or any portion of his or her share of the trust estate, his contention being that the words 'for his or her advancement in life' do not restrict his discretion, but are simply equivalent to 'for his or her use and benefit.' We think that such a construction is too lax. It may not be easy to define with precision what is meant by 'advancement in life,' since the meaning may depend, to a greater or less degree, on circumstances, but it seems to us to point to some occasion out of the everyday course, when the beneficiary has in mind some new act or undertaking which calls for pecuniary outlay, and which, if properly conducted, holds out a prospect of something beyond a mere transient benefit or employment. This, if the beneficiary were going to enter upon a business or profession, or to get married, or to build a dwelling-house, or to make some unusual repairs or renovation, it would be a proper occasion for the trustee to use his discretion. We mention these by way of illustration."

This decision is based upon the earlier English cases, and is quite in accord with the latter case of Molyneux v. Fletcher, [1898] 1 Q.B. 648, where Kennedy, J., says (p. 653): "It is clear on the authorities, one of which is the judgment of Jessel, M.R., in Lowther v. Bentinck, L.R. 19 Eq. 166, that a power to apply capital for the advancement in life of a child, has a well recognised meaning. Sometimes enlarging expressions, such as 'or otherwise for the benefit,' are used. In the absence of any such enlarging expression, the word 'advancement' as pointed out by Malins, V.-C., in In re Kershaw's Trusts, L.R. 6 Eq. 322, is to be read as a word appropriate to an early period of life." These cases shew that the word "advancement" standing by itself has a narrow and restricted meaning; and I think that the applicant must shew that this contemplated payment is really for his "advancement" within that narrower meaning.

Upon this being satisfactorily shewn, the order may be made; but, in the meantime, the motion must stand for further material upon this point.

MIDDLETON, J., IN CHAMBERS. SEPTEMBER 25TH, 1911.

PARSONS v. CITY OF LONDON.

Parties — Attorney-General — Addition of, as Plaintiff — Con. Rule 185*—Improper Joinder of Separate Causes of Action —Rights of Ratepayers of Municipality—Rights of Public— Pleading—Class Action.*

An appeal by the defendants the Royal Bank of Canada from an order of the Master in Chambers, ante 48, adding the Attorney-General as a party plaintiff.

C. A. Moss, for the appellants.

E. C. Cattanach, for the defendants the Corporation of the City of London.

Casey Wood, for the plaintiff.

MIDDLETON, J.:—The action was originally brought by Parsons on behalf of himself and all other ratepayers of the City of London.

Parsons asserted not only certain rights in the ratepayers, as cestuis que trust and otherwise, with respect to the lands in question, but upon the injunction motion sought to assert certain public rights, which, it was well objected, could only be asserted by the Attorney-General.

The joinder of these two independent causes of action is not permitted by our Rules. They are in no sense cognate. It may well be that the two actions can be conveniently tried together, but, if an action is brought by the Attorney-General, this can easily be arranged.

The appeal must be allowed and the action restored to its original plight. Parsons must amend by cutting down his statement of claim to that which he is prepared to stand by as a proper pleading in a class action.

It was arranged that the plaintiff should be relieved from the term imposed by the injunction order as to a speedy trial—a clause to this effect may be inserted in the order.

If there is any doubt about the matter, it is better that there should be a separation of the plaintiffs now, instead of difficulty at the trial, or later, when the remedy may not be so simple.

Costs to the defendants in any event.

MEREDITH, C.J.C.P. SEPTEMBER 25TH, 1911.

*BENNER v. MAIL PRINTING CO.

Libel—Newspaper—Libel and Slander Act, sec. 8—Notice—Insufficiency—Action Dismissed on Motion for Judgment on Pleadings.

Motion by the defendants for judgment on the pleadings and admissions of the plaintiff upon his examination for discovery, in an action for a libel published in a newspaper.

C. Swabey, for the defendants.
H. S. White, for the plaintiff.

MEREDITH, C.J., held that the notice served by the plaintiff specifying the statements complained of was not a sufficient notice to the defendants, within the meaning and for the purposes of sec. 8 of the Libel and Slander Act, being addressed: "To W. J. Douglas, Esq., Publisher and General Manager, Mail & Empire." The notice was not given to the defendants, as required by sec. 8.

The Chief Justice also thought the point could be properly dealt with as upon a demurrer, as no evidence that might be given at the trial would help the plaintiff.

Action dismissed with costs.

BOYD, C. SEPTEMBER 25TH, 1911.

*PEARS v. STORMONT.

Club—Unincorporated Association—Liability of Members for Rent of Club Premises—Lease Signed by Chairman of Executive Committee—Members of Executive Made Defendants—Right to Contribution from other Members.

Action against members of the executive committee of the Tecumseh Amateur Athletic Association (an unincorporated body) to recover $960 alleged to be due for rent of premises used for the purposes of the association.

*To be reported in the Ontario Law Reports.

A. J. Russell Snow, K.C., for the plaintiff.

S. W. Burns, for the defendant Stormont.

T. N. Phelan, for the defendant Querrie.

W. N. Ferguson, K.C., for the defendant English.

W. A. Proudfoot, for the defendants Fitzgerald and Edworthy.

The defendant Hunter, in person.

A. A. Bond, for certain other defendants.

BOYD, C., referred to and summarised the following cases: Earl of Mountcashell v. Barber (1853), 14 C.B. 53, 69; Shaw v. Tassie (1896), 17 P.R. 315 n.; Aikins v. Dominion Live Stock Association of Canada (1896), 17 P.R. 303; Jones v. Hope (1880), 3 Times L.R. 247 n.; Overton v. Hewett (1886), 3 Times L.R. 246; and referred with approval to the language of Meredith, C.J.C.P., in the Aikins case, 17 P.R. at p. 305: "Where credit is given to an abstract entity such as a club, the person who gives the credit to it may look to those who in fact assumed to act for it and those who authorised or sanctioned that being done—at all events where he did not know of the want of authority of the agent to bind the club."

The Chancellor proceeded:—Nothing is proved one way or other as to the present plaintiff; the inference from the absence of evidence would be that he rightly supposed that the athletic association was competent to contract, which turns out not to be the fact, as it is a mere voluntary association of persons who acted in the matter of getting the lease by an executive committee, who negotiated the matter and entered into the engagement for procuring the lease of their club premises, by means of their chairman, who signed the lease under seal. No one, therefore, was bound under the terms of the written contract; but the consequence in law is not that all go free, but that those are bound who are responsible for the procuring of the lease, and the enjoyment of its benefits. The defendant Stormont (the chairman) executed the lease by the direction and at the instance of the executive committee (who are the defendants), and in this execution acted for the whole body of the members who appointed the executive committee for the very purpose of getting these premises under the lease thereof. The whole body of members initiating and approving of this lease might have been made liable (as it now appears to me); but this does not relieve from liability the members of the executive committee who have been sued. Judgment against them and payment by them would put them in the way of getting proper contribution from those

others who are liable and have not been sued. There is no defence by way of abatement for nonjoinder of defendants, and there is no technical difficulty in giving judgment against those now before the Court. . . .

[Reference to Overton v. Hewett and Jones v. Hope, supra; Steele v. Gourley (1886-7), 3 Times L.R. 119, 772; Whitford v. Lailor (1883), 94 N.Y. 145; Fredendall v. Taylor (1868), 23 Wis. 538, 640; Wise v. Perpetual Trustee Co., [1903] A.C. 139; Harper v. Granville-Smith (1891), 7 Times L.R. 284; Draper v. Earl Manvers (1892), 9 Times L.R. 73.]

Judgment must be entered for the amount claimed, with costs, against all the defendants who were members of the association and of the executive committee to whom was intrusted the procurement of the lease, except Querrie, who was not a member; though he advised as to the lease and was otherwise active, yet in law he was an outsider; the action is dismissed as to him with costs.

MIDDLETON, J., IN CHAMBERS. SEPTEMBER 27TH, 1911.

REX v. BRADLEY.

Liquor License Act—Intoxicating Liquor Sold on Unlicensed Premises—Liability of Landlord for Act of Tenant—Sec. 112(3) of Act—"Occupant"—Presumption—Part of Hotel Premises not Leased—Permission to Tenant to Occupy—Conviction — Evidence — Onus — Finding of Magistrate—Motion to Quash.

Motion by the defendant to quash his conviction by a magistrate for an offence against the Liquor License Act.

J. Haverson, K.C., for the defendant.
J. R. Cartwright, K.C., for the Crown.

MIDDLETON, J.:—Undoubtedly there has been a flagrant breach of the law—liquor has been kept for sale in the stable forming part of the hotel premises. The question is whether the accused, the landlord of the premises in question, who lives in the village of Little Current, and who in no way authorised or was aware of the violation of the law taking place upon his property in Owen Sound, is, by virtue of the statute, to be "conclusively held" guilty of the offence.

I have to accept the law as I find it; and it is no part of my duty to criticise either its wisdom or its justice. If it has appeared necessary and right to the Legislature, in order to secure obedience to the law, to impose a penalty upon a landlord whose tenant violates the law, it is the duty of the magistrate, and of this Court, when clearly satisfied that this is the meaning of the statute, to enforce its provisions. All considerations of hardship must be addressed to the Legislature itself.

Section 112 of the Liquor License Act was considered by a Divisional Court in an earlier case against the same man, in connection with an offence committed upon the same premises, reported in 13 O.W.R. 39. The conviction was quashed, upon the ground that the amendment by which the statute received its present form was not in force when the offence was committed. The meaning of the statute was discussed, and the Court accepted the view now contended for by the Crown, which is described as "a very stringent exercise of legislative power, placing the owner at the mercy of the actual occupant who has gone in under him."

It may be that the decision, turning, as it did, upon the other point, is not binding upon me in considering the true meaning of the statute; but its reasoning appears to me, if I may say so, unanswerable.

Leaving out the words not now important, sec. 112(3) provides: "In the event of the premises being an unlicensed tavern, the owner who permits to be occupied by any other person any part of the premises in which liquor is sold or kept for sale shall be conclusively held to be an occupant within the meaning of this section." The section, by an earlier clause, makes an occupant personally liable for any offence committed upon the premises by any person who is suffered to be or remain upon the premises; and the proof of sale by such person is made conclusive evidence that such sale took place with the authority and by the direction of such occupant.

By this double statutory "conclusive" presumption, the owner is made liable for offences committed upon his premises, and he is called upon to exercise such care in his choice of tenants and the terms of his leases as to guard himself from the very serious consequences of repeated violations of the law for which he may be called upon to suffer.

The stable in question formed part of the hotel premises. It is said that, when leased to the tenant now in occupation, the lease did not cover this stable. The lease is not produced—it is not stated in the evidence whether it is in writing. The lease was made by the defendant's brother, who lives in Owen Sound and acts for him. After the lease was made, the brother, it is

said, without consulting the defendant, gave the tenant permission to occupy the stable for the purpose of keeping a rig in it. No rent was to be paid, and the defendant says that his brother, while having authority to rent, had no authority to give this permission.

Upon this it is argued that the premises had become subdivided, and that the owner is only liable for offences committed upon the demised premises, and is not liable for the offence committed upon the property not demised—the stable.

So to construe the statute as to permit the subdivision of "the premises" would not only defeat the object of the Act, but ignore its plain provisions.

What the accused owns is the hotel and all its outbuildings; these constitute the "hotel premises" with which the statute deals. He is either the occupant himself of this stable and so liable under sub-sec. (1), or is constructively the occupant by reason of having sublet part of the premises.

It may well be that, in this case, all was done by the accused in complete innocence, but it would be very dangerous to hold that a landlord could rent one room in an hotel building and escape liability for the sale of liquor in another room, to which the tenant was permitted to have gratuitous access for certain limited purposes only.

In another view the motion fails. The tenant was found in possession of the whole—the onus was upon the accused, even if his construction of the statute is correct, to shew that the stable was not included in the demise. The magistrate may not have accepted the statement that the brother had no authority to make the arrangement set up, or he may have discredited the whole story. The lease was not produced, and there is that about the case that arouses suspicion.

When, upon any view of the evidence, the conviction can be supported, I cannot quash.

The motion fails, and I can see no reason for withholding costs.

FALCONBRIDGE, C.J.K.B. SEPTEMBER 27TH, 1911.

JOHNSTON v. OCCIDENTAL SYNDICATE LIMITED.

Foreign Judgment — Action on—Defence—Fraud—Estoppel—Amendment.

An action on a judgment recovered in the Territorial Court of the Yukon Territory.

Glyn Osler, for the plaintiff.
H. W. Mickle, for the defendants.

FALCONBRIDGE, C.J.K.B.:—The defendants appeared in the Yukon action. An application for final judgment was made to Mr. Justice Macaulay under sec. 102 of the Judicature Ordinance.

The defendants filed an affidavit of one A. B. Craig, and counsel appeared for them and shewed cause to the motion. The Judge made the order asked for, and judgment was signed in pursuance thereof.

A great deal of evidence was taken in England on commission, and some viva voce testimony was given before me.

The case, as thus presented, falls within "the combination of the two rules," as enunciated by Mr. Justice Garrow, in Jacobs v. Beaver (1908), 17 O.L.R. at p. 506: "The fraud relied on must be something collateral or extraneous, and not merely the fraud which is imputed from alleged false statements made at the trial, which were met by counter-statements by the other side, and the whole adjudicated upon by the Court, and so passed on into the limbo of estoppel by the judgment."

I am not sitting in appeal from or by way of rehearing of the Yukon judgment.

The defence, therefore, fails. The question of amendment of the statement of defence, by specifically pleading fraud in procuring the judgment, is referred to any Court which may sit in appeal from this judgment.

Judgment for the plaintiff for $4,918, with interest from the 2nd September, 1909, and costs.

BOYD, C. SEPTEMBER 27TH, 1911.

*CHANDLER & MASSEY LIMITED v. IRISH.

Company—Illegal Disposition of Assets—Acquisition by Shareholder of Shares of another Company—Payment by Means of Assets of Company—Breach of Trust—Right of Liquidator—Following Trust Funds.

Action in the name of a company in liquidation, brought by the liquidator, to recover certain assets of the company alleged to have been illegally transferred to the defendant.

*To be reported in the Ontario Law Reports.

A. C. McMaster, for the liquidator.
H. E. Rose, K.C., for the defendant.

BOYD, C.:—The plaintiff company was (as a witness said) getting into deep water, and a plan was formed to relieve the situation by forming subsidiary companies, who should buy out part of the assets, and so better the condition of the plaintiff company. It was desired to get some members of the old company to enter the several new companies, and, of these members, Irish, the defendant, held $1,000 of paid-up stock in the plaintiff company, which he was willing to relinquish and acquire the like amount of paid-up stock in one of the new companies. The matter was negotiated by Mr. Chandler, his cousin, and a leading officer, president, and member of the plaintiff corporation. Irish does not know, as he says, how the change was brought about, beyond this, that he handed over his scrip in the plaintiff company to Chandler, and he subscribed for stock in the new company, on the understanding that he was not to pay for it. Nor did he pay for it, though subsequently a fully paid-up certificate for the stock was handed to him.

The payment for the stock was managed in this way. The new company bought assets to a large extent from the old company, and paid for them by cheque and otherwise. One of the cheques passed was for $3,200 from the new company to the old one (plaintiff), and, as a part of the same transaction, a cheque of like amount and date was passed from the old company (plaintiff) to the new company, which was by that company treated as the means whereby the defendant's stock therein (together with other stock in like case) should be handed over as paid-up stock. The cheque or the money so received and so applied by the new company was undoubtedly the assets of the old company, and was illegally applied in the purchase of stock for Irish in the new company.

I quote some passages from the evidence of Ingram (one of the constituents of both companies) referring to cash item of $3,000 (31st October): "That was $3,200 worth of shares that were on what we termed a transfer basis from one company to the other: shareholders in the Chandler-Massey company got shares in our company for that amount. The way it was paid (as by the books) was our giving a cheque and getting a cross-cheque back and giving these people shares in our company instead of the Chandler-Massey."

The defendant was a provisional director of the new company, and, when he was subscribing for the new stock, he was told by Ingram that his $1,000 would be handled on the stock

transfer proposition, "as my own stock and Mr. Bell's and some others," which Mr. Chandler had agreed to transfer from one company to the other.

Mr. Bell, of the new company, and the accountant who had to do with the books, said in evidence at the time of Irish's subscribing as follows: "Did you tell him that the matter was going to be put through by Chandler & Massey Limited giving you a cheque for his stock? A. I don't know it was explained in that way, but it was understood that amount was to be transferred from his credit. Q. From where? A. From the old company . . . transferred to our company . . . that this stock was going to be transferred to our company."

I think Irish is so implicated in this transaction—which was an illegal dealing by the president of the plaintiff company with the trust funds—as to be liable to renounce any benefit there may be in the stock held by him in the new company, at the call of the liquidator of the plaintiff company. There seems to be no good reason why these trust funds, to the extent of $1,000, which have gone into the acquisition of this stock in the new company, should not be followed by the liquidator of the old company. There is a sufficient ear-marking and identification of the fund to satisfy the Court of its trust character, and I do not regard Mr. Irish as other than a volunteer—certainly not a bonâ fide purchaser for value. I think notice of the modus operandi may be well imputed to him, both from what he knew and from what he chose to be ignorant of or silent about, and also from the fact that he left his affairs, as to this transfer of stock from one company to the other, in the hands of his agent, Mr. Chandler, who was the active manager in the whole transaction.

The cases cited by Mr. McMaster I have consulted, and they cover pretty well the law involved in this litigation.

Judgment should be with costs in favour of the liquidator, and declaring that the shares of stock held by the defendant have been acquired by means of the assets of the insolvent company, and that they are, therefore, recoverable by the liquidator.

RESTALL v. ALLEN—MASTER IN CHAMBERS—SEPT. 26.

Mechanics' Liens— Statement of Claim—Substituted Service —Motion by Defendant to Set aside—Effective Knowledge of Defendant—Time for Delivery of Defence—Extension—Time for Commencing Proceedings—Pleading—Date of Last Work Done—Defendant in Province when Statement of Claim Filed— No Necessity for Order under Con. Rule 162.]—Motion by the

defendant to set aside an order for substituted service of a statement of claim, and the statement of claim itself, and to vacate a certificate of lis pendens. The Master said that the motion being made on behalf of the defendant shewed that the matter had come to his knowledge: Taylor v. Taylor, 6 O.L.R. 356, 545.—The order should, perhaps, have given some additional time for delivery of the defence beyond the usual 10 days; but this could be provided for now.—It was argued, further, that the motion was entitled to prevail, because the statement of claim shewed that the action was begun too late. The proceeding was under the Mechanics' Lien Act. The statement of claim was delivered on the 11th July, 1911. The lien was filed on the 12th May, 1911. The statement of claim did not say when the last work was done. It spoke of a contract to do plumbers' work, to the value of $1,000, made in May or June, 1910, and admitted payment of $100. It admitted also that the work was not completed, but said that this was owing to the default of the defendant, and that the plaintiff has not abandoned the work. The Master said that there was no admission by the plaintiff of when the last work was done, supposing that this would be conclusive if more than 90 days ago. Mr. White contended that, as between the parties here, this was immaterial. Without expressing any opinion, it seemed to the Master to be a matter of defence that would have to be proved if available. It might be that sec. 22(1) of the Mechanics' Lien Act supported Mr. White's contention.—It was also argued in support of the motion that an order should have been made under Con. Rule 162. As the defendant was in the Province when the statement of claim was filed, it would seem (the Master said) from the decision of the Court of Appeal in Jay v. Budd, [1897] 1 Q.B. 12, that this was not necessary. The Court there distinguished the cases of Wilding v. Bean, [1891] 1 Q.B. 100, and Fry v. Moore, 23 Q.B.D. 395, relied on by the defendant's counsel. From the entry made at the time, it would appear that the plaintiff's solicitor at first intended to take out an order under Con. Rule 162. This was, as it would seem, changed, possibly in reliance on Jay v. Budd, supra.—Something was said on the argument that indicated a disposition to settle the matter. If this was not carried into effect, the best disposition to make would be to dismiss the motion, giving the defendant such further time as he might require, and letting the action be disposed of on the merits. Costs in the cause, as the plaintiff might have proceeded more promptly and thereby have rendered this motion unnecessary. A. J. Russell Snow, K.C., for the defendant. J. T. White, for the plaintiff.