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APPELLATE DIVISION.

MAY 18TH, 1914.

CHADWICK v. TUDHOPE.

Master and Servant—Injury to Servant—Negligence—Common Law Liability—Damages—Reduction.

Appeal by the defendants from the judgment of LENNOX, J., ante 151.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

J. M. Godfrey, for the appellants.

S. S. Sharpe, for the plaintiff, the respondent.

THE COURT being of opinion that the amount of damages assessed by the jury, $2,000, was excessive, the amount was, by consent of counsel, reduced to $1,250, instead of a new trial being ordered. No costs of the appeal.

HIGH COURT DIVISION.

KELLY, J. MAY 18TH, 1914.

RE HARTWICK FUR CO. LIMITED.

MURPHY'S CLAIM.

Company—Winding-up—Preferred Claim for Wages—Dominion Winding-up Act, sec. 70—Commercial Traveller—Payment by Commission—Time and Manner of Making Sales for which Claim Made.

Appeal by the liquidator of the company from a decision of the Master in Ordinary.

G. W. Adams, for the liquidator.
C. F. Ritchie, for the claimant.

KELLY, J.:—On the reference before the Master in Ordinary, in proceedings to wind up the Hartwick Fur Company Limited, he declared that Harry Murphy was entitled to rank in respect of a preferred claim for $837.47, under the provisions of sec. 70 of the Dominion Winding-up Act.

The liquidator appeals against this decision on two grounds: (1) that the claimant does not come within the class of persons entitled to the preference given by sec. 70; and (2) that the money so allowed the claimant did not accrue to him in such manner and at such time as to entitle him to that preference.

In Re Morlock and Cline Limited, 23 O.L.R. 165, it was held that a commercial traveller is of the class of "clerks or other persons" mentioned in sec. 70. Murphy, the claimant, is, it is in evidence, a commercial traveller. His engagement with the company was to sell furs, and in the months during which he made the sales for making which he now claims, his whole time and services were to be given, and, so far as the evidence shews, were given, to the company. By the terms of the engagement he was to be paid, not a fixed salary or wages, but a commission on the amount of his sales. The contention is, that the character of his services and the mode of payment adopted took him out of the class entitled under the statute to a preference. The only circumstance which might be urged as against the claimant's right is the payment by commission instead of by straight salary; but the adoption of that means of payment does not, in my judgment, affect the relationship of the parties towards each other or take the claim out of the class intended to be benefited by the section referred to.

Nor do I think that the right of the appellant to succeed can be established on the other ground. The sales for making which the claim has been allowed were made in the months of March and April, 1913—perhaps some trifling sales later. The agreement was that payment should be made after the 1st July. The winding-up order, I am informed—it is not before me—was made on the 28th August, 1913. The Master had sufficient evidence before him to find that the amount allowed was due under the terms of sec. 70 so as to give the preference, and he so found. I see no reason for disturbing that finding.

The appeal is dismissed with costs.

BRITTON, J., IN CHAMBERS. MAY 22ND, 1914.

REX EX REL. SULLIVAN v. CHURCH.

Municipal Election—Deputy Reeve of Town—Right of Town to Have Deputy Reeve—Municipal Act, 1913, *sec.* 51—*Number of Municipal Electors—Count—Name of any Person to be Counted only once—Evidence—Affidavits—Onus—Tenants—Right to Vote—Secs.* 2(*n*), 48, 161, 177, 178 *of Act—Remedy by Summary Proceeding under Act to Unseat Person Elected where Town not Entitled to Deputy Reeve—Municipality not a Party.*

Appeal by Thomas S. Church from the order of the Master in Chambers, ante 116, setting aside the election of the appellant to the office of Deputy Reeve of the Town of Arnprior.

G. H. Watson, K.C., and J. E. Thompson, for the appellant.
E. E. A. DuVernet, K.C., and R. J. Slattery, for the relator.

BRITTON, J.:—Section 48 of the Municipal Act, 1913, provides that the council of a town not in unorganised territory having a population of more than 5,000 shall be composed of a mayor, a reeve, as many deputy reeves as the town is entitled to, and three councillors for each ward where there are less than five wards, or two councillors for each ward where there are five or more wards. By sec. 2, cl. (*n*), of the Act, "Population" shall mean population as determined by the last preceding census taken under the authority of the Parliament of Canada, or under a by-law of the council, or by the last preceding municipal enumeration by the assessor whichever shall be the latest. Section 51 provides that a town, not being a separated town, shall be entitled where it has more than 1,000 and not more than 2,000 municipal electors to a first deputy reeve; and, by sub-sec. 2, the number of municipal electors shall be determined by the last revised voters' list, but, in counting the names, the name of the same person shall not be counted more than once.

Before the 9th December, 1913, the town council instructed their clerk to ascertain the number of the electors on the last revised voters' list, not counting the same name more than once. This the clerk did; and on the 9th December, 1913, reported to the council. This, by virtue of sec. 51, if the count was correct, would entitle Arnprior to a deputy reeve. The council there-

upon passed by-law No. 525, appointing a time and place for the nomination and election of mayor, reeve, deputy reeve, councillors, and public school trustees, etc. The election was duly held, and the appellant was elected deputy reeve by acclamation.

The relator now, under sec. 161, questions the validity of the election of the appellant as a member of the council. The grounds alleged are, that the town has not the names of more than 1,000 municipal electors upon its last revised list of voters for the said town, not counting the same names more than once; and, even if it had at the time the list was revised, it had not the required number at the time of the election complained of.

Upon the preliminary objection that the municipality is not a party to this proceeding, I have found considerable difficulty in satisfying myself that the objection should not prevail. If the law is that the action of the council in ascertaining whether or not it is entitled to a deputy reeve, and the by-law of the town providing for the election of a person to that office, can be set aside by proceeding against the person elected without any notice to the municipality or making the municipality a party, it is somewhat anomalous.

Under sec. 161, there may be tried or determined: (1) the validity of the election of a member of the council; (2) the right of a member of the council to hold his seat; or (3) the right of a local municipality to a deputy reeve.

I should suppose, but for the reasons I shall mention, that the right of a local municipality to a deputy reeve should be tried by proceeding against the corporation, or by giving notice allowing the corporation to come in and defend.

The deputy reeve, so-called, has done no wrong—both he and the council have acted in the most perfect good faith. The electors of the town—indeed, the inhabitants of the town—are all interested in the office. . . . In this proceeding—if the election of Church is set aside—he not only drops out, but the alleged right of the town is denied. To have the by-law of the municipality virtually quashed behind its back is not the usual way.

The argument of counsel for the relator is that, as under sec. 161, sub-sec. 1, the right of the municipality to a deputy reeve may be tried, and as sub-sec. 2 designates who may be relator, and as no conditions are imposed, it must be tried, even if the details applicable to trying the validity of an election are not prescribed or made applicable to a proceeding like the present.

This argument is strengthened by sec. 186. This section does not, in terms, apply to the right of a municipality to a deputy reeve, but refers to the right of a person to sit in the council, and provides that "proceedings to have the right of a person to sit in a council determined shall be had and taken under the provisions of this Part" (of the Act) "and not by quo warranto proceedings or by an action in any Court."

I reluctantly yield to the argument, and hold that neither notice nor adding the municipality as a party was necessary.

The question now is, were there more than 1,000 names of municipal electors, not counting any name a second time, on the then last revised list of voters for Arnprior. The municipal clerk said that there were. He is a man of considerable experience, and his integrity is not impeached.

A scrutiny was entered upon before the Master. It seems clear to me that for the purpose of determining the right to a deputy reeve no scrutiny is contemplated by the Act beyond that of seeing that the name of any elector is not counted more than once: sec. 51, sub-sec. 2 (supra). . . . "Determined" in that sub-section must mean, in the first instance at least, determined by the council. Primâ facie that determination shall stand. If it is wrong, the onus of shewing error must be upon the attacking party. Many sections of the Municipal Act refer to population. Population must be determined by the census or otherwise according to the interpretation clause (*n*) above cited. That may not be correct, but it must be accepted as correct for the specific purpose.

In the scrutiny before the Master, evidence was given as to tenants who had moved away from the town, persons who had died, and tenants who had changed their places of residence in the town. I reject that, and come to the count, assuming that the determination of the council, if incorrect, must be so shewn by proper evidence, and that the count must be subject to the limitation of sec. 51, sub-sec. 2.

For the purpose of my determination of the case in hand, I shall accept the relator's affidavit as to persons whose names are on for more than one polling subdivision, or whose names are on the list more than once. He finds that the list at first contained 1,098 names; 12 were struck off by the County Court Judge; leaving 1,086. From this number there must properly be struck off 86 names before the municipality can be deprived of the right to a deputy reeve. The town clerk swears to only 1,006 names; but I have no means, on the material before me, of ascertaining

the names of the 80 which the clerk struck off, reducing the number from 1,086 to 1,006; so I must deal with it as between the relator and the appellant.

Of the 1,086, the relator contends that there should come off 87 names of persons voting in more than one division, and 2 names which are on twice in the same subdivision—making 89 to come off . . . leaving 997.

Of the 87 names, the appellant challenges the relator's count to the extent of 15 names. The relator says that the clerk claims only 1,006. If the 15 names were all added to 997 names, there would be 1,012; and, as the clerk claims only 1,006, the relator asks that the difference of 6 be taken from the 115, and that will leave only 9 names of those challenged to be investigated. I am of opinion that the appellant's contention as to at least 4 of the names is correct. Of the 9 names which the relator attacks, he has been successful as to 3, and perhaps another, but no more. The affidavit of Mr. O'Day is, as is the affidavit of the relator, simply general; and neither is more than the affidavit of the clerk as to the general count. The special scrutiny of particular names is not and cannot be thorough or exhaustive; and the result must necessarily depend upon the question of burden of proof.

With the voters' list before the Court, verified as to the number of names and as to the not counting any one person more than once, the onus is upon the person attacking the list to prove his case. The relator has not, in my opinion, established that there are not more than 1,000 municipal electors on the roll. Restoring 4 names to the list, the number will be 1,001, viz., 997 +4=1,001.

It may be that a more careful scrutiny might increase the number by restoring some of the names not counted by the clerk on his reduction to 1,006.

Feeling satisfied, upon the evidence, that the number was at least 1,001, I did not go further.

The appeal will be allowed, and the motion to unseat the appellant will be dismissed, both with costs.

An order will be made in accordance with the above pursuant to sec. 177, and papers returned pursuant to sec. 178.

BRITTON, J., IN CHAMBERS. MAY 22ND, 1914.

REX EX REL. BAND v. McVEITY.

Municipal Election—Validity of Election of Mayor of City—Attempt to Disqualify—Liability for Arrears of Taxes—Municipal Act, 1913, *sec.* 53, *sub-sec.* 1(*s*)—*Evidence—Settlement with Treasurer—Collector's Rolls—Mayor Elect Acting as Solicitor in Actions against City Corporation—Termination of Relationship of Solicitor and Client before Election—Litigation Ended before Election—Costs — Payment of Cheque of Corporation for.*

Motion by the relator, under the Municipal Act, for an order declaring that Taylor McVeity, the defendant, was not duly elected to and had usurped the office of Mayor of the City of Ottawa.

The motion was heard at Ottawa on the 15th May, 1914.

R. A. Pringle, K.C., for the relator.

T. A. Beament, for the defendant.

BRITTON, J.:—The grounds of attack are: (1) that at the time of the defendant's pretended election he was indebted to the city corporation in the sum of $170.61, or some other sum, for taxes; (2) that at the said time he was solicitor for one Thomas O'Connell, of Ottawa, who claimed damages from the city corporation; (3) that at the said time the defendant was acting as solicitor for one Thomas Clarey in proceedings to have a by-law or by-laws of the city quashed; (4) that the defendant, since the election, has continued to act for the said Thomas Clarey in Clarey's proceeding against the city corporation; (5) that, since the election, the defendant had and has against the city corporation a claim for the costs of the proceedings taken by Clarey. . . .

It is asked that the office of mayor may be declared vacant, and the defendant disqualified. . . . .

As to taxes, sec. 53, sub-sec. 1, of the Municipal Act, 1913, is as follows: "The following shall not be eligible to be elected a member of a council or be entitled to sit or vote therein: . . . (*s*) a person who at the time of the election is liable for any arrears of taxes to the corporation of the municipality." "Liable for" means "obliged in law or equity to pay;" and that condi-

tion of things, in order to affect the qualification of the defendant, must have existed on the date of the election.

The sum of $170.61 . . . is made up as follows: 1906, income tax, $37.11; 1907, income tax, $37.07; 1909, income tax, $61.29; interest at 5 per cent. $6.77; 1913, balance on 2nd half of income tax, $28.37.

The defendant says that he intended to pay and did in fact pay all the taxes for which he was liable down to and including the year 1913. Special circumstances exist in reference to the taxes of 1910, 1911, 1912, and 1913, which I shall deal with later.

As to 1906 and 1907, considering what was done with the rolls and the work of the collector and the letters written by the collector to the defendant and the admission that the taxes for 1908 were paid, I think that a fair inference from the evidence, apart from the testimony of the defendant, is, that these taxes are not a liability of the defendant to the city corporation.

The evidence as to taxes for 1910, 1911, and 1912, is, that the defendant was to be paid a sum of $2,000 granted to him by the city council and $300 or thereabouts for costs, salary, or services. The city collector, knowing that the defendant was going away, sent in to the city treasurer a bill or account for all, as he (the collector) thought, that the defendant owed to the city corporation. . . .

[The amount was $185.64, for taxes, etc.]

The treasurer (Corbett) presented this account to the defendant. The defendant states: "I told Mr. Corbett to deduct from money which he had in his possession belonging to me everything which I owed the city for taxes or for anything else, and I understood he did. . . . I was leaving the corporation . . . and I wanted to have everything in the city hall, so far as I was connected with it, disposed of, cleaned up." He states that he did not ask for any bills or to see them—or even for the amount—but that he told the treasurer to withhold whatever was necessary. The treasurer, instead of withholding the amount of the bills in his hands, deducted one-half from the income tax of 1913—apparently because that half would not fall due until the 3rd December following. The treasurer knew nothing of arrears, if any, prior to 1910, and the defendant was apparently not careful enough to make such inquiry. . . . There was an abundance of money in the hands of the treasurer; the defendant was ready and willing to pay whatever was demanded; and the treasurer did in fact deduct from the defendant's money the sum of $360.04. . . . In

this matter of arrears, I cannot accept the rolls for 1906, 1907, and 1909, as sufficient proof of taxes in arrear. . . .

In a case like the present, where money sufficient to pay all taxes due by the defendant was in the hands of the treasurer, and where there was express authority to pay, and where the treasurer did keep back such a sum as the defendant supposed was all, and where there was not, after the settlement and before the election, any intimation that a mistake had been made, and there was no notice or demand for payment of the alleged arrears, I am of opinion that the defendant was not, at the time of the election, liable for such alleged arrears of taxes, within the meaning of the section of the Act cited.

Speaking further of the rolls, it appeared upon the roll of 1909 that the taxes for 1907 and 1908 were in arrear. Then there was a striking out of 1906. The collector said: "On the face of the rolls of 1909 and 1910, it would lead any one to believe that the taxes of 1906 had been paid." The treasurer was called, and upon his evidence a judgment could not be given against the defendant for any arrears of taxes as a debt. . . .

Upon the evidence, I find that at the time of the election the defendant was not solicitor for Thomas O'Connell, who claimed damages from the city corporation. The defendant had written a letter, but there was no retainer or employment for anything further. At the time of the election the defendant was not in a position to give, and O'Connell was not in a position to receive, the defendant's services.

The defendant was not at the time of the election acting as solicitor for Thomas Clarey in any proceeding then pending against the city corporation.

What the relator complains of as an act by the defendant, since the election, for Thomas Clarey, was merely getting the cheque of the city corporation in favour of Thomas Clarey cashed. There is no dispute about the amount. Clarey was entitled to get it; the defendant was entitled to his costs from Clarey; and Clarey allowed the defendant to collect the amount of the cheque—the defendant to account to Clarey. It was not any act or thing in Clarey's proceedings against the city corporation—nothing in litigation or in contemplation of litigation or dispute between Clarey and the corporation.

The defendant had not at the time of the election any claim against the corporation for costs of the proceedings taken by Clarey. The defendant's claim, if any, was against Clarey. His claim did not in any way depend upon the result of litigation,

and the litigation in which the defendant's claim against Clarey arose was at an end.

The motion will be dismissed with costs. Judgment will be in favour of the defendant.

The order will be drawn up and papers returned pursuant to secs. 177 and 178 of the Act.

MIDDLETON, J. MAY 22ND, 1914.

REID v. AULL.

Marriage—Action for Declaration of Nullity of Marriage of Infant over Eighteen—Jurisdiction of Supreme Court of Ontario—Marriage Act, R.S.O. 1914 *ch.* 148*—Intervention of Attorney-General—Motion to Dismiss Action—Right of Intervention before Trial—Construction of secs.* 36 *and* 37 *of Act—Preliminary Question of Law—Separate Hearing and Determination before Trial of Issues of Fact—Exceptional Circumstances.*

Motion by the Attorney-General for Ontario for an order dismissing the action or staying all further proceedings, on the ground that the Court had no jurisdiction to entertain the action.

The motion came before MIDDLETON, J., in the Weekly Court at Toronto.

G. H. Watson, K.C., for the plaintiff, raised a preliminary objection as to the right of the Attorney-General to be heard.

Edward Bayly, K.C., and Eric H. Armour, for the Attorney-General.

No one appeared for the defendant, although notified.

MIDDLETON, J.:—The plaintiff, an infant, now past nineteen years of age, sues by her father, George P. Reid, alleging that a marriage ceremony which was performed on the 25th July, 1913, is void, because it was procured by deceit and fraud and through wrongful influences and misstatements of the defendant, who had procured mastery of the mind and will of the plaintiff so that she was incapable of exercising judgment and discretion; the ceremony, it is said, being performed while the plaintiff was under the influence of intoxicating drink which the defendant

procured the plaintiff to take, by which she became and was incapable of reasonable thought and action. It is also alleged that the affidavit made for the purpose of obtaining the marriage license was untrue, and that the license was wrongfully and illegally issued, and the ceremony was, therefore, illegally performed. It is asked that the Court declare the marriage to be null and void, and that the marriage license be also declared illegal, fraudulent, and void. The defendant has filed a statement of defence to this claim, in which he denies all impropriety on his part, and alleges that the marriage was duly solemnised with the full and free consent of the plaintiff.

As no one appeared for the defendant on this motion, I am not aware whether the defendant has any intention of resisting the plaintiff's claim when the action actually comes to trial. Statements were made by the counsel for the plaintiff which indicate that no defence will be offered.

The Attorney-General has been served with notice of trial pursuant to the statute now forming part of the Ontario Marriage Act, R.S.O. 1914 ch. 148.

In Lawless v. Chamberlain, 18 O.R. 296, my Lord the Chancellor stated that the Courts of this Province have jurisdiction to declare a marriage null and void ab initio where it is shewn to be void de jure by reason of the absence of some essential preliminary. In that case it was held that there was no defect in the marriage, and the action was dismissed; and it has since been intimated in a series of reported decisions that this statement was a dictum only, and the contrary opinion has been more than once expressed.

The Attorney-General takes the view that our Courts have no jurisdiction to entertain an action brought for the purpose of declaring a marriage void which has been duly solemnised, unless the case can be brought under sec. 36 of the Marriage Act; and this motion is made for the purpose of having that question determined.

The Attorney-General rests his right to intervene upon the provisions found in sec. 37 of the Marriage Act. The plaintiff now contends that this statute does not give the right of intervention claimed by the Attorney-General, save in cases falling under sec. 36. That section provides that where a form of marriage has been gone through between persons either of whom is under the age of eighteen years, without the consent of the parent or guardian, the Supreme Court of Ontario shall have jurisdiction, in an action brought by the party, who was under

the stipulated age, to declare and adjudge that a valid marriage was not effected or entered into, provided that the parties had not after the ceremony lived together as man and wife.

This section had its origin in an Act passed in 1907. In 1909, the Act was amended by adding as sub-sections of the original of sec. 36 the provisions now found in sec. 37, in a slightly amended form. In their original form, the operation of these added sub-sections was, no doubt, confined to actions falling under the section itself; but, in 1911, the statute was recast, and the sub-sections in question are removed from the original section and given the dignity of an independent statutory enactment. As they stand now, the sub-sections commence by a wide provision, applicable not only to the statutory action provided for by sec. 36, but also to any case in which the intervention of the Court is sought for the purpose of declaring a marriage void. "No declaration or adjudication that a valid marriage was not effected or entered into shall in any case be made or pronounced upon consent of parties, admissions, or in default of appearance or of pleadings, or otherwise than at a trial."

I cannot narrow this, as contended by Mr. Watson, and make it applicable only to cases where one of the contracting parties was under age, leaving it open in all other cases to have the marriage declared to be invalid upon consent or upon default of defence. It follows that the sub-sections which are appended to this wide declaration are equally wide in their application, and confer upon the Attorney-General the right to intervene in all cases in which a declaration of the invalidity of a marriage is sought.

Nor can I yield to the alternative argument presented by Mr. Watson. Sub-section 4 provides that ten days' notice of trial shall be given to the Attorney-General; sub-sec. 5, that "the Attorney-General may intervene at the trial or at any stage of the proceedings, and may adduce evidence and examine and cross-examine witnesses in like manner as a party defendant." Mr. Watson's contention is, that this allows the Attorney-General to intervene only at the trial, and does not allow the making of such an application as this, to stay the action.

Two answers, I think, are apparent. In the first place, there is nothing to restrict in any way the meaning to be attributed to the word "intervene." Mr. Watson contends that this litigation is the mere private concern of the parties litigant. The Legislature has thought otherwise. The public are concerned; and the Attorney-General, as representing the public, is author-

ised to intervene, that is, according to the meaning given that word in the Oxford Dictionary, "come in as something extraneous . . . come between, interfere so as to prevent or modify a result." This makes it the duty of the Attorney-General to intervene so as to modify the result which would otherwise be obtained in this private litigation, if he thinks the public interest demands it. Moreover, the section itself provides that the intervention may be not only at the trial, but at "any stage of the proceedings."

If the Court has no jurisdiction, it seems to me that that fact should be ascertained at the earliest possible stage of the action. Upon an application to have this case heard in camera, made to my brother Latchford, it was stated under oath that the plaintiff's health and condition was such that a cross-examination in public might seriously affect her life or reason; and it is easy to conceive that the case made by the plaintiff in her pleadings is one which ought not to be paraded in open court if there is any real doubt of the jurisdiction of the tribunal to entertain the action. No Judge ought to be asked to pronounce an opinion upon such a matter, affecting as it must the whole future of this unfortunate young woman, unless it is plain that he has jurisdiction to deal with the action. If the finding should be adverse to the plaintiff, and it should afterwards be held that the Court had no jurisdiction, her position would be lamentable in the extreme. Scarcely better would be her situation if the finding upon the facts should be in her favour.

These considerations point to the propriety of separating the trial of the question of fact from the hearing upon the question of law. Speaking generally, the policy of our law of recent years has been entirely against the separation of the issues in law from the trial of the questions of fact; but the Rules still provide for this, leaving it to the Judge in each case to determine whether the questions should be so separated. It appears to me that this case is one of the few in which the interests of the parties will be best served by determining this much-debated legal question in the way suggested.

The fact that the latest reported decisions seem to be against the existence of the jurisdiction also points to the adoption of this course; because they render it probable that the Judge before whom the case would come for hearing, if the issues of fact and law should come down together, would investigate the legal aspect of the case in the first instance; and, if he considered himself bound by the reported cases, he would not express an

opinion upon the question of fact if he was satisfied that he had no jurisdiction, and a new trial would almost inevitably follow, as an appellate Court would hesitate long before dealing with questions of fact of this nature, depending upon the weight to be given to the evidence of witnesses which it had no opportunity of seeing or appraising.

The merits of this legal question not having been discussed before me, I do nothing more now than determine that the preliminary objection must be overruled, and the motion must be heard upon its merits at some convenient date.

LANGWORTHY v. MCVICAR—KELLY, J. IN CHAMBERS—MAY 18.

Trial—Postponement.]—Motion by the plaintiff for an order fixing a day for the trial of this action. The case was entered for trial at the Toronto non-jury sittings. The learned Judge said that his information was that it was likely to be reached in the ordinary course in about ten days; and no reason was shewn why it should not then be proceeded with, and it was desirable that there should not be further delay in bringing it to trial. But counsel for some of the defendants had expressed himself to the effect that, if it should unexpectedly appear on the peremptory list, it would be necessary to apply for a postponement, owing to the great distances witnesses lived from Toronto. That was not a sufficient ground for postponement. The trial should be proceeded with as soon as the case was reached in the ordinary course, but not earlier than Monday the 1st June; thus giving to the parties, in the circumstances, ample time to be ready. Counsel and the parties should govern themselves accordingly. No costs of the motion. J. Haverson, K.C., for the plaintiffs and the defendant Helen Elma McVicar. J. W. McCullough, for the defendant Christina Kains. S. W. McKeown, for the defendant Alexander Crane. No one appeared for the defendant Robert McVicar. Featherston Aylesworth, for the other defendants.

RE HOGG—KELLY, J.—MAY 18.

Trustee—Removal from Ontario—Appointment of New Trustee.]—Petition by John Peter Fisher, the continuing trustee under the will of William Walker Hogg, deceased, for an order appointing a new trustee in the place of Hector Cowan, now resident out of Ontario. The learned Judge made an

order appointing David Forrester, of the village of Paisley, barrister-at-law, trustee in the place of Hector Cowan; the assets of the estate to vest in the continuing trustee and the new trustee jointly. Costs out of the estate. G. H. Kilmer, K.C., for the applicant. T. H. Peine, for Mary Brockey Pearce. E. C. Cattanach, for Hector Cowan. J. R. Meredith, for the infant.

RE MURDOCK BROTHERS' ESTATE—DONOVAN'S CLAIM—KELLY, J.—MAY 18.

Appeal—Master's Report—Items of Claim.]—Appeal by the claimant Patrick Donovan from a report of the Master in Ordinary, in so far as it disallowed certain items of the claim put forward by the claimant. After a careful perusal of the evidence, the learned Judge was of opinion that the claimant should have been allowed the item of $137.80, and as to it the appeal should be allowed. The other amounts involved in the appeal, on the evidence, stood in a different position, and as to these the appeal should be dismissed. No costs of the appeal. H. S. White, for the claimant. G. H. Kilmer, K.C., for the estate.

CITY OF TORONTO AND GOODERHAM AND WORTS LIMITED v. NATIONAL IRON CO. AND CAWTHRA MULOCK—HODGINS, J.A., IN CHAMBERS—MAY 19.

Parties—Joinder of Plaintiffs—Motion to Compel Plaintiffs to Elect which will Proceed—Enlargement till Trial—Special Circumstances.]—Appeal by the defendants from an order of the Master in Chambers enlarging before the Judge at the trial the defendants' motion for an order requiring the plaintiffs to elect which of them shall proceed with the action. HODGINS, J.A., said that in the particular circumstances appearing here, namely, that the case was at issue and set down for trial, he did not think that he should interfere with the order of the Master in Chambers. The trial Judge would, no doubt, hear the motion in advance of the actual day of trial, if it appeared that expense would be saved thereby. In view of the case of Gandy v. Gandy, 30 Ch.D. 57, it could not be said that it was improper for both plaintiffs to join in endeavouring to enforce the agreement set up in a certain letter addressed to a former Mayor of the City of Toronto. Motion dismissed. Costs to the plaintiffs in any event. R. C. H. Cassels, for the defendants. T. P. Galt, K.C., for the plaintiffs.