

Full Court.]

HOLLOWAY v. LINDBERG.

[Jan. 11.

Master and servant—Term of hiring—Dismissal without notice—Evidence—Acceptance of employment with person to whom business is transferred.

In an action by plaintiff against defendant for wrongful dismissal without due notice the trial Judge found in defendant's favor on the ground that a weekly had been substituted for a yearly hiring. There was a direct conflict of evidence between the parties on this point.

Held, that the Court should not interfere with the conclusion of the trial Judge, although members of the Court were disposed to think that had the matter come before them they would have found differently.

Assuming that plaintiff was working for defendant under a weekly hiring when the business of defendant was taken over by the H. B. Co., with whom plaintiff continued,

Held, that the trial Judge was right in holding that the relationship between plaintiff and defendant came to an end, and that plaintiff then entered into the employment of the company.

Per TOWNSHEND, J., that the case was not that of a servant unjustly dismissed, but of a servant accepting employment in the same business upon its transfer to other persons, with full knowledge and acquiescence, and without objection to the new arrangement.

E. P. Allison, for appellant. *C. P. Fullerton*, for respondent.

McDonald, C.J., Ritchie, J., }
Townshend, J., Graham, E.J. } BIGELOW v. DOHERTY.

[Jan. 11.

Setting aside judgment in default of plea—Affidavit need not disclose merits—Discretion of Judges—Defence sent by mail—Non-compliance rule—Costs.

By agreement between solicitors defendant was allowed further time for putting in his defence. Before the expiration of the time, and by the same mail, copies of the defence were sent to plaintiff's solicitor and the Clerk of the Court. The latter was shown to have been received in time, and was placed on file, and there was no explicit denial of the receipt of the former. Plaintiff's solicitor having entered judgment for default of plea, the Judge of the County Court on application to him for that purpose, showing the facts and on the usual affidavit of "a good defence on the merits," set aside the judgment with costs, giving leave to defendant to file and deliver his defence.

Held, affirming the judgment with costs that the practice requiring a party seeking to set aside a judgment for default of plea to disclose merits has been superseded by O. 27, R. 14, under which a judgment so entered may be set aside by the court of a judge upon such terms as to costs or otherwise, as such court or judge may think fit, and that in view of the terms of the rule, and the repeal of the former practice, it is not now necessary for the defendant to disclose merits unless the judge to whom the application is made requires it.

Per GRAHAM, E.J., that the case was eminently one in which the judge was justified in exercising his discretion by granting the application, and