

Falconbridge, C.J., Street, J.]

[Jan. 28.]

## HEISE v. SHANKS.

*Appeal to High Court—Division Court case—Certified copy of proceedings—Filing in time—Notice of appeal—Extension of time for—Excuse for delay.*

Motion by the primary creditor to quash an appeal by the primary debtor and the claimant from an order of a Divisional Court made on the 25th August, 1900, refusing a new trial.

On Aug. 29, 1900, the clerk of the Division Court certified a copy of the proceedings, and on the 4th September, 1900, the certified copy was filed with the proper officer of the High Court.

On Oct. 12, 1900, upon the application of the primary debtor and the claimant, an order was made by the County Court Judge in the Division Court extending the time for filing the certified copy of the proceedings until the 20th October, 1900. The same order dismissed the application to extend the time for setting the cause down for hearing in appeal.

On Oct. 17, 1900, the primary debtor and the claimant obtained from the clerk of the Division Court another certified copy of the proceedings in the Division Court, and filed it with the proper officer of the High Court, and gave the primary creditor notice of their having done so and of their appeal for the November sittings of the Divisional Court, a sittings having taken place in October.

No affidavits were filed explaining the fact of the two sets of certified copies of the proceedings having been filed, nor accounting for the delay in giving the notice of appeal.

*S. B. Woods*, for the motion to quash. *J. W. McCullough*, contra.

Per CURIAM.—The filing of a certified copy of the proceedings on Sept. 4, 1900, in the absence of some statement to the contrary, we must presume to have been the act of the present appellants, who have filed no affidavit denying that they did it. Having filed the certified copy, they should have given notice for the October sittings, but failed to do so. Then they obtained from the Judge below an order extending the time for filing the certified copy. This was inoperative, because the certified copy had already been filed, and it was evidently an effort to obtain in a circuitous way an order extending the time for giving their notice of appeal, an order which the Judge below had no power to make. We have given the appellants ample time to file affidavits explaining away their difficulties, if possible, after pointing out those difficulties upon the argument, but they have not availed themselves of the opportunity to do so. The motion to quash the appeal must, therefore, be allowed with costs.