

plaintiff on payment of costs within ten days, otherwise judgment for the defendant," the two weeks within which a motion can be made for a new trial, the costs not being paid, does not commence to run until the expiration of the ten days, for until then there is no judgment.

C. C. Robinson, for plaintiff. Boys (Barrie), for defendant.

Meredith, C. J.]

RE NILICK v. MARKS.

[May 10.

*District Courts—New trial—Limitations to fourteen days—Inherent power to grant new trial.*

A judge of a District Court in an action in the Division Court within the District, apart from the jurisdiction conferred by s. 152 of the Division Court Act to grant a new trial within the fourteen days thereby prescribed, has not any inherent jurisdiction to set aside a judgment by reason of its having been procured by fraud and to order a new trial; and where the judge so assumed to act, an order for prohibition was granted.

A. Grayson-Smith, for defendant. McMichael, for plaintiff.

Boyd, C., Ferguson, J., Robertson, J.]

[May 26.

GIRARDOT v. WELTON.

*Costs—Counterclaim—Relief obtainable without cross-action—Set-off—Rules 1164, 1165—Order of revivor.*

Decision of ARMOUR, C.J., ante p. 311, as to the costs taxable by the plaintiff upon a judgment dismissing a so-called counterclaim, affirmed.

Held, also, that such costs were interlocutory costs within the meaning of Rule 1165; and, if not, that they were costs falling within Rule 1164, and subject to the discretion of the taxing officer in setting them off against the defendant's costs of the action.

Held, also, that costs of an order of revivor obtained by the plaintiff after judgment in order to tax his costs, should be taxed to him and added to his other costs and set off against the defendant's costs.

F. E. Hodgins, for the plaintiff. S. White, for the defendant Welton.

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

[June 4.

IN RE NILICK v. MARKS.

*Division Courts—New trial—Limitation to fourteen days—Inherent power—Fraud.*

Decision of MEREDITH, C.J., ante, affirmed on appeal.

A. F. McMichael, for the plaintiffs. Grayson Smith, for the defendant.