

stances of this case, the proper course was to give leave to move for a new trial, notwithstanding the lapse of time, and upon that motion to set aside the whole of the findings and order a new trial.

R.S.O., c. 44, s. 84; and Rules 789 and 792, considered.

*Wills v. Carman*, 14 A.R. 656, specially referred to.

*Aylesworth*, Q.C., for the plaintiff.

*Shepley*, Q.C., for the defendant.

STREET, J.]

CHAMBERS v. KITCHEN.

[Sept. 17.

*Revivor—Order for, after judgment—Motion to set aside judgment—Rule 622—Execution issued before revivor—Rule 886—Irregularity.*

After judgment pronounced by the court upon default of defence the plaintiff died, and the defendant, desiring to have the judgment set aside and be let in to defend, issued a *precipe* order under Rule 622, reviving the action in the name of the executor of the plaintiff's will.

Upon motion to set this order aside,

*Held*, that Rule 622 should be read as applicable to a case in which final judgment has been entered; and, as it was necessary that the defendant should be allowed to carry on the proceedings, the order should be sustained.

*Arnison v. Smith*, 40 Ch.D. 567, distinguished.

*Curtis v. Sheffield*, 20 Ch.D. 398, and *Twycross v. Grant*, 4 C.P.D. 40, followed.

After the death of the plaintiff and before the order of revivor, the solicitor who had acted for her issued a writ of *hab. fac. poss.* upon the judgment, without the leave required by Rule 886.

*Held*, that the writ was irregular; and it was competent for the party affected by it to apply to set it aside without first reviving the action.

The defendant let in to defend upon terms.

*L. F. Heyd* for the plaintiff by revivor.

*H. J. Scott*, Q.C., for the defendant.

STREET, J.]

HOLLENDER v. FFOULKES.

[Sept. 18

*Security for costs—Time—Dismissal of action for default—Waiver—Rule 1251—Effect of.*

Where an order for security for costs directs that unless security be given within a limited time the action shall be dismissed, and security is not given within the time limited, the action is to be regarded as dismissed, unless the defendant treats it as still alive.

Rule 1251 does not give a plaintiff any further time for, or relieve him from the obligation of, putting in his security for costs; it only enables him to remove the stay effected by the order for the sole purpose of making a motion for judgment under Rule 739; and, if he does not succeed in that motion, he must obey the order by putting in the full security for costs.