

third parties, execution should not be stayed as regards the damages awarded against them, or at all events as regards the sums of \$160 and \$282.25 part thereof, or that the MacWillie Company should be directed to give security for the damage.. The motion was made upon two grounds: (1) that the company had no assets and had discontinued business; (2) that the company did not on the appeal dispute their liability to the defendant to the extent of \$160, in other words that they admitted the propriety of the judgment in favour of the plaintiffs against the defendant, but disputed that they were liable to indemnify the defendant beyond the sum of \$160. The sum of \$282.25 represented the costs of the plaintiffs paid by the defendant. The appeal of the company was in form an appeal against the judgment in favour of the plaintiffs, as well as against the judgment of indemnity in favour of the defendant, but the reasons for appeal indicated that the company were relying chiefly on the ground that their liability to the defendant ought to be limited to \$160.

Held, that security is not to be required from the appellant for damages, unless, upon an application showing special circumstances, the court otherwise orders. *McCormick v. Temperance and General Life Assurance Co.*, 17 P.R. 175, followed. An application under Rule 827 (2) is not sufficiently supported by showing that the appellant does not appear to be presently possessed of assets immediately available under execution. But in this case the allegation of wants of assets was displaced, and it was not shown that any fraudulent or improper disposition of the assets spoken of had been attempted or contemplated. As to the second ground, the defendant was not willing to accept the \$160 in full of his claim against the company, but insisted upon the full measure of the judgment in his favour. It might be that, should the company succeed in their appeal to any extent, there would need to be a readjustment of not only the amount of damages, but also of the costs for which the company had been made responsible. It could not be said at present that the company must in any event be ordered to pay \$160 to the defendant, for there might be deductions or offsets. The defendant was not in any immediate danger from inability to enforce his judgment. Motion refused with costs to the company in the appeal.

Rowell, for defendant. *W. H. Irving*, for MacWillie Company.

HIGH COURT OF JUSTICE.

Boyd, C., Robertson, J., Meredith, J.]

[Jan. 22.

FOSTER v. TORONTO STREET RAILWAY CO.

Dies non juridicus—Good Friday—Trial.

Held, that in this country the only day on which no judicial act can be validly done is the Lord's Day, or Sunday. This does not result from Sunday being a statutory holiday, but because it is dies non juridicus as declared