

under Rule 788 (2) is not "doing an act or taking a proceeding in appealing to a Divisional Court" within Rule 352 (e).

Motion to stay a taxation of costs as of an abandoned motion under Rule 790, or for an order confirming the setting down of the appeal. The judgment, at the trial without a jury, was granted on 13th November, 1901, and defendant Lyon served notice of appeal therefrom on 25th November. The plaintiff served notice of appeal on the 16th December, and set his appeal down on 20th December. On 24th December the defendant Lyon's appeal not having been set down, the plaintiff obtained under the following Rule: "790 (1).—Unless otherwise ordered, if a party who serves a notice of motion does not set the motion down, he shall be deemed to have abandoned the same, and the opposite party shall thereupon be entitled without an order to the costs of the motion"—an appointment for 26th December to tax the costs. On the 26th December the appeal of defendant Lyon was set down, and on the same day MacMahon, J., made an order, with costs to plaintiff in any event, staying the taxation until the first sittings of a Divisional Court to enable defendant Lyon to apply to it for relief, and accordingly this motion was made on 7th January, before a Divisional Court, Meredith, C.J., and Britton, J.

A. Mills, for defendant Lyon.

T. Hislop, for plaintiff.

The judgment of the Court was delivered at the close of the argument.

MEREDITH, C.J.—The practice has been for a long time to set down appeals in Christmas vacation, and as the matter is not *res integra*, it is better not to disturb a practice that is well settled. Costs throughout should be in the action.

BRITTON, J.—I concur.

T. Hislop, Toronto, solicitor for plaintiff.

Mills, Raney, Anderson, & Hales, Toronto, solicitors for defendant Lyon.

JANUARY 2ND, 1902.

DIVISIONAL COURT.

TRUSTEES OF CARLETON PLACE METHODIST CHURCH v. KEYES.

*Methodist Church—Trustees of, Have no Right to Allot Pews unless for a Money Consideration or Rent — But may Punish under Criminal Code any Person disturbing the service in the Church—47 Vict. ch. 88 (O.), schedule B.—47 Vict. ch. 106 (D.), schedule B.—Sec. 173, Crim. Code.*

Appeal by defendant from judgment of County Court of