

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac. Cases]

Full Court.]

[Dec. 7.]

RUMOHR V. MARX.

Appeal to Divisional Court—Appeal after time elapsed—Mistake—Rule 522—Time for setting down.

Where a defendant's solicitor had notified the plaintiff's solicitor of his intention to appeal from a judgment to the Divisional Court, and gave instructions to his clerk to set the cause down, but the clerk, by mistake, supposing that the seven days mentioned in Rule 522 were not clear days, suffered the last day to pass without setting the cause down, and on applying the following day to set the cause down, found he was too late.

Held, that this was no ground for granting leave to set the cause down after the time had elapsed.

Held, also, that the seven days mentioned in Rule 522 are "clear days."

Full Court.]

[Dec. 7.]

HUGHES V. HUGHES.

Appeal—Discontinuance—Costs—Appeal bond—R. S. O. c. 38, sect. 41.

Where an appellant gave notice of discontinuance, and the respondent thereupon, without taking out any order dismissing the appeal, proceeded and taxed his costs, and then applied for and obtained an order for the delivery out of the appeal bond for suit.

Held, that the order for the delivery out of the bond was regular.

Semle, also, that no order for the payment of the respondent's costs was necessary as a condition precedent to suing on the bond.

[The above four cases will be reported in full in our next issue.—Ed. L. J.]

Full Court.]

[Dec. 9.]

FOLEY V. CANADA PERMANENT L. & S. CO.

Leave to set case down for appeal—Excuse for delay.

Moss, Q.C., for plaintiff, moved for leave to set cause down for hearing at the present sittings. The judgment sought to be appealed from was

delivered on the 22nd November last. The plaintiff's solicitor immediately applied for a copy of the judgment, but did not receive it until the 29th November, which was the last day for setting the cause down for the present sittings. There was therefore no time to consult either the plaintiff or counsel as to whether the judgment should be appealed from.

Leonard, for defendants, opposed the application. He referred to *International F. Co. v. City of Moscow Gas Co.*, L. R. 7, Ch. D. 241; *Craig v. Phillips*, *Ib.* 249; *McAndrew v. Barker*, *Ib.* 701; *Re Mansell*, *Ib.* 711; W. N. 1878, 227; W. N. 1879-6.

The Court held the delay sufficiently excused, and granted the leave asked on payment of costs.

PRACTICE CASES.

Ferguson, J.]

[Nov. 1.]

HUNTER V. WILCOCKSON.

Judgment on endorsement—Statement of claim.

Motion for judgment on the endorsement on the writ. The action was for the rectification of a deed, and for a declaration that the plaintiff was entitled to a right of way, and for an injunction restraining defendant from interfering therewith. The endorsement stated the relief claimed; the defendant did not appear within the time limited. He subsequently entered an appearance, but did not serve any notice thereof. Notice of the motion had been posted up in the office, as in case of non-appearance.

Bain, for plaintiff, claimed that he was entitled to judgment for the relief claimed by the endorsement, without delivering a statement of claim. That the plaintiff was not bound to deliver a statement of claim, unless the defendant required it.

Held, that a statement of claim must be filed.

Cameron, J.]

[Dec. 5.]

RE LINDSAY V. MORRISON.

Motion for prohibition.

This action was brought in the First Division Court of the County of York, for \$175 due the