

SUMMERFELDT V. NEELANDS.—LAW STUDENTS' DEPARTMENT.

of the Registry Act being to give no effect to hidden equities. (2) That by taking a mortgage, and thus giving time to the mortgagor, the plaintiff, an execution creditor, was a holder of his mortgage for value.

Bethune, Q.C., for plaintiff.

W. Cassels, for defendant.

REPORTS.

IN THE COUNTY COURT OF SIMCOE.

SUMMERFELDT V. NEELANDS.

Costs—Setting aside judgment—Reasonable time.

Writ issued on 11th March, 1879; served on 5th May, 1879. The plaintiff never declared. On the 2nd of March, 1881, notice was served on the plaintiff's attorney by the defendant's attorney of the latter's intention after the lapse of the then ensuing term to sign judgment of *non pros*. In pursuance of this notice the defendant did on the 14th of April, 1881, sign judgment for his costs, and wrote a letter on the same day notifying the plaintiff's attorney that he would issue execution within a week, if the costs were not sooner paid. This letter was received on the 16th of April, and was the first intimation the plaintiff had of the judgment being signed. On the 19th of April, the plaintiff obtained a summons to set aside the judgment on the grounds that the plaintiff, not having declared within a year from the return day of the summons, was out of court (sec. 93, C. L. P. Act, R. S. O. Cap. 50), and that a proper notice had not been given, a notice to declare within eight days being necessary under sec. 94.

The defendant maintained *first*: that although under sec. 93 the plaintiff was out of court, yet the defendant was not, and the section did not exclude the defendant from signing judgment for his costs even after the expiration of the year from the day summons was returnable, and *secondly*: that the plaintiff was too late in his application.

In support of the summons was cited Chitty's Archbold, 10 Ed. pages 203 and 1409, to, and Chitty's Forms, 7 Ed. p. 95.

To the second contention it was urged that irregularities have only to be moved against

within a *reasonable time*, and before another step has been taken by the party applying, (106 Reg. Gen. Trinity Term 20 Vict.) and in this case a reasonable time had not elapsed because knowledge of the signing of judgment had only been obtained on the 16th of April, the 15th being Good Friday. The 17th was Sunday, and the 18th Easter Monday, so that in reality the plaintiff had applied on the second day after the receipt of notice. And in any event, counting from the 14th to the 19th, there would only be five days, which was a reasonable time within which to move (Harrison's C. L. P. Act, page 52).

ARDAGH J. J. held that upon the authority of *Cooper v. Nias* 3 B. A. 271, the judgment must be set aside, but that the plaintiff had not applied within such a reasonable time as to entitle him to costs, notwithstanding cases referred to in Harrison's C. L. P. A. 52.

(Note by Editor C. L. J.)

There is no point on which Judges are so liable to be misunderstood as that which relates to the giving or refusing costs. A Judge may express an opinion on some point, which opinion, though not given directly as the reason, is nevertheless at once set down as that assigned for granting or refusing costs. In this case the point, is we think, a new one, and we can well understand the Judge making the summons absolute without costs.

LAW STUDENTS' DEPARTMENT.

EXAMINATION QUESTIONS.

FIRST INTERMEDIATE.

Mercantile Law, &c.

1. A. makes an offer to "B." by letter dated 26th April, 1881, to sell him goods enumerated therein for the price of \$200. B. receives the letter on the 27th, and writes and posts a letter accepting the offer on the 29th, and immediately thereafter receives a letter which had been written by A. on the 28th, rescinding his offer. State accurately the rights of the parties.

2. Give a short statement of the law in regard to a wife's power to bind her husband by contract.