

MacLennan, J.A.]

McLAUGHLIN v. MAYHEW.

[Jan. 5.

Appeal—Court of Appeal—Late entry—Refusal of consent—Confirmation—Responsibility for delay—Costs.

The defendants on the 19th May gave notice of an appeal to the Court of Appeal from a judgment delivered on 22nd April and gave security on 22nd May. Reasons of appeal were not served till 10th Sept., and reasons against appeal not till 13th Oct. The next sittings of the Court of Appeal was set for 10th Nov. The appeal case was not prepared in time to enter the case on 6th Nov., and the plaintiff's solicitor refused to consent to its being entered on the 10th for the sittings beginning on that day. The case was entered without consent on the 17th Nov., and a motion was made to confirm the entry.

Held, that the plaintiff's solicitor should have consented to the proposed entry on 10th Nov., and the subsequent entry should be confirmed; and, as both parties were nearly equally blameable for delay, there should be no costs.

F. E. Hodgins, K.C., for defendants. *O. M. Arnold*, for plaintiff.

HIGH COURT OF JUSTICE.

Street, J., Britton, J.]

[Nov. 15, 1902.

BIRNIF v. TORONTO MILK CO.

Company—Appointment of manager by directors—Want of by-law and seal—Services rendered—Salary—Compensation—R.S.O. c. 191, ss. 47, 48.

Plaintiff was appointed by the Board of Provisional Directors of a Company to be a director and was also appointed manager at a salary before the Company was organized. In an action for salary or compensation for services rendered, in which it was shewn that the services rendered had not resulted in any benefit to the Company and that the Company had never gone into operation,

Held, that as he was not appointed by by-law approved of by the shareholders and had no contract under seal he could not recover. *In re Ontario Express and Transportation Company* (1894) 25 O.R. 587 commented on.

Judgment of LOUNT, J., reversed.

J. B. O'Brian, for the appeal. *Godfrey*, contra.

Boyd, C., Meredith, J.]

[Dec. 2, 1902.

DAWDY v. HAMILTON, GRIMSBY AND BEAMSVILLE R. W. CO.

Jury—Functions of—Scope of authority—Of servant—Evidence.

Plaintiff came to a platform station of the defendants and signalled an approaching car to stop. The car slowed down but did not stop, and