

The variation made in the wording of C.R. 828 by Rule 497 may have been thought merely to make C.R. 828 say what it had been held to mean, without perhaps taking into account why it received that peculiar construction. But if C.R. 828 had been retained in an unaltered form it is reasonable to suppose that the stay of execution under Rule 496 would not now be held to be a supersedeas, but merely a stay as under the former Divisional Court practice.

This change from the former procedure of the Divisional Courts we do not think was well advised. It is one thing to say an execution shall be superseded because the judgment creditor has security for his debt; it is quite another thing to say his execution shall be superseded, although he holds no security, and yet that is precisely the change which Rule 497 in its present form has effected.

We are disposed to think that Rule 497 should be repealed leaving the stay of execution pending an appeal to be governed by Rule 496.

The recent case of *Saskatchewan Land Co. v. Moore*, 9 O.W.N. 343, indicates that where an appellant neglects the formality of obtaining a certificate from the Registrar and lodging it with the sheriff, the execution though stayed under Rule 496 is not superseded under Rule 497, although the obtaining of a judge's fiat under the former C.R. 828 was held to be immaterial: see *O'Donohoe v. Robinson*, supra (per Hagarty, C.J., at p. 625).

Seeing that security is no longer required as a condition of appeal, and therefore the reason for superseding execution pending appeal is taken away, it may well be doubted whether in the circumstances the change made in C.R. 828 by the present Rule 497 was well advised. Certainly it seems somewhat hard to rob the creditor of the benefit of his execution without giving him any equivalent.

What is the precise effect of superseding execution under Rule 497 remains to be determined. It certainly can never