

OCTOBER 12TH, 1907.

DIVISIONAL COURT.

ALLAN v. PLACE.

*Appeal to Divisional Court—County Court Appeal—Time—
Delivery of Judgment Appealed against—Date of Notifi-
cation to Parties.*

Motion by plaintiff to quash an appeal by defendant from the judgment of the County Court of Welland upon an interpleader issue, on the ground that the appeal was not set down for the first sittings of a Divisional Court commencing "after the expiration of one month from the judgment, order, or decision complained of," as prescribed by sec. 57 of the County Courts Act, R. S. O. 1897 ch. 55.

G. H. Kilmer, for plaintiff.

R. McKay, for defendant.

The judgment of the Court (MULOCK, C.J., ANGLIN, J., CLUTE, J.), was delivered by

ANGLIN, J.:—The interpleader issue was tried in the County Court in June, and judgment was reserved, no date being fixed for its delivery. Subsequently the County Court Judge handed the record to the clerk of the Court, with an indorsement of his findings, dated 17th July, 1907.

The material does not disclose upon what day the Judge gave the record so indorsed to the clerk, but it was stated at bar that this occurred on the 12th or 13th September last. At all events, the clerk first notified defendant's solicitors of the judgment on 13th September, and they were until then unaware that any judgment had been pronounced. Notice of appeal was served on 23rd September, and the appeal was duly set down for the October sittings of the Divisional Court.

In *Fawkes v. Swayzie*, 31 O. R. 256, Armour, C.J. delivering the judgment of a Divisional Court, said obiter, at p. 261, in discussing sec. 57 of the County Courts Act: