

Appeal dismissed with costs.

MOSS, C.J.O., MACLAREN and MAGEE, JJ.A., concurred.

MAGEE, J.A., to give reasons later.

OCTOBER 29TH, 1910.

*STRATI v. TORONTO CONSTRUCTION CO.

Dismissal of Action—Order at Trial—Default in Payment of Costs of Day—Appeal—Extension of Time—Jurisdiction of Divisional Court.

Appeal by the defendants from the order of a Divisional Court, 1 O. W. N. 1000, allowing the plaintiff's appeal from the judgment of LATCHFORD, J., at the trial, whereby the action was dismissed, and extending the time for payment of costs of the day, upon default in payment whereof the dismissal of the action was based.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

Grayson Smith, for the defendants.

H. S. White, for the plaintiff.

Moss, C.J.O.:—The defendants were put to no serious prejudice by reason of the order of the Divisional Court from which this appeal has been taken. The plaintiff and his solicitor were struggling to comply with the terms of the order pronounced at the trial by Latchford, J., but, owing to an unfortunate omission on the part of the bank to which funds had been sent, the costs which were to be paid on or before noon on the 18th May, 1910, were not tendered to the defendants' solicitors until 12.40 in the afternoon of that day. The tender was not accepted, the defendants' solicitor contending that the time had elapsed, and the action was out of Court. It was not so entirely out of Court that it was not subject to the power of the Court or a Judge, under Con. Rule 353,

* This case will be reported in the Ontario Law Reports.