

to by C.; (2) because the appointment was not made in writing; and (3) because the appointment, if agreed to by C. in the first instance was revoked by C. withdrawing his consent thereto before action brought.

*Held*,—1. The onus of establishing the grounds relied upon was upon plaintiffs.

2. The question as to whether C. did or did not assent to the appointment of D. was one of fact, and the finding on the point being adverse to plaintiffs, and the weight of evidence being in favour of the finding there was no reason for setting it aside.

3. In the absence of anything to require the appointment of the third arbitrator to be made in writing the same law would govern as in the case of the appointment of an umpire under a submission, which may be made by parol if no particular mode of appointment be prescribed.

4. D. having been appointed and having consented to act his appointment could not be revoked by subsequent dissent of the parties.

*J. A. McLean*, K.C., for appellant. *F. B. Wade*, K.C., for respondent.

Full Court.]

DUYON v. LEBLANC.

[March 5.

*Equitable action—Entry of default judgment—Common law practice not applicable—O. 13, rr. 11 and 13—Appearance after time limited—Appearance and defence—Motion to set aside for irregularity—Notice of trial and to enter cause—Right of defendant to give—Dismissal of action for non-appearance on trial—O. 34, rr. 11 and 23—Conditions as to costs—Power of judge to impose—Amending order—Costs.*

Plaintiffs, as heirs of L., claimed as against defendants, who were also heirs of L., partition of certain lands granted by the Crown to L. in 1805, or, in the alternative, a sale of the property and a division of the proceeds. Also a declaration that a grant of the same lands from the Crown to defendants, dated on or about the 23rd August, 1890, was inoperative and void. Shortly after the issue of the writ plaintiffs' solicitor was informed by F., a solicitor, that he had been consulted by defendants, and had advised them that they had no defence, and that the only thing to be done was to have the property divided as cheaply as possible. No appearance having been entered, judgment by default was entered against three of the defendants on June 6th, 1899. Subsequently, on the 26th February, 1900, appearance was entered on behalf of all the defendants by G., another solicitor, and a defence was filed and served. Notice of trial was given on behalf of defendants for the first day of the September sittings of the Supreme Court at A., and notice was given on behalf of plaintiffs, for the same time, of a motion to set aside the notice of trial and entry of the same on the docket, on the grounds, among others, that default had been marked for want of appearance before and appearance was filed or served, and that the solicitor G. had no authority to appear and defend the action. The latter motion