

Perdue, J.]

McCAUL v. CHRISTIE.

[May 22.]

Practice—Setting aside judgment—Leave to defend—King's Bench Act, Rules 347, 664—Error of solicitor's clerk.

Appeal from the order of the referee setting aside the judgment entered herein in default of a defence and allowing a defence to be put in. A firm of solicitors had been instructed to defend the action, but, by the error of their clerk in not carrying out his instructions, the judgment was allowed to be entered.

Held, that, when a final judgment has been regularly entered, and the defendant applies to be let in to defend, the general rule is that he must shew a good defence on the merits: *Watt v. Barnett*, 3 Q.B.D. 363; but, under Rules 347 and 664 of the King's Bench Act, the referee has a discretion to set aside the judgment if he thinks any possible defence is shewn, and that the exercise of that discretion in defendant's favour should not, under the circumstance of this case, be interfered with, although the learned judge was of the opinion that, if the motion had been made to him in the first instance, the defence shewn was so weak that he would not have opened up the judgment: *More v. Kennedy*, 12 M.R. 173, followed.

Appeal dismissed, with the addition, however, of a term to the order that the defendant should waive any right to security for costs as a condition to being let in to defend.

Costs of the appeal to be costs in the cause.

T. R. Ferguson, for plaintiff. *E. L. Howell*, for defendant.

Province of British Columbia.

COUNTY COURT.

Bole, Co. J.]

PAISLEY v. NELMES.

[May 30.]

Partnership Act—Registration—Real estate agent.

Real estate agents or brokers in partnership in the business of selling real estate on commission are not persons associated in a general partnership for trading, manufacturing or mining purposes within the meaning of the Partnership Act. See *Harris v. Amery*, L.R. 1 C.P. 148; *R. v. Sylvester*, 33 L.J.M.C. 80; *Caledonian Ry. Co. v. N.B. Ry. Co.*, 6 App. Cas. 131.

Pelly, for plaintiffs. *Brown*, for defendants.