

The defendant notified the plaintiffs that he would not attend at the June sittings—that he relied upon the notice of trial for the October sittings.

The plaintiffs appeared at the June sittings and insisted on the trial going on; the defendant did not appear; the County Court Judge proceeded with the trial, in the absence of the defendant, and gave judgment for the plaintiffs.

The defendant's appeal was from that judgment.

The appeal was heard by MULLOCK, C.J. Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

D. L. McCarthy, K.C., for the appellant.

A. W. Langmuir, for the plaintiffs, respondents.

THE COURT, at the conclusion of the hearing, gave judgment allowing the appeal, holding:—

(1) That, notwithstanding the peremptory adjournment to the June sittings, notice of trial was necessary: Rule 252.

(2) That, in the event which happened, the defendant accepted the plaintiffs' first notice of trial; and, without an order setting it aside, the plaintiffs were bound by it.

(3) That the plaintiffs' second notice of trial was in effect an attempted countermand of their first; and a countermand of a notice of trial is not regular.

Friendly v. Carter (1881), 9 P.R. 41, approved.

The judgment was set aside with costs of trial and appeal payable by the plaintiffs forthwith after taxation.

SECOND DIVISIONAL COURT.

JANUARY 21ST, 1918.

*APPELBE v. WINDSOR SECURITY CO. OF CANADA LIMITED.

Mortgage—Action to Enforce—Summary Dismissal as Contravention of Mortgagees and Purchasers Relief Act, 1915—Order Dismissing Set aside by Appellate Court—Application by Defendants to Add to Order of Appellate Court an Order for Judgment for Plaintiff—Proposed Appeal to Supreme Court of Canada—Application Opposed by Plaintiff—Unnecessary Application—Dismissal.

In this mortgage action, the defendants, soon after it was begun, obtained an order dismissing it, on the ground that it was