

sideration was when the mortgage was being paid off to G. W. L. H. There was nothing to create an estoppel as between him and the plaintiff so as to have prevented the latter from then claiming credit for these payments. G. W. L. H., and not the testator, was the person who received too much, and it was the payment to him which was erroneous. The executors, upon their appeal from the judgment against them, were entitled to be relieved and to costs of the action. And the plaintiff, although he had omitted to appeal, by way of precaution against that result, for judgment in his favour against G. W. L. H., should be permitted to do so, *nunc pro tunc*, and judgment should be entered for the plaintiff against G. W. L. H. with costs down to the trial and settlement of the judgment as if G. W. L. H. had been the original and only defendant. No costs of the appeal to any of the parties.

*Douglas*, K.C., and *W. A. Boys*, for defendants. *Strathy*, K.C., and *Plaxton*, for plaintiff.

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Falconbridge, C. J., K.C.] *BEAUDRY v. GALLIEN.* [Dec. 6, 1902.

*Agreement of counsel as to proceedings in Master's office—Misunderstanding—Reference back.*

In a proceeding before a Master in mechanics' lien matter an understanding was arrived at between the counsel for the plaintiff and defendant verbally communicated to the Master. When the time arrived to act on the understanding counsel disagreed in their recollection of what the understanding was.

*Held*, that the judgment given by the Master whose recollection of the understanding was the same as that of the plaintiff's counsel in favour of the plaintiff, must be reopened and the matter referred back as the parties were not *ad idem*.

*Wilding v. Sanderson* (1897) 2 Ch. 334, referred back. *Geo. F. Henderson*, for the appeal. *J. A. Ritchie*, contra.

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Moss, C.J.O.]

*SMITH v. HUNT.*

Dec. 8, 1902.

*Appeal to Supreme Court—Extension of time—Intention to appeal—Suspension of proceedings—Merits.*

Upon application to extend the time for appealing from the Court of Appeal to the Supreme Court the applicant must shew a bona fide intention to appeal, held while a right to appeal existed and a suspension of further proceedings by reason of some special circumstances in consequence of which they were held in abeyance. No such case having been made out, and the Court not being impressed with the merits of the defence, leave to extend the time was refused to two defendants. *In re Manchester Economic Building Society* (1883) 24 Ch. D. 488, followed.

*D. L. McCarthy*, for the motion. *F. A. Anglin*, K.C., contra.