

Former C.R. 827, which is now Rule 496, dealt with the stay of executions on appeal to Divisional Courts, whereas C.R. 828, which is now Rule 497, related to the stay of executions on appeals to the Court of Appeal, in the former of which no security to stay execution was required, and in the latter of which it was required.

In this state of things the proper course of action it appears to us would have been to leave out of the recent consolidation C.R. 828 altogether as dealing with a part of the former procedure which has been superseded. But that Rule has not only been continued but continued with a variation which has the effect of making, as we believe, a quite important and wholly unnecessary change in what was the practice on appeals to the former Divisional Courts which it was really intended should be continued. Rule 497, it will be seen, provides that pending an appeal to the Appellate Division an execution issued upon the judgment or order appealed from shall be superseded upon a certificate of the Registrar being lodged with the Sheriff that an appeal is pending from the judgment or order on which the execution was issued.

The former C.R. 828 merely provided that the execution should be "stayed," but at the time that Rule was in force, as we have already said, security was required to be given for the debt and costs awarded by a judgment appealed from, as a condition of staying execution therefor; and the former Court of Appeal held that the effect of the "stay of execution" under C.R. 828 was equivalent to a supersedeas, because the legislature must be taken to have intended to substitute the security given upon the appeal for the lien on the property of the appellant created by the execution, leaving it free to be disposed of by him, and liable to the claim of his other creditors: see per Osler, J.A., *O'Donohoe v. Robinson*, 10 Ont. App. 629.

Now it is to be noted that although no security is now given for debt or costs recovered by a judgment appealed from, the new Rule 497 (varying the wording of C.R. 828) expressly provides for superseding the execution.