

[Prac.]

NOTES OF CANADIAN CASES

[Prac.]

Rose, J.]

[May 19.]

CARTER V. BARKER.

*Dismissing action—Want of prosecution.*

The pleadings were closed six weeks before the commencement of the assizes, but the plaintiff's solicitors did not serve notice of trial in time for such assizes because they were waiting to hear from the plaintiff whom they had notified that they would not proceed unless certain costs were paid. On the last day for serving notice of trial, about eight o'clock in the evening (service after four not being good), the plaintiff's solicitors asked the defendant's solicitor to accept service of notice of trial, but the latter declined to do so, and afterwards moved to dismiss the action for want of prosecution.

*Held*, that if the plaintiff, without good excuse, neglect to proceed with the action the Court will not, as of course on his mere undertaking to speed the action and paying costs, refuse to dismiss; but, under the circumstances above set out, an order of the Master in Chambers refusing to dismiss and permitting the plaintiff to proceed, was affirmed on appeal.

*Aylesworth*, for the appeal.

*R. A. Porteous*, contra.

Rose, J.]

[May 22.]

ROBERTS V. LUCAS.

*Order dismissing action—No bar to subsequent action—Rule 255, O. J. A.*

An appeal from the order of the local judge at Hamilton, in Chambers, made under Rule 255, O. J. A., dismissing the action for want of prosecution, and refusing to insert in the order a clause reserving leave to the plaintiff to bring a fresh action, was dismissed.

*Held*, that the order was not a dismissal on the merits, and not a bar to a subsequent action for the same cause.

*Holman*, for the appeal.

*A. Bruce*, contra.

Boyd, C.]

[May 26.]

PAWSON ET AL. V. THE MERCHANTS' BANK ET AL.

*Production of documents—Privilege.*

The plaintiffs were allowed to read, upon a motion for a better affidavit of documents, the depositions of the Assistant General Manager of the defendants, the Merchants' Bank, taken for use upon an injunction motion.

G. was general solicitor for the defendants, the Merchants' Bank, and was also acting in the transactions in question for other parties, and had himself agreed to endorse certain notes which were in question, and was negotiating actively much of the whole transaction.

*Held*, that letters written by G. to the Merchants' Bank, in reference to the transactions in question, were not privileged from production.

*Moss, Q.C.*, and *Hoyles*, for the Merchants' Bank.

*Shepley*, for the plaintiffs.

The Master in Chambers.]

[May 27.]

MCCALLUM V. MCCALLUM.

*Interlocutory judgment—Irregularity—Claim for injunction.*

Where the endorsement on the writ of summons claimed, in addition to pecuniary damages, an injunction restraining the defendant from disposing of certain goods, an interlocutory judgment signed by the plaintiff for default of appearance, was set aside as irregular.

*Holman*, for the motion.

*Hoyles*, contra.