

I think defendant, by his negotiation for settlement and by his delay in moving and laches, has waived his right to prohibition, even if there was no notice by the Judge and no argument between 13th November, 1894, and 25th March, 1896. See *Richardson v. Shaw*, 6 P. R. 296; *Re Burrowes*, 18 C. P. 496.

The motion must be refused. . . .

I think the balance against defendant should have been only \$73.67. I cannot correct the judgment, but I think it right, under the circumstances, as the judgment will stand for the full amount, to dismiss this application without costs.

OSLER, J.A.

OCTOBER 16TH, 1903.

TRIAL.

WEBB v. CANADIAN GENERAL ELECTRIC CO.

New Trial — Order Directing — Appeal from—New Trial pending Appeal—No Application to Stay—Judgment.

Action tried with a jury at Peterborough. The jury found a verdict for plaintiff for \$700.

R. M. Dennistoun, Peterborough, for plaintiff.

R. McKay, for defendants.

OSLER, J.A.—On the plaintiff's counsel moving for judgment, it was stated by the other side that an appeal was then pending before the Court of Appeal from the judgment of a Divisional Court setting aside a judgment which had been directed for the defendants by Meredith, J., at a former trial before him in October, 1902, and ordering a new trial. This new trial took place before me. Nothing was said by either party of the pending appeal until judgment was moved for on the verdict of the jury. I then thought it would be advisable to defer giving judgment until the appeal should be disposed of; but upon reflection I have arrived at a different conclusion. Being of opinion that upon the evidence at the last trial the plaintiff is entitled to judgment, it is better that such judgment should now be given in order that an appeal therefrom, should defendants determine to appeal, may be brought on together with the appeal now pending, as was done in the case of *Blackley v. Toronto Street R. W. Co.* My strong impression at present is, that the defendants should have moved to stay the new trial until the appeal from the order directing it was disposed of. Having taken their chances of a new trial without objection, it may be found that they ought to be taken to have abandoned their appeal. But if not, and their appeal should be dismissed, plaintiff ought