

have that judgment set aside on terms, but will take steps to have the case properly tried on the merits."

Under our Rules the case is quite different, and notwithstanding a sworn defence is on the files a plaintiff is compelled in certain events to ignore it and sign judgment by default, and the defendant is put to the circuitous process of applying to set it aside as it is very hard to suppose that such a judgment could with any regard to justice be allowed to stand.

The defence in question having regard to the cases above referred to, is clearly not a nullity, though filed after the time limited by Rule 112, and in the circumstances in which it was filed, I am of the opinion that it cannot be said to be irregular. The motion therefore fails, but in consideration of the difficulty attending the introduction of a new procedure, I think the costs of the motion should be in the cause to the defendant.

Rule 121 allows a defence to be filed at any time before a defendant is noted in default, but that Rule applies where a defendant can be noted in default; in the present case according to the decision in *Smith v. Walker* he could not be noted in default. Rule 121 applies apparently only to actions where judgments cannot be signed, and here judgment could have been signed.

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HON. MR. JUSTICE MIDDLETON.

DECEMBER 5TH, 1913.

WHELAN v. KNIGHTS OF COLUMBUS.

5 O. W. N. 432.

*Fraternal Society — Amendment to Constitution — Institution of Superior Degree — Jurisdiction of Court — No Property Rights Involved — Stated Case — Dismissal of Action — Costs.*

MIDDLETON, J., *held*, that the Court had no jurisdiction to enquire into the organization or management of a fraternal society as long as no property rights were affected.

*Rigby v. Connoll*, 14 Ch. D. 428, followed.

Action for a declaration that the establishment by the defendant society of a "fourth degree" as a branch or offshoot of the society and the provisions made for the government of such degree were illegal and *ultra vires* the powers of the defendant society.