

The Ontario Weekly Notes

VOL. XIII. TORONTO, FEBRUARY 1, 1918. No. 20

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

JANUARY 17TH, 1918.

*MALDEN PUBLIC SCHOOL BOARD (SECTION 5) v.
SELLERS.

Trial—Adjournment to Next Sittings—Necessity for New Notice of Trial—Rule 252—Notice of Trial Given by Plaintiffs for Later Sittings—Subsequent Notice of Trial for Next Sittings—Attempted Countermand—First Notice Accepted by Defendant—No Application to Set aside First Notice of Trial—Entry for Trial at Next Sittings—Defendant not Appearing—Plaintiffs Insisting on Going on—Judgment for Plaintiffs Set aside on Appeal—Costs.

Appeal by the defendant from the judgment of the County Court of the County of Essex, in favour of the plaintiffs, in an action to recover \$126.30, moneys of the school section alleged to have been wrongfully paid to the defendant.

The action came on for trial in October, 1916; but the trial was then postponed, at the instance of the defendant. The County Court Judge endorsed on the record: "Adjourned peremptorily till the June sittings, 1917."

The plaintiffs (by mistake, it was said) served notice of trial for the October sittings of 1917, and entered the action for that sittings; but subsequently served a notice of trial for the June sittings of 1917; and caused the entry for trial to be changed, but did not formally countermand the previous notice of trial; nor did either party make any motion.

* This case and all others so marked to be reported in the Ontario Law Reports.