

The judgment of the Court (OSLER, MACLENNAN, and MOSS, JJ.A.) was delivered by

MOSS, J.A., who, after referring to *Turner v. London and South Western R.W.Co.*, L.R. 17 Eq. 561, *Collinson v. Lister*, 20 Beav. 355, *Troup v. Troup*, 16 W. R. 573, and *Ecroyd v. Coutinard*, [1897] 2 Ch. 554, said:—These cases shew that where at the time of giving judgment the Court is aware that an abatement has occurred since the argument, it may direct the judgment to be dated as of the day when the argument terminated. Rule 629 provides that every judgment and order pronounced by the Court or a Judge shall be dated as of the day on which it is pronounced, and shall take effect from that date, unless otherwise directed. In the present case, if the Court had been aware of the death of the plaintiff when giving judgment, it would have pronounced it and directed it to be entered as of the day of the argument, and it would then have borne that date, and have been so entered. The certificate of this Court having issued in its present form through ignorance of an existing fact, the Court, in the exercise of its inherent power over its records, may now give the proper directions with regard to its form: *Re Swire*, 30 Ch. D. 239; *Sherk v. Evans*, 22 A.R. 242; *Rattray v. Young*, Cass. Sup. Ct. Dig. 692. And the proper course is to amend it by dating it as of the day of the argument, and by inserting in the body thereof a direction that it be entered as of the day of the argument. Direction accordingly. No costs of application or amendment.

J. L. Whiting, Kingston, solicitor for defendants.

ROBERTSON, J.

MAY 12TH, 1902.

TRIAL.

HOLMES v. TOWN OF GODERICH.

*Municipal Corporation—“Ordinary Current Expenditure”—By law to Raise Money for—Right of Corporation to Use Portion of Such Money as Security on Appeal by it to Supreme Court.*

Action to restrain defendants from discounting or in any way dealing with a promissory note for \$2,000, made for the purpose of providing funds for security for appeal to Supreme Court of Canada in a former action of *Holmes v. Town of Goderich*, and for delivery up of note for cancellation. The note in question was signed by the mayor and treasurer of the town and sealed with the seal of the town corporation. The council of the town had previously passed by-laws authorizing the mayor and treasurer to borrow \$22,000 from the Bank of Montreal for current expenditure of the corporation. These by-laws were acted upon, and from time to time money was drawn from the bank as re-