

## Province of Manitoba.

## COURT OF APPEAL.

Full Court.]

LACHAPPELLE v. LEMAY.

[Oct. 8.]

*Amendment—Statute of Limitations—New trial—County Court action—Dispute note filed too late—Costs.*

County Court appeal. The defendant was personally served with the writ of summons on 31st May. He consulted a solicitor who prepared a dispute note setting up the plea of never indebted and the Statute of Limitations and defendant swore to this on 2nd June.

Having learned from the County Court clerk that it had not been filed, defendant himself prepared another dispute note setting up never indebted only and filed same on the 9th June. The solicitor afterwards sent the first dispute note to the clerk, but it only reached the clerk on 16th June. At the trial, the judge struck out the dispute note last filed and refused to allow an amendment of the other dispute note setting up the Statute of Limitations and entered a verdict for plaintiff for the amount claimed.

*Held*, that the dispute note filed on 16th June was irregular and was properly struck out, but that an amendment of the other dispute note raising the Statute of Limitations and a new trial should be allowed under the circumstances, upon the defendant paying all costs to date in the Court below, except those of issuing and serving the writ, and the costs of the appeal within ten days after taxation. Otherwise the appeal to be dismissed with costs and the judgment to stand.

*Phillon*, for plaintiff. *Affleck*, for defendant.

## KING'S BENCH.

Mathers, J.]

LONDON GUARANTEE v. CORNISH.

[May 13.]

*Contract—Counter bond of guaranty—Authority of manager for Canada of English insurance company to bind company by indorsement on bond—Consideration.*

Plaintiffs had given a bond to the municipal commissioner, dated 1st May, 1904, to insure the faithfulness and honesty of