

warranted proceedings against the defendants who did not appear, must be taken to have abandoned his action against them.

The cause of action was a joint one against thirty-one defendants. Twelve of them did not appear, and judgments were signed against these for the full amount claimed. The other nineteen appeared, and as against them the action proceeded to trial, and judgment was given for the plaintiff against these defendants for \$116. An appeal by these nineteen defendants was allowed as to the eleven of them, but dismissed as to eight. After this the plaintiff made an agreement with the twelve defendants against whom judgments had been signed for default, that upon each defendant paying to the plaintiff the sum of \$10, such defendant should be released from all liability in respect of the plaintiff's cause of action against him.

Held, that as the release occurred after judgment against the defendants who had appeared, it could not be pleaded in the action; but, as the action was for a joint liability of the defendants who did not appear and of those who failed in appeal, and the plaintiff never had any claim against these defendants for any sum but \$116, and the plaintiff had been paid by or had agreed to accept from the defendants who failed to appear, a larger sum, \$120, it would be inequitable that the plaintiff should be permitted to enforce his judgment against the defendants who failed in appeal.

Held, also, that the plaintiff, after the judgment in appeal, should have amended the judgment below in accordance with the certificate of the Court of Appeal, and that the costs in the Court of Appeal should have been added to the costs of the action, and only one execution issued thereon.

D. L. McCarthy, for plaintiff. *J. H. Moss*, for defendants.

Moss, J.A.]

[June 17.

IN RE TORONTO RAILWAY CO. AND CITY OF TORONTO.

Appeal—Court of Appeal—Assessment appeal—Notice of—Non-prosecution—Motion to dismiss—Rules 790, 821, 822.

Notice of an appeal to the Court of Appeal, under s. 84 (6) of the Assessment Act, R.S.O., c. 224, against the decision of a board of County Court Judges with respect to a municipal assessment was served by the municipality upon the railway company whose assessment was in question, but the motion was not set down to be heard nor proceeded with in any way. Upon motion by the railway company for an order dismissing the appeal;

Held, that the appeal, by force of s. 84 (6), was lodged in the Court of Appeal in like manner as an appeal from a decision of a County Court in an ordinary action becomes lodged—when the proper proceedings have been taken—in a Divisional Court, in which case Rule 790, or Rules 821 and 822 applied, and a motion to dismiss was unnecessary; or, if not, that