

On the 26th May, 1916, this solicitor wrote to the Master saying that he (the solicitor) could not act, his authority being at an end, and no further administration having been granted.

The Master, notwithstanding, settled the report; and, assuming to proceed under Rule 304, dated it as of the 1st February, 1916, and signed it; it was filed on the 26th May, 1916.

On the 8th June, 1916, the same solicitor served a notice of motion by way of appeal from the report and for an order setting it aside, and directing a reference to another officer, and appointing Clarence L. Swarts administrator ad litem and adding him as a party defendant to represent the estate of Edward R. Swarts.

The Local Master had then resigned his office.

On the 23rd June, 1916, the solicitors for Roos served a notice of motion for judgment for the amount found due to Roos by the report, and dismissing the action brought by Edward R. Swarts.

The two motions were heard in the Weekly Court at Toronto.

L. E. Dancey, for the applicant in the first application.

C. Garrow, for Roos.

SUTHERLAND, J., referred to Holmested's Judicature Act, p. 770, where the effect of Rule 304 is dealt with; and said that it appeared that the Master must have ignored the argument in reply delivered by counsel for Roos, and treated the argument as closed when counsel for Mrs. Swarts delivered his written answer on the 1st February, as that was the date of his report. It might be that a special direction should have been obtained from the Court to date and enter the report as of the 1st February before it was formally signed and filed. See Rules 304, 512, and notes thereunder in Holmested's Judicature Act, pp. 770, 1131; *Turner v. London and South-Western R.W. Co.* (1874), L.R. 17 Eq. 561, 565; *Ecroyd v. Coulthard*, [1897] 2 Ch. 554, 573; *Couture v. Bouchard* (1892), 21 S.C.R. 281.

But, assuming that, in the circumstances, the Master treated the argument as closed on the 1st February for the purpose of enabling him to date his report on that day and before the death of Mrs. Swarts, once he had done that, the learned Judge thought, no further step could be taken before representation of the estates had been obtained and an order to continue proceedings made.

The parties desired to argue the matter on the merits; but the learned Judge found himself unable to make any effective disposition thereof in the absence of proper representatives of the estates concerned. If the parties preferred, the motions might stand until after vacation, and meantime representatives of the