

Armour, C.J., Street, J.]

[June 6.

MCCARRON v. METROPOLITAN LIFE INS. CO.

*Appeal—County Court—Setting down—Time—Extension—R.S.O., c. 55, s. 57—Rule 353.*

Motion by plaintiff to quash the appeal of defendants from a judgment of the County Court of York, upon the ground that it was not set down for argument at the first sittings of a Divisional Court which commenced after the expiration of one month from the judgment complained of, as required by s. 57 of the County Courts Act, R.S.O., c. 55. The County Judge had, upon the ex parte application of the defendants, made an order purporting to extend the time for setting down the appeal, and had refused an application made by the plaintiff to rescind such order.

*Hislop*, for plaintiff. *F. S. Mearns*, for the defendant, relied on the order of the judge, and also asked the Court, if necessary, to extend the time, under Rule 353.

*Held*, that the appeal having been set down too late, the Court had no power to hear it, nor had the Court, or the Judge below, power to extend the time, Rule 353 not in terms or by inference applying so as to enable the Court to extend the time limited by the statute. Order made quashing the appeal with costs.

Armour, C.J., Street, J.]

SMITH v. HAY.

[June 7.

*Appeal—County Court—Certificate of judge—Absence of—Setting down—Invalidity of—Time—R.S.O., c. 55, ss. 55, 57.*

Motion by plaintiff to quash the appeal of defendant from the judgment of the County Court of Stormont, Dundas and Glengarry, on the ground that the appeal was improperly set down, the pleadings and proceedings in the Court below not having been certified by the judge, as required by s. 55 of the County Courts Act, R.S.O., c. 55.

*C. H. Cline*, for plaintiff. *W. A. D. Lees*, for defendant, asked to be allowed to obtain a certificate from the judge and lodge it nunc pro tunc, and to have the setting down thereupon taken as regular.

*Held*, that the appeal could not be considered as set down at all, because the proceedings were not certified, as required by s. 55; and as s. 57 required that the appeal should be set down within a particular time, it would be useless to allow the proceedings to be certified now, as the appeal would have to be set down anew, and the time for setting down had now elapsed. Order made quashing the appeal with costs.