

MACLENNAN, J.A.]

[Jan. 22.

MCMASTER v. RADFORD.

Appeal to Privy Council—R.S.O., c. 41—Security, effect of—Stay of proceedings—Execution—Payment out of court—Jurisdiction of judge of Court of Appeal—Correction of order—Mistake of inadvertence—Settlement of order—Consent order.

A judge may always correct anything in an order which has been inserted by mistake or inadvertence; and an order may be corrected even after the lapse of a year.

And where the plaintiffs were appealing to the Privy Council from a judgment of the Court of Appeal dismissing with costs an appeal from the judgment of the Queen's Bench Division in favour of the defendants with costs, and had given security in \$2,000, as required by s. 2 of R.S.O., c. 41;

Held, that the order of a judge of the Court of Appeal under s. 5, allowing the security, should not have stayed the proceedings in the action, and so much of the order as related to the stay should be rescinded.

Held, also, that the plaintiffs not having given security to stay execution for the costs in the courts below, and the stay being removed, if they now desired to have execution for such costs stayed, they should give security therefor as provided by Rule 804, which is made applicable by s. 4 of the Act.

Held, also, that if an order for payment out of the High Court of money therein, awaiting the result of the litigation, was "execution" within the meaning of s. 3, it was stayed by the allowance of the security, and required no order; if it was not "execution," a judge of the Court of Appeal had no jurisdiction to stay proceedings in the court below; and it was for the High Court to determine whether such an order was "execution," and, if not, whether the money should be paid out.

Held, lastly, that after an order has been pronounced, the initialling of it as drawn up by the solicitor for the party opposed to the party having the carriage of it does not make it a consent order, but merely assents to it as being the understanding of the party of what was ordered by the judge.

George Bell for the plaintiffs.

George Kerr for the defendants.

J. GUSON, J.]

[Jan. 23.

FORD v. MASON.

Solicitor and client—Taxation of costs—Retaining fee—R.S.O., c. 147, s. 51—Appeal—Report—Confirmation—Rules 848, 849, 1226 (D.).

The report or certificate of an officer upon the taxation of the costs of a solicitor as against his client falls under the provision of the Rule 1226 (D.) as to its confirmation, and is, for the purposes of an appeal, a report within the meaning of Rules 848 and 849.

The solicitor, during the progress of the action in respect of which the costs in question were incurred, made a contract in writing with his clients for the payment to him of a retaining fee of \$100, explaining fully to them the effect of