

HUNTER v. PERRIN—FALCONBRIDGE, C.J.K.B.—APRIL 27.

*Judgment—Summary Application—Failure to Serve one Defendant—Counsel Appearing on Motion—Motion to Set aside Judgment Granted on Terms—Execution to Stand as Security.*—Motion by the defendant Perrin for leave to appeal from or to set aside a judgment of a Local Judge, disposing of the action, upon a summary application. The motion was heard in the Weekly Court at Toronto. The learned Chief Justice, in a written judgment, said that *Joss v. Fairgrieve* (1914), 32 O.L.R. 117, was not quite on all fours. In this case counsel did appear for the defendant Perrin on the motion; but that defendant swore that the said counsel was not his solicitor on the record nor in the proceedings in the action; that no notice of motion for judgment was ever served on him (the defendant Perrin); and that the said counsel did not communicate to him (the defendant Perrin) the fact that he (counsel) had been served on the defendant Perrin's behalf with the notice. On consideration of all the circumstances and the voluminous documents and correspondence, the Chief Justice was of opinion that the judgment ought to be set aside and the defendant Perrin let in to defend, on the terms of the execution standing in the meantime as security. Costs in the cause. H. D. Gamble, K.C., for the defendant Perrin. A. W. Langmuir, for the plaintiff.

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UNITED STATES FIDELITY AND GUARANTY CO. v. UNION BANK OF CANADA—CLUTE, J.—APRIL 27.

*Costs—Recovery by Plaintiff against Defendant—Recovery over by Defendant against Third Party.*—Upon counsel speaking to the minutes of the judgment pronounced by CLUTE, J., on the 11th April, 1917 (noted ante 141), the learned Judge ruled that the defendant bank was entitled to recover from the third party the plaintiff company's costs of the action for which the defendant bank was liable, the defendant bank's costs of its claim against the third party, and the defendant bank's costs incurred in its defence of the plaintiff's claim. See *King v. Federal Life Assurance Co.* (1895), 17 P.R. 65; *Hartas v. Scarborough* (1889), 33 Sol. Jour. 661.