

*Held*, not a good special indorsement.

*McVicar v. McLaughlin*, 16 P.R. 450, distinguished.

*Held* also, BURTON, J.A., dissenting, that the special indorsement was bad, and no amendment could be permitted, for the reasons given in the Court below, reported 17 P. R. 92.

*A. R. Lewis*, Q.C., for the appellants.

*F. A. Anglin*, for the respondent.

Practice.]

[May 12.]

SMITH *v.* LOGAN.

*Judgment—Appearance—Default—Tender—Notice—Irregularity—Motion for judgment.*

Until the law stamps have been attached to, or impressed upon, the paper upon which a judgment is drawn up, there is no complete, effective, or valid judgment ; and an appearance tendered after all the work of signing judgment for default has been completed, except the attachment of the stamps, should be received and entered.

Where an appearance, though tendered before, is not entered by the officer until after judgment, it cannot become an effective appearance until after the judgment has been set aside ; and therefore the defendant cannot be said to be in default for not giving notice of appearance on the day on which it is entered, pursuant to Rule 281.

Where the plaintiffs insist upon the regularity of a judgment as a judgment in default of appearance, they are not in a position to take the alternative and inconsistent course of moving for judgment under Rule 739, treating the appearance as regular.

Decision of the Court below, 17 P. R. 121, reversed.

*W. H. Blake*, for the appellant.

*Aylesworth*, Q.C., for the respondents.

Practice.]

[May 12.]

SALES *v.* LAKE ERIE AND DETROIT RIVER R. W. CO.

*Amendment—New defence—Court of Appeal.*

The defendants were sued as common carriers for breach of contract to carry and deliver safely the plaintiffs' goods. It was charged in the alternative that if the defendants had become warehousemen of the goods, their loss and destruction by fire was caused by the defendants' negligence. The defendants denied the contract, and averred that the goods were safely carried to their destination, but that the plaintiffs left them in the defendants' hands at their own risk, and if they were destroyed, it was without any negligence on the defendants' part. The only question raised at the trial was whether the fire by which the goods were destroyed was caused by the negligence of the defendants, and that question was found against them by the trial Judge, in accordance with the evidence. On appeal to the Court of Appeal, the defendants for the first time sought to defend under the special conditions on the bills of lading, by which, it was contended, they were exempted from liability for loss by negligence in the character of bailees or warehousemen, and for loss by fire.