

Prac.]

NOTES OF CANADIAN CASES.

[Co. Ct.]

Mr. Dalton, Q.C.]

[April 27.]

## PRETTIE V. LINDNER ET AL.

*Serving papers—Toronto agents—Disclosing principal.*

Service of papers on a Toronto agent for solicitors in the country is not good unless accompanied with a statement of the name of the solicitors for whom the agents are served.

MacGregor, for plaintiff.

Holman, for defendants.

Mr. Dalton, Q. C.]

[April 29.]

## RE RAINY LAKE LUMBER CO.

*Security for costs—Action on behalf of others—Financial incompetency of plaintiff.*

One S., a contributory of the company, petitioning to set aside a winding-up order, was required to give security for the costs of the company and a creditor opposing the petition, where it appeared that S., although he had a nominal interest as the holder of stock upon which nothing was paid, was not in such a position that anything could be made out of him upon execution, and was petitioning merely in the interest of other persons who lived out of the jurisdiction, and who had indemnified S. as to costs.

J. R. Roaf, for the company.

Worrell, for the petitioning creditor.

J. B. Clarke, for S.

Wilson, C.J.]

[April 29.]

## RE FOLEY V. MORAN.

*Division Court—Jurisdiction—Setting aside judgment—Time—Rule 270, O. J. A.*

The Judge of a Division Court has no jurisdiction to set aside a judgment after the expiry of fourteen days from the trial.

Although the defendant has fourteen days to move against a verdict in the Division Court it is proper for the plaintiff to enter judgment and issue execution before the expiry of the fourteen days.

The practice under Rule 270, O. J. A., is not applicable to Division Courts.

Kappele, for the plaintiff.

A. D. Kean, for the defendant.

## COUNTY COURT CASES.

COUNTY COURT, COUNTY OF ONTARIO.

## FOLEY V. MORAN ET AL.

*Transcript from Division Court—Wrongful return of "nulla bona"—No return against one defendant—Rule 113—New trial.*

[Whitby—Dartnell, J.J.]

This was a motion to set aside a judgment founded upon a transcript to the County Court of the County of Ontario, from the 6th Division Court of the same County.

The suit was originally brought in the Division Court upon a joint note, made by Patrick and James Moran. Patrick was not served, it being now stated that he was out of the country. James filed a dispute note, but, not appearing at the hearing, judgment was entered against him by default, there being no evidence taken. No application was made to strike out the name of the defendant Patrick under Rule 113. Execution was issued against James Moran alone, and the bailiff returned "nulla bona." Thereupon a transcript from the Division to the County Court was filed, and writs against lands and goods of James Moran were placed in the hands of the sheriff, who seized goods to the value of \$400 or \$500.

DARTNELL, J.J., set aside the judgment in the County Court on the ground that the transcript did not show a return against both defendants, one of them not having been served and his name not struck out under Rule 113.

Held also, that an alleged wrongful return of "nulla bona" in the Inferior Court is not of itself ground for setting aside the County Court judgment.

Held also, that where, at the hearing, the defendant not appearing, judgment was entered by the Judge; that there was no adjudication on the merits, and the judgment could be set aside notwithstanding fourteen days had elapsed.

N. F. Paterson, Q.C., for plaintiff.

A. W. Kean, for defendant.