

HODGINS, J.A.

DECEMBER 13TH, 1920.

## TEASDALE v. WELSH.

*Judgment—Entry of Judgment for Default of Defence—Assessment of Damages by Jury—Motion to Set aside Judgment—Defence on Merits—Affidavit—Excuse for Default—Judgment Set aside on Terms—Payment of Costs—Payment of Money into Court—Execution—Stay of Operation.*

Application by the defendant to set aside a judgment entered by the plaintiff upon default of appearance and defence and to be let in to defend.

The motion was heard in the Weekly Court, Toronto.

R. J. Gibson, for the defendant.

W. D. McPherson, K.C., for the plaintiff.

HODGINS, J.A., in a written judgment, said that he thought he had jurisdiction, under Rule 520, to set aside the judgment, which was a default judgment, notwithstanding the fact that the damages had been assessed by a jury. The defence on the merits was sufficiently indicated in the affidavits filed; and, as the Court could not try that issue here, the motion should not be adjourned in order to put in further material. No sufficient excuse was shewn for the neglect by the defendant of the process of the Court leading to judgment. The terms, therefore, on which the judgment would be set aside would be that all the costs thrown away, including the costs of this motion, be paid within 10 days after taxation, and that the sum of \$164, the out-of-pocket expense to which the plaintiff had been put, be paid into Court to await the result of the trial. If there was any question of the defendant's solvency, the learned Judge might be spoken to again, with a view to a direction for payment of a further sum into Court. In any case the execution, if issued, might remain in force in the sheriff's hands, but its operation, except as to lands, must be stayed meantime. In default of payment as directed, the application should be dismissed with costs.