

OSLER, J.A.:—For the purpose of this application, I may properly hold, upon the affidavit filed and the note of the judgment, that the amount involved is upwards of \$1,000. There is a judgment for damages for timber already cut, \$565, followed by a judgment for an injunction restraining defendants from removing the timber remaining on the lots, sworn to be of the value of \$800 or thereabouts, which, if the judgment is wrong, the defendants, by the very terms of the judgment, must lose if it stands. So I think that I have jurisdiction to make the order. I think also that I ought to make it, as a Divisional Court would probably feel itself bound to follow the judgment of a former Divisional Court in *Dolan v. Baker*, 5 O. W. R. 229, 10 O. L. R. 259, upon which, as counsel inform me, the trial Judge acted.

An order, therefore, is granted giving defendant leave to appeal direct to this Court, passing over the Divisional Court.

The order should recite, "and it appearing that the matter in controversy in the appeal exceeds the sum or value of \$1,000 exclusive of costs, and therefore that an appeal would lie from the decision of the Court of Appeal to the Supreme Court of Canada."

Costs of the application to be costs in the cause.

BOYD, C.

DECEMBER 20TH, 1906.

TRIAL.

KNILL v. GRAND TRUNK R. W. CO.

Railway—Injury to Land by Laying Double Tracks—Action for Damages—Remedy by Arbitration under Railway Act—Farm Crossing—Blocking by Heaping up Snow—Actionable Wrong—Limitation of Time for Bringing Action—Blocking of Drains—Assessment of Damages—Costs.

Action to recover damages for injury to plaintiff's farm by the laying of tracks by defendants across it.

BOYD, C.:—Part of the damages claimed in this case arises from the defendants having so raised the new line of rails forming the double track where it crosses plaintiff's