

to 7th April, a discretion was given to a Divisional Court to allow in certain cases a further appeal to the Court of Appeal. Notice of this application was served on the 4th April, 1896, and it was heard on 13th April. Held, that the amendment of sec. 73 of the Judicature Act, 1895, enacted by paragraph 7 of the schedule to the Law Courts Act, 1896, being matter of procedure, applies to pending actions. *Watton v. Watton*, L. R. I. P. and M. 227, followed. 2. That at the time the amending statute was passed the action was still pending, the judgment of the Court, though pronounced, not having been entered: *Holland v. Fox*, 3 E. & B. 977, and *In re Clagett's Estate*, 20 Chy. D. 637, followed. 3. That the discretion of the Court should be exercised in granting leave to appeal, no lapse of time having occurred to prejudice plaintiff's claim to consideration, a question of law being involved as to which there were differences of opinion on the part of the judges before whom the case had come, and the injury sustained by plaintiff being a serious one. Order made giving plaintiff leave to appeal upon his giving security to defendants for costs of the appeal according to the former practice. Costs of appellant to be costs in the appeal. If security not given within a month, motion dismissed with costs. *J. J. MacLaren*, Q.C., for plaintiff. *W. M. Douglas* for defendants the *G. T. R. Co.* *W. Nesbitt* for defendants the *C. P. R. Co.*

*Regina v. Rees*.—Before Meredith, C.J., Rose and MacMahon, JJ.—22nd April.—Conviction for passing toll-gate without paying toll—Quashing same—Bona fide

belief of defendant as to right to pass.—This was a judgment on motion to make absolute a rule nisi to quash conviction of defendant for passing a toll-gate upon a road in the Township of Kingston without paying toll, on the ground that defendant did the act complained of under the bona fide claim that he had a right to do so, and that complainant had not authority to collect tolls on the road in question. The Court are of opinion that the defendant acted bona fide, and therefore magistrate had no jurisdiction. Rule absolute, quashing conviction without costs. *Aylesworth*, Q.C., for motion. No one contra.

*Faulkner v. Clifford*.—Meredith, C.J., Rose and MacMahon, JJ.—The 22nd April.—Master and servant—Injury in course of service—Question of liability where there has been sub-letting.—*McBrayne* (*Hamilton*), for plaintiff, moved to set aside judgment of nonsuit entered by Street, J., as against defendant *Onderdonk*. The action is by the representative of a deceased workman who was employed by defendant *Clifford*. The defendant *Onderdonk* has a contract to build the tunnel where the accident happened with the *Dominion Construction Company*. He contracted with *Clifford* for the excavation work of the tunnel by the latter. During the excavating work the deceased was killed by the caving in of the earth. Counsel rested plaintiff's case on alleged liability of defendant *Onderdonk* at common law, whose duty he contended it was to shore and brace the sides of the excavation during the progress and after the completion of the work. *D. W. Saunders*, for defendant *Onder-*