The defendants complain that their easement was not defined or delimited, and urge an appeal because other actions have been taken and are threatened by other proprietors. They also complain strongly that High Court costs were given against them. They have not obtained leave to appeal on this last ground, so that it cannot be considered. Neither will such a judgment as they now seek determine future actions.

In cases where such an indulgence as is asked for in this case has been granted, the fact that the party desiring to appeal has taken some step within the month has been deemed important. See Ross v. Robertson, 7 O.L.R. 494; McClemont v. Kilgour Manufacturing Co., 3 O.W.N. 1351. In these cases, so far as appears, no hint was given of the intention to appeal before September. I do not find any sufficient reason for depriving the plaintiffs of the rights they have acquired after having had to go through two trials and two appeals.

In my opinion, the motion must be dismissed with costs.

HIGH COURT OF JUSTICE.

DIVISIONAL COURT. SEPTEMBER 30TH, 1912.

*WILSON v. SHAVER.

Sale of Goods—Heifer—Warranty—"Due to Calve."

An appeal by the defendant from the judgment of the County Court of the County of Halton.

The defendant, a breeder of Holstein and other cattle, advertised a sale of some of his stock. In the catalogue furnished to intending purchasers, a certain young cow was described as "due to calve" on a day stated. The plaintiff had, a short time before, visited the defendant's stock, and had been told by the defendant that this cow was "due to calve" on the said day. The plaintiff bought the cow, and it turned out that she was not in calf. He brought this action for damages for breach of warranty, alleging that the representation "due to calve" meant that the cow was in calf.

The County Court Judge gave effect to this contention, and gave judgment for the plaintiff.

*To be reported in the Ontario Law Reports.