

HON. MR. JUSTICE MIDDLETON.

APRIL 24TH, 1914.

SASKATCHEWAN LAND AND HOMESTEAD CO v.  
MOORE.

6 O. W. N. 262.

*Appeal—Supreme Court of Canada—From Supreme Court of Ontario—Reference Ordered by Trial Judge.*

MIDDLETON, J., refused to stay a reference ordered by Kelly, J., 25 O. W. R. 126, affirmed by SUP. CT. ONT., 26 O. W. R. 100.

Motion by defendant for an order staying reference directed by HON. MR. JUSTICE KELLY, 25 O. W. R. 125, affirmed with a variation by judgment of Supreme Court of Ontario, 26 O. W. R. 160, pending an appeal by the defendant to the Supreme Court of Canada. Argued 21st April, 1914, in Weekly Court.

A. J. Russell Snow, K.C., for the defendant.

A. B. Cunningham, for the plaintiff.

HON. MR. JUSTICE MIDDLETON:—The judgment of the learned trial Judge directs payments by defendant of an amount to be ascertained by the Master-in-Ordinary. Most of the items going into the account are determined. The reference is as to minor matters only.

The Supreme Court of Ontario varied this judgment in some respects, and possibly the decision of the Supreme Court of Canada may restore the original judgment or further vary it; but the matters that were argued before the Supreme Court of Ontario are not the sole matters nor indeed the important matters so far as the reference is concerned.

In cases such as *Monro v. Toronto Rw. Co.*, 5 O. L. R. 15, where the question in issue upon the appeal was the plaintiff's right to have partition, it is quite plain that the partition proceedings ought not to be allowed to proceed until this question has been determined. That is widely different from the situation here.

I have not attempted to deal with this matter upon the construction of the rules, for it does not appear to me to be material whether the onus is upon the plaintiff to obtain leave to proceed or upon the defendant to stay the reference. The main question is whether under the circumstances the refer-