the defendants for an order allowing the security for costs given by them upon a proposed appeal to the Privy Council from the same judgment.

E. D. Armour, K.C., for the plaintiffs.
A. W. Langmuir, for the defendants.

SUTHERLAND, J., in a written judgment, said that on the 13th May, about 11 a.m., the defendants' solicitors served a notice of their proposed appeal to the Privy Council upon the plaintiffs' solicitors, at Windsor, Ontario, where the solicitors for all parties resided.

Between 3 and 4 o'clock in the afternoon of the same day, the agents of the plaintiffs' solicitors in Toronto, in pursuance of instructions alleged to have been sent to them a day or two before, served on the agents for the defendants' solicitors there a notice of appeal to the Supreme Court of Canada from so much of the judgment of the Divisional Court as declared the defendant company entitled to a lien and directed a reference.

On the 14th May, the plaintiffs' solicitors filed a bond as security upon their appeal, and on the same day served on the agents of the defendants' solicitors in Toronto a notice of the filing of the bond and a notice of motion, returnable on the 17th May, for an order approving of the security. This motion came on for hearing, and was adjourned till the 25th May.

On the 19th May, the defendants' solicitors served on the plaintiffs' solicitors a notice of motion, returnable on the 25th May, for an order allowing the security filed by them on their proposed appeal to the Privy Council.

The two motions were heard together on the 25th May.

The learned Judge said that both parties were, of course, entitled to appeal.

The defendants urged that, if the plaintiffs were permitted to go to the Supreme Court of Canada, and the defendants were subsequently dissatisfied with the judgment of that Court, they could not appeal to the Privy Council without special leave.

Reference to Hately v. Merchants' Despatch Co. (1884), 4 O.R. 723.

It was suggested that, as the defendants had served the first notice of appeal, they had taken the first step. But, whatever might be the case as between different defendants, the Hately case would not necessarily apply to plaintiffs and defendants both desiring to appeal.

By sec. 75 of the Supreme Court Act, R.S.C. 1906 ch. 139, no appeal shall be allowed to the Supreme Court of Canada until the appellant has given proper security.