

"Attendu que l'intimé, par sa motion pour renvoi de l'appel, allègue que cette cour n'a pas de juridiction pour entendre l'appel, parce qu'en vertu de l'article 209 de la loi de Chemins de fer un appel seulement est accordé d'une sentence arbitrale à une cour Supérieure;

"Attendu que l'intimé allègue que cet appel a déjà été entendu par la cour Supérieure, présidée par M. le juge Martineau, et qu'un deuxième appel à cette cour n'est pas accordé par le statut;

"Considérant que le moyen plus haut invoqué est bien fondé;

"Accorde la motion pour renvoi d'appel et rejette l'appel avec dépens."

*Cross, J.* — "It appears to me that there are two questions to be decided, namely:

"First—Is the cause an appeal, under section 209 of the Railway Act, from an arbitrators' award simply, or is it in effect an action to set aside the award as well?

"Second—If it is an appeal from an award simply, is the judgment of the Superior Court rendered upon it, a judgment from which there can be an appeal to this court?

"Upon the first question it appears that the present respondent, after the making of the award, addressed the Superior Court by petition for leave to appeal and obtained such leave. While it may be said that this petition for leave was quite unnecessary as asking for something to which the act already in express terms declared the party entitled, it serves at least to characterize the kind of recourse sought to be exercised. Besides, I understand that, in appeals to His Majesty, there is always a formal "petition of appeal," so that there would seem, in the nature of the thing, to be a reason for initiating the recourse by a formal petition though this is nowhere expressly provided for.