

to turn his horse which became frightened and threw him out causing injuries for which he brought an action against the railway company.

Held, affirming the judgment of the Court of Appeal, 25 Ont. App. R. 437, 34 C.L.J. 783, that the evidence showed that no bell was rung or whistle blown or other warning given as the engine approached the crossing and the want of such warning was the proximate cause of the injury to H.

Held, further, that sec. 256 of the Railway Act, requiring warning to be given at least 80 rods from a crossing, applies in case of shunting or other temporary movements as well as in the general traffic. Appeal dismissed with costs.

Chrysler, Q.C., and *Betiune* for appellants. *Wallace Nesbitt* and *Macfarlane* for respondent.

Province of Ontario.

COURT OF APPEAL.

Moss, J. A., in Chambers.] *RICE v. RICE*. [July 26.

Appeal—Court of Appeal—Stay of proceedings—Removal of—Security for money directed to be paid into Court.—Special circumstances.

Motion by the plaintiff for an order that execution be not stayed unless and until the defendants should have given security for \$1,700 directed by the judge of a Divisional Court, now in appeal to this Court, to be paid into Court to the credit of this action. The action was brought to recover the amount of a promissory note made by the defendant, T. G. Rice, in favor of the plaintiff, and to set aside a transfer of a farm by that defendant to the other defendant, his wife, and a transfer of the sum of \$1,700 by him to her. The action was dismissed at the trial, but the plaintiff succeeded on appeal to a Divisional Court, and a decree was made declaring the conveyance of the farm void against creditors, and directing payment of \$1,700 into Court. The defendants launched an appeal to the Court of Appeal and gave security for the costs of such appeal, whereupon there was a stay, which the plaintiff now sought to have removed.

Held, that there were not in this case any special circumstances distinguishing it from the case of *Wintermute v. Brotherhood of Railway Trainmen*, or taking it out of the general rule followed in that and other cases. No such case of pressing necessity for removing the stay of execution pending the appeal as is called for in order to overcome the governing principle had been made out.

Motion refused with costs to the defendants in any event of the appeal.

A. W. Mickle, for the plaintiff. *Heighington*, for the defendants.