

Ont. Rep.] CARROLL V. STRATFORD—ELORA AGRICULTURAL INS. CO. V. POTTER. [C. L. Cham.

from the Irish and Scotch courts generally, his Lordship remarked that "Irish and Scotch decisions, although they ought to be treated with deference, are not binding upon us in the same way as decisions of the courts in this country." The authority of the Irish case quoted had already been questioned by the Court of Exchequer in *Gough v. Everard*, 8 L. T. Rep. N. S., 363, where Chief Baron Pollock said in effect that the decision could be supported only by a liberal interpretation of the statute, and that such an interpretation would be quite inappropriate when the parties were acting honestly. We do not think that the reasoning of the judgments in *Brantom v. Griffiths* is altogether satisfactory, although we think the equity of the case has been met. The weak point in the reasoning of the judgment of Mr. Justice Brett appears to be that there is no sequence between his conclusion that growing crops are not chattels for all purposes, and his instances of cases where growing crops are treated as chattels. Perhaps, too, it is unfortunate that nothing, so far at least as can be gathered from the report of the case, was said of the numerous cases upon the construction of Statute of Frauds. As we have already said, we think the result of the case does no wrong; but we should have been better pleased had the reasoning been more strictly logical.—*Law Times*.

CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

CARROLL V. STRATFORD.

Practice Court—Appeal from.

Held, that an appeal lies from a judgment of the Practice Court to the Court of Appeal on a rule to set aside an award.

[October 24, 1876.—MR. DALTON.]

A rule to set aside an award in favour of the defendants was discharged by the learned judge, sitting in Practice Court. The defendants' costs were then taxed, and judgment entered, when the plaintiff took out a summons for

stay of proceedings, on filing the proper bond, pending an appeal to the Court of Appeal.

H. J. Scott shewed cause, and cited *Brown v. Overholt*, 14 Q. B. 64, to shew that no appeal lies in such a case. It is a matter of discretion with the Practice Court whether it will interfere with an award or not, and its judgment in such a case is therefore not appealable. Even though the plaintiff should establish his right to an appeal, it does not follow that he has a right to have proceedings stayed. In such cases a stay of proceedings is a favor, the granting of which is wholly in the discretion of the judge, and it should not be granted unless special circumstances are shewn entitling the applicant to this relief: *McCleary v. Smith*, 5 U. C. L. J. 212.

Meek, contra. Under the Act as to the Court of Error and Appeal, all decrees of whatever kind of the Court of Chancery are appealable, and by sec. 41 of the A. J. Act of 1873, Common Law has in this respect been put on the same footing with Chancery, so that the case of *Brown v. Overholt* is practically overruled. The amount of costs taxed against the plaintiff is very large, and there is danger of his not being able to recover it from the defendants in case the judgment of the Court of Appeal should be in his favour.

MR. DALTON thought that the intention of the recent legislation on the subject of appeals was to allow an appeal from all decisions of the Superior Courts, and the spirit of modern legislation certainly tends in that direction. He therefore made the summons absolute.

Order accordingly.

ELORA AGRICULTURAL INSURANCE COMPANY
V. POTTER.

Held that where a reference is directed to "the Judge" of a certain county, the senior Judge is the person referred to.

[Oct. 25, 1876.—MORRISON, J.]

This case was referred to the arbitration of "the Judge of the County of Wellington." An appointment under this reference having been given by the Junior Judge of the County, a summons was taken out to set it aside.

W. S. Smith shewed cause.

Osler, contra.

MORRISON, J., made the summons absolute, holding that the word "judge" in the order of reference, must be restricted in its application to the senior Judge.