

MAY 30TH, 1902.

C. A.

CENTAUR CYCLE CO. v. HILL.

Appeal—Order of Judge of Court of Appeal in Chambers—Appeal to Court—Execution—Leave to Issue Notwithstanding Appeal—Discretion of Judge—Special Circumstances—“Court Appealed to or Judge thereof”—Rule 827 (1).

Appeal by defendants from order of MACLENNAN, J.A., ante p. 377.

The same counsel appeared.

The judgment of the Court (OSLER, MACLENNAN, MOSS, GARROW, J.J.A.) was delivered by

OSLER, J.A.—First, as to the competency of the appeal. The order of my learned brother is one made in relation to a pending appeal—a matter in Court—and in that respect is not like an order made in a matter external to its ordinary jurisdiction in pursuance of some authority conferred by a statute upon the Court or a Judge of the Court *pro hac vice*, e.g., under the Dominion Railway Act: *Re Toronto, Hamilton, and Buffalo R. W. Co. and Hendrie*, 17 P. R. 199. In the latter case it may well be that, when a Judge makes an order, he does so as *persona designata*—as one of the two jurisdictions upon whom an alternative authority is conferred to do the act. Here the order is made in the cause to remove the stay of execution under the authority of the Rule of Court, 827 (1), “unless otherwise ordered by the Court appealed to, or a Judge thereof,” &c. I see no tangible distinction between these words as here used, and the words “the Court or a Judge,” and the meaning of the latter, when used in a statute or rule of Court in relation to jurisdiction over proceedings in a cause or matter, is well recognized. “The Court” means a Judge or Judges in open Court; a “Judge” means a Judge sitting in Chambers: *In re B.*, [1892] 1 Ch. 459, 463; or, as Brett, J., said in *Baker v. Vokes*, 2 Q. B. D. 171, 175, using the old terminology, “a Court or Judge” means the Court sitting in banc or a Judge at Chambers representing the Court in banc. See also per the same Judge in *Dallow v. Garrold*, 54 L. J. Q. B. 78: “The statute gives the power to the Court or a Judge, and it is well recognized that that phrase always includes a Judge at Chambers, unless there is some express enactment limiting the meaning of the phrase.”

And see *Re Housing of the Working Classes Act, 1890*, Ex p. Slieman, [1892] 1 Q. B. 394. From the order of a