

MacLennan, J. A.,]

[July 13.

WINTERMUTE v. BROTHERHOOD OF RAILWAY TRAINMEN.

*Appeal—Court of Appeal—Stay of proceedings—Removal of—Security for costs—Rules 826, 827.*

Upon an appeal to the Court of Appeal, upon security for costs being allowed, in general the proceedings ought to be stayed ; but if it is made to appear in any case that the respondent may suffer injustice by his execution being stayed, then the stay may be removed, upon terms which may be just to both parties ; Rules 826, 827.

The plaintiff recovered a money judgment against the defendants, a benevolent society incorporated in a foreign country, but having members in Ontario who paid dues and assessments which were transmitted abroad. The defendants launched an appeal from the judgment to the Court of Appeal, and gave security for the costs thereof. Upon an application by the plaintiff to remove the stay of proceedings upon the judgment imposed by virtue of the security being given, the defendant's secretary-treasurer, by his affidavit, admitted that they had no assets in Ontario, but said that they were advised that they had good grounds for the appeal, but, if it should fail, that the plaintiff's claim would be paid ; and this was not contradicted.

*Held*, that the dues and assessments of members in Ontario being voluntary payments, could not be reached by a receiver or by attachment ; and there was no prejudice or injustice that the plaintiff was likely to suffer by the stay, as he already had security for costs, and the delay would be compensated by interest on the judgment, if the appeal should be unsuccessful.

*Boyd v. Dominion Cold Storage Co.*, 17 P.R. 545, distinguished.

*Held*, also, that the costs of the unsuccessful motion should be paid by the applicant ; there was no rule that costs of such a motion should go to the successful party upon the appeal.

*F. E. Hodgins*, for plaintiff. *J. H. Moss*, for defendants.

Meredith, C.J.]

[July 14th.

HILLS v. UNION LOAN AND SAVINGS CO.

*Discovery—Inspection of Buildings—Occupation of Tenants—Rule 571.*

Rule 571, though not so limited in express terms, must be construed so as to be confined to cases in which that of which inspection is sought is in the possession, custody, or control of the party against whom the order is desired.

The plaintiff sued for damages for breaches of the covenants to repair and to leave the premises in good repair, contained in a lease from her to the defendants' assignor, for which she claimed that the defendants were answerable. The defendants were mortgagees of the lease, and had not themselves been in the actual occupation of the premises. At the time of