

SUTHERLAND, J., IN CHAMBERS.

JUNE 14TH, 1916.

DAVISON v. FORBES.

Reference—Stay of, pending Appeal to Supreme Court of Canada from Judgment Directing Reference—“Final Judgment”—3 & 4 Geo. V. ch. 51, sec. 1 (D.), Amending Supreme Court Act sec. 2 (e)—Security—Supreme Court Act, R.S.C. 1906 ch. 139, sec. 76 (d)—Discretion.

Motion by the defendant Forbes by way of appeal from a certificate of the Master in Ordinary, and for an order requiring him to adjourn the reference to him under the judgment of KELLY, J., 9 O.W.N. 22, affirmed by a Divisional Court of the Appellate Division, 9 O.W.N. 319, until after an appeal by the applicant to the Supreme Court of Canada had been disposed of, or for an order staying the reference upon the applicant giving security.

M. L. Gordon, for the applicant.

W. N. Tilley, K.C., for the plaintiff.

SUTHERLAND, J., after setting out the facts in a written opinion, said that it was contended by the defendant Forbes that the amendment to the Supreme Court Act found in 3 & 4 Geo. V. ch. 51, sec. 1, as to the meaning of “final judgment” had application; but the learned Judge was unable to see in what way it applied to or affected this motion.

It was argued that there was no final judgment for the payment of money in the judgment of the Court herein, and *Crowe v. Graham* (1910), 22 O.L.R. 145, was referred to. There was, however, in this judgment, the specific direction that the defendants should pay to the plaintiff the sum the Master should find him entitled to.

It was contended by the plaintiff and appeared plain from the reasons for judgment of the trial Judge, and indeed it was not substantially denied by counsel for the applicant, that the judgment was for a comparatively large sum in favour of the plaintiff, and that the matters referred to the Master, which might go in reduction, had reference to comparatively small amounts, and that the reference would be a short one.

To give effect to the motion to adjourn the reference would in reality enable the applicant to obtain a stay of execution without giving the security required by sec. 76 of the Supreme Court Act, sub-sec. (d). This was not a case in which further directions