

attendance. His case was placed on the list, the notice of motion did him no harm. The learned trial Judge granted him leave to proceed, upon payment of the costs. Ordinarily the Judge would have dismissed the action with costs; instead of that he gave the plaintiff an opportunity still to pursue his cause of action, but only upon paying the costs which had been occasioned to the defendants.

This appeal will have to be dismissed with costs.

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SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

NOVEMBER 11TH, 1913.

RE KETCHESON AND CANADIAN NORTHERN  
Rw. CO.

5 O. W. N. 271.

*Appeal—To Supreme Court of Canada—Judgment of Appellate Division on Appeal from Award of Arbitrators under Railway Act (Dom.)—Right of Appeal—Railway Act, s. 208—Supreme Court Act, s. 36—Undertaking to have Supreme Court Decide Jurisdiction under Rule 1—Approval of Security.*

HODGINS, J.A., approved of the security tendered by the proposed appellants in a proposed appeal to the Supreme Court of Canada from the Appellate Division of the Supreme Court of Ontario, which had disposed of an appeal from an award made by arbitrators under the Railway Act (Dom.), holding that it was possible that such an appeal lay and that therefore the Supreme Court of Canada should decide the question.

Motion to approve of security on proposed appeal to Supreme Court of Canada, from a judgment of the First Appellate Division Supreme Court of Ontario (25 O. W. R. 20).

F. Aylesworth, for Canadian Northern Rw. Co.

E. D. Armour, K.C., for Ketcheson.

HON. MR. JUSTICE HODGINS:—If I were clear that no appeal lay, it would be my duty to refuse to approve of the security: see *Townsend v. Northern Crown Bank*, 24 O. W. R. 516; 4 O. W. N. 1245. Appeals in cases of awards under the Railway Act, originating in other provinces have reached the Supreme Court, but I am unable to find any instance from this province. But in the present state of