From Maclennan, J.A.] CENTAUR CYCLE CO. *v.* HILL. [Feb. 29.

Court of appeal—Security—Money paid into Court—Payment out after purpose answered—Further appeal.

A party who has paid money into Court as security upon his appeal to the Court of Appeal is entitled, after his appeal has been allowed with costs, to take the money out, although his opponent is prosecuting a further appeal to the Supreme Court of Canada or the Judicial Committee of the Privy Council. An appeal to the Court of Appeal is a step in the cause, but a further appeal is not so.

Order of MACLENNAN, J.A., affirmed.

C. W. Kerr, for defendant Hill. *Middleton*, for plaintiffs.

From Boyd, C.] HIGHWAY ADVERTISING CO. *v.* ELLIS. [April 18.

Company—Promoter—Fiduciary capacity—Profit—Action to recover.

The defendant Hotchkiss was the owner of a patent for certain improvements for advertising boards, and in April, 1898, induced the other defendants to take an interest in it with him with a view to introducing the patented article into public use, and it was agreed between them that each should have a joint interest in the patent and jointly endeavor to make it a successful undertaking. They then decided to form a company. Hotchkiss had not at this time actually assigned to the other defendants any interest in the patent, but he did this in June, 1898, pending the issue of the letters of incorporation, the expense of which the other defendants at the same time undertook to bear: and by agreement of even date the defendants agreed with one Maughan, to sell to the company when incorporated the patent and all improvements, in consideration of the company paying them $5,000 and crediting $45,000 in respect to 500 shares subscribed or to be subscribed by them. In August, 1898, after incorporation of the company an instrument was executed by the defendants and the company adopted and confirmed the agreement above mentioned, and the patent was assigned to the plaintiffs. The plaintiffs now sought to recover the $5,000 on the ground that the defendants when they made the agreement of June, 1898, to transfer to the plaintiffs, had become holders of the patent for the benefit of the plaintiffs, and were disentitled to any profit on the transaction.

Held, that the action must fail inasmuch as the defendants did not become promoters until after they had become entitled by agreement to interests in the patent, which were afterwards and before incorporation actually transferred to them.

Semble, that even if the defendants had acquired their interests without consideration that would be of no consequence to the plaintiffs unless acquired for them.

Aylesworth, K. C., and *J. M. McEvoy*, for plaintiffs, appellants. *Shepley*, K. C., and *W. H. Irving*, for defendant Ellis, *Heighington*, for defendant McCutcheon.