

by the plaintiff that the defendants have no defence to the action, and that their present appeal is merely for the purpose of delay, added to the affidavit of the plaintiff's solicitor that the plaintiff has expressed considerable anxiety as to the financial ability of the defendants to pay the claim, and the solicitor's own belief that the defendants' appeal is to delay the plaintiff and obtain some time to raise the money. There is no suggestion that by staying the execution the plaintiff will probably lose his claim; and no facts are set out from which such an inference can be drawn. On the present material, I do not think that the motion can succeed to the full extent; but I reserve leave to the plaintiff to move again in case facts come to his notice indicating danger to his claim.

As to the costs to which the plaintiff is entitled under the judgment, I understand that the execution does not cover them; so that there will be a sum against which to draw for costs which may be awarded to the defendants by an appellate Court.

The order will be that the stay effected by the setting down of the appeal be removed, to the amount of \$524.25, unless the defendants pay that sum to the plaintiff's solicitor upon the judgment on or before 26th December, 1907.

Costs of this motion, if the pending appeal be proceeded with, to the plaintiff in the appeal; if the appeal be not proceeded with, to the plaintiff in any event. The principle upon which I proceed is that, as the plaintiff has succeeded in part, he should not pay costs in any event; and if the appeal is simply for time, or if it turn out to be ineffectual, the plaintiff should be paid his costs.

TEETZEL, J.

DECEMBER 21ST, 1907.

WEEKLY COURT.

RE CAFFERTY.

Will — Construction—Devise—Determination of Nature of Estate—Summary Application—Rule 938—Scope of.

Motion by Cecilia Cafferty, a daughter and devisee under the will of Michael Cafferty, who died in 1873, for an order under Rule 938 declaring the true construction of the will.

W. M. Douglas, K.C., for the applicant.

J. E. Jones, for the respondents.