

Russell for a part of his farm taken for the company's railway and for loss and damage by severance, injurious affection, etc.

The appeal came on for hearing before MEREDITH, C.J.C.P., LATCHFORD and MIDDLETON, JJ., and FERGUSON, J.A.

R. S. Robertson, for William Russell, the respondent, objected that no appeal lay.

R. B. Henderson, for the railway company, was heard in answer to the objection.

MEREDITH, C.J.C.P., in a written judgment, said that the respondent's objection was based upon the judgment of the Court of Appeal in *Birely v. Toronto Hamilton and Buffalo R.W. Co.* (1898), 25 A.R. 88; but that judgment was quite inapplicable to this case. Here the arbitration was under the Ontario Railway Act, R.S.O. 1914 ch. 185; and that Act gives a right to any party to the arbitration to "appeal therefrom upon any question of law or fact to the Supreme Court:" sec. 90 (15); and the words "Supreme Court" mean the "Supreme Court of Ontario:" Interpretation Act, R.S.O. 1914 ch. 1, sec. 29 (*dd*). By sub-sec. 16 of sec. 90 of the Railway Act, it is enacted that "upon such appeal"—that is, an appeal under sub-sec. 15—"the practice and proceedings shall be as nearly as may be the same as upon an appeal from an award under the Arbitration Act"—that is, under sec. 17 of the Arbitration Act, R.S.O. 1914 ch. 65, which provides that "an appeal shall lie to a Judge of the Supreme Court and to a Divisional Court in the same manner, and subject to the same restrictions, as in the case of a reference under an order of the Court."

The learned Chief Justice was therefore of opinion that the railway company's "proceedings" upon appeal in this case had been quite regular, and that the objection must be overruled, and the appeal heard on its merits. This opinion was quite in accord with an unreported ruling of the First Divisional Court—a ruling which necessitated an appeal to a single Judge of the High Court Division first and then an appeal to a Divisional Court of the Appellate Division.

The costs of this part of the appeal should be costs to the railway company, the appellant, in the appeal in any event.

The other members of the Court agreed, written reasons being given by LATCHFORD and MIDDLETON, JJ.

*Objection overruled.*