

If the plaintiff really desired to rely upon the statement made by the conductor, the conductor could be called; and, if he did not admit having made the statement, evidence might be given attacking his veracity in that respect.

BRITTON and LATCHFORD, JJ., concurred.

RIDDELL, J., dissented, for reasons stated in writing.

New trial ordered (RIDDELL, J., dissenting).

FIRST DIVISIONAL COURT.

FEBRUARY 10TH, 1919.

*RICHARDSON v. McCAFFREY.

Appeal—Order of Judge in Chambers Refusing to Stay Reference pending Appeal to Supreme Court of Canada—Supreme Court Act, R.S.C. 1906 ch. 139, sec. 76—Effect of—Interlocutory Order—Judicature Act, sec. 25—Leave to Appeal not Given—Rule 507—Appeal Dismissed as Incompetent.

Appeal by the defendant from an order of MEREDITH, C.J.C.P., in Chambers, reversing an order of the Master in Chambers whereby the proceedings upon a reference were stayed pending an appeal by the defendant to the Supreme Court of Canada from the order of the Appellate Division affirming the judgment by which the reference was directed.

The action was for foreclosure, and the judgment was the usual foreclosure judgment.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

H. J. Scott, K.C., for the appellant.

A. C. Heighington, for the plaintiffs, respondents.

MEREDITH, C.J.O., reading the judgment of the Court, said that the contention of the appellant was that the effect of sec. 76 of the Supreme Court Act, R.S.C. 1906 ch. 139, was automatically to stay proceedings in the action after security for costs had been allowed; and, if that was not the case, the Court, in the exercise of its discretion, ought to stay the proceedings until the appeal to the Supreme Court of Canada had been heard and determined.

The respondents objected that the appeal was not competent