

The case involves a large amount of money, and is otherwise important because of the question of law raised. The construction of secs. 3 and 4 of the Act cited is asked. Section 4, if it stood alone, is perfectly plain and unambiguous. The words are, "Upon the perfecting of such security" (that is, the security required by sec. 3, which in this case has been given), "unless otherwise ordered, execution shall be stayed in the original cause."

Section 5 creates the difficulty, if difficulty there be: "Subject to rules to be made by the Judges of the Supreme Court, the practice applicable to staying execution upon appeals to the Court of Appeal shall apply in an appeal to His Majesty in His Privy Council."

"The practice applicable" is subject to rules. What rules? The rules are not, in express terms, referred to, so that they can override or be of equal force with the statute. The rules, however, may be applicable, because the practice "shall apply," and the practice apparently is under Con. Rule 832. "Unless otherwise ordered," as found in sec. 4, can hardly apply to what is ordered by a rule, but may apply to some order made in the cause in Court or by a Judge. It may be argued that mere "practice" in obtaining an order authorised by a rule cannot control the express terms of a statute.

In this case, sec. 4 is not interfered with by anything "otherwise ordered," unless these words mean that rules are to govern where rules have been made. I am not attempting to give a considered opinion upon the construction of this statute, as would be necessary were the case before me as or in an appellate Court. I have a doubt, and so can not satisfy myself in withholding the leave asked.

Leave to appeal granted. Costs in the cause.

DIVISIONAL COURT.

FEBRUARY 6TH, 1912.

\*HELLER v. GRAND TRUNK R.W. CO.

*Railway—Injury to Passenger—Exemption of Company from Liability as to Passenger—"Traffic"—Special Contract—Approval by Board of Railway Commissioners—Shipper of Animal—Privilege of Travelling at Reduced Rate—Railway Act, secs. 2(31), 284, 340—"Impairing."*

Appeal by the plaintiff from the judgment of MULOCK, C.J. Ex.D., ante 275, 25 O.L.R. 117.

\*To be reported in the Ontario Law Reports.