

The appeal should be allowed and the action dismissed.

The plaintiff's costs as between party and party up to and inclusive of the trial-judgment, and the defendants' costs to the same point as between solicitor and client, should be paid out of the estate; and the plaintiff should pay the defendants' costs of the appeal.

SECOND DIVISIONAL COURT.

JUNE 27TH, 1916.

DAVISON v. FORBES.

Reference—Stay of, pending Appeal to Supreme Court of Canada from Judgment Directing Reference—Security—Consent.

Appeal by the defendant Forbes from the order of SUTHERLAND, J., in Chambers, ante 358.

The appeal was heard by MEREDITH, C.J.C.P., HODGINS, J.A., RIDDELL and MASTEN, JJ.

J. W. Bain, K.C., and M. L. Gordon, for the appellant.

Harcourt Ferguson, for the plaintiff, respondent.

P. E. F. Smily, for the defendant Haines.

THE COURT, on consent of the parties, ordered that, upon the appellant giving security in the sum of \$25,000, all proceedings should be stayed pending the appeal to the Supreme Court of Canada.

SECOND DIVISIONAL COURT.

JUNE 28TH, 1916.

*RE ARNOLD v. COOK.

Division Courts—Action Dismissed in Absence of Parties—Case Improperly on List by Mistake of Clerk—Judgment of Dismissal Treated as Nullity—Division Courts Act, R.S.O. 1914 ch. 63, secs. 79 (2), 123—Motion for Prohibition—Refusal—Appeal—Costs.

Appeal by the defendants from the order of KELLY, J., in Chambers, ante 113.