

and validity of the proceedings, the question raised was decidedly of consequence.

The action was brought to recover wages and moneys claimed to have been paid for the defendants at their request. On the 5th January, 1914, counsel for all parties consenting, an order was made referring the action "for trial to George Kappeler, Esquire, Official Referee." The order also provided: "And this Court doth reserve further directions and the question of costs until after the said Referee shall have made his report."

After hearing part of the evidence, Mr. Kappeler died; and thereupon, on the 21st October, 1914, with the like consent, an order was made, in similar terms, referring the action to Mr. Cameron, and directing that the evidence already taken be used on the trial. These orders were made under sec. 65 of the Judicature Act.

Mr. Cameron disposed of the questions to him referred as follows: "There will be judgment against the defendant Gillies for \$7,000, with interest from the 17th of April, 1908. The plaintiff is also entitled to costs as against the defendant Gillies. The action will be dismissed against the defendant company without costs." Although in form a judgment rather than a report, the learned Judge regarded it as in effect a report.

On the 25th June, 1915, Middleton, J., set aside the report, and directed judgment to be entered in another way: *Brown v. Coleman Development Co.* (1915), 34 O.L.R. 210. On the 29th December, 1915, a Divisional Court of the Appellate Division set aside the order of Middleton, J., restored the report and finding of Mr. Cameron, the Official Referee, and gave the plaintiff the costs of both appeals: *Brown v. Coleman Development Co.* (1915), 35 O.L.R. 219. This judgment was affirmed upon appeal to the Supreme Court of Canada, with costs: *Gillies v. Brown* (1916), 53 Can. S.C.R. 557.

Entry of judgment for the plaintiff was not in terms directed by either the Divisional Court or the Supreme Court of Canada.

The learned Judge was of opinion that the plaintiff's motion for judgment was now proper and necessary.

Reference to Holmsted's Ontario Judicature Act, p. 228.

Section 67 of the Judicature Act provides that "the Referee shall make his findings and embody his conclusions in the form of a report, and his report shall be subject to all the incidents of a report of a Master on a reference as regards filing, confirmation, appealing therefrom, motions thereupon and otherwise, including appeals to a Divisional Court."

"An Official Referee has no power to order judgment to be entered. The report must be brought before the Court on motion for judgment, when the Court will give judgment as formerly in