vessel and one-half of the proceeds, and your costs out of the other half. The water is going out of the canal, and it is likely that unless something is done the vessel will be further injured. As your clients have a larger interest in it than ours, we think you should interest yourselves in preventing any injury to the schooner.

"We shall proceed to have the judgment issued at once in order that the vessel may be offered for sale as soon as possible, as otherwise she will have to be as she is, all season, and will be still further deteriorated." The defendant's solicitor swore that when he wrote this letter he thought that the plaintiffs were not sincerely intending to prosecute their appeal, nothing further having been done in the appeal, and the notice not having been served until the time for doing so had almost expired.

On the 14th June, 1886, the plaintiffs entered judgment, and afterwards took it into the Master's office where an advertisement was settled, and the vessel was sold for $700, which was paid into court. At the same time the plaintiffs carried on their appeal proceedings, and on the 27th August, 1886, the defendants served notice of motion to quash the appeal.

Held, that a party may appeal from a judgment in his favour if he thinks it should have been a judgment of a different character, but he must be taken to have abandoned his appeal, if he proceeds under the judgment. By the appeal the plaintiffs sought to obtain a judgment *in personam*, while the judgment appealed against, gave them a remedy *in rem*; having taken this remedy they could not be heard to say that it was not the one to which they were entitled.

If it had appeared that the letter of the 20th April, 1886, was written for the purpose of leading the opposite party into a false position, or to induce him inadvertently to take a course destructive of his appeal, the plaintiffs might have been relieved from the consequence of their acts, but it did not so appear, and it could not be said that the sale was one made by consent. The appeal was therefore quashed.

BANK OF MINNESOTA v. PAGE.

Practice—Appeal from District Court—Order for judgment under Rule 80—Order for security for costs, effect of non-compliance with.

There is a right of appeal to the Court of Appeal from the judgments of the District Courts of the Provisional Judicial Districts, R. S. O. c. 90, s. 34, imports that when by the law in force with regard to County Courts an appeal lies from those courts to the Court of Appeal, it lies also from the District Courts. An order for leave to sign judgment under Rule 80 is in its nature final and not merely interlocutory, and therefore such an order, if made in a County Court, would be appealable by virtue of 45 Vict. c. 6, s. 4, and is also appealable when made in a District Court.

47 Vict. c. 14, s. 4, assumes the existence of the right of appeal from District Courts; and the optional right to move against the verdict in the High Court, provided by sub-sec. 5, is not the appeal referred to in the first part of the section, in the words "subject to appeal."

On the 5th November, 1885, an order was made requiring the plaintiff to give security for costs within four weeks, and in default, that the action should be dismissed with costs, unless the court or judge, on special application for that purpose, should otherwise order. Within the four weeks the plaintiff took out a summons, with a stay of proceedings, for "further time to perfect security for costs," and on the 10th December, 1885, an order was made extending the time till the 23rd December, 1885, but not providing that the dismissal of the action should be the result of non-compliance with its terms. Security was not furnished within the time so extended, and it was contended that after that the action was dead, and there was no jurisdiction to make an order in it.

Held, that the action never became dismissed under either of those orders, and that a motion to dismiss was regular and necessary.

Leave to sign judgment under Rule 80 should not be granted, save where the case is clear and free from doubt; and under the circumstances of this case an order for such leave made by the judge of the District Court of Thunder Bay was reversed.