Motion by McAllister, the claimant, for an order for the enforcement of an award made on the 2nd October, 1916, as varied by an order of the First Divisional Court of the Appellate Division of the 4th July, 1917: Re McAllister and Toronto and Suburban R. W. Co. (1917), 12 O.W.N. 359, 40 O.L.R. 252; and directing the payment out of Court to the claimant of the money paid in, to the credit of this matter.

J. W. Pickup, for the claimant.

R. B. Henderson, for the railway company, contestant.

SUTHERLAND, J., in a written judgment, said that the contestant had paid $5,000 into Court, upon taking possession of the property expropriated. The original award was for $4,573.70, which was increased to $9,437.70 by the order of the Divisional Court. Of the sum paid into Court, $4,000 had, by arrangement, been paid out to the claimant. It was the remaining $1,000 and accrued interest that the claimant now sought to have paid out. But the contestant was appealing to the Privy Council, and had given the usual security in $2,000 to prosecute effectually the appeal and to pay such costs and damages as might be awarded in case the order appealed from should be affirmed.

It was contended by the contestant that the giving of the security operated as a stay, under sec. 4 of the Privy Council Appeals Act, R.S.O. 1914 ch. 54—the award not being a judgment or order for the payment of money so as to bring the case within the exception contained in sec. 4 (*d*), and not coming within the other exceptions.

The learned Judge thought that this contention was well-founded.

Motion dismissed with costs.

SUTHERLAND, J. JANUARY 12TH, 1918.

BRYMER & WEBSTER v. WELLINGTON MUTUAL FIRE INSURANCE CO.

Insurance (Fire)—Stock of Jewellery—"Precious Stones"—Reasonable Care—Evidence of Value—Exaggerated Claim—Exaggeration not Amounting to Fraud—"Implements"—Models—Assessment of Loss—Costs—Test Action.

Action upon a fire insurance policy covering the stock and machinery of the plaintiffs, who were manufacturing jewellers.