merits and as to whether the defendants have been prejudiced in their defence.

Costs in the cause.

MIDDLETON, J., agreed, for reasons stated in writing.

LATCHFORD, J., also concurred.

DIVISIONAL COURT. OCTOBER 7TH, 1911.

*GIBSON v. HAWES.

County Court Appeal—Interlocutory Order—Right of Appeal from—County Courts Act, 10 *Edw. VII. ch.* 30, *sec.* 40.

Motion by the defendants to quash the plaintiff's appeal from an order of one of the Junior Judges of the County Court of the County of York staying proceedings in an action in that Court pending the trial of a certain action in the High Court.

The motion was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

J. R. Roaf, for the defendant James Hawes.

F. R. MacKelcan, for the defendant Alfred Hawes.

F. Arnoldi, K.C., for the plaintiff.

The judgment of the Court was delivered by MIDDLETON, J.:—

. . . The first three clauses of sec. 40(1) of the County Courts Act, 10 Edw. VII. ch. 30, were found in sec. 52 of the old statute. The proviso limiting the appeal to final orders only was uniformly held to relate to and to control the whole section (e.g., per Boyd, C., in In re Taggart v. Bennett, 6 O.L.R. 74). There is much force in Mr. Arnoldi's contention that the change in the statute as it now stands confines the operation of this restriction to cases falling under clause (c). Without determining this question, I think the motion to quash succeeds and the appeal is not competent. Clause (a), as interpreted by the appellant, is very wide and covers every possible order or decision, and the following clauses, (b), (c), and (d), as well as sec. 39, are useless and meaningless. This at once suggests that clause (a) must be

*To be reported in the Ontario Law Reports.