

may support the judgment on any ground they may think proper. The evidence ought, in that event, also to be before us when we give judgment, for it is the case as presented to us which should go to the Supreme Court, and it is, as I have said, the now respondents' right to have the case before us as fully as it was before the trial Judge. The defendants suggest that I might impose terms by which the evidence might be introduced for the purpose of the appeal to the Supreme Court. But this may lead to embarrassment, for I cannot say—no one can—how that Court may look at the case when it comes before them. They may raise all sorts of objections to hear the case in any other way than as it was argued and came before us, and I do not think I could order (or safely for the plaintiffs order) that the evidence shall be brought in merely for the purpose of the further appeal. It is quite conceivable that the Supreme Court would hold, that, even by consent of the parties, or by the imposition of terms, I had no authority to do so, or to provide for the case going before them in any other way than it had judicially come before us. From any point of view therefore, as the defendants are not prepared to say that in the event of judgment adverse to them on the construction of the contract they will go no further, it would be merely a matter of postponing the introduction of the evidence, and there is no object to be gained that I can see by doing that. If indeed the defendants could say that they were not going to the Supreme Court, and would submit to imposition of such a term, I might, so far as the appeal to this Court is concerned, accede to their application, although Mr. Riddell suggests that even on the question of construction there are some parts of the evidence which he desires to be in a position to refer to. This, however, is as far as I could go.

I may add that the matter of settling the appeal book in respect of the subject I have dealt with, has been referred to me, or some Judge of the Court, by the trial Judge to whom in strictness it appertains, and comes before me in this way by consent of the parties. For the actual order to be made in the settlement of the book remains to be made by the proper Judge, but I may say without going beyond the line of my duty, that I hope the parties in their own interests, as well as in that of the Court, will make an effort to limit the evidence brought up, to what is actually necessary for the purpose of the appeal.

McKelcan & Counsell, Hamilton, solicitors for plaintiffs.

Lee, Farmer, & Stanton, Hamilton, solicitors for defendants.