

Section 3 of the Privy Council Appeals Act, R.S.O. 1914 ch. 54, provides that no appeal shall be allowed until the appellant has given security as therein mentioned.

Neither of these Acts expressly requires that a notice of appeal shall be given, in such a case as this. Under both Acts, the first important thing to be done is to furnish the necessary security.

It was the plaintiffs who took the first effective step towards prosecuting an appeal, when they filed their bond and served notice of filing and of an application for its allowance.

Apart from that, where either litigant desires to take an appeal to the final Canadian appellate Court, he should not be deprived of that right except for good reason.

The plaintiffs' application should be granted; and no order should be made upon the defendants' motion.

The costs of both motions should be costs in the cause.

MASTEN, J.

JUNE 18TH, 1920.

**\*GRAHAM & STRONG v. DOMINION EXPRESS CO.**

*Mandamus—Common Carriers—Express Company—Carriage of Intoxicating Liquors—Motion in Action for Interim Mandatory Order—Motion Turned into Motion for Judgment—Nature of Order—Whether Grantable in Action—Leave to Serve Originating Notice for Order in Nature of Prerogative Writ—Exclusive Jurisdiction of Railway Board over Express Companies—Railway Act of Canada, 9 & 10 Geo. V. ch. 68, secs. 362, 363, 364—Jurisdiction over Tolls and Tariffs—Prohibition of Transportation—Jurisdiction of Court not Ousted—Preliminary Objections Overruled—Consideration of Merits—Judgment for Declaration and Mandamus.*

Motion, by the plaintiffs in an action, for an interim mandatory order requiring the defendants until the trial to receive from the plaintiffs and transport shipments of intoxicating liquors sold from the warehouse of the plaintiffs in the town of Kenora, in the Province of Ontario, to persons in other Provinces or in foreign countries permitting such traffic, in bona fide transactions, or, in the alternative, for an injunction restraining the defendants from refusing to receive and transport such shipments.

The motion came on for hearing in the Weekly Court, Toronto, and was turned into a motion for judgment, which was argued.