

BRITTON, J.

MAY 11TH, 1903.

CHAMBERS.

RE TAGGART v. BENNETT.

County Court Appeal—Right of Appeal — Final Order — Refusal to Vary Minutes of Judgment—Duty of Judge to Certify Proceedings even where Appeal does not Lie—Set-off of Costs.

Motion by plaintiff for a mandamus to compel the Judge of the County Court of Middlesex to certify the proceedings in this case, pursuant to sec. 55 of the County Courts Act, so as to permit an appeal to a Divisional Court against an order of the Judge dismissing an application to vary the minutes of the judgment in this action.

W. H. Bartram, London, for plaintiff.

E. W. M. Flock, London, for the Judge.

BRITTON, J., held that the proposed appeal would not lie, the order not being a final order within the meaning of sec. 52 of the County Courts Act. *Blakey v. Latham*, 43 Ch. D. 23, London and Canadian L. and A. Co. v. *Morris*, 19 S. C. R. 442, *McPherson v. Wilson*, 13 P. R. 339, *O'Donnell v. Guinane*, 28 O. R. 389, *Fisken v. Stewart*, 17 C. L. T. Occ. N. 82, *Hunter v. Hunter*, 18 C. L. T. Occ. N. 114, and *Hastings v. Ernest*, 7 U. C. R. 520, referred to. *Semble*, that the fact that there is no appeal from this order is no reason why the County Court Judge should not certify the papers. Whether an appeal lies or not, is a question for the Court appealed to. The Judge's duty is ministerial, and the certificate should as a rule be given on request. But in this case plaintiff does not desire the mandamus, if the order cannot be successfully appealed against. *Semble*, also, that the setting off of costs (which was the thing objected to by the motion to vary the minutes) is no part of what is ordinarily understood as settling minutes of judgment.

Motion for mandamus dismissed without costs.

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WEEKLY COURT.

RE ONTARIO POWER CO. OF NIAGARA FALLS.

Constitutional Law—Powers of Dominion Parliament—Expropriation of Lands—Use of Water Power—Local Work—General Advantage of Canada—Statutory Declaration—Company.

Motion by the company for order for possession of certain lands which they desired to appropriate for the construction