

was not open upon this motion, as sec. 33 of the Judicature Act, R.S.O. 1914 ch. 56, had not been complied with. In any event, the decisions in *Smith v. City of London* (1909), 20 O.L.R. 133, and *Beardmore v. City of Toronto* (1909-10), 20 O.L.R. 165, 21 O.L.R. 505, would probably be found to conclude this question, so far as any Court of first instance was concerned.

The writ having been improperly issued, the order setting it aside should be affirmed.

It was not necessary to consider whether an action would lie against the Attorney-General for the purpose of obtaining a declaration of the invalidity of the recent statute. By sec. 20 of the Judicature Act, the Court was given power to determine the validity of a statute at the instance of the Attorney-General, but it by no means followed that the Attorney-General might, against his will, be compelled to appear as a defendant to uphold the validity of a Provincial Act. This question did not require solution upon the present motion.

The appeal should be dismissed with costs.

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LAHEY V. QUEENSTON QUARRY CO. LIMITED—FALCONBRIDGE,  
C.J.K.B.—SEPT. 16.

*Fixtures—Sale of Land—Articles not Affixed to Freehold—Evidence—Intention—Money Paid into Court—Costs.*]—Action to recover possession of certain chattels alleged to have been wrongfully removed by the defendants from a gravel-pit sold by them in April, 1914, or to recover the value of the chattels, and for damages. The action was tried without a jury at St. Catharines. The learned Chief Justice, in a written judgment, said that the chattels mentioned in para. 1 of the prayer of the statement of claim, were the only ones now in dispute. As to the other matters, they were either abandoned, or sufficient money had been paid into Court to cover them. The articles in question were chattels because they never became part of the land and did not pass under the conveyance to Kasting. As far as any evidence of intention could affect the case, the testimony of C. Lowry, W. A. Pew, and R. Lowry, as to the conversation in Mr. McBurney's office following on Perry's question, "Did you get the derrick?" should be accepted. Frank Stewart, an apparently independent and credible witness, said that Perry told him the derrick was rented from Lowry. Whether observed or recognised