

Injury to any person then upon the train arising from a failure to observe the duty—gross negligence in fact—should, I think, be considered as within the consequences fairly resulting from the defendants' default.

I think the appeal should be dismissed with costs.

GARROW, J.A., came to the same conclusion, for reasons stated in writing.

MACLAREN, J.A., and SUTHERLAND, J., also concurred.

MEREDITH, J.A., dissented, for reasons stated in writing. He was of opinion that the plaintiff was a mere trespasser, and that the defendants owed him no duty; that the appeal should be allowed and the action dismissed.

---

OCTOBER 13TH, 1910.

\*FEDERAL LIFE ASSURANCE CO. v. SIDDALL.

*Appeal—Right of Appeal to Court of Appeal—Amount in Controversy—Judicature Act, sec. 76 (b)—Mortgage Action—Costs—Motion to Quash Appeal—Practice—Leave to Appeal—Judicature Act, sec. 51.*

Motion by the plaintiffs to quash the appeal of the defendant Robert H. Siddall from an order of a Divisional Court, 1 O. W. N. 796.

The motion was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

J. G. Farmer, for the plaintiffs.

W. M. Douglas, K.C., for the appellant.

MOSS, C.J.O.:—When a respondent seeks to invoke the power of the Court under sec. 51 of the Judicature Act, the proper practice is to move the Court to quash the appeal at the earliest moment after it has been lodged, as was done in the case of *International Wrecking Co. v. Lobb*, 12 P. R. 207, and other cases. This with a view to saving costs in the event of the motion succeeding.

Upon the motion coming on to be heard, the Court may, as it did in the case cited, direct the motion to stand for argument along

\* This case will be reported in the Ontario Law Reports.