

1905  
 \*Nov. 21. ELLEN KIRKPATRICK (RESPONDENT) . . . . . } APPELLANT.

AND

ROBERT MORRIS BIRKS AND }  
 OTHERS (PETITIONERS) . . . . . } RESPONDENTS.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL  
 SIDE, PROVINCE OF QUEBEC.

*Appeal—Jurisdiction—Successions—Security by beneficiary—Controversy involved—Future rights—Interlocutory order.*

An application for the approval of security on an appeal to the Supreme Court of Canada from an order directing that a beneficiary should furnish the security required by article 663 of the Civil Code of Lower Canada was refused on the ground that it was interlocutory and could not affect the rights of the parties interested.

APPLICATION for approval of a bond for security on an appeal from the judgment of the Court of King's Bench, appeal side(1), affirming the judgment of the Superior Court, sitting in review at Montreal, which ordered the appellant, as beneficiary under the last will and testament of the late Richard Birks, deceased, to furnish the security required under article 663 of the Civil Code of Lower Canada upon the petition of the respondents. The judgment, thus affirmed, reversed a former judgment in the Superior Court, District of Montreal (Pagnuelo J.), dismissing the respondents' petition with costs.

\*PRESENT:—Mr. Justice Idington, in Chambers.

(1) Q.R. 14 K.B. 287.

*Brosseau K.C.* for the motion.  
*Hibbard* contra.

1905  
 KIRK-  
 PATRICK  
 v.  
 BIRKS.

Idington J.

IDINGTON J.—It seems to me that the order made by the Superior Court, sitting in review, herein and from which appeal was taken to the Court of King's Bench, appeal side, and dismissed, is of such an interlocutory nature that leave should not be given to appeal to the Supreme Court of Canada as desired, even if such leave would give that court jurisdiction to hear such an appeal.

It can hurt no one to give the security the order directs. There is no final result affecting the rights of the parties in either acceding to the requirements of the order or refusing to do so.

I therefore dismiss, with costs, the application made to me for the approval of the security bond filed on the proposed appeal to the Supreme Court of Canada.

*Application refused with costs.*

Solicitors for the appellant: *Brosseau & Holt.*

Solicitors for the respondents: *Hibbard & Orr.*

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