

THE ONTARIO MINING COM- }
 PANY (PLAINTIFF) } APPELLANT;

1901
 *Jan. 18

AND

EDWARD SEYBOLD AND OTHERS }
 (DEFENDANTS) } RESPONDENTS.

ON APPEAL FROM THE QUEEN'S BENCH DIVISION OF THE
 HIGH COURT OF JUSTICE FOR ONTARIO.

*Appeal per saltum—Divisional Court judgment—62 V. (2), c. 11, s. 27
 (Ont.)—Constitutional question—Indian lands—Legislative juris-
 diction—Costs.*

Under the provisions of section 26, sub-sec. 3 of the Supreme and Exchequer Courts Act, leave to appeal direct from the final judgment of a divisional court of the High Court of Justice for Ontario may be granted in cases where there is a right of appeal to the Court of Appeal for Ontario, and the fact that an important question of constitutional law is involved and that neither party would be satisfied with the judgment of the Court of Appeal, is sufficient ground for granting such leave.

MOTION on behalf of the plaintiff for leave to appeal direct from the judgment of the Queen's Bench Division of the High Court of Justice for Ontario affirming the decision of the Chancellor dismissing the plaintiff's action with costs.

This action was commenced in the High Court of Justice for Ontario, and was tried before the Chancellor who delivered judgment dismissing the plaintiff's action with costs. Plaintiff thereupon appealed to the Queen's Bench Divisional Court where the appeal was dismissed with costs.

On the 11th of January, 1901, a motion was made before the Registrar on behalf of the plaintiffs for leave to appeal direct from the judgment of the Divisional

*PRESENT :—His Lordship Mr. Justice Girouard, (in Chambers.)

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Court to the Supreme Court of Canada upon the ground that the appeal involved questions of constitutional law between the Dominion of Canada and the province in regard to indian reserves which had been selected and laid aside under treaties entered into between the government of Canada and the indian tribes subsequent to the British North America Act (1867) and that any decision by the Court of Appeal (in the event of special leave being granted under 62 Vict. (2), ch. 11, sec. 27) would be unsatisfactory to either one or the other of the parties.

The motion was referred by the Registrar to a Judge in Chambers, and came on to be heard before His Lordship Mr. Justice Girouard on the 18th January, 1901.

*Travers Lewis* for the motion.

*Chrysler Q.C.* and *Burbidge contra.*

After hearing the parties, the following judgment was pronounced by:

GIROUARD J. (oral).—It is clear from the material filed that a very important constitutional question is involved in the present appeal, namely, a question of jurisdiction between the Federal and Provincial Governments over certain Indian lands in the north-west part of Ontario. It is objected by the respondents that leave should not be granted inasmuch as the matters in dispute are determined by certain judgments of the Privy Council, particularly *St. Catharines Milling Co. v. The Queen* (1). At this stage, it is impossible to tell, without knowing the particular facts of the case, how far the decisions of the Privy Council are applicable, but if the contention of the respondents be correct, they will suffer no prejudice by leave being

granted, as this court is bound to follow the decisions of the Privy Council. It is deposed to, and not denied on the present application, that neither party would be satisfied with the judgment of the Court of Appeal in this matter.

In the report of *Farquharson v. Imperial Oil Co.* (1), which I saw for the first time when this application was made, I am said to have concurred in the dismissal of the appeal from the order made in Chambers. I presume that this means that I would not interfere with the discretion exercised by the learned judge who granted leave to appeal. I am supposed to have expressed no views upon the question of jurisdiction of the court to hear the appeal. But as I concurred in the judgment disposing of the merits of the case, I must be taken to have concurred with the view of the Chief Justice and Mr. Justice Gwynne that there was jurisdiction in the Supreme Court to grant an appeal *per saltum* to this court from the Divisional Court of Ontario, notwithstanding the limitations placed by the Legislature of Ontario upon appeals from the Divisional Court, where the party desiring a further appeal had failed both in the Divisional Court and in the court below.

Leave to appeal *per saltum* is therefore granted. The costs to be costs in the cause to the successful party.

*Motion allowed with costs.*

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