

OTTAWA ELECTRIC COMPANY } APPELLANT ;
(DEFENDANT)..... }

1901

AND

*May 7.

JOHN CHARLES BRENNAN AND } RESPONDENTS.
OTHERS (PLAINTIFFS)..... }

ON APPEAL FROM A DIVISIONAL COURT OF THE HIGH COURT OF JUSTICE FOR ONTARIO.

Appeal per saltum—Jurisdiction—R. S. C. c. 135 s. 26 (3).

Leave to appeal direct to the Supreme Court from a judgment of a Divisional Court of the High Court of Justice under sec. 26, sub-sec. 3 of the Supreme and Exchequer Courts Act, cannot be granted unless it is clear that there is a right of appeal from such judgment to the Court of Appeal for Ontario.

*PRESENT :—Sir Henry Strong C.J. and Taschereau, Gwynne, Sedgewick and Girouard JJ.

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 THE  
 OTTAWA  
 ELECTRIC  
 COMPANY  
 v.  
 BRENNAN.

MOTION for leave to appeal direct from the judgment of Mr. Justice MacMahon increasing the amount awarded to plaintiffs by arbitrators appointed to determine the value of lands expropriated by the defendant company.

The motion was first made to the registrar of the court sitting as a judge in chambers, who refused the application, and an appeal from his decision to Mr. Justice Taschereau in chambers was referred by him to the full court.

The appellant company is a corporation to which the Railway Act of Canada applies. In 1900 notice was given to the plaintiffs of the company's intention to expropriate their land in the township of Nepean offering to pay \$2,124.60 therefor which offer was refused. Arbitrators were then appointed under the provisions of the Railway Act to determine the value of the land and they awarded the plaintiffs \$2,865, which being deemed insufficient an appeal was taken to the High Court of Justice from the award and heard before Mr. Justice MacMahon, who increased the amount to \$5,861. The company applies for leave to appeal direct from the judgment of MacMahon J. to the Supreme Court.

In the case of *Birely v. Toronto, Hamilton & Buffalo Railway Co.* (1), on appeal from the decision of Armour C.J. (2) affirming an award by arbitrators under the Railway Act, the Court of Appeal held that a party dissatisfied with such an award might appeal either to a Divisional Court or to the Court of Appeal, but if he elected to go to the former there was no further appeal to any provincial court.

*Glyn Osler* in support of the motion.

In *Farquharson v. Imperial Oil Co.* (3) leave to appeal *per saltum* was granted, although there was no appeal

(1) 25 Ont. App. R. 88. (2) 28 O. R. 468.

(3) 30 Can. S. C. R. 188.

as of right to the Court of Appeal, and leave to appeal to that court had been refused.

The Court of Appeal by its decision in *Birely v. Toronto, &c., Railway Co.* (1) has held that we have no right to go to that court. It is submitted that that decision was wrong, and if our motion cannot be granted because of it we ask that it be overruled.

*Henderson, contra*, was not called upon.

The judgment of the court was delivered by :

THE CHIEF JUSTICE (oral).—We are all of opinion that this application must be refused. It is not a case in which leave to appeal *per saltum* can be granted. It has not been shown that there was any right of appeal to the Court of Appeal which is necessary to give us jurisdiction; on the contrary it appears that there is no such right of appeal.

The motion is refused with costs.

*Motion refused with costs.*

Solicitors for the appellant: *Wyld & Oster.*

Solicitors for the respondents: *McCracken, Henderson & Macdougall.*

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