

A. R. WILLIAMS.....APPELLANT;

1905.

AND

* May 29.

* May 30.

THE GRAND TRUNK RAILWAY }
COMPANY OF CANADA..... } RESPONDENTS.ON APPEAL FROM HIS LORDSHIP MR. JUSTICE SEDGE-
WICK, IN CHAMBERS.*Appeal—Special leave—Judge in chambers—Appeal to full court—
Jurisdiction.*

No appeal lies to the Supreme Court of Canada from an order of a judge of that court in chambers granting or refusing leave to appeal from a decision of the Board of Railway Commissioners under sec. 44(3) of the Railway Act, 1903.

APPEAL from an order made by Mr. Justice Sedgewick, in chambers, refusing leave to appeal from a decision of the Board of Railway Commissioners on a question of jurisdiction.

The application was made to the judge in chambers under sec. 44, sub-sec. 3 of the Railway Act, 1903, which provides that an appeal shall lie from the Board on a question of jurisdiction, but leave therefor must be obtained from a judge.

Counsel having opened the court raised the question of its jurisdiction to entertain an appeal from the order of Mr. Justice Sedgewick.

Shepley K.C. for the appellant cited the provision of the Railway Act authorizing the appeal on leave and *Ex parte Stevenson*(1).

*PRESENT:—Sir Elzéar Taschereau C.J. and Girouard, Davies, and Idington JJ.

(1) [1892] 1 Q.B. 394, 609.

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Ewart K.C. and *Cowan K.C.* for the respondents referred to *Lane v. Esdaile*(1); *In re Central Bank*(2); *Brown v. Bamford*(3).

Glynn Osler for the City of Toronto and *A. G. Blair* for the Board of Railway Commissioners, submitted the case to the court without argument.

The judgment of the court was delivered by

THE CHIEF JUSTICE.—By sub-sec. 3 of sec. 44 of the "Railway Act, 1903," it is provided that:

An appeal shall lie from the Board to the Supreme Court of Canada upon a question of jurisdiction, but such appeal shall not lie unless the same is allowed by a judge of the said court upon application and hearing the parties and the Board.

Under that section an application was made before Mr. Justice Sedgewick by Williams & Co. for leave to appeal to this court from an order of the Board of Railway Commissioners upon the question of the jurisdiction of the said Board, which had been raised by the said applicants. Mr. Justice Sedgewick, after hearing the parties, refused the leave asked for. The applicants now move for leave to appeal from that refusal.

This application is opposed on the part of the Grand Trunk Railway Company on the ground that no appeal lies from Mr. Justice Sedgewick's order.

We are of the opinion that this contention must prevail and the application must be refused. The judge to whom the application is made would not have the power to refer it to this court. A statutory enactment of this nature cannot be extended by interpretation. Jurisdiction is conferred upon a judge to grant or refuse the leave to appeal, as a *persona*

(1) [1891] A.C. 210.

(2) 17 Ont. P.R. 370, 395.

(3) 9 M. & W. 42.

designata, but not to the court. Whether he gives leave or refuses it, the right to apply for leave is exhausted. The right of appeal is a statutory right, and when given under conditions, it does not exist, if not falling exactly under these conditions or in conformity with it.

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 The Chief
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 —

I refer to *Ex parte Stevenson* (1); *Lane v. Esdaile* (2); *Farquharson v. The Imperial Oil Co.* (3); *The Canadian Pacific Railway Co. v. The Little Seminary of Ste. Thérèse* (4); *Birely v. Toronto, etc., Railway Co.* (5).

The application is dismissed with costs.

*Appeal dismissed with costs.**

Solicitors for the appellant: *Macdonald, Shepley,
 Middleton & Donald.*

Solicitor for the respondents: *W. H. Biggar.*

* Leave to appeal to the Privy Council was refused, 2nd August, 1905.

(1) (1892) 1 Q.B. 394, 609. (3) 30 Can. S.C.R. 188.
 (2) (1891) A.C. 210. (4) 16 Can. S.C.R. 606.
 (5) 25 Ont. App. R. 88.