

THE JAMES BAY RAILWAY COM- } APPELLANTS. 1907
 PANY (DEFENDANTS) }
 *Mar. 18, 19.
 *April 1.

AND

SAMUEL W. ARMSTRONG (PLAIN- } RESPONDENT.
 TIFF)

ON APPEAL FROM THE COMMON PLEAS DIVISION OF THE
 HIGH COURT OF JUSTICE.

*Appeal—Railway Act—Expropriation—Appeal from award—Choice
 of forum—Curia designata.*

By sec. 168 of 3 Edw. VII. ch. 58 amending the Railway Act, 1903,
 (R.S.C. (1906) ch. 37, sec. 209) if an award by arbitrators on
 expropriation of land by a railway company exceeds \$600 any
 dissatisfied party may appeal therefrom to a Superior Court
 which in Ontario means the High Court or the Court of Appeal
 (Interpretation Act R.S. [1906] ch. 1, sec. 34, sub-sec. 26).

Held, that if an appeal from an award is taken to the High Court
 there can be no further appeal to the Supreme Court of Canada
 which cannot even give special leave.

APPEAL from a decision of Meredith C.J. of the
 Common Pleas Division of the High Court of Jus-
 tice for Ontario(1), increasing the award of arbitra-
 tors in proceedings for expropriation of plaintiff's
 land by the defendants.

The arbitrators awarded the plaintiff \$1,170 which
 he considered insufficient, and appealed to the High
 Court where it was increased to \$2,250. The Railway
 Co. then took an appeal to the Supreme Court of
 Canada asking to have the original award of \$1,170

*PRESENT:—Fitzpatrick C. J. and Davies, Idington, MacLennan
 and Duff JJ.

(1) 12 Ont. L.R. 137.

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restored. The plaintiff by cross-appeal claimed that the increase allowed by the High Court was insufficient and that he was entitled to a much larger sum.

Armour K.C. and *R. B. Henderson* for the appellants after arguing the case for a time on the merits were called upon to support the jurisdiction of the court to hear the appeal.

For purposes of an appeal from an award under the Railway Act the High Court and Court of Appeal are on an equal footing. See *Railway Act Amendment* 3 Ed. VII. ch. 58, sec. 168 and *Interpretation Act* R.S. [1906] ch. 1, sec. 34(26). If an appeal is taken to the High Court there is no further appeal to the Court of Appeal, *Birely v. Toronto, Hamilton and Buffalo Railway Co.*(1), and the High Court becomes the highest court of last resort in the province for these cases. *Farquharson v. Imperial Oil Co.*(2).

DuVernet and *Kyles* for the respondent referred to *Atlantic and North-West Railway Co. v. Judah* (3), *The Province of Ontario v. The Province of Quebec*; *In re Common School Fund and Lands*(4).

The judgment of the court was delivered by

MACLENNAN J.—This is an appeal by a railway company and a cross-appeal by a landowner, in respect to the compensation to be allowed to the latter for land taken by the railway company for its track, and also for severance.

(1) 25 Ont. App. R. 88.

(2) 30 Can. S.C.R. 188.

(3) 23 Can. S.C.R. 231.

(4) 30 Can. S.C.R. 306.

Arbitrators were appointed in the usual manner, and a majority award was made on the 29th December, 1905, in favour of the respondent for the sum of \$1,170.

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From this award an appeal was taken by the respondent, in pursuance of sec. 168 of the Railway Act, 3 Ed. VII. ch. 58.

That section provides that whenever such an award exceeds \$600 any party

may appeal therefrom upon any question of law or fact to a superior court; and upon the hearing of the appeal, the court shall, if the same is a question of fact, decide the same upon the evidence taken before the arbitrators, as in a case of original jurisdiction.

Subsection 2 provides that:

Upon such appeal the practice and proceedings shall be, as nearly as may be, the same as upon an appeal from the decision of an inferior court to the said court, subject to any general rules or orders from time to time made by the said last-mentioned court, in respect to such appeals, which orders may amongst other things provide that any such appeal may be heard and determined by a single judge.

By sec. 2(f) of the Railway Act, the expression "Court" means a superior court of the province or district, and by the Interpretation Act, R.S.C. [1906] ch. 1, sec. 34(26), "Superior Court" means, in the Province of Ontario, the Court of Appeal for Ontario, and the High Court of Justice for Ontario.

By sec. 65 of the Judicature Act of Ontario, it is provided that every action and proceeding in the High Court, and all business arising out of the same, except as hereinafter provided, shall, so far as is practicable and convenient, be heard, determined and disposed of before a single judge.

In pursuance of these enactments, the landowner, who had the option of taking an appeal from the

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award, either to the High Court of Justice, or to the Court of Appeal in Ontario, took it to the High Court, and it was heard before a single judge, viz., before Meredith C.J., who increased the compensation due from the company to the sum of \$2,250.

From that judgment the present appeal was brought by the company, whereupon the landowner, by way of cross-appeal, claimed in his factum, that the sum awarded to him by the Chief Justice, was insufficient and should be largely increased.

Upon the opening of the appeal, a question was raised by the court with respect to its jurisdiction, and an opportunity was given to counsel to argue that question, as well as the merits.

Having heard the argument and also an application for leave to appeal, we are all of opinion that there is no jurisdiction to hear the appeal, either with or without leave, and that the appeal should be quashed.

Precisely the same question arose in this court in 1901, on a motion for leave to appeal to this court from a judgment of a judge of the High Court of Ontario, increasing the sum awarded by arbitrators to a landowner against a Railway Company, and the application was refused. That was the case of the *Ottawa Electric Co. v. Brennan*(1).

The case of *Birely v. The Toronto, Hamilton and Buffalo Ry. Co.*(2), was there referred to with approval in which it was held that no appeal lay from the judge of the High Court to the Court of Appeal in such a case, both those courts being designated by the statute as special tribunals, to either of which the appellant might resort.

(1) 31 Can. S.C.R. 311.

(2) 25 Ont. App. R. 88.

The appeal and cross appeal, and also the motion
for leave will therefore be dismissed without costs.

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Appeal dismissed without costs.

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Solicitors for the appellants: *Boyce and Hender-
son.*

Solicitors for the respondent: *Bull and Kyles.*