

THE UNITED STATES OF AMERICA . . . APPELLANT;

1955
*Mar. 7

AND

WALTER H. LINK AND HARRY H. }
GREEN } RESPONDENTS.

MOTION FOR LEAVE TO APPEAL

Appeal—Jurisdiction—Extradition—Refusal of judge to issue warrant of committal under Extradition Act, R.S.C. 1952, c. 322, s. 18—Whether judgment within Supreme Court Act, R.S.C. 1952, c. 259.

The refusal of a judge of the Superior Court of the Province of Quebec to issue a warrant of committal under s. 18 of the *Extradition Act*, R.S.C. 1952, c. 322, is not a judgment within the meaning of s. 41 of the *Supreme Court Act*, R.S.C. 1952, c. 259. Consequently, this Court has no jurisdiction to grant leave to appeal from such refusal.

T. H. Montgomery for the applicant.

M. Gross for the respondent Link.

M. Gaboury, Q.C. for the respondent Green.

D. H. W. Henry for the Attorney General of Canada.

G. Hill, Q.C. for the Attorney General of Quebec.

This was an application under s. 41 of the *Supreme Court Act*, R.S.C. 1952, c. 259, for leave to appeal from the refusal of Chief Justice Scott, of the Superior Court of the Province of Quebec, to issue a warrant for the committal of the respondents under s. 18 of the *Extradition Act*, R.S.C. 1952, c. 322.

The Court requested Mr. Montgomery to deal first with the question of the jurisdiction of this Court to grant leave. At the conclusion of his argument Counsel for the Attorney General of Canada and for the Attorney General of Quebec stated that they took no position with reference to that question. Without calling on Counsel for the respondents the Chief Justice announced that the Members of the Court were unanimously of the opinion that there was no jurisdiction, as the refusal of Chief Justice Scott was not a judgment, as defined by s. 2(d), within the meaning of s. 41 of the *Supreme Court Act*.

Application refused.

*PRESENT: Kerwin C.J. and Taschereau, Rand, Kellock, Estey, Locke, Cartwright, Fauteux and Abbott JJ.