

Mr. *Fitzgerald*, in asking for special leave to appeal, said he did so on four grounds; first, that the amount of the claim was something between £46,000 and £47,000; secondly, that it was to some extent a test case; thirdly, because of the peculiar constitution of the court appealed from. He did not know whether their lordships' attention had ever been directed to the constitution of the Canadian Exchequer Court. It was created by the same act as the Supreme Court.

LORD HOBHOUSE: You cannot appeal from the Exchequer Court to the Crown, as you can from the Supreme Court.

Mr. *Fitzgerald*: No. The Supreme Court and the Exchequer Court were established by a Canadian Act of 1875, the fourth section of which provided that the Chief Justice and judges of the former Court shall respectively be Chief Justice and judges of the latter; therefore, the Exchequer Court was only another name for the Supreme Court. The petitioners, however, were bound to appeal from the one court to the other; they had no option, and their right to appeal was quite different from that in ordinary cases.

LORD HOBHOUSE: The case has not gone through so many sieves as in the ordinary course of appeal.

Mr. *Fitzgerald* said his fourth reason for asking for leave to appeal was because of the bearing of the case of *McGreevy v. The Queen* on the present action. That case was a very similar one to this. The decision of Mr. Justice Fournier, sitting in the Exchequer Court, was in favor of Mr. McGreevy, but was reversed by the Supreme Court by a majority judgment. That judgment was, however, really in favor of the suppliant, because, out of the five judges, two were for confirming the judgment of Mr. Justice Fournier, two were against, while the fifth agreed with the Exchequer Court on one point, and not on another. He turned the balance for reasons not agreed to by any of the other judges. That was an unsatisfactory state of the law, and one which he thought ought to be, if possible, reviewed. The Dominion Government had instructed its solicitors not to oppose this application.

LORD HOBHOUSE—What is it all about?

Mr. *Fitzgerald* said he might briefly state the facts. The case arose out of the construction of the Intercolonial Railway. Messrs. Bertrand & Co. made contracts with the Railway Commissioners