

intended to be brought by defendants from the judgment of the Court of Appeal (3 O. W. R. 885) to the Supreme Court of Canada.

H. E. Rose, for defendants.

D'Arcy Tate, Hamilton, for plaintiff.

OSLER, J.A.—The defendants concede, and I think rightly, that the appeal is one which cannot be brought without leave, which they are unable to move for at present, neither the Court of Appeal nor the Supreme Court sitting in vacation. It appears to me that I have no jurisdiction to make such an order, or (which is much the same thing), if I have, that it is one which would be of no service to defendants and would give them no relief.

If defendants could appeal without leave, I might, under sec. 42 of the Supreme Court Act, "allow" the appeal, i.e., allow the security. That may be done by the Court or a Judge notwithstanding that the appeal is not brought within the time prescribed by sec. 40 of the Act (as amended). "Allowance" of the appeal has been said to involve the granting of leave to appeal, and that would seem to be necessarily so where such allowance is by a jurisdiction competent to grant leave. But, as a single Judge has no power to do that (60 & 61 Vict. ch. 24, sec. 1 (e)), neither has he power to "allow" the security on an appeal which without leave is not competent, and therefore not yet brought. No power has been conferred upon a single Judge, that I can find, to extend the time either for allowing the security or moving for leave to appeal to the Supreme Court in such a case as that, and the power of the full Court of Appeal or of the Supreme Court to grant leave or to allow the appeal, under the provisions above mentioned, does not depend upon the granting by a single Judge of an order to extend the time for doing either. That leave to appeal may be granted though not applied for until after the expiration of the time limited by sec. 40 for bringing the appeal, seems to have been decided in *Bank of B. N. A. v. Walker*, *Coutlee's S. C. Dig.* p. 111, and in *Bank of Montreal v. Demers*, 29 S. C. R. 435. See, however, *Barrett v. Le Syndicat*, 33 S. C. R. 667.

The motion must therefore be refused with costs.

Mr. Rose asked that if I found myself unable to grant his motion I would direct the issue of the judgment of this Court to be stayed until he had an opportunity of moving for leave to appeal. If I have power to do this, which I doubt, at all merely for any such reason as this, I do not think I ought to exercise it.