
Correspondence.

SUPREME COURT APPEALS.

To the Editor CANADA LAW JOURNAL.

Dear Sir,—In a late number of your journal I endeavoured to show concisely the opinions of the Judges of the Supreme Court in *Farquharson v. Imperial Oil Co.*, as to the power of the Court or a judge to grant leave to appeal per saltum from a judgment of a Divisional Court from which there is no appeal as of right to the Court of Appeal. At page 362 of the current volume of your journal, you advance the opinion that the statute 62 Vict., 2nd Sess., c. 11, s. 27 settles the question in favour of the right to grant such leave. As the question is important perhaps you will grant me the privilege of space enough in your journal to point out why I consider the position you take an untenable one.

The judges who held that no leave to appeal could be given in this case, did so on the ground that under s. 26 of the Supreme Court Act, such leave can only be granted where the parties have an absolute right to go to the Court of Appeal, but it is advisable to dispense with the exercise of such right and allow an appeal direct. That section provides that an appeal shall lie only from the Court of final resort for the Province, but the Court or a judge may grant leave for an appeal from the Court of original jurisdiction "without any immediate appeal being had to any intermediate Court of Appeal in the Province." Following the terms of the statute, in this case, then, the order was to grant leave to appeal from the judgment of the Divisional Court without an intermediate appeal being had to the Court of Appeal.

Judge Taschereau was of opinion that to grant leave in the *Farquharson* case would have the effect of striking out of the section the words above quoted. Then, assuming that he was not aware of the section referred to in your editorial, could its terms change his opinion? Admitting that an appeal will always lie to the Court of Appeal by leave, is s. 26 satisfied by dispensing with such potential right? If application for leave to appeal is made and refused by the Court of Appeal what is dispensed with by the order under s. 26? Surely nothing more than if the application could not have been made.