somewhat wider. Sec. 31 (38 Vic., c. 11) is drawn in the untechnical manner with which we are so familiar. "No appeal shall be allowed until the appellant has given sufficient security to the satisfaction of the Court appealed from or the judge." Nothing more is said as to the allowance, by which I understand to be meant granting leave to appeal, but by the following section we are told that by the perfecting of such security the execution is stayed. That is, we are told that if the judge or Court is satisfied with the sufficiency of the security, its or his duty is to sign the bond. I see nowhere any jurisdiction given to decide as to whether the case is appealable or not. Now the first principle to be considered is, that the appealable character of a proceeding is matter of consideration for the Court to which the appeal lies. It decides as to its jurisdiction and giving the Court, whose judgment is appealed from, right to accord or refuse the appeal is abnormal. Such a power is sometimes expressly given by Statute but it certainly cannot be presumed. I fancy the practice which has undoubtedly prevailed, of looking into the nature of the appeal to the Supreme Court, has taken rise from the practice as to appeals to the Privy Council, and in what appears to me to be an incorrect interpretation of section 17. The proviso there, clearly applies to the limitation of the appeal by the Statute. Sec. 17 confers no powers on this Court. The duty of the Court or judge is to take the bond—a purely ministerial duty—and he has no discretion beyond judging of the sufficiency of the security. Having given a sufficient bond the appellant goes on at his peril. This view makes the decision of the Supreme Court, that they cannot allow an appeal, perfectly reasonable. It is plain that if the Court or a judge here had discretion to adjudicate as to whether a case is appealable or not, then by force of necessity the Supreme Court would be obliged to assume the power (though not expressly given) to examine the cause of our refusal, else we could defeat their jurisdiction; and thus bring about intolerable disorder. I think, therefore, the refusal to take the bond on the ground that the case is not appealable is wrong. The only words of the Statute that seem to war with this interpretation are the last words of sec. 28, "and obtained the allowance of the appeal." But I read these words as referring to what precedes, and as though they were, and "thereby," *i. e.* by the giving the sufficient security.

It now remains to enquire if we can give a remedy. The only difficulty is the lapse of the 30 days, for it is evident that the refusal of one judge to take the bond cannot under sec. 31, preclude the Court from taking the bond, or indeed any other judge of the Court, within the 30 days. I do not however think the lapse of time fatal under the circumstances. The party seeking to appeal used all the diligence possible, and he cannot be made to suffer for what is no fault of his, and this on general principles. He would therefore be helped by the rule *nunc pro tunc*. But apart from this we have the statutory provision of sec. 26, by which on special application, notwithstanding the lapse of time, the Court or judge may allow the appeal on certain conditions. I think, therefore, we can give a remedy. But the second question then comes up, namely, the question as to whether the case before us is appealable or not. If I had an opinion to express I should probably agree with the majority of the Court. It seems to me that *la matière en litige* means the interest of the appellant. But as I have already said, I do not think it is our province to decide that question, and I am therefore of opinion that we should give the appellant leave to produce his security. In this opinion I stand alone.

The Chief Justice, who gave the judgment of the Court, said that the Statute had always been interpreted to mean that the Court or judge could give or refuse leave to appeal, and that he found expressions in several sections of the Act which implied that the Court or judge had this power. Then there was another point, the Statute gave concurrent jurisdiction to the Court or judge, and as there was no right of appeal given from the judge to the Court the decision of the one or other was final. Were it otherwise application could be made to each of the six judges and then to the Court, and also after the appeal had been refused by the Court, application could be made to a judge, who might grant leave to appeal. The third point is that the case is not appealable. The interest of the appellant is a sum less than $2,000.

Application refused.