

the highest court of final resort in the Province within the meaning of R.S.C., c. 135, s. 24 (a), and there is a right of appeal from such judgment direct to the Supreme Court.

His Lordship also held that the judgment of the Divisional Court deprived the appellant for all time in a very essential degree of the use of a stream for floating down timber, such being the effect of the construction of a dam across the stream which the judgment pronounced lawful, and it was, therefore, a proper case for leave to appeal per saltem if such leave was necessary, and he made order granting such leave. On appeal from his whole judgment the Court did not pronounce on the first question, and held that it had no jurisdiction to review the order granting leave. Appeal dismissed with costs.

Oster, Q.C., for appellant. *Aylesworth*, Q.C., for respondent.

Province of Ontario.

COURT OF APPEAL.

MacLennan, J. A.]

[March 8.

GREAT NORTH-WEST CENTRAL RAILWAY CO. v. STEVENS.

Appeal—Leave—Refusal by Court below—Stay of proceedings—Special circumstances—Judicature Act, s. 77.

Leave to appeal to the Court of Appeal from an order of a Divisional Court affirming an order of a judge in chambers, which set aside an order of a referee in chambers, whereby the proceedings in the action were stayed, pending the determination of an action in England brought by some of the present defendants, and to which the present plaintiffs were defendants, was refused by a judge of the Court of Appeal, where such leave had previously been refused by the court whose decision had been complained of, where there were no good grounds on which that decision could be supported, where none of the special circumstances existed which s. 77 of the Judicature Act makes essential, and there were no special reasons for treating the case as exceptional.

W. M. Douglas, for the applicants. *E. D. Armour*, Q.C., for the plaintiffs.

Practice.]

FRASER v. LONDON STREET R.W. CO.

[March 14.

Evidence—Appeal—Motion for leave to adduce further evidence—Action for bodily injuries—Excessive damages—Examination by surgeon—Rules 462, 498.

In an action for damages for bodily injuries received by the plaintiff owing to the alleged negligence of the defendants, the plaintiff recovered a