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THE QUEEN v. POIRIER.

[Oct. 24.

*Landlord and tenant—Conditions of lease—Construction of deed—Practice
— objections taken on appeal for the first time.*

Where the issues have been joined in a suit and judgment rendered upon pleadings admitting and relying upon a written instrument, an objection to the validity of the instrument taken for the first time on an appeal to the Supreme Court of Canada comes too late and cannot be entertained.

Where a written lease of lands provides for the payment of indemnity to the lessees in case they should be dispossessed by the lessor before the expiration of the term of the lease, the lessees are entitled to claim the indemnity upon being so dispossessed although the eviction may be for cause, inasmuch as the lessor could not, under the lease, dispossess the lessee except for breach of the conditions therein mentioned. Appeal dismissed with costs.

Duffy, Q.C., and Cannon, Q.C., for appellant. Fitzpatrick, Q.C., and Marechal for respondent.

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FARQUHARSON v. IMPERIAL OIL.

[Oct. 29.

*Rivers and streams—Driving logs—Obstruction—Dam—
R. S. O. (1887) c. 120, ss. 1 and 5.*

R.S.O. (1887) c. 120, s. 1, all persons are prohibited from preventing the passage of saw-logs and other timber down a river, creek or stream by felling trees or placing any other obstruction in or across the same.

Held, reversing the judgment of the Queen's Bench Division (34 C.L.J. 271; 26 O.R. 206) that placing a dam on a river or stream by which the supply of water therein was diminished so as to interfere with the passage of logs was an obstruction under this Act.

In a previous term an appeal had been taken to the Court from an order made by Gwynne, J., in Chambers, granting leave to appeal per saltum from the judgment of the Chancery Division. The Court held that no appeal could be taken from the order in Chambers, and dismissed it without pronouncing on the question of jurisdiction.

Held, per Taschereau, J., that the appeal should have been quashed on such motion; that an appeal does not lie from judgment of a Divisional Court; that as the case could not have been taken to the Court of Appeal leave to appeal per saltum could not be granted and the order therefore could not confer jurisdiction. Appeal allowed with costs.

Aylesworth, Q.C., and Shaumessy for appellant. Oster, Q.C., for respondent.