

HIGH COURT OF JUSTICE.

Riddell, J.]

IN RE AARON ERB (No. 1).

[May 11.

Assignment for benefit of creditors—Collateral securities held by bank—Refusal to value—Appeal to judge in Chambers—Jurisdiction—"Judge of the Court of Appeal"—Transfer of motion under C.R. 784—Costs—63 Vict. c. 17, s. 14(O.).

A., having made an assignment for the benefit of creditors, the M. bank filed a claim for over \$25,000, for which they held as collateral security certain notes made by the B. company to A. and endorsed by him, to an amount over \$17,500. The bank declined to value these securities, in which position they were supported upon an application being made to a county judge. The assignee thereupon served notice of motion before the presiding judge in Chambers, "by way of appeal from the order" of the county judge, and to reverse the same and for an order that the M. bank should value the securities held by them against the B. company, "or for such other order as may be just." The matter having come before Britton, J., he permitted an amendment to be made in the notice of motion, changing it into a notice for special leave to appeal under 63 Vict. c. 17, s. 14(O.).

Held, 1. There was no jurisdiction to entertain the motion, as under the statute the leave is to be granted "by a judge of the Court of Appeal," which means that division of the Supreme Court of Judicature which is called in the Judicature Act, s. 3(2), "the Court of Appeal for Ontario," and in most other parts of the legislation, simply "the Court of Appeal."

2. Under the general prayer "for such other order as may seem just," the application for leave to appeal might, on payment of costs be transferred to a judge of the Court of Appeal under Con. Rule 784, which provides that "where any motion or appeal is set down to be heard before a court which is not the proper court for hearing the motion or appeal, the same may, upon such terms as may seem just, be transferred to, and shall be heard by, the proper court for hearing the same."

3. Under Con. Rule 1130(1), costs may be awarded against the applicant in cases in which the tribunal applied to has no jurisdiction.

Middleton, K.C., for applicant. *J. E. Jones*, for the Merchants Bank of Canada.