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 *Oct. 25.
 *Nov. 2.

ANDREW FINSETH APPELLANT;
 AND
 THE RYLEY HOTEL COMPANY.... RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA.

Appeal—Jurisdiction—Special leave—“Judicial proceeding”—Discretionary order—Matter of public interest—Alberta “Liquor License Ordinance,” s. 57—“Originating summons”—R.S.C. 1906, c. 139, s. 37—8 Edw. VII. (Alta.), c. 7, ss. 1, 2, 6.

Proceedings on an originating summons issued by a judge of the Supreme Court of Alberta on an application for cancellation of a license under section 57 of the “Liquor License Ordinance,” are judicial proceedings within the meaning of section 37 of the “Supreme Court Act,” R.S.C. 1906, ch. 139, and, consequently, the Supreme Court of Canada has jurisdiction to entertain an application for leave to appeal from the judgment of the Supreme Court of Alberta thereon.

Where the decisions of the provincial court shew that the judges of that court are equally divided in opinion as to the proper construction of a statute in force in the province and it appears to be desirable in the public interest that the question should be finally settled it is proper for the Supreme Court of Canada to exercise the discretion vested in it for the granting of special leave to appeal under the provisions of section 37 of the “Supreme Court Act.” Girouard J. dissented on the ground that the proceedings in question were intended to be summary and that, in these circumstances, the case was not one in which special leave to appeal should be granted.

MOTION for special leave to appeal from the judgment of the Supreme Court of Alberta setting aside an order by Harvey J., whereby a license for the sale of malt and spirituous liquors granted to the respondents had been cancelled.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington and Anglin JJ.

The proceedings in the case were instituted, on an application to a judge of the Supreme Court of Alberta, under section 57 of the "Liquor License Ordinance" in force in that province, for the cancellation of a license granted to the respondents for the sale, by retail, of malt, spirituous and other liquors in the Village of Ryley, Alberta, upon which Mr. Justice Harvey issued an originating summons. On the return of the summons the learned judge proceeded, in a summary manner, to hear and investigate the appellant's complaint against the issue of the license, adjudicated thereupon, and made an order directing the license to be cancelled. This order was set aside, on an appeal, by the Supreme Court of Alberta, *in banco*, and the complainant applied for special leave to appeal from the latter judgment to the Supreme Court of Canada.

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The questions raised on the application for special leave are set out in the judgment now reported.

Chrysler K.C. supported the application.

Ewart K.C. contra.

The judgment of the court was delivered by

THE CHIEF JUSTICE.—This is an application for leave to appeal from a judgment of the Supreme Court of Alberta *en banc*, the highest court of final resort in the province. The two questions to be determined are: Have we jurisdiction to grant the application? and, Is this, assuming that we have jurisdiction, a proper case in which to grant the leave asked for?

The "Supreme Court Act," section 37, enacts that

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an appeal shall lie on special leave, to this court, from any judgment of the highest court of final resort in the provinces of Saskatchewan and Alberta when the action, suit, cause, matter or other judicial proceeding has not originated in a superior court. The proceedings here originated in an application made by Andrew Finseth, the appellant, before Mr. Justice Harvey in July, 1910, for the cancellation of a retail liquor license granted to the Ryley Hotel Company, Limited, under section 57 of the "Liquor License Ordinance."

The first question to be decided is: Was this a judicial proceeding within the meaning of that section ?

The sections of the Alberta Acts to be referred to are sub-section 15, section 2 of the interpretation clause of the "Liquor License Ordinance" and sections 1, 2 and 6 of chapter 7 of the statutes of 1908(1). The judge to whom the application was made is the judge of the Supreme Court usually exercising jurisdiction in the judicial district in which the license district is situate, and the inquiry he was called upon to make was really a judicial inquiry. He could not properly exercise his discretion without hearing all the parties interested and he was obliged to bring to the performance of the duties assigned to him a judicial mind so as to determine what was fair and just in respect of the matter under consideration. Further the statute which provides for the enforcement of any order that may be made granting or refusing the application gives to the judge the same jurisdiction as a judge of the court to which he belongs; and his order, when made and filed in the office of the clerk of the court, becomes an order of the Supreme Court enforceable in like manner and by the like process, and from that

order there is an appeal to the court *en banc* (section 1). I can entertain no doubt, therefore, that this is a judicial proceeding. See *per Lopes L.J.*, in *Royal Aquarium and Summer and Winter Garden Society v. Parkinson* (1).

I am also of opinion that this is a proper case in which to grant leave. The appeal to the provincial court of appeal was limited to the question whether or not the judge to whom the application was made in the first instance had jurisdiction under section 57 of the "Liquor License Ordinance" to investigate and try the complaint. The majority of the court *en banc* delivered judgment allowing the appeal. The party moving here contends that the majority of the court overruled the unanimous judgment of three judges of the same court on the same point in another case. (In *Re Richelieu Hotel License* (2).) In view of this difference of opinion in the court below, we grant this motion, as it is desirable in the public interest that the point raised on this appeal should be definitely and finally settled.

GIROUARD J. (dissenting).—I do not look upon this case as one where special leave to appeal should be granted.

I think it was intended that proceedings of the nature in question in this case should be summary.

Motion granted.

Solicitors for the appellant: *Bishop, Grant & Delavault.*

Solicitors for the respondent: *Boyle, Parlee & Co.*

(1) [1892] 1 Q.B. 452.

(2) 10 West. L.R. 402.

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