

ALPHONSE NOEL (PLAINTIFF).....APPELLANT;

1929

AND

*Dec. 17.

LA COUR DES SESSIONS DE LA PAIX }
 AND LE COLLEGE DES MEDECINS }
 ET CHIRURGIENS DE LA PRO- } RESPONDENTS.
 VINCE DE QUEBEC (DEFENDANTS).

ON APPEAL FROM THE COURT OF KING’S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC

*Appeal—Special leave to appeal—Proviso to s. 41, Supreme Court Act—
Jurisdiction—Writ of prohibition*

The proviso to section 41 of the *Supreme Court Act* (which gives jurisdiction to this court to grant special leave to appeal), notwithstanding the wide terms in which it is couched, is necessarily restricted in its application to cases within section 41 itself, i.e., to cases in which the appellate court had jurisdiction, if so advised, to grant special leave to appeal to this court under that section.

APPLICATION by the intending appellant for an extension of time to permit of his asking for special leave to appeal.

The intending appellant moved before Anglin C.J.C. in chambers for an extension of time to permit of his asking for special leave to appeal, under the proviso to section 41 of the *Supreme Court Act*, such leave having been refused by the Court of King’s Bench.

*PRESENT:—Anglin C.J.C. in Chambers.

1929
 NOËL
 v.
 LA COUR
 DES
 SESSIONS
 DE LA PAIX.

The proposed appeal is from a judgment of the Court of King's Bench, confirming the decision by the Superior Court, refusing a writ of prohibition to the Court of Sessions of the Peace. The appellant had been convicted by that court of practising medicine illegally and contrary to c. 213, R.S.Q., 1925. For this offence he had been condemned to pay a fine of \$50, or, in default, to suffer sixty days imprisonment. By the present action, it was sought to prevent the enforcement of this punishment.

P. Dubois for the motion.

P. St. Germain K.C. contra.

ANGLIN C.J.C.—The proviso to s. 41, notwithstanding the wide terms in which it is couched, is necessarily restricted in its application to cases within s. 41 itself, i.e., to cases in which the appellate court had jurisdiction, if so advised, to grant special leave to appeal to this court under s. 41.

The proviso is based upon a refusal of such leave by the appellate court. It therefore presupposes the right or power in that court to grant such leave and that it has refused to exercise that right or power. But, under the terms of s. 41, such power only exists in cases within s. 36, and the granting or refusal of prohibition in a criminal case is expressly excluded from our jurisdiction by that section, which defines the subjects of appeal to this court. This court is purely statutory in its origin and in its jurisdiction. There would be no object, therefore, in extending the time to enable the appellant to apply for special leave to appeal under the proviso to s. 41 since that leave must necessarily be refused for want of jurisdiction to grant it.

Application dismissed.
