

1955  
June 13

BETWEEN:

HER MAJESTY THE QUEEN ..... PLAINTIFF;

AND

E. & A. LEDUC LIMITEE ..... DEFENDANT.

*Practice—Extension of time to appeal—Motion initiated after expiration of statutory period to appeal—The Exchequer Court Act, R.S.C. 1962, c. 98, s. 82(3)—Special circumstances—Requirements of justice—Motion dismissed.*

On a motion for extension of the time to appeal from a judgment of this Court initiated almost four months after the expiration of the statutory period of sixty days and almost six months after the date of pronouncing judgment.

*Held:* That no rigid rules should be laid down which must be complied with before an extension of time to appeal will be granted but in specific cases the reasons in support of a motion for such an extension may be found insufficient.

2. That here the reasons advanced do not show any special circumstances nor any requirements of justice on which to found an order extending the statutory period allowed for instituting an appeal. *International Financial Society v. Moscow Gas Company* (1878) 47 L. J. Ch. 258; *Re Manchester Economic Building Society* (1883) 24 Ch. D. 488; *Nicholson v. Piper* (1907) 24 T. L. R. 16 referred to.

MOTION for extension of time to appeal.

The motion was heard before the Honourable Mr. Justice Ritchie at Ottawa.

*P. M. Ollivier* for the motion.

*Louis A. Pouliot, Q.C.* and *C. A. Séguin, Q.C.* contra.

RTCHIE J. now (June 13, 1955) delivered the following judgment:

The Crown has applied for an order extending the time within which to appeal from the judgment of Fournier, J., delivered herein on December 6, 1954. At the conclusion of

the argument I indicated, for reasons then stated verbally, I was not prepared to grant the extension applied for. Counsel for Her Majesty asked that I file written reasons for my refusal to grant the application and I acceded to that request.

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In support of the application the Crown filed the affidavit of Paul Ollivier, sworn herein on May 3, 1955 and setting out the following five grounds to support the application.

1. The Crown wishes to submit to the Supreme Court that an amount of \$30,000 awarded by the trial judge for loss of business and of a slaughtering permit is without foundation and in no wise justified by evidence given at the trial;
2. The Crown desires to submit that the defendant has no right to the amount of \$13,800 allowed by the trial judge for forcible taking and that, in any event, such amount is excessive;
3. By reason of an increase of work in the Department of Justice, having regard particularly to the number of officers available and the delays caused by the period of Christmas holidays, the Crown was not able to institute an appeal from the judgment before February 4, 1955, the expiry date of the period allowed for filing and serving notice of appeal;
4. After the termination of the statutory period for instituting an appeal negotiations were entered into between officers of the Department of Transport and representatives of the defendant and that such negotiations together with a reorganization of the personnel of the Department at that time delayed presentation of the application for an extension of time in which to appeal;
5. The judgment raises important questions of law on which it is in the interests of justice and good administration of the law respecting expropriation to obtain a decision of the Supreme Court.

Only the last ground has any substance. The Supreme Court, however, has ruled on more than one occasion on the questions of law covered by the trial judgment.

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The statutory provision applicable in section 82(3) of the Exchequer Court Act which requires that a notice of appeal shall be served and filed within sixty days from the entry or pronouncing of the judgment appealed from or within such further time as a judge of the Exchequer Court may either before or after the expiry of the said sixty days fix or allow.

The time for serving the notice of appeal expired on February 4, 1955. This application was initiated by notice of motion dated May 31, 1955, just four days less than four months after expiration of the statutory period within which to appeal and just six days less than six months after the date of pronouncing judgment.

It is not desirable to lay down rigid rules which must be complied with before an extension of time within which to appeal will be granted but in specific cases the reasons advanced to support an application for such an extension may be held insufficient.

Two Court of Appeal cases, decided in 1877 and 1883 respectively, and which are regarded as leading cases in respect to extending the time to appeal are *International Financial Society v. Moscow Gas Company* (1) and *Re Manchester Economic Building Society* (2). One judgment stresses that the limitation of time should not be enlarged except under very special circumstances. The other judgment stresses that judicial discretion should be exercised in accordance with the requirements of justice. The two cases are complementary.

In the *International Financial Society-Moscow Gas* case an application for leave to appeal, notwithstanding the lapse of one year, was refused. In the course of an oft referred to judgment, James, L. J. said:

The limitation of the time to appeal is a right given to the person in whose favour a judge has decided. I think we ought not to enlarge that time, unless under some very special circumstances . . .

In the *Manchester Economic Building Society* case Brett, M. R., in dealing with an application for extension of time to bring an appeal, said:

I know of no rule other than this, that the court has power to give the special leave, and exercising his judicial discretion is bound to give the special leave, if justice requires that leave should be given.

(1) (1878) 47 L. J. Ch. 258.

(2) (1883) 24 Ch. D. 488.

In 1907 the Court of Appeal in *Nicholson v. Piper* (1) refused an application for an extension of time in which to appeal and emphasized the general rule that where an action has been adjudicated upon the successful litigant had, upon the termination of the time allowed for appealing, a vested interest in his order of which he ought not, in the absence of special circumstances, to be deprived.

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I am unable to find, in the reasons advanced to support this application, any special circumstances or any requirement of justice on which to found an order extending the statutory period allowed for instituting an appeal.

The application is refused. The defendant will have the costs of the application, to be taxed.

*Judgment accordingly.*