

ALEXANDER MACLEAN, AND JOHN }
 CHARLES ROGER. (MACLEAN, } CLAIMANTS;
 ROGER & CO.).....

1894
 Oct. 17.

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

Practice—Appeal by the Crown—Extension of time to appeal—Special grounds—50-51 Vict. c. 51.—53 Vict. c. 35.

Where an application was made by the Crown for an extension of time for leave to appeal a long time after the period prescribed therefor in section 51 of 50-51 Vict. c. 16 (as amended by 53 Vict. c. 35), had expired, and the material read in support of such application did not disclose any special grounds or reasons why an extension should be granted, the application was refused.

THIS was an application for an extension of time for leave to appeal to the Supreme Court of Canada.

On the 20th May, 1890, a judgment of the court was granted by consent and arrangement of the parties to give effect to an agreement for the submission of certain matters in dispute between the parties to arbitration which had become impossible to be carried out. By the submission, and by the judgment, the contract and the several breaches thereof set up by the claimants were apparently admitted, and the only question which it was proposed to refer to special referees of the court was that of the amount of damages resulting from such breaches. The reference was proceeded with, and the referees made a report with respect to the damages to which the claimants were entitled but without fixing an amount. This report, against which both parties appealed was subsequently confirmed by the court, and the amount for which judgment should be entered was ascertained by an accountant to be \$24,090.82. On the 23rd day of April, 1894, on motion

1894 made by the claimants, judgment was rendered for
 MACLEAN, that amount.

ROGER
 & Co.

April 30th, 1894.

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Argument
 of Counsel.

Hogg, Q.C., for the Crown, took out a summons for
 an order to extend the time within which to appeal
 from both the consent judgment of the 29th May,
 1890, and the judgment pronounced herein on the
 23rd April, 1894.

May 1st, 1894.

An order extending the time to appeal from the
 judgment herein of 23rd April, 1894, was made on
 this date by consent of parties. The motion for an
 order extending the time for appealing from the judg-
 ment of the 29th May, 1890, was allowed to stand
 over pending negotiations for a settlement which
 eventually fell through.

September 17th, 1894.

The motion for an extension of time to appeal from
 the last mentioned judgment now came on to be
 argued.

Hogg, Q.C., in support of the motion, read the fol-
 lowing affidavit:—

“ I, William Drummond Hogg, of the City of Ottawa,
 in the County of Carleton, Barrister-at-law, make oath
 and say :

“ 1. That I have acted as solicitor and counsel in this
 action on behalf of the respondent.

“ 2. The judgment pronounced herein on the 29th
 day of May, 1890, referred the claims of the claimants
 to three referees to ascertain the damages suffered by
 them by reason of the alleged breaches of the contracts
 in the pleadings mentioned.

“ 3. The final judgment herein was pronounced in
 this court on the 23rd day of April instant, and the

Crown is now desirous of appealing from the said judgments to the Supreme Court of Canada.

“ Sworn, etc.

(Sgd.) “ W. D. HOGG.”

He also cited the following authorities: *The Queen v. Clark* (1); *Annual Practice* 1893-94 (2).

Gormully, Q.C., contra, read the following affidavit:—

“ I, Robert Victor Sinclair, of the City of Ottawa, in the County of Carleton, in the Province of Ontario, Esquire, make oath and say:

“ 1. I am a partner in the firm of Gormully & Sinclair, the solicitors for the claimants herein.

“ 2. The matters in question in this suit were referred to arbitration by Deed of Submission dated the twenty-eighth day of March, A.D. 1890, a copy of which said deed is set out in the decree herein dated the twenty-ninth day of May, A.D. 1890.

“ 3. After the arbitration proceedings had gone on for some time and a large amount of expense had been incurred therein the said decree for reasons appearing in same was pronounced by this court on the twenty-ninth day of May, A.D. 1890, all parties consenting thereto as appears upon its face.

“ 4. No special circumstances are alleged or shown whereon to justify the present application for an extension of time to appeal from said decree.

“ 5. Since the pronouncing of said decree a very long and expensive reference before referees, the costs of which will amount to several thousand dollars, has been proceeded with and continued to completion.

“ 6. The respondent appealed to this court from the report of the said referees herein, and on the ninth day of April, A.D. 1894, by a judgment of this court the report of said referees was confirmed.

(1) 21 Can. S. C. R. 656.

(2) pp. 63, 210, 211.

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 of Counsel.

“ On the twenty-third day of April, A.D. 1894, on motion for judgment, judgment was given in favour of the claimants for the amount found due by the said referees' report.

“ 8. On the eleventh day of September, A.D. 1894, notice was served on the claimants by the respondent that an appeal had been taken to the Supreme Court of Canada, a copy of which notice is hereunto annexed.

“ 9. In January, A.D. 1893, the claimants relying on the finality of the said decree of the twenty-ninth day of May, A.D. 1890, obtained on the faith thereof certain advances from the Bank of Montreal, giving to said bank as collateral security for their then indebtedness and said advances an equitable charge on the moneys that might thereafter become payable to claimants by the respondent under said decree, which said charge is still in full force and virtue.

“ Sworn, etc.

(Sgd.) “ R. V. SINCLAIR.”

He referred to the following authorities: *Seton on Decrees* (1); *Moss v. Leatham* (2); *Annual Practice* 1893-94 (3).

Hogg, Q.C. replied.

THE JUDGE OF THE EXCHEQUER COURT now (October 17th, 1894) delivered judgment.

I think, so far as this is an application for an extension of time in which to prosecute an appeal from the judgment herein of the 29th May, 1890, that I should refuse it.

In respect to the judgment of the 23rd April, 1894, an order has been made and the appeal, I understand, is being prosecuted, so I have nothing to do with it at present.

(1) pp. 111, 732.

(2) 2 Moo. P. C. 73.

(3) p. 1023.

With reference to the judgment of the 29th May, 1890, I express no opinion as to whether or not an appeal would lie because it was a judgment by consent of parties. I do not think that is directly involved in the question now before me, and I treat the matter as though it were a case in which an appeal would lie. I refuse the application simply upon the ground that no special circumstances are shown to exist, or any reason given for the extension of time asked for, and such an extension should not be granted unless special circumstances are shown to exist. Upon reference to the affidavit read in support of the application I find it merely states that judgment was delivered on a certain date (29th May, 1890), and that the Crown is desirous of appealing therefrom. That much might be urged in any case, and if allowed to be sufficient it would be difficult to suggest a case in which the limitation in the statute should be observed. Then, I think, there are special circumstances shown in the affidavit read in answer to the motion which make against extending the time. In this connection I think it is a matter to be considered that the judgment was a judgment by consent, arrived at entirely by arrangement between the parties; and so far as it was a final judgment the claimants are now, I think, entitled to the benefit of it.

The application to extend the time to appeal from the judgment pronounced herein on the 29th May, 1890, is refused with costs.

Judgment accordingly.

Solicitors for claimants: *Gormully & Sinclair.*

Solicitors for respondent: *O'Connor & Hogg.*

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 Reasons
 for
 Judgment.
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