

1917
 May 26.

HIS MAJESTY THE KING,
 PLAINTIFF,
 AND
 THE QUEBEC NORTH SHORE TURNPIKE
 ROAD TRUSTEES,
 DEFENDANTS.
 AND
 GEORGE H. BURROUGHS, CURATOR OF THE ES-
 TATE OF SAID QUEBEC NORTH SHORE TURNPIKE
 ROAD TRUSTEES,
 ADDED DEFENDANT.

Appeal—Extension of time—Delay—“Justice of the case”.

An extension of time to appeal to the Supreme Court of Canada, under sec. 82 of the *Exchequer Court Act*, will not be granted after a delay of 14 months, particularly when “the justice of the case” does not warrant the granting of such an extension.

A PPLICATION for extension of time to appeal.

Heard by the Honourable Mr. Justice Audette, at Ottawa, May 22, 1917.

A. Taschereau, K.C., for plaintiff.

G. G. Stuart, K.C., for defendant.

AUDETTE, J. (May 26, 1917) delivered judgment.

This is an application, on behalf of the Crown, made this 22nd May, 1917, under the provisions of sec. 82 of the *Exchequer Court Act*, for an extension of the time to appeal, to the Supreme Court of Canada, from a judgment pronounced herein by this Court on March 27th, 1916.

The present application is made about 14 months after the pronouncement of the judgment from which an appeal is desired. True, an application to the same effect was made some time in November last—that is about 9 months after judgment—but as the notice of the application was not served upon the proper parties, the application could not be entertained, and an order of taking nothing by the application was duly made.

The application is now renewed 5 months from the November application and 14 months from the delivery of judgment, and it is needless to say a strong case of special circumstances must be made at this date to induce the court to grant such a demand. In support of the application is read an affidavit setting forth pressure of public business in the Department of Justice. Is that an allegation to be taken to mean that pressure of public business was maintained to such a high degree during this long period as to actually prevent the giving of half an hour or an hour to the consideration of the report made by the counsel, who had charge of the case at trial, at Quebec? However, the Crown was duly notified before delivery of judgment of the date on which judgment would be rendered. Right after the delivery of the judgment the Crown obtained from the Registry a copy of the reasons for judgment and remained silent for months. The judgment has been settled and is filed of record.

Extension of time, after the lapse of 30 days, but within reasonable delay, is sometimes allowed under special circumstances; but in such cases the balance of justice or injustice to the litigants must be the determining consideration.

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I do not wish to charge the officers of the Crown with laches, for which the Crown is not liable; but, is it not natural to infer from the long silence either acquiescence in the judgment or waiver—if waiver could exist on behalf of the Crown, to its right of appeal. There was here want of diligence and the defendant is entitled at this period to the fruits of his judgment.

As a matter of actual fact, the remedy sought in the present action by the Crown can no more at the present date be given or asserted. And even if the argument against relief, which otherwise would be just, were founded merely upon delay, the validity of that defence must be tried upon principles substantially equitable.

The present case, on the merits, is an action by the Crown to recover \$1,006.05 (an amount which was materially reduced at the trial) alleged to have been illegally collected by the defendant from the Crown's officers, as toll fees.

At the time of the institution of the action, the defendant was and had been insolvent for a number of years, having even defaulted some of its bonds for a period of over 35 years, and others for 3 years, as appears in the preamble of 6 Geo. V., ch. 2 (Prov.).

The defendant company, under the provisions of 6 Geo. V., ch. 2, was dissolved for all legal purposes from the 13th May, 1916, the date of the publication of the Proclamation in the Official Gazette, as provided by sec. 2 of the said Act, and a liquidator appointed under the provisions of sec. 4 thereof.

What does the equity of the case suggest under the circumstances? Would it be just and equitable to place, at this stage, an appeal upon the shoulders

of the curator after a silence of 14 months, on behalf of the Crown, and after the absolute insolvency of the defendant has been established even by an Act of the Legislature? Would not an appeal, or the continuation of litigation for such a small amount defeat the purposes of justice in delaying the adjustment of this small insolvent estate and prolong unduly the final winding up of such an insolvent company which practically has no assets? What interest can the Crown have in prosecuting this appeal? Were the judgment pronounced by this Court reversed and judgment given in favour of the Crown for the amount asked for, how could the Crown recover or realize? There are now no assets upon which the Crown could levy, and were there any assets the bondholders would take in preference and to the exclusion of all others.

As I have already said, granting this extension after such a long delay of 14 months would encourage fruitless litigation to discuss but academic questions without any substantial remedy against an absolutely insolvent defendant, who after such a long delay, and especially under the circumstances, has reason to expect not to be further troubled in respect of the matters raised and adjudged upon so many months ago. Taking into consideration the special position of the defendant, the reasons alleged in support of the application are not such as would justify the exercise of judicial discretion in favour of the same. Against the reasons set forth in support of the application, there are special circumstances which militate very strongly and equitably against them.

Although reluctant to shut out a party from the privilege of appealing, the "justice of the case"

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herein is against the granting of such an extension under the circumstances after such a long lapse of time.

Moreover, granting, at this stage and period, this application would consecrate the principle of no finality in the administration of justice and would be against the very spirit of the law, as enacted by sec. 82 of the *Exchequer Court Act*, whereby Parliament has enacted that 30 days would be a reasonable delay within which a suitor had to decide as to whether or not he would lodge an appeal, and the legislator could not reasonably anticipate that the discretion given the Judge in respect of an extension could ever be exercised 14 months after the pronouncing of judgment, unless serious and material injustice would follow, which is not the case in the present application.

The application is dismissed with costs.

Application dismissed.

Solicitor for plaintiff: *Alleyn Taschereau.*

Solicitors for defendants: *Pentland, Stuart & Co.*