

1903
 *Dec. 11.
 THE ATTORNEY GENERAL FOR }
 QUEBEC AND THE CITY OF } APPELLANTS;
 HULL..... }

AND

JANET LOUISA SCOTT AND }
 OTHERS } RESPONDENTS.

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

Appeal—Time for bringing appeal—Delays occasioned by the court—Jurisdiction—Controversy involved—Title to land.

An action *au pétitoire* was brought by the City of Hull against the respondents claiming certain real property which the Government of Quebec had sold and granted to the city for the sum of \$1000. The Attorney General for Quebec was permitted to intervene and take up the *fait et cause* of the plaintiffs without being formally summoned in warranty. The judgment appealed from was pronounced on the 25th of September, 1903. Notice of appeal on behalf of both the plaintiff and the intervenant was given on 3rd November, and notice that securities would be put in no 10th November, 1903, on which latter date, the parties were heard on the applications for leave to appeal and for approval of securities before Würtéle J. who reserved his decision until one day after the expiration of the sixty days immediately following the date of the judgment appealed from and, on the 25th of November, 1903, granted leave for the appeals and approved the securities filed.

Held, that the appellants could not be prejudiced by the delay of the judge, in deciding upon the application, until after the expiration of the sixty days allowed for bringing the appeals and, following *Couture v. Bouchard* (21 Can. S. C. R. 281) that the judgment approving the securities and granting leave for the appeals must be treated as if it had been rendered within the time limited for appealing when the applications were made and taken *en délibéré*.

Held also, that as the controversy between the parties related to a title to real estate, both appeals would lie to the Supreme Court of

*PRESENT:—Sir Elzéar Taschereau C.J. and Sedgewick, Girouard, Nesbitt and Killam JJ.

Canada notwithstanding the fact that the liability of the intervenant might be merely for the reimbursement of a sum less than \$2000.

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MOTION to quash appeal from the judgment of the Court of King's Bench, appeal side, rendered on the 25th of September, 1903, affirming the judgment of the Superior Court, District of Ottawa, Curran J. (1), which dismissed the plaintiff's action and the intervention therein, with costs.

The circumstances of the case are fully stated in the Superior Court judgment (1), and summarized in the judgment of the court delivered by His Lordship Mr. Justice Girouard which is now reported.

Aylen K.C. for the motion.

Belcourt K.C. contra.

The judgment of the court was delivered by

GIROUARD J.—This is a motion to quash an appeal for two reasons: First, because the security was not put in within sixty days after the rendering of the judgment appealed from and; Secondly, because the judgment does not come within the provisions of the Supreme Court Act.

As to the first point, it is sufficient to say that notice of security was given on the 3rd November, 1903, to be put in on the 10th. Parties appeared on that day, but after hearing them, the judge took the application *en délibéré* till the 25th November, that is one day after the sixty days, when the security was allowed. We have already held in a case like this that parties cannot be prejudiced by the delay of the court in rendering judgment which should be treated as having been given on the day that the case was taken *en délibéré*. *Couture v. Bouchard* (2).

(1) Q. R. 24 S. C. 59.

(2) 21 Can. S. C. R. 281.

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As to the second point, we are also against the respondents. An action in the nature of a petitory action was taken against respondents claiming, under a grant from the Quebec Government of the 2nd April, 1902, a certain bed of a creek known as Brigham's or Brewery creek, in the City of Hull. The Attorney General of Quebec was allowed to intervene in the case and to take *fait et cause* for the City of Hull, the plaintiffs, and thereby became plaintiff in the case without waiting till he was called in warranty.

The City of Hull has appealed and the respondents admit that this appeal exists, but contend that the Attorney General has no such appeal. The authorities quoted by them have no application. There is nothing in dispute in this case between the Government and the respondents but a title to land. The fact that this land may possibly remain in the hands of the respondents which would render the Quebec Government liable only for the reimbursement of the purchase money, namely, \$1,000, and probably interest, is of no consequence, for this is not the point in dispute between the parties. The sole point in issue is the title to the bed of the creek. The motion, therefore, is dismissed with costs.

Motion dismissed with costs.

Solicitor for the Attorney General for Quebec, appellant: *L. J. Cannon.*

Solicitors for the City of Hull, appellant: *Foran & Champagne.*

Solicitors for the respondents: *Aylen & Duclos.*
