

(By ORIGINAL BILL)

DENIS O'SULLIVAN PLAINTIFF;

1884

AND

WILLIAM HARTY AND CHARLES }
 W. WELDON } DEFENDANTS.

* Nov. 28.

1885

* Mar. 16.

(By ORDER OF REVIVOR)

JOHN KEHOE, EXECUTOR OF THE LAST }
 WILL AND TESTAMENT OF DENIS } APPELLANT;
 O'SULLIVAN, DECEASED (PLAINTIFF) }

AND

WILLIAM HARTY AND CHARLES }
 W. WELDON (DEFENDANTS) } RESPONDENTS.

Time for appealing under S. and E. C. A. sec. 25—Whether from pronouncing or entry of judgment—Matters to be settled by registrar.

Where any substantial matter remains to be determined on the settlement of the minutes before the registrar, the time for appealing to the Supreme Court of Canada will run from the entry of the judgment, otherwise it will run from the date on which the judgment is pronounced. In the Province of Quebec the time runs in every case from the pronouncing of the judgment.

MOTION for leave to appeal when more than thirty days had elapsed since the pronouncing of the judgment, but within thirty days of the formal entry of judgment by the registrar of the court.

*PRESENT—Sir W. J. Ritchie C.J. and Strong, Fournier, Henry and Taschereau JJ.

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The judgment in this case was pronounced in the Court of Appeal on June 30th, 1884, the two following months being the vacation of the court. On September 13th O'Sullivan deposited \$500 and applied for leave to appeal, which was refused, the court holding that the application should have been made within thirty days from the date of the pronouncing of the judgment, as the vacation did not prevent the time from running.

A substantial question affecting the rights of the parties arose on the settlement of the minutes, and was subsequently brought before the court for decision. In consequence of this the judgment was not formally entered until November 14th, 1884.

On November 27th, 1884, O'Sullivan applied to a judge of the Supreme Court of Canada for leave to give security under sec. 31 of the Supreme Court Act as amended by sec. 14 of the Amendment Act of 1879. This application was referred to the full court.

D. A. O'Sullivan supported the motion.

J. L. Whiting contra.

Sir W. J. RITCHIE C.J.—This was a motion made in chambers for an order allowing an appeal to this court from the judgment of the Court of Appeal for Ontario, or for an order that the appellant may be at liberty to give proper security.

I have been a good deal embarrassed as to what should be done in this case. It is claimed that in Ontario the time for appealing should run from the time the judgment was pronounced, and that as the judgment in this case was pronounced before vacation, the application should have been made during vacation. I was of opinion at first that the party was not obliged to apply during vacation, but this application need not be decided on this point. The decision was pronounced in June, but the minutes were not settled

and entered until some time in the autumn. The question is whether the time runs from the date of the pronouncing of the judgment, or from the entry of the certificate. I understand the practice in Quebec to be that the judgment is always entered as of the date on which it was pronounced, and therefore no question can arise as to appeals coming from the Province of Quebec; and also in Ontario where there is simply a judgment declaring that the appeal is dismissed or allowed as the case may be, and there is nothing more to be done; but when the decision requires something more to be done at the settlement of the minutes, as in this case whether the plaintiff should be held personally liable for the costs, then I think that until the settlement of the minutes and entry of the certificate a party should not be compelled to take his appeal. I am therefore inclined to think the time ought to run in this case from the date of the entry of the certificate, which was entered on the 14th of November last.

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STRONG J. was of opinion that the motion should be granted.

FOURNIER, HENRY AND TASCHEREAU JJ. concurred.

Motion allowed and leave to appeal granted.

Solicitor for appellant: *Robert Mahon.*

Solicitors for respondents: *Britton & Whiting.*