

1893 W. P. HOWLAND & COMPANY } APPELLANTS;  
 \*Mar. 15, 16. (PLAINTIFFS) .....

\*May 1.

AND

THE DOMINION BANK (DEFENDANTS)..RESPONDENTS  
 ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Practice—Renewal of writ—Setting aside order for—Statute of limitations.*

A writ issued from the High Court of Justice for Ontario, in June, 1887, was renewed by order of a master in chambers three times, the last order being made in May, 1890. In May, 1891, it was served on defendants, who thereupon applied to the master to have the service and last renewal set aside, which application was granted and the order setting aside said service and renewal was affirmed on appeal by a judge in chambers and by the Divisional Court. Special leave to appeal from the decision of the Divisional Court was granted by the Court of Appeal, which also affirmed the order of the master, Mr. Justice Osler, who delivered the principal judgment, holding that the master had jurisdiction to review his own order; that plaintiffs had not shown good reasons, under rule 238 (a), for extending the time for service; and the ruling of the master having been approved by a judge in chambers and a Divisional Court, the Court of Appeal could not say that all the tribunals below were wrong in so holding. On appeal to the Supreme Court of Canada:

*Held*, that for the reasons given by Mr. Justice Osler in the Court of Appeal the appeal to this court must fail and be dismissed with costs.

APPEAL from a decision of the Court of Appeal for Ontario(1) affirming the judgment of the Divisional Court, by which the order of a master setting aside a former order for renewal of the writ in the case, which had been affirmed by a judge in chambers, was upheld.

The writ was first issued in June, 1887, and was renewed, by order of a master in chambers, three times, the last order being made in May, 1890. In May, 1891, it was served on the defendants, the Dominion Bank, and by order of the master the service was allowed.

\* PRESENT :—Strong C.J., and Fournier, Taschereau, Gwynne and Sedgewick JJ.

The defendant then moved, before the master in chambers, to have the service and order allowing the same, and all renewals since June, 1889, set aside, on the ground that the same were contrary to the statute, and that no sufficient cause for granting the same had been shown. The master granted the application, and set aside the renewals and order for service, with costs against the plaintiffs, who appealed to a judge in chambers, to the Divisional Court and to the Court of Appeal, all of which appeals were unsuccessful, and the master's order was sustained. The plaintiffs then appealed to this court.

1893  
 HOWLAND  
 & Co.  
 v.  
 DOMINION  
 BANK.

*Arnoldi* Q.C., for the appellants.

*Dr. McMichael* Q.C., for the respondents.

The judgment of the court was delivered by :

SEDGEWICK J.—The appeal in this case relates to a question of practice only. The writ of summons had been renewed three times by the master in chambers, at Toronto, and was not served until nearly four years from the date of its issue had elapsed. The order for the third renewal was set aside by the master, whose order was affirmed by Mr. Justice Street, at chambers, by the Divisional Court and by the Court of Appeal. The effect of the master's order was, it is contended, to enable the defendant bank to set up the statute of limitation as a defence to the action, should it be begun *de novo*, hence the necessity on the plaintiff's part to maintain alive the writ itself, as well as its several renewals.

I am of opinion that the appeal must fail for the reasons stated by Mr. Justice Osler in the Court of Appeal, to whose judgment no observations of mine can usefully be added.

The appeal should, I think, be dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for appellants : *Howland, Arnoldi & Bristol.*

Solicitors for respondents : *McMichael, Mills & McMichael.*