

HARRY M. HILLMAN (DEFENDANT) .. APPELLANT;

AND

THE IMPERIAL ELEVATOR AND
LUMBER COMPANY (PLAIN- } RESPONDENTS.
TIFFS)

1915
*Dec. 7.
1916
*Feb. 1.

ON APPEAL FROM THE SUPREME COURT OF
SASKATCHEWAN.

Appeal—Jurisdiction—Matter originating in inferior court—Transfer to superior court—Extension of time for appealing—Special leave—“Supreme Court Act,” ss. 37c, 71.

An action commenced in the District Court was, by consent of the parties, transferred to and subsequently carried on in the Supreme Court of Saskatchewan as if a new writ had been issued therein; the statement of claim, pleadings and proceedings being all filed and taken in the latter court.

Held, that, although the proceedings, after the issue of the writ, had all been carried on in the court of superior jurisdiction, yet as the cause originated in a court of inferior jurisdiction, an appeal *de plano* would not lie to the Supreme Court of Canada. *Tucker v. Young* (30 Can. S.C.R. 185) followed.

An order in the Supreme Court of Saskatchewan was made extending the time for appealing beyond the sixty days limited for bringing the appeal by the “Supreme Court Act,” under sec. 71. On an application, under section 37 (c) of the “Supreme Court Act,” for special leave to appeal,—

Held, also, following *Goodison Thresher Co. v. Township of McNab* (42 Can. S.C.R. 694), that, notwithstanding the order extending the time for appealing made in the court appealed from, the Supreme Court of Canada had no jurisdiction to grant special leave for an appeal after the expiration of the sixty days limited for bringing appeals by section 69 of the “Supreme Court Act.”

MOTION for special leave to appeal to the Supreme Court of Canada from the judgment of the Supreme

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

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Court of Saskatchewan (1), affirming the judgment of Newlands J., at the trial, maintaining the plaintiffs' action with costs.

The motion was made, *ex parte*, on written consent filed, in the circumstances stated in the judgment now reported.

Chrysler K.C. for the motion, on behalf of the appellant.

The judgment of the court was delivered by

THE CHIEF JUSTICE.—This is a motion for leave to appeal from the judgment of the Supreme Court of Saskatchewan, under section 37c of the "Supreme Court Act" which gives an appeal by leave of the Supreme Court of Canada from a judgment in an action, suit, etc., not originating in a superior court. If there is power to grant leave the case is eminently one for granting it. The writ was issued in the District Court for the purpose of enforcing a mechanic's lien. The appellant's proceedings in that court were not continued but, instead of issuing a new writ, by consent of the parties the proceedings were transferred to the Supreme Court of Saskatchewan, and the statement of claim, pleadings and proceedings have all been in that court, the intention between the parties being that the plaintiff should be in the same position as if he had issued a new writ. Unfortunately, according to *Tucker v. Young* (2) it did not have that effect. It was held in that case that an action begun in the County Court, in Ontario, and removed under the

(1) 8 Sask. L.R. 91.

(2) 30 Can. S.C.R. 185.

provisions of the "Judicature Act" into the High Court was not appealable to the Supreme Court of Canada as the action had not originated in a superior court.

When the case first came to this court, Mr. Lafleur having doubts as to this court's jurisdiction, had the case struck from the list. The plaintiff then applied to the Chief Justice of Saskatchewan, with the consent of the defendants, and obtained an order, professedly under section 71 of the "Supreme Court Act," which gives to the court below the power to allow an appeal, although the same was not brought within the sixty days prescribed by section 69. Section 37, however, does not give the court below power to grant leave to appeal in a case of this kind, and it has been held by this court in *The John Goodison Thresher Co. v. The Township of McNab* (1), that section 71 does not authorize the court below to extend the time for bringing an appeal so as to confer power on this court to grant leave to appeal where the application to this court for leave to appeal is made under section 48e.

I do not see how it is possible to distinguish this case from the *Goodison Case* (1) so as to hold that the order of the Chief Justice of Saskatchewan will authorize this court, after the sixty days, to grant leave to appeal.

Motion refused with costs.

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The Chief
Justice.

(1) 42 Can. S.C.R. 694.