

THE ONTARIO JOCKEY CLUB (DE- } APPELLANT;
FENDANT) }

1926

*Feb. 22.

*Mar. 1.

AND

SAMUEL McBRIDE (PLAINTIFF) RESPONDENT.

Practice and procedure—Special leave—Application after delay—Extension of time—Powers of appellate court—Supreme Court Act, R.S.C., c. 139, ss. 69, 71.

When an application to an appellate court for special leave to appeal to this court is brought on after the expiry of sixty days prescribed by s. 69 of the Supreme Court Act, the appellate court, by its order granting such leave, can also extend the time for bringing the appeal, under the power conferred by s. 71.

MOTION by the respondent to quash the appeal.

Geo. F. Macdonnell for motion.

F. Hogg K.C. contra.

The judgment of the court was delivered by

ANGLIN C.J.C.—The plaintiff (McBride) seeks to compel the defendant club to register him as an assignee of a share of its capital stock. This relief, denied by the trial judge, having been accorded by the Appellate Divisional Court, the defendant now appeals to this court.

Under the authority of s. 41 of the *Supreme Court Act* the Appellate Divisional Court granted special leave to appeal and, the application therefor having been brought on after the expiry of the 60 days prescribed by s. 69 of the *Supreme Court Act*, the court by its order, exercising the power conferred by s. 71 of the *Supreme Court Act*, also extended the time for bringing the appeal to the 15th of February, 1926.

The appeal having been duly launched under the terms of this order the plaintiff now moves to quash it. The sole ground relied on at bar in support of the motion was that the power conferred by s. 71 cannot be exercised where special leave to appeal is necessary.

In our opinion this objection cannot be maintained. S. 39 of the *Supreme Court Act* subjects the right of appeal conferred by s. 36 to two alternative conditions: either (a) the amount or value of the matter in controversy must exceed \$2,000, or (b) special leave to appeal must be obtained. Upon condition (b) being satisfied the same right

*PRESENT:—Anglin C.J.C. and Idington, Duff, Mignault, Newcombe and Rinfret JJ.

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of appeal exists as in cases which fall within condition (a) and there is no good reason why s. 71 should not apply equally to both classes of appeals.

Moreover, the matter appears to be covered by authority. In *Goodison Thresher Co. v. Township of McNab*, the court of appeal for Ontario on the 31st of December, 1909, made an order extending the time for appealing to this court from its judgment pronounced on the 13th of May, 1909. The value of the matter in controversy being less than \$1,000, special leave to appeal was required, and by s. 48 (e) of the *Supreme Court Act*, as it then stood, this court or the court of appeal was empowered to grant such leave. This court having, on the 25th of February, 1910, refused leave on the ground that its right to grant it did not exist after the expiry of the 60 days prescribed by s. 69, notwithstanding the order of extension made by the court of appeal (1), the latter court on application to it on the 24th of March, 1910, gave special leave to appeal and further extended the time for appealing. The appeal was subsequently heard on the merits and dismissed (2). See also *Brussels v. McCrae* (3).

The motion will be dismissed with costs.

Motion dismissed with costs.
