

should not now be allowed the amendment asked for, and that the partnership accounts could not be gone into in this action, more especially as it was open to the defendants by an independent action to have the partnership accounts taken, and thereby to recover any amount that might be due to them.

Coldwell, Q.C., for plaintiff.

A. D. Cameron, for defendants.

Province of British Columbia.

SUPREME COURT.

BOLE, J.,
Local Judge. }

[Feb. 22.]

ROBERTSON *v.* ATLAS CANNING COMPANY.

Practice—Execution—Stay of.

The application herein was to stay execution with respect to the costs of a previous non-suit as between the same parties pending trial of present action.

Held, following the analogy of the practice as to security for costs, which is not required to be given by a resident plaintiff unless he has divested himself of all interest or claim in the subject of the action, that execution should not be stayed.

Motion dismissed.

WALKEM, DRAKE, J. }
MCCOLL, J. }

[March 4.]

KINNEY ET AL. *v.* HARRIS ET AL.

Mining law—Practice—Appeal from County Court—Extending time for.

On March 11th, 1896, the plaintiffs obtained judgment in their favor in the County Court of Kootenay holden at Kaslo (mining jurisdiction), and on 13th March, 1896, the defendants gave notice of appeal to the then next sitting of the Full Court, but did not set down the appeal for hearing on account of their not having been able to get the notes of evidence from the judge.

The defendants now moved for leave to set down the appeal for hearing.

The preliminary objection was taken that by Mineral Act, 1888, s. 29, the appeal should be by case stated.

Held, that under this Act an appeal by case stated was not imperative. A motion should have been made for an extension of time for setting down the appeal at the sitting of the Court next after the notice of appeal.

Where an application is made after the expiration of the prescribed time within which a thing should be done, for an extension of time, the special circumstances must be much stronger than in a case in which the time has not yet elapsed at the date of the application for an extension of time.

Held, also, following *Trask v. Pellent*, 5 B.C.R., "that it is for the interest of the public that litigants should know as soon as possible when certainty has been reached," applies particularly in mining cases.

Motion dismissed with costs.

Cassidy, for defendants.

Duff, for plaintiffs.