

OSLER, J.A.

MAY 28TH, 1906.

C.A.-CHAMBERS.

KIRBY v. TOWNSHIP OF PELEE.

Appeal to Court of Appeal—Extending Time for—Excuse for Delay—Importance of Case—Costs—Objectionable Affidavit.

Motion by defendants to extend the time for setting down appeal from the report of the Drainage Referee.

W. D. McPherson, for defendants.

F. E. Hodgins, K.C., for plaintiff.

OSLER, J.A.:—The motion was launched upon an affidavit of the reeve of defendants, sworn on 2nd May, 1906, in which he states that he "is advised and believes" that the report of the Referee was filed on 2nd December, 1905; that notice of appeal was given on 23rd January, 1906; that on 24th February, 1906, the draft of the appeal was served upon plaintiff's solicitor, but had not been returned; that the evidence and exhibits are now ready for the printer, and he has the same in the hands of the printer, so that the appeal books will be ready in a few days. The excuse for the delay, as stated by the deponent, is that the township is an island in Lake Erie, 16 miles from the mainland, and in the winter time for weeks at a time, and sometimes for over a month, it is impossible to have any communication with the mainland; that the telephone cable between the island and the mainland is most of the time out of order during the winter season, so that no communication can be had in that way, and is out of order at the present time; that some of the exhibits put in at the trial were taken back to the island after the trial, and, owing to the isolated condition of the island, communication could not be had so that the exhibits could be returned "until recently" for the purpose of being printed. In deponent's belief the appellants have a good right of appeal, and the application is made bona fide.

A further affidavit on behalf of the defendants was afterwards filed, made by one Wilkinson, whose firm has the contract for conveying the Pelée Island mail between the post office at Leamington and Point Pelée, where the mail, during the winter months, is landed from Pelée Island. The deponent states that during February last "only" three mails