

January, 1910. In case of appeal the act requires that it be taken within 10 days and the trial of the appeal must be within 30 days from date of conviction "unless the Court or Judge extends the time for hearing and decision beyond such 30 days," an extension of time for hearing, necessarily involves an extension of time for decision. Where there is any conflict or discrepancy as to what actually took place in formally extending the time, or in fact as to the action of a Judge or Court officer in any matter of routine, the presumption that all was done rightly—should prevail. Where, as in this case, the Judge had the power to extend the time and acted as if such extension was actually made, it would require a very strong and clear case to warrant prohibition because of the omission to formally announce or make a memo in writing of, an extension of time for doing what afterwards was done. As to this objection and also as to the objection that the Judge did not himself fix the amount of costs, I have to say the least of it, grave doubts as to the applicability of the cases cited.

I have given every consideration in my power to the very full and complete arguments addressed to the Court by counsel, I have read the cases cited—and I have carefully considered the judgment of my brother Sutherland and his reasons for refusing the motion. The conclusion reached by me is that it is not a proper case for prohibition.

As I have since going over this case, had an opportunity of reading the reasons for decision of my brother Riddell—and as I agree that the appeal should be dismissed I need not attempt to give further reasons—I may add this that it should be only where there is absolutely no doubt, that a party litigant invoking the aid of the Court to get rid of a conviction should after going a certain length and likely to fail—stop short and deny the right of the Court to go further.

The appeal should be dismissed with costs.

HON. MR. JUSTICE RIDDELL:—The defendant contended that he was entitled to prohibition forthwith. Sufficient reason has been shewn for the delay in taking the appeal—the facts are set out accurately and in sufficient detail in the report already cited. I mention the important dates, etc.

The defendant was 11th January, 1910, convicted before the police magistrate at Goderich under sec. 321 of R. S. C.