

The case came before this Court by way of appeal from the trial Judge's decision. That this was done *per incuriam* appears to follow from the subsequent action of the Supreme Court.

The plaintiff was not responsible for this, and should not be made to suffer for it. When the Supreme Court raised the objection, there was the defendants' opportunity to ask a suspension of action until application might be made to this Court under secs. 48 and 71 of the Supreme Court Act. But this course was not adopted. The consequence is that to grant the application now would be to further delay the final disposition of the case until the May sittings of the Court.

Besides, the Supreme Court deprived the plaintiff of his costs of the abortive appeal. Yet it is now asked that he be compelled to again undergo further expense and submit to further delay.

Care should be taken not to respond too readily to the desire of defeated appellants to be permitted to carry on the litigation, notwithstanding the general limitation prescribed by the statutes. Nor should we be too much influenced to assist the prolongation by the fact that, acting under a mistaken impression, the parties seeking leave have already incurred expense which will be thrown away. Perhaps, if the regular course had been adopted, both parties might have been spared much unnecessary expense.

The case being one in which an appeal does not lie as of right to the Supreme Court, the defendants have reached the ordinary limit. They might, and perhaps should, have first taken an appeal to a Divisional Court, but, whatever the result might have been there, the ultimate appeal was to this Court according to the general rule.

Under the circumstances, I am disposed to let it rest there.

The motion must be refused.

OSLER, J.A., gave reasons in writing for the same conclusion.

GARROW and MACLAREN, J.J.A., concurred.

MEREDITH, J.A., dissenting, was of opinion, for reasons stated in writing, that leave to appeal should be granted and the time be extended.