

Moss, C.J.O.

DECEMBER 8TH, 1902.

C.A.—CHAMBERS.

SMITH v. HUNT.

*Appeal—To Supreme Court of Canada—Extension of Time—Grounds for Allowing—Negotiations for Settlement—Special Circumstances—Bona Fide Intention to Appeal.*

Motion by defendants Hunt and Roberts for an order extending the time for appealing to the Supreme Court of Canada from the judgment of the Court of Appeal (ante 598).

D. L. McCarthy, for the applicants.

F. A. Anglin, K.C., for plaintiff.

Moss, C.J.O.—The judgment of this Court was delivered on the 19th September, 1902. The first proceeding taken toward an appeal was the service on 17th November of a notice of intention to appeal, but, as no such notice was necessary, its service was material only as evidence of the intention it expressed.

The affidavit filed in support of the motion set out that about the end of September negotiations for a settlement were going on, and that these continued until 17th November, when defendants and their attorney spent all day with plaintiff's solicitors, ultimately failing to reach a settlement. Thereupon, as the defendants alleged, plaintiff's solicitors were advised to proceed with an appeal. Notice of appeal was served and leave to serve notice of this motion obtained 20th November.

Upon an application of this nature it lies upon the applicant to shew, among other things, a bona fide intention to appeal, entertained while the right of appeal exists, and a suspension of further proceedings by reason of some special circumstances in consequence of which they are held in abeyance. No such case was made out here. Further, there was no evidence of any communication to plaintiff or his solicitors of any intention to appeal, or any arrangement or any understanding that the time for appealing should not be considered as running during the negotiations. In spite of *In re Manchester Economic Building Society*, 24 Ch. D. 488, where it is said that leave should be granted where justice requires it, no leave should be given here; and in any case no extension should in any event have been granted in favour of the defendant Roberts, who did not appeal from the judgment at