

of that part of the judgment was not stayed—that is, between the expiry of the 30 days' stay granted by the trial Judge and 4th March, 1907, when the stay was granted by Moss, C.J.O.

It was strenuously urged by Mr. Middleton that it would be a great injustice to defendants, who were dissatisfied with the judgment and had appealed against it, that they should be required to obey the mandate of the Court contained in paragraph 24 of the judgment, at the peril of being liable to be punished for contempt, and that too where the case was one in which a Judge of the Court of Appeal had determined that it was proper that the operation of the judgment should be stayed pending the appeal, and had accordingly granted such a stay. With the hardships of a practice leading to such a result, we have nothing to do, but there was no reason why the defendants should have incurred that risk. They might have yielded obedience to the judgment while it was operative, and, if that would have involved serious loss, they might have obtained an extension of the stay granted by the trial Judge, or have procured a stay from the Court of Appeal, or a Judge of that Court, before the expiry of the stay granted by the trial Judge. They were in a position to move for such a stay at any time after 12th January, 1907, and, if the disposition of the motion had been delayed owing to plaintiffs asking enlargements of it, terms might have been imposed on them which would have protected defendants from incurring any penalty for contempt in not in the meantime yielding obedience to the judgment. . . .

[Reference to *McGarvey v. Town of Strathroy*, 6 O. R. 138; *McLaren v. Caldwell*, 29 Gr. 438; *Dundas v. Hamilton and Milton Road Co.*, 19 Gr. 455.]

The first ground of appeal, in my opinion, fails.

The second ground, in my opinion, also, fails.

I do not propose going through the cases cited by Mr. Middleton, all of which I have read. Several of them deal with the exercise by the Court of its jurisdiction to punish for contempt not committed in the face of the Court, and point out that this jurisdiction should be exercised sparingly, and only where the public interests require that it should be exercised. In all this I entirely agree, but it does not help much, if at all, to the solution of the question whether the order of Mulock, C.J., was rightly made in this case.