

of Canada adjourned the hearing to permit this application to be made.

The learned Judge said that, if the extension of time were granted and the plaintiffs allowed to appeal in the action, it would practically not increase the expense. Though the actual value of the land in question was small, it might be of more value to the abutting owners as a street, and the question of the right to close a street on which a rear tier of lots fronts, was one of considerable general importance, and might well seem so to the plaintiffs. After the time for appealing has expired, it is ordinarily but just that a litigant should be able to feel assured that the matter is at rest and govern himself accordingly. But here the township corporation had not been lulled into security, for the very same rights were still before the Court in the concurrent proceeding. There was no cross-appeal to re-establish the conveyance to the defendant Kruse or sec. 2 of the by-law. Both he and the corporation had acquiesced in their declared invalidity. The sole question now was the validity of sec. 1 of the by-law, closing the street. In that Kruse had no more interest than any one of the public who might hereafter be a possible bidder at a possible, though improbable, sale. So the only parties interested were already before the Supreme Court of Canada. The double litigation was apparently not the choice of the plaintiffs. It would seem to savour of technicality and injustice to say to these plaintiffs that, though they were protesting and appealing in the Courts against the identical pronouncement which was now set up against them, they should be considered, in one of the two proceedings to which that pronouncement equally and at the same instant applied, to have acquiesced in and to be bound by it, because their protest was made for the same purpose in the other proceeding. In the peculiar circumstances, it will not be a departure from the principles upon which extensions of time have been granted, when it is considered that the intention of these plaintiffs, manifested by actual proceedings, has been to have the decision dealt with by the Court above.

Reference to *Concha v. Concha*, [1892] A.C. 670.

The extension should be granted, but the plaintiffs must pay the costs of the application.

MACLAREN and HODGINS, JJ.A., concurred.

MEREDITH, C.J.O., dissented, for reasons given in writing.

*Motion granted; MEREDITH, C.J.O., dissenting.*