

tion must be refused. Cockburn, C.J., said that the "power to enlarge the time cannot apply when by virtue of a statute the cause of action is gone." This, we take it, is the case here. The right is barred at the end of thirty days unless the claimant has brought himself within the saving clause. The Appellate Court agreed with the court below, but decided that in any event the plaintiff had been guilty of such laches as disentitled him to the relief asked for.

On the same principle is *Whistler v. Hancock*, same volume, page 83, and referred to and approved of in *The Glengarry Election Case* cited below. An order was made dismissing the action for want of prosecution unless a statement of claim should be delivered within a week. Default was made in delivering the statement of claim, and it was held that the action was at an end, and that there was no jurisdiction to make an order extending the time for the delivery of the statement of claim.

An analogous case is supplied by the Ontario Controverted Elections Act, R.S.O., c. 10, s. 15, as to service of petition and notice of presentation, which must be made "within five days after the day on which security for costs is given, or within such longer time as the court may, under special circumstances of difficulty in effecting service, allow." The Court of Appeal passed rules governing the practice under this Act by virtue of s. 109. By s-s. 2 of that section, these rules must not be inconsistent with the Act itself. By one of the rules—number 14—the judges have ordered that an application for extension of time for the service of the petition and notice must be made within the five days. This shows clearly their opinion as to what is meant by s. 15, for if the application could be made *after the expiry of the five days*, the rule would be inconsistent with the Act, and consequently void. If the rule is valid, then s. 15 means that an application must be made before the time expires. This rule is practically a judgment on the construction of the section. The courts, in the late Ontario election trials, adopted this construction, and held that the application must be made in all cases within the five days.

Another very strong argument in favor of the view here taken is to be found in the judgments of the Supreme Court judges in *The Glengarry Election Case*, 14 S.C.R., p. 453.

The Dominion Controverted Election Act provides that the trial of the petition shall be brought on within six months from the time when the petition has been presented, and, if the respondent's presence is necessary at the trial, such trial shall not be commenced during any session of Parliament, and the time of the session shall not be included in the six months: R.S.C., c. 9, s. 32. By s. 33, the court or judge may, notwithstanding this section, from time to time enlarge the time for the commencement of the trial if it appears on an application supported by affidavit that the requirements of justice render such enlargement necessary. The Supreme Court held that all trials must be commenced within the six months unless an order had been obtained enlarging the time *on application made within said six months*, and that an order granted on an application made after the six months is invalid and can give no jurisdiction to try the petition, which is then out of court. See particularly the judgment of