

The Ontario Weekly Notes

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APPELLATE DIVISION.

FERGUSON, J.A., IN CHAMBERS. SEPTEMBER 20TH, 1917.

FOX v. BELLEPERCHE.

Appeal—Extension of Time for Appealing to Supreme Court of Canada from Judgment of Appellate Division—Bona Fide Intention to Appeal—Mistake of Solicitor as to Time for Appealing.

Application by the plaintiff to extend the time for appealing to the Supreme Court of Canada from a judgment (12 O.W.N. 275), pronounced by the Appellate Division of the Supreme Court of Ontario on the 12th June, 1917, dismissing the action.

H. S. White, for the plaintiff.

A. W. Langmuir, for the defendants.

FERGUSON, J.A., in a written judgment, said that the material in support of the motion shewed a bona fide intention to appeal, held while the right to appeal existed, and a failure to take the necessary steps to perfect the appeal by reason of the solicitor for the plaintiff being under the erroneous impression that the time for taking the appeal, as fixed by the Rules of the Supreme Court of Canada, was exclusive of long vacation.

The plaintiff had by his material brought himself within the requirements of the rule stated in *Smith v. Hunt* (1902), 5 O.L.R. 97, and in *Canadian Heating and Ventilating Co. Limited v. T. Eaton Co. Limited and Guelph Stove Co. Limited* (1916), 11 O.W.N. 176. In the absence of any material controverting the case made out, a reasonable extension should be granted.

The time for completing security in the proposed appeal should therefore be extended up to and including the 1st October; the plaintiff before that time to pay to the defendants the costs of this application and order, fixed at \$30.