

Osler, J. A.]

[March 20.

JAMIESON v. LONDON AND CANADIAN L. &amp; A. CO.

*Appeal bond—Defect in form—Uncertainty—Disallowance.*

A bond filed as security for costs of an appeal to the Supreme Court of Canada stated that the sureties were jointly and severally held and jointly bound, instead of firmly bound, and "we bind ourselves and each of us by himself," instead of binds himself.

*Held*, that it must be disallowed. It was uncertain whether it could be properly construed as a joint and several bond; and the respondents' rights ought not to be left in a state of uncertainty.

The bond followed the form in Cassels' Practice of the Supreme Court of Canada, 2nd ed., p. 220, which should be corrected.

*W. H. Irving* for the plaintiff. *Arnoldi*, Q.C., for the defendants.

MacLennan, J. A.]

THURESSON v. THURESSON.

[April 10.

*Appeal—Time—Extension—Security for costs—Dispensing with—Poverty of appellants—Ejectment—Claim for improvements—Mesne profits—Mortgage.*

Motion by the defendants for an order extending the time for appealing to this Court from the order of a Divisional Court, reversing the judgment at the trial, and ordering judgment to be entered for the plaintiffs for possession of land with costs, and also dispensing with security for costs, of the proposed appeal. The defendants served notice of appeal one day late.

*Held*, that the circumstances disclosed made the delay excusable, and an extension of time should be granted.

The defendants sought to have security dispensed with on the ground that they had no means or money or resources, other than the land in question, and they were unable to get any persons to become sureties, and also on the ground that they had expended \$500 upon the land in the way of improvements, in the belief that the land was their own, whereby the value had been enhanced to that extent.

*Held*, that the first ground was no reason for dispensing with security, but the other ground was one to which, in a proper case, effect ought to be given. In this case, however, there were two difficulties in the way: (1) That if the plaintiffs should uphold their judgment they would be entitled to mesne profits since 1892, as against the improvements, which had only been made in the last two or three years; and (2) that the defendants had mortgaged the land for the money laid out in improvements, and the lien, if any, was that of the mortgagee.

Order made extending the time for appealing and dismissing the other part of the motion, with costs to the plaintiffs in any event of the appeal.

*Aylesworth*, Q.C., for the plaintiffs. *Armour*, Q.C., for defendants.