

within any of these 4 sub-heads, it only needs the application by the Court of the power given by the 5th sub-head to group it with them. There is nothing in sec. 48 imposing a time limit within which the leave must be applied for or granted. For that, reference must be made to sec. 69, the effect of which, but for the proviso "except as otherwise provided," would probably be to compel the leave to be at least applied for within the 60 days. But then comes the power not possessed by the Supreme Court, but given by sec. 71 to the Court appealed from or a Judge thereof, to allow an appeal although not brought within the 60 days. Again, there is no time limit imposed, and it is left to the Court or Judge to be governed by such special circumstances as may be presented, having regard to what, in view of all the facts, including the lapse of time, may be fair and just to the respondent.

It follows from these conclusions that there is no obstruction to our entertaining the application in this case, even if it be out of time, as suggested. The case came to this Court by way of appeal from a Divisional Court. The matter in controversy was the sum of \$1,000, exclusive of costs, and so fell within sub-head (b) of sec. 76 of the Judicature Act, as enacted by 4 Edw. VII. ch. 11, sec. 2, and was therefore properly before this Court.

Unfortunately for the defendants, the Supreme Court has held that the matter in controversy on the appeal to that Court does not *exceed* \$1,000, exclusive of costs, and therefore it does not come under sub-head (c) of sec. 48 of the Supreme Court Act, and it is necessary to obtain leave under sub-head. (e).

If this branch of the motion should be granted, there would be no difficulty in acting under sec. 71.

But, although I differed from the majority of the Court as to the disposition of the appeal, I am unable to say, consistently with our decisions in other cases, that there are in this case any special reasons for treating it as exceptional or any special circumstances which should take it out of the general rule that litigation in a case involving no more than the amount here involved should cease with the rendering of judgment in this Court.

As has been pointed out in other cases, the mere fact of a difference of opinion amongst the members of the Court is not in itself a sufficient reason: see *Lovell v. Lovell*, 13 O. L. R. 587, 9 O. W. R. 227. And no other special cir-