

think the question of the power of the Court does not come up here, because the petition must be rejected as unfounded.

*R. & L. Laflamme* for petitioner.

*Davidson (C. P.)* for the Crown.

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ANGERS, Appellant; & MURRAY, Respondent.

*Information—Delay for appeal from judgment.*

Sir A. A. DORION, C.J. A motion is made by the respondent to reject the appeal, because the writ was not issued within forty days after the judgment, under art. 1038, C.C.P. The action was in the name of the Attorney-General, to annul letters-patent. Art. 1035 says that all demands for annulling letters-patent may be made by suits in the ordinary form, or by *scire facias*, upon information brought by Her Majesty's Attorney-General, or Solicitor-General, &c. Art. 1037 says: "An appeal lies from the final judgment rendered upon such information, provided the writ of appeal issues within forty days from the rendering of the judgment." Here, there is no doubt that the writ of appeal issued more than forty days after the rendering of the judgment, but in answer to that objection it is said that this is not an information, but an ordinary suit (1035 C.C.P.), and that the limitation only applies when the proceeding began by information and *scire facias*. We have already decided that the Attorney-General is now the only person who can take proceedings to annul letters-patent. There is hardly any distinction between an information and a declaration. The only difference is that the Queen lays an information before her Courts that an abuse exists, and a declaration states a complaint. It would be very singular that the Attorney-General should have a year for an appeal if the proceeding was by ordinary suit, and only forty days if by information. Blackstone says the *scire facias* does not vary much from the ordinary proceeding. We think the only delay for appeal in these cases, whether by information or by suit in the ordinary form, is forty days, and therefore the present appeal, being taken after the delay expired, is dismissed.

*Abbott, Tail, Wotherspoon & Abbott* for appellant.

*W. W. Robertson* for respondent.

CITIZENS INSURANCE Co., Appellants; & LAJOIE, Respondent.

*Judgment settling the facts for jury trial—Desistance from judgment.*

Sir A. A. DORION, C.J. This is a motion for leave to appeal from an interlocutory judgment of the Superior Court settling the facts for a jury trial. The defendants are dissatisfied with the settlement of facts as made by the judge. The plaintiff is also dissatisfied, and declares in writing that he wishes to desist from the judgment of the Court below. But the defendants wish to go on with their appeal and to have the facts settled by this court. We do not think, as both parties are dissatisfied with the judgment, that we should allow the appeal. It would only cause useless delay and expense. We therefore, give *acte* to the plaintiff of his declaration that he desists from the judgment, and we say that the motion of the Citizens Insurance Company is only granted as to costs, thus sending the parties to the court below to have the facts settled. We do not mean to say that this court has no right to settle the facts on an appeal; where only one of the parties is dissatisfied with the facts settled, it is quite probable that we would entertain the application for leave to appeal. But here, as neither party is satisfied with the facts, we send them again before the judge of the court below.

*Abbott, Tail, Wotherspoon & Abbott* for Appellants.

*Archambault & David* for Respondent.

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OUIMET, Appellant; & DESJARDINS, Respondent.  
*Surety on appeal bond.*

Sir A. A. DORION, C. J. The respondent has moved that appellant be ordered to furnish new security, one of the sureties being insolvent, and the other being over 70 years of age, and not liable to coercive imprisonment. As to one of the sureties, Louis Dupuy, the writ of insolvency was produced. The motion is granted as to him, and he must be replaced within 15 days. As to Guilbault, the other surety, it was not established that he was over 70 years of age, and the motion is rejected.

RAMSAY, J. I concur. The appellant should have destroyed the presumption arising from the writ, and therefore further security must be given. As to the other surety, there is no evidence of the age, even if the pretention were