

HON. MR. JUSTICE BRITTON:—After a careful reading of the judgment of the learned Chancellor, and of the cases cited by him, as well as the cases cited upon the argument, I am of opinion that notwithstanding 1 Geo. V., ch. 35, sec. 3, this appeal should succeed.

The agreement made on the 4th day of December, 1911, between the parties is not binding upon the appellant. The appellant as father of the infant girl is entitled to her custody. I quite agree with the Chancellor in this, that the character of the grandparents (respondents) is beyond reproach—and that the interests of the child would very likely be better subserved by leaving her custody to remain in *statu quo*, the father having all reasonable access to the child when he so desires; but as a matter of law the father is entitled to revoke or ignore the agreement made by him. Nothing has been shewn as to the character or habits of the father such as would disentitle him to insist upon his strict legal rights.

The appeal will be allowed. In view of the agreement and the perfect good faith of the respondents—there should be no costs of appeal—nor below. It will be greatly regretted, later on, if some amicable arrangement be not made between the father and grandparents in reference to this child. If the order allowing the appeal must issue it will be when and on terms mentioned by my brother Riddell.

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COURT OF APPEAL CHAMBERS.

HON. MR. JUSTICE GARROW.

JUNE 10TH, 1912.

McCLEMENT v. KILGOUR MANUFACTURING CO.

3 O. W. N. 1351.

*Appeal—To Court of Appeal—From Divisional Court—Extension of Time—Substantial Question Involved—Solicitor's Oversight.*

GARROW, J.A., granted an extension of time to appeal from judgment of Divisional Court herein, 21 O. W. R. 856, 3 O. W. N. 999, as question involved in action was of substantial and general interest, and time had lapsed through solicitor's oversight.

Costs to respondent in any event of appeal.

Application by the defendant for an order extending the time for appeal to the Court of Appeal from a judgment of Divisional Court, 21 O. W. R. 856, 3 O. W. N. 999. Notice of appeal was not served in time.