

which has in other cases been placed on language similar to that of sec. 33, I think it reasonably clear that the power to enlarge is not necessarily to be exercised only within the 6 months, but may in a proper case be exercised after that time has expired." He refers to *Wheeler v. Gibbs*, *Banner v. Johnston*, and *Lord v. Lee*, to which I will refer later.

If the case of allowance for longer time (sec. 18) for effecting service cannot be distinguished from enlarging the time (sec. 40) for commencement of trial, then the petition would seem to have no further life. In determining whether the case can be distinguished, the petitioner at this stage is entitled to the benefit of any doubt. The respondent has knowledge of the petition and of its contents. As a matter of information, the service is, of course, a merely formal matter. While the respondent is entitled to the benefit of every objection that can be made for non-compliance with the law, the allowance of the additional time and allowing substitutional service cannot result in any hardship.

In attempting to distinguish between enlarging the time for trial and extending the time or giving further time for service, no assistance can be had from the words used, for, in the ordinary legal sense, to enlarge a rule or order or notice means to extend the time for compliance with it.

*Wheeler v. Gibbs*, 3 S. C. R. 374, was cited in the *Glengarry* case. It was distinguished rather than overruled. In *Wheeler v. Gibbs* an appeal was quashed because the appellant had not given notice of setting down the case for hearing, nor obtained from the Judge who tried the petition further time for giving notice, as required by the sec. 48 of the Supreme and Exchequer Court Act. Afterwards, the appellant applied to and obtained from the trial Judge an order extending the time for giving notice, and upon the matter coming again before the appellate Court it was held that the power of the trial Judge could be exercised after the expiration of the original time, even so long after, and after an abortive attempt to get the case argued in the Supreme Court. Henry, J., took part, and he also was with the majority in the *Glengarry* case. Reading the two cases, and considering that this is only a matter of service, at the very commencement of the proceedings, when, as might well often happen, the first 10 days would be exhausted before the petitioner could know that there would be difficulty in effecting personal service, I think it could not have been the intention of the Act to nip in the bud the petition because