

not notified of the judgment—which was given some time after the trial—until the 20th July, and that within a day or two thereafter he was obliged to depart to the Pacific coast; that he expected to be back by the 1st September, but his return was delayed until the 15th September, and thereafter he was ill for two weeks; that he had no authority to appeal without the sanction of the directors; and that no conclusion was reached as to appealing until the 25th October, though there was always the intention to consider the question of an appeal.

In such a case as the present, the learned Judge said, it is sufficient if the officer of the incorporated company whose duty it is to deal with the matter has entertained, within the time allowed for appeal, the bona fide intention of submitting the question of appealing to the directors, and is prevented by special circumstances from so doing.

In the circumstances of the case, the learned Judge did not feel bound by the rule laid down in *Smith v. Hunt* (1902), 5 O.L.R. 97; he considered that the broader rule, that to do justice in the particular case is above all other considerations, ought rather to be applied.

Difficult questions of law, questions of very considerable general importance, would arise upon the appeal; there need be no delay in bringing on the appeal; and, while the inconvenience and loss to the respondent company might be great, full indemnity could be provided.

Leave to appeal should be granted and the time extended, upon terms (set out in the judgment) as to payment of costs, indemnity, etc.

SUTHERLAND, J.

NOVEMBER 22ND, 1916.

BOON v. FAIR.

Deed—Conveyance of Land—Illegal Consideration—Stifling Prosecution—Threats—Duress—Agreement to Hold Deed as Security.

Action by two elderly spinsters, the sisters of Thomas J. Boon, to set aside a conveyance of land made by them to the defendant, upon what was alleged to be an illegal consideration, viz., an agreement on the part of the defendant to abstain from prosecuting Thomas J. Boon for criminal offences, and upon the ground that the deed was obtained by fraud and duress, and upon other grounds.