

The
Ontario Weekly Notes

Vol. III.

TORONTO, JUNE 19, 1912.

No. 40.

COURT OF APPEAL.

GARROW, J.A., IN CHAMBERS.

JUNE 10TH, 1912.

McCLEMONT v. KILGOUR MANUFACTURING CO.

*Appeal—Court of Appeal—Extension of Time for Appeal—
Bona Fide Intention—Communication to Opposite Party—
Substantial Question of General Interest.*

Application by the defendants to extend the time for appeal to the Court of Appeal from the order of a Divisional Court, ante 999, notice of appeal not having been served in time.

T. N. Phelan, for the defendants.

W. M. McClemon, for the plaintiff.

GARROW, J.A.:—The judgment is for \$1,000 and costs. And the question of law relied on by the defendants is, that the defence known as *volenti non fit injuria* applies to the breach of a statutory obligation, which was denied in the Divisional Court.

The question is substantial and of general interest; and the leave should, I think, be granted, it appearing that there was an intention to appeal within the time, communicated to the plaintiff's solicitors, and that the failure to serve the notice was through an oversight in the defendants' solicitors' office. See *Ross v. Robertson*, 7 O.L.R. 494.

The case must be set down in time to be heard at the September sittings; and the costs of the application will be to the respondent in any event of the appeal.