

IN RE HAROLD ARTHUR DAVIES. EX PARTE  
APPLICATION FOR SPECIAL LEAVE TO APPEAL.

14th February,  
1922.

*Special Leave to Appeal granted by Full Court—Order made directing Appellant to go to Court below in order to be put on terms—Omission of Counsel to apply—Limit of time for second application for Leave to Appeal in cases of lapsed or abandoned appeals.*

The facts of this case are sufficiently set out in the judgments.

The Appellant appeared in person.

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McDONNELL, Acting J.

In this case the would-be Appellant was given Special Leave to Appeal by the Full Court sitting in January, 1920, and the order directed him to go to the Court below in order that he might be put on terms.

He states that, owing to the omission of his Counsel, such application was not made. Any remedy which he has against his Counsel lies in his hands alone in the form of an action. I cannot entertain the view which he puts forward that the full Court can take any steps against the Counsel concerned in respect of the negligence which he alleges.

He has urged upon the Court the proviso in section 5 of the schedule to the Supreme Court Amendment Ordinance, 1912,<sup>1</sup> but that proviso must be read with the preceding paragraphs of the section which relate only to the Court below.

If a party in that Court who has been granted Conditional Leave to Appeal, on condition that:—

(a) Within a month of the application he gives security,

(b) He pays the expenses of the making-up and transmission of the appeal,

and

(c) He gives notice to other parties,

omits to perfect those conditions in that month, or allows the appeal to lapse or be abandoned, the proviso allows—in certain circumstances—a new application for Leave to Appeal to be made. There is nothing in this which governs the case before us. Sections 8 and 9<sup>2</sup> of the schedule limit the time for

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<sup>1</sup> Now Cap. 205, Schedule, sec. 5, Vol. II, p. 1438.

<sup>2</sup> Vol. II, p. 1439.

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applications in the Court below to three months and in this Court to six months.

The proviso to section 5 must be read in the light of section 8.<sup>1</sup> In the case of a lapsed or abandoned appeal the second application under the proviso to section 5 must, I hold, be made within the three months prescribed by section 8. Section 9<sup>1</sup> limits applications for Leave to Appeal to those, notice of which is given within six months of the decision.

For these reasons I hold that the present application must fail.

PURCELL, C.J.

I agree.

SAWREY-COOKSON, J.

I agree, and only wish to add that if this Court entertained this application for the reasons urged by the applicant it is obvious that an injustice would result to the holder of the judgment appealed against simply because there would be no limit of time fixed, beyond which his judgment would be reversed.

Time limits have been fixed and although it is true that in certain instances the Courts may and should extend the time, there is nothing in the Schedule to the Supreme Court Ordinance which justifies this Court in creating such a manifestly absurd precedent as it is in effect here asked to create.

The applicant has perhaps forgotten the maxim—*interest reipublicae ut sit litium finis*.

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<sup>1</sup> Vol. II, p. 1439.