

1898
 May 23.

THE ALLIANCE ASSURANCE COM- } SUPPLIANTS;
 PANY..... }

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

Appeal—Extension of Time—Grounds of refusal—Solicitor's Affidavit—Practice.

Judgment against suppliants was delivered on the 17th of January, and the time allowed for leave to appeal by the 51st section of *The Exchequer Court Act* expired on the 17th of February. On the 22nd of April following, the suppliants applied for an extension of the time to appeal on the ground that before judgment the suppliants' solicitor had been given instructions to appeal in the event of the judgment in the Exchequer Court going against them. There was no affidavit establishing this fact by the solicitor for the suppliants, but there was an affidavit made by an agent of the suppliants stating that such instructions were given and that he personally did not know of the judgment being delivered until the 27th of March.

Held, that the knowledge of the solicitor must be taken to be the knowledge of the company, that notice to him was notice to the company, and that as between the suppliants and the respondent the matter should be disposed of upon the basis of what he knew and did and not upon the knowledge or want of knowledge of the suppliant's manager or agent as to the state of the cause. Order refused.

APPLICATION for extension of time for leave to appeal.

The grounds upon which the application was made appear in the reasons for judgment.

May 2nd, 1898.

A. Ferguson Q C., in support of motion, cited *Collins v. Vestry of Paddington* (1); *Clarke v. The Queen* (2); *Annual Practice* (1897) p. 1116.

(1) 5 Q. B. D. 368.

(2) 3 Ex. C. R. 1.

E. L. Newcombe Q.C., *contra* relied on *Cusack v. London & North Western Railway Company* (1).

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THE
ALLIANCE
ASSURANCE
COMPANY
v.
THE
QUEEN.

THE JUDGE OF THE EXCHEQUER COURT now (May 23rd, 1898) delivered judgment.

This is an application by the suppliants to extend the time for an appeal to the Supreme Court of Canada from a judgment of this court of the 17th of January last. The application was made on the 22nd of April, on the ground that the general manager, in Canada, of the Alliance Assurance Company did not know of the judgment until the 27th of March, and that before judgment the company's solicitor had been given instructions to take the necessary steps to appeal to the Supreme Court in the event of the judgment in this court being against the company. Mr. Hanson, an insurance adjustor, who acted as agent for the suppliants in the prosecution of the petition, states that such instructions were given by him, and that he did not know of the judgment until the 27th of March. There is no affidavit from the solicitor, but it was stated by the suppliants' counsel in explanation of that fact, that the solicitor had no recollection of any such instructions having been given to him, or of being aware whether the suppliants intended to appeal or not. That the solicitor had notice of the judgment is not denied. At the time the judgment was given there were petitions of right by two other assurance companies pending in the court, which it had been agreed should abide the result of the present action, the suppliants' solicitor being the solicitor in the three actions. After the time for appealing herein had expired the two other petitions were dismissed after notice to the suppliants' solicitor, and the costs in the three cases were duly taxed.

Reasons
for
Judgment.

1) [1891] 1 Q. B. 347.

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Now it is clear that the knowledge of the solicitor must be taken to be the knowledge of the company, that notice to him was notice to the company, and that as between the suppliants and the respondent the matter should be disposed of upon the basis of what he knew and did, and not upon the knowledge or want of knowledge of the suppliants' manager as to the state of the cause. If the application were supported by an affidavit of the solicitor showing that there had been some misunderstanding or offering some explanation for the delay, the matter would perhaps stand in a different position. As it is I do not think sufficient grounds are shown to justify the order asked for.

The application will be refused, but, under the circumstances, without costs.

*Application dismissed.*

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