

JOHN MARTLEY AND TRUMAN } APPELLANTS ;
CELAH CLARK (DEFENDANTS)..... }

1886

March 26.

AND

* May 17.

ROBERT CARSON AND JOSEPH } RESPONDENTS.
EHOLT (PLAINTIFFS)..... }

Appeal—When time begins to run—S. and E. C. Act sec. 25—Entry of judgment—Varying minutes.

Where, after the minutes of a case decided by the Supreme Court of British Columbia were settled, the plaintiffs moved before the full court to have the minutes varied, and they were varied by striking out certain declarations respecting the rights of the

*PRESENT.—Sir W. J. Ritchie C. J. and Strong, Fournier, Henry and Gwynne JJ.

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plaintiff C. and the defendant M. respectively, and also with respect to the costs payable by the plaintiff E.

Held, that there being substantial questions to be decided before the judgment could be entered the time for appealing to the Supreme Court of Canada would run from the date of the entry of the judgment. *O'Sullivan v. Harty* (1) followed.

MOTION to dismiss appeal on the ground that it was not brought within thirty days after the pronouncing of the judgment.

This was an appeal from the Supreme Court of British Columbia, in an action respecting water rights brought by Carson and Eholt against the appellants Martley and Clark. Judgment was pronounced 20th August, 1885. On the 28th August the defendants (appellants) gave notice of appeal and security, and obtained from the plaintiffs (respondents) a consent to three months' further time being given to file the case. The three months having expired without the case being ready, the appellants applied in chambers to Ritchie C.J. of the Supreme Court of Canada, for further time to appeal. This application was refused on the ground that the appellants had not satisfactorily accounted for the delay. On the 8th January, 1886, the minutes of the judgment were settled. On the 9th January the plaintiffs (respondents) moved before the full court of British Columbia to vary the minutes. The minutes were varied by striking out certain declarations respecting the rights of the plaintiff Carson and the defendant Martley respectively, and also with respect to the costs payable by the plaintiff Eholt. On the 26th of January, 1886, the judgment of the court below was entered. The appellants next day gave fresh notice and went on with the appeal.

Chrysler supported motion. *McCarthy Q.C. contra.*

By the court: Motion refused with costs.

Solicitors for appellant Martley: *Davie & Pooley.*

Solicitor for appellant Clark: *Charles Wilson.*

Solicitors for respondents: *Drake, Jackson & Helmcken.*

(1) 13 Can. S. C. R. 431.