
TORONTO GENERAL TRUSTS COR- }
 PORATION } APPLICANT;

AND

THE CITY OF OTTAWA.....RESPONDENT.

1934
 *Nov. 14.
 *Dec. 12.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Appeal—Jurisdiction—Granting of special leave to appeal—Supreme Court Act (R.S.C. 1927, c. 35), s. 41 (c).

The applicant, having received, as executor of an estate left by a person resident in Ontario, income on behalf of and payable to persons resident out of Ontario, and being assessed by respondent city in respect of same under the Ontario *Assessment Act*, claimed an exemption of \$1,500 in respect of the income received by it in 1932 on behalf of and payable to each such person. The Court of Appeal for Ontario held against the claim for exemption; and refused special leave to appeal to this Court. The applicant then applied to this Court for special leave to appeal.

Held, This Court has jurisdiction to grant such leave, under s. 41 (c) of the *Supreme Court Act* (R.S.C. 1927, c. 35); and, in all the circumstances, leave should be granted.

MOTION for special leave to appeal to this Court from the judgment of the Court of Appeal for Ontario (1) allowing an appeal (taken by way of stated case) by the City of

*PRESENT:—Duff C.J. and Rinfret, Cannon, Crocket and Hughes JJ.

(1) [1934] Ont. W.N. 269.

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Ottawa, the present respondent, from the decision of Daly, Co.C.J., affirming the decision of the Court of Revision which, on assessment under the Ontario *Assessment Act* in respect of income received in 1932 by the present applicant as executor or trustee of each of several estates left by persons resident in Ontario, allowed an exemption of \$1,500 in respect of the income payable to each beneficiary resident out of Ontario.

W. Schroeder for the applicant.

F. B. Proctor K.C. for the respondent.

The judgment of the court was delivered by

HUGHES J.—This is a motion by the Toronto General Trusts Corporation for special leave to appeal to this Court from a judgment of the Court of Appeal for Ontario, dated April 3, 1934. Special leave to appeal was refused by the Court of Appeal on May 8, 1934.

The matter in controversy between the parties is whether an executor and trustee of an estate in which part of the annual income is payable to persons residing out of Ontario is entitled to an exemption of \$1,500 in respect of the income received by it on behalf of and payable to each beneficiary resident out of Ontario.

Les Ecclésiastiques de St. Sulpice de Montréal v. City of Montreal (1), was an exemption case. In it the jurisdiction of this Court was questioned on an appeal from a judgment of the Court of Queen's Bench for Lower Canada, Appeal Side, in an action brought to recover \$361.90, the amount of a special assessment for a drain along the property of the appellants. The respondent moved to quash on the ground that the matter in controversy was less than \$2,000 and did not come within any of the exceptions of section 29 of the *Supreme and Exchequer Courts Act*. Section 29 (b) of the Act read as follows:—

29. No appeal shall lie under this Act from any judgment rendered in the province of Quebec in any action, suit, cause, matter or other judicial proceeding, wherein the matter in controversy does not amount to the sum or value of two thousand dollars, unless such matter, if less than that amount,—

* * * * *

(b) Relates to any fee of office, duty, rent, revenue or any sum of money payable to Her Majesty, or to any title to lands or tenements,

annual rents or such like matters or things where the rights in future might be bound.

It was held *Per Curiam*:

The case is appealable as coming within the words "such like matters or things where the rights in future might be bound" in paragraph 6 of section 29 of the Supreme and Exchequer Courts Act—If the rate struck was found to be insufficient and another rate imposed, the parties would be bound by the judgment in this case.

The figure 6 in the report is obviously a clerical error. It should be the letter (b). There was no paragraph 6 in section 29. On the merits it was held that the appellants came within a statutory exemption and the appeal was allowed.

We think this case falls within subsection (c) of section 41 of the present *Supreme Court Act*.

There remains the question whether, there being jurisdiction, special leave should be granted. We are of opinion that, in all the circumstances, it should be granted.

The costs of this application will be costs in the cause in the appeal.

Motion granted.

Solicitors for the applicant: *MacCraken, Fleming & Schroeder.*

Solicitor for the respondent: *F. B. Proctor.*

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