1946
*May 13
*May 20

LEO KINCAID GREENLEES (PLAINTIFF) ..... } APPELLANT;

AND

ATTORNEY-GENERAL OF CANADA (DEFENDANT) ..... } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Appeal—Jurisdiction—Liability to military service—Exemption of "a minister of a religious denomination"—Action by member of Jehovah's Witnesses to be declared within exemption—Dismissal of action—Petition for leave to appeal—"Rights in future"—Supreme Court Act, Section 41(c).

The appellant brought an action against the Attorney-General of Canada, claiming a declaration that he was "a minister of a religious denomination," to wit. Jehovah's Witnesses, within the meaning of section 3, subs. 2 (c), of the *National Selective Service Mobilization Regulations, 1944,* and that, therefore, the Regulations did not apply to him. The trial judge held that, even assuming that the Jehovah's Witnesses were "a religious denomination", the appellant was not "a minister" thereof; and that judgment was affirmed by the appellate court. The appellant moved for special leave to appeal to this Court, under the provisions of section 41 (c) of the *Supreme Court Act.*

*PRESENT:—Kerwin, Hudson, Taschereau, Rand and Estey JJ.

Held that this Court has no jurisdiction to grant leave, and the application must be refused, on the ground that the appellant's present or future pecuniary or economic rights are not in controversy in this appeal. The decision appealed from is confined to the point that the appellant is not "a minister of a religious denomination", and the mere possibility that a lower Court might inappropriately use it against the appellant in connection with any rights he may have under other statutory enactments cannot alter the fact that, in the present appeal, his future rights are not involved.

MOTION for leave to appeal to the Supreme Court of Canada from a judgment of the Court of Appeal for Ontario (1), affirming the judgment of the trial judge, Hogg J. (2) and dismissing an action for a declaration that the appellant is exempt from the application of the *National Selective Service Mobilization Regulations.*

W. G. How for the motion.

W. R. Jackett contra.

The judgment of the Court was delivered by

KERWIN J.:—L. K. Greenless brought an action against the Attorney-General for Canada, claiming a declaration that he is a minister of a religious denomination within the meaning of section 3, subsection 2, of the *National Selective Service Mobilization Regulations, 1944.* By subsection 1, the Regulations are stated to apply to such age classes, or parts of age classes, of men as the Governor in Council may, from time to time, by proclamation in the Canada Gazette, designate for the purpose. Then comes subsection 2, which so far as material provides:

(2) Notwithstanding subsection 1, these regulations shall not apply to the following:—

* * *

(c) a regular clergyman or a minister of a religious denomination.

A preliminary objection was raised that the appellant was not entitled to bring the action but the trial judge, Mr. Justice Hogg (2), concluded that he had jurisdiction and that it came within such cases as *Dyson* v. *Attorney-General* (3). However, while inclining to the view that

(1) [1946] 1 D.L.R. 550.
(2) [1945] 2 D.L.R. 641, 808.
(3) [1911] 1 K.B. 410.

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Kerwin J.

there is a religious denomination known as Jehovah's Witnesses, he held that the plaintiff was not a "minister" of that denomination, and dismissed the action.

Upon appeal to the Court of Appeal for Ontario (1), the Chief Justice of the province, writing the judgment of the Court, expressed no opinion upon the preliminary objection. He concluded that notwithstanding the stand taken by Jehovah's Witnesses as to "religion", it would be proper to say that the word "religious" in Regulation 3(2(*c*)) might be applied to them. He had more difficulty with the question whether they constituted a denomination, and he concluded that he was far from satisfied that, the onus being upon the plaintiff to bring himself within an exception, the evidence warranted a finding that those calling themselves "Jehovah's Witnesses" constituted a "religious denomination" within the meaning of the Regulation. That was sufficient for the dismissal of the appeal but he agreed with the conclusion arrived at by Mr. Justice Hogg that, even assuming they were a religious denomination, the appellant was not a minister thereof.

The plaintiff sought leave from the Court of Appeal for leave to appeal from its decision but that leave was refused. He then applied to this Court for special leave and admitted that the only provision giving this Court power to grant leave must be found in clause (*c*) of section 41, *Supreme Court Act*, reading as follows:

> (*c*) the taking of any annual rent, customary or other fee, or other matters by which rights in future of the parties may be affected; or

Mr. How endeavoured to distinguish the decision of this Court in *Bland* v. *Agnew* (2), where it was held that section 41, when enacted substantially in its present form in 1920 by chapter 32, section 2, did not profess in terms to introduce any change in the well-settled practice that no appeal would lie unless the matter in controversy involved or affected something in the nature of a pecuniary or economic interest, present or future. It was there held that there was no jurisdiction in this Court to grant special leave to appeal from the Court of Appeal for British Columbia dismissing the applicant's appeal from an order allowing the adoption by respondents of the applicant's daughter.

(1) [1946] 1 D.L.R. 550. (2) [1933] S.C.R. 345.

Mr. How argued that this rule had been broadened by this Court since that decision, and he referred to *Forcier* v. *Coderre* (1), *Christie* v. *The York Corporation* (2) and *Le Comité Paritaire* v. *Dominion Blank Book Company Limited* (3). In the first of these cases the application was actually refused and the statement of the present Chief Justice, at page 551:—

> si la règle nisi avait été maintenue, la liberté du sujet serait en jeu, et nous serions probablement d'avis que le litige soulève une question suffisamment importante,

must be read in the light of what was involved, viz., the title to real estate under clause (*d*) of section 41. In the *Christie* case (2) there was an economic interest involved as the plaintiff claimed, among other things, damages, while in the third case, the judgment at the trial was finally restored, as would appear by a reference to the report of that decision (4), wherein, besides other relief, damages in the sum of $33.80 had been ordered to be paid. None of these decisions has made any inroads upon the principle set forth in *Bland* v. *Agnew* (5).

Mr. How then sought what would really amount to a reversal of the jurisprudence of this Court in connection with applications for special leave to appeal under section 41 (*c*) by emphasizing the fact that the paragraph speaks of matters by which rights in future of the parties "may" be affected; and he suggested that the plaintiff's right to exemption as a minister or clergyman in charge of a diocese, parish or congregation under Rule A to the First Schedule to the *Income War Tax Act,* or his claim to a railway pass under the provisions of the *Railway Act,* or his standing under various other enactments might be affected. That overlooks that *Bland* v. *Agnew* (5) merely reiterates the well-settled jurisprudence set forth in a line of decisions, some of which are there referred to, that it is the matter in controversy in the appeal that must be looked at, and the mere fact, that, even in a case sought to be appealed to this Court, a judgment would deal with incidental matters involving a condemnation in money, would not give the Court jurisdiction to entertain the appeal.

(1) [1936] S.C.R. 550.
(2) [1939] S.C.R. 50.
(3) [1943] S.C.R. 566.
(4) [1944] S.C.R. 213.
(5) [1933] S.C.R. 345.

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Furthermore, the decision of the Court of Appeal in the present case is that within section 3, subsection 2 (*c*) of the *National Selective Service Mobilization Regulations, 1944,* Jehovah's Witnesses is not a religious denomination and the plaintiff is not a minister. It is confined to that point and the mere possibility that notwithstanding the explicit words of the Chief Justice of Ontario, a lower Court might inappropriately use it against the plaintiff in connection with one of the other matters referred to cannot alter the fact that the plaintiff's present or future economic rights are not in controversy in this appeal.

On the ground that we have no jurisdiction to grant leave, the application must be refused.

Leave to appeal refused.