



1954
*Oct. 5
*Nov. 11

JOSEPH ALBERT ARCAND APPLICANT;

AND

HER MAJESTY THE QUEEN RESPONDENT;

AND

LOUIS-PHILIPPE LACROIX RESPONDENT.

MOTION FOR LEAVE TO APPEAL

Appeal—Jurisdiction—Judgment for less than \$500 in favour of Her Majesty—Automobile accident—Exchequer Court Act, R.S.C. 1927, c. 34, ss. 82, 83.

When no appeal lies without leave under ss. 82 and 83 of the *Exchequer Court Act*, a judge of the Supreme Court of Canada has no jurisdiction to grant leave in an action arising out of a motor vehicle accident and in which the applicant was ordered to pay to Her Majesty a sum not exceeding \$500.

The words “any sum of money” in s. 83(b) must be construed as *ejusdem generis* with the preceding words and limited in their meaning to a sum payable to Her Majesty of the same kind as a fee of office, duty, rent or revenue, and cannot be construed as including a claim for damages suffered by the Crown as a result of negligent driving.

*PRESENT: Cartwright J. in Chambers.

The difference in the wording of s. 30(d) and that of s. 83(b) is too marked to permit a conclusion that the words "an action relating to a sum of money payable to Her Majesty" are intended to describe an action in tort for unliquidated damages suffered by the Crown.

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Motion for leave to appeal from a judgment of the Exchequer Court of Canada.

G. Perley-Robertson for the applicant.

P. M. Ollivier for Her Majesty The Queen.

H. St-Jacques, Q.C. and *Redmond Quain, Q.C.* for the respondent Lacroix.

CARTWRIGHT J. (In Chambers):—This is an application by Joseph Albert Arcand for leave to appeal from a judgment of Fournier J. pronounced on June 7, 1954, recommending to Her Majesty to pay to Louis-Philippe Lacroix \$423.80 and giving judgment in the third party proceedings in favour of Her Majesty against the applicant for the said sum of \$423.80.

It is conceded that the actual amount in controversy does not exceed \$500 and that under sections 82 and 83 of the *Exchequer Court Act* no appeal lies without leave.

On December 11, 1950, a collision occurred between two motor vehicles, one owned and driven by the applicant and the other by Lacroix. In this action Lacroix sought damages from Her Majesty alleging that the collision was caused by the negligence of the applicant while acting within the scope of his duties as servant of the Crown. Two other actions were also commenced arising out of the same collision. In action 56135, Antoinette Houle, as suppliant, sought damages, on her own behalf and in her quality as tutrix of her two minor children, for the death of her husband who was killed in the collision and Her Majesty claimed over against the applicant and Lacroix as third parties. In action 64658 Her Majesty as plaintiff claimed damages from the applicant for expenses for hospital costs, pay and allowances and similar disbursements paid during the period that members of Her Majesty's forces were disabled as a result of the collision.

Pursuant to an order of Cameron J. consolidating these three actions they were tried together.

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In action 56135 Antoinette Houle was awarded \$20,000 and Her Majesty was awarded judgment against the applicant for \$6,000 and against Lacroix for \$14,000 and an appeal to this Court has been launched and is now pending.

In action 64658 Her Majesty has obtained judgment against the applicant for \$307.74 and in that action also the applicant seeks leave to appeal.

As the three actions all arise out of one collision and were tried together and in one of them an appeal lies as of right and has been launched, leave should be granted almost as a matter of course in the other two if there is jurisdiction to grant it. Indeed no question as to the propriety of granting leave if there is jurisdiction to do so was raised by any counsel.

For the applicant it is first contended that there is jurisdiction to grant leave under section 83 (b) of the *Exchequer Court Act* in that the action relates to a "sum of money payable to Her Majesty." The words "payable to Her Majesty" in clause (b) of section 83 appear to me to qualify the preceding phrase "fee of office" and nouns, "duty", "rent" and "revenue" as well as the phrase "any sum of money". This view is strengthened by the French version of the Act in which the corresponding words are "Ne se rapporte à un honoraire d'office, droit, rente, revenu ou autre somme d'argent payable à Sa Majesté." In my opinion the phrase "any sum of money" must be construed as *ejusdem generis* with the preceding words and limited in its meaning to a sum payable to Her Majesty of the same kind as a fee of office, duty, rent or revenue. I am accordingly unable to construe it as including a claim for damages suffered by the Crown as a result of negligent driving.

Apart altogether from the application of the *ejusdem generis* principle, I would not think that the words "an action relating to a sum of money payable to Her Majesty" were apt to describe an action in tort for unliquidated damages suffered by the Crown. The construction of clause (b) of section 83 for which the applicant contends would bring about the result that jurisdiction exists to grant leave to appeal, although less than \$500 is in controversy, in the case of all actions in which jurisdiction is conferred on the Exchequer Court under clause (d) of section 30, provided a

claim is made for the payment of money by way of unliquidated damages or otherwise. The clause referred to reads as follows:—

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30. The Exchequer Court shall have and possess concurrent original jurisdiction in Canada

(d) in all other actions and suits of a civil nature at common law or equity in which the Crown is plaintiff or petitioner. Cartwright J.

The difference between the wording of section 30 (d) and that of section 83 (b) is too marked to permit such a conclusion.

The applicant alternatively contends that the application falls within the words of clause (b) of section 83:—"relates to . . . any matter or thing where rights in future might be bound." The only right in future which it is suggested might be bound are the rights of the parties in action 56135 referred to above. The answer to this is that it is clear that those rights will not be bound. The fact that no appeal lies in actions 57656 and 64658 does not permit the judgments in those actions to be raised as a bar to the prosecution of the pending appeal in action 56135.

For the above reasons I have concluded that I have no jurisdiction to grant this application or the similar application made in action 64658. I think this regrettable as should the judgment in action 56135 be varied on appeal it will result in inconsistent judgments having been given in actions arising out of the same occurrence.

This application will be dismissed with costs. It was suggested that if the application failed Lacroix should receive two sets of costs because he is represented by different solicitors in this action and in action 56135 and both of these solicitors were served with notice of this application and both appeared. In my view, in spite of this fact, Lacroix should be awarded only one set of costs.

Leave refused with costs.
