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*Jan. 11
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ERNEST CARROLL ..... APPLICANT;

AND

THE CORPORATION OF THE CITY OF OTTAWA ..... RESPONDENT.

MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

Appeal—Forma pauperis—Whether test of rule 142 of the Supreme Court of Canada met.

The applicant, an unmarried man of twenty-eight years of age, earning $3,600 a year, contributing $70 to $75 a month to the family expenses, having a life insurance policy of $5,000 with a cash surrender value of $450, and having debts of $2,003, half for medical bills arising out of injuries which are the subject of the present litigation and the other half for monies borrowed to cover costs in the courts below, has failed to satisfy the onus that he is not worth the amount fixed by rule 142 of the Supreme Court of Canada. Leave to appeal to this Court in forma pauperis should, therefore, be refused (*Benson* v. *Harrison* [1952] 2 S.C.R. 333 applied).

MOTION by the applicant before Mr. Justice Abbott in Chambers for leave to appeal in forma pauperis.

S. J. Gorman for the motion.

R. K. Laishley, Q.C. contra.

ABBOTT J.:—This is an application for leave to appeal *in forma pauperis*. The affidavit of the applicant made under Rule 142 sets out that he is "not worth five hundred dollars in the world excepting my wearing apparel and my

*PRESENT: Abbott J. in Chambers.

interest in the said matter of the intended appeal" and that he has debts amounting to $2,003, of which approximately one-half represent unpaid medical bills arising out of his injury and the other half a loan from a relative to cover costs of the litigation in the courts below.

The applicant was examined on his affidavit and from this examination it appears that he is a locomotive engineer, twenty-eight years of age, employed by the Canadian Pacific Railway with ten years' seniority. He is unmarried, lives at home with his parents and two unmarried sisters, the two latter, with himself, contributing to the expenses of running the house. He earns about $3,600 a year and testified that these earnings would probably be increased in the near future under the operation of the seniority system in force in the railway. He has no debts or liabilities other than those set out in his affidavit, is contributing about $70 to $75 a month to the expenses of the family home, and during the past year has been paying off about $100 a month on account of obligations incurred, largely arising out of this litigation. He has insurance policies on his life of a face value of $5,000 and with a present cash surrender value of approximately $450.

The onus is on the applicant to satisfy the Court that he is not worth $500, the amount fixed by the rule, and as to the test to be applied in determining this question, I am in agreement with the view expressed by my brother Rand in *Benson* v. *Harrison* (1), when he said:—

> In determining that question, the matter should, I think, be approached, not as an inquiry whether the person has actually $500 worth of property, but whether, in the ordinary business judgment, it can be said that he is good for $500. That was the view taken by Buckley L.J. in *Kydd* v. *The Watch Committee of Liverpool* 24 T.L.R. 257.

Applying this test to the present case, the applicant has failed to satisfy me that he is not worth the amount fixed by the rule.

The application is therefore dismissed but without costs.

Leave refused.

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(1) [1952] 2 S.C.R. 333 at 334.