

IN THE MATTER OF THE ESTATE OF ARTHUR GILL WITHY-
COMBE, DECEASED

1944

THE ATTORNEY-GENERAL OF AL-
BERTA } APPELLANT;

*April 25.
*May 15.

AND

THE ROYAL TRUST COMPANY, THE
ADMINISTRATOR WITH WILL ANNEXED
OF THE ESTATE OF ARTHUR GILL WITHY-
COMBE, DECEASED } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA,
APPELLATE DIVISION

Appeal—Jurisdiction—Supreme Court Act, R.S.C. 1927, c. 35—"Judicial proceeding" (ss. 36, 2 (e))—Security on appeal (s. 70)—Not required from Crown in right of a province.

The judgment of the Supreme Court of Alberta, Appellate Division, [1944] 1 W.W.R. 385, fixing the value of certain property for succession duty purposes at a less sum than the value determined by a commissioner appointed under s. 28 of *The Succession Duty Act*, R.S.A. 1942, c. 57, was *held* to be a judgment in a "judicial proceeding" (within ss. 36 and 2 (e) of the *Supreme Court Act*, R.S.C. 1927, c. 35); and a motion to quash an appeal therefrom was dismissed.

*PRESENT:—Rinfret C.J. and Kerwin, Hudson, Taschereau and Rand JJ.

1944
 In re
 WITHYCOMBE
 ESTATE
 —
 ATTORNEY-
 GENERAL
 OF ALBERTA
 v.
 ROYAL TRUST
 Co.
 —

Sec. 70 of the *Supreme Court Act*, requiring security on appeal, does not apply to an appeal by or on behalf of the Crown in right of a province; there is no reason to restrict the meaning of the word "Crown" (as used in the excepting provision of s. 70 (2)) to the Crown in right of the Dominion.

MOTION to quash an appeal for want of jurisdiction.

The appeal was from the judgment of the Supreme Court of Alberta, Appellate Division (1), rendered upon an appeal to it from the report of a commissioner appointed under s. 28 of *The Succession Duty Act*, R.S.A. 1942, c. 57, to determine the value of certain property for succession duty purposes. Under said s. 28 (subss. 8 and 9, and amendment in 1944, c. 29) the Commissioner's report, on being filed in the Supreme Court of Alberta, became a judgment of that Court, and subject to appeal. The commissioner determined the value of the property at \$108,300. On appeal, taken by the administrator with will annexed of the estate in question in Alberta, the Appellate Division fixed the value at \$65,000 (Harvey C.J.A. and Lunney J.A., dissenting, would have dismissed the appeal). Following this judgment, the Attorney-General of Alberta applied to the Appellate Division for an order for special leave to appeal to the Supreme Court of Canada and also applied to dispense with security for costs on the ground "that this is an appeal by or on behalf of the Crown". The Appellate Division made an order reading as follows:

Upon the application of counsel for the Attorney-General of the Province of Alberta, and upon hearing read the notice of motion herein, the affidavit of Frederick Claude Blower filed, and upon counsel for the Respondent admitting that the amount involved in this appeal exceeds the sum of Two thousand dollars, and upon hearing counsel for the Respondent,

It is ordered that, in so far as special leave to appeal is necessary and this Court has jurisdiction to grant the Order the Attorney-General of the Province of Alberta do have special leave to appeal to the Supreme Court of Canada from the judgment of the Appellate Division of the Supreme Court of Alberta delivered on the 9th day of February, A.D. 1944, and entered on the 18th day of February, A.D. 1944;

And it is further ordered that the appeal herein of the Attorney-General of the Province of Alberta to the Supreme Court of Canada be allowed without security pursuant to section 70, subsection 2 of the *Supreme Court Act*, being chapter 35 of the *Revised Statutes of Canada*, 1927.

The respondent now moved to quash the appeal on the grounds that the judgment of the Appellate Division appealed from was not a judgment in a judicial proceeding

(within ss. 36 and 2 (e) of the *Supreme Court Act*, R.S.C. 1927, c. 35), and that the appeal was not properly instituted or allowed without the giving of proper security under s. 70 of the *Supreme Court Act*.

C. Robinson for the motion.

E. G. Gowling contra.

The judgment of the Court was delivered by

THE CHIEF JUSTICE.—The motion to quash for want of jurisdiction should be dismissed with costs. The respondent moved to quash on the following grounds:

(1) That the judgment of the Appellate Division is not a judgment in a judicial proceeding; and

(2) That the appeal was not properly allowed without the giving of proper security under section 70 of the *Supreme Court Act*.

As to the first ground. We think the definition of "judicial proceeding" in the *Supreme Court Act* is a sufficient answer. The Appellate Division of the Supreme Court of Alberta did not, in disposing of the appeal, exercise merely a regulative, administrative, or executive jurisdiction, but it determined substantive rights in controversy in the proceeding. (*Quebec Railway, Light & Power Co. v. Montcalm Land Co. and the City of Quebec* (1).)

On the second ground it should be said that there are no words of limitation following the word "Crown" in section 70 of the *Supreme Court Act*. There is no reason to restrict the meaning of that word in section 70 to the Crown in right of the Dominion. We think the appellant is covered and protected by section 70 of the Act. (*Attorney-General for Quebec v. Attorney-General for Canada* (2); *Attorney-General for Quebec v. Nipissing Central Railway Company and Attorney-General for Canada* (3).

The motion ought, therefore, to be dismissed with costs.

Motion dismissed with costs.

Solicitor for the appellant: *H. J. Wilson*.

Solicitors for the respondent: *Newell, Lindsay, Emery & Ford*.

(1) [1927] S.C.R. 545, at 560.

(2) [1932] A.C. 514.

(3) [1926] A.C. 715.

1944
In re
WITCHCOMBE
ESTATE
—
ATTORNEY-
GENERAL
OF ALBERTA
v.
ROYAL TRUST
Co.
—