

1933  
\*Jan. 7.  
\*Jan. 12.

BURT BUSINESS FORMS LIMITED } APPELLANT;  
(DEFENDANT) .....

AND

ARTHUR A. JOHNSON (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Appeal—Jurisdiction—Exchequer Court Act (R.S.C., 1927, c. 34), s. 82—  
“Actual amount in controversy”—Claim involved to property or  
rights of value exceeding \$500, but no pecuniary demand—Conflicting  
claims in applications for patents.*

The right of appeal to the Supreme Court of Canada given by s. 82 of the *Exchequer Court Act* (R.S.C., 1927, c. 34), although expressed in the words “the actual amount in controversy,” extends to cases where a claim to property or rights (in the present case, conflicting claims in applications for patents) of a value exceeding \$500 is actually involved in the proceeding, although no pecuniary demand is involved. Such value may be established by affidavit.

*Burnett v. Hutchins Car Roofing Co.*, 54 Can. S.C.R. 610, and other cases referred to.

*Quaere* whether, where it appears that an applicant for leave to appeal has a right of appeal *de plano*, a judge has authority to allow an appeal under s. 83 of said Act.

\*RINFRET J. in chambers.

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

*Henri Gérin-Lajoie K.C.* for the motion.

*O. M. Biggar K.C. contra.*

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RINFRET J.—The appellant moves for leave to appeal from a judgment of the Exchequer Court of Canada rendered December 9, 1932.

The matter relates to conflicting claims in applications for patents made by or on behalf of the parties. The proceeding does not involve a pecuniary demand, but affidavits are filed on behalf of the appellant to the effect that the claims in conflict are of great importance, and that their value to the parties herein and, in particular, to the appellant, is far in excess of the sum of \$500. In fact it is sworn in the affidavits that, according to the value of the claims in conflict forming the subject matter of the present case, the actual amount in controversy far exceeds the sum of \$500.

In my opinion that is sufficient to give the Supreme Court of Canada jurisdiction to entertain the appeal in this case under section 82 of the *Exchequer Court Act*. The right of appeal given therein, although expressed in the words "the actual amount in controversy," should be held to extend not only to cases where a sum of money exceeding \$500 is actually in dispute, but also to cases where a claim to property or rights of a value exceeding \$500 is actually involved in the proceeding. I take this to be the effect of the unanimous judgment of this Court in the case of *Burnett v. Hutchins Car Roofing Co.* (1), which is directly in point because the matter there in controversy related, as it does in the present case, to conflicting applications for a patent.

It might also be stated that in *Borrowman v. The Permutit Company* (2), in a similar case of conflicting applications, this Court entertained jurisdiction (although, however, the point was not raised) and the Judicial Committee of the Privy Council (3) subsequently confirmed the judgment of this Court.

Moreover, the question of the proper construction to be given to the words "actual amount in controversy" in sec-

(1) (1917) 54 Can. S.C.R. 610.

(2) [1925] Can. S.C.R. 685.

(3) (1926) 43 R.P.C. 356.

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tion 82 was discussed in this Court in the case of *The Sun Life Assurance Co. of Canada v. The Superintendent of Insurance* (1). The Chief Justice (with whom Cannon J. concurred) was of opinion that the condition of the right to appeal was not satisfied in that case, because there was not at stake "a pecuniary sum of more than \$500, or, at least, tangible property, exceeding that amount in actual value," and the right to recover which was directly in issue in the judicial proceeding. Duff J., (with whom Smith J. concurred) thought section 82 should be read with section 83 of the *Exchequer Court Act* and, "having regard to the general scope of the sections, it must be held that in this particular respect the conditions of jurisdiction \* \* \*" are complied with "if the right immediately involved amounted to the value of" \$500.

From this Court the case went to the Privy Council (2) where the question as to the jurisdiction of the Supreme Court to consider the judgment of the Exchequer Court Judge was given up, but, in their reasons, their Lordships declared themselves to be in agreement with the dissenting Judges in this Court. If the Supreme Court were without jurisdiction, it would seem to follow as a logical consequence that the judgments herein would have been disregarded; and the fact that they were approved would, I think, be at least an indication that, in the opinion of their Lordships, the Court was not precluded from entertaining jurisdiction under the conditions referred to.

Being of opinion that the affidavits filed establish the value of the claims in dispute at more than \$500, and that, therefore, the appellant has a right of appeal *de plano* to this Court, and that this is a judicial proceeding wherein the actual amount in controversy exceeds the sum or value of \$500 within the meaning of s. 82, I entertain some doubt accordingly as to my authority to allow an appeal under section 83 and, at all events, if I am right, the special leave to appeal becomes unnecessary. However, my decision is not binding on the full Court and it may well be that the Court might hold a different view.

Under the circumstances it seems to me that the proper course to follow is to notify the parties of the opinion I hold at present on the motion of the appellant presented

(1) [1930] Can. S.C.R. 612.

(2) [1931] 4 D.L.R. 43.

to me, so that the appellant, if it is so advised, may proceed to lodge its appeal in the ordinary way under section 82 of the *Exchequer Court Act*.

In the meantime I wish to express no opinion on the question whether this is a proper case for the granting of special leave to appeal under section 83 of the Act. I will keep the motion before me for further adjudication, according as occasion requires, at the request of either party, after notice to the other.

Solicitors for the appellant: *Lajoie, Lajoie, Gelinas & Macnaughten*.

Solicitors for the respondent: *Smart & Biggar*.

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