J. HAROLD WOOD .....PETITIONER;

AND

THE MINISTER OF NATIONAL REVENUE .....RESPONDENT.

1968

*Oct. 4
Oct. 7

MOTION FOR LEAVE TO APPEAL

Appeals—Jurisdiction—Application for leave to appeal—Desirability that application be brought promptly—Duty of respondent to move to quash when application for leave not made—Costs denied—Exchequer Court Act, R.S.C. 1952, c. 98, ss. 82, 83.

Taxation—Income tax—Income or capital gain—Mortgage acquired at a discount—Whether amount of discount collected at maturity income—Income Tax Act, R.S.C. 1952, c. 48, s. 3.

The applicant was assessed for income tax in 1962 on $700, being the amount of a discount he collected on a mortgage at maturity. The Tax Appeal Board and the Exchequer Court upheld the assessment, but the two tribunals did not agree as to the basis on which the $700 should be considered as income. The applicant filed an appeal to this Court although the amount in controversy, the tax on $700, was less than $500. The Minister did not object. Subsequently, the applicant gave notice than an application for leave to appeal would be made when the appeal came on for hearing. The application for leave was argued in Chambers before the hearing of the appeal and was opposed by the Minister.

Held: Leave to appeal should be granted.

In view of the importance of the question of law involved, it was desirable that it should be reviewed by this Court.

Although this Court sometimes under special circumstances gives leave to appeal at the time an appeal is heard, it is very inconvenient and highly undesirable that applications for leave should be made at such a late date. Also, when a case is inscribed without jurisdiction, it is the duty of the respondent to move to quash if the appellant does not move for special leave. No costs allowed to either party on the application.

Appel—Juridiction—Requête pour permission d'appeler—Doit être présentée promptement—L'intimé a le devoir de demander le rejet de l'appel si une requête pour permission d'appeler n'est pas présentée—Dépens refusés—Loi sur la Cour de l'Échiquier, S.R.C. 1952, c. 98, art. 82, 83.

Revenu—Impôt sur le revenu—Revenu ou gain en capital—Hypothèque acquise à escompte—Le montant de l'escompte perçu à l'échéance est-il un revenu—Loi de l'impôt sur le revenu, S.R.C. 1952, c. 48, art. 3.

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*PRESENT: Pigeon J. in Chambers.

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Le Ministre a cotisé le requérant pour impôt sur le revenu en 1962 sur $700, montant d'un escompte perçu lors de l'échéance d'une hypothèque. La Commission d'appel de l'impôt et la Cour de l'Échiquier ont maintenu la cotisation, mais les deux tribunaux n'ont pas été d'accord quant au motif de considérer comme revenu cette somme de $700. Le requérant en a appelé à cette Cour quoique le montant en litige, l'impôt sur les $700, fût moins de $500. Le Ministre n'a pas objecté. Subséquemment, le requérant a donné avis qu'il présenterait une requête pour permission d'appeler le jour de l'audition de l'appel. La requête pour permission d'appeler a été plaidée en Chambre avant l'audition de l'appel et le Ministre a fait opposition.

Arrêt: La permission d'appeler doit être accordée.

Vu l'importance de la question de droit qui se présente dans cette cause, il est souhaitable qu'elle soit examinée par la Cour.

Quoiqu'il arrive que cette Cour, dans des circonstances spéciales, donne la permisison d'appeler à l'audition d'un appel, la présentation d'une requête pour permission d'appeler à une date si tardive cause de grands inconvénients et est à éviter. De plus, lorsqu'une cause est inscrite sans juridiction, l'intimé a le devoir de demander le rejet de l'appel si l'appelant ne demande pas la permission d'appeler. Les frais de la requête sont refusés aux deux parties.

REQUÊTE pour permission d'appeler d'un jugement du Juge Gibson de la Cour de l'Échiquier du Canada[1], en matière d'impôt sur le revenu. Requête accordée.

APPLICATION for leave to appeal a judgment of Gibson J. of the Exchequer Court of Canada[1], in an income tax matter. Application granted.

S. Fisher, for the petitioner.

G. W. Ainslie, for the respondent.

The following judgment was delivered by

PIGEON J.:—The appellant is a solicitor who, over a period of years, acquired some 13 mortgages, usually at a substantial discount. He was assessed for income tax in 1962 on $700 being the amount of a discount on one of these mortgages that he collected at maturity in that year.

Before the Tax Appeal Board, the assessment was upheld on the finding, not that it was profit from a "business", but that "it was a *quasi-bonus*" and therefore "*interest per se*".

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[1] [1967] 1 Ex. C.R. 199, [1967] C.T.C. 66, 67 D.T.C. 5045.

In the Exchequer Court, Gibson J. did not wish to pass on the soundness of that conclusion and did not choose (those are his words) to make a finding that this was profit from a "business". He expressly founded his decision in favour of the Minister on the basis that this "was income from a source within the meaning of the opening words of section 3 of the *Income Tax Act*", adding:

> as far as I know, there is no decision of this Court or of the Supreme Court of Canada in which a question of this kind has been resolved by deciding that such a discount was income from a "source" within the meaning of the opining words of s. 3 of the Act, without deciding whether it was income from any of the particular sources detailed in s. 3 or elsewhere in the Act.

From this judgment, appellant filed an inscription in appeal to this Court as of right without apparently realizing that, due to the rate of tax applicable, the actual amount in controversy was less than $500. Respondent also appears to have overlooked the point and did not move to quash but, on the contrary, signed an agreement as to contents of case and did not object to the appeal being inscribed for hearing at the last term. Being No. 17 on the Ontario list, the case was not called before the vacation. In June, however, appellant became aware of the doubtful jurisdiction and, on June 13, gave to respondent a notice of motion supported by affidavit which was filed the following day. This notice was "that an application will be made to this Honourable Court or to a Judge of this Honourable Court on the day when this appeal comes on for hearing for leave to appeal to this Honourable Court, if such leave should be necessary, . . ."

The parties have now appeared before me and argued the application before the case will be called. Counsel for the respondent agrees that the amount in controversy is under $500 and is a "sum of money payable to Her Majesty" within the meaning of para. (*b*) of s. 83 of the *Exchequer Cour Act,* R.S.C. 1952, c. 98, but otherwise he opposes the application.

In view of the importance of the question of law involved in the decision sought to be appealed from, I consider it desirable that it should be reviewed by this Court and accordingly grant leave to appeal.

In doing so, I must point out that, although this Court sometimes under special circumstances gives leave to appeal

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at the time an appeal is heard, it is very inconvenient and highly undesirable that applications for leave should be made at such a late date. Especially is this so when, as in this case, the jurisdiction for granting leave is conferred not on the Court but on a judge. The orderly disposition of the business of the Court requires that applications for leave be brought promptly. Also, when a case is inscribed without jurisdiction, it is respondent's duty to move to quash if applicant does not move for special leave.

Under the circumstances, there will be no costs of the application to either party.

Application granted.

Solicitors for the petitioner: MacKenzie, Wood & Goodchild, Toronto.

Solicitor for the respondent: D. S. Maxwell, Ottawa.