NORCAN LIMITED ..... APPELLANT;

AND

HAROLD LEBROCK ..... RESPONDENT;

AND

HAROLD GOLTMAN and ALPHONSE RAYMOND JR. ..... APPLICANTS.

1969

*Mar. 17
May 16

MOTION FOR LEAVE TO INTERVENE

Practice and procedure—Intervention—Whether bondsmen entitled to intervene on appeal to Supreme Court of Canada—Rule 60.

The appellant appealed to this Court from a judgment of the Court of Appeal affirming a judgment of the Superior Court granting the respondent's petition to quash a writ of *capias* and discharging the bondsmen. The respondent has left the country, was not represented in the Court of Appeal and his solicitors will not represent him on the appeal. The bondsmen applied to a Judge in Chambers for leave to intervene under Rule 60 of the Rules of this Court. The application was opposed on the ground that the interest required to file an intervention must be an interest in the subject-matter of the litigation, not merely an interest in the result, and that the bondsmen could not be considered as having the required interest. The application was referred to the Court.

Held: The application to intervene should be granted.

Rule 60 should not be narrowly construed. Any interest is sufficient to support an application under that rule, subject always to the exercise of discretion.

Procédure—Intervention—Droit des cautions d'intervenir dans un appel devant la Cour suprême du Canada—Règle 60.

La compagnie appelante a interjeté appel à cette Cour d'un jugement de la Cour d'appel confirmant un jugement de la Cour supérieure accordant la requête de l'intimé pour faire annuler un bref de *capias* et libérant les cautions. L'intimé a quitté le pays, n'était pas représenté devant la Cour d'appel et ses avocats ne le représenteront pas sur l'appel. Les cautions ont présenté une requête à un Juge en chambre pour obtenir la permission d'intervenir selon la règle 60 des Règles de cette Cour. La requête a été contestée pour le motif que l'intérêt requis pour produire une intervention doit être un intérêt dans l'objet du litige, et non pas simplement un intérêt dans le résultat, et que les cautions ne pouvaient pas être considérées comme ayant l'intérêt requis. La requête a été déférée à la Cour.

Arrêt: La requête pour intervenir doit être accordée.

On ne doit pas interpréter la règle 60 d'une façon restreinte. Sous réserve de la discrétion judiciaire, tout intérêt est suffisant pour obtenir la permission d'intervenir en vertu de cette règle.

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*PRESENT: Fauteux, Abbott, Judson, Ritchie and Pigeon JJ.

NORCAN LTD. v. LEBROCK

REQUÊTE pour obtenir la permission d'intervenir déférée à la Cour par le Juge en chambre. Requête accordée.

APPLICATION for leave to intervene referred to the Court by the Judge in Chambers. Application granted.

J. M. Schlesinger, Q.C., for the applicants.

J. Gibb Stewart, Q.C., for the appellant.

The judgment of the Court was delivered by

PIGEON J.:—In this case Norcan Ltd. appeals from a judgment of the Court of Appeal for the Province of Quebec affirming a judgment of the Superior Court granting Harold Lebrock's petition to quash a writ of *capias* and discharging the bondsmen. It appears from the reasons for judgment that Lebrock has left the country and was not represented at the hearing. The solicitors who had been acting for him have notified the Registrar that their mandate has been revoked and that they will not represent him in this Court. Under those circumstances, the bondsmen ask for leave to intervene under rule 60.

Counsel for Norcan Ltd., the appellant, opposes the application relying on decisions under the provisions of the Quebec *Code of Civil Procedure* respecting intervention. These decisions are to the effect that the interest required to file an intervention must be an interest in the subject-matter of the litigation, not merely an interest in the result. As a consequence, the right of intervention has been denied to bondsmen, the latest case being *Druckman v. Stand Built Upholstery Corporation*[1] affirmed in this Court[2]. Seeing that the provisions of the old Quebec *Code of Civil Procedure* concerning intervention were practically identical with rule 60 and seem to have inspired it (Cameron, Supreme Court Practice, 3rd ed., p. 430), the objection appeared serious and I referred the matter to the Court.

Having now made a review of past decisions under rule 60, I have come to the conclusion that it should not be narrowly construed. It seems clear that any interest is sufficient to support an application under that rule subject always to the exercise of discretion.

[1] [1965] Que. Q.B. 615.

[2] [1966] S.C.R. v.

In *Massie & Renwick v. Underwriters' Survey Bureau* (unreported; reported on merits[3]), leave to intervene in an action for infringement of copyright was granted to persons against whom similar actions were pending. They were held to be "vitally interested and concerned with the questions involved in these appeals".

In *Winner v. S.M.T.* (unreported; reported on merits[4], varied by P.C.[5]), railway companies were granted leave to intervene in a case respecting the constitutional validity and application of provincial regulations of motor carriers in interprovincial or international operations.

I should also note that our rule is quite different from that which was held to have a narrow scope in *Moser v. Marsden*[6].

Finally, I should observe that in *Druckman v. Stand Built Upholstery*, the application was made only after judgment had been rendered dismissing the appeal. It is well settled that an application for permission to intervene may be made only as long as the case is pending. For that reason, all that was said in the Court of Queen's Bench as to the required interest is undoubtedly *obiter*.

On the merits of the application no reason was given for opposing it, except the contention that the bondsmen should not be considered as having the required interest.

Under the circumstances of this case it seems proper to make the order requested. The costs will be reserved for adjudication at the same time as the merits of the appeal.

Application granted.

Solicitor for the applicants: J. M. Schlesinger, Montreal.

Solicitor for the appellant: Stewart, Crépault, McKenna, Wagner & Loriot, Montreal.

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[3] [1937] S.C.R. 265, [1937] 2 D.L.R. 213 and [1940] S.C.R. 218, 7 I.L.R. 19, [1940] 1 D.L.R. 625.

[4] [1951] S.C.R. 887, 68 C.R.T.C. 41, [1951] 4 D.L.R. 529.

[5] [1954] A.C. 541, 13 W.W.R. (N.S.) 657, 71 C.R.T.C. 225.

[6] [1892] 1 Ch. 487.