

1928

\*Apr. 24, 25.

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AMERICAN SECURITIES CORPORATION,  
LIMITED *v.* WOLDSON

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH  
COLUMBIA

*Trusts and trustees—Order to trustee—Trustee directed to give notice of assignment of moneys—Discretionary nature of the order—Appeal—Jurisdiction—Pecuniary value attached to the order—Supreme Court Act, s. 39.*

APPEAL by the plaintiff from the decision of the Court of Appeal for British Columbia (1), affirming the judgment of McDonald J.—Appeal dismissed for want of jurisdiction.

The appellant assigned to the Royal Trust Company, *inter alia*, future instalments of moneys which might become payable to the appellant under a designated option to the Granby Consolidated Mining, Smelting and Power Company, to purchase mining property. The assignment was to secure the payment of a bond issue. A bank in Seattle was by deed nominated to keep a record of the bonds which might be registered there and to retire them out of the moneys which should be paid into it from time to time by the payee of the instalments, the Granby Company. Matters went on smoothly for a time until the bank at the request or instigation of the appellant, diverted some

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\*PRESENT:—Duff, Mignault, Newcombe, Lamont and Smith JJ.

of the said moneys to a purpose not authorized by the deed. On discovering this act the respondent, a holder of more than one-fourth of the said bonds, made a demand upon the trustee that it should notify the Granby Company of the assignment and require payment of the instalments in future to itself.

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The order granted by the trial judge was held by the Court of Appeal to have been within his discretion and, therefore, one which should not be interfered with, since it was not based on an error in principle or made in the absence of materials affording ground for the exercise of the discretion.

On conclusion of the argument of counsel for the appellant, and without calling on counsel for the respondent, the judgment of the court was orally delivered by

DUFF J.—We think the appeal should be dismissed for want of jurisdiction. Section 39 of the *Supreme Court Act* limits the right of appeal to cases in which the amount or value of the matter in controversy exceeds the sum of \$2,000. The question of the jurisdiction to entertain this appeal came before us on a motion to quash, and for the purpose of enabling the parties to provide further material, and in order that the court might be more fully informed as to the precise facts, the disposition of the motion was deferred until the hearing of the appeal.

It is now suggested by Mr. Griffin that there should be an adjournment to enable him to file an affidavit. I think, in the circumstances, that this is an indulgence which cannot be allowed. On the facts before us there is really nothing to show what (if any) pecuniary value attaches to that control of which the appellants have been deprived by the order of which they now complain. It seems to be precisely one of those cases which the statute provides for by giving an appeal only upon condition that special leave shall be obtained.

However we think it right to say—after consultation with my colleagues—that, having had an opportunity to consider the questions at issue since the close of Mr. Griffin's argument, we are all quite clearly of the opinion that the appeal could not succeed on the merits. We think it right to say that, in the circumstances.

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We think that the appeal should be dismissed on the point of jurisdiction, because we are quite clear, on the material before us, that there is no jurisdiction. We are equally clear, if we did not deal with the appeal on that ground, that we should be obliged to dismiss it on the merits.

*Appeal dismissed with costs.*

*Martin Griffin* for the appellant.

*W. D. Herridge* for the respondent.

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