1933

*May 29.
*June 16.

IN THE MATTER OF THE "ADOPTION ACT" (BRITISH COLUMBIA)

AND

IN THE MATTER OF THE PETITION OF HERBERT WEBSTER AGNEW AND ANNIE HEATON AGNEW, HIS WIFE, TO ADOPT AN INFANT, AUDREY BLAND.

JEAN BLAND AND CHARLES ASHTON BLAND ..... } APPLICANTS;

AND

HERBERT WEBSTER AGNEW AND ANNIE HEATON AGNEW..... } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Appeal—Jurisdiction—Special leave to appeal under proviso of s. 41 of Supreme Court Act, R.S.C., 1927, c. 35—"Other matters by which rights in future of the parties may be affected."

An application, under the proviso of s. 41 of the *Supreme Court Act* (R.S.C., 1927, c. 35), for special leave to appeal from the judgment of the Court of Appeal for British Columbia ([1933] 1 W.W.R. 681; [1933] 2 D.L.R. 545), dismissing the applicants' appeal from an order allowing the adoption by respondents of the applicants' daughter, was dismissed, on the ground of want of jurisdiction, the rights in dispute not coming within the meaning of the phrase "other matters by which rights in future of the parties may be affected," having regard to its context, in s. 41. The scope of the phrase discussed, and the opinion indicated that it is restricted, pursuant to the formula *noscitur a sociis,* to matters involving something in the nature of a pecuniary or economic interest. *Davis* v. *Shaughnessy,* [1932] A.C. 106, discussed and distinguished.

*PRESENT:—Duff C.J. and Rinfret, Lamont, Smith, Cannon, Crocket and Hughes JJ.

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APPLICATION, under s. 41 of the *Supreme Court Act*, R.S.C., 1927, c. 35, for special leave (refused by the Court of Appeal for British Columbia) to appeal from the judgment of the Court of Appeal for British Columbia (1) dismissing the present applicants' appeal from the order of D. A. McDonald J. granting the petition of the present respondents for the adoption of the infant daughter of the present applicants under the provisions of the *Adoption Act*, R.S.B.C., 1924, c. 6.

The application to this Court was dismissed with costs, on the ground of want of jurisdiction.

T. A. Beament K.C. for the applicants.

E. F. Newcombe K.C. for the respondents.

The judgment of the court was delivered by

DUFF C.J.—Section 41 of the *Supreme Court Act*, under which the application for leave to appeal is made, is, so far as pertinent, in these terms:

> 41. Special leave * * * may be granted in any case * * * by the highest court of final resort having jurisdiction in the province * * * Provided that in any case whatever where the matter in controversy on the appeal will involve
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> (*a*) the validity of an Act of the Parliament of Canada or of the legislature of any province of Canada or of an Ordinance or Act of the council or legislative body of any territory of Canada; or
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> (*b*) any fee of office, duty, rent or revenue, or any sum of money payable to His Majesty; or
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> (*c*) the taking of any annual rent, customary or other fee, or, other matters by which rights in future of the parties may be affected; or
>
> (*d*) the title to real estate or some interest therein; or
>
> (*e*) the validity of a patent; and
>
> (*f*) in cases which originated in a court of which the judges are appointed by the Governor General and in which the amount or value of the matter in controversy in the appeal will exceed the sum of one thousand dollars;
>
> if a special leave to appeal has been refused by the highest court of final resort in the province the Supreme Court may nevertheless grant such leave * * *.

The Court of Appeal for British Columbia has refused leave. The preliminary question arises as to our jurisdiction to grant leave under the proviso of section 41. The immediate point upon which our decision must turn is

(1) [1933] 1 W.W.R. 681; [1933] 2 D.L.R. 545.

whether "other matters by which rights in future of the parties may be affected" comprehend all such matters, or whether the scope of the phrase is restricted pursuant to the formula *noscitur a sociis* to matters involving something in the nature of a pecuniary or economic interest.

The present section applies to appeals from all the provinces. But the phrase "other matters by which rights in future of the parties may be affected" or a phrase not distinguishable in any relevant sense appeared in section 29 (*b*) of the old statute of 1886 as amended in 1892 which affected exclusively appeals from the province of Quebec. Section 29 excluded appeals from that province except in cases where the matter in controversy amounted to the sum or value of $2,000 or involved the validity of some legislative enactment or

> (*b*) * * * relates to any fee of office, duty, rent, revenue or any sum of money payable to Her Majesty, or to any title to lands or tenements, annual rents and other matters or things where the rights in future might be bound.

The effect of the words in this section "unless the matter in controversy * * * (*b*) relates to * * * other matters or things where rights in future might be bound" was, long prior to the enactment of s. 41 (in 1920), considered by this Court in a series of decisions which have never been departed from.

It was held (*inter alia*) that these words, in the collocation in which they were there placed, did not invest this Court with jurisdiction to entertain an appeal from a judgment in an action by a husband for "*séparation de corps*" from his wife (*O'Dell* v. *Gregory* (1), and *Talbot* v. *Guilmartin* (2)); in an action "*en declaration de paternité*" (*Macdonald* v. *Galivan* (3)); in a petition for cancellation of the respondent's appointment as tutrix to her minor children (*Noel* v. *Chevrefils* (4)).

It is true that under another enactment of the *Supreme Court Act* (now sections 36 and 42) this Court may be called upon to deal with questions touching the right to the custody of children when such questions are raised in appeals in habeas corpus. But the current of decision (apart from the special cases of mandamus, habeas corpus,

(1) (1895) 24 Can. S.C.R. 661.
(2) (1900) 30 Can. S.C.R. 482.
(3) (1898) 28 Can. S.C.R. 258.
(4) (1900) 30 Can. S.C.R. 327.

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certiorari and prohibition and cases in which the validity of some legislative Act is in controversy) has, subject to the authority to give leave to appeal under s. 48 in appeals from Ontario, been uniformly in the sense that no appeal would lie unless the matter in controversy involved or affected something in the nature of a pecuniary or economic interest present or future.

Section 41 does not profess in terms to introduce any change in this respect. With the single exception of matters touching legislative jurisdiction, all the matters specifically enumerated in that section as affording a foundation for the jurisdiction of this Court to grant leave are matters involving some kind of interest of an economic character. It seems reasonable to assume that if the legislature had intended to enlarge the jurisdiction of this Court by introducing a radical change, that intention would have been more explicitly set forth. Since the decisions in *O'Dell* v. *Gregory* in 1895 (1) and the other cases mentioned, the statute has been re-enacted many times; and there is no evidence in any of those re-enactments that the interpretation of s. 46 by which appeals were excluded from judgments in proceedings of the character exemplified in those cases was not regarded as conforming to the legislative intention. Indeed, by the Act of 1920 the authority of this Court was, in any view of s. 41, restricted in one important respect. The authority to grant leave under the old s. 48 (which dealt with appeals from Ontario) was, as already mentioned, unlimited, except probably by implied reference to s. 36. By s. 41 as enacted in 1920, that unlimited authority in respect of Ontario appeals was confined to those cases enumerated in s. 41.

The judgment of the Judicial Committee in *Davis* v. *Shaughnessy* (2) was not concerned with the effect of the *Supreme Court Act*. The passage quoted from the judgment involves, it is true, a ruling that the rights contemplated by the words " other matters in which the rights in future of the parties may be affected " are not " necessarily," in the context in which they appear in Art. 68 of the *C.C.P.* of Quebec, *ejusdem generis* with " titles to lands or tenements, annual rents "; in other words, they are not necessarily limited to rights of a character similar to rights

(1) 24 Can. S.C.R. 661. (2) [1932] A.C. 106.

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in or issuing out of land. This does not necessarily involve a decision that, in construing them, the whole text of the article (which includes other matters) is to be disregarded. In truth, their Lordships hold that

> the future rights of the appellants are affected since, if the judgment stands, the respondents may again vote themselves sums of money contrary to their duty as *ex hypothesi* they have already done.

There is here no suggestion that "rights in future" even in Art. 68, with which, strictly, we are not at all concerned, comprehend rights of the character the applicants desire to assert in the proposed appeal.

The application is dismissed with costs.

Application dismissed with costs.

Solicitor for the applicants: *C. H. O'Halloran.*

Solicitor for the respondents: *H. A. Beckwith.*