

SCULLY SIGNAL COMPANYAPPELLANT;

1954

AND

*Nov. 10

*Nov. 18

YORK MACHINE COMPANYRESPONDENT.

MOTION FOR LEAVE TO APPEAL

Appeal—Jurisdiction—Exchequer Court Judgment—Appeal as of right dismissed—Motion Renewed—Leave Granted—Provisions of s. 82 no bar to application made under s. 83 of the Exchequer Court Act R.S.C. 1927, c. 34.

The provisions of s. 82 of the *Exchequer Court Act* do not apply to an application made under s. 83 of that Act, any more than the jurisdiction of the Supreme Court in respect of an appeal in exercise of a

*PRESENT: Kerwin C.J. in Chambers.

(1) [1909] A.C. 229.

(2) [1950] 1 K.B. 514.

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right of appeal given by the *Exchequer Court Act* is affected by what is now s. 44 of the *Supreme Court Act*. *British American Brewing Co. Ltd. v. The King* [1935] S.C.R. 569.

MOTION by appellant under s. 83 of the *Exchequer Court Act*, before Kerwin C.J. in Chambers, for leave to appeal from a judgment of the Exchequer Court. (1)

Christopher Robinson, Q.C. for the motion.

Gordon Henderson, Q.C. contra.

THE CHIEF JUSTICE (In Chambers):—The Court has decided that there was no appeal as of right from the judgment of the Exchequer Court in this case dated January 25, 1954, and the plaintiff now moves under s. 83 of the *Exchequer Court Act* for leave to appeal.

I have read and considered all the decisions referred to, particularly *Western Clock Co. v. Oris Watch Co.* (2), including Chief Justice Anglin's statement at 399:—

"Whether the time can now be extended and leave granted by virtue of such extension, under s. 83, is a question for the consideration of the appellant. (*Goodison v. McNab*). (3)

The *McNab* case was an appeal from a decision of the Court of Appeal for Ontario under the provisions of *The Supreme Court Act*. Section 82 of the *Exchequer Court Act* deals with appeals to the Supreme Court of Canada from judgments of the Exchequer Court. Sub-section 2 thereof provides that "an appeal under this section" shall be brought by serving a notice of appeal, and s-s. 2(a) provides that the notice of appeal "shall be served and filed and the security shall be deposited within sixty days . . . from the signing or entry or pronouncing of the judgment appealed from, or within such further time as a judge of the Exchequer Court . . . may either before or after the expiry of the said sixty days fix or allow." These provisions do not apply to an application under s. 83, any more than the jurisdiction of the Supreme Court in respect of appeals in exercise of a right of appeal given by the *Exchequer Court Act* is affected by what is now s. 44 of *The Supreme Court Act*. (*British American Brewing Co. Ltd. v. The King* (4)).

(1) [1954] 20 C.P.R. 27;
 14 Fox Pat. C. 27.

(2) [1931] S.C.R. 397.

(3) (1910) 42 Can. S.C.R. 694.

(4) [1935] S.C.R. 569.

I, therefore, have jurisdiction to make the order requested. On the argument I intimated that if I came to this conclusion permission would be given, and the order may go accordingly. Costs in the cause.

Motion granted.

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