

WESTERN CLOCK COMPANY.....APPELLANT;

AND

ORIS WATCH COMPANY, LTD.....RESPONDENT.

1931

*April 28.
*April 29.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Appeal—Jurisdiction—Exchequer Court Act, R.S.C., 1927, c. 34, s. 82—
“Actual amount in controversy”—Value of right involved—Proof by
affidavit—Insufficiency of facts sworn to.*

Appellant sued in the Exchequer Court to expunge respondent's trade-mark from the register. No amount was claimed for damages. The action was dismissed. Appellant appealed to this Court (without obtaining leave under s. 83 of the *Exchequer Court Act*). Respondent moved to quash the appeal for want of jurisdiction, on the ground that there was no “actual amount in controversy” in the action. Appellant replied by affidavit that the registration of the trade-mark had “aggrieved” appellant “in an amount exceeding \$500.”

Held: Assuming, but not deciding, that the words “actual amount in controversy” in s. 82 of the *Exchequer Court Act*, do not imply that there must be a sum of money exceeding \$500 actually in dispute, but that a claim for property or rights of which the value exceeds \$500, if actually involved in the action, suffices to give this Court jurisdiction to entertain the appeal under s. 82, and that such value may be proved by affidavit, yet appellant's affidavit was insufficient for the purpose, because, while appellant might have sustained the amount of damages sworn to as the result of registration of the trade-mark, it did not follow that the value of its right to have the trade-mark expunged exceeded \$500, and that was what required proof, to bring this case (on the assumption aforesaid) within s. 82.

MOTION on behalf of the respondent for an order quashing the appeal, which was brought from the judgment of Audette J. in the Exchequer Court of Canada (1),

*PRESENT:—Anglin C.J.C. and Newcombe, Rinfret, Lamont, Smith and Cannon JJ.

(1) [1931] Ex. C.R. 64.

1931
 WESTERN
 CLOCK
 Co.
 v.
 ORIS
 WATCH Co.

dismissing the appellant's action, which was for the expunging from the register of a specific trade-mark registered by the respondent. The respondent's motion was made on the ground of want of jurisdiction, in that there was no "actual amount in controversy" (*Exchequer Court Act*, R.S.C., 1927, c. 34, s. 82) in the action.

O. M. Biggar K.C. for the motion.

G. F. Henderson K.C. contra.

The judgment of the court was delivered by

ANGLIN C.J.C.—Without so deciding, but assuming that the words "the actual amount in controversy" in s. 82 of the *Exchequer Court Act* (R.S.C., 1927, c. 34) do not imply that there must be a sum of money exceeding \$500 actually in dispute in the action, but that a claim for property or rights of which the value exceeds \$500, if actually involved in the action, suit, etc., suffices to give this Court jurisdiction to entertain the appeal under s. 82, (See *Sun Life Assur. Co. of Canada v. Superintendent of Insurance* (1); *Burnett v. Hutchins Car Roofing Co.* (2)), and that such value may be proved by affidavit,—we are all of the opinion that the affidavit filed on behalf of the appellant to prove the value in this case is insufficient.

The respondent having put in an affidavit to the effect that "there is no actual amount in controversy in this action," the appellant replies by an affidavit which contains the following passages:

2. This is an action to expunge a specific Trade-Mark registered by the Respondent herein, as Folio Number 47084, Register 220.

3. That the registration of the said Trade-Mark by the Respondent as aforesaid has aggrieved the Appellant (Petitioner) herein in an amount exceeding Five Hundred (\$500) dollars.

While the appellant may have sustained the amount of damages sworn to as the result of the registration of the trade-mark by the respondent, it does not at all follow that the value of his right to have such trade-mark expunged exceeds the sum of five hundred dollars; yet that is what he would be required to swear to in order to bring this case within s. 82 of the *Exchequer Court Act*, there being no amount claimed for damages, but merely a claim for the expunging of the respondent's trade-mark.

As I have indicated, we shall assume the proof of value of the right in question can be made by affidavit, and that, if such value be shown to exceed \$500, an appeal lies to this Court under s. 82; but, that not having been done, the alternative was to obtain leave to appeal from a judge of this Court, under s. 83. This has not been done.

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* (1).)

Meantime, and as matters now stand, the Court is without jurisdiction to hear the appeal and the motion to quash must be granted with costs.

Motion granted with costs.

Solicitors for the appellant: *Henderson, Herridge & Gowing.*

Solicitors for the respondent: *Smart & Biggar.*

1931
WESTERN
CLOCK
Co.
v.
ORIS
WATCH Co.
Anglin
C.J.C.