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IMPERIAL STEEL CORPORATION LTD. (DEFENDANT) AND J. A. CURRIE ..... APPELLANTS; *Oct. 6. *Oct. 7. *Nov. 4.

AND

H. A. BITTER AND IMPERIAL TRUST COMPANY OF CANADA ..... RESPONDENTS.

IMPERIAL STEEL CORPORATION, LTD. (DEFENDANT), AND J. A. CURRIE ..... APPELLANTS;

AND

FREDERICK ARTHUR WATSON (PLAINTIFF) AND IMPERIAL TRUST COMPANY OF CANADA (DEFENDANT) ..... RESPONDENTS.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO

Practice—Status—Intervention—Discontinuance—Supreme Court Act, ss. 60, 69, 80

Where a judgment had been given against a corporation in favour of a holder of a debenture, the interest upon which was in default, and the company and its president personally (the latter not theretofore a party) gave security for an appeal to the Supreme Court of Canada without objection by the respondents.

Held, that the president had no status to take part in the appeal as he had not intervened in the manner provided by *The Supreme Court Act,* s. 80.

An informal statement in a letter from the solicitors of the appellants, (Imperial Steel Corporation Ltd.) indicating an intention to abandon an appeal does not suffice to effect a discontinuance, the explicit provisions of the Supreme Court Rule 60 not having been complied with.

APPEALS from the decisions of the Appellate Division of the Supreme Court of Ontario.

By originating summons under the *Trustee Act* the respondent Bitter sought the removal of the Imperial Trust Co. of Canada as trustee for bondholders under a bond mortgage made by appellant, The Imperial Steel Corporation, Ltd., and the substitution for it of the Trust & Guarantee Co. which he also asked should be appointed receiver of the appellant corporation. Mr. Justice Riddell made an

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

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order appointing the Trust & Guarantee Co. trustee and receiver as asked. From this order an appeal was taken to the Appellate Division, on the ground, *inter alia*, that the learned judge had exceeded his jurisdiction in appointing a receiver by way of equitable execution on a summary application under the *Trustee Act*.

To meet this difficulty, the respondent Watson then brought an action for realization of the mortgage security and for the appointment of a receiver of the assets of the Imperial Steel Corporation and made a motion returnable before Mr. Justice Riddell for the appointment of an interim receiver.

Watson was the holder of certain bonds of the Imperial Steel Corporation of which J. A. Currie was president. Default had been made in the payment of three half-yearly instalments of interest on these bonds.

Upon the return of Watson's motion it was turned by the court into a motion for judgment, and final judgment was pronounced for the realization of the mortgage security and appointing the Trust & Guarantee Co. receiver of the assets of the Imperial Steel Corporation, Ltd.

From this judgment an appeal was also taken to the Appellate Division.

Both appeals came on to be heard together. The Appellate Division, on the 13th of May, 1925, modified the first order made by Mr. Justice Riddell so as to restrict it to the appointment of the Trust & Guarantee Company as trustee. The judgment in the action it affirmed without variation.

From these judgments the appeals were taken to this court which the respondents move to quash.

On the motion to quash coming on for hearing on the 6th of October, judgment was reserved. The court subsequently quashed the appeal from the judgment affirming the order appointing the Trust & Guarantee Co. trustee in lieu of the Imperial Steel Corporation, for want of jurisdiction. It was, however, of the opinion that it had jurisdiction to entertain the appeal from the judgment in the Watson action for the realization of the mortgage security and appointing the Trust & Guarantee Company receiver by way of equitable execution, but directed that the appel-

lant should show cause why that appeal should not be dismissed as frivolous and vexatious and lacking substance.

Upon the return of the motion for this purpose on the 4th of November, the attention of the court was drawn to the fact that, although the appeal in the Watson action purports to be taken by the Imperial Steel Corporation, Limited, the defendant in the action, and also by J. A. Currie, the latter was not a party to the proceedings in the Ontario courts. His name, however, appeared as an appellant in the notice of appeal to this court and also in the bond taken as security for costs and approved by Smith J.A. in chambers. It also appeared that before the return of the motion to quash the solicitors of the Imperial Steel Corporation had written a letter to the solicitors for the respondent Watson intimating that they would not appear.

Rule 60 of the Supreme Court Rules reads as follows:

Any person interested in an appeal between other parties may, by leave of the court or a judge, intervene therein upon such terms and conditions and with such rights and privileges as the court or judge may determine.

Section 80 of the Supreme Court Act is in these terms:

An appellant may discontinue his proceedings by giving to the respondent a notice entitled in the Supreme Court and in the cause, and signed by the appellant, his attorney or solicitor, stating that he discontinues such proceedings.

O'Meara for Currie.
Raney K.C. for respondent Watson.

Judgment was pronounced by the court on the same day holding that Currie had no status in the appeal although he had given security without objection by the respondent. He was not a party to the case and had not appeared in the court below. If he desired to intervene, he should have taken the steps required by Rule 60. To permit him now to intervene to prosecute the appeal which the sole appellant properly in the record has evinced its intention to abandon, would seem tantamount to allowing Mr. Currie to institute an appeal contrary to the prescription of s. 69 of the *Supreme Court Act*. On the other hand, the appeal of the Imperial Steel Co., Ltd., was still before the court, notice of discontinuance not having been given as prescribed by s. 80. The letter written to the solicitors was not sufficient for that purpose. The court being of the opinion, however, that it was reasonably clear

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that the appeal lacked substance and that the only appellant who had any status did not intend to prosecute it, dismissed the appeal; but, under all the circumstances, without costs.

Appeals dismissed.