

1925
 }
 *Dec. 31.

IN RE HUDSON FASHION SHOPPE }
 LIMITED } IN BANKRUPTCY

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

*Appeal—Jurisdiction—Bankruptcy—Leave to appeal—Statutory rule—
 Delay—To enlarge or abridge—Bankruptcy Act (D)
 9-10 Geo. V, rule 72*

The provision contained in par. 1 of rule 72 of the Bankruptcy Act that “notice of an application for special leave to appeal shall be served on the other party at least fourteen days before the hearing thereof” being statutory, there is no jurisdiction in the Supreme Court of Canada or one of its judges to abridge the delay so fixed. Therefore a motion for leave to appeal from a judgment dated 1st December, 1925, although made returnable within the delay of thirty days provided in rule 72, was dismissed as notice of the motion had been served only on the 17th December, 1925. *In re Gilbert* ([1925] S.C.R. 275). complemented

MOTION for leave to appeal to this court in bankruptcy proceedings.

The Hudson Fashion Shoppe, Limited, was an incorporated company carrying on retail businesses in Hamilton and in London, Ontario. On May 22, 1925, an interim receiver in bankruptcy was appointed under an order of the court and took possession of both shops; and thereafter a final receiving order was made on June 1, 1925. The creditors subsequently appointed a trustee and inspectors. All goods not sold thus passed into the possession of the trustee. The Royal Dress Company, Limited, a manufacturing concern doing business in Montreal, Quebec, moved before a judge in the Ontario courts for an order and judgment annulling and resiliating for all purposes, as of right, the sale from that company to the insolvent company of

certain merchandise and for its immediate return and delivery to the applicants. The two main points for determination were: (a) was the contract of sale made in the province of Quebec, and (b) if made there, do the terms of art. 1998 of the civil code of that province apply to the sale and goods in question and entitle the unpaid vendors to revendicate the latter in the province of Ontario.

The trial judge held that the whole contract of sale was not made in Quebec and that the civil code of that province, having regard to the facts of the case, was not effective or operative in the province of Ontario (1). This judgment was reversed by the Appellate Division on the first day of December, 1925 (2).

The trustee then made a motion for special leave to appeal to this court. The motion was returnable before a judge of this court on the 31st day of December, 1925, being the last day of the thirty days allowed by rule 72 of the Bankruptcy Act for bringing on such a motion; but notice of the motion was served on the counsel for the Royal Dress Company only on the 17th day of December, 1925.

Upon hearing of the motion and after argument by counsel, Anglin C.J.C. in chambers pronounced judgment, dismissing the motion with costs, holding that notice of the motion had not been given at least fourteen days before the date of its return and that a judge of the Supreme Court of Canada was not empowered to abridge that period since it was fixed by a statutory rule.

Motion dismissed with costs.

Singer and Schroeder for motion.

Robinson and Hill contra.

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FASHION
SHOPPE,
LTD.

(1) [1925] 57 Ont. L.R. 505.

(2) [1925] 29 Ont. L.R. 203.