CANADA PERMANENT MORTGAGE CORPORATION ..... APPELLANT;

AND

JOHN CHEESE ..... (APPLICANT)

AND

THE CHIEF COMMISSIONER OF THE BOARD OF REVIEW ..... RESPONDENT.

1941
*Oct. 8, 9, 10.
1942
*May 5.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Debtor and creditor—Farmers' Creditors Arrangement Act (Dom.), 1934—Jurisdiction of Board of Review to entertain proposal—Grounds against proposal raised by way of certiorari—Creditor's debt reduced to amount below value of security—Present and prospective capability of debtor to perform obligations prescribed—Prospective value of farm upon which creditor has security—Whether proposal formulated in fairness and justice to debtor and creditors—Farmers' Creditors Arrangement Act, 1934, (Dom.) ss. 5, 7, 12 (7) (8) (9) (10).

The applicant Cheese farmed a certain land which was subject to a first mortgage held by the Corporation appellant. He made a proposal to his creditors for a composition, extension of time or scheme of arrangement under the *Farmers' Creditors Arrangement Act*, 1934, and amendments. The proposal not having been approved by the creditors before the Official Receiver, a request was made by the debtor to the Board of Review to formulate an acceptable proposal under the Act. Of all the claims against the debtor set out in the proposal, the Board dealt only with the claim of the Corporation appellant for an amount of $689.25, no proposal having been asked of the Board as to some of them and the others having been paid. The Board of Review found that the debtor was entitled to the benefit of the Act, formulated a proposal and subsequently confirmed it. Under the proposal, the Corporation appellant's claim was reduced to $400 payable in ten equal consecutive annual instalments with

* PRESENT:—Duff C.J. and Rinfret, Crocket, Hudson and Taschereau JJ.

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interest at six per cent. The appellant applied to the Court of Appeal for Saskatchewan for an order that a writ of *certiorari* be issued out of that Court for the return of the proposal and that the proposal and its confirmation be quashed as having been made without jurisdiction. The grounds raised in the Court of Appeal and before this Court were that (*a*) the proposal deprived the appellant of its security in that the appellant's claim was reduced to a figure below the value of its security, (*b*) that the proposal was based on considerations other than the present and prospective capability of the debtor to perform the obligations prescribed and the prospective values of the farm upon which the appellant had security and (*c*) the proposal was not formulated in fairness and justice to the creditors. Other grounds were raised by the appellant for the first time before this Court, but it was held that they ought not to be given effect to. The appellant's application was dismissed by a majority of the appellate court.

Held, affirming the judgment appealed from ([1941] 1 W.W.R. 337), that the Board of Review had jurisdiction to entertain the application of the debtor and to formulate and confirm the proposal in this case; and that such proposal ought not to be quashed on the grounds raised by the appellant.

Per the Chief Justice.—The jurisdiction of the Board of Review is incontestable to entertain the debtor's application to formulate and to confirm an acceptable proposal. This Court cannot give effect to the points of law or contentions raised by the appellant without holding that the impeached proposal and confirmation of it constitute an erroneous adjudication upon matters that were within the jurisdiction of the Board of Review; and it would be inadmissible to quash the proposal upon that ground.—All questions touching the present and prospective capability of the debtor to perform his obligations and touching the productive value of the farm, to which subsection 8 of section 12 relates, are obviously matters to be determined by the Board; and the Board's decision upon such matters is not subject to review in any court, unless (and no opinion is expressed on this point) it is reviewable by the court of bankruptcy established by section 5.—Also, the explicit words of subsection 9 of s. 12 leave the matter of fairness and justice to the Board for determination.—As to the specific point raised by the appellant that the effect of the proposal was to reduce the mortgage debt below the value of the security, which, it is alleged, would be *ultra vires* of the Board: it cannot be affirmed as a proposition of law, on the material before the Court, that such is the effect of the proposal. The Board may have proceeded upon the view that, in point of fact, the sum to which the mortgage debt was reduced was not less than the value of the farm, and it is not competent to this Court to review the proposal or its confirmation on the ground that it involves an erroneous adjudication upon a matter of fact.—No opinion is expressed on the question whether either the Court of Appeal for Saskatchewan or this Court has any jurisdiction to grant *certiorari* on the grounds upon which the present appeal is based.

Per Rinfret, Crocket and Taschereau JJ.—It is not necessary, for the purpose of this appeal, to decide the point, either in its legal aspect or from the viewpoint of jurisdiction conferred upon a Board of Review by the Act, whether a Board has jurisdiction to reduce the

claim of a secured creditor at a sum less than the value of its security.—The Court, in this case, is not in a position to find whether, as a matter of fact, the proposal has the effect of making such reduction, and there is nothing which enables the Court to say that the value of the respondent's farm is greater or less than $400. The fact itself whether the appellant's debt was so reduced must have been part of the inquiry of the Board; and, at all events, that inquiry was committed by the Act to the Board, the only tribunal competent to determine that fact, and such inquiry cannot be questioned on *certiorari*.—As to the ground that the proposal was not formulated in fairness and justice to the creditors, such a question does not affect the competency and jurisdiction of the Board of Review nor challenge the authority of the Board to formulate a proposal: such an issue raises questions of pure fact and cannot be made the subject of an inquiry by a superior court through the procedure of *certiorari*.—If the Board should fail to act "in fairness and justice" to the debtor and creditors, the controlling authority on a question of that kind would be the county or district court acting under section 5 of the Act.

Per Hudson J.—In formulating and confirming a proposal as to a secured debt, it is within the jurisdiction of the Board of Review under the Act to reduce the debt to an amount below the value of the security.—As to the question of fairness and justice to debtor and creditors, this Court is not in possession of all the information possessed by the members of the Board and, in the absence of a much more complete statement of facts, it cannot be held that the Board has been unfair to the Corporation appellant in reducing its mortgage, according to statements made during argument, by a sum of only about $42.25. In any event, such a question has been rightly held by the appellate court not to be open to the court.

APPEAL, by special leave granted by the Court of Appeal for Saskatchewan, from the decision of that Court (1) dismissing the application of the Corporation appellant by way of *certiorari* to quash a proposal and confirmation thereof made by a Board of Review under the *Farmers' Creditors Arrangement Act*, 1934 (Dom.), relating to the affairs of the applicant Cheese.

W. N. Tilley K.C. and *T. D'Arcy Leonard K.C.* for the appellant.

C. R. Davidson K.C. and *David Mundell* for the respondent.

THE CHIEF JUSTICE—I had written a judgment dealing with all the points of law raised by the appellants. I desire, however, to put my judgment on a ground which conforms substantially to the ground upon which my brother judges are proceeding, viz.: that we cannot give

(1) [1941] 1 W.W.R. 337; [1941] 2 D.L.R. 246; 22 Can. B.R. 225.

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effect to these contentions without holding that the impeached proposal and confirmation of it constitute an erroneous adjudication upon matters that were within the jurisdiction of the Board of Review; and quashing the proposal upon that ground, which, of course, is inadmissible.

The jurisdiction of the Board of Review is incontestable to entertain the application, to formulate and to confirm an acceptable proposal.

It has never been suggested that the respondent was not competent to invoke the statute; that, for example, he was not a farmer; nor is there any ground for affirming that the procedure of the Board was irregular, or that it was characterized by any departure from the principles of natural justice.

Subsections 8 and 9 of section 12 of the *Farmers' Creditors Arrangement Act* are in the following words:—

> (8) The Board shall base its proposal upon the present and prospective capability of the debtor to perform the obligations prescribed and the productive value of the farm.
>
> (9) The Board may decline to formulate a proposal in any case where it does not consider that it can do so in fairness and justice to the debtor or the creditors.

All questions touching the present and prospective capability of the debtor to perform his obligations and the productive value of the farm to which subsection 8 relates, are obviously matters to be determined by the Board; and the Board's decision upon such matters is not subject to review in any court unless—and upon this point I express no opinion—it is reviewable by the court of bankruptcy established by section 5.

Subsection 9 presents a parallel case. In the most explicit words that subsection leaves the matter of fairness and justice to the Board for determination. The specific point upon which the appellants rely in connection with these subsections is this: it is argued that the effect of the proposal is to reduce the mortgage debt to a level at which it is less than the value of the security, which, it is said, is *ultra vires* of the Board. I should like to make it very clear that I am not agreeing that the major premise of this argument is sound in point of law, but I am expressing no opinion upon that. It cannot be affirmed as a proposition of law, on the material before us, that such is the

effect of the proposal. The Board may have proceeded upon the view that, in point of fact, the sum to which the mortgage debt was reduced was not less than the value of the farm, and it is not competent to us to review the proposal or its confirmation on the ground that it involves an erroneous adjudication upon a matter of fact.

Other points taken for the first time in this Court ought not to be given effect to. One of them, that a proposal in respect of one debt only is not competent under the statute, rests upon an assumption of fact which is not supported by any evidence. The other, that the Board had no jurisdiction because the appellants, not having valued their security, had no debt provable in bankruptcy, must, I think, be taken to have been waived. I wish, however, to say that I must not be understood as intending to give any countenance to the view that either of these points has any merit in it.

I ought further to add that I must not be understood as giving any adherence to the view that either the Court of Appeal for Saskatchewan or this Court has any jurisdiction to grant *certiorari* on the grounds upon which this present appeal is based.

I cannot think that anybody would suppose it to be open to doubt that section 5 is one of the essential provisions of this statute. The statute was enacted for the purpose of doing something to prevent farmers leaving the land—to set up machinery by which, in a summary method, a Board, presided over by a judge of the bankruptcy court, could devise a scheme of arrangement of the affairs on an insolvent farmer which the Board might make binding on everybody, debtors and creditors alike, including secured creditors.

In the vast majority of cases persons applying for relief under the Act would be farmers possessing a few hundred acres of land who had got into difficulty with their creditors, usually, it may be supposed, with their mortgagees. Everybody reading this statute must realize that any acute lawyer could, in almost any case, raise plausible legal questions in proceedings under it. The statute does not deal with the situation, as it might have done, by making the decisions of the Board of Review, constituted as it is, unimpeachable in a court of law, but it does, by the wise enactments of section 5, require that all questions relating

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to bankruptcy matters arising from the fyling of a proposal shall be within the exclusive jurisdiction of a local court for determination. All matters dealt with by the enactments of the statute are necessarily matters relating to bankrupcy and insolvency. It must have been evident to Parliament that, in the absence of some such provision, the statute would be mere waste paper. The appeal before us is an excellent example of the kind of thing, it might well be thought, Parliament had determined to prevent. The amount involved is a very few hundred dollars and thousands of dollars have been wasted already in these proceedings.

I have put my judgment, however, upon a ground which makes it strictly unnecessary to give a decision upon this point and I pronounce no decision upon it.

The appeal should be dismissed with costs.

The judgment of Rinfret, Crocket and Taschereau JJ. was delivered by

RINFRET J.—This is an appeal by special leave from the Court of Appeal for Saskatchewan.

The debtor, John Cheese, farms a certain land which he holds under an agreement for sale from the Government of the province of Saskatchewan, Department of Natural Resources, and another land which is subject to a first mortgage now held by the appellant. He made a proposal for a composition, extension of time, or scheme of arrangement under *The Farmers' Creditors Arrangement Act*, 1934, and amendments.

The claims against Cheese appeared as follows:—

The Government of the province of Saskatchewan under the agreement for sale, $914.50;

Rural Municipality of Emerald No. 277 for taxes, $194.23;

Canada Permanent Mortgage Corporation (the appellant) secured by a first mortgage, $689.25;

International Harvester Company of Canada Limited, secured by lien on a binder, $119.40;

Joe Bozek, $401.62;

Bank of Montreal, $135;

Wadena Union Hospital, $51.75.

The proposal not having been approved by the creditors before the Official Receiver, a request was made by the debtor to the Board of Review to formulate an acceptable proposal under the Act.

The Board of Review formulated a proposal; and subsequently, on the second day of November, 1940, confirmed the same.

The Board found that the debtor was entitled to the benefit of the Act.

It stated, as to the claim of the Government of Saskatchewan, that

> no proposal is asked of the Board in connection therewith and the Board does not make a proposal with regard thereto.

As to the claim of the Rural Municipality of Emerald for taxes, the Board also stated that it did not make a proposal.

But it proceeded to fix the amount of the claim of the appellant at four hundred dollars ($400) as at the first day of November, 1939, and ordered

> that such fixed amount be paid in ten equal consecutive annual instalments payable on the First day of November in each year commencing on the First day of November, 1941, with interest at the rate of six per cent per annum from the First day of November, 1939, payable on the First day of November in each year commencing on the First day of November, 1940.

Certain other provisions and conditions relating to that claim were inserted in the Board's proposal; but it is unnecessary to refer to them, as they have no bearing on the questions that we have to discuss.

The Board further stated that

> As to the claims of the remaining Creditors against the Debtor, the Board is advised that each of these claims have been paid and accordingly does not make a proposal with regard to any of them.

By the terms of the proposal,

> the Debtor is to have the privilege of prepaying the whole or any part of any moneys payable under this Proposal at any time without notice or bonus upon first paying any arrears that may have accrued thereunder.

And

> The terms and provisions of all existing securities and documents, including any right of acceleration on default, shall continue in full force and effect except as hereby expressly modified.

The appellant applied to the Court of Appeal of Saskatchewan for an order that a writ of *certiorari* do issue

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out of that court for the return of the proposal formulated by the Board and that the proposal and its confirmation by the Board be quashed so far as the same related to the mortgage of the appellant, as having been made without jurisdiction, upon certain grounds enumerated in the notice of motion, but which may be summed up as follows:

(*a*) The proposal deprives the appellant of its security in that the appellant's claim was reduced to a figure below the value of its security;

(*b*) The proposal is based on considerations other than the present and prospective capability of the respondent to perform the obligations prescribed and the prospective value of the farm upon which the appellant has security;

(*c*) The proposal is not formulated in fairness and justice to the Creditors.

In this Court, the appellant raised the three questions already submitted to the Court of Appeal; but, in addition thereto, sought to support its application upon the following grounds:

(1) The appellant did not have a debt provable in bankruptcy and did not prove for any debt; and, therefore, the Board did not have jurisdiction to formulate a proposal with respect to the appellant's claim secured by mortgage;

(2) The Board exceeded the powers conferred upon it in that it purported to reduce the claim of the appellant notwithstanding that such claim was within the ability of the debtor to pay it;

(3) The proposal of the Board was not a proposal for a composition, nor for a scheme of arrangement, nor for an extension of time within the terms of the *Farmers' Creditors Arrangement Act;*

(4) The proposal is made in respect of one debt only and, on that account, is not competent under the statute.

As to the four points raised in this Court for the first time, I do not think that they are properly before us, nor that they ought to be considered on an appeal such as this, where the appellant is seeking relief through the exceptional remedy by way of *certiorari.*

This, at least, may be said in respect of each of these points that they are peculiarly bankruptcy matters and that they belonged properly to the jurisdiction of the County Court or District Court, to which, under the *Farmers' Creditors Arrangement Act*, these matters are specifically referred under s. 5 (1) of the Act.

Dealing, therefore, with the first two points raised before the Court of Appeal, the difficulty standing uppermost in the way of the appellant is that of ascertaining, in the words of Mackenzie J.A., "the factual considerations which affected the Board in making the proposal."

Section 7 of the Act expressly gives to a Board of Review, in a proposal formulated and confirmed by it, the power to provide for a

> compromise or * * * a scheme of arrangement in relation to a debt owing to a secured creditor.

And the power so attributed to the Board has been authoritatively interpreted, both by this Court and by the Judicial Committee, as making it possible for the Board "to force the terms of a composition upon a secured creditor by which a secured creditor may be compelled to submit to a reduction of the debt owing to him by the insolvent" (*Reference re Farmers' Creditors Arrangement Act* (1)).

Lord Thankerton, delivering the judgment of the Privy Council on the same reference (*Attorney-General for British Columbia* v. *Attorney General for Canada* (2)), expressed the same view as follows:

> The appellant further maintains that, under sec. 7, the secured creditor may be deprived of that which is his property. To deal first with the last contention, their Lordships are clearly of opinion that s. 7 does not enable any creditor to be deprived of his security, but does enable the proposal for composition to provide for the reduction of the debt itself, or an extension of time for its payment, which is a familiar feature of compositions.

We admit that the appellant's proposition might not be entirely covered by the decisions just referred to, for the appellant contends that, even if it is competent for the Board to reduce the personal debt, yet it may not reduce it to a figure below the value of the security.

But, in the present proceedings, we do not feel that we are called upon to decide such a point, either in its

(1) [1936] S.C.R. 384, at 394. (2) [1937] A.C. 391, at 403.

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legal aspect or from the viewpoint of the jurisdiction conferred upon a Board of Review by the *Farmers' Creditors Arrangement Act*.

This Court is not in a position to find whether, as a matter of fact, the proposal has the effect of reducing the appellant's debt below the value of its security.

There is nothing before us which enables us to say, for the purpose of this appeal, that the value of the respondent's farm is greater or less than $400.

Certainly it cannot be asserted that the Board was not competent to ascertain and fix the value of the farm. That would seem to be peculiarly a matter for the Board; and s. 12 of the Act does not allow of the slightest room for doubt that the intention of Parliament was that it should be so.

That section provides that the Board should formulate an acceptable proposal to be submitted to the creditors and the debtor and that the Board shall consider representations on the part of those interested. The word "creditor" includes a secured creditor (s. 2-*d*).

The Board is specifically given the authority to direct

> any one or more of its members on its behalf to inspect and investigate any or all circumstances of any request for review and report to the Board (s. 12-7).

It is to ascertain

> the present and prospective capability of the debtor to perform the obligations prescribed and the productive value of the farm (s. 12-8);

and,

> for the purpose of the performance of its duties and functions hereunder,

the Board has

> the powers of a Commissioner appointed under the *Inquiries Act* (s. 12-10).

The Board, therefore, may act, not only upon the evidence actually submitted to it by the interested parties, including the secured creditor, but it is authorized to act upon the knowledge acquired through the particular facilities accorded under the several sections of the Act just referred to.

What evidence of value was or was not before the Board is not apparent on the face of the proposal itself; and it cannot be said that such evidence had to be set out in

the proposal. Further, no ground of appeal or for the issue of the writ of *certiorari* was made by the appellant in respect of the omission, in the proposal, of any reference to the evidence upon which it is based.

We do not doubt that the fact itself whether the appellant's debt would be reduced below the value of the security, must have been part of the inquiry of the Board; and, at all events, such an inquiry was committed by the Act to the Board and cannot be questioned on *certiorari*. The Board of Review is the only tribunal competent to determine that fact; and it is impossible for this Court to say, from the record in the present case, what facts, what evidence, what "representations" were before the Board, were considered by it, or induced it to act as it did.

In order to intervene in this matter, the Court must first be asked to find as a fact that, in this particular case, the Board of Review reduced the appellant's claim below the value of the appellant's security. It is evident that, on an application for *certiorari,* this Court cannot go into that question, which is a question of fact exclusively within the purview of the Board of Review. The Court of Appeal, to which the appellant's application was made, was not concerned with the preponderance of the evidence in the premises, nor as to the basis for the Board's findings in that regard.

From a perusal of the record, and taking into consideration that the Board was entitled to act as a result of its own investigation, it is not possible to come to the conclusion that, in this case, the Board has not acted according to proper principles.

If there was substance in the appellant's contention on that ground, the matter should have been submitted to the county or district court specially named in s. 5 of the Act as having exclusive jurisdiction to deal with it, subject to appeal, as therein provided.

Without, therefore, deciding whether a Board of Review has jurisdiction to reduce the claim of a secured creditor at a sum less than the value of its security, we are compelled to the conclusion that the fact itself of the reduction of the claim below the security is not apparent in the record before this Court; and, for that reason, the appellant's points in that regard cannot be entertained.

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Coming now to the third ground submitted to the Court of Appeal on the appellant's application, to wit: That the proposal was not formulated in fairness and justice to the creditors, we would say that, *a fortiori,* the point fails, because it is without any basis in fact.

Clearly a question of that character does not affect the competency and jurisdiction of the Board of Review. It does not challenge the authority of the Board to formulate the proposal.

The Act undoubtedly contemplates that the Board should act "in fairness and justice" to the debtor and creditors (s. 12-9). If it should fail to do so, the controlling authority on a question of that kind would be the county or district court acting under s. 5 of the Act.

Fundamentally, such an issue raises questions of pure fact. They cannot be made the subject of an inquiry by a superior court through the procedure of *certiorari.*

The basis for the appellant's argument on that point was that the proposal apparently deals only with the appellant's debt.

However, the Court was told, at the hearing, that the claims of the Government of Saskatchewan and of the Rural Municipality of Emerald represented debts incurred after the 1st of May, 1935, which, by force of s. 19 of the Act, could not be dealt with by the Board. This was evidently a sufficient reason why the Board was not asked to make a proposal with regard thereto.

As for the claims of the remaining creditors, the proposal states that the Board was "advised that each of these claims have been paid", and, accordingly, it did not make a proposal with regard to any of them. It is not to be assumed that the settlements arrived at with these creditors were made outside the knowledge of the Board. At all events, the proposal implies that these settlements were approved of by the Board, since no exception to them was expressed in the proposal.

It is not inconsistent with anything before us that these other creditors may have offered concessions or suffered reductions as good or better than the appellant is called upon to make as a result of the Board's proposal.

The material point is that we know nothing of the circumstances relating to the payments; and it would be quite impossible to order the issue of a writ of *certiorari,*

or to quash the proposal without the issue of the writ, on the assumptions that we are asked to make by the appellant.

The appeal should be dismissed with costs.

HUDSON J.—The Board of Review of the province of Saskatchewan under the *Farmers' Creditors Arrangement Act*, 1934, formulated and confirmed a proposal by which the amount payable on a farm mortgage to the appellants was reduced.

The appellants applied to the Court of Appeal of Saskatchewan for a writ of *certiorari* addressed to the Board requiring a return to the Court of the proposal and confirmation and for an order quashing the same.

Several grounds were put forward in support of this application but only two of these were deemed worthy of consideration in the Court of Appeal. The first and important ground was that the effect of the direction of the Board was to deprive the appellant of its security in that the amount secured by their mortgage was reduced to a sum below the value of the land. The second ground was that the proposal was not formulated in fairness and justice to the creditors.

The application was refused by the Court of Appeal. Mr. Justice Martin was of the opinion that the applicants had no right to a writ of *certiorari*, basing his decision on a case of *Rex* v. *Nat Bell Liquors Limited* (1), but said that he did not think that the Court should dispose of the application on this ground because of the importance of the question raised as to the jurisdiction of the Board. On that question he came to the conclusion that the Board was within its powers. Mr. Justice Mackenzie was also of the opinion that the Board had jurisdiction and that the application should be dismissed, although stating that he had been impressed by the argument of counsel for the appellant "directed to the novel and discriminatory nature of the proposal."

Mr. Justice Gordon on the other hand held that the proposal and confirmation should be quashed on the ground that it was not formulated in fairness and justice to the creditors. He was also of the opinion that the Board had no jurisdiction, although he did not base his decision on this ground.

(1) (1922) 37 C.C.C. 129.

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On the question as to the jurisdiction of the Board, I agree with Mr. Justice Martin.

The *Farmers' Creditors Arrangement Act* in purpose and effect was in some respects a departure from ordinary bankruptcy legislation. Its purpose is set forth in the preamble as follows:

> Whereas in view of the depressed state of agriculture the present indebtedness of many farmers is beyond their capacity to pay; and whereas it is essential in the interest of the Dominion to retain the farmers on the land as efficient producers and for such purpose it is necessary to provide means whereby compromises or rearrangements may be effected of debts of farmers who are unable to pay;

To effect this purpose it provides that a farmer who is unable to meet his liabilities as they become due may make a proposal for a composition or extension of time or scheme of arrangement in respect of his debts. This proposal is submitted to the creditors who may accept or reject the same. If accepted, the proposal becomes binding on all parties; if rejected, the matter may then be dealt with by a Board of Review consisting of three members, one of whom must be a judge of the Superior Court. This Board is given very extensive powers.

The novelty of this legislation at once gave rise to doubts as to its constitutional validity. However, on submission it was held to be valid by this Court (1) and by the Judicial Committee of the Privy Council (2).

It was strongly contended before both of these courts that the Act was invalid, because it in effect enabled the Board of Review to take away the security of a secured creditor and, because of that, interfered with property and civil rights, and was not properly bankruptcy legislation at all. The courts nevertheless sustained the legislation.

It is not for the courts to question the wisdom or fairness of the legislation, but to loyally carry out its purpose in so far as that purpose is expressed in the Act.

The sections of the Act have been analyzed in the court below by Mr. Justice Martin and I accept his interpretation. It seems to me that any other interpretation would be to defeat the whole intent and purpose of the Act.

(1) [1936] S.C.R. 384.

(2) [1937] A.C. 391.

On the question of fairness, there appears to have been some misapprehension in the court below as to the amount of the reduction. When the application was originally made, the amount payable on the mortgage was $689.25. It was stated during argument that prior to the final direction of the Board $247 had been paid on account of this, leaving the balance payable on the mortgage at $442.25. The amount at which the mortgage was reduced was $400, leaving a balance of $42.25. It is not easy to see why the Board thought it necessary to make such an insignificant reduction as this, but it is quite apparent that this Court is not in possession of all the information possessed by the members of the Board and, in the absence of a much more complete statement of facts, I would be very loath to hold that a Board of Review headed by the Chief Justice of King's Bench of Saskatchewan had been unfair to the applicant company in reducing its mortgage by a sum of only about $42.25. In any event, I agree with the majority in the court below in the present proceedings that this question is not open to the court.

There was another point raised during the argument before us and not set out particularly in the applicant's original application, that is, that the Board lacked jurisdiction because the applicant company appeared to be the sole creditor of the farmer debtor at the time the direction of the Board was made. Even if this were the fact, it seems to me that the objection is unfounded. Under the stricter rules of the Bankruptcy Act the court has power to consider cases where there is only a single creditor: see *In re Geiger* (1) and *In re Hacquard* (2); Williams on Bankruptcy, page 99.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Thom, Bastedo, Ward & McDougall.*

Solicitor for the respondent: *C. R. Davidson.*

(1) [1915] 1 K.B. 439.

(2) (1886) 24 Q.B.D. 71, at 76.