
THE NEW REGINA TRADING COM-
PANY LIMITED (PLAINTIFF).....

APPELLANT;

1933

*May 15.

*May 19.

AND

THE CANADIAN CREDIT MEN'S
TRUST ASSOCIATION, LIMITED,
THE TRUSTEE OF THE PROPERTY OF
REGINA TRADING COMPANY LIMITED,
AUTHORIZED ASSIGNOR, AND THE CAN-
ADIAN CREDIT MEN'S TRUST
ASSOCIATION, LIMITED (DEFEND-
ANTS)

RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Appeal—Jurisdiction—Bankruptcy—Leave, under Bankruptcy Act (R.S.C., 1927, c. 11), s. 24, to commence action in King's Bench Court, Sask.—Appeal from Court of Appeal to Supreme Court of Canada, without special leave obtained under Bankruptcy Act, s. 174.

The plaintiff's tenant made an assignment under the *Bankruptcy Act*, R.S.C., 1927, c. 11, and defendant was appointed trustee. Plaintiff claimed the amount of three months' rent (\$5,250) under s. 126 of said Act and ss. 41 to 48 of the *Landlord and Tenant Act*, R.S.S., 1930,

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

1933

NEW
REGINA
TRADING
CO. LTD.
v.
CANADIAN
CREDIT
MEN'S
TRUST
ASSN. LTD.

c. 199, and obtained leave, under s. 24 of the *Bankruptcy Act*, to commence an action in the King's Bench Court, Sask. Plaintiff recovered judgment at trial, which was reversed by the Court of Appeal, which dismissed its action. Plaintiff appealed to the Supreme Court of Canada. Defendant moved to quash the appeal for want of jurisdiction, on the ground that the judgment appealed from was in a proceeding under the *Bankruptcy Act* and no special leave to appeal had been obtained under s. 174 thereof.

Held: The motion to quash should be dismissed; said s. 174 had no application, the action not falling within the description therein, "proceedings under this Act."

MOTION to quash the appeal for want of jurisdiction.

The appeal was by the plaintiff from the judgment of the Court of Appeal for Saskatchewan (1).

The plaintiff's tenant made an assignment under the *Bankruptcy Act*, R.S.C., 1927, c. 11, and the defendant was appointed trustee. Leave was given by Macdonald J., in Chambers, under the provisions of s. 24 of the *Bankruptcy Act*, to commence action against the defendant. The plaintiff claimed the sum of \$5,250, being the amount equivalent to three months' rent of the premises, and interest thereon, the claim being made under the provisions of s. 126 of the *Bankruptcy Act* and ss. 41 to 48, inclusive, of the *Landlord and Tenant Act*, R.S.S., 1930, c. 199. There was also an alternative claim for the said sum against the defendant personally, because of its failure to give effect to the alleged preferential claim of the plaintiff upon the assets of the trust estate, and a claim (not in issue in the present appeal) for damages alleged to have been suffered by reason of wrongful acts of defendant in subletting the premises.

The trial judge, Taylor J. (2), awarded the plaintiff the sum of \$5,250 for three months' rent, out of the tenant's assets, in the hands of the defendant, in priority to the claims of all other creditors. He dismissed the plaintiff's other claims in the action. The defendant, as trustee, appealed, and the Court of Appeal (1) allowed its appeal, set aside the judgment below, and dismissed the plaintiff-tiff's action (dismissing also the plaintiff's cross-appeal in respect of its other claims).

(1) [1933] 1 W.W.R. 492; 14 C.B.R. 275.

(2) [1932] 2 W.W.R. 692; 14 C.B.R. 95.

The plaintiff appealed to the Supreme Court of Canada.

The plaintiff applied before Martin J.A., under s. 70 of the *Supreme Court Act*, R.S.C., 1927, c. 35, for the approval of a bond as security for the effectual prosecution of an appeal to the Supreme Court of Canada and for the payment of such costs, etc., as might be allowed against it. On that application the defendant's counsel objected to the approval of the bond, contending that the action was a "proceeding" in bankruptcy, and that, under the provisions of s. 174 of the *Bankruptcy Act*, no appeal lay from the Court of Appeal to the Supreme Court of Canada, unless special leave to appeal had been obtained from a judge of the Supreme Court. Martin J.A. (1) held that such contention was not well founded; that the action was an ordinary action, commenced in the Court of King's Bench, and the fact, that leave was obtained from the judge in bankruptcy to commence the action, under the provisions of s. 24 of the *Bankruptcy Act*, did not make the action, which was commenced pursuant to the leave, a "proceeding" in bankruptcy; that when leave is given to commence the action, it is brought in the appropriate court, and proceeds in that court, subject to the procedure therein and to any right of appeal which exists in that court or with respect to decisions rendered in that court; that the right of appeal in this action existed, not by reason of the *Bankruptcy Act*, but by virtue of the provisions of the *Supreme Court Act*, and the appeal was an exercise of the ordinary right of appeal which is given by the *Supreme Court Act* from a final judgment of the court of last resort in the province (*Supreme Court Act*, R.S.C., 1927, c. 35, s. 36). He approved of the bond as security.

The defendant (respondent in this Court) now moved to quash the appeal for want of jurisdiction, on the ground taken by defendant before Martin J.A. on the said application for approval of bond.

G. F. Henderson K.C. for the motion.

O. M. Biggar K.C. contra.

1933

NEW
REGINA
TRADING
CO. LTD.
v.
CANADIAN
CREDIT
MEN'S
TRUST
ASSN. LTD.

1933

NEW
REGINA
TRADING
CO. LTD.
v.
CANADIAN
CREDIT
MEN'S
TRUST
ASSN. LTD.

The judgment of the court was delivered by

DUFF C.J.—We think this application should be dismissed.

We agree entirely with the view expressed by Mr. Justice Martin in the court below (1) that the action does not fall within the description “proceedings under this Act” in section 174 of the *Bankruptcy Act* and, consequently, the provisions of that section have no application.

The application is dismissed with costs.

Application dismissed with costs.

Solicitors for the appellant: *Barr, Stewart & Cumming.*

Solicitors for the respondent: *Mackenzie, Thom, Bastedo & Jackson.*
