

1926  
\*Dec. 14.  
\*Dec. 15.

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IN THE MATTER OF THE AUTHORIZED ASSIGN-  
MENT OF HOTEL DUNLOP, LTD., ETC.

PAUL C. QUINN (AUTHORIZED TRUSTEE) . . . . APPELLANT;

AND

HERBERT GUERNSEY (LANDLORD) . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK,  
APPEAL DIVISION, SITTING IN BANKRUPTCY

*Appeal—Special leave to appeal to Supreme Court of Canada under s. 74 (3) of The Bankruptcy Act (D., 1919, c. 36)—Whether hotel-keeper a “trader” within s. 47 of Act Respecting Landlord and Tenant, N.B. (C.S.N.B., 1903, c. 153, as amended 1924, c. 30)—Extent of landlord’s rights of priority in New Brunswick under assignment in bankruptcy.*

\*PRESENT:—Anglin C.J.C. in Chambers.

APPLICATION for special leave to appeal under sec. 74 (3) of *The Bankruptcy Act* from a judgment of the Supreme Court of New Brunswick. Application granted.

*H. A. Porter* for the application.

*E. P. Raymond K.C. contra.*

ANGLIN C.J.C.—This is an application for special leave to appeal under s. 74 (3) of *The Bankruptcy Act* from the judgment of the Supreme Court of New Brunswick delivered by Grimmer J., reversing the judgment of Barry C.J.K.B., sitting as a judge in bankruptcy. Barry C.J.K.B. had held the insolvent to be a “trader” within the meaning of s. 47, added to the C.S.N.B., 1903, c. 153, *Respecting Landlords and Tenants*, by c. 30 of the New Brunswick Statutes of 1924. He accordingly restricted the landlord’s priority over general creditors to three months’ rent. The appellate court, being of the opinion that the insolvent was not a “trader” within the meaning of the New Brunswick statute, held that the landlord was entitled to priority for his entire claim for rent amounting to upwards of \$3,000, but, inasmuch as the estate of the bankrupt was inadequate to meet that claim, directed that the trustee should pay over to the landlord all the moneys in his hands received from the sale of the estate less the sheriff’s costs of a seizure under execution, amounting to \$243.31, the balance payable to the landlord being \$2,256.69, “without deducting therefrom any costs or charges of the sale or otherwise”; and no costs of the appeal were allowed.

The questions as to whether an hotel-keeper is a “trader” and as to the extent of the landlord’s rights in New Brunswick under an assignment in bankruptcy seem to me to be of sufficient general importance and open to sufficient doubt in view of the conflicting judgments below, to warrant the granting of special leave to appeal.

Such leave will accordingly be granted; and the costs of this application will be costs in the appeal.

*Application granted.*

Solicitors for the applicant: *Porter & Ritchie.*

Solicitor for the respondent: *Edward P. Raymond.*

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IN RE  
HOTEL  
DUNLOP  
LTD.;  
QUINN  
v.  
GUERNSEY.