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*Feb. 22, 25.
*May 22.

IN RE STRATHCONA FIRE INSURANCE COMPANY ..... } IN LIQUIDATION.

J. E. LEMIRE AND OTHER (PETITIONERS) ... APPELLANTS;

AND

THE HONOURABLE J. NICOL AND OTHER (RESPONDENTS) ..... } RESPONDENTS.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Insurance company—Fire—Quebec charter—Federal winding-up—Deposit with Provincial Treasurer—Administration—Quebec Fire Insurance Act, R.S.Q. (1909) sections 6929, 6930, 6931, 6932, 6933.

When a fire insurance company incorporated under a Quebec charter is placed in liquidation, the administration of the company's deposit made under the Quebec Insurance Act with the provincial treasurer for the guarantee of its insured is governed by sections 6930 and 6931 and not by sections 6932 and 6933 R.S.Q. Idington J. dissenting.

PRESENT:—Idington, Duff, Mignault and Malouin JJ. and Maclean J. *ad hoc.*

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec, affirming the judgment of the Superior Court and dismissing the appellant's petition.

The Strathcona Fire Insurance Company was incorporated by the legislature of the province of Quebec. To comply with the provisions of the Quebec Fire Insurance Act, it lodged with the provincial treasurer a deposit made in debentures of a nominal value of $59,000 to guarantee its insured upon insurance contracts having for object some property in the province (sections 6923 to 6929 R.S.Q. (1909)). Later on, the company went into liquidation under the Dominion Winding-Up Act and the appellants were appointed joint liquidators. They presented the present petition to the Superior Court, asking that the provincial treasurer, one of the respondents, be ordered to hand this deposit to them for its administration, upon the ground that sections 6930 and 6931 R.S.Q. were applicable to a company in liquidation and that their provisions were not restricted to a company still doing business. The respondents contested the petition, alleging that the provincial treasurer should continue to have the custody and administration of the deposit until all the formalities prescribed by sections 6932 and 6933 R.S.Q. be completed.

Eug. Lafleur K.C. and *Paul Lacoste K.C.* for the appellants.

A. Perrault K.C. for the respondents.

IDINGTON J. (dissenting).—The Strathcona Fire Insurance Company was incorporated by the Quebec legislature, by 8 Edward VII (1908), c. 122, which Act brought it under the Quebec Insurance Act so far as the provisions of the said Act of incorporation were not inconsistent with said general Act. Before doing any business in Quebec it was required to obtain a license from Quebec and by section X, articles 98 *et seq* of said Quebec Insurance Act it was bound to make with the Provincial Treasurer a deposit or deposits to meet the claims of Quebec insurers on certain classes of property in Quebec and not beyond.

The said company became insolvent about two years ago when it was put in liquidation under the Dominion Wind-

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ing-up Act, and the respondents were appointed thereunder its liquidators.

The said liquidators petitioned to have the respondent, the Treasurer of Quebec, directed to hand over to them the deposits so made with him and amounting to the sum of about $59,000.

The said respondent insisted, as I understand and think he was entitled to do, before complying with such a wide demand, that due notice should be given as required by the Act so that the limited number of those creditors entitled to share therein should be thus ascertained and the respective amounts of such claims be duly verified.

There should never have been any hesitation about duly recognizing such right, for the Treasurer is a trustee subject to certain limitations and obligations.

There is no doubt in my mind that the company having become insolvent the Dominion Act supersedes the provisions of the Provincial Act for winding up the company.

And, if I am at liberty to draw inferences from the course of the litigation persisted in relative to the recovery of said fund from the Treasurer, he was well advised in awaiting and insisting upon a more reasonable claim being made before he complied.

These moneys are clearly applicable to meeting the claims of the special class of the insured they were designed to protect and that free from any liability to bear any part of the general expenses of liquidation.

The only question I have any serious doubt about is what course should be pursued.

The Winding-Up Act does not provide for such a case as this. And the provision of the Quebec Act seems to point to a separate liquidation of the fund regardless of the Winding-Up Act which supersedes that, subject to the rights of the respondent to see his *cestui que trust* protected.

I agree with the suggestions made by Mr. Justice Guerin at the end of his notes.

We are not in a position in this case to give any specific directions.

When appellants have complied with what it was to my mind their clear duty to have done by a delivery of the

claims made by those alone entitled to share in the fund in question, then, by a little common sense, harmoniously applied to a particular situation, I have no doubt the difficulties existent can be overcome.

Meantime I agree with the unanimous conclusion reached below and am of the opinion that this appeal should be dismissed with costs, none of which should be chargeable by appellant against those entitled to share in said fund.

The judgment of Duff, Mignault, Malouin and Maclean JJ. was delivered by

MIGNAULT J.—The appellants are the liquidators of the Strathcona Fire Insurance Company, an insurance company incorporated under a Quebec charter, which was placed in liquidation under a winding-up order made on the 24th of April, 1922. The winding-up is under the provisions of the Dominion Winding-Up Act, R.S.C., c. 144.

The appellants petitioned the Superior Court for the administration of the company's deposit in the Quebec Treasury Department, the Provincial Treasurer and the Quebec Inspector of Insurance being made respondents.

One of the main questions discussed was which set of provisions of the Quebec Insurance Act applies. We are clearly of opinion that the case is governed by articles 6930 and 6931, and not by articles 6932 and 6933 of the Revised Statutes of Quebec.

We think, however, that the last paragraph of article 6931, providing for the appointment of a provincial liquidator in the case of a company incorporated by the province, is inoperative where the liquidation takes place under the Dominion Winding-Up Act. There obviously cannot be two separate liquidations of the same company and the liquidation under the Dominion statute, which is anterior in time, excludes any other.

The appellants, as representing in some respects the company and in some other respects the creditors and the contributories, appear to us to have a status to invoke the action of the court under article 6930. It should be observed, however, that this can only be done with the approval of the Superior Court (sections 33 and 34 Winding-Up Act), and that court has full control of the proceedings.

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It is clear that the deposit should be made available for the policyholders thereunto entitled although the liquidation is proceeding under the Dominion Winding-Up Act. In view of the long delay which has elapsed since the winding-up order, we venture to suggest to the parties that they should cordially co-operate to the end that the liquidation of this company and the administration of the deposit may be speedily completed.

The learned judge of first instance treated the petition as one presented by the appellants in their personal and not in their official capacity as liquidators; and at least one of the learned judges in the Court of King's Bench (Guerin, J.) makes it plain that he would not have approved of the proceedings. Further, the liquidators do not appear to have obtained the approval of the court under section 34 of the Winding-Up Act. In view of all the circumstances, we will not ourselves make an order for the administration of the deposit, but we will remit the case to the Superior Court so that, with its approval and subject to its direction, the deposit may be administered for the benefit of the policyholders who are entitled to it. We express no opinion as to the person who should be appointed administrator.

There will be no order as to costs.

Appeal allowed.

Solicitors for the appellants: *Kavanagh, Lajoie & Lacoste.*

Solicitors for the respondents: *Perrault & Raymond.*