1933

June 12.
June 16.

IN THE MATTER OF THE FOREIGN INSURANCE COMPANIES ACT, 1932

AND

IN THE MATTER OF THE RULING OF THE SUPERINTENDENT OF INSURANCE REFUSING REGISTRY OF THE CONTINENTAL ASSURANCE COMPANY, ACCORDING TO THE PROVISIONS OF THE SAID ACT.

Foreign Insurance Company—Registration—Ruling of Superintendent of Insurance—Appeal—Time

Held; that the report of the Superintendent of Insurance to the Minister of Finance, that registration of a foreign insurance company be refused because the name of such company is similar to that of a Canadian or British company, constitutes a ruling from which an appeal lies to the Exchequer Court under s. 34 of 1932 (22-23 Geo. V, Ch. 47).

MOTION for an order requiring the Superintendent of Insurance to give to Continental Assurance Company, for the purposes of appeal, a certificate in writing setting forth his ruling and the reasons therefor.

The motion was heard before the Honourable Mr. Justice Angers, in Chambers, at Ottawa.

J. W. Gauvreau K.C. for applicant.

C. P. Plaxton K.C. for respondent.

1933

IN THE MATTER OF THE FOREIGN INSURANCE COMPANIES ACT, 1932.

ANGERS J., now (June 16, 1933), delivered the following judgment:

On or about October 29, 1932, the Continental Assurance Company, incorporated under the laws of the State of Illinois, one of the United States of America, made an application for registry under the Foreign Insurance Companies Act, 1932 (22-23 Geo. V, chap. 47).

On December 30, 1932, the Superintendent of Insurance made a report to the Honourable the Minister of Finance recommending "that the Company be advised that its application cannot be granted."

On the same day, the Superintendent wrote to R. D. Bedolfe, Canadian General Manager of Continental Assurance Company, the following letter:

> Replying to your letter of the 29th instant we have given careful consideration to this application and we are advised that it is open to the Minister to refuse the Company's application on the ground that there is danger of confusion between the name of the applicant company and that of a Canadian company.
>
> In view of the protest of the Canadian Company and of the established practice of the Department in similar cases I have recommended to the Minister that the Company's application be not granted.

In a letter addressed to V. Evan Gray, solicitor for the applicant company, bearing date the 13th of January, 1933, the Superintendent made, among others, the following statements:

> As you are aware, I wrote to Mr. Bedolfe on the 30th ultimo advising him of my report to the Minister, but *in the absence of the Minister this report has not yet been acted upon.*
>
> *Action upon that report would appear to be necessary before any further proceedings are taken.*
>
> . . . . .
>
> However, apart from the requirements of the section, the Department can see no objection whatever to a hearing being granted and I would suggest some day week after next.

Apparently the Commissioner did not consider the matter closed.

On January 27, 1933, the Superintendent, at the request of the Continental Assurance Company, held a hearing at the City of Toronto, in the Province of Ontario, in reference to the Company's application for registry, at which the said Bedolfe and one George B. Woods, president of the Continental Life Insurance Company, were examined as witnesses.

1933

IN THE MATTER OF THE FOREIGN INSURANCE COMPANIES ACT, 1932.

Angers J.

On May 16, 1933, the Superintendent wrote to V. Evan Gray, solicitor for the Continental Assurance Company, as follows:

> Replying to your letter of the 15th instant, I may say that I have not revised my previous report to the Minister in which I recommended that the application by the above-mentioned company for registration in Canada be not granted.

On May 22, 1933, the Continental Assurance Company gave notice to the Superintendent that it appealed from his ruling refusing the Company's application for registry, on the ground that it had complied with all the requirements of the Act precedent to registry and that it was entitled to be registered and on such other grounds as the Company might be advised to submit, when the reasons for the ruling were delivered.

On the same day (May 22, 1933), the Continental Assurance Company further gave notice to the Superintendent of Insurance that it required from him, for the purposes of the appeal, a certificate in writing setting forth the ruling appealed from and the reasons therefor. These were not supplied.

The Continental Assurance Company now makes a motion for an order requiring the Superintendent of Insurance to give to it, for the purposes of the appeal, a certificate in writing setting forth his ruling and the reasons therefor.

When the motion was presented, the Superintendent appeared by counsel to oppose it.

An affidavit of the Superintendent, dated June 12, 1933, was read; after a recital of the facts, it contains a declaration that, upon the advice of the Deputy Minister of Justice, the Superintendent did not comply with the Company's notice requiring him to furnish a certificate of his ruling for, among others, four reasons which briefly are as follows:

(1) Because the report of the Superintendent upon the Company's application was made in the exercise of a discretion and is not subject to judicial review;

(2) Because the said report was based upon the objection that the name of the applicant Company so nearly resembled that of the Continental Life Insurance Company as to be calculated to deceive the public and to be therefore " on public grounds " objectionable;

(3) Because the said report does not constitute a ruling within the meaning of sections 9 and 34 of the Foreign Insurance Companies Act, 1932, and no appeal therefrom is provided;

(4) Because the applicant Company did not serve upon the Superintendent a notice of its intention to appeal from his report within 15 days after receiving notice thereof and said report, even if a ruling under sections 9 and 34 of the Act, became in consequence binding upon the Company.

The second reason deals with the merits; the first and third are correlative. The case then narrows down to two points: (*a*) does the report of the Superintendent in the present case constitute a ruling which as such is appealable? (*b*) was the notice of appeal served within the delay prescribed by subsection 2 of section 34?

I think that the report of the Superintendent in the present case constitutes a ruling which is appealable under the Act. Section 34 enacts that

> an appeal shall lie in a summary manner from the ruling of the Superintendent as to the admissibility of any asset not allowed by him, or as to any item or amount so added to liabilities, or as to any correction or alteration made in any statement, *or as to any other matter arising in the carrying out of the provisions of this Act,* to the Exchequer Court of Canada . . . .

The words " any other matter arising in the carrying out of the provisions of this Act " are very broad, and, in my opinion, include the matter of determining whether the name of an applicant Company applying for registry under the Act so closely resembles the name of another Company, be it Canadian, British or foreign, as to be liable to mislead the public.

True it is that under section 9 as worded the legislators might appear to have intended to restrict the appeal to cases where the report of the Superintendent concludes to the refusal of the application on the ground that the name of the applicant Company is liable to be confounded with that of a *foreign* Company. As pointed out by the Superintendent in his report, it may well be that an error was made in the drafting of section 9, " which was not noticed by those responsible for the Act in time to have the correction made at the last Session of Parliament," whilst the necessary change was made in the corresponding section (section 123) of the Canadian and British Insurance Companies Act, 1932 (22-23 Geo. V, chap. 46).

1933

IN THE MATTER OF THE FOREIGN INSURANCE COMPANIES ACT, 1932.

Angers J.

At all events, in the face of the very broad terms of section 34, I do not feel justified to dismiss the motion. I cannot believe that it was the intention of the legislators to grant the right of appeal in cases in which the name of the applicant Company is similar to that of a foreign Company and to refuse it in cases in which the name of the applicant Company is similar to that of a Canadian or a British Company. Indeed I see no reason why such a discrimination should exist.

There remains the question of delay. I do not think that the letter of the 30th of December, 1932, complies with the requirements of the Act. Even if it did, it seems to me that the Superintendent, in holding a hearing on the 27th of January, 1933, reopened the matter and that, after this hearing, he was bound to give the applicant Company a notice of his ruling. The Superintendent wrote to V. Evan Gray, solicitor for the Continental Assurance Company, on the 16th of May, 1933, notifying him that he had not revised his previous report, in which he recommended that the application for registration be not granted. In my opinion, this letter is not a notice of the Superintendent's ruling in the sense of section 34. At any rate, this is immaterial inasmuch as the Company served its notice of appeal on the 22nd of May, 1933, which was well within the 15 days provided for by section 34.

For these reasons the applicant Company's motion is granted.

I may say that I hesitated before granting the motion seeing that the Superintendent's ruling does not appear to be arbitrary nor unreasonable. However the applicant may possibly have arguments to urge why its application should not be refused and for this reason I believe that the appeal ought not to be rejected at this stage.

The costs of the motion will be costs in the cause.

Judgment accordingly.