
1933
Nov. 21.

IN THE MATTER OF The Foreign Insurance Companies Act, 1932,

AND

1934
Feb. 22.

IN THE MATTER OF Appeal from 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—Confusion due to similarity of names—"or otherwise on public grounds objectionable".

The Continental Assurance Company, a United States corporation, was refused registration in Canada under the Foreign Insurance Companies Act, 22-23 Geo. V, c. 47, on the ground that its name was liable to be confounded with that of the Continental Life Insurance Company, a Canadian corporation licensed under the Canadian and British Insurance Companies Act, 22-23 Geo. V, c. 46. On appeal from the ruling of the Minister of Finance, it was held:

1. That under s. 9 of the Foreign Insurance Companies Act registration may be refused if the name of the applicant company is so similar to the name of a company already registered under the same Act, as to cause confusion.
2. That the words "or otherwise on public grounds objectionable" in ss. 1 of s. 9, of the Foreign Insurance Companies Act mean something other than the question of confusion arising out of a similarity of names.

APPEAL from the decision of the Minister of Finance refusing registration to the Continental Assurance Company under the Foreign Insurance Companies Act, 22-23 Geo. V, c. 47.

The appeal was heard before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

G. F. Henderson, K.C., and *E. G. Gowling* for Continental Life Insurance Co.

W. Evan Gray, K.C., for Continental Assurance Co.

C. P. Plaxton, K.C., for the Attorney-General

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT, now (February 22, 1934) delivered the following judgment:

The Continental Assurance Company, which for the sake of brevity and clarity will hereafter be referred to as the applicant, made application in October, 1932, to the Superintendent of Insurance, for its registration under the Foreign Insurance Companies Act, 1932. The applicant is a United States corporation, incorporated under the laws of the State of Illinois, and has carried on a life insurance business in a substantial way in that country since 1911, and presently is licensed to carry on such business in thirty-five different states. The applicant, it is said, is associated, through share ownership, with the Continental Casualty Company which is licensed to carry on business in Canada, and in fact does so, but that does not appear to have any relevancy to the issue to be determined here.

The applicant complied with all the requirements of the statute, and of the Department of Insurance, in its application for registration. After a hearing by the Superintendent of Insurance at which the applicant, and the Continental Life Insurance Company as an objecting party, appeared, the Superintendent made a report to the Minister of Finance recommending that the registration of the applicant be refused on the ground that its name was liable to be confounded with the name of the Continental Life Insurance Company, a Canadian corporation licensed to carry on the business of life insurance in Canada under the Canadian and British Insurance Companies Act, 1932, and thus "on public grounds objectionable"; thereupon the Minister accordingly refused to register the applicant.

From the report of the Superintendent of Insurance and the refusal of the Minister, the applicant appealed, and the

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right of appeal being questioned by the Superintendent of Insurance, the applicant applied to Angers, J. for an order requiring the Superintendent of Insurance to deliver to the applicant a certificate in writing setting forth his ruling in the matter of the applicant's application for registration and the reasons therefor, with which order the Superintendent of Insurance in due course complied. In the facts of this case, I think, there was the right of appeal under the statute.

Coming now to the real question for decision in this matter. The issue seems to me to be one of the interpretation of a statutory provision, and that is sec. 9 of the Foreign Insurance Companies Act, 1932, and it reads thus:—

> If the name of any company applying to be registered is that of any company registered, under this Act, or, in the opinion of the Superintendent, any name liable to be confounded therewith, or otherwise on public grounds objectionable, the Superintendent shall so report to the Minister, and the Minister may refuse to register the company.
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> (2) Such report, if based upon the objection that the name of the company applying to be registered is that of any company registered under this Act or any name liable to be confounded therewith, shall be deemed to be a ruling of the Superintendent from which an appeal shall lie under and subject to the provisions of section thirty-four of this Act.

The Superintendent of Insurance, and the applicant, agree that the language of sec. 9 (1) is defective and through inadvertence does not express fully what was intended, that is to say, it was never intended by the legislature to limit the application of this statutory provision to companies registered under the Foreign Insurance Companies Act but should have included companies registered under the Canadian and British Insurance Companies Act. The applicant, it is said, through the appropriate avenue, requested that this defect be cured by amending legislation. All parties to the controversy therefore agree that something important was omitted from this section of the Act. Mr. Gray, for the applicant, agreed that I might construe this section of the Act as if the omission had been supplied, and that I might deal with the appeal upon the merits if I felt inclined to do so. He, however, urged that upon a fair construction of the section as it stands the ruling of the Superintendent of Insurance was in error.

There can be no doubt, I think, as to the construction to be put on sec. 9. It means that a registration may be

refused if the name of the applicant company is so similar to the name of a company already registered under the same Act, as to cause confusion. The first clause of the section enables the Superintendent to report adversely to an application of a foreign company for registration under the Foreign Insurance Companies Act on account of the similarity of its name to another foreign company already registered under the same Act.

To attempt to sustain the refusal to register the applicant under the words "or otherwise on public grounds objectionable" is untenable, in my opinion. These words have no reference to the situation produced by an applicant company seeking registration under a name so similar to a name already registered as to be calculated to cause confusion. The words "or otherwise on public grounds objectionable," as here used, mean something other than the question of confusion arising out of a similarity of names and in such a case there is no appeal from the report or decision of the Superintendent of Insurance, while in the other case there is an appeal and an applicant is entitled to a judicial decision as to whether its name is liable to be confounded with another name. The words "or otherwise on public grounds objectionable" exclude an objection grounded on a possible confusion of names.

Mr. Gray for the applicant, as I have already stated expressed his willingness that I dispose of the appeal upon the merits if I so cared to do, and that I might assume that the alleged missing words were supplied in sec. 9 of the Act in question. I do not think this is a case where the Court would be justified in reading into the section the words said to have been inadvertently omitted. I think I am bound to assume that the legislature meant precisely what it said notwithstanding counsel for the applicant, and the Superintendent of Insurance, believe it to be a *casus omissus*. This is not a case where the imperfect wording of a section of a statute creates some doubt as to its meaning but where the intent of the legislature may be resolved with confidence from other provisions found in the same statute.

It seems to me that the appeal should be allowed and it should be declared that the applicant is entitled to registration. The statute, as it stands, authorizes a refusal of

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registration of a foreign insurance company under the Act in question here when its name is liable to be confounded with the name of another foreign company already on the registry, and any attempt to base the refusal upon the words "otherwise on public grounds objectionable," does not appear tenable to me. I canot see any useful purpose now to be served in a discussion of the appeal upon the merits of the case.

Judgment accordingly.