

Vancouver Salt Co. v. R. Tabata and Co. (Trustee of)

In re R. Tabata and Company (Debtor)

[1932] B.C.J. No. 123

[1933] 1 W.W.R. 29

British Columbia Supreme Court
(In Bankruptcy)

Fisher J.

December, 1932.

Counsel:

J.P. Hogg, for the applicant.

W.M. Griffin, K.C., for Canadian Credit Men's Trust Association.

1 FISHER J.:-- In this matter the Vancouver Salt Company Limited appeals from the decision of the trustee of the estate of R. Tabata and Company, debtor, under the provisions of The Bankruptcy Act, and claims to be a secured creditor of the above-named debtor in respect to 200 (formerly estimated at 250) tons of salt. Upon the hearing of the appeal evidence was adduced by the appellant to show that the salt in question was the property of the said debtor, but, after considering all the evidence before me, I find that the property in the said salt had passed to Ritherdon Bay Packing Company Limited. Counsel on behalf of the appellant, however, argues that the trustee of the estate of the said debtor is estopped from taking the position that the salt is the property of Ritherdon Bay Packing Company Limited. I think it must be noted, however, that the Vancouver Salt Company Limited, in its appeal herein from the decision of the trustee in bankruptcy, is specifically asking for an order that it is entitled to delivery of the salt represented by the warehouse receipt.(Ex. 2). In other words, the appellant is now seeking a decision that it holds a valid and effective security on and is thereby entitled to delivery of some salt, which is the property of another company, not a party to this appeal, on the ground that the trustee is estopped from denying in these proceedings that the salt is the property of the said debtor. As the issue comes before me, however, by way of an appeal from the trustee in bankruptcy, it is apparent that what I have to decide is whether the warehouse receipt is an effective legal charge on property of the debtor. The appellant claims that it is a secured creditor, and in sec. 2(ii) of The Bankruptcy Act we have the expression "secured creditor" defined as follows [14 C.B.R. 1]:

"Secured creditor" means a person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the debtor, or any part thereof, as security for a debt due or accruing due to him from the debtor.

2 I cannot see that the appellant can by invoking the principle of estoppel against the trustee in the present proceedings create in the trustee of the debtor title to something not the property of the debtor and thus perhaps obtain a decision that it holds an effective security by way of a legal charge on property of other people not parties to the proceedings.

3 My conclusion, therefore, is that, though under the circumstances I do not think I can or should determine in the present proceedings whether the warehouse receipt is a valid security upon the property of any one, I have to determine, as I do, that the appellant is not the holder of a valid security or an effective legal charge by virtue of the said warehouse receipt upon the property of the debtor, and I cannot make an order herein for delivery of the salt to the appellant.

4 The appeal must be dismissed accordingly.

