

ORDE, J., IN CHAMBERS.

JANUARY 12TH, 1921.

*RE N. BRENNER & CO. LIMITED.

Bankruptcy and Insolvency—Practice and Procedure—Authorised Assignment to Authorised Trustee—Action Brought by Insolvents Pending at Date of Assignment—Judgment for Insolvents Entered after Assignment—Motion by Trustee for Leave to Proceed in Action—No Necessity for Leave—Permission of Inspectors—“Property”—Chose in Action—Proceedings to be Continued in Official Name of Trustee—Præcipe Order to Continue Proceedings—Bankruptcy Act, 1919, secs. 2 (dd), 10, 20 (c), (2)—Supreme Court Rules 300-302.

Motion on behalf of Osler Wade, an authorised trustee in bankruptcy, to whom an authorised assignment had been made by the above-named company, for an order empowering him to continue the proceedings in an action in the Supreme Court of Ontario, commenced by the company, before the assignment, against H. J. Garson & Co.

H. H. Shaver, for the applicant.

ORDE, J., in a written judgment, said that the applicant had misconceived the course to be taken in order to proceed with the pending action. By sec. 20 of the Bankruptcy Act, the trustee may, with the permission in writing of the inspectors, (c) bring, institute, or defend any action or other proceeding relating to the property of the debtor. The powers given by sec. 20 are conferred upon the authorised trustee, whether acting under a receiving order or under an authorised assignment. The written permission must not be general, but to do the particular thing for which permission is sought: sub-sec. 2.

The wider power to “bring” an action would include the lesser one to “continue” one already brought; and, apart from that, the words “to institute . . . any . . . other legal proceeding” would be sufficient to authorise the trustee to take the necessary steps in the pending action to continue it in his official name.

No leave to proceed, so far as these insolvency proceedings are concerned, is necessary.

It is equally clear that the trustee cannot proceed with the action in the name of the insolvents. By sec. 10, the assignment vested in the trustee all the property of the assignors at the time of the assignment, except property held by them in trust and property exempt from execution or seizure under legal process.