

1969

S. C. No. 14809

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

BETWEEN:

THE ROYAL BANK OF CANADA,
a Chartered Bank,

Appellant
[Plaintiff and
Judgment Creditor]

- and -

MAURICE STINZIANO

Respondent
[Defendant and
Judgment Debtor]

- and -

LINDEN M. SMITH, in his capacity
as Clerk of the County Court
Judge's Criminal Court for
District Number One

Garnishee

McKINNON, C.J.N.S.:

The matter here, in so far as we are able to determine from the record before us, turns upon the special facts of this particular case. It involves no question of law of general application, a pronouncement upon which could assist the Court below; at least no question of law has been specifically referred to this Court for determination.

Under section 25 (2) of The Judicature Act, 1950, it would seem that a Judge of the Trial Division has a duty to decide all questions coming properly before him, but he may reserve the case, or any point in a case, for the consideration of the Appeal Division. A primary duty therefore rests with the Judge of the Trial Division to try and decide the issues

coming before him. If for good and sufficient reasons he is unable to discharge that primary duty and reserves the case, or any part of the case, then this Court should have before it the reasons of the trial Judge for so reserving the matter for the consideration of this Court. The record before us does not disclose any such reasons, nor does it state any question or questions for our consideration: see Howard v. Lancashire Insurance Co., 14 N.S.R. 374. And although the reference in this case was considered by our Appeal Court before the passing of The Judicature Act, the principle of practice applied there, it seems to me, remains unaltered.

It is the unanimous opinion of the Court, therefore, that we have no power to entertain the reference so made. The matter will be returned to the learned Chambers Judge.

DATED at Halifax, Nova Scotia, this 19th day of March,
A. D., 1970.