RIORDON COMPANY, LIMITED (PETITIONER) ..... APPELLANT;

AND

JOHN W. DANFORTH COMPANY (RESPONDENT) ..... RESPONDENT

*1923
Mar. 9, 10.
April 3.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Practice and procedure—Stay of proceedings—Debtor—Extension of credit by unsecured creditors—Approval by Bankruptcy Judge—Privileged claim—Action to enforce—Right of judge to grant stay—C.C. Art. 2013 et seq.—"The Bankruptcy Act," as amended by (D) 11-12 Geo. V, c. 17, s. 2 (g.g.), 6, 7, 9, 10, 11, 13 (15), 13a, 42, 45, 46, 51, 52.

The appellant company, being financially embarrassed, but before any assignment made, submitted to its unsecured creditors a proposal for an extension of credit of one year, pursuant to section 13 of the Bankruptcy Act. Such proposal was accepted by the majority of the unsecured creditors and duly approved by a judge in bankruptcy according to the provisions of the Act. The respondent, having a claim against the appellant for work done and materials supplied, caused to be registered a privilege, under articles 2013 *et seq.* C.C., upon the property on which work had been performed and, within the delay mentioned in the code, brought action to realize its security. The appellant then petitioned the court in bankruptcy for a stay of proceedings in such action until the expiry of the extension of credit.

Held that the judge in bankruptcy had no jurisdiction under the provisions of the Bankruptcy Act to grant such stay.

Per Duff, Anglin and Brodeur JJ.—The court in bankruptcy had no inherent power to stay action.

Held, also, that the respondent company was a "secured creditor" within the meaning of section 2, subsection gg. of the Bankruptcy Act.

APPEAL from the judgment of the Court of King's Bench, Appeal Side, province of Quebec, reversing the judgment of the court in bankruptcy, Maclennan J. and dismissing the petition made by the appellant for an order staying an action instituted by the respondent against the appellant.

The material facts of the case and the questions at issue are fully stated in the above head-note and in the judgments now reported.

Lafleur K.C. and *Montgomery K.C.* for the appellant. The judge in bankruptcy was competent to stay the action of the respondent, as the Bankruptcy Act does not entirely

*PRESENT:—Idington, Duff, Anglin, Brodeur and Mignault JJ.

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oust the jurisdiction of the court to restrain proceedings by a secured creditor, when such court is of the opinion that the interests of the creditors generally, secured and unsecured, would be seriously prejudiced by the continuance of the proceedings.

The respondent was not a " secured creditor " within the meaning of the relevant sections of the Bankruptcy Act.

Geoffrion K.C. and *De Witt K.C.* for the respondent.

IDINGTON J.—The respondent having a claim against the appellant for work done and materials supplied in the erection of a mill owned by it, registered a lien or privilege in respect thereof under article 2013 and subsequent articles of the Civil Code of Quebec.

The appellant became insolvent in 1921 and before any receiving order or assignment under the Bankruptcy Act, or its amendments, had been made, applied under said Act and some of said amendments to its creditors for an extension of time to pay its debts and was, on the 1st December, 1921, granted same for a year, and after the said extension was granted the respondent instituted an action to enforce its said lien or privilege and realize the security thereby afforded it. That action was on the 2nd February, 1922, specifically ordered by a learned judge of the Superior Court to be stayed.

The question raised in this appeal is whether or not the respondent is, by virtue of said lien or privilege, a secured creditor within the meaning of the relevant section of said Bankruptcy Act and its amendments.

The learned judge who granted the order, thus staying respondent's action, recognized that secured creditors were expressly excepted from the operation of any such extension of credit but by a process of reasoning which seeks to distinguish between such a security as respondent enjoys under the code and that of other secured creditors, satisfied himself that the latter could be protected whilst the other should not be.

The said learned judge then founds his right to stay upon section 7, section 13, subsection 15, and subsection 13*a* (2).

The Court of King's Bench reversed said judgment and set aside said stay with costs.

The notes of judgment by Mr. Justice Greenshields set forth in such complete and satisfactory manner the various aspects of the relevant law bearing upon the questions raised, that I need not repeat same here for I agree in all the essential features thereof as did the majority of his colleagues.

I may, however, remark here concisely that, of the sections specifically relied upon by the learned judge granting the stay, section 7 must be read in connection with section 6; that subsections 15 and 13 cannot justifiably support the order, and that section 13*a* makes any such order as grants an extension of time subject to the rights of secured creditors to realize upon or otherwise deal with their securities.

In short, in my view, I respectfully submit that the only ground which can, at all plausibly, be presented (and that only at first blush) in support of the said staying order, is the distinction which the learned judge makes between the classes of securities business men had long been accustomed to refer to as such and those furnished by the respective statutes of the several provinces in favour of those doing work or supplying material for the purpose of improving the value of the debtor's property.

Why in reason and common sense those doing so should be excluded from the benefits given other classes of securities passes my understanding. They contract with the supposed owner of land on the faith of the legislation which aims at giving them a lien thereon, to the extent by which they thereby add to its value. And surely they are quite as worthy and in need of protection as a mortgagee or other creditor of that kind. All they get back in way of security is that which they gave on faith of being secured to the extent in value which the debtor got. They may have given much more but only get secured to the extent by which the debtor is enriched and his unsecured creditors suffer nothing of which they have a right to complain.

But this need not be elaborated for I submit that the express language of section 2, subsection (*gg*) of the Bankruptcy Act, which reads as follows:

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"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

seems to answer the distinction made and all implied therein.

Clearly it is for the class of unsecured creditors, who are all on the same footing and by this legislation are given an opportunity of coercing a small minority of that class, and no other, to do what the majority may deem advisable in the interest of the entire class.

The scope of such legislation and its obvious purpose is what ought to be looked at and govern us, instead of ignoring all that by following methods akin to splitting hairs and guessing at the possible meaning of certain words and thereby doing a palpable injustice.

Why should those who chose to deal blindly, without security, be entitled to use the property of others to recover something for themselves?

And, above all, why should they be permitted to impair and possibly destroy that property of others?

That given as security is *pro tanto* the property of others than the debtor or his unsecured creditors.

I think this appeal should be dismissed with costs.

DUFF J.—In the fall of 1921 the appellant company became financially embarrassed; and on the 11th October of the same year the company requested Mr. Scott, an authorized trustee in bankruptcy, to call a meeting of its creditors to enable it to submit a proposal for an extension of credit, the proposal being that credit should be extended up to the 19th of November, 1922.

There was accordingly on the 17th of November, 1921, a meeting of the unsecured creditors of the appellant sufficient in number and as to the amount of their claims to satisfy the conditions of section 13 of the Bankruptcy Act, which accepted the proposal. On the 5th December, 1921, approval was given by a judgment of the Judge in Bankruptcy to this proposal.

It was before the year 1921 that the respondent company entered into its contract with the appellant company out of which the respondent company's claim arises. By

that contract the respondent company undertook to construct works of a permanent nature on property belonging to the appellant company in the province of Quebec. Prior to the proceedings above mentioned the appellant under acticle 2013 (*f*) C.C. caused to be registered a statement by which it claimed a privilege upon the property in respect of the sum of one hundred thousand dollars, the contract price. Due notice of this claim having been given, an action was commenced within the period prescribed by the code against the appellant company, praying a condemnation in respect of the personal obligation of the company and a declaration of the validity of its privilege as registered and of its right to be paid by preference the amount of its judgment out of the sale of the property. The respondent company having disputed the appellant company's claim by its pleadings, the action was set down for trial on the 9th of February, 1922.

On the 31st January, 1922, the appellant company petitioned the court in bankruptcy asking for a stay of proceedings in this action until the 19th November, 1922; on the 2nd February of the same year the Judge in Bankruptcy granted the stay.

On appeal this order was set aside and the appellant company by leave given under the Bankruptcy Act now appeals to this court. There are two questions. The first of these in their natural order is whether the respondent company is a secured creditor within the meaning of the Bankruptcy Act. This is contested by the appellant company. It is not denied however that the respondent company would be entitled in liquidation proceedings to a preference out of the property of the company over and above creditors possessing no such security as that which the respondent company possesses, the argument presented on behalf of the appellant company being that the respondent company, while entitled to priority over the general body of creditors possessing neither security nor privilege in the distribution of the proceeds of liquidation, is not within the scope of the provisions of the Act giving special rights and a special status to creditors described as "secured" creditors but that its right is strictly limited to the right of preferential payment conceded. I may say at

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once that I am unable to accept this view for a number of reasons.

First of all the rights of the appellant company under article 2013 C.C. and the subparagraphs of that article are rights which appear clearly enough to constitute a security within the ordinary meaning of the word. It is true that for the purpose of realizing this security the respondent company must first obtain judgment against the appellant company in respect of the appellant company's personal obligation to pay, but having done that it is entitled to bring the property subject to the privilege to sale and to rank upon the proceeds of the sale in priority over other claimants to the extent, at all events, to which the value of the property has been enhanced by the execution of the works giving rise to the obligation. Such rights, I repeat, seem to me to constitute a security and a creditor possessing such rights is, I think, in the ordinary meaning of the words a secured creditor. Then if we look at the definition of secured creditor, which is to be found in s. 2, s.s. (*gg*), we find that "secured creditor" is defined as meaning a person holding any of a number of things, among which is

> a privilege on or against the property of the debtor or any part thereof

as "security for" his debt. I concur with the view expressed by Mr. Justice Greenshields in the court below that "hypothec" and "privilege" have been brought within the scope of the definition for the purpose of including therein securities characteristic of the law of the province of Quebec; and *prima facie* at all events it seems to me that privilege in this definition must include every privilege given by the law of Quebec which is of such a character that it can properly be said to be held "as security for" a debt.

There seems to me to be great force also in Mr. Geoffrion's contention that there is no provision in the Act if the holder of such a privilege be not a "secured creditor" for the recognition of the security. Section 51 seems to provide for the distribution of the property of the bankrupt among his creditors *pari passu*, due provision having been made pursuant to the provisions of the Act for secured creditors.

I have not failed to consider and weigh the arguments presented by Mr. Lafleur and Mr. Montgomery based upon the suggestion that a privilege of this character cannot be given effect to in a practical way under the provisions of the Act relating to secured creditors. One must admit that difficulties are likely to arise, but precisely the same difficulties would arise in dealing with a claim under the Mechanics Lien Act in force in the various provinces by which the holder of a mechanic's lien is entitled to priority over a prior mortgagee in respect of the *plus value* arising from the work or the materials supplied upon which the lien is founded. My conclusion is that on this point the appellants fail.

The next question is whether, assuming the respondent company to be a secured creditor within the meaning of the Act in respect of the privilege mentioned, the Judge in Bankruptcy had jurisdiction to make the order which he did make granting a stay of proceedings. The jurisdiction, if it existed, must have arisen from the express provision of s.s. (1) of sec. 13*a* or from the inherent powers of the Bankruptcy Court. As to s.s. (1) of s. 13*a*, that subsection appears very clearly (whatever may be said with regard to s. 7) to limit the express authority to grant a stay to the period during which the creditors are considering the proposal "made or to be made." I must say it seems impossible to escape this construction of s.s. (1). At the expiration of that period, that is to say after an order has been made approving the proposal and the acceptance of it, then a stay automatically takes place except in the case of proceedings by secured creditors to assert their rights. Assuming there may be grounds for doubt as to the construction of s. 7, we are not concerned with that section, and I cannot think that any real doubt can exist that the jurisdiction given by s.s. (1) of s. 13*a* is limited in the manner I have stated.

The only remaining point is whether the jurisdiction to make the order can properly be ascribed to the inherent powers of the Bankruptcy Court. I think Mr. Geoffrion's contention on that point is sound, namely, that the Bankruptcy Judge was not professing to exercise any inherent power of the Court of Bankruptcy to control its proceed-

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ings but was professing to act under the powers explicitly conferred upon him by the statute, but there is another objection, and although it may be strictly unnecessary to deal with the point, I think it is better to do so. In my opinion the jurisdiction must be taken to be defined by s.s. (1) of s. 13*a* in respect of the subject matter with which that subsection deals and consequently the Court of Bankruptcy possesses no authority under the circumstances in which the subsection comes into play to grant a stay of proceedings which is not compatible with the exercise by secured creditors of their rights "to realize or otherwise deal with their securities."

The appeal should be dismissed with costs.

ANGLIN J.—In this case no receiving order has been pronounced nor has any assignment been made or petition in bankruptcy presented. What has occurred is that the appellant company, desiring to make a proposal to its creditors for an extension of time for payment of its debts, had a meeting of such creditors convened by an authorized trustee; the proposal submitted was accepted by the prescribed majority of the creditors; and on the report of the authorized trustee, the extension so agreed to was approved by the Court in Bankruptcy. All this was done under the authority of s. 13 of the Bankruptcy Act.

The respondent is admittedly a privileged creditor under the provisions of articles 2013 C.C. *et seq.*, and is proceeding by action to realize its security. Invoking as the authority for doing so ss. 7, 13 (15) and 13*a* (2), Mr. Justice Maclennan, sitting as Judge in Bankruptcy, on the application of the appellant made an order staying that action. The Court of King's Bench (Greenshields, Flynn, Tellier and Bernier JJ., Guerin J., dissenting), reversed that order, and from its judgment the present appeal is brought by leave under s. 74 (3) granted by my brother Duff.

The staying of proceedings by creditors for the purpose of facilitating, or aiding to make effective, an extension proposed or approved is dealt with specifically by section 13*a* enacted in 1921 (c. 17, s. 14). I am accordingly of the opinion that, notwithstanding the provisions of ss. 15 of

s. 13, s. 7 cannot be invoked to support the order made by the learned Judge in Bankruptcy. Subsection (1) of s. 7 applies only "after the presentation of a bankruptcy petition," and s.s. (2) only "on the making of a receiving order."

Subsection (1) of s. 13*a*, as the side note indicates, deals only with the staying of proceedings

pending consideration of proposal of a composition, extension or scheme of arrangement.

It provides for the case of intended efforts to effect an extension being imperilled and for a stay until action is taken by the court on the trustee's report. The learned Judge in Bankruptcy evidently realized the inapplicability of this subsection, as he invokes only subsection (2), which applies "on the making * * * of an order approving a proposal of a composition, extension or scheme of arrangement." But ss. (2) does not provide for any action by the Bankruptcy Court. By it such proceedings as fall within its scope are automatically stayed upon the order approving of an extension being made. Moreover, the operation of the subsection is expressly declared to be "subject to the rights of secured creditors to realize or otherwise deal with their securities."

By statutory definition, "a person holding * * * a lien or privilege on or against the property of the debtor, or any part thereof, as security for a debt due or accruing due from the debtor" is a "secured creditor." The respondent is such a person. I am quite unable to appreciate the grounds on which it sought to restrict the term "secured creditor" thus defined to a person holding physical possession of the property which forms his security, or some estate in it, such as the mortgagee under the English system enjoys. The privileged creditor under the law of Quebec occupies much the same position as the lien-holder in the English law. Both are alike covered by the definition. On this aspect of the case I concur in the views expressed by Mr. Justice Greenshields. The respondent, in my opinion, is a "secured creditor" within the meaning of that term in ss. (2) of s. 13*a* of the Bankruptcy Act. On that ground, and also because it does not contemplate a stay by action

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of the court, that subsection does not support the order of the learned Judge in Bankruptcy.

But it is said the court must have inherent discretionary jurisdiction to stay this action. No doubt the Superior Court in which the action was brought has such a discretionary power under some circumstances, but I would question the existence of such inherent power in the Judge in Bankruptcy over the proceedings in any other court, or in the court of which he is a member which for this purpose may be regarded as another court, even if the explicit provisions of the Bankruptcy Act dealing with the subject of staying proceedings do not imply its exclusion. Moreover, no such inherent discretionary jurisdiction was exercised. If it exists for any purpose I am not satisfied that it would justify the making of the order which the appellant seeks against the respondent, who is merely exercising his legal right to realize on his security and is in nowise abusing the process of the court in seeking to enforce that right. The extension was sought on the footing that it should " not bind or affect secured creditors," and the order of approval expressly provides that the extension

is approved subject to the rights of secured creditors to deal with their securities according to law.

I am for these reasons of the opinion that the judgment appealed from was right and should be maintained.

BRODEUR J.—I concur with my brother Duff.

MIGNAULT J.—The question here is whether the court can stay an action by a creditor of an insolvent debtor who has obtained an extension of time under section 13 and 13a of The Bankruptcy Act, when such creditor asserts a privilege or lien against the whole or part of the debtor's property.

The respondent had taken an action against the appellant claiming $100,720.50, and alleging that it was entitled to a builder's privilege on the appellant's mill at Temiskaming, Que., for, we were informed, plumbing work and supplies. The appellant had obtained, under sections 13 and 13a of the Bankruptcy Act, an extension of time from its creditors and on its application the Superior Court sitting in bankruptcy (Maclennan J.) stayed the respond-

ent's action. This judgment was reversed by the Court of King's Bench, Mr. Justice Guerin dissenting, and the appellant now appeals with special leave to this court.

The question submitted is a most important one, and if the judgment appealed from is right the respondent's action could not be stayed even if a receiving order or an authorized assignment had been made, the provisions of the Act as to the staying of such an action being practically to the same effect in all these cases.

In reversing the judgment of the Superior Court, the Court of King's Bench refused to follow a previous decision of its own court, differently composed, in a case of *La Compagnie du Boulevard Pie IX* v. *Damphousse* (1). Perhaps I may be permitted to say with great respect that the inconvenience of a court thus disregarding its own judgment in a previous case is too obvious for discussion. However, the *Damphousse Case* (1) is not binding on us and the effect of our judgment, if it be followed as it should be, will be to put an end to any confusion or uncertainty which may arise.

The respondent claims to be a "secured creditor" under subsection *gg* of section 2 of the Act which is as follows:—

(*gg*) "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.

The respondent contends that this definition is wide enough to include such a claim as it asserts on the appellant's mill for work done thereon. It has undoubtedly a privilege under Quebec law, but this privilege is only on the increased value given to the property by reason of the work done or materials supplied, to be established after a judicial sale of the property and a relative valuation of the property and the work done (Arts. 2013, 2013b C.C.). To give effect to this privilege the property will have to be sold.

Before dealing with the statutory definition of the term "secured creditor," it will be useful to consider several other provisions of the Act.

To rank against the estate of an insolvent debtor claims must be proved, hence the term "provable debts" which

(1) 67 D.L.R. 385.

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is found in several sections of the Act. The mode of proving debts is described in section 45, and in section 46 there are elaborate provisions as to the proof of debts and valuation of securities by secured creditors. Briefly, the secured creditor may realize his security and prove for the balance due him, or he may surrender his security and prove for his whole debt, or he may in a statutory declaration place a value on his security, and the trustee then can redeem the security at its assessed value or require that the property comprised in the security be sold. The creditor may require the trustee to elect whether he will redeem the security or require it to be realized, failing which the equity of redemption or any other interest in the property comprised in the security vests in the creditor and his debt is reduced by the amount at which the security was valued. When the secured creditor does not comply with section 46, he is excluded from all share in any dividend.

Section 51 deals with the priority of claims on the estate, the general order being: 1, the fees and expenses of the trustee; 2, the costs of the execution creditor, including sheriff's fees and disbursements; 3, wages, salaries, commissions or compensation of clerks, servants, travelling salesmen, labourers or workmen. Debts proved in bankruptcy or under any assignment are paid *pari passu*. Section 52 states that the right of the landlord to distrain or realize his rent shall cease after the receiving order or assignment, but the landlord has the right to be paid by preference an amount not exceeding the value of the distrainable assets and not exceeding three months' rent. I may add that, for the purpose of voting at meetings of creditors, a secured creditor, unless he surrenders his security, must state in his proof the particulars of his security, its date and its value, and can vote only in respect of the balance due him. He is not entitled to vote until he has proved his claim and valued his security (section 42).

We now come to sections 6 and 7, dealing with the effect of a receiving order, which are important in connection with the question at issue.

Section 6, subsection 1, states that on the making of a receiving order the trustee is constituted receiver of the property of the debtor, and thereafter, except as directed by the Act, no creditor to whom the debtor is indebted in respect of a debt provable in bankruptcy has any remedy against the property and person of the debtor in respect of the debt, or shall commence any action or other legal proceeding without leave of the court. It adds this proviso:—

But this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Section 7 enacts that the court may, after presentation of a bankruptcy petition against a debtor, order that any action, execution or other proceeding against the person or property of the debtor, pending in any court other than the court having jurisdiction in bankruptcy, shall stand stayed until the last mentioned court shall otherwise order; and the court in which any such proceedings are pending may likewise, on proof that a bankruptcy petition has been presented against the debtor, stay such proceedings until the first mentioned court shall otherwise order.

Subsection 2 of section 7 is as follows:—

(2) On the making of a receiving order, every such action, execution or other proceeding for the recovery of a debt provable in bankruptcy shall, subject to the provisions of the next preceding section as to the rights of secured creditors, stand stayed unless and until the court shall, on such terms as it may think just, otherwise order.

Sections 9 and 10 deal with the authorized assignment, the latter section stating that its effect is to vest in the trustee, subject to the rights of secured creditors, all the property of the assignor at the time of the assignment.

Section 11 contains general provisions relating to receiving orders and authorized assignments and directs (subsection 1) that they shall take precedence over,

(*a*) all attachments of debts by way of garnishment, unless the debt has been actually paid over; and

(*b*) all other attachments, executions or other process against property, except such thereof as having been completely executed by payment to the execution or other creditor, and except also the rights of a secured creditor under section six of this Act.

(This last exception was added by the 1921 amendment.)

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I may note briefly that subsection 3 of section 11 directs the sheriff or other officer of the court having seized property of the debtor under execution, attachment or other process, upon receiving a copy of an assignment or receiving order, to forthwith deliver to the trustee all the property of the execution debtor in his hands, upon payment of his fees and charges and the costs of the execution creditor. And subsection 10 states that after its registration the receiving order or the assignment shall have precedence over all certificates of judgment, judgments operating as hypothecs, executions and attachments against land, within the registration office or district or county, subject to a lien for the costs of registration and sheriff's fees.

Section 13 deals with compositions, extensions of time and schemes of arrangement of the insolvent debtor's affairs, which when approved by the court are binding on all the creditors. Section 13a is important in view of this controversy, but is very unskilfully drafted. I will cite it in full:—

13*a*. (1) The court, at any time after a debtor has required an authorized trustee to convene a meeting of creditors to consider a proposal of a composition, extension or scheme of arrangement, may, on the *ex parte* application of the trustee and his affidavit disclosing the circumstances and stating his belief that the success of the intended efforts to bring into effect a composition, extension of time for payment, or scheme of arrangement of the debtor's affairs and obligations will be imperilled unless, pending consideration by the creditors of the proposal made or to be made the existing conditions as to litigation of claims against the debtor is preserved, order that any action, execution or other proceeding against the person or property of the debtor pending in any court other than the court having jurisdiction in bankruptcy shall stand stayed until the last-mentioned court, upon or before report made of the result of the dealings between the debtor and his creditors, shall otherwise order, whereupon such action, execution or other proceeding shall stand stayed accordingly; and the court in which any such proceedings are pending may likewise, on like application and proof, stay such proceedings until the court having jurisdiction in bankruptcy shall otherwise order.

(2) On the making of an authorized assignment or an order approving a proposal of a composition, extension or scheme of arrangement every such action, execution or other proceeding for the recovery of a debt provable in authorized assignment or composition, extension or scheme of arrangement, proceedings under this Act shall, subject to the rights of secured creditors to realize or otherwise deal with their securities stand stayed unless and until the court shall, on such terms as it may think just, otherwise order.

The reservation in subsection 2 of section 13a is practically in the same terms, as to the right or power of secured creditors to realize or otherwise deal with their securities, as the proviso of section 6, subsection 1.

Coming back now to the definition of "secured creditor" in section 2, subsection *gg*, it is certainly wide enough to comprise a builder who, under articles 2013 and 2013f C.C., has acquired, and has taken an action to enforce, a privilege on the immovable on which he performed work. The taking of such an action within six months is necessary for the preservation of the privilege.

The respondent being therefore a "secured creditor," can his action be stayed?

The general scheme of the Bankruptcy Act appears to be that secured creditors are considered as creditors of the insolvent debtor, for all purposes such as proving claims, voting at meetings of creditors and receiving dividends, only after deducting the value of their security. They may keep their security and remain entirely outside the bankruptcy proceedings. Under section 46 they may surrender their security and prove their debt for the whole, or realize it and prove for the balance, if any, of their debt; they have the further option of valuing their security which the trustee may redeem at its valuation or require it to be offered for sale, and the secured creditors rank only for the balance. Where they have done none of these things they are excluded from all share in any dividend. The case of the landlord is a special one and is dealt with in section 52.

While there may no doubt be difficulties caused by some provisions of the Act such as the offering for sale, under section 46, of a privilege like that asserted by the respondent, I think that it follows, from what I have described as the general scheme of the Act, that the secured creditor (I do not refer to the landlord) should not be impeded in his attempt to realize his security. Our Act appears even more emphatic in this respect than the English Act, for while the proviso of section 6 copies verbatim subsection 2 of section 7 of the latter Act, subsection 2 of section 7 of the Canadian Act is not found in section 9 of the English Act, and sections 13 and 13a of our Act are

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not in the English Bankruptcy Act, nor in the English Deeds of Arrangement Act, 1914.

It may be that by asserting certain general privileges under the Quebec law, which apply to the whole of the personal or real property of the debtor (arts. 1993, 1994, 2009 C.C.), creditors may cause some embarrassment in the administration of the Bankruptcy law, but these privileges are generally for small amounts and could be redeemed by the trustee. And, if necessary, Parliament can provide for the difficulty by an amendment of the Act.

I would therefore not disturb the judgment appealed from and would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Lafleur, Macdougall, Macfarlane & Barclay.*

Solicitors for the respondent: *De Witt & Howard.*