

1933

*Feb. 10.
*Mar. 8.

PHILIPPE DUBROFSKIDEBTOR;

v.

THE VIGER COMPANY.....PETITIONER;

AND

HERMAS PERRASTRUSTEE.

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

Bankruptcy—Application to judge of Supreme Court of Canada for special leave to appeal—Order by which a debtor is adjudged a bankrupt—Jurisdiction—Bankruptcy Act, R.S.C., 1927, c. 11, s. 174.

A judge of the Supreme Court of Canada is competent, under section 174 of the *Bankruptcy Act*, to grant leave to appeal from the judgment of an appellate court affirming an order rendered by a bankruptcy court, by which a debtor was adjudged a bankrupt. Even although no actual amount may be in controversy, such an appeal involves the future rights both of the creditor and of the debtor, which are directly affected by the bankruptcy proceedings following as a consequence of the order.

APPLICATION for special leave to appeal to the Supreme Court of Canada from the decision of the Court of King's Bench, appeal side, province of Quebec, affirming (two judges dissenting), the judgment of the Superior Court sitting in bankruptcy by which the debtor was adjudged a bankrupt. The material facts of the case, for the purposes of the present judgment, are sufficiently stated in the judgment now reported. The application was granted, costs to be costs in the appeal.

T. Brosseau K.C. for the motion.

D. Baril contra.

RINFRET J.—The debtor was adjudged a bankrupt by a judgment of the Superior Court sitting in bankruptcy in the district of Montreal. The judgment was affirmed by the Court of King's Bench (appeal side) by a majority of three judges against two. The debtor applies for special leave to appeal from those judgments to the Supreme Court of Canada.

At the outset, the point was raised that the appellate court was not competent to entertain the appeal and, therefore, no authority vested in a judge of the Supreme Court

*PRESENT:—Rinfret J. in chambers.

of Canada to grant leave to appeal from the judgment of the appellate court.

There were two issues in this case. The main issue was whether the debtor had committed any act of bankruptcy and whether, as a consequence, a bankruptcy order should be made against him. The court of first instance made the order, and this was confirmed by the Court of King's Bench.

While no amount of money was directly involved in the judgment of the latter court refusing to set aside the bankruptcy order (*The Cushing Sulphite Fibre Company v. Cushing* (1)), a second issue was whether the debtor was indebted to the petitioner in the sum of \$2,741.24, as alleged in the petition. This was contested; and the resulting controversy, it is argued, concerned a sum of money amounting to more than \$500. However, in the nature of the proceedings, the amount could not be made the subject of a demand in the conclusions of the petition; and it may yet be a question whether, under the circumstances, the petitioner's claim ought truly to be considered a matter involved in the appeal.

It is not necessary for me to decide that point. Even if it should not be said that any sum of money is involved, the bankruptcy order is an order from which, in my opinion, an appeal will lie to the appellate court under section 174 of the *Bankruptcy Act*, because the appeal involves the future rights both of the creditor and of the debtor, which are directly affected by the bankruptcy proceedings following as a consequence of the order. (*In re Union Fire Insurance Company* (2); *In re J. McCarthy & Sons Co.* (3), and cases there referred to; *Marsden v. Minnekahda Land Co.* (4).)

I think, therefore, the objection to the jurisdiction of the appellate court as well as to my authority to grant leave must be overruled.

It remains to consider the special reasons for granting leave in the premises.

The question whether, on the facts established in this case, the applicant was rightly decided to be a debtor of

(1) (1906) 37 Can. S.C.R. 427.

(3) (1916) 38 Ont. L.R. 3, at 6.

(2) (1886) 13 Ont. App. Rep. 268,
at 295.

(4) (1918) 40 D.L.R. 76.

1933
DUBROFSKY
v.
THE
VIGER
COMPANY.
Rinfret J.

the petitioner presents, in my view, a question of law of certain importance. Other questions are raised in the appeal involving the interpretation of the *Bankruptcy Act* in respect to the character of the debt essentially required to entitle a creditor to present a bankruptcy petition; in respect to the debtor's occupation and whether he was a trader according to the Act; also in respect to the true meaning of the word "goods" in subsection (t) of section 2 of the Act and whether it includes immovable property, having regard to the apparent discrepancy between the French and the English version of the Act. These questions, in my opinion, afford special and sufficient reasons why leave to appeal should be granted to the applicant.

There will therefore be an order granting the application and a stay of proceedings. The appellant will not be required to provide security for costs; but should he elect to give security so as to get the benefit of subsection 4 of section 174 of the Act, I fix the amount of the security at \$500. Any security already provided when the appeal was lodged in the Court of King's Bench shall remain in force in any event. Costs of this application to be costs in the appeal.

Application allowed.
