

DAVID GARSON AND ANOTHER.....APPELLANTS;

1928

*May 12.

AND

CANADIAN CREDIT MEN'S TRUST }
 ASSOCIATION LIMITED } RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA
 SITTING IN BANCO

*Appeal—Leave to appeal—S. 74 (3) of the Bankruptcy Act (D. 1919, c. 36)
 —N.S. Bulk Sales Act (R.S.N.S. 1923, c. 202)—Meaning of the word
 “settlements” in s. 60 of the Bankruptcy Act—Grant of stay of pro-
 ceedings made conditional on the appellants furnishing security.*

The appellants had purchased, and paid \$1,600 for, the stock-in-trade of one Crouse at a bulk sale, the requirements of the Nova Scotia *Bulk Sales Act* (R.S.N.S., 1923, c. 202) not having been complied with. They afterwards sold the goods for \$2,000, which proceeds were not ear-marked and were disposed of by them in the usual course of business. The questions at issue in this case were whether the bulk sale was fraudulent and utterly void under the *Bulk Sales Act*, and whether the trustee in bankruptcy could recover from the appellants the sum of \$2,000, being an amount equal to the amount realized on the resale of the stock-in-trade. Both courts answered these questions adversely to the appellants, the court *in banco* as to the second question basing its judgment on sections 60 and 65 of *The Bankruptcy Act*. The appellants now seek leave to appeal to this court.

Held, that leave to appeal should be granted. Among other questions, the meaning of the word “settlements” in section 60 of the *Bankruptcy Act* appears to be involved in this appeal, the point being whether this word should receive the same construction as that given to it under the English *Bankruptcy Act* ([1914] 4 & 5 Geo. V, c. 59, s. 42).

Under the circumstances of the case, the granting of a stay of proceedings was made conditional upon the appellants giving security that they would pay the amount adjudged against them in the event of their appeal being dismissed.

APPLICATION for special leave to appeal under section 74 (3) of the *Bankruptcy Act* from a judgment of the Supreme Court of Nova Scotia sitting *in banco*.

Application granted.

A. C. Hill K.C. for the application.

E. F. Newcombe *contra*.

*PRESENT:—Mignault J. in Chambers.

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 —
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MIGNAULT J.—The appellants applied to me, on the 27th of April, 1928, for leave to appeal from the judgment of the Supreme Court of Nova Scotia *in banco* of the 31st of March, 1928, dismissing their appeal from the judgment of Mr. Justice Carroll on a case stated by the parties.

The appellants had purchased for \$1,600, which they paid, the stock-in-trade of one Crouse at a bulk sale, the requirements of the Nova Scotia *Bulk Sales Act* (c. 202, R.S.N.S., 1923) not having been complied with. They afterwards sold the goods thus purchased for \$2,000, which proceeds were not ear-marked and were disposed of by them in the usual course of business. The questions at issue are whether the bulk sale was fraudulent and utterly void under the Bulk Sales Act, and whether the trustee in bankruptcy could recover from these appellants the sum of \$2,000, being an amount equal to the amount realized on the re-sale of the said stock-in-trade.

Both courts answered these questions adversely to the appellants, the court *in banco*, as to the second question, basing its judgment on sections 29, subs. 1, and 33 of the *Bankruptcy Act*. (These numbers are those of the office consolidation of the Act; the sections are now numbered 60 and 66 in chapter 11, R.S.C., 1927).

Among other questions, the meaning of the word "settlements" in section 29 (now section 60 of the *Bankruptcy Act*) appears to be here involved, the point being whether this word should receive the same construction as that given to it under the English *Bankruptcy Act* (4 & 5 Geo. 5, c. 59, s. 42, 1914). See *In re Plummer* (1), and other decisions noted in Duncan's treatise on Bankruptcy, p. 329, note 1.

I think that the questions involved in this case are of sufficient importance to justify me in granting special leave to the appellants to appeal to this court. I therefore give them this leave. Whether there should be a stay of proceedings pending the appeal is however a matter left to my discretion, and, in view of all the circumstances of the case and of the fact that the sum involved, if it can be claimed by the trustee, represents by far the greater part of the assets of the bankrupt estate, I would make the stay

of proceedings conditional upon the appellants giving, within fifteen days from this date, or such other time which a judge of this court may on proper cause being shown grant to the appellants, proper security to the satisfaction of the registrar that they will pay the amount which has been adjudged against them, in the event of the appeal to this court being dismissed. Otherwise, stay of proceedings shall be refused.

As to security for the costs of the appeal to this court, the provisions of subs. 4 of s. 174 of the *Bankruptcy Act* (R.S.C., 1927) shall govern. Costs of this application to be costs in the cause.

Application granted.

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