

ally determined by it was the landlord's right to possession, the order in this respect, assuming non-payment of rent, being within the jurisdiction of the judge who made it. Taking that view,—and they of course knew what had been their appreciation of the former proceeding—it was open to the Appellate Division to deal with the appeal from the judgment of Mowat J. in this action, as they did.

“The other branch of the appeal is directed to the merits. It is claimed by the plaintiffs that the lease obtained by Pong is held by him as trustee for them. The Appellate Division gave effect to that contention, and, in our opinion, upon the whole case, rightly gave effect to it. It is manifest to us that the transaction carried out by Pong was in breach of good faith and contravened his obligation with regard to renewals, which was implied in the whole arrangement between him and Quong. While there is no express right of renewal in the lease, the assignment of it does deal with renewal, and the allusion must be taken to refer to the reasonable expectation of the tenant in possession to obtain a renewal. The case is fairly within the principle stated by Mr. Justice Parker in *Griffith v. Owen* (1). That principle was properly applied in the judgment now appealed from. That judgment is affirmed, and the appeal is dismissed with costs.”

*Appeal dismissed with costs.*

Solicitors for the appellant: *Norman Sommerville & Co.*

Solicitors for the respondents, plaintiffs: *Raney & Raney.*

Solicitors for the respondent, Mrs. Thomson: *Grant & Grant.*

ARMAND BOILY (DEBTOR).....APPELLANT;

AND

J. W. McNULTY (PETITIONER).....RESPONDENT.

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

*Appeal—Leave to appeal to Supreme Court of Canada—Bankruptcy Act  
(D) 1919, c. 36.*

The competency of the Supreme Court of Canada in bankruptcy proceedings is to be looked for exclusively in the *Bankruptcy Act* and is not

\*PRESENT:—Rinfret J. in chambers.

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controlled by the sections of the *Supreme Court Act* dealing with its ordinary jurisdiction.

Leave to appeal to the Supreme Court of Canada will be granted from a judgment of an appellate court in proceedings under the *Bankruptcy Act*, when that judgment, affecting the jurisdiction of the courts under that Act, is of great importance and of general interest and there does not appear to be any jurisprudence on the question.

The question to be decided in the present appeal is one of jurisdiction as to whether the Superior Court of the province of Quebec, sitting in Montreal, is competent to hear and decide a petition for receiving order under the *Bankruptcy Act* made by a resident of Montreal against a debtor residing and carrying on business in the town of Roberval, thus involving the interpretation of par. (b) of subs. 4 of s. 4 of the *Bankruptcy Act*.

MOTION for leave to appeal from a decision of the Court of King's Bench, appeal side, province of Quebec, affirming the judgment of the Superior Court, sitting in bankruptcy at Montreal, Delormier J., and upholding its jurisdiction to hear the respondent's petition for a receiving order against the appellant under the *Bankruptcy Act*.

The facts are stated in the judgment of Mr. Justice Rinfret on the application for leave.

*W. Chipman K.C.* for motion.

*Oscar P. Dorais K.C. contra.*

RINFRET J.—By petition dated 19th February, 1926, addressed to the Superior Court of the province of Quebec, at Montreal, the respondent prayed that a receiving order be granted against the debtor under the *Bankruptcy Act*. Notice was given to the debtor that the petition would be presented before the Superior Court on the 8th March, 1926. The debtor contested the petition for receiving order, alleging, amongst other things:

That the debtor does not come within the jurisdiction of the Superior Court under the *Bankruptcy Act* in the district of Montreal and that the latter court has no jurisdiction to hear the present petition.

That the debtor is, as alleged in the said petition, resident, practising and carrying on business in the town of Roberval, district of Roberval, where there is a competent court of jurisdiction under the *Bankruptcy Act* and before which he should have been summoned;

That all the assets of the said debtor are situate in the said district of Roberval at a distance of more than four hundred miles (400) from Montreal and within the jurisdiction of the Superior Court of the district of Roberval.

Accordingly the petitioner concluded for the dismissal of the petition for receiving order, or alternatively, for the transfer of the record to the Superior Court, sitting in bankruptcy in the district of Roberval. The parties agreed that this question of jurisdiction should first be submitted to and decided by the court before proceeding upon the merits of the case.

By judgment rendered on the 12th May, 1926, Mr. Justice Delorimier decided that he, as a judge of the Superior Court, sitting in and for the district of Montreal, had jurisdiction to hear and decide the petition. The petitioner inscribed on appeal from this judgment; but, on the 23rd February, 1927, judgment was rendered by the Court of King's Bench sitting in appeal at Montreal, maintaining the original judgment, Mr. Justice Tellier dissenting.

The question to be decided in the present case is one of jurisdiction as to whether the Superior Court of the province of Quebec, sitting in Montreal, is competent to hear and decide a petition for receiving order under the *Bankruptcy Act* made by a resident of Montreal against a debtor residing and carrying on business in the town of Roberval. It involves the interpretation of paragraph (b) of subsection 4 of section 4 of the *Bankruptcy Act*, reading as follows:

The petition shall be presented to the court having jurisdiction in the locality of the debtor.

The "locality of the debtor" is defined in the Act (s. 2x):

(a) the principal place where the debtor has carried business during the year immediately preceding the presentation against him of a bankruptcy petition or the making by him of an authorized assignment; or

(b) the place where the debtor has resided during the year immediately preceding the date of the presentation against him of a bankruptcy petition or the making by him of an authorized assignment; or

(c) in cases not coming within (a) or (b), the place where the greater portion of the property of such debtor is situate.

The effect of the judgments complained of is to hold that the "locality of the debtor," in this case, is the whole province of Quebec; and this is alleged to be contrary to the *Bankruptcy Act*, as it enables one particular creditor to choose the judicial district in which he desires the bankruptcy proceedings to take place and to force the debtor to leave his place of business or residence and go possibly to the other end of the province in order to defend himself

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against the petition and also to compel all the other creditors to come to the bankruptcy district chosen by the caprice of the petitioner.

This decision, affecting, as it does, the jurisdiction of the courts under the *Bankruptcy Act*, is of great importance and of general interest (*Riley v. Curtis's and Harvey* (1) ), and there does not appear to be any jurisprudence upon this question in Canada at the present time.

The point is raised, however, that this court is not competent to entertain this appeal.

In addition to its ordinary jurisdiction, covered by the *Supreme Court Act*, the Supreme Court of Canada also holds jurisdiction "as provided in any other Act covering jurisdiction" (*Supreme Court Act*, s. 43); and this is "notwithstanding anything contained in the *Supreme Court Act*."

The statutory provision by virtue of which this court holds jurisdiction in bankruptcy proceedings is contained in the *Bankruptcy Act*, c. 36 of the statutes of 1919, s. 74. It gives an appeal to the appeal court from an order or decision of a court or judge sitting in bankruptcy if the question to be raised on the appeal involves future rights; or if the order or decision is likely to affect other cases of a similar nature in the bankruptcy or authorized assignment proceedings; or if the amount involved in the appeal exceeds five hundred dollars; or if the appeal is from the grant or refusal to grant a discharge and the aggregate of the unpaid claims of creditors exceeds five hundred dollars.

In this case the appeal court, the Court of King's Bench of the province of Quebec, has entertained jurisdiction holding that the decision of Mr. Justice Delorimier came within one of the classes of cases where section 74 authorizes an appeal.

Under subsections 3 and 4, the decision of the appeal court "upon any such appeal" is final and conclusive unless special leave to appeal therefrom to the Supreme Court of Canada is obtained from a judge of this court; but this court is *expressly given* jurisdiction to hear and decide any appeal so permitted. It follows that the competency of

the Supreme Court of Canada in the present case is to be looked for in the *Bankruptcy Act* alone and is not controlled by the sections of the *Supreme Court Act* dealing with its ordinary jurisdiction.

Under those circumstances, I am of opinion that the petitioner has made out a sufficient case to obtain leave to appeal to this court. Such appeal shall operate as a stay of proceedings until it has been finally determined by this court.

The appellant shall not be required to provide security for costs; but if he should choose to do so, in order to found a claim to be awarded costs in the event of his success upon his appeal, I fix the amount of five hundred dollars (\$500) for such security.

*Motion granted.*

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