1932
*May 18, 19.
*June 15.

ELECTRIC MOTOR & MACHINERY CO. LIMITED (DEBTOR) ..... APPELLANT;

AND

GEORGES DUCLOS (TRUSTEE)

AND

THE BANK OF MONTREAL (CONTESTANT) ..... RESPONDENT.

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

Bankruptcy—Proposal of compromise—False statements in writing—Statements made prior to bankruptcy—Bankruptcy Act, R.S.C., 1927, c. 11, ss. 16 (2) and 191 (q. & r.).

Paragraphs *q.* and *r.* of section 191 of the *Bankruptcy Act* (referring to false statements in writing) apply to false statements which the debtor may have made after he had been adjudged bankrupt. Therefore, the refusal by the Bankruptcy Court to approve a proposal of compromise, on the ground that the debtor had knowingly made false statements to the respondent bank, but prior to his bankruptcy, was not justified under section 16 (2) of the Act.

Judgment of the Court of King's Bench (Q.R. 52 K.B. 162) reversed.

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1), affirming by a majority of the court the judgment of the Superior Court sitting in bankruptcy, Panneton J., and refusing to approve a proposal of compromise made by the debtor.

The appellant made an authorized assignment under the *Bankruptcy Act* on the 3rd day of November, 1930, and, subsequently, through its trustee, submitted for approval to the Bankruptcy Court a proposal for a compromise. The approval was refused on the ground that the debtor

*PRESENT: Anglin C.J.C. and Duff, Rinfret, Lamont and Cannon JJ.

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had committed offences mentioned in section 191, subs. *q* and *r*, of the *Bankruptcy Act*, c. 11, R.S.C., 1927, by making false statements in writing, with intent that they should be relied upon respecting the debtor's affairs, financial condition, means or ability to pay, and for the purpose of procuring credit and discount of bills of exchange and notes. It was claimed by the respondent bank that the debtor furnished three false statements: (*a*) Statement of September, 1929, which disclosed liabilities of $1,926.07 instead of $98,509.17; (*b*) Statement of September 29, 1928, which disclosed liabilities of $2,856.68 instead of $90,197.68 (*c*) Statement of 30th of September, 1927, showing liabilities of $1,925.35, while the actual liabilities were then $83,425.35. The trial judge held that the debtor had in fact made these false statements with the intention that they should be relied upon for the purpose of procuring credit from the respondent bank, and he found that these false statements constituted offences mentioned in section 191 of the *Bankruptcy Act*, namely under subsections *q* and *r*. This decision was affirmed by a majority of the judges of the Court of King's Bench (1).

J. G. Ahern K.C. for the appellant.

R. C. Holden K.C. for the respondent.

The judgments of Anglin C.J.C. and Rinfret, Lamont and Cannon JJ. were delivered by

RINFRET J.—We have to construe subs. (*q*) and (*r*) of s. 191 of the *Bankruptcy Act* (R.S.C., 1927, c. 11). They read as follows:

191. Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made, or who has made an authorized assignment under this Act, shall in each of the cases following be guilty of an indictable offence and liable to a fine not exceeding one thousand dollars or to a term not exceeding two years' imprisonment or to both such fine and such imprisonment:—

* * *

(*q*) If he knowingly makes or causes to be made, either directly or indirectly, or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon respecting the financial condition or means or ability to pay of himself or any other person, firm or corporation in whom or in which he is interested, or for whom or for which he is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan, or credit, the extension of a credit, the discount of any account

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receivable, or the making, acceptance, discount or endorsement of a bill of exchange, cheque, draft or promissory note, either for the benefit of himself or such person, firm or corporation.

(*r*) If he, knowing that a false statement in writing has been made respecting the financial condition or means or ability to pay of himself or any other person, firm or corporation in whom or in which he is interested or for whom or for which he is acting, procures upon the faith thereof, either for the benefit of himself or such person, firm or corporation, any of the benefits mentioned in the preceding paragraph.

The appellant made an authorized assignment under the *Bankruptcy Act* on the 3rd day of November, 1930. Subsequently, through its trustee, it submitted for approval to the *Bankruptcy Court* a proposal for a compromise. The demand of approval was contested by the respondent, the Bank of Montreal, on several grounds. "Leaving aside everything else," the Court found as a fact that in and during the years 1927, 1928 and 1929 the authorized assignor had knowingly made to the bank three false statements of the character described in subs. (*q*) and (*r*). The Court held that these were offences under the subsections mentioned and that,

these being established, the Court under article 16, paragraph 2 (of the *Bankruptcy Act*) was bound to refuse the approval of the proposal of compromise.

In the Court of King's Bench, that judgment was upheld by the majority of the court (Létourneau and St. Germain JJ., dissenting). The matter is now before this Court by special leave.

It will be convenient to set out here the material part of section 16 of the Act:

16. The court shall, before approving the proposal, hear a report of the trustee as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

2. If the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in section one hundred and ninety-one of this Act.

As will be observed, the whole question is whether the making of the false statements by the appellant may be held to constitute the offences described in subs. (*q*) and (*r*) of sec. 191, notwithstanding that they were made before the date of the authorized assignment—in fact, the last statement was made more than nine months before, and

the other statements almost two and three years respectively before the assignment.

The acts dealt with in sec. 191 are, in terms, the acts of a person

> who has been adjudged bankrupt or in respect of whose estate a receiving order has been made or who has made an authorized assignment.

Then, subs. (*q*) and (*r*) proceed to describe the particular offences and the present tense is used.

Upon the plain meaning of the words, what is there described as an offence is the act of a person who has already been adjudged bankrupt, etc. And there is no reason, in the premises, why the court should depart from the ordinary and natural sense of the words of the enactment: *Vacher* v. *London Society of Compositors* (1). It was pointed out by the respondent that, in other subsections of s. 191, the present tense is equally used although, in terms, these subsections are made to apply to offences committed

> within six months next before the presentation of a bankruptcy petition, etc.

The obvious answer is that, in those other subsections, the times are fixed and there is an absolutely controlling context. The point is rather that: were it not for the fact that these other subsections, by their context, are expressly given a retrospective operation, the same rule would apply to them and they would have to be construed as prospective only. A retrospective effect should not be given, unless that cannot be avoided without violence to the language. (Maxwell, 7th ed., p. 186.)

The respondent urged that, on the construction put forward by the appellant, the statute would be nugatory or inoperative, in the sense that the acts contemplated could never happen after bankruptcy. But we find nothing absurd or repugnant in the notion of an adjudged bankrupt or an authorized assignor

> making a false statement in writing with intent that it shall be relied upon respecting the financial condition or means or ability to pay of himself or any other person, firm or corporation in whom or in which he is interested

or for the other purposes mentioned in subs. (*q*) and (*r*). Like the minority judges in the Court of King's Bench, we think that any of these acts may yet be attempted after

(1) [1913] A.C. 107, at 118.

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bankruptcy and in connection with the bankruptcy. Both in his factum and at the hearing, counsel for the appellant was able to suggest many instances of how an offence of the nature contemplated may be committed after bankruptcy. Section 192 of the Act, immediately following the section now in discussion, affords an illustration of the fact that Parliament had in mind the possibility of just such acts being indulged in by an undischarged bankrupt or an undischarged authorized assignor. Section 196 is another illustration.

For these reasons, we are of opinion that the Bankruptcy Court was in error when it decided that, on account of subs. (*q*) and (*r*) of sec. 191 of the *Bankruptcy Act*, it was "bound to refuse the approval of the proposal for compromise" and the appeal ought to be allowed with costs.

We do not think, however, we should go any further, and that we should either approve or disapprove the proposal which has been made on behalf of the appellant. On proceedings such as these there are considerations which make it highly desirable that the Bankruptcy Court should be allowed to exercise proper discretion. The conclusion of the minority judges in the Court of King's Bench was that the record should be sent back to the Bankruptcy Court, with the object that that Court may now adjudicate upon the other objections of the contesting respondent, as also upon the advisability of approving the proposal for compromise. That, in our view, is the wise course to follow and the record will therefore be remitted to the Bankruptcy Court for the above mentioned purposes. The appellant should have its costs both here and in the Court of Appeal. The costs of the abortive hearing should follow the event.

DUFF J.—I concur with my brother Rinfret.

The points necessarily involved in this appeal were fully discussed on the argument and the opinion of the Court in respect of them given, except that arising under the second limb of subsection 2 of section 16. That question concerns the effect of subsections (*q*) and (*r*) of section 191; and the precise point in controversy is whether or not those subsections can be brought into play where the act complained of is an act which takes place before the bankrupt has been adjudicated as such.

I am unable to accept the view that the language of those subsections, in its ordinary meaning, is ambiguous in the sense that it applies as well to such acts as to acts committed after bankruptcy. Reading it in the ordinary sense, the scope of the subsections is, in my opinion, limited to the last mentioned character of acts. It is, therefore, incumbent upon the respondent to shew, in order to make good his position (and there is no dispute about this), either, that there is some qualifying context requiring a different reading, or that the subsections read according to their ordinary sense are incapable of practical application under the law of bankruptcy.

As to the first, it is, in my opinion, too plain for argument that there is no such qualifying context.

As to the second, the respondent has quite failed to satisfy me that these subsections, upon the construction contended for by the appellant are nugatory.

The statute contemplates

> 16. Arrangements under the approval of the Court by which the debtor may carry on his business.

Section 196 shews very plainly that the conviction of the debtor, under section 191 of the Act, may have the effect of nullifying any such arrangements, and there is nothing whatever in that section to indicate that this is restricted to offences constituted by some act preceding bankruptcy.

The appeal should be allowed and there should be a declaration that the acts complained of, committed prior to the bankruptcy, are not criminal acts, within the contemplation of section 191; and the case should be referred back to the Court in Bankruptcy to be dealt with accordingly.

Appeal allowed with costs.

Solicitors for the appellant: *Hyde, Ahern, Perron, Puddicombe & Smith.*

Solicitors for the respondent: *Meredith, Holden, Heward & Holden.*