IN RE N. H. GILBERT

DAME MARIE BOIVIN.....APPELLANT;

AND

LARUE, TRUDEL & PICHE.....RESPONDENTS.

1925
*Feb. 21.

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

Appeal—Jurisdiction—Bankruptcy—Leave to appeal—Delay—Enlargement—Filing of petition in the registrar's office—Sufficiency—Bankruptcy Act (D) 9-10 Geo. V, c. 36, ss. 63, 66, 74 and rule 72—Supreme Court Act, R.S.C. (1906), c. 139, rule 108.

A judge of the Supreme Court of Canada cannot, under rule 108 of that court, enlarge or abridge the statutory delay provided by rule 72 of

*PRESENT:—Mr. Justice Mignault in chambers.

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the Bankruptcy Act for making "an application for special leave to appeal" to this court which rule 72 is not inconsistent with the provisons of the Act (s. 74).

The filing of a petition for leave to appeal in the registrar's office within the delay will not suffice to meet the requirements of rule 72.

MOTION for leave to appeal to this court by the appellant in bankruptcy proceedings.

The facts are stated in the judgment of Mr. Justice Mignault.

A. Langlais K.C. and *Paul Leduc* for the motion.

Gagné contra.

MIGNAULT J.—The appellant moves before me for leave to appeal from a judgment of the Quebec Court of King's Bench of the 12th January, 1925, dismissing her appeal from a judgment of the Superior Court, sitting in bankruptcy, which condemned her to pay to the respondents, in their quality of trustee to the insolvency, $23,555, for money she had received from the insolvent, her husband, and also to return to the insolvent estate certain movable effects which were in the house occupied by the consorts.

A motion was also presented to me by the appellant to enlarge the time for applying to a judge of this court for leave to appeal, which time is fixed by rule 72 of the general rules under the Bankruptcy Act. The motion for leave to appeal was filed in the registrar's office on February 10 within thirty days after the judgment of the Court of King's Bench, with a notice to the respondent that it would be presented on the 19th of February. By consent of counsel, this latter motion was presented to me on the 20th of February to avail as if presented on the 19th. It is however obvious that it is outside the time prescribed by rule 72.

At the argument on both motions, an affidavit was filed on behalf of the appellant alleging that the trustee had not proceeded against her before the Superior Court of the province of Quebec, the only court having jurisdiction in reference to civil rights of persons not under process of liquidation; that the trustee proceeded in the court of bankruptcy not with a writ of summons but with a petition, and that she had been dragged before the court of bankruptcy and deprived of her natural jurisdiction and

of her right to inscribe this case before the Supreme Court of Canada *de plano* and without leave to appeal; that she was in no way a party to the liquidation of the insolvent; that this question of jurisdiction was raised before the Superior Court and before the Court of King's Bench and was decided contrary to her contentions; that the judgment condemning her had interpreted Art. 1265 C.C. in a way which she contends is contrary to its meaning thus affecting her civil rights; that a federal law cannot deprive any citizen of the province of Quebec of rights granted him by the *British North America Act* and that the decision of this court will be of general interest to all the citizens of that province.

The first point to be determined is whether this application for leave to appeal is made within the time prescribed by bankruptcy rule 72. It is to be observed that these rules, provided they are not inconsistent with the terms of *The Bankruptcy Act,* must be judicially noticed and have effect as if enacted by the Act (s. 66 of *The Bankruptcy Act*).

Paragraph 1 of rule 72 is in the following terms:

> An application for special leave to appeal from a decision of the appeal court and to fix the security for costs, if any, shall be made to a judge of the Supreme Court of Canada within thirty days after the pronouncing of the decision complained of and notice of such application shall be served on the other party at least fourteen days before the hearing thereof.

This rule is not inconsistent with the terms of the *Bankruptcy Act* for this Act merely provides (s. 74) that the decision of the appeal court upon an appeal to it shall be final and conclusive unless special leave to appeal therefrom to the Supreme Court of Canada is obtained from a judge of that court. The time for making application for leave is not determined by the Act and therefore could be fixed by the general rules adopted under s. 66.

The appellant relies on rule 108 of the Supreme Court Rules which states that

> in any appeal or other proceeding the court or a judge in chambers may by order, enlarge or abridge the time for doing any act, or taking any proceeding upon such (if any) terms as the justice of this case may require, and such order may be granted, although the application for the same is not made until after the expiration of the time appointed or allowed.

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I am however of opinion that the time fixed by bankruptcy rule 72 for applying for leave to appeal goes to the jurisdiction of the judge to whom this application is made and who here acts as *persona designata*. Supreme Court rule 108 applies to delays of procedure in appeals already before the court and at all events could not prevail against a statutory delay such as that provided by bankruptcy rule 72.

It is true that the petition for leave was filed in the registrar's office within the thirty days, but rule 72 requires that the application for leave to appeal shall be made to a judge of this court within thirty days after the pronouncing of the judgment complained of. This has not been done and I am now without jurisdiction to grant leave.

In my opinion therefore the application is made too late and cannot be entertained.

I may add that I am also of opinion that the grounds of appeal alleged in the appellant's affidavit would not justify me in granting leave. The appellant was not dragged before a court which had no jurisdiction over her. The so-called court of bankruptcy is merely the Superior Court of the province of Quebec exercising jurisdiction under a statute which applies throughout Canada (s. 63 of the *Bankruptcy Act* as amended in 1922 by c. 8 of the statutes of that year, s. 8). The right of appeal from the Superior Court is restricted in bankruptcy matters by the *Bankruptcy Act*, as it is restricted in many other matters by provincial statutes. The circumstance that the appellant might have had a right of appeal *de plano* if the proceedings had begun by a writ instead of a petition—and no opinion is expressed as to such right of appeal—is certainly no reason to grant her in these proceedings a right of appeal to which she is not entitled under the statute and the rules.

The two motions should be dismissed with costs.

Motions dismissed with costs.