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*Oct. 29
*Nov. 26

I. SIMCOVITCH AND H. SIMCOVITCH...APPELLANTS;

AND

HIS MAJESTY THE KING.....RESPONDENT.

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

Criminal law—Bankruptcy—Concealing or removing property of bankrupt—Offences enacted by section 191 of the Bankruptcy Act, R.S.C. [1927] c. 11—Persons other than bankrupt convicted—Conviction valid—Criminal Code R.S.C. [1927], c. 36, s. 69—Interpretation Act, R.S.C. [1927], c. 1, s. 28.

The appellants, one being the manager and the other an employee of a bankrupt company, were convicted for having concealed and fraudulently removed goods belonging to the bankrupt, contrary to section 191 (d and e) of the *Bankruptcy Act*. The ground of appeal was that no other person than the bankrupt could be indicted for any offence under that section.

Held, affirming that conviction, that the offences created by section 191 of the *Bankruptcy Act* were offences within section 69 of the *Criminal Code*; or, to put it alternatively, by force of section 69, or, by force of the enactments of section 28 of the *Interpretation Act,* sec-

*PRESENT:—Duff C.J. and Cannon, Crocket and Hughes JJ. and St.-Germain J. *ad hoc.*

(3) (1890) 18 S.C.R. 222.

(4) [1924] 1 D.L.R. 1140.

tion 69 is to be read as if the offences created by section 191 were specifically named therein.—In other words, section 191 must be read and construed on the footing that the provisions of the *Criminal Code* should apply to offences created by that section, as there is nothing in the provisions of that section necessarily or reasonably implying the exclusion of section 69 of the *Criminal Code*. Crocket J. dissenting.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec, sustaining the conviction of the appellants, on their trial before Cusson J., president of the Court of Sessions of the Peace, on charges of having concealed and removed property of a bankrupt, under s. 191 of the *Bankruptcy Act*. The ground of appeal, and the material facts of the case bearing on the point dealt with by the Court are stated in the judgments now reported. The appeal was dismissed; and the conviction was affirmed.

Phillippe Monette K.C. for the appellant.

Ernest Bertrand K.C. for the respondent.

DUFF C.J.—This appeal raises a question as to the sufficiency of an indictment in these terms:

Irving Simcovitch et Harry Simcovitch, en la cité de Montréal, en rapport avec la compagnie "Paris Shoe Shoppe", magasin de chaussures dont Cecilia Simcovitch était propriétaire, et dont le dit Irving Simcovitch était le gérant et l'autre dit accusé était l'employé et complice avant le fait, la dite compagnie ayant été déclarée en faillite, le ou vers le 7 décembre, mil-neuf-cent-trente-deux, ont commis les actes criminels de faillite suivants:

(*d*) Dans les six mois qui ont précédé la dite faillite ou après ils ont caché une partie des biens de la dite faillite pour une valeur au delà $50 et ils ont caché des comptes recevables de la dite faillite;

(*e*) Durant la même période de temps, ils ont frauduleusement enlevé une partie des biens de la dite faillite pour une valeur d'au delà $50, à savoir; pour une valeur de $5,000.

S.R.C. *Loi des faillites*, c. 11, art. 191, d et e.

The sole point in controversy before this court is a point raised by the dissenting judgment of Mr. Justice St. Jacques, which is stated in the formal judgment of the Court of King's Bench in these words,

* * * because, according to section 191 of the *Bankruptcy Act*, no other than the bankrupt can be indicted for an offence under that article.

The argument presented is substantially as follows: Section 191 declares that any person who has been adjudged a bankrupt, or in respect of whose estate a receiving order has been made, or who has made an authorized assignment

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under this Act, shall in each of the cases following be guilty of an indictable offence.

Neither of the appellants falls within the description of the classes of persons to whom, in the circumstances mentioned in the subsections, the indictable offences created by the section are imputed by the statute. It follows, it is said, that the appellants cannot be convicted of such an offence.

The validity of this contention turns upon the proper answer to the question whether the offences created by section 191 are offences within section 69 of the *Criminal Code;* or, to put it alternatively, whether, by force of section 69, or, by force of the enactments of the *Interpretation Act,* section 69 is to be read as if the offences created by section 191 were specifically named therein.

The *Interpretation Act* (R.S.C. 1927, c. 1, s. 28) enacts that,

> Every Act shall be read and construed as if any offence for which the offender may be
>
> (*a*) prosecuted by indictment, howsoever such offence may be therein described or referred to, were described or referred to as an indictable offence
>
> * * *
>
> and all provisions of the *Criminal Code* relating to indictable offences, or offences as the case may be, shall apply to every such offence.

The language of this enactment is quite plain and unqualified.

I have no doubt that it applies to offences created by section 191. First of all, there is nothing in section 28 which is (in the words of section 2) "inconsistent with the object or scope of" the *Bankruptcy Act;* or, which (in the words of that section) "could give any word, expression or clause," in section 191, "an interpretation inconsistent with its context." The circumstance that the acts enumerated in section 191 are limited to acts committed by the classes of persons described in that section is in no way inconsistent with the proposition that the offences defined by the section are indictable offences, as section 28 declares, or that to them, as indictable offences, the provisions of the *Criminal Code* apply. With great respect, I cannot give my adherence to the view that in sections 191 to 201 of the *Bankruptcy Act* there is sufficient evidence that these sections were intended to constitute a code, having an operation which excludes the *Criminal Code.* True it is, section 28 lays down a rule of interpretation, and neces-

sarily, therefore, the provisions of the *Criminal Code* must give way to the enactments of the statute to be interpreted, to the extent to which, by express words, or by necessary or reasonable implication, such statute evinces an intention to exclude those provisions. But, subject to this qualification, section 191 must be read and construed on the footing that the provisions of the *Criminal Code* apply to the offences created by it, and, in particular, that the provisions of section 69 are to be construed as if such offences were specifically nominated in that section.

Now, the effect of section 69 in this view, is simply this: persons aiding or abetting the bankrupt or other person, whose acts are embraced within the enactment, are guilty of the offences created by the enactment. I see nothing here inconsistent with section 191 read by itself alone. The bankrupt himself is not affected by this reading of the provisions of section 69; as regards him, section 191 takes full and complete effect according to its terms. On this construction of section 69, we have a substantive enactment, co-ordinate with section 191, by which, persons aiding, abetting, counselling or procuring, are put upon the same plane as the bankrupt, and become indictable and punishable for the offence in relation to which they have so acted.

There is, therefore, nothing in the provisions of section 191 necessarily or reasonably implying the exclusion of section 69.

Section 201 cannot, I think, be properly read as evidencing an intention on the part of the legislature to exclude the operation of section 69. It is limited to the case of offences committed by incorporated companies, and it may well be that the framers of the Act desired to provide against difficulties that might conceivably arise where the bankrupt is a corporation. See *King* v. *Daily Mirror* (1).

On the other hand, I am unable to agree with the argument advanced on behalf of the Crown, that section 198 affords an answer to the contention of the appellants. Section 198 assumes that persons other than the bankrupt may be guilty of an offence under the Act (for example, a creditor or person claiming to be a creditor who has committed an offence under section 194). Section 198 does

(1) [1922] 2 K.B. 530.

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not indicate that any person other than the classes of persons enumerated in section 191 can be guilty of an offence created by that section.

The appeal should be dismissed.

CANNON J.—The appellants were convicted under the following indictment:

Irving Simcovitch et Harry Simcovitch, en la cité de Montréal, en rapport avec la compagnie "Paris Shoe Shoppe", magasin de chaussures dont Cecilia Simcovitch était propriétaire, et dont le dit Irving Simcovitch était le gérant et l'autre dit accusé était l'employé et complice avant le fait, la dite compagnie ayant été déclarée en faillite, le ou vers le 7 faillite suivants:

(*d*) Dans les six mois qui ont précédé la dite faillite ou après ils ont caché une partie des biens de la dite faillite pour une valeur au delà $50 et ils ont caché des comptes recevables de la dite faillite;

(*e*) Durant la même période de temps, ils ont frauduleusement enlevé une partie des biens de la dite faillite pour une valeur d'au delà $50, à savoir: pour une valeur de $5,000.

S.R.C. Loi des faillites, c. 11, art. 191, d et e.

The appeal to the Court of King's Bench on the facts and on points of law was dismissed, Mr. Justice St-Jacques dissenting on a point of law which is now submitted to our consideration.

According to the formal judgment of the Court of King's Bench, the learned justice would have quashed the conviction

because, according to 191 of *Bankruptcy Act*, no other than the bankrupt can be indicted for an offence under that article; and because the trustee, by himself or by a representative, cannot lodge a complaint against another than the bankrupt, for a bankruptcy offence, unless he follows the enactment of 195 and 198 of the Act; and this procedure was not followed.

As the second reason of the dissenting judge was not mentioned amongst the grounds of appeal, the appellants very properly state in their factum that they cannot now support it before this court. We, therefore, have to decide only whether or not none but the bankrupt can be indicted for an offence under 191 of the *Bankruptcy Act*.

The learned dissenting judge says in his reasons for judgment:

La question se pose comme suit:

Les offenses, ou les séries d'offenses, que l'article 191 de la *Loi de faillite* édicte, peuvent-elles être mises à la charge d'autres personnes que du failli lui-même? Et subsidiairement, peut-on recourir à l'article 69 de la *Loi criminelle* pour compléter l'article 191 de la *Loi de faillite*, et par application de cet article 69 du *Code criminel*, mettre en accusation d'autres personnes que le failli lui-même pour la commission de quel-

qu'une ou de quelques-unes des offenses édictées par l'article 191 de la *Loi de faillite*?

Il me paraît certain que le parlement fédéral dans l'exercice des pouvoirs que lui donne la constitution de notre pays, a voulu, en légiférant au sujet des faillites, créer un mécanisme complet, tant au point de vue de la procédure civile que de la procédure criminelle.

Il a défini, entre autres, dans les articles 191, 195, 198 et 201, quels sont les actes qui, sans être criminels en eux-mêmes, le deviennent eu égard à la faillite et s'ils sont commis dans les délais et les conditions posés par la *Loi de faillite*. Par exemple, si un commerçant enlève de son établissement de commerce une certaine quantité de marchandises pour la porter ailleurs, cet acte n'est pas en soi un crime; mais cet enlèvement devient une offense criminelle punissable, si l'enlèvement est fait dans les six mois qui précèdent la faillite ou après la présentation d'une requête de faillite avec l'intention de causer du préjudice aux créanciers, c'est-à-dire avec une intention frauduleuse.

Cette offense créée par le statut des faillites est punissable par une amende n'excédant pas $1,000, ou un terme d'emprisonnement n'excédant pas deux années, ou, en même temps, l'amende et l'emprisonnement.

L'article dit que " toute personne (any person) qui a été déclarée en faillite " etc, sera, dans chacun des cas énumérés à l'article, coupable d'une offense " indictable " etc.

On sait que l'expression " personne " employée dans cette loi de faillite s'applique aussi bien aux corporations qu'aux individus.

Et pourtant, afin de donner une sanction efficace à la loi de faillite, le législateur a disposé dans l'article 201 que lorsqu'une offense, prévue par la loi de faillite, a été commise par une compagnie incorporée, chaque officier, directeur ou agent de la compagnie qui a participé dans la commission de l'offense, sera passible de la même pénalité que la compagnie elle-même et tout comme s'il avait commis cette offense personnellement.

A première vue, il semblerait étrange que les termes généraux employés dans l'article 191 eussent été trouvés insuffisants par le législateur pour permettre d'atteindre toute personne, autre que le failli, qui aurait commis une offense de faillite.

Je crois que l'article 191 vise le failli lui-même et nul autre.

Si le failli a commis l'une queconque des offenses édictées par cet article, il peut être recherché en justice criminelle et condamné à la punition prévue par la loi.

Dans le cas actuel, Cécilia Simcovitch déclarée en faillite et ayant refusé de signer le bilan préparé par les syndics, il y a contre elle de fortes présomptions qu'elle n'ignorait pas les actes frauduleux commis par son gérant, à la veille même de la faillite. Elle aurait pu, je crois, être atteinte par les dispositions de l'article 191.

Le législateur n'a pas voulu, toutefois, que les personnes qui ont pu participer, soit directement, soit indirectement, à la fraude ou aux actes frauduleux que la loi de faillite punit, échappent à la justice.

En vertu de l'article 195, la cour des faillites peut ordonner la poursuite de telle personne pour de telles offenses.

The Crown contends that section 191 of the *Bankruptcy Act* created an indictable offence for any person who has been adjudged bankrupt, or in respect of whom a receiving order has been made, in each of the cases therein enumer-

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ated. Once this offence has been committed, the *Interpretation Act* (R.S.C., 1927, c. 1, s. 28) applies. It reads as follows:

> Every Act (of the Parliament of Canada) *shall be read and construed* as if any offence for which the offender may be,—
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> (*a*) prosecuted by indictment, howsoever such offence may be therein described or referred were described or referred to as an indictable offence; and
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> (*b*) punishable on summary conviction, were described or referred to as an offence; and,
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> *all* provisions of the *Criminal Code relating to indictable offences,* or offences, as the case may be, *shall apply to every such offence.*

Therefore, says the Crown, the *Bankurptcy Act* not excluding this rule of interpretation, the provisions of the *Criminal Code,* including section 69, apply to this particular offence.

The Crown further contends that the appellants, having aided and abetted the bankrupt Cecilia Simcovitch in the commission of this indictable offence, were liable to arrest and conviction, as they have been in this case. Cecilia Simcovitch, the bankrupt, could have have been prosecuted together with her brothers and could even to-day be prosecuted for the said offence.

First of all, it must be noticed that, as pointed out by Mr. Justice Walsh in the majority judgment of the Court of King's Bench, the legislators provided in section 198 of the *Bankruptcy Act* that

> where there is ground to believe that the bankrupt *or any other person* has been guilty of any offence under this Act, the Court may commit the bankrupt *or such other person* for trial.

This section is designed to enable the court to commit the bankrupt or any other person for trial without the necessity of a preliminary inquiry before a magistrate; but it does not exclude the ordinary procedure which has been adopted in the present case. The facts show clearly that the offence was committed with the aid of the appellants. Can they escape punishment on the technical ground that the goods that were concealed and carried away were not their goods, but those of their bankrupt sister?

A somewhat similar question was raised in the case of *The King v. Kehr* (No. 3) (1), in which

> it was urged on behalf of defendant that the facts did not disclose an offence by the defendant, nor a lending by the company, of whose branch office he was in charge as manager; that the offence declared by the *Money Lenders Act* being purely statutory and its prohibition not being

(1) (1910) 18 Can. Cr. Cas. 202.

general as to all persons, but limited to the class specially named therein, i.e. "money lenders," there could be no conviction for aiding and abetting, (with the possible exception of another money lender); that the class limitation of the statute excluded the operation of sec. 69 of the *Criminal Code* (1906), under ss. 2 and 28 of the *Interpretation Act*, R.S.C. (1906), c. 1.

The judgment of the Court of Appeal of Ontario was delivered by Meredith J., who said in part:

I am also unable to see why one who is not a money lender, within the meaning of the Act, may not be an aider and abettor of one who is, in an infraction of its provisions.

It does not follow, from the fact that the person who aids in the commission of a crime is, by the *Criminal Code*, declared to be a party to and guilty of the offence, that one who could not alone have committed it, cannot be convicted. One may be physically incapable of committing a crime and yet guilty of it, through the act of another who is capable and whose act is the act of both; and why not equally so where there is legal incapacity?

That which the accused did would have been none the more harmful, none the more against the object of the enactment, if the accused, as well as his employer, had been a money lender.

Under section 69 of the Criminal Code,

Every one *is a party to* and guilty of an offence who

(*a*) actually commits it;

(*b*) does or omits an act for the purpose of aiding any person to commit the offence;

(*c*) abets any person in commission of the offence; or

(*d*) counsels or procures any person to commit the offence.

This has always been given this meaning: If a person assists another in the commission of an offence, he is responsible as though he had committed it himself. By aiding or abetting in the commission of an offence, he becomes a party to and guilty of an offence. He does become a party principal and there appears to be no reason why he should not be indicted or charged as principal under the Code.

See: *Rémillard* v. *The King* (1) and *Rex* v. *Daily Mirror* (2).

I, therefore, reach the conclusion that the rather technical point raised before us cannot prevail in face of the provisions which are intimately connected of the *Bankruptcy Act*, the *Interpretation Act* and the *Criminal Code*. The evident intention of Parliament was that these three statutes should complete and aid one another in order to bring to justice those who aided or abetted a bankrupt to commit offences to defraud his creditors.

I would, therefore, dismiss the appeal.

(1) (1912) 62 Can. S.C.R. 21. (2) [1922] 2 K.B. 530, at 542.

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CROCKET J. (dissenting): There is no doubt that the acts, with which the appellants were charged as offences against clauses (*d*) and (*e*) of s. 191 of the *Bankruptcy Act*, are declared to be offences by that section only when committed by 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 under that Act. The learned counsel for the Crown conceded that the conviction could not be maintained against either appellant under that section alone, inasmuch as neither was a person answering the specific description stated in its opening words. Seeking for other provisions with which s. 191 might be read to extend its application to any person, whether the bankrupt or not, he argued in the first place that s. 198 of the *Bankruptcy Act* itself had this effect. This argument, however, is not admissible for the reason pointed out in the judgment of the learned Chief Justice, viz: that the language relied upon in the latter section comprehends not only the offences described in s. 191 but other offences described in other sections of the Act as well, which might be committed by other persons than the bankrupt himself.

The real, substantial contention which has been advanced in support of the conviction is that s. 191 of the *Bankruptcy Act* must be read together with s. 69 of the *Criminal Code* in virtue of the provisions of s. 28 of the general *Interpretation Act*, R.S.C., 1927, c. 1, and that s. 69 of the *Criminal Code* makes any one, who abets the bankrupt in the commission of the offence, or who does or omits an act for the purpose of aiding the bankrupt to commit the offence, liable to prosecution for committing the offence described in s. 191 of the Bankruptcy Act as well as the bankrupt himself.

Singularly enough, therefore, there is no difficulty in the interpretation of s. 191 of the *Bankruptcy Act* itself—the enactment which creates and defines the alleged offence of which the appellants have been convicted. Its language is as unequivocal as any language could well be. The difficulty is encountered in the interpretation of s. 28 of the *Interpretation Act*, through which it is sought to read s. 69 of the *Criminal Code* into the *Bankruptcy Act* for the purpose of reaching the appellants, not as offenders who could themselves have committed the described offence, but as

offenders, who might nevertheless be convicted of that offence as accessories.

I regret that after much anxious reflection I find myself quite unable to adopt the view of the majority of the judges of the Court of King's Bench of the province of Quebec and of my brethren in this Court, that s. 28 of the *Interpretation Act* brings into operation, as regards the particular offences created by s. 191 of the *Bankruptcy Act,* the provisions of s. 69 of the Criminal Code, so as to render a person liable to prosecution and punishment therefor, who could not himself be guilty of the offence as created and defined in the particular Act.

As I read s. 28 of the *Interpretation Act,* it does not purport to do any more than to enact that whenever any statute of the Parliament of Canada creates an offence, for which any person may be prosecuted by indictment or liable to punishment on summary conviction, all the provisions of the *Criminal Code* relating to indictable offences, or offences, as the case may be, shall apply to *such* offence. This section itself prescribes a limitation to the words " any offence " in the same way as s. 191 of the *Bankruptcy Act* prescribes a limitation to the words " any person." It qualifies the words " any offence " by the immediate addition of the words " for which the offender may be prosecuted by indictment " or is " punishable on summary conviction," as s. 191 of the *Bankruptcy Act* qualifies the words " any person " by the words " who has been adjudged bankrupt," etc.

It is in my judgment only to an offence, which has been created or defined by the particular statute, to which the designated provisions of the *Criminal Code* are intended to be applied, not to an act, which itself has not been declared by the statute to be an offence at all, and that offence must be one, for which *the offender* within the contemplation of the particular statute may be prosecuted by indictment or is liable to punishment on summary conviction.

Once you have an offence created by the *Bankruptcy Act* or any other Act of the Parliament of Canada, of which any person, whether adjudged a bankrupt or not, *can* be guilty and for which any person *can* be prosecuted by indictment or is liable to punishment on summary conviction, then I have no doubt that s. 28 of the *Interpretation Act*

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would operate to apply all the provisions of the *Criminal Code* relating to indictable offences, or offences, to such an offence in the same manner and with the same effect as they would apply to all offences defined by the *Criminal Code* itself. These provisions of the *Criminal Code* would then apply to such an offence without in any manner altering the effect of the special enactment by which the offence is created.

If, however, s. 28 of the *Interpretation Act* is construed in the sense contended for by the Crown we are at once confronted by two contradictory enactments: one—the special enactment, providing that only a person who answers a specific description, can commit the offence, which it has created; and the other, s. 69 of the *Criminal Code,* providing that anybody, whether he answers the specific description or not, can commit it. If no one but the bankrupt is indictable for any of the offences described in the special enactment, when that enactment is read by itself, as the Crown concedes, and anybody is indictable for any of them, whether he be the bankrupt or not, if the provisions of s. 28 of the *Interpretation Act* and s. 69 of the *Criminal Code* are read together with it, as the Crown contends they ought to be, it necessarily follows, not only that the intendment of the one enactment is radically different from that of the other, but that s. 69 of the *Criminal Code* is the governing enactment. Yet s. 2 of the *Interpretation Act* itself, the controlling section of that statute, clearly recognizes that it is the intention of the particular enactment which must always prevail in the event of there being any inconsistency or repugnance between the particular enactment and any provision of the *Interpretation Act.* S. 2 reads as follows:

> Every provision of this Act shall extend and apply to every Act of the Parliament of Canada, now or hereafter passed, except in so far as any such provision,—
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> (*a*) is inconsistent with the intent or object of such Act; or
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> (*b*) would give to any word, expression or clause of any such Act an interpretation inconsistent with the context; or
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> (*c*) is in any such Act declared not applicable thereto.

In my opinion s. 28 of the *Interpretation Act* and s. 69 of the *Criminal Code* can be read into s. 191 of the *Bankruptcy Act* only in so far as their provisions can consistently be read with those of s. 191. If its language is clear and free from all ambiguity in constituting any of the acts

described in its various clauses as indictable offences only when they are committed by a person who answers the specific description stated in its opening and governing words, and there is no other provision in the *Bankruptcy Act* to the contrary, it seems to me that it must be taken that it was not intended to incorporate in the Act any provision of the *Interpretation Act,* or of the *Criminal Code,* which would give to that enactment any other effect than that which its own language so clearly connotes.

With all deference to those who have reached an opposite conclusion, I think the ground of Mr. Justice St. Jacques' dissent in the Court of King's Bench was well taken. I would adopt his judgment, allow the appeal to this Court and quash the conviction as one which discloses no offence against s. 191 of the *Bankruptcy Act.*

HUGHES J.—The appellants were tried and convicted in the Sessions of the Peace at Montreal on an indictment the material parts of which are as follows:

Irving Simcovitch et Harry Simcovitch, en la cité de Montréal, en rapport avec la compagnie "Paris Shoe Shoppe", magasin de chaussures dont Cecilia Simcovitch était propriétaire, et dont le dit Irving Simcovitch était le gérant et l'autre dit accusé était l'employé et complice avant le fait, la dite compagnie ayant été déclarée en faillite, le ou vers le sept décembre, mil-neuf-cent-trente-deux, ont commis les actes criminels de faillite suivants:

(*d*) Dans les six mois qui ont précédé la dite faillite ou après ils ont caché une partie des biens de la dite faillite pour une valeur au delà $50 et ils ont caché des comptes recevables de la dite faillite;

(*e*) Durant le même période de temps, ils ont frauduleusement enlevé une partie des biens de la dite faillite pour une valeur d'au delà $50, à savoir: pour une valeur de $5,000.

S.R.C. *Loi des faillites,* c. 11, art. 191, d et e.

The accused appealed to the Court of King's Bench, appeal side, and the appeal was dismissed with costs, Mr. Justice St. Jacques dissenting. The grounds of dissent of the learned judge are set forth in the formal judgment of the Court of King's Bench, appeal side, as follows:

The Honourable Mr. Justice St. Jacques dissenting, because, according to 191 of *Bankruptcy Act,* no other than the bankrupt can be indicted for an offence under that article; and because the trustee, by himself or by a representative, cannot lodge a complaint against another than the bankrupt, for a bankruptcy offence, unless he follows the enactments of 195 and 198 of the Act; and this procedure was not followed.

The appellants concede that the second reason for dissent of Mr. Justice St. Jacques was not mentioned in the notice of appeal as a ground of appeal and that it cannot now be urged before this Court.

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In his notes Mr. Justice St. Jacques said:—

Je crois que l'article 191 vise le failli lui-même et nul autre.

The Crown, however, submits that section 69 of the *Criminal Code* is made applicable by the *Interpretation Act*, R.S.C. 1927, c. 1, s. 28, which reads as follows:

28. Every Act shall be read and construed as if any offence for which the offender may be

(*a*) prosecuted by indictment, howsoever such offence may be therein described or referred to, were described or referred to as an indictable offence;

(*b*) punishable on summary conviction, were described or referred to as an offence; and

all provisions of the *Criminal Code* relating to indictable offences, or or offences, as the case may be, shall apply to every such offence.

I am of opinion that section 69 of the *Criminal Code* is applicable.

The appeal should be dismissed.

ST. GERMAIN J. (*ad hoc*): I concur in the dismissal of the appeal.

Appeal dismissed.