

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Alexander F. C. Ross, Curator to the Insolvent Estate of John A. Bulmer & Co. v. Beaudry and others, from the Court of King's Bench for the Province of Quebec (Appeal side) ; delivered the 2nd August 1905.*

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Present at the Hearing :

LORD DAVEY.

LORD JAMES OF HEREFORD.

LORD ROBERTSON.

SIR ANDREW SCOBLE.

*[Delivered by Lord Robertson.]*

The Appellant is Curator of the insolvent estate of John A. Bulmer & Co., lumber merchants in Montreal, and the Respondents were lessors of property occupied by that firm for the purposes of its business. On 19th May 1899 Bulmer & Co. made a judicial abandonment of their property for the benefit of their creditors under Article 853 of the Code of Civil Procedure, and at that date they were owing the Respondents rent for several years. The Respondents claimed for the whole of these arrears as privileged creditors; but the Appellant gave them preference only for two years' rent, ranking them as ordinary creditors for the balance. The ground of the Appellant's decision is the simple one, that, in limiting the landlord's privilege to two years, he obeyed the section of the Civil Code governing the liquidation of property abandoned

by insolvent traders at the date of Bulmers' abandonment of their property. The contention of the Respondents, on the other hand, is that the measure of their preference must be held to have been fixed by the law as it existed at the date of the leases under which the property was held, and that the Code as it stood then made no limitation to two years' rent, the rule founded on by the Appellant having been introduced into the Code between the dates of the leases and the date of the abandonment of their property by Bulmers. The question in dispute was therefore a short and distinct one.

The Appellant's decision that the Respondents were entitled to privilege only for two years' rent was given on 5th February 1902. The Respondents appealed to the Superior Court, and judgment was given by Mr. Justice Archibald, on 5th May 1902, dismissing the Appeal. Appeal having been taken to the Court of King's Bench, the judgment of Mr. Justice Archibald was reversed on 20th January 1903.

The sole question being whether the rights of the Respondents are measured by the statute law as it stood when the leases were granted, or as it stood when the insolvent tenants abandoned their property, it is convenient to set out the two contrasted enactments. At the date of the leases, Article 2005 of the Code was as follows :—

“2005. The privilege of the lessor extends to all rent that is due or to become due, under a lease in authentic form.

“But in the case of the liquidation of property abandoned by an insolvent trader who has made an abandonment in favour of his creditors, the lessor's privilege is restricted to the whole of the rent due and to become due during the current year, if there remain more than four months to complete the year; and if there remain less than four months to complete the year, to the whole of the rent due and to the rent becoming due during the current year and the whole of the following year.

“If the lease be not in authentic form, the privilege can only be claimed for three overdue instalments and for the remainder of the current year.”

The same Article, as amended by 61 Vict. cap. 46, now reads as follows:—

“2005. The privilege of the lessor extends to all rent that is due or to become due under a lease in authentic form.

“But in the case of the liquidation of property abandoned by an insolvent trader who has made an abandonment in favour of his creditors the lessor’s privilege is restricted to twelve months’ rent due and to rent to become due during the current year if there remain more than four months to complete the year; if there remain less than four months to complete the year, to the twelve months’ rent due and to the rent of the current year and the whole of the following year.

“If the lease be not in authentic form, the privilege can only be claimed for three overdue instalments and for the remainder of the current year.”

A comparison between the two enactments shows that the parties are right in saying that the soundness of the judgment now under review depends solely on the question which of the two forms of Article 2005 is applicable to the case.

The decision of the Court of King’s Bench purports to proceed on the well-established principle that legislation is presumed not to be retroactive in its effect on existing rights; and this principle is enforced and elucidated at length in the judgment. In applying this doctrine, however, the learned Judges do not, as it appears to their Lordships, sufficiently advert to the question, to what subject-matter does the new paragraph in Article 2005 primarily relate? The new enactment is directed to the regulation of the liquidation of traders’ abandoned properties and the relations arising in liquidation between the lessor of properties and the general body of creditors. Accordingly, *prima facie*, the true application of the doctrine against the retroaction of laws is to confine this particular enactment to liquidations arising after the amendment of the law. The question whether there shall be a further limitation of the enactment by excluding lessors whose leases are dated prior to the amending Act stands in a very different position, and the intention of

the legislature must be derived, as in every case, from the language and the subject-matter of the enactment. Now, it is to be observed that the right now insisted for by the landlord was derived not from the terms of the lease, but from the general law as expressed in the Code. In the earlier form of Article 2005 (as it stood at the date of the leases), there was one regulation of the effect of abandonment by a trader on the relative position of creditors; in the new form of the Article there is a different one. Now, it is extremely difficult to suppose that it was intended that what is expressed as an uniform rule for liquidation should be invaded by the varying exceptions which would result from the Respondent's argument, without express authority by the Legislature. All regulations about the ranking of creditors in liquidation necessarily affect existing rights, and some one or other of the competitors loses thereby. Accordingly, if in an enactment of this kind it were intended to exclude from its application persons in the position of the Respondents, some specific enactment would be made. The circumstance that the change in the law is brought about in the form of an alteration in a Code, which is supposed to express the existing and living law in its entirety, does not, it is true, affect the principle applicable, but it vividly illustrates the need of some express exception, where it is intended to protect in the future one class of rights from the mass affected by general words. Their Lordships do not think that the presumption against retroaction compels the conclusion that it is to be pursued through all the consequences of the main enactment, and they deem its true application in the present instance to be merely to limit Article 2005 to abandonments occurring after it came in force.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be allowed, the Judgment of the Court of King's Bench reversed, with costs, and the Judgment of Mr. Justice Archibald restored. The Respondents will pay the costs of this Appeal.

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