damaged tissue) may alter the curvature of the spine. *This is an important sign and may be the only sign of injury.*

## PATHOLOGICAL FRACTURES

These fractures are fractures of bones, weakened by a disease process. The weakening may be local as in cysts or tumors or general, such as aging and general bone disease.

In Marie Strumpells disease (ankylosing spondylitis) the joints of the spine fuse together with the result that the spine may fracture like a long bone.

## CONCLUSION

It should be re-emphasized in conclusion that there may or may not be direct x-ray evidence of injury but that spasm and associated clincal findings may be of great importance.

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## APPEAL TO SUPREME COURT OF CANADA IN BANKRUPTCY MATTERS

It quite frequently happens that a legal question of some nicety, particularly on procedural matters, will be decided in an application or notice of motion. Since matters of this sort are very often concluded from the bench without written reasons, they go unreported and the practitioner goes unenlightened. In a recent application to quash, the Supreme Court of Canada dealt with the right of appeal in bankruptcy matters.

In ordinary civil matters, the appeal lies by right so long as the amount in controversy exceeds $10,000.[1] Under the Bankruptcy Act,[2] however, special leave is required to appeal to the Supreme Court. Section 151 reads:

> "The decision of the Court of Appeal upon any appeal is final and conclusive unless special leave to appeal therefrom to the Supreme Court of Canada is obtained from a Judge of that court."

1 Supreme Court Act, R.S.C., 1951, c. 259, s. 36.
2 R.S.C., 1951, c. 14.

The applicability of Section 151 is a question of some importance to a would-be appellant, particularly since special leave to appeal will be granted only if the appeal involves a question of law of general public importance[3]. If Section 151 applies, the appellant must overcome a substantial additional hurdle, he must persuade a judge of the Supreme Court that his appeal involves an important point of law and not just a lot of money.

There are many ways in which the Bankruptcy Act can relate to a civil action; to what degree must it impinge before Section 151 comes into force? Is it enough that a bankrupt and his trustee are involved in the action? Must the action be brought by or against the trustee? Is it enough that any provisions of the Bankruptcy Act itself are involved?

In the case of *New Regina Trading Co. Ltd.* v. *Canadian Credit Men's Trust,*[4] the plaintiff as landlord obtained leave pursuant to the Bankruptcy Act to commence an action against its tenant who had become bankrupt. Having obtained leave, the action was prosecuted in the ordinary courts and was based partly upon the Bankruptcy Act and also upon the Landlord and Tenant Act. On appeal to the Supreme Court, the trustee, who was by now the respondent, moved to quash the appeal on the ground that no special leave had been obtained pursuant to the then equivalent of Section 151. It is to be noted that the counterpart to Section 151 at that time contained a reference to "proceedings under this Act." In the *New Regina* case, leave had to be obtained from the Judge in bankruptcy before the action could commence, some provisions of the Bankruptcy Act were involved as forming a part of the cause of action, and the trustee of the bankrupt was the defendant. Nevertheless, Duff, C.J. held that the action did not fall within the description "proceedings under this Act" and therefore no special leave was required. In view of the *Kent* v. *Arlington* decision, discussed later, it would seem that the reference to "proceedings under this Act" was the controlling factor and that a different result would be obtained under the existing Section 151 which does not contain that reference.

The non-exclusive nature of the Bankruptcy Court had been thoroughly ventilated in the British Columbia Appelate Decision of *Casson* v. *Lakeside Hotel.*[5] The trustee in bankruptcy had proceeded in the ordinary courts by writ of summons seeking a declaration that the chattel mortgage was fraudulent and void and that the debt had been satisfied and that there had been a wrongful seizure. The court held that such an action could be maintained either under the summary procedure set forth under the Bankruptcy Act or by ordinary process in the ordinary courts. There was nothing in the Bankruptcy Act inconsistent with the jurisdiction of the court to maintain the action and carry it to conclusion. Although the right of appeal was not directly involved in the Casson case, the decision is certainly consistent with the view that if an action is commenced in the ordinary way, then the normal provisions as to appeal will prevail.

A few months after the Casson decision was handed down, the Supreme Court of Canada delivered judgment in *Kent Steel Products*

3 Re *Merchants Bank of Canada and Charles Angers* (1921) 62 S.C.R. 354; re *Schulte-United Ltd.* (1934) 15 C.B.R. 533, *Re Lyons* (1949) 29 C.B.R. 121.
4 (1933) S.C.R. 453.
5 (1967) 59 W.W.R., 65

*Ltd. et al* v. *Arlington Management Consultants Ltd. et al.*[6] In the Kent case, a creditor had applied for leave to commence the action from a judge in bankruptcy pursuant to Section 16 of the Bankruptcy Act which provides that where a creditor requests the trustee to take a proceeding and trustee refuses to do so, the creditor may obtain from the court an order authorizing him to take the proceeding in his own name and at his own expense and risk. The leave having been obtained, proceedings were commenced by a statement of claim in the ordinary civil courts. The issues involved in the case were questions of priority and the position of the respondent as a secured and unsecured creditor pursuant to certain provisions of the Bankruptcy Act. Spence, J. held that Section 151 of the Bankruptcy Act applied "both by virtue of the order made by Smith, J. (permitting the action to be brought by the creditor) and because of the character of the issues in the appeal" (words in parenthesis added). The reference by His Lordship to the "character of the issues" could certainly give ground for concern to an appellant that if his case touched upon the Bankruptcy Act in any degree he would be faced with the necessity of obtaining special leave to appeal.

In a recent case, *Nash* v. *Western Rock Bit Company Limited* (unreported on this point), the appellant trustee took the precaution of filing a notice of appeal as of right and also applying for leave to appeal pursuant to Section 151. Leave to appeal was granted but the appeal based on this leave was attacked on the basis that it was made out of time. The only issue in the case itself was whether certain payments which had been made, were preferences within the meaning of Section 64 of the Bankruptcy Act. The action had been commenced by the trustee in the ordinary courts by statement of claim. In dismissing the motion to quash the appeal which had been made on the grounds that the notice to appeal pursuant to the special leave was out of time, the court held that an appeal lay as of right.

It would appear, therefore, that the mere fact that a trustee of the bankrupt is one of the parties and that individual sections of the Bankruptcy Act are involved in the issues will not trigger Section 151, at least if the action was commenced by statement of claim in the ordinary courts. It would seem to be otherwise, however, if leave of the bankruptcy court was obtained prior to commencing the action, or if the action was commenced by way of originating notice as provided for by the Bankruptcy Act, and brought in the Bankruptcy Court. Counsel faced with this dilemma will be troubled by Mr. Justice Spence's reference to "the character of the issues in the appeal" since the issues involved in *Kent* v. *Arlington* were issues dealt with by the Bankruptcy Act itself. If the counsel for the appellant decides to play it safe he must persuade a judge of the Supreme Court that there is an important question of law involved which, from the record, is no easy task. On the other hand, if he assumes that special leave is not required in his case, he may be placed in the embarrassing position of having his appeal quashed for lack of it.

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6 (1967) S.C.R. 497.

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