

to a leasehold four-fifths of which he had mortgaged by way of demise; and the remaining one-fifth was unmortgaged, the whole premises were subject to a rent of £150. The trustee in bankruptcy disclaimed the lease, whereupon the mortgagee of the four-fifths applied for a vesting order to vest the bankrupt's interest in the lease including the unmortgaged one-fifth part in him. The application was resisted by the lessor, who claimed that the bankrupt's interest in the one-fifth part should be vested in him, to which the mortgagee objected that to do so would have the effect of leaving the four-fifths liable for the whole rent. The judge of the County Court to whom the application was made, granted the order asked by the mortgagee, and Bigham and Jelf, JJ., affirmed his decision. We do not think any provision is to be found to meet such a case either in our Winding-up Acts, or in the Assignments and Preferences Act (R.S.O. c. 147).

**BANKRUPTCY—PARTNERSHIP—BREACH OF TRUST—DIRECTOR OF COMPANY AND MEMBER OF PARTNERSHIP—MISAPPROPRIATION BY PARTNERSHIP OF COMPANY'S ASSETS—PROOF AGAINST FIRM'S AND INDIVIDUAL PARTNER'S ESTATES.**

*In re McFadyen* (1908) 2 K.B. 817 is another bankruptcy case, which we also think deserving of attention. McFadyen, the bankrupt, was a director of the Vizianagaram Mining Co., and also a member of a firm of P. McFadyen & Co., which consisted of himself and one Arbuthnot. This firm were the general managers and agents of the company. Certain bills of lading for ore of the company which came to the hands of P. McFadyen & Co., were misappropriated by McFadyen, the bankrupt, to the extent of £13,000. The mining company lodged a proof for £13,000 against the joint estate of P. McFadyen & Co., and also a proof for the same amount against the separate estate of McFadyen. Bigham, J., rejected the proof against the separate estate, but the Divisional Court (Cozens-Hardy, M.R., and Farwell and Kennedy, L.JJ.) considered that he had erred and reversed his decision, and in doing so their Lordships took occasion to emphasize the fact that the liability for a breach of trust is founded on contract and not on tort, and that the property in question having actually come to the hands of a person filling the position of a director he became as to it a trustee, notwithstanding that at the time he also filled the dual position of an agent.