

other words, part of the property owners fronting on the block determine the extent of use that other owners shall make of their lots, and against the restriction they are impotent."

The function of the property owners there is in no way comparable to that of the "ten or more reputable freeholders" in the Cedar Rust Act. They do not determine the action of the state entomologist. They merely request him to conduct an investigation. In him is vested the discretion to decide, after investigation, whether or not conditions are such that the other provisions of the statute shall be brought into action; and his determination is subject to judicial review. The property of plaintiffs in error is not subjected to the possibly arbitrary and irresponsible action of a group of private citizens.

The objection of plaintiffs in error to the vagueness of the statute is without weight. The state court has held it to be applicable and that is enough when, by the statute, no penalty can be incurred or disadvantage suffered in advance of the judicial ascertainment of its applicability. Compare *Connally v. General Construction Co.*, 269 U. S. 385.

*Affirmed.*

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LEVY v. INDUSTRIAL FINANCE CORPORATION,  
ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
FOURTH CIRCUIT

No. 217. Argued February 24, 1928.—Decided March 5, 1928.

Section 14b (3) of the Bankruptcy Act which withholds a discharge from a bankrupt who obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person, applies where the bankrupt through his false statement obtained a loan for a corporation controlled by him and in which he was largely interested as a stockholder and creditor. P. 283.

16 F. (2d) 769, affirmed.

CERTIORARI, 274 U. S. 731, to a judgment of the Circuit Court of Appeals affirming a denial of a discharge in bankruptcy.

*Mr. S. M. Brandt* for petitioner.

*Messrs. R. Randolph Hicks, James J. Irwin, Jr., and Evelyn P. Luquer* were on the brief for respondents.

MR. JUSTICE HOLMES delivered the opinion of the Court.

Levy, a bankrupt, was denied a discharge by the District Court, and the denial was affirmed on appeal by the Circuit Court of Appeals. 16 F. (2d) 769. In view of a conflict between this decision and *In re Applebaum*, 11 F. (2d) 685, a writ of certiorari was granted by this Court, 274 U. S. 731. The conflict concerns the construction of § 14b(3) of the Bankruptcy Act. (July 1, 1898, c. 541, 30 Stat. 550; June 25, 1910, c. 412, § 6, 36 Stat. 838, 839.) By that section "the judge shall . . . discharge the applicant unless he has . . . (3) obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person." The facts that raise the question are found to be as follows. The bankrupt was president of The American Home Furnishers Corporation, had the general management and control of it, had made large advances to it, and with his sister-in-law owned more than two-thirds of the stock; he obtained a loan of \$1,500,000 to the corporation from the objectors and, in order to obtain it, made to them a statement in writing, known by him to be false, which very materially overstated the assets of the corporation. There is no doubt of his pecuniary interest in the result of the fraud found to have been practiced by



him, but it is said that he did not obtain money by this fraud, inasmuch as the money went to the corporation and not to him.

A man obtains his end equally when that end is to induce another to lend to his friend and when it is to bring about a loan to himself. It seems to us that it would be a natural use of ordinary English to say that he obtained the money for his friend. So, when the statute speaks simply of obtaining money, the question for whom the money must be obtained depends upon the context and the policy of the act. It would seem that so far as policy goes there is no more reason for granting a discharge to a man who has fraudulently obtained a loan to a corporation which is owned by him and in which his interests are bound up, than for granting one to a man who has got money directly for himself. *In re Dresser & Co.*, 144 Fed. Rep. 318. It is true that the narrower construction is somewhat helped by the words "for the purpose of obtaining credit from such person," which naturally would be taken to mean for the purpose of obtaining credit for himself and so would fortify the interpretation that only immediate benefit was contemplated. But we cannot think it possible that the statute should be taken to allow an escape from its words, fairly read, by the simple device of interposing an artificial personality between the bankrupt and the lender. We go no farther than the facts before us, and without intimating that our decision would be different, we express no opinion as to how it would be if the bankrupt had no substantial pecuniary interest in the borrower's obtaining the loan. The later amendment, by the Act of May 27, 1926, c. 406, § 6, 44 Stat. 662, 663, serves to limit the bars to a discharge more narrowly and by indirection to favor the defendant's position by a change of the words to "a materially false statement . . . respecting his financial con-

dition." But that statute did not govern this case and cannot be invoked for the construction of the earlier law. As to the suggestion *In re Applebaum* that the language before us may have been drawn from the original statute of false pretenses (referring we presume to 30 Geo. II, c. 24,) and that the words should be taken with the construction first given to them, it is enough to reply with the Court below that it is equally likely that they were taken from a more modern source, and were used with knowledge of the broader interpretation of later days.

*Decree affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

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McMASTER ET AL. *v.* GOULD ET AL.

CERTIORARI TO THE SUPREME COURT OF NEW YORK

No. 85. Argued October 28, 1927.—Decided March 5, 1928.

By the law of New York (Civ. Pr. Act. § 588), appeals from judgments of the Supreme Court, Appellate Division, which finally determine actions or special proceedings, may be taken to the Court of Appeals as of right in certain cases, and, in others, may be allowed upon application, by the Appellate Division, or, in case of refusal, by the Court of Appeals; but if an appeal which is not of right be taken without such leave, it must be dismissed. Petitioners, having been refused leave by the Appellate Division, sued out an appeal which was dismissed by the Court of Appeals without opinion.

*Held*, that the dismissal must be taken as a holding that the case was not appealable of right; and that, since the petitioners had omitted to apply for leave to the Court of Appeals, the judgment of the Appellate Division was not that of the highest court of the State in which a decision could be had, and the writ of certiorari must therefore be dismissed. P. 286.

Dismissed.