

In the Privy Council.

No. 50 of 1893.

UNIVERSITY OF LONDON  
W.C.1.

19 OCT 1956

INSTITUTE OF ADVANCED  
LEGAL STUDIES

44599

## ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

In the matter of a question referred by His Honour the Lieutenant-Governor of Ontario in pursuance of an Order in Council approved by His Honour the 19th day of November, 1892.

### Case

OF HER MAJESTY'S ATTORNEY-GENERAL FOR THE DOMINION OF CANADA.

1. This is an Appeal from a decision of the Court of Appeal for Ontario sitting as a Court of First Instance upon a constitutional question referred by the Lieutenant-Governor of the Province under the provisions of the 53 Vic., c. 13, Ontario Statute.

2. The question submitted by the Lieutenant-Governor to the said Court is as follows:—

“ Had the Legislature of Ontario jurisdiction to enact the 9th section  
“ of the Revised Statutes of Ontario, chaptered 124, and entitled ‘ An  
“ ‘ Act respecting assignments and preferences by insolvent persons.’ ”

3. The section in question is a reproduction of section 9 of the 48 Vict. chapter 26 (Ontario Statute), as amended by section 2 of the 49 Vict. chapter 25 and is in the following terms:—

“ An assignment for the general benefit of creditors under this Act  
“ shall take precedence of all judgments and of all executions not com-  
“ pletely executed by payment, subject to the lien, if any, of an  
“ execution creditor for his costs, where there is but one execution in the

“ sheriff’s hands, or to the lien, if any, of the creditor for his costs, who has the first execution in the sheriff’s hands.”

4. The case came on for argument before the Court of Appeal for Ontario, composed of Hagarty, C.J., and Burton, Osler and MacLennan, J.J.A., who on the 9th of May, 1893, pronounced judgment, declaring that the question submitted to them should be answered in the negative, and that the said 9th section was not within the powers of the Legislature of Ontario.

5. Hagarty, C.J., considered that the case came within the reasoning of certain judgments of his in the case of “ Clarkson v. Ontario Bank,” reported in 15 Ontario Appeals, pp. 116—233, and in the case of “ The Queen v. County of Wellington,” reported in 17 Ontario Appeals, p. 615, which last-mentioned case, under the name of “ Quirt v. The Queen,” was affirmed by the Supreme Court of Canada, and is reported in 19 Supreme Court Reports, p. 510. He stated that he retained the opinion expressed in these judgments, and was of opinion that the Act containing the section in question created a new system for the administration of insolvent estates, interfering with the ordinary laws as regards debtor and creditor, that it was impossible to separate section 9 from the rest of the Act, and that the section was *ultra vires*.

6. Burton, J.A., arrived at the same conclusion, upon the ground that the case was concluded by the decision of the Supreme Court of Canada, in “ Quirt v. The Queen,” above-mentioned. He stated that if not bound by that decision, he would have arrived at an opposite conclusion for reasons which had been stated by him at large in an earlier case of “ Edgar v. The Central Bank.” “ Edgar v. The Central Bank ” is reported in 15 Ontario Appeal Cases, 183, and argued with “ Clarkson v. The Ontario Bank.”

7. MacLennan, J.A., dissented, being of opinion that the case was not governed by “ Quirt v. The Queen,” and agreeing with the judgment of Burton and Patterson, J.J.A., in “ Edgar v. The Central Bank.”

8. Osler, J.A., declined to express an opinion on the case.

9. The Attorney General of Canada submits that in considering the question whether or not the section in question is *ultra vires*, the Act must be considered as a whole, and especially such other provisions of the Act as relate to the effect of and to the proceedings consequent upon an assignment for the general benefit of creditors and to the position of an assignee under such assignment should be taken into consideration.

10. The Attorney-General of Canada submits that the judgment of the Court of Appeal was correct, and should be affirmed for the following amongst other

## REASONS.

1. Because the section in question relates to matters of bankruptcy and insolvency within the meaning of Section 91, of the British North America Act, 1867.
2. Because the section in question cannot be considered apart from the other sections of the Act relating to assignments for the general benefit of creditors, and when so considered relates to matters of bankruptcy and insolvency.
3. Because the subject matter of the section in question is not within the powers assigned to the Provincial Legislature, and is within those assigned to the Legislature of the Dominion.
4. Because the decision of the majority of the Judges of the Court of Appeal of Ontario who gave judgment in the case is correct.

C. ROBINSON.

FRANCIS C. GORE.

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**Case**

Of Her Majesty's Attorney General for the  
Dominion of Canada.

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