In the Privy Council.

No. 50 of 1893.

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.

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IN THE COURT OF APPEAL FOR ONTARIO.

Tuesday, the 9th day of May, 1893.

No. 1. Copy Order in Council, dated 19th Nov., 1892.

Before the Honourable John Hawkins Hagarty, Chief Justice of Ontario, and the Honourables George William Burton and James Maclennan, Justices of the said Court.

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.

The Order in Council, approved by His Honour The Lieutenant-Governor, the 19th day of November, 1892, was in the words and figures following:

"The Committee of Council respectfully recommend that, pursuant to the "provisions of the Provincial Statute 53 Victoria, chapter 13, being an Act for "expediting the decision of Constitutional and other provincial questions, be "referred to the Court of Appeal for hearing:—

"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'" coming on the thirty-first day of January, 1893, to be heard and debated before this Court, composed of the judges above-named, in the presence of counsel in support as well of the

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affirmative as of the negative of the question in the said Order in Council set forth; whereupon and upon debate of the matters and hearing what was alleged by counsel aforesaid.

No. 2. Certificate of the Court.

This Court doth respectfully Certify to His Honour The Lieutenant-Governor in Council, that the majority of the judges of which this Court was composed, declared that the question submitted to this Court should be answered in the negative, and that one of said judges differed from the opinion of the majority.

And this Court doth further respectfully Certify to His Honour The Lieutenant-Governor in Council, the opinions and reasons of the several judges above-named, as follows :—

No. 3. Judge's Reasons.

Opinion of the Chief Justice.

HAGARTY, C. J., Ontario :—

The following question has been submitted to this Court by the Executive Government under c. 13, 53 Vict. :—

" 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' " ?

Nearly four years ago this Court had before it the case of *Clarkson* v. *Ontario Bank* and three others, in which, after very full consideration, the constitutionality of the Assignment Act was considered.

I then gave my views against the validity of the Act (except as to sections 1 and 2) at considerable length, and certainly after the most searching enquiry which I am capable of exercising.

I have carefully re-examined these opinions and can see no reason to alter the conclusion there arrived at.

The section 9 on which an opinion is now sought cannot, as I think, be separated from the rest of the Statute.

It provides that an assignment under the Act shall take precedence of all judgments and executions not completely executed by payment.

I believe that this section was relied on, and considered as one of the chief arguments against the Act, as showing the most marked evidence of the creation of a new system for the administration of insolvent estates interfering with the ordinary laws, as regards debtor and creditor, and as trenching on the subject of bankruptcy and insolvency.

I find it impossible to separate it from the rest of the Act, or to give any opinion as to its effect standing by itself, unless I arrived at a judgment the opposite to that expressed in 1888, to which I still fully adhere.

The opinions of the Judges of the Supreme Court in *Quirt* v. *The Queen*, 19 Sup. Ct. 543, seem to support the view that legislation of the nature of that now before us, affecting the distribution of insolvent estates, is appropriated by the Federation Act to the Dominion Parliament.

This last case was before us under the name of *The Queen* v. *County of Wellington*, 17 Ont. App. 421.

I adhere to the opinion there expressed by me.

I must answer the question submitted to this Court in the negative.

BURTON, J. A.:—

I can add but little to what I said in *Edgar* v. *The Central Bank*, 15 Appeals 183. The Parliament of Canada having power to pass laws for the good government of the Dominion were entrusted with the exclusive power of passing laws on the subject of bankruptcy and insolvency, and the question is whether this section falls within those terms?

Their meaning is, I think, well expressed by Lord Selborne thus:—"The "words describe in their well-known legal sense provisions made by law for the "administration of the estates of persons who may become bankrupt or insolvent "according to rules and definitions prescribed by law, including, of course, the "conditions on which that law is to be brought into operation, the manner in which "it is to be brought into operation, and the effect of its operation."

In other words, bankruptcy and insolvency were well-known legal terms, not confined to the state of things in England or the Provinces at the time of the passing of the Confederation Act, but applicable to systems of legislation with which the whole civilised world were presumed to be familiar.

The Dominion Parliament, and that Parliament alone, can determine whether the legal relation of bankrupt or insolvent shall be created out of any given combination of facts or circumstances, but there would seem to be a difference of opinion as to the true meaning to be attributed to the language of Lord Selborne. It appears to be thought by some that he was not dealing with the well-known legal sense of the terms "bankrupt or insolvent," but that the words had relation to all persons unable to pay their debts in full, and in that sense, therefore, insolvent, and not to persons declared by competent authority to be bankrupt or insolvent.

"What business man," said one of the counsel who was contending that this Act was *ultra vires*, "could suppose for a moment on reading the title to this "Act (R. S. O. 124), or the language of the first section, that it was not insolvency "legislation?" but with great respect that is not the test. A business man not versed in legal terms would very likely so understand the enactment, but the question is, what is the true construction of the words used by the Imperial Legislature when dealing with the distribution of legislative powers? and when we find these powers included with other classes of subjects of national and general concern, such as trade and commerce, and find also that power is given in the same general terms to deal with property and civil rights to the legislatures of the Provinces, we are driven to inquire how far those general words are qualified by anything appearing in section 91. If the meaning of the words in question is not such as I suppose, a power to declare who shall be bankrupt or insolvent and to legislate in reference to them, it would follow that the Parliament could deal with persons unable to pay their debts in each Province, and the powers of the Province in respect to any such matters would be gone. That, I venture to think, was never intended, but the words must receive a more limited construction and probably be treated in the same way as the words "regulation "of trade and commerce" have come to be construed, as confined to matters of national or general concern affecting the whole Dominion.

The statute, the section of which we are considering, with the exception of the provisions against preferences, was on our statute book since 1858, and for a

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Opinion of Burton, J. A. —*continued.*

long period when we had a Bankrupt or Insolvent Act ; but it was always construed like the statute of Elizabeth, and never treated as an Insolvent Act, nor was a person availing himself of its provisions ever spoken of as an insolvent, although he was in a state of insolvency in the sense that he was unable to meet his liabilities.

That it would extend to all persons unable to meet their liabilities, is evidently the view entertained by the late Chief Justice of the Supreme Court in *Regina* v. *Chandler*, 2 Cart. 421. That case was decided very shortly after Confederation and would scarcely be so decided at the present day.

The matters dealt with by the statute come clearly within the definition of property and civil rights, and the onus is, therefore, upon those who attack it to show its invalidity. I find it very difficult to understand upon what ground local legislation making provision for the distribution of a man's estate among his creditors and even for his discharge can be impugned as being beyond their jurisdiction.

In the case of *Edgar* v. *The Central Bank* I went in detail over several of the other sections of the Act, but abstained from expressing any opinion upon this particular section as it was unnecessary then to do so, but the same reasons which I thought then sufficient for upholding the validity of those sections apply, I think, equally to it, and I should, therefore, if at liberty to express my own opinion, answer the question submitted in the affirmative, but a decision of the Supreme Court, by which I am bound, appears to me, as I understand it, to prevent my doing so.

In that case, a bank professing to be possessed of assets exceeding their liabilities, executed a deed of arrangement for the benefit of their creditors with a resulting trust to the shareholders of the bank.

This was previous to Confederation. Subsequently the Dominion Parliament incorporated the trustees and professed to confer upon them additional powers to those given to them by the deed of assignment and professed to ratify the deed.

Subsequently, and after the bank's charter had expired, the Dominion Parliament passed an Act to transfer the assets so assigned from the trustees to the Crown.

The assignment was one which, if it offended against any provisions of our Provincial Assignment Act, if, for instance, it had given a preference to one creditor, or one class of creditors, over another, might have been avoided.

I express no opinion as to whether the powers of the Dominion Parliament in reference to bankruptcy and insolvency are confined to a general bankrupt or insolvent Act, or whether they could pass a special Act for the winding up of the affairs of some particular company. It is sufficient to say that that was not the legislation which took place in the case of this bank. Conceding for a moment that they might in a private Act have declared this bank insolvent according to the definition which I have placed upon it, they did not do so ; on the contrary, they recognized the assignment they had made, which, as I have pointed out, would have been void as against creditors if it offended against the Provincial Act.

The fact that this assignment was made by a bank cannot, in my opinion, affect the question. If the Dominion Parliament could deal with it they could equally deal with an assignment by any commercial firm who by a parity of reasoning they could by special enactment have declared bankrupt or insolvent.

Opinion of Burton, J. A. —*continued.*

I do not at all doubt the power of the Dominion, in a case coming within their legislative powers as to bankruptcy and insolvency, to make a statutory conveyance of the bankrupt's estate, but the foundation here was wanting. They were not dealing with a bankrupt's estate. They were dealing with an assignment with which alone, in my judgment, the Provincial Legislature had power to legislate.

I respectfully differ from the learned judges who placed some reliance on the fact that the views of the Provincial Legislature at its first session seemed to recognize the Dominion legislation; that, I submit, cannot affect the construction of the B. N. A. Act.

As I understand that judgment, if an assignment had been made by an individual or a commercial firm who by special legislation the Dominion Parliament could declare insolvent, but who had not been declared insolvent, they could validate an assignment made by him or them, although it was void under our Preference Act. I think myself that the Local Legislature could alone validate such an assignment.

The Supreme Court places its judgment on the effect of the language "Bankruptcy and Insolvency" in the B. N. A. Act. The bank here never was declared bankrupt or insolvent and could not be so declared except by an Act of the Dominion Parliament. The conclusion, therefore, is irresistible that the Supreme Court has decided that a person insolvent within the meaning of R. S. O. 124, or in insolvent circumstances and making an assignment is brought within the definition of insolvent within the B. N. A. Act.

If that be so, the Act must be beyond the jurisdiction of the Province, and the power to deal with such an assignment must be exclusively vested in the Dominion, and that view must, I apprehend, now be regarded as the law of the land, and so I am constrained to answer the question in the negative.

If this is insolvency legislation, as the Supreme Court seems to hold, the whole enactment would seem to be *ultra vires*.

Statement of Osler, J. A.

OSLER, J. A.:—

Stated that for reasons already given by him on other occasions, he did not feel called upon to answer a question submitted in this way.

Opinion of Maclennan, J. A.

MACLENNAN, J. A.:—

The question we are asked to decide is whether the Legislature of Ontario had authority to enact section 9?

It was enacted originally on the 30th March, 1885, as a section of an Act 48 Vict., c. 26, entitled "an Act respecting Assignments for the benefit of Creditors." Several amendments have been made to this Act since it was first enacted, and section 9 has also been amended, but the amendment has not affected the question of its validity. Neither at the time the section was first enacted nor at any time since has there been any bankruptcy or insolvency law of the Dominion in force

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Opinion of Maclennan, J. A. —continued.

except the Winding-up Act, which applies only to banks and other incorporated companies, and perhaps some special Acts for settling the affairs of companies, such as the Acts relating to the affairs of the Bank of Upper Canada.

The Insolvent Acts which had been in force in the Province continuously from the time of Confederation until the year 1880, had been repealed on the 1st of April in that year by the Act 43 Vict., c. 1, entitled, "An Act to repeal the "Acts respecting Insolvency now in force in Canada," and the Winding-up Act was passed in 1882.

In March, 1888, the constitutional validity of the Provincial statute was raised in four cases in this Court, namely *Clarkson* v. *Ontario Bank*, *Edgar* v. *The Central Bank*, and two others, reported together in 15 A. R. 166, and the Court was equally divided on the question. The learned Chief Justice and Mr. Justice Osler were of opinion that the whole Act, except the first two sections, was invalid, and Mr. Justice Patterson and my brother Burton were of a contrary opinion. The last named judges, however, reserved from their judgment the section now in question, and expressed no opinion upon it.

After the best consideration which I have been able to give to the question, I have arrived at the opinion that the section is valid. I adopt the reasoning in the cases referred to of Mr. Justice Patterson and my brother Burton, and also of the late Master Dalton in *Union Bank* v. *Neville*, 21 Ont. 155.

The question depends on the sense in which the words "bankruptcy and "insolvency" are used in the B. N. A. Act, sec. 91. In *The Queen* v. *Wellington*, 17 A. R. 421, I said I thought that the power of legislation over bankruptcy and insolvency which was intended to be conferred on the Dominion Parliament was the same as had been exercised by the Imperial Parliament and by the Provincial Legislatures before confederation, namely, the passing of laws more or less general in their application, with proper Courts and procedure, and machinery for carrying them into effect, and not acts declaring a particular person or firm or corporation bankrupt or insolvent, or putting their affairs into a course of liquidation. Upon appeal from our judgment in that case, however, it was held unanimously that this was an erroneous view of the statute, and that an Act for the settlement of the affairs of a particular insolvent bank, the late Bank of Upper Canada, was within the powers of Parliament as bankruptcy and insolvency legislation, *Quirt* v. *The Queen*, 19 S. C. R. 510. It is therefore now decided that Parliament may not only pass a general law of bankruptcy and insolvency, but may deal with particular cases; and it seems to follow that it might pass an Act for settling the affairs of a single firm or individual, being indebted.

I think, however, it does not follow from that decision that the enactment in question in this appeal is invalid, as an invasion of the exclusive legislative domain of Parliament. It merely declares that assignments for creditors shall take precedence of all judgments and executions not completely executed by payment. I confess I am altogether at a loss to understand why this should be regarded as bankruptcy or insolvency legislation. The assignment which is spoken of is a purely voluntary act. It is an act which is optional with the debtor; and being made, the statute (sec. 4) gives it the effect of passing the whole of his property by the mere use of a certain form of words. In this respect section 4 is analogous, as was pointed out by Mr. Justice Patterson in *Edgar* v. *The Central Bank*,

15 A. R. 210, to conveyances, leases and mortgages made under the Acts respecting short forms of those kinds of instruments. This short form of assignment did not give the debtor any new power, but only enabled him to do by the use of a short instrument what he could have done by a longer one. Now the effect of the assignment, without the aid of section 9, now under consideration, is to vest in the assignee property under seizure by the sheriff, as well as all other property of the debtor, subject only to the lien of the execution, and all that the section in question does is to displace that lien and to put the execution creditor on a par with other creditors. In effect it says that an execution shall not be a lien on property seized as against an assignment for creditors, as long as it is not actually sold thereunder.

When the Act says that the assignment is to take precedence of executions, it does not mean that the execution creditor is to be postponed to other creditors, but only that executions must give way to the assignment, and that the execution creditor must take his proportionate share of the estate with other creditors. It is merely a change of the law of the Province as to executions. Formerly executions had priority in the order of their delivery to the sheriff or other officer for execution. That order of priority has been done away with by the Creditors' Relief Act, R. S. O. c 65, passed in 1880, and I understand that my learned brothers do not doubt the power of the Legislature to make that change. The section in question further changes and qualifies the effect of the execution. It is now liable to be superseded by an assignment made at any time before a sale. If the Legislature can abolish priority between executions, so that a later execution creditor is put on an equality with an earlier one, why can it not abolish priority between an execution creditor and creditors who have no executions, so that the latter shall stand on an equality with the former? If the one is not bankruptcy and insolvency legislation, I am unable to see why the other should be so regarded. It is merely the effect and operation of an execution which has been altered by the legislation in each case.

But I incline to the opinion that except so far as the Dominion chooses from time to time to occupy the field of bankruptcy and insolvency legislation, the Province may occupy it. I think that follows from the manner in which their respective powers are defined by sections 91 and 92 of the British North America Act. In the *Citizens' Ins. Co.* v. *Parsons*, 7 Ap. Cas. 110, it was decided by the Judicial Committee, that the phrase "property and civil rights in the Province," employed in No. 13, sec. 92, included rights arising out of contracts, and therefore those words embrace the whole law of debtor and creditor. What the Act does then, is to give the whole field of property and civil rights to the Province, and then to give to the Dominion that part of it which answers to the description of bankruptcy and insolvency. Bankruptcy and insolvency are excepted or subtracted from the general field of property and civil rights. Now, if bankruptcy and insolvency were susceptible of clear definition apart from legislation, like bills of exchange and promissory notes, patents of invention, copyright, and the like, there would be no difficulty in saying with reference to any particular act of legislation, that it was or was not within the exception, and so that it was or was not within the power of the Province. But apart from legislation it is not definable. Apart from legislation there is no such thing as bankruptcy or in-

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Opinion of Maclennan, J. A. —*continued.*

solvency. Parliament may pass Acts of that character, and when it does the subject is defined, and we can see what it is. Whatever part of the field of property and civil rights it occupies for that purpose is taken away from the Province, but no more. So far as any such Act extends the law of the Province must yield and is overborne, but beyond that it is the power and duty of the Province to care for the public interest and to enact and enforce proper laws in relation to property and civil rights. Bankrupt and insolvent laws are not a necessity, are not an essential part of every system of jurisprudence or of government. There may or may not be such laws. If Parliament thinks fit to have such laws, it has the exclusive power to enact them ; but it is not obligatory, and if there be no such law, it is still necessary that there be some law of debtor and creditor, and that subject is expressly given to the Province.

There was no such thing as bankruptcy or insolvency at the common law. There was no distinction between the fraudulent or insolvent debtor and any other debtor who did not pay his creditors. There was the same remedy against all by action, judgment and execution, and all debtors alike were held bound until full payment. Bankruptcy and insolvency therefore are wholly the creation of legislation, and without legislation they do not and cannot exist.

The impossibility of defining bankruptcy in the abstract, and apart from legislation, is apparent from the history of the subject. The first Bankrupt Act in England was the Act 34 and 35 H. 8, ch. 4, in the year 1542 ; and between that time and the passing of the Act 24 and 25 Vict., ch. 134, which was in force when the British North America Act was passed, a very large number of such Acts was passed changing the character of the legislation from time to time. The Acts which were passed prior to 1823 will be found printed *in extenso* in the 1st vol. of the 8th edition of Cook on Bankruptcy (1823), and an examination of them will show how the definition of the subject changed from time to time with the legislation. That change is shown strikingly by a comparison between the Act of H. 8, and the Act of 24 and 25 Vict. in 1861. The Act of H. 8 makes no reference whatever to inability to pay or insufficiency of assets. It is directed against fraudulent debtors only. Bankrupts are described as "persons who, craftily obtaining into their hands great substance of other "men's goods, do suddenly flee to parts unknown or keep their houses not "minding to pay or return to pay any of their creditors, their debts and duties, but "at their own wills and pleasures consuming the substance obtained by credit "from other men for their own pleasure and delicate living, against all reason, "equity and good conscience." The Lord Chancellor and other high officers are authorised to seize and distribute the estates of such debtors among their creditors, and it is provided that if the creditors be not satisfied by these means they may still recover the residue by ordinary process as before the Act. That continued to be the law of bankruptcy for a long time, and the changes which were made afterwards were made gradually, until, by the law of 1861, all persons, whether traders or non-traders, whether honest or dishonest, whether they were or were not possessed of sufficient property to pay their debts in full, were made subject to the law in case they had committed certain defined acts or defaults. These acts or defaults are enumerated at p. 127 of Doria and McRae on Bankruptcy (1863), and some of them are the following: Non-payment after judgment debtor

summons by either trader or non-trader; suffering execution to be levied on any of his goods and chattels for any debt exceeding £50, by a trader; and non-payment within seven days by a trader, and within two months by a non-trader, after decree or order peremptory in equity, bankruptcy or lunacy. Prior to the Act of 1861 and as far back as the 13th Elizabeth the law was confined to traders; as to all other persons there was no such law.

The history of the subject in this country shows the same variety in bankruptcy legislation. In the Provinces of Ontario and Quebec there had been a Bankrupt Act in force, more or less, from 1843 to 1856, when it expired, after which there was none until 1864. The Act of that year was called "The "Insolvent Act of 1864," and although called an insolvent Act it was in reality a bankrupt Act; and it was made applicable in Lower Canada to traders only, but in Upper Canada to all persons whether traders or not. This is the Act which was in force in Ontario and Quebec when the B. N. A. Act was passed, and while it was undoubtedly in its nature a bankruptcy Act, it differed in many respects from the English Act. I do not know what, if any, bankruptcy or insolvency laws existed at that time in any of the other provinces of the Dominion.

The Act of 1864 was repealed in 1869, and a new Act was passed, extending to the whole Dominion, called "The Insolvent Act of 1869." It was confined to traders, and any trader unable to meet his engagements might either take the benefit of it voluntarily or might, under defined circumstances, be compelled to do so. The Act of 1869 was re-enacted, with considerable alterations, in 1875, and was still confined to traders. This law continued in force until 1880, when it was repealed, and since that time there has been no Dominion law of bankruptcy or insolvency, except, as already stated, the Winding-up Act, which is confined to corporations, and perhaps some special Acts relating to particular cases, such as the Bank of Upper Canada Act. What I mean is, that there has not been since that time, and there is not now, any general law of the Dominion taking up or occupying any certain part or section of the law of debtor and creditor, for its operation as a law of bankruptcy and insolvency. While there was such a Dominion law the law of the Provinces had to give way. Parliament could declare, and did declare, that to the extent defined by that law the relations of debtor and creditor were to be regulated and adjusted by and under that law. Within its limits was the realm of bankruptcy and insolvency which Parliament had appropriated to itself. All without these limits which concerned the same relation was left to the Legislature of the Province, as being a part of property and civil rights. While the Act was in force it seems clear the Province could deal with everything outside of it, and when it was repealed I think the whole field was left to the Province.

I think, therefore, the true solution of the question is, that Parliament may pass laws of bankruptcy and insolvency, and may thereby define the nature and extent of its interference with the law of the Province for that purpose; can make that interference more or less extensive, according to its pleasure, and that to such laws while they are in force the laws of the Province must give way to all intents and purposes. But unless and until Parliament do pass such laws the legislative power of the Province is not interfered with, and it is free to occupy the whole field. While the Dominion Acts are in force the field of bankruptcy and in-

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Opinion of Maclennan, J. A. —*continued*

solvency is defined. When they are repealed definition is impossible, for the thing has ceased to exist.

When the B. N. A. Act was passed, bankruptcy was a different thing in England from what it was in Ontario, and different in Ontario from what it was in Quebec. The Act of 1864 was applicable to all persons in Ontario, while in Quebec it was confined to traders, and the Acts of 1869 and 1875 were confined to traders in all Provinces; and I think it can hardly be doubted that the acts were so restricted in order to leave other debtors to the operation of the laws of their respective Provinces, as they might be modified by their respective Legislatures.

If we are to take our definition of bankruptcy and insolvency from the laws existing at the time of the passing of the B. N. A. Act, which laws are to be our guide? Is it the imperial Bankruptcy Act or the Insolvency Act of 1864, or the law of some other Province? If the Act of 1864, shall it be as it applied to Ontario or to Quebec? It seems impossible to say that any or either of these can afford a governing rule or a permanent definition of the term "bankruptcy and "insolvency," and if not, and if we must find a definition without reference to the actual statutes on the subject, there would seem to be no alternative but to include everything that might be dealt with by such a law. It must be conceded that among the legitimate subjects of such a law may be included the definition and punishment of frauds by debtors upon their creditors, and the compulsory application of the estates of debtors, whether fraudulent or not, and whether actually insolvent in the sense of a deficiency of assets or not, in payment of their creditors. If that be so it seems clear that a bankrupt or an insolvent law might go the length of providing that the property of every person who failed to pay a debt at maturity should *ipso facto* be vested in the sheriff or other public officer for the payment of all his debts, and that no action or suit should be necessary or proper for the recovery therof. I see no reason why Parliament could not go that length. A bankruptcy law is a law for the recovery of debts, and it might thus become the only law. So also Parliament might as incident to such a law declare all transfers of property and payments made by a debtor within a defined period, whether for value or not, to be void and to be recovered or paid back.

The argument in the present case is that because the provision in section nine is one that might reasonably be inserted in a bankruptcy or insolvency Act, the Legislature could not pass it. If that be so I think it follows that the Legislature can pass no Act whatever for the recovery of debts. A bankrupt law might do that, and therefore any law for the purpose is bankruptcy legislation and *ultra vires*. If the argument is to prevail, then the Province cannot touch the subject of the recovery of debts at all, can make no law for compulsory payment, no law of frauds upon creditors or any law of preferences, or to secure equality of distribution. The method by which debts are to be recovered must be regulated by Parliament, and inasmuch as bankruptcy and insolvency legislation may extend to and include procedure, that also is taken from the Province, and so far as the Judicature Act deals with actions for debts it is all *ultra vires*.

I do not think that is the meaning of the words as used in the B. N. A. Act, and inasmuch as the field of bankruptcy and insolvency is in itself indefinite, and may be more or less extensive according to the will of Parliament, I think

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the true construction of the Act is that Parliament can pass such bankruptcy or insolvency legislation as it thinks fit, and that so far as it does the Provincial law is overborne. But I think that until Parliament passes such a law, and that outside its limits when it is passed, the jurisdiction of the Province over property and civil rights is unimpaired and unaffected.

As has been stated, Parliament in 1880 repealed its law of bankruptcy and insolvency, and thereby, as I conceive, the law relating to the payment of debts was left free once more to the legislation of the Provinces, and it was in my opinion competent to the Province of Ontario to pass the enactment in question, subject to be overborne and displaced if and whenever the Dominion, in the exercise of its jurisdiction over bankruptcy and insolvency, should think fit to make other provisions.

In my judgment, therefore, the Legislature of Ontario was competent to enact the section in question.

No. 4. Registrar's certificate of correctness of Question submitted to Court of Appeal and the Answers of the Judges.

In the Court of Appeal for Ontario.

In the matter of the Statute 53 Victoria, section 9, R. S. O., chapter 124.

I, Alexander Grant, of the City of Toronto, in the Province of Ontario, Registrar of the said Court of Appeal, do hereby certify that the printed paper hereto annexed, from page one to page fourteen, both inclusive—each page of which is marked with my signature—contains a true copy of the question or case submitted by His Honour the Lieutenant-Governor of Ontario to the said Court, together with the answers of the several Judges of the said Court.

Given under my hand and the seal of the said Court this seventh day of June, 1893.

(L.S.) A. GRANT, Registrar.

In the Privy Council.

No. 50 of 1893.

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.

RECORD OF PROCEEDINGS.

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