

only for the payment of her husband's debts, such sale will be set aside as a contravention of Art. 1301 C. C. (Q.) STRONG, J., dissented on the ground that the trial judge's finding that the deeds of sale in this case were not simulated, should be affirmed.

Appeal dismissed with costs.

Flemming, Q.C., for appellant.

Aylen, for Respondent.

SUPREME COURT OF JUDICATURE
FOR ONTARIO.

HIGH COURT OF JUSTICE FOR
ONTARIO.

Queen's Bench Division.

Armour, C. J.]

[May 18.

CLARKSON v. ATTORNEY-GENERAL OF
CANADA.

Customs duties—Lien of Crown—Writ of extent—Preference of Crown over subject—R. S. O. (1887) c. 94.

On the 3rd February, 1887, B., a coal merchant, made an assignment to the plaintiff for the benefit of his creditors under 48 Vict. c. 26, and there passed thereunder to the plaintiff a quantity of coal in B.'s yards. By permission of the Customs Department, B. had sold before the assignment certain other coal, imported by him, without first paying the duty upon it.

Held, 1. That there was nothing in the Customs Act, R. S. C. c. 32, nor in law, giving the Crown the right of lien upon the coal assigned to the plaintiff, for duty payable by B. in respect of the other coal sold by him.

2. That the issue of a writ of extent by the Crown against B. on the 19th February, 1887, for the recovery of the duty so payable in respect of such other coal would have availed the Crown nothing, so far as the property assigned to the plaintiff was concerned, for it could not have been seized under such extent, having previously become vested in the plaintiff.

3. That the claim of the Crown for the duty payable by B. in respect of such other coal was not payable by the plaintiff out of the proceeds of the property assigned to him in

preference to the claims of other creditors; the principle that when the right of the Crown and the subject came into competition that of the Crown is to be preferred, has been applied in winding-up proceedings instituted under statutes which did not bind the Crown, and where the property was not divested out of the Crown debtor by the proceedings; but the principle is not applicable to claims upon estates in bankruptcy, or estates assigned in trust for creditors; in any case the principal has now no existence in Ontario, because the effect of R. S. O. (1887) c. 94, is to do away with any distinction between debts due from a subject to the Crown and debts due from subject to subject, and to place them all on the same footing.

Lash, Q.C., and *R. S. Cassels*, for the plaintiff.

Robinson, Q.C., and *Wickham*, for defendants.

Common Pleas Division.

REGINA v. LEE.

Canada Temperance Act, 1878—Police magistrate appointed for county exclusive of city—Right to sit in city to hear offence arising in county—Appointment "during pleasure"—Necessity for place set apart to hear offences—Alternative jurisdiction—Constitutional law—Appointment of police magistrates.

On 17th November, 1886, G. was appointed by the Lieutenant-Governor of Ontario, police magistrate of the county of Brant, exclusive of the city of Brantford, during pleasure. On 14th March, 1887, an information was laid before him, as such police magistrate, charging that defendant at the township of South Dumfries, in the county of Brant, on 31st day of January, 1887, contrary to the Canada Temperance Act, did unlawfully sell intoxicating liquors, etc., upon which G. issued, at the city of Brantford, a summons requiring defendant to appear at his (G.'s) office, "Court House, Brantford," before him, or such justices of the peace for the said county as may then be there, to answer said charge. On application for a prohibition to prohibit G. from hearing the complaint,