

the further you say it is possible for the Dominion Parliament to go, the more essential it is that you should keep free the hands of the Local Legislature, dealing with Property and Civil Rights, unless and until that range of power is entered on and occupied by the Dominion Parliament. Because the more ample the power you assign to the Dominion Parliament to meddle with the sphere of the Local Legislature, the deeper the wound Parliament can make in "Property and Civil Rights," the larger the area upon which it can infringe, the greater the "cattle" it can carve out of "Property and Civil Rights," the more indefinite and elastic the range of its potential action, the more important it is to decide that at any rate until Parliament chooses to act the other Legislature shall not be disabled from acting.

Then Mr. Justice Burton says he can add but little to what he said in the case of *Edgar v. The Central Bank*:

"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 estate 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 civilized 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."

There is certainly, as there not infrequently happens in cases of definitions, a dispute as to what Lord Selborne's definition means; but whatever may be true conclusions as to his reference in the words "according to rules and definitions prescribed by law," whether they apply to the immediately preceding phrase, "who may become bankrupt or insolvent," or to the remoter word "administration," when you find him stating what the rules and definitions prescribed by law include, and when you see they include the conditions on which the law is to be brought into operation, it seems to me that he plainly meant that the condition of "Bankruptcy and Insolvency" is comprised within the conditions on which the law as to Bankruptcy and Insolvency is to be brought into operation, and therefore that the phrase has a conventional sense, to be, in effect, created by the law, and which it is impossible to define in advance.

LORD WATSON: Unless the scheme of that Act is varied by the condition, the condition here to which this clause refers is that the debtor himself shall execute an assignment for the benefit of his general creditors in compliance with that Act. It may be a great inducement to execute that assignment to prevent his estate being torn in pieces by conflicting creditors; but whenever he does do it, it appears to me, from that moment, judging from a hasty examination of the Act, that everything goes on as if this administration had been at the instance of the creditors.

THE LORD CHANCELLOR: Excepting that the distribution in that case by the person depends upon

the act of the debtor and the power which he gives to distribute, and not any power which the law gives.

MR. BLAKE: It is his voluntary act. At an early stage of my argument I endeavored to ascertain what were the essential elements of "Bankruptcy and Insolvency"; and if one of these essential conditions is, as I contend, the power of the creditors to bring the law into operation, that element is here lacking. It does not exist; it is only the voluntary act of the debtor that brings the law into operation; and then, once so brought into operation, there are facilities for the execution of his voluntary act, and machinery by which that which he chooses to do may be most expeditiously, and most satisfactorily, and most economically carried out. Therefore, we are back again at what the definition of "Bankruptcy and Insolvency" is. To continue:

"What business man," said one of the counsel who was contending that this Act was *ultra vires*, 'could suppose for a moment, or 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 enquire 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 of 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"—

that is, perhaps, a slip, because the provisions against preferences were substantially in from the beginning; more stringent provisions are inserted, but that is the only difference—

"was in our Statute Book since 1853, and for a 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 the 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 validity. 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."

LORD WATSON: That reason seems to reach the case where the law compelled the debtor to make over his estate.

MR. BLAKE: Yes; I should infer that Mr. Justice Burton went, perhaps, that far.

LORD STANB: A provision for an adjudication in Bankruptcy?

LORD WATSON: Yes.

MR. BLAKE: "In the case of *Edgar v. The Central Bank* I went in detail over several of the other sections"—and then he says he still thinks that the reasons apply to these sections, and that he should hold it good except for the decision of the Supreme Court in *Quirt v. The Queen*. I will not trouble