

porate existence; and (2) That the Merchants Bank as creditors upon the individual estate of Henry Mulholland, were entitled to be paid their debt in full, which included interest as collocated, before any portion of the proceeds of that estate could go to the benefit of firm creditors.

The proof established that the firm creditors had only received a dividend of so much on the dollar; that the claim of the Merchants Bank was an interest-bearing one; that the Bank had received twenty shillings in the pound upon the amount of the claim as filed, and that the collocation of \$409.91 was solely for interest upon the amount of the claim from date of filing thereof till the date of payment.

At the argument, *Robertson*, for the Consolidated Bank, contended:

By the Act authorizing the winding up of the Consolidated Bank of Canada, (43 Vic. Chap. 46), it was enacted that liquidators should be appointed who should have all the administrative powers of Directors, and they were empowered, in the event of an offer being made for the purchase of the remaining assets of the Bank *en bloc*, to submit the same to the shareholders, and, if approved, to execute a conveyance thereof to the purchaser. Such sale had been duly effected to the Canadian Securities Company; and by the deed of conveyance, it was expressly stipulated that the Company should have the right to use the name of the Bank in legal proceedings.

By a subsequent Act of the Dominion Parliament (45 Vic. chap. 65) this deed had been in effect confirmed; and it was enacted that the Company should fulfil all the duties and have all the powers and responsibilities of the liquidators.

The action was therefore well brought in the name of the Consolidated Bank of Canada.

As to the right of the firm creditors to the surplus in the individual estate of Henry Mulholland, section 80 of the Insolvent Act provided that all debts due and payable by the insolvent at the time of the execution of a deed of assignment, or at the time of the issue of the writ of attachment under the Act, and all debts due, but not then actually payable, subject to rebate of interest, should have the right to rank upon the estate of the insolvent.

Section 88 provides: "If the insolvent owes

"debts, both individually and as a member of a co-partnership or as a member of two different co-partnerships, the claims against him shall rank first upon the estate, by which the debts they represent were contracted, and shall only rank upon the other after all the creditors of that other have been paid in full."

The words "paid in full" in section 88 refer to the amount of the claims filed, as provided in sec. 80. The claims upon Henry Mulholland's estate had been paid in full, within the meaning of sec. 88, as the creditors had received 20 shillings in the pound on their claims as filed,—and hence any surplus should go to firm creditors.

Tait, Q.C., for Merchants Bank:—

The Consolidated Bank of Canada has no longer any corporate existence, and no suit or proceeding can be taken in its corporate name. All its assets are vested in the Canadian Securities Company, cap. 65. The present proceeding therefore cannot be maintained.

The interest of the claimants to raise this question, consists in this, amongst other things, that a judgment in their favor against a non-existent and altogether fictitious contestant, would be no bar to a similar proceeding by the Canadian Securities Company. And also in this, that the claimant has no remedy for the costs incurred in these proceedings, if judgment should be rendered in his favor. The claimant in this case, if successful, would not obtain his costs under any execution or other writ, but would be obliged to institute a new suit against the Canadian Securities Company to recover those costs. And it is impossible to say how far the claimant could establish any liability against the Canadian Securities Company.

If this proceeding is for the benefit of the Canadian Securities Company, it should have been instituted in their own name, as being vested with the rights of the Bank; or as its liquidators.

Section 80 of the Insolvent Act contemplates a deficiency in the assets of the insolvent to meet his liabilities, and therefore provides a common basis upon which all creditors shall rank upon the estate, so that one shall not have an undue preference over the other. But this section does not contemplate that the creditors shall be restricted to receiving from the estate the precise amount of their claims as limited by