

REPORTS.

ONTARIO.

CHANCERY DIVISION.

(Reported for the LAW JOURNAL.)

MCCALL V. CANADA FARMERS' MUTUAL
INS. CO.*Receiver—Joint Stock Co.—Simple contract creditor.*

A simple contract creditor of a Joint Stock Company cannot obtain an interim order appointing a receiver of the assets of the company on the ground that the company is insolvent, or has made an assignment of its assets.

Mills v. Northern Railway of Buenos Ayres Company, 5 Chy. App. 621, followed.

[February 14, 15.—Boyd, C.]

This was an action on a policy of insurance, and for the appointment of a receiver, and for the winding up of the defendant company, and for the distribution of the assets *pari passu* among the creditors of the company. A motion was now made by plaintiff for the appointment of an interim Receiver until the trial of the action. It appeared from the depositions of the president and secretary that the unpaid premium notes had been transferred by the company as collateral security for advances made to the company, and for which the directors were personally liable; and that the rest of the assets of the company had been assigned to the secretary in trust to realise the same and pay the debts due by the company thereout.

The company filed affidavits disputing the plaintiff's claim on various grounds, among others for breach of the statutory condition as to the disclosure of other insurances existing upon the property insured.

Duff, for the plaintiff—The defendant company appears to be insolvent and incapable of paying its creditors in full. On this motion the plaintiff's right to recover cannot be tried; she has made out a *prima facie* cause of action, and that is sufficient to entitle her to have a Receiver appointed. He referred to *Evans v. Coventry*, 5 D. G. M. G. 911; *McNeil v. Reliance Mutual Ins. Co.*, 26 Gr. 567, R. S. O. c. 161. ss. 69, 75. The Company has no right to assign its assets.

McKelcan, Q.C., for defendant company—A company stands upon no different footing to an

individual, and a simple contract creditor cannot obtain an interim injunction, or a Receiver against a company to restrain its dealing with its assets before judgment, any more than he could obtain such relief against any individual debtor. To entitle a person to apply for a Receiver he must have a lien on the property. The question as to the right of legislating on questions of insolvency is one which has been considered of late, and the strict right of the Dominion Legislature to exclusive jurisdiction over such matters was asserted recently by the disallowance of the Provincial Statute. 43 V., c. 10 on the ground of its being an invasion of the jurisdiction of the Dominion Parliament in matters of insolvency. What the plaintiff is in effect attempting to do is to put the defendant company into liquidation, and there is no statutory jurisdiction authorizing such a proceeding, and it would be an extraordinary thing if the Court were to assume jurisdiction to do that which even the Provincial Legislature cannot accomplish by statute, and were to take away the priority which creditors might otherwise acquire under execution against the Company. Here the plaintiff's claim is disputed for non-compliance with the conditions on the policy. He referred to *Kerr on Receivers*, p.p. 4, 12, 13, 38, 44 and 125; *Bowes v. Directors of Hope Life Ins. Co.*, 11 H. L. C. 389. The transfer of assets is no ground for the present motion. A corporation may make an assignment of its assets for the benefit of creditors: *Abbott's Dig. of the Law of Corporations*, vol. 1., p. 42 to 47, vol. 2, p. 16; *Nelson v. Edwards*, 40 Barb. 279; *Clark v. Titcomb*, 42 Barb. 122; *Hurlbut v. Carter*, 21 Barb. 221; *Hopkins v. Gallutree*, 4 Humph. 403; *Robins v. Emby Turnpike Co.*, 1 Snieder and M. 207-258; *Montgomery v. The Commercial Bank*, 1 Snieder M. 632; *DeRuyter v. St. Peter's Church*, 3 N.Y. (3 Coms.) 238; *McCallie v. Walton*, 37 Ga. 611-614; *B. and Ohio Ry. v. Glen*, 38 Md. 287. A corporation may pledge or mortgage its assets to borrow money or secure a debt; *Abbot's digest of the Law of Corporations*, vol. 1., p. 41., *Gillett v. Campbell*, 1 Den. 520; *Casey v. Giles*, 10 Ga. 9; *Brooke v. Bank of U. C.*, 4 Prac. R. 162, Dom. Stat. of 1867, 31 Vict., ch. 17, reciting and confirming assignment made by Bank of U. C. for benefit of creditors. The transfer which has been made for the benefit of creditors is a less expensive mode of realizing the estate for the