

Against this argument Mr. Blake contended that the Winding-up Act is in the nature of insolvency legislation, within the exclusive jurisdiction of the Dominion Parliament, and therefore in passing such legislation it would be competent to modify or alter the status of a shareholder in his capacity of creditor, so as to secure ratable distribution of the company's assets among all creditors: see *Cushing v. Dupuy*, 5 App. Cas. 409; *Tennant v. Union Bank*, [1894] A. C. 31.

I do not deem it necessary to decide this point, as I think the right of set-off does not exist, on the broad ground of absence of mutuality between the claim of the liquidator against McNeil and McNeil's claim as a creditor of the company, for the reasons fully discussed in the Troop case above cited.

The liquidator's appeal will, therefore, be allowed with costs.

FALCONBRIDGE, C.J.

APRIL 19TH, 1905.

CHAMBERS.

LOVELL v. LOVELL.

*Alimony—Interim Order—Right to—Amount—Disbursements.*

Appeal by defendant from order of Master in Chambers, ante 401, requiring defendant to pay \$12 a week interim alimony and necessary disbursements.

G. H. Watson, K.C., for defendant.

A. H. Sinclair, for plaintiff.

FALCONBRIDGE, C.J.:—To allow this appeal would be, in effect, to declare that plaintiff must fail in the action, and there is no authority for such a course. *Keith v. Keith*, 7 P. R. 41, *Wilson v. Wilson*, 6 P. R. 129, and *Walker v. Walker*, 10 P. R. 633, are direct authorities contra.

The financial circumstances of the parties, and particularly of the husband, seem to be practically the only subjects of consideration, the marriage being proved or admitted. In *Smith v. Smith*, 6 P. R. 51, *Falvey v. Falvey*, 2 O. W. R. 476, and *Pherrill v. Pherrill*, 6 O. L. R. 642, 2 O. W. R. 1096, considerations of this kind did prevail to defeat the claim for interim alimony, but the state of facts here is quite different.

Appeal dismissed with costs.