

effect at common law quite independently of any system of bankruptcy or insolvency, or any legislation relating thereto. So far from being regarded as an essential part of the bankruptcy law, such an assignment was made an act of bankruptcy on which an adjudication might be founded, and by the law of the Province of Canada which prevailed at the time when the Dominion Act was passed it was one of the grounds for an adjudication of insolvency.

It is to be observed that the word "bankruptcy" was apparently not used in Canadian legislation, but the insolvency law of the Province of Canada was precisely analogous to what was known in England as the bankruptcy law.

Moreover, the operation of an assignment for the benefit of creditors was precisely the same, whether the assignor was or was not in fact insolvent. It was open to any debtor who might deem his solvency doubtful, and who desired in that case that his creditors should be equitably dealt with, to make an assignment for their benefit. The validity of the assignment and its effect would in no way depend on the insolvency of the assignor, and their lordships think it clear that the ninth section would equally apply whether the assignor was or was not insolvent. Stress was laid on the fact that the enactment relates only to an assignment under the Act containing the section, and that the Act prescribes that the sheriff of the county is to be the assignee unless a majority of the creditors consent to some other assignee being named. This does not appear to their lordships to be material. If the enactment would have been *intra vires*, supposing section nine had applied to all assignments without these restrictions, it seems difficult to contend that it became *ultra vires* by reason of them. Moreover, it is to be observed that by subsection (2) of section 3, assignments for the benefit of creditors not made to the sheriff or to other persons with the prescribed consent, although they are rendered void as against assignments so made, are nevertheless, unless and until so avoided, to be "subject in other respects to the provisions" of the Act.

At the time when the British North America Act was passed bankruptcy and insolvency legislation existed, and was based on very similar provisions both in Great Britain and the Province of Canada. Attention has already been drawn to the Canadian Act.

The English Act then in force was that of 1861. That Act applied to traders and non-traders alike. Prior to that date the operation of the Bankruptcy Acts had been confined to traders. The statutes relating to insolvent debtors, other than traders, had been designed to provide for their release from custody on their making an assignment of the whole of their estate for the benefit of their creditors.

It is not necessary to refer in detail to the provisions of the Act of 1861. It is enough to say that it provided for a legal adjudication in bankruptcy, with the consequence that the bankrupt was divested of all his property, and its distribution amongst his creditors was provided for.

It is not necessary, in their lordships' opinion, nor would it be expedient, to attempt to define what is covered by the words "bankruptcy" and "insolvency," in section 91 of the British North America Act. But it will be seen that it is a feature common to all the systems of bankruptcy and insolvency to which reference has been made, that the enactments are designed to secure that in