

the power of Parliament to pass it, and that it is constitutional and is binding in this province.

Wharton in his Treatise on Private International Law, at No. 794, says that "Bankruptcy (*concur process*), according to the practice of those countries whose jurisprudence is based on the Roman Law, is a species of national execution against the estate of an insolvent." And this definition gives the reason for the grant of power on this subject to Parliament. The Dominion is formed of different provinces, and there is, of course, more or less diversity in their laws regulating the collection of debts and the settlement of the estates of insolvents; and the power of the provincial courts to execute provincial laws does not extend beyond the territory of the province to which they belong. It is therefore in the interest of the trade and commerce of the whole Dominion that there should be one uniform law for all the provinces, regulating proceedings in the case of insolvent debtors, unrestricted in its operation by provincial boundaries; that it should be possible to obtain a national execution, and not merely a limited provincial one, against the estate of an insolvent debtor, who might hold property in several provinces, or transfer it from his own province into another.

Having disposed of the constitutionality of the Act, and having shown the reason for the Act and its importance, the next question is, whether under the Act the Court at Montreal was the proper one to grant a winding up order?

Section 8 provides that when a company becomes insolvent, a creditor may apply by petition to the court in the province where the head office of the company is situated; and this court in this province is declared to be the Superior Court. The Act determines in which province the proceedings are to be instituted, and before which court; but as regards this province, it is silent respecting the district where this should be done. We must therefore supplement the Act by a reference to our provincial law respecting the jurisdiction of our courts. Article 34 of the Code of Civil Procedure, provides that a defendant may be summoned either before

the court of his domicile or that of the place where the demand is served upon him personally. The domicile of a trading company is at its seat or head office; and, by article 61, that is the place where service may be made upon it. I hold consequently that the proper court to grant a winding up order, is the Superior Court in the district where the head office of the company is situated.

In the present case it appears from the Letters Patent incorporating the company defendant, which have been produced and filed of record, that its head office is in Montreal; and it was by mistake that it is alleged in the opposition that its seat is at Gatineau Point, in this district. The proceedings to place the company defendant in liquidation were therefore properly brought in Montreal. As regards the erroneous statement in the opposition, although the matter is not of sufficient importance to render its correction necessary, the motion for leave to amend is granted.

Under the circumstances of this case, the plaintiffs had no right to proceed to judgment, nor to execute it when obtained; their recourse was and is solely by a claim upon the insolvent estate of the company defendant. The opposition must, therefore, be maintained, and the property seized must be handed over to the liquidators, the opposants in this cause.

The judgment of the court will be recorded as follows:—

"The court, after having heard the opposants and contestants, by their counsel, as well upon the motion of the opposants for leave to amend their opposition to annul as upon the merits of the opposition, having examined the proceedings and the proof of record, and having deliberated;

"Considering that the subject of bankruptcy and insolvency falls under the exclusive legislative authority of the Parliament of Canada;

"Considering that the subject of bankruptcy and insolvency comprises not only laws tending to the discharge of insolvents, but also laws providing for a general execution against the entire estate of insolvents;

"Considering that Chapter 129 of the Re-