

1, are very wide, reserving to a secured creditor untrammelled power to realise or deal with his security in the manner as if the Bankruptcy Act had not been passed. This section, being general, must be read with the other provisions of the Act, and it would appear from the definition of a secured creditor—sec. 2, gg—that a secured creditor is one holding a security under contract or a security given him under the provisions of the Bankruptcy Act. This view is supported by the provisions of sec. 46, which provides for proof by secured creditors. Sub-sec. 3 of sec. 46 provides for filing a statutory declaration with the trustee by a secured creditor of full particulars of the securities held by him giving the dates when each security was given. The security under review has no date as no security was given, it arising by implication under the provincial law. Reading the sections together it would seem to shew that the security contemplated by the Bankruptcy Act is a security arising under provincial law. Can it be said that where a provincial law implies that a person shall have certain rights under certain circumstances giving rise to security, that he “holds” a security as contemplated by the definition of secured creditor? Sec. 2, gg.

Under provincial enactments municipalities have a lien, charge or security for taxes, rates or assessments payable to them. This lien, charge or security arises not by contract but is given by provincial laws. This lien, charge or security is specially preserved by the provision of sec. 51, sub-sec. 6, of the Bankruptcy Act which is as follows:

“(6) Nothing in this section shall interfere with the collection of any taxes, rates or assessments now or at any time hereafter payable by or levied or imposed upon the debtor or upon any property of the debtor under any law of the Dominion, or of the Province wherein such property is situate, or in which the debtor resides, nor prejudice or affect any lien or charge in respect of such property created by any such laws.”

If the framers of the Act had intended that the last paragraph of sub-sec. 1, sec. 6, read with the definition of preferred creditor, sec. 2, gg., was to cover such lien, charge or security for taxes it would not have been necessary to have enacted sub-sec. 6, of sec. 51. It may well be argued that the enactment of sub-sec. 6, sec. 51, shews that only such liens, charges or securities arising under provincial law, which are expressly reserved in the Act are liens, charges or securities against the estate of the bankrupt.

The judgment of Mr. Justice Panneton discusses certain sections dealing with preferred claims of landlords, etc., arising under the Act. These preferred claims were covered by provincial legislation and under these provincial laws, liens, charges or securities were given to the preferred creditors. These liens, charges or securities are retained in an altered form in the present Bankruptcy Act, and it would appear that as certain provincial liens, charges or securities are dealt with, that those that are not dealt with are taken away. It cannot be said that reading the different sections bearing upon the questions that the matter is a settled one and that the last word has been said upon the subject.