

COURT OF REVIEW.

MONTREAL, October 31, 1883.

Before TORRANCE, RAINVILLE & MATHIEU, JJ.

In re PILON, Petitioner, & FOUCAULT, contesting.

Insolvent Act of 1875, Section 56—Failure of Insolvent to keep books of account showing his receipts and disbursements.

TORRANCE, J. The petitioner Pilon was an insolvent, and, applying for his discharge, was opposed by Foucault. The opposition was successful on the ground that the petitioner had not kept proper books of account showing his receipts and disbursements, as required by the Insolvent Act, 1875, S. 56. The judgment of the Court in the District of Terrebonne was correct and should be confirmed.

Judgment confirmed.

*Pagnuelo & Co., for petitioner.**Prevost & Co., for contestant.*

COURT OF QUEEN'S BENCH.

MONTREAL, October 31, 1883.

DORION, C.J., MONK, RAMSAY & BABY, JJ.

THE CONSOLIDATED BANK OF CANADA, Appellant,
& MOAT, Respondent.*Insolvent Act of 1875, Section 88—Interest-bearing debt.*

The creditor of a hypothecary debt bearing interest due by one of the partners, is entitled to be paid interest in full up to date of collocation out of the private estate of the partner, before the creditors of the firm are entitled to rank against the private estate.

RAMSAY, J. The respondent, creditor of a partner of an insolvent firm, was collocated on the private estate for his debt and interest on it.

The question to be decided turns on the interpretation to be given to sect. 88 of the Insolvent Act, 1875. It is contended by appellant, that the *claims* which are to be paid *in full*, do not include interest due on an hypothecary debt. The argument is this: this disposition of the law is taken from an English statute, under which it has been held that the claim does not include interest, and it is offered as a legal pro-

position, that when an institution is borrowed from a foreign legislation, it is presumed to be taken accompanied by the jurisprudence in such foreign country at the time the legislation is introduced. We are also referred to section 80 of our Act of 1875, to show that interest generally does not form part of the claim in insolvency. It is further said, as the reason of the thing, that interest ceases because the debtor has surrendered the thing, and consequently that interest can no longer run for what he has not got. And finally, that the idea of the insolvent act is, that so far as distribution is concerned—or rather ranking—the whole thing is petrified at the moment of a valid assignment.

The law may be very good, and the reason given for it the reverse. It may be good law to say that under our positive law insolvency puts an end to interest, and to give as a reason for it, that it is because the insolvent has surrendered his estate is clearly untenable whether we look at it technically, or from the point of equity. Technically, there is no surrender to the creditor. It is made to a legal person who administers for the benefit of the creditors, it is true, but finally, for the profit of the debtor himself, for he gets the residue, if any there be. The abstract proposition, that insolvency puts an end to interest, was in reality abandoned when appellant admitted that the debtor would be liable for interest before he could get back the residue. If he continues liable for the interest it had not ceased to run. Equitably, it seems to me the argument is no better. Why it should be less fair to claim the interest of the debt bearing interest than the principal, it is difficult to say.

It may, however, be absolute law.

The words "subject to rebate of interest" in section 80, appear to me to have no application to the question before us. They appear to me to refer only to debts *due and not actually payable*. The creditor cannot claim on them for prospective interest, although forming part of the obligation. But without creating any confusion, they may be applied to debts payable and to debts not payable. Both stand on the same footing.

Sec. 88 is not borrowed from the English act, at all events, so far as this Province is concerned, but from cap. 4 of the Sts. of Canada of 1859,