

question, yet from the freely expressed opinions of at least two of the judges, one other not expressing any dissent on this point, we may conclude that the opinion of the majority of that Court was that the legislation in question subjecting foreign joint stock companies to the winding-up process of Canadian courts, was *ultra vires* of the Dominion Legislature, especially in that it conflicted with the Imperial legislation directing such companies incorporated under the English Statutes to be wound up in Great Britain. I think in the present condition of the jurisprudence we should hold it to be so.

As to the second question, I cannot doubt the capacity of the appellant to make the objection and raise the question. In the case of the *Commercial Bank of Halifax v. Gillespie, Moffatt & Co.*, it was raised by a creditor. Allen is not a creditor but a large shareholder, and there might be a surplus over paying the debts in which he would have an interest. He has an interest to invoke the English law and courts rather than the Canadian, if he judges them more efficient to collect debts and settle questions as to contributories and as to other rights of the parties. He has such an interest as entitles him to be a party to the proceedings and therefore entitled to demand that they should be set aside as illegal. It has been contended that the supplementary letters-patent obtained in the Province of Quebec might give the necessary jurisdiction there. I do not think so. These were only to give effect to the charter under the Imperial Statutes.

On the whole I think the judgment should be to reverse the decision of the Superior Court and to set aside the winding-up proceedings.

DORRIN, Ch. J., for the majority of the Court:—

The appellant who is a stockholder of *The Scottish Canadian Asbestos Company, Limited*, now insolvent, complains of a judgment by which the respondents were appointed liquidators of the company under the provisions of the Dominion Winding-up Act, ch. 129 of the Revised Statutes of Canada.

The objection urged by the appellant, both

here and in the Court below, is that the company was incorporated under the Imperial Companies Act, 1862-1886; that it is subject to the laws of the Imperial Parliament as regards its franchises, corporate capacity, and its liquidation; that the winding up Act of Canada does not apply to this Company, and that in so far as it purports to relate or apply to the liquidation of the company, it is *ultra vires* of the Parliament of the Dominion of Canada.

By the articles of association, the head office of the company was to be in Scotland, and it was provided that in case of dissolution, its affairs should be wound up in accordance with the provisions of the Imperial Companies' Act, 1862-1883; the principal business of the company was, however, to be carried on in Canada, and was, in fact, carried on in the Province of Quebec, and for that purpose the company obtained Letters Patent under Art. 4764 of the Revised Statutes of the Province of Quebec.

There is no doubt as to the insolvency of the company, which is in liquidation under proceedings now pending in Scotland.

The only question to be determined is whether the creditors of a company organized under the Companies' Act 1862-1886, of the Imperial Parliament, but doing business in the Province of Quebec, where it holds both real and personal property, can avail themselves of the provisions of the Winding-up Act, ch. 129 of the Revised Statutes of Canada, to realize the property of the company within the province of Quebec or within the Dominion, in order to secure the payment of their claims.

The provisions of the Winding-up Act of Canada are applicable: 1st, to insolvent companies. 2nd, to companies in liquidation or in process of being wound up.

They regulate the proceedings of our courts to enforce the rights of creditors and of shareholders on the property of such companies.

As they only relate to procedure, their operation is confined to property found within the territorial limits of the jurisdiction of the Courts authorized to enforce them. For the same reason, within such territorial limits, their operation can neither be re-