

had its mill and carried on business at Gatineau Point, in this district; and before the cause had been inscribed on the merits, a winding up order was obtained from the Superior Court, in the district of Montreal, and the opposants were appointed liquidators. They forthwith notified the plaintiffs that the company defendant had been placed in liquidation; but, notwithstanding the notice, the plaintiffs took judgment by default, and afterwards sued out a writ of *venditioni exponas*.

The opposants then obtained judicial permission to intervene, and by an opposition to annul, set up the winding up order and their appointment, and claimed, as the liquidators of the company defendant, the property seized. By error they allege that the company defendant had its principal place of business at Gatineau Point, in this district. The plaintiffs contested the opposition and pleaded, among other minor things, that The Winding Up Act was *ultra vires* of the Parliament of Canada and unconstitutional, and that at all events the winding up order and the subsequent proceedings were illegal, as the court in Montreal had no jurisdiction in the matter.

As to the first question, the plaintiffs contend that the power conferred upon the Parliament of Canada to legislate on the subject of bankruptcy and insolvency by paragraph 21 of section 91 of the B. N. A. Act, is limited to laws providing for an insolvent debtor's discharge from his contracts, and does not extend to laws providing for a distribution of an insolvent debtor's estate without a concurrent discharge from his liabilities, and that the Winding Up Act which only provides for the distribution of an insolvent trading company's assets is therefore unconstitutional. As to the other question, they allege that the company carried on its business in this district, and they maintain that, if the Act is constitutional, the proceedings in liquidation should have been instituted and carried on here, and that the proceedings had in Montreal are illegal.

To resolve the first question, we have to ascertain the extent and scope of the power conferred by our constitution on Parliament

by the empowering to legislate on the subject of bankruptcy and insolvency. By the constitution of the United States of America, "Congress has power to establish uniform laws on the subject of bankruptcies throughout the United States." The grant of this power, here and there, is identical; in both countries power is given to pass laws on the subject of bankruptcies. For the construction to be given to the power of Parliament over this subject, we can therefore refer to American jurisprudence.

Turning, then, to Pomeroy's Treatise on Constitutional Law, I would quote the following passages: No. 397. "Laws on the subject of bankruptcies are those whose principal object is to distribute the estates of insolvents rateably among their creditors. . . . Whether the legislation shall apply to all failing debtors or be confined to certain classes; . . . Whether it shall release the debtor from further liability or not; . . . all these are mere matter of policy, to be adopted or rejected by Congress, according to its views of expediency; . . . none of them are necessary to the proper exercise of its jurisdiction." No. 400. "Mr. Justice Catron says: . . . Of this subject, (bankruptcy) Congress has general jurisdiction, and the true inquiry is, to what limits is that jurisdiction restricted? I hold it extends to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest is a discharge of the debtor from his contracts." All this is applicable in considering the nature and the extent of the power granted to Parliament on the subject of bankruptcy and insolvency; and I hold that the great ends of this subject, here as there, are distribution and discharge, and that in dealing with this subject, Parliament, like Congress, has full discretion to legislate to the extent of its power or within its power, that it can provide for a distribution of the property of an insolvent debtor with a discharge from further liability, or for such a distribution without such discharge. The Winding Up Act provides for the distribution of the assets of insolvent trading companies; and I hold that it was within