

lation of trade and commerce." On this point they are most explicit. They say :

"The words 'regulation of trade and commerce,' in their unlimited sense are sufficiently wide if uncontrolled by the context and other parts of the act, to include every regulation of trade ranging from political arrangements, in regard to trade with foreign governments, requiring the sanction of Parliament, down to minute rules for regulating particular trades. But a consideration of the act shows that the words were not used in this unlimited sense. In the first place, the collocation of No. 2 with classes of subjects of national and general concern affords an indication that regulations relating to general trade and commerce were in the mind of the Legislature when conferring this power on the Dominion Parliament. If the words had been intended to have the full scope, of which in their literal meaning they are susceptible, the specific mention of several of the other classes of subjects enumerated in section 91 would have been unnecessary ; as 15, banking ; 17, weights and measures ; 18, bills of exchange and promissory notes ; 19, interest ; and even 21, bankruptcy and insolvency. 'Regulation of trade and commerce' may have been used in some such sense as the words 'regulations of trade' in the Act of Union between England and Scotland (6 Anne, c. 11), and as these words have been used in other acts of state. Article V. of the Act of Union, enacted that all the subjects of the United Kingdom should have 'full freedom and intercourse of trade and navigation' to and from all places in the United Kingdom and the Colonies ; and article VI. enacted that all parts of the United Kingdom from and after the union should be under the same 'prohibitions, restrictions, and regulations of trade.' Parliament has at various times since the union passed laws affecting and regulating specific trades in one part of the United Kingdom only, without its being supposed that it thereby infringed the articles of union. Thus the acts for the sale of intoxicating liquors notoriously vary in the two Kingdoms. So with regard to acts relating to bankruptcy, and various other matters."

This view supports fully the judgment of the Court of Queen's Bench, at the last term at Quebec, maintaining that of Chief Justice Meredith, in the case of *Poulin & The Corporation of Quebec*. It was held in that case that a local

act, regulating the times at which saloons and taverns should be open for the sale of intoxicating liquors, was within the powers of a Local Legislature, being a mere matter of municipal police regulation, and that it was not an interference with the Dominion power to regulate trade and commerce.

The allusion to the case of *L'Union St. Jacques & Belisle* calls for what may be considered a digression. Before the courts here it was argued as being an interference with the powers of the Dominion to deal with bankruptcy and insolvency. Nakedly so considered the decision of the courts here was correct. There can be no question that the act to relieve the insolvent appellant was equivalent to an insolvent act, within our meaning of insolvency ; and when Lord Selborne said, that an act which relieved the association from paying its debts, because obliging it to pay its debts meant ruin, "does not prove that it was in any legal sense in the category of insolvency," he was either drawing his ideas of insolvency from a system of law very different from ours, or that the word had a special meaning in the B. N. A. Act, or he meant that the law might possibly have given a false reason for its enactment. According to our law, the incapacity to pay one's debts is the test of *déconfiture*. Where the legal sense of insolvency is other than the incapacity to pay one's debts, the legal sense must have departed curiously from the normal signification of the word. In the B. N. A. Act insolvency is used to extend bankruptcy. The latter is the condition which the law creates, under certain circumstances for certain classes of persons who are or appear to be insolvent. Bankruptcy is a creation of positive law. Insolvency, on the other hand, results from the general principles of jurisprudence. But in the Privy Council a distinction was made which had not been adverted to here, and one that seems to be founded on unanswerable reasoning. It is said, that the Dominion Parliament not having exercised the power of legislating as to the insolvency of an association like *L'Union St. Jacques*, it remained subject to the civil law, and consequently to the operation of any modification of the civil law by local legislation. In this case when before the Supreme Court, referring to the case of *L'Union St. Jacques & Belisle*, Mr. Justice Fournier puts the point very clearly. He says : "In order to reconcile the exercise of these