recover $4,000 on the common counts from J. S., and other merchants, resident and domiciled in Canada, carrying on business in Toronto, and who were traders within the Insolvent Act of 1875, and had obtained a discharge in insolvency after assignment made under that Act.

The plaintiffs in their declaration charge that a purchase of goods was made by the defendants from them on the 13th March, 1879, and another purchase on the 29th March, of the same year, that when the defendants made the said purchases, they had probable cause for believing themselves to be unable to meet their engagements, and concealed the fact from the plaintiffs, thereby becoming their creditors with intent to defraud the plaintiffs, and sought to bring the defendants within the purview of sec. 136 of the Insolvent Act of 1875.

The defendant J. S. (appellant), amongst other pleas, pleaded, as a fifth plea, that the contract out of which the alleged cause of action arose, was made in England and not in Canada. To this plea plaintiffs demurred, and one of the matters of law to be argued was: "The fact of the contract being made in England does not exempt the defendant from liability under the provisions of the Insolvent Act of 1875 in this action." Issue was joined in the other pleas.

Held (TASCHEREAU, and GWYNNE, J. J. dissenting), that, although the judgment appealed from was a decision on a demurrer to part of the action only, it is a final judgment in a judicial proceeding within the meaning of the 3rd. section of the Supreme Court Amendment Act of 1879 (*Chevalier* v. *Cuvillier*, 4 S.C.R. 605 followed).

Per RITCHIE, C. J., and FOURNIER, J. (1) That sec. 136 of the Insolvent Act of 1875 was *intra vires* of the Parliament of Canada.

(2) That the charge of fraud in the present suit is merely a proceeding to enforce payment of a debt under a law relating to bankruptcy and insolvency, over which subject matter the Parliament of Canada has power to legislate.

(3) That although the fraudulent act charged was committed in another country beyond the territorial jurisdiction of the courts in Canada, the defendant was not exempt for that reason from liability under the provisions of the 136 section of the Insolvent Act, 1875. and therefore the plea demurred to was bad.

Per GWYNNE, J.—That as the said fifth plea confesses the debt for which the action is brought, and that such debt was incurred under circumstances of fraud, and offers no matter whatever of avoidance, or in bar of the action, that the said plea is bad and therefore if the appeal be entertained it must be dismissed.

Per STRONG, HENRY, and TASCHEREAU, JJ.—There being nothing either in the language or object of section 136 of the Insolvent Act to warrant the implication that it was to have any effect out of Canada, it must be held not to extend to the purchase of goods in England by defendant stated in the second count of the declaration.

The Court being equally divided the appeal was dismissed without costs.

Bethune, Q.C., for appellant.

Rose, Q.C., for respondent.

MERCHANTS' BANK v. SMITH.

Warehouse Receipts, 35 *Vict. c.* 5 (*D*).

The appellants discounted for a trading firm, on the understanding that a quantity of coal purchased by the firm should be consigned to them, and that they would transfer to the firm the bills of lading, and should receive from one of the members of the firm his receipt as a wharfinger and warehouseman for the coal, as having been deposited by them, to which they assented; the following warehouse receipt was given:—

"Received in store in Big Coal House warehouse at Toronto, from Merchants' Bank of Canada (at Toronto), fourteen hundred and fifty-eight (1458) tons stove coal, and two hundred and sixty-one tons chestnut coal, per schooners 'Dundee,' 'Jessie Drummond,' 'Gold Hunter,' and 'Annie Mulvey,' to be delivered to the order of the said Merchants' Bank to be endorsed hereon. This is to be regarded as a receipt under the provisions of Statute 34 Vict. ch. 5; value $7,000,000. The said coal in sheds facing Esplanade is separate from and will be kept separate and distinguishable from other coal.

"Dated 10th August, 1878. (sd.) W. Snarr."