

Insol. Cases.]

RE ROBINSON, AN INSOLVENT.

[Insol. Cases.]

waters, none daring to make them afraid. A maritime court warrant could not reach them, a marshal could not arrest them. The owners of vessels and mortgagees had no dread of the firm grasp of a marshal or the power of the Admiralty Law. Vessels then had existing rights—vested rights; men were employed and vessels set out on voyages under the then existing laws. The marshal of this court can now arrest a vessel, her cargo, freight and apparel, and stop the progress of the ship until right is done. Surely this must be a new right, a new power, a new jurisdiction, an interference with substantial rights and privileges. In this view of the case, the statute is, in my opinion, not retrospective in this respect, but prospective. Before the passing of the Maritime Jurisdiction Act, the Province was looked upon as an inland Province, while the Provinces of Quebec, New Brunswick and Nova Scotia were called the Maritime Provinces. So far as maritime authority is concerned, it may be looked upon as maritime. It has the same authority on the inland waters, on Lakes Ontario, Erie, Huron and Superior as the Vice-Admiralty Courts have on the waters of the Gulf of St. Lawrence, the Bay of Fundy, the Straits of Northumberland, the Lower St. Lawrence and Gaspé Bay. The Ports of Toronto, Kingston, St. Catharines, are as much maritime ports as Quebec, St. John or Halifax. As I am of the opinion that the statute is prospective it is unnecessary to discuss any of the other points. The petition will be dismissed, but as the question involved is new and important it will be without costs.

*Petition dismissed without costs.*

## INSOLVENCY CASES.

RE ROBINSON, AN INSOLVENT.

*Watch—Ordinary wearing apparel.*

A watch and chain which an insolvent had been in the habit of wearing, and of no great value, comes within the exemption applicable to the necessary and ordinary wearing apparel of the debtor, and the insolvent will not be ordered to give them up to the assignee.

[Toronto, January 22, 1879.]

This was an application on behalf of the assignee under section 143 of the Insolvent Act of 1875, for an order requiring the insolvent to deliver up to the assignee his watch and chain.

The assignee, by his petition, claimed the watch and chain, as a matter of right, as part of the property which passed to him by the assignment.

*Bigelow*, for the insolvent, contended that the watch and chain in question did not and should not pass under the circumstances to the assignee. He filed an affidavit of the insolvent showing, that he, the insolvent, had the watch in question for about five years and the chain for six years. The watch originally cost \$30. He also filed an affidavit of a manufacturing jeweller who examined the articles in question and said they were worth about twenty dollars.

*Shepley*, contra.

*McKENZIE*, Co. J.—Section 16 of the Insolvent Act of 1875 vests in the assignee all property of the insolvent, except such real and personal property as are exempt from seizure and sale under execution by cap. 66 of the Revised Statutes of Ontario, sec. 2, sub 2. "*The necessary and ordinary wearing apparel of the debtor and his family*"—is by this exempt from seizure under any writ of execution.

My attention was directed to *In re Sanborn*, an insolvent, 14 C. L. J. 241, wherein Judge Elliot (Middlesex) explains his views of the law in this respect, accompanied with very sensible remarks.

The question is, whether the watch and chain in question, of the insolvent, valued at about \$20, and which he had been wearing on his person upwards of four years came under the exemption of "necessary and ordinary wearing apparel." If they do the insolvent has a right to withhold them from the assignee; if not, he must deliver them up. I am of opinion that the watch and chain in question do come within the statutory exemption, and may be withheld by the insolvent.

Among the definitions given of the word "apparel," may be mentioned "dress," "clothes," "attire," "raiment," "external habiliments."