

to the sheriff writs and certificates obtained in the manner provided for by that Act.

Their Lordships proceed now to consider the nature of the enactment said to be *ultra vires*. It postpones judgments and executions not completely executed by payment to an assignment for the benefit of creditors under the Act. Now there can be no doubt that the effect to be given to judgments and executions and the manner and extent to which they may be made available for the recovery of debts are *prima facie* within the legislative powers of the Provincial Parliament. Executions are a part of the machinery by which debts are recovered, and are subject to regulation by that Parliament. A creditor has no inherent right to have his debt satisfied by means of a levy by the sheriff, or to any priority in respect of such levy. The execution is a mere creature of the law which may determine and regulate the rights to which it gives rise. The Act of 1887 which abolished priority as amongst execution creditors provided a simple means by which every creditor might obtain a share in the distribution of moneys levied under an execution by any particular creditor. The other Act of the same year, containing the section which is impeached, goes a step further and gives to all creditors under an assignment for their general benefit a right to a ratable share of the assets of the debtor, including those which have been seized in execution.

But it is argued that inasmuch as this assignment contemplates the insolvency of the debtor, and would only be made if he were insolvent, such a provision purports to deal with insolvency and therefore is a matter exclusively within the jurisdiction of the Dominion Parliament. Now it is to be observed that an assignment for the general benefit of creditors has long been known to the jurisprudence of this country and also of Canada, and has its force and effect at common law quite independently of any system of bankruptcy or insolvency, or any legislation relating thereto. So far from being regarded as an essential part of the bankruptcy law, such an assignment was made an act of bankruptcy on which an adjudication might be founded, and by the law of the Province of Canada which prevailed at the time when the Dominion Act was passed, it was one of the grounds for an adjudication of insolvency.

It is to be observed that the word "bankruptcy" was apparently not used in Canadian legislation, but the insolvency law of the Province of Canada was precisely analogous to what was known in England as the bankruptcy law.

Moreover, the operation of an assignment for the benefit of creditors was precisely the same, whether the assignor was or was not in fact insolvent. It was open to any debtor who might deem his solvency doubtful, and who desired in that case that his creditors should be equitably dealt with, to make an assignment for their benefit. The validity of the assignment and its effect would in no way depend on the insolvency of the assignor, and their Lordships think it clear that the ninth section would equally apply whether the assignor was or was not insolvent. Stress was laid on the fact that the enactment relates only to an assignment under the Act containing the section, and that the Act prescribes that the sheriff of the county is to be the assignee unless a majority of the creditors consent to some other assignee being named. This does not appear to their Lordships to be material. If the enactment would have been *intra vires*, supposing section nine had applied to all assignments without these restrictions, it seems difficult to contend that it became *ultra vires* by reason of them. Moreover, it is to be observed that by subsection (2) of section 9, assignments for the benefit of creditors not made to the sheriff or to other persons with the prescribed consent,

although they are rendered void as against assignments so made, are nevertheless, unless and until so avoided, to be "subject in other respects to the provisions" of the Act.

At the time when the British North America Act was passed bankruptcy and insolvency legislation existed, and was based on very similar provisions both in Great Britain and the Province of Canada. Mention has already been drawn to the Canadian Act.

The English Act then in force was that of 1861. That Act applied to traders and non-traders alike. Prior to that date the operation of the Bankruptcy Acts had been confined to traders. The statutes relating to insolvent debtors, other than traders, had been designed to provide for their release from custody on their making an assignment of the whole of their estate for the benefit of their creditors.

It is not necessary to refer in detail to the provisions of the Act of 1861. It is enough to say that it provided for a legal adjudication in bankruptcy, with the consequence that the bankrupt was divested of all his property and its distribution amongst his creditors was provided for.

It is not necessary in their Lordships' opinion, nor would it be expedient to attempt to define what is covered by the words "Bankruptcy" and "Insolvency" in section 91 of the British North America Act. But it will be seen that it is a feature common to all the systems of bankruptcy and insolvency to which reference has been made, that the enactments are designed to secure that in the case of an insolvent person his assets shall be ratably distributed amongst his creditors whether he is willing that they shall be so distributed or not. Although provision may be made for a voluntary assignment as an alternative, it is only as an alternative. In reply to a question put by their Lordships, the learned Counsel for the Respondent were unable to point to any scheme of bankruptcy or insolvency legislation which did not involve some power of compulsion by process of law to secure to the creditors the distribution amongst them of the insolvent debtor's estate.

In their Lordships' opinion these considerations must be borne in mind when interpreting the words "Bankruptcy" and "Insolvency" in the British North America Act. It appears to their Lordships that such provisions as are found in the enactment in question, relating as they do to assignments purely voluntary, do not infringe on the exclusive legislative power conferred upon the Dominion Parliament. They would observe that a system of bankruptcy legislation may frequently require various ancillary provisions for the purpose of preventing the scheme of the Act from being defeated. It may be necessary for this purpose to deal with the effect of executions and other matters which would otherwise be within the legislative competence of the Provincial Legislature. Their Lordships do not doubt that it would be open to the Dominion Parliament to deal with such matters as part of a bankruptcy law, and the Provincial Legislature would doubtless be then precluded from interfering with this legislation, inasmuch as such interference would affect the bankruptcy law of the Dominion Parliament. But it does not follow that such subjects, as might properly be treated as ancillary to such a law and therefore within the powers of the Dominion Parliament, are excluded from the legislative authority of the Provincial Legislature when there is no bankruptcy or insolvency legislation of the Dominion Parliament in existence.

Their Lordships will therefore humbly advise Her Majesty that the decision of the Court of Appeal ought to be reversed, and that the question ought to be answered, in the affirmative. The parties will bear their own costs of this appeal.