

*Bankruptcy Act*

have a bankruptcy law, power to pass which is given to the Dominion under the British North America Act, and you cannot exercise it unless you interfere with property and civil rights. The whole thing deals with property and nothing else. Does my hon. friend find in the British North America Act any distinction drawn between property and civil rights having regard to personal property on the one hand and property and civil rights having regard to real property on the other? Because I cannot find such a distinction.

Sir LOMER GOUIN: Perhaps I might show some to my hon. friend, but I do not suppose we intend to discuss that point here. As I say, the question has already been submitted to some of our best judges, and some have said that we have no right to interfere to the extent of depriving landlords of their preference; some say that we may have that right. As I said before, we have now a case pending in which, I understand, judgment is to be rendered against our act. I shall not be prepared to say that the judgment is not sound.

Sir HENRY DRAYTON: If we stand in that parlous position, we ought to stop doing anything with this act.

Sir LOMER GOUIN: Not at all.

Sir HENRY DRAYTON: Yes, because my hon. friend himself has admitted that it is absolutely necessary and essential, under a bankruptcy law, to deal with property and civil rights. Every day, under a bankruptcy law, we are interfering with rights of action which are founded on provincial law, just as much as is the right of a lessor founded on provincial law. I would have thought that if we had the right to introduce and pass a bankruptcy law, we would have the right to deal with matters of necessity incidental to that field of legislation. The Privy Council has so held in other cases. If we have not that right, I point out to my hon. friend that this measure ought to be withdrawn.

Mr. MARTELL: Though we have already passed a Bankruptcy Act, does my hon. friend not think that before we put an amendment to the Bankruptcy Act upon the statute books, it would be well to repeal the Bankruptcy Act as it stands at present, and to get a reference to the Supreme Court of Canada and, if necessary, to the Judicial Committee of the Privy Council, in order that we may know exactly what we can do in regard to bankruptcy—though we have the power, under the British North America Act, to pass a bankruptcy law—in order to see how far, in the opinion of the learned judges or of the law

[Sir Henry Drayton.]

lords, we can go as regards an infringement on property and civil rights? Would that not be better than allowing the ordinary people to bear the expense?

Sir HENRY DRAYTON: The trouble in that case would be that the people would have to pay a great deal more. There are many insolvencies at the present time; if we cancel this law, that would cost the public, the creditors and the debtors, a great deal of money, and more money would be thrown away.

Mr. MARTELL: Does my hon. friend not think, before we had this bankruptcy law, we were getting along very well under our various provincial laws with regard to debtors and so on?

Sir HENRY DRAYTON: It is a good thing to have a law which will enable a man who has failed honestly to be able to get a clean sheet and to start afresh. We could not do that before, and for that reason I am in favour of the bankruptcy provision. But surely my hon. friend will agree with me in this, that if we have jurisdiction to pass this bankruptcy law, we have jurisdiction to interfere with the right of a lessor just as much as we have the right to interfere with the rights of any other creditor.

Mr. MARTELL: I agree with that.

Sir LOMER GOUIN: I understand my hon. friend desires, as we do, to frame a bankruptcy law that will be as perfect as possible—he is in favour of a bankruptcy law?

Sir HENRY DRAYTON: Yes.

Sir LOMER GOUIN: We are discussing the point whether we have the right, legislating as we do in regard to bankruptcy, to affect property and civil rights?

Sir HENRY DRAYTON: Yes.

Sir LOMER GOUIN: As I said before, there is room for discussion on that point. The only point, though, that we have to consider in connection with these amendments is the preference of the landlord. When there is doubt on such a question why not make it sure that there shall be no cause for attack by anyone on our amendment, on the ground of its being unconstitutional, by leaving to the provinces all their rights intact in this matter? If, simply in order that we may have a uniform law for all provinces, our legislation changes the status of the landlords in any province and thereby gives occasion for the contesting of our act and the decision later on by the courts that it is un-