

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Present : Lord Herschell, L.C., Lord Watson, Lord Macnaghten, Lord Shand, Sir Richard Couch.

ATTORNEY-GENERAL OF ONTARIO *v.* ATTORNEY-GENERAL OF THE DOMINION OF CANADA.

Jurisdiction of Provincial Legislature—Act respecting Assignments and Preferences, validity of.

Held, that the Legislature of Ontario had jurisdiction to enact s. 9 of R.S.O., c. 124, intituled "An Act respecting Assignments and Preferences by Insolvent Persons."

[Feb. 24th, 1894.]

This was an appeal from the decision of the Court of Appeal for Ontario of May 9th, 1893, reported 20 A.R. 489.

Hon. Edward Blake, Q.C., (of the Canadian Bar) *Mr. Haldane*, Q.C., and *Mr. Bray* for the appellant.

Sir Richard Webster, Q.C., and *Mr. Carson*, Q.C., (of the Irish Bar) for the respondent.

The LORD CHANCELLOR, in delivering the considered judgment of the committee, said : This appeal is presented by the Attorney-General of Ontario against the decision of the Court of Appeal of that province. The decision complained of was an answer given to a question referred to that court by the Lieutenant-Governor of the province in pursuance of an Order in Council.

The question was as follows : "Had the Legislature of Ontario jurisdiction to enact the 9th section of the Revised Statutes of Ontario, c. 124, and entitled 'An Act respecting Assignments and Preferences by Insolvent Persons'?" The majority of the court answered this question in the negative ; but one of the judges who formed the majority only concurred with his brethren because he thought the case was governed by a previous decision of the same court ; had he considered the matter *res integra* he would have decided the other way. The court was thus equally divided in opinion.

It is not contested that the enactment, the validity of which is in question, is within the legislative powers conferred on the Provincial Legislature by s. 92 of the British North America Act, 1867, which enables that legislature to make laws in relation to property and civil rights [in the province unless it is withdrawn from their legislative competency by the provisions of the 91st section of that Act, which confers upon the Dominion Parliament the exclusive power of legislation with reference to bankruptcy and insolvency.

The point to be determined, therefore, is the meaning of those words in s. 91 of the British North America Act, 1867, and whether they render the enactment impeached *ultra vires* of the Provincial Legislature. That enactment is s. 9 of the Revised Statutes of Ontario of 1887, c. 124, entitled "An Act respecting Assignments and Preferences by Insolvent Persons." The section is as follows :

"An assignment for the general benefit of creditors under this Act shall take precedence of all judgments and of all executions not completely executed