

Province of British Columbia.

SUPREME COURT.

BOLE, J.]

[June 16.

IN RE SHARP.

Assignment for benefit of creditors—Homestead exemption—Identical goods not exempt—Part of stock in trade not exempt.

In the matter of the Creditors Trust Deed Act, 1890, and Amending Acts, and the homestead exemption claim of Sharp & Co., merchant tailors.

In this matter the claimants (Sharp & Co.) applied for an order declaring them entitled to a homestead exemption of \$500 worth of personal property out of the goods assigned by them for the benefit of creditors.

The goods claimed were of course part of their stock in trade. Claimants' counsel contended that the property in these goods, i.e., the \$500 worth claimed, had never passed to the assignee by reason of the clause in the "Deed of Assignment," which read as follows: "Save and except such personal property as may be selected by the said debtors under the Homestead Act and the Homestead Exemption Act, 1890," and that their rights were measured by the assignment deed of March 26th, 1896, without any reference to the Homestead Act of 1893.

Section 10 of the Homestead Act, 1893, reads as follows: "Provided that nothing herein contained shall be construed to exempt any goods or chattels from seizure in satisfaction of a debt contracted for or in respect of such identical goods or chattels," and cap. 24 of the statutes of 1896, sec. 10, reads as follows: "The following personal property shall be exempt from forced seizure or sale by any process at law or in equity, that is to say: the goods and chattels of a debtor at the option of such debtor, or if dead, of his personal representative, to the value of five hundred dollars; provided that nothing herein contained shall be construed to exempt any goods or chattels from seizure in satisfaction of a debt contracted for or in respect of such identical goods or chattels; provided further, that this section shall not be construed so as to permit a trader to claim as an exemption any of the goods and merchandise which form a part of the stock in trade of his business."

The case of *Wert v. McEachron*, reported ante p. 208, was cited at the trial.

Held, that as no evidence was adduced to show that the goods claimed under exemption did not fall within the purview of sec. 2 of the Homestead Amendment Act, 1893, therefore the Act applied.

Held, also that the statute of 1896 applied on the ground that it relates to matters of procedure, and would be therefore retrospective: *Hardner v. Lucas*, Appeal Cases, 582; *Singer v. Hasson*, 26 L. T., 326; *Kimbray v. Draper*, 37 L. J. Q. B. 80; *A. G. v. Thebold*, 24 Q. B. D. 560; *Wright v. Hule*, 30 L. J. Ex. 40; *Jones v. Bennett*, 63 L. T. 705; *Dibb v. Walker*, (1893) 2 ch. 429; *Kemp v. Wright*, (1895) 1 ch. 121, 126 C. A., then the debtors' contention must fail.

Held, also, that in any event the debtors cannot be heard to say that they