

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
L'Union St. Jacques de Montreal v. Dame
Julie Belisle, from the Court of Queen's
Bench for the Province of Quebec, Canada
(Appeal Side); delivered July 8th, 1874.*

Present :

LORD SELBORNE.

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE sole question in this Appeal is this,—whether the subject matter of the Provincial Act, the 33rd Victoria, cap. 58, is one of those which by the 91st section of the Dominion Act are reserved exclusively for legislation by the Dominion Legislature. The scheme of the 91st and 92nd sections is this. By the 91st section some matters,—and their Lordships may do well to assume, for the argument's sake, that they are all matters except those afterwards dealt with by the 92nd section—their Lordships do not decide it, but for the argument's sake they will assume it,—certain matters, being upon that assumption all those which are not mentioned in the 92nd section, are reserved for the exclusive legislation of the Parliament of Canada, called the Dominion Parliament; but beyond controversy there are certain other matters, not only not reserved for the Dominion Parliament, but assigned to the exclusive power and competency of the provincial legislature in each province. Among those the last is thus expressed:—“Generally all matters of a

“merely local or private nature in the province.” If there is nothing to control that in the 91st section, it would seem manifest that the subject matter of this Act, the 33rd Victoria, cap. 58, is a matter of a merely local or private nature in the province, because it relates to a benevolent or benefit society incorporated in the city of Montreal within the province, which appears to consist exclusively of members who would be subject *prima facie* to the control of the provincial legislature. This Act deals solely with the affairs of that particular society, and in this manner:—taking notice of a certain state of embarrassment resulting from what it describes in substance as improvident regulations of the society, it imposes a forced commutation of their existing rights upon two widows, who at the time when that Act was passed were annuitants of the society under its rules, reserving to them the rights so cut down, in the future possible event of the improvement up to a certain point of the affairs of the association. Clearly this matter is private; clearly it is local, so far as locality is to be considered, because it is in the province and in the city of Montreal; and unless, therefore, the general effect of that head of section 92 is for this purpose qualified by something in section 91, it is a matter not only within the competency, but within the exclusive competency of the provincial legislature. Now section 91 qualifies it undoubtedly, if it be within any one of the different classes of subjects there specially enumerated; because the last and concluding words of section 91 are,—“And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the

“ legislatures of the provinces.” But the *onus* is on the Respondent to show that this, being in itself of a local or private nature, does also come within one or more of the classes of subjects specially enumerated in the 91st section.

Now it has not been alleged that it comes within any other class of the subjects so enumerated except the 21st, “ Bankruptcy and Insolvency ;” and the question therefore is, whether this is a matter coming under that class 21, of bankruptcy and insolvency? Their Lordships observe that the scheme of enumeration in that section is, to mention various categories of general subjects which may be dealt with by legislation. There is no indication in any instance of anything being contemplated, except what may be properly described as general legislation ; such legislation as is well expressed by Mr. Justice Caron when he speaks of the general laws governing *Faillite*, bankruptcy and insolvency, all which are well known legal terms expressing systems of legislation with which the subjects of this country, and probably of most other civilized countries, are perfectly familiar. The words describe in their known legal sense provisions made by law for the administration of the estates of persons who may become bankrupt or insolvent, according to rules and definitions prescribed by law, including of course the conditions in which that law is to be brought into operation, the manner in which it is to be brought into operation, and the effect of its operation. Well, no such general law covering this particular association is alleged ever to have been passed by the Dominion. The hypothesis was suggested in argument by Mr. Benjamin, who certainly argued this case with his usual ingenuity and force, of a law having been previously passed by the Dominion Legislature, to the effect that any association of this par-

ticular kind throughout the dominion, on certain specified conditions assumed to be exactly those which appear upon the face of this statute, should thereupon, *ipso facto*, fall under the legal administration in bankruptcy or insolvency. Their Lordships are by no means prepared to say that, if any such law as that had been passed by the Dominion Legislature, it would have been beyond their competency; nor that, if it had been so passed, it would have been within the competency of the provincial legislature afterwards to take a particular association out of the scope of a general law of that kind, so competently passed by the authority which had power to deal with bankruptcy and insolvency. But no such law ever has been passed; and to suggest the possibility of such a law as a reason why the power of the provincial legislature over this local and private association should be in abeyance or altogether taken away, is to make a suggestion which, if followed up to its consequences, would go very far to destroy that power in all cases.

It was suggested, perhaps not very accurately, in the course of the argument, that upon the same principle no part of the land in the province upon the sea coast could be dealt with, because, by possibility, it might be required for a lighthouse, and an Act might be passed by the Dominion Legislature to make a lighthouse there. That was not a happy illustration, because the whole of the sea coast is put within the exclusive cognizance of the Dominion Legislature by another article; but the principle of the illustration may be transferred to Article 7, which gives to the Dominion the exclusive right of legislating as to all matters coming under the head of "militia, military and naval service, and defence." Any part of the land in the province of Quebec might be taken by the Dominion Legislature for the

purpose of military defence; and the argument is, if pushed to its consequences, that because this which has not been done as to some particular land might possibly have been done, therefore, it not having been done, all power over that land, and therefore over all the land in the province, is taken away, so far as relates to legislation concerning matters of a merely local or private nature. That, their Lordships' think, is neither a necessary or reasonable, nor a just and proper construction. The fact that this particular society appears upon the face of the Provincial Act to have been in a state of embarrassment, and in such a financial condition that, unless relieved by legislation, it might have been likely to come to ruin, does not prove that it was, in any legal sense, within the category of insolvency. And in point of fact the whole tendency of the Act is to keep it out of that category, and not to bring it into it. The Act does not terminate the Company; it does not propose a final distribution of its assets on the footing of insolvency or bankruptcy; it does not wind it up. On the contrary, it contemplates its going on, and possibly at some future time recovering its prosperity, and then these creditors, who seem on the face of the Act to be somewhat summarily interfered with, are to be reinstated.

Their Lordships are clearly of opinion, that this is not an Act relating to bankruptcy and insolvency, and will therefore humbly advise Her Majesty that this Appeal be allowed, that the judgment of the Court of Queen's Bench (Canada) ought to be reversed, and that the suit be dismissed. There will be no costs of this Appeal.

