

defendants Bull and Hersee were dealing upon the footing of the plaintiffs being creditors who were willing to accept 40 cents in the dollar, and that when the instrument of the 2nd October was executed both were under the belief that, so far as the plaintiffs were concerned, the trust extended only to 40 cents in the dollar of their claim.

It was evidently not contemplated that the creditors who had intimated their acceptance of the composition, either by executing the deed or by letter to the defendant Bull, were to be paid in full by the defendant Hersee, in the event of their subsequently electing to treat their intimation as not binding, as they were at liberty to do provided the deed was not signed by all the creditors.

And the defendant Bull could not stretch the covenant or the trust so as to make them include more than 40 cents in the dollar of the claims of those whom he had represented as having agreed to accept that sum and treated as still willing to do so at the time when the instrument was executed. I do not think that, as regards any of claims which were so regarded by both parties, any Court would extend the trusts beyond the 40 cents in the dollar at the instance of the defendant Bull.

It follows that the plaintiffs are not entitled to the judgment which has been awarded them.

The appeal should be allowed and the action dismissed with costs.

OSLER, J.A., gave reasons in writing for the same conclusion.

MACLENNAN, J.A.:—The defendant Bull held the property of the debtors in trust for their creditors, including the plaintiffs, and he has sold the property to the defendant Hersee, the only consideration for the sale being the covenant sued upon. The plaintiffs having an undoubted right to the benefit of that covenant, and the defendant Bull having refused to enforce it, the right of plaintiffs to enforce it in their own name is as clear as anything can be.

The only question remaining is the construction and meaning of the covenant, and, to my mind, that admits of no doubt. The composition deed contained a proviso that it was only to become operative if assented to by all the creditors. Those who signed it first, therefore, signed it provisionally,