

the borrowing members, to discharge those who within three months should pay 80 per cent of their indebtedness, the surplus, after paying the non-borrowing members in full, to be divided among the borrowing members. Held, that those non-borrowing members who did not discharge the Society, were not bound by this arrangement, and were entitled to claim the surplus to the exclusion of the borrowing members who had all discharged the Society.

The appeal is from a judgment of the Superior Court, Torrance, J., reported in 5 Legal News, p. 429.

RAMSAY, J. The proceedings began by a mandamus, asking the Court to forbid the liquidators of a building society in liquidation to pay over the balance of the funds to certain borrowing members, and to order them to pay certain surplus funds over to the shareholders who had discharged the company. The liquidators maintained that the borrowing members were alone entitled to these surplus funds. The judgment, considering that the assets should not be distributed as belonging to the borrowing members *alone*, overrules defendants' plea, and orders the liquidators within thirty days to distribute among the members of the said society and holders of stock therein *who are entitled to share in said distribution*, namely, who have not already released and discharged the society, and to pay over to them on a dividend sheet, &c., to be prepared, and reserves the power to adjudge on the other conclusions.

The effect of this judgment is to give the whole assets to the members who are not borrowing members, for it appears that all the borrowing members have released and discharged the society.

The only question, then, is whether the deeds of release are an acknowledgment by the borrowing members that they are to abandon all claim on the assets. I can hardly understand words more explicit of such an intention. The following is an extract from one of the deeds, and it is admitted that the others are similar in their terms:—

"And in consideration of the premises and of the discharge hereby granted him, the said Edward Booth, who at the passing of these presents has handed over and delivered to the Society his subscription book No. 58, as also subscription book No. 320 of the said Society,

hereby specially and expressly renounces to the rights or claims of any kind or nature whatsoever, which he might now or at any time claim to exercise against said society as having been a member thereof and holder of said subscription book or for any other cause or reason whatsoever, and does hereby renounce all rights as a member of said society and withdraw therefrom, and does hereby further specially and expressly grant full, final and entire discharge, release and acquittance from and concerning all rights, claims and demands which he has or can or might have or pretend against the said society by reason of his membership thereof, or his having been a holder of said subscription book, or for any other cause or reason whatsoever."

Is there any principle on which in a deed of this sort we should interpret the clause otherwise than in the naked sense of the language? I know none. There was no possibility of error. It was a transaction to get out of a difficulty. Each set of shareholders agreed to a settlement, and the borrowers got an equivalent for what they gave up. In any case there was no balance coming to them. Error is not even pleaded, so that these borrowing members who have got fully paid under their deed are holding on to the advantages so acquired, and at the same time ask us to relieve them of their discharge. It is said we are to do this on equitable grounds and that it is very unfair shutting them out, for by so doing we are in effect giving \$3,000 to be divided among the eight remaining members of the Society. Equity is an excellent guide, but it is the equity of the law, not an emotional sentiment that somebody is getting too much. For my part I neither sorrow nor rejoice that the eight should get so much. It is the luck that falls to them for having stuck to their enterprise. They took all the trouble and ran all the risk, and however much or little that may be they are entitled to the surplus funds; for nothing is more certain than that the surplus funds of a company are not *res nullius*, but that they belong to the remaining members of the Society be they many or few. It was suggested to send back the case to the Court below, to allow other proceedings to be taken. But I don't see what is to be done; all the judgment says is that the members who have dis-