tracted in England: *Philpotts* v. *Reed*, 1 B. & Bing. 294. These authorities, therefore, seem to establish the third proposition by which this case must be governed.

There are nice distinctions which may sometimes arise where, though a contract is made in country, it is to be performed or take effect in one another, or is made under circumstances which show that it is intended to be subject to some law other than that of the place in which it was made: *Lloyd* v. *Guibert*, 6 B. & Sm. 100, 120, L. R. 1 Q.B. 115. But no such point arises in these cases, as the contracts out of which these debts arose were both made and to be performed in Upper Canada.

In the present case the discharge obtained by the defendant in England, under what is equivalent to an English bankruptcy, was created by an Act of the Imperial Legislature, which, like the previous Bankruptcy Acts, is of general application, and must receive a similar construction; and by force of that statute the deed operates as a general discharge of all debts. The discharge would therefore, in our opinion, be binding in Canada, and it is also clearly binding and effectual as an answer to proceedings commenced in the courts of this country. The result of this would be that the deed would operate as a discharge of the original debt in each case, and, therefore, be a good answer to the second action.

The first action, however, is upon a judgment which was recovered after the deed was completed. In the view which we take of this case the deed might have been set up as a defence to the action brought in Upper Canada; and it is averred as a matter of fact in the third replication, and not denied, that it might have been so pleaded The question then arises whether it can now be brought forward in these proceedings as an answer to the judgment. When a party having a defence omits to avail himself of it, or, having relied upon it, it is determined against him, and a judgment is thereupon given, he is not allowed afterwards to set up such matter of defence as an answer to the judgment, which is considered final and conclusive between the parties. We are accustomed and indeed bound to give effect to final judgments of courts of other countries and of our colonies, where they possess a competent jurisdiction which has been duly exercised; and the correctness of such judgments is not allowed to be again brought into contest in our courts. The only ground on which the judgment in the first action was sought to be impeached upon the pleadings before us was that there was a defence to the original claim by the discharge under the deed; but that would go to impeach the propriety and correctness of the judgment, and is a matter which cannot be gone into after the judgment has been obtained, or in this action which is brought to enforce it—*ne lites immortales essent dum litigantes mortales sunt: Henderson* v. *Henderson*, 6 Q. B. 288; *Bank of Australasia* v. *Nias*, 16 Q. B. 717; *De Cosse Brisac* v. *Rathbone*, 6 H. & N. 301; *Scott* v. *Pilkington*, 2 B. & S. 11; *Vanquellin* v. *Boward*, 12 W. R. 128, 15 C. B. N. S. 341; *Castrique* v. *Imrie*, 19 W. R. 1, L. R. 4 H. L. 414. If it had been sought to impeach the judgment on the ground of fraud the case might have been different: *Earl of Bandon* v. *Becher*, 3 Cl. & F. 479; *Phillipson* v. *Earl of Egremont*, 2 Q. B. 587; and the opinions of the majority of the Judges in *Castrique* v. *Imrie*, 19 W. R. 1, L. R. 4 H. L. 414.

Upon the argument a further question was raised as to the validity of the deed itself; and it was objected that it was invalid by reason of its containing a covenant by the creditors that they would not sue for their debts, and that, if they did so, the deed might be pleaded as an accord and satisfaction, and in bar of the suit or other proceeding. The effect of that, however, is not that the creditor is to forfeit his debt and to lose his dividend under the deed, but simply to prevent any action or proceedings to recover the debt itself, leaving the right to the dividend untouched; and this, according to the authorities, does not render the deed void.

Upon these grounds we are of opinion that our judgment should be, in the first action, in favour of the plaintiff, and in the second action, in favour of the defendant.

Judgments accordingly.

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

FOR NOVEMBER AND DECEMBER, 1870, AND JANUARY, 1871.

(Continued from page 140.)

Landlord and Tenant.

1. D. was a lessee for years at a rent payable quarterly, and S. was mortgagee of the reversion; D., having no notice of the mortgage, paid to his lessor the amount of two quarters' rent before any of it was due: afterwards and before rent-day the mortgagee gave him notice to pay the rent to him. *Held*, that the transaction between D. and the lessor was not a payment of rent due, and that D. must pay the rent to the mortgagee.—*De Nicholls* v. *Saunders*, L. R. 5 C. P. 589.

2. Covenant in a lease that the lessors would at all times during the demise maintain and keep the main walls, main timbers, and roofs in good and substantial repair, order, and condition. *Held* (Martin, B., dissenting), that an action on the covenant could not be brought against the lessors without notice of the want of repairs.—*Makin* v. *Watkinson*, L.R. 6 Ex.25; 7 C. L. J. N. S. 128.

3. A debtor assigned by deed, for the benefit of his creditors, all his personal estate to the defendant, who executed the deed and acted under it. The debtor was a tenant from year to year of the plaintiff, but the defendant did no act to show his acceptance of the lease. *Held*, that the lease passed to the defendant