

Assembly in *In re Claxton*, 2 N.W.T. Rep. 88, but had never been altered or amended. 57 & 58 Vict., c. 29, (D.), declared that the territorial legislation on this point "shall hereafter be deemed to be valid, and shall have force and effect as law." The plaintiffs in the first action had filed an execution against the homestead of the defendant in the proper Registry Office prior to the passing of the statute 57 & 58 Vict., c. 29, and the plaintiffs in the second action had likewise filed an execution against the lands of the defendant in the same Registry Office, but subsequent to the passing of the said Act.

Held, that the first execution was a charge on the homestead of the defendant, but that the second was not.

Robson, for Massey.

Johnstone, for Baker.

Secord, Q.C., for defendant

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[Regina, Dec. 5, 1895.

HOWLAND v. GRANT.

Composition—Accord and satisfaction—Payment into court with denial of liability—Form of judgment.

The plaintiffs sued the defendant for the amount of three promissory notes giving credit for certain payments amounting to $64\frac{1}{2}$ per cent. of the claim, purporting to be made under a composition between defendant and his creditors which provided for the payment of 75 per cent. of the claims. The defendant in his defence denied all liability, claiming that the plaintiffs had been paid in full by the composition and had accepted the payments in full under the composition, and as an alternative defence paid into court as in full satisfaction of plaintiffs' claim the difference between $64\frac{1}{2}$ per cent. and 75 per cent. on the claim, with interest and costs. By the terms of the composition between the defendant and his creditors, including plaintiffs, it was provided that the defendant was to give to his creditors certain promissory notes amounting to 75 per cent. of their claims within 60 days, and that *the receipt of the said notes* by the creditors within the 60 days should operate as a payment and satisfaction in full of their claims. The notes for 75 per cent. were not given, but notes for $64\frac{1}{2}$ per cent. were given some considerable time after the expiration of the 60 days, and a release was given by all the defendant's other creditors, but refused by the plaintiffs at the time of receiving the notes.

It appeared from the evidence that subsequent to the expiration of the 60 days, and prior to the receipt of the notes, negotiations had continued between plaintiffs and defendant and the trustee, under the composition deed, for settlement under the compromise.

At the trial the jury found in answer to questions submitted: (1) That the plaintiffs did not receive $64\frac{1}{2}$ cents on the dollar in full payment of their claim. (2) That the plaintiffs received $64\frac{1}{2}$ cents on the dollar on account of 75 cents on the dollar, as provided by the deed of composition. (3) That the $64\frac{1}{2}$ cents on the dollar were not paid to the plaintiffs on account of the original debt.

On this verdict ROULEAU, J., the trial Judge, gave judgment for the defendant with costs, from which judgment the plaintiffs appealed.