

letter of withdrawal or had any knowledge of the fact of withdrawal until after he had executed the instrument of the 2nd October, and had paid a considerable number of the creditors the amount of the composition provided for by his covenant. The only scintilla of evidence of notice or knowledge that could be argued for was in some answers to questions addressed to the defendant Hersee when he was under examination in the former action. But the questions and answers as read at the trial of this action, disconnected as they were from the preceding and succeeding questions and answers, seem vague and unsatisfactory in view of the direct testimony and of the probabilities of the case. It would be unsafe, in my opinion, to found a conclusion of fact on them. It was argued that the learned Judge had not given credence to the testimony of the witnesses on the question of notice. But, as said by Lord Justice James in *Nobel's Explosives Co. v. Jones*, 17 Ch. D. at p. 739, "really that is a fallacy which we had occasion to refer to more than once in this Court, that a man supposes that he proves the affirmative because the witness for the negative is not wholly to be believed. Of course that is not so. The affirmative must be proved, and to say that a witness for the negative is not wholly to be believed, or that some other witness might be there, is in no sense of the word to prove the affirmative."

So far as it affects this case, therefore, I think it ought to be taken that the fact of notice to the defendant Hersee of the plaintiffs' withdrawal from the deed of composition before he executed the instrument of the 2nd October, ought to be taken as not established.

The plaintiffs are not impeaching the transaction between the defendants Bull and Hersee. On the contrary, they have adopted it, and ask to have the trusts of the instrument of the 2nd October enforced for their benefit. Their right to maintain this action in their own names against the defendant Hersee must depend on the circumstance that the property and assets passed to the defendant Hersee impressed with a trust. Probably that is the only substantial distinction between this case and *Henderson v. Killey*, 18 S. C. R. 698, more fully reported in 11 Occ. N. 88. But the rights to be enforced are those which the defendant Bull could enforce, and no others, and, unless he call upon the defendant Hersee to pay the plaintiffs' claim in full, I do not perceive any ground upon which the plaintiffs can do so. In my judgment, the defendant Bull is not shewn to be entitled to that relief. It is plain upon the evidence, as I think, that the