

The Appellant is of opinion that the respondent cannot by negligence or wilfully as in the present instance, set an important portion of the statute at nought, which he would be doing, if his pretensions were maintained. And that by his wilful absence from the meeting of creditors, he cannot place himself in a more favorable position than if present. The law contemplating in the passing of that statute, that all the creditors of the bankrupt, should prove their debts, and be subject to the provisions therein contained. The Respondent in this cause, could not have prevented by his absence the certificate of discharge, if given from operating against his present claim, and the power given the statute, to supersede the commission of bankruptcy, cannot be rendered illusory, and of no service, by a claimant who remains in ambush, to demand and obtain twenty shillings in the pound, with interest, costs, damages, &c., when every other creditor has accepted a composition of one shilling and three pence.

The Appellant is not desirous of extending the present case, as he believes that the following opinion transcribed literally as pronounced, contains all the facts of the case, and arguments more pertinent and convincing, than the undersigned could offer.

No. 1746.

ANDREW MACFARLANE,

and

CHS. B. RADENHURST & HECTOR TURNBULL.

I. MERITS.

Action for

£1484 1s. 6d.

The Plaintiff and one Archbald Macfarlane, were co-partners in trade and commerce, at Montreal, from 1st May 1837, until 15th December 1843, under the firm of A. & A. Macfarlane, on which day the partnership was dissolved, and since that time, the plaintiff hath been a merchant, and at all the times and periods hereinafter mentioned, the defendants were merchants and co-partners.

Defendants made their bill of exchange, at Montreal, in three parts, on the 27th of August 1842, directed to Messrs. Turnbull and Radenhurst, London, payable 90 days after sight, to the order of the Messrs. A. & A. Macfarlane, for £1,000 sterling, value received, for which bill the defendants received from the said A. & A. Macfarlane, £1,204 10s. currency, being at the rate of $8\frac{1}{2}$ per cent, premium, the current rate of exchange.

Presented for acceptance, 15th September 1842, and accepted, payable at Glyn & Co., bankers, London.

Presented for payment, 17th December 1842, and payment refused, and protested for non-payment. Notice-costs 21/6 for protesting.

Other Bill of Exchange of the Defendants, made by the Defendants, on the 27th August, 1842, directed to the said Turnbull and Radenhurst, payable 90 days after sight, for £400 sterling, value received, for which last Bill the Defendants then and there received from the said A. & A. Macfarlane, £481 16s., being at the rate of $8\frac{1}{2}$ per cent, premium.

Presented 15th September, 1842, and accepted.

Protested for non-payment, 17th December, 1842. Costs of Protest, 14s. 6d., sterling.