

If the whole amount of the debt was contracted at one time I would not have much difficulty in committing the debtor, but as there is a continuing and increasing debt from week to week, I would not as a matter of fact say that when he contracted the first week's liability, or for that matter any week, that he had no reasonable expectation to pay. While I fully agree that this is a case which deserves very little sympathy, still the liberty of the subject must be safeguarded and the debtor is entitled to any doubt which I may have as to his being within the statute. For this reason only I must refuse to make the order asked for and dismiss the appeal.

NOVA SCOTIA.

SUPREME COURT.

JULY 20TH, 1909.

PRATT v. BALCOM.

Land—Deed—Testamentary Instrument—Conditions and Trusts—Breach by Grantee—Action by Cestui que Trust for Declaration of Trust or Charge.

Action claiming a declaration that lands held by defendant were charged with payment of a sum of money in favour of plaintiff.

J. J. Ritchie, K.C., for plaintiff.

W. E. Roscoe, K.C. and O. S. Miller, for defendant.

LONGLEY, J.:—The facts of this case are as follows: W. D. Balcom, a well-to-do farmer at Paradise, for some reason which in no wise appears, in 1884 made a deed—I will call it that for the purpose of convenience—to two of his sons, Charles and Edgar, of all his real estate and personal property of every kind, which deed was immediately after recorded. He was not an old man nor in poor health and lived more than eighteen years afterwards. This deed had certain limitations and conditions or trusts. The limitation was that he, the grantor, and his wife, should have the management and control of all the property herein conveyed during their lifetime or the life of either of them. The