

their claim. This action was defended, and a sum equal to 40 cents in the dollar of the claim was paid into Court, the money, it is said, being supplied by the defendant Hersee. The trial resulted in the plaintiffs obtaining judgment for the full amount of their claim, and the sum paid into Court was ordered to be paid out on account of the judgment.

The plaintiffs then brought this action, asking for the enforcement of the trusts of the deed of the 2nd October, 1899, and payment of the balance of their full claim, alleging that under its provisions the defendant Hersee became liable to pay the plaintiffs' claim in full, and that it was the duty of the defendant Bull to enforce the trusts of the deed for their benefit, but that he had refused to do so, or to permit the plaintiffs to use his name for the purpose of enforcing the deed.

The defence set up want of privity and inability of the plaintiffs to maintain the action, and also that, assuming the right to maintain the action, the right to be asserted and the relief to be obtained are the same and no higher or greater than can be asserted or obtained by the defendant Bull, and that the latter's right to relief is limited to compelling the defendant Hersee to pay 40 cents on the dollar of the plaintiffs' claim, and that in any case the relief should be limited to an account of the value of the estate and assets received by the defendant Hersee, and that such value did not amount to 40 cents in the dollar of the claims against the company.

There was a reply to the defence, setting forth at length the reasons which the plaintiffs alleged justified them in withdrawing from the composition, alleging that before the execution of the instrument of the 2nd October the defendant Hersee had notice of the plaintiffs' withdrawal, and assigning other grounds against the validity of the defence.

At the trial the plaintiffs undertook to prove notice to the defendant Hersee of the plaintiffs' withdrawal from the composition, but, as it appears to me upon a careful perusal and consideration of the testimony, they failed to adduce any evidence upon which such notice ought to be fastened upon the defendant.

The onus was upon the plaintiffs to establish the fact of notice to the defendant Hersee, if, as they appeared to think, it was essential to their case. But every witness called or interrogated upon the point distinctly denied that the defendant Hersee had seen or read or been told of the plaintiffs'