" of the agreement or deed of composition by him produced and fy-
" led in this cause is not valid or effectual to bind the said plaintiff,
" who has not proved his debt under the commission of bankruptcy,
" and that the consent of the two-thirds of the creditors who have
" proved their debts before the Judge and Commissioner to the said
" agreement and composition is insufficient, as a bar to the plaintiff's
" action, doth dismiss the exceptions by the said defendant, Charles
" B. Radenhurst, pleaded, and adjudge him, the said defendant,
" Charles B. Radenhurst, to pay and satisfy to the said plaintiff, the
" sum of One thousand four hundred and eighty-four pounds, one
" shilling and six pence, current money of the Province of Canada,"
due for the causes, and with interest and costs mentioned in the said Judgment.

The propositions which the counsel for the Respondent MM. Meridith and Bethune, endeavored to maintain in the Court below, were: 1stly. That the Bankrupt Law of Canada does not contemplate a compotion until all the creditors have proved. The composition is to take place at the second meeting, when, to use the words of the statute, " the creditors who may not have proved their debts at the first gene-
" ral meeting have been allowed to prove, *and have proved the same.*" When this has been done, it is plain that all the creditors will have proved, and it is then, and then only, according to the wording of the law, that a composition can take place.

Secondly: That if a bankrupt think fit to compound before all his creditors have proved, the composition, as has been decided in England, ought not to be held to extend to the creditors who have not proved. The words " two-thirds of the creditors, in number and value," in the 41st section of the Bankrupt Act,* must, it is submitted, be taken in connexion with the preceding words in the same section, and therefore mean two-thirds of the creditors, who proved at the first meeting, and of the creditors who not having proved at the first meeting, have been allowed to prove, and have proved at the second meeting: " *remaining third of the creditors aforesaid,*" must, it is submitted, be the remaining third of the same description of creditors, and therefore does not include a creditor who did not prove at the first or second meeting, or at any other meeting. The words " remaining third of the creditors aforesaid," shew that the creditors who can bind, and the creditors liable to be bound are parts of the same whole; and as a creditor cannot bind others without proving, he cannot himself be bound unless he have proved.

Thirdly: That should it be held that the words " two-thirds of the creditors in number and value" mean two-thirds of all the creditors

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* 7, Vict. chap. 5, 41st sect.—" And be it enacted that if at such second
" general meeting of the said creditors, and after the creditors who may not have
" proved their debts at the first general meeting have been allowed to prove, and
" have proved the same, and the bankrupt has taken and subscribed the oath herein
" before prescribed, and submitted to such examination as aforesaid, two-thirds of
" the creditors in number and value agree to compound with the said bankrupt,
" such agreement shall be valid and effectual to all intents and purposes, according
" to the tenor thereof, and equally binding upon the remaining third of the credi-
" tors aforesaid, and shall have the effect of superseding the said commission of
" bankruptcy, from the date of such agreement, and the jurisdiction of the said Judge
" or Commissioner over the estate and effects of the said bankrupt, shall thence-
" forth cease and determine."