

The action was tried without a jury at Toronto.
J. A. Macintosh, for the plaintiff.
W. N. Tilley, K.C., for the defendants.

MIDDLETON, J., in a written judgment, said that Topp assigned for the benefit of his creditors on the 29th November, 1915, but the assignment was not to become operative till the 6th December. Topp was prosecuted for fraud in connection with his dealings, and pending trial was confined in gaol, bail being refused. The creditors prosecuting were the two defendants. On the 22nd December, 1915, an agreement was made between Topp and the defendants, in which it was recited that the estate in the hands of the assignee was expected to pay 55 cents on the dollar; and that the debtor, "through certain of his friends," was arranging to pay the remaining 45 per cent. of the claims of these two creditors—\$2,304. Upon payment of this sum, the creditors were to "signify to the Crown Attorney . . . that all claims of the parties of the second part have been duly met and satisfied by the party of the first part. The money was paid, the signification to the Crown Attorney was made; the accused (Topp) elected to be tried summarily, appeared before the County Court Judge, pleaded "guilty," and was allowed to go on suspended sentence.

Under our law, the learned Judge said, a felony may not be compounded. By this circumlocution, practically the same end was achieved. In this case there may have been nothing wrong; but the question may arise in some case whether it is not within the evil aimed at by the rule to arrange that, upon a plea of "guilty" being entered, such representations be made to the Crown Attorney and the Judge as to bring about suspended sentence. This question did not require solution now.

It appeared that the \$2,304 was part of a sum of \$3,000 withdrawn by Topp from the assets of his business immediately before the assignment. The fact was as stated by Topp, that when the creditors began to press him, "I was afraid they would block me up in the business, and I would not have anything left—I thought it would be wise perhaps to have a few dollars." The "few dollars" were the \$3,000 so taken.

The money always was Topp's, and on the assignment becoming operative it became the assignee's.

The defendants, beneficiaries under the assignment, had thus received money that was the property of the assignee—Lennox \$1,521 and Wolfe \$783—and it must be declared that the assignee is entitled to deduct and withhold these sums from their respective dividends.

Judgment accordingly with costs.