on their behalf in this matter, but with such considerations we have no concern in this proceeding. But there was from the 3rd of September until the 17th of November for the purpose of making enquiry. During that time nothing was done on their behalf except some negotiations with the assignee about his taking the property covered by the security. Probably the assignee unduly delayed deciding upon what he should do, but that would only entitle the petitioners meantime to apply to amend or withdraw their proof of claim and valuation of security, or to compel the assignee to perform his duty.

When the petitioners' solicitor wrote to the assignee on the 15th of November, all parties considered the negotiations as then pending, and neither one should now be allowed to say anything to the contrary: see *Hickman* v. *Haynes*, L. R. 10 C. P. 598. For upwards of two months these creditors had personally, or through an agent other than the insolvent, the opportunity of ascertaining the value of their security; yet they do not appear to have taken the first step in that direction until the assignee refused to take the property. In ex parte *Downes*, 18 Vesey, 290, a mortgagee, on making a low valuation of the estate and electing to give up his mortgage, was admitted to prove, under a Commission of Bankruptcy, against the mortgagor. The estate was afterwards sold by the assignees for a much larger sum. The mortgagee presented a petition, praying to be at liberty to withdraw his proof and have the benefit of the mortgage. Lord Eldon said it was dangerous to allow a mortgagee to retract his election after having had the benefit of his proof, and dismissed the petition.

In the case of *ex parte Spicer*, 12 L. T. N. S. 55, it was held that a second mortgagee having elected to prove, and having proved his debt, was not entitled to have his proof expunged, as having been made through inadvertence, and to claim the balance of the purchase-money of the mortgaged premises in the hands of the trustees, and to receive the dividends upon the balance. Mr. Commissioner Goulburn says, "he cannot now, in common sense or in right, withdraw from the position [that is the proof claim and valuation of security] by alleging that it was done through inadvertence, and thus retrace his steps and go back to his former position as second mortgagee." Again, at page 56, he says, "It appears to me there is no pretence whatever for this demand. and that it would be perverting the whole object and purpose of this Statute if I were to allow any one to play fast and loose in this way, to prove first and then to come afterwards, when he finds that he might get more as second mortgagee, and say the proof was inadvertence." See also *Re Hurst*, 31 U. C. R. 116; *in re Hoare*, L. R. 18 Eq. 705. But it appears to me that this case can be put on a broader ground than this. Where, as here, without fraud on the part of the assignee, a second creditor makes proof of his claim, and places a value on his security, and invites the other creditors to pay him off at his own valuation and ten per centum additional on his security being accepted, it appears to me much like a statutory contract between the parties; so on the other hand, if the assignee declines to take the security, it should impose on the creditor a corresponding obligation to retain his security at the value he has placed upon it. A proposal on the one hand, and accepted or refused on the other, should have some legal effect. It should not, in the words of the high legal authority just quoted, allow either party to "play fast and loose." There may be circumstances in which it would be proper to allow such an application as this, but a very different case should be made out. If the assignee should be a party to a fraud (and I use the word in its broadest sense) on a secured creditor, or there should be a case clearly established of mutual mistake, which it would be contrary to every principle of justice to ignore, then I think the inherent jurisdiction of the Court could be invoked; but this case presents no such features. It does not appear that he who was acting for the petitioners, in making their proof and placing a value on the security, was not as well able to form an opinion as those who have since valued it. He may have been more san-