

COLLECTION DE DÉCISIONS

DES DIVERS TRIBUNAUX DU BAS-CANADA.

 IN THE PROVINCIAL COURT OF APPEALS, QUEBEC—
1842.
CUVILLIER & AL.—*Appellants,*

AND

BUTEAU—*Respondent.*

A Deed of Composition between a firm and the creditors of that firm, in which it is stipulated that all the creditors shall sign, is not valid or binding upon any of the creditors, unless they all sign.

This was an action of *assumpsit* brought for the recovery of the sum of £900, amount of four several promissory notes mentioned in the Declaration of the Plaintiffs, alleged to have been made by the Defendant and one Martin Malherbes, at the time of the making of which notes, the said Defendant and the said Martin Malherbes were co-partners.

To this action, the Defendant pleaded by perpetual exception, *péremptoire en droit*, that by Deed executed at Quebec, before Prevost and another, Notaries, the 26th day of October, 1839, the co-partnership between the said Defendant and the said Martin Malherbes, was dissolved and discontinued; that the said Defendant, to enable him, the said Malherbes, to settle the affairs of the said co-partnership, authorised him to that effect, and, agreed that the said Malherbes should use, and dispose of the stock-in-trade of the said co-partnership, upon the condition, that upon such disposal of the said stock-in-trade, Malherbes should obtain for the Defendant, a full and entire discharge from the creditors of the said co-partnership.

That on the 30th October, 1839, by Act, before Doucet and another, Notaries, between Malherbes of the one part, and the Plaintiffs and divers other creditors of the co-partnership, before existing between the said Malherbes, and the said Buteau of the other part, the said Plaintiffs had released and discharged the said Buteau from all claims and demands whatsoever, in relation to the said co-partnership.

By special answer to this exception, it was alleged, that by the Deed of the 30th of October, 1839, Malherbes had undertaken to pay the creditors of the said co-partnership the amount of their respective claims, that Malherbes had failed in this undertaking: that it was covenanted by the Deed, that all the creditors of the co-partnership should sign the same within one month; that certain of the creditors named in the said Deed had refused to sign the same; that the release pleaded was conditional; that the condition not having been fulfilled, the debt claimed by the Plaintiffs was still due.

Upon the hearing of the cause, the main question raised, was, as to the validity of the Deed of the 30th of October, 1839, in binding those creditors of the co-partnership who had signed the same; a number of the creditors named therein, and who were to have become parties thereto, having subsequently refused their assent.