

But when it is remembered that the defendant had brought an action for specific performance, that the dispute was upon the form and substance of the deed and mortgage, and that the action was settled by the execution and delivery of the deeds as they now stand, I think it is simply out of the question, there being no fraud or unfair conduct or dealing on the part of the defendant, to maintain this action.

Appeal dismissed with costs.

OCTOBER 9TH, 1902.

C. A.

DOMINION RADIATOR CO v. BULL.

Bankruptcy and Insolvency—Assignment for Creditors—Sale of Estate by Assignee—Covenant of Purchaser to Pay Creditors—Enforcement—Privity—Trust.

Appeal by the defendant Hersee from the judgment of LOUNT, J., at the trial, in favour of plaintiffs in an action for the enforcement of the trusts of a certain deed and for payment of the balance of the full claim of the plaintiffs as creditors of the Hamilton Hardware Company. The facts are stated below.

The appeal was heard by OSLER, MACLENNAN, and MOSS, JJ.A.

G. Lynch-Staunton, K.C., and J. G. Farmer, Hamilton, for appellants.

D. E. Thomson, K.C., and D. Henderson, for plaintiffs.

Moss, J.A.:—In the year 1899 the plaintiffs were creditors of the Hamilton Hardware Company, to the amount of \$1,924.59, or thereabouts. In September of that year the company made an assignment under the Assignments and Preferences Act to the defendant Bull. Subsequently an effort was made by one A. E. Hersee, the president of the company, to effect a composition with the creditors, with the result that a deed of composition and discharge was prepared and executed by the great majority of the principal creditors, including the plaintiffs, whereby it was agreed that A. E. Hersee was to pay to each of the creditors a composition of 40 cents on the dollar of their respective claims, on or before the 1st October, 1899, in consideration of which the creditors