

The Defendant has proved his facts, and the only question seems to be—Is the Defendant *liberated against all his creditors* by his composition with two-thirds in number and amount of his creditors who have proved under the commission.

The statute, 7 Vict. chap. 10, is certainly remedial and as such ought to receive a liberal construction. It was made *for the relief of such traders as shall, without any fraud or gross misconduct have become unable to pay all their debts in full.*

This intention is fully realized when the proceedings result in a certificate which, according to the 59th clause of the statute, discharges the bankrupt from all debts due by him at the date of the commission and from all claims and demands made proveable under the commission,—see 64th clause.

But, says the plaintiff, the effect of the 41st clause is not by any means so extensive. It does no more than enact, that if two-thirds of the creditors in number and value and who have proved their debts agree to compound with the bankrupt, such agreement should be valid and effectual, according to the tenor thereof, and equally binding upon the remaining third of the creditors aforesaid, namely *who have proved their debts*, and such is certainly the letter, and if that interpretation prevails, the whole clause may as well be cast off as nonsense and the letter will have performed its office of killing, as nothing could be more useless or absolutely dead than this clause so understood. But as every reasonable effort ought to be made so to expound the law, that it shall be living and effective, we must try to explain the clause in question, *magis ut valeat quam ut pereat* and

1st. It is observable that according to the concluding words of this clause, the composition *shall have the effect of superseding the commission of bankruptcy*, whence it is reasonable to infer that it affects all the creditors whose debts would have been affected by the further proceedings and certificate of discharge, otherwise the commission would be left open for such creditors as had not appeared or proved at the time of composition being accepted.

2nd. The object of the law, as expressed in its preamble, being the "*relief of such traders as shall, without any fraud, or gross misconduct, have become unable to pay all their debts in full,*" and the composition contemplated in the 41st clause having the effect of superseding the commission, it is evident that unless the composition be as binding on all the creditors as would be the certificate itself, the unfortunate debtor still remains liable towards his non-appearing creditors, and the principal end of the commission will be frustrated, as will be also the professed object of the law.

3rd. All the creditors of the bankrupt, the present plaintiff included, having been duly notified and called to appear before the Bankrupt Court, must be considered in the same light as ordinary defendants who, having been duly summoned and making default, are bound by the proceedings in the cause, and upon this principal, the plaintiff in the cause is evidently bound by the proceedings in bankruptcy, to which, as he was regularly summoned, he was virtually a party.

4th. I think the statute makes the composition binding on the creditors; but if there should remain any doubt on this head under the statute, the 75th clause refers us to the laws of Lower Canada, as the