

## NOVEL ARBITRATION—IN RE LAWSON BROTHERS.

[Insolv. Case.]

## NOVEL ARBITRATIONS.

Down to a very short time ago it was an invariable rule that, whatever cases might be settled or referred, there was one kind of case, at least, which could not be dealt with in either of these ways, or in any way whatever except the good old mode of a full trial in open court; and that was a case involving a charge of fraud. A man who brings an action against another founded upon an allegation of fraud, takes the most formal and the most public method that can be taken of charging him with the commission of a fraud. And it used to be well understood among all those conversant with judicial proceedings that such a charge must be met as deliberately and as publicly as it was made. No counsel would, for a moment, have entertained a proposal to refer or settle an action of deceit. And any judge would have been startled at the suggestion of such a thing. But in this as in other matters men have advanced with the times. At the last Guildhall sittings, as some of our readers may remember, in an action against Sir Edward Watkin and another gentleman for alleged frauds, Chief Justice Cockburn, a judge for the most part more than commonly sensitive upon such points, made the most determined efforts to have the case referred, though the firmness of the defendants or their counsel defeated the attempt, and they were rewarded by an unhesitating verdict in their favour. But during the late assizes several actions of fraud were referred by the consent of counsel and with the full approval of the judge, and we know not how many previous instances there may have been of the same thing.

How has this come to pass? How is it that what every honourable man would have recoiled from a very short time ago is done without hesitation to-day? Is it that character is less valued than it was? Is it that such words as dishonesty, misrepresentation, deceit, have from familiarity acquired a less ugly sound than they once had, so that a man can afford to leave it an open question, or a question to be settled by an arbitrator privately and at leisure, whether he is an honest man or not? To some extent there is reason to fear that this may be so. But this is certainly not the whole explanation of the case. The law itself has been to blame. A silent change has been long in progress, and has gradually given an opening, of which the eager alacrity in shirking their work habitually shown by many of the judges and many of the leaders of the bar has not been slow to take advantage. The process has been the usual one, that of pouring new wine into old bottles. Legal forms and legal terms have remained the same, but a new meaning has been infused into them, the law which they embody has changed. Every declaration for fraudulent misrepresentation still charges, as it always has done, that "the defendant falsely and fraudulently represented" so-and-so, which so-and-so was

false "as the defendant knew." And if judicial decisions can establish anything, there was a time, and not long ago either, when it was perfectly clear law that in order to sustain such a declaration, in other words, in order to establish any right of action for the misrepresentation, it was necessary to show the defendant's knowledge of its falsehood, and his intention to deceive. "Moral fraud" was the favourite expression. But it was soon held that to make a statement recklessly and without regard to its truth or falsehood was the same thing in law as to make it with knowledge of its falsehood. And, the thin edge of the wedge being thus inserted, it has been pushed further and further, until the old doctrine about moral fraud and actual knowledge has been practically frittered away. We are far from regretting the change; we think it a change decidedly for the better. We only desire to call attention to the confusion of landmarks which arises from concealing a change of substance by the retention of old forms and old names. What the law upon the subject is at this moment it might be difficult to define with accuracy. But it is clear that the term "fraud" now includes anything from the grossest swindling down to that which an ingenious counsel eager to hurry off to another case, and a judge anxious to escape a troublesome inquiry, when gracefully consigning the case to a reference, can describe to the jury and the newspaper reporters as "fraud in law," "fraud in the technical sense," involving nothing inconsistent with the strictest integrity or the highest honour.—*Solicitors' Journal*.

## ONTARIO REPORTS.

## INSOLVENCY CASES.

(Before the Judge of the County Court of the County of Wentworth.)

[Reported by S. F. Lazier, Esq., Barrister-at-Law.]

## IN RE LAWSON BROTHERS, INSOLVENTS.

*Insolvency—Deed of Composition and Discharge.*

- Held*, 1. That a deed of composition and discharge under sec. 9 of the Insolvent Act of 1864, purporting to be between the majority of the creditors of \$100 and upwards of the first part, and the Insolvents of the second part, is valid, though the *non-assenting* creditors were not specially made parties to the deed.
2. A creditor who has accepted the terms of a deed of composition cannot afterwards contest the confirmation of the Insolvents' discharge.
3. The debt of a secured creditor who has elected to accept his security in full of his claim, and obtained the consent of the assignee to such election, is not to be estimated in considering the amount of indebtedness.

[September 7th, 1869.]

This was an application by the insolvents to the Judge of the County Court of the County of Wentworth for a confirmation of the deed of composition and discharge made by the insolvents.

The sections of the deed in dispute were as follows:

"This deed of composition and discharge is made and executed in duplicate under and in