

This was a petition by five members of St. Bridget's Mutual Building Society, who set forth that they had all paid money into the Society previous to June, 1879; that at that date the Society went into liquidation; that the defendants were appointed liquidators and accepted the office; that the liquidators had in great measure realized the assets of the Society, and had in hand \$3,000; that by law the liquidators were bound from time to time to distribute said assets, and the only persons entitled to share therein were petitioners, and Andrew Cullen, John Curran, George Crutchlow; that the liquidators had not performed their duty in such distribution; wherefore, a mandamus directed to them, ordering that such distribution be made among said parties, was prayed for.

The plea of the liquidators said that if the parties indicated were entitled to share, they were not the only ones entitled to share in said assets; that the statutes providing for liquidation, 42 Vict. cap. 48, Canada, and 42-43 Vict. cap. 33, contained no enactment constraining the borrowing members or other debtors of the Society to pay back their loans or debts before maturity under the terms of the obligations entered into by such members or debtors; that section 4 of the Canada Statute, and section 18 of the Quebec Act, 42-43 Vic. c. 32, authorized the liquidators to dispose, either by private sale or by auction of the moveable and immovable property of the Society, including the debts due to it, and to compound and compromise with the Society's debtors, and to do whatever they might deem to be advisable in order to the liquidation on the most advantageous terms; that defendants called a meeting of borrowing members or debtors for the 11th August, 1879, and at that meeting it was agreed by resolution, to discharge the borrowing members who, within three months from that date, should pay 80 per cent. of the balance due by them, under the condition expressly contained in the resolution: "that should there be any overplus, after paying all the non borrowing members, dollar for dollar, as that was all they wanted, it (such surplus) would be divided amongst the borrowers, provided the borrowers would all pay up within three months from date, but if not paid up within three months from date, then the non-borrowers would receive bankable interest (four per cent.) on their amounts, and the balance, if any, divided between the borrow-

ers." That said resolution was a contract between the Society and the borrowing members; that a sufficient number of borrowing members paid to enable the defendants to pay the non-borrowing members who claimed to be paid, the amount of the money by them invested and paid, dollar for dollar, with interest from the date of entering into liquidation, at the rate of four per cent.; that said agreement with the borrowing members did not require the consent of the other members to be valid; but it was generally accepted and adhered to by the generality of the non-borrowing members, who accepted their money with four per cent. interest, the petitioners and said three members alone remaining unpaid of a balance of 15 per cent. of their money with interest as above; that the fund in the hands of the defendants in excess of said 15 per cent. and interest was held in trust for the borrowing members whose it was.

The plaintiffs demurred to a large portion of the plea on the ground that the resolution was passed at a meeting of the borrowing members only, and it did not appear that petitioners assented thereto, and it would not bind the Society. The petitioners also answered specially.

PER CURIAM. It appears to me to be a weak point in the defence that they should reserve a large portion of the funds for the benefit of the borrowing members and ignore the claims of the non-borrowing members. The resolution agreed to by the borrowing members may be binding on them, *conventio facit legem*, but it could not bind the Society generally, without its consent, which, so far as the petitioners are concerned, has not been given. The powers given to the liquidators are very large, and in this liquidation, I have nothing to say against the wisdom which inspired the settlement with the borrowing members, but it appears that they are themselves borrowing members, and are interested to maintain the settlement against the petitioners. The proper course, it appears to me, is to order a distribution of the funds not for the exclusive benefit of the petitioners, but according to the rights of all, for the benefit of all who are still members of the society.

Mandamus granted against defendants.

Doherty & Doherty for petitioners.

Doutre & Joseph for liquidators.