with the permission of the Court, then pleaded the arrangement, concluding for the dismissal of the action without costs.

Held, that the plaintiff was not entitled to answer this plea by alleging that the settlement was fraudulent, and made with the view of depriving the attorneys of plaintiff of their costs.

This was an action to set aside a deed of obligation between father and son for want of consideration. After issue joined, the case was inscribed for trial before Mr. Justice Mackay, and the father (defendant) was examined for the plaintiff. The case was then adjourned to a later day, and meanwhile the parties made an arrangement by which plaintiff agreed to discontinue his action on payment to him of $300, which was done, each party paying his own costs.

Subsequently defendant applied to the Court to be allowed to produce an additional plea based on the above arrangement. This was allowed, and the new plea concluded for the dismissal of the action, each party paying his costs.

The plaintiff answered this new plea by alleging that the arrangement had been made in a fraudulent manner, and with the view of depriving the attorneys of plaintiff of their costs, of which they had claimed distraction. The contest was now to ascertain whether the arrangement could be made to the prejudice of the attorneys.

Préfontaine, for plaintiff, cited *Montrait* v. *Williams*, 1 L. N. 339, 3 L. N. 10.

J. M. Loranger, Q.C., for defendant, cited *Lafaille* v. *Lafaille*, 14 L. C. J. 262; *Quebec Bank* v. *Paquet*, 13 L. C. J. 122; *Castonguay* v. *Castonguay*, 14 L. C. J. 304; *Ryan* v. *Ward*, 6 L.C.R. 201.

PER CURIAM. I do not see that *Montrait* v. *Williams* applies to the present case. The facts there were peculiar. The cases cited by defendant are in point. But there is more than this. The demand here for costs against the defendant is made by plaintiff, who urges his own fraud. This cannot be. It is not a demand by his attorneys, though it is for their benefit. The additional plea will be maintained and the answer over-ruled with costs.

Préfontaine & Co. for plaintiff.

Loranger & Co. for defendant.

COURT OF REVIEW.

MONTREAL, Oct. 31, 1882.

MACKAY, TORRANCE, MATHIEU, JJ.

[From C. C., Terrebonne.

GUERIN v. ORR.

Promissory Note—Evidence of payment—Action by third party.

Where there is a competition of evidence on the question whether a security has or has not been satisfied by payment, the possession of the uncancelled security by the claimant ought to turn the scale in his favor.

G., who was not a party to the note in question, got it into his possession before maturity, as collateral security. The payee subsequently became insolvent, and G., before maturity of the note, obtained from the assignee a transfer of all the insolvent's assets.

Held, that G. might sue the maker on the instrument though not endorsed.

The judgment under Review was rendered by the Circuit Court, Terrebonne, Bélanger, J., April 1, 1882.

MACKAY, J. The defendant, appellant, has been condemned to pay plaintiff the amount of a note of December, 1878, for $106, at 12 months, made to the order of L. D. Mathieu.

Mathieu became bankrupt in 1879, before the note matured, and some time before had placed a quantity of notes with the plaintiff, but he had not endorsed them. Dispute, since the bankruptcy, has taken place between Mathieu and plaintiff, as to the conditions under which the notes were delivered to plaintiff.

Mathieu now insists that Guerin never got them as collaterals, for securing payment of the large sum of money which undoubtedly Mathieu owed Guerin; but that the notes were placed with him (unendorsed) on condition that they should become his, only on his procuring Mathieu a discharge from all his creditors. Had the parties made writings, all would have been plain. As things appear, Guerin seems to have the best right. He insists that the notes, Orr's note among them, were gotten by him as collaterals. He proves that he represented the facts to Mathieu's assignee in bankruptcy, and that he described the collaterals, and put a value upon them of over seven hundred dollars, when proving in bankruptcy, value that was ap-