

The plaintiffs answered specially and averred, among other things, that after the pretended giving of time, the Defendant, being cognizant thereof promised the Plaintiffs to pay them the amount of the several promissory notes above-mentioned.

Issue having been joined, the parties proceeded to proof, and the evidence adduced disclosed, (the making and endorsing of the notes being admitted) the following material facts, viz :

That the Plaintiffs had, after the protest of the notes declared upon, entered with other creditors of Thos. McCaw, into a deed of composition with him the said Thos. McCaw, executed at Quebec on the 14th July 1845, by which they agreed to take three shillings and six pence in the pound, payable by instalments, and grant him a discharge :

That the promissory notes made by Thomas McCaw had been protested on the third day after they had become due :

That the defendant was aware of the arrangement between McCaw and his creditors and afterwards expressed his intention to take up the notes :

That the defendant knew of the protest of the notes (no regular notice was proved) and had afterwards, both in Montreal and Quebec, promised to pay to the plaintiffs the amount of the said notes, and particularly at Quebec, a few days before the issuing of process in the cause, in November 1845.

The cause having been inscribed upon the *Roll de Droit* for hearing upon the merits, the plaintiffs prayed for judgment for the amount of the two promissory notes made by McCaw, with interest from the day of service of process, and for one half of the amount of the note made by Coyle & Sculthorp (the plaintiffs having received on the said note £20 9s.) with interest from the date of protest, and moved for judgment against the garnishee pursuant to his declaration.