

including the unproved creditors, then the supersedeas is bad, because it says merely that two-thirds of the *proved creditors* have compounded, but does not show nor purport to show, that two-thirds of all the creditors, including those whose claims were not proved, had agreed to compound.

The Respondent furthermore contended, that even if the Appellant had the power to compound, he has not done so according to law, and that the composition must be held inoperative as regards all the creditors who did not become parties to it.

Firstly: Because the composition was not as the law requires, entered into "at the second general meeting of the creditors," which took place on the 16th of January, but on a subsequent occasion namely on the 24th of February 1845.

Secondly: Because the composition ought to have been by an act made under the sanction of the Court, and the security should have been made as available to the creditors absent as to those present; whereas the agreement was as to form a mere notarial act, and the security was not extended, nor intended to be extended, to creditors not parties to the act.

Thirdly: And chiefly, because the offer to compound on condition of a discharge is not confined to the bankrupt who made it, but extended to M. Hector Turnbull his partner, and was made on condition of a discharge being granted to him, although he was not under or even within the jurisdiction of the Bankrupt Court.

In the Court of Appeals, the position taken by the Respondent as well as the Judgment of the Court below, were held good, and in accordance with the true spirit of the Bankrupt Act.

The honorables Justices Panet, and Bedard dissented from the majority of the Court of Appeals on the principal that all the creditors of the Appellant had received due notice of the proceedings in bankruptcy; that two-thirds of the apparent creditors had agreed to the composition, and that the remainder who had not proved were bound by the said composition, according to the French law; and by that law they were disposed to interpret the working of the Provincial Act.

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### COURT OF APPEALS,—MONTREAL.

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TUESDAY, 10th MARCH, 1846.

PRESENT:

The Honorable Sir JAMES STUART, Baronet, Chief Justice of Lower Canada, President.

Mr. Justice BOWEN,  
 " PANET,  
 " BEDARD,  
 " GAIRDNER,

The Court of Appeals of our Lady the Queen now here having seen and examined as well the Record and Proceedings in this cause;