of the insolvency, because if he was, he would have been mad to endorse; he had simply to abstain from endorsing and he was safe. It is, therefore, evident that when the first endorser is an endorser for accommodation merely, he cannot be troubled, because he was not aware of the insolvency of the maker. The case I have supposed would be just the case against which Article 449 of the French law is directed —the case of a note given to *a creditor at the time*, he getting value for it from a third party who is subsequently paid by the insolvent. The moment, then, that the plaintiff admits, as he does here, that the defendant was endorser for accommodation only, his action is gone. The law of the United States, sec. 34, has a provision similar to the French law against the person receiving such payment, and *who is benefited thereby*, and *has reasonable cause* to believe such person to be insolvent. Our own statute has not adopted the provision of the French law, or that of the American law. It confines itself to the case of a creditor receiving payment from an insolvent debtor, knowing or having reason to believe him insolvent, § 134. On general principles, how can an endorser for accommodation be considered a creditor? He is a surety and nothing else. He can only become a creditor by paying the debt; he cannot even rank on the insolvent's estate till he has paid it. Quintal & Croteau borrowed from the banks, who would not lend to them without the defendant's endorsement. He endorses for them—becomes their security to the bank. Three months later, when the notes are due and are paid by Quintal & Croteau, they return to their direct creditor, the bank they borrowed from, the money that was lent. The surety knows nothing about it. Did Quintal & Croteau pay the surety's debt or their own? The question need not be answered. The very reverse is proved. The defendant then was not a creditor. He had no knowledge of the insolvency of this firm; he was only a surety who benefitted the concern by furnishing them with means at his own risk.

Action dismissed.

*Kerr & Carter*, for plaintiff.

*Duhamel, Pagnuelo & Rainville*, for defendant.

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GOODBODY et ux. v. MCGRATH et vir.

*Particular legacies—Time when payable—Compensation.*

JOHNSON, J. The plaintiff and his wife sue the defendant and her husband to get the amount of two legacies left by the will of their mother, Martha Lillis, to the plaintiff and the plaintiff's sister; the latter being since dead, and having bequeathed her legacy to the plaintiff. The legacy to the plaintiff was $100, and that to her sister Charlotte $300. Both were payable twelve months after the testatrix's property should have been freed from any incumbrances existing at the time of her death. By the same will the mother appointed George McGrath her universal residuary legatee, after payment of her debts and legacies. Martha Lillis, the mother, died, and her son, George McGrath, took possession of her estate; afterwards, on the 24th December, 1870, George McGrath sold to his sister Rebecca, the defendant, a lot of land belonging to the succession of their mother for $2,500, getting $1,800 down, and out of the balance she undertook to pay these two particular legacies of $100 and $300, and this indication of payment was accepted subsequently by the plaintiff, and notice was given of her acceptation of it. To this action the defendant has pleaded three exceptions, and a *défense en fait*.

1st. The existence of the two hypothecs;

2nd. That she expended so much money on the education of two of Charlotte's children that she has been unable to pay off the incumbrances.

3rd. In answer to that part of the action that regards the legacy of $300, she pleads a payment by Geo. McGrath of $65, and that the balance is compensated by the price of the maintenance and education of these children during the years 1874, 1875 and 1876.

As regards the first plea, it is answered that George McGrath, the universal legatee, could not profit by his legacy otherwise than according to the terms of the will, *i.e.*, after payment of all the debts and particular legacies. That by the sale from McGrath to defendant for $2,500, of which he pocketed $1,800, he charged her without delay to pay the mortgages and these legacies, and she herself got by the same transaction the whole amount of her own legacy under the will, and that she is without