of the said transfer of the said stock, the party of the first part covenants with the parties of the second part, that he will assign and transfer to them a debt due to him from Messrs. Thompson & Co., for the sum of fourteen thousand two hundred and ninety dollars, together with all notes, bills, or other evidences of the said debt. To have and to hold to the said parties of the second part as a security for the said stock transferred by the said parties of the second part."

There were provisions about re-transferring bank stock, payment of interest, and principal, &c., not necessary to notice, and the agreement ended with this provision: "And the parties of the second part shall have the right to enforce the said debt of the said Thompson & Co., or compound, compromise, or give time therefor, with the consent of the party of the first part, and on the re-transfer of the said stock, or the payment of the said money, the parties of the second part will re-convey to the party of the first part the said debt of the said Thompson & Co., together with the evidences thereof."

The evidences of the debt due by Thompson & Co. consisted of various promissory notes and acceptances of bills of exchange, some due at the date of the agreement and others not falling due until afterwards. These notes and bills were delivered by Feehan to the plaintiffs. Thompson & Company removed to Lower Canada and there failed. It was admitted in this case that the law of Lower Canada was, in such a case, that such property of Thompson & Co. as remained in their hands, which had been sold by Feehan to them, but not paid for, and could be identified, would be liable for that particular debt, and that the demand of Feehan on production of the security would be there treated as a privileged debt.

On the 19th of October, 1860, Mr. Feehan obtained the notes and acceptances from the plaintiffs, giving them a receipt for them, expressing that it was for the purpose of handing them to a solicitor at Quebec for collection. The courts in Lower Canada dealt with them on the footing that Feehan was collecting them as his own.

The whole demand which Feehan had against the firm of Thompson & Co. consisted of notes and acceptances to the amount of $20,446 52, of which the sum of $14,290 was assigned to the plaintiffs, the remainder having been assigned to other parties, with the exception of $2,123.44, which Mr. Feehan retained in his own hands.

On the 17th of December, 1860, Feehan executed a deed of assignment to the defendants, for the benefit of his, Feehan's creditors, and in the schedule to the deed the notes and acceptances which had been previously delivered to the plaintiffs, and afterwards got from them by Feehan to take them to Lower Canada, were all enumerated, and it was stated that they were held by the plaintiffs as security for an advance of $2550. That sum was the cash value the parties put on the 60 shares of bank stock transferred to Feehan, as the first agreement shewed.

Mr. Feehan was examined as a witness upon the trial of this cause, and stated that when he made the assignment to the defendant, he informed the defendant how the notes and acceptances stood pledged to the plaintiffs. He further stated, that in obtaining the notes and acceptances on the 19th of October, 1860, to present them in Lower Canada, it was only done by him for the purpose of realizing the amount as a privileged debt, in order that the plaintiffs might receive the money when collected. The amount realized in Lower Canada upon the whole debt of $20,446 52, due by Thompson & Co., was $3615 86. Of this sum, $3337 87 found its way into the hands of the defendant, and the residue of the $3615 86 was paid over to other parties. The amount of $3337. 87 was received by Mr, Feehan from his solicitor in Lower Canada in July, 1861; and he said he informed his solicitor there how the matter stood with respect to the plaintiffs, and when the money was received here he wished to pay over to the plaintiffs the proportions due them according to the amount of the notes and acceptances assigned to them, but the defendant would not consent, and contended that he being Feehan's assignee was entitled to the whole money, and that any demand the plaintiffs might have should be presented to him Mr. Feehan stated that he thought the plaintiffs should receive their proportion, and that only the proportion of the $20,446 52, which still belonged to himself, should be paid over to the assignee. The defendant stated that he was acting under the advice of the solicitors of the trust, and insisted he should have the whole money, and it was then paid over to him.

It was admitted the defendant had the money still in his hands unappropriated, and that the plaintiffs had given notice to the defendant of their claim to the money before action brought.

A number of objections were made by the defendant's counsel to the plaintiffs' recovery, which were reserved as grounds of non-suit.

A discrepancy existed as to the amount of notes and acceptances which had been originally given to the plaintiffs, and as to what had been returned from Lower Canada; and there not being time to analyze the matter at the trial, a verdict was taken for the plaintiffs for $3,092.69, subject to be reduced if the calculation was not right.

R. A. Harrison obtained a rule to shew cause why a non-suit should not be entered on the following grounds:—1. That there was no proof of any assignment to the plaintiffs by Feehan of the debt due to Thompson & Co., or any part thereof, but only an agreement to assign. 2. That the plaintiffs were not in law entitled to maintain this action against the defendant, because of the want of privity between the defendant and the plaintiffs. 3 That the plaintiffs were not in law entitled to maintain this action, because of the want of proof of any ascertained sum of money in the hands of the defendant, which could be said to belong exclusively to the plaintiffs. 4. That the plaintiffs' remedy, if any, was in a court of equity, where the rights of all parties concerned could be finally and satisfactorily adjusted 5. That the plaintiffs in respect to the advance to Feehan, were in the same position as other creditors of Feehan, and must with them share rateably under the deed of assignment to the defendant. The rule also asked to reduce the verdict to such sum as the court might find the plaintiffs entitled to, if any.

Cameron, Q C, shewed cause during last term, and cited *Adderley* v *Dixon*, 1 Sim. & St. 607; *Heath* v. *Hall*, 4 Taunt. 326; *Williams* v. *Everett*, 14 East 582; *Poole* v. *Cowan*, 8 L. T. Rep. 385; *Wright* v. *Bell*, 5 Price 325.

R. A. Harrison, contra, cited *Wharton Walker*, 4 B. & C. 163; *Wedlake* v. *Hurley*, 1 Cr. & J. 83; *Stephens* v. *Badcock*, 3 B. & Ad. 355; Trower on Debtor and Creditor, 182; *Jones* v. *Carter*, 8 Q. B. 134; *Great Northern R. W. Co.* v. *Shepherd*, 8 Ex. 30; *Bleaden* v. *Charles*, 7 Bing. 546; *Harvey* v. *Archbold*, 3 B. & C. 626; *Baron* v. *Husband*, 4 B. & Ad. 627.

BURNS, J.—In this case I have to read the judgment prepared by the late Chief Justice of this court, in which I concur.

If the verdict for the plaintiffs should stand, I see there is some doubt suggested as to the correctness of the amount for which it was entered at the trial. This the parties can settle, and in case of any disagreement refer to the court.

I perceive that of the securities handed over by Feehan to the plaintiffs some have been endorsed by him, others (and for the greater part I think) not endorsed.

As to those endorsed by Feehan in blank, and delivered over by him in security to the plaintiffs, how can there be any question that the money collected on them should go to the plaintiffs, at least to the amount of their debt and interest?

As to those not endorsed (all were negotiable), the delivery of them over to the plaintiffs by Feehan, for the purpose of collecting them by the plaintiffs in Feehan's name, as they might be with his assent, would make the money collected upon them the money of the plaintiffs, as between them and Feehan, if Feehan had not made the assignment to defendant which he did make; and if so, then his assigning his debts afterwards to defendant can place the plaintiffs in no worse situation, when the defendant took them, or rather the assignment of them, with written notice that they had been placed in the plaintiffs' hands to secure the sum agreed upon.

It would have made the matter more clear if the securities had all been endorsed, as some were, though probably not for the purpose at the time of transferring them to the plaintiffs

There may be a difficulty in adjusting the amount for which the verdict should be entered, for of course it is only on the moneys that can be held to have been paid by Thompson & Co. on account