une somme de $250.50 pour le prix de chapeaux et d'un moulin à coudre, que Massé lui avait expédiés avant l'acte de composition, et que cette somme de $250.50 doit également être déduite de la balance due par l'intimé sur ses deux billets;

" Et considérant qu'après déduction faite des trois sommes de $500, de $100, et de $250.50, plus $15.21 pour intérêts, le dit intimé doit encore au dit appelant sur les deux billets sur lesquels cette action est portée une somme de $1602.97, avec intérêt sur cette somme à compter du 10 Novembre 1876 ;

" Et considérant qu'il y a erreur dans le jugement rendu par la Cour Supérieure à Montréal le 19 Déc. 1877 ;

" Cette cour casse et annule le dit jugement, et procédant à rendre le jugement qu'aurait dû rendre la dite cour supérieure, condamne l'intimé à payer à l'appelant la somme de $1602.27, avec intérêt sur cette somme à compter du 10 Nov. 1876, et déclare la dite obligation du 27 Avril 1876, et les deux billets du 7 Avril et du 7 Aout 1876 nuls et de nul effet quant au surplus ;

Et cette cour condamne l'intimé à payer à l'appelant les frais encourus tant en cour inférieure que sur l'appel."

RAMSAY, J. I concur in the judgment that has just been rendered, but I differ so completely from some of the reasons that have been given that I must trespass on the time of the Court to explain the grounds on which I think the judgment shquld be in part reversed. We have recently had two cases involving similar questions. The first was that of *Arpin* v. *Poulin*,* arising out of the same transaction as that now before the Court. In that case Poulin, the endorser, pleaded in answer to Arpin's action that he had fraudulently combined with Massé to give a seeming assent to the act of composition and discharge, while, in fact, he had obtained a preference which altered the position of the endorser. The action was dismissed in the Superior Court, and we confirmed the decision. It appears to me that the true principle was laid down in that case, namely, that between the endorser for credit and the creditor the condition of the security was the discharge of the debtor for a certain sum. Next came the case of *Marchand & Wilkes*, 3 L.N. 318. By the judgment of this Court the action was maintained on the ground that Wilkes was only then seeking to recover on the notes which were given for the avowed amount of the composition. I dissented, as it appeared to me that this was laying down a rule different from that laid down in the case of *Arpin* v. *Poulin*. The condition of the endorsement is destroyed by the preferential notes, whether the fraudulent creditor keeps them, or circulates them or sues on them. The present case is distinguishable from both these cases. The defendant raises two grounds of objection to paying his notes. First, there is the fact of the hypothec granted by Massé to Martin, it is said in fraud of the creditors, and the fact that Martin retained his notes of the original indebtedness in addition to those of the composition. Second, that he had fraudulently concealed a quantity of straw hats and a sewing machine. As to the first ground, I do not see that there was any fraud of which Poulin can specially complain in the matter of the hypothec. It was referred to in the deed of composition, and Martin there stipulated his right to retain it. He evidently thought that the retention of the hypothec implied the right to retain the old notes. This was certainly a strange error for him to make ; but Poulin thought the same thing, and on the very day the composition notes were given—the 11th August—he passed a deed with Martin in which he stipulated that Martin should make him over the whole of the old notes and the hypothec, for $600, in a note of Poulin's for $500 and in a note of Massé for $100. Poulin, therefore, was charged with $600, which was not due, and for which he must have credit now ; but he was not defrauded. The hats and the sewing machine stand on a different footing, and if Poulin had been a simple endorser I should have held that he was discharged from his liability. But when we come to look into the matter it appears that the whole of Massé's estate was given over to Poulin, not to Massé, and that he dealt with it as his own. He makes no offer to account for that property, or to tender it back, but he says : " discharge me of my liability and I shall keep what I have got." This would be palpably unjust. All the plaintiff has a right to is the deduction of the value of the straw hats and sewing machine, which seem to have been worth about $250. So that he will have to pay his notes, less $850, and any interest he may have paid on these sums since the 11th August, date of the transaction with Martin.

Judgment reformed, Cross, J., dissenting.

Lacoste & Globensky for appellant.
Archambault & David for respondent.

* 1 Legal News, 290 ; 22 L.C.J. 331.