

plaintiff on a note endorsed by defendant *J. M. Smith*, past due, for about \$800. The plaintiff shortly afterwards put this note in suit. *R. C. Smith* entered a defence to it, as he swears, to enable *Hutty* to get a first judgment in the suit on the note endorsed by him *Smith*, to which no defence was made. The defendant *R. C. Smith*, it is alleged, was at the time of the transfer to *Hutty* insolvent, and it does not appear that he had then, or has now, any means out of which the plaintiff can obtain payment.

The plaintiff files his bill, claiming that the transfer of this note to *Hutty* was under the circumstances fraudulent and void, and shall be so treated under section 17, chapter 26, Consolidated Statutes of Upper Canada, and that the judgment obtained under it should be vacated; or that any thing realised under it should be paid over to him the plaintiff; or in effect that *Hutty* should lose his priority as against the plaintiff, and that *Smith's* goods should be subjugated to his, the plaintiff's execution. There seems no doubt at present of the indebtedness of *R. C. Smith* to *Hutty*, to an amount of about £500. Whatever question may arise as to the right of *Hutty* to press his judgment against *J. M. Smith*, it seems to me there can be no pretence for setting aside his judgment against his principal debtor *R. C. Smith*. He might have taken *R. C. Smith's* note and recovered judgment against him on that, or on the account which *Smith* owed him. I am asked to set aside this judgment against him, or to take such action in respect of it that another creditor may thus obtain priority. Why should that other creditor have priority? His debt does not appear to be entitled to any preference over *Hutty's*. He has a judgment against precisely the same parties, but later in point of time; and *Young v. Christie* very properly, I think, decides that one creditor facilitated, another delayed, by the recognized forms of law in obtaining a judgment, affords no ground for interference. Why should I hand over the defendant's, the principal debtor's,