

C. of A.]

NOTES OF CASES.

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by the payee, he would be held liable only as second indorser. The presumption where such an indorsement is made in blank, is, that the party is liable as maker or guarantor. Where the party is held as a promisor or a second indorser, it is not necessary to allege or prove any other than the original consideration, but if it is attempted to hold him as guarantor, a distinct consideration must appear.—*Ex.*

NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED
IN ADVANCE, BY ORDER OF THE
LAW SOCIETY.

COURT OF APPEAL.

From C. C. York.]

[February 20.

RE WALLS & Co.

Insolvency.

This was an appeal by joint creditors of the insolvents against an order confirming the deed of composition and discharge. The objection to the deed was, that it did not provide for separate creditors, of whom there were two, viz. : The Stadacona Fire Insurance Company, and the Huddersfield Banking Company. The Stadacona Company proved for a sum due for calls on stock which stood in the name of T. Walls, one of the insolvents. Pending proceedings for the confirmation of the discharge, a friend of the Insolvents, for the purpose of removing the objection, took a transfer of this stock, which was shown to be of no value, and paid off the calls: *Held*, that the effect of this transaction was the extinguishment of the debt, and that the deed was not invalidated, because it did not provide for the payment of this debt. The Huddersfield Bank claim was due by the firm and fully secured by a mortgage on the partnership assets, which contained T. W.'s covenant to pay the money: *Held*, that although this was a separate debt, it did not come within the principle which vitiates a deed of composition on the ground that the separate creditors are not provided for, since by resorting to the mortgage security the

Bank would only take what was theirs already, while if they took a different course, and enforced payment from other assets they set free the mortgaged property.

The deed of composition was filed with a certificate from the assignee under sec. 52, dated 21st November, 1877. It stated that the total number of proved claims of \$100 and upwards was thirty-four, and that the number who had proved for that amount, and who had executed the deed, was thirty-one. The deed, however, as produced, had the signatures of fifty creditors, and from the affidavit of execution it appeared that all these had signed before the date of the certificate. There was nothing in the papers or the evidence of the assignee to explain the discrepancy between the numbers in the deed and the certificate. *Held*, that the deed was void, as it did not appear that it had been executed by a sufficient proportion in number and value.

The deed was executed by procuration, but with the exception of a few cases no authority to execute was shown. The assignee swore that nearly all had accepted the composition under it, but it did not appear that he had paid it directly to the creditors, or had their acknowledgment for it, or that those to whom it was paid had power to ratify the Deed by accepting the composition. *Held*, that as neither power to execute or to ratify was shewn, the deed was void.

Held, that the mere fact that no objections to the deed of composition were filed with the assignee, in compliance with sec. 51, does not compel the judge to confirm the discharge under sec. 54.

The affidavits of justification and of the execution of the appeal bond were made before a commissioner in B. R. ; they were entitled in the matter of the insolvency, and referred to the Insolvent Act of 1875 and amending Acts.

Held, that it was no objection that they were not entitled in any court.

The accuracy of styling insolvency proceedings in the County Court questioned.

The bond recited the judgment as being in a matter under the Insolvent Act of 1875.

Held, that even if a reference to the amending Acts had been proper, its absence would not have invalidated the bond so long as there was sufficient to show without ambiguity what was the particular decision attacked by the appeal.

The condition of the bond was that the ap-