

From McMahon, J.]

SMALL v. HENDERSON.

[June 29.

*Bankruptcy and Insolvency—Assignments and Preferences—Composition—
Fraud—Bills of Exchange and Promissory Notes—Endorsement.*

An insolvent made a compromise with his creditors, borrowing from his wife the money to pay them. She borrowed the money from one of his creditors, agreeing to pay a bonus of a large amount and giving to the creditor for his composition payment and the bonus her promissory notes endorsed by her husband, with a mortgage on her real estate, and a chattel mortgage on his stock as collateral security. The creditors signed the composition agreement, nothing being said about the bonus to the other creditors, who knew, however, that some arrangement had been made with this creditor for the supply of the necessary funds. The insolvent, after carrying on business for some time and incurring further liabilities, made an assignment for the benefit of his creditors.

Held, that the transaction with the wife was valid and not a fraud on the composition and that the creditor was entitled to rank upon the notes as far as this question was concerned. Judgment of McMAHON, J., affirmed, MOSS, and LISTER, JJ. A., dissenting.

But the notes in question having been made by the insolvent's wife, payable to the creditor's order, and having been endorsed by the insolvent before they were handed to the creditor:—

Held, on objection taken in this Court, that the insolvent was not liable as endorser and that the creditor could not rank on his estate.

G. Kappeler, and *J. Bicknell*, for appellants. *Clute*, Q.C., and *J. G. Hay*, for respondents.

From Divisional Court.]

[June 29.

FRASER v. LONDON STREET RAILWAY COMPANY.

Street Railways—Negligence—Damages—New Trial.

An appeal by the defendants from the judgment of a Divisional Court in the plaintiff's favor, reported 29 O. R. 411, and a cross-appeal by the plaintiff from that judgment in so far as it reduced the damages awarded to him at the trial, were argued before BURTON, C. J. O., OSLER, MACLENNAN, MOSS, and LISTER, JJ. A., on the 11th of May, 1899.

Hellmuth, for defendants. *Aylesworth*, Q.C., and *A. Stuart*, for the respondent.

At the conclusion of the argument the appeal was dismissed with costs, and on the 29th of June, 1899, the cross-appeal was dismissed without costs, the Court expressing no opinion as to the power of the Court below to make the alternative order for payment into Court of the amount of the judgment, and for a medical examination of the plaintiff at the end of a year.