instituted for the purpose of making the defendant acknowledge this right of passage, and maintain the road in good order, the plaintiff claiming moreover £100 damages. The servitude was established by the predecessors of the parties to the action by notarial deed. The defendant denied that there was any right of passage. He pleaded that no title had been produced by plaintiff; that if the latter had any right at all it was a simple right of way, and he, defendant, had never opposed this right of way. The Court declared that the servitude existed, and ordered the defendant to pay $10 damages.

DUVAL, C. J., said the evidence was very positive in favor of plaintiff as to the condition of the road. It was in very bad order. The Court was also of opinion that plaintiff possessed the right of passage, and that defendant was bound to keep the road in order, which he had neglected to do.

Judgment confirmed unanimously.

Doutre & Doutre for Appellant; Senécal, Ryan & DeBellefeuille for Respondent.

MORRISON *et al.* (defendants in the Court below), appellants; and DUCHARME (plaintiff in the Court below), respondent.

A question as to plaintiff's liability for deteriorations of a Church constructed by him. Held, that the defendants, by receiving the work over, had exonerated the plaintiff from all liability, except the liability which by law attached to him as architect and undertaker; and that the defendants had failed to prove the existence of any *vice du sol* or of *construction* for which the plaintiff could be held liable as such architect or undertaker.

This was an appeal from a judgment of the Superior Court, 30th April, 1864. The plaintiff claimed £306 due under a contract. The defendants were the syndics duly elected to superintend the construction of a church and sacristy in the parish of St. Gabriel de Brandon, and they contracted with plaintiff, 29th March, 1855, to erect certain buildings to be completed 25th December, 1856. The price was £1893.10, payable in instalments. When the work was finished, 25th August, 1858, *experts* were named by the parties to examine it, and on their report, the church and sacristy were accepted and taken over, and the contractor absolved from further liability, with the exception of the guarantee of ten years, or his liability as architect and undertaker. The syndics afterwards, however, refused to meet the instalments as they came due, alleging that they had subsequently discovered defects in the building, that there were various cracks and fissures in the walls, which they said were caused by the improper construction of the foundation; that there were holes in the belfry which allowed the snow and rain to penetrate; that part of one of the walls of the sacristy was on the point of falling, &c., and they claimed £2,000 damages as a set off to plaintiff's demand. The pleas of defendant were dismissed in the Court below by Mr. Justice Smith, and judgment given in plaintiff's favor. The defendants appealed.

DUVAL, C. J., said the Court was of opinion that the judgment of the Court below was quite right. Two persons had made a careful examination of the building, and were of opinion that the defects complained of could have been remedied at first for a few dollars. No objection was made by defendants till a long time after. The contractor had done his work properly, and fulfilled the contract.

Judgment confirmed unanimously.

Lafrenaye and Armstrong for Appellants; Rouer Roy, Q.C., for Respondent.

MARTIN *et al.*, (defendants in the Court below), appellants; and MACFARLANE, (plaintiff in the Court below), respondent.

An action for the amount of a note given in excess of the amount of composition. The defendants pleaded, by *exception peremptoire*, that the note was given before the composition notes and was postdated by plaintiff; and that if it were paid, the plaintiff would receive more than the other creditors. Held, that this plea was no answer to the action.

This was an appeal from a judgment rendered by the Superior Court at Montreal on the 31st May 1864, condemning the defendants to pay the plaintiff the sum of $193.48, amount of a note bearing date 1st February 1862, payable 21 months after date. The defendants pleaded specially that by notarial deed dated 1st Feb. 1862, they made an arrangement with their creditors, including the plaintiff, by which they agreed to compound for ten shillings in the £. That at the date of this composition, plaintiff was in possession of the note sued on, which he had postdated. That if this note were paid the plaintiff would receive more than the other creditors, and equality between them would be destroyed. For these reasons the defendants prayed for the dismissal of the action.

Judgment was rendered by Mr. Justice Smith condemning the defendants to pay the amount on the following grounds: 1st, that defendants had failed to prove that the note sued on was given to plaintiff before the execution of the deed of composition; and 2nd because defendants had not set up any agreement by plaintiff to take the note with the fraudulent intention of inducing the other creditors to sign the deed of composition, but they simply stated that plaintiff thereby received more than the other creditors, which was no answer to the action.

DUVAL, C. J., said the peremptory exception was no answer to the action. There was an important omission to allege fraudulent intent. On this principle, they held the judgment of the Superior Court to be correct.

Judgment confirmed unanimously.

C. & F.-X. Archambault for Appellants; S. Bethune, Q C., for Respondent.

BOVE (defendant in the Court below), Appellant; and MCDONALD *et al* (plaintiffs in the Court below), Respondents.

HELD—That the endorser of a promissory note, tendering the amount to the payee, does not require, and cannot demand any special subrogation, besides the surrender of the note. Further, that the endorser cannot throw upon the payee refusing tender of the amount, the liability for the maker's insolvency unless he have renewed the tender *en justice*.

This was an appeal from a judgment of the Superior Court at St. Johns, in the district of Iberville, 27th Nov., 1863, condemning the defendant to pay plaintiffs the sum of £100, with