Je crois que le fait de priver, en pareil cas, l'accusé de l'avantage de transquestionner le plaignant, est suffisant pour justifier l'émanation d'un bref de *certiorari*.

Suivant moi, le juge de paix qui, dans une cause ordinaire, où l'accusé peut offrir une défense, faire entendre des témoins, etc., etc., refuserait à ce dernier le droit de transquestionner les témoins à charge, commettrait une grave injustice, un abus de pouvoir suffisant pour justifier l'émanation d'un bref de *certiorari*. A plus juste raison doit-il en être ainsi quand l'accusé n'a pas d'autre droit que celui de transquestionner.

Quant à savoir s'il y a lieu à *certiorari* sur demande de cautionnement pour la paix, je n'ai aucun doute à ce sujet.

Tous ordres ou jugements des juges de paix peuvent être évoqués à la Cour Supérieure par *certiorari*.

Voir d'ailleurs, New Digest of cases on criminal law, vo. Articles of the peace.

"The Court of Queen's Bench has authority "to examine the allegations contained in "articles of the peace when they are brought "up *by certiorari*, and to *quash the articles*, if "no sufficient offence is alleged to justify the "justices in ordering the defendant to give "sureties of the peace."

Angers & Martin for complainant.

J. S. Perrault for accused.

(C. A.)

CIRCUIT COURT.

MONTREAL, December 13, 1888.

Coram LORANGER, J.

SMITH *et al.* v. BLUMENTHAL *et vir.*

Note given to creditor to secure his assent to composition.

The action was brought on a promissory note against the defendant, the maker thereof, who pleaded that the note had been given to the plaintiffs to secure their assent to a composition effected by the defendant with her creditors; that this was a fraud on her other creditors, that the consideration was illegal and the note was in consequence void.

Crankshaw, for defendant, cited in support of his plea, *Sinclair* v. *Henderson*, 9 L. C. J. 306; *Doyle* v. *Prevost*, 17 L. C. J. 307; *Prevost* v. *Pickle*, 17 L. C. J. 314; *Decelles* v. *Bertrand*, 21 L. C. J. 291; *McDonald* v. *Senez*, 21 L. C. J. 290.

Duclos, for plaintiffs, submitted,

1o. That the note was valid and consideration legal:—*Greenshields* v. *Plamondon*, 8 L. C. J. 194; *Perrault* v. *Larin*, 8 L. C. J. 195; *Bank of Montreal* v. *Audette*, 4 Q. L. R. 254.

2o. That the cases relied upon by the defendant had all been decided under one or other of the Insolvent Acts of 1864, 65, 69 and 75 and were therefore not applicable.

3o. That the defendant could not plead her own fraud:—*Gareau* v. *Gareau*, 24 L. C. J. 248; *Leblanc* v. *Beaudoin & Bedard*, 2 R. L. 625; *Dorion & Dorion*, 3 Q. B. R. 376; *Chapleau* v. *Lemay*, 14 R. L. 198.

The Court held, following *Chapleau* v. *Lemay*, that an insolvent debtor, who makes a composition with his creditors, and who, to obtain the assent thereto of one of them, enters into a private agreement with him, cannot subsequently plead the nullity of this agreement.

McCormick, Duclos & Murchison for plaintiffs.

James Crankshaw for defendant.

(C. A. D.)

FIRE INSURANCE.

(*By the late Mr. Justice Mackay.*)

CHAPTER VII.

OF REPRESENTATION AND WARRANTY.

[Continued from p. 391.]

§ 213. *Construction of warranties and representations.*

Every statement upon the face of the policy is not necessarily a *warranty*. It must, in order to be a *warranty*, relate to the risk, and contain something more than "facts incidentally expressed, or introduced by way of recital, or to identify the subject insured, and not purporting on the face of the policy to be stipulations."[1]

Where warranties are supposed by the insurers to be involved by the description of the subject insured, must breach of them be

[1] 1 Phillips Ins. Co., 418; *Wood* v. *Hartford Fire Ins. Co.*, 13 Conn. 533.