On several occasions there has been on the part of the Court a marked disregard for the convenience of the profession in the hearing of causes—and, as a minor matter, there has been a tardy issue of the reports of cases decided, and this reporting being generally done (though improved of late) in an incomplete and defective manner. That there must be some such forum as the Supreme Court, for the decision of a certain class of questions, is manifest; it is also manifest that the Court, so far, has been a disappointment.

PREFERENCE OF A SURETY IN INSOLVENCY.

There appears to be a good deal of confusion in the authorities as to the position and liabilities of a surety, who requests and procures payment to be made by the principal debtor, shortly before his going into insolvency. In the case of an accommodation party to a promissory note, it seems to be laid down that if he has cause to believe that the chief debtor is unable to meet his engagements, and solicits the payment of the note by him to a holder who has not such knowledge, this, whether the note is current or has matured, amounts to a fraudulent preference of the surety: *Churcher* v. *Cousins*, 28 U. C. R. 540, and *Botham* v. *Armstrong*, 24 Gr. 216. Indeed the position is laid down in the head note of the latter case very broadly, but very unwarrantably (so far as the text of the judgment goes), that where the payment of a note has been procured by the indorser, he is, under section 133 of the Insolvent Act of 1875, liable to make good the amount thereof to the assignee. But it is to be observed that where the subject matter involved is *money* paid (as opposed to *goods, effects*, &c., which is the language of section 133), then the section properly applicable to such a case is the 134th: *Smith* v. *Hutchinson*, 2 App. R. 405; and section 134 does not appear to contemplate the case of a surety as above stated, for that section applies only to the recovery of money from the person to whom it has been paid. The United States statute goes beyond ours, and expressly provides for the case of a person for whose benefit a payment is made, so that a surety is within the purview of this Act: *Bartholow* v. *Bean*, 10 Bank. Reg. 241; S. C. 18 Wallace, 635. The present Insolvent Act does not even go so far as the old Insolvent Debtors' Act, to be found in Consolidated Statutes of Upper Canada, cap. 18, sec. 57. This was pointed out by Van Koughnet, C. in *Roe* v. *Smith*, 15 Gr. 346, where he said: In the old Insolvency Act, the debtor, on the eve of insolvency, is prohibited from making a voluntary payment or assignment of property to a creditor or to a surety for him; but in the Insolvent Act of 1864, it is the creditors only and not the surety who is inhibited from receiving payment or security for a debt. He goes on to observe, "*the surety is not a creditor till he pays the money.*"

We think that this is the only correct reading of the Act, and that the surety who does no more than procure payment to be made to the creditor, is not exposed to successful attack under either of the sections, 133 or 134. There are English authorities bearing on this question, which do not appear to have been cited in any of the cases before the Canadian Courts, which fortify the conclusion above indicated. The mischief of fraudulent preference, under the terms of the Act, arises where payment is made or security given to the creditor or surety intended to be benefited or preferred, but not where payment is made or security given to one with intent to benefit another. It is true that in *Marshall* v. *Lamb*, 5 Q.B. 115, it was held that a case of fraudulent preference arose where pay-