general distribution among them rateably and proportionably according to the amount of their respective claims.

To hold that this clause in the deed operates so as to compel the court to hold, as an incontrovertible conclusion of law, that the deed was not made and executed as in its terms it professed to be, for the purpose of paying and satisfying rateably and proportionably all the creditors of the debtors their just debts, but was made and executed with intent to defeat and delay such creditors, appears to me to involve a manifest perversion of the plain language of the deed, and such a construction of the clause in question is not warranted by any decision in the English courts or in those of the Province of Ontario, from which this appeal comes, and there is in my judgment nothing in it which so recommends it as to justify us in making a precedent by its adoption. If it be said that the clause in question, although not operating as such a conclusion of law, at least affords evidence of the deed having been executed with an intent to defeat and delay creditors, and not for the purpose of paying and satisfying the creditors their just debts rateably and proportionably, and for that reason was proper to have been submitted to the jury to be taken into consideration by them, the answer is that such a point should have been made at the trial, and not for the first time, as it was here, in the Court of Appeal for Ontario in the argument of the counsel for the appellant in his reply. And as the jury have rendered a verdict for the plaintiff, they must on this appeal be taken to have found, as matter of fact, that the deed was not executed with intent to defeat and delay creditors, but was executed for the purpose of paying and satisfying them their just debts rateably and proportionably.

Unless there be something on the face of the deed which in law nullifies and avoids it, the verdict of the jury in maintaining its validity must be upheld. Upon this appeal nothing, as it appears to me, is open to the appellant to contend, but the points contained in his motion in the Common Pleas Division of the High Court of Justice for Ontario for a rule for a non-suit or judgment to be entered for the defendant. The judgment of this court refusing such rule, sustained by the Court of Appeal for Ontario, is what is before us, and I am of opinion that the verdict of the jury should be upheld, and that the rule moved for was properly refused.

I have, however, carefully perused the judgments in the case of *Nicholson* v. *Leavitt*, so much relied upon by the counsel for the appellant, as it was decided by the Court of Appeals for the State of New York, as reported in 6 N. Y. R. 10, and also the same case as decided in the Superior Court of the State, and reported in 4 Sandf. 254. The Court of Appeals, when reversing the judgment of the Superior Court, seem to me to rest their judgment in a great degree upon a proposition which they lay down, to the effect that a debtor might with equal justice prescribe any period of credit which to him should seem fit, as that which the trustee should give upon sales of property assigned to him, as assume to vest in him a discretion to sell upon credit if such a mode of selling should seem reasonable and proper and in the best interests of the creditors.

With the utmost respect for the high authority of the Court of Appeals for the State of New York, this seems to me to be equivalent to saying that to express an intent of vesting in the trustee authority and permission to exercise his best judgment by selling on credit, if such mode of disposing of the property should seem to be in the interest of the creditors whose trustee he is made, and to express an intent of divesting such trustee of all such authority, and to prescribe to him a rigid, unalterable course which, in the discharge of his trust, he must pursue against the dictates of his own judgment, and against the will of the creditors whose trustee he is made, are one and the same thing. There are other parts of the reasoning upon which this judgment is rested which seem to me to lead to the conclusion, that delaying a creditor in obtaining satisfaction of his debt by the particular process of execution in a suit at law is equally a defeating and delaying of him within the prohibition of the statute as the vesting the trustee with authority in his discretion to sell upon credit, if such would be a reasonable and proper course to pursue in the interest of the creditors, and