Upon the contestation, the parties went to proof, and it would seem that during the course of the *enquête*, the bankrupt was examined *as a witness*, in order to establish that the obligation was unduly, without consideration, and fraudulently entered into by the bankrupt, in favor of his son. An objection was taken to the admissibility of such evidence. It does not appear by the record, that the objection was either maintained or over-ruled, although it was positively asserted by M. Rose, and emphatically denied by M. McKay, that the judge then presiding, had over-ruled the obligation.

The parties were heard on the 26th instant, on the contestation.

M. McKay moved that the evidence of the said bankrupt be rejected, on the ground that being the father of the claimant, not having obtained a certificate of discharge, and thereby being interested, his evidence was by law inadmissible. M. McKay contended that altho' at any time or stage of the proceedings, the bankrupt might be subjected to an examination by the judge, it did not follow, that he could be made a witness of, against third parties, a position which was perfectly untenable.

M. Rose laid much stress on the decision which he said had been by him obtained at the hands of the judge who presided at the *enquête*. He, moreover, contended that the law, the bankrupt law, authorized such a course, and that in a case where fraud was alledged and attempted to be proved, the evidence of the bankrupt, although the father of the claimant, was admissible.

THE COURT:

The bankrupt law which is an exceptional law, has not and could not, unless clearly and expressly, subvert the fundamental principles which by the law of the country, obtain and regulate matters at *enquête*. Moreover, by the 75th section of the bankrupt law (7 Vict. c. 10), it is most emphatically enacted, "that in all questions not otherwise provided for, the laws of Upper Canada and Lower Canada, respectively, shall be resorted to as the rule of decision, in all questions respecting bankrupts, as the said laws now respectively obtain in each section of the province; and in cases unprovided for, in the existing laws, above mentioned, then resort shall be had to the laws of England, as such rule of decision, in that part of the province heretofore Upper Canada, and that only."—Consequently, in Lower Canada, the law of the country and the rules of evidence obtaining in our system of civil jurisprudence, must and do govern. Now whether in matters of fraud, or others (save a few, such as *sévices* &c.) the rule of laws, excluding relatives, *au dégré prohibé*, stringently applies. The evidence of the father therefore, is inadmissible. Besides, the bankrupt who, *pour éclairer la religion du juge* (in so far as regards the bankrupt) may be examined as such bankrupt (see sec. 28), cannot be converted into a witness to disprove the formal assertions made in an authentic notarial obligation; such a monstrous prètention were it to be sanctioned by the court, would, at once, subvert and prostrate the fundamental principles of our law. It is, moreover, to be observed, that the bankrupts not having obtained his certificate of discharge, is interested in the event of the present contestation. It follows, therefore, that whatever views is taken of the question submitted to the decision of the court, the bankrupt's evidence must be rejected, and it is, in consequence, rejected.