

The defendants by peremptory exception, pleaded to the following effect: That by an *acte* of composition *sous seing privé*, entered into on or about the 22nd of May, 1862, between the firm of Cross & Park (the defendants) and their creditors, the latter agreed to accept a composition of 10s. in the £. said composition, when paid, to be in full satisfaction and discharge of claims against the defendants. That the plaintiff had signed the *acte* of composition, and thereby discharged the defendants from all claims, including the note sued upon, which being of a date anterior to the taking effect of the composition, came under it and was discharged.

In the Court below the action was dismissed on the ground that the defendants had established that the note sued on by the plaintiff was due and owing before the day of the settlement of the composition, accepted by the plaintiff in full discharge of all sums due and owing by the defendants. This judgment was confirmed in Review, the Court remarking that the note, being dated before the *acte* of composition, was therefore due at the date of that *acte*, and was necessarily included in its operation. From this judgment the plaintiff appealed, submitting that the Court below, in assuming that the note in question was due and owing at the time the composition was effected, and that it fell within its operation, was clearly in error.

MEREDITH, J. In this case I dissent from the majority of the Court, and the Chief Justice (absent through illness) concurs with me. The action is brought upon a promissory note, and the defendants allege that on the 22nd of May, 1862, a deed of composition was executed, and that the note sued upon formed part of the debt compounded for by the plaintiff. The *acte* of composition is in the following words: "The subscribing creditors of Cross & Park, traders, Beauharnois, hereby agree for themselves, their heirs and assigns, to accept from the said Cross & Park, a composition of 10s. in the £., payable with satisfactory security, in equal proportions of six, twelve, and eighteen months, from 20th day of March last past, said composition, when paid, to be in full satisfaction and discharge of our respective claims against them—provided this

arrangement be carried into effect on or before the 1st day of June, now next ensuing."

The signature of the plaintiff is subscribed, and it is admitted that the notes given in satisfaction of the composition have been paid. The question then is this: Is the plaintiff's action barred by the deed of composition? The sole evidence of the defendants consists of the deposition of the plaintiff, of which they declare that they take advantage. The statement produced by the defendants at *enquête* shows that the plaintiff's claim amounted to \$342.40. The three composition notes of \$57.07 each, less interest, amounted to \$158.58, and the balance \$183.82 was settled for by the note for \$213.32, payable at 24 months, which is the ground of this action. The statement concludes with these words: "Settled as above, it being understood that Messrs Cross & Park pay all the costs of suit in cash."

It seems to me as plain from this statement, as anything can be made by figures, that the note sued upon was not included in the debt compounded for, and I think the plaintiff should have had judgment for the amount. But I think it is equally plain that the note sued upon was given to the plaintiff to induce him to sign the *acte* of composition. The plaintiff himself admits that if he recovered the amount of this note, he would have received twenty shillings in the £. for the whole of his claim. I would therefore have been of a different opinion, had the defendants stated in their plea that the note was given to the plaintiff to induce him to sign the composition, and for the purpose of securing to him an unfair advantage over the other creditors. This point has already been decided by the Court in the case of *Martin and Macfarlane* (1 L. C. Law Journal, p. 55). There is no such plea in this case, and therefore I think the plaintiff's action should have been maintained.

AYLWIN, J. It is to be observed that there is no attempt on the part of the plaintiff to show that the terms of the agreement have not been faithfully carried out by the defendants. On the contrary, there is conclusive evidence of the fact that every farthing of the composition money has been paid. For, by the terms of the agreement, the defendants were