it is enacted that "if the holder of any negotiable paper is unknown to the insolvent, the insertion of the particulars of such paper in the statement of his affairs, with the declaration that the holder thereof is unknown to him, shall bring the debt represented by such paper, and the holder thereof, within the operation of the Act."

It may be said that the insolvent had no interest to not insert in his *bilan* the declaration in question, as plaintiff would not have much better opportunity of receiving information of the insolvency. But the Act requiring such a declaration, to make the act of insolvency operative against the holder, the Court has no discretion, when the disposition is clear and imperative, and when the fact of the omission is equally certain. The intent and the enactments of the Insolvency Act are not to be defeated by contrivances to surprise creditors. In some cases the fact complained may appear susceptible of incertitude and of contradiction. In the doubt, who is to be preferred? the creditor or the debtor? In ordinary civil litigation the doubt is favorable to the party against whom the claim is made, on the principle that it would be greater injustice to deprive one of his property without the positive certainty that he owes the debt, than to dismiss a claimant who makes but a doubtful case.

On this question of discharge it is the insolvent who is plaintiff, claiming to be liberated from a just debt because he is unable to pay. The creditor's claim is admitted; but by the law, he may be forced to relinquish all his rights, if his debtor has fully executed the prescriptions of the special law enacted for a certain class of debtors. In such circumstances the creditor is preferred to the debtor, as to the strict compliance with all the safeguards prescribed for fair play. Everything required to give him knowledge of the proceedings in insolvency must have been done. In this case no declaration, as to unknown holders of notes in the *bilan*, or notice by mail to the creditor, was made or given. By want of notice the creditor was not put in a condition to prove his claim. As a principle, the right of the creditor to prove his debt, and of the debtor to be discharged, is coextensive and commensurate. Statutes giving summary remedy, out of the ordinary course of the civil law, must be followed strictly. Upon this point the following facts must be noted. As proved by C. Copland, witness of defendant, the exhibit No. 4 of the latter, containing statement of notes due to Tucker & Co., does not emanate from Parker, but is only a copy of the books of E. M. Copland. This witness proves further that Parker & Co. filed no claim against the estate; he states also that the note in question and other notes given went into other people's hands, but that Parker kept the old notes given for the same debt reduced by agreement to the amount stated in these new notes. which went into other people's hands. The same witness testifies that his son E. M. Copland, must have seen the protest and notice sent on the part of plaintiff, for non-payment of the note. There is proof then, that the insolvent knew that the note was in other people's hands, and in the possession of plaintiff. It is also proved that no notice of the presentation of the petition for a discharge was given to plaintiff as required by the Insolvency Act. From these facts and the law, it must be decided that the debtor not having declared in his *bilan* that holders of certain notes of his were unknown to him, and not having given notice, as prescribed, to plaintiff, of the petition for discharge, cannot invoke such discharge against such creditor.

The second point is the liability of the endorser. At the hearing, the objection urged was that no protest and notice had been made and given, as required, and *partant*, that the endorser was not liable for the payment. In reading the plea, I found no allusion even to this want or irregularity of protest and notice. The plea alleges simply that the defendant, C. Copland, owed nothing to plaintiff, and that he was not bound in law or in fact to pay the sum claimed; that plaintiff was the *prête-nom* of Parker & Co.; that plaintiff had acquired no right against him. No objection was taken as to the omission of affidavit concerning the irregularity or want of protest or notice in the general answer to the plea. But it may be well to examine the point so argued. The Art. 145 C. P. enacts positively that in such cases an affidavit must be made, that the protest, or the notice or notification required has not been regularly made, and how it is irregular. It has been often decided that this objection and want or