ence or priority, all the creditors of such debtor their just debts, shall not be construed to be a deed made either to defeat or delay the creditors of such debtor, or to give one of such creditors a preference over another, unless then there be something on the face of the deed which is assailed here as being void against creditors which *ex necessitate rei*, has the effect of raising a presumption *juris et de jure* that the intention of the debtors in executing the deed was to defeat or delay their creditors in the sense in which such an act is prohibited by the statute, for there is no suggestion that the deed gives to any creditor a preference over another. The question of intent was one of pure fact to be passed upon by the jury who tried the issue, and the proper way of submitting that question to them would be to say, that if they should find the intent of the debtors in executing the deed was for the purpose of paying and satisfying rateably and proportionably and without preference or priority all the creditors of the defendants their just debts, they should find that it was not made with the fraudulent intent which is prohibited, and that they should render their verdict for the plaintiff.

The words of the deed as affects the selling on credit, in short substance are, that the trustee shall as soon as conveniently may be collect and get in all sums of money due to the debtors and sell the real and personal property assigned by auction or private contract as a whole or in portions for cash or on credit and generally on such terms and in such manner as he shall deem best or suitable having regard to the object of these presents; such object as expressed in another part of the deed being to pay and divide the proceeds among all the creditors of the grantors rateably and proportionably according to the amount of their respective claims.

This language as it appears to me, merely expresses an intention that the trustee may at his discretion sell for cash or on credit accordingly as he shall deem best calculated in the interest of the creditors to realize the largest amount for 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 assumed 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 credi-