proved by the inspectors and assignee, and upon which he reduced his claim to $1,395, from much larger amount that it read for at first.

There are appearances of all this being so; it is hard to believe that Mathieu did not know of how Guerin was claiming in bankruptcy. I see in these proceedings in bankruptcy one confirmation of the plaintiff's title to the collaterals; the assignee, examined as a witness, swears that the bankrupt informed him, as assignee, that he had given Guerin, as collateral security, notes amounting to twelve or thirteen hundred dollars. The bankrupt is suspicious, swearing now to the notes having been given to plaintiff *not* as collateral security, but on the other condition stated; for, when he ought to have instructed his assignee in bankruptcy truly, he told him that the plaintiff held the notes as collateral. The assignee, when Guerin proved his claim, consented to his keeping these collaterals at his valuation of them. Since that, and before maturity of Orr's note, the assignee has conveyed to the plaintiff *en bloc* all the assets generally that the bankrupt owned, or could claim in any way.

The deed filed by plaintiff is *prima facie* evidence of that conveyance. The counsel for Orr has argued that it did not transfer the Orr note to the plaintiff. In one sense it did not; for the plaintiff had the note before the bankruptcy; he was confirmed in possession of it at proving his claim, and that sale *en bloc* transferred to plaintiff the Orr note, in so far as Mathieu had property in it, and any possible claim that Mathieu could make to it. Any such claim was, under the circumstances, subject to the superior right of the plaintiff as holder of the note. Mathieu, in one sense, was, at his bankruptcy, owner of the note, though he had pledged it; but from the time of the sale *en bloc* referred to he certainly ceased to have any kind of claim or right, and complete absolute title to Orr's note was operated in favor of the plaintiff. But for the proceedings and events that have occurred in bankruptcy, the plaintiff might have had trouble in collecting from Orr the amount of the note unendorsed; the proceedings in bankruptcy, and the deed from the assignee, are said by plaintiff to be of equal orce as could be plaintiff's endorsation. The counsel for Orr has insisted upon the absence of Mathieu's endorsation being fatal to the action. The Court below has evidently adopted the plaintiff's argument. We see no reason to differ from it.

There remains the question of whether (supposing the note held well enough by the plaintiff) Orr can be made to pay it. He claims to have paid Mathieu before the note matured. He produces receipts from Mathieu. The plaintiff says that these are simulated; but, whether simulated or not, the plaintiff is not bound to submit to them. Orr had *onus* of proving that he really paid the note. If he paid before maturity of his note, he paid out of the usual course in commerce. We may say so, I think, and yet admit that *au civil* payment may be before the *terme*. Again, a presumption is against Orr from his not having gotten up his note paid. "Where there is a competition of evidence on the question whether a security has or has not been satisfied by payment, the possession of the uncancelled security by the claimant ought to turn the scale in his favor; since, in the ordinary course of dealing, the security is taken up by the party paying." (Mascardus.) Mathieu had not the note to give him; for he had, long before, given it to the plaintiff. Orr ought to have asked to see it. Mathieu is not a reliable witness; he swears for Orr. The plaintiff is like an endorsee of a note getting it *bona fide* before maturity from the payee or holder.

It is said that the Bankrupt law only transfers to the assignee what property the bankrupt had and the rights he might exercise; and that, in the present case, the bankrupt could not have sued Orr. Certainly he could not, but it does not follow that the Orr note, as possessed by plaintiff long before the bankruptcy, cannot be sued upon by the plaintiff, third person, who got it before maturity, and before the date of the alleged payment, who says that he got it as for value, and who may say so now at any rate, seeing his allowance of over $700 (off his debt claim) for this and other notes, and the assignee's deed. The note, as plaintiff holds it, is a valid security against the maker. "A contrary doctrine would add a new clog to the circulation of notes," said Lord Ellenborough in a case in point. (P. 223, Byles on Bills, eleventh English edition.)

Judgment confirmed.

C. L. Champagne for the plaintiff.

Prévost & Co. for the defendant.