dit acte de composition et décharge devait être confirmé ou annulé, et qu'ayant été annulé, la réclamation faite par le demandeur d'installements sur cette composition doit tomber, sans avoir besoin d'entrer dans le mérite de la preuve relative aux préférences et menées frauduleuses pratiquées ou non entre le failli et certains de ses créanciers ;

" Considérant qu'il est constaté par la preuve que le billet de $72.20 réclamé par le demandeur a été transporté par la Howe Machine Co. au demandeur qu'après échéance et pour collection seulement, et a été consenti par le failli à la dite compagnie aussi pour un installement sur la dite composition ;

" Considérant que l'annulation du dit acte de composition doit profiter aux cautions exigées par le dit acte et conséquemment doit profiter aux défendeurs comme telles cautions ;

" Maintient les défenses et exceptions des trois défendeurs poursuivis, et déboute l'action," &c.

The above judgment was reversed in Review, Montreal, May 31, 1878, (Mackay, Dorion, Rainville, JJ.), as follows :—

" The Court, etc.,

" Considering upon the proofs that plaintiff ought to have had judgment against defendants, as prayed ; and that he has proved his allegations material, and defendants have failed to prove theirs ;

" Considering particularly that the notes sued upon were made for lawful consideration ; that the defendants have not proved illegal preferences received by the plaintiff, or the Howe Machine Company, that the judgment of the 19th of December, 1876, cannot, (as regards plaintiff,) be held to prove it, though the said judgment seems warranted against the bankrupt L. H. Marchand, considering what he deposed to before the judge (as stated in his deposition in this cause) ;

" Doth, revising said judgment, cass and reverse the same, and proceeding to render the judgment that ought to have been rendered in the premises, doth condemn the defendants jointly and severally, &c."

Ramsay, J. (*diss.*) I think the appellants right on both points. It is perfectly evident that the position of the endorsers was changed by the fact that the promissor was not discharged. He remained an insolvent, and consequently he had not the opportunity to pay which was contemplated by the endorsers. It perhaps does not affect the question materially as the issue is between the original parties to the note, still it may be observed that the note, on the face of it, expresses the consideration to be : " *pour valeur reçue conformément à l'acte de composition et décharge exécuté devant Maitre D. Carreau notaire le 23 Septembre dernier*," &c. Of course I can understand that in the particular case it may be a hardship to the creditors to lose their endorser ; but it was their own doing. They let the estate slip out of their fingers, without the fault of the endorsers, and they should suffer. As to the second point, it appears to me to be fully proved that the respondent Wilkes represents the Howe Machine Co., and that they both had obtained preferences ; that, in fact, they got notes for 50 cents instead of for 20 cents. I do not see how under these circumstances, we can maintain the decision of the Court below without over-ruling our decision in *Arpin & Poulin*.* It seems to me impossible to distinguish the two cases by saying that in *Arpin & Poulin* there had been other payments. So far as I remember that case, there was no statement to show that the creditor had been paid more than the composition. Besides that was not the principle on which the case turned. The real principle is this, as between an endorser and the creditor, that behind the endorser's back a fraudulent bargain has been made injurious to the position of the debtor. The endorser backs a debtor free of all his debts for 20 cents, and not one who has undertaken to pay 50 cents, and this principle is as applicable, it seems to me, where the creditor holds notes for the preference as where he has been paid the 20 cents. I don't think the creditor who has committed a fraud in this respect should be allowed to recover against the endorser at all, but at any rate he should not be allowed to recover while holding the notes beyond the open rate of composition.

Sir A. A. Dorion, C.J. There is no doubt that when a debtor, to induce his creditor to sign a composition, gives him something beyond what he gives to the other creditors, the notes that he subscribes to induce his creditor to sign are null and void, and cannot be recovered—at

* 1 Legal News, 290 ; 22 L. C. J. 331.