produced, no dealing with the goods by mere words could be proved.

From these decisions plaintiffs seek to appeal, and as the point has been fully argued it becomes the duty of the Court to deal with the full merits of the application. The grounds urged by plaintiffs were, firstly, that it was not necessary under Art. 1233, C. C., to prove the memorandum in the first place. Secondly, that proof of an acceptance without a delivery sufficed to take the case out of the rule of our article, and that acceptance could be proved by parol.

The first of these objections appears to me only to raise a question of order of proceedings. It would probably be competent for a judge to admit parol evidence before the production of the memorandum in writing, if it were understood that the memorandum existed and would be produced, but when it is not contended that any such memorandum exists it would be absurd to admit evidence which could not possibly maintain the action. The form of the declaration leaves no doubt as to the position of the plaintiffs in the present case. It is obvious that the person who drew the declaration was perfectly aware of the difficulty before him, and that he purposely set up the dealing with the goods in order to get round it by proving a verbal dealing with the goods, if it may be so described. When the art. (1235) says no action shall be maintained without a writing, it clearly means that where there is no writing no such evidence shall be received, else we should have evidence adduced in support of that which cannot be maintained. I am therefore of opinion that the first reason is unfounded.

The argument in support of the second reason was this: Our code differing from the Statute of Frauds enacts that acceptance *or* delivery takes the case out of the rule, that acceptance may be verbal and may be without delivery, and consequently it can be proved by parol, just as delivery may be proved by parol. If we were to give the article this interpretation the whole rule would disappear, and proof by parol of a ratification would bind the buyer although he would not be bound by a similar proof of the contract. It must be clear that the only true interpretation of acceptance is to consider it as an acceptance in writing, or acceptance accompanied by some act, not mere words, or that acceptance is the synonym of delivery. Our attention has been directed to some authorities, but I do not think they tend to maintain the pretentions of the plaintiffs. The acceptance was in England, where, under the statute of frauds, there must be acceptance *and* receipt, and not as with us, *or*; and the acceptance must be an actual acceptance the intention of which is to be gathered from the outward acts of the buyer. (Agnew, p. 193.) No case has been brought under our notice where mere words spoken made an acceptance. The case of *Barnes & Jevons* (7 C. & P. 288) seems to be the nearest to this; but even in that case there was a taking of a person to see the engine besides the words, and the question was left to the jury whether the defendant had treated the engine as his. In summing up, Baron Alderson specially notices the taking the person to see the engine.

Motion for leave to appeal rejected.

Kerr, Carter & McGibbon, for plaintiffs.

Abbott, Tait & Abbotts, for defendants.

COURT OF REVIEW.

MONTREAL, June 30, 1881.

SICOTTE, TORRANCE, RAINVILLE, JJ.

[From S. C., St. Francis.

BECKET v. TOBIN.

Sale—Credit.

Where A. ordered goods to be delivered to H. & T., and credit was given by the vendor to A., held, that A. might be sued by the vendor for the value of the goods.

TORRANCE, J. The action here is for goods sold and delivered to John Tobin, who denies the indebtedness and says the sale was to Ham & Tobin, different persons. I am of opinion that there is quite enough to sustain the judgment which condemned the defendant. I refer to the evidence of Chapman, Becket and Kemp. Ham & Tobin were building a hotel and could get no credit. They had a promise of sale of land from one Hamilton, they transferred the promise to John Tobin, and he registered the transfer. He then ordered Becket, the plaintiff, to deliver the goods to Ham & Tobin, the last being his brother, Dennis Tobin. Becket treated John Tobin as his debtor from the first The account was presented to him, as debtor, by Kemp, and he promised to give a note jointly