that he only owed $50.95 for items from 20th December, 1877. The evidence showed that the previous items had been charged by plaintiffs to one Blois, with whom they had an account, and in whose employ Trudel was. In December, 1877, Blois went into insolvency, and from that time Trudel undertook to pay himself.

PER CURIAM. The question is to whom credit had been given, and the answer should be—to Blois and not to Trudel. The plea of Trudel should be maintained, and the action dismissed for the surplus over $50.95.

Prefontaine & Major, for plaintiffs.
A. Brunet, for defendant.

SUPERIOR COURT.

MONTREAL, April 30, 1883.

Before TORRANCE, J.

ROUSSEAU et al. v. EVANS.

Sale—Condition—Parole evidence.

Where goods have been purchased and paid for in advance of delivery, parole evidence is inadmissible to establish that the defendant was only bound to deliver in the event of the goods arriving, there being no mention of such condition in the bill of sale and receipt.

This was an action of damages for non delivery of four cases of phosphorus sold by defendant to plaintiffs, on the 10th November, 1882. The price, $232, was paid on the 11th November. The defendant pleaded that the sale was conditional upon the arrival of the phosphorus in Montreal, and it did not arrive. The plaintiffs proved a rise in value of $60, and the defendant proved by witnesses the allegations of his plea.

PER CURIAM. The sale is proved by witnesses and the bill of sale receipted by the defendant. The bill says nothing of the condition attached by defendant to the sale, that it should only be binding if the phosphorus arrived, and the question is submitted by plaintiffs that the evidence by witnesses of defendant that the sale was only conditional, should be ruled out and rejected as inadmissible, as contradicting a written agreement. The Court is with the plaintiffs, and holding this view, the plaintiffs should have judgment for these damages and costs of protest. (Greenleaf, vol. 2, § 275).

Archambault, for plaintiffs.
T. C. Butler, for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, January 20, 1883.

DORION, C. J., MONK, RAMSAY, CROSS, BABY, JJ.

WILLETT (defendant below), Appellant, and COURT es qual. (plaintiff below), Respondent.

Endorser—Accommodation—Evidence.

The defendant, endorser, being sued on a promissory note, pleaded that he had endorsed for credit, and that the plaintiff (a subsequent endorser) had guaranteed the prior endorsers that he would see the note paid. Held, not proved, it appearing, among other things, that the defendant had by a letter to plaintiff personally guaranteed due payment of the note in question.

The appeal was from a judgment maintaining the respondent's action.

RAMSAY, J. This is an action on a promissory note for $10,000, brought by the last endorser against a prior endorser.

The defence to the action is that the drawer, a railway company, was in difficulties; that advances had been obtained in England by the contractors; that these advances were insufficient, and that the whole enterprise was likely to fail unless more money could be obtained. That, therefore, the English creditors had sent out the original plaintiff, Clark, to arrange some mode of carrying on the railway, and that he, in order to obtain money, got the directors to make the note in question in the name of the company, promising that the persons he represented in England would pay the note at its maturity. In other words, that he guaranteed them that he, Clark, would see the note paid, and that their endorsations were merely a matter of form and for credit.

This story is possible, and perhaps, it may be said, it is not entirely devoid of probability; but, at any rate, it is a defence which throws the burthen of proof on the defendant. He attempted to make the necessary proof by the testimony of persons interested like himself in escaping responsibility. They swear with considerable precision that they never expected to be called on to pay the note; that their interest was small, while the interest of the English creditors was great, and that they signed only for credit. This establishes nothing really incompatible with the liability of Willett to Clark, and unfortunately there are several pieces of evidence which go far to de-