within the meaning of the Act. As to the facts, there is an admission that the sale was a sale *en bloc* by the consent of creditors and realized $36,000, included in which was the real estate of the value of $20,000. That the terms of payment were deferred as pleaded; that the defendant has received the first payment, and out of it has declared a dividend, and retained nothing, and got nothing for the jury fund. Upon these facts I shall give judgment for the plaintiff. 1st. Whether it was a sale *en bloc* or not, can make no difference if the price of the real estate be certain. 2ndly, As to the deferred terms of payment, that could only and at the utmost give a mere temporary defence to the action *quant à présent;* and 3rdly, Whether the defendant has retained the money or not, he is liable just the same. The language of the Act is "one per centum upon all moneys proceeding from the sale by an assignee, under the provisions of this Act, of any immoveable property in the Province of Quebec, shall be retained by the assignee out of such moneys, and shall by such assignee be paid over to the Sheriff," &c., &c. The assignee admits he has violated his duty by not retaining the amount as he was ordered to do by this Statute, and as he certainly could have done out of the first payment.

There is no doubt that the section I have just cited, referred to all sales by the assignee under the provisions of this statute; and with respect to sales *en bloc* special provision is made by section 38; and it is there provided that no such sale shall affect, diminish, impair or postpone the payment of any mortgage or privileged claim. The creditors have the power to order this mode of proceeding for the benefit of the estate; but that is surely no reason why the public should suffer. The plaintiff is entitled to recover one per cent on the ascertained proceeds of the real estate; and though the effect of deferred payments, if the fact warranted it, and if it was asked, might be a temporary suspension of the right of action, I must, as the case stands, give judgment for the amount demanded.

Robidoux for the plaintiff.

Macmaster, Hall & Greenshields for the defendant.

WILSON v. LA SOCIETÉ DE CONSTRUCTION DE SOULANGES, and divers *tiers saisis*.

Evidence—Subscription of Stock—Parol evidence is not admissible to prove that a subscription of stock was conditional, when the writing contains on the face of it an absolute promise.

JOHNSON, J. This case is evoked from the Circuit Court, upon the contestations of the declarations of the garnishees. The case presents a good deal of confusion because each declaration had to be separately contested, and all are not precisely the same with respect to all the facts affecting them. There is one point, however, on which they all resemble each other. They all depend upon the question whether verbal evidence is admissible to support the answers made to these contestations. The position of the parties is this: The garnishees subscribed stock in the defendant's society; and it is quite clear that this society cannot pay their debts with the money of others unless it is due to them; and they on their part, and the plaintiffs also, contend that it is due to them, and their apparent debtors, on the other hand, persist in saying that it is not. The garnishees all say substantially that the contract they made with the Society's agent was conditional, and essentially different from what is alleged by the contesting parties; and they want to prove this by parol evidence. There have been conflicting rulings in this case, one at enquête in one way, and another afterwards, on motion to revise in the Practice Court, the other way; but there is not the slightest doubt of the duty and the power of the Court now to decide finally this as well as all other points in the case. My decided opinion is, and I have so held repeatedly; and so have other judges here—particularly Mr. Justice Papineau in the case of *Compagnie de Navigation* v. *Christin*, that verbal evidence is not admissible in such cases. Abbott in his Digest of the Law of Corporations puts the point very plainly, p. 794, par. 101: "Parol evidence is not admissible to show that an instrument containing on the face of it an absolute promise for a subscription to stock in a corporation is conditional." This states the case, and I need not go further; but I see a number of country people here in this case who attach evidently great importance to it, and I will add for their