quality, but his samples were at Montreal, so that he could not compare them. When he arrived at Montreal he should have notified plaintiff at once that the rags were not of the same quality. This was the more necessary because the rags had been removed after a part of the sum had been paid on account. The law of the case was clear. If the appellant wished to return the rags he should have returned them without delay. In his opinion the appellant had not used due diligence. The price of rags in the meantime went down to the extent of ten per cent. The judgment, he thought, should be confirmed.

DUVAL, C. J. said it was a question of responsibility, and not one of good or bad faith, because both parties were in good faith. But it was a sale according to sample. The rags were wet and inferior, and therefore the vendee had a right to reject them. The only question was this, did the vendee use due diligence in notifying plaintiff? His honor thought he did. The delay took place by the consent of the parties, who were proposing an arbitration. The observance of the Queen's Birth Day also interfered.—Judgment reversed, Meredith, J. and Mondelet, J. dissenting.

S. Bethune, Q.C., for Appellant; A. & W. Robertson, for Respondent.

LAVOIE (defendant below) Appellant; and GAGNON (plaintiff below) Respondent.—The question in this case was whether an amount of 768 livres, amount of a transfer dated some twelve years back, had been included in an obligation subsequently given, and which had been paid. The decision of this question depended upon the further question— whether there was a *commencement de preuve par écrit*, so as to render parol evidence admissible. The Court below, although admitting that there were strong grounds for believing that the money had been paid, was yet of opinion, that there was no *commencement de preuve par écrit*, and, rejecting the parol testimony of payment, condemned defendant to pay the amount.

MEREDITH, J., said there was a *commencement de preuve par écrit* in the receipt signed by the plaintiff himself, and that the parol evidence based upon that receipt, in the opinion of the Court, fully established the pretensions of the appellant.

Judgment reversed, Mondelet, J., dissenting.

D. Girouard for Appellant; A. & W. Robertson for Respondent. [In another case between the same parties judgment also reversed.]

FALLON (defendant below), Appellant; and SMITH, (plaintiff below), Respondent.—The action was brought in the Court below for $100, the price of a combined Mowing and Reaping Machine. The plea was that the machine was only taken on trial, to be kept only in case it should prove a perfect instrument in every respect, and that on trial the machine was found unsuitable. Defendant notified plaintiff accordingly, and called upon him to take away the machine. The Circuit Court gave judgment in favor of plaintiff.

MONDELET, J., and MEREDITH, dissenting, were of opinion that the judgment should be confirmed. The reaping machines made by plaintiff were proved to be made on good principles. It was the duty of the defendant to give the machine a fair trial, and he refused to allow this to be done. All new machinery required a little time to settle into good working order.

DRUMMOND, J., said it required no scientific knowledge to see how a mowing machine worked. It appeared that this machine cut only a third of the hay. His Honor thought the evidence was strongly in favor of the pretensions of the defendant. These machines were always sold with a guarantee. The action should have been dismissed.

DUVAL, C. J., said our rule of law was more favorable to the purchaser under such circumstances. We had a *garantie de droit* as well as a *garantie conventionnel*. And accordingly, every workman must guarantee his work, unless the purchaser takes all the responsibility upon himself. The defendant, who was an extensive farmer, gave the machine repeated trials. Why did not the plaintiff point out where the defect was?—Judgment reversed, Meredith, J, and Mondelet, J., dissenting.

Perkins & Stephens for Appellant; M. Doherty for Respondent.

MASSUE (Defendant below); and DANSEREAU *et al* (Plaintiffs below) Respondents.—AYLWIN, J, dissenting.—The action on the part of the Respondent was *condictio indebiti*, and claimed the *repetition* of the sum of $540 unjustly taken by the Appellant and improperly paid by the Respondents, that is to say $192 on 2nd July, 1856, $96 in July, 1856, $116 on the 5th July, 1857, $136 on the 9th March, 1859. By two obligations before Notaries, the Respondents were indebted to Mr. Aimé Massue, the father of the Appellant, in the sum of £800, payable with interest at the rate of 6 per cent. It is alleged that the Appellant was not authorized by Aimé Lafontaine, the father, to receive or take anything beyond the legal interest of 6 per cent. Respondents pretended the said sum of $540 was excessive interest beyond the 6 per cent, as if it had been taken by the father; whereas in truth it was pocketed by the Appellant for his own benefit and without the knowledge of the other. The son acting throughout the whole transactions as attorney, received in his own name the whole of the money, both principal and interest, together with the $540, the excessive interest.

The defendant pleaded an exception, by which he alleges, *que c'est au défendeur en sa qualité de procureur du dit Aimé Massue que les dites obligations ont été payées ainsi que les intérêts sur icelles, mais qu'il est faux que le Défendeur se soit jamais fait payer en sa qualité de procureur du dit Aimé Massue aucune somme de deniers excédant l'intérêt à raison de 6 par cent par an sur le montant des dites obligations.*

This plea is bad upon the face of it. Firstly, it amounts to no more than the general issue, but besides it only states what the Respondents have stated in their declaration. Both the plaintiff and defendant consent in stating "*qu'il est faux que le Défendeur ne soit jamais fait*