resignation, for his share of the expenses if there have been any. Judgment for the plaintiff as prayed, saving recourse of defendant for any moneys due by the association.

DeLorimier & Co., for the plaintiff.

Davidson & Cushing, for the defendant.

GAUTHIER v. PICARD.

Promissory Note—Action to have portion of Endorsement struck out.

JOHNSON, J. The present action is brought to have the defendant held personally liable as endorser on a promissory note, and to have the words "without recourse" struck from his endorsement. It is averred that the defendant requested the plaintiff to lend him a sum of $86, promising to pay him back $100 at the end of a month, and to give him the note of one St. Denis payable to the defendant's order, and which he would endorse. That the plaintiff consented to lend the money on the terms offered, and the note was drawn and given to the defendant to procure St. Denis' signature, which he did, and brought back the note again to the plaintiff, and while the money was being counted, the defendant, who had taken the note again, to endorse it, as the plaintiff supposed, gave it back to him, and it was put away under the supposition that it really was endorsed; but as soon as the plaintiff found it was not, he sent word to the defendant, who came in answer to his message, and took the note again from the plaintiff's hands to endorse it; but fraudulently wrote the words "without recourse against me" above his signature. The defendant pretends that he merely sold St. Denis' note without recourse against himself, but the plaintiff has completely proved every circumstance of his case. The evidence of St. Denis alone, whom the defendant called as his witness, is enough to condemn him. He proves that the defendant, when he asked him to sign the note, promised himself to take it up. Judgment for plaintiff.

Duhamel, Pagnuelo, & Rainville for plaintiff.

Coursol, Girouard, Wurtele, & Sexton for defendant.

CRAIG es qual. v. QUINTAL.

Insolvent Act—Accommodation Note—Liability of endorser for accommodation to assignee of the maker.

JOHNSON, J. The plaintiff is assignee of the insolvent estate of Quintal & Croteau, a firm composed of Chas. Quintal and Geo. Croteau, and the action is to recover $10,000 from Narcisse Quintal, the defendant, who endorsed paper for the accommodation of the firm to the extent of $10,000 in September and October, 1877. On the 21st February, 1878, an attachment issued against the firm of Quintal & Croteau, and, on the 8th March, 1878, the plaintiff was made assignee. The firm is alleged to have been insolvent more than three months previous to the issuing of the attachment and to the knowledge of the endorser. The notes that were endorsed all fell due between the 8th and 24th January, except two which matured—one on the 11th, and the last on the 19th February, 1878. The defendant pleads a demurrer to the declaration, and a *défense en fait*, and both issues are before me by consent of the parties. There is no averment in this declaration that the defendant was a creditor of the firm. On the contrary, it is expressly stated that he endorsed for the accommodation of the firm, which received the proceeds in discounts from the banks. There is no necessity, however, to decide the naked question, whether an action of this nature could never be maintained, under any circumstances, against any one but a creditor, as the parties have gone into the facts; and it is abundantly clear from the evidence that, creditor or no creditor, the defendant was not aware of the insolvency of the firm, though it was deemed necessary to aver that he was aware of it in the declaration. In point of fact, however, the defendant was the surety and not the creditor, and none of these notes were paid before maturity. He was a benefactor of this estate, and got no benefit at all, unless barely escaping liability as an endorser can be considered a benefit, for he got no commission or other consideration whatever from the makers of the notes. As to the demurrer, then, I shall not concern myself with it; strictly I ought not to look at it, as there is a consent for proof before the right of action is considered, which must mean, if it means anything, that I should judge the merits on the facts proved. In any other view of the matter, the consent would be extremely illogical, for if the right of action can be judged without proof of the facts, the demurrer should have been disposed of in the Practice Court,