Legislature, in Art. 1235 of the Civil Code, which was a reproduction of the Statute of Frauds, had prohibited this kind of proof. On the ground that respondent had failed to prove the purchase by legal evidence, the judgment must be reversed.

RAMSAY, J., remarked that the case was one of great difficulty, and illustrated the inconvenience of our two systems of evidence, one the rule of commencement of proof in writing, and the other the Statute of Frauds. The pretention of the respondent here was that there was a commencement of proof in writing. Trenholme admits that he did give instructions to McLennan to buy lard. But how was the order carried out? A telegram was sent to Chicago, to Taylor & Co., for whom McLennan was doing business, to purchase the lard on Trenholme's account. The son of McLennan was examined to complete the proof, and he gave a relation of the transaction which showed that respondent was not in good faith. This young man, after the lard was sold, went out to Trenholme's place and asked for a margin of $1,000. Trenholme gave an answer, that he was going into town and would see about it. The promise to pay was not proved, and appellant could not be held liable.

The unanimous judgment of the Court was as follows:

"Considering that the respondent, plaintiff in the Court below, hath failed to adduce in this cause any legal proof of the purchase for or on account of the appellant, of 500 tierces of June lard, as mentioned in his declaration in this action, or that the same was resold for, on account, or at the risk of the appellant;

"Considering, therefore, that there is error in the judgment rendered in this cause by the Superior Court, at Montreal, on the 30th day of March, 1878, the Court of our Lady the Queen now here doth cancel, annul, set aside, and reverse the said judgment of the Superior Court, and proceeding to render the judgment which the said Superior Court ought to have rendered, doth dismiss the said action of the respondent with costs, as well in this Court as in the Court below."

Judgment reversed.

E. C. Monk, for appellant.

Macmaster, Hall & Greenshields, for respondent.

DEFOY (representing plff.), appellant, and FORTE (deft. below), respondent.

Inscription en faux—Appeal by the Notary from judgment declaring deed to be faux.

This action was brought in the Court below by one Longtin on an obligation for $100, purporting to be made before Defoy, notary (now appellant). The defendant inscribed *en faux*, denying that he had ever made the obligation in question, or received the money mentioned as the consideration of it.

The Superior Court, Sicotte, J., maintained the inscription, and dismissed the action. The appeal was brought by the notary, claiming to be *cessionnaire* of the plaintiff.

Sir A. A. DORION, C.J., considered that it was a question of proof on the inscription *en faux*. The deed was very badly written, and the handwriting was changed three or four times. The witness denied that he had ever signed the paper.

RAMSAY, J. I have very considerable doubt as to the regularity of the proceedings in appeal by the *cessionnaire*. He appears as a witness deposing to the fact that he has no interest in the suit. He then becomes *cessionnaire* of the debt, and prosecutes the appeal to protect his character. We have thus a witness becoming appellant and seeking to maintain his pretentions with his own evidence. But getting over that difficulty we come to the merits, and there it seems to me the weight of evidence is in favor of the judgment. A very slovenly deed is produced, offering by its appearance very little guarantee of its authenticity. It is admittedly incorrect in several particulars, and the instrumenting witness swears positively that he never was present, and that he never signed as witness. On the other hand, the notary's daughter, whose writing appears in the minute, swears as positively the witness was present and signed. Leaving aside the notary's evidence, there is really no other evidence in the case but that of the daughter and the instrumenting witness. Which are we to believe? I think the man specially chosen to witness the deed is the higher testimony. It has been attempted, but ineffectually I think, to destroy his character. I would therefore confirm the judgment appealed from.

MONK, TESSIER, and CROSS, JJ., all remarked