

plaintiff never gave any notice to, or made any demand on defendant, until the present action dated 11th August, 1890 ;

“ Considering plaintiff hath failed to prove the material allegations of his declaration, and that defendant has proved the material allegations of his plea, to wit, that his endorsement was for accommodation ;

“ Maintaining said plea, doth dismiss plaintiff’s action.”

JOHNSON, Ch. J. (in Review) :—

The plaintiff alleged that on the 22nd of October, 1889, he had sold to Moss Edward Frank Lawrance, all his interest in the business of Northfield & Co., composed of both of them, with the right to continue the use of the firm’s name ; and that the consideration was \$360, whereof \$60 was payable in cash and the balance by thirty notes of \$10 each, payable weekly—dated 22nd October, 1889, and signed by Northfield & Co., payable to plaintiff’s order. That the defendant signed each of the notes as *donneur d’aval*, under his firm name of B. Lawrance & Co. He then alleged a payment of \$59.10, leaving a balance of \$240.90.

The defendant pleaded that the notes were accepted by the plaintiff before they were endorsed ; and that he only endorsed them for plaintiff’s accommodation, to enable him to discount them. He also pleaded compensation.

The main question is whether the defendant endorsed as guarantor, or for the plaintiff’s accommodation. Upon the evidence the Court below found for the defendant ; and that finding I see no reason, and have heard no reason given for disturbing. But objection was made to parol evidence to prove the circumstances in which the notes were endorsed ; and that objection was at first maintained, but afterwards over-ruled at the hearing on the merits, and the case was sent down for evidence, and was finally heard last May before Mr. Justice Davidson, who dismissed the plaintiff’s action. There can be no question that that judgment is in accordance with the proof, and the only points would be, first, the power of the judge to revise at the final hearing a ruling at *enquête* rejecting evidence, and, secondly, the correctness of the over-ruling. I entertain no doubt upon either of those points. The power is plainly given, or rather acknowledged, by the 2326th article of the Revised Statutes of Quebec, and I have never before seen it doubted. Then, as to the law that is to regulate the evidence in this case, it is, of course, the law of England in virtue of Art. 2341 of the Civil Code ; and