receipt of it also is admitted, but the plaintiffs contend it was imputed on a debt due by Moffatt alone, and not on the debt now sued for. The receipt given for the two notes bears date at Quebec, 15th October, 1855, and mentions simply that they were given "on account." It appears by the account marked A, which is an extract from the books of account of the plaintiffs, that the note for £800 was in the first instance placed to the credit not of William Moffatt individually, but of William Moffatt & Co.; the entry being under date 31st August, 1855, when the financial year of Egan & Co. terminated. James Doyle, manager of Mr. Egan's estate, being asked, "How long the said £800 remained credited to Wm. Moffatt & Co's. account, before it was credited to William Moffatt's account," answered: "I state a few days, perhaps a few weeks, for both entries appear in our journal and ledger under date of the 31st August, 1855"; and he added, "Mr. Champion was the clerk who made the entry erroneously in the first place, and it was afterwards altered." Mr. Doyle was the manager of the business at Ottawa, and the note for £800 was received at Quebec, and the entries respecting it were made there, so that Mr. Doyle could not have any personal knowledge of the circumstances under which the entries respecting the note for £800 were made. Under these circumstances, it would have been well to have had the evidence of Mr. Champion, or of some other person having a personal knowledge of the circumstances to which Mr. Doyle refers. All that we know is that when the note was received by John Egan & Co., it was entered in their books to the credit of William Moffatt & Co.; that it remained at their credit, as Mr. Doyle says, "a few days, perhaps a few weeks;" that then, so far as we know, without the consent of Moffatt & Co. having been obtained, or even asked, a sum equal to the amount of the note was placed to the debit side of the account of William Moffatt & Co. with Egan, thus neutralizing the credit that had been given for the note; and then, that the note was placed to the credit of Wm. Moffatt in the account which he individually had with Egan & Co. But when, for what reason, and on what gronnds, this was done, is not proved. The defendant, Moffatt, had a deep interest in paying the first instalment due upon the agreement of July, 1855; and the fact that he gave Egan & Co. two negotiable notes amounting to £2,300, when their claim against him as an individual, (whatever may have been the nature of it,) did not then amount to £900, shows that he had in view the debt under the agreement of July, 1855. Under these circumstances it seems to me that Egan & Co., having carried the note for £800 to the credit of William Moffatt & Co., could not withdraw it from that account without the consent of Moffatt.

On the part of the plaintiffs, however, it was contended that as Wm. Moffatt & Co. were insolvent when the action was brought, the plaintiffs had a right to sue for the whole of their debt. That Moffatt was insolvent when the present action was brought is beyond doubt; but that he became insolvent after the agreement giving the credit is by no means certain. Indeed, I can see nothing to lead us to think that he had then assets sufficient to meet the claim of Egan & Co. But it is unnecessary to dwell upon this point, inasmuch as the plaintiffs have not alleged the insolvency of Moffatt in their declaration. There is an allegation of his insolvency in the special answer, but if the right of Egan & Co. to sue depends upon the insolvency of Moffatt, that fact ought to have been alleged in the declaration, and the deficiency of the allegations in the declaration respecting the cause of action cannot, in the present case, be supplied by the allegations in the special answer.

It was also contended that the plaintiffs had a right to sue for the whole amount due to them, in consequence of the attempt of the defendant, Moffatt, to fraudulently defeat the plaintiffs' claim by the pretended transfer of all the timber to the intervening parties. Upon this point it is sufficient to observe that the declaration does not charge the defendant with fraud. The appellant answers, that there are allegations of fraud in the affidavit; but that does not suffice. It is to the declaration that the defendant is called to plead, and all the allegations necessary to show that the plaintiffs had a right to sue when and as they did, ought to appear on the face of the decla-