une pénalité de $5.00 par jour, pour chaque jour qu'ils négligeront de faire de la brique.

Les demandeurs auxquels il est dû au delà de $40.00 prennent une saisie-arrêt avant jugement.

Le défendeur nie qu'il y ait eu lieu à prendre contre lui une saisie-arrêt avant jugement, et ajoute, en outre, que le montant réclamé par l'action est compensé par les amendes que les demandeurs doivent lui payer pour les jours qu'ils ont négligé de faire de la brique.

La preuve ne justifie pas la saisie-arrêt avant jugement, et plusieurs témoins déclarent que les demandeurs ont perdu du temps par la faute du défendeur; sur ce point la preuve est contradictoire. Lorsque la preuve est contradictoire, au sujet d'une clause pénale, il faut donner le bénéfice du doute à la partie qui s'est obligée. Les demandeurs ne pourraient être condamnés à payer cette pénalité que dans le cas où il serait établi hors de doute qu'ils ont forfait à leur contrat par leur faute.

Saisie-arrêt avant jugement cassée.

Jugement pour les demandeurs sur l'action.

Ethier & Pelletier, avocats des demandeurs.
Lavallée & Lavallée, avocats du défendeur.

(J. J. B.)

APPOINTMENT OF QUEEN'S COUNSEL.

In the House of Commons, March 18, Mr. Amyot said:—A question of importance now agitates the public, especially the legal portion of it, and is of a nature to cause trouble. There seems to be a conflict of jurisdiction in regard to the appointment of Queen's Counsel, between the Federal and Local Governments. The object of my motion is to elucidate that prerogative, which also includes other questions vital to the Confederation at large. It is an important one, not only as far as the etiquette in the courts is concerned, but it may involve serious consequences. The criminal law provides that the Crown Prosecutor shall have the right to reply, in addressing the jury, when he is a Crown Counsel. The wrong application of this rule may occasion new trials, writs of error, cause heavy expenses, undue delays in the administration of justice. We all know what were the Queen's Counsel in England. "A custom, says Blackstone, (Vol. III, page 354) has, of late years, prevailed of granting letters patent of precedence to such barristers as the Crown thinks proper to honor with that mark of distinction; whereby they are entitled to such rank and preaudience as are assigned in their respective patents." These counsel, in England, are appointed by the executive power. It is one of the prerogatives of the Crown. The same practice obtained here, and, up to Confederation, those appointments could not give rise to any difficulty. Even after the Confederation, no difficulty arose until the Supreme Court delivered its judgment, in 1874, in the case of *Lenoir* v. *Ritchie*. Up to that time, nobody denied the right of the Local Legislatures to appoint Queen's Counsel for their courts. The Supreme Court of Canada, in the case cited, decided that the Local Legislatures had no such power. Their judgment rests on the following syllogism: (1) The appointment of a Queen's Counsel is a royal prerogative, and can only be made in the Queen's name; (2) The Queen does not form part of the Local Legislatures, but only of the Federal Parliament; (3) Hence, to the Ottawa Government alone belongs the appointment of the Queen's Counsel. No appeal to Her Majesty's Privy Counsel was taken from that decision; which has perplexed the mind of the legal community ever since, and embarrassed the divers Governments of the Dominion. That judgment was concurred in by only three of the honorable judges of the Supreme Court; the Chief Justice was not present; one of the sitting judges pronounced that the Provinces had the right to appoint Queen's Counsel, and another would not give any opinion, because the question did not arise. The only question in dispute was whether an appointment of Queen's Counsel made by a statute of Nova Scotia in 1876, had a retroactive effect, and gave to the new title-holders precedence over the counsels appointed by the Ottawa Ministry since 1867. That was the only point discussed at the argument by Mr. Haliburton, representing the Govern-