occurred on both sides. We have a bill of lading made for a cargo of wheat by Reynolds Bros., according to which the cargo was to be delivered at Portsmouth to their order and to care of the company defendants, and notice was to be given to Crane & Baird at Montreal. There is nothing in this to show that the port of destination was really Montreal, nor that Crane & Baird are the consignees or owners, as the delivery was to be made to the order of Reynolds Bros. The bill of lading should state the place where the cargo is to be delivered. Strictly speaking, the legal effect of this bill of lading terminated at Kingston. There is no question of freight for any other place, nor that the cargo should go farther. The master of the Falmouth, therefore, fulfilled his contract by notifying Crane & Baird at Montreal, and by delivering the cargo to the company defendants at Portsmouth, and it is proved that he did all this. The defendants admit by their plea that they received the cargo at Portsmouth, and gave a receipt therefor to the master of the Falmouth on the duplicate of the bill of lading in the possession of the latter. Another bill of lading should then have been made for the transportation of the grain to Montreal. This was not done. It was taken to Montreal and delivered to Beddall & Co. on the order of Crane & Baird, without the production of either the original or duplicate. The question is whether there was a new and distinct contract at Portsmouth or the continuation of the first contract. The plaintiffs contend that the first contract was continued, while the defendants say a new contract was entered into with Crane & Baird at Montreal. The Court finds in the evidence a sufficient indication that the defendants, as well as the plaintiffs, understood that they were acting, not under a separate contract, but under a tacit or verbal contract which was the continuation of the contract appearing by the bill of lading. In fact, the defendants' agent admits that he was deceived by an order of Crane & Baird, presented by Beddall & Co., and on which he delivered the cargo without having the bill of lading, and consequently in ignorance of another order of Crane & Baird written on the bill of lading. The endorsement of Crane & Baird was not addressed to the defendants by name, but to D. McPhee, without mentioning that the latter was defendants' agent. The Bank on its side neglected for a long time to ask delivery from defendants. There has been remissness on both sides. The plaintiffs will have judgment for $16,275, the admitted value of the wheat, with costs, save costs of *enquête* which are divided.

As to the question of endorsement for a part only of the cargo, it does not seem to me to present any difficulty, seeing that the plaintiffs offered to surrender the bill of lading on delivery of the portion assigned to them.

Judgment for plaintiffs.

Abbott, Tait & Abbotts, for the plaintiffs.

S. Bethune, Q.C., Counsel.

Girouard & Wurtele, for defendants.

SUPERIOR COURT.

MONTREAL, December 24, 1881.

Before JOHNSON, J.

OUIMET v. ROBILLARD.

Prescription—Taxes made part of the rent.

The claim of the lessor against the lessee to recover taxes which are made a part of the rent by the lease, is prescribed by five years.

PER CURIAM. The question in this case is as to the amount due by the defendant for rent and taxes. He pleads that everything due before 1st May, 1876, is prescribed, and offers the balance, with costs.

The Court is of opinion that the defendant is right, and that his plea ought to be maintained. The rent is the price which the lessee agrees to pay for his occupation (Art. 1601, C. C.) The taxes, when they are made a part of the rent by the lease, are subject to the five years' prescription. (See art. 2250 C. C.) There was a case cited from the 21st L. C. Jurist, p. 300—the case of *Guy* v. *Normandeau*—where the defendant's plea of prescription as to taxes was overruled by Mr. Justice Belanger. I sent for the record, and found that it was not as lessee, but as co-proprietor, *i.e.*, as a *grevée de substitution*, that the party was there held liable. I still hold to my opinion that as between lessor and lessee, where it is agreed between them that the lessee is to pay so much, whatever the items—they all make up the rent which the landlord is to get from his tenant for the enjoyment of the thing leased. Judgment for $137.50, and costs as in an action for that amount not contested.

P. M. Durand for plaintiff.

The defendant in person.