

s'il y a recel et dissipation frauduleuse de sa part.—*Létang v. Renaud, Taschereau, J.*, 4 déc. 1889.

*Capias—Assignment in trust—Acquiescence.*

*Held* :—That where a creditor, by filing his claim with the trustee, has acquiesced in a voluntary assignment in trust made by his debtor for the benefit of his creditors, such creditor is estopped from demanding that the debtor shall make a judicial abandonment; and therefore is not entitled to obtain the issue of a writ of *capias* on the pretext that his debtor has refused to make a judicial abandonment.—*Boston Woven Hose Co. v. Fenrick, Wurtele, J.*, June 23, 1890.

*Exécution—Jour de retour—Vente subséquente—Nullité.*

*Jugé* :—Que la vente judiciaire des biens meubles saisis ne peut se faire après le jour fixé pour le rapport du bref; et qu'une opposition afin d'annuler basée sur ce grief est bien fondée.—*Brodeur v. Leblanc, deLorimier, J.*, 2 oct. 1889.

*Capias—Dommages—Règlement de la dette sans réserve.*

*Jugé* :—Qu'un débiteur, arrêté sous *capias*, qui règle avec son créancier pour le montant réclamé par l'action, sans se réserver spécialement son recours en dommage contre son créancier pour fausse arrestation, ne peut plus subséquemment poursuivre le créancier pour dommage; le reçu accepté par le demandeur constituant un règlement final entre les parties.—*Desautels v. Filiatrault, Jetté, J.*, 16 nov. 1889.

*Cause sommaire—Action sur obligation.*

*Jugé* :—Qu'une action en recouvrement du montant d'une obligation hypothécaire n'est pas une cause sommaire, sous l'article 387 du Code de Procédure Civile.—*Delorme v. Smart, Wurtele, J.*, 22 mai 1890.

QUEEN'S BENCH DIVISION.

LONDON, March 27, 1890.

JONES V. PADGETT (24 Q. B. D. 650).

*Contract to manufacture equal to sample—Latent defect in sample—Implied warranty of merchantableness.*

*The plaintiff carried on the business of a woollen merchant and that of a tailor. The defendants, woollen manufacturers, contracted with the plaintiff as a woollen merchant to manufacture and supply to him indigo blue cloth according to sample. The plaintiff intended to use the cloth in his tailor's business for the purpose of making it into servants' liveries; but neither the fact that the plaintiff was a tailor nor that he intended to use the cloth for liveries was known to the defendants. There was evidence that one of the ordinary uses to which that particular kind of cloth was applied was the making of liveries. The defendants supplied to the plaintiff cloth which corresponded with the sample; but the sample, owing to a latent defect, was unsuited for the purpose of being made into liveries, though there was no evidence that it was unsuitable for other purposes for which cloth of that description was frequently used. The plaintiff having brought an action against the defendants for breach of an implied warranty of merchantableness, the judge left to the jury the question whether the cloth was merchantable as supplied to woollen merchants, and refused to leave to them the question whether an ordinary and usual use of cloth of that description was the making of it into liveries. Held, that the judge was right in refusing to leave the latter question to the jury, and that there was no misdirection.*

Appeal from the Westminster County Court. The plaintiff carried on the business of a woollen merchant at one address, and of a tailor at another. As a woollen merchant, he ordered of the defendants, who were woollen manufacturers, a quantity of "indigo blue cloth," to be made according to sample. He intended to use the cloth in his business as a tailor for the purpose of making it into servants' liveries; but the fact that he was a tailor as well as a woollen merchant was