

intelligence on his part;
the Appellant is

principle, he denies
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seized, and having
Respondent made
now against such
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error from tak-
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obligations than
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in this Honorable
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are acting. The
the Rule of de-
England could
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To say that the
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Law relative to
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nal Law of En-
ld have had no-
Canada. It is
vil process, and
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to escapes, it
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ceded to this.
ning of this De-
Ordinance char-
sistent with this
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t no action lay

him and for
he was com-
t a Guardian.
Tit. 19, & 33.
the defendant
p. 196) and if
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officer of the
ute par Corps
640 & Omnes
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t if the Guar-
effects seized,
he

he, not the *Huissier* shall be compelled thereto by imprisonment—No one Case can be shown in the Law of this Country nor even a *dictum* produced that the Seizing Officer who has appointed a Guardian to effects seized is bound to produce *representer* those effects.

It is also well worthy of remark, that by the Law of no Country is the person upon whom a Seizure is made, prevented from doing those things which are necessary for the preservation of the things Seized, and by the Law of England, he is bound at his own risque to do so.

It has been decided that Raw Hides could not be tanned although alledged to have been done to preserve them from Rotting, and the principle has been carried so far that it seems to be the better opinion that milch kine cannot be milked by the distrainers in order to prevent them from being damaged. (Bradby on Distresses, p. 241.)

The Right of the owner to Milk his Cows and to give food to and take care of his Cattle under Seizure, is recognized in the Edict of the Month of September 1674, as also the obligation of the distrainer to furnish the means to the guardian if the owner neglects it. (Jousse p. 297.)

The Court below however (dissentiente Mr. Justice Kerr,) pronounced the following Judgment :

The Court having heard the parties by their Counsel, upon the pleadings and proofs adduced as well upon the issue joined upon the peremptory exceptions *perpetuel en droit* as upon the *defense au fond en fait* in this cause filed, it is considered, ordered, & adjudged that James Shepherd the defendant in this cause do on or before the twenty-first day of November next, well and truly deliver over to Jean Baptiste M'Clure, the plaintiff in this cause, all and every, the pieces of Pine, Birch and Lath-wood, Spars, oars and Staves, now being in the custody or possession of the said James Shepherd and being also part and parcel of the Pine, Birch and Lath-wood, Spars, Oars, and Staves by him seized as Sheriff of the District of Quebec, under and by virtue of the writ of attachment issued out of this Court, on the seventeenth day of July, which was in the year of our Lord one thousand, eight hundred and nine, at the suit of Mary Barrows, of London, widow, against the said Jean Baptiste M'Clure; and it is further considered, ordered and adjudged that by *Experts* to be named by the said parties at the office of the Prothonotaries of this Court, on or before the tenth day of December next, and in default of such nomination, by John Campbell of the City of Quebec, sworn Culler of lumber of and for the Port of Quebec, the quantity, quality and value of such parts and parcels of the said Pine, Birch, and Lath-wood, Spars, Oars, and staves so seized as aforesaid, as the said James Shepherd shall not deliver to the said Jean Baptiste M'Clure, shall be ascertained and estimated, with power to the said *Experts*, and in default of the nomination of the said *Experts* with power to the said John Campbell to examine witnesses after being duly sworn; of all which it is ordered that the said *Experts* and in default of such *Experts* the said John Campbell do make report to this Court on or before the first day of February term next, and that such further proceedings be had thereon as to justice may appertain, Costs reserved.

The present Appeal has been instituted from the above Judgment,

Quebec, 15th July, 1814.