

COUR SUPERIEURE.

MONTREAL, 29 NOVEMBRE 1873.

Coram.—MACKAY, J.EVANS *vs.* POPHAM *et al.*

DOMMAGES—LOCATEUR ET LOCATAIRE.

In 1866 the defendants leased from plaintiff, for five years from first of May following, a four story store upon St. Paul street. The plaintiff was to make certain repairs, and afterwards defendants were to do all small repairs, and keep the roof wind and water tight. The declaration charges the defendants with having neglected their duty, and allowed the roof to fall into disrepair, and cut and damaged the spouts, so that water was allowed to penetrate the walls of the building, greatly injuring them, to wit, to the amount of at least one thousand dollars; that among other damages done were some caused by defendants cutting holes in the roof for the passage of pipes in connection with a steam engine that they set up in the building; the engine itself, also, by its heat, contributed to the melting of snow upon the roof, and to the damages; in the spring of 1870, and again in 1872, plaintiff had to spend \$224 in necessary repairs, to repair damages caused by defendants; the City Surveyor having notified the plaintiff that the building was dangerous, and required repairs. The sum of \$1,297 is concluded for, with reservation by plaintiff to sue for more, if need be. In the \$1,297 is included a small amount for school taxes, &c; this part of the claim has been paid, and does not call for attention. Defendants plead that the engine and pipes referred to were erected with plaintiff's knowledge and consent, and did not contribute to the damages referred to; that these were caused solely by the defective construction of the spouts and gutters of the building; that these were defective, and allowed rain and snow thaw to back up and from over the backs to flow down over the face wall of the building; and further that some of the damage was caused by plaintiff raising the adjoining building a story, after defendants' tenancy had commenced, the water from