

That the Timber was not lost by any fault or negligence on his part; and that the loss having arisen from a *vis major*, the Appellant is discharged.

But the Appellant does not recognize this principle, he denies that he was bound to furnish either money or men, that having offered to the Respondent the care of the effects seized, and having afterwards nominated a guardian to whom the Respondent made no objection—the recourse of the Respondent is now against such Guardian and against the Plaintiff making the seizure (*le saisissant*).

The Court below appear to have been led into error from taking it for granted that the Sheriff in this country, executing the civil process of the Courts, is liable to more extensive obligations than the *Huissier* of the French Courts, and this is not the first instance of this error having been fallen into. In the case of *Sheriff v. Appellant*, and *McAulay Respondent*, before his Majesty in his Privy Council on an Appeal from a Judgement rendered in this Honorable Court, Lord Camden said that "It was of great consequence that men should know with precision under what Law they are acting. The Laws of Canada being, by the Quebec Act, made the Rule of decision in all civil cases, no part of the Law of England could operate there, except in as far as it may be clearly and expressly introduced by an Ordinance of the Province. To say that the bare mention of the word Sheriff in an Ordinance should have the effect of introducing the whole body of English Law relative to that office, was absurd. That officer existed before the Ordinance passed and had a duty to execute under the criminal Law of England. If the Ordinance had been silent, he would have had nothing to do with civil process under the Law of Canada. It is the Ordinance that gives him the execution of civil process, and further than it charges him, he cannot be liable. If it was intended to have adopted the Law of England with regard to escapes, it ought to have been done in clear and unambiguous language, that the officer might have known whether he would accept of the office under such conditions. Sir Lloyd Kenyon acceded to this." Taking it then both from the authority and the reasoning of this Decision, that the Sheriff is not liable further than the Ordinance charges him or giving his obligations the widest extent consistent with this decision and taking it that his obligations are coextensive with those of the *Huissier* in the French Courts, it is clear that no action lay against him in the Case before the Court.

The Sheriff in execution of the Writ addressed to him and for the purpose of making in legal form the Seizure, which he was commanded to make, was bound to nominate and appoint a Guardian. (Pigeau, Proc. Civ. I. 622, Note d: Ord. de 1667. Tit. 19, & 33. Art. 8.) the principal duty of whom was to see that the defendant did not secrete or make away with the effects (Jousse p. 196) and if the Sheriff had reason to apprehend that the Effects seized would be rescued he would have been justifiable in establishing for the keeping of them, an armed force; (Nouveau Denisart, *verbis* Guardian & Garrison) the Guardian once appointed became the officer of the Court to that effect, was liable therefore to the *Contrainte par Corps* and could only be discharged by the Court, (Pigeau I. 640 & *Omnes Auteurs*) the Plaintiff and not the Sheriff or *Huissier* was bound to make the necessary advances, (Pig. *ib.*) and the remedy of the defendant, according to all the authorities, was against the Plaintiff or *Saisissant* and the Guardian.—It is every where said that if the Guardian does not, when required produce *representer* the effects seized, he