

to the terms of the contract, he shall bear the consequences of *casus fortuitus* or of *vis major*."

Montreal, 21st October, 1844.

A. BUCHANAN,
F. G. JOHNSON,
For Appellants.

Extract of the case of the Respondents.

The Respondents contended in the Court below :

Firstly. That the sale of the raft was the sale of a *corps certain* of an entire raft as a specific thing, and that the object of the Appellants was to become the proprietors and possessors of that particular raft of timber, and not of any 50,000 feet of red pine timber that the Respondents might have wished to deliver to them. That by the operation of the sale, as set forth in the contract, the property was individualized, and the price stipulated and paid, and thereupon the property vested in the Appellants ; that the property having thus passed and become vested in the Appellants, the risk was theirs ; that the Respondents, from the moment of the sale, were the mere Agents of the Appellants, and the *dépositaires* of the timber ; and that after the sale they were bound to use due diligence for the preservation of the property in their possession, but could not be held liable for losses resulting from the acts of God, or from a *force majeure*.

Secondly. That the Respondents by delivering the rafts at Farlin's Booms at Quebec did all that they were bound to do : that the Appellants were not ready to receive it at Farlin's Booms ; that if they had been ready to receive it, the loss would not have taken place, and that the default and negligence of the Appellants in this respect, cannot have the effect of throwing back upon the Respondents a risk to which they otherwise would not have been exposed : that although the time stated in the contract for the delivery of the raft was on or before the fifteenth of June, yet as the delay was occasioned by the weather being bad, and the spring late, and as the Respondents had not in any way been put *en demeure* by the Appellants, the mere delay of three days, unaccompanied by any demand tending to place the Respondents *en demeure* cannot have the effect of relieving the Appellants from a loss to which, without the occurrence of that delay, they would have been liable.

Thirdly. That the Appellants' by collecting and shipping a large portion of the timber after the wreck, and by prohibiting all other persons from meddling with it, have treated the sale as being what in fact it was, a perfect and absolute sale, and therefore they cannot now be allowed to say that it was conditional and incomplete.

The parties were heard on the 18th October, 1843, and on the 5th February, 1844, the Court below rendered judgment, dismissing the principal demand, and condemning the incidental Defendants to pay the sum of £140 10s. 5d. Currency, as the balance remaining due upon the price of the raft.

It is from this Judgment, which is manifestly well founded in law and justice, that the present Appeal has been instituted.

FISHER & SMITH,
Attys. for Respondents.

The Court of our Lady the Queen now here, having seen and examined the record and proceedings in this cause, and heard the