the *motif* of the judgment in the Canadian Courts, that the imputation was made by the parties at the time the receipt was given, the intention of the debtor was thereby declared, and it could not be impugned by the other party, more particularly as he had contented himself with pleading the general issue, without specifically alleging change of appropriation. It may be mentioned that Kirkpatrick, before suing Kershaw, endeavored to collect his claim from Stevenson, and actually got $4000, which, with the $8000, made more than the amount of his claim, but the Courts did not attach any special importance to this fact.

REPORTS AND NOTES OF CASES.

COURT OF REVIEW.

Montreal, June 28, 1878.

JOHNSON, MACKAY, RAINVILLE, JJ.

[From S. C., Montreal.

LORANGER *v.* CLEMENT.

Lease—Insolvency of Lessee.

1. An action to rescind a lease may be brought against a lessee who has become insolvent during the term of the lease.

2. A writing signed by the lessor, not accepted by the lessee, promising that a new lease should be entered into after a certain date, did not constitute a new contract of lease which could be pleaded in defence to an action to rescind the original lease.

JOHNSON, J. The judgment before us for review set aside a lease made by the plaintiff *es qualité* to the defendant of the 5th Oct., 1876, for six years from 1st May, 1877. The defendant became insolvent in October, 1877. The rent was $700 a year, payable quarterly, and in March, 1878, when three quarters, rent were overdue, besides assessments, the plaintiff sued him to annul the lease, and get the back rent, and also the quarter then current, and payable 1st May. The defendant pleaded by a demurrer, and also by exception, that the action ought to have been brought against the assignee of his insolvent estate. This pretention in both forms was overruled, and we think rightly.

He then pleaded that the lease was an emphyteotic lease, which we also think was untenable.

Further he set up that on the 29th October, after the insolvency, the plaintiff had signed a writing promising a discharge from rent past or future, and gave him the gratuitous enjoyment of part of the ground floor up to May 1878, when a new lease should be entered into. This writing is produced and is admitted; and it says the defendant is to rescind the lease whenever required. This was a proposition that was never accepted by the defendant—who never signed the writing at all — but thought to have all the benefit of it, and assume nothing. But even if it had been accepted, can it be said that the contemplation of a new lease between the parties constituted a new contract of lease? for how long? at what rent? We see no reason for disturbing the judgment, and it is confirmed.

L. O. Loranger for plaintiff.

A. Mathieu for defendant.

JOHNSON, TORRANCE, DUNKIN, JJ.

DEGUIRE v. MARCHAND.

[From S. C., Montreal.

Lessor and Lessee—Changes made by Tenant.

Where one of several tenants painted the entire front of the leased building a conspicuous red color, and the defendant, who leased the upper flats, and to whom this color was offensive, covered over the red with a neutral tint, *held*, that the lessor had no ground of rescision against the latter on account of the change.

JOHNSON, J. We all concur in confirming this judgment. It was a case of suburban notoriety. The plaintiff sued the defendant, who had leased the two upper stories of his house, to have the lease rescinded. The grounds alleged for the action were deterioration of the premises, and alteration without express permission in writing of the landlord—as stipulated in the lease. These alterations that were complained of consisted in a hole pierced in the roof, and in having painted the front of the house a grey colour. The plaintiff had another tenant named Pelletier on the ground floor of this house, and he says he got permission from the defendant for this man Pelletier to paint the upper stories red—which was done. There is evidently a mistake in the declaration in this respect—saying that Pelletier had the apartments above the plaintiffs instead of below; but that is nothing, the case having been treated by the parties according to the facts as they are. Pelletier had the lower storey as a shop and painted the outside red, extending this rather *prononcé* color over the upper stories too. The defendant's boarders seem to have