necessary, as the prayer only serves to indicate what the pleader wishes to be decided by his plea. I have referred to a form book which I copied some 35 years ago, and a similar form is given there.

Motion granted.

E. Carter, Q. C., for plaintiff.
A. D. Taylor for defendants.

CIRCUIT COURT.

MONTREAL, February, 1880.

BEDARD v. LUSIGNAN, and DESJARDINS, mis en cause.

Execution—Fees of guardian.

In this case, a seizure had been made of goods, and a guardian appointed. Subsequently the seizure had been quashed, and a rule having been taken against the guardian to produce the goods, he offered them on condition of payment of his fees and disbursements.

Thibault, for the defendant, in support of the rule said that the defendant was not liable for the fees of the guardian, that his recourse was against the party who had appointed him.

TORRANCE, J. The pretension of the guardian is overruled, and the rule made absolute.

Poutré v. *Laviolette*, 9 L. C. R. 360; *Boucher* v. *Mullin*, No. 2724 S. C., Rainville, J., May, A. D. 1877. Pothier, Dépôt No. 92 and 96; Sirey, C. de Pro. on arts. 596 and 598, N. 18; Dalloz, Périodique; 31, 2nd P., p. 210.

Rule absolute.

Thibault for defendant.
Bourgouin for guardian.

JOHNSON v. LONGTIN.

Dépôt — Parol evidence.

This was an action to recover from the defendant the value of a horse which had been placed in his charge to be pastured, and which he said he had given to one Decelles, an employé of the plaintiff, by authority of the latter. Decelles had come for the horse, received delivery of him, and then ran off to the States. Plaintiff denied that Decelles was his servant or had authority from him.

TORRANCE, J. There is reliable evidence by witnesses that Johnson had given defendant to understand that Decelles would call for the horse; but apart from this evidence, I do not regard this *dépôt* as proveable by witnesses. It is not a commercial case, and neither the *dépôt* nor the restitution are proveable by witnesses. C. C. 1233 and Troplong, Dépôt, N. 45. Without the witnesses, we have only the statement of the defendant as to the dépôt and the restitution, and it should not be divided.

Action dismissed.

Robidoux for plaintiff.
Geoffrion for defendant.

SUPERIOR COURT.

MONTREAL, December 29, 1879.

BARIL v. DIONNE.

Pleading—General Issue—A defendant who has pleaded the general issue to an action for infringement of patent, cannot prove that the invention was not new.

JETTÉ, J. Action en dommages pour violation de brevet d'invention.

Le demandeur est l'inventeur de certains perfectionnements pour la construction des *glacières* pour la conservation des viandes. Il se plaint de ce que le défendeur s'est servi de son invention sans sa permission, qu'il s'est fait construire deux *glacières* sur le modèle de celle par lui inventée.

Il réclame comme dommages réels lui résultant de la perte du profit qu'il aurait fait sur la fabrication de l'une de ces glacières $27.50, et comme compensation pour la violation de son droit $100.

Le défendeur plaide :

1o. Que le demandeur lui a permis, moyennant $20, de fabriquer ces glacières, pourvu qu'il ne se servit que d'une seule à la fois, et qu'il s'est conformé à cette condition.

2o. Une défense en fait.

Le défendeur a complètement failli de prouver la convention qu'il allègue, et par conséquent son exception ne peut pas être maintenue. Mais le défendeur se retranche derrière sa défense en fait, et soutient qu'à la faveur de cette dénégation des allégations de la demande, il lui était permis de prouver que l'invention du demandeur n'était pas nouvelle, qu'elle était connue et en usage longtemps avant qu'il obtint son brevet, et que par conséquent il était en droit de s'en servir.