

de la rente ou du capital d'icelle auxquels le cautionnement réfère, a débouté et déboute l'Intimé de son opposition, avec dépens. (*)

MM. LELIÈVRE ET ANGERS, Procureurs de l'Appellant.

M. MCTAVISH, Procureur de l'Intimé.

PROVINCE OF }
CANADA. }

COURT OF APPEALS,

QUEBEC, November Term, 1845

In a Cause between

HENRY LEMESURIER, ESQ. & OTHERS.

(Plaintiffs and Incidental Defendants in the Court below,)

APPELLANTS.

AND

HART LOGAN, ESQ., & OTHERS,

(Defendants and Incidental Plaintiffs in the Court below,)

RESPONDENTS.

Upon the Sale of Goods by admeasurement, which may happen to be destroyed before measurement, the loss is cast upon the seller; stipulations of admeasurement, and delivery at a particular place and time renders the sale conditional and incomplete until the occurrence of those events, and in the meantime the risk, *periculum rei venditæ* must be borne by the seller.†

The Appellants, by their action in the Court below, sought to recover from the Respondents a sum of £1979 3s. 4d., which the latter had received from the former, as the price of a raft of red pine timber, which was sold by the Respondents to the Appellants on the 2nd December, 1834, and which was wrecked at Quebec, on the 20th June, 1835; and also, £400 as damages for the pretended non-delivery of the said raft. That action having been dismissed by the Court below, the Appellants instituted the present Appeal, the object of which was to have the decision of this Tribunal, as to who should bear the loss of the raft so wrecked.

The Case is of importance, not only on account of the magnitude of the sum involved, but also as tending to determine a question of much interest to those concerned, in an important branch of the trade of this Colony.

The Contract between the parties was in the following words:

"Hart, Logan & Company, of Montreal, sell, and LeMesurier, Routh & Co., of the same place, buy, a quantity of Red Pine Timber, the property of Thos. Durrell, of Hull, L. C., but under control of

(*) His Honor the President of the Court, in rendering judgment, cited the case of the Heirs Normandeau, in which the Judges of the Court of Q. B. for the District of Montreal, upon an application made to them, refused to sanction an appointment of this description, though the Testator had expressly willed that such should be the case.

† The majority of the Court, in the present case, seem to have been influenced in their Judgment by the latter consideration, to wit: The condition of delivery at a particular place and time.