tant les sommes par lui payées sur le prix de la dite vente, que celles par lui employées aux constructions et améliorations faites sur les dits immeubles, ainsi que les loyaux coûts, le tout s'élevant comme susdit, à la somme de $6,667.50;

"Renvoie les exceptions et défenses de la défenderesse, et adjugeant sur les conclusions du demandeur, déclare la vente faite par la défenderesse au demandeur comme susdit, résolue et annulée à toutes fins que de droit, et en conséquence, casse et annule le titre de la vente passé entre les dites parties le 20 décembre 1872, devant Mtre. Théo. Doucet, notaire, et condamne la défenderesse à rendre et payer au demandeur la dite somme de $6,667.50, cours actuel, avec intérêt sur icelle à compter du 9 janvier 1878, jour de l'assignation, jusqu'à paiement, et les dépens, y compris le coût des pièces produites au soutien de la demande, les dits dépens distraits à Maîtres Davidson & Cushing, avocats du demandeur.

Davidson & Cushing, for the plaintiff.

Geo. Macrae, Q.C., for the defendants.

MONTREAL, December 15, 1880.

JOHNSON, J.

CARTER v. FORD et al.

Sureties in Appeal—Tender.

Sureties in Appeal, when the judgment has been confirmed, and the Court has not granted leave to appeal to the Privy Council, are liable for the costs absolutely, and they have no right to annex a condition to a tender of such costs, that the money shall be returned in the event of the Privy Council granting a special application to appeal, and the judgment being reversed on such appeal.

JOHNSON, J. This is a mere question of costs. The defendants, being sued as securities in appeal, paid the money into Court, and it was taken by the plaintiff under an order of the Court; but the question of the sufficiency of the tender that was originally made, and of the one now made by the *consignation*, still remains. I regret to see that the point in dispute has given rise to some acrimony, but it is really one which, apart from any feeling that it may have given rise to, could suffer no doubt when looked at impartially. Mr. Bethune had received instructions to sue the two bondsmen; and the declaration was drawn (see the evidence of Fisher), when a tender was made of the debt; but unfortunately accompanied by a condition that was inadmissible. This condition was based on the alleged fact that the judgment of our Provincial Court of Appeals had been made the subject of a special application to Her Majesty in Her Privy Council, and the condition asked before paying the money was that the plaintiff should undertake to return it if the judgment should be reversed. The defendants of course had no right to make any condition of the sort; and the tender was declined by Mr. Bethune on that ground, and also because he had no authority to act to that extent for the plaintiff. This was at 3 p.m.; and Mr. Bethune seeing, or fancying he saw, obstacles unnecessarily made to the payment of the money, at once ordered his clerk to lodge the fiat, which was immediately done. After this there was another tender made to Mr. Abbott, who refused on account of the same condition being asked. Whether he was right or whether he was wrong in that refusal is not the question now; for at that time the fiat had been lodged, and the writ was issued the next morning.

The defendants contend that they did not wish to impose any condition, but the notarial tender is here before me, and it says plainly:—"On condition that if the judgment rendered in the said matter be reversed, the money will be returned to them who now pay as Molson's sureties." The defendants had a perfect right to *dénoncer* this appeal to the Privy Council if they pleased, and to reserve their own right to any recourse that the final judgment might entitle them to; but that was a different thing from insisting upon an express condition to restore the money. The judgment might have been reversed, leaving the question of costs in the Provincial Court just where it was, and there might never be any right to get the money back at all. Besides there was no evidence of the fact of the appeal, that the plaintiff was bound to notice. It was said that the mere lodging the fiat gave rise to no costs at all. That is not the point, however. The only point is what is raised by the plea after writ issued, and that is whether the amount of the debt alone was a sufficient tender then. I hold that it was not, but that the costs incurred up to filing of plea were due then; and the offer made in the plea was not a repetition