Chitty says :—"The proper time for challenging is between the appearance and the swearing of the jurors." It was argued for the prisoner that Archbold's authority only goes so far as to say that the juror need not have kissed the book, but that the oath must have been recited by the clerk, and that Chitty does not decide the point at all, for he only says that the challenge must be between appearance and swearing. (Cr. Law, p. 545.) But when we come to the cases, we find that in the case of *Brandreth* (32 Howell, St. T., 770) that Mr. Justice Holroyd held that the juror must be challenged "before the book is presented to him." In the case of *Frost* (9 C. & P., p. 137) all the judges expressed the same opinion, but the challenge was held to be in time because the book had not been presented by the clerk. The case of *Giorgetti* does not contradict these cases, but it supports the doctrine that the challenge is too late, although the oath be not finished, and it is difficult to suppose that he is not too late after the administration of the oath commenced, but that he is too late before it is finished, as was remarked by Mr. Justice Williams in Frost's case. The time must be either before the beginning or after the conclusion. I may add that in Montreal the caution is :—"You must challenge them as they come to the book, and before they are sworn you will be heard," and not "and you will be heard." Therefore, according to our form and practice, the caution to the prisoner is unambiguous. He must challenge before the juror comes to the book, and if he does so before the administration of the oath he will be heard. The old Quebec form is :—"You must challenge them as they come to the book, and you shall be heard," omitting the useless words "and before they are sworn."

We are, therefore, of opinion that the learned Judge in the Court below was justified in refusing the challenge, although it appears that it was within his discretion to have allowed the challenge. See 4 F. & F., p. 553, note *a* to case of *Reg.* v. *Giorgetti*.

The other points reserved appear to suffer no difficulty. The Judge had quite a right, and it was a proper thing to do, to state why he would not withdraw the case from the consideration of the jury. It does not appear that the witness referred to did not place his right hand on the book, and even if he had not done so it would not establish that he was unsworn. The fourth and last point reserved was that certain evidence of plaintiff's general character was bad. We think this evidence was rightly excluded. We, therefore, reject the motion in arrest, and order the record to be returned to the Court below for such proceedings as may be required.

Conviction affirmed.

COURT OF QUEEN'S BENCH.

MONTREAL, June 15, 1880.

Sir A. A. DORION, C.J., MONK, J., RAMSAY, J., TESSIER, J., CROSS, J.

HODGSON (deft. below), Appellant, and EVANS (plff. below), Respondent.

Lessor and lessee—Tacite reconduction.

The appeal was from the judgment of the Superior Court, Montreal, Rainville, J., January 31, 1879.

RAMSAY, J. The appellant got possession of respondent's house as sub-tenant of one Smillie, whose lease terminated on the 1st May, 1876. In the meantime, on the 2nd Feb., 1876, he wrote to the owner, respondent in the present case, offering to take the house at $500 a year for three years, on condition of the owner making certain repairs. This letter was not formally accepted, but the appellant stayed on until May, 1878, when he gave up the house. The respondent would not take it off his hands, and he finally sued the appellant for a quarter's rent, due 1st Aug., 1878. The appellant pretended that the house was unfit for habitation from the badness of the drainage, and that he was not a tenant under lease for three years, but that he held by *tacite reconduction* under the lease to Smillie. It is not proved that the house was uninhabitable from bad drainage, and it is evident that the appellant did not hold by *tacite reconduction*, because he paid $100 a year less rent after 1st May, 1876, to respondent, than he was paying previously to Smillie.

Judgment confirmed.

Kerr & Carter, for appellant.

Macmaster, Hall & Greenshields, for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, June 22, 1880.

Sir A. A. DORION, C.J., MONK, J., RAMSAY, J., CROSS, J.