

### Judicial Committee of the Privy Council.

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CANADA.—PERRY Appellant, and GUGY Respondent.

PRESENT:—Lord Langdale, Lord Campbell, M. Baron Parke, the Judge of the Admiralty Court, and the Chancellor of the Duchy of Cornwall.

ASSESSORS:—Sir E. East, Sir A. Johnstone and Sir E. Ryan.

This was an appeal from a judgment pronounced by the provincial court of Appeals for the province of Lower Canada, bearing date the 30th of July, 1839; whereby a judgment previously rendered by the court of King's Bench, for the district of Montreal, in an action brought by the original respondent in this appeal against the appellant, was reversed. The late respondent had filled for several years the office of sheriff of the district of Montreal, and had employed one Francis Perry, now deceased, and represented by his widow, the present appellant, as his deputy in that office. The question raised in the action, and insisted on by the counsel in the course of the appeal, was purely one of law, namely, whether the deceased Perry, as sheriff's officer and Clerk of the original respondent the sheriff of Montreal, was liable to account to his principal for monies received by him in his above capacity. The respondent, by his action, sought to render the appellant, the widow and tutrix of the infant children of the late Perry, liable for his *malfeasance* of office. The Court dismissed the action. The provincial court of Appeals reversed this decision, and directed an account. From this decision of reversal the present appeal was brought.

Their Lordships, at the conclusion of the argument, delivered their judgment reversing the decision of the Provincial Court of Appeals.