RAMSAY, J. This is an appeal from a decision of the Court of Review, reversing the judgment of the court of first instance. The action was by appellant for the price of a milk waggon. The contract was verbal, and appellant's defence is that the waggon tendered is not suitable for the purpose for which it was ordered nor conformable to the order given. The evidence is very contradictory. Plaintiff tries to prove his case by his work-people, who heard from the shop what passed between the parties. Their evidence is contradicted by relatives of the defendant. It seems to me that if there had been nothing further the action should have been dismissed, for it was for the plaintiff to prove his case. But in addition to this we have a fact about which there is no difficulty, and which seems to be decisive. The waggon was to be made like one belonging to a person called McGee, and the plaintiff actually measured McGee's waggon; but the new waggon is not like McGee's. The places for the milk cans are wrong, the axles are too wide, and the wheels won't turn under. It is with great regret that we reverse a judgment on a matter of evidence. Usually we do not do so when either view of the evidence may, in our opinion, be fairly maintained, even although we might incline to a view different from that taken. I desire particularly not to be misunderstood in saying this, for I am perfectly aware that the rule we follow has been subjected to some misconception in different quarters. We do not say that we look upon the decision of the court below as we should on the finding of a verdict by a jury, for that would be a manifest error as to our law. On the contrary we are obliged to examine and appreciate the proof; but we do not readily reverse on mere appreciation of the evidence. It appears to me that however difficult it may be to express this rule, its application offers no practical difficulty. In this case, however, we have not to consider this rule. We have only to decide between two judgments, and we think that the judgment in the first instance was correct, and that it should not have been touched. The judgment in review will, therefore, be reversed with costs.

Judgment reversed.

Maclaren & Leet, for appellant.

Coursol, Girouard, Wurtele & Sexton for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, Jan. 26, 1881.

DORION, C. J., MONK, CROSS, BABY, JJ.

BLACK et al. (plffs. below), Appellants, and STODDART (intervenant below), Respondent.

Procedure—Injunction.

Where an injunction is issued in a case which does not fall within any of the cases provided for by the Injunction Act of 1878, (41 *Vic.* [*Quebec*] *c.* 14), *the delay prescribed for ordinary suits must be allowed between service and return.*

The appeal was from a judgment of the Superior Court, Montreal, May 31, 1880, (Papineau, J.) quashing an injunction.

The injunction had been asked to restrain one Hood, of the city of Montreal, from publishing in Canada certain books, containing articles prepared for the Encyclopedia Britannica, the latter work having been registered by the appellants under the Copyright Act of 1878.

After the return of the writ, the respondent petitioned to be allowed to intervene as being interested in the publication, and the respondent, by a preliminary exception, then attacked the regularity of the proceedings, alleging that the ordinary delays should be followed, whereas in the present case the writ had been served only four days before the return day.

The COURT, affirming the decision of the court below, held that as the case did not fall within any of the cases provided for by the Act of 1878 (41 Vic. cap. 14), the proceedings were irregular, and the respondent had a right to take advantage of the irregularity by a preliminary plea.

Judgment confirmed.

Archibald & McCormick, for appellants.

Kerr, Carter & McGibbon, for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, June 30, 1881.

DORION, MONK, RAMSAY, CROSS, BABY JJ.

CAFFREY (deft. below), Appellant, and LIGHTHALL (plff. below), Respondent.

Capias—Affidavit.

An affidavit for capias, which sets out merely the intended departure of defendant without paying his debt to plaintiff, is insufficient.

Appeal from a judgment of the Superior Court, Montreal, Jan. 31, 1879.