

were exactly the same then, as they were before the passing of the district court act. (1)

2ndly. That the district courts, even if they had power to take cognizance of hypothecary actions, which was by no means admitted, could not, in actions for arrears of *rente foncière*, or in hypothecary actions, under ten pounds sterling, afford the plaintiff any remedy whatever; and in order to prevent a failure of justice, the superior courts ought to exercise jurisdiction in these actions.

3rdly. That the plaintiff had a right to bring his action in the Court of King's Bench, because the defendant might, under the statute, by an exception, have caused the action to be removed to that court, it being a rule of law, that, wherever a defendant has a right of evocation, the plaintiff can go directly to the tribunal to which he may be ultimately taken by the defendant.

4thly. That the words of the statute were not sufficiently explicit to oust the superior tribunals of their jurisdiction, even had such been the intention of the Legislature, which could not be supposed.

The pretention of the defendant was that the district court had *exclusive jurisdiction in all actions for sums under twenty pounds sterling*,—whether hypothecary or not.

COURT OF APPEALS,
29th July, 1843.

The judgment of K. B., Montreal, is reversed in favor of the appellant, *en déclaration d'hypothèque* &c., according to his conclusions, with costs in both courts.

(1) This act is no more in force: but it is likely that a similar question might arise, viz: whether, under the 7 Vict. cap. 16, the superior court, Q. B. has not a concurrent jurisdiction in such cases with the inferior court, Q. B.; though the latter has undoubtedly such jurisdiction.