

deur, lorsque le témoin est tenu solidairement avec lui au paiement de la dette réclamée ;

“ Considérant enfin que par la contestation soulevée par les défenses il est établi que le billet invoqué a été donné sans considération, et que le jugement rendu sur telle contestation, aurait pour effet d'opérer la libération complète du témoin, et pourrait être par lui invoqué comme chose jugée en sa faveur ;

“ Maintient l'objection de la demanderesse.”

On the 13th March last, the defendants *es-qualités* moved the Superior Court to revise this judgment.

*Trenholme* cited in support of motion :—*David v. McDonald*, 11 L. C. R. 116 ; *Borthwick & Bryant*, 5 R. L. 449 ; *Close v. Dixon*, 4 R. L. 141 ; 3 & 4 Will. 4, c. 42. Best, p. 202, S. 145, pp. 204 & 205 ; 6 & 7 Vict., chap. 85. *Brodie v. Aetna Life Ins. Co.*, 20 L. C. J., 206-7 ; C. C., Arts. 2340, 2342 & 1231 ; C. S. L. C., ch. 82, sec. 15. 23 Vict., ch. 57, sec. 49.

*Tait, Q. C.*, cited C. C., Art. 2341. *McLeod v. E. T. Bank*, 2 L.N., p. 239 ; 6 & 7 Vic. (Imperial), ch. 85. See Best on Evidence (6th edit.), pp. 206, 240.

On the 15th April, 1882, the Superior Court (Torrance, J.) rendered judgment dismissing the defendants' motion with costs.

*Abbott, Tait & Abbotts* for plaintiff.  
*Trenholme & Taylor* for defendants.

#### CIRCUIT COURT.

SHERBROOKE, May 13, 1882.

Before DOHERTY, J.

LANGLOIS et al. v. ROCQUE.

*Lease—Saisie-Gagerie for damages.*

*Held*, that in an action of ejectment, under the *Lessors and Lessees Act*, the landlord claiming damages only for the non-delivery of the leased premises at the expiration of the lease, may join with his action a *saisie-gagerie* and seize the meubles meublants of the lessee to secure the payment of damages to be awarded ; and that such damages result from the lease or from the relation of lessor and lessee.

Action by landlords for ejectment against the lessee, and for damages alleged to have been caused to them in consequence of the latter not having delivered the premises at the expiration of the lease. The lease expired, according to plaintiffs' pretensions, on the 30th of April.

The action was instituted on the 4th of May by a writ of attachment under which the furniture of the defendant was seized. The plaintiffs did not claim any rent, but merely damages for non-delivery of the premises. The lease was a verbal one.

The defendant met the action by an exception *à la forme*, in which he took the ground that, as there was no rent claimed by the plaintiffs, his property could not be seized merely for prospective damages.

The plaintiffs demurred upon the ground that the exception failed to disclose any ground fatal to the action.

*Belanger*, for defendant, cited art. 1624 of the Civil Code, which gives the lessor the right of action in three different cases, the last being, “ 3. To recover damages for violation of the obligations arising from the lease or from the relation of lessor and lessee.” By the last part of this article, the lessor “ has also a right to join with any action for the purposes specified, a demand for rent, with or without attachment.” He argued that, by art. 1619, “ the lessor has, for the payment of his rent and other obligations of the lease, a privileged right upon the moveable effects which are found upon the property leased,” and that this privileged right only extends to the payment of the rent and to the fulfilment of the obligations of the lease. The lease having expired, the right of action does not arise from it, but simply from the fact that the lessee refuses to quit. This has nothing to do with the lease and is not one of the obligations of the lease. The obligations of the lessee are, under art. 1626, “ 1st. To use the thing leased as a prudent administrator, for the purposes only for which it is designed and according to the terms and intention of the lease ; 2. To pay the rent or hire of the thing leased.” Here, the right of action is derived from par. 2, art. 1624, “ To recover possession . . . where the lessee continues in possession, against the will of the lessor, more than three days after the expiration of the lease.” The damages claimed do not result from the “ violation of the obligations arising from the lease or from the relation of lessor and lessee,” which have ceased to exist, but merely from illegal detention of the premises after the lease has expired.

*Panneton*, for plaintiffs, relied on article 1619 of the Code, giving the lessor a privileged right