

PROVINCE
OF
LOWER-CANADA.}

Court of Appeals.

In a Cause

Between

JAMES SHEPHERD, Esquire,
(Defendant in the Court below) Appellant ;

AND

JEAN BAPTISTE MACLURE,
(Plaintiff in the Court below) Respondent.

THE APPELLANT's CASE.

THIS was an action of Revendication brought by the Respondent against the Appellant in the Court of King's Bench, for the District of Quebec, for the recovery of a large quantity of timber which the Respondent alleged that the Appellant detained from him.

The Delaration states that on the fifteenth day of July, one thousand eight hundred and ten, at Quebec, the said Respondent was proprietor and in possession of the quantity of timber therein specified and described.

That on the seventeenth day of the same month of July, one Mary Barrows obtained permission to have the said timber seized as her property, and accordingly on the eighteenth of the same month sued out of His Majesty's Court of King's Bench for the District of Quebec, a Writ of *arret simple*, returnable on the first day of October then next, commanding the Appellant, Sheriff of the said district, to seize the said timber.

That the said Appellant did in consequence seize the said timber, and dispossess the said Respondent thereof.

That after the return of the said writ of *arret simple*, to wit, on the ninth day of October aforesaid, the said Mary Barrows discontinued her suit and *main levée* was granted of the said seizure, and the said Appellant ordered to deliver the said timber immediately to the said Respondent ; but that the said Appellant hath hitherto refused to do so. The conclusion of the Declaration is the ordinary one in an action of Revendication.

To this declaration the Appellant pleaded several pleas ;

1st The General issue.

2d That on the same eighteenth day of July, one thousand eight hundred and ten, the said timber so attached by the said Appellant was by the irresistible force and violence of the winds and waters carried away, and the said timber (save and except a certain portion thereof