

payer la valeur des dites marchandises, en attendant que le mineur en aurait profité, attendu qu'il n'est pas prouvé que de fait elles aient profité au dit mineur ;

"Considérant que la preuve faite par les demandeurs que les marchandises en question ont été vendues aux prix ordinaires du marché en gros, n'est pas la preuve que le mineur soit devenu par là plus riche d'une somme égale au montant du prix d'achat de ces marchandises qui ont pu ou peuvent être encore une cause de perte pour le mineur ;

"Considérant que les demandeurs n'ont pas établi leur droit d'action contre le défendeur es-qualité et que la défense est bien fondée et suffisamment prouvée, renvoie l'action des demandeurs avec dépens."

*T. & C. C. de Lorimier, avocats des demandeurs.*

*Mercier, Beausoleil & Martineau, avocats du défendeur.*

#### SUPERIOR COURT.

MONTREAL, July 9, 1883.

*Before TORRANCE, J.*

THE OSHAWA CABINET CO. v. SHAW et al.

*Revendication—Possession.*

This was a seizure and revendication of a horse, waggon and harness in the possession of the defendants, against the will of plaintiffs, the proprietors. The defendants denied that they had possession of these things; said that plaintiff had sold them their business in December, 1881, and placed the articles claimed in the possession of one Moore, to be sold by him, and meanwhile the defendants were to have the use of them by paying for the keep of the horse; that the horse always remained in the possession of said Moore until about the time of the seizure, when Moore sold the horse to one Murphy who was in possession at the time of the seizure. The plaintiff answered that the horse and other things were not placed in the custody of Moore to be disposed of by him, but in the hands of the defendants to be worked by them; that Moore had not been in plaintiff's employ since December, 1881, and if the things claimed were in the possession of Moore they were in his possession as employee of the defendants who had the use and control of them up

to and at the time of the seizure, and the things were seized in their possession.

PER CURIAM. The question here is mainly one of possession, and it is necessary carefully to look at the facts of record. They are to be found mainly in the depositions of the two Messrs. Gibbs, Moore, Murphy, the alleged buyer, and James Elder. Taking up first the deposition of Frederick W. Gibbs, he was the manager of the plaintiff, and when the business was sold to the defendants in December, 1881, the horse and other articles in question were left with Shaw and Gowdey. They made the suggestion to leave the horse with them till the Spring, when a better price could be got for him. He bought the horse from a farmer at Oshawa for \$150. He subsequently instructed his brother, who was here, to get the horse, &c., from Shaw & Gowdey to put them into the hands of Mr. Potter, for sale by auction. In cross-examination he says that the last thing he told Moore was to confer with his brother on all things connected with their business here. He had never thought of giving over possession of the horse to Moore for the very reason that Shaw & Gowdey had urged him to leave it with them, and Moore thought of going west to Winnipeg. In March (21st) he wrote Moore not to collect money for the company, but to refer parties to Mr. Samuels, their collector. He further says Moore was simply to see what offers he could get for the horse, and communicate them to the manager. Charles L. Gibbs, another witness, says that about the 10th May, he saw Moore about the horse, and was told by him that he had a standing offer for all of \$150. He wrote this to the manager who telegraphed back to hand over the articles to Mr. Potter for sale by auction. Thereupon he gave Potter an order in writing upon the defendants to deliver them. They refused delivery, and explained that they were under seizure by the *Minerve* for \$18.75. He immediately settled this claim and got an order from the lawyers upon the guardian to the seizure, who was Moore, for delivery of the horse &c. Showing this order to Mr. Gowdey, one of defendants, he said they could not give up the horse till the landlord was settled with. He then settled with the landlord, returned immediately to Shaw & Gowdey, informed them of the settlement, and asked for the horse. At that moment Murphy came forward, and said the