tence of an existing fact, or such a false pretence as by law was necessary to sustain the charge.

5th, That at most a promise for future conduct was proved, viz., to pay the prosecutor, on account of an alleged indebtedness, a certain portion of the amount defendant would receive when the note was discounted.

Judgment was delivered June 9th.

DUVAL, C. J.—In this case we do not think there was such a misrepresentation on the part of the defendant as to justify the verdict, and, in fact, the judge who presided at the trial thinks the verdict should not have been against him. If this verdict could be maintained, it would follow that every man who purchased goods, stating that he would pay for them next week, and who failed to pay for them, could be prosecuted criminally, instead of being sued. We are bound by the evidence as it comes before us, and we are all of opinion that the evidence is insufficient. The defendant is, therefore, discharged.

MONDELET, J.—At the trial I charged the jury for an acquittal, but the jury thought fit to return a verdict of guilty. I then reserved the case for the consideration of the full Bench as to the sufficiency of the evidence, and I entirely concur in the opinion that the evidence is insufficient. There is another consideration that weighs in favor of the defendant. He and Mr. Graham had had previous transactions and accounts together, and the fact of Mr. Pickup's absenting himself from town a few days subsequent to the particular transaction on which the prosecution was based, could not be adduced to justify the presumption of fraud. I instructed the jury at the time that they must consider the transaction apart from any subsequent act.

Conviction quashed.

E. Carter, Q.C., for the defendant.

T. K. Ramsay, for the Crown.

Master's Wages—Maritime Lien—Under the 10th section of the Admiralty Court Act, 1861, (24 Vic. c. 10,) the master has a maritime lien both for his wages and disbursements, and his claim is therefore to be preferred to the claim of a mortgagee. The Mary Ann, Law Rep. A. & E. p. 8.

COURT OF REVIEW, MONTREAL—JUDGMENTS.

March 31.

DUVERNAY *v.* CORPORATION OF PARISH OF ST. BARTHELEMI.

Practice—Notice of Appearance in Circuit Court Appealable Case—Setting aside Appearance.

Held, that when an appearance is filed, it cannot be rejected, except on motion by the plaintiff in court.

Semble, (MONK J. *dissenting*), that it is not necessary for the defendant, in an appealable Circuit Court case, to give notice of his appearance to the opposite party.

SMITH, J.—In this case judgment had been rendered by default in the court below, and the defendants now asked to have the judgment revised. The question to be decided was simply this: Is it necessary for the defendant, in a Circuit Court appealable case, to give notice of his appearance to the opposite party; and, further, can the prothonotary, after receiving such appearance, take upon himself to reject it as irregular? The defendants had appeared in the suit, but no notice of the appearance had been given to the opposite party. The paper was received; but afterwards it was set aside, and the case treated as a case by default. The defendants now appealed, and the court was of opinion that the appeal was well founded. There was nothing in the statute requiring notice of appearance in the Circuit Court. The moment an appearance was presented, it was the duty of the prothonotary to accept it. His authority and jurisdiction ceased there. If improperly filed, it was for the court to reject it on motion. This case had been treated as if no appearance had been filed. The judgment must, therefore, be reversed.

BERTHELOT, J., concurred.

MONK, A. J., concurred in reversing the judgment. But he was of opinion that in appealable cases it was necessary to give notice to the opposite party of an appearance. Such, at all events, had been the invariable practice. He, in chambers, had ordered the prothonotary to reject the appearance, and enter up judgment for the plaintiff. This was not the proper mode of proceeding, and the