PROVINCE OF LOWER-CANADA,
DISTRICT OF QUEBEC.

In Appeal.

BETWEEN

THOs. EVANS, Esq.
(Plaintiff in the Court below)
APPELLANT;

AND

JAMES HALFHIDE,
(Defendant in the Court below)
RESPONDENT.

THE RESPONDENT's CASE.

THIS was an Action founded on the Law *Œde.*

The Declaration states that the Appellant, being proprietor of a Lot of Land, situated in the Suburbs of Montreal, with two Houses erected thereon....That the Respondent, from about the 1st November, 1819, to the 24th April now last past, occupied and possessed the said Lot of Land and premises, as the Tenant of the Appellant, at the rent of £60 per annum, but without any Notarial or regular Lease to that effect, and did still occupy and possess the same ...That on the said 24th day of April last, the Appellant intending to occupy the said premises so leased, in his proper person, gave to the Respondent notice to quit *(Congé de déloger)* on the 1st of May then next and now last past....That on the 10th of the same month of May, the said Appellant again summoned the said Respondent to quit the said premises, which he had neglected to do.

The conclusion of the Declaration is in the usual form of an action founded on the Law *Æde.*

To this Action the Respondent filed a Plea of Peremptory Exception, containing the following grounds of Exception.

1st. That it doth not appear, nor is it alleged by the said Appellant, in his said Declaration that the premises, whereof he was desirous of obtaining possession as proprietor, are of such a nature as to entitle him to the privilege of occupying the same in preference to the said Respondent. But that, on the contrary thereof, it does appear in and by the said Declaration, and by the designation thereof, the said premises in the said Declaration contained that the said premises are of a description which, by Law, does not entitle him, the said Appellant, to expel him, the said Respondent, in order to occupy the said premises himself.

2dly. That the several obligations in the said Declaration contained, did not warrant the conclusions thereof.

3dly. That the said Declaration and the conclusions thereof were irregular insufficient and Incongruous. And the said Respondent without waver of the said Demurrer or *Exception peremtoire*, pleaded next the General Issue.

And lastly, he pleaded as a Peremptory Exception, that on the 4th of March last, and at the time of the institution of his action, he, the Appellant, was domiciliated at Kingston, in the Province of Upper Canada, as a Major of His Majesty's seventieth regiment of foot, which then was and still is quartered at Kingston aforesaid and that until the departure of the said Regiment from Kingston aforesaid, he, the said Appellant, must remain domiciliated at Kingston aforesaid, and that on the aforesaid 4th day of March last past, and at and on divers other days and times previous thereto, he, the said Appellant, let and leased the said premises unto him, the said Respondent, consenting thereto, at and for the rate and price of £60 per annum, upon the express condition that he, the said Respondent, should retain and continue to occupy the same for one year, to be computed from the first day of May last, unless the said 70th regiment of foot, quartered at Kingston aforesaid, should replace the 37th regiment of foot, quartered at Montreal. And the Respondent averred that at the time of the institution of the said action, the said 70th Regiment was and still is quartered at Kingston aforesaid and that the said 37th Regiment hath not been removed from Montreal or replaced by the said 70th Regiment. And further that he the said to appellant did expressly renounce to the privilege of occupying the said premises and of dispossessing the said Respondent thereof unless the said 70th Regiment should be quartered at Montreal aforesaid, in the place and stead of the said 37th Regiment, and that since the making of the said lease, as aforesaid, nothing hath occurred to entitle the said Appellant to the right of maintaining his said action; and further, that the said pretended notification or *congé* in the said declaration contained, was null and void, and insufficient.

The special demurrer was subsequently withdrawn, and issue was joined upon the other pleas.

The *congé*, filed on the lease, is not made or signed by the Appellant—it is made by C. R. Ogden, Esq. acting (as is said) for the Appellant; but no Power of Attorney, or authority of any kind, has been produced, to shew to the Respondent, or to the Court below, that Mr. Ogden was authorized to make the said notification or *congé*. The proceeding being an extra-judicial one, a special power was necessary.

The correspondence between the parties establishes the agreement to have been as stated by the Respondent. It appears that the Appellant obtained a special leave of absence from his Regiment, and had, in consequence, removed to Montreal. This was an event which was not in the contemplation of either of the parties at the time of the lease, and could therefore form neither an express nor implied condition.

In truth, however, the case, as stated in the Appellant's declaration, rests wholely and solely upon the Law Œde. To maintain his action he was bound to shew—

1.—A notice to quit, by himself or his lawful Attorney.

2.—A reasonable delay to the Tenant, accordidg to the usage of the particular City, to enable him to procure another house. That delay is proved to be, at Montreal of *Three Months*. The Appellant gave *One Week*.

The judgment of the Court below was, therefore, what alone it could have been, a judgment dismissing the Appellant's action, with costs.

Quebec, 14th Nov. 1820.