

On these issues the parties went to proof and it is a fact not gainsayed by the Respondent that the Appellant after two years suffering with the smoke—besides having her Dwelling House and furniture damaged as also from the total insufficiency of the Furnace to produce even a moderate amount of heat—was finally at her own cost and expense forced to demolish and remove the Furnace from out of her House— with this fact in evidence beyond all cavil, it is certainly rather surprising that the Court below should have pronounced on the 27th February last, the following Judgment. “The Court having heard the parties by their respective Counsel as well upon the merits of the principal demand as upon that of the incidental demand made and filed in this cause—having examined the proceedings proof of record and deliberated firstly upon the principal demand and considering that the principal Plaintiff hath established in evidence the material allegations of his Declaration and that the Defendant hath failed to establish the matters and things in her pleas to the said principal demand—doth adjudge and condemn the said Luce Cuvillier to pay and satisfy to the said George F. Prowse, the sum of £100 4 6 currency being for a Hot-Air Cooking Furnace and the work and labour employed and the materials furnished in the making and putting up of the same by the Plaintiff for the Defendant—and for other articles sold and delivered by the Plaintiff to the Defendant as mentioned in the account filed, with the exception of the three last items of the said account for taking down and refixing the same, with interest upon the said sum, from the fifth July 1855, till payment and cost of suit, and the Court finally adjudicating upon the incidental demand, it is hereby dismissed for want of proof, with cost.

From which judgment the Appellant now appeals to this Court and prays a reversal thereof.

THOMAS S. JUDAH,

Attorney for Appellant.

Montreal, 18th May, 1858.