

even in the cellar, where the water from above penetrated. The idea of a warehouseman paying in good faith, as Mr. Kingan, did here, for a lot of wool damaged in his keeping, being obliged to have called a survey, is neither supported by authority nor by reason. The theory of the removal of the partitions having caused a strain on the upper floors and roof is conclusively refuted by the witness Marc Trudel and others. A number of letters from the owners of the wool to the warehouseman, and from the latter to the defendant, are produced and proved. It is conclusively proved to my mind that the damage occurred from a hole or from holes in the roof; that the acts of the plaintiff had nothing to do with it; that the defendant was notified as early as November, 1872, and before and since, and that the repairs attempted by the defendant too late were ineffectual and the plaintiff is entitled to recover the amount of his demand. The water pipes are proved to be old and almost useless, and they must be repaired by the defendant too. The whole with costs.

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COUR SUPÉRIEURE.—Montréal, 31 mars 1874.

*Coram* JOHNSON, J.

LAJEUNESSE *vs.* O'BRIEN.

JUGE :—Qu'une action en dommages, pour arrestation et saisie malicieuses, sera déboutée si le demandeur ne prouve pas l'absence de cause probable. La question de frais étant dans la discrétion de la Cour.

A malicious arrest of the person of the plaintiff, and also a malicious seizure of his stock and goods are the grounds of action alleged here. Want of probable cause is the groundwork by law of this class of remedy. Such want of probable cause will in some circumstances give rise to the inference of malice, which may, however, be the subject of independent proof; but in all cases the grounds of action are to be proved by the plaintiff. In the present instance, Lajeunesse, who was defendant in the proceeding now complained of, was discharged from custody and the seizure taken against his property was also dissolved upon petition, and after