

ticular part or share of the sum sought to be recovered, to wit \$320;

"And considering that there is error in the judgment rendered by the Superior Court sitting as a Court of Review at Montreal on the 9th of July, 1879;

"Doth reverse and annul the same, and proceeding to render the judgment which the said court ought to have rendered, doth confirm the judgment rendered by the Superior Court at Montreal on the 21st of December, 1878, and doth condemn the said respondent to pay to the appellants the costs as well in the Court of Review as in the Court here." (Dorion, C. J. and Cross, J. dissenting.)

Judgment reversed.

Lacoste, Globensky & Bisailon, for Appellant.
Bethune & Bethune, for Respondent.

COURT OF REVIEW.

MONTREAL, March 31, 1881.

JOHNSON, RAINVILLE, PAPINEAU, JJ.

[From S.C., Montreal.

LEROUX v. HUDON COTTON Co.

Damages—Negligence—Personal Injuries.

The appeal was from a judgment rendered by the Superior Court, Torrance, J., Jan. 31, 1881, condemning the defendants to pay \$500 damages.

The action was brought for the recovery of damages suffered by plaintiff, in consequence of an empty barrel, thrown from an upper window of the defendants' cotton factory, falling upon him. (See 4 Legal News, p. 46, for report of the case before the Superior Court.)

RAINVILLE, J., who rendered the judgment in Review, remarked that the defendants were clearly responsible under the circumstances of the case. As to the amount of damages awarded, the Court below had allowed \$500, which was only \$200 more than the defendants had tendered. In view of certain recent decisions of the Supreme Court it would not be prudent to disturb the award of the Judge *a quo*.

Judgment confirmed.

E. U. Piché, for plaintiff.

Beique & Co., for defendants.

COURT OF REVIEW.

MONTREAL, March 31, 1881.

JOHNSON, TORRANCE, JETTE, JJ.

[From S.C., Montreal.

DARLING es qual. v. MCINTYRE et al.

Unpaid vendor—Right to take back goods sold and delivered to insolvent (but immediately returned by him) within thirty days before insolvency.

The plaintiff was the assignee of one James Hynes, and defendants were wholesale dry goods merchants at Montreal. The action was instituted under the Insolvent Act of 1875, ss. 132, 133, 134, 135, to recover goods alleged to have been delivered, transferred, and conveyed to defendants by James Hynes within thirty days before insolvency, and with a view of giving a fraudulent preference over his other creditors. Darling alleged the value of these goods to be \$523.31.

McIntyre & Co. pleaded that on or about the 15th March, 1880, James Hynes bought and ordered from defendants the goods mentioned and detailed on the first and second pages of plaintiff's account; that these goods were shipped by the Grand Trunk Railway Company to Hynes, at Prescott, on the 16th and 17th March, and arrived at Prescott on the 19th March; that Hynes refused to receive these goods, and returned them to defendant on the 20th March, and thereby the sale was cancelled; that defendants as the unpaid vendors had a right to have the sale cancelled and the goods returned to them, and that the consent of Hynes to this was not a fraudulent preference, inasmuch as he had never appropriated or taken possession of the goods; that as to the goods mentioned in the third page of the account (\$154.67), McIntyre & Co. admitted that these goods were sent on the 22nd March, 1880, and received by them; but they said the value was only \$97.65, and offered to confess judgment for so much, and asked that plaintiff's action be dismissed as to the surplus.

The proof established that the goods that were shipped on the 16th and 18th March arrived at Prescott on the 19th March, and that Hynes declared that he would not take delivery of them; that these goods were brought to Hynes' store without his knowledge, by one of the public carters of Prescott, who had carted for Hynes for years, and who was in the habit when any package was at the station for Hynes, to take them, whether he had been instructed to do so or not; that his clerks took them in and opened the packages, and took out the goods, but did not mix them with the other