SUPERIOR COURT.

MONTREAL, June 15, 1882.

Before MACKAY, J.

LEMONIER v. CHARLEBOIS.

Sale—Acceptance—Proof by parole testimony.

PER CURIAM. This is an action of assumpsit, for the price of a barrel of wine. The price was over $50, namely, $110, but the Statute of Frauds as carried into our Code, does not say that the acceptance of the goods must be proved by writing. The defendant denies that he ever bought the wine from the plaintiff. But there was a sale and delivery of the wine. What was the conduct of Charlebois after the delivery? It is true that he sent a person to say that he did not want the wine, but afterwards he dealt with it as owner of it. This is proved to the satisfaction of the Court (as in England it would have to be proved to the satisfaction of a jury) by his offering to sell the wine. In the case of *Blenkinsop* v. *Clayton*, it was held that where a person who has contracted for the purchase of goods offers to resell them after delivery, whether this was an acceptance was a question for the jury. The acceptance need not be in writing, but may be evidenced by acts, &c. Here the defendant thought there could be no proof of the sale, and the Court was at first disposed to think that he must go free; but though there can be no proof by parol of a sale there can be proof of acceptance after delivery, and the defendant is bound. The plaintiff has proved the sale alleged, the delivery to defendant, and his acceptance. It is proved by Lacan that the defendant told him that he had bought the barrel of wine for $110, and offered to sell him the half, and pressed him to buy. Where the buyer has accepted after delivery to him, the seller need show no writing. The plaintiff will, therefore, have judgment.

Barnard, Beauchamp & Creighton for plaintiff.
Vanasse & Mackay for defendant.

SUPERIOR COURT.

MONTREAL, May 31, 1882.

Before JOHNSON, J.

HENDERSON et al. v. MCSHANE.

Charter party—Interpretation of contract.

PER CURIAM. The plaintiffs are shipowners in England, and they bring this action against the defendant to recover the difference between the freight they were able to get for their ship, the "Emblehope," and the freight they would have got if the defendant had kept his contract under a charter party between them; that is to say, the hirer being obliged to pay for the whole ship, he is called upon now to pay for so much as is empty—or for what is called dead freight.

The defendant raised a variety of pleas, most of which are not now insisted upon; but upon the fourth plea, a question more of fact than of law presents itself for decision. By this fourth plea it was said that the charter party stipulated for the arrival of the vessel here in the port of Montreal at the opening of the navigation of that year.

The answer to this plea is that the vessel arrived at the time meant and contemplated by the contracting parties; that there was no fixed or express time; and that her arrival here was calculated with reference to the time of departure of the other vessels that had been chartered, and that were to leave here in succession. This appears a reasonable meaning to put upon this agreement, sufficiently accords with the averment in the declaration, which is not that the vessel was to arrive, as is stated in the plea, at the opening of the navigation, nor yet exactly what is stated in the charter party, which is as follows: "Between the opening of navigation 1879, and thereafter to run regularly and with all despatch between Montreal and London; and to be despatched from Montreal in regular rotation with other steamers under charter to the same charterers, up to the 1st October, 1879." What the parties apparently intended was, that as there was to be a succession of cargoes, the ships should arrive at convenient times. In point of fact, one of them arrived on the 17th May, another on the 18th, and the third—the one chartered in the present case—on the 5th of June. But as regards this particular vessel, there was no agreement that she was to arrive by any particular day, nor even at the opening of navigation. The understanding was with reference to cargoes succeeding one another between the opening of navigation and the last shipment in October; and Mr. Shaw, in his evidence, says the ship arrived about the time she was expected. Therefore upon this point, I am against the defendant, and this is really the whole case; for the points