

to preserve those goods pending the action; that in the event of but a portion of the goods being recovered under the *action résolutoire*, the unpaid vendor can rank only as an ordinary creditor for the value of the goods which have not been restored to him, he re-paying to the estate the amount of freight and charges expended by the insolvent or the estate upon the goods so restored to the unpaid vendor.

W. BADGLEY,
WM. H. KERR,
W.W. ROBERTSON,
A. LACOSTE,
C. A. GHOFFRION.

Montreal, January 13th, 1883.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, January 31, 1882.

Before JOHNSON, J.

EAST HAMPTON BELL CO. v. GROSE.

Procedure—Failure to put in security for costs.

An action will be dismissed for failure to comply with an order to give security for costs, notwithstanding that the case was only returned for the costs.

JOHNSON, J. On the 16th December, the plaintiff having returned this action into Court, was ordered to give security for costs within 30 days; and on the 19th of this month, the order not being complied with by the plaintiff, the defendant moved to have the case dismissed. It was answered by the plaintiff that the case was settled before return. Then why return it? For the costs I suppose. However that may be, returned it was, and a default entered against defendant who afterwards got leave to appear, and obtained this order for security.

I have nothing to do with what occurred before the 16th, the day of the judgment ordering security. That judgment has not been complied with, and the defendant is entitled to have his present motion granted.

Motion granted with costs against the plaintiff.

Macmaster, Hutchinson & Knapp, for plaintiff.
A. W. Grenier, for defendant.

SUPERIOR COURT.

MONTREAL, January 31, 1882.

Before JOHNSON, J.

LAUZON v. ROSS et vir.

DUPRESNE v. ROSS et vir.

Illegal Arrest—Probable cause.

Where workmen were employed by one of the proprietors to pull down a building, and a co-proprietor, knowing the authority under which they were acting, caused them to be arrested on a charge of damaging property;—held, that there was want of probable cause.

JOHNSON, J. These two cases are alike. Three workmen had been employed by a Dr. Thayer (who, in right of his wife, was co-proprietor along with the defendants in the two present cases—of some real estate in this city) to pull down a building. They were all three arrested at the instance of the defendants, and brought before a magistrate who discharged them, on a charge of unlawfully doing damage to property. And they then, each of them brought an action for damages laid at \$210. The first case came before Mr. Justice Sicotte, and he gave judgment for the plaintiff with \$25 damages, and costs as in the lowest class of action in this Court. In the two present cases which were heard before me, the Counsel for the defendant contended there was no evidence to show the workmen had authority from Thayer; but the fact is alleged by the defendant himself in his protest served upon these workmen, that Mrs. Thayer was causing a portion of the property to be pulled down—i. e. that the men were working there by order of one of the co-proprietors. The defendant knew what these men were doing there; and the charge he brought against them was without cause, and under a mere color of law. It was also contended that in the event of damages, the costs should be those of the Circuit Court, but that would be in effect to punish these men for the exercise of their right of action. I adhere to the judgment given in the other case; and in these two I give \$25 damages and costs as in lowest class action in this Court.

Longpré & David, for plaintiff.

Kerr, Carter & McGibbon, for defendant.