

Judicial Committee of the Privy Council.

Council Chamber Whitehall,

June 21, 1845.

PRESENT:

The Right Hon. Lord Brougham,
 The Right Hon. The Vice Chancellor Knight Bruce,
 The Right Hon. Dr. Lushington (Judge of the Admiralty Court.)
 The Right Hon. J. Pemberton Leigh (Chancellor of the Duchy of Cornwall.

TOBIN vs. MURISON.

Lord Brougham(1).—This case comes before us from the Court of Intermediate Appeal and Error in Canada, and it seeks to have a Judgment reversed, there given upon an Appeal and Writ of Error from the Court of Queen's Bench in an action brought by the Respondent against the Appellant as Bailee of Sugars delivered to him by the Respondent, and destroyed by a flood of the River St. Lawrence. The ground of the action is the Appellant's negligence in the keeping the Sugars; and first, we may consider the form of the pleadings by which the claim for damages was stated and resisted.

The Declaration contained three counts specially charging the Appellant severally, with not duly keeping, not accounting for, and by his negligence occasioning the damage to the goods. The common counts, except those for goods sold and delivered and on an account stated, were added, one of course being for money had and received for the use of the Plaintiff, and one for money lent and advanced by him. A plea amounting to the general issue was pleaded, and the replication after traversing the matter of the plea, appears to make an addition to the matter of the de-

(1) Copy from Mr. Morton's short-hand notes of the judgment.