

PROVINCE OF CANADA, }
—LOWER CANADA.— } **In the Queen's Bench.**

(APPEAL SIDE.)

ANDREW LEAMY,

(Defendant in the Court Below.)

APPELLANT.

AND

HARDOIN LEONNAIS,

(Plaintiff in Court Below.)

RESPONDENT.

APPELLANT'S CASE.

THE Judgment from which this Appeal is instituted, was rendered by the Superior Court sitting in the District of Ottawa, on the 4th February, 1857.

The Respondent, as sole Assignee of the Estate of Jacob Dennison, sued the Appellant for £215 16s. 2d., and in his Declaration, his title is set forth substantially as follows:

Jacob Dennison became a bankrupt on the 26th February, 1844. At a meeting of the creditors held on the 13th March, 1844, the Respondent and Andrew Cowan were chosen Assignees, accepted the office and gave the required notices.

At a special meeting of the creditors, on the 26th June, 1850, it is stated that Andrew Cowan resigned, and the Respondent was named sole Assignee. At the same meeting, the creditors having failed to name another in his stead, it was ordered by the Court that the Respondent should remain sole Assignee; the latter thereupon accepted the office and gave the required notice.

The Declaration then avers, that the Appellant was indebted to Jacob Dennison before he became a bankrupt, in £215 16s. 2d. for goods sold, &c., and concludes accordingly.

To this action, the Appellant pleaded—1st. *A defense au fonds en droit*—and 2nd. *Et defense au fonds en fait*.

Under his *defense en droit*, the Appellant contended, that the Respondent's declaration did not contain the allegations of facts necessary in law, to vest in him, as sole Assignee, the Estate of Jacob Dennison: That it is not the choice of Assignees by the creditors, nor the acceptance by them of such office, that vests the Estate in them; but, on the contrary, it is an instrument such as is described in the Statute 7 Vic. cap. 10, sec. 30, by which it is enacted:—

“That as soon as such acceptance shall be signified to the Judge or Commissioner, as aforesaid, he shall, by an instrument under his hand and seal, declare the choice or appointment of such Assignees, and their accept-