

PROVINCE OF CANADA. }

LOWER CANADA.

In the Queen's Bench---Appeal Side.

IN APPEAL FROM THE DISTRICT OF ST. FRANCIS.

JOHN JOHNSON,

Defendant in the Court below,

Appellant,

against

WILLIAM W. WILLIAMS,

Plaintiff in the Court below,

Respondent.

RESPONDENT'S CASE.

This was an action in the Court below to revindicate a horse. The horse was seized. The Defendant was an innkeeper. The Plaintiff was in possession of the horse prior to and on the 10th of September, 1853. On last mentioned day he stopped at Defendant's inn in Barnston and ordered said horse to be put in his stable and cared for till he called for him. When he was ready to leave he demanded his horse, offering reasonable and customary tavern expenses of keeping, and defendant refused to deliver up the horse to him, whereon he instituted the action appealed from.

As explanatory of the pleadings and evidence it may be stated that one Lathrop Chamberlain owned the horse in question, called "Zack," in 1851-2, and Plaintiff acquired said horse of Chamberlain in 1853. Chamberlain boarded in 1851-2 at Cameron's tavern in Sherbrooke, and in June 1852 a bill was due for board and horse-keeping from him to Cameron, and he requested Cameron to hold said horse in his possession as a pledge till the debt was settled.

The defence set up to the action was that Defendant purchased the horse of one Oliver Cameron, who acquired it of said Lathrop Chamberlain. This defence is met by a special answer to the effect that Cameron never owned the horse and never sold him to Defendant. That the money paid by Defendant to Cameron was Chamberlain's money, and that Defendant only acted as Chamberlain's agent in paying Chamberlain's debt for board and lodging at Cameron's; that the horse was merely held by Cameron until his debt was paid, and was released to Chamberlain; that the Defendant had charged Chamberlain with this identical money, which in his plea to this action he pretends was the price of the said horse, in an account which had been settled by a suit wherein the disputed accounts between Chamberlain and Defendant had been determined; that said horse was never delivered to Defendant, and that Defendant's pretensions were fraudulent and in bad faith; and further, a special denial of the allegations of Defendant's plea.

Samuel Cleveland proves that Defendant stated that Plaintiff drove the horse to his stable and put him in, and that he had paid money for Chamberlain and got a bill of sale of the horse and he meant to keep him till he got a settlement with Chamberlain—proves horse to be valuable, damages £50.

Norman Cleveland values horse at not less than £75, proves Defendant's admission of taking the horse from Plaintiff same as former witness.

John Hackett worked for Plaintiff in summer and fall of 1853, knows Plaintiff to have possessed the horse as proprietor from July to 10th November, when it was detained from him; proves horse valuable, and badly used by Defendant since he has detained it, and greatly injured and damaged.

E. S. Southmayd heard Defendant say he had the horse in his stable and he would not let him go till he got his pay from Chamberlain, heard him order his ostler not to let Plaintiff have the horse.

Timothy Winn heard Defendant boast of having driven the horse and that he would do so, valuable horse, &c.

Oliver Cameron, the person from whom Defendant pleads that he purchased the horse, says: "I never claimed to own the horse, but had him in my possession until my claim was paid, by Mr Chamberlain's request." On being questioned as to the item in an account filed by Johnson, Defendant in suit Johnson vs. Chamberlain, "Cash lent, del'd O. Cameron, \$200," he says this is the only sum ever delivered by Defendant to him for Chamberlain.

John B. Shorey proves the tender of the money by Plaintiff for tavern expenses when he demanded his horse, and the refusal to give up the horse.

Henry Cameron, brother of Oliver Cameron, proves same facts as Oliver Cameron, also valuable horse, serious damage to Plaintiff, the detention, horse injured by Defendant, &c.

Defendant's Evidence.

Wright Chamberlain proves making of bill of sale in following terms:

June 25, 1852.

O. Cameron

Bo't of L. Chamberlain,

A small bay horse called "Zack," for One Hundred and Fifty Dollars.

Received Payment.

[(Signed,]

L. Chamberlain.