signature of both or of either, and that really J. Dery is shown by the evidence to have had nothing to do with the transaction. The most effective answer to all this is that, sued jointly on the deed, they appeared together, and pleading together said they were justified in making the sale. Under these circumstances it seems idle now to make these distinctions, and further there is no affidavit as required by Art. 145 C. C. P. Appellants say this was not necessary because "J. & C. Dery" could not be the signature of either of them. It seems to me that this distinction cannot be maintained. When the law says "every denial of a signature" it evidently means "of what purports to be a signature," else a defendant might always neglect to make the affidavit, and say "Oh! it was not a signature, for I never signed it; it is therefore only the semblance of a signature, so far as I am concerned."

The next question in importance is as to the effect of the sale of the right to use an invention. Appellants say there was no special warranty, and the warranty of law is only that the patent exists. No authority could be brought forward in support of this pretention, nor has any parallel case been established. It evidently is not the sale of a chance, like the draw of a net, as was suggested. But it is not necessary to discuss this question minutely, for the deed from appellants to respondent contains a description, which amounts to a warranty, and which every patent implies, that the invention is new and useful. It would be strange, indeed, if that which can only exist at all on the pretention that it is new and useful, could be bought and sold as such, and yet be neither. The sale of patent rights, therefore, comes very specially under Art. 1522, C. C., and I would also draw the attention of appellants to the terms of the 35 Vic., c. 32, sections 19 and 20, which gives some additional force to what I have said as to express warranty.

Another question allied to that just referred to is, that the patent should have been set aside first. There might be something in this, if the existence of the patent was the only warranty, but that not being the case, respondent has no interest to set aside the patent, and therefore he was not called upon to raise that issue. It is said that under the proceedings taken, the patent might be declared neither new nor useful as regards respondent, and again be declared good and useful as regards somebody else. That is only to say that *res judicata* only binds the parties to the suit.

Appellants do not plead, nor do they urge in their factum, that the invention was new and useful. On this point nothing can be said. It appears Mr. Stone has disinterred from the history of dressing skins and hides, an exploded system two centuries old, for the special advantage of Her Majesty's lieges in the somewhat over-confiding Province of Quebec.

But it is said there is no proof of damage. The Court will not, in a case like this, interfere with the discretion of the Court below in assessing damages, unless they appear to be exorbitant under the circumstances, which they are not in this case. The respondent has been obliged to find funds, set agoing a business only to discover that he had purchased a troublesome suit. These damages are exemplary and they are not limited by article 1075 C. C.

As to the joint and several condemnation, we think the use of a patent for manufacturing purposes is a commercial matter.

Judgment confirmed.

COURT OF QUEEN'S BENCH.

QUEBEC, Dec. 6, 1884.

Before DORION, C. J., MONK, RAMSAY, CROSS and BABY, JJ.

LEMIEUX, Appellant, and LA CORPORATION DE ST. JEAN CHRYSOSTOME, Respondent.

Superintendent of Education—Jurisdiction.

Held, unanimously, that it is not necessary that the petition in appeal to the Superintendent of Education should contain affirmatively the allegation that the appeal to the Superintendent is authorized by three visitors, if it appear that there was such authorization. And it will be presumed the authorization existed when the sentence alleges it did, unless the fact be contradicted.

The School Commissioners decided that a school-house should be built on a particular site. The appeal was as to the site, and the Superintendent selected another site, and