

personally, and the damages were proved. The judgment would be reversed, and the action maintained for \$600 damages.

The judgment is recorded as follows :

" Considering that on the 15th of July, 1878, the respondents sold to the appellants a cargo of Welsh Anthracite coal, to consist of about 600 tons, to be shipped by sailing vessel, at the price of \$4 per ton of 2,240 lbs ;

" And considering that, according to the understanding between the parties, the said coal was to be delivered on or about the 1st day of September, 1878 ;

" And considering that the said respondents have failed to deliver the said coal as per agreement, although requested so to do, and that the appellants have thereby suffered damages to the extent of at least \$1 per ton ;

" And considering that there is error in the judgment rendered by the Superior Court at Montreal on the 31st of October, 1879 ;

" This Court doth reverse the said judgment of the 31st of October, 1879, and proceeding to render the judgment which the said Superior Court should have rendered, doth condemn the respondents to pay to the appellants the sum of \$600 of damages, with interest from this date, and the costs," &c.

Judgment reversed.

J. A. A. Belle for Appellants.

L. N. Benjamin for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, NOV. 17, 1880.

DORION, C. J., MONK, RAMSAY, CROSS, BABY, JJ.
Provost es qual. (oppt. below), Appellant, &
BOURDON, (contestant below), Respondent.

Correction of error in judgment—Costs.

By an opposition two of the three horses seized were claimed by appellant. Bourdon, the respondent, contested the opposition as to one of the animals claimed by the opposition. The judgment of the Superior Court, by error, dismissed the opposition altogether. The opposant appealed, contending that the opposition should have been maintained altogether, but in any case the clerical error in the judgment should be corrected.

In appeal the error was corrected, and each party was condemned to pay his own costs on

the appeal, the respondent not having desisted promptly from the part of the judgment which was in excess of his claim.

Judgment reformed.

Lacoste & Globensky for Appellant.

Prévost & Préfontaine for Respondent.

COURT OF REVIEW.

MONTREAL, Feb. 28, 1881.

TORRANCE, RAINVILLE, JETTÉ, JJ.

CARTER V. FORD et al.

Sureties in appeal—Tender—Costs.

Appeal from judgment (reported in 3 Legal News, p. 412), rendered by the Superior Court, Montreal, Johnson, J., Dec. 15, 1880.

TORRANCE, J. The question here is one of costs only. The defendants being sureties in appeal, and liable for costs under their bond, on the 30th August, 1880, made a tender "on condition that if the judgment rendered in the said matter be reversed, the money will be returned to them who now pay as Molson's sureties." An action was immediately taken out and the defendants pleaded an unconditional tender, and made an unconditional consignation of the money with their plea. The Court has condemned them to pay the costs of the action, and of this they complain. They had no right to attach a condition to the tender. 1 Pigeau, p. 434, and J. Palais, A. D. 1880, p. 725. Moreover this condemnation to costs was in the discretion of the Court, and we should not, in the present case, interfere with this discretion. Judgment confirmed.

S. Bethune, Q.C., for plaintiff.

E. Barnard, for defendants.

SUPERIOR COURT.

MONTREAL, Feb. 24, 1881.

Before TORRANCE, J.

ARMSTRONG V. THE NORTHERN INSURANCE CO.

Fire Insurance—Claim not made within delay stipulated by the policy.

The demand was to recover, under a fire policy, for loss by fire.

The defendant pleaded a number of pleas.

1. That the plaintiff who claimed for her absentee husband, the owner of the property, had