

is claimed for inconvenience and damages, owing to non-delivery, and the conclusions are that defendants be held to deliver, and in default to pay \$150 for value of the *manteau*, and \$100 damages.

On the 5th of February, 1882, pleas were filed by the defendants, alleging that it took time to find the necessary materials; that the dyeing took time, and failed several times; that no time was fixed for the delivery of the articles, and that the defendants offered back the *manteau* during the delays, but the plaintiff preferred to let the defendants continue to hold them; that the things had been delivered in time to serve this winter, a few days after service of the writ; that the action was malicious; that defendants were not put *en demeure* before suit; and the plaintiff had another *manteau* of the defendants all the time, and the plaintiff's *manteau*, as delivered to defendants, was not worth over \$50.

The plaintiff answered specially that a term (24th of November, 1880,) was fixed for the return of the *manteau* and the muff; that the *manteau* alleged to have been lent to the plaintiff was only a dolman, delivered about or just before, 1st January, 1881; that at the end of 1881 the plaintiff had to hire from Brahadi for the winter of the end of 1881; that defendant's plea is in several respects in bad faith; and that just before suit, there was a new putting *en demeure* of the defendant.

Even the defendant's admissions show that there were enquiries in the fall of 1881, even before—evidently about Ste. Catherine, 1881—and that plaintiff was excited about the delay. At the end of the first year the plaintiff agreed to defer till the following summer the dyeing of the *manteau*, says the witness Belair, so that during the winter of the end of 1880, and first months of 1881, the plaintiff was without grievance, and about Christmas, 1880, or before New Year's Day of 1881, the plaintiff wrote and borrowed a *manteau* from defendant. Then about Ste. Catherine, 1881, says Belair, a visit was made by plaintiff to defendant, and even then there was no promise for a fixed day. The defendant offered back the *manteau* as it was, but the plaintiff left it with defendant.

It is certain that in November, 1881, another enquiry was made, and the defendants answered that it would be delivered as soon as possible. On the 14th January, 1882, the *manteau* was de-

livered. There was no real putting *en demeure* before suit. On these facts the Court is of opinion that the plaintiff has not proved any right to have damages against the defendant as asked. It is not proved that the *manteau* was delivered to the defendant under promise by him to finish its alterations by the 24th of November, 1880; no term was ever agreed upon; and at the end of 1880, the plaintiff agreed to defer till the following summer the dyeing of the *manteau*. From Ste. Catherine, 1880, to January, 1882, though plaintiff asked for the *manteau*, no day was agreed upon for its delivery. The plaintiff might have notified the defendant and have enforced demand for delivery, but he did nothing of the kind. The action must therefore be dismissed with costs.

The judgment is as follows:—

"Considering that plaintiffs have not proved their allegations material of declaration;

"Considering that plaintiffs have not proved their right to have damages against defendant as asked;

"Considering that they have not proved that the *manteau* referred to was delivered to defendant under promise by defendant to finish its alterations by the 24th of November, 1880;

"Considering that no *terme préfix* was, ever;

"Considering that at end of 1880, plaintiffs agreed to defer till the following summer the works, particularly the dyeing of the *manteau*, fur;

"That from Ste. Catherine, 1881, to January 1882, though plaintiffs asked for their *manteau*, it was not agreed upon for a fixed day afterwards for its delivery, but the *manteau* was left with defendant without particular term fixed for its delivery back to plaintiff;

"Considering that the *manteau* has been returned to plaintiffs;

"Considering that the contract of hiring referred to in plaintiff's declaration was without fixation of *terme*, and that the plaintiffs after the contract of hiring of defendant, never intimated before this suit determination and resolution to rescind the contract, with positive demand back of the *manteau* referred to; that he might have notified of such a resolution, and made such a demand, and even enforced it before this suit, had he pleased; but he did nothing of the kind. Action dismissed.

Longpré & David for plaintiff.

Trudel, Charbonneau, Trudel & Lamothe for defendant.