PROVINCE OF LOWER-CANADA. } **Court of Appeals,**

In a Cause Between

JOSEPH FIDGET,

(Co-Defendant with LEVI CONAUT and SIMEON HASTINGS, in the Court below,)

APPELLANTS,

and

WILLIAM FRENCH,

(Plaintiff in the Court below,)

RESPONDENT.

Appellant's Case.

THIS was an action of general *indebitatus assumpsit* for board and lodging, brought in the Court of King's Bench at Montreal by the Respondent against the Appellant and the above named Levi Conaut and Simeon Hastings as co-partners in trade together.

The Respondent prayed by the conclusions of his Declaration an attachment against the goods and chattels of the Appellant and the other two co-defendants as absconding debtors, which was ordered to issue by one of the Judges of the Court below.

In virtue of the Writ which issued in consequence of this order, the Sheriff of the District of Montreal seized as belonging to the Defendants, a carding mill and a potash kettle.

Levi Conaut and Simeon Hastings made default. The Appellant appeared by Attorney and moved to set aside the attachment on the ground that the carding mill and potash kettle seized were attached to and formed part of an immoveable and that the same were the sole property of him the Appellant.

According to the practice which obtains at Montreal, under the rules there established, a day was given for evidence.

Two Notaries Public, Louis Brunette and Charles Lagoree, Esquires, and Pierre Brunette, a Merchant, were examined on the part of the Appellant, who describe fully the carding and fulling mill of the Appellant and concur in stating that the machinery for carding forms an essential part of that mill and falls under the denomination of immoveables.

Several Witnesses were examined on the part of the Respondent who state that the machinery in question might be removed without material injury; but even taking their testimony as it stands and affording to it more credit than it will probably be thought entitled to, it is apparent that the carding machinery though capable of being detached from the mill did actually and in fact form part of the mill at the time of the seizure.

Under these circumstances, the Appellant had every reason to expect that the seizure would be set aside. The Court below however by their judgment of the 20th June, 1817, ordered that the Appellant should take nothing by his motion and declared the seizure good and valid.