

No.

QUEEN'S BENCH,

IN APPEAL

LUCE CUVILLIER,
APPELLANT,

and

G. F. PROWSE,
RESPONDENT,

Appellant's Case.

PROVINCE OF CANADA,
LOWER CANADA, To Wit.

Court of Queen's Bench,

APPEAL SIDE.

LUCE CUVILLIER,

APPELLANT.

(Defendant in Court Below.)

and

GEORGE F. PROWSE,

RESPONDENT,

(Plaintiff in Court Below)

APPELLANT'S CASE.

The Respondent sued the Appellant in the Superior Court at Montreal for the recovery of the sum of £122 7s., currency alleged to be due for work and labour as Plumber and Hot-Air Furnace Maker, and materials furnished agreeable to an account produced and annexed to the Declaration and Summons.

To this action, the Appellant pleaded—*First* that the Appellant and Respondent agreed together that the Respondent should construct for the Appellant a certain apparatus called a Hot-Air Furnace and did warrant that the same should with a small consumption of fuel, heat the Appellant's Dwelling House.—*Second* that all the charges in the said account as well for work as for materials were for the construction of the said Hot-Air Furnace which the Respondent did in fact erect in the said Appellant's House.—*Third* that the said Hot-Air Furnace in question was useless and did not answer the purposes for which it was built.—*Fourth* that after the Appellant had tried to use the same, the Appellant by deed of Protest did notify the Respondent of the defects in said Furnace and require, the Respondent to remedy the said defects forthwith,—or that the Appellant would at the expense of the said Respondent take down and remove the same from out of Appellant's house.—*Fifth* that the Respondent was by law obliged to make the said Hot-Air Furnace serviceable and answer the purposes for which it was constructed.—*Sixth* that the Respondent having failed to complete and remedy the defects alluded to in the first Protest, the Appellant did on the 14th day of May 1855, further protest against the said Respondent to remove the said Furnace and that in consequence of the neglect and refusal of the said Respondent to remove the same, the Appellant did finally take down the same and remove the same from out of her Dwelling House.—*Seventhly*, that the Appellant did suffer great loss in consequence of the said Acts of Respondent caused by ignorance and want of skill of Respondent amounting to £150 currency, which amount she pleaded in compensation of any sum of money that might be adjudged due to the Respondent.—And lastly the Respondent by an incidental demand for the same causes claimed payment of the sum of £150 with interest and costs.

On

On these issues the parties went to proof and it is a fact not gainsayed by the Respondent that the Appellant after two years suffering with the smoke—besides having her Dwelling House and furniture damaged as also from the total insufficiency of the Furnace to produce even a moderate amount of heat—was finally at her own cost and expense forced to demolish and remove the Furnace from out of her House— with this fact in evidence beyond all cavil, it is certainly rather surprising that the Court below should have pronounced on the 27th February last, the following Judgment. “The Court having heard the parties by their respective Counsel as well upon the merits of the principal demand as upon that of the incidental demand made and filed in this cause—having examined the proceedings proof of record and deliberated firstly upon the principal demand and considering that the principal Plaintiff hath established in evidence the material allegations of his Declaration and that the Defendant hath failed to establish the matters and things in her pleas to the said principal demand—doth adjudge and condemn the said Luce Cuvillier to pay and satisfy to the said George F. Prowse, the sum of £100 4 6 currency being for a Hot-Air Cooking Furnace and the work and labour employed and the materials furnished in the making and putting up of the same by the Plaintiff for the Defendant—and for other articles sold and delivered by the Plaintiff to the Defendant as mentioned in the account filed, with the exception of the three last items of the said account for taking down and refixing the same, with interest upon the said sum, from the fifth July 1855, till payment and cost of suit, and the Court finally adjudicating upon the incidental demand, it is hereby dismissed for want of proof, with cost.

From which judgment the Appellant now appeals to this Court and prays a reversal thereof.

THOMAS S. JUDAH,

Attorney for Appellant.

Montreal, 18th May, 1858.