

JAMES BURNS,

Appellant,

AND

GEORGE BURRELL,

Respondent.

RESPONDENT'S CASE.

THE Appellant's Action, in the Court below at Quebec, was an Action of Debt for £90 currency, for use and occupation of certain appartments and premisses of the Appellant.

The 1st. count states the Respondent to have used and occupied the premisses for one year, at and for the yearly rent of £90.

The 2d. count supposes no stipulated rent, but avers the use and occupation for the same period, to be of the value of £90.

70 The Action was opposed by the Respondent
1st. A *Défense au fonds en fait*, containing a general denegation of the Appellant's allegations in point of fact, and 2dly. a *Perpetual Exception Péremptoire en Droit*, by which the Respondent alledges his occupation of the premisses in question, to have been in virtue of a *Notarial Lease* by him obtained from John Graves, the Appellant's Attorney, before Mr. Belanger and his colleague Notaries, according to which Lease the Respondent ought to have enjoyed not only the appartments and premisses mentioned in the Appellant's Declaration, but the whole of the house and premisses therein mentioned, for one year, at the rate of £90, and with this express condition that the Respondent, after the expiration of one year, might retain the premisses for another year, for the same price, if the Appellant should not return to Quebec, and make known to the Respondent, before the 1st. May 1816, his intention of occupying the house and dependencies by himself. The Respondent further alledges that the Appellant had neglected and refused to put him in possession of the entire premisses described in the Lease, by means whereof the Respondent had suffered damage in his trade to the amount of £300, and that the Appellant was still absent from this Province.

The Respondent also fyled an *Incidental cross Demande*, containing all the allegations of the *Exception*, and adding, as a special statement of damage, that in virtue of the Lease made to him by the Appellant's Attorney, the Respondent had himself let part of those premisses to one John Parker for one year, for £25, and that the Appellant and Graves his Attorney having refused to put the Respondent in possession, he had also failed in the fulfillment of his Lease to Parker, who had brought his action against the Respondent and recovered £25 damages, and £7 1 8 costs, which the Respondent had paid.

He alledged also that his intention was to have carried on his business of a Baker and Confectioner in the bake-house, which makes part of the premisses let to him, and that, by the Appellant's refusal to put him in possession of it, he had suffered heavy losses and sustained damage £300.

The Issues having been joined upon the *Demande* in chief, the parties proceeded to an *Enquête*, and clearly proved their respective allegations.

The cause was then heard upon the merit, and after a *délibéré*, which lasted 1st

12 copies made of the *Enquête* and *Délibéré*
Chancery

27th April 1814