

indecent books. If that had stood alone, and those damages for injury to character merely had been prayed in the conclusion, the Court would of course have known how to deal with the case: the action would then have been one for injury to character by certain means alleged, and nothing more; but I have to deal not so much with what a party says—though, of course, that is always important—as with what he asks, for that is what we have to grant or to refuse according to the facts and to the law in the particular case. Now what he asks here in the prayer or conclusion of his declaration is that the books should be delivered to him, and also that a sum of fifty dollars should be paid to him for their illegal detention—a sum not giving jurisdiction here—and no value being put upon the books themselves; and then he asks that the defendant, in default of restoring the books, should be made to pay \$102 damages; so that it is certain that the books themselves are claimed by the action, although their pecuniary value has been omitted to be claimed; and the only damages asked within the jurisdiction of this Court are undoubtedly prayed as the alternative for the books themselves not being restored.

The defendant pleaded, 1st, a demurrer, which was dismissed, 2ndly, he pleaded by exception, that he had seized and taken the books on the 28th December, as forfeited, under the Customs laws, and the plaintiff never gave any notice in writing to the defendant, the seizing officer or other chief officer of Customs, within one month from the day of seizure as required by law, that he claimed, or intended to claim them; whereby they became condemned absolutely, and without suit or proceeding of any kind, at the expiration of one month from their seizure. A third plea set up the insufficiency of the notice of action, and also a variance between the grounds stated in the action and those stated in the notice. The fourth plea was that no regular or lawful entry of these goods had ever been made; that the duty chargeable on them was 15 per cent, *ad valorem*, and was never even offered, and consequently they were taken to the warehouse, and kept at the risk and charge of the owner, and no entry having been made of them within one month they became subject to be sold. By his fifth plea the defendant alleged that these books were of an immoral and indecent character, and were prohibited by law

from being imported into this Province, and were lawfully detained, and became forfeited without process.

There were, therefore, several questions put before the Court; 1st, the demurrer having been disposed of, the same point was more properly raised by the first exception, viz., that the books being detained and seized as prohibited, became forfeited and condemned without suit, in the absence of a notice of claim within a month, under the one hundred and eleventh section of the Customs Act (40 Vic., c. 10).

I say nothing now as to whether the demurrer ought to have been dismissed or not. I have merely to deal with the exception, and I am quite clear that, whether the point, depending as it did upon allegations of fact, (and that would appear to have been the ground of the decision) was cognizable under a demurrer or not, it must be passed upon now, for this exception alleges as matter of fact that the books were detained as forfeited, and there was no notice of claim given. The words of the 111th section are, "All vessels, vehicles, goods and other things seized as forfeited under this act or any other law relating to Customs, or to trade or navigation, shall be placed in the custody of the nearest collector, and shall be deemed and taken to be condemned, without suit, information or proceedings of any kind, and may be sold," &c. &c., &c., "unless the person from whom they were seized, or the owner thereof, or some person on his behalf do, within one month from the day of seizure, give notice in writing to the seizing officer, or other chief officer of the Customs at the nearest port, that he claims or intends to claim the same; and the burden of proof that such notice was duly given in any case shall always lie upon such owner." Therefore this exception will be well founded, if these facts are true—viz., that there was a seizure, and a condemnation without any necessity of process, and if there has been no notice of claim—which the plaintiff has to show the giving of. Now both of these facts are incontestable. The proof is that no entry was ever made, because the examining officer took the books at once to the collector who refused to allow them to be entered, and ordered them to be detained, as clearly appears by the evidence of Mr. O'Hara. The provision of law which the defendant in-