

Court of Appeals.

In a Cause between

THOMAS BUSBY & al.

Appellants.

AND

ANTOINE WOGLMAN, *Executor, &c.*
Respondent.

THE APPELLANTS' CASE.

THIS appeal originates in an attachment or *Saisie-Arrêt*, sued out at the instance of the Appellants' Creditors by Judgment of the succession of A. Winklefoss, for attaching certain monies belonging to that succession, in the hands of David Ross.—Upon the return of the Writ the Garnishee declared on his oath that Woolman, the Executor of A. Winklefoss's Will, had put into his hands £810 : 11 : 6, belonging to the said succession which he still held.

The Defendant Woolman, resisted the Attachment : and by his plea contended that it had been imperfectly sued out, and could not lie, because, as Executor of Winklefoss's Will, he had been sued in the same Court by one Marie Anne La Casse, to render an account of the *Communauté* which had subsisted between the said Winklefoss and one Marguerite Richard, in which action he the said Woolman did render such account which is now before the Court, and that the said account he acknowledged to have in his hands 12,036^{liv.} : 19^{s.} : 11^{d.} which he is answerable by *Contrainte par corps* : thence the said Woolman infers the said attachment to be illegal and concludes accordingly.

To this strange plea the Appellants, without admitting the facts alleged, but on the contrary denying their truth, demurred.—After hearing the parties, the Court on the 20th June, 1812, pronounced the following interlocutor—"It is ordered that the Defendant do at his diligence, notify to all persons having any claim upon the monies attached and seized in the hands of the garnishee as belonging to the estate of the late A. Winklefoss to appear in this Court on the first of October next, and shew cause why the said monies should not be paid over to the said Plaintiffs in satisfaction of their demand, with costs." No such cause as mentioned in this interlocutor having been shewn the Appellants on the 19th of October moved the Court to award judgment in their favor against the garnishee, after a hearing, the Court to the great surprise of the Appellants, who had considered their rights recognized by the said interlocutor, dismissed their action with costs.

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