

prosecuting a claim upon the said Waters and Birnie, and the said William Young was apprehensive lest he the said Charles Stewart might obtain a judgment before himself and his partner, and this gave a priority. Under all these circumstances this deponent granted the warrant of attorney on which the judgment in this cause is founded, with a clause or condition attached thereto, that execution could issue only against the real estate of the said defendant, and on an engagement from the said William Young, that he would not cause judgment to be entered up, until there was room to apprehend, that he the said Charles Stewart might recover. Accordingly, judgment on the said warrant of attorney was not entered up until the 31th day of March, 1818. This deponent, however, still actuated by the same anxiety for the interest of his principals, and unwilling that their credit should suffer on the Island, prevailed on the plaintiffs to defer the levying of their execution, in the hope that this deponent would be able to discharge the whole debt from the moveable property in his hands. Accordingly, this deponent continued to make partial payments, and the goods at Halifax so consigned as aforesaid, of which a large proportion was yet on hand, were still slowly selling, so that in the end of August, 1819, the balance due to the plaintiffs was reduced to £709 10s. 6d. currency. The plaintiffs had then become extremely impatient for their money, and represented the inconvenience and difficulty to which the want of it subjected them. It was then proposed that a mortgage over a certain part of the property should be given. This arrangement, however, was not carried into effect; and the plaintiffs, having renewed their judgment by Scire Facias, execution was levied, August the 22nd, 1820, on the real estate, to wit, on houses and lands of the said defendant, and of the said Waters and Birnie, for the sum of £600, 11s. currency, being the balance then due to the said plaintiffs.

And the said deponent further saith, that during his said agency, to wit, from the month of June, 1816, to July, 1821, when he was superseded by John Stewart of Charlotte Town, Esquire, he, the said deponent did expend a large sum of money in improving, fencing, repairing, and building, on the said houses and lands of the said defendant and of the said Waters and Birnie, and that the said sum did exceed the balance now due to the plaintiffs as aforesaid. And this deponent further saith, that had he not expended the said sum on the houses and lands as aforesaid, he could have applied an adequate share of the said funds so expended to extinguish the debt so due to the said plaintiffs, and that the said houses and lands would consequently have been so much the less valuable at the present day. That this deponent did state the fact on this head in a letter to the said George Birnie, dated Charlotte Town, July 18th, 1818; and all his acts in so improving, fencing, repairing, and building on the said real estate are notified in his various letters to the said A. Birnie and Company, and are sanctioned and approved of by them in express terms, in their letter of the 8th of April, 1818, of which a copy is annexed as aforesaid, and marked C, No. 3.

And this deponent further saith, that at the time he resigned the said agency to the said John Stewart, various sums were due to the said Waters and Birnie for the said goods and merchandize received from the said plaintiffs, which said goods had been credited to various persons by this deponent for behoof of the said Waters and Birnie; that all the said debts were transferred along with the books and other property of the said Waters and Birnie to the said John Stewart, and were received by him as the agent of the said Waters and Birnie, and of the said Edmund Waters; that many of the said debts are good and recoverable, and that they would have been less in number and in value had it not been for the property received from the said plaintiffs, and sold by this deponent for the said Waters and Birnie as aforesaid.

And the said deponent further saith, that although the said letters of this deponent to the said A. Birnie and Company, and to the said George Birnie, and the said defendant, in which the consignment as aforesaid to the plaintiffs, the purchase from them, and the fact that a balance was still due on such purchase are stated, were transmitted by the defendant, and received at the respective dates aforementioned, the said A. Birnie and Company, or the said George Birnie, to no one part of their correspondence expressed any disapprobation or dislike of his said proceedings; but, on the contrary, in a letter from George Birnie to the deponent, dated London, September the 13th, 1817, he says, "They (meaning the said defendant and his partner) leave all matters in dispute or otherwise relative to the concern entirely to your own judgment, trusting that you will adopt such means as may be the most to their advantage." And, further, the said A. Birnie and Company, in their letter aforementioned of the 8th April, 1818, declared, that they had a high opinion of the integrity and assiduity of this deponent. That the deponent acknowledged the said letter of September 13th, 1817, from George Birnie, in a letter to the said A. Birnie and Company, of December 12th, 1817, to which last letter they wrote a reply, on the 8th of April, 1818, as aforesaid, annexed hereto, and marked C, No. 3: That extracts from the said letters of the 13th September, and 12th December 1817, are accurately copied in the paper annexed hereto, and marked F and E.

That the deponent did then, and does now, consider such expressions of the said A. Birnie and Company, and of the said George Birnie, as a virtual and implied approval of his conduct; and the said deponent believes that the disapproval which the said A. Birnie and Company have since expressed of his transactions with the plaintiffs is in truth an after-thought; and that it was suggested, not by any glaring misconduct of this deponent, nor by the original impulse of their own minds, but with the hope and design to shift off their own shoulders the payment of a debt contracted for goods which were applied to their use, and which were had and received by the deponent, with the best intentions on his part as the agent, and for the interest and behoof of the said defendant and his said partner.

And the deponent, lastly, saith, that the said consignment to the said plaintiffs, and the said purchases from them, were made by him for the sole interest and behoof of the said Waters and Birnie, and that all invoices and accounts to and from the said plaintiffs connected with the said transactions were always from the first communication thereof in the names of the said Waters and Birnie, and not in the individual name of this deponent.

(Signed) FAIDE GOFF

Sworn in Court this 4th day of July, 1822, before
(Signed) THOMAS TREMLETT,
Ch. Justice