(Reported for the Standard.)

IN THE CHARLOTTE COMMON PLEAS.

James C. Smithwick and Stetson Soule,
vs.
Wm. Curry, Cavalier H Jouett and Melatiah Calkin, Administrators &c. of Caleb Calkin Curry, deceased.

This was an action of Assumpsit brought against the Administrators of the late C. Curry for the recovery of the sum of £50 and upwards, being the amount of a Promisory Note drawn by him, and payable to the Plaintiffs.

The Administrators pleaded several pleas in defence of this action:

1st. Non Assumpsit.

2nd. Plene Administravit (that they had fully Administered,)

3rd. That there were two Judgments obtained, and then outstanding against them, that the late C. Curry owed Wm. Curry and Melatiah Calkin, two of the Administrators, the one the sum of £228 and the other the sum of £1000; and that they had only £50 in their hands unadministered, which was not sufficient to pay the judgments or satisfy the two different sums of £228 and £1000; and that they had a right to pay off the judgments and retain the said sums of money in payment of themselves as Administrators before satisfying the debt sought to be recovered in this action.

The Plaintiffs replied by joining issue on the plea of Non Assumpsit.

They replied secondly that they, (the defendants) had not fully administered; and thirdly, that they had assets in their hands sufficient to pay the two judgments and satisfy the debt due the Plaintiffs; and more, and that C. Curry did not owe either Wm. Curry or Melatiah Calkin any thing.

Upon these pleadings Notice of trial was given for the trial of this cause, in April Term last, and when the cause was called on for the trial of the same the Defendants put in a plea *Puis darrein continuance*, which plea set forth in the first place a Judgment obtained by J. & H. G. Kinnear since the close of the pleadings in this cause against the administrators for £500 and upwards to be levied of the goods and chattles which were of the late C. Curry, and which, since the pleading of a certain Plea in the said cause by the said William Curry pleaded, to wit since Michaelmas Term 1835 should come into the hands of the said Wm. Curry to be administered, which Judgment the plea further stated was entitled to a priority in payment over this debt, and that they (the administrators) had not sufficient in their hands to pay this Judgment; and then followed after in the same plea, an exact copy of the original pleadings to the end. This plea called by the defendants a Plea Puis darrein continuance being put in, and the court not having the discretionary power then to reject it, had the effect of continuing the cause over till another Term. Before which Term the plaintiffs demurred to the plea of Puis darrein continuance so put in by the defendants at the trial, alleging that the Plea was bad and insufficient on the face of it, and could not preclude them from recovering the debt, all which the defendants denied.

This demurrer came on to be argued in July Term last, before Mr. Justice M'Kay and his associates. Mr. Andrews counsel for the Plaintiff's, Mr. Jack and Mr. G. D. Street for the Defendants, and the grounds insisted by Mr. A. as to the insufficiency of the said plea were as follows:—

1st. That the Defendants had pleaded the same matters puis darrein continuance which they had previously pleaded in bar, and that matters puis darrein continuance could only be pleaded as having arisen since the last continuance, whereas in the case before the Court, they had been pleaded as having arisen before.

2nd. That as this action could only have been sustained upon the ground that the Defendants had assets in their hands sufficient to cover the Plaintiff's demand at the time of the exhibiting of their bill to wit on the 8th Dec. last, the Judgment of assets quando accederent as pleaded puis darrein continuance could be no answer, inasmuch as by that plea it appeared uncertain whether that Judgment did in fact affect assets before or after that time, and that the plea upon that ground was void for its uncertainty.

Mr. Andrews in support of the Demurrer upon the 1st ground stated that from the very name of the plea itself (the words puis darrein continuance, meaning since the last continuance) it was obvious that such a plea could only embrace such matter as had arisen since the last continuance, that is, since the pleadings were closed in the cause and that the object of that plea was merely to give a party the benefit of a defence arising to him since issue joined; such as a release, a bankruptcy &c. That a plea puis darrein continuance was in all cases a waiver of the former pleadings, and that a party by adopting such a plea voluntarily abandoned his previous pleadings, and rested his case upon the matters contained in his plea of puis darrein continuance as the safest defence of the two. After reading a number of authorities in support of these points, it was contended that the plea was bad upon the first ground, because it contained the very same matters that had been previously pleaded.

Upon the second ground it was contended by the counsel for the plaintiff that as the Judgment set forth in their plea was a judgment obtained in February last, and as the judgment itself was of a peculiar kind, only binding assets from a particular time, that the time when the judgment did in fact take effect upon the assets in the hands of the defendants ought to have been stated with certainty so that it might have appeared to the court, that the assets were bound by the judgment previous to the exhibiting of the Bill of the plaintiff's in this cause to wit previous to the 8th Dec. last; for as this action at the time of the filing of this plea rested solely upon the principle that the defendant's had assets in their hands sufficient to pay this debt unadministered upon the 8th Dec. the judgment of J. & H. Kinnear could not have interfered with the plaintiffs in this cause at all, unless it was clearly shewn by the plea that the judgment did actually bind the assets which were in the hands of the administrators before or at that period. That the plea of puis darrein continuance stated that the effect of this judgment was to render the goods and chattles in the hands of the administrators liable only from the pleading of a certain plea by Wm. Curry pleaded in that cause, it was necessary that the precise time when that plea was in reality pleaded should have been shown; that so far from stating that important point with any accuracy, the plea of puis darrein continuance set forth the plea so pleaded by William Curry, to have been pleaded since Michaelmas Term which might have been any time between the 17th Oct. and the 6th February last, and therefore it did not appear but that the judgment took effect upon assets in the hands of the administrators only from a very recent period, possibly so late as the beginning of February. Whereas it was incumbent upon the administrators to shew that the Judgment bound property in their possession before the 8th Dec. as in that case only could the judgment be even in part a defence to this action. That upon this ground also the plea was bad that part of it relying to the Judgment being utterly void for its uncertainty.

It was then contended by the counsel for the plaintiffs, that if this plea was defective only as to one part of it, but that such defective part vitiated and destroyed the whole plea so that the Plaintiffs were entitled to judgment if the plea was bad as to either of the grounds, though good as to the other, and upon these points a number of authorities were cited.

Mr. Jack and Mr. G. D. Street, Contra.

They contended that the objections to the plea of puis darrein continuance did not come in a proper form before the court; that the plaintiff's should have demurred specially, and in the demurrer set out at length and with particularity the different defects in the plea demurred to. That an Executor or Administrator had a right to plead a judgment recovered puis darrein continuance if recovered after the last continuance as in this case, and that therefore the plea was good as to the judgment; and that a plea of puis darrein continuance was only a waiver of former pleading when it contained matter inconsistent with it, that in this case there was no inconsistency with the pleas by them previously pleaded, but were in point of fact consistent and the same and a case in 3d Modern Rep. was read to support the doctrine. Mr. Andrews in reply said that demurrers were either general or special, general when they go to the substance, and special when they point out the defect. That if in this case a general demurrer was correct, because it was not to the form of the Defendants plea that the Plaintiffs objected but to the whole entire substance, and that therefore the defendants could not sustain their plea upon that ground. That although an Executor or Administrator could plead a judgment obtained against them after the last continuance in a plea of puis darrein continuance yet a judgment so pleaded must be shewn in the plea itself to be such as would afford a defence to the action which was not the case with the judgment as pleaded by the defendants; and that as to the argument that a plea puis darrein continuance, was only a waiver of former pleas when it contained matter inconsistent with them, it rested entirely upon the assertion of the Defendants counsel as the case cited by them in 7 Modern Rep. was not an authority to support any such doctrine.

That was an action brought against an Executor, who pleaded that he had recovered a judgment and that he had no assets *ultra*, to which the plaintiff replied that he was Executor *de son tort*, and then the defendant pleaded puis darrein continuance that he was administrator, and to this plea as administrator the plaintiff demurred. Therefore in this case there was no repleading of former pleas, the defendant only pleading that he was administrator, a plea not pleaded before, and in this very case Chief Justice Lee says, "If this were a matter (meaning that the Defendant was Administrator) existing at the time of the first plea it could not be pleaded after the last continuance, but in the case now before the court, the whole substance of the plea of puis darrein continuance word for word is precisely the same as the pleas before pleaded, with the addition only of the judgment alledged to have been recovered by J. & H. Kinnear; the entire plea is consequently defective and void and judgment must be given for the Plaintiffs, and of this opinion were the whole court. Judgment for the Plaintiffs.

Communications.

FOR THE STANDARD.

To JOHN HOOPER Esquire, Editor of the British Colonist,

"John," my dear fellow,

It would seem that my accidental allusion to you, in a letter to the Editor of the Standard, has put you a little out of humour. The truth is, John, that you and I are the best personal friends imaginable, what little difference there is between us is merely political, and knowing this, I am astonished to see you in any degree offended by little more than a base reference to your name. I assure you, John, I was led into this difficulty by the *candid* and *logical* remarks published by you on the sitting of the Delegates, as your readers found themselves unable to finish a School House then in progress, so that I made a new engagement with the people of a vacant district in the Parish of St. James; began the school, and sent notice thereof, with a copy of the contract, to the Rev. Mr. McIntyre, one of the Trustees. In reply I received a letter from that gentleman declining all notice of me as a public School Mistress. My employers were astonished at this new and unexpected difficulty, and sent an humble petition to the Trustees, begging the hitherto undisputed privilege of hiring any licenced teacher duly qualified for the service intended—"vanity all, and vexation of spirit"—the petition was answered by another peremptory refusal. The demon of strife now began to show itself, and the expressions of "obstinacy" "infidelity" "tyranny" "atheism" "intolerance" "bigotry" &c. were running through the country; some appeared sorry and some angry, but in the mean time I taught as fast and well as possible, still hoping for the best.—Winter passed away and the people got up two petitions to the April Court at St. Andrews one of which stated in full, what I have here done concisely, and prayed that their Worships would so order matters as to extend the benefit of the School Laws to the district where I was teaching; the other complained that the Trustees had drawn £20 from the Treasury, and paid it to a man in the Parish as a bounty for teaching a school one year, where no school at all had been taught, both tending to impress the Court with an idea, that if the Trustees had not broken the law, they had, at least, given it a very unexpected twist, in paying the public money where none was due, and in endeavouring to withhold it where the usual requirements of the act had been fully complied with. These petitions were accompanied with copies of the applications to the Trustees and their answers, and put into the hands of a Magistrate to be presented. Session business being put off to a late period of the sittings, the papers were handed to another Magistrate, who forgot to present them; and there the business stands.—Two of the late Trustees have been discontinued, but the most influential of the three, Mr. McIntyre, is still in office, and as determined and inflexible as ever. Their conduct to me and my employers may be *legal* for aught I know—it is certainly unusual and oppressive; for I ought either not to be allowed to teach at all, or, being allowed to hold my licence, ought to be entitled as well as others, to the public allowance. The other transaction speaks for itself, and it must be the duty of some one or other to see the money refunded to the public at least.

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Your Obedient Servant,
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St. James 25th July 1836.

The Saint Andrews Standard.

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FOR THE STANDARD.

To the EDITOR OF THE STANDARD.

SIR,—I am a politician of the olden school, and have not yet learnt to truckle to the tergiversation of the present day. It was not our wont to cower before the Majesty of the multitude, when our better judgement directed the poisonous fever that demagogues were fatally diffusing through the body politic nor were we ashamed to avow our convictions, or afraid to come forward and maintain them. I disdain weak measures, and turn away from every thing like timidity, when a bold, blunt, honest avowal of opinion is necessary. Were I one of those who signed the anti-delegation address which has provoked the bile of *the Tee* "Clodpoles," I would call loudly for its publication. Why should a document which professes to be an emanation from the public, be screened from inspection, and kept in a dark drawer, the buggaboo of a little knot of tories? I have not seen this notable address but from what we have been told of it, I should have signed it, if I had been afforded an opportunity of doing so. Allow me to remark that mystery awakens suspicion, distrust begets fear, enmity ensues, and the vilest passions of our nature are brought into action; which however can easily be prevented by plain, straight forward, open dealing. I would not give the knuckle bone of *palpable concealment and apparent apprehension* for the grievance mongers to gnaw and growl over. I would never shrink from laying before the public what I had signed to be laid before the minister. Yours,

25th July 1836. OPINER.

FOR THE STANDARD.

MR. EDITOR,—Every one is not aware of the effect of public opinion; and few fully appreciate the value of an independent press.—Crooked indeed would be the conduct of some of our men in office were this salutary corrective put to silence, but where it is permitted freely to discuss and examine the public conduct of all in authority, whatever the form of government may be, there is a great degree of liberty, public security, and individual safety.

Sir, the writer of this is a woman holding the humble, yet important situation of a public School Mistress, whose present standing and future prospects, with the interest and welfare of the Parish, are likely to be deeply affected by the conduct of some of the public officers; which she will endeavour to make appear in the following brief "unvarnished tale."

I am a native of St. Davids, in this county. Amid the buffetings of fortune I contrived to pick up a smattering of Parish-school knowledge, and a year ago was quietly teaching a score and a half of urchins in a room in my grandfather's House, when in an evil hour my employers called the Trustees to examine the school and requested me to get a licence. The school was inspected, approved of, and a licence obtained. On the setting in of the winter, my employers found themselves unable to finish a School House then in progress, so that I made a new engagement with the people of a vacant district in the Parish of St. James; began the school, and sent notice thereof, with a copy of the contract, to the Rev. Mr. McIntyre, one of the Trustees. In reply I received a letter from that gentleman declining all notice of me as a public School Mistress. My employers were astonished at this new and unexpected difficulty, and sent an humble petition to the Trustees, begging the hitherto undisputed privilege of hiring any licenced teacher duly qualified for the service intended—"vanity all, and vexation of spirit"—the petition was answered by another peremptory refusal. The demon of strife now began to show itself, and the expressions of "obstinacy" "infidelity" "tyranny" "atheism" "intolerance" "bigotry" &c. were running through the country; some appeared sorry and some angry, but in the mean time I taught as fast and well as possible, still hoping for the best.—Winter passed away and the people got up two petitions to the April Court at St. Andrews one of which stated in full, what I have here done concisely, and prayed that their Worships would so order matters as to extend the benefit of the School Laws to the district where I was teaching; the other complained that the Trustees had drawn £20 from the Treasury, and paid it to a man in the Parish as a bounty for teaching a school one year, where no school at all had been taught, both tending to impress the Court with an idea, that if the Trustees had not broken the law, they had, at least, given it a very unexpected twist, in paying the public money where none was due, and in endeavouring to withhold it where the usual requirements of the act had been fully complied with. These petitions were accompanied with copies of the applications to the Trustees and their answers, and put into the hands of a Magistrate to be presented. Session business being put off to a late period of the sittings, the papers were handed to another Magistrate, who forgot to present them; and there the business stands.—Two of the late Trustees have been discontinued, but the most influential of the three, Mr. McIntyre, is still in office, and as determined and inflexible as ever. Their conduct to me and my employers may be *legal* for aught I know—it is certainly unusual and oppressive; for I ought either not to be allowed to teach at all, or, being allowed to hold my licence, ought to be entitled as well as others, to the public allowance. The other transaction speaks for itself, and it must be the duty of some one or other to see the money refunded to the public at least.

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many, especially among the po
it grateful remembrance the w
Mrs. Marks.—Her benevolenc
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Shipping Jo

PORT OF SAINT

ARRIVED.

July 25, Sch. Wm. Walker, B
merchandize, m
— Brig Recovery, Cun
74 passengers.
— Bqe. Royal William
Whaling Voyag
Oil, 120 Sperm
bone.
— Sch. Rover, M'Rae, I
— Ship Mary, Johnston
— Brig Barbara, Bowan
J. Allen & Sow.
27, Bqe. Matilda Lucki
York, James Ro
28, Bgn. Emeline, Morre
18 days F. H. T
ports the Sir John Moore, and
in a few days.

CLEARED

July 22, Brig Walsingham, W
ter.
— " John & Mary, I
25, " P. I. Nevins, Br
27, Sch. Wm. Walker, I
Lumber.
28, Bqe. Eliza, Davison,

FLOUR

JUST received from Ne
"Mary Elizabeth" via Ea
50 Barrels and half bar
Rye flour.
10 Kegs Soda Biscuit,
10 doz. best Corn Bro
J.
July 27th, 1836.

BAN
OF BRITISH NORT
CAPITAL £1,000,0
In 20,000 shares of £50 each,
have been Subscribed in
remainder are reserve
nies, if with consent
the Capita
London Dir
GEORGE DE BOSCO ATT
EDWARD BLOUNT, ESQ.
ROBERT BROWN, ESQ.
SIR ROBERT CAMPBELL
ROBERT CARTER, ESQ.
WILLIAM ROBERT CHA
JAMES JOHN CUMMINS,
JAMES DOWIE, ESQ.
OLIVER FARRER, ESQ.
ALEXANDER GILLESPI
WILLIAM MEDLEY, ESQ
WILLIAM PEMBERTON
GEORGE RICHARD RO
JOHN WALDRON WRIG

The rapidity with whic
American Colonies have r
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adequacy of the capital al
Banking operations, and
cility of intercourse with t
point out the different sec
North America as affordin
the profitable employmen
which purpose, and with
the Mercantile and Agric
the Colonies, the present
established.

The management of th
is vested in the London C
and the Banks in the Col
ducted by local Boards a

A general meeting of
to be held yearly in London
ment of the Company's a
mited.

Power has been reserve
apply for, and accept on t
lishment, a charter of inc
Parliament.

A Deposit of £10 sterl
paid within a period to b
ter of allotment, at the rate
in fixed, and the deed of se
ed at the time of paymen

After payment of the D
der of the Capital will be
ments not exceeding £10
at such intervals (of not less
as the Directors may find
the objects of the Bank
which due notice will be g

The undersigned, com
sent the Court of Directo
to visit the several Colon
putting the affairs of the
tion, hereby gives notice
dy to receive and conside
persons resident in the
Brunswick, who may be
ing Shareholders in the C
Company, addressed to hi
at St. John, on or before
tember next.

ROBE

New York, 14th July,

FORM OF APPL

To ROBERT CARTER Esq., P
SIR,
I request
me
Bank of British North
hereby engage to pay t
sterling each, upon so m
as you may allot to me, a
rate of Exchange to be s
ter of allotment; and at t
ecute the Deed of Settle
I am, Sir,
Your Obe
Signature at length,
Place of abode,
Date.
ALL LETTERS MUST

Original issues in Poor
Best