

The objection, in point of Law as to the sufficiency of the bond and declaration having been over-ruled on argument, *preuves respectives* were ordered with regard to the matters of fact in the pleadings and the cause accordingly came to trial on the merits.

*The merits of the case as appearing from the evidence, in addition to the general nature of it already stated, were as follows:*

The Plaintiff was the master of the Ship *Mary*, of Greenock, which was consigned to Rogerson, Hunter & Co. of Quebec, in 1814, captured on her voyage by an American privateer and afterwards recaptured by the officers and crew of that ship, for salvage on such recapture. On this occasion a commission of appraisement having issued at Halifax, on the petition of Moore, the master, and security having been given, in pursuance of an offer for that purpose made by him, for the appraised value of the ship and cargo, she was of course restored to him, and sailed for and arrived at Quebec, which was her original port of destination. The appraised value of the ship was £3000, and that of the cargo £11,870. 10s. making in all the sum of £14,870. 10s.

The salvage decreed was an eighth of the value, making £375 for the vessel, and £1483 6s. 3d. for the cargo.

These two sums, together with the costs, were as it seems afterwards paid to Mr. Grant, the Registrar of the Court of Vice-Admiralty at Halifax, by Messrs. Forsyth, Black and company of Halifax, the latter of whom had become surety for both ship and cargo on the petition of the Captain,—see A. No. 4, of the proceedings in the Court of Vice-Admiralty at Halifax, annexed to No. 31, in the Record.

With regard to the motives of the Defendants for giving the bond in question, they were sufficiently obvious. It was done for the purpose of obtaining possession of the cargo at Quebec, which was accordingly immediately delivered over to them as is stated in the evidence of Mr. Burnett and others, see No. 24, in the Record.

The allegation with regard to the deterioration of the value, respecting which however there was nothing adduced to the satisfaction of the Court, appears to have nothing to do with the matter at present in question. The business between the Plaintiff and the Defendants on his arrival at Quebec, was simply as follows. The Defendants being the consignees of the cargo, wished to have it delivered up to them. The Plaintiff had already given security at Halifax, for both ship and cargo, and was therefore liable for such salvage, as might ultimately be awarded to the officers and crew of the *Martin*, as chargeable on either the one or the other; but as he had no interest in the cargo, he had of course no objection to deliver it to the Defendants, on their giving him their bond to pay the amount of all the demands which might thus be made upon it; by which alone he and his owners could be indemnified or safe in so doing. They accordingly give this bond and the cargo is consequently delivered to them. The Cause at Halifax proceeds, and a sum of between fifteen and sixteen hundred pounds is awarded against the cargo, viz. £1483 16s. 3d. besides a proportional part of the costs which amounted to upwards of £150; and this sum it appears is accordingly actually paid by Mr. Black, who had become surety for both ship and cargo, in conformity to the offer made by the Captain in his petition.

The payment of this money is therefore the claim made by this action, and it does not appear that it would be easily possible to assign a case in which there could be less doubt or difficulty with regard to the justice and propriety of the demand.

With regard to the pretext on the part of the Defendants, that their obligation was contracted merely in the capacity of agents or sureties for others, the answer is that in every case in which a man enters into a solemn contract, by specially, positively stipulating for the payment of a sum of money or the performance of any other act whatsoever, it matters not whether he has entered into such a contract for his own benefit or advantage solely or as agent or surety for another, nor does it signify so far as may relate to the matter between himself and the party with whom he contracts, (though it might perhaps have some operation with respect to others by whom he might afterwards be to be indemnified) whether he choose to state the grounds on which he may hope for such future indemnity or not. The Court therefore gave Judgment in this case according to the stipulation in the contract,—in conformity as it is humbly submitted to a concurrent series of authorities to the same effect.

It will be perceived on looking into the sum awarded to the Plaintiff by the Judgment that the portion of it which exceeds the £1483 16s. 3d. originally adjudged for salvage of the cargo by the Court of Vice-Admiralty is, from some error in the figures, between 50 and £60 less than the proper share of the costs, the whole amount of what he is entitled to bearing as we humbly conceive the same proportion to £1991. 10s. (the whole sum paid by Mr. Black) as £11870. 10s. the value of the cargo bears to £14,870. 10s. the whole value of both ship and cargo and which amounts consequently to £1582. 11s. 8d. instead of £1517. 6s. 3d. the sum actually given by the Judgment.