

all his proceedings, as their and the defendant's said Agent, and in particular of the transactions out of which the claim of the plaintiffs in this cause arose; and that the said A. Birnie and Company, or the said defendant, never expressed to this deponent any disapprobation thereof.

And this deponent further saith, that on undertaking the said Agency he received from the said William Preece the stock on hand, of which the estimated value was about £20,000 currency, and which this deponent took into his possession; but he did not narrowly examine the same, nor did he ever at any time open some of the packages in which part of the said goods or stock, and in particular certain articles of furniture, were contained. That the said stock did consist chiefly of the remains of most extensive importations for the seven preceding years, amounting to upwards of £80,000 sterling; and the greater part of which said remains, or stock, was quite unsaleable on this island: the articles were mostly unfashionable, and such as were not usually consumed by the inhabitants of this island. This deponent doth therefore verily believe, that many of them could not have been sold on the said island for ready money, at one third part of their estimated cost; and that no person worthy of credit would have bought at a price at all adequate to the value at which they were stated. This deponent having made himself acquainted with these facts, and being sincerely desirous to promote the interests of the said defendant and his said partner, did therefore determine to consign part of the said stock to the plaintiffs in this cause, then carrying on business in Halifax, Nova Scotia, under the firm of John Young and Company, being led to believe that the said goods, which consisted mostly of silks, fine kerseymeres, silk velvets, a peculiar kind of indigo, and rich noyau, would sell to better advantage in that more extensive market than in Charlotte Town. The invoice of the whole consignment amounted to £1179 5s. 8d. currency. This deponent notified the said A. Birnie and Company, that he had so consigned the said goods, in his letter to them of the 10th September, 1816, and that he had forwarded the same for the purpose of exchanging them for articles saleable in this market; that they had all arrived safe at Halifax, and that he, this deponent, purposed following them in a few days from the date of the said letter, and doing all he could for the interest of the said defendant and his said partner. Accordingly this deponent did proceed to Halifax, and there purchased various goods to a considerable amount from the said plaintiffs in this cause; as also certain sugars and rum from the house of Moody and Boyle, before the packages containing the said goods, so consigned as aforesaid, had been opened at Halifax, or any sales effected of the same. This deponent bought the said merchandise from the plaintiffs, in the belief that the proceeds of the sales of the said consignment, with such partial remittances as he could easily make from Charlotte Town, would pay off and liquidate the said debt so contracted with the said plaintiffs; and that in effect he was merely exchanging one class of property for another, highly to the benefit of the concern, and in strict accordance, as this deponent had every reason to believe, with the interest and views of the said defendant and his said partner. And this deponent doth further say, that had the goods so consigned been sound and of fair quality, and had the sales met the just expectations of the said deponent, the balance of £571 6s., at this day due to the plaintiffs in this cause, would not have existed; and that the same does therefore wholly arise from the disappointment experienced in the said sales, for on opening the said goods at Halifax, as this deponent has been informed and verily believes, the kerseymeres and silks were found to be materially stained, and injured by moths and damp; the consequence of long keeping; the indigo was pronounced of a kind little used in Nova Scotia, therefore of slow and precarious sale; and the noyau, although of excellent quality, was invoiced at a price extravagantly dear. The said John and William Young, the plaintiffs in this cause, had promised the deponent that they would spare no exertion to make the most of those goods; and this deponent hath been informed and doth verily believe, that the said plaintiffs tried them at various times at public and private sale, after this deponent had left Halifax with his said purchases from the said plaintiffs; and that for such of them as were disposed of towards the close of 1816, and during the year 1817, and afterwards, until the sales were finally closed in August, 1820, the said plaintiffs did obtain the best prices which could be had or gotten for the same, and which were duly carried by them to the credit of the said Waters and Birnie, in pursuance of their original promise and agreement with this deponent; besides, certain furniture in cases as aforesaid, which was represented in Mr. Preece's invoice to this deponent, and by this deponent to the said plaintiffs, as of great value and of a rich and fashionable finish, turned out, on being examined at Halifax, as this deponent has been informed and believes, to be old, partly broken, and deficient in quantity; consequently the sales of this one article alone fell far short of the sum which this deponent, when he made the said purchase from the said plaintiffs, had a right to expect. And this deponent doth further say, that he acquainted the said A. Birnie and Company with the said purchase and transactions in his said letter aforesaid, dated at Halifax, October the 5th, 1816; that he alluded to the same again in his letter of December the 5th, in the same year: that in another letter, bearing date Charlotte Town, December the 12th, 1817, he regretted that he had not been able to make such remittances to Halifax, for the goods had from thence, as he could have wished, and had to make up a considerable balance therefore in the spring; that the said letter was acknowledged to be received by the said A. Birnie and Company, in their letter annexed hereto, and marked C, No. 3, and dated April the 8th, 1818. That this deponent did besides, in a letter to George Birnie, dated Charlotte Town, September the 15th, 1817, state that there was much difficulty in making remittances to Halifax for goods received the previous fall (or autumn); and in another letter also to him, dated Charlotte Town, July the 18th, 1818, this deponent mentioned the loss incurred on the sales of the said consignment, and that the noyau and indigo remained still on hand; and further, that balances were due on the goods received from Halifax, which would take a length of time to extinguish. All the paragraphs from the several letters are accurately copied into the annexed paper marked E.

And this deponent further saith that William Young, one of the plaintiffs in this cause, came in the end of October, 1817, to Charlotte Town, when the sales of the consignment up to that time being exhibited, a balance was settled and struck; and the sum of £1438 12s. 9d. currency was found to be due to the said plaintiffs from the said Waters & Birnie. The said William Young finding that this deponent, as the agent of the defendants, had no tangible funds at that time to meet so heavy a claim, was desirous that the ultimate safety of the debt at least should be secured, he expressed a resolution to have a judgment against the said defendant and his said partner, with that view. And this deponent saith, that he verily believes he could not have opposed any just defence to an action by the said plaintiffs, as the goods sold by them to the said Waters and Birnie had been received and delivered to the use of the said Waters and Birnie: many of them had been sold, and a large part were then in the stores of the said Waters and Birnie. The said plaintiffs must, therefore, have procured a judgment against the said defendant and his said partner, and might have issued execution against the personal estate of the said defendant and his partner, to their great loss and injury. Mr. Charles Stewart, of Prince Town, in the said island, was also at that time