

2315 money then due or to grow due or owing unto them in and by virtue of the said charter party. And also a certain policy of insurance made and entered into of and upon the said brig.

It was only on or about the 20th June 1818, that this vessel arrived at the port of Quebec, for on that day differences having arisen between the parties, a protest was served upon Mr. Jones, calling upon him to discharge the cargo.

On the 22d. of the same month, Mr. Lagueux drew a bill upon Mr. Jones for a sum of £600, which, (the differences between them respecting the charter party not having been settled,) was not accepted.

On the 24 August following, Mr. Lagueux instituted his action.

The declaration in the cause states that the above in part recited charter party, was made and entered into by and between the said Louis Lagueux the younger and William Grant, of the one part, and the said John Jones, of the other part, that le dit vaisseau auroit, à tems requis et suivant les circonstances du tems et de la navigation, fait le dit voyage, et auroit, par l'ordre du dit John Jones, délivré sain et sauf, dans le port de Québec, dans le cours de Juin dernier, toute la cargaison mise à bord par l'ordre du dit John Jones dans les isles, et que les dits locateurs auroit de leur part entièrement accompli toutes les obligations convenus par l'acte de charte partie susdit. The Respondent proceeds to state, that le vingt-huit Février mil huit cent dix-huit, par acte passé devant Mtre. Glackmeyer et son confrère Notaires à Québec susdit, les dits William Grant et Louis Lagueux fils auroient vendu au dit Louis Lagueux père, demandeur en cette cause, à ce présent et acceptant le dit brig Adeona avec tous les agrès appareux, tel qu'il étoit lors du dit acte à Halifax, avec ensemble tous les profits faits et à faire, échus et à échoir, et généralement toutes espèces de dettes, actions alors dus et qui pourroient devenir dus aux dits William Grant et Louis Lagueux fils, pour le dit vaisseaux sur le dit voyage.

The declaration concludes for the sum of £600 and 25s. costs of protest.

To this declaration the Appellant pleaded the general issue, and thereby put it upon the Plaintiff to prove the substantial averments contained in his declaration.

The Appellant anticipated that the master or mate of the vessel would have been produced by the Respondent to establish these facts, and he was satisfied that whoever of the ship might be produced, it would be in his power upon the cross-examination of them to shew that the contract had not been fulfilled on the part of the Respondent.—This anticipation was not realized; and strange to say neither the master, nor mate, nor super-cargo, nor any other person having a knowledge of the cargo was produced by the said Respondent.

To establish the total insufficiency of the evidence offered on the part of the Respondent in the Court below, the best course will probably be to state, what by law he ought to have proved and next what he has proved.

He ought to have proved,—1. The execution of the charter party.

2. The fulfillment of the covenants on his part contained in the same and herein:

1. That the vessel took in a cargo of the Appellant and sailed to Barbadoes or the Islands of Leeward.

2. That she delivered her cargo there.

3. That she took in a return cargo at the port of discharge.

4. That she delivered the whole of her return cargo at the port of Quebec.

3. That the vessel and her freight had been as averred in the declaration lawfully assigned and made over by Louis Lagueux the younger and William Grant to the Respondent.

The charter party proves itself, it being a notarial instrument.

Upon the second head the Respondent's evidence is insufficient,

He has, it is true, proved that the vessel took in a cargo at Quebec for Barbadoes, but he has not proved that that cargo was delivered.