

plied that the sleighs must stop, that the gentleman could return with the witness to St. John's, and that if his pass were a good one, he might proceed; that five or six stout men (apparently Americans) then said to the gentleman "Damn it we are not afraid of five or six men, they cannot stop us"; that the witness then ordered his men to load and fix bayonets, and obliged the drivers, (some of whom had run away, but afterwards returned) to take the sleighs back to St. John's, where the bales were deposited with the defendant Mr. Lindsay.

*Theobald Schriever*, corporal in the De Meuron, deposed to the same effect as the last witness, and stated further, that the gentleman alluded to in the last deposition, wished the soldiers to drink with him, and was very significantly rattling money in his pocket while in conversation with the Serjeant.

*Joseph Colbath* stated that he was a prisoner of war at Green Bush, in the State of New-York, in December, 1814; that he begged to be allowed a blanket, and heard the American soldiers also asking for blankets; that he was not able to procure one, but that he afterwards heard some American officers say that they had no blankets for their own men, but that they expected some from the North, which the witness understood to mean from this Province; that he afterwards made his escape and gave information of this conversation.

*Samuel Gelston* was called by the Plaintiff to speak to the value of the goods.

On his cross examination he said that he kept a wholesale and retail store at Missisquoi Bay; that he had no knowledge that the Plaintiff had a Store at that time, (December, 1814); that woollens to any amount could have been sold there, if to the extent of 100 bales; that they would have been undoubtedly sold to go to the United States then at war with Great-Britain; that in taking out goods for Missisquoi Bay, he always proceeded by the direct road to the port of St. John's, and when necessary, from the nature of the goods, obtained a permit from the defendant; that there was a demand for woollens in the United States, and that woollens brought a greater profit there than here; that the distance from Missisquoi Bay to the States is one mile and a half, and that woollens, once at Missisquoi Bay, could in a short time and with great ease be taken into the States.

The Court of King's Bench, after hearing the parties, gave judgment on the 20th June, 1817, in favour of the Plaintiff's action, but without costs, there being probable ground for seizure, and dismissed the intervention; to reverse which judgment, the present appeal has been brought on the part of the Crown.

Quebec, 11th November, 1818.

*Attestant's Sec*

*Robert Smith*

*and*

*John*

*James of Mass*