

It is to be observed that by a mere clerical error in the respondent's exception and defences, the Judgment is expressed to have been obtained, and the assignment to have been made by *John Jones and Thomas White*, whereas *Joseph Jones & Thomas White* are intended to be named, but those instruments are otherwise sufficiently designated *the Judgment and Assignment mentioned in the Appellant's Declaration*.

Furthermore the appellant, by traversing material facts, stated in the respondent's exception, has admitted their applicability to the Judgment and Assignment, upon which his action was founded. This he did by his replication, in which he alleges that the said *Thomas Aylwin, John Harkness* and the Respondent *Austin Cuvillier* were, at the time of service of Process in the said cause, wherein Judgment was rendered against them, *as mentioned in the Declaration*, copartners, at Quebec, there trading under the Name and Firm of *Aylwin, Harkness & Company*, and that the said Partnership was not dissolved on the 14th October 1806, nor at any time before the rendering of the said Judgment.

It was upon the appellant's own motion, (No. 26 of the Record) that the parties were, on the 6th April last, ordered, without any preliminary hearing, to proceed to the adduction of proof upon the issue raised by the pleadings upon the respondent's exceptions and defences.

The Respondent proved by witnesses, heard in Court, that from the year 1805 to the time of taking the Enquête, he had been constantly resident and domiciliated at the city of Montreal.

Every partnership between *Cuvillier, Aylwin & Harkness* was also proved by the defendant's exhibit, No. 18 of the Record, to have been dissolved on the 14th October 1816.

It was incumbent on the respondent to establish the remaining matters of exception, which he had pleaded, and this the respondent has done by submitting to the appellant certain Interrogatories on *Faits & Articles*, which were duly served upon him at Boston in the United States of America, in virtue of a Commission in the nature of a *Commission Rogatoire*, but to which the appellant having neglected to answer, they were afterwards taken against him *pro confesso*.

These *Faits & Articles* establish :

1° That during the year 1807 and during the month of February of that year, the respondent actually resided at the city of Montreal.—(4th Interrogatory.)

2° That the assignment of 29th of July 1813, was made in consideration of £50.—(5th Interrogatory.)

3° That prior to the assignment, several sums of money had been paid by *Thomas Aylwin* unto *Jones & White*, on account of the Judgment stated in the declaration.—(6th Interrogatory.)

4° That the said assignment had been made to the appellant for the use of *Thomas Aylwin*.—(7th Interrogatory.)

5° That the sums paid as a consideration for the assignment were the monies of *Thomas Aylwin*.—(8th Interrogatory.)

6° That the sums paid as such consideration, were not of the appellant's monies or property, that the appellant has no interest in recovering the money by him demanded, and that *Thomas Aylwin* was the only person having such interest.—(9th Interrogatory.)

7° That the appellant is uncle of *Thomas Aylwin*.—(11th Interrogatory.)

8° That the money mentioned in the assignment, has been paid by *Thomas Aylwin* unto *Messrs. Jones & White*.—(12th Interrogatory.)

10° That the appellant's name is made use of in the assignment at the request of *Thomas Aylwin*.—(14th Interrogatory.)