PROVINCE OF LOWER-CANADA.

COURT OF APPEALS

IN A CAUSE Between

JOSEPH LEGER dit PARISIEN,

(Defendant in the Court below,)

APPELLANT,

and

WILLIAM M'GILLIVRAY, and others,

(Plaintiffs in the Court below,)

RESPONDENTS.

CASE OF THE RESPONDENTS.

THE declaration in this cause is in general *indebitatus assumpsit.* It contains two counts; 1. The three money counts in one. 2. On an *insimul computassent.*

The Defendant in the Court below pleaded:

1. *Non assumpsit.*

2. That the several sums of money in the supposed promises mentioned (if any such were paid to him which the Defendant did not admit) laid out for or lent were not advanced to him the said Defendant, but were paid to him the said Defendant for the purpose of affording him the means to withdraw himself to prevent disclosures respecting certain crimes and offences committed in the Indian Territories, in North-America, to the disclosure and prosecution of which the presence of the said Defendant should have given occasion; and as a consideration and in order to induce the said Defendant to withdraw and absent himself from this Province.

From the evidence in the cause it appears that the Plaintiffs are the Agents and Factors of a Commercial Company, composed of numerous individuals, and known by the name of the North-West Company.

That the Plaintiffs carry on trade at Montreal, under the name of M'Tavish, M'Gillivray & Co.

That they are in the habit of engaging canoe-men, to be employed in the service of the North-West Company for the conveyance of goods from Montreal into the interior.

That in point of fact they engaged the present Appellant, and advanced to him a sum of £59 9 2 for services to be by him performed as such canoe-man for the North-West Company. That this individual wholly failed to accomplish his engagement.

No attempt was made to prove the facts in the plea secondly pleaded. It had served to give to the cause the *sombre tint,* which the lovers of romance so much admire; and its truth was not expected to be tried by any severer test than that which is applied to the tales which alarm and delight us, at the first dawn of intellect.

Under the plea of general issue, it was contended in the Court below, that the action ought to have been brought in the names of all the Partners of the North-West Company, the contract having been entered into for their benefit. The Court below, however, thought otherwise, and gave judgment for the sum demanded, with interest and costs.

From this judgment the present appeal has been instituted, under an erroneous notion that a contract entered into by an Agent or Factor gives no right of action to such Agent or Factor, because he is answerable over to his principal.

Quebec, 20th July, 1819.

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