

OBADIAH AYLWIN,

Appellant,

&

AUSTIN CUVILLIER,

Respondent.

RESPONDENT'S CASE.

THE Action in the Court of King's Bench at Montreal, was instituted by the Appellant to obtain from the Respondent the sum of £272 4 9, the amount of a Judgment alledged to have been obtained by Messrs. Joseph Jones & John White in the Court of King's Bench at Quebec, against Thomas Aylwin, John Harkness and the Respondent, as copartners trading at Quebec, under the Firm of Aylwin, Harkness & Company, on the 20th February 1807. and afterwards assigned over by the said Jones & White to the Appellant by act passed before Voyer and another Notaries, on the 29th of July 1813, with interest, and £20 1 10 costs included in the assignment.

To this Demande the Respondent, on the 16th of February last, answered by his Defences and Exceptions Peremptoires, 1° That the allegations of the Declaration were unfounded and untrue in fact and in law.

2° That the assignment, set forth in the Appellant's declaration, had not been served, *signifié*, upon the Respondent prior to the commencement of the action.

3° That the pretended Judgment of the 20th February 1807, in the Appellant's declaration mentioned, was null and void in so much as related to the Respondent,—

1st. Because the Respondent had never been summoned to appear in the cause in which that Judgment was alledged to have been rendered.

2dly. Because, at the time of the service of process in that cause upon Thomas Aylwin, on the 10th of February 1807, at Quebec, the said Austin Cuvillier, Thomas Aylwin & John Harkness were not copartners.

3dly. Because the service of Process, so made upon Thomas Aylwin, could not be a legal service of process upon the Respondent.

4thly. Because, as early as the 14th of October 1806, the partnership before that time existing between the said Cuvillier, Aylwin & Harkness, had been dissolved.

5thly. Because, upon the 10th February 1807, the Respondent was at the city of Montreal and not at Quebec.

4° That the Appellant had not given or paid any consideration for the said assignment of the 29th July 1813.

5° That the consideration for obtaining that assignment had been paid by Thomas Aylwin by collusion with the appellant, in order to defraud the respondent.

6° That the appellant had no interest in the recovery of the sums by him demanded in this cause.

7° That the sum paid by Thomas Aylwin, as a consideration for the said assignment, was only £50 currency.