acting in his general capacity as official representative of the Sheriff, gave the gaoler *bons* or recognitions in writing for the supplies so furnished. The gaoler demanded payment from the government, and the government, acknowledging the liability, placed the amounts to the credit of the Sheriff, but gave no money to the gaoler to re-imburse him. The gaoler then sued the Sheriff.

The first question to be decided is this, for whom did the gaoler contract? Evidently for the government; and it signifies not whether he contracted through the Sheriff or his deputy, for it is well settled law both in England and in France, that unless a person, ostensibly acting for the government, personally engaged his own credit, the contractor would have no claim against the former until the government agent had received funds to pay the debt. Greenleaf, No. 102. *Larue* v. *Crawford et al.*, Stuart's Rep. 141; 5 Cochin, p. 756. We have therefore to enquire whether, as a matter of fact, Quesnel was in funds to meet these expenditures. We are not prepared to say that a sum of money must specially be given to pay the particular claim, notwithstanding the ruling in an old case. (1) It is sufficient to render the agent personally liable if he has received funds to pay accounts of the kind in question. (2) But in this case we think there is no evidence even of general indebtedness on the part of Quesnel. What respondent sought to prove was that Quesnel on some old accounts was indebted to the government, but he has failed in making this clear. He has shown that there was a contested account and that is all. The government in some cases might be desirous to shield its official, and so it might be difficult for the creditor to obtain the most conclusive evidence. In this case there is nothing of this sort to be considered in estimating the evidence. If it could be shown clearly that Quesnel was the debtor of the government, the evidence would have been forthcoming. We cannot therefore oblige Quesnel to pay a debt due by the government, on the vague presumption that he may be the debtor of the government.

Judgment reversed. Tessier & Cross, JJ., *diss.*

(1) See Ramsay & Judah, 2 L. C. J. p. 251.

(2) The general doctrine is expressed in art. 1031, C.C.

COUR DE CIRCUIT.

MONTREAL, 17 mars 1886.

Coram JETTÉ, J.

VALIQUETTE v. NICHOLSON.

Offres réelles—Exception à la forme—Amendement—Défense et consignation.

JUGÉ:—*Qu'un défendeur ne peut être condamné à payer les frais d'une assignation nulle et illégale.*

Alphonse Valiquette poursuivit James *alias* John Nicholson le 29 décembre 1885, et l'assigna à comparaître le 5 janvier 1886.

Le défendeur comparut le 7 janvier 1886; deux jours après la production de la comparution, sans reconnaître la validité de l'assignation et se réservant expressément tout recours que de droit, il offrit, au procureur du demandeur, le montant réclamé par l'action, sans frais, prétendant qu'il ne pouvait être tenu de payer les frais d'une assignation illégale: son nom étant Thomas William Nicholson.

Les offres ne furent pas acceptées; alors il produisit une exception à la forme, le 9 janvier. Le 11, il fit de nouvelles offres au demandeur, représenté alors par son teneur de livres qui référa le défendeur au procureur du demandeur.

Postérieurement, le 15 janvier, le demandeur, par motion, demanda à amender, ce qui lui fut permis en payant les frais d'exception et de motion. Le défendeur alors produisit son plaidoyer, consigna le montant réclamé par l'action et demanda le renvoi de l'action quant aux frais.

La Cour, à l'audition maintint ce plaidoyer avec dépens contre le demandeur.

Z. Renaud, pour le demandeur.

Lavallée & Olivier, pour le défendeur.

MASTER AND SERVANT—NEGLIGENCE —PASSENGER AND DRIVER OF HIRED HACK—CONCURRING NEGLIGENCE.

SUPREME COURT OF THE UNITED STATES.

January 4, 1886.

LITTLE v. HACKETT.

A person who hires a public hack, and gives the driver directions as to the place to which he