

An intervention was afterwards filed on the part of the Crown, by David Ross, Esquire, His Majesty's Counsel at Montreal. The reason alleged for this intervention was, in substance, "That His Majesty being at open war with the United States, no subject of the King, an inhabitant of this Province, had a right to export any articles, whereby His Majesty's enemies could be assisted or receive succour. That flannels, and every kind of woollen cloths were prohibited to be exported from this Province into the United States. That the Plaintiff, in defiance of the common Law of the land, and contrary to his allegiance to His Majesty, did on or about the 20th day of December, 1814, illegally, by circuitous roads and paths convey, and cause to be conveyed, to the Southward and beyond the port of St. John, and towards the lines between this Province and the said United States, twelve bales or packages of flannels marked <sup>D R E</sup> <sub>N Y</sub> and numbered respectively from 1 to 12; and one bale of superfine cloths marked <sup>D R E</sup> 49: divided into two trusses marked <sup>D R E</sup> 1 and numbered respectively 1 and 2: with intent to trade, export, or convey the same into the United States, and thereby to aid and succour the Government and people of the said States, then being the open enemies of His Majesty, contrary to the Laws, Statutes and regulations in this behalf made and provided. That by reason of the premises the said bales and packages were liable to be seized and forfeited. That on the said 20th of December, 1814, at St. John in the District of Montreal, the said bales and packages were by the said William Lindsay, (then and still being Collector of His Majesty's Customs at the Port of St. John,) seized as good and lawful prize." The intervention then stated the ground of seizure as in the defendant's pleas of justification; and concluded by praying "that the said bales and packages might, for the reasons aforesaid, be adjudged good and lawful prize, and forfeited; and might be ordered to be delivered to His Majesty; or that the value thereof might be adjudged to be paid by the plaintiff to His Majesty, and that the plaintiff might be condemned to pay all the costs and expences of the suit and intervention."

The Plaintiff pleaded the general issue to this intervention.

There was no doubt as to the goods being the property of the plaintiff, the only question was, whether they were about to be employed in that specie of illegal traffic, which subjected them to forfeiture.

The following is the substance of the evidence on the part of the Plaintiff.

*Alexander Robertson*, the Plaintiff's Clerk, stated that the Plaintiff received the Goods in question from England, in November 1814; that on the 19th of December following, the Plaintiff directed the witness to convey them to Laprairie, and to deliver them there to one Daniel W. Eager; that on his arrival at Laprairie he heard that Eager was at Missisqui Bay, towards which place he proceeded, without entering the goods at St. John's; that on the 20th of December the goods were seized about half a mile beyond St. John's, by a Serjeant and a party of Soldiers and delivered over to the Custom House at St. John; that he had no intention to carry the goods to the United States, nor was he aware that he was infringing the Law in passing St. John's without entering the goods there, and that he had received no orders from the Plaintiff to that effect.

*John Partlow* stated that he was hired by Robertson, the last witness, to take a load, consisting of bales of goods, from Laprairie to Missisqui Bay, about the 20th of December, 1814; that he accordingly left Laprairie about noon, in company with one David Nutt, who had been hired for the