

The Sheriff further represented, that by a deed of transaction or compromise, executed before Mathieu and Colleague, on the 9th May, 1857, the said Desjardins and the Plaintiff declared that by Deed of the 4th January, 1854, the said Plaintiff had engaged himself to Desjardins for the purpose of conducting a farm, *a traverse* and to conduct and manage a trade in goods and merchandise. That subsequently thereto, difficulties having arisen between them, Desjardins issued an attachment, and that to avoid further difficulties they had referred their differences to arbitrators, which arbitrators had made an award; that the said Desjardins, in consequence of the refusal of the Plaintiff to acquiesce in the award, instituted an action of Revendication and seized upon the stock in the hands of the present Plaintiff, and which said suit was then pending and undetermined.

That the said parties, desirous of terminating all their differences and suits, covenanted that they should discontinue the suits instituted on both sides, and the said Desjardins, by the said compromise, ceded and transferred to the said present Plaintiff, thereto accepting all the goods and chattels and contents of said store, &c. And in consideration thereof the present Plaintiff promised to pay Desjardins £200.

The Appellant considers, that the proceedings having been withdrawn and discontinued, in virtue of the agreement and sale between the Plaintiff and Defendant in that suit, that the Sheriff is bound to pay to the present Plaintiff the amount of the fees and disbursements retained by him, and be compelled to bring an action against Desjardins for the amount thereof.

The Sheriff's pretensions are the following:—

1.—That the Sheriff, as the public officer performing a duty imposed by law, has a lien upon the property seized for his fees and disbursements.

2.—That the Sheriff's right of lien extends to the property under seizure, even where main levée thereof has been ordered.

3.—That the remedy to the Defendant is an action of damages against the Plaintiff for the illegal seizure, and a part of those damages would be the amount paid to the Sheriff before the property was released.

4.—That in the event of the property under seizure having been lost, the Sheriff would be liable and obliged to indemnify the Defendant, directly or indirectly.

5.—That in this case the Sheriff performed certain duties, such as selling and levying, which would entitle him to retain the fees and disbursements.

6.—That the compromise between the Plaintiff and Desjardins was a sale of the property under seizure to the present Plaintiff for a valuable consideration, and could not be made, so as to disturb the rights of the Sheriff.

HENRY STUART,
Attorney for Respondent.

MONTREAL, 27th May, 1859.