

The same thing is repeated in his letter of 26th April, 1816,—No. 51 of Record.

Again in his letter of the 27th May, 1816, (he says) "The times continue very bad, now in fact worse than when I last wrote you, and I am sorry to say there is no great appearance of any change for the better, there is, in fact, no business doing of any kind, and what *v. r.* be the end of all no one can say. The failures have, indeed, in some degree subsided, but confidence is completely gone, and immense sums are locked up by the recent failures."

Again in his letter of the 1st. July, 1816, (he says) "Business continues here dull in the extreme; in fact, there is nothing at all doing, and the manufacturers are going idle about the country, not more than one half being now employed—(and he goes on at the conclusion of the letter to say) "I suppose within the last six months, nearly the half of the people in business in this country have failed, consequently when there is any thing to do, there will be much fewer to do it—little is expected to be done this year, *next I hope will enable us to make up what will be lost this, never were such times at the present witnessed in this country, I hope they are better with you.*"—No. 56 of Record.

The sentiments of the Respondent respecting the "aspect of the times," in 1816, are not more distinctly expressed by his words than they were evinced by his conduct—

In the previous years he had made consignments in which he was himself interested. Early in this year he urged the immediate closing of his consignments, and made no more.

Notwithstanding this, the Respondent, without previously consulting the Appellant, in direct contradiction to the views expressed by the Appellant, and of those expressed by himself, and without condescending to make the slightest explanation of his conduct, shipped to the Appellant, on the 29th April, 1816, goods to the enormous amount of £5140 17 1, sterling; and containing a variety of articles neither ordered nor wanted by the Appellant, and many of them at a higher price than those limited by the Appellant.

The Appellant, on the arrival of these goods, immediately wrote to the Respondent, under date of the 13th June, 1816, as follows: "I am under the painful necessity of informing you that I hold the following goods for account of the furnisher, or others concerned, and wait their further orders respecting the disposal of them, to wit:" (here follows a description of the goods.)

"The disappointment is not trifling to me, as I lose my customary profits of the season; did those Gentlemen consider but one interest—if they could not furnish the order at the limits, they should have declined it, which would ultimately be more advantageous and agreeable to all concerned.—I request of you to credit my account with all those respective sums, with every attendant charge thereon, and advise me as soon as possible."

The goods sent, without orders, are the following:—

Archd. Liddle, & Co. 1 cask Putty,	..	..	..	£6	6	0
Wheel & Lenwoods, 12 figured Rugs	..	..	..	25	18	10
Oates, Wood & Malhyor, 4 ends Coating,	..	..	..	29	16	9
				£62	1	7

The amount of the overcharges upon the goods, which the Appellant refused to accept upon his own account, will appear from a statement subjoined to the present case.

The bad state of the market, at Quebec, is established by the testimony of many witnesses, who were examined on the cause. Overcharges are also clearly proved, as will be seen on reference to the *Enquête*.

The Respondent did not attempt to prove that the sums charged were actually paid by him.

Upon these facts it was contended in the Court below—

1.—That the order being to make the purchases for cash, the Respondent was bound either to accept the Appellant's proposal, in the form in which it was made, or to reject it, and that he was not warranted in making purchases upon a credit price.

2dly.—That the discretionary power given to the Respondent, by the Appellant, in his letter of the 20th July, 1814, related to the articles to be sent, and by no means to the prices of those articles; otherwise the limitation of price would have been merely nugatory.

3dly.—Supposing, hypothetically, that the discretionary power of the Respondent extended to the prices of the articles, the Respondent was to be regulated, in the exercise of it, "by the interest of the Appellant, and the aspect of the times. Now, by the Respondent's own correspondence, it is manifest that the interest of the Appellant, and the aspect of the times," required that the goods in dispute should not have been shipped for the Appellant.

4thly.—Supposing, again, that the above words did not limit the discretionary power of the Respondent—it was limited by law—for, "when any thing is left to any person to be done according to his discretion, the law intends it must be done with sound discretion, 1 Lil. Abr. 477," (so also, 2 Ins. 56. 298.—Hob. 158. D. 1. 76 pro Socio—l. 24 Locati—l. 22 De Reg. Jur.) The abuse of this discretionary power, if any he had, can then constitute no good ground of defence for the Respondent.

5thly.