

The appellants filed with the foregoing pleas, an incidental or cross demand, wherein they set forth :—

"That heretofore, to wit, on the first day of November, which was in the year of our Lord, 1832, it was agreed by and between the said incidental plaintiffs and the said incidental defendant, that he, the said incidental defendant should forthwith proceed to Metis, in the District of Quebec, and there take charge for hire, of a certain retail store or shop, of them the said incidental plaintiffs, at Metis aforesaid, and the said incidental defendant did accordingly proceed to Metis aforesaid, to wit, upon the day and year aforesaid; and the said incidental plaintiffs on the day and year aforesaid, at Metis aforesaid, delivered and caused to be delivered to the said incidental defendant, divers goods, wares and merchandises, to wit, all the goods, wares and merchandises in the said retail store or shop, and delivered and caused to be delivered, divers other goods, wares and merchandises, to the said incidental defendant from time to time, amounting in the whole to the sum of £20,000 of lawful current money of this Province, to be sold and disposed of by the said incidental defendant, at and for the best price and value he the said incidental defendant could procure or get for the same, and to account for and pay to the said incidental plaintiffs, all monies arising from the sale thereof; in consideration whereof, to wit, on the day and year last aforesaid at Quebec, aforesaid, he the said incidental defendant undertook, and then and there faithfully promised the said incidental plaintiffs to sell and dispose of the said goods, wares and merchandises, for the said incidental plaintiffs, at and for the best price and value he, the said incidental defendant could procure for the same, and that he the said incidental defendant should account for, and pay the monies arising from the said sale of the said goods, wares and merchandises to the said incidental plaintiffs, when he, the said incidental defendant should be thereunto afterwards requested; yet he, the said incidental defendant, although often requested, hath not rendered a reasonable account of the premises or any part thereof, but hitherto hath refused, and still doth refuse to render the same. To the damage of the said incidental plaintiffs of £3,000, of lawful current money aforesaid. And the said incidental plaintiffs do allege and aver that the principal action of him, the said incidental defendant, against the said incidental plaintiffs in this cause, is brought for the recovery of certain hire or wages which he, the said incidental defendant in and by his declaration in this cause filed, alleges and pretends to be due unto him, and which said hire or wages are claimed and demanded for and by reason of the work and labor, care and diligence of him the said incidental defendant, used and employed about the selling and disposing of the aforesaid goods, wares and merchandises, and managing the aforesaid retail store or shop, of the said incidental plaintiffs, and that this present incidental action and demande of them the said incidental plaintiffs, arises out of the same source as the principal action and demande of him the said incidental defendant in this cause."

The appellants pray in consequence :—

"That for the causes aforesaid, the said incidental defendant may be adjudged and condemned to make and render under oath, to the said incidental plaintiffs, a true, faithful and exact account of all and every the goods, wares and merchandises which have come, or ought to have come into his possession, custody or power as aforesaid, and of his care and management thereof, and of his management of the aforesaid retail store or shop, and generally of all and singular the concerns and premises of which he the said incidental defendant hath had the care and management as aforesaid, and to produce proper vouchers in support thereof, and in default of a compliance of the premises or any part thereof, that he the said incidental defendant be adjudged and condemned to pay and satisfy to the said incidental plaintiffs, the aforesaid sum of £3,000, lawful current money aforesaid, with legal interest and costs of suit."

The respondent joined issue, by filing a general replication to the plea of general issue, and a general answer to the peremptory exception.

To the incidental demand he pleaded a plea of general issue, and also a peremptory exception, setting forth, that when he entered into the service of the appellants, and was placed to aid and assist in one of their stores, under the superintendence of an agent and foreman, having the gestion and care of the different posts or stores of the appellants in the County of Rimouski, no list or inventory of the merchandise and effects whereof was composed the shop or store where the respondent was placed, and no statement of the business of the said post or establishment was made, and that the respondent remained thus acting as clerk of the said store from the time he so entered until the month of November, 1833, when he was discharged from their service without just cause; and that thereupon the appellants remained in possession of all the merchandise and effects, whereof neither then nor since any list or inventory was made, either with or in presence of the said respondent; and moreover that the books of account of the said store were retained by, and left in the possession of the said appellants.

Issue being completed upon these last mentioned pleadings, the parties proceeded to examine witnesses, whose depositions were taken upon and are common to both demands. Some of the witnesses were examined in open Court, others under a Commission addressed to a Commission named for that purpose.

On the part of the respondent were examined, Daniel Brownson, uncle of the respondent, and William Dawson, junior.

On the part of the appellants were examined under the commission, Godfroy Raimond, of Rivière