

THE TRUST & LOAN COMPANY OF UPPER CANADA,

(Plaintiffs in the Court below).

Appellants ;

AND

CHRISTINA MACKAY, ET AL,

(Defendants in the Court below).

Respondents.

RESPONDENTS' CASE.

THIS Appeal is from a Judgment of the Superior Court, Montreal, which maintained an *Exception à la Forme*, pleaded by Christina Mackay, (wife of the other Respondent and *separée de biens*), and dismissed the Appellants' Action.

The question now, of course, is : Did the Court below err in rendering that Judgment, and in holding, thereby, that the Bailiffs' return (of service of process) which was proved to be untrue, was *not to be approved* ?

That return stated service on the Defendant, Christina Mackay, by "leaving a true copy of Writ and Declaration with a grown person of her family."

No such service, in fact, was made. The said Defendant was in Upper Canada at the time, and has never seen copy of process whatever.

Under common circumstances, the Respondents would have waived any objection to any irregularity of service ; but a sense of what the Trust & Loan Company deserved, forbade them waiving any objection to this service of process. The Appellants' name was, in this case, used and their suit waged avowedly to vex the male Respondent, and their Action was returned, notwithstanding that, before the pretended service of process, offer had been made by Respondents to pay the Plaintiffs, in terms of an open agreement, interest up to first of May next. The Appellants had, therefore, no favors to expect. The original Action was instituted on the ninth of November last. On the tenth, service of process was made on the male Respondent, by *Martin*, Bailiff, who, in his deposition afterwards made, describes what passed. Mr. Mackay informed him that Mrs. Mackay was absent from Lower Canada, and pointed out the various modes by which the Plaintiffs could proceed against her. "Mr. Mackay was perfectly civil," says *Martin*. He was ; and he had right to expect that, afterwards, his privacy would not be vexatiously intruded upon. But, although *Martin* reported everything, another Bailiff, *McCormick*, was sent to Respondent's house on the next day, to whom Mr. Mackay (particularly as he had previously told *Martin* all that he could, and all he knew) declined speaking, but simply shut the door "as soon as he saw him." What passed outside of that door no human eye saw, nor ear heard, except the Bailiff's, *McCormick's* ; yet he made return upon the Writ, that he had served Christina Mackay with process, and had left copy with a grown person of her family !

After return of the Action, the Respondent pleaded *Exception à la Forme*, and alleged that the Bailiff's return was untrue, that no legal service of process had been made on *Christina Mackay*, (the only real Defendant), that no *remise* of copy of process, as required, had ever been made, as pretended, &c.

The Appellants fyled no answer.

At the *Enquête*, (which the Appellants would not attend,) the Respondents proved all their allegations.