

**CIHM
Microfiche
Series
(Monographs)**

**ICMH
Collection de
microfiches
(monographies)**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

© 1994

T
c
m
o
si
cl

-
-
-
-
-
-
-
-
-

This
Ce e
102

Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

Coloured covers/
Couverture de couleur

Covers damaged/
Couverture endommagée

Covers restored and/or laminated/
Couverture restaurée et/ou pelliculée

Cover title missing/
Le titre de couverture manque

Coloured maps/
Cartes géographiques en couleur

Coloured ink (i.e. other than blue or black)/
Encre de couleur (i.e. autre que bleue ou noire)

Coloured plates and/or illustrations/
Planches et/ou illustrations en couleur

Bound with other material/
Relié avec d'autres documents

Tight binding may cause shadows or distortion
along interior margin/
La reliure serrée peut causer de l'ombre ou de la
distorsion le long de la marge intérieure

Blank leaves added during restoration may appear
within the text. Whenever possible, these have
been omitted from filming/
Il se peut que certaines pages blanches ajoutées
lors d'une restauration apparaissent dans le texte,
mais, lorsque cela était possible, ces pages n'ont
pas été filmées.

Additional comments:
Commentaires supplémentaires:

Docket title page is bound in as last page in book but filmed as
first page on fiche.

Coloured pages/
Pages de couleur

Pages damaged/
Pages endommagées

Pages restored and/or laminated/
Pages restaurées et/ou pelliculées

Pages discoloured, stained or foxed/
Pages décolorées, tachetées ou piquées

Pages detached/
Pages détachées

Showthrough/
Transparence

Quality of print varies/
Qualité inégale de l'impression

Continuous pagination/
Pagination continue

Includes index(es)/
Comprend un (des) index

Title on header taken from: /
Le titre de l'en-tête provient:

Title page of issue/
Page de titre de la livraison

Caption of issue/
Titre de départ de la livraison

Masthead/
Générique (périodiques) de la livraison

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The copy filmed here has been reproduced thanks to the generosity of:

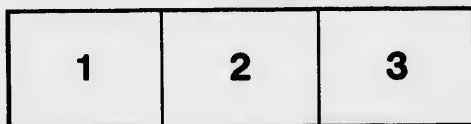
Seminary of Quebec
Library

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol \rightarrow (meaning "CONTINUED"), or the symbol ∇ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'ex
géné

Les
plus
de k
con
film

Les
pap
par
derr
d'in
plat
orig
pre
d'in
la d
emp

Un
derr
cas
sym

Les
film
Lor
rep
de l
et c
d'in
illus

duced thanks

L'exemplaire filmé fut reproduit grâce à la générosité de:

Séminaire de Québec
Bibliothèque

st quality
d legibility
ith the

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

s are filmed
ding on
ted impres-
iste. All
ning on the
impres-
h a printed

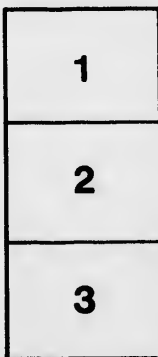
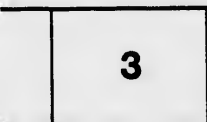
Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

rofiche
ng "CON-
"END"),

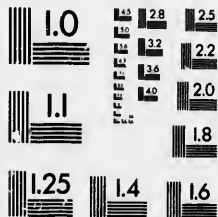
Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole \rightarrow signifie "A SUIVRE", le symbole ∇ signifie "FIN".


med at
large to be
filmed
er, left to
mes as
trate the

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.



MICROCOPY RESOLUTION TEST CHART
(ANSI and ISO TEST CHART No. 2)



 **APPLIED IMAGE Inc**
1653 East Main Street
Rochester, New York 14609 USA
(716) 482-0300 - Phone
(716) 298-5999 - Fax

Court of Appeals.

NOVEMBER SESSION, 1890.

—
DAVID ROSS,

(Defendant in the Court below),

APPELLANT;

AND

WILLIAM GLENN ANDERSON,

RESPONDENT.

==
APPELLANT'S CASE.
==

*Filed by Wm. W.
L. Mc*

A. STUART for Appellant.

PROVINCE OF LOWER-CANADA,
DISTRICT OF QUEBEC. }

In Appeal.

BETWEEN

DAVID ROSS,
(Defendant in the Court below)
APPELLANT ;

AND

WILLIAM GLENN ANDERSON,
(Plaintiff in the Court below)
RESPONDENT.

APPELLANT'S CASE.

THIS was an action of *General indebitatus assumpsit*, brought in the Court of King's Bench, for the District of Quebec, by the Respondent, against the Appellant, for the recovery of £6028, sterling, which the former stated to be due to him by the latter.

The various transactions, out of which the present litigation between these parties has originated, are referred to in a long correspondence between the parties, to be found upon the files of the cause.

It appears that, on the 13th of November, 1813, the Appellant enclosed to the Respondent, by the recommendation of their mutual friend, Mr. James Ewing, of Halifax, a "small order for goods, to be executed for him (the Appellant) upon the most liberal terms." The Appellant expresses, in this letter, "every reliance and confidence in the skill and attention of the Respondent."—No. 68, of Record.

Upon receipt of this letter the Respondent immediately, by his letter of 31st January, 1814, acknowledges its receipt—states that the order for goods "will be executed on the best terms, and the goods shipped from the different ports by the first Spring vessels"—proceeds to give an account of the state of the markets, and concludes with saying, "any goods you order, and to which you put down prices, must be laid in much dearer, as it is impossible to lay them in at the prices quoted by you. I shall, however, use every exertion to lay them in as low as possible, and have no doubt but, in most cases, they will be found as well laid in as any of your neighbours."

The Respondent accordingly executed the before-mentioned order; and, in his letter of the 8th of April, 1814, accompanying the goods, writes, "I have always been in the habit of reducing the orders from my Halifax friends, when the articles were much higher than former shipments, and in many instances have sent none, well knowing the difficulty there is in America to raise goods, corresponding to the advance here, *all at once*; at the same time I have always been in the habit of materially increasing the orders of our friend Ewing of such goods as could be bought low, according to circumstances and appearances—had I the same liberty from you, I cannot help thinking but it would be for your advantage.

"I am extremely sorry the opening of our correspondence has so unpropitious an appearance, owing to the very high prices of goods this year; had I been so fortunate as to have had your orders for last year, I think much good might have been done; I do not, however, think that the present high prices of cotton and woollen goods will continue long; should you be disposed to send an order for the Fall you may rest assured I shall do the best I can for your interest; and, if you leave it in my power to add or diminish it, according to circumstances, I am sure it will be for your advantage. From the great changes which may be expected to take place in Europe, things may be very different on receipt of your orders here, to what they are at the time you are making them out; were a peace to take place, either with America or France, it would produce great changes in this country; and if there was any prospect of a peace with the former, I would ship but very sparingly to my Halifax friends, and I should suppose it would be most advisable to follow the same rule in shipping to your place."
Glasgow, 8th April, 1814.—No. 24.

"It is the opinion of most people here that both woollen and cotton goods will fall, indeed cotton goods have already declined a little; and as coarse woollens advanced in consequence of the great demand from Government for the armies, they must also very soon be lower. At present things are very unsettled, and but little doing, it will be some time before business gets settled into a regular train."
Glasgow, 21st April, 1814.—No. 25.

The Appellant writes, on the 20th July, 1814, to the Respondent, acknowledging the receipt of the last mentioned letter, and saying, "your just determination of not shipping any more carpets, or East India goods, &c. at the present enormous prices, merit my most grateful thanks, and by which means I must save money. I wish you always to use the same discretion and intelligence in diminishing, enlarging, or entirely cancelling such articles as you may deem disadvantageous

"advantageous, and substituting others, as you may judge most proper for my interest, and the aspect of the times." *Quebec, 20th July, 1811.*—No. 70.

These two documents constitute the principal feature in the cause. It will be seen hereafter that the Respondent conceived that the discretionary power thus vested in him, to be used for the benefit of the Respondent, he, the Appellant, might grossly abuse, to the ruin of the Respondent.

The Judgment of this Court will determine whether the Respondent was right in this opinion, or otherwise.

The letters from the Respondent to the Appellant, from this period, contain frequent allusions to the probable effects of the political events then going on upon the state of the market.

Thus in a letter of the Respondent's principal clerk, of the 10th June, 1814, it is said:—

"Business has been very dull in this Country for the last two months, not only in all kinds of Colonial produce, but also in almost all descriptions of British manufacture, (hardware goods excepted) particularly cotton goods; and, from the great fall in the raw material, woollen goods must also be very considerably reduced; in fact it seems to be the general impression, not only here, but over all Europe; that every description of goods must be greatly reduced in their value, in consequence of a general peace."—No. 26, of Record.

In another letter of the Respondent, of the 20th August, 1814, it is said, "woollens and linens will be much lower next Spring."

In an other letter of the Respondent, of the 1st September, 1814, it is said, "It is now confidently reported that the negotiations at Ghent are broken off for a time—in consequence of which the holders of American produce are demanding much higher prices. Querciton Bark has been sold at £20 per cwt. If we had peace with America it would not bring 10s, per cwt. From the rise in cotton wool, heavy cotton goods must also experience a rise in price. Although peace with America is an event apparently at some distance, I would not advise you to speculate in ashes and staves, unless they could be bought at moderate prices with you; below I quote the present price of these articles, but you are aware a peace with America would produce a very great alteration in them, and this event may be nearer than most people suppose."—No. 29, of Record.

In another letter of the Respondent, of the 3d October, 1814, it is said, "the prices of woollens are now fully as high as they were when your spring shipment was made, this is owing to the very high price of the raw material. Cotton goods are rather looking up, but I do not expect there will be any very great change in them. Linen goods continue very stationary."—No. 31, of Record.

Again, in a letter of the Respondent, bearing date 2d December, 1814, it is said, "the prices of coarse wool are now higher than ever they were before, of course, coarse woollens will be very high in the spring. Cotton goods are now very low, but if the American war continues there will be an advance in a very short time. Cotton yarn is now so high that the manufacturers are losing by what they are doing at the present prices for goods. In hardware goods there is little or no variation.

"Ashes and staves are now very high, the latter would now bring £200 per M. and the former perfectly sound would now command 25s. per cwt. but so much does the continuance of these prices depend on the American War that I would by no means advise you to speculate on them, unless you see your way perfectly clear."—No. 32, of Record.

The letter of the Appellant enclosing an order for goods to the Respondent to be sent in the spring, 1815, bears date the 22d November, 1814. In it the Appellant says, "I take the liberty of enclosing a small order for goods for the ensuing season, which I hope you will do me the favor of executing on the lowest terms possible to be obtained, in the selection of which I have the utmost confidence my interest will be the sole object of attention. Purchasing at the very lowest prices and from the most reasonable houses, choosing the most suitable articles and putting them up in the best order will enable me to make speedy sales, early remittances and have a decided advantage of a benefit to myself—making insurance on the amount as usual."—No. 72, of Record.

And lower down, adverting to an event which has been so frequently referred to in the course of this correspondence, the Appellant says, "if the American War is continued, it will create a considerable demand from these Provinces."

On the 1st February, 1815, the Respondent having it is presumed, previous to that time, received the above mentioned order, writes to the Appellant as follows, "You may rest assured I shall do all I can this year, to have your goods well laid in, and when they are very high, I shall either omit these altogether, or reduce the quantity you have ordered."—No. 33, of Record.

It will be observed that the respondent takes no notice in this letter of the signing of the preliminaries of Peace between Great-Britain and America, which had taken place in the previous month of December, nor did he curtail the Appellant's order in the manner in which from the understanding between the parties, manifested in the foregoing letters, and from the then

Interest, and the
—No. 70.

be seen heretofore,
to be used for
ruin of the Res-

right in this opi-

in frequent allu-
sions of the market.

1814, it is said:—

only in all kinds
of raw material,
to be the general
must be greatly
reduced.

1, "woollens and

"It is now con-
—in consequence
of the war prices. Quar-
—it would not bring
—experience a rise in
—e, I would not ad-
—moderate prices with
—peace with America
—than most people

and, "the prices of
—was made, this is
—looking up, but I
—do not continue very

it is said, "the
—course woollens will
—American war con-
—high that the ma-
—goods. In hard-

00 per M. and the
—does the continu-
—advise you to
—of Record.

pendent to be sent
—stant says, "I take
—which I hope you will
—in the selection of
—of attention. Pur-
—chasing the most suit-
—able speedy sales, early
—insurance on the

y referred to in the
—is continued, it will

visions to that time,
—"You may rest as-
—and when they are
—you have ordered."—

of the signing of the
—taken place in the pre-
—manner in which
—letters, and from the
—then

64 they aspect of the times, the Appellant had a right to expect. The just expectations of the Ap-
65 pellant are expressed in his letter of the 27th February, 1815, in which he says, "ever since my last,
66 rumours of peace or certain anticipations of it, put a stop to all buying and selling, and it is
67 now acquiring entire credit. We expect that this news will reduce the present discount. If
68 it should be peace, the demand for goods will not be so rapid, we may suppose the army will
69 in a great measure be withdrawn. In that case, if it is not too late I should think one half
70 my order in general sufficient, fearing prices may decline while they are on hand. I trust all to
71 your superior judgment, and have not doubt but you have anticipated as far as you thought
72 most eligible for my interest at the time of purchasing, you knowing the certainty of the rela-
73 tive situation of the contending powers and the influence it was likely to produce on goods in
74 general."—No. 73, of Record.

On the 4th April, 1815, the Respondent advises the Appellant of shipments to him to the
amount of about eight thousand pounds, "and at the same time informs him that immense ship-
ments have been made by Canadian gentlemen who have been home during the winter.
"I suppose with a view of getting them into the United States. I think in the end they will
"be sorely disappointed."

In the letters acknowledging the receipt of these goods, the Appellant points out several
overcharges. In his letter of 20th August, 1815, he says, "I have almost all the salampores
of Thomas Gould & Co. of last years, which cost 27s. and 28s. Sterg. per piece still on hand,
"as I could not sell them at the beginning but at a loss, my neighbors selling much under what
"I could afford them at. And four bales more of this year's at 22s. 6d. & 23s."

"I find my neighbors have been furnished with Salampores of exactly the same quality
"and width, at the last March Salca at 17s 4 to 17s 8 pr. ps.—Yellow Silk Bandanoes, 24s 0,
"where I am charged 28s 6, 40s pr. ps. 16 ea. Silk Coumgee Romals, do. do. 46s. These cir-
"cumstances demand your immediate attention. I hope you will obtain such liberal deduc-
"tions, as will put me on a footing with my neighbors in the market, as I know you possess
"the inclination to get me every just satisfaction from the parties concerned."—No. 75 of
Record.

Notwithstanding the above circumstances, such was the implicit confidence of the Appel-
lant in the Respondent's honor and discretion, that on the 20th November, 1815, he trans-
mitted to him a new and considerable Order. "I now enclose you (says he) a small order for
"goods for the ensuing season, which I hope you will find convenient to purchase with ready
"money, as in that case, I am persuaded, you can procure the goods perhaps 15 or 20 pr. ct.
"cheaper than the common run, and I shall allow you interest from the moment of issue, and
"any other reasonable additional advance that may attach—and in return I promise quick re-
"mittances."

With respect to the "aspect of the times" the Respondent affords, from time to time, in-
formation. In his letter of 29th August, 1815, (he says) "The prices of Woollen and Cot-
"ton goods keep very high, but I do think by the spring, many descriptions of goods must be
"lower. Indeed from present appearances, I would advise you to keep your stock of goods as
"low as possible, for I am not without my fears of having very bad times in this country very
"soon; at present, money is very scarce, and I think all descriptions of produce as well as bri-
"sh manufactures are too high to be maintained in a state of peace with all the world."—No.
44, of Record.

In his letter of 28 September, 1815, (he says) "I am truly sorry your market is so overload-
"ed with goods, but from the small shipment made this fall, I hope it may soon be relieved as
"I understand goods continue in good demand at New-York; I therefore calculate that dur-
"ing the winter a great many fine goods may be smuggled into the United-States, from your
"Province"—No. 45, of Record.

"Again in his letter of 21st October, 1815, "The prices of Linen, Cotton and Woollen goods,
"continue as last advised, but in my opinion the present high prices cannot be maintained in a
"a profound peace."—No. 46, of Record.

Again, in his letter of the 30th March, 1816, the Respondent says, "My shipments to you,
"this Spring, will be very small indeed, which I consider most fortunate, as I understand busi-
"ness is very bad with you, and things were never worse here."—No. 51, of Record.

Again in his letter of 8th April, 1816, "Great distress in the mercantile world still prevails
"all over this country, and little or no appearance of any change. Goods will in general, go
"out in the fall cheaper than they do this spring. Carpeting is down 3d per yard since I
"bought your's, and will be still lower."—No. 53, of Record.

Again in his letter of 6th April, 1816, (he says) "I am very sorry to say business continues
"in a very depressed state all over this country, without any appearance of a change—Confi-
"dence is totally gone and failures multiply. I sincerely hope you had closed the sales of
"consignments", and after entering into a variety of details respecting the distresses of the
"country, he concludes with saying, "there is not the smallest accommodation now to be got,
"every one being worse off than another for money—they will, however, have this good effect,
"a great number of speculators will be driven out of the different markets, and trade will again
"go on regularly and with more certainty, but a great deal less business must be done by all."
—No. 53, of Record.

The

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 may 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 Patty,	..	..	..	£6	6	0
Wheel & Lenwoods, 12 figured Rugs	..	..	..	25	18	0
Oates, Wood & Malhyor, 4 emts 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.

Record.

...very bad, now
...to great appearance
...and what they
...degree subsided,
...the recent failures."

...es here toll in the
...going idle about
...on at the conclu-
...the half of the peo-
...thing to do, there
...I hope will enable
...witnessed in this

...in 1816, are not
...ct—

...interested. Early
...more.

...the Appellant, in
...dressed by himself,
...ct, shipped to the
...40 17 1, sterling;
...tant, and many of

...espondent, under
...of informing you
...ed, and wait their
...tion of the goods.)

...of the season; did
...nder at the limits,
...s and agreeable to
...ective sums, with

6 0
18 10
16 9
—
1 7

...d to accept upon

...many witnesses,
...ill be seen on re-

...ly paid by him.

...was bound either
...ject it, and that

...tant, in his letter
...the prices of
...ery.

...ndent extended
...se of it, "by the
...nt's own corres-
...the times," re-
...nt.

...ary power of the
...n to be done ac-
...tion, 1 Lit. Abr.
...i—1. 22 De Reg.
...stitute no good

5thly.

110

5thly.—There is no evidence of the prices at which the goods in dispute were purchased—nor of the time of the purchase—nor that, in point of fact, they were purchased for the Appellant—nor that they were charged at the usual and ordinary prices at which goods of a like description were, in the Spring of 1816, bought and sold in Great Britain.

6thly.—But the capital defect in the Respondent's evidence is, that he has not proved that he has paid for these goods at the prices charged by him—nor that he has paid for them at all. The act of an agent, within the scope of his authority, binds his principal. The furnishers of the goods, in Great Britain, have their remedy against the Respondent, and against the Appellant also. Until the debt was discharged by the Respondent, he had no recourse against the Appellant. His action, in technical language, is an action "for money laid out, expended and paid." The payment of the money by him, in discharge of the Appellant, constitutes the very gist of his action, and ought therefore to be strictly proved.

These are the principal objections to the final judgment rendered in the cause; yet the Court below, on 7th June, 1820, condemned the Appellant to pay to the Respondent the sum of £5746 4 1, sig. equal to £6384 13 5, currency, with interest thereon, from 28th of April, 1818, and costs.

There are two interlocutory orders in the cause, of which the Appellant also complains; the one, an order rejecting the application of the Appellant for a trial by Jury; the other, an order rejecting an application of the Appellant for a Commission to examine witnesses residing in Great Britain.

See Respondent's Case, post. p. 193.



