

COMMERCIAL LAW

523

found: and also for his Costs and Charges aforesaid to the said Caleb Bruen, by the Court now hereof his Assent adjudged, and the aforesaid John Kiddie in Mercy etc:

[M. C. M., 1765-68, ff. 235-238]
December 9, 1767

Abraham Duryee v George Hopkins and Duncan M^cDugal.

Pleas held at the City hall of the City of New York in the Court of our Lord the King, in and for the said City before Whitehead Hicks Esq^r Mayor, Simon Johnson Esq^r Recorder, George Brewerton, Nicholas Roosevelt, Elias Desbrosses Cornelius Roosevelt, and Benjamin Blagge Esq^m Aldermen of the said City, of New York, according to the Liberties, priveleges and Franchises, to the Mayor Aldermen and Commonalty of the said City, as well by the Charter of our late Lord George the Second by the Grace of God of Great Britain, France and Ireland King Defender of the Faith etc: As by diverse Charters of the progenitors of our said late Lord the King, granted and confirmed on Tuesday the ninth day of December in the seventh year of the Reign of our now Lord King George the Third to this court comes Abraham Duryee in his own proper person and complains against George Hopkins and Duncan M^cDugal in a plea of Trespass on the Case, and finds pledges of prosecuting his complaint aforesaid (to wit) John Doe and Richard Roe, and the said Abraham Duryee prays process for him thereupon to be made, against the aforesaid George Hopkins and Duncan M^cDugal: Wherefore by virtue of the Letters patent aforesaid it is Com-manded the Sheriff of the said City of New York, and Minister of the same Court, that he take the Bodys of the said George Hopkins and Duncan M^cDugal if they can be found within the Jurisdiction of the Mayor's Court of the said City in his Bailwick and him safely keep so that he may have their Bodies at the next Court of our Lord the King for the City aforesaid to be held in and at the City hall of the said City on Tuesday the Eleventh day of November before the Mayor Recorder and Aldermen of the City aforesaid, by virtue of the Letters patent aforesaid, to answer unto the said Abraham Duryee of the plea aforesaid, and the same day is given to the said Abraham Duryee here etc. And upon this the said Abraham Duryee has put in his place Thomas Hicks his attorney against the Aforesaid George Hopkins and Duncan M^cDugal of the plea aforesaid; at which next Court of our said Lord the King before the said Mayor Recorder and Aldermen of the City of New York aforesaid on Tuesday the aforesaid Eleventh day of November here to wit, at the City hall of the City aforesaid, by virtue of the Letters patent aforesaid held etc: came the said Abraham Duryee by his attorney aforesaid and offered himself against the aforesaid George Hopkins and Duncan M^cDugal of the plea aforesaid; and the aforesaid Sheriff of the said City of New York and Minister of the said Court to wit John Roberts Esq^r now here testifies and makes return that by virtue of the writ aforesaid

to him in form aforesaid directed hath taken the aforesaid George Hopkins whose body he hath in Custody to answer to the aforesaid Abraham Duryee of the plea aforesaid as to him it hath been commanded, and hereupon the said Abraham Duryee upon his Complaint aforesaid in the Same Court here now declares against the said George Hopkins and Duncan M^eDugal in these words (to wit) New York Mayor's Court (In the year of our Lord one thousand seven hundred and Sixty Six. City of New York ss. Ab^m Duryee Complains of George Hopkins and Duncan M^eDugal in Custody of the High Sheriff of the City and County of New York for that to wit that whereas the said George and Duncan after the first day of May in the year of our Lord one thousand seven hundred and five, to wit on the thirteenth day of February in the year of our Lord one thousand seven hundred and sixty six, at the City of New York to wit at the Dockward of the same City, and within the Jurisdiction of this Court made their note in writing commonly called a promissory Note, subscribed with their own proper hands, bearing date the same day and year, and then and there delivered the said Note to one John Farrel, and by the said Note the said George and Duncan promised to pay to the said John Farrel or his Order three months after the Date of the said Note the sum of Ninety two pounds Nineteen shillings and three pence New York Currency for value received by them the said George and Duncan; which said John Farrel afterwards and before the Time limited for the payment of the said Ninety two pounds Nineteen shillings and three pence by the said Note to wit on the day and year last aforesaid at the City and Ward and within the Jurisdiction aforesaid by his Indorsment subscribed with his own proper hand, upon the same Note appointed, the Contents of the said Note, to wit, the said Ninety two pounds Nineteen Shillings and three pence to be paid to the said Abraham for value received of which said premisses the said Abraham afterwards to wit, on the day and year last above said, at the City and ward aforesaid, and within the Jurisdiction aforesaid, gave notice to the said George and Duncan by reason whereof, and by force of the Statute in such Case made and provided; the said George and Duncan became liable to pay to the said Abraham the said Ninety two pounds, Nineteen Shillings and three pence according to the Tenour of the said Note and the said George and Duncan being so liable afterwards to wit on the day and year last abovesaid at the City and ward and within the Jurisdiction aforesaid in Consideration thereof undertook, and then and there faithfully promised the said Abraham to pay him the said Ninety two pounds, Nineteen Shillings and three pence, according to the Tenour of the said Note; Nevertheless the said George and Duncan not regarding their promise and undertaking aforesaid, in form aforesaid made but contriving and fraudulently intending, craftily and Subtilly to deceive and defraud the said Abraham in this respect have not, nor hath either of them paid to the said Abraham, the said Ninety two pounds, Nineteen Shillings and

three pence or any part thereof (altho' the said George and Duncan afterwards to wit on the first day of June in the year last aforesaid, at the City and ward and within the Jurisdiction aforesaid were required; by the said Abraham to pay him the same) but have hitherto refused, and still do refuse to pay the same to the said Abraham to the damage of the said Abraham One hundred and Eighty six pounds and thereupon he brings Suit etc: And hereupon in the same Court now here held lycense is given by the Court to the aforesaid George Hopkins and Duncan M^cDugal to the Bill aforesaid to emparle here until the next Court of our Lord the King to be held for the said City, before the Mayor Recorder and Aldermen aforesaid on Tuesday the twenty seventh day of January in the seventh year of the Reign of our Lord the King aforesaid, and the same day is given by the Court to the aforesaid Abraham Duryee there etc: At which same next Court of our Lord the King held for the said City, before the Mayor Recorder and Aldermen aforesaid at the City hall of the said City, on Tuesday the aforesaid twenty seventh day of January came the said Abraham Duryee by his Attorney aforesaid and the said George Hopkins and Duncan M^cDugal altho' at the same time being solemnly called came not, nor any thing say, in Bar or Preclusion of the action aforesaid of him the said Abraham Duryee, by means whereof the said Abraham Duryee remains thereof against them undefended etc: Therefore it is Considered by the Court, that the said Abraham Duryee recover against the said George Hopkins and Duncan M^cDugal their Damages occasioned by reason of the premisses, but because to the same Court it is not known what Damages the said Abraham Duryee hath sustained by reason of the premisses: Therefore it is commanded the Sheriff of the City of New York and Minister of the same Court, that by the Oath of twelve honest and lawfull men of his Bailwick, he diligently enquire what Damages the said Abraham Duryee hath sustained, as well by reason of the premisses, as for his Costs and Charges by him about his suit in this behalf expended; and the Inquisition which he shall make thereon he may send to the next Court of our Lord the King to be held for the said City, before the Mayor Recorder and Aldermen aforesaid, at the City hall of the said City on Tuesday the twenty fourth day of February next, and the same day is given by the Court to the said Abraham Duryee there etc: At which same next Court of our Lord the King held for the said City, before the Mayor Recorder and Aldermen aforesaid at the City hall of the said City on Tuesday the aforesaid Twenty fourth day of February came the said Abraham Duryee by his attorney aforesaid; and the aforesaid Sheriff of the City of New York and Minister of the same Court to wit, John Roberts Esq^r now here testifies and returns a certain Inquisition indented and taken before him at the Dwelling house of Walter Brock situate near the City hall in the said City the twenty third day of February in the year aforesaid by the Oath of James Lawrence, Samuel Dunscomb, John Balthas Dash, Peter Tillou, James Strachan Edward Boyl-

NEW YORK MAYOR'S COURT

ston, Samuel Dunscomb Jun^r, John Robinson, Peter Machet, Caleb Boylston, Cornelius Sebring, and Nathaniel M^cKinley, honest and lawfull men of the said City, whereby it appears and is found that the said Abraham Duryee hath sustained Damages besides his Costs and Charges by him about his Suit in this behalf expended to Ninty two pounds Nineteen Shillings and three pence, and for those Costs and Charges to six pence: Therefore it is considered by the Court that the said Abraham Duryee recover against the said George Hopkins and Duncan M^cDugal his Damages aforesaid to Ninty two pounds Nineteen Shillings and three pence by the Inquisition aforesaid, in form aforesaid found; and also like money for his Costs and Charges aforesaid to the said Abraham Duryee by the Court now hereof his Assent adjudged [*Mercy*] and the aforesaid George Hopkins and Duncan M^cDugal in Mercy etc: