

yearly upon the said farm could not to be estimated at less than seventy-five pounds, and that the Plaintiff ought in justice and in reason to receive that sum for the yearly rent of the said farm, and that he would willingly give the Respondent sixty pounds for the half part of the produce raised upon the said farm, &c.

The second witness, William Heathe, was present when the covenant or agreement, filed in the said cause, was signed by the parties and signed the same as a witness to the execution thereof, that he knows "the Respondent" to be a man of good character, that he the Respondent performed and fulfilled all "the obligations in the said agreement binding on him, and that the Appellant never complained to him that the Respondent had never fulfilled the same, that the said Respondent ought to receive for "the yearly rent of the same, from seventy to seventy-five pounds, in consideration that he the said Respondent furnished all the farming implements and cattle necessary for cultivating the same."

The third witness, John McCallum stated, that he had "a knowledge that the Respondent leased "the farm, situate in Chatham aforesaid, to the Appellant as mentioned and described in a certain "agreement in writing between the Respondent, the said Appellant, and one Duncan McCallum, that "the Respondent leased the same on the first day of May, one thousand eight hundred and eighteen, "for two years then next ensuing, and that on or about the third or fourth day of May, in the year last "aforesaid, the said Appellant entered upon and took possession of the said farm, and from that time had "continued in the enjoyment and possession of the said farm, that he knew most all the matters and "things mentioned and stipulated in the said agreement, and had a knowledge that the said Respondent "on his part did perform and fulfil every thing incumbent upon him to do, as stipulated in the said "agreement, that he worked upon the said farm for a long time, and that the same was in good order except the pasture-fence which the said Respondent was not bound to repair, and he very believed that "the half part of the produce raised upon the said farm yearly, and each year, since the said Appellant had occupied the same, ought to be worth at least sixty or seventy pounds a-year." He also "proved the signatures to the said agreement."

Upon this evidence the cause was heard upon the merits *ex parte*, the Appellant Defendant in the Court below not having thought fit to file a Plea.

And on the 5th June, 1820, the Court below pronounced the following judgment, "the Court having "heard the Plaintiff by his Counsel, the Defendant not having pleaded to this action, examined the proceedings and evidence of record and deliberated thereon. It is considered that by virtue of the lease "made and agreed on between the Plaintiff on the one part, and the Defendant, and one Duncan McCallum, on the other part, in the beginning of May, one thousand eight hundred and eighteen, of the "farm and premises mentioned in the declaration in this cause, for the space of two years, to expire on "the first day of May last, the Plaintiff is entitled to recover from the Defendant one fourth of the hay, "one fourth of the grains and one sixth of the potatoes raised and produced upon the said farm; "and it is therefore ordered and adjudged that the Defendant do deliver up to the said Plaintiff in the "space of eight days after the service of this judgment, the just fourth part of the hay and of the "grains and the just sixth part of the potatoes raised and produced upon the said farm since the said "lease, and in default of so doing, it is ordered that he do pay over to the said Plaintiff, the sum of thirty-five pounds, current money of this Province, for the value thereof and costs of suit."

It is from this judgment, so favorable to the Appellant (reference had to the evidence) that the present Appeal has been brought.

C. R. OGDEN,  
Attorney for Respondent.

Quebec, 15th November, 1820: