

parties, which said agreement is not mentioned in the said Respondent's declaration in the said cause filed, and hath no relation to the demand in the said declaration contained.

FOURTHLY—That although by the said agreement the said Respondent bound himself to do and perform certain work and labor, for him the said Appellant in consideration whereof the said Appellant promised to pay unto him the said Respondent a certain sum of money, when the said work and labour was by him the said Respondent done and performed, and although the said Respondent hath not yet done and performed the said work and labour, and the said agreement remains open and unfulfilled, yet the Court below by their said Judgment hath awarded unto the said Respondent a large sum of money for the said work and labor.

FIFTHLY—That the action and demand against the said Respondent were premature and unfounded and ought to have been dismissed with costs.

SIXTHLY—That the said Court below in and by the said Judgment hath dismissed the Incidental demand of the said Appellant with costs, and because the said Court below ought to have maintained the Incidental demand of him the said Appellant, and to have awarded unto him the conclusions by him in that behalf taken.

SEVENTHLY—Because the said Judgment of the Court below is repugnant, incongruous and contrary to law and evidence.

Quebec, 21st July, 1818.