

To this declaration the Appellants filed a peremptory exception, averring payment and a plea of General issue.

A General answer to the first was filed by the Respondent and a Replication to the second.

The cause was inscribed upon the *Rolls des Enquêtes* for the adduction of evidence.

No. 22 of Record.

The Appellants filed an admission of the quantities of Barley delivered by the Respondent stating the times when the same were shipped and when delivered, and amounting to 11140 bushels, without prejudice to the right of the Defendant to object to the quality and condition of the said Barley and to obtain such relief in the premises as by law they might be entitled to.

No. 23 of Record.

The Respondent filed an admission of the payments made to him by Mrs. Young, specifying the times when the same were made, amounting in the whole to £1309 14 4.

It will be observed that the quantity admitted by Mrs. Young is 11140 and that the quantity which the Respondent avers in his declaration that he had furnished and delivered and caused to be furnished and delivered *dans le port de Quebec* is 11950, leaving a difference of 840 minots.

These 840 minots appear in fact to have been put on board a vessel of one Monton on the 9th of November 1811, but the vessel was cast away the succeeding night, the Barley was saved at St. Jean Port Joli in a damaged state, but no notice was given by the Respondent or by any other person of the shipment nor of the Loss till so late a period as the 29th of December of the same year, when the Barley was entirely spoiled. The loss would have been comparatively inconsiderable if due notice had been given by the Respondent either of the shipment or of the Loss.

No evidence was offered by the Respondent to shew that these 840 Minots were in fact delivered to Mrs. Young *dans le port de Quebec* as averred in his declaration. Indeed this so far from being supported by the evidence in the cause is directly contradicted by it.

Another ground of objection against the claim of the Appellants in the court below was that much of the Barley delivered to the Appellants at Quebec was in so bad and numerchantable a state as to render it necessary to use it immediately for the purpose of avoiding a total loss. The depositions of Donald M'Donald and Henry Austin establish the degree to which the Barley had been depreciated.

The Court below however pronounced the following Judgment: "It is considered and adjudged by the Court of our Lord the King now here, that the defendants Christian Ainslie Young and the Honorable John Young do jointly and severally pay to the plaintiff Pierre Casgrain, the sum of one thousand two hundred and ninety three pounds eighteen shillings and eight pence half-penny currency, for the causes stated and set forth in the declaration of the said Plaintiff in this cause filed, with interest on the sum of one thousand, two hundred and four pounds, thirteen shillings and six pence, currency from the thirty-first day of March, which was in the year of our Lord one thousand eight hundred and thirteen until perfect payment, and costs of suit.

In No. 43 of the Record will be found a statement of the Respondent's account with Mrs. Young whereby it appears that the balance due to the Respondent at the institution of this suit was £773 16 4.