

Court of Appeals.

IN A CAUSE BETWEEN

The Honorable John Young and Christian Ainslie Young
(Defendants in the Court below), APPELLANTS.

Et

Pierre Casgrain,

RESPONDENT.

CASE OF THE APPELLANTS.

THIS Appeal is brought from a Judgment of the Court of King's Bench for the District of Quebec condemning the Appellants to pay to the Respondent the sum of £1293 18s. 8½d. together with interest on the sum of £1204 13s. 6d. from the 31st day of March, 1813, and costs of suit.

The declaration states that on the 27 Sept. 1811, by a certain Notarial act, executed before Bélanger and Lelièvre, Notaries Public, Pierre Casgrain bound himself to furnish to the said Mrs. Christian Ainslie Young the quantity of from five to twelve thousand Bushels of good and merchantable Barley, weighing not less than 45 pounds the bushel, the said Pierre Casgrain to make a proportionate allowance for any deficiency in the weight of the said barley, without how ever that any barley weighing 43 lbs. only should be taken or considered to be merchantable, which said barley was to be put on board of sufficient vessels at the Rivier Ouelle and the neighbouring Parishes and conveyed to the Port of Quebec in the course of the month of October, then next if possible and not later than the 15th of November, also then next at the risk of Mrs. Young up to the said Period and thereafter at the risk of the said Pierre Casgrain, at a price which should not exceed four shillings the Bushel of Merchantable Barley.

That Mrs. Young was to allow to the said Pierre Casgrain two pence half penny per bushel commission. That the price of the said barley was to be paid by Mrs. Young at certain periods mentioned in the declaration *avec intérêt sur la dite somme à raison de six par cent, l'an à compter du jour de la livraison de la dernière quantité.*

That in fulfilment of the said agreement, the said Pierre Casgrain did from the 5th of October, 1811, to the 12th May, 1812, deliver to Mrs. Young at the Port of Quebec, large quantities of Barley, amounting in the whole to 11,950 Bushels.

That the said Appellants thereby became indebted to the said Pierre Casgrain in the sum of £2390 for the price of the said Barley and in £124 9 7 for his commission thereon, making together £2514 9 7.

The Respondent goes on to state that on the 16th August 1812, by a certain writing *sous seing privé* the said John Young, one of the Appellants, acknowledged that the Balance then due by the said Mrs. Young to the said Pierre Casgrain amounting as it is there said to £2119 9 7, should be paid by the said Christian Ainslie Young at certain other periods in the said Writing specified.

That Mrs. Young had not fulfilled the engagements contained in this last agreement.

The Declaration concludes for the sum of £1720 9 7 with interest upon the entire sum of £2514 9 7, *à compter du douze May dernier, Jour de la dernière livraison de la dite quantité d'orge suivant le dit Marché du 27 September 1811 jusqu'au parfait paiement, et en outre pour voir la dite Dame Christian Ainslie Young dire et déclarer que faite par elle d'avoir rempli ses obligations audit écrit du 10 Aout dernier comme susdit icelui écrit sera déclaré nul et résolu comme s'il n'avoit jamais eu lieu, et que le dit Marché du 27 September demeurera en pleine force et valeur &c.*

The above mentioned agreement of the 16 August was entered into by Mr. Young without any legal authority from Mrs. Young and under circumstances of error on the part of Mr. Young and imposition on that of the Respondent, which would have entitled the Appellants to obtain a judgment declaring that agreement *nul et résolu comme s'il n'avoit jamais eu lieu.*

But it was unnecessary for the Appellants to pray the Judgment of the court to that effect as they had been anticipated in that prayer by the Respondent who had thus formally waived all benefit under the agreement and of course all discussion respecting it,

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