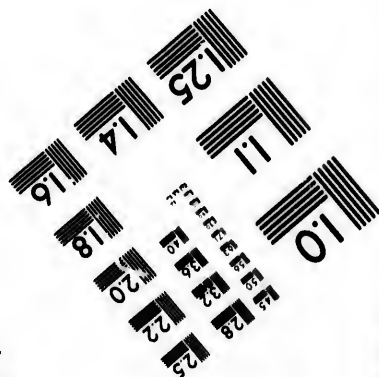
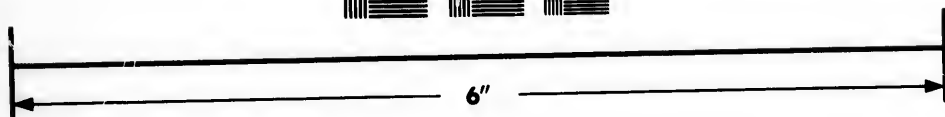
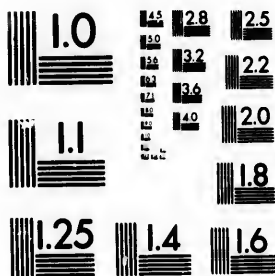


**IMAGE EVALUATION
TEST TARGET (MT-3)**



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

14 12.8 12.5
13.2 12.2
12.0
1.8

**CIHM/ICMH
Microfiche
Series.**

**CIHM/ICMH
Collection de
microfiches.**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

10
01

© 1984

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- | | |
|---|---|
| <input type="checkbox"/> Coloured covers/
Couverture de couleur | <input checked="" type="checkbox"/> Coloured pages/
Pages de couleur |
| <input type="checkbox"/> Covers damaged/
Couverture endommagée | <input type="checkbox"/> Pages damaged/
Pages endommagées |
| <input type="checkbox"/> Covers restored and/or laminated/
Couverture restaurée et/ou pelliculée | <input type="checkbox"/> Pages restored and/or laminated/
Pages restaurées et/ou pelliculées |
| <input type="checkbox"/> Cover title missing/
Le titre de couverture manque | <input checked="" type="checkbox"/> Pages discoloured, stained or foxed/
Pages décolorées, tachetées ou piquées |
| <input type="checkbox"/> Coloured maps/
Cartes géographiques en couleur | <input type="checkbox"/> Pages detached/
Pages détachées |
| <input type="checkbox"/> Coloured ink (i.e. other than blue or black)/
Encre de couleur (i.e. autre que bleue ou noire) | <input checked="" type="checkbox"/> Showthrough/
Transparence |
| <input type="checkbox"/> Coloured plates and/or illustrations/
Planches et/ou illustrations en couleur | <input type="checkbox"/> Quality of print varies/
Qualité inégale de l'impression |
| <input type="checkbox"/> Bound with other material/
Relié avec d'autres documents | <input type="checkbox"/> Includes supplementary material/
Comprend du matériel supplémentaire |
| <input type="checkbox"/> Tight binding may cause shadows or distortion along interior margin/
La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure | <input type="checkbox"/> Only edition available/
Seule édition disponible |
| <input type="checkbox"/> Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/
Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées. | <input type="checkbox"/> Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/
Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible. |
| <input checked="" type="checkbox"/> Additional comments:
Commentaires supplémentaires: | Docket title page is bound in as last page but filmed as first page on fiche. |

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	14X	18X	22X	26X	30X
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12X	16X	20X	24X	28X	32X

The copy filmed here has been reproduced thanks to the generosity of:

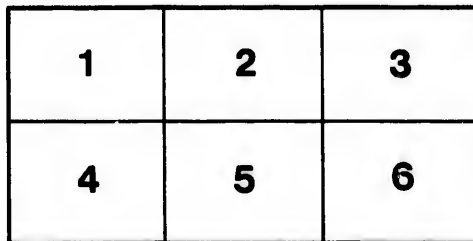
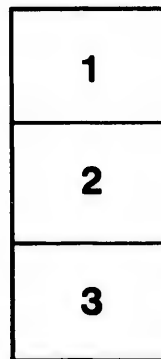
Seminary of Quebec
Library

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol \rightarrow (meaning "CONTINUED"), or the symbol ∇ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

Séminaire de Québec
Bibliothèque

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole \rightarrow signifie "A SUIVRE", le symbole ∇ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

e
étails
s du
modifier
r une
Image

s

errata
to

pelure,
on à

32X

IN THE QUEEN'S BENCH.
APPEAL SIDE

THOMAS C. AYLWIN,

APPELLANT,

(Plaintiff in Queen's Bench.)

AND

HENRY JUDAH,

RESPONDENT,

(Defendant in Queen's Bench.)

RESPONDENT'S CASE.

IN THE QUEEN'S BENCH.

APPEAL SIDE

THOMAS C. AYLWIN.

PROVINCE OF CANADA,
DISTRICT OF MONTREAL.

IN THE QUEEN'S BENCH,

APPEAL SIDE.

THOMAS C. AYLWIN,

APPELLANT,

(Plaintiff in Court below.)

AND

HENRY JUDAH,

RESPONDENT,

(Defendant in Court below.)

RESPONDENT'S CASE.

The Appellant instituted before the Superior Court in the District of Montreal an hypothecary action against the Respondent as the "Détenteur" of a certain immoveable property called the "Bocage," situated in the City of Montreal, founded on a mortgage made and consented by the Honorable Jean Roch Rolland, in favor of the Honorable Samuel Gale, dated 23rd November, 1840, and subsequently transferred to the Appellant.

The Respondent having by Deed of Sale, dated 6th November, 1852, purchased the property in question from the said Honorable Jean Roch Rolland, free of all incumbrances whatsoever, with the further stipulation in the said Deed of Sale as follow: "*Déclarant de plus la propriété présentement vendue franche et quitte de toutes autres charges et hypothèques.*" And having paid at the time of the passing of the said Deed of Sale the whole amount of the purchase money brought an action "*en garantie formelle*" against the said Honorable Jean Roch Rolland, who filed no plea either to the principal action or action "*en garantie*," both demands being inscribed for hearing on the merits *ex parte*. The Superior Court on the 28th day of February last past rendered the following Judgment:—

The 28th February, 1857.

PRESENT:—The Honorable Mr. Justice Smith,
" Mr. Justice Mondelet,
" Mr. Justice Chabot.

The Court having heard the principal Plaintiff by his Counsel, upon the principal demand *ex parte*, the principal Defendant not having pleaded to the principal Demand, and being duly foreclosed from so doing, and having also heard the Plaintiff *en garantie* by his Counsel upon the *demande en garantie*, and having been duly foreclosed from so doing, having examined the proceedings, proof and evidence of Record, and deliberated adjudging. *Firstly*, upon the principal demand and considering that the said Plaintiff, Thomas Cushing Aylwin, hath failed to establish that the debt now claimed by him under transfer from William Aylwin, to him the said Plaintiff, and bearing date the 28th November, 1840, is due by and exigible from the Honorable Jean Roch Rolland, the principal debtor, as set forth in his declaration; and considering further, that by act before Maitre Guy and his colleague Notaries Public, and bearing date the 19th day of August, 1852, the said William Aylwin, acting therein through his attorney the present principal Plaintiff, did agree to and with the said Honorable Jean Roch Rolland to give delay of payment to the said Honorable Jean Roch Rolland for a period of ten years, to be computed from and after the said 19th day of August, 1852, of the debt then vested in him the said William Aylwin, by transfer bearing date the said 19th day of August, 1852, from

John Rowand, Esquire, acting through his attorney, Duncan Finlayson, Esquire, before Maitre Guy and his colleagues Notaries Public, and that by reason of such delay of payment the said Plaintiff cannot, *quant a present*, now have and maintain his said action *hypothecaire* as now brought, doth dismiss the said action *hypothecaire quant a present* with costs.

And the Court further: considering that by reason of the said action *hypothecaire* having been so instituted by the said Plaintiff the said Defendant was entitled by law to implead the said Defendant *en garantie*, the Honorable Jean Roch Rolland, as his *garant formelle* as in and by the said action *en garantie* he hath done, and considering that the said principal Plaintiff hath failed to establish by law any right to the conclusions by him taken, as this Court cannot now adjudicate upon the said action *en garantie* the Court doth condemn the said Plaintiff, *Demandeur principal*, to pay the costs thereof.

It is from this Judgment that the present Appeal is brought.

THOMAS S. JUDAH,
Attorney for Respondent.

Montreal, September 23, 1857.

