

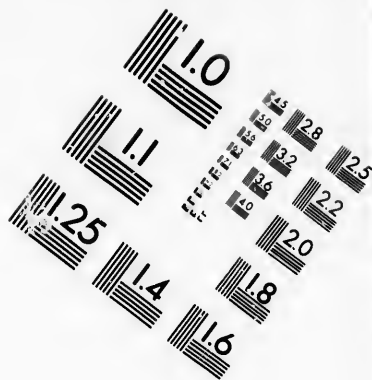
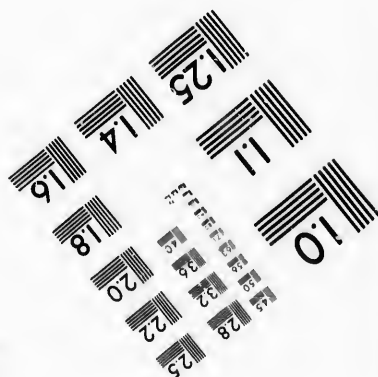
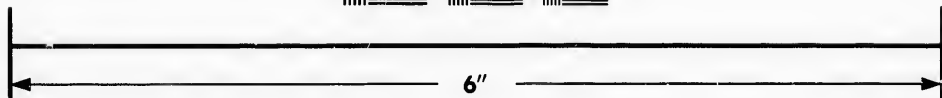
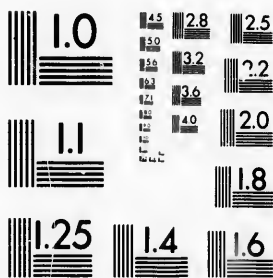


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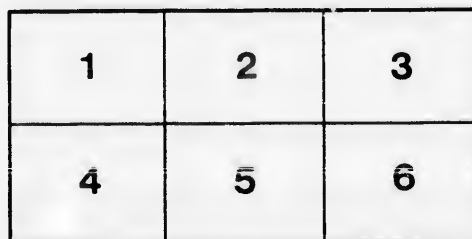
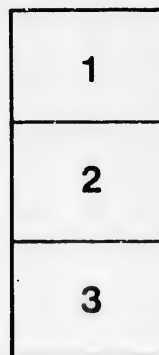
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IN APPEAL.

Hon. John Young & al.

APPELLANTS.

vs

Pierre Casgrain,

RESPONDENT.

CASE OF THE APPELLANTS.

A. STUART for APPELLANTS.

IN APPEAL.

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 £1730 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,

To

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 unmerchantable a state as to render it necessary to use it immediately for the purpose of avoiding a total loss. The depositions of Donald McDonald 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.

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