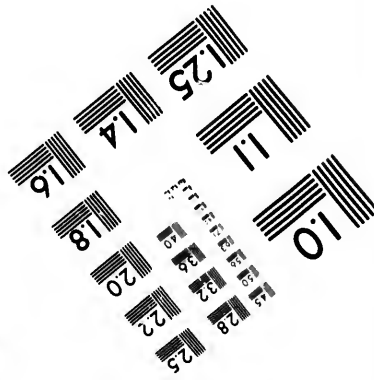
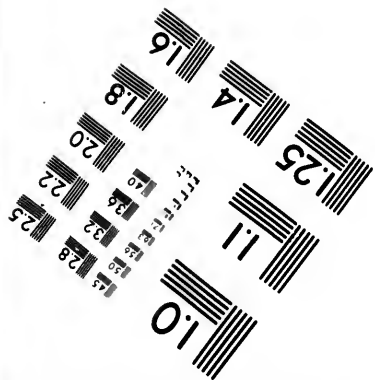
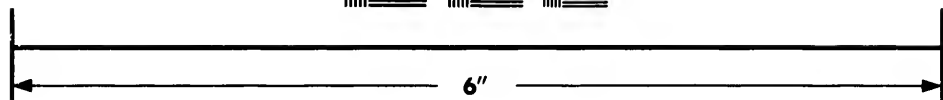
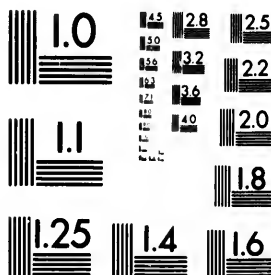


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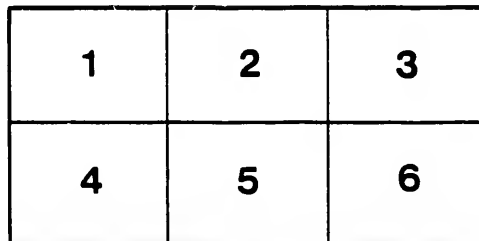
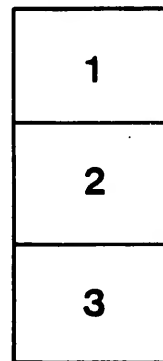
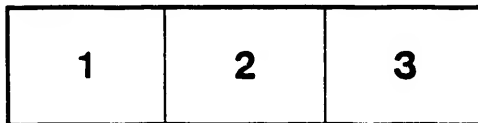
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No.

IN THE QUEEN'S BENCH.

IN APPEAL.

JAMES HOGGEN,

Appellant.

ROBERTUS WRIGHT,

Respondent.

APPELLANT'S CASE.

PROVINCE

10/1/11

The issues being closed the Respondent produced an evidence of his claim firstly the Trust Deed of the twenty-sixth day of March, one thousand eight hundred and fifty-one—secondly, the said deed of sale by the said Trustees represented by their Attorney A Workman (whose power of Attorney or authorization from the other Trustees is not however filed or proved to the Appellant,—thirdly, the said judgment of the Superior Court of the seventh day of June, one thousand eight hundred and fifty-seven,—fourthly a judgment of the Superior Court of the thirtieth day of September, one thousand eight hundred and fifty-seven,—and fifthly, an admission on the part of the Appellant that the property mentioned in the Plaintiff's declaration was sold by the said Trustees to the Appellant, was a part of the property assigned to them by the Respondent, and that the objects for which the said trust was created had been fulfilled.

The Appellant having adduced no evidence the judgment appealed from was rendered in favor of the Respondent on the first day of February, one thousand eight hundred and sixty.

From this statement appears that the Respondent bases his claim to the debt in question upon two grounds which are of course inconsistent with each other. In the first place he claims that the Trust Deed became effete by the fulfillment of the objects for which the said trust was created, and as a consequence that the said debt became vested in him by mere operation of law, and in the second place, that the debt in question became vested in him by virtue of the aforesaid judgments of the Superior Court, which operated as a conveyance of the said debt from the said Trustees to him.

Taking the Respondent's first proposition as founded the said judgments of the Superior Court have absolutely no signification for then they would order the said Trustees to transfer to the Respondent that which was his already, and of which by hypothesis, they had been divested by mere operation of law. And vice versa, the authority of the said judgments of the Superior Court would destroy the Respondent's first proposition for they are both evidently founded upon the presumption that the surplus of the said estate, not disposed of, was still lawfully vested in the said Trustees.

In regard to the Respondent's first proposition, viz. That the debt in question became vested in him by mere operation of law upon the fulfillment by the Trustees of the objects for which the said trust was created, and as a portion of the surplus of the said estate not required to pay the Respondent's debts, the Appellant would submit that the said proposition is proved as unproved by law. It is also inconsistent with the said judgments which the Respondent obtained against the said Trustees, and which in contradiction with the nature and stipulations of the Trust Deed also referred to. For by the said Deed of Trust the Respondent absolutely conveyed all his property to the said Trustees, and all his legal and equitable interests therein, and, in consideration thereof, the Trustees agreed that should the said property conveyed to them be more than sufficient to pay the debts of the Respondent, they would execute such mortgages and conveyances as should be necessary to reinvest the surplus in the Respondent.

The Appellant would further submit that, admitting the legality of the said proposition, it was incumbent on the Respondent to prove that the debt in question formed a part of the said surplus of the estate, un sold or undisposed of by the said Trustees for the benefit of his creditors for this was a reasonable expectation to recover under any circumstances. But of this the proof was adduced, for was it a matter which could be proved in the said action, but one properly to be determined in a trial by the Respondent against the said Trustees.

In regard to the Respondent's claim to the debt in question, based upon the said judgment of the Superior Court the Appellant has only to refer the Court to the copies of the said judgments by which it will appear that they have no reference whatsoever to the debt claimed by the said Respondent from the Appellant. They refer only to real estate, debts, accounts, &c. which were in the hands of the said Trustees undisposed of and forming part of the surplus as conveyed to them by the Deed of Trust. Where as the debt claimed by the Respondent was never conveyed by him to the said Trustees, for it was created after the Deed of Trust, and there is no proof that any such surplus exists or ever did exist.

Under these circumstances, with the documents and proof of record, and in the absence of any proof that the debt claimed by the Respondent formed a part of the said surplus estate undisposed of and not applied by the Trustees, it is difficult to imagine what can be urged in favor of the said judgment in the Respondent's favor.

P. Aylen
Att'y for Appellant

PETER AYLEN,
Attorney for Appellant.

JUDGMENT APPEALED FROM.

IN THE CIRCUIT COURT.

The first day of February one thousand eight hundred and sixty, being an enquire day.

PRESENT THE HONORABLE MR. JUSTICE LAFONTAINE.

R. WRIGHT, *Plaintiff.*

vs.

J. HAGAN, *Defendant.*

THIS CASE having been inscribed for the adduction of evidence and final hearing on the merits at the same time, and the Court having heard the parties by their respective Counsel, and having seen the admission of the Defendant, examined the proceedings and proof of record, and having deliberated thereon it is considered and adjudged that the Plaintiff do recover from the Defendant James Hagan the sum of fifty pounds current money of the Province of Canada, due and owing from the said Defendant to the said Plaintiff for balance of the principal and interest remaining unpaid, in virtue of a certain Deed of Sale, bearing date and executed at Avignon, on the thirteenth day of March, eighteen hundred and fifty four, before Maître R. A. Young and C^oleague, Notaire Public, of a piece or parcel of land, described in the said Deed of Sale, and sold to the said Defendant by Alexander Workman, Esquire, sitting for and in behalf of the Trustees of the said Plaintiff, under a certain Deed of Assignment and transfer in trust, bearing date, and executed by the said Plaintiff before Maître Easton and C^oleague, at Montreal, on the twenty sixth day of March, one thousand eight hundred and fifty one, with interest in the said sum of fifty pounds, from the ninth day of September, last past, date of service of process, and actual payment and costs of suit.

Extract from a Judgment of the Superior Court rendered 25th June, 1857, against the said Trustees in favor of the Respondent.

AND it is further considered and adjudged that the said Defendants and each of them do within one month after the service upon them of the present Judgment, make sign and execute before Notaries a good and sufficient deed or deeds transferring and recovering to the said Plaintiff such portion of the real estate of the said Plaintiff conveyed to them under the said Trust Deed as hath not been sold by them the said Defendants, and in default of the said Defendants to make sign and execute such deed or deeds of transfer and conveyance, the Court doth order that the present Judgment's date and date as such transfer and conveyance, and shall vest in the said Plaintiff the surplus of the said real and immovable estate remaining in the hands of the said Defendants as such trustees as the proprietor thereof. And it is also considered and adjudged that the said Defendants do within the delay above mentioned deliver over to the said Plaintiff all the personal estate and all bills, books, accounts, and other papers and assets as may be in their and each of their hands undisposed of and forming part of the surplus so conveyed as aforesaid to the said Defendants.

