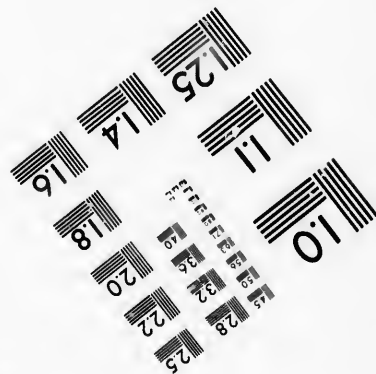
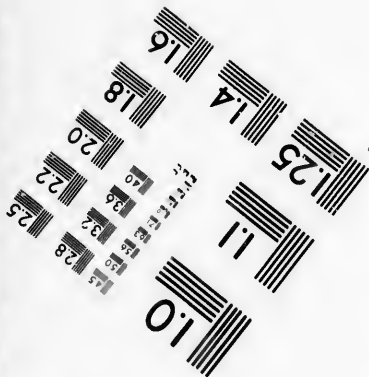
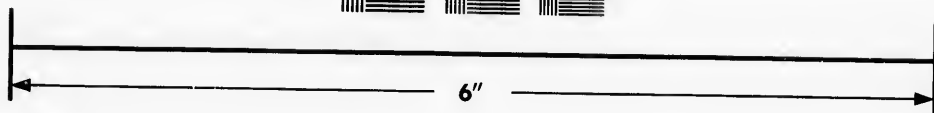
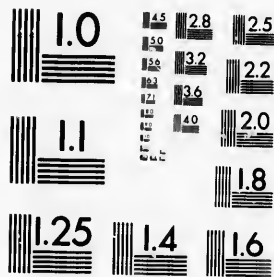


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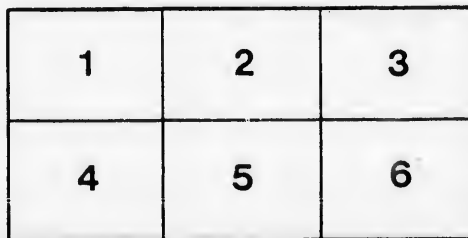
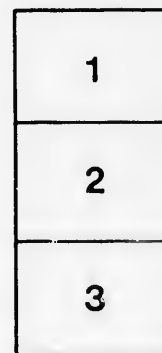
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*In Appeal.*

PHILEMON WRIGHT

and others,

APPELLANTS ;

AND

JONATHAN ALGER,

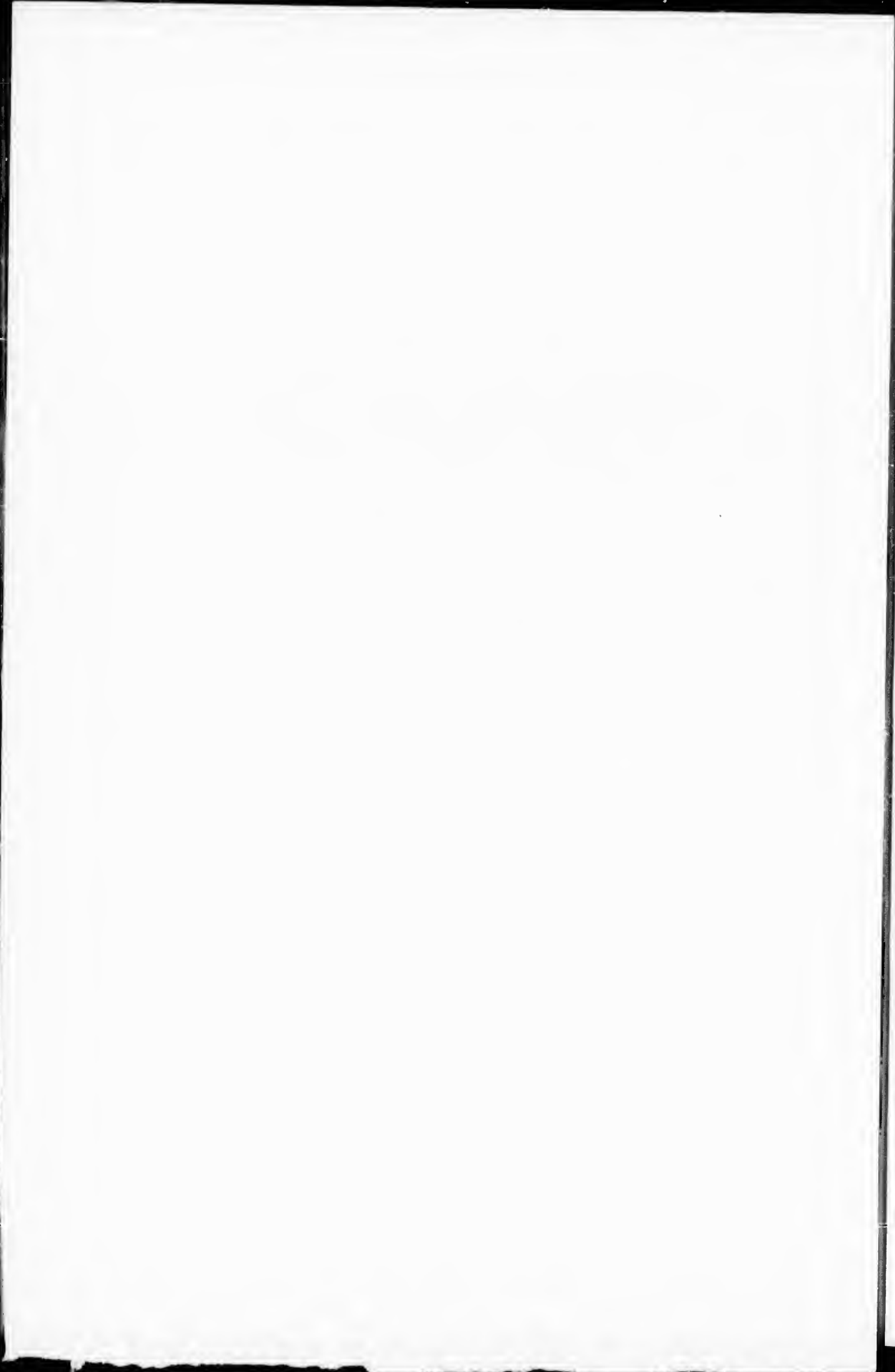
RESPONDENT.

—◆—  
APPELLANTS' CAUSE.

—◆—  
A. STUART, for Appellants.

*In Appeal.*

PHILEMON WRIGHT



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PROVINCE OF }  
LOWER-CANADA. }

*Court of Appeals.*

IN A CAUSE BETWEEN

PHILEMON WRIGHT, the Elder,  
PHILEMON WRIGHT, the Younger,  
TIBERIUS WRIGHT, and  
RUGGLES WRIGHT,

(Defendants in the Court below,)

APPELLANTS ;

AND

JONATHAN ALGER,

(Plaintiff in the Court below,)

RESPONDENT

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**CASE OF THE APPELLANTS.**

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THIS was an Action brought in the Court of King's Bench for the District of Montreal, for the recovery of Five Hundred Pounds, as damages alleged to have been suffered by the Respondent, in consequence of the Appellants not having, as it was said, fulfilled a certain "agreement made between" the said parties.

To this action the Appellants pleaded—First, that all and singular the allegations contained were false, &c. And, Secondly, *non infregit conventionem*.—Issue was joined upon each of these pleas.

The written evidence of the Respondent consisted—

First—Of a paper writing, denominated a "Memorandum," and signed by the Appellants, but not by the Respondent. As the Declaration is founded upon this paper writing, and all the other evidence in the cause relates to it, a copy is here given.—

"*Memorandum.*—It is agreed between Philemon Wright and Sons, of the Township of Hull, and Province of Lower-Canada, of the one part, and Jonathan Alger, of the other part, as follows, viz:—That they the said Philemon Wright and Sons, their Heirs and Executors, shall and will, on or before the first day of next August, grant unto the aforesaid Jonathan Alger a good and sufficient Lease of all that building or tenement called the Trip Hammer Shop, with all the tools, apparatus, and appurtenances thereto belonging, situated standing and being on the Grand Claudière Falls, in the aforesaid Township of Hull, to hold the same from the said day until the full end and term of one year next ensuing, to have and to hold the same for and during the aforesaid term of time free of rent or charge whatever, with the appurtenances; at the expiration of which period said Jonathan Alger is to restore said building unto the said Philemon Wright & Sons, with all the tools, implements, and apparatus thereto belonging, in the same condition in which he received them, making a proper and suitable allowance for the natural decay, wear and tare of said articles, and likewise said Jonathan Alger is to have the use and benefit of the appurtenances during said time, he providing them with board; and we further bind ourselves to provide Jonathan Alger with what quantity of iron and steel he shall require to manufacture during the aforesaid term of time; and for such advancements as we shall make unto the said Jonathan Alger, we bind ourselves to receive from him scythes, axes, hoes, and all other useful implements and workmanship to liquidate the same, at the same price for which he can vend them at the River St. Lawrence or elsewhere, and should he the said Jonathan Alger have occasion to forward any tools or implements of his manufacture down the river, we engage to convey them in our boats, when going down, free from any expense or charge, as far as Lachine and no further, and should said Jonathan Alger require to have any iron or steel transported from Montreal to the aforesaid Township of Hull, we engage to transport the same for the consideration of Thirty Dollars per Ton weight; the iron and steel we engage to give him at the first cost in Montreal, with the addition of transportation, and to deliver him coal at the same price which we ourselves



"are obliged to pay; and we further engage to give said Jonathan Alger the use and benefit of the gardens he originally had during the aforesaid term of one year. Given under our hands and seals, at Hull, the 13th day of February, 1818.

(Signed) "PHILN. WRIGHT & SONS, L. S.

"WITNESSES PRESENT,

(Signed) "SAML. DOWNES,

"JOSEPH RICE."

Secondly—Of a Protest by a Bailiff and two Witnesses, dated at Hull, in the District of Montreal, the 24th September, 1818, wherein the Respondent referring to and reciting the above memorandum, demands from the Appellants, six tons of "Russia or Sweeds" iron, one box of steel and 16,000 bushels of coals, and upon one of the Appellants answering "I never promised any such thing," the Bailiff and Witnesses protest for all damages, &c. &c.

Thirdly—Of a letter, purporting to be a letter from the Respondent to the Appellants, dated at Hull, 8th August, 1818, wherein the Respondent makes a demand similar to that in the above mentioned protest.

Fourthly—Of a release by the Appellants to the Respondent from his proportion "of all costs, charges and demands incurred in building, &c. the Trip Hammer and Blacksmith's shop situate and being on the Chaudière Fall, in said Township of Hull," he relinquishing all right, title or interest to the same, &c. &c.

Fifthly—Of seven plans of the said Trip Hammer and Blacksmith's shop.

Seven Witnesses were produced and examined on the part of the Respondent, and two witnesses on the part of the Appellants.

From the examinations of these witnesses it would appear that the principal difficulty between these parties related to the coal, and it is manifest that the Appellants had no intention of binding themselves to supply the Respondent with all the coal which might be required for the establishment, but barely to fix the price at which any coal which might be furnished by them should be charged at.

The evidence being too voluminous to admit of an abstract of moderate length, the Appellants will satisfy themselves with referring to the Record.

From the above facts it appears that the claim of the Respondent has no foundation in equity -- And even to one who has not yet got beyond the *prima legum incunabula* it will be apparent that it has none at Law.—For, 1st. The paper writing upon which the Respondent's action rests is not a contract or agreement, it not being signed by the parties thereto.

Secondly—If it be any agreement whatever, it is an inchoate one from which no action arises until it be perfected.

Thirdly—In as much as there can be no lease without *res, pretium & consensus*, and in this case there was no consent as to the pretium or rent, the agreement would be void by reason of its uncertainty.

And it cannot be intended, that the Respondent should hold the Land and premises without paying rent; for the term "Lease," used in the memorandum, implies the payment of Rent—And if that term had not been used, still rent would have been payable for *nemo pre-sumitur donare*.

But even if it were conceded to the Respondent that the agreement between the parties had in truth been that no rent should be paid, still the Respondent cannot recover; for,

Fourthly—The contract would in that case be a contract of donation of the use of the Land—Now such a contract ought by Law to be executed before Notaries—to contain words of gift—to contain an express acceptance of the gift, and to be signed by both the parties thereto.

Fifthly—There is no consideration for the promises of the Appellants, and those promises are therefore not binding, being made *sine causa*.

These grounds appear so conclusive, that it is hardly necessary to advert the minor deficiencies in the Respondent's case, such as there being no evidence of the partnership.

The Court below, after hearing "Counsels," condemned the Appellants without any specific evidence of damages, to pay to the Respondent the large sum of Two Hundred Pounds.

The reasons of Appeal are general as also the answers.

Quebec, 20th July, 1820.

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