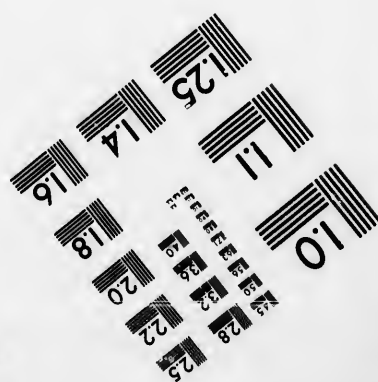
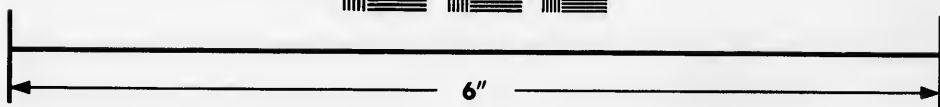
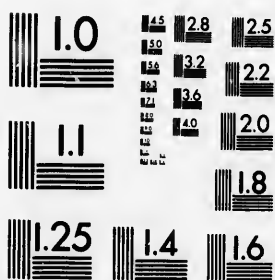


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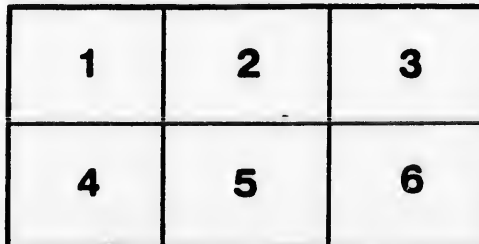
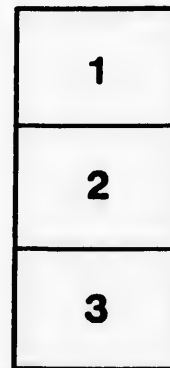
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PROVINCE OF LOWER CANADA,  
COURT OF APPEALS.

NOVEMBER SESSION, 1885.

*In a Cause between*

WILLIAM PRICE and others,

(Defendants and incidental Plaintiffs in the Court below.)

APPELLANTS;

AND

ANDREW BATES BROWNSON,

(Plaintiff and incidental Defendant in the Court below.)  
RESPONDENT.

Case of the Appellants.

STUART & BLACK.

*Filed 1<sup>st</sup> Nov 1885*

*C. J. R.*

In a Cause between

WILLIAM PRICE and others,

(Defendants and incidental Plaintiffs in the Court below.)

APPELLANTS ;

AND

ANDREW BATES BROWNSON,

(Plaintiff and incidental Defendant in the Court below.)

RESPONDENT.

Case of the Appellants.

THE interests involved in this cause are of a magnitude much beyond the sum in controversy, although that sum with the costs already incurred in resisting what the appellants conceive to be an unjust demand, is not inconsiderable.

The appellants are the proprietors, amongst other large establishments in this Province, for the manufacture of deals, and for the export of lumber generally, of a saw-mill and store at Metis, a distance on the South Shore of the St. Lawrence, of about one hundred and eighty miles from Quebec, at which mill large quantities of deals were manufactured, and many labourers employed in getting out the saw-logs, sawing them into deals, and conveying the deals to the River St. Lawrence, and there shipping them for Europe; and from the store supplies were furnished to the labourers and others, of the coarser necessaries which they required. The care and management of this store, and the superintendence of the shipments of deals at Metis, was confided by the appellants to the respondent, and for these services he was to receive £120 a-year. The respondent entered upon these duties on or about the 12th day of September, in the year 1831, and was discharged on the 9th day of November, in the year 1833, for misconduct; whereupon he instituted the present action for the recovery of a sum of £65 3s. 4d., which he claimed as the balance due to him for his services at Metis, as aforesaid.

The declaration is in general *indebitatus assumpsit*, and contains four counts—1st. For work and labour, journeys and attendances. 2dly. a *quantum meruit*. 3dly. For money paid, laid out and expended;—And 4thly. on an account stated.—Damages, £75.

With the general issue the appellants pleaded a plea of peremptory exception, wherein after admitting that the said respondent had been in their employ, from the 30th of November, 1832, to the 8th of November, 1833, as the hired servant of the appellants, they allege:—

“That the said plaintiff during the time that he was in the service of them the said defendants, for the recovery of the wages whereof the present action hath been brought by him, the said plaintiff, against them the said defendants, was employed by them the said defendants, to take charge of a certain retail store or shop, of them the said defendants at Metis, in the District of Quebec aforesaid, and had during the time aforesaid, the care and management and custody of divers goods, wares and merchandises, by him the said plaintiff, for the use and benefit of them the said defendants, as the agent and servant of them the said defendants, for hire and reward, and, amongst other goods, wares and merchandizes, which were placed in the hands and custody of him the said plaintiff, by them the said defendants as aforesaid, at Metis aforesaid, there were forty-one barrels of pork of the value of £205, and ninety-three barrels of flour of the value of £162 15s., making together the sum of £367 15s. current money of this Province; which said forty-one barrels of pork, and ninety-three barrels of flour, the said plaintiff made away with and converted to his own proper use and profit, and that the said plaintiff as such agent and servant as aforesaid, during the time that he was in the said service as aforesaid, conducted himself very negligently and fraudulently, absenting himself from time to time from such service, employing the servants of them the said defendants, for his own private use and benefit, and carrying on a separate trade of his own, to the prejudice of the trade and business wherewith he was entrusted as aforesaid by the said defendants, at Metis aforesaid.”

The appellants filed with the foregoing pleas, an incidental or cross demand, wherein they set forth :—

“That heretofore, to wit, on the first day of November, which was in the year of our Lord, 1832, it was agreed by and between the said incidental plaintiffs and the said incidental defendant, that he, the said incidental defendant should forthwith proceed to Metis, in the District of Quebec, and there take charge for hire, of a certain retail store or shop, of them the said incidental plaintiff, at Metis aforesaid, and the said incidental defendant did accordingly proceed to Metis aforesaid, to wit, upon the day and year aforesaid; and the said incidental plaintiffs on the day and year aforesaid, at Metis aforesaid, delivered and caused to be delivered to the said incidental defendant, divers goods, wares and merchandises, to wit, all the goods, wares and merchandises in the said retail store or shop, and delivered and caused to be delivered, divers other goods, wares and merchandises, to the said incidental defendant from time to time, amounting in the whole to the sum of £30,000 of lawful current money of this Province, to be sold and disposed of by the said incidental defendant, at and for the best price and value he the said incidental defendant could procure or get for the same, and to account for and pay to the said incidental plaintiffs, all monies arising from the sale thereof; in consideration whereof, to wit, on the day and year last aforesaid at Quebec, aforesaid, he the said incidental defendant undertook, and then and there faithfully promised the said incidental plaintiffs to sell and dispose of the said goods, wares and merchandises, for the said incidental plaintiffs, at and for the best price and value he, the said incidental defendant could procure for the same, and that he the said incidental defendant should account for, and pay the monies arising from the said sale of the said goods, wares and merchandises to the said incidental plaintiffs, when he, the said incidental defendant should be thereunto afterwards requested; yet he, the said incidental defendant, although often requested, hath not rendered a reasonable account of the premises or any part thereof, but hitherto hath refused, and still doth refuse to render the same. To the damage of the said incidental plaintiffs of £3,000, of lawful current money aforesaid. And the said incidental plaintiffs do allege and aver that the principal action of him, the said incidental defendant, against the said incidental plaintiffs in this cause, is brought for the recovery of certain hire or wages which he, the said incidental defendant in and by his declaration in this cause filed, alleges and pretends to be due unto him, and which said hire or wages are claimed and demanded for and by reason of the work and labor, care and diligence of him the said incidental defendant, used and employed about the selling and disposing of the aforesaid goods, wares and merchandises, and managing the aforesaid retail store or shop, of the said incidental plaintiffs, and that this present incidental action and demands of them the said incidental plaintiffs, arises out of the same source as the principal action and demands of him the said incidental defendant in this cause.”

The appellants pray in consequence :—

“That for the causes aforesaid, the said incidental defendant may be adjudged and condemned to make and render under oath, to the said incidental plaintiffs, a true, faithful and exact account of all and every the goods, wares and merchandises which have come, or ought to have come into his possession, custody or power as aforesaid, and of his care and management thereof, and of his management of the aforesaid retail store or shop, and generally of all and singular the concerns and premises of which he the said incidental defendant hath had the care and management as aforesaid, and to produce proper vouchers in support thereof, and in default of a compliance of the premises or any part thereof, that he the said incidental defendant be adjudged and condemned to pay and satisfy to the said incidental plaintiffs, the aforesaid sum of £3,000, lawful current money aforesaid, with legal interest and costs of suit.”

The respondent joined issue, by filing a general replication to the plea of general issue, and a general answer to the peremptory exception.

To the incidental demand he pleaded a plea of general issue, and also a peremptory exception, setting forth, that when he entered into the service of the appellants, and was placed to aid and assist in one of their stores, under the superintendance of an agent and foreman, having the gestion and care of the different posts or stores of the appellants in the County of Rimouski, no list or inventory of the merchandise and effects whereof was composed the shop or store where the respondent was placed, and no statement of the business of the said post or establishment was made, and that the respondent remained thus acting as clerk of the said store from the time he so entered until the month of November, 1833, when he was discharged from their service without just cause; and that thereupon the appellants remained in possession of all the merchandise and effects, whereof neither then nor since any list or inventory was made, either with or in presence of the said respondent; and moreover that the books of account of the said store were retained by, and left in the possession of the said appellants.

Issue being completed upon these last mentioned pleadings, the parties proceeded to examine witnesses, whose depositions were taken upon and are common to both demands. Some of the witnesses were examined in open Court, others under a Commission addressed to a Commission named for that purpose.

On the part of the respondent were examined, Daniel Brownson, uncle of the respondent, and William Dawson, junior.

On the part of the appellants were examined under the commission, Godfroy Raimond, of Rivière

du Loup, Guillaume Raimond, of the same parish, Denis Maugire of Metis, culler, Maurice Walsh of Metis, mill-wright, Benoni Peltier of St. Luce, in the county of Rimouski, joiner, Magleire Cameron of St. Luce aforesaid, John George McKenzie of Metis gentleman, Francois Pouliot, of St. Luce aforesaid, farmer, John Shaw of Rimouski, culler, and John McKinnon of Rimouski, gentleman; at Quebec were examined Franklin John Gardner, master of the ship Resolution, William Dawson, junior, gentleman, James Heney and Thomas Heney, labourers, and Hector Turnbull of Quebec, gentleman.

It appears from the deposition of *Daniel Brownson*, that he is the uncle of the respondent, had been in the service of the appellants and dismissed therefrom about the same time that the respondent was dismissed, and had an action pending against the appellants at the time of his examination. He states that the respondent entered into the service of the appellants, on or about the 12th of September, 1831, when the following letter was written by the witness under the authority of the appellants to the respondent:—

“ Rimouski, 12 Sept. 1831.

“ Andrew B. Brownson,  
“ Sir—This is merely to state the nature of our agreement with you. We agree to pay you one  
“ hundred and twenty pounds currency, per annum, commencing from this day, and all your  
“ lawful expenses when in the execution of our business. We shall expect your most zealous  
“ attention in overseeing and conducting our business to the best advantage to the extent of your  
“ abilities.—Yours, &c.

“ Wm. PRICE & Co.  
“ per D. BROWNSON.”

The respondent, this witness says, remained in the service until or about the 9th of November, 1833, when he was discharged from the appellants' service by the witness, in consequence of orders to that effect received from Mr. Price, one of the appellants. The respondent after having been first employed in the *chantiers* to superintend the men in the bush, to explore the woods, and to receive the logs from the contractors as they came to be delivered on the river side, for the space of about seven months, and having been next employed to attend at the mills at Metis, and to superintend the conveying of the logs down to Metis, for the sawing of them there, for the space of about five months, and having been then again employed as above at the chantiers, for another space of seven months, was lastly employed to attend upon the wharf at Metis, culling and shipping of deals, and also the shipping of staves, and attended the store at Metis, and kept the accounts as well of the shipping of deals and staves as of the store. The witness states that it was about the first of June, 1833, the respondent was placed in the said store to take charge of it. That he has no knowledge of an inventory being made at that time, but that he cannot say that no list was in fact then made, and that an inventory was made at the time of his discharge, which inventory remained in the hands of Mr. William Dawson, junior, the book-keeper of the establishment. That during the whole of the time that the respondent remained in the service of the appellants, the witness had the superintendence of the whole establishment in which the store is situated, but had nothing to do with the sales therein, nor did he consider himself answerable for the store or the management of the store, in which the respondent lived, and whereof he had the key which had been delivered to him by Denis Maugire, who had been in charge of the store before the respondent took possession of it; and from whom the respondent received the goods in the store.

The Witness, *William Dawson, junior*, in his examination on the part of the Respondent, states that he had been in the service of the appellants; his principal occupation being that of book-keeper, and that at the time that the respondent left the appellants' employ, the apparent balance upon the books in his favor was about £60; but, upon his cross-examination, he adds that when this balance was stated in the books the account between the respondent and the appellants had not been made up, and it had not been ascertained whether there had been any deficiency in his account or in the merchandise in the store.

The principal witness on the part of the appellants as well upon the demand in chief as upon the incidental demand, was the before named *William Dawson, junior*, who had been employed by the appellants as their book-keeper at the establishments of Rimouski and of Metis, and whose duty it became to settle the stock and accounts of the store at Metis, when the respondent was discharged therefrom and the management transferred to another. His examination containing a narrative of the whole transaction is here given at full length:—(No. 41 of record.)

“ I entered the service of the defendants as their clerk, on or about the second June, 1832, and have remained in their employ ever since. Before I entered into the service of the defendants they had saw-mills and a manufactory establishment for deals at Rimouski and another at Metis, they had also retail stores at both these places; these establishments and stores have been in operation since I entered the defendants service. In the latter part of January, 1833, I was sent from Quebec to Rimouski and Metis by the defendants to perform certain duties for them at both these places. My duty was to take charge of the cash accounts and correspondence under the direction of the superintendant of both these places. I arrived at Rimouski the latter part of January, and immediately upon my arrival, I entered upon the discharge of my duty. The said Daniel Brownson was sole superintendant of the establishment at Rimouski and Metis; he kept house at Rimouski, but attended at the one place and the other as chief manager. The distance between these two places is between twenty-six and thirty miles, by the usual road along the beach. I remained at Rimouski and Metis nearly eleven months, my resi-



dence was principally at Rimouski. I lodged and boarded with private families, and from the beginning of June, 1833, with Daniel Brownson, down to the time of his leaving the defendants' employ in the month of November in that year, on returning to Quebec. I arrived at Quebec upon my return from Rimouski and Metis, on the 28th of December, 1833. The plaintiff was in Quebec at that time. The duty of the plaintiff from the fall of 1832 up to the spring of 1833 was to superintend the Metis chantiers, to cull and receive the logs and to attend in the store when required. From about the middle of May, 1833, he had to take charge of the Metis store, to cull, to ship, and to assort the deals, and to keep the accounts of the shipments and store books, and also of cash left him for to pay the labourers.

*Question*—State particularly in what manner these several duties were performed by the plaintiff, whilst you were at Rimouski and Metis, as above mentioned in the employ of the defendants?

*Answer*—During the whole of the time that I was there the plaintiff behaved in a very careless and bad manner. Shortly after my arrival I found that he had kept the account of the logs in a very bad manner, two men in particular I found he had over paid, which sum was never recovered by the defendants. He was in the habit very frequently of absenting himself from the business, in the business part of the season, for the purpose of shooting and other amusements. He placed in the defendants' store at Metis, a quantity of shoes and boots which he sold to their labourers, stopping the payment from their wages. He was in the habit also of entrusting the key of the Metis store to a female who resided with him in the house, in the capacity of house-keeper. After his discharge when I demanded the key of the store from him, he had to obtain it from this female, in order to give to me. He sent the deals off to the vessels in a very careless and bad manner. I have seen bateaux loaded with deals by the men upon the wharf, the account of which was taken by one of those labourers, and sent off to the vessels without his ever seeing them. Whilst one of the vessels, Jane, was taking on her deck load, I went on board. The captain, Digby, complained to me of the quality of the deals along side: upon inspection, I found several bad culls in the bateau, which I requested the captain to send on shore again, but which the plaintiff had shipped as second quality deals. The far greater part of the deals were not culled by himself, but by an Irish labourer upon the wharf. About September, 1833, a jeweller went down with articles for sale, from Quebec to Metis; whilst there he boarded with the Plaintiff and sold several articles to our labourers at the mills, which the plaintiff paid him and passed to the debit of those men, which brought some of them into debt. The provisions which he had in his house belonged solely to the defendants; the aforesaid jeweller made the plaintiff a present of a silver watch-guard for the trouble he had taken. After the Harriet, (captain Lock) was cleared and sailed from Metis, the plaintiff entered in his Metis cash-book a sum which he said he had paid for butter for the aforesaid captain, which I was compelled to place to the debit of the said captain, which sum the defendants have not yet recovered. The plaintiff got two or three small pigs, whilst I was there, which pigs were fed with the defendants' provisions, those he afterwards killed, and charged in the books as pork bought at the current price.

*Question*—What was the nature and value of the goods which the plaintiff, during the time you were so at Rimouski and Metis, merchandized for the defendants in their store at Metis as you mentioned above?

*Answer*—Pork, flour, sugar, tea, tobacco, rum, with various articles of clothes suitable for the habitants and labourers, also clasped knives.

*Question*—When did the plaintiff leave the defendants' service at Metis, and was there any and what inventory taken of the goods left by him in the said store, and by whom?

*Answer*—The plaintiff left the defendants' service on or about the 9th November, 1833. There was an inventory taken of the goods then in the store, by the superintendent, Daniel Brownson and Mr. John Shaw.

*Question*—Was there any and what deficiency apparent at the said inventory made?

*Answer*—When I made up the store account, I found a serious deficiency of about forty-one barrels of pork, and ninety-three barrels of flour, not accounted for.

*Question*—From what materials did you make up the said account?

*Answer*—In the first place, I ascertained from the sales books at Rimouski the quantity of goods, &c. sent down to Metis, next I took the account of the whole of the sales made at Metis during the time that I was there, to which I added the aforesaid stock on hand at Metis, and by subtracting the one from the other, I found the foregoing deficiency.

*Question*—What was the value of the aforesaid pork and flour at Metis?

*Answer*—About three hundred pounds.

*Question*—Have you any knowledge of the plaintiff trading in furs whilst he was so at Metis?

*Answer*—During the winter that I was there the plaintiff purchased a quantity of furs from the Indians, those furs he sent to Quebec by Denis McGuire, for sale, in the early part of March, 1833.

*Question*—Have you any and what knowledge of the sending of pork and flour to the plaintiff from the defendants' store at Rimouski, to be disposed of by the plaintiff at their stores at Metis?

*Answer*—I saw a great part of it sent down myself.

*Question*—Had you any and what conversation with the plaintiff, or did you ask him any explanation respecting the before mentioned deficiency in the forty barrels of pork and ninety-three barrels of flour which you have spoken about.

*Answer*—As soon as I discovered the deficiency I asked the plaintiff if he could in any way account for it; he replied he could not. I pointed out to him the quantity of pork and flour sent down from November, 1832, up to the time of the discharge of the plaintiff, to which I added the stock taken in November, 1832, and showed him how much was sold at the Metis store, and what had been delivered to our chantiers and other parts of the establishments. I then showed him the deduction of the one from the other, which left the deficiency before stated; he acknowledged the correctness of my account, but said that he could not by any means account for the deficiency?

*Question*—Did the business of the defendants suffer at Metis, and if so how and to what extent, by the plaintiff absenting himself from his duty as you stated in the fore part of this your examination?

*Answer*—I have frequently gone down to Metis when the plaintiff was absent, when people have come to purchase goods from the store, which they could not obtain there, owing to his absence, and had to purchase elsewhere, to the evident injury of the defendants; once in the business part of the season, he took a great quantity of old clothes up to the Metis mills, which he raffled for amongst the labourers, stopping the payment for the same from their wages; thus not only losing his own time, but causing the labourers of the defendants to lose theirs also; he was also in the habit of purchasing guns and other articles at a low rate, which he afterwards sold to the defendants' labourers and the habitants.

"Cross-Examined--I joined the defendants' establishments the latter part of January, 1833. When I joined the establishment, I resided at Rimouski, but went to Metis when my business required it; the plaintiff's post was at Metis the whole of the time, the distance was about twenty-six or thirty miles from where I resided. I cannot positively state upon what terms the plaintiff entered in the defendants' employ, and I was not present when he was hired. Denis McGuire was the person in charge of the store at Metis, of which the plaintiff took possession in the middle of May, 1833, when he the Plaintiff took full possession of the same. I was not at Metis when the plaintiff so took possession, and my knowledge of the plaintiff so taking possession was derived from the entries in the books and from what Daniel Brownson, the superintendent of both establishments told me. Before the plaintiff took possession of the store I had always correct accounts, but after that they were by no means satisfactory. Not being at Metis at the time, when the plaintiff took actual possession, I am not aware of the state of the store at that period. I have not any knowledge of an inventory of the goods on hand being taken, when the plaintiff took possession of the said store. When the plaintiff was discharged from the service of the defendants, an inventory of the goods then on hand, was taken by Daniel Brownson and John Shaw, in my presence. I took copy of the said inventory myself and left the original in the possession of John Shaw, one of the cutlers in the service of the defendants, when the plaintiff was discharged from the service of the defendants, John Shaw was put in possession of the said store, by Daniel Brownson. The books belonging to the said store, kept by the plaintiff, were left there by the plaintiff, and were put into the possession of John Shaw by myself. The plaintiff has not had those books in his possession since. The amount which the plaintiff overpaid the two labourers, mentioned in my examination in chief was a few shillings each. I have a general knowledge of the culling of timber, sufficient to state the different qualities of deals. I used to go down to Metis generally every month, to take a statement of the accounts there in order that I might place them in the principal books belonging to the establishments. Those accounts consisted of the sales made to habitants and labourers, and also of deliveries of goods to the mill and wharf; also an account of cash which the plaintiff had disbursed for the defendants. When in my examination in chief, my knowledge of the duties which the plaintiff had to perform was derived from Daniel Brownson. From my own personal knowledge I am aware of the plaintiff's absenting himself for the purpose of shooting and other amusements, but cannot state how far he might go. I suppose he was not absent upon such excursions less than one hundred times, some times he was about a whole day, at other times not so long. When the plaintiff was selling from the defendants' store, boots and shoes, there were some of those articles in the store at that time belonging to the defendants. At the time that the plaintiff had possession of the store, he had to retail out goods to the habitants and labourers, and also to deliver pork, flour, with other provisions, to the cooks at the mill and wharf, when required for the *nouriture* of the labourers. There were from forty-five to fifty persons employed in the establishment, at that time; the average consumption of pork for the labourers might be about four hundred and eighty pounds per week, as to the quantity of flour that may have been used for the labourers at Metis, I cannot positively state, they were, however, provided with bread as well as pork. After my return from visiting the Brig Jane, I told the plaintiff that he had sent rolls in the batteau amongst the second quality deals, and expostulated with him upon this subject; he told me that his uncle was master, and that he was accountable only to him, and that I had no right to trouble my head about such matters. I never previous to the discharge of the plaintiff, complained of him to the defendants, but I represented his conduct to Daniel Brownson at different times, and invariably received for answer, that he was master, and I had nothing to do with it. The entry in the Metis cash-book, to which I alluded in my chief examination, respecting the Captain of the Harriet, was made after the vessel clearing out, the sum was about one pound fifteen shillings. The food which he gave to the pigs alluded to in my chief examination was, to the best of my knowledge, scraps from his table with other requisite provisions, I cannot state what those other provisions were. I know from my own personal knowledge that the goods charged in the Rimouski books against the Metis store was correct. Sometimes those goods were sent down from Rimouski by the schooner of the establishment, at other times in a batteau boat, or by land as was deemed expedient by the superintendent. The people who took down those goods during the time the plaintiff had charge of the store, brought up receipts for the delivery of the same. These receipts were signed by the plaintiff, or by some other person whom he empowered so to do. He at no time, to my knowledge, empowered any particular person to sign such receipts. The plaintiff had sometimes during the summer time to go to the mills at Metis. I have no personal knowledge who employed the Irishman, I alluded to in my chief examination to assist the plaintiff in the culling of the deals. *Re-examined.* Question.—How did it happen that there were no shoes in the store at Metis, might they not have been procured from Rimouski? Answer.—There were none at Rimouski at that time, I wished to write for a supply from Quebec, but was prevented by Daniel Brownson."

*Hector Turnbull* establishes that the knowledge of the deficiency was first had by the appellants on the 25th of November, 1833, by a letter which will be found in No. 44, of record. He also produced the account of the deficiency as transmitted to the appellants, which will be found under the No. 43, of record; and upon being interrogated in conclusion, at what time it was the respondent returned to Quebec, and whether he ever came to or shewed himself at the office of the appellants after his return, the witness answers that the respondent returned to Quebec towards the end of 1833, but that he never at any time presented himself at the office of the appellants.

The remaining witnesses examined at Quebec were Franklin John Gairdner, mate of the ship *Resolution*, and James Heney and Thomas Heney.

*Captain Gardner* had taken in cargoes of deals at Metis and Rimouski, in each of four preceding years, and was then taking in a cargo there, on his fifth voyage therefrom. He was with his ship at Metis and Rimouski the latter end of August and the whole of September of the year 1833, taking in a cargo, partly at the one place and partly at the other. He states that the respondent had charge of the appellants' wharf and store at Metis, whilst he was so there in 1833, and had also the charge of assorting and shipping the deals which were then put on board his vessel. That these were improperly assorted; that the respondent was not punctual in his attendance, sometimes pleasuring in boats, sometimes snooting with his dogs, and frequently on board of ships, leaving the important duty of assorting the deals to a young Irishman, who had lately arrived in the country, and was incompetent to the duty. Witness had applied for groceries at the store, when the respondent told him that there were none, although there were groceries at Rimouski, with which he might have supplied himself if he had chosen.

The two witnesses, *James and Thomas Heney*, were employed, the former as culler, and the latter as an ordinary labourer in shipping deals at Metis, and establish the negligent manner in which this portion of the respondent's duty was performed.

*Godfroy Raymond, Guillaume Raymond, Denis Maguire, Maurice Walsh, Benoni Pelletier, Edouard Paquet, Magloire Cameron, John George McKenzie, Paul Ross, John Shaw and John McKinnon*, witnesses examined under the Commission, all concur in stating that the respondent was in charge of the store of the appellants at Metis, containing for sale, pork, flour, peas, leather, oil, nails, ready made clothing, groceries, dry goods, hardware and various other articles,—made sales of them,—received the proceeds,—and kept the books of the store. (*See the answers of the several witnesses to the 3d and 4th interrogatories in chief.*) The respondent had charge of this store from about the 15th or 20th of May, to the month of November, in the year 1833, Maguire, who had been previously in possession, having then given up the key of the store to the respondent, and the cash which he, Maguire, had then on hand. The appellants were in the practice of entering into large contracts for the cutting of saw-logs, as well at Metis as at Rimouski, the average number of which might be thirty thousand logs; (*answers to 6th and 7th interrogatories,*) and the contractors and labourers were supplied out of the stores of the appellants at Metis and Rimouski respectively. (*Answer to 8th interrogatory.*) The respondent carried on trade at Metis on his own account. (*Answers to the 9th interrogatory of Godfroy Raymond, Denis Maguire, John George McKenzie, and John McKinnon.*) The evidence already adverted to, in relation to the respondent's absence from his duty, is corroborated by *Godfroy Raymond, Denis Maguire, Edouard Paquet, Magloire Cameron, John George McKenzie, and John McKinnon*, in their answers to the 10th interrogatory.

The parties were heard upon both demands in the month of June last, and the Court below on the 20th of that month, pronounced judgment against the appellants, on the demand in chief for the sum of £65 3 4 currency, with interest from the 15th of March, 1834, and dismissed the incidental demand, with costs against the appellants.

It is apparent that the effect of this judgment would be to relieve the respondent from all the consequences arising from his negligence and misconduct during the time that he was in the service of the appellants, and to deprive the appellants of all recourse against him for the consequences of such misconduct, and more particularly for the value of the property placed in his hands, and for which he had not accounted to his employers. The interests of justice, it is respectfully submitted, would have required that the action in chief should have been dismissed; and that the respondent should have been condemned to render an account of the property of the appellants whereof he had the custody and management.

Dated, 5th November, 1835.

STUART & BLACK,  
For Appellants.

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