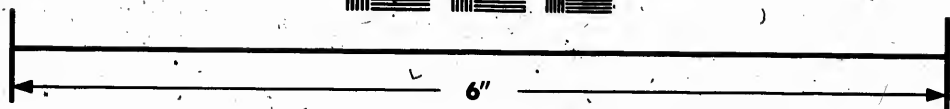
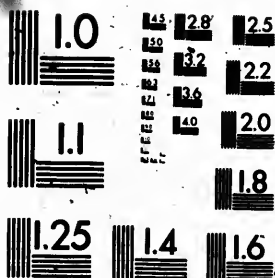


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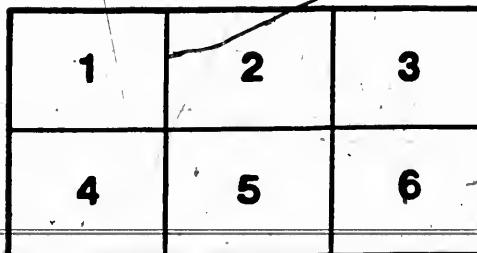
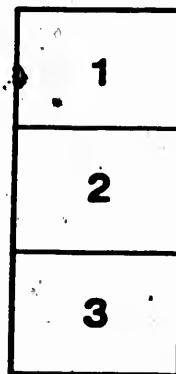
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2/6

# QUEEN'S BENCH,

APPEAL SIDE.

ALEXANDER QUINTIN *dit* DUROIS,

*(Plaintiff in the Court below),*

*Appellant;*

AND

JOHN BOSTON,

*(Defendant in the Court below),*

*Respondent.*

RESPONDENT'S CASE.

FILED,

HENRY STUART,  
*Attorney for Respondent.*

PROVINCE OF CANADA,  
District of Montreal.

# IN THE QUEEN'S BENCH.

(Appeal Side.)

ALEXANDER QUINTIN *dit* DUBOIS,

(Plaintiff in the Court below);

Appellant;

AND

JOHN BOSTON,

(Defendant in the Court below);

Respondent.

## RESPONDENT'S CASE.

The Declaration sets out, that in July, 1856, a Writ of Revendication issued commanding the Respondent, as Sheriff, to seize at the suit of F. D. Desjardins a quantity of goods and effects, grain and stock in the possession of the Appellant.

That the seizure was effected and the return made to the Court on the 22nd August, 1856. That before the return day, that is on the 5th August, in accordance with a petition presented by the said F. D. Desjardins, the Sheriff was commanded to proceed to the sale of a part of the goods and effects under seizure in the said cause, and to have the proceeds before the Court to await the issue of the said suit. That the Sheriff did sell the said goods and effects as directed for the price of £200 18s., 9d. That by an interlocutory order the Sheriff had been directed to pay £116 15s., 10d., to an intervening party, leaving a balance in his hands of £84 2s., 7d. That on the 18th June, 1857, a Judgment was pronounced in the said cause in the following terms: "the Court, after hearing the parties on the motion of the Defendant, inasmuch as it appears by the Deed executed on the 9th May, 1857, before Martin and Colleague, and produced with the said motion, that the parties in the said cause on *pris arrangement* and that the Plaintiff had undertaken to withdraw his suit, grants *acte* to the Defendant of the production of the said Deed and in consequence *met les parties hors de cour sans frais.*" That by the said Judgment the said seizure was virtually annulled and that *main levée* thereof was granted to the Defendant.

That the Sheriff has no further right to detain the effects seized, nor the monies proceeding from the sale; but that the said effects and monies ought to be given and paid to the Plaintiff; conclusion that the Respondent pay to the Plaintiff £84 2s., 7d., with interest.

The Respondent pleaded, that as Sheriff he was obliged by law to yield obedience to the writs and orders of the Court; that on the 14th July, 1856, a Writ of Revendication issued at the suit of one Desjardins, requiring the Defendant to seize and revendicate certain goods and chattels in the possession of the Plaintiff; that the writ was duly executed by the Sheriff and returned with the amount of his fees and disbursements as usual, in like cases; that by an order of Court, dated the 5th August, 1856, the Sheriff was directed to sell a certain portion of the goods and chattels so seized, in the possession of the present Plaintiff, as belonging to the said Desjardins, and in obedience thereto proceeded to such sale, and levied the sum of £200 18s., 9d., and made a formal return of his proceedings in due course of law, deducting the sum of £74 2s., 8d., as and for the fees and disbursements due the said Defendant, his deputies, and other officers, for the services rendered by them as aforesaid and fixed by law.

That on the 17th October, 1856, by an order of the Court, the Sheriff was commanded to pay out of the monies so levied as aforesaid £116 15s., 10d., to an intervening party, which order was executed by the Sheriff.

That there remains in the hands and custody of the Sheriff £9 10s., 11d., which the Sheriff has frequently tendered and offered to the Plaintiff, and renews his tender and offer, depositing the same in the hands of the Prothonotary.

The Sheriff further represented, that by a deed of transaction or compromise, executed before Mathieu and Colleague, on the 9th May, 1857, the said Desjardins and the Plaintiff declared that by Deed of the 4th January, 1854, the said Plaintiff had engaged himself to Desjardins for the purpose of conducting a farm, a *traverse* and to conduct and manage a trade in goods and merchandise. That subsequently thereto, difficulties having arisen between them, Desjardins issued an attachment, and that to avoid further difficulties they had referred their differences to arbitrators, which arbitrators had made an award; that the said Desjardins, in consequence of the refusal of the Plaintiff to acquiesce in the award, instituted an action of Revendication and seized upon the stock in the hands of the present Plaintiff, and which said suit was then pending and undetermined.

That the said parties, desirous of terminating all their differences and suits, covenanted that they should discontinue the suits instituted on both sides, and the said Desjardins, by the said compromise, ceded and transferred to the said present Plaintiff, thereto accepting all the goods and chattels and contents of said store, &c. And in consideration thereof the present Plaintiff promised to pay Desjardins £200.

The Appellant considers, that the proceedings having been withdrawn and discontinued, in virtue of the agreement and sale between the Plaintiff and Defendant in that suit, that the Sheriff is bound to pay to the present Plaintiff the amount of the fees and disbursements retained by him, and be compelled to bring an action against Desjardins for the amount thereof.

The Sheriff's pretensions are the following:—

1.—That the Sheriff, as the public officer performing a duty imposed by law, has a lien upon the property seized for his fees and disbursements.

2.—That the Sheriff's right of lien extends to the property under seizure, even where main *levées* thereof has been ordered.

3.—That the remedy to the Defendant is an action of damages against the Plaintiff for the illegal seizure, and a part of those damages would be the amount paid to the Sheriff before the property was released.

4.—That in the event of the property under seizure having been lost, the Sheriff would be liable and obliged to indemnify the Defendant, directly or indirectly.

5.—That in this case the Sheriff performed certain duties, such as selling and levying, which would entitle him to retain the fees and disbursements.

6.—That the compromise between the Plaintiff and Desjardins was a sale of the property under seizure to the present Plaintiff for a valuable consideration, and could not be made, so as to disturb the rights of the Sheriff.

HENRY STUART,  
*Attorney for Respondent.*

MONTREAL, 27th May, 1859.





