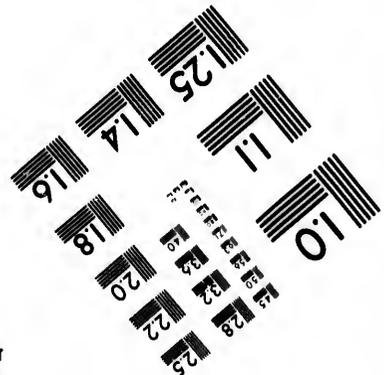
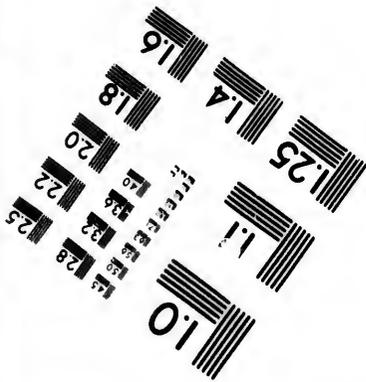
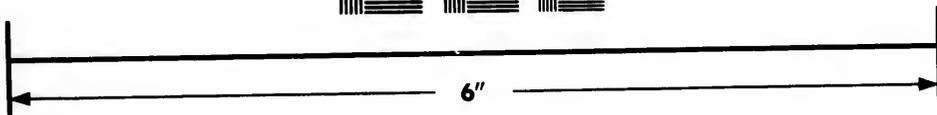
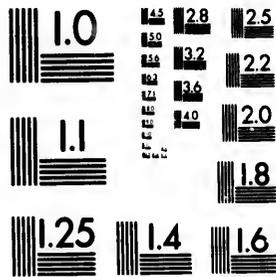


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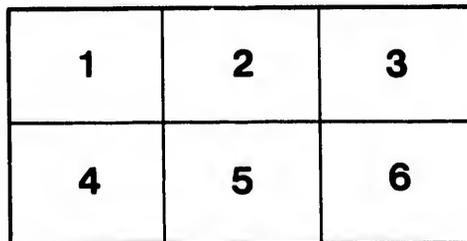
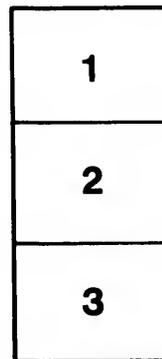
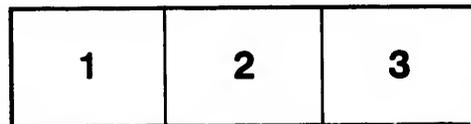
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IN THE QUEEN'S BENCH.

APPEAL SIDE.

ANN CECILIA MAGUIRE *et al.*,

APPELLANTS,

vs.

H. L. ROUTE,

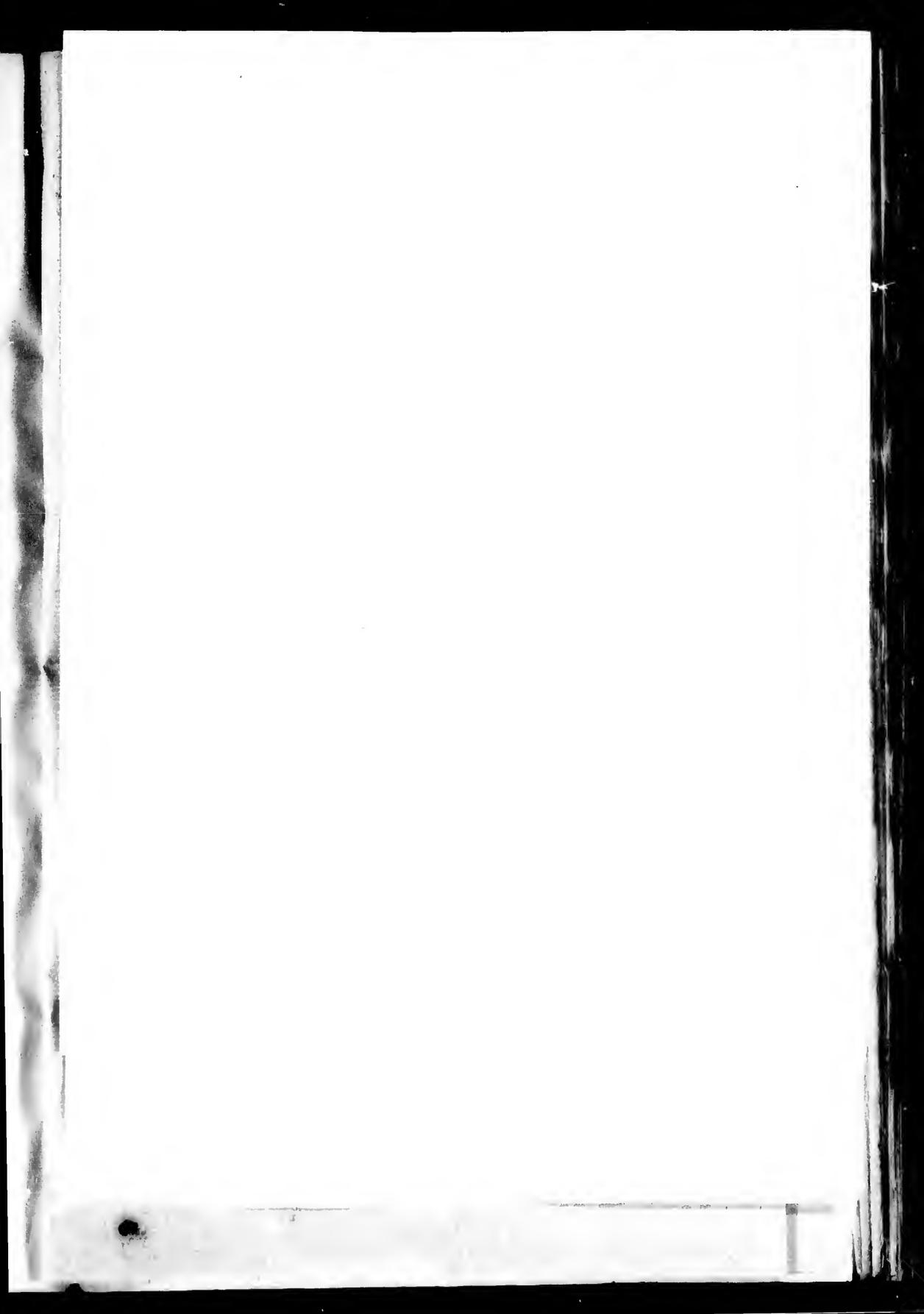
RESPONDENT.

RESPONDENT'S CASE.

See 1570

HOLT & IRVINE,

For Respondent.



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IN THE QUEEN'S BENCH.
APPEAL SIDE.

Ann Cecilia Maguire *et al.*,

APPELLANTS,

and

Havilland L. Routh,

RESPONDENT.

RESPONDENT'S CASE.

THE present Respondent, Plaintiff in the Court below, recovered judgment on the 13th September 1858, against Denis Maguire, junior, a ship chandler in Quebec, for the sum of £53 3s. 8d. with interest and costs. On the 27th February 1860, a writ of execution was issued to enforce this judgment and the stock in trade of a ship chandler's shop supposed to have been kept by the Defendant was seized. To this seizure an opposition *afin d'annuller* was filed by the present Appellant Ann Cecilia Maguire, the Defendant's wife, he being also a party to the opposition, in which it was alleged that she was *séparée de biens* from her husband by a judgment of the Superior Court at Quebec rendered on the 5th February 1858, that she carried on business at Quebec under the name of "Maguire, Junior & Co." and that the effects which had been seized in the cause belonged to her. This Opposition was contested by the Plaintiff who pleaded the general issue and the following plea of Perpetual Exception.

And the said Plaintiff by this his perpetual *Exception péremptoire en droit* to the opposition *afin d'annuller* of the said Ann Cecilia Maguire and her said husband in this cause, not confessing or acknowledging any of the matters or things in the said Exception alleged to be true, saith that the said opposants cannot at any time maintain the conclusions of their said opposition because he saith that the said pretended separation as to property between the said opposants and the judgment ordering such separation is illegal, null and void and of no effect whatever against the said Plaintiff and the other creditors of the said Defendant, because the said Plaintiff doth allege and say that the said Ann Cecilia Maguire had not at the time of the said demand *en séparation de biens* or at the time of the rendering of the said judgment *en séparation* or at any time before any property or effects whatsoever which she had brought into the community existing between her and her husband, and her right to which was endangered in consequence of the insolvency of the said Denis Maguire, Junior, and that the said Ann Cecilia Maguire was not skilled in any trade or calling, and had not exercised or carried on any business by her own skill or industry her gains in which would be lost in consequence of the said insolvency of her husband. And that the said Ann Cecilia Maguire had in consequence no interest in demanding the said separation and the said Plaintiff further saith that the said separation has never been registered or *insinuée* in conformity with the requirements of law in such case.

And the said Plaintiff further saith that the goods, chattels and moveable property seized in the present cause form part of the stock in trade of a certain ship-chandler's

shop held and kept in Quebec by Denis Maguire, Junior, the Defendant in this cause for his own benefit and advantage, the whole of the business connected with which is managed by the skill and industry of the said Denis Maguire, Junior, without any interference or control on the part of his said wife. That the said business is carried on by the name and under the firm of Maguire, Junior, and Company, which it is pretended is the name under which the said Ann Cecilia Maguire carries on a business or trade as a ship-chandler; but that any such name used in the said business is a fraudulent contrivance on the part of the said Denis Maguire, Junior, and the said Ann Cecilia Maguire by which it is attempted to place the property and effects of the said Denis Maguire, Junior, out of the reach of his creditors. The said Plaintiff in fact alleging that the whole of the said goods and chattels are really and *bonâ fide* the property of the said Denis Maguire Junior the said Defendant, and liable to be attached for the payment of his debts.

And the Plaintiff saith that at the time of the said demand *en séparation de biens* and of the rendering of the said judgment the said Plaintiff was the creditor of the said Defendant for the amount of his judgment in the present cause and the said Defendant was insolvent and that the said Defendant and his said wife the present Opposant, contriving and intending to defraud the said Plaintiff and the other creditors of the said Denis Maguire, Junior, caused to be removed from the shop then kept by the said Defendant, goods, wares and merchandize of large value, to wit of the value of five hundred pounds currency and which had formed part of the stock in trade of the said Denis Maguire, Junior, and concealed the same until after the judgment *en séparation de biens* was rendered and then brought back the said goods to the same premises under the pretence that they had been purchased by the said Ann Cecilia Maguire, thereby intending to prevent the said goods from being attached for the payment of the debts of the said Denis Maguire, Junior.

And the said Plaintiff saith that the said judgment *en séparation de biens* was not obtained nor was it executed in good faith and for the purpose of protecting the interests of the said Ann Cecilia Maguire, but was procured by collusion between the said Opposants and for the purpose of defrauding the creditors of the said Defendant.

Wherefore the said Plaintiff prays that for the causes aforesaid the said judgment *en séparation de biens* and the proceedings had in consequence thereof be declared to be illegal, null and void, and the property seized in the present cause declared to be the property of the said Defendant and the said opposition dismissed with costs.

The Opposants demurred to the first part of this plea, that is to so much of it as alleged that the Defendant's wife was not entitled to obtain a judicial separation at the time a judgment to that effect was rendered, and the Court below maintained the demurrer and rejected that portion of the Plaintiff's plea. Issue having been joined on the pleadings, the questions to be tried in the cause were, whether the judgment of separation had been executed in good faith and without fraud, and whether the business of ship-chandlery carried on under the name of "Maguire, Junior, & Co.," was not really and in fact the business of the Defendant, the name of his wife being only used for the purpose of protecting him from executions at the suit of his creditors.

The cause was inscribed for Enquête and hearing at the same time and the evidence adduced, as well that brought forward by the Plaintiff as that by the Opposants, completely made out the Plaintiff's case, and the Court below on the 15th October 1860 rendered the following Judgment :

The Court having seen and examined the proceedings of record, and heard the parties by counsel on the merits of the opposition *opposant* of Ann Cecilia Maguire, and of the contestation raised thereto by the Plaintiffs, considering that there has been no legal execution of the judgment of separation in the present cause, and that the opposant Ann Cecilia Maguire cannot *ester en jugement*: Considering moreover that the goods and effects seized in the present cause are the property of the Defendant, and have never belonged in good faith to the said Ann Cecilia Maguire, doth dismiss the opposition *opposant* of the said Ann Cecilia Maguire, with costs *distribute* in favor of Messieurs Holt and Irvine, the said Plaintiff's Attorney.

The case as disclosed in the evidence may be shortly stated as follows. On the 5th of February 1858, the Defendant being then insolvent and being indebted to the Plaintiff in the amount for which judgment was afterwards rendered in this cause, Ann Cecilia Maguire, his wife, obtained the ordinary judgment of *séparation de biens*; a notary was appointed to establish the matrimonial rights of the parties, and on the 27th February 1858 a deed was passed between them containing a renunciation of the community on the part of the wife, and a declaration that she possessed no property whatever apart from her share of the community, that there was no immoveable property belonging to the community, and that all the moveable property had been sold under an execution against Denis Maguire, on the 12th December 1857, and that the debts due by the community amounted to £1500. A Report founded upon this deed was made to the Court and the proceedings were homologated by Judgment of the 15th March 1857. No other proceedings were taken in execution of the judgment of separation than those above mentioned. On the 11th March 1858 or six days after the rendering of this judgment, a deed of partnership was passed before Notaries, between Mrs. Ann Cecilia Maguire, called a *marchande publique*, and one Robert Wilson Steele, by which it was agreed that they should be partners in the business of ship chandlers for five years commencing on the 1st May 1858. Steele was stated to be altogether without means and Mrs. Maguire pledged herself to contribute the requisite stock for the shop to the extent of seven hundred pounds worth of goods. Steele who has been examined as a witness proves that when the shop was opened on the 1st May 1858, Mrs. Maguire complied with the requirements of her agreement and that the shop was stocked with the necessary amount of goods. The circumstance of a wife *séparée de biens* being possessed of seven hundred pounds worth of goods within a few days from the signing of a *procès-verbal* in which she and her husband are stated to be worth nothing, would if unexplained be sufficient to shew that no *bona fide* execution and sale of the husband's effects had taken place and that the proceeding was a fraudulent one, but the explanation of the transaction as given in the evidence leaves no room for doubt; it appears that Maguire, who had been for several years a ship chandler, finding himself in the autumn of 1857 in embarrassed circumstances, and knowing that an execution at the suit of one of his creditors would shortly be issued, disposed of a large portion of his stock by placing it in the hands of several of his friends, as he expresses it by "stowing it away," and when the goods which remained in his shop had been sold by the Sheriff, and a judgment of *séparation* carried through, these goods were returned to the shop to furnish stock for the new business to be carried on in his wife's name. It is difficult to understand how it can be pretended that the law which requires that the judgment of separation should be executed without fraud has been complied with in a case such as the present.

It is equally clear that the business of "Maguire, Junior, & Co." which it is pretended is that of the wife is really the business of the husband. It is managed entirely by him, his own name is used in the firm, and it is evident that the name of the wife is only used for the purpose of defeating the rights of the creditors of Maguire.

The Respondent respectfully submits that the Judgment of the Court below should be confirmed.

Quebec, 26th November 1860.

HOLT & IRVINE,

Attys. for Respondent.

Evidence on the Part of the Plaintiff.

WILLIAM J. ALLEYN, of the City of Quebec, in the County of Quebec, in the District of Quebec, sail-maker, aged above 21 years, being duly sworn upon the Holy Evangelists doth depose and say :

I do know the parties in this cause; I am not related, allied or of kin to, nor in the service or domestic of either of them or interested in the event of this suit.

I do not know the Plaintiff in this cause. I recollect that in the autumn of eighteen hundred and fifty seven the Defendant in this cause became insolvent and I believe his effects were sold by the Sheriff.

About the month of November of that year the Defendant sent to my place a quantity of canvass; I did not want this canvass and had not asked for it. The Defendant had previously told me that he was in trouble and was expecting to be sold out. This canvass might be worth from one hundred and forty to fifty pounds. To the best of my belief I worked this canvass into sails and I paid the Defendant for it by a promissory note at six months.

During the month of April following I paid him twenty eight pounds for the canvass I had used and the remainder I sent back to him. This canvass and other things, namely sail twine which he had sent to me, I returned when Steele was in partnership with Mrs. Maguire. I never was asked to pay the note. The Opposants declare they have no cross-questions to ask.

The foregoing deposition being duly read over to the witness, he persists therein, declaring it to contain the truth and hath signed.

Sworn before me at Quebec, }
this 27th June 1860. }
A. STUART, Justice. }

WM. J. ALLEYN.

ROBERT W. STEELE, of the City of Quebec, in the County of Quebec, in the District of Quebec, Butcher, aged above 21 years, being duly sworn upon the Holy Evangelists, doth depose and say :

I do know the parties in this cause: I am not related, allied, or of kin, to, nor in the service or domestic of either of them or interested in the event of this suit.

In the month of May eighteen hundred and fifty eight, I entered into partnership with Ann Cecilia Maguire, one of the opposants in this cause, in the business of ship-chandlers. The name of the firm was "Maguire & Steele," the business was carried on in a shop in St. Peter Street which was previously occupied by the Defendant. I brought no money into the firm or capital of any kind.

The stock in the shop was furnished by Mrs. Maguire and the shop was fully stocked when the business commenced in the month of May. The value of the stock in the shop was about seven hundred pounds. I have no personal knowledge as to the place from whence the goods which stocked the shop were brought, but I was informed by the Defendant that he had stowed away part of his stock before the seizure was made. He told me that O'Donohoe had part of his stock and Hennessy part and also McDonnell and also Alleyn the sailmaker.

The Defendant told me he was anxious to get back his canvass from Alleyn's, because he was afraid that Alleyn would work it up.

The canvass was brought back by a carter, but I have no personal knowledge that it came from Alleyn's.

The goods which the Defendant told me that he had stowed away formed part of the stock which Mrs. Maguire furnished to establish her partnership with me.

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During the time of our partnership the Defendant conducted the business as representing his wife.

The Opposits declare they have no questions to ask the witness.

The foregoing deposition being duly read over to the witness he persists therein declaring it to contain the truth and hath signed.

Sworn before me at Quebec,)
this 27th June, 1860.
A. SERRIER, Justice.)

R. W. STEELE.

OWEN MURPHY, of the City of Quebec, in the County of Quebec, in the District of Quebec, Merchant, aged above 21 years, being duly sworn upon the Holy Evangelists doth depose and say :

I do know the parties in this cause; I am not related, allied, or of kin to, nor in the service or domestic of either of them or interested in the event of this suit.

I am in business in Quebec as a merchant. I have had business with a firm known as Maguire, Junior, & Co., who have a ship-chandlers shop at the foot of Mountain Hill. I do not know who are the members of the firm.

The person representing that firm, with whom I dealt, was Denis Maguire, Junior, the Defendant in this cause. The nature of the transactions which I so had were the sale of provisions and breadstuffs and cash advances, and in payment I received cash and notes signed "Maguire, Junior, & Co." which signature was affixed by the Defendant to disbursement bills drawn by masters of vessels with whom the firm dealt and indorsed in the same way, several of these notes were paid. They were all paid with the exception of one and the Bills of Exchange were also paid. The goods I sold were to form part of the stock of the Ship Chandler's Shop above mentioned.

Cross-examined.

I do not know Denis Maguire in business transactions individually, but I know him representing and transacting the business with me for the firm of Maguire, Junior & Co.

The notes which I have spoken of in my examination-in-chief were paid at the Banks with the exception of those which were renewed, which renewals were managed by Denis Maguire, Junior, and part of them paid in cash by me, he having conducted the whole of the business with me, in the name of Maguire, Junior, & Co.

I still hold one of these notes, signed in the name of the firm of Maguire, Junior, & Co., the signature written in the hand writing of the Defendant. I frequently asked the Defendant the payment of this note, but I have not yet been paid.

The foregoing deposition being duly read over to the witness he persists therein declaring the same to contain the truth and has signed.

Sworn before me at Quebec,)
this 27th June 1860.
A. SERRIER, Justice.)

OWEN MURPHY.

