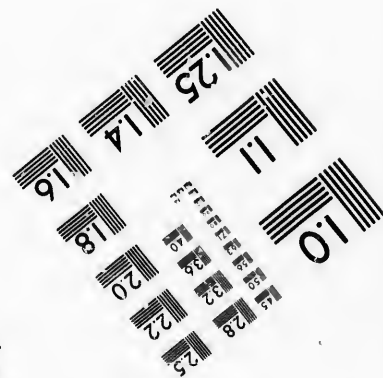
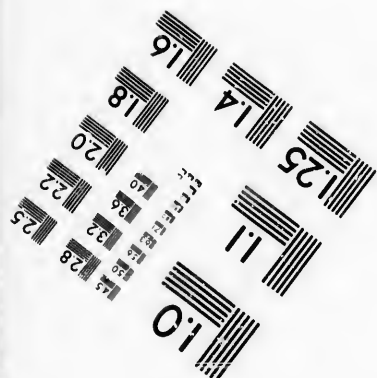
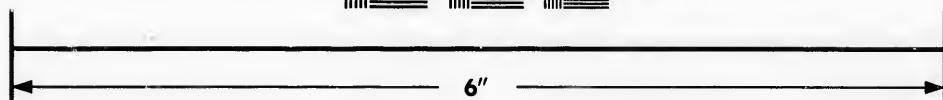
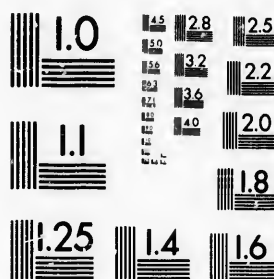


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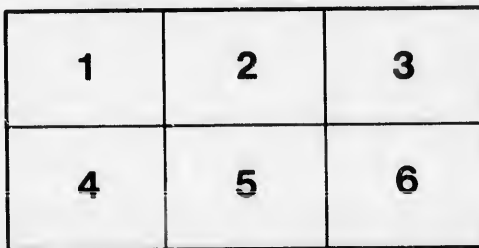
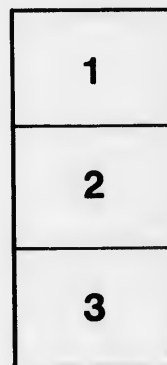
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*IN APPEAL.*

ETIENNE LEBLOND,

APPELLANT;

and

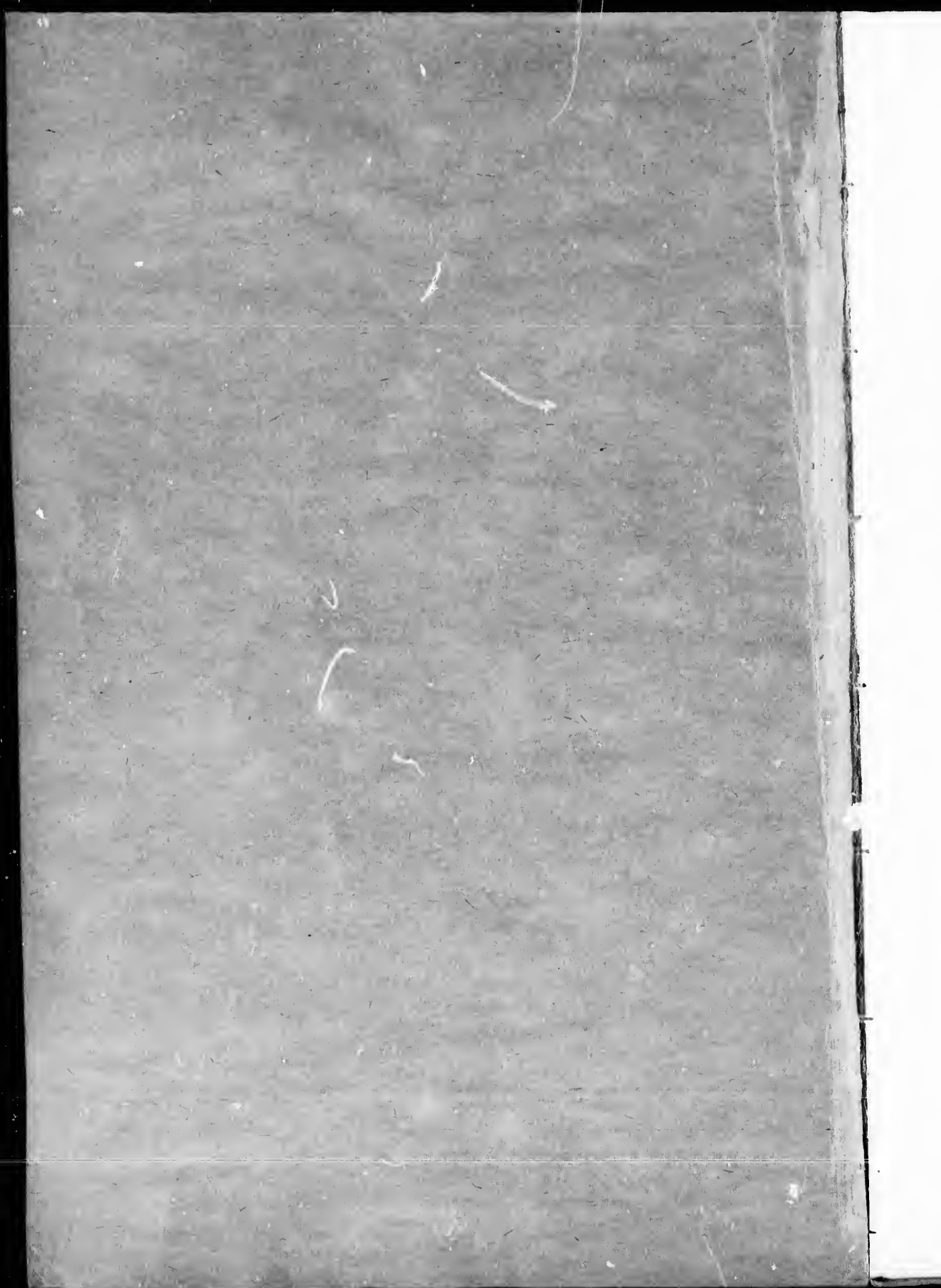
The Honble. THOMAS COFFIN,

RESPONDENT.

RESPONDENT'S CASE.

A. STUART, for Respondent.

IN APPEAL.





*In a Cause*

Between

ETIENNE LEBLOND,

(*Plaintiff in the Court below,*)

APPELLANT,

and

The Honble. THOMAS COFFIN,

(*Defendant in the Court below,*)

RESPONDENT.

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THE RESPONDENT'S CASE.

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**T**HE Appellant instituted in the King's Bench, at Three-Rivers, an Action *en licitation* against the Respondent.

The Declaration states that the Appellant and Respondent, by a certain deed or instrument executed before Doucet, Notary Public, acquire l by equal undivided moieties a certain lot of land, situate in the District of Three-Rivers, and two undivided third parts or portions of a certain other lot of land, situate likewise in the District of Three-Rivers.

That partition was subsequently made of the second above-mentioned lot between the said Appellant and Respondent of one part and one François Poisson of the other part, and that the said Appellant and Respondent are now joint tenants, *par induis*, of the portion of the said ground which fell to the lot of the Appellant and Respondent.

That " it is impossible, considering the situation, nature and value of " the said lots of land and premises, to make partition thereof between " him the said Appellant and the said Respondent equally, nor in any " other manner whatsoever conveniently, so that each of them might en- " joy conveniently his share or portion of the said lands and premises, " and that he the Respondent had no other means of recovering his share " therein than by proceeding to the sale thereof in due course of law " by licitation, to the end that the price might be equally divided be- " tween them the said Appellant and the said Respondent."

The Respondent concludes for a sale by licitation and for partition of the price to accrue from the said sale.

To this action the Appellant pleaded a dilatory exception, alleging that one François Poisson was proprietor of one undivided third of one of the lots of land, the sale by licitation whereof was prayed by the Respondent and that the Court could not lawfully proceed to determine upon the claims of the said Respondent until the said François Poisson was made a party to the suit.

Upon this plea issue was joined, the parties were heard and it was dismissed with costs.

The Appellant pleaded the same matter as a defence to the action, and further denied the alleged indivisibility of the property in question.



The Respondent further pleaded by peremptory exception that the Appellant's action was premature and that the Appellant ought to have demanded the partition of the said lots of land and not the sale thereof by licitation, &c.

Upon those pleadings issues were joined, no parole evidence was adduced on either side.

The parties were heard on the written evidence and the merits, and the Court below pronounced, on the 28th March, 1816, the following interlocutory judgment :

La Cour après avoir entendu les parties, ordonne avant faire droit, que par experts, dont les parties conviendront demain, Cour tenante, sinon nommés d'office, il soit procédé à la visite de l'héritage en question, aux fins de constater si le dit héritage peut être également et commodément divisé, sinon avec soulte et retour, et d'en constater le montant, et si le dit héritage ne peut se diviser, d'en rapporter les raisons pour, sur rapport, être ensuite fait droit, ainsi que de raison, dépens réservés.

The parties concurred in the nomination of François Legendre, Esq. Surveyor, as their expert.

Mr. Legendre having made his report, but not having taken the oath required by law, the report was set aside.

On the 29th March, 1817, the Court below at the instance of the Respondent, ordered that the matters mentioned in the interlocutor above recited should be referred to other two experts, with power to name a third.

The Respondent accordingly named Joseph Brandonnet, and the Appellant named Modeste Pratte as experts.

Modeste Pratte having refused to act as expert, the Court below at the instance of the Respondent ordered the Appellant to name an expert in the lieu and stead of Modeste Pratte.

The Appellant in obedience to this order, named one John Sullivan, and the Court named as third expert Isaac E. Dumoulin.

On the 13th January, 1818, the three experts filed their Report, in which they concur in stating :

1. That the lands in question could not be equally or conveniently divided without a pecuniary indemnification to the party to whom the least valuable lot should fall.

2. That the said lands could be divided equally as to superficial extent but not as to value.

They accordingly recommend an equal partition as to superficial extent and an indemnification of seventy pounds to be paid to the party to whom the least valuable half should fall.

The parties having been heard upon this report and upon the merits the Court below confirmed the Report and dismissed the Appellant's action with costs.

The Appellant it would appear is not satisfied with this judgment, he having instituted the present Appeal therefrom.  
Quebec, 20th July, 1818.

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