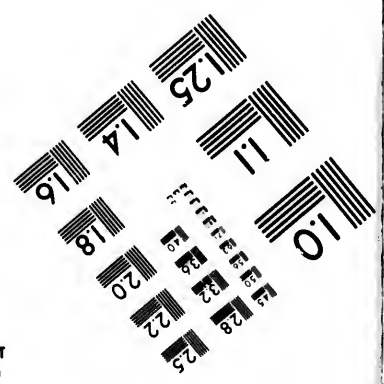
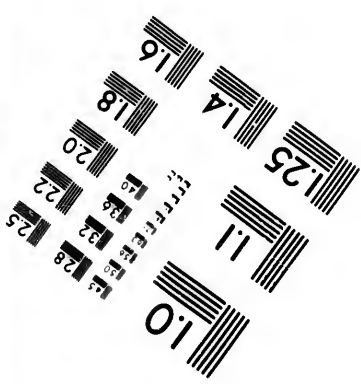
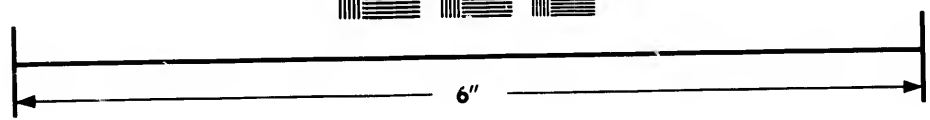
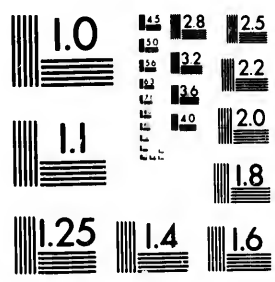


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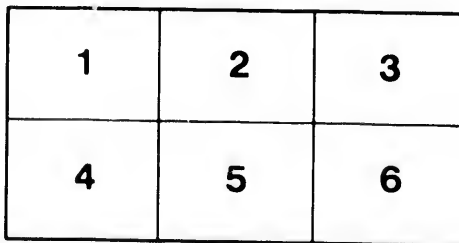
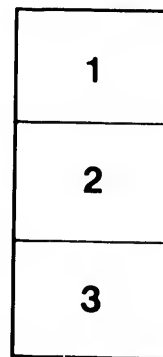
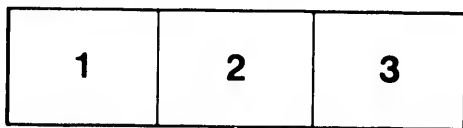
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BY THE
SUPREME COURT

NORTHWEST TERRITORIES

NORTHERN BRITISH COLUMBIA JUDICIAL DISTRICT

JAMES MONTGOMERY, Plaintiff (Respondent.)

vs

GEORGE BROWN and J. H. ARBORN, Defendants (Appellants.)

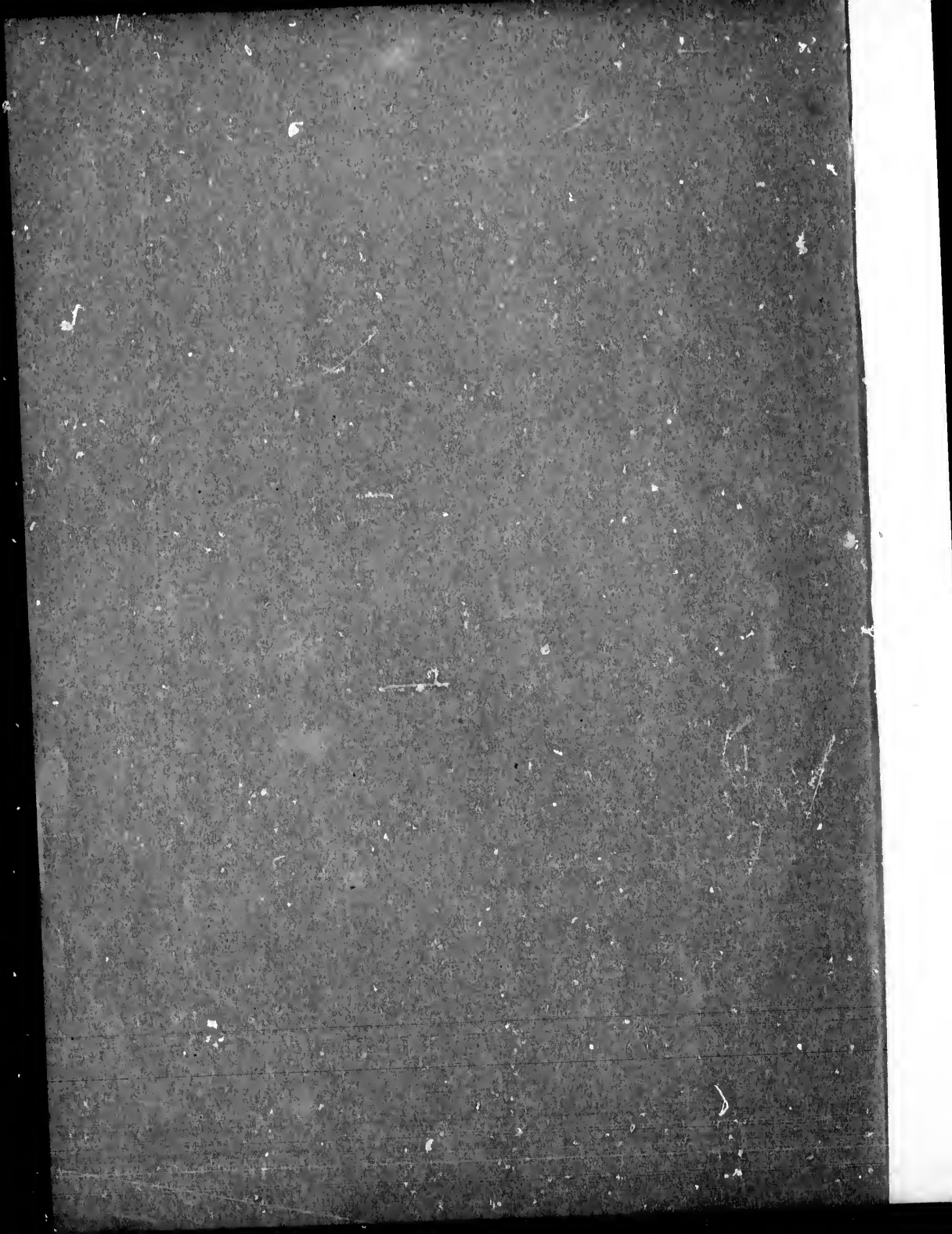
APPEAL BOOK.

W. H. WEST,

ADVOCATE FOR RESPONDENT

E. F. DAVIS,

ADVOCATE FOR APPELLANTS



IN THE
SUPREME COURT
OF THE
NORTHWEST TERRITORIES
NORTHERN ALBERTA JUDICIAL DISTRICT.

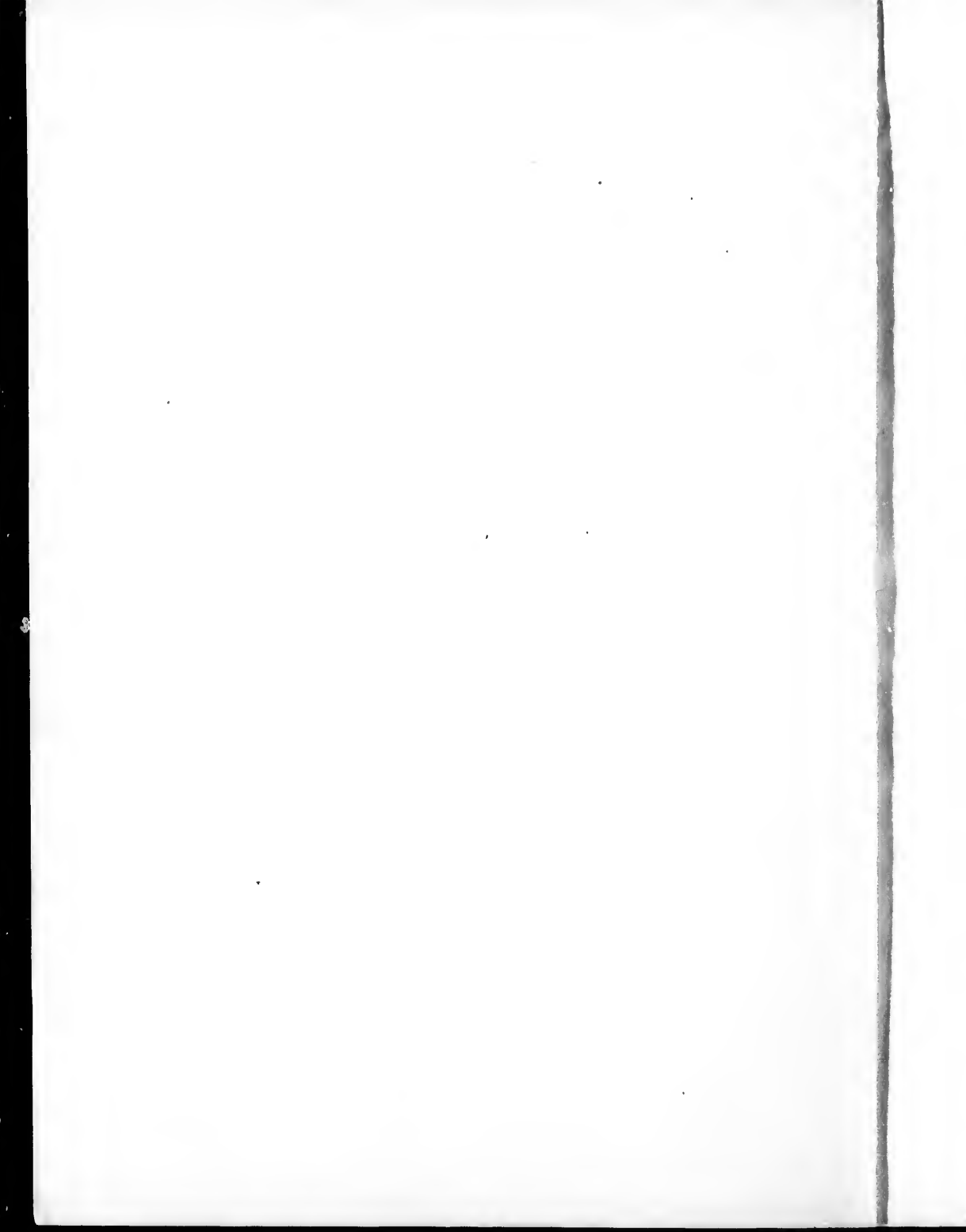
JAMES BANNERMAN, Plaintiff (Respondent.)
AND
GEORGE EMERSON and J. H. ASHDOWN, Defendants (Appellants.)

APPEAL BOOK.

SMITH & WEST,
ADVOCATES FOR RESPONDENT.

} E. P. DAVIS,
ADVOCATE FOR APPELLANTS.

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IN THE SUPREME COURT OF THE NORTH-WEST TERRITORIES
NORTHERN ALBERTA JUDICIAL DISTRICT.

BETWEEN:

JAMES BANNERMAN, (Plaintiff)
and
GEORGE EMERSON AND J. H. ASHDOWN, (Defendants.)

INTERPLEADER ISSUE

For trial pursuant to the order of Mr. Justice Rouleau dated the 1st day of November, 1889.

WHEREAS the above named James Bannerman affirms and the above named George Emerson
10 and J. H. Ashdown deny that at the time of the seizure on the 19th day of October, 1889, by the
Sherriff of the Northern Alberta Judicial District under and by virtue of two writs of fieri facias
issued out of the Supreme Court of the North-West Territories, Northern Alberta Judicial District at
the instance of the Defendants in this issue respectively against the goods of one A. C. Sparrow, on
the 14th day of September, 1887, and the 4th day of September, 1888, respectively or the renewals
thereof, of one stack of grain upon the property of said A. C. Sparrow, the said stack of grain was the
property of the said James Bannerman as against the said George Emerson and J. H. Ashdown and it
has been ordered by the said order of Mr. Justice Rouleau dated the first day of November, 1889, that
the said question shall be tried without a Jury. Therefore let the same be tried accordingly.

Delivered this 12th day of November, 1889 by Messieurs Smith & West, of the Town Calgary,
20 in the District of Alberta, Advocates for the Plaintiff.

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NOTES OF EVIDENCE.

Mr. West for Plff. and Mr. McCarthy, Counsel
Mr. Davis for Defendant.

PLAINTIFF CLAIMS UNDER A BILL OF SALE.

A. C. SPARROW, being on Oath states: It is my signature at foot of Bill of Sale, 24th Sept., 1889 and reg. 24th Dec. 1889. (Objection taken to filing of Bill of Sale as not properly proven.) Was at home when Sheriff came to seize and he told me he seized for Emerson. He seized the stack of Oats mentioned in the Bill of Sale. It was an absolute Bill of Sale and a truthful document. There was not a word said about a repayment to Mr. Bannerman, the Plff. Was not to pay any interest on that money. It was an actual purchase and payment. Bannerman gave me a note at three months for \$400.00 payable at my own order. Discounted the note at Le. Jenne & Smith's Bank. Got the cash on it. Was indebted to Bannerman. Mrs. Sparrow was. I believe the account was in Mrs. Sparrow's name. It was \$136.00. Paid that account to Bannerman and spent the balance. The stack of Oats was mine. There was no agreement that Bannerman was to pay me anything back. T. B. Lafferty did the conveyancing. Bannerman saw Lafferty, I was present. (The following evidence taken under objection.) Told Lafferty I had sold a stack of Oats to Bannerman and to draw a Bill of Sale. The Bill of Sale was drawn accordingly under instructions. Had to thresh it and deliver it to Bannerman. Had no interest in it whatsoever after the Bill of Sale. Bannerman was to pay the note when it became due. We considered that there was 1000 bushels of Oats in the stack at 20-40 cts. a bushel. There was no other agreement in it. Bannerman took his chances about the 1000 bus. of grain. Told Bannerman I wanted some money, that I wanted to use it before I threshed the Oats and that I would sell him the said stack of Oats for 1000 bushels of Oats. He knew the amount of grain contained in the stack as well as I knew, as he is a farmer as well as a grain merchant. He saw the stack of grain every day as he passed by. Bannerman said then he was short of cash and that he would give me his note for three months. I agreed to pay him his account out of it. The Oats were seized before I had an opportunity of threshing.

X-Ex: Am the A. C. Sparrow against whom the execution was issued. The judgment of Emerson was for \$1,900.00 for cattle sold to me. The judgment of Ashdown was for \$150.00. There was nothing paid on account of those judgments. I also owed in 1887 some 3 or \$4000.00 besides 30 In September, 1889 I had not paid my debts in full and was unable to pay them in full. No mention made that I was to keep the straw of that stack of Oats. I first asked Bannerman to advance \$300.00 on the Oats, and he refused unless I paid the account out of it. I told Bannerman that I needed about \$300.00 but that if he could make it \$400.00 I would pay the account out of it. The goods bought of Bannerman were all used in the house where I am living now. It was got some-

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times by me, sometimes by my wife and sometimes by Mooney. Before the Bill of Sale was given, Bannerman asked me for my account two or three times. Bannerman could compel me to deliver more than 1000 bushels or if there was less, he was not to get any more.

T. B. LAFFERTY, Advocate, being on Oath says: Saw the Bill of Sale. I drew it myself. Got instructions from Sparrow and Bannerman. On 24th Sept. Sparrow came to my office and told me he had sold a stack of Oats to Bannerman for \$400.00 and to draw a Bill of Sale of it. This Bill of Sale was drawn according to instructions. A Chattel Mortgage was never mentioned. (Objected to as illegal.)

No Cross Examination.

10 JAMES BANNERMAN, being on Oath says: Am Plaintiff in this Interpleader Issue. Am grain and commission merchant and a farmer as well. Part of my business is buying and selling grain. Got stack of Oats, subject of this Interpleader Issue, from A. C. Sparrow. On 24th Sept. last, A. C. Sparrow called at the store and he asked me if I would advance him \$300.00 on a stack of Oats, I said I would, if he would pay the amount of their account. He said that he required that amount and that if I would advance \$400.00 he would pay the account of Mrs. Sparrow, \$136.00. The account was charged to Mrs. Sparrow, (objected to as the books are not produced.) Gave Mrs. Sparrow credit as she was carrying on the business, (same objection.) I made the change immediately after A. C. Sparrow gave up his business in town about 1886. Since that time I gave credit to Mrs. Sparrow, As a result of the above agreement Sparrow and I went to T. B. Lafferty. We took the acreage of
20 land and the probable yield would be about 1000 bushels. I gave him my note for \$400.00 at three months. I was to pay it when it matured. No agreement of any kind by which Sparrow was to repay me those \$400.00. Don't hold Sparrow any way for the \$400.00. No arrangement except that I was to get the Oats. Nothing said about the interest on the money. Nothing said about Sparrow having any interest in the Oats at all. It was certainly a purchase of the grain. If the grain had been destroyed I could not come on Sparrow as it would have been my loss. There was nothing said about the surplus of 1000 bushels. I was under no obligations to Sparrow. I signed Bill of Sale and the affidavit of bona fides after Sparrow had given instructions in my presence to T. B. Lafferty to draw the Bill of Sale. Any allowance I might have made to Sparrow over the 1000 bushels would have been entirely voluntary.

30 X-Ex: (Objection taken to all conversation which took place between the parties where Defendants were not present.) When I speak of Mrs. Sparrow doing business in her own name, I mean that is what I heard. Don't know personally myself. No understanding about the straw but when I bought the stack I supposed I was to get it. Between man and man if the Oats when delivered were worth 50cts, I would have given credit to Sparrow for the surplus, but there was no agreement to that effect.

THOMAS CHRISTIE, being on Oath states: Am partner of Le Jeune, Smith & Co. Saw the note produced. We are holders of said note. A. C. Sparrow endorsed said note.

Copy of same allowed to be filed.

No Cross-Examination.

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JAMES BANNEKMAN, recalled: The note produced is the note I gave and which I signed. Had an acc. against A. C. Sparrow and entered in Lat. pag. 32 in 1886, until November of same year, showing a balance of \$7.17 still due. It was never paid. (Objected to as irrelevant.) Had an acc. against Harriet Sparrow which commences on folio 28 on 3rd January, 1887. There is a balance entered on folio 179 which was brought forward in Ledger B. The acc. in Ledger A, the account is entered in the name of Mrs. Sparrow. It commences in Oct. 29th, 1886. The balance was carried in Ledger B. The account in Ledger A, was the last account charged against A. C. Sparrow. The amt. \$136.00 was the sum due by Mrs. Sparrow at that time.

X-Ex: The advance of \$400.00 which the consideration for the Bill of Sale was made under the condition that the \$136.00 should be paid.

This closes the Plf's case.

The Defendant declares he has no evidence to adduce.

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EXHIBIT "A."

BILL OF SALE.

THIS INDENTURE made in duplicate the twenty fourth day of September in the year of our Lord one thousand eight hundred and eighty nine.

BETWEEN Angus C. Sparrow of the District of Alberta in the North-West Territories of Canada, Farmer, of the first part

AND James Bannerman of the Town of Calgary in the said District of Alberta, Merchant, of the second part.

WHEREAS the said party of the First Part is possessed of the Personal Property hereinafter set forth described and enumerated, and hath contracted and agreed with the said part of the Second Part for the absolute Sale to him of the same, for the sum of four hundred dollars.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said Agreement, and in consideration of the sum of four hundred dollars of lawful money of Canada, paid by the said party of the Second Part to the said party of the First Part, at or before the sealing and delivery of these Presents; (the receipt whereof is hereby acknowledged) He the said party of the First Part HATH BARGAINED, sold, assigned, transferred, and set over, and by these Presents DOTH BARGAIN, sell, assign, transfer and set over unto the said party of the Second Part, his executors, administrators and assigns

ALL THOSE the said Personal Property described as follows, that is to say: One stack of Oats in the straw and containing about one thousand bushels, said stack being now situated on the South West quarter of Section three, Township twenty-four, Range one, West of the 5th Principal Meridian in said District of Alberta and being the entire crop of Oats taken of said Quarter Section.

The said Sparrow hereby undertakes and agrees to thresh the said Oats and deliver the same in Calgary to the said Bannerman as soon as possible.

AND all the right, title, interest, property, claim and demand whatsoever, both at Law and in Equity, or otherwise howsoever, of him the said party of the First Part, of, in, to, and out of the same, and every part thereof:

TO HAVE AND TO HOLD the said hereinbefore assigned property and every of them and every part thereof, with the appurtenances, and all the right, title and interest of the said party of the First Part thereto and therein, as aforesaid, unto and to the use of the said party of the Second Part, his executors, administrators, and assigns, to and for his sole and only use FOR EVER:

AND the said party of the First Part DOTH HERBY, for himself, his heirs, executors, and administrators, COVENANT, PROMISE and agree with the said party of the Second Part, his executors and administrators, in manner following, that is say: THAT he the said party of the First Part, is now rightfully and absolutely possessed of and entitled to the said hereby assigned property and every of them, and every part thereof:

AND that the said party of the First Part, now has in himself good right to assign the same unto the said party of the Second Part, his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents: AND that the said party hereto, of

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the second part, his executors, administrators and assigns, shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold, possess, and enjoy the said hereby assigned property and every of them, and every part thereof, to and for his own use and benefit, without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by him the said party of the First Part, or any person or persons whomsoever; AND that free and clear, and freely and absolutely released and discharged, or otherwise, at the cost of the said party of the first part, effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges and incumbrances whatsoever:

AND moreover, that he the said party of the First Part, and all persons rightfully claiming, or
 10 to claim any estate, right, title or interest of, in, or to the said hereby assigned property and every of them, and every part thereof, shall and will from time to time, and at all times hereafter upon every reasonable request of the said party of the Second Part, his executors, administrators or assigns, but at the cost and charges of the said party of the Second Part, make, do and execute, or cause or procure to be made, done and executed, all such further acts, deeds and assurances for the more effectually assigning and assuring the said hereby assigned property unto the said party of the Second Part, his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these Presents, as by the said party of the Second Part, his executors, administrators or assigns, or his Counsel shall be reasonably advised or required.

IN WITNESS WHEREOF, the said parties to these Presents have hereunto set their hands and 20 seals, the day and year first above written.

SIGNED, SEALED AND DELIVERED)
 IN THE PRESENCE OF

[Sd.] M. Nicoll.

[Sd.] A. C. Sparrow,

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CANADA :
NORTH-WEST TERRITORIES.

TO WIT :

I, James Bannerman of the Town of Calgary,
Merchant, in the foregoing Bill of Sale named, make
oath and say :

THAT the sale therein made is bona fide, and for good consideration, namely :—Four hundred dollars and not for the purpose of holding or enabling me, this deponent, to hold the goods mentioned therein against the creditors of the said bargainor.

SWORN before me at Calgary, in the
District of Alberta, this 24th day
of September, A. D. 1889.

[Sd.] JAMES BANNERMAN.

10

[Sd.] T. B. LAFFERTY.

A Commissioner.

CANADA :
NORTH-WEST TERRITORIES
To WIT:

I, Michael Nicoll of the Town of Calgary, in the Dis-
trict of Alberta, Gentleman, make oath and say :

THAT I was personally present, and did see the within Bill of Sale duly signed, sealed and executed by Angus C. Sparrow one of the parties thereto; AND that I this deponent am a subscribing witness to the same: AND that the name "M. Nicoll" set and subscribed as a witness to the execution thereof is of the proper handwriting of me this deponent; and that the same was executed at Calgary aforesaid on the date of the date thereof.

20 SWORN before me at Calgary in the
District of Alberta this 24th day
of September in the year of our
Lord 1889.

[Sd.] M. NICOLL.

[Sd.] T. B. LAFFERTY.

A Commissioner for taking Affidavits.

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EXHIBIT "B,"

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\$400.

CALGARY, SEPT. 24TH 1889.

Three months after date I promise to pay to the order of A. C. Sparrow,
Four hundred 00 Dollars at the Bank of Le Jeune, Smith & Co.
Value Received.

[Sgd.] JAMES BANNERMAN.

T. S. C.

Pay Le Jeune, Smith & Co.

order

[Sgd.] A. C. Sparrow.

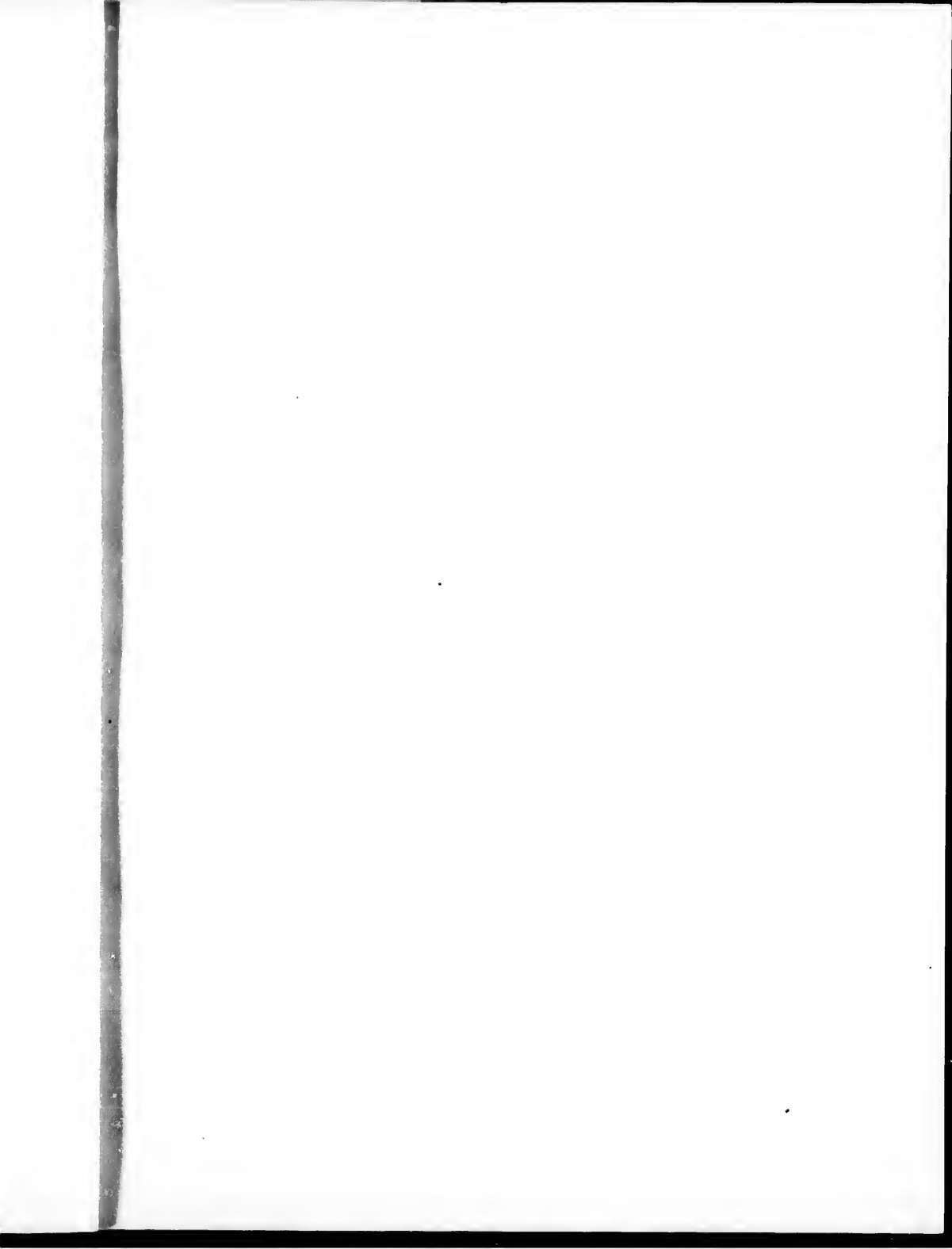


EXHIBIT "C."

CALGARY, ALBERTA, MARCH 6TH, 1890.

MRS. A. C. SPARROW,

BOUGHT OF JAMES BANNERMAN,

Wholesale and Retail Dealer in

PRESSED HAY, FLOUR AND FEED, FISH, BACON, BUTTER, ETC.

Terms Strictly Cash.

Folio 133.

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| | Aug. | 17 | " 270 lbs. Shorts. | 12 4 05 |
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JUDGMENT

Under and by virtue of several writs of *fi fas* issued against A. C. Sparrow, the Judgment Debtor of the said Defendants the Sheriff of the Northern Alberta Judicial District, seized amongst other goods and chattels a certain stack of grain which the Plaintiff in this cause claims under and by virtue of a certain Bill of Sale by the said A. C. Sparrow to the said Plaintiff dated the 24th day of September, 1889. The Sheriff then duly applied for an interpleader order to this Court which was granted on the 1st day of Nov. 1889, and an interpleader issue for trial pursuant to the said order was fixed between the parties by which interpleader issue the said James Bannerman was made Plaintiff, and the said George Emerson and J. H. Ashdown were made defendants. Upon the following issue
 10 to wit:—that the said stack of grain is the property of the said James Bannerman as against the said George Emerson and J. H. Ashdown, execution creditors of A. C. Sparrow, the case was tried.

It is contended by the Defendants that the Bill of Sale under which the Plaintiff claims the property in this case is void as against the Defendants on account of the defect in the affidavit of bona fides. The whole question seems to be on the words used in the affidavit of bona fides—instead of the words “any creditors” as Section 5 of Chapter 47 of the Revised Ordinance mentions the words “the creditors” were used.

Ordinance No. 5 of 1881, the Revised Statutes of Manitoba, 1880, p. 661, Sect. 1 and the Revised Statutes of Ontario, 1887, p. 8 use all the words: “The Creditors,” and “Creditors” and the only means I have to come to a proper conclusion is by an analogy in consulting the precedents.

20 The principal case cited in support of the Defendants’ contention is that of *Boynton vs. Boyd et al* 12 T.C.C.P. 334. A great stress has been placed on the opinion of Chief Justice Draper in his Judgment, that the affidavit of the bargainee does not state that the sale is bona fide and for good consideration, but that the “Bill of Sale was executed in good faith and for good consideration.” It seems to me that the Judgment would have been different, if the affidavit had contained only the following words “that the sale is in good faith and for good consideration,” instead of saying that the Bill of Sale was executed in good faith and for good consideration. The learned Judge considered the words used in the affidavit a departure from those words in the Statute which are the very substance of the affidavit. The same principle was followed in *Boulton vs. Smith*, 17 U.C. Q.B. 400; *Harding vs. Knowlson*, 17 T.C.C.Q.B. 564; *Ohmstead vs. Smith*, 15 U.C.Q.B. 421; *Squair vs. Fortune*,
 30 18 U.C.C.Q.B. 547.

But I think the cases which have the most analogy with this present case are those of *Fraser vs. Bk. of Toronto*, 19 U.C.R. 385. “Creditors” was held sufficient without adding “or either of them” on the maxim that “omne magnum continet in se minus.” In *Taylor vs. Anslie*, 19 C.P. 84, it was decided that the words “creditors of the said Mortgagors” include the creditors “of any or either of them” on the same maxim that “omne magnum continet in se minus.”

Are the words used in this affidavit sufficient in substance to meet the fact that they include

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the enactment of the Ordinance to wit:—Sect 5 of Chap. 47, of the Revised Ordinance. In other words do the words "the creditors" include the words "any creditors" or "either of them."

Basing myself on the maxim which I have already quoted and on the case of Farlinger vs. McDonald, 45 T. C. Q. B. 233: I cannot come to any other conclusion than that the affidavit is sufficient and that the objection is not well taken.

The second objection taken by the Defendants is that there is no Bill of Sale proven at all and consequently the Plaintiff has not established his claim to the property in question. I am of opinion that under our Ordinance no attesting witness is required to prove a Bill of Sale. It only says that such conveyance shall be accompanied by an affidavit of a witness thereto of the due execution thereof and an affidavit of the bargainee, etc. Besides it is an instrument under seal and the signatures of the parties themselves are sworn to by themselves before this Court. How can I have any doubt as to the due execution of the same?

The third and last objection is that the Bill of Sale even if proven is void as against the Defendants under Chapter 49 of the Revised Ordinances. Sect. 2 of Chap. 49 of the Revised Ordinances gives a very important exception to the general rule as provided by Sect. 1 of the same Chapter. I think this case comes under the exception. There was a bona fide sale of goods and payment made of the same by the Plaintiff. The Plaintiff at the time was not a creditor of A. C. Sparrow except for a small amount of about \$7.00, which A. C. Sparrow still owes him. The credit since 1886 was given to Mrs. Sparrow, and the account was charged to her. I am of opinion besides
20 that Bannerman was in good faith when he bought the stack of grain from A. C. Sparrow and did not do so to enable Sparrow to defraud his creditors. And Bannerman showed undoubtedly his good faith in the transaction by not charging Sparrow with his old account of \$7.00 which he had against him at the time of Sparrow's insolvency.

Therefore Judgment must be entered for the Plaintiff and costs.

Calgary, 17th Feb. 1890.

"CHAS. B. ROULEAU"

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NOTICE OF APPEAL.

Take notice that the Defendants herein hereby Appeal to the Supreme Court of the North-West Territories in banc, from the whole Judgment pronounced in this action by the Honorable Mr Justice Rouleau, on the 17th day of February, A. D., 1890, whereby he found that the stack of grain in dispute herein was the property of the Plaintiff as against the Defendants, upon the following grounds:—

1. That the said Judgment is contrary to law in as much as the learned Judge should have held that the Bill of Sale, referred to in the evidence herein, was void as against the Defendants, under Chapter 47 of the Revised Ordinances of the North-West Territories.
- 10 2. That the said Judgment is contrary to law in as much as the learned Judge should have held that the said Bill of Sale was void, as against the Defendants, under Chapter 49 of the Revised Ordinances of the North-West Territories.
3. That the said Judgment is contrary to law in as much as the learned Judge should have held that the said Bill of Sale was not duly proven and that therefore there was no evidence whatever of the said stack of grain being the property of the Plaintiff.

And take notice that the Defendants will move the said Court at its next session, to be holden at Regina in the North-West Territories on the 2nd day of June, A. D., 1890, to reverse the said Judgment and enter Judgment for the Defendants.

Dated at Calgary, this 1st day of March, A. D., 1890.

20 To MESSRS. SMITH & WEST,
Plff's. Advcs.

E. P. DAVIS,
Defts'. Adve.

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