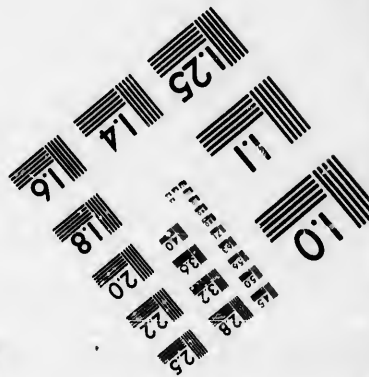
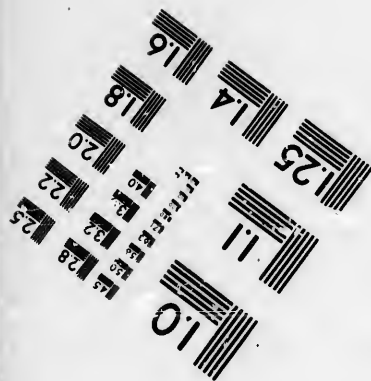
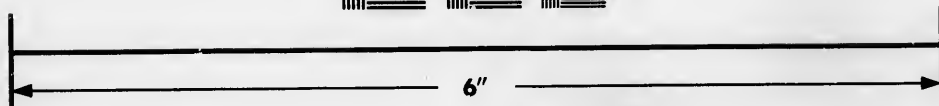
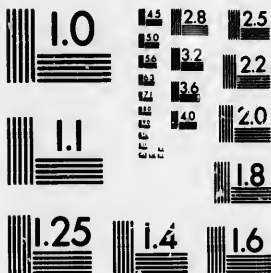


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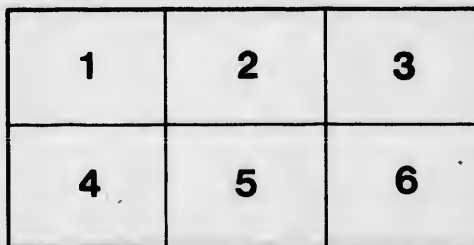
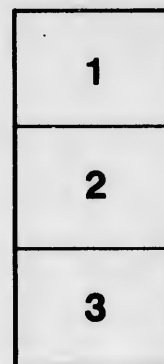
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COURT OF APPEALS.

JOHN JONES,
Appellant,

and

LOUIS LAGUEUX, the elder,
Respondent.

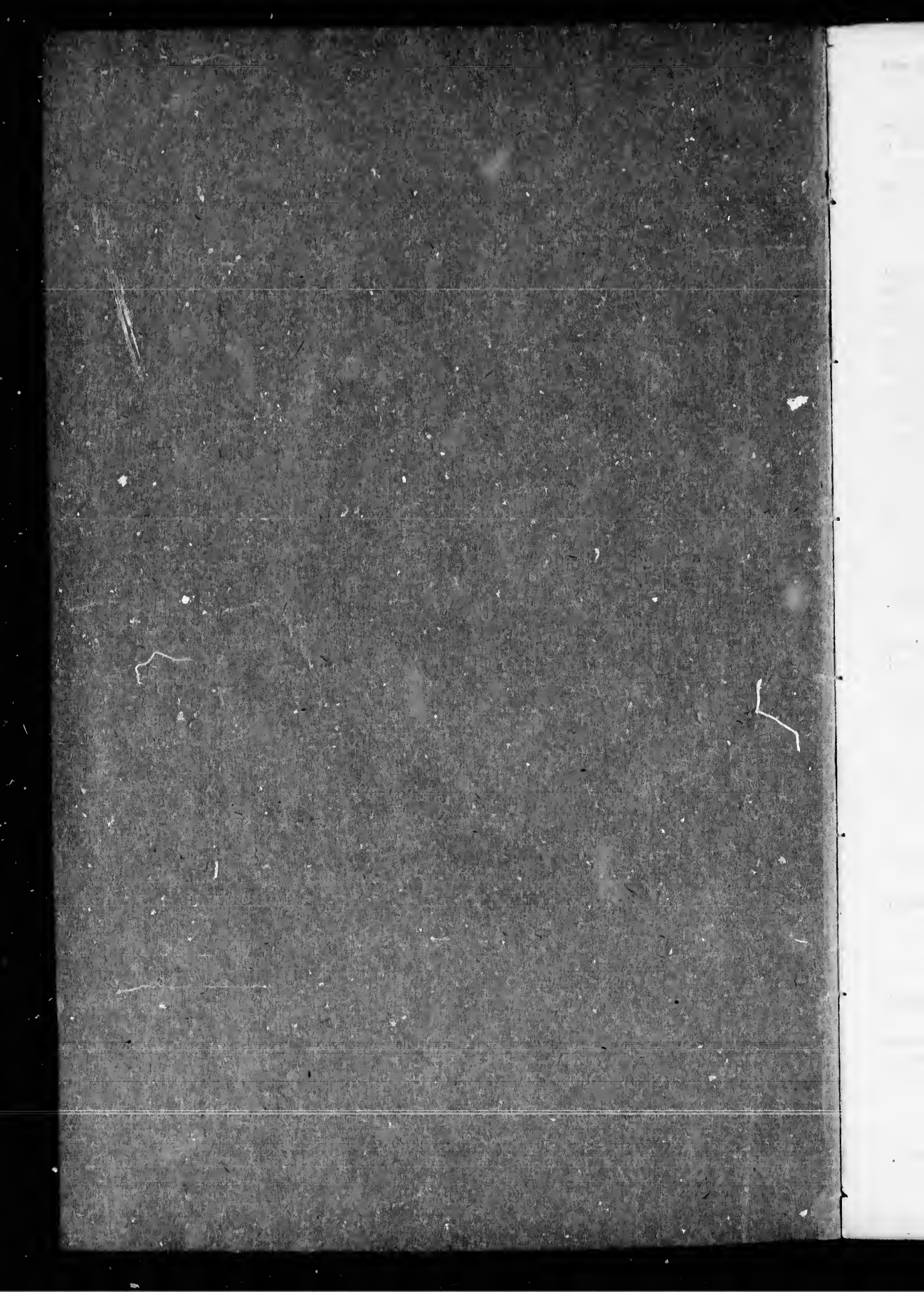
The Appellant's Case.

A. STUART,
for Appellant.

COURT OF APPEALS.

JOHN JONES,

Appellant,



IN A CAUSE, between

JOHN JONES,

(Defendant in the Court below.)

Appellant,

AND

LOUIS LAGUEUX, the elder,

(Plaintiff in the Court below.)

Respondent.

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THE APPELLANT'S CASE.

ON the 24 of May 1817, a charter of the ship Adeona, belonging to one Louis Lagueux the younger and one William Grant, was executed, at Quebec, by the said Louis Lagueux, acting as well for himself as for the said William Grant, to the said Appellant, whereby the said Louis Lagueux for the freight herein after mentioned, let unto the said John Jones the said brig for a voyage, from the port of Quebec to the island of Barbadoes, with liberty to proceed to islands to leeward for a market, and if required to proceed to Turks island, for a return cargo and back to Quebec, and the said Louis Lagueux promised that the said brig or vessel was and during the said voyage, should be kept tight, staunch, strong and well furnished with provisions and men; and should be ready to take in her cargo at Quebec on the twenty sixth of the same month of May, and being laden, should proceed the first fair wind to the island of Barbadoes, or to the islands to leeward for a market for the said cargo, and as should be directed by the said John Jones his agents, factors or assigns, and on delivery of the said cargo, should and would take in such a return cargo, at the port of discharge or at that of any of the islands aforesaid, as should be furnished by the factors, agents or assigns of the said John Jones, which said cargo should be taken from the wharf or quay of the port of the island, when the same should be furnished and be stowed by the master and crew to the satisfaction of the said factors, agents or assigns, which said voyage should be commenced, proceeded on and completed and the said outward return cargo delivered safe and well conditioned, at the ports of discharge thereof as aforesaid the act of God, the King's enemies &c. excepted -- The parties then proceed to settle the demurrage days and the payment of the port charges.

The freight stipulated by the charter party is £900, whereof £100 was paid down, -- £100 to be paid on the receipt of advice of the arrival of the vessel at the island of Barbadoes, the balance of £600 on the completion of the aforesaid intended voyage by the said brig and the delivery of the return cargo.

The ship proceeded upon her voyage to Barbadoes.

During the voyage, to wit, on the 28th of February 1818, an instrument was executed by Louis Lagueux the younger & William Grant, purporting to be a sale of the brig Adeona and of the freight to accrue and become due from John Jones under and in virtue of the aforesaid charter party.

This instrument recites that Louis Lagueux the younger and William Grant were indebted to the said Louis Lagueux the elder (the present Respondent) in a sum of one thousand one hundred and fifty pounds, advanced and paid by the latter to the former. In consideration whereof the said Louis Lagueux the younger and William Grant granted, bargained, sold, assigned, transferred and set over the said brig Adeona, which had been duly registered in the port of Quebec, pursuant to an act of Parliament, for that purpose the certificate of which registry it is therein stated, that the said Louis Lagueux and William Grant could not then produce; and also, all and every such sum or sums of money

2115 money then due or to grow due or owing unto them in and by virtue of the said charter party. And also a certain policy of insurance made and entered into of and upon the said brig.

It was only on or about the 20th June 1818, that this vessel arrived at the port of Quebec, for on that day differences having arisen between the parties, a protest was served upon Mr. Jones, calling upon him to discharge the cargo.

On the 22d. of the same month, Mr. Lagueux drew a bill upon Mr. Jones for a sum of £600, which, (the differences between them respecting the charter party not having been settled,) was not accepted.

On the 24 August following, Mr. Lagueux instituted his action.

The declaration in the cause states that the above in part recited charter party, was made and entered into by and between the said Louis Lagueux the younger and William Grant, of the one part, and the said John Jones, of the other part, that le dit vaisseau auroit, à tems requis et suivant les circonstances du tems et de la navigation, fait le dit voyage, et auroit, par l'ordre du dit John Jones, délivré sain et sauf, dans le port de Québec, dans le cours de Juin dernier, toute la cargaison mise à bord par l'ordre du dit John Jones dans les isles, et que les dits locateurs auroit de leur part entièrement accompli toutes les obligations convenus par l'acte de charte partie susdit. The Respondent proceeds to state, that le vingt-huit Février mil huit cent dix-huit, par acte passé devant Mtre. Glackmeyer et son confrère Notaires à Québec susdit, les dits William Grant et Louis Lagueux fils auroient vendu au dit Louis Lagueux père, demandeur en cette cause, à ce présent et acceptant le dit brig Adeona avec tous les agrès appareux, tel qu'il étoit lors du dit acte à Halifax, par acte ensemble tous les profits faits et à faire, échus et à échoir, et généralement toutes espèces de dettes, actions alors dus et qui pourroient devenir dus aux dits William Grant et Louis Lagueux fils, pour le dit vaisseaux sur le dit voyage.

The declaration concludes for the sum of £600 and 25s. costs of protest.

To this declaration the Appellant pleaded the general issue, and thereby put it upon the Plaintiff to prove the substantial averments contained in his declaration.

The Appellant anticipated that the master or mate of the vessel would have been produced by the Respondent to establish these facts, and he was satisfied that whoever of the ship might be produced, it would be in his power upon the cross-examination of them to shew that the contract had not been fulfilled on the part of the Respondent.—This anticipation was not realized; and strange to say neither the master, nor mate, nor super-cargo, nor any other person having a knowledge of the cargo was produced by the said Respondent.

To establish the total insufficiency of the evidence offered on the part of the Respondent in the Court below, the best course will probably be to state, what by law he ought to have proved and next what he has proved.

He ought to have proved,—1. The execution of the charter party.

2. The fulfilment of the covenants on his part contained in the same and herein:

1. That the vessel took in a cargo of the Appellant and sailed to Barbadoes or the Islands of Leeward.
 2. That she delivered her cargo there.
 3. That she took in a return cargo at the port of discharge.
 4. That she delivered the whole of her return cargo at the port of Quebec.
3. That the vessel and her freight had been as averred in the declaration lawfully assigned and made over by Louis Lagueux the younger and William Grant to the Respondent.

The charter party proves itself, it being a notarial instrument.

Upon the second head the Respondent's evidence is insufficient,

He has, it is true, proved that the vessel took in a cargo at Quebec for Barbadoes, but he has not proved that *that* cargo was delivered.

He has proved that Louis Lagueux and William Grant delivered to the Appellant out of the said vessel a specific quantity of salt; he has not proved that the quantity delivered was the whole quantity put on board.

Upon the third head his evidence is also insufficient.

The sale of the ship Adeona and the freight to accrue was one entire contract. The consideration for the assignment of both was one and entire, the sum of £1150. The ship was British plantation built, and enregistered at this port. The instrument purporting to be a deed of sale contained no recital of the certificate of registry. Whether it be looked at as a sale or an agreement to sale it, was by virtue of the British statute law *null and void to all intents and purposes*. Being so, the debt for the discharge of which the alledged sale was made revived, and Louis Lagueux the elder may now recover from Louis Lagueux the younger and William Grant the £1150, which by that deed they acknowledge to owe him. The consideration cannot be apportioned; There remains then no consideration for the assignment of the freight. It is not two contracts, but one contract. A contract of sale of the vessel with an accessory covenant respecting the freight. The principal contract failing the accessory, fell to the ground with it: *cum principalis causa non consistit, ne ea quidem quae sequuntur, locum habent*.

Yet the Court below, though they could not but admit that the principal contract was null and void, held that the accessory dependent, covenant was binding and condemned the Appellant to pay to the Respondent the sum of six hundred pounds, with interest and costs of suit.

It is from this Judgment that the present Appeal is brought.

QUEBEC, 13 January, 1819.

