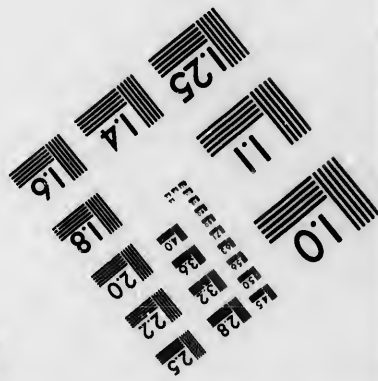
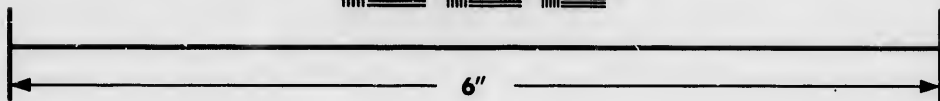
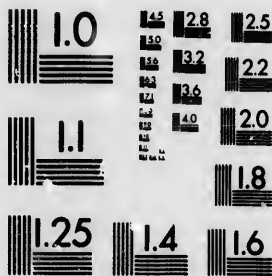


**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**Photographic  
Sciences  
Corporation**

23 WEST MAIN STREET  
WEBSTER, N.Y. 14580  
(716) 872-4503

**CIHM/ICMH  
Microfiche  
Series.**

**CIHM/ICMH  
Collection de  
microfiches.**



**Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques**

**© 1986**

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured covers/  
Couverture de couleur
- Covers damaged/  
Couverture endommagée
- Covers restored and/or laminated/  
Couverture restaurée et/ou pelliculée
- Cover title missing/  
Le titre de couverture manque
- Coloured maps/  
Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black)/  
Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations/  
Planches et/ou illustrations en couleur
- Bound with other material/  
Relié avec d'autres documents
- Tight binding may cause shadows or distortion along interior margin/  
La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/  
Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- Additional comments: /  
Commentaires supplémentaires: Docket title page is bound in as last page in book but filmed as first page on fiche.

- Coloured pages/  
Pages de couleur
- Pages damaged/  
Pages endommagées
- Pages restored and/or laminated/  
Pages restaurées et/ou pelliculées
- Pages discoloured, stained or foxed/  
Pages décolorées, tachetées ou piquées
- Pages detached/  
Pages détachées
- Showthrough/  
Transparence
- Quality of print varies/  
Qualité inégale de l'impression
- includes supplementary material/  
Comprend du matériel supplémentaire
- Only edition available/  
Seule édition disponible
- Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/  
Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below /  
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
								✓			

The copy filmed here has been reproduced thanks to the generosity of:

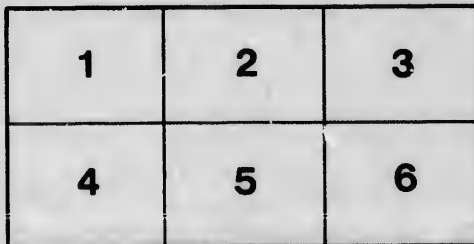
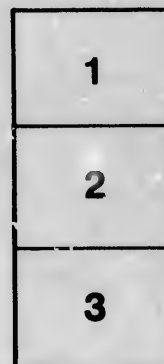
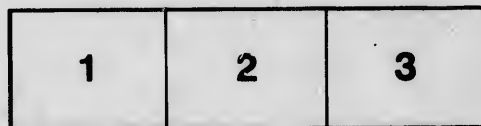
Bibliothèque nationale du Québec

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol  $\rightarrow$  (meaning "CONTINUED"), or the symbol  $\nabla$  (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

Bibliothèque nationale du Québec

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole  $\rightarrow$  signifie "A SUIVRE", le symbole  $\nabla$  signifie "FIN".

Les cartes, plans, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

**IN APPEAL:**

Brehaut and Sheppard,

APPELLANTS:

§

Dean & al.

RESPONDENT.

CASE OF THE APPELLANTS.

A. STUART for APPELLANTS.

IN APPEAL.



IN A CAUSE BETWEEN

Peter Brehaut and William Grut Sheppard,

APPELLANTS.

§

Philip Dean and John Dean,

RESPONDENTS.

CASE OF THE APPELLANTS.

THE Declaration in this cause by Philip Dean and John Dean, styling themselves masters and owners of vessels, is in general *Indebitatus Assumpsit*, and contains three counts: the first for money lent and advanced, the second for money laid out and expended, the third upon an account stated.

To this Declaration the Appellants filed a Plea of Peremptory exception and a Plea of *non assumpsit*.

In the first they say that in and by the account stated and delivered by the said Peter Brehaut and William Grut Sheppard to the said Philip and John Dean, upon which the suit or action was founded, all errors of fact and omissions of and in the said account, are specially excepted, and that by error of fact and mistake, in the hurry of Business, and without having examined as well the Bills of Lading for the sundry goods, wares and Merchandizes shipped by the said Peter Brehaut and William Grut Sheppard at Quebec on board the Charlotte, Philip Dean Master, the first thereof amounting to £240 2 6 currency, payable at St. John's in the Island of Newfoundland by Messrs. Pain and Lemesurier, Merchants, the Consignees of the said goods, as the Bill of Lading for sundry other goods, wares and merchandize shipped by the said Peter Brehaut and William Grut Sheppard at Quebec on board the Schooner Three Sisters, the freight thereof amounting to the sum of £110 12 6, payable at St. John's aforesaid by the said Messrs. Pain and Lemesurier Consignees of the said aforesaid mentioned goods, wares and merchandizes, the said several sums amounting to the sum of £350 15 0, were by error of fact and through mistake as aforesaid credited in the said account so delivered to the said Philip Dean and John Dean.

That the said Philip Dean and John Dean are in truth indebted to them the said Peter Brehaut and William Grut Sheppard in a sum of £140 0 0 for which they the said Peter Brehaut and William Grut Sheppard reserve their recourse &c.

The Respondents joined issue upon these pleas, and the cause was inscribed upon the Roll of *Enquêtes*.

The Evidence adduced by the Appellants established as they think that there were two errors in the abovementioned account which they deem material.

1. The first relates to the existence of the debt as due by the Appellants.

2. The Respondents, clearly might have recovered it from the Consignees; they had no recourse against the Appellants.

The Bills of Lading which the Appellants produce prove that the freight was to be paid by the Consignees.

And this agreement was one which cannot be considered to have been lightly entered into either by the one party or by the other, inasmuch as Bills of Exchange were at a considerable discount at Quebec and were known to be always at *par* at Newfoundland.

The

S. T. R. 390  
S. P. W. 186  
S. B. & P. 583

147179

REC  
HC  
23  
184  
TS



No. 15 of  
Record.

The freight was in fact tendered by Messrs. Paint and Lemessurier, (the Consignees) to the Respondents at Newfoundland, but they refused to receive it, whereupon a protest was duly made which is upon the files of this cause.

2. The second relates to the persons who were entitled to recover the freight earned by the Three Sisters from the Consignees.

Abbott on  
shipping p. 87  
Ed 1804.  
2. Str. 820  
2. T. R. 292  
1. B. & P. 73

It is in evidence that the owners of the Three Sisters were Philip Dean, John Dean and Charles Smith. And the Appellants respectfully contend that by Law all the owners ought to have joined in this action and that the appellants may avail themselves of the objection of the non-joinder of one of them under the general issue.

The Court below however pronounced the following Judgment :

The Court of our Lord the King now here doth adjudge and condemn the Defendants Peter Bchant and William Gut Sheppard to pay to the Plaintiff Philip Dean and John Dean, for the cause stated and set forth in the Declaration in this cause filed, the sum of Two hundred and thirty two Pounds, sixteen Shillings and five pence, currency, with interest thereon from the twenty eighth day of March, one thousand eight hundred and twelve, until perfect payment, and costs of suit.

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

ses) to the  
was duly

d by the

Dean and  
it to have  
the non,

nts Peter  
for the  
red and  
rom the  
ayment,

