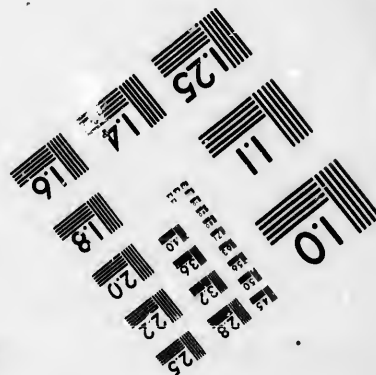
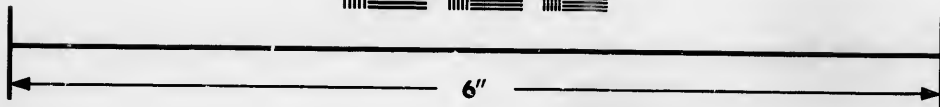
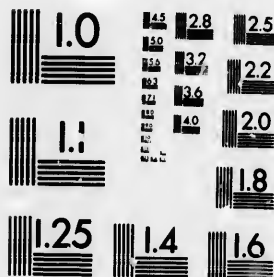


**IMAGE EVALUATION  
TEST TARGET (MT-3)**



**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/  
Le 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 éteit possible, ces pages n'ont pas été filmées.

- 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.

Additional comments: / Docket title page is bound in as last page in book but filmed as first page on fiche.  
Commentaires supplémentaires:

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

10X	14X	18X	22X	26X	30X
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12X	16X	20X	24X	28X	32X

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

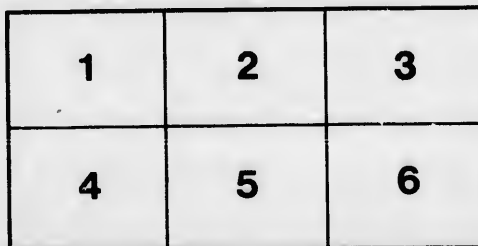
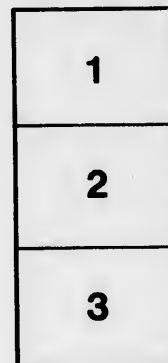
Bibliothèque nationale du Québec

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 end 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, planches, tableaux, 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.

ails  
du  
odifier  
une  
image

rrata  
to

pelure,  
n à

e.



32X

**COURT OF APPEALS.**

**TOUSAINT POTHIER,**

*Appellant,*

*and*

**FRANÇOIS BERNIER,**

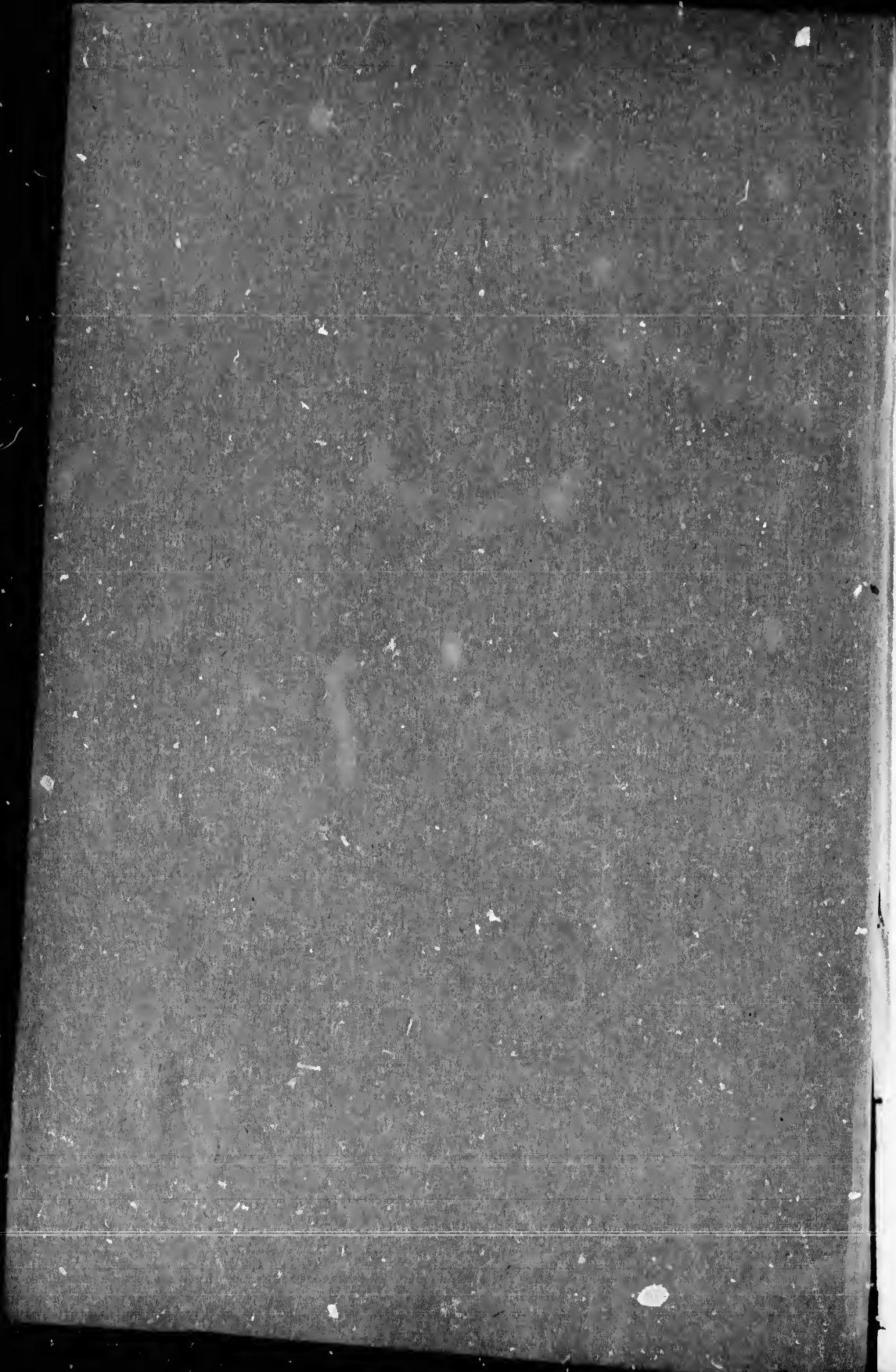
*Respondent.*

Appellant's Case.

**A. STUART, for APPELLANT.**

COURT OF APPEALS.





100  
100  
100  
100

In a Cause

Between

TOUSSAINT POTHIER,

(Defendant and Incidental Plaintiff in the  
 Court below,)

APPELLANT,

and

FRANCOIS BERNIER,

(Plaintiff and Incidental Defendant in the  
 Court below,)

RESPONDENT.

APPELLANT'S CASE.

**T**HIS was an action of general *Indehitatus assumpsit*, brought by the Respondent against the Appellant, in the Court at Three-Rivers, for the recovery of a sum alledged to be due for work and labour, in erecting divers buildings for the Appellant.

The Respondent filed two detailed accounts of work and labour so done, amounting together to three hundred and fifty-seven pounds, twelve shillings and eight pence, and also the special agreement under which the work was done.

The Appellant pleaded first the general Issue, and secondly an incidental demand.

In this last pleading the Appellant states, that the Respondent had entered into a written contract with the Appellant, for the building of a dwelling house and out houses, for the price of £185 : 0 : 0, the said house to be delivered on the 26th day of October then next, and the out-houses on the first of August, also then next.

That the Appellant had advanced to the said Respondent on account of the said price, the sum of £120 : 0 : 0. That the said Respondent had not fulfilled his engagement to the damage of the said Appellant of three hundred pounds, for which sum he prayed Judgment.

With this pleading the Appellant filed a duplicate of the special agreement, which had been entered into between these parties, and several receipts.

The Respondent by his plea, or answer to the Incidental demand, admits the special agreement but avers, that he had done all which he was bound to do, under that agreement, and that the delay which took place in the completing and delivering of the building arose from the omission of the Appellant to point out the site of the house, &c.

The cause was fixed for evidence, as well on the principal as on the Incidental demand.

It appears that the buildings were commenced only in September 18 and the Respondent ceased to work upon them in the month of February following. That one hundred and twenty pounds were received by the Respondent, in part payment of the sum of one hundred and eighty-five pounds, mentioned in the Appellant's Plea.

The Court having heard the parties, ordered a reference to *experts*.

They reported that the out-houses were delivered to the Appellant in September, 1816, that the Appellant's agent received possession of the house

REC  
 AC  
 1816  
 13



only in the month of December following, and then in an unfinished state, that to complete the house according to the terms of the agreement between the parties much work, which they specify in the report, remained to be performed.

On the 19th January 1818, the Court ordered the *experts* to appear before the Court, on the 23d of the same month for the purpose of explaining their report.

By their supplementary, or explanatory Report of the 23d January, 1818, they report, that the Appellant is entitled to no damages for the omission of the Respondent to deliver the house and out-houses, at the times specified in the agreement.

That the Respondent had not fulfilled his agreement in respect of the house, and that of the work covenanted to be done by the Respondent there remained undone, work of the value of ten pounds twelve shillings and six pence, which sum they take upon themselves to say ought to be deducted out of the balance remaining due to the Respondent by the Appellant.

The Court below having heard the parties upon these several reports and upon the evidence in the cause, pronounced on the 16th March, 1818, the following Judgment :

La Cour après avoir entendu les parties par leurs Avocats, tant sur la demande principale que sur la demande incidente : vu les rapports des experts nommés en cette cause dressés en exécution du Jugement interlocutoire de cette Cour, du trente Septembre dernier, lesquels la dite Cour a par ces présentes homologué, examiné le procédure et en avoir délibéré, faisant droit sur la demande principale, condamne le dit défendeur principal a payer au demandeur principal, la somme de quatre-vingt une livres, dix-sept chelins et six deniers courant, pour balance due au dit demandeur principal par le dit défendeur principal pour les ouvrages de menuiserie et de charpente, mentionnés en la déclaration du dit demandeur principal suivant les conventions entre les dites parties mentionnées audit Jugement interlocutoire du 30 Septembre dernier (déduction étant faite de la somme de quatre-vingt douze livres dix chelins, payé par le dit défendeur principal au dit demandeur principal, et aussi la somme de dix livres, douze chelins et six deniers pour les ouvrages qui restent a faire, ainsi que mentionnés au dit rapport d'experts,) avec intérêts sur la dite somme de quatre-vingt une livres, dix-sept chelins et six deniers depuis le 11 Mars, 1817 jour de la demande en Justice, jusqu'au parfait paiement et aux dépens et faisant droit sur la demande incidente, la Cour déboute la dite demande incidente avec dépens.

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

The Reasons of Appeal are as follows :

FIRSTLY—That the said Court below, by the said final Judgment, confirmeth and homologateth the reports of the *experts* in the said cause filed, and because the said Court ought to have set aside the said Reports with costs.

SECONDLY—That the said Court below, in and by the said Judgment, maintaineth the action of him the said Respondent, against the said Appellant and condemneth the said Appellant to pay to the said Respondent a large sum of money, whereas the said Court below ought to have dismissed the said action with costs.

THIRDLY—That the said Judgment of the Court below purports to be founded upon a certain agreement, made and entered into between the said

parties, which said agreement is not mentioned in the said Respondent's declaration in the said cause filed, and hath no relation to the demand in the said declaration contained.

**FOURTHLY**—That although by the said agreement the said Respondent bound himself to do and perform certain work and labor, for him the said Appellant in consideration whereof the said Appellant promised to pay unto him the said Respondent a certain sum of money, when the said work and labour was by him the said Respondent done and performed, and although the said Respondent hath not yet done and performed the said work and labour, and the said agreement remains open and unfulfilled, yet the Court below by their said Judgment hath awarded unto the said Respondent a large sum of money for the said work and labor.

**FIFTHLY**—That the action and demand against the said Respondent were premature and unfounded and ought to have been dismissed with costs.

**SIXTHLY**—That the said Court below in and by the said Judgment hath dismissed the Incidental demand of the said Appellant with costs, and because the said Court below ought to have maintained the Incidental demand of him the said Appellant, and to have awarded unto him the conclusions by him in that behalf taken.

**SEVENTHLY**—Because the said Judgment of the Court below is repugnant, incongruous and contrary to law and evidence.

Quebec, 21st July, 1818.

