

No. of Record	DESCRIPTION OF DOCUMENTS.	DATE.	Page in Record
27	Order for <i>faits et articles</i> and interrogatories to be submitted to Defendant.....dated	22nd May.....1888	75
28	Motion by Defendant Andrew Rough, to amend defence and fyle additional Plea.....dated	10th Sept.....1888	78
29	Motion by Defendant John McDougall, to amend defence, and fyle additional Plea.....dated	10th Sept..... 1888	82
30	Motion by Defendant Samuel Baird to amend defence and fyle additional Plea.....dated	10th Sept.....1888	86
31	Affidavit of T. Brosseau.....taken	12th Sept.....1888	90
32	Plaintiffs' answer to Defendants' motion for leave to amend Pleas.....dated	11th Sept.....1888	91
33	Defendant Rough's amended defence.....dated	12th Sept.....1888	92
34	Defendant John McDougall's amended defence.....dated	12th Sept.....1888	101
35	Defendant S. W. Beard's amended defence..dated	12th Sept.....1888	110
36	Additional Plea of Defendant Beard with answers to answers of the Plaintiff.....dated	12th Sept.....1888	119
37	Answer to Plea of Defendant Andrew Rough, as amended.....dated	11th Sept.....1888	121
38	Answer to Plea of Defendant John McDougall, as amended.....dated	11th Sept. ....1888	124
39	Answer to Plea of Defendant Samuel W. Baird, as amended.....dated	11th Sept.....1888	127
40	Answer of Defendant Rough to Plaintiff's answers.....dated	17th Sept.....1888	130
41	Answers of Defendant John McDougall to answers of the Plaintiff.....dated	12th Sept.....1888	130
42	Motion of the Defendant Rough to amend his defence and to add other Pleas.....dated	10th Sept.....1888	133
43	Interrogatories of the Plaintiff to be submitted to Defendant and order for <i>faits et articles</i> , dated See No. 27 of said Index printed already.	22nd May.....1888	136
44	Doctor's certificate.....dated (Defendants' Exhibit No. 1).....fyled	10th Sept.....1888 3rd Oct.....1888	
45	Copy of judgment of the Superior Court rendered in the case of Andrew Rough, Plaintiff, vs The Pioneer Beet Root Sugar Company Deft. (Defendants' Exhibit No. 1).....fyled	16th Mar.....1883 5th Oct.....1888	137
46	Account of G. O. Doak.....dated (Defendants' Exhibit No. 2).....fyled	22nd Feb.....1883 5th Oct.....1888	137 139
47	Statement (Defendants' Exhibit No. 3).....fyled	26th Oct.....1888	140
48	Letter of J. W. Baird.....dated (Defendants' Exhibit No. 4).....fyled	29th Dec. ....1882 5th Oct.....1888	141
49	Letter of Sheriff of Sherbrooke.....dated (Defendants' Exhibit No. 5).....fyled	3rd Jan.....1883 5th Oct.....1888	141
50	Copy of Writ and declaration <i>in re</i> No. 1642, Banque d'Hochelega, vs Rough and Glackmeyer & al.....dated	26th July.....1883	

# IV

No. of Record	DESCRIPTION OF DOCUMENTS.	DATE.	Page in Record
	(Defendants' Exhibit No 6).....fyled	5th Oct.....1888	142
51	Plaintiff's <i>retraxit</i> for \$131.30.....dated	5th Oct.....1888	146
52	Plaintiff's supplementary articulations of facts of Defendant Rough amending Pleading...dated	5th Jan.....1889	147
53	Plaintiff's supplementary articulations of facts on Defendant Beard, amended Pleadings...dated	5th Jan.....1889	148
54	Plaintiff's supplementary articulations of facts on Defendant McDougall, amended Pleadings.....dated	5th Jan.....1889	149
55	Answers of Defendant Beard to Plaintiff's supplementary articulations of facts.....dated	5th Jan.....1889	150
56	Answers of Defendant Rough to Plaintiff's supplementary articulations of facts.....dated	5th Jan.....1889	151
57	Answers of Defendant McDougall to Plaintiff's supplementary articulations of facts.....dated	5th Jan.....1889	152
58	Plaintiff's answers to supplementary articulation of facts of Defendant John McDougall...dated	31st July.....1889	153
59	Plaintiff's answers to supplementary articulations of facts of Defendant S. W. Beard.....dated	31st July.....1889	155
60	Plaintiff's answers to supplementary articulations of facts of Defendant Andrew Rough...dated	31st July.....1889	157
61	Articulations of facts of Defendant Andrew Rough.....dated	12th Sept.....1888	159
62	Articulations of facts of Defendant S. W. Beard.....dated	12th Sept.....1888	164
63	Articulations of facts of Defendant John McDougall.....dated	12th Sept.....1888	169
64	Plaintiff's answers to Defendant John McDougall's articulations of facts.....dated	April.....1889	174
65	Plaintiff's answers to Defendant S. W. Beard's articulations of facts.....dated	April.....1889	176
66	Plaintiff's answers to Defendant Andrew Rough's articulations of facts.....dated	April.....1889	178
66½	Motion of Defendants to unite Cases.....dated	5th Jan.....1889	180
67	Statement showing \$41,544.59 due by Defendants by Plaintiff upon mortgage with interest at 7 per cent.....		
68	(Plaintiff's Exhibit A A).....fyled Letter from Wm Farwell, general manager, Eastern Townships Bank, addressed to Andrew Rough, Esquire, of date.....Montreal	5th Oct.....1888 19th Jan.....1883	181
69	(Plaintiff's Exhibit A B).....fyled Letter from Andrew Rough, addressed to William Farwell, Esquire, of date.....Montreal	5th Oct.....1889 19th Oct.....1883	182
70	(Plaintiff's Exhibit A C).....fyled Letter from A. Rough to W. Farwell, Sherbrooke, Que., of date.....Montreal	5th Oct.....1888 12th Feb.....1883	183
	(Plaintiff's Exhibit A.D.).....fyled	5th Oct.....1888	183

V

No. of Record	DESCRIPTION OF DOCUMENTS.	DATE.	Page in Record
✓ 71	Letter from S. W. Beard & Co, to Wm Farwell, Esquire.....dated at Montreal (Plaintiff's Exhibit A. E.).....fyled	8th Feb.....1883 5th Oct.....1888	184
✓ 72	Letter from S. W. Beard to Wm. Farwell Esquire.....dated at Montreal (Plaintiff's Exhibit A. F.).....fyled	14th Oct.....1883 5th Oct.....1888	184
✓ 73	Letter of John McDougall to Wm. Farwell Esquire, cashier, Eastern Township Bank, Sherbrooke.....dated at Montreal (Plaintiff's Exhibit A. G.).....fyled	13th Jan.....1883 5th Oct.....1888	185
✓ 74	Letter from S. W. Beard to Wm. Farwell...dated (Plaintiff's Exhibit A. H.).....fyled	13th Jan.....1883 5th Oct.....1888	186
✓ 75	Letter from A. Rough & John McDougall to B. Austin, Manager, Eastern Township Bank, Coaticook, Q.....dated at Montreal (Plaintiff's Exhibit A. I.).....fyled	17th March...1883 5th Oct.....1888	1 86
✓ 76	Memorandum of Debits, Credits and Insurance in connection with deed made..... (Plaintiff's Exhibit A. J.).....fyled	5th Oct.....1888	187
✓ 77	Letter from A. Rough to B. Austin, Esquire, Cashier Eastern Township Bank, Coaticook Q. dated .....at Montreal (Plaintiff's Exhibit A. K.).....fyled	5th Sept.....1883 5th Oct.....1888	187
✓ 78	Letter from J. McDougall per A. Rough to B. Austin, Esquire, Eastern Township Bank Coaticooke, Québec.....dated at Montreal (Plaintiff's Exhibit A. L.).....fyled	9th Nov.....1883 5th Oct.....1888	188
✓ 79	Letter from A. Rough to B. Austin, Esquire, Coaticooke.....dated at Montreal (Plaintiff's Exhibit A M.).....fyled	11th July.....1884 5th Oct.....1888	189
✓ 80	Letter from A. Rough, addressed to B. Austin, Esquire, cashier, E. T. Bk, Coaticook, Que., .....dated at Montreal (Plaintiff's Exhibit A N.).....fyled	11th June .....1884 5th Oct.....1888	190
✓ 81	Memoranda of expenses paid by John McDougall connected with the Pioneer Beet Root Sugar Company, property at Coaticook and Montreal..... (Plaintiff's Exhibit A O.).....fyled	26th Oct.....1888	189
✓ 82	Statement of amounts collected at Coaticook, from property Pioneer Beet Root Sugar Company, by John McDougall to 26th September 1888..... (Plaintiff's Exhibit A P) .....fyled	26th Oct.....1888	204
✓ 83	Statement of amounts collected from property Pioneer Beet Root Sugar Company, Coaticook, by John McDougall.....dated (Plaintiff's Exhibit A Q).....fyled	26th Sept.....1888 26th Oct.....1888	228

## VI

No. of Record	DESCRIPTION OF DOCUMENTS.	DATE.	Page in Record
✓ 84	Copy of Protest, etc., at the request of A. Rough, Esquire, on the Collector of customs, at the Port of Coaticook, and the department of customs of Canada, by John Fraser N. P. .... dated	25th Oct.....1883	
✓ 85	(Plaintiff's Exhibit A R).....fyled Copy of letter from Church, Chapleau, Hall and Atwater, to S. W. Beard, dated at Montreal.....	26th Oct.....1888	229
86	(Plaintiff's Exhibit A. S.).....fyled Deposition of Samuel W. Beard for Plaintiff ..... dated	28th Dec.....1882 26th Oct..... 1888	231
87	Deposition of Andrew Rough for Plaintiff..dated	26th Oct.....1888	232
88	Deposition of George O. Doak for Plaintiff..dated	5th Oct.....1888	241
89	Deposition of L. F. Beique for Plaintiff.....dated	26th Oct.....1888	245
90	Deposition of Louis O. Héту for Plaintiff...dated	26th Oct.....1888	256
91	Deposition of Charles Hagar for Plaintiff...dated	26th Oct.....1888	258
92	Deposition of Andrew Rough for Plaintiff (2nd deposition)..... dated	26th Oct.....1888	260
93	Deposition of Benjamin Austin for Plaintiff dated	26th Oct.....1888	263
94	Deposition of William Farwell, for Plaintiff in rebuttal ..... dated	5th Oct.....1888	268
95	Deposition of Benjamin Austin for Plaintiff in rebuttal ..... dated	5th Oct.....1888	269
96	Deposition of Thomas Darling for Eastern Township Bank..... dated	5th Oct.....1888	277
97	Deposition of Andrew Rough for Defendants McDougall and Beard..... dated	3rd Jan.....1889	285
98	Deposition of John M. Lee for Defendants..dated	26th Oct ..... 1888	288
99	Deposition of John M. Lee for Defendants Rough and al (2nd deposition)..... dated	5th Oct.....1888	290
		26th Oct.....1888	296

**No. 1198.**

*LIST of Documents in Case No. 1198 Superior Court wherein Fairbanks and Company are Plaintiffs, The Pioneer Beet Root Sugar Co'y Defendants, The Eastern Townships Bank adjudicataire, A. Rough and al, mis en cause La*

## VII

No. of Record	DESCRIPTION OF DOCUMENTS.	DATE.	Page in Record
	<i>Banque d'Hochelaga, Petitioners T. Darling, Intervenant. and The Corporation of the Town of Coaticook, mis en cause which were ordered to be filed herein, by judgment rendered upon motion of Defendants in case No. 2157.</i>		
✓ 100	Telegram Beard to Farwell.....dated (Petitioner's Exhibit A1) .....	18th Dec.....1882 Missing	300
✓ 101	Letter from N. Farwell, general manager of adjudicataire to Messrs Beard & McDougall..of date (Petitioner's Exhibit A2).....fyled	6th Jan.....1883 4th Nov.....1887	300
✓ 102	Letter from Farwell to Messrs J. W. & John McDougall.....dated (Petitioner's Exhibit A3).....fyled	8th Jan.....1883 4th Nov.....1887	301
✓ 103	Letter from J. McDougall to Wm Farwell, dated (Petitioner's Exhibit A4).....	9th Jan.....1883 Missing	301
✓ 104	Letter from Wm Farwell to B. Austin.....dated (Petitioner's Exhibit A5).....fyled	8th Jan.....1883 4th Nov.....1887	302
✓ 105	Letter from Wm Farwell to B. Austin.....dated (Petitioner's Exhibit A5 bis).....fyled	10th Jan.....1883 4th Nov.....1887	303
✓ 106	Letter from Wm Farwell to B. Austin.....dated (Petitioner's Exhibit A6).....fyled	25th Jan.....1883 4th Nov.....1887	303
107	Balance sheet Pioneer Beet Root Sugar Company credit side .....	31st Dec ..... 1881	305
107½	Balance sheet Pioneer Beet Root Sugar Company debit side.....dated (Petitioner's Exhibit A7 and A8).....fyled	31st Dec ..... 1881 4th Nov ..... 1887	307 305
108	Minutes of annual meeting of shareholders of the Company Defendant .....	27th Jan .....1882 4th Nov..... 1887	309
109	Copy of Auditors Report.....dated (Petitioner's Exhibit A8 bis).....fyled	27th Jan ..... 1882 4th Nov ..... 1887	310
✓ 110	Letter from Wm Farwell to B. Austin.....dated (Petitioner's Exhibit A9).....fyled	22nd Jan ..... 1883 4th Nov ..... 1887	311
✓ 111	Extract from letter Wm Farwell to John Thornton.....dated (Petitioner's Exhibit A10).....fyled	25th Jan ..... 1883 4th Nov ..... 1887	312
112	Letter from Wm Farwell to B. Austin.....dated (Petitioner's Exhibit A10 bis).....fyled	25th June..... 1883 4th Nov ..... 1887	313
113	Letter from Wm Farwell to B. Austin.....dated (Petitioner's Exhibit A11).....fyled	12th Oct ..... 1881 4th Nov ..... 1887	313
✓ 114	Letter from Wm Farwell to B. Austin extract dated (Petitioner's Exhibit A12).....fyled	17th Oct ..... 1881 4th Nov ..... 1887	315
✓ 115	Letter from Wm Farwell to B. Austin.....dated (Petitioner's Exhibit A13).....fyled	25th Oct .....1881 4th Nov ..... 1887	316
✓ 116	Letter from Wm Farwell to B. Austin .....dated (Petitioner's Exhibit A14).....fyled	8th Nov ..... 1881 4th Nov ..... 1887	317
✓ 117	Letter from Wm Farwell to G. Lomer ..... dated	28th Dec..... 1881	

## VIII

No. of Record	DESCRIPTION OF DOCUMENTS.	DATE.	Page in Record
✓ 118	(Petitioner's Exhibit A15).....fyled Letter from Wm. Farwell to B. Austin..... dated	4th Nov ..... 1887 30th Dec.....1881	317
✓ 119	(Petitioner's Exhibit A16).....fyled Letter from Wm. Farwell to B. Austin..... dated	4th Nov ..... 1887 10th Jan .....1882	318
✓ 120	(Petitioner's Exhibit A17).....fyled Extract from letter from Wm. Farwell to B. Austin .....dated	4th Nov ..... 1887 10th May .....1882	319
✓ 121	(Petitioner's Exhibit A18).....fyled Letter from Wm. Farwell to B. Austin.....dated	4th Nov ..... 1887 24th June .....1882	319
✓ 122	(Petitioner's Exhibit A19).....fyled Letter from Wm. Farwell to John Thornton dated	4th Nov ..... 1887 8th Nov.....1881	320
✓ 123	(Petitioner's Exhibit A20).....fyled Extract of letter from Wm. Farwell to John Thornton.....dated	4th Nov ..... 1887 14th Nov.....1881	320
✓ 124	(Petitioner's Exhibit A21).....fyled Extract of letter from B. Austin to Wm. Farwell .....dated	4th Nov ..... 1887 13th Oct .....1881	321
✓ 125	(Petitioner's Exhibit A22).....fyled Letter from B. Austin to Wm. Farwell.....dated	4th Nov ..... 1887 7th Nov.....1881	322
✓ 126	(Petitioner's Exhibit A23).....fyled Extract from letter from B. Austin to Wm. Farwell .....dated	4th Nov ..... 1887 9th Nov.....1881	323
✓ 127	(Petitioner's Exhibit A24).....fyled Letter from B. Austin to Wm. Farwell..... dated	4th Nov ..... 1887 29th Dec ..... 1881	324
✓ 128	(Petitioner's Exhibit A25).....fyled Letter from B. Austin to Wm. Farwell.....dated	4th Nov ..... 1887 11th Jan ..... 1882	325
✓ 129	(Petitioner's Exhibit A26).....fyled Letter from B. Austin to Wm. Farwell..... dated	4th Nov ..... 1887 3rd Jan.....1883	326
✓ 130	(Petitioner's Exhibit A27).....fyled Letter from B. Austin to Wm. Farwell..... dated	4th Nov .....1887 6th Jan.....1883	326
✓ 131	(Petitioner's Exhibit A28).....fyled Letter from B. Austin to Wm. Farwell..... dated	4th Nov.....1887 14th Jan.....1883	327
✓ 132	(Petitioner's Exhibit A29).....fyled Letter from B. Austin to Wm. Farwell..... dated	4th Nov ..... 1887 17th Jan ..... 1883	328
✓ 133	(Petitioner's Exhibit A30).....fyled Letter from B. Austin to Macpherson.....dated	4th Nov ..... 1887 20th Jan ..... 1883	329
✓ 134	(Petitioner's Exhibit A31).....fyled Letter from B. Austin to Wm. Farwell.....dated	4th Nov ..... 1887 20th Jan ..... 1883	330
✓ 135	(Petitioner's Exhibit A31 bis).....fyled Letter from B. Austin to Wm. Farwell.....dated	4th Nov ..... 1887 24th Jan ..... 1883	330
✓ 136	(Petitioner's Exhibit A32).....fyled Letter from B. Austin to Wm. Farwell..... dated	4th Nov ..... 1887 1st Feb.....1883	331
✓ 137	(Petitioner's Exhibit A33).....fyled Extract from minutes of meeting of Board of directors Banque d'Hochelaga.....dated	4th Nov ..... 1887 2nd June ..... 1883	332
✓ 138	(Petitioner's Exhibit A34).....fyled Letter from J. E. Brais, cashier Banque d'Hoche- laga to J. McDougall.....dated	4th Nov ..... 1887 2nd June ..... 1883	333

# IX

No. of Record	DESCRIPTION OF DOCUMENTS.	DATE.	Page in Record
139	(Petitioner's Exhibit A35).....fyled Consent to the omission in the present Transcript of a certified extract from the Cadastral Plan of the Town of Coaticooke.....dated	4th Nov ..... 1887	335
140	(Petitioner's Exhibit A36).....fyled Statement of machinery sold and taken out from premises of Company Defendant .....	13th April.....1885 4th Nov ..... 1887	334
141	(Petitioners Exhibit A37).....fyled Memorandum or statement of account showing account between Company Defendant and Eastern Townships Bank filed with deposition of Beard.....dated	4th Nov ..... 1887	337
142	(Petitioner's Exhibit B1).....fyled Letter from Messrs Beique, McGoun, & Emard to G. O. Doak, Esq., Coaticooke, dated Montreal	6th Jany.....1883 4th Nov ..... 1887	338
143	(Petitioner's Exhibit X).....fyled Statement of the account of A. Lomer with the Banque d'Hochelaga.....from the .....	28th April.....1883 30th Oct.....1888	340
144	(Petitioner's Exhibit XX).....fyled Extract from the Plaintiffs of the Superior Court in this case No. 1198.....dated	16th May.....1882 12th Jan ..... 1883 4th Oct.....1888	342
145	(Petitioner's Exhibit Y).....fyled Certified copy of Letter from Hochelaga Bank to Adolph Lomer, Esq.....dated	12th Jany.....1889 3rd Oct.....1888	344
146	(Petitioner's Exhibit Z).....fyled Consent of parties as to non-filing Petitioner's Exhibit A1 and A4 at enquête.....dated	8th May.....1885 3rd Oct.....1888	350
		31st Oct.....1887	351
<i>DEPOSITION and Exhibits, Fyled in the cause of La Banque d'Hochelaga, en nullité de décret, to be used in the precept causes.</i>			
147	Deposition of W. Farwell, for Petitioner, La Banque d'Hochelaga.....dated	10th April.....1885	352
148	Deposition of B. Austin, for Petitioner, La Banque d'Hochelaga.....dated	10th April.....1885	356
149	Deposition of W. Farwell, for Petitioner, La Banque d'Hochelaga.....dated	10th April.....1885	3 0
150	Deposition of J. Thornton, for Petitioner, La Banque d'Hochelaga.....dated	11th April.....1885	78
151	Deposition of J. Thornton, for Petitioner, La Banque d'Hochelaga.....dated	11th April.....1885	389

# X

No. of Record	DESCRIPTION OF DOCUMENTS.	DATE.	Page in Record
152	Deposition of G. O. Doak, for Petitioner, La Banque d'Hochelaga.....dated	15th April.....1885	391
153	Deposition of J. McDougall, for Petitioner, La Banque d'Hochelaga.....dated	15th April.....1885	394
154	Deposition of A. Lomer, for Petitioner, la Banque d'Hochelaga.....dated	15th April.....1885	401
155	Deposition of A. Rough, for Petitioner La Banque d'Hochelaga.....dated	16th April.....1885	408
156	Deposition of C. Hagar, for Petitioner, La Banque d'Hochelaga.....dated	16th April.....1885	403
157	Deposition of O. Shurtleff, for Petitioner La Banque d'Hochelaga.....dated	16th April.....1885	424
158	Deposition of T. Darling, for Petitioner La Banque d'Hochelaga.....dated	1st June.....1885	429
159	Deposition of S. W. Beard, for Petitioner, La Banque d'Hochelaga.....dated	10th June.....1885	433
160	Deposition of C. Lamoureux, the Plaintiff, Fairbank & Co.....dated	5th March.....1885	445
161	Deposition of R. Craik, for Petitioner La Banque d'Hochelaga.....dated	4th Oct.....1888	447
162	Deposition of F. L. Beïque, for Petitioner La Banque d'Hochelaga.....dated	3rd Oct.....1888	448
163	Deposition of T. Brosseau, for Petitioner La Banque d'Hochelaga.....dated	3rd Oct.....1888	44
164	Deposition of M. J. A. Prendergast, for the <i>adjudicataire</i> Eastern Townships Bank <i>et mis en cause</i> The Town of Coaticooke.....dated	28th Mar.....1888	450
165	Deposition of J. Leduc, for the <i>adjudicataire et mis en cause</i> .....dated	28th Mar.....1888	456
166	Deposition of A. Rough, for the <i>adjudicataire et mis en cause</i> .....dated	28th Mar.....1888	459
167	Deposition of A. Lomer, for the <i>adjudicataire et mis en cause</i> .....dated	28th Mar.....1888	460
168	Deposition of S. W. Beard, for the <i>adjudicataire et mis en cause</i> .....dated	28th Mar.....1888	464
169	Deposition of G. O. Doak, for the <i>adjudicataire</i> .....dated	3rd Oct.....1888	465
170	Deposition of J. E. Brais, for the <i>adjudicataire</i> Eastern Townships Bank.....dated	3rd Oct.....1888	469
<i>In the Court of Queen's Bench.</i>			
171	Reasons of Appeal.....dated	26th Sept.....1890	473
172	Answers to Reasons of Appeal.....dated	29th Sept.....1890	474
173	Appellants' Factum in both Appeals.....dated	8th Nov.....1892	475
174	Respondents' Factum.....dated	10th June.....1891	490
175	Proceedings in the Court of Queen's Bench.....		
	From.....	20th March.....1890	
	To.....	23rd June.....1893	498



# XI

No. of Record	DESCRIPTION OF DOCUMENT.	DATE.	Page in Record
✓ 175a	Appellants' motion to be permitted to file the judgment rendered in the case of Fairbanks et al Plaintiffs, Pioneer Beet Root Sugar Co, Defendant, etc.....dated	12th Nov.....1892	500
✓ 175b	Consent of parties to unite cases Nos. 301-302 .....	12th Nov.....1892	500
✓ 175c	Judgment <i>re</i> No 198 Fairbanks et al Plaintiffs The Pioneer Beet Root Sugar Co, Defendant & The Eastern Townships Bank, purchaser, & La Banque d'Hochelega Petitioner for vacating of Sheriff's sale (en nullité de décret & Andrew Rough et al mis en cause, rendered..	20th Feb .....1892	501
✓ 175d	Judgment of the Court of Queen's Bench in both Appeals.....rendered	23th Jan.....1893	504
176	Proceedings on motion for leave to Appeal to Her Majesty in Her Privy Council.....dated	18th May.....1894	512
176b	Judgment granting motion for delay to give security for Appeal to Her Majesty Privy Council .....	16th Nov .....1893	513
177	Bail Bond in both Appeals.....dated	21st, Feb.....1894	513
178	<i>Fiat</i> for transcript in both cases.....dated	5th Dec.....1893	515
179	Consent of parties as to the printing of the Transcript record in both cases.....dated	8th Jany.....1894	516
180	Index of all the papers comprising the Original Record.....	.....	517
<i>In the Court of Queen's Bench.</i>			
<b>No. 302</b>			
181	Writ of Appeal..... dated	20th Mar.....1890	524
<i>In the Superior Court</i>			
182	Proceedings in the Superior Court.....from .....	5th Sept.....1884	
	.....to .....	11th Mar.....1890	525
✓ 182a	Judgment of the Superior Court.....rendered	10th Mar.....1890	528
✓ 182½	Writ and declaration.....dated	5th Sept.....1884	532
✓ 183	Deed of sale, by The Eastern Township Bank to Andrew Rough, Hetu N. P.....dated	19th Jan.....1883	
	(Plaintiff's Exhibit B).....	.....	538
✓ 184	Deed of sale, George Frederick Bowen, Esquire, Sheriff to The Eastern Townships Bank, dated	13th Jan.....1883	
	(Plaintiff's Exhibit C).....	.....	541

## XII

No. of Record.	DESCRIPTION OF DOCUMENTS.	DATE.	Page in Record
185	Declinatory exception.....dated	20th Oct.....1884	543
186	Answers to the Declinatory exception.....dated	11th Nov.....1884	544
187	Exception to Judgment dismissing Declinatory Exception.....dated	6th Dec ..... 1884	545
✓ 188	Demurrer and Pleas.....dated	22 <sup>d</sup> Dec.....1884	545
189	Motion of Plaintiff to amend declaration...dated	19th Jan.....1885	549
190	Motion of Plaintiff to amend declaration....dated	10th Sept.....1888	550
✓ 191	Answers to Plaintiff's defence.....dated	19th Sept.....1888	552
✓ 192	Amended declaration.....dated	3rd Sept.....1884	554
✓ 193	Plea to amended action.....dated	11th Sept.....1888	559
194	Defendants' supplementary articulations of facts on amended action.....dated	5th Jan.....1889	560
195	Plaintiff's answers to Defendants' supplementary articulations of facts.....dated	10th April.....1889	560
 <i>In the Court of Queen's Bench</i> 			
196	Reasons of Appeal.....dated	26th Sept..... 1890	561
197	Answers to Reasons of Appeal.....dated	29th Sept..... 1890	563
198	Appellants' Factum (already printed see page 476)		
199	Respondents' Factum .....dated	11th Nov..... 1882	564
200	Proceedings in the Court of Queen's Bench from .....	20 March.....1890 to 23 June.....1893	567
201	Judgement of the Court of Queen's Bench (already printed see page 504).....		
202	Proceedings on Motion for leave to appeal to Her Majesty in Her Privy Council and motion for delay .....	23rd June.....1883	569
203	Appellants objections to the Appeal and security to the Privy Council.....dated	20th Feb.....1894	569
204	Motion of the Eastern Townships Bank that Fairbanks' Judgment be not printed on the Transcript.....dated	12th May .....1894	571
205	Proceedings on motion of the Eastern Townships Bank to omit Judgment in present Transcript Record .....	15 to 17 May...1894	573
206	Order of Court rejecting said motion.....dated	26th May.....1894	574
207	Demand for Judgment of the Court of Queen's Bench.....	17th July..... 1893	575
208	Application for Copy of Judgment and Judges' Notes.....fyled	10th Aug..... 1893	576
209	Motion for extension of delay to put in security .....	15th Nov ..... 1893	576

# XIII

No. of Record	DESCRIPTION OF DOCUMENTS.	DATE.	Page in Record
210	Exception to Judgment of the 26th May 1894 admitting Judgment of Fairbanks' case as part of Transcript.....dated	28th May .....1894	577
211	Index of all the papers comprising the original record .....	.....	580
212	Certificate of Clerk of Appeals for both cases.....	.....	581
213	Certificate of Chief Justice.....	.....	582
214	Judges' Reasons.....	.....	588



# In the Privy Council

IN THE APPEALS FROM THE COURT OF QUEEN'S BENCH  
FOR LOWER CANADA, IN THE PROVINCE OF  
QUEBEC (APPEAL SIDE.)

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BETWEEN :

THE EASTERN TOWNSHIPS BANK,  
APPELLANTS.

AND

ANDREW ROUGH ET AL,  
RESPONDENTS.

AND

THE EASTERN TOWNSHIPS BANK  
APPELLANTS.

AND

ANDREW ROUGH,  
RESPONDENT.

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RECORD OF PROCEEDINGS.

RECORD

*In the  
Court of  
Queen's Bench*

TRANSCRIPT of Record and Proceedings in the Courts of the Province of Quebec, appealed from in two causes between :

ANDREW ROUGH & AL,

*Defendants,*

APPELLANTS,

AND

THE EASTERN TOWNSHIPS BANK,

10

*Plaintiffs,*

RESPONDENTS.

AND

ANDREW ROUGH,

*Plaintiff,*

20

APPELLANT.

AND

THE EASTERN TOWNSHIPS BANK,

*Defendants,*

RESPONDENTS.

30

Canada }  
Province of Quebec. }

In the Court of Queen's Bench,  
(Appeal side)

Transcript of all the Rules, Orders and Proceedings found in the Records and Register of Her Majesty's Court of Queen's Bench for Lower Canada in the Province of Quebec (Appeal side) in the matter lately pending, between : The Eastern Townships Bank, Plaintiffs and Andrew Rough et al, Defendants. 40  
And in the matter lately pending between Andrew Rough, Plaintiff, and the Eastern Township Bank, Defendants ; transmitted to the Court of Queen's Bench, on the appeal side thereof in virtue of two writs sued out by the said Andrew Rough et al, and Andrew Rough and to be transmitted to Her Majesty in Her Privy Council, upon the appeals of the said The Eastern Townships Bank.

## DOCUMENT II.

Canada, ) Province de Québec. f	Victoria, par la Grâce de Dieu, Reine du Royaume- Uni de la Grande-Bretagne et d'Irlande, Défenseur de la Foi.	ET <i>vs</i> In the Court of Queen's Bench
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RECORD

Au Juge en Chef et aux Juges de Notre Cour Supérieure pour le Bas-Canada.

No. 1.  
Writ of  
Appeal dated  
20th March  
1890.*Salut :*

10

Vu que dans l'instance ci-devant pendante en notre dite Cour Supérieure, pour le Bas-Canada, siégeant en la Cité de Montréal, dans le District de Montréal, entre : The Eastern Township Bank, une corporation de Banque, et un corps politique et incorporé, dûment incorporé, et ayant son principal bureau et place d'affaires en la Ville de Sherbrooke, dans le district de St. François, Demanderesse, et Andrew Rough, John McDougall and Samuel W. Beard, tous de la cité et du district de Montréal, marchands, défendeurs, les dits Andrew Rough, John McDougall et Samuel W. Beard, ainsi qu'ils nous le représentent, sont lésés par le jugement final, rendu en la dite instance, le dix Mars, courant, (1890).

20

Nous, voulant que le dit jugement soit révisé par notre Cour du Banc de la Reine pour le Bas-Canada, et que pleine et ample justice soit rendue, Nous commandons que vous ou aucun de vous, transmettiez, sous votre seing et le sceau de la Cour Supérieure, tous les papiers et documents originaux produits, et les procédés faits en la dite cause, avec un transcript de tous les ordres, ordonnances et procédures, qui se trouvent au dossier de la dite cause et dans les registres de notre dite Cour Supérieure, concernant cette dite cause, à notre Cour du Banc de la Reine, siégeant en Juridiction d'Appel, afin que les Juges d'icelle les aient devant eux, au palais de Justice, en notre Cité de Montréal, dans la Province du Québec, mercredi, le neuvième jour d'Avril, prochain, pour être ordonné ce que de droit, suivant les lois et la coutume suivies dans cette dite Province.

30

En foi de quoi, Nous avons fait apposer aux présentes le sceau de Notre dite Cour du Banc de la Reine.

Donné en notre dite Cité de Montréal, ce vingtième jour de mars, mil huit cent quatre-vingt dix et dans la cinquante troisième année de Notre Règne.

LACOSTE, BISAILLON, BROSSEAU et LAJOIE,  
Avocats des Appelants.

L. W. MARCHAND,  
Greffier des Appels.

40

(On the Back.)

L'exécution du présent bref appert par les pièces et apostilles ci-jointes  
Montréal, 15th October, 1890.

GEO. H. KERNICK,  
Dép. P. C. S.

## RECORD.

(ENDORSED).

*In the  
Court of  
Queen's Bench*

Bref d'Appel. Rapportable le neuvième jour d'avril 1890.  
Rapporté et produit au Greffe des Appels en la Cité de Montréal, ce  
15 Octobre 1890.

(Paraphed)

L. O, Dép. A. C.

No. 1.  
Writ of  
Appeal dated  
20th March  
1890.  
*Continued, —*

10

Le 10 Mai 1884.

*In the  
Superior  
Court.*

A. W. Atwater, Ecuier, comparait pour la demanderesse et requiert un  
bref de sommation contre les dits défendeurs Rough, McDougall et Beard.

No. 2.  
Proceedings  
in the  
Superior  
Court, from  
10th May,  
1884, to  
10th March,  
1890,

Un bref de sommation est émané contre les dits défendeurs, rappor-  
table le 27 mai courant.

Le 27 Mai 1884.

F. Murray, un des huissiers de cette Cour, rapporte le bref de somma-  
tion en cette cause, avec la déclaration y annexée et un certificat de signifi-  
cation ;

20

La demanderesse produit une liste et 3 Exhibits.

Le 28 Mai 1884.

Messieurs Lacoste, Globensky, Bisailon et Brosseau, comparaissent  
pour les défendeurs Rough, McDougall et Beard, séparément et en donnent  
avis à l'avocat de la demanderesse.

30

Le 6 Juin 1884.

La demanderesse demande des plaidoyers à cette action de chacun des  
dits défendeurs séparément et leur en donne avis.

Le 16 Septembre 1884.

La demanderesse produit un certificat que les défendeurs n'ont pas pro-  
duit de plaidoyers à cette action et qu'il ont été forclos de ce faire.

Le demanderesse produit 3 foreclusion de plaider contre les dits trois  
défendeurs séparément.

40

La demanderesse inscrit pour jugement *ex parte* contre les trois défen-  
deurs respectivement et leur en donne avis.

Le 20 Septembre 1884.

Le défendeur Rough produit sa défense et en donne avis à la demande-  
resse.



Le 2 Octobre 1884.

Les défendeurs John McDougall et S. W. Beard produisent défenses et en donne avis à la demanderesse.

RECORD.

*In the  
Superior  
Court.*

Le 14 Octobre 1884.

La demanderesse répond aux défenses du défendeur Rough et lui en donne avis.

No. 2. -  
Proceedings  
in the  
Superior  
Court, from  
10th  
May 1884, to  
10th

10

La demanderesse répond aux défenses de dits défendeurs McDougall et Beard et leur en donne avis.

March 1890.  
—Continued.

Le 11 Décembre 1884.

Le défendeur Rough produit réponses et répliques aux réponses de la demanderesse à son plaidoyer et lui en donnent avis.

Les défendeurs McDougall et Beard produisent respectivement leurs réponses et répliques aux réponses de la demanderesse à leurs défenses et leur en donne avis.

20

La demanderesse inscrit pour enquête sur les contestations avec les trois défendeurs en cette cause et leur en donne avis.

Le 7 Novembre 1884.

Les trois défendeurs produisent chacun une motion demandant que la première et la seconde réponse de la demanderesse aux défenses des dits défendeurs soient rejetées du dossier pour les raisons énoncées dans leurs dites motions et en donnent avis à la demanderesse.

30

Les dits défendeurs produisent chacun une motion demandant que les articulations de faits de la demanderesse et l'inscription à l'enquête soient rejetées du dossier et en donne avis à la demanderesse.

Le 10 Novembre 1884.

A l'audition sur les 3 motions des dits défendeurs pour faire rejeter la première et la deuxième réponse de la demanderesse et sur les trois motions des mêmes défendeurs pour faire rejeter les articulations de fait de la demanderesse et l'inscription à l'enquête.

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RECORD.

*In the  
Superior  
Court*No. 2.  
Proceedings  
in the  
Superior  
Court from  
10th  
May 1884  
to 10th  
March 1890.  
*Continued.*—

PRÉSENT :—

L'Honorable M. le juge LORANGER.

P. O . . . C. A. V.

Le 11 Novembre 1884.

La demanderesse donne avis aux dits défendeurs de procéder à leur  
enquête ;

10

Le 17 Novembre 1884.

PRÉSENT :

L'Honorable M. le juge LORANGER.

La Cour, après avoir entendu les parties sur la motion du défendeur  
Rough aux fins de faire rejeter du dossier comme irrégulières, la première et la  
deuxième réponse de la demanderesse à l'encontre des défenses du dit défen- 20  
deur Rough, avoir examiné la procédure et tout le dossier et avoir délibéré.

Considérant que les dites réponses de la demanderesse au défenses du  
dit défendeur Rough contiennent des allégations de fait pertinentes à la con-  
testation soulevée par les dites défenses, notamment que la demanderesse  
allègue dans ses dites réponses que les causes d'éviction dont se plaint le dit  
défendeur Rough, étaient connues de lui et des autres défendeurs ;

Considérant que les dites réponses de la demanderesse contiennent des  
énonciations de faits nouvelles et qu'aux termes de l'article 148, du Code de  
Procédure Civile, le défendeur Rough serait admis à répliquer spécialement 30  
aux dites réponses ;

Considérant que les allégués des dites réponses ne sont pas finales et  
qu'il n'y a pas lieu d'en demander le rejet par motion ;

Renvoie la dite motion du défendeur Rough avec dépens, distraits à M.  
Atwater, avocat de la demanderesse.

Le 17 Novembre 1884.

PRÉSENT :—

L'honorable M. le juge LORANGER.

40

La Cour, après avoir entendu les parties sur la motion du défendeur  
Rough, demandant que les articulations de faits et l'inscription à l'enquête pro-  
duites par la demanderesse quant à ce qui regarde le dit défendeur Rough,  
soit rejetées du dossier, comme irrégulières et à l'encontre des règles de  
pratique de cette Cour, avoir examiné la procédure et tout le dossier et avoir  
délibéré ;

Considérant qu'aux termes des articles 137 et 138 du Code de procédure civile, un délai de huit jours doit être observé entre toutes les pièces de procédure qui servent à lier la contestation, qu'aux termes de l'article 148, un même délai de huit jours était accordé au dit défendeur Rough pour produire une réplique aux réponses spéciales de la demanderesse ;

10 Considérant que la demanderesse a produit sa dite articulation de faits le même jour que ses dites réponses spéciales, contrairement aux dispositions de l'article 207 du Code de procédure civile qui déclare que les articulations de faits seront produites dans les deux jours qui suivent celui où la contestation a été liée : que la dite articulation de fait a été produite prématurément et que le dit défendeur Rough n'était pas tenu d'y répondre ;

Considérant que l'inscription à l'enquête est également irrégulière et prématurée, attendu qu'elle a été faite à une époque où les délais pour lier la contestation n'étaient pas expirés ;

Maintient et accorde la dite motion du défendeur Rough, et en conséquence rejette du dossier en cette cause la dite articulation de faits et la dite inscription à l'enquête ; le tout, avec dépens distraits à MM. Lacoste, Globensky, Bisailon et Brosseau, avocats du dit défendeur Rough ;

20

Le 28 Novembre 1884.

La demanderesse produit ses articulations de faits sur les contestations respectives des dits défendeurs, avec le consentement des dits défendeurs, sans préjudice aux réponses, aux défenses à être produite par la demanderesse ;

Le 3 Décembre 1884.

30 La demanderesse inscrit pour enquête sur chaque contestation avec les dits défendeurs, pour le 15 courant et en donne avis aux dits défendeurs ;

Le 11 Décembre 1884.

Les dits défendeurs produisent leurs réponses et répliques respectives aux réponses de la demanderesse ;

§

Le 17 Décembre 1884.

40 Les dits défendeurs respectivement produisent motion pour qu'il leur soit permis de produire plaidoyers additionnels et donnent avis à la demanderesse ;

PRÉSENT :—

L'Honorable M. le Juge DOHERTY.

C. A. V.

RECORD.

*In the  
Superior  
Court.*

No 2.

Proceedings  
in the  
Superior  
Court, from  
10th May,  
1884, to  
10th March,  
1890.

—Continued

RECORD.

Le 10 Février 1885.

*In the  
Superior  
Court*

PRÉSENT.—

L'Honorable M. le Juge DOHERTY.

No. 2.  
Proceedings  
in the  
Superior  
Court from  
10th  
May 1884  
to 10th  
March 1890.  
*Continued.*—

La cour, après avoir entendu le défendeur Rough sur sa motion aux fins qu'il lui soit permis de produire un plaidoyer additionnel, tel que mentionné, la demanderesse ayant été notifiée, avoir examiné la procédure et délibéré ;

Accorde la dite motion, et en conséquence, permet au dit défendeur Andrew Rough de produire un plaidoyer additionnel à l'encontre des réponses spéciales de la demanderesse, les dépens sont réservés.

10

Le 10 Janvier 1885.

Présent :—

L'Honorable M. le juge DOHERTY.

La cour, après avoir entendu le défendeur McDougall sur sa motion aux fins qu'il lui soit permis de produire le plaidoyer additionnel mentionné, la demanderesse ayant été notifiée, et avoir examiné la procédure et délibéré ;

Accorde la dite motion, et en conséquence permet au dit défendeur John McDougall de produire un plaidoyer additionnel à l'encontre des réponses spéciales de la demanderesse ; les dépens sont réservés.

20

Le 10 Janvier 1885.

Présent :—

L'Honorable M. le juge DOHERTY.

La cour, après avoir entendu le défendeur Beard sur sa motion, aux fins qu'il lui soit permis de produire le plaidoyer additionnel mentionné, la demanderesse ayant été dûment notifiée, avoir examiné la procédure et délibéré ;

Accorde la dite motion, et, en conséquence, permet au dit défendeur Samuel W. Baird de produire un plaidoyer additionnel à l'encontre des réponses spéciales de la demanderesse ; les dépens sont réservés ;

30

40

Le 21 Janvier 1885.

Les défendeurs inscrivent pour audition sur leurs réponses en droit respectivement, et en donne avis à la dite demanderesse.

Le 23 janvier 1885.

PRÉSENT :

l'Honorable MR. le Juge MATHIEU.

Les trois inscriptions ci-dessus, des défendeurs, sont rayées du rôle.

Le 26 Janvier 1885.

- 10 Les dits défendeurs produisent leurs inscriptions respectives pour audition sur les réponses en droit, à leurs plaidoyers respectifs et en donnent avis, à la demanderesse, pour le 2 février prochain.

Le 2 Février 1885.

A l'audition sur les trois réponses en droit de la Demanderese aux plaidoyers des dits Défendeurs.

PRÉSENT :—

20

l'Honorable Mr. Le Juge JETTÉ.

P. O. . . . . C. A. V.

Le 9 Mars 1885.

PRÉSENT :—

l'Honorable Mr. le Juge JETTÉ.

- 30 La Cour, après avoir entendu les parties sur l'inscription du défendeur Rough, pour audition au mérite sur la réponse en droit, au plaidoyer du défendeur A. Rough, et avoir examiné la procédure ;

Considérant, qu'il n'y a au dossier, aucune réponse en droit, au plaidoyer du défendeur Rough, et que ni l'une ni l'autre des deux réponses de la demanderesse au dit plaidoyer, n'est une réponse en droit ; et que par suite cette inscription est irrégulière, la rejette avec dépens contre le dit défendeur Rough.

(Mêmes jugements quant aux dits défendeurs McDougall et Beard).

- 40 Les dits défendeurs Rough, McDougall et Beard produisent chacun une excipation des jugements ci-dessus.

Le 10 Mars 1885.

La demanderesse donne avis aux dits défendeurs respectivement de procéder à leur enquête le 12 Mars courant.

RECORD.

*In the  
Superior  
Court.*

No 2.

Proceedings  
in the  
Superior  
Court, from  
10th May,  
1884, to  
10th March,  
1890.

—Continued

RECORD.

*In the  
Superior  
Court*

No. 2.  
Proceedings  
in the  
Superior  
Court from  
10th  
May 1884  
to 10th  
March 1890.  
*Continued.*—

Le 1er Avril 1885

Les dits défendeurs produisent leurs inscriptions respectives pour audition sur leurs répliques en droit respectives aux réponses de la demanderesse ; avec avis à la dite demanderesse, pour le 1er Avril courant.

Le 8 Avril 1885.

Les parties consentent à ce que messieurs Atwater et Cross soient substitués comme avocats de la demanderesse sur la contestation des trois défendeurs en cette cause.

Le 15 Avril 1885.

Les dits défendeurs produisent re-inscriptions pour auditions sur leurs répliques en droit respectives aux réponses de la demanderesse, et en donnant avis à la dite demanderesse.

10

Le 23 Mai 1885.

Présent :

L'Honorable M. le juge Loranger.

La cour après avoir entendu les parties par leurs avocats sur la réplique en droit du défendeur Rough aux réponses de la demanderesse, examiné la 20  
procédure, et délibéré ;

Considérant que les obligations respectives des parties les unes envers les autres sont déterminées par l'acte de vente de la demanderesse au dit Rough en date du 19 Janvier 1883 et l'acte de cautionnement des défendeurs McDougall et Beard du même jour, indépendamment et sans égard aux rapports particuliers qui ont pu exister entre les défendeurs eux-mêmes ; que le défendeur Rough eût-il été le prête nom des autres défendeurs, l'obligation personnelle qu'il a contractée et que McDougall et Beard ont ensuite cautionnée, les rendent passibles de l'action telle qu'intentée ;

Considérant que la demanderesse en alléguant que Rough est le prête 30  
nom des défendeurs McDougall et Beard, n'a énoncé aucun fait contradictoirement avec la demande, telle que portée ; que cette allégation ne va qu'à démontrer que Rough comme les autres défendeurs, ne pouvait pas ignorer la cause d'éviction dont ils se plaignent dans leur défense ;

Renvoie la réplique en droit du dit défendeur Rough avec dépens *distracts* à Mssrs Atwater et Cross, avocats de la demanderesse.

(Mêmes jugements quant aux défendeurs McDougall et Beard.)

Le 3 Juin 1885.

40

La demanderesse re-inscrit pour enquête sur les contestations respectives des dits défendeurs Rough, McDougall et Beard ;

Le 3 Mars 1888.

Avis est donné aux dits défendeurs que la présente cause est inscrite pour enquête et mérite pour le 13 courant.

Le 22 Mars 1888.

La demanderesse requiert une règle sur faits et articles.

Une règle sur faits et articles est émanée contre le défendeur S. W Beard, rapportable le 25 Mai courant.

Le 25 Mai 1888.

Règle sur faits et articles contre le dit défendeur Beard est rapportée  
1) avec les interrogatoires y annexés et un certificat de signification.

Le 11 Septembre 1888.

La demanderesse re-inscrit pour enquête et mérite pour le 11 Septembre devant son honneur le juge Taschereau.

Avis aux défendeurs que la présente cause est inscrite et a été spécialement fixée pour enquête et mérite pour le 11 courant par son honneur M. le juge Taschereau ;

20) Même avis donné au Protonotaire ;

La demanderesse requiert une règle sur faits et articles.

Les dits défendeurs produisent chacun une motion demandant qu'il leur soit permis d'amender leur défenses respectives et d'y joindre autres plaidoyers etc. ; avec avis à la demanderesse.

L'affidavit de T. Brosseau est produite ;

Réponses produite par la demanderesse à la motion du dit défendeur Rough pour amender ses plaidoyers ; avec avis aux avocats des défendeurs.

30)

Le 12 Septembre 1888

Présent :

L'Honorable M. le juge TASCHEREAU.

La cour, après avoir entendu les parties par leurs avocats sur la motion que le défendeur Andrew Rough a produite le 11 de Septembre courant pour avoir la permission d'amender ses défenses et d'en produire de nouvelles ; examiné la procédure et délibéré ;

4) Accorde la dite motion et permet au dit défendeur Andrew Rough d'amender ses défenses en premier lieu produites de la manière énoncée dans la dite motion, et lui permet également de produire les deux défenses additionnelles énoncées et contenues dans sa dite motion, en par le dit défendeur payant dix piastres de frais aux avocats de la demanderesse, plus aussi la proportion du dit Andrew Rough dans les frais du onze courant, auxquels les défendeurs sont condamnés.

(Mêmes jugements quant aux dits défendeurs McDougall et Beard).

RECORD.

—  
*In the  
Superior  
Court.*

—  
No 2.

Proceedings  
in the  
Superior  
Court, from  
10th May,  
1884, to  
10th March,  
1890.

—Continued

RECORD.

Le 25 Septembre 1888.

—  
*In the  
 Superior  
 Court*  
 —

Les dits défendeurs produisent leurs plaidoyers amendés respectivement, avec avis à la demanderesse.

No. 2.

Le défendeur Beard produit plaidoyers additionnels ou réponse aux réponses et répliques de la demanderesse, avec avis.

Proceedings  
 in the  
 Superior  
 Court from  
 10th

La demanderesse produit réponses aux plaidoyers amendés des dits défendeurs respectivement, avec avis aux dits défendeurs. 10

May 1884  
 to 10th  
 March 1890.  
*Continued.*—

La demanderesse requiert une règle sur faits et articles.

Les Défendeurs, Rough et McDougall produisent respectivement leurs réponses aux réponses et répliques de la demanderesse, avec avis ;

Le 29 Septembre 1888.

La demanderesse produit un *Fiat* pour règle sur faits et articles.

Le 3 Octobre 1888.

20

La demanderesse produit 4 originaux de règles sur faits et articles avec les interrogatoires adressées aux dits défendeurs respectivement, avec un certificat de signification.

Le 3 Octobre 1888.

À l'Enquête et mérite.

Présent :

30

L'honorable M. le juge TASCHEREAU.

John McDougall is called to answer upon Faits et Articles, makes default.

Mr. Toussaint Brosseau appears for J. McDougall, is sworn and examined by Plaintiffs and files Doctor's certificate.

October 4th 1888.

Robert Craik sworn and examined by Defendants' as to the capacity of John McDougall to answer faits et articles. 40

October 5th 1888.

Wm McGoun is sworn as Stenographer.

Benjamin Austin is sworn and examined by Plaintiffs.

Plaintiffs file Exhibits A.A., A.B., A.C., A.D., A.E.



Plaintiffs file motion to have faits et articles served upon Defendant McDougall, taken *pro confessis*. Motion dismissed, without costs.

Andrew Rough (one of the Defendants) sworn and examined by Plaintiffs.

Plaintiffs declare their Enquête closed.

Benjamin Austin, sworn and examined by Defendants.

John M. Lee sworn and examined by Defendants.

Defendants declare their Enquête closed, reserving the right to fill copies of letters from the Sheriff of St. Francis or to examine him as a witness

10) Defendants fill Exhibits No. 1, 2, 3.

William Farewell sworn and examined by Plaintiff in rebuttal.

A.N. Plaintiffs file Exhibits A.F., A.G., A.H., A.I., A.J., A.K., A.L., A.M.,

Continued to the 8th instant at 2 P.M.

RECORD.

*In the  
Superior  
Court.*

No 2.

Proceedings  
in the  
Superior  
Court, from  
10th May,  
1884, to  
10th March,  
1890.

—Continued

October 26th 1888.

Andrew Rough continues his deposition on behalf of Plaintiffs.

Plaintiffs file Exhibits A.O., A.P., A.Q., A.R.

2) F. L. Beique sworn and examined by Plaintiffs.

Samuel W. Beard sworn and examined by Plaintiffs.

Plaintiffs file Exhibit A.S.

Charles Hagar sworn and examined by Plaintiffs.

George J. Doake sworn and examined by Plaintiffs.

Louis O. Hétu sworn and examined by Plaintiffs.

Plaintiffs declare their Enquête closed, reserving the right to examine Wm. Darling.

John M. Lee sworn and examined by Defendants.

Defendants file Exhibit No. 3.

3) Andrew Rough sworn and examined on behalf Defendants McDougall and Beard.

Defendants declare their Enquête closed.

P. O. C. A. V.

Le 28 Juin 1889.

Les défendeurs produisent une liste et les Exhibits No. 1, 2, 3, 4, 5, 6 à l'Enquête.

4)

Le 5 Janvier, 1889.

La demanderesse produits 3 articulations de faits supplémentaires de la de la demanderesse avec avis.

Les défendeurs produisent leurs articulations de faits supplémentaires, avec avis.

RECORD.

Le 8 Novembre 1889.

*In the  
Superior  
Court.*

La demanderesse produit ses réponses aux articulations de faits supplémentaires des dits défendeurs avec avis.

Le 13 Novembre 1889.

No 2.  
Proceedings  
in the  
Superior  
Court, from  
10th May,  
1884, to  
10th March,  
1890.  
*Continued.*—

Les défendeurs produisent respectivement leurs articulations de faits avec avis à la demanderesse.

La demanderesse produit ses réponses respectives aux articulations de faits des dits défendeurs, avec avis.

Les défendeurs produisent une motion demandant que la preuve faite par la demanderesse sous réserve d'objection, soit rejetée, avec avis à la demanderesse.

Les défendeurs produisent une motion demandant que cette cause soit réunie à la cause No. 910, dans laquelle A. Rough, est Demandeur and The Eastern Townships Bank, defenderesse, et avec avis :—

Motion granted, Mr. le Juge TASCHEREAU.

Le 13 Novembre 1889.

Les défendeurs en la première cause et le demandeur dans la seconde causes, produisent une motion demandant que les dites causes soient réunies, à la cause No. 1198, Fairbanks, demandeur vs. The Pioneer Beet Root Sugar Company, defenderesse, et la Banque d'Hochelaga, requérante, *en nullité de décret*, et The Eastern Townships Bank, defenderesse, et Andrew Rough, et al., *mis-en-cause*.

Motion accordée, frais réservés ;

Mr. le Juge TASCHEREAU.

La Demanderesse produit ses réponses à la motion des défendeurs, en dernier lieu mentionnée, avec avis aux défendeurs.

La demanderesse produit une motion, demandant que la preuve faite par les défendeurs et par le demandeur Rough, sous réserves d'objection soit rejetée du dossier, comme étant illégale.

Le 13 Novembre, 1889.

La demanderesse produit une liste et les Exhibits, aa, ab, ac, ad, ac, af, ag, ah, ai, aj, ak, al, am, an, ao, ap, aq, ar, as, à l'enquête.

La demanderesse produit les dépositions des témoins suivants, savoir : Sam. W. Beard, Andrew Rough, Geo. O. Doak, Fred L. Béique, Ls. O. Héту, Chs. Hagar, Andrew Rough, Benjamin Austin, William Farewell, Benjamin Austin and Thomas Darling.

Les défendeurs produisent les dépositions des témoins suivants, savoir ; Andrew Rough de la part des défendeurs, McDougall & Beard, John M. Lee, and John M. Lee, on behalf of defendants, Rough, et al.

Le 10 Mars 1890.

Présent :

L'Honorable M. le Juge TASCHEREAU.

RECORD.

*In the  
Superior  
Court.*No. 2a.  
Judgment  
of the Super-  
ior Court  
rendered  
10th March,  
1890.

La Cour, ayant entendu les parties, par leurs procureurs respectifs, tant sur les motions faites de part et d'autre tendant à faire rejeter comme illégale partie de la preuve, et sur la défense en droit plaidée dans la cause No. 910 (sur laquelle défense en droit le tribunal avait ordonné preuve avant faire droit), que sur le mérite des deux présentes causes Nos. 2157 et 910, réunies pour les fins de la procédure, de la preuve, de l'audition et du jugement; ayant de plus examiné la procédure, la preuve et les pièces du dossier communes aux dites deux causes, ainsi que la preuve faite dans la cause No. 1198, de Fairbanks et al demandeurs, et The Pioneer Beet Root Sugar Company, défenderesse, et la Banque d'Hochelaga requérante en nullité de décret, et "The Eastern Townships Bank" adjudicataire, et Andrew Rough et al., mis-en-cause, laquelle preuve faite en la dite cause No. 1198, doit servir dans les présentes causes comme si elle y avait été faite (suivant consentement des parties et suivant jugement à cet effet en date du treize novembre 1889); et ayant sur le tout délibéré;

2) Considérant que les objections respectivement faites par les parties, à la preuve qui se trouve au dossier, ne sont pas fondées; rejette les dites motions sans frais;

Considérant que la défense en droit plaidée dans la cause No. 910 est mal fondée en droit; renvoie la dite défense en droit avec dépens distraits à Maitres Lacoste, Bisailon, Rrousseau et Lajoie, procureurs du demandeur dans la dite cause.

Et adjugeant au mérite des dites deux causes réunies :

3) Considérant que dans la cause No. 2157, la dite Banque "The Eastern Townships Bank" poursuit le nommé Andrew Rough comme principal obligé, et les nommés John McDougall et Samuel W. Beard, comme cautions solidaires, pour le recouvrement de la somme de trente et un mille huit cent cinquante-trois piastres et cinquante-six centins, balance due et exigible, lors de l'action, sur le prix de vente des immeubles décrits en la déclaration et vendue par la dite Banque au dit Andrew Rough, par acte de vente fait et passé à Montréal, le dix-neuf janvier mil huit cent quatre-vingt-trois, par devant maître Hétu, notaire;

4) Attendu que les dits Rough, McDougall et Beard ont plaidé à la dite action, alléguant trouble et éviction subi par l'acquéreur Rough dans la possession et la propriété des dits immeubles vendus par la dite Banque, les dits trouble et éviction résultant : 1o. du fait que le Gouvernement de la Puissance du Canada aurait, le six octobre mil huit cent quatre-vingt-trois, fait saisir les machines et engins qui se trouvaient attachés aux bâtisses situées sur les dits immeubles, pour droits de douanes non payés et qui étaient dus dès avant le décret des dits immeubles, opéré dans la dite cause No. 1198 le douze janvier mil huit cent quatre-vingt-trois, auquel décret la dite Banque se serait rendue adjudicataire des dits immeubles qu'elle aurait ensuite vendus au dit Rough

RECORD

*In the  
Superior  
Court.*No. 2a.  
Judgment  
of the Super-  
rior Court  
rendered  
10th March,  
1890.

—Continued.

par l'acte de vente sus-mentionné lui cachant l'existence de cette réclamation de la Couronne ; 2o. du fait que dans la dite cause No. 1198 une demande en nullité de décret aurait été instituée et serait encore pendante, à la diligence de la Banque d'Hochelaga, créancière de la Compagnie défenderesse dans la dite cause, la dite nullité de décret résultant, tant d'informalités dans la saisie et les annonces du shérif, que du dol et des artifices pratiqués à la connaissance de l'adjudicataire pour écarter les enchères et faire adjuger les immeubles à vil prix ;

Attendu que dans la dite cause No. 910, le dit Andrew Rough, pour les mêmes raisons que celles qu'il invoque dans sa défense à l'action No. 2157 de- 13  
mande l'annulation du dit acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois et conclut aussi à ce que la dite Banque venderesse soit condamnée à lui rembourser la somme de seize mille quatre-vingt-douze piastres et quarante-huit centins, déjà par lui payée à compte du prix de vente stipulé au dit acte ;

Attendu que par ses réponses aux défenses dans la cause No 2157, et par ses défenses à l'action dans la cause No 910, la dite Banque venderesse allègue le dit Andrew Rough n'était et n'est que le prête-nom des dits McDougall et Beard ; que ces derniers connaissaient les causes d'éviction ci-dessus mentionnées avant la date du dix-neuf janvier mil huit cent quatre-vingt-trois, et même 2)  
antérieurement au décret du douze janvier de la même année ; que le dit acte de vente comporte une stipulation spéciale de non-garantie ; que le décret des dits immeubles a été opéré à la diligence et dans l'intérêt des dits McDougall et Beard qui étaient les cessionnaires du jugement rendu contre la compagnie défenderesse dans la dite cause No 1198 ; que si la dite banque venderesse s'est portée adjudicataire des dits immeubles, elle l'a fait à la sollicitation des dits McDougall et Beard, et en exécution d'une convention antérieure intervenue entre eux et la dite Banque par laquelle convention cette dernière avait promis de se porter adjudicataire des dits immeubles afin de les revendre ensuite aux dits McDougall et Beard, par l'entremise de leur prête-nom, le dit Rough, à un 3)  
prix qui ne représentait pas la valeur des dits immeubles, mais qui serait calculé d'après le montant des réclamations de la dite Banque contre la compagnie saisie, en capital, intérêt et frais, en y ajoutant le prix d'adjudication qui serait payé par la dite Banque ;

Considérant qu'il résulte tant des écrits que des témoignages, qu'en se portant adjudicataire des dits immeubles lors du décret en question, la dite Banque agissait en effet pour le compte du dit Andrew Rough, prête-nom des dits McDougall et Beard, et ce à la demande spéciale de ces derniers, qui, pour des raisons personnelles, ne voulaient pas eux-mêmes se porter adjudicataire, mais qui voulaient pour des fins de spéculation, acquérir ces immeubles par 4)  
l'entremise de la dite Banque et du dit Andrew Rough, et à cet effet avait avec la dite Banque la convention sus-relatée

Considérant que par cette convention spéciale, il avait été entendu que la dite Banque se porterait adjudicataire des dits immeubles et en paierait le prix d'adjudication, et qu'aussitôt après elle consentirait au dit Rough, prête-nom des dits McDougall et Beard, un acte de vente des mêmes immeubles pour un prix qui ne devait pas représenter la valeur réelle des dites propriétés, mais se

composer du montant du prix d'adjudication qui serait payé par la dite Banque, plus la réclamation de celle-ci contre la "Pioncer Beet Root Sugar Company" en capital, intérêt et frais, la dite venderesse devant plus tard tenir compte à l'acquéreur, et lui donner crédit de toutes sommes d'argent qu'elle recevrait à titre de collocations sur le produit du décret ;

Considérant que la dite banque a donc réellement acheté au dit décret pour le dit Andrew Rough, comme son mandataire, et qu'elle a consenti au dit mandat en considération de la promesse qui lui fut faite d'être payée de ses réclamations, hypothécaires et autres, contre la compagnie saisie ;

10 Considérant qu'il résulte de plus des écrits produits et des témoignages, que les dits Rough, McDougall et Beard connaissaient parfaitement lors du décret, les dangers d'éviction qu'ils signalent dans leurs défenses à l'action No. 2157 et dans leur demande dans la cause No. 910, qu'ils étaient au fait des nullités et irrégularités dont la saisie, les annonces du shérif et le décret lui-même pouvait être affectés et frappés ; qu'ils connaissaient de plus la réclamation douanière déjà produite par la Couronne sur les machines et engins attachés aux bâtisses situées sur les dits immeubles ; que Beard, l'un d'eux, était présent au décret, dans son intérêt et dans celui de McDougall et Rough ; que le dit décret a été poursuivi et opéré à la diligence même des dits McDougall et Beard, cessionnaires du jugement rendu dans la dite cause No. 1198 ; qu'en

20 exécution de la convention ci-haut mentionnée; la dite Banque a, quelques jours après le décret, savoir le dix-neuf janvier mil huit cent quatre-vingt trois, vendu au dit Rough, sous la garantie du cautionnement conjoint et solidaire des dits McDougall et Beard, les dits mêmes immeubles pour le prix de quarante-neuf mille quatre cent trente-neuf piastres et soixante et dix centins, lequel prix de vente a été calculé et déterminé d'après les bases fixées par la dite convention antérieure au décret ; qu'enfin la dite vente elle-même a été consentie de la part de la dite Banque avec stipulation spéciale de non-garantie, et qu'en réalité le dit Rough a acheté à ses risques et périls pour les

30 dits McDougall et Beard, n'a pas droit à l'annulation de la vente et à la restitution de la partie du prix de vente déjà payée, et ne peut retenir la balance restant due sur icelui ;

Considérant que la dite Banque venderesse n'était obligée qu'à la garantie de ses faits personnels et qu'il n'y a pas lieu dans l'espèce à cette garantie, attendu que la dite Banque n'a rien fait, soit avant soit après la vente, pour tromper son acquéreur ou pour porter atteinte à ses droits, et qu'elle n'est pas responsable des prétendues informalités ou irrégularités du décret, auquel elle ne s'est portée adjudicataire pour le compte des dits Rough, McDougall et Beard, à la diligence desquels le dit décret a eu lieu ;

40 Considérant qu'après le commencement de l'instance en nullité de décret, dans laquelle le dit Andrew Rough était mis en cause et après la prétendue saisie du Gouvernement de la Puissance en date du six octobre mil huit cent quatre-vingt-trois, les dits Rough, McDougall et Beard ont continué à exploiter les dits immeubles et à vendre partie de l'outillage de l'usine, sans se plaindre aucunement des dits prétendus troubles, et qu'ils ont même opéré des paiements à compte du dit prix de vente depuis le commencement de la présente instance ;

RECORD.

—  
*In the  
 Superior  
 Court.*

—  
 No. 2a.  
 Judgment of  
 the Superior  
 Court ren-  
 dered  
 10th March  
 1890.

—Continued

RECORD.

*In the  
Superior  
Court.*

No. 2a,  
Judgment  
of the Super-  
rior Court  
rendered  
10th March  
1890.

—Continued.

Considérant que sur les dites ventes d'effets, d'outillages, de machines et d'autres objets détachés de l'usine les dits défendeurs ont retiré au-delà de dix mille piastres qu'ils se sont appropriées ;

Considérant que du montant de la réclamation de la dite Banque il convient de déduire la somme de cent trente-six piastres et quarante centins dont les défendeurs doivent être crédités en sus des crédits déjà donnés par l'action, ce qui réduit la demande à la somme de trente et un mille sept cent dix-sept piastres et seize centins, avec intérêt à compter du seize janvier, mil huit cent quatre-vingt-quatre, laquelle somme et lequel intérêt étaient dus et exigibles lors de l'institution de l'action aux termes du dit acte de vente du dix-neuf janvier, mil huit cent quatre-vingt-trois. 10

Et vu les articles 1510, 1512 et 1545 du Code Civil.

Rejette les défenses dans la cause No. 2157 et condamne les dits Andrew Rough, John McDougall et Samuel W. Beard, conjointement et solidairement à payer à la dite Banque, The Eastern Townships Bank, la dite somme de trente et un mille sept cent dix-sept piastres et seize centins, avec intérêt à compter du seize janvier, mil huit cent quatre-vingt-quatre et les dépens encourus dans la dite cause, No. 2157, distraits à Maitres Atwater & Mackie, procureurs de la demanderesse dans la dite cause comprenant les frais réservés mais non ceux déjà adjugés durant l'instance. 20

Maintient la défense dans la cause No. 910 et renvoie l'action portée en la dite cause avec dépens distraits à Maitres Atwater & Mackie, procureurs de la défenderesse dans la dite cause, comprenant les frais réservés, mais non ceux déjà adjugés durant l'instance.

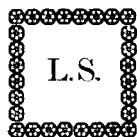
A compte du jugement ci-dessus rendu dans la cause No. 2157 les dits Rough, McDougall & Beard, devront être crédités pour les deux sommes suivantes qui paraissent avoir été payées à la dite Banque durant l'instance, savoir : cent trois piastres et quarante-trois centins, le vingt juillet, mil huit cent quatre-vingt-quatre et deux cent trente-neuf piastres et quarante centins, le quatre octobre, mil huit cent quatre-vingt-quatre. 30

SCHEDULE NO. 2.

No. 3,  
Writ and  
declaration  
dated  
10 May, 1884

Superior Court  
For Lower Canada,  
District of Montreal.

} VICTORIA, by the grace of God, of the United  
Kingdom of Great Britain and Ireland, Queen,  
Defender of the Faith.



No. 2157.

To any of the Bailiffs of the said Court appointed for the District of Montreal

Greeting :

RECORD.

*In the  
Superior  
Court.*No. 3.  
Writ and  
declaration  
dated 10th  
May, 1884.  
*Continued.*—

We command you, to summon, within the limits of the District of Montreal, Andrew Rough, John McDougall and Samuel W. Beard, all of the City and District of Montreal, Merchants, to be and appear before Us, in our Superior Court, for Lower Canada, in the City of Montreal, in the said District of Montreal, on tuesday the twenty seventh day of May instant to answer The Eastern Townships Bank, a banking corporation and body politic and corporate duly incorporated and having its head office and principal place of  
10 business in the City of Sherbrooke, in the District of St Francis, of the *demande* contained in the annexed Declaration ; and have you then and there this writ.

In Witness Whereof, we have caused the Seal of our said Court to be hereunto affixed, at Montreal, this tenth day of May, in the year of our Lord, one thousand eight hundred and eighty four and in the forty seventh year of our Reign.

J. H. KERNICK,

Deputy Prothonotary of the said Court.

20 Reçu copie du bref et de la declaration en cette cause pour les défendeurs McDougall et Rough sous toutes réserves que de droit.

Montréal 13 Mai 1884.

LACOSTE, GLOBENSKY, BISAILLON &amp; BROSSÉAU,

Procureurs et Avocats des Défendeurs,

John McDougall et Andrew Rough.

30

(On the Back.)

Je, Francis Murray, résidant à Montréal, l'un des huissiers jurés de la cour Supérieure du Bas-Canada, exerçant dans le district de Montréal, certifie par les présentes, sous mon serment d'office, que le treizième jour de Mai, mil huit cent quatre-vingt-quatre, entre cinq et sept heures de l'après-midi, j'ai signifié à Samuel W. Beard, l'un des défendeurs en cette cause le bref de sommation d'autre part et la déclaration y annexée en parlant et en laissant une  
40 vraie copie dûment certifiée d'iceux à une personne raisonnable de sa famille à son domicile en la cité de Montréal

Et je certifie de plus que la distance depuis le palais de justice, dans la cité de Montréal, jusqu'au lieu de la dite signification est de plus de deux milles et que la distance parcourue depuis mon domicile pour effectuer la dite signification est de plus de deux milles.

Montréal, 13 Mai 1884.

F. MURRAY, H. C. S.

RECORD. Province of Quebec, }  
District of Montreal. }

Superior Court.

*In the  
Superior  
Court.*

The Eastern Townships Bank.....Plaintiff.

No. 3.  
Writ and  
declaration  
dated  
10th May  
1884.

vs.

Andrew Rough et al.....Defendants.

10

—Continued,

Plaintiffs complain of Defendants and declare.

That in and by ascertain deed of sale made and executed before L. O. Héту N. P. at Montreal the 19th January 1883, the said bank Plaintiff therein represented and acting by its duly authorized agent and manager, sold, assigned and made over, with warranty as regarded their own acts only, to said Defendant Andrew Rough thereto present and accepting the following lots of land to wit: 1o. Lot number seven hundred and twenty-two on the Cadastral plan and book of reference for the village of Coaticook. 2o. Lots numbers seven hundred and sixty one, seven hundred and sixty two, and seven hundred and sixty three on said plan and book of reference, save and accept that portion on said lot seven hundred and sixty three, formerly sold by one Louis Sleeper to Charles W. Vaughan and all the land lying to the South of the same. 3. Lot number seven hundred and twenty one on said plan and book of reference. 4o. Lots numbers seven hundred and fourteen, seven hundred and twenty, seven hundred and twenty-six, seven hundred and twenty-seven, seven hundred and thirty-three, seven hundred and thirty-four, seven hundred and forty-one, seven hundred and forty-four, fifteen hundred and eighty and fifteen hundred and eighty-two on said plan and Book of Reference. 5o. The following lots described in the Sheriff's notice of sale as "sixthly" to wit: Lots numbers seven hundred and sixteen, seven hundred and seventeen, seven hundred and eighteen, and seven hundred and nineteen on said plan or Book of Reference. 6o. The following lot described in the said notice of Sheriff's sale as "ninthly" to wit: Lot number seven hundred and twenty-three on said Cadastral Plan and Book of Reference with all the buildings and improvements on the said lots of land erected and made with all thereunto belonging.

That said sale was so made for and in consideration of the sum or price of (\$49,439.70) forty-nine thousand, four hundred and thirty-nine dollars and seventy cents of which said sum the said Bank acknowledged to have had and received the sum of nine thousand, four hundred and thirty nine dollars and seventy cents, and as to the balance of forty thousand dollars the said purchaser and Defendant Rough thereby promised, bound and obliged himself to pay the sum to the said Bank as follows to wit: ten thousand dollars on or before the sixteenth day of July then next (to wit July 1883) and the remainder to wit thirty thousand dollars in and by six equal annual instalments of five thousand dollars each, the first whereof should become due on the six-



teenth January 1884, and the other instalments to be payable on the 16th January of each successive year, until final payment with interest upon current balance at the rate of seven per cent per annum to be accounted from said sixteenth day of January eighteen hundred and eighty three and payable semi-annually.

That in and by said deed was further specially agreed that by and between the said parties, that in the event of any payment either in capital or interest not being met fifteen days after maturity, then and in that case the whole of the said balance of purchase money or any portion then remaining due should become thereby and *ipso facto* demandable and recoverable without  
 10 further delay, as the whole will more fully and at length appear by reference to an authentic copy of said deed herewith produced to form part hereof.

That in and by a certain deed of security (*cautionnement*) made and executed before the said notary at Montreal the said nineteenth day of January (1883) the said other Defendants McDougall and Beard, after having taken communication of the deed of sale hereinbefore in part recited, did then and thereby declare to become sureties one for the other and each of them, for the whole, waiving thereby all rights of discussion and division of and for the said Andrew Rough in favor of the said Bank thereto represented and accepting  
 20 by the said William Farwell, for the payment, at the terms and in the manner specified in said deed, of the principal and interest of the said sum of forty thousand dollars, balance of purchase price due as aforesaid, and generally for the due and faithful performance by the said purchaser of all and every the obligations contracted by him in favor of said Bank under said deed of sale, as the whole will more fully appear by reference to an authentic copy of said bond herewith produced and filed to form part hereof.

That said Defendant Rough failed to pay the instalment of interest due as aforesaid on the sixteenth July eighteen hundred and eighty three, amounting to the sum of fourteen hundred dollars, (\$1400.00) and the instalment of capital of ten thousand dollars due on the same date and Plaintiff hath only  
 30 received on account from Defendant at different terms, sums amounting in all to ten thousand seven hundred and ninety-two dollars and forty-eight cents, and said Defendant hath wholly failed and neglected to pay to Plaintiff the interest instalment due on the sixteenth January last upon the balance due, and amounting to the sum of twelve hundred and forty-six dollars and four cents, though frequently requested to pay the same, the whole in accordance with the statement of account herewith filed to form part hereof, and that said Defendants and each of them have been duly notified of said default.

That by virtue of the premises and by law the said Defendants became and were and are well and truly and personally indebted to the Plaintiffs as  
 40 well in said interest as in the balance of capital due under said deed of sale, the whole amounting to the sum of (\$31,853.56) thirty-one thousand, eight hundred and fifty-three dollars and fifty-six cents on the said sixteenth (16th) day of January last and in interest thereon from said date at the rate of seven per cent (7 p.c.) per annum which said sum and interest said Defendants and each of them have frequently acknowledged to owe and promised to pay to Plaintiff, yet have hitherto wholly failed to pay the same or any part thereof although often thereto requested.

RECORD.

In the  
 Superior  
 Court.

No. 3.  
 Writ and  
 declaration  
 dated  
 10th May  
 1884.

Continued.—

RECORD.

*In the  
Superior  
Court.*

No. 3.

Writ and  
declaration  
dated

10 May, 1884

—Continued.

Wherefore said Plaintiff brings suit and prays that the said Defendants may be jointly and severally adjudged and condemned to pay and satisfy to the Plaintiff the said sum of thirty one thousand eight hundred and fifty three dollars and fifty six cents with interest thereon from the sixteenth day of January last (1884) and costs of suit and all exhibits of which costs the undersigned attorney prays distraction.

Montreal 10th May 1884.

A. W. ATWATER,

Atty for Plaintiff.

10

(ENDORSED.)

Writ and declaration, returnable 27th May, 1884, Prod. 27th May, 1884. (Paraphed), H. H. and G.

SCHEDULE NO. 4.

No. 4.

Authentic  
Copy deed of  
Sale from  
Plaintiffs,

The Eastern  
Townships

Bank to An-  
drew Rough  
(Hétu N. P)

dated  
19th January,  
1883.

(Plaintiff's  
Exhibit  
No. 1).

On this nineteenth day of the month of January, one thousand eight hundred and eighty three ;

Before Leonard Ovide Hetu the undersigned Notary, residing in the City and District of Montreal, Province of Quebec ;

20

Came and appeared :

The Eastern Townships Bank, a body politic and corporate and a Banking Institution having their office and principal place of business in the City of Sherbrooke, County of Sherbrooke, in the District of St. Francis, and hereto represented and acting by William Farwell, esquire, of the said City of Sherbrooke, their manager, duly authorized to the effect hereof :

Who did and do hereby bargain, sell, assign, transfer and make over, with warranty as regards their own acts only to Andrew Rough, of the said City of Montreal, gentleman, hereto present and accepting the following lots of land described as follows, in the Sheriff's title hereinafter mentioned, to wit :

30

1o Lot number seven hundred and seventy-two on the cadastral plan and book of reference for the village of Coaticooke ;

2o Lots numbers seven hundred and sixty-one, seven hundred and sixty-two, and seven hundred and sixty-three on said plan and book of reference, save and except that portion of said lot seven hundred and sixty-three formerly sold by one Louis Sleeper to Charles W. Vaughan and all the land lying to the South of the same ;

3o Lot number seven hundred and twenty-one on said plan and book of reference ;

40

4o Lots numbers seven hundred and fourteen, seven hundred and twenty, seven hundred and twenty-six, seven hundred and twenty-seven, seven hundred and thirty-three, seven hundred and thirty-four, seven hundred and forty one, seven hundred and forty-four, fifteen hundred and eighty and fifteen hundred and eighty-two on said plan and book of reference ;

50 The following lots described in the Sheriff's notice of sale as Sixthly, to wit : Lots numbers seven hundred and sixteen, seven hundred and seventeen seven hundred and eighteen and seven hundred and nineteen on said plan and book of reference ;

The following lot described in the said notice of Sheriff's as Ninthly to wit : Lot number seven hundred and twenty-three on said cadastral plan and book of reference, with all the buildings and improvements on said lots of land erected and made ;

10 With all and every the members and appurtenances thereunto belonging, of which the said purchaser declares to have a perfect knowledge, having seen and viewed the same previous hereto and therewith he is content and satisfied, without any reservation of any part or portion of the aforesaid bargained and sold premises on the part of the said Bank, who are lawfully seized thereof as having acquired the same from the Sheriff of the District of St. Francis, under deed of sale bearing date the twenty-first day of October, one thousand eight hundred and eighty-two.

To have and to hold, use and enjoy the said hereby bargained and sold lots of land and premises, with all and singular their rights, members and appurtenances unto the said purchaser, his heirs and assigns, as his and their 20 own property for ever by virtue of these presents and to enter upon and take possession thereof immediately.

The present bargain and sale is so made in manner aforesaid, for and in consideration of the sum of forty-nine thousand four hundred and thirty-nine dollars and seventy cents (\$49,439.70).

In deduction of which said sum the said Bank do hereby acknowledge to have had and received from the said purchaser that of nine thousand four hundred and thirty-nine dollars and seventy cents (\$9,439.70) ; Whereof quitfor so much.

30 And as to the balance remaining due, to wit : forty thousand dollars currency, the purchaser doth hereby bind and oblige himself well and truly pay the same to the said Bank or legal representatives as follows to wit : ten thousand dollars on or before the sixteenth day of July next, and the remainder, to wit : thirty thousand dollars, in and by six equal annual instalments of five thousand dollars, currency, each ; the first whereof to become due on the sixteenth day of January next (1884) and the other instalments to be made on the sixteenth day of January of each and every subsequent year, until final payment, with interest on the balance at the rate of seven per cent per annum to be accounted from the sixteenth day of January instant, and payable semi-annually.

40 And for securing the payment of the said consideration price, with all interest that may accrue thereon as aforesaid, the said purchaser doth hereby specially and particularly bind, mortgage and hypothecate the hereby granted bargained and sold lots of ground and premises by special privilege of *bailleur de fonds*.

And it is specially agreed by and between the said parties hereto that in the event of any payment, either in capital or interest, not being met fifteen days after maturity, then the whole of said balance of purchase money, or any portion thereof remaining due, shall become ipso facto demandable, and the recovery of the same may be enforced, without any further delay.

RECORD

*In the  
Superior  
Court.*

No. 4

Authentic  
Copy of deed  
of Sale from  
Plaintiffs,  
The Eastern  
Townships  
Bank to An-  
drew Rough  
(Hetu, N.P.)  
dated

19 January  
1883.

(Plaintiff's  
Exhibit  
No 1.)

Continued.—

RECORD.

*In the  
Superior  
Court.*

No. 4.

Authentic  
Copy deed of  
Sale from  
Plaintiffs,  
The Eastern  
Townships  
Bank to An-  
drew Rough  
(Hétu N. P)  
dated  
19th January,  
1883.  
(Plaintiff's  
Exhibit  
No. 1).

—Continued.

And it is also agreed that the said purchaser will be bound as he now binds himself to insure and keeps insured against all loss and damage by fire until the said balance of price of sale in capital and interest, is paid and for an amount sufficient to cover the same the building erected on the above sold premises and machinery and the plant therein, and to make in favor of said Bank such transfers as shall be necessary to secure the balance of money at any time due on the said price of sale.

And in default by him, the said purchaser, so to do, the said Bank shall have the right to insure in their own name or in the name of the said purchaser, the said buildings and machinery and plant with the right to recover from the latter the premiums paid for such insurance, with interest thereon at the rate of seven per cent. 10

And by these presents the said William Farwell doth hereby undertake and oblige himself to furnish the said purchaser, within a month from the date hereof a duly certified copy of a resolution of the directors of said Bank showing that he, the said William Farwell was duly authorized to execute and sign the present deed of sale for and in the name of said Bank, and on the terms and condition herein contained.

And in consideration of the premises, the said Bank do hereby transfer and set over to the purchaser, all right of property, claim, title, interest demand, seizin, possession and other right whatsoever which the said Bank can have demand or pretend in or upon the aforesaid hereby bargained and sold lots of ground and premises, of which they hereby divest themselves in favor of the said purchaser his heirs and assigns, consenting and agreeing that the said purchaser be and remain seized and invested with the full and entire possession thereof as of right and for that purpose hereby constituting the bearer of these presents their attorney, to whom all necessary power and authority to that effect is hereby given and granted. 20

Done and passed at the said City of Montreal, in the Office of the undersigned Notary, under the number ten thousand five hundred and eighty-three. 30

And the said parties have signed with the said Notary, after due reading.

Signed WM. FARWELL,  
" ANDREW ROUGH,  
" L. O. HÉTU, N. P.

True copy of the original hereof remaining of record in my office.

L. O. HÉTU, N. P. 40

(On the Back).

No. 10583.  
19th January, 1883.  
Deed of sale by The Eastern Townships Bank to Andrew Rough.  
7th copy.

(ENDORSED).

Plaintiff's Exhibit No 1.

## SCHEDULE No. 5.

RECORD

On this day, the nineteenth of January, one thousand eight hundred and eighty-three ;

Before Leonard Ovide Hetu the undersigned Public Notary, residing and practising in the City and District of Montreal, Province of Quebec.

Personally came and appeared :

John McDougall, Esquire, manufacturer, and Samuel William Beard, Esquire, both of the said City of Montreal ;

10 Which said appearers, after having taken communication of a certain deed of sale granted this day by The Eastern Townships Bank, a body politic and corporate and a Banking Institution having their office and principal place of business in the City of Sherbrooke, county of Sherbrooke, in the District of St. Francis, to Andrew Rough, of the said City of Montreal, before the undersigned Notary, did and they do hereby declare to become joint sureties (*cautions solidaires*) one for the other and each of them for the whole, waiving all rights of discussion and division) of the said Andrew Rough in favor of the said Bank, hereto represented and accepting by William Farwell, Esquire, of the City of Sherbrooke, its general manager, for the payment at the terms and in  
20 the manner specified in said deed, of the principal and interest of the sum of forty thousand dollars, being the balance remaining due on the purchase price stipulated in said deed ; and generally for the due and faithful performance by the said purchaser of all and every the obligations contracted by him in favor of said Bank under the said deed of sale.

Thus done and passed at Montreal aforesaid, in the office of the undersigned Notary, under the number ten thousand five hundred and eighty four.

And after due reading hereof to the said appearers, they have signed with the said Notary.

In the  
Superior  
Court  
No. 5.  
Authentic  
copy deed of  
cautionnement  
from Mc-  
Dougall and  
Beard to  
Plaintiffs  
(Hetu N. P.)  
dated  
19th January  
1883.  
(Plaintiffs  
Exhibit  
No. 2

30 Signed S. W. BEARD,  
" JOHN McDOUGALL,  
" WM. FARWELL,  
" L. O. HETU, N. P.

A true copy of the original hereof remaining of record in my office.

L. O. HETU, N. P.

(On the Back).

40 No 10584.  
19th January 1883.  
Deed of Bond (cautionnement) by John McDougall and Samuel W. Beard, Esquires, in favor of The Eastern Townships Bank  
4th copy.

(ENDORSED).

Plaintiff's Exhibit No. 2.

RECORD.

SCHEDULE No. 6.

*In the  
Superior  
Court.*

Canada,  
Province of Quebec,  
District of Montreal.

In the Superior Court.

No. 6.

No. 2157.

Statement of  
account of  
balance due  
by Defen-  
dants to  
Plaintiffs.  
(Plaintiff's  
Exhibit).  
No. 3.

The Eastern Townships Bank.....Plaintiff.

vs.

A. Rough et al., .....Defendants.

10

STATEMENT OF ACCOUNT WITH ACTION.

1883.

16 January—To amount due as per agreement being amount of Banks claim including adjudication price less collocation .....	49,439.70	
By Cash and amount received.....	9,439.70	20
	<u>\$40,000.00</u>	

16 July — To amount of Capital payable this day as per agreement and deed.....	10,000.00	
To interest on capital as above, viz : \$40,000, at seven p.c. for six months payable this day.....	1,400.00	
	<u>11,400.00</u>	
By Cash proceeds Collaterals &c.....	10,792.48	30
	<u>607.52</u>	
To Balance due 16th July 1883 and unpaid.....	607.52	
To Balance Capital due.....	30,000.00	
	<u>30,607.52</u>	

1884

16 January—To accumulated interest on current balances 6 months at 7 p.c. per an.....	1,246.04	
--	----------	--

\$31,853.56 40

(ENDORSED).

Statement of account with action.  
Plaintiff's Exhibit fyled with return No. 3.

SCHEDULE NO. 13.

Province of Quebec, }  
District of Montreal. }

In the Superior Court  
for Lower Canada.

RECORD.  
In the  
Superior  
Court.

No. 2157.

No. 7.  
Certificate of  
no Plea  
fyled, dated  
16th  
September  
1884.

10 The Eastern Townships Bank.....Plaintiffs.  
vs.

Andrew Rough et al.....Defendants.

We do hereby certify that the Defendants have not fyled a plea in this  
cause within the delay granted by the Rules of Practice, and that have been  
duly foreclosed from so doing.

Montreal, 16th September 1884.

HONEY & GENDRON,  
P. S. C.

20 (ENDORSED).

Certificate of no Plea fyled, Fyled 16th September 1884. (Paraphed)  
H. & G., P. S. C.

SCHEDULE NO. 14

Canada, }  
Province of Quebec, }  
District of Montreal. }

Superior Court.

No. 8.  
Foreclosure  
of Defendant  
Rough,  
from Plea-  
ding, dated  
15th  
September,  
1884.

30 No. 2157.  
The Eastern Townships Bank.....Plaintiffs.

vs.

Andrew Rough et al.....Defendants.

40 The Plaintiffs hereby declare that they foreclose the Defendant A.  
Rough from Pleading to this action and pray *acte*.  
Montreal 15th September 1884.

A. W. ATWATER,  
Atty. for Plaintiff.

(ENDORSED).

Foreclosure of Defendant Rough from pleading. Prod. 15th September  
1884. (Paraphed) H. & G., P. S. C.

SCHEDULE NO. 15.

RECORD.  
In the  
Superior  
Court.

Canada,  
Province of Quebec,  
District of Montreal.

Superior Court.

No. 2157.

No. 9.  
Foreclosure  
of Defendant  
McDougall  
from Plea-  
ding dated  
15th  
September,  
1884.

The Eastern Townships Bank..... Plaintiffs.

vs.

Andrew Rough et al..... Defendants.

10

The Plaintiffs hereby declare that they foreclose the Defendant J. McDougall from pleading to this action and pray *acte*.  
Montreal 15th September 1884.

A. W. ATWATER,  
Atty for Plaintiffs.

(ENDORSED).

Foreclosure of Defendant McDougall from pleading. Prod. 15th Sep- 20  
tember 1884. (Paraphed) H. & G., P. S. C.

SCHEDULE NO. 16.

Canada,  
Province of Quebec,  
District of Montreal.

Superior Court.

No. 2157.

No. 10.  
Foreclosure  
from Plea-  
ding on issue  
with Defen-  
dant Beard,  
dated 15th  
September,  
1884.

The Eastern Townships Bank..... Plaintiffs,

vs.

Andrew Rough et al..... Defendants,

30

The Plaintiffs hereby declare that they foreclose the Defendant S. W. Beard from pleading to this action and pray *acte*.  
Montreal 15th September 1884.

A. W. ATWATER,  
Atty. for Plaintiffs.

40

(ENDORSED).

Foreclosure from pleading on issue with Defendant Beard, fyled 15th  
September 1884. (Paraphed) H. & G., P. S. C.



SCHEDULE No. 20.

Canada, }  
 Province de Québec, }  
 District de Montréal. }

Cour Supérieure.

No. 2157.

RECORD.

*In the  
 Superior  
 Court.*

No. 11.  
 Plea of  
 Defendant  
 Rough, dated  
 18th  
 September  
 1884.

10 The Eastern Townships Bank.....Demanderesse.  
 vs.  
 Andrew Rough et al.....Défendeurs.

Et le dit défendeur Andrew Rough par exception péremptoire à cette action, dit :

- 10 1o Que tous et chacun les faits allégués en la dite action, sauf ceux qui pourront être ci-après expressément admis sont faux et mal fondés ;
- 20 2o Que le défendeur Andrew Rough est exposé à un trouble imminent et à une éviction certaine et se refuse par conséquent de payer la balance du prix et intérêts stipulés dans l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois et réclamés par cette action, vente dont il a le droit de demander et demande la nullité ;
- 30 3o Que les immeubles vendus par la demanderesse au défendeur par l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois et dont elle demande la balance du prix par cette action ont été acquis par elle du shérif du district de St. François, G. F. Bowen qui les a vendus le douze janvier, mil huit cent quatre-vingt-trois, au bureau d'enregistrement de la division de Coaticooke, dans le district de St. François en vertu d'un bref d'exécution émané dans le district de Montréal, le trente et un octobre mil huit cent quatre-vingt-deux dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de cette Cour et où Fairbanks et al, étaient demandeurs et The Pioneer Beet Root Sugar Company était défenderesse ;
- 40 4o Qu'un titre de la dite vente a été passé par le dit shérif Bowen, le treize janvier mil huit cent quatre-vingt-trois ;
- 5o Que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du dit bref d'exécution étaient et sont irréguliers, illégaux, nuls et de nul effet et doivent être déclarés tels et la vente et adjudication faite par le dit shérif doit être cassée, annulée et mise de coté ;
- 6o Que la minute de la saisie pratiquée par le dit shérif ainsi que les annonces et les avis de vente ni aucun d'iceux ne contiennent, tel que requis par la loi, une description suffisante des immeubles saisis en vertu du dit bref d'exécution et principalement des immeubles qui ont ainsi été vendus par la dite vente au défendeur Andrew Rough, la description des dits immeubles ne

RECORD.

*In the  
Superior  
Court.*No. 11.  
Plea of  
Defendant  
Rough, dated  
18th  
September  
1884.  
—Continued

mentionnant ni la cité, ville, village, paroisse ou township, non plus que la rue, le rang ou la concession où se trouvaient situés les dits immeubles ainsi annoncés et vendus ;

7o Qu'en outre au nombre des immeubles annoncés et vendus se trouve une partie du lot numéro sept cent soixante-trois qui n'est pas allégué être et n'est pas un numéro distinct d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncées, tel que requis par la loi ;

8o Que le shérif ou le député-shérif qui a procédé à la dite vente a adjugé illégalement les dits immeubles à la demanderesse, The Eastern Townships Bank pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite banque, laquelle enchère avait été entrée sur le livre de minutes tenu pour l'enchère des dits immeubles ;

9o Que le dit shérif a vendu les dits biens immeubles en un seul lot et en bloc sans le consentement de la défenderesse. The Pioneer Beet Root Sugar Company mais sur la demande du gérant de la banque adjudicataire, The Eastern Townships Bank la demanderesse en cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite banque ;

10o Que la vente et adjudication des dits immeubles a ainsi été faite à la demanderesse The Eastern Townships Bank par le dit shérif illégalement et irrégulièrement à vil prix savoir : pour quatorze cents piastres, lorsque la valeur des dits biens immeubles était bien plus considérable, savoir : d'au moins quarante ou cinquante mille piastres.

11o Que le neuf février mil huit cent quatre-vingt-deux la dite The Eastern Townships Bank, la demanderesse en cette cause, bien que connaissant l'insolvabilité et la déconfiture dans laquelle se trouvait alors la "The Pioneer Beet Root Sugar Company," et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérables, a cependant, dans le but de les tromper et d'obtenir une préférence induc et frauduleuse sur eux, intenté secrètement devant la Cour Supérieure, du district de St-François sous le numéro trois cent trente-cinq des dossiers de la dite Cour, une action intitulée : The Eastern Townships Bank vs. Amos H. Cummings et al, manufacturiers du village de Coaticooke, dans le district de St-François, dans laquelle la dite Eastern Townships Bank était demanderesse, un nommé Amos H. Cummings du village de Coaticook dans le district de St-François et The Pioneer Beet Root Sugar Company étaient défendeurs ;

12o Que la dite action a été par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la banque demanderesse à un des directeurs de la dite banque savoir : à un nommé John Thornton qui était aussi un officier de la compagnie défenderesse The Pioneer Beet Root Sugar Company ;

13o Que d'après entente entre le dit Thornton et la dite Eastern Townships Bank la dite action n'a jamais été communiquée au bureau de direction de la compagnie défenderesse laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement ;

14o Que la dite action fut rapportée en Cour le vingt-trois février mil huit cent quatre-vingt-deux et que jugement fut pris immédiatement dans la

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dite cause, le dit jugement ayant été rendu le vingt-cinq du même mois pour une somme de vingt-trois mille six cent soixante et dix-sept piastres avec intérêt du dix février, montant considérablement au-delà de ce qui était dû alors à la dite Eastern Townships Bank ;

150 Que le jour même où le dit jugement fut rendu, savoir : le vingt-cinq février mil huit cent quatre-vingt-deux, la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company ;

10 160 Qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie défenderesse, la dite Eastern Townships Bank malgré l'enregistrement qu'elle fit de son dit jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ;

20 170 Que le jugement dans la cause de Fairbanks contre la Pioneer Beet Sugar Company en faveur des dits Fairbanks & Co, était pour un faible montant, savoir ; cent quatre-vingt-dix piastres et quatre-vingt-quinze centins et les frais, laquelle somme, à la connaissance de la dite Eastern Townships Bank avait été payé en entier par la compagnie défenderesse The Pioneer Beet Root Sugar Company ou par ses directeurs et des personnes agissant pour elle à cet effet longtemps avant la vente et adjudication des dits immeubles et les procédés sur l'exécution et le warrant en cette cause ont été continués dans le seul but de permettre à la dite Eastern Townships Bank de faire valoir sa créance comme opposition afin de conserver et de faire vendre tous les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company, à vil prix ;

180 Que des moyens artificieux ont été employés par la dite Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ;

30 190 Que de plus la dite Eastern Townships Bank, bien que sachant que l'enregistrement de ce jugement comme susdit dans un temps où la compagnie défenderesse, The Pioneer Beet Root Sugar Company était insolvable et en déconfiture ne pouvait pas lui donner et ne lui a pas donné droit d'hypothèque et étant sans force et sans effet, a fait usage de tel enregistrement pour empêcher d'autres personnes d'être présentes à la dite vente et enchérir sur les propriétés en question en cette cause et a ordonné l'enregistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur la dite propriété ;

40 200 Qu'à raison des artifices et d'autres semblables pratiqués par la dite banque lorsque les dites propriétés ont été mises à l'enchère à la dite vente du shérif, les dites propriétés par une entente collusoire et frauduleuse entre la dite banque et d'autres personnes présentes enchérissant ont été vendues et adjugées à William Farwell, gérant de la dite banque, illégalement et frauduleusement au préjudice des créanciers pour la somme de quatorze cents piastres et que le dit William Farwell représentait et agissait pour la dite banque en cette circonstance ;

210 Que les dits immeubles ainsi adjugés à la dite banque valaient aux moins de quarante à cinquante mille piastres ;

RECORD

*In the  
Superior  
Court.*

No. 11.  
Plea of  
Defendant  
Rough dated  
18th  
September  
1884.

*Continued.—*

RECORD.

*In the  
Superior  
Court.*No. 11.  
Plea of  
Defendant  
Rough, dated  
18th  
September  
1884.  
—Continued

220 Qu'ainsi la dite vente est irrégulière, illégale, nulle et de nul effet et devra ainsi être annulée et mise de côté ;

230 Qu'un bref et une requête en nullité de décret ont été pris et signifiés par la Banque d'Hochelega, l'un des créanciers de la dite Pioneer Beet Root Sugar Company, lesquels sont encore pendants devant cette Cour ;

240 Que les moyens invoqués par la dite Banque d'Hochelega sont les mêmes que ceux ci-dessus relatés ;

250 Qu'ainsi le défendeur Andrew Rough se trouve exposé à un trouble imminent et à une éviction certaine ;

260 Que le cinquième jour de septembre, mil huit cent quatre-vingt-quatre, le défendeur a pris une action devant cette Cour pour faire casser, annuler et mettre de côté l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois par la dite banque au défendeur Andrew Rough et relaté en la déclaration en cette cause ;

270 Que la dite action porte le numéro neuf cent dix des dossiers de cette Cour ;

280 Que les moyens invoqués dans la dite action pour faire casser, annuler et mettre de côté le dit acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois sont les mêmes que ceux ci-dessus plaidés ;

290 Que sous ces circonstances le défendeur Andrew Rough est bien fondé à se refuser au paiement de la balance du prix de vente et des intérêts stipulés dans l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois.

Pourquoi le défendeur conclut au renvoi de la dite action avec frais et dépens dont distraction aux soussignés.

Montréal, 16 Septembre 1884.

### LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU.

20 Et le dit défendeur Andrew Rough sans préjudice à ce que ci-dessus plaidé mais au contraire s'en réservant tout le bénéfice et avantage pour autre défense à cette action, dit :

10 Que tous et chacun les faits allégués en la dite action sauf ceux qui pourront être ci-après expressément admis sont faux et mal fondés ;

Que les immeubles vendus par la demanderesse au défendeur par l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois et dont elle demande la balance du prix par cette action ont été acquis par elle du shérif du district de St. François, G. F. Bowen qui les a vendus le douze janvier mil huit cent quatre-vingt-trois au bureau d'enregistrement de la division de Coaticooke, dans le district de St. François en vertu d'un bref d'exécution émané dans le district de Montréal, le trente et un octobre mil huit cent quatre-vingt-deux dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de cette Cour et où Fairbanks et al, étaient demandeurs et The Pioneer Beet Root Sugar Company était défenderesse ;

20 Qu'un titre de la dite vente a été passé par le dit shérif Bowen le treize janvier mil huit cent quatre-vingt-trois ;

Que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du

dit bref d'exécution étaient et sont irréguliers, illégaux, nuls et de nul effet et doivent être déclarés tels et la vente et adjudication faite par le dit shérif doit être cassée, annulée et mise de côté ;

30 Que la minute de la saisie pratiquée par le dit shérif ainsi que les annonces et les avis de vente ni aucun d'iceux ne contiennent tel que requis par la loi une description suffisante des immeubles saisis en vertu du dit bref d'exécution et principalement des immeubles qui ont été vendus par la dite vente au défendeur Andrew Rough, la description des dits immeubles ne mentionnant ni la cité, ville, village, paroisse ou township, non plus que la rue, le  
10 rang, ou la succession où se trouvaient situés les dits immeubles ainsi annoncés et vendus ;

40 Qu'en outre au nombre des immeubles ainsi annoncés et vendu se trouve une partie du lot numéro sept cent soixante et trois qui n'est pas allégué être et n'est pas d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncées tel que requis par la loi ;

50 Que le shérif ou le député-shérif qui a procédé à la dite vente a adjudgé illégalement les dits immeubles à la demanderesse The Eastern Townships Bank pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell le gérant de la dite banque laquelle enchère avait été entrée sur le livre de  
20 minutes tenu pour enchère des dits immeubles ;

60 Que le dit shérif a vendu les dits immeubles en un seul lot et en bloc sans le consentement de la défenderesse mais sous la demande de la banque adjudicataire The Eastern Townships Bank la demanderesse en cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite banque ;

70 Que la vente et adjudication des dite immeubles a ainsi été faite à la demanderesse The Eastern Townships Bank par le dit shérif illégalement et irrégulièrement à vil prix, savoir pour quatorze cents piastres lorsque la valeur  
30 des dits biens immeubles était bien plus considérable savoir d'au moins quarante ou cinquante mille piastres ;

80 Que le neuf février mil huit cent quatre-vingt-deux la dite The Eastern Townships Bank, la demanderesse en cette cause, bien que connaissant l'insolvabilité et la déconfiture dans laquelle elle se trouvait alors la Pioneer Beet Root Sugar Company et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérables a cependant, dans le but de les tromper et d'obtenir une préférence indue et frauduleuse sur eux, intenté secrètement devant la Cour Supérieure du district de St. François, sous le numéro trois cent trente-cinq des dossiers de la dite Cour, une action  
40 intitulée : The Eastern Townships Bank vs Amos. H. Cummings et al, manufacturiers du village de Coaticooke dans le district de St. François dans laquelle la dite The Eastern Townships Bank était demanderesse et Amos H. Cummings et al, du village de Coaticooke dans le district de St. François et The Pioneer Beet Root Sugar Company étaient défendeurs ;

90 Que la dite action a été intentée par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la banque demanderesse à un des directeurs de la dite banque, savoir : à un nommé John

RECORD.

*In the  
Superior  
Court.*

No. 11.  
Plea of  
Defendant  
Rough, dated  
18th  
September  
1884.

—Continued

RECORD.

*In the  
Superior  
Court.*No. 11.  
Plea of  
Defendant  
Rough, dated  
18th  
September  
1884.

Thornton, qui était aussi un officier de la dite compagnie défenderesse, The Pioneer Beet Root Sugar Company ;

10o Que d'après entente entre le dit Thornton et la dite Eastern Townships Bank la dite action n'a jamais été communiquée au bureau de direction de la compagnie défenderesse, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement ;

11o Que la dite action fut rapportée en Cour le vingt-trois février mil huit cent quatre-vingt-deux et jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt et un du même mois pour une somme de vingt-trois mille six cent soixante et dix-sept piastres avec intérêt du dix février, montant considérablement au-delà de ce qui était dû alors à la dite Eastern Townships Bank ;

12o Que le jour même où le jugement fut rendu, le vingt et un février mil huit cent quatre-vingt-deux la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company ;

13o Qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie The Pioneer Beet Root Sugar Company la dite Eastern Townships Bank, malgré l'enregistrement qu'elle fit de son dit jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens et immeubles de la Compagnie The Pioneer Beet Root Sugar Company.

14o. Que le jugement dans la cause Fairbanks contre la The Pioneer Beet Root Sugar Company en faveur des dits Fairbanks & Co. était pour un faible montant, savoir : pour cent quatre-vingt-dix piastres et quatre-vingt-quinze centins, et les frais, laquelle somme, à la connaissance de la dite Eastern Townships Bank avait été payée en entier par la compagnie défenderesse The Pioneer Beet Root Sugar Company ou par ses directeurs ou des personnes agissant pour elle à cet effet longtemps avant la vente et adjudication des dits immeubles et les procédés sur l'exécution et le warrant en cette cause ont été continués dans le seul but de permettre à la dite Eastern Townships Bank de faire valoir sa créance comme opposition, afin de conserver et de faire vendre tous les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company à vil prix ;

15o Que des moyens artificieux ont été employé par la dite Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ;

16o. Que de plus la dite Eastern Townships Bank, bien que sachant que l'enregistrement de ce jugement comme susdit dans un temps où la compagnie défenderesse The Pioneer Beet Root Sugar Company était insolvable et en déconfiture ne pouvait pas lui donner et ne lui a pas donné droit d'hypothèque et était sans force et sans effet, a fait usage de tel enregistrement pour empêcher d'autres personnes présentes à la dite vente et enchérir sur les propriétés en question en cette cause et a ordonné l'enregistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur les dites propriétés ;

17o Qu'à raison des dits artifices et d'autres semblables pratiqués par la dite banque lorsque les dites propriétés ont été mises à l'enchère la dite vente

du shérif, les dites propriétés, par une entente collusoire et frauduleuse entre la dite banque et d'autres personnes présentes et enchérissant ont été vendues et adjugées à William Farwell, gérant général de la dite banque, illégalement et frauduleusement au préjudice des créanciers pour la somme de quatorze cents piastres et que le dit William Farwell représentait et agissait pour la dite banque en cette circonstance ;

18o Que les dits immeubles ainsi adjugés à la dite banque valaient au moins de quarante à cinquante mille piastres ;

10 19o Qu'ainsi la dite vente est irrégulière, illégale, nulle et de nul effet, et devra ainsi être annulée et mise de côté ;

Qu'un bref et une requête en nullité de décret ont été pris et signifiés par la Banque d'Hochelaga, l'un des créanciers de la dite The Pioneer Beet Root Sugar Company le ou vers le vingt-deux juin mil huit cent quatre-vingt trois lesquels procédés sont encore pendants devant cette cour ;

21o Que les moyens invoqués par la dite banque d'Hochelaga sont les mêmes que ceux ci-dessus mentionnés ;

20 22o Que lors de l'échéance des intérêts ainsi que des versements dus le dix juillet mil huit cent quatre-vingt-trois et le seize janvier mil huit cent quatre-vingt-quatre sur le prix de vente, le dit défendeur Andrew Rough a notifié la demanderesse du trouble imminent qu'il subit maintenant, et aussi du trouble auquel il se trouve exposé ;

23o Que la demanderesse qui connaissait d'ailleurs ce trouble n'a pas tenu compte de cette notification et sans faire cesser ce trouble et sans offrir caution, tel que le requiert la loi en pareille circonstance a intenté illégalement cette action ;

30 24o Que tel qu'il appert à l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois ainsi qu'à la déclaration de la demanderesse, celle-ci n'aurait pas le droit de réclamer le prix total de la vente qu'au cas où le défendeur serait en faute en ne payant pas les versements à échéance ;

25o Que tel qu'il appert par les allégués ci-dessus le défendeur étant troublé et étant exposé à un trouble imminent et à une éviction certaine a été en droit de retarder le paiement de ses versements tant que la demanderesse ne ferait pas cesser le trouble ou n'offrirait pas caution tel que requis par la loi, ce qu'elle n'a pas fait ; et le défendeur Andrew Rough allègue :

26o Qu'il a payé en à compte du dit prix de vente la somme de seize mille quatre-vingt-douze piastres et quarante-huit centins comme suit :

40 1er. Neuf mille quatre cent trente-neuf piastres et soixante dix centins lors de la passation du dit Acte de vente du 19 janvier 1883. 2ème Treize cent cinquante-deux piastres et soixante et dix-huit centins vers le trente avril mil huit cent quatre-vingt-trois ;

27o 2ème—Treize cent cinquante-deux piastres et soixante et dix-huit centins vers le trente avril mil huit cent quatre-vingt-trois ; 3ème—Cinq mille trois cents piastres vers la même date (30 avril 1883) ;

28o Que la demanderesse ne lui a donné crédit que pour les deux premiers montants tandis qu'elle aurait dû lui donner crédit pour les trois montants ;

RECORD.

*In the  
Superior  
Court.*

No. 11.  
Plea of  
Defendant  
Rough, dated  
18th  
September  
1884.

RECORD

*In the  
Superior  
Court.*No. 11.  
Plea of  
Defendant  
Rough dated  
18th  
September  
1884.  
*Continued.*—

29<sup>o</sup> Qu'ainsi la balance due à la demanderesse ne s'élève qu'à la somme de huit mille trois cent quarante-sept piastres avec intérêt tel que stipulé au dit acte du dix-neuf janvier mil huit cent quatre-vingt-trois ;

30 Que la demanderesse est mal fondée dans sa demande pour tout montant dépassant la balance mentionnée en l'allégué ci-dessus.

Pourquoi le défendeur tout en se reconnaissant endetté envers la demanderesse en la somme de huit mille trois cent quarante-sept piastres et vingt-deux centins avec l'intérêt tel que stipulé à l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois, conclut néanmoins à ce que par le jugement à intervenir il soit déclaré que le défendeur est bien fondé à retarder, suspendre et garder entre ses mains la dite somme de huit mille trois cent quarante-sept piastres et vingt-deux centins, partie du prix de vente faite de l'immeuble décrit dans la déclaration de la demanderesse et au dit acte passé devant M<sup>re</sup> L. O. Héту, le dix-neuf janvier mil huit cent quatre-vingt-trois jusqu'à ce que la demanderesse ait fait cesser le trouble qu'a subi le défendeur et qu'il a de puissants motifs de craindre pour les raisons ci-dessus alléguées ou jusqu'à ce que la dite demanderesse ait donné au défendeur Andrew Rough bonne et suffisante caution sur l'hypothèque de biens immeubles, qu'il ne sera jamais troublé à raison des faits allégués dans la dite défense, tant pour le passé que pour l'avenir et à défaut de se faire par la demanderesse sous le délai qu'il plaira à cette Cour de fixer, à ce que la dite action de la demanderesse soit déboutée quant à présent pour la dite somme de huit mille trois cent quarante-sept piastres et vingt-deux centins, avec intérêt tel que stipulé à l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois et à tout événement pour toute somme dépassant celle ci-dessus mentionnée, le tout dans tous les cas et à tout événement avec dépens dont les soussignés demandent distraction.

Montréal, 18 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du Défendeur Rough,

Et le dit défendeur Andrew Rough, sans préjudice à ce que ci-dessus plaidé, pour défense au fonds en fait à cette action, dit : que tous et chacun les allégués de la déclaration sont faux et mal fondés en fait.

Pourquoi le dit défendeur Andrew Rough, conclut au renvoi de la dite action avec dépens distraits aux soussignés.

Montréal, 18 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du Défendeur Rough.

(ENDORSED).

Défense de A. Rough. Prod. 20 Sept. 1887. (Paraphed) H. H. & G.



SCHEDULE No. 21.

Province de Québec, }  
District de Montréal. }

Cour Supérieure.

RECORD.

*In the  
Superior  
Court.*

The Eastern Townships Bank.....Demanderesse.

No. 12.  
Plea of defen-  
dants  
McDougall  
and  
Beard, dated  
1st  
October  
1884.

vs.

10 Andrew Rough et al.....Défendeurs.

Et les dits défendeur John McDougall et Samuel W. Beard pour excep-  
tion péremptoire à cette action, disent ;

Que tous et chacun les faits allégués en la dite action, sauf ceux qui  
pourront être ci-après expressément admis, sont faux et mal fondés ;

20 2o Que le défendeur Andrew Rough en faveur de qui l'acte de cautionne-  
ment du dix-neuf janvier mil huit cent quatre-vingt-trois a été passé est exposé  
à un trouble imminent, à une éviction certaine, et se refuse par conséquent de  
payer la balance du prix et intérêts, stipulés dans l'acte de vente du dix-neuf  
janvier mil huit cent quatre-vingt-trois, et réclamé par cette action ;

30 3o Que les immeubles vendus par la demanderesse au défendeur An-  
drew Rough par l'acte de vente de dix-neuf janvier, mil huit cent quatre-vingt-  
trois, et dont elle demande la balance du prix par cette action ont été acquis  
par elle du shérif du district de St François, G. F. Bowen, qui les a vendues le  
douze janvier mil huit cent quatre-vingt-trois, au bureau d'enregistrement de  
Coaticooke, dans le distrit de St François, en vertu d'un bref d'exécution,  
émané dans le district de Montréal, le trente et un octobre mil huit cent  
40 quatre-vingt-deux dans une cause portant le numéro onze cent quatre-vingt-  
dix-huit des dossiers de cette Cour et où Fairbanks et al, étaient demandeurs  
et The Pioneer Beet Root Sugar Company était défenderesse ;

4o Qu'un titre de la dite vente a été passé par le dit shérif Bowen le  
treize janvier mil huit cent quatre-vingt-trois ;

5o Que le bref d'exécution, les annonces, les avis de vente et l'adjudi-  
cation des dits immeubles par le dit shérif et enfin tous les procédés faits en  
vertu du dit bref d'exécution étaient et sont irréguliers, illégaux, nuls et de nul  
effet et doivent être déclarés tels et la vente et adjudication faite par le dit  
shérif doit être cassée, annulée et mise de côté ;

40 6o Que la minute de la saisie pratiquée par le dit shérif, ainsi que les  
annonces et les avis de vente ni aucun d'iceux ne contiennent, tel que requis  
par la loi, une description suffisante des immeubles saisis en vertu du dit bref  
d'exécution et principalement des immeubles qui ont ainsi été vendus par la  
dite vente au défendeur Andrew Rough, la description des dits immeubles ne  
mentionnant ni la cité, ville, village, paroisse ou township, non plus que la rue  
le rang ou la concession où se trouvaient situés les dits immenbles ainsi annon-  
cés et vendus ;

RECORD.

*In the  
Superior  
Court.*

No. 12.

Plea of defen-  
dantsMcDougall  
and

Beard, dated

1st  
October  
1884.

—Continued,

Qu'en outre au nombre des immeubles ainsi annoncés et vendu ; se trouve une partie du lot numéro sept cent soixante et trois, qui n'est pas allégué être et qui n'est pas un numéro distinct d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncées tel que requis par la loi ;

80 Que le shérif ou le député-shérif qui a procédé à la dite vente a adjugé illégalement les dits immeubles à la demanderesse, The Eastern Townships Bank pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le Gérant de la dite banque, laquelle enchère avait été entrée sur le livre des minutes tenu pour l'enchère des dits immeubles ;

90 Que le dit shérif a vendu les dits biens immeubles en un seul lot et en bloc sans le consentement de la défenderesse, The Pioneer Beet Root Sugar Company, mais sur la demande du gérant de la banque adjudicataire The Eastern Townships Bank, la demanderesse en cette cause, qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite banque ;

100 Que la vente adjudication des dits immeubles a ainsi été faite à la demanderesse The Eastern Townships Bank par le dit shérif illégalement et irrégulièrement à vil prix, savoir ; pour quatorze cents piastres lorsque la valeur des dits biens immeubles était bien plus considérable, savoir ; d'au moins quarante ou cinquante mille piastres ;

110 Que le neuf février mil huit cent quatre-vingt-deux la dite The Eastern Townships Bank, la demanderesse en cette cause, bien que connaissant l'insolvabilité et la déconfiture dans laquelle se trouvait alors la Pioneer Beet Root Sugar Company et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérables, a cependant, dans le but de les tromper et d'obtenir une préférence indue et frauduleuse sur eux, intenté secrètement devant la Cour Supérieure, du district de St-François sous le numéro trois cent trente-cinq des dossiers de la dite Cour, une action intitulée : The Eastern Townships Bank vs Amos H. Cummings et al, manufacturiers du village de Coaticooke, dans le district de St-François dans laquelle la dite Eastern Townships Bank était demanderesse et un nommé Amos H. Cummings du village de Coaticooke, dans le district de St-François, et The Pioneer Beet Root Sugar Company étaient défendeurs.

120 Que la dite action a été par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la Banque demanderesse à un des directeurs de la dite banque, savoir : à un nommé John Thornton qui était aussi un officier de la compagnie défenderesse The Pioneer Beet Root Sugar Company ;

130 Que d'après entente entre le dit Thornton et la dite Eastern Townships Bank la dite action n'a jamais été communiquée au bureau de direction de la compagnie défenderesse, The Pioneer Beet Root Sugar Company, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement ;

140 Que la dite action fut rapportée en Cour le vingt-trois février mil huit cent quatre-vingt deux et jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt-cinq du même mois, pour une somme de vingt-trois mille six cent soixante et dix-sept piastres, avec intérêt

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du dix février montant considérablement au-delà de ce qui était dû alors à la dite Eastern Townships Bank ;

15o Que le jour même où le dit jugement fut rendu, savoir le vingt-cinq février mil huit cent quatre-vingt-deux, la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company ;

16o Qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie défenderesse The Pioneer Beet Root Sugar Company, la dite Eastern Townships Bank, malgré l'enregistrement qu'elle fit de son dit jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ;

17o Que le jugement dans la cause de Fairbanks contre la Pioneer Beet Root Sugar Company en faveur des dits Fairbanks & Co. était pour un faible montant, savoir : pour cent quatre-vingt-dix piastres et quatre-vingt-quinze centins et les frais, laquelle somme à la connaissance de la dite Eastern Townships Bank avait été payée en entier par la compagnie défenderesse The Pioneer Beet Root Sugar Company ou par ses directeurs et des personnes agissant pour elle à cet effet longtemps avant la vente et adjudication des dits immeubles et les procédés sur l'exécution et le warrant en cette cause, ont été continués dans le seul but de permettre à la dite Eastern Townships Bank de faire valoir sa créance comme opposition afin de conserver et de faire vendre tous les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company, à vil prix ;

18o Que des moyens artificieux ont été employé par la dite Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ;

19o Que de plus la dite Eastern Townships Bank bien que sachant que l'enregistrement de ce jugement, comme susdit, dans un temps où la compagnie défenderesse The Pioneer Beet Root Sugar Company était insolvable et en déconfiture ne pouvait pas lui donner et ne lui a pas donné de droit d'hypothèque et était sans force et sans effet, a fait usage de tel enregistrement pour empêcher d'autres personnes d'être présentes à la dite vente et enchérir sur les propriétés en question en cette cause et a ordonné l'enregistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur les dites propriétés ;

20o Qu'à raison des dits artifices et d'autres semblables pratiqués par la dite banque lorsque les dites propriétés ont été mises à l'enchère à la vente du shérif, les dites propriétés par une entente collusoire et frauduleuse entre la dite banque et d'autres personnes présentes et enchérissant ont été vendues et adjudgées à William Farwell, gérant général de la dite banque illégalement et frauduleusement, au préjudice des créanciers pour la somme de quatorze cents piastres et que le dit William Farwell représentait et agissait pour la dite banque en cette circonstance ;

22o Que les dits immeubles ainsi adjudgés à la dite banque valaient au moins de quarante à cinquante mille piastres ;

22o Qu'ainsi la dite vente est irrégulière, illégale nulle et de nul effet et devra être annulée et mise de côté ;

RECORD

*In the  
Superior  
Court.*

No. 12.  
Plea of defen-  
dants  
McDougall  
and  
Beard, dated  
1st  
October  
1884.

— *Continued.*

RECORD.  
 —  
*In the  
 Superior  
 Court.*  
 —  
 No. 12.  
 Plea of defen-  
 dants  
 McDougall  
 and  
 Beard, dated  
 1st  
 October  
 1884.  
 —Continued,

230 Qu'un bref et une requête en nullité de décret ont été pris et signifiés par la banque d'Hochelaga, l'un des créanciers de la dite Pioneer Beet Root Sugar Company, lesquels sont encore pendants devant cette Cour ;

240 Que les moyens invoqués par la dite banque d'Hochelaga sont les mêmes que ceux ci-dessus relatés ;

250 Qu'ainsi le défendeur Andrew Rough se trouve exposé à un trouble imminent et à une éviction certaine ;

260 Que le cinquième jour de septembre mil huit cent quatre-vingt-quatre, le défendeur Andrew Rough a pris une action devant cette Cour pour faire casser, annuler et mettre de côté l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois, par la dite banque au défendeur Andrew Rough et relaté en la déclaration en cette cause ;

270 Que la dite action porte le numéro neuf cent dix des dossiers de cette Cour ;

280 Que les moyens invoqués dans la dite action pour faire casser, annuler et mettre de côté le dit acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois, sont les mêmes que ceux ci-dessus plaidés ;

290 Que sous ces circonstances le défendeur Andrew Rough est bien fondé à se refuser au paiement de la balance du prix de vente et des intérêts stipulés dans l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois, et les défendeurs McDougall et Beard allèguent : que le défendeur Andrew Rough a lui-même produit la même défense à cette action.

Pourquoi les défendeurs McDougall et Beard concluent au renvoi de la dite action, avec frais et dépens dont distraction au soussignés ;

Montréal, 1er Octobre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU

Avocats des défendeurs McDougall & Beard.

Et les dits défendeurs John McDougall et S. W. Beard sans préjudice à ce que ci-dessus plaidé mais au contraire s'en réservant tout le bénéfice et avantage pour autre défense à cette action, disent :

Que tous et chacun les faits allégués en la dite action, sauf ceux qui pourrout être ci-après expressément admis sont faux et mal fondés ;

Que les immeubles vendus par la demanderesse au défendeur Andrew Rough par l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois et dont elle demande la balance du prix par cette action ont été acquis par elle du shérif du district de St-François, G. F. Bowen, qui les a vendu le douze janvier mil huit cent quatre-vingt-trois, au bureau d'enregistrement de la division de Coaticooke, dans le district de St-François, en vertu d'un bref d'exécution émané dans le district de Montréal, le trente et un Octobre mil huit cent quatre-vingt-deux dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de cette Cour, et où Fairbanks et al étaient demandeurs et The Pioneer Beet Root Sugar Company était défenderesse ;

Qu'un titre de la dite vente a été passé par le dit shérif Bowen le treize janvier mil huit cent quatre-vingt-trois ;

Que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin toutes les procédures faites en vertu du dit bref d'exécution étaient et sont irréguliers, illégaux et de nul effet et doivent être déclarés tels et la vente et adjudication faite par le dit shérif doit être cassée, annulée et mise de côté ;

10 Que la minute de la saisie pratiquée par le dit shérif, ainsi que les annonces ni les avis de vente ni aucun d'iceux ne contiennent, tel que requis par la loi une description suffisante des immeubles saisis en vertu du dit bref d'exécution et principalement des immeubles qui ont ainsi été vendus par la dite vente au défendeur Andrew Rough, la description des dits immeubles ne mentionnant ni la cité, ville, village, paroisse ou township non plus que la rue, le rang ou la concession où se trouvaient situées les dits immeubles ainsi annoncés et vendu ;

Qu'en outre au nombre des dits immeubles, ainsi annoncés et vendus, se trouve une partie du lot numéro sept cent soixante et trois qui n'est pas allégué être et qui n'est pas un numéro distinct d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncées, tel que requis par la loi ;

20 Que le shérif ou le député-shérif qui a procédé à la dite vente a adjugé illégalement les dits immeubles à la demanderesse, The Eastern Townships Bank pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite banque, laquelle enchère avait été entrée sur le livre des minutes tenu pour l'enchère des dits immeubles ;

Que le dit shérif a vendu les dits biens immeubles en un seul lot et en bloc sans le consentement de la défenderesse mais sur la demande du gérant de la banque adjudicataire The Eastern Townships Bank, la demanderesse en cette cause, qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite banque ;

30 Que la vente et adjudication des dits immeubles a ainsi été faite à la demanderesse "The Eastern Townships Bank", par le dit shérif illégalement et irrégulièrement, à vil prix, savoir : pour quatorze cents piastres lorsque la valeur des dits biens immeubles était bien plus considérable, savoir : d'au moins quarante ou cinquante mille piastres ;

40 Que le neuf février mil huit cent quatre-vingt-deux, la dite "The Eastern Townships Bank", la demanderesse en cette cause, bien que connaissant l'insolvabilité et la déconfiture dans laquelle se trouvait alors la "Pioneer Beet Root Sugar Company" et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérables, a cependant, dans le but de les tromper et d'obtenir une préférence indue et frauduleuse sur eux, intenté secrètement devant la Cour Supérieure du district de St François sous le numéro trois cent trente-cinq des dossiers de la dite Cour, une action intitulée : The Eastern Townships Bank vs Amos H. Cummings et al manufacturiers du village de Coaticooke, dans le district de St François, dans laquelle la dite Eastern Townships Bank était demanderesse un nommé Amos H. Cummings, manufacturier du village de Coaticooke, dans le district de St François et The Pioneer Beet Root Sugar Company étaient défendeurs ;

RECORD

*In the  
Superior  
Court.*

No. 12.

Plea of defen-  
dantsMcDougall  
andBeard, dated  
1st

October

1884.

—Continued.

## RECORD

—  
*In the  
 Superior  
 Court.*

No. 12.  
 Plea of defen-  
 dants  
 McDougall  
 and  
 Beard, dated  
 1st  
 October  
 1884.  
 —Continued.

Que la dite action a été par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la banque demanderesse à un des directeurs de la dite banque, savoir : à un nommé John Thornton, qui était aussi un officier de la dite compagnie défenderesse, The Pioneer Beet Root Sugar Company ;

Que d'après entente entre le dit Thornton et la dite Eastern Townships Bank la dite action n'a jamais été communiqué au bureau de direction de la compagnie défenderesse, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement ; 10

Que la dite action fut rapportée en Cour le vingt-trois février mil huit cent quatre-vingt-deux et jugement fut pris immédiatement dans la dite cause le dit jugement ayant été rendu le vingt-cinq du même mois pour une somme de vingt-trois mille six cent soixante et dix-sept piastres avec intérêt du dix février, montant considérablement au-delà de ce qui était dû alors à la dite Eastern Township Bank ;

Que le jour même où le dit jugement fut rendu, savoir : le vingt-cinq février mil huit cent quatre-vingt-deux, la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la dite compagnie défenderesse The Pioneer Beet Root Sugar Company ; 20

Qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie The Pioneer Beet Root Sugar Company, la dite Eastern Townships Bank, malgré l'enregistrement qu'elle fit de son dit jugement, n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ;

Que le jugement dans la cause de Fairbanks contre la Pioneer Beet Root Sugar Company en faveur des dits Fairbanks & Co. était pour un faible montant, savoir : pour cent quatre-vingt-dix piastres et quatre-vingt-quinze centins et les frais, laquelle somme à la connaissance de la dite Eastern Townships Bank avait été payé en entier par la compagnie défenderesse The Pioneer Beet Root Sugar Company ou par ses directeurs et des personnes agissant pour elle à cet effet longtemps avant la vente et adjudication des dits immeubles ; et les procédés sur l'exécution et le warrant en cette cause ont été continués dans le seul but de permettre à la dite Eastern Townships Bank de faire valoir sa créance comme opposition afin de conserver et de faire vendre tous les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company, à vil prix ; 30

Que des moyens artificieux ont été employés par la dite Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ; 40

Que de plus la dite Eastern Townships Bank, bien que sachant que l'enregistrement de ce jugement comme susdit dans un temps où la compagnie défenderesse The Pioneer Beet Root Sugar Company était insolvable et en déconfiture ne pouvait pas lui donner et ne lui a pas donné droit d'hypothèque et était sans force et sans effet, a fait usage de tel enregistrement pour empêcher d'autres personnes d'être présentes à la dite vente et d'enchérir sur les propriétés en question en cette cause et a ordonné l'enregistrement du dit juge-

ment à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur les dites propriétés ;

Qu'à raison des dits artifices et d'autres semblables pratiqués par la dite banque lorsque les dites propriétés ont été mises à l'enchère à la dite vente du shérif, les dites propriétés par une entente collusoire et frauduleuse entre la dite banque et d'autres personnes présentes et enchérissant, ont été vendues et adjudgées à William Farwell, gérant général de la dite banque, illégalement et frauduleusement au préjudice des créanciers pour la somme de quatorze cents piastres et que le dit William Farwell représentait et agissait

10 pour la dite banque en cette circonstance ;

Que les dits immeubles ainsi adjudgés à la dite banque valaient au moins quarante à cinquante mille piastres ;

Qu'ainsi la dite vente est irrégulière, illégale, nulle et de nul effet, et devra ainsi être annulée et mise de côté ;

Qu'un bref et une requête en nullité de décret ont été prise et signifiées par la Banque d'Hochelaga, l'un des créanciers de la dite Pioneer Beet Root Sugar Company le ou vers le vingt-deux juin mil huit cent quatre-vingt-trois, lesquels procédés sont encore pendant devant cette Cour ;

20 Que les moyens invoqués par la dite Banque d'Hochelaga sont les mêmes que ceux ci-dessus plaidés ;

Que lors de l'échéance des intérêts ainsi que des versements dus le dix juillet mil huit cent quatre-vingt-trois et le seize janvier mil huit cent quatre-vingt-quatre sur le dit prix de vente, le dit défendeur Andrew Rough a notifié la demanderesse du trouble imminent et qu'il subit maintenant et aussi du trouble auquel il se trouve exposé ;

Que la demanderesse qui connaissait d'ailleurs ce trouble, n'a pas tenu compte de cette notification, et sans faire cesser ce trouble et sans offrir caution, tel que le requiert la loi, en pareilles circonstances, a intenté illégitimement cette action ;

30 Que tel qu'il appert à l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois ainsi qu'à la déclaration de la demanderesse, celle-ci n'aurait pas le droit de réclamer le prix total de la vente qu'au cas ou le défendeur Rough serait en faute en ne payant pas les versements à échéance ;

Que tel qu'il appert par les allégués ci-dessus, le défendeur Rough étant troublé et étant exposé à un trouble imminent et à une éviction certaine a été en droit de retarder le paiement de ses versements tant que la demanderesse ne ferait pas cesser le trouble ou n'offrirait pas caution, tel que requis par la loi, ce qu'elle n'a pas fait ;

Et les défendeurs McDougall et Beard alléguent :

40 Que le défendeur Rough a payé en à compte du dit prix de vente la somme de seize mille quatre-vingt-douze piastres et quarante-huit centins comme suit :

1o Neuf mille quatre cent trente-neuf piastres et soixante et dix centins lors de la passation du dit acte de vente le dix-neuf janvier mil huit cent quatre-vingt-trois ;

2o Treize cent cinquante-deux piastres et soixante et dix-huit centins vers le trente avril mil huit cent quatre-vingt-trois ;

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*In the  
Superior  
Court.*

No. 12.  
Plea of defen-  
dants  
McDougall  
and  
Beard, dated  
1st  
October  
1884.  
—Continued.

RECORD. 30 Cinq mille trois cents piastres vers la même date (30 avril 1883);  
 — Que la demanderesse ne lui a donné crédit que pour les deux pre-  
*In the* miers montants tandis qu'elle aurait dû lui donner crédit pour les trois  
*Superior* montants ;  
*Court.* Qu'ainsi la balance due à la demanderesse ne s'élève qu'à la somme de  
 — huit mille trois cent quarante-sept piastres avec intérêt tel que stipulé au dit  
 No. 12. acte du dix-neuf janvier mil huit cent quatre-vingt-trois ;  
 Plea of defen- Que la demanderesse est mal fondée dans sa demande pour tout montant 10  
 dants McDougall dépassant la balance mentionnée en l'allégué ci-dessus.  
 and Beard, dated Pourquoi les défendeurs McDougall et Beard concluent, tout en recon-  
 1st naissant le défendeur Rough endetté envers la demanderesse en la somme de  
 October huit mille trois cent quarante sept piastres et vingt-deux centins avec l'intérêt tel  
 1884. que stipulé à l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois, concluent  
 — *Continued* néanmoins à ce que, par le jugement à intervenir il soit déclaré que les défen-  
 deurs sont bien fondés à retarder, suspendre et garder entre leurs mains la dite  
 la dite somme de huit mille trois cent quarante-sept piastres et vingt-deux  
 centins, partie du prix de vente faite de l'immeuble décrit dans la déclaration  
 de la demanderesse, et au dit acte passé devant Mtre. L. O. Héту le dix-neuf 20  
 janvier mil huit cent quatre-vingt-trois, jusqu'à ce que la demanderesse ait fait  
 cesser le trouble qu'a subi le défendeur Rough et qu'ils ont de puissants motifs  
 de craindre pour les raisons ci-dessus alléguées ou jusqu'à ce que la demande-  
 resse ait donné bonne et suffisante caution sur l'hypothèque de biens immeubles  
 que Rough ne sera jamais troublé à raison des faits allégués dans la dite dé-  
 fense tant pour le passé que pour l'avenir ; et à défaut de ce faire par la deman-  
 deresse sous le délai qu'il plaira à cette Cour de fixer ; à ce que la dite action de  
 la demanderesse soit déboutée quant à présent pour la dite somme de huit  
 mille trois cent quarante-sept piastres et vingt-deux centins avec intérêt pour  
 toute somme dépassant celle ci-dessus mentionnée, le tout dans tous les cas et à 30  
 tout événement, avec dépens dont les soussignés demandent distraction.  
 Montréal 1er Octobre 1884.

LACOSTE, GLOBENSKY, BISAILLON et BROSSEAU,

Avocats des défendeurs McDougall et Beard.

Et les dits défendeurs John McDougall et Samuel W. Beard sans préju-  
 dice à ce que ci-dessus plaidé pour défense au fonds en faits à cette action,  
 disent :

Que tous et chacun les allégués de la déclaration sont faux et mal fondés 40  
 en fait.

Pourquoi les dits défendeurs McDougall et Beard concluent au renvoi  
 de la dite action avec dépens distraits aux soussignés.

Montréal, 1er Octobre 1884.

LACOSTE, GLOBENSKY, BISAILLON ET BROSSEAU,

Avocats des défendeurs John McDougall et Samuel W. Beard.



(Reçu Copie)

Subject to payment of costs of foreclosure.

A. W. ATWATER,

Avocat de la Demanderesse.

(ENDORSED),

10

Défense des défendeurs John McDougall et Samuel W. Beard. Prod. 2 Oct. 1884. (Paraphed H. & G. P. C. S.)

RECORD

In the Superior Court.

No. 12. Plea of defendants McDougall and Beard, dated 1st October 1884. —Continued.

SCHEDULE No. 22.

20

Canada : Province of Quebec, District of Montreal.

Superior Court.

The Eastern Townships Bank.....Plaintiffs.

VS

Andrew Rough et al.....Defendants.

No. 13. Plaintiff's answers to Pleas of Defendant Rough, dated 10th October 1884.

30

And the said Plaintiffs for special answer to the peremptory exception pleaded by the Defendant Rough, without admitting the truth of any of the allegations therein contained, but on the contrary denying the same, say :

That the said Andrew Rough is a mere prête-nom for the other Defendants in this cause, to wit, John McDougall and Samuel W. Beard, who are the real and actual purchasers of the rights and properties, sold under the deed of sale passed before L. O. Hetu, notary public on the nineteenth day of January 1883 and the said Defendants McDougall and Beard merely for their own convenience, took the said deed in the name of said Defendant Rough, who is the book-keeper of said Defendant McDougall ;

That prior to the sale of said property and rights in said deed described at Sheriff's sale, the Defendant Beard acquired the judgment of Fairbanks & Co. under which the said sale took place, and acting for himself and the Defendant McDougall, was the party who brought the said property to sale, and is responsible for all the proceedings upon said Sheriff's sale with which Plaintiffs had nothing to do and concerning which they always refused to take any responsibility ;

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—  
*In the  
 Superior  
 Court.*

—  
 No. 13.  
 Plaintiff's  
 answers to  
 Pleas of  
 Defendant  
 Rough, dated  
 10th  
 October  
 1884.  
 —Continued

That having purchased the judgment of Fairbanks & Co the Defendants McDougall & Beard, not having the funds wherewith to purchase the said property, and to pay the Plaintiffs their hypothecs upon the said property, came to Plaintiffs at the City of Sherbrooke and representing that they were anxious to become the purchasers of said property, but had not the means to pay down for the same and requested said Plaintiffs to bid the property in for them said Defendants McDougall and Beard, and to give them time wherein to pay Plaintiffs the amount of their claim against said property ;

That said Plaintiffs for the accommodation of said Defendants McDougall and Beard consented to this proposition and agreed to bid upon the property upon those conditions, and agreed to transfer all their rights if they should become purchasers of the property to Defendants McDougall and Beard upon receiving the amount of their claim against the property, for the payment of which a term of payment was to be given to said Defendants McDougall and Beard ; 10

That the Defendants McDougall and Beard at the time they purchased Plaintiffs rights in said real estates knew all things concerning said Sheriff's sale, the proceedings thereupon and the claim of said Plaintiffs upon said real estate ;

That said Defendants McDougall and Beard purchased said real estate with full knowledge of all the circumstances and dangers if any attending said Sheriff's sale and so purchased the same at their own risk and péril and without any warranty whatever from the Plaintiffs ; 20

That the proceedings alleged to have been taken by the Banque d'Hochelaga are to the knowledge of Defendants McDougall and Beard, frivolous and unfounded and as Plaintiffs are credibly informed were instituted by the concurrence of said McDougall and Beard for the purpose of compelling Plaintiffs to discount their claim, the said Banque d'Hochelaga having become proprietors of said Beard's share in said real estate by transfer under private signature, and it having been understood and agreed that any discount which might be obtained should be shared between the said McDougall and said Banque d'Hochelaga ; 30

That the defendants McDougall and Beard have created the very trouble of which they complain and are responsible therefore ;

That Plaintiffs did not sell the said real estate for any sum of money representing the supposed value thereof but merely for the amount of their claim against the same, with which both the Defendants McDougall and Beard were well acquainted and which said claim has never been attached in any Court, nor has any attempt ever been made to set the same aside, and the said claim is good and valid both in Law and Equity ; 40

That the said Defendant McDougall was a Director of said Pioneer Beet Root Sugar Company and had a full knowledge of the claims and judgments of said Plaintiffs against said Company and acquiesced therein.

All which Plaintiffs aver to be true and offer to verefy.

Wherefore Plaintiffs pray that the said *exception péremptoire* be dismis-

sed with costs, and further pray as in and by their declaration they have already prayed.

Montreal, 10th Oct. 1884.

A. W. ATWATER,

Atty. for Plaintiff.

RECORD.

*In the  
Superior  
Court.*

No. 13.  
Plaintiff's  
answers to  
Pleas of  
Defendant  
Rough, dated  
10th  
October  
1884.

—Continued

And said Plaintiff for answer and replication to Defendant Rough's second plea, saith ;

10 That except in so far as specially admitted ; the allegations and each and all of them of said plea are false, untrue and unfounded in fact and these of Plaintiff declaration are true and well founded ;

That said Defendant Andrew Rough was and is merely a *prête-nom* of said other defendants McDougall and Beard who were and are the real and actual purchasers of the property in question ;

20 That said Defendant Beard prior to the said Sheriff's sale, acting for himself and said Defendant McDougall, purchased and acquired the rights of said Fairbanks and Co. under which said sale took place and was the party who brought said property to sale, and was and is responsible for all the proceedings upon said Sheriff's sale with which the Plaintiffs had nothing to do and concerning which they have always declined to take any responsibility ;

That the judgment of the said Bank Plaintiff was regularly and legally and openly obtained and registered against said Company, and the said properties were charged and affected for the payment thereof at the time of said sale to the knowledge of said Defendants and each of them :

30 That said defendants McDougall and Beard having acquired the judgment aforesaid and wishing to acquire said property but not having the means so to do and to pay the Plaintiffs their said hypothec, came to and requested Plaintiffs to purchase said property for them and to give them time to pay the claim of said Plaintiffs and that to this as in Plaintiffs previous answer set forth Plaintiffs agreed ;

That said Defendants were well aware at the time of said purchase of all the dangers if any attending the same and so purchased at their own risk and peril and without any warranty on the part of said Plaintiffs ;

40 That the proceedings alleged to have been taken by the Banque d'Ho-chelaga are to the knowledge of Defendants McDougall and Beard frivolous and unfounded and as Plaintiffs are credibly informed were instituted by the by the concurrence of said McDougall and Beard for the purpose of compelling Plaintiffs to discount their claim the said Banque d'Ho-chelaga having become proprietors of the said Beard's share in said real estate by transfer under private signature and it having been understood and agreed that any discount which might be obtained, should be shared between the said McDougall and Banque d'Ho-chelaga ;

That the said Defendants McDougall and Beard have created the very trouble of which they complain and are responsible therefore ;

That Plaintiffs did not sell the said real estate for any sum of money representing the supposed value thereof, but merely for the amount of their claim against the same with which both the Defendants McDougall and Beard

RECORD.

*In the Superior*

No. 13.  
Plaintiff's answers to Pleas of Defendant Rough, dated 10th October 1884.

*Continued.—*

were well acquainted and which said claim has never been attached in any Court nor has any attempt ever been made to set the same aside and the said claim is good, and valid both in Law and Equity ;

That the said Defendant McDougall was a Director of said Pioneer Beet Root Sugar Company and had a full knowledge of the claims and judgments of said Plaintiffs against said Company and acquiesced therein.

Wherefore Plaintiffs pray that said plea be hence dismissed with costs and further pray as in and by their declaration they have already prayed.

Montreal, 10th October 1884.

A. W. ATWATER, 10  
Atty. for Plaintiffs.

And the said Plaintiffs for answer to the *défense en fait* in this cause thirdly pleaded by defendant Rough, say:—

That each and every the allegations of said Plaintiff's declaration are true and sufficient in Law to establish the conclusions thereof.

Wherefore Plaintiffs pray that said Defendant be hence dismissed with costs and further pray as in and by their said declaration they have already prayed.

Montreal, 10th October 1884.

A. W. ATWATER, 20  
Atty. for Plaintiffs.

Rec'd Copy.

LACOSTE, GLOBENSCY, BISAILLON & BROSSEAU,  
Attorney for Defendant Rough.

(ENDORSED).

Plaintiff's answers to Pleas of Defendant Rough. Prod. 14 Oct. 1884.  
Paraphed. H. and G. P. C. S. 30

SCHEDULE No. 23.

No. 14.  
Plaintiffs' answers to Pleas of Defendants McDougall and Beard dated 10th October 1884.

Canada :  
Province of Quebec,  
District of Montreal. }

SUPERIOR COURT.

The Eastern Townships Bank.....Plaintiff.

AND

Andrew Rough et al.....Defendants. 40

PLAINTIFF'S ANSWERS TO PLEAS OF DEFENDANT.

And the said Plaintiffs for special answer to the peremptory exception pleaded by the Defendants McDougall and Besrd, without admitting the truth

of any of the allegations therein contained, but on the contrary denying the same, say :

That the said Andrew Rough is a mere "prête-nom" for the other Defendants in this cause, to wit ; John McDougall and Samuel W. Beard, who are the real and actual purchasers of the rights and properties, sold under the deed of sale passed before L. O. Hetu, Notary Public on the nineteenth day of January 1883 and the said Defendants McDougall and Beard merely for their own convenience, took the said deed in the name of said defendant Rough, who is the book-keeper of said Defendant McDougall ;

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*In the  
Superior  
Court.*No. 14.  
Plaintiffs'  
answers to  
Pleas of  
Defendants  
McDougall  
and Beard  
dated 10th  
October  
1884.

—Continued

10 That prior to the sale of said property and rights in said deed described at Sheriff's Sale, the Defendant Beard acquired the judgment of Fairbanks and Co. under which the said sale took place, and acting for himself and the Defendant McDougall, was the party who brought the said property to sale, and is responsible for all the proceedings upon said Sheriff's sale with which Plaintiffs had nothing to do and concerning which they always refused to take any responsibility :

20 That having purchased the judgment of Fairbanks & Co. the Defendants McDougall and Beard, not having the funds wherewith to purchase the said property, and to pay the Plaintiffs their hypothecs upon the said property, came to Plaintiffs at the City of Sherbrooke and representing that they were anxious to become the purchasers of said property, but had not the means to pay down for the same and requested said Plaintiffs to bid the property in for them said Defendants McDougall and Beard, and to give them time wherein to pay Plaintiffs the amount of their claim against said property ;

30 That said Plaintiffs for the accommodation of said Defendants McDougall and Beard consented to this proposition and agreed to bid upon the property upon those conditions, and agreed to transfer all their rights if they should become purchasers of the property to Defendants McDougall and Beard upon receiving the amount of their claim against the property, for the payment of which a term of payment was to be given to said Defendants McDougall and Beard ;

That the Defendants McDougall and Beard at the time they purchased Plaintiff's rights in said real estates knew all things concerning said Sheriff's sale, the proceedings thereupon and the claim of said Plaintiffs upon said real estate ;

That said Defendants McDougall and Beard purchased said real estate with full knowledge of all the circumstances and dangers if any attending said Sheriff's sale and so purchased the same at their own risk and peril and without any warranty whatever from the Plaintiffs ;

40 That the proceedings alleged to have been taken by the Banque d'Hochelaga are to the knowledge of Defendants McDougall and Beard, frivolous and unfounded and as Plaintiffs are credibly informed were instituted by the concurrence of said McDougall and Beard for the purpose of compelling Plaintiffs to discount their claim, the said Banque d'Hochelaga having become proprietors of said Beard's share in said real estate by transfer under private signature, and it having been understood and agreed that any discount which might be obtained should be shared between the said McDougall and said

RECORD.

*In the  
Superior*No. 14.  
Plaintiffs'  
answers to  
Pleas of De-  
fendants  
McDougall  
and Beard  
dated 10th  
October  
1884.*Continued.—*

Banque d' Hochelaga ;

That the Defendants McDougall and Beard have created the very trouble of which they complain and are responsible therefore ;

That Plaintiffs did not sell the real estate for any sum of money representing the supposed value thereof but merely for the amount of their claim against the same, with which both the Defendants McDougall and Beard were well acquainted and which said claim has never been attacked in any Court, nor has any attempt ever been made to set aside the same, and the said claim is good and valid both in Law and Equity ;

That the Defendant McDougall was a Director of said Pioneer Beet Root Sugar Company and had a full knowledge of the claims and judgments of said Plaintiffs against said Company and acquiesced therein. 10

All which Plaintiffs offer to be true and offer to verify.

Wherefore Plaintiffs pray that the said "exception péremptoire" be hence dismissed with costs, and further pray as in and by their declaration they have already prayed.

Montreal, 10th Oct. 1884.

A. W. ATWATER,  
Atty. for Plaintiffs.

And said Plaintiffs for answer and replication to Defendant McDougall's second plea, saith ; 20

That except in so far as specially admitted ; the allegations and each and all of them of said plea are false, untrue and unfounded in fact and those of Plaintiff declaration are true and well founded ;

That said defendant Andrew Rough was and is merely a "prête-nom" of said other Defendants McDougall and Beard who were and are the real and actual purchasers of the property in question ;

The said Defendant Beard prior to the said Sheriff's sale, acting for himself and said Defendant McDougall, purchased and acquired the rights of said Fairbanks and Co. under which said sale took place and was the party who brought said property to sale, and was and is responsible for all the proceedings upon said Sheriff's sale with which the Plaintiff had nothing to do and concerning which they have always declined to take any responsibility ; 30

That the judgment of the said Bank Plaintiffs was regularly and legally and openly obtained and registered against said Company, and the said properties were charged and affected for the payment thereof at the time of said sale to the knowledge of said Defendants and each of them ;

That said Defendants McDougall and Beard having acquired the judgment aforesaid and wishing to acquire said property but not having the means so to do and to pay Plaintiffs their said hypothec, came to and requested Plaintiffs to purchase said property for them and to give them time to pay the claim of said Plaintiffs and that to this as in Plaintiffs previous answer set forth Plaintiffs agreed ; 40

That said Defendants were well aware at the time of said purchase of all the dangers if any attending the same and so purchased at their own risk and peril and without any warranty on the part of said Plaintiffs ;

That the proceedings alleged to have been taken by the Banque d'Ho-

chelaga are to the knowledge of Defendants McDougall and Beard frivolous and unfounded and as Plaintiffs are credibly informed were instituted by the concurrence of said McDougall and Beard for the purpose of compelling Plaintiffs to discount their claim the Banque d'Hochelaga having purchased and become proprietors of the said Beards share in said real estate by transfer under private signature and it having been understood and agreed that any discount which might be obtained, should be shared between the said McDougall and Banque d'Hochelaga ;

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—  
In the  
Superior  
Court.

—  
No. 14.  
Plaintiffs'  
answers to  
Pleas of  
Defendants  
McDougall  
and Beard  
dated 10th  
October  
1884.

—Continued

10 That the Defendants McDougall and Beard have created the very trouble of which they complain and are responsible therefore ;

That Plaintiffs did not sell the said real estate for any sum of money representing the supposed value thereof, but merely for the amount of their claim against the same with which both the Defendants McDougall and Beard were well acquainted and which said claim has never been attacked in any Court nor has any attempt ever been made to set the same aside and the said claim is good, and valid both in Law and Equity ;

That the said Defendant McDougall was a Director of said Pioneer Beet Root Sugar Company and had a full knowledge of the claims and judgments of said Plaintiffs against said Company and acquiesced therein.

20 That each and every the allegations of said plea, except as are hereinbefore admitted to be true are false, untrue and unfounded in fact and are hereby specially denied.

Wherefore Plaintiffs pray that the said plea be dismissed with costs and further pray as in and by their declaration they have already prayed.

Montreal, 10th October, 1884.

A. W. ATWATER,

Atty. for Plaintiff.

30 And the said Plaintiffs for answer to the "défense en faits" in this cause thirdly pleaded by Defendant McDougall, say :—

That each and every the allegations of said Plaintiffs declaration are true and sufficient in Law to establish the conclusions thereof.

Wherefore Plaintiffs pray that said Defense be hence dismissed with costs and further pray as in and by their said declaration they have already prayed.

Montreal, 10th October 1884.

A. W. ATWATER,

Atty. for Plaintiffs.

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Rec'd Copy.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Attorneys for Defendant McDougall.

(ENDORSED).

Plaintiffs answers to Pleas of Defendants McDougall and Beard. Prod. 14 Oct 1884. Paraphed. H. & G. P. C. S.

RECORD.

SCHEDULE No. 24.

*In the  
Superior  
Court.*

Canada,  
Province de Québec,  
District de Montréal.

Cour Supérieure.

No. 15.

No. 2157.

Answers and  
Reply of Deft  
Andrew  
Rough, dated  
4th Dec, 1894.

The Eastern Townships Bank.....Demanderesse.

vs.

10

Andrew Rough et al.....Défendeurs.

Et le dit défendeur Andrew Rough pour réponse en droit à la réponse en premier lieu plaidée par la demanderesse, dit :

Qu'en supposant vrais les faits allégués en la dite réponse, ce que le défendeur Andrew Rough se réserve le droit de nier, la demanderesse ne peut opposer les faits allégués en la dite réponse à la réponse du défendeur Andrew Rough, parce que les faits allégués en la dite réponse ne justifient pas le droit d'action exercé par la demanderesse tel que spécifié dans sa déclaration et sont contradictoires avec iceux. 20

Parce que les prémisses en la dite réponse ne justifient pas les conclusions.

Pourquoi le défendeur Andrew Rough conclut au renvoi de la dite réponse avec dépens distraits aux soussignés.

Montréal, 4 Décembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU.

Avocats du Défendeur Andrew Rough. 30

Et sans préjudice à la réponse en droit ci-dessus plaidée, mais au contraire s'en réservant tout le bénéfice et avantage, le dit défendeur Andrew Rough pour réponse en droit à la réponse en second lieu plaidée par la demanderesse, dit :

Qu'en supposant vrais les faits allégués en la dite réponse, ce que le défendeur Andrew Rough se réserve le droit de nier, la demanderesse ne peut opposer les faits allégués en la dite réponse à la réponse du défendeur Andrew Rough, parce que les faits allégués en la dite réponse ne justifient pas le droit d'action tel que spécifié dans sa déclaration et sont contradictoires avec iceux ; 40

Parce que les prémisses en la dite réponse ne justifient pas les conclusions.

Pourquoi le défendeur Andrew Rough conclut au renvoi de la dite réponse avec dépens distraits aux soussignés.

Montréal, 4 Décembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU

Avocats du défendeur Andrew Rough



Et sans préjudice aux réponses en droit ci-dessus plaidés mais au contraire s'en réservant tout le bénéfice et avantage, le défendeur Andrew Rough pour réplique à la réponse en premier lieu plaidée par la demanderesse, dit :

Que tous et chacun les faits allégués en la dite réponse, sauf ceux que corroborent la défense sont faux et mal fondés ;

Que les faits récités en la dite réponse sont des faits nouveaux et différents de ceux allégués en la déclaration de la demanderesse.

Que les faits portés en la dite réponse sont contradictoires et incompatibles avec la troisième réponse produite par la demanderesse.

10 Pourquoi le défendeur Andrew Rough conclut au renvoi de la dite réponse avec frais et dépens distraits aux soussignés.

Montréal, 4 Décembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du défendeur Andrew Rough.

RECORD

—  
*In the  
Superior  
Court.*

—  
No. 15.

Answers and  
Reply of Deft  
Andrew  
Rough, dated  
4th Dec. 1884.

—Continued

Et sans préjudice aux réponses en droit ci-dessus plaidées mais au contraire s'en réservant tout le bénéfice et avantage, le défendeur Andrew Rough pour réplique à la deuxième réponse produite par la demanderesse, dit :

20 Que tous et chacun les faits allégués en la dite réponse, sauf ceux qui corroborent la défense sont faux et mal fondés ;

Que les faits récités en la dite réponse sont des faits nouveaux et différents de ceux allégués en la déclaration de la demanderesse.

Que les faits portés en la dite réponse sont contradictoires et incompatibles avec la troisième réponse produite par la demanderesse.

Pourquoi le défendeur Andrew Rough conclut au renvoi de la dite réponse avec frais et dépens distraits aux soussignés.

Montréal, 4 Décembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du défendeur Andrew Rough.

30

Et sans préjudice aux réponses en droit et aux répliques ci-dessus plaidées, mais au contraire s'en réservant tout le bénéfice et avantage, le dit défendeur Andrew Rough pour réplique générale aux réponses produites par la demanderesse, dit :

Que tous et chacun les faits allégués dans les dites réponses sont faux et mal fondés.

Pourquoi le défendeur Andrew Rough conclut au renvoi des dites réponses avec frais et dépens distraits aux soussignés.

Montréal, 4 Décembre 1885.

LACOSTE, GLOBENSKY, BISAILLON, & BROSSEAU,

Avocats du défendeur Andrew Rough.

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(Rec'd Copy)

ATWATER & CROSS,

Attys for Plaintiffs.

(ENDORSED).

Réponses et répliques du défendeur Andrew Rough. Prod. 11 Dec. 1884. (Paraphed) H. & G. P. S. C.

RECORD.

SCHEDULE No. 25.

*In the  
Superior  
Court.*

Canada,  
Province de Québec, }  
District de Montréal. }

Cour Supérieure.

No. 16.  
Answers and  
Reply of Deft  
John McDou-  
gall dated  
4th Dec. 1884.

No. 2157.

The Eastern Townships Bank.....Demanderesse.

10

vs.

Andrew Rough et al.....Défendeurs.

Et le dit défendeur John McDougall pour réponse en droit à la réponse en premier lieu plaidée par la demanderesse, dit :

Qu'en supposant vrais les frais allégués en la dite réponse, ce que le défendeur John McDougall se réserve le droit de nier, la demanderesse ne peut opposer les faits allégués en la dite réponse à la réponse du défendeur John McDougall, parce que les faits allégués en la dite réponse ne justifient pas le droit d'action exercé par la demanderesse tel que spécifié dans sa déclaration et sont contradictoires avec iceux. 20

Parce que les prémisses en la dite réponse ne justifient pas les conclusions.

Pourquoi le défendeur John McDougall conclut au renvoi de la dite réponse avec dépens distraits aux soussignés.

Montréal, 4 Décembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU.

Avocats du Défendeur John McDougall. 30

Et sans préjudice à la réponse en droit ci-dessus plaidée, mais au contraire s'en réservant tout le bénéfice et avantage, le dit défendeur John McDougall pour réponse en droit à la réponse en second lieu plaidée par la demanderesse, dit :

Qu'en supposant vrais les frais allégués en la dite réponse, ce que le défendeur John McDougall se réserve le droit de nier, la demanderesse ne peut opposer les faits allégués en la dite réponse à la réponse du défendeur John McDougall, parce que les faits allégués en la dite réponse ne justifient pas le droit d'action tel que spécifié dans sa déclaration et sont contradictoires avec iceux ; 40

Parce que les prémisses en la dite réponse ne justifient pas les conclusions.

Pourquoi le défendeur John McDougall conclut au renvoi de la dite réponse avec dépens distraits aux soussignés.

Montréal, 4 Décembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU

Avocats du défendeur John McDougall.

Et sans préjudice aux réponses en droit ci-dessus plaidés mais au contraire s'en réservant tout le bénéfice et avantage, le défendeur John McDougall pour réplique à la réponse en premier lieu plaidée par la demanderesse, dit :

Que tous et chacun les faits allégués en la dite réponse, sauf ceux que corroborent la défense sont faux et mal fondés ;

Que les faits récités en la dite réponse sont des faits nouveaux et différents de ceux allégués en la déclaration de la demanderesse.

Que les faits portés en la dite réponse sont contradictoires et incompatibles avec la troisième réponse produite par la demanderesse.

10 Pourquoi le défendeur John McDougall conclut au renvoi de la dite réponse avec frais et dépens distracts aux soussignés.

Montréal, 4 Décembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du défendeur John McDougall.

Et sans préjudice aux réponses en droit ci-dessus plaidées mais au contraire s'en réservant tout le bénéfice et avantage, le défendeur John McDougall pour réplique à la deuxième réponse produite par la demanderesse, dit :

20 Que tous et chacun les faits allégués en la dite réponse, sauf ceux qui corroborent la défense sont faux et mal fondés ;

Que les faits récités en la dite réponse sont des faits nouveaux et différents de ceux allégués en la déclaration de la demanderesse.

Que les faits portés en la dite réponse sont contradictoires et incompatibles avec la troisième réponse produite par la demanderesse.

Pourquoi le défendeur John McDougall conclut au renvoi de la dite réponse avec frais et dépens distracts aux soussignés.

Montréal, 4 Décembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du défendeur John McDougall.

30 Et sans préjudice aux réponses en droit et aux répliques ci-dessus plaidées, mais au contraire s'en réservant tout le bénéfice et avantage, le dit défendeur John McDougall pour réplique générale aux réponses produites par la demanderesse, dit :

Que tous et chacun les faits allégués dans les dites réponses sont faux et mal fondés.

Pourquoi le défendeur John McDougall conclut au renvoi des dites réponses avec frais et dépens distracts aux soussignés.

Montréal, 4 Décembre 1885.

40 LACOSTE, GLOBENSKY, BISAILLON, & BROSSEAU,

Avocats du défr John McDougall.

(Rec'd Copy)

ATWATER & CROSS,

Attys for Plaintiffs.

(ENDORSED).

Réponses et répliques du défendeur John McDougall. Prod. 11 Dec. 1884. (Paraphed) H. & G. P. S. C.

RECORD

In the  
Superior  
Court.

No. 16.

Answers and  
Reply of Deft  
John McDou-  
gall, dated  
4th Dec. 1884.

—Continued

RECORD.

SCHEDULE No. 26.

*In the  
Superior  
Court.*

Canada,  
Province de Québec,  
District de Montréal.

Cour Supérieure.

No. 17.

No. 2157.

Answers and  
Reply of Deft  
Samuel W.  
Beard, dated  
4th Dec. 1884.

The Eastern Townships Bank.....Demanderesse.

10

vs.

Andrew Rough et al.....Défendeurs.

Et le dit défendeur Samuel W. Beard pour réponse en droit à la réponse en premier lieu plaidée par la demanderesse, dit :

Qu'en supposant vrais les faits allégués en la dite réponse, ce que le défendeur Samuel W. Beard se réserve le droit de nier, la demanderesse ne peut opposer les faits allégués en la dite réponse à la réponse du défendeur Samuel W. Beard, parce que les faits allégués en la dite réponse ne justifient pas le droit d'action exercé par la demanderesse tel que spécifié dans sa déclaration et sont contradictoires avec iceux. 20

Parce que les prémisses en la dite réponse ne justifient pas les conclusions.

Pourquoi le défendeur Samuel W. Beard conclut au renvoi de la dite réponse avec dépens distraits aux soussignés.

Montréal, 4 Décembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU.

Avocats du Défendeur Samuel W. Beard. 30

Et sans préjudice à la réponse en droit ci-dessus plaidée, mais au contraire s'en réservant tout le bénéfice et avantage, le dit défendeur Samuel W. Beard pour réponse en droit à la réponse en second lieu plaidée par la demanderesse, dit :

Qu'en supposant vrais les faits allégués en la dite réponse, ce que le défendeur Samuel W. Beard se réserve le droit de nier, la demanderesse ne peut opposer les faits allégués en la dite réponse à la réponse du défendeur Samuel W. Beard, parce que les faits allégués en la dite réponse ne justifient pas le droit d'action tel que spécifié dans sa déclaration et sont contradictoires avec iceux ; 40

Parce que les prémisses en la dite réponse ne justifient pas les conclusions.

Pourquoi le défendeur Samuel W. Beard conclut au renvoi de la dite réponse avec dépens distraits aux soussignés.

Montréal, 4 Décembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU

Avocats du défendeur Samuel W. Beard.

Et sans préjudice aux réponses en droit ci-dessus plaidées mais au contraire s'en réservant tout le bénéfice et avantage, le défendeur Samuel W. Beard pour réplique à la réponse en premier lieu plaidée par la demanderesse, dit :

Que tous et chacun les faits allégués en la dite réponse sauf ceux que corroborent la défense sont faux et mal fondés ;

Que les faits récités en la dite réponse sont des faits nouveaux et différents de ceux allégués en la déclaration de la demanderesse.

Que les faits portés en la dite réponse sont contradictoires et incompatibles avec la troisième réponse produite par la demanderesse.

10 Pourquoi le défendeur Samuel W. Beard conclut au renvoi de la dite réponse avec frais et dépens distracts aux soussignés.

Montréal, 4 Décembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du défendeur S. W. Beard.

Et sans préjudice aux réponses en droit ci-dessus plaidées mais au contraire s'en réservant tout le bénéfice et avantage, le défendeur Samuel W. Beard pour réplique à la deuxième réponse produite par la demanderesse, dit :

20 Que tous et chacun les faits allégués en la dite réponse, sauf ceux qui corroborent la défense sont faux et mal fondés ;

Que les faits récités en la dite réponse sont des faits nouveaux et différents de ceux allégués en la déclaration de la demanderesse.

Que les faits portés en la dite réponse sont contradictoires et incompatibles avec la troisième réponse produite par la demanderesse.

Pourquoi le défendeur Samuel W. Beard conclut au renvoi de la dite réponse avec frais et dépens distracts aux soussignés.

Montréal, 4 Décembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du défendeur Samuel W. Beard.

30 Et sans préjudice aux réponses en droit et aux répliques ci-dessus plaidées, mais au contraire s'en réservant tout le bénéfice et avantage, le dit défendeur Samuel W. Beard pour réplique générale aux réponses produites par la demanderesse, dit :

Que tous et chacun les faits allégués dans les dites réponses sont faux et mal fondés.

Pourquoi le défendeur Samuel W. Beard conclut au renvoi des dites réponses avec frais et dépens distracts aux soussignés.

Montréal, 4 Décembre 1885.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

40 Avocats du Défendeur Samuel W Beard.

(Rec'd Copy)

ATWATER & CROSS,

Attys. for Plaintiffs.

(ENDORSED).

Réponses et répliques du défendeur Samuel W. Beard. Prod. 11 Dec. 1884. (Paraphed) H. & G. P. S. C.

RECORD.

In the  
Superior  
Court

No. 17.

Answers and  
Reply of Deft.  
S. W. Beard,  
dated  
4th Dec 1884.  
—Continued

RECORD

SCHEDULE No. 28.

*In the  
Superior  
Court.*

Province de Québec, }  
District de Montréal. }

Cour Supérieure.

No. 2157.

No. 18.  
Notice and  
Motion of  
Defendant  
John  
McDougall  
dated  
5th Nov.  
1884.

The Eastern Townships Bank.....Demanderesse.

vs.

10

Andrew Rough et al.....Défendeurs.

MOTION DU DÉFENDEUR JOHN MCDUGALL.

Que la première et la seconde réponse produites aux défenses du défendeur John McDougall en cette cause, soient rejetées du dossier comme irrégulières pour entr'autres raisons, les suivantes :

1o. Parce que les dites réponses contiennent des allégués nouveaux et différents à ceux de la déclaration de la demanderesse.

20

2o. Parce que par ces allégués la demanderesse demande implicitement par ses réponses spéciales, la nullité d'actes authentiques auxquels elle a été partie et qui font la base de son action.

3o. Parce que les allégués contenus dans les dites réponses ne peuvent pas faire partie de la réponse au plaidoyer produit par le défendeur à l'action de la demanderesse.

4o. Parce que les dites réponses sont contradictoires et incompatibles avec la troisième réponse de la demanderesse.

Pourquoi le défendeur John McDougall conclut au renvoi des dites réponses avec frais et dépens dont distraction au soussignés.

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Montréal, 5 novembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du Défendeur John McDougall.

MR. A. W. ATWATER,

Avocat de la demanderesse.

MONSIEUR.

Prenez communication de la motion ci-dessus et soyez dûment notifié que vendredi le septième jour de novembre courant, nous présenterons la susdite motion à la Cour Supérieure siégeant en troisième division à onze heures du matin ou aussitôt que Conseil pourra être entendu pour y être adjugé à toute fins que de droit.

40

Montréal, 5 Nov. 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du défendeur John McDougall.

(On the Back).

RECORD

*In the  
Superior  
Court.*

No. 18.  
Notice and  
Motion of  
Defendant  
John  
McDougall  
dated  
5th Nov.  
1884.

—Continued

Je soussigné Joseph Octave Pausé, résidant au village St-Jean-Baptiste l'un des Huissiers Jurés de la Cour Supérieure du Bas-Canada, exerçant dans et pour le District de Montréal certifie sous mon serment d'office que le cinquième jour de novembre courant mil huit cent quatre-vingt-quatre entre trois et quatre heures de l'après-midi. J'ai signifié la présente motion et l'avis de motion en cette cause à A. W. Atwater, Écuyer, Avocat de la demanderesse en cette cause en lui laissant une vraie copie d'iceux, en parlant à lui-même, à son bureau ou place d'affaire en la cité de Montréal ;

10

Je certifie de plus que la distance depuis le Palais de Justice en la cité de Montréal, au lieu de la signification susdite est de moins d'un mille. Montréal 5 Novembre 1884.

J. O. PAUZÉ.

H. C. S.

(ENDORSED)

Avis et motion du défendeur John McDougall. Prod. 7 Nov. 1884.  
Motion renvoyéé, Paraphed L. O. P.

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SCHEDULE No. 29.

Province de Québec, }  
District de Montréal. }

Cour Supérieure.

No. 19.  
Notice and  
Motion of  
Defendant  
Andrew  
Rough dated  
5th Nov. 1884

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No. 2157.

The Eastern Townships Bank.....Demanderesse.

vs.

Andrew Rough et al.....Défendeurs.

MOTION DU DÉFENDEUR ANDREW ROUGH.

40

Que la première et la seconde réponse produites aux défenses du défendeur Andrew Rough en cette cause, soient rejetés du dossier comme irrégulières pour entr'autres raisons, les suivantes :

1ère. Parce que les dites réponses contiennent des allégués nouveaux et différents à ceux de la déclaration de la demanderesse.

2ème. Parce que par ces allégués la demanderesse demande implicitement, par ses réponses spéciales, la nullité d'actes authentiques auxquels elle a été partie et qui font la base de son action.

RECORD

*In the  
Superior  
Court.*No. 19.  
Notice and  
Motion of  
Defendant  
Andrew  
Rough dated  
5th Nov. 1884  
—Continued

3<sup>ème</sup>. Parce que les allégués contenus dans les dites réponses ne peuvent pas faire partie de la réponse au plaidoyer produit par le défendeur à l'action de la demanderesse.

4<sup>ème</sup>. Parce que les dites réponses sont contradictoires et incompatibles avec la troisième réponse de la demanderesse.

Pourquoi le défendeur Andrew Rough conclut au renvoi des dites réponses avec frais et dépens dont distraction aux soussignés.

Montréal 5 novembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

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Avocats du défendeur Andrew Rough.

MR. A. W. ATWATER,

Avocat de la demanderesse.

MONSIEUR.

Prenez communication de la motion ci-dessus et soyez dûment notifié que vendredi le septième jour de novembre courant nous présenterons la susdite motion à la Cour Supérieure siégeant en troisième division à onze heures du matin ou aussitôt que Conseil pourra être entendu pour y être adjugée à 20 toute fins que de droit.

Montréal, 5 Nov. 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du défendeur Andrew Rough.

(On the Back).

Je soussigné Joseph Octave Pausé, résidant au village St-Jean-Baptiste l'un des Huissiers Jurés de la Cour Supérieure du Bas-Canada, exerçant dans et 30 pour le District de Montréal certifie sous mon serment d'office que le cinquième jour de novembre courant mil huit cent quatre-vingt-quatre entre trois et quatre heures de l'après-midi. J'ai signifié la présente motion et l'avis de motion en cette cause à A. W. Atwater, Ecuier, Avocat de la demanderesse en cette cause en lui laissant une vraie copie d'iceux, en parlant à lui-même, à son bureau ou place d'affaire en la cité de Montréal ;

Je certifie de plus que la distance depuis le Palais de Justice en la cité de Montréal, au lieu de la signification susdite est de moins d'un mille.  
Montréal 5 Novembre 1884.

J. O. PAUZÉ.

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H. C. S.

(ENDORSED)

Avis et motion du défendeur Andrew Rough. Prod 7 Nov. 1884.  
Motion renvoyé, Paraphed L. O. P.



SCHEDULE No. 30.

Province de Québec, }  
 District de Montréal. }

Cour Supérieure.

RECORD

*In the  
 Superior  
 Court.*

No. 2157.

No. 20  
 Notice and  
 Motion of  
 Defendant  
 S. W. Beard,  
 dated  
 5th Nov.  
 1884.

The Eastern Townships Bank.....Demanderesse.

10

vs.

Andrew Rough et al.....Défendeurs.

MOTION DU DÉFENDEUR SAMUEL W. BEARD.

Que la première et la seconde réponse produites aux défenses du défendeur Samuel W. Beard en cette cause, soient rejetés du dossier comme irrégulières pour entr'autres raisons, les suivantes :

1ère. Parce que les dites réponses contiennent des allégués nouveaux et différents à ceux de la déclaration de la demanderesse.

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2ème. Parce que par ces allégués la demanderesse demande implicitement, par ses réponses spéciales, la nullité d'actes authentiques auxquels elle a été partie et qui font la base de son action.

3ème. Parce que les allégués contenus dans les dites réponses ne peuvent pas faire partie de la réponse au plaidoyer produit par le défendeur à l'action de la demanderesse.

4ème. Parce que les dites réponses sont contradictoires et incompatibles avec la troisième réponse de la demanderesse.

Pourquoi le défendeur Samuel W. Beard conclut au renvoi des dites réponses avec frais et depens dont distraction aux soussignés.

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Montréal 5 novembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du défendeur Samuel W. Beard.

MR. A. W. ATWATER,

Avocat de la demanderesse.

MONSIEUR.

Prenez communication de la motion ci-dessus et soyez dûment notifié  
 40 que vendredi le septième jour de novembre courant nous présenterons la susdite motion à la Cour Supérieure siégeant en troisième division à onze heures du matin ou aussitôt que Conseil pourra être entendu pour y être adjugée à toute fins que de droit.

Montréal, 5 Nov. 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du défendeur Samuel W. Beard.

RECORD

(On the Back).

*In the Superior Court.*

No. 20.  
Notice and Motion of Defendant Samuel W. Beard; dated 5th Nov. 1884  
—Continued

Je soussigné Joseph Octave Pausé, résidant au village St-Jean-Baptiste l'un des Huissiers Jurés de la Cour Supérieure du Bas-Canada, exerçant dans et pour le District de Montréal certifie sous mon serment d'office que le cinquième jour de novembre courant mil huit cent quatre-vingt-quatre entre trois et quatre heures de l'après-midi. J'ai signifié la présente motion et l'avis de motion en cette cause à A. W. Atwater, Écuyer, Avocat de la demanderesse en cette cause en lui laissant une vraie copie d'iceux, en parlant à lui-même, à son bureau ou place d'affaire en la cité de Montréal;

Je certifie de plus que la distance depuis le Palais de Justice en la cité de Montréal, au lieu de la signification susdite est de moins d'un mille.  
Montréal 5 Novembre 1884.

10

J. O. PAUZÉ.

H. C. S.

(ENDORSED)

Avis et motion du défendeur Samuel W. Beard. Prod 7 Nov. 1884.  
Motion renvoyée, Paraphed L. O. P.

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SCHEDULE No. 31.

No. 21  
Motion of Deft McDougall, to reject articulation of faits, dated 5th Nov. 1884.

Canada,  
Province de Quebec,  
District de Montreal.

Cour Supérieure.

No. 2157.

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The Eastern Townships Bank.....Demanderesse.

vs.

Andrew Rough et al., .....Défendeur

Motion du défendeur John McDougall.

Que les articulations de faits et l'inscription à l'enquête [entrée au Plumitif de la Cour Supérieure soit rejetées du dossier en cette cause comme ayant été faites et produites irrégulièrement et l'encontre des règles de Pratique de cette cour.

Montreal, 5 Novembre 1884.

(Signé) LACOSTE, GLOBENSKY, BISAILLON, & BROSSEAU,  
Avocats du défendeur John McDougall.

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A Monsieur A. W. Atwater,  
 Avocat de la demanderesse.

Monsieur,

Prenez communication de la motion ci-dessus et soyez duement notifié que vendredi le sept novembre courant nous la présenterons à la Cour Supérieure siégeant en troisième division, à onze heures du matin ou aussitôt que conseil pourra être entendu pour y être adjugé à toutes fins que de droit.

Montréal, 5 Novembre 1884

(Signé) LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,  
 Avocats du défendeur John McDougall.

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(Vraie Copie)

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,  
 Avocat du défendeur McDougall.

RECORD

*In the  
 Superior  
 Court.*

No. 21  
 Motion of  
 Deft McDou-  
 gall, to reject  
 articulation  
 of faits, dated  
 5th Nov.  
 1884.  
 —Continued

(On the Back)

Je soussigné Joseph Octave Pauzé, résidant en la ville de St-Jean-Bap-  
 tiste l'un des huissiers jurés de la Cour Supérieure du Bas Canada, exerçant dans  
 et pour le district de Montreal, certifie sous mon serment d'office que le cinquième  
 jour de novembre courant, mil huit cent quatre-vingt-quatre, entre trois et quatre  
 heures de l'après-midi, j'ai signifié la présente motion et l'avis de motion en cette  
 cause à A. W. Atwater, Ecuier, avocat de la demanderesse en cette cause en  
 lui laissant une vraie copie d'iceux à son bureau ou place d'affaire en la cité de  
 Montréal.

20

Je certifie de plus, que la distance depuis le Palais de Justice en la cité  
 de Montréal, au lieu de la significations sus-dite est de moins d'un mille.  
 Montréal, 5th November 1884.

J. O. PAUZE,  
 H. C. S.

(ENDORSED)

30

Motion et avis. Prod. 7 Novembre, 1884. Motion maintenue avec dé-  
 pens. Paraphed L. O. L.

SCHEDULE No. 32.

Canada,  
 Province de Quebec,  
 District de Montreal.

Cour Supérieure.

40

No. 2157.

The Eastern Townships Bank.....Demanderesse.

vs.

Andrew Rough et al., .....Défendeur

No. 22.  
 Motion of  
 Deft Andrew  
 Rough, to re-  
 ject articula-  
 tion of faits  
 dated 5th  
 Nov. 1884.

RECORD

Motion du défendeur Andrew Rough.

*In the  
Superior  
Court.*

No. 22.

Motion of  
Deft Andrew  
Rough, to re-  
ject articula-  
tion of faits  
dated 5th  
Nov. 1884.

—Continued

Que les articulations de faits et l'inscription à l'enquête [entrée au  
Plumitif de la Cour Supérieure soit rejetées du dossier en cette cause  
comme ayant été faites et produites irrégulièrement et l'encontre des règles de  
Pratique de cette cour.

Montreal, 5 Novembre 1884.

(Signé) LACOSTE, GLOBENSKY, BISAILLON, &amp; BROSSEAU,

Avocats du défendeur Andrew Rough. 10

A Monsieur A. W. Atwater,

Avocat de la demanderesse.

Monsieur,

Prenez communication de la motion ci-dessus et soyez duement notifié  
que vendredi le sept novembre courant nous la présenterons à la Cour Supérieure  
siégeant en troisième division, à onze heures du matin ou aussitôt que conseil  
pourra être entendu pour y être adjugé à toutes fins que de droit.

Montréal, 5 Novembre 1884

(Signé) LACOSTE, GLOBENSKY, BISAILLON &amp; BROSSEAU, 20

Avocats du défendeur Andrew Rough.

(Vraie Copie)

LACOSTE, GLOBENSKY, BISAILLON &amp; BROSSEAU,

Avocat du défendeur Rough.

(On the Back)

Je soussigné Joseph Octave Pauzé, résidant en la ville de St-Jean-Bap-  
tiste l'un des huissiers jurés de la Cour Supérieure du Bas Canada, exerçant dans  
et pour le district de Montreal, certifie sous mon serment d'office que le cinquième 30  
jour de novembre courant; mil huit cent quatre-vingt-quatre, entre trois et quatre  
heures de l'après-midi, j'ai signifié la présente motion et l'avis de motion en cette  
cause à A. W. Atwater, Ecuier, avocat de la demanderesse en cette cause en  
lui laissant une vraie copie d'iceux à son bureau ou place d'affaire en la cité de  
Montréal.

Je certifie de plus, que la distance depuis le Palais de Justice en la cité  
de Montréal, au lieu de la significations sus-dite est de moins d'un mille.

Montréal, 5th November 1884.

J. O. PAUZE,

H. C. S.

40

(ENDORSED)

Motion du défendeur Rough et avis. Prod. 7 novembre 1884.

(Paraphed) G. H. K. Dep. P. S. C.

## SCHEDULE No. 33.

Canada,  
Province de Quebec,  
District de Montreal. }

No. 2157.

Cour Supérieure.

RECORD

*In the  
Superior  
Court.*

The Eastern Townships Bank.....Demanderesse.

vs.

Andrew Rough et al., .....Défendeur

No. 23.  
Motion of  
Defendant S.  
W. Beard, to  
reject articu-  
lation of faits  
dated 5th  
Nov. 1894.

10

Motion du défendeur Samuel W. Beard.

Que les articulations de faits et l'inscription à l'enquête entrée au  
Plumitif de la Cour Supérieure soit rejetées du dossier en cette cause  
comme ayant été faites et produites irrégulièrement et l'encontre des règles de  
Pratique de cette cour.

Montreal, 5 Novembre 1884.

(Signé) LACOSTE, GLOBENSKY, BISAILLON, & BROSSEAU,  
Avocats du défendeur Samuel W. Beard.

20

A Monsieur A. W. Atwater,

Avocat de la demanderesse.

Monsieur,

Prenez communication de la motion ci-dessus et soyez duement notifié  
que vendredi le sept novembre courant nous la présenterons à la Cour Supérieure  
siégeant en troisième division, à onze heures du matin ou aussitôt que conseil  
pourra être entendu pour y être adjugé à toutes fins que de droit.

Montréal, 5 Novembre 1884

(Signé) LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,  
Avocats du défendeur S. W. Beard.

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(Vraie Copie)

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,  
Avocat du défendeur S. W. Beard.

(On the Back)

Je soussigné Joseph Octave Pauzé, résidant en la ville de St-Jean-Bap-  
tiste l'un des huissiers jurés de la Cour Supérieure du Bas Canada, exerçant dans  
et pour le district de Montreal, certifie sous mon serment d'office que le cinquième  
jour de novembre courant, mil huit cent quatre-vingt-quatre, entre trois et quatre  
heures de l'après-midi, j'ai signifié la présente motion et l'avis de motion en cette  
cause à A. W. Atwater, Ecuier, avocat de la demanderesse en cette cause en  
lui laissant une vraie copie d'iceux à son bureau ou place d'affaire en la cité de

40 Montréal.

Je certifie de plus, que la distance depuis le Palais de Justice en la cité  
de Montréal, au lieu de la significations sus-dite est de moins d'un mille.

Montréal, 5th November 1884.

J. O. PAUZE, H. C. S.

(ENDORSED)

Motion du défendeur Beard et avis. Prod. 7 novembre 1884. Motion  
maintenu avec dépens. (Paraphed) L. O, L.

RECORD.

SCHEDULE No. 35.

*In the  
Superior  
Court.*

Canada,  
Province of Quebec, }  
District of Montreal. }

Superior Court.

No. 24.

Plffs' articulation of facts on issue with Deft Rough dated 13th Oct. 1884.

No. 2157.

The Eastern Townships Bank.....Plaintiffs. 10

vs.

Andrew Rough et al.....Defendants.

PLAINTIFF ARTICULATION OF FACTS ON ISSUE WITH ANDREW ROUGH.

ARTICULATION No. 1. Is it not true that on the 19th day of January 1883 the said Bank Plaintiff sold to Andrew Rough one of said Defendants, the lots of land mentioned in Plaintiff's declaration ? 20

ARTICULATION No. 2. Is it not true that said sale was so made in consideration of the sum of \$49,439.70 of which the said bank acknowledged to have received the sum of \$9,439.70

ARTICULATION No. 3 Is it not true that as regards the balance of \$40,000 the the said Andrew Rough promised and obliged himself to pay \$10,000 on or before the 16th day of July 1883 and the balance of \$30,000 in six annual instalments of \$5,000 each commencing on the 16th January 1884 ? 30

ARTICULATION No. 4. Is it not true that in and by said deed of sale it was further specified and agreed that in the event of any payment either in capital and interest not being met fifteen days after maturity, the whole of the said balance of purchase money or any portion thereof remaining due, should become recoverable without further delay ?

ARTICULATION No. 5. Is it not true that by a certain deed of security made and executed before L. O. Hetu N. P. the Defendant McDougall and Beard became sureties for the due and faithful performance by the said Rough of all and every the obligations contracted by him in favor of said bank under said deed of sale ? 40

ARTICULATION No. 6. Is it not true that said Defendant Rough failed to pay the instalments of capital and interest due on the 16th July 1883 ?

ARTICULATION No. 7 Is it not true that said Defendant Rough failed to pay the instalment of interest due on the 16th January 1884 ?

- ARTICULATION No. 8. Is it not true that said Plaintiff hath only received from said Defendant on account at different times, sums amounting in all to \$10,792.48. ?
- ARTICULATION No. 9 Is it not true that said Defendant and each of them have been duly notified of said default ?
- ARTICULATION No. 10. Is it not true that said Defendants are now indebted to the said Plaintiff in a balance of principal and interest amounting to the sum of \$31,853.56 with interest ?
- ARTICULATION No. 11. Is it not true that the said Andrew Rough is a mere *prête-nom* for the other Defendants in this cause McDougall and Beard ?
- ARTICULATION No. 11A. Is it not true that prior to the sale of said property and rights in said deed mentioned at sheriff's sale, Defendant Beard acquired the judgment of Fairbanks & Co under which said sale took place ?
- ARTICULATION No. 12 Is it not true that it was the said Beard who brought the said property to sale, and is responsible for all the proceeding upon said sheriff's sale ?
- ARTICULATION No. 13. Is it not true that said Plaintiffs had nothing to do with said sale and always refused to take any responsibility concerning the same ?
- ARTICULATION No. 14. Is it not true that the said Defendant McDougall and Beard not having ready money at hand, requested Plaintiffs to bid the said property in for them and give them time wherein to pay Plaintiffs the amount of their claim against said property ?
- ARTICULATION No. 15. Is it not true that said Plaintiff agreed to do so and to transfer the said property to Defendants McDougall and Beard, upon receiving the amount of their claim against said property ?
- ARTICULATION No. 16. Is it not true that the Defendants McDougall and Beard at the time they purchased Plaintiffs rights in said real estate knew all things concerning said sheriff's sale and the claim of said Plaintiffs upon said real estate ?
- ARTICULATION No. 17. Is it not true that said McDougall and Beard purchased said real estate at their own risk and peril without any warranty whatever from the Plaintiffs ?
- ARTICULATION No. 18 Is it not true that the proceedings alleged to have been taken by the Banque d'Hochelaga were instituted with the concurrence of said McDougall and Beard for the purpose of compelling Plaintiffs to discount their claim ?

RECORD

—  
*In the  
 Superior  
 Court.*

No. 24.

Plffs' articulation of facts on issue with Deft Andrew Rough, dated 13th Oct. 1884.

—Continued.

- RECORD. ARTICULATION No. 19. Is it not true that the said McDougall and Beard have created the very trouble of which the complain and are responsible therefor ?
- In the Superior Court.*
- No. 24. ARTICULATION No. 20. Is it not true that Plaintiff did not sell the said real estate for any sum of money representing the supposed value thereof but merely for the amount of their claim against the same.
- Plffs' articulation of facts on issue with Deft Rough dated 13th Oct. 1884. ARTICULATION No. 21. Is it not true that said Plaintiffs' claim has never been attacked in any Court and is good and valid both in law and equity ? 10
- Continued ARTICULATION No. 22. Is it not true that said Defendant McDougall was a Director of said Pioneer Beet Root Sugar Company, and had a full knowledge of and acquiesced in the claims and judgments of Plaintiff against said company ?
- ARTICULATION No. 23. Is it not true that the judgment of the said bank Plaintiffs was regularly and legally and openly obtained and registered against said Company ?
- ARTICULATION No. 24. Is it not true that the said properties were charged and affected for the payment thereof at the time of said sale to the knowledge of said Defendants and each of them ? 20
- ARTICULATION No. 25. Is it not true that each and every the allegations of Defendant Rough's plea are false and untrue ?
- ARTICULATION No. 26. Is it not true that each and every the allegations, matters and things contained in Plaintiff's declaration and answer to said plea are true and well founded ?

Montreal, 13th Oct. 1884.

A. W. ATWATER,  
Atty for Plaintiffs.

(Rec'd Copy)

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,  
Attorneys for Defendant Rough.

(ENDORSED).

Plaintiffs' Articulation of fact on issue of Defendant Rough. Prod. 28th 40  
Nov. 1884. (Paraphed) G. H. K. Dept. P. S. C.

By consent sans préjudice aux réponses aux défenses à être produites par défenderesse. L. G. B.



SCHEDULE No. 35.

Canada,  
Province of Quebec,  
District of Montreal.

Superior Court.

No. 2157.

RECORD

*In the  
Superior  
Court.*

No. 25.  
Plffs' articulation of facts on issue with Deft McDougall dated 13th Oct. 1884.

10 The Eastern Townships Bank.....Plaintiffs.  
vs.  
Andrew Rough et al.....Defendants.

PLAINTIFF ARTICULATION OF FACTS ON ISSUE WITH JOHN McDUGALL

20 ARTICULATION No. 1. Is it not true that on the 19th day of January 1883 the said Bank Plaintiff sold to Andrew Rough one of said Defendants, the lots of land mentioned in Plaintiff's declaration ?

ARTICULATION No. 2. Is it not true that said sale was so made in consideration of the sum of \$49,439.70 of which the said bank acknowledged to have received the sum of \$9,439.70

30 ARTICULATION No. 3 Is it not true that as regards the balance of \$40,000 the the said Andrew Rough promised and obliged himself to pay \$10,000 on or before the 16th day of July 1883 and the balance of \$30,000 in six annual instalments of \$5,000 each commencing on the 16th January 1884 ?

ARTICULATION No. 4. Is it not true that in and by said deed of sale it was further specified and agreed that in the event of any payment either in capital and interest not being met fifteen days after maturity, the whole of the said balance of purchase money or any portion thereof remaining due, should become recoverable without further delay ?

40 ARTICULATION No. 5. Is it not true that by a certain deed of security made and executed before L. O. Hetu N. P. the Defendant McDougall and Beard became sureties for the due and faithful performance by the said Rough of all and every the obligations contracted by him in favor of said bank under said deed of sale ?

ARTICULATION No. 6. Is it not true that said Defendant Rough failed to pay the instalments of capital and interest due on the 16th July 1883 ?

ARTICULATION No. 7 Is it not true that said Defendant Rough failed to pay the instalment of interest due on the 16th January 1884 ?

- RECORD. ARTICULATION No. 8. Is it not true that said Plaintiff hath only received from said Defendant on account at different times, sums amounting in all to \$10,792.48. ?
- In the Superior Court.*
- No. 24.
- Plffs' articulation of facts on issue with deft. McDougall dated 13 Oct. 1884.  
—Continued
- ARTICULATION No. 9 Is it not true that said Defendant and each of them have been duly notified of said default ?
- ARTICULATION No. 10. Is it not true that said Defendants are now indebted to the said Plaintiff in a balance of principal and interest amounting to the sum of \$31,853.56 with interest ? 10
- ARTICULATION No. 11. Is it not true that the said Andrew Rough is a mere *prête-nom* for the other Defendants in this cause McDougall and Beard ?
- ARTICULATION No. 12. Is it not true that prior to the sale of said property and rights in said deed mentioned at sheriff's sale, Defendant Beard acquired the judgment of Fairbanks & Co under which said sale took place ?
- ARTICULATION No. 13 Is it not true that it was the said Beard who brought the said property to sale, and is responsible for all the proceeding upon said sheriff's sale ? 20
- ARTICULATION No. 14. Is it not true that said Plaintiffs had nothing to do with said sale and always refused to take any responsibility concerning the same ?
- ARTICULATION No. 15. Is it not true that the said Defendant McDougall and Beard not having ready money at hand, requested Plaintiffs to bid the said property in for them and give them time wherein to pay Plaintiffs the amount of their claim against said property ? 30
- ARTICULATION No. 16. Is it not true that said Plaintiff agreed to do so and to transfer the said property to Defendants McDougall and Beard, upon receiving the amount of their claim against said property ?
- ARTICULATION No. 17. Is it not true that the Defendants McDougall and Beard at the time they purchased Plaintiffs rights in said real estate knew all things concerning said sheriff's sale and the claim of said Plaintiffs upon said real estate ?
- ARTICULATION No. 18 Is it not true that said McDougall and Beard purchased said real estate at their own risk and peril without any warranty whatever from the Plaintiffs ? 40
- ARTICULATION No. 19 Is it not true that the proceedings alleged to have been taken by the Banque d'Hochelaga were instituted with the concurrence of said McDougall and Beard for the purpose of compelling Plaintiffs to discount their claim ?

ARTICULATION No. 20. Is it not true that the said McDougall and Beard have created the very trouble of which the complain and are responsible therefor ?

RECORD

*In the  
Superior  
Court.*

ARTICULATION No. 21. Is it not true that Plaintiff did not sell the said real estate for any sum of money representing the supposed value thereof but merely for the amount of their claim against the same.

No. 25.  
Pliffs' articulation of facts on issue with Deft McDougall dated 13th Oct. 1884.

—Continued

10 ARTICULATION No. 22. Is it not true that said Plaintiffs' claim has never been attacked in any Court and is good and valid both in law and equity ?

ARTICULATION No. 23. Is it not true that said Defendant McDougall was a Director of said Pioneer Beet Root Sugar Company, and had a full knowledge of and acquiesced in the claims and judgments of Plaintiff against said company ?

ARTICULATION No. 24. Is it not true that the judgment of the said bank Plaintiffs was regularly and legally and openly obtained and registered against said Company ?

20 ARTICULATION No. 25. Is it not true that the said properties were charged and affected for the payment thereof at the time of said sale to the knowledge of said Defendants and each of them ?

ARTICULATION No. 26. Is it not true that each and every the allegations of Defendant McDougall's plea are false and untrue ?

ARTICULATION No. 27. Is it not true that each and every the allegations, matters and things contained in Plaintiff's declaration and answer to said plea are true and well founded ?

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Montreal, 13th Oct. 1884.

A. W. ATWATER,  
Atty for Plaintiffs.

(Rec'd Copy)

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,  
Attorneys for Defendant McDougall.

(ENDORSED).

40 Plaintiffs' Articulation of fact on issue of Defendant McDougall Prod. 28th Nov. 1884. (Paraphed) G. H. K. Dept. P. S. C.

By consent sans préjudice aux réponses aux défenses à être produites par défenderesse. L. G. B.

RECORD.

SCHEDULE No. 37.

*In the  
Superior  
Court.*

Canada,  
Province of Quebec, }  
District of Montreal. }

Superior Court.

No. 26.

Plffs' articulation of facts on issue with deft. S. W. Beard, dated 13 Oct. 1884.

No. 2157.

The Eastern Townships Bank.....Plaintiffs. 10

vs.

Andrew Rough et al.....Defendants.

PLAINTIFF ARTICULATION OF FACTS ON ISSUE WITH S. W. BEARD.

ARTICULATION No. 1. Is it not true that on the 19th day of January 1883 the said Bank Plaintiff sold to Andrew Rough one of said Defendants, the lots of land mentioned in Plaintiff's declaration ? 20

ARTICULATION No. 2. Is it not true that said sale was so made in consideration of the sum of \$49,439.70 of which the said bank acknowledged to have received the sum of \$9,439.70

ARTICULATION No. 3 Is it not true that as regards the balance of \$40,000 the the said Andrew Rough promised and obliged himself to pay \$10,000 on or before the 16th day of July 1883 and the balance of \$30,000 in six annual instalments of \$5,000 each commencing on the 16th January 1884 ? 30

ARTICULATION No. 4. Is it not true that in and by said deed of sale it was further specified and agreed that in the event of any payment either in capital and interest not being met fifteen days after maturity, the whole of the said balance of purchase money or any portion thereof remaining due, should become recoverable without further delay ?

ARTICULATION No. 5. Is it not true that by a certain deed of security made and executed before L. O. Hetu N. P. the Defendant McDougall and Beard became sureties for the due and faithful performance by the said Rough of all and every the obligations contracted by him in favor of said bank under said deed of sale ? 40

ARTICULATION No. 6. Is it not true that said Defendant Rough failed to pay the instalments of capital and interest due on the 16th July 1883 ?

ARTICULATION No. 7 Is it not true that said Defendant Rough failed to pay the instalment of interest due on the 16th January 1884 ?

- ARTICULATION No. 8. Is it not true that said Plaintiff hath only received from said Defendant on account at different times, sums amounting in all to \$10.792.48. ?
- ARTICULATION No. 9 Is it not true that said Defendant and each of them have been duly notified of said default ?
- ARTICULATION No. 10. Is it not true that said Defendants are now indebted to the said Plaintiff in a balance of principal and interest amounting to the sum of \$31,853.56 with interest ?
- ARTICULATION No. 11. Is it not true that the said Andrew Rough is a mere *prête-nom* for the other Defendants in this cause McDougall and Beard ?
- ARTICULATION No. 12. Is it not true that prior to the sale of said property and rights in said deed mentioned at sheriff's sale, Defendant Beard acquired the judgment of Fairbanks & Co under which said sale took place ?
- ARTICULATION No. 13 Is it not true that it was the said Beard who brought the said property to sale, and is responsible for all the proceeding upon said sheriff's sale ?
- ARTICULATION No. 14. Is it not true that said Plaintiffs had nothing to do with said sale and always refused to take any responsibility concerning the same ?
- ARTICULATION No. 15. Is it not true that the said Defendant McDougall and Beard not having ready money at hand, requested Plaintiffs to bid the said property in for them and give them time wherein to pay Plaintiffs the amount of their claim against said property ?
- ARTICULATION No. 16. Is it not true that said Plaintiff agreed to do so and to transfer the said property to Defendants McDougall and Beard, upon receiving the amount of their claim against said property ?
- ARTICULATION No. 17. Is it not true that the Defendants McDougall and Beard at the time they purchased Plaintiffs rights in said real estate knew all things concerning said sheriff's sale and the claim of said Plaintiffs upon said real estate ?
- ARTICULATION No. 18. Is it not true that said McDougall and Beard purchased said real estate at their own risk and peril without any warranty whatever from the Plaintiffs ?
- ARTICULATION No. 19 Is it not true that the proceedings alleged to have been taken by the Banque d'Hochelega were instituted with the concurrence of said McDougall and Beard for the purpose of compelling Plaintiffs to discount their claim ?

RECORD

—  
*In the  
 Superior  
 Court.*

No. 26.

Plffs' articulation of facts on issue with Deft S. W. Beard, dated 13th Oct. 1884.

—Continued

- RECORD. ARTICULATION No. 20. Is it not true that the said McDougall and Beard have created the very trouble of which the complain and are responsible therefor ?
- In the Superior Court.*
- No. 26.  
Plffs' articulation of facts on issue with def. S. W. Beard, dated 13 Oct. 1884.  
—Continued
- ARTICULATION No. 21. Is it not true that Plaintiff did not sell the said real estate for any sum of money representing the supposed value thereof but merely for the amount of their claim against the same.
- ARTICULATION No. 22. Is it not true that said Plaintiffs' claim has never been attacked in any Court and is good and valid both in law and equity ? 10
- ARTICULATION No. 23. Is it not true that said Defendant McDougall was a Director of said Pioneer Beet Root Sugar Company, and had a full knowledge of and acquiesced in the claims and judgments of Plaintiff against said company ?
- ARTICULATION No. 24. Is it not true that the judgment of the said bank Plaintiffs was regularly and legally and openly obtained and registered against said Company ?
- ARTICULATION No. 25. Is it not true that the said properties were charged 20 and affected for the payment thereof at the time of said sale to the knowledge of said Defendants and each of them ?
- ARTICULATION No. 26. Is it not true that each and every the allegations of Defendant Beard's plea are false and untrue ?
- ARTICULATION No. 27. Is it not true that each and every the allegations, matters and things contained in Plaintiff's declaration and answer to said plea are true and well founded ?

30

Montreal, 13th Oct. 1884.

A. W. ATWATER,  
Atty for Plaintiffs.

(Rec'd Copy)

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,  
Attorneys for Defendant Beard.

(ENDORSED).

Plaintiffs' Articulations of facts on issue of Defendant Beard. Prod. 28th 40  
Nov. 1884. (Paraphed) G. H. K. Dept. P. S. C.By consent sans préjudice aux réponses aux défenses à être produites par  
défenderesse. L. G. B.

Province of Quebec, }  
District of Montreal. }

Superior Court.

*In the  
Superior  
Court.*

No. 2157.

The Eastern Townships Bank .....Plaintiff.

No 27.  
Order of *faits  
et articles* and  
and interro-  
gatories to be  
submitted to  
Deft. dated  
22nd May  
1888.

vs.

10

Andrew Rough et al., .....Defendants.

INTERROGATORIES TO BE SUBMITTED TO DEFENDANT.

10. Is it not true that you are one of the Defendants above mentioned ?

20. Is it not true that the Defendant Rough was during the year 1882 and has since continuously been the book-keeper of the Defendant McDougall ?

20 30. Is it not true that the Defendant Rough is and was only the *prête-nom* of the other Defendants in this case ?

40. Is it not a fact that the sale of the properties in question in this case was really made to the Defendants Beard and McDougall, and the Defendant Rough was only their *prête nom* ?

50. Is it not a fact that prior to the sale of the property and rights in question in this case at sheriff's sale the Defendant Beard acting for himself and for the Defendant McDougall had purchased and acquired the judgment of Fairbanks & Co. under which the said sale took place ?

30 60. Is it not a fact that the Defendants Beard and McDougall were the parties who brought the said property to sale and are responsible for all the proceedings on the sheriff's sale ?

70. Is it not a fact that the said bank Plaintiffs always refused to take any responsibility in connection with said sale ?

80. Is it not a fact that the said Defendants McDougall and Beard had not the funds wherewith to purchase the said property at the said sheriff's sale and that they came to the Plaintiffs at the City of Sherbrooke and represented that they were anxious to become the purchasers of the said property ?

40 90. Is it not a fact that they induced the said Plaintiffs to purchase the said property at the said sheriff's sale and agreed to pay the amount of the said Plaintiff's claim against the said Pioneer Beet Root Sugar Company and to take over the said property and all the rights of the said Plaintiffs against the same and against said Company ?

100. Is it not a fact that the said Bank Plaintiffs for the accommodation of the said Defendants McDougall and Beard agreed to purchase the property upon the conditions aforesaid and agreed to transfer all their rights against the said Company if they should become the purchasers of the same ?

RECORD.

—  
*In the  
 Superior  
 Court.*  
 —

No 27.  
 Order of *faits*  
*et articles* and  
 and interro-  
 gatories to be  
 submitted to  
 Deft. dated  
 22nd May  
 1888.  
 —*Continua.*

110. Is it not a fact that the consideration of the said agreement and of said transfer of said Plaintiff's claim was the payment of the price stipulated in the deed of sale of the 19th of January 1883 that the said Defendants were to be granted a term within which to make the said payments ?

120. Is not a fact that you were aware at the time of the said sheriff's sale of all the matters connected with the same and all of the details thereof ?

130. Is it not a fact that you were aware of the nature of the claim and the circumstances of the judgment of the said bank Plaintiff against the said Company at the time of the said sale ?

10

140. Is it not true that the proceedings taken by the Bank d'Hochelaga to set aside the said sheriff's sale were instituted with the concurrence of the said Defendants McDougall & Beard ?

150. Is it not true that the said proceedings were so instituted for the purpose of compelling the Plaintiffs to reduce their claim ?

160. Is it not true that the share of the said Defendant Beard in the said real estate was transferred to the said Banque d'Hochelaga ?

170. Is it not true that the said Defendants McDougall and Beard have created the trouble of which they complain ?

20

180. Is it not true that the said property was not sold for any sum of money representing the supposed value thereof but for the amount of the claim of the said bank Plaintiff against said property ?

190. Is it not true that the said claim and the nature of the same was well known to the said Defendants McDougall and Beard prior to the said sheriff's sale and they never have been questioned by them ?

200. Is it not true that the said Defendant McDougall was a director of the said Pioneer Beet Root Sugar Co'y at the time said judgment of the said bank Plaintiff was taken against the said company and at the time of the sheriff's sale in this matter and of the sale by the said bank Plaintiff, which is in question in this case ?

30

210. Is it not a fact that the said McDougall had a full knowledge of the nature of the claim and judgment of the said bank Plaintiffs against the said company ?

220. Is it not true that the judgment of said bank Plaintiff against the said company was regularly and openly taken and regularly and openly registered against the said property of the said Company ?

40

230. Is it not true that you are indebted to the bank Plaintiff in the amount of this action ?

Montreal, 22nd May 1888.

ATWATER & MACKIE.

Attorneys for Plaintiffs.



Lower Canada, }  
District of Montreal. }

In the Superior Court for Lower Canada.

RECORD.

*In the  
Superior  
Court.*

No. 2157.

The Eastern Township Bank.....Plaintiff.

vs

10 Andrew Rough et al.....Defendants.

No 27.  
Order of *faits  
et articles* and  
and interro-  
gatories to be  
submitted to  
Deft. dated  
22nd May  
1888.

—*Continuea.*

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To Samuel W. Beard one of the Defendants above named.

Whereas the Plaintiffs desire to examine you on Articulated Facts, and has filed demand thereof accordingly :

20 You are therefore required, by these presents, to appear in person, before our said Court in the Court-House, in the City of Montreal, at two o'clock in the afternoon, on the twenty fifth day of May instant to answer *visa voce* in open Court in the first division of the said Court, the interrogatories to be then and there put to you.

In witness thereof, we have caused the seal of our said Court to be hereunto affixed, at Montreal, this twenty-second day of May eighteen hundred and eighty-eight.

JEAN B. VALLÉE,

Deputy P. S. C.

(On the Back)

30 I, Godfroi Massé, residing in the City of Montreal, one of the sworn Bailiffs of Her Majesty's Superior Court for Lower Canada, appointed and acting in and for the District of Montreal, do hereby certify and return under my oath of office that, on the twenty fifth day of May, one thousand eight hundred and eighty eight, between the hours of five and six of the clock in the afternoon, I did serve the within named Defendant Samuel W. Beard with the within order for faits et articles and interrogatories thereunto annexed, by speaking to and leaving true and certified copies thereof with himself in person in the City of Montreal.

40 The distance from the Court House, in the City of Montreal, and from my domicile, to aforesaid place of service, is less than one mile and that I did necessarily travel to effect said service the distance of less than one mile.

Montreal, 25th May, 1888.

G. MASSÉ, B. S. C.

(ENDORSED)

Order for faits et articles. Original fyled 25th May 1888. (Paraphed)  
G. H. K. Depty. P. C. S.

RECORD

SCHEDULE No. 62.

*In the  
Superior  
Court.*

Province de Québec, }  
District de Montréal. }

Cour Supérieure.

No. 28.

The Eastern Townships Bank..... Demanderesse.

Motion by  
Defendant  
Andrew

vs.

Rough, to  
amend de-  
fence and file  
additional  
Plea, dated  
10th  
September  
1888.

Andrew Rough et al.....Défendeurs. 10

MOTION DU DÉFENDEUR ANDREW ROUGH.

Qu'attendu que par jugement rendu le dix-sept Décembre mil huit cent quatre-vingt-quatre, par l'Honorable Juge Doherty en cette cause, il a été promis au défendeur de produire un plaidoyer additionnel ;

Qu'attendu que les faits allégués dans la réponse de la demanderesse au plaidoyer du défendeur et qui ont donné lieu à la nécessité de produire des plaidoyers additionnels, donnent aussi lieu d'amender les défenses du défendeur ;

Qu'attendu qu'en outre du dit amendement et des plaidoyers addition- 20  
nels auxquels ont donné lieu les réponses de la demanderesse, le défendeur désire ajouter un autre plaidoyer ;

Qu'il soit permis d'amender ses dites défenses et d'y joindre ses autres plaidoyers ; qu'il lui soit permis d'amender ses défenses en premier lieu produites ;

1o En retranchant la dix-septième allégation ;

2o En ajoutant après la vingt-troisième allégation l'allégation suivante savoir : " Que les dits Rough, McDougall et Beard dans les dits bref et requête " en nullité de décret, lesquels dits bref et requête leur ont été signifiés à " chacun d'eux ; 30

3o En ajoutant à l'allégation vingt-cinquième les mots suivants : " lesquels allégués sont vrais " ;

4o En retranchant dans la deuxième allégation les mots : " exposé à un " trouble imminent et à une éviction certaine ", et y substituant les mots " et " troublé et évincé ".

5o En ajoutant à l'allégation trentième les mots suivants : " et sont " vrais. "

6o En retranchant l'allégation quatorzième de la deuxième défense fai-  
sant partie de ses premiers plaidoyers ;

7o En ajoutant dans la vingtième allégations de la dite deuxième dé- 40  
fense, après les mots " qu'un bref et une requête en nullité de décret," les mots suivants : " dans lesquels les dits Rough, McDougall et Beard ont été " mis en cause " ;

8o En ajoutant à l'allégation vingt-unième de la même défense, les mots suivants : " et sont vrais " ;

9o En retranchant à la sixième ligne de la vingt-deuxième allégation de la même défense les mots " imminent qu'il subit maintenant et aussi du

“trouble auquel il se trouve exposé” et en remplaçant les dits mots par les mots suivants “du trouble et de l'éviction, qu'il subit.

10o En retranchant à la deuxième ligne de la vingt-cinquième allégation de la même défense les mots “ et étant exposé à un trouble imminent et à une éviction certaine”, et remplaçant les dits mots par les mots suivants: “ et étant évincé ”

11o En retranchant l'allégation vingt-troisième de la dite défense et la remplaçant par l'allégation suivante : “ Que la demanderesse qui connaissait “ d'ailleurs ce trouble et cette éviction n'a pas tenu compte de cette notifica-

10

tion, et sans faire cesser ce trouble et cette éviction et sans même offrir caution, à intenté illégitimement cette action.”  
“ Que les propriétés vendues ont subi une détérioration considérable “ qui en réduit la valeur maintenant à quelques milliers de piastres seulement ; “ Que les dommages causés aux dites prémisses vendues et aux machineries sont d'au moins la somme de cinquante mille piastres (50,000.00), tel “ qu'il appert à l'état produit au soutien des présentes”

20

12o En retranchant les conclusions de la dite deuxième défense et les remplaçant par les conclusions suivantes : “ Pourquoi le défendeur conclut à “ ce que par le jugement à intervenir, il soit déclaré que le défendeur est bien “ fondé à ne pas payer la dite somme de huit mille trois cent quarante-sept “ piastres et vingt-deux cents (\$8,347.22); jusqu'à ce que la demanderesse ait “ fait cesser le trouble et l'éviction que subit le défendeur,” et à ce que la dite action soit déboutée avec dépens dont distraction aux soussignés ; à ce qu'il soit permis au défendeur d'ajouter à ses défenses les deux défenses additionnelles suivantes savoir :

Première défense

“ Que le défendeur Andrew Rough est troublé évincé dans la possession et propriété du dit immeuble vendu par la demanderesse ” ;

30

“ Que le six Octobre mil huit cent quatre-vingt-trois le gouvernement “ de la Puissance du Canada a, par l'entremise de son collecteur de douanes à “ Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues “ avec les dites bâtisses comme en faisant partie, pour droits de douanes non “ payés ” ;

“ Que les dites machineries ont toujours été depuis et sont encore sous “ le coup de la dite saisie ;

“ Que le collecteur de douanes à Coaticooke s'est, dans le même temps, “ savoir, le six octobre mil huit cent quatre-vingt-trois, mis en possession des “ dites machineries et des dites bâtisses ;

40

“ Que les dites bâtisses et machineries sont encore en sa possession : “ Que le défendeur est depuis cette époque, privé de la possession et de “ la propriété vendues ;

“ Que les droits de douanes sur les machineries dans les dites bâtisses “ existaient avant la vente faite par le shériff à la demanderesse, et ce, à la “ connaissance de la demanderesse ;

“ Que les dites bâtisses ainsi que les dites machineries ont subi de gran- “ des détériorations ;

RECORD.

*In the  
Superior  
Court.*

No. 28.

Motion by  
Defendant  
Andrew  
Rough, to  
amend de-  
fence and file  
additional  
Plea, dated  
10th  
September  
1888.

—Continued

“ Que les dommages causés aux dites bâtisses et aux dites machineries  
sont d’au moins la somme de cinquante mille piastres (\$50,000), tel qu’il ap-  
pert à l’état produit au soutien des présentes ;

“ Que lors de la vente faite au défendeur, la dite demanderesse savait  
que les droits sur les dites machineries n’avaient pas été payés et connaissait  
l’intention du gouvernement de faire saisir les dites machineries ;

“ Que cependant la demanderesse a caché ces faits au défendeur dans le  
but d’opérer une vente frauduleuse ;

“ Que sous ces circonstances, l’action de la demanderesse doit être dé-  
bouté avec dépens ;

“ Pourquoi le défendeur conclut au renvoi de la dite action avec dépens  
dont distraction aux soussignés” ;

10

## Deuxième défense:

Et sans préjudice à ce que ci-dessus plaidé, mais au contraire s’en réser-  
vant tout le bénéfice et avantage le défendeur, pour autre plaider à la dite  
action, dit :

“ Que tous et chacun les faits allégués en la dite action, sauf ceux qui  
corrobore la défense, sont faux et mal fondés et le défendeur les nie tous et  
chacun d’eux formellement et expressément ;

“ Que le défendeur Andrew Rough est troublé et évincé dans la posses-  
sion et propriété du dit immeuble vendu par la demanderesse ;

“ Que le six octobre mil huit cent quatre-vingt-trois, le gouvernement  
de la Puissance du Canada a, par l’entremise de son collecteur des douanes à  
Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues  
avec les dites bâtisses comme en faisant partie, pour droit de douanes non-  
payés ;

“ Que les dites machineries ont toujours été depuis et sont encore sous  
le coup de la dite saisie :

“ Que le collecteur de douanes a Coaticooke s’est, dans le même temps  
savoir le six octobre mil huit cent quatre-vingt-trois, mis en possession des  
dites machineries et des dites bâtisses ;

“ Que les dites bâtisses et machineries sont encore en sa possession ;

“ Que le défendeur, depuis cette époque, est privé de la possession et de  
la propriété vendues ;

“ Que les droits de douanes sur les machineries dans les dites bâtisses  
existaient avant la vente faite par le shériff à la demanderesse, et ce, à la con-  
naissance de la demanderesse.

“ Que les dites bâtisses ainsi que les dites machineries ont subi de gran-  
des détériorations ;

“ Que les dommages causés aux dites bâtisses et aux dites machineries  
sont d’au moins la somme de cinquante mille piastres (\$50,000), tel qu’il  
appert à l’état produit au soutien des présentes ;

“ Que lors de la vente faite au défendeur, la dite demanderesse savait  
que les droits sur les dites machineries n’avaient pas été payés et connaissait  
l’intention du gouvernement de faire saisir les dites machineries ;

30

40

“ Que cependant la demanderesse a caché ces faits au défendeur dans le  
 “ but d’opérer une vente frauduleuse ;

“ Que sous ces circonstances, la demanderesse ne peut réussir dans son  
 “ action sans faire cesser le trouble et l’éviction que subit le défendeur :

“ Pourquoi le défendeur conclut au renvoi de la dite action, avec dépens  
 “ dont distraction aux soussignés.”

Le tout sous telles conditions qu’il plaira à cette Honorable Cour im-  
 poser.

Montréal, 10 Septembre 1888.

LACOSTE, BISAILLON, BROSSEAU et LAJOIE.

Avocats du défendeur.

A MM. ATWATER & MACKIE

Avocats de la demanderesse.

MESSIEURS,

Soyez notifiés que mardi, le onzième jour de Septembre courant, nous  
 présenterons la motion ci-dessus à la Cour Supérieure devant l’honorable juge  
 20 Taschereau, à dix heures et demie de l’avant-midi ou aussitôt que conseil pourra  
 être entendu, pour y être adjugé sur icelle que de droits.

Montréal 10 Septembre 1888.

LACOSTE, BISAILLON, BROSSEAU et LAJOIE.

Avocats du défendeur

(On the Back.)

Je soussigné Joseph Octave Pauzé résidant en la cité de Montréal l’un  
 des Huissiers Jurés de la Cour Supérieure du Bas-Canada exerçant dans et pour  
 30 le District de Montréal, certifie sous mon serment d’office que le dixième jour  
 de Septembre courant mil huit cent quatre-vingt-huit entre cinq et six heures  
 de l’après-midi, j’ai signifié la présente motion et l’avis de motion en cette cause  
 à messieurs Atwater & Mackie, avocats du demandeur en cette cause, en leur  
 laissant une vrai copie d’iceux à leur bureau en la cité de Montréal en parlant  
 à une personne raisonnable de tel bureau et en charge de tel bureau en la cité  
 de Montréal ;

Je certifie de plus que la distance depuis le Palais de Justice en la cité  
 de Montréal, au lieu de la signification susdite est de moins d’un mille.

Montreal, 10 Septembre 1888.

J. O. PAUZÉ

H. C. S.

(ENDORSED)

Motion et avis du défendeur Andrew Rough. Prod. 11 Sept. 1888.

RECORD

*In the  
 Superior  
 Court.*

No. 28.

Motion by  
 Defendant  
 Andrew  
 Rough, to  
 amend de-  
 fence and fyle  
 additional  
 Plea, dated  
 10th  
 September  
 1888.

—*Continued.*

RECORD.

SCHEDULE No. 63.

*In the  
Superior  
Court.*

Province de Québec, }  
District de Montréal. }

Cour Supérieure.

The Eastern Townships Bank.....Demanderesse.

vs.

Andrew Rough et al.....Défendeurs. 10

## MOTION DU DÉFENDEUR JOHN MCDUGALL.

Qu'attendu que par jugement rendu le dix-sept Décembre mil huit cent quatre-vingt-quatre, par l'Honorable Juge Doherty en cette cause, il a été promis au défendeur de produire un plaidoyer additionnel ;

Qu'attendu que les faits allégués dans la réponse de la demanderesse au plaidoyer du défendeur et qui ont donné lieu à la nécessité de produire des plaidoyers additionnels, donnent aussi lieu d'amender les défenses du défendeur ;

Qu'attendu qu'en outre du dit amendement et des plaidoyers additionnels auxquels ont donné lieu les réponses de la demanderesse, le défendeur désire ajouter un autre plaidoyer ; 20

Qu'il soit permis d'amender ses dites défenses et d'y joindre ses autres plaidoyers ; qu'il lui soit permis d'amender ses défenses en premier lieu produites ;

1o En retranchant la dix-septième allégation ;

2o En ajoutant après la vingt-troisième allégation l'allégation suivante savoir : " Que les dits Rough, McDougall et Beard dans les dits bref et requête " en nullité de décret, lesquels dits bref et requête leur ont été signifiés à " chacun d'eux ; 30

3o En ajoutant à l'allégation vingt-cinquième les mots suivants : " lesquels allégués sont vrais " ;

4o En retranchant dans la deuxième allégation les mots : " exposé à un " trouble imminent et à une éviction certaine ", et y substituant les mots " et " troublé et évincé " .

5o En ajoutant à l'allégation trentième les mots suivants : " et sont " vrais. "

6o En retranchant l'allégation quatorzième de la deuxième défense faisant partie de ses premiers plaidoyers ;

7o En ajoutant dans la vingtième allégations de la dite deuxième défense, après les mots " qu'un bref et une requête en nullité de décret, " les mots suivants : " dans lesquels les dits Rough, McDougall et Beard ont été " mis en cause " ; 40

8o En ajoutant à l'allégation vingt-unième de la même défense, les mots suivants : " et sont vrais " ;

9o En retranchant à la sixième ligne, de la vingt-deuxième allégation de la même défense les mots " imminent qu'il subit maintenant et aussi du

No. 29.  
Motion by  
Defendant  
John Mc-  
Dougall, to  
amend de-  
fence and fyle  
additional  
Plea, dated  
10th  
September  
1888.  
—Continued

“ trouble auquel il se trouve exposé ”, et en remplaçant les dits mots par les mots suivants : “ du trouble et de l'éviction qu'il subit.”

10o En retranchant à la deuxième ligne de la vingt-cinquième allégation de la même défense les mots “ et étant exposé à un trouble imminent et à une éviction certaine ”, et remplaçant les dits mots par les mots suivants : “ et étant évincé ”.

11o En retranchant l'allégation vingt-troisième de la dite défense et la remplaçant par l'allégation suivante : “ Que la demanderesse qui connaissait d'ailleurs ce trouble et cette éviction n'a pas tenu compte de cette notification, et sans faire cesser ce trouble et cette éviction et sans même offrir caution, à intenté illégitimement cette action ” ;

“ Que les propriétés vendues ont subi une détérioration considérable qui en réduit la valeur maintenant à quelques milliers de piastres seulement ;

“ Que les dommages causés aux dites prémisses vendues et aux machines sont d'au moins la somme de cinquante mille piastres (50,000.00), tel qu'il appert à l'état produit au soutien des présentes ” :

12o En retranchant les conclusions de la dite deuxième défense et les remplaçant par les conclusions suivantes : “ Pourquoi le défendeur conclut à ce que par le jugement à intervenir, il soit déclaré que le défendeur est bien fondé à ne pas payer la dite somme de huit mille trois cent quarante-sept piastres et vingt-deux cents (\$8,347.22), jusqu'à ce que la demanderesse ait fait cesser le trouble et l'éviction que subit le défendeur, ” et à ce que la dite action soit déboutée avec dépens dont distraction aux soussignés ; à ce qu'il soit permis au défendeur d'ajouter à ses défenses les deux défenses additionnelles suivantes savoir :

Première défense.

“ Que le défendeur John McDougall est troublé évincé dans la possession et propriété du dit immeuble vendu par la demanderesse ” ;

30 “ Que le six Octobre mil huit cent quatre-vingt-trois le gouvernement de la Puissance du Canada a, par l'entremise de son collecteur de douanes à Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues avec les dites bâtisses comme en faisant partie, pour droits de douanes non payés ” ;

“ Que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ;

“ Que le collecteur de douanes à Coaticooke s'est, dans le même temps, savoir, le six octobre mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ;

40 “ Que les dites bâtisses et machineries sont encore en sa possession :

“ Que le défendeur est depuis cette époque, privé de la possession et de la propriété vendues ;

“ Que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shériff à la demanderesse, et ce, à la connaissance de la demanderesse ;

“ Que les dites bâtisses ainsi que les dites machineries ont subi de grandes détériorations ;

RECORD

*In the  
Superior  
Court.*

No. 29.  
Motion by  
Defendant  
John McDougall to  
amend de-  
fence and file  
additional  
Plea, dated  
10th  
September  
1888.

—*Continued.*

RECORD.

*In the  
Superior  
Court.*

No. 29.

Motion by  
Defendant  
John Mc-  
Dougall, to  
amend de-  
fence and file  
additional  
Plea, dated  
10th  
September  
1888.

—Continued

“ Que les dommages causés aux dites bâtisses et aux dites machineries  
“ sont d’au moins la somme de cinquante mille piastres (\$50,000), tel qu’il ap-  
“ pert à l’état produit au soutien des présentes ;

“ Que lors de la vente faite au défendeur, la dite demanderesse savait  
“ que les droits sur les dites machineries n’avaient pas été payés et connaissait  
“ l’intention du gouvernement de faire saisir les dites machineries ;

“ Que cependant la demanderesse a caché ces faits au défendeur dans le  
“ but d’opérer une vente frauduleuse ;

“ Que sous ces circonstances, l’action de la demanderesse doit être dé-  
“ bouté avec dépens ;

“ Pourquoi le défendeur conclut au renvoi de la dite action avec dépens  
“ dont distraction aux soussignés” ;

10

## Deuxième défense:

Et sans préjudice à ce que ci-dessus plaidé, mais au contraire s’en réser-  
“ vant tout le bénéfice et avantage le défendeur, pour autre plaider à la dite  
“ action, dit :

“ Que tous et chacun les faits allégués en la dite action, sauf ceux qui  
“ corrobore la défense, sont faux et mal fondés et le défendeur les nie tous et  
“ chacun d’eux formellement et expressément ;

“ Que le défendeur John McDougall est troublé et évincé dans la posses-  
“ sion et propriété du dit immeuble vendu par la demanderesse ;

“ Que le six octobre mil huit cent quatre-vingt-trois, le gouvernement  
“ de la Puissance du Canada a, par l’entremise de son collecteur des douanes à  
“ Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues  
“ avec les dites bâtisses comme en faisant partie, pour droit de douanes non-  
“ payés ;

“ Que les dites machineries ont toujours été depuis et sont encore sous  
“ le coup de la dite saisie ;

“ Que le collecteur de douanes a Coaticooke s’est, dans le même temps  
“ savoir le six octobre mil huit cent quatre-vingt-trois, mis en possession des  
“ dites machineries et des dites bâtisses ;

“ Que les dites bâtisses et machineries sont encore en sa possession ;

“ Que le défendeur, depuis cette époque, est privé de la possession et de  
“ la propriété vendues ;

“ Que les droits de douanes sur les machineries dans les dites bâtisses  
“ existaient avant la vente faite par le shériff à la demanderesse, et ce, à la con-  
“ naissance de la demanderesse.

“ Que les dites bâtisses ainsi que les dites machineries ont subi de gran-  
“ des détériorations ;

“ Que les dommages causés aux dites bâtisses et aux dites machineries  
“ sont d’au moins la somme de cinquante mille piastres (\$50,000), tel qu’il  
“ appert à l’état produit au soutien des présentes ;

“ Que lors de la vente faite au défendeur, la dite demanderesse savait  
“ que les droits sur les dites machineries n’avaient pas été payés et connaissait  
“ l’intention du gouvernement de faire saisir les dites machineries ;

30

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“ Que cependant la demanderesse a caché ces faits au défendeur dans le but d’opérer une vente frauduleuse ;

“ Que sous ces circonstances, la demanderesse ne peut réussir dans son action sans faire cesser le trouble et l’éviction que subit le défendeur :

“ Pourquoi le défendeur conclut au renvoi de la dite action, avec dépens dont distraction aux soussignés.”

Le tout sous telles conditions qu’il plaira à cette Honorable Cour imposer.

10 Montréal, 10 Septembre 1888.

LACOSTE, BISAILLON, BROSSEAU et LAJOIE.

Avocats du défendeur.

A MM. ATWATER & MACKIE

Avocats de la demanderesse.

MESSIEURS,

Soyez notifiés que mardi, le onzième jour de Septembre courant, nous présenterons la motion ci-dessus à la Cour Supérieure devant l’honorable juge Taschereau, à dix heures et demie de l’avant-midi ou aussitôt que conseil pourra être entendu, pour y être adjugé sur icelle que de droits.

Montréal 10 Septembre 1888.

LACOSTE, BISAILLON, BROSSEAU et LAJOIE.

Avocats du défendeur

(On the Back.)

30 Je soussigné Joseph Octave Pauzé résidant en la cité de Montréal l’un des Huissiers Jurés de la Cour Supérieure du Bas-Canada exerçant dans et pour le District de Montréal, certifie sous mon serment d’office que le dixième jour de Septembre courant mil huit cent quatre-vingt-huit entre cinq et six heures de l’après-midi, j’ai signifié la présente motion et l’avis de motion en cette cause à messieurs Atwater & Mackie, avocats du demandeur en cette cause, en leur laissant une vraie copie d’iceux à leur bureau en la cité de Montréal en parlant à une personne raisonnable de tel bureau et en charge de tel bureau en la cité de Montréal ;

Je certifie de plus que la distance depuis le Palais de Justice en la cité de Montréal, au lieu de la signification susdite est de moins d’un mille.

40 Montreal. 10 Septembre 1888.

J. O. PAUZÉ

H. C. S.

(ENDORSED)

Motion et avis du défendeur John McDougall. Prod. 11 Sept. 1888.

RECORD

In the  
Superior  
Court.

No. 29.

Motion by  
Defendant  
John McDougall to  
amend de-  
fence and file  
additional  
Plea, dated  
10th  
September  
1888.

—Continued.

RECORD.

SCHEDULE No. 64.

*In the  
Superior  
Court.*

Province de Québec, }  
District de Montréal. }

Cour Supérieure.

No. 30.

The Eastern Townships Bank.....Demanderesse.

vs.

Motion by  
Defendant  
S. W. Beard,  
to amend de-  
fence and file  
additional  
Plea, dated  
10th  
September  
1888.

Andrew Rough et al.....Défendeurs. 10

## MOTION DU DÉFENDEUR SAMUEL W. BEARD.

Qu'attendu que par jugement rendu le dix-sept Décembre mil huit cent quatre-vingt-quatre, par l'Honorable Juge Doherty en cette cause, il a été promis au défendeur de produire un plaidoyer additionnel ;

Qu'attendu que les faits allégués dans la réponse de la demanderesse au plaidoyer du défendeur et qui ont donné lieu à la nécessité de produire des plaidoyers additionnels, donnent aussi lieu d'amender les défenses du défendeur ;

Qu'attendu qu'en outre du dit amendement et des plaidoyers additionnels auxquels ont donné lieu les réponses de la demanderesse, le défendeur désire ajouter un autre plaidoyer ; 20

Qu'il soit permis d'amender ses dites défenses et d'y joindre ses autres plaidoyers ; qu'il lui soit permis d'amender ses défenses en premier lieu produites ;

1o En retranchant la dix-septième allégation ;

2o En ajoutant après la vingt-troisième allégation l'allégation suivante savoir : " Que les dits Rough, McDougall et Beard dans les dits bref et requête " en nullité de décret, lesquels dits bref et requête leur ont été signifiés à " chacun d'eux ; 30

3o En ajoutant à l'allégation vingt-cinquième les mots suivants : " lesquels allégués sont vrais " ;

4o En retranchant dans la deuxième allégation les mots : " exposé à un " trouble imminent et à une éviction certaine ", et y substituant les mots " et " troublé et évincé " .

5o En ajoutant à l'allégation trentième les mots suivants : " et sont " vrais. "

6o En retranchant l'allégation quatorzième de la deuxième défense faisant partie de ses premiers plaidoyers ;

7o En ajoutant dans la vingtième allégations de la dite deuxième dé- 40 fense, après les mots " qu'un bref et une requête en nullité de décret, " les mots suivants : " dans lesquels les dits Rough, McDougall et Beard ont été " mis en cause " ;

8o En ajoutant à l'allégation vingt-unième de la même défense, les mots suivants : " et sont vrais " ;

9o En retranchant à la sixième ligne de la vingt-deuxième allégation de la même défense les mots " imminent qu'il subit maintenant et aussi du

—Continued

“trouble auquel il se trouve exposé”, et en remplaçant les dits mots par les mots suivants : “du trouble et de l'éviction qu'il subit.”

100 En retranchant à la deuxième ligne de la vingt-cinquième allégation de la même défense les mots “et étant exposé à un trouble imminent et à une éviction certaine”, et remplaçant les dits mots par les mots suivants : “et étant évincé”.

110 En retranchant l'allégation vingt-troisième de la dite défense et la remplaçant par l'allégation suivante : “Que la demanderesse qui connaissait  
10 “d'ailleurs ce trouble et cette éviction n'a pas tenu compte de cette notification, et sans faire cesser ce trouble et cette éviction et sans même offrir caution, à intenté illégitimement cette action” ;

“Que les propriétés vendues ont subi une détérioration considérable qui en réduit la valeur maintenant à quelques milliers de piastres seulement ;  
“Que les dommages causés aux dites prémisses vendues et aux machines sont d'au moins la somme de cinquante mille piastres (50,000.00), tel qu'il appert à l'état produit au soutien des présentes” :

120 En retranchant les conclusions de la dite deuxième défense et les remplaçant par les conclusions suivantes : “Pourquoi le défendeur conclut à  
20 “ce que par le jugement à intervenir, il soit déclaré que le défendeur est bien fondé à ne pas payer la dite somme de huit mille trois cent quarante-sept piastres et vingt-deux cents (\$8,347.22), jusqu'à ce que la demanderesse ait fait cesser le trouble et l'éviction que subit le défendeur,” et à ce que la dite action soit déboutée avec dépens dont distraction aux soussignés ; à ce qu'il soit permis au défendeur d'ajouter à ses défenses les deux défenses additionnelles suivantes savoir :

Première défense.

30 “Que le défendeur Samuel W. Beard est troublé évincé dans la possession et propriété du dit immeuble vendu par la demanderesse” ;

“Que le six Octobre mil huit cent quatre-vingt-trois le gouvernement de la Puissance du Canada a, par l'entremise de son collecteur de douanes à Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues avec les dites bâtisses comme en faisant partie, pour droits de douanes non payés” ;

“Que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ;

“Que le collecteur de douanes à Coaticooke s'est, dans le même temps, savoir, le six octobre mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ;

40 “Que les dites bâtisses et machineries sont encore en sa possession :

“Que le défendeur est depuis cette époque, privé de la possession et de la propriété vendues ;

“Que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shériff à la demanderesse, et ce, à la connaissance de la demanderesse ;

“Que les dites bâtisses ainsi que les dites machineries ont subi de grandes détériorations ; .

RECORD

In the  
Superior  
Court.

No. 30.  
Motion by  
Defendant  
Samuel W.  
Beard to  
amend de-  
fence and file  
additional  
Plea, dated  
10th  
September  
1888.

—Continued.

RECORD.

*In the  
Superior  
Court.*

No. 30.

Motion by  
Defendant  
S. W. Beard,  
to amend de-  
fence and file  
additional  
Plea, dated  
10th  
September  
1888.

—Continued

“ Que les dommages causés aux dites bâtisses et aux dites machineries sont d’au moins la somme de cinquante mille piastres (\$50,000), tel qu’il appert à l’état produit au soutien des présentes ;

“ Que lors de la vente faite au défendeur, la dite demanderesse savait que les droits sur les dites machineries n’avaient pas été payés et connaissait l’intention du gouvernement de faire saisir les dites machineries ;

“ Que cependant la demanderesse a caché ces faits au défendeur dans le but d’opérer une vente frauduleuse ;

“ Que sous ces circonstances, l’action de la demanderesse doit être déboutée avec dépens ;

“ Pourquoi le défendeur conclut au renvoi de la dite action avec dépens dont distraction aux soussignés” ;

10

## Deuxième défense:

Et sans préjudice à ce que ci-dessus plaidé, mais au contraire s’en réservant tout le bénéfice et avantage le défendeur, pour autre plaider à la dite action, dit :

“ Que tous et chacun les faits allégués en la dite action, sauf ceux qui corrobore la défense, sont faux et mal fondés et le défendeur les nie tous et chacun d’eux formellement et expressément ;

20

“ Que le défendeur S. W. Beard. est troublé et évincé dans la possession et propriété du dit immeuble vendu par la demanderesse ;

“ Que le six octobre mil huit cent quatre-vingt-trois, le gouvernement de la Puissance du Canada a, par l’entremise de son collecteur des douanes à Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues avec les dites bâtisses comme en faisant partie, pour droit de douanes non-payés ;

“ Que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie :

30

“ Que le collecteur de douanes a Coaticooke s’est, dans le même temps savoir le six octobre mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ;

“ Que les dites bâtisses et machineries sont encore en sa possession ;

“ Que le défendeur, depuis cette époque, est privé de la possession et de la propriété vendues ;

“ Que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shériff à la demanderesse, et ce, à la connaissance de la demanderesse.

“ Que les dites bâtisses ainsi que les dites machineries ont subi de grandes détériorations ;

40

“ Que les dommages causés aux dites bâtisses et aux dites machineries sont d’au moins la somme de cinquante mille piastres (\$50,000), tel qu’il appert à l’état produit au soutien des présentes ;

“ Que lors de la vente faite au défendeur, la dite demanderesse savait que les droits sur les dites machineries n’avaient pas été payés et connaissait l’intention du gouvernement de faire saisir les dites machineries ;

“ Que cependant la demanderesse a caché ces faits au défendeur dans le  
 “ but d’opérer une vente frauduleuse ;

“ Que sous ces circonstances, la demanderesse ne peut réussir dans son  
 “ action sans faire cesser le trouble et l’éviction que subit le défendeur :

“ Pourquoi le défendeur conclut au renvoi de la dite action, avec dépens  
 “ dont distraction aux soussignés.”

Le tout sous telles conditions qu’il plaira à cette Honorable Cour im-  
 poser.

Montréal, 10 Septembre 1888.

10

LACOSTE, BISAILLON, BROSSEAU et LAJOIE.

Avocats du défendeur.

A MM. ATWATER & MACKIE

Avocats de la demanderesse.

MESSIEURS,

Soyez notifiés que mardi, le onzième jour de Septembre courant, nous  
 20 présenterons la motion ci-dessus à la Cour Supérieure devant l’honorable juge  
 Taschereau, à dix heures et demie de l’avant-midi ou aussitôt que conseil pourra  
 être entendu, pour y être adjugé sur icelle que de droits.

Montréal 10 Septembre 1888.

LACOSTE, BISAILLON, BROSSEAU et LAJOIE.

Avocats du défendeur

(On the Back.)

30 Je soussigné Joseph Octave Pauzé résidant en la cité de Montréal l’un  
 des Huissiers Jurés de la Cour Supérieure du Bas-Canada exerçant dans et pour  
 le District de Montréal, certifie sous mon serment d’office que le dixième jour  
 de Septembre courant mil huit cent quatre-vingt-huit entre cinq et six heures  
 de l’après-midi, j’ai signifié la présente motion et l’avis de motion en cette cause  
 à messieurs Atwater & Mackie, avocats du demandeur en cette cause, en leur  
 laissant une vrai copie d’iceux à leur bureau en la cité de Montréal en parlant  
 à une personne raisonnable de tel bureau et en charge de tel bureau en la cité  
 de Montréal ;

Je certifie de plus que la distance depuis le Palais de Justice en la cité  
 de Montréal, au lieu de la signification susdite est de moins d’un mille.

Montreal, 10 Septembre 1888.

40

J. O. PAUZÉ

H. C. S.

(ENDORSED)

Motion et avis du défendeur Samuel W. Beard Prod. 11 Sept. 1888.

RECORD

*In the  
 Superior  
 Court.*

No. 30.  
 Motion by  
 Defendant  
 Samuel W.  
 Beard to  
 amend de-  
 fence and fyle  
 additional  
 Plea, dated  
 10th  
 September  
 1888.

—Continued.

RECORD.

SCHEDULE No. 63.

*In the  
Superior  
Court.*

Canada  
Province de Québec }  
District de Montréal }

Cour Supérieure.

No. 31.  
Affidavit of  
T. Brosseau  
taken 12th  
September  
1888.

No. 2157.

The Eastern Townships Bank.....Demanderesse 10

VS

Andrew Rough & al.....Défendeurs.

AFFIDAVIT DE T. BROSSEAU.

Je, T. Brosseau, avocat, de Montréal, étant dûment assermenté sur les Saints Évangiles, dépose et dit :

Que je ne me rappelle pas si les défendeurs m'ont parlé des troubles de douanes allégués en leurs défenses avant la production de leur première défenses ; 20

Qu'il est vrai cependant qu'il y a longtemps que ces troubles me sont connus ;

Que j'ai toujours espéré que la demanderesse ne passerait pas son action avant que jugement soit rendu dans l'action en nullité de décret prise par la banque d'Hochelaga.

Et j'ai signé.

Assermenté, pris et reconnu devant moi }  
à Montréal, ce douzième jour de }  
Septembre mil huit cent quatre- }  
vingt-huit. }

T. BROSSEAU, 30

J. BRISSON,

C. C. S. Dist. de Montréal.

(ENDORSED)

Affidavit. Prod. 11 Sept. 1888. (Paraphed) G. H. K. Dep. P. S. C. 40

SCHEDULE No. 64.

Canada. }  
Province of Quebec }  
District of Montreal. }

Superior Court.

RECORD.

*In the  
Superior  
Court.*

No. 2157.

No. 32  
Plaintiffs'  
answer to  
Defendants  
motion for  
leave to  
amend Pleas  
dated 11th  
September  
1888.

10 The Eastern Townships Bank.....Plaintiff.

vs.

Andrew Rough & al.....Defendants

And the said Plaintiffs for answer to the motion of the said Defendant Rough to amend his pleas, saith :

20 That the said Defendant hath long since been foreclosed by Law from filing any amended answer to the answer of the said Plaintiffs to the said plea and the said defendant cannot at this date on when the present case is inscribed for trial, be allowed to amend the said pleas so as to change the conclusions thereof and to ask for greater and more extended conclusions than to his original plea he demanded.

That the said Defendant cannot moreover at this date be allowed to file an additional plea such as that maintained by his motion which set forth facts antecident to the date of the filing of the plea which is sought to be amended.

Wherefore the said Plaintiff pray that the said motion may be rejected with costs distraits to the undersigned.

Montreal, 11th September, 1888.

30

ATWATER & MACKIE.

Attorneys for Plaintiffs.

Received copy

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,

Attorneys for Defendants.

40

(ENDORSED)

Plaintiffs' Answer to Defendants' motion for leave to amend Pleas.  
Filed 11 Sept. 1888. (Paraphed) G. H. K. Dep. P. S. C.

RECORD.

*In the  
Superior  
Court.*

Canada,  
Province de Québec, }  
District de Montréal. }

Cour Supérieure.

No. 2157.

No. 33.  
Defendant  
Rough's  
amended de-  
fense, dated  
12th  
September  
1888.

The Eastern Townships Bank.....Demanderesse,

vs.

Andrew Rough et al.....Défenderesse. 10

Et le dit défendeur Andrew Rough pour défense aux fond en fait à cette action, dit :

Que le défendeur Andrew Rough est troublé et évincé dans la possession et propriété du dit immeuble rendu par la demanderesse ;

Que le six octobre mil huit cent quatre-vingt-trois, le Gouvernement de la Puissance du Canada a, par l'entremise de son collecteur de douanes à Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues avec les dites bâtisses comme en faisant partie, pour droit de douanes non payés ;

Que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ; 20

Que le collecteur de douanes à Coaticooke s'est, dans le même temps savoir, le six Octobre mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ;

Que les dites bâtisses et machineries sont encore en sa possession :

Que le défendeur Andrew Rough est, depuis cette époque, privé de la possession et de la propriété vendues ;

Que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shérif à la demanderesse, et ce, à la connaissance de la demanderesse ; 30

Que les dites bâtisses ainsi que les dites machineries ont subies de grandes détériorations ;

Que les dommages causés aux dites bâtisses et aux dites machineries sont d'au moins la somme de cinquante mille piastres (\$50,000) tel qu'il appert à l'état produit au soutien des présentes ;

Que lors de la vente faite au défendeur Rough, la dite demanderesse savait que les droits sur les dites machineries n'avaient pas été payés et connaissait l'intention du Gouvernement de faire saisir les dites machineries ;

Que cependant la demanderesse a caché ces faits au défendeur dans le but d'opérer une vente frauduleuse ; 40

Que sous ces circonstances, l'action de la demanderesse doit être déboutée avec dépens.

Pourquoi le défendeur conclut au renvoi de la dite action avec dépens dont distraction aux soussignés.

Montreal, 18 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,  
*Avocats du Défendeur Rough.*



Et sans préjudice à ce que ci-dessus plaidé, mais au contraire s'en réservant tout le bénéfice et avantage, le défendeur pour autre plaidoyer à la dite action, dit :

Que tous et chacun les faits allégués en la dite action, sauf ceux que corrobore la défense, sont faux et mal fondés et le défendeur les nie tous et chacun d'eux formellement et expressément ;

Que le défendeur Andrew Rough est troublé et évincé dans la possession et propriété du dit immeuble vendu par la demanderesse ;

10 Que le six octobre mil huit cent quatre-vingt-trois, le Gouvernement de la Puissance du Canada a, par l'entremise de son collecteur de douanes à Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues avec les dites bâtisses comme en faisant partie, pour droits de douanes non payés ;

Que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ;

Que le collecteur de douanes à Coaticooke s'est, dans le même temps, savoir, le six octobre mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ;

Que les dites bâtisses et machineries sont encore en sa possession ;

20 Que le défendeur Andrew Rough est, depuis cette époque, privé de la possession et de la propriété vendues ;

Que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shérif à la demanderesse, et ce, à la connaissance de la demanderesse ;

Que les dites bâtisses ainsi que les dites machineries ont subi de grandes détérioration ;

Que les dommages causés aux dites bâtisses et aux dites machineries sont d'au moins la somme de cinquante mille piastres (\$50,000), tel qu'il appert à l'état produit au soutien des présentes ;

30 Que lors de la vente faite au défendeur Rough, la dite demanderesse savait que les droits sur les dites machineries n'avaient pas été payés et connaissait l'intention du Gouvernement de faire saisir les dites machineries ;

Que cependant la demanderesse a caché ces faits au défendeur dans le but d'opérer une vente frauduleuse ;

Que sous ces circonstances la demanderesse ne peut réussir dans son action sans faire cesser le trouble et l'éviction que subit le défendeur Andrew Rough ;

Pourquoi le défendeur conclut au renvoi de la dite action avec dépens dont distraction aux soussignés.

40

Montréal, 18 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du Défendeur Rough.

RECORD.

*In the  
Superior  
Court.*

No. 33.  
Defendant  
Rough's  
amended de-  
fence, dated  
12th  
September  
1888.

—Continued.

RECORD.

*In the  
Superior  
Court.*No. 33.  
Defendant  
Rough's  
amended de-  
fense, dated  
12th  
September  
1888.

—Continued

Et le dit défendeur Andrew Rough pour exception péremptoire à cette action, dit :

Que tous et chacun les faits allégués en la dite action, sauf ceux qui pourront être ci-après expressément admis, sont faux et mal fondés ;

Que le défendeur Andrew Rough est troublé et évincé et se refuse par conséquent de payer la balance du prix et intérêts stipulés dans l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois, et réclamés par cette action, vente dont il a le droit de demander et demande la nullité ;

Que les immeubles vendus par la demanderesse au défendeur par l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt trois et dont elle de- 10  
mande la balance du prix par cette action, ont été acquis par elle du shérif du district de St. François, G. F. Bowen, qui les a vendus le douze janvier mil huit cent quatre-vingt-trois, au bureau d'enregistrement de la division de Coaticooke, dans le district de St-François, en vertu d'un bref d'exécution émané dans le district de Montréal le trente-un octobre mil huit cent quatre-vingt-deux, dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de la Cour Supérieure et où Fairbanks et al étaient demandeurs et The Pioneer Beet Root Sugar Company était défenderesse ;

Qu'un titre de la dite vente a été passé par le dit shérif Bowen, le treize 20  
janvier mil huit cent quatre-vingt-trois ;

Que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du dit bref d'exécution étaient et sont irréguliers, illégaux, nuls et de nul effet et doivent être déclarés tels, et la vente et adjudication faite par le dit shérif doit être cassée, annulée et mise de côté ;

Que la minute de la saisie pratiquée par le dit shérif, ainsi que les au-  
nonces et les avis de vente ni aucun d'iceux ne contiennent, tel que requis par la loi, une description suffisante des immeubles qui ont ainsi été vendu par la dite vente au défendeur Rough la description des dits immeubles ne mention- 30  
nant ni la cité, ville, village, paroisse ou township, non plus que la rue, le rang ou la concession où se trouvaient situés les dits immeubles ainsi annoncés et vendus ;

Qu'en outre, au nombre des immeubles annoncés et vendus, se trouve une partie du lot numéro sept cent soixante et trois qui n'est pas allégué être et n'est pas un numéro distinct d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncées, tel que requis par la loi ;

Que le shérif ou le député-shérif qui a procédé à la dite vente, a adjugé illégalement les dits immeubles à la demanderesse The Eastern Townships Bank pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille 40  
piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite banque, laquelle enchère avait été entrée sur le livre de minute tenu pour l'enchère des dits immeubles ;

Que le shérif a vendu les dits biens immeubles en un seul lot et en bloc sans le consentement de la défenderesse The Pioneer Beet Root Sugar Company mais sur la demande du gérant de la banque adjudicataire The Eastern Townships Bank, la demanderesse en cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite banque.

Que la vente et adjudication des dits immeubles a ainsi été faite à la demanderesse The Eastern Townships Bank par le dit shérif illégalement et irrégulièrement, à vil prix, savoir, pour quatorze cents piastres, lorsque la valeur des dits biens immeubles était bien plus considérable, savoir, d'au moins quarante ou cinquante mille piastres ;

10 Que le neuf février mil huit cent quatre-vingt-deux la dite The Eastern Townships Bank, la demanderesse en cette cause, bien que connaissant l'insolvabilité et la déconfiture dans laquelle se trouvait alors la The Pioneer Beet Root Sugar Company, et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérables, a cependant dans le but de les tromper et d'obtenir une préférence indue et frauduleuse sur eux intenté secrètement de vant la Cour Supérieure du district de St-François, sous le numéro trois cent trente-cinq des dossiers de la dite Cour, une action intitulée : "The Eastern Townships Bank vs Amos H. Cummings et al, manufacturiers du village de Coaticooke, dans le district de St-François dans laquelle la dite The Eastern Townships Bank était demanderesse, un nommé Amos H. Cummings du village de Coaticooke dans le district de St-François et The Pioneer Beet Root Sugar Company étaient défendeurs ;

20 Que la dite action a été par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la banque demanderesse à un des Directeurs de la dite Banque savoir un nommé John Thornton, qui était aussi un officier de la compagnie défenderesse ; The Pioneer Beet Root Sugar Company ;

Que d'après entente entre le dit Thornton et la dite Eastern Townships Bank, la dite action n'a jamais été communiqué au bureau de direction de la compagnie défenderesse, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement ;

30 Que la dite action fut rapporté en Cour le vingt trois février mil huit cent quatre-vingt-deux et que jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt-cinq du même mois pour une somme de vingt-trois mille six cent soixante-dix-sept piastres avec intérêt du dix février, montant considérablement au-delà de ce qui était dû alors à la dite Eastern Townships Bank ;

Que le jour même où le dit jugement fut rendu, savoir, le vingt-cinq février mil huit cent quatre-vingt-deux la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie défenderesse, The Pioneer Beet Root Sugar Company ;

40 Qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie défenderesse la dite Eastern Townships Bank malgré l'enregistrement qu'elle fit de son jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ;

Que des moyens artificieux ont été employés par la dite The Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ;

Que de plus, la dite Eastern Townships Bank, bien que sachant l'enregistrement de ce jugement, comme susdit, dans un temps où la compagnie défenderesse The Pioneer Beet Root Sugar Company était insolvable et en déconfi-

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ture, ne pouvait pas lui donner et ne lui a pas donné droit d'hypothèque, et étant sans force et sans effet, a fait usage de tel enregistrement pour empêcher d'autres personnes d'être présentes à la dite vente et enchérir sur les propriétés en question en cette cause et a ordonné l'enregistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur la dite propriété ;

Qu'à raison des artifices et d'autres semblables pratiqués par la dite banque lorsque les dites propriétés ont été mises à l'enchère à la dite vente du shérif, les dites propriétés par une entente collusoire et frauduleuse entre la dite banque, et d'autres personnes présentes et enchérissant, ont été vendues et adjugés à William Farwell, gérant de la dite banque, illégalement et frauduleusement au préjudice des créanciers pour la somme de quatorze cents piastres, et que le dit William Farwell représentait et agissait pour la dite banque en cette circonstance ;

Que les dits immeubles ainsi adjugés à la dite banque valaient au moins de quarante à cinquante mille piastres ;

Qu'ainsi la dite vente est irrégulière, illégale, nulle et de nul effet devra ainsi être annulé et mise de côté ;

Qu'un bref et une requête en nullité de décret ont été pris et signifiés par la banque d'Hochelaga, l'un des créanciers de la dite Pioneer Beet Root Sugar Company, lesquels sont encore pendants devant cette Cour ;

Que les dits Rough, McDougall et Beard ont été mis en cause dans les dits bref et requête en nullité de décret lesquels dits bref et requête leur ont été signifiés à chacun d'eux ;

Que les moyens invoqués par la dite banque d'Hochelaga sont les mêmes que ceux ci-dessus relatés, lesquels allégués sont vrais ;

Qu'ainsi le défendeur Andrew Rough se trouve exposé à un trouble imminent et à une éviction certaine ;

Que le cinquième jour de septembre mil huit cent quatre-vingt-quatre, le défendeur Andrew Rough a pris une action devant cette Cour pour faire casser, annuler et mettre de côté l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois par la dite banque au défendeur et relaté en la déclaration en cette cause ;

Que la dite action porte le numéro neuf cent dix des dossiers de cette Cour ;

Que les moyens invoqués dans la dite action pour faire casser, annuler et mettre de côté le dit acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois sont les mêmes que ceux ci-dessus plaidés et sont vrais ;

Que sous ces circonstances, le défendeur Andrew Rough est bien fondé à se refuser au paiement de la balance du prix de vente et des intérêts stipulés dans l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois.

Pourquoi le défendeur conclut au renvoi de la dite action avec frais et dépens dont distraction aux soussignés.

Montréal, 16 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON et BROSSEAU,

Avocats du défendeur Andrew Rough.

Et le dit défendeur Andrew Rough sans préjudice à ce que ci-dessus plaidé, mais au contraire s'en réservant tout le bénéfice et avantage pour autre défense à cette action, dit :

Que tous et chacun les faits allégués en la dite action, sauf ceux qui pourront être ci-après expressément admis, sont faux et mal fondés ;

Que les immeubles vendus par la demanderesse au défendeur Andrew Rough, par l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois et dont elle demande la balance du prix par cette action ont été acquis par elle du shérif du district de St. François, G. F. Bowen qui les a vendus le douze  
10 janvier mil huit cent quatre-vingt trois au bureau d'enregistrement de la division de Coaticooke, dans le district de St. François en vertu d'un bref d'exécution émané dans le district de Montréal, le trente et un Octobre mil huit cent quatre vingt-deux, dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de cette cour et où Fairbank et al étaient demandeurs et The Pioneer Beet Root Sugar Company était défenderesse ;

Qu'un titre de la dite vente a été passé par le dit shérif Bowen, le treize janvier mil huit cent quatre-vingt-trois ;

Que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du  
20 dit bref d'exécution étaient et sont irréguliers, illégaux, nuls et de nul effet et doivent être déclarés tels et la vente et adjudication faites par le dit shérif doit être cassée, annulée et mise de côté ;

Que la minute de la saisie pratiquée par le dit shérif ainsi que les annonces et les avis de vente ni aucun d'iceux ne contiennent tel que requis par la loi, une description suffisante des immeubles saisis en vertu du dit bref d'exécution et principalement des immeubles qui ont été vendus par la dite vente au défendeur Andrew Rough la description des dits immeubles ne mentionnant ni la cité, ville, village paroisse ou township, non plus que la rue, le rang ou la concession où se trouvaient situés les dits immeubles ainsi annoncés  
30 et vendus ;

Qu'en outre au nombre des immeubles ainsi annoncés et vendus se trouve une partie du lot numéro sept cent soixante-trois qui n'est pas allégué être et n'est pas d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncés tel que requis par la loi ;

Que le shérif ou le député-shérif qui a procédé à la dite vente, a adjugé illégalement les dits immeubles à la demanderesse, The Eastern Townships Bank pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite banque, laquelle enchère avait été entrée sur le livre  
40 de minute tenu pour l'enchère des dits immeubles ;

Que le dit shérif a vendu les dits immeubles en un seul lot et en bloc sans le consentement de la défenderesse, mais sur la demande de la banque adjudicataire The Eastern Townships Bank, la demanderesse en cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite banque ;

Que la vente et adjudication des dits immeubles a ainsi été faite à la demanderesse The Eastern Townships Bank par le dit shérif, illégalement et irrégulièrement.

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gulièrement à vil prix, savoir, pour quatorze cents piastres, lorsque la valeur des dits biens immeubles était bien plus considérable, savoir d'au moins quarante à cinquante mille piastres ;

Que le neuf février mil huit cent quatre-vingt-deux, la dite The Eastern Townships Bank, la demanderesse en cette cause, bien que connaissant l'insolvabilité et la déconfiture dans laquelle se trouvait alors la Pioneer Beet Root Sugar Company et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérables, a cependant, dans le but de les tromper et d'obtenir une préférence induue et frauduleuse sur eux, intenté secrètement devant la Cour Supérieure du district de St-François, sous le numéro trois cent trente-cinq des dossiers de la dite Cour, une action intitulée : "The Eastern Townships Bank vs. Amos H. Cummings et al., manufacturiers, du village de Coaticooke, dans le district de St-François dans laquelle la dite The Eastern Townships Bank était demanderesse et Amos H. Cummings et al., du village de Coaticooke dans le district de St-François et The Pioneer Beet Root Sugar Company étaient défendeurs ;

Que la dite action a été intentée par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la banque demanderesse à un des directeurs de la dite banque, savoir, à un nommé John Thornton, qui était aussi un officier de la dite compagnie défenderesse, The Pioneer Beet Root Sugar Company ;

Que d'après entente entre le dit Thornton et la dite Eastern Townships Bank, la dite action n'a jamais été communiquée au bureau de direction de la compagnie défenderesse, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement ;

Que la dite action fut rapportée en Cour le vingt-trois février mil huit cent quatre-vingt-deux et jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt-un du même mois pour une somme de vingt-trois mille six cent soixante-dix-sept piastres avec intérêt du dix février, montant considérablement au-delà de ce qui était dû alors à la dite Eastern Townships Bank ;

Que le jour même où le jugement fut rendu, le vingt-un février, mil huit cent quatre-vingt-deux, la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company ;

Qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie The Pioneer Beet Root Sugar Company. La dite Eastern Township Bank malgré l'enregistrement qu'elle fit de son jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ;

Que des moyens artificieux ont été employés par la dite Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ;

Que de plus la dite Eastern Townships Bank, bien que sachant que l'enregistrement de ce jugement, comme susdit, dans un temps où la compagnie défenderesse The Pioneer Beet Root Sugar Company était insolvable et en déconfiture, ne pouvait pas lui donner et ne lui a pas donné droit d'hypothèque

et était sans force et sans effet, a fait usage de tel enregistrement pour empêcher d'autres personnes présentes à la dite vente d'encherir sur les propriétés en question en cette cause et a ordonné l'enregistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'encherir sur les dites propriétés ;

10 Qu'à raison des dits artifices et d'autres semblables pratiqués par la dite banque, lorsque les dites propriétés ont été mises à l'enchère à la dite vente du shérif, les dites propriétés, par une entente collusoire et frauduleuse entre la dite banque et d'autres personnes présentes et enchérissant, ont été vendues et a jugées à William Farwell, gérant général de la dite banque, illégalement et frauduleusement, au préjudice des créanciers pour la somme de quatorze cents piastres et que le dit William Farwell représentait et agissait pour la dite banque en cette circonstance.

Que les dits immeubles ainsi adjugés à la dite banque valaient au moins de quarante à cinquante mille piastres ;

Qu'ainsi la dite vente est irrégulière, illégale, nulle et de nul effet et devra ainsi être annulée et mise de côté ;

20 Qu'un bref et une requête en nullité de décret dans lesquels les dits Rough, McDougall et Beard ont été mis en cause, ont été pris et signifiés par la Banque d'Hochelaga, l'un des créanciers de la dite The Pioneer Beet Root Sugar Company, le ou vers le vingt-deux juin mil huit cent quatre-vingt-trois, lesquels procédés sont encore pendants devant cette Cour ;

Que les moyens invoqués par la dite Banque d'Hochelaga sont les mêmes que ceux ci-dessus mentionnés et sont vrais ;

Que lors de l'échéance des intérêts ainsi que des versements dus le dix juillet mil huit cent quatre-vingt-trois et le seize janvier mil huit cent quatre-vingt-quatre sur le dit prix de vente, le dit défendeur Andrew Rough a notifié la demanderesse du trouble et de l'éviction qu'il subit ;

30 Que la demanderesse qui connaissait d'ailleurs ce trouble et cette éviction n'a pas tenu compte de cette notification et sans faire cesser ce trouble et cette éviction et sans même offrir caution, a intenté illégitimement cette action ;

Que les propriétés vendues ont subi une détérioration considérable qui en réduit la valeur maintenant à quelques milliers de piastres seulement ;

Que les dommages causés aux dites prémisses vendues et aux machinerie sont d'au moins la somme de cinquante mille piastres (\$50,000), tel qu'il appert à l'état produit au soutien des présentes ;

40 Que tel qu'il appert à l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois ainsi qu'à la déclaration de la demanderesse, celle-ci n'aurait pas le droit de réclamer le prix total de la vente qu'au cas où le défendeur Andrew Rough serait en faute en ne payant pas les versements à échéance ;

Que tel qu'il appert par les allégués ci-dessus, le défendeur Andrew Rough étant troublé et étant évincé a été en droit de retarder le paiement de ses versements tant que la demanderesse ne ferait pas cesser le trouble et n'offrirait pas caution, tel que requis par la loi, ce qu'elle n'a pas fait ;

Et le dit défendeur Andrew Rough allègue :

Qu'il a payé en acompte du dit prix de vente la somme de seize mille

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quatre-vingt douze piastres et quarante-huit centins, comme suit ;

10. Neuf mille quatre cent trente-neuf piastres et soixante-dix centins, lors de la passation du dit acte de vente, le dix-neuf janvier mil huit cent quatre-vingt-trois ;

20. Treize cent cinquante-deux piastres et soixante-dix-huit centins vers le trente avril mil huit cent quatre-vingt-trois ;

30. Cinq mille trois cents piastres vers la même date (30 avril 1883) ;

Que la demanderesse ne lui a donné crédit que pour les deux premiers montants, tandis qu'elle aurait dû lui donner crédit pour les trois montants ;

Qu'ainsi la balance due à la demanderesse ne s'élève qu'à la somme de 10  
huit mille trois cent quarante-sept piastres, avec intérêt, tel que stipulé au dit acte du dix-neuf janvier mil huit cent quatre-vingt trois ;

Que la demanderesse est mal fondé dans la demande pour tout montant dépassant la balance mentionnée en l'allégué ci-dessus.

Pourquoi le défendeur conclut à ce que par le jugement à intervenir il soit déclaré que le défendeur est bien fondé à ne pas payer la dite somme de huit mille trois cent quarante-sept piastres et vingt-deux centins, jusqu'à ce que la demanderesse ait fait cesser le trouble et l'éviction que subit le défendeur Andrew Rough et à ce que la dite action soit déboutée avec dépens dont distraction aux soussignés. 20

Montréal, 18 Sept. 1884.

LACOSTE, GLOBENSKY, BISAILLON, BROSSEAU & LAJOIE,  
Avocats du défendeur Rough.

Et le dit défendeur Andrew Rough, sans préjudice à ce que ci-dessus plaidé, pour défense au fonds en faits à cette action, dit : que tous et chacun les allégués de la déclaration sont faux et mal fondés en fait.

Pourquoi le dit défendeur conclut au renvoi de la dite action avec dépens distraits aux soussignés. 30

Montreal, 18 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON BROSSEAU & LAJOIE,  
Avocats du Défendeur Rough.

Rec'd copy under all reserves and subject to payment of costs.

Montreal, 19th Sept. 1888.

ATWATER & MACKIE, 40  
Atty. for Plaintiffs.

(ENDORSED),

Défenses du défendeur Andrew Rough amendé. Prod. 25 Sept. 1888.  
(Paraphed) G. H. K. Depty. P. S. C.



SCHEDULE No. 66.

Canada,  
Province de Québec,  
District de Montréal.

Cour Supérieure.

No. 2157.

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*In the  
Superior  
Court.*

The Eastern Townships Bank.....Demanderesse,

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Defendant.

vs.

10 Andrew Rough et al.....Défenderesse.

John  
McDougall's  
amended de-  
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Et le dit défendeur John McDougall pour défense aux fond en fait à cette action, dit :

Que le défendeur John McDougall est troublé et évincé dans la possession et propriété du dit immeuble rendu par la demanderesse ;

Que le six octobre mil huit cent quatre-vingt-trois, le Gouvernement de la Puissance du Canada a, par l'entremise de son collecteur de douanes à Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues avec les dites bâtisses comme en faisant partie, pour droit de douanes non payés ;

20 Que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ;

Que le collecteur de douanes à Coaticooke s'est, dans le même temps savoir, le six Octobre mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ;

Que les dites bâtisses et machineries sont encore en sa possession :

Que le défendeur Andrew Rough est, depuis cette époque, privé de la possession et de la propriété vendues ;

30 Que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shérif à la demanderesse, et ce, à la connaissance de la demanderesse ;

Que les dites bâtisses ainsi que les dites machineries ont subies de grandes détériorations ;

Que les dommages causés aux dites bâtisses et aux dites machineries sont d'au moins la somme de cinquante mille piastres (\$50,000) tel qu'il appert à l'état produit au soutien des présentes ;

Que lors de la vente faite au défendeur Rough, la dite demanderesse savait que les droits sur les dites machineries n'avaient pas été payés et connaissait l'intention du Gouvernement de faire saisir les dites machineries ;

40 Que cependant la demanderesse a caché ces faits au défendeur dans le but d'opérer une vente frauduleuse ;

Que sous ces circonstances, l'action de la demanderesse doit être déboutée avec dépens.

Pourquoi le défendeur conclut au renvoi de la dite action avec dépens dont distraction aux soussignés.

Montreal, 18 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

*Avocats du Défendeur McDougall.*

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Et sans préjudice à ce que ci-dessus plaidé, mais au contraire s'en réservant tout le bénéfice et avantage, le défendeur pour autre plaidoyer à la dite action, dit :

Que tous et chacun les faits allégués en la dite action, sauf ceux que corrobore la défense, sont faux et mal fondés et le défendeur les nie tous et chacun d'eux formellement et expressément ;

Que le défendeur Andrew Rough est troublé et évincé dans la possession et propriété du dit immeuble vendu par la demanderesse ;

Que le six octobre mil huit cent quatre-vingt-trois, le Gouvernement de la Puissance du Canada a, par l'entremise de son collecteur de douanes à Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues avec les dites bâtisses comme en faisant partie, pour droits de douanes non payés ;

Que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ;

Que le collecteur de douanes à Coaticooke s'est, dans le même temps, savoir, le six octobre mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ;

Que les dites bâtisses et machineries sont encore en sa possession ;

Que le défendeur Andrew Rough est, depuis cette époque, privé de la possession et de la propriété vendues ;

Que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shérif à la demanderesse, et ce, à la connaissance de la demanderesse ;

Que les dites bâtisses ainsi que les dites machineries ont subi de grandes détérioration ;

Que les dommages causés aux dites bâtisses et aux dites machineries sont d'au moins la somme de cinquante mille piastres (\$50,000), tel qu'il appert à l'état produit au soutien des présentes ;

Que lors de la vente faite au défendeur Rough, la dite demanderesse savait que les droits sur les dites machineries n'avaient pas été payés et connaissait l'intention du Gouvernement de faire saisir les dites machineries ;

Que cependant la demanderesse a caché ces faits au défendeur dans le but d'opérer une vente frauduleuse ;

Que sous ces circonstances la demanderesse ne peut réussir dans son action sans faire cesser le trouble et l'éviction que subit le défendeur Andrew Rough ;

Pourquoi le défendeur conclut au renvoi de la dite action avec dépens dont distraction aux soussignés.

Montréal, 18 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON &amp; BROSSEAU,

Avocats du Défendeur McDougall.

Et le dit défendeur John McDougall pour exception péremptoire à cette action, dit :

Que tous et chacun les faits allégués en la dite action, sauf ceux qui pourront être ci-après expressément admis, sont faux et mal fondés ;

Que le défendeur Andrew Rough est troublé et évincé et se refuse par conséquent de payer la balance du prix et intérêts stipulés dans l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois, et réclamés par cette action, vente dont il a le droit de demander et demande la nullité ;

10 Que les immeubles vendus par la demanderesse au défendeur par l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt trois et dont elle demande la balance du prix par cette action, ont été acquis par elle du shérif du district de St. François, G. F. Bowen, qui les a vendus le douze janvier mil huit cent quatre-vingt-trois, au bureau d'enregistrement de la division de Coaticooke, dans le district de St-François, en vertu d'un bref d'exécution émané dans le district de Montréal le trente-un octobre mil huit cent quatre-vingt-deux, dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de la Cour Supérieure et où Fairbanks et al étaient demandeurs et The Pioneer Beet Root Sugar Company était défenderesse ;

20 Qu'un titre de la dite vente a été passé par le dit shérif Bowen, le treize janvier mil huit cent quatre-vingt-trois ;

Que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du dit bref d'exécution étaient et sont irréguliers, illégaux, nuls et de nul effet et doivent être déclarés tels, et la vente et adjudication faite par le dit shérif doit être cassée, annulée et mise de côté ;

30 Que la minute de la saisie pratiquée par le dit shérif, ainsi que les annonces et les avis de vente ni aucun d'iceux ne contiennent, tel que requis par la loi, une description suffisante des immeubles qui ont ainsi été vendu par la dite vente au défendeur Rough la description des dits immeubles ne mentionnant ni la cité, ville, village, paroisse ou township, non plus que la rue, le rang ou la concession où se trouvaient situés les dits immeubles ainsi annoncés et vendus ;

Qu'en outre, au nombre des immeubles annoncés et vendus, se trouve une partie du lot numéro sept cent soixante et trois qui n'est pas allégué être et n'est pas un numéro distinct d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncées, tel que requis par la loi ;

40 Que le shérif ou le député-shérif qui a procédé à la dite vente, a adjugé illégalement les dits immeubles à la demanderesse The Eastern Townships Bank pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite banque, laquelle enchère avait été entrée sur le livre de minute tenu pour l'enchère des dits immeubles ;

Que le shérif a vendu les dits biens immeubles en un seul lot et en bloc sans le consentement de la défenderesse The Pioneer Beet Root Sugar Company mais sur la demande du gérant de la banque adjudicataire The Eastern Townships Bank; la demanderesse en cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite banque.

RECORD.

*In the  
Superior  
Court.*

No. 34.

Defendant  
JohnMc Dougall's  
amended de-  
fence, dated  
12th  
September  
1888.

—Continued.

RECORD.

*In the  
Superior  
Court.*No. 34.  
Defendant  
McDougall's  
amended de-  
fence, dated  
12th  
September  
1888.  
—Continued

Que la vente et adjudication des dits immeubles a ainsi été faite à la demanderesse The Eastern Townships Bank par le dit shérif illégalement et irrégulièrement, à vil prix, savoir, pour quatorze cents piastres, lorsque la valeur des dits biens immeubles était bien plus considérable, savoir, d'au moins quarante ou cinquante mille piastres ;

Que le neuf février mil huit cent quatre-vingt-deux la dite The Eastern Townships Bank, la demanderesse en cette cause, bien que connaissant l'insolvabilité et la déconfiture dans laquelle se trouvait alors la The Pioneer Beet Root Sugar Company, et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérables, a cependant dans le but de les tromper et d'obtenir une préférence indue et frauduleuse sur eux intenté secrètement de vant la Cour Supérieure du district de St-François, sous le numéro trois cent trente-cinq des dossiers de la dite Cour, une action intitulée : "The Eastern Townships Bank vs Amos H. Cummings et al, manufacturiers du village de Coaticooke, dans le district de St-François dans laquelle la dite The Eastern Townships Bank était demanderesse, un nommé Amos H. Cummings du village de Coaticooke dans le district de St-François et The Pioneer Beet Root Sugar Company étaient défendeurs ;

Que la dite action a été par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la banque demanderesse à un des Directeurs de la dite Banque savoir un nommé John Thornton, qui était aussi un officier de la compagnie défenderesse ; The Pioneer Beet Root Sugar Company ;

Que d'après entente entre le dit Thornton et la dite Eastern Townships Bank, la dite action n'a jamais été communiqué au bureau de direction de la compagnie défenderesse, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement ;

Que la dite action fut rapporté en Cour le vingt trois février mil huit cent quatre-vingt-deux et que jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt-cinq du même mois pour une somme de vingt-trois mille six cent soixante-dix-sept piastres avec intérêt du dix février, montant considérablement au-delà de ce qui était dû alors à la dite Eastern Townships Bank ;

Que le jour même où le dit jugement fut rendu, savoir, le vingt-cinq février mil huit cent quatre-vingt-deux la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie défenderesse, The Pioneer Beet Root Sugar Company ;

Qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie défenderesse la dite Eastern Townships Bank malgré l'enregistrement qu'elle fit de son jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ;

Que des moyens artificieux ont été employés par la dite The Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ;

Que de plus, la dite Eastern Townships Bank, bien que sachant l'enregistrement de ce jugement, comme susdit, dans un temps où la compagnie défenderesse The Pioneer Beet Root Sugar Company était insolvable et en déconfi-

ture, ne pouvait pas lui donner et ne lui a pas donné droit d'hypothèque, et étant sans force et sans effet, a fait usage de tel enregistrement pour empêcher d'autres personnes d'être présentes à la dite vente et enchérir sur les propriétés en question en cette cause et a ordonné l'enregistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur la dite propriété ;

10 Qu'à raison des artifices et d'autres semblables pratiqués par la dite banque lorsque les dites propriétés ont été mises à l'enchère à la dite vente du shérif, les dites propriétés par une entente collusoire et frauduleuse entre la dite banque, et d'autres personnes présentes et enchérissant, ont été vendues et adjugés à William Farwell, gérant de la dite banque, illégalement et frauduleusement au préjudice des créanciers pour la somme de quatorze cents piastres, et que le dit William Farwell représentait et agissait pour la dite banque en cette circonstance ;

Que les dits immeubles ainsi adjugés à la dite banque valaient au moins de quarante à cinquante mille piastres ;

Qu'ainsi la dite vente est irrégulière, illégale, nulle et de nul effet devra ainsi être annulé et mise de côté ;

20 Qu'un bref et une requête en nullité de décret ont été pris et signifiés par la banque d'Hochelaga, l'un des créanciers de la dite Pioneer Beet Root Sugar Company, lesquels sont encore pendants devant cette Cour ;

Que les dits Rough, McDougall et Beard ont été mis en cause dans les dits bref et requête en nullité de décret lesquels dits bref et requête leur ont été signifiés à chacun d'eux ;

Que les moyens invoqués par la dite banque d'Hochelaga sont les mêmes que ceux ci-dessus relatés, lesquels allégués sont vrais ;

Qu'ainsi le défendeur Andrew Rough se trouve exposé à un trouble imminent et à une éviction certaine ;

30 Que le cinquième jour de septembre mil huit cent quatre-vingt-quatre, le défendeur Andrew Rough a pris une action devant cette Cour pour faire casser, annuler et mettre de côté l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois par la dite banque au défendeur et relaté en la déclaration en cette cause ;

Que la dite action porte le numéro neuf cent dix des dossiers de cette Cour ;

Que les moyens invoqués dans la dite action pour faire casser, annuler et mettre de côté le dit acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois sont les mêmes que ceux ci-dessus plaidés et sont vrais ;

40 Que sous ces circonstances, le défendeur Andrew Rough est bien fondé à se refuser au paiement de la balance du prix de vente et des intérêts stipulés dans l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois.

Pourquoi le défendeur conclut au renvoi de la dite action avec frais et dépens dont distraction aux soussignés.

Montréal, 16 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON et BROSSEAU,

Avocats du défendeur John McDougall.

RECORD.

*In the  
Superior  
Court.*

No. 34.  
Defendant  
John  
Mc Dougall's  
amended de-  
fence, dated  
12th  
September  
1888.

—Continued.

RECORD.

*In the  
Superior  
Court.*No. 34.  
Defendant  
McDougall's  
amended de-  
fence, dated  
12th  
September  
1888.

—Continued

Et le dit défendeur John McDougall sans préjudice à ce que ci-dessus plaidé, mais au contraire s'en réservant tout le bénéfice et avantage pour autre défense à cette action, dit :

Que tous et chacun les faits allégués en la dite action, sauf ceux qui pourront être ci-après expressément admis, sont faux et mal fondés ;

Que les immeubles vendus par la demanderesse au défendeur Andrew Rough, par l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois et dont elle demande la balance du prix par cette action ont été acquis par elle du shérif du district de St. François, G. F. Bowen qui les a vendus le douze janvier mil huit cent quatre-vingt trois au bureau d'enregistrement de la division de Coaticooke, dans le district de St. François en vertu d'un bref d'exécution émané dans le district de Montréal, le trente et un Octobre mil huit cent quatre vingt-deux, dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de cette cour et où Fairbank et al étaient demandeurs et The Pioneer Beet Root Sugar Company était défenderesse ;

Qu'un titre de la dite vente a été passé par le dit shérif Bowen, le treize janvier mil huit cent quatre-vingt-trois ;

Que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du dit bref d'exécution étaient et sont irréguliers, illégaux, nuls et de nul effet et doivent être déclarés tels et la vente et adjudication faites par le dit shérif doit être cassée, annulée et mise de côté ;

Que la minute de la saisie pratiquée par le dit shérif ainsi que les annonces et les avis de vente ni aucun d'iceux ne contiennent tel que requis par la loi, une description suffisante des immeubles saisis en vertu du dit bref d'exécution et principalement des immeubles qui ont été vendus par la dite vente au défendeur Andrew Rough la description des dits immeubles ne mentionnant ni la cité, ville, village paroisse ou township, non plus que la rue, le rang ou la concession où se trouvaient situés les dits immeubles ainsi annoncés et vendus ;

Qu'en outre au nombre des immeubles ainsi annoncés et vendus se trouve une partie du lot numéro sept cent soixante-trois qui n'est pas allégué être et n'est pas d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncés tel que requis par la loi ;

Que le shérif ou le député-shérif qui a procédé à la dite vente, a adjugé illégalement les dits immeubles à la demanderesse, The Eastern Townships Bank pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite banque, laquelle enchère avait été entrée sur le livre de minute tenu pour l'enchère des dits immeubles ;

Que le dit shérif a vendu les dits immeubles en un seul lot et en bloc sans le consentement de la défenderesse, mais sur la demande de la banque adjudicataire The Eastern Townships Bank, la demanderesse en cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite banque ;

Que la vente et adjudication des dits immeubles a ainsi été faite à la demanderesse The Eastern Townships Bank par le dit shérif, illégalement et irrégulièrement ;

gulièrement à vil prix, savoir, pour quatorze cents piastres, lorsque la valeur des dits biens immeubles était bien plus considérable, savoir d'au moins quarante à cinquante mille piastres ;

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*In the  
Superior  
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No. 34.  
Defendant  
John  
Mc Dougall's  
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fence, dated  
12th  
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1888.

—Continued.

10 Que le neuf février mil huit cent quatre-vingt-deux, la dite The Eastern Townships Bank, la demanderesse en cette cause, bien que connaissant l'insolvabilité et la déconfiture dans laquelle se trouvait alors la Pioneer Beet Root Sugar Company et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérables, a cependant, dans le but de les tromper et d'obtenir une préférence indue et frauduleuse sur eux, intenté secrètement devant la Cour Supérieure du district de St-François, sous le numéro trois cent trente-cinq des dossiers de la dite Cour, une action intitulée : "The Eastern Townships Bank vs. Amos H. Cummings et al., manufacturiers, du village de Coaticooke, dans le district de St-François dans laquelle la dite The Eastern Townships Bank était demanderesse et Amos H. Cummings et al., du village de Coaticooke dans le district de St-François et The Pioneer Beet Root Sugar Company étaient défendeurs ;

20 Que la dite action a été intentée par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la banque demanderesse à un des directeurs de la dite banque, savoir, à un nommé John Thornton, qui était aussi un officier de la dite compagnie défenderesse, The Pioneer Beet Root Sugar Company ;

Que d'après entente entre le dit Thornton et la dite Eastern Townships Bank, la dite action n'a jamais été communiquée au bureau de direction de la compagnie défenderesse, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement ;

30 Que la dite action fut rapportée en Cour le vingt-trois février mil huit cent quatre-vingt-deux et jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt-un du même mois pour une somme de vingt-trois mille six cent soixante-dix-sept piastres avec intérêt du dix février, montant considérablement au-delà de ce qui était dû alors à la dite Eastern Townships Bank ;

Que le jour même où le jugement fut rendu, le vingt-un février, mil huit cent quatre-vingt-deux, la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company ;

40 Qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie The Pioneer Beet Root Sugar Company. La dite Eastern Township Bank malgré l'enregistrement qu'elle fit de son jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ;

Que des moyens artificieux ont été employés par la dite Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ;

Que de plus la dite Eastern Townships Bank, bien que sachant que l'enregistrement de ce jugement, comme susdit, dans un temps où la compagnie défenderesse The Pioneer Beet Root Sugar Company était insolvable et en déconfiture, ne pouvait pas lui donner et ne lui a pas donné droit d'hypothèque

RECORD.

*In the  
Superior  
Court.*No. 34.  
Defendant  
McDougall's  
amended de-  
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September  
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—Continued

et était sans force et sans effet, a fait usage de tel enregistrement pour empêcher d'autres personnes présentes à la dite vente d'enchérir sur les propriétés en question en cette cause et a ordonné l'enregistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur les dites propriétés ;

Qu'à raison des dits artifices et d'autres semblables pratiqués par la dite banque, lorsque les dites propriétés ont été mises à l'enchère à la dite vente du shérif, les dites propriétés, par une entente collusoire et frauduleuse entre la dite banque et d'autres personnes présentes et enchérissant, ont été vendues et adjugées à William Farwell, gérant général de la dite banque, illégalement et frauduleusement, au préjudice des créanciers pour la somme de quatorze cents piastres et que le dit William Farwell représentait et agissait pour la dite banque en cette circonstance. 10

Que les dits immeubles ainsi adjugés à la dite banque valaient au moins de quarante à cinquante mille piastres ;

Qu'ainsi la dite vente est irrégulière, illégale, nulle et de nul effet et devra ainsi être annulée et mise de côté ;

Qu'un bref et une requête en nullité de décret dans lesquels les dits Rough, McDougall et Beard ont été mis en cause, ont été pris et signifiés par la Banque d'Hochelaga, l'un des créanciers de la dite The Pioneer Beet Root Sugar Company, le ou vers le vingt-deux juin mil huit cent quatre-vingt-trois, lesquels procédés sont encore pendants devant cette Cour ; 20

Que les moyens invoqués par la dite Banque d'Hochelaga sont les mêmes que ceux ci-dessus mentionnés et sont vrais ;

Que lors de l'échéance des intérêts ainsi que des versements dus le dix juillet mil huit cent quatre-vingt-trois et le seize janvier mil huit cent quatre-vingt-quatre sur le dit prix de vente, le dit défendeur Andrew Rough a notifié la demanderesse du trouble et de l'éviction qu'il subit ;

Que la demanderesse qui connaissait d'ailleurs ce trouble et cette éviction n'a pas tenu compte de cette notification et sans faire cesser ce trouble et cette éviction et sans même offrir caution, a intenté illégitimement cette action ; 30

Que les propriétés vendues ont subi une détérioration considérable qui en réduit la valeur maintenant à quelques milliers de piastres seulement ;

Que les dommages causés aux dites prémisses vendues et aux machineries sont d'au moins la somme de cinquante mille piastres (\$50,000), tel qu'il appert à l'état produit au soutien des présentes ;

Que tel qu'il appert à l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois ainsi qu'à la déclaration de la demanderesse, celle-ci n'aurait pas le droit de réclamer le prix total de la vente qu'au cas où le défendeur Andrew Rough serait en faute en ne payant pas les versements à échéance : 40

Que tel qu'il appert par les allégués ci-dessus, le défendeur Andrew Rough étant troublé et étant évincé a été en droit de retarder le paiement de ses versements tant que la demanderesse ne ferait pas cesser le trouble et n'offrirait pas caution, tel que requis par la loi, ce qu'elle n'a pas fait ;

Et le dit défendeur Andrew Rough allégué :

Qu'il a payé en acompte du dit prix de vente la somme de seize mille



quatre-vingt douze piastres et quarante-huit centins, comme suit :

1o. Neuf mille quatre cent trente-neuf piastres et soixante-dix centins, lors de la passation du dit acte de vente, le dix-neuf janvier mil huit cent quatre-vingt-trois ;

2o. Treize cent cinquante-deux piastres et soixante-dix-huit centins vers le trente avril mil huit cent quatre-vingt-trois ;

3o. Cinq mille trois cents piastres vers la même date (30 avril 1883) ;

Que la demanderesse ne lui a donné crédit que pour les deux premiers montants, tandis qu'elle aurait dû lui donner crédit pour les trois montants ;

10 Qu'ainsi la balance due à la demanderesse ne s'élève qu'à la somme de huit mille trois cent quarante sept piastres, avec intérêt, tel que stipulé au dit acte du dix-neuf janvier mil huit cent quatre-vingt-trois ;

Que la demanderesse est mal fondé dans la demande pour tout montant dépassant la balance mentionnée en l'allégué ci-dessus.

Pourquoi le demandeur conclut à ce que par le jugement à intervenir il soit déclaré que le défendeur est bien fondé à ne pas payer la dite somme de huit mille trois cent quarante-sept piastres et vingt deux centins, jusqu'à ce que la demanderesse ait fait cesser le trouble et l'éviction que subit le défendeur Andrew Rough et à ce que la dite action soit déboutée avec dépens dont distraction aux soussignés.

20 Montréal, 18 Sept. 1884.

LACOSTE, GLOBENSKY, BISAILLON, BROSSEAU & LAJOIE,  
Avocats du défendeur John McDougall.

Et le dit défendeur John McDougall, sans préjudice à ce que ci-dessus plaidé, pour défense au fonds en faits à cette action, dit : que tous et chacun les allégués de la déclaration sont faux et mal fondés en fait.

30 Pourquoi le dit défendeur conclut au renvoi de la dite action avec dépens distraits au soussignés.

Montreal, 18 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON, BROSSEAU & LAJOIE,  
Avocats du Défendeur John McDougall.

Rec'd copy under all reserves and subject to payment of costs.

Montreal, 19th Sept 1888.

40

ATWATER & MACKIE,  
Atty. for Plaintiffs.

(ENDORSED),

Défenses du défendeur John McDougall amendé. Prod. 25 Sept. 1888.  
(Paraphed) G. H. K. Depty. P. S. C.

RECORD

In the  
Superior  
Court.

No 34.

Defendant  
John

McDougall's

amended de-  
fence, dated

12th  
September  
1888.

—Continued.

RECORD.

SCHEDULE No. 67.

Canada,  
Province de Québec, }  
District de Montréal. }

Cour Supérieure.

No. 2157.

No. 35.

Defendant  
S. W. Beard's  
amended de-  
fence, dated  
12th  
September  
1888.

The Eastern Townships Bank.....Demanderesse,

vs.

Andrew Rough et al.....Défenderesse. 10

Et le dit défendeur Samuel W. Beard pour défense aux fond en fait à cette action, dit :

Que le défendeur Andrew Rough est troublé et évincé dans la possession et propriété du dit immeuble rendu par la demanderesse ;

Que le six octobre mil huit cent quatre-vingt-trois, le Gouvernement de la Puissance du Canada a, par l'entremise de son collecteur de douanes à Coaticooke, saisi les machineries qui se trouve dans les bâtisses vendues avec les dites bâtisses comme en faisant partie, pour droit de douanes non payés ;

Que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ; 20

Que le collecteur de douanes à Coaticooke s'est, dans le même temps savoir, le six Octobre mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ;

Que les dites bâtisses et machineries sont encore en sa possession ;

Que le défendeur Andrew Rough est, depuis cette époque, privé de la possession et de la propriété vendues ;

Que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shérif, à la demanderesse, et ce, à la connaissance de la demanderesse ;

Que les dites bâtisses ainsi que les dites machineries ont subies de grandes détériorations. 30

Que les dommages causés aux dites bâtisses et aux dites machineries sont d'au moins la somme de cinquante mille piastres (\$50,000) tel qu'il appert à l'état produit au soutien des présentes ;

Que lors de la vente faite au défendeur Rough, la dite demanderesse savait que les droits sur les dites machineries n'avaient pas été payés et connaissait l'intention du Gouvernement de faire saisir les dites machineries ;

Que cependant la demanderesse a caché ces faits au défendeur dans le but d'opérer une vente frauduleuse ;

Que sous ces circonstances, l'action de la demanderesse doit être déboutée avec dépens. 40

Pourquoi le défendeur conclut au renvoi de la dite action avec dépens dont distraction aux soussignés.

Montréal, 18 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du Défendeur S. W. Beard.

Et sans préjudice à ce que ci-dessus plaidé, mais au contraire s'en réservant tout le bénéfice et avantage, le défendeur pour autre plaider à la dite action, dit :

Que tous et chacun les faits allégués en la dite action, sauf ceux que corrobore la défense, sont faux et mal fondés et le défendeur les nie tous et chacun d'eux formellement et expressément ;

Que le défendeur Andrew Rough est troublé et évincé dans la possession et propriété du dit immeuble vendu par la demanderesse ;

10 Que le six octobre mil huit cent quatre-vingt-trois, le Gouvernement de la Puissance du Canada a, par l'entremise de son collecteur de douanes à Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues avec les dites bâtisses comme en faisant partie, pour droits de douanes non payés ;

Que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ;

Que le collecteur de douanes à Coaticooke s'est, dans le même temps, savoir, le six octobre mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ;

Que les dites bâtisses et machineries sont encore en sa possession ;

20 Que le défendeur Andrew Rough est, depuis cette époque, privé de la possession et de la propriété vendues ;

Que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shérif à la demanderesse, et ce, à la connaissance de la demanderesse ;

Que les dites bâtisses ainsi que les dites machineries ont subi de grandes détérioration ;

Que les dommages causés aux dites bâtisses et aux dites machineries sont d'au moins la somme de cinquante mille piastres (\$50,000), tel qu'il appert à l'état produit au soutien des présentes ;

30 Que lors de la vente faite au défendeur Rough, la dite demanderesse savait que les droits sur les dites machineries n'avaient pas été payés et connaissait l'intention du Gouvernement de faire saisir les dites machineries ;

Que cependant la demanderesse a caché ces faits au défendeur dans le but d'opérer une vente frauduleuse ;

Que sous ces circonstances la demanderesse ne peut réussir dans son action sans faire cesser le trouble et l'éviction que subit le défendeur Andrew Rough ;

Pourquoi le défendeur conclut au renvoi de la dite action avec dépens dont distraction aux soussignés.

40 Montréal, 18 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

Avocats du Défendeur S. W. Beard.

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—  
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Et le dit défendeur Samuel W. Beard pour exception péremptoire à cette action, dit :

Que tous et chacun les faits allégués en la dite action, sauf ceux qui pourront être ci-après expressément admis, sont faux et mal fondés ;

Que le défendeur Andrew Rough est troublé et évincé et se refuse par conséquent de payer la balance du prix et intérêts stipulés dans l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois, et réclamés par cette action, vente dont il a le droit de demander et demande la nullité ;

Que les immeubles vendus par la demanderesse au défendeur par l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt trois et dont elle demande la balance du prix par cette action, ont été acquis par elle du shérif du district de St. François, G. F. Bowen, qui les a vendus le douze janvier mil huit cent quatre-vingt-trois, au bureau d'enregistrement de la division de Coaticooke, dans le district de St-François, en vertu d'un bref d'exécution émané dans le district de Montréal le trente-un octobre mil huit cent quatre-vingt-deux, dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de la Cour Supérieure et où Fairbanks et al étaient demandeurs et The Pioneer Beet Root Sugar Company était défenderesse ;

Qu'un titre de la dite vente a été passé par le dit shérif Bowen, le treize janvier mil huit cent quatre-vingt-trois ;

Que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du dit bref d'exécution étaient et sont irréguliers, illégaux, nuls et de nul effet et doivent être déclarés tels, et la vente et adjudication faite par le dit shérif doit être cassée, annulée et mise de côté ;

Que la minute de la saisie pratiquée par le dit shérif, ainsi que les annonces et les avis de vente ni aucun d'iceux ne contiennent, tel que requis par la loi, une description suffisante des immeubles qui ont ainsi été vendu par la dite vente au défendeur Rough la description des dits immeubles ne mentionnant ni la cité, ville, village, paroisse ou township, non plus que la rue, le rang ou la concession où se trouvaient situés les dits immeubles ainsi annoncés et vendus ;

Qu'en outre, au nombre des immeubles annoncés et vendus, se trouve une partie du lot numéro sept cent soixante et trois qui n'est pas allégué être et n'est pas un numéro distinct d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncées, tel que requis par la loi ;

Que le shérif ou le député-shérif qui a procédé à la dite vente, a adjugé illégalement les dits immeubles à la demanderesse The Eastern Townships Bank pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite banque, laquelle enchère avait été entrée sur le livre de minute tenu pour l'enchère des dits immeubles ;

Que le shérif a vendu les dits biens immeubles en un seul lot et en bloc sans le consentement de la défenderesse The Pioneer Beet Root Sugar Company mais sur la demande du gérant de la banque adjudicataire The Eastern Townships Bank, la demanderesse en cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite banque.

Que la vente et adjudication des dits immeubles a ainsi été faite à la demanderesse The Eastern Townships Bank par le dit shérif illégalement et irrégulièrement, à vil prix, savoir, pour quatorze cents piastres, lorsque la valeur des dits biens immeubles était bien plus considérable, savoir, d'au moins quarante ou cinquante mille piastres ;

10 Que le neuf février mil huit cent quatre-vingt-deux la dite The Eastern Townships Bank, la demanderesse en cette cause, bien que connaissant l'insolvabilité et la déconfiture dans laquelle se trouvait alors la The Pioneer Beet Root Sugar Company, et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérables, a cependant dans le but de les tromper et d'obtenir une préférence induue et frauduleuse sur eux intenté secrètement de vant la Cour Supérieure du district de St-François, sous le numéro trois cent trente-cinq des dossiers de la dite Cour, une action intitulée : " The Eastern Townships Bank vs Amos H. Cummings et al, manufacturiers du village de Coaticooke, dans le district de St-François dans laquelle la dite The Eastern Townships Bank était demanderesse, un nommé Amos H. Cummings du village de Coaticooke dans le district de St-François et The Pioneer Beet Root Sugar Company étaient défendeurs ;

2) Que la dite action a été par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la banque demanderesse à un des Directeurs de la dite Banque savoir un nommé John Thornton, qui était aussi un officier de la compagnie défenderesse ; The Pioneer Beet Root Sugar Company ;

Que d'après entente entre le dit Thornton et la dite Eastern Townships Bank, la dite action n'a jamais été communiqué au bureau de direction de la compagnie défenderesse, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement ;

30 Que la dite action fut rapporté en Cour le vingt trois février mil huit cent quatre-vingt-deux et que jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt-cinq du même mois pour une somme de vingt-trois mille six cent soixante-dix-sept piastres avec intérêt du dix février, montant considérablement au-delà de ce qui était dû alors à la dite Eastern Townships Bank ;

Que le jour même où le dit jugement fut rendu, savoir, le vingt-cinq février mil huit cent quatre-vingt-deux la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie défenderesse, The Pioneer Beet Root Sugar Company ;

40 Qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie défenderesse la dite Eastern Townships Bank malgré l'enregistrement qu'elle fit de son jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ;

Que des moyens artificieux ont été employés par la dite The Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ;

Que de plus, la dite Eastern Townships Bank, bien que sachant l'enregistrement de ce jugement, comme susdit, dans un temps où la compagnie défenderesse The Pioneer Beet Root Sugar Company était insolvable et en déconfi-

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ture, ne pouvait pas lui donner et ne lui a pas donné droit d'hypothèque, et étant sans force et sans effet, a fait usage de tel enregistrement pour empêcher d'autres personnes d'être présentes à la dite vente et enchérir sur les propriétés en question en cette cause et a ordonné l'enregistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur la dite propriété ;

Qu'à raison des artifices et d'autres semblables pratiqués par la dite banque lorsque les dites propriétés ont été mises à l'enchère à la dite vente du shérif, les dites propriétés par une entente collusoire et frauduleuse entre la dite banque, et d'autres personnes présentes et enchérissant, ont été vendues et adjugés à William Farwell, gérant de la dite banque, illégalement et frauduleusement au préjudice des créanciers pour la somme de quatorze cents piastres, et que le dit William Farwell représentait et agissait pour la dite banque en cette circonstance ;

Que les dits immeubles ainsi adjugés à la dite banque valaient au moins de quarante à cinquante mille piastres ;

Qu'ainsi la dite vente est irrégulière, illégale, nulle et de nul effet devra ainsi être annulé et mise de côté ;

Qu'un bref et une requête en nullité de décret ont été pris et signifiés par la banque d'Hochelaga, l'un des créanciers de la dite Pioneer Beet Root Sugar Company, lesquels sont encore pendants devant cette Cour ;

Que les dits Rough, McDougall et Beard ont été mis en cause dans les dits bref et requête en nullité de décret lesquels dits bref et requête leur ont été signifiés à chacun d'eux ;

Que les moyens invoqués par la dite banque d'Hochelaga sont les mêmes que ceux ci-dessus relatés, lesquels allégués sont vrais ;

Qu'ainsi le défendeur Andrew Rough se trouve exposé à un trouble imminent et à une éviction certaine ;

Que le cinquième jour de septembre mil huit cent quatre-vingt-quatre, le défendeur Andrew Rough a pris une action devant cette Cour pour faire casser, annuler et mettre de côté l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois par la dite banque au défendeur et relaté en la déclaration en cette cause ;

Que la dite action porte le numéro neuf cent dix des dossiers de cette Cour ;

Que les moyens invoqués dans la dite action pour faire casser, annuler et mettre de côté le dit acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois sont les mêmes que ceux ci-dessus plaidés et sont vrais ;

Que sous ces circonstances, le défendeur Andrew Rough est bien fondé à se refuser au paiement de la balance du prix de vente et des intérêts stipulés dans l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois.

Pourquoi le défendeur conclut au renvoi de la dite action avec frais et dépens dont distraction aux soussignés.

Montréal, 16 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON et BROSSEAU,

Avocats du défendeur Samuel W. Beard.

Et le dit défendeur Samuel W. Beard sans préjudice à ce que ci-dessus plaidé, mais au contraire s'en réservant tout le bénéfice et avantage pour autre défense à cette action, dit :

Que tous et chacun les faits allégués en la dite action, sauf ceux qui pourront être ci-après expressément admis, sont faux et mal fondés ;

Que les immeubles vendus par la demanderesse au défendeur Andrew Rough, par l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois et dont elle demande la balance du prix par cette action ont été acquis par elle du shérif du district de St. François, G. F. Bowen qui les a vendus le douze 10 janvier mil huit cent quatre-vingt trois au bureau d'enregistrement de la division de Coaticooke, dans le district de St. François en vertu d'un bref d'exécution émané dans le district de Montréal, le trente et un Octobre mil huit cent quatre vingt-deux, dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de cette cour et où Fairbank et al étaient demandeurs et The Pioneer Beet Root Sugar Company était défenderesse ;

Qu'un titre de la dite vente a été passé par le dit shérif Bowen, le treize janvier mil huit cent quatre-vingt-trois ;

Que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du 20 dit bref d'exécution étaient et sont irréguliers, illégaux, nuls et de nul effet et doivent être déclarés tels et la vente et adjudication faites par le dit shérif doit être cassée, annulée et mise de côté ;

Que la minute de la saisie pratiquée par le dit shérif ainsi que les annonces et les avis de vente ni aucun d'iceux ne contiennent tel que requis par la loi, une description suffisante des immeubles saisis en vertu du dit bref d'exécution et principalement des immeubles qui ont été vendus par la dite vente au défendeur Andrew Rough la description des dits immeubles ne mentionnant ni la cité, ville, village paroisse ou township, non plus que la rue, le rang ou la concession où se trouvaient situés les dits immeubles ainsi annoncés 30 et vendus ;

Qu'en outre au nombre des immeubles ainsi annoncés et vendus se trouve une partie du lot numéro sept cent soixante-trois qui n'est pas allégué être et n'est pas d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncés tel que requis par la loi ;

Que le shérif ou le député-shérif qui a procédé à la dite vente, a adjugé illégalement les dits immeubles à la demanderesse, The Eastern Townships Bank pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite banque, laquelle enchère avait été entrée sur le livre 40 de minute tenu pour l'enchère des dits immeubles ;

Que le dit shérif a vendu les dits immeubles en un seul lot et en bloc sans le consentement de la défenderesse, mais sur la demande de la banque adjudicataire The Eastern Townships Bank, la demanderesse en cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite banque ;

Que la vente et adjudication des dits immeubles a ainsi été faite à la demanderesse The Eastern Townships Bank par le dit shérif, illégalement et irrég-

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gulièrement à vil prix, savoir, pour quatorze cents piastres, lorsque la valeur des dits biens immeubles était bien plus considérable, savoir d'au moins quarante à cinquante mille piastres ;

Que le neuf février mil huit cent quatre-vingt-deux, la dite The Eastern Townships Bank, la demanderesse en cette cause, bien que connaissant l'insolvabilité et la déconfiture dans laquelle se trouvait alors la Pioneer Beet Root Sugar Company et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérables, a cependant, dans le but de les tromper et d'obtenir une préférence indue et frauduleuse sur eux, intenté secrètement devant la Cour Supérieure du district de St-François, sous le numéro trois cent trente-cinq des dossiers de la dite Cour, une action intitulée : "The Eastern Townships Bank vs. Amos H. Cummings et al., manufacturiers, du village de Coaticooke, dans le district de St-François dans laquelle la dite The Eastern Townships Bank était demanderesse et Amos H. Cummings et al., du village de Coaticooke dans le district de St-François et The Pioneer Beet Root Sugar Company. étaient défendeurs ;

Que la dite action a été intentée par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la banque demanderesse à un des directeurs de la dite banque, savoir, à un nommé John Thornton, qui était aussi un officier de la dite compagnie défenderesse, The Pioneer Beet Root Sugar Company ;

Que d'après entente entre le dit Thornton et la dite Eastern Townships Bank, la dite action n'a jamais été communiquée au bureau de direction de la compagnie défenderesse, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement ;

Que la dite action fut rapportée en Cour le vingt-trois février mil huit cent quatre-vingt-deux et jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt-un du même mois pour une somme de vingt-trois mille six cent soixante-dix-sept piastres avec intérêt du dix février, montant considérablement au-delà de ce qui était dû alors à la dite Eastern Townships Bank ;

Que le jour même où le jugement fut rendu, le vingt-un février, mil huit cent quatre-vingt-deux, la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company ;

Qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie The Pioneer Beet Root Sugar Company. La dite Eastern Township Bank malgré l'enregistrement qu'elle fit de son jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ;

Que des moyens artificieux ont été employés par la dite Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ;

Que de plus la dite Eastern Townships Bank, bien que sachant que l'enregistrement de ce jugement, comme susdit, dans un temps où la compagnie défenderesse The Pioneer Beet Root Sugar Company était insolvable et en déconfiture, ne pouvait pas lui donner et ne lui a pas donné droit d'hypothèque



et était sans force et sans effet, a fait usage de tel enregistrement pour empêcher d'autres personnes présentes à la dite vente d'enchérir sur les propriétés en question en cette cause et a ordonné l'enregistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur les dites propriétés ;

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10 Qu'à raison des dits artifices et d'autres semblables pratiqués par la dite banque, lorsque les dites propriétés ont été mises à l'enchère à la dite vente du shérif, les dites propriétés, par une entente collusoire et frauduleuse entre la dite banque et d'autres personnes présentes et enchérissant, ont été vendues et adjugées à William Farwell, gérant général de la dite banque, illégalement et frauduleusement, au préjudice des créanciers pour la somme de quatorze cents piastres et que le dit William Farwell représentait et agissait pour la dite banque en cette circonstance.

Que les dits immeubles ainsi adjugés à la dite banque valaient au moins de quarante à cinquante mille piastres ;

Qu'ainsi la dite vente est irrégulière, illégale, nulle et de nul effet et devra ainsi être annulée et mise de côté ;

20 Qu'un bref et une requête en nullité de décret dans lesquels les dits Rough, McDougall et Beard ont été mis en cause, ont été pris et signifiés par la Banque d'Hochelaga, l'un des créanciers de la dite The Pioneer Beet Root Sugar Company, le ou vers le vingt-deux juin mil huit cent quatre-vingt-trois, lesquels procédés sont encore pendants devant cette Cour ;

Que les moyens invoqués par la dite Banque d'Hochelaga sont les mêmes que ceux ci-dessus mentionnés et sont vrais ;

Que lors de l'échéance des intérêts ainsi que des versements dus le dix juillet mil huit cent quatre-vingt-trois et le seize janvier mil huit cent quatre-vingt-quatre sur le dit prix de vente, le dit défendeur Andrew Rough a notifié la demanderesse du trouble et de l'éviction qu'il subit ;

30 Que la demanderesse qui connaissait d'ailleurs ce trouble et cette éviction n'a pas tenu compte de cette notification et sans faire cesser ce trouble et cette éviction et sans même offrir caution, a intenté illégitimement cette action ;

Que les propriétés vendues ont subi une détérioration considérable qui en réduit la valeur maintenant à quelques milliers de piastres seulement ;

Que les dommages causés aux dites prémisses vendues et aux machineries sont d'au moins la somme de cinquante mille piastres (\$50,000), tel qu'il appert à l'état produit au soutien des présentes ;

40 Que tel qu'il appert à l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois ainsi qu'à la déclaration de la demanderesse, celle-ci n'aurait pas le droit de réclamer le prix total de la vente qu'au cas où le défendeur Andrew Rough serait en faute en ne payant pas les versements à échéance :

Que tel qu'il appert par les allégués ci-dessus, le défendeur Andrew Rough étant troublé et étant évincé a été en droit de retarder le paiement de ses versements tant que la demanderesse ne ferait pas cesser le trouble et n'offrirait pas caution, tel que requis par la loi, ce qu'elle n'a pas fait ;

Et le dit défendeur Andrew Rough allégué :

Qu'il a payé en acompte du dit prix de vente la somme de seize mille

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10. Neuf mille quatre cent trente-neuf piastres et soixante-dix centins, lors de la passation du dit acte de vente, le dix-neuf janvier mil huit cent quatre-vingt-trois ;

20. Treize cent cinquante-deux piastres et soixante-dix-huit centins vers le trente avril mil huit cent quatre-vingt-trois ;

30. Cinq mille trois cents piastres vers la même date (30 avril 1883) ;

Que la demanderesse ne lui a donné crédit que pour les deux premiers montants, tandis qu'elle aurait dû lui donner crédit pour les trois montants ;

Qu'ainsi la balance due à la demanderesse ne s'élève qu'à la somme de huit mille trois cent quarante-sept piastres, avec intérêt, tel que stipulé au dit acte du dix-neuf janvier mil huit cent quatre-vingt trois ; 10

Que la demanderesse est mal fondé dans la demande pour tout montant dépassant la balance mentionnée en l'allégué ci-dessus.

Pourquoi le défendeur conclut à ce que par le jugement à intervenir il soit déclaré que le défendeur est bien fondé à ne pas payer la dite somme de huit mille trois cent quarante-sept piastres et vingt-deux centins, jusqu'à ce que la demanderesse ait fait cesser le trouble et l'éviction que subit le défendeur Andrew Rough et à ce que la dite action soit déboutée avec dépens dont distraction aux soussignés. 20

Montréal, 18 Sept. 1884.

LACOSTE, GLOBENSKY, BISAILLON, BROSSEAU & LAJOIE,

Avocats du défendeur Samuel W. Beard.

Et le dit défendeur Saml. W. Beard, sans préjudice à ce que ci-dessus plaidé, pour défense au fonds en faits à cette action, dit : que tous et chacun les allégués de la déclaration sont faux et mal fondés en fait.

Pourquoi le dit défendeur conclut au renvoi de la dite action avec dépens distraits aux soussignés. 30

Montreal, 18 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON BROSSEAU & LAJOIE,

Avocats du Défendeur Samuel W Beard.

Rec'd copy under all reserves and subject to payment of costs.

Montreal, 19th Sept. 1888.

ATWATER & MACKIE,  
Atty. for Plaintiffs. 40

(ENDORSED),

Défenses du défendeur Samuel W. Beard amendé. Prod. 25 Sept. 1888.  
(Paraphed) G. H. K. Depty. P. S. C.

## SCHEDULE No. 68.

Canada,  
Province de Québec,  
District de Montréal. }

Cour Supérieure.

No. 2157.

The Eastern Townships Bank.....Demanderesse.

vs.

Andrew Rough et al..... Défendeurs.

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Et le dit Samuel W. Beard, pour plaidoyers additionnels ou réponses aux réponses et répliques de la demanderesse, dit :

Que tous et chacun les faits allégués en les dites réponses sauf ceux qui corroborent la défense, sont mal fondés et le défendeur les nie tous et chacun d'eux formellement et expressément ;

Que lors de la vente faite par le shérif Bowen, la Banque des Cantons de l'Est, la demanderesse, lui offrit par lettre du

de lui vendre les propriétés en question pour un certain montant équivalent à la dette légitime de la Banque des Cantons de l'Est ;

20

Que le dit S. W. Beard était créancier de la Pioneer Beet Root Sugar Company pour un montant très considérable ;

Que voyant la réclamation hypothécaire de la demanderesse, le dit Beard n'avait plus d'intérêt à enchérir parce que les réclamations hypothécaires devaient être payées avant la sienne ;

Qu'il ignorait les irrégularités commises par la demanderesse ;

Que le dit défendeur Beard a acheté de bonne foi, croyant que la banque demanderesse avait un titre légal exempt d'irrégularités.

Pourquoi le défendeur Beard conclut au renvoi des dites réponses et répliques de la demanderesse avec frais et dépens distraits aux soussignés.

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Montréal, 12 Septembre 1888.

LACOSTE, GLOBENSKY, BISAILLON &amp; BROSSEAU,

Avocats du défendeur Samuel W. Beard.

Et sans préjudice à ce que ci-dessus plaidé, mais au contraire s'en réservant tout le bénéfice et avantage pour autre réponse aux réponses de la demanderesse, le dit défendeur Beard dit :

Que tous et chacun les faits allégués en les dites réponses, sauf ceux qui corroborent la défense, sont faux et mal fondés et le défendeur les nie tous et chacun d'eux formellement et expressément ;

40

Que lors de la vente faite par le shérif Bowen la Banque des Cantons de l'Est la demanderesse offrit par lettre du

de lui vendre les propriétés en question pour un certain montant équivalent à la dette légitime de la Banque des Cantons de l'Est ;

Que le dit S. W. Beard était créancier de la Pioneer Beet Root Sugar Company pour un montant très considérable ;

Que voyant la réclamation hypothécaire de la demanderesse, le dit Beard n'avait plus d'intérêt à enchérir parce que les réclamations hypothécaires devaient être payées avant la sienne ;

Qu'il ignorait les irrégularités commises par la demanderesse ;

Que le dit défendeur Beard a acheté de bonne foi croyant que la banque

RECORD

*In the  
Superior  
Court.*

No. 36,  
Additional  
Plea of De-  
fendant  
Beard with  
answers to  
answers of  
the Plaintiff  
dated 12th  
September  
1888.

—Continued.

RECORD

*In the  
Superior  
Court.*

No. 36.

Additional  
Plea of De-  
fendant  
Beard with  
answers to  
answers of  
the Plaintiff  
dated 12th  
September  
1888.

—Continued.

demanderesse avait un titre légal exempt d'irrégularités ;

Qu'il est vrai que Beard avait payé Fairbanks et al. avant la vente faite par le shérif ;

Que le dit Beard après avoir payé la créance de Fairbanks et al. a écrit et ordonné au shérif de ne pas faire la vente et de suspendre les procédés sur l'exécution ;

Que le shérif répondit au dit Beard qu'il ne pouvait obéir à son ordre qu'il y avait d'autres brefs d'exécution de notés, que la vente aurait lieu et qu'il n'était pas au pouvoir de Beard de l'empêcher ;

Que Beard voyant qu'il ne pouvait empêcher la vente et voyant que la Banque des Cantons de l'Est avait un jugement d'enregistré pour un montant considérable, s'enquit du gérant de la banque s'il avait l'intention d'acheter les immeubles et sur réponse du gérant que la banque avait une forte créance établie et privilégiée par jugement enregistré et qu'elle achèterait à la vente du shérif, s'enquit de lui si la banque revendrait ensuite les prémisses ;

Que le dit gérant de la Banque des Cantons de l'Est s'engagea alors à vendre les dits immeubles moyennant un prix équivalent à sa dette légitime ;

Que Beard était créancier de la Pioneer Beet Root Sugar Company pour un fort montant ;

Que lors de l'exécution prise par Fairbanks, Beard était locataire des dits immeubles vendus ;

Que le prix que payait le dit Beard comme locataire était minime et la jouissance des dites prémisses lui permettrait de faire un commerce qui l'aidait à se récupérer de ses pertes avec la Compagnie ;

Que le dit Beard voyant la réclamation hypothécaire de la Banque des Cantons de l'Est, n'avait plus d'intérêt à enchérir parce que la banque devait être payée avant lui.

Pourquoi le défendeur Samuel W. Beard conclut au renvoi des dites réponses et répliques de la demanderesse avec frais et dépens distracts aux soussignés.

Montréal, 12 Septembre-1888.

LACOSTE, GLOBENSKY, BISAILLON &amp; BROSSEAU,

Avocats du défendeur Samuel W. Beard.

Et le dit S. W. Beard, pour défense ou réponse au fond en faits aux dites réponses de la demanderesse, dit :

Que tous et chacun les faits allégués en les dites réponses sont faux et mal fondés.

Pourquoi le défendeur conclut au renvoi des dites réponses et répliques de la demanderesse avec frais et dépens distracts aux soussignés.

Montréal, 12 Septembre 1888.

LACOSTE, GLOBENSKY, BISAILLON, &amp; BROSSEAU,

Avocats du défr. Samuel W. Beard.

(ENDORSED).

Plaidoyers additionels du défendeur Samuel W. Beard en réponse aux réponses de la demanderesse. Prod. 25 Sept. 1888. Paraphed G. H. K. Dept. P. S. C.

SCHEDULE No. 69.

Canada :  
Province of Quebec,  
District of Montreal. }

Superior Court.

No. 2157.

RECORD

*In the  
Superior  
Court.*

No. 37.

Answer to  
Plea of De-  
fendant An-  
drew Rough,  
as amended  
dated 11th  
September,  
1888.

The Eastern Townships Bank.....Plaintiffs.

vs

10 Andrew Rough et al.....Defendants.

The said Plaintiffs for answer to the plea of the Andrew Rough as amended, under special exception to the ruling of the Court allowing the said amendment and answering the said plea because they are forced to do so and without waiver of their rights to appeal against the decision allowing the said plea, declare that they repeat the allegations of their special answer to the said plea as before amendment and specially reiterate and allege that the said Defendants were well aware of all the matters and things set forth in said pleas. Prior to and at the date of the said sale.

20 And the said Plaintiffs further specially deny each and all the matters alleged by the said Defendant as well by his amendments to said plea as by the plea itself.

Wherefore the said Plaintiffs pray as by their said declaration and answer to plea they have already prayed.

Montreal, 11th September 1888.

ATWATER & MACKIE,  
Attorneys for Plaintiffs.

30 And the said Plaintiffs for answer to the additional plea filed by the said Andrew Rough upon motion to that effect made this day, and under special exception to the ruling allowing the filing of the said additional plea and answering the said plea because they are forced to do so and without waiver of their rights to appeal against the decision allowing the said plea, say :

That each and all of the allegations of the said additional plea are false and untrue and unfounded in fact ;

40 That the Government of Canada and the Collector of Customs at Coaticooke had not and have not now the right, authority or title to seize any portion of the said effects or to hold the same as subject to the payment of any duties and any claim or seizure made in respect thereof was and is illegal, null, void and of no effect and the position of the said Defendant has never been and is not now legally interfered with and the same is not and cannot be a trouble, which would give rise to any right in the Defendant as by his said amended plea ;

And said Plaintiffs further say specially that even if the said seizure was made and even if said seizure was legal or valid, which is not admitted but denied, that fact that the said Government of Canada pretended to have a claim for duties upon the said machinery and effects was well known to the said Defendant and to the said McDougall and Beard for whom the said

RECORD

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*In the  
 Superior  
 Court.*  
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No. 37.

Answer to  
 Plea of De-  
 fendant An-  
 drew Rough,  
 as amended  
 dated 11th  
 September,  
 1888.

Continued.—

Defendant Rough merely acted as prête-nom and agent long prior to the sale by the said Plaintiffs to the Defendants of the property at issue in this cause, and the said claim was moreover publicly announced as against the said property by the then Collector of Customs at Coaticooke on the twelfth day of January one thousand eight hundred and eighty-three, to wit, at and prior to the Sheriff's sale of the said property at which the same was adjudicated to the Plaintiffs, and the said sale was made and conducted subject to the directions and orders of the said Defendant and his agent and representatives, and the said Defendant Beard was present at the said sale and knew of the said announcement of the said claim on behalf of the said Government ;

10

That even if the said pretended claim of the said Government was legal and valid, which is not admitted but on the contrary denied, the said Defendant and the said McDougall and Beard for whom the said Defendant Rough was the *prête-nom* and agent knew of the said claim in so far as the name could be considered a trouble and a danger of eviction and that in buying the said property they bought the same knowing all the said circumstances and at their own risk ;

That it is specially false that the said Plaintiff in any way concealed any facts connected with the said claim of the said Government or that in any respect the said sale was fraudulent.

20

Wherefore the said Plaintiffs pray that the said additional plea be hence dismissed with costs and further pray as in and by their said declaration they have already prayed.

Montreal, 11th September 1888.

ATWATER & MACKIE,  
 Attys. for Plaintiff.

And the said Plaintiff for answer to the second additional plea filed by the Defendant Rough upon motion to that effect made this day, and under special exception to the ruling allowing the filing of the said additional plea and answering the said plea, because they are forced to do so and without waiver of their rights to appeal against the decision allowing the plea, say :

30

That each and all the allegations of the said additional plea are false and untrue and unfounded in fact ;

That the Government of Canada and the Collector of Customs at the Port of Coaticooke had not and have not now the right, authority or title to seize any portion of the said effects or to hold the same as subject to the payment of any duties and any claim or seizure made in respect there of was and is illegal, null, void and of no effect and the position of the said Defendant has never been and is not now legally interfered with and the same is not and cannot be a trouble, which would give rise to any right in the Defendant as by his said amended plea ;

40

And said Plaintiffs further say specially that even if the said seizure was made and even if the said seizure was legal or valid, which is not admitted but denied, that the fact that the said Government of Canada pretended to have a claim for duties upon the said machinery and effects was well known to the said Defendant Rough and to the said McDougall and Beard for whom the

RECORD.

*In the  
Superior  
Court.*

No. 38.

Answer to  
Plea of Deft.  
Andrew  
Rough.as amended,  
dated 11th  
Sept. 1888.

—Continued

said Defendant Rough merely acted as *prête-nom* and agent long prior to the sale by the said Plaintiffs to the Defendants of the property at issue in this cause, and the said claim was moreover publicly announced as against the said property by the then Collector of Customs at Coaticooke on the twelfth of January one thousand eight hundred and eighty-three, to wit at and prior to the sheriff's sale of the said property at which the same was adjudicated to the said Plaintiffs, and the said sale was made and conducted subject to the directions and orders of the said Defendant and his agents and representatives, and the said Defendant Beard was present at the sale and knew of the said announce-

10 ments of the said claim on behalf of the said Government;

That even if the said pretended claim of the said Government was legal and valid, which is not admitted but on the contrary denied, the said Defendant and the said McDougall and Beard for whom the Defendant Rough was the *prête-nom* and agent knew of the said claim in so far as the same could be considered a trouble and a danger of eviction and that in buying the said property they bought the same knowing all the said circumstances and at their own risk ;

That it is specially false that the said Plaintiff in any way concealed any facts connected with the said claim of the said Government or that in any

20 respect the said sale was fraudulent.

Wherefore the said Plaintiffs pray that the said additional plea be hence dismissed with costs and further as in and by their said declaration they have already prayed.

Montreal, 11th Sedtember 1888.

ATWATER & MACKIE,  
Attys. for Plaintiffs.

And the said Plaintiffs without waiver of their foregoing answers for further answer to the said pleas and to each of them, say ;

30 That even if the said Government and Department of Customs had any just and legal claim, which is not admitted but specially denied the same became and was and is entirely extinguished and destroyed by the said Sheriff's sale of the property.

Wherefore the said plaintiffs pray that the said pleas and each of them be hence dismissed with costs distraits to the undersigned and further as in and by their declaration herein they have already prayed.

Montreal, 11th September 1888.

A. W. ATWATER,  
Atty. for Plaintiff.

40 Received copy under reserve of all objections,  
2nd of October 1888.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE.

Attorneys for Defendant.

(ENDORSED).

Answers to plea, Andrew Rough of Defendant as amended. Fyled 11  
Sept. 1888- (Paraphed) G. H. K. Depty. P. S. C.

SCHEDULE No. 70.

RECORD

*In the  
Superior  
Court.*

Canada :  
Province of Quebec,  
District of Montreal. }

Superior Court.

No. 2157.

No. 38.  
Answer to  
Plea of  
Defendant  
John  
McDougall,  
as amended  
dated 11th  
September,  
1888.

The Eastern Townships Bank.....Plaintiffs.

vs

Andrew Rough et al.....Defendants. 10

The said Plaintiffs for answer to the plea of the John McDougall as amended, under special exception to the ruling of the Court allowing the said amendment and answering the said plea because they are forced to do so and without waiver of their rights to appeal against the decision allowing the said plea, declare that they repeat the allegations of their special answer to the said plea as before amendment and specially reiterate and allege that the said Defendants were well aware of all the matters and things set forth in said pleas. Prior to and at the date of the said sale.

And the said Plaintiffs further specially deny each and all the matters alleged by the said Defendant as well by his amendments to said plea as by the plea itself. 20

Wherefore the said Plaintiffs pray as by their said declaration and answer to plea they have already prayed.

Montreal, 11th September 1888.

ATWATER & MACKIE,  
Attorneys for Plaintiffs.

And the said Plaintiffs for answer to the additional plea filed by the said John McDougall upon motion to that effect made this day, and under special exception to the ruling allowing the filing of the said additional plea 30 and answering the said plea because they are forced to do so and without waiver of their rights to appeal against the decision allowing the said plea, say :

That each and all of the allegations of the said additional plea are false and untrue and unfounded in fact ;

That the Government of Canada and the Collector of Customs at Coaticooke had not and have not now the right, authority or title to seize any portion of the said effects or to hold the same as subject to the payment of any duties and any claim or seizure made in respect thereof was and is illegal, null, void and of no effect and the position of the said Defendant has never been and is not now legally interfered with and the same is not and cannot 40 be a trouble, which would give rise to any right in the Defendant as by his said amended plea ;

And said Plaintiffs further say specially that even if the said seizure was made and even if said seizure was legal or valid, which is not admitted but denied, that fact that the said Government of Canada pretended to have a claim for duties upon the said machinery and effects was well known to the said Defendant and to the said McDougall and Beard for whom the said



RECORD.

*In the  
Superior  
Court.*No. 38.  
Answer to  
Plea of Deft.  
John  
McDougall  
as amended,  
dated 11th  
Sept. 1888.  
—Continued

Defendant Rough merely acted as prête-nom and agent long prior to the sale by the said Plaintiffs to the Defendants of the property at issue in this cause, and the said claim was moreover publicly announced as against the said property by the then Collector of Customs at Coaticooke on the twelfth day of January one thousand eight hundred and eighty-three, to wit, at and prior to the Sheriff's sale of the said property at which the same was adjudicated to the Plaintiffs, and the said sale was made and conducted subject to the directions and orders of the said Defendant and his agent and representatives, and the said Defendant Beard was present at the said sale and knew of the said  
10 announcement of the said claim on behalf of the said Government ;

That even if the said pretended claim of the said Government was legal and valid, which is not admitted but on the contrary denied, the said Defendant and the said McDougall and Beard for whom the said Defendant Rough was the *prête-nom* and agent knew of the said claim in so far as the name could be considered a trouble and a danger of eviction and that in buying the said property they bought the same knowing all the said circumstances and at their own risk ;

That it is specially false that the said Plaintiff in any way concealed any facts connected with the said claim of the said Government or that in any respect the said sale was fraudulent.  
20

Wherefore the said Plaintiffs pray that the said additional plea be hence dismissed with costs and further pray as in and by their said declaration they have already prayed.

Montreal, 11th September 1888.

ATWATER & MACKIE,  
Attys. for Plaintiff.

And the said Plaintiff for answer to the second additional plea filed by the Deft. McDougall upon motion to that effect made this day, and under special exception to the ruling allowing the filing of the said additional plea and answering the said plea, because they are forced to do so and without waiver of their rights to appeal against the decision allowing the plea, say :  
30

That each and all the allegations of the said additional plea are false and untrue and unfounded in fact ;

That the Government of Canada and the Collector of Customs at the Port of Coaticooke had not and have not now the right, authority or title to seize any portion of the said effects or to hold the same as subject to the payment of any duties and any claim or seizure made in respect there of was and is illegal, null, void and of no effect and the position of the said Defendant has never  
40 been and is not now legally interferred with and the same is not and cannot be a trouble, which would give rise to any right in the Defendant as by his said amended plea ;

And said Plaintiffs further say specially that even if the said seizure was made and even if the said seizure was legal or valid, which is not admitted but denied, that the fact that the said Government of Canada pretended to have a claim for duties upon the said machinery and effects was well known to the said Defendant Rough and to the said McDougall and Beard for whom the

RECORD

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*In the  
 Superior  
 Court.*  
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No. 38.  
 Answer to  
 Plea of  
 Defendant  
 John  
 McDougall.  
 as amended  
 dated 11th  
 September,  
 1888.

said Defendant Rough merely acted as *prête-nom* and agent long prior to the sale by the said Plaintiffs to the Defendants of the property at issue in this cause, and the said claim was moreover publicly announced as against the said property by the then Collector of Customs at Coaticooke on the twelfth of January one thousand eight hundred and eighty-three, to wit at and prior to the sheriff's sale of the said property at which the same was adjudicated to the said Plaintiffs, and the said sale was made and conducted subject to the directions and orders of the said Defendant and his agents and representatives, and the said Defendant Beard was present at the sale and knew of the said announcements of the said claim on behalf of the said Government;

That even if the said pretended claim of the said Government was legal and valid, which is not admitted but on the contrary denied, the said Defendant and the said McDougall and Beard for whom the Defendant Rough was the *prête-nom* and agent knew of the said claim in so far as the same could be considered a trouble and a danger of eviction and that in buying the said property they bought the same knowing all the said circumstances and at their own risk ;

That it is specially false that the said Plaintiff in any way concealed any facts connected with the said claim of the said Government or that in any respect the said sale was fraudulent.

Wherefore the said Plaintiffs pray that the said additional plea be hence dismissed with costs and further as in and by their said declaration they have already prayed.

Montreal, 11th September 1888.

ATWATER & MACKIE,  
 Attys. for Plaintiffs.

And the said Plaintiffs without waiver of their foregoing answers for further answer to the said pleas and to each of them, say ;

That even if the said Government and Department of Customs had any just and legal claim, which is not admitted but specially denied the same became and was and is entirely extinguished and destroyed by the said Sheriff's sale of the property.

Wherefore the said plaintiffs pray that the said pleas and each of them be hence dismissed with costs distracts to the undersigned and further as in and by their declaration herein they have already prayed.

Montreal, 11th September 1888.

A. W. ATWATER,  
 Atty. for Plaintiff.

Received copy under reserve of all objections,  
 2nd of October 1888.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE.  
 Attorneys for Defendant.

(ENDORSED).

Answers to plea, John McDougall. of Defendant as amended. Fyled 11  
 Sept. 1888- (Paraphed) G. H. K. Depty. P. S. C.

SCHEDULE No. 71.

Canada :  
Province of Quebec,  
District of Montreal. }

Superior Court.

No. 2157.

RECORD.

*In the  
Superior  
Court.*

No. 39.

The Eastern Townships Bank..... Plaintiffs.

Answer to  
Plea of Deft.  
S. W. Beard  
as amended,  
dated 11th  
Sept. 1888.

v8

10 Andrew Rough et al..... Defendants.

The said Plaintiffs for answer to the plea of the Samuel W. Beard as amended, under special exception to the ruling of the Court allowing the said amendment and answering the said plea because they are forced to do so and without waiver of their rights to appeal against the decision allowing the said plea, declare that they repeat the allegations of their special answer to the said plea as before amendment and specially reiterate and allege that the said Defendants were well aware of all the matters and things set forth in said pleas. Prior to and at the date of the said sale.

20 And the said Plaintiffs further specially deny each and all the matters alleged by the said Defendant as well by his amendments to said plea as by the plea itself.

Wherefore the said Plaintiffs pray as by their said declaration and answer to plea they have already prayed.

Montreal, 11th September 1888.

ATWATER & MACKIE,

Attorneys for Plaintiffs.

30 And the said Plaintiffs for answer to the additional plea filed by the said Samuel W. Beard upon motion to that effect made this day, and under special exception to the ruling allowing the filing of the said additional plea and answering the said plea because they are forced to do so and without waiver of their rights to appeal against the decision allowing the said plea, say :

That each and all of the allegations of the said additional plea are false and untrue and unfounded in fact ;

40 That the Government of Canada and the Collector of Customs at Coaticooke had not and have not now the right, authority or title to seize any portion of the said effects or to hold the same as subject to the payment of any duties and any claim or seizure made in respect thereof was and is illegal, null, void and of no effect and the position of the said Defendant has never been and is not now legally interfered with and the same is not and cannot be a trouble, which would give rise to any right in the Defendant as by his said amended plea ;

And said Plaintiffs further say specially that even if the said seizure was made and even if said seizure was legal or valid, which is not admitted but denied, that fact that the said Government of Canada pretended to have a claim for duties upon the said machinery and effects was well known to the said Defendant and to the said McDougall and Beard for whom the said

—Continued

RECORD

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*In the  
 Superior  
 Court.*  
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No. 38.

Answer to  
Plea ofDefendant  
JohnS. W. Beard,  
as amended  
dated 11th  
September,  
1888.—*Continued.*

Defendant Rough merely acted as prête-nom and agent long prior to the sale by the said Plaintiffs to the Defendants of the property at issue in this cause, and the said claim was moreover publicly announced as against the said property by the then Collector of Customs at Coaticooke on the twelfth day of January one thousand eight hundred and eighty-three, to wit, at and prior to the Sheriff's sale of the said property at which the same was adjudicated to the Plaintiffs, and the said sale was made and conducted subject to the directions and orders of the said Defendant and his agent and representatives, and the said Defendant Beard was present at the said sale and knew of the said announcement of the said claim on behalf of the said Government ;

10

That even if the said pretended claim of the said Government was legal and valid, which is not admitted but on the contrary denied, the said Defendant and the said McDougall and Beard for whom the said Defendant Rough was the *prête-nom* and agent knew of the said claim in so far as the name could be considered a trouble and a danger of eviction and that in buying the said property they bought the same knowing all the said circumstances and at their own risk ;

That it is specially false that the said Plaintiff in any way concealed any facts connected with the said claim of the said Government or that in any respect the said sale was fraudulent.

20

Wherefore the said Plaintiffs pray that the said additional plea be hence dismissed with costs and further pray as in and by their said declaration they have already prayed.

Montreal, 11th September 1888.

ATWATER & MACKIE,  
 Attys. for Plaintiff.

And the said Plaintiff for answer to the second additional plea filed by the Deft. Beard upon motion to that effect made this day, and under special exception to the ruling allowing the filing of the said additional plea and answering the said plea, because they are forced to do so and without waiver of their rights to appeal against the decision allowing the plea, say :

30

That each and all the allegations of the said additional plea are false and untrue and unfounded in fact ;

That the Government of Canada and the Collector of Customs at the Port of Coaticooke had not and have not now the right, authority or title to seize any portion of the said effects or to hold the same as subject to the payment of any duties and any claim or seizure made in respect there of was and is illegal, null, void and of no effect and the position of the said Defendant has never been and is not now legally interferred with and the same is not and cannot be a trouble, which would give rise to any right in the Defendant as by his said amended plea ;

40

And said Plaintiffs further say specially that even if the said seizure was made and even if the said seizure was legal or valid, which is not admitted but denied, that the fact that the said Government of Canada pretended to have a claim for duties upon the said machinery and effects was well known to the said Defendant Rough and to the said McDougall and Beard for whom the

said Defendant Rough merely acted as *prête-nom* and agent long prior to the sale by the said Plaintiffs to the Defendants of the property at issue in this cause, and the said claim was moreover publicly announced as against the said property by the then Collector of Customs at Coaticooke on the twelfth of January one thousand eight hundred and eighty-three, to wit at and prior to the sheriff's sale of the said property at which the same was adjudicated to the said Plaintiffs, and the said sale was made and conducted subject to the directions and orders of the said Defendant and his agents and representatives, and the said Defendant Beard was present at the sale and knew of the said announce-

10 ments of the said claim on behalf of the said Government;

That even if the said pretended claim of the said Government was legal and valid, which is not admitted but on the contrary denied, the said Defendant and the said McDougall and Beard for whom the Defendant Rough was the *prête-nom* and agent knew of the said claim in so far as the same could be considered a trouble and a danger of eviction and that in buying the said property they bought the same knowing all the said circumstances and at their own risk ;

That it is specially false that the said Plaintiff in any way concealed any facts connected with the said claim of the said Government or that in any

20 respect the said sale was fraudulent.

Wherefore the said Plaintiffs pray that the said additional plea be hence dismissed with costs and further as in and by their said declaration they have already prayed.

Montreal, 11th September 1888.

ATWATER & MACKIE,  
Attys. for Plaintiffs.

And the said Plaintiffs without waiver of their foregoing answers for further answer to the said pleas and to each of them, say ;

30 That even if the said Government and Department of Customs had any just and legal claim, which is not admitted but specially denied the same became and was and is entirely extinguished and destroyed by the said Sheriff's sale of the property.

Wherefore the said plaintiffs pray that the said pleas and each of them be hence dismissed with costs distracts to the undersigned and further as in and by their declaration herein they have already prayed.

Montreal, 11th September 1888.

A. W. ATWATER,  
Atty. for Plaintiff.

40 Received copy under reserve of all objections,  
2nd of October 1888.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE.  
Attorneys for Defendant.

(ENDORSED).

Answers to plea, Samuel W. Beard, of Defendant as amended. Fyled 11  
Sept. 1888. (Paraphed) G. H. K. Depty. P. S. C.

RECORD.

*In the  
Superior  
Court.*

No. 39.

Answer to  
Plea of Deft.  
S. W. Beard  
as amended,  
dated 11th  
Sept. 1888.

—Continued

RECORD.

SCHEDULE No. 73.

*In the  
Superior  
Court.*

Province de Québec, }  
District de Montréal. }

Cour Supérieure.

The Eastern Townships Bank.....Demanderesse.

vs.

No. 40.  
Answer of  
Defendant  
Rough to  
Plaintiff's  
answers da-  
ted 17th  
September  
1888.

Andrew Rough et al.....Défendeurs. 10

Et le dit Andrew Rough, pour réponse aux réponses et répliques de la demanderesse, dit :

Que tous et chacun les faits allégués en les dites réponses, sauf ceux qui corroborent la défense, sont faux et mal fondés et le défendeur les nie tous et chacun d'eux formellement et expressément.

Pourquoi le dit défendeur conclut au renvoi des dites réponses et répliques avec dépens distraits aux soussignés.

Montréal, 17 Septembre, 1888.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU. 20  
Avocats du Défendeur Andrew Rough.

Rec'd copy under all reserves. 19 Sept. 1888.

ATWATER & MACKIE.  
Attys. for Plaintiff.

(ENDORSED)

Réponses du défendeur Rough aux réponses de la demanderesse. Prod. 30  
25th September, 1888. (Paraphed) G. H. K., Dép. P. S. C.

SCHEDULE No. 74.

No. 41.  
Answers of  
Defendant  
John Mc-  
Dougall to  
answers  
of the Plain-  
tiff, dated  
12th  
September  
1888.

Canada, }  
Province de Québec, }  
District de Montréal. }

Cour Supérieure.

No. 2157.

The Eastern Townships Bank.....Demanderesse. 40

vs.

Andrew Rough et al.....Défendeurs.

Et le dit John McDougall, pour plaidoyers additionel ou réponses aux réponses et répliques de la demanderesse, dit :

Que tous et chacun les faits allégués en les dites réponses sauf ceux qui

corroboient la défense, sont faux et mal fondés et le défendeur les nie tous et chacun d'eux formellement et expressément ;

Que lors de la vente faite par le shérif Bowen, la Banque des Cantons de l'Est, la demanderesse, lui offrit par lettre du

de lui vendre les propriétés en question pour un certain montant équivalent à la dette légitime de la Banque des Cantons de l'Est ;

Que le dit John McDougall était créancier de la Pioneer Beet Root Sugar Company pour au-delà de vingt mille piastres ;

10 Que voyant la réclamation hypothécaire de la demanderesse, le dit McDougall n'avait plus d'intérêt à enchérir parce que les réclamations hypothécaires devraient être payées avant la sienne ;

Qu'il ignorait les irrégularités commises par la demanderesse ;

Que le dit défendeur McDougall a acheté de bonne foi, croyant que la banque demanderesse avait un titre légal exempt d'irrégularités.

Pourquoi le défendeur McDougall conclut au renvoi des dites réponses et répliques de la demanderesse avec frais et dépens distraits aux soussignés.

Montréal, 12 Septembre 1888.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,

20

Avocats du défendeur John McDougall.

Et sans préjudice à ce que ci-dessus plaidé, mais au contraire s'en réservant tout le bénéfice et avantage pour autre réponse aux réponses de la demanderesse, le dit défendeur McDougall dit :

Que tous et chacun les faits allégués en les dites réponses, sauf ceux qui corroborent la défense, sont faux et mal fondés et le défendeur les nie tous et chacun d'eux formellement et expressément ;

30 Que lors de la vente faite par le shérif Bowen la Banque des Cantons de l'Est la demanderesse offrit par lettre du

de lui vendre les propriétés en question pour un certain montant équivalent à la dette légitime de la Banque des Cantons de l'Est ;

Que le dit John McDougall était créancier de la Pioneer Beet Root Sugar Company pour au-delà de vingt mille piastres ;

Que voyant la réclamation hypothécaire de la demanderesse, le dit McDougall n'avait plus d'intérêt à enchérir parce que les réclamations hypothécaires devaient être payées avant la sienne ;

Qu'il ignorait les irrégularités commises par la demanderesse ;

40 Que le dit défendeur McDougall a acheté de bonne foi croyant que la banque demanderesse avait un titre légal exempt d'irrégularités ;

Qu'il est vrai que Beard avait payé Fairbanks et al. avant la vente faite par le shérif ;

Que le dit Beard après avoir payé la créance de Fairbanks et al. a écrit et ordonné au shérif de ne pas faire la vente et de suspendre les procédés sur l'exécution ;

Que le shérif répondit au dit Beard qu'il ne pouvait obéir à son ordre qu'il y avait d'autres brefs d'exécution de notés, que la vente aurait lieu et qu'il

RECORD

—  
In the  
Superior  
Court.

—  
No. 41.  
Answers of  
Defendant  
John Mc-  
Dougall to  
answers  
of the Plain-  
tiff, dated  
12th  
September  
1888.

—Continued

RECORD

*In the  
Superior  
Court.*

No. 41.

Answers of  
Defendant  
John Mc-  
Dougall to  
answers  
of the Plain  
tiff, dated  
12th  
September  
1888.

—Continued

n'était pas au pouvoir de Beard de l'empêcher ;

Que Beard voyant qu'il ne pouvait empêcher la vente et voyant que la Banque des Cantons de l'Est avait un jugement d'enregistré pour un montant considérable, s'enquit du gérant de la banque s'il avait l'intention d'acheter les immeubles et sur réponse du gérant que la banque avait une forte créance établie et privilégiée par jugement enregistré et qu'elle achèterait à la vente du shérif, s'enquit de lui si la banque revendrait ensuite les prémisses ;

Que le dit gérant de la Banque des Cantons de l'Est s'engagea alors à vendre les dits immeubles moyennant un prix équivalent à sa dette légitime ;

Que Beard était créancier de la Pioneer Beet Root Sugar Company pour un fort montant ; 10

Que lors de l'exécution prise par Fairbanks, Beard était locataire des dits immeubles vendus ;

Que le prix que payait le dit Beard comme locataire était minime et la jouissance des dites prémisses lui permettrait de faire un commerce qui l'aidait à se récupérer de ses pertes avec la Compagnie ;

Que le dit Beard voyant la réclamation hypothécaire de la Banque des Cantons de l'Est, n'avait plus d'intérêt à enchérir parce que la banque devait être payée avant lui.

Que cependant le dit McDougall n'a eu aucun pourparler avec le gérant de la dite Banque des Cantons de l'Est, si ce n'est les lettres produites ; 20

Que le dit McDougall n'a jamais autorisé le dit Beard à faire des démarches auprès de la Banque des Cantons de l'Est et ces démarches ont été faites hors sa connaissance.

Que le dit McDougall a toujours ignoré ce qui a pu se passer, outre les lettres écrites par le gérant de la dite banque, à lui, McDougall.

Pourquoi le défendeur John McDougall conclut au renvoi des dites réponses et répliques de la demanderesse avec frais et dépens distracts aux soussignés.

Montréal, 12 Septembre 1888.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,

Avocats du défendeur John McDougall. 30

Et le dit John McDougall, pour réponse aux réponses et répliques de la demanderesse, dit :

Que tous et chacun les faits allégués en les dites réponses, sauf ceux qui corroborent la défense, sont faux et mal fondés et le défendeur les nie tous et chacun d'eux formellement et expressément.

Pourquoi le dit défendeur conclut au renvoi des dites réponses et répliques avec dépens distracts aux soussignés. 40

Montréal, 17 Septembre, 1888.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,

Avocats du défendeur John McDougall.

(ENDORSED).

Réponses du défendeur John McDougall aux réponses de la demanderesse. Prod. 25 Septembre, 1888. (Paraphed) G. H. K., Dep. P. S. C.



Province de Québec, }  
District de Montréal. }

Cour Supérieure.

*In the  
Superior  
Court.*

The Eastern Townships Bank.....Demanderesse.

No. 42.

vs.

Motion of the  
Defendant  
Rough, to  
amend his  
defence and  
to add other  
Pleas. Dated,  
10th Sept.,  
1888.

10 Andrew Rough et al.....Défendeurs

MOTION DU DÉFENDEUR ANDREW ROUGH.

Qu'attendu que par jugement rendu le dix-sept décembre mil-huit cent quatre-vingt-quatre, par l'Honorable Juge Doherty en cette cause, il a été permis au Défendeur de produire un plaidoyer additionnel ;

Qu'attendu que les faits allégués dans la réponse de la Demanderesse au plaidoyer du Défendeur et qui ont donné lieu à la nécessité de produire des plaidoyers additionnels, donnent aussi lieu d'amender les défenses du Défendeur ;

Qu'attendu qu'en outre du dit amendement et des plaidoyers additionnels auxquels ont donné lieu les réponses de la demanderesse, le Défendeur désire ajouter un autre plaidoyer ;

Qu'il lui soit permis d'amender ses dites défenses et d'y joindre ses autres plaidoyers ; qu'il lui soit permis d'amender ses défenses en premier lieu produites ;

10. En retranchant la dix-septième allégation ;

20. En ajoutant après la vingt-troisième allégation l'allégation suivante, savoir : " Que les dits Rough, McDougall & Beard dans les dits bref et requête  
30 " en nullité de décret, lesquels dits bref et requête leur ont été signifiés à " chacun d'eux ; "

30. En ajoutant à l'allégation vingt-cinquième les mots suivants : " les-  
" quels allégués sont vrais ; "

40. En retranchant dans la deuxième allégation les mots : " exposé à  
" un trouble imminent et à une éviction certaine ", et y substituant les mots :  
" et troublé et évincé " ;

50. En ajoutant à l'allégation trentième les mots suivants : " et sont  
" vrais " ;

60. En retranchant l'allégation quatorzième de la deuxième défense fai-  
40 sant partie de ses premiers plaidoyers ;

70. En ajoutant dans la vingtième allégation de la dite deuxième dé-  
fense, après les mots " qu'un bref et une requête en nullité de décret, " les mots  
suivants : " dans lesquels les dits Rough, McDougall & Beard ont été mis en  
" cause " ;

80. En ajoutant à l'allégation vingt-unième de la même défense les mots  
suivants : " et sont vrais " ;

90. En retranchant à la sixième ligne de la vingt-deuxième allégation

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*In the  
Superior  
Court.*No. 42  
Motion of  
Defendant  
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10th Septem-  
ber 1888.  
—Continued.

de la même défense les mots "imminent qu'il subit maintenant et aussi du trouble auquel il se trouve exposé" et en remplaçant les dits mots par les mots suivants : "du trouble et de l'éviction qu'il subit" ;

10o. En retranchant à la deuxième ligne de la vingt-cinquième allé-  
gation de la même défense les mots "et étant exposé à un trouble imminent et à  
"une éviction certaine" et remplaçant les dits mots par les mots suivants :  
"et étant évincé" ;

11o. En retranchant l'allégation vingt-troisième de la dite défense et la  
remplaçant par l'allégation suivante : "que la demanderesse qui connaissait  
"d'ailleurs ce trouble et cette éviction n'a pas tenu compte de cette notifica-  
"tion, et sans faire cesser ce trouble et cette éviction et sans même offrir cau-  
"tion, a intenté illégitimement cette action ;

"Que les propriétés vendues ont subi une détérioration considérable  
"qui en réduit la valeur maintenant à quelques milliers de piastres seulement ;

"Que les dommages causés aux dites prémisses vendues et aux machi-  
"neries sont d'au moins la somme de cinquante mille piastres (\$50,000), tel  
"qu'il appert à l'état produit au soutien des présentes ;

12o. En retranchant les conclusions de la dite deuxième défense et les  
remplaçant par les conclusions suivantes : "Pourquoi le défendeur conclut à  
ce que par le jugement à intervenir, il soit déclaré que le défendeur est bien  
fondé à ne pas payer la dite somme de huit mille trois cent quarante-sept  
piastres et vingt-deux cents (\$8347.22), jusqu'à ce que la demanderesse ait fait  
cesser le trouble et l'éviction que subit le défendeur et à ce que la dite action  
soit déboutée avec dépens dont distraction aux soussignés" ; à ce qu'il soit  
permis au défendeur d'ajouter à ses défenses les deux défenses additionnelles  
suivantes, savoir.

## Première défense.

"Que le défendeur Andrew Rough est troublé évincé et dans la posses-  
"sion et propriété du dit immeuble vendu par la demanderesse ;

"Que le six octobre mil huit cent quatre-vingt-trois le Gouvernement de  
"la Puissance du Canada, par l'entremise de son collecteur de douanes à Coati-  
"cooke, saisi les machineries qui se trouvent dans les bâtisses vendues avec les  
"dites bâtisses comme en faisant partie pour droits de douanes non payés ;

"Que les dites machineries ont toujours été depuis et sont encore sous  
le coup de la dite saisie ;

Que le collecteur de douanes à Coaticooke s'est dans le même temps,  
"savoir, le six octobre mil huit cent quatre-vingt-trois, mis en possession des  
"dites machineries et des dites bâtisses ;

"Que les dites bâtisses et machineries sont encore en sa possession ;

"Que le défendeur est depuis cette époque, privé de la possession et de  
"la propriété vendues ;

"Que les droit de douanes sur les machineries dans les dites bâtisses  
"existaient avant la vente faite par le shérif à la demanderesse, et ce, à la con-  
"naissance de la demanderesse ;

"Que les dites bâtisses ainsi que les dites machineries ont subi de grandes  
"détérioration ;

- “ Que les dommages causés aux dites bâtisses et aux dites machineries sont d’au moins la somme de cinquante mille piastres (\$50,000), tel qu’il appert à l’état produit au soutien des présentes ;
- “ Que lors de la vente faite au défendeur, la dite demanderesse savait que les droits sur les dites machineries n’avaient pas été payés et connaissait l’intention du Gouvernement de faire saisir les dites machineries ;
- “ Que cependant la demanderesse a caché ces faits au défendeur dans le d’opérer une vente frauduleuse ;
- 10 “ Que sous ces circonstances, l’action de la demanderesse doit être débouté avec dépens.
- “ Pourquoi le défendeur conclut au renvoi de la dite action avec dépens dont distraction aux soussignés.
- Deuxième Défense.
- “ Et sans préjudice à ce que ci-dessus plaidé, mais au contraire s’en réservant tout le bénéfice et avantage le défendeur, pour au plaider à la dite action dit :
- 20 “ Que tous et chacun les faits allégués en la dite action, sauf ceux que corrobore la défense, sont faux et mal fondés et le défendeur les nie tous et chacun d’eux formellement et expressément ;
- “ Que le défendeur Andrew Rough est troublé et évincé dans la possession et propriété du dit immeuble vendu par la demanderesse ;
- “ Que le six octobre mil huit cent quatre-vingt-trois le Gouvernement de la Puissance du Canada, a par l’entremise de son collecteur des Douanes à Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues avec les dites bâtisses comme en faisant partie, pour droits de douanes non payés ;
- “ Que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ;
- 30 “ Que le collecteur des douanes à Coaticooke s’est dans le même temps savoir le six octobre mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ;
- “ Que les dites bâtisses et machineries sont encore en sa possession ;
- “ Que le défendeur, depuis cette époque, est privé de la possession et de la propriété vendues :
- “ Que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shérif à la demanderesse, et ce, à la connaissance de la demanderesse ;
- “ Que les dites bâtisses ainsi que les dites machineries ont subi de grandes
- 40 “ détériorations ;
- “ Que les dommages causés aux dites bâtisses et aux dites machineries sont d’au moins la somme de cinquante mille piastres (\$50,000), tel qu’il appert à l’état produit au soutien des présentes ;
- “ Que lors de la vente faite au défendeur, la dite demanderesse savait que les droits sur les dites machineries n’avaient pas été payés et connaissait l’intention du Gouvernement de faire saisir les dites machineries ;
- “ Que cependant la demanderesse a caché ces faits au défendeur dans le

RECORD.

*In the  
Superior  
Court.*

No. 42.

Motion of the  
Defendant  
Rough, to  
amend his  
defence and  
to add other  
Pleas. Dated,  
10th Sept.,  
1888.

—Continued

RECORD.

*In the  
Superior  
Court.*

No. 42  
Motion of  
Defendant  
Rough to  
amend his  
defense and  
to add other  
Pleas, dated  
10th Septem-  
ber 1888.  
—Continued.

“ but d’opérer une vente frauduleuse ;  
“ Que sous ces circonstances, la demanderesse ne peut réussir dans son  
action, sans faire cesser le trouble et l’éviction que subit le défendeur.  
“ Pourquoi le défendeur conclut au renvoi de la dite action, avec dé-  
pens dont distraction aux soussignés.”

Le tout sous telles conditions qu’il plaira à cette Honorable Cour im-  
poser.

Montréal, 10 Septembre, 1888.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU 10

Avocats du Défendeur.

A. MM. ATWATER & MACKIE,  
Avocats de la Demanderesse.

Messieurs,

Soyez notifiés que Mardi, le onzième jour de Septembre courant, nous  
présenterons la motion ci-dessus à la Cour Supérieure devant l’Honorable  
Juge Taschereau, à dix heures et demie de l’avant-midi ou aussitôt que conseil  
pourra être entendu, pour y être adjugé sur icelle que de droit. 20

Montréal, 10 Septembre 1888.

LACOSTE, GLOBENSKY, BISAILLON, & BROSSEAU

Avocats du défendeur.

(ENDORSED)

Motion et avis M. Rough. Prod. 25 Sept. 1888. (Paraphed) G. H. K.  
Deputy P. S. C. 30

No. 43.

Interrogato-  
ries of the  
Plaintiff to  
be submitted  
to Defendant  
and order for  
*faits et arti-  
cles.* Dated  
22nd May,  
1888.

SCHEDULE No. 77.

Already printed, see No. 27 of Index of Reference.

40

SCHEDULE No. 80.

Montreal, 10th September, 1888.

I certify that John McDougall of the Caledonia Works, Montreal, has been severely paralyzed since August 20th 1886, and has entirely lost his power of speech and it is quite impossible for him to give evidence or to carry on a conversation of any kind.

ROBERT CRAIK, M. D.  
Professor McGill University etc, etc, etc.

RECORD

*In the  
Superior  
Court.*

No. 44.  
Doctor's  
certificate.  
Dated 10th  
Sept. 1888.

10

(ENDORSED)

Doctor's certificate, fyled by Mr. T. Brosseau, on the 3rd Oct., 1888.  
(Paraphed) E. D., Deputy P. S. C., Defendant's Exhibit No. 1, Prod. 28 Juin, 1889. (Paraphed), A. B. L.

SCHEDULE No. 81

20 Province de Québec, }  
District de Montréal. }

Cour Supérieure pour le Bas Canada.

No. 1568.

Le seizième jour de mars, mil huit cent quatre-vingt-trois :

Présent :—

L'HON. MR. LE JUGE LORANGER.

30

Andrew Rough, gentilhomme, de la Cité et du District de Montreal,

DEMANDEUR.

vs.

The Pioneer Beet Root Sugar Company (Limited) Corps politique et incorporé, ayant un bureau d'affaires en la Cité et le District de Montreal,

DÉFENDERESSE.

No. 45.  
Copy of judgment of the Superior Court, rendered 16th March, 1883. in the case of Andrew Rough, Plaintiff, vs. The Pioneer Beet Root Sugar Co. Deft. Deft's exhibit No. 1.

40

La Cour après avoir entendu le Demandeur sur le mérite de cette cause la Défenderesse ayant fait défaut, examiné la procédure et les pièces produites et délibéré.

Condamne la Défenderesse à payer au Demandeur la somme de vingt-deux mille trois cent quatre-vingt-une piastres et cinquante-deux centins, cours actuel, dont quinze cents piastres (\$1500.00) montant d'un billet promissoire fait et signé pour valeur reçue par la Défenderesse par le ministère de son directeur gérant Lomer, et de son trésorier Thornton

RECORD

—  
*In the  
 Superior  
 Court.*  
 —

No. 45.  
 Copy of judgment of the Superior Court, rendered 16th March, 1883, in the case of Andrew Rough, Plaintiff, vs. The Pioneer Beet Root Sugar Co. Deft. Deft's exhibit No. 1.  
 —Continued

à Coaticooke, le vingt-six novembre, mil huit cent quatre-vingt-un payable à cinq mois de date à l'ordre de John Thornton son Trésorier, au bureau de la banque dite "The Eastern Townships Bank," à Coaticooke et puis par le dit John Thornton, trésorier, endossés pour valeur reçue, et remis ensuite au demandeur; dix-neuf mille sept quatre-vingt piastres (\$19,780.00) montant de six billets promissoires faits et signés pour valeur reçue, par la défenderesse à Coaticooke, par le ministère de son directeur gérant Lomer, et de son trésorier ou de son secrétaire alors en office aux dates, pour les montants et de la manière suivante: le premier de ces six billets, pour dix-huit cent cinquante-neuf piastres et cinquante centins, le six décembre mil huit cent quatre-vingt-un, payable à quatre mois de date; le deuxième, pour seize cent quatre-vingt-huit piastres et cinquante centins (\$1,688.50) le douze décembre mil huit cent quatre-vingt-un, payable à quatre mois de date; le troisième pour quinze cent cinquante-deux piastres, le treize décembre mil huit quatre-vingt-un payable à quatre mois de date; le quatrième pour deux mille cinq cent piastres (\$2,500.00) le premier de février mil huit cent quatre-vingt deux, payable à trois mois de date; cinquième pour quinze cent quarante piastres, le dix-sept mars mil huit cent quatre-vingt-deux, payable à quatre mois de date et le sixième pour dix mille six cent quarante piastres (\$10,640.00) le vingt-quatre mars mil huit cent quatre-vingt-deux payable à demande; ces six derniers billets payables à l'ordre de John McDougall au bureau de la Banque dite "Eastern Townships Bank" à Coaticooke et puis par le dit John McDougall endossés pour valeur reçue et remis ensuite au demandeur; et onze cent une piastre et cinquante-deux centins pour intérêts accrus sur tous ces billets depuis leur échéance respective jusqu'au vingt-sept février dernier, avec intérêt de droit sur la dite somme de vingt-deux mille trois cent quatre-vingt-une piastre et cinquante deux centins du vingt-sept de février mil huit cent quatre-vingt-trois, jour d'assignation et les dépens distraits à Mtres Lacoste, Globensky, Bisailon et Brosseau, avocats du demandeur.

Nous soussigné protonotaire conjoint de la Cour Supérieure pour le District de Montréal dans le Bas-Canada, certifions que ce qui précède est une vraie copie du jugement final rendu dans cette cause et que les frais encourus en icelle ont été depuis taxés à la somme de quarante-quatre piastres, cours actuel.

Montréal, 14 Juillet 1885.

G. H. KERNICK,  
 Deputy P. S. C.

(ENDORSED)

Copy of judgment. Defendant's Exhibit No. 1 fyled at Enquête on the 5th Oct 1888. (Paraphed) E. D. Depty P. S. C.

40

SCHEDULE No. 82.

ANDREW ROUGH

Bought of G. O. DOAK.

The following property *en bloc*,

Thirteen tanks molasses supposed to contain thirteen thousand nine hundred gallons more or less.

10 One lot of Bone Black in Factory supposed to be sixty-five tons more or less, these two items being now in the possession of the purchaser in his Beet Sugar Works at Coaticooke.

20 One lot in Demijohns about sixty in number, one lot of blue paper about one ton, one lot of press linnen, three copper pipes, one lot of lamps and chimneys, one lot of Brass cocks valves &c, one lot of bolts and nuts, one lot of Hoes, one lot of old iron, one lot of iron steam gates, one lot of iron valves, one lot of wheels flanges and Tees and Railway fitting one lot of iron round and flat, one bll. tar, one lot of empty blls, one lot of windows and sash and doors (old), one lot of old shovels, one forge bellows, one old stove, one old fire Brick, one lot of coal in Bin, one lot copper platé, one lot of iron plates, one lot of thermometers, one lot of old wood pullies, one lot of couplings and fittings for pipes; one lot of chain and blocks, one lot of galvanized iron, one lot of vices, one iron Beet carriage, one lot of iron knees and Gears, one lot of lanterns, lamps and hangings and oil cans, one lot of brass wire and fittings, one lot of belt fastenings, one lot of brass, copper and iron wire, one lot of sand paper, one lot of twine, one lot of screws (assorted sizes), one large iron funnel, one lot of one lot of carriage rivets, one lot of old boxes, one Derrick, one lot of empty blls, one lot bll head stoves and hoops, one old stove and Grind stone.

30 Price of above.....\$2411.00  
 Purchaser to assume my title without warranty.  
 Received payment by note for.....\$2453.22  
 February 22nd 1883.

G. O. DOAK.

(ENDORSED.)

Defendants' Exhibit No. 2, fyled at Enquête, on the 5th Oct. 1888.  
 (Paraphed), J. B. V. Deputy. P. S. C. Prod. 28 Juin, 1889. (Paraphed)

40 A. B. L.

RECORD.

*In the  
 Superior  
 Court.*

No. 46.

Account of  
 G. O. Doak,  
 dated 22nd  
 Feb. 1883.  
 (Defendant's  
 Exhibit  
 No 2.)

RECORD

SCHEDULE No. 83

<p><i>In the Superior court.</i></p> <p>No. 47. Statement (Defts' Exhibit No. 3). fyled 26th Oct. 1888. and 28 June 1889.</p>	In Taplin and Reynold Stores 44730 lbs @ 2c	\$ 894 60		
	In A. A. Adams, Warehouse, 500 Barrels 160 lbs. Ea. 80,000 @ 1½ c	1200 00		
	In A. A. Adams, Shed. 82 barrels. 160lbs. Ea. 13, 120lb.	196 80	2291 40	10
	LESS.			
	Warehouse Charges.	84 10		
	Freight on 68¾ Tons. @ \$ 3.00	206 25		
	For barrels seperating.			
	Weighing and Cartage. @ \$ 4.30 per ton	295 62		
	Discount on 1st, Item \$ 894.60.	44 73		
	Short weight on 93, 120lb Sold to St. Lawrence Sugar Co. 5, 318 lbs. @ 1½ c.	79 77	710 47	20
		\$1580 93		
MEMO.				
Of details of cost of seperating and cleaning bone black yer ton.				
12 Barrels. 16 @ 10c.	1 20			
Cartage and loading on car.	40			
Drying on Kiln (Fuel and Labor).	1 00			
Screening Barrelling and Weighing.	1 70	4 30	30	

(ENDORSED)

Defendants' exhibit No. 3. Fyled 26 Oct. 1888. (Paraphed) D. G. Dep. P.S.C. Prod. 28 juin 1889.



SCHEDULE No 84.

RECORD

Montreal, Dec. 29 1882.

*In the  
Superior  
Court.*

Dr. Sir,

We hand you herewith a letter from the Solicitors of Mess. Fairbanks & Coy, who held a judgment against the Pioneer Beet Sugar Coy and under which you have advertised the property for sale.

No. 48.  
Letter of  
S. W. Beard  
dated  
29 Dec. 1882.  
(Defendants'  
Exhibit  
No. 4.)  
fyled 5th  
October 1888  
and 28th June  
1889.

Should it be so arranged by the date of the sale that it is desired that the sale shall not take place, is this letter sufficient to enable you to take instructions from me to either suspend or discontinue the proceedings, and if any then further is required.

Kindly drop me a line upon receipt hereof.

Yours,

S. W. BEARD.

(On the Back).

Plaintiffs admit the within letter to be one sent by S. W. Beard, Defendant, to the Sheriff of the District of St Francis. Paraphed A. & M.

(ENDORSED).

Lettre de S. W. Beard. Prod. 5 Oct. 1888. Exhibit No. 4 à l'enquête du défendeur. Prod. 28 juin 1889. Paraphed A. B. L.

30

SCHEDULE No. 85.

P.O. Box 298,

SHERIFF'S OFFICE.

Sherbrooke, 3rd Jany, 1883.

My dear Sir,

I have just rec'd your note of the date of Dec. 29 82, mailed at Noon on the 2nd Inst. and a notification of the transfer by Fairbanks to you of his Judgt in Case No. 1198 S. C. A. Fairbanks agst Pioneer Beet Root Sugar Company. No opposition has been fyled in this case to the sale on the 12th Instant at Coaticooke, so it will take place. Two writs of Execution have been fyled with me which I have noted as opposition for payment under article 642 of Code of Civil Procedure by which you may see that I shall be obliged to proceed to the sale, as the first seizure "Fairbanks" cannot be abandoned or suspended except in certain cases, and read also the Art. 643 which reads the Sheriff is bound to continue the proceedings at the cost of the judgment cre-

No. 49.  
Letter of  
Sheriff of  
Sherbrooke  
dated 3rd  
January 1883  
Defendant's  
(Exhibit No.  
5 fyled 5th  
Oct. 1888.  
and 28th  
June 1889.

RECORD

*In the  
Superior  
Court.*

No. 49.  
Letter of  
Sheriff of  
Sherbrooke  
dated 3rd  
January 1883  
Defendant's  
(Exhibit No.  
5 fyled 5th  
Oct. 1888.  
and 28th  
June 1889.  
—*Continued.*

ditors whose writs have been noted except in certain cases the following are synopsis of the execution placed in my hands. So you had better attend the sale to see your interests.

Very truly yours,

E. T. B.

Shff.

These two Cases were sent to me by Robertson & Co., Adv.

(On the Back).

Plaintiffs admit the within letter to have been written by the Sheriff of District of St. Francis to S. W. Beard, Defendant. Paraphed A. & M.

(ENDORSED)

Lettre du shérif de Sherbrooke, prod. 5 oct. 1888, Exhibit No. 5 à l'enquête du défendeur prod. 28 juin 1889. Paraphed A. B. L.

10

SCHEDULE No. 86.

20

Province of Quebec, }  
District of Montreal. }

Superior Court  
For Lower Canada.

No. 1642.

No. 50.  
Copy of Writ  
and decla-  
ration *in re*  
No. 1642,  
Banque  
d'Hochelaga,  
vs Rough and  
Glackmeyer  
and al, dated  
26th  
July, 1883.

VICTORIA, By the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To any of the Bailiffs of the said Superior Court appointed and acting in the District of Montreal in our Province of Quebec.

GREETING :—

We command you that you attach and seize First "A lot of bone black, thirty-one packages in all measuring two thousand four hundred and " twenty-eight cubic feet or at fifty-five pounds, one hundred and thirty-five thousand " five hundred and forty pounds ; Secondly " A certain lot of bone dust con- " tained in ten tanks and in bulk in all one hundred and fifty thousand " pounds," more or less contained in premises situated at Coaticooke, in the district of St. Francis, formerly belonging to the Pioneer Beet Root Sugar Company and now in the possession and under the control of Andrew Rough, of the city and District of Montreal, bookkeeper, Defendant belonging to La Banque d'Hochelaga, a body politic and corporate duly incorporated and having its head office and principal place of business in the city of Montreal, in the district of Montreal, as it is alleged in the declaration to be served, and the same so attached and seized, that you hold and detain until the order of

40

our Superior Court thereon touching and concerning the same, and to abide the said order; and we likewise command you, that you summon the said Andrew Rough and also Ernest Glackmeyer and Christian Fischer, both of the village of Coaticooke, in the district St. Francis, both warehousemen, mis en cause, to be and appear before us, in person or by their Attorneys in our said Court, at the Court House, in the City of Montreal, in the said District, on Saturday first day of September next to hear the said attachment declared good and valid, and to answer the said Declaration, and have you then and there this Writ.

10 In witness whereof, we have caused the Seal of our said Court to be hereunto affixed, at Montreal, this twenty-sixth day of July in the year of our Lord one thousand eight hundred and eighty-three and in the forty-seventh year of our Reign.

L.S.

(Signed) HUBERT, HONEY & GENDRON,  
Prothonotary of the said Court.

20 (True copy.)

HUBERT, HONEY & GENDRON,  
Prothonotary of the said Court.

(On the Back)

Issued upon the affidavit of Joseph Edmond Brais, of the City and District of Montreal, cashier, of the bank of the Plaintiffs for the sum of eleven thousand three hundred and forty-one dollars and sixty cents, current money of our said Province.

30 Montreal, this twenty-sixth day of July, one thousand eight hundred and eighty-three.

(Signed), HUBERT, HONEY & GENDRON,  
P. S. C.

(True copy.)

HUBERT, HONEY & GENDRON,  
P. S. C.

Canada,  
Province of Quebec,  
District of Montreal.

Superior Court.

40

La Banque d'Hochelaga, a body politic and corporate, duly incorporated and having its head office and principal place of business in the City of Montreal, in the District of Montreal,

Plaintiffs;

vs.

Andrew Rough, of the said City of Montreal, Book-keeper,  
Defendant;

RECORD.

In the  
Superior  
Court.

No. 50.  
Copy of Writ  
and decla-  
ration in re,  
No. 1642,  
Banque  
d'Hochelaga  
vs. Rough &  
Glackmeyer,  
et al., dated  
26th July,  
July, 1883.  
—Continued.

RECORD

and

*In the  
Superior  
Court.*

Ernest Glackmeyer and Christian Fischer, both of the Village of Coaticooke, in the district of St. Francis, both warehousemen,

Mis-en-cause.

No. 50.

Copy of Writ  
and decla-  
ration *in re*

No. 1642,  
Banque  
d'Hochelega,  
vs Rough and  
Glackmeyer  
and al, dated  
26th  
July, 1883.

—Continued.

The Plaintiffs declare :

That they the Plaintiffs are the true and only owners of the following moveable property, to wit : First “ A lot of bone black thirty-one packages in 10  
“ all measuring twenty-four hundred and twenty-eight cubic feet or at fifty-five  
“ pounds. One hundred and thirty-five thousand five hundred and forty  
“ pounds valued at four cents per pound equal to five thousand three hundred  
“ and forty-one dollars and sixty cents, stored in a warehouse at Coaticooke,  
“ in the District of St Francis, formerly belonging to the said warehouse to  
“ The Pioneer Beet Root Sugar Company and now in the possession and  
“ under the control of the Defendant :”

Secondly. A certain lot of bone dust contained in ten tanks and in bulk in all one hundred and fifty-thousand pounds more or less, valued at six thousand 20  
dollars, also stored in a warehouse at Coaticooke aforesaid formerly belonging  
to the said Pioneer Beet Root Sugar Company and now in the possession and  
in the possession and under the control of the Defendant ;

That the value of the said two lots of bone black together is eleven thousand three hundred and forty-one dollars and sixty cents ;

That the said moveable property first above mentioned was on or about the seventeenth day of November eighteen hundred and eighty-one at Coaticooke aforesaid stored and warehoused in a certain warehouse heretofore known as “ ware house number four, a brick building known as the Filter tower and  
“ building adjoining belonging to the Pioneer Beet Root Sugar Company of  
“ Coaticooke ” and a warehouse receipt bearing date the 7th November 1881 30  
given there for by one of the *mis en cause* Ernest Glackmeyer one of the work-  
men, warehouseman wherein and whereby the said Glackmeyer acknowledged  
receipt of the said lot of bone black first above described and undertook to de-  
liver the same to one Adolf Lomer or to his order on return of the said ware-  
house receipt ;

That the said warehouse receipt was then and there duly endorsed by the said Adolf Lomer and transfer for value to the Plaintiffs who are now the legal holders thereof and owners of the bone black mentioned therein and receipt is produced as exhibit O ;

That the lot of bone black or bone dust secondly above described was 40  
on or about the eighteenth day of March eighteen hundred and eighty-two at  
Coaticooke aforesaid stored and warehoused in the premises then belonging to  
the said Pioneer Beet Root Sugar Company and a warehouse receipt bearing  
date the said 18th March 1882 given for the same by the *mis en cause* Christian  
Fischer, labory man, warehouseman wherein and whereby the said Fischer ac-  
knowledged having received from the said Adolf Lomer, the said bone black  
therein described as also secondly above described and undertook to deliver the

same on production of the said warehouse receipt was then and there duly endorsed by the said Adolf Lomer and transferred for value to Plaintiffs who are now the legal holders of the same and owners of the bone black or bone dust mentioned therein, which warehouse receipt is herewith filed as Plaintiffs' exhibit number two ;

That by the endorsement and transfer to them of said two warehouse receipts the Plaintiffs became and they still are the sole and lawful owners of all the bone black and bone dust herein above first and secondly described.

10 That said warehouse receipt and each of them was and were duly presented to said Glackmeyer and to said Fisher respectively and to the person in charge of the premises aforesaid in which the said bone black and bone dust are stored and to the Defendant and his representatives at said warehouse store and at Montreal aforesaid and possession and delivery of said moveable property was duly demanded and said warehouse receipts offered by Plaintiffs but Plaintiffs have failed to obtain such possession and delivery and Defendant without cause or reasons has frequently refused to deliver and to give possession of said moveable property, but illegally and without right detains the same against the will and without the consent of Plaintiffs ;

20 That by reason of premises and by law the Plaintiffs are entitled to obtain a writ of attachment revendication to seize and revendicate said moveable property in the hands of the Defendant ;

Wherefore the Plaintiffs pray that in presence of the affidavit herein filed they the Plaintiffs be declared by the judgment to be herein rendered to be the true, lawful and sole owner of the moveable property above described, to wit of : First " A lot of bone black, thirty-one packages in all measuring " twenty four hundred and twenty eight cubic feet or at fifty-five pounds, one " hundred and thirty-five thousand five hundred and forty pounds and secondly : " A certain lot of bone dust contained in ten tanks and in bulk, in all one hundred and fifty thousand pounds more or less ", contained in the premises here-  
30 in above described that a writ of attachment in revendication do issue in this cause to seize and attach by way of revendication the said moveable property in the hands and possession of the Defendant ; that the Defendant and the *mis en cause* be summoned to hear the said attachment in revendication declared good and valid and that the said moveable property by placed in the possession of Plaintiffs unless the Defendant prefer to pay the sum of eleven thousand three hundred and forty-one dollars and sixty cents value of the said moveable property with interest and costs distracts to the undersigned Attorneys including cost of Exhibits and against Defendant and in case of contestation by any of  
40 the other parties with such costs also against them.

Montreal, 20th July 1883.

(Signed) BEIQUÉ, MCGOWN & EMARD,  
Attorneys for Plaintiffs.

True copy,

BEIQUÉ, MCGOWN & EMARD,  
Attorneys for Plaintiffs.

RECORD.

*In the  
Superior  
Curt.*

No. 50.  
Copy of Writ  
and déclaration *in re*  
No. 1642,  
Banque  
d'Hochelaga  
vs. Rough &  
Glackmeyer,  
et al., dated  
26th July,  
July, 1883.  
—Continued.

(ENDORSED).

RECORD

Writ and declaration (copy) Exhibit No. 6 des Défendeurs à l'enquête  
Prod. 5 Oct. 1888. Prod. 28 juin 1889. Paraphed A. B. L. P. C. S.

*In the  
Superior  
Court.*

No. 50.

Copy of Writ  
and decla-  
ration *in re*  
No. 1642,  
Banque  
d'Hochelega,  
vs Rough and  
Glackmeyer  
and al, dated  
26th  
July, 1883.  
—Continued.

\_\_\_\_\_

10

SCHEDULE No. 87.

Canada :  
Province of Quebec,  
District of Montreal. }

SUPERIOR COURT.

No. 2157.

20

No. 51.  
Plaintiff's  
retraxit for  
\$131.30, da-  
ted 5th  
October  
1888.

The Eastern Townships Bank.....Plaintiff.

vs.

Andrew Rough et al.....Defendants.

RETRAXIT FOR \$131.30.

The Plaintiffs hereby pray acte of the declaration which they hereby  
make that they reduce the amount for which they prayed judgment by the  
sum of one hundred and thirty-one dollars and thirty cents (\$131.30) the same  
being the interest which should be allowed to the Defendants upon payments  
made or credited to them in advance of the period at which such payments  
would be exigible as explained in the deposition of Mr. Austin.

Montreal, 5th October 1888.

ATWATER & MACKIE.  
Attorneys for Plaintiffs.

Retraxit for \$131.30. Prod. 26th Oct., 1888. (Paraphed) A. B. L.

40

\_\_\_\_\_

\*

RECORD

Canada,  
Province of Quebec, }  
District of Montreal. }

Superior Court.

In the  
Superior  
Court.

No. 2157.

No. 52.  
Plaintiff's  
Supplement-  
ary articu-  
lations of  
facts of  
Defendant  
Rough's  
amended  
Pleadings da-  
ted 5th  
January 1889

10 The Eastern Townships Bank..... Plaintiffs.  
vs.  
Andrew Rough et al..... Defendants.

PLAINTIFF'S SUPPLEMENTARY ARTICULATIONS OF FACTS ON DEFENDANT  
ROUGH'S AMENDED PLEADINGS.

- 20 1. Is it not a fact that the Government of Canada and the Collector of Customs at Coaticooke had not and have not now the right, authority, or title to seize any portions of the said effect at issue in this cause or to hold the same as subject to the payment of any duties ?
- 2. Is it not a fact that any pretended claim of the said Government of Canada was well known to the said Defendant and to the said McDougall and Beard long prior to the sale by the said Plaintiffs to the said Defendants of the property at issue in this cause ?
- 3. Is it not a fact that any such claim was publicly announced as against the said property by the then Collector of Customs at Coaticooke, on the twelfth day of January eighteen hundred and eighty-three ?
- 4. Is it not a fact that the said sale was made and conducted subject to the directions and orders of the said Defendant and his agents ?
- 30 5. Is it not a fact that the said Defendant Rough was present at the said sale and knew of the said announcement of the said claim on behalf of the Government.
- 6. Is it not a fact that the said Plaintiff never in any way concealed any fact connected with the claim of the said Government, or that the sale was fraudulent ?
- 7. Is it not a fact that the allegations of said Defendants' plea as amended are false ?
- 8. Is it not a fact that the allegations of Plaintiffs answer to said Defendants' plea as amended are true ?
- 40 Montreal, January 5th, 1889.

ATWATER & MACKIE,  
Attys. for Plaintiffs.

(Rec'd Copy)

LACOSTE, BISAILLON, BROSSEAU et LAJOIE.

(ENDORSED).

Plaintiffs Supplementary Articulation of facts of Defendant Rough's amended Pleadings. Fyled 5th January 1889.

RECORD

*In the  
Superior  
Court.*

Canada,  
Province of Quebec, }  
District of Montreal. }

Superior Court.

No. 2157.

No. 53.  
Plaintiff's  
Supplement-  
ary articu-  
lations of  
facts of  
Defendant  
Beard's  
amended  
Pleadings da-  
ted 5th  
January 1889

The Eastern Townships Bank.....Plaintiffs.

vs.

10

Andrew Rough et al.....Defendants.

PLAINTIFF'S SUPPLEMENTARY ARTICULATIONS OF FACTS ON DEFENDANT  
BEARD'S AMENDED PLEADINGS.

1. Is it not a fact that the Government of Canada and the Collector of Customs at Coaticooke had not and have not now the right, authority, or title to seize any portions of the said effect at issue in this cause or to hold the same as subject to the payment of any duties ?

2. Is it not a fact that any pretended claim of the said Government of Canada was well known to the said Defendant and to the said McDougall and Beard long prior to the sale by the said Plaintiffs to the said Defendants of the property at issue in this cause ?

3. Is it not a fact that any such claim was publicly announced as against the said property by the then Collector of Customs at Coaticooke, on the twelfth day of January eighteen hundred and eighty-three ?

4. Is it not a fact that the said sale was made and conducted subject to the directions and orders of the said Defendant and his agents ?

5. Is it not a fact that the said Defendant Beard was present at the said sale and knew of the said announcement of the said claim on behalf of the Government.

6. Is it not a fact that the said Plaintiff never in any way concealed any fact connected with the claim of the said Government, or that the sale was fraudulent ?

7. Is it not a fact that the allegations of said Defendants' plea as amended are false ?

8. Is it not a fact that the allegations of Plaintiffs answer to said Defendants' plea as amended are true ?

Montreal, January 5th, 1889.

ATWATER & MACKIE,  
Attys. for Plaintiffs.

40

(Rec'd Copy)

LACOSTE, BISAILLON, BROSSEAU et LAJOIE.

(ENDORSED).

Plaintiffs Supplementary Articulation of facts of Defendant Rough's amended Pleadings. Fyled 5th January 1889.



Canada,  
Province of Quebec, }  
District of Montreal.

Superior Court.

RECORD

*In the  
Superior  
Court.*

No. 2157.

No. 54.  
Plaintiff's  
Supplement-  
ary articu-  
lations of  
facts of  
Defendant  
McDougall's  
amended  
Pleadings da-  
ted 5th  
January 1889

10 The Eastern Townships Bank..... Plaintiffs.  
vs.  
Andrew Rough et al..... Defendants.

PLAINTIFF'S SUPPLEMENTARY ARTICULATIONS OF FACTS ON DEFENDANT  
McDOUGALL'S AMENDED PLEADINGS.

20 1. Is it not a fact that the Government of Canada and the Collector of  
Customs at Coaticooke had not and have not now the right, authority, or title  
to seize any portions of the said effect at issue in this cause or to hold the  
same as subject to the payment of any duties ?

2. Is it not a fact that any pretended claim of the said Government of  
Canada was well known to the said Defendant and to the said McDougall and  
Beard long prior to the sale by the said Plaintiffs to the said Defendants of  
the property at issue in this cause ?

3. Is it not a fact that any such claim was publicly announced as  
against the said property by the then Collector of Customs at Coaticooke, on  
the twelfth day of January eighteen hundred and eighty-three ?

4. Is it not a fact that the said sale was made and conducted subject  
to the directions and orders of the said Defendant and his agents ?

30 5. Is it not a fact that the said Defendant McDougall was present at the  
said sale and knew of the said announcement of the said claim on behalf of the  
Government.

6. Is it not a fact that the said Plaintiff never in any way concealed  
any fact connected with the claim of the said Government, or that the sale  
was fraudulent ?

7. Is it not a fact that the allegations of said Defendants' plea as amen-  
ded are false ?

8. Is it not a fact that the allegations of Plaintiffs answer to said De-  
fendants' plea as amended are true ?

40 Montreal, January 5th, 1889.

ATWATER & MACKIE,  
Attys. for Plaintiffs.

(Rec'd Copy)

LACOSTE, BISAILLON, BROSSEAU et LAJOIE.

(ENDORSED).

Plaintiffs Supplementary Articulation of facts of Defendant McDou-  
gall's amended Pleadings. Fyled 5th January 1889.

RECORD

*In the  
Superior  
Court.*

SCHEDULE No. 89.

Canada  
Province de Québec }  
District de Montréal }

Cour Supérieure.

No. 55.

No. 2157.

Answers of  
Def't Beard  
to Plff's supp.  
articulations  
of facts  
dated 5th  
January  
1888.

The Eastern Townships Bank ..... Demanderesse

vs

10

Andrew Rough & al. .... Défendeurs

Réponses du défendeur Beard aux articulations de faits supplémentaires  
de la demanderesse.

1. Le défendeur Beard répond non.

2. " " " " non.

3. " " " " non.

20

4. " " " " non.

5. " " " " non.

6. " " " " non.

7. " " " " non.

8. " " " " non.

30

Montréal, 5 Janv. 1889.

LACOSTE, BISAILLON BROSSEAU & LAJOIE,

Avocats du défendeur Beard.

(Reçu copie)

ATWATER & MACKIE,

Avocats de la demanderesse.

(ENDORSED)

40

Réponses du défendeur Beard aux articulations supp. de la demande-  
resse. Prod. 13 Nov. 1889. (Paraphed) A. B. L.

Canada  
Province de Québec }  
District de Montréal }

Cour Supérieure.

No. 2157.

The Eastern Townships Bank.....Demanderesse

10

vs

Andrew Rough & al.....Défendeurs

Réponses du défendeur Rough aux articulations de faits supplémentaires  
de la demanderesse.

1. Le défendeur Rough répond non.

2. " " " " non.

20

3. " " " " non.

4. " " " " non.

5. " " " " non.

6. " " " " non.

7. " " " " non.

30

8. " " " " non.

Montréal, 5 Janv. 1889.

LACOSTE, BISAILLON BROSSEAU & LAJOIE,

Avocats du défendeur Rough,

(Reçu copie)

ATWATER & MACKIE,

Avocats de la demanderesse.

40

(ENDORSED)

Réponses du défendeur Rough aux articulations supp. de la demande-  
resse. Prod. 13 Nov. 1889. (Paraphed) A. B. L.

RECOR

In the  
Superior  
Court.

No. 56.

Answers of  
Def't. Rough  
to Plff's sup-  
articulation  
of facts  
dated 5th  
January  
1888.

RECORD

SCHEDULE No. 89.

*In the  
Superior  
Court.*  
Canada  
Province de Québec }  
District de Montréal }

Cour Supérieure.

No. 2157.

No. 57.  
Answers of  
Defendant  
McDougall  
to Plff's supp.  
articulations  
of facts  
dated 5th  
January  
1888.

The Eastern Townships Bank.....Demanderesse

vs

10

Andrew Rough & al.....Défendeurs

Réponses du défendeur McDougall aux articulations de faits supplémen-  
taires de la demanderesse.

1. Le défendeur McDougall répond non.

2. " " " " non.

3. " " " " non.

20

4. " " " " non.

5. " " " " non.

6. " " " " non.

7. " " " " non.

8. " " " " non.

30

Montréal, 5 Janv. 1889.

LACOSTE, BISAILLON BROSSEAU & LAJOIE,

Avocats du défendeur McDougall.

(Reçu copie)

ATWATER & MACKIE,

Avocats de la demanderesse.

(ENDORSED)

40

Réponses du défendeur McDougall aux articulations supp. de la de-  
manderesse. Prod. 13 Nov. 1889. (Paraphed) A. B. L.

SCHEDULE No. 90.

RECORD.

Canada.  
Province of Quebec }  
District of Montreal. }  
No. 2157.

Superior Court.

*In the  
Superior  
Court.*

10 The Eastern Townships Bank.....Plaintiff,  
vs.  
Andrew Rough & al.....Defendants

No. 58.  
Plaintiff's  
answers to  
supplemen-  
tary articula-  
tion of facts  
of Defendant  
John  
McDougall  
dated  
31st July  
1889.

Plaintiffs Answers to Supplementary Articulations of Facts of Defen-  
dant John McDougall.

- ARTICULATION No. 1—No it is not true.
- 20 " " 2—No.
- " " 3—No.
- " " 4—No.
- " " 5—No.
- " " 6—No.
- " " 7—No.
- 30 " " 8—No.
- " " 9—No.
- " " 10—No.
- " " 11—No.
- " " 12—No.
- 40 " " 13—No.
- " " 14—No.
- " " 15—No.
- " " 16—No.
- " " 17—No.

RECORD.	ARTICULATION	No. 18—No.	
<i>In the Superior Court.</i>	'	" 19—No.	
	'	" 20—No.	
	'	" 21—No.	
No. 58.	"	" 22—No.	
Plaintiff's	"	" 23—No.	
answers to	"	" 24—No.	
supplemen-	"	" 25—No.	
tary articula-	'	" 26—No.	10
tion of facts	'	" 27—No.	
of Defendant	"	" 28—No.	
John McDou-	"	" 29—No.	
gall.	"	" 30—No.	
dated	"	" 31—No.	
31st July	"	" 32—No.	
1889.	"	" 33—No.	20
—Continued.	"	" 34—No.	
	"	" 35—No.	
	"	" 36—No.	
	"	" 37—No.	
	"	" 38—No.	
	"	" 39—No.	
	"	" 40—No.	30
	"	" 41—No.	
	"	" 42—No.	
	"	" 43—No.	
	"	" 44—No.	

Montreal, 31st July 1889.

ATWATER & MACKIE,

Attys for Plaintiffs.

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LACOSTE, BISAILLON, BROSSEAU & LAJOIE.

Attorneys for Defendant McDougall.

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(ENDORSED)

Plaintiffs Answers to Supplementary Articulations of Facts of Defendant John McDougall. Prod. 8 Nov. 1889. Paraphed A. B. L.

SCHEDULE No. 91.

RECORD.

Canada.  
Province of Quebec }  
District of Montreal. }  
No. 2157.

Superior Court.

*In the  
Superior  
Court.*

No. 59.  
Plaintiff's  
answers to  
supplemen-  
tary articula-  
tion of facts  
of Defendant  
S. W. Beard  
dated  
31st July  
1889.

10 The Eastern Townships Bank.....Plaintiff.  
vs.  
Andrew Rough & al.....Defendants

Plaintiffs Answers to Supplementary Articulations of Facts of Defen-  
dant S. W. Beard.

ARTICULATION No. 1—No it is not true.

- 20 " " 2—No.
- " " 3—No.
- " " 4—No.
- " " 5—No.
- " " 6—No.
- " " 7—No.
- 30 " " 8—No.
- " " 9—No.
- " " 10—No.
- " " 11—No.
- " " 12—No.
- 40 " " 13—No.
- " " 14—No.
- " " 15—No.
- " " 16—No.
- " " 17—No.

RECORD.	ARTICULATION No. 18—No.	
<i>In the Superior Court.</i>	“ 19—No.	
	“ 20—No.	
	“ 21—No.	
No. 59.	“ 22—No.	
Plaintiff's	“ 23—No.	
answers to	“ 24—No.	
supplemen-	“ 25—No.	10
tary articula-	“ 26—No.	
tion of facts	“ 27—No.	
of Defendant	“ 28—No.	
S. W. Beard	“ 29—No.	
dated	“ 30—No.	
31st July	“ 31—No.	
1889.	“ 32—No.	
—Continued.	“ 33—No.	20
	“ 34—No.	
	“ 35—No.	
	“ 36—No.	
	“ 37—No.	
	“ 38—No.	
	“ 39—No.	
	“ 40—No.	30
	“ 41—No.	
	“ 42—No.	
	“ 43—No.	
	“ 44—No.	

Montreal, 31st July 1889.

ATWATER & MACKIE,  
Attys for Plaintiffs.

Rec'd Copy.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE.  
Attorneys for Defendant S. W. Beard.

(ENDORSED)

Plaintiffs Answers to Supplementary Articulations of Facts of Defendant S. W. Beard. Prod. 8 Nov. 1889. Paraphed A. B. L.



SCHEDULE No. 91.

RECORD.

Canada.  
Province of Quebec }  
District of Montreal. }  
No. 2157.

Superior Court.

*In the  
Superior  
Court.*

10 The Eastern Townships Bank.....Plaintiff.  
vs.  
Andrew Rough & al.....Defendants

No. 60.  
Plaintiff's  
answers to  
supplemen-  
tary articula-  
tion of facts  
of Defendant  
Andrew  
Rough  
dated  
31st July  
1889.

Plaintiffs Answers to Supplementary Articulations of Facts of Defen-  
dant Andrew Rough

- ARTICULATION No. 1—No it is not true.
- 20 " " 2—No.
  - " " 3—No.
  - " " 4—No.
  - " " 5—No.
  - " " 6—No.
  - " " 7—No.
  - 30 " " 8—No.
  - " " 9—No.
  - " " 10—No.
  - " " 11—No.
  - " " 12—No.
  - 40 " " 13—No.
  - " " 14—No.
  - " " 15—No.
  - " " 16—No.
  - " " 17—No.

RECORD.	ARTICULATION No. 18—No.	
<i>In the Superior Court.</i>	“ 19—No.	
	“ 20—No.	
	“ 21—No.	
No. 60.	“ 22—No.	
Plaintiff's	“ 23—No.	
answers to	“ 24—No.	
supplemen-	“ 25—No.	10
tary articula-	“ 26—No.	
tion of facts	“ 27—No.	
of Defendant	“ 28—No.	
Andrew	“ 29—No.	
Rough	“ 30—No.	
dated	“ 31—No.	
31st July	“ 32—No.	
1889.	“ 33—No.	20
—Continued.	“ 34—No.	
	“ 35—No.	
	“ 36—No.	
	“ 37—No.	
	“ 38—No.	
	“ 39—No.	
	“ 40—No.	30
	“ 41—No.	
	“ 42—No.	
	“ 43—No.	
	“ 44—No.	

Montreal, 31st July 1889.

ATWATER & MACKIE,

Attys for Plaintiffs.

Rec'd Copy.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE.

Attorneys for Defendant Rough.

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(ENDORSED)

Plaintiffs Answers to Supplementary Articulations of Facts of Defendant Andrew Rough. Prod. 8 Nov. 1889. Paraphed A. B. L.

Province de Québec, }  
 District de Montréal. }

Cour Supérieure

*In the  
 Superior  
 Court.*

The Eastern Townships Bank ..... Demanderesse.

vs.

Andrew Rough et al., ..... Défendeurs.

No. 61.  
 Articulation  
 of facts of  
 Defendant  
 A. Rough.  
 Dated 12th  
 Sept. 1888.

10

ARTICULATIONS DE FAITS DU DÉFENDEUR ANDREW ROUGH.

ARTICULATION 1. N'est-il pas vrai que le défendeur Andrew Rough, est troublé et évincé dans la possession et propriété du dit immeuble vendu par la demanderesse ?

20

ARTICULATION 2. N'est-il pas vrai que le six Octobre, mil huit cent quatre-vingt-trois, le Gouvernement de la Puissance du Canada, par l'entremise de son collecteur de douanes à Coaticooke a saisi les machineries, qui se trouvent dans les bâtisses vendues avec les dites bâtisses, comme en faisant partie, pour droit de douanes non payés ?

ARTICULATION 3. N'est-il pas vrai que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ?

ARTICULATION 4. N'est-il pas vrai que le collecteur de douanes à Coaticooke, s'est dans le même temps, savoir : le six Octobre, mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ?

ARTICULATION 5. N'est-il pas vrai que les dites bâtisses et machineries sont encore en sa possession ?

30

ARTICULATION 6. N'est-il pas vrai que le défendeur Andrew Rough est, depuis cette époque, privé de la possession et de la propriété vendues ?

ARTICULATION 7. N'est-il pas vrai que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shérif à la demanderesse, et ce, à la connaissance de la demanderesse ?

ARTICULATION 8. N'est-il pas vrai que les dites bâtisses ainsi que les dites machineries ont subi de grandes détériorations ?

40

ARTICULATION 9. N'est-il pas vrai que les dommages causés aux dites bâtisses et aux dites machineries sont d'au moins la somme de cinquante mille piastres ?

ARTICULATION 10. N'est-il pas vrai que lors de la vente faite au défendeur Andrew Rough la dite demanderesse savait que les droits sur les dites machineries n'avaient pas été payés et connaissait l'intention du gouvernement de faire saisir les dites machineries ?

ARTICULATION 11. N'est-il pas vrai que la demanderesse a caché ces faits au défendeur dans le but d'opérer une vente frauduleuse ?

RECORD

—  
*In the  
 Superior  
 Court.*  
 —

No. 61.

Articulation  
 of facts of  
 Defendant  
 A. Rough.  
 Dated 12th  
 Sept. 1888.

—Continued.

ARTICULATION 12. N'est-il pas vrai que les immeubles vendus par la demanderesse au défendeur par l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois et dont elle demande la balance du prix par cette action, ont été acquis par elle du shérif du district de St. François, C. F. Bowen, qui les a vendus le douze janvier mil huit cent quatre-vingt-trois, au bureau d'enregistrement de la division de Coaticooke, dans le district de St. François en vertu d'un bref d'exécution émané dans le district de Montréal le trente et un octobre mil huit cent quatre-vingt-deux, dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de la Cour Supérieure et ou Fairbanks et al étaient demandeurs et the Pioneer Beet Root Sugar Company était défenderesse ? 10

ARTICULATION 13. N'est-il pas vrai qu'un titre de la dite vente a été passé par le dit shérif Bowen, le treize janvier mil huit cent quatre-vingt-trois ?

ARTICULATION 14. N'est-il pas vrai que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du dit bref d'exécution étaient et sont irréguliers, illégaux, nul et de nul effet et doivent être déclarés tels, et la vente et adjudication faite par le dit shérif doit être cassée, annulée et mise de côté ? 20

ARTICULATION 15. N'est-il pas vrai que la minute de la saisie pratiquée par le dit shérif ainsi que les annonces et les avis de vente ni aucun d'iceux ne contiennent, tel que requis par la loi, une description suffisante des immeubles saisis en vertu du bref d'exécution.

ARTICULATION 16. N'est-il pas vrai qu'au nombre des immeubles annoncés et et vendus se trouve une partie du lot numéro sept-cent soixante-trois qui n'est pas allégué être et n'est pas un numéro distinct d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncées ?

ARTICULATION 17. N'est-il pas vrai que le shérif, ou le député shérif qui a 30  
 procédé à la dite vente, a adjugé illégalement les dits immeubles à la demanderesse, The Eastern Townships Bank, pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite Banque, laquelle enchère avait été entrée sur le livre de minutes tenu pour l'enchère des dits immeubles ?

ARTICULATION 18. N'est-il pas vrai que le shérif a vendu les dits biens meubles en un seul lot et en bloc sans le consentement de la défenderesse The Pioneer Beet Root Sugar Company, mais sur la demande du gérant de la Banque adjudicataire The Eastern Townships Bank, la demanderesse en 40  
 cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite Banque ?

ARTICULATION 19. N'est-il pas vrai que la vente et adjudication des dits immeubles a ainsi été faite à la demanderesse The Eastern Townships Bank par le dit shérif, illégalement et irrégulièrement, à vil prix, savoir : pour quatorze cents piastres, lorsque la valeur des dits biens, immeubles étant

bien plus considérable, savoir : d'au moins quarante ou cinquante mille piastres.

Que le neuf février mil huit cent quatre-vingt-deux la dite The Eastern Townships Bank, la demanderesse en cette cause, bien qu'il connaissait l'insolvabilité et la déconfiture dans laquelle se trouvait alors The Pioneer Beet Root Sugar Company, et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérable, a cependant dans le but de les tromper et d'obtenir une préférence induc et frauduleuse sur eux, intenté secrètement devant la Cour Supérieure du district de St-François, sous le numéro trois cent trente-cinq des dossier de la dite Cour une action intitulée : "The Eastern Townships Bank vs Amos H. Cummings & al, manufacturier du village de Coaticooke, dans le district de St-François" dans laquelle la dite The Eastern Townships Bank était demanderesse, un nommé Amos H. Cummings, du village de Coaticooke, dans le district de St-François et The Pioneer Beet Root Sugar Company, étaient défendeurs ?

10

ARTICULATION 21. N'est-il pas vrai que la dite action a été, par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la banque demanderesse à un des directeurs de la dite banque savoir : à un nommé John Thornton qui était aussi un officier de la compagnie défenderesse The Pioneer Beet Root Sugar Company ?

20

ARTICULATION 22. N'est-il pas vrai que d'après entente entre le dit Thornton et la dite Eastern Townships Bank, la dite action n'a jamais été communiquée au bureau de direction de la compagnie défenderesse, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement.

30

ARTICULATION 23. N'est-il pas vrai que la dite action fut rapportée en Cour le vingt-trois février mil huit cent quatre-vingt-deux et que jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt-cinq du même mois pour une somme de vingt-trois mille six cent soixante et dix-sept piastres avec intérêt du dix février, montant considérable au-delà de ce qui était dû alors à la dite Eastern Township Bank ?

ARTICULATION 24. N'est-il pas vrai que le jour même où le dit jugement fut rendu, savoir, le vingt-cinq février mil huit cent quatre-vingt-deux, la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company ?

40

ARTICULATION 25. N'est-il pas vrai qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie défenderesse la dite Eastern Township Bank, malgré l'enregistrement qu'elle fit de son jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ?

ARTICULATION 26. N'est-il pas vrai que des moyens artificieux ont été employés par la dite The Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ?

ARTICULATION 27. N'est-il pas vrai que de plus, la dite Eastern Townships Bank, bien que sachant que l'enregistrement de ce jugement, comme sus-

RECORD.

*In the  
Superior  
Court.*

No. 61.  
Articulation  
of facts of  
Defendant  
A. Rough.  
Dated 12th  
Sept. 1888.  
—Continued

## RECORD

—  
*In the  
 Superior  
 Court.*  
 —

No. 61.  
 Articulation  
 of facts of  
 Defendant  
 A. Rough.  
 Dated 12th  
 Sept. 1888.  
 —Continued.

dit, dans un temps ou la compagnie défenderesse The Pioneer Beet Root Sugar Company, était insolvable et en déconfiture, ne pouvait pas lui donner et ne lui a pas donné droit d'hypothèque, et étant sans force et sans effet, a fait usage de tel enrégistrement pour empêcher d'autres personnes d'être présentés à la dite vente et enchérir sur les propriétés en question en cette cause, et a ordonné l'enregistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur la dite propriété ?

- ARTICULATION 28. N'est-il pas vrai qu'à raison des artifices et d'autres semblables pratiqués par la dite Banque, lorsque les dites propriétés ont été mises à l'enchère à la dite vente du shérif, les dites propriétés, par une entente collusoire et frauduleuse entre la dite Banque et d'autres personnes présentes et enchérissant, ont été vendues et adjugées à William Farwell, gérant de la dite Banque, illégalement et frauduleusement au préjudice des créanciers pour la somme de quatorze cents piastres, et que le dit William Farwell, représentait et agissait pour la dite Banque en cette circonstance ? 10
- ARTICULATION 29. N'est-il pas vrai que les dits biens immeubles ainsi adjugés à la dite Banque valaient au moins de quarante à cinquante mille piastres ? 20
- ARTICULATION 30. N'est-il pas vrai qu'un bref et une requête en nullité de décret ont été pris et signifiés par la Banque d'Hochelega, l'un des créanciers de la dite Pioneer Beet Root Sugar Company, lesquels sont encore pendants devants cette Cour ?
- ARTICULATION 31. N'est-il pas vrai que les dits Rough, McDougall et Beard ont été mis en cause dans les dits brefs et requête en nullité de décret, lesquels dits brefs et requête leur ont été signifiés à chacun d'eux ?
- ARTICULATION 32. N'est-il pas vrai que les moyens invoqués par la dite banque d'Hochelega sont les mêmes que ceux ci-dessus relatés, lesquels allégués sont vrais. 30
- ARTICULATION 33. N'est-il pas vrai que le défendeur Andrew Rough se trouve exposé à un trouble imminent et à une éviction certaine ?
- ARTICULATION 34. N'est-il pas vrai que le cinquième jour de Septembre mil huit cent quatre-vingt-quatre, le défendeur Andrew Rough a pris une action devant cette Cour pour faire casser, annuler et mettre de côté l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois par la dite banque au défendeur et relaté en la déclaration en cette cause ?
- ARTICULATION 35. N'est-il pas vrai que la dite action porte le numéro neuf cent dix des dossiers de cette Cour ?
- ARTICULATION 36. N'est-il pas vrais que les moyens invoqués dans la dite action pour faire casser, annuler et mettre de côté le dit acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois sont les mêmes que ceux ci-dessus plaidés et sont vrais ? 40
- ARTICULATION 37. N'est-il pas vrai que lors de l'échéance des intérêts ainsi que des versements dus le dix juillet mil huit cent quatre-vingt-trois et le seize janvier mil huit cent quatre-vingt-quatre sur le dit prix de vente le

dit défendeur Andrew Rough a notifié la demanderesse du trouble et de l'éviction qu'il subit ?

RECORD.

*In the  
Superior  
Court.*

No. 61.

Articulation  
of facts of  
Defendant  
A. Rough,  
Dated 12th  
Sept. 1888.

—Continued

ARTICULATION 38. N'est-il pas vrai que les propriétés vendues ont subi une détérioration considérable qui en réduit la valeur maintenant à quelques milliers de piastres seulement ;

ARTICULATION 39. N'est-il pas vrai que les dommages causés aux dites prémisses vendues et aux machineries sont d'au moins la somme de cinquante mille piastres, tel qu'il appert à l'état produit avec la déclaration ?

10 ARTICULATION 40. N'est-il pas vrai que tel qu'il appert à l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois, ainsi qu'à la déclaration de la demanderesse, celle-ci n'aurait pas le droit de réclamer le prix total de la vente qu'au cas où le défendeur Andrew Rough serait en faute en ne payant pas les versements à échéance :

ARTICULATION 41. N'est-il pas vrai que le défendeur Andrew Rough a payé en acompte du dit prix de vente la somme de seize mille quatre-vingt-douze piastres et quarante huit centins, comme suit :

20 1. Neuf mille quatre cent trente-neuf piastres et soixante-dix centins, lors de la passation du dit acte de vente, le dix-neuf janvier mil huit cent quatre-vingt-trois ;

2. Treize cent cinquante deux piastres et soixante-dix-huit centins vers le trente avril mil huit cent quatre-vingt-trois ;

3. Cinq mille trois cent piastres vers la même date ?

ARTICULATION 42. N'est-il pas vrai que la demanderesse ne lui a donner crédit que pour les deux premiers montants, tandis qu'elle aurait du lui donner crédit pour les trois montants ?

30 ARTICULATION 43. N'est-il pas vrai que la balance due à la demanderesse ne s'élève qu'à la somme de huit mille trois cent quarante-sept piastres, avec intérêt, tel que stipulé au dit acte du dix-neuf janvier mil huit cent quatre-vingt-trois ?

ARTICULATION 44. N'est-il pas vrai que tous et chacun les faits allégués en la défense du défendeur Andrew Rough sont vrais et bien fondés ?

Montréal 12 Sept. 1888.

LACOSTE, BISAILLON BROSSEAU & LAJOIE,

Avocats du défendeur Andrew Rough

(Rec'd copy)

40

ATWATER & MACKIE,

Attys. for Plaintiff.

(ENDORSED)

Articulation de faits du défendeur Andrew Rough. Prod. 13 novembre 1889. (Paraphed) A. B. L.

*In the  
Superior  
Court.*

Province de Québec, )  
District de Montréal. ]

Cour Supérieure

The Eastern Townships Bank ..... Demanderesse.

No. 62.

Articulation  
of facts of  
Defendant  
S. W. Beard.

Dated 12th  
Sept. 1888.

—Continued.

vs.

Andrew Rough et al., ..... Défendeurs. 10

ARTICULATIONS DE FAITS DU DÉFENDEUR S. W. BEARD.

ARTICULATION 1. N'est-il pas vrai que le défendeur Andrew Rough, est troublé et évincé dans la possession et propriété du dit immeuble vendu par la demanderesse ?

ARTICULATION 2. N'est-il pas vrai que le six Octobre, mil huit cent quatre-vingt-trois, le Gouvernement de la Puissance du Canada, par l'entremise de son collecteur de douanes à Coaticooke a saisi les machineries, qui se trouvent dans les bâtisses vendues avec les dites bâtisses, comme en fai- 20  
sant partie, pour droit de douanes non payés ?

ARTICULATION 3. N'est-il pas vrai que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ?

ARTICULATION 4. N'est-il pas vrai que le collecteur de douanes à Coaticooke, s'est dans le même temps, savoir : le six Octobre, mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ?

ARTICULATION 5. N'est-il pas vrai que les dites bâtisses et machineries sont encore en sa possession ?

ARTICULATION 6. N'est-il pas vrai que le défendeur Andrew Rough est, depuis 30  
cette époque, privé de la possession et de la propriété vendues ?

ARTICULATION 7. N'est-il pas vrai que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shérif à la demanderesse, et ce, à la connaissance de la demanderesse ?

ARTICULATION 8. N'est-il pas vrai que les dites bâtisses ainsi que les dites machineries ont subi de grandes détériorations ?

ARTICULATION 9. N'est-il pas vrai que les dommages causés aux dites bâtisses et aux dites machineries sont d'au moins la somme de cinquante mille piastres ? 40

ARTICULATION 10. N'est-il pas vrai que lors de la vente faite au défendeur Andrew Rough la dite demanderesse savait que les droits sur les dites machineries n'avaient pas été payés et connaissait l'intention du gouvernement de faire saisir les dites machineries ?

ARTICULATION 11. N'est-il pas vrai que la demanderesse a caché ces faits au défendeur dans le but d'opérer une vente frauduleuse ?



- ARTICULATION 12. N'est-il pas vrai que les immeubles vendus par la demanderesse au défendeur par l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois et dont elle demande la balance du prix par cette action, ont été acquis par elle du shérif du district de St. François, C. F. Bowen, qui les a vendus le douze janvier mil huit cent quatre-vingt-trois, au bureau d'enregistrement de la division de Coaticooke, dans le district de St. François en vertu d'un bref d'exécution émané dans le district de Montréal le trente et un octobre mil huit cent quatre-vingt-deux, dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de la Cour Supérieure et ou Fairbanks et al étaient demandeurs et the Pioneer Beet Root Sugar Company était défenderesse ?
- ARTICULATION 13. N'est-il pas vrai qu'un titre de la dite vente a été passé par le dit shérif Bowen, le treize janvier mil huit cent quatre-vingt-trois ?
- ARTICULATION 14. N'est-il pas vrai que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du dit bref d'exécution étaient et sont irréguliers, illégaux, nul et de nul effet et doivent être déclarés tels, et la vente et adjudication faite par le dit shérif doit être cassée, annulée et mise de côté ?
- ARTICULATION 15. N'est-il pas vrai que la minute de la saisie pratiquée par le dit shérif ainsi que les annonces et les avis de vente ni aucun d'iceux ne contiennent, tel que requis par la loi, une description suffisante des immeubles saisis en vertu du bref d'exécution.
- ARTICULATION 16. N'est-il pas vrai qu'au nombre des immeubles annoncés et et vendus se trouve une partie du lot numéro sept-cent soixante-trois qui n'est pas allégué être et n'est pas un numéro distinct d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncées ?
- ARTICULATION 17. N'est-il pas vrai que le shérif, ou le député shérif qui a procédé à la dite vente, a adjugé illégalement les dits immeubles à la demanderesse, The Eastern Townships Bank, pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite Banque, laquelle enchère avait été entrée sur le livre de minutes tenu pour l'enchère des dits immeubles ?
- ARTICULATION 18. N'est-il pas vrai que le shérif a vendu les dits biens meubles en un seul lot et en bloc sans le consentement de la défenderesse The Pioneer Beet Root Sugar Company, mais sur la demande du gérant de la Banque adjudicataire The Eastern Townships Bank, la demanderesse en cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite Banque ?
- ARTICULATION 19. N'est-il pas vrai que la vente et adjudication des dits immeubles a ainsi été faite à la demanderesse The Eastern Townships Bank par le dit shérif, illégalement et irrégulièrement, à vil prix, savoir : pour quatorze cents piastres, lorsque la valeur des dits biens, immeubles étant

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bien plus considérable, savoir : d'au moins quarante ou cinquante mille piastres.

Que le neuf février mil huit cent quatre-vingt-deux la dite The Eastern Townships Bank, la demanderesse en cette cause, bien qu'il connaissait l'insolvabilité et la déconfiture dans laquelle se trouvait alors The Pioneer Beet Root Sugar Company, et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérable, a cependant dans le but de les tromper et d'obtenir une préférence indue et frauduleuse sur eux, intenté secrètement devant la Cour Supérieure du district de St-François, sous le numéro trois cent trente-cinq des dossier de la dite Cour une action intitulée : "The Eastern Townships Bank vs Amos H. Cummings & al, manufacturier du village de Coaticooke, dans le district de St-François" dans laquelle la dite The Eastern Townships Bank était demanderesse, un nommé Amos H. Cummings, du village de Coaticooke, dans le district de St-François et The Pioneer Beet Root Sugar Company, étaient défendeurs ?

ARTICULATION 21. N'est-il pas vrai que la dite action a été, par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la banque demanderesse à un des directeurs de la dite banque savoir : à un nommé John Thornton qui était aussi un officier de la compagnie défenderesse The Pioneer Beet Root Sugar Company ?

ARTICULATION 22. N'est-il pas vrai que d'après entente entre le dit Thornton et la dite Eastern Townships Bank, la dite action n'a jamais été communiquée au bureau de direction de la compagnie défenderesse, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement.

ARTICULATION 23. N'est-il pas vrai que la dite action fut rapportée en Cour le vingt-trois février mil huit cent quatre-vingt-deux et que jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt-cinq du même mois pour une somme de vingt-trois mille six cent soixante et dix-sept piastres avec intérêt du dix février, montant considérable au-delà de ce qui était dû alors à la dite Eastern Township Bank ?

ARTICULATION 24. N'est-il pas vrai que le jour même où le dit jugement fut rendu, savoir, le vingt-cinq février mil huit cent quatre-vingt-deux, la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company ?

ARTICULATION 25. N'est-il pas vrai qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie défenderesse la dite Eastern Township Bank, malgré l'enregistrement qu'elle fit de son jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ?

ARTICULATION 26. N'est-il pas vrai que des moyens artificieux ont été employés par la dite The Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ?

ARTICULATION 27. N'est-il pas vrai que de plus, la dite Eastern Townships Bank, bien que sachant que l'enregistrement de ce jugement, comme sus-

dit, dans un temps où la compagnie défenderesse The Pioneer Beet Root Sugar Company, était insolvable et en déconfiture, ne pouvait pas lui donner et ne lui a pas donné droit d'hypothèque, et étant sans force et sans effet, a fait usage de tel enrégistrement pour empêcher d'autres personnes d'être présentés à la dite vente et enchérir sur les propriétés en question en cette cause, et a ordonné l'enrégistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur la dite propriété ?

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10 ARTICULATION 28. N'est-il pas vrai qu'à raison des artifices et d'autres semblables pratiqués par la dite Banque, lorsque les dites propriétés ont été mises à l'enchère à la dite vente du shérif, les dites propriétés, par une entente collusoire et frauduleuse entre la dite Banque et d'autres personnes présentes et enchérissant, ont été vendues et adjugées à William Farwell, gérant de la dite Banque, illégalement et frauduleusement au préjudice des créanciers pour la somme de quatorze cents piastres, et que le dit William Farwell, représentait et agissait pour la dite Banque en cette circonstance ?

ARTICULATION 29. N'est-il pas vrai que les dits biens immeubles ainsi adjugés à la dite Banque valaient au moins de quarante à cinquante mille piastres ?

20 ARTICULATION 30. N'est-il pas vrai qu'un bref et une requête en nullité de décret ont été pris et signifiés par la Banque d'Hochelaga, l'un des créanciers de la dite Pioneer Beet Root Sugar Company, lesquels sont encore pendants devants cette Cour ?

ARTICULATION 31. N'est-il pas vrai que les dits Rough, McDougall et Beard ont été mis en cause dans les dits brefs et requête en nullité de décret, lesquels dits brefs et requête leur ont été signifiés à chacun d'eux ?

30 ARTICULATION 32. N'est-il pas vrai que les moyens invoqués par la dite banque d'Hochelaga sont les mêmes que ceux ci-dessus relatés, lesquels allégués sont vrais.

ARTICULATION 33. N'est-il pas vrai que le défendeur Andrew Rough se trouve exposé à un trouble imminent et à une éviction certaine ?

ARTICULATION 34. N'est-il pas vrai que le cinquième jour de Septembre mil huit cent quatre-vingt-quatre, le défendeur Andrew Rough a pris une action devant cette Cour pour faire casser, annuler et mettre de côté l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois par la dite banque au défendeur et relaté en la déclaration en cette cause ?

ARTICULATION 35. N'est-il pas vrai que la dite action porte le numéro neuf cent dix des dossiers de cette Cour ?

40 ARTICULATION 36. N'est-il pas vrais que les moyens invoqués dans la dite action pour faire casser, annuler et mettre de côté le dit acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois sont les mêmes que ceux ci-dessus plaidés et sont vrais ?

ARTICULATION 37. N'est-il pas vrai que lors de l'échéance des intérêts ainsi que des versements dus le dix juillet mil huit cent quatre-vingt-trois et le seize janvier mil huit cent quatre-vingt-quatre sur le dit prix de vente le

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dit défendeur Andrew Rough a notifié la demanderesse du trouble et de l'éviction qu'il subit ?

ARTICULATION 38. N'est-il pas vrai que les propriétés vendues ont subi une détérioration considérable qui en réduit la valeur maintenant à quelques milliers de piastres seulement ;

ARTICULATION 39. N'est-il pas vrai que les dommages causés aux dites prémisses vendues et aux machineries sont d'au moins la somme de cinquante mille piastres, tel qu'il appert à l'état produit avec la déclaration ?

ARTICULATION 40. N'est-il pas vrai que tel qu'il appert à l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois, ainsi qu'à la déclaration de la demanderesse, celle-ci n'aurait pas le droit de réclamer le prix total de la vente qu'au cas où le défendeur Andrew Rough serait en faute en ne payant pas les versements à échéance : 10

ARTICULATION 41. N'est-il pas vrai que le défendeur Andrew Rough a payé en acompte du dit prix de vente la somme de seize mille quatre-vingt-douze piastres et quarante huit centins, comme suit :

1. Neuf mille quatre cent trente-neuf piastres et soixante-dix centins, lors de la passation du dit acte de vente, le dix-neuf janvier mil huit cent quatre-vingt-trois ; 20

2. Treize cent cinquante deux piastres et soixante-dix-huit centins vers le trente avril mil huit cent quatre-vingt-trois ;

3. Cinq mille trois cent piastres vers la même date ?

ARTICULATION 42. N'est-il pas vrai que la demanderesse ne lui a donné crédit que pour les deux premiers montants, tandis qu'elle aurait dû lui donner crédit pour les trois montants ?

ARTICULATION 43. N'est-il pas vrai que la balance due à la demanderesse ne s'élève qu'à la somme de huit mille trois cent quarante-sept piastres, avec intérêt, tel que stipulé au dit acte du dix-neuf janvier mil huit cent quatre-vingt-trois ? 30

ARTICULATION 44. N'est-il pas vrai que tous et chacun les faits allégués en la défense du défendeur S. W. Beard sont vrais et bien fondés ?

Montréal 12 Sept. 1888.

LACOSTE, BISAILLON BROSSEAU &amp; LAJOIE,

Avocats du défendeur S. W. Beard.

(Rec'd copy waiving service only)

ATWATER &amp; MACKIE,

Attys. for Plaintiff.

(ENDORSED)

Articulation de faits du défendeur S. W. Beard. Prod. 13 novembre 1889. (Paraphed) A. B. L. 40

SCHEDULE NO. 92

RECORD.

Province de Québec, }  
District de Montréal. }

Cour Supérieure

*In the  
Superior  
Court.*

The Eastern Townships Bank .....Demanderesse.

No. 63.

vs.

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of facts of  
Defendant  
John McDou-  
gall.

10 Andrew Rough et al., .....Défendeurs.

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ARTICULATIONS DE FAITS DU DÉFENDEUR John McDougall

ARTICULATION 1. N'est-il pas vrai que le défendeur Andrew Rough, est troublé et évincé dans la possession et propriété du dit immeuble vendu par la demanderesse ?

20 ARTICULATION 2. N'est-il pas vrai que le six Octobre, mil huit cent quatre-vingt-trois, le Gouvernement de la Puissance du Canada, par l'entremise de son collecteur de douanes à Coaticooke a saisi les machineries, qui se trouvent dans les bâtisses vendues avec les dites bâtisses, comme en faisant partie, pour droit de douanes non payés ?

ARTICULATION 3. N'est-il pas vrai que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ?

ARTICULATION 4. N'est-il pas vrai que le collecteur de douanes à Coaticooke, s'est dans le même temps, savoir : le six Octobre, mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ?

ARTICULATION 5. N'est-il pas vrai que les dites bâtisses et machineries sont encore en sa possession ?

30 ARTICULATION 6. N'est-il pas vrai que le défendeur Andrew Rough est, depuis cette époque, privé de la possession et de la propriété vendues ?

ARTICULATION 7. N'est-il pas vrai que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shérif à la demanderesse, et ce, à la connaissance de la demanderesse ?

ARTICULATION 8. N'est-il pas vrai que les dites bâtisses ainsi que les dites machineries ont subi de grandes détériorations ?

40 ARTICULATION 9. N'est-il pas vrai que les dommages causés aux dites bâtisses et aux dites machineries sont d'au moins la somme de cinquante mille piastres ?

ARTICULATION 10. N'est-il pas vrai que lors de la vente faite au défendeur Andrew Rough la dite demanderesse savait que les droits sur les dites machineries n'avaient pas été payés et connaissait l'intention du gouvernement de faire saisir les dites machineries ?

ARTICULATION 11. N'est-il pas vrai que la demanderesse a caché ces faits au défendeur dans le but d'opérer une vente frauduleuse ?

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- ARTICULATION 12. N'est-il pas vrai que les immeubles vendus par la demanderesse au défendeur par l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois et dont elle demande la balance du prix par cette action, ont été acquis par elle du shérif du district de St. François, C. F. Bowen, qui les a vendus le douze janvier mil huit cent quatre-vingt-trois, au bureau d'enregistrement de la division de Coaticooke, dans le district de St. François en vertu d'un bref d'exécution émané dans le district de Montréal le trente et un octobre mil huit cent quatre-vingt-deux, dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de la Cour Supérieure et où Fairbanks et al étaient demandeurs et the Pioneer Beet Root Sugar Company était défenderesse ? 10
- ARTICULATION 13. N'est-il pas vrai qu'un titre de la dite vente a été passé par le dit shérif Bowen, le treize janvier mil huit cent quatre-vingt-trois ?
- ARTICULATION 14. N'est-il pas vrai que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du dit bref d'exécution étaient et sont irréguliers, illégaux, nul et de nul effet et doivent être déclarés tels, et la vente et adjudication faite par le dit shérif doit être cassée, annullée et mise de côté ? 20
- ARTICULATION 15. N'est-il pas vrai que la minute de la saisie pratiquée par le dit shérif ainsi que les annonces et les avis de vente ni aucun d'iceux ne contiennent, tel que requis par la loi, une description suffisante des immeubles saisis en vertu du bref d'exécution.
- ARTICULATION 16. N'est-il pas vrai qu'au nombre des immeubles annoncés et vendus se trouve une partie du lot numéro sept-cent soixante-trois qui n'est pas allégué être et n'est pas un numéro distinct d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncées ?
- ARTICULATION 17. N'est-il pas vrai que le shérif, ou le député shérif qui a 50  
 procédé à la dite vente, a adjugé illégalement les dits immeubles à la demanderesse, The Eastern Townships Bank, pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite Banque, laquelle enchère avait été entrée sur le livre de minutes tenu pour l'enchère des dits immeubles ?
- ARTICULATION 18. N'est-il pas vrai que le shérif a vendu les dits biens meubles en un seul lot et en bloc sans le consentement de la défenderesse The Pioneer Beet Root Sugar Company, mais sur la demande du gérant de la 40  
 Banque adjudicataire The Eastern Townships Bank, la demanderesse en cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite Banque ?
- ARTICULATION 19. N'est-il pas vrai que la vente et adjudication des dits immeubles a ainsi été faite à la demanderesse The Eastern Townships Bank par le dit shérif, illégalement et irrégulièrement, à vil prix, savoir : pour quatorze cents piastres, lorsque la valeur des dits biens, immeubles étant

bien plus considérable, savoir : d'au moins quarante ou cinquante mille piastres.

Que le neuf février mil huit cent quatre-vingt-deux la dite The Eastern Townships Bank, la demanderesse en cette cause, bien qu'il connaissait l'insolvabilité et la déconfiture dans laquelle se trouvait alors The Pioneer Beet Root Sugar Company, et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérable, a cependant dans le but de les tromper et d'obtenir une préférence indue et frauduleuse sur eux, intenté secrètement devant la Cour Supérieure du district de St-François, sous le numéro trois cent trente-cinq des dossier de la dite Cour une action intitulée : "The Eastern Townships Bank vs Amos H. Cummings & al, manufacturier du village de Coaticooke, dans le district de St-François" dans laquelle la dite The Eastern Townships Bank était demanderesse, un nommé Amos H. Cummings, du village de Coaticooke, dans le district de St-François et The Pioneer Beet Root Sugar Company, étaient défendeurs ?

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ARTICULATION 21. N'est-il pas vrai que la dite action a été, par entente secrète et engagement fait à cet effet par les parties ci-dessus, signifiée dans la bâtisse de la banque demanderesse à un des directeurs de la dite banque savoir : à un nommé John Thornton qui était aussi un officier de la compagnie défenderesse The Pioneer Beet Root Sugar Company ?

ARTICULATION 22. N'est-il pas vrai que d'après entente entre le dit Thornton et la dite Eastern Townships Bank, la dite action n'a jamais été communiquée au bureau de direction de la compagnie défenderesse, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement.

ARTICULATION 23. N'est-il pas vrai que la dite action fut rapportée en Cour le vingt-trois février mil huit cent quatre-vingt-deux et que jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt-cinq du même mois pour une somme de vingt-trois mille six cent soixante et dix-sept piastres avec intérêt du dix février, montant considérable au-delà de ce qui était dû alors à la dite Eastern Township Bank ?

ARTICULATION 24. N'est-il pas vrai que le jour même où le dit jugement fut rendu, savoir, le vingt-cinq février mil huit cent quatre-vingt-deux, la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie défenderesse The Pioneer Beet Root Sugar Company ?

ARTICULATION 25. N'est-il pas vrai qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie défenderesse la dite Eastern Township Bank, malgré l'enregistrement qu'elle fit de son jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ?

ARTICULATION 26. N'est-il pas vrai que des moyens artificieux ont été employés par la dite The Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ?

ARTICULATION 27. N'est-il pas vrai que de plus, la dite Eastern Townships Bank, bien que sachant que l'enregistrement de ce jugement, comme sus-

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 John McDou-  
 gall.

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dit, dans un temps ou la compagnie défenderesse The Pioneer Beet Root Sugar Company, était insolvable et en déconfiture, ne pouvait pas lui donner et ne lui a pas donné droit d'hypothèque, et étant sans force et sans effet, a fait usage de tel enrégistrement pour empêcher d'autres personnes d'être présentés à la dite vente et enchérir sur les propriétés en question en cette cause, et a ordonné l'enrégistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur la dite propriété ?

- ARTICULATION 28. N'est-il pas vrai qu'à raison des artifices et d'autres semblables pratiqués par la dite Banque, lorsque les dites propriétés ont été mises à l'enchère à la dite vente du shérif, les dites propriétés, par une entente collusoire et frauduleuse entre la dite Banque et d'autres personnes présentés et enchérissant, ont été vendues et adjugées à William Farwell, gérant de la dite Banque, illégalement et frauduleusement au préjudice des créanciers pour la somme de quatorze cents piastres, et que le dit William Farwell, représentait et agissait pour la dite Banque en cette circonstance ? 10
- ARTICULATION 29. N'est-il pas vrai que les dits biens immeubles ainsi adjugés à la dite Banque valaient au moins de quarante à cinquante mille piastres ? 20
- ARTICULATION 30. N'est-il pas vrai qu'un bref et une requête en nullité de décret ont été pris et signifiés par la Banque d'Hochelaga, l'un des créanciers de la dite Pioneer Beet Root Sugar Company, lesquels sont encore pendants devants cette Cour ?
- ARTICULATION 31. N'est-il pas vrai que les dits Rough, McDougall et Beard ont été mis en cause dans les dits brefs et requête en nullité de décret, lesquels dits brefs et requête leur ont été signifiés à chacun d'eux ?
- ARTICULATION 32. N'est-il pas vrai que les moyens invoqués par la dite banque d'Hochelaga sont les mêmes que ceux ci-dessus relatés, lesquels allégués sont vrais. 30
- ARTICULATION 33. N'est-il pas vrai que le défendeur Andrew Rough se trouve exposé à un trouble imminent et à une éviction certaine ?
- ARTICULATION 34. N'est-il pas vrai que le cinquième jour de Septembre mil huit cent quatre-vingt-quatre, le défendeur Andrew Rough a pris une action devant cette Cour pour faire casser, annuler et mettre de côté l'acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois par la dite banque au défendeur et relaté en la déclaration en cette cause ?
- ARTICULATION 35. N'est-il pas vrai que la dite action porte le numéro neuf cent dix des dossiers de cette Cour ? 40
- ARTICULATION 36. N'est-il pas vrais que les moyens invoqués dans la dite action pour faire casser, annuler et mettre de côté le dit acte de vente du dix-neuf janvier mil huit cent quatre-vingt-trois sont les mêmes que ceux ci-dessus plaidés et sont vrais ?
- ARTICULATION 37. N'est-il pas vrai que lors de l'échéance des intérêts ainsi que des versements dus le dix juillet mil huit cent quatre-vingt-trois et le seize janvier mil huit cent quatre-vingt-quatre sur le dit prix de vente le



dit défendeur Andrew Rough a notifié la demanderesse du trouble et de l'éviction qu'il subit ?

RECORD.

*In the  
Superior  
Court.*

ARTICULATION 38. N'est-il pas vrai que les propriétés vendues ont subi une détérioration considérable qui en réduit la valeur maintenant à quelques milliers de piastres seulement ;

ARTICULATION 39. N'est-il pas vrai que les dommages causés aux dites prémisses vendues et aux machineries sont d'au moins la somme de cinquante mille piastres, tel qu'il appert à l'état produit avec la déclaration ?

No. 63.  
Articulation  
of facts of  
Defendant  
John McDougall.  
Dated 12th  
Sept. 1888.  
—Continued

10 ARTICULATION 40. N'est-il pas vrai que tel qu'il appert à l'acte du dix-neuf janvier mil huit cent quatre-vingt-trois, ainsi qu'à la déclaration de la demanderesse, celle-ci n'aurait pas le droit de réclamer le prix total de la vente qu'au cas où le défendeur Andrew Rough serait en faute en ne payant pas les versements à échéance :

ARTICULATION 41. N'est-il pas vrai que le défendeur Andrew Rough a payé en acompte du dit prix de vente la somme de seize mille quatre-vingt-douze piastres et quarante huit centins, comme suit :

20 1. Neuf mille quatre cent trente-neuf piastres et soixante-dix centins, lors de la passation du dit acte de vente, le dix-neuf janvier mil huit cent quatre-vingt-trois ;

2. Treize cent cinquante deux piastres et soixante-dix-huit centins vers le trente avril mil huit cent quatre-vingt-trois ;

3. Cinq mille trois cent piastres vers la même date ?

ARTICULATION 42. N'est-il pas vrai que la demanderesse ne lui a donner crédit que pour les deux premiers montants, tandis qu'elle aurait du lui donner crédit pour les trois montants ?

30 ARTICULATION 43. N'est-il pas vrai que la balance due à la demanderesse ne s'élève qu'à la somme de huit mille trois cent quarante-sept piastres, avec intérêt, tel que stipulé au dit acte du dix-neuf janvier mil huit cent quatre-vingt-trois ?

ARTICULATION 44. N'est-il pas vrai que tous et chacun les faits allégués en la défense du défendeur John McDougall sont vrais et bien fondés ?

Montréal 12 Sept. 1888.

LACOSTE, BISAILLON BROSSEAU & LAJOIE,

Avocats du défendeur John McDougall.

(Rec'd copy waiving service only)

40

ATWATER & MACKIE,

Attys. for Plaintiff.

(ENDORSED)

Articulation de faits du défendeur John McDougall. Prod. 13 novembre 1889. (Paraphed) A. B. L.

RECORD

SCHEDULE No. 93.

*In the  
Superior  
Court.*

Canada,  
Province of Quebec,  
District of Montreal.

Superior Court.

No. 2157.

No. 64.  
Plaintiff's  
answers to  
Defendant  
John Mc-  
Dougall's,  
articulation  
of facts,  
dated April,  
1889.

The Eastern Townships Bank.....Plaintiff.

vs.

Andrew Rough et al.....Defendants.

10

PLAINTIFFS ANSWERS TO DEFENDANT JOHN McDUGALL'S ARTI-  
CULATIONS OF FACTS.

To the 1st    Plaintiffs says    No    it is not true.

"	2nd	"	No	"
"	3rd	"	No	"
"	4th	"	No	"
"	5th	"	No	"
"	6th	"	No	"
"	7th	"	No	"
"	8th	"	No	"
"	9th	"	No	"
"	10th	"	No	"
"	11th	"	No	"
"	12th	"	No	"
"	13th	"	No	"
"	15th	"	No	"
"	16th	"	No	"
"	17th	"	No	"
"	18th	"	No	"
"	19th	"	No	"
"	20th	"	No	"
"	21st	"	No	"
"	22nd	"	No	"
"	23rd	"	No	"
"	24th	"	No	"

20

30

40

	“	25th	Plaintiff says	No	it is not true.	RECORD.
	“	26th	“	No	“	<i>In the</i>
	“	27th	“	No	“	<i>Superior</i>
	“	28th	“	No	“	<i>Court.</i>
	“	29th	“	No	“	No. 64.
	“	30th	“	No	“	Plaintiff's
	“	31st	“	No	“	answers to
10	“	32nd	“	No	“	Defendant
	“	33rd	“	No	“	John Mc-
	“	34th	“	No	“	Dougall's
	“	35th	“	No	“	articulations
	“	36th	“	No	“	of facts.
	“	37th	“	No	“	dated April,
	“	38th	“	No	“	1889.
	“	39th	“	No	“	— <i>Continued.</i>
20	“	40th	“	No	“	
	“	41st	“	No	“	
	“	42nd	“	No	“	
	“	43rd	“	No	“	
	“	44th	“	No	“	

Montreal, April, 1889.

30 ATWATER & MACKIE,  
Attys. for Plaintiff.

(Rec'd Copy)

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,  
Attys. for Defendant.

40 (ENDORSED)

Plaintiff's answers to Defendant John McDougall's articulation of facts.  
Filed April 1889.

(Signed): ATWATER & MACKIE,  
Attys for Plaintiffs.

RECORD

SCHEDULE NO. 93.

*In the  
Superior  
Court.*

Canada,  
Province of Quebec, }  
District of Montreal. }

Superior Court.

No. 2157.

No. 65.  
Plaintiff's  
answers to  
Defendant  
S. W. Beard's  
articulation  
of facts,  
dated April,  
1889.

The Eastern Townships Bank.....Plaintiff.

vs.

Andrew Rough et al.....Defendants.

10

PLAINTIFFS ANSWERS TO DEFENDANT S. W. BEARD'S ARTI-  
CULATIONS OF FACTS.

To the 1st    Plaintiffs says    No    it is not true.

“	2nd	“	No	“
“	3rd	“	No	“
“	4th	“	No	“
“	5th	“	No	“
“	6th	“	No	“
“	7th	“	No	“
“	8th	“	No	“
“	9th	“	No	“
“	10th	“	No	“
“	11th	“	No	“
“	12th	“	No	“
“	13th	“	No	“
“	15th	“	No	“
“	16th	“	No	“
“	17th	“	No	“
“	18th	“	No	“
“	19th	“	No	“
“	20th	“	No	“
“	21st	“	No	“
“	22nd	“	No	“
“	23rd	“	No	“
“	24th	“	No	“

20

30

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	“	25th	Plaintiff says	No	it is not true.	RECORD.
	“	26th	“	No	“	—
	“	27th	“	No	“	<i>In the</i>
	“	28th	“	No	“	<i>Superior</i>
	“	29th	“	No	“	<i>Court.</i>
	“	30th	“	No	“	—
	“	31st	“	No	“	No. 65.
10	“	32nd	“	No	“	Plaintiff's
	“	33rd	“	No	“	answers to
	“	34th	“	No	“	Defendant
	“	35th	“	No	“	S. W. Beard's
	“	36th	“	No	“	articulations
	“	37th	“	No	“	of facts.
	“	38th	“	No	“	dated April,
	“	39th	“	No	“	1889.
20	“	40th	“	No	“	— <i>Continued.</i>
	“	41st	“	No	“	
	“	42nd	“	No	“	
	“	43rd	“	No	“	
	“	44th	“	No	“	

Montreal, April, 1889.

30 ATWATER & MACKIE,  
Attys. for Plaintiff.

(Rec'd Copy)

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,  
Attys. for Defendant.

40 (ENDORSED)

Plaintiff's answers to Defendant S. W. Beard's articulation of facts.  
Filed April 1889.

(Signed) ATWATER & MACKIE,  
Attys for Plaintiff.

RECORD

SCHEDULE No. 93.

*In the  
Superior  
Court.*  
Canada,  
Province of Quebec,  
District of Montreal.

Superior Court.

No. 2157.

No. 66.  
Plaintiff's  
answers to  
Defendant  
A. Rough's  
articulation  
of facts.  
dated April,  
1889.

The Eastern Townships Bank.....Plaintiff.

vs.

10

Andrew Rough et al.....Defendants.

PLAINTIFFS ANSWERS TO DEFENDANT ANDREW ROUGH'S ARTI-  
CULATIONS OF FACTS.

To the 1st	Plaintiff's	says	No	it is not true.	
"	2nd	"	No	"	
"	3rd	"	No	"	20
"	4th	"	No	"	
"	5th	"	No	"	
"	6th	"	No	"	
"	7th	"	No	"	
"	8th	"	No	"	
"	9th	"	No	"	
"	10th	"	No	"	
"	11th	"	No	"	30
"	12th	"	No	"	
"	13th	"	No	"	
"	15th	"	No	"	
"	16th	"	No	"	
"	17th	"	No	"	
"	18th	"	No	"	
"	19th	"	No	"	40
"	20th	"	No	"	
"	21st	"	No	"	
"	22nd	"	No	"	
"	23rd	"	No	"	
"	24th	"	No	"	

	"	25th	Plaintiff says	No	it is not true.	RECORD.
	"	26th	"	No	"	<i>In the</i>
	"	27th	"	No	"	<i>Superior</i>
	"	28th	"	No	"	<i>Court.</i>
	"	29th	"	No	"	No. 66.
	"	30th	"	No	"	Plaintiff's
10	"	31st	"	No	"	answers to
	"	32nd	"	No	"	Defendant
	"	33rd	"	No	"	A. Rough's
	"	34th	"	No	"	articulations
	"	35th	"	No	"	of facts.
	"	36th	"	No	"	dated April,
	"	37th	"	No	"	1889.
	"	38th	"	No	"	—Continued.
	"	39th	"	No	"	
20	"	40th	"	No	"	
	"	41st	"	No	"	
	"	42nd	"	No	"	
	"	43rd	"	No	"	
	"	44th	"	No	"	

Montreal, April, 1889.

30 ATWATER & MACKIE,  
Attys. for Plaintiff.

(Rec'd Copy)

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,  
Attys. for Defendant.

40 (ENDORSED)

Plaintiff's answers to Defendant Andrew Rough's articulation of facts.  
Filed April 1889.

(Signed) ATWATER & MACKIE,  
Attys for Plaintiff.

RECORD

SCHEDULE No. 95.

*In the  
Superior  
Court.*

Canada  
Province de Québec }  
District de Montréal }

Cour Supérieure.

No. 66½.  
Motion of  
defendants to  
unite cases,  
dated 5th  
Jany. 1889.

No. 2157.

The Eastern Townships Bank.....Demanderesse.

10

vs

Andrew Rough & al..... Défendeur.

MOTION DES DEFENDEURS EN CETTE CAUSE.

Que cette cause soit unie à la cause de Andrew Rough, demandeur vs, The Eastern Township Bank, défenderesse et portant le numéro neuf cent dix des dossiers de la Cour Supérieure, et que la preuve faite dans l'une ou l'autre de ces causes serve et soit considérée comme faite dans chacune d'elle, à toutes fins que de droit ; le tout avec dépens distraits aux soussignés.

20

Montréal, 5 Janvier 1889.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,

Avocats des défendeurs.

(Rec'd Copy.)

Under reserves of objections.

30

ATWATER & MACKIE.

Attys. for Plaintiff.

(ENDORSED)

Motion granted, costs reserved 13 October 1889. Henri T. Taschereau, J. C. S. Motion des défendeurs pour réunion de causes. Prod. 5 Janv. 1889. Prod. 13 Octobre 1889. (Paraphed) A. B. L.  
By Consent.

40

ATWATER & MACKIE,

Attys. for Plaintiff.



SCHEDULE No. 100.

A. ROUGH ET AL., DR. TO E. T. BANK, UPON MORTGAGE.

RECORD.

*In the  
Superior  
Court.*

	Interest @ 7%.	No. 67. Statement showing
1st. Instalment of Capital due 16 July 1883.	\$10,000.00	\$41,544.59 due by De- fendants to Plaintiff upon mortgage with interest at 7 p. c. Plaintiff's Exhibit A A.
1st. " " Interest " 16 " 1883.)	1,400.00	
10 6 Mos. on \$40,000.)	<u>11,400.00</u>	
Deduct credits. 21 Apl. 1883.	\$5,300.00	
1 June 1883.	498.74	
	<u>5,601.26</u>	
Add remaining instalments of Capital, due by default	30,000.00	
Due 16 July 1883.	35,601.26	
20 Add 6 mos. int. to 16 Jany. 1884.	1,246.04	
	<u>36,847.30</u>	
Deduct credits. Nov. 29 1883.	\$2,496.87	
Dec. 19 1883.	2,496.87	
	<u>4,993.74</u>	
Due 16th Jany. 1884.	\$31,853.56	
Add 6 mos. interest to 16 July 1884.	\$1,114.87	
30 " 6 " " to 16 Jany. 1885.	1,114.87	
	<u>2,229.74</u>	
	34,083.30	
Deduct credits. 20 July 1884.	\$103.43	
4 Oct. 1884.	239.40	
	<u>342.83</u>	
Due 16th Jany. 1885.	33,740.47	
Add 3 years and 6 mos. int. to 16 July 1888, on	\$31,853.56	
	7,804.12	
40	<u>\$41,544.59</u>	

(Plaintiff's Exhibit AA.) Fyled 5th October 1888. (Paraphed) E. D.,  
Deputy P. S. C.

RECORD

SCHEDULE No. 101.

*In the  
Superior  
Court.*

Montreal, 19th January 1883.

ANDREW ROUGH, Esq.,

Montreal.

No. 68.

Letter from  
Wm. Farwell  
Gen. Man.  
Eastern  
Townships  
Bank, ad-  
dressed to A.  
Rough, Esq.,  
of date,  
Montreal 19  
Jan'y 1883.  
Plff's exhibit  
A. B. fyled  
5th Oct. 1889.

Dear sir

I hereby undertake to have the goods, bone black and ground bones held by the bank from the Pioneer Beet Root Sugar Company as collateral security, brought to sale as speedily as possible and if purchased by the bank to deliver over to you where it may be whatever we may purchase upon your paying to us the purchase money and all costs connected with said suit and sale and we also agree to pay over to you any sum we realize from the sale of said collateral collocated to us as well as any sum that we may be collocated for from the sheriff's sale of the company's property held at Coaticooke on the 12 Inst, I further agree in accordance with request in your letter of even date to see that said collaterals are not allowed to be purchased by any other parties, except at an advance over four thousand dollars.

Your obt. servt.

WM. FARWELL,

General Manager, Eastern Township Bank.

(ENDORSED)

Plaintiff's exhibit A. B. Fyled at Enquête on the 5th October 1888.  
(Paraphed) J. B. V. Dept. P. S. C.

30

SCHEDULE No. 102.

Montreal, Jan'y 19 1883.

No. 69.

Letter from  
A. Rough  
addressed to  
Wm. Farwell  
Esq., of date  
Montreal 19  
Jan'y 1883.  
Plff's exhibit  
A. C.

WM FARWELL Esq.,

Dear Sir,

With reference to the collaterals of wood and bone held by the Bank and which you agree to bring to sale, I request that you should protect said collaterals to the extent of four thousand dollars I agreeing to take them of your hands at this sum on demand.

Yours,

ANDREW ROUGH,

40

(ENDORSED)

Plaintiff's Exhibit A. C. fyled at enquête 5th October 1888. Prod. 8  
Nov. 1889. (Paraphed) J. B. V. Depty. P. S. C.

RECORD.

*In the  
Superior  
Court.*

No. 69.

Letter from  
A. Rough  
addressed to  
Wm. Farwell  
Esq., of date  
Montreal 19  
Jan'y 1883.  
Pliff's exhibit  
A. C.

—Continued.

10

## SCHEDULE No. 103.

Montreal, 12th July, 1883.

DEAR SIR :

20 Referring to my respects of 7th Inst. I trust Mr. Beard, attended to the explanation of item \$400.00 contained in yours of 11th. of course the \$84.10 will have to be seen to. The present is to request your attention to the small amt. of insurance \$55,000.00 on the Pioneer property machinery. It appears that the agents here did not like the idea of Lyfond coming in and placing the am't as he did having deprived the City Agents of their commission. I wish you would do your best with Mr. Lyfond, and get more on as the premises are in a safe condition comprised to the position during the old Co's. operation, Mr. Lee has instructions and is carrying them out effectually to have the risk and safe and for any Insurance Co. to place or extend the  
30 amount of the offices now interested.

Please let me hear from you on rec't

Yours truly,

ANDREW ROUGH.

W. FARWELL,

Sherbrooke, Q.

(ENDORSED)

40 Letter, Andrew Rough, to W. Farwell, 12th Feb'y. 1883, Plaintiff's Exhibit A. D. fyled at Enquête 5th Oct., 1888. (Paraphed), J. B. V. Dep. P. S. C.

No. 70.  
Letter from  
A. Rough,  
to W. Far-  
well, Sher-  
brooke, Que.,  
of date  
Montreal,  
12th July,  
1883.  
Plaintiff's  
Exhibit A D

RECORD

SCHEDULE No. 104.

*In the  
Superior  
Court.*

Montreal, Feby. 8th 1883.

WM. FARWELL, ESQ.,

DEAR SIR :

No. 71.  
Letter from  
G. W. Beard  
& Co., to  
Wm. Farwell,  
Esquire,  
dated at  
Montreal,  
8th Feb.  
1883.  
Exhibit A E.

I have seen your letter to Mr. Rough, about the Bone and Wood, which were purchased by you under an agreement for \$400, nominal.—You state therein that there is \$84.10, charges thereon to the warehouse-man, and you request that \$484.10 be sent you when you would send authority to have the same delivered. This is an error you have to hand over the property free upon the charges \$84.10 being paid. The wood too has a claim of the same nature against it of \$61.00 upon payment of which it has to be handed over. Please drop a line confirming this or rather a letter on authorizing Mr. Austin to deliver upon getting these two amounts \$84.10 and \$61.00. 10

Yours,

S. W. BEARD &amp; CO.

(On the Back)

Dear Austin.—What is the other claim of \$61.00 Beard refers to? I am writing him that the \$484.10 will have to be paid over if it all comes to us as I suppose it will, the amount will be allowed Mr. Rough on \$10.000 payment. Please return this. W. F. 20

(ENDORSED.)

Exhibit A. E. at Enquête, fyled on the 5th Oct., 1888.

30

SCHEDULE No. 105.

Montreal, Feby 14, 1883.

No. 72.

W. FARWELL, ESQ.,

Letter from  
S. W. Beard  
to Wm. Far-  
well Esq.,  
dated at  
Montreal 14  
Feb. 1883,  
Pliff's exhibit  
A. F.

Dear Sir,

Yours of 13th rec'd Mr. Todd's claim of 6th inst. we intend to pay. If you will kindly refer to your letter stipulating upon what terms you would transfer the property should it come into your hands, you will find that you were to perfect your rights to the Wood and Bone collaterals and hand them over in the same manner as you handed the cash over pd in on or the collaterals of Bills Receivable and wood withdrawn. You were to receive nothing further from these and it would never do to leave \$400 in your hands to be subject to 40

attachment from any Company creditor that might wish to make annoyance. It was not the agreement. Kindly therefore drop me a line stating that you will deliver up the property upon receiving the amount of the charges and I will see that the amount is at once forwarded.

Yours,

S. W. BEARD.

(ENDORSED)

10 Plaintiff's Exhibit A.F. fyled at Enquête the 5th Oct. 1888. Paraphed I. B. V. Dep. P. S. C.

RECORD.

*In the Superior Court.*

No. 72.

Letter from S. W. Beard to Wm. Farwell Esq., dated at Montreal 14 Feb. 1883, Plff's exhibit A. F.

—Continued.

SCHEDULE No. 106

Montreal 13th Jany, 1883.

20

WM. FARWELL, ESQ.

Cashier, Eastern Townships Bank.

Sherbrooke, Q.

Dear Sir,

I saw Mr. Cole, manager of the Commercial Union Insurance Co this a. m. about the Policies now existing "Loss if any payable to me" signed by the President and accepted by the different Cos. Mr. Cole recommended me to get Mr. Hagar, Presd. to sign the following "The Eastern Townships Bank "having purchased the property of Coaticooke Pioneer Beet Root S. Co. please  
30 "keep the Policies valid for the Bank subject to the Lien of Mr. McDougall" This matter I will try and put to rights on Monday in the mean time get your Deed from the Sheriff and notify me when completed, so that the new Deed can be prepared at once subject to the conditions and terms made by you. I will keep you posted as to the completion of the policies. Hagar has signed the letter as above quoted.

Please acknowledge rec't.

Yours truly,

JOHN McDOUGALL.

40

(ENDORSED)

Plaintiff's Exhibit A.G. Fyled at Enquête the 5th Oct. 1888. Paraphed J. B. V. Dep. P. S. C.

No 73.  
Letter of J. McDougall to Wm. Farwell Esq., cashier, Eastern Townships Bank, Sherbrooke, dated at Montreal 13 Jan. 1883. Plff's exhibit A. G.

RECORD

SCHEDULE No. 107.

*In the  
Superior  
Court.*

Montreal, January 13th, 1888.

WM. FARWELL, ESQ.,

Dear Sir,

No. 74.  
Letter from  
S. W. Beard  
to Wm. Far-  
well, Esq.,  
dated, 13th  
January  
1883.  
Plff's exhibit  
A. H.

I have seen Mr. McDougall this morning and he has had all the Insurance Coys notified by letter signed by Chas Hagar as President of the Sugar Coy in the following terms :

"The E. T. Bank having purchased the property of the P. Beet Sugar Company at Coaticooke, please keep the Police valid for the Bank subject to the interest of Mr. John McDougall".

Kindly have the deed from the Sheriff in order as soon as possible, so that your deed to us may be executed without delay, and the matter closed off.

Yours &amp;c,

S. W. BEARD.

(ENDORSED.)

Plaintiff's Exhibit A H., fyled on the 5th Oct. 1888. (Paraphed) J. B. V., Deputy P. S. C.

SCHEDULE No. 108.

Montreal, 17 March, 1888.

B. AUSTIN, Esq.,  
Manager E. T. Bank,  
Coaticooke, Que.

Dear Sir,

No. 75.  
Letter from  
A. Rough  
and John  
McDougall  
to B. Austin,  
Esquire,  
Manager,  
Eastern  
Township's  
Bank,  
Coaticooke,  
Que. dated at  
Montreal  
17th March  
1883 Plff's  
exhi it. A. I.

With respect to the Cord Wood and Bone Charcoal brought to sale by you on my behalf on the 5th Feb'y last and bid off by you for the nominal sum of four hundred dollars, it is well understood that no part of this price was paid to the Bank and I have therefore no claim nor title with respect to it the said sum of \$400. It is also well understood that upon payment of your charges in connexion with said sale and commodities I shall take possession of said cord wood and bone charcoal at my own risk as to quantity and condition, and without any warranty whatever from your Bank or from the warehouseman with respect thereto.

I am, Dear Sirs,  
Yours Truly,

ANDREW ROUGH,  
JOHN McDOUGALL.

(ENDORSED.)

Plaintiff's Exhibit A I, fyled at enquête 5th October, 1888. (Paraphed) J. B. V., Deputy P. S. C.

SCHEDULE No. 109.

MEMORANDA re A. ROUGH et al.

Deed made Jany. 1883. \$49,439.  
 Paid down. 9,439. Balance \$40,000.

Payable \$10,000. 16th July, 1883; and \$5,000 each 16th January thereafter, with interest @ 7 oyo. 16th July and 16th January of each year, commencing 16th July 1883.

19

CREDITS :

21 April 1883.	Ellershansen.	\$5,300 00
1 June "	Sheriff.	498 74
29 Nov. "	Magog T. & P. Co.	2,496 87
19 Dec. "	Can. Sugar Ref. Co.	3,496 87
10 July 1884.	McDougall.	103 43
4 Oct. "	Magog T. & P. Co.	239 40

RECORD.

In the Superior Court.

No. 76.

Memorandum of debits credits and Insurance in connection with deed made (Plaintiff Exhibit A. J.

20

INSURANCE HELD 2ND OCT. 1888.

<i>Policy No.</i>	<i>Company.</i>	<i>Amount.</i>	<i>Date of Expiration</i>
19701	Citizens	\$2,500	19 Jany. 1889
46216	City of London	7,500	19 " "
1563457	Coml. Union	5,000	19 " "
429892	Royal Can.	2,500	19 " "
1226017	Queen	2,500	16 Oct. 1888
41763	Glasgow London	2,500	16 " "
100235	Citizens	2,500	9 July 1889

30

\$25,000

(ENDORSED).

Plaintiff Exhibit A. J., fyled at Enquête.

SCHEDULE No. 110.

Montreal 5th Sept. 1883.

B. AUSTIN, Esq.,  
 Cashier The Eastern T. Bank,  
 Coaticooke, Q.

40

Dear Sir,

I beg to advise that I have sold to The Textile Manufacturing Co. Magog, Hobbs, Esq, manager, two boilers, price for the two twenty-five hundred dollars

No. 77  
 Letter from A. Rough to B. Austin, Esquire, Cashier Eastern Townships Bank Coaticooke, Q dated at Montreal 5th Sept. 1883. Plaintiff's Exhibit A.K.

RECORD

cash an delivery said amount \$2,500 to be deposited in your Bank to be applied in reduction of your claim against me as per deed of sale from the E. T. Bank.

*In the Superior Court.*

I am,

Dear Sir,

Yours Respectfully

ANDREW ROUGH.

10

No. 77  
Letter from  
A. Rough to  
B. Austin,  
Esquire,  
Cashier East-  
ern Town-  
ships Bank  
Coaticooke, Q  
dated at  
Montreal 5th  
Sept. 1883.  
Plaintiff's  
Exhibit A.K.  
—Continued.

Please acknowledge receipt of above.

(ENDORSED)

Plaintiffs Exhibit A. K. fyled at Enquête 5 Oct. 1888. Paraphed J.B.V.  
Dep. P.S.C.

20

SCHEDULE No. 111.

Montreal, 9 November 1883.

30

No. 78.  
Letter from J.  
McDougall  
per A. Rough  
to B. Austin,  
Esq., E. T.  
Bank Coati-  
cooke Que.,  
dated at  
Montreal 9th  
Nov. 1883.  
Pliff's exhibit  
A. L. fyled  
5th Oct. 1888.

B. AUSTIN, Esq.,

E. T. Bank,

Coaticooke, Q.

Dear Sir,

Your favor of 7 inst duly rec'd the boilers two in number sold to the Canada Sugar Refining Co, for twenty-five hundred dollars \$2,500.00 will be paid for by them Cash as soon as delivered here. This company are prompt in their payments and on arrivals and delivery here to them of your boilers I will advise you so as you can draw on me at sight and place the amount to credit of my indebtedness to your Bank, similar to the Magog boilers as per my respects to you under date 5th Sept last. Hoping this will be satisfactory.

40

I am, Dear sir,

Yours truly,

JOHN McDOUGALL,

per ANDREW ROUGH.



(ENDORSED)

Plaintiffs' exhibit A. L. fyled at enquête 5th October 1888. (Paraphed)  
J. B. V. Dep. P. S. C.

RECORD.

*In the  
Superior  
Court.*

No. 78.

Letter from J.  
McDougall  
per A. Rough  
to B. Austin,  
Esq., E. T.  
Bank Coati-  
cooke Que.,  
dated at  
Montreal 9th  
Nov. 1883.  
Plff's exhibit  
A. L. fyled  
5th Oct. 1888.  
—Continued.

10

SCHEDULE No. 112.

Montreal, 9 June 1884.

B. AUSTIN, Esq.,

Coaticooke,

Dear Sir,

Your favor of 3rd inst. duly received and contents noted, I expect to  
send you the Policies Quebec at noon to-morrow, the Premium was paid as  
your rec't the Vouchers for same and so far as I am concerned the delay is un-  
pleasant to me but will again see the Company to-morrow. You can draw at  
one month from this date due 9/12 July for \$103.68 being amount of machine-  
ry which Mr Lee took of the Premiums and sent in here some short time ago.  
He is now taking out 8 wood Tanks for the Magog Co. which will be deli-  
vered to them shortly when I will send you a draft for the amount \$240.00  
when the company settled with me.

Yours truly,

ANDREW ROUGH.

40

(ENDORSED)

Plaintiff's Exhibit A. M. fyled at enquête 5th Oct. 1888. (Paraphed) J.  
B. V. Dep. P. S. C.

No. 79.  
Letter from  
A. Rough to  
B. Austin,  
Esq. Coati-  
cooke, dated  
at Montreal  
9 June 1884.  
Plff's exhibit  
A. M. fyled  
5th Oct. 1888.

SCHEDULE No. 113.

Montreal, 11th July 1884.

RECORD.

B. AUSTIN Esq.,  
Cashier E. T. Bank,  
Coaticooke Q.

*In the  
Superior  
Court.*

Dear Sir,

Enclosed please find Rec't Premium \$2,500.00 Fire Insurance Association for 9 inst. The tanks sold to Magog Textile Co, namely 8 @ \$30 equal to \$240.00 you can draw for in Rec't say at two months from 8th inst. this is about the time I have given them for tanks and other material from here. 10

Yours truly,  
ANDREW ROUGH,

Please acknowledge Rec't of enclosed.

(ENDORSED)

Plaintiff's Exhibit A. N. Filed at enquête 5th Oct. 1888. (Paraphed) 20  
J. B. V. Dep. P. S. C.

No. 80.  
Letter from  
A. Rough,  
addressed to  
B. Austin  
Esq., cashier,  
E. T. Bank,  
Coaticooke,  
Que. dated  
at Montreal  
11 July 1884.  
Plff's exhibit  
A. N fyled  
5th Oct. 1888

SCHEDULE NO. 114.

MEMO. — 26TH SEPTEMBER, 1888.

RECORD.

*In the  
Superior  
Court.*

No. 81.

Memoranda  
of expenses  
paid by John  
McDougall  
connected  
with the  
Pioneer Beet-  
Root Sugar  
Company,  
property at  
Coaticooke  
and  
Montreal.  
Plaintiff's  
Exhibit A.O.

				Principal	Interest.
10	E. T. Bank rec'd from Mr. McDougall			9439 70	3756 48
	"    "    Ellesham	\$5300.00			
	"    "    Sheriff	498.74			
	Magog Texile Co. rec'd per Draft	2496.87			
	2 Boilers C. Sugar Co. rec'd per Draft	2496.87		10792 48	3879 20
				20232 18	7635 68
	rec'd per Draft	103.43			
20	"    "    "	239.40		342 83	97 03
				\$20575 01	7732 71
	Expenses Montreal	\$ 8,232.29			
30	Coaticooke	12,488.11	\$20,720.40		Int. \$4,476.17
	Receipts Montreal	4,994.18			
	Coaticooke	5,179.79	10,173.97		3,128.78
			\$10,546.43		1,347.39
	1st. Instalment		9,439.70		3,756.48
			\$19,986.13		\$5,103.87
40	Oct—16—Insurance		\$152.50		
	Taxes unpaid		437.50		

RECORD.

EXPENSES AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR CO.  
PAID BY JOHN McDOUGALL, 26 SEPT. 1888.

<i>In the Superior Court.</i>	Feb.	4	To Paid Board from 30th Jany. to 4th Feb.		6 00		
	Feb.	10	" " Pay list		18 50		
No. 81.		17	" " do		17 50		
Memoranda of expenses paid by John McDougall connected with the Pioneer Beet Root Sugar Company, property at Coaticooke and Montreal. Plaintiffs Exhibit A. O.	Mar.	3	" " do		20 50		
		10	" " do		33 50		
		17	" " do		14 50		10
			" " 10 Days Kranz. @ \$2.00		20 00		
			" " E. T. Bank for Expenses		84 10		
		24	" " Pay list		14 00		
		31	" " do		19 00	261 60	
	April	7	" " do		20 87		
		14	" " do		13 00		
			" " E. T. Bank Premium Insurance.		16 30		
			" " Rent of Siding.		16 63		
		21	" " Pay list		13 00		
		28	" " do		13 00		
	May	5	" " do		13 00		20
		12	" " do		13 00		
		19	" " do		13 00		
		26	" " do		13 00		
	June	2	" " do		13 00	157 80	
		9	" " do		13 00		
		16	" " do		13 00		
		23	" " do		13 00		
		30	" " do		13 00		
			" " 5 Mos. Wages I. M. Lee		500 00		
	July	7	" " Pay list		13 00		30
		14	" " do		13 00		
		21	" " do		13 00		
		28	" " do		7 00		
	Aug.	4	" " do		13 00	611 00	
	1883		Carried Forward.			\$1030 40	
			To Paid Otis Shurtleff for Statement.		3 50	\$1030 40	
			" " Duty on 2 Fitter Presses.		25 00		
			" " Sleeper & Akhurst Repairing Piston		7 26		
		11	" " Pay list.		13 00		40
		18	" " do		13 00		
		25	" " do		13 00		
			" " G. T. Railway Rent of Siding		16 63		
	Sep.	1	" " Pay list		13 00		
		8	" " do		13 00		
		15	" " do		13 00	130 39	
		22	" " do		19 00		

EXPENSES AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co.  
PAID BY JOHN MCDUGALL, 26 SEPT. 1888.

RECORD.

*In the Superior Court.*

No. 81.  
Memoranda of expenses paid by John McDougall connected with the Pioneer Beet Root Sugar Company, property at Coaticooke and Montreal. Plaintiffs Exhibit A. O. —Continued.

	Sep.	29	To paid Pay List.		23 50		
	Oct.	6	" " do		17 50		
		13	" " do		18 50		
		20	" " do		13 50		
		27	" " do		16 25		
	Nov.	3	" " do		13 00		
10	Nov.	10	" " do		13 00		
		17	" " do		13 00		
		24	" " do		13 00	160 25	
	Decr.	1	" " do		14 50		
		8	" " do		18 25		
		15	" " do		13 00		
			" " School Tax.		119 00		
		22	" " Pay list		13 00		
			" " Assessment on a/c.		100 00		
			" " 43 Weeks Board.		215 00		
20			" " Coal Oil &c		6 60		
			" " Nails.		9 56		
			" " Stamps.		16 20		
			" " Telegrams.		10 25	535 36	
	1883		Carried Forward.			\$1856 40	
	Decr.	22	To Paid for Paper and Envelopes.		4 75	\$1856 40	
			" " 6 Fares to Montreal Ret. @ \$6.85		41 10		
			" " Expenses to Sherbrooke (Insurance.)		7 00		
30			" " Expenses to Sherbrooke (E. T. Bank).		7 60		
			" " Expenses to Farnham.		6 70		
		26	" " for Paper		15		
		29	" " Pay list.		12 00		
		30	" " 6 Mos. Wages, I. M. Lee.		600 00		
Jan.			" " 1 Fare to Montreal Ret.		6 85		
		5	" " Pay list.		12 50	698 65	
		10	" " Postage Stamps.		30		
		12	" " Pay list		13 00		
		19	" " do		13 00		
40		25	" " 1 Fare Montreal and Ret.		6 85		
		26	" " Pay list.		13 00		
Feb.		2	" " do		13 00		
		9	" " do		15 50		
		14	" " Writing paper.		30		
		16	" " Pay list.		12 00		
		18	" " Postage Stamps.		50	87 45	
			" " Teaming to siding.		4 30		
		21	" " Discount on draft to pay taxes.		88		

RECORD.

EXPENSES AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR CO.  
PAID BY JOHN MCDUGALL, 26 SEPT. 1888.

<i>In the Superior Court.</i>						
No. 81.	Feb. 23	To paid	Assessment on a/c.	100 00		
Memoranda of expenses paid by John McDougall connected with the Pioneer Beet Root Sugar Company, property at Coaticooke and Montreal. Plaintiffs Exhibit A. O. —Continued.	Mar. 1	" "	Pay list.	7 00		
	8	" "	do	7 00		
	15	" "	do	7 00		
	22	" "	do	10 00		
	27	" "	Stamps.	25		10
	29	" "	Telegram.	35		
		" "	Pay list.	11 00	154 78	
1884			Carried Forward.		\$2797 28	
					\$2797 28	
	Apr. 5	To Paid	for Postage Stamps.	30		
		" "	Pay list.	7 00		
	12	" "	for Postage stamps.	25		
		" "	Pay list.	10 00		20
	17	" "	for Postage Stamps.	25		
	19	" "	Pay list.	10 00		
	26	" "	for Postage Stamps.	50		
		" "	Pay list.	16 00		
		" "	Return to Montreal.	6 85		
May	1	" "	Telegrams.	50	51 65	
	3	" "	Pay list.	13 00		
		" "	Postage Stamps.	25		
	5	" "	Balance of Municipal taxes.	276 00		
		" "	Discount on Draft for do	2 60		
		" "	Wright Sleeper, Witness Fee.	10 00		30
	10	" "	Pay list.	12 50		
		" "	Johnson Taplin, Witness Fee.	10 00		
		" "	W. Clarke Cartage of Pipes	75		
	15	" "	do do Saturaters.	2 00		
	17	" "	Pay list.	28 00	355 10	
		" "	Postage Stamps.	50		
		" "	Writing paper.	25		
	20	" "	Cartage Brick to siding.	2 25		
	21	" "	Telegram.	37		
	24	" "	Pay list	11 50		
	29	" "	Return fare Montreal.	6 85		40
	31	" "	Postage stamps.	30		
		" "	Pay list.	13 00		
June	7	" "	do	19 25		
		" "	Paper and envelopes.	40		
	11	" "	Postage stamps.	50		
	14	" "	Pay list.	21 50	76 67	
					\$3280 70	

EXPENSES AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co.  
PAID BY JOHN McDUGALL, 26 SEPT. 1888.

RECORD.  
*In the  
Superior  
Court.*

1884			Carried Forward			\$3280	70
June	6	To Paid Postage Stamps.			25		
	14	" " Cartage to Station.			1 60		
	21	" " Pay list.			19 00		
	27	" " John Fraser his acc.			10 00		
	28	" " Pay list.			14 00		
10		" " T. T. Shurtleff Witness Fee.			10 00		
	30	" " 6 Mos Wages I. M. Lee.			600 00		
		" " Coal Oil Lighting and Cleaning.			4 45		
		" " 191 days Board to 30th June 1884.			136 46		
July	5	" " Pay list (Flume).			19 00	814	76
	12	" " do			13 00		
	16	" " for Postage Stamps.			50		
	19	" " Pay list (Dam).			15 50		
		" " Spikes Nails &c for do.			3 28		
	21	" " for Paper.			15		
20	26	" " Pay list (Wood Vats).			17 25		
		" " 1 Return Fare Montreal.			6 85		
Aug.	1	" " for Postage Stamps.			25		
	2	" " Pay list.			13 75		
	9	" " do			13 00	83	53
	11	" " Postage Stamps.			50		
	12	" " Telegram Ottawa on account of Customs.			48		
	16	" " Pay list.			13 00		
	23	" " do			13 00		
	29	" " Paper and Envelopes.			30		
30	30	" " Pay list.			13 00		
	3	" " Return ticket to Montreal.			6 85		
	6	" " Pay list.			13 00		
	13	" " do			13 00		
	20	" " do			17 00		
	17	" " do			18 00	108	13
						\$4287	12
						\$4287	12
1883			Carried Forward.				
Sep.	30	To Paid for Postage Stamps.			50		
Oct.	4	" " Pay list.			13 00		
	11	" " do			13 00		
40	18	" " do			13 00		
	21	" " Telegram.			25		
	25	" " Pay list.			13 00		
	28	" " Postage Stamps.			50		
	30	" " Writing Paper.			10		
	31	" " Coal Oil.			84		
Nov.	1	" " Pay list.			13 00		
	4	" " Cut Nails.			35	67	54

No. 81.  
Memoranda  
of expenses  
paid by John  
McDougall  
connected  
with the  
Pioneer Beet  
Root Sugar  
Company,  
property at  
Coaticooke  
and  
Montreal  
Plaintiff's  
Exhibit A. O.  
—Continued.

RECORD.

EXPENSES AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co.  
PAID BY JOHN MCDUGALL, 26 SEPT. 1888.

*In the Superior Court.*

No. 81. Memoranda of expenses paid by John McDougall connected with the Pioneer Beet Root Sugar Company, property at Coaticooke and Montreal Plaintiffs Exhibit A. O. —Continued.

		To Paid Postage Stamps.		50	
		" " Cotton Our share of Repairs to Dam.		35 70	
	Nov. 8	" " Pay list.		13 00	
		" " Return Ticket Montreal.		6 85	
	15	" " Pay list.		13 00	
	22	" " do		13 00	10
	25	" " G. T. R. Rent of siding to 30th June.		15 63	
	27	" " 1 Broom & Postage stamps.		80	
	29	" " Pay list.		13 00	
		" " Writing Paper and Envelopes.		35	111 83
	Decr. 6	" " Pay list.		13 00	
	13	" " do		13 00	
	20	" " do		13 00	
		" " Clark Cartage 14,000 brick.		8 00	
		" " do do 1,300		1 50	
		" " Postage Stamps.		50	20
	27	" " Pay list.		13 00	
	31	" " 6 Mos. Wages I. M. Lee.		600 00	
	1885 Jan. 3	" " Pay list.		13 00	
	10	" " do		13 00	688 00
	1885 Jany. 17	To Paid Pay list.		13 00	
	24	" " do		13 00	
		" " Postage stamps.		50	30
	31	" " Pay list.		13 00	
		" " Return Ticket Montreal.		6 85	
		" " G. T. R. Rent of Siding to 31st Decr.		16 63	
	Feb. 7	" " Pay list.		13 00	
	14	" " do		13 00	
	21	" " do		13 00	
	28	" " do		13 00	
		" " Coal oil.		84	115 83
		" " Postage Stamps.		50	
		" " 31 Weeks Board.		155 00	40
	Mar. 7	" " Pay list.		13 00	
	14	" " do		13 00	
	20	" " Disct Sleeper and Akhursts Note.		1 30	
	21	" " Kilburn Board.		62 10	
		" " Pay list.		13 00	
	28	" " do		13 00	
	31	" " Cartage Scrap. Iron.		1 50	
		" " Postage stamps.		60	273 00
		Carried Forward.			\$5154 49
					\$5154 49





RECORD. EXPENSES AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co.  
PAID BY JOHN MCDUGALL, 26 SEPT. 1888.

In the Superior Court.				Carried Forward.		
	1885					\$6652 70
	Sep.	19	To Paid Pay list		13 00	
No. 81.		26	" " do		13 00	
Memoranda	Oct.	3	" " do		13 00	
of expenses		10	" " do		13 00	
paid by John		17	" " do		13 00	
McDougall		24	" " do		13 00	10
connected			" " Cartage of Brick.		4 50	
with the		31	" " Pay list.		13 00	
Pioneer Beet			" " Dist. Sleeper and Akhurst Note.		82	
Root Sugar	Nov.	7	" " Pay list.		13 00	109 32
Company,		14	" " do		13 00	
property at		21	" " do		13 00	
Coaticooke		28	" " do		13 00	
and	Dec.	5	" " do		13 00	
Montreal		12	" " do		13 00	
Plaintiff's		19	" " do		13 00	
Exhibit A. O.		26	" " do		12 00	20
—Continued.			" " Coal Oil		1 00	
			" " 17 Weeks Board		85 00	
			" " 6 Mos. Wages I. M. Lec.		600 00	776 00
	1886					
	Jan.	2	" " Pay list.		12 00	
		9	" " do		13 00	
		16	" " do		13 00	
		22	" " Dist. on Sleeper and Akhurst Note		1 25	
		23	" " Pay list.		7 00	
		30	" " do		7 00	30
Feb.		6	" " do		7 00	
		13	" " do		7 00	
		20	" " do		7 00	
		27	" " do		7 00	
Mar.		6	" " do		7 00	88 25
				Carried Forward.		\$7626 27
	1886					\$7626 27
	Mar.	6	To Paid G. T. R. Rent of Siding		16 63	
		13	" " Pay list		7 00	
		20	" " do		7 00	
		27	" " do		7 00	40
Apr.		3	" " do		7 00	
		4	" " Nails and Spikes		1 65	
		10	" " Pay list		7 00	
			" " Axe and Handle		1 25	
		17	" " Pay list		7 00	
		24	" " do		7 00	68 53
May		1	" " do		7 00	

EXPENSES AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR CO.  
PAID BY JOHN McDougall, 26 SEPT. 1888.

RECORD.

*In the  
Superior  
Court.*

No. 81.  
Memoranda  
of expenses  
paid by John  
McDougall  
connected  
with the  
Pioneer Beet  
Root Sugar  
Company,  
property at  
Coaticooke  
and  
Montreal  
Plaintiff's  
Exhibit A. O.  
—Continued.

		To Paid Pay List		\$7 00	
	15	" " do		7 00	
	22	" " do		7 00	
	29	" " do		7 00	
		" " W. Clarke Cartage		3 75	
		" " 21 weeks and 4 days board		107 88	
10	June	5 " " Pay list		7 00	
		12 " " do		7 00	
		19 " " do		7 00	167 63
		26 " " do		7 00	
		30 " " 6 Mos Wages I. M. Lee		600 00	
July	3	" " Pay list		7 00	
	10	" " do		7 00	
	17	" " do		7 00	
	24	" " do		7 00	
	31	" " do		7 00	
20	Aug.	7 " " do		7 00	
		" " G. T. R. Rent of Siding to 30th june		15 63	
		14 " " Pay list		7 00	
		21 " " do		7 00	678 63
1886			Carried Forward		\$8541 06
Aug.	28	To Paid Pay list		7 00	\$8541 06
Sep.	4	" " do		7 00	
	11	" " do		7 00	
	18	" " do		7 00	
30	25	" " do		7 00	
	27	" " Cartage of Brick		50	
		" " 17½ Weeks Board.		87 50	
Oct.	2	" " Pay list.		7 00	
	9	" " do		7 00	
	16	" " do		7 00	144 00
	23	" " do		7 00	
	30	" " do		7 00	
		" " 4½ Weeks Board		22 16	
Nov.	6	" " Pay list		7 00	
	13	" " do		7 00	
40	20	" " do		7 00	
	27	" " do		7 00	
Decr.	4	" " do		7 00	
	11	" " do		7 00	
	18	" " do		7 00	85 16
	25	" " do		7 00	
	31	" " do		7 00	
		" " 8 Weeks and 5 days Board		43 60	

RECORD EXPENSES AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR CO.  
PAID BY JOHN MCDUGALL, 26 SEPT. 1888.

In the Superior Court.				Carried Forward			
	1887						\$9476 82
	Feb.	26	To Paid Pay List		\$7 00		
No. 81.	Mar.	5	" " do		7 00		
Memoranda		12	" " do		7 00		
of expenses		19	" " do		7 00		
paid by John		26	" " do		7 00		
McDougall	Apr.	2	" " do		7 00		10
connected		9	" " do		7 00		
with the		16	" " do		7 00		
Pioneer Beet		23	" " do		7 00		
Root Sugar		30	" " do		7 00	70 00	
Company,			" " 17 Weeks and 1 day Board		85 72		
property at	May	7	" " Pay list		7 00		
Coaticooke		14	" " do		7 00		
and		21	" " do		7 00		
Montreal.		28	" " do		7 00		
Plaintiff's	June	4	" " do		7 00		20
Exhibit A.O.		11	" " do		7 00		
—Continued.		18	" " do		7 00		
		25	" " do		7 00		
		30	" " 6 Mos Wages I. M. Lee		600 00	741 27	
	July	2	" " Pay list.		7 00		
		9	" " do		7 00		
		16	" " do		7 00		
		22	" " Return ticket to Montreal.		6 85		
		23	" " Pay list		7 00		
		30	" " do		7 00		
			" " 13 Weeks Board		65 00		30
	Aug.	6	" " Pay list		7 00		
		13	" " do		7 00		
		20	" " do		7 00		
		27	" " do		7 00	134 85	
							\$10423 39
	1887						\$10423 39
	Sep.	3	To Paid Pay list		7 00		
		10	" " do		7 00		
		17	" " do		7 00		
		24	" " do		7 00		
	Oct.	1	" " do		7 00		40
		8	" " do		7 00		
		15	" " do		7 00		
		22	" " do		7 00		
		29	" " do		7 00		
			" " Ticket to Montreal.		4 10	67 10	
			" " 13 Weeks Board.		65 00		
	Nov.	5	" " Pay list		7 00		

EXPENSES AT COATICOKE PROPERTY PIONEER BEET ROOT SUGAR Co.  
PAID BY JOHN McDougall, 26 SEPT. 1888.

RECORD

*In the  
Superior  
Court.*

No. 81.  
Memoranda  
of expenses  
paid by John  
McDougall  
connected  
with the  
Pioneer Beet  
Root Sugar  
Company,  
property at  
Coaticook  
and  
Montreal  
Plaintiff's  
Exhibit A.O.  
—Continued.

	Nov.	12	To Paid Pay list.		7 00	
		19	" " do		7 00	
		26	" " do		7 00	
	Decr.	3	" " do		7 00	
		10	" " do		7 00	
		17	" " do		7 00	
10		24	" " do		7 00	
		31	" " do		7 00	128 00
			" " 6 Mos. Wages I. M. Lee.		600 00	
1888						
	Jan.	7	" " Pay list.		7 00	
		14	" " do		7 00	
		27	" " do		7 00	
		28	" " do		7 00	
	Feb.	4	" " do		7 00	
		11	" " do		7 00	
		18	" " do		7 00	
20		25	" " do		7 00	
		29	" " 17 Weeks and 2 days Board.		86 44	
	Mar.	3	" " Pay list.		7 00	749 44
1888						\$11367 93
			Carried Forward.			\$11367 93
	Mar.	10	" " Pay list.		7 00	
		17	" " do		7 00	
		24	" " do		7 00	
		29	" " Return ticket to Montreal.		6 85	
		31	" " Pay list.		7 00	
30	Apr.	7	" " do		7 00	
		14	" " do		7 00	
		21	" " do		7 00	
		28	" " do		7 00	
			" " 8 Weeks and 5 days Board.		43 60	
			" " 4 Mos. Wages I. M. Lee.		400 00	506 45
	May.	5	" " Pay list.		7 00	
		12	" " do		7 00	
		19	" " do		7 00	
		24	" " Return Ticket to Montreal.		6 85	27 85
40		26	" " Pay list.		7 00	
	June	2	" " do		7 00	
		9	" " do		7 00	
		16	" " do		7 00	
		23	" " do		7 00	
		30	" " do		7 00	
	July	7	" " do		7 00	
		14	" " do		7 00	
		21	" " do		7 00	

RECORD

EXPENSES AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co.  
PAID BY JOHN McDUGALL, 26 SEPT. 1888.

In the  
Superior  
Court.  
No. 81.  
Memoranda  
of expenses  
paid by John  
McDougall  
connected  
with the  
Pioneer Beet  
Root Sugar  
Company,  
property at  
Coaticooke  
and

Montreal.  
Plaintiff's  
Exhibit A.O.  
—Continued.

				Interest		Principal	
	28	To Paid Pay list.			7 00		
Aug.	4	" " do			7 00		
	11	" " do			7 00		
	18	" " do			7 00		
	25	" " do			7 00	98 00	
		" " 17 Weeks and 4 days Board.			87 88		
		" " 4 Mos. Wages I. M. Lec.			400 00	487 88	10
						\$12488 11	
				Interest		Principal	
1883	27	To Cash Lyfond Insurance Prem	5 years.	243	435 42	\$1097 91	
Jany.	4	" " J. O. Hetu.	5 "	114	24 82	66 75	20
June	9	" " Telegrams.	5 "	79	95	2 60	
July	16	" " Mignault Insurance.	5 "	72	8 14	22 38	
		" " Premium.	5 "	72	27 28	75 00	
Oct.	6	" " Telegrams.	4 "	356	16	42	
	18	" " Allowed.	4 "	344	4 21	12 00	
Nov.	12	" " Premium.	4 "	319	102 35	300 00	
Dec.	7	" " Draft Moving Boilers.	4 "	293	100 85	300 00	
1884	17	" " Siding G. T. R. R.	4 "	253	5 47	16 63	
	25	" " Lyfond Insurance Prem.	4 "	245	111 67	341 48	
March	15	" " Siding G. T. R. R.	4 "	195	1 58	5 00	50
	26	" " School Tax. &c.	4 "	185	31 54	100 00	
April	9	" " Premium Insurance.	4 "	170	70 33	225 00	
May.	14	" " Taxes School.	4 "	135	84 41	276 00	
June	19	" " Fraser Protest.	4 "	99	2 98	10 00	
		" " Shurtleff.	4 "	99	2 98	10 00	
July	9	" " Premium Insurance,	4 "	79	22 13	75 00	
Oct.	27	" " Taxes.	3 "	335	166 84	608 25	
Nov.	15	" " Premium "	3 "	316	40 59	150 00	
1885	20	" " do "	3 "	250	173 17	671 27	
Jany.	9	" " do "	3 "	79	16 88	75 00	
July	9	" " do "	2 "	346	30 94	150 00	40
Oct.	16	" " Taxes.	2 "	346	111 17	538 74	
1886	15	" " Premium "	2 "	103	89 16	558 09	
July	12	" " do "	2 "	75	11 57	75 00	
Oct.	28	" " do "	1 "	334	20 10	150 00	
Nov.	12	" " Taxes.	1 "	320	51 68	393 14	
1887	31	" " Premium "	1 "	240	8 70	75 00	



RECORD. AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co., 26 SEPT. 1888.

1883						
No. 82. Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company, by John McDougall, to 26th Sept., 1888.	Mar.	17	Geo. Doak.			
			To 11 Bags Malt, 1211 lbs. } 1189 lbs.	@ \$2.00	22 00	
			" Less for Bags 22. }			
			" 2½ Bags Rye 236 } 230 lbs	do 1.50	3 75	
			" Less for Bags 6 }			
			" ½ Bale Hops. 58½ } 54½ lbs	do .75	40 88	10
			" Less for Bale 4 }			
			" 30 Empty Spirit Barrels.	do 2.00	60 00	
			" 1 Bag Rye		1 65	
			" ½ Carboy of Vitriol 59 lbs.	do 2½	1 47	
			" 1 do Muriatic Acid. 118 lbs	do 2½	2 95	
			" 2 Empty Carboys.	do 1.00	2 00	134 70
			N. W. Thomas.			
			" 1 Piece Cotton Cloth 45¾			
			" do do 46¾			
		" do do 46¼				
		" do do 44¾			20	
		" do do 44¾				
		" do do 45				
		" do do 45¼				
		" do do 45¾			32 76	
		" do do 46 409½	do 8c.			
		Messrs. Sleeper & Akhurst.				
May	10	" 12000 lbs. Cast. Scrap.	@ \$15.00	90 00		
		" 16 feet 3 inch. Rubber Belt.		3 00		
		" 3⅝ Glass Water Guages.	@ 10c	30		
		" 69 lbs. Old Brass.	do 10c.	6 90	100 20 30	
		Carried Forward.			\$267 66	
		M. Kelly.			\$267 66	
		To 1 Bureau with Glass and Washstand.			4 00	
		Johnson Taplin.				
May	12	To a Lot of Hay, Straw and Manure.			20 00	
		Mr. Baulne.				
		To 1 Iron Bed.		3 00		
		" 1 do do		2 00		
		" 2 Spring Mattresses.	@ 1.50	3 00	40	
		" 1 Fibre do		2 25		
		" 4½ pair Blankets		11 25		
		" 1 Quilt and 2 Pillow Sham.		2 00		
		" Comforter.		2 00		
		" 9 Sheets	do 40c	3 60		
		" 5 Pillow Slips.		50		
		" 10 Towels.		1 50		



AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT  
SUGAR CO. 26 SEPT. 1888.

RECORD

		" 2½ pair Gray Blankets.		3 25	34 35
		H. Lowell & Sons.			
May	23	To 3 Lengths Shafting Couplings and Boxes 732 lbs.	do	4c	29 28
		" 1 Small Vice 34 lbs.	do	9c	3 06
		" 20½ lbs. Copper.	do	25c	5 12
10		" 1 Flogging Hammer.			1 00
		" 89½ Yards Cotton.	do	8c	7 16
					45 62
		Geo. Emaire.			
May	23	To 2 Garden Hoes.	do	25c	50
		" 4 Chairs 60c. 1 Bureau 2.50			3 10
		" 3 do 40c. 1 Table 1.50			1 90
					5 50
1883		Carried Forward.			\$377 13
					\$377 13
		Jas. Churchill.			
May	23	To 1 Wood Bed and Spring Mattress.			2 50
20		S. L.A. Way.			
		To 15 feet of 2½ Pipe	@	20c	3 00
		" 25 " 2 do	do	15c	3 75
		" 61 " 1 do	do	7c	4 20
		" 1 " 2½ Bend.			20
		1 " 2 do			15
		1 " Nipple.			15
		2 " Couplings.			24
		2 " Tees	do	15c	30
		1 " Union.			35
30		3 " 1 inch Globe Valve	do	80c	2 40
		" 1 " Check Valve.			56
		" 1 " Globe do			80
					16 10
		Coaticooke Knitting Co.			
June	27	To 29 feet of 3 inch Pipe	do	30c	8 70
		" 50 " 2½ " do	do	20c	10 00
		" 2 " 3 " Globe Valves	do	\$9.00	18 00
		" 1 " 2½ " do do			6 00
		" 5 " 1½ " do do	do	1.50	7 50
		" 1 " 1½ " Check Valve.			1 00
		" 1 " 1 " Stop Cock.			1 50
40		" 5 " 8 " Cast Flanges	do	40c	2 00
		" 2 " 7 " do do	do	30c	60
		" 1 foot 3 inch. Tee 45c. 1 foot 2½ inch. Cast Flanges 25c.			70
		" 1 foot 3 inch. Bend 40c. 5 feet 2½ inch. Cast Flanges 1.50.			1 90
		" 2 feet 3 inch. Nipples.	do	30c	60
		" 1 Small Turning Laithe.			275 00
					333 50

In the  
Superior  
Court.

No. 82.  
Statement of  
amount  
collected at  
Coaticook,  
from  
property  
Pioneer Beet  
Root Sugar  
Company,  
by John  
McDouga  
to 26th  
Sept., 1888.  
—Continued.

RECORD

AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co. 26 SEPT. 1888.

In the Superior Court.

	1883		Carried Forward.			\$729 23	
						\$729 23	
No. 82. Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company, by John McDouga to 26th Sept., 1888. —Continued.	July	25	J. M. Chandler. To 2 Length 1 7/8' Shaft 190 lbs. } " 4 Boxes 8 Bolts & Washers 143 } " 4 Wood Pullies & Centres " 1 pce 5' & 1 pce. 4' old Belt.	333 lbs. @ 4c do \$2.50	13 32 10 00 6 68		30 00
	Aug.	8	Mr. Cummings. To 1 pce. Sheet Iron 30 lbs " Revits. 2 lbs " 18 Coach Screws. (5 inch.) " 28 do do " 1 pce Sheet Iron Pipe 75 lbs " 1 " 8 inch. Cast Pipe 195 lbs " 1 Rail 145 lbs " 1 lb. Revits.	do 2c do 6c do 2c do do 2c do 1c do 1c do	60 12 36 56 1 50 1 95 1 45 06		6 60
	Aug.	9	Messrs Sleeper & Akhurst. To 3 Tons Cast Scrap	do 15.00			45 00
			Mr. Baldwin. To 116 feet 5' Belt @ 36c \$41.76 " 26 " 10 do \$1.07 27.82 Less 60% 41 70 " 27 ft 10' Belt @ 1.07 28 89 Less 40% 11 39	69 58 27 88 17 39			45 27
	Aug.		Coaticooke Cotton Co. To Use of Mill Pond.		50 00		
	Decr.		" do do		25 00		75 00
							\$931 10
	1883			Carried Forward			\$931 10
	Sep.	22	Messrs Sleeper & Akhurst. To 21 1/2 Tons Cast Scrap	@ \$15 00			322 00
		29	John Johnson. To 200 feet 1 inch Pipe	do 4c			8 00
Oct.	11	Coaticooke Cotton Co. To 3500 Bricks	do \$5 00			17 50	
	12	A. Fuller. To 200 feet 1 inch Pipe	do 4c			8 00	

10

30

40

AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co. 26 SEPT. 1888.

RECORD

In the Superior Court.

No. 82. Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company, by John McDougla to 26th Sept., 1888. —Continued.

		A. McCoy.				
	25	To 23½ feet 2½" Shaft & Boxes 595 lbs.	@ 4c.	23 80		
		" 6 Wood Pullies with Centres.		13 00	36 80	
		C. N. Remick.				
10	Nov. 23	To 2 Wood Tanks.	@ \$10.00	20 00		
		" 82 feet 1½" Pipe	@ 9c.	7 38		
		" 9 " 1½" Bends	@ 12c.	1 08		
		" 2 " 1½" Unions.	@ 40c.	80		
		" 1 " Flange.		12		
		" 1 " Tee.		15	29 53	
		Wiggett Bros.				
	26	To 50 feet of 2" Pipe.	@ 13c.	6 50		
		" 200 " 1½" do	@ 8c.	16 00		
		" 100 " 1" do	@ 5c.	5 00		
		" 2 " 2½" Peet Valves	@ 4.00	8 00		
20		" 3 " 1½" Globe Valves.	@ 1.00	3 00		
		Carried Forward.		38 50	\$1352 93	
1883		Wiggett Bros. Bro't up		38 50	\$1352 93	
	Nov. 26	To 4 feet 1" Globe Valves.	@ 75c	3 00		
		" 2 " 2½" Bends.	@ 20c	40		
		" 12 " 2½" do	@ 15c	1 80		
		" 12 " 1½" do	@ 12c	1 44		
		" 6 " 1" do	@ 10c	60		
		" 1 " 2" Tee		30		
		" 5 " 2" do	" 15c	75		
		" 6 " 1" do	" 10c	60		
30		" 14 " 2½" Pipe	" 20c	2 80		
		" 1 Flange for Pipe		50		
		" 4 " 1" Brass Cocks with 2 Flanges 5	" 1 75	7 00	57 69	
		Coaticooke Knitting Co.				
	Sep. 27	To 1 Sett Water guages \$6 00 1 Steam guage \$5.50		11 50		
	Oct. 2	" 13½ 6 inch Cast Pipe 664 lbs	@ 2c	13 28		
		" 6 Joint Bolts	" 5c	30		
	23	" 30½ feet 1½" Pipe	" 10c	3 05		
		" 1 Flange		25		
40	Decr. 7	" 29 feet 4 inch Pipe	" 30c	10 44		
		" 4 feet 3 inch Bends \$1 60-4 3" Tees 1 80		3 40		
		" 1 Plug 20c 2 Nipples 80		1 00		
		" 2 Reducers	" 40c	80		
	13	" 31 feet 4" Pipe	" 53c	16 43		
		" 191 " 3" do	" 36c	68 95		
		" 125 " 1½" do	" 10c	12 50		
		" 3 " 4" Bends 1 80 5 3 inch	" 2 00	3 80		

AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co., 26 SEPT. 1888.

RECORD.

*In the Superior Court.*

No. 82. Statement of amount collected at Coaticook, 1883 from property Pioneer Beet Root Sugar Company, by John McDougall, to 26th Sept., 1888. - *Continued.*

		" 3 " 3" Tees 1 35 3" Nipples 2 00		3 35	
		" 4 " 1½" Bends 48c 2 1½ Unions 90c		1 38	
		" 1 Reducer 3" to 2"		30	
		" foot 2 inch Safety Valve		5 00	155 72
					\$1566 34
			Carried Forward.		\$1566 34 10
		Mesrs Sleeper & Akhurst.			
1883	Aug.	9 To 2 Cars on Siding @ 1 00		2 00	
		12 " 1 do do		1 00	
	Nov.	4 " 100 feet 2 inch. pipe do 12c		12 00	
		" 6 " 2" Union do 50c		3 00	
		17 " 200 Brick do 50c		1 00	
		19 " 20 feet 2 inch pipe do 12c		2 40	
		" 38 " 1½ do do 7c		2 66	
		" 1 " 1½" Globe valve do 12c		1 50	
		" 3 " 1½ Bends do 12c		36	
		" 1 " Tee 2" to 1½"		14	
		" 1 " do 1½" to 1"		14	20
		" 1 Reducer 2½" to 1½"		20	
		" 3 feet 1½ pipe do 6c		18	26 58
		Cash Sales.			
		To 1 old Fork & 1 old Shovel		1 00	
		" 1 old Fork & 2 old Hoes		1 00	
		" 1 Bureau		2 50	
		" 5 doz. Lamp Chimnies		2 33	
		" 2 Empty Casks		2 00	
		" 500 Bricks		2 00	
		" 1 pce. Old Betting		2 00	
		" 112 feet 1½ Split Pipe do 6c		6 72	30
		" 16 " 1" do do 5c		80	
		" 3 " Bends		25	
		" 10 lbs Sheet Iron do 2c		20	
		" 13 feet 1½ Split Pipe do 6c		78	
		" 2 Tees & 1 Bend		20	
		" 1 Small Coal Stove		3 50	25 37
					\$1618 29
			Carried Forward.		\$1618 29
		Cash Sales.			
1883	Oct.	5 To Clarke 50 Fire Brick do 3c		1 50	40
		" Judson 400 Con do do 50c		2 00	
		16 " Standish 500 do "		2 50	
		" Con. 300 do "		1 50	
		19 " do 1000 do "		5 00	
		" Baldwin 500 do "		2 50	
		" Hurd. 450 do "		2 25	
		22 " Harvey 300 do "		1 50	
		" do 200 do "		1 00	

AMOUNT COLLECTED AT COATICOKE PROPERTY PIONEER BEET ROOT SUGAR Co. 26 SEPT. 1888.

RECORD

*In the Superior Court.*

No. 82. Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company, by John McDouga to 26th Sept., 1888. —Continued.

	24	To Hulbert 350 Brick	@ 50	1 75	
	25	" Hill do	"	1 50	
		" Harvey 300 do	"	1 50	
Nov.	1	" Smith 800 do	"	4 00	
	2	" Judson 200 do	"	1 00	
	6	" Harvey 300 do	"	1 50	
10	10	" do 200 do	"	1 00	
	12	" Standish 500 do	"	2 50	
		" Rent of House 10 Mos.	@ 2 00	20 00	54 50
		Coaticooke Knitting Co			
Dec.	24	To 32 2/3 feet 3" Pipe	@ 36c	11 76	
		" 1 " 3 inch Globe Valve		9 00	
		" 1 " 3" Tee 45c. 1 Nipple 40c		85	
		" 1 Reducer 40c. 2 Couplings 80c.		1 20	
		" 12 Joint Bolts 60c. 2 8" Flanges 50c.		1 10	
		" 1 feet 2" Globe Valve		6 00	
		" 2 " 7" Flanges 50c. 8 Joint bolts 40c.		90	
20		" 1 " 3" Plug 20c 1 2 1/2 Nipple 40c		60	
		" 2 " 6" Flanges 50c. 1 3" Bend 40c.		90	
1884					
Jan.	14	" 1 " 9" Flange		30	32 61
					\$1705 40
1883			Carried Forward.		\$1705 40
		McCoy.			
Decr.	24	To 230 Fire Brick	@ 3c		6 00
		Cummings			
		To 75 lbs Screw bolts	do 4c	3 00	
		" 20 lbs do	do 3c	60	
		" 1 lbs 3 inch do 45"	do 4c	1 80	
		" 17 lbs Cast Washers	"	68	
		" Bolts 10"	"	40	6 48
		Johnson Taplin			
1883					
Decr.	26	To 200 Brick	do 50c	1 00	
		" 8 feet Pipe	do 30c	2 40	
		" 1 Large Screw & Nut		4 00	7 40
		H. Lovell & Sons			
1884					
40	Jan.	2 To 11 feet 2 1/2" Pipe	do 20c	2 20	
		" 10 " 2" do	do 13c	1 30	
		" 5 1/2 " 1 1/2" do	do 10c	55	
		" 3 " 2 1/2" Bends	do 20c	60	
		" 3 " 2" do	do 12c	36	5 01
		Messrs Sleeper & Akurst			
Feb.	1	To 4 1/2 feet 2 1/2" Pipe	do 20c	90	
		" 1 " 1 1/2" Nipple		20	

RECORD AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co. 26 SEPT. 1888.

In the Superior Court.							
Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company by John McDougall to 26th Sept., 1888. —Continued.	Apr	9	To 1 Bar Mar Steel 46 lbs	@ 4c	1 84		
			" 4½ feet 2½" Pipe	" 20c	90		
		25	" 1 Car on Siding		1 00	4 84	
							\$1735 13
					Carried Forward.		\$1735 13
					Cash Sales.		
	Feb	23	To 600 Brick	@ 50c	3 00		10
			" 1 Picce old Rail 168 lbs	" 1c	1 68	4 68	
					H. Lowell & Sons.		
		25	To piece Shaft Pulley and 2 Boxes 317 lbs	" 4c		12 68	
				Cash Sales.			
Mar	1	To 400 Brick	" 50c	2 00			
		" 3 pces, old Rail 275 lbs	" 1c	2 75			
		" 200 Brick	" 50c	1 00			
		" 2 pces Rail 360 lbs	" 1c	3 60			
		" 60 feet 1" Pipe	" 50c	3 00		20	
		" 500 Brick	" 50c	2 50			
		" 2 ft. 1" Valves	" 50c	1 00			
		6	" 350 Brick	" 50c	1 75		
		" 1 pce Rail 175 lbs	" 1c	1 75			
		5	" 500 Brick	" 50c	2 50		
Apr	5	" 300 do	" 50c	1 50	23 35		
				Coaticooke Knitting Co.			
Mar	1	To 2 feet 7½ X 3" Flanges	" 25c	50			
Apr	2	" 1 " 36" Wood Pully		3 00			
		" 1 Cast Centre for do 62 lbs	" 4c	2 48		30	
		" 8 Bag Screws	" 2c	16			
May	31	" 9 feet 4 inch. Pipe	" 53c	4 77			
		" 2 " 4 inch. Bends	" 60c	1 20			
		" 1 " 4 inch. Coupling		40			
		" 1 " 1½" Nipple 5 long		40			
		" 1 Reducer 1½" to 2"		40			
		" 1 feet 2 inch, Long Nipple		40	13 71		
				Carried forward.		\$1789 55	
				John Johnson.		\$1789 55	
Mar	17	To 3 pces. Rail 360 lbs	@ 1c	3 60	3 60	40	
				D. Underwood.			
	2	To 200 Brick	" 50c	1 00	1 00		
				D. Davis.			
		To 1 Small Wooden Tank			9 00		
				Cash Sale.			

AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR CO., 26 SEPT. 1888.

RECORD.

*In the Superior Court.*

No. 82. Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company, by John McDougall, to 26th sept., 1888. —Continued.

		To 1 Small Wooden Tank			8 00	
		C. Wheeler.				
Apr	5	To 3 Cars on Siding	@ 1.00	3 00		
May	20	" 1 do do		75		
June	1	" 1 do do		75		
10	24	" 1 do do		75	5 25	
		Bouche.				
Apr	5	To 3 Cars on Siding	" 1.00	3 00		
	10	" 1 do do		1 00		
	12	" 1 do do		1 00	5 00	
		F. Lyster.				
Apr	26	To 901 feet 1½ inch. Pipe	" 7c		63 00	
		Cash Sale.				
Apr	26	To 290 Brick	" 50c	1 45		
20		" 2 pces Rail 480	" 1c	4 80		
June	13	" 300 Brick 1 50 21st 500 do 2 50		4 00		
	25	" 1 old Punche on \$1 00 1 old Press \$1 00		2 00	12 25	
					\$1896 65	
1884		Carried Forward.				\$1896 65
		A. M. Stelson.				
May	14	To 1000 Fire Brick			25 00	
		Colquhoun & Drummond.				
30	22	To 1 old Drill Machine			10 00	
		Trenholm & Nunns				
		To 100 Brick			5 00	
		D. Reneville.				
June	2	To 1 Counter Shaft & 2 Boxes 200 lbs	@ 4c	8 00		
		" 1 pce Shaft 1 Pulley 2 Collars } 404 lbs.				
		" Coupling Boxes & Bolts	" 4c	16 16	24 16	
		Palister.				
30	7	To 500 Fire Brick		12 50	12 50	
		T. T. Shurtleff.				
40	24	To 4000 Brick	" 5 00		20 00	
		J. C. Evens.				
	23	To 200 feet 1½" Pipe	" 7c		14 00	
		S. D. Morgan.				
		To 1 Wooden Tank			12 00	

RECORD AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co. 26 SEPT. 1888.

In the Superior Court. No. 82. Statement of amount collected at Coaticook, from Pioneer Beet Root Sugar Company by John McDougall to 26th Sept., 1888. —Continued.

		John Luce.				
		To 13½ feet 1½" Pipe	" 7c	94		
		" 5 Mos Rent of House	" 2 00	10 00		10 94
						\$2025 75
						\$2025 75
						Carried forward.
		J. C. Remick.				
	July	24 To 89 feet 1½" Pipe	" 7c	6 23		10
		" 12 " 1½" Bends	" 12c	1 44		
	Oct	8 " 600 Brick	" 50c	3 00		
		9 " 150 do	"	75		11 42
		C. Wheeler.				
	July	30 To 1 Car on Siding		75		
	1885					
	Jan	5 " 2 do do		1 50		2 25
		Woolen Mill Co.				
	July	4 To 630 Brick	" 50c	3 15		23)
	Aug	27 " 36 feet 1½ inch Pipe	" 7c	2 42		
		" 2 " 1½" Bends	" 12c	24		
	Sep	18 " 500 Brick	" 50c	2 50		
		19 " 700 do	"	3 50		
	Oct	13 " 3 feet 10" of 2 inch Pipe	" 12c	46		
		" 1 " 2 inch Union		55		
		14 " 1 " 2 " Bend		30		
		" 254 " 1½ inch Pipe	" 7c	17 82		
		" 16 " ¾ " do	" 4c	64		
		" 12 " 1½" Bends	" 12c	1 44		
		" 2 " 1½" Tees		24		
		" 1 " 1½" Union		40		30
		" 1 " 1½" Globe Valve		1 00		
		" 2 " 1" do do	" 75c	1 50		
		" 2 Reducers 1½" to ¾"	" 12c	24		36 50
						\$2075 92
	1884					\$2075 92
						Carried Forward.
		Bouford.				
	July	12 To 1 Lot of Broken Brick				8 50
		Coaticooke Knitting Co.				
	Aug	6 To 6600 Brick	@ 450	29 70		29 70 40
		J. Ayling.				
		To 7000 Brick		30 00		
		" 30 pces Scantling		1 32		
		" 23 lbs. Bend Iron.	" 1c	23		
	Oct.	3 " 200 Brick		90		32 45
		W. C. Webster.				
	Aug	12 To 600 Brick	" 50c			



AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co. 26 SEPT. 1888.

RECORD.

*In the Superior Court.*

No. 82.  
Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company, by John McDougall, to 26th sept., 1888.  
—Continued.

		Cash Sales.			
Aug.	22	To 500 Brick.	@ 50c.	2 50	
		" 200 do	"	1 00	
		" 1 pce. old Rail 150 lbs.	" 1c.	1 50	
	23	" 500 Brick.	" 50c.	2 50	
10	25	" 500 do	"	2 50	
	26	" 200 do	"	1 00	
		" 25 lbs. old Iron	" 2c.	50	
Sep.	8	" 250 feet 1 1/2" Pipe.	" 7c.	17 50	
		" 138 feet 3/4" Pipe	@ 4c.	5 52	
		" 200 " 1/2" do	" 4c.	8 00	
	13	" 12 1/2 " 1 1/2" do	" 8c.	1 00	
		" 1 pce. Wire Cloth		25	
Sep.		" 1 foot 1 1/2" Bend		10	
	20	" 200 Brick	@ 50c	1 00	
		" 150 Fire Brick \$3.75	1000 Brick \$5.00	8 75	53 62
20					\$2203 19
1884			Carried Forward		\$2203 19
			Cash Sales		
Sep.	29	To 400 Brick	@ 50c	2 00	
	30	" 400 do	"	2 00	
	9	" 360 do	"	1 80	
Oct.	10	" 400 do	"	2 00	
	11	" 300 do	"	1 50	
	13	" 500 do	"	2 50	
		" 150 Fire Bricks	2 1/2c	3 75	15 55
30	18	" 800 Com do	@ 50c	4 00	
		" 13 feet 1" Pipe		52	
	20	" 200 Brick	"	1 00	
	22	" 500 do	"	2 50	
	23	" 175 do	"	87	
	24	" 200 do	"	1 00	
	25	" 4 1/2 feet 2 1/2" Pipe	@ 20c	90	
	28	" 300 Brick	50c	1 50	
	31	" 100 do	"	50	
Nov.	1	" 625 do	"	3 12	
	4	" 200 do	"	1 00	
		" Pipe Fittings	"	1 00	
40	12	" 15 feet 2 inch. Pipe	15c	2 25	
		" 1 Bend.		15	
	25	" 90 Brick.		45	
Dec. 1885	13	" 350 Fire Brick.		8 75	
Jany	6	" 2 Bends.		10	29 61

Johnson Taplin.

RECORD

AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR CO., 26 SEPT. 1888.

*In the Superior Court.*  
No. 82.  
Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company by John McDougall to 26th Sept., 1888.  
*—Continued.*

Aug.	22	To 18 pces. old Press Cloth.		1 00		
Oct.	10	" 1000 Brick.		5 00		
Decr.	6	" 150 do		75		6 75
1884			Carried Forward			\$2255 10
						\$2255 10
Sep.	6	To 301 feet 1 inch Pipe " Rent of Farm.	Geo Doak @ 4c.	12 04 60 00		72 04
			Averell Lumber Co			
	20	To 7000 Brick.	@ 5 0c	35 00		70 00
	26	" 7000 do		35 00		70 00
			A. Fuller.			
Oct.	13	To 200 Brick.	@ 50c.			1 00
			T. T. Shurtleff.			
	14	To 100 Brick.				50 20
			Coaticooke Knitting Co.			
Oct.	15	To 20' 8" 2 1/2" Pipe	@ 20c.	5 94		
		" 25' 8" 2" do	" 12c.	3 08		
		" 1 Branch 2 1/2" x 2"		25		
		" 1 Reducer 2 1/2" to 2"		12		
		" 3 feet 2 1/2" Bends.	@ 20c.	60		
Nov.	20	" 1 " 1 1/2" Union.		45		
	25	" 5 " 2" do	" 55c.	2 75		
		" 6 " 2" Bends.	" 20c.	1 20		
		" 3 " Tees 2" x 1 1/2"	" 40c.	1 20		30
		" 3 " " 2" x 2"		80		
		" 6 " 2 inch. Nipples.	" 30c.	1 80		
		" 6 " 1 1/2" do	" 20c.	1 20		
		" 6 " 1" do	" 15c.	90		
		" 2 " 2" Plugs.	" 15c.	30		
Dec.	1	" 3 " 1 inch Union	" 33c.	1 05		21 64
1884			Carried Forward.			\$2420 28
						\$2420 28
			Mr. Hastings.			
Oct.	25	To 400 Brick.	@ 50c.	2 00		40
		" old Rail & Scrap 480 lbs	" 1c.	4 80		
		" 1 feet 1" Valve.		50		
		" 2 " 1" Bends.		12		
		" 3 " 1" Tees.		20		
		" 3 pces. Pipe.		30		
		" 159 feet 2 inch. Pipe.	@ 13c.	20 67		
		" 300 Brick	" 50c.	1 50		30 09

AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT  
SUGAR Co., 26 SEPT. 1888.

RECORD

In the  
Superior  
Court.

No. 82.  
Statement of  
amount  
collected at  
Coaticook,  
from  
property  
Pioneer Beet  
Root Sugar  
Company  
by John  
McDougall  
to 26th  
Sept., 1888.  
—Continued.

		M. Kilburn.			
Oct.	29	To 1 feet 6 inch. Flange		10	
		" 1 " 1½" Nipple		10	
		" 1 " 1½" to 1" Reducer		10	
		" 1 " 1½" Tee		10	
10		" 10 " 1½" Pipe	@ 7c	70	
		" 2 pces. do	" 10c	20	
		" 300 feet 1" Pipe	" 5c	15 00	
		" 1 " 1½" Union		30	
		" 2 " 1" do	" 20c	40	
		" 1 " 1" Valve		50	
		" 1 old Shovel		40	17 90
		Coaticooke Cotton Co.			
		To Use of Mill Pond to 31st Augt		75 00	
		" do do 31st Oct.		30 00	
		" Rent of Siding to 30 June		8 32	
20		" Use of Mill Pond for Nov. & Decr.		60 00	
		" Rent of Siding to 31st Decr		8 32	
		" Use of Mill Pond to 30 Jany 1885		30 00	211 64
1884		Carried Forward			\$2679 91
					\$2679 91
		A. M. Stetson.			
Oct.	29	To 1300 Brick	@ 50c	6 50	6 50
		Messrs Sleeper & Akhurst.			
		To 6½ feet 1½" Pipe			46
30		J. C. Remick.			
1885		To 300 Brick	" 50c	1 50	
Feb.	21	" old Furnace Bars 130 lbs	" 1c	1 30	2 80
		Coaticooke Knitting Co.			
Decr.	26	To 10 feet 1¼" Pipe	" 8c	80	
		" 1 " 2" Bend		20	
		" 3 " 1½" do	" 12c	36	
		" 2 " 1½" Tees	" 40c	80	
		" 2 " 1½" Nipples	" 20c	40	
		" 1 " 1" Plug		10	
		" 1 " 2" do		15	
40		" 1 " 1½" Union		45	
		" 1 Flange 7"x2½"		30	
1885		" 3 feet of 2½" Pipe	" 20c	60	
Jan.	6	" 9 " 2" do	" 12c	1 08	
	21	" 800 Brick	" 45c	3 60	
	24	" 800 do	"	3 60	12 44
		Noyce.			



AMOUNT COLLECTED AT COATICOKE PROPERTY PIONEER BEET ROOT SUGAR Co., 26 SEPT. 1888.

RECORD.

*In the Superior Court.*

No. 82. Statement of amount collected at Coaticook, from property of Pioneer Beet Root Sugar Company, by John McDougall, to 26th sept., 1888. —Continued.

		" 15 Small Rails 620 lbs	@ 2½c	15	75			
		" 35 lbs Spikes for Rails			91	17 77		
		Mr. Moss.						
	Apr.	30	To 200 Brick	" 50c		1 00		
10	Apr.	29	To 1 Car on Siding			1 00		
			W. Dawson,					
	May	5	To Rent of Farm on a/c			25 00		
			R. J. Roy,					
	June	13	To 8 Tons Cast Scrap	" 15 00		120 00		
			Messrs. Sleeper & Akhurst.					
		17	To 200 Brick	" 50c		1 00		
			John Thornton.					
20		18	To 1 feet 3" Bend 40c. 1 feet 3" Nipple	40c	80			
			" 1 " 1¼" do 10c. 2 " 1¼" Pipe	12c	22			
		26	" 1 " 1½" Tee 15c. 2 feet 1½" Nipples	40c	55			
			" 4 " 1½" Pipe	" 7c	28			
			" 1 " 2" Union		50	2 35		
1885			Carried Forward					\$3086 74
			H. Lovell & Sons.					\$3086 74
	June	17	To 1 feet 2 inch, Screw down Valve Iron		3 25			
30			" 1 " 1½ inch Angle Valve Brass		1 50			
			" 25' 10" 2½" Pipe	@ 20c	5 17			
			" 19' 3" 2" do	" 13c	2 50			
			" 9' 8" 1½" do	" 10c	96			
			" 2 feet 2½" Bends	" 20c	40			
			" 5 " 2" do	" 12c	60			
			" 1 " 3" Nipple		40			
			" 1 " 2½" do		30			
			" 1 " 2" do		20			
			" 2 " 1½" do	" 15c	30			
			" 1 Reducer 3" to 2"		40			
			" 1 do 1½" to 1"		30	16 28		
40			Cash Sales.					
	July	9	To 200 Brick	" 50c	1 00			
			" 24 Furnace Bars 420 lbs	" 1½c	7 80			
		11	" 350 Brick	" 50c	1 75			
	Aug.	7	" 250 do	"	1 25			
			" 250 do	"	1 25			
			" Furnace Bars 66 lbs	" 1½c	1 00	14 05		

RECORD

AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co., 26 SEPT. 1888.

In the Superior Court.							
No. 82. Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company by John McDougall to 26th Sept., 1888. —Continued.	July	11	Coaticooke Cotton Co. To Use of Mill Pond half of May		15 00		
			"	do do June	30 00		
			"	Rent of Siding 6 Mos. Ending 30th June	8 32		
			"	Use of Mill Pond for July & Augt.	60 00	113 32	
				Carried Forward		\$3230 39	10
				H. C. H. Chagnon.		\$3230 39	
	July	14	To	3500 Fire Brick @ 24c	84 00		
		29	"	2500 do " 50c	60 00	151 50	
			"	1500 Com. do " 50c	7 50		
	July	16	To	Thos. Kelly. 1 Matching Machine		60 00	
July	26	To	Coaticooke Knitting Co. 500 Brick " 50c		2 50	20	
Aug.	16	To	M. Buckland. 500 Brick " 50c	2 50			
	17	"	600 do " "	3 00	5 50		
		To	John Conway. 2300 Brick " 50c		11 50		
Sep.	3	To	D. Cameron. 3650 Brick " 50c		16 43		
	7	To	Gale & Sons. 26 feet 5" Pipe " 65c		16 90	50	
		To	Cash Sales. 36 feet 2½" Pipe " 16c	5 76			
		"	4 " 2" Pipe 48c. 2 Elbows 40c	88			
		"	300 Brick \$1.50. 20 Fire Brick 50c	2 00			
		"	old Rail 240 lbs " 1c	2 40			
		"	Sheet Iron 14 lbs " 1½c	20			
		"	400 Brick " 5c	2 00	13 24		
1885			Carried Forward		\$3507 96		
			H. C. H. Chagnon.		\$3507 96	40	
Sep.	14	To	400 Brick @ 40c	1 60			
	18	"	800 do " "	3 20	4 80		
Sep.	19	To	Coaticooke Cotton Co. 100 Fire Brick	2 50			
	29	"	1 Reducer 3" to 2½"	40			
		"	1 do 2½" to 1½"	30			

AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co., 26 SEPT. 1888.

RECORD.

*In the Superior Court.*

No. 82.  
Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company by John McDougall to 26th Sept., 1888.  
—Continued.

Oct.	16	" 1 feet 2½" Nipple		30	
		" 200 Fire Brick		5 00	
		" 1500 Com do	" 50c	7 50	
		" Use of Mill Pond for Sept.		30 00	
		" do do Oct.		30 00	
10		" do do Nov.		30 00	
		" do do Decr.		30 00	136 00
		Cash Sales.			
	7	To 62 Furnace Bars 428 lbs	" 1½c	6 42	
		" 1 do Door 205 lbs	" 2c	4 10	
		" Bolts for do 16 lbs	" 3c	48	11 00
		O. Martin.			
		To 70 Fire Brick	" 2½c		1 75
		Cash Sales.			
20	29	To 6 feet 1" Pipe	" 5c	30	
		" 2 " 1" Flanges	" 10c	20	
		" 3 Tees		25	
		" 4 pces old Betting		1 95	
		" 37½ feet 3" Belt	" 12c	4 50	
		" 400 Brick \$2.00 Bold elt 50c		2 50	9 70
1885		Ed. Hall,			\$3671 21
Sep.	29	To 150 Brick	@ 50c		75
30		Mr. Lindsey,			
Oct.	12	To 1000 Brick		5 00	
	14	" 1000 do		5 00	10 00
		Cash Sales.			
		To 600 Brick	" 50c	3 00	
		" 400 do		2 00	
		" 200 do		1 00	
		" 400 do		2 00	8 00
		Messrs. Sleeper & Akhurst.			
40	Oct. 27	To 3 Tons Cast Scrap	" \$15 00	45 00	
	Nov. 4	" 1 feet 1½" Bend		10	
		" 1 " 1¼" do		10	
	Decr. 5	" 5 " 1¼" Pipe	" 7c	35	
		" 1 " 1¼" Tee & Plug		16	45 71
		Cash Sales.			
Nov.	2	To 100 Brick		50	
		" 60 Fire Brick	" 2½c	1 50	
		" 100 Com do		50	

AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co., 26 SEPT. 1888.

RECORD

In the Superior Court.

No. 82. Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company by John McDougall to 26th Sept., 1888.

—Continued.

	7	"	400 do do			2 00		
	Decr.	14	"	60 Fire do	"	2½c	1 50	
			"	25 feet 1½" Pipe	"	7c	1 75	
		21	"	40 Fire Brick	"	2½c	1 00	
		30	"	1 pce. old Rail 186 lbs	"	1c	1 86	10 61
	1885			Brought Forward				\$3746 28 10
				H. Lovell & Sons,				\$3746 28
	Nov.	19	To	2 Wood Pullies with Centers.			6 00	
			"	1 Box for 3" Shaft			1 00	
			"	1 1½ Brass Cock			2 00	9 00
				Mr. Hastings.				
	Decr.	5	To	80 feet 1½" Pipe	@	8c		6 40
				Johnson Taplin.				
	Nov.	25	To	13' 7" 1¼" Pipe & 2 Bends				75 20
				Gendron Manufacturing Co.				
	Nov.	5	To	230 Fire Brick			5 75	
		12	"	1 3" Bend			45	
			"	15" of 3" Pipe	"	36c	44	
		14	"	200 Fire Brick	"	2½c	5 00	
			"	6½ feet 2 inch. Pipe	"	12c	78	
			"	1 2" Plug			15	
		23	"	6 feet of 2" Pipe	"	12c	72	
			"	14 inches of do			14	
			"	1 2" Nipple			15	
			"	5' 8" 2 inch. Pipe	"	12c	68	
			"	3 2" Bends 60c. 1 Tee 20c			80	50
		30	"	49 feet 3" Pipe	"	33c	16 17	
			"	10' 8" 2½ do			2 11	
			"	5 feet 1" Pipe	"	5c	25	
			"	3 " 3" Bends	"	40c	1 20	
			"	2 " 2½" do	"	35c	70	
			"	2 " 1½" do	"	12c	24	
			"	4 " 1½" Union	"	40c	1 60	
			"	1 Reducer 40c. 1 Tee 15c			55	
	1885			Carried Forward			37 88	\$3762 43
				Gendron Manfg. Co. Brot up.			37 88	\$3762 43 40
	Nov.	30	To	2 Tees 80c, 1 do 40c			1 20	
	Decr.	1	"	9 feet 3 inch. Pipe	@	33c	2 97	
			"	10 " 1½" Nipples	"	20c	2 00	
			"	3 " 2" do	"		60	
			"	1 " 3" do	I—1" do	10c	40	
			"	2 " Tees 3"x2"	@	40c	80	
			"	3 " Reducers			75	



AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co., 26 SEPT. 1888.

RECORD

In the Superior Court.

No. 82. Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company by John McDougall to 26th Sept., 1888. —Continued.

	7	To 3 feet 1½" Nipples	@ 20c	60	
		" 15 inches of ¾" Pipe		05	
		" 2 ¾" Nipples	" 6c	12	
		" 1 ¾" Bend		08	
		" 1 ½" do		12	
10		" 1 ½" Union		40	
		" 100 feet 2 inch Pipe	" 12c	12 00	
		" 3 " Tees 2½" x 1½"	" 20c	60	
		" 3 " 1½" Nipples	" 20c	60	
		" 3 " Reducers 1½" to 1"	" 15c	45	
		" 4 " 2" Bends	" 20c	80	
		" 1 " 1" Brass Valve		50	
		" 1 " Flange 6" x 2"		20	
		" 1 " 1½" Reducer		15	
		" 2 11-12 lbs. 1½" Pipe	" 12c	35	63 62
		A. M. Noyce.			
1886					
20	Jany	4 To 400 Com. Brick	" 50c	2 00	
		" 400 do	"	2 00	
		" 100 do	"	50	
		" 712 Fire Brick	" 2½c	17 80	
	28	" 2 pces old Rail 270 lbs	" 1c	2 70	25 00
		Carried Forward			\$3851 05
1886					\$3851 05
		Mr. Cummings.			
	Jan.	5 To 28 feet old Belt		4 00	
		" 2 " 1½" do		75	
	12	" 21 " 5" do		3 75	
30		" 6 Coach Screws 6" x 5/8"	@ 3c	18	
		" 21 feet of 8" Belt		1 00	9 68
		Messrs. Sleeper & Akhurst			
	Jan.	16 To 1000 Fire Brick		25 00	
		" 3 Tons Cast Scrap	" 15.00	45 00	70 00
		C. Hanson.			
	22	To 50 Fire Brick	" 2½c	1 25	1 25
		J. R. Roy.			
40		To Balance of Rent of Farm for 1885			35 00
		Cash Sales.			
	Apr.	1 To 1 pce old Rail 120 lbs	" 1c	1 20	
	Feb.	2 " 300 Brick	" 50c	1 50	
		4 " 1000 do	"	5 00	
		10 " 150 do	"	75	
		16 " 300 do	"	1 60	
	Mar.	18 " 630 do	"	3 15	
		" old Rail 830 lbs	" 1c	8 30	

RECORD. AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT  
SUGAR CO. 26 SEPT. 1888.

In the  
Superior  
Court.  
—  
No. 82.  
Statement of  
amount 1886  
collected at  
Coaticook,  
from  
property  
Pioneer Beet  
Root Sugar  
Company  
by John  
McDougall  
to 26th  
Sept., 1888.  
—Continued.

		To 100 Fire Brick	@ 2½c.	2 50			
		" 1 Car on Siding		1 00		24 90	
						\$3991 88	
			Carried Forward.			\$3991 88	
		A. M. Stetson.					
		To 4 feet 2½" Pipe	@ 25c	1 00		10	
		" 4 " 2½" Couplings	" 30c	60			
		" 1 " 2½" Bend		30			
		" 7 pces old Rail 2321 lbs	" 1c	23 21			
		" 1 feet 4" Steam Valve		16 00			
		" 3½ " 4" Pipe	" 53c	1 73			
		" 3 " 3" Bends		1 35			
		" 1 " 3" Nipple		50			
		" 2 " 4" Flanges	" 40c	80		45 49	
		Messrs. Sleeper & Akhurst.					
Feb.	16	To 5 feet 3 Pipe	" 30c	1 80			
Apr.	23	" 1¾ Tons Cast Scrap	" 15.00	26 25		20	
May	22	" 4 feet of 2 Pipe	" 12c	48			
		" Plate Iron 35 lbs	" 2c	70		29 23	
		Coaticooke Cotton Co					
Jany	28	To 100 Fire Brick	" 2½c	2 50			
		" Use of Mill Pond for January		30 00			
		" Rent of Siding 6 Mos to 31st Decr		8 32			
		" Use of Mill Pond for Jany & March		50 00		90 82	
		J. C. Remick.					
		To a Lot of Broken Fire Brick				1 50 30	
		J. R. Roy.					
		To Rent of Farm on a/c. for 1886				25 00	
						\$4183 92	
1886			Carried Forward.			\$4183 92	
		Cash Sales.					
May	5	To 2 Wood Pullies	" 1 50	3 00			
		" 1 piece old Belt		3 25		6 25	
June	3	" 1 3" Bend		40			
		" 3½ feet 3" Pipe	" 40c	1 40		40	
	12	" 300 Brick	" 50c	1 50			
July	2	" 2 pces old Belt 2 \$7.00 1 \$6.00		13 00			
	26	" 200 Brick	"	1 00			
Aug.	20	" 400 do	"	2 00			
	24	" 230 do	"	1 15			
	27	" 400 do	"	2 00			
Sept.	4	" 450 do	"	2 25			
	6	" 400 do	"	2 00			

AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR CO., 26 SEPT. 1888.

RECORD.

*In the Superior Court.*

	7	" 375 do	@ 50c	1 88	
	25	" Broken pieces Fire Brick		1 50	
		" do do Com		2 50	32 58
		H. Cleveland.			
10	June 5	To 1000 Brick	" 50c		5 00
		Messrs. Sleeper & Akhurst.			
	July 26	To 2 Tons Cast Scrap	" 15.00		30 00
		Coaticooke Cotton Co			
	Aug. 3	To Use of Mill Pond 20 days in June		20 00	
		" do do for July		30 00	
		" Rent of Siding 5 Mos. to 30th June 1886		8 32	
	Sep. 4	" Use of Mill Pond for Augt.		30 00	88 33
					<u>\$4346 07</u>
20	1886	Carried Forward.			<u>\$4346 07</u>
		A. Hall			
	July 19	To 8 feet 3" Pipe	@ 36c	2 88	
		" 1 " 3" Bend		40	3 28
		S. Moyles			
	July 9	To 1 Tee 3" x 2"		40	
		" 1 do 2" x 1½"		30	
		" 1 2 inch Plug		10	
		" 1 2 " Nipple		15	
		" 1 2 " do 15" long		50	
30		" 7 feet 1½" Pipe	" 7c	49	1 94
		Mr Lovell			
	July 16	To 100 Fire Brick (pieces).			2 50
		Mr. Ives.			
	July 21	To 39 feet 3" Pipe	" 36c		14 00
		Woodard & Lyster.			
	Aug. 30	To 300 Fire Brick (pieces)			7 50
		W. Oliviere.			
40		To 1 Car on Siding			1 00
		Coaticooke Cotton Co			
	Oct. 2	To Use of Mill Pond for Sepr		30 00	
		" do do Octr		30 00	60 00
		Sleeper & Akhurst			
	Oct. 5	To 1 Car on Siding		1 00	
	23	" 1 do do		1 00	2 00
					<u>\$4438 29</u>

No. 82. Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company by John McDougall to 26th Sept., 1888.  
—Continued.

RECORD. AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co., 26 SEPT. 1888.

In the Superior Court.		1886		Carried Forward			\$4438 29
No. 82. Statement of amount collected at Chatcook, from property Pioneer Beet Root Sugar Company by John McDougall to 26th Sept., 1888. —Continued.				W. Oliviere.			
	Oct.	22	To 1 Car on Siding				1 00
			Cash Sales.				10
	Oct.	1	To 2 pcs 1 7/8" Shaft 200 lbs @ 4		8 00		
			" 1 Wood Pulley with Cast Center 75 lbs.		3 00		11 00
			S. Moyles.				
			To 4 1" Tees. @ 10c.		40		
			" 12 1" Bends "		1 20		
			" 14 feet 2" Pipe 12c.		1 68		
			" 3 " 2" Bends.		30		3 58
			Coaticooke Cotton Co.				20
			To Use of Mill Pond for November.				30 00
			R. J. Roy.				
			To Balance of Rent of Farm 1886.				35 00
			Dawson.				
			To 1 Car on Siding,				1 00
			Coaticooke Cotton Co.				30
1887	Jan.	8	To use of Mill Pond for December 1886.		30 00		
	Feb.	2	" do do Jany. 1887.		30 00		
			" Rent of Siding 6 Mos. Ending 31st. Decr. 1886		8 32		
			" Use of Mill Pond for Feby.		30 00		
			" do do March		30 00		128 32
	Mar.	5	W. Oliviere. To 1 Car on Siding				1 00
1887			Carried Forward				\$4649 19 40
			S. Dawson.				
			To 1 Car on Siding.				1 00
	Apr.	29	Roy Bros. To Rent of Farm on a/c.				40 00

AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co., 26 SEPT. 1888.

RECORD

In the Superior Court.

No. 82. Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company by John McDougall to 26th Sept., 1888. —Continued.

		Coaticooke Knitting Co.			
1886					
Oct.	15	To 1 3" Bend		45	
	25	" 4 feet 4" Pipe	@ 53c.	2 12	
1887					
Feb.	8	" 2 " Flange 8" x 3	" 25c.	50	
10		" 3 " 3" Bends.	" 40c.	1 20	
May.	24	" 1 " 3" Nipple 7" long.			
		" 4 Flanges 6" x 2"	" 25c.	1 00	
		" 8 Joint Bolts	" 5c.	40	
		" 15 3/4 feet 2" Pipe	" 12c.	1 89	
July	26	" 4 1/2 " 5" do	" 75c.	3 38	
		" 1 1/2 " 2 1/2" do	" 20c.	30	
		" 1 Flange		25	
		" 2 Reducers 5" to 4"	" 65c.	1 30	
		" 1 4" Bend		60	
		" 1 4" Nipple		40	
20		" 2 3/4 feet 2 1/2" Pipe	" 20c.	55	
		" 1 feet 2 1/2" Bend		40	15 14
June	25	To 125 Brick,	Geo. Roy.		63
			S. Moyles.		
July	14	To 21 1/2 feet 2 inch Pipe	" 12c.	2 58	
		" 1 " 2" Bend		12	2 70
20	1887		Carried Forward		\$4708 66
			Coaticooke Cotton Co.		\$4708 66
June	28	To 12 1/2 feet 2" Pipe.	@ 12c.	1 48	
		" 3 " 2" Bends	" 20c.	60	
		" 2 " 2" Tees	" 40c.	80	
		" 1 " 2" Union		60	
		" To Use of Mill Pond for June		30 00	33 48
May	30	To 25 1/3 feet 2" Pipe	" 12c.		3 04
40	July	26	To 1 Car on Siding		1 00
Aug.	6	To Use of Mill Pond for July		30 00	
		" Rent of Siding 6 Mos. Ending 30th June 1887		8 32	
Sep.	6	" Use of Mill Pond for Augt.		30 00	68 32

RECORD

AMOUNT COLLECTED AT COATICOOKÉ PROPERTY PIONEER BEET ROOT SUGAR Co., 26 SEPT. 1888.

In the Superior Court.

No. 82. Statement of amount collected at Coaticook, from property Pioneer Beet Root Sugar Company by John McDougall to 26th Sept., 1888. —Continued.

		H. Beltrand.				
Aug.	25	To 1 Small Coal Stove				3 50
		Coaticooke Cotton Co.				
		To Use of Mill Pond for Sept.		30 00		10
		“ do do Octr.		30 00		
		“ do do Novr.		30 00		
		“ do do Decr.		30 00		
		“ Rent of Siding 6 Mos. Ending 31st. Decr.		8 32		128 32
		Dr. Jenks.				
Nov.	7	To 2 pces 1½” Round Iron 158 lbs.	@ 2c.			3 16
		Carried Forward				\$4949 48.
		Cash Sales.				\$4949 48
Dec.	19	To 2 piecc old 9” Belt				6 00
		Dawson.				
		To 1 Car on Siding.				1 00
		Cash Sales				
1888		To 2 pieces old 5” Belt		2 00		
Feb.	27	“ 8 “ old Rail 180 lbs	@ 1c.	1 80		3 80
		Dr. Ives.				
Mar.	10	To 273 feet 2 inch Pipe.	@ 12c.			32 76 30
		Coaticooke Cotton Co.				
		To Use of Mill Pond for January		30 00		
		“ do do Feby.		30 00		60 00
		Cash Sales.				
		To 1 piece old Elevater Belt.				10 00
		Dawson.				
		To 2 Cars on Siding.				2 00
		Coaticooke Cotton Co.				
Apr.	17	To Use of Mill Pond for March.				30 00
		Roy Bros.				
May	7	To Rent of Farm on a/c				30 00
						\$5125 04

AMOUNT COLLECTED AT COATICOOKE PROPERTY PIONEER BEET ROOT SUGAR Co. 26 SEPT. 1888.

RECORD

*In the Superior Court.*

No. 82. Statement of amount collected at Coaticook, from property of Pioneer Beet Root Sugar Company by John McDougall to 26th Sept., 1888. —Continued.

1888		Carried Forward.		\$5125 04
		Coaticooke Cotton Co.		
July	31	To Use of Mill Pond for half of June	15 00	
		do do do July	30 00	45 00
10 Aug.	7	A. W. Martin To 81 ¼ feet, 2 inch Pipe @ 12c		9 75
				\$5179 79
		In Abeyance.		
		Rent of Farm 1883	\$ 50.00	
		do of Saw Mill	100.00	
		Geo. O. Doak.	\$150.00	
20		(ENDORSED).		
		(Plaintiffs' Exhibit A. P., fyled at Enquête, 26 Oct. 1888. Prod.: 8 Nov. 1889.		
		D. G., Dep. P. S. C.		
30				
40				

SCHEDULE NO 116.

RECORD. AMOUNT COLLECTED FROM PROPERTY PIONEER BEET ROOT SUGAR CO.  
COATICOOKE, Q., BY JOHN MCDUGALL, 26 SEPT. 1888.

In the  
Superior  
Court.  
—  
No. 83.  
Statement of  
amounts  
collected  
from  
property  
Pioneer Beet  
Root Sugar  
Company  
Coaticook,  
by John  
McDougall  
dated 26th  
Sept., 1888.

				Interest	Principal	
1883	Jan. 29	By Cash	Eastern Townships Bank	5 <sup>241</sup>	105 36	265 92
	Feb. 16	" "	Returned Premium Royal Insurance	5 <sup>223</sup>	108 79	277 00
	Apr. 2	" "	do do Lyfond	5 <sup>178</sup>	57 96	150 91
	4	" "	Coaticooke Knitting Co			
			1 Boiler & 1 Engine	5 <sup>176</sup>	460 50	1200 00
	10	" "	Cotton Co			10
			321 Cords Wood @ \$1.62	5 <sup>170</sup>	227 00	593 27
			58 " " @ \$1.25			
	14	" "	Farnham B. R. Sugar Co			
			63 Steel Rails 2666 @ 2½		66.65	
			8 Pcs. Switch 100 "		2.50	
			1 Cooper Stove \$4		4.00	
			2 Trucks \$8		16.00	
			2 Iron Tanks 2072" 4	5 <sup>166</sup>	82.88	172 03
	20	" "	G. O. Doak			
			Limestone & Co	5 <sup>160</sup>	47 57	125 00
June	10	" "	Retd. Premium London Assurance	5 <sup>108</sup>	64 48	173 97 20
	21	" "	do Queen	5 <sup>97</sup>	34 55	93 75
	30	" "	Farnham B. R. Sugar Co			
			14 Steels Rails 575" @ 2½		14.62	
			44 Yds. Cloth Press 12½		5.50	
			1 Honny Truck \$6	5 <sup>89</sup>	6.00	26 12
July	9	" "	Retd. Premium Phoenix	5 <sup>79</sup>	27 88	76 37
	17	" "	Shaw Bros. 1 Engine	5 <sup>71</sup>	72 72	200 00
	20	" "	Chandler 1 Planer	5 <sup>68</sup>	39 93	110 00
	24	" "	Allard 1 Engine	5 <sup>64</sup>	144 91	400 00
Aug.	4	" "	C. Sugar Co. 2 Presses	5 <sup>53</sup>	72 03	200 00 50
Nov.	22	do	Moving Boilers.	4 <sup>310</sup>	101 84	300 00
1884	May 16	" "	do 2 Saturaters 403.75			
			Less. 103.43	4 <sup>133</sup>	91 74	300 32
	20	" "	Magog Textile Co. 2 Tanks 2120 @ 4	4 <sup>129</sup>	25 81	84 80
		" "	J. McDougall 3500 Bricks @ \$25	4 <sup>129</sup>	26 67	87 50
June	11	" "	Magog Textile Co. 94 Rails			
			3580 @ 271.60			
	"	" "	Magog Textile Co. 12 Pairs			
			Axles 30.00	4 <sup>106</sup>	30 50	101 60
Aug.	8	" "	Magog Textile Co. 2 Tanks 750 3)	4 <sup>49</sup>	16 12	55 62
			Labonne 3.12)			40
					\$1831 65	4994 18

(ENDORSED)

Amounts collected at Montreal from property P. B. R. Sugar Co. Coaticooke by John MacDougall, to 24 Sept. 1888 \$4,994.18 Plaintiffs exhibit A. Q. fyled at enquete 26 Oct. 1888. Paraphed D. G. Dep. P. S. C.



## SCHEDULE No. 117.

RECORD.

*In the  
Superior  
Court*

No. 84.

Copy of Pro-  
test, etc., at  
the request  
of A. Rough,  
Esquire, on  
the collector  
of customs,  
at the Port of  
Coaticooke  
and the De-  
partment of  
customs of  
Canada, by  
John Fraser  
N. P. dated  
25th October  
1883.

On the twenty-fifth day of October in the year of Our Lord one thousand eight hundred and eighty-three.

At the special instance and request of Andrew Rough, of the City of Montreal, in the District of Montreal, gentleman.

10 I. JOHN FRASER, the undersigned Notary Public, duly admitted and sworn in and for the Province of Quebec in the Dominion of Canada and residing at the Village of Coaticooke, in the District of St. Francis in said Province, proceeded to the office of the Collector of Her Majesty's Customs at the Port of Coaticooke situate in the said Village of Coaticooke and then and there being and speaking to William S. Williams of the said Village of Coaticooke, Esquire, Collector of Customs at the said Port of Coaticooke did signify, declare and make known unto the said Collector of Customs at the said Port of Coaticooke and the Department of Customs of the said Dominion of Canada as follows :

20 That whereas on the sixth day of October instant the said Andrew Rough was the owner of a certain Beet Root Sugar Factory at the said Village of Coaticooke together with all machinery and plant forming part thereof and connected therewith as having acquired the same by purchase from the Eastern Townships Bank who had on the twelfth day of January last become the purchasers of the same at the public sale adjudication thereof by the Sheriff of the said District of St. Francis in the cause in the Superior Court in the said District of Montreal wherein Fairbanks & Company were Plaintiffs, The Pioneer Beet Root Sugar Company Defendants after due and public advertisement and notice of such sale had been given in the manner required by law :

30 That whereas on the said sixth day of October instant the said William S. Williams in his quality of Collector of Customs at the said Port of Coaticooke seized and attached the machinery in said factory for the non-payment of duties alleged by him to be due thereon and still holds the same under seizure :

That whereas the said machinery had long previous to the seizure thereof and previous to said twelfth day of January last become incorporated with and apart of the real estate of the said Beet Root Sugar Factory and the said machinery was than and is now unmoveable property and it cannot be removed or detached from the buildings of the said factory without the complete destruction of the said factory and buildings ;

40 That the said machinery having been sold at Sheriff's sale as aforesaid and without opposition on the part of any person or persons soever any claim lien or privilege which might have existed and been exercised in respect to such machinery in favor of any and all parties soever was by the said sale by the Sheriff completely extinguished ;

That the said Department of Customs of the Dominion of Canada and the said Collector of Customs at the said Port of Coaticooke had due notice and were well aware of the said Sheriff's sale and did not fyle either before or at the time thereof any opposition thereto ;

That if there were any duties due to the said Department of Customs in respect of the said machinery the sale of the said machinery by the Sheriff of

RECORD.

*In the  
Superior  
Court*

No. 84.  
Copy of Pro-  
test, etc., at  
the request  
of A. Rough,  
Esquire, on  
the collector  
of customs,  
at the Port of  
Coaticooke  
and the De-  
partment of  
customs of  
Canada, by  
John Fraser  
N. P. dated  
25th October  
1883.

—Continued.

the said District of St. Francis as aforesaid completely cancelled and obliterated the same in so far as the purchasers were concerned and gave to them a free and perfect title to the said machinery ;

That if the said Department of Customs had intended to claim any right, title or interest in or here or privilege upon the said machinery they were bound to have declared the same by opposition setting forth their right and filed with the Sheriff consenting the said sale and having failed to file such opposition the said Department of Customs and the said Collector of Customs of the said Port of Coaticooke have been by the said sale by the Sheriff of the said District of St. Francis deprived of any and all rights title, and interest in and liens and privileges upon the said machinery, and the said machinery is now the sole and absolute property of the said Andrew Rough free and clear of any and all rights, title, claim, interest, privileges or liens for customs duties thereon which the said Department of Customs or the said Collector of Customs might have had exercised upon or in respect of such machinery had the said Sheriff's sale thereof not taken place.

That inasmuch as the said Department of Customs and the said Collector of Customs had as aforesaid permitted any right, title, claim, interest, privilege lien which they may or might previously have had in or upon the said machinery to be cancelled and extinguished by the said Sheriff's sale thereof the said seizure and attachment of the said machinery in the possession and ownership of the said Andrew Rough under Sheriff's title as aforesaid, made by the said Collector of Customs and still hold in by him for duties claimed thereon was and is illegal arbitrary and oppressive and has caused is causing and will continue to cause to the said Andrew Rough great inconvenience loss and damage.

Wherefore I, the said Notary, at the request and speaking as aforesaid have protested as by these presents I do solemnly protest against the said Department of Customs and the said Collector of Customs at the Port of Coaticooke and all others whom it shall or may concern for on account of all losses, costs, damages and interests suffering and to be suffered by the said Andrew Rough in and by reason of the premises.

And I, the said Notary at the special instance and on the behalf of the said Andrew Rough did at the same time speaking as aforesaid, as by these presents I do claim the said machinery by the said Collector of Customs at the Port of Coaticooke seized and attached as aforesaid, for the said Andrew Rough as proprietor and owner of the same free and clear from all or any right, title, claim, interest, privilege or lien soever thereon for customs duties, and demand the immediate release of the said machinery from the seizure and attachment thereof made by the said Collector of Customs at the Port of Coaticooke on the said sixth day of October instant—Notifying the said Collector of Customs at the Port of Coaticooke and the said Department of Customs of the Dominion of Canada and all others whom it shall or may concern that in case of refusal or neglect on the part of them or either or any of them to comply with the foregoing demand, the said Andrew Rough will hold them liable and responsible to him for any and all losses, costs, damages and interests suffered and to be suffered by him by reason of such refusal or neglect.

10

20

30

40

To all which the said William S. Williams, Collector of Customs at the Port of Coaticooke made answer "I do not recognize Mr. Rough as the owner of the machinery and I refuse to release it from seizure without payment of the duties claimed upon it and further, at the time of the Sheriff's sale the parties purchasing were fully cognizant of the claim of the Government as I notified them myself"

Therefore I, the said notary, taking such answer for a refusal have persisted as by these presents, I do persist in all the foregoing notifications, protestations and requisitions.

10 Thus done, protested and signified at the said Village of Coaticooke on the day and year first above written to remain recorded in the office of me said Notary under the number two thousand nine hundred and ninety an authentic Notarial Copy of these presents after due reading hereof having been then and there left with the said William S. Williams, speaking as aforesaid so that of the premises ignorance may not be pleaded.

(Signed) JNO. FRASER, N. P.

A true copy of the original hereof remaining of record in my office.

JNO. FRASER, N. P.

20

(On the Back)

No. 2990. Protest etc., at request of Andrew Rough Esq., on the Collector of Customs at the Port of Coaticooke and the Department of Customs of Canada. 4th copy.

(ENDORSED)

30 Plaintiff's Exhibit A. R. fyled at enquête 26th Oct. 1888. (Paraphed)  
D. G., Dep. P. S. C.

SCHEDULE No. 118.

S. W. BEARD, Esq.,  
City.

28 Dec'r. 82.

40

Dear Sir,

1198 Fairbanks & Pioneer Beet Root Sugar Co.  
S. C. M.

In this case we beg to acknowledge receipt of promissory note for two hundred and nine. 86 dollars made by you endorsed by A. Lomer in consideration of which we transfer you the judgment & costs in the above case, you

RECORD.

In the  
Superior  
Court

No. 84.

Copy of Protest, etc., at the request of A. Rough, Esquire, on the collector of customs, at the Port of Coaticooke and the Department of customs of Canada, by John Fraser N. P. dated 25th October 1883.

—Continued.

No. 85.

Copy of letter from Church, Chappleau, Hall and Atwater, to S. W. Beard, City, dated 28th December 1882.

RECORD. however not to put any further costs against our client.

*In the  
Superior  
Court*

We also have your cheque for fifty-three. 15 dollars to settle costs of judgment & writ de bonis you to settle for balance with Sheriff. You will take further charge of the Execution de terris and give what instructions you wish to the Sheriff who is hereby authorized to receive them from you.

Yours &c.,

(Sig'd) CHURCH, CHAPLEAU, HALL & ATWATER.

No. 85.  
Copy of letter  
from  
Church, Cha-  
pleau, Hall  
and Atwater,  
to S. W.  
Beard, City,  
dated  
28th  
December  
1882.

(ENDORSED.)

Plaintiff's Exhibit A. S. fyled at Enquête 26th Oct. 1889. (Paraphed)  
D. G., Dep. P. S. C.

10

—Continued.

SCHEDULE No. 120.

20

IN THE SUPERIOR COURT FOR LOWER CANADA.

No. 86,  
Deposition of  
Samuel W.  
Beard for  
Plaintiff, da-  
ted 26th Oct.  
1888.

Present :—

THE HON. MR. JUSTICE TASCHEREAU.

On this twenty-sixth day of October, in the year of Our Lord one thousand eight hundred and eighty-eight, personally came appeared : Samuel W. Beard, of the City of Montreal, Merchant, aged forty-eight years, witness produced by the Plaintiff, who, being duly sworn, deposes as follows : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit :

30

Q. Prior to the Sheriff's sale of the property of the Pioneer Beet Root Sugar Company in January 1883 had you had any connection with that property, or know anything of it ?

A. Yes, I had a lease of it.

Q. When did you enter upon that lease ?

A. Sometime during the year previous.

Q. During 1882 ?

A. Yes, I think so.

Q. What month can you remember ?

A. I cannot remember, I think it was in the summer sometime.

Q. After that you become lessee of the property of the Company ?

A. Yes.

Q. And you were working it as lessee at the time of the Sheriff's sale ?

A. Yes.

40

- Q. You purchased the Judgment of Fairbanks and Company, under which this property was brought to sale ?
- A. Yes.
- Q. You purchased it from Messrs Church, Chapleau, Hall and Atwater, who were at that time Attorneys for Fairbanks and Company ?
- A. I think so. I think the transaction was made by them.
- Q. Will you produce the letter which was given you by them at the time of the purchase ?
- 10 A. I have not got it. I think it was filed in a previous case. I have not got any of the papers.
- Q. Have you made search for that letter ?
- A. I have not got any of them.
- Q. Will you look at the letter produced as A. S., and say if that is a copy of the letter that was given you ?
- A. I think that is a copy. I know there was some such letter as that passed.
- Q. The understanding was at the time when you purchased this judgment, that you were to take futur charge of it and give instructions to the Sheriff ?
- 20 A. Yes.
- Q. Did you give any instructions to the Sheriff ?
- A. I wrote to the sheriff asking him the position of the matter, and I suggested the probability that the sale would not take place. He replied stating that the sale would have to go on, as there had been some other executions lodged with him, and unless these were settled, Fairbank's judgment would not influence it.
- Q. Is it not a fact that before the sale that proceeding were taken to stop the sale and put the Company into liquidation at the instance of some the of principal creditors—Von Roofer and Company, particularly ?
- 30 A. The company was in difficulty, and people were getting restless about the amounts due them, but I don't think any steps had been taken in that view.
- Q. You are sure there were none ?
- A. I won't be sure, but I don't remember at the moment there were any steps taken.
- Q. Don't you recollect that an application was made to the Court of the District of St. Francis at Sherbrooke for an winding up order against this company, just before the sheriff's sale ?
- A. It may have been so, I don't remember.
- 40 Q. Do you recollect that an application was also made on the day before the day fixed for the sheriff's sale for an ordering of the Court suspending the sale until proceedings for an arranging up order could be completed ?
- A. I don't remember.
- Q. Don't you remember employing or retaining Mr. Atwater to go out to Sherbrooke to oppose an application of the nature that I have just mentioned and instructing him to resist, in every way, any application to stay that Sheriff's sale ?

RECORD.

—  
*In the  
 Superior  
 Court*  
 —

No. 86.  
 Deposition of  
 Samuel W.  
 Beard for  
 Plaintiff, da-  
 ted 26th Oct.  
 1888.

—Continued.

- RECORD.
- In the Superior Court.*
- No. 86.  
Deposition of Samuel W. Baird for Plaintiff's dated 26th October 1888.  
—Continued.
- A. I remember arranging with you (Mr. Atwater) to go out, I forget what was the nature of the proceedings. There was something of that kind.
- Q. Did you not represent that you feared that the Sheriff's sale would be stopped?
- A. It may be.
- Q. Is it not a fact?
- A. I won't swear so. I don't remember sufficiently about it, it is four years ago and I cannot remember.
- Q. You remember sending Mr. Atwater out?
- A. Yes, but I don't remember the nature of the business. 10
- Q. Don't you remember that it was urgent and pressing?
- A. Yes, I suppose so, or I would not have arranged for you to go out and I had quite forgotten it until just now.
- Q. Don't you remember that you insisted upon Mr. Atwater going out on that night, saying, that the Petition was going to be presented in the morning and that it had to be attended to?
- A. I don't remember that.
- Q. Don't you remember giving Mr. Atwater a letter of introduction to Mr. Farwell of the Eastern Townships Bank?
- A. No, I don't remember that. It may be so, but I don't remember. 20
- Q. You would not be prepared to deny it?
- A. No, I don't remember it at all.
- Q. Don't you remember that Mr. Abbott was going out on the same night after the Von Roofers, to endeavor to get an order to stay this Sheriff's sale?
- A. I think you told me so.
- Q. Did you not find it out and go and tell me that?
- A. I don't remember that at all. I remember you saying that Mr. Harry Abbott was going out, but I don't remember the circumstances.
- Q. At all events you were anxious that time that that Sheriff's sale should go on? 30
- A. I think so. I won't be sure. I forget very much about that. I did not take much interest in it lately.
- Q. But you took a very lively interest at that time?
- A. Yes, a considerable interest in it at that time.
- Q. It was you that induced Mr. MacDougall to go into this, was it not.
- A. No.
- Q. You are the Mr. Beard that went and made arrangements with Mr. Farwell to buy the property? 40
- A. Yes.
- Q. You arranged to take this property for the amount, whatever it might be, that the Eastern Townships Bank claimed against the Company.
- A. I was not aware at the time what the Eastern Townships Bank claimed, but I thought if the property could got for what their claim was, it would be a very good bargain, and I acted on that supposition.
- Q. So you thought that you would make a bargain if you could manage

- to get the property for the amount of the Eastern Townships Bank's claim ? RECORD.
- A. Yes.
- Q. And you represented this before Mr. McDougall ?
- A. Yes.
- Q. And induced him to go in ?
- A. Yes, after the thing was done, though, after I had got the arrangement with Mr. Farwell I then told Mr. MacDougall what had been done.
- Q. Did not Mr. Farwell stipulate that Mr. MacDougall should go in.
- A. Yes, but I don't think Mr. MacDougall knew anything about what
- 10 arrangement I was trying to make.
- Q. When you went out to see Mr. Farwell, did not he stipulate that you should have some responsible man behind you to assist you ?
- A. Yes.
- Q. And you suggested Mr. John MacDougall ?
- A. Yes.
- Q. And you went in with Mr. MacDougall ?
- A. Afterwards.
- Q. After the first interview, or before the Sheriff's sale ?
- A. Yes, but he did not know anything about it at the time I negotiated
- 20 with Mr. Farwell.
- Q. That was the first time ?
- A. During the negotiations, I don't think Mr. MacDougall knew anything about the particulars of what we were trying to arrive at.
- Q. And after you did make these arrangements with Mr. Farwell you came to Montreal and proposed the scheme to Mr. MacDougall ?
- A. Yes. I must have proposed it to him before he went into it.
- Q. And Mr. MacDougall consented ?
- A. After the thing was all arranged.
- Q. After you had made the arrangement with Mr. Farwell ?
- 30 A. Yes. But I think his idea of the Pioneer Beet Root Sugar Company was very much less than it turned out to be. I had no idea the claim was as big as it was.
- Q. You accepted the claim for what it was, you agreed to take it for whatever the claim might be. That was your arrangement with Mr. Farwell ?
- A. Yes. The arrangement was that the legitimate claim should be the amount that was to be paid for it.
- Q. Was that when the Great Eastern Townships Bank bought this property at the Sheriff's sale they were simply buying for your benefit ?
- A. I don't know that. They could not have forced me to go ahead
- 40 with it, but I could have forced him.
- Q. What do you mean: had you not made an arrangement to take over the property ?
- A. There was a preliminary discussion, and I got from Mr. Farwell the best terms I could. I did not give anything to Mr. Farwell, so far as I remember, to bind anybody.
- Q. Did not you tell Mr. Farwell you would take this property if he bought it at the Sheriff's sale ?

—  
In the  
Superior  
Court

—  
No. 86.

Deposition of  
Samuel W.  
Beard for  
Plaintiff, da-  
ted 26th Oct.  
1888.

—Continued.

RECORD.

—  
*In the  
 Superior  
 Court.*

No. 86.

Deposition of  
 Samuel W.  
 Baird for  
 Plaintiff's  
 dated 26th  
 October  
 1888.

—Continued.

A. There is a preliminary discussion always in making a bargain that perhaps is not always reduced to actual facts afterwards. There is always a good deal of discussion over a thing of that kind.

Q. Did not the thing crystallize itself into this; you were to take over the property from the Eastern Townships Bank if they bought it at the Sheriff's sale, for the amount of their claim?

A. The arrangement I made with Mr. Farwell for that property was that they would buy it in any way, and if he wanted it at the cost of their debt against the Company we were to have it. He could not have disposed of it.

Q. After he bought it at the Sheriff's sale, Mr. Farwell could not have 10 refused to give to you?

A. I would not have expected that he would. I don't know whether he could or not.

Q. Did not he pledged himself—did not he write you to that effect, before the sale came off?

A. Yes.

Q. Did you not write accepting his offer?

A. Yes. The letters will show.

Q. Do you remember having an interview with Mr. Doak, of Coaticooke, sometime in May 1883? 20

A. I had several interviews with Mr. Doak, I don't know exactly which one you refer to, some were pleasant and some were not.

Q. Do you remember having any interview with Mr. Doak in which you stated that you were to help the Hochelaga Bank in their action on the petition to set aside the sheriff's sale?

A. I don't remember that.

Q. You would not be prepared to say that no such interview had taken place?

A. No. I saw Mr. Doak several times. And we talked about various subjects. It may have been so, but I don't remember that. 30

Q. While you were lessee of these premises you were out there very often?

A. No. I was only out there once, I think, once or twice very seldom any way, but I would not confine myself to the number of times.

Q. Did you notice that they were posters on a portion of the building showing it was a bonded warehouse?

A. No. I don't remember that.

Q. You were intimately connected with Mr. Lomer in this business?

A. Yes.

Q. Mr. Adolphe Lomer was your brother-in-law, and Gerard Lomer 40 was your father-in-law?

A. Yes.

Q. Gerard Lomer had been the general manager of this company?

A. Yes.

Q. And Mr. Adolphe Lomer had something to do with it?

A. He was joint lessee with me.

Q. Mr. Gerald Lomer remained out there on the premises?



- A. I think so.
- Q. Was it not Mr. Gerard Lomer that brought in this German machinery ?
- A. He organized the Company and brought it in in that way.
- Q. He was general manager of the Company down to the time you took it up as lessee ?
- A. Yes.
- Q. Don't you know that this German machinery was brought in by Mr. Lomer in bond ?
- 10 A. I had no connection with the company at that time.
- Q. Did not Mr. Lomer tell you that ?
- A. I have no recollection. He may have done so, or he may not.
- Q. He kept you pretty well informed, did he not ?
- A. He talked a good deal sugar.
- Q. You had numerous conversations regarding the affairs of the Company from time to time ?
- A. Yes.
- Q. And you satisfied yourself pretty well before you undertook to take it ?
- 20 A. No, I was not satisfied at all but I unfortunately was dragged in in a way that I could not very well help.
- Q. But as a prudent man you looked into it before you bought it ?
- A. Unfortunately I was not a prudent man.
- Q. Who dragged you into the thing, was it Adolphe Lomer ?
- A. I got in any way, and I did not get out very easy either. I would like to have had you with me.
- Q. Did you know anything about these Von Roofers who sold this machinery ?
- 30 B. No. I have heard the name, that is all I know. That had a representative out here, a nice young man apparently, but he did not collect his bill any more than I did.
- Q. Referring to this matter of opposing the winding up proceedings, I would like you to remember if you can and say if it is not true that the Petitioner under the proceeding pending at that time, were proceedings to set aside this Sheriff's sale ?
- A. I had quite forgotten all about the circumstances of that until you called my attention to it I really don't remember what the nature of the proceedings were. It may be quite possible. If it is so, it must be a matter of record I cannot from memory tell you at present and I won't undertake to do so.
- 40 Q. But you were anxious that these proceedings, whatever they were, being taken out in Sherbrooke, should not succeed ?
- A. When I arranged with a first class counsel I expect I am serious about what I am doing.
- Q. You were anxious that these proceedings should not succeed ?
- A. The very fact of my arranging with you to go out shows that goes without saying.
- Q. And at that time, which was on the eleventh of January 1883, you

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—  
*In the  
 Superior  
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No. 86.

Deposition of  
 Samuel W.  
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 Plaintiff, da-  
 ted 26th Oct.  
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—Continued.

RECORD. had the matter arranged for the purchase of the property, with the Eastern Townships Bank ?

*In the  
Superior  
Court.*

A. Yes. I had Mr. Farwell's letter then.

CROSS-EXAMINED.

No. 86.  
Deposition of  
Samuel W.  
Baird for  
Plaintiff's  
dated 26th  
October  
1888.  
—Continued.

Q. After you saw Mr. Farwell at the bank, who conducted the proceedings at the Sheriff's sale for the Fairbank's case, had you anything to do with it after that, was it you or the Eastern Townships Bank ?

A. When I found there were several other judgments in the Sheriff's hands and the Sheriff wrote me that the sale would have to go on unless these judgments were settled. The bank took charge of the thing and whatever was done they looked after it. I did not take any more interest in it. 10

Q. Were you a creditor of the Pioneer Beet Root Sugar Company also ?

A. Yes.

Q. For what amount ?

A. A large amount, I forget exactly.

Q. Was it over ten thousand dollars ?

A. Yes. A large sum.

Q. The first time you saw Mr. MacDougall after your interview with Mr. Farwell of the bank, had you with you the letter written by Mr. Farwell, containing the proposition, or the agreement of the bank to sell out the proposition ? 20

A. If I remember rightly, I had two interviews with Mr. Farwell, one was preliminary to what passed at the last, I think, if I remember rightly, that I only acquainted M. MacDougall with what had been going on, after I got the letter. I remember it is some way like that. I may have said to him that I was negotiating, or some such thing, but I don't think I told him in what shape I was proposing to get it at all. He was a large creditor and he was often asking me about how the thing was shaping, and we had conversations in connection with it in that way, but I don't think, if I remember rightly, I don't think that I told him what I was trying to accomplish until after I got the letter. 30

Q. After you got the letter you told him the purport of the letter ?

A. Yes.

Q. Now I suppose you had not been sent there by Mr. MacDougall ?

A. I was not sent by anybody.

Q. He did not know anything about it ?

A. No. I had a talk with him and I sounded him several times to see if he would assist in case anything came of it, and I found he was favorable to a good speculation, as I always found him to be, and more than that, I don't think that we came to any understanding, until after the thing was arranged. 40

Q. But he knew nothing at all about them going to see Mr. Farwell ?

A. He may have known I was negotiating with Mr. Farwell, but as to what was proposed I don't think he knew anything at all about it until after the thing was accomplished. That is my present impression of what transpired.

Q. I think you stated before that the first time you spoke to Mr. Mac-

Dougall about this thing was after that interview with Mr. Farwell ?

A. I think that was that it was. I think it was after I saw Mr. Farwell that I told Mr. MacDougall what I had been trying to do, and Mr. MacDougall had been speaking of the conditions of sugar matters often. He was a large creditor, but in getting it into this shape I don't think he knew anything about it until after that letter.

Q. He knew nothing about your projects until after this letter ?

A. That is my present impression. I may have told him I was seeing Mr. Farwell, and Mr. Farwell had a large claim, and would probably get hold  
 10 of the property, and he may have suggested to see what Mr. Farwell would do or something of that kind. But my impression is that he did not know what arrangement I was trying to make with Mr. Farwell at all until after I had succeeded in getting the letter from him. That is my present impression.

Q. You were present at the Sheriff's sale ?

A. Yes.

Q. Did you see Mr. Williams the Collector of Customs there ?

Objected to as illegal.

Objection reserved.

A. I heard the witnesses evidence the other day and I was very much  
 20 surprised. There were two or three rooms in the place and I think that if I had seen this man, Mr. Williams, I would have known him. I don't know him at all, and I would know him if he had been there and made himself prominent at least I think I would have known him. I think if such a thing had occurred at the sale I might have been in another room, but I certainly have no recollection of ever seeing him, and it certainly would have been on my mind if I had. I heard another witness say it was in the office. I would not like to say it was not but so far as my recollection goes. I have no recollection of ever hearing it.

Q. There were several rooms there ?

A. There must have been two or three rooms I think, more than one  
 30 room any way.

RE-EXAMINED.

Q. You would not like to swear positively that this announcement was not made by Mr. Williams ?

A. No. But it might have been made without my hearing it, but I have no recollection of it and I think I would have heard it if it have been done in my hearing.

Q. You were present at the sale ?

A. Yes.

Q. And you went down to the Registrar's office before the sale com-  
 40 menced ?

A. I have an idea that I was up at the bank before the sale com-  
 menced.

Q. That is the Eastern Township Bank at Coaticooke ?

A. Yes.

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*In the  
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Deposition of  
Samuel W.  
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—Continued.

Q. And did you go down with Mr. Austin ?

A. I think Mr. Austin, Mr. Farwell and myself came down together to the sale.

Q. You got there in good time before the sale commenced ?

A. Yes. I don't think the sale had commenced. I think Mr. Austin and Mr. Farwell were discussing the amount of the account, the amount that that letter was to carry, we had not been settled at that time. They had only arrived at the points of it, and I think they were discussing that.

Q. You say you went down to the sale with Mr. Austin and Mr. Farwell ?

A. I think so. I know I was in the bank previously and I think probably we came out together, My impression is we came down together.

Q. You wanted to see that the sale came off all right ?

A. I was out there on that business

Q. You went out on purpose to see the sale ?

A. I went out there for that purpose.

Q. Do you remember Mr. Doak being there ?

A. Yes.

Q. Do you remember having any conversation with Mr. Doak ?

A. If he was there I would probably have something to say to him. I don't remember any particular conversation. 10

Q. Don't you remember when the announcement was made by Mr. Williams at the sale spoke to Mr. Doak ?

A. I don't remember that.

Q. Would you swear you did not ?

A. As I told you I have no recollection of it, and I was very much surprised the other day to hear the witnesses mention it, I won't be certain of anything, but I have no recollection at the moment of this man Williams.

Q. Will you swear you never made any remark to Mr. Doak or any one else upon that matter when Mr. Williams made that announcement ? 10

A. No, I won't say so.

Q. You won't say you did not.

A. No. It is four or five years ago and won't say one way or another but I have no recollection.

Q. You would not be prepared to deny it ?

A. He may have come up and be the scarecrow that he said he would be but I did not see that scarecrow there.

Q. This letter exhibit A. H. is in your handwriting and your signature ?

A. Yes that is my handwriting.

Q. It was written on January thirteenth ? 40

A. It seems to be.

Q. What do you mean by the following : "the E. T. Bank having purchased that property of the P. Beet Sugar Co. at Coaticooke, please keep the policies valid for the bank subject to the interest of Mr. J. MacDougall ?"

A. It was represented to us that unless the Insurance Companies were notified, if a fire occurred the policies would be voided.

Q. So that you asked the Eastern Townships Bank after the Sheriff's

sale to notify the Insurance Companies to hold this insured subject to Mr. MacDougall's interest ?

A. I see no reason of that being addressed to Mr. Farwell except it was he that called my attention to these insurance policies and suggested the sending of somebody from Sherbrooke to have them rearranged, and I would not be surprised if that was done under his suggestion.

Q. You would not swear that ?

A. I would not swear it was not. I am very much inclined to think it was.

10 Q. You would not swear it ?

A. I would not swear it was not.

Q. Is not the meaning of that clause, a request to the bank to keep the property insured subject to Mr. MacDougall's interest, a week before you purchased the property ?

A. It is alright, of course, subject to Mr. MacDougall's interest if we were going on with it we did not want to have it unless somebody was going to pay for it.

Q. Do you know whether that was done whether the companies were notified to that effect ?

20 A. I don't know. I know that Mr. Farwell telegraphed to a party at Sherbrooke to come in and take the thing in hand, and I think somebody did come in.

And further deponent saith not.

WILLIAM MCGOUN,  
Stenographer.

(ENDORSED).

30 Deposition of Samuel W. Beard for Plaintiffs, filed 26 Oct. 1888, 20 May 1889. Paraphed A. B. L.

SCHEDULE No. 121.

IN THE SUPERIOR COURT FOR LOWER CANADA,

40 Present :—

The Hon. MR. JUSTICE TASCHEREAU.

The Eastern Townships Bank.....Plaintiff,

vs.

Andrew Rough, et al.....Defendants.

On this fifth day of October, in the year of Our Lord one thousand

RECORD.

In the  
Superior  
Court

No. 86.

Deposition of  
Samuel W. |  
Beard for  
Plaintiff, da-  
ted 26th Oct.  
1888.

—Continued.

No. 87  
Deposition fo  
Andrew  
Rough for  
Plaintiffs  
dated 5th  
Oct 1888.

- RECORD. eight hundred and eighty eight personally came and appeared : Andrew Rough, of the City of Montreal, Book-keeper, aged sixty years, and witness produced on the part of the Plaintiff who, being duly sworn, deposes and saith : I am one of the Defendants.
- In the Superior Court.*
- No. 87.  
Deposition of Andrew Rough for Plaintiff, dated 5th Oct., 1888.  
*Continued.*
- Q. You are the Mr. Rough, who signed the deed of sale in this cause ?
- A. Yes.
- Q. At that time you were in the employ of Mr. John MacDougall ?
- A. Yes.
- Q. And in signing the said deed, is it not a fact that you acted as Mr. MacDougall's Prête-nom. 10
- A. Yes.
- Q. And on his behalf.
- A. Yes.
- A. Any moneys that were paid in part execution of that deed were Mr. MacDougall's ?
- A. Yes.
- Q. Have you any written undertaking from the Eastern Townships Bank of the nineteenth of January 1883, and if so, will you produce it ?
- Objected as illegal.
- Question withdrawn. 20
- A. I now produce it. As Plaintiff's exhibit A. B. It was given to me at the time of the sale by Mr. Farwell.
- Q. Will you look at the letter Plaintiff's exhibit A. C., and state if the same is signed by you ?
- A. Yes. That is my signature.
- Q. And whose handwriting is the body of that letter in ?
- A. I cannot tell you.
- Q. Is it not Mr. Beard's ?
- A. It looks very like his
- Q. This refers to the same transaction as this letter A. B ? 30
- A. Yes.
- CROSS-EXAMINED BY MR. BROSSEAU.
- Q. Will you state how you acquired this bone black, bone dust and cord-wood ?
- A. The document you have in your hand describes bone black, but I don't think it describes fire wood. This amount was paid to Mr. Doak in order to pay for certain claims belonging on the old company which were unpaid I gave a draft to Mr. Doak for twenty-four hundred dollars or something, and he received the money for it, and I suppose paid of the old claims.
- Q. That was paid altogether outside of the price for the lots ? 40
- A. Outside altogether.
- Q. Please take communication of a writing dated twenty-second of February 1883 signed G. O. Doak and filed as exhibit A2, of Defendant's, and say if that refers to it and say if that was the same transaction altogether ?
- A. Yes.
- Q. Is this the same bone black as is mentioned in the letters which were filed as AB and AC ?

A. I could not locate where the bone black was, I never have seen it. Our agent Mr. Lee had charge at the office at Coaticooke.

Q. Was all the bone black which was at Coaticooke included in this purchase ?

A. I could not say.

Q. Was it in the agreement ?

A. I understand so. I don't believe we were ever called upon to pay the Eastern Townships Bank what is contained in that letter. I don't remember having seen any letter to that effect, there might have been one.

10 Q. Are you aware if the Hochelaga Bank has taken an action to get this bone black back ?

A. I understood when I was examined, in what we called Fairbank's case there was something came up about that, some three years ago, that they had a lien on some bone black.

Q. Look at this document, the answer to plea, and say if they have not sued you for it ?

A. Yes, that seems to be correct.

RE-EXAMINED.

20 Q. This agreement you have spoken of as Defendant's exhibit number two, is dated the twenty-second of February ?

A. Yes.

Q. Are you aware that there were two lots of bone black there, one which was claimed by the Hochelaga bank on the warehouse receipt, and the other lot was included, and spoken of, in these letters filed as exhibits A B and A C ?

A. I am not aware particularly. I cannot tell really where they were located I never saw it.

Q. I am asking you: Are you aware that certain portions of the bone black were held by the Hochelaga bank ?

30 A. Yes.

Q. And it was on account of that, that an action was taken against you by the Hochelaga bank ?

A. Yes.

Q. Was there not another lot than the lot spoken of in A B and A C ?

A. There seems to be.

Q. You say you gave a cheque for twenty-four hundred dollars to Mr. Doak ; was not that to obtain this lot that was held as collateral by the Hochelaga bank, and the other material in this agreement held by the Hochelaga bank ?

40 A. It is mentioned there how many tons.

Q. Mr. Doak would know all about it ?

A. I should say so.

Q. Are you not aware that the bank realized on that bone black and placed it to your account ?

A. I never saw anything of it, not to my knowledge, it may have been done.

Q. Will you look at the letters now filed as A D and A F, and say if

RECORD.

In the  
Superior  
Court

No. 87  
Deposition for  
Andrew  
Rough for  
Plaintiffs  
dated 5th  
Oct 1888.  
—Continued.

RECORD. they are Mr. Beard's ?

A. Yes.

*In the  
Superior  
Court.*

Q. Do they refer to the same bone black as referred to in the letter of the nineteenth of January ?

A. I think so.

No. 87.  
Deposition of  
Andrew  
Rough for  
Plaintiff, da-  
ted 5th  
Oct., 1888.  
*Continued.*—

Q. Look at the letter of the twelfth of February, Exhibit A3, and say if this is your letter.

A. Yes, that is my writing.

Q. And the reference in that letter to Mr. Beard's letter has reference to the same matter ?

A. Yes.

10

## RE-CROSS-EXAMINED.

Q. Are these facts to your personal knowledge.

A. I remember very well from looking at the letters that there was a demand made by the bank, if I remember rightly of four thousand dollars, and it dwindled down to four hundred dollars. It was not paid, but for what reason, I cannot tell. I do not see any charge made of four hundred dollars paid to the bank for that purpose.

20

Q. Do you remember having been put in possession of any other bone black but the one referred to in Mr. Doak's bill of sale ?

A. I don't remember, because I was not cognizant of the fact not being there, I did not know where the bone black was.

Q. What quantity did you buy from Mr. Doak ?

A. Sixty-five tons.

Q. Do you know, as a matter of fact, how much bone black there was on the property ?

A. I could not say.

Q. Where you ever there on the property yourself ?

30

A. I was there once.

Q. When was that ?

A. On the twenty-fourth of February 1883.

Q. Did you see any bone black on the property then ?

A. I did, but I could not tell you what part of the building it was. There are two or three buildings belonging to the property. I did not take any notice.

Q. Do you remember having seen more than one lot of bone black ?

A. I could not say.

Q. This amount was paid, the price of the sale of the bone black ?

40

A. Yes.

Q. Did you sell that bone black ?

A. Yes.

Q. How much did it bring ?

A. It brought twenty dollars a gross ton delivered in Montreal. I think that was the figure that we got.

Q. What was the net price ?



A. I suppose that each car load would cost about two dollars and fifty cents a ton I think that was the charge if I mistake not, so that would be seventeen dollars and fifty cents a ton.

Q. How many tons did you sell, have you got a memorandum of that?

A. No, I have not got a memorandum of that.

Q. Could you say whether you sold more than sixty-five tons?

A. Yes, I could easily say.

Q. Will you make up a statement of what you have sold of the bone black, and file it?

10 A. I will.

Q. I suppose that statement would have been all the bone black in which you were in possession of?

A. Yes.

Q. You have sold all the bone black that was delivered to you?

A. Yes.

Q. That statement would show all the bone black that was delivered?

A. Yes.

And further deponent saith not.

WM. MCGOUN,  
Stenographer.

20

(ENDORSED).

Deposition of Andrew Rough for Plaintiff fyled 5th Oct. 1888. 20 May 1889. Paraphed A. B. L.

RECORD.

In the  
Superior  
Court

No. 87

Deposition fo  
Andrew  
Rough for  
Plaintiffs  
dated 5th  
Oct 1888.

—Continued.

30

SCHEDULE No. 122.

IN THE SUPERIOR COURT FOR LOWER CANADA.

Present :—

THE HON. MR. JUSTICE TASCHEREAU.

40 On this twenty-sixth day of October in the year Our Lord one thousand eight hundred and eighty-eight, personally came and appeared : George O. Doak of Coaticooke, in the Province of Quebec, Esq. Advocate aged years witness produced by the Plaintiff who, being duly sworn, deposes as follows :—I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. You were practising as Attorney and Advocate at Coaticooke during 1881 and 1882 ?

A. I was.

No. 88.  
Deposition of  
George O.  
Doak for  
Plaintiff  
dated 26th  
Oct 1888

- RECORD. Q. You are at present the Collector of Customs at the Port of Coaticooke ?
- In the Superior Court.* A. I am.
- No. 88. Q. In what capacity were you acting for the Eastern Townships Bank in the transaction between them and Mr. MacDougall and Mr. Beard ?
- deposition of George O. Doak for Plaintiff dated 26th Oct. 1888 *Continued.* A. I was acting as counsel for the bank at Coaticooke.
- Q. Were you present at the Sheriff's sale of the property in this cause ?
- A. I was.
- Q. Was Mr. Beard there ?
- A. He was. 10
- Q. Do you know if any statement was made at that sale on behalf of the department of Customs ?
- A. Mr. Williams the then collector of Customs read a notice forbidding the Sheriff's sale of the property, just before the bidding commenced.
- Q. Did he read that out publicly and loudly ?
- A. Yes.
- Q. How did he say it, in such a way as to attract attention ?
- A. Yes. I think every one in the room heard it.
- Q. Do you remember Samuel W. Beard, one of the Defendants in this cause, being there ? 20
- A. Yes.
- Q. Did he hear that remark ?
- A. Certainly he did.
- Q. Was he near you at the time ?
- A. Yes, we were all there together.
- Q. Did he address any remark to you with regard to it ?
- A. Yes. He spoke to me after Mr. Williams had read the announcement, and wanted to know what effect I thought it would have.
- Q. The sale went on just the same ?
- A. Yes. 50
- Q. This Sheriff's sale was on the twelfth of January 1883 ; do you know if any proceedings were taken before that on behalf of any creditors to stay this Sheriff's sale ?
- A. I know a large creditor, Von Roofer, who furnished the German machinery applied for an order from Judge Brooks at Sherbrooke to stay the sale under the winding up act.
- Q. What day was this application made ?
- A. It was the day previous to the sale.
- Q. Was that opposed ?
- A. Yes on behalf of the Plaintiffs in the case of Fairbanks and Com 40 pany, by Mr. Atwater.
- Q. And the application was made by whom ?
- A. By Mr. Abbott on behalf of Von Roofer.
- Q. And Mr. Atwater on behalf of the Plaintiff opposed it ?
- A. Yes.
- Q. And the application was rejected ?
- A. Yes.

Q. And the sale was ordered to go on?

A. Yes.

Q. Do you know who employed Mr. Atwater to oppose this application to stay the sale?

A. I met Mr. Beard at Coaticooke the next day, and he told me he had sent Mr. Atwater out from Montreal for that purpose.

Q. For the purpose of opposing the application to stay the sale?

A. Yes.

Q. That is Mr. Beard, one of the Defendants?

10 A. Yes. He was examined here to-day.

Q. So that the application was really opposed by the Defendant Beard?

A. Yes.

Q. You revised, did you not, the notarial deeds of sale and suretyship in favor of the bank?

A. I looked over the drafts at the time they were made and made some corrections.

Q. You were in Montreal at the time the conversation took place between the parties?

20 A. Yes.

Q. Do you know if Mr. John McDougall had been a director of the Pioneer Beet Root Sugar Company?

A. Yes.

Q. For how long a time?

A. I think he had been nearly a year. I think he was elected at the February meeting in 1882, if I remember rightly. I cannot state positively.

Q. For some time he had been a director of the Company?

A. Yes.

30 Q. Do you know from your personal knowledge, whether he took an interest in the affairs of the Company?

A. Well, I knew that he knew how the Company was going on. He was one of the directors.

Q. Something has been said with reference to an action and judgment taken by the Eastern Townships Bank against the Company; have you any means of knowing whether Mr. John MacDougall knew of the existence of that judgment after it was registered?

A. Yes. I know from what he told me he was aware of it immediately after it was registered.

40 Q. That is, he told you himself that he was aware that the judgment had been taken and registered immediately after it was registered?

A. He told me that, I think, at my first interview with him, preceding the execution of the deeds.

Q. That is before he had actually signed the deed?

A. Before he had taken the transfer.

Q. Before the deeds were signed?

A. Yes.

Q. You were conversing with him about it?

RECORD.

—  
*In the  
 Superior  
 Court.*

No. 88.  
 Deposition of  
 George O.  
 Doak for  
 Plaintiff  
 dated 26th  
 Oct. 1888  
*Continued.*

A. Yes. After this judgment he took credit to himself for its not having been opposed. Some of the creditors wanted to oppose this judgment and he said he did not see that there was any object in it, the amount was actually due, and the bank was opposed to its being contested.

Q. That is, at the time it was first registered ?

A. Yes.

Q. So that the matter was known to himself and the other directors at the time ?

A. Yes, well known.

Q. Was the fact of that judgment known in Coaticooke where the 10 Company was situated ?

A. Yes.

Q. And was it spoken of ?

A. Yes, it was well known by every one that had any interest in the matter that ever I heard speak of the Company.

Q. You spoke of Mr. MacDougall taking credit for not having opposed it ; did he say anything more with regard to it ?

A. He said he opposed any action being taken to attack the judgment, and in consequence, it was not attacked.

Q. He knew you had been acting for the bank in taking that judgment ? 20

A. Yes.

Q. Did he say anything to you with reference to it, to your own action in the matter the action that the bank had taken ?

A. He said he thought they had a right to protect themselves so far as they could ; he would have done the same thing if he had the chance.

Q. How long is it since the department of Custom pretended to have a claim on any of the machinery there ?

A. The machinery was brought in by the Pioneer Beet Root Sugar Company in bond, and in order not to pay any duties upon it, the factory was constituted a bonded warehouse, and the usual Government sign was posted 30 up on the factory " Bonded Warehouse ".

Q. How long before the Sheriff's sale was that ?

A. I think the machinery was brought in in the summer of 1881.

Q. And these placards were put on a portion of the building at once ?

A. Yes.

Q. And it was perfectly apparent to everybody ?

A. Yes. It was brought in in bond the same as cotton machinery had been brought in.

Q. Did you ever see this notice that it pretended to be a bonded Warehouse, before the sale took place ? 40

A. Yes, it was along the public street.

Q. Do you know whether Mr. MacDougall, or Mr. Beard, knew of these Customs duties ?

A. I know Mr. MacDougall knew all about it.

Q. Do you know that from his own statement ?

A. Yes.

Q. Do you know if Mr. MacDougall has taken any steps to arrange

the matter with the Government on his own behalf ?

A. I know that he has been negotiating with them at different times, and in different conversations I have had with him previous to this. I know he was constantly in negotiation with them, and I remember the last conversation I had with him was to this effect : that his best plan was to let the Government keep the machinery, it had lost all its value, and to let them keep it and charge them rent for the building. If they claimed it was a bonded Warehouse he had never bonded it, and his titles to the building were certainly good and if they wanted to claim it for a Bonded Warehouse, they could not refuse to pay him  
 10 rent, and he would get more out of the rent than he could possibly get out of the machinery in its present condition.

Q. This claim of the Government has been existing ever since the property was brought up at Sheriff's sale ?

A. Yes.

Q. Was there any sort of seizure ?

A. There was a seizure put upon the property by the Government in the fall of 1883.

Q. Do you know whether Mr. MacDougall or Mr. Rough or any one ever saw the Eastern Townships Bank with regard to this claim of the  
 20 Eastern Townships Bank ?

A. They never claimed that the Eastern Townships Bank had any thing to do with it at all.

Q. They were negotiating on their own account ?

A. Yes.

Q. Did Mr. MacDougall or Mr. Beard ever say anything to you with regard to the purchase of this judgment of Fairbanks ?

A. All that was said with regard to that was, Mr. MacDougall told me, that Mr. Beard had told him, that he had purchased this judgment under which the property was to be sold. As I understood it from Mr. MacDougall,  
 30 Mr. Beard entered upon his negotiations in the first place without his knowledge, and without his knowing anything about it, and after he had gone a certain distance, he found he required backing, and Mr. Beard came to him and told him what he had done, and asked him to join him, and he consented to do so.

Q. Did Mr. MacDougall say, at that time, that they thought they had the property cheap, or that they had paid too much for it ?

A. I don't know that he ever said anything with regard to that. He expected to float it, he told me, in Paris, through Mr. Senecal, who had purchased the Berthier Factory and the Farnham Factory, and he expected to  
 40 float the three of them, and he expected to get back eighty thousand dollars.

Q. The sugar industry was proved to be a failure in this country ?

A. Entirely a big failure.

Q. Do you know anything of the property there at present ?

A. Yes.

Q. Do you know that Mr MacDougall has been in possession of it ever since he has acquired it ?

A. Yes.

RECORD.

In the  
 Superior  
 Court

No. 88  
 Deposition of  
 George O.  
 Doak for  
 Plaintiff  
 dated 26th  
 Oct 1888  
 —Continued.

RECORD.

—  
*In the  
 Superior  
 Court.*  
 —

No. 88.  
 Deposition of  
 George O.  
 Doak for  
 Plaintiff  
 dated 26th  
 Oct. 1888  
*Continued.*—

Q. Has much of it been sold there ?

A. They have sold quite a large quantity of machinery that could be used for other purposes. I think they have sold all that could be sold for any purpose other than the sugar purpose.

Q. Nearly all ?

A. Nearly all, I think, that can be got out of the building, without the building being taken to pieces. A certain amount of the machinery could not be got out without taking the building apart.

Q. Referring to the filed statement, showing the value of the property sold, I would like to know what proportions that bears to the whole of the machinery in the building ? 10

A. I may say, I agree with Mr. Lee in regard to the sugar machinery. It is not worth a dollar to-day. No one would undertake to go into making beet sugar in this country ; and to knock the building down and take the machinery out, and get it into market, would cost more than could possibly be got for it.

Q. So nearly everything except the machinery for beet sugar has been disposed of ?

A. Nearly all.

Q. How much of the property has been rented there ? 20

A. I am president of the Coaticooke knitting Company, and we pay a certain proportion of the rental that is paid to Mr. MacDougall for the water power. And they have rented the farm for a small thing, it is not of any great value.

Q. Is that all the available properties that can be rented ?

A. That is all I think could be rented now. Of course, if the saw mill were rebuilt, it has nearly rotted, if it were rebuilt, it could be rented ; it is the most valuable part of the property. I don't see what the other places could be rented for at all.

Q. Did you know anything personally of the circumstances under which this arrangement was entered into between the Bank and Mr. MacDougall and Mr. Beard, how the amount of the purchased price was arrived at ? 30

A. I was not personally connected with that.

Q. You simply came in after ?

A. Yes, after they had arranged the price I came in.

Q. As collector of Customs, could this machinery, which is now in bond, could it have been re-exported to France and Germany without payment of duties ?

A. Yes, it could be taken out of bond to be re-exported. If there had been a market for it any where else it could be taken out and sold without paying duties. 40

Q. You have seen that protest that was put in evidence this morning ?

A. Yes, I saw it.

Q. That was prepared under your instructions ?

A. Yes.

Q. From whom did you receive the instructions to make this protest ?

A. From Mr. Lee Mr. MacDougall's agent at Coaticooke.

RECORD.

CROSS-EXAMINED.

*In the  
Superior  
Court*

No. 88

Deposition of  
George O.  
Doak for  
Plaintiff  
dated 26th  
Oct 1888

—Continued.

Q. You are the Mr. Doak that has been examined in the Hochelaga Bank case, are you not ?

A. Yes.

Q. You have acted as counsel for the Eastern Townships Bank all through this matter ?

10 A. Yes.

Q. And you are their counsel also in these cases, are you not ?

A. Yes, all together.

Q. And if the bank fails, you have got to reimburse a thousand dollars to the Eastern Townships Bank ?

A. No.

Q. That is according to a new agreement, since the institution of these actions ?

A. That understanding applied only to the other cases. It had nothing to do with these cases.

20 Q. Only to that of the Hochelaga Bank ?

A. Yes. It had no reference to those two cases at all.

Q. Does not the letter say that if the sale is annulled, Mr. Doak, that you will have to reimburse the one thousand dollars ; if the Sheriff's sale is annulled and set aside ?

A. I think that was a statement with regard to a previous case.

Q. Is not the meaning of the letter, any way, without referring to any case at all ?

A. No. It does not apply to these cases.

30 Q. Is it not a fact that when that letter was written that there was no action at all pending, not even on the part of the Hochelaga Bank case ?

A. That is the only action that has been taken to set aside the sale.

Q. It referred only to the question of the sale being set aside ?

A. Yes, that is all.

Q. The action of anybody ?

A. The action of anybody.

Q. When was this agreement changed ?

40 A. I will tell you. I don't know that it was ever changed. I have been acting in the cases for the last five years, and it was considered that it was wiped out, generally, and the obligation I gave them to refund the thousand dollars was surrendered to me sometime in the month of September last I don't remember the date.

Q. 1888 ?

A. Yes.

Q. Under a special agreement ?

A. There was no special agreement about it. It had been on the cases for five years and it was considered that it was cancelled long ago, so far as I remember.

- RECORD.
- In the  
Superior  
Court.  
—  
No. 88.  
Deposition of  
George O.  
Doak for  
Plaintiff  
dated 26th  
Oct. 1888  
Continued.—
- Q. There must have been some talk about it with somebody, otherwise it could not be cancelled ?
- A. Certainly.
- Q. What was the talk ?
- A. I don't remember the particulars of any talk. It was discussed that it had better be cleaned up.
- Q. Between whom was this discussed ?
- A. I think Mr. Atwater and myself. I have not any interest in this suit at all, but it did apply in the other case, as I stated to Mr. Beique.
- Q. Then this *pourparler* took place between Mr. Atwater about this claim being wiped out ?
- A. I don't know that there was any *pourparler* about it. It was simply discussed that it had better be wiped out that I had been in the case so long that it was surrendered.
- Q. By whom ?
- A. It was surrendered to me by the agent of the bank at Coaticooke, Mr. Austin.
- Q. Was there a letter to that effect ?
- A. No, he simply surrendered my undertaking that I would refund the one thousand dollars.
- Q. That writing was given back to you ?
- A. Yes.
- Q. Is it not a fact that this was done just for the purpose of allowing you to be examined in this case ?
- A. No, not in this case. It had reference entirely to the other cases.
- Q. To the Hochelaga bank case ?
- A. Yes.
- Q. And it was just to get your testimony admitted, it was for that purpose that it was done ?
- A. Of course, you can draw your own inference. The idea was, that it stood there, and it ought not to have stood there, because it was wiped out by services performed since, and that it was better that it should be cancelled before I gave evidence. There is nothing to conceal about it at all.
- Q. At whose suggestion was it wiped out ?
- A. Mr. Atwater's suggestion.
- Q. You said that you saw Mr. Beard after Mr. Williams had stated that the government had a claim ; did you state that ?
- A. I said that Mr. Beard was present when Mr. Williams made the announcement, in view of the Sheriff stating that he could not sell the property on account of the property on account of the government claim.
- Q. When Mr. Williams made that announcement can you swear where Mr. Beard was ?
- A. He was in the room with the rest of us where the sale was going on.
- Q. If Mr. Beard said that he did not hear that announcement are you prepared to say that he does not say the truth ?
- A. I am.
- Q. What makes you say that ?



A. He was standing close by me when Mr. Williams made the announcement, and spoke to me about it.

Q. Have you any particular reason for remembering that Mr. Beard was standing by you at that very moment?

A. Yes, I have. He spoke to me at the time.

Q. Do you remember what he told you at the time?

A. He asked me what effect that would have.

Q. That is just what makes you remember?

A. He was there all the time, we were talking together. He was particularly interested in having the sale go on, and it was just the same as any one that had a deep interest in it.

Q. Who conducted that Sheriff's sale: Is it not a fact that it was you, on behalf of the bank?

A. No.

Q. Had you any communication at all with the Sheriff about this sale, yourself?

A. I don't think I had any communication with him, before I filed an execution with him.

Q. What execution?

A. The execution upon that judgment of the Eastern Township Bank against The Pioneer Beet Root Sugar Company.

Q. Do you remember if you had any instructions from the bank to see the Sheriff about this sale?

A. I don't think I had. I don't think I did see him. I think I filed my judgment that was all.

Q. What was your object in filing your judgment with the Sheriff?

A. I wanted the sale to go on.

Q. That is in case the Fairbank case was settled that they would go on with the sale any way with your judgment; that was your object?

A. Yes.

Q. You don't remember if you had any communication with the Sheriff at all about it?

A. I don't think I had. I think I just filed my judgment with him in the ordinary way that any lawyer would do.

Q. Were you instructed by the bank to see that this sale should take place?

A. I don't know that I was specially instructed, any more than that I had charge of their action against the Pioneer Beet Root Sugar Company, and they were anxious that the property should be brought to sale because if it stood over long it would not be worth anything, and we were anxious that it should be brought to sale.

Q. And for that purpose you filed your judgment?

A. Yes.

Q. You said that you had seen Mr. MacDougall after the sale and that he told you that he knew of the judgment of the Eastern Townships Bank against the Pioneer Beet Root Sugar Company, after this judgment was filed?

A. Yes.

RECORD.

In the  
Superior  
Court

No. 88

Deposition of  
George O.  
Doak for  
Plaintiff  
dated 26th  
Oct 1888

—Continued.

RECORD.

Q. Did you inform him, at the time, of the way this judgment had been taken ?

A. He knew all about it. He told me he knew all about it.

*In the  
Superior  
Court.*

Q. How did this come that he told you he knew all about it ?

A. He said that he had got the information from Mr. Lomer the general manager of the Company.

No. 88.

Q. Only after the judgment was registered ?

Deposition of  
George O.  
Doak for  
Plaintiff  
dated 26th  
Oct. 1888  
*Continued.*—

A. Yes.

Q. How long before the sheriff's sale was the judgment registered ?

A. It was registered nearly a year I think. I think it was registered in February 1882 if I remember rightly. I don't remember the exact date, but it was in that vicinity. 10

Q. Was it in 1882 or 1883 that you saw Mr. MacDougall, and that he spoke on this subject ?

A. I did not see him until 1883. I never saw him at all until after the sheriff's sale.

Q. So it was after the sheriff's sale that he told you about this ?

A. Yes. He told me he knew of it immediately after it was registered

Q. Are you sure these were his expressions ?

A. Yes, he used that expression. 20

Q. I think you have said that there were some placards, or something of that kind, put on the buildings showing that the buildings were occupied as a bonded warehouse ?

A. Yes.

Q. Do you know if in 1882 these placards were there yet on the building ?

A. Yes, they were.

Q. You are sure of that ?

A. Yes.

Q. Are they there yet on the building ? 30

A. I could not tell whether they are there yet or not. I have not noticed particularly within the last year or two, but I know they were there for a long time.

Q. But you don't know how long they were there ?

A. I know they were after the sale.

Q. You say that Mr. MacDougall never contended that the Eastern Townships Bank had anything to do with the seizure ?

A. Not with the customs duties.

Q. But he never contended that he controlled either ?

A. He always in any conversation he had with me, said that he had to fight that battle himself. He never pretended that the bank was to take any hand in it, or had anything to do with it. 40

Q. Have you seen, or have you a list of the sundries &c. that were taken from the buildings and sold by Mr. McDougall ?

A. I have just glanced at it.

Q. What make you say that it was the best part that was sold by MacDougall ?

A. It was the part of the machinery that was applicable for other than beet sugar purposes, such as, ordinary engines and boilers, and piping, and that sort of thing.

Q. Besides the boilers for which the bank have the money: do you pretend to say it was the best part that was sold; is it not a fact that it was only things of small value that were getting deteriorated?

A. Oh no he sold I think two engines and a boiler of the engines to the knitting company I know of because I am president of that Company. And I think there was another engine sold to another party, and piping: that  
 10 was, of course good piping, and available in any building.

## RE-EXAMINED.

Q. The execution which you filed in the hands of the Eastern Townships Bank, was not the only execution?

A. No, there were several others.

Q. That is taken on behalf of other creditors?

A. Yes.

Q. Were any of these creditors, or representatives of these creditors  
 20 present at the sale?

A. Yes. I think a representative of the Goodyear Rubber Company was present.

Q. You said that the bank were anxious to have the property brought to sale; was Mr. Beard anxious also?

A. Mr. Beard was equally anxious. Both Mr. Beard and Mr. MacDougall and I think everybody connected with it, was anxious that it should be brought to sale.

Q. At the time of the sale you were aware that arrangements had to be entered into between the bank and Mr. MacDougall for the purchase of the  
 30 property if the bank bought it?

A. I was aware previous to the sale that the arrangements had been made. I saw Mr. Beard at the bank in company with Mr. Farwell, and I understood from them generally, what the understanding was.

Q. And the bank were acting under Mr. Beard's instructions

A. I understood they were buying the property in for Mr. Beard and MacDougall.

Q. Have there been a large quantity of the bricks sold from that place?

A. Yes, I have seen quite large quantity of bricks sold from the premises.

Q. Portion of the walls?  
 40

A. A portion of one wall, taken down to take out the engine and boiler, but the buildings themselves have not been taken down to be sold. The internal part of the building, the brick work could be taken down, and I think it has lately been taken down and the bricks sold. It has been completely dismantled as a sugar factory.

RECORD.

RE-CROSS-EXAMINED.

*In the  
Superior  
Court.*

No. 88.  
Deposition of  
George O.  
Doak for  
Plaintiff  
dated 26th  
Oct. 1888  
*Continued.*—

Q. I think you said you had not seen Mr. MacDougall until after the sheriff's sale ?

A. Yes.

Q. How can you swear that Mr. MacDougall was anxious to see that sheriff's sale go on, and Mr. Beard was anxious equally with the bank ?

A. I know from what he told me.

Q. Afterwards ?

A. Yes.

And further deponent saith not.

WILLIAM MCGOUN,  
Stenographer.

10

(ENDORSED)

Deposition of George O. Doak for Plaintiff. Fyled 26 Oct. 1888, 20th May 1889 (Paraphed) A. B. L.

20

## SCHEDULE No. 123.

## IN THE SUPERIOR COURT FOR LOWER CANADA.

Present :—

20

THE HON. MR. JUSTICE TASCHEREAU.

No. 89.  
Deposition of  
L. Beique for  
Plff, dated  
26th Oct.  
1888.

On this twenty-sixth day of October in the year of Our Lord one thousand eight hundred and eighty-eight, personally came and appeared : Frederick L. Beique, of the city of Montreal, Esq., Q. C. aged      years, witness produced by the Plaintiff, who, being duly sworn, deposes as follows : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q You were acting as Attorney for the Hochelaga Bank on the petition en nullité de décrêt against the Eastern Townships Bank ?

A. Yes.

Q. Did you go down see Mr. John MacDougall, one of the defendant in this cause, before bringing that action ?

A. Yes, I saw him a couple of times, I believe.

Q. You went there for the purpose of getting information on which to base this action on the petition en nullité de décrêt ?

40

A. I applied to Mr. MacDougall as I applied to other parties for the purpose of trying to find how it came that the property was sold for a trifle. For the purpose of posting myself as to the facts, and what occurred.

Q. Did Mr. MacDougall give you any information ?

A. Not anything of importance that I can remember.

Q. Did you get any statement from Mr. MacDougall as to his transactions with Mr. Farwell of the Eastern Townships Bank ?

10 A. I forget if it was through Mr. MacDougall, or otherwise, that I obtained the particulars which were mentioned in the notarial deed. I remember I found two deeds passed before Mr. Hetu, one sale to Mr. Rough, and one asked bond.

Q. The bond given by MacDougall and Beard to the bank ?

A. Yes. It is possible Mr. MacDougall may have told me that the deeds had been passed, but I may say to the best of my recollection, that I have no distinct recollection of it. Mr. MacDougall did not hide anything, he did not pretend to hide his transactions, or the amount that he agreed to pay.

Q. And he told you about the arrangement he had with the bank ?

Witness :—Before hand ?

Counsel :—Yes.

20 A. I cannot recollect. I cannot say.

Q. Did you see Mr. Beard at all.

A. I saw Mr. Beard only, to the best of my recollection, at the time he was examined. I may have seen him a day or two before, for the purposes of ascertaining what I could proved by him as we generally do with the witness.

Q. I mean before taking your petition ?

A. I am quite sure, I think I am warranted to saying I am positive, that I did not see Mr. Beard at all before taking the petition.

30 Q. One the reasons of that petition being made was, that there was a small judgment, and that judgment had been discharged previously by parties with the knowledge of the bank adjudicataire, now it was Mr. Beard that bought that judgment ; was it not he that gave you that information or Mr. MacDougall ?

A. I am quite sure I have not communicated with Mr. Beard. I do not recollect when Mr. MacDougall gave me the information, or how I came to make the alligation. It is possible that I made it on suspicion, though I do not pretend to have a distinct recollection. I have no doubt that if I asked Mr. MacDougall that he would have told me. He did not appear to be reticent at all on any of the facts that were to his knowledge, I knew Mr. MacDougall very well before hand.

40 Q. Did you see a statement at any time, or did Mr. MacDougall ever show you a statement that Mr. Farwell had a claim of the bank against the company ?

A. I think he did.

Q. Did Mr. MacDougall give you that information ?

A. I have no recollection as to whether it was Mr. MacDougall gave me that, but I don't see from whom else I could have got it.

Q. Mr. MacDougall was ready to give you any information he could ?

RECORD.

*In the  
Superior  
Court.*

No. 89.

Deposition of  
L. Beique for  
Plff, dated  
26th Oct.  
1888

---Continued.

A. He did not seem to be disposed to hide anything at all. As I say I knew Mr. McDougall for several years before.

Q. Did you tell Mr. MacDougall what your object was when you were contemplating taking this action for the Hochelaga Bank ?

A. I think I must have told him on the first occasion. To the best of my recollection, the first I saw Mr. MacDougall I approached him rather guardedly, but I am under the impression that I saw him a second time, and I think that I likely must have told him that we intended to ask to have the sale annulled. I would like to add, on reflection, I believe this statement referred to was obtained from Mr. Beard, I do not think it was obtained from Mr. Mac- 10  
Dougall. The memorandum of agreement between the Bank, Mr. Beard and Mr. MacDougall stated that in the case the bank bought the property they were to sell it to them for such a price, containing all collaterals held by the bank, and fixing the amount that was to be paid by MacDougall and Beard to an amount of some forty-four, or forty-five thousand dollars. I am now under the impression that I did not obtained that statement from Mr. MacDougall but I had obtained it from Mr. Beard. I think I obtained that after the petition was entered, or I may have obtained it, and it is likely it may have been delivered to me by Mr. Brais, the cashier of the bank, from whom I got it. I don't know but I think that is the way I got it. That is my recollection. 20

No Cross-Examination.

And further deponent saith not.

WM. MCGOUN,  
Stenographer.

(ENDORSED)

Deposition of Frederick L. Beique for Plaintiff. Fyled 26 Oct. 1888 20  
May 1889. (Paraphed) A, B. L.

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## SCHEDULE No 124.

In the Superior Court for Lower Canada.

Present :—

THE HON. MR. JUSTICE TASCHEREAU.

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No. 90.  
Deposition of  
Louis O. Hetu  
for Plaintiff,  
dated 26th  
Oct. 1888.

On this twenty-sixth day of October, in the year of Our Lord, one thousand eight hundred and eighty-eight, personally came and appeared :

Louis O. Hetu, Notary Public, aged fifty-four years, witness produced by Plaintiff, who, being duly sworn, deposes as follows : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. Are you the notary who passed the deed of sale which is fyled in this cause as Plaintiff's exhibit B, in the case 910 dated January nineteenth 1883 ?

A. Yes.

Q. Who gave you instruction to prepare that deed ?

A. I don't recollect now.

Q. Is it not a fact that you were acting for Mr. MacDougall in preparing that ?

A. I used to make some deeds for Mr. MacDougall from time to time.

Q. And for Mr. Beard ?

A. No. I dont recollect doing any for Mr. Beard.

Q. But you don't know exactly who gave you iastructions for that deed ?

A. No.

Q. You never prepared any deeds before for the Eastern Townships Bank, did you ?

A. I don't recollect. I don't think so.

Q. Do you know Mr. Farwell. the manager of the bank ?

A. I saw him, yes, several times.

Q. At a time subsequent to this Deed ?

A. Yes, and I used to see him before too.

Q. Not as a client ?

A. No.

Q. Do you know what you took your instruction from in preparing the description of the property described in that Deed ?

A. I suppose the title Deeds.

Q. Would you look at the Sheriff's certificate of the deed of sale filed as Plaintiff's exhibit C, in case 910, and see if it was from that you took your description, or from a copy of the same Deed ?

A. I will have to compare the description to see.

Q. Can you remember that you had any document ?

A. I don't remember it at all. It was five years ago. I don't remember where I took the description of this document, I am sure.

Q. Who instructed you, can you not remember who instructed you ?

A. Really, I could not tell you.

Q. You refer in the deed passed before you, exhibit B, to the following document, to wit : " the following lot described in the said notice of Sheriff's sale as 9thly," can you say whether you had, when you drew that Deed, notices of any Sheriff title ?

Objected to as illegal.

Objection reserved by the Court.

A. I cannot say, but I am inclined to think that I had some kind of notice, perhaps the registry certificate.

Q. Will you take communication of exhibit C, of Plaintiff in case 910, and say whether the Sheriff's title exhibit C is the same as the one referred to by the deed passed before you, and mentioned in the following terms in the said Deed, to wit : " as having acquired the same from the Sheriff of the District of St. Francis under Deed of sale bearing date 21st day October 1882" ?

RECORD

In the  
Superior  
Court.

No. 90  
Deposition of  
Louis O. Hetu  
for Plaintiff,  
dated 26th.  
Oct. 1888.

—Continued.

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RECORD.

*In the  
Superior  
Court.*

No. 90

Deposition of  
Louis O. Hetu  
for Plaintiff,  
dated 26th.  
Oct. 1888.  
—Continued.

A. I cannot remember what document I was referring to in the said Deed, except that I find on exhibit C in case 910 the following words in my handwriting.

“Registered at Coaticooke on 16th January 1883.

“Reg. B. Vol. 11.

“No. 132”.

Q. Do you remember having had occasion to refer to the said document on any other occasion except when you drew the Deed of sale exhibit C?

A. I don't recollect any other occasion.

Q. Can you remember who put you in possession of the said exhibit C? 10

A. I don't know.

Q. Do you know whether you drew the Deed yourself, or whether any of your partners did it, and you only received it?

A. I am not quite sure, but my partner was with me, Mr. Dumouchel. I think he was with me when the Deed was signed.

No Cross-Examination.

And further Deponent saith not.

WM. MCGOUN,  
Stenographer.

(ENDORSED).

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Deposition of Louis O. Hétu, for Plaintiffs, fyled 26 Oct. 1888, 20 May 1889. Paraphed A. B. L.

SCHEDULE No. 125.

In the Superior Court for Lower Canada.

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Present :

THE HON. MR. JUSTICE TASCHEREAU.

No. 91  
Deposition of  
Charles  
Hagar for  
Plaintiff,  
dated 26th  
Oct. 1888.

On this twenty-sixth day of October in the year Our Lord one thousand eight hundred and eighty-eight, personally came and appeared : Charles Hagar, of the City of Montreal, Gentleman, aged sixty-nine years witness produced by the Plaintiff who, being duly sworn, deposes as follows :—I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. You were president of the Pioneer Beet Root Sugar Company for some time ?

A. Yes, I was.

Q. Between what dates ?

A. From the time it was started I think, until it was closed.

Q. That is during the whole of 1881 and 1882 ?

A. I suppose so.

40



Q. Was Mr. John MacDougall a director of that company ?

A. Yes.

Q. Between what periods ?

A. I don't know I was the director from the commencement and he was a director at one time I know.

Q. Can you state from what time ?

A. No.

Q. The minute books of the Company would show perhaps ?

A. Yes, I suppose so.

10 Q. Did you have any conversation with Mr. MacDougall with regard to this property after the Sheriff's sale ?

A. Never, that I remember particularly.

Q. Did Mr. MacDougall say anything about purchasing the property ?

A. No. I don't recollect having any particular conversation about it.

Q. Did you know after the Sheriff's sale that Mr. MacDougall was interested in the purchase of the property ?

A. Yes, I knew of it after the sale.

Q. Mr. MacDougall told you so ?

20 A. I don't know if he told me but I understood it was so. I don't know that Mr. MacDougall said so.

Q. As president of the Company, you know, I suppose, that the properties were insured in favor of the Company before the sale ?

A. Yes.

Q. Do you remember giving any notification to the insurance companies after the sale ?

A. No.

Q. Is it not a fact that Mr. MacDougall asked you to notify the Companies that he had an interest in the property ?

30 A. No. I don't remember anything of the kind.

Q. If you had done so would there be any record of it ?

A. I suppose there would.

Q. Could you say where ?

A. I suppose it would be out at Coaticooke.

Q. Did you not do any business here, and have meetings here ?

A. Yes, some meetings.

Q. Were there letter books of the Company ?

A. Yes.

Q. Who has those ?

40 A. I don't know. I suppose in they are Court I suppose Mr. Darling would have them.

Q. Look at the letter filed as AH, stating that Mr. MacDougall has had the different insurance companies notified by letter signed by you, as president of the company ; do you remember signing any such notice for Mr MacDougall, or at his request ?

A. No, not that I recollect of. I may have done so, but I don't recollect.

*In the  
Superior  
Court.*

No. 91  
Deposition of  
Charles  
Hagar for  
Plaintiff,  
dated 26th  
Oct. 1888.  
—Continued.

RECORD.

Q. The letters might have been brought to you, or something represented to you and you might have signed them ?

*In the  
Superior  
Court.*

A. Just so.

Q. Do you know in what insurance companies this property was insured at that time ?

A. No.

No. 91  
Deposition of  
Charles  
Hagar for  
Plaintiff,  
dated 26th  
Oct. 1888.  
—Continued.

Q. Do you remember about what time Mr. MacDougall commenced to be a director, in the Company ?

A. I don't know whether he was at the beginning or not.

Q. He was a director for some time previous to the collapse of the company ?

A. Yes, I think so.

## CROSS-EXAMINED.

Q. For how long was Mr. MacDougall a director of the company ?

A. A few months, perhaps a year I don't recollect at all. I don't think he was director from the beginning.

Q. You know he resigned before the Sheriff's sale ?

A. I think he did. Any way, there was a letter that he resigned, but I don't recollect the time.

Q. You don't recollect that he was there for only two or three months ?

A. He was longer than that, I think.

## RE-EXAMINED.

Q. He was not a director at the formation of the Company ?

A. No. I am sure but I think not.

And further deponent saith not.

WM. MCGOUN,

*Stenographer.*

## ENDORSED.

Deposition of Charles Hagar for Plaintiff, filed 26 Oct. 1888, 20 May 1889. Paraphed A. B. L.

## SCHEDULE No 126.

## IN THE SUPERIOR COURT FOR LOWER CANADA,

Present :—

The Hon. MR. JUSTICE TASCHEREAU.

RECORD.

*In the  
Superior  
Court.*No. 92.  
Deposition of  
Andrew  
Rough for  
Plaintiff,  
(2nd deposition), dated  
26th October  
1888.

10 On this twenty-sixth day of October in the year of Our Lord one thousand eight hundred and eighty-eight, personally came and appeared : Andrew Rough, of the City of Montreal, aged years, witness reproduced by the Plaintiff who, being duly sworn, deposes as follows : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit :

Q. Have you the statement that you spoke of in your former examination.

*Witness :* With regard to what ?

*Counsel :* With regard to the bone-black and machinery.

A. I have it, yes.

20 Q. Does that statement also contain a statement of the brick you have sold from the property ?

A. No, that is merely a statement of the bone-black that I was examined on when I was here before.

Q. Have you a statement can you tell us, how much have you sold of that property since you have been in possession of it ?

Objected to this evidence as illegal.

Objection reserved by the Court.

A. I produce said statement as exhibit AO.

30 Q. Who paid the Eastern Townships Bank that amount mentioned in the statement ?

A. John MacDougall.

Q. What are these items to the Magog Textile Print Company, two boilers ; and to the Canada Sugar Refining Company ; what do they mean ?

A. There were two boilers to the Magog Textite Print Company ; and two to the Canada Sugar Refining Company.

Q. The sale of these boilers was made by Mr. MacDougall ?

A. Yes.

Q. And was a part of the property of the Pioneer Beet Root Sugar Company ?

A. Yes.

40 Q. What are these items of one hundred and three dollars and forty-three cents ; and two hundred and thirty-nine dollars and forty cents ?

A. Two drafts. One of one hundred and forty-three was on account of two presses ; and the other one was for a draft drawn on John MacDougall for eight tanks to the Magog Textile Print Company.

Q. This was also machinery that was in the Pioneer Beet Root Sugar Company ?

RECORD.

A. Yes.

*In the  
Superior  
Court.*

Q. I am instructed that that statement is not a complete statement of everything that has been sold from that property since you have been in possession of it ?

A. No, it is not. I have given you the bulk sum.

No 92.

Deposition of  
Andrew  
Rough for  
Plaintiff, (2nd  
deposition),  
dated 26th  
Oct. 1888.  
*Continued.*

Q. Will you give me the details of the other machinery that has been sold and has not been paid to the bank ?

A. I file as exhibit AP, a statement showing in detail the amounts realized from portions of the property of the Pioneer Beet Root Sugar Company which were not paid over to the Eastern Townships Bank, amounting in all to \$5,179.79. These are the proceeds of the sales at the Coaticooke office. I file also as exhibit AQ, a statement showing the amounts realized at Montreal from the sale of property and rebates to insurance, showing the total amount realized of \$4,994.18 without interest. 10

Q. In this statement AP, I see there is some bricks sold ?

A. Yes.

Q. Where did these bricks come from ?

A. The greater portion, I believe, were from the debris of the building for taking out the four boilers. I believe that was the most of it.

Q. Was there not some others besides that ?

A. They may have been. I was only there once. Mr. Lee of course can give you better information than I can about that. 20

Q. At all events these bricks were from a portion of the building ?

A. The were not a portion of the stone building, that is to say ; a boiler may be put down on bricks on the level floor, and if you take away the boiler, and the bricks remain, you do not damage the building.

Q. Were not some portions of the walls of the building damaged ?

A. I could not say.

Q. Mr. Lee would know that ?

A. Yes.

Q. Did you protest the Government with reference to their pretended claim on the machinery in that property ?

A. Yes.

Q. State if you are the Mr. Rough mentioned in this protest, produced as AR ?

A. Yes. I suppose that is the document that went to the Collector.

Q. You instructed Mr. Doak, Queen's Counsel, at Coaticooke to see to that protest ?

A. I do not recollect that.

Q. Did you know whether Mr. MacDougall did ?

A. I could not say. If there is anything of the kind the letters will show. 40

Q. Don't you know some fees were paid by Mr. MacDougall to Mr. Doak ?

A. I could not say, I am sure.

Q. Don't you remember, would it not go into the accounts ?

A. I do not see Mr. Doak's name mentioned here in the statement.

- Q. At all events that statement was made in your name and with your authority ?
- A. Yes, under the name of Mr. MacDougall.
- Q. Did you ever notify the Eastern Townships Bank of this claim of the Government ?
- A. I don't remember doing so.
- Q. Did you never call upon them in any way to induce them to settle it ?
- A. I could not say.
- Q. That protest was made on what date ?
- A. In October 1883.
- Q. Did you ever communicate in any way with the Government with regard to this claim of theirs ?
- A. There were several letters written to the department.
- Q. On behalf of yourself as owner of the property ?
- A. I think Mr. MacDougall signed the letters.
- Q. And did not Mr. Lee go up there ?
- A. Yes.
- Q. Two or three times ?
- A. Twice to my knowledge, I think.
- Q. Did you ever make any offer of settlement of this claim ?
- A. We never made an offer. There was some conversation as to making an offer by one or two parties connected with the affair, but it was never made, to my knowledge.
- Q. Are you certain there was not an offer of one thousand dollars made, by you or Mr. MacDougall to settle this Government claim ?
- A. Mr. MacDougall never made the offer to my knowledge, that is, lately, because he has been laid up at the house for a couple of years.
- Q. At any time ?
- A. I don't know, sir.
- Q. With regard to this German machinery, on which there was a pretended claim by the Government if you could have got a purchaser for this property in Europe, could you not have taken this property out of bond and re-exported it without paying duty ?
- A. I could not say.
- Q. You don't know ?
- A. No.
- Q. What is the present position of the property out there ?
- A. We lease the water power. And we have been collecting rentals, which you see by the receipt from the Coaticooke Cotton Company, and also from the farm.
- Q. You have also leased the farm ?
- A. Yes.
- Q. During this last year ?
- A. I don't know the last year but the previous year, the farm was leased.
- Q. Was there any other property leased ?
- A. Not that I am aware of.

RECORD.

*In the  
Superior  
Court.*

No. 92,

Deposition of  
Andrew  
Rough for  
Plaintiff,  
(2nd deposition), dated  
26th October  
1888.

RECORD.

*In the  
Superior  
Court.*

No 92.  
Deposition of  
Andrew  
Rough for  
Plaintiff, (2nd  
deposition),  
dated 26th  
Oct. 1888.  
*Continued.*—

Q. What rental do you get, is it shown in the statement ?

A. Yes, the rental of the water power, and the rental of the farm is.

## (CROSS-EXAMINED.

Q. To whom did you lease the property ?

A. I don't know, I am sure. You will see in the statement. Mr. Lee takes charge of all that.

Q. Mr. Lee would know better than you about it ?

A. Yes.

However, what you have collected out of the lease is entered in this statement ?

A. Yes. That is to say, all that is not shown Mr. McDougall received in his office. They are collections made by the Eastern Townships Bank themselves, besides that what they have in their statement up to the sixteenth of January 1884.

Q. What collections are they ?

A. They receive \$5,300, from a man down at Halifax, of the name of Ellerhausen, all that they received is in Mr. Austin's statement, with the exception of two items, which were received after the date of the suit.

Q. What is the amount of those two items ?

A. \$342.83. These two were after the date of the suit.

Q. This statement filed by you as exhibit A O, also contains the expenses made on account of the property ?

A. Yes.

Q. Will you state en-bloc what were the expenses ?

A. The expenses were \$20,720.40, paid by John MacDougall.

Q. Have you got the details of these expenses ?

A. Yes. I will annex this to exhibit A O.

Q. Will you state what you have paid for insurance since you have had the property in hand ?

A. There has been paid for insurance \$5,471.42. We have received for return premiums \$772, at various dates amounting to \$4,699.40.

Q. Is this last amount included in this general statement of expenses exhibit A O, the amounts paid for insurances ?

A. Yes, the Montreal expenses.

Q. I think to get insurance on the property you were bound to keep a guardian there all the time ?

A. Yes.

Q. What is the name of this guardian ?

A. I could not tell you his name, but we have him there at night, and Mr. Lee is guardian during the day. The other party is the night watchman.

Q. Since when has Mr. Lee been there ?

A. He went there, I think, on the first of February 1883, about that time.

Q. And what amount have you been paying him to keep him there ?

A. At the rate of one hundred dollars per month, and five dollars a

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week for his board, that is fourteen hundred and fifty dollars a year, for his board and salary.

Q. Since the first of February 1883.

A. Yes.

Q. Is that amount included in the general statement filed as exhibit AO?

A. Yes. It is included in his own statement. It is included in the expenses at Coaticooke.

10 Q. The sundries that were sold, except the machinery, were things useful at the place, at the time?

A. I don't think it. I think Mr. Lee just sold these articles that he saw lying around rather than let them get damaged. He is a mechanic. He is not like a stranger, he knew what it was worth and what it was for.

RECORD

*In the  
Superior  
Court.*

No. 92.  
Deposition of  
Andrew  
Rough for  
Plaintiff,  
(2nd deposition), dated  
26th October  
1888.

RE-EXAMINED.

Q. I asked you the last time you were here for a copy of the letter of the ninth of January 1883 from John MacDougall to Mr. Farwell?

20 A. I cannot say. I asked you the question then, who wrote that letter, and you said Mr. MacDougall himself, consequently, I cannot tell anything at all about it. If I had written the letter it would have been copied in the letter book.

Q. Have you made search in your letter book and have you been unable to find a copy?

A. No. I cannot find it. If it was sent out by Mr. MacDougall himself, it would not have been copied. If I wrote it and he signed it, I would copy it immediately, but it has apparently been perhaps when I was absent.

Q. Are you positive that no copy exists or has existed of this letter?

30 A. I was particular to look for it, because it is a thing I do not like cast up to me about it being missing, because I am very careful to have all letters copied.

Q. You have made search and cannot produce it?

A. I cannot produce it.

And further Deponent saith not.

WM. MCGOUN,  
Stenographer.

ENDORSED.

40 1889. Deposition of Andrew Rough for Plaintiff, filed 26 Oct. 1888, 20 May (Paraphed) A. B. L.

RECORD.

SCHEDULE No. 127.

*In the  
Superior  
Court.*

## IN THE SUPERIOR COURT FOR LOWER CANADA.

Present :—

No. 93.

Deposition of  
Benjamin  
Austin for  
Plaintiff's  
dated  
5th October  
1888.

THE HONORABLE MR. JUSTICE TASCHEREAU.

On this fifth day of October in the year of Our Lord one thousand eight hundred and personally came and appeared : Benjamin Austin, 10  
of Coaticooke, in the Province of Quebec, Local manager of the Eastern Townships Bank, aged thirty-seven years, and witness produced on the part of the Plaintiff, who, being duly sworn, deposeth and saith : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

EXAMINED BY MR. ATWATER :

Q. Will you state the amount due according to the deed of sale by the Plaintiff to the Defendant on the nineteenth of January eighteen hundred and eighty-three, at the time of the institution of the present action and on the tenth May 1884 ? 20

A. The amount due at that time was thirty-one thousand eight hundred and fifty-three dollars fifty-six cents. That is to say, the whole amount of the capital, together with interest, computed to the sixteenth of January 1884, which was the date of the half yearly payment. I fyled a statement showing the amount due at that date, and also since, marked exhibit A A.

CROSS-EXAMINED BY MR. BROSSEAU :

Q. Will you state what amounts you have credited to Mr. MacDougal 1 30  
on that deed of sale ?

A. It appears by the statement.

Q. How did you calculate the interest on that statement ?

A. I calculated the interest up to the expiration of each interest term.

Q. You have calculated interest on interest I think ?

A. Not exactly. I will tell you what I have done. I have added the interest to the capital every six months, and have deducted the credits made during that period.

Q. And then you calculated the interest on the balance, this is interest 40  
on interest ?

A. No, not interest on interest, because these credits were sufficient to pay the interest and to leave something to apply upon the capital ; consequently there was no compounding of interest.

Q. So, according to your statement, you have not calculated compound interest ?

A. No. The interest is not compounded. There is one explanation I



would like to make : I have not allowed the debtor the interest on these credits from the time they were made up to the time that they were applied. Perhaps he may be entitled to interest from the dates that they were made up to the date of the half yearly period when they were applied, but I did not give him credit for that. It is our custom to apply payments when they are due (we do not give them credit) not before they are due. It is possible he may be entitled to interest during that short period intervening.

RECORD.

*In the  
Superior  
Court.*

No. 93.  
Deposition of  
Benjamin  
Austin for  
Plaintiff  
dated 5th  
Oct. 1888

---Continued.

Q. What would be the difference, will you make a statement of it ?

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A. I made a memorandum of that the other day, and according to my calculation, it amounts to one hundred and thirty-six dollars and forty cents, which might be allowed to the debtor if he is entitled to interest on his payments made in advance of the time they were due.

Q. Was there not an amount of two hundred and forty dollars paid on the sixteenth of July 1884 ?

A. No. That amount is credited on the fourth of October 1884 in our statement, two hundred and thirty-nine dollars and forty cents.

Q. The difference is the discount, I suppose ?

A. The exchange on the draft that was drawn to cover it.

Q. Was it not paid to the bank on the sixteenth of July 1884 ?

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A. No, I believe it was the proceeds of a draft of Mr. MacDougall upon the Magog Textile and Print Company. It was drawn I think at three months, from July 1884, but it was not credited until the maturity of the draft in October.

Q. Did you not get the proceeds of the draft on the sixteenth of July 1884 ?

A. No, the draft was not paid by the drawees until on or about the fourth of October, when it was credited.

Q. Did you discount that draft to any bank.

30

A. No, we held the draft in the bank, and when we were paid we credited Mr. MacDougall with the amount.

And further Deponent saith not.

WM. MCGOUN,  
Stenographer.

ENDORSED.

Deposition of Benjamin Austin for Plaintiff, filed 5 Oct. 1888, 20 May 1889. (Paraphed) A. B. L.

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SCHEDULE NO. 128.

In the Superior Court for Lower Canada,

Present :—

The Honorable Mr. Justice Taschereau.

On this fifth day of October in the year of Our Lord one thousand eight hundred and personally came and appeared : William Farrell, of the City

No. 94  
Deposition of  
William Far-  
well, for Plain-  
tiff in rebut-  
tal, dated 5th  
Oct. 1888.

RECORD. of Sherbrooke, in the District of St-Francis, Bank Manager, aged fifty-three years, and witness produced on the part of the Plaintiff in rebuttal who, being duly sworn, deposeth and saith : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

*In the  
Superior  
Court.*

No. 94.

Deposition of  
William Far-  
well, for  
Plaintiff in  
rebuttal,  
dated 5th Oct  
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---Continued.

Examined by Mr. Atwater.

Q. You were the general manager of the Eastern Townships Bank during 1881, and have been since ?

A. I was.

Q. The Bank were large creditors of the Pioneer Beet Root Sugar Company ?

A. Yes.

Q. Were you approached by any parties with regard to the purchasing of the property of the Pioneer Beet Root Sugar Company prior to the Sheriff's sale ?

A. I was. On the eighteenth of December 1882 Mr. S. W. Beard came out to Sherbrooke to see me with regard to making some arrangement for the purchase of the property in the event of the bank buying it at the Sheriff's sale, which was advertised to come off on the 12 of January 1883, or to arrange that the bank should buy it. He said at that time that Mr. John MacDougall, of Montreal, proposed to join him, and that the bank should buy it in for them, and give them the right to take it at a certain price.

Objected to this evidence as illegal.

Objection reserved.

We discussed the question of the price, and I told him that we had no desire to make a profit out of the property, but that our expectation was, or our intention was, to secure the amount of our debt. At that time I had not a full statement before me of the amount of our claim, but after discussing the matter, it was arranged that I should ascertain, or make up a statement of it, and that he would return to Montreal and come and see me later, previous to the sale. His desire to arrange through us was that they would want a portion carried by the bank for a term, and the amount spoken of then was, some thirty-five thousand dollars, that he wanted the bank to carry. I went to Coaticooke and obtained a full statement of our claim, and on the 6 of January 1883, Mr. Beard come to Sherbrooke again, when this statement was submitted to him showing an amount of fifty-two thousand seven hundred and thirty-five dollars and sixty-eight cents, with interest to the 12 of January 1883.

Q. It was then you gave Mr. Beard your letter of the 6 of January that has been produced here ?

A. Yes.

Q. You gave that letter to Mr. Beard personally at Sherbrooke ?

A. I think so.

Q. And then did you receive any reply to that ?

A. Not then. On the following Monday, the eight of January I wrote another letter, which I have already filed in the case of Fairbanks and Company as exhibit A3.

Q. What reply did you get to that letter ?

A. I got a reply later on, of date, Montreal 9th of January, signed by John MacDougall himself, confirming this arrangement, and adding, that he hoped we would be successful with the sale.

Q. At the time that this arrangement was entered into with Mr. Beard, had Mr. Beard any connection with the property?

A. I cannot speak positively about that. I think he had.

Q. You don't know positively?

A. No.

10 Q. Do you know that subsequent to Mr. Beard's having a conversation with you that he had anything to do with the judgment under which the property was advertised to be sold?

A. I cannot speak positively. My impression is that he told me that he had.

Q. Were you present at the Sheriff's sale in this cause?

A. I was.

Q. Was Mr. Beard there?

A. Yes. There was a large attendance.

Q. Mr. Beard was the party who was negotiating for Mr MacDougall and himself for the sale?

20 A. Yes.

Q. At the time of the Sheriff's sale, was there any notification made by any one representing the government, of a pretended claim that they had?

A. Yes. The collectors of Customs, Mr. Williams, notified the people present that the government had a claim of, I think, ten thousand dollars for Duties, publicly before the sale, just as the sale was ready to commence

Q. And that was heard of everyone present?

A. Certainly.

Q. Did the Sheriff announce at the time that he had received a notice from the Collector?

30 A. I think so. At all events, this notice was made just before the bidding commenced and I think Mr. Williams got up on a chair so as to make it very clear.

Q. Was Mr. Beard aware of this pretended claim?

A. I am sure he was.

Q. Did he say anything to you before hand when you were in negotiations for it?

A. I cannot say.

40 Q. These negotiations were entered into between you and Mr. Beard and Mr. MacDougall the deeds were executed in Montreal: Will you say how it was that Mr. MacDougall and Mr. Beard did not take the property in their own name?

A. Mr. MacDougall preferred, on account of being a director of the Company, and I think, a creditor too, that the deeds should be taken by Mr. Rough for him, but in order to satisfy us as to the security, he and Mr. Beard executed a guarantee, an obligation, to be responsible for the amount, Mr. Rough was simply acting for them.

Q. Did Mr. MacDougall state that he had objections to appearing as

- RECORD. the purchaser ?
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 William Far-  
 well, for  
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 ---Continued.
- A. He thought that it was advisable that he should not.
- Q. So it was his proposition that Mr. Rough became the purchaser nominally ?
- A. Yes.
- Q. Mr. MacDougall was anxious to secure the property in this way ?
- A. He was.
- Q. And before the sale came off was he anxious that the sale should be brought about, that the Sheriff's sale should take place ?
- A. Evidently. from the latter he wrote me, saying that he hoped we would be successful at the sale. 10
- Q. They were to pay you as part of purchase price in this matter whatever you had to pay the Sheriff for the property ?
- A. Yes.
- Q. And the fourteen hundred dollars you paid for the property was a portion of their account ?
- A. Yes. I have a statement here made at the time.
- Q. So, it was part of their desire that the property should be sold as low as possible ?
- A. Naturally, yes everything was included at the time of the settle- 20  
 ment in taking the deed, with interest to the 16 of January. It amounted to fifty-four thousand six hundred and ninety-six dollars and sixty-three cents.
- Q. That is including the amount of adjudication ?
- A. Yes. That was reduced by five thousand two hundred and fifty-seven dollars and sixty-three cents, the amount of cash collaterals in our hands, and reduced the account, leaving it, forty-nine thousand, four hundred and thirty-nine dollars. He paid me nine thousand four hundred and thirty-nine dollars at the time of executing the deeds.
- Q. Do you know anything about negotiations with Mr. MacDougall has endeavored to carry out with the government, with regard to this Customs 30  
 claim ?
- A. I don't know.
- Q. Did Mr. MacDougall ever notify the bank with regard to this Customs claim, did he claim that the bank was responsible ?
- A. Never. At the time of the taking of the deed, my recollection of the matter was, that this was mentioned incidentally but it was stated distinctly that the bank turned over the property to them without any guarantee at all.
- Q. Neither Mr. MacDougall, Mr. Beard or Mr. Rough have made any claim for these duties ; or have notified the bank that they would hold them 40  
 responsible ?
- A. Never, that I have seen.
- Q. Have you received any letters or communication from Mr. MacDougall, or Mr. Beard, or Mr. Rough, relative to this sale ?
- A. With regard to the arrangement for insurance, and payment of an amount for bone black ; I have some letters from them with regard to that.
- Q. Will you let us see these letters ?

A. I produce the letters received by me.

Q. What was included in the accessories of the property sold to the Defendants, as nearly as you can state.

Objected to as attempt to prove beyond that is contained in the deed of sale.

Objection over-ruled.

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Superior  
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William Far-  
well, for Plain-  
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tal, dated 5th  
Oct. 1888.  
---Continued.

A. A certain amount of cord wood estimated to be worth about five hundred dollars which had been transferred to the bank as collateral by the Company. The estimated value of seventy-one thousand pounds of bone black; twenty-one thousand five hundred and sixty pounds coarse; twenty-three thousand two hundred and ninety pounds crushed fine; and seventeen thousand two hundred and fifty pounds of coarse; the estimated value of these four items was some thirty-four hundred dollars.

10

Q. Did you give them any written undertaking as to the disposal of these properties you have spoken of?

A. I did.

Witness here stood down for the examination of Mr. Andrew Rough.

After the conclusion of the witness Rough's examination, the further examination of this witness was continued as follows:

20

Q. This bone black referred to in the letter you have produced was it delivered to the Defendants?

A. I have no personal knowledge in the matter it was brought to sale at Coaticooke?

Q. Mr. Austin would know about that?

A. Yes, I have a correspondence with Mr. Rough here in regard to the proceeds of the sale.

Q. Has that correspondence been put in already?

A. No.

30

Q. Did you write to Mr. Rough or to any of the Defendants with regard to this bone black, and if so on what dates?

A. I wrote to Andrew Rough on the sixth of February in connection with the bone black; and also on the ninth of February to S. W. Beard. I do not remember any others with reference to that. I also wrote another letter to Andrew Rough on the 13th of February.

Q. Have you produced all the letters you received from the Defendants?

A. They are here. I have not filed them.

Q. Before the deeds of sale were signed in this cause, did you have any conversation with Mr. MacDougall in Montreal, or elsewhere?

40

A. At the time of executing the deeds there was not very much as I mentioned before. The question of the government claim was spoken off incidentally, and I don't know but that he had the paper drawn, that the bank should guarantee it.

Q. What was said with regard to that?

A. It was that the bank simply acted for them and guaranteed nothing, we simply handed over the title that we had got, and nothing more.

Q. Will you produce any letters you received from Mr. MacDougall in

RECORD. connection with the purchase of the property in the passing of the deed ?

A. There is a letter of the 13th of January in reference to it. I produce it as exhibit AG.

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Q. That letter is signed by John MacDougall ?

A. Yes.

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dated 5th Oct  
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Q. You referred this morning to a letter of the 9th of January that you received from Mr. MacDougall, where is that letter ?

A. I don't know. I see by my evidence in the Hochelaga bank case that it was filed as an exhibit in that case, and since then I have not seen it. Also a telegram from Mr. Beard arranging for an interview with me I think on the 18th of December. 10

Q. You have neither of these communications ?

A. No. I also produce a letter AH, of the same date, the 13th of January 1883 from S. W. Beard the Defendant.

Q. What is meant there by the reference contained in his letter about insuring company's property subject to the claim of John MacDougall ?

A. I presume it was the claim I had given him, or undertaken that I had given him, to turn over the properties to him.

Q. Until the title was passed ?

A. Yes.

Q. So that Mr. Beard was taking charge of the transfers of the insurances immediately after the bank bought the property at the Sheriff's sale ?

A. Yes, assisting in it. 20

CROSS-EXAMINED BY THE HON. MR. LACOSTE, Q. C.

Q. Since the sale was made the properties were insured for the benefit of the bank, were they not ?

A. The insurance matter was particularly attended to at the Coaticooke Branch, I am not familiar with its details. 20

Q. You know nothing of it ?

A. No. I presume it was necessary to keep the insurances regularly on so that in case of fire the loss would be covered, but what was done, I cannot say.

Q. Your letter of the 6 of January 1883 and that of the 8 January, these two letters addressed to MacDougall and Beard contain the agreement entered into by you and Mr. Beard, do they not ?

A. Sanctioned on the 9 of January by Mr. MacDougall's letter, which is missing.

Q. So that the agreement is to be found in these two letters ? 40

A. Yes, the agreement, and this of the 19 of January carrying it out.

Q. I am speaking of the agreement, I am not speaking of the carrying out of the agreement ; are we to understand that the agreement as is contained in these two letters of the 6 and 8 of January addressed to MacDougall & Beard, or Beard & MacDougall, which are filed, yes or no ?

A. Yes.

Q. The arrangement was made between you and Mr. Beard, was it not ?

A. Between Mr. Beard and myself. Mr. Beard claimed to be authorized to represent John MacDougall, at the time.

Q. You don't know whether he was authorized or no ?

A. No.

Q. When did you see Mr. MacDougall for the first time in reference to this matter ?

A. I don't know that I saw him until the passing of the deeds on the nineteenth of January.

10 Q. So the sale had taken place when you saw Mr. MacDougall for the first time in reference to this matter ?

A. I think so.

Q. Was it long before the passing of the deed of sale that you saw Mr. MacDougall, or at the time ?

A. It was during the day.

Q. On that very same day ?

A. On that same day.

Q. You said that Mr. MacDougall mentioned to you the claim of the Government ?

20 A. That was spoken of in the office of the Occidental Railway where the deeds were passed.

Q. By whom ?

A. By MacDougall, and between Mr. MacDougall, myself and I think Mr. Doak. The matter was brought up in this way, in regard to the guarantee, in not exactly the same words, but in substance specifying that should the government step in and try to take this property over for their claim for duties and I was told distinctly by I think, Mr. Doak, he was connected with the matter, that that was his (MacDougall's) own matter, it was nothing that I had anything to do with.

30 Q. Was the deed signed at the time ?

A. It was being signed.

Q. Was it not signed at the time ?

A. No, not until after the preliminaries were arranged.

Q. Is it not true that this occurred after the signing of the deed ?

A. No, it is not true. This was mentioned in the preliminaries before the deed was finally closed.

Q. Can you swear positively that this matter came up before the signing of the deed ?

A. Yes, I can positively, because it was part of the negotiation.

Q. Was the notary there at the time ?

40 A. I think so, yes. I think it was when reading over the draft of deed that this came up.

Q. You were present at the sale of the property, were you not ?

A. Yes.

Q. Where did the sale take place ?

A. I think in the Registry Office at Coaticooke.

Q. There are several rooms, there, are there not ?

A. There is a main room and a little office outside. A large main room.

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Superior  
Court.*

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well, for Plain-  
tiff in rebut-  
tal, dated 5th  
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Deposition of William Farwell, for Plaintiff in rebuttal, dated 5th Oct 1888.  
---Continued.
- Q. Please tell me where the sale took place ?
- A. In the main office.
- Q. And the people were going from the main office into the other rooms ?
- A. The people were standing around and the listening to the bids, and bidding, those that wanted to.
- Q. Was it before the bidding that mention was made of that claim of the Government ?
- A. I think it was before the bidding. 10
- Q. By whom was it mentioned ?
- A. By the collector of Customs.
- Q. Was it at your request ?
- A. No sir.
- Q. It was not at the request of the bank ?
- A. No. Not to my knowledge. I never asked him.
- Q. You said that Mr. Beard was present at the sale, can you swear positively that he was there present when this remark was made about Mr. Williams "this little scare-crow" ?
- A. It was made before the bidding began. 20
- Q. Please answer my question : can you swear positively ?
- A. I have no reason to believe that he was not there. I saw him in the room during the sale.
- Q. Are you positive enough to swear ?
- A. I am positive enough to swear he was there.
- Q. At the time this remark was made by Mr. Williams, do you swear positively that Mr. Beard was there, or that he must have heard this remark ?
- A. I am satisfied he heard the remark, and that he was present in the room.
- Q. Did you see him at that very moment ?
- A. I have no doubt that he was present. I am satisfied that he was 30 there during the whole sale, when that announcement was made and during the whole bidding.
- Q. You said before that this announcement took place before the bidding ?
- A. Just as the bidding was commencing.
- Q. It was before the sale ?
- A. About the time of the sale.
- Q. Have you an actual remembrance that he was present at that very moment, yes or no ?
- A. I remember that as well as anything I remember as long ago I am 40 satisfied he was there.
- Q. Do you swear positively that he was there when this remark was made ?
- A. I swear I positively believe he was there.
- Q. Have you an actual remembrance that he was there ?
- A. I do swear positively that during the whole of the sale he was there looking after his interests.



Q. Is it not true that you doubt whether he was present or not ?

A. I have not a shadow of a doubt.

Q. You swear that he must have heard this remark ?

A. I swear he was there during the whole of the sale.

Q. Do you swear he was there when this remark was made.

A. I swear, I am satisfied he was there.

Q. What do you mean by these words "I swear I am satisfied he was there" ?

10 A. I swear positively that I am satisfied that he was there during the whole proceedings of the sale.

Q. Was he in the room when this remark was made ?

A. I feel justified in saying I am satisfied he was in the room when the sale took place, and when this declaration was made.

Q. If Mr. Beard came here and stated he was not there at the time, would you think he was swearing falsely ?

A. I should still adhere to what I say. I am as satisfied as I can be that he was present during the whole of the sale.

Q. I believe you have been conducting this from the beginning of the Pioneer Beet Root Sugar Company this agreement with Mr. MacDougall ?

20 A. I don't understand exactly what you mean. These negotiations connected with these letters of the sixth or eighth of January were done with me.

And further Deponent saith not.

WM. MCGOUN,  
Stenographer.

ENDORSED.

Deposition of William Farwell for Plaintiff, fyled 5 Oct. 1888, 20 May 1889. Paraphed A. B. L.

30

SCHEDULE No. 129.

In the Superior Court for Lower Canada.

Present :

40

THE HON. MR. JUSTICE TASCHEREAU.

On this fifth day of October in the year of Our Lord one thousand eight hundred and—personally came and appeared: Benjamin Austin, of Coaticooke, in the Province of Quebec, Local Manager of the Eastern Townships Bank, aged thirty-seven years, and witness produced on the part of the Plaintiff in rebuttal, who, being duly sworn, deposeth and saith: I am not related, allied, or of kin to, or in the employ of any of the parties in this cause; I am

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well, for Plain-  
tiff in rebut-  
tal, dated 5th  
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No. 95  
Deposition of  
Benjamin  
Austin for  
Plaintiff,  
dated 5th Oct  
1888.

RECORD. not interested in the event of this suit.

-----  
*In the*  
*Superior*  
*Court.*  
 -----  
 No. 95  
 Deposition of  
 Benjamin  
 Austin for  
 Plaintiff,  
 dated 5th Oct  
 1888  
*Continued.*-----

Q. You were manager of the bank Plaintiffs at Coaticooke during 1882 and 1883.

A. Yes.

Q. Were you present at the Sheriff's sale of this property ?

A. I was.

Q. Was an announcement made on behalf of the government at that sale by somebody representing the department of Customs about a claim that they pretended to have against a certain portion of the machinery.

A. Yes. There was an announcement to that effect made by Mr. Williams, the collector of Customs at Coaticooke, just previous to the sale, or as the sale was about to take place he came up and made an announcement to the effect that the government held a claim for duties on part of the machinery in the factory. A claim for import duties. 10

Q. Did he make this announcement publicly ?

A. Yes, publicly and distinctly.

Q. Do you know S. W. Beard, one of the Defendants in this cause ?

A. Yes.

Q. Did you see him at the sale ?

A. Yes, and previous to the sale, in my office on the morning of the sale. 20

Q. He went to your office before the sale commenced ?

A. Yes.

Q. Did you go down together to the sale ?

A. I don't know that we went down together, but I saw Mr. Beard afterwards at the sale.

Q. Was he there at the time this announcement was made by Mr. Williams ?

A. Yes.

Q. There were a number of people present there at the sale ? 30

A. Yes, there were a number.

Q. You have heard the evidence given with regard to this bone black ; do you know the circumstances of that transfer of bone black, and if so, will you state them ?

A. At the time of the Sheriff's sale the Eastern Townships Bank held warehouse receipts on a quantity of bone black and cord wood which had been warehoused in their favor by the Pioneer Beet Root Sugar Company, to secure advances made to that company by the Eastern Townships Bank.

Q. Where was this warehouse situated at the time ?

A. It was in Coaticooke on the premises of the Pioneer Beet Root Sugar Company which the warehouse men had leased for the purpose of doing this warehousing business. Under the arrangement made between my general manager and Mr. John MacDougall, it was agreed that all the collateral securities held by the bank for indebtedness due to it by the Pioneer Beet Root Sugar Company, it was agreed that our bank should transfer these collateral securities to Mr. MacDougall. Mr. MacDougall was to pay the full amount of its claim against the Pioneer Beet Root Sugar Company, and in consideration 40

of that, the bank was to convey to Mr. MacDougall, the factory, which the bank had acquired at the sheriff's sale, and in addition, the collateral securities which the bank held as security for its claim against the Pioneer Beet Root Sugar Company. Well, after the sheriff's sale and after the property had been conveyed by the Eastern Townships Bank to Messrs Rough and MacDougall, in order to make a proper conveyance to these gentlemen of the bone charcoal, and the cord wood, which, as I have explained, had been held by the bank as collateral security. That property was brought to auction sale under the provisions of the banking Act governing such matters, and by arrangements with Mr. MacDougall, and his associates in the matter, I attended that sale. I had been authorized to bid the property up to four thousand dollars. I was directed to do so by my general manager, who had received instructions from Mr. MacDougall to that effect. I bid the property in for four hundred dollars in my own name and was therefor ready to hand it over to Mr. MacDougall. Well, the property was handed over to Mr. MacDougall, and Mr. MacDougall paid nothing to the bank, there was no consideration paid to the bank in connection with this particular transaction except the charges. The charges were the charges payable to the warehouse men, and these were paid by Mr. MacDougall or by his agency.

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Court.*No. 95  
Deposition of  
Benjamin  
Austin for  
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20 Q. They were paid by you first, and reimbursed by Mr. MacDougall to you ?

A. I forget the circumstances of that, but it was paid, and the money came from Mr. MacDougall. Well, in order to show that no money had passed in this transaction, that although the property had been struck off at four hundred dollars, for my protection I procured a letter from Messrs Rough and MacDougall, dated 17 March 1883, which I now produce as A I—, which is signed by the Defendants Rough & MacDougall.

Q. So that the Defendants obtained this bone black, they got it afterwards ?

30 A. Yes.

Q. Was there any other lot of bone black there besides this, at the time of the sale to the Defendants, was there any other lot, or quantity of bone black, besides this four thousand dollars worth ?

A. There was no other bone black in which the bank was interested. The Pioneer Beet Root Sugar Company had other bone black which had not been pledged to the Bank.

Q. Would you look at the Defendant exhibit number two at enquête and say if the bone black referred to in that exhibit as purchased from Mr. Doak, is the same as that you have just been speaking of ?

40 A. No. That bone black had nothing to do with the bone black which I have previously referred to.

Q. What was that lot ?

A. I remember something of the circumstances of that. I remember there was a Bailiff's sale of some property of the Pioneer Beet Root Sugar Company, and that there was some bone black in the lot that was sold at Bailiff's sale.

Q. But it was not the same lot as held by the bank, and transferred

RECORD. afterwards to the Defendants ?

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*Continued.*

A. No it was not the same which had been transferred to the bank which I previously referred to.

Q. Did you receive at any time any of the proceeds of the sale by the Defendants of the machinery on this property, and if so, will you just state the dates on which you received these amounts ?

A. I have already stated that we received from Mr. MacDougall certain moneys, representing the proceeds of machinery which he had sold, and I will now produce a statement showing the credits as A. J.

Q. Did you receive any letters from the Defendants with reference to these credits ? 10

A. Yes.

Q. Will you produce them ?

A. I produce letters Defendant's exhibits AK, AF, AM and AN, having references to the insurances, and some other machinery.

Q. Do you know if any other machinery was sold by the Defendant for which these proceeds were not paid to you ?

A. Yes.

And on the eight day of October 1888, re-appeared said witness and continued his examination as follows: 20

Q. It was you who wrote the letter filed as exhibit A37 to Mr. Farwell, referring to Mr. Williams' presence at the sale ?

A. Yes.

Q. Did you take any steps whatever, and if so, what, to have Mr. Williams attend that sale ?

A. No, I did not. I never spoke a single word to Mr. Williams on the subject. I had contemplated doing so and I wrote to my general manager to that effect but he decided as he stated in one of his letters, that we should do nothing at all to influence the bidding at the sale, and as a matter of fact, nothing whatever of the kind was done. 30

Q. Mr. Williams had made this pretended claim on behalf of the Government sometime before you wrote that letter, had he not ?

A. Yes. It was well known that the Government had a claim for duties on the machinery, that was imported from Germany, it was in bond in the factory, and I don't remember the circumstances now, but I understood that he had spoken of the claim which the Government held in connection with the approaching sale, and I expected he would be there as a matter of duty to look after it on behalf of the Government. 40

Q. Did the bank have anything to do with it ?

A. No.

Q. But when you wrote this letter you simply pretended you know the Government pretended to have such a claim ?

A. Yes, and I expected Mr. Williams would be there.

Q. When you say that the goods were in bond, what do you mean, what steps had the Government taken ?

A. The Government admitted the machinery free of duty, and the company were allowed to put it into their factory, and for that purpose the factory was made a bonded warehouse.

Q. But did they put the notice on the factory to that effect that it was a bonded warehouse ?

A. Yes, they put a notice up unto that effect.

Q. You swear positively that no steps were taken to have Mr. Williams, or any one representing the Government attend the sale ?

A. I am positive of that. I never said a single word to any one on the  
10 subject.

Q. Did you ever authorize or know of any one else on behalf of the bank doing such a thing.

A. No.

Q. Either directly or indirectly ?

A. Not to my knowledge.

Q. So that the Government had made this claim before you wrote this letter, and Mr. Williams went there as representing the Government entirely without any suggestion on the part of the bank ?

A. Precisely so.

20

CROSS-EXAMINED BY THE HON. MR. LACOSTE, Q. C.

Q. You state that the collaterals were to be transferred to Beard and MacDougall, collaterals held by the bank in the matter of the Pioneer Beet Root Sugar Company ?

A. Yes.

Q. Will you give us a list of those collaterals held by the bank at the time of the sale ?

A. These are the collaterals which we made over to Mr. MacDougall.  
30 (There are some). Mr. Macdougall paid us in full and we were to transfer to him all the claims which we had.

Q. What were the collaterals ?

A. Bone charcoal and cord wood, which I have already referred to and which were brought to sale, and subsequently conveyed to Mr. MacDougall; and besides that, a claim which the bank held against a Mr. Frank Ellenhausen, which the Pioneer Beet Root Sugar Company had transferred to the bank.

Q. You had no other collaterals ?

A. No, none.

Q. You had no promissory notes, or nothing at all against some other  
40 parties as security for moneys due by the company ?

A. Not that I would call collateral security.

Q. Had you any recourse against some other parties, or were some third parties bound to pay to you the debt of the company, or any part of the debt of the company ?

A. Nothing except of course, we held the notes of the Pioneer Beet Root Sugar Company.

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Plaintiff,  
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—  
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 Superior  
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 —

No. 95

Deposition of  
 Benjamin  
 Austin for  
 Plaintiff,  
 dated 5th Oct  
 1888  
*Continued.*—

Q. What I understand from you is that, you sold your claim and transferred your rights in the collaterals I am asking if, at the time of the sale, you had no recourse against third parties outsiders, which you did not transfer to Mr. MacDougall and Mr. Beard ?

A. We had none whatever.

## QUESTIONED BY MR. BROSSÉAU :

Q. You said that Mr. Beard was present at the Sheriff's sale ?

A. Yes. 10

Q. You said also that Mr. Williams had announced that there was a Government claim, how did he announce that ?

A. He announced it publicly he got up, stoop up, and read from a memorandum that he had in his hand.

Q. Can you swear that Mr. Beard was at the time in the same room where Mr. Williams read that paper ?

A. Yes, I can swear that he was present at the time that Mr. Williams made that announcement. He came out on purpose to attend the sale and he was there throughout the whole proceedings.

Q. There is not only one room is there ? 20

A. There are two rooms in the registry office where the sale was held, but they are connected together. There are two folding doors between the two so that is practically one room.

Q. You swear that he was in the very same room where Mr. Williams was when he made that announcement ?

A. I am not prepared to swear absolutely to that. It is a number of years ago since the sale was held but it was practically one room and he was there, and I have not the slightest doubt that he heard the announcement.

Q. Was there a big crowd there, present at the sale ?

A. There were a good many there. 30

Q. Was the room full ?

A. I don't remember that it was what you would call absolutely full, there were a good many people there, more than usually attend sales of that nature. I could not say that the room was crowded, but the sale was well attended.

Q. There were people in both rooms, I suppose ?

A. Well, probably there were people in both rooms, but the two rooms were thrown into one.

Q. The doors were open ?

A. Yes. 40

Q. Did Mr. Williams get up on a chair, or did he stand on the floor to make that announcement ?

A. My impression is, he got up on some thing because as I recollect the circumstances ; he was standing with his head somewhat higher than the heads of the rest of the people that were in the room.

Q. People were talking together as they usually do at sheriff's sale ?

A. Well really, I don't remember with regard to that.

Q. You know that the Hochelaga Bank pretends to hold some warehouse receipts, about some bone black that was there in Coaticook ?

A. I knew they had taken warehouse receipts but I didn't know personally with regard to the particulars.

Q. Is that the bone black, the bone black you pretend to have a claim upon in this cause, is that the bone black you pretend to have sold to Mr. MacDougall with the factory ?

A. The bone black that we handed over to Mr. MacDougall the Hoche-  
laga Bank had no claim upon whatever, it had been warehoused to the Eastern  
10 Townships Band for some time previously.

Q. Had you ever any talk with Mr. Williams about this Government claim ?

A. Well, really. I don't remember, I could not swear positively to that, I might have done so. I met him occasionally as he would come into my office to make his deposits.

Q. What do you mean when you state you intended to have a scarecrow there at the sale ?

A. I knew that Mr. Williams was going to attend that sale as it was his duty to do. He was the collector of customs, and the Customs department  
20 had a claim on that machinery for unpaid duties, and I believed that he would make some announcement at the sale with regard to that claim.

Q. I should think that these words mean that your intention was to do something and I would like to know what it was that you intended to do ?

A. Well, I believed that I could influence the form in which Mr. Williams would make that announcement but as a matter of fact, I did nothing, that idea was abandoned and I never said anything to him on the subject what-  
30 ever. Those are the exact facts of the case. Mr. Farwell as appears by one of his letters wrote me that we should do nothing whatever with the sale to influence the bidding in any way ; and that policy was strictly carried out. There was nothing whatever done to influence the bidding at the sale. That is the  
absolute truth of the whole matter.

Q. I suppose when you met Mr. Williams you probably asked him if he would be present at the sale ?

A. I cannot say as to that, but I am positive I made no request to him about it in our behalf whatever.

Q. Is it not probable that you said something to that effect to him saying for instance : "I suppose you will make that announcement nicely", or something to that effect ?

A. No. I am quite sure I never said anything of that kind.

40 Q. Can you tell me why the sale was made en bloc at whose request was it ?

A. I believe it was made at the request of Mr. Hagar, the president of the Pioneer Beet Root Sugar Company.

Q. Was he present at the sale ?

A. Yes.

Q. Had you any conversation with the Sheriff at all before the sale ?

A. I remember nothing of any importance. The sale en bloc was the

RECORD

*In the  
Superior  
Court.*

No. 95  
Deposition of  
Benjamin  
Austin for  
Plaintiff,  
dated 5th Oct  
1888.

---Continued.

RECORD. most reasonable form that could be made. It was practically one property, and if it had been sold in separate lots nobody would have been willing to bid for it.

*In the  
Superior  
Court.*

No. 95

Deposition of  
Benjamin  
Austin for  
Plaintiff,  
dated 5th Oct  
1888  
*Continued.*—

Q. I suppose the saw mill could have been sold separately without injuring the rest of the property ?

A. No. It would have depreciated the value of the other property because it was from the saw-mill dam that they obtained their water to wash the beets with.

Q. But the water was quite a different think I suppose, the water power, was it not that could have been sold besides ? 10

A. That water was obtained from the pond above the saw mill dam from whence the water flowed to wash the beets.

Q. The farm could have been sold separately without injuring the rest of the property ?

Witness. The Adam's property.

Counsel. Yes.

A. Well, that was used in conjunction with the factory. It was used for storing beets in, and part of it was occupied by the travelling basket railway that was used for transporting the beets from the railway siding.

Q. Did your bank hold any notes as collateral security besides the Ellenhausen notes ? 20

A. No, those were the only collateral notes that were held at the time of the Sheriff's sale and at the time that we transferred the property to Mr. MacDougall.

Q. What was the amount of the Ellenhausen notes, there were two notes ?

Q. One note of fifteen hundred dollars, which had been transferred to the Eastern Townships Bank as collateral security by the Pioneer Beet Root Sugar Company ; and there was another note signed by Ellenhausen for thirty five hundred dollars, which was under discount, and which was included in the Eastern Townships Bank's claim against the Pioneer Beet Root Sugar Company, which Mr. MacDougall paid in consideration of getting the property and subsequently the Eastern Townships Bank collected both of those notes against Ellenhausen and applied them to the credit of Mr. MacDougall ; the amount being five thousand three hundred dollars, which appears in the statement of credits to Mr. MacDougall. 30

Q. What is the difference between charcoal and bone black ?

A. I understand that they are precisely the same thing. It is a product of bone, which is used for filtering the juices derived from the beet root.

And further deponent saith not. 40

WM. MCGOUN,  
Stenographer.

ENDORSED.

Deposition of Benjamin Austin, re-called for Plaintiff fyled 5 Oct. 1888-  
20 May 1889. Paraphed G. H. K. Dep P. S. C.



## SCHEDULE No. 130.

In the Superior Court for Lower Canada.

Present :

THE HONORABLE MR. JUSTICE

RECORD

*In the  
Superior  
Court.*

No. 96.

Deposition of  
Thomas Dar-  
ling, for East-  
ern Town-  
ship Bank  
dated 3rd  
Jan. 1889.

10 On this third day of January in the year of Our Lord one thousand eight hundred and eighty-nine, personally came and appeared : Thomas Darling of the City and District of Montreal Accountant and Assignee, aged      years, and witness produced on the part of the Eastern Townships Bank who, being duly sworn, deposes and saith ; I am not related, allied or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

20 I am Liquidator of the Pioneer Beet Root Sugar Co'y and have in my possession the books of the said Co'y. I have before me the minute book of the said Company containing the minutes of such general meetings of Shareholders as were held and also containing the minutes of the meetings of the Directors.

I have before me also the Letters Patents incorporating the Company, which Letter Patent are dated the fifteenth of July one thousand eight hundred and eighty (1880) and under the seal of the Province of Quebec and the signature of the Lieutenant Governor and incorporating the Company as a body politic and corporate under the Provisions of the Joint Stock Company's General Clauses Act and the Letter Patent Act of the Province of Quebec. I cannot allow the Letters Patent to pass from my possession so as to be filed.

30 I find by reference to the minute book before mentioned, and now before me, that John MacDougall of Montreal, one of the Defendants in this case was elected a director of the said Company at a general meeting of the Shareholders held on January twenty-seventh, eighteen hundred and eighty-two (1882). At the same meeting a report of the Directors was read showing the permanent investment of the Company to be two hundred and three thousand, two hundred and eighty-five dollars and ninety-two cents (\$203,285.92), consisting of real estate, building account, machinery, account, laboratory and permanent implements and the disbursements upon moveable account to amount to sixty thousand eight hundred and forty-five dollars and two cents (\$60,845.02).

40 I find that Mr. MacDougall attended meetings of the Directors held on the thirty-first of January, eighteen hundred and eighty-two (1882) ; on the first of February, eighteen hundred and eighty-two (1882) ; on the sixth of February, eighteen hundred and eighty-two (1882) ; on the twenty-third of February, eighteen hundred and eighty-two (1882) ; on the twenty-second of June, eighteen hundred and eighty-two (1882) ; on which occasion the meeting of Directors was held at his office and at which meeting said John MacDougall moved that bonds of the Company be issued to the Hochelaga Bank covering advances, if they would accept the same. At a meeting on the fifteenth July eighteen hundred and eighty-two (1882) at which meeting it was moved and

RECORDED.

—  
*In the  
 Superior  
 Court.*

No. 96.  
 Deposition  
 of Thomas  
 Darling for  
 Eastern  
 Townships  
 Bank dated  
 3rd Jan. 1889  
 —Continued.

resolved that said Mr. John MacDougall should have the right to take out a policy of insurance upon the buildings and plant of the Company to cover his claim against the Company, he to pay the premiums himself.

He was also present at a meeting of Directors held on the nineteenth of July, eighteen hundred and eighty-two (1882) and at a meeting on the seventh of August, eighteen hundred and eighty-two (1882), at which meeting the said John MacDougall was appointed, by resolution, Vice President and Treasurer of the Company in place of Mr. John Thornton, resigned, and at which meeting an offer was read before the Board from Adolphe Lomer and G. Lomer to lease the Company's property for a term of one year and by the minutes of the said meeting it is stated that the said offer is made to save the Company from assignment, which was accepted. 10

He was present at a meeting of the Directors on the eleventh of August eighteen hundred and eighty-two (1882) at which meeting it was, resolved that he should be handed ten thousand dollars in bonds of the Company as collateral security for his claim against the Company.

He was also present at a meeting of Directors held at his own office on the twenty-second of November, eighteen hundred and eighty-two (1882) at which it was moved and resolved, that inasmuch as the said John MacDougall had agreed to pay the due by A. Lomer and S. W. Beard for insurance on the Company's property at Coaticooke for fifty thousand dollars (\$50,000), for one year, said premiums amounting to six hundred and fifty dollars (\$650). That Charles Hagar (The President) be authorized to transfer to the said John MacDougall the policies of this insurance. It was also moved and resolved that the next Government Subsidy should be paid the said John MacDougall. 20

He was also at a meeting of Directors held at his own office on the nineteenth of December eighteen hundred and eighty-two (1882); and at a meeting held at his own office on the second of January, eighteen hundred and eighty-three (1883) at which it was resolved by a motion of Mr. Evans, one of the Directors, seconded by the said John MacDougall, that an action be taken to rescind the lease granted to Adolphe Lomer and S. W. Beard on account of failure on their part to carry out its provisions. 30

He was also present at a meeting held on the ninth of January, eighteen hundred and eighty-three (1883), and also at a meeting held at his own office on the thirteenth of January, eighteen hundred and eighty-three (1883) at which a motion was made by said Mr. MacDougall that Mr. George O. Doak be authorized to legally take possession of the property of the said Pioneer Beet Root Sugar Company, consisting of goods &c., belonging to the said Company, and that he realize on the same and with the proceeds thereof pay and discharge all claims for wages and salary, which the Directors may be legally liable for. That said Mr. Doak was also requested to give all employees of the Company such notices as might be necessary so that they might have no further claim on the Directors. The minutes of this meeting are the last, which are recorded in the minute book. 40

I find by reference to the stock Ledger of the Company that Mr. MacDougall was a shareholder of the Company holding fifty shares of a par value of five thousand dollars (\$5,000), which appear to have been fully paid up.

He was also a creditor of the Company for an amount which I cannot at present state, but the amount of which, I am informed should appear from a judgment taken against the Company and filed as of record herein.

I find also by reference to the Minute Book that that by the report of the Directors submitted at the meeting on the twenty-seventh of January eighteen hundred and eighty-two (1882) at which Mr. MacDougall was elected a Director, it appears by the statement submitted at that meeting that the Eastern Townships Bank held bills under discount upon which the Company was liable, amounting to forty-three thousand four hundred and seventy-three dollars and thirty-nine cents (43,473.39).

I find also reference and a resolution at a meeting on the second of May, eighteen hundred and eighty-two (1882) by which the Managing Director was empowered to settle all matters pending with the Eastern Townships Bank.

I cannot allow the books to be produced in this case, as I cannot allow them to pass from my possession.

The Attorney of Rough et al objects to this proof as illegal and as not being justified by the proceedings in the case.

Objection reserved in the absence of a judge.

20

## CROSS-EXAMINATION

Q. Personally you know nothing of the facts above stated?

A. Nothing at all.

Q. And you don't know, of course, if anything mentioned above was ever carried out?

A. No.

Q. Do you know, Mr. Darling, if Mr. MacDougall has resigned?

A. I am not aware that Mr. MacDougall ever resigned. There is no thing in my possession to establish that.

And further Deponent saith not.

The Stenographer who took and transcribed above deposition being sick and unable to certified to same, the parties consent and agree that the above written pages numbers one to six be fyled as a correct and true transcript of the evidence given by said T. Darling at his examination in above mentioned case.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,

Attorneys for Rough & al

40

(ENDORSED.)

Deposition of Thos. Darling for Eastern Townships Bank, fyled 30th Dec., 1889. (Paraphed) G. H. K., Dep. P. S. C.

RECORD

In the  
Superior  
Court.

No. 96.

Deposition of  
Thomas Dar-  
ling, for East-  
ern Town-  
ship Bank  
dated 3rd  
Jan. 1889.

---Continued

RECORD.

SCHEDULE NO. 131

*In the  
Superior  
Court.*

In the Superior Court for Lower Canada.

Present :

THE HONORABLE MR. JUSTICE TASCHEREAU.

No. 97.  
Deposition  
of  
Andrew  
Rough  
for defen-  
dants Mc-  
Dougall and  
Beard, da-  
ted 26th  
October 1888.

On this twenty-sixth day of October in the year of Our Lord one thousand eight hundred and personally came and appeared : Andrew Rough, of the City of Montreal, Book-keeper, aged years, and witness reproduced on the part of the Defendants MacDougall & Beard who, being duly sworn, deposed and saith : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit. 10

Q. Have you got a statement of this bone black in question which was sold ?

A. Yes, it is all mentioned in the statement filed.

Q. How much did that bone black or dust bring ?

A. Fifteen hundred and eighty dollars, ninety-three cents net.

Q. Was it sold according to the value, or under the value at that time ?

A. When we ascertained that there was bone black in the premises we naturally went around to make the best bargain we could. We went to the St. Lawrence Sugar Refining Company and we offered it to the Canada Sugar Refining Company and we took the highest offer. There was very little sold at two cents, only two car loads. 20

Q. So it was sold at the value at that time ?

A. It was to the interest of Mr. MacDougall to get as much out of it as he could.

Q. This is shown by the statement filed as exhibit 3 of Defendant ?

A. Yes.

Q. Are you aware that Mr. MacDougall could have sold all that other property besides if there had been no trouble in this matter ? 30

A. My opinion is, from what I have heard, and what I have seen in the office, if there had been no trouble we could have sold it out very well.

Q. Were there any offers made ?

A. We were repeatedly asked by Mr. Drummond of the Canada Sugar Refining Company, to sell that machinery to him. I don't say the whole, but we have been asked repeatedly, and the thing went so far that I even submitted a statement of all the machinery to Mr. Drummond, he has it yet in his office.

Q. Were there any offers made for the purchase also of the immovables, the buildings ? 40

A. Yes, by Mr. Hobbs, for a saw mill, for five thousand dollars.

Objected to this evidence as illegal.

Objection reserved.

Q. Were there offers for the other things as well ?

A. My opinion came from Mr. Lee he knew of it and told me. There was one building specially that they were going to make braid in. I don't

know whether the industry is in the village or not, but they came in, or a party came in who wanted to lease part of the building for a braid factory.

Objected to this evidence as illegal.

Objection reserved.

Q. Did you see that party yourself ?

A. Yes.

Q. Was that the big building he wanted ?

A. No, it was part of the building where the water power was placed.

Q. That is part of the factory ?

10 A. Yes, he only wanted one flat, or a part of one flat, and a certain amount of water power.

CROSS-EXAMINED.

Q. Did you have any personal conversations with Mr. Drummond ?

A. I had.

Q. Did he make any definite offer for this property ?

A. He got into two presses.

Q. Did he make any definite offer for the rest ?

20 A. No. He did not.

Q. So he did buy some ?

A. Yes, but he wanted to buy a great deal more but Mr. MacDougall told him that under the circumstances he did not feel disposed to disturb the machinery.

Q. You spoke about the bone black in that statement ?

A. Yes.

Q. And you disposed of it at the price there mentioned ?

A. The net proceeds are on that statement.

Q. You did not offer this bone black to the Eastern Townships Bank ?

30 A. No, we did not.

Q. This threatened action by the Hochelaga Bank did not prevent you selling any of the other machinery ?

A. It was just a matter for Mr. MacDougall.

Q. In other words : if he could get enough money for it ?

A. Of course if could have got out of the bargain clean. He would have been glad to do it.

And further Deponent saith not.

WM. MCGOUN,  
Stenographer.

ENDORSED.

40

Deposition of Andrew Rough and reproduce for Defendants, fyled 26th Oct 1888. Prod. 28 June 1889. Paraphed A. B. L.

RECORD

*In the  
Superior  
Court.*

No. 97  
Deposition of  
Andrew  
Rough for  
Defendants  
McDougall  
and Beard,  
dated 26th  
Oct 1888  
—Continued.

RECORD

## SCHEDULE No 132.

*In the  
Superior  
Court.*

In the Superior Court for Lower Canada.

. Present :—

No. 98

Deposition of  
John Lee for  
Defts. dated  
5th Oct. 1888.

THE HON. MR. JUSTICE TASCHEREAU.

On this fifth day of October, in the year of Our Lord, one thousand eight hundred and eighty-eight, personally came and appeared :

John M. Lee, of the city of Montreal, Mechanical Engineer Millwright, aged over sixty years, and witness produced on the part of the Defendants, who, being duly sworn, deposes and saith : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit. 10

Examined by Mr. Brosseau.

Q. What is your occupation ?

A. Mechanical engineer and millwright.

Q. Were you in Coaticooke in October 1883 ?

A. Yes. 20

Q. In what capacity were you there ?

A. I was sent there by Mr. MacDougall to take charge of the old Beet Root Sugar Company Factory.

Q. For how long was Mr. MacDougall left in possession of the Beet Root Sugar Factory without being troubled ?

A. The first intimation of the trouble that I received was in March 1883.

Q. What was it ?

A. Mr. Williams, a gentleman I did not know at the time, left word at the station that no cars should be shipped from the Beet Root Factory. I asked him who he was and he said he was the collector of Customs, I said "you have nothing to do with me, I am not shipping anything that you have any claim on, that I know of, and he examined the articles that were going and he was satisfied that he had no claim on them 30

Q. That was in March 1883 ?

A. Yes.

Q. Have you had any intimation after that from Mr. Williams ?

A. In October he had the machinery seized, that is the machinery that was imported from Germany, they were seized for duty, as he claimed.

Q. Was there much machinery besides that imported from Germany ? 40

A. Yes, quite a lot of machinery besides that imported from Germany furnished by Mr. MacDougall and others.

Q. Did this machinery imported from Germany from a big lot ?

A. Yes quite a lot. It was valued by the government at some thirty-seven thousand dollars, I think.

Q. And he seized them in October 1883.

A. Yes.

Q. Are they under seizure yet ?

A. Yes, on the sixth of October 1883.

Q. Was there a guardian appointed ?

A. Yes.

Q. Who was appointed as guardian ?

A. A man named Solomon Lemoine.

Q. Is that guardian there yet ?

A. No sir. He stayed there some three months and they thought we were honest enough not to sell anything out, so they took him off.

10 Q. Was there any trouble about the Custom duties ?

A. That is all I know of.

Q. Could Mr. MacDougall do anything with that factory that he bought from the Eastern Townships Bank ?

A. No, so far as the property is concerned no one would look at it for purchase on account of the troubles.

Q. So it was locked up then and has been since ?

A. Yes.

Q. And you are the only caretaker of it ?

A. Yes.

20 Q. In what state is the machinery now ?

A. In a very bad state.

Q. Is it much deteriorated ?

A. It is deteriorated not only in the value as machinery but the use of the machinery is also gone. The industry for which it was got up is gone.

Examined by A. W. Atwater, Esquire, of Counsel for Plaintiff.

Q. This Mr. MacDougall who sent you out there, is the John MacDougall who is one of the Defendants in this cause ?

A. Yes.

Q. Have you been out there ever since ?

30 ally. A. Yes, back and forward. I have been in here a fews days occasion-

Q. And Mr. MacDougall pays you for the services out there ?

A. Yes.

Q. You have had charges of the property there ?

A. Yes.

Q. Have you ever had any conversations, or negotiations with the Government or any one representing the department of Customs, with reference to this pretended claim of theirs on the machinery ?

A. Yes.

40 Q. Have you been to Ottawa about it ?

A. Yes.

Q. On whose behalf did you go there ?

A. Mr. MacDougall's.

Q. Then you were there to settle the Government claim for Mr. Mac-DouGall ?

A. I was trying to get them to take off their claim.

Q. You pretended to the Government that they had no claim upon that

RECORD machinery ?

- In the  
Superior  
Court.*
- No. 98  
Deposition of  
John Lee for  
Defts. dated  
5th Oct. 1888.  
—Continued.
- A. Yes.
- Q. And you pretend so now ?
- A. Yes.
- Q. When did you go up there, about what period ?
- A. I have been up three times, I cannot just recollect the times.
- Q. During the last two or three years ?
- A. Yes.
- Q. Did you make any offer to the departments of Customs with regard  
to these duties ? 10
- A. No sir.
- Q. You simply represented that they had no claim for duties, and  
you wanted them removed ?
- A. Yes.
- Q. Have you had any watchman employed about the premises there ?
- A. Yes, all the time.
- Q. Who employes that watchman, and pays him ?
- A. Mr. MacDougall.
- Q. He is there yet, is he not ?
- A. Yes. 20
- Q. What is the nature of this machinery, that you speak of, that came  
from Germany, what sort of machinery is it ?
- A. Machinery that is used for the Machinery of Beet Root Sugar.
- Q. It is specially manufactured for that purpose, is it not ?
- A. Yes.
- Q. And it is of very little value for anything else ?
- A. It is not any value for anything else, except as old iron. In order  
to explain why it is so valueless : to bring it into market as old iron it would  
cost nearly what you would get for it to take it out of the factory and bring it  
into market to sell it. 30
- A. Now, it would have been just as valueless in the beginning of 1883  
as it is to-day ?
- A. No. Because the industry for which it was got up was in opera-  
tion at that time, in Germany and France.
- Q. Was it in operation anywhere in this country, that industry ?
- A. No.
- Q. All the beet root sugar companies had failed absolutely by that  
time ?
- A. Yes.
- Q. You could not of got rid of it to any one here could you ? 40
- A. No.
- Q. You considered it necessary that you and the watchman should  
look after this property ?
- A. He is there at night and I am there during the day time.
- Q. This machinery is very weighty is it not, to ship it ?
- A. Pretty heavy.
- Q. And very large ?



A. Yes.

Q. It is so large that you would have to take down part of the building to get it out ?

A. You would have to take down part of the building to get it out unless it was broken up in the building.

Q. What is the reason that you and the watchman have to take charge of this property ?

A. Well, at the time I went out there, there was rather a bad feeling against the property, on account of the way the men had been treated, and they were afraid of fire.

Q. So that somebody has to stay there in order to keep the property insured at all, is that not it ?

A. Yes.

Q. You say there was a large amount of other machinery, that was seized there ?

A. Yes.

Q. What was the value of other machinery, at that time ?

A. Mr. MacDougall's account for it was something like nineteen thousand dollars.

Q. That is for the machinery he had put in ?

A. Yes. I think that was the amount.

Q. Was there machinery put in by anybody else ?

A. Not that I know of. There was quite a lot of piping.

Q. That was not seized at all ?

A. Some of it was seized by mistake.

Q. It was released again ?

A. Yes.

Q. You have sold a good deal of that machinery, have you not ?

A. Yes.

Q. How much altogether have you sold ?

A. There is a statement I handed to Mr. Rough I don't remember the figures exactly.

Q. You sold all the available, saleable machinery ?

A. What was called for. What people required.

Q. Whenever you got a chance to sell you sold ?

A. Yes.

Q. And that has been going ever since you have had possession of the property, has it not ?

A. Yes.

Q. How lately did you make a sale of any machinery there ?

A. About a month ago. Not machinery, it was piping.

Q. But you have been selling right along whenever you got an opportunity to sell ?

A. Yes.

Q. This large machinery from Germany would cost a great deal to take out and get it to the port of shipment, a great deal for freight, if it were shipped across the water, would it not ?

RECORD

*In the  
Superior  
Court.*

No. 98

Deposition of  
John Lee for  
Defts. dated  
5th Oct. 1888.  
—Continued.

A. Yes.

Q. It would cost an enormous amount of money, would it not ?

A. Yes.

Q. So it was practically valueless unless for beet root sugar purposes ?

A. Yes.

Q. Did Mr. MacDougall undertake to run this property as a sugar fac-

tory after he got it ?

A. No sir.

Q. He did not try to at all ?

A. No sir.

Q. This trouble you speak of, as having take place in March, it was merely a notification to the collector of Customs about some machinery which was being shipped, and which he afterwards relinquished ?

A. It was not machinery. It was different stores that had been outside of the factory.

Q. Being releazed of seizure, after that there was no further trouble about that ?

A. He had nothing to do with it. He gave no further trouble about it.

Q. There was no trouble really in the matter, until this so called seizure in October 1883 ?

A. No.

Q. And you had then been in possession of the property since February ?

A. Yes.

Q. Was there ever any attempt by Mr. MacDougall to run it as a beet root sugar factory ?

A. No.

Q. He turned around and sold some of the machinery ?

A. He took out some of the machinery.

Q. Is that sugar industry going on yet in France and Germany ?

A. It may be going on, but not as much as it used to.

Q. You don't know positively whether it is going on or not ?

A. No.

Q. You don't know any more positively that it was going on in 1883 ?

A. No further than what we read in the newspapers.

Q. Did Mr. MacDougall ever have a chance of selling that machinery in France or Germany in 1883 or did he try to sell it ?

A. He did not try to sell it after it was seized.

Q. But before that did he try to sell, during 1883 ?

A. There was no demand for it. And since March the Collector put a stop to it, on the first of March.

Q. Did he ever try to sell it, did he ask for any bids, or take any steps to sell it ?

A. Not that I know of.

RE-EXAMINED.

Q. Was there not a notice of seizure posted on the building ?

A. I never saw it.

Q. What was the value of the machinery in 1883; the machinery imported from Germany?

A. They claimed it was worth thirty-seven thousand dollars.

Q. And do you know at what time it was imported?

A. No, sir.

Q. Do you know about the time?

A. 1881, I guess.

Q. You are sure that it was imported before 1883?

10 A. Yes. It was there when I went there.

Q. And this claim was for duties of importation?

A. Yes.

Q. Do you think that Mr. MacDougall could have sold all the machinery that was there in 1873 if it had not been in trouble?

A. I could not say.

Q. Must I understand that you said that Mr. MacDougall sold every thing he could there?

A. Everything that was asked for he sold it. I judge it was the proper time to sell anything when it was wanted, and we sold it, and kept a strict

20 account of everything we sold.

Q. This machinery that he sold, was it those that were seized, or those that were not seized?

A. They were not seized.

Q. They were not the machinery imported from Germany?

A. No.

Q. These seized were not sold at all?

A. No.

Q. And they are there yet?

A. Yes.

30 Q. I think you said that these that were seized could have been sold in Germany and France at that time, in 1883?

A. The might have been sold there, but of course we understood the industry was going on there still.

Q. As a matter of fact was it not the intention of Mr. MacDougall to send you there to sell the machinery?

A. There was some conversation of that kind, but he did not decide upon anything.

Q. That was his intention if he did not succeed of disposing of it here?

40 A. He might have done it that way, I suppose?

RE-CROSS-EXAMINED.

Q. Was not this machinery in bond always this Von roofer machinery?

A. I don't know.

Q. You don't know whether it ever came out of bond?

A. I heard nothing of it until the first of March, that was the first

RECORD. intimation I had.

*In the  
Superior  
Court.*

No. 98

Deposition of  
John Lee for  
Defts. dated  
5th Oct. 1888.  
—Continued.

Q. Was not the understanding then that this machinery was in bond to the Government ?

A. I don't know.

Q. When you went to Ottawa did not you find out ?

A. Yes. After I found that out.

Q. So it could have been sent back to Germany without payment of any duties at all ?

A. I suppose so.

Q. So that there was no seizure as against this property for re-export ? 10

A. No.

Q. You have been asked about your sale of some of the property under seizure : is it not a fact that there was one lot of machinery you sold which was part of that seized, and you paid the duties under protest ?

A. Yes, there were two filter presses that had been sold, and the duties paid upon them.

Q. You paid the duties ?

A. Yes.

Q. Under protest ?

A. Yes. 20

Q. You protested that the Government had no right to collect it ?

A. They wanted to try them, and I got them out in that way.

ADDITIONAL QUESTION BY MR. BROUSSEAU.

Q. Do you know as a matter of fact that the Government had a right to seize that machinery, or not, yourself, personally ?

A. No

And further Deponent saith not.

WM. MCGOUN, 30  
Stenographer.

ENDORSED.

Deposition of John M. Lee, for Defendants, filed 5th Oct. 1888. Prod. 28 June 1889. (Paraphed) A. B. L.

SCHEDULE No. 133.

In the Superior Court for Lower Canada. 40

Present :

THE HONORABLE MR. JUSTICE TASCHEREAU.

On this twenty-sixth day of October in the year of Our Lord one thou-

No. 99.  
Deposition of  
John M. Lee  
for Defen-  
dants Rough  
& al, (2nd  
d eposition),  
dated 26th  
Oct. 1888.

sand eight hundred and eighty-eight, personally came and appeared : John M. Lee, of the City of Montreal, Mechanical Engineer and Millwright, aged over sixty years, and witness produced by the Defendants Rough et al who, being duly sworn, deposes as follows : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit :

Q. Will you tell me how much bone black, or bone dust was sent from Coaticooke to Montreal ?

A. Sixty-eight and three quarter tons.

10 Q. Have you made a statement of it ?

A. Yes. I now file a statement as Defendants exhibit number 3.

Q. Will you explain this statement ?

A. There were three lots of bone black in the bonded warehouse, known as " Adams ", and a small store known as Tapplins, and another shed also of Adams. The whole containing about sixty-eight and three quarter tons. This bone black was cleaned and separated into three qualities and sent into Montreal and sold.

Q. There were charges for warehouse charges ?

20 A. Which I paid to the Eastern Townships Bank eighty-four dollars and ten cents. The freight was paid in Montreal by Mr. MacDougall on sixty-eight and three quarter tons at three dollars a ton, two hundred and six dollars and twenty-five cents. For barrels, separating, and weighing, and cartage it cost four dollars and thirty cents each ton, for all work in shipping on board the cars. There was a discount on the first item sold, amounting to forty-four dollars, and for " their weight " on ninety-three thousand one hundred and twenty pounds sold to the St-Lawrence Sugar Refining Company of five thousand three hundred and eighteen pounds at one and a half cents, which was taken off, which left seventy-nine dollars and seventy-three cents.

Q. You had nothing to do with the sale of the bone black ?

30 A. No. I only sent it to Montreal.

Q. You made nearly all the sales that were made at Coaticooke ?

A. Yes.

Q. Will you state in a very few words what was sold ; and for what reason it was sold ?

A. It was asked for, as there was quite a lot of that machinery useful there, and it could be sold, and I found that the proper time to sell it was the time it was required, in order to help to pay expenses.

Q. Is it not a fact that everything was deteriorating very much ?

A. Yes, it deteriorated.

40 Q. And it was for the benefit of all parties that it should be sold as quickly as possible ?

A. Yes.

Q. Besides the machinery, were there not lots of small things that were no use at all that were sold, to get rid of them ?

A. No. There was nothing of no use that I sold. They were useful to the parties that required them.

Q. Did you make a statement of the machinery which is left there yet

RECORD

*In the  
Superior  
Court.*

No. 99

Deposition of  
John M. Lee  
for Defts  
Rough & al  
(2nd deposition  
dated

26th Oct.

1888

*---Continued.*

RECORD on the Plaintiff's premises ?

*In the  
Superior  
Court.*

No. 99.

Deposition of  
John M. Lee  
for Defen-  
dants Rough  
& al, (2nd  
deposition),  
dated 26th  
Oct. 1888.

A. All the imported German machinery except two pieces are still there.

Q. Will you make a list of what is there in the premises ?

A. I will do so.

Q. Is it not a fact that the greater part of the machinery is there yet in the building ?

A. Yes.

Q. I understood from Mr. Doak that you had sold all the principal part of the machinery ?

A. Oh no. There is quite a lot there. He meant that we sold all what was required.

Q. Would you tell me why this other machinery was not sold that is in the premises now ?

A. Yes, the German machinery which was not required. It was not asked for.

Q. I think you said that Mr. MacDougall's intention was, to send you to the Old Country to sell this machinery ?

A. I did not say it was his intention, but he had spoken of it and had it not been bonded by the Government he might possibly have done that.

Q. Is it to your personal knowledge that there were any offers made to buy the machinery there which was in the building ?

Objected as to illegal.

Objection reserved.

A. There were several inquiries, but as soon as they found out that title could not be given they abandoned the idea. I, myself offered to purchase the saw-mill. I offered five thousand dollars, and would have been ready to give it if I could have bought it and got a clear title for it at the time.

Q. Were there any other offers for the building ?

A. No [particular offer for the building, except portions of it. Mr. Tomkins wanted a portion of it, to start a braid factory in, and I, for myself, would have been glad to buy it, and I consulted with Mr. Lacoste, but he had advised not to take it.

Objected to this evidence as illegal.

Objection reserved.

Q. You have no hesitation in saying that if it was not for this trouble the properties could have been sold, or rented very easily ?

A. That would be too hard to say, I could not say that they would have been, but the chances would have been that a great portion could have been either leased or sold.

CROSS-EXAMINED.

Q. It is not true that almost all the machinery that remains in that building is the important German machinery, and some large tanks, which could not be removed without being broken to pieces ?

A. There are several pieces there that have been made by Mr. MacDougall himself.

10

20

30

40

Q. But the great majority of what is left there now is special sugar machinery?

A. Yes.

Q. Mr. Doak's statement in that regard was pretty nearly correct?

A. Yes.

Q. How much more was there to lease, except the saw-mill, and the building put up specially for the manufacture of beet root sugar?

10 A. What we call the factory proper, that is the beet factory. And there was a large store called the beet store, that is not connected with that building, and then there is what we call the "Red House" and large building; and then there is what we call the "Red House" and two or three other small buildings.

Q. These were all leased in one if they were leased?

A. No. they were all seperated.

Q. Did you have any offer to lease these big buildings?

A. For portions of it.

Q. For the whole of them?

A. No.

Q. You only had an offer for one portion of it, for this braid factory?

20 A. There was a party came from the States, a man who wanted to open some kind of manufactory and he looked it over and said he was going back to bring his partner to look at it, but he found out in the town that the property was in such a way that he could not buy it, and we saw no more of him.

Q. He never made any definite offer for it?

A. No.

Q. Did the other man who wanted to have a braid factory, make a definite offer for it?

A. Yes, to least a portion of it.

30 Q. He never made any definite offer to buy it?

A. No.

RE-EXAMINED.

Q. If there had been no trouble about this matter, do you think Mr. MacDougall could have sold all that and get back his money?

A. I could not tell that.

And further Deponent saith not.

40

Wm. McGOUN,  
*Stenographer.*

ENDORSED.

Deposition of John M. Lee, for Defendant Rough et al. Prod. 28 June, 1889. (Paraphed) A. B. L.

RECORD

*In the  
Superior  
Court.*

No. 99

Deposition of  
John M. Lee  
for Defts  
Rough & al  
(2nd deposi-  
tion dated  
26th Oct.  
1888

---Continued.

RECORD.

SCHEDULE No. 135.

*In the  
Superior  
Court.*

(Omitted.)

See Schedule No. 174 being a consent to now fying of said exhibit.—  
Number 146 of Index of Reference. Petitioner Exhibit A1 at enquete.

No. 100.  
Telegram  
Beard to Far-  
well, dated 18  
Dec. 1882.  
(Petitioner's  
Exhibit A1.)  
Missing.

10

SCHEDULE No. 136.

6th January 1883.

Messrs. S. W. Beard & John MacDougall,  
Montreal.

No. 101.  
Letter from  
W. Farwell,  
Gen. Man.  
of adjudica-  
taire to  
Messrs Beard  
& MacDou-  
gall of date  
6th Jan. 1883  
fyled 4th  
Nov. 1887.

Gentleman,

In the event of the bank becoming the purchaser of the Pioneer Beet Sugar Company property now advertised to be sold at sheriff's sale on the 12th Inst. we hereby agree to sell the same to you jointly and severally within ten 20  
days thereafter at such sum as will pay our claim and all expenses connected with the sale upon the following terms and conditions, viz : a cash payment of a sufficient amount to reduce our whole debt to \$40,000. a further sum in cash with what we may succeed in realizing from Ellenhausen notes now in suit to amount of ten thousand dollars more within six months, with interest at 7 oyo per annum on whole amt. unpaid five thousand dollars within 12 mos, and five thousand dollars annually thereafter until fully paid within semi-annually at the rate of seven per cent per annum, the property to be mortgaged to the Bank as security for due payment of above sums and to be kept insured in good Compa- 30  
nies to the satisfaction of the bank to full amount of their claim, on the execu- tion of the deeds the cash already realized from collateral to be applied in re- duction of our claim and the cordwood, bone black, and ground bones, now in possession of the Bank to be transferred to you, all notes and acceptances of the Company and of other parties endorsed by the Company forming our claim to be cancelled if practicable to be delivered over to you.

Your obt svt.

(Sgd) W. FARWELL,  
Gen. Man.

(ENDORSED).

Petitioner Exhibit A2 at Enquete fyled 4 Nov. 1887. Paraphed A.B.L. 40



## SCHEDULE No 137.

8th. Jany. 1883

MESSRS. J. W. &amp; JOHN MACDOUGALL.

Montreal.

*Gentleman,*

RECORD

*In the  
Superior  
Court.*No 102  
Letter from  
Farwell to  
Messrs  
McDougall,  
dated 8th Jan  
1883.  
Exhibit  
A3) fyled  
4th Nov 1883.

10 Referring to that part of my letter of Saturday last addressed to you respecting the Pioneer Beet Root Sugar Co. property, in which I agreed in the event of your purchasing the property from us should it come into our hands at Sheriff's on the 12th. Inst. to transfer the cord wood, Bone Black and ground Bones to you. I find it is questionable whether we should legally be able to do this as some of the notes for which this is held has collateral are included in our Judgt and application of a portion of proceeds of the sale could be demanded to apply on those notes. I must therefore withdraw that portion of my letter, and can only undertake to subrogate you in respect to those collaterals in such rights as we have, that have not been extinguished by the Sheriff's sale. In other respects my letter to remain in force and the property held by us for ten days from date of sale, subject to your acceptance on the terms and conditions therein stated. Please acknowledge receipt of this and state if satisfactory.

Yours Truly  
(Sgd)WM. FARWELL,  
Gen. Mgr.

P. S.—It is understood our whole debt with interest and costs is to be paid and we should deed without any warrenty.

W. F.

30

ENDORSED.

& C. Contestant exhibit A3 at enquête fyled 4 Nov. 1887. Paraphed H & L.

## SCHEDULE No. 138.

40

Missing.

See consent Schedule No. 174 and number 146 of Index of Reference. Petitioners exhibit A4 at enquête.

No. 103.  
Letter from  
J. McDougall  
to Wm. Far-  
well, dated  
9th Jan 1883  
(Petitioner's  
Exhibit A4)  
Missing.

RECORD

SCHEDULE No. 139.

8th Jan'y 1883.

*In the  
Superior  
Court.*

B. AUSTIN, ESQ. MANAGER,

Coaticooke P. Q.

*Dear Sir**Re* PIONEER BEET SUGAR Co.

No. 104.  
Letter from  
Wm. Farwell  
to B. Austin  
dated 8th  
Jan 1883.  
(Petitioner's  
Exhibit A5),  
fyled 4th  
Nov 1887.

Yours of 6th inst. is rec'd and contents noted, so far as I can see we are all right, and any action that would in any way affect the validity of any sale which may take place must be avoided. So far as Hagar is concerned I think Beard and he will come to some understanding. Beard came to see me Saturday morning according to arrangements, and we went over the whole account. It was somewhat more than he anticipated, he said and I fancy it would put him to some inconvenience to raise sufficient to reduce the am't at once to the \$25,000, as he first proposed. I have accordingly given him and MacDougall a letter agreeing in the event of the Bank becoming the purchaser of the property at the sale, to give them the right, within ten days thereafter, jointly and severally to purchase from us at the amount of our claim and all costs of sale, upon the following terms, viz: Cash pay't. of a sufficient am't. to reduce our claim to \$40,000, a further sum in cash, with what we may realize from Ellenhausen's notes now in suit to am't. to \$10,000 more, within 6 months. with in't. to that date, at 7 per cent per annum, \$5,000 more within 12 mos. from date of sale, and \$5,000 annually thereafter until fully paid, with in't. semi-annually at 7 per cent. the property to remain mtgd, to the Bank, and fully covered by insurance to am't. of our claim, the cash in hand to be applied, and form part of the reduction to \$40,000, and we to subrogate them in any rights we may have after the sale in our wood, bone black, and bone collaterals. I have been particular not to make any agreement with them, that they should not bid up the property, so I do not think any advantage can be taken of us. The only difference from our first talk is the large am't. we are to carry, and even if we had to carry the whole we are better off than now.—

From what Beard said, I do not think they expected to get the Hagar note from us in such shape as to enable them to collect it, and I state in my letter that the notes and acceptances of the Co, or of other parties endorsed by the Company, and forming part of our claim, are to be cancelled and returned to them if practicable, so that would cover it.

Perhaps if it does not appear necessary it would be as well that Williams should not be too prominent with Govt claim, unless Baird and MacDougall now understand it, and are content therewith. However I shall go up to the sale and we can take our bearings then.

Will you have Doak see to fyling our judgment so there will be no slip on that. Beard understood that point, he had communicated with the Sheriff respecting some arrangement and the Sheriff had advised him of the position. —I then informed him that we intended to fyle our judgment also, so it would

make the sale of the whole property certain, and he quite approved of that course. I think it is all right and we shall come out whole.

Yours truly,  
(Sgd) WM. FARWELL,  
Genl. Mgr.

RECORD

*In the  
Superior  
Court.*

No. 104.

Letter from  
Wm. Farwell  
to B. Austin  
dated 8th  
Jan 1883.  
(Petitioner's  
Exhibit A5),  
fyled 4th  
Nov 1887.

—Continued.

ENDORSED.

Contestant's Exhibit A5 at Enquete. Fyled 4 Nov. 1887 Paraphed H. L. & C.

No. 105.

Letter from  
Wm Farwell  
to B. Austin,  
dated 10th  
Jan. 1883.  
(Petitioner's  
Exhibit  
A5 bis), fyled  
4th Nov 1887

10

SCHEDULE 140.

Extract from letter from W. Farwell to Mr. B. Austin, dated 10th Jan'y. 1883.

I am going to Montreal to-morrow morning on some other bus. and expect to run out to Farnham on afternoon train, but if so shall return in time to take night train out, and shall go thro' to Coaticooke, be there Friday morning, I do not know of anything necessary to say respecting it, but trust you will have studied it up so as to know just how far we can go of course you have had our judgment fyled.

20

Yours truly,  
(Sgd) W. FARWELL,

B. AUSTIN, Esq, MANAGER,  
Coaticooke.

ENDORSED.

Contestant's Exhibit A5 bis fyled 4 Nov 1887. Paraphed H. L. & C.

30

SCHEDULE No. 141.

Sherbrooke, 25th Jany. 1883.

B. AUSTIN, Esq.  
M'gr. Coaticooke.

Dear Sir,

RE : PIONEER BEET ROOT SUGAR SETTLEMENT.

40

The settlement as made in sheets sent in yours of 24th inst. is all right, I think.

In regard to balance of interest \$3185.82 on this account, the more correct plan is to enter it in your current profit although it is ready interest accruing on loans for a longer period than the current half year. The stock in the Coy's is a loss and should be treated the same as any other loss ; Viz : charged to

No. 106.

Letter from  
Wm. Farwell  
to B. Austin  
dated 25th  
Jan. 1883.  
(Petitioner's  
Exhibit A6)  
fyled 4th  
Nov 1887.

RECORD.

*In the  
Superior  
Court.*

No. 106.  
Letter from  
Wm. Farwell  
to B. Austin  
dated 25th  
Jan. 1883.  
(Petitioner's  
Exhibit A6)  
fyled 4th  
Nov 1887.  
—Continued.

bad and doubtful debt account. I therefore credit you to-day with \$5000 which has been charged to that account here to wipe off that item.

Please make the entry.

I overlooked the item paid the Sheriff and the amount you charged us as paid Churchill \$4.00 but I debit amount to your account to-day.

(Sgnd) Wm. FARWELL,  
Gen. Mgr.

(ENDORSED):

Contestants Exhibit A6 at Enquête fyled 4 Nov. 1887. Paraphed ; H.  
L. & C.

10

20

30

40

SCHEDULE No. 141-142.  
 PIONEER BEET ROOT SUGAR COMPANY.  
 Classification of Credit side of Balance Sheet in 31st. Dec. 1881.

RECORD.  
 In the  
 Superior  
 Court.

	Capital Stock, subscribed as per list.....		\$138600 00
	Mortgages viz : .....		
	L. Sleeper.....	11993 29	
	A. A. Adams .....	3498 00	
	H. Hogan .....	212 00	
	J. B. Sherkeff .....	1011 00	
10	F. Brigham.....	1000 00	
	John Thornton.....	500 00	18214 29
	Bills Payable Per list.....		
	Advance from E. T. Bank Pass Book Balance.....	1603 81	86981 84
	Cheques out.....	958 98	2562 79
	Merchandise at credit to be adjusted with consignment acct..		2202 57
	Provisional advances by shareholders for adjustment or repayment.		
	Jackson, Rae .....	2868 57	
20	Charles Hagar .....	5000 00	7868 57
	Open accounts for adjustments or payment .....		
	G. W. Von Buffer & Co.....	23403 66	
	Marine Insurance .....	12 00	
	Benny McPherson & Co .....	1244 62	
	Goodyear Rubber Co.....	918 51	
	Morton Philips & Bulmer.....	254 29	
	R. Mitchell & Co.....	1 60	
	Sherbrooke & D. Line Coy .....	456 40	
	Sleeper & Akhurst.....	623 25	
	A. Lomer .....	5467 64	
30	E. Anders .....	388 31	
	J. Churchill.....	5 00	
	G. Lomer.....	92 40	
	Forward.....	32868 18	256430 06
	Forward.....	32868 18	256430 06
	C. Holmes .....	28 50	
	D. Schmisdt.....	14 00	
	R. Zabolk.....	2 91	
	P. S. Lamere.....	51 00	
	J. Dubrec.....	50 00	
	J. Boline .....	34 60	
40	J. J. Parker.....	200 00	
	John Taylor & Bro .....	3150 17	
	H. McNally & Co .....	153 67	
	A. E. Schmit .....	623 92	
	Magog & Gibb.....	100 36	
	Canada Paper Co .....	431 70	
	Mackay Bros .....	135 86	
	G. W. Cossitt & Co.....	40 50	
	W. B. V. Currie & Co .....	16 25	

No. 107.  
 Balance sheet  
 P. B. Root  
 Sugar Co.  
 credit side  
 dated  
 31 Dec. 1881  
 (Petitioner's  
 Exh. A7 and  
 A8.

SCHEDULE No. 141-142.

PIONEER BEET ROOT SUGAR COMPANY.

Classification of Credit side of Balance Sheet in 31st. Dec. 1881.

RECORD.

*In the  
Superior  
Court.*

No. 107.  
Balance sheet  
P. B. Root  
Sugar Co.  
credit side  
dated  
31 Dec. 1881  
(Petitioner's  
Exh. A7 and  
A8.  
---Continued

O. Baldwin .....	23 71		
G. Lomer Jr .....	750 00		
W. C. Woerter .....	36 71		
Frothingham & Workman .....	86 15		
A. C. Leslie & Co .....	121 24		
Thos. Roberston & Co .....	513 27		
John A. Converse .....	21 28		10
Anderson McKenzie .....	57 84		
Coaticooke Cotton Co .....	260 60		
John C. McLaren .....	147 35		
H. A. Nelson & Sons .....	43 85		
Lyman Sons & Co .....	17 49		
A. Savage & Son .....	35 32		
Dominion Stove Co .....	102 08		
R. C. Adams & Co .....	172 26		
J. L. Cassidy & Co .....	114 25		
F. A. Dawes .....	357 75		
B. F. Hedden .....	100 00		20
C. Garth & Co .....	15 00		
R. Paxton .....	105 30		
Forward .....		256430 06	
Forward .....		256430 06	
Shurkeff & Knapp .....	39 15		
Kenneth Campbell & Co .....	46 02		
A. R. Fox .....	23 71		
S. Brush .....	500 00		
E. Thibault .....	8 70	41607 35	
Total Credit of Balance Sheet .....		298037 41	30
Bills under discount in E. T. Bank detailed .....			
In their account .....	43473 39		
Coaticooke, 27th Jan'y. 1882.			40

PIONEER BEET ROOT SUGAR COMPANY.

RECORD.

Classification of the debit side of Balance Sheet on 31st Dec. 1881.

In the  
Superior  
Court.

No. 107 1/2.  
Balance sheet  
P. B. Root  
Sugar Co.  
Debit side  
dated  
31 Dec. 1881  
(Petitioner's  
Exh. A7 and  
A8.

	Properties & Buildings.....			
	Construction Expenditures incurred.....	55896	58	
	Company's Teams do .....	256	56	
	Furniture do .....	607	49	
	Railway Siding do .....	6891	38	
	Real Estate do .....	22964	43	86616 44
10	Plant Implements & Machinery do .....	100993	35	
	Agricultural Implements do .....	545	53	
	Sundry Implements do .....	1716	00	
	Laboratory do .....	744	15	
	Bone Factory do .....	12200	00	116199 03
	Manufacturing account Farm 1882 do .....	64	00	
	Fuel including Col &c. Security given Sundry creditors incurred.....	4474	40	
20	Production do .....	4186	65	
	Lime do .....	1340	62	
	Barrels do .....	1482.26 299.70	1881 96	
	Beet including Col &c. security, given Sundry creditors incurred.....	26572	45	
	Oil do .....	958	64	
	Acid do .....	566	11	39944 83
	Preliminary Expenses in recurring } General Expenses contingencies incurred..... }	5890	19	5890 19
30	Interest incurred.....	1611	29	
	Insurance do .....	918	47	
	Commission incurred to be adjusted.....	0	00	
	Salaries & Wages incurred.....	8979	95	-11509 71
	Bone Department including collapsed security given sundry creditors.....	20779	23	20779 23
	Forward.....		\$	280939 43
	Forward.....			280939 43
40	Consignment of Merchandise Value.....	1945	69	1945 69
	Cash on hand.....	159	83	159 83
	Bills Receivable given E. T. Bank as Coltc. security.....	1700	00	1700 00
	Arthabaskaville Syndicate advanced them.....	3703	21	3703 21
	Open Accounts for adjustment and collection.....			
	John MacDougall.....	1593	30	

RECORD				
<i>In the Superior Court.</i>	G. Lomer.....	114	11	
	T. Brau.....	1290	00	
	A. H. Cummings.....	765	00	
	S. Davis.....	35	42	
	T. T. Shurtleff.....	199	59	
	J. D. Fraser.....	5	00	
	G. O. Doak.....	121	95	
	J. Thornton.....	60		
	S. H. May & Co.....	8	21	
	Winn & Holland.....	20	46	
	Fenwick & Sclater.....	27	17	
	Hugh McKay.....	3008	51	
	F. Ellerhausen.....	106	54	
	of Coaticooke.....	150	00	
	A. W. Thomas.....	20	70	
	F. Langlands.....	9	10	
	Hugh McKay.....	5	06	
	Jackson Rae.....	76	57	
	Chas. Hagar.....	103	06	
	J. Thornton.....	12	00	
C. C. Colby.....	3	82		
H. Stewart.....	193	75		
J. Coristine.....	84	57		
D. T. Irish.....	10	52		
E. H. Todd.....	11	16		
B. Austin.....	100	00		
E. Anders.....	53	88		
A. B. Sharer.....	19	98		
Rev. Canon Henderson.....	400	00		
G. Wait.....	18	32		
R. McKeoun.....	30	20		
G. Cernes in trust.....	16	70		
G. B. Burland.....	19	70		
T. Coristine.....	12	68		
S. Harris.....	6	86		
J. W. Dakers.....	1001	74		
A. Lomer.....	13	02		
		9589	25	
Total debit of Balance Sheet.....			298037	80
Bills under discount in E. T. Bank detailed.....				
In their account.....		43473	39	

Verified  
Coaticooke, 27th Jany 1882.

The foregoing is a correct extract from the minute book of the Pioneer Beet Root Sugar Company, according to its purport.  
THOS. DARLING,  
Liquidator.

(ENDORSED.)

Contestants' Exhibit A7 & A8 at enquôte, fyled 4 Nov. 1888. (Paraphed) H. L. & C.



## SCHEDULE No. 141½.

In the matter of the Pioneer Beet Root Sugar Company,

*Insolvent.*

RECORD

*In the  
Superior  
Court.*

EXTRACT FROM PAGE 19 OF THE MINUTE BOOK.

No. 108.  
Minutes of  
annual meet-  
ing of share-  
holders of the  
Company  
Defendant  
dated 27th Ja-  
nuary 1882,

10 Minutes of the annual general' meeting of the shareholders of the Pioneer Beet Root Sugar Company held at the office of the Company at Coaticooke, January 27th 1882, at which were present the following gentlemen: Charles Hagar, John Thornton, Hugh Mackay, G. B. Burland, G. Lomer, J. Hodgson, Geo. Wait, W. S. Evans, Wm. Cleveland, Messrs. Sleeper & Akhurst, B. Austin, B. Dawson Jr., A. Lomer, E. H. Todd, E. Anders and also Wm. Farwell Genl. Manager E. T. Bank.

Chas. Hagar, Esq was requested to take the chair and the proceedings of the meeting were then begun by the by-laws of the Company being read by G. B. Burland, Esq, and after Sundry amendments it was proposed by W. S. Evans, and second by J. Hodgson, that they be adopted—Carried.

The Managing Directors report was then read to the Meeting.

20 The Auditors report and statement of the affairs of the Company was then submitted to those present

Proposed by G. B. Burland, and seconded by H. Mackay that the proposed application to the government as read to the meeting to increase Capital stock of the Company to two hundred and fifty thousand dollars, and to be permitted to issue \$125,000. Debenture Bonds, be approved—Carried.

A Ballot was then taken for the election of Directors and the scrutineers (G. B. Burland & B. Dawson Jr.) reported that the following gentlemen were almost unanimously declared elected Directors for the ensuing year.

C. Hagar, G. Lomer, James Coristine, John MacDougall, J. Thornton, Geo. Wait, W. S. Evans. Their meeting then closed.

30

(Signed) CHAS. HAGAR,  
President.

(Signed) ERNEST GLACKMEYER,  
Acting Secretary.

The foregoing is a correct extract from the Minute Book of the Pioneer Beet Root Sugar Company, according to its purport.

THOS. DARLING,  
Liquidator.

(ENDORSED.)

40

Contestants' Exhibit A7 *bis* at enquête, fyled 4th Nov. 1887. (Paraphed) H. L. & C.

RECORD

SCHEDULE No. 142.

—  
*In the  
 Superior  
 Court.*  
 —

IN THE MATTER OF THE PIONEER BEET ROOT SUGAR COMPANY,

Insolvent.

EXTRACT FROM PAGE 32. OF THE MINUTE BOOK.

## AUDITORS REPORT.

No. 109.  
 Copy of Au-  
 ditors Report  
 27th January  
 1882.  
 Contestants  
 Exh. A8 bis

To the Shareholders of

10

THE PIONEER BEET ROOT SUGAR COMPANY,  
 Coaticooke.

GENTLEMEN,

In accordance with the request of your President and Managing Director, I have examined and audited the Company's Books, and vouchers from their origin till the 31st December 1881 and rendered a trial balance sheet and statements of the Company's affairs between these periods. With the exception of some inaccuracies which are now rectified and which were evidently the result of comparative inexperience I found the books in good order and well adapted for the Company's business. Vouchers for all the transactions recorded were found in good order and complete. The results shewn in the statements prove the accuracy of the entries made, but the balance sheet which is what is technically called a trial balance does not profess to show any gain or loss resulting from the Manufacturing operations of the Company, the beginning of which are of so recent a date as render any such proof impossible. The accounts are kept by reliable method for demonstrating the process and results of the manufacture when the proper time arrives for making a final balance sheet. 20

The statements rendered verified by me this day, are as follows : viz :

1st Trial balance sheet. 50

2nd Classification of debit side of sheet.

3rd Classification of credit side of sheet.

4th Detailed list of bills payable.

Coaticooke, 27th Jan'y 1882.

(Signed) JOHN C. McDONALD,  
 Auditor.

The foregoing is a correct extract from the minute book of the Pioneer Beet Root Sugar Company, according to its purport.

THOS. DARLING,  
 Liquidator. 40

(ENDORSED.)

Contestants' Exhibit A8 bis at enquete, fyled 4th Nov. 1887. (Paraphed) H. L. & C.

SCHEDULE No. 143.

22nd Jany. 1883.

B. AUSTIN, ESQ, MANAGER,  
Coaticooke P. Q.

Dear Sir,

Re PIONEER BEET SUGAR CO. SETTLEMENT.

Yours of 20th Inst. is recd and I am sure we can all congratulate ourselves upon the successful result of our negotiations. I think you and Doak and director Thornton deserve special mention.

10 I did not succeed finally in getting the papers signed and the cheque into my hands until after 5 o'clock Friday, and on Saturday I deposited the amt. to credit of your branch in Bank of Montreal, viz: \$9,439.00.

I send you herewith a sheet showing how the acct. was made up, so you can settle your book. In the settlement I was obliged to allow int. on the \$4794 recd. by you from colln. of collaterals at same rate as we had chgd, viz: 7 per cent and as their ck. was made out for full amt, and accepted, I gave them ck. on you, the amt. was made up by Beard, and if not correct, he will make it so, my ck. was for \$266.57, which of course will lessen the amt. of int. you will receive, perhaps you had better credit that acct. with so much int and then chg. the full amt, as by your statement.

20 I debit your acct. to-day \$510.00 being amt. included in the statement for lime Co claim \$500 and \$10 I handed Doak in Montreal, you will see I have added \$4 for Churchill, his time and expenses coming here *re* insurance, and if you think he has been useful enough to us, you can give him for his wife perhaps—\$50, you might do so.

I see no reason why you may not settle with Doak, but as a matter of precaution you had better have him give you and undertaking that in event of the sale being upset in any way. and we have to refund the amt. recd. he will repay us the amt. of course I do not anticipate anything of the kind, but Doak says in case of any informality it might be done within one year. So it is well enough to have it, as the amt. is considerable.

30 In regard to the collaterals I return you the———of Mr. Adams, which you sent me, and it is agreed we are to take proceedings at once to have the stuff brought to sale. I have a written request from Mr. Rough asking us to see that it is not allowed to be bought by any outside party, unless they bid over \$4000 agreeing to take it off our hands at whatever we do pay. I gave an agreement that this should be done. I send you his letter and copy of my letter to him all of which I suppose Doak will require to see, of course he will see us safe through this part of it. Mr. Adams claim will form part of the costs and you must also get the watchman's fees out of them at same time.

4.) Re Lomer collaterals I do not see that we can hold them any longer but go very cautiously and surrender them so that there will be no back fire.

Re Ellenhausen I would only accept the note they have sent upon approval of Beard and MacDougall and then of course as collateral, possibly however it may not be necessary to refer to them as the matter is in our hands, and I have not given them any writing in regard to it. I think therefore you may take it as it is, if nothing is collected it makes no difference to us.

RECORD

In the  
Superior  
Court.

No. 110.

Letter from  
Wm. Farwell  
to B. Austin,  
dated

22nd January  
1883.

Petr's Exh.  
A9 at En-  
quête.

## RECORD

*In the  
Superior  
Court.*

No. 110.  
Letter from  
Wm. Farwell  
to B. Austin,  
dated  
22nd January  
1883.  
Petr's Exh.  
A9 at En-  
quête.  
—Continued

Re Hogan lot they claim to have understanding with you that they are to have it at what you paid. They did not make any stipulation however with me in regard to it.

I will send you the cors. by Mr. Adams to-morrow as it is too late to night to enregister this letter and I do not care to send them without.

I have all the notes in my possession and will hold them until the year expires in case we may want them.

Yours truly,

(Sgd)

WM. FARWELL,  
Genl. Mgr.

10

Please let me know, by return mail, date and registered date of the Sheriff's deed.

ENDORSED.

Contestant's Exhibit A9 at Enquête fyled 4th Nov. 1887. Paraphed H. L. & C.

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SCHEDULE No. 144.

No. 111.  
Extract from  
letter Wm.  
Farwell to  
John Thorn-  
ton, dated 25  
Jan. 1883.  
(Petr's Exh.  
A10

Extract from letter from W. Farwell to Mr. Thornton.

Dated 25th Jan'y. 83.

I suppose you have heard from Coaticooke of the successful result of 30 our beet sugar purchase and sale.

I think we are all right now, and, as I wrote Austin, Doak himself, and you, are specially worthy of mention in connection with the transaction, if any of us ever did *take anything*, I think the present would be the right time.

Yours truly,

(Sgd)

W. FARWELL.

THORNTON, Esq.,  
Coaticooke.

ENDORSED.

Contestant's Exhibit A10 at Enquête, fyled 4th Nov. 1887. Paraphed H. L. & C.

40

SCHEDULE No. 144½

25 June 1883.

RECORD.

B. Austin Esq., Manager, Coaticooke, P. Q.

*In the  
Superior  
Court.*

Dear Sir,

We have to-day been served with a writ at the instance of the Hoche-  
laga Bank and others *re* the Pioneer Beet Sugar Co sale claiming the sale and  
adjudication fraudulent and also our judgment fraudulent etc, etc, the writ is  
not returnable until first September so there is no immediate hurry and it is  
returnable in Montreal. As Doak knows more about this matter than *any*  
10 *one else*, I think we must have him attend to it as it would never do having got  
on so far well, to go under now. I understand that Doak is away west. Please  
let me know when he his to return and where he is etc.

Yours truly,

(Sgd)

WM. FARWELL,

Gen. Man.

No. 112.  
Letter from  
Wm. Farwell  
to B. Austin  
dated 25th  
June 1883.  
(Petr's Exh.  
A10 bis)

ENDORSED.

Contestant's exhibit A10 bis. at enquête. Fyled 4th Nov. 1887. Paraphed  
20 H. L. & C.

SCHEDULE No. 145.

EXTRACT FROM LETTER FROM WM. FARWELL,

Gen. Man.

To B. Austin,  
Manager,  
Coaticooke, P. Q.

Dated 12th October 1881. (Petr's Exh.  
A11)

No. 113.  
Letter from  
Wm. Farwell  
to B. Austin  
dated 12th  
Oct. 1881  
(Petr's Exh.  
A11)

30 BEET SUGAR COMPANY ACCOUNT.

Dear Sirs,

The Directors here are feeling considerable anxiety respecting the ac-  
count and the position of the Company. The time is at hand when they must  
commence to pay for beets, their works are incomplete and their capital stock  
still I believe is considerably short of the amount required. From the Inspec-  
tor's report we also find that the amount has increased considerably in various  
ways, and some portion of it irregular and unsatisfactory. Overdrawn account  
\$10, 926, 51 we note the explanation that this was upon written assurances  
40 that payment of about \$8,500 new stock sum to be made should be applied to  
cover this, but such written assurances are only morally binding, and a vote of  
the board, possibly a majority being unfriendly, would change this. I also  
note that A. Lomer's note has lately been dis. on account of stock, and that you  
have further paper of his going on same account. This you must be aware  
rests wholly upon the success of the Co., as Mr. Lomer admits, I believe having  
put all his moneys in therefore all the paper of A. Lomer really is only Beet  
Sugar Company. You also hold very considerable amounts of the Co'y. paper  
endorsed by men of small means such as Thibault say \$600, J. J. Parker also

RECORD

*In the  
Superior  
Court.*

No. 113.  
Letter from  
Wm. Farwell  
to B. Austin  
dated 12th  
Oct. 1881  
(Petr's Exh.  
A11)  
—Continued

about \$1,500. In case of trouble with the Co, this no doubt, would be a very serious matter for him to provide for. Also a note of \$605. endorsed by Mrs. Doak and her husband for wood, unless the wood was actually got out for Mrs. Doak and sold for her acct. her endorsement—which we look upon as the only name on the note of any strength—will be of no acct. as she cannot, as you are aware, endorse for her husband we regret to find that the \$7,500. advance on acct. of bonus is still unsettled, that you have not taken measures to have the mortgage amended, so the Bank would be protected beyond any question ; also that a further advance of \$425. was made the Co for purchase of the Adams engine on their own security only.

10

I find the following amt. against the Co. unsecured, viz :

Overdrawn acc.	\$10,926	
Seed note	2,422	
Bonus advance	7,500	
A. Lomer	3,600	
Engine note 425, Thibault 600	1,025	
Other Doak endorsements say	1,500	\$26,973.

Mr. Morey reports some warehouse receipts for bones as held, but such security as I think you were advised sometime before this, was irregular and of questionable value, as any real security, even with an old established and tried industry an account standing as this does would be unsatisfactory. And with our dear bought experience in connection with the meat Co, the directors feel that advances should only have been made upon undoubted security I am therefore directed to require you to give this matter your immediate attention, and get the whole account put into such shape as will make us perfectly secure.

20

Mr. Morey also reports that this acct. has been heavily overdrawn more or less since the commenced operations, but that no int. has been charged up ; but that it was your intention to do so later on. This I think is entirely wrong, and very liable to lead to misunderstanding between you besides the int. on all transaction should come in within the period when the money is used or, say, in all cases, at the close of your half yearly returns. Will you therefore give attention to this matter and have the int. made up and charge over and in future require the companies to make some other arrangements than by overdraft for money they may require.

30

(Signed) W. FARWELL.

ENDORSED

Contestants' Exhibit A11 at enquête, fyled 4 Nov. 1887. Paraphed  
H. L. & C.

40

## SCHEDULE No. 146.

EXTRACT FROM LETTER FROM W. FARWELL,  
 To B. AUSTIN,  
 Manager,  
 Coaticooke,

Dated 17th. Oct. 1881

*Re* BEET SUGAR CO. MORTGAGE.

RECORD.

*In the  
 Superior  
 Court.*

No. 114.  
 Letter from  
 Wm. Farwell  
 to B. Austin  
 extract.  
 dated  
 17th Oct.  
 1881. (Petr's  
 Exh. A12)

10 I have had Mr. Brooks examine the agreement sent me on yours of 13th inst. amending the mortgage, he says in any case it would require the authorization of the board of directors of the Sugar Co, to make it legal, and then is would only be so provided their charter or by-laws gave the Directors power-necessary to alienate property. Will you please look that up, and see if they have powers, and if so get the document ratified. In the meantime will you please send me a copy of the deed from Mr. Sleeper to the Co. under which our mortgage is created? Mr. Brooks would like to examine it in connection with this new agreement.

20 *Re* BEET SUGAR CO. GENERAL MATTERS.

The bill of exchange recd. in yours of 15th inst. Quebec Bank on Union Bk. £850 @ 60 d st. you may credit them with 7 5-8 prm. This is a good rate, as you will see by the papers that it is selling between Bks. at 8-1-8 round amt. You will require to write London and county to credit our act (Ho.) with amt. when paid. I have had the entries made in our books to-day, and credit your branch \$4065.93, and I debit London and county the bills as being sent by you. I return you the second ex. which you can forward to London and county this week with instructions.

30

## A. LOMER.

I note what you say about this party and find I fall into the same error as Morey, confounding him with G. Lomer. I apologize all round.

(Signed) W. Farwell,  
 Gen. Mgr.

(ENDORSED.)

40 Contestants' Exhibit A12 at Enquête, fyled 4 Nov. 1887. (Paraphed)  
 H. L. & C.

RECORD

SCHEDULE NO. 147

25th Oct. 1881.

*In the  
Superior  
Court.*

B. AUSTIN, Esq.  
Manager.  
Coaticooke, Q.

Re Beet Sugar Co. Mortgage & Sleeper Deed.

No. 115.  
Letter from  
Wm. Farwell  
to B. Austin  
dated 25th  
Oct. 1881  
(Petr's Exh.  
A13)

Dear Sir.

Mr. Brooks has carefully examined these papers, and he says until rati- 10  
fied by the Directors of the Beet Co. the amendatory acct has no force or value;  
but even if ratified it would still leave it a question whether, in event of any  
difficulty, other share holders or creditors could not compel us to accept the  
\$5,000 stock stipulated in the original Deed, and on which 5 per cent is ac-  
knowledged in the Deed. He also says that he has been furnished with no  
proof that the Directors have authority to hypothecate the property of the  
Co, through I suppose their by-laws give them such powers. Will you please  
send me a copy of their by-laws which I presume they have a supply of in  
printed form? Mr. Brooks is of the opinion that it will be much more safe  
and regular for us to have a straight mortgage for the \$5,000, and as the Beet 20  
Co., board have to meet in any case to pass resolution to ratify what has been  
done, they can quite as readily pass a resolution authorizing the new mortgage  
instead. And while this is being done, the amt should be for the whole of our  
bonus advance, viz : \$7,500. This advance was made against special security  
which was to be given us and now that they find they cannot give us the special  
security which covered the full advance they must give what will be equally as  
good. I note that in one of your previous letters you state that they object to do  
this as they will require to use such securities as they can give to enable them,  
to raise money to pay for beets. But I do not see that that is any good reason  
why we should carry the \$2,500 unsecured. Will you please have this matter 30  
put in shape at once, so it can be reported as all correct in our semi-annual  
returns, it was fully understood that we are not to be asked to carry this unse-  
cured and we cannot.

With regard to the seed note this should now be paid as they are getting  
returns from the farmers for sale of this seed in beets and the note should  
therefore be retired.

I return you the Sleeper Deed and the amendment.

Yours truly,  
(Sgd)

WM. FARWELL,  
General Manager

40

ENDORSED.

Contestant's Exhibit A13 at Enquête, fyled 4 Nov. 1887. Paraphed  
H. L. & C.



## SCHEDULE No. 148

Sherbrooke, 8th Nov. 1881.

RECORD.

B. AUSTIN, Esq.

Mgr., Coaticooke.

*In the  
Superior  
Court.**Re* BEET SUGAR COY.

DEAR SIR,

No. 116.

Letter from  
Wm. Farwell  
to B. Austin  
dated 8th  
Nov 1881  
(Pet's Exh.  
A14)

10 I note what you say about this account. I presume the Charles Hagar note is all right and safe, but I note you have been cashing quite large amounts of Jackson Rae's acceptances, I have noticed quite a number of them lately I suppose you have made enquiries but I was under the impression he was not very strong in fact has not much means.

Mr. Cochrane was here to-day and feels very nervous about this business and he does not think we ought to advance a single dollar unless we have ample security as he has no confidence in the enterprise. He is of the opinion that we should at once press for our unsecured claims and insist upon satisfactory security, that if we risk the \$5000 stock we hold we should not do more.

20 There is considerable grumbling among the farmers about the way they are being treated about receiving beets. They say they were told not to harvest them as the Co'y. were not ready to receive them, in consequence of which the beets were frozen and now they require them to make a heavy discount. I think there are many farmers who will not raise them again.

Yours truly,

(Sgd)

WM. FARWELL,

Gen Man.

30 Contestants' Exhibit A14 at Enquête, fyled 4 Nov. 1887. Paraphed  
H.-L. & C.

## SCHEDULE No. 149.

28 Dec. 1881.

G. LOMER, Esq.

No. 117.  
Letter from  
Wm. Farwell  
to G. Lomer  
dated 28th  
Dec. 1881  
(Pet's Exh.  
A15)

40

Manager of the Pioneer Beet Sugar Co.

Coaticooke, Q.

DEAR SIR,

I must return you the rew'l note sent on yours of yesterday's date, with the \$2.50 int. both of which please find herein. The alteration in the date

RECORD

*In the  
Superior  
Court.*

No. 117.  
Letter from  
Wm. Farwell  
to G. Lomer  
dated 28th  
Dec. 1881  
(Petr's Exh.  
A15)  
—Continued

invalidates the note. Besides we think these small notes should be paid. The endorser is a man of very small means and we could not consent to extend the time, as it would be virtually upon the Company's name alone.

Yours truly,  
(Sgd.) Wm. FARWELL,  
Gnl. Mgr.

(ENDORSED.)

Contestants' exhibit A15 at Enquête, fyled 4 Nov. 1887. Paraphed  
H. L. & C. 10

## SCHEDULE NO. 150.

30th Dec. 1881.

B. AUSTIN ESQ., MANAGER,  
Coaticooke, Q.

No. 118.  
Letter from  
Wm. Farwell  
to B. Austin  
dated 30th  
Dec. 1881  
(Petr's Exh.  
A16)

Dear Sir,

*Re* BEET SUGAR Co. 20

Yours of 29th inst. is received and I am sorry to learn that matters are in such a bad state with the Co. Will you please send me a full statement of just how their acct. stands, with you, as early as possible? And we think you should take measures to strengthen any paper of theirs you hold. You are satisfied that the Company's endorsement is of very little value now. Therefore as the paper endorsed by them or as paper of the Company endorsed by other parties matures, either have payment or additional security. J. J. Parker will hardly like to be called upon to provide for his paper, but it is better to have it arranged now, when there may seem to him a prospect of getting something, 50 than later on when all is gone, Thibault and all others. I think Adolf Lomer's position weak, if he is as you say endorsing, as you say, at the Banque d'Hochelaga so largely, and that you should not accept renewal of his paper. It will never do if we can possibly avoid it, to make a dollar's loss through this Co. in the matter of wood that has been taken, you must require that arranged and settled at once, as it was a most unwarranted transaction, cannot Mr. Thornton put you in the way to get security on our outstanding? I am sure you are doing all you can but you must not hesitate to push matters if you see anything can be accomplished by so doing.

Please send the statement as early as you can and possibly if you think 40 it advisable I will run up or you can come down.

Yours truly,

Wm. FARWELL,  
Gnl. Mgr.

(ENDORSED.)

Contestants' Exhibit A16 at enquête, fyled 4th Nov. 1887. (Paraphed)  
A. L. & C.

SCHEDULE No. 151.

10th January 1882

RECORD.

B. AUSTIN, Esq.  
 Manager,  
 Coaticooke, Q.

—  
*In the  
 Superior  
 Court.*  
 —

DEAR SIR,

*Re* BEET SUGAR Co.

No. 119.  
 Letter from  
 Wm. Farwell  
 to B. Austin  
 dated 10th  
 Jan. 1882.  
 (Petr's Exh.  
 A17)

10 I wrote you on 30 ult. asking you to send me as early as possible a full statement of just how their account stood with you and suggesting that you should not grant renewals of their paper without additional security, unless the endorsers were perfectly responsible, as in the position the Company now stood, we could not consider their endorsement of much value up to now I have no answer to my letter, and have noticed renewals of quite a number of their notes. We thought Adolf Lomer's position weak, having endorsed so largely for the Co. to Bank d'Hochelaga, and measures should be taken at once, to strengthen our position, as I wrote you it would never do if we could possibly avoid it to make a dollar's loss on this acct. Please send statement as we feel great anxiety.

20

Yours truly,  
 (Sgd)

WM. FARWELL,  
 Gnl. Mgr.

(ENDORSED.)

Contestant Exhibit A17 at Enquête, fyled 4 Nov. 1887. Paraphed H. L. & C,

SCHEDULE No. 152.

30 EXTRACT FROM LETTER FROM WM. FARWELL,  
 Gen. Mgr.

TO B, AUSTIN, Esq.  
 Manager,  
 COATICOOKE, Q.

Dated 10th May 82.

*Re* BEET SUGAR COMPANY.

No. 120.  
 Extract from  
 letter from  
 W. Farwell  
 to B.  
 Austin dated  
 10th May  
 1882  
 (Petr's Exh.  
 A18) fyled

40 I duly receive yours of yesterday's date and after consideration wired you to make such arrangements with Lomer as you thought advisable, only keeping security in best shape possible. It has occurred to me since wiring you that possibly Lomer might not be authorized to make any exchange or transfer of collateral without authorization of his board. You must look carefully at all points and not get caught and you had also better get an order on the govt for the \$750. subsidy money. In regard to remainder of the bone meal as it appears it may deteriorate in quality by keeping, efforts had better be made forthwith to dispose of it. I dislike very much to allow any exchange or meddle with the matter at all, and would not only it is desirable to have

## RECORD

*In the  
Superior  
Court.*

No. 120.

Extract from  
letter Wm.Farwell  
to B. Austin  
dated 10th  
May 1882  
(Petr's Exh.  
A18)

—Continued

them go on, and if we get equally good security, I do not see we alter our position, I do not wish a dollar of security released in consideration of our holding the judgt, as that may be uncertain, and the collaterals are not. You had better get authorization from Lomer to sell bone meal, and apply proceeds. Then it can be handled, whereas if left to Lomer he may not attend to it. I hope to goodness we shall get out of this miserable matter sometime.

(Signed) Wm. FARWELL,

*General Manager.*

(ENDORSED.)

Contestant's Exhibit A. 18. at Enquête, fyled 4th November, 1887. Paraphed H. L. & C.

10

No. 121

Letter from  
Farwell to  
Austin, dated  
24 June 1882  
Petr's Exh.

A19

SCHEDULE No. 153.

24 June 1882.

B. AUSTIN, ESQ., MANAGER,  
Coaticooke, P. Q.

Dear Sir,

Yours of 21st inst. returning me Lomer's letter is received. I note that you say that you "think if you should press him as you did in the other transaction he would raise the money &c". My idea then is that you should press him, go for him and make him pay up, as we have all the bones we have any use for.

Yours truly,

(Sgd)

Wm. FARWELL,

*Genl. Mgr.*

(ENDORSED.)

20

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Contestant's Exhibit A 19 at Enquête, fyled 4th Nov. 1887. Paraphed H. L. & C.

SCHEDULE No. 154.

Confidential.

8th. Nov. 1881.

No. 122  
Letter from  
W. Farwell  
to John  
Thornton,  
dated 8 Nov.  
1881. Petr's  
Exh A20

JOHN THORNTON, ESQ.

Coaticooke, P. Q.

Dear Sir,

*Re BEET SUGAR CO.*

Mr. Cochrane has been here to-day discussing Beet Sugar, and takes

40

very strong ground against our making advances to the Companies for purchase of beets and working cap. even after they have their capital fully paid and are free of Debt. he even goes so far as to say that he should feel inclined to sell his bank stock, if we did, as he is confident the Co. cannot succeed and it will in the end result in loss to the Bank, he says he has carefully gone into the matter and does not believe it can succeed, that there is a very bitter feeling amongst the farmers, at the way they have been treated, in the Company not being ready to receive the beets when they should have been harvested and in consequence are making them dis. for frozen beets. He thinks we should insist upon our unsecured claim being put in shape at once, and that we should take no risks. I notice considerable advances upon acceptances of Jackson Rae, which I understand is not strong paper, I am sure if any loss should be made, there would be considerable feeling about it. I wish in order that all should be harmonious, that you could see Mr. Cochrane, and talk over the whole business with him, he takes such strong grounds against it.

Yours truly,  
(Sgd.)

WM. FARWELL,  
Genl. Mgr.

(ENDORSED.)

RECORD

*In the  
Superior  
Court.*

No. 122.  
Letter from  
Wm. Farwell  
to  
John Thorn-  
ton, dated 8  
Nov. 1881.  
(Petr's Exh.  
A20  
—Continued.

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20 Contestant's Exhibit A. 20, at Enquête, filed 4th Nov, 1887. Paraphed,  
H. L. & C.

SCHEDULE NO. 155.

30 EXTRACT FROM LETTER FROM WM. FARWELL,  
Genl. Mgr.

TO JOHN THORNTON, ESQ.

Coaticooke, dated 14th Nov. 1881.

*In Re* BEET SUGAR Co.

I have received your letter, and do not know as it is of any consequence about your seeing Mr. Cochrane. Mr. Lomer is here to-day, with Mr. Austin, and we are going into the matter with him fully. Mr. Austin, will advise you of the result.

No. 123.  
Extract of  
letter from W.  
Farwell, to  
John Thorn-  
ton, dated  
14th Nov.  
1881. Petr's  
Exh. A. 21,

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(Signed),

WM. FARWELL,  
Genl. Mgr.

ENDORSED.

Contestant's Exhibit A. 21 at Enquête, filed 4th Nov. 1887. Paraphed  
H. L. & C.

RECORD

SCHEDULE No. 156.

*In the  
Superior  
Court.*

EXTRACT FROM LETTER FROM B. AUSTIN,  
Genl. Mgr.

TO WM. FARWELL, ESQ.

Sherbrooke, dated 13th Oct. 1881.

No. 124.  
Extract of  
letter from B.  
Austin, to  
W. Farwell  
dated 13th  
Oct. 1881.  
(Petr's Exh.  
A.22)

Dear Sir,

In reply to yours of yesterday, I beg to say the Beet Sugar Co's. Cap. 10  
is not yet as you say completed. It stand at about \$123,000, I told Mr.  
Lomer some days ago that as long as the Cap. of the Co. is incomplete the  
Bank could not make advances for purchasing beets. He replied that he  
expected a large addition to the Cap. on Saturday next when some Montreal  
people are coming out to examine the works; and failing that he hopes to  
arrange for advances through Jno. Hope & Co., who will sell the product of  
the Factory. With regard to the advances made against stock subsn. they  
have been all paid and applied. You appeared to have confounded A. Lomer,  
with G. Lomer, the latter is the promoter of the Co. A. L. is his son I enclosed  
D. W. & Co's report of the latter. Please return it to me. J. J. Parker is 20  
not a weak man, he is worth at least \$5000, and doing a very good business.  
The note in favor of Mrs. Doak, was for wood cut upon her own land and sold  
in her name, to the Co. With regard to the advance of seven thousand five  
hundred dollars, \$7500, against bonus which was made by yourself direct to  
the Company, without my knowledge, and much to my surprise, I did the best  
I could with it. I procured the enclosed amendment to the mortgage which  
sets forth that the Bank's mortgage shall remain at the original figure. This  
was already done before Mr. Morey made his inspection, and I showed him  
the document, I had not made the application upon the note as I had not  
received the stock certificate for fifty shares; I have since obtained it and made 30  
the application leaving the balance \$2500, in the form of a demand note and  
unsecured. The \$425, note was taken from Mr. Adams, not from the Co. and  
applied upon Mr. Adams debt, to the Bank. He holds \$400, stock for the  
balance of the price of the engine. The overdrawn account of the Co. is now  
covered by warehouse receipts for bonus to the amount of three thousand dol-  
lars \$3000, and the balance, by sterling bill, accepted by Union Bank of Lon-  
don. Thus the unsecured liabilities consist of \$2422, and the balance and the  
loan which you made \$5500. I will undertake on my part not to increase this  
amt. and beyond this I do not see that we can take any more judicious course  
than to await the result of Mr. Lomer's efforts. Every addition to the Cap. 40  
He obtains increases the strength of the Co. and I believe it to be already in a  
position that taking the worst view of the case, the creditors at least should be  
safe. Some time ago when the \$7500, loan matured I urged Mr. Lomer and  
Mr. Hagar, to give us a mortgage to secure it, and they replied that they  
could not do so, as in case the Bank should decline to furnish advances to pay  
for beets they would require all their resources and all their credit to procure  
the money elsewhere.

Interest on overdrawn acts. Mr. Morey, was not strictly correct in stating the accts. of the Beet Co. had been heavily overdrawn more or less since they commenced operations, and that no interest, had been charged. It is true of the Beet Co since the early part of the present year, and they have not been in a position to provide the interest.

(Signed), B. AUSTIN,  
Genl. Mgr.

(ENDORSED.)

RECORD

—  
*In the  
Superior  
Court.*  
—

No. 124.  
Extract of  
letter from B.  
Austin, to  
W. Farwell  
dated 13th  
Oct. 1881.  
(Petr's Exh.  
A.22)  
—Continued.

10 Contestant's Exhibit A 22 at Enquête, fyled 4th Nov. 1887. Paraphed  
H. L. & C.

SCHEDULE No. 157.

P. S. TO LETTER FROM B. AUSTIN.  
To Wm. FARWELL.

No. 125.  
Letter from  
B. Austin to  
W. Farwell,  
dated  
7th Nov. 1881  
(Petr's Exh  
A.23.

20 The Beet Sugar Co's Acct. of course adds largely to our work their cks. come in a perfect stream. They are still drawing funds from Montreal, I took from them to-day acceptance of Mr. Hagar's \$5000 three mos. He is perfectly good. They hope to start up the factory in a week from to-day, the delay has been a serious damage to them in many ways. I have not yet got pay for the seed note \$2,200, as they have realized nothing from the beets and the parties from Montreal only supply funds for current disbursements, Lomer furnishing them with daily statements of the outlay. Nor have I obtained security for the \$2500 referred to in yours of the 25th ult. We are not likely to get it, unless  
30 we commence or threaten an action. I do not think that would be judicious at the present moment. I have obtained the passage of a resolution of their directors ratifying the amendment to the mortgage. The Co. have passed no by-laws since their incorporation and are consequently working under the provisions of the "Joint Stock companies general clauses act" which does not give them power to hypothecate real estate. But our present mortgage is a different matter, it is the "Bailleur de Fonds" for the purchase of the site of their factory. The amendment simply changes the manner of payment in favor of the Co, and Mr. Doak's opinion is that this action would clearly come within the powers of their directors. He says he spoke with Mr. E. T. Brooks recently  
40 upon the subject, and after explanations the latter was disposed to take a somewhat modified view of the matter.

(Initialed) B. A.

(ENDORSED.)

Contestant's Exhibit A 23, at enquête, fyled 8th Nov. 1887. Paraphed  
H. L. & C.

RECORD

SCHEDULE No. 158.

*In the  
Superior  
Court.*

EXTRACT FROM LETTER FROM B. AUSTIN.

To Wm. Farwell,  
Gen. Man.

No. 126.

Extract from  
letter from B.  
Austin, to W.  
Farwell dated  
9th Nov.  
1881. Petr's.  
Exh. A.24.

Dated 9th Nov. 1881.

Mr. Lomer said to-day that these parties now intend to take up the balance of the Cap. of the Co. \$27,000 in reimbursement of these advances made and to be made, and will then expect the Bank to advance \$25,000. for working expenses. But I told him there was considerable uneasiness among our Director in regard to the Co's acct. and it was not likely they would consent to it. Of course if these parties take stock for the \$27,000 it will encrease the strength of the Co. but it is impossible to say what their position will be until they get fairly to running and the cost of the property liability on account of same etc. is definitely ascertained. They hope to start up already next week but there may be delays. The delay in commencement has been a serious matter and has entailed a good deal expenses in many ways putting beets etc. There will also be some loss from frozen and bad beets. The unprecedented frost so early in October was a great blow to the Co. They cannot escape considerable loss from frozen beets, in spite of discounting the farmers; and of course the latter are displeased and make the most of their greavances as usual. On the other hand there are many farmers who are fairly pleased with their crop, still it would be up hill work to secure a supply for next year. Altogether I have been very much harassed about the acct. and I can see that you have been also. For my own part I am inclined to say to the Co. that owing to uneasiness felt by our Directors we shall not be able to afford them any further accommodation of any kind. My idea has been to get along and assist them as much as possible, but only on first rate paper, and I think we have succeeded in this, with the exception of the two old matters of \$2,500 & \$2,200 about which we have had some correspondence. But it is exceedingly difficult to carry the acct. in this way. They bring in paper which they suppose will be accepted as in the case of Jackson Rae and we do not care to take it. Then as their needs are urgent they are placed in a dilemma. If they knew they could expect no accommodation from us they would have to make the arrangements elsewhere or stop this would relieve us all of a great deal of anxiety.

(Sgd) B. AUSTIN,  
Gen. Man.

ENDORSED.

Contestant's Exhibit A24 at Enquête fyled 4th Nov. 1887. Paraphed  
H. L. & C.



SCHEDULE No. 159

29th Dec. 1881.

WM. FARWELL, ESQ.  
Genl. Manager,

Sherbrooke.

Dear Sir,

10 In reply to yours of yesterday the P. B. R. Sugar Co. are having very bad luck, every one of their boilers gave out by Monday last, they had them repaired and started up again, but I hear that one of the boilers is again leaking. They have therefore made very little progress. Have only shipped one car load of sugar, while their capacity should be from one to two car loads day. Meantime there must be as you say a serious deterioration of the beets going on, though Lomer says there is but little. Besides the heavy expenses for repairs and salaries must amount to a large sum, altogether the seasons operations must inevitably show a very heavy loss. I feel very anxious about the matter and would like to reduce or strengthen the Co's acct, but do not see a way to bring that about. They are renewing every one of their bills both here and elsewhere, in fact there is no other alternative. Lomer has been at his wits end to procure funds to meet the cash disbursements and it is wonderful what he has accomplished in this way. As I wrote you before he has been getting large advances from Bank d'Hochelaga through his son Adolf, and they must now have a large liability there. In addition to bad luck, there is evidently bad management as well, so that the prospects are very discouraging. The fuel and bones warehoused are intact with exception of about 100 cords of wood, which was taken without permission. I have pointed out to Mr. Lomer the serious nature of this misdemeanor and he said he would take immediate steps to say the value of the wood taken. And would see that the act was not repeated. I do not learn that there are any suits of importance against the Co. if there were we would of course press our claims to judgment also. In fact we may have to do that in any case sooner or later. Hoping you can think of some plan to improve our deposition.

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30

I remain yours truly,

B. AUSTIN,  
Manager.

ENDORSED.

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Contestant's Exhibit A 25 at Enquête, fyled 4th Nov. 1887. Paraphed  
H. L. & C.

RECORD.

*In the  
Superior  
Court.*

No. 127  
Letter from  
B. Austin to  
W. Farwell,  
dated 9 Dec.  
1881. Petr's  
Exh. A25

RECORD

SCHEDULE No. 160.

*In the  
Superior  
Court.*

11th Jan. 1882.

WM. FARWELL, ESQ. MANAGER.

DEAR SIR,

No 128  
Letter from  
B. Austin to  
W. Farwell,  
dated 11th  
Jany 1882  
Petr's Exh.  
A26

Yours of yesterday received I had not forgotten nor neglected your request for sugar Co. statement, but have had such a press of work that I could not get it out have only to-day completed our liabilities ledger for Dec. and will try to send you the statement this evening or to-morrow there will be no material change since the last statement I made for you I have as you say renewed some of their paper but could not see my way at the time to do better. The Co. are paying no bills and can barely pay running expenses last Saturday I refused an inaccepted check of A. Lomer upon Bk. Hochelaga to provide for the fortnightly pay. However Lomer went to Montreal that night, and brought the money back with him on Tuesday. It is exceedingly difficult to get along with them and for my part I should like to break with them entirely it might even be well to at once press our claims to judgment but that is a matter which requires serious consideration, and I think you had better, as you suggest come up here and we will all discuss it together. The Co. have applied to the legislature for power to issue \$100,000 or \$125,000 of debentures, and with these, Lomer expect to pay of the creditors. I have had the wood measured and find the deficiency greater than I had calculated, it amounts in value to just \$1,000. Lomer is alive to the serious position he occupies in this respect. But though he promises to fix it up at once, has not yet done so. Hoping to see you shortly I remain, yours truly.

B. AUSTIN,  
Mgr.

(ENDORSED).

Contestant's Exhibit A26 at Enquête, fyled 4 Nov. 1887. Paraphed  
H. L. & C.

SCHEDULE No 161.

COPY OF LETTER FROM B. AUSTIN TO WM. FARWELL.

3rd. Jany 1883.

No. 129  
Letter from  
B. Austin to  
W. Farwell  
Dated 3 Jany  
1883. Petr's  
Exh. A27WM. FARWELL, ESQ.  
Genl. Mangr.  
Sherbrooke.

DEAR SIR,

I enclose recent letter from our Attorney re "Ellerhausen" also reports

of Messrs. Blanchard just rec'd from Dun, Wiman & Co. I think we may feel quite easy about the matter. The question of the sale of the Pioneer Property on the 12th inst. is still uncertain, we shall bring it about if it is a possible thing; but if they should pay the present execution we are arranging to have another creditor with a larger claim about \$1000, execute his judgment at once, which will no doubt bring it to actual sale. Francis has been confined to the house since 30th ult. with Bronchitis, and his doctor says he may not be fit for work for a fortnight; we would like assistance if you could send it.

Truly yours,

B. AUSTIN.

10

Can Lyford place any more insurance in the Pioneer Property you know the amount is reduced by cancellation from what it was.

(ENDORSED).

Contestants' Exhibit A27 at enquête, fyled 4th Nov. 1887. (Paraphed)  
H. L. C.

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SCHEDULE No. 162.

COPY OF LETTER FROM B. AUSTIN, TO WM. FARWELL.

6th Jany. '83.

WM. FARWELL, ESQ.  
*Genl. Manager.*

Dear Sir.

30 Referring to our conversation of yesterday, *re* "Pioneer" the section of the Code of Procedure (not civil code as Whitcher—contended, are Nos. 642 and 3 and are quite clear upon the subject. Doak looked it up to-day. We will therefore by filing an execution of our judgment with the Sheriff, make sure that the property, and the whole of, shall be sold on the 12th as advertised, For even if sold in parcels it would in all likelihood, take all of them to satisfy one execution. It is probable even that it could thus be bid in for a less amount than if sold "en bloc" since few would dare to bid high upon the separate portions. In view of this contingency I will study up the property and post myself thoroughly with regard to the position and value of each lot. The position is  
40 therefore decidedly improved. At all events we shall not be compelled to manœuvre for a sale "en bloc" nor to accept conditions which Hagar proposed in a letter to Doak received to-day. He asks whether the Bank if *allowed* to bid in the property for a nominal sum, would release him from his liabilities upon the \$5000, till, and also pay the back wages and salaries for which he and his co-directors are liable. You see he is perfectly willing to sacrifice us for his own benefit; so Doak now admits he (Hagar) has forfeited any claim to tenderness at our hands; Of course a sale at a nominal sum would be desirable,

RECORD.

*In the  
Superior  
Court.*

No. 129  
Letter from  
B. Austin to  
W. Farwell  
Dated 3 Jany  
1883. Petr's  
Exh. A27  
—Continued.

No. 130.  
Letter from  
B. Austin to  
W. Farwell.  
Dated 6  
Jany 1883.  
Petr's Exh.  
A18

RECORD,

—  
*In the  
 Superior  
 Court.*  
 —

No. 130.

Letter from  
 B. Austin to  
 W. Farwell.  
 Dated 6  
 Jany 1883.  
 Petr's Exh.  
 A18

—Continued.

but I don't think it would be worth bleeding for, particularly as any arrangement made to bring it about would be illegal and might invalidate the sale. It is probable too, that in any event the bidding will not exceed the amount of that portion of our claim which is strictly incontestible, say about \$15,000, bona fide purchasers would, of course, see it to their advantage to purchase from us *after* the sale; and the factious bidders would be chary of running into high figure especially as we intend to have a *scare crow* present in the shape Williams, who will declare that any one purchasing the property must forthwith pay over to him in full the amount of the Government's claim for duties.

The position is thus so far simplified that failing the purchase of our claim before the sale, all we need do is simply to agree, if asked to sell the property (in the event of our buying it) for the amount of our debt in full with the condition that the purchaser be prepared to close immediately after. . . . the amount down to \$25,000 as proposed. Of course the purchaser takes it subject to all claims of the Government and if paid, strictly without warranty of any kind.

Truly yours,

B. AUSTIN.

(ENDORSED.)

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Contestants Exhibit A 28 at Enquête, fyled 4th Nov. 1887. Paraphed  
 H. L. & C.

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 SCHEDULE No. 163.

14th Jan. 1883.

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WM. FARWELL, ESQ.,  
 Genl. Manager.

No. 131.  
 Letter from  
 B. Austin to  
 W. Farwell  
 dated 14 Jany  
 1883. Petr's  
 Fxh. A29

Dear Sir,

Yours of yesterday not received until to-day, Churchill will go to you to-morrow morning on the mixed train, I gave him two dollars for expenses which I herewith debit you as directed. Churchill has been very faithful to us throughout, and it is in great measure due to his having kept me posted in regard to the movements of the "enemy" that our measures have worked so successfully, you must manage to say a good word for him to MacDougall and Beard, they will consult their own interests by retaining his services he has been tolerably steady for some months past even with his one fault he was the only efficient man connected with the establishment he has first rate ability, can get through a great deal of work, and his experience in connection with the factory will be valuable to the new proprietors. He will be in a bad way if he should lose his employment.

Yours truly,

B. AUSTIN,  
 Manager.

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P.S.—I find I will want the particulars of those warehouse receipts in order to arrange for a transfer of them. Please send them, the warehouse receipts to me. As long as we don't transfer our claim to Beard, what is the use of giving him the notes. Hagar would like his and I presume other people would also. Keep Doak's and (indicipherable).

(Signed) B. AUSTIN,  
Mgr.

(ENDORSED.)

10 Contestants' Exhibit A 29 fyled 4th Nov. 1887. Paraphed H. L. & C.

RECORD.

*In the  
Superior  
Court.*

No. 131.  
Letter from  
B. Austin to  
W. Farwell  
dated 14 Jany  
1883. Petr's  
Fch. A29  
—Continued.

SCHEDULE No. 164.

17th January, 1883.

WM. FARWELL, Esq.,

Windsor Hotel,

20

Montreal.

Dear Sir,

No. 132.  
Letter from  
B. Aubtin to  
W. Farwell.  
Dated 17  
Jany 1883.  
Petr's Exh.  
A30

Yours of yesterday received. Doak says the goods warehoused could be disposed of in the way you proposed, by consent of the Co., I. E. written consent, signed by the president and sec'y. Lomer is no longer an officer of the Co., having been discharged, and the V. P. MacDougall has resigned. You can get Hagar to sign the consent in Montreal and I will have Churchill countersign it here. This arrangement would I suppose come under section 30 47 sub. sec. 2, of the Bank Act. The property could also be sold under section 50 of the act in a very simple manner, by ordinary advertisement, after ten days notice. It could also, as you say be sold under our judgt. I think however the plan you propose of transferring to McD and B with consent of Co., and taking acquittance on behalf of Mr. Adams would be perfectly safe, and would be the easier method. Mr. Adams charges rewarehousing \$31.10 thirty-one and ten ; there is also another charge which the purchasers must provide for on Saturday I went down to look over the property and found that the right watchman would not continue his duties without a guarantee from me for his pay. I therefore guarantee it at a dollar a day, a night, commencing 40 Saturday night last.

And so the universal Senecal is to have a hand in this affair ; well, since the poor province is bound to be plundered it will not hurt Coaticooke to receive a few of the crumbs I think the thing must be all right now you will probably close it before you return.

Yours truly,

B. AUSTIN,  
Manager.

RECORD

*In the  
Superior  
Court.*

No. 132.  
Letter from  
B. Aubtin to  
W. Farwell.  
Dated 17  
Jany 1883.  
Petr's Exh.  
A30  
—Continued.

P. S. I send you my copy of the amendments of the bank act, please return it to me. With regard to the \$4800 check collateral, we have full power to apply that, under our pledge. As the case stands we can even apply it strictly on the \$4800 Loan it makes no difference now.

Initialed B. A.

(ENDORSED).

Contestants' Exhibit A30 at enquête fyled 4th Nov. 1887. (Paraphed)  
H. L. & C.

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## SCHEDULE No. 165.

No. 133  
Letter from  
B. Austin to  
MacPherson.  
Dated 20 Jan.  
1883. Petr's  
Exh. A31

(Private) 20th Jan. 83.

MY DEAR MACPHERSON,

Yours of 19th recd. I am very sorry indeed we were unable to secure anything upon your claim. Lomer had so thoroughly run the thing into ground that we were even unable to protect ourselves fully. You know we bid the property at the Sheriff's sale, and yesterday my Genl. Mgr. Mr. Farwell was in Montreal and resold it. As it is our net loss is considerable nearly as large I think as your whole claim. Still we consider ourselves fortunate to get out of it so well. Mr. MacDougall will give creditors of the Pioneer Co. an opportunity to participate in the proprietorship of the property upon the same terms as himself. This would appear to be as fair a thing as could be done under the circumstances. Beyond this we have not been able to protect any of our friends, and as I have said suffer a considerable loss ourselves, besides we had to give up all our collaterals to the purchasers. It was simply impossible to protect you. You will remember that particularly recent communication.  
(The rest indcipherable.)

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(Signed) B. AUSTIN.

(ENDORSED).

Contestants' Exhibit A31 at enquête, fyled 4th Nov. 1887. (Paraphed)  
H. L. & C.

## SCHEDULE No. 166.

No. 134.  
Letter from  
B. Austin to  
W. Farwell.  
Dated 20  
Jany 1883.  
Petr's Exh.  
A31

20th Jan. 1883.

40

WM. FARWELL, ESQ.  
Genl Mgr.

Dear Sir,

I was rejoiced to learn from your telegram to Doak that the sale of the Pioneer property had been satisfactorily closed. I suppose that nothing remains now but to square our books; you will send me particulars of the

terms of sale, or the balance of price, must I suppose go under the head of mortgages on re sold by bk. Doak understands you have decided to sell the collaterals under the provisions of the banking act, shall I send the proper notices and insert the advertisements? Lomer is anxious to get his money which I explained to you I had been holding as security, and which he did not include in the list of collaterals furnished Beard. Is it all right to give it to him now, and can the \$1000 fee now be applied on Doak's liabilities? Doak says you made no conveyance of the Hogan lot, so much the better, and I wonder they overlooked that, I enclose letter from our attorneys in the Ellerhausen case; also copy of the note referred to, which I suppose I shall enter up as collateral for the mortgage.

Yours truly,

B. AUSTIN.

*Mgr.*

P. S.—Please return me C&R'S letter. I think they intended to say their fee would be \$150, not \$15. the former amt was to be their.

ENDORSED.

20 Contestant's Exhibit A.31, at Enquête, fyled 4th Nov., 1887. Paraphed, H. L. & C.

RECORD.

*In the  
Superior  
Court.*

No. 134.  
Letter from  
B. Austin to  
W. Farwell.  
Dated 20  
Jany 1883.  
Petr's Exh.  
A31

—Continued.

30

SCHEDULE No. 167.

COPY OF LETTER FROM B. AUSTIN  
To Wm. FARWELL.

24th. Jan. 1883.

WM. FARWELL, ESQ.

DEAR SIR,

40 Yours of 22nd. recd. last evening per Mr. Adams. Thanks for your praise. As you say we have reason to congratulate ourselves I know it is a great relief to me, and hope I shall never go through a similar experience. It is however a great satisfaction to have come out so completely "at the top of the heap"; in spite of all the machinations of the "enemy."

I enclose draft of the entries from which I squared the books. You will see there is a net balance of \$4235.82 to Cr. of Disct. and Int. out of the whole transaction. Against this I shall have to charge fees Doak \$1000 Churchill (well earned) \$50. This will leave \$3185.82. Shall I apply this towards wiping out Pioneer Stock \$5000, and charge for B. & D. debts with balance \$1814.18?

No. 135  
Copy of  
Letter from  
B. Austin to  
W. Farwell,  
dated 24th.  
Jany 1883  
Petr's Exh.  
A32

RECORD

*In the  
Superior  
Court.*

No. 135  
Copy of  
Letter from  
B. Austin to  
W. Farwell,  
dated 24th.  
Jany 1883  
Petr's Exh.  
A32  
—Continued.

I note instructions regarding collaterals.  
The sale is advertised for 5th prox.  
I sent you date of deed yesterday.

Yours truly,  
(Sgd). B. AUSTIN.

(ENDORSED.)

Contestant's Exhibit A 32, at Enquete, prod. 4th Nov. 1887. Paraphed  
H. L. & C.

10

SCHEDULE No. 168.

No. 136.  
Letter from  
B. Austin to  
W. Farwell,  
Dated 1 Feb.  
1883. Petr's.  
Exh. A.33.

(Confidential)  
WM. FARWELL, ESQ.

1st Feby 1883.

20

Gnl. Manager,

Sherbrooke.

DEAR SIR,

Please be extra careful regarding insurance on Pioneer property. There is some devilry on foot. It was discovered yesterday that an attempt had been made to set fire to the main building the night before and the circumstances point to old Lomer and his son as having a hand in it. This of course is only known and spoken of between one or two people. Don't know the object, unless they have been giving warehouse receipts on bones etc., in the factory two or three times over, and want to cover it up. Our warehouse receipts were of course all regular. Doak has written MacDougall all the circumstances and recommended him to send one out to take charge of the property. This ought to be done, as under present careless or criminal conduct it is a question if the insurance companies could be made to pay. Perhaps you also had better write MacDougall. Lomer has been given a hint of the suspicions and hope he won't make the attempt again, but he is a desperate old villain and may contrive some way to accomplish his purpose whatever it may be the property is not safe while he or any of his tribe are connected.

(Signed) B. AUSTIN,  
Manager.

(ENDORSED.)

Contestant's Exhibit A33, fyled 4 Nov. 1887. (Paraphed) H. L. &amp; C.



## SCHEDULE No. 169.

RECORD.

Extrait du procès-verbal d'une assemblée des directeurs de la Banque d'Hochelaga tenue dans ses bureaux à Montréal, samedi le deuxième jour de juin mil huit cent quatre-vingt-trois.

*In the  
Superior  
Court.*

Une demande de John MacDougall que la Banque par une proportion de  $\frac{1}{4}$  sur le prix d'achat des propriétés du Pioneer Beet Root Sugar Co'y est refusée et le Caissier est prié de lui écrire dans ce sens d'après les instructions de l'avocat de cette Banque."

No. 137.  
Extract from  
minutes of  
meeting of  
Board of Di-  
rectors Ban-  
que d'Hoche-  
laga dated 2  
June 1883.  
(Petr's Exh.  
A34) fyled  
4th Nov. 1887

10

(Véritable extrait)

AL. PARANT,

Caissier.

Montréal, 9 Avril, 1885.

(ENDORSED.)

Contestant's Exhibit A 34, at Enquête, fyled 4th Nov. 1887. Paraphed  
H. L. & C.

20

## SCHEDULE No. 170.

Montreal, June 2nd 1883.

Dear Sir,

Referring to your verbal request that this Bank should pay a certain proportion of the price you agreed to pay to the Eastern Townships Bank, for the property belonging to the Pioneer Beet Root Sugar Co in Coaticooke, and also to a certain statement to that effect which I have received from Mr. Andrew Rough,

No. 138.  
Letter from  
J. E. Brais,  
cashier Ban-  
que d'Hoche-  
laga dated 2  
June 1883.  
(Petr's Exh.  
A35) fyled  
4th Nov.  
1887.

30

I beg to state that the Directors of this Bank have decided to take or accept no interest in the purchase of the said property.

By order of the Board,

(Signed) J. E. BRAIS,

Cashier.

(ENDORSED.)

Contestant's Exhibit A 35, at Enquête, fyled 4 Nov. 1887. Paraphed  
H. L. & C.

40

ANDREW ROUGH & AL

AND

THE EASTERN TOWNSHIPS BANK.

—————  
 PLAN OMITTED BY CONSENT.  
 —————

10

No. 139.  
 Consent to  
 the omission  
 in the present  
 Transcript of  
 a certified  
 Extract from  
 the cadastral  
 plan of the  
 town of Coati-  
 cooke, dated  
 13th April  
 1885. (Peti-  
 tioners Exhi-  
 bit A 36)

We hereby consent and agree to the omission in the present printed Record of a certified Extract from the cadastral plan of the Town of Coaticooke, dated 13th April 1885, signed by O. Shurtleff, Registrar fyled as Contestants Exhibit A36 at Enquête on the 4th November 1887, in a certain case under number 1198 in the Superior Court at Montreal, between Fairbanks Co. Plaintiffs, and the Pioneer Beet Root Sugar Company Defendants, and The Eastern Townships Bank Adjudicataire and ~~La Banque d'Hochelaga~~ Contestant. 20

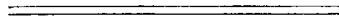
Montreal 1st May 1894.

BISAILLON, BROSSEAU & LAJOIE,  
 Attorneys for A Rough.

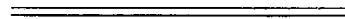
ATWATER & MACKIE,  
 Attorneys for E. T. Bank.

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SCHEDULE No. 172,

STATEMENT.

Machinery sold and taken from Premises of Pioneer Beet Root Sugar Company, Coaticooke, P. of Q.

RECORD

*In the Superior Court.*

No. 140.  
Statement of machinery sold and taken out from premises of Co. Dft dated (Pet's Exh. A37) fyled 4th Nov.1887

1883					
10 Apr.	4	1 Steam Engine.....			\$1200 00
May	18	2 Tanks Trucks &c.....			172 03
"	"	1 Wood Planer.....			110 00
June	13	1 Truck & Rails.....			26 12
July	2	1 Horizontal Engine.....			400 00
"	17	1 Angular do .....			200 00
Aug.	3	2 Presses.....			200 00
Nov.	22	2 Steam Boilers.....			2500 00
"	"	2 do do .....			2500 00
1884					
Feb.	2	2 Iron Tanks.....			84 80
20 May	16	2 Saturaters.....			603 75
"	"	2 Presses.....			
June	6	94 Rails.....	71 60		
		8 Wooden Tanks.....	240 00		311 60
					\$ 8308 30

30

(ENDORSED.)

Contestant's Exhibit A 37 at Enquête, fyled 4th Nov. 1887. Paraphed H. L. & C.

40

RECORD

SCHEDULE No. 173.

In the  
Superior  
Court.

6 January 1883.

No. 141.  
Memoran-  
dum or state-  
ment of acct.  
showing acct.  
between Co.  
Deft. and E.  
T. Bdnk filed  
with deposi-  
tion of Beard  
dated  
(Pelr's Exh.  
B1) fyled 4

Agreed to sell to Jno. MacDougall & S. W. Board jointly and severally in event of Bank purchasing for sufficient and to pay our debt int costs in full, say,			54,697 33	
Apply Proceeds Cash Collaterals.....		5,257 63		
MacD. & B. Cash.....		9,439 70	14,697 33	10
			40,000 00	
On or before 17th July 1883 with proceeds collaterals realized and cash payment.....	10000 00			
Also Int 6 mos. Int on \$40,000 @ 7 o/o.....	14 00			
On 16 Jany. Jany 1884.....	50 00			
"    Int 6 mos.....	10 50			
16 July 1884 Int 6 mos on \$25,000.....	8 75			
16 Jany. 1885.....	50 00			
"    6 mos. Int. on \$25,000.....	8 75			
16 July 1885 6 mos. Int. on \$20,000.....	7 00			20
16 Jany. 1886.....	50 00			
16 July 1886 6 mos. Int. on \$20,000.....	7 00			
16 July 1886 " " \$15,000.....	5 25			
16 Jany. 1887.....	50 00			
16 " " 6 mos. Int on \$15,000.....	5 25			
16 July " " " \$10,000.....	3 50			
16 Jany. 1888.....	50 00			
6 mos. Int. on \$10,000.....	3 50			
16 July 1888 " " \$ 5,000.....	1 75			
16 Jany.....	50 00			
do.....	1 75			30

Just to satisfaction of Bank and in event of any payment not being met at maturity the whole debt to become due and exigible.

STATEMENT PIONEER BEET SUGAR CO. ACCT.

RECORD

12 January 1883.				<i>In the Superior Court.</i>
	P. B. S. Co. ....	\$4800 00		
	do .....	2422 22		
	do .....	2500 00		No. 141.
	do .....	900 00		Memoran-
	do .....	928 60		dum or state-
10	do .....	1501 80		ment of acct.
	do .....	635 25		showing acct.
	do .....	300 00		between Co.
	do .....	2500 00		Deft. and E.
	do .....	875 0		T. Bank filed
	do .....	240 00		with deposi-
	do .....	200 00		tion of Beard
	do .....	400 00		dated 6 Jany,
	do .....	5000 00		1883,
	do .....	182 07		(Petr's Exh.
	Int. & Costs on Judgment.....	344 86	\$23729 80	B1)
				— <i>Continuea.</i>
20	And Judgt.....		1420 00	
	P. B. S. Co. ....		1857 23	
	do .....		102 01	
	do .....		302 62	
	do .....		3501 40	
	Overdrawn acct.....		2250 00	
	Sleeper Mtg.....		11208 69	
	Adams " .....		3300 00	
	Insurance.....		907 38	
	Int. to 12 Jany.....		4156 55	
30			52735 68	
	Lime Co.....		500 00	
	Sheriff.....		1411 25	
	Churchill Ins.....		4 00	
			54650 93	
	Int to 16th. inst.....		46 40	
			54697 33	
			5257 63	
40			49439 70	
	Proceeds Collateral notes.....	\$4794 00		
	Cord Wood sold.....	463 63		
		5257 63		
	6 January.			
	Collaterals not realized Ellenhausen now in suit.....	1500 00		
	Cord wood estimated value.....	500 00		

RECORD.

*In the  
Superior  
Court.*

71260 lbs. Blk. Bone Black	} .....	\$3400 00
20566 lbs. do Coarse		
23290 lbs. Crushed Bone fine		
17248 lbs. do Coarse		

No. 141.  
Memoran-  
dum or state-  
ment of acct.  
showing acct.  
between Co.  
Def. and E.  
T. Bank filed  
with deposi-  
tion of Beard  
dated 6 Jany,  
1883,  
(Petr's Exh.  
B1)  
—*Continuea.*

(ENDORSED)

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Contestants' Exhibit B1 at enquête, fyled 4 Nov. 1887. (Paraphed)  
H. L. & C.

SCHEDULE No. 176.

Montreal, 28th April 1883.

20

No. 142.  
Letter from  
Messrs Bei-  
que, McGoun  
& Emarid to  
G. O. Doak,  
Esq., Coati-  
cooke, dated  
Montreal 28  
Apr. 1883  
(Petr's Exh.  
X)

Bei que & Co.

*Re* Hochelaga Bank.

Dear Sir.

We have been instructed by la Banque d'Hochelaga who are creditors for a large amount of the Pioneer Beet Root Sugar Co. to institute proceedings to have annulled and set aside the sheriff's sale of that Company's property made to the Eastern Townships Bank.

Some of the grounds we intend urging are the following :

1. That the action of the bank was served upon one of its own directors who was also an officer of the P. B. Sugar Co, in the Bank premises by ap-  
pointment and was never communicated to the Board of Directors of the Co. 30  
Defendant until after judgment was rendered.

2. That the suit of the bank was for a larger amount than was actually due.

3. That artifices were employed by the bank to keep persons from bid-  
ding at the sheriff's sale, and among other letters were sent to Mr. Beard and  
to Mr. MacDougall by which the bank promised to recell the property after they  
had purchased it ; in execution of which the property was afterwards actually  
transferred to Andrew Rough as a *prête-nom* of John MacDougall.

4. That the time of the registration of its judgment, the bank could (by  
CC art 2023) acquired no hypothec on the property of the Company Defen- 40  
dant said Company being then notoriously insolvent, and said registration hav-  
ing been made within 30 days previous to it bankruptcy (as defined in art. 17  
No. 23 C. Code).

That all the proceedings above referred to were taken by the E. T. Bank with a view of obtaining an undue preference over the other Creditors.



Of course our client is not interested in making the contestation for the benefit of the other parties, and we communicate the above to you as Attorney for the bank in the case, in order that you may consider whether it would not be well to bring about a fair settlement between our respective clients.

Our Mr. Beique intends to go to Sherbrooke in the beginning of next week for the purpose of instituting their proceedings, and will telegraph you before leaving in order that you may if you so desire, meet him there.

Yours truly,

BEIQUE, McGOUN & EMARD.

G. O. DOAK, Esq.,

Coaticooke.

ENDORSED.

Exhibit X fyled 30th Oct. 1888. Paraphed E. D. Dep. P. C. S.

RECORD

*In the  
Superior  
Court.*

No. 142.

Letter from  
Messrs Beique,  
McGoun & Emard to  
G. O. Doak,  
Esq., Coaticooke,  
dated  
Montreal 28  
Apr. 1883  
(Petr's Exh.  
X)

—Continued.

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RECORD.

SCHEDULE No. 177.

*In the  
Superior  
Court.*

Etat du compte de A. Lomer, avec la Banque d'Hochelaga.

Du 16 Mai 1882 au 12 Janvier 1883.

No. 143.

Statement of  
the acct. of A.  
Lomer with  
the Banque  
d'Hochelaga  
from the 16  
May 1882  
to 12th Jan.  
1883 (Petr's  
Exh. XX)  
fyled 4th Oct.  
1888.

DATES.		DOIT.		AVOIR.		BALANCE.		
	1882					Ar.	3128 97	10
Mai	16	Cheques &c.		Dept. & Escpt.				
	16	G 386	13003 10	G 386	9911 71			
	17 au 25	" 390	25724 48	" 390	26860 08			
	25 " 30	" "	28522 65	" "	27732 25			
	30 " 31	" 393	4146 20	" 393	3919 99			
Juin	1 " 5	" "	12187 17	" "	12428 94			
	5 " 10	" "	20592 75	" "	21080 54			
	12 " 17	" 398	19118 82	" "	18290 00			20
	17 " 22	" "	46381 10	" "	46877 30			
	22 " 27	" 403	30274 98	" 403	32046 96			
	27 " 30	" "	10661 26	" "	8503 21			
Juillet	1 au 5	" "	16672 43	" "	16680 34			
	6 " 14	" 301	22100 44	" 301	21364 97			
	14 " 18	" "	19195 50	" "	19986 94			
	18 " 22	" 294	16676 66	" 294	21004 83			
	24 " 28	" "	34091 87	" "	29638 75			
	28 " 31	" 293	6599 00	" 293	6561 26			
AOÛT	1 " 4	" "	14543 40	" "	14741 26			
	4 " 11	" "	37427 74	" "	37113 56			
	12 " 17	" 285	32447 30	" 285	35820 01			50
	17 " 23	" "	22537 35	" "	21359 85			
	23 " 28	" 281	31067 87	" 281	29027 94			
	29 " 31	" "	15236 91	" "	15811 91			
Sept.	1 " 4	" "	15909 32	" "	17591 58			
	4 " 9	" 279	27727 95	" 279	25368 76			
	4 " 15	" "	37271 51	" "	38732 94			
	15 " 23	" 277	32297 85	" 277	31417 85			
	23 " 28	" "	34662 62	" "	36080 52			
	29 " 30	" 617	11174 58	" 617	9175 39			
Oct.	2 " 6	H 332	42488 90	H 332	42874 80			
	6 " 11	" "	31695 06	" "	31094 63			
	12 " 18	" 360	43868 89	" 360	44157 12			40
			\$756305 66		\$753256 20		\$3128 97	
			756305 66		753256 20		3128 97	
Oct.	18 au 24	" 360	25102 37	" 360	25356 01			
	24 " 30	" 362	31300 82	" 362	31622 98			
	30 " 31	" "	16602 42	" "	15967 84			
Nov.	2 " 3	" "	31070 76	" "	33817 91			

Etat du compte de A. Lomer, avec la Banque d'Hochelaga.

Du 16 Mai 1882 au 12 Janvier 1883.

RECORD

In the Superior Court.

No. 143.  
Statement of the acct. of A. Lomer with the Banque d'Hochelaga from the 16 May 1882 to 12th Jan. 1883 (Petr's Exh. XX) fyled 4th Oct. 1888.

—Continued.

DATES.				DOIT		AVOIR.		BALANCE.	
	Nov.	3	au 10	H. 365	23625 77	H. 365	14299 44		3128 97
	"	10	" 16	" "	24131 68	" "	27528 45		
10	"	17	" 22	" 366	34448 82	" 366	38761 15		
	"	22	" 29	" "	24461 17	" "	22253 98		
	"	29	" 30	" 370	7992 88	" 370	7346 36		
	Dec.	1	" 6	" "	17790 72	" "	21217 15		
	"	6	" 14	" "	21308 38	" "	19558 44		
	"	15	" 21	" 376	20761 71	" 376	21212 92		
	"	21	" 29	" "	15799 05	" "	15402 45		
	Janv.	2	" 12	" 380	17735 66	" 380	17564 81		
							\$1065176 09		
20					\$1068437 88		3128 97		3128 97
					1068305 06		1068305 06		
	Bal. due à la Bque.								
	d'Hoch.			1271 83	\$132 82				

ENDORSED.

Adjudicataire, Exhibit XX. Fyled at Enquête on the 4th Oct. 1888.  
30 Paraphed E. D. Dep. P.S.C.

RECORD.

SCHEDULE No. 178.

*In the  
Superior  
Court.*

Province of Quebec, }  
District of Montreal }

In the Superior Court.

No. 144.  
Extract from  
the Plaintiffs  
of the  
Superior  
Court in this  
case No. 1198  
dated 12th  
Jan'y. 1889.  
(Petitioner's  
Exhibit Y)  
fyled 3rd Oct  
1888.

No. 1198.

Fairbanks & Company, .....	Plaintiff.	10
vs		
The Pioneer Beet Root Sugar Company, .....	Defendant.	
&		
The Eastern Townships Bank, .....	Adjudicataire.	
&		
Andrew Rough et al., .....	Mis-en-cause.	20
&		
La Banque d'Hochelaga et al., .....	Petitioners en nullité de décret.	
&		
Thos. Darling es. qualité, .....	Intervenant.	
1883 June 1	Art of facts of Deft : contestants fyled.	50
“ “ 7	Opposant's answers to contestants art. of facts.	
“ Sept 1	A. W. Atwater appears for adjudicataire. Lacoste, Globensky Bisaillon et Brosseau appear for mis-en-cause.	
“ “	Writs and petitions <i>en rep.</i> d'inst returned contd. to 3 Sept. inst :	
“ “ 3	10 days delay granted to answer Petitioner. Motion by the Eastern Townships Bank for costs.	
“ “	P. O. Motion granted with delay of eight days to furnish Secr.	40
“ “ 10	One month delay granted by consent.	
“ “ 22	Petitioners fyle List and 4 exh.	
“ Oct. 17	Foreclosure against Petitioners fyled. Declaration of Petitioners	
1884 Jan'y 31	La Banque d'Hochelaga and Ernest Anders that they intend to prosecute their motion etc.	

	1884	Feby	1	Motion of Adjudicataire that Petitioners en nullité or action be dismissed for want of sec. for costs.	RECORD,
	"	"		Motion of Petitioners for leave to amend their petition. P.O. On the foregoing motions C. A. V. Mr. Just. Torrance.	<i>In the Superior Court.</i>
	1884	Feby	1	Mot by the adjudicataire, The Eastern Townships Bank, that the paper writing called Requête pour intervention, and moyens be rejected from Record therein mentioned, and moreover as the Petitioners La Banque d'Hochelag et al., have not furnished security, for costs, as ordered within the delays prescribed by the Court, and have been foreclosed from so doing, no proceedings could be had in said case, until such security was furnished contd. to 4 Inst : Intervening party to answer in writing.	No. 144. Extract from the Plaintiffs of the Superior Court in this case No. 1198 dated 12th Jan'y. 1889. (Petitioner's Exhibit Y) fyled 3rd Oct 1888.
10	"	"		Motion on behalf of Adjudicataires, that the paper writing fyled as a declaration and notice to proceed on the part of said Petitioners be rejected from the Record and declared to have been fyled irregularly and illegally etc., P. O. C. A. V. 4 Judgment granting motion to reject Declaration and notice, fyled by Petitioner.	— <i>Continued.</i>
	"	Feby.	4	Motion of adjudicataire granted as to two Von Ruffers.	
	"	"	4	Motion to amend, granted as to Banque and Anders, on payment of costs of motion to atty. for adju.	
	"	"	4	Requête en Intervention par John Fair, esqual, avec certificat de service du 2 Février, courant.	
30	"	"	8	Judgment dismissing Petition, et action en nullité de décret, as to the two Von Ruffers, with costs distraits, to A. W. Atwater, atty. of adjudicataire.	
	"	"	11	Exception à la forme, by the adjudicataire with deposit of \$8.00.	
	"	"	11	Answer to Exception à la forme.	
	"	"	11	Petition ins. for hearing on the Exception à la forme, for 11th inst :	
40	"	"	13	On Exception à la forme-adjudicataire called, makes default C. A. V. Mr. Just. Torrance.	
	"	Apr.	3	Judgment ordering avant faire droit en exception à la forme that the Corp. of the Village of Coaticooke, be summoned to appear.	
	"	"	23	Petn. by John Fair, for leave to examine one, Ernest Anders, and for an order upon Defendant, and A. Rough, to permit witness to Examine premises.	

RECORD.	1884	April	23	Qu'il soit fait tel que requis sauf à décider ci-après de l'admissibilité du témoin Mr. le Juge Mathieu.		
<i>In the Superior Court.</i>		"	April	17	Petition by la Banque d'Hochelaga to examine Ernest Anders.	
No. 144.		"	"	17	Accorder réservant à décider lors de l'audition du témoin si la déclaration doit être reçue Mr. le Juge Mathieu.	
Extract from the Plaintiffs of the Superior Court in this case No. 1198 dated 12th Jan'y. 1889. (Petitioner's Exhibit Y) fyled 3rd Oct 1888.		"	May	3	Writ & Petition returned.	
—Continued.		"	"	5	Motion of Petitioners La Banque d'Hochelaga that they be permitted to amend writ & petition ordered to be served upon the municipality of the town of Coaticooke etc. Affidavit of B. Humphrey in support.—Mr. Atwater appears for adjud & Cornpn of Coaticooke P. O. Motion granted no costs Mr. Just. Mathieu.	10
		"	"	5	A. W. Atwater for the Corpn of Coaticooke.	
		"	"	7	Motion of the mis en cause. The Corporation of Coaticooke for security for costs contd to 9th inst.	
		"	"	7	Motion by adjudicataire for security for costs contd to 9th inst.	20
		"	"	12	P. O. On the two foregoing motions C. A. V. Mr. Just. Doherty.	
		"	"	15	Deposition of Ernest Anders for Petitioner & Liquidators.	
		"	"	28	Judgment ordering Petitioner Anders give security for costs within a month.	
1884	Jun		3	Declaration of Ernest Anders that he does not intend to give security for costs.	50	
	"		14	Petitioners fyled a demand of plea.		
	"		17	Petitioners <i>Re ins</i> for hearing on exception à la forme on 18th inst May 28th. Jugt. rejecting with costs the petition of adjudic. Eastern Townships Bank, for security for costs.		
	"		18	Jugement renvoyant l'exception à la forme de l'adjudicataire sans frais.		
	July		2	Church, Chapleau, Hall & Nicolls Sub Attorneys for Plaintiffs.	40	
	"		4	Demand of Pleas or answer to petition en nullité de décret.		
	"		9	Certificate of no plea or answer to petition en nullité de décret against the adjudicataire and the municipality of the town of Coaticooke wit foreclosure fyled.		

1884	July	9—Petition the Bank of Hochelaga ins ; at Enq. Expte. on 2nd Sept. next.	RECORD
	"	Sept, 3—Motion of adjud ; East Townships Bk. to fyle answers to petition and to remove foreclosure.	<i>In the Superior Court.</i>
	"	" 3—Motion of Corp. of Coaticooke for same.	No. 144.
	"	" 3—P. O. On the two foregoing motions. C. A. V. Mr. Just. Jetté.	Extract from the Plainiffs of the Superior Court in this case No. 1198 dated 12th Jan'y. 1889. (Petitioner's Exhibit Y) fyled 3rd Oct 1888.
10	"	" 8—Jugement permettant à l'adjudicataire de répondre a la requête sous cinq jours et sur paiement de \$8.00.	—Continued.
	"	" 11—Plea of M. E. C. The Corporation of Coaticooke.	
	"	" 11—Plea of adjudicataire The Eastern Township Bank.	
	"	" 15—Mot. by T. Darling for leave to continue proceedings en lieu of John Fair.	
	"	" 17—P. O. On foregoing motion C. A. V. Mr. Just Jetté.	
20	"	" 17—Motion by the Eastern Townships Bk. to reject depn of Ernest Anders one of the Petitioners from Record contd to 18th by consent do to 22 contd to merits hearing Mr. Just. Mathieu.	
	"	Oct. 4 Answer to plea of adjudicataire.	
	"	" " " " the corporation of Coaticooke.	
	"	" 15 P. O. On demurrer and answer in law C. A. V. Mr. Just. Mathieu.	
30	"	" 18 Art. of facts of the Eastern Townships Bank adjudicataire on the petition of Bank d'Hochelaga.	
	"	" 18 Art. of facts of the Corporation of Coaticooke on the petition of Banque d'Hochelaga.	
	"	" 27 Jugt. substituant Thos. Darling à John Fair comme liquidateur à la Pioneer Beet Root Sugar Co.	
	"	" 29 Adjudicataire's Answers to petitions Art. of facts.	
	"	" 29 Coys. of Town of Coaticooke to Petitioners art of facts.	
40	"	" 3 Petitioners ins. for hearino on demurrer of adjud. and of the municipality of Coaticooke and ans. in law of petitioners &c. &c., on the 6th inst.	
	"	" 22 Petitioners art. of facts with adjudicataires. Petitioners " " Town of Coaticooke.	
	"	Nov. 8 P. O. Demurrer C. A. V. Mr. Just Loranger. Petitioners Answers to Adjudicataires Art. of facts.	

RECORD.	1884	Nov.	8	Petitioners answers to Art. of facts of Municipality of Coaticooke.	
<i>In the Superior Court.</i>	1885	Fevr.	20	Mr. le Juge Mathieu. Jugement renvoyant la 1ère défense en droit de l'adjudic : La Banque des Cantons de l'Est, avec dépens distraits à Messrs. Beique & Co. et ordonnant preuve avant faire droit sur la deuxième, dépens réservés. Renvoyant la première Rép : en droit de la mise-en-cause La Corp. de la ville de Coaticooke, avec dépens distraits à Messrs. Beique & Co. et ordonnant preuve avant faire droit sur les réponses en droit aux plaidoyers de la dite Corporation de la ville de Coaticooke, dépens réservés. Maintenant la Rép : en droit au 3ième plaidoyer de l'adjudic : et rejetant le dit 3ième plaidoyer, avec dépens distraits à Messrs. Beique & Co. Maintenant la Rép. en droit des Reqrts. au 6ième plaidoyer de l'adjudic : et renvoyant le 6ième Plaidoyer de l'ajudic. avec dépens aux dits Messrs. Beique & Co.	10
No. 144. Extract from the Plainiffs of the Superior Court in this case No. 1198 dated 12th Jan'y. 1889. (Petitioner's Exhibit Y) fyled 3rd Oct 1888. —Continued.	1885	Fev.	23	Petitioners deposit \$10.00 & ins. at Enq. et mérite for the Term of.	20
	"	Avril	15	At Enq. & Merits Mr. Jus. Torrance Wm. Farwell Petitioners witness taxed after having been heard \$38,61.	
	"	"	27	Petition by T. Darling, Liquidator to Pioneer Beet Root Sugar Coy : that the Intervention by said Liquidator be maintained and that the seizure sale and adjudication of the immoveable properties described in said petition and the Sheriff's deed &c. be declared to be and to have been irregular, illegal, null and void that the moneys be repaid and returned into Court that the same may be paid back à qui de droit and contd. to 8th. inst.	30
	"	May	8	Mot. by T. Darling for leave to fyle his reasons in support of his intervention that he has no other proof to offer then that already made by the Hochelaga Bank.	
	"	May	8	P. O. Motion granted with costs agst intervenant Mr. Just Mathieu.	
	"	June	5	Four orig. Subp : filed.	
	1886	Avril	27	Avis des Requéants qu'ils procèderont à leur Enquête le premier mai prochain.	40
	"	May	3	Petitioners reinscribe at Enquête on the 4th. inst.	
	"	July	9	Depositions of John Thornton, S.W. Beard, Adolphe Lomer, Benjamin Austin, Andrew Rough, John MacDougall, Charles Lamoureux, Otis Shurtleff, Thomas Darling, William Farwell, G. O. Doak & Charles Hagar for Petitioners.	



	1886	July	21	Depn. of John Thornton, a witness of Petitioner in rebuttal exd 11 April 1885 filed this day.	RECORD.
	1887	Oct.	24	Petitioners declare their Enq: closed and give notice to Adjudicataire and to mis-en-cause to proceed with their Enq on the 2nd November next.	<i>In the Superior Court.</i>
	"	Nov.	4	Petitioners fyle list & Exhibits A2 A3 A5 A5bis--A6 A7 & 8 A7bis A8bis A9 A10 A10bis A11 A12 A13 A14 A15 A16 A17 A18 A19 A20 A21 A22 A23 A24 A25 A26 A27A28 A29 A30 A31 A31bis A32 A33 A34 A35 A36-A37 & B1 at Enquête.	No. 144. Extract from the Plaintiffs of the Superior Court in this case No. 1198 dated 12th Jan'y. 1889. Petitioner's Exhibit Y) fyled 3rd Oct 1888.
10	"	"	7	Motion on behalf of the adjudicataire in order that a commissaire enqueteur be appointed to take the proof of witnesses in the village of Coaticooke, and John Fraser be commissioner contd : to 9th inst.	—Continued.
	"	Nov.	7	Consent as to non fyling of Petrs exhs A1 A4.	
	"	"	28	Consent by parties, that the evidences of witnesses resident in the District of St. Francis be taken at Coaticooke, etc.	
20	"	Dec.	1	Beique & Turgeon substituted Attys of the ptr The Bank by consent.	
	1888	Jan.	13	Demand of Plea to moyens of the Intervenaut.	
	"	Fev.	24	Reqrts ins : pour audition au mérite sur la requête en nullité de décret etc pour ce jour.	
	"	Avril	4	Demande de plaider aux demandeurs sur l'intervention et moyens d'intervention.	
30	"	"	23	Notice of inscription.	
	"	June.	14	Petitioners file deposition of Wm. Farwell.	
	"	Sept.	1	Petitioners ins for final hearing <i>de novo</i> on petition en nullité de décret, intervention etc on the 21st inst.	
	"	Oct.	3	Réponse à l'intervention.	
	"	"	3	1 Original de Subpoena de l'adjudicataire.	
40	"	"	3	At Enquête et mérite Mr. Just. Taschereau, W. McGoun Sworn as Stenographer Jos. E. Brais sworn & Exd. by adjudicataire, Geo. O. Doak sworn and Exd. by adjudicataire. Adjudicataires file exbts X and a copy of Report of distribution as Exh Y. Alf. Prendergast sworn and Exd. by adjudicataires. Adjudicataires declare their Enq. closed reserving the complete the examination of witness Prendergast Mr. Beique	

RECORD.  
 In the  
 Superior  
 Court.  
 No. 144.  
 Extract from  
 the Plaintiffs  
 of the  
 Superior  
 Court in this  
 case No. 1198  
 dated 12th  
 Jan'y. 1889.  
 Petitioner's  
 Exhibit Y)  
 fyled 3rd Oct  
 1888.  
 —Continued

is sworn and exd. by Petitioners in rebuttal at 2.30 P M.  
 case contd. to to-morrow at 10½ A.M.

1888 Oct. 4.—Alfred Prendergast appears and completes his deposition-  
 files Exh. X.X.  
 Petitioners declare their Enq. in rebuttal closed P. O. C.,  
 A. V.

“ “ 13.—Petitioners file depositions of R. Craik, Tous. Brosseau and  
 F. L. Beïque.

“ “ 22.—E. Lafontaine comme Conseil à l'Enq. de la Requête. 10

I the undersigned prothonotary of the Superior Court for Lower Canada in the District of Montreal do hereby certify that the foregoing is a true extract of the proceedings had in the above cause, since the first of June eighteen hundred and eighty-three to this date, taken from the Plaintiffs of this Court.

Montreal, 12th January 1889.

A. B. LONGPRÉ,  
 Prothonotary. 20

(ENDORSED.)

Adjudicataire's Exhibit Y, fyled 3rd Oct. 1888. (Paraphed) D. G.,  
 Dep. P. S. C.

No. 145  
 Certified  
 copy of letter  
 from Hoche-  
 laga Bank to  
 Adolph  
 Lomer, Esq.  
 dated 8th  
 May 1885.  
 (Petitioner's  
 Exhibit Z)  
 fyled 3rd Oct  
 1888.

SCHEDULE No. 179.

La Banque d'Hoche-laga.

Montreal, 8th May, 1885. 20

ADOLPHE LOMER, Esq.,  
 City.

Dear Sir,

I am instructed by the Board to inform you that on your paying to the Bank five hundred dollars cash, two thousand dollars on the first of Oct. next and fifteen hundred dollars on the first of Oct. 1886 and on your remitting forthwith to said Bank a warehouse receipt for two hundred tons of phosphates and transferring on demand of said Bank a claim against the Pioneer Beet Root Sugar Co, to the amount of \$20700 you will be released from all further claim from said Bank proved it however that such release does not 40  
 impair the recourse of said Bank against any other parties liable with you or in  
 stead towards the Bank.

2nd Oct. 1888.  
 (True Copy)

Yours truly,  
 M. J. A. PRENDERGAST,  
 Cashier B. H.  
 (Signed) A. D. PARANT,  
 Cashier.

(ENDORSED.)

Adjudicataire's Exhibit Z, fyled 3 Oct. 1888. (Paraphed) E. P., Dep. P. S. C.

RECORD.

*In the Superior Court.*

SCHEDULE No. 174.

No. 145  
—Continued.

10 Province of Quebec, }  
District of Montreal. }  
No. 1198.

Superior Court.

Fairbanks & Company.....Plaintiff.

VS

The Pioneer Beet Root Sugar Company.....Defendant.

AND

20 The Eastern Townships Bank.....Adjudicataire.

AND

Andrew Rough et al.....Mis-en-cause.

AND

La Banque d'Hochelaga.....Petitioner.

AND

30 Thomas Darling, esqual.....Intervening party.

AND

The Municipality of the Town of Coaticooke.....Mis-en-cause.

The parties hereby consent and agree to dispense with the fying of  
Petitioner's exhibits A' and A' at Enquête on account of their being lost.  
Montreal, 31st October, 1887.

40 BEIQUÉ, MCGOUN & EMARD,  
Attorneys for Petitioners.  
ATWATER & MACKIE,  
Attys for Adjutr & M. E. C.

(ENDORSED.)

Consent as to non fying of Petitioners Exhibits A' and A' fyled 7th  
Nov. 1887. Paraphed H. L. C.

No. 146.  
Consent of parties as to non filing Petr's Exhibit A1 & A4 at Enquête. Dated 31st Oct. 1887.

RECORD.

*In the  
Superior  
Court.*

DEPOSITIONS AND EXHIBITS, FILED IN THE CAUSE OF  
LA BANQUE D'HOCHELAGA, *EN NULLITÉ DE*  
DÉCRET, TO BE USED IN THE  
PRESENT CASES.

SCHEDULE No. 180.

In the Superior Court for Lower Canada.

No. 147  
Deposition of  
W. Farwell  
for Petiti-  
tioner, La  
Banque  
d'Hochelaga  
dated 10th  
April 1885.

Present :

10

The Honorable Mr. Justice.

On this tenth day of April, in the year of Our Lord, one thousand eight hundred and eighty-five, personally came and appeared : William Farwell, of the City of Sherbrooke, in the District of St. Francis, general manager, of the Eastern Townships Bank, aged forty-nine years, and witness produced on the part of the Petitioners, who, being duly sworn, deposes and saith : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause, I am not interested in the event of this suit.

20

Q.—You are, and have been manager of the Bank Adjudicataire, for a number of years ?

A.—Yes.

Q.—You are aware that in the month of February, eighteen hundred and eighty-two, an action was instituted by your Bank, against the Company Defendant, for an amount of about twenty-three thousand dollars ?

A.—I don't know the time ; I suppose it is about that time.

Q.—Will you state what were the reasons of the Bank for pressing payment of said claim against the Company Defendant ?

A.—We desired to collect our debt ; that was the only reason that I know of.

Q.—Was not the information that you had received from the local manager, or from Mr. Thornton, or any other parties, that the Company Defendant, was getting into trouble ?

A.—No. I don't think so. I know that they were indebted to us, and more than that we wanted them to pay.

Q.—Had their paper been attended to of late ?

A.—I cannot say, the business was done at Coaticook, and I only knew from seeing the amount of their indebtedness.

Q. Are you aware of any precautions taken to institute this action or serving it so, that the judgment would be obtained without the Company Defendant, as a Board, or Gerard Lomer, the managing director, knowing of it ?

A. No, I am not.

Q Did you bring any statements of the claim of the Bank against the Company Defendant ?

A. I brought letters and copies of letters as directed. I have here a

statement of what I presume would be the indebtedness of the Company, on the twelfth of January, eighteen hundred and eighty-three.

Q. What was the amount ?

A. The amount including interest at the time was fifty-three thousand two hundred and thirty-five dollars and sixty-eight cents (\$53,235.68), subject to a reduction of five thousand two hundred and fifty-seven dollars, and sixty-three cents (\$5,257.63), the amount collected from collaterals as reported to me.

Q. And the Bank has other collaterals ?

A. I don't know what the value of them were. Some collateral notes.

10 Q. What was the amount of the collaterals, the nominal amount ?

A. About ten thousand dollars (\$10,000) but it did not realize anything like that. No, the nominal amount would be about seven thousand five hundred dollars, (\$7,500).

Q. It realized how much ?

A. I don't know.

Q. Mr. Austin would be able to say, it was kept by Mr. Austin ?

A. These figures I obtained from the cashier at the time. I may say that these collaterals I speak of, a portion of the amount I stated should be deducted from the indebtedness. That was the proceeds of collateral notes held  
20 by us to the credit of wood sold as reported to me.

Q. On the date you have mentioned, the twelfth of January, eighteen hundred and eighty-three, that was the amount of the claim ?

A. The amount of the indebtedness as reported to me was fifty-three thousand two hundred and thirty-five dollars and sixty-eight cents (\$53,235.68), from which would be deducted the cash on hand from collaterals.

Q. What amount of cash ?

A. The amount I have given : five thousand two hundred and fifty-seven dollars and sixty-three cents (\$5,257.63).

Q. About the time of the sale of the property in question by the sheriff,  
30 had you any agreement, as a manager of the Bank, with Messrs. Beard and MacDougall on any of them with reference to purchasing the property or the reselling of it ?

A. I had an agreement with Mr. Beard, and Mr. MacDougall that if we bought it we would sell it to them at a certain price, and that agreement arose from application made by Mr. Beard as he said he represented Mr. MacDougall to obtain the privilege of purchasing it from us if we bought it at Sheriff's sale.

Q. Was the agreement put in writing ?

A. Yes. I have the agreement just mentioned which resulted from the  
40 letters and telegram fyled and marked as Petitioner's exhibit ; the telegram exhibit A1, and the letters A2, A3, and A4. Exhibit A1 was received by me on the eighteenth of December, eighteen hundred and eighty-two, and was the first communication which I received or which the Bank received in connection with this matter. I think that Mr. Beard only came at the date mentioned in the telegram and left me personally to discuss the matter.

Q. Had you any personal communication with Mr. John MacDougall himself previous to the sale of the property by the sheriff ?

A. No, I think not.

RECORD

*In the  
Superior  
Court.*

No. 147  
Deposition of  
W. Farwell  
for Petition-  
er, La  
Banque  
d'Hochelaga  
dated 10th  
April 1885.  
—Continued.

RECORD.

*In the  
Superior  
Court.*

No. 147

Deposition of  
W. Farwell  
for Petiti-  
tioner, La  
Banque  
d'Hochelaga  
dated 10th  
April 1885.

—Continued.

Q. Will you say what you understood Mr. MacDougall to mean by the following words in his letter on the ninth January eighteen hundred and eighty-three: "I hope you will be successful with the sale"?

A. I cannot say what he meant.

Q. What sale had this reference to?

A. I understood it to be the sale of the Pioneer Beet Root Sugar Co.

Q. By the sheriff?

A. Yes; in connection with the whole thing.

Q. When Mr. Beard communicated with you in December eighteen hundred and eighty-two did he tell you that he had purchased the judgment of Mr. Fairbanks?

A. I do not know.

Q. Were you aware at the time of the sale made by the sheriff by whom the Fairbank's judgment was controlled?

A. I cannot say that I was.

Q. Had you not in fact the control of the judgment of Fairbanks from the time the agreement was made with Beard and MacDougall?

A. Not to my knowledge.

Q. Was it not understood that the sale would be conducted as you would advise or you would be advised by your legal Attorneys?

A. No, the same as any other sheriff's sale.

Q. You were present at the sale?

A. Yes, and bought the property.

Q. You did not bring with you the letter book containing any correspondence that you may have had with the local manager in November referring either to the sale or to the institution of the action or the judgment?

A. I have got the letter book commencing the twenty-seventh of October eighteen hundred and eighty-two and ending November eighteen hundred and eighty-three.

Q. Will you refer to that letter book and see if you find any letter thereto the local manager Mr. Austin, or to Mr. Thornton, having reference to the property in question in this cause?

A. I find in my letter book a copy of letter of the eight of January eighteen hundred and eighty-three written to Mr. Austin in Coaticooke, of which I file a copy marked as Petitioner's exhibit A5. In the letter of the tenth of January eighteen hundred and eighty-three addressed to B. Austin, local manager at Coaticooke I say.

"Beet Root Sugar Company Sale.

"I am going to Montreal to-morrow morning on some other business and expect to run out to Farnham on afternoon train, but if so, shall return in time to take night train out and shall go through to Coaticooke and be there Friday morning. Don't of anything to say respecting it but trust you will have it studied up so as to know just how far we can go. Of course you had our judgment filed." I find a copy of letter of the twenty-second of January which I now file as Exhibit A9.

Counsel for adjudicataire and mis en cause objects to the production of the letter, reserving the objection until to-morrow for argument on the

objection.

I have a copy of letter of the twenty-fifth of January eighteen hundred and eighty-three of which I file a copy marked as Petitioner's Exhibit A10.

Objected to by Adjudicataire as illegal.

Objection reserved.

I did not find any copies of letters written by me to Mr. Doak.

Q. Have you any copies of letters written by you, or the Bank to Mr. John Thornton having reference to the matters in question in this petition?

A. I have a letter of the twenty-fifth of January eighteen hundred and  
10 eighty-three which I file as Exhibit A10.

The Adjudicataire objects to the production of any such letters as being privileged communications between the Bank and its officers, and further to the production of any communications subsequent, or posterior to the date of the sale.

Objection reserved until to-morrow morning for argument.

And the further examination of this witness was continued until to-morrow, the eleventh day of April one thousand eight hundred and eighty-five.

And on this eleventh day of April eighteen hundred and eighty five reappeared said witness and continued his examination as follows:

20 Adjudicataire consents to reserve the objection and to the filing of the letters makes objection.

I file copies or extracts of said letters as Petitioners Exhibits A9 and A10.

Q.—The sum to be refunded by Mr. Doak had reference to the one thousand dollars paid to him?

A.—I suppose so.

I have now before me my letter book from September eighteen hundred and eighty-one to October eighteen hundred and eighty-two.

30 Q.—Will you please file any letter or extract written by you or the Bank to Mr. Austin having reference in any way to the suit, judgment, or property in question in this cause, or to the Pioneer Beet Root Sugar Company?

A.—I file copies or extracts of the following letters: 12th. October 1881, 17th October 1881, 25th October 1881, 8th November 1881, 28th December 1881, 30th December 1881, 10th January 1882, 10th May 1882 and 24th June 1882, as Petitioners Exhibits A11, A12, A13, A14, A15, A16, A17, A18 and A19.

Q.—Will you file any letters by you or the Bank to Mr. John Thornton having reference to the same matters?

40 A.—I will file copies or extracts of the following letters: 8th November 1881 and the 14th November 1881 as Exhibits A20 and A21.

Q.—Will you file any letter by you or the Bank to Mr. Doak having reference to the same matters?

A. There are none to Mr. Doak.

Q. You have stated that you were present at the Sheriff's sale?

A. Yes.

Q. Will you see how much you had made up your mind to bid up the

RECORD

In the  
Superior  
Court.

No: 147  
Deposition of  
W. Farwell  
for Petition-  
er, La  
Banque  
d'Hochelaga  
dated 10th  
April 1885.  
—Continued.

RECORD

*In the  
Superior  
Court.*

No. 147  
Deposition of  
W. Farwell  
for Petiti-  
tioner, La  
Banque  
d'Hochelaga  
dated 10th  
April 1885.  
—Continued

property in question ?

A. I cannot state ; I do not remember.

Q. To the best of your belief was it to the amount of your claim ?

A. I would not pretend to say, I don't know. It is a matter that has gone from me now.

Q. Was it not a surprise to you that the property was allowed to be sold for fourteen hundred dollars (\$1,400) ?

A. I have no correspondence on the subject. I cannot tell, I do not know when ; it has gone from my mind what my feelings were at the time.

Taking into consideration the value of the property, did you not find it rather strange that the property would be sold for fourteen hundred dollars (\$1400) ?

A. No, I don't know that I did I say I have no recollection of what my feelings were at the time.

Q. There were several parties present ?

A. Yes, quite a large number.

Q. How could you account for the audience letting the property be sold for a small amount of that kind ?

A. The only way was that they did not want it, nobody wanted it.

Q. You don't suppose that anybody purchasing the property at five thousand dollars (\$5000) for instance, would not have been able to make money on the reselling of it ?

A. Possibly, they might have got more than that, but I have no means of knowing whether it would have brought more than that or not, at all events there was nobody there that was prepared to bid more.

And further for the present Deponent saith not.

WM. MCGOUN,  
Stenographer.

(ENDORSED.)

Deposition of Wm. Farwell for Petitioners, fyled 9th July 1886. (Paraphed) H. & G. Dep. P. S. C.

SCHEDULE No 181.

In the Superior Court for Lower Canada.

Present :

On this tenth day of April in the year of Our Lord one thousand eight hundred and eighty-five, personally came and appeared : Benjamin Austin of the town of Coaticooke in the District of St. Francis, Esquire, manager, aged years, and witness produced on the part of the who, being duly sworn, deposeseth and saith : I am not related, allied, or of kin to,

No. 148.  
Deposition of  
Benjamin  
Austin for  
Petitioner, La  
Banque  
d'Hochelaga  
dated 10th  
April 1885.

10

20

50

40



or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

RECORD

*In the  
Superior  
Court.*

No. 148.

Deposition of  
B. Austin  
for Petitioner  
La Banque  
d'Hochelaga  
dated 10th  
April 1885

—Continued.

I am the the Local manager of the Eastern Townships Bank, at Coaticooke, and I have been so since 1873. I am aware that in February eighteen hundred and eighty-two, the Eastern Townships Bank sued the Pioneer Beet Root Sugar Company. It was by my instructions I gave the matter in the hands of our Attorney at Coaticooke Mr. G. O. Doak of Coaticooke I might have consulted with the people at the head office before doing so, I probably did but I do not remember distinctly this suit was  
10 for an amount of about twenty-three thousand dollars. It was the suit in which judgment was rendered, and an execution was noted as *opposition afin de conserver*. In this Fairbanks as appears by the record.

Q. Was it understood between you and Mr. Doak, or any other persons, on whom the service of the said action should be made?

Objected to as illegal and as tending to prove an understanding, and as tending to prove privileged communication between the witness and his Attorney, and as not effecting the issue.

Objection overruled.

A. I do not remember that there was any understanding to that effect  
20 upon whom the service should be made, at the time.

Q. Are you aware that a service of said action was made on Mr. John Thornton?

Objected to as above.

Objection reserved.

A. I understand that it was I was not present when the service was made, I have no personal knowledge of it.

Q. Was it made in the premises of the Bank?

A. Certainly not. It certainly was not made on Mr. Thornton, in the premises of the Bank, Mr. John Thornton, was a Director of the Eastern  
30 Townships Bank at the time. He was also Treasurer of the Pioneer Beet Root Sugar Company, I believe.

Q. Had you some conversation with Mr. Thornton, or with any other persons, as to the manner in which the action would be served, so that the Company Defendant would not know that he contested the sale?

Objected to as above.

Objection reserved.

A. I do not remember having any conversation with Mr. Thornton, to that effect at all, I am very sure I had none.

Q. With some other persons?

A. I cannot recollect any conversation to that effect, if I had any at all,  
40 it was with the Attorney of the Bank, but I do not remember the conversation that we had at that time.

Q. Did you not understand that precautions of some kind were taken, so that the Company would not contest the action nor know of the existence of the same, until after judgment would be rendered?

A. I do not remember that there was any arrangements of that kind made, the only matter bearing on the subject that I can recall, I think there was

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something said with regard to which officer of the Company the service should be made on.

Q. And when something was said to that effect, it was understood it would be made on Mr. Thornton, was it not?

A. No, as well as I can recollect, it was not.

Q. On whom?

A. I do not think there was anything concluded with regard to that.

Q. What was the object of talking on what officer the service should be made, was it not in view of avoiding a contestation of the action, and taking judgment without the Board, and the Company Defendant interested board knowing of it? 10

A. So far as I can remember, the idea was as to whether it would be advisable to serve the action on some officer of the Company, other than Mr. Lomer, there seemed to be no particular reason why it should be served on him.

Q. Was there not some particular reason at the time in your own mind for not serving it on Mr. Lomer?

Objected to as above.

Objection reserved.

A. Well Mr. Lomer was extremely litigious man, and perhaps rather disposed to be unfriendly to the Bank, and it was thought perhaps that some of the other officers of the Company might not feel in the same manner, but this was a conversation with my Attorney that occurred several years ago, and have not at all a clear recollection of it. 20

Q. This Gerald Lomer was manager of the Company at the time?

A. He was Managing Director.

Q. You expected at the time having the action served on another officer of the Company, on Mr. Thornton for instance, that he would not have any knowledge that Mr. Lomer would perchance, would not have any knowledge of it? 30

A. I cannot say exactly that, but I think there was possibly less chance that we would be subject to factious litigation in the matter.

Q. Is it not a fact that Mr. Doak was paid by your Bank, for obtaining said judgment a sum of about one thousand dollars?

Objected to as illegal and irrelevant.

Objection by the parties.

A. Yes, it is a fact, he was paid one thousand dollars for his services in connexion with our matters with that Company it was about one thousand dollars.

Q. For obtaining this judgment, was it not? 40

A. I do not understand that it was exclusively for obtaining that judgment.

Q. For what other services was it?

A. It was for all our claims in connection with all our proceedings with that Company.

Q. What other claims or proceedings against the Company Defendant had your Bank?

A. I cannot remember them all now, I remember there was another judgment obtained in the case, and I remember that Mr. Doak attended at the sale of the property, and other services in connection with it.

Q. Was this one thousand dollars asked for, or paid previous to or after the sale of the property ?

A. I am not quite positive of that, but I think it was paid after the sale of the property, I am not sure.

Q. Did Mr. Doak mention to you as a reason for asking this amount of one thousand dollars, that he had obtained a snap judgment against the  
10 Company Defendant, referring to the judgment mentioned above, or words to that effect ?

A. He certainly did not make use of that expression that I can recollect.

Q. What was his particular expression, or the purport of what he said ?

A. I do not remember what expression he made at all.

Q. What did he urge for asking to be paid a large sum of that kind ?

A. I do not remember explicitly in regard to that ; it was a large case, and an important case and the Bank was willing to pay the sum.

20 Q. You know that the judgment was rendered by de-fault, there was no contestation ?

A. I have no personal knowledge of it. From what I heard I understand that it was so. There was no reason why there should have been, they owed the debt every dollar of it.

Q. Was Mr. Doak the regular Attorney of the Bank ?

A. Yes in Coaticooke.

Q. He had charge of all the affairs of the Bank at Coaticooke—every  
suit ?

30 A. Yes everything. He is the only Attorney that we have employed at Coaticooke.

Q. The suit was not instituted in Coaticooke, it was instituted at Sherbrooke ?

A. Yes.

Q. The representatives of the Bank in Sherbrooke were Messrs. Hall & White ?

40 A. At that time I think it was Hall & White, I would not be positive but I think so, but all the business arising from the Coaticooke Agency whether the suits were taken at Coaticooke or Sherbrooke, were taken by the Coaticooke Attorney. It is only small causes that are tried at Coaticooke, all the larger ones have to go to Sherbrooke.

Q. Are you sure that Mr. Doak was in the habit of taking the action in the Superior Court in Sherbrooke, in the name of the bank, because it arise from matters connected with the agency in Coaticooke ?

A. I have known of his taking a number of actions, in the Superior Court in Sherbrooke, that arise out of the business at Coaticooke, and I understand that they have to be taken there, over a certain amount.

Q. Were you present at the sheriff's sale of the property in question ?

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A. Yes.

Q. Are you aware of any agreement, previous to the said sale, between the Bank and Mr. S. W. Beard with reference to the property in question ?

A. Well, I have no specific personal knowledge that any agreements of that kind were made by the General Manager, Mr. Farwell. I can tell you what I heard about it.

Q. What did you hear from the General Manager, or any other officer of the Bank, with regard to any agreement made with Mr. Beard, having reference to the property in question, or to the sale of the same.

Objected to as illegal.

10

Objection reserved by consent.

A. I heard that Mr. Beard and Mr. John MacDougall, previous to the sale, had opened communications with Mr. Farwell, the General Manager of the bank, and they had proposed to Mr. Farwell that the bank should practically buy in the property at the sale for them—for MacDougall and Beard, and give them "time" to pay for it.

Q. Were you aware at the time of the sale of the property that Mr. Beard and Mr. John MacDougall controlled the judgment obtained by Fairbanks against the Company Defendant.

A. I do not recollect positively with regard to that ; I have an impression in my mind that they were interested in it in some way but I do not remember whether the knowledge came to me before the sale or after it.

Q. Were you not aware at the time of said sale that Fairbanks had been paid ?

A. No, I cannot say that I was.

Q. At the time the action of the Eastern Townships Bank was taken, was the Company Defendant solvent or not ?

A. It is impossible for me to answer that question definitely, I had no access to their books or accounts, I had no reasons to think they were otherwise they were doing business as usual, in fact it was their first campaign, and it is impossible for me to tell whether they were solvent or insolvent. I think their business was badly managed although I had no reason to think they were insolvent at the time, still I think it not improbable that they were gravitating in that direction.

Q. And it was on account of your apprehension to that effect that you wanted to hurry and take judgment against them, was it not ?

A. Yes, we did not know what might come of it, we did not like the way things were managed, we felt concerned about our claim and that was the reason we took the action against them.

Q. The Company Defendant had an open account with the Agency of the Bank in Coaticooke ?

A. Yes, they did their banking business with us.

Q. Was the paper on which the judgment of said suit was instituted long over due ?

A. I do not think it was long over due.

Q. Had they been renewing for a considerable length of time ?

A. No, I do not think so, it could not have been a very long time, they

only commenced operations in eighteen hundred and eighty-one.

Q. You were aware that the Company Defendant had issued mortgage debentures on its property—at the time of the institution of said action?

A. No, I was not aware that they had.

Q. Have you with you any statement of the account of the Company Defendant with the bank, or of the paper on which said action was based?

A. No I have not; the action was based on promissory notes of the Company.

10 Q. You were requested by the subpoena served on you to bring all papers having reference to that claim, have you got them?

A. Those notes are in the record I suppose. I have some notes here that are not included in that judgment, I was asked to bring any papers that had reference to the claim; the notes that the judgment of the bank was taken upon are not in my possession.

Q. Did you bring any letters or letter book with your having reference to the institution of said action?

A. No, I did not.

20 Q. Did you not write to the head office, to Mr. Farwell or to any other officer of the Bank at the head office, that the Company Defendant was getting into difficulties, and that it would be better to take action against them some-time before the institution of said action?

A. I do not remember whether I did or not.

Q. Is it not very likely that you did so?

A. It is quite possible that I communicated with him on the subject either verbally or by letter, but I do not remember the circumstances now. And the examination of this witness is continued until to-morrow the eleventh day of April, eighteen hundred and eighty-five, and on this eleventh day of April, re-appeared said witness and continued his examination as follows.

30 Q.—Will you file any copies of letters written by you to the Eastern Townships Bank, or its manager, or to any other persons, having reference to the claim of the said bank, against the Company Defendant or to the suit, judgment or sale above referred to.

A. I have my letter books here from the twenty-eight of July eighteen hundred and eighty-one to the third of October eighteen hundred and eighty-two but they unfortunately are not indexed. I have examined my book at and about the date of the action taken by the Adjudicataire against the Company Defendant and at and about the date of the rendering of the judgment in the suit, and I find no correspondence bearing upon the question, and I believe there was none.

40 Q. Will you please file a copy of the letter of the third of January eighteen hundred and eighty-two, of the sixth of January, fourteenth and the seventeenth of January, twentieth of January, twenty-fourth of January and the first of February eighteen hundred and eighty-three?

A. I will do so. The Mr. Churchill mentioned in the letter of the fourteenth of January eighteen hundred and eighty-three, was at one time Secretary of the Pioneer Beet Root Sugar Company, I am not positive about what time, but I think it was about then.

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La Banque  
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*In the  
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No. 148.

Deposition of  
Benjamin  
Austin for  
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Q. Please state if the said Mr. Churchill was paid anything by the Adjudicataire for the service rendered to the Bank as mentioned in said letter ?

A. He was paid fifty dollars by the Bank for general services that he had rendered to it.

Q. What was the services rendered ?

A. I do not remember them all, I could not specify them all, I know he had something to do in connection with getting the insurance on the building, and he also rendered notable services in watching the property which had been warehoused in favor of the Bank, consisting of Bone, Charcoal and Cordwood. These were stored in premises in the factory which in fact belonged to the Pioneer Beet Root Sugar Company, the warehouseman having rented them from the Company and upon one occasion, I discovered that part of this property had been extra ted from the warehouse and I employed Mr. Churchill to have an eye to it, and to report to me any depredations that might be made, of that nature, and he also kept me informed, generally, as to the movements of Mr. Lomer who was the Managing Director of the Company Defendant, and who is referred to as the "enemy" in the letter in question. 10

B. The said Churchill was at one time in the employ of the Company Defendant, was he not ?

A. Yes. 20

Q. You have been requested by the Adjudicataire to insert an extract from the letter, of the seventeenth of January eighteen hundred and eighty-three, referring to Mr. Senecal, please state what the reference in the said extract is to ?

A. I understood from some one, I do not remember who, that Mr. Senecal was a party with MacDougall and the others, in the purchase of this Pioneer Beet Root Sugar Company's property ; and that being the case, I thought it not unlikely, that we should hear of some more subsidies being granted by the Provincial Legislature.

Q. In the letter of date, the sixth of January eighteen hundred and eighty-two, (meaning eighteen hundred and eighty three) you refer to one Williams, who was to be present as scare crow : who was the said Williams ? 30

A. He was the Collector of Customs at Coaticooke.

Q. What claim had he ?

A. The Government had a large claim for duties, The machinery that went into the buildings, had never paid the import duties, that is to say, the machinery that was imported, and it was bonded in the building, in fact the factory was treated as a bonded warehouse for that purpose, and the Government held a claim for duties upon the machinery for about ten thousand dollars.

Q. Did they ever file their claim ? 40

A. Yes, the property is under seizure now by the Government, and at the sale, Mr. Williams, the Collector, filed same statement of the fact, with the Sheriff, to the effect that this claim existed. Since the sale, the machinery has been seized by the Government ?

Q. That claim has never been satisfied ?

A. No, the Government still hold the claim.

Q. That arrangement had been made between Mr. Williams, mentioned

in the said letter, and the Adjudicataire ?

A. There had been no arrangement made at all, to my knowledge. I did contemplate having him attend the sale, for the purpose I have stated in my letter, that is to say, to guard against factions bidding that might be made simply for the purpose of black mail; but on further consideration I concluded that it would be better not to meddle with the question and I said nothing to Mr. Williams. He was at the sale, simply in discharge of his duty, as representing the Government, but not by any request made by me, or, so far as I know, by any body on behalf of the bank.

10 The "Mr. Doak" referred to in the letter of the twenty-fourth of January, and the "Churchill," are respectively Mr. G. O. Doak and James Churchill, to whom I have already referred.

Q. For what amount was the property insured at the time ?

A. I don't remember what it was. The insurance was effected in Sherbrooke, through a Mr. Leford, I don't remember what it was, I know there were some cancellations. I can tell the amount we hold on it now.

Q. Do you know at what amount the property was insured shortly after the sale in question ?

20 A. No, Mr. MacDougall effected the insurance, and transferred the policies to the Bank. I do not recollect the amount at that time, it was sometime before I got advice of it, and there was some cancellations made by the Company.

Q. When were the cancellations made ?

A. Shortly after this insurance was effected.

Q. Were you present at the sale ?

A. Yes.

Q. To what price were you prepared to bid up the property, at the sale in question ?

30 A. So far as I am judge there was no specific sum agreed upon, we intended to be guided by circumstances, we had large hypothecary claims on the property, and when we attended the sale and saw no probable bidders there, we concluded that we should have to buy it in.

Q. Did you express your intention, at the sale, of bidding it up to the amount of the hypothecary claim you pretended to have upon the property in question ?

A. No, I did not and the further examination of this witness is continued until Monday, the thirteenth of April, eighteen hundred and eighty-five, and on this thirteenth day of April eighteen hundred and eighty-five, re-appeared said witness, and continued as follows :—

CROSS-EXAMINATION.

40 Q. Will you produce the letter, or a copy of the letter of the twenty-first of June eighteen hundred and eighty-two ?

A. I will do so, and file it as Adjudicataire's exhibit "B2."

Q. Did you have any conversation with the Managing Director, Mr. Lomer, in regard to this judgment after it was acquired, and if so, state what it was ?

A. It is impossible for me to give the details of the conversation, but I remember it was to the effect that we might have served the judgment upon

RECORD him, that he would not have contested the action.

*In the Superior Court.*  
Q. Did he say from whom he first obtained knowledge of the judgment?

A.—I understand that he had obtained the information from Montreal, by means of a telegram from the Bank of Hochelaga.

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Q. Is it to your personal knowledge that the Company Defendant acquiesced in this judgment as being valid consideration?

A. Yes, they never disputed the justness of our claims at all.

Q. Do you know if they afterwards applied to you to make use of the judgment for their own benefit, in seizing moneys, which they claimed to be due them, in the hands of farmers, who had procured at Arthabaska?

A. Yes, I remember that circumstances, and we allowed the Company to use the judgment for that purpose.

Q. This was in the summer following the judgment, was it?

A. Yes.

Q. Was the fact of the judgment and registration publicly known immediately after it was procured?

A. I think it was shortly after.

Q. Do you know if Messrs. Abbott, the Attorneys of Von Roofer, were also aware of this judgment?

A. I remember hearing Mr. Lomer say he had consulted Mr. Abbott, in regard to the judgment.

Q. Had the obtaining of this judgment, anything whatever to do with the Sheriff's sale in this cause?

A. Not in the most remote degree, the Bank knew nothing of the claim of Fairbanks & Company, under which the property was sold at that time, viz. the time the judgment was obtained.

Q.—Was this judgment used in any manner, to prevent parties bidding at the sale?

A. Not in any manner, it was not referred to at the sale by me or any one on behalf of the Bank, to my knowledge.

Q. Were there a lot of other judgments and mortgages registered against the property, subsequently previous to the sale?

A. Yes, there were.

Q. Speaking of the fee paid to Mr. Doak, didn't that fee include services rendered in connection with the Company for a period of two years?

A. Precisely.

Q. And a great number of consultations?

A. I think I stated as much in my examination-in-chief.

Q. Had not Mr. Doak in order to flout the Company to affect the sale of this property to subscribe two thousand dollars in stock to the Company?

A. Yes, he had.

Q. Was not the one thousand dollars to be applied upon the liability for that stock, the money for which had been borrowed from the Bank?

A. Just so and it was so applied.

Q. What is the actual cash value of this property?

A. From five to ten thousand dollars. I do not think a man would



make a dollar profit out of it by buying it for ten thousand dollars, and I doubt if he would much more than get out of it, at seven thousand five hundred dollars.

Q. Is the property specially constructed for the manufacture of Beet Root Sugar and is it almost impossible to convert it into anything else to any advantage ?

A. It is specially constructed for the manufacture of Sugar from Beet Root, and badly constructed for that purpose even. I do not see how it could be converted to any other purpose without practically leaving it down and building it over again.

Q. Was there any one present at the sale with any intention of bidding to anything like the extent of your first mortgage, or with the means of paying like your first mortgage on the property, at the time of the sale ?

A. I saw no one at the sale who appeared to have any intention of buying the property, now, indeed, who had the money to do so, with of course, the exception to the Eastern Township Bank.

Q. Are you aware of any artifices employed to prevent parties from bidding at the sale ?

A. None whatever, we were very careful to avoid anything of that kind, having given the matter a great deal of consideration.

Q. In your letter of sixth January to Mr. Farwell, you speak of "factious bidders," will you explain what you mean by factious bidders, and who they were ?

A. In Coaticooke, it sometimes happen that people attend a sale of that kind simply for the sake of creating annoyance, perhaps trying to get themselves bought off.

Q. I understand you mean, certain parties are in the habit of attending Sheriff's sales, and pretending to bid up the property unless they are paid a certain amount ?

A. Yes.

Q. That is what you mean by "factious bidders" ?

A. Yes. On the occasion of the sale in question, there was no annoyance of that kind, although we took no steps at all to prevent it.

Q. The fifteen thousand dollars mortgage spoken of in that letter refers to the *bailleur de fonds* claim, does it ?

A. It does. It has reference to the Sleeper mortgage and not to the other, that is to the balance of the price of the property, which the Beet Root Sugar purchased from Mr. Sleeper.

Q. In speaking of Senecal in your letter, what did you understand by that reference ; did you understand that MacDougall and Beard expected him to join them in the purchase as a reason for their buying the property ?

A. I understood that Mr. Senecal was to join them in the purchase of the property, and with the intention of floating it, together with the Beet Sugar properties at Farnham and Berthier, upon the Paris market, in the shape of a Company for that purpose, out of which transaction a large profit was expected to be made.

Q. Your reference to the "enemy" and "Churchill," in the letters of

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the 24th of January and the fourteenth of January, have reference to the transaction in regard to Bone Black ?

Objected to as leading

Question waived.

Q. Will you explain what transactions your references in the said letters apply ?

A. The transactions with our collateral security, viz : Cordwood and Bone Black, Mr. Gerard Lomer, the Managing Director of the Company, was the person referred to as the "enemy" he was constantly trying to get these collaterals out of our hands, by some manœuvre or other without paying us the proper consideration. 10

Q. Do you know how much insurance there is now on the property ?

A. There is twenty-five thousand dollars on the property, that I know of, possibly twenty thousand more, I am not sure of that. There have been some cancellations of late.

Q. Has there been any difficulty in keeping the property insured ?

A. Yes, there has been great difficulty in keeping it insured.

Q. Upon what condition only can it be kept insured ?

A. The only condition is, that the owner of the property is obliged to keep a man in charge of it all the time, and a night watchman. and the premiums are very high. 20

Q. In your letters, speaking of the financial position of the Company, Upon what conditions did the fact that they would be ultimately solvent or insolvent depend ?

A. It depended upon the success of the enterprise.

Q. At the time that these letters were written, they had not been in operation much more than six months, had they ?

A. No, they had not. They were, I think in the midst of their operations, of course if they could prove it to be a money making business they would have been all right. 30

Q. And if it had been otherwise it would be a failure ?

A. Yes.

#### RE-EXAMINED.

Q. Have you any knowledge direct or positive as to the manner in which Mr. Lomer became aware of the judgment in question having been obtained by the adjudicataire ?

A. Only as I have stated, only from the information I obtained from Mr. Lomer. 40

Q. When did you understand that this knowledge came to Mr. Lomer ?

A. I cannot fix the date, but it was not long after the judgment was obtained,

Q. About how long ?

A. Within a few weeks at most.

Q. When were you told that Mr. Abbott had been consulted about the validity of the judgment, in favor of the Adjudicataire in question ?

A. It was not long after the judgment was obtained, it might have been a week, or it might have been four or five weeks.

Q. Are you aware that Mr. Abbott was at that time attorney representing the Von Roofers, and was it in such capacity that he was consulted?

A. I cannot say as to that, I know that he did act as attorney to Von Roofers, but I do not know whether I was aware of it at that time or not.

Q. Do you know now that he represented them then?

A. No, I cannot speak positively as to that.

10 Q. Do you swear that none of the Officers of the Pioneer Beet Root Sugar Company ever disputed the amount of the judgment obtained by the Adjudicataire?

A. I do, so far as my knowledge goes, I never heard that they had disputed the amount of the judgment at all.

Q. Did you not understand that they considered the amount contestable.

A. I understood that they considered it contestable on the grounds of the service only.

Q. Did you understand nothing more?

A. Nothing more than that.

20 Q. You have said you allowed the Company to use the judgment, what do you mean by that?

A. The Company had some claims against some farmers for the value of seed which they had supplied them, and to recover this, they wanted to garnishee their debtors.

Q. Who wanted to do this?

A. The Pioneer Beet Root Sugar Company.

Q. Represented by whom?

A. By Gerard Lomer, the Managing Director.

Q. Did they do it?

30 A. I think they commenced some actions, but I do not know with what result.

Q. Do you know of any case in which they did garnishee their debtors?

A. I cannot state positively, for I had no personal interest in the matter.

Q. You were present at the sale?

A. Yes.

Q. Do you swear that no mention was made at the sale of the adjudicataire having a judgment registered upon the property of the Defendants?

40 A. To the best of my knowledge and belief I swear it, as I have no recollection of anything of the kind.

Q. Did you not hear it spoken of by any person at all?

A. No, I did not, to the best of my recollection.

Q. Is it not a fact that the property has been dismantled, and deteriorated to a considerable extent, since the date of the Sheriff's sale?

A. I know there have been some boilers taken out of the buildings and and I think some few iron tanks, and a small engine, and I think some iron piping. That is all that I recollect. All the Sugar Machinery remains there.

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Q. Was a wall torn down ?

A. The brick work into the boiler, to which I referred was taken down, I think there was a small part of one brick wall taken down, to get at the boiler.

Q. Has it not been generally dismantled ?

A. No, I think not.

Q. You say that the factory in question is badly constructed for a Beet Root Sugar Factory. Have you any technical knowledge as to the construction of a Beet Root Factory ?

A. Yes, I have. 10

Q. Have you ever seen one besides that ?

A. I remember that the engineer, who came out from Germany, to prepare the plans for the factory, was very much dissatisfied with the site, his name was Gesner, he was sent out by Von Roofer, who supplied the machinery, I remember his expression in regard to the site was that "the *terrain* was very inopportune," that the buildings were buildings upon the Bank of the River, which was rather abrupt, and a great deal of blasting had to be done, the place between the road and the river, was not sufficient to contain all the buildings of the factory, and even those that were situated, there had to be built in an inconvenient manner, and other buildings had to be placed upon the other side of the street. 20

Q. Have you ever seen a Beet Root Sugar Factory besides this ?

A. No, I never did, but I saw a number of plans that Mr. Gesner brought with him, yes. I did see another one, I examined a Beet Sugar Factory at Portland, Maine, the only one of the Continent that ever paid expenses, to my knowledge.

Q. Are you prepared to say that there was no person present at the sale of the property in question apart from the representatives of the Bank who could pay more than fourteen hundred dollars for it ?

A. I do not remember if there were, at all events there were none who could have paid in cash the amount of the *bailleur de fonds* to which I referred. At least I am very sure that they were none, in fact that there did not appear to be anybody there who had any intention of bidding at all nor desiring the property. 30

Q. Who were the factious bidders whom you expected to be present at the sale ?

A. There is one name that I think of immediately, but I am in doubt as to whether it would be proper for me to mention it.

Counsel makes application to the Court to call upon the witness to answer. 40

A.—H. C. H. Shonyo.

Q.—Any others ?

A.—I don't think of any others now, but I remember distinctly thinking, Mr. Shonyo before the sale took place, there was a possibility of his making himself unpleasant at the sale, however he did not do so.

Q.—Had you made known to any person, before the sale took place, the fact of the Bank having a registered judgment on the property ?

A. I do not remember it is quite possible that I may have mentioned it, I did not publish it, I did not take any pains to spread that information.

Q. Do you know of a person to whom you did mention it?

A. I do not think of any one excepting persons connected with the Bank.

Q. Did you mention it to Mr. Shonyo?

A. I do not remember. I do not think I did.

Q. Can you not state how much the property was insured for shortly or immediately after the sale?

10 A. I do not remember at all, the insurance was not effected by me, it was effected for Mr. MacDougall in conjunction with the General Manager, and I remember that I had no report of it for a considerable time after it was effected.

Q. Do you know who will be able to state the exact amount?

A. I do not know, I suppose Mr. MacDougall would.

Q. I understand at the time you took the judgment in question you believe that the operations of the Company were going to turn out a failure, is that the case?

A. I cannot say that I believed it, but I feared it might be so.

20 Q. Was it the common belief that it would be so?

A. There were varying opinions on the subject, I cannot say that it was the common belief.

Q. Did the Sleeper mortgage to which you have referred, apply to the property purchased by the Adjudicataire, at the sale in question?

A. Yes, it did.

Q. And the amount of that mortgage was?

A. The amount of that mortgage was between twelve and thirteen thousand dollars, and there was between two and three years accrued interest upon it at seven per cent.

30

RE-CROSS-EXAMINED.

Q. As to the value of these Boilers & Pipe &c which you say had been removed from the property since the sale, can you state about the value of it?

A. I should say about six thousand dollars, I think it was between five and six thousand dollars that Mr. MacDougall paid to us as being the value of the property. The value of the machinery there now is very little, I do not think it is worth anything except for old iron, and probably it would cost as much to take it out as it worth.

40 Q. Excepting for a Beet Root Sugar Company?

A. Yes.

And further deponent saith not.

WM. MCGOUN,  
Stenographer.

ENDORSED.

Deposition of Benjamin Austin, for Petitioners filed 9 July, 1886. Paragraphed H. & G. Dep. P. S. C.

RECORD

*In the  
Superior  
Court.*

No. 148.  
Deposition of  
B. Austin  
for Petitioner  
La Banque  
d'Hochelaga  
dated 10th  
April 1885  
—Continued.

RECORD.

SCHEDULE No. 182.

*In the  
Superior  
Court.*

In the Superior Court for Lower Canada.

No. 149  
Deposition of  
W. Farwell  
for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 10th  
April 1885.

On this tenth day of April in the year of Our Lord one thousand eight hundred and eighty-five, personally came and appeared: William Farwell, of the City of Sherbrooke, in the district of St. Francis, general manager, aged 49 years, and witness produced on the part of the Petitioners who, being duly sworn, deposes and saith:—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause; I am, not interested in the event of this suit. 10

Q. You are and have been manager of the Bank Adjudicataire for a number of years?

A. Yes.

Q. You are aware that in month of February eighteen hundred and eighty-two an action was instituted by your Bank against the Company Defendant for an amount of about twenty-three thousand dollars?

A. I don't know the time, I suppose it is about that time.

Q. Will you state what were the reasons of the Bank for pressing payment of said claim against the Company Defendant? 20

A. We desired to collect our debt, that is the only reason I know of.

Q. Was not the information that you had received from the local manager, or from Mr. Thornton, or any other parties, that the Company Defendant was getting into trouble?

A. No, I don't think so. I know that they were indebted to us and we wanted them to pay.

Q. Had their paper been attended to of late?

A. I cannot say. The business was done at Coaticooke, and I only knew from seeing the amount of their indebtedness. 30

Y. Are you aware of any precautions taken to institute this action, or serving it, so that the judgment would be obtained without the Company Defendant as a Board, or Mr. Gerard Lomer, managing director, knowing of it?

A. No, I am not.

Q. Did you bring any statement of the claim of the Bank against the Company Defendant?

A. I brought letters and copies of letters as directed, and I have here a statement of what I presumed to be the indebtedness of the Company on the twelfth of January, eighteen hundred and eighty-three.

Q. What was the amount?

A. The amount, including interest, at that time was fifty-three thousand two hundred and thirty-five dollars and sixty-eight cents, subject to the reduction of five thousand two hundred and fifty-seven dollars and sixty-three cents, an amount collected from collaterals as reported to me. 40

Q. And the Bank had other collaterals?

A. Yes.

Q. To what amount?

A. I don't know what the value of the collaterals was, some collateral

notes.

Q. What was the amount of the collaterals, a nominal amount ?

A. About ten thousand dollars, but it did not realize anything like that. No the nominal amount would be about seven thousand five hundred dollars.

Q. And it realized about how much ?

A. I don't know.

Q. Mr. Austin would be able to say, it was kept by Mr. Austin ?

A. It was kept at Coaticooke ? These figures I obtained from the  
10 Coaticook Branch at the time, I may say that these collaterals I speak of, a portion of the amount I stated should be deducted from the indebtedness, that was the proceeds of collateral notes held by us to the credit of wood sold as reported to me.

Q. On the date you have mentioned, the twelfth of January eighteen hundred and eighty-three what was the amount of the claim ?

A. The amount of the indebtedness as reported to me was fifty-three thousand two hundred and thirty-five dollars and sixty-eight cents, from which would be deducted the cash on hand from collaterals.

Q. What amount of cash ?

A. The amount I have given, five thousand two hundred and fifty-seven  
20 dollars and sixty-three cents.

Q. About the time of the sale of the property in question, by the sheriff had you any agreement as manager of the bank with Messrs Beard and MacDougall, or any of them, with reference to the purchasing of the property, or the re-selling of it ?

A. I had an agreement with Mr. Beard and Mr. MacDougall that if we bought it we would sell it them at a certain price, and that agreement arose from the application made by Mr. Beard, as he stated he represented Mr. MacDougall to obtain the privilege of purchasing it from us if we bought it at  
30 Sheriff's sale.

Q. Was the agreement put in writing ?

A. Yes, it was put in writing, it is here. The agreement just mentioned results from the letters and telegram filed and marked, the telegram as Petitioner's exhibit "A1," and the letters, "A2" "A3" & "A4." "A1" was received by me on the eighteen of December, eighteen hundred and eighty-two, and was the first communication which I received, or which the bank received in connection with this matter I think Mr. Beard only came at the date mentioned in the telegram, and met me personally to discuss the matter.

Q. Had you any personal communication with Mr. John MacDougall  
40 himself previous to the sale of the property by the sheriff ?

A. No, I think not.

Q. Will you say what you understood Mr. MacDougall to mean by the following words of his letter on the ninth of January eighteen hundred and eighty-three, "I hope you will be successful with the sale ?

A. I cannot say what he meant.

Q. To what sale had this reference ?

A. I understood it to be a sale of the Pioneer Beet Root Company.

RECORD

*In the  
Superior  
Court.*

No. 149.

Deposition of  
W. Farwell  
for Petitioner  
La Banque  
d'Hochelega  
dated 10th  
April 1885  
—Continued.

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*In the  
Superior  
Court.*

No. 149

Deposition of  
W. Farwell  
for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 10th  
April 1885.

Q. By the Sheriff?

A. Yes, in connection with the whole thing.

Q. When Mr. Beard communicated with you in December eighteen hundred and eighty-two did he tell you that he had purchased the judgment of Fairbanks?

A. I don't remember.

Q. Were you aware at the time of the sale made by the Sheriff by whom the Fairbanks judgment was controlled?

A. I cannot say that I was.

Q. Had you not in fact the control of the judgment of Fairbanks from the time that the agreement was made with Beard & MacDougall?

A. Not to my knowledge.

Q. Was it not understood that the sale would be conducted as you would advise or you would be advised by your legal attorneys?

A. No. The same as any other Sheriff's sale.

Q. You were present at the sale?

A. Yes, and bought the property.

Q. You did not bring with you the letter book containing any correspondence which you may have had with the Local Manager in Coaticooke, referring either to the sale or to the institution of the action, or judgment?

A. I have got my letter book commencing the twenty-seventh of October eighteen hundred and eighty-two, and ending November eighteen hundred and eighty-three.

Q. Will you refer to your letter book and say if you find any letter either to the Local Manager, Mr. Austin or to Mr. Thornton, having reference to the property in question in this cause?

A. I find in my letter book a copy of letter of the eighth of January, eighteen hundred and eighty-three written to Mr. Austin, our Local Manager in Coaticooke, of which I file a copy, marked as Petitioner's exhibit "A5." In the letter of the tenth of January eighteen hundred and eighty-three addressed to B. Austin, Local Manager at Coaticooke, I say :  
Beet Sugar Company sale.

"I am going to Montreal to-morrow morning on same other business "and expect to run out to Farnham on afternoon train, but if so shall return "in time to take night train out and shall go through to Coaticooke and be "there Friday morning, don't know of anything necessary to say respecting it, "but trust you will have it studed up so as to know, just how far we can go. "Of course you have had our judgment filed." I have a copy of letter of the twenty-fifth of January eighteen hundred and eighty-three of which I file a copy marked Petitioner's exhibit "A6."

(In pencil.)

And of letter of 25th June, 1883, as Petitioner's Exh. A10. bis.

Objected to the filing of this document as illegal.

Objection reserved.

Q. Do you find any copies of letters written to Mr. Doak?

A. I do not.

Q. Have you any copies of letters, written by you or the Bank to Mr.



John Thornton, having reference to the matter in question in this petition ?

A. I have a copy of a letter of the twenty-fifth of January, eighteen hundred and eighty-three, and also a letter of the twenty-second of January. The adjudicataire objects to the production of any such letters, as being privileged communications between the Bank and its officers. And further to the production of any communication subsequent or posterior to the date of the sale.

10 There being no judge present, the objection is reserved for the present. And on this eleventh day of April, re-appeared said witness and continued his examination as follows :

Adjudicataire consents to reserve the objection to the filing of the letters mentioned above.

I file copies or extracts of said letters as Petitioner's exhibits "A9" and "A10."

Q. The sum to be refunded by Mr. Doak, had reference to the one thousand dollars, paid to him ?

A. I suppose so.

I have now before me, my letter book from September, eighteen hundred and eighty-one, to October, eighteen hundred and eighty-two.

20 Q. Will you please file any letters or any extracts written by you or the Bank to Mr. Austin, having reference in any way to the suit, judgment, or property in question, in this cause, or to the Pioneer Beet Root Sugar Company ?

A. I file a copy or extract, of the following letters, twelfth of October, eighteen hundred and eighty-one,

Marked as Petitioner's exhibit "A11"

17th October, 1881, marked "A12."

25th October, 1881, " " "A13"

8th November, 1881, " " "A14"

30 28th December, 1881, " " "A15"

30th December, 1881, " " "A16"

10th January, 1882, " " "A17"

10th May, 1882, " " "A18"

24th June, 1882, " " "A19"

having Q. Will you file any letter by you or the Bank to Mr. John Thornton reference to the same matters ?

A. I will file a copy or an extract of the following letters :

8th November 1881 marked A 20

14th November 1881 " A 21

40 Q. Will you file any letter or extract by you or the bank to Mr. Doak having reference to the same matters ?

A. There are none to Mr. Doak.

Q. You have stated that you were present at the sheriff's sale ?

A. Yes.

Q. Will you say how much you have made up your mind to bid up the property in question ?

I cannot state, I don't remember.

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No. 149.

Deposition of  
W. Farwell  
for Petitioner  
La Banque  
d'Hochelaga  
dated 10th  
April 1885

—Continued.

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*In the  
Superior  
Court.*

No. 149

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W. Farwell  
for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 10th  
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—Continued.

Q. To the best of your belief was it to the amount of your claim ?

A. I would not pretend to say, I don't know. It is a matter that has gone from me now.

Q. Was it not a surprise to you that the property was allowed to be sold for fourteen hundred dollars ?

A. I have no correspondence on the subject, I cannot tell. I don't know really, it has gone from my mind, as to what my feelings were at the time.

Q. Taking into consideration the value of the property did you not find it rather strange that the property would be sold for fourteen hundred dollars ? 10

A. No, I don't know that I did. As I say. I have no recollection of what my feelings were at the time.

Q. There were several parties present ?

A. Yes, quite a large number.

Q. How could you account for the audience letting the property be sold a small amount of that kind ?

A. The only way was that they did not want it, nobody wanted it.

Q. You don't suppose that anybody wanting to purchase the property at five thousand dollars for instance would not have been able to make money on the reselling of it ? 20

A. Possibly they might have got more than that, but I have no means of knowing whether it would have brought more than that or not ; at all events there was nobody there that was prepared to bid more.

And further for the present deponent saith not.

WM. MCGOUN,  
Stenographer.

And on this eighteenth day of January eighteen hundred and eighty-seven, re-appeared the said deponent and continued his examination as follows : 30

I have compared the exhibits A5 bis, A6, A10 bis, A9, A10, A11, A12, A13, A14, A15, A16, A17, A18, A19, A20, A21, being letters from myself to various parties, principally to Mr. Austin, the manager at Coaticooke, and also A22, A23, A24, A25, A26, A27, A28, A29, A30, A31 A31 bis, A32 and A33, being copies of the letters copied in the letter books of Mr. Austin, manager, at Coaticooke, and addressed principally to me and I have initialed each page of each of said exhibits and I find that they are true copies of the press copies of the said letters appearing in the said letter books.

Q.—Are you satisfied that these exhibits, which you have just referred to as being copies of press copies of letters are true copies of the originals thereof ? 40

A. I cannot say as I have not seen them lately, but I presume they are.

Q. Have you any objection to admit that these copies, are true copies of the letters, or do you prefer to file the original letters, themselves, any way those that were written to you ?

The parties admit these copies as copies of the originals, and in lieu of said originals. RECORD

Q. Have you in your letter book, copies of the letters addressed by you to Mr. MacDougall, or to Messrs. MacDougall & Beard, one of the sixth of January, 1883, and the other of the eighth of January, '83, the originals whereof, were shown to you, when you were previously examined as marked A2 and A3, and now lost?

*In the  
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Court.*

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W. Farwell  
for Petitioner  
La Banque  
d'Hochelaga  
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Objected to as illegal and as tending to make proof by secondary evidence.

10 Objection reserved by the parties.

A. I have.

Q. Will you please file copies of them as marked A2 and A3?

Objected to as illegal and as tending to make proof by secondary evidence.

Objection reserved by the parties.

A. I will file copies of the copies, which appear in my letter book.

Q. They are press copies which appear in your letter books?

A. Yes.

20 of the originals?  
Q. You are satisfied that they are similar in every respect, true copies

A. Yes.

Q. Will you please initial these copies?

A. I will do so.

Q. Have you any copies of the exhibits referred to in your deposition as A1 and A4?

A. No.

Q. From memory can you state what their contents were?

A. No.

30 Cross-examined under reserve of objections.

Q. The account of the Pioneer Sugar Company referred to in these letters was a running account which the Company had in Coaticooke?

A. Yes.

Q. Will you state if the Bank had any other particular claim against the Company?

40 A. We had mortgages which we took from the late Mr. Sleeper and from Mr. Adams, the two amounting to over fifteen thousand dollars given to them by the Company at the time of the purchase of the properties by the Company somewhere in eighteen hundred and eighty. These mortgages were transferred to the Bank to secure an indebtedness or in payment of indebtedness to the Bank owing to Mr. Sleeper and Mr. Adams. These mortgages never have been paid to us. This there was in addition to what business the Company had done at Coaticooke. The local Manager Mr. Austin having faith in the enterprise and wishing to increase the business of his branch made the Company advance upon open account, and upon the Company's own notes without satisfactory collateral security. This method of doing the business was

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contrary to our rules and I have repeatedly objected to it and required that he should insist upon the same method and the same security as he required from the other customers of the Bank. Letters file here showed that I repeatedly remonstrated with him. It was not that I had any feelings that the Company were not good, but the objectionable method in which he made the advances.

Q. Did the Bank have any reason to believe that the Company was insolvent?

A. None whatever, but on the contrary we were repeatedly assured by the Managers that the Company was in a good and sound position. My own opinion of the Company was that they would succeed, it was only a question of management and of getting the works started. Of course I knew nothing as to whether the machinery was proper for the manufacture of sugar, but it seemed to me that if it could be made a success elsewhere it could be made a success here. 10

Q. It is a custom of the bank in open accounts to require, collateral or an endorser that they may discount with you?

A. Yes, we always required it. Is it our rule that a customer shall not be allowed to have overdrawn paper to discount single named paper, either they must furnish a satisfactory endorser or collateral, and we were anxious to get this in the case of the Company and I impressed it upon our general manager Mr. Austin. 20

Q. Did you know anything of the action of Fairbanks & Co'y under which the property was brought to sale before the execution issued?

A. No I did not. After the seizure of the property Mr. S. W. Beard of Montreal came out to Sherbrooke to see me in regard to the sale, and in the course of our conversation he gave me to understand that the Bank would buy the property and the object of his visit was to arrange that he and John MacDougall of Montreal might buy it from them and he said they wanted it, but that they would not be able to buy it and pay all cash and as they would not be able to do so, they wanted the Bank to buy the property and resell, to them on terms of the payment in the event of the Bank becoming the purchaser. The result of the conversation was that I gave them a letter of agreement which was filed in the case and referred to in my deposition there. There was no undertaking or agreement on the part of the Bank that we would buy the property at the sale or agreement on their part that they would refrain from bidding. There was no agreement. 50

Q. They told you this, that if they had to buy it themselves they were unable to buy it and pay cash as they would have to do at the Sheriff's sale?

A. Yes. That was what he claimed and therefore he wanted to arrange in the event of the Bank buying the property that we should resell it to them and give them time to pay for it. I think Mr. Beard was present at the sale and if he had chosen to do so he could have bought it, in fact there was a large number present at the sale and it was generally known. 40

Q. The negotiations were opened by Mr. Beard and not by the Bank?

A. Yes.

Q. Did you have any control of the judgment under which the property was brought to sale?

A. None whatever.

Q. Did you know if any other judgments were taken in Montreal ?

A. I believe that others were taken.

Q. Had you no knowledge of these until afterwards ?

A. No, certainly not. We had no knowledge of the existence of these judgments until after executions were issued upon them.

Q. In the expressions that you used in some of the letters you seemed to congratulate yourself on the sale. Will you explain why you used these expressions in regard to the sale ?

10      Objected to these questions as illegal and as tending to contradict or prove beyond the letters filed.

Objection reserved by the parties.

A. Because I considered it a good sale and under it secured the payment of our debt. I would like to explain in regard to the indebtedness of the Beet Company to the Bank that it had been allowed to grow much larger than I had ever intended that it should and I was therefore very glad when we succeeded in making such an arrangement as would secure the payment of the debt and relieve the Bank.

20      Q. Then you considered the sale to MacDougall a good sale of the property ?

A. I did.

Q. If it had been bought by any one else at the Sheriff's sale have you any idea what it would realize ?

A. Well I don't know of any one who would have paid for the property to the amount of fifteen thousand dollars or enough to have covered our first mortgage and pay cash for it as they would have been obliged to do at the Sheriff's sale.

Q. Was there anything said or done by the Bank directly or indirectly to prevent parties from bidding on the property ?

30      A. No, nothing at all, neither at the time of the sale nor prior thereto. Any person might have gone and bid whatever they choose.

Q. Do you think the property is worth anything more than what you state ?

A. I don't think it was worth more than our mortgage or as much in fact.

Q. These letters copies of which have been produced were private letters between yourselves as general manager and Mr. Austin as manager of the Bank at Coaticooke ?

40      A. Strictly so and considered by ourselves as confidential communications.

RE-EXAMINED.

Q. You don't mean to say that these letters or the contents thereof, were confidential to the extent of holding the same from the knowledge of the Board of directors of the Bank ?

A. No, for every paper and book in the office, as a matter of course

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are open to the inspection of the Directors that all correspondence between myself and the managers is of a confidential nature to any person outside of the Board of Directors.

Q. Will you repeat the conversation you had with Mr. Beard, at the time, or previous to the arrangement arrived at, between you and with reference to your buying the property and reselling the same to him and MacDougall stating as near as you can do the expressions, he made use of?

A. I can only give the substance of it, as I had done in my cross-examination.

Q. What was the substance of it?

A. The substance of it was that he understood or expected that the Bank would buy the property at the Sheriff's sale, and that he wanted to arrange that in the event of the Bank doing so that we would resell it to himself and John MacDougall on terms of payment.

Q. Did he state his reasons for his entering into such an agreement?

A. He did not enter into any agreement, he simply asked as I have stated, that we would resell it to them, giving them time for payment of the purchase money or the bulk of it.

Q. Did he not enter into this agreement that on your purchasing the property you would resell it to him and MacDougall on the conditions above referred to.

A. Well yes giving long time to pay for the property.

Q. But he gave you no reason why he wanted to enter into any agreement of that kind?

A. Because they could not pay for the property in cash as they would have had to do at the Sheriff's sale.

Q. Do you swear that he declared the inability of both himself and MacDougall to pay for the property by cash?

A. He certainly did. I do.

And further deponent saith not.

W. J. WRIGHT,  
Stenographer.

(ENDORSED.)

Deposition of Wm. Farwell, for Petitioner's. Fyled 14th June, 1888.  
(Paraphed), G. H. K., Dep. P. S. C.

No. 150.  
Deposition of  
John Thornton,  
for  
Petitioner, La  
Banque  
d'Hochelaga  
dated 11th  
April 1885.

SCHEDULE No. 183.

In the Superior Court for Lower Canada.

On this eleventh day of April, in the year of Our Lord, one thousand eight hundred and eighty-five, personally came and appeared: John Thornton, of the town of Coaticooke, in the District of St. Francis, member of Parliament,

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30

40

aged sixty-two years, and witness produced on the part of the Petitioners, who, being duly sworn, deposes and saith: I am not related, allied, or of kin to, or in the employ of any of the parties in this cause, I am not interested in the event of this suit.

Q. In February eighteen hundred and eighty-two, are you aware that a suit was instituted by the Bank as Adjudicataire, against the Company Defendant, for an amount of about twenty-three thousand dollars?

A. Yes.

Q. I believe the suit was served on you?

10 The adjudicataire objects to any evidence tending to prove the service of the writ in question as being illegal, and as not being the best evidence of the said service and as the original record and returns thereon are not produced or accounted for.

Objection reserved.

A. It was.

Q. Where was this service made?

A. In the office of the Pioneer Beet Root Sugar Company.

Q. Had it been agreed before hand that the service would be made on you?

20 Objected to as above.

Objection reserved.

A. Mr. Doak came to me at my house and when I went home to dinner they told me a gentleman was down at the office of the Pioneer Beet Root Sugar Company who wished to see me and I went down and the Bailiff served me with this paper.

Q. It was at dinner time?

A. I think so.

Q. The employes of the Company had left the factory?

A. I did not go down into the factory this was in the office.

30 Q. There was an office boy?

A. No. There was the secretary who was about in the building somewhere I think, I saw him.

Q. You were alone in the office?

A. I think I was at that time the paper was served.

Q. Is it not a fact that it had been arranged that the service would be made at dinner time when everybody was away so that you might be alone in the office?

A. I don't think there was any particular arrangement about that, about its being done at any particular time.

40 Q. Was it not arranged so that the service would be made on you without any of the employes of the Company knowing?

A. I don't think there was any arrangement of that kind. Mr. Doak asked me to go down at that particular time and I went down.

Q. Did you know before hand for what purpose he wanted you?

A. I expected it.

Q. Did he not tell you before hand that it would be better to have it served when no other employes were there?

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In the  
Superior  
Court.

No. 150.

Deposition of  
John Thorn-  
ton,

for Petitioner  
La Banque  
d'Hochelaga  
dated 11th  
April 1885

—Continued.

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*In the  
Superior  
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John Thorn-

ton, for

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Banque

d'Hochelaga

dated 11th

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—Continued.

A. I don't think anything of that kind was said.

Q. Is it not a fact that the office boy when you went in was sent on a message so that you would be alone ?

A. Not to my knowledge.

Q. As a matter of fact you were alone in the office when it was served ?

A. The secretary of the Company was in the building, he was in the room when I went in, and he went out for something. I did not send him out.

Q. What was the reason for making the service on you ?

A. In order to secure our debt. 10

Q. In what way ?

A. To get judgment.

Q. To avoid the action being contested, was it not ?

A. There was nothing of that kind ever said to me that, that was the object at all.

Q. Have you not just answered that the object of serving the action in this way was to prevent it being contested ?

A. I might have said that, but I did not intend that in particular.

Q. Were you not satisfied at the time that such was the object ?

A. I was satisfied we wanted to secure our debt. It was an honest and just debt and due to the bank. 20

Q. Were you not satisfied at the time that the precaution taken of serving the action on you was to avoid the action being contested ?

A. I could not say that.

Q. Could you say the contrary ?

A. I don't know that I could.

Q. Was it not in order that the judgment could be registered as soon as possible upon the property of the Company ?

A. It was registered I think, but I don't think that was taken into consideration by me at the time. 30

Q. Was it not taken into consideration by other parties to your knowledge at the time ?

A. I cannot tell you I don't know.

Q. Had you any communication with any of the parties with Mr. Farwell, or with Mr. Austin, the local manager of the Eastern Townships Bank, or Mr. Doak, with reference to the institution of the said action, before the date on which it was served ?

A. I think that Mr. Doak, had some conversation.

Council for adjudicataire objects to any evidence of conversations or communications between the witness as an officer of the bank, and its attorney as being privileged communication. 40

Objection reserved.

Q. What conversation had you with Mr. Doak ?

A. In regard to the matter, I don't remember any particulars in regard to the matter.

Q. Try to give the substance of it ?

A.—I am inclined to think to substance was that the Eastern Town-



ships Bank, would sue the Sugar Company, that was the substance.

Q. Was it not a talked between you and Mr. Doak, as to what precaution would be taken so as to avoid the action being contested?

A. I don't know that there was any particular secrecy I don't think he advised any particular secrecy, with me at all ; after the papers were handed to me, I either sent them to Mr. Doak, or handed them to him, I dont know which.

Q. You mean after the action had been served on, you sent it to Mr. Doak?

10 A. Yes.

Q. Had you any conversation with Mr. Austin, with reference to that?

A. I don't recollect that I had, but I might have had, but I don't remember having any.

Q. Were you at the time the Local director, of the Eastern Townships Bank?

A. I was one of the directors of the bank.

Q. As director of the bank had you any conversation with Mr. Austin, as to the advisability of taking this suit before it was taken?

20 Counsel for Adjudicataire objects evidence tending to prove communications between the officers of the Bank in such capacity as being privileged.

Objection reserved.

A. I might have had but I don't remember.

Q. Did you inform of the officers of the Pioneer Beet Root Sugar Company of the service of the action?

A. I don't think I did. I was an officer myself.

Q. Where you at the time Treasurer and Vice-President of the Company?

A. Yes, although I never had any money I acted as Treasurer.

30 Q. In so far as you know the Company was not aware of this action except through you until after the judgment was rendered?

A. I dont know anything about it. I know that after judgment was obtained and recorded some time after Mr. Lomer spoke to me about it and said he was quite satisfied.

The Petitioners object to the portion of the witness' answer having regard to what Mr. Lomer told him.

Objection reserved by the parties.

Q. Had you any correspondence with Mr. Farwell with reference to this suit?

40 Objected to as being evidence tending to prove communications between the officers of the bank in such capacity as being privileged.

Objection reserved.

A. None to my knowledge, if I had. I have not got it now. I don't know what it was. If I had he might have written with regard to the matter afterwards. I don't know whether he did or not. If he did I did not preserve the letters because I would have a bushel of them and more too.

Q. Were you present at the sale?

A. Yes, I was.

RECORD

In the  
Superior  
Court.

No. 150.

Deposition of  
John Thorn-  
ton,  
for Petitioner  
La Banque  
d'Hochelaga  
dated 11th  
April 1885  
—Continued.

RECORD.

—  
*In the  
 Superior  
 Court.*  
 —

No. 150.

Deposition of  
 John Thorn-  
 ton, for  
 Petitioner, La  
 Banque  
 d'Hochelaga  
 dated 11th  
 April 1885.  
 —Continued.

Q. You did not bid in the property ?

A. No sir.

Q. You did not consider that the property was worth only fourteen hundred dollars did you ?

A. I should consider the property worth more than that at the time.

Q. At the time how much did you consider it worth ?

A. I don't know as I considered it particularly.

Q. Approximately ?

A. I cannot tell just how much it was sold for but enough to cover 10  
 our debt, and I was very well pleased with the sale.

Q. Did you think it was worth about that amount ?

A. No, I don't think it.

Q. Did you at the time think it was worth about that ?

A. No. I did not, if I had had money I never would have given any-  
 thing like that.

Q. The property is much deteriorated now since it was sold ?

A. I have not been inside.

Q. Is it to your knowledge that it has been much deteriorated and a  
 large amount of the machinery has been sold ?

A. The machinery has been sold and what machinery is left I have 20  
 not seen it but it is almost worthless I have been told. It is a pretty poor  
 property now I guess, it always has been, it never paid the stock holders any-  
 thing, nor the creditors very much.

Q. Can you account for the property being sold for fourteen hundred  
 dollars ?

A. It is the highest bid there was, that is all I know about it.

Q. You cannot account for it at all ?

A. That was the highest bid that was made.

Q. Do you know the reason for the officers of the Company letting it  
 be sold for that price ? 30

A. I don't know, they never told me.

Q. Did it not appear rather strange to you ?

A. There were mortgages upon it.

Q. Was it on account of the Bank having mortgages that the property  
 was allowed to be sold for a trifle like that ?

A. I supposed of course that the mortgage was of some value, the  
 property would not have been sold for fourteen hundred dollars if there had  
 not been any incumbrances on it.

Q. The parties understood that it was no use to bid in the property  
 on account of that mortgage ? 40

A. I don't know, I did not have any conversation about it.

Objected to this proof as illegal as tending to prove by secondary evi-  
 dence an understanding with third parties.

Objection reserved.

Q. Why did you send the action to Mr. Doak after it was served on  
 you ?

A. Well, I did not know who else to give it to than Mr. Doak.

Q. Was he the attorney of the Company Defendant at the time ?

A. I don't know whether he was or not, I did not ask him. He had been acting for the Company.

Q. Had it been understood between you that after it was served you would send it back ?

A. I don't think there was any understanding about it. I thought that was the best way to get rid of it.

Q. You have stated that in February, eighty-two you were the Vice-President and Treasurer of the Company Defendant : did you occupy the same  
10 position, at the time of the Sheriff's sale ?

A. I really don't remember.

Q. Will you take communication of the minute book of the Company Defendant, now shown you at page twenty-two, being a report of the directors of the Pioneer Beet Root Sugar Company, to the Shareholders, at the annual general meeting, held on the twenty-seventh of January, eighteen eighty-two, and say if Petitioner's exhibited " A 7 " (a seven) is an extract of said report ?

Adjudicataire objects to the production of the report in question or any extracts therefrom as it does not appear that the same form part of the minutes of the general meeting referred to in the question or that the said  
20 report was submitted thereat.

Objection reserved.

A. I have no doubt but these are the minutes of the said meeting. I have no doubt that this is an extract of what appeared in the said report.

Q. Were you present at this annual meeting ?

A. Yes. The minutes make mention that I was present at said meeting and that Mr. William Farwell the manager of the Eastern Township Bank was also present and Mr. Austin also appears to have been present at said meeting.

Q. Will you take communication of Petitioners Exhibit A8 eight and say if it is also an extract of said report ?  
30

Objected to as above.

Objection reserved.

A. Yes, it is an extract as appears on pages thirty-three, thirty-four, thirty-five and thirty-six, of said minute book.

Q. It is also mentioned in the minutes, that the Auditors report to wit, the report above referred to, was submitted to the shareholders present ?

A.—It says so.

Q. Do you also find the following entered in said report. " The directors have applied to Parliament, for power to permit to increase its capital to two hundred and fifty thousand dollars, or borrow one hundred and twenty-five thousand dollars, on mortgage, or mortgage debentures. The directors consider this a most proper manner of paying off the floating debt of this Company " ?  
40

A. Yes.

Q. This statement is according to the facts ?

A. As appears by said report.

Q. Was it according to the facts ?

A. It was so according to the minutes.

RECORD

*In the  
Superior  
Court.*

No. 150.

Deposition of  
John Thorn-  
ton,  
for Petitioner  
La Banque  
d'Hochelaga  
dated 11th  
April 1885

—Continued.

- RECORD.  
 ———  
*In the  
 Superior  
 Court.*  
 ———  
 No. 150.  
 Deposition of  
 John Thorn-  
 ton, for  
 report ?  
 Petitioner, La  
 Banque  
 d'Hochelaga  
 dated 11th  
 April 1885.  
 —Continued.
- Q. According to your own remembrance was it not the fact ?  
 A. Yes.  
 Q. Will you say what valuable asserts the Company Defendant had at the time besides this intended loan to provide for payment of its liabilities ?  
 A. I have no recollection of what other asserts.  
 Q. Had the Company any cash on hand at that time ?  
 A. It never had but very little. I never had any in my own hands.  
 Q. If the Company had any other asserts it would be mentioned in the report ?  
 A. I have no doubt.  
 Q. Will you refer again to the extract A7 (a seven) and say which of the items mentioned therein was comprised or formed part of the sale made by the Sheriff to the Bank Adjudicataire on the twelfth of January ?  
 A. I cannot tell you. There is no description of the real estate, but I know that the real estate and the machinery that they had on hand at the time it was sold.  
 Q. All the machinery ?  
 A. So far as I know it was all, I could not tell you but I suppose it was all that was seized.  
 Q. All the real estate of the Company except whatever real estate was purchased by other parties at the same sale ?  
 A. All the real estate that the Company owned so far as I can remember.  
 Q. With what asserts did the Company remain after the sale ?  
 A. I don't know.  
 Q. Do you know of any ?  
 A. I do not.

## CROSS-EXAMINED WITHOUT WAIVER OF OBJECTIONS.

- Q. Was not the judgment you speak of almost as soon as it was rendered known to Gerard Lomer, managing Director.  
 A. I think it was.  
 Q. You know that from him ?  
 A. Yes, because he said he was quite satisfied. I cannot give you the date.  
 Petitioners object to this way of proving Gerard Lomer's knowledge of said judgment as illegal.  
 Objection reserved.  
 Q. Did he admit that the amount was correct and that the debt was due to the Bank ?  
 A. Objected to as above.  
 Objection reserved.  
 A. He never objected to it.  
 Q. Was this judgment afterwards attacked or set aside by any parties whatsoever ?  
 A. Not to my knowledge.

Q. It still remains there ?

A. Yes, so far as I know.

Q. Who was the actual Manager of the Company and took the complete direction of it ?

A. Mr. Gerard Lomer the Managing director.

Q. Have you any personal knowledge of the working of the factory or of the business and the position of the Company ?

A. Very little indeed.

10 Q. All you knew in regard to it was the statements that were exhibited to you by the Manager director ?

A. That is all I know.

Q. After this meeting did you lose confidence in Mr. Lomer's management ?

A. I did.

Q. Since eighteen eighty-two as the Beet Sugar industry in Canada completely collapsed ?

A. Yes.

Q. Both this Company and every other Company that has started ?

A. Yes, the Farnham Company and the Berthier Company.

20 Q. The Farnham Company was very largely subsidised by Parliament, was it not ?

A. It was.

Q. These buildings and machinery at Coaticoke are all special machinery for the manufacture of Beet Root Sugar ?

A. A large proportion, with the exception of the office and buildings.

Q. They are comparatively valueless for everything else ?

A. Yes.

Q. What would you consider the cash value of this property supposing it to be put up at Sheriff's sale to-day ?

30 A. It is difficult for me to value it. The old saw mill is a pretty slim concern any way ; the fifty acres of land and the mill together with the property and all the real Estate South of Central street and East of Compton street might have been sold at due time upon a credit, portion of it down, for five thousand dollars. That would take the saw mill and all the real estate South of St. Paul street and East of Compton street.

Q. It would not bring more than that cash ?

A. I don't think it would. The water power is the most value about it.

40 Q. Take the balance of the property on the North of Central street, what would be the value of that in its present condition ?

A. It is difficult for me to value it.

Q. What would you give for it ?

A. I don't want it, it would be an elephant. I would not keep it and pay taxes and keep a watchman, if they give it to me. I don't know what could be got out of it, the buildings are built solely for this purpose and the brick would have to be taken out so it could not be used for anything else that I know of.

*In the  
Superior  
Court.*

No. 150.  
Deposition of  
John Thorn-  
ton,  
for Petitioner  
La Banque  
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dated 11th  
April 1885.  
—Continued.

## RECORD

*In the  
Superior  
Court.*

No. 150.

Deposition of  
John Thorn-  
ton, for  
Petitioner, La  
Banque  
d'Hochelaga  
dated 11th  
April 1885.  
—Continued.

Q. Would it bring in cash over four or five thousand ?

A. I would not want it to pay that money for it.

Q. Do you think it would bring that in cash ?

Q. I don't know who in the world would want it, I cannot say what it would bring.

Q. Simply give your opinion ?

A. I gave my opinion of what I would give for it. There is no speculation in it for me for five thousand dollars, I would rather have the saw mill and the office and what is called the best of the real estate, that part of it that I have described South of Central Street and East of Compton Street than to have the other buildings. 10

Q. What would you have given for in cash at the time it was sold in eighteen hundred and eighty-three ?

A. I feel a good deal about it as I do now.

Q. You did not consider it much more valuable than now ?

A. No. I was very much pleased when it was sold and I thought it was a good sale.

Q. You considered that the negotiations that were conducted with Mr. Beard and Mr. MacDougall after the Sheriff's sale by which the property was sold to have been very conducive to the interest of the Bank ? 20

A. No doubt about at all, I think that MacDougall thinks so.

Q. Were you very much pleased at the result ?

A. Very much indeed.

Q. Has this property since it was purchased by MacDougall been idle ?

A. I think the saw mill ran a little while one winter a very short time and some shingies cut up and a few boards. It has all been all save that. I think that the office has been occupied by MacDougall's man since he bought it and the family lives in the upper part of the same building.

Q. The total revenues from the property would not begin to pay the taxes ? 30

A. It would not pay quarter I don't think. I don't know what the taxes are but I think the revenue would pay a quarter of the taxes. This is an opinion of course. I have not looked up these facts to know what the taxes are. There is another bit of revenue that I had forgotten they have got a little for the use of the water I think.

Q. Will you look at the minutes of the annual meeting of the twenty-seventh of January, eighteen eighty-two, and say if those minutes contain any report of the Directors, and if you can say that this report which is written in afterwards in a different handwriting were read at that meeting ?

A. No, I am not prepared to say I don't remember. 40

Q. Is it not entered in the minute book after the minute of the Directors is closed ?

A. It seems to have been in another handwriting.

Q. So you have no personal knowledge of it whatever ?

A. I don't remember the facts in regard to the matter.

Q. You have personally no remembrance of it ?

A. Well no I have not a personal remembrance save that I remember

being present, and I remember several others with me, I think several were there, Mr. Austin, Mr. Farwell, and quite a number, but the particular of the meeting of course I could not tell you.

Q. When you were speaking in your examination in chief of this meeting you spoke from having seen the minutes laid before you ?

A. Yes.

Q. Not from any personal knowledge of the meeting ?

A. Only in regard to this meeting.

10 Q. I am speaking now in regard to this report of the minutes : you have no personal remembrance in regard to it ?

A. No it is too long since.

Q. Were you present at the sale of this property ?

A. I was.

Q. Was there a large audience there ?

A. Quite, the room was quite full as is usual when there is a sale.

Q. Did not the bidding at this sale appear to be open and above board ?

A. Quite so.

Q. There were no artifices to prevent people from bidding at all ?

20 A. Not to my knowledge everything was done openly and in a straight forward way.

Q. Did not you understand that this sale was generally known, that everybody secured to know that this sale of this property was coming off ?

A. Yes, it was generally known, it was a matter that was talked about by quite a number that had a little interest in the matter.

Q. During the last year the business was carried on that is to say after this general meeting the business of the Company was done by Mr. Lomer principally with the Hochelaga Bank, was it not ?

30 A. I should think so, but it is from no personal knowledge I know there was business done with the Hochelaga Bank, I could not say much about it, I don't remember.

#### RE-EXAMINED.

Q. Are you aware that the time of the Sheriff's sale in question the saw mill was rented for one thousand dollars a year ?

A. I am aware it was rented at the same time.

Q. At what price ?

A. I don't know the price.

Q. Approximately ?

40 A. I could not tell I think it was rented to Mr. Lamoureux because he wanted to monopolize the lumber business there. He had a mill and I think he wanted to monopolize it. This was my idea.

Q. What amount had you in the Eastern Townships Bank at the time about ?

A. I think ten thousand dollars.

Q. And now ?

A. Ten thousand dollars.

RECORD

*In the  
Superior  
Court.*

No. 150.  
Deposition of  
John Thorn-  
ton,  
for Petitioner  
La Banque  
d'Hochelaga  
dated 11th  
April 1885  
—Continued.

RECORD.

*In the  
Superior  
Court.*No. 150.  
Deposition of  
John Thorn-  
ton, for  
Petitioner, La  
Banque  
d'Hochelaga  
dated 11th  
April 1885.  
—Continued.

Q. You have stated I believe that you had not seen the properties in question for a long time ?

A. The machinery.

Q. You were not inside ?

A. No, I only know from report.

Q. You know the machinery had been taken out ?

A. Some.

Q. The Boilers for instance ?

A. Yes.

Q. And that they destroyed a portion of the building ?

A. They took down some brick part of it, a portion of the building to get the boilers out.

Q. So far as you could see it has been generally dismantled ?

A. I don't know how much of the machinery has gone out, I don't think I have been inside since.

Q. The condition there has been very much changed since the sale ?

A. I think so.

Q. Very much deteriorated ?

A. I know at the time it was supposed to be quite valuable as a speculative property but the actual value of the property I don't know what it was worth at all as much now as it was then.

Q. At the time of the sale did you hear it mentioned that the Bank had a mortgage on the property ?

A. I knew they had.

Q. Did you hear it mentioned at the time of the sale by any parties present ?

A. I don't know that I did, I don't think there was anything said about it. If there was I did not recollect, I do not think there was anything said, but everybody knew that the Bank had more money in there than they expected to get out.

Q. Are you aware that the property purchased by the Eastern Townships Bank was assessed on the valuation roll to an amount of one hundred and seven thousand six hundred dollars ?

A. I am not aware of it. I know the assessed value is generally for a good deal more than its worth.

Q. You are not on the valuation board ?

A. No. I know they valued my property and I offered to sell it to them for less for years and they did not find a purchaser. As an instance, there is a property valued at twenty-five thousand dollars, would not bring eight thousand dollars.

## RE-CROSS-EXAMINATION.

Q. In speaking of the municipal valuation in Coaticooke, is it not true that many properties are valued on the roll for purposes of taxation at more than double that they would bring in cash ?

A. Some properties have been valued for more than double, but I am



not qualified that because some of the properties have been valued so very high and have been reduced. The Stewart property I had charge of myself, it has been reduced.

Q. Is the valuation roll any criterion of the case value of a property?

A. I don't think so.

And further deponent saith not.

WM. MCGOUN,  
Stenographer,

(ENDORSED.)

10

Deposition of John Thornton for Petitioner, Fyled 9th July, 1886.  
(Paraphed), H. & G., Dep. P. S. C.

RECORD

—  
*In the  
Superior  
Court.*

No. 150.  
Deposition of  
John Thorn-  
ton,  
for Petitioner  
La Banque  
d'Hochelaga  
dated 11th  
April 1885  
—*Continued.*

SCHEDULE No 184,

In the Superior Court for Lower Canada.

20

On this eleventh day of April, in the year of Our Lord one thousand eight hundred and eighty-five, personally came and appeared: John Thornton, of the town of Coaticooke, Member of Parliament, aged sixty-two years, and witness produced on the part of the Petitioners in rebuttal who, being duly sworn, deposeth and saith:—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. Will you take communication of the letter of Adjudicataire's exhibit B one?

30

A. I have taken communication of it.

Q. Did you not suggest Mr. Beique writing to Mr. Doak about matters contained in that letter?

A. I should presume I did.

Q. You met Mr. Beique on board the cars when he was going to Sherbrooke?

A. I did.

Q. Will you state the substance of the conversation?

40 A. As near as I can remember I do not know as I would have thought of it. Mr. Beique was going out to see the Eastern Townships Bank and I suggested that he should write to Mr. Doak. I should think that, I know we had quite a conversation, but about the particulars I don't remember.

Q. Do you not remember that you asked Mr. Beique where he was going and what he was about.

A. I do, but I don't think I put that square question where he was going or what he was after. I think he told me. He found out that I was a Bank Director and he opened his budget to me a little.

Q. Did not Mr. Beique tell you he was going to examine the records

No. 151.  
Deposition of  
John Thorn-  
ton, for  
Petitioner, La  
Banque  
d'Hochelaga  
dated 11th  
April 1885.

RECORD.

*In the  
Superior  
Court.*

No. 151.

Deposition of  
John Thorn-  
ton, forPetitioner, La  
Banqued'Hochelaga  
dated 11th  
April 1885.

—Continued

and not to see the Bank?

A. That may be right. It was some time ago. I am inclined to think you are right about that.

Q. What was your reason for suggesting to Mr. Beique his writing to Mr. Doak rather than to Mr. Farwell?

A. Mr. Doak was the lawyer of the Bank.

Q. Do you remember Mr. Beique making some objections to writing saying that you had better see him yourself if you thought proper?

A. There was a considerable conversation, but to remember the par- 10  
ticulars of it, it is impossible for me. I don't know as I have thought of if for  
some time, but I recollect having some conversation: if you were to say this  
conversation took place at that particular time I should not doubt it at all.

## CROSS-EXAMINED.

Q. Was not that letter written previous to your seeing Mr. Beique on the cars?

A. I could not tell when I saw Mr. Beique on the cars.

Q. Does it not state in that letter that Mr. Beique was going out to 20  
Sherbrooke and wrote to Mr. Doak to meet him there and must not, this letter  
have been written previous to your seeking Mr. Beique on the cars?A. I have not the date. I have read the letter and I recollect meeting  
Mr. Beique, but as far as the date is concerned it is impossible for me to tell.Q. From the terms of the letter was it not written previous to his  
going out?

A. I saw Mr. Beique on the cars.

Q. So as a matter of fact while he was talking to you he must have  
written to Mr. Doak previously?A. It says in the letter "Our Mr. Beique intend going to Sherbrooke 30  
the beginning of next week for the purpose of instituting proceedings, but will  
telegraph you before leaving, in order that you may if you so desire meet him  
there."Q. Is it not your opinion from the contents of this letter and from the  
conversations you had with Mr. Beique and from conversations you had with  
the officers of the Hochelaga Bank at this time that the action to set aside the  
sale was not taken with any idea that the property would realize anything for  
ordinary creditors, but for the purpose of squeezing something out of the Ad-  
judicataire rather than contest the action?

Objected to this question as illegal.

40

Question waived.

Questions (by Mr. Atwater).

Q. Did you know Mr. Beique before you met him on the train?

A. I think so.

Q. You knew him personally?

A. I did.

Q. Did you open the conversation or did he?

A. I could not tell you?

## RE-EXAMINED

RECORD

*In the  
Superior  
Court.*

Q. On your arrival in Coaticooke or the next morning did you see Mr. Doak and tell him that Mr. Beique would write ?

A. If I told Mr. Beique I would, I presume I did. I don't recollect the particulars.

Q. At the time you are not aware that Mr. Beique was in communication with Mr. Doak ?

A. At that time, no. I had no knowledge of it.

10 And further deponent saith not.

WM. MCGCUN,  
Stenographer.

(ENDORSED.)

No. 151.  
Deposition of  
John Thornton,  
for Petitioner  
La Banque  
d'Hochelaga  
dated 11th  
April 1885  
—Continued.

Deposition of John Thornton for Petitioners in rebuttal taken 11th April, 1885, Fyled 21st July, 1886.

20

## SCHEDULE 185.

In the Superior Court for Lower Canada.

No. 152.  
Deposition of  
G. O. Doak,  
for Petitioner,  
La Banque  
d'Hochelaga  
dated 15th  
April 1885.

On this fifteenth day of April, in the year of Our Lord one thousand eight hundred and eighty-five, personally came and appeared: George O. Doak, of the town of Coaticooke, in the district of St. Francis, Esquire, Advocate, aged      years, and witness produced on the part of the Petitioners, who, being duly sworn, deposes and saith:—I am not related, allied, or of kin to  
30 or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. You are conducting the enquête for the Bank Adjudicataire ?

A. I am assisting.

Q. You reside in Coaticooke and you know the property in question ?

A. Yes.

Q. Can you say if the different properties in question in this cause, purchased by the Bank Adjudicataire on the twelfth of January eighteen hundred and eighty-three formed but one property ?

40 A. They formed but one property in connection with the manufacture of Beet Sugar, that is to say they were all connected with the manufacture and operations of the factory.

Q. In what way were they connected ?

A. They were connected by water power, by wire rope and pipe and the land which was purchased off Mr. Adams, was used for pilting Beets, and for storing Phosphate Bone Black etc.

Q. Will you take communication of Petitioners exhibit A36, and indicate thereon the properties in question in this cause ?

## RECORD

*In the  
Superior  
Court.*

No. 152.  
Deposition of  
G. O. Doak,  
for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 15th  
April 1885.  
—Continued

A. There appears numbers, 722, 761, 762, 763, 721, 714, 720, 726, 727, 733, 734, 741, 744, 1580, 1582, 716, 717, 718, 719, and 720.

Q. Will you say if the lots numbered 1582, 1580, 741, 734, and 727 are ordinary farm property ?

A. They are ordinary farm property, there is no street as shewn on the plan here marked Spring Street.

Q. And they were at the time of the sale ordinary farm property ?

A. Yes.

Q. What extent of ground did they form, each of them about ? 10

A. There is about fifty acres in all.

Q. In what way was number 1582 connected with the factory at the time of the sale ?

A. 734, 741, 744, 1580 & 1582 form one lot, and it was upon this piece of land that beets were grown as an experiment, to show the farmers how to raise beets and for the purpose of pilting, storing, fertilizing, &c.

Q. For the purpose of pilting beets, what was the extent used, how many acres ?

A. I do not know ; they pilted in different places as it was most convenient. 20

Q. Altogether what extent of ground was required for pilting ?

A. There was no more I should suppose than five or six acres. After Mr. Lomer purchased the real estate upon which the Factory Buildings were to be erected, he said that it was necessary to have the land adjacent to the Factory for the purpose of raising beets by the Company itself, in order to show the farmers how to raise them, and it was purchased for that express purpose, and as far as I know used for that purpose.

Q. Do you know if the properties used as this farm property was, was purchased from same party ?

A. Yes. 30

Q. They were purchased from Mr. Adams ?

A. Yes.

Q. What was the price he agreed to pay ?

A. Three thousand dollars for them, and for number 714 and certain rights in numbers 16, 17, 18, 19 and 20.

Q. At what rate ?

A. Mr. Adams owned the land of these properties, certain parties had built a couple of little houses in here, and they had certain rights on it, and he agreed to pay three thousand dollars for the whole thing. It was a great deal more than it was worth. 40

Q. What was lot number 714 used for ?

A. It was graded for and used as a starting point of his Wire Railroad and station ; he ran some Railroad tracks from it to the Railroad siding and also had a lot of limestone stored on it.

Q. Will you indicate where the Sawmill was and is situated ?

A. It is on number 763.

Q. In what way was it connected with the Beet Root Factory ?

A. The flume with water was taken from 763, and carried to the

“diffusion house” (I think they called it) on 761; it was connected by a flume.

Q. That was the only relation that the two properties had together?

A. No, number 763 was used in common with other lots, the Office was on 763.

Q. I mean the saw mill itself could be sold perfectly independent of the other lots, could it not?

A. In my estimation it would have ruined the other property?

Q. You are not asked to state your opinion in that respect, you are asked whether the saw mill could be sold or not as an independent property?

10 A. It can now be sold as an independent property, as the rest of the property is abandoned as a Sugar Factory; if it was in operation as a Sugar Factory it would be of prime necessity to it.

Q. In what way would it be of prime necessity?

A. For the water.

Q. Could not the privilege be retained for a Beet Sugar Factory still, and sell the saw mill independent of it?

A. I do not know what could be done, I would not buy it that way.

Q. On which of these lots were buildings, and for what purpose were each of the buildings used.

20 A. On 721 there what was called the “Beet Loft” a building purposely constructed for storing Beets, on 720 and 721 there was what had formerly had been a storing house, used as a storing house for Bone Black, on 722 there was an Iron Lime Kiln used to burn limestone for the use of Carbonic Acid Gas, and there was also what was called the “Bone Black Factory.” On 761 there was what was called the “Filter tower” and “Tank Shed” and the “Bone revivifying building” and the bulk of the Sugar Machinery and the “Diffusion house” and “Pulp purses,” and the “Beet Store house.” On 762 there was the “Boiler house” on 763 there was the saw mill and Offices of the Company, on 714 was a little house used as a Lime house, on 727 there was a  
30 dwelling house and barn, the barn was used as a store house and as a fertilizer of Bone Black. There was nothing on lots 16, 17 18 and 19.

Q. Are you aware that at the time of the sale the Saw mill had been rented and was occupied by another party?

A. Yes, it had been rented in payment of a debt to a named Parker.

Q. And it was occupied for how long before the sale by Parker?

A. I do not know how long it was occupied by Parker.

Q. About how long?

A. I really do not remember now. The certificate will show you, the lease was registered and will appear on the records.

40 Q. He occupied it as a Saw mill?

A. I do not think that he ever used it himself as a Saw mill, but that was his intention.

Q. Was it not run as a Saw mill by some parties independent of the Company?

A. I do not think it was, until after the sale.

Q. Did you at any time lease the fifty acres of land that you have mentioned, used as a farm property?

A. I leased since Mr. MacDougall bought it.

Q. But from the Company at any time?

RECORD.

—  
*In the  
Superior  
Court.*  
—

No. 152  
Deposition of  
G. O. Doak,  
for Petitioner  
La Banque  
d'Hochelega  
dated 15th  
April 1885  
— *Continued*

RECORD

*In the  
Superior  
Court.*

No. 152.

Deposition of  
G. O. Doak,  
for Peti-  
tioner, La  
Banque  
d'Hoche-  
laga  
dated 15th  
April 1885.  
—Continued

A. No, they used it themselves.

Q. You know that some portion of it was, at the time, cultivated in growing oats and other produce of that kind ?

A. Yes, when they first broke it up, I think they had oats or buck-wheat or something.

Q. Did you buy the farm produce that was grown there ?

A. No.

## CROSS-EXAMINED.

Q. Would the farm lots of which you have spoken be as much value to any one else as to the proprietors of the Factory and Building for the purpose of growing beets ? 10

A. Not if they were intended for growing sugar beets in connection with a sugar factory.

Q. Would they be of as much value to any one else ?

A. It is hard to say what they would be to anyone else that property, I do not consider the whole of it worth over fifteen hundred dollars, and there was a mortgage of three thousand dollars on it.

Q. Does the mortgage appear on the certificate ?

A. Yes.

Q. How was the saw mill, of which you have spoken, leased to Mr. Parker, or how did he come to pay rent for it ? 20

A. It was leased to Parker in payment of a debt due by the Company to him. I may say that a portion of it had been used by the Company in the Summer of eighteen hundred and eighty-one as a workshop, and the water from it was taken to all parts of the Company's works.

Q. Then it was essential to the Company ?

A. As a Sugar Eactory it was essential to it. I would consider it essential to the buildings for whatever manufacturing purposes they were used, as they are practically without power unless they have this. 30

And further deponent saith not.

WM. MCGOUN,

Stenographer.

(ENDORSED).

Deposition of Geo. O. Doak for Petitioners. Fyled 9th July, 1886.

No. 153  
Deposition of  
John Mac-  
Dougall  
for Petitioner  
La Banque  
d'Hoche-  
laga  
dated 15th  
April 1885

## SCHEDULE No. 186.

In the Superior Court for Lower Canada.

On this fifteenth day of April, in the year of Our Lord, one thousand eight hundred and eighty-five, personally came and appeared : John Mac-

Dougall, of the City of Montreal, Machinist and Iron Founder, aged fifty-nine years, and witness produced on the part of the Petitioners, who, being duly sworn, deposeseth and saith :—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. You were connected with the Company Defendant ?

A. I was connected with it.

Q. You were a Director and Treasurer of the Company ?

A. At the latter end of the Company.

10 of its Directors ?

A. I was a Director and Treasurer only a few months before the Company went to pieces.

Q. Do you know if in February eighteen hundred and eighty-two the Company was solvent ?

A. In my opinion the Company was never solvent.

Q. Had you dealings with the Company ?

A. Yes to a large extent.

Q. You supplied them with machinery ?

20 A. Yes a large amount of machinery.

Q. What are your reasons for saying the Company was never solvent ?

A. I had to renew their drafts from the very commencement of delivering the machinery.

Q. Repeatedly ?

A. Repeatedly.

Q. Was it temporary embarrassment ?

A. I could not say, but I should judge that they had not money enough to carry out their engagements.

30 Bank Adjudicataire Mr. Rough was your prête-nom ?

A. Mr. Rough has acted as agent for me in the matter.

Q. At the time the property was sold by the Sheriff and purchased by the Eastern Townships Bank what did you consider it to be worth ?

A. I considered the property was cheap any way in the neighborhood of from seventy-five to one hundred thousand dollars at that time.

Q. Do you know of other properties of that kind that were sold at that time and for what price ?

A. Yes, the Berthier Sugar Refinery which was not so complete as that was sold for seventy-five thousand dollars.

40 Q. A bona fide sale ?

A. Yes.

Q. You know both of these properties ?

A. Well yes I know them both well.

Q. You consider that the Coaticooke property was worth more at the time ?

A. I consider it was worth more because they could refine the sugar, as well as make it from the beet, and the Berthier one could not.

RECORD.

—  
*In the  
Superior  
Court.*

—  
No. 153

Deposition of  
John Mac-  
Dougall  
for Petitioner  
La Banque  
d'Hochelaga  
dated 15th  
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— *Continued*

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CROSS-EXAMINED.

*In the  
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Deposition of  
John Mac-  
Dougall  
for Petitioner  
La Banque  
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—Continued

Q. After you purchased the property in the name of Mr. Rough did you give any obligations to any parties agreeing to leave them a certain portion of it and if so to whom ?

A. I agreed to do so, but they never carried out their agreement with me. All the payments that have been made were made by me.

Q. Will you state who these parties were ?

A. It was Mr. Beard to get half of it provided he paid half the money.

Q. Was not the Hochelaga Bank interested in the purchase as signifi-  
cation to you from the Hochelaga Bank of a transfer by Adolf Lomer of one  
quarter ? 10

A. The only intimation was a letter from Mr. Beard saying that he had assigned one half of his interest to Mr. Lomer. That is the only intimation I know of.

Q. Did not the cashier of the Bank, Mr. Brais visit you at your office and tell you that they were interested in the purchase of a transfer from Adolf Lomer ?

A. Mr. Brais called at my office and stated he had got these notes transferred from Mr. Lomer as security for the money that the Bank had ad-  
vanced. 20

Q. Did you ever see this property at Coaticooke ?

A. I never saw it no more than from the amount of machinery that has gone into it from me and others, and statements I have at the office.

Q. You never saw the property itself ?

A. No.

Q. Have you seen the Berthier property ?

A. Yes.

Q. It is a very fine building ?

A. Yes the building is higher but the machinery is not to compare  
with the other. 30

Q. The building is a very fine building at Berthier ?

A. Yes, it is unnecessarily fine.

Q. Do you know from any conversation you had with Mr. Brais the cashier of the Hochelaga Bank if he knew all about this sale; and was aware that it was going to take place ?

A. It could not be that because he did not go near my office until the sale did actually take place.

Q. But from his conversation were you not aware that he knew it was going to take place ?

A. No, I could not say that. 40

Q. Did you call on the Hochelaga Bank about the month of April eighteen hundred and eighty-three and called upon them to defray their share of the expenses of insurance ?

A. Yes we did.

Q. And their charges connected with the property ?

A. Yes.



Q. Was it in eighteen hundred and eighty-three ?

A. I could not say what year it was but we did call upon the Bank and they decline to advance anything and declined to have anything to do with it whatever by letter.

Q. At this time ?

A. Yes. I may state that this was decided at a meeting of the Bank board and we were notified that they had nothing to do with the property and would advance no money.

Q. Did they send you back the transfer that was made by Mr. Lomer ?

10 A. I could not say. The papers are in Mr. Rough's hands.

Q. You have not the papers ?

A. I could not say whether we have or not. Mr. Rough has got all those.

Q. Did you have any other conversation or understanding with the Bank in regard to the matter ?

A. No that I know of.

Q. Mr. Beard was the one that transacted the business originally with the Eastern Townships Bank on your behalf ?

20 A. Mr. Beard had transacted all the business previous to my knowing about it, he brought a letter to me from the Bank stating they would sell for so much and Mr. Beard knew I was a large creditor, and he said that if I would take part with him I might make part of my loss that is why I touched the property at all.

Q. You expected at this time to float the property with the other parties through Mr. Senecal ?

A. Yes we expected to do it with another party who is now interested in a Sugar Refinery.

30 Q. After the Hochelaga Bank had this meeting you speak of and declined to have anything more to do with the property or pay any of the charges, are you aware that they intended to institute proceedings to set aside the sale or to threaten to do so ?

A. Not at that time.

Q. Did you not furnish the said Hochelaga Bank for the purpose of threatening the Eastern Townships Bank with this action, certain papers and information in regard to the matter which you thought would have that effect upon it ?

A. I was never asked by the Bank to do so.

Q. The question is if you did do so ?

40 A. Not to my knowledge.

Q. Have you not furnished them with any information or been acting with them in this matter in any way ?

A. I have never been approached by the Bank ?

Q. Did you suggest the name of David Morice as a witness favorable to them to testify as to the conversation had with Mr. Doak.

A. I did to my lawyer, but not to the Bank.

Q. Then all the information you have furnished in regard to the matter

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—Continued

has been furnished to your lawyer who is acting with the petitioners lawyers in this case ?

A. To the best of my knowledge.

Q. Did not the Hochelaga Bank decline to carry out the sale to Adolf Lomer because they found that the property had been purchased at too high a price, and nothing could be made out of it owing to the collapse of the Sugar industry in the country ?

Q. Not to my knowledge.

Q. Do you think if they had found there was something in it they would not have advanced money.

A. Yes. They never told me what they thought and I am not sup- 10  
posed to know what they thought.

Q. The Company were doing business with the Hochelaga Bank ?

A. I believe so.

Q. For about a year previous to the Sheriffs sale ?

A. I could not say how long.

Q. You say that the Company never was solvent, what do you mean by that, do you mean that they were always hard up ?

A. I mean to say they never could pay their debts.

Q. Would not the payment of their debts depend upon the value of their real estate or if they had made other investments ? 20

A. I have no knowledge of that, but I know that many more creditors besides me were not paid.

Q. In all his transactions has Mr. Rough acted as your agent and representative ?

A. Yes.

Q. Was this Berthier property sold at Sheriff's sale ?

A. I could not say, Mr. Senecal bought it.

Q. Are you not aware that it was sold at Sheriff's sale and that sale was repudiated ?

A. I am not aware that the sale was repudiated I am aware that there 30  
was some trouble with the Government claim but nothing with the sale itself.

Q. What is the value of that Sugar factory now ?

A. I cannot say.

Q. Is it not true that Farnham Factory which is a much finer factory than the Coaticooke can be bought for twenty-five thousand dollars ?

A. I cannot see how it can be bought for that when there is a mortgage to the Government for about seventy thousand dollars. They got there bonus and gave a mortgage on the buildings for it.

Q. How much was procured by the Farnham Factory from the Government ? 40

A. Seventy thousand dollars—seven years bonus at ten thousand dollars a year.

Q. It was mortgage for the full amount ?

A. They asked the Government to advance that amount and they would give a guarantee that they would carry it on for seven years and the Government did it, as I understood to them and gave security on the property for these seven years.

Q. Is it not true that there is no actual value to Beet Sugar Machinery as such?

A. I cannot say, I am not a Sugar refiner, I don't pretend to know.

Q. What revenue did you derive from this property since you bought it?

A. Nothing.

Q. Has it been a bill of expense to you in addition?

A. The bill of expense has been caused by law suits against the property, and from the Adjudicataire against me and the other from the Hochelaga Bank.

10 Q. That does not affect the property?

A. It does because the property could have been sold while these actions were going on.

Q. I am speaking now of the revenues of the property?

A. Any man could answer that.

Q. There has been no revenues, the annual balance is on the other side?

A. Yes but there might have been a revenue if these law suits had not been brought on.

20 Q. In what way?

A. Because I could have sold the property and it would have been revenue if we had sold. It is well known that a property closed cannot bring a revenue.

Q. Are you aware if mortgage bonus were issued in the month of August eighteen hundred and eighty-two?

A. I could not say when but I know they were issued for, I have some of them myself.

Q. Did not the Hochelaga Bank take some of them?

A. I could not say.

30 Q. You say the property could have been sold. Did you have any offers for it?

A. Yes.

Q. From whom?

A. We have an offer from the Cotton Company there.

Q. For how much?

A. They made an offer of five thousand dollars for the saw mill in writing.

Q. That is the duly offer you have had for it?

40 A. No. Mr. Drummond last winter offered for a part of the machinery which I could not sell, he sent a man down to look at it but I have another inquiry from the Saint Lawrence Sugar Refinery.

Q. Was there any price stated?

A. No.

Q. Then you have never had any offer except the five thousand dollars for the saw mill?

A. Yes. I have an offer in writing at least an inquiry in writing.

Q. I mean an offer; there is no offer for any portion of the property beyond the five thousand dollars?

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*Continued.*—

A. Yes.

Q. Have you sold a portion of the machinery from the factory ?

A. Yes.

Q. Did you consult the Hochelaga Bank in reference to the sale ?

A. No, I did not, I never asked their permission ; I never mentioned it to them.

Q. What did the Cotton Company want the saw mill for ?

A. I don't know ; we have got the letter still and I can produce it.

Q. Is it not true that they wanted it only for a reservoir for water and they now use steam ?

A. I don't know, They have made an offer for the property. 10

## RE-EXAMINED.

Q. What do you understand to be the purport of the following question which was put to you in cross-examination :—"Then all the information you have furnished in regard to the matter has been furnished to your lawyer who is acting with the Petitioner's lawyer in this case ?"

A. I should judge that they suppose that I had given the Bank all the information that they are now using. 20

Q. That is what you understand to be the purport of the question ?

A. That is what I understand.

Q. I understand you to say you have given to the Hochelaga Bank all the information that they have been using for this suit ?

A. No, I don't mean that, but I mean being sent by the Bank Adjudicataire another transaction that my lawyers are acting for me individually, it is merely to watch my interest in this suit so as to guide them in the other suit that is following.

Q. Do you know who are the Petitioners in this suit ?

A. The Hochelaga Bank I believe. 30

Q. Is your lawyer acting with the Petitioners ?

A. No they are not. It is simply watching our interest in this case ; they have no authority to act,

Q. Did you furnish your lawyer with any information for the purpose of having it communicated to the Hochelaga Bank's lawyer ?

A. None, purely on our own defence.

Q. Any information that you have given to your own lawyer was merely for your own defence ?

A. Yes.

Q. Either in this case or the suit of the Bank Adjudicataire against you ? 40

A. Yes.

Q. Were you present at the Sheriff's sale ?

A. No, I was not.

Q. Do you remember in what month the insurance account which you have mentioned was presented to the Hochelaga Bank ?

A. I could not say from memory.

Q. Will you take communication of Exhibit A thirty-four and A thirty five and say if those are true copies of the notification sent to you by the Hochelaga Bank to which you have referred in cross-examination ?

A. I think A thirty-five is a copy of notification I received as to the copy of the resolution I could not say, Mr, Rough would be able to say.

Q. Was there not a quantity of machinery included in the property in question that could be used for other purposes ?

A. Yes.

10 Q. Could you give an approximate value of the machinery that could be used for other purposes ?

A. I could not say, but a large amount of stuff could be used for other things besides a large quantity of steam pipe and many other things could be used for many purposes besides this.

Q. The boilers could be used ?

A. The boilers were sold to Mr. Drummond.

Q. They and the Magog Textile Print Company and the money was paid over to the Eastern Townships Bank ;

Q. For what price were they sold, approximately ?

20 A. I could not say, but I think from memory they were twelve hundred dollars a piece as they stood.

Q. You have mentioned bonds issued by the Company Defendant. Was the Company ever able to float its bonds ?

A. No. They were never able to raise a dollar on the bonds.

Q. Was the company able to borrow on mortgage as they decided to do at due time on the property ?

A. No.

And further deposeth saith not.

WM. MCGOUN,  
Stenographer.

30 (ENDORSED)

Deposition of John McDougall, for Petitioners, fyled 9th July, 1886.

SCHEDULE No. 187.

In the Superior Court for Lower Canada.

40 On this fifteenth day of April, in the year of Our Lord one thousand eight hundred and eighty-five, personally came and appeared: Adolf Lomer, of the city of Montreal, Merchant, aged thirty-one years, and witness produced on the part of the Petitioners, who, being duly sworn, deposeth and saith :—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

I have been connected with the Company Defendant as agent in Mont-

RECORD. real since the establishment until it ceased operations on the ninth of August, eighteen hundred and eighty-two, when they leased the property to myself and Mr. S. W. Beard.

*In the  
Superior  
Court.*

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Adolf Lomer  
for Petitioner,  
La Banque  
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*Continued.*—

Q. During the period extending from the first of January until the month of August, eighteen hundred and eighty-two, of what consisted the operations of the Company ?

A. In January I believe they were working up beets and molasses, but in the spring they ceased operations altogether.

Q. Do you know if the Company was solvent in the month of January, eighteen hundred and eighty-two ?

Objected to by adjudicataire, as being inadmissible and not being the best evidence and as illegal.

Objection reserved.

A. It was not solvent.

Q. State your reason and knowledge that the Company was insolvent at that time ?

A. The Company was indebted to me for a large amount and was then unable to pay me.

Q. Do you know if at that time the Company was indebted only to you or to other parties ?

Objected to as above.

Objection reserved.

A. Yes it was indebted to John Taylor and it was indebted to the German Manufacturers Von Roofers.

Q. In small or large amounts ?

A. In large amounts.

Q. To each of those parties ?

A. Yes.

Q. What would be the aggregate amount owing to these parties about ?

A. Over fifty thousand dollars.

Q. Does that include your claim, or outside of your claim ?

A. Outside of my claim.

Q. Your claim was how much about ?

A. It was over twenty thousand dollars.

Q. How did the Company continue its operation at that time, being unable to pay these parties ?

A. My father was manager, and of course I learned everything of him, of the position of the Company, and he used my name for effecting the financial accommodation of the Company.

Q. Were they doing small or large operations in the winter of eighteen hundred and eighty-two ?

A. They were never very large.

Q. You know the property in question, in this cause very well ?

A. I know the location of course ; I don't know anything about the properties.

Q. Were you present at the Sheriff's sale ?

A. I was not.

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- Q. What did you consider it to be worth at the time of the Sheriff's sale ?
- A. I have no idea of the value, only I know the cost of it approximately.
- Q. What was the cost of it ?
- A. Approximately the cost must have been in the neighborhood of one hundred and fifty thousand dollars.
- Q. Including the machinery ?
- A. Yes.
- 10 Q. Do you know the Saw Mill ?
- A. Yes.
- Q. By whom was it used at the time of the sale in January, eighteen hundred and eighty-three ?
- A. I don't know who used it ; I know a man named Parker used it at one time.
- Q. Do you know how much it was rented for to Parker ?
- A. Yes, about eight hundred dollars, I think, a year.
- Q. The Saw Mill alone ?
- A. Yes.
- 20 Q. Was the Saw Mill an independent property of the Beet Factory ?
- A. It was independent, yes. It was not there for Sugar purposes.
- Q. Will you take communication of Petitioners exhibit A thirty-six and say how the properties numbered 734, 741, 727, 744, 1580 and 1582 were used ?
- A. They were used as a farming property. Number 727 one of the buildings there were used as storing bone black and fertilizers.
- Q. This farm property had it any relations to the beet factory ?
- A. Same portion of it to my knowledge was cultivated with beets, but the greater part of it was for other farm purposes.
- 50 Q. What other farm purposes ?
- A. They grew oats on it and hay, I believe.
- Q. To what extent was it used for growing beets ?
- A. I cannot say what quantity.
- Q. How many acres ?
- A. I have no idea.

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*In the  
Superior  
Court.*No. 154,  
Deposition of  
Adolf Lomer  
for Petitioner, La  
Banque  
d'Hochelaga  
dated 15th  
April 1887.  
—Continued

## CROSS-EXAMINED.

- 40 Q. You say the Company was largely indebted to you in eighteen hundred and eighty-two ; what for ?
- A. For advances.
- Q. When those advances made in cash ?
- A. In cash and otherwise.
- Q. How much had you advanced in cash ?
- A. Show me the accounts and I will tell you, I cannot remember.
- Q. About ?
- A. Over twenty thousand dollars over drawn.

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tioner, La  
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*Continued.*—

- Q. Over drawn how ?  
A. In cash.  
Q. Was that cash that you had advanced them ?  
A. Yes.  
Q. How otherwise in what other ways ?  
A. They drew drafts on me at my acceptance.  
Q. How were those drafts drawn ?  
A. They were drawn from Coaticooke on me in Montreal ?  
Q. Were they paid by you or your bank and charged to your account ?  
A. My acceptances were paid by myself. 10  
Q. Where did you keep your account ?  
A. Entirely in the Hochelaga Bank.  
Q. Were those drafts cashed by the Hochelaga Bank on your acceptances, the draft of the Company on you ?  
A. They were paid by myself.  
Q. Were they paid by the bank and charged to your account ?  
A. No. They were paid by myself against my own cheques.  
Q. Is it not a fact that the drafts went through the Hochelaga Bank ?  
A. The Company's drafts never did.  
Q. Were you not in the habit of drawing back on the Company ? 20  
A. I was. Yes.  
Q. What did you do with these drafts ?  
A. I cashed them in the Hochelaga Bank.  
Q. So you had to meet a draft of the company upon you and you would draw back on the Company and the bank would discount your draft back on the Company ?  
A. I drew a draft on the Pioneer Beet Root Sugar Company say at ten days sight the Hochelaga Bank paid me the cash for that and I would give the cash to S. W. Beard and he would telegraph the money through another bank and Hochelaga Bank were not aware it was the same transaction. 30  
Q. Then all the indebtedness of the Company arose upon drafts that were passed back and forth between you in this way ?  
A. Not at all, a large amount passed in cash in payment of beets here and the payment of other indebtedness of the Company.  
Q. In all cases were you made advances did you not draw back on the Company for it ?  
A. No sir.  
Q. How much cash did you advance for which there were no drafts ?  
A. At least twenty thousand dollars.  
Q. You are aware that the Company is in liquidation ? 40  
A. Yes.  
Q. Have you filed any claim on the state of the Company for the amount of your claim ?  
A. I have not.  
Q. Who holds those acceptances of yours and the drafts on the Company ?  
A. My drafts on the Company I have some renewals, and some I have



handed over to the bank as my account there was over drawn, because they did not belong to me any more.

Q. Are you aware that the Hochelaga Bank sued the Company for a large amount made up of paper and drafts that were held by them for your indebtedness?

A. Yes.

Q. How much did that amount to do you know?

A. It made about thirty thousand dollars I should think.

10 Q. When did you give the drafts and notes and other paper upon which this judgment was obtained to the Bank?

A. I gave it to the Bank after the sale took place.

Q. Prior to that what was the indebtedness of the Company to the Hochelaga Bank?

A. I don't believe that the Company kept an account with the Hochelaga Bank.

Q. Do you know that the Hochelaga Bank held a note of the Company for ten thousand dollars dated fifteenth of May eighteen hundred and eighty-two and endorsed by you?

A. I think they did to my knowledge.

20 Q. When did they receive that?

A. I suppose they got it the time it was dated.

Q. Did they receive it from the Company or from you?

A. From me. They never had any direct transaction with the Company.

Q. This claim against the Company was only a claim on their paper which they received from you?

A. Yes.

Q. Was anything ever paid on that note of ten thousand dollars?

A. Yes they received money in Quebec.

30 Q. What money was that?

A. Government subsidy money.

Q. Was this payable to the Company by the Government?

40 A. I don't remember in what shape the thing was, I know I got instructions from my father to collect the same in the shape of a letter written by some Government official and this letter I made in the form of a draft which was endorsed by the President of the Company Mr. Hagar and I handed this letter or draft for collection on my account to the Hochelaga Bank without telling them to credit it against the ten thousand dollar note. Subsequently when they got the money I wanted the cash and they would not pay it to me but simply wrote it to my credit on that ten thousand dollar note.

Q. About what date was that?

A.—I don't remember.

Q. Do you know whether the Hochelaga Bank received any collaterals about the first of eighteen eighty-three from the Company in the shape of warehouse receipts or otherwise?

A. I don't believe that the Hochelaga Bank had any correspondence with the Company.

RECORD

*In the  
Superior  
Court.*

No. 154.

Deposition of  
Adolf Lomer  
for Petitioner, La  
Banque  
d'Hochelaga  
dated 15th  
April 1885.

—Continued

## RECORD

*In the  
Superior  
Court.*

No. 154.  
Deposition of  
Adolf Lomer  
for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 15th  
April 1885.  
*Continued.*—

Q. Do you know as a matter of fact that they received collateral security from the Company in shape of warehouse receipts?

A. They got some from me.

Q. What warehouse receipts did they get from you?

A. I believe it was bone black or molasses, or both.

Q. Were the goods represented by the warehouse receipts the property of the Company?

A. They were supposed to be, but they never got possession of them though.

Q. Were they warehoused in the Company's name?

A. I don't know where they were stored, they were signed by a man named Fisher.

Q. In the name of the Company to the order of the Company?

A. No, to my order if I mistake not.

Q. You are not sure?

A. I am not quite sure, I would have to see them.

Q. To about what amount?

A. I cannot say.

Q. Have you any personal knowledge regarding the insolvency of the Company further than your own dealings with it?

A. Yes, I have the manager's statement to me almost daily about his money difficulties.

Q. The manager was your father?

A. Yes.

Q. You have no other knowledge: did you ever examine the books of the Company?

A. No, I did not; I saw other statements though.

Q. When?

A. On several occasions.

Q. Did their statements not always show a surplus?

A. No.

Q. When did you see their last statement?

A. I don't recollect when I saw their last statement, but I know I was daily called upon for money.

Q. Do you remember seeing a statement of the Company's affairs in January eighteen hundred and eighty-two?

A. I don't recollect any dates when I saw those things.

Q. Early in eighteen eighty-two?

A. If you call it to my mind, I must have seen their statement at the general meeting. The statement at the general meeting showed that they were behind hand and they called upon the Shareholders then and there present each to subscribe more capital in order to meet its liabilities and paid them off.

Q. Do you remember that they issued a statement of their assets which exceeded their liabilities?

A. I must have seen all the statement at that time. I never saw a statement that showed a surplus,

Q. Did you never see a statement where the assets exceeded the liabilities ?

A. No, not even enough for working capital they never had any working capital except what they got from me.

Q. Do you know this man Parker whom you say rented the mill. Do you know if he paid any rent ?

A. I don't know what he paid, I am under the impression he rented the mill for about eight hundred dollars.

Q. Are you not aware that the company owed him a certain amount  
10 of money and that he took the Saw Mill ?

A. The Company gave Mr. Parker a good deal of work for sawing lumber. That is all I know.

Q. You are aware that the Company issued mortgage bonds ?

A. Yes.

Q. Is it your opinion that the Company was insolvent at the time ?

A. Yes because they issued them on purpose to satisfy their creditors.

Q. Was the one hundred and fifty thousand dollars that you say this property cost ever paid ?

A. That is what makes the Company insolvent because they were  
20 never able to pay it, it was disbursed, and more than that.

Q. When was the saw mill purchased ?

A. I believe in the beginning when all the other property was purchased.

Q. It was all purchased together there ?

A. I believe so, at least the property around the sugar factory.

Q. Is it not a fact that the office of the Company was on the same lot  
at this saw mill ?

A. The office of the Company was in the beginning and for a greater  
part of the time on the other side of the river somewhere around lot number  
50 seven hundred and sixty-six. Afterwards the offices were moved to the building over on lot number seven hundred and sixty-three.

Q. What was the object of purchasing that lot with the saw mill on at the same time ?

A. I don't know.

Q. Are you not aware that there was a flume for conducting water from the river across that lot with the saw mill on ?

A. Yes.

Q. This water was used for the purposes of the Company in its business ?

A. Yes. It was used for the cleaning of beets—washing of beets.

40 Q. You owe the Hochelaga Bank now ?

A. Yes.

Q. On these same acceptances or drafts ?

A. On my general account.

Q. Did you owe them anything on these drafts and acceptances that you have spoken of ?

A. Everything in the Hochelaga Bank enters into my general account. I cannot detail here what is paid and what is not.

## RECORD.

*In the  
Superior  
Court.*

No. 154.

Deposition of  
Adolf Lomer  
for Petitioner,  
La Banque  
d'Hochelaga  
dated 15th  
April 1885.  
*Continued.*

- Q. Have the Company not got an account there ?  
A. The Company never had any account there I had an account it is all one account and they credit me for so and so et cetera.  
Q. Anything they get out of the Company they credited your account with ?  
A. It goes to my credit.

## RE-EXAMINED.

- Q. Did the Hochelaga Bank realize anything from the warehouse 10 receipts which you have mentioned before ?  
A. No. They did not to my knowledge.  
Q. Why ?  
A. I don't believe the goods were there when they were asked for they could not be produced Mr. Jackson Rae has similar warehouse receipts and he has not been able to get the goods.  
Q. The bonds that you have mentioned could they be completely issued by the Company ?  
A. No sir they could not sell any.  
And further Deponent saith not.

WM. MCGOUN,  
Stenographer.

20

(ENDORSED.)

Deposition of Adolf Lomer for Petitioners, fyled 9th July 1886. Paraphed H. & G., P. S. C.

## SCHEDULE No. 188.

30

No. 155  
Deposition of  
A. Rough,  
for Petitioner  
La Banque  
d'Hochelaga  
dated 16th  
April 1885

## In the Superior Court for Lower Canada.

On this sixteenth day of April in the year of Our Lord one thousand eight hundred and eighty-five personally came and appeared : Andrew Rough, of the City of Montreal. bookkeeper, aged fifty-six years, and witness produced on the part of the Petitioners who, being duly sworn, deposeth and saith :—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

I am one of the mis-en-cause.

Q. In the deed of sale by the Eastern Townships Bank to you, you are merely the agent of Mr. John MacDougall ?

A. Yes.

Q. And of S. W. Beard ?

A. I did not consider I was working for Mr. Beard at all.

Q. Any matters between Beard and McDougall were to be settled between them ?

40

A. Yes.

Q. Do you know the property in question?

A. I have been there, yes.

Q. Do you know to what amount the property was insured at the time of the Sheriff's sale?

A. I could not state.

Q. Approximately?

A. I can tell you what it was insured for when it came into my possession, but I could not tell what it was insured for before.

10 Q. What was it insured for when it came into your possession?

A. We got it insured up to fifty-two thousand dollars.

Q. Do you know with what Company it was insured before?

Witness:—Previous to the sale?

Counsel:—Yes.

A. I could not say.

Q. You were not present at the Sheriff's sale?

A. No, I knew nothing about it.

Q. I believe there was some machinery sold since the Sheriff's sale. Will you state what it was, and for what amount it was sold?

20 A. I have got a statement here. I produce a statement as Petitioner's exhibit A thirty-seven, showing the machinery sold and the dates at which it was sold and the amounts received. The total being eight thousand three hundred and eight dollars and thirty cents.

Q. All this machinery formed part of the property sold by the Sheriff and as purchased by you from the Eastern Townships Bank?

A. Yes, I considered all the machinery was sold along with the property.

Q. Do you know whether there is a large amount of machinery left?

A. Yes.

30 Q. Had you any offer for the other machinery?

A. We could have sold a large quantity of machinery, we had plenty of offers.

Q. Have you any idea of the amount of machinery you could have sold?

A. It is hard for me to say the amount.

Q. Approximately, I mean?

A. I should say we could have sold perhaps half of the machinery at the time.

40 Q. What proportion of the machinery mentioned in the statement A thirty-seven comprised half of the machinery you could have sold, as you have just stated?

A. I suppose we could have sold at any rate say about thirty thousand dollars in all, and this was eight thousand dollars, and you have got to deduct one from the other.

Q. Was this machinery mentioned in statement A thirty-seven sold near its cost price, or how much below?

A. It was under its cost, half of the cost price or less. It is pretty

RECORD. difficult for me to swear.

*In the  
Superior  
Court.*

No. 155

Deposition of

A. Rough,  
for Petitioner

La Banque  
d'Hochelaga

dated 16th  
April 1885

*Continued.*—

Q. You could have sold : what prevented you from selling the machinery that you could have sold ?

A. There were various reasons. In consequence of the litigation going on.

CROSS-EXAMINED.

Q. You say you were a *prête-nom* for MacDougall. Do you know of his going an obligation to S. W. Beard for half of this property purchased ? 10

A. I do.

Q. Are you not aware that the said S. W. Beard transferred one half of this rights to Adolf Lomer ?

A. Yes.

Q. Did not the said Adolf Lomer transfer one half of his rights in this real estate to the Hochelaga Bank to Petitioners ?

A. Yes.

Q. Did they signify this transfer on you ?

A. They did, yes.

Q. You have at the instance of Mr. MacDougall instituted a suit against the Eastern Townships Bank to set aside the sale that was made to you of this property ? 20

A. Yes.

Q. Will you state that machinery you have had offers for and what the amount of those offers are ?

A. I could not say in a general way, there various injuries that we could have sold.

Q. Then you have not had any specific offers at all ?

A. I could not produce them now.

Q. Is it not true that you have sold the most valuable machinery that there is there and what is left is for the great bulk of it, special machinery which is comparatively no value. 30

A. I consider the machinery left is very valuable.

Q. Have you examined this machinery ?

A. I saw it along with yourself (Mr. Doak) in a casual way.

Q. You are not much of a judge of that class of machinery ?

A. No.

Q. It is specially sugar machinery, is it not.

A. Yes.

Q. And the sugar industry has no value at present in the Dominion of Canada ? 40

A. I could not say, I am not a sugar man.

Q. You cannot state any cash offers you have had for this machinery ?

A. You summon me here about a thing and you ask me about another thing. I cannot answer any further.

Q. Will you state what revenue the property has produced in the last two years ?

A. I could not tell you, not being in the Sugar line I cannot say. It is something like the hand of a Turk, it is all the other way.

Q. Is it not true that this property has cost you for insurance, taxes, watchman and caretaker to the time of something like three thousand dollars a year since you have had it?

A. I don't remember, of course I can produce a statement from the books.

Q. Have you not had in your employ there a man by the name of Lee during the whole time?

10 A. Yes.

Q. What salary do you pay him?

Objected to this evidence as illegal and altogether irrelevant, and more-over as not arising out of the examination in chief.

Objection reserved.

A. Twelve hundred dollars and paid his board.

Q. Is he not the man that has effected all these sales?

A. The most of them.

Q. He has been there to watch your interests and effect sales.

20 A. Yes.

Q. You don't know the total expense of keeping the property there for sale during this time?

A. No.

Q. Was any of this machinery sold with the consent of the Hochelaga Bank?

A. The Hochelaga Bank had nothing to do with it.

Q. You sold it without regard to them?

A. Yes.

30 Q. Is it not true that the reason you have not sold the other machinery that is the portion you could have sold was due to the fact that it is under seizure for customs dues?

A. There is a certain quantity I believe we cannot get at.

Q. Owing to its being under seizure for custom dues. There was no more difficulty in selling machinery that was not under seizure for customs dues than this?

A. We could have sold if we had not been stopped by these proceedings.

Q. To what people?

A. People would have come there.

Q. How do you know people would have come there?

40 A. We suppose.

Q. How much is the property assured for now?

A. Twenty-five thousand dollars.

Q. Have you not had great difficulty in keeping that insured?

A. Yes in consequence of the concern being in litigation the Insurance Company did not feel disposed to keep the amount up.

Q. Is it not true that they also objected to keeping it insured on account of the tremendous depreciation that there has been in the sugar industry?

RECORD

*In the  
Superior  
Court.*

No. 155.  
Deposition of  
A. Rough,  
for Petition-  
er, La  
Banque  
d'Hochelaga  
dated 16th  
April 1885.  
—Continued

## RECORD.

*In the  
Superior  
Court.*

No. 155  
Deposition of  
A. Rough  
for Petitioner  
La Banque  
d'Hochelaga  
dated 16th  
April 1885  
*Continued.*—

A. No, they never advanced that.

Q. The reason they refuse to insure is on account of the litigation?

A. And the place being silent.

Q. Principally on account of the place being silent?

A. There was objections. They did not say half and half you know.

Q. Has the machinery which you have sold during the two and half years you have had the occupation of it, any more than covered the expense connected with making the sales?

A. I could not answer that question.

Q. Do you consider that you have a right to charge the expenses you have been at against the property in case of its being resold at Sheriff's sale?

Objected to this question as illegal it not being a matter of evidence.

Objection reserved by the parties.

A. Yes.

Q. Have you also taken an action against the Eastern Townships Bank to set aside the sale which was made to you?

A. Yes.

Q. Is it not accordingly to your interest in the suit you have taken against the Eastern Townships Bank, and in your defence to the suit which they have taken against you that the present action should succeed?

A. I could not say.

Q. Are not you and Mr. MacDougall aiding and assisting in every way you can the present action?

A. Not that I know of.

Q. Are not your attorneys acting with the attorneys of the Petitioners in this cause for the purpose of procuring a favorable judgment in this suit?

A. I could not say.

Q. Was it yourself personally or Mr. MacDougall that gave instructions to the attorneys that represent you in this case and in the other case?

A. Mr. MacDougall.

Q. Is it not true that in your action against the Eastern Townships Bank and in your plea to their action against you, you have set up the same matters that are alleged in the petition in this cause?

A. Not having seen the plea, I cannot say.

Q. Will you produce a copy of your plea in that case and a copy of your declaration in your action against the said Eastern Townships Bank?

A. The adjudicataires produce as their exhibits B and B copies of the plea filed by the witness in the action taken against him by the Eastern Townships Bank for the recovery of the purchase price of the property in question, and also a copy of his declaration in the action taken against the bank adjudicataire to resiliate the deed of sale of the said property.

Q. Will you produce any papers served upon you by the Hochelaga Bank in connection with this sale?

A. I produce a letter of the second of June eighteen hundred and eighty-three written by Mr. Brais, Cashier of the Bank as Adjudicataire's Exhibit B. That is the only document I have.



RE-EXAMINED.

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*In the Superior Court.*

You say that the letter of the second of June eighteen hundred and eighty-three is the only paper that you have ?

A. Yes.

Q. Had you any other paper from the Bank having reference to this matter ?

A. No

Q. You had no other papers ?

10

A. No.

Q. Then what do you mean when you state that the Bank had served you with a transfer ?

A. There was a letter whereby I acknowledged the transfer from Beard to Lomer and from Lomer to the Bank.

Q. Is that what you call the signification of the transfer ?

A. Yes.

And further the deponent saith not.

No. 155.  
Deposition of  
A. Rough,  
for Petitioner, La  
Banque  
d'Hochelaga  
dated 16th  
April 1885.  
—Continued

WM. MCGOUN,

Stenographer.

20

ENDORSED.

Deposition of Andrew Rough for Petitioners, fyled 9th July 1886. (Paraphed) H. & G., P. S. C.

30

SCHEDULE No 189.

In the Superior Court for Lower Canada.

On this sixteenth day of April in the year of Our Lord one thousand eight hundred and eighty-five, personally came and appeared : Charles Hagar, of the City of Montreal, Merchant, aged sixty-six years, and witness produced on the Part of the Petitioners, who being duly sworn deposeth and saith : I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

40

Q. Please look at the Minute Book of the Company defendant, at the Minute of the Meeting of Stock holders, on the thirteenth (13) of January eighteen hundred and eighty-one (1881), which appears to have been the only meeting for that year, and state who were re-elected Directors for the ensuing year ?

A. Charles Hagar, Henry Stewart, G, Lomer, C. C. Colby and G. O. Doak.

Q. The Charles Hagar there mentioned was yourself ?

No. 156.  
Deposition of  
Charles Hagar  
for Petitioner, La  
Banque  
d'Hochelaga  
dated 16th  
April 1885.

RECORD.

*In the  
Superior  
Court.*  
— — —  
No. 156  
Deposition of  
Charles Ha-  
gar  
for Petitioner  
La Banque  
d'Hochelaga  
dated 16th  
April 1885  
*Continued.*—

A. Yes.

Q. G. O. Doak, was Mr. Doak, Advocate of Coaticooke, who is now assisting at the Enquête ?

A. Yes.

Q. Will you please state what entry there is made there, with regard to Mr. Thornton ?

A. He was re-elected Treasurer, with a sitting at the Board. This Mr. Thornton, is the Mr. Thornton who has been examined as a witness in this cause ?

Q. How were the Minutes of that Meeting signed ? 10

A. By myself as President, and Mr. Doak as Vice-President and Secretary.

Q. And the Minutes of the ensuing meeting of Directors are signed in the same way ?

A. Yes April the twenty-fifth (25th) eighteen hundred and eighty-one (1881).

Q. Please take communication of the Minutes of the Annual General Meeting of Share-holders of the Company Defendant held on the twenty-seventh (27th) January, eighteen hundred and eighty-two (1882), and state who were elected Directors for the ensuing year ? 20

A. Charles Hagar, G. Lomer, James Coristine, John MacDougall, J. Thornton, George Wait, and W. S. Evans. The Charles Hagar there mentioned is myself, and the John Thornton, that I have already mentioned, and John MacDougall is the John MacDougall examined as a witness in this cause. At the Meeting of Directors which followed said annual meeting, I was elected President, said Mr. Thornton, Vice-President, and Mr. Lomer, Managing Director.

Q. Please take communication of the report of the Directors of the Company Defendant presented to the Share-holders at the Annual General Meeting last mentioned, and state whether the intention of borrowing money on Mortgage or Mortgage Debentures, was ever carried out ? 30

Objected to by Adjudicataire, to any evidence concerning the contents of any report which is not proved, was produced or read, at the Annual Meeting in question.

Objection reserved.

A. I think not.

Q. Were mortgage Debentures prepared and attempted to be issued ?

A. Not that I know of.

Q. What was the reason that it was considered necessary at that time to borrow the money, was there any more available capital stock ? 40

A. Yes, there was some more available stock.

Q. What stock ?

A. The stock of the Company.

Q. Was it available ?

A. It was the stock of the Company. The stock of the Company was not all taken up, there was a certain part of it on the market to be sold.

Q. Could it be sold ?

A. Not very well at the time.

Q. Take communication of Petitioner's Exhibit A8, being a copy or extract from the Minute book, pages thirty-three (33), thirty-four (34), thirty-five (35) and thirty-six (36), and state what means the Company had to meet its liabilities mentioned in the said statement?

A. They had no means to meet their liabilities at that time.

Q. Had the Company Defendant means to meet its liabilities at any time subsequent to the said date?

A. I think not.

10 Q. Please look at the minutes of the Directors of the Company Defendant of date thirty-first January, eighteen hundred and eighty-two, and state what entry you find regarding Mr. Thornton already mentioned?

A. "Mr. John Thornton be requested to the office of Treasurer: and Mr. Churchill to fill the office of Secretary, pro tem."

Q. Did those gentlemen assume and fill those offices?

A. I don't recollect that Mr. Thornton assumed the office of Treasurer and that Mr. Churchill acted as Secretary.

Q. Up to what date did Mr. Churchill act?

A. Until that closed up, I think.

20 Q. That was until the Company was put into liquidation, that was after the sale of the property?

A. After the sale the hands were discharged.

Q. The Mr. Churchill is Mr. James Churchill, is it not, of Coaticooke?

A. I think his name is James Churchill.

Q. Were you present at the Sheriff's sale of the Defendant's property in question in this cause?

A. I was.

Q. Will you please state how the property in question which was purchased by the Adjudicataire, came to be sold *en bloc*?

30 A. I don't think there was any other way of selling the property except *en bloc*.

Q. Did you consent to its being sold so?

A. If I was asked I would have consented. I don't recollect whether I was asked or not.

Q. Part of the property consisted of a Saw mill and another part of a Farm: did you consider it necessary to sell these *en bloc* with the factory?

A. I don't think the farm was sold with the factory.

Q. You gave no consent to its being sold so?

A. I don't recollect if I was asked about it in any way.

40 Q. About the Saw mill: did you consider it was necessary that it should be sold along with the Sugar factory?

A. I thought the property should all go together, it was so stated that the properties should be sold together.

Q. Was not the Saw mill capable of being run as a Saw mill apart from the Sugar factory?

A. I suppose it could have been.

Q. Was it not in fact at that time being run separately from the Sugar

RECORD.

factory ?

*In the  
Superior  
Court.*

A. I think it was rented as a saw mill.

Q. Had you any authorization from the Board of Directors to consent to the property being sold *en-bloc* ?

A. No.

No. 156  
Deposition of  
Charles Ha-  
gar  
for Petitioner  
La Banque  
d'Hoche-  
laga  
dated 16th  
April 1885  
*Continued.*

Q. Did you consider fourteen hundred dollars (\$1400) to be the value, or approximate value of the property so sold to the Adjudicataire ?

A. Objected to by the Adjudicataire as illegal.

A. Objection reserved.

A. I consider the property was sold fairly, of course the price was very small for it ; there was no object in running it up against a man that had a large mortgage on it. I refer to the mortgage of the Eastern Townships Bank. 10

Q. Was mention made at the time of the sale of the mortgage held by the Eastern Townships Bank ?

A. I think not.

Q. Was it spoken of among those that were there as a reason why it was useless to attempt to bid it up ?

A. Not that I know of.

Q. Was it known by all that were present that there was such a mort- 20  
gage ?

A. I don't know, I had very little to say to any of them.

Q. If it was not known, how can you account for the property having been allowed to go at the price of fourteen hundred dollars (\$1400) ?

A. I suppose nobody wanted the property.

Q. Was the property not worth a great deal more than fourteen hundred dollars (\$1400) to anybody ?

A. The property of course was worth more than that.

Q. If any person present who was not influenced by the fact of a mortgage in favor of the Eastern Townships Bank would it not be unreason- 30  
able to suppose that they would allow it to go at the price of fourteen hundred dollars (\$1400) ?

A. Objected to as illegal and as being an opinion of the witness, and as to the form of the question as leading and suggestive.

A. Objection reserved for the present.

A. I don't know if there was any person present who did not know there was a mortgage registered in favor of the Eastern Townships Bank, though I have no personal knowledge of it.

Q. Have you a further recollection of what occurred at the time of the Sheriff's sale in question with regard to what passed at the time when the sale 40  
was proceeding ?

A. I was there and saw the Sheriff read out the Writ or whatever it was, and go through the whole of the proceeding, I have a distinct recollection.

Q. Can you state who was present at the sale ?

A. Yes.

Q. Enumerate those you recollect ?

A. Mr. Beard was there, Mr. Doak, Mr. Farwell, Mr. Austin, Mr.

Todd, Mr. Shurtleff and a number of people from around the country, I don't recollect their names.

Q. Among those present at the sale, were there any who could have paid more than fourteen hundred dollars (\$1,400.00) for the property in question?

A. I should think so.

Q. Apart from the representatives of the Eastern Townships Bank?

A. I think so.

Q. Were there several?

A. I think so.

Q. How long did the sale in question last—the proceedings of the Sheriff in connection with the sale?

A. I should think about an hour.

Q. You were President of the Company in the month of February eighteen hundred and eighty-two, were you not?

A. Yes.

Q. Do you recollect the action that was instituted by the Eastern Townships Bank, for an amount of about twenty-three thousand dollars (\$23,000.00), and was the same served on you?

A. It was not served on me.

Q. Was it communicated to you, or were you made aware of the institution of the action previous to judgment being taken?

A. I think not.

Q. Was the fact of the writ in question having been served, made known to the Board of Directors?

A. I think not.

Q. Were you made aware at any time of the agreement entered into between Mr. John MacDougall and S. W. Beard for the purchase of the property in question, and if so, please state when?

A. No.

Q. Were you not made aware at any time that the Eastern Townships Bank had agreed to sell the property in question to Messrs. Beard and MacDougall?

A. I understood that Mr. MacDougall had an offer of the property, that is in the case the bank bought the property in.

Q. When did you understand that Mr. MacDougall had that offer was it previous to the sale?

A. I think it was the day of the sale.

Q. Previous to the sale?

A. The morning of the sale, before the sale was effected.

Q. Who told you of this offer?

A. Mr. Farwell.

Q. What did he tell you in reference to that?

A. I went out there myself to see if he bought in the property, and to see if he would give me the refusal of it, to see if I could make an arrangement with the stock-holders here, and he told me he had given Mr. MacDougall an offer of the property.

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Q. Had you any conversation with any others with reference to it at the time?

A. Nothing special that I know of.

Q. Did you not ask Mr. Beard for an interest in that offer?

A. Not at the time, I don't think I ever asked for any interest in it at all.

Q. Did you not ask Mr. MacDougall or Mr. Beard to guarantee on the proceeds of the property a sum of about five thousand dollars (\$5,000) that you were out of pocket with reference to the Company in question?

A. I don't recollect having any particular conversation about it. 10

Q. Try to recollect if there was not something of the kind mentioned between you and Mr. MacDougall or Mr. Beard or Mr. Rough?

A. I was not out of pocket in money. The Company had a draft on me for five thousand dollars (\$5,000) which I accepted, and I never intended to pay it, or expected to pay it. In conversation with Mr. MacDougall I might have mentioned something about it.

Q. Did you ever pay that draft?

A. No.

Q. It is still outstanding?

A. I think so. 20

Q. What do you mean by saying you never expected to pay it?

A. When it was drawn on me I did not expect to pay it and I was pretty sure I would not pay it afterwards.

Q. Did you not ask Mr. MacDougall or Mr. Beard to assume the responsibility with reference to that draft of five thousand dollars (\$5,000)?

A. I might have asked them, but I don't recollect specially.

## CROSS-EXAMINED.

Q. The draft in question was your personal draft? 30

A. No, the Company drew on me to carry on the concern.

Q. Your acceptance was a personal acceptance of its as President of the Company?

A. No personal acceptance.

Q. You went out to this sale: were you prepared to buy in that property for anything if you had to pay for it in cash?

A. No.

Q. What do you think it would have brought if any one had to pay for it in cash at the sale?

A. I have no idea what anybody would give for it. 40

Q. Do you think anybody would have given ten thousand dollars (\$10,000) for it in cash?

A. Perhaps they might have given that much, or a little more.

Q. Not much more?

A. No, not much more.

Q. They would not have been likely to have given more than twelve thousand dollars (\$12,000) in cash for it?

A. I would not have bought it myself for any money in cash. I cannot say what any other party would have given for it.

Q. Do you think that there were any persons in the room apart from the representatives of the Eastern Townships Bank, who were able and prepared to pay a sum of, say,—twelve thousand dollars (\$12,000 in cash for that property?

A. No, I don't think there was.

10 Q. Will you look at the minute book of the Company at the so-called report concerning which you have been asked in your examination in chief and state if there is anything to show in that report or in the minutes of the general meeting on the twenty-seventh (27th) of January, eighteen hundred and eighty-two (1882), that the said report was submitted to the Shareholders at the said annual meeting, and is there anything to show who the directors were?

A. It says the Auditor's report was submitted to those present. The Auditor made a report because I was present there. I do not find anything in the book to show that it was read, but I think it was, if not the whole of it some part of it. Some part of it may have been left out.

20 Q. Are you prepared to swear that the extracts which you have been referring to in your examination in chief were submitted to the annual General Meeting on the twenty-seventh of January, eighteen hundred and eighty-two?

A. No.

Q. Is it not a fact that the minutes of the said general meeting are written entirely on page nineteen (19) of the said minute book and signed by yourself as President, and E. Glackmeyer, Secretary, on the foot of page nineteen (19)?

A. Yes, and they are continued over.

50 Q. What goes on: do you see in meetings of a general meeting afterwards on another page?

A. There is a meeting over on the next page of Directors I find on the page twenty (20) minutes of a meeting of Directors who were appointed at the General meeting, which minutes are signed by myself.

Q. Is it not a fact that the so-called report, from which the extracts have been taken, about which you were asked in your examination in chief, placed after the conclusion of the minutes of the meeting of Directors, and after your signature of President, to such minutes, is in an entirely different handwriting and is followed by the By-laws of the Company which appear in the same handwriting as that of the pretended report?

A. Yes.

40 Q. Do you remember that these By-laws were read and submitted at the General Meeting on the twenty-seventh (27th) January, eighteen hundred and eighty-two (1882)?

A. I think they were, I could not swear positively.

Q. Do you find the auditor's original report in that minute book?

A. I presume it is the original report.

Q. Look at the bottom of it and say?

A. I think so. That is not the original report, of course if he gave it

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in he gave it in on a sheet of paper.

Q. And the one in the minute book then is only a copy ?

A. Yes.

Q. Does this report of the Directors appear to be signed by anybody in the minute book ?

A. No, I don't think it was put in writing. I think it should have been first in the minutes. It was a long thing, the copy, and it was not written until afterwards.

Q. If there was a report read such as that shown to you, the one before you in the Minute book was not the original of that report ?

A. No.

Q. Had you any personal knowledge of the financial condition of the Company ?

A. I know the Company was always hard up from the very commencement always in want of money.

Q. Did you know anything personally and definitely regarding its assets and liabilities ?

A. No, the Directors did not know very much about it. Mr. Gerard Lomer had the whole management of the concern. General Lomer is the father of Mr. Adolf Lomer who attended to the financial arrangements.

Q. You have stated that you do not think that Mortgage Bonds were issued: is it not a fact that such bonds were issued to the extent of at least some ninety thousand five hundred dollars (\$90,500), and that said bonds were afterwards distributed to the different creditors of the Company ?

A. Yes, I did not understand the question in my examination in chief to refer to the mortgage bonds, I thought they had reference to the mortgage on the property. I knew there were bonds given at the time.

Q. Would you refer to the minute book of the Company and say what reference you find to such bonds at any meeting of the Directors ?

A. I find a meeting of Directors held on the eleventh of August eighteen hundred and eighty-two, at which myself and Mr. John Mac-Dougall, W. S. Evans and G. Lomer were present, it is stated that Mr. Lomer moved that a power of Attorney be granted to the Treasurer of the Company to receive from the Provincial Treasurer the subsidy money, outstanding for the Company, and that a Notary prepare such, and that two Directors be authorized to sign the power of Attorney. I produce a copy of the minutes of the said meeting as Adjudicataire's Exhibit B showing how these Bonds were distributed.

Q. Do you know to whom the Saw mill which you have spoken of was rented, and how it was paid for ?

A. No, I don't recollect the name, and I don't know what price was paid for it.

Q. You don't think he paid anything for it ?

A. I don't know whether he paid anything in cash or not.

Q. Are you aware that the judgment of the Eastern Townships Bank was referred to at any meetings of the Directors in eighteen hundred and eighty-two (1882) ?



A. I think not.

Q. Are you quite sure of that ?

A. There may have been some conversations among ourselves about it, but there was nothing at any meeting that I know of.

Q. Do you not recollect that a meeting of the Directors subsequent, to the judgment obtained by the Eastern Townships Bank, that the question was discussed at the meeting to the advisability of taking steps against the judgment was considered ?

A. I don't recollect.

10 Q. As a matter of fact the affairs of the Company were managed almost entirely by Gerard Lomer ?

A. In fact we knew very little how things were managed.

Q. He and Mr. Adolf Lomer were working together ?

A. They were working together at the latter part, before the Company stopped.

Q. Do you know whether any such Power of Attorney as that authorized in the minutes of the eleventh (11th) August eighteen hundred and eighty-two (1882) to collect the subsidy from the Quebec Government was prepared, and before what Notary ?

20 A. I don't recollect its ever being prepared.

Q. Was not the object of issuing these Mortgage Bonds to relieve the Company from its liabilities ?

A. Yes.

Q. Is it not a fact that there is a flume which conducts water from the river to all parts of the Company's works, and which flume runs underneath the saw mill and across the lot upon which the saw mill is built ?

A. I think the flume runs across all strait along the side of the factory, it does not run into it.

30 Q. Is it not a fact that this flume conveys the water from the water power on the lot on which the saw mill is constructed, and conveys it to the rest of the property of the Company ?

A. Yes, I think it does, I cannot recollect now.

Q. Was not this water shaft, for the purpose of the Company's business ?

A. I should think so. They used a great deal of water.

Q. Was the office of the Company not on the same lot as this saw mill was erected on ?

A. It was the same property.

40 Q. Was there anything said or done at the Sheriff's sale of this property to prevent any parties from building ?

A. Not that I heard of.

Q. Were any settlements made that the Eastern Townships Bank had a large mortgage ?

A. I had no conversation with anybody, and I did not hear of any.

Q. Do you know anything of the state of the Beet Sugar industry ?

A. I knew it is not very profitable.

Q. Do you think that the industry was any more profitable, or valuable

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at the time of the Sheriff's sale in this matter, than it is to-day ?

A. I think the sugar business was more profitable then than now.

Q. Much more ?

A. Sugar is a good deal sugar.

Q. Beet Sugar ?

A. I don't think the beet sugar is a great success in this country ?

Q. Was it ever a success ?

A. No, the only chance we had, if we got started in the first year, we might have made some money, but since then I do not think there was much chance.

Q. I suppose if you could not make money out of it, nobody could ?

A. I don't know. Mr. Lomer was manager.

10

## RE-EXAMINED.

Q. Are we to understand you to say that you are of the opinion that if the Eastern Townships Bank had had no mortgage that this property would have been allowed to be sold for fourteen hundred dollars (\$1,400) ?

A. No, if they had had no mortgage.

Q. You would not have let it go for that ?

A. No.

Q. You yourself would have bid more than that ?

A. Yes.

Q. And the number of other parties would have done the same thing ?

A. I should imagine so.

Q. Would you have let the property be sold yourself even for five thousand dollars (\$5,000) in the absence of such a mortgage ?

A. No, I don't think I would.

Q. Mr. Gérard Lomer is now in England ?

A. I believe he has been on the other side of the Atlantic, for a year and a half, I think.

Q. You have been requested to file a copy of the minutes of the Meeting of Directors of the eleventh (11th) August, eighteen hundred and eighty-two (1882), wherein distribution of Bonds is mentioned ?

A. Yes.

Q. Did you take any part in the distribution of such Bonds ?

A. I distributed some of them. I think pretty much all of them were distributed.

Q. Did you distribute in the Hochelaga Bank ?

A. No. Mr. Lomer put a lot of Bonds into the Hochelaga Bank, a good many more than what is mentioned there ; in fact, he deposited all that was left and they kept them—they retained a good many they had no right to.

Q. How do you know that ?

A. Because I went to try to get them from them. These Bonds were left in Adolf Lomer's possession, and he lodged them in the Hochelaga Bank ; some he had himself and some belonged to the Company to secure a loan, I suppose. I knew they were there because I went to try to get them back.

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Q. Were you personally aware of the deposit of these Bonds ?

A. No I was not, but I saw they were in the Bank.

Q. You were told they had been deposited by Adolf Lomer ?

A. Yes.

Q. You considered that Mr. Lomer had no right to deposit the amount that he deposited with the Bank ?

A. Of course not.

Q. And that is the reason you claimed them from the Bank, but the Bank refused to give them up to you ?

10 A. Yes.

Q. But you are not aware that any Bonds were distributed or handed to the Hochelaga Bank directly by the Company ?

A. No.

Q. Were those bonds distributed in that way in payment, or collateral security only, to the parties mentioned ?

A. I suppose more as collateral security. I think most of these parties got them.

Q. As collateral security ?

A. Yes, as collateral security.

20 Q. By referring to the minutes above mentioned, I see that the Eastern Townships Bank seems to be the holder of that five thousand dollar draft, accepted by you, and mentioned above ?

A. Yes, they held that.

Q. They never pressed you ?

A. No.

Q. How do you account for them not pressing you for that ?

A. I suppose they thought I should not pay it, I done it for the benefit of the Company.

Q. They never asked you for the payment of it ?

30 A. I think not. It was done merely to benefit the Company, I had no interest in it except to help the Company along.

Q. Will you say if the extract of the record on page twenty-two (22) of the minute book was not submitted and read to the General Meeting ?

A. I could not say, I think some part of it was read, and whether the whole of it was read I could not say.

Q. The report was there ?

A. It was not printed, Mr. Lomer had the report, he might have read the whole or part of it.

Q. It was submitted to the meeting.

40 A. It lay there, if there was anything that Mr. Lomer did not want the stockholders to see, he did not show it.

Q. You did not entertain any scruple in signing the minutes, making mention that the Auditors report and statement of the affairs of the Company had been submitted to those present ?

A. No.

Q. That was because you considered at the time that it had been done ?

A. I suppose so.

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Q. You have no reason to say that the minute as signed by you are not according to the truth, and what passed?

A. No.

Q. You have stated that Mr. Lomer is the only party well posted on the affairs of the Company?

A. Yes.

Q. Are you not aware that Mr. Doak was pretty well posted also on the affairs of the Company?

A. Mr. Lomer was Managing Director, and I suppose next to him would be probably Mr. Doak, while he was a Director.

Q. He is pretty shrewd, this Mr. Doak, is he not?

A. Well, I think he is pretty sharp.

10

## RE-CROSS-EXAMINED.

Q. Is there anything in the Minute Book to show that the Directors certified that the reports from which the extracts were taken of which you have spoken?

A. No.

Q. Is it not a fact that the minutes of the meeting of the twenty-seventh (27th) January eighteen hundred and eighty-two (1882) contain no mention of any report of the Directors?

A. No, there is no report of the Directors—only that of the Managing Director.

Q. Is it not true that Mr. Doak had sold out his stock in the Company in the Autumn of eighteen hundred and eighty-one (1881)?

A. I know he sold out his stock, I don't know what time.

Q. And the note of five thousand dollars (\$5,000) of which you have spoken was only held by the Eastern Townships Bank as collateral security for the indebtedness of the Company, was it not?

A. Yes.

And further Deponent saith not.

WM. MCGOUN,  
Stenographer.

## ENDORSED.

Deposition of Chas. Hagar for Petitioner, filed 9 July, 1886. (Paraphed)  
H. & G., P. S. C.

No. 157.

Deposition of  
Otis Shurt-  
leff for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 16th  
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## SCHEDULE No. 150.

In the Superior Court for Lower Canada.

On the 16th day of April, in the year of Our Lord, one thousand eight hundred and eighty-five, personally came and appeared: Otis Shurtleff, of the

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town of Coaticooke, in the District of Saint Francis, Registrar and Secretary Treasurer, aged forty-one years, and witness produced on the part of the Petitioners, who, being duly sworn, deposes and saith :—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

I am Registrar and Secretary Treasurer of the Registration Division of Coaticooke and Secretary Treasurer of the town of Coaticooke.

10 Petitioners exhibit A thirty-six has been signed by me, and it is a true extract of the cadaster showing the property owned by the Company Defendant previous to the Sheriff's sale in question in this case. There was, however, a mistake made on the said exhibit in writing the words "Coaticooke River" instead of "Grand Trunk Railway"; that portion of the plan is intended to show the Grand Trunk line. Number 723 may have been omitted but I believe it would be on the North end of the lot marked 722. I have with me the valuation roll for the then village of Coaticooke for eighteen eighty-one and eighteen eighty-two whereby it appears that the whole property then owned by the Company Defendant was valued at forty-nine thousand two hundred dollars.

20 Saw mill four thousand dollars, Cleveland's store four hundred and fifty dollars, Reynolds' store five hundred and fifty dollars, factory buildings forty thousand dollars part of cadaster lot 722—six hundred dollars, the farm three thousand dollars and three small houses on East Central street at two hundred dollars each, total six hundred dollars.

Q. The property was not described otherwise at the time of the valuation roll ?

A. No. The cadastral plan number is given only in one instance which had just come in force only a short time before. The valuation for eighteen hundred and eighty-two, cadastral lots numbers 721, 722, 723, 761, 762, one hundred thousand dollars for those lots. The saw mill property 30 which is lot number 763 was assessed at three thousand five hundred dollars cadastral lots 716, 717, 718, 719 and 720 were valued at five hundred dollars. The farm was assessed at three thousand dollars and lot number 714 was assessed at six hundred dollars.

#### CROSS-EXAMINED.

Q. What is the basis of municipal valuation, is it the cash value or what the valuers think is about the cost of the property ?

A. I think as a rule they intend to value it at the cost to construct.

40 Q. Then it is no guide as to the cash value ?

A. I know after it is not.

Q. Are there not properties in Coaticooke outside of this property which are valued on the roll at from two to three times what they bring in cash ?

A. I think in almost every case properties are assessed highest than it would sell for in cash, and I have known in some cases where it has been assessed for more than double, I can instance one, the metropolitan building.

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Q. Who did that metropolitan building stand in the name of at that time?

A. In one instance the property erected by the Metropolitan bank in Coaticooke was assessed on the valuation roll of eighteen eighty two for sixty-five hundred dollars, and was sold as appeared by the deed for twenty-five hundred dollars.

Q. You are acquainted with the property in question, are you not?

A. I am.

Q. What would be the cash value of the farm taking in numbers 727, 726, 733, 734, 741, 744, 1580 and 1582 at the time of the Sheriff's sale; would it be worth thirty dollars an acre right through cash? 10

A. Judging from lands that have been sold near to it which I should estimate about the same value, I think they have been sold from thirty to thirty-five dollars an acre. That is all I can judge from.

Q. What would be the cash value of say numbers 721 and 722, is it desirable property and what would be the cash value of it, what would you give for it or what would you have given for it at the time of the Sheriff's sale?

A. That property it is almost impossible to put a value on it, it is not like a farm that has a value. 20

Q. Would it have been worth in cash one thousand dollars or fifteen hundred dollars to you as a purchaser?

A. I would not wish to buy it all, I would not consider it but very little value except for the purposes for which it was intended, it is a property that cannot be converted into any other use.

Q. You would give something for it in cash?

A. No, I would not buy it.

Q. Would you give five hundred dollars for it in cash; would you get that out of it?

A. The same would apply to all of these properties, I would not make any distinction. 30

Q. Take that by itself; would you give five hundred dollars for it?

A. Yes, because the material taken down would be worth more than that.

Q. Would you give a thousand dollars for it cash?

A. No, I would not, but still it might be worth that or more, I consider the value which it worth to take it down, that is the only value I can put upon it, because it cannot be converted for any other use.

Q. From eight hundred dollars to one thousand dollars would be the cost value? 40

A. I cannot say that because I don't know what the mill would be worth. You ask me the question if I would give a thousand dollars for it. I cannot say it is not worth that.

Q. What would be the cash value of numbers seven hundred and sixty-two and seven hundred sixty-one that includes the bulk of the property, what would be the cash value of that, have you any idea?

A. No, I could not estimate it.

Q. What would you give for it ?

A. I would not want to buy it.

Q. You were present at the Sheriff's sale ?

A. Yes.

Q. You frequently invest in real estate do you not ?

A. Sometimes.

Q. You would not want to buy it at any price ?

A. No, I would not.

10 Q. While the defendants were running under the charge of Mr. Lomer did he make use of all this property in question with his operations ?

Objected to as illegal.

Question waived.

Q. Will you produce the roll for eighteen hundred and eighty-four and say what this property is assessed at ?

Objected to as illegal and irrelevant it being subsequent to the sale.

Objection reserved by parties in the absence of the Judge.

20 A. In eighteen hundred and eighty-four the property was assessed as follows :—Lots 721-722-723-761 and 762 at forty thousand five hundred dollars, the saw mill property at five thousand dollars, lots 716-717-718 and 719 six hundred dollars. The farm at twenty-five hundred dollars, lot 714 six hundred dollars, the farm includes those lots I have mentioned. The farm properties comprise lots 726-727-733-734-741-744-1580 and 1582. "Spring Street" mentioned on the plan has only been opened a few rods west of the Grand Trunk Railway and there are a couple of lots at the South-East corner of number 1580.

## RE-EXAMINED.

30 Q. Was there at the time of the said sale any buildings on the farm property ?

A. Yes.

Q. How many ?

A. There is a dwelling house an old building and barn also I think.

Q. What do you consider the buildings to have been worth separate from the farm ?

A. There is not much value on the buildings there. They are old and delapidated. I should suppose perhaps the buildings were valued at four hundred dollars perhaps.

Q. Do you know that this farm had been sold for the Company Defendants ?

40 A. I think it was thirty-five hundred dollars.

Q. Was it considered at the time too high a price ?

A. Yes, it was desinterested parties.

Q. About how much was it considered ?

A. By my estimate to-day I should say from thirty or thirty-five dollars an acre. It would be nearly double the value according to my estimate to-day.

Q. What was the land selling for in the village at the time in the vici-

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nity of lots 721 or 763?

A. 721 I think was bought by the Defendants with the building on it for I think five hundred dollars. There were no vacant lots sold very near to this property at that time nor has there been since.

Q. In the town of Coaticooke what were lands selling for in a portion of the village in about an equally good situation as say lot 721 or 763?

Q. Those were on the public street, 721 and 763, those do not take the farm properties. There were none sold on that street to my knowledge There were some lots sold up on Central street, that is the nearest I knew of any sold.

Q. What were those lots sold for?

A. Lots were sold on Central street which should be the nearest to that at the rate of about seventy-five dollars an acre but those were sold for residences, they were nearer the village.

Q. The valuation roll was made by how many persons?

A. Three valuers.

Q. They were made in the ordinary manner.

A. Yes.

Q. You were not one of the valuers?

A. I am not one of the valuers.

Q. And you were not present when valuation was made by them?

A. I was not present on the spot, it was returned to me in a rough state.

Q. Have you any personal knowledge as to whether the valuers based the valuation on the cost price or on what they considered to be the real value?

A. I never heard them in this instance make any remark upon what they based their valuation, but I am aware that in other instance where their valuations have been questioned they have stated that was their basis, what they considered the cost of the property.

Q. There were other large buildings on the properties in question, were they not?

A. Yes.

Q. And the material alone would be worth something?

A. Yes.

Q. Where they brick buildings.

A. Principally of brick.

RE-CROSS-EXAMINED.

Q. In regard to lots 721, 722, are they not situated under the Railroad dump, springy lots and not fitted for residences?

A. Number 722 would be, 721 is not, that ground is higher; the westerly part of 721 would be.

And further deponent saith not.

WM. MCGOUN,  
Stenographer.



(ENDORSED.)

Deposition of Otis Shurtleff for Petitioners, fyled 9th July 1886. Paraphed H. & G., P. S. C.

RECORD

*In the  
Superior  
Court.*

No. 157  
Deposition of  
Otis  
Shurtleff,  
for Petitioner  
La Banque  
d'Hochelaga  
dated 16th  
April 1885  
*Continued.*—

10

## SCHEDULE No. 191.

In the Superior Court for Lower Canada.

Present :

THE HONORABLE MR. JUSTICE MOUSSEAU.

On this first day of June in the year of Our Lord one thousand  
20 eight hundred and eighty-five personally came and appeared : Thomas Darling,  
of the City of Montreal, Accountant, aged fifty years, and witness pro-  
duced on the part of the Petitioners who, being duly sworn, deposeth and  
saith :—I am not related, allied, or of kin to, or in the employ of any of the  
parties in this cause ; I am not interested in the event of this suit.

I am the liquidator appointed to the Company Defendant. The Petiti-  
oners exhibits "A 7" and "A 8" are true extracts from the minute book of the  
Company Defendant, I have made an examination of the books of the Com-  
pany Defendant and there is a deficit apart from certain claims against the  
parties who are disputing their liabilities for stock subscribed, and this deficit  
30 amounts to something in the neighbourhood of one hundred and fifty or two  
hundred thousand dollars. At the time that the balance sheet, of which exhibits  
"A 7" and "A 8" are copies, was taken namely, the thirty-first of December  
eighteen hundred and eighty-one (1881), that Company was incapable of meet-  
ing its liabilities, because it shews a liability, apart from the liability to share-  
holders of over two hundred thousand dollars, while the available assets shown  
upon the same exhibits are comparatively trifling, the whole being made up  
with little exception of permanent investment in the way of real estate plant  
and machinery, construction investment, and certain payment for interest, insu-  
40 rance, salaries etc., which are not of the nature of assets at all, being moneys,  
that have been already expended, and therefore being no longer in existence.

I fyle copies of the minutes of the annual general meeting of share-  
holders held on the twenty-seventh of January, eighteen hundred and eighty-  
two (1882) marked Petitioners exhibit A7, bis . The exhibits "A 8" and  
"A 7" are a portion of the report mentioned in the said minutes. I also fyle  
marked as Petitioners exhibit A8 bis, copy of the auditors' report, dated the  
twenty-seventh of January, eighteen hundred and eighty-two.

No. 158.  
Deposition of  
Thomas  
Darling  
or Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 1st  
June 1885

## RECORD

## CROSS-EXAMINED BY THE EASTERN TOWNSHIPS BANK.

*In the  
Superior  
Court.*

No. 153.  
Deposition of  
Thomas  
Darling  
for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 1st  
June 1887.  
—Continued

Q. You were not personally present at the meeting of the twenty-seventh of January, eighteen hundred and eighty-two ?

A. I was not.

Q. Did you have any connection with the Company whatever before your appointment as liquidator ?

A. None.

Q. To that what you know of the affairs of the Company was only derived after your appointment as liquidator ?

A. That is all.

Q. When were you appointed as liquidator ?

A. Sometime in eighteen hundred and eighty-three, to the best of my recollection.

Q. You are not the original Liquidator who was appointed to the Company, when it went into liquidation ?

A. No.

Q. You replaced Mr. Fair in that position, did you not.

A. I did.

Q. Look at the minute book now before you, and state if any original report appears to be entered in that book, signed by any officer of the Company ?

A. The minutes of which exhibit is a copy, are entered on page nineteen of the minute book, and on page twenty on the same sheet of paper the date the twenty-seventh of January, eighteen hundred and eighty-two, beginning with these words : "The Directors beg to present a balance sheet to the shareholders" and soon. The balance sheet therein referred to is evidently that of which exhibits "A7" and "A8" are copies as the follow connectedly with the report, and from part of it, which continues down to page forty-one (41) of the said minute book.

Q. Now, just answer the question as to whether there is any signature of any officer of the Company to that ?

A. There is no signature on page forty-one (41), but on page thirty-two (32) in the report of which exhibit is a copy, "John C. McDonald Auditor" appears to have signed the reports connected with exhibits "A7" and "A8", I do not find any other signature from the commencement of the said report on page twenty down to the conclusion on page forty-one.

Q. Did you see Mr. MacDonald sign there ?

A. That is not the original of this signature, but as appears upon the exhibit, it states signed John McDonald.

Q. Did you ever see the original report, and do you know that is a copy of the said original report ?

A. I do not, I never saw the original report.

Q. Is it not a fact that between the Minutes of the annual meeting of the twenty-seventh of January eighteen hundred and eighty-two, and the report of which you have just spoken, there occurs the minutes of a meeting of Directors of the Company, which is entered in the Minute book on the page following that on which the meeting the general meeting is entered ?

A. There are the minutes of such a meeting dated upon the same day the twenty-seventh of January.

Q. Is it not a fact that the first part of this book appears to be in an entirely different handwriting from the so called report, which is written subsequently ?

A. It is a fact.

Q. Is it not a fact that in this report between pages twenty and forty-one, appears the by-laws of the Company ?

10 A. There certain by-laws which are appear to be included in the said report.

Q. And these by-laws appear before the statement of which Exhibit "A7" is a copy ?

A. They do.

Q. Do you find anything in the minutes of the general meetings of the twenty-seventh of June, stating that any by-laws were submitted to that meeting ?

A. I do, it says that the by-laws, after having been read by J. B. Burland, esquire, and with sundry amendments it was proposed by W. S. Evans and seconded by J. Hodgson, that they be adopted, carried.

20 Q. And the report of the minutes, between the pages twenty and forty-one only appear to be a copy ?

A. Yes, they appear to be a copy.

Q. Does not the tone of the report seems to show that the Company was solvent ?

A. The report concludes with certain statements of possible profits contingent upon the existence of certain conditions, but I don't find anything that the report looked right for the shareholders.

30 Well, is it not a fact that the report seems to show that the Company was able to meet its liabilities—that the assets were sufficient to meet the liabilities.

A. I don't see that it is stated anywhere.

Q. Is it not a fact that from the statement which you have just produced that the assets are equal to the liabilities ?

A. The balance sheet, of which exhibit "A8" is a copy, shows the position of the Company, and it speaks for itself.

Q. It shews that the assets as a matter of fact were equal to the liabilities, does it not ?

40 A. It does not, in as much as there are no assets there shown to cover the liability upon bills under discount in the Eastern Townships Bank amounting to forty-three thousand four hundred and seventy-three dollars (\$43,473.00).

Q. The Eastern Townships Bank is included as a creditor, is it not, for that amount ?

A. The only amount for which I find the Eastern Townships Bank entered as a creditor, is the sum of (\$2562.79) two thousand five hundred and sixty-two dollars and seventy-nine cents, on the first page of the said balance sheet.

RECORD

*In the  
Superior  
Court.*

No. 158.

Deposition of  
Thomas  
Darling  
for Petitioner,  
La  
Banque  
d'Hochelaga  
dated 1st  
June 1885  
*Continued.*—

RECORD

*In the  
Superior  
Court.*

No. 158.  
Deposition of  
Thomas  
Darling  
for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 1st  
June 1885.  
—Continued

Q. This entry of forty-three thousand four hundred and seventy-three dollars (\$43,473.00) appears on both the credit and debit side of the account ?

A. Yes.

Q. Have you any of the other books of the Company with you, Mr. Darling ?

A. They are all in Court here.

Q. Do you find anything in the books of the Company referring to the issue of certain bonds on the Company's property ?

A. The only entry with reference to the issue of bonds, which came under my notice, is in the minute book, where it appears that certain bonds were proposed to be delivered to John MacDougall, and other parties, but I am not aware that there is any entry anywhere to show what amount of bonds were issued, nor what became of them. 10

Q. Is it not a fact that the following entry appears in the said minute book : "Mr. G. Lomer having presented the list of bonds distributed, and " to be distributed, and hands balance to J. MacDougall, treasurer, and the " Hochelaga Bank for advances (0012 to 0021—\$10,000.00). Twelve to twenty- " one—Ten thousand dollars, and that further, payment is made to Adolph " Lomer as having received bonds of the Company as collateral numbers (0022 " and 0032) twenty-two and thirty-two (0001 and 0009) one and nine, (0046 and 20 " 0050) forty-six and fifty (\$25,000.00) twenty-five thousand dollars," and that further appears the name of Roofer and Company as having received (\$20,000.00) twenty thousand dollars of the said bonds, and will you state at what meeting the resolution and entries in question appear to have been passed ?

A. The entries referred to appear under date of the eleventh of August eighteen hundred and eighty-two, on which date a meeting of directors is recorded on page sixty-five of the minute book. All the said entries appear on said page, as stated in the question.

Q. The minutes of the meeting appear to be signed on page sixty-six by the President ? 30

A. Yes.

Q. Do you know when these bonds were received by the Hochelaga Bank ?

A. I know nothing concerning the bonds but what is stated in the said entry.

Q. Is there anything in any of the other books of the Company to shew the disposition of these bonds ?

A. There is nothing to my knowledge.

Q. Have you examined all the books ?

A. I have been through all the books. 40

The remaining parties in this case decline to cross-examine this witness. And further deponent saith not.

JAMES VINCENT,

Stenographer.

(ENDORSED).

Deposition of Thomas Darling for Petitioner filed 9th Oct. 1886. Paraphed H. & G. P. S. C.

## SCHEDULE No. 192-

In the Superior Court for Lower Canada.

Present :

THE HONORABLE MR. JUSTICE MATHIEU.

RECORD

*In the  
Superior  
Court.*No. 150  
Deposition of  
Samuel W.  
Beard  
for Petitioner, La  
Banque  
d'Hochelaga  
dated 10th  
June 1885

10 On this tenth day of June, in the year of our Lord, one thousand eight hundred and eighty-five, personally came and appeared: Samuel W. Beard, of the city and district of Montreal, coal merchant, aged over forty years and witness produced on the part of the Petitioners who, being duly sworn, de-  
20 poseth and saith: I am not related, allied, or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

On the twenty-eighth day of December, eighteen hundred and eighty-two, or a day or two previous, I purchased from the Plaintiffs in this cause their judgment against the Defendant in this cause and I remain the owner of said judgment, I have taken communication of Petitioners' Exhibit "A 3" and I am one of the parties who signed the said exhibit. The object in purchasing  
20 the said judgment was to prevent the property from being sold if possible, that was the object at the time, because the property had been seized and advertised by the Sheriff for sale.

Q. How came you to decide otherwise?

Objected to as it is not a matter for the decision of the witness, whether said Sheriff's sale should proceed or not, there being other writs against the property in question in the hands of the Sheriff before the sale.

The objection is reserved by consent.

A. I wrote to the Sheriff notifying him that I had a judgment, and suggesting that probably the sale might not take place, might not go on, to  
30 which if I remember rightly, I got a reply stating that other writs had been lodged, and that the sale would take place, unless we settled.

Q. When was that?

A. Shortly before the advertisement of the sale, I think, about the first two or three days of January.

Q. Will you take communication of Petitioners' exhibit "A 1," and say if at the time the said Exhibit bears date, to wit, on the eighteenth day of December, eighteen hundred and eighty-two, you were then in communication with the Eastern Townships Bank, in view of effecting the arrangement which was afterwards closed between you and said Bank.

40 A. I was aware that the Eastern Township's Bank held a judgment for a considerable amount against the Company, and I wished to see them to ascertain what their views were on the general condition of the Company at that time, and in regard to their claim against the Company.

Q. Did you see them?

A. I saw Mr. Farwell.

Q. Will you say what passed having reference to what is mentioned in this question?

## RECORD

*In the  
Superior  
Court.*

No. 153.  
Deposition of  
Samuel W.  
Beard  
for Peti-  
tioner, La  
Banque  
d'Hoche-  
laga  
dated 10th  
June 1887.  
—Continued

A. He said there was no doubt the property would have to go to sale, and that as they were a large creditor, they would probably buy it. I then proposed that he should give me a letter, stating on what terms he would be willing to resell it in case he purchased it, and he gave me the letter Exhibit "A2" dated the sixth day of January, eighteen hundred and eighty-three. After I obtained that letter, I did not trouble myself particularly and further about it. I went out to the sale, but did not bid—but did not take any particular part in it.

Q. After this letter was sent, who had the taking of the proceedings in virtue of the Judgment in this cause: was it you or the Eastern Townships Bank? 10

A. I did not trouble myself any further about it then, but I went out to the sale.

Q. I did not ask you whether you troubled yourself or not, but I asked you. Was it the Eastern Townships Bank or you, who had the taking of the proceedings to arrive at this sale in virtue of Fairbanks' Judgment, from the moment that the letter Exhibit "A2" was signed?

Objected to as illegal and irrelevant in as much as it has been proved that at this time, the Writ was in the hands of the Sheriff, and the proceedings were beyond the control of the witness or any of the parties in this cause. 20

The objection is reserved.

A. If anything at all outside the regular course of procedure, that is to say by the Sheriff, was taken, it would have been by the Eastern Townships Bank, I did not meddle with it.

Q. Nor was there anything said between you and the officers of the Eastern Townships Bank, as to whether you were to interfere or not in any way?

A. There was a good deal of talk during the negotiations, (and during that interview when he produced this letter,) and among others the suggestion was made that probably these executions that were in the hands of the Sheriff might be withdrawn by the parties if they actually saw that the thing was going to be sold, and Mr. Farwell said that it would not do any good for if were withdrawn, they would simply put in other Judgments. The feeling was to bring the thing to a close. 30

Q. Was there any mention made of Mr. Doak as attending to the whole affair?

A. I did not remember at this interview of Mr. Doak's name being mentioned at all.

Q. In virtue of the agreement that was passed between you and the Bank, were you or Mr. MacDougall to bid on the property at the time of sale? 40

A. The understanding was we should not interfere at all.

Q. And Mr. MacDougall was he to interfere?

A. Well. He was not spoken of.

Q. At how much did you value the property at the time?

A. Well. We supposed it would cost somewhere in the neighbourhood of two hundred and fifty thousand dollars, (\$250,000,) as I was told and I believe the actual disbursements were in that neighbourhood, or even more,

and we thought it was worth something near what it would cost.

Q. Were you the lessee of the property at the time ?

A. Yes.

Q. You had been operating it for some time past ?

A. Yes. Under not very favourable circumstances.

Q. If you had not obtained this letter from the Eastern Townships Bank, would you have allowed the property to be sold for fourteen hundred dollars or twenty or thirty thousand dollars ?

10 A. No. Some other offer would have been made to have brought about a different result.

Q. For how much would you bid on the property at the time ?

A. At the time I was unable to have done anything with it. I had lost very heavily through it, and my object was to recoup the loss that I had sustained through it, by getting it at a cheap rate and it was with that object that I was anxious that it should come into the hands of the Bank, so that they could finance it.

Q. You say that the efforts would have been made to get another result : what do you mean ?

20 A. I mean to say that if they would not have gone into it, efforts would have been made to induce some one else to have gone in and bid on it, and bought it at whatever price it would have been sold at.

Q. What do you consider the property then to be cheap at ?

A. The impression was that we were getting it at certainly about one quarter of its value.

Q. Fifty thousand dollars was one quarter of its value ?

A. Fifty thousand dollars was one quarter of its value. That was the impression at the time.

Q. Well, whose impression ?

30 A. That was my impression, and the impression of those who had to do with it.

Q. Have you any doubt that you would have been able to make other arrangements to have the property bid to at least forty or fifty thousand dollars ?

A. Well, I would not like to say, as the circumstances did not arise to make it necessary to try ; after the arrangement was made with the Bank I looked upon it as unnecessary further to do anything.

Q. Have you the statement of account furnished to you by the Bank at the time of the arrangement in question, and if so, will you file it ?

40 A. This is the one exhibit "B I" now fyled. The figures written in blue pencil are mine. According to this statement of account the indebtedness of the Bank amounted to forty-nine thousand four hundred and thirty-nine dollars and seventy cents (\$49,439.70).

And further deponent saith not for the present and his examination is continued to a future day to be hereafter decided upon.

JAS. H. BROWNING,  
Stenographer.

RECORD.

*In the  
Superior  
Court.*

No. 15 )  
Deposition of  
Samuel W.  
Beard  
for Petitioner, La  
Banque  
d'Hochelega  
dated 10th  
June 1885  
*Continued.*—

## RECORD

*In the  
Superior  
Court.*

No. 153.  
Deposition of  
Samuel W.  
Beard  
for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 10th  
June 1887.  
—Continued

And on this fourth day of May, in the year of Our Lord one thousand eight hundred and eighty-six, re-appears the said witness, Samuel W. Beard, and continues his evidence in chief as follows :

Since giving my evidence on the tenth day of June, eighteen hundred and eighty-five, by referring to the record of Fairbanks against myself, I have ascertained that it was on the twenty-eighth (28th) of December, eighteen hundred and eighty-two (1882), that I bought the Plaintiff's Judgment in the present cause.

Q. Will you please refer to the exhibit "B I" and say in virtue of the agreement entered into between you and the Eastern Townships Bank what was to be done with the five thousand dollars (\$5,000) therein mentioned as forming part of the twenty-three thousand seven hundred and twenty-nine dollars and eighty cents (\$23,729.80). 10

A. It was probably treated as a debt of the Company only, and not held against Mr. Hagar, that was of the note of Charles Hagar held by the Bank which they included in the price of the claim that they made against the Company and which was to be allowed as part of the purchase money.

Q. Then you were not to get that note of Hagar nor any benefit deriving from it?

A. No. The bank reserved its right to do what they liked with it, they would not give it to us. 20

Q. This Charles Hagar : He was the President of the Company at the time, was he not?

A. Yes.

Q. Were you present at the sale of the property?

A. Yes.

Q. Was there anything mentioned then about the Eastern Townships Bank?

Objected to as illegal and irrelevant.

The question is waived. 30

Q. Will you say what passed with reference to bidding on the property, or to any knowledge being given to the parties present of the mortgage that the bank had on the property?

A. The General Manager of the bank, of the Coaticooke branch were both present, and as far as I can remember the impression was among the audience, that they were going to purchase it, and I judged from that circumstance, and the impression seemed to be that they were going to purchase it.

Q. Was it made known. Was the existence of their judgment or mortgage made known?

A. The affairs of the Company had been very generally discussed by everybody out there, and it was well known by everybody out there that the bank had a large claim, and intended to purchase. 40

Q. Was there any objection at all made against the bank?

A. No.

Q. How did they come to pay the fourteen hundred dollars?

A. I think the fourteen hundred dollars (\$1400.00) was arrived at by the calculation of some taxes or preference claims, or something of that kind,



that was against the property  $\frac{1}{2}$ , what would have to be paid anyway. I think that was how the thing was arrived at. It was something in that direction anyway.

Q. How do you account for their being no competition for a property of that kind, and it being allowed to be sold for fourteen hundred dollars (\$1400.00)?

10 A. Well I can only speak for myself as regards that. I held an arrangement with the Bank that they would purchase the property in which they pledged themselves to purchase the property, and consequently as far as I was concerned, we took no further interest in the matter, knowing what we had to do, after it went into their hands.

Q. I believe that you have already stated that you would not have allowed the property to sell for fourteen hundred dollars, if you had not had the arrangement with the Bank?

A. If we had not had that arrangement with the Bank, some other arrangement would have been made whereby the property would not have gone for any low figure.

Q. Were you able to find out what prevented the other parties present at the sale from bidding on the property?

20 A. Well, I did not make any particular inquiry among the other people, but as far as I was concerned, and my friends, it was against the arrangement that we had, that we should compete.

Q. You did not hear any remarks passed by the other parties then present?

A. No.

Q. Do you know the saw mill there that was sold with that property?

A. Yes.

Q. It was an independent property, or had it to be sold with the property?

30 A. It was an entirely disconnected with the factory proper. There was a little creek or river running between, not at all connected with the property.

Q. When you operated the factory, did you run the saw mill?

A. No. It was let to somebody else.

Q. How came it to be sold?

A. I understood the land belonged to the company, and was sold *en-bloc*.

Q. Was it you who arranged to have it sold *en-bloc*?

A. No.

*Cross-examined* under reserve of objections.

40

Q. You say that after you purchased the judgment in this cause against the Defendant, you wrote to the Sheriff, what was your object in writing to the Sheriff?

A. To ask him to stay the sale. We did not want to have it sold.

Q. Why did you not want to have it sold?

A. We would rather have it remain as the way it was.

Q. Was that after you made the arrangement with the Eastern Town-

RECORD

In the  
Superior  
Court.

No. 150  
Deposition of  
Samuel W.  
Beard  
for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 10th  
June 1885  
*Continued.*—

## RECORD

*In the  
Superior  
Court.*

No. 159.  
Deposition of  
Samuel W.  
Beard  
for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 10th  
June 1887.  
—Continued

ships Bank ?

A. Oh, no.

Q. What was your object then in purchasing it ?

A. I simply thought it was like the purchasing of goods that it would stop the sale, that they would withdraw it. I wrote to the Sheriff stating that I had a judgment, and suggesting that probably he would stop the sale, and then we found out through him, I believe, in his reply that other writs had been put in which forced on the sale. I did not think it would go that far. I was hopeful it would not at any rate.

Q. Did you purchase the judgment before you sent the Writ to the Sheriff ? 10

A. The Writ was in the Sheriff's hands before I purchased the judgment. I think the advertisement in the Gazette was out before we purchased it.

Q. The Bank is now suing you, are they not, for the balance of the purchase price of this property ?

A. Yes.

Q. Under this agreement that you made with them ?

A. Under the outcome of that agreement.

Q. Under the Deeds passed in pursuance of that agreement ? 20

A. Yes.

Q. You have filed a plea to that action, under which you have alleged the same things that are urged by the Petitioner in this matter ?

A. The plea speaks for itself.

Q. You objected to pay for the property on the ground that there is a doubt as to the Bank's title ?

A. I think that is it.

Q. Have not you and your colleagues found that the purchase of this property was a bad investment at the price you agreed to give the Eastern Townships Bank for it ? 30

A. I will not say that.

Q. Will you swear that it was not ?

A. I do not think it is. I think the property is exceptionally cheap if it could have been handled at once.

Q. Then you think that the price that you agreed to give to the Eastern Townships Bank for this property was a reasonable price ?

A. We looked upon it as a very cheap thing. At the time we thought we could recoup a great deal of what we lost out of the difference in value, and the price we had been paying.

Q. Did you not get possession of the property at once ? 40

A. I cannot say. I left it all to Mr. MacDougall.

Q. Are you not aware that Mr. MacDougall took possession of the property immediately after the title was passed ?

A. I think he did. I did not have any hand at all in it ?

Q. Are you aware that the property had been conducted there at a loss ?

A. I am aware that the operations of the Pioneer Beet Root Sugar Company were terribly disastrous.

Q. Are you aware that subsequently to the Pioneer Beet Root Sugar Company doing business there, that the property was conducted at a loss ?

A. That was from circumstances that could have been controled. We could not get enough Beets from the farmers.

A. You were interested in the concern at that time ?

A. Yes.

Q. Has there been any attempt made the work to property since the purchase of the property ?

A. No.

10 Q. Why did you not attempt it ?

A. Mr. MacDougall seemed to be in doubt as to whether we could hold the property at all under the arrangement.

Q. When did he first had that doubt ?

A. Shortly after the deeds were passed : sometime afterwards.

Q. Before any action was taken by the Hochelaga Bank ?

A. I think so.

Q. Is it not a fact that Mr MacDougall requested the Hochelaga Bank to assume a portion of its liabilities in this matter ?

20 A. I do not think it is exactly in that shape. I think the Hochelaga Bank was claiming to have an interest in the purchase, and Mr. MacDougall said that if they so considered it they must bear their share of the payments.

Q. The Hochelaga Bank set up this claim to Mr. MacDougall and to you, as charges on the property ?

A. No. I think they were saying they should claim some interest in it, and when he knew that they took that view ; he proposed that they should join in the thing, but I do not know that from my own knowledge, any more than hearsay.

Q. Hearsay from Mr. MacDougall ?

A. I think so.

30 Q. He was one of your partners in this purchase ?

A. Yes.

Q. What was the nature of the interest that the Hochelaga Bank claimed ?

Q. The Hochelaga Bank had made some advances to Mr. Adolph Lomer who was acting on joint account with me in running the factory, and there was very heavy losses made in consequence and they claimed through him to have a hand in it.

Q. The advances made by the Hochelaga Bank were to Adolph Lomer ?

A. Yes.

40 Q. Personally ?

A. I think so.

Q. Was it for that amount that they based their claim against the Pioneer Beet Root Sugar Company. For their amount of advances through Lomer ?

A. I cannot say that as a fact. I only know from hearsay.

Q. Now just before Sheriff's sale of this property, you were running it on joint account with Mr. Lomer ?

## RECORD

*In the  
Superior  
Court.*

No. 159.

Deposition of  
Samuel W.  
Beard  
for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 10th  
June 1885.  
—Continued

A. Yes.

Q. Not for the Company, but for yourself ?

A. Yes.

Q. Was Mr. MacDougall interested at that time ?

A. No. Not at all.

Q. When you made this arrangement that you have spoken of with the Eastern Townships Bank was it you that induced Mr. MacDougall to go into it ?

A. After the arrangement was made I shewed him what I had ; what the arrangement was that I had made ; and as I knew he was a heavy loser by the concern, I thought probably he would be willing to join me in it—to assist himself as well as myself in extricating us from some of the losses we had made. 10

Q. How was Mr. MacDougall a heavy loser ?

A. He supplied the boilers, and a great deal of the machinery. He advanced the money.

Q. And was a creditor of the Company ?

A. Yes, very largely so.

Q. So that he was induced to go into this arrangement with the idea of saving himself from loss ? 20

A. Yes. To recoup himself somewhat for the losses he had sustained. That is to say, I looked upon it in that way, and after getting the arrangement from the Bank, I thought he would have no hesitation in joining in it.

Q. Did Mr. Mac Dougall look upon it as favourable ?

A. Yes.

Q. There was no secret about that sale ?

A. There was not much noise about it.

Q. It was conducted in the regular manner, was it not ?

A. There was no effort made to get a price. It was a foregone conclusion that they would get it (the Bank). 30

Q. They had a mortgage on it and a large judgment and more interest in it than anybody else, and no one was prepared to go higher ?

We looked upon it as being a cash sale, and the Bank was better prepared to handle it.

Q. Now I will ask you this question. Do you know any individual who would give twenty-five thousand dollars cash for that property at that sale ?

A. No, for the simple reason that I did not pay any further attention to it.

Q. I ask you again. Do you know of any person who was prepared to give twenty-five thousand dollars for that property at Sheriff's sale ? 40

A. I cannot say that I did. I could not say that I was aware of any one for the reason that I did not pay any further attention to it.

Q. Do you know of any one that would have paid twenty-five thousand dollars cash for that property at Sheriff's sale ?

A. I could not say for any one.

Q. You must know one way or the other ?

A. I cannot name anybody. I have no authority to name anybody.

Q. You never heard anyone say that they would give twenty-five thousand dollars for that property cash?

A. I am not prepared to mention any names. I am not prepared to mention the name of any one for the moment.

Q. If you had not made this arrangement, would you have been prepared to give twenty-five thousand dollars cash for this property?

A. I would certainly have made an arrangement whereby the property would have been bought in at such a price as that I think.

10 Q. Could you have made arrangements to pay cash for the property?

A. For the simple reason that the question did not come up in that shape, I could not say. The property was worth in the neighbourhood of three hundred thousand dollars—and it was looked upon at that time as about the correct price, and I think there would have been no difficulty whatever in inducing people to have gone into it at that small rate (\$25,000).

Q. But could you name any one who would be prepared to give twenty-five thousand dollars cash for that property at that sale?

A. I have no authority to name anybody.

20 Q. Do you know whether John MacDougall would have given twenty-five thousand dollars cash for that property at Sheriff's sale?

A. I consider that I have no right to say one way or the other about that.

Q. Do you know that he would?

A. I cannot answer that. I could not say what he could or would not do.

Q. Did you ever ask him if he would give twenty-five thousand dollars for the property?

A. I had no occasion to ask him that.

30 Q. Do you know anyone who would be prepared to pay at that sale, the amount of the Bank's Mortgage?

A. I have no authority to name anyone.

Q. I did not ask you what authority you had or whether you had any authority or not. I ask you if you know anyone who would have been prepared to pay twenty-five thousand dollars for that property at that sale?

A. I have no authority to mention names.

Q. But without stating your authority, would you state if you know anyone who would be prepared to give twenty-five thousand dollars for that property at that sale?

40 A. I am not prepared to mention any name in connection with that property at all.

Q. Are you aware that at that sale, there were parties there representing other creditors who had judgments against the property?

A. I do not remember for the moment.

Q. Are you not aware that parties were there representing creditors, such as the Goodyear Rubber Company, and somebody else, who had writs in the hands of the Sheriff?

A. If I remember right, Mr. Fleet, advocate, of Montreal, was there

RECORD

*In the  
Superior  
Court.*

No. 159  
Deposition of  
Samuel W.  
Beard  
for Peti-  
tioner, La  
Banque  
d'Hochelega  
dated 10th  
June 1885  
*Continued.*—

## RECORD

- representing some person, but I do not know who it was.
- In the Superior Court.*
- No. 159.  
Deposition of Samuel W. Beard for Petitioner, La Banque d'Hochelaga dated 10th June 1887.  
—Continued
- Q. Are you not aware that other writs have been lodged with the Sheriff prior to the sale, and also that there was a Judgment ?
- A. I think there was two smaller ones.
- Q. Now this Company—the operations of this Company resulted in a total loss to the shareholders, did it not.
- A. Yes.
- Q. It had been very unsuccessful ?
- A. Yes.
- Q. They had plenty of money when they started ?
- A. No I do not think they had enough money when they started. I think they spent too much on the property. 10
- Q. Then you think the property cost too much ?
- A. No. I think they have not enough money for the size of the undertaking.
- Q. Then it would require a larger sum of money to start it anew ?
- A. Yes.
- Q. Now was any statement made—You have stated about the claim of the Bank. Did the Bank by any of its officers make any statement with regard to their claim, or their intention of bidding up to their claim, can you swear 20 that ?
- A. I can only speak from my own impression. My impression was very strong that they were going to buy it.
- Q. I am asking if you know as a matter of fact, if the Bank by any of its officers, made a statement that they intended to bid the property up to the amount of their claim ?
- A. I cannot put it in that shape, or I would be justified in stating it was, although my impression was that it was.
- Q. Who made that statement ?
- A. Both Mr. Farwell and I talked it over very freely, and the under- 30 standing was that they would buy it.
- Q. I do not ask you what you understood. I ask you whether you know as a matter of fact that the Bank by any of its officers at that sale made the statement that they intended to bid the property up to the amount of their claim, whether any such statement was made by Mr. Farwell or Mr. Austin ?
- A. I am not able to state that it was.
- Q. Would you state that it was not.
- A. I will not state that it was, and I will not state that it was not.
- Q. You have stated that if you had not had this arrangement with the Bank, some other arrangement would have been made, with whom else did you 40 make arrangements, or would have you have made arrangements ?
- A. I am not prepared to state that at all the occasion did not call for that, consequently no attempt was made.
- Q. Should you have made arrangements with anybody else ?
- A. I think I would.
- Q. Is it not true that the Bank made this arrangement only because they feared the property would not sell for a sufficient amount to cover their

claim ?

A. Oh, no Mr. Farwell all through the negotiations talked as if he considered he was giving us a very good bargain a very good thing, and we thought he was.

Q. When did you find out that it was not a good bargain, have you discovered it was not a good bargain at all ?

A. A property like that is only suitable for one kind of business, and laying idle it is of course not very profitable.

Q. Why is it idle ?

10 A. Well. As far as I am concerned, I got into difficulties otherwise, and was not able to go on with it and I cannot tell why particularly Mr. MacDougall did not go on with it ; I will not speak for him.

Q. You had not the money to carry it on ?

A. No.

Q. Did you not have money to carry it on during the first part of eighteen hundred and eighty-three.

A. No. At no time to carry it on property, and positively the thing was never in the shape it ought to be. We were led to believe there were plenty of beets grown, and when we came to manufacture there was not ten  
20 per cent of the beets that we required for manufacture, and that we were led to expect forth coming.

Q. You bought it before the Bank, and so you had better information about it than the Bank ?

A. No. We were led to believe it would be profitable, and I consider it would, if we had plenty of raw material.

Q. Had you not sufficient material ?

A. No.

Q. If you had would it have been a profitable undertaking ?

A. I think the thing now would be sure to be a profitable under-  
30 taking, if you could get sufficient raw material. If it was properly supplied with beets you could make lots of money out of it.

Q. Do you swear that was the only trouble with this undertaking that it was not a productive concern ?

A. I think if it was plentifully supplied with beets, and was run by people who understand it that money could be made out of it.

Q. But you did not operate it after you purchased it. Of course you thought there was no money to be made out of it ?

A. No. I got into difficulties shortly afterwards, and was unable to do anything further in it.

40 Q. Mr. MacDougall was not in difficulties ?

A. I do not know that he was. I cannot speak for him.

Q. Were you in difficulties the first part of eighteen hundred and eighty-three ?

A. Well. It was in such a shape that we could not get the beets grown. We could not get the farmers to grow the beets with any certainty.

Q. Did you not attempt to run it later on ?

A. We could not get the beets grown in the Spring.

RECORD.

*In the  
Superior  
Court.*

No. 159  
Deposition of  
Samuel W.  
Beard  
for Peti-  
tioner, La  
Banque  
d'Hochelega  
dated 10th  
June 1885  
*Continued.*—

RECORD

*In the  
Superior  
Court.*No. 15).  
Deposition of  
Samuel W.  
Beard  
for Petitioner,  
La Banque  
d'Hochelaga  
dated 10th  
June 1887.  
—Continued

Q. But you took over the contract ?

A. Yes. But we did not get ten per cent of the beets that we were led to believe there would be furnished to us.

Q. And then you abandoned it over to Mr. MacDougall this thing ?

A. When.

Q. After you bought it ?

A. After I bought it, shortly afterwards, I got into difficulties ; I was not able to meet the thing.

Q. How long had you been running it before you purchased it ?

A. Only a few months. 10

Q. Since when ?

A. I forget exactly. Sometime in the fall of eighteen hundred and eighty-two.

Q. You swear that ?

A. I think it was in the summer or fall in that year.

Q. Is it not a fact that you took it over in June or July in eighteen hundred and eighty-two ?

A. It may have been. I forget exactly. I think it was towards the fall.

Q. So you had over six months to prove the truth of the representations of the Company ? 20

A. No. The Beets were the only things to come in the Fall, and there was only these two or three months.

Q. And you had all the Fall to obtain the beets ?

A. Yes. There was a difficulty about the success in that Fall. There were no Beets. The Beets were not forth coming as we were led to suppose they would be.

Q. Do you swear that you had the capacity to run all the Beets you could get there ?

A. Yes. As I understand it. The thing (factory) as the capacity to 30 run a large quantity of beets.

RE-EXAMINED.

Q. Mr. John MacDougall is a man of large means ?

A. Yes.

Q. He is considered to be worth how much ?

A. All the way up past a quarter of a million dollars or more.

RE-CROSS-EXAMINED.

Q. These arrangements were made with Mr. A. Rough ? 40

A. The arrangements were made by Mr. Farwell with myself and Mr. MacDougall. The agreement or letter was addressed to us, but afterwards Mr. MacDougall thought he would prefer not to be in it, but he would guarantee the agreement, and he induced Mr. Rough to assume it.

Q. Mr. Rough was his Book-keeper ?

A. He was in his employ.



And the further deponent saith not.

JAMES HENRY BROWNING,  
Stenographer.

ENDORSED.

Deposition of S. W. Beard for Petitioner, fyled 9 July 1886. Paraphed  
H. & G. P. S. C.

RECORD.

*In the  
Superior  
Court.*

No. 159  
Deposition of  
Samuel W.  
Beard  
for Peti-  
tioner, La  
Banque  
d'Hochelaga  
dated 10th  
June 1885  
*Continued.—*

10

SCHEDDULE No. 193.

Cour Superieure pour le Bas-Canada.

PRÉSENT :

20

L'HONORABLE JUGE JOHNSON.

No. 160.  
Deposition of  
C. Lamou-  
reux, for  
Plaintiff,  
Fairbanks &  
Co, dated  
5th March  
1886.

L'an mil huit cent quatre-vingt-six, le cinquième jour de mars, est com-  
paru ; Charles Lamoureux, manufacturier, de Coaticooke, âgé de quarante-six  
ans, témoin produit par le demandeur, lequel, après serment prêté dépose et  
dit : Je ne suis point intéressé dans l'événement de ce procès ; je ne suis ni  
parent, ni allié, ni au service d'aucune des parties en cette cause.

Q. Vous êtes manufacturier de meubles n'est-ce pas ?

R. Oui.

Q. Et vous demeurez à Coaticooke ?

30

R. Oui.

Q. Vous connaissez bien la propriété connue comme étant la propriété  
de la Compagnie Beet Root Sugar Company ?

R. Oui.

Q. Connaissez-vous le moulin à scie qui a appartenu à cette compa-  
gnie ?

R. Oui.

Q. Avez-vous loué le moulin à scie, et si oui, à quelle époque et de  
qui ?

40

de ma connaissance.

Q. De qui ?

R. De monsieur Joshua Parker.

Q. Qui lui l'avait loué de la compagnie de sucre de betterave ?

R. Oui.

Q. Quel loyer payiez-vous pour cela ?

R. Cinquante piastres par mois.

Q. En étiez-vous le locataire lorsque la vente par le shérif a eu lieu de

- RECORD la Compagnie de sucre de betterave ?
- In the Superior Court.*
- No. 160. R. Oui.
- Deposition of Charles Lamoureux, for Plaintiff Fairbanks & Co, dated 5th March 1886. —Continued
- Q. Et ça vous a privé de votre bail ?
- R. Oui.
- Q. Votre bail a été résilié en conséquence parce que vous n'aviez pas fait d'opposition ?
- R. Oui, j'ai été obligé de payer même sans avoir la propriété.
- Q. Parce que vous aviez payé d'avance à Parker, parce que vous aviez acheté ?
- R. Oui, parce que Parker prétendait que c'était une vente de ses droits pour seize mois le bail était pour seize mois.
- Q. Ce moulin-là, c'est-à-dire la propriété occupée par le moulin a-t-elle quelque rapport avec le reste de la propriété de la Pioneer Beet Root Sugar Company ?
- R. Ça se trouve séparé.
- Q. Considérez-vous cela comme une propriété indépendante ?
- R. Moi, je l'ai louée pour une propriété indépendante ; la manufacture de sucre de betterave a été bâtie après le moulin à scie ; c'est indépendant.
- Q. Et ça pouvait être facilement vendu comme propriété indépendante et exploité comme tel ?
- R. Oui. 20

## TRANSQUESTIONNÉ.

- Q. Vous avez occupé la propriété après la vente par le shérif ?
- R. Non, après la vente on n'a pas eu le droit d'y aller.
- Q. Le moulin a été construit par la compagnie ?
- R. Non, le moulin était construit avant que la compagnie vint bâtir sa manufacture ; le moulin était un vieux moulin ; la compagnie a acheté le moulin.
- Q. Mais la compagnie a fait usage de ce moulin ?
- R. Ils se sont servi de ce moulin pendant un an, pour scier leur bois, pendant qu'ils construisaient leur bâtisse, et ensuite ils l'ont loué au nommé Parker. 30
- Q. Qui, lui vous l'a loué ?
- R. Oui.
- Q. Qui a occupé le moulin après vous ?
- R. C'est M. Doak qui l'a loué, je suppose. C'est M. Doak et M. Parker qui le marchaient.
- Q. Est-ce occupé maintenant ?
- R. Non, et ça n'a pas été occupé depuis ce temps-là
- Et le déposant ne dit rien de plus, la présente déposition est une transcription fidèle et exacte de mes notes sténographiques prises en cette cause. 40

J. T. THOMPSON,  
Sténographe.

ENDORSED.

Déposition de Chs. Lamoureux pour le Demandeur, fyled 9 July 1886,  
Paraphed H. & G. P. S. C.

## SCHEDULE No. 194.

In the Superior Court for Lower Canada.

RECORD.

*In the  
Superior  
Court.*

No. 161.  
Deposition of  
Robert  
Craik, physi-  
cian, for Pe-  
titioner La  
Banque  
d' Hochelaga  
dated 4th  
October 1888

On this fourth day of October in the year of Our Lord one thousand eight hundred and eighty-eight, personally came and appeared : Robert Craik of the City of Montreal, Physician, aged        years, and witness produced on the part of the Petitioner who, being duly sworn, deposeth and saith : I am not related, allied, or of kin to, or in the employ of any of the parties in this

10 cause ; I am not interested in the event of this suit.

Q. Do you know Mr. John MacDougall ?

A. Yes.

Q. I think you have been attending to him since his first attack of paralysis ?

A. Yes, I have attended since twenty years at least.

Q. Will you take communication of the order for faits et articles, and interrogatories, which are now handed to you, and will you say to the Court whether Mr. McDougall is in a position to answer these questions ?

A. I have read them a few moments ago. I am sorry to say that it is

20 quite impossible for him to reply to any questions of that nature. He has not been able to speak two consecutive words since August of 1886.

Q. Do you think he could understand these questions ?

A. No. I don't think he could follow any of them. His memory is almost entirely gone, in fact he is sinking into imbecility. The injury to his brain was very severe and it has become worse. He had a second fit in February of this year and since then he has been considerably worse.

Q. Do you think it would affect him in any way if he was brought into Court here ?

A. It certainly would be very dangerous. The fit he had in February

30 last was after a little excitement the day before, and I would not be answerable for consequences were he brought to Court. I am sorry to say that, but we have to keep a nurse there night and day in order to be prepared for emergencies. He has not the slightest power over his right hand and arm. He can walk a little by dragging his right foot.

## CROSS-EXAMINED

Q. Does he recognize individuals ?

A. Yes he does. At least he recognizes me and those he is accustomed

40 to see.

Q. Do they not ask him questions ?

A. They ask him simple questions about matters that are present before him, and he will signify sometimes rightly and sometimes wrongly. He has never been able to say yes nor no.

Q. He tries to show in some way whether he assents or dessents ?

A. Yes.

Q. Without his coming to Court would it in any way affect his health

RECORD

seriously if he were examined at his own residence ?

*In the  
Superior  
Court.*

A. I don't think it would be safe to discuss any serious matter of business with him.

Q. You would not be prepared to say that it would necessarily be fatal to him.

No. 161.  
Deposition of  
Robert Craik  
physician, for  
Petitioners  
La Banque  
d' Hochelaga  
dated 4th  
October 1888  
—Continued

A. No, I could not say that, of course, because no person can answer a question of that kind, but I certainly would not take any responsibility of permitting it.

Q. Mr. MacDougall has large interests, has he not ?

A. He had, I know. 10

Q. Has he ever been interdicted ?

A. Not to my knowledge.

Q. Is he not consulted by his business friends about business mat-  
ters ?

A. I don't think he has for a long time. At first we used to talk business to him, and we sometimes imagined he understood us to a very limited extent, but nothing of that kind has ever transpired in the last year, certainly not since last February. I have strictly forbidden him to be excited in any way from fear of bringing on any of these attacks such as last February.

Q. Is it paralysis ? 20

A. Yes.

RE-EXAMINED.

Q. You don't think he could understand these questions sufficiently well to answer them ?

A.—I am sure he could not understand them intelligently.

And further Deponent saith not.

WM. MCGOUN,  
Stenographer.Deposition of Robert Craik for Petitioners, fyled 13th Oct., 1888. (Par-  
aphed) G. H. K., Dep. P. S. C. 30

## SCHEDULE No. 195.

No. 162.  
Deposition of  
F. L. Beique  
Q. C., for  
Petitioner La  
Banque  
d' Hochelaga  
dated 3rd  
October 1888

In the Superior Court for Lower Canada.

On this third day of October, in the year of Our Lord, one thousand eight hundred and eighty-eight, personally came and appeared : Frederick L. Beique, of the City of Montreal, Esq., Queen's Counsel, aged years, and witness produced on the part of the Petitioners, who, being duly sworn, deposeth and saith :—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit. 40

I am attorney for the Petitioner and I am the party who dictated the

letter filed as exhibit X dated the twenty-eighth day of April, 1883. I came to cause this letter to be written under the following circumstances :—

Objected to any explanation of this letter exhibit X as illegal.  
Objection reserved.

RECORD

*In the  
Superior  
Court.*

—  
No. 162.

Deposition of  
F. L. Beique  
Q. C., for  
Petitioner.  
La Banque  
d'Hochelega  
dated 3rd  
October 1888  
*Continued.*—

A few days before writing this letter I met on board the cars Mr. John Thornton one of the Directors of the Eastern Townships bank, when I was on my way to Sherbrooke or Coaticooke for the purpose of inquiring as to the sale of the property in question. As I was well acquainted with Mr. Thornton, he asked me the object of my trip, I told him that I was going out there for the purpose of getting information as to the circumstances under which that sale had taken place, with a view of asking it to be set aside. He then suggested that I should write to Mr. Farwell, manager of the bank, before taking any proceedings, with a view of coming to a settlement if it was possible. I believe I did write to Mr. Farwell and was then asked to write to Mr. Doak, as he was the party who managed the whole affair. It was then that the letter filed was written. Whether it was suggested by Mr. Farwell himself by letter or by Mr. Thornton I know I was requested by somebody on behalf of Eastern Townships Bank to write directly to Mr. Doak.

The adjudicataire relying on his objection declines to cross-examine.  
And further deponent saith not.

WM. MCGOUN,  
Stenographer.

(ENDORSED)

Deposition of Frederick L. Beique Esq., for Petitioner, fyled 13th Oct., 1888. (Paraphed) G. H. K., Dep. P. S. C.

30

## SCHEDULE No. 196.

In the Superior Court for Lower Canada.

On this third day of October in the year of Our Lord one thousand eight hundred and eighty-eight, personally came and appeared: Toussaint Brosseau, of the City of Montreal, Esq., Advocate, aged \_\_\_\_\_ years, and witness produced on the part of the Petitioners who, being duly sworn, deposeth and saith :—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit,

Q. You are well acquainted with Mr. MacDougall?

A. Yes, I have been acting for him in several cases, for several years.

Q. Do you know that he has been paralyzed for the last couple of years?

A. Yes, I am aware of that fact. During these two years I have been to see him myself, and personally I know he cannot say a word, to my knowledge.

No. 163.

Deposition of  
T. Brosseau  
advocate, for  
Petitioner  
La Banque  
d'Hochelega  
dated 3rd  
October 1888

## RECORD

*In the  
Superior  
Court.*

No. 163.

Deposition of  
T. Brosseau  
advocate, for  
Petitioner  
La Banque  
d' Hochelaga,  
dated 3rd  
October 1888  
—Continued

Q. He is unable to be examined as a witness ?

A. He is unable to be examined as a witness.

Q. Does he not understand what you say to him ?

A. Really I could not say whether he understands or not, because he cannot say yes or no.

Q. Cannot he intimate by some motion whether he assents or dissents from the question ?

A. He makes motions, but for myself I could not say that he understands.

Q. You have had some professional interviews with him ?

10

A. No, not since he has been paralyzed.

Q. Cannot he give some sign of assent or dissent ?

A. I never asked him direct questions, I have been to see him often but there were other people there present when we were talking and sometimes he would make a sign with his head, but whether he understood it or not really I could not say.

And further deponent saith not

WM. MCGOUN,  
Stenographer.

ENDORSED.

20

Deposition of Toussaint Brousseau, Esq., for Petitioners. Paraphed  
G. H. K., Dep. P. S. C.

SCHEDULE No. 197.

No. 164.  
Deposition of  
M. J. A.  
Prendergast  
cashier of  
Hochelaga  
bank, for ad-  
judicataire  
Eastern T. B.  
and M. E. C.  
Town of  
Coaticooke  
dated 28th  
March 1888.

In the Superior Court for Lower Canada.

30

On this twenty-eighth day of March, in the year of our Lord, one thousand eight hundred and eighty-eight, personally came and appeared : M. J. Alfred Prendergast, of the city and District of Montreal, cashier of La Banque de Hochelaga, Petitioner and witness produced on the part of the Adjudicataire, and M. E. C. the town of Coaticooke, who being duly sworn deposes and saith : I am not interested in the event of this suit.

Q. How long have you been cashier of the Hochelaga Bank ?

A. I have been cashier of the Hochelaga Bank since the fourteenth day of June, eighteen hundred and eighty-seven (1887). 40

Q. Have you examined the ledger and books of account of said Bank for the years eighteen hundred and eighty-two, and eighteen hundred and eighty-three (1883) and if so, state if you have found any account of the Pioneer Beet Root Sugar Co'y between those dates ?

A. I have examined the said books for the said period and find no account upon to the Pioneer Beet Root Sugar Co'y.

Q. Is there an account in said books against Adolph Lomer between those dates ?

A. Yes sir.

Q. Can you produce a statement of the account against A. Lomer for the year eighteen hundred and eighty-three ?

In the absence of the books of the Bank the answer is deferred for the present.

Q. Can you produce the warehouse receipts of molasses and bone-black taken either in the name of Adolph Lomer of the Pioneer Beet Root Sugar Company in eighteen hundred and eighty-three (1883) immediately preceding the sale ?

A. I am not in a position to answer the question not having referred to these transactions.

And further for the present the Deponent saith not his examination having been adjourned until the twenty-ninth day of March at the office of the Banque de Hochelaga, to permit the witness to refer to the Bank books.

And on this twenty-ninth day of March eighteen hundred and eighty-eight reappeared the said witness, by consent of the parties, and continued his testimony as follows :

I now produce the warehouse receipts taken by the Bank as collateral security from the Company Defendant, and numbered from B to B.

Q. Have you any other warehouse receipts ?

A. Those are all that I can find. We may have had others but I have no record of them. We have further in our possession fifty-seven thousand dollars (\$57,000) worth (face value) of bonds of the Company Defendant. I take my information from memoranda in the Bank's possession, and on the package of bonds, which I now have before me and which I have in my possession as Cashier of the Bank I see nothing in the books to indicate when these bonds were received by the Bank, and I have no personal knowledge of their receipt. I cannot ascertain from any of the employees of the Bank when they were received. Mr. Brais, the then Cashier of the Bank might be able to give some information. That an account was opened with Adolph Lomer individually and we accepted originally three notes or drafts of the Company Defendant from Adolphe Lomer and with his endorsement. These notes were afterwards renewed by a single demand note of the Company Defendant to the order of Adolph Lomer in May eighteen hundred and eighty-two (1882) and Lomer received credit on his general account for the proceeds of this last mentioned note. His account on the twelfth of January eighteen hundred and eighty-three (1883) showed a balance against him of about one hundred and thirty-two dollars and eighty-two cents (\$132.82). The ten thousand dollar note of the Company had not been paid and was entered on our liability ledger and charged to the account of Adolph Lomer. The ten thousand dollar demand note had never been charged back against Lomer on his current account if it had been so charged it would have increased his liability on his current account by that amount.

Q. Had Mr. Lomer been depositing as well as chequing against this account between the date that this draft was charged and the twelfth of Jan.

RECORD.

*In the  
Superior  
Court.*

No. 164.  
Deposition of  
M. J. A.  
Prendergast  
cashier of  
Hochelaga  
bank, for ad-  
judicataire  
Eastern T. B.  
and M. E. C.  
Town of  
Coaticooke,  
dated 28th  
March 1888.  
*Continued.*—

RECORD

In the  
Superior  
Court.

No. 164.  
Deposition of  
M. J. A.  
Prendergast  
cashier of  
Hochelaga  
bank, for ad-  
judicataire  
Eastern T. B.  
and M. E. C.  
Town of  
Coaticooke  
dated 28th  
March 1888.  
—Continued

uary eighteen hundred and eighty-three (1883) ?

A. They were depositing as I see by this account.

Q. Did not the total amount of the credits, irrespective of the debits exceed the amount of this draft ?

A. The amount of his deposit is since the discounting of the note in question exceeded the amount of the note.

Q. Did the deposits and credit items to his account from the date of discounting the note in question to the twelfth of January eighteen hundred and eighty-three exceed the amount of his total liability ?

A. No sir, it did not.

Q. Now, what was his total liability to the Bank on the date that this note was discounted, after charging the note ?

A. I cannot state that without making up a statement. I would have to refer to the credit book and in fact to all the books to see what his total liability was at that date.

Q. Will you make a statement showing the total liability of Adolph Lomer to the Bank at the date of and after charging the ten thousand dollars note in question and also give me a statement of the gross amounts which have been credited to his account upon the books of the Bank without taking into account the debits from the date of charging this ten thousand dollar note up to and including the twelfth of January eighteen hundred and eighty-three.

Counsel for Petitioners objects to this question as irrelevant and entailing an enormous amount of unnecessary work.

The objection is reserved with the answer until it can be argued before a Judge at Enquête sittings.

Q. Will you also state what is the present position of Adolph Lomer's account with the Bank ?

Petitioner's Counsel objects to this question as illegal and irrelevant.

Objection reserved.

The examination of this witness is ajourned until the above mentioned objections are adjudicated upon by a Judge at Enquête sittings.

And on this third day of October, 1888, reappeared said witness and the above question was withdrawn by counsel for Adjudicataire and his further examination was continued as follows :

Q. Was the total of the credit items upon the account of the bank with Adolphe Lomer subsequent to the charging of the ten thousand dollar note in question in excess of his over draft with your bank at that date ?

Objected to as illegal.

Objection reserved.

A. The note in question was never credited back to Mr. Lomer on his current account, it was charged back in our liability ledger to Adolph Lomer. It was a demand note.

Q. When was it charged back in the liability ledger ?

A. I could not say without referring to the books.

Q. Please verify and state at what date it was charged back in the liability ledger ?

A. It was charged to Mr. Lomer's account in the liability ledger on

10

20

30

40



the sixteenth of May, 1882, the date of discount.

Q. Please verify and state total amount of credits to Adolph Lomer's account from the date of and after the date of charging the ten thousand dollar note. And state also what the total indebtedness to the bank was at the date of the charging of the said note, including the same?

A. When a note is discounted it is charged in the liability ledger directly to the party for whose benefit it is discounted. This note was discounted on the sixteenth of May, 1882, and the total liability then amounted to fifty-two thousand nine hundred and twenty-seven dollars and seventy-four cents on the liability ledger.

Q. Will you also state what were the total amount of credits irrespective of the debits from that date up to the twelfth of January, 1883?

A. Since the sixteenth of May, 1882, to January second, 1883, there was a total amount of one million sixty-five thousand one hundred and seventy-six dollars and nine cents credited. Add to that the balance to his credit when the note was discounted three thousand one hundred and twenty-eight dollars and ninety-seven cents.

Q. Has the Bank ever settled up with Adolphe Lomer?

A. There was a settlement given, I see by the copy of a letter that I have in my possession, which I have now file as exhibit Z.

Q. What is this claim referred to in this letter of twenty thousand seven hundred dollars against the Pioneer Beet Root Sugar Company?

A. I suppose that includes the ten thousand dollar note signed by the Pioneer Beet Root Sugar Company and some other paper that might have been in the books at that time. The twenty thousand seven hundred dollars referred to, in the agreement between the bank and Mr. Lomer, in May, 1885, was a balance due by the Pioneer Beet Root Sugar Company, to A. Lomer. The balance remaining after the thirty-eight thousand, four hundred and twenty dollars and sixty-five cents, upon which the Bank had obtained judgment against the Company. The balance still due to Mr. Lomer, by the Pioneer Beet Root Sugar Company, was the twenty thousand, seven hundred dollars, referred to in the agreement in question.

Q. Was this put into effect this proposition contained in this letter exhibit Z?

A. It was.

Q. Mr. Lomer, carried it out?

A. He did not so far as the amounts specified are concerned.

Q. At all events you settled it up practically on the bases proposed?

A. So far as I remember, instead of paying four thousand dollars, he paid twenty-five hundred dollars, but the bank carried out the agreement for that amount. The Pioneer Beet Root Sugar Company mentioned in the letter is the same company as is mentioned in this case.

#### CROSS-EXAMINED.

Q. Do you know if Mr. Lomer, carried out this part of the arrangement whereby he was to transfer a claim of twenty thousand, seven hundred dollars?

RECORD.

*In the  
Superior  
Court.*

No. 164.  
Deposition of  
M. J. A.  
Prendergast  
cashier of  
Hochelaga  
bank, for ad-  
judicataire  
Eastern T. B.  
and M. E. C.  
Town of  
Coaticooke,  
dated 28th  
March 1888.  
*Continued.—*

## RECORD

*In the  
Superior  
Court.*

No. 164.  
Deposition of  
M. J. A.  
Prendergast  
cashier of  
Hochelaga  
bank, for ad-  
judicataire  
Eastern T. B.  
and M. E. C.  
Town of  
Coaticooke  
dated 28th  
March 1888.  
—Continued

A. I know he did transfer the claim to the bank. He transferred as before stated, a certain number of debentures.

Q. But the transfer to which you now refer, was it not transferred previous to that agreement?

A. So far as the amount specified, twenty thousand, seven hundred dollars, is concerned, I am not prepared to say anything certain about it.

Q. Are you able to say whether the bank was the creditor of the Company Defendant, on the twelfth of January, 1883, and for what amount?

A. The bank was a creditor for the thirty-eight thousand, four hundred hundred and twenty dollars, in question. 10

Q. When you verify, as you have been asked to do, the total amounts of credits, given to Mr. Lomer, between the date of the demand note for ten thousand dollars, and the twelfth of January, 1883; you also verify what was the amount of the debits?

A. The amount of the debits, is one million sixty-eight thousand, four hundred thirty-seven dollars, and eighty-eight cents.

Q.—Will you also verify if up to this date the Bank has remained the creditor of the Company Defendant, and for what amount?

A. The Bank has remained a creditor for the amount of the judgment rendered on the thirty-eight thousand dollars in question. The judgment was rendered for forty thousand eight hundred dollars and eighty cents. 20

Q.—You say that the bank remained a creditor of the Company Defendant for the amount of the judgment?

A.—Yes.

Q.—Is it the amount of the judgment fyled as exhibit number one of Petitioner?

A.—I would have to read the judgment through. But by the different amounts I see in the judgment, these correspond exactly with the statement.

Q.—You have no doubt that is the judgment?

A.—I have no doubt. I see the total amount of drafts fifteen thousand four hundred and fifty dollars. This corresponds exactly with the amount of drafts in my statement. 30

Q.—You have referred to the amount of thirty-eight thousand dollars as forming the basis of this judgment?

A.—Yes.

Q.—The amount of thirty-eight thousand dollars you say was a transfer made by Mr. Lomer to the Bank?

A.—Drafts at ten days, and sight cheques delivered by Mr. Lomer to the Bank.

Q. At what date?

A. Until the first of January, 1883, I see by the memorandum here. 40

Q. And the Bank to this day remained a creditor of the Company Defendant in virtue of that judgment?

A.—Yes.

Q.—Did you verify from the minute book of the bank as to whether there was any agreement whereby the bank consented to take a share in the purchase of the property in question?

A. I went over the minutes of the meetings of the Directors from the first of May, 1882, to the 1st of July, 1883, and I find only one reference to the purchase in question, that is on the second of June, eighteen hundred and eighty-three, when the board refused to take any share in the purchase in question, and instructions given to write to Mr. MacDougall to that effect, That is the only reference I see in the minutes.

Q—You did not find it necessary to continue your searches further than July, 1883?

A. No sir.

10 Q. You are not aware of anything else in the minute book?

A. No, I am not.

RE-EXAM'NED.

Q. Do you know if your bank received any of the Government subsidies in any way?

A. It did.

Q. Does that appear amongst the list of credits in your statement?

A. Yes, it does. The amount of the judgment mentioned just now  
20 includes the balance of the ten thousand dollar note, to which I have referred previously in the deposition, and the balance of the note appears only for six thousand five hundred and four dollars and forty cents. The difference was paid over to the bank by the Provincial Government in the shape of subsidy on the eighteenth of August 1882—three thousand four hundred and ninety-five dollars and sixty cents. This amount was credited to the note in question before bringing suit against the Company.

Q. That was the full amount of the subsidy at the time given to the Company?

A. That is more than I can say.

30 Q. Did you state the total amount of the indebtedness at the time of charging that ten thousand dollars?

A. At the time of the charging of the note there was no indebtedness. There was to his credit three thousand one hundred and twenty-eight dollars and ninety-seven cents.

Q. You filed this statement?

A. I now file it as exhibit XX. This statement is taken from the current account ledger and shows every page as indicted the total amount charged and credited to the current account charged for cheques and credited for discounts each line is the addition of one page. It is a recapitulation of  
40 the whole proceedings from the dates mentioned.

And further deponent saith not.

WM. MCGOUN,  
Stenographer

ENDORSED.

Deposition of M. J. A. Pendergast for adjudicataire at al: filed 25th February, 1889, (paraphed,) A. B. L.

RECORD.

In the  
Superior  
Court.

No. 164.

Deposition of  
M. J. A.

Pendergast  
cashier of  
Hochelaga  
bank, for ad-  
judicataire  
Eastern T. B.  
and M. E. C.

Town of  
Coaticooke,  
dated 28th  
March 1888.

Continued.—

RECORD

SCHEDULE No. 198.

*In the  
Superior  
Court.*

In the Superior Court for Lower Canada.

No. 165.  
Deposition of  
Joël Leduc  
merchant, for  
adjudicataire  
and mis-en-  
cause, dated  
28th March  
1888.

On this twenty-eighth day of March in the year of Our Lord, one thousand eight hundred and eighty-eight, personally came and appeared: Joël Leduc, of the City and District of Montreal, Merchant, and witness produced on the part of the Adjudicataire and M. E. C. the Corporation of Coaticooke, who, being duly sworn, deposes and saith: I am not related, allied, or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit. 10

Q. You were a Director of the Hochelaga Bank during the years eighteen hundred and eighty-two and eighteen hundred and eighty-three, Mr. Leduc, were you not?

A. Yes, sir.

Q. Do you remember visiting the property of the Pioneer Beet Root Sugar Company during the fall of eighteen hundred and eighty-two and the winter of eighteen hundred and eighty-three, Mr. Leduc?

A. I do not remember the date, but I remember visiting the place in the Fall of the year I remember. I was sent out by the Board of the Hochelaga Bank to see about some bone black and some molasses. 20

Q. Do you remember if they had some warehouse receipts of this bone black and molasses?

A. If I am not mistaken they got those warehouse receipts through Lomer.

Q. Do you know if they have got those warehouse receipts now, Mr. Leduc?

A. I cannot say.

Q. Do you remember who was sent out to get the receipts?

A. I do not. 30

Q. Do you remember if it was one of the officers of the Bank?

A. I don't remember anything of it. In fact I don't know if any one was sent for them.

Q. Have you any knowledge how they were procured?

A. I have not.

Q. Have you any knowledge of the date on which they were procured?

A. No sir, I have not.

Q. Have you any knowledge as to why the Bank wished to get them at this particular time?

A. I have not, because I do not know at what time the Bank got them. 40

Q. You were sent out after the sale of the real estate took place to get possession of the bone-black and molasses?

A. I think so, because Mr. MacDougall had possession of the property at the time, whatever there was in it.

Q. From whom did the Bank get their information in regard to the Company Defendant's standing and what it was doing generally?

A. Well I suppose at the time it was through Adolphe Lomer, I cannot say exactly, because the Bank was not doing any business with the Company according to my knowledge.

Q. Were the Board of Hochelaga Bank aware of the Sheriff's sale which took place of the property of the Company?

A. To tell you the truth I don't remember exactly the circumstances attending the sale. They might have been aware of it or they might not.

Q. Have you any doubt that the Bank was aware of the sale?

Objected to as illegal and irrelevant.

10 The objection is reserved with the question until the argument of the same before a Judge at Enquête sittings.

Q. Were you not aware personally before the sale took place that the Company were in difficulties?

A. Oh! I think the Bank should have known if the Company was in difficulties

Q. Now, Mr. Leduc, don't you recollect that the subject of the sale of the property of this Company Defendant was discussed by the Directors of the Bank before the Sheriff's sale took place?

20 A. I don't really remember that there was any discussion of the sale before the property was sold. All that I remember is that it was talked of when I was sent out there to see about the bone-black and molasses which the Bank claimed.

Q. Were you not out at Coaticooke before the time that you went out to see about this bone-black and molasses?

A. I was there on other business, but not on this particular business.

Q. Did you know in what condition this Company was when you had occasion to visit Coaticooke on this other business?

30 A. I was there that year or the year before when the Company was deemed to be in a good substantial condition. They were working at the time.

Q. Do you know long before the Sheriff's sale that was?

A. I could not say.

Q. You have seen the property formerly belonging to the Company and sold at the Sheriff's sale?

A. Yes sir.

Q. Is that property fit for any other purpose than for a sugar factory?

A. Truly I don't see how it could be used. It is hard to say, because it is made in a particular way.

40 Q. That is, that it was constructed specially for the purpose of a Beet Root Sugar Factory?

A. Yes.

Q. At the time that this Company was in difficulties and at the time of the Sheriff's sale in what condition was this Beet Root Sugar industry generally in this country?

A. It was not very brisk.

Q. There had not been any instance of a success being made out of such a business?

RECORD.

In the  
Superior  
Court.

No. 165.

Deposition of  
Joël Leduc  
merchant for  
adjudicataire  
and mis-en-  
cause, dated  
28th March  
1888.

—Continued

RECORD      A. Not out of such a business, because it was the first time it was in-  
 In the      troduced in Canada.

*In the  
 Superior  
 Court.*

Q. Has he ever succeeded since ?

A. No. It was never successful.

Q. Do you know if other factories of the same nature failed ?

No. 165.      A. There was one in Farnham and one in Berthier, that is of that class,  
 Deposition of and I am informed that they have not been successful.

Joël Ledue      Q. It is a matter of common repute that they were not successful ?  
 merchant, for

A. Yes.

adjudicataire  
 and mis-en-  
 cause, dated  
 28th March  
 1888.

*Continued.—*

CROSS-EXAMINED.

10

Q. I believe you were in eighty-two and eighty-three one of the Direc-  
 tors of the Coaticooke Cotton Company having its operations in Coaticooke ?

A. Yes sir,

Q. And as much you had the occasion to go there occasionally ?

A. Yes sir.

Q. Do I understand that you visited the premises of the Pioneer Beet  
 Root Sugar Co'y.

Q. Thoroughly. No, except the one time I went out there specially but 20  
 I have passed there many times and have seen the outside of it.

A. But except on that occasion, you had only had occasion to pass  
 there and never took any special notice of the property ?

A. Except outside.

Q. You went out there on behalf of the Hochelaga Bank only once ?

A. Yes.

Q. And that was in reference to the bone-black and some molasses ?

A. Yes.

Q. Instead of molasses was it not beet seed ?

A. No it was some stuff which they called molasses and which came 30  
 from the beet root, at least I was told so.

Q. When you visited the place with reference to the bone-black and  
 molasses you say that Mr. MacDougall was in possession of the premises ?

A. Yes.

Q. And you believe that it was after the sale ?

A. I believe it was.

Q. You never had been there with reference to the taking of the ware-  
 house receipts ?

A. No sir.

Q. You did nothing at all to do with the taking of such warehouse 40  
 receipts and you don't know by whom they were taken and how they were  
 taken ?

A. No sir.

Q. You are sure that they were not taken by you ?

A. No. I am sure of that.

Q. And that you had nothing to do with the taking of them ?

A. No. I never saw them.

Q. You are not actually a director of the Hochelaga Bank ?

A. No. I was a director of said Bank from about I believe eighteen hundred and seventy-eight (1878) up to January last, eighteen hundred and eighty-eight.

And further Deponent saith not.

W. J. WRIGHT,  
Stenographer.

(ENDORSED).

RECORD.

*In the  
Superior  
Court.*

No. 165.  
Deposition of  
Joël Leduc  
merchant for  
adjudicataire  
and mis-en-  
cause, dated  
28th March  
1888.  
—Continued

10 Deposition of J. Leduc for adjudicataire et al, fyled 20th May 1889  
(Paraphed) J. L., Dep. P. S. C.

SCHEDULE No. 199.

In the Superior Court for Lower Canada.

20 On this twenty-eighth day of March in the year of Our Lord one thousand eight hundred and eighty-eight, personally came and appeared : Andrew Rough of the City and District of Montreal, agent, and witness produced on the part of the Adjudicataire and M. E. C. the Corporation of Coaticooke and continued his evidence as follows : I am one of the Mis en Cause in the present action. I have already been examined as a witness.

Q. You have still the property in question in your possession, Mr. Rough ?

A. Yes.

30 Q. Will you state what amount you have received on account of the property, proceeds of either sales of machinery or rents, up to the present time ?

A. I will make a statement in writing, and produce it as Exhibit B

Q. Who do you keep in charge of the property in Coaticooke ?

A.—Mr. John Lee.

Q.—Has he a watchman, under him ?

A.—He has.

R.—A night and day watchman ?

A.—A night watchman.

Q.—Do you require to keep him there in charge, Mr. Rough ?

40 A.—Mr. MacDougall always thinks it advisable to do so, and we have made no change since his illness. Mr. Lee, is kept there, on account of the insurance. The night watchman, is also employed on account of the insurance ?

Q.—Is the machinery under seizure for Customs' charges, Mr. Rough ?  
Objected to this question as illegal and irrelevant.

Objection and question are reserved for a decision of a Judge, at Enquête sittings.

Q.—Do you know if at the time of the adjudication it was understood

No. 166.  
Deposition of  
Andrew  
Rough, agent  
for the adjudicataire and  
mis-en-cause  
dated 28th,  
March 1888.

RECORD

*In the  
Superior  
Court.*No. 166.  
Deposition of  
Andrew  
Rough, agent  
for the adju-  
dicataire and  
mis-en-cause,  
dated 28th  
March 1888.  
*Continued.*—

that Adolph Lomer, was to have an interest in the property with Mr. MacDougall and Mr. Beard?

Objected to as irrelevant and illegal.

Objection reserved by the parties.

A. I believe that there was some letter passed, but don't remember the contents of it though.

Q.—Do you know if the Hochelaga Bank, were to have a transfer of Adolph Lomer's rights, in the property?

A.—I think there is a letter to that effect.

Q.—Do you remember Mr. Brais, the then Cashier of the Hochelaga Bank, being at Mr. McDougalls office, within a day or two after the sale in regard to the matter? 10

A.—I never saw Mr. Brais there, and what time he was there, or what he said I don't know.

And further for the present Deponent saith not.

W. J. WRIGHT.

Stenographer.

ENDORSED.

Deposition of A. Rough for adjudicataire et al: fyled May 20, 1889. 20  
Paraphed J L. Dep. P. S. C.

No. 167.  
Deposition of  
Adolph  
Lomer, mer-  
chant, for  
adjudicataire  
and mis-en-  
cause, dated  
28th March  
1888.

Schedule No. 200.

In the Superior Court, for Lower Canada.

On this twenty-eighth day of March in the year of Our Lord one thousand eight hundred and eighty-eight, personally came and appeared: Adolph Lomer, of the City and District of Montreal, Merchant, aged            years, and witness produced on the part of the Adjudicataire and mis-en-cause the Town of Coaticooke, who, being duly sworn, deposeth and saith:—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit. 30

Q.—You have already been examined in this matter, Mr. Lomer?

A.—Yes.

Q.—Were you aware prior to the Sheriff's sale of the property to the Company Defendant, that the Sheriff's sale was to take place? 40

A.—I know it was advertised. None of us were positive here that it would take place.

Q.—When you say none of us what do you mean?

A.—Myself and G. Lomer, Junior, for instance and others.

Q.—Do you mean the Hochelaga Bank people?

A.—Not in particular.

Q.—But in general, if not, in particular?



A.—Not generally. I mean particularly Mr. G. Lomer, Junior, who was interested in the sale at the time.

Q.—Why was it that you did not think that the sale would not take place?

A.—Because we expected an opposition.

Q.—From what source?

A.—I do not know. It is now some five years ago.

Q. You thought that some of the Creditors would oppose, that was your idea?

10 A.—We expected some legal complications. I dont remember now what it was.

Q. Did you have any conversation with any of the officials of Directors of the Hochelaga Bank as to this sale before it took place?

A. I don't recollect now. I could not swear anything positive. could not deny it and I could not affirm.

Q. At the time this sale took place, and sometime prior thereto, you were indebted to the Hochelaga Bank in a considerable amount of money?

A.—Well, I will have to refer to my books.

20 Q.—Now don't you know as a fact that you owed a considerable sum to the Bank at that time?

A.—There may have been in the shape of over due or undue notes, but I could not say positively without referring to my books.

Q.—Did not the Hochelaga Bank at the date of the sale hold from you a number of notes of the Company Defendant, which were then over due?

A.—I cannot say from memory. It is about five years ago. I do not even remember the date of the sale.

Q.—Well the date of the sale was the twelfth of January eighteen hundred and eighty three. Can you remember any better now, Mr. Lomer?

A.—No. I would have to refer to my books.

30 Q.—Do you remember the Hochelaga Bank taking a judgement against the Pioneer Co'y?

A.—I heard that they had taken a judgment, but I do not remember the time they took it.

Q.—That judgment would be upon the notes you gave them?

A.—Yes.

Q.—If the Hochelaga Bank held over-due notes of the Pioneer Co'y, which had been placed to the credit of your account, do you not remember their speaking to you about these notes or about the position of the Company?

40 A.—I don't think we ever discussed the position of the Company.

Q.—Did they take these notes without inquiry as to the position of the Company?

A.—I cannot remember. It is too far back for me to remember.

Q.—Well, who was the cashier of the Hochelaga Bank at that time?

A.—J. E. Brais.

Q.—You knew that the sale of this property was advertised before it took place?

RECORD

*In the  
Superior  
Court.*

No. 167.

Deposition of  
Adolph  
Lomer, mer-  
chant, for  
adjudicataire  
and mis-en-  
cause, dated  
28th March  
1888.

—Continued

## RECORD

*In the  
Superior  
Court.*

No. 167.  
Deposition of  
Adolph  
Lomer, mer-  
chant, for  
adjudicataire  
and mis-en-  
cause, dated  
28th March  
1888.  
—Continued

A.—Yes.

Q.—In fact you knew all about the suit taken by Fairbanks and Com-  
pany and when they took judgment and when they seized?

A. Yes.

Q. You knew of these occurrences at the time?

A. Yes.

Q. Did you not tell the Bank or some of its officials of the sale which  
was to take place?

A. I don't recollect whether I did or not.

Q. Were you at that time and for some months prior to January<sup>10</sup>  
eighteen hundred and eighty-three (1883) in the habit of being frequently in  
the Hochelaga Bank?

A. Yes.

Q. You were there nearly every day?

A. That I cannot tell you, but I was there several times a week.

Q. Well, when you were there who did you see?

A. I saw them about all there, but I was not in the habit of talking of  
anything but I went particularly to the Bank for.

Q. Was not the subject of your account discussed from time to time  
about that period? 20

A. I don't think it.

Q. You swear it was not.

A. I will have to refer to my books first, because if my books did not  
show that I owed the Bank my account would not have come under discussion.

Q. If the Bank's books showed that you owed the Bank would it not  
be likely that your account would be discussed?

A. I don't know anything about the bank's books.

Q. If the Bank's books showed that you were indebted to the Bank in  
any considerable amount about December eighteen hundred and eighty-two<sup>30</sup>  
(1882) would it not be likely that your account would be a subject of discussion  
between yourself and the officers of the Bank?

A. I have no recollection of it.

Q. I am not asking for your recollection. Would it not be in the or-  
dinary course of business between you and your bankers that if you were in-  
debted to the bank in a considerable amount of money that your account would  
be a subject of discussion?

A. I may have had loans from the Bank for specific purposes, but the  
Bank's books would show that I owed the amount, but that would not necessa-  
rily call forth discussion of my account.

Q. Will M. Lomer, be good enough to answer me yes or no, if you<sup>40</sup>  
were indebted to the Bank on general account, if your account would not have  
been the subject of more or less discussion between yourself and the bank's  
officials?

A. I cannot answer that.

Q. You have been doing business for a number of years Mr. Lomer?

A. Yes.

Q. Have you ever been in a position with a bank where you have been

largely indebted to the bank and your account has not been discussed ?

A. I have been hauled over the coals, but I cannot remember what date it was, but that was the only time my account got under discussion.

Q. You won't swear whether that was before or after the sale of this property ?

A. No.

Q. Have you effected any settlement of your account with the Hoche-  
laga Bank ?

A. I have paid them some money since.

10 Q. This account that you had with the Hochelaga Bank, is it still open or is it closed ?

A. The witness declines to answer.

Q. What I want to know is, if you are still indebted to the bank or if they have discharged you ?

Counsel for Petitioner objects to this question as illegal or irrelevant.

The question is reserved until the objection can be argued before a judge.

Q. Do you know if the Hochelaga Bank received any warehouse receipts from the Pioneer Co'y as collateral security at any time ?

A. I know they received warehouse receipts but I don't know under what circumstances.

20 Q. Do you know the date ?

A. No. I don't recollect.

Q. Was it before or after the sale ?

A. I don't recollect.

Q. Who gave them those warehouse receipts ?

A. I may have given them, or my father may have given them.

Q. Do you remember the issue of any bonds by the Pioneer Co'y under special act authorizing them to issue bonds ?

A. Yes.

30 Q. Do you remember if any of those bonds were given to the Hoche-  
laga Bank ?

A. I know the Hochelaga Bank had them in their possession but I believe they were deposited there by my father for safe keeping ?

Q. Was that after they were issued by the Company ?

A. It was after they were printed and signed.

Q. Well, what was done with them afterwards ? Has the Bank got them still ?

A. That I don't know. I know that either I or my father deposited a whole roll with them there,

Q. What was the face value of the bonds deposited there ?

40 A. That I don't know.

Q. You would not swear that they were not given to the Bank, would you ?

A. I have no recollection now under what circumstances they were given to the Bank.

Q. Do you not remember the Bank or its officers pressing you in eighteen hundred and eighty-two (1882) for payment of the drafts and the

RECORD

—  
*In the  
Superior  
Court.*  
—

No. 167.

Deposition of  
Adolph  
Lomer, mer-  
chant, for  
adjudicataire  
and mis-en-  
cause, dated  
23th March  
1888.

—*Conti nued*

RECORD notes of the Company, given to you by the Company and discounted by the Bank ?

*In the  
Superior  
Court.*

A. I don't recollect.

Q. Do you remember whether they were pressed you for any payment of any note given by the Company ?

A. I don't recollect.

No. 167.  
Deposition of  
Adolph

Q. You are sure you don't recollect ?

A. Yes.

Lomer, mer-  
chant, for  
adjudicataire  
and mis-en-  
cause, dated  
28th March  
1888.

CROSS-EXAMINED BY COUNSEL FOR PETITIONER.

10

Q. You live in the City of Montreal ?

A. Yes.

—Continued

CROSS-EXAMINED BY COUNSEL FOR ADJUDICATAIRE AND M. E. C. TOWN OF COATICOOKE.

Q. Do you remember where you resided in eighteen hundred and eighty-two and eighteen hundred and eighty-three ?

The witness decline to answer.

And further for the present Deponent saith not.

20

W. J. WRIGHT,  
Stenographer.

ENDORSED.

Deposition of A. Lomer for Adjudicataire et al. fyled 20th May, 1889  
(Paraphed.) J. L., Dep. P. S. C.

30

SCHEDULE NO 201.

No. 168.  
Deposition of  
Samuel W.

In the Superior Court for Lower Canada.

Beard  
merchant  
for the adju-  
dicataire and  
mis-en-cause,  
dated 28th  
March 1888.

On this twenty-eighth day of March, in the year of our Lord, one thousand eight hundred and eighty-eight, personally came and appeared: Samuel W. Beard, of the City and District of Montreal, merchant, and witness produced on the part of the Adjudicataire and M. E. C. the Corporation of Coaticooke, who being duly sworn continues his evidence as follows:

Q. You have already been examined as a witness in this case, Mr. Beard ? <sup>40</sup>

A. Yes.

Q. What was Mr. Adolph Lomer's interest in the property and from whom did he hold his obligation ?

A. There was a verbal understanding between Mr. Lomer and myself that he should get one half of what I got. I don't remember whether I gave

him a written obligation to that effect or not.

Q. Was this at the time of the sale?

A. About the time of the sale. Before and after.

Q. Do you know if said Lomer transferred his rights under this agreement with you to the Hochelaga Bank, and if their claim arises from that?

A. I have no personal knowledge of it, but I understood that was the way it was.

Q. Was it on account of this supposed transfer that MacDougall called upon the Bank to pay its share of the disbursements?

10 A.—I am under the impression that MacDougall held the opinion that as they were claiming a certain interest in the thing that they should bear their share of the outlays and if I am not mistaken the request was made to them but that they declined.

Q. You held the obligation from Mr. MacDougall for one half of the property?

20 A. I think there was something to that effect. At first the property was to be transferred to Mr. MacDougall himself, but we all met, myself, Mr. MacDougall, Mr. William Farwell, Mr. G. O. Doak, after the Sheriff's sale, and it was then arranged that the property should be transferred to Mr. Andrew Rough, then I think I took a letter from Mr. Rough for one half of the property upon paying one half charges.

CROSS-EXAMINED.

Q.—What you state with reference to your impression of that Hochelaga Bank having an interest or claiming an interest in the property, is it simply from your recollection of what was said to you either by Mr. MacDougall or by Mr. Lomer too, is it by personal intercourse between you and the Bank?

30 A.—My impression is that it was from Mr. Lomer.  
And further deponent saith not,

W. J. WRIGHT,  
Stenographer.

ENDORSED.

Deposition of S. W. Beard for adjudicataire, at al: filed 20th May, 1889. (Paraphed,) J. L., Dep. P. S. C.

40

SCHEDULE No. 202.

In the Superior Court for Lower Canada.

Present :—

THE HONORABLE MR. JUSTICE TASCHEREAU.

On this third day of October, in the year of Our Lord, one thousand eight hundred and eighty-eight personally, came and appeared: George O.

RECORD

In the  
Superior  
Court.

No. 168.  
Deposition of  
Samuel W.  
Beard  
merchant  
for the adju-  
dicataire and  
mis-en-cause,  
dated 28th  
March 1888.  
—Continued

No. 169.  
Deposition of  
George O.  
Doak, Q. C.  
for adjudicat-  
aire,  
dated 3rd  
Oct. 1888.

RECORD

*In the  
Superior  
Court.*

No. 169.  
Deposition of  
George O.  
Doak, Q. C.  
for adjudicat-  
aire,  
dated 3rd  
Oct. 1888.  
—Continued

Doak, of Coaticooke, in the Province of Quebec, Queen's Counsel, aged 48 years, and witness produced on the part of the Adjudicataire who, being duly sworn, deposeth and saith:—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q You have already been examined in this case ?

A.—Yes.

Q.—You were acting as Counsel for the Bank Adjudicataire about the time the Sheriff's sale of the property in question in this cause, were you not ?

A.—Yes, I was.

Q.—And as representing the Eastern Townships Bank, were you in Montreal about the time of the sale of the property in question, to Mr. MacDougall and others, after the Sheriff's sale ?

A.—I was.

Q.—While you were in Montreal at that time did you ever have any interviews with any persons representing the Hochelaga Bank, the petitioners in this cause or at which they were present, and if so please state their purport ?

Objected to as illegal, and not being susceptible of verbal evidence. 10

Objection reserved by the Court.

A.—I was present, I think, within a day or two after the sale to Mr. MacDougall at his office, and Mr. Brais, who I understood at the time, was representing the Hochelaga Bank, was present. From the conversations that took place between Mr. Brais and Mr. MacDougall, I understood that the Bank had received, or were about to receive a transfer of about one-fourth of the real estate which had been purchased by Mr. MacDougall, from Adolph Lomer as security for their claim against him. This transfer was the subject of conversation between Mr. MacDougall and Mr. Brais in my presence. Mr. MacDougall introduced me to Mr. Brais, that was the first time I met Mr. Brais and he spoke to Mr Brais as acting on behalf of the Hochelaga Bank as if he were to take over one-fourth of the property from Mr. Adolph Lomer. 30

Q.—That was said to you by Mr. MacDougall and Mr. Brais ?

A.—I think it was Mr. MacDougall said in the presence of Mr. Brais, and Mr. Brais acquiesced in it.

Q.—He intimated it was correct ?

A.—Yes, I don't think there was any dissent at all about it.

Q.—Did Mr. Brais say anything about the Sheriff's sale ?

A.—Yes, it was discussed, and it was from what he said that I understood he had a knowledge of the sale both before and after the sale took place. 40

Q.—Did you understand that from the assertions made by Mr. Brais ?

A.—Yes, from what Mr. Brais said in conversation with Mr. MacDougall.

Q.—Some reference has been made in some possible interest you might possibly have yourself in this case : will you state if that is the case ?

A.—In reference to that, I have not personal interest in the result of this suit ; the arrangement which was spoken of I think in the letter of Mr.

Farwell, has been arranged and settled, and I have no pecuniary interest in the matter.

Q.—Then you are not liable to any pecuniary return to the Eastern Townships Bank whatever might be the result of this suit ?

A.—No.

Q.—Do you know of any one representing the Hochelaga Bank visiting the property of the Defendants at Coaticooke either before or after the sale ?

A.—I met Mr. Leduc, one of the directors of the Bank, at Coaticooke, within a short time after the sale.

10 Q.—Did he have an opportunity then to examine the property ?

A.—Yes.

Q.—How soon after the sale was that.

A. Within a short time of the sale. He came out there with warehouse receipts, and he sent for me to meet him at the hotel, I met him at the hotel and he showed me the warehouse receipts, and I told him he should have got the property away previous to the sale.

Q. He did not get anything under these warehouse receipts ?

A. No.

20 Q. Did you receive any letters on the part of the bank petitioner in this cause, as representing the Eastern Townships Bank, and please produce the same ?

A. In the latter part of April 1883 I received a letter from the Attorneys of the Hochelaga Bank, Messrs Beique, McGoun, and Emard, I think were the names, which I now produce as exhibit X.

The Petitioners admit the letter.

Q. You know, of course, that the judgment taken by the Eastern Townships Bank in 1882 against the Defendant it was notorious that such a judgment had been rendered against the property ?

A. It was very well known I believe.

30 Q. Prior to the Sheriff's sale ?

A. Yes, a year prior.

#### CROSS-EXAMINED.

Q. Who was present at Mr. MacDougall's office when you met Mr. Brais as you have stated ?

A. There was no one but Mr. MacDougall and myself there.

Q. Mr. MacDougall, Mr. Brais and yourself ?

A. Yes.

40 Q. Were you there by appointment to meet Mr. Brais, or did you happen to be there casually ?

A. I happened to go in; it was the first time I met Mr. Brais at all.

Q. Did the whole conversation between Mr. Brais and Mr. MacDougall take place in your presence while you were there or only a portion of it ?

A. Mr. Brais was in there when I went in. Of course, I don't know what took place previous, but Mr. Brais went out before I left.

Q. But Mr. Brais was there when you went in ?

RECORD

*In the  
Superior  
Court.*

No. 169.

Deposition of  
George O.  
Doak, Q. C.  
for adjudicat-  
aire,  
dated 3rd  
Oct. 1888.

—Continued

## RECORD

*In the  
Superior  
Court.*

No. 169.  
Deposition of  
George O.  
Doak, Q. C.  
for adjudicat-  
aire,  
dated 3rd  
Oct. 1888.  
—Continued

- A. Yes.
- Q. Was there anything said about the bone black, or the warehouse receipts, between Mr. Brais and Mr. MacDougall in your presence?
- A. I think they might have been referred to. I know the whole thing was discussed in a general way.
- Q. How long were you there while Mr. Brais and Mr. MacDougall had the conversation together?
- A. It is impossible to tell how long.
- Q. Was it five minutes or half an hour?
- A. It might have been from fifteen minutes to half an hour. 10
- Q. It might have been five minutes?
- A. It was longer than five minutes, because we talked quite a long time.
- Q. You say you have no interest at all in the event of this suit?
- A. None whatever now.
- Q. When Mr. Farwell was examined as a witness in this case you had?
- A. Yes.
- Q. You had been paid one thousand dollars which you were to reimburse if the sale was not sustained? 20
- A. Yes.
- Q. Since then there was a settlement between you and the bank?
- A. Yes.
- Q. Was not the settlement effected for the purpose of enabling you to be examined as a witness?
- A. I don't know, I am sure, as to that. The settlement was effected and I was completely cleared.
- Q. Was there any mention about that between you and Mr. Farwell?
- A. No. 30
- Q. Or some other of the officers of the bank?
- A. No.
- Q. Or acting on behalf of the bank, Mr. Atwater, for instance?
- A. It was mentioned.
- Q. And it was suggested that this matter be settled in order to enable you to testify in this case?
- A. It was suggested that it would be better that a settlement be made between us.
- Q. When was that settlement effected?
- A. It was effected this fall. 40
- Q. How long ago?
- A. Within the last month.
- Q. When you were in Montreal the other day?
- A. No, I consider it wiped off, long long ago.
- Q.—Before receiving this letter, exhibit X, were you told by either Mr. Farwell or Mr. Thornton that Mr. Beique was to write to you on the subject?
- A.—No, that was the first intimation I had.



Q.—You are acting as counsel on behalf of the Eastern Townships Bank with Mr. Atwater ?

A.—Yes, I am not a lawyer, I have ceased to practice, but I was in the case, and from my knowledge of it the bank wanted me to continue to look after their interests.

Q. You have been taking an active part in the case up to this date ?

A. Yes, I have.

And further deponent saith not.

WM. MCGOUN,  
Stenographer.

RECORD

*In the  
Superior  
Court.*

No. 169.

Deposition of  
George O.

Doak, Q. C.

for adjudicat-  
aire,

dated 3rd

Oct. 1888.

—Continued

10

ENDORSED.

Deposition of Geo. O. Doak, for Adjudicataire, fyled 25th Feb., 1889.  
Paraphed A. B. L.

SCHEDULE NO. 203.

20

In the Superior Court for Lower Canada.

Present :—

The Hon. Mr. Justice Taschereau.

No. 170.

Deposition of  
J. E. Brais

for the adju-  
dicataire

Eastern

Township

Bank, dated

3rd Oct. 1888

On this third day of October, in the year of our Lord one thousand eight hundred and eighty-eight, personally came and appeared : Joseph E. Brais, of the City of Montreal, stock broker, aged thirty-eight years, and witness produced on the part of the Adjudicataire who, being duly sworn, deposeth and saith :—I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

30

Q. You were cashier of the Hochelaga Bank, in Montreal, at one time ?

A. Yes.

Q. You were cashier at the time of the sale by the Sheriff of the property of the Defendant in this cause, were you not, the Pioneer Beet Root Sugar Company ?

A.—Yes.

40

Q.—And for some time after that ?

A.—Yes, and for some time after that, about a year, I believe.

Q.—Were you aware that this sale was to come off, that this property of the Defendants was to be brought to sale by the sheriff ?

A. I knew it was to be brought to sale by the sheriff, but I did know the date of it, I heard the sale was to be made by the Sheriff, the thing was in insolvency.

RECORD

*In the  
Superior  
Court.*No. 170.  
Deposition of  
J. E. Brais  
for the adju-  
dicataire  
Eastern  
Township  
Bank, dated  
3rd Oct. 1888  
—Continued

Q.—You were interested in the affairs of this company—the bank was ?

A.—The bank was interested with Adolph Lomer, and other parties, the bank held some valuables there in the building as security for some advances to Mr. Lomer.

Q.—Yes, in the building of the company Defendants ?

A.—Yes.

Q.—Did you go out to Coaticooke at all after the sale?

A.—No, I never was there.

Q.—Was any one sent on behalf of the bank to Coaticooke ?

A.—Somebody was sent to Coaticooke, it was Mr. Leduc I believe, one 10  
of the directors. I could not tell exactly at what time it was, it is to long ago  
now.

Q.—What did he go for ?

A.—He went to ascertain whether the valuables that the bank held as security, were really there.

Q.—Machinery ?

A.—Some machinery, and what they called bone-black stuff.

Q.—And you held these as collateral securities ?

A.—Yes, the bank held warehouse receipts for them.

Q.—Do you know whether Mr. Lomer had any interest in this pro- 20  
perty ?

A.—I don't know of any particular interest he had except he was their agent, representing them for the selling of their goods.

Q.—Did he make the bank a proposition to purchase this property after the Sheriff's sale ?

A.—He never did.

Q.—Do you remember having a conversation with Mr. John Mac-  
Dougall, subsequent to the Sheriff's sale ?A.—I know I was there in Mr. MacDougall's office, it is long ago, I  
could not exactly say when. 30

Q.—Say to the best of your recollection ?

A.—To the best of my recollection, I was there in Mr. MacDougall's  
office a couple of times about that matter.

Q.—About what matter ?

A.—About the Pioneer Beet Root Sugar Company matter. Mr. Mac-  
Dougall was interested and I was there once with the bank's Attorney, Mr.  
Beïque, I believe.

Q.—And at any other time alone ?

A.—I don't think I was there alone at all.

Q. Do you remember having a conversation at Mr. MacDougall's 40  
office, when Mr. Doak of Coaticooke was present ?

A. I believe, I saw Mr. Doak there once.

Q. And there was some conversation at that time between you and  
Mr. MacDougall ?A. I did not do the talking, it was Mr. Beïque that did the talking  
then.

Q. Was Mr. Beïque there at the time Mr. Doak was there ?

A. I could not tell you exactly. So far as I can remember, every time I was there it was with Mr. Beique.

Q. You would not swear positively that Mr. Beique was there at the time you met Mr. Doak?

A. I cannot remember.

Q. And you mean to swear as to what was said at that interview?

A. No, it is a matter of five years ago.

Q. Every time you were there, you were representing the bank?

A. I was there in the interests of the bank.

10 Q. Don't you recollect having had a conversation at Mr. MacDougall's office very shortly after the sale of the property in question in this cause from the Eastern Townships bank, who were the adjudicataires, and John MacDougall, and others, at which conversations, or at which the question of the transfer by Mr. Lomer to your bank, of a portion or of an interest in the property acquired by Mr. MacDougall, was discussed?

A.—Yes, I believe that the bank wanted Mr. MacDougall to transfer a part of his purchase. I believe there was something of that kind spoken of then.

Q. That is the Hochelaga Bank?

20 A. Yes.

Q. That is, they wanted Mr. MacDougall, who had become purchaser of this property, to transfer to them a portion of his interest in it?

A.—To give the bank security for what they had held a guarantee on and was sold at the time. The bank held warehouse receipts on bone black and some other stuff in the building, and everything was sold, and Mr. MacDougall had become possessor of everything, and the bank wanted Mr. MacDougall to give back the property that the bank held the property covered by the warehouse receipts.

30 Q. Was it not a proposition that they should give him an interest in his purchase?

A. The proposition was, that he would give back the property of the bank or give some other values for it, to secure the bank.

Q.—Did not Mr. MacDougall or Mr. Lomer subsequently agree to give the Hochelaga Bank an interest in this property?

A.—There was something of the kind, I don't know if it was completed but there was a proposition I believe, of the kind made. The Bank was asking simply to get back what belonged to it.

CROSS-EXAMINED.

40 Q.—You say that the Hochelaga Bank held, at the time of the Sheriff's sale, or about that time, warehouse receipts on bone black and some other things, stored in the buildings of the Company Defendant?

A.—Yes.

Q.—Do you remember if these other things were not beet seeds?

A.—There was some beets and some bone black. I don't know if there was not some boilers or some machinery and molasses, and different things.

Q.—There was no machinery was there?

A.—I don't remember exactly. I am sure of the bone black etc.

RECORD

*In the  
Superior  
Court.*

Deposition of  
J. E. Brais  
for the adju-  
dicataire  
Easterly  
Township  
Bank, dated  
3rd Oct. 1888  
— *Continued.*

RECORD

—  
*In the  
 Superior  
 Court.*  
 —

Deposition of  
 J. E. Brais  
 for the adju-  
 dicataire  
 Eastern  
 Township  
 Bank, dated  
 3rd Oct. 1888  
 — *Continued.*

Q.—You remember having gone twice to Mr. MacDougall with Mr. Beïque ?

A.—Yes.

Q.—Do you remember that on one of these occasions it was for the purpose of enquiring as to the circumstances under which the sale by the Sheriff had taken place, and with a view of setting it aside ?

A.—Yes.

Q.—And do you remember that on the other occasion that you went there for the purpose as you have stated to induce Mr. MacDougall to give up any pretension to the bone black and molasses and seeds that had been sold ? 10

A.—Exactly.

Q.—Any agreement that would have taken place, if any took place would be shown by the minute book of the Bank.

A.—Yes.

Q.—Can you say now that you were aware previous to the Sheriff's sale that the property was under Seizure or whether you became aware of it, only after it was sold ?

A.—I became aware of it after the sale.

Q.—You don't remember of having been aware of its previous to the sale ?

A.—No. 20

RE-EXAMINED.

Q. Will you swear you did not know of it before the sale ?

A. To the best of my knowledge I had no information of it, neither as to when the sale was to take place or anything at all.

Q. You pretend to be interested, or the bank does, to the extract of about forty odd thousand dollars, and did you not keep the property of your debtor ?

A. The interest that the bank held in the affair was not exactly on the property, the interest was on Mr. Lomer. Mr. Lomer was indebted to the bank and the bank held some stuff there as a guarantee for the advances made to Mr. Lomer, and that was the only interest the bank held in that stuff. The bank had no interest whatever on the property. 30

RE-CROSS-EXAMINED.

Q. You remember the bank was a creditor of the Company Defendant for a large amount ?

A. Through Mr. Lomer.

Q. The paper was discounted for Mr. Lomer ?

A. Yes. 40

Q. Before the sale in 1882 they were creditors ?

A. Yes. The Company was indirectly responsible for it.

Q. You had no account with the Company ?

A. No.

And further deponent saith not.

WM. MCGOUN,  
 Stenographer.

(ENDORSED.)

Deposition of Joseph E. Brais for Adjudicataire, fyled 25th Feb., 1889.  
Paraphed A. B. L.

RECORD

*In the Superior Court.*

No. 170.  
Deposition of J. E. Brais for the adjudicataire Eastern Township Bank, dated 3rd Oct. 1888  
— *Continued.*

DOCUMENT VII.

10

Canada,  
Province de Québec, }  
District de Montréal. }

Cour du Banc de la Reine.

(En Appel.)

Andrew Rough & al. .... (Défendeurs en Cour Inférieure).

APPELANTS ;

*In the Court of Queen's Bench.*

20

ET

The Eastern Townships Bank .....  
..... (Demanderesse en Cour Inférieure).

No. 171.  
Reasons of Appeal, dated 26th Sept., 1890.

INTIMÉE.

30

Les dits Appelants se réservant le droit de se plaindre de la diminution du Dossier en cette cause, et de l'insuffisance du Rapport du Bref d'Appel, de faire toutes motions, d'adopter tous procédés nécessaires relativement à cette diminution du dossier ou insuffisance du Rapport, et aussi le bénéfice et avantage de tous autres moyens à être déduits en Appel, pour Griefs ou Raisons d'Appel en cette cause dit :

Que les règles, ordres et jugements rendus et intervenus en cette cause, en Cour de Première Instance et particulièrement le jugement rendu le dixième jour de mars mil huit cent quatre-vingt-dix sont illégaux, injustes et doivent être déclarés tels par cette Cour, pour entr'autres raisons, suivantes :

Parce que le dit jugement du dixième jour de mars mil huit cent quatre-vingt-dix a été rendu contre les Appelants et en faveur de l'Intimée, tandis qu'il devrait être rendu en faveur des Appelants et contre l'Intimée.

40

Parce que le dit jugement a renvoyé les Défenses des Appelants, tandis qu'il aurait dû les maintenir ;

Parce que les dits Appelants ont prouvé en Cour Inférieure toutes les allégations essentielles de leurs défenses ;

Parce que les Appelants tant en droit qu'en fait, devaient obtenir les conclusions par eux prises en leurs défenses ;

Parce que le dit jugement rendu le dixième jour de mars mil huit cent quatre-vingt-dix est contraire à la loi et à la jurisprudence.

RECORD

*In the Court  
of Queen's  
Bench.*

No. 171.

Reasons of  
Appeal.

dated 26th  
Sept., 1890

— *Continued.*

Pourquoi les dits Appelants concluent à ce que les dites règles, ordres et jugements et nommément le dit jugement rendu le dixième jour de mars mil huit cent quatre-vingt-dix soient déclarés irréguliers, illégaux, injustes, nuls et de nul effet ; à ce qu'enfin cette Honorable Cour, procédant à rendre le jugement que la Cour Inférieure aurait dû rendre, maintienne les défenses des Appelants et en accorde les conclusions ; le tout avec dépens, tant de la Cour Inférieure que de cette Honorable Cour.

Montréal, 26 Septembre 1890.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,

10

Avocats des Appelants.

Je soussigné, Joseph H. Mallette résidant à Montréal, l'un des huissiers jurés de la Cour d'Appel du Bas-Canada, exerçant dans le district de Montréal, certifie par ces présentes et fais rapport, sous mon serment d'office, à cette Honorable Cour, que le vingt-huitième jour du mois de septembre en l'année mil huit cent quatre-vingt-dix, entre trois et quatre heures de l'après-midi, j'ai signifié à Messrs. Atwater & MacKie avocats de l'Intimée en cette cause les Griefs d'Appel d'autre part écrit en laissant une vraie copie certifiée d'iceux aux dits avocats en parlant et en laissant les dites pièces à une personne raisonnable gardien et en charge de leur bureau, à leur bureau d'affaires à Montréal dit district.

Daté à Montréal, ce 29 Septembre 1890.

Honoraire :—\$1.00

J. H. MALLETTE,

H. C. B. de la R.

(ENDORSED).

Griefs d'Appel. Produit 30 Septembre 1890. Paraphed L. W. M.

30

No. 172.  
Answers to  
Reasons of  
Appeal.  
dated 29th  
Sept. 1890

DOCUMENT IX.

Province of Quebec, }  
District of Montreal. }

Court of Queen's Bench.  
(Appeal Side.)

Andrew Rough, et al.,.....Defendants in the Court below.

APPELLANTS ;

AND

40

The Eastern Township Bank,.....Plaintiff in the Court below.

RESPONDENTS.

The said respondents reserving to themselves at all times hereafter the right of alleging diminution of the Record in this cause, and imperfection and insufficiency of the Return to the writ of Appeal therein, and the right of

making all such motions and using all such lawful ways and means as may be necessary or expedient touching such diminution of the said Record, and imperfection and insufficiency of the said Return, and in the premises, for Answer to the Reasons of Appeal of the said Appellants in this cause fyled, do hereby say :

10 That all and every the allegations, matters and things in the said Reasons of Appeal contained and set forth, are false, untrue and unfounded in fact, and moreover insufficient in law to entitle the said Appellant to have and maintain the conclusions in and by the said Reasons of Appeal taken, or any thereof.

Wherefore, the said Respondents humbly pray that by the sentence and decree of the Court here, the said Appeal and Reasons of Appeal be hence dismissed ; and that the Judgment of the Court below made and rendered on the tenth day of March one thousand eight hundred and ninety . . . . . from which the present Appeal is taken, be affirmed ; the whole with costs, as well of the Court below as of this Court.

MONTREAL, 29th September, 1890.

ATWATER & MACKIE,  
Attorneys for Respondents.

20 Received copy

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,  
Attorneys for Appellants.

(ENDORSED)

Answer to Reasons of Appeal Fyled 21 June 1893. (Paraphed) M. & D.

DOCUMENT X.

30 Province de Québec, }  
District de Montréal. }

Cour du Banc de la Reine  
En Appel

No. 173.  
Appellants' Factum in both Appeals dated 8th Nov. 1892.

No. 301

Andrew Rough . . . . . Demandeur en Cour Inférieure  
APPELANT.

vs.

The Eastern Townships Bank . . . . . Défenderesse en Cour Inférieure.  
INTIMÉE.

40

AND

No. 302

Andrew Rough & al. . . . . Défendeurs en Cour Inférieure.  
APPELANTS.

vs.

The Eastern Townships Bank . . . . . Demandeur en Cour Inférieure.  
INTIMÉE.

RECORD.  
In the Court of Queen's Bench.

No. 172.  
Answers to Reasons of Appeal dated 29th Sept. 1890.  
— Continued.

## RECORD.

## FACTUM DE L'APPELANT DANS LES DEUX CAUSES.

*In the Court  
of Queen's  
Bench.*

No. 173.  
Appellants'  
Factum in  
both Appeals  
dated 8th  
Nov. 1892.  
— *Continued.*

Il s'agit de l'appel d'un jugement dans deux actions réunies, l'une prise par l'intimée contre les appelants et l'autre par l'appelant Rough contre l'intimée.

La première est pour le recouvrement d'une somme de \$31,853.56 avec intérêts du 16 janvier 1884, balance du prix de vente de la fabrique de sucre de betteraves de Coaticooke qui a été faite par l'intimée aux appelants le 19 janvier 1883.

La deuxième est en nullité de cette vente.

L'intimée s'est portée adjudicataire des propriétés en question à une vente du shérif du district de St-François qui a eu lieu le 12 janvier 1883 contre la compagnie "The Pioneer Beet Root Sugar Coy." 10

Le 19 janvier 1883, l'intimée a revendu les propriétés à Rough, un des appelants, et prête-nom des deux autres appelants Beard & McDougall et ces derniers se sont portés caution du prix de vente. Peu de temps après cela, vers la fin de juin de la même année, la Banque d'Hochelaga a pris une action en nullité de décret contre la banque intimée, adjudicataire, mettant en cause, Rough, Beard & McDougall, comme détenteurs des immeubles. Ces derniers s'en sont rapportés à justice, et la banque intimée a contesté. Après sa contestation produite, l'intimée a fait signifier en mai 1884 une action contre les appelants en recouvrement de la balance du prix de faire vente et Rough, a en septembre 1884, pris une action pour mettre de côté la vente que lui a faite l'intimée et se faire restituer la partie du prix payée. 20

Les appelants ont alors plaidé trouble et éviction à l'encontre de l'action de l'intimée contre eux.

L'intimée combat les prétentions des appelants en alléguant qu'elle a stipulé "non-garantie" à l'acte de vente du 19 janvier; que les appelants connaissaient lors de la vente et même lors du décret, les causes de l'éviction et qu'ils ont acheté à leurs risques et périls; que d'ailleurs l'intimée en se portant adjudicataire a agi comme prête-nom des appelants Beard & McDougall, et que les appelants (pour se servir de l'expression de l'intimée dans sa plaidoirie) ont acquiescé à l'état des choses, et ont perdu leurs droits en laissant écouler plus d'un an et demi après l'action de la Banque d'Hochelaga sans prendre de procédure; en gardant la propriété et en vendant partie du stock et de la machinerie. 30

Comme nous l'avons dit, le jugement en première instance donne gain de cause à l'intimée. Et le même jour où il condamnait les appelants, il annulait le décret, à la demande la Banque d'Hochelaga, tenant ainsi les appelants responsables vis-à-vis de l'intimée d'une somme d'environ de \$50,000.00 pour prix d'une propriété dont ils sont évincés. 40

Les motifs du jugement sont:—

1o. Que l'intimée s'est portée adjudicataire de la propriété, comme prête-nom et mandataire des appelants, Beard & McDougall;

2o. Que les appelants connaissaient lors de la vente et même lors du décret, les causes d'éviction et qu'ayant acheté sans garantie du vendeur, ils ont



acheté à leurs risques et périls ;

30. Que le décret ayant été poursuivi à la diligence des appelants Beard & McDougall, ces derniers sont responsables vis-à-vis de la Banque des irrégularités du décret ;

40. Que depuis la signification de l'action en nullité de décret de la Banque d'Hochelaga, les appelants ont contribué à exploiter la fabrique et vendu la partie de l'outillage de l'usine et ont fait des paiements accompte du prix de vente, et qu'ils ont laissé écouler plus d'un an et demi sans prendre de procédures contre la Banque.

Nous allons traiter ces questions dans l'ordre ci-dessus.

## I

En se portant adjudicataire, la banque intimée agissait-elle comme prête-nom et mandataire de Beard & McDougall ?

Beard & McDougall étaient créanciers de la compagnie pour un fort montant et la Banque était elle-même créancière pour un certain montant.

20 Ne pouvant acheter au comptant la propriété au shérif, ils demandèrent à la Banque de vouloir bien le leur vendre à terme dans le cas où elle se porterait adjudicataire. Ils convinrent que si l'achat était effectué le prix serait un montant suffisant pour indemniser la Banque de sa dette, ce qui représentait le valeur de la propriété. L'offre d'acheter devait rester ouverte pendant dix jours de la date de l'adjudication.

La Cour pourra constater l'exacitude de notre appréciation de la convention, en y référant. Elle est contenue dans les deux lettres de W. Farwell, gérant général de la Banque, l'une en date du six janvier 1883 et l'autre en date du 9 janvier 1883 qui sont reproduites aux pages 300 et 301 de l'appendice des appelants.

30 Voici la lettre du 6 janvier 1883 :

" 6th Jany., 1883.

" Messrs. S. W. Beard & John McDougall,  
" Montreal.

" Gentlemen,

" In the event of the Bank becoming the purchaser of the Pioneer Beet  
" Root Sugar Company, property now advertised to be sold at Sheriff's sale  
" on the 12th inst., we hereby agree to sell the same to you jointly and sever-  
" ally within ten days thereafter at such sum as will pay our claim and all ex-  
40 " penses connected with the sale, upon the following conditions, viz. : a cash  
" payment of a sufficient amount to reduce our whole debts to \$10,000.00, a  
" further sum in cash with what we may succeed in realizing from Ellenhausen  
" notes, now in suit, to amount of ten thousand dollars more within six months  
" with interest at 7o/o per annum on the whole and unpaid five thousand dol-  
" lars within 12 mos., and five thousand dollars annually thereafter until fully  
" paid with interest semi-annually at the rate of seven per cent. per annum,  
" the property to be mortgaged to the Bank as security for the payment of

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No. 173.

Appellants'  
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— *Continued.*

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 In the Court  
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No. 173.  
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 — Continued.

“ above sums, and to be kept insured in good companies to the satisfaction of  
 “ the Bank to full amount of their claim, on the execution of the deeds, the Bank  
 “ cash already realized from collaterals to be applied in reduction of our claim,  
 “ and the Cordwood, Bone Black and Ground Bones, now in possession of the  
 “ Bank to be transferred to you, all notes and acceptances of the Company and  
 “ of other parties endorsed by the Company forming our claim to be cancelled if  
 “ practicable to be delivered over to you.

Your obt. svt.,

(Signed)

W. FARWELL,  
 “ Gen. Man.”

10

Voici la lettre du 8 Janvier 1883 :—

“ 8th Jany 1883.

“ Messrs. J. W. & John McDougall.

“ Montreal.

“ Gentlemen,

“ Referring to that part of my letter of Saturday last addressed to you  
 “ respecting the Pioneer Beet Root Sugar Company, in which we agreed in  
 “ the event of your purchasing the property from us should it come into our  
 “ hands at Sheriff's sale, on the 12th inst., to transfer the Cordwood, Bone  
 “ Black and Ground Bones to you. I find it is questionable whether we should  
 “ legally be able to do this as some of the notes for which this is held as col-  
 “ lateral are included in our Judgment and application of a portion of proceeds  
 “ of the sale could be demanded to apply on those notes. I must therefore  
 “ withdraw that portion of my letter and can only undertake to subrogate you  
 “ in respect to those collaterals in such rights as we have, that have not been  
 “ extinguished by the Sheriff's sale. In other respects my letter to remain in  
 “ force and the property held by us for ten days from date of sale, subject to  
 “ your acceptance on the terms and conditions therein stated. Please  
 “ acknowledge receipt of this and state if satisfactory.

20

Yours truly,

(Sgd) WM. FARWELL,  
 “ Gen. Man.”

30

“ P. S. It is understood our whole debt with interest and costs is to be  
 “ paid as we should deed without any warranty.”

La Banque s'oblige, mais les appelants Beard & MacDougall ne s'obli-  
 gent pas.

Que cet écrit contienne la convention toute entière il ne saurait y avoir  
 le moindre doute. Ceci appert par les différents témoignages de Farwell.

Examiné d'abord dans la cause de la Banque d'Hochelaga, dont la  
 preuve fait partie de la présente cause, voici ce qu'il dit : p. 353, ligne 29 et  
 suivantes :

“ Q. About the time of the sale of the property in question by the  
 “ Sheriff, had you any agreement as manager of the Bank, with Messrs. Beard  
 “ & McDougall, or any of them with reference to purchasing the property on  
 “ the reselling of it ?

40

“ A. I had an agreement with Mr. Beard and Mr. McDougall that  
 “ if we bought it we would sell it to them at a certain price and that

“ agreement arose from application made by Mr. Beard as he said he represented Mr. McDougall to obtain the privilege of purchasing it from us if we bought it at Sheriff’s sale.

“ Q. Was the agreement put in writing ?

“ A. Yes. I have here the agreement just mentioned which resulted from the letters and telegram filed and marked exhibit A1, and the letters A2, A3 and A4. Exhibit A1 was received by me on the eighteenth of December, eighteen hundred and eighty-two and was the first communication which I received or which the Bank received in connection with this matter. I think that Mr. Beard only came at the date mentioned in the telegram and left personally to discuss the matter.

10

“ Q. Had you any personal communication with Mr. John McDougall himself previous to the sale of the property by the Sheriff ?

“ A. No, I think not.

Et à la page 378 du même appendice, ligne 4 et suivantes :

“ Q. Will you please repeat the conversation you had with Mr. Beard at the time or previous to the arrangement arrived at between you and with reference to your buying the property and reselling the same to him and McDougall, stating as near as you can do the expressions he made use of ?

20

“ A. I can only give the substance of it as I have done in my cross-examination.

“ What was the substance of it.

“ A. The substance of it was that he understood or expected that the Bank would buy the property at the Sheriff’s sale and that he wanted to arrange that in the event of the Bank doing so that he would resell it to himself and John MacDougall on terms of payment.

“ Q. Did he state the reasons for his entering into such an agreement ?

30

“ A. He did not enter into any agreement, he simply asked as I have stated that we would resell it, to them giving them time for payment of the purchase money, or the bulk of it.

“ Q. Did he not enter into this agreement that on your purchasing the property you would resell it to him and MacDougall on the conditions above referred to ?

“ A. Well, yes, giving long time to pay for the property.”

Plus tard, examiné comme témoin dans les présentes causes, voici ce qu’il dit, dans son examen en chef, page 270 :—

“ Q. Were you approached by any parties with regard to the purchasing of the property of the Pioneer Beet Root Sugar Company prior to the Sheriff’s sale ?

40

“ A. I was. On the eighteenth of December, 1882, Mr. S. W. Beard, came out to Sherbrooke, to see me with regard to make some arrangement for the purchase of the property *in the event* of the bank buying it at the Sheriff’s sale, which was advertised to come off on the 12th of January, 1883, or to arrange that the bank should buy it. He said at that time that Mr. John MacDougall, of Montreal, proposed to join him, and that the Bank should buy it for them and give them the right to take it at a certain price.”

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Plus loin, page 273, il dit :—

“ Q. Before the deeds of sale were signed in this case, did you have any conversation with Mr. John McDougall in Montreal, or elsewhere ?

“ A. At the time of executing the deeds, there was not very much as I mentioned before. The question of the government claim was spoken off incidentally, and I don't know but that he had the paper drawn, that the Bank should guarantee it.

“ Q. What was said with regard to that ?

“ A. It was that the Bank simply acted for them and guaranteed no- 10  
“ thing, we simply handed over the title that we had got and nothing more.”

Mais dans la transquestion, page 274 de l'appendice des appelants, ligne 35 et suivantes, il se corrige et revient à la version qu'il a donnée dans la cause de la Banque d'Hochelaga, voici ce qu'il dit :

“ Q. Your letter of the 6th January 1883 and that of the 8th January, “ these two letters addressed to Mr. McDougall & Mr. Beard contain the “ agreement entered into by you and Mr. Beard, do they not ?

“ A. Sanctioned on the 9th January by Mr. McDougall's letter, which “ is missing.

“ Q. So that the agreement is to be found in these two letters ? 20

“ A. Yes, the agreement, and this of 9th of January carrying it out.

“ Q. I am speaking of the agreement, I am not speaking of the car-  
“ rying out of the agreement ; are we to understand that the agreement is as  
“ contained in these two letters of the 6 and 8 of January addressed to  
“ McDougall & Beard, or Beard and McDougall, which are filed, yes or no ?

“ A. Yes.”

Il résulte de ces extraits de témoignages de Farwell que d'abord examiné dans la cause de la Banque d'Hochelaga, il rapporte la convention telle que nous l'apprécions ; examiné dans les présentes causes par son avocat il est quelque peu hésitant sur la portée de la convention, mais dans la trans-  
question, il est obligé de revenir à ce qu'il a juré tout d'abord dans l'action en 30  
nullité, et de déclarer que la convention est toute entière dans les lettres.—Et la convention contenue dans les lettres est une promesse de vente avec faculté chez Beard & McDougall d'en profiter pendant dix jours après le décret.

La Banque n'agissait donc pas comme prête-nom et mandataire de Beard et McDougall, mais pour son propre compte. Nous pourrions ajouter que même si ces derniers se fussent obligés à acheter, la Banque n'aurait pas été pour cela leur prête-nom, puisqu'ils achetaient à un prix et à des conditions différentes de celle du décret.

Il y a donc erreur dans le jugement dont est appel lorsqu'il affirme que l'intimée était leur prête-nom et mandataire des appelants ; et les rapports qui 40  
existent entre les parties sont bien ceux, de vendeur a acheteur et non pas ceux  
de mandant à mandataire.

## II

Les appelants ont-ils acheté à leurs risques et périls ?

L'acte de vente est reproduit à la page 22 de l'appendice des appelants.

La clause de garantie est dans les termes suivants :—

“ Who did and do hereby bargain, sell, assign, transfer and make over with warranty as regards their own acts only to Andrew Rough, at the said City of Montreal, gentleman, hereto present and accepting the following lots of land described as follows, in the Sheriff’s title hereinafter mentioned, to wit :

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Quel est l’effet de cette clause ?

10 L’article 1510 du Code nous dit que dans le cas de stipulation de non-garantie, le vendeur au cas d’éviction, est tenu à la restitution du prix à moins que l’acheteur n’ait connu lors de la vente, le danger de l’éviction ou qu’il n’ait acheté à ses risques et périls, et l’article 1509 avait dit précédemment : quoiqu’il soit stipulé que le vendeur n’est soumis à aucune garantie, il demeure cependant obligé à la garantie de ses faits personnels. Toute convention contraire est nulle.

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Il résulte que nonobstant la clause de non-garantie, le vendeur est toujours garant de ses faits personnels ; mais dans l’espèce il y a plus, il y a stipulation expresse que l’intimé sera garante de ses faits personnels.

Il importe donc peu que les appelants aient connu les causes d’éviction si elles procèdent des faits personnels de l’intimé.

20 Ces causes d’éviction sont de deux sortes :—1o Fraude de la Banque ; 2o Irrégularité dans les procédures de la saisie et de la vente. Le décret a été mis de côté pour ces deux motifs. L’un d’eux est imputable à la Banque. A lui seul il était suffisant pour faire mettre de côté le décret.

Lorsqu’un décret est annulé à raison des faits personnels du vendeur et pour des cause étrangères y a-t-il lieu à la garantie du vendeur dans le cas de stipulation de non-garantie, excepté des faits personnels comme dans l’espèce ?

Nous le croyons au moins en ce qui concerne la restitution du prix, car il est à présumer que l’acquéreur sans cette garantie des faits et promesses, n’aurait pas acheté. Donc. La Banque est garante.

30 Pourquoi un vendeur est-il tenu de restituer le prix ? Parce qu’il l’a reçu sans cause. Puisqu’il n’a pas transmis la propriété il ne doit pas en garder la valeur. Ce serait s’enrichir aux dépens d’autrui. Voici un vendeur qui dit à un acquéreur : Je vous vends une propriété, vous assumerez les risques des titres toutefois, je vous garantis que je n’ai rien fait qui ait pu rendre le titre vicieux. Plus tard il se trouve que le titre est nul pour des causes étrangères au vendeur, mais en même temps, il est établi que le vendeur l’avait également rendu nul par des actes frauduleux. En vertu de quel principe de justice pourrait-il en garder le prix ? Ce serait le faire bénéficiaire de sa fraude. C’est en comptant sur sa bonne foi que l’acquéreur a acheté ; et la garantie de ses faits personnels a été le motif déterminant du contrat. Cette doctrine est

40 conforme aux principes du droit. La garantie du vendeur n’est autre chose qu’une obligation conditionnelle par laquelle il s’oblige à indemniser l’acquéreur au cas au il serait évincé. L’éviction est un événement futur et incertain qui constitue la condition aux termes de l’article 1079. Cette condition est suspensive, mais dès qu’elle est arrivée l’obligation devient pure et simple et elle est exigible.

Appliquant cette règle à l’espèce : la garantie personnelle de la Banque était une obligation conditionnelle qu’elle contractait envers les acheteurs par

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laquelle elle s'obligeait à leur restituer le prix dans le cas où ils seraient évincés à raison de ses faits personnels. Peu importe qu'il y ait eu d'autres causes d'éviction. Du moment que celle-là a existé ; c'était l'accomplissement de la condition qui rendait l'obligation de la Banque pure et simple et exigible.

Cette doctrine nous paraît consacrée par les auteurs qui accordent la restitution du prix à l'acquéreur, bien que ce dernier ait pu avoir contribué à l'éviction, pourvu qu'il n'en ait pas été l'unique cause,

Troplong, "Vente" No. 441.

Mais nous disons de plus qu'il n'est pas prouvé que les appelants aient 10  
connu les causes d'éviction. Ils sont présumés les avoir ignorées jusqu'à  
preuve du contraire ; c'est à l'intimée à faire cette preuve.

C'est ce que disent les auteurs à ce sujet :—Dall. Vo. Jurisprudence  
générale Vo. Vente numéro 908.

Lorsqu'il a été inséré dans l'acte une clause de non-garantie, c'est au  
vendeur actionné en restitution du prix qu'il incombe de prouver que l'ache-  
teur connaissait, au moment de la vente, le danger de l'éviction. C'est ce  
qu'enseignent Pothier, No. 187, et MM. Troplong, No. 484, Duranton, t.16, No.  
263, *in fine* ; Zachariæ, Ed. Massé & Vergé, t. 4, p. 299, note 25.

La fraude imputée à la Banque et qui a motivé la nullité du décret est 20  
d'avoir écarté les enchérisseurs par son dol et ses artifices. C. P. C. Art. 714.

La Banque avait fait des avances considérables à la compagnie. A la  
fin de 1881 ou au commencement de 1882 sa créance atteignait près de \$50,-  
000.00. Les billets étaient sans cesse renouvelés, c'était connu que les fournis-  
seurs de betteraves mêmes n'étaient pas payés. La compagnie était notoire-  
ment insolvable. Les directeurs se montraient inquiets. L'un deux, L'Hon.  
Mr. Cockraue menaçait de vendre ses actions dans la Banque. Le gérant local  
de la Banque à Coaticooke Mr. Austin et le gérant général à Sherbrooke, Mr.  
Farwell, devinrent justement alarmés et il cherchèrent les meilleurs moyens  
pour sortir d'embarras.

La correspondance entre eux et la preuve orale divulguent ceux qu'ils ont 30  
adoptés.

Cette correspondance est reproduite aux pages 302 et suivantes de l'ap-  
pendice des appelants.

Tout d'abord ils décidèrent de prendre jugement contre la compagnie, mais  
de le faire de manière à ne pas éveiller l'attention du public, des créanciers et  
même des directeurs de la compagnie.

Au nombre des directeurs de la Banque se trouvait un nommé Thornton  
qui était aussi directeur de la compagnie.

Mr. Austin, gérant local de la Banque et Doak, l'avocat de la Banque con- 40  
vinrent avec Thornton que ce dernier serait à un jour fixé au bureau de la  
compagnie, à l'heure du dîner lorsque les employés seraient absents, pour y re-  
cevoir la signification de l'action ; et les choses se passèrent ainsi que convenu.

En outre, au lieu de mettre dans les livres de la Cour le nom de la compa-  
gnie comme défenderesse, on ajouta sans motif légitime connu le nom de Cum-  
mings comme premier défendeur, en sorte que pour les tiers, l'action de la Banque  
était contre Cummings et al. Rien ne faisait soupçonner qu'elle était dirigée  
contre la compagnie.

De cette manière la Banque a obtenu jugement par défaut, qu'elle s'est empressée de faire enregistrer afin d'avoir hypothèque nonobstant la connaissance qu'elle avait de l'insolvabilité de la compagnie.

La Banque s'arrêta là pour le moment. Elle espérait que le temps validerait son hypothèque.

L'automne suivant (1882) le nommé Fairbanks qui avait pris un jugement de \$190. contre la compagnie fit saisir les immeubles. Nous voyons par la correspondance de Farwell et Austin que la Banque poursuivit sa fraude. Il était rumeur que Fairbanks serait désintéressé et que la vente serait arrêtée. 10 Beard avait de fait acheté le jugement de Fairbanks dans ce but, alors Austin écrivit à Farwell le 3 janvier 1883, (page 326 de l'appendice des appelants) au sujet de cette rumeur et il lui dit que dans le cas où cette vente serait arrêtée il trouverait un autre créancier qui ferait vendre.

Nous trouvons dans la lettre de Austin à Farwell en date du 6 janvier 1883, la ligne de conduite qu'il fut décidé de suivre (page 327 de l'appendice des appelants). Cette lettre est très importante. Elle prouve que la Banque cherchait dans son intérêt à faire vendre les propriétés en bloc au lieu de les laisser vendre séparément conformément à la loi ; qu'elle désirait écarter les enchérisseurs mais n'osait pas le faire directement par crainte de violer la loi trop ouvertement, mais qu'elle projetait de le faire indirectement en envoyant 20 à la vente un scare srow, épouvantail qui répandrait dans l'assistance le bruit que le gouvernement avait une réclamation sur les machineries de la fabrique que l'adjudicataire serait tenue de payer. Cette lettre annonce également que Doak, l'avocat de la Banque a trouvé le moyen d'assurer la vente en logeant chez le shérif un bref d'exécution du jugement obtenu par la Banque. La preuve constate qu'après avoir acheté le jugement de Fairbanks, Austin exprime son espérance que le public voyant combien la Banque était intéressée et le fort montant de son hypothèque ne surenchérirait pas et que ceux qui convoitaient la propriété chercheraient plutôt à acheter de la 30 Banque qui se serait portée adjudicataire. Austin était prévoyant car ce jour-là même Beard & McDougall convenaient d'acheter de la Banque adjudicataire. Austin qui demeurait à Coaticook ignorait ce qui se passait à Sherbrooke.

Notons en passant un mot de la lettre au sujet de la légitimité de la créance de la Banque, page 328 :

"It is probable too that, in any event the bidding will not exceed "the amount of that portion of our claim which is strictly incontestable, say about \$15.000."

Nous n'avons pas pu tracer pas à pas les démarches de la Banque, mais 40 il a été prouvé qu'il se trouvait un scare crow à la vente dans la personne de Williams qui répandait avec une certaine prudence dans l'assistance que l'adjudicataire serait tenue de payer la réclamation du gouvernement.

Il est établi que les propriétés ont été vendues en bloc et adjudgées à vil prix.

C'est cette fraude que la Cour a trouvée suffisante pour l'autoriser à prononcer la nullité du décret.

L'intimée prétend que les appelants ont eu connaissance de cette fraude

RECORD.

*In the Court  
of Queen's  
Bench.*

No. 173.  
Appellants'  
Factum in  
both Appeals  
dated 8th  
Nov. 1892.  
— *Continued.*

RECORD.

*In the Court  
of Queen's  
Bench.*No. 173.  
Appellants'  
Factum in  
both Appeals  
dated 8th  
Nov. 1892.  
— *Continued.*

et elle s'appuie sur la présence de Beard lors de la vente et sur le témoignage de Doak qui déclare que McDougall lui a avoué qu'il connaissait l'existence du jugement de la Banque, mais qu'il en avait empêché la contestation parce la dette était due à la Banque.

On infère de la présence de Beard à la vente qu'il a entendu la *scare crow* qu'il n'a pas pu ne pas l'entendre. Cependant Beard nie l'avoir entendu. L'aurait-il entendu qu'il ne pouvait pas présumer que c'était un envoyé de la Banque agissant dans le but de frauder. C'est donc à tort que l'on conclut que Beard a connu la fraude de la Banque.

La Banque se défait de Beard et McDougall.

Voici ce que Farwell dit à Austin, dans sa lettre du 8 janvier 1883, rapporté à la page 302 de l'appendice des appelants :

"Perhaps if it does not appear necessary it would be as well that Williams should not be too prominent with Government claim, unless Beard and McDougall now understand it, and are content therewith, however I shall go up to the sale and we can take our hearings then."

L'aveu que McDougall a pu faire à Doak prouve qu'il a eu connaissance du jugement après son enregistrement et qu'il n'a pas voulu le contester, voilà tout. Conclure de là que McDougall a eu connaissance de la fraude de la Banque nous paraît illogique.

Que l'on remarque que cette fraude était pratiquée contre les appelants aussi bien que contre les autres créanciers... On ne s'occupe guère de mettre les acquéreurs dans l'embarras ainsi que le dit Austin dans la lettre du 6 janvier, page 302 :—

"Of course the purchasers take it subject to all claims of the Government and if paid, strictly warranted of any bind."

Il est curieux de voir les sentiments de joie de l'intimée après que la fraude eut été consommée.

La vente du shérif a eu lieu le 12 janvier 1883. Le 14 Austin écrit à Farwell et lui annonce qu'il lui envoie le nommé Churchill, ex-secrétaire de la compagnie, ce lui-là même qui s'était absenté du bureau lorsque Thornton s'y est rendu pour recevoir la signification de l'action de la Banque.

Voir témoignage de Thornton, page

Austin le recommande à Farwell comme ayant été bien dévoué à la Banque et il ajoute : "it is in great measure due to his having kept me posted, in regards to the movement of the "ennemy" that our measures have word so successfully". Page 328 de l'appendice des appelants.

La vente de la Banque à Rough a eu lieu le 19 janvier. Le 20 Austin se réjouit parce que l'affaire a été conduit à bonne fin et il demande s'il peut porter les \$1000.00 de retenue de Doak à son crédit. Page 328 de l'appendice des appelants.

Le 22 Farwell lui répond, il se félicite également, il ajoute : "I think you and Doak and Thornton deserve special mention." Il autorise Austin à donner à Churchill \$50.00 pour sa femme. Il conseille de prendre un écrit de Doak par lequel il s'obligera à remettre les \$1000.00 dans le cas où le décret serait *upset in any way and we have to refund the amount received*. La Banque comprenait donc qu'elle devait rembourser au cas de nullité du décret.



Le 24 Austin écrit à Farwell, page 331, le remercie de ses louanges, se félicite to have come out so completely on the top of the heap, in spite of all the machination of the enemy, et il ajoute, en soulignant ses mots : Churchill will eared \$50.00.

Dans une lettre en date du 25 janvier, page 312, Farwell félicite Thornton, lui attribue en partie le succès de l'affaire, lui annonce qu'il croit que la Banque est sauvée et il l'invite à boire une santé.

La Cour doit être convaincue maintenant que les appelants n'ont pas connu ces faits frauduleux.

10 Passons maintenant au second motif de la nullité du décret, les informalités dans la saisie et dans la vente.

Nous avons dit que Beard avait acheté le jugement de Fairbanks sur lequel la vente a eu lieu. Cet achat a été fait après la saisie et après les annonces en décembre 1882. Beard s'est arrangé avec le Banque le 6 janvier 1883 et dès lors il a laissé la Banque surveiller les procédures et en s'en est plus occupé, c'est la Banque qui a continué. Voir son témoignage, page.

Les irrégularités qui ont été jugées fatales, bien que pas détaillées, sont :—

10. Irrégularité dans la description des lots.

20 20. La vente en bloc.

L'irrégularité dans la description résulte de ce que le nom de la ville, celui de la rue et le rang n'ont pas été donnés. La Banque a participé dans cette illégalité en continuant la vente. Elle a elle-même été cause de la vente en bloc. Mais de plus.

D'après l'article 1510 C. C., le vendeur doit restitution du prix même au cas de non-garantie à moins que l'acheteur ait connu le danger de l'éviction.

La connaissance dont parle cet article est une connaissance actuelle et non pas une connaissance présumée ; chacun est présumé connaître la loi, mais en matière de bonne foi cette présomption n'existe pas.

30 La raison est facile à saisir. L'acquéreur qui a une connaissance actuelle des dangers de l'éviction est censé acquérir à ses risques et périls, il n'en est pas de même s'il ignore de bonne foi le danger. Il doit présumer que les officiers on agi conformément à leur devoir ; c'est pourquoi les auteurs exigent que l'acquéreur ait eu une connaissance *réelle*. Il ne suffit pas que l'acheteur ait pu connaître la cause de l'éviction il faut qu'il l'ait *réellement* connue.

En supposant que Beard aurait connu ces irrégularités, McDougall ne les connaissait pas et en autant qu'il est concerné, il n'y a eu connaissance ni réelle ni présumée.

### III

40 Beard & McDougall sont-ils responsables envers la Banque, des irrégularités du décret ?

Nous avons dit que le décret avait été annulé pour les motifs suivants : Fraude de la Banque, informalités dans la saisie et la vente.

Beard avait acheté le jugement de Fairbanks sur lequel la vente a eu lieu, on en conclut qu'il est responsable de ces irrégularités ainsi que McDougall. Les informalités dans la saisie était le défaut d'indication des tenants

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et aboutissants. L'irrégularité dans la vente est d'avoir été faite en bloc.

L'irrégularité dans la saisie est apparente et elle a pu être connue par la Banque tout aussi bien que Beard. Sans doute elle n'est pas imputable à Beard, parce qu'elle exige une connaissance de la loi, mais ce que nous entendons, c'est qu'on ne saurait rendre ce dernier responsable d'une erreur de droit sans en rendre la Banque responsable, parce que l'erreur apparaissait à la face même des annonces et si l'intimée veut prétendre que Beard est présumé connaître la loi, nous lui répondrons qu'elle-même était présumée la connaître et qu'elle a acheté connaissant cette irrégularité. Quant à la vente en bloc nous avons vu que c'était le fait de la Banque. 10

De plus Beard seul aurait assumé une responsabilité (si responsabilité il y a). Car il n'y a pas de preuve que McDougall ait connu ces informalités. Quoiqu'en dise le juge il n'a jamais été propriétaire du jugement de Fairbanks et n'a jamais participé aux procédures.

Définissons maintenant les responsabilités de Beard et déterminons en l'étendue.

Le juge semble avoir assumé que Beard et McDougall étaient les garants de la Banque à raison des informalités. Il y a évidemment une erreur de fait quant à McDougall et il y a erreur de droit quant à Beard.

Le saisissant n'est pas le garant de l'adjudicataire, nous ne disons pas que l'adjudicataire n'a pas de recours contre lui, car l'art. 1587 lui reconnaît un recours, mais un recours en garantie n'existe pas. 20

C'est là l'opinion de la très grande majorité des auteurs pour ne pas dire l'unanimité *Vide* 6 Marcadé, p. 265, par. 3 et auteurs cités.

4 Aubry & Roy, p. 375.

24 Laurent, No 227.

Dalloz, Jurisprudence, "Vente", Nos 832 & 833.

Cette doctrine est consacrée par l'article 1586 de notre Code qui permet de recouvrer le prix du débiteur ou saisie et des créanciers qui l'ont touché, mais qui ne parle pas du saisissant. 30

Nous avons dit que l'adjudicataire n'était pas sans recours contre le saisissant à raison d'informalités. Ce recours consacré par l'art. 1587 est d'après les auteurs précités celui accordé par les art. 1053 et 1054 qui rend chacun responsable de sa faute.

Or, d'après les auteurs, cette responsabilité est toute personnelle, par conséquent ils ne s'appliqueraient qu'à Beard.

Nous pouvons ajouter les irrégularités dans la saisie et les annonces ne sont pas le fait de Beard qui a acheté après qu'elles furent faites.

Ensuite, il faut que la faute ait causé un dommage, c'est-à-dire que le fait imputable soit dommageable. Or, on ne peut pas dire que ces informalités aient causé des dommages à la Banque, puisque le décret était déjà nul à raison de sa fraude, en éloignant les enchérisseurs et en faisant vendre en bloc. C'est la doctrine consacrée par les auteurs. 40

20 Laurent, No 391 nous cite le cas d'un avoué qui avait reçu mandat de purger ce qu'il a négligé de faire et qui était une faute grave. Son client a été évincé sur l'action des créanciers inscrits, néanmoins il a été jugé qu'il n'encourait aucune responsabilité parce qu'il était constant que la purge n'eût

pas empêché la dépossession ; la vente était entachée de fraude et avait eu lieu à vil prix. Certainement il y aurait eu une surenchère et par suite, expropriation. Un notaire oublie de mentionner le lieu où avait été passé un testament mais le même testament était nul à raison de l'incapacité de la testatrice.— Recours en dommage refusé.

Il résulte de ces autorités que la Banque n'aurait eu aucun recours contre Beard et c'est à tort que le juge en première instance dit que Beard et McDougall étaient responsables de la nullité du décret.

## IV

10 Les appelants sont-ils censés avoir abandonné leur recours contre l'intimée, par leur conduite depuis le commencement du procès en nullité de décret ?

L'intimée dans sa plaidoirie a une expression peut-être impropre, mais qui tout de même rend bien sa pensée. Les appelants ont, dit-il, acquiescé depuis la demande en nullité de décret, c'est-à-dire ont renoncé à leur recours contre l'intimée en retardant pendant un an et demi de prendre leur action en nullité de la vente que leur a consenti l'intimée ; en faisant des actes répétés de propriétaires pendant ce temps et en vendant une partie de la machinerie et de l'outillage, qui dépendait de la propriété.

20 Les plaidoyers ne disent pas plus, mais le jugement sort de la plaidoirie et s'appuie sur ce que les appelants auraient continué l'exploitation des immeubles, auraient vendu partie de l'outillage de l'usine sans se plaindre du trouble, et s'en seraient approprié le montant ; auraient fait des paiements sur le prix de vente, même depuis le commencement des présentes instances.

D'après les plaidoyers nous n'avons qu'à expliquer notre détention de l'immeuble depuis la demande en nullité de décret et la vente d'une partie de l'outillage et de la machinerie ; par conséquent nous n'avons pas à démontrer pourquoi nous avons fait des paiements même depuis l'institution des présentes actions et il nous semble contraire à la loi que le juge s'appuie sur des faits qui ne nous sont pas reprochés par l'adversaire.

30 Tout de même, nous expliquerons tous les faits qui nous sont imputés par le jugement

Rappelons tout d'abord quelques dates.

La requête en nullité de décret a été signifiée le 25 juin 1883 (Vide lettre Farwell, p. 312). La Banque a contesté cette demande. Nous nous en sommes rapportés à justice. Notre premier paiement sur le prix de vente s'élevait à la somme de \$10,000., devenait exigible en juillet. Nous avons refusé de l'acquitter.

40 Cependant comme nous n'étions pas pour exploiter la fabrique et que l'industrie du sucre de betterave était à terre (*vide* témoignage de Lee, p. 291) et que d'ailleurs le saisie d'une partie de la machinerie effectuée par le gouvernement, en Novembre 1883, rendait l'exploitation impossible et que le tout se détériorait. Nous avons cru qu'il était de l'intérêt commun de disposer au plus tôt d'une partie de la machinerie. Nous avons compris que la Banque réussirait dans sa contestation de la demande en nullité de décret et nous avons alors à la connaissance de la Banque vendu les bouilloires, et nous lui avons laissé retirer le produit. Ces montants aurait évidemment été en déduc-

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RECORD.  
 —  
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tion du prix de vente si la banque eût réussi mais dans le cas contraire, elle était solvable et elle nous en devait compte.

En outre nous avons vendu une foule de petits articles inutiles et qui se détérioraient dont nous gardions le produit pour nous rembourser des dépenses que nous faisons pour la conservation de la chose, dépenses dont nous nous croyions en droit d'être remboursées, si nous étions privés de la propriété. Les témoignages de Lee pp. 290 à 299 font foi de ce que nous disons.

Le 13 mai 1884 la Banque nous a fait signifier son action en remboursement de la balance du prix de vente. Nous espérions que cette action resterait pendante sans que nous fussions obligés de la contester jusqu'après la déci- 10  
 sion sur la requête en nullité de droit.

Dans le cours de juin et juillet, nous avons vendu deux pièces de la machinerie pour \$240.00 et \$103.00 et nous avons autorisé la Banque à tirer sur nous pour ces montants qui devaient nous être payés en juillet et octobre. (pp. 188 et 190.)

La Banque nous ayant forcés à procéder sur son action nous avons produit notre plaidoyer le 20 septembre, dans lequel nous invoquons l'éviction comme moyen de défense. Et nous avons alors pris notre action en nullité de décret. Depuis cette époque nous n'avons rien payé à la Banque, seulement nous avons honoré la traite tirée sur nous et acceptée antérieurement à l'enfi- 20  
 lure du plaidoyer et à l'institution de l'action en nullité de décret. Voilà les faits.

La Banque a bien compris que ces divers paiements ne devaient pas militer contre nous puisqu'elle ne les a pas invoqués. Si elle l'eût fait nous aurions pu prouver son adhésion complète dans la position que nous prenions.

Qu'est-ce que le juge intèrè de ces faits ?

Que nous avons renoncé aux droits d'invoquer l'éviction et que nous avons abandonné notre recours en restitution du prix et que nonobstant l'éviction nous avons consenti au paiement de la balance du prix. Cette doctrine nous paraît erronée. L'acquiescement ou la ratification expresse ou tacite 30  
 peut bien valider un acte imparfait. Mais nous ne comprenons pas que la ratification puisse confirmer un acte sans cause. Or l'éviction rend le contrat de vente sans cause puisque l'objet de la vente est enlevé à l'acquéreur.

Dalloz, obligation No. 4470.

Ce serait une véritable donation que nous aurions faite à la Banque et cet acte devrait être revêtu des formalités de la donation. Dalloz, voir loco citato.

L'acheteur est censé propriétaire jusqu'à jugement sur l'éviction, par conséquent il peut faire de sa propriété ce que bon lui semble, sauf tout au plus au véritable propriétaire à réclamer de lui la diminution en valeur qu'il aurait pu 40  
 causer. C'est envers lui que nous sommes responsables des dégradations et de la diminution causée par notre fait. Ce n'est donc pas envers l'intimée que nous sommes responsables, mais envers la compagnie.

Dalloz, vente No. 981.

24 Laurent, No. 234

A tout événement il faudrait que notre intention de renoncer au recours au cas d'éviction eut été bien clairement établi. Il faut que ce soit la consé-

quence nécessaire des faits que l'on nous impute. Jusqu'à ce que nous ayons décidé d'invoquer l'éviction par notre plaidoyer et notre action en septembre 1883 on ne saurait invoquer l'usage que nous avons fait de la propriété comme un abandon de nos droits, car jusqu'alors nous nous reposions sur la contestation que ferait la Banque de la demande en nullité du décret. Rien ne nous défendait d'user notre propriété comme propriétaire. Et nous avons le même droit après l'institution des présentes actions. Nous n'étions pas tenus de conserver la propriété intacte pour l'intimée parce que advenant l'éviction ce n'est pas à elle que nous en devions compte. Que nous ayions bien ou mal interprété la loi, l'exercice de ce droit de propriété avant et pendant les actions démontrent notre intention de rester propriétaires, mais rien de plus.

Elles ne prouvent pas notre intention de renoncer à la restitution du prix dans le cas où définitivement nous serions évincés. Les paiements que nous avons faits avant que nous ayions contesté la vente étaient, en loi, justifiés par la confiance que nous avons dans le succès de la Banque, et le paiement que nous ayions fait depuis la contestation de la vente, celui de \$103.00 en octobre, s'explique par le fait que c'était une traite antérieure à notre contestation, sur laquelle nous aurions pu être poursuivis. D'ailleurs au moment même où nous payions, nous étions à exercer notre recours contre l'intimée.

20 Est-il à présumer que nous aurions en même temps exercé notre recours et renoncer à ce recours.

Les appelants réclament ce qu'ils ont payé lors de la passation de l'acte de vente savoir : \$9439.70 avec intérêt à 7o/o et réclament aussi avec intérêt le produit des machineries vendues que la Banque Intimée a eu, savoir deux items de \$2496.87 chacun et deux autres items dont l'un \$103.43 et l'autre \$289.40, puisque le premier montant a été payé avec leur argent et qu'ils doivent compte des autres montants au propriétaire. Voir page 191 de l'appendice des appelants.

Nous avons confiance que le jugement de la Cour Inférieure sera ren-

30 versé.

Montréal, 8 Novembre 1892.

CHAPLEAU, BISAILLON, BROSSEAU & LAJOIE,

*Avocats des Appelants.*

ENDORSED.

Factum des Appelants. Prod. 12 Nov. 1892. Paraphed M. & D.

RECORD.

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*In the Court  
of Queen's  
Bench.*

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No. 173.  
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Factum in  
both Appeals  
dated 8th  
Nov. 1892.  
— *Continued.*

RECORD.

DOCUMENT XI.

In the Court of Queen's Bench. CANADA, Province of Quebec, District of Montreal.

Court of Queen's Bench.

(Appeal Side.)

No. 174. Respondent's Factum. dated 10 June 1891.

Andrew Rough, et al.,.....Defendants in the Court below.

APPELLANTS ;

10

AND

The Eastern Townships Bank.....Plaintiffs in the Court below.

RESPONDENTS.

RESPONDENTS' FACTUM.

This action is based primarily upon a Deed of Sale dated the 19th January, 1883, from the Bank Respondent to the Defendant Rough, of certain properties at Coaticooke, in the District of St. Francis, which had formed the property of the Poineer Beet Root Sugar Company. The sale is made without warranty except as to personal acts, and the property is described as that purchased by the Bank, vendor at a Sheriff's sale of the property in question in a case of Fairbanks, plaintiff, vs. The Pioneer Beet Root Sugar Company, defendants, on the 12th January, 1883. The price named in the sale to Rough is \$49,439.70 ; \$9,439.70, of which was acknowledged to have been paid at the time of the sale, \$10,000 payable on or before the 16th July, 1883, and the remainder of \$30,000 annually in instalments of \$5,000, payable on the 16th January in each year, with interest at seven per cent., with a stipulation that default of payment of any instalment for a period of fifteen days should render the whole amount exigible.

The Defendants McDougall and Beard, by a Deed of Warranty passed at the same time, jointly and severally guaranteed the preformance of all the obligations of the purchaser Rough and renounced the benefits of division and discussion.

Plaintiffs allege that Defendant Rough failed to pay in whole the instalments due on the 16th July, 1883, amounting in principal and interest to \$11,400, and the instalment due on the 16th January, 1884, prior to the institution of the action.

Plaintiffs acknowledge by their action to have received from different sources, such as the realization on movables by consent of Defendants, the sum of \$10,792.48 and by reason of the default sue for the balance due on the latter date of the whole obligation amounting to \$31,853.56 with interest from the 16th January, 1884.

The Defendants resist liability and their pleas are identical. Their principal plea, is a plea of trouble and danger of eviction, the trouble they complain of being an action or petition en nullite de decret instituted by the Hochelaga Bank

as creditors of the Pioneer Beet Root Sugar Company to set aside the sale by the Sheriff of the property in question to the Bank Respondent on the 12th January, 1883.

They plead further by the way of abatement of the claim of the Plaintiff, that by reason of the alleged trouble they were not in default for the whole amount agreed upon between the parties, and allege a payment upon account of over \$16,000 at different times. The Defendants proceed to admit by this plea that there is a balance due to the Plaintiffs of \$8,347 with interest as stipulated by the Deed of Sale and conclude with such admission, but ask that they be entitled to retain the same until security be given against the trouble complained of.

They further by a plea added just after the issues had been completed complained of trouble and fear of eviction arising from a seizure made by the Customs Department of the Government of Canada on part of the machinery on the property which had been included in the sale, for non-payment of duties.

The Plaintiffs answer that the Defendant Rough was merely a *prête nom* for the Defendants McDougall and Beard, who were the real purchasers of the property in question; (Rough, who was McDougall's bookkeeper, having been substituted at the latter's request as the titular purchaser of the property), that Defendants McDougall and Beard had full knowledge prior to and at the time of the sales mentioned of all the matters complained of by their pleadings, and bought at their own risk and without warranty, and in fact that the trouble complained of was in no way the fault of the Plaintiff but was attributable to the Defendants McDougall and Beard themselves, and that in reality the sale was an aleatory contract by which the Defendants became the purchasers without warranty of the claims and rights of the Bank against the Pioneer Beet Root Sugar Company of the nature of which rights the Defendants had full information at the time they entered into the contract, and that the price was not fixed at the supposed value of the property, but was the amount of the Bank's claim against the Company, and the consideration included not only the immoveable property in question, but also moveable property and goods which the Bank held as part collateral for their claim.

It is proper to mention that issue was joined by the Bank Plaintiff on the petition to annul the Sheriff's sale, and that by consent the evidence taken on that petition, on motion of Defendants, the present Appellants, was made part of the evidence in this case.

The same learned Judge tried both the petition and the present case, and while maintaining the petition and annulling the sale by the Sheriff to the Bank Respondent to the real estate, rendered also the judgment now appealed from maintaining the Respondents' action and holding the answers to Defendants' pleas proved in fact and good in law.

The judgment on the petition to annul the Sheriff's sale, to which the Defendant Rough was made a party, has not been appealed from.

A short history of the circumstances as supported by the evidence will simplify the consideration of the case. In the year 1882 the Eastern Townships Bank was a large creditor of the Pioneer Beet Root Sugar Company and was the owner of certain mortgages upon its property and had also a judgment against it. The defendant John McDougall was a large shareholder and had been

RECORD.

—  
In the Court  
of Queen's  
Bench.

—  
No. 174.  
Respondent's  
Factum.  
Dated 10th  
June, 1891.  
— Continued.

RECORD.

*In the Court  
of Queen's  
Bench.*

No. 174.

Respondent's  
Factum.dated 10 June  
1891.— *Continued.*

treasurer, and was actually president of the Company, and the defendant S. W. Beard was working the industry under a lease from the Company. In the autumn of that year the whole of its real estate at Coaticooke was seized under a judgment obtained in the district of Montreal by Messrs. Fairbanks & Company who were creditors. Under this seizure the property was advertized by the sheriff of the district of St. Francis for sale on the 12th January, 1883. The defendant Beard bought this judgment, as he says, with the object of stopping the sale, but finding other judgments against the Company had been filed with the sheriff and that in consequence the sale could not be stopped, he changed his tactics and did what he could to bring the property to sale under the Writ controlled by him. Not having the money to buy in the property himself, he communicated with the Eastern Townships Bank, through its representative Mr. Farwell, and proposed an arrangement, by which the Bank should buy in the property for him. Beard not being considered a responsible party, he gave the name of the defendant John McDougall, who he said was willing to associate himself in purchasing the property. McDougall and Beard then agreed with the Bank that the Bank should buy in the property *for them* and that they were to pay the amount of the Bank's claim. They did not wish to pay cash and McDougall did not wish to appear as the purchaser, being the president of the Company and contemplating a profitable personal speculation. They were to have a delay within which to pay the claim and the sale also included the transfer to them of the collateral security which had been placed in the Bank's hands by the Company, such as goods warehoused, and against which advances had been made, and promissory notes given as collaterals.

Having made this arrangement the property was brought to sale under the judgment owned by Beard. The sale was fully advertised and there was a large audience and the property was adjudicated to the Bank for the sum of \$1,400 on the 12th January, 1883.

On the 19th January, 1883, before Hetu, Notary Public, at Montreal, the Bank in fulfillment of its undertaking transferred the property to Rough who appears for the first time in the transaction. Rough is put forward by McDougall as the nominal purchaser of the property, because, as McDougall himself stated, he did not want his name to appear as buying the property of the Company of which he was the president. The price of the sale was established at the amount of the Bank's claim against the Company and it will be noted that this claim was arrived at by the strictest computation and after being thoroughly investigated and approved of by McDougall and Beard even to the extent of including in the claim the price which the Bank had paid for the adjudication and deducting the amount they were entitled to retain out of it.

McDougall and Beard no doubt at this time considered that they were obtaining a bargain as they contemplated selling the property to the late L. A. Senecal for something like \$80,000. Throughout the negotiations it is apparent that McDougall and Beard having had years of intimate connection with the Company and being thoroughly conversant with its affairs and the value of the property, were thoroughly acquainted with all its business and particularly of the position which the Bank occupied, with regard to it, and were willing in this way to pay the Bank and to get possession of the property. If they failed to realize



their expectations it was through no fault of the Bank's.

Following up the transfer, which was put in the form of a sale so far as the real estate was concerned, at the request of the Defendants themselves, (though the collaterals which were of very considerable value and which formed part of the consideration were transferred separately) the Defendant McDougall proceeded to take possession of the property and put his own man, a Mr. Lee, in possession and assumed the financial management. He has never since remained in possession, administering it, receiving revenues, selling property from time to time, some of the moneys for which he paid over to the Bank and others he did not, and otherwise acting as owner even after the commencement of the present litigation. His book-keeper Rough the nominal purchaser, kept all the accounts received accounts from time to time from the Bank and did not think of making any objection.

Some six months after the Sheriff's sale the Hochelaga Bank, as creditors of the Beet Root Sugar Company, took the action to annul the Sheriff's sale already spoken of. Rough, as *détenteur* of the property was made a party to the action so that he had full knowledge of it from its commencement. This action is the trouble of which the Defendants complain. The grounds of this petition in brief are : That the Sheriff's sale was void for informalities, inasmuch as the advertisements and notices of sale had described the lots sold simply by their cadastral numbers without giving any boundaries or streets upon which they were situated, and also that the property had been sold *a vil prix* by reason of the arrangement between the Bank, the Adjudicataire, and the Defendants in the present case, which tended to prevent parties from bidding.

When action to annul the Sheriff's sale was taken, or in other words when the trouble which the Defendants complained of began, they made no *délaissement* of the property, nor did they in any way protest the Bank Respondent, the simple reason being that they knew and were prepared for the whole of this trouble from before the time that they bought the property. Not only so, but they went on and occupied and exploited the property for their own benefit, selling portions of it from time to time and pocketing the proceeds, or else, as in some cases, paying over the proceeds to the Bank, in recognition of their obligations and without complaint or protest of any sort.

It was not until seven or eight months after the trouble began and when it became apparent that they were not going to make a profitable transaction out of the property and that the property was worth less than they had agreed that it should cost them, that they attempted to repudiate their bargain on which they were willing enough to take their chances before, and to throw back the loss upon the Bank upon the pretense that the Bank was their warrantor.

There was no warranty. No act of the Bank disturbed the possession of the Defendants. The purchase by them was a purchase of the claim of the Bank against the Company and of the moveable property which the Bank held as collateral. The immovable property was bought by the Bank as Defendant's *prête nom* and handed over to Defendants in pursuance of their previous contract, a Deed of Sale being passed at the request of the Defendants for the purposes of registration. The attack upon the possession of the Defendants of this immoveable property at the instance of Creditors of the Company was based,

RECORD.

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In the Court  
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No. 174.

Respondent's  
Factum.

Dated 10th  
June, 1891.

— Continued.

RECORD. not upon any act of the Bank, but upon the contract which the Defendants themselves had made, and upon informalities attributable to the Defendants.

*In the Court  
of Queen's  
Bench.*

No. 174.  
Respondent's  
Factum.  
dated 10 June  
1891.  
— *Continued.*

The Respondents contend that the following facts will be found to be conclusively proved by the evidence :—

1o. That the sale by the Sheriff of the property in question was brought about under a judgment at the instance of Fairbanks & Co. and that this judgment had been purchased and was controled by the Defendant Beard, acting for himself and the other defendants.

2o. That the Defendant McDougall was a Director of the Company from January, 1882, and subsequently became its Treasurer and President, and that he took an active interest in the affairs of the Company, meetings of Directors being held frequently at his office in Montreal; and that defendant Beard had also been interested in the working of the Company prior to its difficulties and had been Lessee of the Company's property for more than six months prior to the Sheriff's sale.

3o. That Rough, who is the titular Defendant, was and is the book-keeper of McDougall and was merely put forward as his *prête-nom* and to conceal the fact that McDougall was interested in the acquisition of the property.

4o. That the Defendants McDougall and Beard prior to the Sheriff's sale of the property at which the Bank became adjudicataire had arranged to pay the Bank the amount of its claim against the Company in consideration of the transfer of all the rights and collaterals of the Bank against the Company and that the Bank should purchase the immoveables at the Sheriff's sale and should immediately transfer to defendants, and that in purchasing the property at Sheriff's sale the Bank was merely acting in pursuance of this arrangement and as the representative of the defendants.

5o. That the price agreed upon was not supposed to represent the value of the property but the claim of the Bank, is shown, by the letters which passed between the parties prior to the Sheriff's sale;—by the fact that the consideration mentioned in the deed of sale included all the collateral claims of the Bank against the Company and which were actually applied by the Bank in reduction of the defendant's indebtedness and with their consent:—by the fact that the supposed value of the property as McDougall and Beard confess, was greatly in excess of the amount named in the deed of sale; by the admissions which both Beard and McDougall make, Beard particularly, that the Bank's claim was to be the basis of the arrangement, and by the statement (filed) which shows the manner in which the price was arrived at, which included even the price paid by the Bank upon adjudication and gives credit to the defendants for the amount received back from the Prothonotary upon the report of distribution of the proceeds.

6o. That the defendant McDougall admitted prior to the signature of the Deed of Purchase that he knew all about the circumstances, which he now relies on as his plea.

7o. That the trouble complained of by defendants pleas arose when the Hochelaga Bank, as a creditor of the Company, instituted proceedings to set aside the Sheriff's sale of the property to the Bank in May, 1883. This proceeding was served upon the defendant Rough immediately after its institution and he was made a party to the suit.

8o. That subsequent to the trouble originating and when defendants had full knowledge of it, as stated in the last paragraph, they continued in possession of the property without protest, made no *délaissement* and even expressly by letters (Plaintiff's Exhibits A. K. ; A. L.), in September and November, *nearly six months after the origin of the trouble* admitted their indebtedness to the Plaintiff.

They further admitted their indebtedness and made payment on account even after the institution of the present action.

*Vide*—Plaintiff's Exhibits A. M. and A. N. of 9th June and 11th July, 1884, and statements of payments made.

10 9o. That the defendants have remained in possession of the property and have from time to time realized on the sale of large portions of it during all the time that the present litigation and the litigation which forms the trouble of which they complain has continued and that the amounts which they have thus realized from the sales of the property aggregate upwards of \$10,000.

10o. That pretended Customs' claim was well known to the Defendants McDougall and Beard, at the time of and prior to the Sheriff's sale. (*Vide* evidence—Doak and Farwell.)

20 11o That the contract between the parties was not a purchase of the real estate but a sale and purchase of such rights as the Bank possessed and was without warranty and a veritable *contrat aleatoire*.

Upon these facts, it is contended, that Plaintiffs must have judgment even admitting the existence of the trouble complained of.

Article 1510 of the Civil Code embodies the principle which must be admitted, that a stipulation of non-warranty added to a knowledge of the causes of eviction renders the purchaser liable in any event, The purchasers cannot even demand security under Article 1535.

*Vide*—C. C. 1510 and 1512.

30

Code Napoleon 1629.

Laurent (Vente) Volume 24, Sects. 256, 258, 261 and 323.

Marcade (Vente) Nol. 6, pp. 270 and 272.

Aubré & Rau, Vol. 4, p. 383.

Baudry Lacantinerie, Droit Civile. Vol. 3, p. 561.

Duranton Title 16, 345.

Warranty as to the personal acts of the Plaintiffs stipulated by the Deed of Sale is only an expression of the principle enunciated by Article 1509.

*Vide*—Pothier Vente (Bugnet Ed.) Vol. III. Nos. 183-4, pp. 77-8.

40 This is apparent by the circumstances attending the sale and by the letters of the manager of the Bank, Plaintiffs to the Defendant, prior to the sale and which formed the basis of their agreement, and copies of which are filed as exhibits in the actions *en nullité*.

The acts referred to can only be held to apply to acts subsequent to the sale.

*Vide*—Laurent, Vol. 24, Sect. 256.

Arret in D'Alloz, 1865, 1-181.

RECORD.

*In the Court  
of Queen's  
Bench.*

No. 174.

Respondent's  
Factum.

Dated 10th  
June, 1891.

— *Continued.*

RECORD.

In the Court  
of Queen's  
Bench.

No. 174.  
Respondent's  
Factum.

dated 10 June  
1891.

— Continued.

Even if the Plaintiffs were responsible for their acts, which would cause trouble, prior to the sale, they are not responsible for any of the acts alleged in the Defendants' pleas and which are relied upon by the Petitioners on the action *en nullité*.

The principal reliance of those who attack the Sheriff's sale is the informality of the Sheriff's notices of sale. Now, these defective notices were clearly not acts of the Plaintiffs, but rather of the Defendants. The property was not brought to sale at the instance of the Plaintiff, but of other creditors; the judgment, under which the seizure and sale was effected, having been purchased by Beard, acting for himself and McDougall.

10

Article 1587 of the Civil Code makes the prosecuting creditor liable for informalities in proceedings; *ergo*, if the Eastern Townships Bank had purchased for its own account, the Defendants would have been its warrantors, and if the Bank were evicted from the property they would have an action for damages against these very Defendants who had brought the property to sale.

*Soulard vs. Letourneau*, 19 L. C. J., pp. 40 and 45.

Apart from these informalities in the sale there was no act of the Bank Plaintiff, which would be sufficient of itself to nullify the sale. There was no illegality in their having obtained, a year previous to the Sheriff's sale, a judgment against the Company and having publicly registered it, and, moreover, all the circumstances attending the Bank's judgment were well known to the Defendants, and, in fact they made use of the same to obtain possession of the property which they wished to purchase as a speculation.

20

It is not pretended, nor is there any suggestion in the evidence, that the Defendants were in any way influenced by the fact that the Bank had a registered judgment against the property, and McDougall is proved to have known all about this judgment long prior to the Sheriff's sale, and as a Director of the Company took no steps, nor did the Company itself, to set it aside.

30

The arrangement between the Defendants and the Bank was relied upon by the creditors of the Company as a ground for annulling the sale by the Sheriff as tending to prevent persons from bidding, but as has been said, this arrangement was Defendants' own scheme, not the Bank's, and if their own acts tended to dispossess them they cannot ask the Bank to pay.

The cases of *Lizotte & Blondin*, 13 *Revue Legale*, and *Prerost & Five Lilles*, Ramsay's Appeal Cases, proceed upon the principle that a Sheriff's sale implies warranty to title.

C. C. P. Articles 689 and 707, and C. C. 1588 to 1591.

The remarks of the Privy Council and of the Court of Queen's Bench under the latter case both show that these were sales where warranty was implied, and inferentially if there had been no warranty, as in this case, the purchaser would have been liable. As has been stated this claim was well known to Defendants before the sale.

40

A word as to the pretended claim of the Customs and the plea regarding it. This claim though it is clearly shown to have been known to the Defendants long prior to the sale of the property in January, 1883. to them it is not plead-

ed until the last moment before trial, some six years later. They never protested the Plaintiff with regard to it, and Mr. Rough even formally protested the Government against the pretended claim, alleging that it had no foundation, and has constantly been in communication with the Department of Customs with regard to its settlement.

10 The real estate was sold under the Queen's Writ on the 12th January, 1883, and if the machinery constructively warehoused formed part of the realty it was sold under that Writ, and cannot be sold again by the Crown for a claim existant at the time of the first sale. The Crown loses its rights the same as  
 10 other parties if it does not protect the same in the manner provided by the laws of the realm.

The pretended seizure by the Crown is clearly a nullity. A reference to the Customs laws show that goods can only be seized for infraction of the Revenue Laws, and goods which are warehoused to Government have committed no infraction of the laws.

20 The rights of the Government in regard to warehoused goods are to enforce its bond or to sell the goods warehoused, if it has them ; but the Government has no right of seizure, and this the Crown lawyers clearly understood, as they have made no attempt whatever to enforce the seizure which was made  
 20 more than five years ago.

A word as to Mr. MacDougall's pretention that he gets nothing for his money if the Sheriff's sale is set aside. In the present position of matters he would still receive all that he practically purchased from Plaintiffs. The claim of Plaintiff at the time the deed was passed was absorbed in the Sheriff's sale, but if this were set aside it would still exist in the form of mortgages, judgments and collaterals as per statement made to McDougall at the time he purchased. He has sold and realized all the collaterals. He would still have all the rights and interest of the Bank in the property as expressed in their hypo-  
 30 thecs and registered judgments, of which he had full knowledge at the time he purchased and in any re-sale the *Baillieur de fonds* claims alone would secure to him the property, as no sane person would think of paying more for it.

If Mr. McDougall's statement of taxes, insurance and necessary expense of maintenance is true, he could certainly meet any claim for what had been sold out from the property.

40 This must be clearly borne in mind, that whatever trouble Defendants might have in connection with the title to the property, they still would hold, and did hold, all the rights of the Bank against it, which was what they contracted for. The consideration for the property had no reference to its value but was based on the claim of the Bank, and when the agreement was made  
 40 the Bank had no title to the property, and such as they subsequently got was obtained at a Sheriff's sale conducted under the Defendant's writ, was for Defendants' benefit and fulfillment of their plan and request and all the circumstances connected with the property and which they plead they were minutely acquainted with.

Upon the whole, the Respondent respectfully contends that the judgment appealed from be confirmed with costs.

Montreal, June, 1891.

ATWATER & MACKIE,  
*Attorneys for Respondent.*

RECORD.

*In the Court  
 of Queen's  
 Bench.*

No. 174.  
 Respondent's  
 Factu.n.  
 Dated 10th  
 June, 1891.  
 — *Continued.*

RECORD.

ENDORSED.

*In the Court  
of Queen's  
Bench.*

Respondents case fyled 24 Sept., 1891, paraphed, L. W. M.

No. 174.  
Respondent's  
Factum.  
dated 10 June  
1891.  
— *Continued.*

## DOCUMENT XIII

10

## Case No. 301.

No. 175  
Transcript of  
Proceedings  
in the Court  
of Queen's  
Bench from  
20th March  
to 25rd June  
1893.

Transcript of the proceedings had and entries made in the Register of the Court of Queen's Bench (Appeal side.)

20 March 1890.

Messrs. Lacoste, Bisailon, Brosseau and Lajoie file a praecipe for writ of Appeal and writ issues.

20

9 April 1890.

The appellants file an authentic copy of said writ with return of service.

19 September 1890.

Messrs. Atwater & Mackie appear for the Respondents.

23 September 1890.

Messrs. Lacoste, Bisailon, Brosseau & Lajoie appear for the Appellants. 30

26 September 1890.

Demand of Reasous are fyled on behalf of Respondents.

30 September 1890.

Reasons of appeal are fyled on behalf of the Appellants.

Demand of Answers to Reasons of appeal are also fyled on behalf of the said Appellant.

23 September 1891.

40

The Respondents file their printed case.

24 September 1891.

The Respondents inscribe this cause on the Role for hearing on the merits *Ex parte.*

Present

The Honorable Mr. Justice Baby,  
do do Bossé,  
do do Blanchet,  
do do Wurtele, Assistant.

La Cour, sur motion de MM. Bisailon, Brosseau & Lajoie, permet qu'ils soient substitués à MM. Lacoste, Bisailon, Brosseau & Lajoie comme avocats des Intimés.

10

11 November 1892.

Mr. Justice Hall files a declaration of incompetency to sit in this cause, the firm of Hall, White & Cate of which he was a member having been counsel in the case.

RECORD.

*In the Court  
of Queen's  
Bench.*

No. 175

Transcript of  
Proceedings  
in the Court  
of Queen's  
Bench from  
20th March  
to 2<sup>nd</sup> June  
1893.

— *Continued.*

There is fyled on behalf of the said Andrew Rough a petition praying for the adoption of the necessary proceedings to cause the appointment of a judge *ad hoc* in the above two causes which are consolidated to replace Sir  
20 Alexandre Lacoste, Chief Justice and Mr. Justice Hall who are incompetent to sit therein ; at foot of which Petition is an order conformable thereto signed by Mr. Assistant Justice Wurtele.

Received this day from the Chief Justice of the Superior Court a letter appointing Mr. Justice Tellier judge *ad hoc* in the said causes and the same is here entered and registered viz :—

MONTREAL, 11 November 1892.

CLERK OF APPEALS.

SIR,

30

I have to acknowledge the receipt of your letter dated the 11th November instant notifying me that one of the judges of the Superior Court for Lower Canada is required to sit and act in the causes pending in the Court of Queen's Bench (Appeal side) and consolidated to wit : No. 301 Andrew Rough et al Appellants and The Eastern Townships Bank, Respondents and No. 302 Andrew Rough, Appellant and The Eastern Townships Bank, Respondents in lieu and stead of the Honorable Sir Alexandre Lacoste, Chief Justice and Mr. Justice Hall who are incompetent to sit in the said cause ; and having communicated with the judges of the said Superior Court, it as been arranged that the Honorable Judge Tellier will sit and act at the hearing of the cause above  
40 mentioned.

I have the honor to be, Sir,  
Your obedient servant,  
Signed F. G. JOHNSON,  
*Chief Justice S. C.*

12 November 1892.

The Appellants file their case.

RECORD.

DOCUMENT XIV.

*In the Court  
of Queen's  
Bench.*

15 November 1892.

Présent

No. 175a  
Appellant's  
motion to  
be permitted  
to file judge-  
ment *Re*  
Fairbanks  
& al, Plain-  
tiffs, and Pio-  
neer Beet  
Root Sngar  
Co., Defend-  
ants, etc  
Dated 12th  
Nov., 1892.

L'Honorable Juge Baby,  
do do Bossé,  
do do Blanchet,  
do do Hall.

10

Suivant avis donné, il est fait motion de la part des Appellants qu'il leur soit permis de produire une copie du jugement rendu dans la cause No. 198 Fairbanks et al, Demandeurs vs. The Pioneer Beet Root Sugar Company, Défenderesse et la Banque d'Hochelaga, Requérente en nullité du Décret et The Eastern Townships Bank, adjudicataire et Andrew Rough et al, mis en cause accordant la nullité du Décret en question.

Il est ordonné que l'audition sur cette motion ait lieu en même temps que sur le mérite.

20

DOCUMENT XVI.

15 November 1892.

No. 175b  
Consent of  
parties to  
unite cases  
Nos. 301 and  
302. Dated  
12th Nov.,  
1892.

30

Les parties produisent un consentement à ce que les causes ci-dessus qui étaient consolidées en Cour du premier instance soit aussi consolidées dans la présente Cour pour les fins de l'Appel.

18 November 1892.

Present

The Honorable Mr. Justice Baby,  
do do Bossé,  
do do Blanchet,  
do do Wurtele,  
do do Tellier *ad hoc*.

40

The hearing on the merits was commenced and was proceeding when the Court adjourned.



19 November 1892.

Presents

The Honorable Mr. Judge Baby,  
do do Bossé,  
do do Blanchet,  
do do Wurtele,  
do do Tellier *ad hoc*.

10

The hearing on the merits is closed.

*Curia advisare Vult.*

RECORD.

*In the Court  
of Queen's  
Bench.*

No. 175b  
Consent of  
parties to  
unite cases  
Nos. 301-302  
dated 12th  
Nov. 1892  
*Continued.*—

20

DOCUMENT XV.

Le vingtième jour de Février, 1890.

L'HON. JUGE TASCHEREAU

La Cour, ayant entendu les parties, savoir : La Banque d'Hochelaga, requérante, La Banque des Townships de l'Est, adjudicataire, la Compagnie Défenderesse, la corporation du village de Coaticooke, mis en cause, et Thomas Darling ès-qualité, intervenant, par leurs procureurs respectifs, sur le mérite de la requête en nullité de décret produite par la dite Banque d'Hochelaga et sur le mérite de l'intervention du dit Thomas Darling ès-qualité, les autres mis en cause et la corporation demanderesse n'ayant pas comparu à l'audience et ne contestant ni la dite requête, ni la dite intervention ; ayant de plus examiné la procédure, la preuve, les admissions et consentement et généralement toutes les pièces du dossier et sur le tout délibéré.

30

Adjudgeant *premièrement*, sur l'intervention et les moyens d'intervention du dit Thomas Darling, ès-qualité.

Considérant que l'intervention et les moyens d'intervention du dit Thomas Darling, liquidateur de la dite compagnie défenderesse, par lesquels le dit liquidateur prend pour la dite défenderesse des conclusions identiques à celles déjà prises par la dite Banque d'Hochelaga pour faire mettre de côté le décret en cette cause, sont mal fondées en droit, attendu, 1o. que le dit Thomas Darling ne pouvait dans tous les cas, intervenir en son nom personnel ainsi qu'il le fait, mais devait intervenir et prendre des conclusions au nom de la Compagnie défenderesse seulement ; 2o, que la dite intervention et moyens d'intervention étaient inutiles, contraires aux dispositions de l'article 715 du Code de Procédure Civil et productif de faux frais auxquels l'adjudicataire ne peut être condamné.

40

No. 175c  
Judgment re  
No 198 Fair  
banks et al  
Plaintiffs The  
Pioneer Beet  
Root Sugar  
Co Defen-  
dant & The  
Eastern  
Townships  
Bank, pur-  
chaser, & La  
Banque  
d'Hochelaga  
Petitioner (en  
nullité de d-  
cret & An-  
drew Rough  
et al mis en  
cause, render-  
ed 20th Fe-  
bruary 1890

RECORD.

*In the Court  
of Queen's  
Bench.*

No. 175c  
Judgment *re*  
No. 198 Fair-  
banks et al  
Plaintiffs The  
Beet Root  
Sugar Co.  
Defendant &  
The Eastern  
Townships  
Bank purcha-  
ser, & La  
Banque d'Ho-  
chelaga Peti-  
tioner (en  
nullité de dé-  
cret) & An-  
drew Rough  
et al mis en  
cause, render-  
ed 20th Fe-  
bruary 1890  
*Continued.*—

Rejette la dite intervention et les dits moyens d'intervention du dit Thomas Darling ès-qualité avec dépens distraits à Maître Atwater & Mackie, procureurs de l'adjudicataire.

Adjugeant *deuxièmement*, sur la dite requête en nullité de décret de la requérante, la Banque d'Hochelaga et sur la contestation d'icelle par la dite adjudicataire et par la dite corporation du village de Coaticooke, mise en cause ;

Considérant que la dite Banque d'Hochelaga, comme créancière de la dite Compagnie défenderesse et comme telle intéressée à la vente régulière des biens de sa débitrice, et à la distribution légale des deniers provenant de telle rente, avait droit d'attaquer le décret fait en cette cause des propriétés immobilières de la dite compagnie défenderesse pour les raisons invoquées dans sa requête. 10

Considérant que le procès-verbal de la saisie des immeubles de la défenderesse mentionnés dans la requête et les annonces et avis publics de la vente d'iceux, donnés et publiés par le shérif du district de St. François sont nuls et de nul effet, ne contenant pas la description des immeubles saisis telle que requise par l'article 658 du Code de Procédure Civile.

Considérant que la description donnée dans les dits documents pêche en ce qu'elle ne contient pas l'indication de la rue où les dits immeubles sont situés dans le village de Coaticooke, et considérant que pour un des dits immeubles, la dite description pêche de plus en ce qu'elle mentionne une partie d'un lot officiel sans désigner suffisamment la dite partie du lot par ses tenants et aboutissants. 20

Considérant que la vente des dits immeubles a eu lieu sur cette description insuffisante, illégale et nulle, et qu'ils ont été adjugés illégalement, irrégulièrement à la dite adjudication pour une somme de quatorze cents piastres ;

Considérant que les dits immeubles ont été ainsi vendus *en bloc*, quoique annoncés séparément et que telle vente en bloc a été faite sans le consentement régulier de la partie saisie, mais illégalement, à la sollicitation de l'adjudicataire et à vil prix ; 30

Considérant que la preuve révèle en outre qu'il y a eu dol et artifices à la connaissance de l'adjudicataire pour écarter les enchères ;

Considérant que la première défense en droit de la dite adjudicataire a rejetée par jugement de cette cour, en date du vingt février mil huit cent quatre-vingt-cinq ;

Considérant que la deuxième défense en droit de la dite adjudicataire, réservée au mérite par le dit jugement, est mal fondée, attendu que les allégations de la requérante que cette défense en droit attaque étaient nécessaire pour démontrer le dol et les artifices auxquels on a recours pour parvenir au but que l'adjudicataire se proposait, c'est-à-dire l'adjudication à vil prix des immeubles de la défenderesse ; 40

Considérant que les troisième et sixième plaidoyers de la dite adjudicataire ont été rejetés sur réponse en droit, par le même jugement du vingt-février mil huit cent quatre-vingt-cinq ;

Considérant que les autres défenses de la dite adjudicataire allèguent la

prétendue régularité des procédés de la saisie et de la vente, et un prétendu acquiescement de la requérante aux dits procédés, sont mal fondées en fait et en droit ;

Considérant que la première défense en droit de la dite mise en cause la corporation du village de Coaticooke, a été rejetée par le dit jugement du vingt février mil huit cent quatre-vingt-cinq ;

10 Considérant que la deuxième défense en droit de la dite corporation du village de Coaticooke, réservée au mérite par le dit jugement est bien fondée quant au moyen suivant qu'elle invoque ; savoir : que la requête contient une conclusion à l'effet que toutes les parties colloquées sur le produit de la vente des dits immeubles soient condamnées à rapporter et payer les deniers ainsi reçus par elle à qui de droit ;

20 Que la requérante est sans droit et sans intérêt à prendre cette conclusion, attendu que si le décret est annulé et les parties remises au même état qu'elles étaient avant le dit décret les immeubles seront remis en possession de la défenderesse et sujets à être saisis et à être vendus de nouveau sur la dite défenderesse ; que le recours de la requérante est contre les dits immeubles et non contre le produit d'un décret nul en loi ; que dans l'espèce ce serait à l'adjudicataire seule et non aux créanciers à se faire rembourser le prix d'adjudication par qui de droit et à solliciter le tribunal à cet égard, par action ou requête, en vertu de l'art. 762 du Code de Procédure Civile ;

Considérant que la dite Corporation du village de Coaticooke, régulièrement mise en cause par jugement de cette cour en date du trois avril mil huit cent quatre-vingt quatre avait droit et intérêt de contester cette partie illégale des conclusions de la requérante ;

Considérant que ce moyen de défense de la dite Corporation est le seul qui soit fondé en droit, et que les autres plaidoyers par elle produits ne peuvent être *maintenus* ;

30 Considérant que la dite Corporation ayant contesté toutes les conclusions de la demande et ne réussissant que sur ce point unique qui n'a trait qu'à une partie d'icelles.

Rejette les plaidoyers de la dite adjudicataire non déjà précédemment écartés, maintient pour partie les conclusions de la requête en nullité de décret de la dite Banque d'Hochelaga, annule et met à néant la vente et l'abjudication, faites par le shérif du district de Saint-François, le douze janvier mil huit cent quatre-vingt-trois, des immeubles ainsi décrits dans le procès-verbal de saisie du dit shérif et dans ses annonces officielles, savoir : 1o Lot number Seven Hundred and twenty two on the cadastral plan and book of reference for the village of Coaticooke. 2o 40 Lots numbers 761, 762, 763, on said plan and book of reference save and except that portion on said lot number 763, formerly sold by one Lewis Sleeper to Charles W. Vaughan, and all the land lying to the south of the same. 3o Lot number seven hundred and twenty-one, on said plan and book of reference. 4o Lots numbers 714, 720, 726, 727, 733 734, 741, 744, 1580 and 1582 on said plan and book of reference. 6o Lots numbers 716, 717, 718, 719, 720, on said plan and book of reference. 9o Lot number seven hundred and twenty three on said cadastral plan and book of reference, with all the buildings and

RECORD.

*in the Court  
of Queen's  
Bench.*

No. 175c  
Judgment *re*  
No. 198 Fair-  
banks et al  
Plaintiffs The  
Beet Root  
Sugar Co.  
Defendant &  
The Eastern  
Townships  
Bank purcha-  
ser, & La  
Banqued'Hochelaga Peti-  
tioner (en  
nullité de dé-  
cret) & An-  
drew Rough-  
et al mis en  
cause, rendered 20th Fe-  
bruary 1890  
*Continued.*—

RECORD.  
 in the Court  
 of Queen's  
 Bench.  
 No. 175d  
 Judgment re  
 No. 198 Fair-  
 banks et al  
 Plaintiffs The  
 Beet Root  
 Sugar Co.  
 Defendant &  
 The Eastern  
 Townships  
 Bank purcha-  
 ser, & La  
 Banqued'Hoc-  
 chelaga Peti-  
 tioner (en  
 nullité de dé-  
 cret) & An-  
 drew Rough  
 et al mis en  
 cause. render-  
 ed 20th Fe-  
 bruary 1890.

improvements on the said lots of land erected and made ; annule et met aussi à néant le titre subséquemment consenti par le dit shérif à la dite adjudicataire; déclare nuls et de nul effet la saisie des dits immeubles fait par le dit shérif, le procès verbal de la dite saisie, les annonces de vente généralement tous les procédés du dit shérif pour opérer la dite saisie et parvenir au dit décret, déclare que les parties seront remises au même état qu'avant la dite saisie, avec dépens contre la dite adjudicataire distraits à Maîtres Béique, McGoun & Emard, procureurs de la dite requérante en nullité de décret, sauf les frais déjà adjugés durant l'instance sur la contestation soulevée entre la requérante et la dite adjudicataire ; maintenant la deuxième défense en droit de la corporation du village de Coaticooke, rejette cette partie des conclusions de la requérante par laquelle il est demandé à la cour de condamner les créanciers colloqués à rapporter et payer à qui de droit les deniers reçus par eux et rejette les autres plaidoyers de la dite corporation du village de Coaticooke, le tout sans frais sur la contestation soulevée entre la requérante et la dite corporation ; sauf toujours les dépens déjà adjugés durant l'instance.

La Cour réservant à qui de droit tout recours qui peut être exercé en vertu de l'Art. 762 du Code de Procédure Civile et tout autres recours légal qu'il y aura lieu d'exercer.

Vraie Copie,

JEAN B. VALLÉE,  
 Député P. C. S

DOCUMENT XVII.

Canada,  
 Province de Québec. }

Cour du Banc de la Reine,  
 (En appel.)

Montréal, vendredi le vingt-troisième jour de juin mil huit cent quatre-vingt-treize.

PRÉSENT

- L'HONORABLE M. LE JUGE BABY,
- “ “ BOSSE,
- “ “ BLANCHET,
- “ “ WURTELE,
- “ “ Tellier, *ad hoc.*

No 301

Andrew Rough, John McDougall et Samuel W. Beard, tous de la cité et du district de Montréal (Défendeurs en Cour de première instance)  
 APPELANTS

ET

La Banque des Townships de l'Est (The Eastern Townships Bank) une corporation de Banque et un corps politique et incorporé et ayant son principal

bureau et place d'affaires en la ville de Sherbrooke, dans le district de St-François (Demanderesse en Cour de première instance)

No 302

INTIMÉE

Le dit Andrew Rough (Demandeur en Cour de première instance)

APPELANT

RECORD.

*In the Court  
of Queen's  
Bench.*

No. 175d  
Judgment of  
the Court of  
Queen's  
Bench in  
both Appeals  
rendered 23rd  
June. 1893.

10 La dite Banque des Townships de l'Est (Défenderesse en Cour de première instance)

INTIMÉE

20 La Cour après avoir entendu les parties par leurs Avocats, tant sur le mérite de ces deux causes qui ont été du consentement des parties consolidées dans la présente Cour, pour les fins de l'appel, comme elles l'étaient en Cour de première instance, pour les fins de la procédure, de l'instruction et du Jugement, que sur la motion des appelants faite à l'audience et demandant la permission de produire, pour valoir ce que de droit, le jugement qui a été rendu en Cour Supérieure, à Montréal, le 20 février 1890, dans la cause numéro 1198 de Fairbanks & al., Demandeurs contre The Pioneer Beet Root Sugar Company, Défenderesse et La Banque d'Hochelaga, requérante en nullité de décret et "The Eastern Townships Bank, adjudicataire et Andrew Rough & al., mis en cause, et qui a prononcé la nullité du décret" dont il est question dans les présentes causes, après avoir examiné les griefs d'appel et les réponses à iceux, les dossiers de la procédure en Cour de première instance, les plaidoeries, la preuve et les pièces et documents communs aux dites deux causes, ainsi que la preuve faite dans la dite cause numéro 1198 sur la dite demande en nullité de décret, et devant servir dans les présentes causes comme si elle y avait été prise (suivant consentement des parties et jugement de la Cour à cet effet, en date du 13 novembre 1889) et après avoir sur le tout mûrement délibéré ;

30 Attendu qu'il résulte de la preuve et des documents des dites causes que les propriétés immobilières de la compagnie dite : The Pioneer Beet Root Sugar Company ont été saisies et annoncé en vente par le shérif du district de St François, en vertu d'un bref d'exécution émané sous l'autorité d'un Jugement obtenu par Fairbanks and Company contre la dite compagnie que dans le but d'arrêter la vente des dites propriétés dont il était le locataire, l'appelant Beard a acquis de Fairbanks and Company le Jugement en vertu duquel elles avaient été saisies et annoncées en vente, mais découvrant que l'intimée qui  
40 avait obtenu jugement contre la compagnie saisie et fait enregistrer ce jugement avec hypothèque sur les dites propriétés avait fait noter un bref d'exécution émané sur ce jugement, comme opposition afin de conserver au bref émané et exécuté sur le jugement de Fairbanks and company ; et que s'il se désistait de la saisie, le shérif serait tenu de continuer ses procédés au nom du premier saisissant et aux frais de l'Intimée dont le bref avait été noté comme susdit, il a laissé les procédés suivre leur cours ordinaire, et il est entré en pourparlers pour

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Bench.*

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the Court of  
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Bench in  
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—Continued

l'acquisition des dites propriétés de l'Intimée qui entendait mettre des enchères à la vente que peu de jours avant le décret, l'intimée s'était engagée pour le cas où elle deviendrait adjudicataire des propriétés saisies, de les revendre aux appelants Beard et McDougall, dans le délai, et aux termes prix et conditions qui sont énoncés dans les deux lettres de son gérant général, en date des 6 et 8 janvier 1883 et adressées aux dits Beard et McDougall et que l'Intimée a acquis les dites propriétés saisies à la vente qui en fut faite, par le shérif du district de St François, qui les lui a adjugées le 12 janvier 1883 pour le prix de \$1400, et lui en a octroyé contrat le lendemain et que c'est en exécution de la promesse de vente que l'Intimée a consenti, devant Mtre. Hétu, notaire, à Montréal, le 19 janvier 1883, avec la garantie de ses faits seulement, pour le prix de \$49,439.70 qui correspond à son prix d'acquisition et au montant de sa créance contre la dite compagnie, un titre de vente des propriétés par elle acquises au dit décret, à l'appelant Rough qui était le teneur de livres de l'appelant McDougall, sur lequel prix elle a reconnu dans le dit acte, avoir reçu un acompte de \$9,439.70 ; et que les appelants Beard et McDougall se sont, par un autre acte, passé le même jour et devant le même notaire, portés envers l'Intimée, cautions conjoints et solidaires du paiement de la balance de \$40,000 restant due sur le prix et payable aux termes portés à l'acte, avec intérêt de sept pour cent par an et avec stipulation que le défaut de faire les versements convenus dans les 15 jours de leur échéance respective, rendrait exigible tout ce que dû sur le prix ;

Attendu que vers le 22 juin 1883, la Banque d'Hochelaga, créancière de la dite compagnie The Pioneer Beet Root Sugar Company, a formé une demande en nullité du dit décret du 12 janvier 1883 contre l'Intimée adjudicataire qui a contesté cette demande, et aussi contre les appelants qui ont été mis en cause comme détenteurs des dits immeubles et qui s'en sont rapportés à justice ; et que les moyens invoqués par la Banque d'Hochelaga pour faire prononcer la nullité du dit décret sont tant les informalités dans la saisie, les annonces la vente du shérif que le dol, la fraude et les artifices pratiqués par l'Intimée et à sa connaissance pour obtenir ses jugement, hypothèque et exécution contre la compagnie saisie, pour écarter les enchères et se faire adjuger les immeubles saisis à vil prix ;

Attendu que le 6 octobre 1883 le gouvernement de la Puissance du Canada a fait saisir les machines et engins qui se trouvaient attachés aux bâtisses situées sur les immeubles en question, pour droit de douane non payés et qui étaient dus dès avant le décret opéré dans la dite cause numéro 1198, le 12 janvier 1883 ;

Attendu que la dite demande en nullité de décret était encore pendante lorsque, d'une part, l'Intimée, sans tenir compte du trouble qui en résultait, s'est pourvue, le 10 mai 1884, contre l'appelant Rough, comme principal obligé et contre les appelants Beard et McDougall comme cautions solidaires, pour le recouvrement de la somme de \$31,853,56 avec intérêt du 16 janvier 1884, étant la balance du prix de la dite vente du 19 janvier 1883, et que, d'autre part, l'appelant Rough a raison du trouble par lui éprouvé par suite de la demande et requête de La Banque d'Hochelaga, et pour les mêmes moyens que ceux articulés par cette dernière, s'est pourvu, le 5 septembre 1884, contre l'Intimé,

pour faire prononcer la nullité de cette vente, et obtenir la restitution des \$16,092.48 qu'il allègue avoir été payés sur le prix des dits immeubles ;

Attendu que les appelants se sont refusés au paiement de la balance du prix de vente et des intérêts stipulés dans l'acte du 19 janvier 1883, et qu'ils ont opposé à l'action de l'Intimée contre eux, par leurs plaidoyers respectifs, les mêmes moyens que ceux invoqués par l'appelant Rough pour faire casser, annuler et mettre de côté le dit acte de vente du 19 janvier 1883 ;

10 Attendu qu'après la contestation liée entre les parties sur les dites deux actions, de nouveaux moyens tirés du trouble apporté par la saisie douanière du 6 octobre 1883, ont été, avec la permission de la Cour Supérieure, ajoutés aux plaidoyers opposés par les appelants respectivement à l'action de l'Intimée contre eux ; et à la demande et action formées par l'appelant Rough contre l'Intimée ;

Attendu que par ses réponses aux plaidoyers des appelants, et par ces défenses à l'action de l'appelant Rough, l'Intimée allègue que ce dernier n'était et n'est que le prête-nom des appelants McDougall et Beard ; que ces derniers connaissaient les causes d'éviction ci-dessus mentionnées avant la date du 19 janvier 1883, et même antérieurement au décret du 12 janvier de la même année que le dit acte de vente comporte une stipulation spéciale de non garantie ; que  
20 le décret, des dits immeubles a été opéré à la diligence et dans l'intérêt des dits McDougall et Beard qui étaient les cessionnaires du jugement rendu contre la compagnie Défendresse dans la dite cause numéro 1198 ; que si l'Intimée s'est portée adjudicataire des dits immeubles, elle l'a fait à la sollicitation des dits McDougall et Beard, et en exécution d'une convention antérieure intervenue entre eux et la dite Banque intimée, par laquelle convention cette dernière avait promis de se porter adjudicataire des dits immeubles afin de les revendre ensuite aux dits McDougall et Beard, par l'entremise de leur prête nom, le dit Rough, à un prix qui ne représenterait pas la valeur des dits immeubles, mais qui serait calculé d'après le montant des réclamations de la  
30 dite Banque Intimée contre la compagnie saisie en capital, intérêt et frais, en y ajoutant le prix d'adjudication qui serait payé par l'Intimée, celle-ci devant plus tard tenir compte à l'acquéreur et lui donner crédit de toutes sommes d'argent qu'elle recevrait à titre de collocations sur le produit du décret ; adjugeant sur la motion faite par les Appelants à l'audience :—

Considérant qu'il n'y a pas lieu de recevoir en appel le jugement que les appelants ont demandé la permission de produire, rejette la dite motion avec dépens contre les appelants.

Et adjugeant sur le mérite de l'appel ;

40 Considérant que, dans l'espèce, pour apprécier les droits et obligations des parties, il importe avant tout de chercher quelles ont été leurs intentions respectives dans les faits et agissements qui ont précédé, accompagné et suivi le décret en question ;

Considérant qu'il est constant par la preuve et les documents de la cause que l'Intimée désirait la vente par décret des propriétés immobilières de la compagnie saisie ; qu'elle voulait même enchérir sur ces propriétés, et s'en rendre adjudicataire, si c'était nécessaire pour sauvegarder ses droits et intérêts, et faire bonne la créance réputée douteuse qu'elle avait contre la dite

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 —  
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compagnie, mais que le dit décret n'aurait pas eu lieu après que le créancier saisissant eut été payé et désintéressé par l'appelant Beard, dans le but de mettre fin à la saisie, si le dit shérif n'eut pas été tenu, en loi, de continuer ses procédés au nom du premier saisissant et aux frais de l'Intimée dont le bref avait été au préalable noté, pour satisfaire à la créance spécifiée dans le bref d'exécution subséquent, et que c'est après avoir constaté son impuissance d'arrêter les procédés sur la dite saisie et partant d'empêcher la dite vente par décret que l'appelant Beard s'est mis à rechercher l'avantage d'acquérir aux prix, termes et conditions que l'Intimée pourrait lui faire, les dites propriétés saisies, qu'il ne pouvait acheter au comptant du shérif et dont l'Intimée voulait se rendre adjudicataire ; et qu'il a réussi à faire la convention qui est constatée dans les susdites lettres des 6 et 8 Janvier 1883 et qui permettait à l'Intimée d'atteindre plus sûrement le but qu'elle poursuivait et le succès qu'elle recherchait auparavant, et aux appelants Beard & McDougall d'avoir la faculté d'acquérir de l'Intimée, si elle en devenait adjudicataire, aux prix, termes et conditions et dans le délai stipulés et arrêtés d'avance ; et que c'est, dans ces circonstances, que l'appelant Beard a laissé la dite saisie suivre son cours, que le dit décret a eu lieu et que l'Intimée est devenue adjudicataire des dites propriétés immobilières de la dite compagnie saisie, sa débitrice ;

20  
 Considérant qu'en se portant adjudicataire au dit décret, l'Intimée agissait pour elle-même et dans son propre intérêt ; qu'il est vrai qu'aux termes des dites lettres des 6 et 8 Janvier 1883, l'Intimée était tenue de revendre les propriétés par elle acquises, aux appelants Beard & McDougall, dans les dix jours suivant le décret, aux prix, termes et conditions y stipulés, mais qu'il ne s'en suit pas qu'en se portant adjudicataire, l'Intimée agissait comme leur prête-nom et mandataire ; qu'on ne saurait trouver dans la convention qui a précédé l'acquisition de l'Intimée, aucun mandat à cette dernière d'acquérir les propriétés mises en vente au dit décret, pour les appelants Beard & McDougall, et que c'est à tort que le Jugement dénoncé à interprété la dite convention dans ce sens ; que cette interprétation est repoussée, et par les termes de la convention qui imposent à l'Intimée l'obligation de revendre les propriétés acquises au dit décret, et par le prix à être payé, qui devait être de beaucoup plus élevé que celui de l'acquisition de l'Intimée ; que la dite convention ne constituait qu'une simple promesse de vente qui était obligatoire pour l'Intimée pendant les dix jours suivant le décret, mais qui n'obligeait à rien les appelants à qui elle avait été faite ; que les appelants Beard & McDougall étaient si peu liés par cette promesse de vente que l'Intimée n'aurait eu aucune action pour les forcer à s'en prévaloir ; et que l'Intimée avait si peu acheté pour les appelants Beard & McDougall que, s'ils ne s'étaient pas prévalus de la dite promesse de vente, dans le délai fixé à cet égard, les dites propriétés seraient restées à l'Intimée, et ils n'auraient eu aucune action pour la forcer à les leur vendre.

30  
 40  
 Considérant que par la dite convention, il entrerait dans les faits, actes et promesses de l'Intimée, et qu'il incombait à celle-ci de se procurer tous les avantages, tous les privilèges et tous les éléments constitutifs de la propriété des immenbles mis en vente au dit décret ; et de les conférer ensuite pleins, entiers et complets, aux prix, termes et conditions stipulés, aux appelants



Beard & McDougall, s'ils se prévalaient de la dite promesse de vente, dans le délai fixé ; et que c'est sur la transmission des propriétés, possession et titre des dits immeubles, et à raison de cette transmission et de la garantie des faits et promesses de l'Intimée que les appelants ont assumé envers cette dernière l'obligation de payer le prix calculé et déterminé d'après les bases de la dite convention, et porté en l'acte de vente du 19 Janvier 1883 ;

10 Considérant que, dans cette vente comme dans toute vente en général, la cause de l'obligation consiste, pour chacune des parties, dans l'obligation que l'autre partie a contractée de donner ou de faire ; qu'ainsi la cause pour l'Intimée, vendeuse, c'est l'obligation imposée aux acheteurs de payer le prix ; et la cause pour les appelants acheteurs, c'est la transmission des dits immeubles de la part de l'Intimée ;

Considérant que si le titre et l'acquisition de l'Intimée étaient annulés, il s'en suivrait nécessairement que l'Intimée n'ayant pu transmettre un droit qu'elle n'avait pas elle-même, ses acheteurs souffriraient une éviction qu'elle n'aurait pas alors rempli les engagements qu'elle avait pris envers les appelants Beard & McDougall et que par conséquent l'obligation assumée par les appelants de payer le prix convenu, deviendrait nulle et éteinte pour défaut de cause.

20 Considérant en outre que l'obligation de l'Intimée n'est pas entièrement consommée par la transmission qu'elle a faite des immeubles vendus ; qu'elle demeure encore, après cette transmission, en vertu de la garantie des faits et promesses qu'elle a stipulée et qui peut-être considérée comme le complément nécessaire de la délivrance, obligée à défendre et garantir ses acheteurs de toutes évictions par rapport à ces immeubles, qui procéderaient de ses faits et actes.

30 Considérant que par la dite stipulation de garantie des faits et promesses, l'Intimée serait bien exemptée du recours pour les évictions dont la cause lui serait étrangère ; mais qu'elle ne serait pas affranchie du recours pour de l'éviction dont la cause procéderait des vices de son titre ou de l'annulité de son acquisition ; qu'en effet, une telle cause d'éviction ne lui serait pas étrangère puisque par la convention antérieure au décret, il entraient dans les faits, actes et promesses de l'Intimée de se procurer les dits immeubles afin de les faire avoir aux appelants Beard & McDougall et de remplir par là, sa dite promesse de vente envers eux, pour le cas où ils s'en prévaudraient dans le délai fixé ;

40 Considérant que la connaissance que les appelants auraient eue, lors du contrat, des causes d'éviction tombant dans les limites de la garantie des faits et promesses de l'Intimée, empêcherait bien que cette dernière ne fut tenue des dommages et intérêts des appelants faute de pouvoir faire cesser l'éviction et accomplir la promesse qu'elle leur a faite de leur faire avoir les dits immeubles, mais que cette connaissance ne la déchargerait pas de la restitution du prix dont elle serait tenue *conditio sine causa* ; et qu'on devrait supposer que les appelants ont exigés la dite garantie précisément à raison du danger dont l'existence leur était connue, et que ce serait un cas pour appliquer l'article 1512 du Code Civil, et non l'article 1510 qui ne saurait trouver d'application dans l'espèce ;

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June. 1893.  
—Continued

Considérant que les appelants sont troublés par suite de la demande formée par La Banque d'Hochelaga pour faire annuler le décret du 12 Janvier 1883, et par suite de la dite saisie douanière du 6 Octobre 1883 ; que l'Intimée, en vertu de la garantie de ses faits et promesses, est tenue de garantir aux appelants la possession paisible des immeubles vendus ; qu'il lui incombe donc, en établissant la légitimité de son titre et de son acquisition, de faire cesser ces troubles pour remplir ses obligations comme venderesse, car autrement, les appelants se trouvant évincés, la partie du prix payée par eux et la balance qu'elle leur réclame resterait sans cause entre ses mains ;

Considérant que si l'intimée est étrangère aux causes de nullité tirées des informalités dans la saisie, les annonces et la vente du shérif, et aux causes qui ont amené la dite saisie douanière, elle n'en reste pas moins obligée de défendre son titre et son acquisition contre ces attaques ; pour avoir droit au prix porté en l'acte du 19 Janvier 1883 ; 10

Considérant à tout événement que la fraude et les artifices qu'on allègue avoir été pratiqués par l'Intimée pour obtenir ses jugement, hypothèque et exécution contre la dite compagnie *The Pioneer beet Root Sugar Company*, pour écarter les enchérisseurs au décret attaqué et se faire adjuger les propriétés saisies à vil prix, constituent des faits et actes qui sont propres à l'Intimée et dont elle est tenue de garantir les appelants ; 20

Considérant que le créancier qui a fait saisir et vendre sur exécution les biens de son débiteur ne saurait être considéré comme un vendeur, et, par suite, n'est pas soumis envers l'adjudicataire évincé à la garantie édictée par les articles 1508 et suivants du code civil ; qu'il n'encourt que la responsabilité résultant de ses fautes ;

Considérant qu'il n'a été établi dans la cause aucune faute pouvant engager la responsabilité des appelants envers l'intimée, comme adjudicataire au dit décret ; et lui donner un recours contre eux à raison des informalités de la saisie qui a amené le décret dont il s'agit ; que le fait par l'appelant Beard d'avoir acquis après la saisie et dans le but d'y mettre fin le jugement du créancier saisissant ne saurait le rendre responsable des informalités antérieurs à son acquisition ; et que l'Intimée n'a pas été étrangère aux prétendues informalités portérieures à cette acquisition, et, par suite, ne saurait s'en faire une arme contre les appelants ; pour s'affranchir de sa garantie ; 30

Considérant que les appelants sont bien fondés, dans les circonstances, à différer le paiement de la balance du prix qui leur est réclamée jusqu'à ce que l'Intimée fasse cesser le trouble et l'éviction qu'ils souffrent ou qu'elle leur fournisse cautions aux termes de l'article 1535 du Code civil.

Considérant que du montant de la réclamation de l'Intimée il convient de déduire la somme de cent trente-six piastres et quarante centins dont les appelants doivent être crédités en sus des crédits déjà donnés par l'action, ce qui réduit la demande à la somme de trente-et-un mille sept-cent dix-sept piastres et seize centins, avec intérêt à compter du 16 Janvier 1884 ; laquelle somme et lequel intérêt étaient dus et exigibles, lors de l'institution de l'action de l'Intimée, aux termes du dit acte de vente du 19 Janvier 1883 ; 40

Considérant que la garantie s'exerce de deux manières : ou par demande formée incidemment à la demande du tiers, ou par action principale formée

avant ou après l'éviction opérée ; que l'acheteur est toujours à temps d'exercer son action de garantie ; mais qu'il a surtout intérêt de l'exercer aussitôt que le trouble lui est fait, et avant que la sentence définitive ne soit prononcée ; car lorsqu'il attend après cette sentence à l'intenter, il se charge de la justification du droit du tiers qui a obtenu jugement contre lui, et il s'expose à voir sa garantie cesser par suite de la preuve que ferait le vendeur, qu'il existait des moyens pour faire rejeter la demande en éviction ; au lieu qu'en donnant la demande en garantie avant la fin du procès, cette discussion se fait entre le tiers et le garant, mais comme dans ce cas, il est incertain s'il y aura éviction, il y a lieu

10 à surseoir sur la demande en garantie jusqu'au jugement sur la demande formée par le tiers ;

Considérant, dans l'espèce, que la demande formée par l'appelant Rough contre l'Intimée pour obtenir l'annulation de la dite vente du 19 Janvier 1883, et la restitution de ce que payé sur le prix, trouvait sa raison d'être dans les troubles qui étaient faits aux dits appelants acheteurs et dans l'éviction qui les menaçait, par suite de la demande en nullité de décret de la Banque d'Hochelega et aussi par suite de la dite saisie douanière invoquée par l'amendement permis, à cette action que, dans les circonstances, elle peut être considérée comme une véritable action de garantie contre des troubles et éviction dont l'Intimée était

20 garante dans les limites et pour les raisons sus-énoncées ; qu'elle mettait l'Intimée en demeure d'établir la légitimité de son acquisition au dit décret et de son titre aux immeubles qu'elle avait vendus, et de faire cesser ces troubles et éviction ; qu'elle lui fournissait en outre les moyens (si elle avait voulu en user) de se décharger, de suite et à meilleure condition, de son obligation de garantie, en renonçant à sa dite acquisition, et en se soumettant à la restitution des acomptes reçus par elle sur le prix, et à l'abandon de sa réclamation pour la balance de ce prix ; mais que cette action de l'appelant Rough que l'Intimée a choisi de contester devait nécessairement avoir le même sort que la dite

30 demande en nullité de décret, et que la dite saisie douanière dont elle dépendait entièrement ; et que, par conséquent, il y avait lieu à surseoir sur cette action de garantie jusqu'après la décision finale sur la demande formée par La Banque d'Hochelega et sur la saisie pratiquée par le Gouvernement du Canada, pour ensuite, la maintenir, dans le cas où le décret aurait été annulé et la saisie maintenue ou la rejeter dans le cas où le décret aurait été maintenu et la saisie douanière annulée, en tenant compte toutefois que l'annulation du décret aurait permis d'adjuger sur la dite action de garantie, de la maintenir et de remettre les appelants et l'Intimée dans le même état qu'ils étaient respectivement avant le décret, sans attendre le résultat final de la dite saisie douanière ; par ces motifs dit et déclare que l'Intimée était et est tenue de garantir et de

40 défendre les appelants contre les troubles qui leur étaient et sont faits, et contre l'éviction dont ils étaient et sont menacés ; qu'il a été mal jugé dans et par le jugement dont est appel, savoir : le jugement rendu par la Cour Supérieure à Montréal, le dixième jour de Mars 1890 ; et qu'il a été bien appelé de ce jugement, et en conséquence maintient l'appel dans les deux causes et casse et annule le dit jugement en son entier, avec dépens contre l'Intimée en faveur des appelants ; desquels dépens distraction et accordée à MM. Chapleau, Bisailon, Brosseau et Lajoie, avocats des appelants.

RECORD.

*In the Court  
of Queen's  
Bench.*

No. 175d  
Judgment of  
the Court of  
Queen's  
Bench in  
both Appeals  
rendered 23rd  
June. 1893.  
—Continued

## RECORD.

*In the Court  
of Queen's  
Bench.*

No. 175d  
Judgment of  
the Court of  
Queen's  
Bench in  
both Appeals  
rendered 23rd  
June. 1893.  
—Continued

Et faisant ce qui aurait dû être fait sur l'instance de l'intimée contre les appelants, la Cour condamne ces derniers conjointement et solidairement à payer à l'intimée la dite somme de trente-et-un mille sept cent dix-sept piastres et seize centins, cours actuel, avec intérêt à compter du 16 Janvier 1884 et les dépens d'une action non contestée distraits à MM. Atwater et Mackie, procureurs de l'intimée, mais les appelants devront être crédités sur le montant de la présente condamnation des deux sommes suivantes qui paraissent avoir été payées à l'intimée durant l'instance, en vertu d'engagements pris avant la production des plaidoyers des appelants et avant l'institution de l'action de l'appelant Rough contre l'intimée, comme suit, savoir : cent trois piastres et quarante-trois centins, le 20 Juillet 1884, et deux cent trente-neuf piastres et quarante centins, le 4 Octobre 1884 ; ordonne qu'il soit sursis à l'exécution de la présente condamnation jusqu'à ce que l'intimée, demanderesse en cour de première instance, ait fait cesser les troubles et les dangers d'éviction dont se plaignent les appelants dans leurs plaidoyers à l'action ; ou ait fourni caution au désir de l'article 1535 du Code civil, et condamne l'intimée à payer aux appelants les frais encourus par leur contestation de sa dite action, et distraits à MM. Lacoste, Bisailon, Brosseau et Lajoie, procureurs des dits appelants :

Et faisant ce qui aurait dû être fait sur l'instance de l'appelant Rough contre l'intimée, la cour adjuge et ordonne que les parties soient renvoyées et elles sont renvoyées ainsi que le dossier, devant la cour de première instance, pour y être procédé de nouveau à l'instruction et au jugement final en icelle cause, et à y faire ce que de droit, suivant les droits et obligations respectifs des parties, tels que définis et établis ci-dessus par la présente sentence, après l'introduction régulière en icelle cause du jugement définitif qui a été rendu sur la demande en nullité de décret formée comme susdit par la Banque d'Ho-chelaga.

Friday the 18th day of May 1894.

Present.

THE HONORABLE MR. JUSTICE BARY,  
" " " BOSSÉ,  
" " " BLANCHET,  
" " " WURTELE.

ANDREW ROUGH & AL,

No. 301.

AND

THE EASTERN TOWNSHIPS BANK,

APPELLANTS,

RESPONDENTS.

Pursuant on notice given it is moved on behalf of said Eastern Townships Bank for leave to appeal to Her Majesty in Her Privy Council, on the 23rd of June last 1893, reversing the judgment of the Superior Court in the case wherein the said Eastern Townships Bank were plaintiffs in the Court below and the said Andrew Rough et al were Defendants.

The Court having heard both parties by their Counsel respectively on said motion : doth grant the same without costs, and the said Eastern Townships Bank are hereby permitted to Appeal from said judgment to Her Majesty in Her Privy Council.

× from the  
judgment  
rendered in  
this cause.

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DOCUMENT XIX.

16 November 1893.

Present :

Hon. Judge Baby,  
do Bossé,  
do Blanchet,  
do Hall.

RECORD.

*In the Court  
of Queen's  
Bench.*

No. 176b  
Motion of  
Respondent  
for delay to  
put in Secu-  
rity in appeal  
to the Privy  
Council &  
Order of  
court allow-  
ing delay  
Dated 16  
Nov. 1893.

10

The Court upon motion of the Respondents and with the consent of said Appellants doth order that the delays to put in security and to do all matter connected with their appeal from the judgment rendered by this Court on the 23rd day of June last to Her Majesty in Her Privy Council be extended for a period of six weeks to be computed from the date of the entering of the judgment in the Register of the Court.

20

DOCUMENT XX.

CANADA }  
PROVINCE OF QUEBEC }

In the Court of Queen's Bench,  
(Appeal side)

No. 177  
Bail Bond in  
both Appeals  
to Her Ma-  
jesty's Privy  
Council  
Dated 21st  
Feb. 1894.

No. 301

30 In two causes, between : Andrew Rough, John McDougall and Samuel W. Beard all of the City and District of Montreal, (Defendants in the Court below) Appellants and The Eastern Townships Bank, a Bank Corporation and a body public and corporate, duly incorporated, and having its principal office, and place of business, in the City of Sherbrooke, in the District of St-Francis, (Plaintiff in the Court below.) Respondents.

No. 302.

Andrew Rough, Plaintiff in the Court Below . . . . . APPELLANTS

40

AND

The Eastern Townships Bank, Defendants in the Court Below . . . . . RESPONDENTS

Be it remembered that on the twenty-first day of February in the year of Our Lord, one thousand eight hundred and ninety-four, at the city of Montreal, before me, the Honorable Mr. Justice Wurtele, one of the Justices of the Court of Queen's Bench for Lower Canada, came and appeared, the Hon. Matthew H.

RECORD. Cochrane, of Compton, in the District of St. Francis, Senator of Canada, who declares himself bound and liable unto and in favor of the said Andrew Rough, John McDougall, Samuel W. Beard and Andrew Rough, their heirs, assigns and representatives, in the sum of two thousand dollars, current money of Canada, for costs, and in the sum of two thousand dollars also for costs to be made and levied of the several goods and chattels, lands and tenements of him, the said Honorable Matthew H. Cochrane, to the use of the said Andrew Rough, John McDougall, and Samuel W. Beard, and Andrew Rough, their heirs, assigns and representatives, and more especially to be made and levied of the following real property belonging to the said Hon. Matthew H. Cochrane, to wit : of a property known as the Hillhurst Farm, in the County of Compton, in the District of St. Francis, and bearing Nos. , being of the value of over twenty thousand dollars and upwards, over and above all charges, hypothecs, and incumbrances thereon. 10

*In the Court of Queen's Bench.*

No. 177  
Bail Bond in both Appeals to Her Majesty's Privy Council  
Dated 21st Feb. 1894.  
—Continued

Whereas judgment was rendered in the said cause, in the said Court of Queen's Bench on the twenty third day of June one thousand eight hundred and ninety three on the appeal instituted in this cause and whereas the said The Eastern Townships Bank have obtained leave to Appeal therefrom to Her Majesty in Her Privy Council :

Now the condition is such that if the said The Eastern Townships Bank do prosecute effectually the said appeal to Her Majesty, satisfy the condemnation and pay unto the said Andrew Rough, John McDougall, and Samuel W. Beard, and Andrew Rough, their heirs, assigns and representatives, such costs and damages as may be awarded unto them by Her Majesty in the event of the said judgment of the Court of Queen's Bench being confirmed, then the present obligation shall be null and void, otherwise the same shall be and remain in full force and effect. And the said Honorable Matthew Cochrane hath signed. 20

Taken and acknowledged before Me, at the City }  
Montreal the day and year first above written, the } M. H. Cochrane. 30  
said surety having first justified as to his so vency, }

J. WURTELE.

J. Q. B.

The said Honorable Matthew H. Cochrane being duly sworn doth depose and say that he is the lawful owner and proprietor of the real estate described in the foregoing Bond and that the same is worth the sum of four thousand dollars, current money of Canada, and upwards over and above all charges, hypothecs and incumbrances and over and above what would pay his just and lawful debts, and he hath signed. 40

Sworn before me, at Montreal, this twenty first }  
day of February one thousand eight hundred } M. H. Cochrane.  
ninety four. }

J. Wurtele.

J. Q. B.

(ENDORSED)

BAIL-BOND

In appeal to the Privy Council

Filed 21st February 1894.  
(Paraphed) M. & D.

RECORD.

*In the Court  
of Queen's  
Bench.*

No. 177  
Bail Bond in  
both Appeals  
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jesty's Privy  
Council  
Dated 21st  
Feb. 1894.  
—Continued

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DOCUMENT XXII.

Court of Queen's Bench.  
(Appeal side)

No. 178.  
Fiat for  
the prepara-  
tion of the  
transcript  
Record in  
both cases  
dated 5th  
Dec 1893.

20

To L. W. Marchand, Esq.,  
Clerk of Appeals.

We hereby require the preparation of the Transcript Record in the Appeal in this cause to Her Majesty in Her Privy Council, the said Transcript to be printed here, in Nos 301 et 302.

Andrew Rough and al.,.....Appellants

AND

30 The Eastern Townships Bank..... Respondents.

Montreal, 5 December, 1893.

Atwater & Mackie,  
Attorneys for Respondents.

(ENDORSED)

Fiat for transcript.  
Filed 18 December, 1893. Paraphed L. M. Dep. C. A.

40

DOCUMENT XXIII.

RECORD.

*In the Court  
of Queen's  
Bench.*

CANADA }  
PROVINCE OF QUEBEC. }  
Nos. 301, 302.

Court of Queen's Bench.  
(Appeal side)

No. 179  
Consent of  
parties as to  
the printing  
of the trans-  
cript record  
in both cases  
dated 8th  
Jany 1894.

A. Rough & al.,.....Appellants

AND

10

The Eastern Townships Bank,..... Respondents.

We consent that the Transcript in Appeal to Her Majesty in Her Privy Council be prepared and printed in Canada, and that the costs of its preparation, and of printing of the Record be taxed by the Clerk of Appeals, Montreal, as well as any proceedings subsequent to the transmission of the Transcript.

Montreal, 8 January, 1894.

Bisaillon, Brosseau & Lajoie,  
Attorneys for Appellants.

20

Atwater & Mackie,  
Attorneys for Respondents.

(ENDORSED)

Consent of parties. Prod : 8th January, 1894. Paraphed L. M.  
Dep. C. A,

30

40



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**No. 1198.**

*List of Documents in case No. 1198, S. C. wherein Fairbanks  
& Co are Plaintiffs, The Pioneer Beet Root Sugar  
Company, Defendants, The Eastern Townships Bank,  
adjudicataires, A. Rough et al, mis-en-cause. La Ban-*

No.		Page	RECORD
	<i>que d'Hochelaga, Petitioners, T. Darling, Intervenant and The Corporation of the Town of Coaticooke, mis-en-cause, which were ordered to be fyled herein by Judgment rendered upon motion of Defendants in case No. 2157.</i>		<i>In the Court of Queen's Bench</i>
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RECORD.

DOCUMENT II.

*In the Court  
of Queen's  
Bench.*

Canada :  
Province de Québec.

VICTORIA, par la Grâce de Dieu, REINE du  
Royaume-Uni de la Grande-Bretagne et d'Irlande,  
Défenseur de la Foi.

No 181.  
Writ of Ap-  
peal, dated  
20th March,  
1890.

Au Juge en Chef et aux Juges de Notre Cour Supérieure pour le Bas Canada.

*SALUT :*

10

VU que dans l'instance ci-devant pendante en notre dite Cour Supérieure pour le Bas-Canada, siégeant en la Cité de Montréal, dans le District de Montréal, entre :

ANDREW ROUGH, comptable de la Cité et du District de Montréal,  
Demandeur,

ET

THE EASTERN TOWNSHIPS BANK, corps politique et incorporé, ayant  
son principal bureau et siège d'affaires en la ville de Sherbrooke, dans  
le District de St-François, Défenderesse. 20

Le dit Andrew Rough ainsi qu'il Nous le représente est lésé par le Jugement final rendu en la dite instance, le dix mars courant (1890).

Nous, voulant que le dit Jugement soit révisé par notre Cour du Banc de la Reine pour le Bas-Canada, et que pleine et ample justice soit rendue. Nous commandons que vous ou aucun de vous, transmettiez, sous votre seing et le sceau de la Cour Supérieure, tous les papiers et documents originaux produits, et les procédés faits en la dite cause, avec un transcript de tous les ordres, ordonnances et procédures qui se trouvent au dossier de la dite cause 30 et dans les registres de notre dite Cour Supérieure, concernant cette dite cause, à notre Cour du Banc de la Reine, siégeant en Juridiction d'Appel, afin que les Juges d'icelle les aient devant eux, au Palais de Justice, en notre Cité de Montréal, dans la Province de Québec, mercredi, le neuvième jour d'Avril prochain, pour être ordonné ce que de droit, suivant les lois et la coutume suivies dans cette dite Province.

En foi de quoi, nous avons fait apposer aux présentes le sceau de Notre dite Cour du Banc de la Reine.

Donné en notre dite Cité de Montréal, ce vingtième jour de Mars mil huit huit cent quatre-vingt-dix et dans la cinquante-troisième année de Notre 40 Règne.

L. W. MARCHAND,  
*Greffier des Appels.*

Lacoste, Bisailon, Brosseau & Lajoie,  
Avocats de l'Appelant.



ENDORSED.

RECORD.

Bref d'Appel—Rapportable le 9 avril 1890. Rapporté et produit au Greffe des Appels à Montréal le 15ème jour d'Octobre 1890. (Paraphed) L. O. Dep. C. A.

*In the Court  
of Queen's  
Bench.*

No 181.  
Writ of Ap-  
peal, dated  
20th March,  
1890.

10

A

## TRANSCRIPT OF THE SUPERIOR COURT.

Le 5 Septembre 1884.

*In the  
Superior  
Court.*

20 MM. Lacoste, Globensky, Bisailon & Brosseau comparaissent pour le Demandeur en cette cause et requièrent un Bref de Sommation contre la Défenderesse.

No 182.  
Proceedings  
in the Supe-  
rior Court  
from 5th Sept  
1884 to 11th  
March 1890

Un Bref de Sommation est émané contre la dite Défenderesse, rappor-  
table le 17 Octobre prochain (1884).

Le 17 Octobre 1884.

George Champoux, un des Huissiers de la Cour Supérieure pour le District de St-François rapporte le Bref de Sommation en cette cause avec la déclaration y annexée et un certificat de signification.

Le Demandeur produit une liste avec les exhibits marqués B. et C.

30 A. W. Atwater, écuyer, comparait pour la Défenderesse en cette cause sous toutes les réserves que de droit, et en donne avis à la Défenderesse.

Le 21 Octobre 1884.

La Défenderesse produit une exception *déclinatoire*, dépose \$800 et en donne avis au Demandeur.

Le 14 Novembre 1884.

40 Le Demandeur répond à l'exception *déclinatoire* de la Défenderesse et en donne avis à la dite Défenderesse.

Le 14 Novembre 1884.

Le Demandeur inscrit pour audition sur exception *déclinatoire* pour le 14 Novembre courant et en donne avis à la Défenderesse.

A l'audition sur l'Exception *déclinatoire* ;

RECORD.

In the  
Superior  
Court.

No 182.  
Proceedings  
in the Super-  
rior Court  
from 5th Sept  
1884 to 11th  
March 1890  
— *Continued!*

PRÉSENT :

L'HONORABLE M. LE JUGE LORANGER,  
P. O. C. A. V.

Le 6 Décembre 1884.

PRÉSENT :

L'HONORABLE M. LE JUGE LORANGER.

La Cour, ayant entendu les parties sur le mérite de l'exception *déclina-* 10  
*toire* produite en cette cause et examiné la procédure et avoir délibéré ;

Attendu que la Défenderesse a vendu au Demandeur, par acte passé à  
Montréal, un immeuble situé dans le District de St-François dans les livrets  
duquel district se trouve le bureau d'affaires de la dite Défenderesse ;

Attendu que le Demandeur poursuit la Défenderesse pour faire *annuler*  
cet acte de vente et demande le remboursement d'une partie du prix de vente  
qu'il allègue avoir payé sans considération et qu'il a intenté son action dans le  
District de Montréal ;

Attendu que la Défenderesse a plaidé que l'objet de l'action étant d'ob- 20  
tenir la résolution d'un acte de vente d'un immeuble. Cette action est réelle  
et devait être intentée dans le District de St-François où se trouve situé le dit  
immeuble ;

Considérant que le Demandeur par son action, demande le rembourse-  
ment d'une partie du prix de vente qu'il a payé à la Défenderesse et conclut en  
même temps à ce que la vente en question soit amendée ; que l'objet de la  
demande est de contraindre la Défenderesse au remboursement d'une somme  
que le Demandeur allègue avoir payé par erreur, vu que la Défenderesse est  
dans l'impossibilité de lui donner un titre valable ; que le Demandeur ne peut  
obtenir le remboursement de la somme qu'il a ainsi payée qu'après avoir au 30  
préalable fait annuler la dite vente, que par son action, le Demandeur n'exerce  
qu'un droit personnel.

Considérant que par son action, le Demandeur ne réclame point l'im-  
meuble décrit au dit acte et ne prétend exercer aucun droit réel sur le dit  
immeuble ; Qu'aux contraire, la dite action n'a pour objet que de contraindre  
la Défenderesse à remplir une obligation qui lui est purement personnelle,

Considérant que l'action intentée devant le tribunal du lieu où l'acte de  
vente a été passé a été portée devant la juridiction compétente ;

Renvoie la dite *exception à la forme*, avec dépens.

Le 6 Décembre 1884.

40

La Défenderesse produit une exception au jugement rendu, renvoyant  
son exception *déclinatoire*.

Le 24 Décembre 1884.

La Défenderesse est requise de plaider à cette action.

Le 8 Janvier 1885.

La Défenderesse produit *demurrer* et défenses en faits et en donne avis au Demandeur.

Le 19 Janvier 1885.

La Défenderesse inscrit pour audition sur défense en droit pour le 21 Janvier courant et en donne avis au Demandeur.

Le 21 Janvier 1885.

10 A l'audition sur Défense en droit.

PRÉSENT :

L'HONORABLE M. LE JUGE MATHIEU.

P. O. C. A. V.

Le 6 Mars, jugement, a ordonné et ordonne *preuve avant faire droit, frais réservés*.—M. le Juge Mathieu.

20 Le Demandeur produit une motion, demandant qu'il lui soit permis d'amender les conclusions de sa déclaration, en la manière énoncée en la dite motion, avec avis à la dite Défenderesse.

P. O.—Sur la motion ci-dessus, M. le Juge Mathieu, motion accordée par le Demandeur payant les frais accordés par le tarif, après plaider *en droit*.

Le 11 Septembre 1888.

30 Le Demandeur produit une motion demandant qu'il lui soit permis d'amender sa déclaration en la manière énoncée dans la dite motion ; avec un avis à la dite Défenderesse.

Le 12 Septembre 1888.

Sur la motion précédente.

PRÉSENT :

L'HONORABLE M. LE JUGE TASCHEREAU.

40 La Cour, après avoir entendu les parties par leurs avocats sur la motion que le Demandeur a produit le 11 de Septembre courant (1888), pour amender sa déclaration ; avoir examiné la procédure et délibéré ;

Accorde la dite motion et permet au Demandeur d'amender sa déclaration de la manière énoncée dans la dite motion, en, par le dit Demandeur, payant \$10 de frais aux avocats de la Défenderesse, plus leurs frais sur la présente motion.

RECORD.

*In the  
Superior  
Court.*

No 182.  
Proceedings  
in the Super-  
ior Court  
from 5th Sept  
1884 to 11th  
March 1890  
— *Continued.*

RECORD.

Le 25 Septembre 1888.

*In the  
Superior  
Court.*

Le Demandeur produit réponse à la défense, avec avis à la Défenderesse.  
Le Demandeur produit sa déclaration amendée, avec avis à la Défenderesse.

Le 20 Mai 1889.

No 182.  
Proceedings  
in the Super-  
rior Court  
from 5th Sept  
1884 to 11th  
March 1890  
— *Continued.*

La Défenderesse produit son plaidoyer à l'action amendée, avec avis au Demandeur

La Défenderesse produit ses articulations de faits supplémentaires à l'action amendée, avec avis au Demandeur. 10

Le Demandeur produit ses réponses aux articulations de faits supplémentaires du Défendeur avec avis.

La Défenderesse donne avis au Demandeur que cette cause est inscrite et a été spécialement fixée sur le Rôle pour Enquête et Mérite pour le 11 Septembre 1888 et donne le même avis au Protonotaire.

Le 26 Octobre 1888.

A l'Enquête et Mérite.

20

PRÉSENT:

L'HONORABLE M. LE JUGE TASCHEREAU  
P. O. C. A. V.

10 Mars, 1890.

No. 182A  
Judgment of  
the Superior  
Court ren-  
dered 10th  
Mar 1890.

Présent :—

30

L'HON. MR. LE JUGEL TASCHEREAU.

La Cour, ayant entendu les, parties par leur procureurs respectifs, tant sur les motions faites de part et d'autre tendant à faire rejeter comme illégale partie de la preuve, et sur la défense en droit plaidée dans la cause No. 910 (sur laquelle défense en droit le tribunal avait ordonné preuve avant faire droit), que sur le mérite des deux présentes causes Nos, 2157 et 910, réunis pour les fins de la procédure, de la preuve, de l'audition et du jugement; ayant de plus examiné la procédure, la preuve, et les pièces du dossier communes aux dites deux causes, ainsi que la preuve faite dans la cause No. 1198, de Fairbanks et al, Demandeurs & The Pioneer Beet Root Sugar Company, Défenderesse et La Banque d'Hochelaga, Requérente en nullité de décret, et "The Eastern Townships Bank" adjudicataire, et Andrew Rough et al mis en cause, laquelle preuve faite en la dite cause No. 1198, doit servir dans les présentes causes comme si elle y avait été faite (suivant consentement des parties et suivant jugement à cet effet en date du treize Novembre, 1889;) et ayant sur le tout délibéré; 40

preuve qui se trouve au dossier, ne sont pas fondées ; rejette les dites motions sans frais ;

Considérant que la défense en droit plaidée dans la cause No. 910 est mal fondée en droit ; renvoie la dite défense en droit avec dépens distraits à Maitres Lacoste, Bisailon, Brosseau and Lajoie, procureurs du Demandeur dans la dite cause ;

Considérant que les objections respectivement faites par les parties à la Et adjugeant au mérite des dites deux causes réunies ;

10 Considérant que dans la cause No. 2157, la dite banque "The Eastern Townships Bank" poursuit le nommé Andrew Rough comme principal obligé, et les nommés John McDougall et Samuel W. Beard, comme cautions solidaires, pour le recouvrement de la somme de trente-et-un mille huit cent cinquante-trois piastres et cinquante-six centins, balance due et exigible, lors de l'action, sur le prix de vente des immeubles décrits en la déclaration et vendus par la dite banque au dit Andrew Rough par acte de vente fait et passé à Montréal le dix-neuf Janvier, mil huit cent-quatre-vingt-trois, par devant Maitre Hétu, notaire ;

20 Attendu que les dits Rough, McDougall et Beard ont plaidé à la dite action, alléguant trouble et éviction subis par l'acquéreur Rough dans la possession et la propriété des dits immeubles vendus par la dite banque, les dits troubles et éviction résultant : 1er du fait que le gouvernement de la Puissance du Canada aurait, le six Octobre, mil-huit cent-quatre-vingt-trois, fait saisir les machines et engins qui se trouvaient attachés aux bâtisses situées sur les dits immeubles, pour droits de douane non payés et qui étaient dûs dès avant le décret des dits immeubles opérée dans la dite cause No. 1198 le douze Janvier, mil huit cent quatre-vingt-trois, auquel décret la dite banque se serait rendue adjudicataire des dits immeubles qu'elle aurait ensuite vendus au dit Rough par l'acte de vente sus-mentionné, lui cachant l'existence de cette réclamation de la Couronne ; 2e du fait que dans la dite cause No. 1198 une demande en nullité de décret aurait été instituée et serait encore pendante, à la diligence de 30 la Banque d'Hochelega, créancière de la Compagnie Défenderesse dans la dite cause, la dite nullité de décret résultant, tant d'informalites dans la saisie et les annonces du Shérif, que du dol et des artifices pratiqués à la connaissance de l'adjudicataire pour écarter les enchères et faire adjuger les immeubles à vil prix ;

40 Attendu que dans la dite cause No. 910, le dit Andrew Rough, pour les mêmes raisons que celles qu'il invoque dans sa défense à l'action No. 2157, demande l'annulation du dit acte de vente du dix-neuf Janvier, mil huit cent quatre-vingt-trois, et conclut aussi à ce que la dite banque venderesse soit condamnée à lui rembourser la somme de seize mille quatre-vingt-douze piastres et quarante-huit centins, déjà par lui payée à compte du prix de vente stipulé au dit acte ;

Attendu que par ses réponses aux défenses dans la cause No. 2157, et par ses défenses à l'action dans la cause No. 910, la dite banque venderesse allègue que le dit Andrew Rough n'était et n'est que le prête nom des dits McDougall et Beard ; que ces derniers connaissaient les causes d'éviction ci-dessus mentionnées avant la date du dix-neuf Janvier, mil huit cent quatre-vingt-

RECORD.

*In the  
Superior  
Court.*

No. 182A  
Judgment of  
the Superior  
Court rendered 10th  
Mar 1890.  
— *Continued.*

RECORD.

*In the  
Superior  
Court.*No. 182A  
Judgment of  
the Superior  
Court ren-  
dered 10th  
Mar<sup>ch</sup> 1890.  
— *Continued.*

trois, et même antérieurement au décret du douze Janvier de la même année ; que le dit acte de vente comporte une stipulation spéciale de non-garantie ; que le décret des dits immeubles a été opéré à la diligence et dans l'intérêt des dits McDougall et Beard, qui étaient les cessionnaires du jugement rendu contre la compagnie défenderesse dans la dite cause No. 1198 ; que si la dite banque venderesse s'est portée adjudicataire des dits immeubles, elle l'a fait à la sollicitation des dits McDougall et Beard, et en exécution d'une convention antérieure intervenue entre eux et la dite banque, par laquelle convention cette dernière avait promis de se porter adjudicataire des dits immeubles afin de les revendre ensuite aux dits McDougall et Beard, par l'entremise de leur prête-nom, le dit Rough, à un prix qui ne représenterait pas la valeur réelle des dits immeubles, mais qui serait calculé d'après le montant des réclamations de la dite banque contre la compagnie saisie, en capital, intérêt et frais en y ajoutant le prix d'adjudication qui serait payé par la dite banque ;

Considérant qu'il résulte tant des écrits que des témoignages, qu'en se portant adjudicataire des dits immeubles lors du décret en question, la dite banque agissait en effet pour le compte du dit Andrew Rough, prête-nom des dits McDougall et Beard, et ce à la demande spéciale de ces derniers, qui, pour des raisons personnelles, ne voulaient pas eux-mêmes se porter adjudicataires mais qui voulaient, pour des fins de spéculation, acquérir ces immeubles par l'entremise la dite banque et du dit Andrew Rough, et à cette effet avaient fait avec la dite banque la convention sus-relatée ;

Considérant que par cette convention spéciale, il avait été entendu que la dite banque se porterait adjudicataire des dits immeubles et en paierait le prix d'adjudication, et qu'aussitôt après elle consentirait au dit Rough, prête-nom des dits McDougall et Beard, un acte de vente des mêmes immeubles pour un prix qui ne devait pas représenter la valeur réelle des dites propriétés, mais se composer du montant du prix d'adjudication qui serait payé par la dite banque, plus la réclamation de celle-ci contre la " Pioneer Beet Root Sugar Company " en capital, intérêt et frais, la dite venderesse devant plus tard tenir compte à l'acquéreur, et lui donner crédit de toutes sommes d'argent qu'elle recevrait à titre de collocations sur le produit du décret ;

Considérant que la dite banque a donc réellement acheté au dit décret pour le dit Andrew Rough, comme sa mandataire, et qu'elle a consenti au dit mandat en considération de la promesse qui lui fut faite d'être payée de ses réclamations, hypothécaire et autres, contre la Compagnie saisie ;

Considérant qu'il résulte de plus des écrits produits et des témoignages que les dits Rough, McDougall & Beard connaissaient parfaitement, lors du décret, les dangers d'éviction qu'ils signalaient dans leurs défenses à l'action No. 2157 et dans leur demande dans la cause No. 910, qu'ils étaient au fait des nullités et irrégularités dont la saisie, les annonces du shérif et le décret lui-même pouvaient être affectés et frappés ; qu'ils connaissaient de plus la réclamation douanière déjà produite par la Couronne sur les machines et engins attachés aux bâtisses situées sur les dits immeubles ; que Beard, l'un d'eux, était présent au décret, dans son intérêt et dans celui de McDougall & Rough ; que le dit décret a été poursuivi et opéré à la diligence même des dits McDougall & Beard, cessionnaires du jugement rendu dans la dite cause No.

1198 ; qu'en exécution de la convention ci-haut mentionnée, la dite Banque a, quelques jours après le décret, savoir le dix-neuf Janvier mil huit cent quatre-vingt-trois, vendu au dit Rough, sous la garantie du cautionnement conjoint et solidaire des dits McDougall & Beard, les dits mêmes immeubles pour le prix de quarante neuf mille quatre cent trente-neuf piastres et soixante-dix centins, le quel prix de vente a été calculé et déterminé d'après les bases fixées par la dite convention antérieure au décret ; qu'enfin la dite vente elle-même a été consentie, de la part de la dite Banque avec stipulation spéciale de non-garantie, et qu'en réalité le dit Rough a acheté *à ses risques et périls* pour les dits McDougall & Beard, n'a pas droit à l'annulation de la vente et à la restitution de la partie du prix de vente déjà payée, et ne peut retenir la balance restant due sur icelui ;

10 Considérant que la dite Banque venderesse n'était obligée qu'à la garantie de ses faits personnels, et qu'il n'y a pas lieu dans l'espèce à cette garantie, attendu que la dite Banque n'a rien fait, soit avant soit après la vente, pour tromper son acquéreur ou pour porter atteinte à ses droits, et qu'elle n'est pas responsable des prétendues informalités ou irrégularités du décret, auquel elle ne s'est porté adjudicataire que pour le compte des dits Rough, McDougall et Beard, à la diligence desquels le dit décret a eu lieu ;

20 Considérant qu'après le commencement de l'instance en nullité de décret, dans laquelle le dit Andrew Rough était mis en cause, et après la prétendue saisie du Gouvernement de la Puissance en date du six Octobre, mil huit cent quatre-vingt-trois, les dits Rough, McDougall & Beard ont continué à exploiter les dits immeubles et à vendre partie de l'outillage de l'usine, sans se plaindre aucunement des dits prétendus troubles, et qu'ils ont même opéré des paiements à compte du dit prix de vente depuis le commencement de la présente instance ;

30 Considérant que sur les dites ventes d'effets d'outillages, de machines et d'autres objets détachés de l'usine les dits Défendeurs ont retiré au-delà de dix mille piastres qu'ils se sont appropriés.

Considérant que du montant de la réclamation de la dite Banque, il convient de déduire la somme de cent trente-six piastres et quarante centins dont les Défendeurs doivent être crédités en sus des crédits déjà donnés par l'action, ce qui réduit la demande à la somme de trente et un mille sept cent dix piastres et seize centins, avec intérêt à compter du seize Janvier mil huit cent quatre-vingt-quatre, laquelle somme et le quel intérêt étaient dus et exigibles, lors de l'institution de l'action aux termes du dit acte de vente du dix-neuf Janvier mil huit cent quatre-vingt-trois ;

Et vu les articles 1510, 1512 et 1535 du Code Civil ;

40 Rejette les défenses dans la cause No. 2157, et condamne les dits Andrew Rough, John McDougall & Samuel W. Beard, conjointement et solidairement, à payer à la dite Banque " The Eastern Townships Bank " la dite somme de trente et un mille sept cent dix sept piastres et seize centins avec intérêt à compter du seize Janvier mil huit cent quatre-vingt-quatre, et les dépens encourus dans la dite cause No. 2157, distraits à Maître Atwater et Mackie, Procureurs de la Demanderesse dans la dite cause, comprenant les frais réservés, mais non ceux déjà adjugés durant l'instance ;

RECORD.

In the  
Superior  
Court.

No. 182A  
Judgment of  
the Superior  
Court rendered  
10th  
Mar 1890.  
— Continued.

RECORD.

*In the  
Superior  
Court.*

No. 182A  
Judgment of  
the Superior  
Court rendered  
10th  
Mar 1890.  
— *Continued.*

Maintient la défense dans la cause No. 910, et renvoie l'action portée dans la dite cause, avec dépens distrai's à Maitres, Atwater & Mackie, Procureurs de la défenderesse dans la dite cause, comprenant les faits réservés, mais non ceux déjà adjugés durant l'instance ;

A Compte du jugement ci-dessus rendu dans la cause No. 2157, les dits Rough McDougall et Beard devront être crédités pour les deux sommes suivantes qui paraissent avoir été payées à la dite Banque durant l'instance, savoir cent trois piastres et quarante trois centins, le vingt juillet mil huit cent quatre-vingt-quatre, et deux cent trente-neuf piastres et quarante centins, le quatre Octobre, mil huit cent quatre-vingt-quatre.

10

No. 182½  
Writ and  
Declaration  
dated 5th  
Sept. 1884.

SCHEDULE NO. 134.

Cour Supérieure  
Pour la Bas-Canada  
District de Montreal.

VICTORIA, par la Grâce de Dieu, REINE du  
Royaume-Uni de la Grande-Bretagne et d'Irlande,  
Défenseur de la Foi,

20

*A aucun des Huissiers de la dite Cour pour le District de St. François.*

*SALUT :*

Nous vous ordonnons d'assigner dans les limites du District de St. Francois. The " Eastern Townships Bank " corps politique et incorporé ; ayant son principal bureau et siège d'affaires en la ville de Sherbrooke dans le district de St. François afin qu'elle comparaisse par devant nous, dans notre dite Cour Supérieure, pour le Bas-Canada, dans la Cité de Montréal, dans le District de Montréal, vendredi le dix-septième jour d'Octobre prochain pour répondre à la demande qui sera faite contre elle par Andrew Rough, comptable de la cité et du District de Montréal pour les causes mentionnées dans la déclaration ci-annexée, et vous nous rapporterez cet ordre.

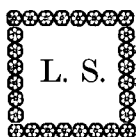
30

En Foi de quoi, Nous avons fait apposer aux présentes le Sceau de Notre dite Cour, à Montréal, ce cinquième jour de September en l'année de Notre Seigneur mil huit cent quatre-vingt-quatre dans la quarante huitième année de Notre Règne.

W. MESSIER,

Député Protonotaire de la dite Cour.

40



On the Back.

Je, George Champoux, soussigné, un des huissiers jurés de la Cour



Supérieure pour le Bas-Canada dans la Province de Québec, résidant dans la Cité de Sherbrooke, exerçant comme tel dans le District de Saint-François, certifie par le présent, sous mon serment d'*office* à cette honorable Cour, que le vingt-deuxième jour du mois de Septembre mil huit cent quatre-vingt-quatre, entre onze heures à midi, j'ai signifié le présent Bref de Sommation décrit d'autre part, et la déclaration ci-annexée à The Eastern Township Bank, la Défenderesse en cette cause, en leur en laissant une vraie copie dûment certifiée du dit Bref, et la déclaration au bureau The Eastern Township Bank, principal siège d'affaires en la Cité de Sherbrooke dans le District de Saint-François, en parlant à M. Farwell, le caissier de la dite Banque a lui-même en personne et l'informant du contenu.

Je certifie de plus que la distance de mon domicile au lieu où cette signification a été faite est moins un mille, et que la distance du bureau de la dite Défenderesse au Palais de Justice, dans la Cité de Montréal est de quatre-vingt-dix milles.

Mes services sont de cinquante centins.  
Sherbrooke, le 22 Septembre 1884.

GEORGE CHAMPOUX,  
*H. C. S.*

20

Cour Supérieure.

ANDREW ROUGH, comptable de la Cité et du District de Montréal,

Demandeur,

se plaint de "The Eastern Townships Bank," corps politique et incorporé ayant son principal bureau et siège d'affaires en la ville de Sherbrooke dans le District de St. François,

Défenderesse,

et déclare :

30 1o Que par acte de vente fait et passé à Montréal, le dix-neuf Janvier, mil huit cent quatre-vingt-trois, devant Maître L. O. Héту et son confrère, notaires, la dite banque défenderesse représentée à cet effet par son gérant, vendit au Demandeur Andrew Rough présent et acceptant les lots de terre ci-après désignés, et décrits comme suit au dit acte :

"1." Lot number seven hundred and twenty-two on the cadastral plan and book of reference for the village of Coaticooke.

40 "2." Lots number seven hundred and sixty-one and seven hundred and sixty-two and seven hundred and sixty-three on said plan and book of reference save, and except that portion on said lot seven hundred and sixty-three, formally sold by one Louis Sleeper to Charles V. Vaughan and all the land lying to the south of the same.

3rd. "Lot seven hundred and twenty one, on said plan and book of reference.

4th. "Lots numbers seven hundred and fourteen, seven hundred and twenty, seven hundred and six, seven hundred and twenty seven, seven hundred and thirty three, seven hundred and thirty four, seven hundred and forty-one, seven hundred and forty-four, fifteen hundred and eighty and fifteen

RECORD.

*In the  
Superior  
Court.*No. 182½  
Writ and  
Declaration  
dated 5th  
Sept. 1884.  
— *Continued.*

hundred and eighty two on said plan and book of reference.”

5th. “The following lots described in the sheriff’s notice of sale as “sixthly” to wit lots numbers seven hundred and sixteen, seven hundred and seventeen, seven hundred and eighteen and seven hundred and nineteen on said Plan or Book of reference.”

6th. “The following lot described in the said notice of sheriff’s sale as “ninthly” to wit lot number seven hundred and twenty three on said cadastral Plan and Book of reference with all the buildings and improvements on the said lots of land erected and made with all thereunto belonging.”

Que la dite vente fut faite pour et moyennant la somme de quarante neuf mille quatre cent trente-neuf piastres et soixante et dix centins en déduction de laquelle la dite Banque défenderesse a reconnu par le dit acte avoir reçu du dit demandeur Andrew Rough, celle de neuf mille quatre cent trente-neuf piastres et soixante-et-dix centins pour laquelle elle a donné quittance ? quant à la balance, savoir : quarante mille piastres, le dit Andrew Rough s’obligea de la payer à la dite banque ou à ses représentants légaux, comme suit, savoir : dix mille piastres, le ou avant le six Juillet suivant mil huit cent quatre-vingt-trois, et la balance de trente mille piastres par six paiements annuels de cinq mille piastres chacun, le premier des dits paiements devant devenir due le seize janvier suivant, mil huit cent quatre-vingt-quatre et les autres paiements devant devenir dus le seize janvier de chacune des années suivantes jusqu’au paiement final avec intérêt à sept par cent sur la balance, par année, à compter du seize janvier mil huit cent quatre-vingt-trois, le dit intérêt payable semi-annuellement ;

30 Que le ou vers le trente avril, mil huit cent quatre-vingt-trois le demandeur a payé en outre un acompte du dit prix la somme de treize cent cinquante deux piastres et soixante et dix-huit centins, laquelle somme jointe a celle de neuf mille quatre cent trente-deux piastres et soixante-dix centins forment la somme de dix-mille sept cent quatre-vingt cinq piastres et quarante-huit centins ;

40 Que le trente avril mil huit cent quatre-vingt-trois le demandeur paya en outre à compte du prix de vente la somme de cinq mille trois cents piastres, laquelle jointe aux deux sommes ci-dessus forme la somme totale de seize mille quatre-vingt-cinq piastres et quarante-huit centins ;

50 Que les immeubles vendue par la Défenderesse au demandeur par l’acte de vente du dix-neuf Janvier, mil huit cent quatre-vingt-trois, ont été acquis par elle du shérif du district de St. François, C. F. Bowen qui les a vendus le douze Janvier, mil huit cent quatre-vingt trois, au bureau d’enregistrement de la division de Coaticooke, dans le district de St. François, en vertu d’un bref d’exécution émané dans le district de Montréal, le trente-et-un Octobre, mil huit cent quatre-vingt-deux, dans une cause portant numéro onze cent quatre-vingt-dix-huit des dossiers de cette cour et où Fairbanks et al, étaient Demandeurs, et “The Pioneer Beet Root Sugar Company” était Défenderesse.

60 Qu’un titre de la dite vente a été passé par le dit shérif à la Défenderesse, le treize Janvier, mil huit cent quatre-vingt-trois, et a été enregistré à Coaticooke le seize Janvier, mil huit cent quatre-vingt-trois.

7o Que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du dit bref d'exécution étaient et sont irréguliers, illégaux, nuls et de nul effet et doivent être déclarés tels et la vente et adjudication faite par le dit shérif doit être cassée, annulée et mise de côté.

10 Que la minute de la saisie pratiquée par le dit shérif ainsi que les annonces et les avis de vente ni aucun d'iceux ne contiennent tel que requis par la loi une description suffisante des immeubles saisis en vertu du dit bref d'exécution et principalement des immeubles qui ont été ainsi vendus par la dite Banque au Demandeur Andrew Rough, la description des dits immeubles ne mentionnant ni la cité, ville, village, paroisse ou township, non plus que la rue, le rang ou la concession où se trouvaient situés les dits immeubles ainsi annoncés et vendus.

8o Qu'en outre au nombre des immeubles ainsi annoncés et vendus se trouve une partie du lot numéro sept cent soixante et trois qui n'est pas allégué être et n'est pas un numéro distinct d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncées tel que requis par la loi.

20 9o Que le shérif ou le député shérif qui a procédé à la dite vente a adjugé illégalement les dits immeubles à la défenderesse, The Eastern Township Bank, pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite banque, laquelle enchère avait été entrée sur le livre de minutes tenu pour l'enchère des dits immeubles ;

10o Que le dit shérif a vendu les dits bien immeubles en un seul lot et en bloc sans le consentement de la demanderesse, mais sur la demande du gérant de la banque adjudicataire The Eastern Townships Bank, la défenderesse en cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite Banque ;

30 11o Que la vente et adjudication des dits immeubles a ainsi été faites à la défenderesse, The Eastern Townships Bank, par le dit shérif illégalement et irrégulièrement à vil prix, savoir pour quatorze cents piastres, lorsque la valeur des dits biens immeubles était bien plus considérable, savoir d'au moins quarante à cinquante mille piastres ;

40 12o Que le neuf février mil huit cent quatre-vingt-deux la dite The Eastern Townships Bank, la défenderesse en cette cause, bien que connaissant l'insolvabilité et la déconfiture dans laquelle se trouvait alors la " Pioneer Beet Root Sugar Company " et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérables, a cependant dans le but de tromper et d'obtenir une préférence indue et frauduleuse sur eux, intenté secrètement devant la Cour Supérieure, du district de St-François, sous le numéro trois cent trente-cinq des dossiers de la dite Cour, une action intitulé : " The Eastern Township Bank " vs Amos H. Cummings & al, manufacturiers du village de Coaticooke, dans le district de St-François, dans laquelle la dite " Eastern Townships Bank " était demanderesse et un nommé Amos. H. Cummings, du village de Coaticooke, dans le district de St-François, et " The Pioneer Beet Root Sugar Company " était défendeurs.

13o Que la dite action a été par entente secrète et engagement fait à

RECORD.

*In the  
Superior  
Court.*

No. 1821 $\frac{1}{2}$   
Writ and  
Declaration  
dated 5th  
Sept. 1884.  
— *Continued.*

RECORD.

*In the  
Superior  
Court.*

No. 182½  
Writ and  
Declaration  
dated 5th  
Sept. 1884.  
— *Continued.*

cet effet par les parties ci-dessus signifiée dans la même bâtisse de la banque défenderesse à un des directeurs de la dite banque, savoir : a un nommé John Thornton, qui était aussi un officier de la compagnie défenderesse " The Pioneer Beet Root Sugar Company."

14o Que d'après entente entre le dit Thornton et la dite Eastern Townships Bank, la dite action n'a jamais été communiquée au bureau de direction de la compagnie The Pioneer Beet Root Sugar Company, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement.

15o Que la dite action fut rapportée en cour le vingt-trois février mil huit cent quatre-vingt-deux, et jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt-cinq du même mois pour une somme de vingt-trois mille six cent soixante-et-dix-sept piastres avec intérêt du dix février montant considérablement au-delà de ce qui était dû alors à la dite Eastern Townships Bank ; 10

16o Que le jour même où le dit jugement fut rendu, savoir : le vingt-cinq février mil huit cent quatre-vingt-deux, la dite Eastern Townships Bank le fit enregistrer contre les biens immeubles de la compagnie " The Pioneer Beet Root Sugar Company ;

17o Qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie The Pioneer Beet Root Sugar Comdany, la dite Eastern Eownships Bank, malgré l'enregistrement qu'elle fit de son dit jugement n'a acquis et ne pouvait acquérir aucune hypothèque sur les dits biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ; 20

17o Que le jugement dans la cause de Fairbanks contre la Pioneer Beet Root Sugar Company en faveur des dits Fairbanks & Co., était pour un faible montant, savoir : cent quatre-vingt-dix piastres et quatre-vingt quinze centins et les frais, laquelle somme à la connaissance de la dite Eastern Townships Bank avait été payée en entier par la compagnie " The Pioneer Beet Root Sugar Company " ou par ses directeurs et des personnes agissant pour elle à cet effet longtemps avant la vente et adjudication des dits immeubles et les procédés sur l'exécution et le warrant en cette cause, ont été continués dans le seul but de permettre à la dite Eastern Townships Bank de faire valoir sa créance comme opposition afin de conserver et de faire vendre tous les biens immeubles de la compagnie " The Pioneer Beet Root Sugar Company " à vil prix ; 30

18o Que des moyens artificiels ont été employés par la dite Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ;

19o Que de plus, la dite Eastern Townships Bank bien que sachant que l'enregistrement de ce jugement comme susdit dans un temps où la compagnie " The Pioneer Beet Root Sugar Company " était insolvable et en déconfiture ne pouvait pas lui donner et ne lui a pas donné de droit d'hypothèque et était sans force et sans effet a fait usage de tel enregistrement pour empêcher d'autres personnes d'être présentes à la dite vente et enchérir sur les propriétés en question en cette cause et a ordonné l'enregistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur les dites propriétés ; 40

20o Qu'a raison des dits artifices et d'autres semblables pratiqués par la dite banque lorsque les dites propriété ont été mises à l'enchère à la dite vente du shérif, les dites propriétés par une entente collusoire et fraudneuse entre la dite banque et d'autres personnes présentes et enchérissant ont été vendus et adjugés à William Farwell, gérant général de la dite banque illégalement et frauduleusement, au préjudice des créanciers pour la somme de quatorze cents piastres, et que le dit William Farwell représentait et agissait pour la dite banque en cette circonstance ;

10 21o Que les dits immeubles ainsi adjugés à la dite Banque valaient au moins quarante à cinquante mille piastres ;

22o Que le ou vers le dix-huit juin, mil huit cent quatre-vingt-trois, la Banque d'Hochelaga, corps politique et incorporé ayant son principal bureau et siège d'affaires en la cité et le District de Montréal et l'un des trois créanciers de la dite " Pioneer Beet Root Sugar Company " a pris une action en nullité de décret pour faire déclarer la dite saisie et la dite vente et adjudication irrégulière, illégale, nulle et de nul effet et, mise de côté, et à ce que la dite banque et les créanciers de la dite compagnie soient remis dans la position où ils étaient avant la dite vente faite par le shérif ;

20 23o Que les moyens invoqués par la dite Banque d'Hochelaga sont les mêmes que ceux ci-haut mentionnés ;

24o Que pour les raisons ci-dessus mentionnées le demandeur est exposé à un trouble imminent et à une éviction certaine ;

Pourquoi le demandeur conclut à ce qu'il soit déclaré par cette cour que l'acte de vente faite au demandeur par la défenderesse le dix-neuf janvier mil huit cent quatre-vingt-trois et passé devant Mtre L. O. Héту, N. P. est illégale, entachée de nullité et nulle ; à ce que pour les causes et raisons ci-dessus le dit acte de vente du dix-neuf Janvier mil huit cent quatre-vingt-trois par la défenderesse au demandeur soit cassé et annulé et mis de côté en amendement permis par la cour le vingt-et-un Janvier mil huit cent quatre-vingt-un.

30 40 À ce que les parties soient remises dans le même état qu'avant la dite vente, le demandeur consentant et offrant de délaisser les dites propriétés sur déclaration de nullité de vente, et à ce que la défenderesse soit condamnée à rembourser au demandeur les diverses sommes de neuf mille quatre cent trente-neuf piastres et soixante-et-dix centins avec intérêt à sept par cent du dix-neuf Janvier mil huit cent quatre-vingt-trois, de treize cent cinquante-deux piastres et soixante-et-dix-huit centins avec intérêt à sept par cent et de cinq mille trois cent diastres avec intérêt sur ces sommes à compter du trente Avril, mil huit cent quatre-vingt-trois, le demandeur se réservant son recours contre la défenderesse pour tout dommage qu'il a pu souffrir, conclut en outre aux dépens de cette action contre la défenderesse, desquels dépens les soussignés demandent distraction.

Montréal, 5 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,

AVOCATS DU DEMANDEUR.

ENDORSED

Bref et déclaration. Prod. 17 Oct. 1884. Paraphed H. & G., P. C. S.

RECORD.

—  
In the  
Superior  
Court.

—  
No. 182½  
Writ and  
Declaration  
dated 5th  
Sept. 1884.

— Continued.

RECORD.

## SCHEDULE No. 136

*In the  
Superior  
Court.*

No. 183  
Deed of sale  
by the East-  
ern Township  
Bank to An-  
drew Rough  
Hetu N.P.  
dated 19th  
Jan 1883.  
(Plaintiff's  
Exhibit B).  
— *Continued*

On this nineteenth day of the month of January, one thousand eight hundred and eighty three.

Before Leonard Ovide Hetu, the undersigned Notary, residing in the city and district of Montreal, Province of Quebec.

Came and appeared :

The Eastern Townships Bank, a body politic and corporate and a Banking Institution, having their office and principal place of business in the city of Sherbrooke, in the district of St Francis, and here to represented 10 and acting by William Farwell, Esquire, of the said city of Sherbrooke, their manager, duly authorized to the effect here of.

Who did and do hereby bargain, sell, assign, transfer and make over, *with warranty as regards their own acts only*, to Andrew Rough, of the said city of Montreal, gentleman here to present and accepting, the following lots of land described as follows in the sheriff's title hereinafter mentioned, to wit.

10 Lot number seven hundred and twenty-two on the cadastral plan and book of reference for the village of Coaticook.

20 Lots numbers seven hundred and sixty one, seven hundred and sixty-two, seven hundred and sixty-three on said plan and book of reference, save and except that portion on said lot seven hundred and sixty-three formerly sold by one Louis Sleeper to Charles W. Vaughan and all the land lying to the south of the same.

30 Lot number seven hundred and twenty-one on said plan and book of reference.

40 Lots numbers seven hundred and fourteen, seven hundred and twenty, seven hundred and twenty-six, seven hundred and twenty-seven, seven hundred and thirty-three, seven hundred and thirty-four, seven hundred and forty-one, seven hundred and forty-four, fifteen hundred and eighty and 30 fifteen hundred and eighty-two on said plan and book of reference.

50 The following lots described in the sheriff's notice of sale as "Sixthly", to wit :

Lots numbers seven hundred and sixteen, seven hundred and seventeen, seven hundred and eighteen and seven hundred and nineteen, on said plan and book of reference.

60 The following lot described in the said notice of sheriff's sale as "Ninthly," to wit :

Lot number seven hundred and twenty-three on said cadastral plan and book of reference ; with all the buildings and improvements on the said 40 lots of and erected and made.

With all and every the members and appurtenances thereunto belonging, of which the said purchaser declare to have a perfect knowledge, having seen and viewed the same previous hereto and there with he is content and satisfied, without any reservation of any part or portion of the aforesaid bargained and sold premises on the part of the said Bank who are lawfully seized thereof having acquired the same from the sheriff of the

district of St Francis, under deed of sale bearing date the twenty first day of October, one thousand eight hundred and eighty-two.

To have and to hold, use and enjoy the said hereby bargained and sold lots of land and premises, with all and singular their rights, members and appurtenances unto the said purchaser, his heirs and assigns, as his and their own property for ever by virtue of these presents and to enter upon and take possession thereof immediately.

The present bargain and sale is so made in manner aforesaid, for and in consideration of the sum of forty-nine thousand four hundred and thirty-nine  
10 dollars and seventy cents (\$49,439.70), currency.

In deduction of which said sum the said bank do hereby acknowledge to have had and received from the said purchaser that of nine thousand four hundred and thirty-nine dollars and seventy-cents (\$9,439.70); whereof quit for so much.

And as to the balance remaining due, to wit forty thousand dollars currency, the purchaser doth hereby bind and oblige himself well and truly pay the same to the said Bond or legal representatives as follows, to wit: ten thousand dollars, on or before the sixteenth day of July next, and the remainder, to wit: thirty thousand dollars, in and by six equal annual instalments of five  
20 thousand dollars, currency, each; the first whereof to become due on the sixteenth day of January next (1884) and the other instalments to be made on the sixteenth day of January of each and every subsequent year, until final payment with interest on the balance at the rate of seven per cent per annum to be accounted from the sixteenth day of January instant, and payable semi-annually.

And for securing the payment of the balance of the said consideration price, with all interests that may accrue thereon as aforesaid, the said purchaser doth hereby specially and particularly bind, mortgage and hypothecate the hereby granted bargained and sold lots of ground and premises by special privilege of bailleur de fonds.

And it is specially agreed by and between the said parties hereto that  
30 in the event of any payment, either in capital or interest, not being met fifteen days after maturity, then the whole of said balance of purchase money, or any portion thereof remaining due, shall become ipso facto demandable, and the recovery of the same may be enforced without any further delay.

And it is also agreed that the said purchaser will be bound as he now binds himself to insure and keep insured, against all loss and damage by fire, until said balance of price of sale, in capital and interest, is paid, and for an amount sufficient to cover the same, the buildings erected on the above sold premises and machinery and plant therein, and to make in favor of said Bank  
40 such transfers as shall be necessary to secure the balance of money at any time due on the said price of sale.

And in default by him, the said purchaser, so to do, the said Bank shall have the right to insure, in their own name or in the name of the said purchaser, the said buildings and machinery and plant, with the right to recover from the latter the premiums paid for such insurance, with interest thereon at the rate of seven per cent.

And by these presents the said William Farwell doth hereby undertake

RECORD.

*In the  
Superior  
Court.*

No. 183

Deed of sale  
by the East-  
ern Township  
Bank to An-  
drew Rough  
Hetu N.P.  
dated 19th  
Jan 1883.  
(Plaintiff's  
Exhibit B).

— *Continued*

## RECORD.

*In the  
Superior  
Court.*

No. 183  
Deed of sale  
by the East-  
ern Township  
Bank to An-  
drew Rough  
Hctu N.P.  
dated 19th  
Jan 1883.  
(Plaintiff's  
Exhibit B).  
— *Continued*

and oblige himself to furnish the said purchaser, within a month from the date hereof, a duly certified copy of a resolution of the directors of said Bank showing that he, the said William Farwell, was duly authorized to execute and sign the present deed of sale for and in the name of said Bank and on the terms and conditions herein contained.

And in consideration of the premises, the said Bank do hereby transfer and set over to the purchaser all right of property, claim, title, interest, demand, seizin, possession and other rights whatsoever, which the said Bank can have, demand or pretend in or upon the aforesaid hereby bargained and sold lots of ground and premises, of which they hereby divest themselves in favor of the said purchaser, his heirs and assigns, consenting and agreeing that the said purchaser be and remain seized and invested with the full and entire possession thereof as of right; and for that purpose hereby constituting the bearer of these presents their attorney, to whom all necessary power and authority to that effect is hereby given and granted.

Done and passed at the said City of Montreal, in the office of the undersigned Notary, under the number ten thousand five hundred and eighty-three

And the said parties have signed with the said Notary, after due reading

(Signed)

WM. FARWELL.  
ANDREW ROUGH.  
L. O. HETU, N.P.

True copy of the original hereof remaining of record in my office.

L. O. HETU, N. P.

[On the Back.]

No. 152, I do hereby certify that this instrument was received in Coaticook Division Registry Office at the hour of nine in the forenoon, of the sixth day of the month of February in the year of our Lord one thousand eight hundred and eighty-three, and registered at full length in register B. Volume 11, number 152, page 176 et seq.

OTIS SHURTLIFF,  
Registrar.

No. 10483, 19 January, 1883. Deed of sale by The Eastern Townships Bank, to Andrew Rough, Esq. 2nd copy B. Vol. 11, No. 152, Fyled at 9 a.m. this 6th February, 1883, O. S. Regr.

(ENDORSED.)

Exhibit du Demandeur B. Prod. 17th Oct. 1884. (Paraphed) H. & G.  
P. S. C.



## SCHEDULE No. 137.

RECORD.

## TO ALL TO WHOM THESE PRESENTS SHALL COME

*In the  
Superior  
Court.*

I, GEORGE FREDERICK BOWEN, esquire, Sheriff of the District of St. Francis, in the Province of Quebec, send

GREETING ;—

No. 184.

WHEREAS, on the twenty first day of October in the year of Our Lord one thousand eight hundred and eighty two a certain Writ of Execution, Fieri Facias de Terris of our Lady the Queen was sued out of Her Majesty's Superior Court for the Province of Quebec, holding Civil Pleas in the District of Montreal, at a suit of Fairbanks & Company, a Corporation duly incorporated, and having its head office, and principal place of business at St. Johnsbury, in the State of Vermont, one of the United States of America, and having a principal place of business in the City and District of Montreal, Plaintiffs under the number 1198 against the lands and tenements of the Pioneer Beet Root Sugar Company, a Corporation duly incorporated and having its head office and principal place of business at Coaticook in the District of St. Francis, Defendants which said writ afterwards, to wit on the third day of November last was unto me delivered in due form of law, to be executed ; by virtue whereof I, the said Sheriff, did seize into my hands and take in execution as belonging to the said Defendants among other parcels of land.

Deed of sale,  
George Frederick Bowen  
Esquire  
sheriff to The  
Eastern  
Townships  
Bank, dated  
13th Jan 1883  
(Plaintiff's  
Exhibit C)

The following : Firstly, Lot number seven hundred and twenty-two (722) on the Cadastral Plan and book of reference for the Village of Coaticook. Secondly, Lots numbers seven hundred and sixty-one (761) seven hundred and sixty-two (762) and seven hundred and sixty three (763) on said plan and book of reference, save and except that portion on said lot seven hundred and sixty-three formerly sold by one Louis Sleeper to Charles W. Vaughan and all the land lying to the south of the same. Thirdly, lot number seven hundred and twenty-one (721) on said plan and book of reference.

Fourthly, Lots number seven hundred and fourteen (714) seven hundred and twenty (720), seven hundred and twenty-six (726) seven hundred and twenty-seven (727), seven hundred and thirty-three (733) seven hundred and thirty-four (734) seven hundred and forty-one (741), seven hundred and forty-four (744) fifteen hundred and eighty, 1580, and fifteen hundred and eighty-two on said plan and book of reference.

Fifthly the following lots described in the Sheriff's notice of sale as "sixthly," the following lots viz : Lots numbers seven hundred and sixteen (716) seven hundred and seventeen (717), seven hundred and eighteen (718), seven hundred and nineteen (719) on said plan and book of reference.

Sixthly the following lot described in the said notice of Sheriff's sale as "ninthly," to wit lot number seven hundred and twenty-three, (723) on said Cadastral plan and book of reference, with all the buildings and improvements on the said lots of land erected and made.

AND WHEREAS, I the said Sheriff, having so seized into my hands, and taken the lots and parcels of land and premises in execution, did cause the same to be advertised and published according to Law, to be sold and adjudged to the highest bidder, at the Registry Office of the Registration Division

RECORD.

*In the  
Superior  
Court.*

No. 184.

Deed of sale,  
George Frederick BowenEsquire  
sheriff to TheEastern  
TownshipsBank, dated  
13th Jan 1883(Plaintiff's  
Exhibit C)— *Continued*

of Coaticook in the said Village of Coaticook in the District of St. Francis, on the twelfth day of January instant at the hour of ten of the clock in the forenoon, and the said lots and parcels of land and premises being then and there put up for sale in the usual manner, William Farwell of the City of Sherbrooke, Esquire, in his capacity of General Manager of the Eastern Townships Bank, became the purchaser thereof, being the best and highest bidder, at and for the price or sum of Fourteen hundred dollars, current money of Canada.

Now, in order to convey the said Lots and Parcels of land and premises and to confirm the purchase thereof to the said Eastern Townships Bank, and assigns, Know all Men by these presents, that I, the said George Frederick Bowen, Sheriff as aforesaid, by virtue of the said Writ of Execution, and of my said office, and for and in consideration of the said sum of Fourteen hundred dollars to me by the said William Farwell in his said capacity paid at or before the execution hereof, in hand paid, the receipt whereof I do hereby acknowledge, and therefore do acquit and discharge the said Eastern Townships Bank, and assigns, have granted, bargained, sold and conveyed, and by virtue of the said Writ of Execution ; and these presents do, as much as in me is, and I lawfully may grant, bargain, sell, and convey to the said Eastern Townships Bank, and assigns, all the said lots and parcels of land and premises herein beforementioned, situate, lying and being as aforesaid and also all and singular the right, title, interest, property, claim and demand whatsoever, of me, the said Sheriff, by virtue of the Writ of Execution aforesaid, of, in and to the same and every part and parcel thereof, to have and to hold all the said lots and parcels of land and premises in and by these presents bargained, sold and conveyed, and every part and parcel thereof, with all and every of their appurtenances unto the said Eastern Townships Bank and assigns, to the only proper use, benefit and behoof of the said Eastern Townships Bank and assigns forever, and to and for no other use, intent or purpose whatever.

IN WITNESS WHEREOF I the said Sheriff, have hereunto set my Hand and the Seal of my Office this Thirteenth day of January in the year of our Lord one thousand eight hundred and eighty-three.

G. F. BOWEN,  
Sheriff.

(On the Back.)

Deed of Sale, George Frederick Bowen, Esq., Sheriff, to The Eastern Townships Bank, dated 13th January, 1883.

(ENDORSED)

C. S. M. No. 910 Rough vs. The Eastern Townships Bank.  
Exh. "C." du Demandeur prod. le 17 Oct. 1887. H. & G. P. S. C.

SCHEDULE No. 139.

Province of Quebec, }  
District of Montreal, }

Superior Court.

RECORD.

In the  
Superior  
Court.

Andrew Rough .....Plaintiff.

vs.

The Eastern Townships Bank.....Defendant.

No. 185.  
Declinatory  
exception  
dated 20th  
Oct. 1884.

10 And said Defendant without discussing the merits of the present action with reserving its rights so to do before the proper tribunal, for exception *déclinatoire* to said action and demand saith :

That the said Superior Court in and for the District of Montreal has not any power authority or jurisdiction to try and determine the present action or to grant the conclusions thereof, inasmuch as the same is a real action having for its object to set aside a deed of sale of certain real estate and properties situated and being in the village of Coaticooke in the District of St. Francis. That the said Defendant has no office or place of business within the limits of the said District of Montreal, but has its head office and place of business in  
20 the said District of Saint Francis, the whole as appears by said writ and declaration.

That the only Court before which such an action as the present could be instituted would be the said Superior Court sitting in and for said District of Saint Francis.

Wherefore said Defendant prays that said action of plaintiff be hence dismissed with costs, saving plaintiff's recourse before a competent tribunal, the whole with costs *distracts* to the undersigned.

Montreal, 20th October, 1884.

A. W. ATWATER,  
Attorney for Defendant.

30

(On the back)

JE, Godfroi Massé, résidant à Montréal, l'un des huissiers jurés de la Cour Supérieure du Bas-Canada, exerçant dans le district de Montréal, certifie par les présentes, sous mon serment d'office, que le vingtième jour d'octobre mil huit cent quatre-vingt-quatre entre quatre et cinq heures de l'après midi, j'ai signifié à M.M. Lacoste, Globensky, Bisailon & Brosseau, avocats du demandeur, l'exception déclinatoire d'autre part en parlant et en laissant une vraie copie dûment certifiée d'icelle à une personne raisonnable en charge de  
40 leur bureau à leur bureau en la Cité de Montreal.

Honoraires \$0.30cts.

Montreal, 20 Octobre, 1884.

G. MASSÉ, H. C. S.,

(ENDORSED)

Exception déclinatoire. Filed 21st October, 1884, with deposit of eight dollars. (Paraphed) H. & G., P. S. C.

RECORD.

SCHEDULE No. 140.

*In the  
Superior  
Court.*

Province de Québec, }  
District de Montréal. }

Cour Supérieure.

Andrew Rough.....Demandeur.

No. 186.

*vs.*

Answers to  
the Declina-  
tory excep-  
tion dated  
6th Dec 1884

The Eastern Townships Bank .....Défenderesse. 10

Et le dit demandeur Andrew Rough pour réponse à l'exception déclina-  
toire produite en cette cause dit :

Que tous et chacun les faits allégués en la dite exception sauf ceux qui  
pourraient être ci après expressément admis sont faux et mal fondés et il les  
nie tous et chacun d'eux.

Que l'acte sur lequel est bassée cette action a été passé à Montreal et  
que les parties au dit acte ont fait élection de domicile pour l'exécution d'icelui  
ainsi que pour toute contestation judiciaire qui pourrait s'élever à propos du  
dit acte.

Que cette action a originé dans une action prise par la dite banque 20  
défenderesse contre le demandeur pour partie du prix de vente mentionné au  
dit acte.,

Que cette action a été prise devant la cour du district de Montreal,  
devant laquelle la présente action est maintenant pendante.

Que cette action prise par la défenderesse contre le demandeur porte le  
numéro des dossiers de cette cour est maintenant pendante devant cette cour  
sur contestation faite par le défendeur qui est le demandeur dans la présente  
cause.

Que la déclaration du demandeur en la présente cause est basée sur les  
mêmes moyens que ceux allégués dans sa défense en la cause de la défenderesse 30  
contre le demandeur.

Que dans cette action de la défenderesse contre le demandeur, le deman-  
deur base sa défense sur la nullité de la vente qui lui a été faite par l'acte du  
dix neuf Janvier mil huit cent quatre vingt trois.,

Que la présente action a été intentée par le demandeur pour obtenir la  
nullité de la dite vente.,

Que la présente action n'est qu'une conséquence de l'action prise par la  
défenderesse contre le demandeur.,

Que des procédés ont aussi été pris par la Banque d'Hochelaga contre  
la défenderesse en cette cause pour obtenir la nullité du titre en vertu duquel 40  
la défenderesse a passé le dit acte de vente qui fait la base de cette action au  
au demandeur.,

Qu'ainsi toutes les contestations soulevées à propos de la propriété men-  
tionnée à l'acte de vente produit en cette cause ont été prises devant les tribu-  
naux de ce district.,

Qu'il est important que la présente cause soit jointe à la cause prise,  
par la défenderesse contre le demandeur comme n'en étant qu'une conséquence.

Que sous ces circonstances le demandeur est bien fondé à demander le renvoi de la dite exception déclinatoire avec dépens distraits aux soussignés. Montreal, 11 Novembre, 1884.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,  
Avocats du Demandeur.

(Reçu Copie,)  
A. W. ATWATER,  
Avocat de la Défenderesse.

RECORD.  
In the  
Superior  
Court.  
No. 186.  
Answers to  
the Declina-  
tory excep-  
tion dated  
6th Dec 1884

10 (ENDORSED.)

Réponse à l'exception déclinatoire. Produite ce 14 Novembre, 1884.  
(Paraphed) F. B., Dep. P. C. S.

SCHEDULE No. 142.

Province of Quebec, }  
District of Montreal. } Superior Court.

20 Andrew Rough, ..... Plaintiff.

vs.

The Eastern Townships Bank, ..... Defendant

The said Defendant hereby respectfully excepts to the Judgment in this cause dismissing Defendant's exception *déclinatoire* rendered on the sixth day of December instant and reserves all rights of appeal therefrom.  
Montreal, 6th December 1884.

No. 187.  
Exception  
Judgment  
dismissing  
Declinatory  
Excepted  
6th. Dec.  
1884

30 A. W. ATWATER,  
*Attorney for Defendant.*

(ENDORSED)

Exception to judgment dismissing exception déclinatoire. Prod. 6 Dec. 1884. (Paraphed) H. & G., P.S.C.

SCHEDULE No. 144.

40 Province of Quebec, }  
District of Montreal. } Superior Court,

Andrew Rough, ..... Plaintiff.

vs.

The Eastern Townships Bank, ..... Defendant.

And Defendant for demurrer or *réponse en droit* to Plaintiff's action and

No. 188.  
Demurrer  
and Pleas  
dated 22nd.  
Dec. 1884

RECORD.

In the  
Superior  
Court.

No. 188.  
Demurrer  
and Pleas  
dated 22nd.  
Dec. 1884  
—Continued

demand, and reserving his right to plead otherwise saith :—

That the allegations of Plaintiff's declaration are insufficient to support the conclusions thereof :—

1o Because it is not alleged that Plaintiff hath been evicted from the promises therein described ;

2o Because it is not alleged that any judgment has ever been rendered ordering Plaintiff to give up said premises ;

3o Because it is not alleged that Plaintiff has made any abandonment—*délaissement*—of said premises so sold to him at the time of the sale ;

4o Because without the intervention of a judgment condemning him to abandon said property and premises, the said Plaintiff cannot enforce any obligation or right of warranty without abandoning the property so sold and conveyed to him ;

5o Because the facts alleged by Plaintiff, that he fears eviction, are not sufficient to justify an action *en résiliation* of a deed of sale ;

6o Because it is not even alleged that any proceedings have been taken against Plaintiff by any party or parties for his eviction ;

7o Because Plaintiff's allegations show no cause of action such as brought.

Wherefore Defendant prays that said action and demand of Plaintiff be hence dismissed with costs *distracts* to the undersigned,

Montreal, 22nd December 1884.

A. W. ATWATER,

*Attorney for Defendants.*

And said Bank Defendant without waiver of his foregoing *défense en droit*, but specially reserving to himself all benefit thereof for plea to said action and demand of Plaintiff saith :—

That each all, every the allegations of Plaintiff's declaration, except in so far as hereinafter specially admitted are false, untrue and are hereby denied.

That Plaintiff hath no right of action and cannot enforce any obligation or warranty as he pretends to do by his action without the intervention of a judgment or an abandonment by him of the property in question which latter he has not done.

That Plaintiff hath never been disturbed in his possession by any party and hath always had quiet and peaceable enjoyment of all the property sold and conveyed to him by Defendant, and hath moreover continued in possession of said property and exercised control and ownership thereover, long after he became aware of the proceedings by him mentioned, on behalf of the Hochelaga Bank.

That said Plaintiff moreover well knew of the danger of eviction of which he now complains and bought at his own risk, and hath since acquiesced in his position of purchaser and *détenteur* of said property by allowed more than one year and a half to elapse since the institution of the proceedings on behalf of said Banque d'Hochelaga and to which he was made *en cause*, without taking any steps to change his position or believe himself from liability—if so he could, which is denied,— and in meantime exercising control and ownership over said and sold off and disposed of and hath got paid for large portions of the stock, plant and machinery in and upon said premises and has tried to sell more as occasion presented itself.

That Plaintiff's action is in bad faith and unfounded.

Wherefore said Defendant prays the dismissal of said action with costs *distrains* to the undersigned.  
Montreal, 22nd December 1884.

A. W. ATWATER,  
*Attorney for Defendants.*

And said Defendant without waiver of the foregoing demurrer and plea but reserving all benefit thereof for further plea to Plaintiff's action saith.

10 That Plaintiff hath no cause of action, being in peaceable enjoyment of the property in question and having exercised his rights of ownership thereto since the action on behalf of the Banque d'Hochelaga, by him complained of, was instituted.

• That the present Plaintiff is moreover merely a *prête nom* for John McDougall and Samuel W. Beard both of the City of Montreal, and who by deed made and executed notoriously at Montreal, the nineteenth day of January eighteen hundred and eighty-three, before L. O. Hétu, Notary Public, bound and obliged themselves jointly and severally with the said Plaintiff, for the fulfillment of his obligations towards said Bank Defendant, under said deed of sale and said John McDougall and S. W. Beard were and are the real purchasers  
20 and owners of said property, said Plaintiff being then and now the bookkeeper of said McDougall.

That prior to said Sheriff's sale in said declaration mentioned said Beard had acquired the judgment under which the said sale was made and acting for himself and said John McDougall brought said property to sale, and the said parties and said Plaintiff are the parties responsible for all the proceedings upon said Sheriff's sale, with which Defendants had nothing to do, and concerning which they always refused to take any responsibility.

30 That Plaintiff and said McDougall and Beard not having the moneys to pay for said property at Sheriff's sale, requested said Defendants to bid in said property for them, and to give them time to pay off the claim of said Defendants against said property.

That Defendants on such understanding agreed so to do and did, and that said Plaintiff and particularly said McDougall and Beard at the time of said purchase from Defendant well knew all things concerning said Sheriff's sale. The proceedings thereupon and concerning the claim of said Defendant upon said property and its nature.

That said McDougall and Beard—so acting for said Plaintiff—and said Plaintiff purchased said real estate well knowing all the circumstances, and the dangers if any, of eviction and at their own risk and peril.

40 That said sale was so made moreover specially without any warranty whatsoever on the part of said Defendant.

That the alleged proceedings on the part of said Banque d'Hochelaga, are to the knowledge of the Plaintiff and said McDougall and Beard frivolous and unfounded and as Defendants are credibly informed have been instituted and prosecuted with the connivance of said McDougall and Beard, for the purpose of compelling said Bank Defendants to discount their claim, said Banque

RECORD.

*In the  
Superior  
Court,*

c. 188.

Demurrer  
and Pleas  
dated 22nd.  
Dec. 1884  
—Continued

RECORD.

In the  
Superior  
Court

No. 188.  
Demurrer  
and Pleas  
dated 22nd  
Dec. 1884  
—Continued

d'Hochelaga having become Proprietors of said Beard's share in said Real Estate by transfer *sous seing privé*.

And it having been understood and agreed that any discount which might be obtained should be shared between said McDougall and said Banque d'Hochelaga,

The said McDougall and Beard—and said Plaintiff—have created and are continuing the very trouble of which they complain.

That said McDougall was moreover a director of said Pioneer Beet Sugar Company, at the times and periods mentioned in Plaintiff's declaration and well knew it's financial condition and what claims, actions, and judgments were outstanding against said Company and particularly was he aware of all the circumstances connected with the claim, action and judgment of Defendant against the said Company and acquiesced and consented thereto. 10

That said action was moreover perfectly, legally, openly, and regularly instituted and prosecuted and Judgment obtained thereon and no attempt hath ever at any time been made to set aside the same, and said claim and judgment are good and valid both in Law and equity.

That said sale of said property to Plaintiff—acting as aforesaid—was not made for any sum of money supposed to represent the value of said property but for the amount of Defendants claim against the same. 20

That the purchase money mentioned in said deed of sale also included a large quantity of personal property which was delivered to said John McDougall by Defendants, to the value of ten thousand dollars, which said personal property had been pledged to the said Defendant under the banking act from said Pioneer Beet Sugar Company by warehouse receipt and sold under the provisions of said act.

That said purchase money also included a lot of promissory notes pledged by said Company to said Defendants to a large amount.

That Plaintiff and said McDougall and Beard have not in reality paid anything on account of the purchase money on said real estate described in said deed, having removed a large amount of plant and machinery therefrom, the proceeds of which to an extent they have turned in to Defendants on account of said purchase. 30

That all that has been paid on account of the purchase money in said deed mentioned, is the money collected by Defendants on said promissory notes, the value of the personal property made over by them to said McDougall, and the value of the plant and machinery removed from said property by said McDougall.

The Plaintiff has never paid one cent on account of said purchase money.

That Plaintiff and said McDougall still remain in possession of said property and continue to sell off portions of the machinery and plant therefrom as they can find occasion. 40

That each, all, and every the allegations, matters, and things in said declaration contained except in so far as the same are herein expressly admitted to be true are false, untrue, and unfounded in fact and are hereby specially denied.



Wherefore said Bank Defendant prays that said action be hence dismissed with costs distraits to the undersigned.  
 Montreal, 22nd December, 1884.

A. W. ATWATER,  
 Atty. for Defendant.

And said Defendant without waiver of his foregoing demurrer and pleas for *défense au fonds en fait* to Plaintiff's action saith :

That each all and every the allegations matters and things in Plaintiff's action set forth and contained, except in so far as the same have been expressly admitted to be true are false, untrue, and unfounded in fact and are hereby specially denied.

Wherefore said defendant prays that said action be hence dismissed with costs distraits to the undersigned.  
 Montreal, 22nd December, 1884.

A. W. ATWATER,  
 Atty. for Defendant.

(Received copy under reserve of all legal objections.)

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU, \ Attys. for Plaintiff.

RECORD.

*In the Superior Court*

No. 188.  
 Demurrer and Pleas dated 22nd Dec. 1884  
 —Continued

10

20

(ENDORSED)

Demurrer and Pleas filed 8th Jan., 1885. Paraphed H. & G., P.S.C.

SCHEDULE No. 146.

30 Province de Québec, }  
 District de Montréal. }

Cour Supérieure.

Andrew Rough ..... Demandeur,

vs.

The Eastern Townships Bank ..... Défenderesse.

Motion du demandeur.

40 Qu'il lui soit permis d'amender les conclusions de sa déclaration en ajoutant après les mots " et mis de côté " à la dixième ligne de la dernière page de sa déclaration, les mots suivants : " à ce que les parties soient remises dans " le même état qu'avant la dite vente le demandeur consentant et offrant de " délaisser la dite propriété sur déclaration de nullité de vente."

Montréal, 19 Janvier, 1885.

LACOSTE, GLOBENSKY, BISAILLON, & BROSSEAU.

Avocats du demandeur.

No. 189.  
 Motion of Plaintiff to amend declaration, dated 19th. Jan. 1885

RECORD.

*In the  
Superior  
Court*

No. 189.  
Motion of  
Plaintiff, to  
amend decla-  
ration, dated  
19th Jan.,  
1885.  
—Continued

à A. W. ATWATER,  
Avocat de la défenderesse.

Monsieur,

Prenez communication de la motion ci-dessus et soyez notifié que mer-  
credi le vingt-et-unième jour de Janvier courant à onze heures de l'avant-midi  
ou aussitôt que Conseil pourra être entendu nous présenterons la dite motion  
à la Cour Supérieure siégeant en troisième division pour y être adjugée à toutes  
fins que de droit.

Montréal, 19 Janvier, 1885.

10

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,  
Avocats du demandeur.

(On the back.)

Je soussigné, Joseph Octave Pauzé, résidant en la ville de St. Jean  
Baptiste, l'un des huissiers jurés de la Cour Supérieure du Bas Canada,  
exerçant dans et pour le District de Montréal, certifie sous mon serment d'of-  
fice que le vingtième jour de Janvier courant, mil huit cent quatre-vingt-cinq,  
entre quatre et cinq heures de l'après-midi, j'ai signifié la présente motion et  
l'avis de motion en cette cause à A. W. Atwater, Ecuier, avocat de la défen-  
deresse en cette cause, en lui laissant une vraie copie d'iceux, en parlant à lui-  
même à son bureau en la Cité de Montréal.

Je certifie de plus que la distance depuis le Palais de Justice en la Cité  
de Montréal au lieu de la signification susdite est de moins d'un mille.

Montréal, 20 Janvier, 1885.

J. O. PAUZÉ,  
H. C. S.

ENDORSED.

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Motion et avis Prod. 21 Janvier. P. O. Motion accordée en payant  
les frais, accordés par le Tarif après plaidoyer en droit.

M. le J. Mathieu,

ENDORSED.

J. H. C.  
D. P. C. S.

SCHEDULE No. 147.

No. 190.  
Motion of  
Plaintiff to  
amend decla-  
ration, dated  
10th. Sept.  
1888

Province de Québec, }  
District de Montréal. }

Cour Supérieure.

40

Andrew Rough.....Demandeur.

*vs*

The Eastern Townships Bank.....Défenderesse.

Motion du Demandeur en cette cause :  
Qu'il soit permis d'amender sa déclaration.

10. En retranchant l'allégation dix-neuvième.

20. En ajoutant après l'allégation vingt-quatrième, l'allégation suivante :  
 “ Que le demandeur en cette cause ainsi que les dits Beard et McDougall mentionnés à l'acte de cautionnement, ont été mis en cause par la Banque d'Hochelaga dans son action en nullité de décret, laquelle action leur a été signifiée à chacun d'eux.”

30. En ajoutant à la fin de la vingt-cinquième allégation, les mots suivants : “ et la dite Banque d'Hochelaga doit réussir ; ”

40. En ajoutant après l'allégation vingt-cinquième les allégations suivantes : “ Que le six Octobre mil huit cent quatre-vingt-trois, le Gouvernement de la Puissance du Canada a, par l'entremise de son collecteur de Douanes à Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues avec les dites bâtisses comme en faisant partie, pour droits de douanes non payés : ”

“ Que les dites machineries ont toujours été depuis, et sont encore sous le coup de la dite saisie ;

“ Que le collecteur de Douanes à Coaticooke s'est, dans le même temps, savoir, le six Octobre mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ;

20 “ Que les dites bâtisses et machineries sont encore en sa possession ;

“ Que le demandeur est, depuis cette époque privé de la possession et de la propriété vendues ;

“ Que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shérif à la défenderesse, et ce, à la naissance de la défenderesse ;

“ Que les dites bâtisses ainsi que les dites machineries ont subi de grande détériorations ;

“ Que lors de la vente faite au Demandeur, la dite défenderesse savait que les droits sur les dites machineries n'avaient pas été payés et connaissait

30 “ l'intention du Gouvernement de faire saisir les dites machineries ;

“ Que cependant la défenderesse a caché ces faits au demandeur dans le but d'opérer une vente frauduleuse ;

“ Qu'ainsi le demandeur se trouve troublé et évincé dans la possession et la propriété des dits immeubles vendus ” :

50. En retranchant l'allégation vingt-sixième.

Le tout sous telles conditions qu'il plaira à cette Honorable Cour imposer.

Montreal, 10 Septembre 1888.

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LACOSTE, BISAILLON, BROSSEAU & LAJOIE.

Avocats du Demandeur.

A MM ATWATER & MACKIE,

Avocats de la défenderesse.

MESSIEURS,

Soyez notifiés que nous présenterons la motion ci-dessus à la Cour Supé-

RECORD.

—  
*In the  
 Superior  
 Court*

—  
 No. 190.

Motion of  
 Plaintiff to  
 amend declara-  
 tion. dated  
 10th Sept.  
 —Continued

RECORD riure, mardi le onze courant, à dix heures de l'avant-midi ou aussitôt que conseil pourra être entendu, pour y être adjugé sur icelle que de droit.  
 — In the Superior Court. Montréal, 10 Septembre, 1888.  
 LACOSTE, BISAILLON, BROSSEAU & LAJOIE.  
 Avocats du Demandeur.

ENDORSED.

No. 190. Motion of Plaintiff to amend declaration, dated 10th. Sept. 1888  
 Motion et avis du Demandeur. Prod. 11 Sept. 1888. (Paraphed) J. L. Dép. P. C. S. 10  
 — Continued.

SCHEDULE No. 147½

No. 191 Province de Québec }  
 Answers to District de Montréal } Cour Supérieure  
 Plaintiff's defence dated 19th Sept 1888  
 Andrew Rough.....Demandeur. 20  
 . . . . . rs.  
 The Eastern Townships Bank.....Défenderesse.

Et le dit demandeur, pour réponses aux défenses produites par la défenderesse, dit :

Que tous et chacun les faits allégués dans les dites défenses sauf ceux qui corroborent la demande et ceux qui pourrait être ci-après spécialement et expressément admis, sont faux et mal fondés et le dit Demandeur les nie tous et chacun d'eux formellement expressément ;

Que quelques jours avant la vente du shérif, Beard qui avait appuyé la réclamation de Fairbanks & al. a écrit au shérif l'informant du fait et lui ordonnant de ne pas procéder à la vente ; 30

Que le shérif répondit au dit Beard qu'il ne pouvait obéir à son ordre : qu'il y avait d'autres brefs d'exécution de notés ; que la vente aurait lieu et qu'il n'était pas au pouvoir de Beard de l'empêcher ;

Que Beard voyant qu'il ne pouvait empêcher la vente et voyant que la Banque des Cantons de l'Est avait un jugement enregistré pour un montant considérable, s'enquit du gérant de la Banque s'il avait l'intention d'acheter les immeubles saisis et sur réponse du gérant que la banque avait une forte créance établie et privilégié par jugement enregistré, et qu'elle achèterait à la vente du Shérif et s'enquit de lui si la Banque revendrait ensuite les prémisses. 40

Que le dit gérant de la dite Banque des Cantons de l'Est déclara que c'était l'intention de la Banque d'acheter les immeubles, et s'engagea aussi à vendre les dits immeubles après les avoir acquis du Shérif, au cas ou ils lui seraient adjugés, moyennant un prix équivalent à sa dette légitime, tel qu'il appert à copie de la lettre du dit gérant produite comme exhibit avec les présentes ;

Que Beard était créancier de la Pioneer Beet Root Sugar Company,

pour un fort montant ;

Que lors de l'exécution prise par Fairbanks, Beard était locataire des immeubles vendus ;

Que le prix que payait le dit Beard comme locataire était minime ;

Que la jouissance des prémisses lui permettait de faire un commerce qui l'aidait à se récupérer de ses pertes avec la compagnie The Pioneer Beet Root Sugar Company dont il était un des forts créanciers ;

10 • Cantons de l'Est, n'avait plus d'intérêt d'enchérir parce que la banque devait être payée avant lui ;

Que le dit John McDougall était aussi créancier de la Pioneer Beet Root Sugar Company pour un montant d'au-delà de vingt mille piastres ;

Que lors de la vente par le shérif Bowen, la Banque des Cantons de l'Est, la demanderesse, lui offrit par lettre de lui vendre les propriétés en question pour un certain montant équivalent à la dette légitime de la Banque des Cantons de l'Est ;

Que voyant la réclamation hypothécaire de la défenderesse, le dit MacDougall n'avait plus d'intérêt à enchérir parce que la réclamation hypothécaire devait être payée avant la sienne ;

20 Que les immeubles ont été achetés de bonne foi, croyant que la banque défenderesse avait un titre légal sans irrégularités ;

Pourquoi le demandeur conclut au renvoi des dites défenses avec frais et dépens distraits aux soussignés.

Montréal, 19 Septembre 1888.

LACOSTE, GLOBENSKY, BISAILLON & BROSSEAU,  
Avocats du Demandeur.

(On the Back.)

30 Je soussigné, Joseph B. Mallette, résidant à Montréal, l'un des huissiers, jurés de la Cour Supérieure, pour le Bas-Canada, immatriculé pour le District de Montréal, certifié sous mon serment d'office, et fais rapport à cette honorable Cour, que le vingtième jour de Septembre, mil huit cent quatre-vingt-huit, entre quatre et cinq heures de l'après-midi, j'ai signifié, à Messrs. Atwater & Mackie, Avocats de la Défenderesse en cette cause, la présente réponse, en leur en laissant une vraie copie dûment certifiée à leur bureau d'affaire, en la Cité de Montréal, en parlant et laissant la dite pièce, à une personne raisonnable, en charge de leur dit bureau.

Montréal, 20 Septembre, 1888.

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J. H. MALLETTE,  
H. C. S.

(ENDORSED.)

Réponse du demandeur à la défense. Prod. 25 Septembre, 1888.  
Paraphed G. H. K., Dep. P. S. C.

RECORD.

In the  
Superior  
Court

No. 191.  
Answers to  
Plaintiff's  
defence.  
dated 19th  
Sept. 1888.

— *Continued*

RECORD

SCHEDULE No 148

*In the  
Superior  
Court.*Province de Québec, }  
District de Montréal. }

COUR SUPERIEURE

No. 192  
Amended de-  
claration da-  
ted 3rd Sept.  
1884

Andrew Rough, comptable de la cité et du district de Montréal,

Demandeur,

se plaint de " The Eastern Townships Bank, " corps politique et incorporé  
avant son principal bureau et siège d'affaires en la ville de Sherbrooke, dans le 10  
District de St-François,

Défenderesse,

et déclare :

Que par acte de vente fait et passé à Montréal, le dix-neuf Janvier mil huit cent quatre-vingt-trois, devant Mtre L. O. Héту et son confrère, notaires, la dite Banque Défenderesse représentée à cet effet par son gérant, vendit au Demandeur Andrew Rough présent et acceptant les lots de terre ci-après désignés, et décrits comme suit au dit acte :

" 1. Lot number seven hundred and twenty two on the cadastral plan  
" and book of reference for the village of Coaticook. 20

" 2. Lots number seven hundred and sixty one and seven hundred and  
" sixty two and seven hundred and sixty three on said plan and book of refer-  
" ence, save and except that portion on said lot seven hundred and sixty three  
" formally sold by one Louis Sleeper to Charles W. Vaughan and all the land  
" lying to the south of the same.

" 3. Lot seven hundred and twenty one, on said plan and book of  
" reference.

" 4. Lots numbers seven hundred and fourteen, seven hundred and  
" twenty, seven hundred and six, seven hundred and twenty seven, seven  
" hundred and thirty-three, seven hundred and thirty four, seven hundred and 30  
" forty one, seven hundred and forty-four, fifteen hundred and eighty and fif-  
" teen hundred and eighty two on said plan and book of reference.

" 5. The following lots described in the Sheriff's notice of sale as  
" sixthly, " to wit : Lots numbers seven hundred and sixteen, seven hundred  
" and seventeen, seven hundred and eighteen and seven hundred and nineteen  
" on said plan or book of reference.

" 6. The following lot described in the said notice of Sheriff's sale as  
" ninthly, " to wit : Lot number seven hundred and twenty three on said cad-  
" astral plan and book of reference with all the buildings and improvements on  
" the said lots of land erected and made with all there unto belonging." 40

Que la dite vente fut faite pour et moyennant la somme de quarante-neuf mille quatre cent trente-neuf piastres et soixante-dix centins en déduction de laquelle la dite banque Défenderesse a reconnu par le dit acte avoir reçu du dit Demandeur Andrew Rough, celle de neuf mille quatre cent trente-neuf piastres et soixante-dix centins, pour laquelle elle a donné quittance, et quant à la balance, savoir : quarante mille piastres, le dit Andrew Rough s'obligea de la payer à la dite banque ou à ses représentants légaux, comme suit, savoir :

dix mille piastres le ou avant le six Juillet suivant, mil huit cent quatre-vingt-trois et la balance de trente mille piastres par six paiements annuels de cinq mille piastres chacun, le premier des dits paiements devant devenir dus le seize Janvier suivant, mil huit cent quatre-vingt-quatre, et les autres paiements devant devenir dus le seize Janvier de chacune des années suivantes jusqu'au paiement final, avec intérêt à sept par cent sur la balance, par année, à compter du seize Janvier mil huit cent quatre-vingt-trois, le dit intérêt payable semi-annuellement ;

10 Que le ou vers le trente Avril mil huit cent quatre-vingt-trois, le Demandeur a payé en outre en acompte du dit prix la somme de treize cent cinquante-deux piastres et soixante-dix-huit centins, laquelle somme jointe à celle de neuf mille quatre cent trente-deux piastres et soixante-dix centins, forment la somme de dix mille sept cent quatre-vingt-cinq piastres et quarante-huit centins ;

Que le trente Avril mil huit cent quatre-vingt-trois le Demandeur paya en outre acompte du prix de vente la somme de cinq mille trois cents piastres, laquelle jointe aux deux sommes ci-dessus forme la somme totale de seize mille quatre-vingt-cinq piastres et quarante huit centins.

20 Que les immeubles vendus par la Défenderesse au Demandeur par l'acte de vente du dix-neuf Janvier mil huit cent quatre-vingt-trois, ont été acquis du shérif du District de St-François, C. F. Bowen, qui les a vendus le douze Janvier mil huit cent quatre-vingt-trois au bureau d'enregistrement de la division de Coaticooke dans le district de St-François, en vertu d'un bref d'exécution émané dans le District de Montréal, le trente-et-un Octobre mil huit cent quatre-vingt-deux, dans une cause portant le numéro onze cent quatre-vingt-dix-huit des dossiers de cette cour et où Fairbanks & al. étaient demandeurs et The Pioneer Beet Root Sugar Company était Défenderesse.

30 Qu'un titre de la dite vente a été passé par le dit shérif à la Défenderesse, le treize Janvier mil huit cent quatre-vingt-trois et a été enregistré à Coaticooke le seize Janvier mil huit cent quatre-vingt-trois ;

Que le bref d'exécution, les annonces, les avis de vente et l'adjudication des dits immeubles par le dit shérif et enfin tous les procédés faits en vertu du dit bref d'exécution étaient et sont irréguliers, illégaux, nuls et de nul effet et doivent être déclarés tels et la vente et adjudication faite par le dit shérif doit être cassée, annulée et mise de côté ;

40 Que la minute de la saisie pratiquée par le dit shérif ainsi que les annonces et les avis de vente ni aucun d'iceux ne contiennent, tel que requis par la loi, une description suffisante des immeubles saisis en vertu du dit bref d'exécution et principalement des immeubles qui ont ainsi été vendus par la dite vente au Demandeur Andrew Rough, la description des dits immeubles ne mentionnant ni la cité, ville, village, paroisse ou township, non plus que la rue, le rang ou la concession où se trouvaient situés les dits immeubles ainsi annoncés et vendus ;

Qu'en outre, au nombre des immeubles ainsi annoncés et vendus, se trouve une partie du lot numéro sept cent soixante-trois qui n'est pas allégué être et n'est pas un numéro distinct d'icelui sur aucun plan officiel et dont les bornes n'ont pas été annoncées, tel que requis par la loi ;

RECORD.

—  
In the  
Superior  
Court

—  
No. 192.  
Amended  
declaration  
dated 3rd.  
Sept. 1884.  
—Continued

RECORD

—  
*In the  
 Superior  
 Court.*

No. 192

Amended de-  
 claracion da-  
 ted 3rd Sept.  
 1884

—*Continued.*

Que le shérif ou le député-shérif qui a procédé à la dite vente a adjugé illégalement les dits immeubles à la Défenderesse The Eastern Townships Bank pour la somme de quatorze cents piastres, bien qu'une enchère de douze mille piastres ait été faite et offerte pour les dits immeubles par William Farwell, le gérant de la dite banque, laquelle enchère avait été entrée sur le livre de minutes tenu pour l'enchère des dits immeubles ;

Que le dit shérif a vendu les dits biens immeubles en un seul lot et en bloc sans le consentement de la Défenderesse, The Pioneer Beet Root Sugar Company, mais sur la demande du gérant de la banque adjudicataire The Eastern Townships Bank, la Défenderesse en cette cause qui a ainsi agi dans le but de favoriser illégalement une vente à vil prix à la dite banque ; 10

Que la vente et adjudication des dits immeubles a ainsi été faite à la Défenderesse The Eastern Township Bank par le dit shérif illégalement et irrégulièrement, à vil prix, savoir, pour quatorze cents piastres, lorsque la valeur des dits biens immeubles était bien plus considérable, savoir, d'au moins quarante à cinquante mille piastres ;

Que le neuf Février, mil huit cent quatre-vingt-deux, la dite The Eastern Townships Bank, la Défenderesse en cette cause, bien que connaissant l'insolvabilité et la déconfiture dans laquelle se trouvait alors la Pioneer Beet Root Sugar Company, et sachant que cette dernière avait un grand nombre de créanciers pour des montants considérables, a cependant, dans le but de tromper et d'obtenir une préférence indue et frauduleuse sur eux, intenté secrètement devant la Cour Supérieure du district de St. François sous le numéro trois cent trente-cinq des dossiers de la dite Cour, une action intitulée : "The Eastern Townships Bank vs. Amos H. Cummings et al., manufacturiers, du village de Coaticooke, dans le district de St. François," dans laquelle la dite The Eastern Townships Bank était Demanderesse, et un nommé Amos H. Cummings, du village de Coaticooke, dans le district de St. François et The Pioneer Beet Root Sugar Company étaient Défendeurs ; 20

Que la dite action a été, par entente secrète et engagement fait à cet effet par les parties ci-dessus signifiées dans la bâtisse de la Banque Défenderesse à un des directeurs de la dite banque, savoir, à un nommé John Thornton qui était aussi un officier de la Compagnie Défenderesse The Pioneer Beet Root Sugar Company ; 30

Que d'après entente entre le dit Thornton et la dite Eastern Townships Bank, la dite action n'a jamais été communiquée au bureau de direction de la compagnie The Pioneer Beet Root Sugar Company, laquelle n'a eu aucune connaissance de la dite action avant l'époque du jugement ;

Que la dite action fut rapportée en Cour le vingt-trois Février, mil huit cent quatre-vingt-deux, et jugement fut pris immédiatement dans la dite cause, le dit jugement ayant été rendu le vingt-cinq du même mois pour une somme de vingt-trois mille six cent soixante-et-dix-sept piastres avec intérêt du dix Février montant considérablement au-delà de ce qui, était dû alors à la dite Eastern Townships Bank ; 40

Que le jour même ou le dit jugement fut rendu, savoir, le vingt-cinq Février, mil huit cent quatre-vingt-deux, la dite Eastern Townships Bank le fit



enregistré contre les biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ;

Qu'à raison de l'insolvabilité et de la déconfiture de la dite compagnie The Pioneer Beet Root Sugar Company, la dite Eastern Townships Bank, malgré l'enregistrement qu'elle fit de son dit jugement, n'a acquis et ne pouvait acquérir aucune hypothèque sur les biens immeubles de la compagnie The Pioneer Beet Root Sugar Company ;

10 Que des moyens artificiels ont été employés par la dite Eastern Townships Bank pour empêcher des personnes de se rendre à l'enchère et d'enchérir à la dite vente du shérif ;

Que de plus, la dite Eastern Townships Bank, bien que sachant que l'enregistrement de ce jugement, comme susdit, dans un temps où la compagnie The Pioneer Beet Root Sugar Company était insolvable et en déconfiture ne pouvait pas lui donner et ne lui a pas donné de droit d'hypothèque et était sans force et sans effet, a fait usage de tel enregistrement pour empêcher d'autres personnes d'être présente à la dite vente et enchérir sur les propriétés en question en cette cause, et a ordonné l'enregistrement du dit jugement à l'époque de la dite vente pour empêcher d'autres personnes d'enchérir sur les dites propriétés ;

20 Qu'à raison des dits artifices et d'autres semblables pratiqués par la dite banque lorsque les dites propriétés ont été mises à l'enchère à la dite vente du shérif, les dites propriétés, par une entente collusoire et frauduleuse entre la dite banque et d'autres personnes présentes et enchérissant, ont été vendues et adjugées à William Farwell, gérant général de la dite banque, illégalement et frauduleusement, au préjudice des créanciers, pour la somme de quatorze cents piastres et que le dit William Farwell représentait et agissait pour la dite banque en cette circonstance ;

Que les dits immeubles ainsi adjugés à la dite banque valaient au moins quarante à cinquante mille piastres ;

30 Que le ou vers le dix-huit Juin, mil huit cent quatre-vingt-trois, la banque d'Hochelaga, corps politique et incorporé ayant son principal bureau et siège d'affaires en la Cité et le District de Montréal et l'un des trois créanciers de la dite Pioneer Beet Root Sugar Company, a pris une action en nullité de décret pour faire déclarer la dite saisie et la dite vente et adjudication irrégulières, illégales, nulles et de nulle effet et mises de côté, et à ce que la dite banque et les créanciers de la dite compagnie soient remis dans la position où ils étaient avant la dite vente faite par le shérif :

40 Que le demandeur en cette cause ainsi que les dits Beard et Mac-Dougall mentionnés à l'acte de cautionnement, ont été mis en cause par la Banque d'Hochelaga dans son action en nullité de décret, laquelle action leur a été signifiée à chacun d'eux ;

Que les moyens invoqués par la dite Banque d'Hochelaga sont les mêmes que ceux ci-haut mentionnés, et la dite Banque d'Hochelaga doit réussir ;

Que le six Octobre, mil huit cent quatre-vingt-trois, le Gouvernement de la Puissance du Canada a, par l'entremise de son collecteur de douanes à Coaticooke, saisi les machineries qui se trouvent dans les bâtisses vendues

RECORD.

*In the  
Superior  
Court*

No. 192.  
Amended  
declaration  
dated 3rd.  
Sept. 1884.

—Continued

RECORD

*In the  
Superior  
Court.*No. 192  
Amended de-  
claration da-  
ted 3rd Sept.  
1884  
—Continued.

avec les dites bâtisses comme en faisant partie, pour droits de douanes non-payés ;

Que les dites machineries ont toujours été depuis et sont encore sous le coup de la dite saisie ;

Que le collecteur de douanes à Coaticooke, s'est, dans le même temps, savoir, le six Octobre, mil huit cent quatre-vingt-trois, mis en possession des dites machineries et des dites bâtisses ;

Que les dites bâtisses et machineries sont encore en sa possession ;

Que le Demandeur est, depuis cette époque, privé de la possession et de la propriété vendues ;

Que les droits de douanes sur les machineries dans les dites bâtisses existaient avant la vente faite par le shérif à la Défenderesse, et ce, à la connaissance de la Défenderesse ;

Que les dites bâtisses ainsi que les dites machineries ont subi de grandes détériorations ;

Que lors de la vente faite au Demandeur, la dite Défenderesse savait que les droits sur les dites machineries n'avaient pas été payés et connaissait l'intention du Gouvernement de faire saisir les dites machineries ;

Que cependant la Défenderesse a caché ces faits au Demandeur dans le but d'opérer une vente frauduleuse ;

Qu'ainsi le Demandeur se trouve troublé et évincé dans la possession et la propriété des dits immeubles vendus ;

Pourquoi le Demandeur conclut à ce qu'il soit déclaré par cette Cour que l'acte de vente faite au Demandeur par la Défenderesse le dix-neuf Janvier mil huit cent quatre-vingt-trois et passé devant Maître L. O. Héту, N. P., est illégale, entachée de nullité et nulle ; à ce que pour les causes et raisons ci-dessus, le dit acte de vente du dix-neuf Janvier mil huit cent quatre-vingt-trois, par la Défenderesse au Demandeur soit cassé et annullé et mis de côté ; à ce que les parties soient mises dans le même état qu'avant la dite vente, le Demandeur consentant et offrant de délaissier les dites propriétés sur déclaration de nullité de vente, et à ce que la Défenderesse soit condamnée à rembourser au Demandeur les diverses sommes de neuf mille quatre cent trente-neuf piastres et soixante-dix centins, avec intérêt à sept par cent, du dix-neuf Janvier mil huit cent quatre-vingt-trois, de treize cent cinquante-deux piastres et soixante-dix-huit centins avec intérêt à sept pour cent et de cinq mille trois cents piastres avec intérêt sur ces sommes à compter du trente Avril mil huit cent quatre-vingt-trois, le Demandeur se réservant son recours contre la Défenderesse pour tout dommage qu'il a pu souffrir, conclut en outre aux dépens de cette action contre la Défenderesse, desquels dépens les soussignés demandent distraction.

Montréal, 3 Septembre 1884.

LACOSTE, GLOBENSKY, BISAILLON, BROUSSEAU & LAJOIE,  
Avocats du Demandeur.

Received copy under all reserves and subject to payment of costs.  
19 September 1888.

ATWATER & MACKIE,  
Attorneys for Defendant.

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ENDORSED.

RECORD.

Déclaration (Amendée) Prod. 25 Septembre 1888: Paraphed.  
G. H. K., Député P. S. C.

*In the Superior Court*

No. 192.  
Amended declaration dated 3rd. Sept. 1884.  
— *Continued*

10

SCHEDULE NO. 149.

Canada }  
Province of Quebec, }  
District of Montreal. }

In the Superior Court.

No. 193.  
Plea to amended action, dated 11th. Sept. 1888

Andrew Rough..... Plaintiff

vs.

20

The Eastern Townships Bank..... Defendant

That the said Defendants for answer to the action and demand of Plaintiff and for plea thereto as amended while reserving all the benefit of their original pleas and each of them and under special exception to the ruling of the Court allowing the said amendment and answering the said demand because they are forced to do so and without waiver of their rights to appeal against the decision allowing the said amendment, declare that they repeat the allegations of their several original pleas before amendment and specially reiterate and allege that the said Plaintiff was well aware of all the matters and things set forth in said amended action prior to and at the date of the Sheriff's sale in this matter.

30

And that said Defendants further specially deny each and all the matters alleged by the said Plaintiff as well by his amendments to said action as by the said plea itself.

Wherefore the said Defendants pray as by their said original pleas they have already prayed.

Montreal, 11th September 1888.

ATWATER & MACKIE,  
Attorneys for Plaintiffs.

40

Received copy under reserve of all objection.  
2 October 1888.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,  
Attorneys for Defendants.

ENDORSED.

Plea to amended action. Filed 20th May 1889. Paraphed. A. B. L.

RECORD

SCHEDULE No. 151.

*In the  
Superior  
Court.*  
Canada  
Province of Quebec,  
District of Montreal.

Superior Court.

No. 910.

No 194.  
Defendant's  
supplemen-  
tary articula-  
tions of facts  
on amended  
action dated,  
5th. Jan.  
1889

Andrew Rough,.....Plaintiff.

vs.

The Eastern Townships Bank,.....Defendant. 10

Defendants supplementary articulations of facts on amended action.

No. 1. Is it not a fact that Defendant's allegations in their several original pleas are well founded ?

No. 2. Is it not a fact that Plaintiff was well aware of all the matters and things set forth in his amended action prior to and at the date of the Sheriff's sale herein ?

No. 3. Is it not a fact that each and all the matters alleged by said Plaintiff as well as by his amendments to said action as by the said action itself are false and untrue ?

20

Montreal, 5th January 1889.

ATWATER & MACKIE,  
Attorneys for Defendant.

Received copy.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE,  
Attorneys for Plaintiffs.

(ENDORSED)

Defendant's supplementary articulations of facts on amended action.  
Filed, 20th May 1889. Paraphed. A. B. L.

ATWATER & MACKIE,  
Attorney for Defendant.

30

No. 195.  
Plaintiff's  
answers to  
Defendant's  
supplemen-  
tary articula-  
tions of facts  
dated  
10th. April  
1889

SCHEDULE No. 152.

Province de Québec,  
District de Montréal.

Cour Supérieure.

No. 910.

40

Andrew Rough.....Demandeur.

vs.

The Eastern Townships Bank.....Défenderesse.

Réponse du Demandeur aux articulations de faits supplémentaires du Défendeur.

A la 1ère articulation le Demandeur répond : Non.  
 " 2e " " " Non.  
 " 3e " " " Non.

RECORD.  
 —  
*In the Superior Court*  
 —

Montréal, 10 Avril 1889.

LACOSTE, BISAILLON, BROSSEAU & LAJOIE.

Avocats du Demandeur.

[Received copy.]

ATWATER & MACKIE,

Attorneys for Defendants.

10

(ENDORSED)

Réponse du Demandeur aux articulations de faits supplémentaires du Défendeur. Filed, 11 April 1889. Paraphed. A. B. L

No. 195.  
 Plaintiff's answers to Defendant's supplementary articulations of facts dated 10th. April 1889  
 —Continued

20

DOCUMENT VI.

Canada }  
 Province de Québec, }  
 District de Montréal. }

Cour de banc de la Reine.

[EN APPEL.]

*In the Court of Queen's Bench*  
 —

No. 302.

Andrew Rough,.....(Demandeur en Cour Inférieure,)

APPELANT.

30

ET

The Eastern Townships Bank,.....(Défenderesse en Cour Inférieure,)

INTIMÉE.

No. 196.  
 Reasons of Appeal dated 26th Sept. 1890.

40

Le dit Appellant, se réservant le droit de se plaindre de la diminution du Dossier en cette cause, et de l'insuffisance du rapport du Bref d'Appel, de faire toutes motions, d'adopter tous procédés nécessaires relativement à cette diminution du Dossier ou insuffisance du Rapport, et aussi le bénéfice et avantage de tous autres moyens à être déduits en Appel, pour Grievs ou Raisons d'Appel en cette cause dit :

Que les règles, ordres et jugements rendus et intervenus en cette cause, en Cour de Première Instance et particulièrement le jugement rendu le dixième jour de mars mil huit cent quatre-vingt-dix sont illégaux, injustes et doivent être déclarés tels par cette Cour, pour entr'autres raisons, les suivantes :

Parce que le dit jugement du dixième jour de mars mil huit cent quatre-vingt-dix a été rendu contre l'Appellant et en faveur de l'Intimé, tandis qu'il devait être rendu en faveur de l'Appellant et contre l'Intimée.

RECORD

*In the  
Court of  
Queen's Bench*No. 196.  
Reasons of  
Appeal  
dated 26th  
Sept. 1890.  
—Continued

Parce que le dit jugement a renvoyé l'action de l'Appelant, tandis qu'il aurait dû la maintenir ;

Parce que le dit Appelant a prouvé en Cour Inférieure toutes les allégations essentielles de sa déclaration ;

Parce que le dit Appelant, tant en droit qu'en fait, devait obtenir les conclusions par lui prises en sa déclaration ;

Parce que le dit jugement rendu le dixième jour de mars mil huit cent quatre-vingt-dix est contraire à la loi et à la jurisprudence.

Pourquoi, le dit Appelant conclut à ce que les dites règles, ordres et jugements et notamment le dit jugement rendu le dixième jour de mars mil huit cent quatre-vingt-dix soient déclarés irréguliers, illégaux, injustes, nuls et de nul effet ; à ce qu'enfin cette Honorable Cour, procédant à rendre le jugement que la Cour Inférieure aurait dû rendre, maintienne l'action de l'Appelant, et en accorde les conclusions ; le tout avec dépens, tant de la Cour Inférieure que de cette Honorable Cour. 10

Montréal, 26 Septembre 1890.

LACOSTE, BISAILLON BROSSEAU & LAJOIE,  
Avocats de l'Appelant. 20

(On the Back)

Je, soussigné Joseph H. Mallette résidant à Montréal, l'un des huissiers jurés de la Cour d'Appel du Bas-Canada, exerçant dans le district de Montréal, certifie par ces présentes et fais rapport, sous mon serment d'office, à cette Honorable Cour, que le vingt-neuvième jour du mois de Septembre, en l'année mil huit cent quatre-vingt-dix, entre trois et quatre heure de l'après-midi, j'ai signifié à Messrs Atwater & Mackie avocats de l'Intimé en cette cause les Griefs d'Appel d'autre part écrit en laissant une vraie copie certifiée d'iceux aux dits avocats en parlant et en laissant les dites pièces à une personne raisonnable gardien et en charge de leur bureau, à Montréal dit district. 30

Daté à Montréal, ce 29 Sept. 1890.

J. H. MALLETE,  
H. C. d'Appel.

Honoraire, \$100.

(ENDORSED)

Grieffs d'appel  
Produits 30, Sept. 1890. Paraphed L. W. M.

40

DOCUMENT VIII

Court of Queen's Bench,

(APPEAL SIDE)

RECORD  
In the  
Court of  
Queen's Bench

No. 197.  
Answers to  
Reasons of  
Appeal  
dated 29th  
Sept. 1890.

Andrew Rough.....(Plaintiff in the Court below,)

APPELLANT.

10

AND

The Eastern Townships.....(Defendants in the Court below)

RESPONDENTS.

The said Respondents reserving to themselves at all times hereafter the right of alleging diminution of the Record in this cause, and imperfection and insufficiency of the Return to the Writ of Appeal therein, and the right of making all such motions and using all such lawful ways and means as may be necessary or expedient touching such diminution of the said Record, and imperfection and insufficiency of the said Return, and in the premises, for Answer to the Reasons of Appeal of the said Appellant in this cause fyled, do hereby say :

20

That all and every the allegations, matters and things in the said Reasons of Appeal contained and set forth, are false, untrue and unfounded in fact, and moreover insufficient in law to entitle the said Appellant to have and maintain the conclusions in and by the said Reasons of Appeal taken, or any thereof.

30

Wherefore, the said Respondents humbly pray that by the sentence and decree of the Court here, the said Appeal and Reasons of Appeal be hence dismissed ; and that the Judgment of the Court below made and rendered on the tenth day of March, one thousand eight hundred and ninety, from which the present Appeal is taken, be affirmed ; the whole with costs, as well of the Court below as of this Court.

Montreal, 29th September 1890.

ATWATER & MACKIE,  
Attys for Respondents.

Received Copy

LACOSTE, BISAILLON BROSSEAU & LAJOIE,  
Attys for Appellants,

40

(ENDORSED.)

Answer to Reasons of Appeal.  
Filed 21st June 1893. (Paraphed) M. & D.

RECORD

*In the  
Court of  
Queen's Bench*

No. 198.  
Appellants'  
Factum  
already printed see page  
476

DOCUMENT IX.

FACTUM OF APPELLANTS.

Already printed see page 476.

10

No. 199.  
Respondents'  
Factum  
dated 11th  
Novr. 1892.

Canada  
Province of Quebec,  
District of Montreal, }

No. 302.

DOCUMENT X.

Court of Queen's Bench.

(APPEAL SIDE)

20

Andrew Rough,.....(Plaintiff in the Court below,)

APPELLANT.

AND

The Eastern Townships Bank,.....(Defendant in the Court below,)

RESPONDENT.

FACTUM OF RESPONDENT.

This in an action taken by the Appellant to set aside a deed of sale 30  
from the Respondent to him of certain real property at Coaticook which had  
belonged to the Pioneer Beet Root Sugar Company and which had been pur-  
chased by the Respondent at Sheriff's sale and sold to the Appellant by deed  
before Hetu, N. P. on the 19th January 1883.

The judgment appealed from dismissed the Appellant's action.

The grounds which the Appellant urges in support of his action are  
identical with those which he relies upon by his plea to the case of the Eastern  
Townships Bank against him namely, to be brief, want of title in the vendor  
and fear of trouble and of eviction. The plea of the present Defendant  
Respondent was on all questions of fact the same as their declaration and their 40  
answer to pleas in the other action, viz, in effect, that the sale was made with-  
out warranty and with knowledge on the part of the purchaser of the causes  
of eviction complained of; that these causes were the result of the purchaser's  
own acts and of those for whom he was responsible; and that in purchasing  
from the Sheriff the vendor merely acted as the agent of and in the interest of  
the present Appellant and that the latter bought from Respondent at his own  
risk





The pleadings are fully set out in the Appellant's Appendix in case No. 301. The case were joined for the purposes of trial, and on all points, but the one which is referred to specially by this factum, the Respondent's view of the case is fully discussed in the factum in the case No. 301 of this Court to which reference is made.

10 There is one special point which was raised by the present Respondent by his pleas to the Plaintiff's action which they could hardly raise in the other action taken by them to recover the price. To this action to annul the sale the Respondent demurred alleged that the action was insufficiently *libellée* on the ground that it neither alleged a judgment or eviction and did not make any *délaissement* or abandonment of the property. The demurrer was dismissed and perhaps properly so as the allegation of the Declaration may have been sufficiently general as to acknowledgment &c. to have justified the conclusion, but the Defendant pleaded the same matter by their subsequent pleas.

The present Respondent contends that as a proposition of law the fear of trouble is not sufficient to justify an action of rescission without an abandonment or admission of the incumbrance.

20 Such abandonment or admission the purchaser must prove was made by reason of a right which existed at the time of the sale. The general principle is contained in article 1508 Civil Code, that the seller is obliged to warrant buyer, first, against eviction and secondly, against incumbrances not declared and not apparent. Article 1510 says, that in a stipulation excluding warrantly to seller *in case of eviction*, &c. These and the following articles all contemplate that the buyer must have been evicted before he can exercise his action in restitution of the price or for damages.

30 As regards a warranty against non apparent incumbrances, which must be distinguished from eviction the remedy of the buyer is declared by Article 1535, to be to delay the payment of the price until the seller cause the disturbance to cease or gives security. He certainly has no right to take any action to set aside the sale even though he had just cause to fear he would be disturbed in his possession. The purchaser may, according to Article 1521 enforce the obligation of the warranty without the intervention of a judgment i.e.a. judgment affecting him or his possession, when he abandons the thing sold, but in such case he has to prove that his abandonment is made by reason of a right which existed at the time of the sale, but it will be noted that he must make an abandonment and then if he proves his right to do so he might have the sale cancelled.

40 In the present case however no abandonment has been made either before or by the action which the Plaintiff takes and the proof establishes that he was in possession of the property without protest on his part and paid moneys on account and received moneys from the sale of portions of it and administered it without protest, not only long after the trouble which he complained about had arisen, but after the institution even of the present action. The action *en nullité* of the Sheriff's sale was instituted and served on the present Plaintiff Rough on 22nd of June 1883 while the present action was only instituted on the 5th September 1884 and after the present respondents had taken their action in case No. 301, which was instituted on the 13th May

RECORD  
—  
*In the  
Court of  
Queen's Bench*  
—

No. 199.  
Respondents'  
Factum  
dated 11th  
Novr. 1892.

RECORD

—  
*In the  
 Court of  
 Queen's Bench*  
 —

No. 199.  
 Respondents'  
 Factum  
 dated 11th  
 Novr. 1892.  
 —Continued

1884. Respondent refers here again to their exhibits A. H, A. L, A. M. and A. N., and to the admission made by Rough, the Appellant in his evidence as to payments having been made subsequent to action.

This method of treating the property certainly negatives any idea of an abandonment even by the present action.

As to the right of the buyer to enforce the obligation of warranty by admitting the incumbrance, he must in like manner prove that the admission is made by reason of a right which existed at the time of the sale. The Appellant does not prove the existence of any such right. He alleges an action taken by creditors to set aside the Sheriff's title to the property which action 10 was instituted subsequently to the sale, but he cannot allege that this action would be successful and if it was not he would have no right to urge the matters relied upon by the Petitioner in the action *en nullité*.

The admission to enforce the obligation of warranty must be an admission of such an incumbrance, as will positively result in the eviction of the purchaser in whole or in part. The mere fear, even with just cause, is not sufficient. For instance if a year had elapsed from the date of the Sheriff's sale it could not then have been attacked. It could only be attacked by creditors.— Rough himself, if no petition had been made to set aside the sale, could not have substantiated an action such as he is now taking, even 20 though he set up and proved all the matters set up by the creditors petitioning. Clearly the only acts which he could rely on in the action, are not the matters pleaded by the creditors, but the fact that the action *en nullité* of the Sheriff's sale had been taken, and he cannot enforce the obligation of warranty upon this ground alone, without going further and alleging that the action was successful, and, that he has been evicted. Otherwise Appellant might succeed 30 in setting aside his purchase from the Bank upon proving that the Hochelaga Bank, who were the petitioning creditors had a right to succeed in setting aside the sale even though the Hochelaga Bank might have withdrawn their petition or it had been dismissed. The right which it must be proved he exercised at the time of the sale must be an absolute and not a relative one. The Respondent contends that the Appellant has no right under the circumstances of the present case to enforce any obligation of warranty even if any such existed, which is, of course, denied, until he was either evicted or had been able to allege and prove that his title was worthless. All, as a matter of fact, that he does allege, is a mere fear of trouble and it does not appear anywhere in the proof that he has ever been dispossessed or evicted. On the contrary he would appear to be, even until the present date, in possession of the property and receiving its revenues. He does not and cannot allege any judgment setting aside the Respondent's title. 40

The Respondents rely in the present case on the evidence made by them in the united cases and upon the arguments based thereon as more fully set out in their Factum and Appendix to the case No 301, but he submits the foregoing proposition merely in addition thereto and as bearing especially upon the present appeal.

On the whole, Respondent respectfully contends that the judgment should be confirmed with costs.

Montreal, November 11th, 1892.

ATWATER & MACKIE,  
*Attorneys for Respondent.*

(ENDORSED.)

10 Factum of Respondent, fyled 17th Sept. 1892. (Paraphed), M. & D.

RECORD  
—  
*In the  
Court of  
Queen's Bench*  
—  
No. 199.  
Respon-  
dents'  
Factum  
dated 11th  
Novr, 1892.  
—*Continued*

DOCUMENT XII.

Case No. 302.

20 Transcript of the Proceedings had and entries made in the Register of the Court of Queen's Bench, (Appeal side).

20th March, 1890.

No. 200.  
Proceedings  
in the Court  
of Queen's  
Bench  
from 20 Mar.  
1890 to 23rd  
June 1893

Messrs. Lacoste, Bisailon, Brosseau & Lajoie fyle a praecipe for Writ of Appeal and writ issues.

9th April, 1890.

30 The Appellant fyle an authentic copy of said writ with return of service.

19th September, 1890.

Messrs. Atwater & Mackie, appear for the Respondents.

23rd September, 1890.

Messrs. Lacoste, Bisailon, Brosseau & Lajoie, appear for the Appellant

26th September, 1890.

40 Demand of Reasons of Appeal are fyled on behalf of the Respondent.

30th September, 1890.

Reasons of Appeal are fyled on behalf of the Appellant.  
Demand of answers to Reasons of Appeal are also fyled on behalf of the said Appellant.

## RECORD

24th September, 1891.

*In the  
Court of  
Queen's Bench*

PRESENT.

No. 200.  
Proceedings  
in the Court  
of Queen's  
Bench  
from 20 Mar.  
1890 to 23rd  
June 1893  
—Continued

THE HONORABLE MR. JUSTICE BABY.  
" " " " BOSSÉ.  
" " " " BLANCHET.  
" " " " WURTELE, Assistant.

La Cour sur motion de Messrs. Bisailon, Brosseau & Lajoie, permet qu'ils soient substitués à Messrs. Lacoste, Bisailon, Brosseau & Lajoie, comme avocats des Intimés. 10

11th November, 1892.

Mr. Justice Hall fyles a Declaration of incompetency to sit in this cause, the firm of Hall White & Cate of which he was a member, having been counsel in the case.

12th November, 1892.

20

The Appellant fyle his printed case.

15th November, 1892.

The Appellant inscribes the case on the Roll for hearing on the merits.

17th November, 1892.

The Respondents fyle their printed case.

30

## DOCUMENT No. XIII.

23rd June, 1893.

PRESENT.

No. 201  
Judgment of  
the Court of  
Queen's  
Bench  
already printed,  
see page  
504

THE HONORABLE MR. JUSTICE BABY.  
" " " " BOSSE,  
" " " " BLANCHET.  
" " " " WURTELE.  
" " " " TELLIER, *ad hoc*.

40

Judgment of the Court of Queen's Bench. already printed see page 504

DOCUMENT XIX,

23rd June, 1893.

RECORD  
In the  
Court of  
Queen's Bench

10 It is moved on behalf of said Respondent that leave to appeal to Her Majesty in Her Privy Council be granted to said Respondent from the judgment this day rendered by this court in the present cause. The Court doth grant said motion and said Respondent are allowed to appeal to Her Majesty in Her Privy Council from the Judgment this day rendered by this court in the present cause and said Respondent giving within six weeks from this day the security required by law and in default of such security being given within said delay it is ordered that the record be forthwith remitted to the court below without any further order.

No. 202.  
Proceedings  
on motion for  
leave to ap-  
peal to Her  
Majesty's  
Privy Council  
and motion  
for delay.

18 September 1893.

PRESENT :

20 THE HONORABLE M. JUSTICE BABY.  
" " BOSSÉ.  
" " BLANCHET.  
" " HALL.

It is moved on behalf of the Respondents that the delay of 6 weeks for entering security to appeal to Her Majesty in Her Privy Council be extended until..... The court doth grant said motion by and with the consent of the Appellant.

30

DOCUMENT XV

Province de Québec, }  
District de Montréal. }

Cour du Banc de la Reine

(EN APPEL)

40 No 302, ANDREW ROUGH.....Demandeur en Cour Inférieure,

APPELANT.

ET

THE EASTERN TOWNSHIPS BANK, Défenderesse en Cour Inférieure,  
INTIMÉE.

Le Demandeur appellant s'objecte à l'appel et au cautionnement offert en cette cause pour l'appel au Conseil Privé de Sa Majesté en Angleterre, attendu que le jugement rendu en cette cause est un jugement interlocutoire

No. 203.  
Appellants  
objections to  
the Appeal  
and security  
to the Privy  
Council, da-  
ted 20th Feb.  
1894

RECORD

*In the  
Court of  
Queen's Bench*

dont il n'y a pas appel au Conseil Privé de Sa Majesté en Angleterre.  
Montréal, 21 Février 1894.

BISAILLON, BROSSEAU & LAJOIE,

AVOCATS DE L'APPELANT.

No. 203.

ENDORSED

Appellants  
objections to  
the Appeal  
and security  
to the Privy  
Council, da-  
ted 20th Feb.  
1894

Objection de l'appelant à l'appel et au cautionnement au Conseil Privé.  
Montréal, 21 Février 1894.

10

ON THE BACK

Acte est accordé de la production de la présente objection.  
Paraphed M. & D. Montréal, 21 Février 1894.

J. WURTELE,

J. B. R.

—Continued

20

DOCUMENT XVI.

No. 204  
Motion of the  
E. T. Bank  
that  
Fairbank's  
Judgment be  
not printed  
in transcript  
dated  
12th May  
1894.

Canada,  
Province of Quebec, }  
District of Montreal. }

In the Court of Queen's Bench.

In the matter of the appeal to the Privy Council in the united cases of 30

No. 301

Andrew Rough et al. .... Defendants below.  
APPELLANTS.

&

The Eastern Townships Bank ..... Plaintiffs below.  
RESPONDENTS. 40

AND

No. 302

RECORD.

Andrew Rough.....Plaintiff below  
APPELLANT.

*In the Court  
of Queen's  
Bench.*

&

10 The Eastern Townships Bank.....Defendants below  
RESPONDENTS.

No. 204.  
Motion of the  
E. T. Bank,  
that  
Fairbanks'  
Judgment be  
not printed  
in transcript  
dated  
12th May  
1894.

MOTION ON BEHALF OF THE SAID EASTERN TOWNSHIPS BANK ;

20 Whereas a certain judgment was rendered on the twenty-eighth day of February eighteen hundred and ninety (1890) in the Superior Court of this District in a case being No. 1198 amongst the records of the said Court, wherein Fairbanks & Company were Plaintiffs and the Pioneer Beet Root Sugar Company were Defendants and the Banque d'Hochelaga was a Petitioner to set aside a Sheriff's Sale to the Eastern Townships Bank, Adjudicataire.

Whereas the said judgment did not form part of the record in the present case in the Superior Court, nor was the same pleaded, nor was there any allegation made by the Appellant Rough in any of his pleadings as to the said judgment and the same was not produced or filed by him and was not admitted into the record ;

Whereas the record which was sent up from the Superior Court to this Court did not contain the said judgment nor any copy there of and the same could not become a part of the record before this Court ; And

30 Whereas the Appellant Rough made a special application before this Court on the date of hearing only to have the said judgment admitted to and made part of the record and said motion was denied, this Honorable Court having heard that such judgment could not be added to the record in appeal ; And

Whereas an appeal has been taken to Her Majesty in Her Privy Council by the Respondents before this Court from the judgment rendered on the twenty-third day of June last (1893) ; And

40 Whereas the said judgment was rendered upon the merits of the pleadings and the issues as joined between the parties hereto and was rendered upon the record, evidence and procedure as transmitted to this Court by the Superior Court ; And

Whereas the transcript of the proceedings to be submitted to Her Majesty, in Her Privy Council, on the appeal thereto cannot and should not contain other documents, papers or pleadings than those upon which the judgment of the Court appealed from was based ; And

Whereas the said judgment in the said case of Fairbanks et al against the Pioneer Beet Root Sugar Company was not and never became a part of the

RECORD. record transmitted to this Court and upon which the judgment appealed from to Her Majesty in Her Privy Council was based ; And

*In the Court  
of Queen's  
Bench.*

Whereas the Clerk of this Court in superintending the printing of the transcript, proposes to allow the said judgment in the said case of Fairbanks to be copied and printed as part of the record and one of the papers to be transmitted to Her Majesty's Privy Council ; And

No. 204.

Motion of the  
E. T. Bank  
that  
Fairbanks'  
Judgment be  
not printed  
in transcript  
dated  
12th May  
1894.

Whereas such allowance is illegal and irregular and puts of record a paper which has never become a part of the record and was not part of the record before this Court when they rendered the judgment appealed from ;

That this Court do declare that the said judgment does not form and never did form part of the record in this case nor one of the papers therein and cannot accordingly, be printed in the transcript upon the appeal to Her Majesty in Her Privy Council, the whole with costs in the case of contestation against the Contestant, distrains to the undersigned.

*Continued.—*

Montreal 12th May 1894.

ATWATER & MACKIE

Attorneys for the said Eastern Townships Bank. 20

To MESSRS BISAILLON, BROUSSEAU & LAJOIE

Attorneys for Appellants in Court of first appeal.

GENTLEMEN,

Take notice of the foregoing motion and that we will present the same for allowance to the said Court on Tuesday the fifteenth day of May instant at the opening thereof or so soon thereafter as counsel can be heard. 30

Montreal 12th May 1894.

ATWATER & MACKIE,

Attorneys for Respondents.

(On the Back).

I, Damase A. St. Amour, residing in Montreal, one of the sworn Bailiffs 40 of the Superior Court and of Court of Queen's Bench, in appeal, for the Province of Quebec, duly named for the District of Montreal, do hereby certify under my oath of office that on the fourteenth day of May one thousand eight hundred and ninety-four between the hours of eleven and twelve o'clock in the forenoon, I did serve upon Messrs Bisailon, Brosseau & Lajoie, Attorneys for Appellants in this cause, the within motion and notice by leaving a duly certified copy thereof for them at their office in the City of Montreal by speaking to a reasonable person in charge thereof.

The distance from the Court House, in Montreal, to aforesaid place of



service, is less than one mile, and that I did necessarily travel to effect said service, the distance of less than one mile.

Montreal 14th May 1894

10

D. A. ST. AMOUR,  
B. S. C. and of Court of Queen's  
Bench in appeal.

ENDORSED.

Motion that Fairbanks judgment be not printed in transcript herein.  
(Paraphed), M. & D.

20

RECORD.

*In the Court  
of Queen's  
Bench.*

No. 204.  
Motion of the  
E. T. Bank  
that  
Fairbanks'  
Judgment be  
not printed  
in transcript  
dated  
12th May  
1894.

*Continued.—*

DOCUMENT XVII.

Tuesday the 15th day of May 1894.

30

Present :

THE HONORABLE MR. JUSTICE BOSSÉ,  
" " BLANCHET,  
" " HALL,  
" " WURTELE.

No. 205.  
Proceedings  
on motion of  
E. T. Bank  
to omit Judg-  
ment in  
present trans-  
cript  
Record from  
15 to 17 May  
1894.

This motion is continued till to-morrow.

40

Wednesday the 16th May 1894.

Present :

THE HONORABLE MR. JUSTICE BOSSÉ,  
" " BLANCHET,  
" " HALL,  
" " WURTELE.

This motion is continued until Friday the 18th of May instant.

RECORD.

Friday the 18th day of May 1894.

*In the Court  
of Queen's  
Bench.*

Present :

THE HONORABLE MR. JUSTICE BABY,  
" " BOSSÉ,  
" " BLANCHET,  
" " WURTELE.

No. 205.  
Proceedings  
on motion of  
E. T. Bank  
to omit Judgment in  
present transcript  
Record from  
15 to 17 May  
1894.

The parties having been heard by their counsel respectively on the motion of the said The Eastern Townships Bank praying that it be declared that the Judgment re Fairbanks & Company, The Pioneer Beet Root Sugar Company and La Banque d'Hochelaga Petitioner, does not form part of the Record in this cause and that the said Judgment be not inserted in the transcript upon the Appeal to Her Majesty in Her Privy Council. 10

C. A. V.

*Continued.*—

DOCUMENT XIX.

Saturday the 26th day of May 1894.

20

Present :

THE HONORABLE MR. JUSTICE BABY,  
" " BOSSÉ,  
" " BLANCHET,  
" " HALL,  
" " WURTELE.

No. 206.  
Order of  
Court rejecting  
said  
motion dated  
26th May  
1894.

No. 301.

ANDREW ROUGH ET AL, (Defendants below)

APPELLANTS. 30

AND

THE EASTERN TOWNSHIPS BANK, (Plaintiffs below)

RESPONDENTS.

AND

No. 302.

ANDREW ROUGH, (Plaintiff below)

APPELLANT.

AND

THE EASTERN TOWNSHIPS BANK, (Defendants below)

40

RESPONDENTS.

The Court having heard the parties by their counsel respectively on the motion of the said The Eastern Townships Bank praying that it be declared by this Court that a certain judgment rendered on the 28th of February 1890

in the Superior Court for the District of Montreal in a case being No. 1198 amongst the records of the said Court wherein Fairbanks & Company were Plaintiffs and the Pioneer Beet Root Sugar Company were Defendants and La Banque d'Hochelaga was a Petitioner to set aside a sheriff's sale to the Eastern Townships Bank, adjudicataire, does not form part of the Record in this cause and cannot, accordingly be printed in the transcript upon the appeal to Her Majesty in Her Privy Council, and mature deliberation on the same being had :

Doth reject the said motion with Costs.

10

RECORD.

*In the Court of Queen's Bench.*

No. 206.

Order of Court rejecting said motion dated 26th May 1894.

*Continued.*—

DOCUMENT XX.

20 Canada, }  
Province of Quebec, }  
District of Montreal. }

Court of Queen's Bench.

(In Appeal)

No 207  
Demand for Judgment  
fyled 17th  
July 1893.

Nos. 301 - 302.

Andrew Rough et al,.....Appellants.

vs.

30 The Eastern Townships Bank.....Respondents.

We appear for the said Respondents, The Eastern Townships Bank and require forthwith communication of the judgment of this Court, rendered herein, on the twenty-third day of June last, and of the Honorable Judges notes of the same, and the said Respondents hereby protest against whomsoever may be at Court in the non-production, of said judgment and notes, for failure to produce the same, after repealed demands therefor which have at divers times since the said 23rd day of June, been made at the office of said Court, by said Respondents' and their undersigned attorneys.

40 Montreal, 17th July, 1893.

ATWATER & MACKIE,  
Attorneys for Respondent.

(ENDORSED.)

Demand for Judgment and protest. Fyled 17th July, 1893. Paraphed,  
M. & D.

DOCUMENT XXI.

RECORD Province of Quebec, }  
 District of Montreal. }  
*In the Court of Queen's Bench*

Court of Queen's Bench.  
 (Appeal Side)

A. ROUGH,

APPELLANT ;

AND

THE EASTERN TOWNSHIPS BANK,

RESPONDENT. 10

No. 208.  
 Application for Copy of Judgment and Judges' Notes Fyled 10th, August 1893

On behalf of the said Respondents, we hereby make application for a copy of the Judgment rendered by this honorable Court in this cause on the twenty third of June last, and also for the notes of the Honorable Judges sitting in said Judgment.

Montreal, August 10th, 1893.

ATWATER & MACKIE,  
 Attys for Respondent.

20

ENDORSED.

Application for copy of Judgment and Judge's notes. Fyled 10th August, 1893. (Paraphed,) M. & D.

DOCUMENT XXII.

No. 209  
 Motion for extension of delays to put in security fyled 15th Nov. 1893

Canada }  
 Province of Quebec, }  
 District of Montreal, }

In the Court of Queen's Bench  
 (Appeal Side)

30

Inasmuch as judgment was rendered in this case by the Court of Queen's Bench, Appeal Side, on the 3rd day of June last, (1893.)

Inasmuch as no judgment has ever been signed, and no reasons of the judgment have ever been given by any of the Judges.

Inasmuch as the record even is not in the office of the Clerk of the Court and the Respondents have never been able to ascertain the reason of the said judgement or considerants therefor ; 40

Inasmuch as the Respondents have frequently demanded and asked for the said judgment, and for the reasons thereof, and have put of record their said demands on several occasions and their protest against the delay ;

Inasmuch as the said judgment is necessary to enable the said Respondents effectively to prosecute their appeal from the said judgment ;

Inasmuch as at the last term of this Court, to wit : commencing on the

fifteenth day of September last, (1893) the Respondents moved for an extension of the delays within which they were bound to put in security upon the same grounds as they now urge and brought the matter to the attention of this honorable Court ;

Inasmuch as Respondents are desirous immediately of prosecuting their appeal from the said judgment but have been and are unable to obtain even the record on the said case, or any judgment of this Court ;

10 That their delays to put in security, and to do all the matters connected with their appeal from the said judgment to be extended for a period of six weeks, the whole with costs. And the said Respondents very respectfully enter their protest against the said delays, and protest that the same is calculated to cause expense and to prejudice their interests.

Montreal, 13th November, 1893.

ATWATER & MACKIE,  
Attorneys for Respondents.

To

MESSRS. BISAILLON, BROUSSEAU & LAJOIE,  
Attorneys for Appellants.

20 GENTLEMEN :

Take notice of the foregoing motion and that we will present the same for allowance before the said court on Wednesday the fifteenth day of November instant at the opening thereof or so soon thereafter as counsel can be heard.

Montreal, 13th November, 1893.

ATWATER & MACKIE,  
Attorneys for Respondents.

(ENDORSED.)

30 Motion and notice fyled 15th November 1893. (Paraphed) M. & D.

DOCUMENT XXIII.

Province of Quebec,  
District of Montreal.

Court of Queen's Bench.  
(Appeal Side.)

40 Nos. 301 - 302.

Andrew Rough, Appellant,.....(Plaintiff and Defendant.)

AND

The Eastern Townships Bank, Respondent.....(Defendant and Plaintiff.)

The said Eastern Townships Bank hereby respectfully excepts to the

RECORD.

*In the Court  
of Queen's  
Bench.*

No. 209.

Motion for  
extension of  
delays to put  
in security.  
fyled 15th  
Nov. 1893.

*Continued.—*

No. 210.  
Exception to  
the Judgment  
of the 26th  
May, 1894,  
admltting  
Judgment of  
Fairbanks's  
case as part  
of transcript  
dated 28th  
May, 1894.

## RECORD.

*In the Court  
of Queen's  
Bench.*

No. 210.

Exception to  
the judgment  
of the 26th  
May 1894,  
admitting  
judgment of  
Fairbanks  
case as part  
of transcript  
dated 28th  
May 1894.  
—*Continued*

Judgment of the Court of Queen's Bench Appeal side rendered on the 26th day of May instant, allowing to be printed as part of the transcript on the appeal to Her Majesty in Her Privy Council the Judgment in the Superior Court in the case of Fairbanks et al to The Pioneer Beet Root Sugar Company and the said Bank adjudicataire and The Bank d'Hochelaga, Petitioner. Said Judgment never having formed part of the record in the present cases either in this Court or the Court of first instance, and reserves its rights to move or take such other steps as may be proper and necessary before the judicial committee of Her Majesty's Privy Council to cause the same to be struck out of and removed from the transcript herein.

Montreal, 28th May, 1894.

ATWATER & MACKIE,  
Attys. for said E. T. Bank.

(ENDORSED.)

Exception to Judgment of 26th May admitting Judgment of Fairbanks' case as part of transcript. Fyled 31st May, 1894.

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We Louis F. W. Marchand and W. E. Duggan, joint Clerk of Appeals of Her Majesty's Court of Queen's Bench for Lower Canada, do hereby certify that the foregoing 580 and present pages contain true and faithful copies of all and every, the original papers, documents, and principal proceedings, and of the Transcript of all the Rules, Orders, Proceedings and Judgments of Her Majesty's Superior Court for Lower Canada, sitting in the City of Montreal, in the Province of Quebec, transmitted to the Appeal Office in the said City of Montreal, as the Record of the said Superior Court, in the cause therein lately pending and determined, wherein: No. 301  
 10 The Eastern Townships Bank, Plaintiff in the Superior Court were Respondents in the Court of Queen's Bench, and Andrew Rough et al, Defendants in the Superior Court were Appellants in the Court of Queen's Bench, and No. 302, Andrew Rough, Plaintiff in the Superior Court, was Appellant in the Court of Queen's Bench, and the Eastern Townships Bank Defendants in the Superior Court were Respondents in the Court of Queen's Bench, and also of all the proceedings and documents fyled in the said Court of Queen's Bench (Appeal Side), and of all and every, the entries made in the Register of the said Court of Queen's Bench, and of the Judgments therein given on the Appeal instituted before the said Court of Queen's Bench, by the  
 20 said Andrew Rough et al. and Andrew Rough.

In faith and testimony whereof we have to these presents set and subscribed our signature and affixed the seal of the said Court of Queen's Bench (Appeal Side.)

Given at the City of Montreal in that part of the Dominion of Canada, called the Province of Quebec, this second day of June, in the year of our Lord one thousand eight hundred and ninety-four.

MARCHAND & DUGGAN,  
 Clerk of Appeals.

30



40

RECORD

*In the Court  
 of Queen's  
 Bench*

No. 212.  
 Certificate of  
 Clerk of Ap-  
 peals for  
 both cases.

RECORD

*In the Court  
of Queen's  
Bench*

No. 213.  
Certificate of  
Chief Justice.

I, the undersigned Sir Alexandre Lacoste, Knight Chief Justice of the Court of Queen's Bench for Lower Canada, do hereby certify that the said Louis Wilfrid Marchand, Q. C., and William E. Duggan are the joint Clerk of the Court of Queen's Bench, on the Appeal Side thereof, and that the signature "Marchand & Duggan" subscribed at the foot of each of the foregoing pages and of the certificate above written, is their proper signature and handwriting.

I do further certify that the said Marchand & Duggan as such Clerk, are Keeper of the Record of the said Court, and the proper Officer to certify the proceedings of the same (on the Appeal Side), and that the seal above set, is the seal of the said Court on the Appeal Side, and was so affixed under the sanction of the Court. 10

In testimony whereof, I have hereunto set my hand and seal, at the City of Montreal, in the Province of Quebec, the 2nd day of June, in the year of our Lord one thousand eight hundred and ninety-four, and of Her Majesty's Reign. the fifty-seventh.

A. LACOSTE,  
Chief Justice, Queen's Bench,  
Province of Quebec.

20



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40

## JUDGE'S REASONS

Montreal, 23rd. Feby. 1894.

Messrs. Marchand & Duggan,  
Clerk of Appeals.

RECORD

*In the Court  
of Queen's  
Bench.*No. 214.  
Reasons of  
Mr. Justice  
Wurtele

10 Gentlemen,

In reply to your letter of the 21st Inst., asking for my notes of judgment in the case of Rough and the Eastern Townships Bank, I have to inform you that as I concurred entirely in the motives of the judgment rendered and in Mr. Pelletier's Notes, I prepared none and merely declared when the judgment was pronounced that I concurred.

Your obt. servant,

J. W. WURTELE,

J. Q. B.

20

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19 OCT 1956

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*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Eastern Townships Bank v. Rough and others in the consolidated cases of The Eastern Townships Bank v. Andrew Rough, John McDougall, and Samuel W. Beard, and The Eastern Townships Bank v. Andrew Rough, from the Court of Queen's Bench for Lower Canada, Province of Quebec; delivered 11th December 1895.*

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[Present :

LORD HERSCHELL.

LORD WATSON.

LORD DAVEY.

[*Delivered by Lord Herschell.*]

Although the facts of this case are somewhat complicated, the questions of law involved do not in their Lordships' opinion present any difficulty.

The Eastern Townships Bank carry on the business of bankers in Canada, having their head office at Sherbrooke in the Province of Quebec with a branch office at Coaticooke. Amongst the persons banking with the Eastern Townships Bank were the Pioneer Beetroot Sugar Company. In February 1882 this Company was indebted to the Bank in a considerable amount. As security for \$15,000 a part of this indebtedness, the Bank held mortgages of the real estate of the Company. In respect of a further sum of \$23,000 the Bank obtained a judgment by default against the Company on the 25th February 1882 and

registered it against the real property of the Company on the same day.

On the 21st October 1882 Fairbanks & Co. creditors of the Sugar Company attached under execution of a judgment all the real property of the Company, which the Sheriff of the district advertised for sale on the 12th January 1883. The Respondent Beard who had leased the factory of the Sugar Company on favourable terms was anxious to prevent a sale and with this object he paid off Fairbanks & Co's debt and took a transfer of their rights. Having done so he inquired of the Sheriff whether he would stop the sale. The Sheriff however was not in a position to take this course inasmuch as writs had been noted in respect of other judgments which rendered it obligatory on him to proceed with the sale. Under these circumstances Beard entered into negotiations with the Bank with a view to obtaining the property which was to be sold. The nature of these negotiations sufficiently appears from the letter which, as their result, Mr. Farwell the manager of the Bank on the 6th of January 1883 addressed to Messrs. Beard and McDougall.

The letter was in the following terms:—

“ In the event of the Bank becoming the purchaser of the  
 “ Pioneer Beet Sugar Company property now advertised to be  
 “ sold at sheriff's sale on the 12th inst. we hereby agree to sell  
 “ the same to you jointly and severally within ten days there-  
 “ after at such sum as will pay our claim and all expenses  
 “ connected with the sale upon the following terms and  
 “ conditions, viz.: a cash payment of a sufficient amount to  
 “ reduce our whole debt to \$40,000, a further sum in cash  
 “ with what we may succeed in realizing from Ellenhausen  
 “ notes now in suit to amount of ten thousand dollars more  
 “ within six months, with interest at 7 % per annum on whole  
 “ amt. unpaid five thousand dollars within 12 mos., and five  
 “ thousand dollars annually thereafter until fully paid within  
 “ semi-annually at the rate of seven per cent. per annum, the  
 “ property to be mortgaged to the Bank as security for  
 “ due payment of above sums and to be kept insured in good  
 “ Companies to the satisfaction of the Bank to full amount of  
 “ their claim, on the execution of the deeds the cash already

“realized from collateral to be applied in reduction of our  
 “claim and the cordwood, bone black, and ground bones, now  
 “in possession of the Bank to be transferred to you, all notes  
 “and acceptances of the Company and of other parties  
 “endorsed by the Company forming our claim to be cancelled  
 “if practicable to be delivered over to you.”

On the 8th of January the following further letter was written:—

“Referring to that part of my letter of Saturday last  
 “addressed to you respecting the Pioneer Beet Root Sugar  
 “Co. property, in which I agreed in the event of your  
 “purchasing the property from us should it come into our  
 “hands at Sheriff’s on the 12th inst. to transfer the cord  
 “wood, bone black, and ground bones to you. I find it is  
 “questionable whether we should legally be able to do this as  
 “some of the notes for which this is held as collateral are  
 “included in our judgment and application of a portion of  
 “proceeds of the sale could be demanded to apply on those  
 “notes. I must therefore withdraw that portion of my letter,  
 “and can only undertake to subrogate you in respect to those  
 “collaterals in such rights as we have, that have not been  
 “extinguished by the Sheriff’s sale. In other respects my  
 “letter to remain in force and the property held by us for ten  
 “days from date of sale, subject to your acceptance on the  
 “terms and conditions therein stated. Please acknowledge  
 “receipt of this and state if satisfactory.

“P.S.—It is understood our whole debt with interest and  
 “costs is to be paid and we should deed without any  
 “warranty.”

The letter which Mr. McDougall on the 9th of January wrote in reply has in some unexplained manner disappeared from the record, but it appears clear that he expressed himself satisfied with the proposals made by Mr. Farwell.

On the 12th of January the real estate of the Sugar Co. was sold by the Sheriff and the Bank were adjudged the purchasers at the price of \$1,400. On the 13th of January McDougall and Beard requested the Bank Manager to get the deed of sale from the Sheriff, so that the deed of sale from the Bank to McDougall and Beard, subject to the conditions and terms of the Manager, might be at once prepared.

On the 19th of January 1883 the Bank executed a conveyance of the property to Rough.

This was done at the request of McDougall and Beard for reasons into which it is not necessary to enter. The conveyance was made by the Bank "with warranty as regards their own acts only." The consideration was \$49,439 of which \$9,439 were acknowledged as already received leaving \$40,000 still due.

On the 28th April 1883 the Hochelaga Bank who were creditors of the Pioneer Co. gave notice to the Appellant Bank of their intention to take proceedings to set aside the Sheriff's sale. On the 25th of June following such proceedings were initiated by a petition. The Appellant Bank appeared as Defendants. The Respondents Rough McDougall and Beard were all *mis-en-cause* as being in possession of the property. They did not defend the proceedings, but submitted themselves to the judgment of the Court.

On the 18th of May 1884 the Appellant Bank commenced an action to recover the sums due under the provisions of the deed of sale. In the month of September following Rough instituted an action to set aside that deed and to recover the sums paid in respect of the sale. The cross action and the petition of the Hochelaga Bank were consolidated by orders of the Court and by consent the evidence taken on the petition was made evidence in the actions.

On the 20th February 1890 Mr. Justice Taschereau gave judgment in favour of the Hochelaga Bank on their petition, annulling the Sheriff's sale and all proceedings thereunder. On the 10th of March following he gave judgment in the cross actions in favour of the Eastern Townships Bank, with the result that whilst the purchasers were deprived of the subject matter of the sale they were held still liable to pay the price agreed upon. The ground upon which this decision proceeded was mainly



that the purchase from the Sheriff was made by the Appellant Bank as mandatory only for McDougall and Beard of whom Rough was the *prête-nom*. Their Lordships agree with the Court of Queen's Bench which on appeal rejected this view of the facts as inadmissible.

The circumstances under which the Appellant Bank purchased and subsequently conveyed to Rough, appear from the letters written in January 1883, there is no trace of any other agreement or arrangement than that which these letters disclose. In their Lordships' opinion they are inconsistent with the view that the Bank in purchasing acted as mandatory for Beard and McDougall. The letter of the 6th of January contains an agreement by the Bank, in case they should purchase the property at the Sheriff's sale, to sell it to Beard and McDougall. There is no indication of an arrangement that the Bank should act for McDougall and Beard in making the purchase, indeed the terms on which they were to acquire the property, the price they were to pay the Bank, appear quite inconsistent with any such idea. Although the letter probably constituted what is termed a firm offer on the part of the Bank to sell at the price and on the conditions named, that is to say they were bound to sell on those terms if within the time limited Beard and McDougall elected to buy, no obligation was imposed on the latter to do so. Even if the Bank obtained the property at the Sheriff's sale Beard and McDougall might have refused to become the purchasers and unless they exercised their option within the ten days limited by the letter they could not have insisted upon becoming the purchasers. This is made quite clear by Mr. Farwell's letter of the 8th of January already quoted. He speaks of his having agreed in the previous letter "in the event of your purchasing the property from

“ us should it come into our hands at the Sheriff’s” and concludes—“ In other respects my letter to remain in force and the property held by us for ten days from date of sale subject to your acceptance on the terms and conditions therein stated.”

It was argued for the Appellant Bank that even assuming that the sale was made with a warranty as regards their own acts, this afforded no answer to their claim to be paid the purchase money and no ground for setting aside the sale, inasmuch as it was not by reason of any act of theirs that the sale was declared void. After the judgment on the petition of the Hochelaga Bank had been pronounced and whilst the appeals in the cross actions were before the Queen’s Bench, the Respondents McDougall Beard and Rough sought to put in evidence that judgment. The application made with that view was refused by the Court on the ground apparently either that the judgment not being a final one it was not competent to introduce it, or that the rules of procedure did not admit of its being then introduced. The judgment of the Queen’s Bench in the action brought by the Appellant Bank condemned the Defendants in that action to pay the sum demanded by the Bank, but suspended the execution of this condemnation until the Bank had put an end to the trouble and danger of eviction complained of. In the action brought by Rough it remitted the proceedings to the Court of First Instance to be proceeded with according to the rights and obligations of the parties defined and established by the judgment of the Court of Appeal, after the regular introduction in that cause of the definitive decree of nullity pronounced at the instance of the Bank of Hochelaga.

The Court of Queen’s Bench in the judgment now under review came to the conclusion that

the Appellant Bank were not strangers to the acts which rendered the sale by the Sheriff invalid and that their warranty was therefore not fulfilled. Their Lordships see no reason whatever to differ from that conclusion.

The Appellant Bank insist however that seeing that the postscript to the letter of the 8th of January made it one of the conditions that they should "deed without warranty," they are entitled to the purchase money and are under no obligation to the purchasers even though these should be evicted from the property on the ground that the Bank acquired no title from the Sheriff. It was contended that although the deed of sale by the Bank to Rough contains an express warranty as regards their own acts, the Bank are entitled to appeal to the agreement which the deed of sale was intended to carry out and which when examined shows that there was to be no warranty at all.

It is not necessary for their Lordships to consider whether it is competent to the parties thus to go behind the provisions of the deed and to absolve themselves from one of its express stipulations. Assuming it to be so their Lordships do not think that this appeal to the documents of January 1883 is calculated to improve the case of the Bank. It is clear that the basis of the whole transaction was to be a purchase by the Bank from the Sheriff, and this must mean a valid and effectual purchase and not a mere apparent or pretended one. The circumstances show that the Bank did not really become the purchasers, not by reason of any defect in the prior title but because of a vice in the sale itself, which prevented its being a sale. It was only in the event of their becoming the purchasers that the terms and conditions of the letters of January 1883 became applicable and their Lordships think that the Bank never did, within the

true meaning of those documents, become the purchasers.

For these reasons their Lordships will humbly advise Her Majesty that the judgment appealed from should be affirmed and the appeal dismissed with costs.

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