

IN A CAUSE, between,

GEORGE ARNOLD,

(*Plaintiff in the Court below,*)

Appellant,

AND

WILLIAM WILSON,

(*Defendant in the Court below,*)

Respondent.

APPELLANT'S CASE.

THE Declaration in this Cause states that the Appellant is true and lawful Owner of a Lot of Ground, and House situate in the Lower Town of Quebec, bounded on one side by a lot of ground of the Widow Robinson, on the other side by a lot of ground of William Wilson the Respondent, in front by the street commonly called Rue sous le Fort, and in the rear by the lot of the said William Wilson.

That on the 2nd. of July 1784, by Act passed before Rousseau Notary and Witnesses, it was stipulated and agreed between one Curchaud (from whom the Respondent derives his title,) and Chinique (from whom the Appellant derives *his* title) in good faith, as well for themselves as for their heirs and assigns, as follows, that is to say: "Que le dit Chinique consent et promet à mon dit Sieur Curchaud de pratiquer contre son mur, du côté de la grève et au coin près le porche, des latrines. il y prendra le terrain nécessaire pour la construction d'icelles, lesquelles lui appartiendront, ainsi que la place où elles seront, en propre, et aux siens, le dit Sieur Curchaud, y pratiquera son entrée sur la galerie qui lui appartient au-dessus du porche, pour aller et venir aux dites latrines, sans incommoder le dit Sieur Chinique, fera faire la cage et un canal qui tombera dessus la grève et tout ce qui sera nécessaire en bois pour la construction d'icelles, sera fait aux dépens de mon dit Sieur Curchaud, pour ce qui est d'un petit quarré qui sera nécessaire pour renfermer le dit canal, depuis le dessous des latrines jusqu'en bas il sera fait en pierre et appuyé contre le mur du dit Sieur Chinique pour lui et les siens promet au Sieur Curchaud, et sera fait et entre-tenu par la suite à frais communs." All which more fully and at large appeared by the said Act, whereof the Appellant brought into Court a notarial copy.

The Appellant proceeds to state that, under and in virtue of this agreement, a privy was erected by Curchaud conformable thereto, which was used by him and his assigns freely and without molestation until the beginning of June in the year 1814, at which time the said William Wilson, of his own authority and in manifest contravention of the said agreement, and notwithstanding the prohibition of him the said Appellant, erected a new work upon the said premises, to the prejudice of the right of him the Appellant, and did then and there dig the foundations of a building in stone, which hath since been erected and completed and whereof a part hath obstructed the canal leading from the said privy, so that there is not therefrom the same free discharge as there was heretofore.

That although the said William Wilson hath been required to demolish the said new building, that is to say, such part of the said wall as obstructed the canal leading from the said privy he had refused to do so.

The Appellant prays in consequence that the said new erection or building made and erected upon the said premises be demolished and more particularly such part thereof as was erected upon the canal leading from the said Appellant's privy, and the said premises put into the same state as they were before the erection of the said wall, by him the said William Wilson, and further that he may be maintained in his right to the said privy and the canal leading therefrom and one said William Wilson prohibited from disturbing him in the use thereof and for damages and costs.

To this Declaration the Respondent pleaded, that he was not guilty of the several matters alleged and set forth in the Declaration of him the said George Arnold, in manner and form &c.

Issue

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