

Court of Queen's Bench.

IN APPEAL.

FROM THE DISTRICT OF ST. FRANCIS.

MONTREAL, 3rd OCTOBER, 1857.

Coram LAFONTAINE, C. J., AYLWIN, J., DUVAL, J., CARON, J.

BENJAMIN WILCOX *et ux*, (Defendants in the Court below.)
Appellants.

ET

BARNABAS WILCOX, (Plaintiff in the Court below.)

Respondent.

SOCAGE LANDS.—TENURE.

Held 1o. that before the British act, 6 Geo. 4, cap. 59, commonly called the Canada Tenures Act, became law in Lower Canada, the Customary Dower of the Custom of Paris was claimable on lands in Lower Canada granted and held by the free and common socage tenure.

2o. That by the above British Act, the Law of England as to dower, descent, and alienation, was introduced into Lower Canada, as an incident of the tenure of lands held in free and common socage.

3o. That the defendant Sophia Blodget being married to Joseph Wilcox on the 31st January, 1825, before the above act became law, while the said Joseph Wilcox was proprietor of land in Lower Canada held by the tenure of free and common socage, was entitled to claim on the land in question her customary dower under the custom of Paris.

This was a petitory action wherein the Respondent, as Plaintiff in the Court below sought to recover the possession of a farm and its appurtenances, part of Lot No. 3 in the 2nd range in the township of Orford, in the District of St. Francis. His title was alleged to be a deed of lease and release, executed before Ritchie, N. P., and witnesses, 2nd February, 1826, from the late Joseph Wilcox to him. The respondent was the eldest son of said Joseph Wilcox, by his first marriage. The land was held in free and common socage.

The appellant, Sophia Blodget, was the wife by second marriage, of said Joseph Wilcox, who several years prior to the institution of the action, died, and Benjamin Wilcox, the other appellant, was, at the time of the institution of the said action, and thereafter continued to be the husband of the said Sophia Blodget.

The appellants met the action by several grounds of defence contained in one special plea of peremptory exception *en droit*. 1o. That the said late Joseph Wilcox from the 1st November 1815, when he acquired said piece of land, up to the 28th April 1847, when he died, held and occupied the same as the absolute legal proprietor *animo domini*, without interruption or molestation.—That on the 31st January 1825, at the township of Ascot, in the said District, the said Joseph Wilcox, was married to the said Sophia Blodget without any pre-nuptial contract, and that the usual customary dower *douaire légal et coutumier* existed by reason of such marriage, that on the 6th March 1846, the late Joseph Wilcox made his last will before William Ritchie and colleague, and thereby

NOTE.—In order to render the report of this important case more complete, it has been thought advisable to print in an appendix *inter alia* the opinions of the judges who sat in the famous case of Stuart v. Bowman, in which the tenure of the lands granted in Lower Canada in free and common socage was fully discussed. These opinions have been already published in the reports of Stuart *et ux*. v. Bowman, to be found in the 2d and 3rd volumes of the Lower Canada Reports. (Vide Appendix.)