

“Wait, viz: Elizabeth Borrowman, Julia Emmeline and William Brongest Fuller, who are to be the proprietors of the residue of my estate and property, as by the aforesaid Will bequeathed to my said husband, who is, viz, my said husband, to hold the same as fiduciary legatee, only in trust for my said grand children.”

“Secondly, my said husband is to have the power and authority to sell and dispose of the whole or any part of my said property, either in his own name or in the name of his said grand children, and this without the intervention or authorization of any Judge or Court being necessary; and to have during his life-time the sole, entire and exclusive management of my said property, subject only to the accountability of my said husband, or representatives to my said grand children.”

Tender of 29th December, 1857, after reciting promise of sale, stating the decision had in the suit in the Queen's Bench, and Appellants continued possession under the promise of sale, and the fact of his having removed boundaries, by which the quantity could be ascertained and his refusal to accept a conveyance, goes on to say:

“Notify the said William G. Greenshields that the said Gregor McGregor has always been since the decision of the said cause, and is now, ready and willing to execute and deliver a good and sufficient *acte* of conveyance of the said hereinbefore described property to the said William G. Greenshields, in express conformity with the said promise of sale, and doth hereby through, us said Notaries, offer to execute the same; and we the said Notaries do further, at the request aforesaid, and speaking as aforesaid, demand and require, as by these presents we do demand and require, the said William G. Greenshields, speaking as aforesaid, forthwith to well and truly pay, or cause to pay to him, the said Gregor McGregor, the sum of two hundred pounds currency, with legal interest thereon from the time the said Gregor McGregor has been willing and offered to execute the said title deed.”

Answer of Respondent to pretended tender of 9th January, 1858, produced by Appellant.

“Mr. Greenshields took possession of my land as fenced in, knowing its relative position to the Décairy lot, he has held it without objection for nearly three years, no deficiency has ever been ascertained or was ever pretended until I asked him for the instalment payable on the execution of a deed. I wish to be paid what is now due me, and am now and always have been ready and willing and offered to give him a deed of three hundred feet front, and two hundred and forty feet in depth, and in every other respect in conformity with the promise of sale.”

After unsuccessful attempts made by the Appellant to delay the cause by motions for setting aside the *Enquête*, it was heard on the merits, the Appellant at the time again moving to have the *Enquête* set aside and the hearing on the merits delayed, and on the 31st March last the Court below rendered the following Judgment:—

“The Court having heard the parties by their counsel, as well upon the merits of this cause as upon the two motions of the Defendant of the nineteenth instant, that the inscription of this cause upon the *Role de Droit* for hearing on the merits be postponed until a decision on the above 1st recited motion, having examined the proceedings, proof of record and deliberated, considering the said Plaintiff under and by virtue of the Codicil of the late Dame Elizabeth Clarke, his wife, made and executed before Gibb and Colleague Notaries, on the ninth day of January, 1849, had trust, power and authority to sell and dispose of the said lots of land, numbers 1 and 3 in his declaration in this cause first mentioned, in his own name and to receive and take the purchase money thereof, as well as the rents, revenues, profits and interests thereof, and considering that under and by virtue of the promise of sale between the parties in this cause, bearing date 7th March, 1855, in the said declaration referred to, and established of record in this cause, the Plaintiff sold to the Defendant, and promised thereby to give the Defendant a good and sufficient title for the said two lots, numbers 1 and 3, the latter by error in the said promise set down as number 4, as in said promise described and being of the supposed extent of 350 feet in front by 240 in depth, the said Plaintiff binding himself to make up the said lots to that amount in quantity in case of any deficiency being found, the said title to be given as aforesaid upon the subsequent rendering of a Judgment of the Court of Appeals in Plaintiff's favor, which said Judgment was so rendered on the 2nd day of October, 1857; considering that the consideration of which said sale was to be the sum of £600, whereof £200 to be paid on the execution of the said title deed and the balance as in the said promise stated, with interest at 6 per centum per annum, and further, at the rate of £20 per annum for the use and occupation of said lots until such deed was executed; and considering that the said Defendant did at and from the time of the date of the execution of the said promise of sale enter into the possession of the said lots of land, and did use and occupy the same without objection of any deficiency aforesaid, and was and continued to be and was in such possession, use and occupation of the said lots until and at the time of the institution of this action; and considering that on the 29th day of December, 1857, a tender and offer was duly made to the Defendant by the Plaintiff to make and execute such title in conformity with the said promise of sale and the stipulations and conditions thereof, and considering that the tender and offer by the Defendant, previous to the institution of this action, were insufficient and not effective for the purpose of payment of the sums of money then due to the Plaintiff by reason of the said promise of sale, doth condemn the Defendant to pay and satisfy to the Plaintiff the sum of £248 current money of the Province of Canada, to wit, the sum of £48 for portion of upwards of 2 years use and occupation of the said two lots of land to 29th day of December, 1857, and two hundred pounds due as stipulated in and by the said promise of sale to be paid upon the execution of the said title deed; and the said Court