

The third ground is the extraordinary one that, notwithstanding these things, and though the defendants may have no defence to this action under any statute of limitations, they have under the fiction of a lost grant; and, in order to make a defence in that way, they ask the Court to disregard the present, to disregard all this evidence to the contrary, and to treat this trial as if it were being held before the year 1896, when the \$100 was paid; that is to say, that the Court is first to exclude evidence of the greatest weight, and then to determine in the defendants' favour that the case is one of lost grant; and this although it may be that, had the trial taken place over sixteen years ago, evidence not adduced at this trial might possibly have been given which would have as effectually defeated this defence as Harry Richards's testimony did that on the second ground. It would be extraordinary if in this case, obviously failing on their second ground, the defendants could succeed upon the third.

Upon the whole evidence, no one could reasonably find that there was any grant from any one at any time giving the defendants the right now to injure the plaintiff's land as they are doing; nor indeed that, on the whole, there is any reasonable evidence of possession from which such a grant might be presumed.

In dealing with questions of this character, the character of this country in the earlier days of its settlement, and the needs of the earlier civilised inhabitants, must never be overlooked if justice is to be done. . . .

Equally with the other grounds of defence, this ground is, in my opinion, quite untenable.

I would therefore, unhesitatingly, dismiss the appeal.

Appeal dismissed with costs.

FEBRUARY 26TH, 1913.

*REX v. ST. CLAIR.

Criminal Law—Circulating Obscene Printed Matter Tending to Corrupt Morals—Criminal Code, sec. 207—Evidence—Intent to Serve Public Good—Lawful Justification or Excuse—Excess—Onus—Conviction.

The defendant was charged in the County Court Judge's Criminal Court for the County of York, before DENTON, Jun.

*To be reported in the Ontario Law Reports.