

JUDICIAL DISTRICT OF QUEBEC
District of Montreal

IN THE QUEEN'S BENCH.

In Appeal from Superior Court, Montreal.

WILLIAM HENDERSON,

(Defendant in the Court below).

Respondent;

GEORGE MILES DRAWFOOD,

(Appellant in the Court below).

Respondent.

RESPONDENT'S CASE.

The Respondent averred that he purchased the Appealant's (Defendant below) legacy to the Plaintiff £200, the amount of three annual payments of £50 each—the last due in January, 1853—under a Mortgage Deed of George Miles Drawfood, and also of a lot of land in the Appointed Town of St. Charles, Montreal, under the Appealant's name, of date the 2nd of November, 1848; the Respondent being in the possession of the land, by Notarial transfer and assignment, of the 1st of April, 1849.

The Plaintiff's Declaration sets out the title of George Miles Drawfood of the tract of land in question, which is described in the Declaration as follows:

"A certain lot or parcel of land situated in the Township of Charlevoix, and being parts of lots numbered one and two in the first range of lots, of the said Township of Charlevoix, being said lots as follows, to wit: bounded in front by Messrs Davis; is rear by Messrs Davis, joining on the East side by the lot of the said Township of Arden; and on the West side to the Village and Charles Drawfood; including all the land belonging to the Village, to the said lot numbered one and two, both of River du Nord, and including said River, with all and every the members and appurtenances thereto belonging." Also, the clause of the said Deed as to the payment of the price, which is in the following terms: "The present bargain and sale is made in manner as aforesaid, subject to such clauses and conditions and stipulations as are set forth and contained in the Letters Patent of the said Township, and for and in satisfaction of the price and cost of one pound seven shillings and sixpence, for each and every acre of land contained in the tract of land hereinafter described and sold, the said tract of land to be surveyed, and the quantity ascertained by duly sworn Commissioners, at the request, costs and expense of the said Village, within one month of the date hereof; it is further agreed that the sum of £200, which is the price of the said land, shall be paid to the Village by instalments, to wit: £30 currency on the 1st January now next coming, and the residue by yearly instalments of £20 same currency each; the first instalment to be due and payable in the month of January, 1848, and thereafter to be paid at the rate of £20, same currency, at the same time, until actual payment of the whole amount of said purchase money, the whole without interest, and under the foregoing and other conditions of the above mentioned deed of land and purchase."

The Declaration then sets forth, that the Plaintiff had caused the land to be surveyed on the 1st October, 1848, by Donald Mackenzie, sworn Land Surveyor, to cause to ascertain the quantity of land, and that it was found to contain 1277 acres, as per the Plaintiff's precise verbal statement (Plaintiff's Exhibit No. 2) annexed, at the same time said survey was made, to £118 10s. 3d. City. That on the 8th of February, 1849, the Plaintiff caused another survey to be made by Alexander Mackenzie, also sworn Land Surveyor, as per the precise verbal statement of said Plaintiff's Exhibit No. 4, and that on the 8th of January, 1853, he caused a Notarial Copy