

*The Hon. Ch. J. C. G. 175-47
W. Justice A. Stuart
with the Plaintiff's Counsel*

COPY OF THE REPORT OF THE JUDGMENT

OF THE

Court of Queen's Bench for Ontario

IN THE SUIT OF

STUART vs. BALDWIN,

(AN ACTION OF REPLEVIN FOR A CARGO OF IRON ORE MINED ON
LANDS IN QUEBEC AND SEIZED IN ONTARIO),

Discharging, with costs, defendant's rule calling upon the plaintiff to shew cause why the verdict, rendered in his favour, should not be set aside and entered for the defendant on six several grounds specified, the defendant having attempted to justify his mining and removing the ore: 1st. By alleged possession of the premises, *in good faith*, on his part, for upwards of a year and a day; 2nd. By the long prescription, by means of an alleged possession by himself and those under whom he held for a period of upwards of thirty years: the plaintiff, on the other hand, contending, as to the ~~just~~ possession referred to, that it was *not in good faith*, and that, even if it were, it did not warrant his appropriating to himself as *fruits* of the land, ore from a mine which had not been previously opened and worked; and as to the second possession set up, that the defendant, as well as those under whom he held, were, in fact, mere tenants of the plaintiff and those under whom he claims, the defendant's original *anteur* (the father of his vendors) having died in 1854 as a tenant, in possession under a lease, which he had accepted in 1847, from the representative of the estate of the plaintiff's original *anteur*, terminable upon six month's notice, (which had, in fact never been given), and which lease he never repudiated; whereas, by the law of Quebec, (unlike that of Ontario in that respect) *once a tenant always a tenant* until the contrary is proved, and the title of a possessor of lands being no better than that of the party under whom he claims.

N.B.—The within comprises pages from 446 to 484 (both inclusive) of Volume XLI. of the Queen's Bench Reports of Ontario.

TORONTO:

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1878.