

COMMISSIONERS' COURT,

QUEBEC, *Monday, 20th Jany. 1845.*

Present:—W. K. McCORD, Esq., Circuit Judge.

ANTOINE LAURENT dit LORTIE vs. MICHAEL STEVENSON.

The prescription of five years as to loyers is an absolute prescription.

This was an action brought for the recovery of £3 10s. 8d., for rent alleged to be due by the Defendant to the Plaintiff, for the occupation of certain premises, from the 1st day of August, 1839, to the 12th day of October of the same year; on which last day the Defendant having purchased the premises, the lease under which he occupied was determined: these facts appear on the face of the Summons or Declaration.

To this *Demande* the Defendant has pleaded—

1st—Prescription of five years as a bar to the action.

2d—The general issue.

3d—Set off.

4th—Incidental demand.

The Plaintiff answered that the Ordinance establishing the prescription of five years here pleaded was never registered *au Parlement de Paris*, and therefore not in force.

That if in force, it is only to be considered a presumption of payment, and not a bar to the action, and consequently the Defendant should also have pleaded payment and tendered his oath.

Defendant has replied generally, and prays the Judgment of the Court upon the demurrer.

The first question that arises is whether the prescription now invoked be in force in this Province,—that is, whether the Ordinance (1629, art. 142.) commonly called *Code Marillac* or *Code Michaud*, which establishes this prescription, was registered *au Parlement de Paris*.

Any doubt upon this subject will be removed by reference to the *Collection des Anciennes Lois Françaises*, by Isambert and others, vol. 16th, page 233, where it will be found to have been registered *avec Modification*, under the title of *Code Michaud*.

The full particulars of its registration are to be found in the *second vol. of Néron*, page 782.

Lacombe's Recueil de Jurisprudence, verbo Prescription, sec. II. No. 9. Arrêt of 18th Jany. 1728, at Paris, enforcing the 142nd art. of the Ord. 1629.

Troplong de la Prescription, vol. 2nd, pages 509–10, Nos. 1005–6. Dictionnaire de Pratique, by Ferrière, under the title Code Michaud. Merlin. Question de Droit, vol. 12th, verbo prescription § 16, pages 51–2–3.

It is true that M. Pothier differs on this subject with other authors; he does not, however, give a positive opinion; but merely states that he had no knowledge of this point having been decided at Paris, and cites Bourjon's opinion in support of this, and yet on referring to Bourjon's Treatise on the *Droit Commun de la France, vol. 2, p. 571, distin. III, partie I^{re} Tit. 7, No. 46*, he says, “*C'est a tort que quelques auteurs on dit que cette Ordonnance (1629, art. 142, n'avait pas été enrégistrée*, consequently much weight cannot be given to M. Pothier on this point; moreover, Pothier himself at a later period, in his *Coutume*