

Island known as "Middle Island," the division thereof being in strict accordance with the terms of the said Will, and also, as truly determining the area of the said island and its marshes respectively.

11. That the said Island of "Point-au-Pelée," though found, by the said survey, to cover an area of eleven thousand six hundred and forty-nine acres, one rood and four poles, contains upwards of five thousand four hundred acres of marsh, which is unavailable at all times and, in consequence of its low level, utterly irreclaimable; that upwards of two thousand acres of that portion, which is not such irreclaimable marsh, can never be made available as tillable land, it being always overflowed at anything like a high stage of water; and further, there are at least five hundred acres of the remaining four thousand three hundred acres on bed-rock—slightly covered with soil—which is also unfit for purposes of tillage; there, thus, being less than four thousand acres of the whole area of the Island, available, at all times, as arable land.

12. That, in the year 1859, some of Your Excellency's Memorialists, being anxious to raise money, some by way of mortgage on, and others by sale of portions of, their respective interests in the said island, and having failed in such attempts in consequence of the indisposition, on the part of the parties with whom they had negotiated for that purpose, to purchase or make advances on real estate, for which no Patent had been obtained, consulted their then legal adviser, John Prince, Esquire, as to the best mode of procuring the confirmation of their titles by the Government; that the said John Prince then suggested that the Government should be requested to bring an amicable suit against one or more of them, in respect of their possession of the said island, he, the said John Prince, advising them, that upon judgment being rendered in their favor, (as he was confident it must be,) the Government would at once issue the necessary Patents to them, confirming their titles; that Your Excellency's Memorialists, reposing full confidence in the legal knowledge and ability of the said John Prince, were induced to assent to such his suggestion.

That, accordingly, at the express instance and request of the legal adviser of the said devisees, the Toronto agent of Her Majesty's Attorney General for Upper Canada, filed, in the Court of Queen's Bench, an Information for Intrusion, on the said island, against Mary McCormick and William McCormick, two of Your Excellency's Memorialists; which action resulted in a judgment, rendered in Easter Term of 1859, in favor of the Crown, and on which said judgment no further action has been taken, by or on behalf of the Crown, than the collection of its costs therein, from the defendants, under a Writ of Execution; that the said information, having been so filed, a special case was agreed upon, by the Counsel on both sides, for submission for the judgment of the Court; that in the statement of such special case, not only were some material facts erroneously stated, but a particular one, which, as Your Memorialists are advised, was most material and important to the defendants' case—as in fact, constituting the basis and ground-work of the McKee-McCormick title to the said island—was wholly omitted and ignored, namely: the existence of the Registry of the said Lease from the Indians, and that the holding, as well by the said devisees, as by those under whom they claimed, was under the said Lease, and, which fact, had it been made to form a part of the said special case, could not, as Your Memorialists are advised, have failed to satisfy the Court on the very important point, as to which the learned Chief Justice, the late Sir John Beverley Robinson, Baronet, in giving his judgment, admits, in the following words, the Court to have been left wholly in the dark, viz: "Some proof, I think, should be given that the possession had not been a mere continued one taken, in the first instance, by a mere intruder, not asserting title."

Your Excellency's Memorialists beg leave to append, for Your Excellency's information, the concluding paragraph of the judgment in question: "I do not doubt, when I consider the position of this Island, on the southern frontier of Canada, that it must have been known to the Government, in fact, that McKee and McCormick, and his family, had held the long possession which is admitted; if the Government acquiesced in it from a knowledge that the Indians had, all along, intended the land to be theirs, and, for that, or any other reason, have forbore, for sixty years, to assert a claim, either on account of the Indians or for the Crown, that may be felt, perhaps, by the Government, to give a strong claim to the present occupants to be confirmed in their title or, at least, to be left unmolested, as they have hitherto been; but that is a consideration to be disposed of by the Government, and, *it is evident*, I think, *from what is before us*, that the defendants are not likely to be unjustly or harshly dealt with." As a Court of Justice we must be careful not to distort legal principles on account of their operation in particular cases, for what we hold to be law in the present case, we should be bound to apply in others, unless there should be a difference in the facts, such as would warrant a different decision. My opinion is, that the Crown, upon what is stated in this case, is entitled to a verdict;" which said judgment is reported in volume 18, of the Queen's Bench Reports for Upper Canada, at page 131, and also in the U. C. Law Journal for 1860, page 41.