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SUPREME COURT OF CANADA.

OTTAWA, May 1, 1893.

MACDONALD V. FERDAIS.

[Quebec.]

Action confessoire—Real servitude—Apparent—Registration—44 and 45 Vic., ch. 16, secs. 5 and 6, (P.Q.)—Art. 1508, C.C.—Procedure—Matters of, in appeal.

By deed of sale dated 2nd April, 1860, the vendor of cadastral lot No. 369, in the Parish of Ste. Marguerite de Blairfindie, district of Iberville, reserved for himself as owner of lot 370, a carriage road to be kept open and in order by the vendee. The respondent, as assignee of the owner of lot 370, continued to enjoy the use of said carriage road, which was sufficiently indicated by an open road, until 1887 when he was prevented by appellant Cully from using the said road. C. had purchased the lot 369 from one McD. without any mention of any servitude, and the original title deed created by the servitude was not registered within the delay prescribed by 44 and 45 Vic. (P.Q.) ch. 16, secs. 5 and 6.

In an action brought by F. against C., the latter filed a dilatory exception to enable him to call McD. in warranty, and McD. having intervened, pleaded to the action. C. never pleaded to the merits of the action. The judge who tried the case dismissed McD.'s intervention and maintained the action. This judgment was affirmed by the Court of Queen's Bench. On appeal to the Supreme Court of Canada :