

The action was tried without a jury at Belleville and Toronto.

E. G. Porter, K.C., and F. H. White, for the plaintiff.

F. E. O'Flynn, for the defendant.

FALCONBRIDGE, C.J.K.B.:—The plaintiff in his statement of claim describes himself as a "foreman." The defendant is one of the children of the forest, and is now 78 years of age. In 1876, the patent was granted to his father under the name of Jean Baptiste Defoe. His real, aristocratic name, as set out in his commission as an Indian Chief granted to him by his late Majesty King George IV. was Kijikomanitou; and in a like commission from his Majesty King William IV. he is called Kei-jie-o-ma-ni-tou. This patentee gave his son (this defendant) the patent to the lands about 3 days before he died, and the defendant got the "chief-papers" (the above-mentioned commissions) at L'Amable, where the old man told him to get them.

It is elementary that a gift of real estate cannot be sustained as a *donatio mortis causa*, for that extends only to personalty.

So the defendant's only paper title is as one of the 5 heirs at law of his father.

The plaintiff's paper title, apart from a tax-deed (to be hereafter referred to) is a quit-claim deed from one Mary Ann Benwa (Benoit!), née Baptiste or Defoe.

By way of assignment or quit-claim to the said Mary Ann Benoit, there are produced some "scraps of paper," not under seal, purporting to be signed by heirs or next of kin of the patentee.

I find that there was sufficient distress on the occupied lands to satisfy the total amount of the taxes charged against the same: Assessment Act, R.S.O. 1897 ch. 224, sec. 156; and the sale and the tax-deed are, therefore invalid.

These poor people (the defendant and his family) also remitted by post-office order to J. Perry, a bailiff at Maynooth, the sum of \$22 in response to a Division Court summons for taxes.

I find that the defendant has proved his title by length of possession. A considerable portion of the peninsula was fenced in "from water to water," and he exercised acts of ownership over the other parts of the lots, sufficient to perfect his title.

*Action dismissed with costs.*