

support of the motion the affidavits of David Craig, John Lyon, and Joseph Gaudette.

These affidavits are directed to contradicting the testimony of Murphy that at the time of the purchase Lavan was living in Arnprior. They were answered by the affidavit of Joseph Des Sormier, who was cross-examined upon it. His testimony corroborates that of Murphy as to Lavan and his wife living in Arnprior at that time. My brother Middleton accepted Des Sormier's affirmative testimony in preference to the negative evidence of the other three deponents, and I see no reason for differing from the conclusion of my learned brother. I may remark that there is no mention of these affidavits or of the cross-examination of Des Sormier having been read on the motion; but it is clear for the reasons for judgment that they were.

The result of these findings of my learned brother and of the Junior Judge is, that it is established that, when the arrangement as to Lavan becoming caretaker was made, he and his wife were living in Arnprior; but the findings are, for the reason I have already given, as to an immaterial matter.

Upon the whole, I am of opinion that the defence fails, except as to the two small clearings, and that they should be excepted in the declaration of the respondents' right, and, if necessary, there should be a reference to delimit them; and I would vary the judgment accordingly, and, with that variation, affirm it, and the appellants should pay the costs of the appeal, as they have failed as to their contention, and the modification of the judgment which I would make was not asked for.

*Judgment below varied.*