

neurie of Beauharnois, including the land claimed in the action; that on that date he surrendered them to the Crown, and that the Crown, by Letters Patent, re-granted them to him in free and common socage. The declaration then alleged a title in the plaintiff to the land in question, derived from Ellice, and averred that the defendant, about the year 1850, had taken possession of the land, and ever since kept it from the plaintiff; and prayed that the plaintiff be declared owner, and the defendant adjudged to deliver up the land, and repay the rent and profits he had received.

The case was dismissed by *Smith, J.*, in the Superior Court, and this judgment was affirmed by the Court of Appeals, on the ground that the defendant had proved prescription.

The argument of counsel before the Judicial Committee is noteworthy, from the fact of its raising an old question. The following is an extract: "But an important question arises with respect to the governing law of prescription to be applied. We contend that the Court below miscarried in applying the ancient French law to the case. The law that governs it is the English law. The Proclamation made on the cession of Canada, in the year 1763, introduced the English law by right of conquest. It is true the effect of the Proclamation, as to the full extent of the introduction of that law, has been doubted, as it does not mention in express words "English law." The Statute, 14 Geo. 4, c. 83, however, by implication, makes the Proclamation to this extent apply to English law, even if it had not been so before. The Statute, 6 Geo. 4, c. 59, was passed to remove doubts as to certain matters, but section 8 does not abrogate the English law, being the governing law." The counsel for the Respondent answered: "No serious doubt can be entertained that the law to govern the case is the old French law prevailing in Lower Canada. Such a point was never before taken in the numerous appeals to this Tribunal from Lower Canada, where the rights of the parties have always been regulated by the old French law."

LORD CAIRNS:—The actions in which these appeals are brought were petitory actions to recover possession of two pieces of ground in the 5th range of Russelltown, in the Seigniory of Beauharnois. It was admitted in the argument before us on behalf of the Respondent, that the land in question formed a part of the Seigneurie of Beauharnois, as originally granted in 1729 by the French King, Louis XIV. The judgment delivered in the primary Court in Lower Canada by Mr. Justice Smith in favour of the Respondents proceeds upon the principle that the Respondent and Goodwin, his predecessor, had been in possession of this land from 1807, and that this possession must be taken to have been by permission of the Seigneur, and that, therefore, the Seigneur could not eject the Respondent, but only claim from him rights and dues such as a tenant should render to his Seigneur. This view of the case was again pressed in argument upon these appeals, but their Lordships are of opinion that, although there may be some facts appearing in the evidence which would form a ground for such an argument, the pleadings between the parties render the argument inadmissible. The Appellants in both the appeals allege in their declaration that the Respondent wrongfully, and without any title, took and obtained possession of the land, and has kept illegal possession of it, and pray delivery of it. The Respondent, on the other hand, alleges a seisin of the lands in 1807 by Goodwin, a transfer in 1833 from Goodwin to the Respondent, and that the land has been peaceably, openly, and uninterruptedly possessed and enjoyed by Goodwin and the Respondent, *animo domini*, from 1807 to the present date, and that the Respondent has a right to be declared proprietor and owner of the land. Their Lordships are of opinion, with the Court of Queen's Bench of Lower Canada, that the case is thus put on both sides as one of adverse possession, and that what the Respondent has undertaken to prove is not a tenure, express or implied, under the Seigneur, but a title by prescription,