

MORIN, (plaintiff in the Court below) Appellant; and PALSgrave, (defendant in the Court below) Respondent.

*Possessory Action—Uninterrupted Possession.*

*Held*, that in order to maintain an action *en complainte*, the plaintiff must have had exclusive and uninterrupted possession of the property during the year and day previous to the institution of the action.

This was an appeal from a judgment of the Court of Review,\* at Montreal, on the 31st of October, 1865, by *Badgley, Berthelot, and Monk, JJ.*, reversing a judgment rendered by *Loranger, J.*, in the Superior Court for the district of Richelieu, on the 19th of April, 1865.

The plaintiff brought a possessory action, setting out that for more than a year and a day, namely, for more than thirty years before the beginning of the current year, he had possessed peaceably and without interruption a certain property in St. Ours. That within a year and a day he had been troubled in his possession by the defendant, who had entered on the land and carried off wood. The plaintiff accordingly prayed that he be maintained in his possession, and that the defendant be ordered to desist from his encroachments, and be condemned to pay £60 damages.

The defendant, among other grounds of defence, pleaded that he had been in possession of the land, and was the lawful proprietor.

*Loranger, J.*, maintained the plaintiff's action, holding that the defendant had committed *saisine et nouvelleté*, and that he had failed to prove the contrary possession invoked by him. The defendant having inscribed this judgment for review, it was reversed, as above stated, *Badgley, J.*, who rendered the judgment of the Court, stating that it was clear from the evidence that both parties had been in possession of the property previous to the institution of the action, and, therefore, the plaintiff's possessory action could not be maintained. His recourse, by petitory action, was reserved. From this judgment the plaintiff instituted the present appeal.

*Per Curiam.* (DUVAL, C. J., MEREDITH,

and DRUMMOND, JJ.) The judgment of the Court of Review was correct, and is confirmed.

MONDELET, J., dissented.

*Germain*, for the Appellant.

*Lafrenaye & Bruneau*, for the Respondent.

\*QUEBEC, September Term, 1866.

*Coram* DUVAL, C. J., AYLWIN, MEREDITH, DRUMMOND, and MONDELET, JJ.

GUILLEMETTE, (defendant in the Court below) Appellant; and LAROCHELLE, (plaintiff in the Court below) Respondent.

*Action en complainte—Trouble.*

*Held*, that the possession of a year and a day, upon which may be founded an action *en complainte*, must immediately precede the trouble complained of, and must also be continuous and decided.

That carrying away wood already cut is not a *trouble de fait* sufficient to found an action *en complainte*.

This was an appeal from a judgment of the Court of Revision, confirming a judgment of the Superior Court rendered in the district of Beauce.

The action was a possessory one, and the facts of the case were as follows:—The appellant held a certain lot of land in the parish of Ste. Marguerite (Beauce) since 1856, *à titre de censitaire*, upon which he was in the habit of working from time to time, though not very frequently, as he lived in another parish. In the autumn of 1862, the respondent, during the absence of the appellant, took possession of the lot in question and commenced to work upon it. Shortly afterwards, by a verbal agreement, the appellant promised the respondent to sell him the lot in question, for the sum of \$40, and 400 stakes, and allowed him to continue in possession. In the month of October following, Larochelle visited the seignior of the land, (the Hon. J. T. Taschereau), and by false representations that Guillemette had abandoned the lot, obtained from him a promise of a concession of the same, and a receipt for part of the arrears of *cens et rentes* due upon it. About a month after, the appellant summoned the respondent either to hold to

\* The report of this, and of the three following cases, has been contributed by Mr. I. T. Wotherspoon, of Quebec.