

Province of New Brunswick.

SUPREME COURT.

MCDONALD v. RESTIGOUCHE SALMON CLUB.

Deed of infant—Reasonable time to repudiate after obtaining majority.

Held that five and one-half years is an unreasonable time to wait after coming of age to decide whether a deed executed while under age shall be repudiated or not.

Held also, TUCK, J., dissenting, that where defendant in an action of ejectment claims title, ouster must be proved by plaintiff under 57 Vict., c. 10, sec., 66.

[EN BANC—FREDERICTON, Feb. 7.]

This was an action of ejectment to recover possession of an undivided interest in a lot of land of which the plaintiff alleged he and the defendants were tenants in common. On June 4th, 1880, the Crown granted the land in question to John P. Mowatt and John M. Fraser as tenants in common. Fraser was at this time about 17 years of age. The lot in question fronts on the Restigouche river, and its principal value lies in the fishing privileges appurtenant to it. Soon after the grant issued Fraser's father entered into negotiations with one Winchester who sought to purchase certain lands for the defendants. The purchase price agreed upon was \$33,000, but the land to be conveyed included the undivided interest of Fraser to the river front of the lot in question; the interest of Mowatt having been already secured by defendants. Fraser, at the request of his father, executed a conveyance to Winchester of his undivided half-interest in that portion of the lot in question lying between the road and the river front, leaving the title to an undivided one-half part in the residue of the lot in Fraser. This conveyance to Winchester was dated June 15th, 1880; Winchester immediately conveyed to the defendants and they continued in possession ever since. In November, 1889, Fraser executed a deed of his interest in the whole lot to the plaintiff, and it was under this deed that the plaintiff claimed. The plaintiff therefore claimed an undivided half part of the whole lot, and a tenancy in common with the defendants, while the defendants claimed the absolute title to that portion of the lot between the road and the river, and admitted the tenancy in common as to the residue. Nine years elapsed from the time of the conveyance from Fraser to Winchester and the date of the conveyance from Fraser to plaintiff; and over five years and a half from the time Fraser came of age until he conveyed to the plaintiff, four years of which Fraser's father was alive.

Two questions were left to the jury: (1) Whether at the time the deed was made to Winchester, Fraser represented himself to be of age. (2) Whether the time which elapsed from the time Fraser came of age until he gave the deed to the plaintiff was an unreasonable time for him to take to consider whether he would repudiate the deed to Winchester or not. The first question the jury refused to answer, and to the second they answered "we do not think the time taken was unreasonable."

The trial Judge directed a verdict to be entered for the plaintiff on the issue of title for an undivided one-half portion of the lands lying between the road and the river; and directed the jury to find for the defendants on the