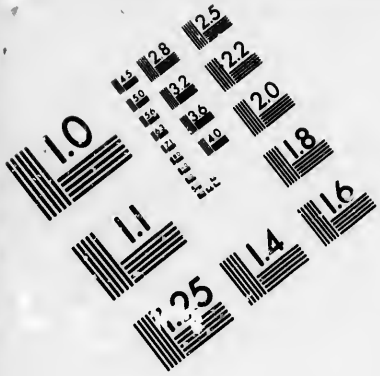

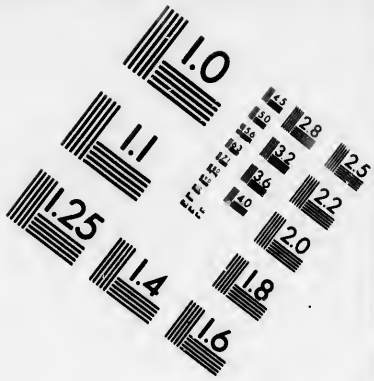

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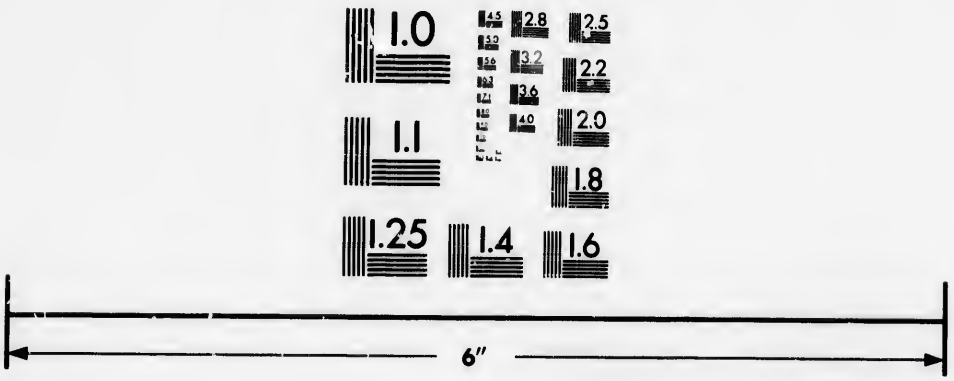

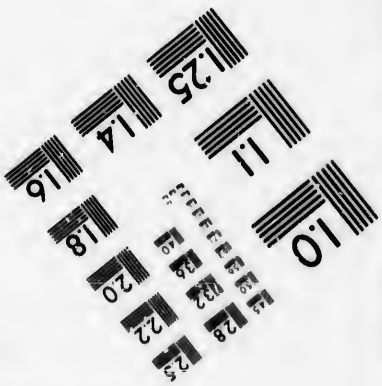

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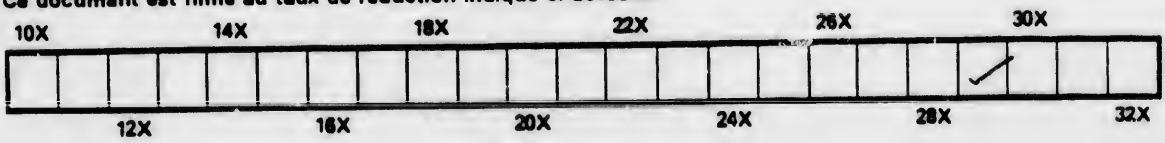

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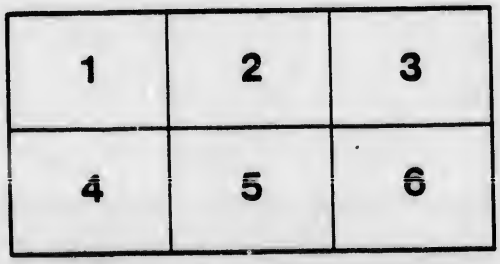

In the Queen's Bench.

APPEAL SIDE.

WILLIAM VONDENVELDEN,

Appellant.

vs.

OLIVER PRINCE,

Respondent.

Respondent's ~~APPELLANT'S~~ CASE.

In the Queen's Bench.

PROVINCE OF CANADA,
LOWER CANADA TO WIT. } Court of Queen's Bench,

APPEAL SIDE.

WILLIAM VONDENVELDEN,
Plaintiff in the Court below,
APPELLANT,

vs.

OLIVER PRINCE,
Defendant in the Court below,
RESPONDENT.

Respondent's CASE.

This is an appeal from the Circuit Court, Richmond Circuit, District of St. Francis. Action *petitoire*. Vondenvelden demanded of Prince a longitudinal quarter of lot No. 7, in 4th Range, Kingsey, as described in his declaration. Lot 7 was patented to one Eustache Harnois, 28th January, 1805. Vondenvelden bases his action upon a pretended conveyance from Joseph Harnois, alleged to be son of Eustache Harnois, to one Antoine Luc Poulin de Courval, and said William Vondenvelden *par indivis* of date 9th March, 1835, and upon pretended transfer of his rights by Courval to Vondenvelden, by *acte* of date 25th May, 1855.

Prince pleaded 1.—That Eustache Harnois the patentee of said Lot 7, did not die seized of the same or any part thereof, but had divested himself thereof by deed of conveyance long prior to his decease, and that consequently neither Joseph Harnois nor any one else, as heir to Eustache Harnois, became seized of said lot or any part thereof.

2.—The prescription of *dix ans entre presens* and of 30 years.

3.—A special denial of all the allegations of Plaintiff's declaration.

Before alluding to matters of proof, Respondent calls the attention of the Court to the vagueness of Plaintiff's allegations. The averment of heirship of Joseph Harnois is as defective as the attempted proof of it. It is in these terms, "*le ou vers le dix Mars* 1820, *le dit Eustache Harnois est decedé laissant pour heritier son fils Joseph Harnois tel qu'appert à l'extrait mortuaire produit.*" There is no allegation of the marriage of Eustache Harnois, or that Joseph Harnois was the issue of a lawful marriage, or that he was the only son of Eustache Harnois. The Plaintiff seems to state it as a necessary and logical sequence of the death of Eustache Harnois, that Joseph Harnois was his only lawful heir.

There is no allegation that Joseph Harnois was ever seized of the land in question, or that there was any consideration for the pretended agreement between him and Courval, or that Courval was authorized to act in that behalf for Vondenvelden, or that the land was in any manner delivered to Coorval or Vondenvelden, or that any of these several parties ever had possession thereof. The declaration does not contain the requisite allegations if fully proved, upon which to base a judgment in favor of Vondenvelden. Again the instrument whereby Vondenvelden pretends to have acquired, together with Courval, the alleged rights of Joseph Harnois, is not, from its very nature and purport, a deed of conveyance of the land. It simply transfers such rights as Joseph Harnois may have had, without any guaranty whatsoever. The consideration is £21 for 6 lots, or 1200 acres of valuable land, with the sum of one pound paid *dout quittance d'autant* and with the significant stipulation that the remaining £20 should not be *exigible* till *main levee* were had of a seizure of the land at suit of James Hastings Kerr, against the heirs of the late Samuel Holland. The consciousness that this was a sham title, and that the land had long before the death of Eustache Harnois passed to Holland's heirs is patent upon the face of the document itself. It was a venture, and a small one at that, for there was simply the risk of twenty shillings.

Courval appears to have had no authority from Vondenvelden to act in his behalf, and there never was any privity of contract between Vondenvelden and Joseph Harnois, and said *acte* could have no effect until accepted by Vondenvelden, by agreement with Courval, 25th May, 1855, and then, as Respondent maintains, Vondenvelden could not ratify this former contract, except so far as concerned the rights between him and Courval, without the intervention of Joseph Harnois to such ratification. In the last mentioned contract between Courval and Vondenvelden, Courval declares that in the former deed he did not act for himself at all, but only lent his name for Vondenvelden. This is contradictory to the letter of the alleged agreement with Joseph Harnois, and if true, there was no contract with Joseph Harnois, inasmuch as Vondenvelden never authorized Courval to act for him in part or in whole, and never ratified his acts with Joseph Harnois so as to complete a contract with the latter. There was not in fact any tradition in any manner of the land in question to Courval or Vondenvelden. There could not have been actual tradition inasmuch as it is clearly proved that Prince and his *auteurs* possessed the land *comme maitres* long prior to and at the time and subsequent to all the transactions of Joseph Harnois with Courval and of Courval with Vondelvelden; and there is no dissaizine contained in either of these pretended transfers under which Vondenvelden claims, nor any symbolic tradition in any form, nor in these pretended conveyances in the form or in equivalent terms of the form required by the registry ordinance to obviate the necessity of tradition to pass the property. On reference to Defendant's exhibit No. 7, the Court will perceive that Eustache Harnois, 20th September, 1805, sold and conveyed lot 7, in 4th Range of Kingsey, to the heirs of Samuel Holland, which was duly enregistered, 5th May, 1834. Thus it appears that Eustache Harnois ceased to be proprietor of said lot, 15 years before his death. It will appear by deeds numbered by the clerk, as papers of record Nos. 11, 12, and 13, that 1st February, 1847, more than 10 years prior to institution of this action, François Bourbon dit Coguan, conveyed, for valuable consideration, the land in question in this cause, to George Bourbon dit Cogman, who, 3rd December, 1851, for valuable consideration, conveyed the same to Edward Marcotte, who, 26th March, 1852, for valuable consideration, conveyed the same to Prince, Respondent. All these deeds were followed by tradition, and a continuous possession is proved. A continuous possession of some thirty-two years, prior to institution of this action is proved from one Patrick Sheridan, to Charles

Babineau, and from Charles Babineau to the before mentioned François Bourbon dit Cognan, and from François Bourbon dit Cognan to Edward Marcotte, and from the latter to Prince. The actual possession of thirty years is clearly proved, and Respondent contends that the documentary evidence is sufficient to connect the possession for the purposes of prescription. At all events, the maxim *in pari casu melior est conditio possidentis* can be invoked in favor of Prince. In the next place, there is no proof whatever that Joseph Harnois was the lawful son of Eustache Harnois. Vondenvelden took care to prove that there was no *extrait baptistaire* of Joseph Harnois, which alone raises the presumption that he was not born of parents in lawful wedlock and has adduced no evidence whatever to negative such presumption.

The judgment of the Honorable Edward Short, rendered in the Circuit Court on 14th September, 1858, is in the following terms:

"The Court having heard the parties by their respective Counsel, seen and examined the pleadings, evidence and proceedings of record in this cause, and deliberated thereon, rejects the Defendant's pleas of prescription, as unfounded, but considering that Plaintiff has failed to prove Joseph Harnois to be the son and heir of the late Eustache Harnios as alleged in his declaration, and that Defendent has proved that the land in question in this cause, formed no part of the estate and succession of the said late Eustache Harnois, he having alienated the same prior to his decease, doth dismiss the action of Plaintiff in this behalf, with costs distraits to Defendant's Attorneys, Messrs. Sanborn & Brooks."

Respondent is satisfied that the Court here will confirm the judgment so rendered, for the reasons therein mentioned, as well as upon other grounds hereinbefore urged.

Dated 1st December, 1858.

SANBORN & BROOKS,
Attorneys for Respondent.

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