

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Dunn and Others v. Lareau, from the Court of
Queen's Bench for Lower Canada; delivered
July 14th, 1888.*

Present:

LORD WATSON.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

THE subject of controversy in this appeal is a parcel of land forming part of the 8th concession of the Seigneurie de Monnoir, which consists of a strip of ground of uniform breadth lying north and south. It was originally laid off in 36 lots bounded by parallel lines running east and west, numbered consecutively from 92, the northmost to 126 the southmost lot.

On the 11th November 1854, the late William McGinnis, who is now represented by the Appellants, acquired, under a deed of sale, five of these lots, numbered from 99 to 103 inclusive, which are described in his title as bounded on one side by lot 98 and on the other by lot 104. On the 18th March 1857, the Respondent Lareau acquired by purchase a piece of land, which is described in the deed of sale as lot No. 104, bounded on the north side by the land of William McGinnis, and on the south by that of Moïse Daigneault. The deed expressly states that the said land "*a été vendue avec ses circonstances et dépendances, ainsi que le tout se composait, et dont l'acquéreur a déclaré être content et satisfait pour l'avoir vue et visitée.*"

About a twelvemonth before the Respondent

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purchased lot No. 104, William McGinnis made a survey of the land which he had acquired in November 1854, and spotted or blazed off the block which he then understood to contain his five lots. In so doing he marked off the southern boundary along a straight line, which now represents the northern boundary of the land in dispute. At that time the lot immediately to the south of the land in dispute was, as it still is, occupied by Moses Daigneault, who purchased it in December 1851, as being lot 105. It is impossible, in their Lordships' opinion, to hold that McGinnis was in possession, either actual or constructive, of the disputed land, after he had marked off his five lots, or at least supposed he had done so; and it is matter of admission that from 1857 until the commencement of the present litigation—a period of nearly 20 years—the Respondent had peaceable and uninterrupted possession of the land in question without challenge by McGinnis. The Appellants now say that William McGinnis was under a misapprehension as to the extent of his five lots. They allege that the land in dispute is in reality lot 103, and not lot 104; and on that footing they seek to recover possession of it from the Respondents.

According to the Civil Code of Lower Canada (section 2,251), a person who in good faith acquires land by purchase, prescribes the ownership thereof by effective possession for ten years, which possession must be "in virtue of his title." It follows from that qualification that possession for ten years will not avail him unless it can be ascribed to his title—in other words his possession must be of the very subject which his title describes and professes to convey to him. A title to Blackacre cannot be made the basis of a prescriptive right to Whiteacre. In cases where possession is inconsistent with the possessor's title, he cannot acquire a prescriptive

right until he has had possession for the full period of thirty years, which is sufficient to confer the right of ownership irrespective of title. If it were conclusively shown that the disputed lot is No. 103 and not No. 104; and if it could also be shown that the Respondent's title merely gives him a conveyance to lot No. 104 wherever it may be found, the Appellants would be entitled to prevail. It is therefore necessary to consider how far they have succeeded in establishing either of these propositions.

The fact that their author, William McGinnis, for twenty years and upwards treated the disputed land as outside his lots, and for at least nineteen years permitted the Respondent to possess it as No. 104, lays a very heavy onus on the Appellants. The Judge of first instance, and one of the Judges of the Court of Appeal, were of opinion that the disputed land has been shown to be lot 103, but four of the Judges of the Appeal Court came to the opposite conclusion. Their Lordships would have hesitated to differ from the majority of the Court below upon a pure question of fact; but in the view which they take of the case it is unnecessary to decide the point. The whole case of the Appellant rests upon the assumption that the Respondent's deed of sale conveys to him nothing more than a right to lot 104, if and wheresoever it can be found. That assumption appears to their Lordships to be erroneous. The subject sold to him is not merely described as lot No. 104, but as an area of land which had been seen and examined, lying between the property of McGinnis and that of Daigneault. That is a specific description, not with reference to numbers, but with reference to the actual and visible state of possession of the adjoining lands; and having regard to the admitted state of possession in 1857, at the time when the Respondent's deed of sale was granted, their Lordships have no

hesitation in holding, with the Court of Appeal, that the description of the subject sold completely identifies it with the land in dispute. The Respondent's possession, which was in perfect good faith, was in conformity with, and must be ascribed to his title; and the lapse of ten years' possession has therefore perfected his right in competition with the Appellants.

Their Lordships will humbly advise Her Majesty that the Judgement appealed from ought to be affirmed, and the appeal dismissed with costs.