

Privy Council Appeal No. 32 of 1928.

Dame Hermine Belanger - - - - - *Appellant*

v.

Marie Yvonne Henriette Fraser - - - - - *Respondent*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC
(APPEAL SIDE).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 13TH JULY, 1928.

Present at the Hearing :

THE LORD CHANCELLOR.

VISCOUNT DUNEDIN.

VISCOUNT SUMNER.

LORD ATKIN.

CHIEF JUSTICE ANGLIN.

[*Delivered by* THE LORD CHANCELLOR.]

In this case the appellant sought to recover possession of certain property which she alleged was acquired by her ancestor in the year 1734, and of which the respondent or her predecessors in title are alleged to have been in possession for 170 years.

The respondent by her defence raised the point that she had obtained a prescriptive title by reason of her possession. To that the appellant replied that the prescription did not run because the respondent and her predecessors in title had wrongfully and fraudulently concealed from the appellant and her predecessors the existence of the title deeds and the right which the appellant's ancestor had acquired; therefore, that that fraud prevented the respondent from invoking the doctrine of prescription.

On that reply the case was set down for argument on the point of law whether that paragraph in the reply should be struck

out as irrelevant. The Courts in Quebec have upheld the objection and ordered the paragraph to be struck out, and it is from that order that the present appeal is brought.

Their Lordships have carefully considered the relevant sections of the Code and the judgments dealing with the matter. The points have been quite clearly placed before them by Mr. Masson on behalf of the appellant, and their Lordships are satisfied that the provisions of the Civil Code of Quebec do govern the matter which has to be determined. They regard the language of those sections as being quite plain and as applying to the case in question.

For these reasons, which are really the reasons embodied in the judgments, their Lordships are of opinion that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

DAME HERMINE BELANGER

v.

MARIE YVONNE HENRIETTE FRASER.

DELIVERED BY THE LORD CHANCELLOR.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.
1928.