

## HARDY v. DESJARLAIS; KERR v. DESJARLAIS

(1892), 3 W.L.T. 137 Manitoba Queen's Bench, Dubuc J., 20 June 1892 (Appealed to Manitoba Queen's Bench, Full Court, *infra* p.58)

*R. P. Act--Halfbreed title--Sale of infants' lands under court order--Necessary compliance with order--Lost order, proof of.*

Issue under Real Property Act.

Defendant, a half-breed, on attaining his majority in 1890, made application for certificate of title as grantee from Crown of patent dated October 2, 1882, under Manitoba Act.

The plaintiffs filed caveats claiming to be entitled under a Court Order which (under 41 Vic., c. 7, s. 15) on the petition of the defendant, then an infant, presented by his father, directed a sale of said lands and ordered the proceeds to be applied to the maintenance and education of the defendant; and authorized the father to execute a conveyance on certain conditions. Under such order the father conveyed to the Rev. C. St. Pierre, who conveyed to H., who conveyed to G., who conveyed to plaintiff Kerr, who conveyed a portion thereof to plaintiff Hardy.

The original order was lost and proof, not conclusive, but sufficient, was given to satisfy the court of this fact; the plaintiffs adduced the following secondary evidence of the order--(1.) The recital in the conveyance under 48 V., cap. 30, s. 2; (2.) an office copy under the seal of the court with stamps thereon, cancelled on Aug. 5, 1882; (3.) exemplification under seal of court under Reg. Act, R. S.

M., cap. 135, sec 46; and (4.) by an office copy from the Registry office, under sections 50, 75 and 76 of said Reg. Act.

*Howell, Q. C., and Mulock, Q. C., for plaintiffs.*  
*Ewart, Q. C., and Chaffey, for defendant.*

### ***Held--***

A sufficient proof of the making of the order.

The order directed that the sum of \$200 offered was a fair price and should be accepted; that a sale be made to St. Pierre upon payment into court of that sum for the use, etc., of defendant; that upon such payment the father be empowered to execute a conveyance of said lands; that the said sum be then paid out to St. Pierre on his entering into and delivering to the Master a bond conditioned for the proper expending of the money so entrusted to him for the maintenance and support of the defendant. The money was paid in by, and paid out to St. Pierre on Sept. 23, 1881, ten months after the date of the order, and after he had sold to H.; but already as early as June 1880, St. Pierre had paid a considerable portion, if not the whole of the purchase money, to the father for the infant.

### ***Held--***

That while the payments in and out of Sept. 23, 1881, were certainly against the spirit and intention of the order, even if they were not against the letter, as no time for payment was fixed thereby, yet the terms thereof had been substantially complied with, and the provisions of 48 V., cap. 30, secs. 1 and 2 (reproduced in R. S. M., c. 67, secs. 11 and 22) should be considered as fully applicable--*Barber v. Proudfoot*, 1 W. L. T. 147 distinguished as in that case no sale had been made at all, but an improper exchange effected, and the terms of the order had been neither strictly nor substantially observed.

Verdict for plaintiffs.