ATTORNEY-GENERAL OF CANADA v. ATTORNEY-GENERAL OF QUEBEC (sub nom. MOWAT v. CASGRAIN)

(1897), 6 Que.Q.B. 12

Quebec Queen's Bench, Lacoste C.J., Bossé, Blanchet, Hall and Wurtele JJ., 20 January 1897

Constitutional law--Indian lands--Seigniory of Sault St. Louis.

HELD:--1. The distribution of powers contained in sections 91 and 92 of the British North America Act, 1867, not only divides the legislative powers between the Parliament of the Dominion and the Legislatures of the Provinces, but it also defines their respective administerial powers and functions whenever the subjects mentioned are capable of being administered by a government.

2. By paragraph 24 of section 91, the government of the Dominion is entrusted and charged with the care and supervision of the Indians and with the control and administration of the property appropriated for their use.

3. Section 109 of the British North America Act, 1867, assigns all lands vested in the Crown to the government of the province in which they are situated, but does so subject "to any trusts existing in respect thereof and to any interest other than that of the province in the same."

4. The Seigniory of Sault St. Louis was granted for the use and habitation of the Iroquois Indians and the soil is vested in the Crown, but subject to the enjoyment or usufruct of the Indians.

5. The naked ownership therefore belongs to the Province of Quebec within which the Seigniory is situated, but the control and administration of the Indians' usufruct is entrusted and appertains to the government of the Dominion.

6. The suit for the recovery of the arrears of rent due by the defend- ant was therefore properly brought by the Attorney-General of the Dominion.

The appeal was from a judgment of the Superior Court Montreal, Doherty, J., 30th June, 1896, and the formal judgment of the Court was as follows:--

"The Court having taken communication of the *facta* submitted by the parties, plaintiff and intervenant, respectively, upon the merits of the intervention of intervenant, and the contestation thereof by plaintiff, examined the proceedings and proof of record, and deliberated:

"Whereas plaintiff in his quality of Minister of Justice and Attorney-General of Her Majesty the Queen for the Dominion of Canada, now represented by the plaintiff *par reprise d'instance*, (his successor in the said office) by his action seeks to have certain lots of land situate in the Seigniory of Sault St. Louis, in the parish of St. Constant, in the County of Laprairie, and known as numbers 177, 180, 238, 150, and 245, of the plan and book of reference of said Seigniory, whereof he alleges defendant is in possession as proprietor, declared affected in

favor of Her Majesty for the payment of a yearly rental of $8.80, pay- able by privilege, and defendant ordered to abandon the same unless he prefer to pay an annual rental of $8.80, for the past 30 years, amounting to $264, and pass a *titre-nouvel* at his own expense, in favor of Her Majesty, binding himself to pay said rental for the future, he further alleging that said Seigniory and the lands therein, appertain to and are held by Her Majesty the Queen, the Crown in trust, and to be administered for the tribe of Indians known as the Iroquois Indians, and such Indians as may join them upon the Caughnawauga Reserve, and that the Government of the Dominion of Canada acts for and represents and has full control for Her Majesty, of matters relating to Indians, and lands reserved for Indians as proprietor and Seigneur of the said Seigniory of Sault St. Louis;

"That there is due on said lands a yearly seigniorial rent of $8.80, which has not been paid for a period exceeding thirty years; that the defendant holds said lands under titles, recognizing the rights of the Crown, as aforesaid, his *auteurs* having by two *titres-nouvels* of dates respectively the 30th July, and 8th August, 1828, in favour respectively of Alexis Menard, and Joseph Pinsonneault, promised to pay to the Crown a certain yearly rental, now fixed under the schedule duly prepared and published by the Seigniorial Commissioners at the sum of $8.80 per annum, for the whole of said lots; that in said *titres-nouvels* and in other deeds, it was erroneously stated that the said lands formerly formed part of the estates be- longing to the religious order of Jesuits, but said property never did so belong, but was originally ceded in favor of and for the use and benefit of the said Iroquois Indians, and since 1762 has been held and administered by the Crown, in trust for said Indians, and defendant has so admitted, and has up to 30 years ago, paid to Her Majesty the obligations under said titles, and subsequently the seigniorial rents provided by the Seigniorial Act of 1854;

"Whereas intervenant in his quality of Attorney-General of Her Majesty for the Province of Quebec, now represented by the intervenant *par reprise d'instance*, his successor in said office, intervenes, by his petition in intervention, as amended by leave of the Court, alleging that, as appears by the declaration and the *titres-nouvels* therein recited and therewith produced as exhibits, the defendant is indebted to Her Majesty in the sum of $264, under authentic deeds passed in 1828; that it appears also by said exhibits, that the lands for which said sum is claimed, as seigniorial rents, are situate in the Seigniory of Sault St. Louis, and heretofore formed part of the property of the order of Jesuits in this Province; that under the British North America Act, the Seigniorial rents of said Seigniory belong to the Province of Quebec, and can only be claimed by intervenant; that assuming said Seigniory not to belong to the Province but to form part of the property of the Indians, the sum claimed cannot be so claimed by plaintiff, but by intervenant,--the Provincial Government, under the terms of the British North America Act, having alone the administration and control of the *cens et rentes* which may accrue in the said Seigniory, which Seigniory, even were it the property of the Indians, would nevertheless be held in trust by the said Province, and the Government of the Dominion has no control in the said property; that it is

true that, under the British North America Act the Government of the Dominion has power to legislate concerning Indians and Indian reserves, but that it is not true that said Government has the adminstration of the properties reserved for Indians-- and intervenant in consequence concludes that it be declared that the sum claimed is not the property or under the control of the Federal Government, but belongs to the Province of Quebec, subject to any trust attaching to said Seigniory, and that defendant be condemned to pay the same to him;

"Whereas plaintiff contests said intervention, reiterating the allegation of his declaration, that the lands in question formed no part of any property that ever belonged to the Jesuit order, and reciting in support of said assertion the original deeds of concession of the land in question, granted in 1680, by the king of France; a judgment of General Gage and his military council, of date 22nd March, 1760, and the fact that in said judgment, which declared the lands in question as forming part of a larger extent of land in said deeds referred to, and described to have been conceded to the Iroquois Indians, and not to the Rev. Fathers of the Society of Jesus, the latter acquiesced, and that in no list of their properties made by said Rev. Fathers, or by public authority, were said lands included; that by said judgment it was ordered that as regards any portion of said lands conceded by the said Rev. Fathers of the Society of Jesus prior to said judgment, the *concessionnaires* should not be disturbed, provided they appeared before the proper authorities, and executed *titres-nouvels*, and that the revenues of the lands so conceded should be received by Her Majesty for the benefit of said Indians; plaintiff further, by said answer alleges that under the provisions of the Act, 18 Victoria, chapter 3, the conceded portion of the lands granted under the original deeds above referred to, was included as coming under said Act, and styled the Seigniory of Sault St. Louis, and the balance of the territory remains as an Indian Reserve, known as the Caughnawauga Indian Reserve; that of said conceded portion of said territory a schedule and Seigniorial cadastre was duly made and published, showing the amounts that would be due by the various *cessionnaires* under the terms of the Seigniorial Act, which cadastre and schedule was made and proclaimed, and came into force on the 17th December, 1860; that from 1762 to 1830 the management and administration of Indians and of Indian affairs, including the lands and rents thereof, were under the control of, and vested in, the Governor-General for Canada, or Lower Canada, for the time being, and thereafter the same was transferred to the Governments of the respective Provinces of Upper and Lower Canada until Confederation, since which time the Government of Canada has control of Indians and Indian affairs, and said rents have been by said Government collected ; that under the B. N. A. Act of 1867, all matters respecting Indians, and lands reserved for Indians come within the jurisdiction, control and legislation of the Government of Canada; that the rents in question are rents and revenues on the property belonging to the Indians, reserved for them and to be administered by the Government of Canada for their behalf, and that intervenant and the Province of Quebec have no right or authority to claim or collect said rents, or any- thing to do with them, or any powers of administration in respect thereof; "Considering that the rents claimed by plaintiff's

action, and to enforce payment whereof said action is brought, are so claimed under deeds executed by defendant's *auteurs* in favor of Her Majesty in 1828, and that for whosoever benefit or subject to whatsoever trust Her Majesty in virtue of said deeds collected said rents prior to Confederation, the same continued and were at the time of Confederation moneys payable to the Government of the heretofore Province of Canada, for lands situate in the now Province of Quebec;

"Seeing section 109 of the B. N. A. Act;

"Considering that under said section of said Act all sums of money then (to wit: at the time of Confederation) due or payable to the then Province of Canada, for lands situate in the now Province of Quebec, belong to the Province of Quebec, subject to any trusts existing in respect thereof, and to any interest other than that of the Province therein;

"Considering that, assuming the lands for which the rents now in question are owing, to have originally been conceded to the Iroquois Indians, as contended for by plaintiff, and said rents to have been at the time of and prior to Confederation, payable to the then Province of Canada in trust for and for the benefit of the said Iroquois Indians--the said rents were nevertheless subject to said section 109, as being money payable to said heretofore Province, and as such passed to and belong to the Province of Quebec, subject to such trust for, and to any interest therein of said Indians;

"Considering that the dispositions of said B.N.A. Act (sec. 19, 324) vesting in the Parliament of Canada the exclusive legislative authority in all matters concerning Indians, and lands reserved for Indians, had not the effect of vesting in the Dominion of Canada, or the Government thereof, the ownership of any lands situate in the Province of Quebec, or the right to receive any moneys payable to the heretofore Province of Canada, for lands situate in the said Province of Quebec even though said moneys may have been payable to said heretofore Province in trust for or for the benefit of Indians;

"Considering that the existence of any such trust would merely have the effect of subjecting the Province of Quebec, to whom the money, subject thereto, became payable under the section (109) above mentioned, to the obligation of fulfilling said trust, and paying over or accounting for said moneys, to the beneficiaries thereunder or to their lawful representative, but that the same would not affect the right of said Province of Quebec to collect the same, nor confer upon the Government of Canada any right to collect the same from the debtors thereof;

"Considering that the intervention of the intervening is well founded:

"Doth maintain the said intervention and doth declare that any sum that may be due by defendant for the reasons set forth in plaintiff's demand, is not the property nor under the control of the Government of the Do- minion, but belongs to the Province of Quebec, subject to any trust that may attach to the said *Seigneurie* of Sault St. Louis, and doth reserve to pronounce upon the demand of intervenant for

a condemnation against defend- ant, until the latter shall have pleaded to or been duly foreclosed from pleading to said demand."

WURTELE, J.:--

The defendant in this cause, Noel Pinsonneault, is the owner of certain lands situated in the Seigniory of Sault St. Louis, which are subject, under the cadastre made by the Seigniorial Commissioner, to the payment of constituted rents representing the *cens et rentes* with which they were formerly charged. The Seigniory of Sault St. Louis is in possession of the Tribe of Iroquois Indians, and their village is built on a part of the unconceded portion.

A suit has been instituted by the Attorney-General of the Dominion, against Noel Pinsonneault, for thirty years' arrears of the constituted rents with which his lands are charged; he alleges that the Seigniory is held by the Crown in trust for the Iroquois Indians and that the Government of the Dominion, which has the administration and control of all matters relating to Indians and of all lands reserved for them, has the right to sue for and collect the arrears of the rents in question. The Attorney- General for the Province of Quebec, has intervened in the cause and alleges that under the provisions of the Union Act of 1867, the Seigniory of Sault St. Louis is vested in the Crown, represented, not by the Government of the Dominion, but by that of the Province of Quebec, and that the latter alone has the right to sue for and recover the arrears of the rents in question, subject, however, to the trust in favor of the Iroquois Indians, and he therefore prays that it should be declared that the arrears in question neither belong to nor are under the control of the Federal Government, but that they belong to and are under the control of the Province of Quebec, subject to the trust in favor of the Indians, and that the defendant should be condemned to pay such arrears to the Provincial Government. The defendant thereon declared that he was ready to abide by the judgment of the Court, and reserved the right to produce a plea of payment and compensation after the decision of the question raised by the intervention.

The Superior Court has maintained the pretensions of the Provincial Government, and the Government of the Dominion now appeals from this decision.

The Iroquois Indians, before 1680, were in the spiritual charge of the Jesuit Fathers and had been settled on lands situated in the Seigniory of Laprairie. As these lands were swampy and undesirable, the Indians were dissatisfied with them and threatened to leave the locality. In order to retain them within the sphere of civilization, and to keep them under the spiritual charge of the Jesuit Fathers, Louis XIV, by letters patent of the 29th May, 1680, granted to the Jesuit Fathers a tract of land containing two leagues in front on the River St. Lawrence, adjoining the Seigniory of Laprairie, for the habitation and use of the Iroquois Indians, but with the condition that the land contained in such grant would revert to the Crown if the Indians should ever abandon it. Later on, another tract of land containing one league and a half in front, lying between the first grant and the Seigniory of

Chateauguay, was granted to the Jesuit Fathers by Louis de Buade, then the Governor of Canada, by letters patent of the 31st Octtober, 1680, for the same purpose and on the same condition as the first grant. The Indians established their village on the land contained in the second grant and afterwards the Jesuit Fathers conceded, under the Seignioral Tenure, a part of the first grant to persons other than Indians.

The year after the Capitulation of Montreal, the Iroquois Indians laid a complaint against the Jesuit Fathers before the Governor of Montreal, alleging that the two grants of land had been made for their habitation and use, and complaining that the Jesuit Fathers pretended that they were the owners of the land and that they were conceding portions of it to their detriment. The case was heard by the Governor, Thomas Gage, assisted by his Military Council, and on the 22nd March, 1762, a decree was rendered depriving the Jesuit Fathers of all right in the land contained in such grants, known as the Seigniory of Sault St. Louis, and ordering that the Indians should be put and maintained in the peaceful enjoyment of the same, and of all the revenues produced there- by, but confirming however the concessions which had been made by the Jesuit Fathers up to the 8th day of September, 1760, date of the Capitulation of Montreal, and requiring the occupants to take new titles. It was further ordered that an agent should be appointed by the Governor for the collection of the rents of the conceded portion, and that he should account for his receipts annually to the Indians. By two ordinances, passed the one on the 20th September, 1764, and the other on the 12th Nov- ember, 1764, a certain delay was given for the purpose of appealing from decrees or judgments which had been rendered prior to the 10th day of August, 1764, on which day, civil government was established in the Province; but no appeal was ever brought against the decree rendered on the 22nd March, 1762, by the Governor of Montreal and his Council on the complaint made by the Iroquois Indians against the Jesuit Fathers.

Since the date of that decree the Iroquois Indians have always been in possession of the Seigniory; and the Seigniorial cadastre which came into force on the 1st December, 1860, declares that it was then possessed by them.

For a considerable time after the Cession of Canada to the Crown of England, all Indian matters were managed and all Indian lands were administered by the Imperial Government, through officers appointed by it. During this period, the owners of the lands now in the possession of the defendant executed renewal deeds, one on the 30th July, 1828, and the other on the 3rd August, 1828, acknowledging that they were charged with Seigniorial rents payable to His Majesty the King of England, as the Seignior of the Seigniory of Sault St. Louis. The Iroquois Indians only had the usufruct and enjoyment of the Seigniory, and the land and Seigniorial dues were consequently vested in the King, subject to such usufruct and enjoyment; and the King as the guardian of the Indians had the administration of their property. Then the control and administration of these matters were transferred to the Provincial Government, but while the Provincial Government had the management of Indian affairs, the title of lands appropriated

for the Indians and of Seignioral rents accruing therefrom remained vested in the Sovereign. Immediately prior to Confederation, all lands and property in Lower Canada appropriated for the use of any tribe or body of Indians were, under Sec. 7 of Ch. 14 of the Consolidated Statutes for Lower Canada, being an Act respecting Indians and Indian lands, vested in trust for such tribes and bodies of Indians in a Commissioner of Indian lands for Lower Canada, who was appointed from time to time by the Governor; and this Commissioner was authorized to recover and receive the rents, issues and profits of all such lands and property.

By the Union Act, or the British North America Act, 1867, a division is made of the powers and functions of governance and administration between the Government of the Dominion, on the one hand, and the Governments of the Provinces, on the other hand, and also of the respective legislative powers of the Parliament of the Dominion, and of the Legislatures of the Provinces. The distribution of legislative powers is made by sections 91 and 92; but the powers of Provincial Legislatures are restricted to the subjects mentioned in sec. 92, while in addition to the subjects mentioned in sec. 91, the Parliament of Canada has the power to legislate on all matters not contained in the classes of subjects attributed to the Provincial Legislatures. Among the matters attributed to the Parliament of the Dominion, paragraph 24 mentions "Indians and lands reserved for the Indians."

It has been contended that the enumeration contained in these clauses merely confers on Parliament and on the Legislatures the power to legislate on the subjects which are mentioned, but that it does not confer on the Dominion and on the Provinces respectively any administerial powers and functions, and that, in short, the power to legislate is one thing while the power to administer is another, and that the power to legislate on a subject does not necessarily infer a right of administration respecting such subject.

Until quite recently, the Court of last resort had not given any pronouncement on this question. The case of the Ste-Catherine's Milling and Lumber Co. and the Queen has been referred to, but nothing decisive on this point is to be found in the report of the case.

In the case, however, of the Attorney-General for the Dominion of Canada and the Attorney-General for the Province of Ontario, in which Lord Watson delivered the judgment of their Lordships on the 9th December last, we find an *obiter dictum* which decides that the enumeration of subjects contained in the two sections of the Union Act which I have mentioned, not only confers legislative power, but also defines the administerial powers, and functions of the various Governments. Here is what Lord Watson said: "Even at the present time, and in view of the change of circumstances introduced by the Act of 1867, their Lordships thought it must still be a matter of absolute indifference to the Indians whether they had to look for payment to the Dominion, *to which the administration and control of their affairs was entrusted by sec. 91, par. 24, of the Act of* 1867, or to the Province of Ontario."

So in the opinion of their Lordships the distribution of powers contained in sections 91 and 92 of the Union Act applies to the administerial powers and functions of the different Governments as well as to the legislative authority of the Parliament of Canada and of the Provincial legislatures. It would seem to us that wherever the subjects mentioned in these sections are not only susceptible of legislative powers but also are such as to be capable of being administered by a Government, that the rule thus laid down should apply. Let us take for instance some of the subjects attributed to the Provincial Legislatures. The power to legislate on direct taxation involves the executive and administerial power of collecting and re- covering the taxes imposed by Provincial legislation; the power of legislating on the borrowing of money involves the executive and administerial right of the Provincial Government to receive and expend monies of which the borrowing is authorized by the Legislature; the right to legislate on the management and sale of public lands infers the executive or administerial right to manage and dispose of such lands; the right to legislate on the establishment, maintenance and management of prisons, hospitals and asylums involves the executive or administerial power to establish, maintain and manage such institutions; the right to legislate on the administration of justice throws on the Provincial Governments the obligation of administering justice in their respective Provinces. And so with respect to the Dominion: the right to legislate on the postal service involves the maintenance and administration of such service; the power to legislate on the census involves the obligation of making it; the right to legislate on the militia and the military and naval services confers on the Government of the Dominion the administration of the militia and of such services; the right to legislate on beacons, buoys and lighthouses and also on quarantine and on marine hospitals puts on the Dominion Government the obligation of establishing and maintaining them. And, in like manner, the power and right of legislating respecting Indians and land reserved for the Indians entrusts the Government of the Dominion with the administration and control of the affairs and of the lands and property of the Indians.

After Confederation, the Parliament of the Dominion repealed Ch. 14 of the Consolidated Statutes for Lower Canada, respecting Indians and Indian lands, and enacted that there should be a department of Indian affairs which should have the management, charge and direction of Indian affairs, and that the Minister of the Interior, or the head of any other department appointed for that purpose by the Governor in Council, should be the Superintendent of Indian affairs and should, as such, have the control and management of the lands and property of the Indians in Canada. These provisions were afterwards consolidated in "The Indian Act" and are contained in sections 4, 5 and 6 of Ch. 43 of the Revised Statutes of Canada. As a matter of fact, I may say that from the formation of the Union on the 1st July, 1867, the control, direction and management of all matters relating to Indians and of their lands and property were assumed and have ever since been exercised by the Government of the Dominion.

But it is contended that, inasmuch as at the time of Con- federation, all lands or

property appropriated for the use of Indians in Canada were vested in the Crown although in trust for their benefit and use, they fell and belonged under the provisions of section 109 of the Union Act, to the Province in which they were situated, subject how- ever to the trust or interest of the Indians existing in respect of the same. The Attorney-General for the Province of Quebec maintains therefore that the constituted rents of which the arrears are claimed by the suit in this cause, and which represent the lands upon which they are charged, belong to the Province of Quebec, subject however to any trust or interest existing in respect thereof, and that it is the Crown represented by the Government of the Province of Quebec, and not the Crown represented by the Government of the Dominion, which has the right to sue for and recover the arrears claimed in this cause.

The special condition contained in the grants from the Crown of France of the two tracts of land forming the Seigniory of Sault St. Louis, which provides that such land would revert to the Crown should the Iroquois Indians ever abandon their settlement, does not affect the present enjoyment or usufruct of the Seigniory by them, and it must be borne in mind that we are now dealing with such enjoyment or usufruct, and not with the ownership of the Seigniory.

While section 109 assigns all lands to the Government of the several provinces in which they are situated, it, however, does so "subject to any trusts existing in respect thereof and to any interest other than that of the Province in the same."

Under this section, it would seem that the contention of the Attorney-General for the Province of Quebec is well founded in so far as the naked right of ownership is concerned, and that the naked property of the constituted rents in question is vested in the Crown represented by the Province of Quebec. The Province of Quebec, however, holds these constituted rents subject to the usufruct or enjoyment of the Iroquois Indians, such usufruct or enjoyment being in the words of the proviso contained in section 109 "an interest other than that of the Province in the same."

On the one hand, the Province of Quebec holds the naked ownership of the constituted rents and on the other hand, the Indians have a right to the enjoyment or usufruct thereof so long as they remain in their settlement on the Seigniory of Sault St. Louis.

The question to be decided does not relate to the ownership of these constituted Seigniorial rents but is as to whom it appertains to sue for, recover, and collect the arrears? By the Union Act, the Government of the Do- minion is entrusted with the administration of the affairs and property of the Indians in Canada, and under the Indian Act the control and management of their lands and property is confided to the department of Indian affairs, under the charge and direction of the Superintendent General of Indian affairs, who is authorized, as was the Commissioner of Indian lands before Confederation, to collect and receive the rents, issues and profits of the lands and property appropriated for Indians and to

apply the same to their use. The Government to which such control and management is entrusted must necessarily have as a corollary the right to sue whenever the affairs of the trust require such action.

We are therefore of opinion that while the naked ownership of the rents in question is vested in the Province of Quebec, the right to collect the arrears and to apply the same to the use of the Iroquois Indians belongs to the Government of the Dominion. Unless special provision is made with respect to the person who should sue in the name of Her Majesty, this is always done by the Attorney-General. We are of opinion therefore that the suit for the recovery of the arrears was properly brought by the Attorney-General of the Dominion and that the intervention of the Attorney-General of the Province of Quebec is unfounded, and that there is error in the judgment appealed from which maintains the intervention.

We therefore maintain the appeal with costs; we set aside and annul the judgment appealed from and rendered by the Superior Court on the 30th June, 1896, and proceeding to pronounce the judgment which should have been rendered, we dismiss the intervention, with costs.

The text of the formal judgment of the Court of Appeal is as follows:--

"Whereas the Attorney-General for the Dominion of Canada, on behalf of Her Majesty the Queen, has instituted an action in the Superior Court against Noel Pinsonneault, for the recovery of arrears of the constituted rents representing the *cens et rentes* with which certain lands belonging to him and situated in the Seigniory of Sault St. Louis, which is composed of land appropriated for the use and habitation of the Iroquois Indians, were charged;

"Whereas the Attorney-General for the Province of Quebec has intervened in the suit, and alleges that the Seigniory of Sault St. Louis is not vested in the Crown represented by the Government of the Dominion, but in the Crown represented by the Government of the Province of Quebec, subject nevertheless to the enjoyment or usufruct thereof by the Iroquois Indians, and prays that it be declared that the arrears in question belong to and are under the control of the Government of the Province of Quebec, subject to the trust in favor of the Iroquois Indians, and that the defendant be condemned to pay such arrears to the Provincial Government;

"Whereas the defendant Noel Pinsonneault has declared that he would abide by the judgment of the Court and has reserved the right to plead after the decision of the question raised by the intervention;

"Whereas the Superior Court, sitting at Montreal, in the district of Montreal, by its judgment rendered on the 30th day of June, 1896, maintained the intervention, and declared that the constituted Seigniorial rents in question, and any sum of money due by reason thereof, belonged to the Province of Quebec, subject to any trust existing thereon, and the Attorney-General for the Dominion of Canada, on behalf of the Government thereof, has appealed from such judgment;

"Considering that the land forming the Seigniory of Sault St. Louis was appropriated by the grants thereof, bearing date the 29th day of May, 1680, and the 31st day of October, 1680, for the use and habitation of the Iroquois Indians, and that their right to the possession and enjoyment thereof was recognized by a decree of His Excellency General Thomas Gage, the Governor of Montreal, assisted by his Military Council, rendered on the 20th day of September, 1764, which decree ordered that they should be put and maintained in the peaceful possession of such Seigniory, and that they have ever since been in the possession and enjoyment thereof, subject to the guardian- ship and control and management of the Crown;

"Considering that prior to the establishment of the Dominion of Canada, the legal title of all land and immovable property appropriated for the use and benefit of Indians and situated in Lower Canada, now constituting the Province of Quebec, was in the King or Queen as the Suzerain of the country, but that the right of enjoyment of such land and immovable property was, under the authority of section 7 of Chapter 14 of the Consolidated Statutes for Lower Canada, being an Act respecting Indians and Indian lands, vested in trust for the Indians having an interest therein in a Commissioner of Indian lands, who had the control and management of all such lands and property and was authorized to recover and receive the rents, issues and profits thereof;

"Considering that the soil of the Seigniory of Sault St. Louis was vested by right of the Crown in the Queen, but that the usufruct of the Seigniory and the Iroquois Indians fell under the purview of the above mentioned statute; "Considering that the 24th paragraph of section 91 of the British North America Act, 1867, confers on the Parliament of Canada the right to legislate on the subject of Indians and of lands reserved for the Indians, and also confers on the Government of the Dominion the control and administration of their affairs and of the lands appropriated for them, but that the legal title of such lands remained and remains in the Crown;

"Considering that the Parliament of Canada repealed the above mentioned Act respecting Indians and Indian lands, and enacted that there should be a department of Indian affairs which should have the management, charge and direction of Indian affairs, and that the Minister of the Interior, or the head of any other department appointed for that purpose by the Governor-in-Council, should be the Superintendent of Indian affairs and should, as such, have the control and management of the lands and property of the Indians in Canada, which provisions were afterwards consolidated in "The Indian Act," and are contained in sections 4, 5 and 6 of chapter 43 of the Consolidated Statutes of Canada;

"Considering that section 109 of the British North America Act, 1867, enacts that all lands belonging to the several Provinces included in the Dominion, and all sums due for such lands, should belong to the Province in which such lands were situate, subject however to any trusts existing in respect thereof, and to any interest other than that of the Province in the same, and that this rule is not

affected by the fact that the legal title to such lands and sums may reside in the Sovereign;

"Considering that under the above recited provisions, the ownership of the constituted Seigniorial rents in question in this cause is vested in the Province of Quebec, but subject nevertheless to the enjoyment or usufruct thereof by the Iroquois Indians, such enjoyment, or usufruct, being an interest therein other than that of the Province;

"Considering that under the above mentioned provisions the management of such enjoyment or usufruct of the Iroquois Indians in the constituted Seigniorial rents in question is conferred upon the department of Indian affairs, under the control and direction of the Superintendent of Indian affairs, and that the suit for the recovery of the arrears claimed has consequently been properly brought by the Attorney- General for the Dominion of Canada, on behalf of Her Majesty for the Government of the Dominion;

"Considering that the suit in this cause relates to the enjoyment, or usufruct, of the constituted Seignioral rents in question, or to the accrued arrears, and not to the ownership of the capital thereof, and that there is error in the judgment appealed from which maintains the intervention and declares that such arrears are not under the control of the Government of the Dominion, but belong to the Province of Quebec, subject to any trust which may attach to the Seigniory;

"Doth maintain the appeal, with costs; doth set aside and annul the judgment appealed from, to wit; the judgment rendered in the cause by the Superior Court, sitting at Montreal, in the district of Montreal, on the 30th day of June, 1896; and proceeding to pronounce the judgment which should have been rendered, doth dismiss the intervention of the Attorney-General for the Province of Quebec, with costs."

Judgment reversed.

J S. Hall, Q.C., and *S. Cross, Q.C.*, for appellant.

Bisaillon, Brosseau & Lajoie, for respondent.

G. Lamothe, Q.C. for defendant.

(J.K.)