

CORINTHE ET AL. v. THE ECCLESIASTICS OF THE SEMINARY OF ST. SULPICE

(1910), 38 Que.S.C. 268

Quebec Superior Court, Hutchinson J., 10 March 1910

(Appealed to Quebec King's Bench, *infra* p.67)

*Construction of statute powers--Property vested in trust for benefit of Indians--Right of their chiefs to sue for them--
Breach of Trust.*

HELD:--A statute passed before the abolition of the feudal tenure in this province, to vest a fief or seigniorie in an ecclesiastical corporation, in trust, "for the instruction, and spiritual care of the Algonquin and Iroquois Indians," does not give the chiefs elected by them, a right of action against the corporation, on the ground that it grants lands of the fief to "*whites*," or others than Indians, and that it interferes with the exercise, by the Indians, of pretended rights of pasturage and to cut wood in the seigniorie.

HUTCHINSON, J.:--

The plaintiffs describe themselves as chiefs duly elected of the Indians settled at a place called Oka, on the shore of the Lake of Two Mountains, in this district, and allege that, as such, they are by law entitled to act for, and to represent their kinsmen or tribesmen for the purposes of the action. They claim that the fief or seigniorie of Oka, the property of the defendants, lies in a territory that was originally occupied by, and belonged to, the tribe, that by right of succession it should still belong to it, or to themselves, as representing it. They allege that, at some time during the French rule in this country, the fief or seigniorie was granted by the king of France to the defendants, for the express purpose of giving the Indians religious instruction in the Christian faith; that the grant was thus made in trust, for the benefit of the Indians who lived on the land, and for their benefit exclusively; that, from the time of the concession, a large tract of the land was set apart, known as the *Commune*, for the common use of the Indians, for pasturage of their cattle and flocks, for supplying them with wood, both as building material and as fuel. They complain that, in breach of the trust, the defendants have made grants and continue to make grants of land in the seigniorie to "*whites*," and to others than Indians; that they have caused the common to be fenced, and prevent the Indians from enjoying their rights of pasturage and to cut wood, above mentioned. They play for redress in consequence.

The defendants virtually deny these allegations and set up a line of titles dating from the early part of the seventeenth century, embodied in and ratified by statutes of this province, and continuous possession of the character required to give them a title by prescription.

It is evident from the facts set forth in these pleadings, that reference must be had to the early history of the Island of Montreal, and the Seigniorie of the Lake of Two Mountains, and the title of these lands must be traced from the first settlement of this part of the province. Without doubt the province was first discovered, and possession taken of it, by, or in the name of the king

of France, and, actuated by a desire to civilize and christianize the Indians inhabiting the Island of Montreal, this part of the province was conceded by the French King to a company known as that of the Hundred Associates. The title given to them was the same as that granted to other parties, respecting other portions of New France; but the kings of France recognized no title in the Indians. Their mode of dealing with the Indians was to make grants of land to French subjects in trust for the benefit and support of the Indians.

Subsequently, to wit: on the 9th of March, 1663, this company of persons, known as that of the Hundred Associates, granted by donation to the Seminary of St. Sulpice of Paris, the Island of Montreal. This donation was accepted and registered on the 20th September, 1677, at Quebec. The consideration of this donation was: (a) The conversion of the Indians of New France; (b) to pay all debts and charges of the donors incurred while conducting their operations on the Island of Montreal; (c) to celebrate every year, both in the church at Montreal and in the chapel in the Seminary at Paris, a solemn mass for the repose of the souls of the donors deceased, and of all associates of the company.

This donation, based on the considerations above mentioned, was given absolutely and in full ownership to the Seminary of St. Sulpice of Paris, the language used being: " Par donation pure, simple et irrevocable et entrevifs, pour eux et leurs successeurs."

In the month of May, 1677, there was established in the Island of Montreal, under the authority of an ordinance of the king of France, a community and seminary of ecclesiastics for the propagation of the faith and for the establishment of the Christian religion in New France, in conformity with the holy councils of the church and the ordinances of the kingdom; and, further, this ordinance contained a special acte of approval of the donation to the Seminary of St. Sulpice of Paris, mentioned above, bearing date the 9th of March, 1663. And it has been contended that this ordinance constituted the Seminary of St. Sulpice of Montreal an incorporated body, separate from the Seminary of St. Sulpice of Paris.

In conformity with this donation, the Seminary of St. Sulpice of Montreal, established, or continued to carry on a mission, already established, for the conversion of the Indians, near the Montreal Mountain. This mission was a purely religious undertaking. Somewhat later, this mission was moved to the Back River, but still retained on the Island of Montreal.

On the 17th of October, 1717, a petition was presented to Vaudreuil, the Governor-General, and to Begon, the Intendant, by the Ecclesiastics of the Seminary of St. Sulpice of Montreal, setting forth that it would be advantageous to the mission to the Indians at the Sault aux Recollets on the Island of Montreal, which was under their care, that it should be transferred to above and beyond the Island of Montreal, and established on lands situated on the south-west side of the Lake of Two Mountains, which place would be more advantageous, not only for the conversion of the Indians (by reason of their being deprived of the opportunity of getting intoxicating liquors), but also, to the colony, which, by this means, would be protected against the incursions of the Iroquois in times of war, and the petition prayed for a grant of land, three leagues and a half in front, to commence at the brook which runs into the great bay of the Lake of Two Mountains, ascending along the said lake and river Saint Lawrence, by three leagues in depth, in fief and seigniori, together with the right of superior, mean and inferior jurisdiction, and the privilege of hunting and fishing, as well within the limits of the land, as on the lake and the river St. Lawrence, on condition that they should, as they offered to do, bear the whole expense of

moving the mission, and that they should cause a church and fort to be built of stone, at the place to which the mission should be transferred; whereupon, the Governor and Intendant, in virtue of the power entrusted to them by His Majesty, granted and conceded unto the Ecclesiastics of the Seminary of St. Sulpice of Montreal, the tract of land, with the right to have and to hold the same for ever unto the said ecclesiastics, their successors and assigns, *even should the said mission be taken away from thence*, in full property, under the title of fief and seignior, with the right of superior, mean and inferior jurisdiction, and the privileges of hunting and fishing, etc., and on the condition above mentioned as to expense, and the building of a church and fort at their own cost. This concession was to be confirmed within one year by His Majesty the king, and in default thereof, it should be null and void.

However, on the 27th of April, 1718 (within a year), His Majesty the king duly confirmed the concession of the territory, not to the Seminary of St. Sulpice of Montreal, but to the Seminary of Saint Sulpice of Paris, their successors and *ayants cause*.

On the 26th of September, 1733, Beauharnois, the Governor-General and Hocquart, the Intendant, conceded and transferred to the Seminary of Saint Sulpice of Paris, a tract of land bounded on the one side by the seignior belonging to the representatives of the late sieurs de Langloiserie and Petit, and on the other side by the seignior of the Lake of Two Mountains, belonging to the said seminary, and in front extending about two leagues by the Lake of Two Mountains, this tract of land forming a nearly equal equilateral triangle, to have and to hold the said tract of land unto the said sieurs of the Seminary, their successors or assigns, henceforth as fief and seignior, the whole subject to the confirmation of His Majesty the king within a year; and on the 1st of March, 1735, this concession was ratified and confirmed by the king, and duly registered at Quebec on the 12th December, 1735. Under this concession full ownership of the tract of land above mentioned was conferred upon the Seminary of St. Sulpice of Paris. These lands form the seignior in question.

The next step in the order of events was the capitulation of Montreal, the articles of which were signed and dated September, 1760. By article 27 the free exercise of the Catholic Apostolic and Roman Religion was granted, and by article 33, it was provided: "The communities of nuns shall be preserved in their constitution and privileges," but the following article 33 was refused by general Amherst, commander-in-chief to the British troops and forces in North America, namely:-- "The preceding article (quoted above) shall likewise be executed with regard to the communities of Jesuits and Recollects and of the House of priests of Saint Sulpice of Montreal," &c. ; further, by article 40 it was provided that "The savages, or Indian allies of His Most Christian Majesty shall be maintained in the lands they inhabit, if they choose to remain there; they shall not be molested on any pretence whatsoever for having carried arms and served His Most Christian Majesty; they shall have, as well as the French, liberty of religion and shall keep their missionaries."

The Treaty of Paris followed, dated the 10th day of February, 1763. By article 6 it was provided that

"His Britannic Majesty further agrees that the French inhabitants, or others, who have been subjects of the Most Christian King in Canada, may retire with all safety and freedom wherever they shall think proper, and may sell their estates, provided it be to the subjects of His Britannic Majesty, and bring away their effects, as well as their person,

without being restrained in their emigration under any pretence whatsoever, excepting that of debts or of criminal prosecutions. The term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratification of the present treaty."

Then, there was the Royal Proclamation, bearing date the 7th of October, 1763, which provided, among other things, that the Indians should not be molested or disturbed in the possession of such lands as, not having been ceded or purchased, were reserved to them as their hunting grounds.

On the 29th day of April, 1764, the Seminary of St. Sulpice of Paris, declaring itself to be the proprietor of the lands and seigniories of the Island of Montreal, of the Cote of St. Sulpice, of the Lake of Two Mountains, and other landed properties, conceded by donation these tracts of land and property to the Seminary of Montreal, the latter acting by Mtre Etienne de Montgolfier, superior priest of the Seminary of Montreal, residing there usually, but accepting the concession at Paris, for and on behalf of the seminary of Montreal. In this acte of concession, it is stated that, inasmuch as Canada was then under the domination of the king of Great Britain, and in order to avoid confiscation of their property, and further, with the object of continuing their mission to christianize the Indians, as they were under obligation to do, in virtue of the concession to them by the company of One Hundred Associates, and its confirmation by His Majesty the king of France, this concession was made under the obligation to execute the charges and conditions imposed upon them as above mentioned by their donors.

The question subsequently arose as to the legality of this concession. In the first place it was contended that the Seminary of St Sulpice of Montreal was never incorporated, and secondly, that the community of the Seminary of St. Sulpice of Paris was not recognized in the capitulation of Montreal and the Treaty of Paris. And from the documents above mentioned, and particularly the fact that the concession granted to the Seminary of St. Sulpice of Montreal, on the 17th of October 1717, which required to be confirmed by the king, and which was done on the 27th April, 1718, was not to the Seminary of Montreal, but to the Seminary of St. Sulpice of Paris, it appears evident that the Seminary of St. Sulpice of Montreal was in reality only a branch or agent of the Seminary of St. Sulpice of Paris, and, in fact, no stipulation was made by the capitulation under which the members of the Seminary of St. Sulpice of Paris or of the Seminary of Montreal could claim a right to subsist as a corporation. Consequently, the Lieutenant-Governor of the Province of Lower Canada, in 1804, asked for a report from Attorney-General Sewell, as to what was the legal effect of this concession from the Seminary of St. Sulpice of Paris, and to whom the property belonged, since the conquest of the country, and what right the crown had; if any, in the properties mentioned in the concession, and, later, the Governor-General of Lower Canada and of the other provinces then under his jurisdiction, in 1828, made the same request to Attorney-General Stuart, and, about the same time, the law officers of the Crown in England were asked to report upon the same matter. These reports are lengthy, but they are of the same tenor and to the same effect, namely: (1) That the Seminary of Montreal was not at the time of the conquest a body or community distinct from that of Paris, and that the priests who composed it did not constitute, in themselves, a body corporate capable to take and hold estates in mortmain; that the priests of St. Sulpice of Paris, who were residents of Montreal, were merely deputed agents for the Seminary of St. Sulpice of Paris, and therefore, the whole of the said estates lapsed to His Majesty by right of conquest and acquired sovereignty, as the property

of a foreign society, domiciled at Paris and not in Canada, at the time of the conquest; and (2) that the deed of cession of the 29th April, 1764, was, *ipso facto*, null and void, as the said estates had long before vested in His Majesty; and (3) even supposing that the priests of St. Sulpice composing the seminary of Montreal, at the conquest, really were entitled to hold and enjoy, in their own right, the said estates, this right could not be extended beyond the term of their natural lives; and the order of St. Sulpice, *quoad* Canada, would have died with them, as the seminary of Montreal possessed no power to create priests of St. Sulpice of Paris. Besides, the members of St. Sulpice of Paris, being aliens, were disqualified from becoming members of the seminary of Montreal, and, also, were incapable of being members of a corporation.

These considerations appear to be conclusive, but, notwithstanding these legal opinions, it was generally felt to be desirable, and it was advised by the law officers of the Crown in England, that some compromise or amicable arrangement should be entered into by which His Majesty could be restored to his rights, without having recourse to the process of law which might carry with it some appearance of hardship to the persons against whom it would be enforced, and, finally, a statute was passed by the legislature of Lower Canada, 3 and 4 Victoria, chapter 30, the preamble of which is as follows:

"Whereas doubts and controversies have arisen touching the rights and title of the said Ecclesiastics of the Seminary of St. Sulpice of Montreal, in and to the several fiefs and seigniories and their dependencies of which they have been in possession since the capitulation, and it has been contended that all and several of the said fiefs and seigniories became, by conquest of this province by British arms, vested in the crown. And, whereas, Her Majesty desires that all such doubts and controversies should be removed and terminated; it was therefore enacted as follows: (1) That the members of the Seminary of St. Sulpice of Montreal (whose names are mentioned), and their successors be created an ecclesiastical corporation or body corporate and ecclesiastical, in name and in deed, by the name of the Ecclesiastics of the Seminary of St. Sulpice of Montreal, and that by this name they shall have perpetual succession, by admitting and electing new members according to the rules of their foundation, and the practice by them heretofore followed. And, further, it was ordained that the right and title of the said ecclesiastics of the Seminary of St. Sulpice of Montreal, in and to all and singular the said fiefs and seigniories of the Island of Montreal--of the Lake of Two Mountains--and of St. Sulpice and their several dependencies, and in and to all seigniorial and feudal rights, privileges, dues and duties arising out of and from the same, and in and to all and every the domains, lands, reservations, buildings, messuages, tenements and hereditaments, within the said fiefs and seigniories now held and possessed by them as proprietors thereof, with all and every the rights, privileges and appurtenances thereunto belonging, or in any wise appertaining, shall be and they are hereby confirmed and declared good and valid and effectual in law; and the corporation hereby constituted, shall and may have, hold and possess the same as proprietor thereof, as fully, in the same manner, and to the same extent, as the Ecclesiastics of the Seminary of St. Sulpice of Paris, or the Seminary of St. Sulpice of Montreal, according to its constitution before the 18th day of September, 1759, or either or both of the said seminaries might or could have done, or had a right to do, or might or could have held, enjoyed or applied the same, or any part thereof, previously to the last mentioned period--and to and for the purposes objects and intents following, that is to say--the cure of souls within the parish of Montreal--the mission of the Lake of Two Mountains, for the instruction and spiritual care of the Algonquin and Iroquois Indians--the support of the *Petit Seminaire* or college at Montreal--the support of schools for children

within the parish of Montreal--the support of the poor, invalids and orphans--the sufficient support and maintenace of the members of the corporation, its officers and servants--and the support of such other religious, charitable and educational institutions as may from time to time be approved and sanctioned by the Governor, the Lieutenant-Governor, or persons administering the government of the province for the time being--and to and for no other objects, purposes or intents whatsoever."

This statute was not disallowed by the Imperial Government, nor has it been repealed. On the contrary, when the statutes of Lower Canada were consolidated in 1845, this statute was accepted as forming part of the law of Lower Canada, and was incorporated with the statutes in force in Lower Canada, and subsequently this statute was again accepted and made to form part of the Consolidated Statutes of Lower Canada in 1861.

It will thus be seen that whatever rights were reserved to, and conferred upon, the Indians in occupation of the lands at the Lake of Two Mountains, under article 40 of the capitulation of Montreal, were entirely ignored by this statute, except the right to claim from the Seminary instruction and spiritual care. This statute was, moreover passed under the authority of the Constitutional Act of 1791, and, when assented to by the Crown, had the same force and effect as an Imperial statute. Further, these rights were not based on original occupation or any Indian title, but were conferred on the Indian as on act of bounty from the Crown, with the right to the Crown to alter or annul them. And as Mr. Justice Story has said, and quoted with approval by Sir W. J. Ritchie, C. J., in giving judgment in the St. Catherines Milling case (vol. 13, p. 599, S.C.R.): "It is to be deemed a right exclusively belonging to the government in its sovereign capacity, to extinguish the Indian title and to perfect its own dominion over the soil, and dispose of it according to its own good pleasure."

The question of prescription has been raised as vesting title in the Indians occupying a part of the seigniority of the Lake of Two Mountains. Article 2193 of the civil code is as follows:-- "For the purpose of prescription, the possession of the person must be continuous, and uninterrupted, peaceable, public, unequivocal and as proprietor."

The evidence adduced by the plaintiffs does not show that they occupied any lands of the said seigniority as proprietors.

The evidence of the defendant establishes the contrary.

When the mission was transferred from the Island of Montreal to the Lake of Two Mountains, the Indians were induced to remove thither, the object being to bring them under the influence of the Roman Catholic religion, and also to protect them from the incursions of warlike Indians from a distance and from the equally great peril of obtaining intoxicants, and not to grant them what is known as an Indian reservation.

It will be seen, however, from the statute 3 and 4 Victoria, that the Seminary of St. Sulpice of Montreal has been placed under the obligation of promoting and continuing the mission of the Lake of Two Mountains for the instruction and spiritual care of the Algonquin and Iroquois Indians.

This obligation must of necessity include the right of residence in the seigniority, on such lots and places as the defendant may designate, but within easy distance of the church, and taking into

consideration the primitive condition of the seigniorie when the statute was passed, and the well-known habits of the Indians, this obligation also includes the right to cut wood on the seigniorie for the building, repairing and heating of the dwellings of the Indians and the right to pasture their horses and cattle in the seigniorie, but all, within such limits as the defendants may fix and determine.

By reason of the foregoing considerations, the action and demand of the plaintiffs is dismissed with costs, subject to their right and that of the Indians represented by them, to demand and receive from the defendants, instruction and spiritual care, and, consequently, the right to reside in the seigniorie, on such lots and places as the defendants may designate, within easy distance of the church, and to erect dwellings thereon, and sheds for their horses and cattle, and, also, to cut and use wood on the seigniorie for the building, repairing and heating of their dwellings, and the right to pasture on the said seigniorie, their horses and cattle, all, within such limits as the defendant may fix and determine.

Smith, Markey & Skinner, for the plaintiffs.

Geoffrion, Geoffrion & Cusson, for the defendants.