CORINTHE ET AL. v. SEMINARY OF ST. SULPICE

(1912), 5 D.L.R. 263 (also reported: [1912] A.C. 872)

Judicial Committee of the Privy Council, Viscount Haldane L.C., Lord Macnaghten, Lord Atkinson, Lord Shaw and Sir Charles Fitzpatrick, 19 July 1912

(On appeal from judgment of Quebec King's Bench, supra p.67)

1. INDIANS (II--8)--TITLE TO SEIGNIORY OF THE LAKE OF TWO MOUNTAINS--OKA INDIANS IN QUEBEC.

> The effect of the Act 2 Vict. (Can.) ch. 50 (see now C.S.L.C 1861 ch. 42), is to place beyond question the title of the Seminary of St. Sulpice of Montreal to the Seigniory of The Lake of Two Mountains, and to make it impossible for the Indians of Oka to establish an independent title either to possession or control in the administration of the seigniory, either by prescription or aboriginal title or on the theory that the title of the seigniory was merely as trustees for the Indians; any benefits to which the Indians were entitled as upon a statutory charitable trust enforceable by legislation, or possibly in an action by the Attorney-General, were not such as to support an action for recovery of the land by the elected chiefs of the bands of Indians concerned.

APPEAL from a judgment of the Court of King's Bench for [Statement] Quebec (Appeal Side), affirming a decision of Mr. Justice Hutchinson.

The appeal related to the title to the ownership of the Seigniory of the Lake of Two Mountains at Montreal, in regard to which for over a century a controversy has existed. The appellants are the elected chiefs of a band of Indians residing at Oka within the limits of the Seigniory. They claimed to be the owners of the Seigniory and demanded possession of it on three grounds: (1) That they are the descendants of the first aboriginal occupants; (2) that they have acquired a title by prescriptions, *i.e.*, by 30 years' possession, and (3) that the titles of the respondent ecclesiastics--if they existed--were only as trustees for the benefit of the Indians. They allege that the Indians have from time immemorial enjoyed the use of the common lands to cut firewood and pasture cattle, and other purposes consistent with common ownership, and that the ecclesiastics were now forcibly preventing the Indians from exercising their rights, were selling plots of the land to white people, and had fenced in a large portion of the common.

The modern title of the Ecclesiastics of the Seminary of St. Sulpice of Montreal is contained in a statute of Canada, first enacted by 2 Vict. ch. 50, re-enacted by 3 and 4 Vict. ch. 30, and now included in chapter 42 of the Consolidated Statutes of Lower Canada of 1861. The effect of the statute is, briefly, to recognize and, if necessary, to constitute the respondents as a corporation, to confirm their title to this particular Seigniory with others, and to impose upon them certain obligations in regard to their sub-grantees.

The Canadian Government, considering it desirable in the public interest that these conflicting

claims should be finally determined, directed these proceedings to be taken, and undertook the payments of the costs on both sides.

Mr. Justice Hutchinson, who tried the case, thought that the Indians had not occupied the land as proprietors, but that the seminary of St. Sulpice had been placed by statute under the obligation of promoting and continuing the mission of the Lake of Two Mountains for the instruction and spiritual care of the Indians, which must involve their right of residence in that district [STATEMENT] and of cutting wood and pasturing their horses and cattle. From that decision both parties appealed.

The Indians reiterated their claim to absolute ownership. The ecclesiastics, on the other hand, insisted that the Indians had no right in the Seigniory at all, and that the obligations of the ecclesiastics to the Indians (if any) were simply to give them instruction and spiritual care and for these purposes to permit them to reside in such convenient and accessible places within the Seigniory as they might designate. The Court of Appeal dismissed both appeals. From that decision the pre- sent appeal was instituted.

[Argument] *R. C. Smith*, K.C. (of the Canadian Bar), and *Rowlatt*, appeared for the appellants.

Sir Robert Finlay, K.C., *Geoffrion*, K.C. (of the Canadian Bar), and *Geoffrey Lawrence*, for the respondents.

Mr. *Smith*, who said he was instructed by the Minister of Justice to argue the case of the Indians, submitted that the Government desired to have the whole contention in regard to these lands definitely discussed and decided. There had been constant agitation and friction on the subject for the last 40 or 50 years, and it was time that it should come to an end. The history of the matter began in 1663, when the original grantees of the Island of Montreal, on which the city was built, transferred their rights to the Seminary of St. Sulpice of Paris, who in 1677 received an edict from the King of France to establish in the island a community and seminary of ecclesiastics. The ecclesiastics, thus established, opened a mission just outside the walls of Montreal for the conversion and education of the Indian tribes who had pitched their tents under the walls. Ultimately the mission was removed to the north shore of the Lake of Two Mountains, and two Royal grants, in 1717 and 1733, of land for the purposes of the seminary were made. These constituted the Seigniory of the Lake of Two Mountains. Those grants by the French Crown were not, it was submitted, absolute grants, but were grants to the ecclesiastics in trust, the Indians being the real beneficial owners and the ecclesiastics were trustees of the Seigniory on behalf of the Indians.

The two contentions might thus be summarized. The Indians asserted an absolute or beneficial ownership, while the ecclesiastics, on the strength of their grants and the statute, said the Indians were only there out of tolerance and grace on their part, and had no legal rights at all, except perhaps to cut wood and pasture cattle and live where they were allowed.

Sir Robert Finlay, interposing, said the respondents did not admit that there was a trust of any sort or kind. The modern position of the community was recognized and regulated by the statute 2 Vict ch. 50, on which they had ever since acted, and which was purposely passed to dispel doubts as to the right [Argument] and title to such seigniories, which doubts had been raised after the Treaty of Paris.

In the course of the argument some of their Lordships expressed a doubt whether any absolute ownership of the land by the ecclesiastics had been established, and suggested that the justice of the case might be satisfied if their right, as trustees for the mission, was conceded, and an investigation made as to the way in which the trust might be exercised in the interests of all parties.

R. C. Smith, K.C., continuing his argument in support of the claim, contended that the Oka band of Indians, represented by the appellants, was entitled as of right to the use, enjoyment, and occupation of the whole Seigniory, or, in the alternative, that the respondents were trustees for them of the whole of the Seigniory. The respondents' title, if any, was subject to a statutory trust declared by the ordinance 3 and 4 Vict. ch. 30, in favour of the Indians, and the latter's rights and title had not been taken away by the ordinances and statutes relied on by the respondents.

Rowlatt, who followed on the same side, suggested that should the question hereafter be raised in another form their Lordships' judgment in the present case should leave it open to the appellants to argue that there was a special trust affecting the Seigniory for the residence, education, and religious instruction of the Indians if the Indians wanted to avail them- selves of it.

Sir Robert Finlay, for the respondents, said that there was no ground for the claim put forward in the action, and he asked that the appeal should be dismissed.

Geoffrion, K.C., following on the same side, maintained that the respondents were the absolute owners of the property for all the purposes for which they existed. He pointed out that every one of the Indians had been given by the respondents a definite lot to reside on. The Seminary had never tried to chase them out or to refuse them occupation of the lands. The whole fight began by the Indians believing that they owned absolutely or beneficially the whole Seigniory, and that controversy had been going on for over 100 years. The Seminary also paid $20,000 for the expense of removing some of the Indians to other lands, but a number of them came back again.

London, Eng., July 19, 1912. THE LORD CHANCELLOR (VIS- COUNT HALDANE) delivered the judgment of the Board:--For upwards of a century a controversy had existed concerning the title to the Seigniory of the Lake of Two Mountains. The Ecclesiastics of the Seminary of St. Sulpice of Montreal, on the one hand, had claimed it under grants from the King of France, and under statutes passed later on by the Canadian Legislature.

Their assertion had been that they held the Seigniory in the full proprietary title, and that the Indians residing within the limits of the Seigniory had no individual title to it, nor any right, competent to them as individual beneficiaries, to control the administration of the land. The Indians belonging to the band resident upon the Seigniory had, on the other hand, con- tended that they possessed proprietary rights or at all events, indefeasible rights of occupation, by virtue of either an unex- tinguished aboriginal title or occupation sufficient to found a prescriptive title, or by virtue of an obligation created by the grants, statutes, and other documents relating to the Seigniory.

The appellants brought an action on the footing that they were the duly elected chiefs of a band of Indians residing on the land in question. By their declaration they claimed possession of the Seigniory, or at all events, of certain common lands comprised in it; or alternatively, that if the defendant ecclesiastics had a title to the Seigniory, such title was subject to a trust for the benefit

of the plaintiffs and those whom they represented, such that the latter were entitled to the free use of the common lands free from interference.

Among the important documents in the case were certain grants from the King of France in 1717 and 1718, and in 1733 and 1735.

These grants, which were made to predecessors of the respondents, purported to convey to them land forming part of the Seigniory, with a full proprietary title, but on the condition that they should alter the situation of a certain mission they had founded among the Indians in the neighborhood, and build a church and a fort for the security of the latter. The circum- stances under which these grants were made, and the events which occasioned them, appeared in detail in the judgment of the Superior Court, and their Lordships did not think it necessary to refer to them in detail.

In 1841 the Legislature of Lower Canada passed an Act with a preamble referring to a controversy about the title of the Ecclesiastics of the Seminary, not relating, however, to the questions involved in the issues raised here. By section 1 they were declared to be a corporation. By section 2 their title to the Seigniory was confirmed, and it was enacted that the corporation should hold as fully as their predecessors, but for certain purposes, objects and intents. These were to be the care of souls within the parish, the mission of the Lake of the Two Mountains, for the instruction and spiritual care of the Algonquin and Iroquois Indians, the support of a college at Montreal, the support of schools for children in the parish, and of the poor, invalids and orphans, the support and maintenance of the members of the corporation, its officers and servants, and the support of such other religious, charitable, and educational institutions as might, from time to time, be approved by the Governor of the Province, and for no other objects, purposes, or intents.

By section 14 the ecclesiastics were to lay accounts before the Governor of the province, and by section 15 they were, in re- spect of temporal matters, to be subject to visitation.

Their Lordships thought that the effect of this Act was to place beyond question the title of the respondents to the Seigni- ory, and to make it impossible for the appellants to establish an independent title to possession or control in the administra- tion. They agreed with the learned Judges in the Courts below in thinking that neither by aboriginal title, nor by prescription, nor on the footing that they were *cestuis que trustent* of the corporation, could the appellants assert any title in an action such as that out of which this appeal had arisen. They agreed with the reasoning upon these points in the judgments of the Courts below.

They desired, however, to guard themselves against being supposed to express an opinion that there were no means of securing for the Indians in the Seigniory benefits which section 2 of the Act shewed they were intended to have. If this were a case which the practice of the English Courts governed, their Lordships might not improbably think that there was a charitable trust which the Attorney-General, as representing the public, could enforce, if not in terms, at all events *cy pres*, by means of a scheme, or, if necessary, by invoking the assistance of the legislature.

Whether an analogous procedure existed in Quebec, and whether in that sense the matter was one for the Government of the Dominion, or of that of the Province, were questions which had not

been, and could not have been, discussed in proceedings such as the present.

All their Lordships intended to decide was that, in the action in which the present appeal had arisen, the plaintiffs' claim was based on a supposed individual title which their Lordships held did not exist. If in some different form of proceeding, in which the Crown, as representing the interest of the public, puts the law in motion, or if negotiations are initiated for the settlement of a question as to the location of these Indians, which may be of importance to the general interests of Canada, their Lordships desired to make it clear that nothing they had now decided was intended to prejudice the questions which might then arise.

They would humbly advise His Majesty to dismiss the appeal. They gathered from what was said at the Bar that it was un- necessary for them to dispose of the costs.

Appeal dismissed.