

NIANENTSIASA V. AKWIRENTE ET AL. (NO. 1)

(1859), 3 L.C.Jur. 316 (also reported: 8 R.J.R.Q. 32)

Lower Canada Queen's Bench, Lafontaine C.J., Aylwin, Duval , Meredith , and Mondelet JJ., 9 June 1859

Held,--That the security bond given in appeal by Indians is valid, inasmuch as in the present case, the Indians who became securities were, as appeared by the affidavits, in possession as proprietors according to the Indian customary law, of certain real estate situated and lying within the tract of land appropriated to the uses of the tribe to which they belonged.

The Respondents having made a motion to set aside the security given by the Appellant, (which security consisted of two Indians, Ignace Kaneratahere and Thomas Tahantison), a rule was issued returnable on the 30th April, 1859, and which rule is in the following words:

"It is moved on the part of the said Respondents inasmuch as the Appellant has not given good and sufficient security in the manner required by law to entitle him to the present appeal, and inasmuch as the security by the appellant in this cause given is insufficient, the sureties in the security bond mentioned being valueless and not worth the amount in which they justified as will more fully appear by the affidavits herewith fyled, that the security given by the appellant upon the present appeal be declared insufficient and null and void, and this appeal dismissed with costs, unless cause to the contrary be shown on the 30th April instant:--"

It is ordered that the appellant do shew cause to the contrary on Saturday the thirtieth day of April instant, sitting the Court.

The Respondents fyled in support of their rule four affidavits to establish the insolvency of the securities. On the part the appellant, four counter affidavits were produced in which it is stated: que le dit Thomas Tahantison est propriétaire et en possession de l'immeuble décrit en l'acte de donation en date du 31 Mars 1859, Mtre Lepailleur, N.P., et depuis environ cinq ans et qu'il a continué à l'être jusqu'à ce jour sans interruption. Il arrive souvent que les Sauvages, dans l'étendue de la Seigneurie du Sault St. Louis, possèdent des terres et en sont réputés et en sont réellement propriétaires sans avoir de titre devant notaires, ni par, écrit sous seing-privé. La moitié indivise de l'immeuble décrit à l'acte de donation susmentionné vaudrait pour des blancs, au moins quatre cent piastres. Sur la dite moitié indivise de l'immeuble appartenant au dit Thomas Tahantison, il y a une maison neuve qu'il a construite l'automne dernier, et un écurie. C'est une maison de vingt pieds quarrés couverte en bardeaux. L'écurie est couverte en planches et bien bonne. Je sais que Ignace Kaneratahere possède un emplacement situé au Village du Sault St. Louis, sur lequel il y a une maison en pierre à deux étages, dans laquelle il réside et qui vaut au moins huit cents piastres. Il possède cet emplacement depuis que j'ai l'âge de connaissance comme propriétaire, une terre d'à peu près quatrevingts arpents en superficie, dans la Seigneurie du Sault St. Louis, près de la paroisse St. Isidore, valant à peu près six cents piastres; je sais qu'il possède aussi comme propriétaire trois Isles sur lesquelles il cultive du foin, dans les limites de la dite Seigneurie, et cela depuis plus de dix ans--ces trois Isles peuvent valoir cent piastres. Le dit Ignace Kaneratahere tient maison comme susdit, avec sa famille, et possède un ménage aussi

bien qu'en ont les Sauvages à l'aise; je ne lui connais pas de dettes, et je n'ai pas connaissance qu'il ait été poursuivi en justice.

The appeal bond had been given in December 1858. The deed of gift fyled by the Appellant with his affidavits was made and passed on the 31st March, 1859.

Carter, for the Respondents contended that Indians could not hold in their own name immovable property situated within the limits of such tracts of land as were occupied by them in this Province, and cited the following authorities:

13 & 14 Vic. ch. 42.--Sect. 1.--Indian lands vested in a commissioner.

Sect. 2.--All suits to be brought by or against commissioner.

Sect. 3.--Commissioner has power to concede, lease or charge any such lands.

Sect. 4.--Rights of individual Indians as *possessor* or *occupant* preserved.

No. 997. The Commissioner of Indian lands for Lower Canada vs. Louis Payant dit St. Onge, and Onganoron defendant *en garantie*. Under this statute, *Justices* Day, Smith, and Mondelet, on 23rd March 1855, rendered judgment sustaining a *revendication* of wood cut in the seignior in question. Referred to 7th head of admissions fyled, establishing that ten cords of the wood had been cut on land *in the occupation* of Defendant *en garantie*.

The judgment declares he had no right or title by virtue whereof he could sell the wood and *Carter*, for Respondent contended that it sustains the proposition that the lands in Sault St. Louis and the right of property are vested in the commissioner.

Rev. Statute p. 573.

17 Geo. 3, ch. 7 S. 3.--Prohibits persons living in any Indian village without a license.

Rev. Statute, p. 574.

3 & 4 Vic. ch. 44, sec. 2. Governor may order any person resident in Indian village to remove therefrom under a penalty and imprisonment.

The rule taken by the Respondents was discharged with costs.

The judgment was as follows:

La cour après avoir entendu l'Intimé sur sa motion du trente Avril dernier ainsi que l'Appelant, par leurs avocats, examiné le dossier en cour de première instance et les pièces justificatives à l'appui de la dite motion ainsi que celles à l'encontre et sur le tout mûrement délibéré; rejette la dite motion avec dépens,

Doutre & Daoust, Attorneys for Appellant.

Carter, Attorney for Respondent.

(P. R. L.)