

## [PRIVY COUNCIL.]

J. C.\* LABRADOR COMPANY . . . . . DEFENDANTS ;

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AND

July 26, 27, THE QUEEN . . . . . PLAINTIFF.  
 28, 29 ;  
 Aug. 2, 3 ;  
 Nov. 19.

AND THE CROSS-APPEAL.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER  
 CANADA, PROVINCE OF QUEBEC.

*Action of Ejectment—Effect of Act (18 Vict. c. 3) as to Defendants' title—Prescription—Immemorial Possession—Disclosure of Title with its Infirmitics.*

In an action of ejectment by the Crown, it appeared that the appellant company derived title through a grant made in 1661 by the French Government, which gave no seigneurie over the land in suit, but only a right to make establishments for hunting and fishing within certain limits; that an Ordonnance in 1733, together with the action of the French Crown thereunder, did not create or recognise any title in the heirs of the grantee to such seigneurie; that down to 1854 there was no evidence of either its creation or recognition by the British Crown; but that in 1854 the Canadian Act, 18 Vict. c. 3 (amended by subsequent Acts), recognised that there was a seigneurie of Mingan, being part of the disputed land the boundaries whereof were conclusively established by a schedule authorized by the Acts:—

*Held*, that the High Court was right in dismissing the suit as regards the scheduled lands. If a mistake had been made the legislature alone could correct it; a court of law must give effect to the enactment as it stands:

*Held*, further, with regard to the claim of the company to hold the whole of the land in suit by prescription and immemorial possession, that inasmuch as it had disclosed the true root of its title, the law of prescription did not apply.

CONSOLIDATED CROSS-APPEALS from a decree of the Court of Queen's Bench (Feb. 6, 1891), affirming by a majority a decree of the Superior Court (Sept. 18, 1888).

The question at issue was as to the title of the Crown to a large tract of territory within the Province of Quebec, forming the northern sea coast of the Gulf of St. Lawrence and extending

\* *Present*:—LORD WATSON, LORD HOBHOUSE, LORD MACNAGHTEN, LORD MORRIS, and LORD HANNEN.

from Cape Cormorant at the mouth of the River St. Lawrence to the eastern boundary of the province near Brador Bay by Bell Isle Straits. The tract of land in dispute is about 450 miles long, and is of a uniform width throughout of six miles inland from the sea coast.

The facts and proceedings are stated in the judgment of their Lordships.

The Judge of the Superior Court decided that the company had satisfactorily proved the grant of the seigneurie in question; that they had not surrendered any portion of it except the district from the Île aux Œufs to the River Moisy in the proceedings in 1733, and that the result of such proceedings left the rights of the predecessors of the company untouched except in respect of the district surrendered. He further decided that the company and their predecessors in title had been in practically undisturbed possession of the seigneurie for more than two centuries, that there had repeatedly been a recognition of the rights of their predecessors by the Crown, both in the Maurepas correspondence, by the receipt of dues, which were only owing to the Crown on the hypothesis that a seigneurie existed, and finally by the schedule of 1864. He left open and undecided the point raised by the company that their immemorial possession and their possession for over 100 years amounted to a title. But while thus in favour of the company on the main point, that of the existence of the seigneurie, the judge was in favour of the Crown as to what constituted its eastern boundary.

The Court of Queen's Bench affirmed the judgment of the Superior Court, but solely upon the ground that the Crown was bound by the recognition of the existence of the seigneurie contained in the seignorial Acts, and that as against the company the schedule of 1864 was binding as to the eastern boundary of the seigneurie.

*Rigby*, Q.C., *Abbott*, Q.C. (of the Canadian Bar), and *Tyrrell T. Paine*, for the Labrador Company, contended that the Courts below were right, so far as they held upon the evidence that the company had proved the existence of the seigneurie in question. They referred to the evidence as shewing an original

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grant thereof by the French Government to the appellant's predecessor—a subsequent recognition of its existence first by the French and afterwards by the British authorities, and that the rights thereunder, so far as they were asserted in the present suit, had not been surrendered.

With regard to the points of law involved, they contended that the majority of the Court of Queen's Bench were right in holding that the statutory recognition of the existence of the seigneurie, by the Acts of 1854, 1855, and 1856, related to the terra firma of Mingan, and bound the Crown. The error was in holding that the schedule of 1864 definitely settled the question of the eastern boundary. In the case of an unsettled seigneurie, which the terra firma of Mingan was, such schedule had no effect whatever except to fix the amount of the difference in value of the dues occasioned by the change from seignorial tenure to that of franc aleu roturier.

Two classes of seigneuries are dealt with by the Acts, settled and unsettled; in other words, seigneuries in which there had been subinfeudation, and those in which there had not. In regard to settled seigneuries it would be necessary to ascertain the difference in value of the dues not only between the Crown and the seignior, but also as between the seigneur and his censitaires, to whom the land was conceded and by whom it was settled (see sect. 7, sub-sect. 4, of the Consolidated Statutes of 1861, c. 41). A "censitaire" is defined by sect. 8 to be "every person occupying or possessing any land in any seigneurie with the permission of the seigneur or from whom the seigneur has received rents or other seignorial dues in respect of such lands." In the case of lands held by censitaires, but only in such case, the Commissioners were directed to ascertain the extent and nature of the lands held by them (see sect. 7, sub-sect. 5). No such direction was given in the case of seigneuries: indeed it was by sect. 9 expressly enacted that for the purpose "of making the schedule of any seigneurie the boundaries thereof shall be deemed to be those actually possessed by the seigneur although all or any part thereof may be in dispute." Neither as between seigneur and censitaire, nor as between Crown and seigneur, nor as between seigneur and adjoining seigneur, was any jurisdiction

as to boundaries given to the Commissioners, and it is expressly stated in sect. 9 that for the purpose of making the schedule of any seigneurie "the boundaries" of a seigneurie are to "be deemed to be those actually possessed by the seigneur although all or any part thereof may be in dispute."

Further than that, as regards unsettled seigneuries, the change of tenure was effected *eo instanti* by the passing of the Act of 1856, and there was no necessity for settling boundaries by a subsequent schedule. Consequently, those who prepared the schedule of 1864 acted without jurisdiction in fixing the eastern boundary of Mingan at the River Goynish, and disregarded the direction of the Act to adopt the boundaries actually possessed by the proprietors; and a schedule so drawn is not binding on the appellants. [LORD WATSON:—How can a court of law go behind what has been done by the Legislature?]

It was also contended that the company and its predecessors in title had been in possession, in good faith, for more than 100 years, of the lands in suit, with the knowledge of, and without the interference of, the Crown. Such possession is equivalent to, or is sufficient evidence of, a title even against the Crown; especially in the case of wild and unsettled lands, which under the feudal law were alienable, although forming part of the domain of the Crown. Such possession is evidence of a grant by the Crown of the whole of the property in dispute. [LORD WATSON:—Is there any evidence of possession which is inconsistent with a licence? Can you use possession for any other purpose than to explain the original grant? Can you prescribe contrary to the title which you produce and rely on?] The authorities cited upon the question of prescription were the *Edit de Moulins de Février*, 1566; *Bosquet*, vol. ii. pp. 90 and 96 (2nd ed. pp. 112 and 120); *Bacquet*, *Troisiesme Traicté*, partie iii.; *Du Droit de Déshérence*, ed. 1664, p. 170, ch. 7, No. 8, and p. 177; *Bourjon*, *Droit Commun de la France*, vol. i. p. 183, ed. 1770, pt. i. sect. 2, ss. 23 and 24; *Tit. iii. chap. prélim. sect. 1*, ss. 3, 4, and 5; *Tit. xii. c. 4*, s. 3, p. 1093. *Dalloz*, *Jurisprudence*, 1838: première partie, *Cour de Cassation*, p. 166; ditto, 1849, deuxième partie, *Cour d'Appel*, p. 149; *Pothier's Works*, ed. 1827, par *Dupin*, vol. viii. pp. 517, 534, sects. 278–284, 288; *Hervé*, ed.

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J. C. 1785, *Théorie des Matières Féodales et Censuelles*, vol. i. pp. 335,  
 1892 397, which is an authority that there may be prescription of a  
 LABRADOR seigneurie against the Crown; 5 Guyot, *Tr. des Fiefs*, p. 5, citing  
 COMPANY Dumoulin, vo. *Dénombrement*, sect. 7, N. 24; and 5 Guyot, c. 7,  
 v. p. 157. See also sect. 2213 of the Civil Code, on which it may  
 THE QUEEN. be said that a prescriptive censitaire is not covered by it, and  
 also that prescription, having begun to run while the old law was  
 in force, was governed thereby.

Sir *Horace Davey*, Q.C., *Laflamme*, Q.C., and *Belleau*, Q.C. (both of the Canadian Bar), and *Gore*, for the Crown, contended that under the grant of 1661, the company's predecessors did not derive title to any territory upon the mainland, but only a right to establish stations thereon within the limits and for the purpose stated therein. The effect of the judgment in 1733 was that the grant was held not to be binding on the Crown, and in the proceedings the grantee surrendered to the French Crown all claims thereunder. Upon the cession of French Canada to England the claims of the grantee were considered and rejected, and nothing has happened since to preclude the present claim of the Crown. The evidence entirely negatives any possession or occupation of the lands in dispute except for the limited purposes mentioned in the grant. Nor were there any acts of ownership exercised by the appellants' predecessors which were not referable to the terms of the grant.

As regards the two points of law raised by the appellants, it was contended, first, that no title to any part of the territory in dispute had been obtained under the Act of 1856 and the schedule of 1864. Reference was made to the three Acts of 1854, 1855, and 1856, and to c. 41 of the Consolidated Statutes, 1861, which consolidated them. In the Act of 1856 there was nothing to shew what seigneurie was referred to in sect. 10 under the name of Mingan. At that time the seigneurie of the mainland of Mingan had, as was held by all the judges of the Court of Appeal, no existence. The only seigneurie known by that name was that of the Isles of Mingan, which latter seigneurie had never been settled or conceded, and, therefore, did not come within the terms of sect. 10. The evidence shewed that the schedule had

been prepared by the chief clerk to the Commissioners, who acted on erroneous information, and had been signed by the Commissioners without any steps being taken to verify either the title or extent of the seigneurie. Neither the Crown nor any of the parties interested had any notice of the contents of the schedule nor any opportunity of being heard before it was published. An erroneous statement in an Act, a reference to a non-existing state of things, does not give existence thereto, unless it appears from some part of the Act that the object was to settle the point in a particular way. Reference was made to Municipal Corporation Act, 5 & 6 Will. 4, c. 76, s. 6, to Schedule A, where Gateshead is mentioned. But in *Rex v. Greene* (1), it was held that Gateshead was not a municipal corporation, and that its mention in the schedule was a mistake. See also *Rex v. Haughton* (2). The Act cannot create a seigneurie contrary to the fact, there not being any intention so to do.

With regard to the other point, viz., the claim of title by prescription or immemorial possession, it was contended that no title as against the Crown could be acquired in that way. Art. 2213 of the Code is not new; see Pothier, Bugnet's ed. vol. 9, pp. 416, 421, sects. 278-288. See also art. 2208 of the Civil Code, according to which no one can prescribe against his title. The title relied upon by the company binds it, and cannot be altered by any length of possession under it unless it is shewn that acts were done with the intention of altering the rights as conferred by the grant. Reference was made to Dunod, *Traité de Prescription*, part i., c. 8; Merlin's *Répertoire*, Title Prescription, vol. 24, pp. 142, 145. The title explains the possession; the quality of the latter will not be changed in the absence of a clear proof of intention so to do: Troplong, *Prescription*, vol. ii., p. 47. The title adduced by the defendants being manifestly insufficient, no new title has been created either by possession or by recognition by the Crown. Reference was also made to art. 2203 of the Civil Code, which specifies numerous restrictions upon the power of prescribing.

*Rigby*, Q.C., replied.

(1) 6 Ad. & E. 548.

(2) 1 E. & B. 501, 515.

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J. C. 1892. Nov. 19. The judgment of their Lordships was delivered by

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LORD HANNEN :—

The subject-matter of these appeals is a tract of country on the northern shore of the Gulf of the St. Lawrence, extending from Cape Cormorant to the Strait of Belle Isle, a distance of more than 400 miles, with a depth of six miles.

The Labrador Company is in possession of this territory. The Attorney-General for the province of Quebec, on behalf of Her Majesty, seeks to recover it from the company, who claim title to the whole of the land in question under a grant alleged to have been made in 1661 to one François Bissot by “the Company of New France,” deriving its powers from the Crown of France. The Labrador Company also claimed a title by prescription and immemorial possession. In answer to this claim the Attorney-General denies that the alleged grant of 1661 gave a title to the land in question, or that a title by prescription can be acquired against the Crown. He also alleges that the grant to Bissot was revoked by the French Crown and abandoned by Bissot’s successors in title. The company further rely on certain alleged acts of recognition by the Crown, which they contend preclude the Crown from setting up the said revocation and abandonment of the grant, or from denying its validity.

The judgment of the Superior Court affirmed the title of the Crown to the larger portion (about 250 miles) of the tract in dispute, leaving the company in possession of the rest. The River Agwanus or Goynish was taken as the dividing line, the Crown recovering all that lies to the east of that river, and the company keeping all that lies to the west.

Both parties appealed from the judgment, and the Court of Queen’s Bench dismissed both appeals.

The basis of the company’s claim is the alleged grant of the 25th of February, 1661. It is necessary therefore, in the first place, to examine the nature and extent of this grant. In 1627 a company, called the Company of New France (or of the Cent Associés) was formed, to which the King of France conceded the pays de la Nouvelle France, including the land in question, “en

toute propriété, justice et seigneurie," with the right to distribute the lands. The rights of this company were subsequently surrendered to the king, and by him ceded to a fresh company, called "the Company of the West Indies;" but in 1661, while the Company of New France retained its original powers, it made, on the 25th of February of that year, a grant to François Bissot, under whom the Labrador Company claim as successors in title.

This grant is no longer in existence, the original document, as well as the copy supplied to Bissot, having been destroyed by fire. Before their destruction, however, François Bissot, on the 11th of February, 1668, made an *aveu*, or declaration, to the Company of the West Indies, the successors of the Company of New France, setting forth the grant made to him by the last-named company in 1661. This *aveu* has been preserved, and it has been treated throughout these proceedings as containing a correct statement of the original grant.

This *aveu* is in the following terms :—

"François Bissot, Sr. de la Rivière, lequel avoue et déclare tenir de nos Seigneurs l'Isle aux Œufs, située au dessous de Tadoussac, vers les Montpellès, du costé du Nord, quarante lieues ou environ dud. Tadoussac, avec le droit et faculté de chasse et d'établir en terre ferme aux endroits qu'il trouvera plus commodes, la pesche sédentaire des loups marins, baleines, marsouins, et les autres négoes, depuis la dite Isle aux Œufs jusqu'aux Sept Isles et dans la Grande Anse, vers les Esquimaux où les Espagnols font ordinairement la pesche, avec les bois et terres nécessaires pour faire le dit établissement. Le tout à luy appartenant par titre de concession en date du vingt cinq Février mil six cent soixante et un, signé par extrait des délibérations de la Compagnie de la Nouvelle France, A. Chefault, à la charge de payer par chacun an, deux castors d'hyver ou dix livres tournois au receveur de la dite Compagnie, et les droits accoutumés pour la traite à la communauté de ce pays, au bas duquel titre est écrit Dubois Danaugour, ratifié le don que dessus de laquelle dite déclaration il nous a requis acte et a signé. Ainsi signé, Bissot, avec paraphe.

" Sur quoy, oüy le procureur fiscal, nous avons accordé acte au

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dit sieur Bissot de son dit aven et déclaration, et iceley condamné payer la dite redevance, tant pour le passé que pour l'avenir, suivant et conformément au dit titre de concession, sans néanmoins que le dit acte puisse être tiré à conséquence n'y préjudice, remettant au Roy ou à la Compagnie de faire valoir le dit titre ou point. Mandons, &c.

“Donné par nous Louis Théandre Chartier, Escuyer, Seigneur de Lotbinière, Conseiller du Roy, Lieutenant-Général Civil et Criminel, à Québec, les assizes tenant le onzième jour de Février mil six cent soixante-huit.”

It is not disputed that this concession gave to Bissot the seigneurie of the Isle aux Œufs, situated some distance to the west of Cape Cormorant, the western boundary of the land now in question. The contest arises on the passage commencing “Avec le droit et faculté de chasse, &c.”

For the Crown it is contended that the effect of the grant is to give the seigneurie of the Isle aux Œufs, with the accessory right of hunting, &c., on the mainland within certain limits, the extent of which will be considered later. The company, on the other hand, contend that this grant gave a seigneurie, not only in the Isle aux Œufs, but in the territory on the mainland within the defined limits.

Their Lordships are of opinion that this contention of the company is wholly untenable. They agree on this point with the opinion expressed by all the judges in the Courts below, that the rights to be exercised on the mainland are only accessory to the seigneurie of the island. They consist in the permission (not to take possession of a defined district on the mainland, but) to establish at such places as may be most convenient, fixed stations for the capture of seals, &c., with the privilege of taking the timber and land necessary for the establishment of such stations. This last-mentioned provision effectually excludes the idea that the whole land was conceded to Bissot in fee, in which case it would have been superfluous to give him the right to take the wood and land necessary for the stations. Further, the reservation of an annual payment of two beaver skins for the right to hunt and fish is stated by Sir A. A. Dorion, C.J., in the judgment of himself and his colleagues, to be inconsistent

with the hypothesis that a fief on the mainland was granted, and this appears also to have been the opinion of Routhier, J., and it has not been controverted before this board.

One fact remains to be noticed, tending strongly to negative the company's contention that a seigneurie on the mainland was conceded by the grant of 1661. That document contains no limitation inland of the supposed fief. It might, therefore, as well have been made the basis of a claim to the whole territory northwards, forming part of La Nouvelle France, as to the land for six miles inland. A license to make stations for fishing and hunting, and trading with the natives in an unsettled country, might naturally be given without fixing its limits inland; but it cannot be supposed that a fief would be created without some indication of what its boundaries were to be.

This leads to the consideration of the question, over what extent of territory on the mainland is the right of establishing stations for fishing, &c., conceded? It is thus defined: "Depuis la dite Isle aux Œufs jusqu'aux Sept Isles, et dans la Grande Anse, vers les Esquimaux où les Espagnols font ordinairement la pesche;" that is, "from the said Isle aux Œufs, up to the Seven Islands, and in the great cove in the direction of the Esquimaux where the Spaniards usually fish." In English there can be no doubt this means that the fishing stations may be established in the land between the Isle aux Œufs and the Seven Islands, and also in the Grande Anse. It has, however, been contended that the proper construction of the French is different, and that the force of the word "jusque" is carried on to the word "dans," and that the passage has the same meaning as if it had run "jusqu'aux Sept Isles et jusque dans la Grande Anse." No authority for this construction has been given, and all the judges of the Court below, whose mother-tongue is French, agree that the right of establishing a station in the Grande Anse is distinct from the right to make stations up to the Sept Isles. Routhier, J., says: "Ces derniers mots comprenaient-ils toute la terre ferme depuis les Sept Isles jusqu'à la Grande Anse? Je ne le crois pas, car autrement on aurait fixé l'étendue de la concession depuis l'Isle aux Œufs jusque dans la Grande Anse." And Dorion, C.J., thus paraphrases

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the grant: "Que la concession était de l'Isle aux Œufs en seigneurie, et de plus le droit de faire des établissements de pêche et de chasse sur la côte Nord jusqu'aux Sept Isles, puis dans la Grande Anse vers les Esquimaux." Their Lordships have no doubt that this is the correct interpretation of the grant, and that it conceded to Bissot no seigneurie on the mainland, but only a right to make establishments for fishing and hunting up to Sept Isles, and also in the Grande Anse. Where that Grande Anse was situated will be considered hereafter.

It may be convenient at this point to refer, in order of date, to a map of 1678, which has been relied on as shewing that a seigneurie on the mainland was recognised as belonging to Bissot. This map is described as one "pour servir à l'éclaircissement du papier terrier de la Nouvelle France," and was dedicated to the Minister Colbert by the Intendant Duchesneau. Upon this map is printed "Seigneurie du Sieur Bissot," stretching along the coast from a little east of the Sept Isles to a place about two-thirds along the "Isles de Mingan." These islands follow another to a river along which is written "Esquimaux," and at a short distance eastward "Baye des Espagnols" is inscribed.

The bearing of this map on the question of boundary will, so far as is necessary, be referred to by-and-by. Its value as evidence of a seigneurie on the mainland is now the subject of consideration. The utmost effect that could be given to this map would be as evidence of reputation at the date it bears of the existence of such seigneurie; but this must necessarily give way before the proof which the representatives of Bissot have supplied that this grant to him did not in fact concede a seigneurie on the mainland. But undue importance has been given to this inscription on the map. Bissot had, in fact, a seigneurie, namely, that of the Isle aux Œufs, to which belonged as an accessory a right of making establishments for hunting, fishing, &c., on the mainland. It was not necessary for the purpose of the cartographer that all this should be set out on the map. What was of importance to him was, to indicate over what extent of coast Bissot exercised rights whatever they might be, and he did this by writing the words referred to. This inter-

pretation is indeed impliedly adopted by Routhier, J., who is most favourable to the contention of the Labrador Company. He says, speaking of the right of continuing the establishment of Mingan, "Comme cette exploitation était un accessoire de l'ancienne seigneurie de l'Île aux Œufs, il n'est pas étonnant que depuis des temps reculés on l'ait appelée seigneurie du sieur Bissot."

But it is contended, on behalf of the Labrador Company, that, even if the grant of 1661 did not in itself create a seigneurie on the mainland in favour of Bissot, this effect was produced by an Ordonnance of Intendant Hocquart in 1733, and the subsequent action upon it by the French Crown.

This Ordonnance was pronounced in a suit instituted in 1732 by Pierre Carlier, the Adjudicataire Général des Fermes Unies de France, et du Domaine d'occident, against the heirs of François Bissot (who had died in 1676), and the heirs of Sieurs Lalande and Louis Jolyet, to whom the seigneuries of the isles and islets of Mingan had been granted by the French Crown in 1679, calling upon them to shew by virtue of what title they had taken possession of the territory occupied by them on the terre du nord (i.e., the mainland north of the St. Lawrence) below the River Moisy up to the Bay of the Spaniards.

The Adjudicataire Général did not dispute the title of Jolyet (deceased) to the Isles of Mingan, described in the grant of 1679, as the "Islets du Mingan du côté du nord et qui se suivent jusqu'à l'ance des Espagnols." He only required the title to anything claimed on the mainland. The seigneurie of the isles and islets of Mingan will therefore only be of importance in considering the question of boundary.

In answer to the demand of the Adjudicataire Général, the Defendants relied solely on the grant of 1661, under which they alleged they had formed establishments and had continual possession for seventy-one years, and they conclude by a specific claim to be maintained in the possession and enjoyment of the lands granted to François Bissot, deceased, "in accordance with the title of concession of the 25th of February, 1661."

In reply the Adjudicataire Général, after taking the objection, not now insisted on, that the grant of 1661 was in conflict with

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certain earlier grants, said that, admitting the grant of 1661 and the declaration of 1668 as valid title-deeds, and construing them in the sense most favourable to the defendants, the grant gave no proprietary title except on the Isle aux Œufs. On the mainland it conferred no right of ownership, but only the right to establish there “la pesche sédentaire,” from l’Isle aux Œufs, up to the Seven Isles and in the Bay of the Spaniards, “a right,” he continues, “which it would have been useless to express, if the intention of the concession had been to give a right of property, and which by its expression positively excludes a right of property.” He then presents substantially the arguments against the then defendants’ claim which have been repeated before this Board, and he proceeds: “Though the defendants have not even the right to make establishments in the tract of country from the Seven Islands up to the Bay of the Spaniards, it is in consequence of their title of concession that Bissot, deceased, has founded the establishment of Mingan continued by the defendants, for which they allege a continued possession of seventy-one years. Having regard to this long enjoyment of the seigneurie of Mingan, he will not dispute it, provided that they be limited to a concession of which the limits shall be certain and determined, so that they cannot injure or prejudice the ‘Traites du Domaine du Roi.’ It is at Mingan that they have fixed their establishment on the mainland. The Farmer-General will not offer opposition to the enjoyment of it being continued to them, and even that the property in it be accorded to them by a new title, if His Majesty should think fit to accord to them as recompense the establishments which they have made there.” The Mingan here referred to as the place where the defendants are said to have fixed their establishment on the mainland is a station on the mainland opposite to the islands of Mingan, and is marked on several maps as the Mingan settlement.

The Adjudicataire Général concludes by demanding that he be maintained in his right, to the exclusion of all others, to exercise trading, hunting, fishing, and commerce in the tract of the domaine between l’Isle aux Coudres up to and including the River Moisy, that the defendants be condemned to pay him the

arrears of the annual dues of two beaver skins or ten livres tournois from 1661 to the then present year, unless they should prefer to give up (*se désister de*) the said concession, and consent to the reunion to the domaine of the said seigneurie of the Isle aux Œufs, which they long since abandoned, and, moreover, also to pay the dues for the trading which they had carried on at Mingan; and that the said defendants be bound to take a new title for the establishment made by them at Mingan aforesaid, to commence from Cormorant Point (“*en allant*”) in the direction of the Bay of the Spaniards, with such depth and on (payment of) such dues as it should please His Majesty to accord them.

By way of rejoinder to the reply of the *Adjudicataire Général*, the defendants reassert in general terms their claims, and ask whether their possession for seventy years, and the expenses they have been put to, and the losses they have suffered from the English in times of war, ought not to serve them in the place of title, and they conclude that, though they have proved their right, they consent to the River Moisy being the western limit of their concession up to the Bay of the Spaniards, and, therefore, they pray that they may be relieved from the payment of the dues with which that territory is charged, and that they may be given a new title to it.

This was the state of the controversy which the Intendant Hocquart had to decide. After reviewing the pleadings, *Monsieur Hocquart* gave his judgment as follows:—

He took notice of the abandonment by the defendants of the territory conceded to François Bissot, deceased, by the Company of Nouvelle France on the 25th of February, 1661, from the Isle aux Œufs up to the River Moisy, and, in consequence, as far as was necessary, reunited to the domain of His Majesty the said territory conceded to the said François Bissot from and including the Isle aux Œufs to Cormorant Point, four or five leagues below the River Moisy; forbade the defendants and all others directly or indirectly to exercise any trading, hunting, fishing, commerce, or establishment in the territory so reunited, or in the said River Moisy and its affluent lakes and rivers; and, in consideration of the abandonment aforesaid by the defendants,

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he discharged them from any arrears which might be due from them, and "as to the new title of concession required by them for the establishment made by them and their predecessor François Bissot at the place of Mingan aforesaid, the parties shall apply to His Majesty to obtain the same, with such frontage and depth and on payment of such dues as His Majesty shall be pleased to grant."

The effect of this Ordonnance was entirely to put an end to the seigneurie in the Isle aux Œufs, and to the rights, whatever they were, which had been conceded to Bissot by the original grant, as far as Cormorant Point, and to reannex the district from and including the said Isle aux Œufs up to Cormorant Point to the domain of the King. This, with the remission of the arrears, was the whole operative part of the Ordonnance. As to the request of the defendants that the limits of their concession should be from the River Moisy to the Bay of the Spaniards, and that of this district a new title should be granted to them, this was not acceded to. The district for five or six leagues eastward of the River Moisy was reunited to the Crown, and no mention whatever of the Bay of the Spaniards is made, and the defendants are remitted to the Crown to obtain a new title for "the establishment made by them and the said François Bissot, at the place of Mingan aforesaid," for such frontage and depth as His Majesty might think fit to grant.

François Bissot, the son, addressed several petitions for a new title to the Comte de Maurepas, the French Secretary of State. In these petitions he set out the substance of the original grant of 1661, explained that his father had made his first establishment at Mingan, where the family residence was formed, but that he had made many others at different places, which, after they had been destroyed by the English, had been from time to time re-established. He stated that the limits of the Royal domain had been fixed by Hocquart at Cormorant Point, and he prayed that he might be continued in the remainder of his concession from that point "down the river to the conceded lands" (by which appears to be meant, conceded to other persons), and the exclusive privilege of continuing there his establishments, and others, if possible, for the hunting of seals, with the rights

of hunting and trading with the savages such as he and his late father had enjoyed for seventy years.

The result of a correspondence which followed between the Comte de Maurepas and the Marquis de Beauharnois, the Governor of La Nouvelle France, and the Intendant Hocquart, was that the Comte de Maurepas stated, in a letter to MM. de Beauharnois and Hocquart, that the circumstances of the case would have determined him to propose to the King to confirm the heirs of Bissot in the possession of a part of the coast conceded by the grant of 1661, and to fix their condition; but that, having regard to the existing circumstances of the family, and the discussions which such a confirmation might give rise to, he had taken the course recommended by MM. de Beauharnois and Hocquart, to suspend all determination on the subject, and that he had only induced the King to agree that the heirs (of Bissot) should enjoy such extent of coast as they (Beauharnois and Hocquart) had designated in their letter, from the boundary of Tadoussac down the river to the concession of the Sieur Lafontaine, with such depth as they (Beauharnois and Hocquart) should think right to fix; and he concluded with a request that they would consider whether it would be convenient to leave them this extent of territory, or whether it would not be right to reduce it for the purpose of locating other concessionaries.

It does not appear that these suggestions of M. de Maurepas were ever communicated to the heirs of Bissot. No new title was ever granted to them. This letter imports no engagement on the part of the Crown to give one; it contains only the expression of a possible intention to do so if, upon the examination of this matter by MM. Beauharnois and Hocquart, it should be thought expedient. No further action on the subject is shewn. No boundary inland was ever fixed. All that can be inferred is that the representatives of Bissot continued to carry on their stations for fishing, &c., at Mingan as before. Their Lordships, therefore, are of opinion that the judgment of Hocquart and the action of the French Crown upon it did not create or recognise any title in the heirs of Bissot to a seigneurie on the mainland.

Nothing between the date of M. de Maurepas' letter, down to

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the cession of Canada to England in 1763, calls for observation. In 1766 the representatives of François Bissot laid before the British Government a claim to be proprietors of the terre ferme de Mingan, commonly called "the seigneurie and post of Mingan." In support of their claim they do not appear to have furnished evidence of the contents of the grant of 1661, but they relied on an "Acte de Notoriété," signed by several citizens and notables of Quebec, two of whom, at least, were parties interested, to prove an immemorial possession of the seigneurie of the mainland of Mingan by the heirs of MM. F. Bissot and Lewis Jolyet. This claim was referred to the law officers of the Crown in England, who, in the year 1768, reported upon it. After observing that "the claim is of an exclusive right of property in the soil containing originally, in extent along the north shore of the River St. Lawrence from the Isle of Eggs to the Bay Phelipleaux which appears to be about 500 miles, and in depth into the country without bounds or limitation," but of which a space of about thirty leagues from Egg Island to Cape Cormorant was acknowledged to have been surrendered, the law officers comment on the uncertainty of the grant as well as of possession, and they conclude, "Under these circumstances, we are of opinion that this claim, standing as it does at present upon these papers, could not in any judicial inquiry be allowed in point of law as valid and effectual; at the same time there is reason to think that some part of this family has been in some kind of legitimate and authorized possession of some particular parts of the shore within the limits described; but the ground, the nature, and extent of such possession does not appear at present in such authentic manner as to be capable of receiving any judicial confirmation."

In 1781 the claimants appear to have endeavoured to supply the want of proof thus pointed out. On the 28th of May in that year F. J. Cugnet, on behalf of himself and others named, claiming to be seigneurs and proprietors in undivided shares of the seigneurial fiefs of the isles and islets of Mingan, of the isle of Anticosty, and of the terre ferme de Mingan, is alleged to have presented an Act of foi et hommage in respect of the said fiefs and seigneuries. A document of this date and to this effect

is found in the register of foi et hommage, and it states that the "Seigneurie de la terre ferme de Mingan," commencing at Cape Cormorant, "jusqu'à la grande Ance vers les Esquimaux où les Espagnols faisaient ordinairement la pêche sur deux lieux de profondeur," was conceded by the company (of La Nouvelle France) on the 25th of February, 1661, to the Sieur François Bissot. Appended to this document is a certificate of Cugnet himself (who appears to have held the office of Keeper of the Papier Terrier) that this foi et hommage had been presented; but it is not signed by the Governor, and therefore has no validity. But from its having been found in the registry it has since been frequently assumed, though erroneously, to have had an official character.

This document contains two statements which are now known to be untrue, whether wilfully or not it is unnecessary to inquire. The one is that the grant of 1661 conceded a seigneurie from Cape Cormorant as far as the Grande Anse. It omits altogether the mention of the Sept Isles, and changes the language with regard to the Grande Anse. The second is that it introduces a limitation inland, thus supplying words which would meet the objection taken as to the uncertainty of the grant in this respect. It is said that these words are introduced in the margin of the document; but as the original is not before them, their Lordships cannot verify this statement.

The effect of these inaccuracies, whether intended or not, was that in 1803 MM. Vondenvelden and Charland, surveyors, in a work on the subject of the titles of ancient concessions include that of la terre ferme de Mingan, on the authority of the supposed Act of foi et hommage of 1781; and from this work the same error has been derived and continued in subsequent transactions. Thus in 1805, in an action at the suit of Ralph Rosslewin against one Crawford and others, the sheriff seized fifteen thirty-second undivided parts of the seigneurie of the Isles Mingan, "with all the rights in the seigniory of the mainland of Mingan." The Procureur Général claimed the droit de quint due to the Crown on the sale. The matter was referred to the arbitration of M. Planté, an advocate, who gave his decision and based it upon the supposition that the grant of

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 1892 Fr. Bissot, and refers for his authority to the false entry of the  
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 COMPANY work of MM. Vondenvelden et Charland. The demand and  
 v. receipt on this occasion of the droit de quint by the Procureur  
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 the Crown of their title to a seigneurie of the terre ferme de  
 Mingan. There is no proof that it was paid; but assuming that  
 it was, it does not amount to a recognition by the Crown. A  
 recognition to be effectual for the purpose of curing a defective  
 title must be made with knowledge of the defects to be cured,  
 and no such knowledge on the part of the Crown can in this  
 case be inferred from the mere receipt by its officer of a fiscal  
 due, under a mistake induced by the company's predecessors.

In 1837 James Stuart, on the part of several persons named, rendered faith and homage for, amongst other things, certain undivided shares in the Seigneurie de la terre ferme de Mingan. On this occasion the act of faith and homage is signed by the Governor, Lord Gosford. This would be *primâ facie* proof of the existence of some seigneurie on the mainland of Mingan; but this *primâ facie* proof is rebutted by the title relied on by the claimants, namely, that supposed to be derived from the grant of 1661, and the Ordonnance of Hocquart of 1733. The effect of these documents of title has been already considered.

Nothing calling for observation occurred after 1837 until the year 1854. Down to this time their Lordships are of opinion that the facts proved fail to establish that there was a seigneurie of the mainland of Mingan, or that the Crown had recognised its existence, although, chiefly from the supposed act of foi et hommage of 1781 containing the erroneous statement of the effect of the grant of 1661, a reputation had arisen that there was such a seigneurie.

With regard to the claim of the company to hold by prescription and immemorial possession, it is unnecessary to consider what would have been the effect of the evidence if the title of the company had rested upon this basis alone, because as the true root of their title has been shewn by the company themselves, there is no room for the application of the law of præ-

scription. This is clearly stated by many authors of authority: "On ne peut pas prescrire contre son titre en ce sens que l'on ne peut pas se changer à soi-même la cause et le principe de sa possession . . . il suit de là que lorsque le titre est représenté, c'est par lui qu'il faut régler la cause et le principe de la possession; et tant que le possesseur ne prouve pas une intervention légale soit par le fait d'un tiers, soit par une contradiction formelle, le titre reste la loi invincible qui sert à qualifier sa possession. Il y est ramené sans cesse par la loi et par la raison. C'est ce que les praticiens ont voulu exprimer par ce brocard; *ad primordium tituli posterior semper refertur eventus*." Trop-  
long de la Prescription, 522, 4th ed.

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In this state of things the Legislature of the Province of Canada, deeming it expedient to abolish all feudal rights and duties in Lower Canada, passed for this purpose the Seigniorial Act of 1854 (18 Vict. c. 3), amended by the Act of 18 Vict. c. 103 (1855), and the Seigniorial Amendment Act of 1856 (19 Vict. c. 53). The 10th section of this last-mentioned Act is as follows: "Inasmuch as the following fiefs and seigniories, namely: Perthuis, Hubert, Mille Vaches, Mingan, and the island of Anticosti, are not settled, the tenure under which the said seigniories are now held by the present proprietors of the same respectively, shall be and is hereby changed into the tenure of franc aleu roturier."

This is an absolute statement by the legislature that there was a seigneurie of Mingan. Even if it could be proved that the legislature was deceived, it would not be competent for a court of law to disregard its enactments. If a mistake has been made, the legislature alone can correct it. The Act of Parliament has declared that there was a seigneurie of Mingan, and that thenceforward its tenure shall be changed into that of franc aleu roturier. The courts of law cannot sit in judgment on the legislature, but must obey and give effect to its determination.

It remains only to consider what was the seigneurie of Mingan to which the Act of 1856 referred. It has been contended for the Crown that there was a seigneurie of the isles and islets of Mingan which may have been intended. The answer to this contention is that the proper name of this last-named seigneurie

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was that of “the isles and islets of Mingan,” and that there is no trace of evidence that it has been on any occasion otherwise designated, or that it has ever been known as the Seigneurie de Mingan.

An examination of the Act further proves that a seigneurie on the mainland was contemplated.

The original Act provides for the appointment of Commissioners (sect. 2), to whom (sect. 4) the Governor shall assign the seigneurie or seigneuries in and for which each of them shall act, and whose duty it shall be (sect. 5) “to value the several rights . . . with regard to each seigniory which shall be assigned to him as aforesaid.”

By virtue of these provisions Henry Judah, one of the Commissioners, had assigned to him the making of the cadastre, and the valuation of the rights of the seigneurie of Mingan, and he has discharged his duties specifically with regard to the “seigneurie of the terre firme de Mingan,” while on the other hand no mention has been made of the seigneurie of the isles and islets of Mingan.

Before beginning to prepare the schedule for any seigneurie it was the duty (sect. 7 of the Act of 1854) of the Commissioner to give public notice of the place, day, and hour at which he would begin his inquiry; he had power to examine on oath any person appearing before him.

Immediately after the making of the schedule, the Commissioner was bound (sect. 11 of the Act of 1854, and sect. 5 of the Act of 1856) to give eight days’ public notice that such schedule would remain open for the inspection of the seignior and the censitaires of the seigniory during thirty days following the said notice, “and any person interested in the schedule may point out in writing any error or omission therein, and require that the same be corrected or supplied.” Provisions are also made for the revision of the schedule, and it is enacted (sect. 8 of the Act of 1856) that no revision shall be allowed, unless application be made for the same within fifteen days after the Commissioner shall have given his decision under sect. 11 of the Act of 1854; and by the 10th section of the Act of 1855 it is enacted that, “after any schedule shall have been completed and deposited

under the said Act, it shall not be impeached, or its effect impaired for any informality, error, or defect in any prior proceeding in relation to it, or in anything required by the said Act to be done before it was so completed and deposited, but all such prior proceedings and things shall be held to have been rightly and formally had and done, unless the contrary expressly appear on the face of such schedule; and the same rule shall apply to all proceedings of the Commissioners under the said Act, so that no one of them, when completed, shall be impeached or questioned for any informality, error, or defect in any previous proceeding, or in anything theretofore done or omitted to be done by the Commissioners or any of them."

It was open, therefore, to the Government on the one hand, or the persons claiming to be proprietors of the seigneurie of the terre ferme of Mingan to have complained in due time and in the manner prescribed, of any error in the schedule. As no such complaint was made, the schedule as deposited must be deemed to be correct.

Now, by the schedule drawn up by Henry Judah (dated the 23rd of January, 1864), it is certified that the "seigneurie de Mingan ou de terre ferme de Mingan" is scheduled in the country and district of Saguenay, and is not conceded; it contains fifty leagues of frontage by two leagues of depth, extending from Cape Cormorant up to the River Goynish, forming an area of 705,400 arpents, and is bounded in front by the River St. Lawrence, and along its depth and two sides by the public domain.

This schedule, with the Act under which it was made, must now be deemed to have conclusively established the existence and boundaries of the Seigneurie de Mingan referred to in the 10th section of the Act of 1856.

Routhier, J., by an independent examination of the evidence, has arrived at the conclusion, in which their Lordships entirely concur, that the territory in which the right to make establishments for fishing, &c., was granted by the Concession of 1661, did not extend further eastward than the River Goynish, and that there is no foundation for the claim to extend it to Brador Bay in the strait of Belle Isle. Their Lordships concur with

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Routhier, J., in thinking that the bay referred to in the grant of 1661 as that where the Spaniards ordinarily fished was not that which is now called Brador Bay, but was the one indicated as the Baye des Espagnols on the map, presumably drawn up on the information of Sieur Jolyet, an experienced navigator, and one of the parties having an interest under the Concession of 1661. This bay exactly answers the description given in the grant of 1679 to Laland and Jolyet of the seigniory of the isles and islets of Mingan, "which follow one another to the bay called l'Anse aux Espagnols," and to the position assigned to it in the map of 1678, near the eastward end of those islands and near a place or river marked "Esquimaux." It is, however, unnecessary to examine this question in detail, as their Lordships are of opinion, for the reasons already given, that the schedule drawn up by Mr. Judah is conclusive on the subject of boundary.

Their Lordships will humbly advise Her Majesty that both appeals be dismissed, and that the judgment of the Court of Queen's Bench be affirmed, and they direct that the parties pay their own costs of the appeals.

Solicitors for the company: *Paine, Son, & Pollock.*

Solicitors for the Queen: *Bompas & Co.*

## ERRATA.

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<i>Page</i>	<i>Line</i>	<i>For</i>	<i>Read</i>	
24	19 from top	"Hollams"	"Holman."	
114	19	"follow another"	"follow one another."	
357	3 from top	"Lord Halsbury, L.C. '	"Lord Halsbury."	
358 }	Margin of pages }			
359 }				