Privy Council Appeal No. 54 of 1917.

Les Président et Syndics de la Commune de Laprairie de la Magdeleine - *Appellants*

v.

La Compagnie de Jésus - - - - - - *Respondents*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC (APPEAL SIDE).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH OCTOBER, 1920.

Present at the Hearing:

VISCOUNT HALDANE.
VISCOUNT CAVE.
LORD DUNEDIN.
LORD ATKINSON.
MR. JUSTICE DUFF.

[*Delivered by* VISCOUNT CAVE.]

This is an appeal from a judgment of the Court of King's Bench (Appeal Side) for the Province of Quebec rendered under the Act 3, George V (Quebec) c. 78, whereby it was provided that the respective rights of the respondents, the Society of Jesus, and of the persons having rights in the Laprairie common in the Province of Quebec should be determined by that Court subject to the appeal provided by law.

The material facts may be shortly stated as follows: The Jesuit Fathers were the owners, under a grant made by the French Government in 1647, of the Seigniory of Laprairie de la Magdeleine. In the year 1694 the Jesuit Fathers made a grant of about 3,000 arpents of land in the neighbourhood of the village of Laprairie, being part of the lands belonging to the Seigniory, to the inhabitants of Laprairie and of certain neighbouring districts for a common. In 1724 an agreement was made between the inhabitants and the Jesuit Fathers authorizing the latter to grant, out of the common land, *emplacements* or building lots for the extension of the village. After the cession of Canada to England

in 1763 the Jesuits gradually disappeared from the country, and on the death of the last of them, in or about 1800, their seigniories escheated to the Crown. In 1817, the common having become derelict and the village requiring extension, the inhabitants petitioned the Crown authorities, with the result that in the year 1820 a part of the common, defined in a plan drawn by the Crown Surveyor, M. Saxe, was set aside by the Crown for building. In 1822 an Act, 2 George IV, c. 8, provided for the election by the commoners of a president and syndics to define and regulate the common. This Act was from time to time continued, and was ultimately rendered permanent, and the appellants are the president and syndics elected under that Act. In 1867 the Crown rights in the common passed, under the British North America Act of that year, to the Province of Quebec. By an Act of 1887 (50 Vict. (Quebec) c. 28) the Jesuit Fathers were incorporated as La Compagnie de Jésus, being the respondent corporation. In 1888 the Governor of the Province, acting under the authority of an Act passed in that year respecting the settlement of the Jesuit estates (51 and 52 Vict. (Quebec), c. 13) ceded to the respondent corporation all the rights of the Province in Laprairie common. The result of the above transactions was that as from 1888 the respondents became the owners of all rights in the common formerly belonging to the Jesuit Fathers, subject to the grant of 1694.

Shortly after the events last mentioned it was ascertained that the soil of the common was suitable for brick-making, and questions arose as to the rights of the respondent and the commoners in the soil. By a series of statutes passed by the legislature of Quebec permission was given to alienate certain parts of the common for that purpose, the rights of all parties interested being reserved. Ultimately, by the above-mentioned Act of 1912 (3 George V (Quebec), c. 78), provision was made for the ascertainment of the rights of the parties by means of questions to be submitted to and answered by the Court of King's Bench (Appeal Side), subject to an appeal to this Board, and the appellants were authorised to represent the persons having rights in the common before all Courts for the purposes of the Act.

The questions submitted to the Court, as settled by Mr. Justice Lafontaine under the Act of 1912, were as follows :—

"1. What are the respective rights of the Society of Jesus and of the parties entitled to the common in the said Common of Laprairie ?

"2. Do any particular rights exist as regards the lands immediately adjoining the Common of Laprairie, and, if so, what are they and what lands are affected by those rights ?

"3. Is the deed passed on the 30th November, 1724, before Mtre. G. Barrette, N.P., still in force, and, if so, what are the rights which result from it ?"

The replies to the above questions, as rendered by the majority of the Court (Sir Horace Archambeault, C.J., and Lavergne, Carroll and Pelletier, JJ.) were as follows :—

"To the first question ; The Society of Jesus has over the Common of Laprairie a right of *domaine direct*, a right of ownership of

the soil and sub-soil, a right to the strands, rivers, timber and quarries, as well as to the rent of 30 'sols' for each inhabitant who puts beasts upon it. There can be no difficulty as regards the timber, for it no longer exists. The commoners (les ayants-droit de commune) have the co-ownership, limited to the right of pasturage for their beasts and to enjoyment for communal purposes only, without being able to dispose of these rights without the consent of the seigneur.

"The replies to the second and third questions must be identical; the Reverend Jesuit Fathers have the right to cede building lots (emplacements) for the purpose of enlarging the village or the town of Laprairie from this time forward. The application of the deed is without restriction as to time."

Mr. Justice Cross dissented from the above decisions and expressed his opinion as follows:—

"I would therefore say, in answer to the first question, that the ownership of the land of the common was and is vested in the commoners, subject to the claim of the Company of Jesus to thirty sols per year from each head of family and the right to stumpage mentioned in the deed of 1694.

. . . .

"In answer to the third question, I would therefore say that the Society of Jesus is entitled to sell for its own profit and account any of the lots shown on the Saxe plan of 1820 for village extension which may remain unsold and of which the Crown in right of the province of Quebec was in possession on the 5th November, 1889.

"In so far as not answered by the answer to the third question, the second question could relate only to the strip of one arpent outside the village reserved by the grantor in the deed of the 19th May, 1694; but that strip, never having formed part of the common, is not now in question, and the second question need not therefore be answered."

Against the decision of the majority of the Court the present appeal is brought.

From the above statement it is obvious that the decision on the first question must depend mainly upon the construction of the grant of 1694, and accordingly it is to the terms of that grant that the greater part of the argument before their Lordships has been addressed. The grant is contained in an "Acte" passed before a public notary, Maître Adhémar, on the 19th May, 1694, and found among his records in the archives of the Superior Court of Montreal. It is headed:—

"Vente par le R. P. Levaillant, S.J., gérant les affaires de la Seigneurie de Laprairie aux Sieurs Pierre Gagnié et autres pour les habitants de Laprairie de la Magdeleine."

and, after recording the presence of the Reverend Father François Levaillant, Superior of the Residence of Ville-Marie, managing the affairs of the Seigniory of Laprairie de la Magdeleine under authority granted by the Superior General of the Jesuit Fathers in New France, the grant proceeds as follows:—

"Lequel audit nom a volontairement donné et concédé et par ces présentes donne et concède à titre de cens et rentes seigneuriales dès maintenant et à toujours, promis et promet garantir de tous troubles et empêchements généralement quelconques aux habitants de Laprairie de la Magdeleine qui y sont prést habitués et à ceux qui s'y habitueront par la

suite, ensemble à ceux habiteront à la coste de la Tortue et depuis la Coste de la Tortue jusques à la Commune de la Prairie St. Lambert, à la fourche, et à Fontarabie ; les sieurs Pierre Gaignier, Claude Carron, Jean Caillaud Caron, Etienne Bisaillon, Charles Deno, faisant pour eux et pour les autres habitants dudit lieu de la Prairie de la Magdeleine habitués en vertu du pouvoir qu'ils ont d'eux, reçu en mon Estude, et ceux qui s'y habitueront auxdites costes de la Tortue, la fourche et Fontarabie, à ce prést, et acceptant pour eux leurs hoirs et ayant cause à l'avenir; La consistance de terre, &c. [here follows a description of the land]. Ce réservant ledit révérend père Levaillant audit nom, l'entier village, comme il est de prést, et un arpent de terre tout au tour du village et au dehors dudit fort, pour en faire ce que bon luy semblera sans que ledit arpent réservé hors dudit fort et joignant les pieuds d'iceluy puissent préjudicier auxdits habitants habitués et à habituer dit lieu à passer et faire passer leurs bestiaux pour aller sur les d. cy-dessus données et concédées.

" Lesquelles ledit révérend père Vaillant audit nom a données et concédées aux d. habitants pour leur service de commune, sans que ledit révérend père audit nom soit exclus de fre. paccager dans ladite commune les bestiaux qu'ils auront ou leurs fermiers qui sont ou seront sur lesdits lieux ci-dessus déclarés, et sans que lesdits révérends pères ny leurs fermiers soient obligés de contribuer à aucuns travaux sur la dite commune. Tenant ladite consistance de terre, &c. [here follow the boundaries].

" Pour de la dite consistance de terre cy-dessus donnée jouir par lesdits habitans habitués et à habituer aux dits lieux cy-dessus déclarés comme à eux appt. aux moyen des préstes, sans qu'ils en puissent vendre part ny partie ny l'employer en autre usages qu'une commune sans le consentement exprès des dits révérends pères Jesuites. Est expressé, convenu qu'il sera loisible auxdits révérends pères et habitans habitués et à habituer de prendre dans ladite Commune, du bois pr. fr. planches, madriers et bois de charpentes et autre bois quy leur seront nécessaires pour se bâtir pour eux seulement : et en cas qu'eux ou d'autres personnes y prennent du bois pour vendre, seront tenus de payer vingt sols par chaque pied d'arbre qu'ils abbattront dans ladite Commune, lequel argent sera employé au profit d'icelle dite Commune.

" A la charge que lesdits hab. des lieux habitués et à habituer seront tenus de paier par chacun ou [? an] aux dits révérends pères Jesuites ou au porteur des préstes. trente sols par chaque habitant en chef de famille, qu'ils seront tenus de paier comme dit est aux dits révérends pères au premier jour de décembre en argent monnoyé, dont le premier payement escherra et se fera au dit jour premier décembre prochain au dit lieu de la Prairie de la Magdeleine, et ainsi continuer de là en avant et à perpétuité. Et faute par lesdits habitants quy auront des bestiaux de paier les dits trente sols par chacun an seront deschus du dit droit de Commune. Et le d. R. père Vaillant et le dit Caillaud ont convenu, attendu que par le bail de ferme à luy fait des terres des d. révérends pères. La sus dite concédée ou partie est incorporée dans la dite ferme, le révérend père luy cède la moitié du revenu de la dite Commune pour le temps qui luy reste à expirer de son bail, sans qu'il puisse prétendre autre disminution et sans diminution du prix porté en son bail."

The deed was signed by Father Levaillant and the five representatives of the inhabitants above named in the presence of witnesses, as well as by the notary.

Before considering in detail the construction of the above deed, it appears to be desirable to consider a contention raised on behalf of the respondent corporation during the argument, viz., that by the law of Quebec no grant of proprietorship could be

made to a fluctuating body of inhabitants. In their Lordships' opinion this contention is unfounded.

The subject is dealt with by Denisart (" *Collection de Decisions Nouvelles*," Paris, 1786), who says :—

> " Le mot '*communes*' a deux acceptions principales. Il signifie d'abord une sorte de société que les habitans d'une même ville, d'un même bourg, d'un même lieu, commencèrent à former en France sous le regne de Louis VI, au douzième siécle, de l'agrément du souverain, avec pouvoir de s'assembler, de se choisir des officiers, de se cotiser pour les besoins de la société. Nous en avons parlé au mot '*Communauté d'habitans.*' On nomme en second lieu '*commune*' ou '*communaux*,' des terres qui appartiennent à une communauté d'habitans, et dont les habitans jouissent ordinairement en commun." (Vol. IV, p. 746, tit. " Commune.")

Thus the word " commune " was used sometimes as signifying the general body of inhabitants of a town or village, who were treated as a quasi-corporation capable of owning land or other property, and at other times as signifying the property owned by such a community. In the former sense it was also referred to as a " *communauté d'habitans*," and such a *communauté* was authorised to elect officers (generally known in rural communities as syndics), and to hold general meetings or *assemblées d'habitans*. Such a community could be formed without letters patent. (Vol. IV, p. 728, tit. " *Communauté d'habitans*.")

To the same effect is Merlin (" *Répertoire de Jurisprudence*," ed. 1812, Vol. II, p. 587, tit., " *Communauté d'habitans* "), who says :—

> " Les Communautés d'habitans possèdent en certains lieux des biens communaux, tels que des maisons, terres, bois, prés, pâturages, dont la propriété appartient à toute la Communauté, et l'usage à chacun des habitans, à moins qu'ils ne soient loués au profit de la Communauté, comme cela se pratique ordinairement pour les maisons et les terres ; les revenus communs qu'ils en retirent, sont ce que l'on appelle les deniers patrimoniaux."

He adds that such communes cannot acquire land without the previous authorisation of the Government (*Ibid.*, and *see* Vol. VII, p. 606, under the title " Mainmorte ") ; but such an authorisation may be presumed after so long a period.

It is stated by Denisart (Vol. IV, p. 747) that the word " commune " is not properly applied to land over which a community of inhabitants have limited rights of usage, but only to land of which it is the proprietor ; but according to Merlin (Vol. II, p. 592, tit., " *Communaux* ") the distinction was not always observed, for he says :—

> " Remarquez néanmoins que fréquemment on appelle aussi *Communaux* les biens qui ne sont tels qu'à titre d'usage, et dont les communes n'ont pas la propriété foncière. Cette manière de parler s'est même glissée dans nos lois."

Turning now to the construction of the deed of 1694, with particular reference to the question whether it passed to the inhabitants of Laprairie the proprietorship of the soil or only the right of user, it is plain that the language used in the early

part of the deed, if taken alone, would be is in favour of the former view. The words :—

> " donne et concède à titre de cens et rentes seigneuriales "

with which the grant commences, are appropriate to a feudal grant by seigneur to *censitaire* (*see* the Decisions of the Courts of Lower Canada on Seigniorial Questions (1856), Vol. A., p. 126A, ff.); and the same may be said of the initial words of the habendum (as it would be called in English Law), viz. :—

> " Pour de la dite consistance de terre cy-dessus donnée jouir par lesdits habitans habitués et à habituer aux dits lieux cy-dessus déclarés comme à eux appartenant au moyen des présentes."

But it is necessary, as pointed out by Carroll J., when stating the reasons for the judgment of the majority of the Court, to consider the other expressions used in the deed and to construe the document as a whole. No safe inference either way can be drawn from the fact that the grant is made to the inhabitants "*pour leur service de commune*," for the word "*commune*" is (as appears by the above quotation from Merlin) used sometimes as indicating proprietorship and sometimes with reference to a right to profits only. But there are other elements in the deed which point to the conclusion that something less than full proprietorship was intended to pass. The grant is not made to the inhabitants of Laprairie only, but to them and the inhabitants of other neighbouring districts. The words prohibiting sale or use for any purpose other than as a common—

> " sans le consentement exprès des dits Révérends Pères Jésuites "

are incompatible with proprietorship, and are inadequately explained by the fact that a right of pasture is reserved to the seigneurs. The grant to the inhabitants of a right to cut timber was unnecessary if they were to own the soil. The reservation of a rent or payment of thirty sols a year for each inhabitant who is the head of a family would not fall under the ordinary description of "*cens et rentes*" and tends to show that the seigneur was to retain something more than the *dominium directum* only. And lastly, the provision that, on the default of any inhabitant holding cattle in paying the thirty sols a year, those inhabitants "*seront deschus du dit droit de Commune*," is hardly explicable on the theory that the soil passed to the inhabitants; for the obligation of a commoner to pay this sum to the seigneur would be inadequately secured by the penalty of a forfeiture of common rights in favour of other commoners. The effect of these considerations is to throw great doubt upon the inference which might otherwise be drawn from the initial words of the grant and the habendum, and to give weight to the argument that the deed passes no more than a right of user.

In view of the ambiguity of the grant, it is permissible to take note of the manner in which it was construed at or about the time of its execution; and accordingly reference may be made

to certain agreements entered into before the same notary in 1705 and 1724, to which some of the inhabitants who signed the deed of 1694 were also parties. By a convention entered into between the Jesuit Fathers and a number of inhabitants of Laprairie on the 21st January, 1705, and found among the notarial Acts of Maître Adhémar, it was agreed that the Jesuit Fathers should be at liberty to dispose of four arpents of the common on the terms of replacing them by other land of equal extent; and by another convention entered into by a meeting of inhabitants of Laprairie with the Jesuit Fathers on the 30th November, 1724 (to which more particular reference will be made hereafter), it was agreed that the Jesuit Fathers and their successors should be at liberty to grant as building lots (*concéder pour emplacements*) such parts of the common as might be required for that purpose. In each of these agreements it is assumed that, subject to the consent of the commoners, the seigneurs are in a position to alienate the soil. These agreements, therefore, support the view that the soil had not passed under the grant of 1694, but was still vested in the seigneurs.

Reference may also be made to the Act of 1822 (2 George IV (Quebec), c. 8), by which the management of the common was entrusted to the appellants. By that Act it is recited that:—

> "Certain of the inhabitants of the village and seigneurie of La Prairie de la Magdeleine, in the county of Huntingdon, are in possession of a Common," which is described, and that "the general benefit of the proprietors of the said Common and of the inhabitants of the said village and seigneurie of La Prairie de la Magdeleine would be materially promoted if provision were made for the well ordering of the said Common,"

thus distinguishing the proprietors of the common from the inhabitants of the village. Provision is then made for the election by the inhabitants "entitled to the benefit of the said common" of a chairman and four trustees (*président et syndics*) to "manage and direct the business relating to the said common," and such trustees are incorporated by the name of the appellants. The trustees are to cause the common to be surveyed and the limits thereof to be ascertained and fixed by a surveyor; but the Commissioners representing the Crown (in which the seigniorial rights were then vested) are authorised to appoint a surveyor to act jointly in making the survey, and no survey or act of the trustees or their surveyor is to be valid or binding unless agreed to or ratified by the Commissioners, their surveyor or agent. The Act also requires the trustees to ascertain the "persons having any pretensions to right of common in the said common of Laprairie," and to determine the number of horses and cattle which shall be allowed to graze upon the common. No provision is made for vesting the common in the trustees. The recitals and provisions of this statute appear to recognise a substantial interest in the common as being still vested in the seigneurs; and some of the expressions used are inconsistent with the view that the soil had passed to the commoners.

Upon the whole, and having regard to all the above considerations, their Lordships are not satisfied that the deed of 1694 vested the proprietorship of the common in the inhabitants, and accordingly they do not differ from the conclusions of the Court of King's Bench as to the reply which should be given to the first question.

The meaning of the second question is obscure. If, as the Court appears to have thought, it was intended only to raise the point which is more specifically raised in the third question, it is unnecessary to reply to it. But if some other point relating to lands adjoining the common was intended to be raised, then the question is not formulated with sufficient clearness, nor are the facts sufficiently stated, to enable a reply to be given. In these circumstances it appears to their Lordships that this question should be left unanswered, leaving it to the parties to formulate the question again in the " clear and distinct manner " required by the Act of 1912 if they should desire to do so.

The third question relates to the Acte or agreement of 1724 to which reference has already been made for another purpose, and it is desirable now to state in more detail the nature of that document. It is headed :—

> " Procès-verbal d'une Assemblée d'habitants intéressés dans la Commune de Laprairie à la réquisition du R. P. d'Heu, supérieur des Jésuites, et convention de concession d'emplacement : Adhémar, notaire royal, 30 novembre 1724,"

and is in the following terms :—

> " L'an 1724, le 30 novembre, à la sortie et issue de grande messe ledit jour dite et chantée en l'Eglise du d. lieu de Laprairie de la Magdeleine a esté faite assemblée à la requisition du Révérend père d'Heu, Supr. des Révérends Pères de la compagnie de Jésus, Supr. de la Résidence de Ville-Marie, gérant les affaires de la Seigneurie de la Prairie de la Magdeleine, de la plus grande partie des habitants du dit lieu de Laprairie de la Magdeleine quy ont droit de commune, chez le Sr. Pinsonno, auxquels dits habitants il a esté représenté par le dit Révérend père d'Heu, qu'il est très important de travailler à l'augmentation de l'établissement du d. village du d. lieu, et ne le pouvant maintenant faire que par des concessions nouvelles d'emplacements hors le dit village qui sont unis à la Commune dudit lieu, et avant ce faire ledit Révérend père d'Heu requére à cette cause et fait l'agrément et consentement des d. habitants pour ce assemblés à grand nombre, et après l'examen fait par les d. habitants que plus le d. village sera établi plus il sera en estat de soutenir et de ce deffandre à l'avenir contre les ennemis, ils ont pour cet effet à l'exception du Sr. Pierre Brosso tous dit d'une commune voix qu'ils consentaient et consentent par ces présentes de leur bon gré, pleine et libre volonté que le dit Révérend Père dispose de ce jour à l'avenir luy et ces successeurs et ayant c. du terrain qui sera nécessaire de concéder pour emplacements au delà de ce quy peut estre présentement concédé autour du dit village, pour en disposer par concession d'emplacement luy ces successeurs et ayant cause de ce dit jour à l'avenir et s'en appropriéter les droits seigneuriaux. Et en reconnaissance du consentement fait par lesdits habitants au dit Révérend père d'Heu il promet de faire un présent à leur Eglise d'un tableau de St. François Xavier, de dix à onze pieds de long et de six à sept pieds de large avec un cadre doré autour d'iceluy et ce le plutôt que faire ce pourra."

The Procès-verbal is signed by Father d'Heu and nine inhabitants of Laprairie, present at the meeting, and it is stated that others had declared that they did not know how to sign. There is annexed to the Procès-verbal a document dated the 19th December, 1724, by which four other inhabitants (including Pierre Gagnier, one of the accepting parties in the deed of 1694) approve and ratify it; and also a minute of another "*assemblée de la plus grande partie des habitants de la paroisse*," which appears to have been held on the 25th July, 1725, and at which Father d'Heu, at the request of the meeting, substituted for the promised painting of St. François Xavier a payment of 600 livres for the needs of the Church.

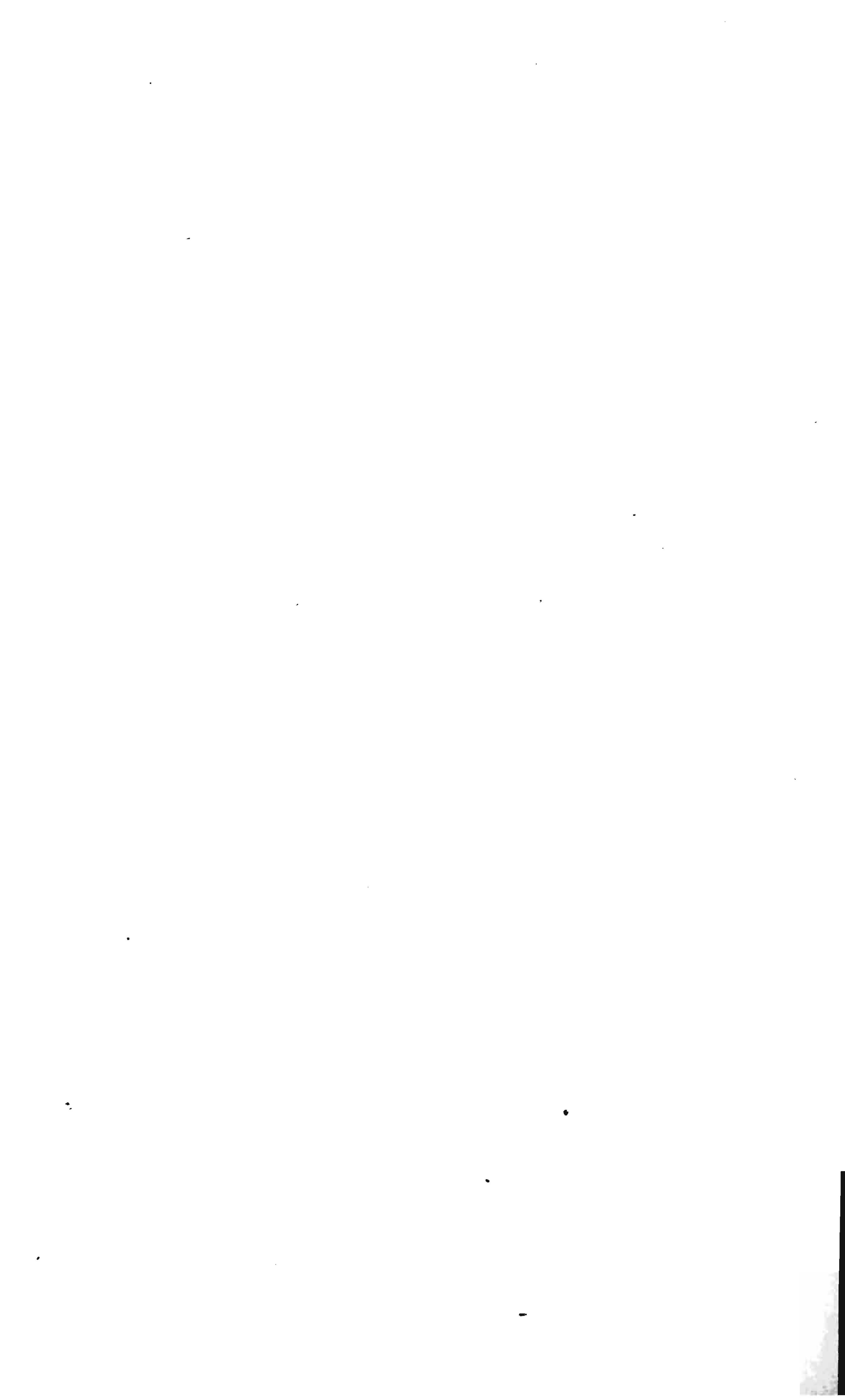
It appears to their Lordships to be open to serious question whether this agreement was valid and binding upon the general body of the inhabitants of Laprairie. It is stated in Denisart (Vol. IV, p. 729, tit. "*Communauté d'Habitans*") that, while a small number of inhabitants present at a meeting is sufficient for the election of officers, etc., yet when it is proposed to take a step of more importance for the *communauté*, such as the alienation of any of its property, etc., it is necessary that the meeting should be regularly summoned by the "chefs de village," and that two-thirds of the inhabitants of the village should be present at the discussion. Merlin (Vol. II, p. 588) adds that under certain ordinances of 1683 and 1687 no alienation can be made except for certain purposes of which the acquisition of a painting is not one; but it is not clear whether these provisions had become law in Quebec in 1724. Had there been no objection of substance to the transaction, it might perhaps after this lapse of time have been presumed that the proper forms were followed and the necessary majority obtained. But the agreement now in question purports to bestow upon the seigneurs, in consideration of the gift of a painting, the right at any time thereafter to make grants of parts of the common for building; and it would not be right to assume the validity of such an agreement, which might result in time in the complete destruction of the common rights, without strict proof that it was entered into with the proper sanction. It is true that in the years 1817 to 1820, the inhabitants of Laprairie having petitioned the Governor-General to pass legislation for the appropriation of a part of the common to building purposes, the Commissioners to whom the petition was referred, after investigating the matter, recommended that building lots should be granted by the Crown under the agreement of 1724, and this appears to have been done. But it is to be observed that the commoners were not less desirous than the Crown that grants of building lots should be made, and no inference prejudicial to their rights can be drawn from the fact that they made no objection to the manner in which effect was given to their wishes. It would appear that some other *emplacements* were granted under the agreement, but the dates and circumstances of these grants are not stated.

But even if the validity of the agreement of 1724 be assumed, there is good ground for saying that it is no longer operative. The Act of 1822 directed, as has been already stated, that the trustees, with the concurrence of the seigneur, should ascertain and fix the limits and boundaries of the common, and no reference is made to any power or authority enabling the seigneurs afterwards to encroach upon the limits so fixed. Further, by the Acts of 1854–1855 and the consolidating statute of 1861 (Lower Canada, 1861, c. 41), provision was made for the abolition of all feudal rights and duties in Lower Canada, and it was provided that no land should thereafter be granted by a seigneur to be held by any other tenure than *franc-alleu roturier*, or free and common socage. It is true that the seigniories of the late Order of Jesuits and other seigniories held by the Crown were excepted from the compulsory clauses of the Act (sec. 60), but provision was made for bringing those seigniories within the Act (Sec. 61). In view of this legislation, it is difficult to see how the respondent corporation could now make grants of *emplacements* under the "acte" of 1724 "*et s'en approprier les droits seigneuriaux.*" Further, it seems doubtful whether the "acte" contemplates a sale of building lots at a profit, and it is clear that it would not cover a grant for brick-making purposes. The deed, therefore, if it ever had any validity, appears to be now obsolete.

For these reasons, which do not appear to have been brought to the notice of the Court of King's Bench, their Lordships are of opinion that no grant could now be made under the agreement of 1724.

Their Lordships will accordingly humbly advise His Majesty that the order appealed from should be affirmed as regards the reply to the first question and set aside as regards the replies to the second and third questions; that the second question should be left unanswered; and that the reply to the third question should be that the Acte of the 30th November, 1724, is not in force.

Their Lordships think that, having regard to their decision, there should be no costs of this appeal.



In the Privy Council.

LES PRÉSIDENT ET SYNDICS DE LA COMMUNE DE LAPRAIRIE DE LA MAGDELEINE.

v.

LA COMPAGNIE DE JÉSUS.

DELIVERED BY VISCOUNT CAVE.

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