

COMMISSIONER OF INDIAN LANDS FOR LOWER CANADA v. PAYANT DIT ST. ONGE, PAYANT DIT ST. ONGE V. ON8ANORON

(1856), 8 R.J.R.Q. 29 (also reported: 3 L.C.Jur. 313)
Lower Canada Superior Court, Day, Smith, and Mondelet JJ., 22 March 1856

- Held:**1. That Indians have not by law any right or title by virtue whereof they can sell and dispose of the wood growing upon their lands, set apart and appropriated to and for the use of the tribe or body of Indians therein residing.
2. That such wood is held in trust by the commissioner of Indian lands for Lower Canada.

This was an action *en saisie-revendication* brought by Plaintiff in the principal demand, for the recovery of twelve cords and upwards of fire-wood of the value of £10, cut, felled and carried away by Defendant in the principal demand in November, 1854, from and upon the unconceded lands of the seigniory of Sault St. Louis, which, for more than 20 years, has been set apart and appropriated to and for the use of the tribe or body of Indians therein residing and as such is vested in principal Plaintiff. Besides the value of the wood, principal Plaintiff claimed £50 for damages. Before answering this demand, principal Defendant took out an action *en garantie* against the Indian On8anoron with whom he had made a contract for the wood, alleging: "Que, par acte reçu à St-Isidore, devant Langevin et son confrère, notaires, le 18 "décembre 1854, le Demandeur et le Défendeur "avait donné, le 1er novembre dernier, au Demandeur, un "morceau de terre d'environ un demi-arpent en superficie, "sur sa terre qu'il occupait alors dans le Sault St-Louis, si- "tuée au côté sud-est du chemin de fer de Montréal et New- "York, à nettoyer et faire la terre du demi-arpent en super- "ficie, au râteau (les souches exceptées), et livrable au prin- "temps prochain, pour être ensemencées, ce à quoi le Deman- "deur consentit et s'obligea par le dit acte, et pour toute "indemnité, de la part du Défendeur, envers le Demandeur, ce "dernier enlèverait dedans le morceau de terre tout le bois "qui s'y trouvait et en disposerait comme bon lui semblerait; "tel fut expressément convenu." The Defendant *en garantie*, having appeared, took up the *fait et cause* of principal Defendant and pleaded as follows: que le Défendeur en garantie a été, pour plus de cinq ans, propriétaire en possession, et a joui, pour son propre usage et avantage, et cela d'une manière distincte, des autres terres formant partie des terres qui sont sous le contrôle du Demandeur principal, d'un certain lot de terre situé dans al seigneurie du Sault St-Louis au côte sudest du chemin de fer de Montréal et New-York; lequel lot de terre est encore occupé par le Défendeur en garantie; qu'il en était ainsi en possession, le 1er novembre dernier, ainsi que du bois qui avait crû sur ce lot de terre; que, ce jour-là, il a permis au Défendeur principal d'enlever du bois qui se trouvait sur le lot, et de le convertir à son propre usage, ainsi qu'il a été convenu plus tard, par acte fait le 18 décembre 1854, devant J.F.Langevin et son confrère, notaires; que, par les us et coutumes suivis dans la tribu indienne du Sault St-Louis, le Défendeur en garantie avait droit de jouir du dit lot de terre, et de convertir à son propre usage le bois qui avait crû sur ce lot; que le Défendeur principal, qui avait acquis le bois du Défendeur en garantie, n'en pouvait être, en aucune façon quelconque, dépossédé par le Demandeur principal, et qu'ainsi la saisie de partie de ce bois a été pratiquée à tort, et le Demandeur principal ne peut revendiquer la propriété du bois saisi.

To this plea, principal Plaintiff answered as follows: That even if Defendant *en garantie* did occupy the land mentioned, which Plaintiff denies, yet the occupation thereof or the possession thereof, under the customary indian title, could confer no right on the occupant to sell and dispose of the wood thereon, or any part thereof; that the whole of the lands of said seigniory are held in trust by Plaintiff, for the benefit of the whole tribe of Indians therein residing, and under the local regulations of the chiefs of the tribe, duly appointed by competent authority; that the right to take wood from off said lands, by said regulations and by law, extends only to the taking of such wood as may be required for the individual uses of the Indians residing therein, and confers on no party the right to sell and dispose of the same, and Plaintiff specially denies that Defendant *en garantie* had any legal right to sell and dispose of the wood seized; that both Defendant and Defendant *en garantie* were well aware of these facts, yet, contriving to despoil said property of the wood growing thereon, to the loss and injury of the community of Indians for whom Plaintiff holds said lands in trust, Defendant, with the connivance of Defendant *en garantie*, took the wood from off the lands of said seigniory, and removed the same out of the possession of Plaintiff, and, to give a colour to said unlawful act, the agreement fyled by Defendant *en garantie* was afterwards drawn up.

The following admissions were agreed upon by parties; 1. that Plaintiff is vested with the lands of the seigniorship of Sault St-Louis, in trust for the whole tribe of Indians therein residing as provided for in the statute in that behalf, and that the land from which the wood seized was cut and carried off was within the limits of said seigniorship, and that principal Defendant is not of Indian blood; 2. that the Indians residing in said seigniorship of which Defendant *en garantie* is one, have certain rights of property, to wit: the power to enter upon portions of the uncleared lands of said seigniorship, for the purpose of clearing and cultivating the same for their own use and profit; 3. that all Indians residing in said seigniorship have the right to cut whatever wood they may require for fire or other purposes for their own use; 4. that the possession or occupation of any portion of land in said seigniorship, by any individual Indian, gives him right of property therein as against any other Indians; 5. that Defendant *en garantie* had the common Indian right to the land from which the wood in question in this cause was cut; 6. that the question of the right of Indians to sell wood, off the lands of said seigniorship, has agitated the community of Indians for a considerable period, and that the chiefs thereof had warned the community not to traffic in wood, but Defendants do not admit that the chief had any right to forbid the sale of wood so cut as aforesaid, and neither Defendant nor Defendant *en garantie* plead ignorance that such traffic was forbidden by the chiefs; but, on the contrary, said parties were well aware of the traffic being forbidden as aforesaid. That the wood seized has grown upon the lot of ground in question, that is to say, the lot of ground described in the plea filed by Defendant *en garantie*, which lot of ground was, at the time of the seizure and the time of the sale made by Defendant *en garantie*, to the principal Defendant of the wood in question, in the occupation of Defendant *en garantie*, in virtue of the right of property belonging to Indians and that it is in virtue of the agreement and bargain made between Defendant and Defendant *en garantie*, according to the sale and permission made and given by the latter to the former, that Defendant has cut the wood or caused the wood to be cut and carried off. Plaintiff does not admit, however, the right of Defendant *en garantie* to sell the wood aforesaid, leaving to the court the appreciation of that right.

"THE COURT, considering that Plaintiff hath established, by evidence, the material allegations of his declaration, and that Defendant *en garantie*, Saro On8anoron, who hath taken the *fait et cause* of Defendant, Louis Payant dit St. Onge, had not, by law any right or title, by virtue whereof, he could sell and dispose of the wood in this cause leased to him, Payant dit St. Onge, and that Payant dit St. Onge did not, by reason of the agreement dated the eighteenth day of December, 1854, acquired any right to cut the said wood and to remove thence the same in manner and form as in and by the said agreement and by the exception of Defendant *en garantie* is set forth, dismissing said exception, and adjudging upon the merits of the principal demand; doth declare the attachment or *saisie-revendication* of about twelve cords of fire wood good and valid, and doth declare the same to be the property of Plaintiff, in his said capacity, and it is ordered that the said twelve cords of fire wood be delivered up and restored to Plaintiff, in his said capacity; and the court adjudging upon the *demande en garantie*: it is considered and adjudged that Defendant *en garantie*, Saro On8anoron, do guarantee, indemnify and hold harmless principal Defendant and Plaintiff *en garantie*, Payant dit St. Onge, from the condemnation herein pronounced against him." (3 J., p. 313.)

DUNLOP, Attorney for principal Plaintiff.

LORANGER and POMINVILLE, Attorneys for principal Defendant and Plaintiff *en garantie*.

COURSOL, Attorney for Defendant *en garantie*.