SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

United States Vs. Repentigny

United States Vs. Repentigny

SooperKanoon Citation : sooperkanoon.com/81430

Court : US Supreme Court

Decided On : 1866

Appeal No. : 72 U.S. 211

Appellant : United States

Respondent : Repentigny

Judgement :

United States v. Repentigny - 72 U.S. 211 (1866)
U.S. Supreme Court United States v. Repentigny, 72 U.S. 5 Wall. 211 211 (1866)

United States v. Repentigny

72 U.S. (5 Wall.) 211

APPEAL BY THE UNITED STATES FROM A DECREE

OF THE DISTRICT COURT OF THE UNITED STATES

SYLLABUS

1. On a conquest by one nation of another, and the subsequent surrender of the soil and change of sovereignty, those of the former inhabitants who do not remain and become citizens of the victorious sovereign, but, on the contrary, adhere to

their old allegiance and continue in the service of the vanquished sovereign, deprive themselves of protection or security to their property except so far as it may be secured by treaty.

2. Hence where on such a conquest, treaty provided that the former inhabitants who wished to adhere in allegiance to their vanquished sovereign, might sell their property provided they sold it to a certain class of persons and within a time named, the property, if not so sold, became abandoned to the conqueror.

3. Where a British Canadian subject has conveyed to a citizen of the United States lands in what are now the United States, which lands such subject holds under a grant made to a French ancestor by the King of France in 1750 before Canada passed to Great Britain under its conquest in 1760, and while it yet was a French province, and embraced that part of what is now the United States containing them, the title is no longer a French, or English, but an American title, held under the laws of the United States and subject to them.

4. *Semble.* Where Congress authorizes a court to hear a question of title, such as is above described, to which the United States is a party, and in adjudicating it to be governed by the law of nations and of the country from which the title was derived, by principles of natural justice and according to the law of nations and the stipulations of treaties, an objection of mere alienage and consequent incapacity to take or hold must be regarded as waived.

5. A grant in the nature of a fief and seigniory was made to private individuals by the French government in 1750 of a tract of 214,000 acres at the Saut de St. Marie, in what is now Michigan, but was then called Canada, on condition of improvement and occupancy, one of the objects of the grant having been to afford a refuge for travelers in a region then a wilderness and inhabited by Indians only. In 1760, the region passed by conquest from France to Great Britain, and in 1783 in the same way from Great Britain to the United States. The grantees took possession immediately after the grant, occupying and improving the tract to a

certain extent for four years, but no longer. They then came away, leaving there a person who had gone out and been there with them but who did not claim under them. One of them went away from this continent in 1764 and died in France, apparently abandoning all interests on this continent; his heir (a French subject and in the naval service of France) received and considered in 1790, 1796, and 1804, offers of purchase more or less definite for his half, and in 1800 had made an *acte de notoriete,* or solemn declaration *in perpetuam memoriam rei,* of his claim to the estate, *doing however nothing more.* The other grantee was killed in 1760, and the alienee of his descendants sold, in 1796, the land to British subjects who had been always resident abroad and who never in any way looked after the land. In 1824 or 1825, forty-two years after the territory within which the lands are situate had come into her possession, the parties in interest by derivation from the original grantees, made a claim to the United States for the land, this having been the first notice which the United States had of any title adverse to her own. In the meantime, the United States had, in 1823, built a fort there for the protection and encouragement of settlers, her laws had been extended over it, the Indian title extinguished, the lands surveyed and put on sale, and were now and had been in a large part for years, covered with inhabitants.

Held that even under an act of Congress which directed an adjudication to be made, among other ways, on principles of natural justice, the claim could not after such a lapse of time, and so considerable a failure to comply

Page 72 U. S. 213

with the conditions on which the grant was made, be sustained against the United States.

6. Where a tract on our Northern Lakes containing over two hundred thousand acres of land was granted in 1750 by the Crown of France as a fief and seigniory and on condition of improvement and occupancy and with a view of its being a refuge and protection for travelers against Indians then inhabiting the region, improvements which, besides a stockade fort, consisted in nothing but the erection of three or four temporary huts for laborers, the clearing of a few acres of land

around the fort, planting the same with Indian corn, and the placing upon the tract of seven head of cattle and two horses, are an insufficient compliance with the conditions of improvement and occupancy, there not having been after 1754 (over a century before the commencement of the suit) any possession or occupancy by the grantees or their descendants, tenants, or assigns, or further improvement.

7. Under the Treaty of 1783 with Great Britain at the close of our Revolutionary War, the United States succeeded to all the rights, in that part of old Canada which now forms the State of Michigan, that existed in the King of France prior to its conquest from the French by the British in 1760, and among these rights, with that of dealing with the seigniorial estate of lands granted out as seigniories by the said king, after a forfeiture had occurred for non-fulfillment of the conditions of the fief. And under our system, a legislative act -- after forfeiture from nonfulfillment of the seigniorial conditions -- directing the appropriation and possession of the land -- which is equivalent to the "office found" of the common law -- is sufficient to complete its reunion with the public domain.

Appeal by the United States from a decree of the District Court of the United States decreeing to the representatives of the Chevalier de Repentigny and of Captain Louis De Bonne, a large tract of land at the Saut de St. Marie, under a grant from the French government in the year 1751. The proceedings and case were thus:

On the 19th April, 1860, the Congress of the United States, at the instance of certain persons, representatives of the Chevalier de Repentigny and of Captain Louis De Bonne, ancient citizens of French Canada, one of whom had died in 1760 and the other in 1786, passed a law authorizing the District Court of the United States for Michigan to examine a claim which these representatives set up to certain land at the Saut de St. Marie in the State of Michigan, under an alleged grant made in the year 1750, by the French government to the said Repentigny and De Bonne.

Page 72 U. S. 214

Under this act of Congress, Louise de Repentigny and others, all females, and resident in Guadaloupe, the representatives by descent of the Chevalier de Repentigny, with one Colonel Rotton, the representative by purchase and devise of Captain De Bonne, filed their petition on the 9th January, 1861, in the nature of a bill in equity against the United States in the said District Court of Michigan. The bill set forth a grant, with certain conditions of occupancy, as a fief or seigniory, on the 18th October, 1750, to Repentigny and De Bonne, by the Marquis de la Jonquiere, Governor of Canada, then a French province called New France, and by Monsieur Bigot, intendant of the same, of a large tract at the Saut de St. Marie, describing its nature and extent; a subsequent ratification by Louis XV, and the descents and purchases by which it was now vested in the petitioners. It set forth further that the Chevalier de Repentigny had entered upon the fief in October, 1750, and remained there till 1754; had caused clearing to be done there, put cattle on it by himself or his tenants, and had occupied the place as required by the terms of his grant, and that when withdrawing, about the year 1755, had left agents of the grantees in possession, who or whose representatives were still in occupancy of some parts of the tract; that the claim had never been abandoned, though, owing to the domicil of the parties in foreign countries and occupations in the armies and navies of such countries, and in remote public service, the owners had not been aware of any mode in which their rights could be defined and specifically assured; that they had from the first relied implicitly upon the faith of treaties existent, as they averred, in the case, and upon the justice of the government of the United States to protect their rights and shield them from wrong; and, as respected some of the petitioners, women, descendants of Repentigny, that owing to their helplessness and the helplessness of their ancestors in respect to pecuniary means, they had been utterly unable to come to the United States and assert their rights, but had been obliged to remain absent and to trust to such exertions as their friends had

Page 72 U. S. 215

from time to time voluntarily made in their behalf to recover the said lands.

The answer of the United States denied generally most of the allegations of the bill; asserted more particularly that the claimants were all aliens; that the conditions of the alleged grant had not been fulfilled by the grantees; and that by the laws of ancient Canada the land had become reunited to the King's domain; that the fief had moreover been abandoned and deserted in fact, and stood possessed by the United States, no judicial forfeiture thereof having been, under the circumstances, necessary; that none of the parties in interest had ever complied with any of the acts of Congress, prescribing in what way claimants of lands in that region should indicate their possessions; that thus, in fact, as well as of right, the fief so abandoned and deserted was reunited to the supreme domain, vested in the people of the United States of America; and that the burden and cost of bringing the same into a productive and profitable estate by the general administration, survey, and settlement thereof, by extinguishing the Indian title thereto, by improvements in the way of public works, and otherwise, had ever since, that is to say, for sixty years and upwards, been thrown upon and borne by the United States. And it set up, moreover, that the land was incapable of identification, and the grant void, owing to the vagueness of the description.

The case, as made out by the evidence, was thus:

On the 18th of October, 1750, the Marquis de la Jonquiere, Governor of Canada, then a French province, called New France, and Monsieur Bigot, intendant of the same, by instrument -- reciting that the Chevalier de Repentigny and Captain De Bonne, officers of the French army, entertaining the purpose of establishing a *seigniory,* had cast their eyes upon a place called the Saut of St. Marie; that settlements in that place would be most useful, as travelers from the neighboring ports, and those from the western sea, would there find a safe retreat, and by the care and precautions which the petitioners proposed to take, would destroy in

Page 72 U. S. 216

those parts the trade of Indians with the English -- made to the said Captain De Bonne and the said Chevalier de Repentigny a concession at the Saut, in what is the present State of Michigan, of a tract of land, "with six leagues front upon the

portage by six leagues in depth, bordering the river which separates the two lakes," to be enjoyed by them, their heirs, and assignees, in perpetuity, by title of fief and seigniory, with the right of fishing and hunting within the whole extent of said concession, upon condition of doing faith and homage at the Castle of St. Louis at Quebec, of which they should hold said lands upon the customary rights and services according to the *coutume de Paris* followed in that country &c.; to hold and possess the same by themselves, to cause the same to be held and possessed by their tenants, and to cause all others to desert and give it up, *in default whereof it should be reunited to his majesty's domain &c.;*

The tract contained about 335 square miles, or 214,000 acres.

On the 24th of June, 1751, Louis XV, then King of France, by instrument or *brevet* of ratification, soon after duly registered at Quebec, confirmed the concession.

The instrument of concession orders that the grantees shall enjoy, in perpetuity, the land; and, among other things enjoined are, that they improve the said concession, and use and *occupy the same by their tenants; and that in default thereof the same shall be reunited to his majesty's domain.* . . . His majesty ordering that the said concession shall be subject to the conditions above expressed, "without thereby meaning to admit that they had not been stipulated for in the original grant."

A map of the military frontier, on which the tract was marked, was made by the government surveyor, Franquett, in 1752, and returned to the proper office in Paris.

The purposes of the Marquis La Jonquiere, the Governor of Canada, in making the grant, and the views of the ministry at home, were set forth in certain contemporary correspondence between the marquis and the ministry, as follows:

Page 72 U. S. 217

" *THE GOVERNOR OF NEW FRANCE TO THE MINISTER OF MARINE AND THE COLONIES"*

"QUEBEC, CANADA, October 5, 1751"

"MY LORD: By my letter of the 24th August, of last year, I had the honor to let you know that in order to thwart the movements that the English do not cease to make in order to seduce the Indian nations of the North, I had sent the Sieur Chevalier de Repentigny to the Saut St. Marie in order to make there an establishment at his own expense; to build there a palisade fort to stop the Indians of the northern posts who go to and from the English; to interrupt the commerce they carry on; stop and prevent the continuation of the 'talks,' and of the presents which the English send to those nations to corrupt them, to put them entirely in their interests, and inspire them with feelings of hate and aversion for the French."

"Moreover, I had in view in that establishment to secure a retreat to the French travelers, especially to those who trade in the northern part, and for that purpose to clear the lands which are proper for the production of Indian corn there, and to subserve thereby the victualling necessary to the people of said post, and even to the needs of the voyagers."

"The said Sieur de Repentigny has fulfilled, in all points, the first object of my orders."

"[A part of the letter here omitted is given further on, at pages <72 U.S. 219|>219-220.]"

"In regard to the *second* object, the said Sieur de Repentigny has neglected nothing."

"I beg of you, my lord, to be well persuaded that I shall spare no pains to render this establishment equally useful to the service of the King and to the accommodation of the travelers."

"I am, with a very profound respect &c.;,"

"LA JONQUIERE"

" *THE MINISTER OF FOREIGN AFFAIRS, AT PARIS, TO THE MARQUIS DUQUESNE,"*

" *GOVERNOR-GENERAL OF CANADA"*

"VERSAILLES, June 16, 1752"

"TO MR. LE MARQUIS DUQUESNE:"

"I answer the letters which Mr. Le Marquis de la Jonquiere wrote last year on the subject of the establishment of divers posts. "

Page 72 U. S. 218

"I begin by a general observation."

"It is that such sort of establishments ought not to be undertaken but with a great deal of reflection and consideration upon the motives of well established necessity or sufficient utility. Those who propose them are never short of specious and plausible reasons for their adoption. They always have in view the good of commerce, or the importance of restraining some Indian nation, but the most often it has been proved that they act under private interest. These posts however cost a great deal to the King as well for their establishment as for their keeping, and serve sometimes only to occasion movements and disorders. Thus the King desires not only that you should not bind yourself to any new establishment of that sort except after having well recognized its advantages, but also that you should examine if among those which have been made for some years past there are not some that it will be good to suppress. And his majesty recommends you the greatest attention on that subject."

"By one of my dispatches, written last year to Mr. de la Jonquiere, I intimated to him that I had approved of the construction of a fort at the Saut St. Marie, and the project of cultivating the land there, and raising cattle there. We cannot but approve the dispositions which have been made for the execution of that establishment, *but it must be considered that the cultivation of the lands and the multiplication of cattle must be the principal object of it,* and that trade must be

only the accessory of it."

"As it can hardly be expected that any other grain than corn will grow there it is necessary, at least for awhile, to stick to it, and not to persevere stubbornly in trying to raise wheat."

"The care of cattle at that post ought to precede that of the cultivation of the lands, because in proportion as Detroit and the other posts of the south shall be established, they will furnish abundance of grain to those of the north, which will be able to furnish cattle to them."

"I am perfectly &c.;,"

T.

The Sieur de Repentigny went to the place soon after the grant, and fixed himself at a spot where Fort Brady has since stood. He remained here during the years 1751, 1752, 1753, and 1754. What he did there appears best from the contemporary letter of the Marquis de la Jonquiere to the

Page 72 U. S. 219

Minister of Marine and the Colonies, already quoted, describing the matter, and from which a part omitted on page <72 U.S. 217|>217, is now, as more in order of subject, here given.

"As soon as he arrived at Missilimakinac, the chief of the Indians of the Saut St. Marie gave to him four strings of wampum and begged of him to send them to me to express to me how sensible they were for the attention I had for them by sending to them the Sieur de Repentigny, whom they had already adopted as their nephew (which is a mark of distinction for an officer amongst the Indians) to signify to them my will in all cases to direct their steps and their actions."

"I have given order to said Sieur de Repentigny to answer at 'the talk' of that chief by the same number of strings of wampum, and to assure him and his nation of the satisfaction I have at their good dispositions."

"The Indians received him at the Saut St. Marie with much joy. He kindled my fire in that village by a neckless, which these Indians received with feelings of thankfulness. He labored first to assure himself of the most suspected of the Indians. The Indian named Cacosagane told him, in confidence, that there was a neckless in the village from the English; the said Sieur de Repentigny succeeded in withdrawing that neckless, which had been in the village for five years, and which had been asked for in vain until now. This neckless was carried into all the Saulteux villages, and others at the south, and at the north of Lake Superior, in order to make all these nations enter into the conspiracy concerted between the English and the Five Nations, after which it was put and remains in deposit at the Saut St. Marie. Fortunately for us, this conspiracy was revealed and had not any consequences. The Sieur de Repentigny has sent me that neckless, with the 'talk' of Apacquois Massisague, from village the head of Lac Ontario, to support that neckless, which he gave to the Saulteux of the foot of the rapids of Quinilitanon."

"He sent me also 'the talk' given by the English in the autumn of 1746 to form this conspiracy. I have the honor to send you enclosed, my lord, a copy of those two 'talks,' by which you will see to what excesses the English had pushed their malignity for the destruction of the French, and to make themselves masters of our forts. The said Sieur de Repentigny

forbid the Indians of his post to go and winter at Saginaw, which is not little to say, for these nations go thence from there very easily, and in a short time to the English, who load them with presents. These Indians kept the promise which I required from them; they all stayed at Lake Superior, whatever were the inducements the English made to attract them to themselves."

"He arrived too late last year at the Saut St. Marie to fortify himself well; however, he secured himself against insults in a sort of fort large enough to receive the traders of Missilimakinac."

"The weather was dreadful in September, October, and November. Snow fell one foot deep on the 10th October, which caused him a great delay. He employed his hired men during the whole winter in cutting 1,100 pickets, of 15 feet, for his fort, with the doublings, and the timber necessary for the construction of three houses, one of them 30 feet long by 20 feet wide, and the two others 25 feet long, and the same width of the first."

"His fort is entirely finished, with the exception of a redoute of oak, which he is to have made 12 feet square, and which shall reach the same distance above the gate of the fort. As soon as this work shall be completed, he will send me the plan of his establishment. His fort is 110 feet square."

"As for the cultivation of the lands:"

"The Sieur de Repentigny had a bull, two bullocks, three cows, two heifers, one horse, and a mare from Missilimakinac. He could not, on his arrival, make clearing of lands, for the works of his fort had occupied entirely his hired men. Last spring he cleared off all the small trees and bushes within the range of the fort. He has engaged a Frenchman, who married at the Saut St. Mare an Indian woman, to take a farm; they have cleared it up and sowed it, and without a frost they will gather 30 to 35 sacks of corn."

"The said Sieur de Repentigny so much feels it his duty to devote himself to the cultivation of these lands that he has already entered into a bargain for two slaves, whom he will employ to take care of the corn that he will gather upon these lands."

On the 24th April, 1754, Governor Duquesne addressed a letter to the Chevalier "commanding at the Saut St. Marie," in which he says:

Page 72 U. S. 221

"Besides the *private advantage* you will derive from the care you give to the culture of your lands, the court will be very thankful to you, and I exhort you to give yourself entirely to it by the interest I take in you. . . . Continue to keep me informed of what is passing at your post and the progress of the cultivation of the

land, of which I shall make proper use."

So the same Governor writes to Machault, the Colonial Minister, dating from Quebec, 13th October, 1754, saying:

"The Chevalier de Repentigny, who commands at the Saut St. Marie, is busily engaged in the settlement of his post, which is essential for stopping all the Indians who come down from Lake Superior to go to Choueguen (Oswego), but I do not hear it said that this post yields a great revenue."

Repentigny remained at this place till 1755.

In that year, or somewhat before, war broke out between Great Britain and France, the possessions of France in America being one of the matters which Great Britain sought to gain. The British arms were victorious, and peace being concluded in 1760, Canada, which was considered as embracing the land in question, was surrendered to Great Britain.

By the capitulation made at Montreal, September 8, 1760, it was declared that

"The military and civil officers and all other persons whatsoever shall preserve the entire peaceable right and possession of their *'biens'* (property), movable and immovable; they shall not be touched, nor the least damage done to them on any pretense whatsoever, and shall have liberty to keep, let, or sell them, as well to the French as to the English. [Footnote 1]"

By the preliminary articles of peace between the Kings of Great Britain and France, of November 3, 1762, [Footnote 2] it was agreed:

Page 72 U. S. 222

"That the French inhabitants, or others, who would have been subjects of the Most Christian King in Canada, *may retire in all safety and freedom wherever they please, and may sell their estates, provided it be to his Britannic Majesty's subjects,* and transport their effects, as well as their persons, without being

restrained in their emigration under any pretense whatsoever, except debts and criminal prosecutions; the term limited for this emigration being fixed to the space of eighteen months, to be computed from the day of the ratification of the definitive treaty."

The same clause was copied into the definitive Treaty of Paris of 10th of February, 1763, between the same powers.

By these two treaties severally, Canada was ceded and guaranteed to the Crown of Great Britain, and thus that power maintained its conquest.

This war and the peace had different results in the personal and family history of De Bonne and De Repentigny. De Bonne was killed in 1760, at the battle of Sillery, during the attempt of the French to recapture Quebec, after its taking by Wolfe in the celebrated battle on the Plains of Abraham. He left an infant son, Pierre, who was born in 1758, and was therefore two years old at the time of his father's death. Pierre remained in the province after its cession to the English, and, thus choosing a British domicil, became a British subject; rising in fact to judicial and other civil honors under the British crown. Having reached manhood, he presented himself, in 1781,

"at the Castle of St. Louis, at Quebec, to render faith and homage to his most gracious majesty King George III, as owner of the land of the Saut de Sainte Marie, conceded, in 1750, to his father and to Monsieur de Repentigny, jointly."

In 1796, he sold for 1570 sterling, his interest in the seigniory to James Caldwell, of Albany, who, in 1798, made a deed of quitclaim of the same interest to Arthur Noble, a citizen of Ireland, then residing temporarily in New York. Noble returning to Ireland, by his will, made in 1814, devised the interest to his nephew, John Slacke, of Dublin. John Slacke, by his will, dated in 1819, devised it to his wife.

Page 72 U. S. 223

Mrs. Slacke, in 1839, conveyed the same to her son, John Gray Slacke. He, in 1841, devised to Henry Battersby, of Dublin, who, in May, 1861, conveyed to

Colonel Rotton, an officer in the British service, and the party in this case to whom by the decree below one-half the land had been adjudged.

So far as respects the moiety of De Bonne. Now as to Repentigny.

About the year 1755, and with the necessities of the Crown, Repentigny, whom we left on his seigniory at the Saut de St. Marie, returned to Quebec and entered into the military service of the King of France, in which he remained until the surrender of the French forces, having like De Bonne been engaged in the battle of Sillery, in 1760, for the recapture of Quebec. On coming away from the Saut in 1755, he left there one Jean Baptiste Cadotte, a Frenchman, who had gone out there with him apparently as an attendant, and who had married an Indian woman.

In 1756, at Montreal, he entered into a partnership with De Langy and another person for carrying on the fur trade at the Saut and other posts in that region. The Chevalier "puts in all his merchandise at the said posts." The partnership at all the posts was to last until the spring of 1759, and as to that at the Saut might, at the option of the parties, be continued until the autumn of 1762. The two partners of Repentigny were not to be at liberty to quit their posts.

In 1759, at Montreal, he gave to his wife a general power of attorney to carry on, govern, and transact all his affairs; and under it, in 1761, Madame de Repentigny authorized one Quenel to go to the Saut and the other posts held by the partnership, and receive

"the third part of the packages of furs which are at the Saut St. Marie arising from the partnership between &c.; and those furs which the Sieur Cadotte may have in his hands, as well as other effects of whatever nature they may be, and give receipts, also to take away all that may be due to said Sieur de Repentigny."

In 1762, the British garrison being now in possession of the fort -- the country having changed sovereigns -- all the

Page 72 U. S. 224

houses at the fort except Cadotte's were burned by the Indians. The furs escaped.

The Chevalier remained in Canada till 1764; that is to say, until Canada had completely ceased to be a French province. The British Governor, Murray, now made to him the most flattering offers of promotion to induce him to stay. "The knowledge which I have of your military talents," he writes from Quebec, March 6, 1764,

"and the esteem I have for yourself induces me by every sort of reason to try to attach you to this country, the country of your birth. Although it has passed under another dominion, it ought to be always dear to you. You are attached to it by too many bonds to be able easily to detach yourself from it."

Repentigny preferred, however, to follow the fortunes and standard of his king, and in 1764, as above said, returned to France, leaving Madame de Repentigny, his wife, temporarily behind him, with her power of attorney. Under this power she sold, in April, 1776, to Colonel Christie, a British officer, an estate called La Chenay, which the Chevalier de Repentigny owned, above Montreal, reciting that she was "intending to leave and quit Canada." The deed contained covenants for further assurance which, in October, 1766, was given by Repentigny himself, now styled "of Paris, in the Kingdom of France." In 1769 he was appointed commandant of troops at the Isle de Re, on the coast of France, where he remained till 1778, in which year he was sent to Guadaloupe, in command of the *Regiment d'Amerique.* He remained at Guadaloupe with his regiment till 1782; a part of it having participated in the operations of the American army in Georgia during the war of Independence. Receiving the rank of brigadier, he returned, in 1782, to France, and having been now forty years in service, and not being willing to retire on half pay, was appointed by the Crown, in 1783, Military Governor of Senegal, on the coast of Africa. His health failing him after two winters in that climate, he asked, in the autumn of 1785, for a furlough, and returning to Paris, died there October 9, 1786.

He left one son, Gaspard, born at Quebec in 1753, who, in

1777, entered the naval service of France, was made lieutenant in 1780, and in that year married in Guadaloupe. He continued in the naval service of France at Guadaloupe, and after having made eleven campaigns at sea and been engaged in two sea fights and wounded, died at that place in 1808.

Gaspard had also a son, Camille, born in 1789. He married in Guadaloupe in 1814, died there in 1820, leaving children. These, with grandchildren, male and female, the issue of a deceased child, were parties to the present proceeding, and the persons, along with the representatives of De Bonne, in whose favor the decree appealed from had been made.

As respected the amount of claim made to this estate after the Chevalier left Canada in 1764 to return to France, and as to how far he or his heirs considered it his and their property still, or retained possession by their agent or tenants, the case presented some contradictions of evidence.

On the one hand, ancient witnesses, still resident at the Saut de St. Marie, were produced.

One of them, named Biron, testified that a nephew of Jean Baptiste Cadotte (the Frenchman already mentioned, p. <72 U.S. 223|>223, as having gone with Repentigny to the Saut in 1751, and been left there when the Chevalier returned to the army at Quebec) had told him, the witness, that his uncle, old Cadotte, had informed him that there was an officer at the Saut in the times of the French, named Repentigny; that the Saut was a seigniory, including the old fort and a great distance below and above the same; that it belonged to De Bonne; that he (old Cadotte) was not sent here to take charge of the fort, but *got possession* after he came, and commanded the fort; that De Bonne transferred it to someone, he did not know to whom.

A second witness, Gornon, a granddaughter of the same Jean Baptiste Cadotte, testified that she had heard her father or mother say that old J. B. Cadotte, her grandfather, came to the country as a *"voyageur;"* that two French officers, one by the name of Repentigny and the other of De Bonne, came there about the

same time; that she had heard her parents

Page 72 U. S. 226

or some others say that the said officers built a fort or post, and that they went away, leaving her grandfather in possession; that her grandfather retained possession till he gave it to her father; that her father went away about the year 1810, leaving her mother in possession.

A third witness, husband of the last one, testified that he had heard his father-in-law, J. B. Cadotte the younger, say that old Cadotte came to the Saut about the same time that a French officer by the name of De Repentigny came there; that they were in some way connected about the fort, which the officer had built, and that after the officer went away old Cadotte took possession and ever afterwards held it until it was taken possession of by his son, J. B. Cadotte the younger, the father-in-law of witness, and after his death by Madame Gornon's mother, the widow of J. B. Cadotte the younger.

Coming, in the next generation, to the son of the Chevalier, it appeared that in the year 1790, an English gentleman had proposed to Gaspard de Repentigny to buy the property, this being apparently the first information Gaspard had of it, or at least of its value. Gaspard declined to sell. So again, in August, 1796, he was applied to, through an agent of the Mr. Caldwell who had bought De Bonne's half, to sell this other half also, the price offered being $8100. Gaspard replies:

"Escaped from the wreck of Guadaloupe with means which supply the wants of my family, I think you will approve the determination I take of not hastening to sell a tract of land which cannot but acquire value in the future. My title papers, well proved by his care and the measures that Madame de la Vigne assured me her husband had taken, . . . all put me in the greatest security. The proposition that Mr. Caldwell makes does not seem to me tempting. From what Madame de la Vigne told me, he paid more than $8,100 for the portion which he has, and I don't believe that the remaining half is now worth less than that which he bought. Although at a distance from New England, the relations which we have with that country enables

us to learn that every day gives value to these lands. I beg you

to continue your cares upon a matter which will terminate sooner or later, and to give me any information you may acquire either as to the value of the lands or the persons who desire to purchase."

So, four years later, that is to say, in the year 1800, this same Gaspard, then residing in the Island of Martinique, made, before two notaries there, what in France and its colonies is known as an *acte de notoriete,* a solemn and recorded declaration of right, intended to keep alive a claim not capable of enjoyment at the moment. This *acte de notoriete* declared the fact, date, nature, and confirmation of the grant by Louis XV; that by various treaties the property was now included in the United States; that the Chevalier de Repentigny had been attached to the marine service of Rochefort, in France, and of Guadaloupe and Martinique, and governor in Africa &c.;, and had died in France; that he, Gaspard, was his only heir;

"that the remoteness of the place and other circumstances have, until this day, prevented him from having his rights recognized, *but that he desires to exercise them, and that for this he need only establish his heirship.* "

In 1804 the matter of a sale to Caldwell was again brought up, but was not carried through.

In 1825, the original deed of ratification signed by the King of France was presented to Mr. Graham, the Commissioner of the General Land Office, by an agent of the parties in interest, to prevent, as he says, "the issuing of patents" to the claimants at the Saut St. Marie under the Act of February 21, 1823. On the 7th of December, 1826, Mrs. Slacke's caveat was filed in that office, showing the grounds of the claim. On the 15th of the same month, Mr. Cambreling, member from New York, presented to Congress the petition of Mrs. Slacke, praying a recognition of the claim; and this petition continued to be presented from time to time to Congress down to 1841, when the De Repentigny heirs also presented

their petition for the same purpose. Agents were employed by both the De Bonne and

De Repentigny representatives, at great expense, to obtain a recognition of the claim by Congress, down to the 19th of April, 1860. On that day, Congress, referring to their claim under an "alleged grant in 1750," passed a private act authorizing them to present their case by petition to the District Court for the District of Michigan and authorizing that court to examine and adjudicate the same.

On the other hand, documents and letters from the Chevalier de Repentigny, produced from the French archives, rather tended to show that he considered himself, when leaving the province of Canada after the conquest, to have abandoned all claim to this grant. As exhibiting not only this fact, but the character of the writer in point of standing, intelligence, and capacity to judge of his concerns (a matter spoken of by the court), full extracts are given. They were thus:

About the year 1773, being then at the Isle de Re and desiring promotion in rank, he forwarded to the minister of the colonies by that minister's desire a memoir or statement of facts on which he based his solicitation. It ran thus:

"I entered the service at 13 years of age; I made my debut by a campaign at a thousand leagues from my garrison; I have been for 33 years in the service; sixteen campaigns or expeditions of war; twelve battles, affairs, or hot actions, in four of which I commanded in chief, with success. Two sieges; six years employed with the approbation of the generals in command, and negotiations among different nations of Canada. Such, my Lord, are my services. In 1632, my great-great-grandfather went to Canada with the charge of accompanying families of his province in order to establish that colony, in which he himself settled. Since that epoch, we have furnished to the corps of troops which served there fifty officers of the same name, of which more than one-half has perished in the war; my father augmented the number of them in 1733. My grandfather was the eldest of 23

brothers, all in the service. My son alone remains of that numerous family."

" *The cession of Canada, my native country, has overturned a fortune more than moderate, which I could preserve only by an oath of fidelity to the new master, which was too hard for my heart.* "

Page 72 U. S. 229

"The offers of the English ministry made to my eldest brother to retain us in their service are an unequivocal proof of the consideration we enjoyed in Canada, a consideration augmented, and I dare say merited, in the last campaigns."

"In fine, two hundred thousand francs in drafts upon the Treasury, a hundred thousand francs in bills of exchange, of which I was bearer, drawn upon the King in 1761, reduced to one hundred thousand francs in 1764, to fifty thousand francs in 1770, by the reduction at 2 1/2 percent, have just brought me thirty-two thousand five hundred francs last month, by the negotiation that I have made of it, fearing to lose all. *Such are my sacrifices and my misfortunes in abandoning my country.* You made me forget them, my lord; your ministry has given me existence; you have granted me several military favors; my ambition is only to deserve, and be judged worthy of their continuation."

"REPENTIGNY,"

"Colonel of the Reg't de l'Amerique"

So in letters on the same subject of his promotion, written one in January, 1770, and one in April, 1772:

"My claim is based, my lord, upon thirty-one years of services, ending in the month of May next, commenced at about fourteen years of age, upon sixteen campaigns, twelve battles or actions, four in which I commanded in chief with success enough to deserve the confidence and approbation of the generals who employed me."

"I made two sieges, one fight at sea commanding a detachment of 200 men with six officers for Newfoundland in 1762, when the Duke of Choiseul honored me with

that command."

"I was taken by a man-of-war (vaisseau) of 74 guns, the Dragon."

"After 30 years of service performed with honor in the colonies, *and the sacrifice of a future more than reasonable in leaving Canada, my native country, I should be able at 45 years of age to claim a regiment in the colonies without too much ambition.* "

A letter written from Paris, September 28, 1782, not long before his appointment to the Governorship of Senegal, on the coast of Africa, and in reply, apparently, to one from the

Page 72 U. S. 230

crown offering him retirement on half pay, contained similar expressions.

"The permission which the King gives me to retire implies that I have asked it, but I am very far, my Lord, from wishing to profit by it. The word 'retirement' always made me shudder. Two years ago I entered upon my sixth engagement, and I hope you will appeal to the goodness of the King to permit me to continue my services, which may be for a long time useful to his majesty. *If I had not calculated upon dying in the service, I should not have sacrificed more than four-fifths of my fortune, my wellbeing, that of my family, in abandoning Canada, my country.* "

"In fine, my Lord, you are just; you would avoid having to censure yourself with having maltreated an old officer, without reproach, who has presented with honor and distinction a career of more than forty years, and with causing him to lose all consideration. Truth is one; it cannot escape your observation."

By the definitive Treaty of Peace of 1783 between Great Britain and the United States after the War of Independence, Great Britain relinquished all claim to the proprietary and territorial rights of the several United States, repeating the boundaries agreed upon in a provisional treaty of 1782, by which the seigniory was found to be included within the limits of the United States and fell within those

of Virginia.

This tract remained within the acknowledged limits of Virginia until the final cession of the territory northwest of the Ohio on the 1st of March, 1784, to the United States.

The region about the Saut de St. Marie remained occupied by Indians chiefly until 1820, when by treaty between them and the United States, their title was extinguished. After this date, the United States caused the whole district to be surveyed, and at the time that the bill below was filed had sold to private persons who were in possession under patents 108,000 acres. more or less, of the 214,400 originally granted to Repentigny and De Bonne.

In 1805, the Legislature of Michigan passed an act allowing foreigners to take and hold lands.

Numerous jurists of high standing in Canada were examined

Page 72 U. S. 231

on both sides, as experts, to prove the nature of a fief and seigniory under the laws, ancient and modern, of Canada, the *coutume de Paris* &c.;, and as to whether, under certain royal *arrets* of France, one of March 15, 1732, another of 1711, called the *arret* of Marly, the land originally granted had or had not become united to the King's domain, and how far a judicial proceeding in the nature of an "office found" was necessary to make the reunion effective, supposing that the facts justified one.

The *arret* of 1732 declared that

"all owners of unimproved seigniories shall improve them and place their settlers upon them, otherwise the seigniories shall be united, in virtue of this statute, without recourse to any other *statute,* "

and there seemed to be no doubt that if the proprietors made no improvements, and put no tenants in occupancy *(qui n'ont point de domaine defriche et qui n'y*

out point d'habitants), they could be reunited, though perhaps the testimony left a case like the present not so entirely clear as the other. As to the necessity of some proceeding, Mr. Justice Badgley, of the Superior Court of Canada and for more than thirty years connected with the profession of the law, testified that under the *arret* of 1711, the proceedings were strictly judicial.

The *arret* of 1732 contained a provision relating apparently to the sale of wooded land, and by which, as the counsel of the United States interpreted it, it was declared that on any attempt to sell such land they should be:

"In like manner reunited -- *de pleno jure* . . . in virtue of the present decree, and without there being need of another."

" *Pareillement reunie de plein droit . . . en vertu du present arret, et sans qu'il en soit besoin d'autre.* "

The act of Congress of 1860, authorizing the District Court for Michigan to take cognizance of the case, enacted that in adjudicating the question of the *"validity of the title"* as against the United States, "the court was to be governed" by the laws of nations and of the country from which the title was derived, and also by the principles, so far as they are applicable, which are recognized in the act of Congress approved

Page 72 U. S. 232

the 26th of May, 1824,

"enabling the claimants to lands within the limits of the state of Missouri and Territory of Arkansas to institute proceedings to try the validity of the same,"

an act which directed that the claims should be heard and determined in conformity with the principles of justice, and according to the laws and ordinances of the government under which the titles originated; also, according to the law of nations and the stipulations of treaties.

The act limited the time of bringing the suit to two years, and provided that

"in case of a final decree in favor of the *validity of the grant,* it shall not be construed to affect or in any way impair any adverse sales, claims, or other rights which have been recognized by the United States within the limits of the said claim or which, under any law of the United States, may have heretofore been brought to the notice of the land commissioners or of the land officers in Michigan, or any of the land granted to the State of Michigan or occupied by it, for the Saut St. Marie canal, its tow path and appurtenances, but for the area of any such adverse claims the legal representatives of the said De Bonne and Repentigny shall receive from the Commissioner of the General Land Office warrants authorizing them or their assigns to enter any other lands belonging to the United States and subject to entry at private sale at one dollar and twenty-five cents per acre."

The court below, as already said, decreed for the petitioners, and the case was now here for review on appeal by the United States.

Page 72 U. S. 257

MR. JUSTICE NELSON delivered the opinion of the Court.

The bill in this case was filed in the court below to recover possession of a large tract of land of six leagues square, fronting on the River St. Marie, at the Saut, which connects the waters of Lake Superior with those of Lake Huron in the State of Michigan. The grant of the land was made on the 18th October, 1750, by the Governor and Intendant-General of Canada (then called New France), to Louis De Bonne, a captain of infantry, and Count Repentigny, an ensign in the French army. The complainants derive title under them. It was confirmed by the King of France the next year on the 24th June, 1751.

The grant was to De Bonne and Repentigny, their heirs and assigns, "in perpetuity by title of feof and seigniory," with all the customary rights belonging to that species of estate. Repentigny went into possession about the date of the grant at the Saut, having about the same time received an appointment to command the military post established there. He constructed a small stockade fort and made some improvements in connection with it, such as the clearing of a few acres of

land and the erection of huts for the people with him, and continued thus engaged till 1754. When war broke out between France and England, he was called away into active military service of the government, and never afterwards returned. De Bonne never took personal possession or possession of any other character except that derived from the transient occupation of his co-tenant.

The bill was filed on the 9th January, 1861, one hundred and ten years since the date of the grant.

We will now refer to the Act of Congress passed April 19, 1860, under which the bill was filed.

It provides that the legal representatives of the original grantees may present their petition to the District Court of the State of Michigan setting forth the nature of their claim to certain lands at the Saut St. Marie, under an alleged grant in 1750, with evidence in support of it, and praying that the validity of the title may be inquired into, and the court is authorized to examine the same, and, in adjudicating upon

Page 72 U. S. 258

the validity as against the United States, to be governed by the law of nations and of the country from which the title was derived, and also by the principles, so far as they are applicable, which are recognized in the Act of Congress of the 26th May, 1824. This act, which was passed to enable claimants to lands situate within the State of Missouri to try their titles before the United States district court, directed that the claims should be heard and determined in conformity with the principles of justice and according to the laws and ordinances of the government under which the titles originated; also according to the law of nations and the stipulations of treaties.

This act of 1860, which authorizes the institution of these proceedings, was passed in pursuance of petitions to Congress by the representatives of the original grantees. The first notice to this government of any claim to the lands on their behalf was in the year 1825 or 1826, some seventy-five years after the date of the grant. Since then, the subject has, from time to time, been brought to the attention

of Congress, and finally disposed of by the passage of the act in question. The act, as we have seen, refers the claimants to the judiciary for relief and prescribes the principles which shall govern it in hearing and adjudicating upon the case. They are:

1. The law of nations.

2. The laws of the country from which the title was derived.

3. The principles of justice.

4. The stipulations of treaties.

In the light of these principles, we shall proceed to an examination of the claim, and, first, as to the claim of the representatives of Repentigny. He was a native of Canada and a captain in the French army at the close of the war, which terminated in the surrender of that province to the British forces in 1760. His family was among the earliest emigrants to the country after possession had been taken by the King of France, and held high and influential positions in the government. Soon after the execution of the definitive treaty of peace of 1763, the Governor of Canada opened

Page 72 U. S. 259

a correspondence with Repentigny to induce him to remain in the province and become a subject of Great Britain, promising him protection and advancement in his profession. He was then about thirty-eight years of age. But he declined all the advances made to him, and soon after left the country, by order of his superior officer, to take a command on the Island of Newfoundland, where the Indians were disturbing the settlers, and spent the rest of his life in the military service of France, having risen to the rank of Major General and Governor of Senegal, on the Island of Goree, and its dependencies. He died in 1786, leaving a son, Gaspard, an officer in the French naval service, from whom the present claimants descended, and who reside in the Island of Guadaloupe. The preliminary treaty of the 3d November, 1762, at the surrender of Canada, provided in the second

article, in behalf of his Britannic majesty, that the French inhabitants, or others who would have been subjects of the Most Christian King, in Canada, may retire in all safety and freedom, wherever they please, and may sell their estates, provided it be to his Britannic majesty's subjects, and transport their effects, as well as their persons, without being restrained in their emigration under any pretense whatsoever except debts or criminal prosecutions -- the term limited for this emigration being the space of eighteen months, to be computed from the day of the ratification of the definitive treaty. The definitive treaty of the 10th February of 1763 contained a similar article.

The articles of capitulation at Montreal, dated 8 September, 1760, when the Canadas were given up to the British forces, secured to the inhabitants their property movable and immovable, and the proclamation of the King, under date of 7 October, 1763, pledged to his loving subjects of Canada his paternal care for the security of the liberty and property of those who are or should become inhabitants thereof. These pledges, both before and after the treaty, were but the recognition of the modern usages of civilized nations which have acquired the force of law, even in the case of an absolute and unqualified conquest of the enemy's

Page 72 U. S. 260

country. But the rule is limited, as in the pledge of the King in his proclamation to the inhabitants of the conquered territory, to those who remain and become the subjects or citizens of the victorious sovereign -- those who, in the language of Chief Justice Marshall, change their allegiance, and where the relations to their ancient sovereign are dissolved. Speaking of the cession of Florida, he observed:

"Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change. [Footnote 3]"

Another rule of public law kindred to this one is that the conqueror who has obtained permanent possession of the enemy's country has the right to forbid the

departure of his new subjects or citizens from it, and to exercise his sovereign authority over them. Hence the stipulation in the capitulation and treaties of cession providing for the emigration of those inhabitants who desire to adhere to their ancient allegiance, usually fixing a limited period within which to leave the country and frequently extending to them the privilege in the meantime of selling their property, collecting their debts, and carrying with them their effects.

Now in view of these principles it is apparent that Repentigny, having refused to continue an inhabitant of Canada and to become a subject of Great Britain, but, on the contrary, elected to adhere in his allegiance to his native sovereign and to continue in his service, deprived himself of any protection or security of his property except so far as it was secured by the treaty. That protection, as we have seen, was limited to the privilege of sale or sales to British subjects and to carry with him his effects at any time within eighteen months from its ratification. Whatever property was left unsold was abandoned to the conqueror. Repentigny acted upon this view of his rights. Besides the property

Page 72 U. S. 261

in question, he owned and possessed a seigniory situate above Montreal, on the River St. Lawrence, called La Chenay, which he sold to Colonel Christie, a British officer, and in the deed it is recited that he had a mind to go to France, and therefore, as allowed by the late treaty of peace, was disposed to sell &c.; This was in 1766, although it appears that steps had been taken in respect to the sale at an earlier day. It is evident also that he had been engaged in negotiating for the sale of the seigniory in question, as in a memorial of his services presented to the chief of the bureau of the French colonies he states, under date of 1765, that the establishment -- referring to that at the Saut St. Marie -- was burnt in 1762 by the Indians, at the time his attorney was negotiating at Montreal with the English for the sale of it. And in 1772, in a communication to the French authorities on the subject of military services and sacrifices, he observes:

"I thought that after a lease of thirty years of services, fulfilled with honor in the colonies, and the sacrifice of a fortune more than reasonable, in leaving Canada,

my native country, I should be able at forty-five years of age to claim a regiment in the colonies without too much ambition."

And again, in answer to an intimation that the King would give him permission to retire, he observes:

"If I had not calculated upon dying in the service, I should not have sacrificed more than four-fifths of my fortune, my wellbeing and that of my family, in abandoning Canada, my country."

And further, in a communication to his government supposed to be about 1773 or 1774, he observed:

"The cession of Canada, my country, has overturned a fortune more than moderate, which I could preserve only by an oath of fidelity to the new master, which was too hard for my heart. The offers of the English ministry made to my eldest brother to retain us in their service are unequivocal proofs of the consideration we enjoyed in Canada."

Repentigny was a gentleman of education and high intelligence. He rose to the rank of general in the army, and aspired to that of Marshal of France; was Governor of Senegal

and its dependencies, and, as is obvious from his correspondence with his government, comprehended fully the principles of public law which forfeited all his property left unsold at the time he retired from Canada, under the provisions of the treaty.

He died in 1786, twenty-three years after the date of the treaty, and during all this time not only set up no claim to this seigniory, but, on the contrary, repeatedly, as we have seen, urged the patriotic sacrifice of it to his government as a merit for her favorable consideration of himself and family. And we may add that his only son, an officer in the French navy, and who died in 1808, at the age of fifty-five, also never set up any claim or right to it to this government, and the first notice she

had of it, so far as the record discloses, was in 1824 or 1825, from the descendants of this son residing in the Island Guadaloupe, and who are the complainants in the suit.

We will now examine the other branch of this case -- the moiety claimed under De Bonne. He was a captain in the French service, and fell in the battle of Sillery, in 1760, under Count de Levi, in an attempt to recapture Quebec. He left a son, P. A. De Bonne, who was then only two years old. The family were inhabitants of Canada, remained after the treaty of 1763, and became subjects of Great Britain. He was of age in 1779, and in 1781 rendered faith and homage at the Castle of St. Louis, in Quebec, before the governor, as required by one of the conditions of the grant of the seigniory, and which was accepted and a record made of it. He became an eminent barrister in the lower province of Canada, was attorney-general, and afterwards one of the justices of the King's Bench. In 1796, he sold his interest in the seigniory to James Caldwell, of Albany, New York, a citizen of that state, and conveyed to him the title. In 1798, Caldwell quitclaimed the premises to Arthur Noble, an Irish gentleman and an alien, who resided at the time in the State of New York. He afterwards returned to Ireland, and died in 1813 or 1814, leaving a will by which he devised all his lands in the United States to his nephew, John Slacke,

Page 72 U. S. 263

a barrister in the City of Dublin. Slacke devised the same in 1819 to Agnes, his wife, with power to dispose of this and other property as she might think fit, and by sundry deeds and devises the estate passed to John Rotton, the present claimant, and a lieutenant-colonel in the British army. All of these parties were British subjects and aliens. The territory within which the premises in question are situate passed from France to England by the Treaty of 1763, and from England to the United States by the Definitive Treaty of 1783, according to the boundaries there agreed upon. And assuming for the sake of the argument that the ninth section of the subsequent treaty of 1794 protected the interest of P. A. De Bonne in the seigniory, the question arises whether the present claimant has established any valid title to it.

The conveyance by De Bonne to Caldwell, a citizen of the United States, passed out of him whatever title he may have had and vested it in the grantee. It was no longer a French or English but an American title, held under the laws of the United States and subject to them. The transmission by deed, devise, or descent must be according to these laws, and not according to the laws of France or of England. Caldwell held the lands as he held other real property, under the laws of the government within which they were situate, the same as if they had been conveyed to him by a native citizen. The intention of the parties to the treaty was that the citizens and subjects of each should be quieted in the enjoyment of their estates in the same manner as if they and their heirs had been native citizens and subjects. And having conveyed to Noble, who, together with those claiming under him, were aliens, the complainant is met with the objection of alienage.

It appears, however, that since 1805, laws have been passed, first, by the Legislature of the Territory of Michigan and afterwards by the state conferring upon aliens the right to hold lands "by purchase, devise, or descent," which, it is insisted, remove the objection. Whether or not these laws apply to lands claimed by the United States as a part of the

Page 72 U. S. 264

public domain is a question we shall not enter upon, as we are inclined to think, upon a liberal construction of the act of Congress under which this suit is brought, this objection may be regarded as waived.

We have thus far stated somewhat in detail the present state of this branch of the title -- the moiety claimed by Rotton as derived from De Bonne. And it appears that more than a century has elapsed since the original grant, and during all this time there has been but some four years' actual possession or occupation by the grantee or those claiming under him, and that immediately succeeding the grant. The seigniory has been held under and subject to the laws of three governments -- thirteen years under the French, twenty under the English, and seventy-seven under the United States. The first notice this government had of the title or claim was in 1824-1825, forty-two years since the territory within which the lands are

situate came into her possession. In the meantime, her laws have been extended over it, the Indian title extinguished, the lands surveyed and put on sale, and are now, and have been for years, covered with inhabitants. As early as 1823, before this claim was presented to the government, as appears from the record, a large part of this tract was possessed and occupied by settlers, and the possession afterwards confirmed by Congress, and a military post established at the Saut for their protection and encouragement in that remote section of the country. If these grantees, their descendants or assignees had fulfilled the conditions of the grant, introduced and established tenants upon the seigniory, and thus occupied and improved the lands, they would have been among these cherished inhabitants, and their titles and possessions alike protected.

The purposes for which this grant was made and the conditions annexed to it are specifically stated upon its face. It recites that Repentigny and De Bonne -- entertaining the purpose of establishing a seigniory -- had cast their eyes upon a place called the Saut St. Marie; that a settlement in that place would be most useful for voyageurs from the

Page 72 U. S. 265

neighboring ports and those from the western sea, who could there find a safe retreat, and by proper precautions, which the petitioners proposed to take, would destroy in those parts the trade of Indians with the English, and (after the words of concession of six leagues in front on the river at the Saut, and six in depth) it provides that the grantees shall hold and possess the same by themselves, and cause the same to be held and possessed by their tenants, and cause all others to desert and give up the land, and "in default thereof, the present concession shall be and shall remain null." In the deed of confirmation by the King is the following clause:

"That they [the grantees] improve the said concession and use and occupy the same by their tenants. In default thereof, the same shall be reunited to his majesty's domain,"

and in a subsequent clause:

"His Majesty ordering that the said concession shall be subject to the conditions above expressed, without any pretext that they should not have been stipulated in the said concession."

There is a letter in the record from the Governor General of Canada, under date of October 5, 1771, to the government at Paris giving the reasons for this concession. He writes:

"I had the honor to let you know (by a former letter) that in order to thwart the movements that the English do not cease to make to seduce the Indian nations of the North, I had sent Sr. Chevalier Repentigny to the Saut of St. Marie, to make there an establishment at his own expense and to build a palisade fort to stop the Indians of the northern posts, who go to and from the English, to intercept the commerce they carry on and to stop and prevent the talks, and also the presents which the English send these nations to corrupt them and get them in their interests. Moreover, I had in view in that establishment to secure a retreat to the French voyageurs, especially those who trade in the northern parts, and for the purpose to clear the lands which are proper for the production of Indian corn, and to sustain thereby the victualling the people of the said post, and even to the needs of the voyageurs. "

Page 72 U. S. 266

And in a letter by the minister at Paris to a high official in Canada, he alludes to that of the governor above referred to and observes,

"In one of my dispatches last year to the governor, I had intimated to him that I had approved the construction of a fort at the Saut of St. Marie, and the project of cultivating the land there and raising cattle. We cannot but approve the dispositions which have been made for the execution of that establishment, but it must be considered that the cultivation of the lands and the multiplication of cattle must be the principal object, and that trade must be only accessory. As it can hardly be expected, he observes, that any other grain than corn will grow there, it

is necessary, at least for a while, to stick to it and not to persevere stubbornly in trying to raise wheat."

The purposes and conditions of the grant are too obvious to require further comment.

It is admitted by the learned and intelligent jurists of Canada who have been examined as witnesses in this case that the legal liabilities to seignioral reunion to the royal domain exists in cases of the nonfulfillment of the conditions of settlement, and which is rigorously enforced if there be no cleared lands and no settlers on the seigniory. That the right to resume the grant applies only to unimproved seigniories, to all those that have been neglected, as it respects the establishment of tenants upon the lands, and the consequent absence of cultivation, such as clearing the forests, converting them into fruitful fields, laying out and working public roads, building mills for the convenience of the tenants and the like.

We agree to this interpretation of the conditions. We cannot, however, assent to the next position taken -- namely that the possession and improvement of Repentigny during the four years that he occupied the seigniory at the Saut should be regarded as a fulfillment of this condition. It contained over two hundred thousand acres of land, and the whole of the improvements claimed in his behalf, besides the stockade fort, consisted in the erection of three or four temporary huts for laborers, the clearing of a few acres of land

Page 72 U. S. 267

around the fort and planting the same with Indian corn. His stock consisted of seven head of cattle and two horses, and, since 1754, over a century before the commencement of this suit, there has been no possession or occupancy by either of the grantees or their descendants, tenants, or assigns, or further trace of improvements. The primeval forest remained unbroken till settlers entered upon it and established themselves under the protection of the laws and regulations in pursuance thereof of the United States.

It is argued, however, that according to the customs and usages of France in respect to these conditions of settlement, that no reunion to the royal domain could be asserted except by a judicial determination; that the King was disabled by his own ordinances from decreeing a reunion. We think, upon the proofs in the record, this may well be doubted in the case of such prolonged neglect to conform to the conditions of settlement as in the instance before us. It furnishes cogent if not irresistible evidence of the abandonment of the duties and obligations arising out of the conditions of the grant, and consequently of the grant itself, and invites a direct resumption by the sovereign, the lord paramount. Assuming De Bonne's title to have been valid under the treaty of 1794, thirty-one years elapsed before this government had any notice of its existence, and in the meantime neither De Bonne nor those claiming under him had taken any steps in fulfillment of the conditions. They could at least have applied to the government for the privilege of fulfilling the conditions or to obtain a remission of them.

But we do not intend to put this branch of the case on this ground. The United States succeeded to all the rights to this territory that existed in the King of France under the Treaty of 1783 with Great Britain, at the close of the Revolution. The United States then became the lord paramount of this seigniory, and were thereby invested with the power to deal with the seigniorial estate, the same as the King of France, had it continued under his dominion, and we agree that before a forfeiture or reunion with the public domain could take place, a judicial inquiry should be instituted or,

Page 72 U. S. 268

in the technical language of the common law, office found or its legal equivalent. A legislative act directing the possession and appropriation of the land is equivalent to office found. The mode of asserting or of assuming the forfeited grant is subject to the legislative authority of the government. It may be after judicial investigation, or by taking possession directly under the authority of the government without these preliminary proceedings. [Footnote 4] In the present instance, we have seen the laws have been extended over this tract, the lands surveyed and put on sale and confirmed to the occupants or purchasers, and, in the meantime, an

opportunity given to all settlers and claimants to come in before a board of commissioners and exhibit their claims. This is a legislative equivalent for the reunion by office found.

Upon the whole, we are quite satisfied that, consistent with the principles in the light of which we are directed by the act of Congress to examine into the validity of this title, the complainants have failed to establish it. We have felt justified in applying to the case these principles with reasonable strictness and particularity as it is nearly, if not wholly, destitute of merit.

Decree of the court below reversed and case remanded with directions to dismiss the bill.

[Footnote 1]

Mr. Bancroft (History of the United States, vol. iv, p. 361) remarks that this capitulation included all Canada, which was said to extend to the crest of land dividing the branches of Erie and Michigan from those of the Miami, the Wabash, and the Illinois Rivers.

[Footnote 2]

Entick's History &c.; 439, 440.

[Footnote 3]

United States v. Percheman, 7 Pet. 51, 32 U. S. 87 .

[Footnote 4]

Fairfax v. Hunter, 7 Cranch 603, 11 U. S. 622 , 11 U. S. 631 ; *Smith v. Maryland,* 6 Cranch 286.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com