

This is proved by the *arrêts* and judgements cited above in answer to the last ground of exception. Firstly, by the *arrêt* of the 4th of June, 1686. Secondly, by the judgement of Mr. Gilles Hocquart of the 11th of July, 1742, on the complaint of *Simon Jolie* against *Jacques Asselin*. Thirdly, by an *arrêt* of the 20th December, 1706, which orders that a Mill built upon an *arrière fief* on the Seigneurie of Lauzon shall be shut up: this *arrêt* is founded on that of the 4th June, 1686. Fourthly, by the judgement of the 13th February, 1742, rendered in a cause between the Missionaries and *Censitaires* of the Seigneurie of *Contre-Cœur*, Plaintiffs, and François Ant. de Pecond, Esquire, Seigneur of *Contre-Cœur*, and Wife, Defendants. Fifthly, by a judgement of the Court of Common Pleas rendered at Quebec, on the 14th of August, 1770, in the case of Madame Veuve Couillard and her Co-heirs, against Michel Blais and ten others, *Censitaires* of the Seigneurie de la *Rivière du Sud*. This was an action against the Defendants not carrying their grain to be ground at the Banal Mill of the said Seigneurie. This judgement was affirmed in Appeal on the 12th February, 1773. Sixthly, by another judgement of the Court of Common Pleas of Quebec, rendered the 6th September, 1774, in a cause between the last mentioned Plaintiffs and the said Michel Blais, for building a Mill in the said last mentioned Seigneurie, and for the purpose of obtaining the *démolition* thereof, the conclusion of Plaintiffs were awarded to them. This last judgement was also affirmed in Appeal on the 2nd December, 1774. Seventhly, by a judgement rendered in the Court of King's Bench, for the District of Quebec, on the 20th June, 1805, in the case of Perrault Guy, condemning the Defendant for a refusal on his part to carry his grain to be ground at the Seigneurial Mill. Eighthly, by a judgement of the Court of King's Bench for the District of Montreal, rendered in April, 1820, in the case of the Baroness of Longueuil, against Fichette, and ordering the demolition of a Mill built by the Defendant.

2d. That the right to cause the mill in question to be demolished is a right growing out of the Right of *Bannalité*.

This proposition is proved by the third and sixth judgements above cited, and by the following authorities (*Bouchel, verbo Moulin, page 799, 2d Edition*), *Denisart, Bannalité*, No. 6, *Trencon, p. 156. Dictionnaire de Ferrière, Bannalité* *Bocquet, Droits de Justice, p. 258, Grand Coutumier, tom. 1er. p. 10, 98, 1039, No. 13, Despeisses, tom. 3, page 212, Nouveau Denisart, Bannalité, page 150, Répertoire de Jurisprudence, Verbo Moulin*.

The right of preventing the building of a Mill implies the right of causing to be demolished a Mill that has been already built—most of the above writers maintain the former and several of them expressly support the latter.

3d. That the right to maintain an action *en complainte* is a necessary consequence of the right of *Bannalité*.

This is proved by the second judgment above cited which is positive: by the 3d. which forbids the use of the mill, by the 6th, which orders the demolition of a mill, and most unquestionably the right to cause the demolition, and consequently to prevent the erection of a mill is a real right, a right connected with the soil, and of course a right authorising in action *en Complainte*. This is also proved by the *arrêt* of the Council of State of the year 1686, and by the uniform Jurisprudence of the Province which has always ranked the right of *Bannalité* amongst the Seigneurial Rights, and the disturbance of the enjoyment of any Seigneurial Right forms a sufficient ground for an action *en Complainte*. Such are the rights of administering Justice and of Fisheries (*Droit de Justice et de Pêche, Denisart Verbo Complainte, No. 31, No. 18, and No. 7.*)

Such are also the Honorary rights, (*droits honorifiques*), (*Dictionnaire de Commerce, No. 1, p. 396.*) Such are all the Seigneurial Rights in general, (*Denisart Verbo Complainte, sec. 22, 32, Droits Seigneuriaux, No. 659, Nouveau Denisart Complainte, sec. 2, No. 4, sec. 3, No. 3, Merlin Complainte, p. 650, Répertoire de Jurisprudence Complainte, p. 494, 496, Edit. in 8vo. Dictionnaire de Ferrière, p. 335, 336.*) The *Nouveau Denisart*, cited above establishes the principle (the 2d Section) that the right of *Bannalité* being a Seigneurial Right is incorporated with the Seigneurie and becomes like the Seigneurie itself, immovable property, & nothing can be more certain than that a disturbance of the possession of an immovable property gives rise to an action *en Complainte*, (*Pothier, Traité de la Communauté, Nos. 64, 65, 66, 67, 78*, according to the Custom of Paris an action *en Complainte* without a title would not lie, because in the Custom of Paris the right of *Bannalité* is presumed to exist by suffrance or by usurpation—But the inference is different in Canada where the right of *Bannalité* is recognized by Law. Even the Custom of Paris hostile to the right of *Bannalité* claimed without a title gives an action *en Complainte*, when the right is claimed under a title, although the validity of the title itself be contested, *Pothier, traité de la possession, No. 91, Nouveau Denisart Complainte, sec. 2, No. 10, Merlin, Bannalité, p. 550.* But in the present case the Defendant in the Court below is subject to the right of *Bannalité* by his very title or deed of Concession (*Exhibit No. 2, filed by the Seminary.*)

These three propositions relating to the merits of the case having been established, it only remains to be observed that the Respondents have proved their possession of the Seigneurie of Montreal by the witnesses who have been examined, by the papers that have been filed, by the *Lettres de Terrier*, by the *aveu et dénombrement*, and by the deed of Concession of the Appellant, who cannot by any principle be allowed to gainsay his own title—It is established also beyond a doubt that the right of *Bannalité* according to the Law of this Country is a consequence of, or rather forms a part of the Seigneurie; hence it follows, that they have also proved their possession of the right of *Bannalité*. Their possession of this right of *Bannalité* does not however rest upon authorities or inferences only; it is clearly and incontrovertibly proved by the witnesses above mentioned who have also proved that the Appellant's Mill was built on the Seigneurie of Montreal, and that it began to grind wheat into flour in March 1816, a short time before the Respondents instituted the action in question.—The Respondents therefore, having been in possession of the *Bannalité* of the Seigneurie of Montreal had a right to bring the action in question, and to pray in their conclusions for the demolition of the Mill built thereon by the Appellant.