Though speaking more particularly of Indian lands and territories, yet the opinion of the Court as to the maintenance of the laws of the Aborigines, is manifest throughout. The principles laid down in this judgment, (and Mr. Justice Story as a member of the Court concurred in this decision), admit of no doubt.

Phillimore in his International Law CCXLI. p. 208, Ed. of 1854, says:—

"The nature of Occupation is not confined to any one class or description: it must be a *beneficial use and occupation* (*le travail d' appropriation*) "but it may be by a settlement for the purpose of prosecuting a particular trade, "such as a fishery, or for working mines, or pastoral occupations, as well as "agriculture, though Bynkershoek is correct in saying, '*cultura* utique et *cura* "*agri* possessionem quam maximè indicat.'"

"Vattel justly maintains that the pastoral occupation of the Arabs entitled "them to the exclusive possession of the regions which they inhabit. 'Si les "Arabes pasteurs voulaient cultiver soigneusement la terre, un moindre espace "pourrait leur suffire. Cependant, aucune autre nation n'est en droit de les res- "serrer, à moins qu'elle ne manquât absolument de terre; car enfin ils *possèdent* "leur pays; ils s'en servent à leur manière; ils en tirent un usage convenable "à leur genre de vie; sur lequel ils ne reçoivent la loi de personne.'"

"It has been truly observed that, 'agreeably to this rule, the North American "Indians would have been entitled to have excluded the British fur-traders from "their hunting grounds; and, not having done so, the latter must be considered "as having been admitted *to* a *joint occupation of the territory*, and thus to have "become invested with a similar right of excluding strangers from such portions "of the country as their own industrial operations pervade.'"

Authorities might be accumulated on this point, concerning which all writers agree.

Mr Fox in the great Debate upon his system of Government for India said: "It had been often suggested that it would be advisable to give to the Gen- "toos the laws of England; but such an attempt would be ridiculous and chime- "rical. The customs and religion of India clashed too much with them."

I have no hesitation in saying that, adopting these views of the question under consideration, (and acquiescing, for the sake of argument, in the pretensions of the defendant) the Indian political and territorial rights, laws, and usages remained in full force—both at Athabaska and in the Hudson Bay region, previous to the Charter of 1670, and even after that date, as will appear hereafter. I come now to the consideration of that Charter; for it was incidentally and impliedly contended that it not only introduced the common law of England, but also rendered it applicable to all the inhabitants, and abrogated the Indian customs and usages, within the territories.

Hudson's Bay had been discovered prior to the attempt in which Hudson perished in 1610; but from the voyage of Sir Thomas Button, 1611, till the year 1667, it appears to have been wholly neglected by the English Government and nation. In the latter year, the communication between Canada and the Bay was discovered by two Canadian gentlemen, Messrs. Raddisson and De Groseliers, who were conducted thither across the country by Indians. Succeeding in