

party, plaintiff and defendants. The plaintiff, in reply to defendants' plea, specially alleges the feudal and seigniorial rights of herself and *auteurs* over the common, that the said commissioner had no statutory authority over her or her *auteurs*, and that any judgment rendered by him as against her or them, would be of no effect; and then denying finally the allegations of the peremptory exception in general. She concludes that as to her, if it be necessary, the commissioner's judgment should be set aside and her action maintained. The defendants on their part specially reply to her special answer, by demurring to the allegation of feudal right set up by her over the common, which they allege was an onerous not gratuitous grant; wherefore dismissal of her action. Both of these special pleadings are illegal, except as to her general denegation of the defendants' peremptory exception, and should have been dismissed.

A mass of oral testimony followed the pleadings, which may be summed up as follows: that plaintiff and her *auteurs* constantly, publicly and freely enjoyed the right of property and *usage de bois* over all the trees in the *lisière*; that depredations by individuals, some of whom were commoners, some not, were committed upon the trees and wood in contravention of her repeated and annual notifications against such *maraudage*; that the sugaries were *exploités* by the plaintiff or for her use and advantage; that the depredations were the acts of individuals, few in number out of the entire body of the *habitants intéressés*, and never by the latter in general, or as a body of commoners; that even these depredations were neither continuous nor public, and that neither as an unincorporated body, nor as a corporation, had her rights in the *lisière de bois* been interfered with by them previous to the date of the resolution to that effect of 29th November, 1858, under which her wood was cut down and converted to the use of the corporation; that upwards of fifty cords of wood were so taken, to her damage of upwards of £50.

This oral testimony is accompanied by several documents filed in support of the plaintiff's pretensions, some whereof have been already adverted to, and amongst them she

has produced a copy of an ancient document, dated in 1724, by which the disputes between the *censitaires* and the then holder of the seignior appear to have been settled between them. It has not been filed or declared upon as a title of property, nor is it necessary to consider it in that character, but it is available for the plaintiff as documentary evidence. It is the judgment of 1724, rendered by the Deputy of the *Intendant de Justice*, and established the extent and boundaries of the *commune* precisely as they have since continued, for the purpose of the commoners' pasturage, and, after making certain reservations of lesser importance to the Seignior, concludes with this special reservation: "*lui reservons en outre tous les arbres étant en la susdite lisière de bois, pour en disposer par elle, ainsi qu'elle en jugera à propos.*" From that time the commoners' right in the common and the Seignior's right in the *lisière de bois*, have been coincident and co-extensive, and it may not improperly be said, upon a fair examination of the whole case, that the plaintiff has *from that time*, shown a continuous and uninterrupted right and property, as well as possession of her *usage de bois*, down to the institution of her action, with the full and perfect acquiescence of the commoners in that right, through the deed of transaction of 1824, and the *arpentage* of 1842, in connection with the deed of partition of 1826, until the date of their adverse resolution of 1858, in which they impliedly admit the plaintiff's right, by deciding to contest it, and this for the first time. This continuity of right and of possession of itself constitutes in law a *véritable droit*, because the *droit d'usage de bois* is not a servitude, it is a proprietary right like a usufruct. The authors characterise it as a *droit immobilier, un démembrement* of the real property. "*C'est une séparation perpétuelle du droit de jouissance dans les arbres de celui de la propriété,*" and rests upon a proprietary right acquiesced in and acknowledged by the Corporation since its existence as such in 1822, and sustained by an uninterrupted possession *non desertée ou abandonnée* by the plaintiff or her *auteurs* during the interval from that year.

The right and property of the defendants