

to complete this partition, the several proprietors resolved to have their respective boundaries defined and laid down by an *arpentage* and survey, which was performed by a Provincial Surveyor, who drew not only the several division lines of the respective properties from each other, but also the front lines between them and the common, including the respective portions of the *lisière* in front of each property. These operations are shown in the surveys and *arpentages* for each individual property, and in the general mass of the whole, and also in the surveyors' *procès-verbaux*, all filed of record in this case. The proprietors assented to the operations by affixing their signatures to the several documents of the operations, and the corporation also acquiesced in them, their chairman and trustees also subscribing the same documents. These operations were completed in 1842.

The female plaintiff, by transactions and exchanges with her sister, became the sole owner of their joint allotments, as specified in the partition deed of 1826. She intermarried with the male plaintiff, but with stipulation of contractual *séparation de biens*.

From the record it appears that frequent depredations by individuals had been committed upon the trees growing and standing upon the *lisière de bois* in the plaintiff's allotments, which she did her best to stop by public notifications at the Church door to the tenants generally; but these depredations were made to assume unusual proportions at last by an assembly of the tenants, specially holden on the 29th November, 1858, and called for the express purpose, at which it was resolved by a majority as follows:—"que la Corporation est autorisée à faire bucher 300 ou 400 cordes de bois plus ou moins dans les limites de la dite commune durant la présente hiver, qui seront vendus par la dite Corporation pour le bien générale de tous les propriétaires de droit dans la dite commune;" and it was further resolved to contest "toutes oppositions qui pourraient être placées devant eux par les Seigneurs et autres à cet effet." The chairman of the Corporation, one Gouin, immediately set to work to carry out the resolution of the *habitants*, and put men to cut down the trees on the *lisière de bois*, and particularly a

considerable number upon the plaintiff's fourth allotment above described, the wood of which was by the chairman's directions removed and converted to the *bien général des propriétaires* in the common, whereupon she instituted the present action against the Corporation, for £125 damages, for the wood cut and carried away.

The declaration sets out her possession for more than a year and day before this trespass, of the *droit d'usage de tous les arbres et bois de haute futaie* in the said *lisière*, the possession of the said *lisière de bois* by the seigniors for more than forty years, the terms and agreement of the deed of transaction of 12th August, 1824, between the seigniors and the Corporation, the special reservation therein of their right in all the trees in the *lisière*, the terms and effect of the said deed of partition, by the joint seigniors, the plaintiff's particular allotments of the seignior, and especially the fourth above described, with the portion of the *lisière* in front of it, her possession of that part of the *lisière* by herself and *auteurs* for more than forty years last past, and her present sole title thereto. She then charges the defendants with maliciously and knowingly committing the injury and damage complained of, with intent to damnify her, and her actual damage of £125, for which she prays their condemnation with costs.

The defendants have pleaded, by peremptory exception, that neither the plaintiff nor her *auteurs* ever had or could have any right of usage in the *lisière de bois*, which has always formed part of the common, and that neither she nor they possessed the *lisière* freely, peaceably and publicly; that the commoners have cut and carried away from the common for more than thirty years, *le bois à eux nécessaire*; that the deed of transaction of the 12th August, 1824, was *ultra vires* of the Corporation, and did not nor could confer upon plaintiff and her *auteurs* any *usage de bois* or servitude in the trees and wood; that plaintiff never indicated her proprietary rights before the commissioner appointed under the statute to settle the rights of the commoners in the common, *ergo actio non* and annulment of deed of transaction.

Two special pleadings follow, one by each