

money should go to the creditors, for this reason:—Nivin and others became creditors of Durrell subsequently to the purchase of the stock and debts by M'Donald; therefore, in my opinion, they have no right to this money. I have been altogether at a loss to understand on what principle the majority of the Court are disposed to allow Nivin and other creditors to take possession of this money, when the transfer to M'Donald from M'Gibbon was anterior to their becoming creditors. I am of opinion that M'Donald acted in good faith in these transactions, and I have been unable to see any reason for making him pay the \$2,200 into Court. I have therefore to dissent from the judgment.

DRUMMOND, J. I must say that I had some doubts about pronouncing a judgment in the absence of Burke; but it appears to me, after reflection, that Burke has no interest whatever in the case, because no attempt has been made to assail his title. The object of the plaintiffs is simply to get from the hands of M'Donald the sum of \$2,200, which, as one of Durrell's creditors, he has appropriated to himself.

AYLWIN, J. I can only say, in the language made use of many years ago by Sir Alexander Stuart, this is a case of stinking fraud. I shall say nothing more.

Judgment confirmed, (except as to error in the amount, which was corrected) MONDELET, J., dissenting.

A. & W. Robertson, for the Appellant.

Popham, for the Respondents.

PRESIDENT ET SYNDICS DE LA COMMUNE DE LA SEIGNEURIE DE LA BAIE ST. ANTOINE, (defendants in the Court below,) Appelants; and LOZEAU ET VIR, (plaintiffs in the Court below,) Respondents.

*Communal Land—Droit d'usage of timber.*

Question as to the right of defendants to cut timber on certain communal land.

Held, that the *droit d'usage* (which is a proprietary right like a *usufruit*) de tous les arbres et bois de haute futaie on the *lisière de bois* in question, belonged to the plaintiff, and that the defendants merely possessed the *terrain ou fonds* of the land.

This was an appeal from a judgment of the Superior Court, rendered at Sorel, on the 19th

of October, 1861, condemning the defendants to pay £5 damages, for having cut timber on a certain *lisière de bois*.

BADGLEY, J. The Sieur Lefebvre, a former proprietor of the Seigniory of St. Antoine, commonly called La Baie du Fèbvre, made a grant to his tenants, sometime before 1724, of a tract of land along the shore of Lake St. Peter, for their common of pasturage, and after his decease, whilst his widow was in possession of the Seigniory, disputes arose between herself and the commoners as to its extent, and as to some other matters connected with it. These disputes were terminated in 1724, and the extent of the common was settled as being "tout le front qui se trouvera depuis les terres que le feu Sieur Lefebvre a acquies ci-devant du Sieur Courval, jusqu'à la Seigneurie Lussaudière ensemble le terrain étant depuis les concessions jusqu'au bord du Lac St. Pierre," including "la lisière de bois qui règne le long du Lac St. Pierre." From that time the record presents nothing to notice with reference to the common until 1822, and during that long interval the commoners used their common, whilst the Seigniors enjoyed, without interruption the *usage de bois* on the *lisière* above referred to. In 1822, the commoners, tenants of the Seigniory, petitioned the Legislature for their incorporation, for the purpose of administering and managing their communal property, and they were in consequence erected into a corporation, by the L. C. Act, 2 Geo. 4, cap. 10, which provided for the nomination of a chairman and trustees from amongst themselves, who were to regulate the affairs of the common, fix its boundaries, settle the number and description of cattle to be put to graze thereon, and the time for grazing, and which assured a right of common to each tenant. In 1824, an additional Act, 4 Geo. 4, was passed, which amended the previous one, and received the royal assent in May of that year. The powers of the chairman and trustees were thereby enlarged; they were authorized to fix the boundaries of the common absolutely, to contract, transact and conclude with all owners of land adjacent to or encroaching on the common, whether owners or Seigniors, upon terms to be mutually agreed upon, for the terminating of all disputes