

DORION, C. J., and MONK, J., dissenting, thought the stipulation had not been complied with, and the defendant was not obliged to ask for security merely, but could plead the clause in the deed as a defence to the action.

Judgment confirmed.

*Archibald & McCormick* for appellant.

*A. & W. Robertson* for respondent.

MIDDLEMISS (proprietor respondent in the Court below), Appellant; and NUNS OF L'HOTEL DIEU OF MONTREAL (petitioners below), Respondents.

*Seigniorial Rights—Property acquired by Crown.*

This was a case of some peculiarity, not likely to occur again. The respondents, the *seigneuses* of the Fief St. Augustin, claimed certain seigniorial dues on an immoveable in the Fief, which the appellant had acquired from the Provincial Government in 1874 by exchange for other property. The respondents petitioned in the usual form for the nomination of experts, in order to establish the amount of indemnity or commutation due the petitioners by reason of the exchange, in place of the seigniorial rights on the land, and the amount to be paid for the redemption of the constituted rent representing the *cens et rentes* to which the property was alleged to be subject.

The appellant pleaded that the property had been acquired by the Crown for a purpose of public utility and the tenure had been changed; that the respondents had been indemnified for this change of tenure; that while the land was the property of the Crown the seigniorial rights in the Fief were abolished, and the land passed into the possession of the appellant free from all seigniorial rights, and consequently there was no occasion to commute rights which did not exist.

The Superior Court having named experts to establish the amount of indemnity to be paid in lieu of seigniorial rights, and also the amount to be paid for redemption of the constituted rent, and having homologated the report of the experts thereon, the proprietor Middlemiss appealed.

The Court of Appeal, Monk and Tessier, JJ., dissenting, reversed the judgment. The grounds for the judgment in appeal were in substance as follows:—

The immoveable had been acquired by the Crown in 1839 as the site of a lunatic asylum, an object of public utility. By this acquisition the land was re-united to the Crown domain and free forever from all seigniorial rights of the fief St. Augustin, with the exception of the right to indemnity for loss of the *mouvance*. On the 20th April, 1860, the Crown paid respondents the sum of £192. 0. 10, for right of indemnity claimed by reason of such acquisition. After the abolition of the seigniorial tenure in the fief St. Augustin in 1860, the respondents could only claim a right of commutation on such alienations as before the abolition would have given rise to a right of *lods et ventes*, and the exchange made by the Provincial government of this lot for another owned by the appellant did not revive the seigniorial rights which had been abolished by its reunion with the crown domain. The exchange, even before the abolition of seigniorial tenure in the fief, would not have given rise to *lods et ventes*, and therefore respondents could not claim commutation right by reason of the exchange.

Judgment reversed.

*Geoffrion, Rinfret & Archambault* for Appellant.

*Pagnuelo & Major* for Respondents.

HALL (plff. below), Appellant; and ATKINSON (deft. below), Respondent.

*Revendication—Lien.*

This was a case heard at Quebec. The appellant claimed by a *saisie-revendication* a quantity of logs which the respondent held and refused to deliver to him.

The respondent pleaded that these logs had been wintered on his property and formed part of a larger quantity which had passed through his mill pond, for which he was entitled to be paid, and he claimed a *droit de rétention*.

The appellant answered that owing to respondent's boom and mill dam, which obstructed the River Etchemin at a point where the same was navigable and where he had no right to obstruct it, he had been forced to pass his logs through respondent's property to take them to the River St. Lawrence.

Respondent replied that he had constructed his boom and mill dam on private property which he held from the Crown.