

Connolly
vs.
Woolrich and
Johnson et al.

From this evidence, and according to this high authority, we are led to infer that the common law prevails throughout the Hudson Bay territory in virtue and by the terms of the Charter generally, and in regard to all the inhabitants or occupants of the territory, both natives and Europeans.

Mr. Hopkins, witness for defendant had been in the service of the Hudson Bay Company for twenty-five years, and is a gentleman of great intelligence; he testifies that "the laws by which the Hudson Bay territory is governed are the laws of England, modified by certain regulations passed by the Council of the Hudson Bay Company." Mr. Hopkins adds: "*I know the place called Rebuska from official intercourse, and from having been in the vicinity of it. It is one of the most remote districts, and is without the limits of the Hudson Bay Company territories proper; the jurisdiction of the Company extended over this post, and still extends over it. We held it up to within a recent date by separate license. If the late William Connolly was stationed there, it was long before my time. I have no knowledge of the regulations of the Company (if any), with regard to marriage in that country in 1803.*"

This evidence, though proceeding from good authority, leaves the Court in doubt:—

1st, As to what portion of the laws of England prevailed at *Rivière-aux-Rats* in 1803; to whom they were applicable, and how they were introduced into that particular district of country, though all those gentlemen seem to imply that these laws, whatever they may be or have been, were extended to that locality by the Charter of Charles II.]

2nd, As to what modifications had taken place in 1803, and since, in these laws, within the Hudson Bay territory, or at *Rivière-aux-Rats*.

3rd, Whether the Athabaska District, within which is situated *La Rivière-aux-Rats*, was or was not, in 1803, within the chartered limits of the Hudson Bay territories, or under the jurisdiction of the Company, in such a way as to subject it to the laws of England generally, and as stated by the two learned Judges.

4th, As to whether there exists a native usage or law of marriage among the Indians, either at *Rivière-aux-Rats* or elsewhere within the chartered limits of the Hudson Bay territories, distinct from the law of England prevailing in that country.

The Court is bound to respect the testimony of these witnesses so far as it proves any thing; but I shall proceed to show, I think clearly and conclusively, that the Athabaska District never was within the chartered limits of the Hudson Bay Company; and, moreover, admitting it to be doubtful whether the common law of England obtained even within the last-mentioned territory to the full extent stated by the witnesses, still it is beyond controversy that this law did not prevail in the Athabaska region at *Rivière-aux-Rats* at the time of Connolly's alleged marriage with the Cree woman; and, in any case, that the customs of the Cree Indians relative to marriage were in force there at that time. In doing so, it will be necessary for me, in the first place, to advert briefly to the discoveries made and trading posts established in those vast and remote regions of the North-

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