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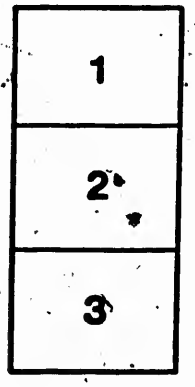

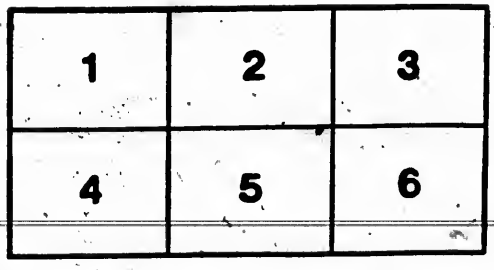

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138 Procès N° 7

PROVINCE OF LOWER-CANADA.

COURT OF APPEALS.

WILLIAM FLEMING,

(Defendant in the Court below)

APPELLANT,

AND

JEAN HENRI AUGUSTE ROUX,

AND OTHERS,

(Plaintiffs in the Court below)

RESPONDENTS.

THIS was an *action en complainte*, brought in the Court of King's Bench for the District of Montreal, by JEAN HENRI AUGUSTE ROUX, and others, for a disturbance *(trouble)* of their right of *Bannalité* in the *Seigneurie* of Montreal, against the said WILLIAM FLEMING, the Apellant, who had built a Wind-mill, in the said Seigneurie, and who had ground into flour wheat and other grain for the *censitaires* or tenants of the Respondents.

The Respondents are thus described in their declaratian filed in the Court below :—

" *Messire* Jean Henri Auguste Roux, Superior of the Gentlemen Ecclesiastics of the Seminary " of Montreal, Seigniors in possession of the Seigniory of Montreal, in the District of Montreal, in " the Province of Lower-Canada, and the said Gentlemen Ecclesiastics of the said Seminary of " Montreal, Seigniors in possession as aforesaid of the said Seigniory, by *Messire* Joseph Borneuf, " their Agent and Attorney."

The defence set up by the said William Fleming consists of peremptory exceptions, and of pleas to the merits.

By the former, the defendant in the Court below denied: 1st. The existence of the Seminary of Montreal as a Body Corporate or *Communauté*. 2d. Their right to sue in a collective name and by their agent or attorney. 3dly. He contended that the said declaration was insufficient; because, amongst other pretended defects, it did not alledge that the said Seminary was ever possessed of the right of *Bannalité*, or that it ever was possessed of a Banal Mill within the said Seigneurie, at which the *censitaires* or tenants thereof might cause their grain to be ground.

These exceptions were dismissed by a Judgment of the Court below, rendered on the 18th April, 1821: And the same Court, after having heard the parties on the merits, awarded to the Respondents, by its final Judgment, of the 20th June, 1822, the conclusions of their declaration.

From these Judgments it is that an appeal has been instituted by the said William Fleming.

With respect to the first of these Judgments, it is respectfully contended, that the said William Fleming hath lost his right of appeal; because, by his subsequent proceedings in the cause, had, without having filed any exception, or made any reservation, he has acquiesced in the said Judgment, rendered on the 18th day of April, 1821, and barred any further consideration of the exceptions, which it has set aside.

If it were otherwise, however, the Respondents are prepared to shew that these exceptions were properly dismissed.

1sly. Because, in an action of *complainte*, the quality of the Plaintiff can never be the subject of contest: the only question that can present itself for examination is the naked fact of the *trouble* or disturbance: the only defence that can be made is either to deny the possession of the Plaintiff, or or set up a contrary one. *(Pothier, Traité de la Possession, No. 104, 105. Ferrière, Dict. de Droit Verbo Complainte, page 337. Gauret, Style Universel, p. 355.)* The reason is evident. The remedy affording redress against a trespasser should, from the very nature of the offence, be an expeditious one. *(Exhibits Nos. 1 and 2, filed by the Plaintiffs in the Court below.)*

2dly. The Appellant has no right to raise such a contest: because, interest is the measure of right, and he has not even a shadow of interest in the question: allow him to deny the possession of the Seminary as a Body Corporate, and you allow him to establish the right of some other Seigneur—of a third person. He is a *censitaire*, a tenant—as such he has nothing to do with the qualities of his Seigneurs. He is bound to yield *to the Fief* that which is due to it. Besides, this is a question involving the state and condition of men—*(une question d'état)*—the possession of which forms an obstacle which it is difficult to overcome. *(Poth. Traité du Cont. de Mariage, No. 348.)* It is a question relating to the existence of a Corporate Body, and in which the King alone can be interested. According to the laws of *Mortmain*, no individual can have an interest in the property

of a Body Corporate, unless he be either the heir or the representative of the person or persons who first bestowed it: But the Appellant is neither the heir nor the representative of those who first ceded the right of *Bannalité* to the Seminary; he could not therefore institute an action for the purpose of causing the existence of that Body Corporate to be declared illegal; and how can he be allowed to do by an exception that which he could not do by an action? It was decided in 1796, that to entitle the Seminary to recover *Lods et Ventes*, nothing more was necessary than to prove their possession of the Seigneurie. *(Exhibit No. 6.)*

3dly. The Seminary having proved the fact of its existence as a Body Corporate, not only by several witnesses, but by a long series of Judgments, rendered year after year, ought to be maintained in the possession of that existence, without any other proof. It is enough for that Body to say to the Appellant, *possideo quia possideo.* (Cochin, vol. I. p. 590, 592; III. 746; IV. 344.) To him the Seminary has a particular right to address these words, because the deed of concession whence he derives his title to the land upon which the Mill in question is built, mentions the *Superior of the Seminary of Montreal*—expressions which sufficiently denote a Body Corporate. It would, therefore, be incumbent on the Appellant to shew that the Seminary is not a Body Corporate, but it is impossible to prove a negative.

4thly. On the other hand, there is nothing so easy as to establish that the Seminary is really a Body Corporate. This is proved:—

1st. By the Letters Patent of 1677, by which it was created. *(Edits et Ordon, Royaux*, p. 780.) 2d. By the Edict of 1693, which speaks of the Seminary as having been established and endowed with Seigniorial Jurisdiction. *(Edits et Ordon.* p. 289.)—3d. By the *Arrêts* of the Council of State and the Letters Patent of 1702, which also mention the Seminary as having been established by *Saint Sulpice*, by virtue of the Letters Patent of the year 1677, and which go so far as to unite several parishes to the Seminary so established, *(Ibidem*, page 304, *&c.)*—4th. By the Letters Patent in the nature of an *Edit* of the year 1714, which acknowledge its existence and privileges. *(Ibidem*, page 328.) and confirm the Letters Patent of 1677, *(page* 329.)—5th. By the *Arrêts* of the Council of State, in the years 1716 and 1722, *(Ibid.* pages 338 & 431.)—6th. By the exhibits filed by the Plaintiffs in the Court below, viz: by No. 32, which is the Deed of Concession of the Seigneurie of the Lake of the Two Mountains to the *Seminary* by the Governor and the *Intendant:* by No. 33, which is a Deed of Cession by the Seminary of Saint Sulpitius in Paris to the Seminary of *Ville-Marie* or Montreal: by the *Lettres de Terrier*, granted in 1724, which set forth that a *Communauté* or Body Corporate had been established at Montreal, by the Seminary of St. Sulpitius, in consequence of the permission of the King: by No. 37, which is a notification served upon the Superior of the Seminary, at the instance of the Attorney General, of the Declaration of 1743, concerning Bodies Corporate; whence it is to be inferred that this Law or Declaration was applicable to the Seminary, and that the Seminary was a Body Corporate. This documentary evidence derives new strength from the principle, "*in Antiquis enunciata valent.*" The existence of the Seminary *enunciated* or mentioned as a Body Corporate in documents of such a remote date, particularly in the *Lettres de Terrier*, is therefore beyond a doubt.—7th. The existence of a Seminary as a Body Corporate may be proved even without Letters Patent. A Seminary does not stand in need of Letters Patent. According to the Ordonnance of 1659, enrigistered by the Parliament of Paris, with a reservation in favour of Seminaries in general. *(Mem. du Clergé, tom. II.* p. 596; *Denisart Seminaire, No.* 9.)

If it be objected that the Declaration of 1743 renders it necessary that there should be Letters Patent for the erection or creation of new Bodies Corporate or *Communautés*, the answer to this objection is, that the Declaration of 1743 has not expressly mentioned *Seminaries:* and it is evident that to render the Declaration applicable they should have been mentioned expressly; because it is plain that it would have required a special derogation from those ordonnances which had established special reservations in favor of Seminaries.

Besides, the Declaration of 1743 only relates to new Bodies Corporate, or in other words, to subsequent establishments. It cannot therefore, be considered, as having any thing whatsoever to do with the Seminary of Montreal, which, by the authorities above cited, is proved to have existed long before 1743, and as early as 1677, 1693, &c. &c.

Again, the Declaration of 1743 makes for the Seminary; because the Seminary had existed long before the enactment of that law; and the ninth article makes a special provision for the Bodies Corporate *(Communautés)* already in existence. It allows them to continue to exist until His Most Christian Majesty should think fit to make some future provision concerning them. Thus according to this article must the Seminary of Montreal continue to exist: its existence *de facto* becomes legal, and legal too by the very law which is made the foundation of the objection.

But has not the Conquest of Canada by his late Majesty interrupted the existence of the Seminary as a Body Corporate? Most unquestionably not.

The conquest of a country can have no more effect with respect to the state, condition and property of a Body Corporate, than with respect to the state, condition and property of an individual. It could still less have the effect of suppressing Bodies Corporate, because when once established, it is part of their nature to perpetuate themselves. Such an effect could still less proceed from a con-

quest made by England; a country where usage and custom are alone sufficient for the establishment of Bodies Corporate, *Blackstone's Com.* and where consequently the law views them with a more favourable eye. Still less could such an effect be produced by the Conquest of Canada; when, by the Capitulation, not only are all the *Communautés* preserved without exception, but they are also maintained in the possession of their property, (art. 34); and when, in addition to the Capitulation, it is considered, that the Treaty of Peace secures to His Majesty's Canadian Subjects the free exercise of their Religion, and of course the existence of Seminaries, the only nurseries for Priests, without whom their Religion cannot exist.

Hence it is that the Conquest of Canada by His Majesty's Arms, so far from having destroyed, has, on the contrary, fortified the existence of the Seminary; an existence essentially necessary for that free exercise of Religion granted by the Treaty.

The existence of the Seminary of Montreal as a Body Corporate, has been since confirmed by divers Acts of the Government. In Exhibit No. 34, the Government mentions *the Superior of the Seminary, the Priests of the Seminary of Montreal*—expressions exclusively applicable to a *Communauté* or Body Corporate. Exhibit No. 1—*aveu et denombrement* in 1781. Exhibit No. 35—Act of Fealty and Hommage, in which the Seminary is described as a Body Corporate, and in which also is described the real property belonging to the Seminary in that capacity. Its existence as a Body Corporate has been confirmed by twenty-seven Judgments, from 1790 to 1814, which are all filed as exhibits in the cause, by which it appears that the Seminary of Montreal has sued and been sued as a *Communauté* or Body Corporate, and that as a Body Corporate the Seminary has been maintained in the recovery of all its Seigneurial Rights—maintained, notwithstanding that their existence as a Body Corporate had been called in question, (exhibit No. 6.) Nay, by a Judgment of the Court at Montreal, in 1795, confirmed an appeal in 1796, (exhibits 2 and 3), the Seminary is condemned as a Body Corporate, for having done certain acts forbidden to be done by Bodies Corporate. The Seminary having been thus condemned as a Body Corporate, can it now be condemned for not being so?

Nor have even the approbation and acknowledgment of His Majesty been wanting to confirm the rights of the Seminary of Montreal, as is evident from the following extract of Instructions under the Sign Manual, dated 3d January, 1775, to the person then administering the Government of Canada:

" That the Society of Romish Priests called the Seminaries of Quebec and Montreal shall con-
" tinue to possess and occupy their house of residence, and all other houses and lands to which they
" were lawfully entitled on the 13th September, 1759; and it shall be lawful for those Societies to
" fill up the vacancies, and admit new members, according to the Rules of their Foundation, and to
" educate Youth in order to qualify them for the service of Parochial Cures as they shall become
" vacant." (Paragraph 45, sect. 11.)

These Instructions have been frequently renewed, and particularly on the 22d October, 1811. Nothing certainly can be more clear than that by these Instructions the existence of the Seminary of Montreal as a Corporate Body is most distinctly recognized. If it were objected that these Instructions are of no avail, because they are of a private nature, it would be easy to shew that they have been given to the world in the most authentick shape. They are to be found in a Work printed by order of the House of Commons, the 21st April, 1791, under the title of " Papers relative to the Province of Quebec." They are also to be met with in the " *Report from the Select Committee of the House of Commons,*" ordered to be printed 12th February, 1817.

Not only does the Seminary exist as a Body Corporate, but its existence as such is as separate and distinct from that of the *Seminary of Saint Sulpitius at Paris, (the name of the Body of the Sulpitians)* as the existence of any particular establishment belonging to any Body Corporate is separate and distinct from the body itself. The Seminary at Montreal was created in 1677 by the successors of Mr. Ollier: the Seminary at Paris in 1645 by Mr. Ollier himself. The first was established for the purpose of converting the Indians, and of affording education to the Canadians. The second with a view of forming Ecclesiastics for the Priesthood of France. The former was established at Montreal—the latter at Paris. Let the authorities already cited be referred to, and it will be found that it was the Seminary of Paris that established the Seminary of Montreal. That the former was a Donor and the latter a Donee—and a Deed of Gift cannot take place without the existence of two separate and distinct persons—the one who gives, and the other who receives. It will be seen that the two Houses had, in every respect, a distinct and separate existence, and that they were governed each by its own distinct principal or superior. In a word, ever since the Conquest, the separate existence of the Seminary of Montreal has been uniformly recognised by the Government, by the Courts of Justice, by the Public at large, and this to the entire exclusion of the Seminary at Paris. What stronger authority can there be to prove this separate and distinct existence than the very words used in Registering the Deed of Donation of the Seigneurie of Montreal to the Seminary of Montreal. (*Edits et Ordonnances,* page 85.) It is proper to refer here again to the *Edits et Ordon.* page 280, 306, 338, 431, &c. See also exhibits, Nos. 2, 32, 33, 35, 37.

With respect to the second exception, namely, that the Seminary of Montreal cannot sue in a collective name, and by their agent or attorney—nothing can be more destitute of foundation.

It has ever been the invariable usage of Bodies Corporate thus to institute their actions (*See the different* ARRESTISTES). Thus it is that Bodies Corporate were always represented in Courts of

Justice, previously to the Conquest. (Edits et Ordon. tom. ii. page 125, 145, 214, 232, 254.) Thus it is also that since the Conquest, Church Wardens and other Corporate Bodies have uniformly instituted actions, and more particularly the Seminary of Montreal, as may be seen by the Judgment which they have filed in the Court below. Let any Author be opened who touches upon this question, and he will be found to contain analogous principles. Church Wardens are charged with the administration of the affairs of the Church, as well in Courts of Justice as elsewhere. (*Demat. vol.* ii. p. 108.) Whenever it is necessary to make known to Bodies Corporate Judgments which may have been rendered against them, notice thereof is given to their administrators or agents. (*Ordon.* 1667, *Tit.* 35, *art.* 9). Petitions presented by Hospitals are drawn in the names of the administrators of these Bodies. (*Gauret, Stile*, p. 58.) In actions instituted against Bodies Corporate, process is served either personally on the Superior or Administrator of such Bodies, or at his domicile. (*Poth. Trait de La Procédure* p. 7.) Nothing can be more satisfactory than the authority of Pigeau on this subject. (*Tom.* 1*er. p.* 76, 77.)—He treats of it *ex professo*. He goes even so far as to mention the exceptions to the general rule of "*Le Roi seul plaide par Procureur.*" Ferrière in his *Dictionnaire de Droit*, (verbis *Plaider par Procureur*) says that the word *Procureur*, taking it in the sense given to it in the principle just cited means the Law Officers of the Crown. But in no sense whatever can it apply to the Seminary of Montreal. The fact is that the action was instituted by the Ecclesiasticks of the Seminary themselves, since Mr. Burneuf their agent, was one of their Body, and they sue *through* him and *with* him. Again the action having been also instituted in the name of the Superior of the Seminary, in his capacity of Superior, it must be considered as having been instituted by that Body, of which he is the natural representative.

This part of the subject may be dismissed with one observation; an observation as simple as it is decisive. The action instituted in the Court below, was instituted by the Seminary, not as *Proprietor* of the Seigneurie of Montreal, but as *Possessor* of that Seigneurie. In coming into a Court of Justice, the Seminary must act in the capacity in which it has possessed—It has always possessed—It possesses still the Seigneurie of Montreal, in the capacity of a Body Corporate—It must, therefore, act as a Body Corporate—In that capacity, therefore, must it claim its rights as derived from the possession of that Seigneurie, and of the Bannalité attached to it.

With respect to the other exceptions, it will be found upon referring to the declaration or *demande* of the Respondents, that they have shewn and alledged that they were vested with the right of Bannalité. The only ground of exception which remains to be disposed of is that by which the Defendant in the Court below states that it was not alledged by the Seminary that they had any *Banal* Mill at which the *Censitaires* might cause their grain to be ground. To shew the inutility of such an allegation it will be sufficient to establish that a *Censitaire* has no right to build a Mill without first having put the Seigneur *en demeure*.

In an *arrêt* of the *Intendant* of the 14th June, 1707, the Seigneur declare, that he has a right to ask for the delay of a whole year to build a *Banal* Mill—declaration which is not contradicted by the adverse party, (*Edits et Ordonn.* II. *p* 250).

By a Judgment rendered on the 18th February, 1731, it was ordered at the instance of the Censitaires of the Seigneurie of Durantaye, that the Seigneur should without delay repair the Mill [illegible] that in default of his so doing the Censitaires should be at liberty to build a Mill at their own expense. (*ibid* LXVII).

By another Judgment of the 10th March, 1734, the Seigneur of Gentilly was condemned at the suit of the *Censitaires* to rebuild the *Moulin Banal* in two years, and in default of his so doing the *Censitaires* authorised to build &c. &c. (LXXII)

On the 13th February, 1742, a Judgement was rendered at the instance of certain *Censitaires* of the Seigneurie of Contre-Cœur, praying that the *Co-Seigneurs* might be condemned to build a Mill within such time as the *Intendant* might think proper to allow, or in default thereof, &c. &c. &c. (LXXX)

Another Judgement is to be found 12th February, 1746, at the suit of the *Censitaires*, praying that the *Seigneurs* might be condemned to build a Mill unless he should see fit to transfer and assign to them his right of *Bannalité*, &c. (LXXXIV)

These authorities establish beyond a doubt the necessity of first constituting the Seigneur *en demeure*, and nothing can be better founded both in reason and justice. No man can be allowed to do himself justice his his own hands. The Judge alone is possessed of competent authority to establish that delinquency in consequence of which a Seigneur or any other individual in society is to be deprived of his rights.

The loss to be sustained by the Seigneur who has built a Mill, of his right of *Bannalité* for the future is in the nature of a penal clause; and Pothier in his treatise on obligations No. 349, expresses himself thus "It is necessary generally speaking that an action should be instituted against a debtor "to put him *en demeure*, and thus render him liable to the forfeiture of the penalty."

The pleas to the merits are 1st. the general issue, 2d. a plea of general denegation.

In support of the action instituted by the Plaintiffs in the Court below it is proposed to shew:

1st. That the right of bannalité, is by law established in this Province.

This is proved by the *arrêts* and judgements cited above in answer to the last ground of exception. Firstly, by the *arrêts* of the 4th of June, 1686. Secondly, by the judgement of Mr. Gilles Hocquart of the 11th of July, 1742, on the complaint of *Simon Jolie* against *Jacques Asselin*. Thirdly, by an *arrêt* of the 20th December, 1706, which orders that a Mill built upon on arrère fief on the Seigneurie of Lauzon shall be shut up: this arrêt is founded on that of the 4th June, 1686. Fourthly, by the judgement of the 13th February, 1742, rendered in a cause between the Missionaries and *Censitaires* of the Seigneurie of *Contre-Cœur*, Plaintiffs, and François Ant. de Pecond, Esquire, Seigneur of Contre-Cœur, and Wife, Defendants. Fifthly, by a judgement of the Court of Common Pleas rendered at Quebec, on the 14th of August, 1770, in the case of Madame Veuve Couillard and her Coheirs, against Michel Blais and ten others, *Censitaires* of the Seigneurie de la *Rivière du Sud*. This was an action against the Defendants not carrying their grain to be ground at the Banal Mill of the said Seigneurie. This judgement was affirmed in Appeal on the 12th February, 1773. Sixthly, by another judgement of the Court of Common Pleas of Quebec, rendered the 6th September, 1774, in a cause between the last mentioned Plaintiffs and the said Michel Blais, for building a Mill in the said last mentioned Seigneurie, and for the purpose of obtaining the demolition thereof, the conclusion of Plaintiffs were awarded to them. This last judgement was also affirmed in Appeal on the 23d December, 1774. Seventhly, by a judgement rendered in the Court of King's Bench, for the District of Quebec, on the 20th June, 1805, in the case of Perrault Guy, condemning the Defendant for a refusal on his part to carry his grain to be ground at the Seigneurial Mill. Eighthly, by a judgement of the Court of King's Bench for the District of Montreal, rendered in April, 1820, in the case of the Baroness of Longueuil, against Frichette, and ordering the demolition of a Mill built by the Defendant.

2d. That the right to cause the mill in question to be demolished is a right growing out of the Right of *Bannalite*.

This proposition is proved by the third and sixth judgements above cited, and by the following authorities (*Bouchel, verbo Moulin, page* 799, 2d *Edition*,) *Denisart, Bannalité*, No. 6, *Trençon, p.* 156. *Dictionaire de Ferrière, Bannalité Bacquet, Droits de Justice, p.* 258, *Grand Coutumier, tom.* 1*er. p.* 10, 38, 1039, No. 13, *Despaisses, tom.* 3, *page* 212, *Nouveau Denisart, Bannalité, page* 150, *Repertoire de Jurisprudence, Verbo Moulin.*

The right of preventing the building of a Mill implies the right of causing to be demolished a Mill that has been already built—most of the above writers maintain the former and several of them expressly support the latter.

3d. That the right to maintain an action *en complainte* is a necessary consequence *of the right* of *Bannalité*.

This is proved by the second judment above cited which is positive: by the 3d. which forbids the use of the mill, by the 6th, which orders the demolition of a mill, and most unquestionably the right to cause the demolition, and consequently to prevent the erection of a mill is a real right, a right connected with the soil, and of course a right authorising *in action en Complainte*. This is also proved by the *arrêt* of the Council of State of the year 1686, and by the uniform Jurisprudence of the Province which has always ranked the right of *Bannalité* amongst the Seigneurial Rights, and the disturbance of the enjoyment of any Seigneurial Right forms a sufficient ground for an *action en Complainte*. Such are the rights of administering Justice and of Fisheries (*Droit de Justice et de Pêche, Denisart Verbo Complainte*, No. 31, No. 18, and No. 7.)

Such are also the Honorary rights, (*droits honorifiques,*) (*Dictionnaire de Ferrière*, No. 1, p. 336.) Such are all the Seigneurial Rights in general, (*Denisart Verbis Complainte*, §§s. 22, 32, *Droits Seigneuriaux*, No. 659, *Nouveau Denisart Complainte, sec.* 2, No. 4, *sec.* 3, No. 3, *Merlin Complainte, p.* 650, *Repertoire de Jurisprudence Complainte, p.* 494, 498, *Edit. in* 8*vo. Dictionnaire de Ferrière, p.* 335, 336. Le nouveau Denisart, cited above establishes the principle (the 2d Section) that the right of *Bannalité* being a Seigneurial Right is incorporated with the Seigneurie and becomes like the Seigneurie itself, immoveable property, & nothing can be more certain than that a disturbance of the possession of an immoveable property gives rise to an *action en Complainte*, (*Pothier, Traité de la Communauté*, Nos. 64, 65, 66, 67, 78, according to the Custom of Paris an action *en Complainte* without a title would not lie, because in the Custom of Paris the right of *Bannalité* is presumed to exist by suffrance or by usurpation—But the inference is different in Canada where the right of *Bannalité* is recognized by Law. Even the Custom of Paris hostile to the right of *Bannalité* claimed without a title gives an action *en Complainte*, when the right is claimed under a title, although the validity of the title itself be contested, *Pothier, traité de la possession*, No. 91, *Nouveau Denisart Complainte, sec.* 2, No. 10, *Merlin, Bannalité*, p. 550. But in the present case the Defendant in the Court below is subject to the right of Bannalité by his very title or deed of Concession (*Exhibit* No. 2, *fyled by the Seminary.*)

These three propositions relating to the merits of the case having been established, it only remains to be observed that the Respondents have proved their possession of the Seigneurie of Montreal by the witnesses who have been examined, by the papers that have been fyled, by the *Lettres de Terrier*, by the *aveu et dénombrement*, and by the deed of Concession of the Appellant, who cannot by any principle be allowed to gainsay his own title—It is established also beyond a doubt that the right of *Bannalité* according to the Law of this Country is a consequence of, or rather forms a part of the Seigneurie; hence it follows, that they have also proved their possession of the right of *Bannalité*.—Their possession of this right of *Bannalité* does not however rest upon authorities or inferences only; it is clearly and incontrovertibly proved by the witnesses above mentioned who have also proved that the Appellant's Mill was built on the Seigneurie of Montreal, and that it began to grind wheat into flour in March 1816, a short time before the Respondents instituted the action in question.—The Respondents therefore, having been in possession of the Bannalité of the Seigneurie of Montreal had a right to bring the action in question, and to pray in their conclusions for the demolition of the Mill built thereon by the Appellant.