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*Mar. 3, 4.
*May 20.

HIS MAJESTY THE KING (DEFENDANT) . . APPELLANT;

AND

PRICE BROTHERS AND COMPANY, LIMITED (PLAINTIFF) . . . . . } RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Grant—Description—"A lake"—Expanse of water—Construction—Maps—Reliability as evidence—Proof of reputation—Sheriff's sale—Description of the property—Knowledge of buyer as to contents—Art. 1019 CC.—Arts. 638, 648 C.P.C.

A grant was made in 1693 by Frontenac, Intendant of New France and confirmed in 1694 by royal warrant of Louis XIV, King of France, upon the request of Augustin Rouer, for and in the name of Louis Rouer, his son, for the concession of a lake, or one lake ("*d'un lac*") called Mitis, which discharged itself into a river of the same name, with one league of land all about the lake. This grant was and still is commonly known under the name of the seigniory of Lake Metis. According to the topography, it is not a single body of water which is to be found at the source of the River Metis, but three bodies of water, two of them being approximately of the same altitude above sea level and the third being of an altitude approximately eight feet above the other two; all three discharged naturally, from one to another by channels of flowing water which form no part of the lake expanse. At the time of the grant, these bodies of water were situated in a remote locality and uninhabited unless by Indians. After various changes of ownership, the respondent became the proprietor of the seigniory in 1922 and it then instituted a petition of right for the purpose of determining the extent of the property. It alleged that, at the time of the grant, it was not known that there was any difference of level between the three bodies of water and that what are now shown in the modern maps and known generally as three lake sections with connecting channels were, by the grant, considered and described as a single lake; and it concluded by asking for a declaration that the three bodies of water should be considered as "a lake" within the meaning of that term in the grant. In 1875, the seigniory had been sold under a sheriff's warrant to one B., the respondent's predecessor and the sheriff's deed described the property as follows: "all that tract of land forming and known under the name of seigniory of Lake Metis * * * with one league of land all around the said lake * * *." Prior to the sheriff's sale, from November, 1868, the provincial government had granted to the respondent's predecessors timber licences on two limits which, according to their description, included all the land which would be comprised within the boundaries of the seigniory if they were those as claimed now by the respondent to have been fixed by the grant of 1693; and the respondent's predecessors exercised their rights of cutting timber within these limits. At the trial, the respondent produced a number of maps which were admitted in evidence on its behalf: they came originally from various sources but were mostly selected from the collection of maps at the

*PRESENT:—Anglin C.J.C. and Idington, Duff, Mignault, Newcombe and Rinfret JJ.

Dominion Archives. The earliest are of the date of 1765 and in all these maps down to 1863, there is a single lake shown at the head of the River Metis.

Held, Duff J. dissenting, that the area of the grant must be limited to one lake, the upper lake, with the surrounding league, as, upon the evidence, the grant cannot be given an interpretation or construction of wider import than the restricted literal meaning of the language used carries with it.

Per Duff J. (dissenting).—The preponderance of evidence favours the view that, at the beginning of the 19th century and previously as far as known, the expanse of water, consisting of the upper, middle and lower sections, with connecting stretches, from the southern extremity of the upper section to the point where the river proper debouches from the lower section, bore the designation of Lake Metis, the whole expanse being treated as a *unum quid.*

Held, also, that maps generally, are of little or no value to prove the facts which they depict or represent, geographers often laying them down upon incorrect surveys or information and copying the mistakes of one another; but they may be useful as admissions against the party who produces them. Idington J. expressed no opinion. Duff J. *held* that although they may not be conclusive for the purpose of construing the grant of 1693, they are at least very cogent evidence in support of the contention advanced by a report of a surveyor in favour of the respondent as to the denotation of the name Lake Metis according to the contemporary usage of persons familiar with the locality.

Per Anglin C.J.C. and Mignault and Newcombe JJ.—Maps, when they have no conventional or statutory significance, should be regarded merely as representing the opinions of the persons who constructed them; they furnish at best no adequate proof, and none when it appears that they are founded upon misleading or unreliable information or upon reasons which do not go to establish the theory or opinion represented, and when they have not the qualifications requisite to found proof of reputation.

Per Anglin C.J.C. and Mignault and Newcombe JJ.—A map prepared by a private person, although filed with a provincial government, is not admissible as a public document against the Crown; it merely illustrates and the proof must come from sources outside the maps. *Mercer* v. *Denne* ([1904] 2 Ch. 534) disc.

Per Rinfret J.—At the time of the seizure and sale, the sheriff cannot have meant, nor could he have intended the public to understand that he had seized and was selling other than the only lake which then was known by the name Lake Metis, that is the body of water furthest from the St. Lawrence. The buyer B., who was perfectly aware of the whole situation, cannot have imagined that his sheriff's deed granted him rights over the other two lakes; and the respondent's predecessors, when they bought from B. in 1876, cannot have intended, in view of the licences held by them since 1868, that they were getting more than the land around the upper lake, not already covered by their Crown licences.

Per Anglin C.J.C. and Mignault and Newcombe JJ.—The report of a surveyor employed by one of the parties to a dispute affecting the title to land to survey that land, when made *post litem motam,* is not admissible as evidence, either of reputation or of fact; it serves only as notice of the claim.

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APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec, affirming the judgment of the Superior Court (1) and maintaining the respondent's petition of right.

The judgment appealed from was reversed (2).

The material facts and the questions at issue are fully stated in the above head-note and in the judgments now reported.

Geoffrion K.C. and *Bouffard K.C.* for the appellant.

Wainwright K.C. and *Vien K.C.* for the respondent.

ANGLIN C.J.C.—I concur with Mr. Justice Newcombe.

IDINGTON J.—This is an appeal from the judgment of the Court of King's Bench, maintaining the judgment of Mr. Justice Gibson the learned trial judge who tried a petition of right presented by the respondent claiming, under and by virtue of a grant made A.D. 1693, by the Intendant of New France to one Louis Rouer, and confirmed in the following year by the Royal Warrant of the King, and successive assignments pursuant thereto of the rights so acquired, and including thereunder a great variety of instruments of which a clear detail is given by the said learned trial judge.

The grant was given of

un lac appellé Mitis qui se décharge dans une rivière du même nom, avec une lieue de terre de profondeur tout autour du lac qui est esloigné d'environ douze ou quinze lieues du fleuve St. Laurens, ensemble les Isles et Islets qui se peuvent trouver en iceluy, etc.

The claim now set up is that not only was there one lake granted thereby, but three.

After considering all the arguments addressed to us and reading all the evidence presented in the case, I, with great respect, am unable to reach the conclusion that such a grant so limited to one lake can be extended further.

It seems to have been impossible to present facts and surrounding circumstances of the time of the date of the said grant, or for seventy years thereafter, as I understand counsel for respondent to admit, which would help out their client's claim.

I am unable to hold, as we are in effect asked to do, that certain circumstances, which arose over a century later than said grant, can help us to give said grant an interpre-

(1) [1924] 3 D.L.R. 817. (2) Appeal to Privy Council.

tation or construction of wider import than the restricted literal meaning of the language used imperatively carries with it.

It seems to me that the evidence of Johnston, a witness of scientific attainments, and Joncas, a surveyor and civil engineer, who were sent to the district in question where Lake Metis is, with instructions to find and to report on the facts tending to determine whether only one lake, or two, or three, as the respective parties hereto had long been contending, and still contend for herein, is conclusive on the question of fact arising in our trying to correctly interpret and construe said grant.

Certainly if Johnston is correct in his estimate of the facts attested by the growth of the trees and vegetation in the locality in question there has been no material change in the levels of the water since the time of the grant in question, and, if Joncas is correct in the evidence he gives, tending to corroborate Johnston's view in that respect, and further that there was a fall of eight feet or more within a stretch of over or about a quarter of a mile in the water flowing from Lake Métis (properly so called) and the next lower lake, known as "Lac à la Croix," I cannot accede to the contention set up by the respondent. For I cannot conceive of a lake having such an outlet and fall having ever been confused with another lake, or river as forming part thereof.

I cannot conceive of people blundering into asserting that two lakes were in fact one.

Such seems to have been the case with the late Mr. Ballantyne, chosen by Mr. Rouville in 1835 to survey the territory he had then acquired under the above mentioned grant of 1693, and successive grants or divisions thereof, by which it was passed on by said grantee and through others to Rouville.

Rouville, apparently, knew as little as the rest of us about this acquisition, and employed Ballantyne as his surveyor to enlighten him.

In the report Ballantyne made he uses the following expression:—

> The whole extent of the lake, i.e., from the point A to the point B, is almost a perfect level.

I am not inclined to believe that Mr. Ballantyne was intentionally dishonest, but I cannot believe that he took

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the same pains as either Johnston or Joncas, in 1923, or Breen, in 1870, who arrived at almost exactly the same results in making a survey of said outlet from lake Métis (properly so called) and demonstrating that there was a fall in the level of the water rushing out from that end of lake Métis which absolutely forbade, in my view of such things, anyone, taking due care, from reporting those three sections of water, draining the surrounding country and emptying the results into the so-called river Métis, as one lake.

Owing to the erection of a dam by respondent at the end of these three lakes the level between *Lac à la Croix* and *Lac aux Anguilles* in its natural state was not, and, I imagine, could not possibly be made as clear as the fall from the Métis, properly so called, to La Croix.

But how did the latter get the names they acquired and when?

We were told in argument that La Croix had a tradition attached to it but as I do not find the tradition on its origin clearly testified to by oral evidence, perhaps it resulted from the necessities of those visiting there for business or pleasure promoting in these later times what anyone so doing must have seen necessity for instead of the absurdity of calling the second and third sections, part of lake Métis.

I am quite confident that there must have been some of these people intelligent enough to recognize the absurdity of calling all those stretches of water by one name and as if one lake.

It takes time, under such conditions as existed in that far away district to have each spot given a name which adheres to it.

I have no doubt that as lake Métis, properly so called, was the chief body of water at all like a lake, in 1693, and that no reasonable person could then claim for the other sections, now claimed as lakes, any necessity for having a name given them, there was no grant made of any lake but that I have been designating the one properly so called.

Then the outlet from it at the river Métis was clearly a recognition of the lower parts of its outflow, as part of the river Métis.

Such a view may be said to be unfounded in the evidence. I reply thereto that for such speculation there is

quite as much evidence as for accepting in whole the report of Mr. Ballantyne, as if evidence.

I cannot accept that as evidence of anything but the fact that he had been so retained and so reported.

On that report we have much argument based, as if it proved the facts stated as such, therein, when they are not proven, and are only good for evidence of what occurred relative to the filing of same in the Crown records when all relative to the truth or falsehood of the statements made therein was expressly reserved for future determination.

I cannot, therefore, accede to the respondent's argument based on Mr. Ballantyne's statements of fact. Much less can I as helping to prove the actual facts and circumstances surrounding the execution of the original grant.

Nor can I assent to the suggestion that the commutation deed of 1853 extended, or ever was intended to extend, the rights originally granted.

The mere power given by the imperial statute of 1820, on which the said deed of 1853 rests, never contemplated more than a mere change of tenure.

I observe that the court below seems to have adopted the opinion of Mr. Justice Greenshields who wrote at greater length than some of the others writing; and he certainly seemed to start out in his conclusion as if the statements of Ballantyne were to be accepted as fact, instead of simply proof of his having, acting on behalf of his client Rouville, presented his opinions to the Government, and which were received for future consideration, but not as proven evidence. And that was so clearly put on record at the time as to rather lead one to doubt the sincerity of argument rested thereon.

That argument seems nevertheless to have pervaded the minds of the court below and, without that state of mind I, with great respect, submit that the judgment appealed from would not have been given.

As, with great respect, I cannot accept that view, or any other than as above indicated as briefly as can be at present, I am decidedly of the opinion that this appeal should be allowed with costs throughout, and the petition in question herein dismised with costs.

There are many other grounds taken by respondent which I am of opinion have no evidence to support them, and I have no time to deal with them herein, and yet they

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are put forward with apparent confidence which the respondents could not have felt half a century, or more, ago, when accepting licenses from appellant, recognizing his rights, though under protest.

DUFF J. (dissenting).—The crucial question on this appeal is mainly a question of fact, which has been elaborately and ably examined by the trial judge, Mr. Justice Gibson, and by Mr. Justice Greenshields, in the Court of King's Bench. The powerful argument addressed to us for the Crown has not, in my opinion, seriously shaken their conclusion. The consideration of the question can be most conveniently approached by referring first to the report and plan of Ballantyne, of 1836. The report is, in part, in these words:—

Report of the survey of Lake Mitis, surveyed in November and December, 1835, by D. S. Ballantyne, D.P.S.

Pursuant to the instructions directed to me by J. B. Taché, Esq., dated the 8th October, 1835, I have surveyed the Lake Mitis situated about 36 miles south east of the river St. Lawrence, conformable to the plan and field notes hereto annexed, and in the manner hereafter mentioned.

Beginning at the south extremity of the said lake, towards the north extremity of said lake, in scaling the different courses and distances and taking intersections, to the entrance of the river Mitis. The parts surveyed by scaling are coloured on the plan in pink and those by intersections are coloured in yellow.

Remarks

The general features of the county around the lake is level for one mile and from thence begins rising hills.

The average depth of water in the expanded parts may be from 4 to 6 fathoms and in the contracted parts from 4 to 15 feet.

The average breadth of the expanded parts is from 24 to 16 arpens and the contracted parts from 4 to 24 perches. The contracted parts is dead water and the soil on the banks is alluvial for 3 to 5 arpens each side and from thence begins the flats, extending from half a mile to a mile and afterwards begins the rising ground.

Both in the expanded and contracted parts of the lake, the bottom is composed of sand and clay and the bed of the river Mitis, stoney. At the point B, where the river takes the name of river Mitis, the average breadth may be about 3 perches and very rapid, the average fall may also be about forty feet to one mile. The whole extend of the lake, i.e., from the point A to the point B is almost a perfect level.

The river discharging in the lake is small and run with a gentle current, and are not connected with any lakes.

The islands are of a sandy soil rather inclined to be loamy and elevated above the level of the lake about 3 to 4 feet, the timber growing on them is firs and white birch of a middle size.

The hunters and old settlers of Mitis and Rimousky that have often frequented those parts gives the appelation of Lake Mitis to the

whole extend, i.e., from the point A to B and the river takes the name of river Mitis at the point B.

From the features of the country its locality and the tenure of the title of concession, my humble opinion, is that the grant was made for the whole extend, i.e., from the point A to B for the following reasons:

When Mr. Rouer in 1693 made application for a grant of Lake Mitis, he certainly applied for the whole extend, as the aborigines of that part of the country, then and do now consider it to be all Lake Mitis, i.e., the whole extend from the point B to A and as also the south section only; could not induce any person to apply for a grant being such a distance from the St. Lawrence, and also the same reasons only for the second section.

If the intention of the grant was merely for one section, by giving one length in depth round either of the lakes one of the sections most evidently encroach on the other.

Trois Pistoles, 10 January, 1836.

D. S. Ballantyne, D.P.S.

The effect of this report is, when read in light of the plan, that, at the date of the report and previously, so far as known, among the hunters and settlers of Metis and Rimouski, the expanse of water, consisting of the upper, middle and lower sections, with connecting stretches, from the southern extremity of the upper to the point where the river proper debouches from the lower section, bore the designation of "Lake Metis"; the whole expanse being treated as a *unum quid*. The preponderance of evidence favours the view that at the beginning of the nineteenth century it was to this expanse as a whole that the term "Lake Metis" was applied.

Ballantyne's report was referred to Bouchette, the surveyor-general, and Bouchette, whose report is dated about six weeks later than the date of Ballantyne's, while personally not unwilling to accept the view advanced by Ballantyne, advised the executive that this should be subject to verification in the manner suggested by Colonel de Rouville, the owner of the seigniory, in support of whose application Ballantyne's report had been made and filed. De Rouville's application has not been found, and we are ignorant of the nature of his suggestions as to verification. About a month later, the surveyor-general was authorized by the executive to make Ballantyne's report and plan part of the records of the surveyor-general's office, it being understood that Ballantyne's survey was not to be construed as settling "conclusively" the boundaries of lake Métis. The object of Colonel de Rouville's application was, of course, to fix in principle the extent of the seigniory, by

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establishing the identity of lake Métis within the meaning of the grant of Louis XIV, in 1693, and this was apparently the question intended to be reserved.

There is no evidence of any formal acceptance of Ballantyne's report and plan as correctly defining lake Métis for the purpose of giving effect to the grant of Louis XIV, except such as may be found in the grant of 1855 and the map of 1853 hereinafter mentioned. The learned trial judge seems rightly to have held that the dominating purpose of this last-mentioned grant was to effect a change of tenure, pursuant to the powers and duties created by the Act of 1822. This, of course, is not necessarily inconsistent with the existence of an intention manifested by that grant to accept Ballantyne's survey as correctly ascertaining the subject of the earlier grant, and rightly construed in light of the facts known to the Crown officials as well as to the grantees this grant of 1855 does appear, inferentially at all events, to involve a declaration upon that subject.

The description of the land which was the subject of the grant in the deed of 1855 is in the following words:—

* * * all that certain tract of waste and uncultivated land, lands and tenements known by the name of the fief and seigniory of the Lake Metis situate in the county of Rimouski in the district of Kamouraska heretofore forming part of the district of Quebec, which said lake, lying on the south bank of the river St. Lawrence, discharges itself into a river of the same name (Metis) emptying itself into the said river St. Lawrence and being at a distance of about ten or eleven leagues from the said river St. Lawrence, together with all the isles, islands and islets which may be found therein and one league of land in depth all round the said lake and the appurtenances bounded on all sides by the waste lands of the Crown.

In the original grant of 1693, the distance of the lake from the river had been given as from twelve to fifteen leagues. There appears to be little doubt that the figures given in each grant are intended to express the distance, reckoned according to the sinuosities of the river, and not in a straight line, and give the length of the river proper, so measured, from the lower end of the lake described as lake Métis to its embouchement at the St. Lawrence. For nearly twenty years before the grant of 1855, the Crown had been in possession of Ballantyne's plan and report, which had been official records of the department of Crown Lands. Ballantyne had reported the "distance" as "thirty-six miles." This was not adopted in preparing the description for the deed of 1855. No doubt in the

meantime more accurate information had been obtained upon this point; and the "ten or eleven leagues," mentioned in the description as the length of the river, accords with the fact as deposed to by Cimon (who, as the result of his measurements, gives the length of the river as thirty-three miles and a fraction), if "Lake Métis," in the description, is to be read as designating the whole expanse which is delineated and so designated in the plan and survey of Ballantyne. That this is the purport of the description is borne out by a map of the west part of Rimouski, which appears to have been returned, in 1853, to the two houses of the Quebec legislature, with a report by the department of Crown Lands. That map professes to give the boundaries of the seigniory; and the lake, as there delineated, obviously comprises all three sections.

This delineation depicts the river proper as debouching from the lake at a point which must obviously be the lower end of the lower section—the lake, as depicted on the map, discharging itself into the river at that point. In this respect, the lake and river as shown in this map, returned to the two houses of the legislature by the department of Crown Lands, answer the description in the grant of 1855, as well as in the grant of 1693, construed according to the contention of the respondents; but does not answer the description in either grant, construed according to the contention of the Crown. The length of the river given, moreover, ten or eleven leagues, is wholly irreconciliable with the contention of the Crown that lac Métis embraces the upper section alone.

The description in the deed of 1855, interpreted in light of these facts—in light, that is to say, of the documents of 1836, of this map of 1853, of the fact that ten or eleven leagues is an approximately correct statement of the actual distance, measured from the lower end of the lower section to the St. Lawrence, according to the sinuosities of the river, and of the adoption of these figures in substitution for the figures in the original grant—appears to afford satisfactory evidence that the Crown and its grantees under the grant of 1855 did accept, for the purposes of the deed, the claim advanced in 1836 as to the identity of the expanse of water designated by the name "Lake Métis."

Assuming that this is not conclusive for the purpose of construing the grant of 1693 (and leaving out of view the

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surrender of the earlier grant involved in the acceptance of the grant of 1855), it seems at least to be very cogent evidence in support of the contention advanced by Ballantyne as to the denotation of the name "Lake Métis," according to the contemporary usage of persons familiar with the locality. The admissibility of Ballantyne's survey, plan and report has been challenged, but Bouchette's report upon them, and the letter of advice from the Governor's secretary to M. de Rouville, are indisputably admissible, and the documents to which they relate can unquestionably be referred to for the purpose of explaining them. Moreover, Ballantyne's report and plan, having been received as part of the records of the Crown Lands department, can be inspected for the purpose of estimating the significance of the map returned in 1853; and it is impossible to doubt that they can be referred to for the purpose of construing and applying the description in the grant of 1855.

Ballantyne's report and plan evidently remained a part of the official records in the Crown Lands office, and without official challenge as to their correctness, as representing the state of affairs existing in 1836, and they formed the basis of official and other maps and plans of Rimouski for nearly half a century after the grant of 1855. Ballantyne's boundaries of Lake Métis are reproduced in a series of maps, many of them official, beginning with 1863, and ending about the end of the century.

In 1870, a departmental map was issued, with the authority of the commissioner of Crown Lands and the assistant commissioner, in which the seigniory is shown as embracing all the three sections of the lake with the surrounding land; and again, in 1880, a departmental map, prepared by Mr. Taché, the assistant commissioner, exhibits the boundaries of the seigniory in the same way as the map of 1870. There are similar maps in 1893, 1898, 1904 and 1914. In 1895, for the first time, there is a map issued to the public in which the boundaries of the seigniory are traced in accordance with the view now advocated by the Crown; as circumscribing, that is to say, the upper lake alone. But again, in 1898, an official map, signed by the commissioner of colonization and mines, gives the boundaries of the seigniory according to the plan of Ballantyne. It is not until 1870 that we first hear of the

designations "Lac à la Croix" and "Lac d'Anguilles" as attaching to the middle and lower lakes as quite distinct sheets of water. The latter designation appears in none of the published maps produced, and the former—until 1914—only as an alternative designation in this legend, "Lac Milieu, ou Lac à la Croix."

Then there is another series of maps, beginning with the year 1798 and ending about the year 1830, in which the lake source of the river Métis is shown under the designation of "Lac Métis," and circumscribed by the boundaries of the seigniory, and delineated in such a way as to indicate an intention to include the whole lake source in the body of water so described. From the dimensions, moreover, of this lake source, as delineated on nearly every one of these maps, it must be inferred that the map-maker conceived the body of water delineated as having a much greater longitudinal extent than four and a half miles, the length of the upper lake as ascertained by Johnston's report. As a rule, this body of water is shown as having a length, when scaled, of from ten to fourteen miles. It is quite clear, from the legends on some of these maps, that the delineation of this body of water proceeded on no survey or report but from information gathered from people familiar with the locality.

These maps, however, afford some evidence that Ballantyne's view was in conformity with the general repute and the fair inference appears to be that, at the beginning of the nineteenth century, the whole chain of lakes was the subject designated by the term "Lake Métis," according to the usage of those familiar with the locality.

This, of course, is by no means necessarily conclusive as to the construction of the grant of 1693, but it is sufficient to establish a *prima facie* case in favour of the suppliants on the question of fact as to what was the subject or what were the subjects designated in 1693 by the appellation "Lac Métis."

Nothing in the maps of the eighteenth century is at all inconsistent with this. Against it there can be urged only this, namely, that the grant of 1693 itself describes the subject of it as "un lac," and that this forbids the adoption of a reading of the description as a whole which makes it embrace three distinct bodies of water, each of which might be described in technical, as well as in popu-

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lar language, as "un lac." To this the answer appears to be that the phrase of the grant of 1693 "un lac appellé Métis" may not improperly be read as a mere paraphrase of the proper name, Lac Mitis; and if it be true that under this latter description the whole chain or expanse now in question was embraced, then effect ought to be given to the grant according to this nomenclature.

The appeal should be dismised with costs.

MIGNAULT J.—I concur with Mr. Justice Newcombe.

NEWCOMBE J.—I see no reason to doubt the conclusion of the learned trial judge expressed in the finding

that the identification, situation and extent of the lands referred to in the re-grant of 1855 are to be determined from the primordial title, to wit, that of 10th February, 1693.

It is the affirmative determination expressed in the next following paragraph of the judgment which is at the foundation of the respondent company's case:—

Considering that it appears that, at the time of the primordial grant, it was not known that there was any difference of level between the uppermost section of (sic) the other two, and that the intention of the grantor was not affected by the consideration of such circumstance, but, on the contrary, it appears that what are now shown on the maps and plans as three lake sections with connecting channels, were, by the primordial grant, considered and described as a single lake, regardless of there being separate sections, and regardless of there being a difference between the natural level of one section and that of the other two.

I accept the finding that according to the topography it is not a single body of water called "Lake Métis" which is to be found at the source of the river Métis, but three bodies of water; the learned judge says that

travelling up stream there is a first lake, now called "*Lac à l'Anguille*"; connected to it, by a rather widened channel, is, at a distance of about two miles further up stream, a second lake, now called "*Lac à la Croix*"; then further up, connected by the river at its normal width, is a third lake, the distance between the second and the third lake is about one-half mile, the third lake now called "*Lake Mitis*." The first and second lakes are approximately of the same altitude above sea level; the channel between them is sluggish; but the third lake is of an altitude approximately eight feet above the other two, and the stream in the connecting channel has a flow consequent upon the fall of eight feet in the half mile.

It is to be observed however by reference to the report of Mr. Johnston of the Geological Survey, who surveyed these lakes, that he gives the distance between the upper and middle lakes as fifteen hundred feet. He shows moreover that the levels of the middle and lower lakes have been raised by reason of the dam which has been constructed at the discharge of the lower lake, and that

the middle and lower lakes were formerly connected by a channel in which there was probably a small amount of fall, but because of the effects of the dam at the outlet of the lower lake, in raising the level of the water, the two lakes are now at the same level.

Mr. Johnston also found that

the difference in level between the water above and below the dam when the gates were closed varied from 9.7 to 10.2 feet, so that under natural conditions at times of low water there would be a difference of level of 12 to 13 feet, between the level of the water of the lower lake and that of the upper lake.

There are thus three lakes lying at different levels, and these discharge naturally, from one to another, by channels of flowing water which form no part of the lake expanses, and it serves only to misunderstanding and confusion to call these lakes three lake sections or separate sections. This misdescription finds its origin in the report of Mr. Ballantyne, a surveyor, who was sent by the proprietor of the granted rights to survey the seigniory in 1835, at a time when questions had arisen and were pending as between the proprietor and the Crown as to its extent. Unfortunately Ballantyne's survey and plan were permitted to find their way to the records of the Crown Lands office at Quebec, and, although the Government declined to accept or to act upon his report, and has never acquiesced in or become bound by it, it has nevertheless, as a document of reference, exercised a confounding influence upon the subsequent cartography and description.

The grant was made in 1693, upon the request of Augustin Rouer, for and in the name of Louis Rouer, his son, for the concession of a lake, or one lake (*d'un lac*), called Métis, which discharges itself into a river of the same name, with one league of land all about the lake, which is at a distance of about twelve or fifteen leagues from the river St. Lawrence, and the land is granted by the same description *à titre de fief*. This was less than ninety years after the establishment of the first settlement at Quebec. The lakes are situated at the head waters of the river Metis, a stream which flows into the St. Lawrence from the southward, 200 miles or more below Quebec, and which comes down from the height of land or watershed between the St. Lawrence and the Baie des Chaleurs, and has a length, exclusive of the lakes, following its sinuosities, of about 33 miles, or, in a direct line, about 10 miles less. The region was at the time uninhabited, unless by Indians, or at places on the St. Lawrence convenient for the fish-

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ery; it may be that it was due to the proximity of the natives to a settlement at the estuary that the river Métis derived its name. The chain of lakes, upper, middle and lower, including the connecting channels, is about fifteen miles in length; the upper lake, four and one-half miles; the middle lake, about five miles; the lower lake, about three miles, and the connecting streams about two and one-half miles. There is no evidence except from the grant, and such as comes from the maps to which I shall refer, as to what any of these lakes was called at the time. They were situated in a remote locality and probably not much was known about them. If they were named, it is most unlikely that the three lakes would have the same name; if one of them were named "Métis," it may perhaps have been the lower because the name is French, and the discovery would naturally come from the settlements on the St. Lawrence; or, the existence of the three lakes were known, it may have been the upper one, as the source of the river, which had received the name "*Mitis.*" The application of the name is thus left somewhat to conjecture, but certainly if the grantee before making his application had explored these waters, or caused them to be explored, to the head of the upper lake, and if it had been his intention to obtain a grant of the land surrounding all three, it is inconceivable that he would have described the area in his application as one lake and the surrounding league. He could not have ascended the channel which carried the discharge of the middle lake and was two miles in length without realizing that it was a river or stream, and not a lake, and he would not have thought of using the name "Lac Métis" as descriptive either of it or of the upper channel.

The inference to be drawn from the maps of the 18th and early 19th centuries, which were introduced by the respondent, is that, according to the knowledge or reputation of the time, there was only one lake on the river Métis, and this, as early at least as 1755, bore the name of Lake Métis, and it was from this lake that the river took its rise. I see no evidence to suggest that the name was applied to three lakes; and it is noteworthy that it is the upper lake, the source of the river, to which the name "*Métis*" adheres, and that we find the middle lake known

under the name of "*Lac à La Croix,*" and the lower one as "*Lac à l'Anguille.*"

Ballantyne on his plan puts the letter A at the head of the upper lake, and the letter B at the foot of the lower lake, and he says that the hunters and old settlers of Métis and Rimouski applied the name "Lake Métis" to the whole extent from A to B, and that the river takes the name of Métis at B. Moreover, he says that

> the aborigines of that part of the country then (1693) and do now consider it to be all Lake Metis, that is the whole extent from point B to A.

There are subjoined to Ballantyne's report under the title "remarks" a few paragraphs, the first group of which is descriptive, while the concluding group of paragraphs is evidently designed to set forth his reasons and argument for projecting the boundary lines of the seigniory around all three lakes. It is here that he refers to the hunters and old settlers of the time, and to the aborigines of 1693. In my view, neither one of these declarations or statements can have any probative effect, because of the partizan source from which they come *post litem motam,* and because, seeing that Ballantyne reports as a fact the use which the Indians made of the name "Lake Métis" in 1693, a subject upon which he could possibly have had no information, there is no reason to suppose that he was adequately informed when he tells of the application of the name by the hunters and old settlers of Métis and Rimouski. It is, I think, just, having regard to the occasion and context of Ballantyne's remarks, to consider them as put forward by the surveyor merely as argument to support the case of his employer, and not as evidence which can be permitted to influence the findings.

I am not aware of any principle upon which the self-serving statements in Ballantyne's report can be accepted as evidence for the respondent, either of reputation or of fact. His survey and his enquiries, if he made any, were for the purpose of establishing or supporting this very claim, which was then in controversy. In my view, Ballantyne's report serves as notice of the claim which it was prepared to advocate and may be used only for that purpose.

The respondent produced a number of maps which were admitted in evidence on his behalf. These came originally from various sources, but were mostly selected from

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the collection of maps at the Dominion Archives. The earliest are of the date 1755 and in all these maps down to 1863 there is a single lake shown at the head of the river Métis. In Holland's map of 1803, the lake is shown under the name "Lake Métis" surrounded by lines presumably drawn to represent the boundaries of the grant, but the lake is according to the scale somewhat less than ten miles in length and has an extreme breadth of upwards of five miles. It was not until 1863 that a map emerged showing a long narrow crescent-shaped lake corresponding somewhat to the lakes depicted upon Ballantyne's plan, but this map makes no attempt to separate the three lakes and shows all of more or less uniform width. Later maps follow Ballantyne's draft more closely.

Maps are from their nature of very slight evidence. Geographers often lay them down upon incorrect surveys or information, copying the mistakes of one another. This may be illustrated by reference to Holland's map of 1803, where it is said, under the figure of Lake Métis, surrounded by lines to represent the boundaries of the seigniory, that

> these lakes are laid down not from actual survey but from information of travellers.

Now this drawing which is the first representation of a lake which is of any use for the purpose of realizing its size or shape was certainly laid down without any reliable information; there is no lake of its outline or size upon the ground, and yet the lake as shown here re-appears in subsequent maps with considerable regularity until 1863, a time considerably subsequent to Ballantyne's survey. It must be remembered that these are all maps of an unsurveyed district, and they are really of little or no value to prove the facts which they depict or represent; they may however be useful as admissions against the party who produces them; and, in this aspect, the inference which they support is that, until the time of Ballantyne's survey, everybody, both cartographers and the persons from whom they got their information, were under the impression that the river Métis had its source in one lake only. It may be that the description of the grant is apt or sufficient to include the upper or the lower lake as a lake, or one lake, called " Métis," which is the subject of the grant, but upon what principle the description can be extended to include more lakes than one I am unable to realize. I

see no convincing evidence that the three lakes were called "Métis;" but, if they were, how does that improve the respondent's case? If there were three lakes called "Métis" discharging into the river Métis the grant is surely void for uncertainty, or because it is impossible to apply the description to any defined subject matter; and, if it be only the lower lake which discharges into the river Métis, that fact, while perhaps sufficient to identify the lake as the subject of the grant, does not entitle the respondent to include also two other lakes called "Métis" which do not discharge into the river Métis.

Maps, when they have no conventional or statutory significance, should be regarded merely as representing the opinions of the persons who constructed them, they furnish at best no adequate proof, and none when it appears that they are founded upon misleading or unreliable information or upon reasons which do not go to establish the theory or opinion represented, and when they have not the qualifications requisite to found proof of reputation. Some of the later printed or coloured maps issued by the department of Colonization or of Crown Lands represent the seigniory in accordance with the respondent's contention, others adopt that of the Crown. These maps embrace large districts, if not the whole province; they are issued for departmental use. One realizes that publications, documents and information not infrequently find their way into the Crown Lands and other departments of the Government from which inferences may be drawn adverse to the public right. Claimants are vigilant to avail themselves of any consent which may be afforded to introduce to the records information which may serve their interests. Territorial limits and the boundaries of wilderness grants are, perhaps more frequently than not, lacking in definition or precision of statement, and when a general map of a province or district is in course of preparation, the attention of the departmental draftsman is not apt to be specially directed to careful consideration of the particular features or details upon which claims may depend, and sometimes, not unnaturally, particulars creep into the draft without due consideration of their use or trustworthiness. They are matters of detail, perhaps proper to be shown if verified, but not contributing to the main purpose of the work,

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which is not essentially concerned to verify them. These maps are prepared and issued not for the purpose of establishing facts or as admissions; they merely illustrate, and the proof must come from sources outside the maps. *Mercer* v. *Denne* (1). Neither the minister nor the Governor in Council can in the reasonable course of administration consider and conclude all the particulars or details which find place in a general map, or all the questions which, if the map import admission or proof, it might be used to determine. The map makers of the department use the information which is available, and they in turn, no matter how carefully they execute their work, are not proof against oversight or errors, the consequences of which might be very serious if these erroneous representations are to be taken as determining the facts with relation to pending claims. It is not in this manner that the Crown domain can be alienated.

It is a remarkable fact that whereas, according to the original grant, the distance of the lake called Métis is about 12 or 15 leagues from the St. Lawrence, the grant in free and common soccage of 1855, known as the commutation, gives a distance of about 10 or 11 leagues; and, although nothing else appears by the latter grant to indicate an intention to enlarge or to alter the area or location of the lands granted in 1693, there is no explanation or suggestion of any reason why the statement of the distance from the St. Lawrence is thus varied. It appears in fact that the outlet of the upper lake is about 30 miles from the St. Lawrence, and that of the lower lake about 23 miles, and it may have been that the draftsman of the grant of 1855 considered that, as the distance stated in the original grant was then known to be excessive, it ought to be reduced, and that he stated the distance of 10 or 11 leagues as his appreciation of the true distance, which, in fact, as will have been perceived, corresponds very closely to the actual distance of the outlet of the upper lake from the St. Lawrence. Certainly the distance of 10 or 11 leagues was not taken from Ballantyne's report which states that the lake Métis is situated about 36 miles southeast of the St. Lawrence.

It is the upper lake which the Crown identifies as the

(1) [1904] 2 Ch. 534.

lake Métis of the grant, and expresses its willingness to concede, and it would answer all the requirements not unreasonably if the stream between the upper and middle lakes be regarded as the beginning of the river Métis into which the lake discharges. On the other hand, the lower lake undoubtedly discharges into the river Métis, and if, at the time of the grant, it were called lake Métis, it would satisfy the grant in all particulars, except as to distance from the St. Lawrence. I do not think the grant necessarily fails or is utterly void for uncertainty, or that it is impossible to define the subject of the grant upon the ground. The object of the litigation is to extend the grant, which admittedly and upon the common view includes the upper lake, to the middle and lower lake, and I would reject that contention.

RINFRET J.—Price Brothers & Company, Limited, par sa pétition de droit amendée, conclut:—

That by the judgment to intervene herein your suppliant be declared the true and lawful proprietor and owner of that territory or tract of land, lands and tenements situated and lying within the counties of Rimouski and Matane, in the province of Quebec, commonly known under the name of the seigniory of Lake Metis and comprising that certain body of water at the head of the river Metis in the counties of Rimouski and Matane composed of three sections or parts known collectively as Lac Metis, together with all the isles, islands and islets which may be found therein, and one league of land in depth around the said body of water, together with all rights, members and appurtenances appertaining thereto or in connection therewith.

La compagnie demande, en outre, qu'il soit procédé à un bornage entre le territoire de la seigneurie et celui de la Couronne.

Les parties ont consenti à suspendre l'adjudication sur la question du bornage jusqu'à ce que le jugement final ait été prononcé quant à l'étendue de la seigneurie.

L'acte de concession original du fief à Louis Rouer remonte au 10 février 1693 et fut ratifié par Louis XIV, le 15 avril 1694.

Le plan de D. S. Ballantyne, que la compagnie désire faire accepter, porte la date du 10 janvier 1836.

M. Ballantyne était un arpenteur qui agit sur les instructions de M. Hertel de Rouville, le seigneur d'alors. Il prépara un rapport et un plan dont M. de Rouville voulut faire la base de ses réclamations relatives à la superficie du territoire compris dans la concession originale, et qu'il pria

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la Couronne d'admettre pour les fins du bornage qu'il sollicitait.

La difficulté peut se résumer comme suit:

La concession originale décrit la seigneurie

Led lac appellé Mitis avec une lieue de terre de profondeur tout autour d'iceluy, à titre de fief.

Ballantyne, en 1836, rapporta qu'il existait en réalité trois nappes d'eau reliées par des bras de rivière; mais qu'elles étaient toutes trois presque sur le même niveau et qu'elles devaient être considérées plutôt comme un seul lac divisé en trois sections qui, de tout temps, avaient été connues par les chasseurs et les indigènes sous l'appellation commune du lac Métis.

Ce que la compagnie demande donc de déterminer, c'est la question de savoir si la désignation dans ses titres couvre les trois nappes d'eau conformément au rapport et au plan de Ballantyne, ou si elle n'en comprend qu'une seule; et, dans ce cas, laquelle doit lui être attribuée.

Il est avéré que les trois sections dont il s'agit sont maintenant connues sous les noms de Lac à l'Anguille, Lac à la Croix et Lac Métis, et que, par rapport au fleuve Saint-Laurent, le Lac à l'Anguille est le plus rapproché et le Lac Métis est le plus éloigné; le Lac à la Croix se trouvant, par conséquent, au milieu. La différence entre les superficies réclamées et concédées de part et d'autre constitue 52,477 acres et représente donc une valeur considérable.

A la fois parce que la compagnie est demanderesse, parce que le texte de son octroi (*"un lac"*) est de prime abord opposé à sa prétention, parce qu'elle réclame à l'encontre de la Couronne, et, au besoin, par application de l'article 1019 du code civil, il ne paraît pas y avoir de doute que le fardeau de la preuve lui incombe.

Le compagnie, dans sa pétition, a énuméré toute la lignée de ses titres depuis 1693; mais, à l'examen, il apparaît très clairement que l'on doit se borner à la considération de trois étapes seulement: la concession originale, la commutation de 1855 et le titre du shérif de 1875.

Il semble que c'est en rétrogradant de la dernière jusqu'à la première de ces étapes que l'on peut le plus avantageusement tirer une conclusion des faits et des nombreux documents qui ont été soumis.

La compagnie pétitionnaire a été incorporée sous le nom qu'elle porte en 1920. Elle succédait à une première com-

pagnie du même nom incorporée en 1904. Le titre en vertu duquel elle détient actuellement la seigneurie du Lac Métis est une vente qui lui a été consentie par la première compagnie le 17 mai 1921.

La première compagnie avait elle-même acquis la seigneurie, le 29 août 1878, d'un monsieur George W. Bartholomew, lequel tenait son titre comme adjudicataire du shérif en vertu d'un acte de vente en date du 6 avril 1875.

L'acte du shérif décrit la seigneurie comme suit:

All that tract of land heretofore forming and known under the name of seigniory of Lake Metis, namely, the said Lake Metis, which discharges itself into the river of the same name (Metis), with one league of land in depth all around the said lake, being distant about twelve or fifteen leagues from the river St. Lawrence, lying within the county of Rimouski, province of Quebec, with all the islands and islets which may be found therein, with all rights belonging thereto, appurtenances and dependencies of any kind, the whole now in free and common succage, bounded on all sides by the waste lands of the Crown.

Cette description a été conservée identiquement dans les titres subséquents; et c'est donc celle qui se trouve dans la vente en vertu de laquelle la compagnie actuelle est devenue propriétaire. Il convient d'ajouter que cette description est conforme à celle du procès-verbal de saisie et de l'avis de vente publié dans la Gazette Officielle.

D'après le code de procédure alors en vigueur (articles 638 et 648), la saisie d'un immeuble était constatée par un procès-verbal contenant

la description des immeubles saisis en indiquant la cité, ville, village, paroisse ou township, ainsi que la rue, le rang ou la concession où ils sont situés, et le numéro de l'immeuble, s'il existe un plan officiel de la localité, sinon les tenants et aboutissants,

et l'annonce dans la Gazette Officielle devait contenir également " la désignation de l'immeuble " de la même façon.

Il ne s'agit pas naturellement d'envisager la désignation, que le shérif a alors donnée à l'immeuble qu'il a saisi et vendu, au point de vue de l'irrigularité qu'elle pouvait comporter. La Couronne ne se prévaut pas de cette insuffisance. Mais la comparaison entre la désignation du shérif et la situation telle qu'elle était alors connue des parties nous semble être de la plus haute importance pour la décision que nous avons à rendre.

En effet, dès 1835, M. de Rouville avait soumis à la Couronne ses prétentions basées sur le plan et le rapport de Ballantyne. Elles démontrent que jusqu'à cette époque les droits du seigneur sur ce que nous appellerons les trois

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sections en litige n'étaient pas reconnus. Or, ces prétentions ne furent pas alors accueillies. Sur réception de ce rapport et de ce plan, l'arpenteur général, M. Joseph Bouchette, fit rapport au gouverneur que l'éloignement de la seigneurie ne permettait pas de contrôler les données fournies par Ballantyne et recommanda de différer toute décision

until it was the intention of the Government to settle that portion of the waste lands * * * provided the survey of Mr. Ballantyne on which it is based shall have been found upon verification correct and satisfactory, and have been approved by His Majesty's Government.

Sur quoi le Secrétaire Civil écrivit, le 24 mars 1836, à M. de Rouville

that His Excellency will authorize that report and plan (ceux de Ballantyne) to form part of the records of the Surveyor General's office but with the understanding that whenever His Majesty's Government shall see fit to lay out townships to be bounded by the seigniory of Mitis and that the verification of the survey of the lake shall become necessary to establish the boundaries of that seigniory legally—you will be prepared to contribute the proportion of the expense to which you are liable by the law and usage of the province without reference to any disbursement which you may have made for the outline of the lake as laid down on Mr. Ballantyne's survey, which survey is not to be considered as conclusively settling the outline of the lake.

Ce n'est que le 9 mars 1870 que M. Thomas Breen, arpenteur provincial, reçut de l'assistant commissaire des terres instruction de procéder à l'arpentage de la rivière Métis,

the above stated survey having been deemed expedient preliminarily to establishing the position and extent of the seigniory of Lake Mitis in connection with the delimitation of the divisional line of boundary between that seigniory and the adjacent lands of the Crown in rear of the projected township of Massé.

Ces instructions recommandaient à M. Breen de contrôler l'exactitude du rapport de Ballantyne et de vérifier les variations de niveau des trois sections, ainsi que le cours des eaux dans les parties rétrécies par lesquelles ces trois sections communiquaient entre elles. On voit, par une lettre, en date du 23 octobre 1871, écrite par l'assistant-commissaire des terres au procureur général, que cette mission fut confiée à M. Breen parce que M. G. W. Bartholomew avait demandé, par l'entremise de son agent,

que le département des Terres de la Couronne vint à confier au plus tôt à un ou deux arpenteurs compétents, le soin d'établir les limites entre ce territoire et les terres adjacentes du domaine public.

M. Breen fit rapport:

Ayant trouvé un courant très fort dans la décharge du lac de la première section, ou Grand Lac Métis, j'en ai d'abord fait un relevé exact

puis constaté qu'il existe réellement entre les points A et B sur le plan une différence de niveau de huit pieds et demie (8½ pieds) faisant de ce lac un lac tout particulier et ne laissant le nom de lac Métis qu'aux lacs de la Croix et de la Pêche à l'Anguille dont le niveau ne varie que de quelques pouces d'un bout à l'autre.

La lettre de l'assistant-commissaire, M. Taché, à laquelle il vient d'être fait allusion, est un résumé complet de la situation jusqu'à la date de 1871. Elle soumet toute la question au procureur général parce que le commissaire des terres désire obtenir une décision

afin de pouvoir donner à M. Gauvreau (agent de M. Bartholomew) une réponse claire et précise sur la valeur des prétentions de M. Bartholomew.

Elle déclare que, depuis le dépôt aux archives du rapport et du plan Ballantyne

jusqu'à la demande de M. Gauvreau, il n'est plus question au département des Terres de la Couronne de la seigneurie du lac Métis, et les cadastres préparés par les commissaires seigneuriaux n'en font point mention.

Elle ajoute que M. Bartholomew est informé par son agent du résultat des opérations de M. Breen et que néanmoins, dans une lettre adressée, le 30 janvier 1871, à l'honorable commissaire des terres, il persiste à demander que la superficie établie sur le rapport de Ballantyne lui soit reconnue. M. Taché signale les " données gravement en erreur " du rapport de Ballantyne, et dit qu'il

devient nécessaire de déterminer lequel de ces trois lacs doit être reconnu comme étant le lac Métis proprement dit,

et qu'il lui semble

plus rationnel que le troisième, situé à la source de la rivière Métis, sur un plan élevé et portant de plus le nom de grand lac Métis, soit celui autour duquel la seigneurie devrait être limitée.

Nous ignorons si le procureur général a rendu une décision à la suite du rapport que lui a fait alors M. Taché. Le dossier ne le dévoile pas. Il reste acquis cependant que, dès cette époque, M. Bartholomew était en instances pour faire reconnaître des droits à ce que nous continuerons d'appeler les trois sections, et que non seulement le gouvernement refusait d'admettre ses prétentions, mais, au contraire, soumettait que son titre devait se borner au grand lac Métis, c'est-à-dire à celle des trois nappes d'eau qui était la plus éloignée du fleuve Saint-Laurent.

En outre, le rapport de M. Breen et la lettre de M. Taché font voir que, dès lors, les trois nappes d'eau étaient connues comme trois lacs différents, portant respectivement les noms de Grand Lac Métis, Lac à la Croix et Lac de la Pêche à l'Anguille.

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Cela est d'ailleurs confirmé par un monsieur Israël Fontaine, témoin offert de la part de la compagnie, dont les souvenirs remontent au delà de l'année 1877, et qui parle même d'un quatrième lac connu sous le nom de Trépanier.

D'autre part, vers le 22 novembre 1868, le gouvernement de la province de Québec avait concédé aux auteurs de la pétitionnaire des licences pour l'exploitation de deux limites à bois dans le canton appelé Métis East; et, par leur description, ces limites incluaient tout le territoire situé de chaque côté de la rivière Métis, du lac à l'Anguille et d'une partie du lac à la Croix.

Du 22 novembre 1868 au 6 avril 1875, date de la vente du shérif, les auteurs de la compagnie Price étaient en possession de ce territoire et y avaient pratiqué la coupe du bois en vertu de ces licences qu'ils avaient obtenues de la province.

Au moment de la saisie et de la vente du shérif, par conséquent, ce dernier, en déclarant lui-même qu'il saisissait le territoire autour du lac Métis, ne pouvait pas avoir en vue de saisir et de vendre et ne pouvait donner à entendre au public en général qu'il saisissait et vendait autre chose que le seul lac qui était alors connu sous ce nom, à savoir celle des trois nappes d'eau qui était la plus éloignée du fleuve Saint-Laurent.

Et Bartholomew, qui fut à la fois le créancier saisissant et l'adjudicataire, qui avait été informé du rapport de Breen et des prétentions de la Couronne et qui ne pouvait non plus ignorer l'existence des licences octroyées à Price Bros., n'a pu croire que son acquisition du shérif lui conférait des droits à d'autres lacs qu'à celui qui était alors connu sous le nom de Lac Métis avec une lieue de terre de profondeur tout autour dudit lac. C'est l'interprétation la plus normale que l'on puisse donner au texte de la description dans le titre d'adjudication et à l'intention de l'adjudicataire, qui était alors parfaitement au courant de toute la situation. On ne peut pas supposer autrement que la Couronne et Price Bros eux-mêmes eussent laissé pratiquer une saisie et parfaire un décret dont l'effet eût été de transférer à l'adjudicataire la propriété sur un territoire qui, à ce moment-là même, était depuis 1868 et a continué jusqu'à 1876 à être subordonné à l'exercice des droits de coupe conférés par les licences.

Il convient d'ajouter que Price Brothers, lorsqu'ils achetèrent de Bartholomew, le 29 août 1876, la seigneurie du lac Métis dans les termes mêmes dont le shérif s'était servi dans son acte d'adjudication n'ont pu comprendre, en vue des droits de licences qu'ils exerçaient depuis 1868, qu'ils acquéraient un autre domaine que celui qui encerclait le grand lac Métis et qui n'était pas couvert déjà par ces mêmes licences qu'ils tenaient de la Couronne.

Bien entendu, nous ne voulons par là tenir aucune compte du fait que, postérieurement à leur acquisition de Bartholomew, Price Brothers continuèrent de payer une rente de droit de coupe au gouvernement; car ils prétendent avoir

fait ces paiements toujours sous la réserve de leur protêt contenu dans une longue suite de correspondance,

ce que, dans son plaidoyer, la Couronne admet. Mais, de toute évidence, ce protêt ne peut dater que de l'époque de l'acte de vente qui leur a été consenti par Bartholomew. Il ne saurait avoir d'effet pour la période de temps qui s'est écoulée depuis l'octroi des licences, en 1868, jusqu'à ce qu'ils devinssent eux-mêmes propriétaires.

La Couronne s'appuie, dans son plaidoyer, sur l'existence de ces licences, en vertu desquelles Price Brothers ont reconnu son droit de propriété.

Il nous paraît que, dans toutes les circonstances qui ont entouré la vente du shérif, on ne saurait trouver une réponse satisfaisante à l'affirmation que l'adjudication à Bartholomew n'a comporté que le Grand Lac Métis et une lieue de terrain autour; de même que, dans l'intention des parties à l'acte de vente du 29 août 1876, à la lumière des faits tels qu'ils étaient alors connus, Price Brothers, les auteurs de la compagnie pétitionnaire, n'ont pu acquérir de Bartholomew un terrain plus étendu.

La description, aussi claire et aussi précise que possible, de l'immeuble saisi et vendu judiciairement, est une condition impérative de la loi. Le code fixe les éléments essentiels de cette description. Il l'exige non seulement pour les parties immédiatement intéressées, le saisissant et le saisi, dans le procès-verbal du shérif; mais pour l'adjudicataire, dans l'acte de vente; et pour le public en général, dans l'avis qui annonce cette vente.

Sans doute, dans le cas qui nous occupe, le shérif commence par les termes suivants:

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Toute cette étendue de terre ci-devant formant et connue sous le nom de la seigneurie du Lac Métis;

mais ensuite il précise ce qu'il entend dire par là:

savoir: ledit lac Métis qui se décharge dans la rivière du même nom, avec une lieue de terre de profondeur tout autour dudit lac, qui est éloigné de douze à quinze lieues environ du fleuve St. Laurent.

C'est là une définition de la seigneurie adressée au public dans un avis et dans des documents officiels, et destinée à lui décrire la propriété saisie d'après les informations qu'on possédait en 1875. Cette définition devient encore plus importante du fait qu'elle est fournie au nom de ce même M. Bartholomew, qui est le créancier saisissant et qui deviendra l'adjudicataire, puis l'auteur de Price Bros.

Or, le rapport de Breen de 1870 et le témoignage de Fontaine établissent qu'en 1875, d'après la commune renommée et pour le public tout autant que pour le département des Terres, "ledit lac Métis" indiquait le lac le plus au sud, et les deux autres lacs étaient connus par d'autres noms. On savait également que la distance de douze à quinze lieues du fleuve ne pouvait s'appliquer qu'au seul lac supérieur, et que les deux autres ne concordaient pas avec cette désignation.

Le langage du procès-verbal de saisie, de l'annonce de vente et du titre de l'adjudication, interprété à la lumière des connaissances acquises dès 1875 et d'après le sens qu'il comportait à cette époque, délimitait la propriété vendue à une lieue de terre de profondeur autour du seul lac qui était alors désigné dans le public sous le nom de Métis.

Et il semblerait qu'on ne peut légalement soutenir une autre prétention; car si l'avis public de saisie et de vente avait étendu la description de la seigneurie au delà du seul lac du sud et du territoire circonvoisin, il est logique de conclure que la Couronne, qui réclamait la propriété, et Price Brothers, qui en étaient en possession comme détenteurs de licence, n'auraient pas manqué de faire opposition.

Les limites à bois sur lesquelles la Couronne avait octroyé le droit de coupe à Price Bros. sont minutieusement décrites dans les octrois de 1868. Elles couvrent tout le territoire du Lac à l'Anguille et partie du Lac à la Croix, de chaque côté de la Rivière Métis, et y sont catégoriquement indiquées comme suit:

being bounded by the west and south outline of the seigniory of Metis aforesaid, being at the distance of one french league from the lower end of Upper Lake Metis

dans la première; et comme suit dans la seconde:

The northerly outline of the seigniory of Metis Lake aforesaid being at a distance of one french league from the lower end of the upper Lake Metis.

Ces désignations circonscrivent la seigneurie à une lieue de profondeur autour du seul lac supérieur. Le résidu du territoire, qui fait maintenant l'objet de la pétition de droit, était donc alors en la possession de Price Brothers pour le compte de la Couronne et sans aucune objection de la part du seigneur. On ne peut assumer que le shérif aurait saisi et vendu *super non possidente*. La règle veut qu'il ait procédé régulièrement et qu'il se soit confiné à ce qu'il a trouvé en la possession du débiteur.

On est en droit de tirer de tous ces faits l'argument que, en 1876, le vendeur, Bartholomew, et les acheteurs, Price Bros., n'ont pu beaucoup se méprendre sur la portée du titre qui faisait l'objet de leur négociation. Et il n'est pas facile de comprendre comment Price Brothers, les auteurs des pétitionnaires, ont pu penser qu'ils acquéraient de Bartholomew le territoire autour des lacs à l'Anguille et à la Croix (pour partie), lorsque, depuis 1868, ils reconnaissaient pour ce même territoire le domaine supérieur de la Couronne dans des octrois de licences de coupe délimitant la seigneurie d'une façon précise et formelle.

Assumons cependant que (malgré le sens que les circonstances, connues en 1875, imposaient au texte de la description telle qu'on la trouve dans la vente du shérif), on doive quand même, au lieu de l'envisager comme un seul tout, en détacher les mots:

Toute cette étendue de terre ci-devant formant et connue sous le nom de seigneurie du Lac Métis.

Assumons qu'il faille donner effet à cette désignation vague et illégale, indépendamment du second membre de la phrase qui, d'après ce que nous avons dit plus haut, a pour but d'en définir et d'en préciser la première partie, et de la rendre plus conforme à la loi. Acceptons, pour les besoins de l'argument, qu'il en résulte une cession de toute la seigneurie quelle qu'elle fût, et remontons donc à la seconde étape: la commutation de 1855.

D'accord avec le juge de première instance, nous croyons que les lettres patentes alors émises n'ont pas eu d'autre but que de changer, conformément au statut impérial de 1822 (3 Geo. IV, c. 119), la tenure féodale en celle de franc et commun soccage. On y chercherait vainement une décla-

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ration expresse que la Couronne et le seigneur ont entendu par là régler les questions qui étaient restées en suspens en 1835. Il est impossible d'y voir la moindre intention d'accepter les prétentions émises dans le rapport de Ballantyne.

En 1855, la Couronne n'avait pas encore fait contrôler l'exactitude de ce rapport. Cela n'est venu qu'en 1870, lors des instructions données à M. Breen. La correspondance échangée alors entre le département des Terres et M. Bartholomew le démontre.

Ces lettres patentes, il est vrai, modifient la description du lac autour duquel s'étend la seigneurie en en fixant la distance à " about ten or eleven leagues from the said river Saint-Lawrence "; mais en l'absence d'aucun éclaircissement sur le motif de cette modification, on ne saurait en tirer une conclusion satisfaisante.

Cette diminution de distance ne se retrouve pas dans les actes subséquents. La vente du shérif et celles qui ont suivi conservent la distance indiquée dans la concession originale. A aucun moment, les propriétaires successifs de la seigneurie n'ont prétendu que les lettres patentes de 1855 avaient défini leurs droits. Toute leur conduite incline dans le sens contraire. Ce n'est pas en s'appuyant sur ces lettres patentes, mais en se réclamant du plan de Ballantyne que M. Bartholomew s'est adressé au Commissaire des Terres, en 1871. Et la pétition de droit elle-même n'invoque pas ces lettres patentes comme base de ses revendications. Au contraire, elle affirme d'un bout à l'autre que les territoires respectifs de la seigneurie et du domaine de la Couronne n'ont jamais été délimités.

La commutation de 1855 ne peut donc aider à la solution que nous cherchons.

Il nous reste à considérer la première étape et à nous reporter à l'acte de concession originale.

Il se lit:

> Concédons par ces présentes, en pleine propriété à perpétuité. Le lac appellé Métis, avec une lieue de terre de profondeur tout autour d'iceluy, à titre de fief.

Ce texte n'est pas ambigu et il n'indique qu'un seul lac.

Mais la prétention de la compagnie pétitionnaire est que, en 1693, ce nom s'étendait à ce que Ballantyne a appelé les trois sections.

En plus, on fait remarquer que le préambule de l'acte de concession, qui récite la requête d'Augustin Rouer, parle d'un lac appellé Mitis qui se décharge dans une rivière du mesme nom. L'on ajoute que le lac supérieur ou plus au sud (qui reçoit dans le rapport de M. Breen le nom de Grand Lac Métis) ne se décharge pas apparemment dans la rivière Métis et que l'indication attribuée à la requête ne peut donc s'appliquer à cette dernière section.

La preuve ne permet pas d'admettre les prétentions de la compagnie pétitionnaire. Les rapports de MM. Joncas et Johnston, et les explications verbales qu'ils y ont ajoutées au cours de leur témoignage, établissent que " l'état des lieux au point de vue topographique " était lors de la concession originale, sensiblement le même que celui de l'époque actuelle. Il y avait, alors comme aujourd'hui, trois nappes d'eau à niveaux différents, dont chacune correspondait séparément à l'idée que le langage attribue au mot " lac ". La définition lexicologique d'un lac et sa marque caractéristique proviennent précisément de la fixité de son niveau. A proprement parler, le terme " un lac " ou " ledit lac " peut s'appliquer à chacune des trois sections, mais ne peut signifier les trois sections à la fois.

L'indication supplémentaire du préambule: " qui se décharge dans une rivière du même nom ", quand on l'examine de près, ne complique pas vraiment la situation. Les informations qui nous sont fournies par le dossier ne permettent pas de dire que l'une ou l'autre des étendues d'eau avait reçu un nom antérieurement à la concession; et il est tout aussi logique d'en déduire que le nom Métis aurait pu alors s'appliquer à la section nord autant qu'à la section sud. Si l'on tient absolument à ce que la rivière ne commence qu'à la décharge de la section nord, ce serait alors cette section qui aurait été concédée sous le nom de lac Métis, mais il n'y a pas de difficulté insurmontable à penser que, au contraire, la rivière elle-même sous le nom de Métis était considérée comme remontant jusqu'à la décharge de la section sud. En effet, les deux bras qui relient les trois sections constituent, dans la véritable acception du mot, une rivière. Les exemples sont fréquents dans la province de Québec (pour ne pas parler d'ailleurs) de fleuves ou de rivières qui, à certains endroits, élargissent leurs rives en nappes d'eau auxquelles on a donné le nom de lacs, sans que pour cela ces

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fleuves ou ces rivières cessent de former une unité conservant le même nom en deçà et au delà de ces lacs. Nous ne voyons pas d'objection sérieuse à dire que la rivière Métis commençait alors et constitue encore aujourd'hui tout le cours d'eau qui s'étend de la décharge de la section sud jusqu'au fleuve Saint-Laurent et qu'elle est entrecoupée, en deux ou peut-être trois endroits distincts, par les lacs Trépanier, à la Croix et à l'Anguille. Il n'y a rien dans la preuve qui impose une conclusion contraire et qui suggère qu'on a donné un nom différent aux deux bras de rivière reliant ces deux ou trois lacs.

En plus, le préambule contient cette autre déclaration que le lac dont il s'agit

est esloigné d'environ douze ou quinze lieues du fleuve St-Laurent.

La section sud est celle qui le plus exactement concorde avec cette désignation.

Il en résulte que les termes mêmes de la concession, en donnant aux mots leur sens usuel, correspondent mieux avec le lac du sud et semblent exclure les deux autres sections ou lacs. On peut douter, dans les circonstances, qu'il fût loisible de chercher à étendre la portée naturelle de ces termes pour leur faire inclure trois lacs, alors que le texte n'en mentionne qu'un et que les deux autres ne remplissent pas les conditions de la description.

Il eut fallu, semble-t-il, une preuve très explicite pour faire adopter une interprétation aussi contraire aux mots employés.

On ne saurait trouver cette preuve dans les seuls plans ou cartes géographiques qui ont été produits et qui vont de l'année 1755 à l'année 1830. Sans discuter pour l'instant la valeur probante de ces plans, il apparaît à leur face même qu'ils ne prétendent en aucune façon représenter la région dont il s'agit. Ce sont plutôt des compilations sans caractère de précision. Quelques-uns d'ailleurs se chargent d'eux mêmes de nous avertir qu'il ne faut pas y chercher l'exactitude. Ils portent les légendes suivantes:

These lakes are laid down not from actual survey, but from information of travellers. (ou) These lakes are described from reports, not having been surveyed.

Il n'est pas même certain qu'on puisse leur accorder le poids restreint d'une preuve de commune renommée: car il est aussi possible que le lac Métis y ait été représenté comme un seul lac à raison même de la mention qui est faite dans

la concession du roi de France. Les prétentions émises dans la pétition de droit apparaissent pour la première fois dans le rapport de Ballantyne, en 1835, soit: cent quarante-deux ans après l'émission du titre du fief. Ce rapport ne peut être qualifié de document scientifique, quoiqu'il soit préparé par un arpenteur-géomètre. Toute la partie qui y concerne la question qui nous occupe est présentée en la forme argumentative et a pour but évident de soumettre une cause et d'appuyer une réclamation. Il est déjà curieux qu'il apparaisse par ce rapport même qu'à cette époque le seigneur de Rouville, au lieu de s'appuyer sur des droits qui auraient été affermis par le consentement public pour toute cette période de cent quarante-deux ans, invoque apparemment des motifs nouveaux pour se faire concéder une étendue de terrain qu'il ne possédait pas déjà.

En plus, l'erreur dans les niveaux, qui se trouve dans le document signé par M. Ballantyne, en diminue considérament la valeur. Il est clair que ce rapport n'est qu'une requête, et que ses données ne peuvent servir de base pour remonter à l'époque de l'octroi original et en déduire des présomptions qui permettent d'interpréter cet octroi dans le sens de la compagnie pétitionnaire. La même chose doit être dite des plans qui l'ont précédé.

Quant aux plans postérieurs à 1835, ce ne sont que des documents émis pour fins départementales. La compagnie ne prétend pas, et on ne pourrait admettre, qu'ils puissent constituer un titre en sa faveur. Ils ne sauraient, en tout cas, avoir l'effet de mettre de côté les réserves qui avaient été faites dans le rapport de l'arpenteur général Bouchette et dans la lettre du secrétaire civil en 1836, dont le seigneur de Rouville avait reçu avis. C'est la pétition de droit elle-même qui se charge de disposer le plus catégoriquement de la prétention qu'aucun de ces plans ou aucune de ces cartes géographiques pourrait équivaloir à une renonciation de la part de la Couronne ou à une admission des droits de la compagnie, en admettant dans presque toutes ses allégations essentielles que la Couronne a toujours maintenu son point de vue.

Il m'est impossible, pour toutes ces raisons, de concourir avec les jugements qui ont été rendus par la Cour Supérieure et par la Cour du Banc du Roi; et je conclurais au maintien de l'appel et au renvoi de la pétition de droit, en

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autant qu'elle demande de faire accepter le rapport et le plan de M. Ballantyne comme représentant la propriété des intimés et comme devant servir de base au bornage que réclame Price Brothers & Company, Limited.

Appeal allowed with costs.

Solicitor for the appellant: *Pierre Bouffard.*
Solicitor for the respondent: *Thomas Vien.*