

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Cabot
v. The Attorney-General of the Province of
Quebec, from the Court of King's Bench
for the Province of Quebec (Appeal Side);
delivered the 31st July 1907.*

Present at the Hearing :

LORD ROBERTSON.

LORD COLLINS.

SIR ARTHUR WILSON.

SIR HENRI ELZÉAR TASCHEREAU.

SIR ALFRED WILLS.

[*Delivered by Lord Robertson.*]

In 1898 the Appellant purchased the Seigniorie and Fief of Grand River, in the county of Gaspé, as described in the original deeds of concession, made of the said Seigniorie by the King of France, and containing about two leagues in front of the whole depth and bounded, in front by the Gulf of St. Lawrence, in rear by the township Rameau, on one side towards the west by the Seigniorie of Pabos, with all the fishing and hunting and other rights and privileges which the vendor had or might have as Seignior, or along its frontage on the sea shore. Other words follow, and other exceptions from the grant ; but the real question is whether a grant of the King of France, to which the Appellant admittedly has right, gives him the exclusive right to fish salmon *ex adverso* of the lands which are the primary subject of the grant. The Crown, in virtue of its ordinary and original right, has granted licences to certain persons to fish for salmon from the foreshore in

question; and the pretension of the Appellant is that the words of his grant from the French King give him this exclusive right. It is necessary to keep in mind that, while, formally, there is a plea that the possession has been according to the Appellant's construction of the title (that is, exclusive on the part of the Appellant), there is no evidence of this, and it was not maintained in argument.

The sole question is therefore of the effect of the grant of the French King, which, in two forms, differing only in immaterial points, are set out on pp. 8 and 9 of the Record. The Appellant indicated that he had an argument on certain words, "en tirant du costé du Cap Espoir vers l'Île Percée," which, he contended, extended the boundaries of the grant of fishing beyond high-water mark. The fatal defect of this argument is that the words supposed to imply extension are equally applied to the grant of land as to the grant of fishing. And, indeed, the true meaning and use of the words "tirant vers" (according to so high an authority as Littré) is no more than to indicate the direction.

The question is therefore reduced to a very general one, which is quite settled in the law of Canada, and that is, what is the meaning of the words "avec droit de chasse, pesche et traite avec les sauvages dans toute l'étendue de la dite concession"? The effect of such a grant is defined in a passage cited in the judgment under review, and the soundness of the law so laid down is not impugned by the Appellant. "Le droit de pêche formait partie du fonds commun de la colonie, mais sous la garde du Roi, pour l'avantage de tous, et ne pouvait devenir exclusif sans quelque concession spéciale exprimée dans des termes plus formels que ceux qui se trouvaient dans la simple formule mentionnée plus haut," and the "simple formula," in that case, was exactly

that which is now under consideration. While the question is thus discussed under somewhat abstract terms, it is always to be remembered that the exclusive right claimed (and never exercised) implies a grant by the Crown of the exclusive use of the foreshore so far as fishing is concerned. All the arguments offered to their Lordships about the relative importance of fishing and land in such cases as the present were full in view (and at less distance of time) of the Canadian jurists who have thus stated and developed the law. The Appellant received no support from the Canadian Courts, and their Lordships are entirely unable humbly to advise His Majesty otherwise than that this Appeal should be dismissed.

The Appellant will pay the costs of the Appeal.

