

# MINNESOTA HISTORY

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## A BRITISH LEGAL CASE AND OLD GRAND PORTAGE

MANY A STUDENT of history has found legal documents useful. For periods for which few records survive, as well as for those of widespread illiteracy, court and notary records assume large importance. Few records exist for events on Minnesota soil before 1820. Yet courts had jurisdiction there and notaries affixed their signatures to documents dealing with persons and events of the area. Records of the earliest court case involving a Minnesota event to be discovered thus far for the British regime are in Edinburgh and Montreal.

The most complete record of this case, that of Dominique Rousseau and Joseph Bailly v. Duncan McGillivray, is preserved in the papers of Lord Strathcona in the General Register House in Edinburgh, Scotland. The documents may be the notes taken by a member of the Northwest Company at the trial of the case in Montreal in 1802, 1803, and 1804 or merely abbreviated copies of the official records of the case in Montreal. Whereas the depositions of fourteen persons are given in the records in Edinburgh, only seven are included in the dossier of the case in Montreal. Why this should be so is beyond the editor's ability to explain. Possibly some parts of the records in Montreal have been lost. In the following report of the case, the editor has used the Edinburgh documents, unless otherwise indicated.

The importance of the case lies in the historical information given by the various witnesses, especially with regard to the period when Grand Portage was cleared of its forest

growth, when the several forts were built, who built them and where, and facts about the location of gates, canoe beaches, and so forth. Until these documents were found, no one could venture even a good guess as to who cleared the ground at Grand Portage and who built the first fort. Now some facts are given outright, some are hinted, and many can be inferred.

They have another use. In America as in England, common law develops through precedent. All too little has been known heretofore about common usage on portages. Again and again in these testimonies usage with regard to portages is set forth. Later the verdict of the court confirmed this usage and thus made it law. Here, then, is law in the making—a very interesting process.

It is possible that it was this case, involving an American license to trade at Grand Portage in accordance with Jay's treaty, that determined, or helped to determine the Northwest Company to remove well within British territory at Fort William. If so, here is another important fact gleaned from this old court case.

The facts of the case and the chief personalities involved are as follows. In 1802, during the period of struggle between the Northwest Company and its offshoot and rival, the X Y Company, Dominique Rousseau and Joseph Bailly of Mackinac sent a canoe-load of goods with an American license under the direction of Paul Hervieux to Grand Portage.<sup>1</sup> He and his men arrived at that place during the

<sup>1</sup> Rousseau is mentioned in the "Register of Baptisms of the Mission of St. Ignace de Michilimakinak" as the father of two children born in 1821. His residence at that time, therefore, appears to have been Mackinac, although he lived earlier at Montreal. See the "Mackinac Register," in *Wisconsin Historical Collections*, 19:136 (1910); and Thomas Douglas, Earl of Selkirk, *Sketch of the British Fur Trade in North America*, 56 (London, 1816). Bailly was a member of an ancient French family of Canada, the Bailly de Messein family. He was born in Quebec in 1774 and entered the fur trade as a young man. Like Rousseau, he made Mackinac his center of operations, with posts in a large, outlying area, extending as far northwest as Grand Portage and as far south as the Wabash country. Later he made his home in Indiana. He was

second week of July and set up tents near the creek east of the Northwest Company's fort and close to the shore, between the so-called "Big Fort" and the "Little Fort." The latter, called also "Boucher's Fort," lay east of the Northwest Company's establishment, beyond the creek and near the shore.<sup>2</sup>

No sooner were the tents set up than trouble developed. In highhanded fashion bourgeois—men who had capital invested in the company's fur ventures—from the larger of the two forts demanded that Hervieux remove his tents from the portage way and refrain from trading with their men, mutilated tents and injured goods of the newcomers, abused them with scurrilous language, and otherwise acted the role of monopolists who felt secure because of their capital, prestige, and superiority of numbers.

But the Northwest Company unexpectedly came up against resistance. A case was brought in the Court of King's Bench in Montreal against Duncan McGillivray of the Northwest Company.<sup>3</sup> Men who had traveled the arduous canoe route from Montreal to Grand Portage throughout the period of British dominance in Canada testified, mostly in behalf of the plaintiffs. One witness had been at Grand Portage in 1766. What he and others told of customs of bourgeois, clerks, voyageurs, and others affords some of the best material yet available on obscure points in fur-trade history. For example, the affidavits show that probably John Askin cleared the site of the Northwest Company's post at Grand Portage

the father of Alexis Bailly, a prominent trader in the Minnesota country. See John O. Bowers, *The Old Bailly Homestead*, 1 (Gary, Indiana, 1922). Bailly's ledger, kept at the time of the lawsuit, is mentioned on page 3 of this work. For information on Hervieux, see *post*, n. 7.

<sup>2</sup>The Boucher here mentioned may have been François Boucher. See Charles Gates, ed., *Five Fur Traders of the Northwest*, 260 (Minneapolis, 1933).

<sup>3</sup>McGillivray was a brother of William and of Simon McGillivray and a nephew of Simon McTavish "and was himself the acknowledged agent of the company, in which capacity he took the lead in all the proceedings at the general meeting of the wintering partners." Selkirk, *British Fur Trade*, 61.

soon after 1766; that several forts had occupied the shore line close to the Grand Portage in the years between 1766 and 1803; that there were several free-lance, or apparently free-lance, traders at Grand Portage between 1794 and 1802, some of whom constructed houses; that a peculiar kind of currency, "bons," prevailed at the depot; that voyageurs and other *engagés* did some trading of furs on their own accounts, and that customs had crystalized by 1802 into what practically all traders and *engagés* considered effective laws for portaging, trading, competing in the fur business, and the like.

The court decided in favor of the men with the American license. Some nice legal points might be raised over the right of a Montreal court to exercise jurisdiction in an event that occurred at Grand Portage, especially in view of the fact that the plaintiffs were operating under an American license. However, the boundary line had not been conclusively determined in 1804 and no one appears to have challenged the court's right to adjudicate the case. Indeed, one of the plaintiffs, Rousseau, made another attempt to trade at Grand Portage in 1806, after the Northwest Company had decided to remove its post from Grand Portage to uncontestedly British soil at Fort William; and when the Northwest Company again beset him he brought another suit in the Montreal courts.<sup>4</sup> This time, however, a compromise was effected out of court. It is interesting to note that the method adopted by the Northwest Company to keep Rousseau's canoe out of the hinterland beyond Grand Portage was to fell trees across the portages and narrow creeks of the old canoe route.<sup>5</sup> These obstacles prevented

\*An account of this episode is given in Selkirk, *British Fur Trade*, 59-61.

<sup>5</sup>Rousseau sent a man named De Lorme west of Grand Portage in 1806. In the "Arrangement of Departments for 1806" of the Northwest Company, the following list of men is given under the caption "to Watch De Lorme": Alexander McKay, "Prop," J. C. Sayer, clerk, and "Ant: Vallé" and Joseph Laverdiere, guides. See William S. Wallace,

others, too, from using the route. Thus ended the old trade way from Grand Portage to Lac la Croix, a route that had been utilized since La Vérendrye's day. At Lac la Croix the Northwest Company's new route from Fort William joined the long-established route, and so no obstacles were placed beyond that point. The Fort William-Lac la Croix-Rainy Lake canoe route became the usual one after 1806, presumably because of the difficulty of removing the fallen trees.

Photostatic copies of the documents in the Strathcona Papers relating to this case were available to the editor in preparing these records for publication. For the Montreal documents, however, typewritten copies only could be obtained. For the sake of clarity, in a few instances punctuation has been supplied by the editor. Many of the witnesses in the case testified in French; the translations of their depositions presented herewith have been made by the editor.

GRACE LEE NUTE

MINNESOTA HISTORICAL SOCIETY  
ST. PAUL

DOMINIQUE ROUSSEAU AND JOSEPH BAILLY  
V. DUNCAN MCGILLIVRAY

[Court of King's Bench, Register of Common Pleas, Superior Term, 1800-03, in Archives of the Judiciary District of Montreal.]

Thursday 7th October 1802 . . . Dominique Rousseau and Joseph Bailly, Plaintiffs vs Duncan McGillevraye, Defendant

The Court having heard the parties by their Counsel upon the defendant's plea of abatement. It is considered that so much of the declaration of the Plaintiffs as charges the defendant with having committed an assault upon the Plaintiffs be quashed with costs; and that the defendant do answer to the other part of the said declaration in the due course of proceeding.

No. 94. King's Bench, Montreal, vacation after Ap: Term 1803 ed., *Documents Relating to the North West Company*, 221 (Toronto, 1934).

Exception to the issuing of Com: Rog: for the Examination of Arch<sup>d</sup> N. McLeod & John Finlay<sup>o</sup>

Domi. Rousseau & J. Bailly, Pltffs vs Dun. McGillivray, Def.  
filed 13th May 1803 D. R.

Ross atty for pltffs . . .

In consequence of a notice sent to me by the Defendant's Attorney, to attend at the office of the Court at the issuing of a Commission Rogatoire for the examination of Archibald Norman McLeod and John Findlay [*sic*] as witnesses on the part of the Defendant. I do attend and for and on behalf of the plaintiffs object to the issuing of the said Commission Rogatoire as irregular and object and except to the examination of the said Archibald Norman McLeod and John Finlay as they are the Defendant's partners and interested in the present suit—The plaintiffs hereby reserving to themselves the right of proving and supporting this their Exception when and where it may be incumbent on them to do so: of all which they pray act and that the present exception may be filed in the record of this Cause.

(Signed) Dvd Ross Atty for Pltffs

13 May 1803

### ROUSSEAU AND BAILLY V. MCGILLIVRAY

[Strathcona Papers, General Register House, Edinburgh, Scotland.]

District of Montreal, Court of King's Bench, Vacation after the February Term, 1803

Dominique Rousseau & Joseph Bailly v<sup>a</sup> Duncan McGillivray

#### TESTIMONY OF PAUL HARVIEUX<sup>7</sup>

[*Translation*]

Paul Harvieux deposes that last spring he was employed as clerk by Dominique Rousseau and Joseph Bailly to take merchandise to

<sup>o</sup> McLeod is mentioned frequently in the affidavits of this case. For an account of him and for his diary of 1800–01, see Gates, *Five Fur Traders*, 123–185. Finlay was probably one of the anonymous bourgeois mentioned in the affidavits. For a sketch of his career, see Wallace, *Documents Relating to the North West Company*, 440.

<sup>7</sup> The Montreal version of this document gives the following information in French: "Paul Hervieux, living at Repentigny, 28 years of age, a witness for the plaintiffs, having been duly sworn, says that he is neither a relative of, related by marriage to, nor in the service of any of the parties to this suit nor to any one affected by it."

Grand Portage; that he left Mackinac for Grand Portage with a canoeful of goods valued between twenty-five hundred and three thousand louis; that he reached the Portage about the 10th or 12th of July; that on arrival he camped overnight on an island in front of Grand Portage; that on the morning of the following day, about eight o'clock, he camped at a little distance from the river, in an unoccupied space; that he set up three tents, wherein he put his goods; that the same day the defendant and M<sup>r</sup> McTavish came to the deponent's tent;<sup>8</sup> that they addressed themselves to a man named Rastoute saying "Is that you, Rastoute? Who gave you permission to set up your tents here? I order you to withdraw farther than the little fort," said the defendant. That the deponent went to find the defendant and asked him if he had any right to prevent his stopping in that spot; that the defendant replied that he was the one who had cleared that ground and that he did not want the deponent there. Whereupon the deponent took from his wallet the license that the Americans had given him to go to that place and showed it to the defendant. Then the defendant said that he had no interest in the paper—that it amounted to nothing. Whereupon the deponent said he would see about that and returned to his tent. That about two hours later the deponent returned to the fort to find the defendant and asked him to kindly explain what right he had to expel him from that place; that the said defendant repeated the same thing and told him he could withdraw a gunshot from the place where he was located. Whereupon the deponent told him he would already have done so if he had not feared blocking the public passageway, but if the defendant wished to give a day's time, he would move his tents. Then the said defendant told him not to trade. The deponent then returned to his tents and set his men to work moving the tents and packs of goods to the spot he had agreed upon with the defendant; that while he was thus occupied, one of the men came to find him and told him that the tent he had sold that morning to a man named Durand, one of the defendant's men, was being cut up by the defendant; that he, the deponent, then stepped out of his tent and saw in truth the said tent cut to bits and on fire; that Durand complained bitterly that he had been deprived of his tent and that it was being carried off on the end of

<sup>8</sup> Probably this was the most prominent of the numerous McTavishes in the fur trade, Simon McTavish. See a sketch of his career in Wallace, *Documents Relating to the North West Company*, 485, 486.

sticks; that a moment later he saw the defendant and Mr. McLeod step out of the fort accompanied by both bourgeois and clerks, who advanced toward his tent; that the defendant came to the deponent, saying to him, "You asked me what right I had to expel you from this place? I will tell you." He grasped his hunting knife and with it pierced the tent, which resisted the first blow; but the second stroke pierced the tent and tore off a piece of some length; that the defendant was by that time in a great rage and left without further remarks; that then Mr. McLeod, a bourgeois, said to the deponent, "*Sacré Gueux*, pick up your goods & chattels and hurry up!" He then tore up the pins of the tent, which had fallen, and seized a bale of goods and threw it into the air, and repeated "Hurry up and move your goods." He then advanced threateningly toward the deponent, saying "*Sacré petit noir*, if you were at Rat Portage you would see what I would do to you."<sup>9</sup> Thereupon the deponent asked, "What else would you do? You could not offer me a greater insult than you have already done." "You will see, *sacré Gueux*," repeated the said McLeod. "Tell me," said the deponent. "I would break your neck." Whereupon the deponent offered him his neck, telling him to do so. Thereupon the said McLeod said to him, "Is it your damned *chevalier* who tells you to do this? Go find him."<sup>10</sup> That the deponent told him that he was clerk for Messrs. Rousseau and Bailly; that he was there on their business; and that if he wished him to leave that place to be so good as to put it down in writing to show to his bourgeois. Then the said McLeod said that he would not give him such a writing. Then the deponent took the rest of his goods and carried them to the place where he had put the other pieces; that the *engagés* of the defendant and his associates told the deponent that their bourgeois had prohibited them from going to buy of him, that if they did so, they ran the risk of losing their wages; that the said *engagés* of the defendant came only at night by stealth and sometimes during the day when they could conceal themselves; that he was much

<sup>9</sup> Rat Portage was the carrying place between Lake of the Woods and Winnipeg River, just beyond American territory on the regular canoe route. The inference intended was doubtless that Hervieux, on British territory, might be manhandled with impunity, whereas discretion had better be exercised on American soil.

<sup>10</sup> The title "Sir" is translated into French by "Chevalier." Probably the reference is to Sir Alexander Mackenzie, the leader in the X Y Company, rival of the Northwest Company at the moment.



injured in his trade with the defendant's men; that the manner in which he had been treated by the defendant had discredited him greatly in that place; that if he had not been interfered with or prevented from trading, he would have disposed of the larger part of his merchandise; that he was obliged to carry most of it back to Mackinac; that the canoeful of goods cost more than eight hundred and forty louis, and the expense [*to Grand Portage*] about 166 louis, and that if the goods had been sold he could have had a sum of twenty-five hundred to three thousand louis; that he had realized only about five hundred louis; that he had disposed of about a fourth of his merchandise; that if he had not been hindered in his business, he could have sold the rest of his goods at the same rate and realized the said sum of twenty-five hundred to three thousand louis.

Cross-examined

That the morning of his arrival at that place no one had stopped him; that the goods were partly dry and partly liquid; that he had sold some things before he was told to get out; that the morning he arrived he had unpacked some merchandise on arrival and that he had not unpacked any afterward that day in that place; that in the place where he settled there were tents of the defendant's men close to the spot where he was, that the defendant's canoes from Montreal were on the beach at a little distance, perhaps a quarter arpent, from his location;<sup>11</sup> that he does not recall that anyone told him to withdraw from this place, because the *engagés* of the defendant were accustomed to put up their tents there; that this ground where he was was cleared; that when he settled there he saw there some tents of the defendant's men and that some others were set up there afterward; that the place where he agreed to go was about a gunshot from his first site at Grand Portage; and that the spot was pointed out to him where a man named Boucher lived selling the same kind of goods as himself; that, in the spot where the tents were, he was the only one selling merchandise; that when he settled in that place he said to the *engagés* that he had the permission of the Americans to go and trade there.

Question. Whether he told the defendant's men that he had come there for the purpose of releasing them from their slavery?

Answer. That he does not remember doing so; that he told them

<sup>11</sup> The arpent measures about eleven and a half rods; thus the canoes were about fifty feet away.

that he would sell them goods cheaper than the others; that when the defendant came to pierce his tent with his hunting knife that the larger part of the goods had already been moved to the spot agreed upon, where he remained afterward; that when he had this conversation with Mr. McLeod, the defendant was not present and that he did not see the defendant; that the defendant did him no other injury than to tear his tent and spoil his trade by preventing his men from trading in the deponent's tent; that it was the *engagés* who told him that the defendant told them not to go to the deponent's tent; that when he moved to the designated place, he continued his trade; that they said nothing more to him, but that he could see that the gentlemen watched their men very closely; that he was at the end of the fort of the man called Boucher, about ten feet from the edge of the water on a level with the house of the said Boucher; that in Boucher's house he saw little merchandise and that he sold Boucher some; that about five or six arpents away was a man named Mailloux,<sup>12</sup> who sold goods; that the deponent promised the defendant to move from the spot where he first settled and not to sell goods there and that the tent which he sold to the said Durand had been sold in the morning; that he did not sell other goods in that spot where he first was, after having agreed with the defendant to move farther; that he had made that agreement with the defendant about ten or eleven o'clock in the morning and that his tent had been destroyed about two o'clock; that he was not accustomed to trading in the *pays d'en haut*,<sup>13</sup> never having been there before; that he does not recall how many pieces he had in his canoe; that he thinks that the reason the defendant cut his tent was the fact that he, the deponent, had sold a tent to Durand.

Upon questioning by the Court: that he may have stayed a month at Grand Portage after his tent was destroyed in the manner described, and that he continued to trade there during that time under the conditions mentioned; that he did not have orders to remain for the winter in this place, but only so long as he could do business with the

<sup>12</sup> François Victor Malhiot may be the trader mentioned as Mailloux, though a diary kept at the Rainy Lake post in 1804 mentions a man named Mailloux several times. Gates, *Five Fur Traders*, 206-226, 137 n.; Wallace, *Documents Relating to the North West Company*, 486.

<sup>13</sup> This *voyageur* expression means the "upper country" or the interior of the country, usually with the added significance of the region where furs were sought.

*engagés* before they left for their wintering grounds; that he had in his canoe about seven men; that Mr. McLeod, of whom he spoke, is the one called Le Noir [*the black*] in order to distinguish him, apparently, from the other McLeods; and that he thinks McLeod is still in the *pays d'en haut*.

(Signed) P HARVIEUX

TESTIMONY OF MICHEL ROBICHAUX <sup>14</sup>

[*Translation*]

Michel Robichaux, voyageur, deposes and says that he left Michilimackinac last spring in a canoe belonging to the plaintiffs, in which were Paul Harvieux, clerk of the plaintiffs, and merchandise belonging to the plaintiffs; that the deponent betook himself to Grand Portage with the said canoe; that upon their arrival they camped for the night in an island in front of Grand Portage and that the following day they went on to Grand Portage and camped in a certain unoccupied spot upon the shore; that he thinks it was at the beginning of July that they arrived at Grand Portage where they erected two tents and immediately afterward Mr. Hervieux, the clerk, began to sell goods and the same morning sold a tent to a man named Durand. That after he had sold the tent Mr. McGillivray came to tell them it was necessary for them to withdraw a gunshot from the place where they were camped. That the deponent heard Mr. McGillivray say, afterwards, that he would show Mr. Hervieux the right that he had to make him withdraw from there, and as he said so Mr. McGillivray drew his hunting knife and pierced the said Hervieux' tent with it. That he did not cut clear through the first time, but the second time he pierced it. That at that time there was a man named McLeod with Mr. McGillivray, as well as several bourgeois and clerks. That the said McLeod pulled up the tent pins of the said tent and overturned it, saying to Mr. Hervieux in a menacing tone to get out quickly, and that if he had him at Rat Portage he would break his neck. That the said tent was torn to bits, burned and carried on the

<sup>14</sup> The Montreal document includes the following statement in French: "Michel Robichaux, voyageur, a resident of Montreal, 25 years of age, a witness for the plaintiffs, having been duly sworn, testifies that he is neither a relative of, related by marriage to, nor in the service of any of the parties to this suit and has replied to the questions put to him as follows."

ends of sticks by a Negro of the defendant's.<sup>15</sup> That because of this threat the said Hervieux was obliged to change his location and transported his goods the same day the distance of an arpent and a half, or about that distance, from the spot where he had camped. That after the tent had been destroyed and a part of the merchandise had been transported, the deponent saw the said McLeod take a bale belonging to the said clerk, Hervieux, in his arms and scatter it to the breezes. That because of the threats that the defendant made at that time to the said Hervieux and the attitude of the said McLeod and the other employes of the defendant, the said Hervieux has suffered damage through the discredit that he has undergone in his trade and because the defendant's *engagés* told the deponent that they were prohibited from trading with the said Hervieux under pain of losing their wages. That the said Hervieux was so much thwarted in his trade there by the deeds that the deponent has just recited that the deponent thinks that he could not openly carry on trade with the defendant's men in the daytime but only secretly at night. That the deponent himself even went to look for furs in the tents of the defendant's *engagés* by night. That the said Hervieux sold only about a quarter of his goods. That the deponent thinks that if the said Hervieux had not been molested, he would have sold all his goods and that the men of the defendant had told the deponent as much. That the said Hervieux was obliged to take back the remainder of the merchandise to Michilimakinac.

Cross-examined by the Defendant .

Says that he knows the defendant; that the spot where the said Hervieux was was not surrounded by the tents of the defendant but that there were several of them about fifty feet behind. That there were some canoes that had arrived from Montreal overturned on the shore in front, where the men were camped, but he does not know the number either of the canoes or of the men; that he does not know whether there were ten of them or not; that the said canoes were about twenty feet from the spot where the said Hervieux camped at first. That the said Hervieux had unpacked a part of his goods that day, before Mr. McGillivray came to warn him to leave; that upon the arrival of the said Hervieux at Grand Portage, he passed between

<sup>15</sup> The Negro was probably a member of the Bonga family, prominent in western Canada, and especially in Minnesota history. A brief sketch of the family is to be found *ante*, 3:197 n.

the canoes of the defendant in order to reach the spot where he camped. That when Mr. McGillivray first came to talk to the said Hervieux, the latter agreed to withdraw from the spot to the distance of about an arpent or an arpent and a half. That the tents that were in back of the place where the said Hervieux first camped belonged to the defendant and were occupied by his men. That the canoe of the said Hervieux was paddled by five men besides himself and another clerk. That he does not recall the number of pieces with which the canoe was loaded. That he believes that it contained about 45 pieces. That it must have required two hours' time to transport the said load from the spot where Mr. Hervieux camped the first time to the place where he went later. That there was a man named Boucher who sold goods in this latter spot, about sixty feet from the said Hervieux. That Mr. Hervieux continued his trade in the place last mentioned, until he left Grand Portage at the end of a month after he got established there and at the time when the voyageurs left for their wintering grounds.

Question: What were the threats that the defendant made to the said Hervieux?

Answer: That the threats were made because the defendant drew his hunting knife and pierced the tent when Mr. Hervieux asked for his right to make him leave the place where he was camped; that he heard no others. That Mr. McGillivray was not present when the conversation took place between Mr. McLeod and the said Hervieux. That the deponent did not see Mr. McGillivray enter the tent of the said Hervieux afterward, to prevent him from trading. That the said Hervieux did trade with the men of Mr. Forsyth and the other bourgeois in plain day.<sup>10</sup> That there was a man named Mailloux who sold goods at that time at Grand Portage. That Mr. Hervieux did not sell any merchandise that particular day to the knowledge of the deponent, after Mr. McGillivray came to prevent him. That the furs that the *engagés* of the defendant traded with the said Hervieux by night consisted of moose skins and dressed buffalo robes. He also said that he had not been to Grand Portage before.

The deponent declares that he does not know how to sign.

<sup>10</sup> Doubtless the reference is to Thomas Forsyth of the firm of Forsyth, Richardson and Company of Montreal. This firm was prominent in the affairs of the X Y Company.

TESTIMONY OF FRANÇOIS ROSSIGNOL<sup>17</sup>

## [Translation]

François Rossignol deposes that he knows the parties in this case, that he is a voyageur, and that last summer he was in the employ of the defendant and his associates to go to Grand Portage; that he was there last summer and that there were many *engagés* there; that they had a quantity of buffalo robes and elk skins and that they had permission to trade; that he knew that there was at Grand Portage a man named Paul Hervieux, who had some goods of the plaintiffs for trade with the *engagés* at Grand Portage; that he knew that a man named Durand had bought a tent of the Sieur Paul Hervieux, and that he heard it said that this tent had been cut in pieces by the defendant; that he had learned this at the payment; that he was told also that the *engagés* had been prohibited from trading with the said Hervieux and that the *engagés* feared that their purchases would suffer the same fate as Durand's tent and so they dared not do any business. That as for himself, the deponent, if he had had any skins to trade, would not have dared sell them; that he believes that because of the great number of men that were there and the great number of skins that they had, the said Hervieux would have sold a much greater part of the goods, if the *engagés* had not had this fear of trading; that what happened to the said Hervieux in the way of having his tent cut and torn up had discredited him in his trade and in his honor and had caused him wrong and injury.

## Cross-examined

That the *engagés* of the North West Company are not prohibited by their engagements from trading with strangers and that they trade freely to his knowledge with strangers; that he is engaged this year by the same bourgeois.

The deponent, after his deposition was read, declared that he did not know how to sign.

<sup>17</sup> The Montreal document gives the following information in French: "François Rossignol, living at St. Martin, 30 years of age, a witness for the plaintiffs, having been duly sworn, says that he is neither a relative of, related by marriage to, nor in the service of any of the parties, nor affected by this suit." At the end of the Montreal version are statements that this witness was allowed twelve shillings, six pence; that his affirmation was made in court on March 28, 1803; that J. Reid was the prothonotary; and that the document was filed on March 28, 1803.

TESTIMONY OF CHARLES LEGER<sup>18</sup>

## [Translation]

Charles Leger, called Parisien, deposes and says that for thirty years he has been a guide to Grand Portage; that he has been many times in that place as guide; that he is well acquainted with the customs of that place; that during that time he has always seen the *engagés* trade buffalo robes and elk skins and other coarse skins, but not fine furs, and that they could deal with all the individuals that came to trade in that place; that a cotton shirt sold for twelve francs at Grand Portage, one that was worth four piasters in Canada; a phial of rum of three *demiarres* for four piasters of this country; one can buy a cotton shirt in this country for from seven livres ten sols to eight francs for the dearest; a phial of rum is worth in this country from thirty to thirty-six sols, also in proportion for all other articles that are carried into that place for trade; that it is his opinion that a part of the goods bought in this country for a thousand louis would give a profit in trade in the *pays d'en haut* of about twenty-five hundred louis; that according to his knowledge of *engagés* and their customs he thinks that a trader whose tent had been cut and pulled up and who had been obliged to change his location would be discredited, his trade would be damaged, and he would be injured.

## Cross-examined

That he has not been at Grand Portage the past year, but he was there the preceding year; that he has never traded; that he does not know the value of a canoeful of goods at Grand Portage; that he does not know how to read or write.

The deponent, after his deposition was read him, said that it is the truth and so maintains.

TESTIMONY OF JOSEPH POISSANT<sup>19</sup>

## [Translation]

Joseph Poissant deposes and says that he was at Grand Portage

<sup>18</sup> The Montreal document gives the following information in French: "Charles Leger, called Parisien, a resident of Isle Perrault, 56 years of age, a witness for the plaintiffs, having been duly sworn, says that he is neither a relative of, related by marriage to, nor in the service of any of the parties, nor affected by this suit."

<sup>19</sup> The Montreal document gives the following information in French: "Joseph Poissant, a voyageur living at St. Philippe, 21 years of age, a witness for the plaintiffs, being duly sworn, says that he is neither a

last summer in the capacity of *engagé* of Mr. Ogilvy.<sup>20</sup> That he saw there a man named Paul Hervieux, who had a canoeful of goods for trading on the account of the plaintiffs; that the said Hervieux upon his arrival at Grand Portage camped upon the shore between the fort of the Big Company and that of Mr. Boucher, in an unoccupied place. That the deponent, having arrived at the tent which the said Hervieux had just set up, saw Mr. McLeod piercing the said tent and pushing it over. That many people were about but he did not see Mr. McGillivray there. That he saw the said McLeod take a bale belonging to Mr. Hervieux and throw it into the air. That the said McLeod menaced Mr. Hervieux, saying to him, "*Mon sacré petit noire*, who gave you permission to settle here? If I had you at the other end of Rat Portage I would break your neck." That he knows that a man named Durand bought a tent of Mr. Hervieux the same morning. That he saw this same tent overset by the *engagés* of the Big Company and that some of the bourgeois of the said company who were present at the time aided in demolishing the said tent; that they threw it into the fire and afterward lifted it up on the ends of sticks while it was still burning, uttering cries of joy. That the deponent is of the opinion that such actions injured Mr. Hervieux in his trade for the reason that persons who traded with him feared that their purchases would be treated in the same fashion as the tent.

Cross-examined

Says that there were tents of the Big Company set up on the spot where Mr. Hervieux first erected his at the distance of some twenty to fifty feet, and others farther off. That Mr. Hervieux' tent was placed between the big fort and Fort Boucher. That Durand's tent was demolished before Mr. Hervieux. That the place where the said Hervieux placed his tent the first time was about an arpent and a half distant from that to which he withdrew afterward, and that this last place was as advantageous for his trade as the one he had left. The deponent declares that he does not know how to sign.

relative of, related by marriage to, nor in the service of any of the parties, nor affected by this case." At the end of the document is a notation showing that this witness was allowed fifteen shillings, and a statement in English that he was "Sworn and examined in open Court this 21 March 1803."

<sup>20</sup> John Ogilvy was another chief partner in the X Y Company. His firm was known as Parker, Gerrard and Ogilvy. See Wallace, *Documents Relating to the North West Company*, 490.



## TESTIMONY OF THOMAS FORSYTH

Thomas Forsyth Esquire, Deposeth and saith that he was at the Grande Portage last summer in the month of July. That he saw there one Paul Hervieux a Commis or Clerk of the Plaintiffs, who the Deponent understood had some goods to trade on account of the Plaintiffs. That he knows the situation or place near which said Hervieux pitched his tent upon his arrival there, which was upon an open space near the waterside. That from the said report the said Deposant [*sic*] conceives that the circumstance of cutting down said Tent must have done the said Hervieux some damage, and that an insult of that nature must have injured him in his trade in the minds of the people then there.

## Cross examined

says, That there were then Tents pitched between the Northwest Fort and Boucher's Fort at the Grand Portage. That the Deponent understood that the tent first pitched by the said Hervieux was amongst those of the North West Company and between them and Boucher's fort. That Deponent has been informed that that space of ground has been cleared these fifty years past, and that it has been occupied by the tents of the North West Company, but that he conceives that he would have a right to erect a tent there. That when the Deponent saw said Hervieux at the Grand Portage his tent was pitched near to Boucher's fort not more than half an acre from a little River. That he cannot ascertain the exact spot where said Hervieux first pitched his tent, having never seen it, when it [was] first put up. That the North West Company had a great number of men encamped at the Grand Portage last summer, and that he thinks it would have done them an injury if any person had pitched a tent among them for the purpose of selling Rum, that the value of a Canoe load of Goods at the Grand Portage, including the wages of the men and their provisions, is from six hundred to one thousand pounds, Currency. That he does not know whether or not the cutting down the said Hervieux tent, did actually do him a damage but he conceives that an act that may tend to render a man contemptible must do him a damage.

(Signed) THOMAS FORSYTH

TESTIMONY OF MAURICE BLONDEAU <sup>21</sup>

## [Translation]

Maurice Blondeau, Esquire, deposes and says that he has been a merchant voyageur in this country since 1752. That he went up to Grand Portage the first time in 1766. That he knows the fort where the bourgeois were, which was not then cleared and was not cleared for two or three years thereafter and then by a man named Erskine, as he believes.<sup>22</sup> That according to what has been told him, the Big Company occupies at present the same fort that the deponent occupied formerly. That during the time when the deponent voyaged in the *pays d'en haut* he never knew of any hindrance to putting tents at the Grand Portage outside the fort. That on all the portages from here to Grand Portage it was always the custom, while the deponent was voyaging, to put the tents near one another, even though one were a little inconvenienced by giving room to those who arrived later. That he has never understood that one had a right to make anyone else move his tent to another spot. That if a case occurred, it would cause an injury to the person concerned.

## Cross-examined by the Defendant

Says that at the time when he was at Grand Portage, there were at least three or four hundred men there, besides Indians. That if it had happened that anyone settled himself there to sell rum, he believes such a person would have had no trouble, and that as for himself, he would not have opposed him. That in his time there were two or three companies and that there was not the least trouble. That he never prohibited his voyageurs from selling coarse skins like buffalo robes and elk skins, and that he never heard that such selling was prevented by other bourgeois.

(Signed) M<sup>ce</sup> BLONDEAU

<sup>21</sup> One of the earliest visitors to Grand Portage after the conquest of Canada was Maurice Blondeau, who was born in Montreal on June 23, 1734. For a brief sketch of his life, see Wallace, *Documents Relating to the North West Company*, 427.

<sup>22</sup> Probably Blondeau refers to John Askin, one of the first traders to go to the West after the conquest, whose family name was also spelled Erskine. Wallace writes that he "was born at Strabane, county Tyrone, Ireland, about 1739, the son of John Askin (or Erskine) and Alice Rea." He went to Mackinac about 1765 after several years as a trader at Albany, New York. His headquarters were removed to Detroit in 1780. *Documents Relating to the North West Company*, 425.

TESTIMONY OF HYACINTHE MARCOT<sup>23</sup>

## [Translation]

Hyacinthe Marcot deposes and says that he was at Grand Portage last summer, where he saw Paul Hervieux with a canoe full of goods that he was trading on the account of the plaintiffs, according to what Hervieux told him. That he heard *engagés* and winterers of the defendant and his associates say that they were prohibited by their bourgeois from trading any skins under pain of loss of their wages. That the deponent has wintered for seven years in the North and about Lake Superior and that his bourgeois have never prohibited the trading of buffalo robes and elk skins, and that this trade was allowed to other *engagés* who even had permission to carry these kinds of skins in their bourgeois' canoes to the Portage. When they arrived there it was the custom to sell the furs to anyone. That there were many *engagés* of the Big Company at Grand Portage last summer who had such skins to sell. That the deponent heard it said at Grand Portage that the defendant had cut a tent belonging to the said Hervieux and burned another and that this last had been sold to a man named Durand. That this rumor injured the said Hervieux and humiliated him before the men, who told the deponent that they were no longer going to trade with him, for fear that they would suffer the same treatment. That it is the opinion of the defendant [*deponent?*] that if such a rumor had not been bruited about, the said Hervieux would have traded the greater part of his merchandise.

## Cross-examined by the Defendant

Says that he has been in the service of Messrs. Robertson for eight years.<sup>24</sup> Since the latter sold out to the Big Society, the deponent has entered the service of the Big Company in the North. That it was while he was in the service of Messrs Robertson that he was free to sell his skins. That he has not traded since he entered the service of the Company because he has had no furs and because he shortly

<sup>23</sup> The Montreal document gives the following additional information in French: "Hyacinthe Marcot, voyageur of the Fauxbourg of St. Laurent, 34 years of age, a witness for the plaintiffs, being duly sworn, says that he is neither a relative of, related by marriage to, nor in the service of any of the parties, nor affected by this case."

<sup>24</sup> Possibly William Robertson was one of these gentlemen. See Wallace, *Documents Relating to the North West Company*, 105. See also *post*, n. 26.

came down to Montreal; but that he has watched the *engagés*, when they came out from the interior, sell their furs to the people from Montreal. That he did not see the tent of Mr. Hervieux when it was first set up, but that he had been shown the place. That the men of the defendant had a tent on the same spot, but that there were no other tents in the vicinity. That he did not see the second tent of the said Hervieux, but that he saw a little cabin covered with bark, where his goods were stored, and a little tent where his men lived at a distance of thirty feet from Boucher's fort and about an arpent or an arpent and a half from the place where he had erected his first tent. That while the said Hervieux was established near Fort Boucher, he sold his goods freely to the men of the new company, to some whom the deponent saw; that there were two other men who sold goods to the *engagés*, viz., Mr. Boucher and Mr. Mailloux. The deponent declares that he does not know how to sign.

TESTIMONY OF JEAN BAPTISTE TABEAU <sup>25</sup>

[Translation]

Jean Batiste Tabeau deposes that from the year 1771 until 1798 he voyaged in the *pays d'en haut* around Michilimakanac. That in order to go to the Grand Portage one uses the same route as to Michilimakanac, except that about twenty or twenty-five leagues from Michilimakanac the routes fork and separate. That on all the portages from Montreal to Michilimakanac it was the custom that every voyageur put his tent where he would and that if another came, he had as much right to set up his tent there as the first. That the deponent has never seen that right contested. That as far as he knows from traveling in the *pays d'en haut*, he thinks that a man whose tent had been cut or destroyed would suffer thereby.

Signed J. B<sup>te</sup> TABEAU

<sup>25</sup> Jean Baptiste Tabeau was an important Montreal trader. One of his sons, Pierre Antoine Tabeau, wrote an account of the fur trade on the Missouri River that has been recently translated by Rose Abel Wright and edited for publication by Annie H. Abel (Norman, Oklahoma, 1939). A second son, Jean Baptiste Henri Tabeau, was well known in Montreal fur circles. The elder Jean Baptiste was a member of the Beaver Club in 1787. He made his first trip into the interior in 1770. See Benoit Brouillette, *La pénétration du continent américain par les Canadiens français 1763-1846*, 149 (Montreal, 1939). Of the same family was the first known missionary to the Minnesota country after the conquest, Abbé Pierre Antoine Tabeau.

TESTIMONY OF DANIEL SUTHERLAND<sup>26</sup>

Daniel Sutherland Deposeth and saith That he has been in the habit of trading to the upper Country for these fourteen years past. That he knows the Defendant and some of the Partners in the North West Company. That he was acquainted with the situation of the Fort at the Grand Portage before the Defendant was a Partner in that Company. That the Deponent was a Partner in the former North West Company. That he particularly knows the old fort at the Grand Portage which was occupied by the said North West Company in the year 1801, and as the Deponent has been informed was occupied by them last year. That he also knows the situation of a smaller Fort at a little distance from the former which now goes by the name of Fort Boucher, and the space of ground between them, which space of ground was cleared (*défriché*) when the Deponent first saw it, and appeared to have been so for several years before that time, that during the time the Deponent was a Partner in the North West Company he never did hinder or prevent persons from pitching their tents on that space of ground & on the [space] Between the said two forts. That the Deponent considered that any trader had a right to pitch his tent on the said space of ground on his arrival there, the same being open and not inclosed, that the Deponent has frequently passed over the different Portages between this and the Grand Portage, that it is the Custom of the trade in such communication that the first comer pitches his Tent in the spot he may prefer when vacant, that in these Portages as there is very little space cleared it often happens that when several tents are thereon pitched they touch each other and that even in such cases he never knew the right of Pitching tents to be contested. That from the knowledge which the Deponent has of the Upper Country trade and of the manners of the people, he conceives that the Cutting down of a man's tent would hurt and prejudice him in the minds of the Engagés and people trading to that Country, and that such a Public insult would do him damage.

Cross examined by Defendant

Says that he is a partner in the new North West Company<sup>27</sup> lately

<sup>26</sup> Daniel Sutherland retired as a member of the Northwest Company in 1795. He later became a partner in the XY Company. His wife was Margaret Robertson of Montreal. Wallace, *Documents Relating to the North West Company*, 501.

<sup>27</sup> Probably Sutherland here means that he is a member of the XY

established in Montreal but that he does not in that capacity conceive that he would be in the least interested in the decision to be given in the present suit by establishing a right that may have heretofore been contested.

That while he was a Partner in the North West Company there was a clause inserted in the articles of agreement of their men in the following words "sans permission de faire aucune traite particulière sous les peines portées par les ordonnances et de perdre leurs gages" [*without leave to carry on trade individually under penalty of the law and with loss of wages*] which clause Deponent believes is inserted in every engagement with the men employed in the trade. That there are not any Courts of Justice established in that Country to the Deponent's knowledge. That notwithstanding said clause the Deponent conceives, that when men have permission from their Employers to bring certain skins such as Buffaloe Robes and Original [*elk*] skins in their Canoes from the Wintering grounds to the Grand Portage, they have a right, when at the last mentioned place to trade them as they please, and that this is the custom of the trade, and Deponent has known it to be practised, and allowed to the men as a perquisite although he does not know that this indulgence was gennerally allowed to all the men. That in some cases it was specially granted by the words "*permission de porter le pacton*," in the agreement. That Deponent conceives that if he had chose to exercise the Prohibitive right mentioned in the articles of agreement of the Engagés he would have had a right to prevent them from carrying on any private trade whatsoever. That Possession in that Country of particular spots has been generally respected, and in such cases it has been usual for the persons in possession of such places to enclose them with pickets. That during the time the Deponent was at the Grand Portage the above mentioned space between the two Forts was always occupied by the tents and the men and by their Canots. That the said space of ground is bounded in front by the lake, on the south West side by the old fort, on the North East by Fort Boucher (belonging to the North West Company as he believes) and in the rear by the woods. That he does not recollect during his residence there that any person came to trade or pitched their Tents at the said spot. That it is Customary Company, though a firm that called itself the "New North West Company" came into being in October, 1798. Wallace, *Documents Relating to the North West Company*, 17.

at Carrying places between Montreal & the Grand Portage to avoid as much as possible mixing the baggage and goods of different persons, and at several of these carrying places there are trading houses established during the Summer. That if the Deponent had a number of men encamped at the Grand Portage he would have thought it would have done him a prejudice if a stranger should have come amongst them for the purpose of selling Rum. Says further that there is a public Road that passes in the open space between the two forts above mentioned to the North side of the Portage, and that a Cart may pass in the said Road from the Beach to the little River, which Road was made, before Deponent went to the Grand Portage, by the former North West Company as Deponent believes. That the value of a Canot load of Goods at the Grand Portage may be worth from five hundred to twelve hundred pounds according to the assortment it may contain.

D. SUTHERLAND

TESTIMONY OF JOHN CHARLES STEWART <sup>28</sup>

for Defendant

John Charles Stewart Deposeth and saith that he was at the Grand Portage last year, and has been in the habit of going there for some years past. That while there, last summer he was informed of, and shewn the situation where one Hervieux had pitched his Tent on his arrival last summer.

That the said spot, to the Deponent's Knowledge has been occupied for some years past by the men and the Tents of the North West Company, and was so during last summer. That Deponent has never knew any strangers place themselves on that ground for the purpose of Carrying on trade, since he has been in the habit of going there. That Deponent conceives it would not be safe or convenient

<sup>28</sup> The Montreal version gives the following additional information: "John Charles Stuart of Montreal Gentleman aged twenty one years and upwards, a witness produced sworn and examined on the part of the Defend<sup>t</sup> deposeth that he is not related nor allied to either of the parties in this firme that he is clerk to the North West Company. That the Defd<sup>t</sup> is a partner of the House of McTavish Frobish[er] & Co. and that said House have share in the Nort[h] West Company." The cross examination on the Montreal document is signed "J. C. Stewart." For other references to Stewart, see Wallace, *Documents Relating to the North West Company*, 104, 125, 171-173, 176, 182, 186, 188, 190, 193, 195, 202.

for the North West Company to suffer strangers to place themselves on that ground for the purpose of trade or selling liquor. That he is acquainted with the general tenor of the agreement, entered into between the North West Company and their wintering men. That the said agreement[s] are all of the same tenor, and contain the said clauses and restrictions as are mentioned in that now produced by Deponent marked X and have been of the same tenor for several years past. That there are no Courts of Justice in that Country known or established. That the Deponent knows no other means which the traders have to keep their engagés and men in submission that [*sic*] by a strict adherence to the articles of their agreement and by their own personal exertions, which it is necessary should be called forth and used. That the Deponent has always understood that when any of the men brought skins from the Wintering grounds for the purpose of trading on their own private account it was by a special favor of their Bourgeois granted to them by a clause in their contract under the words *port de pactons* and a privilege granted to them.

That although this is Customary, yet the Deponent conceives it is in the power of the Employer to grant it or refuse it as he may think fit. That it is a necessary precaution for the Traders at the Grand Portage to keep their men apart as much as possible, and to prevent persons from giving them Spirituous Liquors. That the Deponent saw the spot where said Hervieux erected his Tent the second time at the Grand Portage, which, in the opinion of the Deponent, was as advantageous for his trade as that where he had first pitched his Tent. That said Hervieux remained there until nearly the Close of the communication, and until the men began to retire that Deponent saw M<sup>r</sup> Mailloux and M<sup>r</sup> Boucher at the Grand Portage last summer who also had goods for sale. That said Boucher had two Canots loads of goods there last summer the usual quantity he takes each year a considerable part of which, at the close of the Communication remained still on hand, and a greater proportion of them remained then unsold than the autumn before. That according to an Inventory of said goods on hand last autumn which Deponent has seen the amount was from six to seven thousand livres. That during the course of last summer the North West Company had sometimes from four to five hundred men at the Grand Portage at one time, who were daily going and coming. That said Mailloux and Boucher have been in



the habit of frequenting the Grand Portage and selling goods there since 1798 or 1799.

That as M<sup>r</sup> Hervieux was concerned in the same kind of business as them the Deponent conceives it was their Interest to oppose M<sup>r</sup> Hervieux's Trade as much as possible. That the Deponent thinks if M<sup>r</sup> Boucher and M<sup>r</sup> Mailloux had not been there last summer M<sup>r</sup> Hervieux would have disposed of all his goods.

Cross examined

Says, that Deponent's knowledge of the quantity of goods which M<sup>r</sup> Boucher had on hand last autumn and the value of them arises from having seen an Inventory thereof which the Deponent has now in his possession. That M<sup>r</sup> John Welles a Clerk of the North West Company assisted in taking that Inventory. That said Boucher is equipped by the North West Company, and his two Canots loads of goods consisted chiefly of liquors. That some of the goods which went up in his Canots belonged to the North West Company. That said Boucher has been in the employ of said Company for some time past. That he saw said Mailloux at the Grand Portage but did not see any of his goods but it was a matter of notariety [*sic*] that he had goods. That the *pactons* mentioned in Deponents examination in chief are composed of Buffaloe skins and Elk skins. That such *pactons* when brought by the men to the Grand Portage are considered as their private property, which they have a right to dispose of. That he understood that there was a number of the men who brought their *pactons* from the wintering grounds last summer, although he does not recollect to have seen any of them but that he knows they generally do so. That he knows the situation where M<sup>r</sup> Hervieux first pitched his Tent and that to which he retired afterwards that it would not take a man above three minutes to walk from the one to the other, and that he thinks that change of situation could not have prevented his selling rum or anything else.

J. C. STEWART

#### TESTIMONY OF HENRY MCKENZIE <sup>29</sup>

Henry McKenzie of Montreal maketh oath and saith, That he Deponent was at Michelimakanac last summer where he saw M<sup>r</sup> Rousseau, one of the Plaintiffs who told Deponent in presence of

<sup>29</sup> Henry McKenzie was a younger brother of Roderick McKenzie. His sympathies were with the defendant since he was affiliated with the

other persons, that he was sending a Canoe load of goods to the grand Portage to reduce the prices which the North West Company generally charged there for goods, and that he would continue to do so until he had effected that purpose.

That Deponent went from thence to the Grand Portage where he saw one Hervieux trading on behalf of the Plaintiff; and besides a M<sup>r</sup> Mailloux and one Boucher who were also trading goods of the same kind as those which said Hervieux traded, as Deponent supposes.

That said Boucher was fitted out by the North West Company and took up two Canot loads of goods to the Grand Portage for the purpose of trading there, that the amount of the said goods remaining on hand at the close of the communication, last summer, according to the Inventory thereof which Deponent saw was six thousand six hundred and ninety one livres nineteen sols. That the amount of the goods of said Boucher remaining on hand at the grand Portage the preceeding year at the close of the Communication was fifty nine pounds seventeen shillings and one penny Currency.

That Deponent saw the Canot load of goods belonging to M<sup>r</sup> Mailloux at the Grand Portage last summer. That the above mentioned Boucher & Mailloux were the only traders that had been known at the Grand Portage for two or three years preceeding the last year. That Deponent thinks it was their Interest to oppose the trade of said Hervieux.

That from the year 1794 to 1798, inclusive, previous to M<sup>r</sup> Boucher's going there, one [Joseph] Lecuyer<sup>80</sup> used to trade at that post in the same articles of trade as those carried on by Boucher and Mailloux and to the best of Deponent's knowledge, was the only trader of that description there. That during the trade of the said Lecuyer, his Capital or *outfits* amounted in the five years above mentioned, from four to five thousand pounds, and that his share of the average profits during each of the said years was about one hundred and twelve pounds Cur<sup>y</sup>. That Deponent conceives that a stranger has not the same advantages at the said Post as a person who has been in the Custom of Northwest Company through the firm of McTavish, Frobisher and Company, the "directorship" of the Northwest Company. Wallace, *Documents Relating to the North West Company*, 477.

<sup>80</sup> Joseph Lecuyer was one of the witnesses in this case. His evidence appears *post*, p. 146-148.

trading there for several years. That during the time said Lecuyer traded at the Portage the same number of men was there employed by the North West Company as have been since, that period as far as the Depon<sup>t</sup> knows & believes.

Cross examined by Plaintiffs

Says; That he has no personal knowledge of M<sup>r</sup> Lecuyer's trading at the Grand Portage during four of the years above mentioned. That Deponent saw him there for the first time in 1797, but that from the accounts in the Books of M<sup>c</sup>Tavish Frobisher & C<sup>o</sup> it appears that he had traded there from the year 1794 to 1798. That Deponent acquired this knowledge from the Books of M<sup>c</sup>Tavish Frobisher & C<sup>o</sup> which he examined this day. That Deponent cannot say at what rate the goods furnished by M<sup>c</sup>Tavish Frobisher & C<sup>o</sup> to said Lecuyer are charged in their Books. That in one of the years they are charged at 50 P Cent advance upon sterling, but—cannot say in what year; the Deponent means English goods. That he cannot recollect the advance charged upon liquors, but they are generally *à prix fait*. That the part or share which M<sup>r</sup> Lecuyer held in the concerns he carried on at the Grand Portage was one half as far as Deponent can recollect and the other half belonged to the North West Company. That part of M<sup>r</sup> Lecuyer's outsits [*sic*] to the Grand Portage consisted of liquors but cannot say what part. That said Lecuyer while Deponent was at Grande Portage traded these goods with the Engagés and other people. That during the time Deponent was at the Grand Portage in the year 1797, he never saw M<sup>r</sup> Lecuyer receive any skins from the trade he was then carrying on, and that Deponent did not understand that said Lecuyer traded any of the *Pactons* brought by the engagés although he might have done so as the Deponent did not see any of his returns.

Being asked how he Deponent, has so precise a knowledge of the profits made by M<sup>r</sup> Lecuyer during the years before mentioned as he declares he never saw any of Lecuyer's returns? Answers, by the accounts, in which he supposes the returns are mentioned, but that he only looked at the balances and did not examine the accounts. That the outfitts of M<sup>r</sup> Boucher are also entered in the Books of M<sup>c</sup>Tavish Frobisher & C<sup>o</sup> the amount of which the Deponent cannot at present tell, nor the profits he may have made during his trade at the Grand Portage, That the Depon<sup>t</sup> came here to swear to M<sup>r</sup>

Lecuyer's accounts, and that he looked at them before he came. That Deponent arrived at the grand Portage in the month of June or July last year but cannot recollect the exact time, but that he arrived there before M<sup>r</sup> Hervieux. That the Deponent when at the grand Portage, felt himself interested for the North West Company his Employers. That Deponent mentioned to many persons the conversation he had with M<sup>r</sup> Rousseau the Plaintiff, while at Michilimakanac and that he has mentioned the same to some of the partners of the N. W. Company.

That the Defendant is one of the agents of the said Company at the Grand Portage.

That Deponent when at the Grand Portage considers himself as under the direction of the said Defendant and of any others of the North West Company. That M<sup>r</sup> Boucher's returns last year consisted of various kinds of skins (but not chiefly of Buffaloe, Robes and Elk skins) and various other things, such as [*blank in MS.*]

That said Boucher traded those skins with the engagés and the freemen of the Grand Portage and beyond it in the interior. That by Freemen the Deponent means men not engaged to the North West Company, nor to any other Company, and men whose engagements with the Company determine on their ar[r]ival at the Grand Portage from the Interior. That the Deponent cannot tell how many freemen of the above discription [*sic*] there might have been at the Grand Portage during the course of last summer. That there might have been a great number for what he knows. That Deponent was at the Grand Portage last summer when the greatest part of the Canots arrived from the Interior. That he saw some of them arrive at the Beach and unload that he does not recollect to have seen any skins in those Canots which commonly go by the name of *Pactons*. That the men who have such skins dispose of them at the option of their Bourgeois, as the Deponent has understood according to their agreement. That the said skins or *Pactons* are considered as the Property of the men, with those restrictions. The Deponent means the men of the North West Company. That the Bourgeois of the North West Company do not sell those *Pactons* at the Portage for the men and Deponent believes that some of the men who do not sell their *Pactons* at the Grand Portage bring them down to Montreal, but he does not know how they dispose of them there.

H. M<sup>c</sup>KINZIE

TESTIMONY OF WILLIAM MUNRO <sup>81</sup>

W<sup>m</sup> Munro maketh oath and saith that he is a Clerk to the said North West Company for these four years last past and resided during that period in the North West or Interior Country. That the Engagés of the said Company are restricted by a particular clause in the articles of their agreement from trading on their own private account at the Grand Portage. That by the word *Pacton* is understood and meant such skins as the men can get in the Interior part of the Country and which consist of Buffaloe and Orignal skins. That the men who make such *pactons* are not permitted to trade them at the Grand Portage without permission of their Employers.

Cross examined by Plaintiffs

Says that he arrived at the Grand Portage in the month of June last. That he saw one Paul Hervieux in the course of the day that the said Hervieux arrived there. That he saw a Tent which he was informed one Durand had purchased from Hervieux that morning, which Tent had been cut up afterward, but he did not see it Cut up nor when it was burnt, and only saw it after it had been Cut up.

WILLIAM MUNRO

## TESTIMONY OF ANGUS SHAW

Angus Shaw deposeth and saith that he is not related to either of the Plaintiffs in this cause nor interested in the event thereof. That he is Brother in law to Duncan M<sup>c</sup>Gillivray the Defendant and has been so since S<sup>t</sup> Andrew's day last. That he is a Partner in the North West Company and that the Defendant is a partner of the house of M<sup>c</sup>Tavish Frobisher & C<sup>o</sup> and as such has an Interest in the said North West Company.

ANGUS SHAW

## TESTIMONY OF ALEXANDER MCLEOD

Alexander M<sup>c</sup>Leod maketh oath and saith that he is not related to either of the Plaintiffs in this cause, that he is a partner in the North West Company but not interested in the present cause. That the Defendant Duncan M<sup>c</sup>Gillivray is a Partner in the house of M<sup>c</sup>Tavish Frobisher & C<sup>o</sup> and as such has an Interest in the said North West

<sup>81</sup> For information on William Munro, see Gates, *Five Fur Traders*, 137 n. He was a trader in the upper Red River district.

Company and acted during last summer, as one of the agents of the said North West Company at the Grand Portage.

ALEX. McLEOD

TESTIMONY OF JOSEPH LECUYER

[*Translation*]

Joseph Lecuyer deposes that he was at Grand Portage in the summers of the years from 1794 to 1798 inclusive. That he took with him some goods to trade with the *engagés*; that these goods amounted to about a thousand livres, present value, every year. That the first year he was on his own account as far as Sault Ste. Marie, where he formed a partnership with Mr. D<sup>l</sup> Sutherland, then an agent of the North West Company; and the other years he was outfitted by the said North West Company. That the premium that the said Company charged for their goods was fifty per cent Halifax upon the price sterling for the drygoods. That rum was charged the current price at Montreal, likewise all the other merchandise except the drygoods. That he was the only trading merchant during those three years and the last year. The fourth year he had a neighbor, who traded as he himself did. That he sold these goods for buffalo robes and elk skins; and the larger part he exchanged for *bons* of the bourgeois. That ordinarily he made thirty to forty packs of these kinds of skins every year.

That if these skins had been the sole trade, he would not have made much profit, because they were not selling well at that time. That his chief profit came from the *bons* that he got. That the Company's men could sell these kinds of furs to the deponent without the permission of their bourgeois, because he was in partnership with them; but that they were not allowed to trade with strangers without that permission, and if they had done so, they would not have had permission to bring the furs out from the wintering grounds. That the first year that he was at Grand Portage he lost £13 on his trade; the second he gained £140; the third he gained £172; the fourth he gained £25; and the fifth he gained £172; that the accounts current and the returns of these years are entered in the books of the North West Company and signed by the deponent. That the deponent occupied a little house belonging to the Company at Grand Portage, which was a little distant from the Big Fort. His house was on the same site

as that on which Fort Boucher is now located, according to what he has been told.

Cross-examined by the Defendant

Says that these outfits during the years mentioned consisted of wearing-apparel of all kinds, such as capotes, jackets, and breeches. That he had them made from cloth supplied by the Company, which paid its share of the making. That in addition he had rum, wine, and victuals; but that his outfit consisted mostly of drygoods. That during his trade at the portage the fourth year there came there a man named Chandonnet,<sup>32</sup> who did business during the summer on his own account with a little assortment; that the said Chandonnet got some elk skins, chiefly by secret night-trading; that he made some five or six packs. That the said Chandonnet [*sic*] stayed there at most a month. That the said deponent knows a man named Seraphim Lamare,<sup>33</sup> who was at Grand Portage with the deponent a year as his clerk and the following year was clerk of the said Chandonnet. That at the time that the deponent was at Grand Portage there were some freemen who came out of the North country and brought some packs that they sold to the bourgeois of the Company. That they held auctions sometimes, when the bourgeois bought. That in these packs there were sometimes some beaver and martin skins. That by the *bons* of the bourgeois that he mentioned he refers to the notes of the bourgeois that he received from the men as money for goods and drinks that he sold. That these *bons* were paid like wages to the men, to whom he granted goods. That the deponent believed that he had the right to sell to the *engagés* who came from Montreal as well as to those coming out of the wintering grounds, but that there was little to gain

<sup>32</sup>A Charles Chandonnet was born in Quebec in July, 1763. *Wisconsin Historical Collections*, 19:305 n.

<sup>33</sup>La Mar was a clerk in the Fond du Lac department in 1805, according to "lists of men in the various departments of the Northwest Company for 1805." The Minnesota Historical Society has a photostatic copy of the original list in the Masson Papers, McGill University Library, Montreal. This name appears as "Su: La Mar—clerk," in Wallace, *Documents Relating to the North West Company*, 221, where it is included in a list of *engagés* and others employed in 1806 by the Northwest Company in the "Folle Avoine" department, now part of western Wisconsin. This is a misreading of the original manuscript "Minutes of the Northwest Company, June 30, 1801–Feb. 28, 1811," in the Gerrard Papers, Bibliothèque St. Sulpice, Montreal. A photostatic copy of this document, in which the name appears as "Ser. La Mar," is owned by the Minnesota Historical Society.

from the people from Montreal. That he sold seven or eight louis' worth to these people at best.

Being asked if a comer and goer or a winterer from the interior, who had received wages, could use them to procure necessities, he replied that that depended upon the bourgeois. If the man had need of something, he (the deponent) would advance it to him, if the latter wished, but that he was not obliged to give him money at the portage, nor at any other post, because the wages are paid in Montreal in money. That the accounts of the winterers returning to the interior are regulated at Grand Portage and they are given bills of exchange when they go down to Montreal. He thinks that these men might sell these bills to whomever they will. That the deponent is of the opinion that any merchant voyageur having goods at Grand Portage could sell his goods to any *engagé* at all, if he knew him and wished to take the risk. That the deponent sold goods one year at Grand Portage for five hundred louis. That the second year the deponent was at Grand Portage there were some *engagés* of Mr. Robertson as well as of the North West Company. That he sold nothing to Mr. Robertson's *engagés* except to one individual, whom he risked and lost thereby forty livres. That Mr. Robertson prohibited his *engagés* from selling their robes to others because he bought them himself.

(Signed) JOSEPH LECUYER

### ROUSSEAU AND BAILLY v. MCGILLIVRAY

[Court of King's Bench, Register of Common Pleas, Superior Term, 1803-05, in Archives of the Judiciary District of Montreal.]

Thursday 5<sup>th</sup> April 1804 . . . Dominique Rousseau & Joseph Bailly, merchants and Indian traders, & late co-partners trading under the firm of Rousseau & Bailly, Plaintiffs vs. Duncan McGillivray of Montreal also merchant & Indian trader, one of the House of Mc Tavish-Frobisher & Co., Defendant

The Court having heard the parties by their Counsel, and duly examined the evidence of Record . . .

It is CONSIDERED that the Plaintiffs do recover from the defendant the sum of FIVE HUNDRED POUNDS current money of this province, with costs of suit.





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