

The French from Canada having lately erected some Forts upon a Territory within His Majesty's Dominions in America, & after a regular Summons, disposess'd a Garrison placed by the Governor of Virginia in a Fort erected by His Majesty's Orders within the said Territory, it becomes necessary to enquire into & ascertain the Title which His Majesty has to the Territory in Question, & to invalidate the Pretensions of the Crown of France.

The Pretensions of France seem to be founded upon the prior Discovery of the Mississippi by M. de La Salle in 1684, a constant and uninterrupted Navigation & Commerce carried on in the neighbouring Lakes ever since that Time, & in consequence thereof, a pretended Title set up to the Spring Heads of all the Rivers & Waters

Waters falling into the said Lakes & River Mississippi, but no actual Possession by erecting Forts, Culture, or Plantation, is pretended, at least to the Territory in question, till the present Settlement.

The Title of the Crown of Great Britain may, in like Manner, be founded on Discovery, Charters, & Grants, from the Crown, previous to any Discovery on the Part of the French; & Cessions from the Indian Inhabitants, original Proprietors of the Soil, or such as had acquired Right by Conquest, & enjoyed long Possession in consequence of it. But neither can the Crown of Great Britain pretend any actual Possession by Forts, Culture, or Plantation, previous to about the Year 1736. And therefore, in respect of ancient Possession, must rest its Title on the Possession of its Indian Authors,
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The Five Nations, who have been expressly acknowledged by France in the Treaty of Utrecht, to be Subjects of the Crown of Great Britain. This being, in short, the State of the Case between the two Parties, in respect to Title, it may be observed, with regard to that of France, that, so far as it is founded on prior Discovery, was it even admitted to be a good Foundation of Acquisition, it is not only entirely taken off by an anterior Claim of the like kind, but, being acknowledged to be divested of any Territorial Possession, in consequence of such Discovery, falls to the Ground.

As to the continued Practice of Trade and Navigation upon the Lakes and Rivers; supposing the Fact admitted, it never can give a just Right to Territory, which is only to be acquired by Possession under a just Title, which that of trading with the Native Proprietors is not, even supposing it
exclusive

exclusive, which is not either pretended, or, if it was, would it be admitted in the present Case; For the English have traded upon the Lakes & Rivers in like Manner, tho' they do not attempt to found their Right of Territory upon any such chimerical Title.

If this Pretension of the French to the Territory adjacent to the Lakes & Rivers, where Trade has been carried on, is chimerical, much more is it so when extended to the Spring Heads of all the Waters which fall into those Lakes or Rivers, & to which Extent no Trade can be pretended to have been carried on.

This Doctrine, which is so agreeable to common Sense, & the general Law of Nations, is further confirmed by the Sense of the two contending Parties in the Treaty of Neutrality in 1763, by which the
exclusive

exclusive Right of trading is preserved to each Country respectively, not over the Territory where each has traded respectively, but over that which each has been or shall be possessed of respectively; Et pour cet Effet, les Sujets et Habitans, Marchands, Capitaines de Vaisseaux, Pilotes, ou Matelots, de Royauxmes, Provinces & Terres, de chacun des dits Roys respectivement, ne feront aucun Commerce, ni Pêche, dans tous les lieux, dont l'un est, ou l'on sera en Possession, de Part ou d'autre, dans l'Amérique, &c. &c.

The Territory in Question was most certainly not then possessed by the French; but was then, & has been ever since, till the Cession of it to His Majesty, by the five Nations, at the Treaty of Lancaster 1744, possessed by Indians, subject to the Crown of Great Britain, & acknowledged by France herself.

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The Title of the Crown of Great Britain to the Territory in question, is founded, not only upon prior Discovery & Charters & Grants, in Consequence of it, but upon Cessions of the Indian Proprietors & Possessors, & whatever may be said as to the two first of these Titles, the last must be allowed to be one of the most just and approved Modes by which Property can be acquired.

The Territory between the Allegany or Apalachean Mountains, & the Lake Erie or Oswego, was anciently possessed by Indians, who were conquered by the Iroquois or five Nations; a Fact which is uniformly admitted by all the French Writers, & French Maps, & was, in the Year 1701, together with other Territories, enumerated in the Decree, conveyed by them to the Crown of Great Britain, & put under its Protection &

and Sovereignty, with a Reservation only of a Right of hunting. In the Year 1726, the five Nations, by Deed, give to Great Britain all the lands within 60 Miles of the Lakes, which includes the Lands now in Dispute; & in the Year 1764, by the Treaty of Lancaster, the Indians of the five Nations ceded to His Majesty whatever Lands he should think proper to grant to the Inhabitants of Virginia, to the Westward of the Mountains.

The Sovereignty of Great Britain over the five Nations, is expressly admitted, & acknowledged by France, by the 13th Article of the Treaty of Utrecht, ^{about 1730?} and this Acknowledgement & Admission, seems equally to bar all Claim on their Part, by Cession, or other ways, to any Lands, which then belonged to the five Nations, either in their own Right, or Right of Conquest, as to ascertain that Title,

Title, which Great Britain has
acquired, in consequence of Cession, from
them; for as the French, on one Hand,
after such Admission, can never
require, with Validity, a Title to Lands
belonging to the five Nations, without
the Consent of those, whose Sovereignty
they have acknowledged; so neither
can they, on the other, dispute the
Validity of a Cession, made by Subjects
to their Sovereign, unless by denying
the Right of those Subjects to the Lands
so ceded, which, neither in this Case,
nor in that of the Territory where their
Fort of Niagara is built, do they pretend
to do; but, on the contrary, pretend, in
this last Case, to have had the
Permission of the five Nations for
erecting that Fort.

The French seem, as well in
their historical Writings, as in their
Memorials, in Answer to Complaints,

on

on the Part of the British Governors, to
be extremely puzzled how to reconcile
their Conduct with this Acknowledgment
of our Sovereignty over the five Nations,
contained in the Treaty of Utrecht; they
sometimes deny the Fact, as will
appear from the Correspondence between
Gov: Burnet & M. Longueil in 1726, &
between Gov: Clinton & M. de la
Galissoniere in 1749; The words of M.
Longueil are remarkable, "Les Cinq
"Nations, qu'ils ne font ni vos Sujets, ni
"les nôtres, vous doit être bien obligée de
"vous décharger d'une Inquietude, qu'elle
"n'ont jamais eu; puisque bien éloignée
"de penser, qu'un tel Etablissement de
"Niagara puisse leur apporter aucun
"Trouble, Elles s'y ont donné la Main,
"par un Consentement unanime, &
"l'ont encore confirmé dans les dernières
"Conferences à Niagara, le Quatorze de
"Juillet dernier." Lettre de M. Longueil

à

a M. Burnet le 6.^e d'Août 1726. From
which Words it may be fairly enough
concluded, that, as the Fact is quite
the reverse of what M. Longueuil puts,
the Establishment of Niagara was
an Encroachment upon the Right of
Great Britain, & a direct Violation
of the Treaty of Utrecht.

Pere Charlevoix, who was better
informed of the Fact than the French
Governor, endeavours to explain away
the Right, arising to Great Britain,
from the Admission of Sovereignty on
the Part of France, over the five Nations,
by supposing, first, a Fact, of
which he brings no Sort of Proof,
that the five Nations protested
against this pretended Sovereignty
of Great Britain; & then drawing
this Inference, that this Admission
of Sovereignty on the Part of France,
could consequently convey no Right
to

to Great Britain; his Words are, &
Louis Quatorze, qui avoit aussi ses
Raisons de ne point apporter
d'Obstacle au Traité, qu'il vouloit
conclure avec la Majesté Britannique,
sacrifia ces trois Provinces, la Baye
de Hudson, Terre Neuve, & l'Acadie, & le
Droit, qu'il pretendoit avoir sur les
Cinqs Cantons Iroquois; cet dernier
Article ne vous ote rien de réel, & ne
donne non plus rien aux Anglois,
par que les Cantons renouvelerent
les Protestations, qu'ils avoient déjà
faites plus d'une fois, contre les
Pretensions reciproques de leur
Voisins, & ont très bien su se
maintenir dans la Possession de
leur Liberté, & de leur Independance,
(Charlevoix Livre 20. Page 107.) &
afterwards, giving an Account of
the Establishment at Niagara, in
the Year 1720, he says, J'ai déjà
eu l'Honneur de vous dire, que
nous

Nous avons ici un Projet
d'Établissement, pour bien entendre
ce qu'y a donné Lieu, il faut savoir
que les Anglois prétendent, en vertu
du Traité d'Utrecht, d'avoir la
Souveraineté sur tous les Pays
Iroquois, & par conséquent, de
n'être borné de ce côté-là que par
le Lac Ontario; cependant on a compris
que si leur Prétension avoit Lieu, ils
ne tiendroient bientôt plus, qu'à eux,
de s'établir puissamment dans le
Centre de la Colonie Française, ou,
du moins, d'en ruiner absolument
le Commerce; on a donc jugé à
propos de parer à cet Inconvénient,
en évitant, néanmoins, de donner
Attente au Traité; & on n'a rien
trouvé de mieux, que de Nous
placer dans un Lieu, qu'il Nous
assure la libre Communication
du

226.

du Lac, & que les Anglois ne fussent
pas les Maîtres de s'opposer à
notre Établissement. — Journals
Historique Lettre 15. Page 333.

But as to the Fact, which
Father Charlevoix here supposes, of the
five Nations having disavowed their
Subjection to the Crown of Great
Britain, he not only brings no
Proof of it, but it is a Fact, which
is contradicted by every Treaty
which the Crown of Great Britain
has had with the five Nations,
both since, & before that Time; &
was it to be admitted, whatever
Consequence it might be supposed to
have in any Dispute between the
Crown of Great Britain & these
Indians, it certainly can have
none against that formal
Stipulation, which the French
came under to the Crown of Great
Britain.

Britain, at the Treaty of Utrecht, & by which they have precluded themselves from ever treating with those Indians, in any other Quality, than in that of Subjects to Great Britain.

This Stipulation on the Part of France, flows clearly from the Words of the Treaty, which would otherwise have no Meaning at all, but may further be confirmed from the whole Series of Negotiations, both between the two Courts of France & Great Britain & their Governors in America, from the Year 1606, to the Treaty of Utrecht; wherein it appears, that both Parties were fully apprized of what was meant by this Admission of Sovereignty, & of the Consequence & the Obligation it would lay each of them under, in all future Transactions.

Reduction of Rights
to the Spaniards made
by the five Nations
to the English.

N^o 2.

Exact Justice will
all praise.

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