

"His Majesty expressly prohibits all Seigniors or other proprietors, from selling "any wood lands, on pain of nullity of the deed of sale and of restitution of the "price of lands sold as aforesaid, which lands shall in the same manner be re-united "by force of law to the Domain of His Majesty."

The Defendant, in order to come within the case provided by the *arrêt* of 1732, has alleged in his plea "That the land described in the Plaintiff's declaration, before and at the time of the execution of the said Deed of Concession, consisted of "unconceded woodland &c." If the Defendant had proved this allegation, we should have been called upon to decide a number of important questions, which, in the absence of such proof do not arise.

CARON, Counsel for Defendant.

I must call attention to the fact, that the Deed of Concession granted by the Plaintiff to the Defendant, contains a clause imposing the condition that the Censitaire *shall clear and improve the said land.*

MEREDITH, Justice.

I do not think that, according to this stipulation, it must necessarily be inferred that no part of that land had been improved, and that it consisted of woodland within the meaning of the *arrêt* of 1732.

DUVAL, Justice.

It is not a Deed of Sale, and besides there is no proof that it is wood land.

MEREDITH, Justice, in continuation :—

The *arrêts* of 1711 and 1732 were introductory of new Law into the system of French law introduced into the Colony, a system by which a Seignior could concede his land at a rate agreed upon between himself and the Censitaire (1). These *arrêts* are penal laws. In order to subject any one to the penalties imposed by these *arrêts*; the infraction complained of must be a violation of the letter and of the spirit of the law, (2) and the Court cannot be satisfied with a presumption as to an essential fact which it was easy to prove. In the present case, six witnesses examined by the Defendant, state that they know the land in question, none of them state that it was wood land at the time it was conceded. I consider the proof of the Defendant on this point to be defective, but as there may be a variety of opinions in this respect, I do not hesitate to say (and I have examined this question also) that I concur in the opinion of the other Members of the Court, namely, that the deed in question is not a deed of sale within the meaning of the *arrêt* of 1732.

It is possible, (though I know no example of a Deed of Concession having been annulled) it is possible, I repeat, that if a case of this nature had been submitted to the Governor, or to the Intendant, under the French Government, the Censitaire

(1) *Hervé*, 5 v. p. 91 to 422:—*Dunod*, part III c. X. p. 311:—*Argou* p. 519.

(2) *Dwarris*, p. 737:—3 *Bingham* p. 583.