As Seigneur dominant and vassal could make what contractsthey pleased (not *contrà bonos mores* or against law) so the Seigneurs and censitaires could in Canada, up to the cession. There was no law against their so doing.

Their contracts once made could only be changed by mutual consent. Guyot, Fiefs, p. 6, tom. 5, says:

"Un premier principe, vrai et immuable, que Dumoulin nous donne §2, hodie 3, glos. 4, No. 30, et qu'aucun docteur n'a désavoué est que le seigneur potest concessioni suæ adhibère modum quem vult; le seigneur concède sous telles conditions qu'il lui plait, c'est au vassal, disons mieux à celui qui demande la concession à accepter ou à refuser. Le contrat une fois fait, il est irrévocable par l'un ou par l'autre seul."

Some hold the arrêt of 1711 as having been *de droit public*, and *d'ordre public*, and penal; this view of it may be defended certainly.

It orders against Seigneurs refusing to concede *à titre de redevances* that the Governor and Intendant shall concede their lands to the proposing censitaire, (Plaintiff) *aux mêmes droits imposés sur les autres terres concédées dans les dites seigneuries lesquels droits seront payés par les nouveaux habitants entre les mains du receveur du domaine de sa majesté en la ville de Québec, sans que les seigneurs en puissent prétendre aucun sur eux, de quelque nature qu'ils soient.*

So, it orders a confiscation against the Seigneur as for transgression of the provisions of the arrêt.

Dwarris defines a penal law as follows:

P. 642.—"Penal statutes are such Acts of Parliament whereby a forfeiture is inflicted for "transgressing the provision therein contained."

As said before, the Seigneurs are safe, whichever of the two views this Court may take of the *arrêt* in question.

The Court is called upon to pronounce whether or not these arrêts of Marly have been in force here since the cession.

It cannot be shewn that the arrêt of 1711 ever was enforced up to the cession, —certainly it has not been since. It is not in force, and has not had force since the cession. As regards the arrêt of 1732, it may be said to have also fallen into *désuétude* before the cession. Certainly it has not as prohibiting sales of lands *en bois debout*, been enforced in the ninety years since the cession. It could not have had force after the cession. The British public law must have freed the Canadians from any obligation to observe such an arrêt. Probably a hundred thousand sales have been made in Canada contrary to the arrêt of 1732, since the cession; all of them sales such as those declared absolutely null and void by it. It is hard for any lawyer to suppose that a defendant purchaser since the cession of a tract of land *en bois debout*, sued for the purchase money, keeping the land, may repel the action and obtain a sentence declaring null the deed of sale. Equally hard to suppose that in a case like this, and where the price has been paid, the crown could to-day obtain a sentence ordering the seller to restore the price, and the purchaser to give up the land to be confiscated in favor of, and to be united to the King's domain, in terms of the arrêt of 1732! There is no more law, however, to justify the holding that the arrêt of 1711 has been in force since the cession than that this arrêt of 1732 has been in force. Either both have been in force, or neither has.