

with administrative and judiciary authority. *Vide* also; "*Ferlan et Déguise*, in Appeal, 5th January, 1789, before Chief Justice Smith." It might also be asked, whether the Censitaire, in having agreed to the concession deed and taken possession of the land, had not renounced the benefit of the *arrêt*, according to the rule; *unique licet juri pro se introducto renuntiari*.

It is therefore evident that we cannot apply the *arrêts* of 1711 and 1732 to the present case, and that judgment must be rendered in favor of the Plaintiff.

DUVAL, Justice.

This cause is one of great importance, both for the Seignior and for the Censitaire; but the question, in the way in which it is brought, does not present much difficulty. The Defendant pleads that he is only bound to pay one *sol* of *cens*, and that as to the sum or annual *redevance* of seven *sols*, imposed upon him in the form of a constituted rent, he ought to be discharged therefrom, and he prays that part of the deed of concession, to wit: so much thereof as imposes a due of seven *sols*, be annulled. What does he found this pretension upon? It cannot assuredly be upon the *arrêts* of 1711 and 1732; both these *arrêts*, the only ones that can be cited, only apply to the refusal of the Seignior to concede, and to the sale of forest lands, in both of which cases, the matter had to be brought before the Intendant. No reference whatever is made therein to the rate of the concessions. (*Vide* these *arrêts* above cited.) If they are still law, the Court cannot apply them in part; they must have their full effect, and render the concession entirely null. Besides, these *arrêts* conferred upon the Governor and the Intendant, administrative and extra judiciary powers which do not belong to this Court.

These *arrêts* in no wise justify the exception pleaded in this case. The Defendant might have pleaded an error in Law, and alleged that he had signed that deed without due cause or motive, but he has not thought proper to do so, and cannot therefore avail himself of that ground of defence (1.) He should have made it the subject of a special plea, and the Defendant might then have answered and proved, in consequence of the uncertainty, or of the ambiguity of the Law, that the parties had entered into a transaction among themselves; and this answer would have been conclusive. It has been pretended that this deed was a sale, but such is not the case; in my opinion it is purely a deed of Concession.

MEREDITH, Justice.

It would be almost useless for me to add any thing to the observations of the other Members of the Court on this important case, but I think it my duty to quote the very words of the *arrêt* of 1732, which are supposed to apply to the present case. They are as follows:

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(1.) *Revue de Woloski*, 18 vol. p. 159;—6 *Toullier*, Nos. 58 to 71;—1 *Pothier*, ob. 17;—2 *Evans Pothier*, 369;—*La Revue*, loco citato.