is not within the cases provided by these *arrêts*, and yet he wants to have his deed in part annulled, and in part maintained. The *arrêt* of 1711 is in the nature of a penal Statute, and must be interpreted according to the letter. I am of opinion that the Defendant does not come at all within the case provided. There has been no calling upon the Seignior to concede, nor refusal on his part to do so: on the contrary, the agreement entered into between the parties has been entirely free and voluntary. The Defendant has not even made the necessary allegations in his pleas, in order to succeed, namely, the fact of a concession having been demanded, and the refusal on the part of the Seignior to make such concession.

I have said that the question was not a new one; in support of this assertion, I will cite a decision applicable to this case, rendered in the Court of Queen's Bench, at Quebec, in 1820, No. 92, Dubois *vs.* Caldwell. It was an action *in factum* brought by a Censitaire against his Seignior. The declaration alleged in substance, that the Defendant had had 1000 *livres* paid him for the concession of a land in the Seigniory of Gaspé, at a fixed rate of interest, over and above the *cens;* and prayed that the land in question be discharged from this annual *redevance*, imposed in addition to the *cens*, and that the Plaintiff be exempted from the payment of this capital of 1000 *livres*. To this action the Defendant answered by a *défense en droit.*— *Per Curiam*:—This action (Dubois *vs.* Caldwell,) is founded on one of the clauses of the *arrêt* of the 6th July, 1711, which enacts: "That all the Seigniors in the said "Country of New France, shall concede to the settlers, the lots of land which they "may demand of them in their Seigniories, at a ground rent, and without exacting "from them any sum of money as a consideration for such concessions; otherwise, "and in default of their so doing, His Majesty permits the said settlers to demand "the said lots of land from them by a formal summons, and in case of their refusal, "to make application to the Governor and Lieutenant General and Intendant of the "Country, whom His Majesty enjoins to concede to the said settlers the lands "demanded by them, in the said Seigniories, for the same dues as are laid upon the "other conceded lands in the said Seigniories, which dues shall be paid by the new "settlers into the hands of the Receiver of His Majesty's Domain." This law must be assimilated to a penal Statute, so that in order that the Plaintiff should succeed, his case must come within the very letter of the law. The *arrêt* requires, in the first place, that the Seignior shall be called upon to concede at the rate usual in his Seigniory, and for no other consideration, and the recourse which it grants can only be had in case of refusal. As the declaration neither alleges such calling upon the Seignior to concede, nor his refusal to do so, it is defective in one essential point, and the *défense en droit* must be maintained.

Such is the decision rendered as far back as 1820 on the subject, and the same defects as were in Dubois' declaration are also to be found in Martel's exception.

It may be asked with reason (and this question arose in the cause above mentioned,) whether the Court has jurisdiction in this case, inasmuch as the authority conferred by the *arrêt* of the 6th July, 1711, is not within the ordinary province of the judicial power? In effect, it was the authority to make a concession of lands, in the place of the Seignior, and this authority was vested in the Governor and in the Intendant. The first was a purely political functionary; the second was invested