

seminary of St. Sulpice at Paris; but although no formal instrument is now to be found by which it was done, it appears by the words of an arrêt of 1702, and another of 1716, that the Parisian community, under the permission given by the King, had established a community at Montreal, somewhere between 1677 and 1702, most likely immediately after the letters patent of 1677: and the arrêt of the 5th May 1716, which imposed a tax of 2,000 livres upon the seminary at Montreal for the repair of the fortifications, styled that seminary the "*seigneur direct*" of the island. In 1760, therefore, at the time of the surrender of Montreal, there were two communities, the one domiciled at Paris, who were the seigneurs of the island of Montreal, and the community at Montreal who were in the actual occupation of the seignury, and in the immediate receipt of its revenues, but who had been created by, and were subordinate to, the community at Paris, and to whom it was a legal impossibility that the Parisian community could have transferred the whole of their seigneurial rights. The Montreal community being the creation of the other, could not well, in its corporate capacity, have been a member of it without some reconstruction of the parent society, which does not appear to have taken place; but it seems that all the individuals of the Montreal community were members of that at Paris. They exercised the right of appointing the registrar or greffier of the King's Court at Montreal; and their own places of residence were exempt from the jurisdictions of the King's Courts: See 1 Edits & O. p. 289. By the capitulation of Montreal† in 1760, a demand made in article 33, that "the communities of Jesuits and Récollets, and the house of the priests of St. Sulpice at Montreal, should be preserved in their constitutions and privileges, was, by the general commanding the British army, "refused, until the King's pleasure be known." But by the 34th and 35th articles, it was granted that all the communities and all the priests should preserve their moveables, the property and revenues of the *seigneuries and other estates which they possessed* in the colony, of what nature soever they were; and that the same estates should be preserved in their privileges, rights and exemptions. By the definitive treaty of 10th February, 1763, Canada, with all the right of the crown of France, was ceded to His Britannic Majesty, who, by the 4th article, agreed to grant the liberty of the Catholic religion to the inhabitants of Canada, and to give the most effectual orders that his new Roman Catholic subjects might profess the worship of their religion, according to the rights of the Romish church, as far as the laws of Great Britain permitted. His Britannic Majesty further agreed that the French inhabitants or others who had been the subjects of the most Christian King, in Canada,

might during the period of 18 months, retire with all safety and freedom wherever they should think proper, and might sell their estates, provided it should be to subjects of his Britannic Majesty. At this point it is desirable to consider in what position the two communities of the seminary at Paris and the seminary at Montreal were left by the capitulation and the treaty. General Amherst, when he assented to stipulations respecting the permanent enjoyment of immoveable property, which could not be construed otherwise than as extending beyond the period of the war, allowed the limits of a capitulation to be exceeded, and it does not require any argument to show that conditions granted by a general cannot be valid to any extent beyond what the laws of the nation for which the general is acting, will permit. This indeed was intimated in the answer to the 41st and 42d articles of the capitulation, and more distinctly in the 4th article of the definitive treaty. But inasmuch as it is certainly within the authority of a general to grant to a stipulating party the property in their moveables, and as General Amherst's assent respecting the permanent enjoyment of real and immoveable property, was blended in the same article with that respecting moveables, if the British Government meant to repudiate any of the stipulations respecting the permanent possession of real estate, it was incumbent on them to do so at the first opportunity, or at all events in the definitive treaty. Not having done so otherwise than by expressing, what must always have been implied, that the liberty of the Catholic religion was not to exceed what the laws of Great Britain permitted, it seems to me that, subject to that proviso, the 33d and 34th articles of the capitulation of Montreal have always been binding, in honor at least, as lasting conditions; and that they must be looked to even now as a part of the grounds on which all claims respecting the seignury of Montreal must be argued. From this opinion, however, I exclude those words in the 34th and 35th articles which relate to "privileges" and "honors" of estates, as repugnant to the 33d article, which referred all "privileges" to the pleasure of the King. Two somewhat discordant stipulations then were to be reconciled after the ratification of the definitive treaty. By the one the constitutions and the privileges, as far as Canada was concerned, both of the community of Paris and of that of Montreal, were made dependent on the King's pleasure; by the other the communities and priests were promised the permanent possession of their seigneuries, as far as the laws of Great Britain permitted, but with the liberty to sell their estates within 18 months to any subject of his Britannic Majesty, under which term were included those Roman Catholic inhabitants of Canada who should choose to remain there, and give their allegiance to the British Crown. Now the point on which the whole case turns is, whether the laws at that time permitted the recognition in Canada of the constitutions of the seminary of St. Sulpice at Paris and of the seminary at Montreal, or of either of them; and it seem to me that it did not, which makes it unnecessary to take any notice of the question which might otherwise arise, according to recent decisions, respecting the rights of aliens to hold

† It must be remembered that the capitulation of Montreal did not take place until a year after that of Quebec, so that the demands of the garrison, probably, were in some degree foreseen, and the remoteness of the province both from England and from France, and the difficulty of bringing to the notice and understanding of the authorities in Europe the interests of the inhabitants of Canada, may account for, and perhaps justify, the fact that the capitulation rather resembles a set of preliminary articles of peace than the mere capitulation of a town. It certainly has been considered, both in Canada and in England, as having effect beyond the occasion on which it was made. It is published at the head of the volume of Public Acts, which is regarded as comprising the fundamental laws of the colony, and is referred to in the opinions of the Crown law officers, even in recent times, as bearing on the present interests of the parties to the questions respecting the seignury of Montreal.