

in *franc aleu noble* held by the most independent tenure possible, a tenure which admitted of his disposing of his land in whatever way he pleased. The holder in *franc aleu roturier* held as freely; with this reservation only, that he could not grant to inferiors, retaining to himself feudal superiority. The holder *en fief* was bound to his superior, and could grant, (either *en fief* or *en roture*,) if he pleased, to inferiors under him; and the holder *en roture* or *censive* was bound to his superior, but could have no inferior below him.

As to the essential character of the contract involved in the granting of land *en fief*, I refer here to one authority only, that of Hervé, the latest and perhaps most satisfactory writer on the whole subject of the Seigniorial Tenure. In his First Volume, on page 372, he says, speaking of this contract: "*il doit être défini une concession faite à la charge d'une reconnaissance toujours subsistante, qui doit se manifester de la manière convenue*"; "it must be defined to be a concession made subject to the charge of an always subsisting acknowledgment, which must be manifested in the manner agreed upon." This, then, is the essential of the contract; a superior, holding nobly, grants to an inferior, who admits his inferiority and acknowledges it—how? In the manner agreed upon. The style of acknowledgment is the creature of the agreement between the parties. Here, again, is the definition of the holding *à titre de cens*, taken from the same author, Volume 5, page 152. "*C'est le bail d'une portion de fief ou d'aleu, à la charge par le preneur de conserver et de reconnaître, de la manière convenue, un rapport de sujétion toujours subsistant entre la portion concédée et celle qui ne l'est pas, et de jouir roturièrement*"; "it is the grant of a portion of a *fief* or *aleu*, subject to the charge upon the taker, of maintaining and recognising, in the manner agreed upon, a relation of subjection ever subsisting between the part conceded and that not conceded, and of holding as a *roturier*." The holder *en roture* was a proprietor, but he must always recognize his chief—and this, as a *roturier* or commoner; while the holder *en fief* held as a noble. Both tenures were creatures of contract. In some parts of France one Custom, in others another, prevailed; and in the silence of contracts the Customs governed the relations between the parties. The Custom which prevailed throughout Lower Canada, is well known to have been the Custom of Paris; and under it, as indeed under most Customs, the grantor of land was at liberty to grant on all kinds or conditions, and the appeal was only made to the regulations of the Custom in the silence of the contract. Particular Customs prohibited certain conventions; but in general men granted, whether *en fief* or *en censive*, as they pleased, only observing not to transcend whatever might be the conditions of the Custom under which they contracted.

I admit, of course, that during a long period of dim antiquity, neither land held *en fief* nor land held *en censive* was really and truly property. In those days, such grant of land was merely the grant of its use; and the holder could not leave it to his children, or in any other way dispose of it. But in process of time it became the rule, that holders of land *en fief* could part with it by will, or by any contract known to the law,—by sale, lease, grant *à cens* or *à rente*, or in any other way. If the holder did thus part with his land, the Lord of the land might claim his certain amount of dues; if it was a *fief* or part of a *fief* that was sold, the buyer had to pay a *quint*. But I repeat, subject to these payments, the holder could sell his *fief* or any part of it; only in the latter case, he could not make such part a new *fief*. The purchaser would merely become a co-proprietor with himself.

Indeed, subsequently, still further relaxation came to be allowed. Within varying limits the holder *en fief* became entitled to alienate, without dues accruing to the Lord. According to the Custom of Paris, this point was regulated in a very precise manner; the holder of a *fief* being at liberty to sell, grant or otherwise alienate, two thirds of his *fief*, if he only reserved the *foi* to himself—that is to say, if he held himself still as the feudal tenant or Seignior of the whole, and retained some real right, large or small, over the land alienated. He might take the value in any way he pleased, provided he only retained something payable annually as a token of his feudal superiority, and provided also he did not dispose of more than two thirds of his holding. In Brittany and elsewhere, the whole of this system of disposing of *fiefs* was unknown. There, the Seignior could not sell part of his *fief*. He could either grant it nobly or *en roture*; but could take only a small cash payment; and, supposing he had ever granted land at a particular amount of rent,