

each arpent in superficies, which rate is mentioned and fixed by the Plaintiff himself in the said deed of concession, at one *sol cens et rente* for each arpent in superficies, as aforesaid, and which said rate the Defendant hath offered, hath always been, and is still ready to pay, and hath in fact paid.

8. That consequently, a rate of *cens et rente* exceeding one *sol* per arpent in superficies is illegal, and the excess over that rate ought to be reduced and deducted.

9. Wherefore the Defendant humbly prays that for the causes aforesaid, by the judgment of this Honorable Court it be declared and adjudged: 1st. That so much of the aforesaid deed of concession as stipulates a price of sale for the said land, namely, seven *sols* constituted and annual rent, redeemable at pleasure, for each arpent in superficies, be declared illegal, null and of none effect and void both for the past and for the future; 2ndly. That the rate of *cens et rente* shall remain as stipulated in the said deed of concession, at one *sol* of *cens et rentes* for each arpent in superficies, and be reduced to the said rate, or to such other rate as the law declares legal, the Defendant reserving to himself the right of taking thereupon any other conclusions that he may deem necessary; and that the action of the said Plaintiff be dismissed with costs.

LELIEVRE for Plaintiff:

There is no law fixing the quota of *cens et rentes*; the *cens* when payable in money varies as much in amount, as in the mode of payment; it is sometimes paid in poultry, sometimes in grain, besides a moderate redevance in money; these articles must necessarily vary in value; if the law, therefore, did establish the quota of *cens et rentes* it would not be lawful for the Seigneur to impose them otherwise than in a fixed sum of money. (1)

The value of money is much less at this day than what it was a century ago; and the one *sol* of *cens* with the *rente* of two or three *sols*, charged a hundred years ago, was equivalent to the *cens et rentes* charged at this day, and claimed in this cause. The stipulation of a redeemable constituted rent, is one which is favorable to the Censitaire, who may be discharged therefrom, by re-imbursement, prescription, or sale by authority of justice. (2)

The *arrêts* of 1711 and 1732 contain no provision fixing the quota of *cens*: if such be the case, the Defendant cannot complain that he has been left the power of being discharged by redemption.

TESSIER, for the Defendant:

The deed of concession contains two distinct parts; one in the form of a concession, which stipulates one *sol* of *cens et rentes* per arpent in superficies; the other, in the form of a sale, which stipulates a redeemable constituted rent of seven *sols* per arpent in superficies. In the case of a *décret*, (sale by authority of justice,) the

(1) Poquet du Livonière, p. 534.—Dic. de droit, vbo. *cens*, p. 249.—Renauldon Dr. Seig. pp. 152, 157.—Prud'homme, pp. 37, 129.

(2) Denisart, 4 v. vbo. *rentes foncières*, no. 16, b. 245.