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CORRESPONDENCE

BETWEEN

THE FRENCH GOVERNMENT

AND

THE GOVERNORS AND INTENDANTS OF CANADA,

RELATIVE TO THE

SEIGNIORIAL TENURE,

REQUIRED BY AN ADDRESS OF

THE LEGISLATIVE ASSEMBLY,

1851.



QUEBEC:

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1853.

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LEGISLATIVE ASSEMBLY,

FRIDAY, 29TH AUGUST, 1851.

Resolved,

That an humble Address be presented to His Excellency the Governor General, praying he will be pleased to direct that copies of all *Octrois*, Deeds of Concession or Grants made, and to be found in the Archives or Public Records of the Province, of the various Fiefs and Seigniories in "*Nouvelle-France*," or Canada, from the earliest settlements thereof to the cession of the same in 1763, by the Crown of France to Great Britain, and also of those made since that period, be translated into English, printed and distributed in both languages, with all convenient despatch, among the Members of the Legislature, and to the several Municipalities throughout the Province, for public information, together with all such legal opinions, official and public documents relating to the Seigniorial or Feudal Tenure, or to the commutation or abolition thereof, of which the Executive Government may be possessed, and which His Excellency may deem necessary to the proper understanding of the relative rights of Seigniors and Censitaires; and to assure His Excellency that this House will make good any expense that may be incurred in consequence of his compliance with the present Address.

Ordered,

That the said Address be presented to His Excellency by such Members of this House as are of the Honorable Council of this Province.

Attest,

W. B. LINDSAY,

Clk. Assy.

DOCUMENTS

OBTAINED FROM THE ARCHIVES OF THE MARINE AND COLONIAL DEPARTMENT AT PARIS, BY MR. FARIBAUT, UPON THE OCCASION OF HIS MISSION TO EUROPE IN 1851.

SEIGNIORIES OF CANADA.

Extract from the Draught of a Regulation made by Messieurs de Tracy and Talon, for the administration of Justice and the distribution of Lands in Canada,

Of the 24th January, 1667.

Respecting the distribution of Lands in Canada, and the grants thereof made or to be made, they ask—

“ That an ordinance be made, enjoining all inhabitants of the country, and all strangers, possessing lands therein, to declare what they possess, either in *fief* of liege homage or of simple simple homage, in *arrière-fief* or in *roture*, by a statement and acknowledgment (*dénombrement et aveu*) in favor of the West India Company, giving the conditions and clauses contained in their title-deeds, so that it may be ascertained whether the mesne lords (*seigneurs dominants*) have not had anything inserted in the deeds given to them by the lords paramount (*seigneurs suzerains ou dominantissimes*) to the prejudice of the rights of sovereignty; and whether they themselves, in distributing the lands of their *fief dominant* to their vassals, have not exacted anything that may infringe on the rights of the crown and those of subjection due only to the King.

And to the end that such declaration or statement may be more correctly made, that copies of the deeds of concession be furnished to the persons named in the orders to that effect to be posted up wherever need may be.

It will thus be ascertained how much of the lands in Canada is alleged to have been distributed, how much has been cleared and improved, how much remains to be distributed of those that are conveniently situated, whether the grantees have complied

with the clauses inserted in their contracts, and above all whether by neglecting to do so they have not impeded or retarded the settlement of Canada.

It will also be ascertained, which is of importance to M. de Tracy and M. de Courcelles, what number of grants have been distributed and improved since their arrival, whereby the King desires to be informed what change they may have brought about in the advancement of the country.—And to avoid any confusion and give the King a perfect knowledge of the changes which will be effected each year in Canada, that it be ordered that in future no particular or general grant shall be made in the name of the West India Company, or on the part of the seigniors of fiefs granting possession of their lands to inhabitants, which, in order to be valid, shall not have been verified and ratified by the person having power from His Majesty, and registered in the office of the domain of the said company, for whose benefit a terrier shall be commenced forthwith.

From Mr. Raudot Senior

10th November, 1707.

My Lord,

A business spirit, which, as you know, has always much more cunning and chicanery than truth and uprightness in it, has begun, for some time past, to introduce itself here, and is increasing daily in its two bad features. If these could be retrenched, *this spirit might be good for the future*, although the simplicity which prevailed here formerly was better still. But, in dealing with the past, nothing, in my opinion, is more pernicious than this spirit, or more opposed to the peace and quietness of the people of a colony, which only maintains itself and increases by the labor of its inhabitants, who should not be afforded opportunities of neglecting their work. As there is hardly anything in their transactions with each other which has been regularly done, the notaries, bailiffs, and even judges, having been almost all of them ignorant persons, and the settlers especially, who have formed this colony, having improved their lands *without any available security from those by whom they were granted*, there is no property the possessor of which might not be troubled, no partition that might not be unsettled, no widow who might not be attacked as having possessed in common with her husband, no guardians against whom a law-suit might not be brought for the accounts which they have rendered of their guardianship. It is not that all may not often have been done in good faith, but ignorance and the want of rules observed in all such matters have produced these disorders, which would lead to greater still if those who might avail themselves of this spirit were allowed, either of themselves or by the advice of others, to bring law-suits in consequence: there would be more law-suits in this country than there are persons. And as the judges are obliged to adjudicate according to rules of which they begin to have some knowledge, by applying them to cases in which ignorance has caused none to be observed, they would be led

to commit a thousand acts of injustice, as I should have considered myself doing, My Lord, if I had entirely subjected myself to such rules in many law-suits that have come before me.

For all these reasons, Mylord, I think you could not do more good to the inhabitants of this country than by obtaining for them, from His Majesty, *a declaration which would secure the ownership of the lands, with all their appurtenances*, and according to the lines which have been drawn, to those *who have been five years in possession thereof*, either by working on them, or in virtue of any title whatsoever; which would also validate all partitions of estates that have hitherto been made; would prohibit the bringing of any law-suit concerning the accounts of guardianship rendered and the renunciations made by women of the community with their husbands, and would forbid the judges to admit parties to sue on such matters; finally, My Lord, a declaration which would validate all judgments that have been given and all deeds and contracts that have been passed up to this time, and the rights that individuals have acquired against each other, *except in odious matters, such as deeds and contracts in which there may be usury, deceit or fraud, and possessions in which there may be violence or authority.*

It is thus only, My Lord, that you can establish peace and quietness in this country, which without this just precaution will always be unhappy and unable to increase, its inhabitants, who ought to attend to the cultivation of their lands, being daily obliged to leave them in order to defend themselves in many cases against unjust law-suits. I know this evil, My Lord, from all the affairs which continually come before me and with which it may be said that I have been overwhelmed ever since I came here, because these poor inhabitants finding me of easy access, and not being obliged to go any expense for pleading, hardly a day has passed but I have given several judgments on such transactions which had taken place between them before my arrival. There are even some who being afraid of law-suits, come and ask decisions of me, to prevent those that might be brought against them in future, their ignorance making them afraid of the least threats on this subject from others as ignorant as themselves.

I have had the honor to tell you, My Lord, that, if His Majesty will grant them the declaration which I have the honor to ask of you for them, it is necessary to insert it *in virtue of any title whatever*, adding even *were it only simple possession*, because formalities have not been much attended to it in the grants that have been made here. *Many inhabitants have worked on the word of the seigniors, others on simple tickets which did not express the charges of the grant.* Hence a great abuse has arisen, which is, that the inhabitants who had worked without a safe title, have been subjected to *very heavy rents and dues*, the seigniors refusing to grant them deeds except on these conditions, which they were obliged to accept, because otherwise they would have lost their labor: the consequence of which is, that, *in almost all the seigniories, the dues are different; some pay in one way, others in another*, according to the different characters of the seigniors by whom the grants were made.

They have even introduced, in nearly all the contracts, *a retrait roturier of which no mention is made in the Custom of Paris*, although it is the custom observed in this

country, by stipulating that the seignior, at each sale, might withdraw the lands which he gives *en roture*, at the same price at which they would be sold; and they have thus abused the right of conditional redemption (*retrait conditionnel*) spoken of in that Custom, which is sometimes stipulated in deeds of sale wherein the vender reserves to himself the power of redemption (*faculté de réméré*), but which is not established as from the seignior to the tenant. This preference, My Lord, shackles improperly all sales.

There are grants in which the capons paid to the seigniors are paid *either in kind or in cash, at the choice of the seignior*. These capons are valued at *thirty sous* (fifteen pence), and the capons are not worth more than *ten sous*. The seigniors oblige the tenants to give them *cash*, which they find *very inconvenient*, as they frequently have none: for, although *30 sous appear but a trifle*, it is a great deal in this country where money is very scarce; and moreover it seems to me that in all dues, when there is a choice, *it is always in favor of the party owing*, cash being a species of penalty against him when unable to pay in kind.

The seigniors have also introduced in their grants the exclusive right of baking or keeping an oven (*four banal*), of which the inhabitants can never avail themselves, because the habitations being at great distances from the seignior's house, where this oven must be established (which indeed could not be in a more convenient place for them, wherever placed, because the habitations are very distant from each other), they cannot, or could not possibly at all seasons, carry their dough to it; in winter it would be frozen before it arrived there. The seigniors, even, feel themselves so ill grounded in claiming this right, because of this impossibility, that they do not exact it now; but they will, at some future period, make a title of this stipulation to compel the inhabitants either to submit to it or redeem themselves from it by means of a large rent, and thus will the seigniors have acquired a right from which the inhabitants will derive no benefit. This, My Lord, is what I would call getting a title to vex them hereafter.

There is another advantage that, I believe, against His Majesty's intentions, some seigniors have taken of their tenants. To make you understand it, My Lord, it is necessary for me to have the honor to observe that the Normans being the first who came to this country, *they at first established in it the Custom of le Vexin*. As that Custom did not suit them with regard to their holding of His Majesty, they asked afterwards to be placed under the Custom of Paris, in that respect, preserving the Custom of le Vexin *against their vassals and tenants*, because it is more favorable to themselves; it seems to me that this would be another matter to be reformed by obliging them to follow the Custom of Paris in what concerns themselves, as they do in what concerns His Majesty.

I should therefore think, My Lord, under your pleasure, that, *to place things in some sort of uniformity and render the inhabitants that justice which the seigniors have not rendered them hitherto*, and to prevent the latter from committing the vexations to which the former will undoubtedly hereafter be exposed, it would be necessary *that His Majesty should give a declaration reforming, and even regulating for the future*, all the rights and dues which the seigniors have given and will in future give to themselves,

and that His Majesty should ordain that they should only take, *for each arpent* of the contents of the grants, *one sou of rente and a capon for each arpent in front, or 20 sous at the choice of the grantee; that the preference which the seignior stipulates for himself in case of sale of the lands held en roture should be suppressed; that the exclusive right of baking should also be suppressed; that in the places where fish is taken, the right of the seignior should be reduced to one tenth purely and simply, without any other conditions; that the exclusive right of grinding (banalité) should be preserved to the seigniors on condition of their building a mill on their seigniori within one year, failing in which, their right would be forfeited and the inhabitants would not be obliged, when one was built, to have their corn ground there: otherwise, My Lord, they will never be induced to erect mills, from the privation of which the inhabitants suffer greatly, being unable, for want of means, to avail themselves of the favor which His Majesty has granted them, by permitting them to erect mills in case the seigniors should not do so within a year.*

This was granted to them, in the year 1686, by a decree (*arrêt*) which was registered in the council of this country; but the decree of registration not having been sent to the subordinate jurisdictions to be published, the inhabitants have not hitherto profited by this favor, and it is only since my arrival here that the decree has been published: it having come to my knowledge in the course of a law-suit recently determined, in which this decree was produced, and one of the parties was unable to take advantage of it because it remained unpublished. The fault can only be attributed to the *Sieur d'Auteuil*, whose duty, as attorney general to this council, it is to transmit such decrees to the subordinate courts; *but it was his interest as a seignior, and also that of some councillors who are likewise seigniors, not to make known this decree.*

It is thus, My Lord, that the King is obeyed in this country, where I can assure you that the interests of the King and the public, if they were not continually looked after, would be sacrificed to those of private individuals.

Letter from Mr. de Pontchartrain to Mr. Raudot senior.

13th June, 1708.

I have received the letter which you wrote me on the 10th of November last, concerning the state of the administration of justice in Canada.

I have been much pained to see the irregularity with which all has been done hitherto, and the difficulties in which the inhabitants would find themselves involved if the deeds and contracts that have been passed were impugned for the informalities contained in them. I will examine the proposal you make *to confirm by a general decree all those who have possessed and cultivated lands for the last five years in virtue of any title whatever.* But as nothing can be done on this subject *till next year, examine*

again into the matter, and send me a memorandum of all that you will think should be inserted in the decree.

It would be very desirable to reduce the seigniorial dues throughout the whole extent of Canada to the same level. See what could be done towards this end and report it to me, observing that once the Custom of Paris adopted as a rule, the *retrait roturier* cannot be admitted. I would also advise to admit neither the *retrait lignager*, nor even the *retrait feudal*, unless it was stipulated by the concession of the *fief*.

As to the dues paid to the seigniors, the valuation complained of ought only to take place when cash is wanting, unless the deed of concession say *at the choice of the seignior*; but I would be for abolishing these dues, because they afford an opportunity of *exaction*. I will see what can be done in this respect, and will inform you of it. With respect to the privilege of baking (*four's banaux*), all that is to be done is to follow and enforce the decree rendered in the year 1686, by which that matter has been settled.

I incline very much to your opinion with regard to the different degrees of jurisdiction at which the inhabitants of Canada are obliged to plead; but as it does not appear to me possible to suppress the provostships, on account of the complaints which their suppression would produce, I would advise that these provostships should adjudicate in *dernier resort* to a certain amount, above which the appeal from the seigniorial jurisdictions would lie directly before the superior council. Send me a memorandum of what could be done on this subject, with your opinion.

Letter from Mr. de Pontchartrain to Mr. Deshaguais, at Fontainebleau.

10th July, 1708.

Mr. de la Touche, on leaving Versailles, handed me, Sir, a letter from Mr. Raudot concerning the administration of justice with which he is intrusted in Canada, together with a memorandum of the observations made by you on each article. I have sent an answer to Mr. Raudot in conformity with these observations, and have told him that I would propose to the King to issue a declaration fixing the rights of the seigniors of parishes in that country who have conceded lands to settlers, as well for the past as for the future, at one sou of rente and a capon for each arpent of land in front, or twenty sous, at the choice of the party owing the same, according to your advice. I request you to make a draught of this declaration in concert with Mr. Daguesseau, as you propose.

Here is a letter by which I request him to draw it up *at his leisure*, because I believe that the Canada ships have now left, so that we cannot send this declaration till next year.

I return to you Mr. Raudot's letter, with the memorandum of your observations on it.

To Mr. Daguesscau.

Same date.

Mr. Raudot, intendant in Canada, has written to me, sir, that that the seigniors of parishes in that country who have granted lands to settlers have subjected them to all the dues they pleased, *which are almost all different from each other*; that in most of these grants there are dues which ought not to be tolerated, because they afford an opportunity of vexation, and that it would be necessary to issue a declaration *fixing the dues and rents of these seigniors, as well for the past as for the future.*

I have requested Mr. Deshaguais to see you and take your leisure to draw up this declaration.

I send him Mr. Raudot's letter, *which will inform you of what he writes on the subject.*

Letter from Mr. Raudot to the Minister.

Quebec, 18th October, 1708.

My Lord,

I have received the three letters which you did me honor to write to me on the 6th, 13th and 18th of June last. I had been obliged, My Lord, in order to make you understand what I meant when I had the honor to ask of you a declaration securing the ownership of the lands to those in possession of them, to insert these words: "*in virtue of any title whatever*," and for this purpose I had the honor to explain to you, by my letter of the 10th November last, *that many inhabitants of this country had obtained grants of land on simple tickets; others have nothing in their favor but possession on the verbal promise (sur la parole) of the seigniors; others again have lost or mislaid these tickets.* There are even *many contracts that cannot be found.* The possession even of a part of these lands had been much interrupted by the forced abandonment of them in consequence of the Iroquois war. Hence it results that the prescriptions established by the Custom can hardly avail to any one, and it is for these reasons that I think it would be necessary to insert in the declaration which I have the honor to ask of you that the land should remain the property of him who had been five years in possession of it, or who held it by any title whatever.

It would also be necessary, with regard to *the seigniorial dues, to make them uniform by reducing them all to the same scale*; and for this purpose, My Lord, I have the honor to send you a memorandum *containing the dues which I have found in several deeds of concession (*)*, all different from each other, opposite to which *I have placed*

(*) I have not found this memorandum.

my opinions as to the diminutions and retrenchments that might be effected, and in so doing I have adhered to the earliest grants, which were made in innocent times, when people did not so much seek their own advantages; and I believe, My Lord, that the justice which is due to the inhabitants being thus maintained, His Majesty might, in his declaration, insert these words, without having regard to the charges, clauses and conditions contained in their title-deeds, that the dues should only be paid according to what would be contained in the said declaration.

As to the *retrait roturier*, you acknowledge, My Lord, with reason, that it ought to be suppressed in all deeds of concession, and the same might be done with regard to the *retrait féodal*, because, if mentioned in the Custom of Paris, it was only in consequence of its being supposed that the fiefs to which it was applied were a portion of the seigniority from which they were alienated, and it was intended thereby to give the seignior the right to replace his fief on the same footing as it formerly was; but it is not so in this country, as the seigniors here gave the fiefs at the same time that they formed their seigniories, and these fiefs cannot be said to be a dismemberment of them.

With respect to the *retrait lignager*, it seems to me that it cannot be dealt with, in the same manner as it was established by the Custom, for good reasons. It appears to me, on the contrary, that it should be viewed in a favorable light, as it perpetuates property in the same families, and insures a right to those to whom nature gives it. The only reason, My Lord, for which I have proposed that the privilege of baking (*fours banaux*) should be suppressed, was the impossibility for those who are subjected to it of using the banal ovens at which they are obliged to bake, on account of the distance at which all the inhabitants of the seigniories are from their seignior's house, the seigniories in this country not being settled as they are in France, where almost all the inhabitants are collected in villages near each other, and all within reach of the banal ovens. Here the inhabitants of the seigniories, which are at least two leagues in extent along the river St. Lawrence, are all settled along the said river, so that the banal oven being in the seignior's house, which is always in the centre of the seigniority, some inhabitants would have to carry their bread at a distance of a league or even two or three from home. Besides the inconvenience to which this would subject them at all seasons, there is even an impossibility in winter, as their dough would be frozen before they reached the place where the oven was situated. It is a right, My Lord, which must be suppressed, because the inhabitants cannot derive any benefit from it, and the seigniors have established or wish to establish it only to oblige them to redeem themselves from it by consenting to pay in future some heavy charge in consideration of the servitude from which they would be liberated. It is not so, My Lord, with the banal mills, the banal mill being always to the advantage of the inhabitants, who have not the means of erecting mills themselves, whereas the banal oven is to their disadvantage, there being not one of them who has not an oven in his own house and as much wood as he wants to heat it.

From the abstract made for the King, of Messieurs Rawdot and D'Aigremont's letters of the

4th and 7th November, 1711.

..... That being well informed of the pretensions of the Sieur de Cabanac, he cannot help saying that they are ill founded, since he will not submit to the general regulation which has been made in the Council at Quebec concerning the honorary rights due to the seigniors. He incloses the decree (*arrêt*) of the Superior Council, of the 8th July, 1709, for these honorary rights, (here the words "and for those of the seigniors having high courts of justice" [*seigneurs hauts-justiciers*], are erased in the document deposited in the archives).

Extract from a memorandum on the subject of the colony of Canada and of that which is projected in Isle-Royale (Cape-Breton.)

1st March, 1716.

In 1675, the King farmed out the domain of all the colonies to Jean Oudiette for the sum of three hundred and fifty thousand livres, and in this lease are stated all the dues which the farmer was to collect, and His Majesty confided to him the task of getting a terrier made to regulate the rights of *cens* and *lods et ventes* which His Majesty had resolved to establish in the said colonies, to supply evidence in all times to come of his seigniorial and domanial rights, and to insure at the same time to private individuals the indefeasible right of property in their estates and inheritances. His Majesty at the same time undertook to pay the governors and other officers of the land forces and of justice, employed in his service in these colonies. This charge was then but trifling, as there were none in Canada. Mr. de Frontenac had been appointed governor there by the West India Company: His Majesty confirmed the appointment, and contented himself with adding an intendant: it was Mr. Duchesneau who filled this office in the year 1675.

This intendant caused to be made, at the expense of the farmer of the domain, the terrier of Canada, and established therein the dues and *lods et ventes*. The intendants of the West Indies had not the same attention, and this order of the King has not been hitherto executed either in Cayenne or in the West India Islands. It is a work which deserves the attention of the council of marine.

Extract of a Memorandum from the King to Messieurs de Vaudreuil and Begon.

15th June, 1716.

His Majesty having no title to establish any *censive* in the island of Montreal, it is not his intention that the Seminary of Saint Sulpicius, seigniors of that island, should be disturbed in the rights belonging to them on the grants which they have made of several habitations, and the sieurs de Vaudreuil and Begon will make this decision public, so that the inhabitants of the island may have no pretext for not paying the rents due by them to the owners of these grants.

Extract of a letter from the Minister to Monsieur Begon.

16th June, 1716.

..... It has examined what you stated on the subject of the grants made by the seigniors of parishes in Canada, and of what they exact from their grantees, according to the different Customs under which they have granted. The intention of the council is that the Custom of Paris should be followed; that all acts done against that Custom should be declared null, unless at the time when the Custom of Paris was established in Canada, the King excepted the grants previously made according to other Customs. It is necessary that you should ascertain this and send the documents, in order that the council may put this matter completely to rights.

9th May 1719.

To be submitted
to the Council of
the Regent.

—
The Council is of
opinion that a de-
cree must be made
as proposed by the
Sieur Begon.

L. A. D.
L. M. D.

Mr. Begon last year observed that in the deeds of concession which proprietors of seigniories grant to those who take lands therein, they introduce a variety of obligations contrary to the Custom and to the settlement of the colony.

Such are the *corvées* (day labor) which the seigniors exact, independently of an annual rent (*rente foncière*) for the common used for grazing cattle.

Other seigniors have resumed the possession of such common, after the clearing of the same by some of the inhabitants, for the purpose of selling it to others.

They further stipulate for *corvées* which are not mentioned by the Custom.

They reserve to themselves the right of resuming the possession of the lands they grant whenever the same shall be sold, upon repaying the purchaser, which is also

contrary to the Custom of Paris, to which they derogate in that respect, as is stated by them, to follow the Custom of Normandy. He stated that he thought proper to order that this stipulation should not be observed, in the contracts where it is found, and to prohibit the insertion of the same in such contracts as may be entered into for the future.

Some of the seigniors reserve to themselves, in the deeds of concession, the timber necessary for their houses and other buildings, and the wood necessary for their fuel; others reserve the timber fit for sale.

Others grant to their tenants leave to cut pine timber upon the lands which they have not yet granted, on condition that they shall pay them ten per cent upon the boards they will obtain from such timber; by reason of which they do not concede these lands.

When they do concede them, they reserve for themselves all the oak and pine timber without paying anything therefore to such inhabitants; this enables the seigniors to exact any amount they please for the oak timber, and to sell it at a very high price; which is prejudicial to building and prevents the trade in such timber which would be carried on with the West India Islands and with France, if it were sold at a reasonable rate.

These seigniors also receive the eleventh part of the fish taken by their tenants upon the front of their grants.

They also subject them to the right of *banalité*, which is injurious to the colony, where a large number of mills could not but be advantageous.

Upon which, it was decided by the Council, on the 12th of May, 1716, that the Custom of Paris should be followed, and that all deeds made in contravention therewith should be declared void, unless it was shown that upon the Custom of Paris being established in Canada, His Majesty had made an exception, in relation to grants previously made subject to other Customs; which the Council has ordered should be ascertained, in order that some decision may be come to upon the subject.

Mr. Begon has been written to in consequence of this decision, in order that the fact may be ascertained.

By his letter of the 14th October, 1716, he states that it appears that the first Company of New France, formed in 1628, has made grants of lands in seigniority, *en fief*, more particularly in the Island of Montreal, upon condition that the seigniorial rights and fealty and homage should be made and rendered according to the Custom of Paris; and that by the 33rd article of the decree regulating the new Company formed in 1711, under the name of the West India Company, it was ordered by His Majesty, that the judges appointed in all the said places should be held to decide according to the laws and ordinances of the Kingdom, and the officers bound to observe and follow the Custom of the *prévôté* and *vicomté* of Paris, according to which the inhabitants would be free to contract, without its being lawful to introduce therein any other Custom, to avoid diversity.

He transmitted a copy of the article in question, to which His Majesty has adhered, and inasmuch as it is the intention of the Council that the clauses inserted in the deeds of concession, which are contrary to the provisions of the Custom of Paris, shall be declared null and void, it becomes necessary that His Majesty should make a decree so ordering it.

Thus done and decreed by the Council of the Naval Department, the 9th May, 1717.

(Signed) L. A. DE BOURBON,

(Signed) LE MARÉCHAL D'ESTRÉES.

By order of the Council,

(Signed) LACHAPELLE.

A Decree to annul, in the Deeds and Contracts of Concession executed in Canada, clauses contrary to the Custom of Paris, and to order that it shall be observed in future.

Mai, 1717.

The King being informed that the Company of New-France, formed in 1628, has conceded lands in fief, especially the island of Montreal, on condition that fealty and homage would be done and dues paid to it according to the Custom of Paris; that this Company, which held the country until 1663, has introduced no other Custom there; that to avoid a diversity of Customs the late King, by the 33rd article of the Edict establishing the new Company formed in 1664, under the name of the West-India Company, prohibited the introduction of any other Custom in the countries granted to that Company, and ordered the local officers to follow and conform themselves to the Custom of the provostship of the viscounty of Paris, according to which the inhabitants of the said countries might contract; that notwithstanding the provisions of the said Edict, several of his subjects who hold lands in seigniorship in New-France impose in the contracts of concession of the lands which they grant in their manors, very burthensome clauses and servitudes, contrary to the provisions of the said Custom and prejudicial to the settlement of the colony, such as the days of husbandry service (*corvées*) which they stipulate or exact, besides a ground rent (*rente foncière*), for the common which serves as a pasture-ground for cattle; the days of husbandry service which they again establish on account of the grants of land; the right which they reserve to themselves of re-entering into possession of the lands which they grant, every time that they are sold, on refunding to the purchaser the purchase-money; the reservation of the power to take on each grant, without paying anything for it, all the necessary wood for their houses or other works, or for their fuel; or of having the preference of all the wood, grain, cattle or other things which the inhabitants may have to sell; the reservation of all the pine and oak trees that may be found on each grant, without any payment, which enables them to exact such

prices as they please for this timber, and is an obstacle to building, and prevents the trade in such timber which might be carried on as well with this kingdom as with the West India islands, if it were cheap; the reservation of the fish taken by the inhabitants in front of their grants, and the obligation which they impose upon them of carrying their grain to be ground at the wind-mills which they have on their seigniories, although such mills are not banal by the Custom of Paris, and the multiplicity of mills in a colony cannot be otherwise than advantageous, particularly in seigniories of great length and in which there are no water-mills; His Majesty being also informed that some of the said seigniors grant permission to their inhabitants to cut pine timber on the lands which they have not yet granted, on condition of paying them one tenth of the boards, planks and deals made out of such timber, which is so much the more prejudicial to the settlement of the colony as, in order to preserve this tenth, they do not grant these lands; and it being necessary to provide against all these abuses;

The report having been heard and the whole considered, His Majesty, being present in his council, on the advice of My Lord the Duke of Orleans, Regent, has ordained and does ordain that the said 33rd article of the Edict establishing the West India Company, of the month of May 1664, shall be executed according to its form and tenor; which being done, the inhabitants of the said country of New-France shall have power to contract only according to and in conformity with the Custom of Paris; His Majesty prohibits the introduction of any other Custom in the said country, and wills that all clauses inserted in deeds and contracts of concession or others, contrary to the provisions of the said Custom, be and remain null, as well for the past as for the future, and in consequence His Majesty has discharged and does discharge the inhabitants of the said country, towards the said seigniors, of all husbandry service (*corvées*), for any cause whatsoever; of the reservation of the right of conventional redemption (*retrait conventionnel*), as also of that of taking any wood, of what kind soever, whether for building or for fuel, without payment; of the preference for anything whatsoever that they may have for sale; of the reservation of the 11th fish to be taken by them; of the obligation to have their corn ground at the wind-mills, and of the execution of all other clauses contrary to the provisions of the said Custom; but the said inhabitants shall not have any claim against the said seigniors on account of anything which they may have given or paid, up to the day of publication of this decree, for servitudes or clauses contrary to the said Custom; and His Majesty forbids the seigniors to grant permission to cut timber on the lands which they have not yet granted, under the reservation of one tenth of the boards, planks and deals to be made therefrom, or under any other reservation or condition whatsoever; and His Majesty enjoins the said seigniors to grant the said lands to such inhabitants as may apply for them, subject to the usual dues, in default whereof he permits the said inhabitants to appeal to His Majesty's governor and lieutenant-general and the intendant of the said country, according to the decree of his council of the 6th July, 1711: and the present decree shall be registered in the office of the Superior Council of Quebec, read published and posted up wherever need may be, to the end that no one may be ignorant of the same, and all letters necessary to this effect shall be issued.

Extract of a Memorandum from the King to the same.

26th June, 1717.

..... Their attention to enforcing the decree of the 6th July, 1711, which reunites to the King's domain the seigniories that are not settled, and to obliging the seigniors having lands to be granted within the extent of their seigniories to grant them, is very necessary for the settlement and extension of the colony ; they should prevent these seigniors from receiving money for the wood lands which they grant, as it is not just that they should sell lands on which they have spent nothing and which are given to them only for the purpose of being settled.

Extract of the King's Memorandum to Messieurs de Vaudreuil and Bégon, of the

23rd May, 1719.

..... His Majesty has seen the memorial of the Sieur Desjord Moreau, captain in the troops, who applies for a grant of land under the title of fief and seigniory, with high, mean and low justice. His Majesty would willingly have granted him this favor ; but the great number of seigniories having proved but too prejudicial to the settlement of Canada, it was resolved several years ago to grant no more of them ; His Majesty has again explained this to the Sieurs de Vaudreuil and Bégon by his despatch of the 15th June, 1716, and his intention is not to change any thing. He will in future make such grants in *roture* only. However, although he has directed them to make such grants of not more than 3 arpents in front by 40 in depth, in good lands, he will nevertheless approve of their giving them a greater extent if they think proper.

Extract from Monsieur Dupuy's Letter

Of the 20th October, 1727.

I have received the letter which you did me the honor to write me at Brest, on the 8th May, 1727, respecting two representations which had been made to you by the late Monsieur Coll'et, attorney general, the one on the subject of the Montreal Seminary, and the other on that of the Religious Ladies Hospitallers of the Hotel-Dieu of Quebec.

As to the former, the representations of the attorney general have been confined to observing that the King had issued a declaration in the month of July, 1714, by which,

to indemnify the ecclesiastics of the Seminary of Saint Sulpitius, His Majesty had granted them *the right of exchange throughout their seigniority, without their paying anything as a pecuniary consideration therefor to the King who (?)* . . . nevertheless, by abandonment which he has effectively made to the Seminary, has reserved to himself the registry (*le greffe*), whereby he has appropriated to himself all the profits, while relieving himself of the expense and care of the administration of justice: so that the Seminary has had granted to it and *claims to enjoy, under what it calls an onerous title, rights which are purely royal, not established by the Custom (la Coutume), but merely by the edicts and declarations of 1673 and 1674, which, besides, have not been sent to Canada, where His Majesty does not enjoy any rights of exchange.*

I have not failed, My Lord, to refer to the title-deed, in order to ascertain precisely what the King has been pleased to grant, and on what grounds it has been obtained, so as to see whether the favor has been secured by a true statement. I have found, My Lord, that the onerous title spoken of does not consist of the relinquishment of the administration of justice.

The real burthen which has been imposed upon them, and which gives them occasion to allege that they have obtained *the right of exchange under an onerous title, is that they have bound themselves for the past, but not for the future, not to exact any indemnity from all the regular communities, such as the Ladies Hospitallers, the Frères Charon, and the Sisters of the Congregation,* for whatever these communities have required previously to the date of the declaration made in favor of the Seminary, and the amortisement of which they have obtained from the King. This remission would however, My Lord, amount to considerable sums, considering the quantity of lands and estates which these communities hold in the Island of Montreal and its vicinity. This, then, is the burden which has been imposed upon the Seminary of Saint Sulpitius. It is also what they have fulfilled and what *gives them occasion to say that they have the right of exchange under an onerous title,* in addition to which it is further said that it is in consideration of the lands and mills they have abandoned to the King for the fortifications of the city. But in this the King only granted them a bounty and compensation similar to that which His Majesty granted, in a similar case, at Paris, when, in 1674, to avoid the conflicts of jurisdiction between the several judges appointed by the seigniors who had the right of superior jurisdiction (*in haute justice*) in Paris, the plan was adopted of uniting them with the *Châtelet* in 1674—75—76—77.

The King, as an indemnity for so much of their jurisdiction as was united with the *Châtelet*, grants, by way of exchange, the seigniorial rights for the exchanges of fiefs, lands and demesnes holden of them (*qui sont de leur mouvance*), to enjoy the same in conformity with the edicts and declarations of the 20th March, 1673, and February, 1674, etc., without their being obliged to pay, on account of these rights of exchange, any sum of money to His Majesty, from which he releases them, as was also done with respect to several religious communities,

It is true that *the seigniorial rights for exchanges are not established by the various Customs, and are in no wise so by the Custom of Paris,* notwithstanding which the

usage had been gradually introduced of exacting payment of dues in contracts of exchange, where some money was given as a balance (*soulte*).

But they were finally created and *regulated* by the King in 1673 and 1674, and all contracts of exchange, as well of estates for estates, as of estates for rents, have been reduced by the edicts and declarations of His Majesty to the condition of contracts of sale.

The seigniors have been made to purchase these rights, and the King has made a gift of them to whom he pleased.

This is now the case, and His Majesty has granted them, under an onerous title, to the Seminary of Saint Sulpitius.

Had the grant been made under a gratuitous title (*à titre gracieux*), that would not affect the interests of the country, and might suit those of the King.

The right of exchange is a demesnial right; it was necessary to establish it, in order to prevent frauds. The registration in Canada of the edicts and declarations of 1673 and 1674 was unnecessary for that purpose, it was sufficient that the King had his domain in Canada; and as the rights of the domain are not separable, because the crown being round, it suffers no diminution nor section in any of its parts, wherever the King has his domain established, the rights attached to the domain exist in their integrity.

I shall have the honor to represent to you, My Lord, that the right of exchange ought to exist in Canada so much the more as it will be there, as everywhere else, the only means of putting a stop to fictitious contracts made for the purpose of disguising all sales under the name of an exchange, or of making fictitious sales and defrauding the seigniors and inattentive creditors, as you may well conceive that was, which I have just had the honor to mention to you, and this without the pretended purchasers being liable (to pay)?..... the mutation fines (*lots et ventes*).

Extract from the King's Memorandum to Messieurs de Beauharnois and Hocquart, of the 25th April, 1720, on the subject of the contestations arising in the colony between the owners of fiefs and the parties owing them seigniorial rents and dues. — Ordinance rendered by Mr. Begon, June 21st, 1723, and those subsequently rendered by Mr. Dupuy, November 16th, 1727, and January 13th, 1728.

..... On the account which I gave the King, as well of the provisions of these ordinances, which contradict each other in everything, as of the memorials which were sent last year on the part of the seigniors of fiefs and of their tenants, His Majesty has thought necessary to make his declaration hereunto annexed, in interpretation of the 9th article of that of the 5th July, 1717. He ordains that without

regard being had to the ordinances of the said Sieurs Bogon and Dupuy, the *cens*, rents, dues and other debts contracted before the registration of the declaration of the said 5th day of July, 1717, when money of France, or Tournois, or Parisis, is not stipulated, shall be paid in money of France, deducting one fourth, which is the way of reducing the currency of the country to that of France; and that when money of France, or Tournois or Parisis is stipulated, they shall be paid in money of France without any deduction. You will please to have the same published and registered, and you will take care that it be strictly executed.

Messrs. de Beauharnois & Hocquart.

10th October, 1730.

My Lord,

During our residence in Montreal, complaints were made by several individuals that the seigniors refused to give them grants in their seigniories, under various pretexts, although obliged by the decree of the Council of State of the month of July 1711, to make such grants to the inhabitants who will require them, and in the event of refusal, that such inhabitants may apply to the governors and intendants of the country, who are commanded by His Majesty to grant to the said inhabitants the lands required by them. We have the honor to report, that upon this subject a variety of abuses have been introduced, as well by the seigniors as by the inhabitants, which are alike contrary to the decree of the Council of State of 1711, and the settlement of the colony. Some seigniors have reserved considerable domains within their seigniories, and under the pretext that these lands form part of their domain, have refused to concede the lands therein which have been demanded by way of grants, believing they were entitled to sell and have in fact sold the same. We have also observed, that in the partition of seigniories among co-heirs, such of them as have not the right of jurisdiction, *droit de justice*, or the principal manor-house, ceasing to hold themselves out as the seigniors of the fief, refuse to grant to the inhabitants the lands which are required of them within the portion which has accrued to them, and deem themselves to be without the operation of the decree which compels seigniors to concede, and on the contrary believe themselves entitled to sell the lands which they grant.

Another abuse has arisen on the part of the inhabitants, who having the right of obtaining concessions from the seigniors, after having so obtained lands, shortly after sell them to others, the effect of which has been to establish a speculation in the country, injurious to the colony, without furthering the settlement or the cultivation of lands, but tending to foster habits of indolence among the inhabitants, a practice to which the seigniors are not averse inasmuch as *lods et ventes* accrue to them by the sale of such lands; in this way a number of grantees do not reside upon their grants, and the seigniors are not anxious to reunite them to their domains, and when such

re-union is demanded, those who are in possession cannot recover back the sums of money paid by them.

We are therefore of opinion that in enforcing the decrees of the Council of State of 1711, it would be necessary to render another decree prohibiting seigniors, and all other proprietors, from selling wild lands, under any pretext whatsoever, upon penalty against the seigniors and proprietors of the lands so sold, of the nullity of the deeds of sale, the restitution of the price thereof, and of being deprived of all the right of property in the said lands, which would be, *de plano*, reunited to the King's domain, and reconceded, by us, in his name.

It is true that generally the seigniors concede, or appear to concede, their lands gratis, but those who avoid the provisions of the decree of the Council take means to obtain payment of the value of such lands, without its appearing upon the face of the deed, either by obtaining obligations from the grantees for sums pretended to be due them for other considerations, or under color of some inconsiderable clearing without cultivation, or under pretence of natural prairie land found upon the grant.

If it had pleased M. Hocquart to adjudicate upon all the contestations arising from the abuses which we have had the honor to bring under your notice, he would have disturbed a number of families and have given occasion to considerable litigation. He has deemed that the grantees not having taken advantage of the provisions of the decrees of the Council which were favorable to them, it was altogether attributable to them if they have paid sums of money for the grants made to them, and that they are not entitled to recover them back, according to the maxim of law: *Volenti non fit injuria*.

We believe that it is for the advantage both of the seigniors and of the inhabitants to allow matters to remain in their present state, awaiting the decree in Council which we have the honor to request, and not to alter the practice which has heretofore obtained. It would nevertheless appear to us equitable, that in the event of clearings or natural prairie land being found, the seigniors should derive the advantages therefrom, and that in the grants made by them such clearings and prairie lands should be indicated as well as the amounts received by them from the grantees.

The wild lands are becoming valuable in this colony, inasmuch as the grantees in the front ranges require wood, and are under the necessity of asking for grants of land in the third and fourth ranges, to supply this want. The generality of the inhabitants are not aware of the provisions of the decree of the Council touching them in relation to this matter. M. Hocquart has caused some of the principal among them to be informed upon the subject, without causing publication anew of the decree. Before doing so, he awaits the orders which we shall receive from you during the ensuing year.

We are with profound respect,

My Lord,

Your very humble and very obedient servants,

(Signed)

BEAUHARNOIS,
HOCQUART.

Letter from the Minister to Messieurs de Beauharnois and Hocquart.

24th April, 1731.

I have received the letter which you wrote me on the 10th October of last year, on the subject of the granting of lands in Canada, and I have given an account of it to the King. His Majesty has learned with pain the inexecution of the decrees of the 6th July, 1711, on the subject of these lands, and the abuses that are committed in violation of the said decrees. He would have determined, for the purpose of putting an end to a disorder as prejudicial to the settlement of the colony as to the interests of the inhabitants and of commerce, to issue a decree ordering the execution of those of the 6th July, 1711, and to declare at the same time null and void all grants of land in seigniority or in *roture* which have not been confirmed and have not been improved, and to forbid your making any grants of land until the terrier is completed and until otherwise ordained; but he has been pleased to wait until he has received your answer and your opinion thereon. These prohibitions have two objects: the first, to finish the work of this terrier; the second, to insure the preservation of the forests, in order to prevent the scarcity of wood, of which you state that the grantees of the front lands already feel the want, and also to form hereafter a domain for His Majesty in the country.

It will be only by examining the terrier that the extent of these forests can be well and usefully ascertained. Mr. Hocquart cannot therefore pay too much attention to this long protracted work.

AT QUEBEC, the 3rd October 1731.

My Lord,

By the letter which you did us the honor of addressing us, on the 24th April last, touching the abuses which we brought under your notice in relation to the grants of lands in Canada, we observe that His Majesty has refrained from making any decree, until our answer and our opinion had been received, and that you strongly urge upon Mr. Hocquart the necessity of completing the rent-roll, inasmuch as an inspection of that document is the only means of arriving at a definite conclusion upon this subject.

Mr. Hocquart has ever felt how important it was that the rent-roll should be completed in order to obtain therefrom all the information necessary to regulate the subject.

The Religious Communities have been principally the cause of the delay. Mr. Hocquart has however succeeded in obtaining from the Seminary of Montreal a statement or enumeration, *aveu et dénombrement*, of the lands possessed by that body in Canada,

and it is to be hoped that the order of Jesuits, the Seminary of Quebec and other Religious Communities will not further delay the fulfilment of their obligations, for up to this period these bodies have seemed to hold back, none being desirous of first making the necessary declaration.

We shall ourselves await the completion of the rent-roll, to enable us to give to the answer and opinion expected from us by His Majesty the required degree of certainty and precision; we have nevertheless the honor of observing for the present, that many of the abuses remarked upon in our letter of the 10th October 1730 appear susceptible of immediate reform without the necessity of a reference to the rent-roll. For this reason we deemed it proper forthwith to inform you upon the subject, although the rent-roll is still imperfect. Such, for instance, are the sales of lands made by some seigniors, although these lands are still uncleared, instead of merely conceding them at the rate of one *sou* of *cens* by the arpent and a capon by each arpent in front, which sales some of these same seigniors attempt to disguise under various pretences and by the different means mentioned in our said letter; such again is the system of location tickets as explained in the same letter. It is probable however that it is His Majesty's will to regulate the whole matter by one and the same decree, not deeming it proper to make a separate one upon each subject.

Nevertheless, if it pleased His Majesty to order the publication anew of the decrees of 1711, to prohibit the sale of uncleared lands upon pain of nullity of the deeds of sale and the restitution of the price of such sale, and to grant to the proprietors of seigniories still remaining uncultivated a further delay of a year or two to settle them or cause them to be settled, we are of opinion that independently of the rent-roll these orders would partially, if not altogether, remedy the abuses complained of. With respect to the grants made by the seigniors to their tenants, Mr. Hocquart has, so far, complied with the decree of the 16th July 1711, and has, since he is in Canada, pronounced upon the re-union of 200 concessions to the domain of seigniors, by reason of the grantees failing to reside thereon, (*faute d'y tenir feu et lieu*).

He has nevertheless taken upon himself to give to such grantees a delay of six months or a year, before ordering such re-union, in order to avoid any complaint upon this subject.

This delay has enabled several to comply with the regulations having reference to the matter, and has induced them to settle their lands to avoid the penalties imposed the decree of the Council of State of the month of July 1711.

We are, etc.,

(Signed)

BEAUHARNOIS,

HOCQUART.

Extract from the Minister's Letter to Mr. Hocquart,

Of the 6th May, 1734.

As I hope that, by your care, the terrier will be completed next year, I expect from the completion of that work a large increase in the receipts of the dues of *cens et rentes* which you tell me have been hitherto paid only by those who voluntarily came forward. And so likewise of the *lods et ventes* and the *droits de quint* and *relief*, as the mutations will then be known by means of the ordinance which you purpose to issue, enjoining notaries and registrars to furnish quarterly statements, certified by them, of all deeds concerning the ownership of landed estates. This is what has appeared to me the most urgent in answer to your long memorial. I shall have what relates to the other articles decided, and let you know His Majesty's intentions.

To Messieurs de Beauharnois and Hocquart.

Versailles, 6th May, 1734.

Gentlemen,

M. l'abbé Couturier, superior general of the Seminary of Saint Sulpitius, has applied for the confirmation of the grant which you made by order of the King, to that Seminary, on the 26th September of last year; but he at the same time prays that it may please His Majesty to explain some clauses inserted in that grant as well as in that which was made in 1717 to the same Seminary, and to change others agreeably to the draught of a patent (*brevet*) which he has presented me. He has asked that the rhumb-line which has been fixed for the seigniority of the Seminary may be altered, and that the same may be assigned to it as has been to the sieurs de Langloiserie and Petit, and he has represented the necessity of doing so to avoid the contestations which might arise from the diversity of rhumb-lines of those seigniorities; that the clause which obliges the Seminary to preserve the oak timber fit for the building of the King's ships may be restricted to such oak trees as may be found on the parts of the seigniority which the ecclesiastics of the Seminary may reserve for their principal manor house or domain, a restriction which he has represented as necessary for the settlement of the private grants to be made by the Seminary; that clause may be suppressed which provides the penalty of re-union to the King's domain, in default of actual settlement (*d'établir feu et lieu*) within a year and a day, on the grant; that the clause may also be suppressed which declares that the private grants shall be made at the usual *cens et rentes* for each arpent in front by forty arpents in depth; and as the same clause is found in the grant of 1717, he asks that it may likewise be cancelled in that deed; that the clause may also be suppressed, as useless, which provides that the beaches shall be left free to all fishers; that the clause may likewise be

struck out which declares that if the King should hereafter want any parts of the land for the purpose of erecting thereon forts, batteries, parade grounds, magazines and public works, His Majesty may take them without being held to any indemnification; and he has observed that the same clause had been inserted in the grant of 1717, but was omitted in the patent of confirmation of 1718;—that the clause inserted as well in the grant of 1733 as in that of 1717, and which declares that the ecclesiastics of Saint Sulpitius shall hold their lands of His Majesty subject to the usual rights and dues may be interpreted and restricted to simple fealty and homage at each new reign, releasing the Seminary, when need may be, from all amortizement dues, survivorships (*prestation d'hommes vivants et mourants*), and other charges, by reason of these grants; and finally that there may be added a discharge from the obligation to build a stone fort on the land granted in 1717, and an extension of that land to six leagues in depth.

Such are the changes which M. l'abbé Couturier wishes to be made in the patent of confirmation; you will find them more fully explained in the copy which I send you of the draught of a patent which he has presented me, and in the observations which he has added thereto. You will examine the whole and please to give me your detailed advice on each article, that I may take the King's orders; but I must inform you that His Majesty is determined to grant the Seminary a discharge from the obligation to build a stone fort on the grant of 1717, and is disposed to concede also the other demands, supposing they are not prejudicial to the public good nor to his service; and it is in conformity with these views that you are to examine them.

Lands in censive on the Détroit (Straits) of Lake Erié.

16th June, 1734.

On the representations which have been made by the inhabitants of Fort Pontchartrain on the Straits of Lake Erié, to Messieurs de Boishébert, captain of a company of the detachment of marines, heretofore commanding at Fort Pontchartrain aforesaid, and Péan, knight of the military order of Saint Louis, major of the town and government of Quebec, now commanding at the said Fort, and which have been reported to us, stating that hitherto they had not dared to undertake any clearings and to settle on lands at the said place, because they had no title that could secure to them the ownership thereof; that if we were pleased to grant them such titles, they would not only be enabled to work without running the risk of being molested, but that considerable advantages would result from their labors, by procuring at the said place an abundance of provisions, which would cause the garrison as well as the settlers and travellers to find an easy subsistence; to which having regard, and seeing His Majesty's letters-patent dated at Paris in the month of April, 1716, and registered at the Superior Council on the first December following, and the decree of the King's Council of State of the 19th May, 1722;

We have, in His Majesty's name, given, granted and conceded, and do hereby give, grant and concede, under the title of *cens et rentes*, from henceforth and for ever, unto

—— Chauvin, an inhabitant of Fort Pontchartrain on the Straits aforesaid, residing thereat, for him, his heirs and assigns hereafter, a piece of land situated on the Straits of Lake Erié, containing two arpents in front by forty in depth, bounded on one side towards the east-north-east by the land of one Faffart de Lorme, which he holds of the Sieur de la Motte Cadillac, by contract of the 10th March, 1707, bounded by a line running north-north-west and south-south-east, and on the other side towards the west-south-west by the ungranted lands, in front by the Straits of Lake Erié, and in depth by a line running east-north-east and west-south-west, adjoining also the ungranted lands, to be held, enjoyed and disposed of by the said Chauvin, his heirs and assigns, under the following charges, clauses and conditions, to wit:

That the said Chauvin, his heirs and assigns shall be bound to carry their grain to be ground at the banal mill when one shall have been established, on pain of forfeiture of the grain and of an arbitrary fine; to keep or cause to be kept house and home (*feu et lieu*) thereon within one year from this date, at the latest; to open the clearings (*découvrir les déserts*) of the neighbors as they may require it; to cultivate the said land; to allow thereon such roads as may be judged necessary for the public use; to make the division fences (*clôtures mitoyennes*) as may be agreed upon; and to pay each year, to the receiver of His Majesty's domain in this country, or to the clerk of the said receiver residing at the Straits, *one sou of cens for each arpent in front, and twenty sous of rent for every twenty arpents in superficies*, making for the said two arpents by forty in depth *four livres of rent, and moreover half a minot of wheat for the said two arpents in front*: the whole payable yearly on the festival day of St. Martin; the first yearly payment becoming due on the 11th November 1735, and so to continue from year to year; the said *cens* bearing profit of *lods et ventes, défaut et amende*, with all other royal and seigniorial rights when the case may occur according to the Custom of the provostship and viscounty of Paris.

It will however be optional for the said Chauvin to pay the said four *livres of rente* and the *sou* of *cens* in furs at the Détroit price, until a current money is established.

Reserving in the name of the King, on the said habitation, all the timber which His Majesty may want, for the erection of such buildings and forts as he may determine upon hereafter, as well as the ownership of mines, ores and minerals if any be found within the extent of the said grant.

And the said Chauvin, his heirs and assigns shall be bound to cause immediately the said grant to be surveyed, measured and bounded in all its length and depth at his own expense, and to execute the clauses contained in this title and take out a patent of confirmation of the same within two years, the whole on pain of nullity of these presents.

Done and given at Montreal, the 16th June, 1734.

(Signed)

BEAUHARNOIS and

HOCQUART.

(Here follows a series of grants in the same terms.)

From the abstract of Messieurs de Beauharnois and Hocquart's Letter, of the

6th October, 1734.

Messieurs de Beauharnois and Hocquart send a statement of the different grants which they have made to various individuals since 1731, as well in fief as in *censive*.

(The list is here annexed. The grants which have been ratified by the King are pointed out).

Most of the grants in fief are situated on lake Champlain, where the settlements can only be made little by little. There are however already some settlers on those of the Sieurs de Noyan, Daine and Léry. They will induce others to follow their example.

Those in *censive* are situated on the Detroit and are already nearly all settled. The title-deeds which have been issued for them *contain nearly the same clauses with regard to reserves as the grants in fief, and the charges are also the same as those to which individual seigniors usually subject their vassals, with the exception of the liberty which is given to the grantees on the Detroit to pay the cens et rentes in furs to the receiver of the domain, until there be a current money established at that post.* They have had regard, in issuing these grants, to the claims which the Sieur de la Motte Cadillac may have to a part of the lands on the Detroit, having maintained private individuals in possession of the lands which he had granted them, which they had improved and to which they had a title.

The grants made by them are in favor of other settlers on the Detroit, who have commenced clearings or continued those which had been abandoned and which had been successively distributed to them by the commanders at the post without any other title or formality.....

From Messieurs de Beauharnois and Hocquart.

October 6, 1734.

My Lord,

We have received the letter which you have done us the honor to address to us on the subject of the grant which we made by order of His Majesty, to the Seminary of Saint Sulpitius, on the 20th of September, 1733. We have now the honor to answer it in detail, and to give our opinion with regard to M. l'abbé Couturier's observations which were joined to your letter.

1. It is true that in the deed of the 26th of September, 1733, there is an error in the rhumb-line marked for the seigniory of the Lake of Two Mountains, granted to the Seminary in 1717. It was naturally marked in the copy, as it was in the original, S. $\frac{1}{4}$ S. W. and N. $\frac{1}{4}$ N. E. It is a clerical error which may be corrected in the patent of confirmation; but after this correction, far from there being any inconvenience in fixing for the seigniory of 1717 a rhumb-line different from that of the seigniory of the Sieurs Langloiserie and Petit, which is S. E. and N. W., there would be a very great inconvenience in fixing it in this manner, as the course of the Two Mountains river, or the Grand River of the Ottawacs, which is the same, following a rhumb-line different from that of the river Saint-Lawrence, if the ordinary rhumb-line of the seigniories which are along the Saint-Lawrence were followed in the seigniories granted or to be granted on the former river, the whole frontage of the seigniory of the Lake of Two Mountains would include the frontage of the seigniory belonging to Madame d'Argenteuil, which consequently that lady could no longer enjoy. Besides *it is proper that the depth of seigniories should be nearly perpendicular to the front, as well for the facility of surveying as in order to multiply the grants on the same extent of the river.* It was with this view that in the contestations which had arisen between the Seminary of Saint-Sulpitius and Madame d'Argenteuil, the Superior Council, without regard to the 28th article of its own regulations of the 10th May, 1676, gave a contrary decision on the 5th October, 1722, respecting the rhumb-line to be followed for the grant of 1717 and for all those situated on the Ottawac river, to wit: for the front from E. $\frac{1}{4}$ S. E. to N. $\frac{1}{4}$ N. W., and for the depth from S. $\frac{1}{4}$ S. W. to N. $\frac{1}{4}$ N. E. It was in consequence of the orders which you gave on the 6th May, 1732, that we granted the latter seigniory, as we had had the honor to propose to you in our letter of the 21st October, 1731. We joined to that letter a copy of the decision of the Superior Council and of the figurative plan of the grounds, by which it is easy to see that the seigniory of Madame d'Argenteuil would be annihilated if the first observation of M. Couturier in his memorial were admitted. You ordered us to maintain Madame d'Argenteuil in possession, by your same letter of the 6th May. She has been informed of it, and she has tenants and a domain on the seigniory. Another circumstance mentioned in this article of the observations of the Seminary is, that the rhumb-lines of the seigniories of Madame Langloiserie and of the Lake of Two Mountains will cross each other if fixed as they are laid down in the title-deeds. The answer is, that these lines may meet, but without inconvenience, and this cannot give occasion to any law-suit, whatever survey may be made, as, *by the general usage of Canada, when contiguous lands are to be surveyed, the oldest grantee takes his land first, and the neighbor the remaining land.*

2. It has been ascertained that in the patent confirming the grant of 1717 a clause is inserted to the effect that the ecclesiastics shall not only preserve the oak timber fit for ship-building which may be found within the domain, but also that they shall make a reservation of such timber throughout the private grants made or to be made to their tenants. From this clause it follows that such timber cannot be cut when found effectively fit for ship-building, and it will then be for the officers appointed by the King to point out and mark the trees fit for that purpose; until then the ecclesiastics of the Seminary cannot be held and subjected precisely to that reservation, as they are not presumed to know what timber is or is not fit for ship-building, any more than all

other proprietors of seigniories whose title-deeds contain similar clauses, and who notwithstanding cause their lands to be cleared; and in case His Majesty should have the oak trees fit for his service marked, the clearings would not be interrupted on that account; they would only be made with more precaution, for the preservation of the oak timber: the reservation, indeed, means nothing else.

3. The penalty of reunion to His Majesty's domain in default of actual settlement on the grant within a year and a day, is not to be taken literally. *It is known that it can only take place after some years*; and the governor and intendant alone can pronounce the reunion, by virtue of the decree (*arrêt*) of the Council of State of the 6th July, 1711, recited and confirmed by a later decree of the King's Council of the 15th May, 1732, and they will never act so rigorously towards the Seminary, to which they are instructed to grant all reasonable facilities. Indeed it is proper for the good of the King's service and the settlement of the colony that a further delay should be allowed, according to circumstances, to the grantees to improve their grants, the period of one year being generally found insufficient; but it appears indispensable, considering the King's intentions, to let the clause stand, in order to induce more prompt settlements. The ecclesiastics of the Seminary need not be uneasy on this head.

4. We do not know the reasons which induced His Majesty to fix, in the patent of 1718, the depth of the grants at 40 arpents, and the amount of the *cens et rentes*. It was thought it would be agreeable to his intentions to insert only, in those of 1733: "*at the usual cens, rentes and dues for each arpent of land in front by 40 arpents in depth.*"

The observation on the justice and equity of proportioning the rents and dues to the extent of the property, which may be more valuable in one place than another, merits consideration; and it appears to us that His Majesty might content himself with merely having inserted in the new patent to be issued: "*at the usual cens, rentes and dues for each arpent of land.*"

This vague expression will leave the Seminary free to grant more or less in depth, and at more or less *cens et rentes* in proportion to the extent of the lands, and even to their value. *And as the usages are different in almost every seigniority, the term "usual" will only restrain the ecclesiastics from granting, ordinarily, less than twenty arpents in depth, and from exacting higher rentes than that of twenty sous for every arpent in superficies, and one capon or its equivalent in wheat. With regard to the cens, as it is a very trifling due, which has been presumed to be established only to mark the direct seigniority, and which carries with it lods et ventes, the usual amount in Canada is from six deniers up to one sou for each arpent in front by the whole depth of the private grants, whatever that depth may be.*

The statement in the memorial, that the seigniors in Canada, as everywhere else, have the right to grant, *à cens et rentes, whatever quantity of land and subject to whatever charges they please, is not correct as to the charges; the uniform practice being to grant at the charges above explained, or more frequently below them.* If the right alleged were admitted, it might be abused by making grants, which ought to be, as it were, gratuitous, degenerate into mere contracts of sale.

5. The clause about leaving the beaches free to all fishers is an old protocol, inserted in a great number of patents confirming the grants of seigniories, even of those situated on the banks of the river Saint-Lawrence and its tributaries, and among others in the patent of the 6th July, 1711, ratifying the grants made on the 21st October, 1672, 7th April, 1701, 8th August, 1702, 25th March, 1st August, 26th September and 24th October, 1708, 7th November, 1709, 8th July, 6th September and 17th October, 1710, to the sieurs Labouteillerie, L'Épinay, Charon, Ramesay, Marie Joseph Fezeret, Damour, Dumontier, Pepin Laforce, Longueuil, Louvigny and Boucher; and in other patents of the 5th May, 1716, ratifying the grants made on the 12th and 13th October, 1702, and 5th May, 1714, to the late Messieurs the marquis de Vaudreuil and Joibert de Soulanges, and to the sieurs Langloiserie and Petit, whose land now adjoins the grant of 1733.

We shall not quote any more; the above are sufficient to show that this clause of free beaches is not peculiar to seigniories on the sea-shore, and we are of opinion, My Lord, that it might properly be retained in the patent of confirmation applied for. *The interpretation given to it in Canada is that the seigniors are bound to grant the right of fishing to their tenants, on condition of their paying a due which is ordinarily of every eleventh fish, or an equivalent in money, according to the value set on the fishery, as is practised in other seigniories.*

This liberty of fishing, to the tenants, is very favorable to the settlement of the lands, which would be less in demand if the new settlers were denied this right, by means of which they procure a livelihood at the commencement of their clearings.

The true right of fishing consists then, for the seigniors of Canada, in choosing and reserving to themselves a reasonable extent for their fishery, and deriving some income from the fishing places which they concede to each of their tenants, along the front of their grants. But as His Majesty has not thought proper to insert that clause concerning the beaches in the patent of confirmation of 1718, he may continue the same favor to the Seminary in the new patent applied for, if he think proper. It should however be observed that in a country like this, it would be impossible for the proprietors of seigniories to keep and cause to be observed this right of fishing; it would not fail to produce frequent difficulties and quarrels between the seigniors and tenants.

6. The clause which declares that if the King should hereafter require any part of the land for the purpose of erecting forts, batteries, parade grounds, magazines and public works thereon, His Majesty may take it without being held to any indemnification, is newer. It is however inserted in the grant of the 5th May, 1716, to the Sieurs Langloiserie and Petit, in another of the same date in favor of the Sieur Soulange, and in all the grants more recently made by the Sieurs de Beauharnois and Hocquart, subject to His Majesty's pleasure. This cannot give rise to any contestations hereafter, if His Majesty's right be expressed in the private grants which may be made by the Seminary, and no vexations are to be apprehended therefrom, as it is not presumed that His Majesty's officers would take for such works, without great necessity and without orders to that effect, the house of a private individual or a valuable portion of

his property, in which case His Majesty's justice may be relied upon for the compensation to be claimed by the owners. Indeed, as His Majesty grants the lands gratuitously, he may impose any conditions he pleases, and omit this one in the new patent, if he think proper.

7. The last clause, to wit, that the Seminary shall hold the lands in question of His Majesty, in fief, *subject to the usual rights and dues, according to the Custom of Paris*, is the style used in all such grants, and implies only, with respect to persons holding in mortmain, paying fealty and homage to the King, rendering an account (*aveu et dénombrement*), and furnishing on their part a man (*donner de leur part homme vivant et mourant*) at whose death a *droit de relief* becomes due, with a renewal of fealty and homage by another man (*un nouvel homme vivant et mourant*). His Majesty, as he has done for all the communities of Canada, while maintaining the obligation of paying fealty and homage at each new reign, and rendering an account (*aveu et dénombrement*), may release the community of Saint Sulpitius from that of furnishing *homme vivant et mourant*, and from all amortizement dues, which only goes to deprive His Majesty of the *droit de relief*.

8. The ecclesiastics of the Montreal Seminary have been advised, at the time, of the favor conferred upon them by His Majesty, of releasing them from the obligation of building a fort, which they were bound to do by their grant of 1717, as you have been pleased to inform us by your letter of the 6th May 1732. No inconvenience can result to His Majesty's service from his confirming that favor to them, and adding, in the new patent, an extension of three leagues in depth to the grant of 1717, if so much be found there, for it must not interfere with the grant of the widow ladies Langloiserie and Petit. But this extension of three leagues further in depth cannot be added to the grant of 1733, the dimensions of which can only be those mentioned in the title-deed executed by the Sieurs de Beauharnois and Hocquart, as the simple inspection of the map sent in 1731 will show.

You have commanded us, My Lord, to give our opinion in detail on each article of M. l'abbé Couturier's memorial: we have done so as far as justice, the King's service and the public good required; we have also entered into His Majesty's views, who, you have been pleased to inform us, was disposed to grant the Seminary their demands on those conditions.

We are with the most profound respect,

My Lord,

Your most humble and obedient servants,

(Signed)

BEAUHARNOIS,

HOCQUART.

Quebec, 6th October, 1734.

Letter from the Minister to Messieurs de Beauharnois and Hocquart, dated

Versailles, 19th April, 1735.

Gentlemen,

I have received your letter of the 6th October last, containing your opinion with regard to the memorial which was submitted to me on the subject of the grant which you had made by order of the King to the Seminary of Saint Sulpitius on the 26th September, 1733, and on the account which I have given of the whole to His Majesty, he has commanded me to issue a patent, which has been delivered to M. l'abbé Coururier, superior of that Seminary, and of which I send you a copy.

You will see, with regard to the first article of the observations of the Seminary, that all that has been done in this patent has been to correct the error which was in the copy of your grant, as to the rhumb-line; but that, according to your advice, no change has been made as to the rhumb-line of the seigniory of the Lake of Two Mountains.

Your advice has likewise been followed with respect to the second article of the Seminary's observations: the patent contains the reservation of such oak timber as may be found fit for the King's service throughout the extent of the grant. .

The obligation of actual settlement within a year (*de tenir feu et lieu dans un an*) has been expressed in it, agreeably to your observation; but this clause is not to be strictly enforced, and His Majesty relies on your prudence in this respect.

He has been pleased to change the clause which you had inserted in your grant and which is also found in the grant of the Lake of Two Mountains, with respect to the *cens et rentes* of the private grants, and, in conformity with your advice on this article, it has only been declared in the patent that these grants shall be made "*subject to the usual cens, rentes and dues for each arpent of land.*"

The clause concerning the freedom of the beaches has been retrenched. You have observed that this clause, according to the construction put upon it in Canada, only meant that the seigniors should be bound to grant their tenants the right of fishing opposite their lands, on condition of their paying a certain rate either in fish or in money, and you add that the liberty of fishing, to the tenants, must be favorable to the settlement of the lands, which would be less in demand if the new tenants were denied this right, by means of which they obtain a livelihood at the commencement of their clearings; but it is for this reason that it has not appeared necessary to express in the patent the obligation of granting that liberty to the tenants; it is, indeed, a private agreement between them and the seignior, and, besides, the clause is not in the patent of 1718.

The clause inserted in your grant, declaring that the King might take, of the land granted, as much as he should require, without any compensation, has likewise been

retrenched according to your advice. The same clause had also been suppressed in the patent of 1718.

You have observed, on the seventh article of the memorial, that while maintaining the obligation of paying fealty and homage and rendering an account (*aveu et dénombrement*) at each new reign, the community might be released from the obligation of furnishing *homme vivant et mourant* and from all amortizement dues, and this has been done in the patent.

Finally, your advice on the eighth article, relating to the release from the obligation of building a fort, which was to be done on the grant of 1718, and to the extension of that grant, has likewise been approved and followed, as you will see more particularly in the patent.