CASE

(IN PART)

OF THE

SEIGNIORS OF LOWER CANADA,

SUBMITTED TO THE

JUDGES OF THE COURT OF QUEEN'S BENCH AND OF THE SUPERIOR COURT,

IN REFERENCE TO QUESTIONS BEFORE THEM,

UNDER

"THE SEIGNIORIAL ACT OF 1854,"

AND BEING THE SUBSTANCE OF AN ARGUMENT BEFORE THEM, AT QUEBEC, ON 13TH SEPTEMBER, 1855.

The Judgt may be seen in Robertson's Digest. P. 433.

BY R. MACKAY,

ADVOCATE.

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CASE.

We have heard much of the "*usurpations*" of the Seigneurs. Their properties and titles have often been the objects of attacks, frequently gotten up for political purposes, and always founded on unsound ideas, sometimes of the rights of the censitaires, sometimes of those of the Seigneurs.

Strange that of the hundreds of thousands of censitaires aggrieved by such "illegal and oppressive" rents and duties as we have heard of, not one has appeared here!

However differently individuals may view the Seigniorial Act of 1854, public opinion seems formed that much good must result from it to the country at large.

That none may suffer through errors of law, the Attorney General has been ordered by it to frame such questions as he might see fit; in the present paper it is proposed to take up on behalf of the Seigneurs some of the questions by him submitted to this Court, and to examine their subject matter.

The first five have for object to establish what was the *droit féodal* in the Custom of Paris, at the time of the introduction of that Custom into Canada. What was the nature of the *contrat d'inféodation?* What the nature of the *contrat d'accensement?*

The sixth, seventh and eighth questions enquire as to whether it was necessary, in transferring this system into Canada, to make the granting or concession of lands binding on all Seigniors.

The ninth to the sixteenth enquire as to whether the Canadian Seigneurs were bound to concede *à titre de redevances, à un taux fixe;* whether they were trustees merely for colonizing the country.

The sixteenth enquires whether the arrêts of Marly were in force here at the cession.

The eighteenth enquires whether certain laws (the arrêts of Marly being those more particularly meant) were *d'ordre public.*

The nineteenth and twentieth enquire as to whether private individuals could contract contrarily to those laws, and as to whether such contracts were void or voidable.

The questions following, to the twenty-fifth inclusively, enquire as to whether those laws have been in force since the cession, whether there have been tribunals competent to exercise the jurisdiction conferred by the arrêt of Marly of 1711, whether there have been tribunals competent to declare the nullity of

covenants made between private individuals in contravention to the laws referred to, and whether censitaires who have taken concessions, since the cession, at rates higher than customary before the cession, have a right to obtain a reduction of such rents?

The thirty-ninth, fortieth and forty-first questions enquire as to the legality of certain reservations and prohibitions in *baux à cens*.

The forty-second enquires as to the legality of *corvées*.

Upon these subjects the undersigned submits the following observations:

With respect to the *droit féodal* in France, there was the feudal contract or the contract between the Seigneur suzerain (or dominant) and the vassal: this was otherwise called the *contrat d'inféodation*. There was also the contract between proprietors of Fiefs and their censitaires: this was the *contrat d'accensement*.

The obligations issuing out of both of these contracts issued principally from the contracts, which were to be interpreted as all other contracts.

Concession *en fief* was a contract *parfaitement synallagmatique*.—1 Hervé, p. 386:

Nous avons jusqu'à présent trois principes fondamentaux sur lesquels repose tout le système de la féodalité.

Le premier, que la concession en fief est un contrat parfaitement synallagmatique ou bilateral. En effet, l'obligation que le seigneur a contractée au moment de la concession, de laisser jouir le vassal de la chose concédée, en la manière convenue, et l'obligation que le vassal a contractée de son côté de conserver une reconnoissance toujours subsistante, sont deux obligations essentiellement correlatives et également principales, qui ne peuvent subsister l'une sans l'autre, et desquelles resulte, de part et d'autre, une action directe.

As to the rights of property under these contracts.

As between *Seigneurs dominans* and their vassals there was by the *contrat d'inféodation* a division of property; but to contemplate upon such a contract in the *prevosté de Paris* a division of the property, except as between grantor and grantee, to contemplate it also as between vassal and some third persons, none being designated, is absurd.

By the *contrat d'inféodation* the *domaine direct* was reserved by the grantor and the *domaine utile* was given to the vassal. This *domaine* might be larger or smaller, according to the terms of the *contrat d'inféodation*. The land granted *en fief* could be charged in various ways, and all bars on the vassal's using and disposing of his property could be taken away.

Under the *bail à cens* also the property was divided, the Seigneur retaining a *direct*, the censitaire obtaining a *domaine utile*. The Seigneur's *domaine* might be larger or smaller, according to the contract.

The payments and duties promised and assumed by the censitaire, and so much of the Seigneur's property as he did not part with, constituted his *domaine directe*.

No. 80, p. 146, Championnière:

Dans ce système, la propriété pleine, entière, absolue, constituait le *dominium plenum*, le *jus integrum*, et celui qui en réunissait tous les élémens dans sa possession jouissait *jure proprietario, in integritate*. Par l'effet du contrat féodal cette propriété se divisait: le beneficiaire, feudataire ou censitaire, recevait le domaine utile, dont les profits consistaient dans les produits du sol; le *donateur* se réservait le domaine direct, dont les bénéfices consistaient

dans les obligations ou redevances du feudataire. Il est essentiel de constater qu'aux yeux des jurisconsultes le possesseur du domaine direct était le veritable propriétaire.

And he cites *Pontanus*, who says, among other things:

" *Directum id est quod verum proprium ac principale dominium est. Quo fit ut cum domi-*
" *nium simpliciter nominamus de directo intelligendum sit, teste Bartholo.*"

At No. 349, p. 589, he says:

" Ces considérations déterminent le véritable sens des mots fief, seigneur de fief, droit
" féodal dans les coutumes, toutes postérieures à l'extinction de la société sénioriale telle que
" l'avoit constituée son but primitif.....
" aucune superiorité personelle n'avoit survécue; le seigneur n'avoit plus rien à commander
" au vassal; celui-ci n'avoit plus d'ordres à recevoir. L'association seigneuriale ne subsis-
" tait que dans l'un de ses moyens, savoir: l'inféodation. En cessant d'avoir son but primitif,
" la concession n'avoit pas été résolue; elle avoit persisté dans sa nature et non dans ses
" effets. Elle n'engendrait plus en réalité et utilement l'hommage, le service militaire, ni le
" droit de juger (No. 248.) Mais elle consistait toujours dans un démembrement de la pro-
" priété et un partage de ses élémens entre le seigneur et le vassal. Le premier était tou-
" jours le possesseur de la directe, le second celui du domaine utile, là se bornait leurs rela-
" tions respectives."..... " Tous les droits réservées au seigneur constituaient la directe, tous ceux
" qui étaient attribués au vassal formaient le domaine utile."..... " Tout ce que le vassal tenait du contrat formait le domaine utile."..... " J'insiste sur cette observation, &c., &c., &c.....

In the Custom of Paris sub-infeudation was not an essential part of the feudal system. Of the essence of the Fief was *fidélité*, [called by some *foi*,] and nothing else.—Pp. 27 and 40, Dumoulin *par* H. de Pansey.

Other things were of the *nature du fief*, and others *accidentels*.

Dumoulin, Traité des Fiefs, *par* Henrion de Pansey, p. 27:

" J'ajouterai seulement quelques réflexions sur les differentes espèces de droits féodaux.
" Il y en a de trois sortes, les essentiels, les naturels, et les accidentels. La fidelité est la
" seule chose qui soit de l'essence du fief; elle suffit seule pour imprimer le caractère de la
" féodalité; c'est un lien moral, une relation de devoirs entre le vassal et le seigneur, qu'il
" ne faut pas confondre avec la prestation de la foi."

The Seigneur *du fief* in France was at liberty to keep his Fief and lands,—or he might sub-infeud,—he might lease them,—he might sell them. The *contrat d'inféodation* might regulate the matter, but generally the Seigneur was not bound to sub-infeud, or to concede. He could do what he pleased, subject only to the prohibition, such as it was, in the Custom of Paris, which prohibition was solely in the interest of the *Seigneur dominant*. If *ouverture de fief* occurred, this last could *exploiter tout le fief*.

Hervé, Tome iii., pp. 374, 375, shows that holder of Fief could lease, sell, and do anything:

" Ainsi le jeu de fief peut s'opérer par bail à cens, par bail à rente, par donation, par legs,
" par échange, par vente, par sous-inféodation; en un mot par tous les contrats qui transpor-
" tent la propriété."

And see Pothier, cited on page 498, of Dumoulin, by H. de Pansey.

Hervé, Tome i., p. 376, shews that notwithstanding the Art. 51, Custom of of Paris, the Seigneur *du fief* was *propriétaire*:

Je pense sans difficulté que les fiefs appartiennent en pleine proprieté aux vassaux, depuis qu'ils sont patrimoniaux et disponibles. S'ils ne furent pas d'abord considérés comme une

propriété parfaite, c'est qu'ils ne consistèrent que dans une jouissance précaire et passagère qui pouvoit se perdre à chaque instant, et qui contrarie l'idée de propriété. Mais quand ils sont devenues héréditaires et qu'ils ont absolument tombé dans le patrimoine du vassal on a du prendre d'autres idées. Quand je puis vendre, donner, aliéner de toutes les manières, détériorer une chose ; en un mot, en disposer à mon gré, j'ai bien le *jus utendi et abutendi*, dans lequel consiste la vraie propriété.

In Lower Canada concession has not been obligatory on all Seigneurs. But for the arrêt of 1711 this could not be pretended even. To say that the Seigneurs were merely trustees charged to concede is to say that which is not warranted, either by law or by the facts.

Take up any of the grants,—for instance, before 1711, the concession of the Rivière du Loup, (p. 39, Seigniorial Documents, Vol. 1) :

No. 373.

THE WEST INDIA COMPANY.

On the requisition presented to us by the Sieur Aubert de la Chesnaye, praying that we might be pleased to grant him an extent of land in New France, on the south side of the great River St. Lawrence, of one league above the River du Loup, and one league below, by one league and a-half in depth, together with the ownership of the said River du Loup, and of the minerals, lakes and other rivers which may be found within the said concession, and also the isles and beaches in the said River St. Lawrence opposite the same, with the rights of hunting and fishing ;

We, the directors general of the said Company, acknowledging how important it is for the welfare and improvement of the colonies of New France, that persons possessed of pecuniary means and good will should settle therein, have, in the name of the said Company, granted and conceded, and do grant and concede to the said Sieur Aubert de la Chesnaye the said extent of land in New France, on the south side of the great River St. Lawrence, of one league above and one league below the River du Loup, by one league and a-half in depth, and the ownership of the said River du Loup, and of the mines and minerals, lakes and other rivers which may be found within the said concession, and also the islands and beaches in the said River St. Lawrence, opposite the said concession, with the right of hunting and fishing throughout the whole of the said concession ; to have and to hold the same unto the said Sieur de la Chesnaye, his heirs and assigns, for ever, in full property and seigniory ; subject on the part of the said Sieur de la Chesnaye, his heirs and assigns, to the performance of fealty and homage (*foi et hommage*) which they shall be held to do to the said Company on each and every change of possessor, at the Fort St. Louis of Quebec, or in this City of Paris, at the office of the directors general of the said Company, together with a gold crown (*écu d'or*) which shall be paid at the time of the performance of the said homage, a certificate whereof shall be delivered ; and moreover subject to the charge and condition that the said Sieur de la Chesnaye shall cause the settlement of the lands of the said concession to be commenced within two years, the survey thereof made and the boundaries set up within the said space of time ; in default of the execution of which conditions, the lands contained herein shall be re-annexed to the domain of the said Company, which shall have the right of disposing thereof as it may think proper, and without the said Sieur de la Chesnaye or any others having any claim of indemnity therefor ; which said conditions have been accepted by the said Sieur de la Chesnaye.

Is there appearance of a trust estate being the estate granted here? Where is the benefit of another mentioned in this grant? To consider such a grant as a grant by A to B for the benefit of C would be absurd.

Take up the grant by Governor and Intendant in 1683, to be found in p. 79, Vol. 1:

" We, in virtue of the power jointly entrusted to us by His Majesty, and in consideration " of the different settlements which the said Sieur de la Vallière and the Sieur de la Poterie, " his father, have long since made in this country, and in order to afford him the means of " augmenting them, have, to the said Sieur de la Vallière, given, granted and conceded and " by these presents do give, grant and concede the above described tract of land; to have " and to hold the same, himself, his heirs and assigns, for ever, under the title of fief, seigniory, " superior, mean and inferior jurisdiction (*haute, moyenne et basse justice,*) and also the right " of hunting and fishing throughout the extent of the said tract of land; subject to the con- " dition of fealty and homage (*foi et hommage*) which the said Sieur de la Vallière, his said " heirs and assigns, shall be held to perform at the Castle of St. Louis in Quebec, of which " he shall hold under the customary rights and dues, agreeably to the Custom of Paris, which " shall be followed in this respect provisionally and until otherwise ordained by His Majesty; " and that the appeals from the judge of the said place shall lie before the Lieutenant General " of Three Rivers; and also that he shall keep house and home (*feu et lieu*) and cause the " same to be kept by his tenants on the concessions which he may grant them. in default " whereof he shall re-enter *pleno jure* into the possession of the said lands; that the said " Sieur de la Vallière shall preserve and cause to be preserved by his tenants, within the " limits of the said tract of land, the oak timber fit for the building of vessels; and that he " shall give immediate notice to the King or to us of the mines, ores or minerals, if any be " found therein; that he shall leave and cause to be left all necessary roadways and passages; " and that he shall cause the said tract of land to be cleared and inhabited, and furnished " with buildings and cattle within two years from this date, in default whereof the present " concession shall be null and void; the whole under the pleasure of His Majesty, by whom " he shall be held to have these presents confirmed."

Is there appearance of a mere trust estate being the estate granted here?

As well might it be pretended that under ordinary Letters Patent, such as granted to the leaders of the townships, third persons called settlers derived rights of property from them, or that these Letters Patent involve that the grantees must concede to settlers, as that before 1711 the Seigneurs in Canada were bound so to concede.

Trusts are not easily to be presumed. Lord Nottingham said truly, that "if Chancery do take liberty to construe a trust by implication of law, or to presume a trust unnecessarily, a way is open to the Lord Chancellor to construe or presume any man out of his estate."

Adams on Equity [28,] [29,] shows what a trust is, and states that a written instrument cannot be explained by *parol* in order to make appear a trust where in words, in the written instrument, no trust appears; and this is the doctrine well known of our law. So in the case of the Seigneurs, the grants to them must show a mere trust estate to have been granted to them, else their estate will be supposed for their own benefit.

Adams says: [27]

" In order to originate a trust, two things are essential, first, that the ownership conferred " be coupled with a trust either declared by the parties or resulting by presumption of law; " and secondly that it be accepted on those terms by the trustee."

The declaration of a trust by the parties is not independently of the statute of frauds, required to be made or evidenced in any particular way. And therefore previously to that statute a trust whether of real or personal property might be declared either by deed, by writing not under seal, or by mere word of mouth, subject however to the ordinary rule of law, that, if an instrument in writing existed, it could not be explained or contradicted by parol evidence.

With respect however to real estate the rule is altered by the statute of frauds, and it is enacted that all declarations or creations of trusts of any lands, tenements or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of no effect.

[28] The intention thus evidenced, whether by writing or by parol, to impose a trust on the donee must be declared with certainty, and there must also be a certain declaration of its terms, viz: of the property in which the trust is to attach, the parties for whom the benefit is meant, and the interests which they are, respectively, to take. If there be uncertainty in this latter respect, but it be sufficiently certain that a trust was meant, and not a gift for the donees benefit, the case will fall under a different rule, and there will be a resulting trust, for the *donor*, by operation of law.

In Hill on Trustees, p. 45, the author says that in a trust are limitations and declarations, showing to whom the beneficial interest is given. There are no limitations or declarations in favor of others than the Seigneurs themselves in any of the grants to the Canadian Seigneurs; and if not in the grants in vain will subsequent instruments by the grantor alone operate against grantee.

At p. 64, Hill says:

"Except in the case of fraud no subsequent instrument executed by the grantor would "operate to deprive the grantee of his right to the beneficial interest.

"Hence it is obvious that it is not the legal conveyance, or transfer of the property, but "the *declaration of the trust*, that operates in the creation of the trustee."

This agrees with Hervé, tom. i., p. 389.

"En un mot le seigneur et le vassal ne peuvent ni l'un ni l'autre, rien changer au contrat "sans consentement commun; mais ils peuvent, de concert, y apporter tel changement et "telle modification qu'ils jugeront à-propos, en ce qui ne touche point à son essence."

At page 392, *Hervé* adds:

"Quelqu'onéreuses que soient les charges du vassal il ne peut s'y soustraire, les modifier, en "substituer d'autre, ni changer le tems, le lieu et la maniére de s'acquitter, car ce seroit perdre "de vue la condition présumée de l'inféodation, p. 393. Le seigneur de son côté ne peut "étendre ses droits sous prétexte d'interprétation, et de presomption de la volonté des par-"ties lorsquelles aient contracté; ce seroit ajouter au titre primitif."

See, on this, also *Guyot, Fiefs*, tom. v, p. 6.

Hill, p. 65, is to the effect that there can hardly ever be a doubt, upon deeds *inter vivos*, as to whether a grantee takes beneficially or as a trustee for others.

The undersigned would here say, with reference to the Attorney General's seventh question, that what the French King intended in granting *quoad* all Seigneurs CAN only be stated after reference to *all* his grants.

It is contended by the opponents of the Seigneurs that the obligation upon them to concede is to be gathered from such documents as the grant to the *cent associés*, p. 5, 1 Ed. et Ord., the grant to the W. I. Company, and a "*document important*" *pouvoir donné à M. de Frontenach.* Can these, or any of them, make law?

And can there be gathered from them anything to support the proposition that the Seigneurs were bound to concede or that they were mere trustees? Far from it; for instance, the grant to the *cent associés* is made to them "*en toute propriété*," and this is said to be "*pour aucunement récompenser la dite compagnie;*" power is given to the company to dispose of the lands "*en telle quantité, et ainsi qu'ils jugeront à propos.*" The grant to the West India Company was very similar. It ran thus:

" Appartiendront à la dite compagnie, en toute seigneurie, propriété et justice, toutes les " terres qu'elle pourra conquérir et habiter pendant les dites quarante années en l'étendue des " dits pays ci-devant exprimés et concédés, comme aussi les Isles de l'Amérique appellées " Antilles, habitées par les Français, qui ont été vendues à plusieurs particuliers par la com- " pagnie des dites Isles formée en 1642, en remboursant les seigneurs propriétaires d'icelles " des sommes qu'ils ont payées pour l'achat, conformément à leurs contrats d'acquisition, et " des améliorations et augmentations qu'ils y ont faites suivant la liquidation qu'en feront les " commissaires par nous à ces députés, et les laissant jouir des habitations qu'ils y ont établies " depuis l'acquisition des dites Isles."

" Tous lesquels pays, isles et terres, places et forts, qui pourront y avoir été construits et " établis par nos sujets, Nous avons donné, octroyé et concédé, donnons, octroyons et concé- " dons à la dite compagnie pour en jouir et perpétuité en toute propriété, seigneurie et jus- " tice ; ne nous réservant autre droit, ni devoir que la seule foi et hommage-lige, que la dite " compagnie sera tenue de nous rendre et à nos successeurs rois, à chaque mutation du roi " avec une couronne d'or du poids de trente marcs."

" La dite compagnie pourra vendre ou inféoder les terres, soit dans les dites isles et terres " fermes de l'Amérique ou ailleurs dans les dits pays concédés, à tels cens, rentes et droits " seigneuriaux qu'elle jugera bon et à telles personnes qu'elle trouvera à propos."

They were also to have :

" Toutes les mines et manières, caps, golfes, ports, havres, fleuves, rivières ; isles, et islots, " étant dans l'étendue des dits pays concédés, sans être tenue de nous payer pour raison des " dites mines et manières aucuns droits de souveraineté, desquels nous lui avons fait don."

It would be idle to take up more time upon this part of the case.

" Before 1711 usage had fixed the *taux* of *cens*," say the opponents of the Seigneurs, " and the maximum was not over two *sols* ;" yet there is the concession to Jean de Paris at ten *sols* per arpent superficial !

The ancient laws did not oblige the Seigneurs in Canada to concede *à titre de redevances, à taux fixe.* Until 1711 nothing had occurred to justify any pretence that they were so obliged. Comes the arrêt of 1711 :

" Le roi étant informé que dans les terres que Sa Majesté a bien voulu accorder et concé- " der en seigneurie à ses sujets en la Nouvelle-France, il y en a partie qui ne sont point " entièrement habituées et d'autres où il n'y a encore aucun habitant d'établi pour les mettre " en valeur, et sur lesquelles aussi ceux à qui elles ont été concédées en seigneuries n'ont pas " encore commencé d'en défricher pour y établir leurs domaines ; Sa Majesté étant aussi " informée qu'il y a quelques Seigneurs qui refusent, sous différents prétextes, de concéder " des terres aux habitans qui leur en demandent dans la vue de pouvoir les vendre, leur " imposant en même tems des mêmes droits de redevance qu'aux habitans établis, ce qui est " entièrement contraire aux intentions de Sa Majesté et aux clauses des titres de concessions " par lesquelles il leur est permis seulement de concéder les terres à titre de redevance, ce " qui cause aussi un préjudice très considérable aux nouveaux habitans qui trouvent moins de " terre à occuper dans les lieux qui peuvent mieux convenir au commerce.

" A quoi voulant pourvoir, Sa Majesté étant en son conseil a ordonné et ordonne que dans " un an du jour de la publication du présent arrêt, pour toute préfixion et délai, les habitans " de la Nouvelle-France auxquels Sa Majesté a accordé des terres en seigneuries, qui n'ont " point de domaine défriché et qui n'y ont point d'habitans, seront tenus de les mettre en cul- " ture et d'y placer des habitans dessus, faute de quoi et le dit tems passé, veut Sa Majesté " qu'elles soient réunies à son domaine à la diligence du procureur général du conseil supé- " rieur de Québec, et sur les ordonnances qui en seront rendues par le gouverneur et lieute- " nant général de Sa Majesté et l'intendant au dit pays ; ordonne aussi Sa Majesté que tous " les Seigneurs au dit pays de la Nouvelle-France ayent à concéder aux habitans les terres " qu'ils leur demanderont dans leurs seigneuries à titre de redevances et sans exiger d'eux

" aucune somme d'argent pour raison des dites concessions, sinon et à faute de ce faire per-
" met aux dits habitants de leur demander les dites terres par sommation, et en cas de refus
" de se pourvoir pardevant le gouverneur et lieutenant général et l'intendant au dit pays,
" auxquels Sa Majesté ordonne de concéder aux dits habitans les terres par eux demandées
" dans les dites seigneuries, aux mémes droits imposés sur les autres terres concédées dans
" les dites seigneuries, lesquels droits seront payés par les nouveaux habitans entre les mains
" du receveur du domaine de Sa Majesté en la ville de Québec, sans que les Seigneurs en
" puissent prétendre aucun sur eux, de quelque nature qu'ils soient, et sera le présent arrêt
" enrégistré au greffe du conseil supérieur de Québec, lu et publié partout où besoin sera.

" Fait au conseil d'état du roi, Sa Majesté y étant, tenu à Marly, le sixième jour de juillet
" mil sept cent onze.

Signé, PHELYPEAUX."

It is said that at the time of the cession this arrêt was law, obliging all the Seigniors to concede *à taux fixe*, and that their rights of property were restricted by such obligation to concede.

We know of no Seigneurs whose grants anterior to 1711 contained clauses or conditions such as contained in those grants to Seigneurs referred to in the preamble of the arrêt.

Such an arrêt could not be construed largely, nor could it operate more than it expressed.—Dwarris, p. 729. It would be restrained to exactly what it enacted. Domat, xxiv. No construction could be put upon such an arrêt not supported by the words, whatever might be supposed of the intentions of the King.—P. 707, Dwarris.

At the time of the cession what Seigneurs were affected by the arrêt of 1711? Were those whose titles bore date before 1711? Were those whose titles bear later dates?

Those only could be affected by it whose titles had in them the conditions referred to in the preamble of the arrêt.

But supposing all to have been bound, what *could* have been the effect? Only that after an extra judicial demand by a proposing censitaire, and a refusal to grant by the Seigneur, the former could implead the latter before the Governor and Intendant and obtain by sentence a concession upon the terms, dues and duties, usual in the Seigniory in which such concession was to be made, the rents and duties to be in such case paid towards the King's domain; a kind of confiscation being ordered against the Seigneur who had, after extra judicial demand to concede, refused to do so.

This arrêt of 1711 is vague; there are no limits to the land which a proposing settler might demand. It fixes no *taux* of *cens*. The word *taux* does not occur in it. The words of it are affirmative, not negative. It is directory, not prohibitive. It prescribes no penalty on Seigniors *doing anything*. It prohibits nothing. (*Il ne défend rien.*)

No nullities are enacted by it, as by the arrêt of 1732 are enacted. Concession was what was meant to be enforced. Sales were not to be. For the special case of it there was the special remedy, *and none other*.

The concessions were to be *à titre de redevances;* but of what *redevances*, or amount of *redevances*, nothing is said. This is left primarily to the parties. The use of the word *redevances* shows that mere *cens* were not ordered. So does the

use of the words "*aux mêmes droits*," and of the words "*de quelque nature* "*qu'ils soient.*" *Redevances*, according to Renauldon, Dict. des Fiefs, mean :

"Les droits ou charges auxqu'elles les propriétaires d'héritages sont tenus envers les "seigneurs féodaux ou censuels ;"

And he talks of "*redevances après les cens.*"

We have *Hocquart's* understanding of the word in Vol. 2, Ed. & Ord., p, 547, and we have the Governor's and Intendant's at p. 221, Vol. 1, Seign. Documents.

Concession quelconque being made, the will of the arrêt was satisfied. Concession being refused, then the arrêt could be invoked. The *grief* was concession refused; once there was concession there was no *grief*. Where there is no *grief* there is no nullity, says Solon, tom. 1, p. 275.

We can suppose a Seigneur and proposing censitaire to have disagreed, and a concession to have been refused, the parties to be before the tribunal of the arrêt of 1711. What was to prevent them making up their disagreements, and walking out of Court? If a proposing censitaire agreed to and took a concession, in vain would he afterwards seek to be freed from his promises, in vain would he seek an abatement of rent.

Observe, the King does not enact in his own favor primarily, but in favor of the proposing censitaires, who obtaining concessions, or taking them, the King will do nothing ; the arrêt orders nothing in such case. Suppose the King by the arrêt to have made a kind of grant to the body of proposing censitaires, might they not choose to avail themselves of it *or not?*

The tribunal of the arrêt of 1711 had no right to entertain *demandes* of an ordinary character, such as a demand of abatement of rent, or a demand *en nullité* of a deed of concession.

May we not fairly suppose that the King really meant by the arrêt of 1711 to hold those bound towards him and those only who were by contract bound already towards him, and that his wish was to enact a thing according with rights under contracts.

The jurisdiction of the arrêt of 1711 was entirely in favor of the proposing censitaire ; for him was the tribunal of it erected. It is not easy to believe that the King wished to gain by it, and how could he if no proposing censitaire moved?

The undersigned does not consider that there is *casus omissus* in the arrêt of 1711. The King did not *wish* to go farther than he has done by it. He did not wish to fix the amounts or kinds of *redevances*, or a *taux* of *cens*. *Quod intendit fecit.* He was present, and looked forward to being so, and could remedy any after inconveniences ; but, at date of the arrêt, wished to enact what by it he expressed, and no more. And was he not right? After the arrêt could there be cause for complaint? All who asked appear to have gotten concessions to their satisfaction. The adversaries of the Seigniors would have it admitted that two *sols* was the *maximum* of *cens* up to the *cession*. If this so, were these Seigniors refusing to concede? Were they insisting upon unconscionable or hard bargains? Were they selling, instead of granting *à redevances?* Were they troubling society, and retarding the settlement of the country?

The King not only did *not* declare null concessions agreed upon between Seigneurs and censitaires at *any* rate ; but he could not, where by their *contrats d'inféodation* the Seigneurs were not bound to concede *à taux fixe*.

The King was subject to the law.—Mey. Max. du Dr. Fr., pages 5, 84, 94, 95. At p. 84 the author says:

"Nous lisons dans la republic de *Bodin* que la monarchie royale est celle où les sujets "obeissent aux loix du monarque, et le monarque aux loix de nature; demeurant la liberté "naturelle, et propriété des biens aux sujets. C'est très mal dire, au jugement de cette aut- "eur que de dire que les princes peuvent prendre les biens de leurs sujets de puissance ab- "solue; vaudroit mieux dire par force et par armes qui est le droit du plus fort et des "voleurs."

And at page 93 he says:

"Si nos Rois ont quelque discussion avec quelqu'un de leurs sujets ils trouvent bon qu'il "defend ses droits ou ses pretentions contre eux; que le jugement en soit déféré aux tribu- "naux ordinaires de la justice, et qu'ils soient condamnés si la réclamation du sujet est juste "et légitime. "Si le Roi (dit Bodin) est debiteur à son sujet il souffre condamnation."....

"Par arrêt de 1266, le roi fut condamné à payer la dixme à son curé des fruits de son jar- "din.

"De semblable justice usent nos rois de France, lesquels s'ils prétendent contre leurs sujets "quelques possessions leur appartenir ils ne les ravissent et ôtent: ains de leur justice "accoutumée font par leurs avocats et procureurs conduire les proces et soutenir leurs droits, "ou ès cours souveraines ou pardevant les juges royaux inferieurs, pardevant lesquels les "sujets en pleine liberté allèguent leurs demandes et defenses de seigneurie, et veulent les "rois le droit de leurs sujets être religieusement gardé sans aucunement être violé pour révé- "rence de la puissance royale. Tous lesquels droits seroient éteints et abolis, si les princes "ôtoient aux privés la seigneurie de leurs biens, et s'ils disoient qu'ils le peuvent faire par "puissance royale."

"Cette usage de plaider contre le roi rencontre aux tems les plus reculés."

The King's contracts were enforcible against him as were any subjects against *him*. At page 95, tom. i, the author says:

"Quelle reconnoissance plus authentique pourroit-on désirer du droit de propriété qui "reside dans la personne des François? D'une part, les contrats que les plus petits des "sujets passent avec le monarque sont des liens qu'il n'est pas en son pouvoir de rompre, "parcequ'il ne peut anéantir par voie de puissance absolue des engagemens dont la foi pub- "lique garantit la stabilité. D'autre part quelque sujet a-t-il des demandes à former contre "le roi les tribunaux de la justice lui sont ouverts, et son action a le même sort que celui de "toute autre action intentée contre des sujets semblables."

The King himself seems to have been fully aware of all this, and therefore the preamble of the arrêt.

Notwithstanding the arrêt of 1711, all the Seigniors in Canada had their rights according to their *titres* from the Crown, and were under no obligation to concede at a rate fixed for them.

With respect to this arrêt of 1711, the Seigniors can afford to treat it either as *d'ordre public*, and a penal law, (in which case it has not had force since the cession,) or as not penal nor *d'ordre public*, but *de droit privé*, in which case contracts might be made to the contrary of it.

Let us pass to the arrêt of 1732.

Its preamble says:

"Le roi s'étant fait représenter en son conseil l'arrêt rendu en icelui le six juillet, mil sept "cent onze, portant que les habitans de la Nouvelle-France, auxquels il auroit été accordé "des terres en seigneuries, qui n'y auroient pas de domaines défrichés ni d'habitans établis, "seroient tenus de les mettre en culture et d'y placer des habitans dans un an du jour de la "publication du dit arrêt, passé lequel tems elles demeureroient réunis au domaine de Sa

" Majesté, et que les dits seigneurs seroient aussi tenus de concéder aux habitans qui les " demanderoient, à titre de redevance, et sans exiger aucune somme d'argent, sinon permis " aux dits habitans, en cas de refus aprés une sommation, de se pourvoir pardevant le gou- " verneur et lieutenant-général et l'intendant du dit pays, pour en obentir les concessions aux " mêmes droits imposés sur les autres terres concédées, lesquels droits seroient payés au " receveur du domaine de Sa Majesté, sans que les seigneurs puissent rien prétendre sur les " terres ainsi concédées ; et un autre arrêt du même jour six juillet, mil sept cent onze, por- " tant que les concessionnaires de terres en roture seroient tenus d'y avoir feu et lieu et de " les mettre en valeur dans un an du jour de la publication, à peine de réunion au domaine " des seigneurs sur les ordonnances de l'intendant."

" Et Sa Majesté étant informée, qu'au préjudice des dispositions de ces deux arrêts, il y " a des seigneurs qui se sont réservés dans leurs terres des domaines considérables, qu'ils " vendent en bois debout au lieu de les concéder simplement à titre de redevances, et que des " habitans qui ont obtenu des concessions des seigneurs les vendoient à d'autres, qui les re- " vendent successivement, ce qui opère un commerce contraire au bien de la colonie, et étant " nécessaire de remédier à des abus si préjudiciables ; Sa Majesté étant en son conseil, a or- " donné et ordonne que dans deux ans, à compter du jour de la publication du présent arrêt " tous les propriétaires des terres en seigneurie non encore défrichées, seront tenus de les " mettre en valeur et d'y établir des habitans, sinon, et le dit temps passé, les dites terres " demeureront réunies au domaine de Sa Majesté en vertu du présent arrêt, et sans qu'il en " soit besoin d'autre."

Its object seems to be to repress a "*commerce contraire au bien de la colonie*," a dabbling in lands ; but can it be pretended that the Seigniors, who have conceded, as have the Canadian Seigniors, in a way which has put settlers upon nearly all the lands of the country, have been guilty of this traffic ?

The chief enactment of the arrêt of 1732 is the following :

" Fait Sa Majesté très-expresses inhibitions et défenses à tous seigneurs et autres propriéé- " taires, de vendre aucunes terres en bois debout, à peine de nullité des contrats de vente, et " de restitution du prix des dites terres vendues, lesquelles seront pareillement réunies de " plein droit au domaine de Sa Majesté."

What of the subsequent order :

" Et seront au surplus les dits deux arrêts du six juillet, mil sept cent onze, exécutés selon " leur forme et teneur, et le présent sera registré au greffe du conseil supérieur de Québec, " lu et publié partout où besoin sera."

It neither adds to nor diminishes the force of the arrêt of 1711.

The Royal declaration of 1743 is the last document invoked against the Seigniors, and it amounts to nothing. It has really nothing to do with the arrêt of 1711, nor does it by any word in it make allusion even remote to it. It was a declaration for use "*dans toutes nos colonies.*" The arrêt of 1711 never was meant to have any force out of Canada.

The word Canada does not occur in this declaration, except in the *mandement*, where what was a blank in the draft was filled up for Canada, as in other *expeditions* the names of other colonies were doubtless put in :—"*Si donnons en mandement à nos amés et féaux les gens tenans notre conseil superieur de Canada, &c.*" —Had the arrêt of 1711 never been enacted this declaration would probably not the less have been made, for it would have been useful in all the colonies, in Canada as in the others.

This Royal declaration neither added to nor diminished the force of the arrêt of 1711, which must be viewed by itself.

The Seigniors were not at the time of the *cession* under obligation to concede *à taux fixe*. Their contracts, so far as we have seen them, did not so oblige them, and no law can be shown which ever so obliged them. Mr. Williams' opinion cannot make law; and does he say that in the ancient grants there are the conditions that the grantees shall concede at *taux fixe?* He does not. Mr. Williams is wrong in what he does state of "the usual reservations and conditions," in the ancient grants. He states that in them, usually, was a condition that the grantees should concede at the accustomed rates and dues, &c., while, in fact, in none of them was such condition contained. If any exist with such condition in them, let them be produced.

It is said that the arrêts of 1711 and 1732, and the Royal declaration of 1743, were in force at the time of the *cession*. The Royal declaration may have been, but the arrêts referred to were not then in force.—An usage had prevailed contrary to both of them, which made them null from non-usage.

Laws may be abrogated by usage *contraire*.—1 Solon, p. 267:

"Nos lois nouvelles n'ont rien de contraire à des principes aussi généralement admis, et "comme autrefois elles sont susceptibles d'être abrogées par un usage contraire. Nous devons "même dire que si ce genre d'abrogation a été toujours considéré comme tenant à la paix "des familles et à l'ordre public, il a dû acquerir plus d'importance dans les nombreuses "révolutions que nous avons eu à subir depuis 89. Combien de lois en effet ont été faites "avec légèreté et repoussées par l'opinion publique! Combien de lois n'ont dû qu'à des cir-"constances passagères une vie aussi courte que la cause qui les avoient produites, et nos "bulletins ne sont ils pas remplis de dispositions législatives qui ont cessé d'exister sans "aucune abrogation formelle!"

No. 394. La jurisprudence a aussi confirmé sur ce point les anciens principes.

No. 399. *Quid* si la loi était prohibitive de tout usage contraire; si par exemple le législateur avait déclaré que la loi serait observée, nonobstant tout usage qui tendrait à l'abroger? *Dunod* pense que dans ce cas, elle empêcherait l'usage de naitre et de se former. Nous ne saurions partager cette opinion: sans doute l'abrogation seroit beaucoup plus difficile à s'opérer; il faudrait beaucoup plus de tems et un plus grand nombre d'actes contraires, mais du moment que ces actes seroient multipliés qu'ils se renouvelleroient journellement avec les charactères ci-dessus, ils abrogeroient la loi, malgré la defense qui se trouverait comprise dans ses dispositions.

English statutes may not be so repealed, Dwarris, p. 672, but under our law it is not as in England. *Désuétude générale* will abrogate a *loi générale*.—P. 269, Solon.

Lois de circonstance are particularly subject to fall into *désuétude*.—No. 404, tom. i., Solon.

At No. 404, p. 273, tom. i., he says:

"Moyennant ces exceptions, toutes les lois sont sujettes à tomber en désuétude; d'Agues-"seau, lett. du 26 Oct. 1736; mais surtout les lois de circonstance, celles dont *Bacon* a dit "dans ces aphorismes: Quæ manifesto temporis leges fuere, atquè ex occasionibus reipub-"licæ tunc invalescentibus natæ. Ces lois sont abrogées avec d'autant plus de facilité, que "nées à l'occasion de circonstances qui durent peu, elles ne sont censées faites que pour le "tems où elles pourront être nécessaires; elles doivent périr avec les circonstances qui les "avaient fait porter, avec la cause qui les avait produites."

Were not the arrêts of 1711 and 1732 dictated by a temporary policy? Can any body read them without being struck with the fact of their having been result of a temporary and peculiar policy?

In Mey., Vol 2, p. 323, are given many examples of *désuétude.*

" On prétend aujourd'hui qu'elles n'en sont pas moins efficaces, que la désuétude n'abolit " pas la loi ; qu'elle conserve tout son empire à moins qu'elle n'ait été formellement revoquée " par le souverain. On se gardera bien de s'étendre pour refuter une assertion si étrange ; " on n'y opposera que l'art. 1, de l'ordonnance de 1629, une de celles dont on argumente, qui " enjoint l'exécution de toutes les ordonnances qui ne sont pas spécialement révoquées *ni* " *abrogées par usage contraire* reçu et approuvé de nos prédécesseurs et de nous. Il résulte " de là clairement que les lois sont abrogées par l'usage contraire au moins lorsqu'il est " approuvé du roi : cette approbation, si elle était expresse, emporteroit de la part du sou- " verain la revocation formelle ; il ne peut donc être question que d'une approbation tacite. " Or qui peut douter qu'il n'y ait une telle approbation de sa part, lorsque sous ses yeux il " souffre qu'on pratique le contraire de la loi ? Combien d'articles de l'ordonnance de 1667 " qui sont aujourd'hui totalement oubliés ; qui n'ont pas plus de force que s'il n'y avoient pas " été inserés.....

" Lorsqu'il s'établit tranquillement un usage directement opposé à la loi, lorsque les magis- " trats continuent d'agir comme si elle n'avait pas été promulguée, on ne peut douter qu'ils " ne le fassent du consentement du roi."

Has not the Crown, since the Conquest, observed that the Seigniors were doing ? It has taken *quint* of the values of all the Signiories which have been sold.

To support the proposition that the arrêt of 1711 had been enforced before the cession, against the Seigniors, judgments are commonly referred to which condemned Seigniors to concede ; but certainly not otherwise than as our Courts would do, in like cases, to-day. Upon *billets de concession* granted by them, some Seigneurs had been condemned to concede, as upon promises of sale now-a-days a man may be condemned to sell.

The *veuve* Toupin's case does not condemn Seigneurs to concede.—P. 39, Vol. 2, Seign. Documents.

The *veuve* Toupin's case was not before the tribunal of the arrêt of 1711.

It was decided *before* the arrêt of 1711 was registered !

The *veuve* Petit's case is sometimes referred to.—P. 72, Vol. 2, Seign. Documents. The judgment in this case is the only one which was rendered by the Governor and Intendant conjointly. It was rendered by the Governor and Intendant conjointly, and that is the only respect in which it can be pretended to be evidence of the arrêt of Marly having been carried into working. All the other judgments that ever have been invoked against the Seigniors were manifestly not rendered by tribunal resembling even so far the one of the arrêt of Marly. The *veuve* Petit's case was one of a very special character ; the demand originated in a grant of land by the Nuns of the Hotel Dieu, in June, 1698, to Martin Le Pirs. The Sieur Petit appears to have acquired Le Pirs' rights. Sieur Petit moved against the Nuns who had taken possession of the land, and in 1720, obtained a decree against them that they should grant him the said land. After Sieur Petit's death, his widow moved, upon the said decree, that the Nuns should be held to pass a deed of the land to her as having been *commune* with her husband deceased, and as tutrix to his children. The Nuns were ordered to pass a deed accordingly, but refused to do so, or to give up the land, whereupon followed the sentence whereby the Governor and Intendant granted the land to the *veuve* Petit, who afterwards got possession. The Nuns were

merely ordered to give up what they had granted. The case had nothing to do with the arrêt of Marly. And all the other cases referred to usually by the opponents of the Seigneurs had yet less to do with it.

And this is the amount of all that can be found to prove that the arrêt of 1711 was in force, and used up to the cession!

It is asked by the Attorney General whether the arrêts of Marly were laws of public policy, *d'ordre public*, and whether private individuals by contracts could contravene those laws.

What laws are *d'ordre public* is not well settled. All laws have for object the *intérêt public*, says *Solon*. There are public laws *d'ordre public*, and public laws not *d'ordre public*, and there are private laws. The law of Normandy prohibiting community was a law public and *d'ordre public*. Such a prohibitive law would be in vain stipulated against. Laws affecting all the lands in the country might be public laws without being *d'ordre public;* a law prohibiting all Seigniorial tenures would be both.

A law affecting particular classes of persons though large would be a private law.—Dwarris, p. 629.

Some public laws are made with a view only to individual private benefit.

Solon, tom. i., p. 4, says:

Les lois ayant toutes pour objet l'intérêt général ou l'intérêt particulier les nullités que le législateur a attachées à l'inobservation de leurs dispositions, sont aussi ou d'ordre public ou de droit privé. On les distingue les unes des autres en ce que les premières ne se rattachent que secondairement aux intérêts particuliers, *primario spectant utilitatem publicam, secundario privatam;* tandisque les secondes sont principalement portées en vue de l'intérêt des citoyens pris individuellement, primario spectant utilitatem privatam, secundario publicam; ces dernières sont l'effet de la contravention aux lois dont l'objet est principalement de régler les actes et les transactions des citoyens entre eux.

Some hold that the arrêt of 1711 was a law merely *de droit privé*, that it only had reference to the individual relations between Seigniors and censitaires —to *intérêts particuliers*. *Hocquart* seems to have so held. The evils it refers to are stated as being suffered not by the public, but by those *habitans* wanting concessions, and in favor of these particular individuals was the arrêt made.

If, upon the transactions which have been made since the arrêt of 1711, there be doubt, owing to the arrêt, whether they be valid or invalid, all presumptions that can be, must be presumed in favor of the validity of the *actes*, and as if the arrêt was *de droit privé* only; according to Solon, No. 23, p. 12, tom. i.

By the arrêt of 1711, no *défenses* whatever are enacted. Nullities must be *écrites dans la loi*.—No. 482, tom. vii., Toullier.

Even where the legislator does *defend*, it is held that merely defending he does not mean to declare the nullity absolutely of things done contrary to the *défense*. Toullier, tom. vii., p. 580, No. 491.

Mere public laws may be stipulated against; that is, private persons may abandon rights under such, *modus et conventio vincunt legem*.

If for the private advantage of individuals, proposing settlers, something was ordered against the Seigneurs by the arrêt of 1711, surely acts agreed upon between Seigneurs and censitaires shall be supported where society is not troubled by such agreements.

As Seigneur dominant and vassal could make what contractsthey pleased (not *contrà bonos mores* or against law) so the Seigneurs and censitaires could in Canada, up to the cession. There was no law against their so doing.

Their contracts once made could only be changed by mutual consent. Guyot, Fiefs, p. 6, tom. 5, says:

"Un premier principe, vrai et immuable, que Dumoulin nous donne §2, hodie 3, glos. 4, No. 30, et qu'aucun docteur n'a désavoué est que le seigneur potest concessioni suæ adhibère modum quem vult; le seigneur concède sous telles conditions qu'il lui plait, c'est au vassal, disons mieux à celui qui demande la concession à accepter ou à refuser. Le contrat une fois fait, il est irrévocable par l'un ou par l'autre seul."

Some hold the arrêt of 1711 as having been *de droit public*, and *d'ordre public*, and penal; this view of it may be defended certainly.

It orders against Seigneurs refusing to concede *à titre de redevances* that the Governor and Intendant shall concede their lands to the proposing censitaire, (Plaintiff) *aux mêmes droits imposés sur les autres terres concédées dans les dites seigneuries lesquels droits seront payés par les nouveaux habitants entre les mains du receveur du domaine de sa majesté en la ville de Québec, sans que les seigneurs en puissent prétendre aucun sur eux, de quelque nature qu'ils soient.*

So, it orders a confiscation against the Seigneur as for transgression of the provisions of the arrêt.

Dwarris defines a penal law as follows:

P. 642.—"Penal statutes are such Acts of Parliament whereby a forfeiture is inflicted for "transgressing the provision therein contained."

As said before, the Seigneurs are safe, whichever of the two views this Court may take of the *arrêt* in question.

The Court is called upon to pronounce whether or not these arrêts of Marly have been in force here since the cession.

It cannot be shewn that the arrêt of 1711 ever was enforced up to the cession, —certainly it has not been since. It is not in force, and has not had force since the cession. As regards the arrêt of 1732, it may be said to have also fallen into *désuétude* before the cession. Certainly it has not as prohibiting sales of lands *en bois debout*, been enforced in the ninety years since the cession. It could not have had force after the cession. The British public law must have freed the Canadians from any obligation to observe such an arrêt. Probably a hundred thousand sales have been made in Canada contrary to the arrêt of 1732, since the cession; all of them sales such as those declared absolutely null and void by it. It is hard for any lawyer to suppose that a defendant purchaser since the cession of a tract of land *en bois debout*, sued for the purchase money, keeping the land, may repel the action and obtain a sentence declaring null the deed of sale. Equally hard to suppose that in a case like this, and where the price has been paid, the crown could to-day obtain a sentence ordering the seller to restore the price, and the purchaser to give up the land to be confiscated in favor of, and to be united to the King's domain, in terms of the arrêt of 1732! There is no more law, however, to justify the holding that the arrêt of 1711 has been in force since the cession than that this arrêt of 1732 has been in force. Either both have been in force, or neither has.

The Seigneurs contend that, since the cession certainly, all have been free to make their bargains notwithstanding the arrêts referred to.

No tribunal has existed in Canada since the cession, such as enquired about in the twenty-second question of the Attorney General. No Court to-day exists having the power and jurisdiction of the tribunal created by the arrêt of 1711. So much the better for the censitaires, it is said, because "if no such Court has "existed they will yet be in time to complain of illegal or oppressive rents;" as if, for such complaints, we had ever in Canada been without Courts! Before 1711 there were Courts competent to entertain and dispose of such complaints; up to the cession there were, and since there have been. The tribunal of the arrêt of 1711, as before remarked, had *no right*, and if it existed to-day would have none to entertain such demands; that *arrêt* was not needed to constitute tribunal for them, the tribunals then existing having power and jurisdiction sufficient for the purpose. For *actions rescisoires*, or *en nullité*, or in abatement of illegal rents, the Courts to-day—the Superior Court for instance—exists and has jurisdiction.

If high rents have been illegal, and reducible at any time since the cession, suits to have them declared illegal, or to have them reduced could always have been brought in the ordinary Courts.

The 39th and 41st Questions of the Attorney General enquire as to whether certain reservations and prohibitions contained in concession deeds are valid.

These reservations and prohibitions are all legal.

No Custom was more favorable to the censitaire than the *Coutume de la Rochelle;* yet it allowed all such reservations and servitudes.—Tom. i., pp. 37, 49, Valin.

In this Custom they adopted *lods* as *per* the Custom of Paris, at one-twelfth, yet allowed a higher rate of *lods* to be stipulated; as, in fact, was allowable also in the Custom of Paris, notwithstanding that the text of an article fixed them at one twelfth of the purchase money.—See Grand Cout. Par., tom. i.

Valin, tom. i, p. 113.—"Avant toutes choses il ne sera pas indifferent d'observer néan- "moins avec Brodeau sur l'art. 76 de Paris d'après Ricard sur le même article que par quel- "que convention particulière le seigneur peut être fondé à percevoir les lods et ventes à un "taux plus avantageux pour lui; mais qu'il faut pour cela un titre valable."

High *cens*, or low ones, were allowed in the Custom of Paris, and *cens* might even be stipulated to be higher in some years than in others. [Arg. from the law, and from Qu. d'Olive, p. 189.]

The Seigneur in the Custom of Paris might reserve to re-enter into the land conceded whenever he liked.—Tom. 1, p. 1066, Gr. Cout.

To change the time and place for receipt of his dues he did not require the benefit of any reserve, but under such a reserve certainly he could change them.

No nullity is pronounced against any reservations, such as in the thirty ninth Question of the Attorney General referred to by the Custom of Paris, or any other law.

Titres particuliers make the best titles, and the first for the Seigneurs against their *censitaires*. The Custom is the Seigneur's second title. In the *nouveau* Denisart, tom. 7, Vo. "*Droits Seigneuriaux*," it is so stated:

" Il n'est pas douteux que le contrat d'investure en fief, ou d'accensement, ne soit le pre-
" mier titre capable d'assurer l'existence et l'étendue des droits dont un héritage est chargé
" envers le seigneur. La concession en fief ou à ceux étant comme tout contrat synallagma-
" tique, une convention qui intervient entre deux personnes, il leur est absolument libre d'y
" opposer toutes les clauses et conditions qu'il leur plait."

" La coutume tient le second rang entre les titres dont le seigneur peut augmenter. A
" défaut de conventions particulières sur un objet, les parties sont censées s'en être rapportées
" à l'usage du pays, consigné dans la coutume."

In § IV. he treats of possesion, and he says :

" En général, la seule possession suffit pour assurer au seigneur contre son vassal tant les
" droits extraordinaires dont il a joui que la qualité et les accessoires de toute espèce de
" droits."

The Seigniors in Canada have always been as free to make reserves in granting their lands, as have been the owners of free and common soccage lands, or rather they have been more free. The reserves by the Seigneurs in the concessions granted by them have always been considered part and parcel of the consideration agreed upon for the concession.

With respect to *corvées*, it has been pretended that they are illegal, but they were expressly recognized in the Custom of Paris.—See Art. 71, also Prat. Univ. des Terriers, tom. 2, p. 609.

Hervé, tom. 1, p. 384, ranks them among the *drcits accidentels du fief.*

Valin. Comm: sur la Coutume de Rochelle, tom. i, p. 37, says :

" Le droit de corvées vient de la méme source que celui de la banalité."

" Ce droit n'a pu être légitime dans le principe, qu'autant que le seigneur se le sera
" reservé, soit en concédant à la communauté des habitans une certaine quantité de terre en
" bois ou marais pour leur chauffage, ou pour la pâturage de leurs bestiaux, soit comme une
" charge expresse des accensemens qu'il aura faits."

All that was required to give them validity was *titre*—that is, stipulation of them. They have always been known and allowed in Canada.

The Seigneurs in Canada have their properties secured by titles having all the elements of *perfect* titles—they have firstly, for all that they claim, *titres*, secondly, *la coutume*, and lastly possession uninterupted in the case of many of them, during upwards of one hundred and fifty years, and in the case of the most unfavorable of them during from thirty up to ninety years. Such possession should be of itself sufficient to make for them a very respectable title.

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