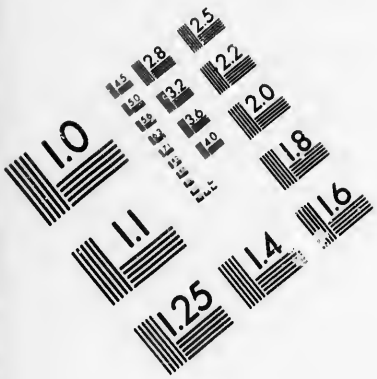

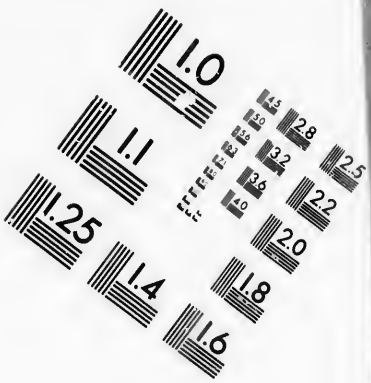

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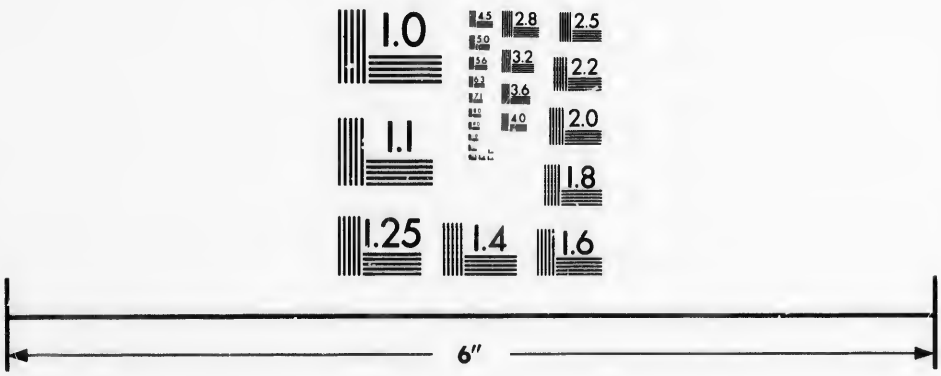

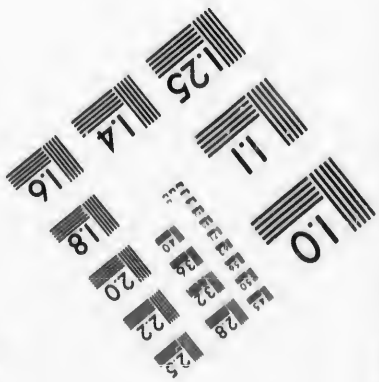

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CANADIAN PARLIAMENT.

LEGISLATIVE ASSEMBLY,

QUEBEC, MARCH 11, 1853.

ADDRESS OF C. DUNKIN, Esq., before the Legislative Assembly of Canada, on behalf of certain Seigniors, petitioners of the Honorable House against a Bill introduced by the Hon. Mr. Attorney General DRUMMOND, entitled "An Act to "define rights of Seigniors and Censitaires in Lower Canada, and to facilitate re-"demption thereof."

MR. SPEAKER: On behalf of the petitioners proprietors of Seigniories in Lower Canada, I appear before you to represent certain objections which they feel themselves justified, in urging to the further progress of the bill, which has just been called up before this Hon. House. And surely I do not say anything extraordinary when I declare that I appear before you with a good deal of embarrassment, and even of regret. I am before a tribunal certainly of an extraordinary—certainly also of a very high character; and I have to contend against strong prepossessions and powerful interests. I have to speak on behalf of clients, few in number, and of extremely small influence in the community; and I feel that I labour under difficulties of a peculiar character, as well from the physical impossibility of speaking in both the languages used by members of this Hon. House, as from other causes. I should be happy, were I able to do so, to address the House in both languages; but I know that those members whose language I do not use will be capable of understanding me, and I trust they will feel that my failure to address them in their own tongue proceeds from no disrespect. One other regret also I have on this occasion; it is that I am obliged to stand here alone. The season of the year and the feeble health of the learned Counsel—greatly my superior—who has been associated with me, have prevented him from appearing before you, and nobody more than myself feels how impossible it is for me to fill his place. But I have not felt that I had a right to decline on this account to give my services when required; and I have not shrunk from my duty, because, though I feel my inadequacy, I also feel great confidence in the fairness of this high tribunal. I believe that its members will listen patiently, honestly, and impartially, because of their high position, and in spite of the insignificance of him who speaks; and I am so convinced, indeed, of the truth of what I shall say, that I do not believe I shall speak in vain.

Let me say here, and say earnestly, that I do not stand here as the apologist for the Seigniorial Tenure. I have nothing to do with its merits, if it have any, nor with its demerits, be they what they may. I am not here the partizan of a system; but the advocate of individuals whose misfortune it is that their property is of a peculiar character. As their advocate I speak merely of law; I have to convince you that these my clients are really proprietors, who have entered into contracts, who have rights recognized and guarded by the law, which rights I do feel that this measure will most injuriously affect. When I take this position I speak under the sanction of the speech from the Throne, and the reply of this Honorable House. I know that it is a position to which every branch of our Parliament is pledged; that it is admitted, that no rights of property must be disregarded, nor legal decisions of Courts set aside. Thus speaking then—under these sanctions—in spite of prepossessions, notwithstanding the measure I oppose is introduced by an Honorable Member of an Administration generally understood to be strong enough in the confidence of this House to carry its measures—I still have confidence in the justice of my cause and in this High Tribunal—I still believe that I shall not labour in vain.

I shall lay before the House and the country facts not generally known. A good deal has been published to the world since this subject was last discussed, which had previously been obscure. Several volumes have been printed which contain the greater part of the titles of the Seigniories of Lower Canada; and besides these, reports in both languages of a number of *arrets* which had never previously seen the light. There have also been published considerable extracts from the correspondence of the high officers of the French Government, of the Governors and Intendants in Canada, the Ministers of State, and even of the Sovereign, and it is my belief—my full and firm belief—that from these titles now first placed in a position to be understood—these *arrets* now first made known—this correspondence now first opened to historical research and legal deduction—a case can be made out, which could never before have been made out. I have not the vanity to hope that I shall be able to do this by merely drawing new arguments from old facts; but I have studied these documents as attentively as possible, and as I believe none other ever did study them, and it is upon this close examination that I found my opinion. They are arranged not in order of time, nor of place; and the French and English versions are not even arranged in the same order. This I mention to show the difficulty of studying them, and from no intention of imputing blame to those who compiled them. In going over these volumes I soon found that to understand these documents it would be necessary to arrange them in the order of their dates, and I have therefore so done. Thus arranged, I have carefully gone through them all, and have ascertained with tolerable accuracy to what Seigniory each title referred. I think I have made out a nearly perfect list; that I understand all the titles; and I now say that from this examination of the whole, and from the comparison of each part with the other,

I have been forced to conclusions to which I never thought I should arrive,—to the conviction that the fact in regard to this question is that which very few people of late years, have believed.—I enter into these explanations because I may be thought to owe an apology to the House for laying down propositions, for which those who have not studied the subject so carefully as myself are not prepared: If I fail to bring forward good reasons, on my head be the responsibility.

I believe there is no question of the truth of one proposition—that it has of late been held as the fixed tradition of the country that the Seignors are not proprietors—are not what an English lawyer would be called holders of freehold estate; but are rather trustees bound to concede at low rates of charge to all who apply to them for land. On this proposition alone can the provisions of this bill possibly be justified. If this be properly held, I admit that much is to be said in favour of the measure. If the Seigniors were originally merely trustees bound to concede at low charges and reserves, it may follow that only a moderate degree of mercy should be dealt out to them. Still even on that head much may be said, owing to the peculiar position, in which they have stood since the cession of the country. It would have been easy—and it is common—to object to the measure before the House on this ground; for, supposing even that before the cession seigniors were bound to concede without exacting more than a certain rent, or reserving water courses, wood, *banalité*, or anything else, still it may be argued that for ninety three years the machinery of such old law has ceased to exist; that the courts and the legislature, and the government have treated these persons as absolute proprietors and that thus they have changed the properties the tenure, and placed the Seigniors in a new position. That being so, it has been argued, and I think properly, that it would be hard to fail to respect those rights of property which a usage of ninety years has established. My duty to my clients and to truth however, lead me not to stop short with this argument. It is my duty to object altogether to the proposition on which it is attempted to defend the present bill; and I do now distinctly deny the proposition that the seigniors are to be looked on as trustees of the public—as agents bound to discharge duties of any kind whatever. My proposition, on the contrary, is that the Seigniors are and always have been proprietors of real estate; that whatever interference may ever have taken place with reference to their property was arbitrary, irregular, inconsistent with principle, and not equal in extent to the interference exercised over the property of the *censitaire*. The grants to the Seigniors were grants of the soil, with no obligation like that supposed; and though during certain periods their property was interfered with, it was never interfered with to the extent to which similar interference took place in respect to the property of the *habitant*. If the Seigniors were not holders of property there were no such holders; if they were not proprietors, there were none who could consider themselves so. I am aware that in this statement I run counter to the traditions of late currently held—to doctrines which are supported by the authority of men for whom I have the highest respect, and from whom I differ with reluctance; but from whom I dare to differ nevertheless, because I believe I have looked more closely than they have done, or could do, into the titles and *arrets* which form the evidence on this subject. I neither reflect on their ability nor on their integrity—I do not doubt the honesty of their conclusions; but yet I see that their doctrines were well fitted to obtain popular credence, because it is always popular to tell the debtor that his obligation is not justly incurred. I do see that certain circumstances have given currency to opinions that will be found on examination as destitute of foundation, as any the most absurd of opinions ever vulgarly entertained.

If the Seigniors be trustees and not proprietors, this much must be conceded—that their capacity of trustees must arise either from the incidents of the law in France before their grants; or from something which took place at the time of making the grants—from something done here in the colony or by the authorities in France before the cession; or, lastly, from something done since the cession of Canada to the British crown. On all these points, I maintain that there is nothing to show the Seigniors were trustees, and not proprietors—everything to show that whatever interference was exercised over their property was of an abnormal character.

As to the tenor of the prior French law interpreting the subsequent grants in Lower Canada I will not say much, because, though addressing a tribunal, I am not addressing professional lawyers, and ought not therefore to talk too abstruse law. I shall therefore go as little as possible into details; but venturing as I do on a position which professional men will and must attack, it is necessary for me to state some reasons in support of the conclusions to which I come.

It would be a singular thing, considering what we know of France, if in the seventeenth and the early part of the eighteenth centuries any idea should have been entertained by the French crown and government of creating a body of aristocratic land-holders as mere trustees for the public, especially for that part of the public which was considered so low as to be unworthy of attention. For ages, indeed down to the great revolution in the 18th century, the doctrine which prevailed in France was a doctrine which made public trusts a property, certainly not one which made of property a public trust. The Seignior who was a *Justicier* was the absolute owner of all the many and onerous dues, which he collected from the people subject to his control. The functionaries, even, whom he employed to distribute the justice—such as it was—which he executed, held their offices for their own benefit—bought them and sold them. Trusts were then so truly property, that the majority of the functionaries of the very crown itself possessed their offices as real estate, which might be seized at law, sold, and the proceeds of the sale dealt with just as though the offices had been so much land. The whole system regarded the throne as worthy of the very highest respect; the aristocracy as worthy of a degree of respect only something below that accorded to the crown; and the people as worthy of no respect at all. Was it at a time when public trusts were property; when the people were only not slaves; when we must suppose that the French King, about to settle a new and great country would seek to introduce the state of things which prevailed in the old country—was it, too,

when the King was here creating Seigniors *Haut Justiciers*, and raising some of them to high rank in the peerage; that he gave the grantees what only purported to be property and was really a public trust, and this trust to be executed in behalf of a class for whose welfare the king cared nothing? The idea is natural to us, because we associate the power of the crown with the happiness and welfare of the people governed. We are so sensitive that we almost shrink when speaking of the lower orders, from calling them by that name; but this was not so then. Then the people were emphatically the lower orders, or rather they were hardly an "order" at all. This was the state of things here at the time of making these grants.

Now, under the French system, there were four principal modes of holding real estate. It was sometimes held under certain limitations. All who did not hold by the noblest and freest tenure, may be said (if one wants to use a modern term) to have held in trust; but not for the behoof of those below, but for that of those above them. Some property in France and in Lower Canada was held in *franc aleu noble*—free land held by a noble man—held by a noble tenure, of no one, and owing no faith nor subjection to any superior. There was again another kind of property held in *franc aleu roturier*—a property incapable of the attributes of nobility, but in other respects free. A third description was that held in *fief* or *seigneurie*; and lastly there were lands held *en roture* or *en censive*. But all these kinds of property were alike real estate held by proprietors. The holder in *franc aleu noble* held by the most independent tenure possible, which admitted of their disposing of their land in whatever way they pleased. The holder in *franc aleu roturier* held as freely; with this reservation only, that he could not grant to inferiors retaining feudal superiority. The holder *en fief* was bound to his superior, and could grant to inferiors under him; and the holder *en roture* or *censive* was bound to his superior, but could have no inferior below him.

As to the essential character of the contract involved in the granting of land *en fief*, I refer here to one authority only, that of Hervé, the latest and perhaps most satisfactory writer on the whole subject of the Seigniorial Tenure. In his 1st vol. p. 372, he says, speaking of this contract: "*il doit être définie une concession faite à la charge d'une reconnaissance toujours subsistante, qui doit se manifester de la manière convenue*"; "it "must be defined to be a concession made "subject to the charge of an always subsisting "acknowledgment, *which must be manifested in "the manner agreed upon.*" This then is the essential of the contract—a superior holding nobly grants to an inferior who admits his inferiority and acknowledges it—how? Why, observe—*in the manner agreed upon*. The kind of acknowledgment is the creature of the agreement between the parties. Here, again, is the definition of the holding *à titre de cens* taken from the same author, vol. 5, p. 152. "*Cést le bail d'une "portion de fief ou d'alleu à la charge par le preneur de conserver et de reconnâitre, de la manière convenue, un rapport de sujétion toujours "subsistant entre la portion concédée et celle qui "ne l'est pas, et de jouir roturièrement*;" it is "the grant of a portion of a *fief* or *aleu*, subject to "the charge upon the taker of maintaining and "recognising, *in the manner agreed upon*, a relation of subjection ever subsisting between the "part conceded and that not conceded, and of "holding as a *roturier*." The holder *en roture* was a proprietor, but he must always recognize his chief—he was a commoner, while the holder *en fief* held as a noble. Both tenures were creatures of contract. In some parts of France some customs, in others other customs prevailed, and in the silence of contracts the customs governed the relations between the parties. That custom which regulated everything in Lower Canada is well known to be the *Coutume de Paris*; and under that, as indeed under most customs, the grantor was at liberty to grant on all kinds of conditions, and the appeal was only made to the regulations of the Custom in the absence of contract. Particular customs prohibited certain conventions; but in general men granted whether *en fief* or *en censive*, as they pleased, only observing not to transcend certain conditions of the custom to which they belonged.

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

Indeed, subsequently, still further relaxation came to be allowed. Within varying limits the holder *en fief* became entitled to alienate without dues accruing to the Lord. According to the custom of Paris this point was regulated in a very precise manner; the holder of a *fief* being at liberty to sell, grant or otherwise alienate two thirds of his *fief*, if he only reserved the *foi* to himself—that is to say, if he held himself still as the master of the whole, and retained some real right, large or small, over the land. He might take the value either in yearly payments or one sum of money, provided he only retained something payable annually in token of his feudal superiority and provided also he did not dispose of more than two thirds of his holding. In Brittany and elsewhere the whole of this system of disposing of *fiefs* was unknown. There the lord could not sell part of his *fief*. He could either grant it nobly or *en roture*; but could take only a small cash payment; and supposing he had ever granted land at a particular amount of rent, he could never afterwards grant it at a less rent, and this for the reason that the interests of his superior in the land was affected by the amount of the permanent rent. Thus he had the right to demand that the holder below him should not make away lightly with his property—that the value of his property should be

kept up. That was the restriction in these customs; but it did not exist in the custom of Paris.

No lawyer will deny that by the law of France all the obligations on holders of land were in the interest of the lord and not in that of his inferior. It was not then the fashion to think of the inferior at all; but only to take care that the chief was not cheated by his vassal, nor the Seignior by his *censitaire*. This doctrine thus held in France was equally recognized in England by *Magna Charta*, which was to a great extent identical with the custom of Normandy. One of its articles provided that no free man should grant away so much of his land, as that enough should not be left to enable him to fulfil all his duties to his lord. Here it was plain that it was the lord who made the demand—that it was he who claimed from his vassal the retention of so much land as was necessary for the service of the lord. In those days there were no objections made to wide spread properties in the hands of individuals. Individuals held most extensive possessions and cultivated them by dependents of all grades, for their own benefit; not at all for that of their subordinates. The higher classes alone were regarded, and it would have been strange, if the crown had created a class of nobility and granted them large tracts of land, and yet had intended that they should be mere agents for classes below them—for classes for which the rulers cared not.

I now pass to the consideration of the terms of the grants made in Canada, and of the jurisprudence which prevailed from the settlement of the country to its cession. The period being a long one, I may divide it into three parts—the first ending with 1663, when the Company of New France or the hundred Associates was dissolved; the second from that period to the passing of the *arrets* of Marly registered in 1712; and the third, from thence to the cession of the country to the crown of Great Britain. If throughout these periods there can be found any thing adverse to these antecedent dispositions of the French law, I am greatly mistaken.

In 1627 or 1628, the French Crown after several previous attempts, resulting in nothing, to settle Canada, created the Company of one hundred Associates with extraordinary prerogatives. The terms of this grant are to be found in one of the volumes printed for this House; by it the King granted in full property all the country of New France or Canada. The document sets forth:—

"And for the purpose of repaying to the said company the heavy expenses and advances necessary to be made by the said company, for the purposes of the settlement of the said colony and the support and preservation of the same, His Majesty will grant to the said associates, their heirs and assigns forever, in full property, with right of seigniory, the fort and settlement of Quebec, with all the country of New-France called Canada, &c., together with the lands within, and along the rivers which pass therein and discharge themselves into the river called Saint Lawrence, otherwise the Great River of Canada, and in all other rivers which flow therein towards the sea, together also with the lands, mines and minerals, the said mines to hold always in compliance with the terms of the ordinance, ports and harbors, rivers, ponds, islands and islets, and generally all the extent of the said country, in length and in breadth, and beyond as far as it will be possible to extend and to make known the name of His Majesty,—His Majesty merely reserving the right of Fealty and Homage, which shall be rendered to him and to his royal successors &c."

"It will be lawful for the said associates to improve and deal with the said lands as they may see meet and to distribute the same to those who shall inhabit the said country and to others, in such quantities and in such manner as they may think proper; to give and grant them such titles and honors, rights and powers as they may deem proper, essential and necessary according to the quality, condition and merits of the individuals, and generally upon such charges, reserves and conditions as they may think proper. But nevertheless, in case of the erection of any duchy, marquisate, county or barony, His Majesty's letters of confirmation shall be obtained upon the application of his said Eminence the grand-master, chief and general superintendant of the trade and navigation of France."

There then was a grant made in 1628 to a commercial Campany, with most extraordinary privileges. They were to make war or peace; to have fortresses, in fact to be clothed with all the attributes of sovereignty; and it is provided that all limitations which might appear to be made by the Custom of Paris, or otherwise, were to be dispensed with. They were to grant to anybody and everybody on just such terms as they pleased. There were grants made before this period; but none of them seem to be in force; so that I begin with this grant to the Company as affording the key idea which interprets and governs all that follow. The Company granted, under this ample charter, a considerable number of Seigniories between the years 1628 and 1663. By examining the printed titles and adding several others obtained elsewhere, I have found out in all sixty one, of which sixteen are either duplicates or have never been taken possession of, or have been forfeited. Forty five are thus still in force, and of these thirty five are in the documents laid before this hon. House. The total grants in Lower Canada are about two hundred and eighty. The Company's grants, therefore, form about one sixth of the whole of those now existing. These grants cover an extent of nearly 3,000,000 of arpents, according to the estimate of a gentlemen of great accuracy in these matters, and as all the lands in Seigniory amount to some 10,000,000 of arpents, the quantity granted by the Company is not far from one third of the whole. Of these grants three contain also grants à *titre de cens*, and one of these is a grant to Robert Giffard, of the Seigniory of Beauport; it is dated January 15th 1634, and sets out that the Company "being desirous to distribute the lands" of Canada, "give and grant "by these presents the extent and appurtenances "of the following lands: to wit: one league of "land along the bank of the River St. Lawrence, "by one league and a half of depth on the lands "situated at the place where the River Notre "Dame de Beauport falls into the aforesaid river, "including the river (Notre Dame) to enjoy "the said lands, the said Sieur Giffard, his "successors or *ayans cause*, in all justice, property "and seigniory forever, with precisely the same "rights as those under which it has pleased His

" Majesty to grant the country of New France to " the said Company." Is not that an irrevocable and absolute grant of property? I think if there are words which can convey such a grant I have just read them. But the grant conveyed other property; it gives another piece of land *à titre de cens* in the following terms. " Besides which " things the Company has also accorded to the " said Sieur Giffard his successors or *ayans cause* " a place near the fort of Quebec, containing two " arpents for him there to construct a house with " the conveniences of a court yard and garden, " which places he will hold *à cens* of the said place " of Quebec." The strong expressions contained in the other grant are not in this. I of course do not mean to say that this was not a grant of property; but when I have the much more extensive expressions of the other portion of the grant, I cannot believe that they were not meant to give the most absolute property. If one was a grant of property, which cannot be denied, the other was such a grant ten times over. The one was a grant made as to a commoner; the other of all kind of property, with right of justice and lordship over the tract of country comprised within it.

The following are the conditions of the grant of Deschambault (*Pieces et Documents* 375):—

" We have, to the said Sieur de Chavigny, given, granted and conceded, and in virtue of the power conferred on us by His Majesty's edict for the establishment of our Company, do by these presents give, grant and concede the lands and places hereinafter described, that is to say: two arpents of land to be taken in the place designated for the city and banlieue of Quebec, if there remain still any unconceded lands therein or adjoining the same, to build thereon a dwelling with a garden where he may reside with his family; moreover, thirty arpents of land to be taken outside the said banlieue of the said city of Quebec and close to the same, in the lands not yet conceded;—

" And have moreover to the said Sieur de Chavigny given, granted and conceded, and by these presents do give, grant and concede, in virtue of the power conferred on our said Company, half a league of land in width, to be taken along the said River St. Lawrence above and below Quebec to commence from Three Rivers only, down to the mouth of the said river, by three leagues in depth inland, either on the side where Quebec is, or on the other shore of the said river, as the said Sieur de Chavigny may desire; to have and to hold, unto him, his successors and assigns, the above conceded lands, in full property, and possess them, to wit: the said two arpents of land in the city and and banlieue of Quebec, and the said thirty arpents near and outside the said banlieue, in *roture*, subject to the payment of one *denier* of *cens*, payable at the Fort of Quebec, every year, on the day which shall hereafter be appointed, the the said *cens* bearing *lods et ventes, saisine et amendes;* and the said half league on the River St. Lawrence by three leagues in depth inland in full property, jurisdiction and seigniory, also for ever, unto him, his heirs and assigns, subject nevertheless to the condition of fealty and homage."

Here again one property was granted *en fief*, and another *en roture*—both as real property; but one a very much higher kind of property than the other. On page 351 (*edits et ordonances*) I cite the original French copy throughout—will be found a grant of a different kind—one of the grants *en roture*, to a Mr. J. Bourdon. In this document the grant set forth is of " an extent " of about fifty arpents, of land covered with growing wood, situate in the banlieu of Quebec to have and to hold the same unto him, his heirs and assigns, fully and peaceably, in simple *roture*, under the charges and *censives* which Messieurs of the Company of New France shall order, on condition that the said Sieur Jean Bourdon shall cause the said lands to be cleared, and shall allow the roads which the officers of Messieurs of the said Company may establish to pass through his lands, if the said officers judge it expedient, and that he shall take a title of concession from Messieurs of the said Company of the said lands by us granted to him: The Company has confirmed and hereby confirms the said distribution of land, and as far as may be necessary, has granted and conceded it anew to the said Jean Bourdon, to have and to hold the same unto him, his successors or assigns, under the said charges and conditions above mentioned, and moreover subject to the payment of one *denier* of *cens* for each arpent every year to be computed from the date of the said grant." The same restrictive characteristics mark all the grants of lands *en roture*. The expressions conveying property, in the grants of *fiefs* are always incomparably stronger than in these.

No less than twelve of the grants by this company contain expressions equivalent to that which I have read from the grant of Beauport, conferring the same rights as the Company had from the King. Amongst the seigniories thus granted were the following, viz: In 1634, Jany., 15th Beauport; Feby., 15th; a *fief* to the Jesuits—in 1636 Lauzon, Beaupré, and Isle d'Orleans—in 1640 part of Montreal and St. Sulpice—in 1652 Feb., 8 Guadarville—1653 March 31 Augmentation of Beauport; Nov. 15, Mille Vaches, and the augumentation of Guadarville; Decr. 15th Neuville or Pointe aux Trembles—1658, the remainder of Montreal. Of these, Guardarville was granted for the purpose of inducing the grantee to defend a dangerous post. There are three other grants in *franc aleu*, words which absolutely relieved the holder from any obligation, except those to which he was liable as a subject of the French crown; feudal superior he had none. Several other grants were made in *franc almoyne* to religious bodies, on condition of their giving an honorable place to members of the company at the performance of mass on certain days of ceremony, of taking care of the sick, &c. Many exempted the owner from the duty of paying a *quint* on mutations, and thus gave him the power to part with the property exactly as he pleased. A large proportion of these grants contain the words *en pleine propriété*, and not one excluded the notion implied in those words: Several expressly grant some river or some rivers; many had the words " all the rivers"; and of course when the company granted with the same rights as they held themselves from the the crown, they gave the rivers, mines, minerals and everything else. So far did these grants go indeed, that in some cases it was even thought necessary to make a reserve of this kind—" The Company does not intend that the present con-

cession should prejudice the liberty of navigation which shall be common to all the inhabitants of New France." This clause was to be found in the grant of Montreal in 1640 (p. 365 *pieces et documents*); and similar provisions were to be found in other grants, shewing clearly how perfect was the property intended to be given, when it was thought necessary to reserve such rights as these. In several of these grants this clause goes on to provide that the seigniors should charge no duty on ships passing their lands on the St. Lawrence. Were not men, in whose grants it was thought requisite to reserve even the great rivers of the country, intended to be proprietors of something? These grants were from 1640 to 1659, and were in all no less than nine, which in various ways reserved the navigation of the St. Lawrence. They were the grants of Deschambault; part of Montreal, & St. Sulpice; Riviére du Sud; D'Autré, augmentation; Portneuf; Repentigny, Lachenaie & L'Assomption; Becancour, augumentation of Deschambault; and the remainder of Montreal. Besides these nine, other similar remarkable reservations of which I cannot mention, every detail, occur in others of these thirty-five grants. Among these reservations, some forbid the erection of forts; and a number of the grants imply the intention of the grantee to apply for titles of honour. The Company of New France could not grant this privilege to its cessionaires without application to the crown, and the grants, therefore provided for the grantee applying for that favour.

There is of course no question but that all these grants implied the duty of settlement and clearing of the land—that when the crown granted land, the grantee was to take possession of, and make use of it. If not, the contract was not fulfilled; and either the crown, or the company—in case the Company were the grantor—might take it back, as if it had never been given. This I admit; all I contend for is, that the grantees were not bound to settle the land in any particular manner—that they were lords and masters, not obliged to concede *en arriére fief* nor yet *à cens*. There were physical difficulties in the state of the new country which rendered it impossible to carry out in it the manners of the old; but these were circumstances of geographical position, not restrictions of law. The law imposed no restraint whatever; and as to the grants, very few indeed made any mention whatever of the amount or kind of settlement to be effected by the grantees. In the grant of Deschambault, *Pieces et documens* p. 375, it was provided the grantee "shall send at least "four working men to commence the clearing, be- "sides his wife and servant-maid, and this by the "first ships that shall sail from Dieppe or La- "Rochelle, together with the goods and provisions "for their support during three years, which "shall be gratuitously brought and carried for "him to Quebec in New France, on condition "that he send the whole on board of the "ships of the said company at Dieppe or La- "Rochelle." There was thus a consideration for this grant—not however an obligation to take out emigrants by the hundred—not to concede to all and sundry who might come and demand the land. You could not in those days have induced a man of substance to come out and settle, without giving him a large quantity of land, and no man would have thanked you for such a grant unless he were to be the master of it.

The grant of Montreal shows a similar kind of expectation that the grantees would bring out settlers; but none imply obligation as to the terms on which land should be given to these settlers. Some of them positively limit the power of granting land in a very whimsical manner. Thus in the grant of Beauport in 1634, the land is given "without the said Sieur Giffard, his successors or "assigns, having the right to dispose of the whole "or part of the lands hereinabove granted to him "without the will and consent of the said com- "pany, during the term and space of ten years." So far then from its being the duty of the Seignior to concede, his grant restrains his power to concede. The grant of D'Autré provides that concessions shall be made only to persons residing in new France, or who shall go out there. That of Montreal & St. Sulpice on the contrary limits them to persons not inhabitants of New France, but who shall bind themselves to emigrate there. This shows how various were all these grants, and how adverse to the ideas that then prevailed, must have been the notion that the grantees were bound to subgrant their lands, *à cens*, or otherwise.

Besides, a number of these grants *en fief*, were of tracts of land too small for sub-granting to have been possibly thought of. Isle des Ruaux was a small island granted for purposes of pasturage to the Jesuit Fathers. Another grant was made to one Boucher of two hundred *arpents, en fief*; and another on the Cap Rouge Road, called Becancour, was but ten arpents by one. It appears also that one Bourdon had a house which he called St. Jean, and which was held *en roture*. This the company erected, with sixty arpents of land adjoining it, into a *fief*; no doubt to gratify the proprietor by making his tenure that of a man of rank.

Under such circumstances, can it be imagined that the owner of the *fief* was necessarily bound to concede? No, he was the proprietor, only with a higher social rank and superior privileges than were possessed by the holder *en roture*. It was impossible that such a condition should be thought of. The grantees must sometimes bring people out from France; but the Company could not require them, after they had done so, to make any other bargain than they and the emigrants thought fit to make. The Seignior could grant or not, as he thought proper. The beginning, middle and end of his obligation was, to take possession of his land and settle on it; when he had done this, he might do whatever else he pleased. Again, several of these grants were made to religious bodies for the purpose of securing to them a revenue; a notion altogether adverse to the idea that they were to concede at very low rates.

I have now considered the titles of three tenths of the land held *en fief* in Lower Canada. I pass next to the period between 1663, the date of the dissolution of the Company of New France, and the year 1712, when the *Arrets* of Marly were published. The Company was dissolved because it did little for the settlement of the country; the majority of the Seigniories were not settled, and the French King revoked his grant of 1627, and took the Colony again into his own hands. About the same time several *arrets* were issued

which have been cited as though they imported the revocation of the antecedent grants by the company. Many have thought that because the king said these grants were to be revoked, they were revoked. I admit, some were: indeed all those which do not at present subsist were no doubt taken possession of and granted again.

The first of these *Arrets* is of 1663, March 21, (page 135, of the Third Volume laid before Parliament). In it the king complains of the failure to settle the country and alleges: "that one of the chief causes for the said "country not becoming so populous as he "desired and even that several settlements had "been destroyed by the Iroquois is to be found in "in the grants of large quantities of land which "have been accorded to certain inhabitants of the "said country, who never being able to clear their "lands, and having established their resid nces "in the middle of the said lands, have by this "means found themselves placed at a great dis-"tance from each other, and, therefore, unable to "succour or aid each other." And the *arret* goes on to say that, to prevent this evil, the king ordains that "within six months of the publica-"tion of the present *arret* in the said country all "the inhabitants thereof shall cause to be clear-"ed the lands contained in their concessions; or "otherwise, in default of their so doing within "the time mentioned, his Majesty ordains that "all the lands not cleared shall be distributed "by new concessions in the name of His Majesty; "His Majesty revoking and annulling all con-"cessions of land by the said company still re-"maining uncleared." It might be supposed that this meant something; but almost on the same day there will be found in the old edition of the *Edits et Ordonnances*, vol. 2, p. 26, a document directed to a M. Guadais, a Commissioner of Inquiry. This is dated May 6th, 1633, and in it the king treats the injunction just mentioned as merely comminatory, and never intended to be carried out to the letter. "In case any of "those to whom concessions have been made, "set to work at once to clear them entirely, and "before the expiration of six months as mention-"ed in the *arret*, shall have commenced to "clear a good part, it is the intention of His Ma-"jesty, that on their petition, the Sovereign "Council may grant a new term of six months "only, which being ended he desires that all the "above mentioned concessions shall be declared "null." When the *arret* came to Canada, however, it appears that nothing was done with it the Sovereign Council concented itself with merely having it communicated to the Syndic of the habitans before any thing was done upon it—*avant faire droit*. In fact nothing was done, except as to those concessions already referred to which were resumed and regranted.

In May 1664 the French king granted a new charter to the company of the West Indies, and shortly after this, was written one of the extracts of correspondence lately laid before this House. I feel it necessary to advert to this latter, to show that I have gone over the entire subject. The paper bears the names of de Tracy and Talon, who were at that time Governor and Intendant of the colony. They seem to have been framing a plan for regulating the concessions of lands, and they proposed:—

"That an ordinance be made, enjoining all inhabitants of the country, and all foreigners possessing lands therein, to declare what they possess, either in *fief* of liege homage or of simple homage, in *arriere-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 Seigniors (*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 the subjection due only to the King. * *

"And to avoid any confusion and give the King a perfect knowledge of the changes which shall 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 who shall be distributing their *domaine utile* to *habitans*, unless, (and this as a condition of their validity,) the same be verified and ratified by the official having power from His Majesty, and he registered in the office of the domain of the said company; for whose benefit a land roll *terrier* shall be commenced forthwith."

They were under the impression that [illegible] and which had been made interfer[illegible] of sovereignty; and under this [illegible] was—not to make the Sei[illegible] to throw a certain measure of obs[illegible] ay of their so doing. Whatever might [illegible] tended, however, it would seem to have been [illegible] mere project which came to nothing.

A second *arret* has been cited as proving the zeal of the king to enforce the settlement of the country. This bears date in 1672, and was registered Sept. 18, 1672; it appears only in the old edition of the *Edits et Ordonnances* at page 60. This was issued just at the time when a new governor was coming out, and is really little more than an order to Mr. Talon the Intendant to make a land roll or *terrier*. It recites the too great size of the grants and the insufficient settlements, and then it directs that all proprietors should at once settle on their lands; failing to do which they were to be taken by the crown and regranted to others—not the whole of them, however, but half. The spirit of the *arret* was to say to the proprietors of lands, we see that you have got too much to settle; therefore half must be taken away from you; but the mere fact of this *arret* being issued showed that the preceding one of 1663 was merely comminatory and had not been acted upon. Nor was that of 1672, any more than the other, for almost immediately after, Talon granted a great number of Seignories without going through any formality whatever, for reuniting to the domain of the crown any grants previously made.

A third *arret* on this subject, also directing the escheat of one half of all unsettled lands was issued in 1674, and directed to Mr. Duchesneau the then Intendant; but this again was merely comminatory and never acted upon. Then in 1676 joint powers were given to the Governor and

the Intendant to grant lands; and in 1679, three years latter, there was a fourth *arret* on the same subject, which, like all the rest was a mere threat. The terms of this last were analogous to those of the preceding one, except that it sets forth that the *Papier Terrier* or land roll had really been made. The lands granted before 1665 were to be cleared with all dispatch; if not, they were not as a whole to be forfeited; but one quarter was to be taken off the grants, and one twentieth part yearly every year afterwards. There is not, however, the least trace of this having ever been put in force; it was merely comminatory; neither one half, nor one fourth, nor one twentieth of any seigniory was ever confiscated. All was a dead letter—a threat never executed, nor apparently intended to be executed.

I pass to consider the grants made by the West India Company, or in the King's name, to the year 1712. These grants were very numerous—in all something less than two hundred and sixty, of which some 83 are either not in Canada or for other reasons should be struck off. There remain 176, of which one hundred and sixty four are printed in the volumes before the House Two of those not so printed I have obtained elsewhere. They exceed four seventhe of the grants now in force, and they cover more than four millions of the ten millions of arpents held *en fief*.

That of River du Loup *en bas* is one of those granted by the W. I. Company. It grants "On the south side of the great River St. Lawrence, 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."

The grant of Terrebonne is in similar terms, and both were confirmed by the King in 1674, at the time of the revocation of the charter of the W I. Company. Indeed the clause of the revocation by which these grants were confirmed was of a very extensive nature. "We have rendered "valid, approve and confirm the concessions of "land accorded by the directors, their agents or attorneys, and the particular sales which have "been made of any habitations storehouses, farms "or inheritances." So that by this act, even sales made by the Company were confirmed. Besides these grants by the Company, six in number, there were many in the name of the King during this period by Talon, especially to officers of the Regiment Carignan who were then settling in the country. A number were also granted by Frontenac and by Duchesneau, first separately and then together as Governor and Intendant.—And the remainder were granted by subsequent Governor and Intendants.

In these documents there is great variety, some referring back to grants by the Company of New France, and augmenting them; the new grants being quite as destitute of clauses of restrictions on the grantee as the originals. A great number mention rivers, like that of River du Loup; others set forth as the object of the grant that it is to endow religious bodies, or to reward services to the State. Some even carried with them rank in the peerage. Others again were intended to cause the establishment of Fisheries. These of course granted the rivers; and contained no expression in any way hinting at the idea of the land being sub-granted at all. The thing intended was the creation of fisheries, not of agricultural establishments. One grant was made, almost without any clauses, for the establishment of a slate quarry at *Anse de l'E'tang*: the only condition being that the grantee was to give notice to the King, of the mines and minerals, which he might find.

I might heap proof on proof, of the absence of any intention on the part of the grantor to compel the grantee to sub-grant. It is even certain that several grants as large as Seigniories were granted *à titre de cens*—that is to say without the faculty to regrant, because the holder *à titre de cens* could have no *censitaire* under him. I repeat, during several years grants were repeatedly made of an extent of from two to four leagues *à titre de cens*. at the rate of six *deniers* of *cens*, which it was legally impossible to grant to any feudal sub-holder. A number of such grants and others inconsistent with the obligation to concede, were made. I have felt anxious in making this statement to support it by precise details. To some extent I shall do this now; and I regret that time did not permit me to prepare a complete factum to lay before this House, setting forth with distinctness each of these cases. I propose hereafter to state the whole of these cases and the others in print; in the meantime I mention some of them as examples. One of these grants is of the Isle aux Coudres to the Seminary of Quebec; and this was expressly upon condition that the land should not be inhabited except by persons belonging to the Seminary. So far from obliging the grantees to grant again, it actually prohibited them. The ecclesiastics were to make a settlement in favour of the education and conversion of the Indians, and therefore none but ecclesiastics were to live there, lest the work of conversion should be interfered with by lay disorders.

The only kind of reference in any of these grants to the probable settlement of them by tenants at all is to be found in a clause to which I now ask attention, taken from a grant by Talon of St. Anne de la Pérade.

"On the condition that they (shall) continue to hold cause to be held hearth and home on * * * * * * * * * * and that they shall stipulate in the contracts they may make with their tenants, that these latter shall be held to reside within the year, and hold hearth and home on the concessions that may be or have been accorded to them, and that in default of doing this, they shall re enter into full and lawful possession of the said lands;—that they shall preserve the oak trees, that may be found on the land which shall be reserved for the principal manor house, also that they shall reserve the said oaks in all the extent of the particular concessions made to their tenants, that may be proper for &c." It is evident that these were not clauses to oblige the grantee to have tenants. The very word *tenancier* is an ambiguous one: it may mean *censitaires*, or it may mean something else—it is applicable to *censitaires*, *fermiers*,

holders à *bail à rente*, &c. Put apart from this ambiguity, I repeat that these clauses do not require the grantee to have tenants at all. They merely require, him if he have tenants, to make them live on their lands. He was not to part with his land or to create claims upon it without making those to whom he gave it reside upon it; and they were not then to have it except upon condition of preserving the oak timber. To show this was the whole meaning of the clause, it will be enough to turn to other titles of the same period. We shall see for instance, that this clause gradually got shortened, and that it appeared in a grant of Longueuil, July 10th 1676 (*p. 90 pieces et documents*) in the following words:—"that he shall continue to keep and cause to be kept by his tenants hearth and home (*feu et lieu*) on the said seigniory; that he shall preserve and cause to be preserved the oak timber fit for ship-building which may be found there, &c." In the grants of St. Maurice and Gentilly, the same year, the clause is merely "He shall continue to keep hearth and home (*tenir "feu et lieu*) on the said seigniory, and shall pre- "serve and cause to be preserved the oak timber "thereon." Wherever, indeed, any mention of tenants is to be found in these grants, it is to provide that the seignior shall hold them to the duties he was required to enforce on them. This was in the spirit of the times, when the highest exercised rights on those below them, and required those below them to exercise these rights against those lower in the scale. I go farther even than this. Some of these grants are even so worded as unequivocally to import nothing more than permission to have sub-grantees. Thus in the grant of Ste. Anne des Monts the grantee is to cause to be inserted the same conditions in the "concessions that he will be allowed to grant on the said lands." And in a number of other instances, the same or like words are used.

Nor were these varying forms of expression the result of mere unauthorized caprice on the part of the Governor and Intendant. They were fully sanctioned by the crown. There are printed two Royal *arrets*, each confirming a number of grants; one dated in 1680, the other in 1684. By these the King declared that he confirmed those grants precisely as they were made; only adding a clause to require clearance within six years. I have also obtained another, bearing date the same day as the *arrets* of Marly, 6th July, 1711; which contains the ratification of 11 grants of various dates & granted under various conditions, but none hinting at any obligation on the grantee to concede. In this document which I have from a client (and the terms of which correspond almost word for word with those of every subsequent *brevet* of ratification that I have been able to procure) the King expressly recites the Seignior's obligations as the following, and no other:

"To render *Foy et hommage* at the Castle of St. Lewis at Quebec, of which they shall hold under; (to pay) the ordinary dues; to preserve & cause to be preserved the oak trees proper for the construction of vessels of the king; to give notice to His Majesty or to the Governors and Intendants of the said country, of mines, ores and minerals, if any be found in any part of the said concessions; to keep hearth and home, and to make their tenants do the same, failing which the grants shall be reunited to the domain of His Majesty; to clear and cause the said lands to be cleared; give space for roads necessary for the public good; to leave the beaches free, except those which they may want for their own fisheries; and in case His Majesty shall need any part of such lands, for the construction of any forts, batteries, *places d'armes*, magazines or other public works, His Majesty shall be entitled to take the same, as also all trees that may be necessary for such public works, without having to make any compensation therefor."

In all this, most surely,—in all, I repeat, that is to be found in all the grants to this date,—there is no word indicative of the imposition on the Seignior of any obligation to sub-grant his lands on any particula terms, or indeed to subgrant them at all.

We come, then to the *arrets* of Marly, of the 6th July, 1711, promulgated in Canada in December, 1712. It need hardly be observed that there are two *arrets* of that date; one aimed at the Seigniors; the other at the *censitaires*. Before speaking of the precise terms of these *arrets*, I must remark on some matters of fact only of late brought to light, and which are established by the extracts of correspondence printed in the last of the four volumes laid before this Honorable House. From the second of these extracts, it appears that in 1707, Mr. Raudot the elder, the then Intendant, wrote to the minister complaining of many abuses, as he thought them, which prevailed in the country, and especially stigmatized the *esprit d'affaires* and of law suits which had taken possession of the people. According to his ideas, it was necessary, in order to put a stop to all this litigation, to introduce an entirely new law, establishing an absolute five years prescription, by which all sorts of people should be prevented from bringing all sorts of suits; for, said he, unless this universal litigation is put an end to, the most dreadful results to the colony must follow. Then he turns round upon the seigniors, and says that many *habitants* have settled on land on the bare word of their seigniors, without deeds setting forth any conditions, and that the consequence is that these *habitants* have been subjected to rents and dues of a most onerous character; the seigniors refusing to give deeds except at charges which the censitaires ought not to be compelled to pay. This, says he, has caused the dues to be different in almost all the seigniories; in some, one rule prevailing; in some, another. He further complains that it has become usual for Seigniors to stipulate in their concession deeds, the *droit de retrait*, a right which he characterizes as inadmissible under the Custom of Paris. On this last point, I should observe that that Custom does give the right of *retrait* as regards land held *en fief*; that is to say, whenever such land may have been sold, the Superior Lord may by the Custom come in and take it at the price paid,—as not being obliged to accept of any vassal whom he may not like. The custom does not accord him such right, as regards land held of him *en censive*; but it does not preclude his agreeing with his censitaire for its exercise. Such agreements were always common; and whenever made, were valid. M. Raudot was merely wrong in his law on a most obvious point, when asserting the contrary.

He goes on to say:—

"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 as to 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 oven (*four banal*.) of which the inhabitants can never avail themselves, because of the habitations being at great distances from the seignior's house, where this oven must be established."

Raudot, then proposes that all these things should be changed and a new settlement made—as to all sorts of matters. Some of his proposals,—as for instance, that for suppressing the *four banal*, were not unreasonable; but others of them were absurd; and one in particular—for the reduction of all Seigniorial rents, past and to come, to one low uniform rate, was (to say the least) a proposal to interfere with contracts and established rights of property, in a manner utterly indefensible.

The next document in the same volume is a letter, or part of a letter from M. dePontchartrain in answer to this despatch; a diplomatic note, intimating a civil disposition on the part of the Minister at home to act on the recommendations given him; but asking for more information.

Following this, in the same volume, are two notes from Pontchartrain to Messrs. Deshaguais and Attorney General D'Agueseau—two lawyers; in which the minister requests those two gentlemen to draft an edict on the subject.

The importance of these two notes, however is not obvious; as there is nothing to show that any such edict ever was drafted—and it is at least quite certain none was ever passed.

M. Raudot, in the meantime, in 1708, sent home another letter, accompanied by a memoir showing the various rates, which prevailed in different seigniories. This memoir has not been printed, and it seems has not been found; but this much is clear, that in 1708 Raudot informed the King that the dues paid to the Seigniors were most various, and many of them most onerous, considering that at the time there was little or no money in the country—that they were, in fact, so various and so many, that he sent home this memoir with the recommendation to bring all to the same level, and this by way of reduction, in order to go back to the early days, *les temps d'innocence* as he called them when all the rates were low. To these two papers, we have no answer of Pontchartrain. There is a short document, dated 1711, which has no reference at all to the matter of Raudot's letter; and after that we have no extracts till the year 1716.

Did I say, we have no answer?—I am wrong. We have the King's own answer, in these *arrets* of Marly, of the year 1711; showing how extremely small a fraction of all M. Raudot's sweeping recommendations His Majesty saw fit to regard with any sort of favor. The former of these *arrets* of Marly, that which is directed against the Seigniors is in these words:—

"The King being informed that among the "tracts of land which His Majesty has been "pleased to grant and concede in seigniory to "his subjects in New France, there are some "which have not been entirely settled, and oth-"ers on which there are as yet no settlers to "bring them into cultivation, and on which also "those to whom they have been conceded in "Seigniory, have not yet commenced to make "clearings for the purpose of establishing their "domains thereon:—

"And His Majesty being also informed that "there are some seigniors who refuse, under va-"rious pretexts, to concede lands to settlers who "apply to them, with the hope of being able to "sell the same, and at the same time impose "upon the purchasers the same dues as are paid "by the inhabitants already settled on lands, "which is entirely contrary to His Majesty's in-"tentions, and to the clauses and conditions of "the concessions by which they are merely per-"mitted to concede lands subject to dues (*a "titre de redevances*) whereby very great de-"triment is done to the new settlers, who "find less land open to settlement in the "places best adapted to commerce:

"For remedy hereof His Majesty, being in "his council, has ordained and ordains that, "within one year at the farthest from the day on "which the present *arret* shall be published, "the inhabitants of New France to whom His "Majesty has granted lands in seigniory, who "have no domain cleared and who have no set-"tlers on their grants, shall be held to bring them "into cultivation and to place settlers thereon; in "default of which it is His Majesty's will that the "said lands be reunited to his domain after the "lapse of the said period, at the diligence of the "Attorney General of the superior council of Que-"bec, and on the judgments (*ordonnances*) to be "given in that behalf by the governor and lieute-"nant general of His Majesty, and the Intendant "in the said country;

"And His Majesty ordains also, that all the "seigniors in the said country of New France "have to concede (*ayent à concéder*) to the *habi-"tans* the lots of land which they may demand "of them in their seigniories, subject to dues "(*à titre de redevances*), and without exacting "from them any sum of money as a considera-"tion for such concessions; otherwise, and in "default of their so doing, His Majesty permits "the said *habitans* to demand the said lots of land "from them by a formal summons, and in case "of their refusal, to make application to the Gov-"ernor and Lieutenant General and Intendant of "the said country, whom His Majesty enjoins to "concede to the said *habitans* the lands demanded "by them in the said seigniories, for the same "dues as are laid upon the other conceded lands "in the said seigniories; which dues shall be paid "by the new settlers (*nouveaux habitans*) into "the hands of the receiver of His Majesty's do-"main, in the City of Quebec, without its being "in the power of the seigniors to claim from them "any dues of any kind whatever."

What, now, does this *arrêt* amount to? The King is told that certain seigniors have not granted and settled their lands; and he says, if they do not do so, he will take their seigniories away from them,—a proceeding which he had threatened before, but had never carried out. This course, however, was to be taken through the agency of the Attorney General as prosecuting officer, by the Governor and Intendant acting conjointly. The King further says that he learns that certain seigniors refuse to grant, unless they get cash payment, and so keep back the settlement of the land; which being contrary to the royal intention, he orders that they shall be bound to make the grants without any payment in money. The word used to express the dues which were to be stipulated is not *cens*, but *redevances*, a general word, which does not necessarily a holding *à titre de cens*. I do not say that this kind of holding was not present to the mind of those who drafted the *arrêt*; but what I do say is, that the thing intended was merely that the seigniors should be compelled to grant on credit, instead of demanding a consideration in cash. If it was intended that the grants *must* be *à titre de cens*, why was not the appropriate and definite word employed? If it were intended to fix a constant rate, why was not that rate mentioned? Raudot, as we have seen, in 1707 and 1708 called attention to the variety of rates; and yet, well acquainted with these circumstances, and after his minister had called on MM. Deshaguais and D'Aguesseau to draft an edict, what does the King do? Do we find him say, you shall concede at so much, *à titre de cens*? Not at all. You are to concede, he says, for *redevances*—and this without exacting ready money. What again is the one penalty imposed? It is explicitly stated in the edict. The Attorney General shall prosecute you, it says to the seigniors, and shall confiscate your land, if you fail to settle; and if you refuse to concede at *redevances* and insist on cash, we permit the *habitants* to implead you. What was to be done then? Was the land to be granted at a fixed rate? Not at all: we know the king knew there was no fixed rate, for that had been brought under his notice. It was to be granted by the Governor and Intendant acting conjointly, and this for the Crown—not for the Seignior—and it was to be so granted at the rates of the other lands in the seigniory. These were vague words, which might do when the officers of a despotic master had but to refer to him on all occasions to find out his will; but are altogether too uncertain for any legal purpose now. The fact was, the seigniors were by law at liberty to do what they pleased. If any seignior indeed, instead of refusing to grant, asked some perfectly enormous rate of rent, that might probably have been taken, according to the spirit of the law, for a refusal. I admit so much. And the Governor and Intendant might then have granted the land, that is to say, if really the *arrêt* were ever acted upon. But let me repeat; the *arrêt* did not make it illegal to dispose of land otherwise than by grant *à cens*. It was only in case upon application the seignior refused to grant, that the law became applicable, and his land grantable by the Governor and Intendant; in which case the dues were to be paid to the crown and not to him.

But this *arrêt* was coupled with another; and how is it that those who are so anxious to enforce the first do not wish to enforce the second also? This second *arrêt* sets forth, that the King had been informed the *censitaires* did not live on their grants; and his Majesty then orders that in case the *censitaire* do not settle and clear, on a simple certificate from the *curé* and captain of the *côte* that such and such a man was not keeping hearth and home, the Intendant alone was to escheat the land. Thus any number of *censitaires* not keeping hearth and home could be, on an *ex parte* proceeding, ejected from their holding. This *arrêt*, unlike the other, was frequently acted upon. Sometimes the Intendant was kind and granted delay; at others, however, he escheated the land without any delay at all, according to the terms of the *arrêt*. The first of these laws, note, was not nearly so stringent as the other. When the seignior was in fault, it required the Governor and Intendant to bring him to justice. When the *censitaire* failed to fulfil the conditions of his grant, nothing was required but the authority of the Intendant, acting upon the certificate of the *curé* and the captain.

This legislation of 1711 was all that really took place on the representations of M. Raudot.

The extracts which I find in the same volume taken from letters bearing date in Nov. 1711 and March 1716, I pass over without remark, because they have no reference to anything in controversy here. The latter merely relates to the making of a rent roll of the demain of the crown.

Next comes an extract, a single sentence, having reference to the *censive* of the Island of Montreal, a purely local matter; and this again is followed by a sentence from another document, which also calls for no present remark.

The two documents next following (on pages 15 & 18 of the same volume) are, however, documents of much importance. They purport to be, the one a minute of the proceedings, or of part of the proceedings had at a sitting of the *Conseil de la Marine* (the Board of Direction of what was then the French Colonial Office) held on the 9th of May, 1717,—and the other a copy of a draft of an *arrêt* which at that sitting that Board resolved to recommend to the King.

It would seem from these papers, that Begon, the Intendant, (for Raudot had ceased to be so,) had made some representations, which unfortunately are not printed, on a variety of matters; and that he had complained greatly of a number of practices characterised by him as abusive. Among other such matters, he seems to have represented that a *droit de retrait* was sometimes stipulated, so sweeping in its range as to give the seignior a right of pre-emption of all manner of articles that his *censitaire* might have to sell. I remark particularly on the onerous character of some of these charges, because they show the absurdity of the assertion frequently made, that onerous demands have been made by the seigniors only since the cession of the country. It is common to say that everything which is obnoxious connected with the tenure took its rise after the cession. Here, however, we find that long before that date, clauses much more stringent and odious than any that now prevail were complained of, and were even not reformed by those in authority. I say they were not reformed; because though the Council of the Marine passed a vote to set all these matters right, yet the *arrêt* contemplated by that vote was never passed into law. It was a document which had the sanction of the Count de Toulouse, Admiral of France, and of Marshal D'Estrées—doubtless a very good sailor and a very good soldier—and it was worthy of their naval and military education. A number of its clauses are so singularly contrary to every notion

, that it is impossible it could ever have been pro-igated with the force of law. In truth it never s an *arret*—a draft of an *arret* it may have been, *arret* it never did or could become. One thing is rthy of remark, that neither in this minute of the ncil of the Marine, nor in this draft, nor in the *rets* of Marly, is there any proposal to interfere th any past contracts, or even to regulate futnre ntracts, in so far as the amounts or kinds of dues pulated or to be stipulated (various as these were own to be) were in question. There is no traee of notion of acting on the proposal of M. Raudot, to alize the rate of *cens et rentes* all over the coun-.

That this draft of an *arret*, such as it was, never lly so much as had the Royal sanction, is a fact ll further evidenced by the next extract to be nd in the same volume. This extract is short, d yet must be read two or three times, in order to ertain what it means. It is part of an instruction m the King to the then Governor and Intendant, d (rendered into English as closely as I can render reads thus :—

" * * The attention they are to pay to he execution of the *arrêt* of the 6th July, 1711, which reunites to the domain of the Crown the seigniories that are not inhabited, and to the oblig-ng of seigniors who have lands for concession within the limits of their seigniories to concede hem, is very necessary for the settlement and augmentation of the colony. They are to prevent he seigniers from receiving cash for the lands which they concede in standing wood, it not being just that they should sell property on which they have laid out no money, and which is given to hem only to get it settled, (*qui ne leur est donné que pour faire habiter.*")

These words show what the Crown meant by the *rêts* of Marly. Here is the Crown's own gloss on Crown's *arrêts*. They were to prevent the gniors from taking money for lands conceded *en 's de bout*. Not that there was a fixed rate at ich lands were to be granted ; but that money s not to be taken for wild land. Most surely, such tter as this proves that the draft proposed by the inute of 1717 could never have passed into law : d that been the case, these instructions could never ve been written.

The next extract, of date of 1719 is only interest-g as showing that in 1716 the crown sent orders to colony to cease granting seigniories. The des-tch conveying these orders is not printed ; though riously enough, an uninteresting extract from a ter of the same date appears in this collection.

I pass on, then, to speak of the terms of the grants ade after the date of the *arrets* of Marly.

I have already stated, and any body who will study grants before the date of those *arrets*, may rify the assertion, that none of those grants imply condition to sub concede in any manner or to any dy. The only obligations are on the grantees mselves, and those to whom they may grant, to certain things—there is no obligation to sub-grant all. Coming to the grants since that period, I find at they are ninety in number, of which thirty-five e not here to be counted, as being either not in nada, or as revoked, or for other causes. Of the y-five which remain, fifty-one have been printed, d I have procured copies of three others ; so that we have the terms of fifty-four. These form nearly one-fifth of the total grants now in force, and they cover some 3,000,000 of arpents, or three-tenths of all the land granted *en fief*.

In 1716, as I have stated, the king prohibited the granting of more seigniories in Canada. And from the date of the publication of the *arrets* of Marly, to that of the enforcement of this order, five seigniories only were granted. One of these, granted in 1713, seems never to have been taken possession of. Another, of the same date, was that of an augmentation of Belœil. Singularly enough, these are printed as embodying an unintelligible combination of the *fief* and *censive* tenures ; the grants purporting to be *en fief*, and yet subject to a nominal *cens*. I suppose this a clerical error. But this is of no consequence for my present argument. All I need observe as to these grants is, that like the older grants, they contain no clause hinting at any obligation to sub-grant.

The other three grants of this period, however, do contain clauses, which if sanctioned by the crown, would have changed greatly the character of the grants, as compared with preceeding grants. The first of these in order of time was the grant, in 1713, of a small augmentation of a seigniory in the district of Quebec ; and is printed on p. 64 of the 1st of the volumes laid before this Hon. House. This grant provides that the grantee shall concede the said lands at *redevances* of twenty *sols* and a *chapon* for each arpent of front by 40 in depth, and six *derniers* of *cens*, without power to insert in the said concessions either any sums of money or any other charge than that of the mere title of *redevances*, and those therein above mentioned, agreeably to the intention of his Majesty. Here re-appeared the idea which Raudout, the former Intendant, had desired to carry out by an ediet ; but which the king would not carry out.

The year following, a second grant was made, of the large seigniory of Mille Isles, in the district of Montreal. And here again a like clause appears ; but with this remarkable variation, that whereas in the grant last above mentioned the rate is fixed at 20 sous and a chapon per arpent of front by forty in depth, in this one, of Mille Isles, the fixed price is twenty sous and a chapon for one arpent by thirty. But what is more remarkable is, that this clause was left out in the ratification ; showing that the king never had ordered, and did not even sanction its insertion. This *brevet* of ratification is not printed ; but I have been fortunate enough to ascertain the fact of its having been granted in 1716, and also the fact that, while it purports to recite at full length all the conditions of this grant, the clause in question is omitted from it !

The last in date, of these three grants, is that of the Seigniory of the Lake of Two Mountains to the Seminary of St. Sulpice. This grant contains the same clause as the preceding, except that the rate is calculated on a depth of 40 arpents instead of 30 arpents ; and now comes out another fact of the utmost interest and importance. From the extracts from these titles, printed some years ago in the Appendix to the Report of the Seigniorial Tenure Commissioners,—and from copies of the titles themselves which I have myself procured, I find that in the *brevet* of ratification of this grant by the King, which was issued in 1718, this clause was—not indeed wholly omitted—but very materially altered, by the King. In the first grant by the Governor and Intendant, the clause reads as I have stated. But in

the letters patent of the King it is made to read thus:—"On condition * * of conceding the said lands "*which shall be uncleared (qui seront en bois debout,)* on the terms specified in the first grant, but with the added clause—"*permitting them, nevertheless, to sell* "*or grant at higher dues (à redevances plus fortes)* "*any lands whereof there may be as much as a* "*fourth part cleared.*"

It is, then, perfectly apparent, that when the King saw this grant, he did not choose to make the terms so stringent. He said, you must grant your *wild* lands at this rate, but you may do what you please with any lands which have been partially cleared.—I shall show presently that some years later His Majesty went much further in the way of relaxation, of even this modified requirement, in favor of these grantees, and with reference to this very Seigniory.

In the meantime it is clear that in these grants the King would not insert this clause. It is not in the ratification of Mille Isles at all, and in that of Two Mountains it is cut down to half its original meaning. As to his intentions on this head. some further evidence is to be drawn from the fact, that on the very day of the date of the *arrêts* of Marly, he ratified (by a brevet of confirmation, of which one of my clients has furnished me with a copy) as many as eleven anterior grants, adding new clauses not to be found in the originals, for the purpose of reserving land for forts, &c.; but *not* putting in this clause,—and this too, notwithstanding the *brevet* in question, purports to set forth in detail all the conditions under which the grantees were to hold. Again, five years later, in 1716. I have ascertained that he did precisely the same thing in two other *brevets* of confirmation then granted, for concessions originally made in 1702, of the two Seigniories of Soulanges and Vaudreuil. One of these last mentioned documents is printed in the papers laid before this House. The other I have procured.

In one word, the case is clear, that the insertion of this clause by the Governor and Intendant in these three instances, was their own unauthorized act—dictated by a wish on their part to carry out a policy of control over the Seigniors, far beyond any thing warranted by the *arrêts* of Marly, or even contemplated by the King; and that the King in fact never even sanctioned it in any way.

I say *never;* and the next step in the proof of this is to be found in the circumstances of the next grant made after that of Two Mountains. I refer to the grant of an augmentation of Maskinongé granted to the Ursuline ladies of Three Rivers in 1727; up to which year no grants had been made since 1717. I have already mentioned that all further grants had been stopped in the latter year; but in 1727 Beauharnois and Hocquart, Governor and Intendant, took on themselves to make this small made to the Ursulines of Three Rivers. It was a very peculiar one, and contained the obligation to concede; but in the present case the rate varies again, and becomes twenty sous and a capon for one arpent by—neither forty nor thirty—but, this time, twenty arpents of depth. I have the confirmation, furnished me by the Seigniouresses, and it does not contain this clause. Like the other confirmations I have mentioned, it purports to recite all the grantees' obligations; but the King would not put into his grant what his Governor and Intendant had put there upon this head.

Yet again, in 1729, the King made a grant of his own mere motion—the first grant of the Seigniory of Beauharnois, which was afterwards granted again 1750, and which appears in the second volume documents, p. 260. This grant gives six leagues six leagues to the Governor and his brother; and nced hardly say that it does not oblige the gran to concede, nor indeed to do any other thing th clear the land and profit by it. The grant was mea to be a magnificent endowment to a man whom King had chosen to raise to the government of country.

Farther evidence will still be found, the more examine into the acts of the King in this respe On page 140, of the same second volume, will found an *Ordonnance* of the Governor and Intenda by which on the petition of Louis Lepage, the S gneur of Terrebonne, those officers declare th "waiting the order of His Majesty, and under good will and pleasure, we have allowed and do low the said petitioner to continue his settlements the depth of two leagues beyond that of his s seigniory, to take out pine and oak timber, and make such roads as may be necessary for the drawi out of the same, and we prohibit all persons fr molesting or disturbing him until the will of Majesty be known." The recitals in this docume set forth that Lepage had been lumbering extensive and manufacturing pitch and tar, and was un contracts for the public service, and in fact want more land and especially more wood-land for all th purposes. Whereupon, instead of granting h more, they say that having seen the concession of Seigniory of Terrebonne, waiting His Majest order, they grant him this permission. No title Terrebonne nor of its augmentations appears in a of the volumes laid before Parliament. I supp the register is in a state of confusion, and that fr some difficulty of this kind it has happened t neither the extraordinarily liberal grant of Ter bonne, nor the actual title of this augmentation, n called Desplaines, have been published. I ha however, obtained a copy of the King's grant the after made in 1731; and I find that, after the s recitals, it concluded thus:—

"Having respect to which, and wishing facilitate to the said Sieur Lepage de St. Cla the means of sustaining establishments whi cannot be other than useful to the colony, Majesty has conceded, given, and made ove territory of two leagues, to be taken in unco ceded lands, in the depth and on all the fr of the said Seigniory of Terrebonne, to enj for himself, his heirs, or *ayant cause*, as his a their own property, (*comme de propre*) and t with the same rights that belong to his s Seigniory, and under the same dues, claus and conditions with which it is burthened."

This Seignior, then, wanted a large tract of l for lumbering and making pitch and tar, and not mere agricultural settlement. It is granted to him the same charges and conditions as the seigniory Terrebonne; and these are just none at all. T grant gives mines, rivers, and everything else, and out, and nothing was imposed but the duty planting *bornes* within a certain time; yet this gr is of 1731, twenty years after the date of *arrêts* of Marly, and at a time when the Gover and Intendant were putting in clauses, far more strictive, which the King was leaving out. At

every time, I say, the King himself gave this grant to a man for the purpose of lumbering, under a title as free as that which was granted to his predecessor by the company of the West Indies, sixty years before.

But I must return to the Volume of Extracts of Correspondence; the 4th of those laid before this House. The extract next following those on which I have already remarked, is one dated 1727, which calls for no remark beyond the observation that it relates merely to the question of a particular Seignior's claim to what were known as the *droits de change*. By the custom of Paris, a seignior was entitled to *lods*, that is to say, to a fine of a twelfth part of the price, in case of any mutation by sale, or by contract equivalent to sale. But on exchanges there was no such right, till the French King created it, and sold it (when he pleased) to the seigniors.—An edict, anterior to the date to which we have now arrived, had granted this right to the Seminary of Montreal, and a question had arisen as to the circumstances under which the Seminary had so acquired this privilege—a matter of no interest at present.

The next extract in order of date is equally irrelevant, though on another subject. It is part of a despatch to the Governor and Intendant, of date of 1730, and states that upon a report by the Minister on a number of decisions of conflicting tenor which had been rendered in Canada by the Intendant and his predecessor,—

"His Majesty has thought necessary to make this 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 Begon and Dupny, the *cens*, *rentes*, 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."

This declaration of 1717 is not—and I thus mention it to say so—is not the draft of *arret* of the same year, printed in this volume, and upon which I have already remarked; but a declaration really issued by the King at the time in question, on quite another subject. Before 1717, there was current in the Province a sort of debenture money, called *monnaie des cartes*. This had become very much depreciated, and the King called it in; declaring at the same time that all debts incurred during its prevalence should be paid in money of France, but subject to a deduction of one fourth. Under this regulation, a number of troublesome suits had taken place, on questions whether certain particular dues were to be paid in full, or not; and this state of things had given rise to several *arrets* utterly inconsistent with each other. It was plain that the rulers of the country did not know what to do in the matter. By this declaration, therefore, the King said, on the representations which you have sent home, I have felt it necessary to issue an explanation hereto annexed. This last document is in print, and well known; and it shows what the King meant should be done as to these payments, but it has nothing to do with any matter now in controversy.

The next of these extracts bears date in October 1730; and it is of great importance. It is a despatch from Messrs. Beauharnois and Hocquart, to the Minister at home, and is in these terms:—

"During our late stay in Montreal, complaints were made by several individuals, that the seigniors refused to give them grants in their seigniories, under various pretexts, although bound by the *arrêt* of the Council of State of the month of July 1711, to make such grants to the *habitans* who may require them, under provision in the event of refusal, that such *habitans* may apply to the governors and intendants of the country, who are commanded by His Majesty to grant to the said *habitans* 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 *habitans*, which are equally contrary to the *arrêt* 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 *habitans* 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 *arrêt*, which requires 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 *habitans*, 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 sort of trade (*une sorte d'agiot*) in the country, injurious to the colony, and not furthering the settlement and cultivation of lands, but tending to foster habits of indolence among the *habitans*; a practice to which the seigniors are not averse inasmuch as *lods et ventes* accrue to them on 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 by way of maintaining the *arrêts* of the Council of State of 1711, it would be well to render another, prohibiting seigniors, and all other proprietors,

from selling wild land, on any pretext whatsoever; under penalty against the seigniors and proprietors of all lands so sold, of the nullity of the deeds of sale, the restitution of the price thereof, and deprivation of all right of property in the said lands, which should be, *de plein droit* reunited to the King's domain, and reconceded, by us, in his name.

"It is true that generally the seigniors concede, or pretend to concede, their lands, gratis; but those who evade the provisions of the *arrêt* 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 *arrêts* 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 *habitans*, to allow matters to remain in their present state, awaiting the *arrêt* of the 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 advantage thereof, 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 *habitans* are not aware of the provisions of the *arrêt* of the Council touching them in relation to this matter. Mr. Hocquart has caused some of the principal among them to be informed upon the subject, without causing publication anew of the *arrêt*. Before doing so, he awaits the orders which we shall receive from you during the ensuing year."

It is only justice to Messrs. Beauharnois and Hocquart to observe, that in all this they do not propose to destroy existing contracts; but adhere to the sound principle, *volenti non fit injuria*. The proposal they made was to render the sale of wild lands a kind of crime, to be visited by the penalties of nullity, and so forth. As to the *arrêt* of Marly, their understanding of it was most manifestly just that which I have given to it—nothing more nor less. It told the *habitant*, if the seignior refused him, to go before the Governor and Intendant, and get from them a concession; but it still left him in this position, that if he chose to go and make a contract with the seignior, he must put up with the consequence. So understanding, they go on to recommend that for the past everything should be left as it was, and then propose the new law, which they think should be made about wild lands.—If any proof were wanting that the *arrêt* of Marly had fallen into *desuetude*, this letter would furnish it; for it would appear that in 1730, it was so little known, that Hocquart had to explain its provisions to some of the chief *habitans* —a mode of procedure, perhaps less open to comment then, than the like conduct on the part of a public functionary of like rank would be now.

In reply to this despatch, we have next, in the same volume, a letter, or rather extract from a letter, addressed by the minister to Messrs. Beauharnois and Hocquart, reminding them that they had been somewhat remiss in the matter of the making up of the *Papier Terrier*, or Crown Rent Roll of the Colony, and expressing a disposition to resort to a line of policy not very closely corresponding with that recommended by them.

In their answer to this, of October, 1731, the next in order of the extracts under review, these gentlemen excuse themselves for not having forwarded the *terrier*, and say that the fault was not theirs, but that of some of the vassals of the Crown; and they go on to say that what they had suggested might be done without waiting for this; adding—"In respect of the "concessions accorded to the *habitans* by the seig- "niors, M. Hocquart has governed himself, up to "the present time, by the *arrêt* of the 6th July, "1711, and since he has been in Canada, has pro- "nounced the reunion of more than 200 concessions "to the domain of the seignior, in default of the "*habitans* observing the duty of keeping hearth and "home." From which we see that these ministers of the crown—who had never acted on the first *arrêt* of 1711, who had never granted a seignior's land to a *censitaire*—had acted on the second *arrêt* of the same year in 200 cases. The first *arrêt*, in fact, never was acted on as law; the second was constantly so acted on.

The first representations of Raudot in 1707 and 1708, as we have seen, were scarcely, if at all, acted upon, in the framing of the *arrets* of Marly in 1711; but these representations of 1730 by Beauharnois and Hocquart, renewed in 1731, produced full fruit in the *arret* of 1732, which was passed in exact accordance with their suggestions. This *arret* declares that there shall be a new comminatory publication respecting the escheating of lands; and then, to prevent the double abuse of sales of wild land by seignior or *censitaire*, there is a farther declaration that all sales of land *en bois debout* shall be null, that the purchase money paid shall be recoverable from the party taking it, and that the land so sold shall be escheated to the crown. The fact, that it was necessary in 1732 for the King to legislate in this manner for I admit the power of the King to legislate—proves that in 1711 he had not so legislated. True, he had then said that the seignoirs should concede, or their lands might be conceded, to their loss; but he did not say,

if they do not concede but sell, the sale shall be null. He merely gave a certain remedy in case of refusal. Now, he promulgates a new penalty; which was the re-annexation of the land to his domain, in order to punish the one offence, which he desired to put an end to, that is to say, the sale of wild land. It seems that a notion prevailed in those days, that if one allowed land to be sold without its being first cleared, it was less likely afterwards to be cleared, andthat the edict against the sale of land *en bois de bout*, was thus likely to promote the clearance of the country.

I pass to a further piece of evidence, still tending the same way; and connected with the grant of Argenteuil. The document I am about to cite is not one of those laid before Parliament. I cannot even say whether or not it is to be found in the Provincial Archives. But I have a copy of it, authenticated by the signature of M. Hocquart; which the proprietor of that Seigniory (one of my clients) has placed in my hands. And from it I am about to quote.

Argenteuil was first granted (or rather, the grant of it was first promised) by two short instruments, one signed by Duchesneau. (the then Intendant) in 1680, the other by the Comte de Frontenac, (then Governor) in 1682; both of which are printed in the first of the volumes laid before Parliament—on page 372. By these, those functionaries promised it to the Sieur D'Ailleboust to be held *en fief*, with all *droits de justice* attached thereto, and absolutely without condition or reserve,—so soon as the King should see fit to allow the country above Montreal to be settled.—The Seigniory, as I need hardly say, is on the Ottawa; next above that of the Lake of Two Mountains, which latter was afterwards granted to the Seminary of Montreal, in 1717, and 1818, as before observed.

For a number of years, settlement on the Ottawa continued to be forbidded. But in 1725 the widow of the original grantee was admitted to *foi et hommage* for the grant.

Shortly previous to this, a dispute had arisen between her and the Seminary, with reference to the line of division between their respective Seigniories. The Seminary contended that this line should be run in such a way as to cut off a large part of the tract which Madame D'Ailleboust desired to possess. The dispute was brought for trial before the *Conseil Superieur* at Quebec, and that body decided in favour of the seigniores of Argenteuil; but among other propositions which had been put forward during the contestation, was this,—that the lady really owned no seigniory at all; having no grant—but merely a promise of one. This being referred to the King, the result was a reply, under date of the 6th of May, 1732, from the Comte de Maurepas to the Governor and Intendant—of which the following is a literal translation:—

"I have received the letter which you wrote to "me, on the 21st of October of last year, with the "paper which accompanied it on the subject of "the contestation between the Seminary of St. "Sulpice, and the Dame D'Argenteuil. On the "report which I have made of the whole matter "to the King, His Majesty is pleased to leave to "the Dame D'Argenteuil the enjoyment of the "Seigniory in question, conformably to the boundary line fixed by the *arret* of the *Conseil Superieur* of Quebec, on the 5th October 172[illegible], on "condition that she settle it, (*qu'elle l'établira*) "that she do not attract to it the trade of the "Indians, and so injuriously affect the "propagation of the faith. You will take "care to explain to her the intentions of His Majesty, and will not fail to give effect to them."

Thus it appears that Mad. D'Ailleboust was to have the seigniory on certain conditions; but these did not oblige her to grant on any particular terms. It appears that the report went home, that this lady had began to clear upon her seigniory; and the King replied that she was to continue to do so, but was not to draw to her settlement the Indian trade—so counteracting her neighbours' efforts in spiritual matters. This, and no more, the King insisted on. His Governor and Intendant had been inserting in their grants the clause requiring concession at fixed rates. The King had not done so,—did not do so in this case.

In the meantime, Messrs. Beauharnois and Hocquart had begun to put into their grants a new clause—the following:—"*à la charge * * de faire insérerp areilles conditions dans les concessions qu'il fera à ses tenanciers aux cens et rentes et redevances accoutumées par arpent de terre de front sur quaante de profondeur.*"—" on condition * * of causing to be inserted the like conditions," (this clause follows several others requiring the grantee to preserve oak timber, give notice of mines, keep hearth and home, allow roads, and so forth) on condition, I say of the Seignior's causing the like charges to be inserted " in the concessions he shall make to his tenants at the *cens et rentes* and dues accustomed per arpent of land of front by 40 of depth."

This clause is vague—ambiguous even; may be read to mean, that the grantees shall sub-grant at some *cens accoutumés*; or as merely meaning, that when they shall so sub-grant, they are to put into their deeds certain clauses, held necessary on grounds of public policy. Beauharnois and Hocquart may have meant to put upon it the former meaning. But that is not the question. The clause is to be read and made out, as it stands; not explained into a something else, by any considerations from without. Limiting the terms of a grant, and this in derogation of the common law, the rule of law is clear,—that any ambiguity in it is to be interpreted favorably towards the grantee, restrictively of the limitation to be imposed.

Vague as it thus is, this clause was put by Messrs. Beauharnois and Hocquart, and their successors as Governors and Intendants here, into 46 of the subsisting grants of Seigniories in Lower Canada. Three other grants, those of Grande Riviere in 1750, an augmentation of Riviere Ouelle in the same year, and an augmentation of Rimouski in 1751,—though granted here by the Governor and Intendant,—do not contain it, but simply declare the grantees to hold on the terms of their older grants. Another grant, during the same period, was made by the King himself; the second grant of the Seigniory of Beauharnois, in 1750; and this also contains no such clause, but answers word for word to the earlier grant of 1729, already remarked upon. So that, between 1731 and 1760, there were these 4 grants in Lower

Canada made without this clause; and 45 with it.

But I come now to perhaps the most important point of all. How did the King deal with this clause? If in ratifying the grants which contained it, he qualified or explained it away, or wholly left it out, there can be no doubt as to his meaning in the premises. And that he did so, I shall have no difficulty in proving. I begin by taking up the case of one of these 45 grants, as to which we have (in the 4th volume, so often cited) some most interesting correspondence,—the grant of the augmentation of Two Mountains to the Seminary of Montreal. I need not repeat here what I have already said as to the circumstances of the grant of Two Mountains in 1717, and its ratification by the King in 1718, on easier terms than those first proposed by the Governor and Intendant; nor yet as to the after controversy that had arisen between the Seminary and the Seigniores of Argenteuil, as to the boundary between their properties, and the consequent decision of the King as to the terms on which the latter was to hold the Seigniory of Argenteuil. The material new fact is, that in 1733, a grant was made by Beauharnois and Hocquart to the Seminary, of a large augmentation of their Seigniory; and in that grant they inserted—not the clause fixing a rate of *cens*, which was first inserted in the grant of the Seigniory in 1717, nor yet the modification of it which the king had put into his ratification, of 1718; but this last, new, ambiguous clause above quoted.

I was aware, before I saw the correspondence I am about to remark upon, that the King, in 1735, did, by the terms of his ratification of this last grant, materially change the tenor of this clause. For the fact had been brought out, by the publication in the Appendix to the Report of the Seigniorial Tenure Commissioners, of extracts from the grant and ratification—showing such to have been the case. But till I read this correspondence, I was not aware how deliberately and advisedly this had been done, how attentively the matter was canvassed, how explicitly the King had put it of record on the occasion, that he would not do that which his servants in the colony were so bent on getting done.

To come, then, to the first document of the series, on page 25 of volume 4. It is a despatch from the minister (his name not given) to Messrs. Beauharnois and Hocquart, and is dated the 6th May, 1734. It opens thus:—

"M. l'Abbé Couturier, Superior-general of "the Seminary of Saint Sulpice, 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 Majes"ty to explain some clauses inserted in that "grant as well as in that which was made in "1717 to the same Seminary, and even to change "others agreeably to the draught of a patent (*bra"vet*) which he has presented me. He has ask"ed that the boundary line fixed for the Seigniory "of the Seminary may be altered, and that "the same direction be laid down for it as "for that of the sieurs de Langloiserie and Petit; "and he has represented the necessity of doing so "to avoid the contestations which might arise "from diversity of the directions of the lines of "those seigniories; that the clause which obliges "the Seminary to preserve the oak timber fit for "the building of the King's ships may be res"tricted to such oak trees as may be found on the "parts of the seigniory which the ecclesiastics of "the Seminary may reserve for the principal ma"nor house or domain, a restriction which he "has represented as necessary for the settlement "of the private grants to be made by the Sem"inary; that the 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 the year and day, "on the grant; that the clause may also be sup"pressed which imports (*porte*) 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; that the clause may also be sup"pressed, as useless, which provides that the "beaches be left free to all fishers; that the "clause be likewise 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 with"out being held to any indemnification; and he "has remarked that this clause had been in"serted 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, which declares that the ecclesi"astics of Saint Sulpice shall hold their lands of "His Majesty, subject to the usual rights and dues "may be interpreted and restricted to simple fe"alty and homage at each new reign, releasing "the Seminary, when need may be, from all dues "of *amortissement, prestation d'hommes vivants* "and *mourants* and others, by reason of these "grants; and finally that there may be added a "discharge from the obligation to build a stone "forth on the land granted in 1717, and an exten"sion of that land to six leagues in depth."

On all these demands, the report of the Governor and Intendant is called for; and it is added that a copy of the draft prepared by the Seminary, and of their observations in support of it, accompany the despatch.

It is unfortunate, to say the least,—with a view to the right understanding of the whole matter,—that these all important documents are not printed. I have tried to obtain a copy of them in another quarter; but have not yet succeeded.

The answer of Beauharnois and Hocquart, however, is printed, *au long*: Much of it is of no immediate importance, as regards our present subject. I cite, therefore, from it, for the present, only such parts as are.

The clause of the grant threatening re-union to the domain, in default of settlement,—I may observe *en passant*, is most explicitly declared to be commutatory. The Governor and Intendant (p. 30.) in so many words say, "the Ecclesiastics of "the Seminary need give themselves no uneasi"ness about it."

As to the clause more particularly under discussion, I translate their language as exactly as I can. It is this:—

" We do not know the reasons which induced " his Majesty to fix, in the Letters Patent (*brevet*) " 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 that of 1783; 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 *rentes* and dues to the extent " of the property, whrch may be more valuable " in one place than another, merits consideration. " and it appears to us that his Majesty might con- " tent 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 Semi- " nary 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 " seigniory, the term 'usual' will only restrain " the ecclesiastics from granting, ordinarily, less " than twenty arpents in depth, and from exact- " ing higher *rentes* than twenty sous for every ar- " pent in superficies, and one capon or its equiva- " lent 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 seigniory, " and which carries with it *lods et ventes*, the usu- " al amount in Canada is from six deniers up to " one sou for each arpent in front by the whole " depth of the particular grants, whatever that " depth may be."

" The statement in the memorial, that the seig- " niors in Canada, as every where else, have the " right to grant *à cens et rentes*, whatever quan- " tity 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 admited, it " might be abused by making grants, which ought " to be, as it were, gratuitous, degenerate into " mere contracts of sale."

It is impossible not to notice here, the strange style in which this document deals with the clause of the *Brevet* of 1718, as to the qualified obligation thereby imposed, of sub-granting *wild lands* in lots of a fixed depth, and at a fixed rate. The writers do not know how His Majesty came to fix upon that depth and rate! Why, the fact—as we have seen—is, that the King never had fixed either. It was the then Governor and Intendant, who did all that was done in that direction. The King had merely relaxed the rigor of their clause; so showing it to have been theirs, not his. In every other instance, so far as we can find, he had utterly ignored the clause.

Nor can one help noticing the frank admission made, that the Ecclesiastics were right in their proposition, that of right there ought not to be any requirement made for the subgranting of lots of any prescribed depth, or at any fixed rate. True, it is said that the Ecclesiastics were wrong in asserting (as it is manifest they had done, strongly) the absolute right of a Seignior in Canada, as in France, to grant in any quantities and at any price he pleased; but all that is said against this proposition (one as clear in law as man could state) is—what? Why, that a "*uniform practice*" obtained to grant at certain charges, " or more frequently below them." Uuniform practice, oftener departed from than followed! Undoubtedly, it was usual to grant at low rates; for land was a drug and cheap. But everything proves there was no "uniform practice" of stipulating any particular rate; this particular despatch, no less than every other on the subject, that has been printed.

But, says the despatch, the proposed "*expression vague*" of a customary rent per arpent, will leave the Seminary free to do a good deal. "*As the usages are different in almost every Seigniory,*" all it will do will be to restrain the Seminary from "*ordinarily*" granting less than 20 arpents, or charging more than so much. The *sequitur* is hardly clear, and the word "*ordinarily*" is hardly without a certain significance of meaning. Was the restriction meant to be absolute, or was it not? If not, it was properly no restriction at all. For, how say what rule is to be followed as to its application? Yet, that it was not understood as inteded to be absolute, even by this Governor and Intendant, we have their own written words to show.

The answer of the minister is to be found in the despatch enclosing the *brevet* of confirmation, as granted by the King in 1735,—and which despatch is the next document given us in the same volume. The clauses of it, in reference to the matters I am presently discussing, are as follows:—

" The obligation of keeping hearth and home " within the year on pain of re-union to the do- " main, 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* " *rents* of the private grants, and, in conformity " with your advice on this article, it has only " been declared in the *brevet* that these grants " shall be made subject to the usual *cens, rentes* " and dues for each arpent of land."

It is said here, the King has, as to this latter clause, issued his Letters Patent in terms of your suggestion. But, however courteous and accordant with diplomatic form, such a statement may have been, it happens not to have been the fact. The extract in question from this instrument has been printed in the appendix of the Commissioners Report (though, by the way, not quite correctly) *and it is not in the terms indicated by this despatch.* I have obtained a copy of the document; and the clause in question in truth, runs thus:—

"And on condition * * of causingto be inser- " ted like conditions in the particular concessions " which they will make to their tenants, at the " *cens, rentes et redevances* per arpent of land, usu- " al *in the neighboring seigniories, regard had to* " *the quality and situation of the heritages at the* " *time of the particular concessions;* which also " His Majesty wills to be observed for the lands & " heritages of the seigniory of the Lake of Two " Mountains, belonging to the said ecclesiastics, " notwithstanding the fixing of the said *cens et* " *redevances,* and of the quantity of land in each

"concession set forth in the said *brevet* of one thous-
"and seven hundred and eighteen, to which His
"Majesty has derogated."

The "*expression vague*," then, of Messrs. Beauharnois and Hocquart, is not taken. It is made still more vague. I should rather say, it is made clear and unmistakeable. The King had been told that hardly any two Seigniories followed like rules. He qualifies the term "usual" (*accoutumés*) by express reference to neighbouring Seigniories, presumably varying in this respect. He will not at all limit the measure of the lots to be granted. He will not allude to any usual rates, without explaining that they are of course to vary with the quality and value of the lots to be granted, at the times of the concessions to be made of each.

What was all this, but in effect, to bid the Seminary make their own bargains, as occasion served. The limit really put upon them; what was it more than this, that if they should charge too high rates, they were to be liable to suit before the Governor and Intendant. But if any man agreed with them as to any rate,—was it meant to let him on the one hand keep the land, and on the other get relieved from payment? The law does not—common sense and justice do not—lightly pronounce the nullity of a contract A Contract must be *contra bonos mores*, or explicitly prohibited by law on pain of nullity; or it is not null. He who has waived his right, by making a contract that he need not have made, such contract not being by law null, must abide the result. *Volenti non fit injuria*. So ruled this very Governor and Intendant, in regard to this very matter. One nullity only, they had themselves created,—*the nullity of all sales of wild land, by whomsoever made*. Is even that nullity of force now? Is wild land escheated to the Crown, *de plein droit*, whenever sold?—Contracts never threatened with nullity, by anything purporting to read as law, are they null? Or rather—for that is the question here raised—are they to be maintained as valid contracts against the grantor, so as to vest the land in the grantee; and yet set aside as null in favor of the grantee, so as to free him from his obligation to pay, as he has voluntarily promised?

But to return. I have said, there were 45 grants in Lower Canada, made from 1731 to 1760, and having in them (as issued here) this ambigious clause. We have seen how the King, *en pleine connaissance de cause*, saw fit to deal with one of them. How did he deal with the rest?

In the second of the volumes laid before Parliament, at page 239, will be found his *brevet* of ratification of one—that of Nouvelle Longueuil—bearing date in 1735, some months after that of the augmentation of Two Mountains above adverted to. It is a *brevet* drawn in the style, and as nearly as may be in the words, of those of somewhat earlier dates, of which I have made mention; and like them, purports to recite *au long* the obligations of the grantee. But it does not contain this clause. Precisely as in former cases the King had left out the unambiguous clause then put in by his officers,—so now, did he leave out this.

And this case is no exception to the rule. I have been able to obtain in all, 12 other *brevets* of ratification of different grants out of this total number of 45; and in every one of them the case is the same. They are those of Rigaud, granted in 1733; an augmentation of Berthier, in 1734; Noyan, in 1735; the augmentation of Lavaltrie, in 1735; D'Aillebout, in 1737; De Ramsay, in 1740; the augmentation of Monnoir, in 1740; the augmentation of Sorel, in 1740; the augmentation of Lanoraie and Dautré, in 1740; St. Hyacinthe, in 1749; Bleury, in 1751; and Sabrevois, in 1751. I have not been able to find one,—I do not, cannot believe there is one—that does not omit the clause.

I have shown, then,—to recount the facts as they stand, from the day of the date of the *arrets* of Marly,—that on that day the King certainly ratified 11 grants, in terms that imposed new charges on several of the grantees, but without inserting any clause at all bearing on this matter; that in 1716, he did the same thing as regarded two more grants; that in the same year he ratified the grant of Mille Isles, (issued here by his lieutenants with the clause of the fixed rate,) in terms not imposing that clause on the grantee; that in 1718, he materially relaxed its stringency, when ratifying the grant of Two Mountains; that in 1729, he granted Beauharnois, without it; that in 1731, he granted the augmentation of Terrebonne, known as Desplaines, not merely without any such clause, but, as one may say—absolutely without clause or restriction; that in 1732, he in effect granted Argenteuil, with no such restriction; that in 1733, he ratified the Ursulines' grant of an augmentation of Maskinonge, again omitting the clause of the fixed rate; that in 1735, in the case of the augmentation of Two Mountains, he cut down almost to nothing the newer ambiguous clause by that time contrived by his lieutenants, as to usual rates, and wholly struck out from the Two Mountains grant of 1718, the stricter clause then left in that grant; that in 13 other instances, ranging from 1733 to 1751, (being all the other instances as to which I have been able to find out what he did with their grants,) he uniformly omitted this ambiguous clause of his Canadian servants' insertion; and that in 1750, he issued his second grant of Beauharnois,—still, as ever, omitting it.

Is there, can there be, a doubt of the fact, that neither the one clause nor the other ever in truth had the Royal sanction? Or can there be a doubt that neither the Governors and Intendants here, nor yet the king and his ministers in France, ever took the *arrets* of Marly, to have fixed a rate of *cens*—much less to have made contracts for any higher rate illegal and null? The clauses were put in, to enable the Governor and Intendant to exercise a power known and felt not to have been given them by the *arrets* of Marly. Their insertion was never sanctioned. The king never meant to grant them—never did grant them—the power they thus sought to get.

One other point, in reference to this correspondence of 1734-5 about the grant of the augmentation of Two Mountains, may call for a word of remark. The Seminary, we have seen, complained of the clause requiring them to leave the beaches free with the exception of such as they should require for their own fisheries. In their letter, Messrs. Beauharnois and Hocquart had entered into some explanations as to the *droit de peche* in Canada, as to which I may have to speak hereaf-

ter ; and had in guarded terms recommended the maintenance of this clause. But what answer did the King make ? "The clause concerning "the freedom of the beaches has been omitted "(*retranchée.*) 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 fish- "ing opposite their lands,on condition of their pay- "ing 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 te- "nants 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 "*brevet* the obligation of granting that liberty to "the tenants ; the matter, in fact, is one for pri- "vate agreement between them and the seignior "(*c'est là, en effet une convention particuliere "entre eux et le Seigneur*) ; and besides, the "clause is not in the *brevet* of 1718."

If proof could be wanting, as to the meaning or effect of the omission in a *brevet* of ratification, of a clause inserted in the first grant,—it is here. The minister declares that it is not the king's will to bind the Seminary to the observance of this clause. It is simply left out of the *brevet.* So left out, it is no longer a condition of the giant.

Another inference is no less obvious. So far from its having been the royal policy, as late even as 1735, to tie down seignior and *censitaire* to fixed rules, prohibitory of such reserves or other clauses as they might agree upon from time to time, we have here the royal declaration, on the one hand that the right of fishing was unquestionably one that the *habitant* by all means ought to have, but at the same time, on the other hand, that the king would not in this instance force the seignior to grant it. He is to be allowed freely to dispose of it, to get whatever he can for it. The relation of seignior and *censitaire* on all these matters, was to remain matter of mere contract.

So much for the king's views and conduct in relation to these matters. What as to those of his Governors and Intendants there ?

Let me observe only, by the way, that this (properly speaking) is by no means the real question in the case The king's officers here acted only in his name and by his authority. It was their fashion, of course, always to call whatever they did and said, the king's will. If it was not, if in any matter wherein his will was signified to them one way, they acted and spoke otherwise, they at all events could not thereby make the law other than what the king, as law-giver, declared and made it.

Another remark is this. These functionaries not only had no power of themselves, to make the law other and than what the king willed to have it ; but, moreover, even when not exactly misrepresenting the royal will, they were not unapt to make mistakes as to the law, public and private,—which mistakes were by no means law.

For instance, in 1709, Mr. Intendant Raudot, whose plans (shortly before that time submitted) for the fixing of a uniform rate of *cens*, and doing a great many other things, were not adopted by the Crown, as we have seen—Mr. Randot, I say, issued an *Ordonnance* (to be found on p. 67 of the 2nd vol. of the old *Edits & Ordonnances*) by which he declared all Indians of the tribe or class called Panis, and all negroes escaping to this country, to be slaves. And in 1736, M. Hocquart, by another Ordonnance, (printed on p. 105 of the same vol.) declared that such slaves could not be manumitted otherwise than by Notarial *Acte*. Yet the *Code Noir* never was enregistered here: and the law of the land did not, in truth, recognize slavery. These *Ordonnances* never needed to be repealed; because, though practically for a time enforced, they never really had the force of law.

Again, as late as 1740, the same M Hocquart, by another *Ordonnance*, (on p. 177 of the 2nd of the volumes lately laid before Parliament,) after reciting that he had just seen a valuable pine wood in the Seigniory of Sorel, coolly declared the same to be a reserve for the supply of His Majesty's navy ; forbade Seignior and *censitaires* from cutting any part of it under heavy penalties ; and appointed a resident guardian to take care they were enforced. The title of the Seigniory contained no reserve of pine timber. And the wood in question was no property of the Crown. The consequences to the parties of any infringement of the prohibition, might have been unpleasant; as it was probably ordained with the full intention of enforcing it. But it was still not law. Its illegal enforcement by an arbitrary ruler, once out of the question, there was no need for its repeal.

What, then, in truth, as to these Seigniorial questions, was the Jurisprudence (so to speak) established by the decisions and general course of the Governor, Intendants and Courts of Law in Canada ?

So far as regarded the re-union to the Crown domain, of Seigniories which the grantees failed to clear, it is obvious to remark that there was practically no need of an *arret* of Marly to authorize it. If, after the Crown had granted a Seigniory, the grantee did not, by himself or others, take steps to settle on it, he might fairly enough be taken not to have accepted the grant. The Crown, under such circumstances, was always held to have full power to take back it, unaccepted gift. Long before 1711, numbers of grants were undoubtedly so resumed; some withf some without, the formality of an express *arret* or decree to that effect. All that the first of the two *arrets* of Marly did in that behalf, was to point out the precise mode of procedure to be thereafter followed, for the escheat of such lands. The Attorney General was to prosecute; and the Governor and Intendant, acting conjointly as the special and extraordinary tribunal alone competent to take cognizance of the matter, upon due ascertainment of the facts, and by *ordonnances* in due form, were to pronounce the escheat.

The Military man, head of the Executive, and the Civilian, head of the Judiciary, Police and Finance Departments, must concur in every such *Ordonnance* ; or it could not be made. I find trace, by the way, of but one such *Ordonnance*, as ever really promulgated ; of date as late as 1741, for the escheat of 20 grants. Further incidental evidence of the habitually comminatory character of these legislative *arrêts* of the French King.

Again, there was no need of the second of the *arrets* of Marly, to authorize the re-union to the domain of a Seignior, of any lot of land not cleared and and settled on by the *censitaire*. Equally with the Seignior, a *censitaire* not settling on his grant was held not to have practically taken it. Besides, in all

but the earliest grants of Seigniories, the Crown had systematically bound the Seignior to enforce residence by the express terms of his contract with his sub-grantees. And beyond doubt, clauses to that effect were always put into the grants to *censitaires*, with that view; and whenever appealed to (as they often were) were at all periods rigidly enough enforced. All that this *arret* of Marly had to do, was to provide a short and easy mode of enforcing this obligation. And it did so, most decidedly. No prosecution in this case by an Attorney General, or before a Governor and Intendant who must agree in judgment in order to act at all. Properly speaking, no prosecution at all; for the party complained of need not be (sometimes, was not) so much as summoned. On the mere certificate of the *Curé* and Captain of the *Côte*, the Intendant—acting alone, summarily and with no appeal from his decision—was to do all the justice that that kind of case was held to need.

But for the other of the three procedures contemplated by these *arrets*, the case was different. It was an extraordinary procedure. The Crown had made grants; the lands granted were the seignior's,—and he alone, of course, could sub-grant, or in any way alienate them. Here, the Crown in effect said to such seignior—the seignior holding, the while, under the Crown's grant—you are to make a certain kind of contract for the alienation of this land of yours, whenever you are called on so to do; and if you refuse, the Crown (on complaint of the refused party) will do it in spite of you, and in so doing will by the way practically escheat—not your whole grant—but that particular part of it which in each such case may so be dealt with. Till, by its *arret* here in question, the Crown had said this, it was impossible it could have done it. Before 1712, there could have been no enforcement of a description of control over the seigniors, which to that date had never been so much as threatened.

After 1712, then, how did the case stand? How far did successive Governors and Intendants act upon this power to sub-grant in the contingency supposed? Or how far may they not have transcended it—have assumed, without right, the far larger power of control sought by Raudot, as we have seen, in 1707 and 1708, but never granted by the King?

I find mention in the 2d Volume of the old *Edits & Ordonnances* (p. xxxiii) of an *arret*, which, I am aware, has been quoted as an instance of the exercise of these larger powers. It is of date of 1713, the 29th of May, a few months only after the enregistration in Canada, of the *arrets* of Marly; and it is given as an *arrêt* of the *Conseil Superieur de Quebec*. It is thus printed:—

"*Arret* importing regulation, (*portant reglement,*) "which prohibits the Sieur Duchesnay from conceding any village lots (*emplacements*) in the village (*bourg*) of Fargy de Beauport, at any higher "rate of dues (*à plus haut titre et redevances*) than "1 sol of *cens* for each arpent, and a capon-fowl "(*poulet pret à chaponner*) of seigniorial rent, as on "grant of land, and irredeemable; to which *cens et* "*rentes* are reduced all the concessions made to "*habitans* in the said village, by the said Sieur Duchesnay and his predecessors, seigniors of Beauport."

But if any proposition can be clear, this must be,—that this *arret* had not in law any—the very slightest—sanction from, or reference to the *arrets* of Marly. They delegated no function or authority, to the *Conseil Superieur*. They contain no word of village lots, nor of concessions already made to *habitans*, nor of any lowering of any rates fixed by contract, nor indeed of interference with contracts of any sort. Nor had it, indeed, any the slightest sanctiou in law at all. It was as mere an interference with property and rights, as plainly contrary to law, as were the recognitions of slavery, and the reservation of the Sorel pine-wood, to which I a few moments since referred.

Let me add, that I can find nothing to show it ever to have been drawn into precedent. It stands alone. There is no other printed, in the least like it. That the Intendant of that day, M. Begon, having just received the *arrets* of Marly, should have been inclined to stretch his authority far beyond their purview, may easily be accounted for. That neither he nor his successors should have followed up an *arret* of this kind, by others like it,—is a fact of far more weight and significance.

An *arret*, or rather *ordonnance*, of M. Begon, of the 28th of June 1721, (printed on p. 68 of the 2d Vol. laid before Parliament) may perhaps be thought to bear such reference to the subject, as here to call for remark. But it is manifestly what lawyers call an *arret de circonstance*, a judgment in a special case, and that not at all the case contemplated by the *arret* of Marly. There was here no refusal to concede; on the contrary, the Seignior impleaded had long before granted "*billets de concession*," written promises of grant, only just not in form to serve the grantees as an absolute title to their lands. The dispute was merely as to the terms in which the notarial deeds of grant were to be drawn up, the Seignior wishing to put into them more onerous terms than the *censitaires* were willing to accept. The Intendant was called on to interpret and enforce a contract made—the contract established by these written promises; was not acting under the *arret* of Marly at all. The Defendant, with reason good, began by excepting to his jurisdiction, on the double grounds,—first, that the case was one for the ordinary Courts and not for the extraordinary cognizance of the Intendant,—and secondly, that the Intendant had expressed a strong opinion against him. The Intendant by the recitals of the *ordonnance*, sets forth his own decision that the matter, as coming within the scope of the *arret* of Marly, was matter for decision by no other Judge than himself, and that he had plainly told the Defendant that he meant to enforce that *arret* in the case; and he then proceeds to fine the Defendant 50 Livres—no small sum in those days—for his impertinence in daring to question his, the Intendant's authority and impartiality! Whereupon, still not without reason, fearing, I suppose, a heavier fine if he should venture to plead his cause any more, the defendant walked out of court under protest; and the Intendant's judgment went *ex parte*. Of course, it went for the plaintiffs. But of necessity, it was not at all in terms of the *arret* of Marly. The defendant is ordered to pass deeds on certain terms—the terms no doubt, on which the Intendant meant to say they ought to be passed; but failing the defendant so to do within the month of delay allowed, what was the alternative? "This delay expired," says

the judgment, "we do hereby authorize the plaintiffs to apply to the Marquis of Vaudreuil and "to ourselves, demanding the grant of the said "lands in the name of His Majesty, upon the same "charges and conditions, conformably to the said "*arret* of the *Conseil d'Etat* of His Majesty, of "the 6th July 1711; and this *ordonnance* shall be "executed, notwithstanding appeal, but without "prejudice thereto."

So that here we have of record the all obvious truth that so far the procedure had not been under the *arret* of Marly. If it had been, the Intendant so far from being Judge of it, to the exclusion of all others, could not have been the Judge of it at all; but could only have sat upon it with the Governor. The Defendant may not have been right. His pretensions, as they appear to have been put forth, were harsh, and probably not warranted by any proper interpretation of the *billets* he had given; but certainly, his Judge was not right, and showed none too much of the Judicial spirit in dealing with the case. And—which is here the whole point—the case had no real reference to the *arret* of Marly.

The next case I find, at all seeming to bear on this matter, is an *Ordonnance* of the Governor and Intendant of the 13th of October of the same year 1721,—printed on p. 72 of the same volume.—Here, those functionaries undoubtedly did in the King's name grant to a certain Widow Petit, a tract of land within the *censive* of the Fief St. Ignace belonging to the Ladies of the Hotel Dieu of Quebec. But it is expressly recited that this was done—not under the *arret* of Marly,—but under an *arret* of the *Conseil d'Etat du Roy* of date of the 2nd of June, 1720,—a special *arret* evidently predicated on special circumstances of controversy between the parties. By this *arret* the King in Council had declared the widow Petit to be entitled to a deed of this particular land; and had ordered the Governor and Intendant to grant it to her, if the Ladies of the Hotel Dieu should persist in their resistance to her claim.—They did persist.—The urgent but vain efforts of the Plaintiff to bring them to a compliance are set forth at great length; and the grant was made accordingly. It is the one only grant in the King's name, that has been found,—made by a Governor and Intendant within the *censive* of a granted Seigniory. There is no other printed,—I venture to say, no other of record.

It is a fact not wholly without significance, that neither of these *arrêts* names any rate of dues. The notion of a uniform rule as to that matter, started by Raudot in 1707 and 1708, is nowhere—save in his despatches—to be found.

A third *Ordonnance* of an Intendant, M. Dupuy, rendered Nov. 16, 1727, (p. 180 of the same volume) has been cited, as containing an important reference to this general subject. It will be found, however, that it really has none at all. The case is one of those, to which I have already made some reference,—turning wholly on the question of the date at which debts incurred during the currency of the *monnaie des cartes* were to be paid. Certain *censitaries* of Bellechasse naturally wanted to pay their dues, accrued and accruing under deeds which had been passed during that period in certain terms, subject to the reduction of a fourth, to convert them, as they claimed, into money of France. The Seignior as naturally wanted to be paid without such reduction. In part of his argument, which is given at great length as part of the recital of the *Ordonnance*, he urges that of all kinds of debts, Seigniorial dues ought not lightly to be taken to come within the range of the reduction in question, "because," says he, "the King having willed in order to the "more prompt settlement of the country that the "Seigniors here should grant their lands at a low "price, (*donnassent les terres à bas prix,*) there "is hardly any land granted at more than" so much, and much that is granted far lower, though covered with wood, and so forth. Add to which, says he, pushing his argument further, low as these their dues are, the Seigniors have heavy burthens to bear, for all sorts of objects of public utility; and it is absurd to suppose that the King means them to form an order of *noblesse* here, as he surely does, burthened thus, and yet subject to a cutting down of dues so much too light for such ends. But all this proves nothing; except that this gentleman saw fit to urge this argument in a case where it really had no legal bearing. Good or bad, as fact or argument, it is his mere statement made for a special purpose under peculiar circumstances. The judgment did not turn upon it,—and neither embodies nor at all indicates any expression of the Intendant's notions (supposing even them to signify) as to the matter.

A fourth *Ordonnance* has been cited; rendered by M. Hocquart on the 23rd of January 1738, and which is to be found on p.170 of the same volume, the *Ordonnance* in fact which was printed during the last Session of Parliament at Toronto, as bearing on this question. But, like the others I have remarked upon, it will be found to have really nothing to do with it. Several *habitans* of Gaudarville, in this case impleaded their Seigniores, the Delle. Peuvret, demanding—not a grant of lands which she had refused to make—but "titles in due "form of the lands she had conceded them, (*titres "en bonne forme des terres qu'elle leur a concé-"dées,*) and that, upon the footing of the titles of "the other lands of the said Seigniory." Her reply was, that she was quite willing to pass "deeds to the *habitans* Plaintiffs, of the new lands "she had granted, the same to be taken immediately behind the first grants of the said Seigni-"ory,—and at the *cens, rentes* and seigniorial dues "which the Intendant should please to indicate "(*et aux cens, rentes et droits Seigneuriaux qu'il "nous plaira régler.*") Hereupon the Plaintiffs objected by their answer—and this manifestly was the sole point in serious dispute between the parties—that behind the first range of grants there was a swamp, and that their lots ought to be marked off in rear of it. To this the Seigniores in turn made objection; and here the Intendant had to decide. The Grand Voyer visited the ground, and reported. The Intendant settled the point in favor of the Seigniores's pretension; and, so doing—and in terms of her express consent, of record in the cause, directed that the grants should be "at the "*cens rentes* ordained by His Majesty, to wit: "one *sol* of *cens* per arpent of front, and one *sol* "of *rente* per arpent in superficies, and a capon "or 20 *sols* at the choice of the said Seigniores, "per arpent of front."—"Ordained by His Majesty." How? When? *apropos* of what? There

is nothing to show. It may have been, that such orders had been sent out, in reference to grants *en censive*, within the domain of the Crown; though the fact is at least noticeable here, that these rates are not those which, as we know from other documents now published, were fixed for grants in the *censives* of the Crown, about the same period. To this consideration I shall have to advert presently; and I pass from it therefore now, merely observing as I do so, that it is certain that at this very period the Governor and Intendant were fixing variant rates of dues, not identical with this rate nor with each other, for *censive* grants within the Crown domain; and, that the case, as an authoritative decision amounts to nothing, because—as I have said—it purports to have been on this point a mere judgment by consent. For aught we know, the Seigniores may gained by it, may have got higher rates than those of her older grants. Nothing in the case indicates that they were lower.

One more *ordonnance* I cite in this connexion; not as making against my view, (for I have found none that do,) but as the one other, which I have found, indicative of any material control exercised by an Intendant over the terms of a grant *à cens* made by a Seignior. It is another *ordonnance* of M. Hocquart. under date of the 23rd of February 1748, and is to be found at p. 202 of the same volume. In this case, the Fabrique of Berthier impleaded the Seigniores, to obtain from her a notarial deed to a lot held by them for the last 38 years, under a *billet de concession*. The Defendant declared her willingness to pass the deed, but demanded to be allowed to insert in it certain clauses,—one to the effect that the land, if ever alienated by the Fabrique, should become chargeable in her favor with a certain rate of dues, stated by her to be that of the other lands in her Seigniory,—and some other clauses of a kind not likely to have been contemplated at the time of the granting of the *billet de concession*. To these latter clauses the Fabrique gave no consent; and the Intendant, rightly no doubt, disallowed them, —and directed the passing of a deed that should merely stipulate for payment of dues by any party acquiring from the Fabrique. The rate named in the judgment is not identical with that proposed by the Seigniores, as the rate usual in her Seigniory; the former being partly payable in capons, and the latter in wheat; and no reason is given for the variance. Indeed, it reads as though made by inadvertence. Be this, however, as it may, so much at least is clear, that this *ordonnance*, equally with the others I have been commenting on, is not a case ever so remotely coming within the purview of the enactments of the *arrets* of Marly.

I say more. I dare not undertake to weary this Honorable House with comments on every *Ordonnance* and *Arret* in detail; thus over and over again to prove a negative. But this I must say, after thus remarking on these cases—the few I have found, of a tenor which has seemed to me to call for notice here,—that I have most carefully studied every printed *Edit*, *Arret* and *Ordonnance* laid before this Honorable House in connection with this whole subject, and every other that I have been able to find; that I have arranged them all in order of date; have read and re-read them all, so arranged; have made a written abstract of them all; and, though I will not say that the *Edit*, *Arret* or *Ordonnance* does not exist, that shows this procedure by *habitant* against Seignior, provided for by this *arret* of Marly, in some stray instance to have been resorted to and carried out, I will and do say, that after every effort made I have not found it. I do firmly believe that it is nowhere to be found.

And not only do I find no proof of this procedure under this *arret* of Marly having ever been carried out. I fail equally to find a case of the enforcement of the after *arret* of 1732, which prohibited all sale of wild land, by whomsoever made, under pain of nullity and escheat. Both, so far as one can see, were mere threats. I will not say they were never meant for more. But that they were no more, I cannot doubt.

Indeed, that this part of the first *arret* of Marly had so fallen into *desuetude*, is further to some extent evidenced by the tenor of the Declaration of the French King, of the year 1743, to be found on page 230 of the second volume so often quoted. By that Declaration the King undertook to regulate the course to be followed by the Governor and Intendant, and in proceedings had before them, in regard to the matter of the granting and and escheating of land. But there is not in it, nor yet in the King's subsequent Declaration of 1747 (p. 172 of the third volume laid before Parliament) explanatory of it,—any reference to this peculiar procedure (most of all requiring regulation, one would say, if then a precedure really ever taken) for the *quasi* escheat of land part of a granted Seigniory, and its grant by the Crown to the *habitant*, prosecutor in the cause. It was not a procedure seriously thought about.

I would not be misunderstood. My position is not, that the Governors and Intendants let the Seigniors alone. They let no one alone. They were for manging everything and everybody; for not allowing wild land to be sold by any one; for not letting men of any class make their own bargains or deal freely about anything. I dare say they interfered with Seigniors. Very likely —the *arrets* of Marly not coming up to their notion of the extent or kind of interference they were inclined to resort to,—they interpreted them more or less to be what they were not. Some of the *arrets* I have remarked upon, are indicative of this sort of thing. And very possibly a vague impression as to what might be done by an Intendant in any given case, under col of his notions of these *arrets*, or representations as to what was the King's pleasure, may have had more or less of effect at one time or another, in leading Seigniors to concede at lower rates or under less onerous charges and reserves than they otherwise would have done. The same kind of consideration, no doubt, influenced other classes of men as to other matters. But such influence was no influence of law; changed no man's tenure of his land; affected in no way the legal incidents attaching to a man's property.

And without any such influence operating to that end, it was impossible the rates of concession of land should have been high. By 1663, we have seen that not far from 3,000,000 of arpents of the land now so held, had been granted *en fief*, under those of the titles of that period which still remain in force; and perhaps twice that quantity had in all been granted under all the titles

then extant. The French population, to that date, is stated not to have amounted to 2,500 souls. At a low calculation, the extent of the grants must have averaged something like 10,000 arpents for every family. In 1712, when the *arrets* of Marly were promulgated, the grants *en fief* covered more than 7,000,000 of arpents; for a population (Indians excluded) of hardly 22,000 souls; some 1,800 arpents at least on the average for every family. And in 1760, the grants were 10,000,000 of arpents, to a population of about 59,000; or still, about 1,000 arpents to a family. Could land bear anything but a low price under such circumstances? And these figures all understate the fact. For they are given without reference to the large grants made beyond the present limits of Lower Canada, and where the population bore a still smaller proportion to the extent of the land granted than it did in Lower Canada.

But low (as compared with present values) as the ruling rates always were in Lower Canada during these periods, they were never uniform, or fixed by any law or rule.

It would have been contrary to all precedent, to every notion of law antecedently prevailing in the country, if they had been. No doubt, the doctrine will be found laid down in most of the books, that the *cens* was in its nature a small *redevance* or due—nominal, so to speak—imposed merely in recognition of the Seignior's superiority, and mainly valuable as establishing his right to the mutation fine, known under the Custom of Paris as *lods et ventes*. And from this fact, some have thought and spoken, as though it was of the nature of the of the fixed yearly Seigniorial dues, upon land granted *en censive*, to be low and nominal. But it is forgotten by those who draw this mistaken inference, that the doctrine I have referred to is by these feudist writers laid down, only with reference to the *cens*, properly so called, as contra-distingnished from the *rentes* which also formed part—and by very far the larger part—of these yearly dues. Even, however, as to the *cens*, in France, there was no kind of uniformity; and for the amount and character of the *rentes*, no limit whatever can be assigned to their variations. The total amount, in France, of a Seignior's yearly dues accruing on his lands granted *en censive*, were as variant as the caprice of local customs, and special contracts, possibly could make them; and as a general rule they were anything but low. Indeed, it has been clearly established as matter of historical research, that the *cens* itself was not in its origin a nominal due, but (as the very word, *cens, census*, imports) a real and onerous tribute—fixed in money and in the course of ages rendered light in amount, by reason not merely of advance in money prices, but also of the enormous depreciations of the currency that for some centuries disgraced the history of France.—Hervé, the writer from whom I have already quoted, and the weight of whose authority on these matters cannot be questioned, after conclusively establishing this historical fact, in his 5th volume, lays it down (p. 121) "*que* "*toujours le cens a été proportionné au véritable* "*produit de la chose accensée, lorsqu'on a fait de* "*véritables baux à cens; et non pas des rentes* "*sous le nom de baux à cens, et qu'il n'est point* "*par sa nature une simple redevance fictive et ho-* "*norifique;* that the *cens* has always been proportioned to the veritable product of the estate "granted *à cens*, when the parties have made "real grants *à cens*, and not sales disguised under "that name, and that it is not in its nature a mere "fictitious, honorific due" The *cens et rentes* here in question, no less than the *cens et rentes* of old subsisting in France under our Custom of Paris, bear, and ever have borne, this legal character; are, as to amount and kind, whatever the parties may have agreed to make them; represent the consideration of the grant, in terms of the contract establishing the grant.

To turn to facts.

The terms of a few grants *en censive*, made before 1663, are to be found in the 1st of the volumes laid before Parliament. In 1639, for instance, (see p. 351) a piece of land close to Quebec was granted at 1 denier, the twelfth part of a halfpenny of our currency, per arpent. In 1647 (p.12) a tract of a quarter of a league by a league in depth, was granted at the same rate: but with the proviso that such rate per arpent was to be paid "*lorsqu'il* "*sera en valeur seulement,*" "as it shall be brought "into cultivation only,"—a curious passing indication of the idea then entertained of the value of the twelfth part of the coin now passing as a halfpenny. Two years after, in 1649, (p. 382) land at Three Rivers was granted at the enhanced rate of 3 deniers per arpent; and in the same year (p. 311) two months latter, other land, to be taken at Three Rivers or Quebec, was granted at the further advance of 6 deniers per arpent. These grants and some others like them, are grants by the Company of New France.

Almost at the same date, in 1648, I find mention in the recitals of an *Arret*, (vol. II, p. 176 *Edits et Ordonnances* of 1806) of a grant *à cens* by a Seignior, at the rate of 12 deniers per arpent of cleared or meadow land, together with a quart of well salted eels. And it may be added, by the way, that this grant (thus early made) stipulated the *droit de retrait*, or right of pre-emption by the Seignior, in case of sale of the land by the grantee.

I was desirous to have had it in my power to lay before this House something like a statement of the extent of range of the variations observable at different periods and in different parts of the Province; but they are so almost infinite, that I soon felt it to be quite impossible, with the very little time I was able to devote to this particular branch of research. A friend to whom I applied a few days since to aid me in this respect was able to spend a very short time in an examination of a limited number of old grants in the vaults of the Prothonotary's office at Montreal. Taking the first in alphabetic order, of the names of the notaries of the old time, whose minutes were there deposited—that of one Adhémar,—and striking on the year 1671, as remote enough to fall within M. Randot's times of innocence, he examined as many of that Notary's deeds as the short time he could give to the matter allowed. From their state and style of writing he was unable to examine many in that time; but all he could examine showed an almost incredible absence of rule or usage, as well at that date as at others—whether as to amount or kinds of dues or as to the quantities granted, or as to the clauses and reserves attached to grants. Hereafter—so soon as time shall allow—I will establish this fact (for it is a certain fact) beyond the possibili-

ty of doubt, by ascertaining and laying before the public the terms of a sufficient number of these all-varying deeds. For the moment, I must be content to cite four; the first four that my friend chanced to examine, and of which I hold authenticated copies in my hands. They are of dates falling within 8 consecutive days of September, 1674; the first, being of the 5th—the second, of the 12th, and the third and fourth, of the 13th, of that month; in fact, I believe them to be the four consecutive deeds of concession which it was that Notary's fortune to pass in those eight days. The first, second and fourth, are of grants in Batiscan; the third is of a grant either in Batiscan or Cap de la Magdeleine. Either Seigniory belonged to the Jesuit fathers; presumably not the most exacting, or irregular in procedure, of the Seigniors of the time.

The first of these grants is one of 40 arpents by 40; 1600 square arpents. The yearly dues are stated at 30 *Livres Tournois*, 10 capons, and 10 *deniers* (ten twelfths of a half-penny) of *cens*. Valuing the capons at 15 sols a piece—the money rate per arpent is something over half a *sol*—something over a farthing of our currency.

The second of these grants is of 4 arpents by an unstated depth; the rate, 1 *sol Tournois* per arpent, 1 capon per 20 arpents, and 4 *deniers* (⅓ of a half-penny) of *cens*: in all—upon the same valuation of the capon—about 1¾ *sols* per arpent, more than treble that of the grant of the week before.

The third is of 2 arpents by 40; the rate, as though the parties had not liked ever twice to do the same thing in the same way, or on like terms is stated at half a *boisseau* of wheat, 2 capons and 2 *deniers* of *cens*.

The fourth—a grant of 60 feet square near the mill of Batiscan—is for 3 *Livres Tournois*, and 1 *denier* of *cens*; a rate of more than 1 *sol* for every foot of front by 60 feet of depth.

Quantities—amounts—rate—styles of rate—could scarcely have varied more.

Again, to take another kind of proof, and from another and later time. In 1707 and 1708, we find Mr. Raudot complaining of the extraordinary diversity everywhere prevailing; sending home a table to exhibit it; and proposing, by way of remedy (p. 8 of Vol. 4, as laid before this House) the adoption as a rule of universal application, of the rate of "a *sol* of *rente*, and a capon or 20 *sols* "at the payer's choice, per arpent of frontage." as we have seen, the suggestion was not adopted. In 1716, when the subject was again under review nothing approaching to it appears to have been offered by Mr. Begon, or thought of by any one else.

Between 1731, however, and 1753, we have copies of some 10 grants *en censive*, printed in the 1st and 4th of the Volumes laid before Parliament, made by the Governor and Intendant for the Crown. And here, at all events, if uniformity of rate could have been the rule any where, one would expect to find it. Five of these grants from 1734 to 1750, (Vol. 4, p. 27 and Vol. 1, p. 242, 243, 247, 248, and 249) are at the same rate, being all grants near Detroit; but it is not the rate suggested in 1707 by Raudot—but one materially higher, and this, though the land granted was so far back in the wilderness. This new rate is 1 *sol* of *cens* per arpent of front, 20 *sols* for every 20 arpents of extent, and a quarter of a minot of wheat per arpent of front by 40 arpents. A sixth grant at the same place, in 1753, (Vol. 1, p. 252,) is made nominally at the same rate, but the depth being 60 arpents the real rate per arpent is, so much lower. A seventh—of the Isle aux Cochons, in Lake Erie—in 1752, (Vol. 1, p. 251) is made with no reference to this rule, at 2 *sols* of *cens*, 4 *Livres* of *rente*, and a minot of wheat, for the entire grant—20 arpents by half a league. The eight and ninth of these grants, are at Port St. Frederic, in 1741 and 1744, (Vol. 1, p. 245, 246,) and the rate is an advance—not inconsiderable, according to the notions of those times—on that of the 4 grants at Detroit first referred to. It is 1 *sol* of *cens* per arpent of front, 20 *sols* of *rente* per 20 arpents, and *half* a minot of wheat (instead of a quarter) per 40 arpents. And the tenth grant of the number, at La Presentation, in 1751, (Vol. 1, p. 250,) being of an arpent and a half square, for convenience of a saw-mill built by the grantee, is at 5 *sols* of *rente*, and 6 *deniers* of *cens*.

No observance, therefore of a fixed rule, even in the *censive* of the crown; the Governor and Intendant, granting; and through the period presumably that of the nearest approach to regularity of system ever attained under the French Government.

In truth, uniformity of rule and absolutism have very little to do with one another. We have seen already that even in the 4 cases, between 1713 and 1727, in which the Governors and Intendants attempted, by their fixed rate clause, to enforce a rule on grantees of Seigniories, they could not bring themselves to make that rule one and the same,—but, by prescribing three different depths of grants in three out of the four cases, laid down in truth three different rules, for three several Seigniories.

The recitals of numbers of the *Ordonnances and Arrets*, as we find them in the second of the Volumes laid before this Honourable House, all tend to the same conclusion. Over and over, we find the Intendants taking cognizance of rates in not at all alike; and constantly enforcing them, just as the contracts chanced to set them forth. Sometimes, the *Arrets* clearly show more than one rate in a Seigniory. In one, that occurs to me, (to be found on p. 165 of this second Volume) three such rates are incidentally referred to as co-existent in one and the same Seigniory; and this not as a matter at all extraordinary—as in truth it was not.

Further, to turn to still another description of proof. In the table on the subject, printed as part of the Appendix to the Seigniorial Tenure Commissioners' Report, (Vol. 3, p. 159 and seq.,) are stated, in all, the terms of some 47 grants *en censive*, of dates prior to 1760, made in 18 Seigniories. And these grants exhibit some 40 variances of rate. In one Seigniory alone 6 or 7 of these variances are shown; in another, 5; in several others 2, 3, or 4.

But to what end heap proof on proof, of a fact so certain,—so everywhere patent on the face of every document we have, that at all refers to it; of a fact so consonant with every probability arising out of the antecedent law of the land,—so certainly made known as a fact, to the Crown by its Governors and Intendants,—so certainly recognized and sactioned by the Crown? There can nothing be proved, if this is not.

I pass to another consideration. I said, not long since, that the Seigniors, if at all more controlled by the authorities that the law warranted, were at all events not the only parties so controlled. But that is not all I must say. They were the parties least so controlled. Why, the very obligation imposed on so many of them by their deeds, was an obligation to aid in controlling the class below them,—to compel that class to live on their lands, to reserve oak timber for the King, and so forth. Before, as well as after the *arrets* of Marly, the grants made to that class were constantly escheated for failure so to settle them.—The complaint of the Intendants was, that the Seigniors were only too little zealous in enforcing this control.

The *arrets* of Marly threatened a penalty hard of enforcement and not practically enforced against the Seignior, and for the *censitaire*; but contrived the shortest and most summary mode possible—a mode constantly resorted to—of enforcing its penalty against the *censitaire*, and for the Seignior.

The *arret* of 1732 pretended—not to annul simply a Seignior's sales of wild land,—but all such sales made by any one. If ever enforced, we may take it for certain, that the *censitaires*' sales would not have been the sales to escape the forfeiture.

The *censitaires* were not then the powerful or favored class.

Even where favored, it was seldom to an extent that would be thought much of, in days like ours. For example, in 1706 (I refer to p. 35 of the second volume laid before this House) Mr. Raudot was called on to interpret a clause, general it would seem in the grants made by the Seminary, in their Seigniory of Montreal, (and in those days, by the way, not uncommon elsewhere,) by which that body had reserved to themselves the right to take without payment any quantity of wood they pleased on their *censitaires*' land. The Seminary expresly consented, as a favour, to limit this reserve to the right of cutting down for their own fire wood one arpent in every sixty, to be chosen by themselves, near the clearings of the *censitaires*, and for their buildings or other public works any further quantity they might require.—And this offer was accepted; and by such consent of parties, Mr. Raudot pronounced accordingly.

At all dates, we find the Intendants strictly enforcing the prohibition to fish against the *habitans*, unless by leave of their Seignior, from whom they had to acquire the right—of course for value. The same strict enforcement was uniform of the Seigniors' right of banality, of which I shall have to speak more hereafter, and by virtue of which no man was allowed to resort to any other than his Seignior's grist mill. And even as to *Corvées*, or the obligation to involuntary labor at the Seigniors requirment, notwithstanding the *Ordonnance* of 1716, printed last year at Toronto (and to be found on page 57 of the second volume now before this House,) under which it has been contended that all *Corvées* were then prohibited,—and notwithstanding the dislike of them expressed to the government at home, in 1707, 1708 and 1716 by Messrs. Raudot and Begon,—not even herein was the *censitaire* in fact relieved. Everywhere I find them enforced. Nay, as late even as 1723, (see p. 85 of volume 2,) I find an extra day of *corvée* ordered by the Intendant, for all the *habitans* of Longueuil, on the *exparte* demand of the Seignior—the *censitaires* not so much as summoned to make answer to the demand before judgment rendered.

And this control and these interferences were not merely resorted to, in matters where the Seignior's interests may be said to have dictated them. In 1709, for instance,—I quote now from page xli of the second volume of *Edits et Ordonnances* published in 1806—Mr. Raudot, whose especial mania for interference with all sorts of people and things I have so often had to notice, issued his ukase, "forbidding the *habitans* of the neighbourhood of Montreal to keep more than two horses or mares and one colt, as their doing so would prevent their raising horned cattle and sheep, and would lead to a scarcity of other animals."

From this absurd caprice of an Intendant, I pass to a piece of serious legislation by the King, as which again there can be no mistake. In 1745—I cite from page 151 of the 1st volume of the *Edits et Ordonnances* published in 1803,—the King by an *ordonnance*, forbade the *habitans* throughout the the country, to build any house or stable, whether of strone or wood, on any piece of land of less extent than an arpent and a half by from 30 to 40 deep unless it were, within the limits of some *bourg* or village declared such by the Governor and Intendant, and this on pain of demolition of such building and 100 *Livres* of fine. And from the time of its promulgation down to 1760, that *Ordonnance* with all its severity—a severity pressing only on the *habitant* class—was, as is well known, most rightly enforced.

And it did not quite come up to the ideas cherished by the functionaries of the then Government as to the extent and oppressiveness of the control that ought to be brought to bear on the unfortunate class of men for whom it was intended. By all means whatever, they were to be forced to abide the life of risk and hardship then falling to the lot of the rural settler,—neither suffered to hold only so much land as they might want, nor under any pretext to leave their forest wilderness for the easier life of the town. By 1749 (see p. lxxxvii of the 2d Volume of *Edits et Ordonnances*, of 1806) an Intendant's *Ordonnance* "with intent to advance the cultivation of the country, forbids the *habitans* who have land in in the country from coming to settle in town, without leave of the Intendant granted in writing; and orders all persons of the town, letting houses or rooms to any whom they shall suspect to be *habitants* of the country, to declare the same to the Lieutenant General of Police,"—of course that they be sent back, punished or unpunished, as occasion shall require.

Control! Every one, I repeat, was controlled, as happily none can be now, But the weight of the control pressed on the *censitaire*. The Seignior in comparison was free. Such as it was, moreover, that control is of the past; to all intents, as regards the law of the land, is as though it had never been. No man's tenure of his property is effected by it; nejther *censitaire*'s, nor Seignior's. Both hold as proprietors; their rights defined and protected equally, by the law.—For my clients, I am here, not to ask for a return, in any the very slightest particular towards the

old system under which they were (as I have shown) the comparatively favored class. I recall that past, as it was, only that I may protest on their behalf against the monstrous error and injustice of any attempt now to subject them (and them only) to its influence,..or rather to the influence of a system of arbitrary, despotic interference, other and far worse than that past ever inflicted on their predecessors,—such as may not, cannot be made to affect any class whatever, where (as with us) the law alike and equally protects all classes, all property, all rights.

I proceed to another portion of my argument. I have said, that the proposition on which alone this Bill can for an instant be defended, is the proposition, that the Seigniors of Lower Canada are not truly proprietors, but trustees bound to concede at some low rate, and under few or no conditions or restrictions; and that this alleged trustee capacity of theirs, if it be the fact, must arise either from something in the tenor of the antecedent law of France, as interpretative of their position; or from something done when their grants made, or afterwards, down to the cession of this country to the British Crown; or from something done since that cession. Unless I am much mistaken, I have shown, that alike the tenor of the old law, the terms of their grants, the action, legislative and otherwise, of the French Crown, and the whole course and character of the jurisprudence (so to speak) of the country, while under the French Crown, establish in terms the contrary proposition; prove that, to the date of the cession, they not only were proprietors, but were even the proprietor who held by the higher and more perfect and favored tenure,—were in fact emphatically the proprietors of the favored class. Passing now to the period which has elapsed since the cession of the country to the British Crown, I believe that my further proposition, that nothing has been done since the cession to take from them their proprietor quality, does not require much argument for its support. I shall easily show that the history of this whole matter since the cession, is such, as to suffice of itself to assure to them that quality, with all its incidents, were it even doubtful (as it is not) how far it attached to them before.

But before occupying myself with that part of my subject, I perhaps ought to offer some remarks on a point which may be said to suggest itself incidentally, as one passes from the consideration of the French period of our history, to our own. It is this; how far what has been said and written since the cession, can be suffered to affect our inferences on this matter, drawn from what we have before us of all that was said and written previously; how far, in a word, the expressed opinions of men of mark since the cession, can go to prove the existence before that date, of a state of things in Canada, different from that which I have (as I think) established, by the examination of the grants, *arrets*, *ordonnances*, despatches and other documents of all kinds, of date before the cession.

The truth is, that the *tradition* (so to speak) against which I argue, is attributable to statements made since the cession of the country. It has grown up since that period, and it may not be uninteresting to show how it has grown up; and that it has done so in a manner and under circumstances to attach no importance whatever to it. At first sight, indeed, this must seem tolerably obvious; for it is a maxim of law, and of common sense too, that the best evidence alone is to be taken. If it bethe fact, that from the tenor of the law of France, of the Seignior's grants, direct from the French King or through his officers in the colony, and the legislation and jurisprudence of the country under the French Crown, one has to assign to the Seigniors of Lower Canada the quality of proprietors—such as I have shown it to attach to them; if this, I say, be proved by the best —the only real evidence we can obtain; it is not necesary to show how any counter-impression may or may not have since grown up. But, evident as this is, I may be allowed, I trust, in consideration of the extent to which it has latterly prevailed, to offer some observations by way of accounting for its origin and progress.

Perhaps there never was a country in so peculiarly false a position with respect to its traditions of its own past, as Lower Canada. On the occasion of the cession, the high officers who had administered the government left the country; with them they took its confidential archives; with them went, too, the superior judicial functionaries, and a large proportion of the men of higher rank and better education; leaving behind them comparatively few who were not of the less educated class, or at any rate of the class less capable of preserving in the country a correct tradition as to the spirit of its old institutions. New rulers arrived in the Province, not speaking the tongue of those amongst whom they came, and whom they had to govern; wholly strangers to their laws usages, and modes of thought and feeling; bringing with them the maxims and opinions of the nation of all others the least resembling that which had first settled Canada; not at all the men to seize—or even to try to seize—the peculiarities of the law they came to suporsede; whether as to the prerogative of the French Crown, the confusion of legislative, judicial and executive functions pervading its whole system, the uncertain and purely comminatory character habitually attaching to it, or the vast and complex detail of laws and rights of property subsisting under it.

All this, I say, they were not likely to understand, or make the effort to understand.

The law of England, their law, one need hardly observe, is essentially a law of unwritten custom; and most of all, perhaps, with regard to that particular description of English real property, which answered most nearly to what they here found subsisting as land held *en censive*. In England, copyhold property is almost entirely—perhaps I should say, is entirely and essentially—governed by unwritten customs peculiar to the different manors and holdings. The very term "custom" as they found it in use here, was a term calculated to mislead them. The Custom of Paris here established, and the other customs locally prevalent in France, were not unwritten customs, like those of an English manor, or the great, general body of unwritten custom known as the common law of England. They were written documents, enacted by authority,—statutes, in English phrase, not customs.

Indeed, in Canada there was even less of resort to unwritten usage, as regarded the terms of the

holding of *censive* lands, than in old France. In France, undoubtedly, in many cases, rates of *cens* and other dues could only be traced back to local unwritten usages which, as it were, supplemented the known written customs of the land. But in Canada there was no dark antiquity to peer into; here every thing was new, had had its origin within a date that could be reached; every grant *à cens* was by an authentic instrument, the precise tenor of which could be ascertained; or if in particular instances it happened that this was not the case, it was merely that the parties had trusted each other's faith, and so entered into a contract which they might possibly have some practical difficulty in proving and enforcing to the letter; but the terms of which were yet to be ascertained and enforced in all such cases, as well as might be, in common course of law.

All this, I repeat, was not calculated to lead to a very correct first impression, on the part of these new rulers of this country. Inclined naturally to see in the Canadian Seigniory an English manor, and in its *censitaires* a body of English copyholders, it was not possible for them to avoid attaching too much weight to the notion of *customary* rates and obligations, and too little to the terms of the actual contracts. They hardly could realize how entirely in Canada the existence of these written laws and written contracts dispensed with—precluded one might say—reference to unwritten custom in this class of cases.

And this was not all. If they had been ever so disposed to study Canadian law,—as they were not, they would have found it hard to do so to much purpose. Books of such law were not plenty to their hands; not of inviting bulk, or styler or language. Of the model treatises on French law, to which at the present day lawyers of all countries resort, by far the greater part did not then exist. What books there were, were the older, larger, in every sense heavier volumes, of an earlier age. They were little likely to find readers in men, inclined neither to fancy their language nor their law.

The Provincial records, moreover, as I have said, were in the same tongue, in a hand-writing not easy to decipher, imperfect, in disorder; and there were few or no persons in the country, likely much to help the authorities in the attempt to find out what they amounted to.

Besides, the first Courts in the country, after the cession, by courtesy called Courts of law, were military Courts, made up of soldier-judges; and as, no doubt, it is true that the lawyer is apt to be an indifferent soldier, it is no less true that the soldier is apt not to be much of a lawyer.

And even this was not all. These Courts thus set to declare and administer the law of the lands were set to declare and administer they knew not what law. The general impression with the new, English ruling class, of course was, that a great deal of English law was to be introduced; and it was a question that no one could answer, how far French law, how far English law, how far a mixture of the two in some way or other to be worked up, was to be the rule.

It was under these circumstances that an *arret*, the only one of the kind which I find cited, as making against my clients' interests, and of which I have now to speak, was rendered. I refer to the *arret* of the 20th of April 1762, printed on the last page of the fourth of the volumes laid before this Honorable House. It purports to be taken from the Register of *arrets* of the Military Council of Montreal; such Council composed of Colonel Haldimand, the Baron de Munster, and Captains Prevot and Wharton; four highly respectable officers of Her Majesty's army, I have no doubt. And it reads thus:—

"Between the sieur Jean Baptiste Le Duc, "seignior of Isle Perrot, appellant from the sen- "tence of the Militia Court (*Chambre des Milices*) "of Pointe-Claire, of the fifteenth March last, of the one part;—

"And Joseph Hunaut, an inhabitant of Isle "Perrot aforesaid, Respondent of the other part;—

"Having seen the sentence appealed from, by "which the said sieur Le Duc is adjudged (*con- "damné*) to receive in future the rents of the "land which the Respondent holds in his seignio- "ry at the rate of thirty sols a-year and half a "minot of wheat, the court not having the power "to amend any of the clauses contained in the "deed of concession executed before Maitre Le- "pailleur notary, on the 5th Aug, 1718; the peti- "tion of appeal presented to this Council by the "said sieur Le Duc, the Appellant, answered on "the 19th March last, and notified on the 3rd inst.; "a written defence furnished by the Respondent, "and the deed of concession referred to; and "having heard the parties;—

"The Council, convinced that the clause in- "serted in the said deed, which binds the lessee "(*preneur*) to pay yearly half a minot of wheat "and ten *sols* for each arpent, is an error of the "notary, *the usual rate at which lands are granted "in this country being one sol for each arpent in "superficies and half a minot of wheat for each "arpent in front by twenty in depth*, orders that in "future the rents of the land in question shall be "paid at the rate of fifty-four *sols* in money and a "minot and a half of wheat a-year."

Now, what is this judgment worth? Four gentlemen, not lawyers, reverse a sentence which every lawyer must say was perfectly sound and right; and condemn a *censitaire*, who by his written contract was to pay thirty *sols* and half a minot of wheat only, to pay fifty four *sols* and a minot and a half of wheat! The court below had maintained the contract; the Seignior for some extraordinary reason, had appealed; and, what is more extraordinary, the court maintained the appeal,—not, be it observed, reducing the rent but raising it, so as actually to give the Seignior more than his written contract established in his favor. And they did this, not on proof of circumstances, showing the deed to have been wrong, as they took it to be; but merely on the ground of the supposed existence of a customary rate so fixed and invariable as of itself to prove the clause of the deed an error. And this, in a deed of 44 years standing! And though, as we have seen, at all times, as well after as before the time of its date, all manner of varying rates had ever prevailed—the Governors and Intendants themselves testifying. And though the very rate which they coolly declared to be the one legal rate of "*concessions in this country*," absolutely was not so much as one of the various rates which

we know to have been prevalent, even in the Crown *censives* immediately before the cession I have shown that most of the Detroit grants of the Crown, at this period, were made at a nominal *cens.* wi h a *sol* of *rente* per arpent, and *a quarter of a minot* of wheat for every arpent by *forty*; some, however, fixing this same quantity of wheat for every arpent by *sixty*; and I have shown that there were Royal grants during the same period at Fort St. Frederic, where the rate was the like *cens.* the same *sol* per arpent, and *the half of a minot* of wheat, per *forty* arpents And we have here the declaration (*par parenthése*) that any rate below the yet higher allowance of *a half minot per twenty arpents,* is so repudiated by custom, that though stipulated before notaries forty-four years ago, a Court of law is to pronounce the deed wrong, and raise the rate to this new standard.

The judgment is merely as unjust and mistaken from first to last. as its authors could well have made it.

It furnishes one further proof that in fact there was no fixed, known rate of concession; and it proves, for all matters presently in issue, nothing more.

To return, however, to the matter more immediately under consideration—the question of the rise and progress of the mistaken impression which has grown up as to the existence of this supposed fixed rate, and so forth.

Till 1772, I am not aware of the appearance in print of any work purporting to set forth the tenor of the old French laws and customs of Canada. There was then printed in London, for Parliamentary purposes (Parliament being then on the point of discussing what became the Quebec Act of 1774) a remarkably well drawn, though short, abstract of those laws and usages, which had been sent home by Governor Carleton, from a draft prepared by a committee of French Canadian gentlemen. About the same time there appeared also a publication by Mr. Maseres, who had been Attorney General here some years previously; and which contained, not indeed anything like a connected statement of Canadian law, but several papers and documents having more or less bearing on Canadian law, and as a whole, of considerable interest. The other publications of that time, connected with the discussion of the Quebec Act so far as I am aware, were not of a kind to call for mention; as they hardly, if at all, tended to throw light on any point of present interest And it was not till 3 years later, in 1775, that Mr. Cugnet's well known (though now rather scarce) treatises—valuable, though much too short and slight of construction—was published in this country.

The imperfection and inaccuracy of statement which more or less mark all these works, in reference to the present subject, I shall have to note presently. For the moment, I observe merely that they appeared after a lapse of from 12 to 15 years after the cession of the country to the British Crown; that within 3 years after that event the King's Declaration (of 1763) had assured His Majesty's subjects of the introduction, as nearly as might be, of the laws of England; and that about the same time it had been ordered that the granting of Crown Lands in Canada was to be in free and common soccage, that is to say, under the English law. All this time, therefore, people were kept in uncertainty as to the very existence of the old laws of the land; besides that they had had hardly any means of ascertaining (had they wished it ever so much) what those laws were. Of the Seigniors, in particular, few held eventhe titles of their Seigniories; and many, no doubt, had never seen them, and had no kind of knowledge of their terms. To those who are not familiar with the law and usages of this part of the Province, it may seem strange that people should not be in the habit of keeping their own deeds. But it is well known, to those who are, that such is the case. Deeds are passed, as matter of course before Notaries,—public functionaries, who preserve the originals, and whose certified copies of such originals are always authentic, proving themselves in all Courts of law, whenever produced. In the same way, copies of a Royal grant or other public document, certified by the proper officer, serve every purpose of an original. Thus nothing is commoner than for persons not to keep what one would call their most valuable papers; and it is not uncommon for them to become strangely ignorant of what they contain. There is even a peculiarity in the position of a Seignior, that makes this habit one into which he is peculiarly apt to fall; for in all those classes of action which a Seignior ordinarily has to institute in maintenance of his rights, he is under no necessity of showing his title. It is enough, if he allege and show himself to be the Seignior *de facto* in possession of such and such a Seigniory.

Under all these circumstances, I repeat, there can be no wonder that the tradition which gained ground in the popular mind, should have been a tradition wide of the truth. It would rather have been strange, if the fact had been the other way for the mass of the people, threatened with the loss of their laws and language, and apprehensive even for their faith under the rule of strangers alien to themselves in all these respects, would naturally incline to cherish too favorable notions of the past; and the more educated classes would as naturally share, direct, develope and intensify this feeling. The past could not be remembered as it was; was painted of brighter colors than the truth, it's bad forgotten; good, that it never had, attributed to it.

Till the times of the discussion of the Quebec Act, however, we have nothing to show satisfactorily, how this particular matter was dealt with or spoken of. Let us see how the writers of that time treated it.

Maseres has been spoken of as an authority for the since current impression. The first document in his book (the book I have already mentioned) is a draft of a Report drawn by him, when Attorney General in 1769, and proposed by him for adoption by the Governor and Executive Council,—but which was not by them adopted,—on "the state of the laws and the administration of justice" in the Province. In the main, it is a strongly written *expose* of the evils arising out of the then existing uncertainty as to the state of the law—as between the conflicting French and English systems; and the writer argues ably and forcibly in favor of an entirely different policy for their removal, from that adopted by the Quebec Act. All that he says on the point here under discussion, in this document, indeed the only

passage in his book, that I find, having reference to it, is the following :—" Leases," says he, (on p. 21) in the coure of his recital of the mischiefs of the existing state of things, " have likewise " been made of land near Quebec for twenty-one " years by the Society of Jesuits in this Province, " though by the French law they can only be " made for nine years. This has been done up- " on a supposition that the restraints upon the " power of leasing land imposed on the owners of " them by the custom of Paris, of which this is " one, have no longer any legal existence. Upon " the same principle many owners of Seigniories, " Canadians as well as Englishmen, have made " grants of uncleared lands upon their seigniories " for higher *quit-rents* than they were allowed to " take in the time of the French Government, " without regard to a rule or custom that was in " force at the time of the conquest, that restrains " them in this particular. And as the Seigniors " transgress the French laws in this respect, up- " on a supposition that they are abolished or sup- " erseded by the laws of England, so the free- " holders or peasants of the Province transgress " them in other instances upon the same suppo- " sition. For example, there was a law made " by the King concerning the lands of this Pro- " vince, ordaining that no man should build a new " dwelling house in the country (that is, out of " towns or villages) without having sixty French " arpents, or about fifty English acres, of land " adjoining to it, and that if upon the death of a " freeholder and the partition of his lands amongst " his sons the share of each son came to less than " the said sixty arpents of land, the whole was to " be sold and the money produced by the sale di- " vided among the children. This was intended " to prevent the children from setting themselves " in a supine and indolent manner upon their " little portions of land, which were not sufficient " to maintain them, and to oblige them to set " about clearing new lands (of which they had a " right to demand of the Seigniors sufficient qual- " ities at very easy *quit rents* by which means " they would provide better for their own main- " tainance and become more useful to the public. " But now this law is entirely disregarded ; and " the children of the freeholders all over the Pro- " vince settle upon their little portions of their " father's land, of thirty, twenty, and sometimes " of ten acres, and build little huts upon them, as " if no such law had ever been known here ; and " when they are reminded of it by their seigniors " and exhorted to take and clear new tracts of " land, they reply that they understand that by " the English law every man may build a house " upon his own land whenever he pleases, let the " size be ever so small. This is an unfortunate " practice, and contributes very much to the " great increase of idleness, drunkenness and beg- " gary, which is too visible in this Province."

It is obvious to remark, upon the passing reference, here made to this supposed "rule or custom" as to quit-rents, how much more vague and slight it is than the after reference to the *Ordonnance* of the French King of 1745, prohibitory of building by *habitans* on lands of less size than an arpent and a half by thirty or forty, of which I have already spoken. Yet even this latter law is loosely and inaccurately paraphrased ; and the added sentence, relative to the sale of land whenever division had to be made between the "sons" of a deceased proprietor, formed no part of it,—indeed,—never was the law, as it is loosely stated to have been. It is manifest that this paragraph was written argumentatively, for an end quite other than that of precisely stating the tenor of the old French law on any of these points, indeed, with no care for such accuracy, and as an inevitable consequence, not accurately. Even as it stands it fails to indicate the notion of a uniform rate. And, loose as it is, it is not at all borne out by facts, by the known tenor of those documents of the antecedent period, which embody the laws at which he glances.

I pass to the abstract of French Canadian law, of which also I have spoken, sent to England by the Governor, and there printed in 1772. In this work is to be found the first distinct printed mention that we find, of the *Arrets* of Marly of 1711. And it occurs (on p. 25) in precisely the connection in which, according to the view I have taken of this whole subject, I should expect to find it ; that is to say, it occurs at that part of the work which treats of the limit set by the Custom of Paris to the right of the Seignior to alienate in any way portions of his *fief*, without the incurring of mutation fines in favor of his Superior Lord. That limit the compilers of this work correctly state (as I have already done) at the two thirds of the whole extent of the *fief* ; adding, still correctly, that if that limit be exceeded, the party acquiring will at once hold of such Superior Lord—of course on payment of the proper fine. This explained, they add :—

" It is to be observed that this prohibition by " the custom to alienate more than the two- " thirds, is no obstacle to concessions tending to " clearance, because these are rather an ameli- " oration than an alienation of the part of the " *fief*. Accordingly, the Sovereign, by an *arret* " of the Council of State of the 6th July, 1711, directed the Seigniors of this Province without re- " serve, (*a ordonné aux Seigneurs dans cette Pro- " vince sans aucune reserve*) to concede the lands " which should be demanded of them ; in de- " fault of which they were to be conceded by the " Governor and Intendant, and reunited to the " King's domain.

On page 29 of the same work, the compilers speak of the tenure *en censive*. And here, if indeed they had known of any uniform rate, or even fixed maximum of rate, for grants under that tenure, they were bound to state it. But they do no such thing. All they say is this :—" *cens, cen- " sive*, or *fond de terre* is an annual payment " which is made by the possessors of a heritage " held under this charge, to the *seigneur censier*, " that is to say to the Seignior of the *fief* from " which the heritage is held, in acknowledge- " ment of his direct seigniory (*directe Seigneurie.*) " This due (*redevance*) consists in money, grain, " fowls or other articles in kind (*autre espéce.*)

No hint here—none throughout the work—at any limit or restriction whatever.

On page 13, however, of a subsequent part of the same volume, consisting of a recital of important *arrets*, &c., the King's *Ordonnance* of 1745, so often mentioned, prohibitory of buildings on lots under a certain size, is of course given, as an important part of the old law. And further on, upon page 2 of the last part of the volume, and

as introductory to a *resumé* of what are printed as the Police Laws (*Loix de Police*) in force before 1760, occur the following remarks, indicative of the importance attached to that *Ordonnance* as part of the past public laws of Canada :—

" The laws of which we here give a synopsis " were generally followed, with the exception of " some few articles of little importance, which " were changed by later laws. It were to be " wished for the general good of the Province, " that government would insist on their execu- " tion. The non-observance of some of them for " nine or ten years past has already caused con- " siderable harm as to the clearance of lands ; and " without desiring to enter into any detail, we " can testify that the mere non-enforcement of " the *arret* of the *Conseil d'Etat* of the 28th " April, 1745, is one of the principal causes of " the dearth which we have suffered for some " time past. That *arret* prohibited the *habitants* " from establishing themselves on less than an ar- " pent and a half in front by thirty or forty in " depth. It was enacted because children in di- " viding the property of their parents established " themselves, each on his portion of the same " land, insufficient for subsistence ; a practice " hurtful alike as regarded the subsistence of the " towns, and the clearance of the country. The " former government considered this matter so " important that they caused to be demolished all " houses built in opposition to this *arret* ; not- " withstanding which nothing at present is so " common as establishments of this sort."

Following this introductory notice, and printed at the head of these *Loix de Police*, are the two *arrets* of Marly of 1711, and the *arret* of 1732, prohibitory of all sale of wild land. The compilers had no need to say particularly, as to these, that since 1760 they had not been enforced. There had been no court or functionary vested with the powers of the Governor and Intendant of the old time, to enforce the first ; and no captains of the *Côte*, to do their part towards carrying out the summary procedure enacted by the second. And as to the third, it would have been strange indeed, if under English rule wild land would have been thought of, by any Court or Judge or functionary, as an unsaleable commodity.

Cugnet, then, is the remaining writer of this period, of whom I have to speak.

And the passage from his book, in relation to this matter, (pages 44 and 45 of the *Loix des fiefs*) reads thus :—

" The rules of concession, (*les regles de concéder*) " in this Province are 1 *sol of cens* for each arpent " of frontage, 40 *sols* for each arpent of frontage " by 40 of depth in *Argent Tournois*, currency of " France, 1 fat capon for each arpent of frontage, " or 20 *sols Tournois*, at the choice and option of " the Seignior, or one half minot of wheat for each " arpent by the depth of 40, as seigniorial ground " rent, (*de rente foncière et seigneuriale*) including " the other seigniorial rights. (*compris les autres* " *droits seigneuriaux*) ; and this in consequence " of titles of concession that the intendants gave " in the name of the king, on the lands conceded " in the king's Censive."

" There does not appear (*il ne parait point*) in " the archives any Edict of the King, which fixes " the seigniorial *cens et rentes* that the Seigniors " are to impose. These rules grew up by usage. " (*Ces regles se sont établies par l'usage.*) The king " conceded thus the lands of *habitans* in his *cen-* " *sive* ; (*le roy a concédé ainsie les terres d'habitans* " *dans sa censive* ;) and there will be found true " judgments only of Intendants (*deux jugemens* " *d'Intendans seulement*) which confirm this " usage ; the one of Mr. Begon, Intendant, of the " 18th April, 1710 ; and another of Mr. Hoequart, " also Intendant, of the 20th July, 1733. Besides, " the lands are not conceded at one rate (*ne sont* " *point concédées également.*) They are in the " District of Montreal at a higher price than in that " of Quebec ; no doubt, because the lands of Mon- " treal are more valuable (*plus avantageuses*) then " those of Quebec. These two judgments relate " to lands in the District of Quebec."

This passage, I am aware,—far as it is from really stating it,—has contributed a good deal towards the formation of the popular belief in the existence, under the French government, of some uniform or maximum rate.

I remark, however, that it bears date 15 years after the cession of the country ; and, whatever it may purport to say, can be no good evidence as to what was the fact before that event,—the documents of the time itself existing, and making full proof to the contrary.

But what, in truth does it say ?—That the rules of concession in the Province—or rather that the *ruling rates of concession* in the Province, (for this latter expression, though a less literal translation, is certainly that which better gives the meaning of the French words used,) are so and so ; and this, as a consequence of the rates of grant in the King's *censives* ; there is no edict of the King imposing observance of them on the Seigniors in their grants to their *censitaires ;* there are but two judgments of Intendants, confirmatory of the usage prevailing in that behalf, which, moreover, was not uniform,—the rates in the District of Montreal, ruling higher than those in that of Quebec ; and lastly, these two judgments are as to land in the District of Quebec.

But this is in effect to say, that though there had come to be ruling or prevailing rates, there was no uniformity, no fixed rule, no enacted maximum.

Let me note, further, that in giving these ruling rates, as they are here given, for the grants in the Crown domain, Mr. Cugnet has unfortunately not contrived to be accurate. He was evidently not aware of the extent to which (as we now know, from the papers lately printed on the subject) these rates taken up by the Intendants varied, according to circumstances of place, time and otherwise. He has given two rates. One of these is the rate named in the *ordonnance* of the 23rd of January, 1738, on which I remarked some time since, (p. 170 of the second of the volumes laid before this House,) and by which M. Hocquart—the Seigniores interested having fyled her consent —named a rate for certain grants theretofore made by her in her Seigniory ; but this, as I then stated and must now repeat, does not appear from any of the printed grants of land within the Crown *censives* to have been a rate ever followed in any of those *censives*. The other is that of the two Point St. Frederic grants, on which also I have remarked ; but I have shown from the documents themselves, that this last rate was by no means the only rate of the period, even for Crown grants

en censive; that it was higher than those of the Detroit and Lake Erie grants of the same time,—and this, notwithstanding the fact (shown by M.M. Beauharnois and Hocquart's despatch of 1734—on p. 28 of vol. 4,) that in 1734 the King's sanction had been specially asked—and presumably obtained—for one of these Detroit rates. Not aware of these facts, and writing with no great effort at precision, Cugnet has fallen into error.

I say, not writing with much effort at precision. And this,—apart even from the mere looseness of his style, and the inaccuracy of statement which I have noted, it is easy to show.

He speaks of two judgments of Intendants, as the only judgments of which he is aware, tending to confirm his "usage"—so called—as regarded grants in the *censives* not belonging to the Crown.

One of these, he cites as a judgment of Mr. Begon, under date of the 18th April 1710. Begon became Intendant here, only in 1712. The judgment referred to, must be one of the 18th April 1713, printed on page 40 of the second of the Volumes laid before this House. Cugnet himself did not take the pains to print it among the *Extraits* of Edicts &c, which form the concluding part of his Volume. And I do not find that it was ever printed until now. As now printed, however, it proves to be a mere *arret de circonstance*, wholly without bearing on this vexed question of a fixed rate. The Seignior of Eboulemens had petitioned the Intendant to reduce by one half the extent of a grant of 12 arpents frontage theretofore made by a former Seignior, to one Tremblay; but for which a *billet de concession* only had been granted. The Intendant did so and in so doing ordered:—Tremblay to take a deed for the part left to him, at the rate of 20 *sols*, and canon or 20 *sols* at the choice of the Seignior, for each arpent of front by 40 of depth, and 1 *sol* of *cens* for the 6 arpents of front. Why this rate was fixed, there is nothing to show. It may have been the rate stated in the original *billet*. It may have been the rate stipulated in the deeds of the adjoining lands. It may have been the rate specially prayed for by the Seignior.—There is no word of its being a usual rate for the whole country. Besides, it is positively does not answer to either of the two rates styled usual, by Cugnet. So far from giving color to his notion, that two rates were usual, and as such enforced on Seigniors by the Interdant, it shows the precise reverse,—that the Intendant here sanctioned quite another rate. It admits of remark—merely as an indication of the temper of those times,—that the judgment seems to have been an *exparte* order, on a Seignior's application; the defendant *censitaire*, half of whose grant it took away, not being stated to have appeared—or been summoned to appear.

Of the other judgment cited, under date of the 20th July 1733, Cugnet gives short abstract, (p. 61 of his *Extraits*,) just long enough to show that is also is no case in point. It is printed *au long* on page 157 of the second Volume lately laid before Parliament. In this instance, the Seignior of Portneuf go an injunction against a number of his *censitaires*, ordering them to take titles for their lands; but not at either of the rates mentioned in Cugnet, not yet any one of those now known to have been stipilated at the time in any of the *censives* of the Crown, nor answering to those fixed in the case just mentioned. Indeed, the command is in the alternative, so that one cannot precisely say what terms were ordered. The Seignior had produced two old deeds of concession. granted in his Seigniory; the terms of which are not stated. though it is apparent from the recital, that they embodied a clause stipulating *corvées* or the performance of labor for the Seignor by the *censitaire*, and also payment of an eleventh of all fish caught by the *censitaire*. And the injunction granted on his application, against all occupants of lands in his seigniors who had not taken deeds, was this; that they should forthwith take such deeds, either on the terms of these two deeds (*corvées* and all) or else at the rate of 30 *sols* and a capon per arpent by 40, 6 *deniers* of *cens*, and the eleventh of all the fish that they might take: a rate certainly not accordant with any one of the many I have yet had to particularize.

Is more proof wanting to show that the tradition of a fixed or known *maximum* rate, is not to be maintained on the authority of M Cuguet?

Fifteen years more are to be passed over. In 1790, we find the Seigniorial tenure and its proposed commutation into that of Free and Common Soccage again—and this time somewhat seriously—taken up. *Apropos* of this discussion, we have several documents, printed in the third of the volumes laid before Parliament; a report of Mr. Solicitor General Williams, addressed to the Committee of the Executive Council; a document drawn up by Mr. DeLanaudiere, and laid before that body; certain resolutions of the Council on the subject; and the dissent and reasons of dissent of Mr. Mabane, a member of the Council, from those resolutions.

The first of these documents (see p. 30 of the English version of this volume) refers to this matter of the *Arrets* of Marly and so forth, in language that has been cited as furnishing important evidence of the existence and amount of this fancied fixed rate of dues. I cite the words:—

"By one of the *Arrets* aforementioned of the "6th July, 1711, the Grantees were bound to "concede lands to their Subfeudatories for the "usual *cens et rentes et redevances*, and by the "*Arret* of the 15th of March, 1732, upon non-"compliance on the part of the Royal Grantee, "the Governor and Intendant were impowered "and directed to concede the same on the part of "the Crown, to the exclusion of the Grantee, "and the Rents to be payable to the Receiver "General."

Now, in this short sentence, there are two obvious inaccuracies, such as one could hardly suppose that a man of high official and professional standing could have made. First, there is not in the *arret* of 1711, as we have seen, a word about "usual *cens et rentes et redevances;*" but only a requirement that lands be granted '*à titre de redevance*," enforceable in a prescribed way, and in no other. The very words "*cens et rentes*" do not appear in it, any more than the word "usual." Next it is not the *arret* of 1732, which gave the power spoken of to the Governor and Intendant; but the first *arret* of 17 1.

I continue. "The Grantees are thereby also "restricted from selling any Wood Lands (*bois "debout,*) upon pain of Nullity of the Contract "of Concession, a reunion of the Lands to the "Royal Domain, and Restitution of the purchase "Money to the Subfeudatory."

A loose and again inaccurate paraphrase ; as it conveys the idea that only the grantees of the Crown, or Seigniors, were prohibited by the *arret* of 1732 from selling land *en bois debout* ; the certain fact being, that all persons, " Seigniors and other proprietors," were alike prohibited from so doing. The writer proceeds—still on the same page :—

" By the *roture* Tenure, the Grantor, whether " the King directly, or his Grantee *en fief me-* " *diately*, stipulated a specific Sum (one half-penny " for every acre in front by forty acres in depth) " payable to him by the *roture* Grantee annually " on a fixed day, & at the Seigneur's MansionHouse " for what is termed *cens*, evidencing thereby that " he was the Seigneur *censier et foncier*, or im- " mediate Seigneur of the *roture* Grantee, *marque* " *de la directe seigneurie:* a specification indispensi- " bly necessary to intitle the Seigneur to be paid " the *lods et ventes* upon every subsequent alien- " ation of the Land granted, (*cens porte lods et* " *ventes*), and another specific Sum (one half- " penny for every superficial Acre contained in " the Grant) for what is called *rente*. In the " towns of Quebec and Three Rivers, the Re- " servation of the *cens et rentes*, for small lots, are " variable and very low, but specifically ascer- " tained."

Thus, in two parentheses thrown in by the way into this one sentence, without if, or but, or qualification or alternative of any kind, we have here Mr. Solicitor General Williams's confession of faith in the existence of a one fixed unvarying rule, first as to the *cens*, and next as to the *rentes*—for all the Seigniories in the land ; the towns of Quebec and Three Rivers alone excepted. Every *censive* grant through the country, out of Quebec and Three Rivers, alike ! And at a rate, not squaring with any one of all the score or so of variant rates that I have had to cite, as in turn, candidates for the distinction of being the one true rate. Yet, with all the certainty there is, of the existence of all these variances of rate, this loose sentence of Mr. Solicitor General Williams's inditing—of date of 30 years after the close of the period he is speaking of, has been gravely elevated into a proof of something else that the the writer's incredible confidence and carelessness.

The page I quote from bears still further testimony to these constitutional tendencies of its author. The next sentence reads :—

" Upon every Mutation of *roture* lands, the " new proprietor was bound to produce his titles " to the Seigneur, and in forty days after exhibit- " ing the same, the Seigneur, in case of a muta- " tion by sale, and even upon Donations *inter* " *vivos*, from a Collateral Branch or Stranger, was " intitled to the Alienation Fine called *droit* " *de lods et ventes*, (Art. 73,) which is the twelfth " penny or twelfth part of the price or value of " the Land."

A donation *inter vivos* from a collateral branch or stranger, giving rise to *Lods et Ventes*, to be calculated on the value of the land given ! Authority had need be in demand, when a writer thus rash in his misuse of words, misquoting *arrets*, mis-stating usage, mis-reciting the very alphabet of the law, must be pressed into the service.

Of Mr. DeLanaudiere's answers laid before the Council, and the resolutions of that body, it is enough here to say that I find in them no statements at all confirmatory of these peculiar views.

Mr. Mabane's Reasons of dissent contain a few words, which have been cited as evidence. Among ther things, he says that the proposed change " would not only be a sacrifice of the King's " rights, but would defeat the wise intentions and " beneficent effects of the *arrets* of 1711 and " 1732, and of the declaration of 1743, by " which the Seignior is obliged to grant " to such persons as may apply for them, for the " purpose of improvement, lands in conces- " sion, subject only to the rents and dues accus- " tomed and stipulated (*aux rentes st droits accou-* " *temés et stipulés*) and upon his refusal the Gov- " ernor is authorised on the part of theCrown and " for its benefit, to the exclusion of the Seignior for " ever, to concede the lands so applied for.

" By the same laws" he proceeds, "the Seigniors " are forbidden, under pain of nullity and a reunion " to the Crown of the land attempted to be sold " to sell any part of their lands uncleared or *en* " *bois debout*, dispositions of law highly favorable, " to the improvement of the Colony," &c.

It must be admitted that Mr. Mabane was less unguarded in his use of words, than Mr. Williams. His statements are far enough from being correct ; for, (as I have already observed) the Declaration of 1743 contains no reference to this matter of the *censitaires'* claim to concessions of wild land ; and under the *arret* of 1711, it was not the Governor, but the Governor and Intendant conjointly, to whom in the case supposed the power to concede was given ; and by the *arret* of 1732, not the Seignior alone, but everybody, was forbidden to sell wild land. But at all events, he treats us to no parenthetic assertion of the uniform rate theory. On the contrary, from his use of the phrase " ac- " customed *and stipulated*," one would rather infer that the notorious fact of the variety of the rates stipulated, was present to his recollection as he wrote.

Nearly four years later in date, we come to another document of considerable importance in relation to this matter. A number of *habitans* of Longueuil appear to have petitioned the House, complaining of certain conduct on the part of their Seignior. The petition itself is not printed ; so that I can only state its purport from the abstract given of it in the Attorney General's report upon it—the document I am about to remark upon. It is there said of it :—

" The petition brings forward questions for " public discussion, upon which there are various " opinions. The second clause states that Mr. " Grant, in open defiance of the ancient ordinances " of the Kings of France has arbitrarily increas- " ed the rents of three lots of land which he has " conceded to his tenants since he became their " Seignior ; and the remaining clauses complain " that he has increased the *reditus* paid by the " petitioners for lands conceded by his predeces- " sors."

This petition was referred by the Governor to the then Attorney General (Mr. Monk) for report ; and his report on it, under date of the 27th of February 1794, to be found on page 93 of the English version of the third of the Volumes laid before this House, is another of the documents

which have been cited as confirmatory of the opinion I am combating Is it really so?

In the first place, it states the tenor of the first *Arret* of Marly, in quite other terms than those of Mr. Williams's report of 1790. "The Royal "Edict" says the Attorney General, "of the 6th of " July 1711 enacted, that every Seignior should " concede, upon application, such quantities of " ungranted lands as any inhabitant should ask, " within the limits of his Seigniory, *à titre de re-* " *devance, et sans exiger d'eux aucune somme d'ar-* " *gent*; and in case of the Seignior's refusal, the " same edict authorized the Governor and Inten- " dant to grant the land required, *aux memes droits* " *imposes sur les autres terres concédées dans les* " *dites Seigneuries.*" A paraphrase, copying *verbatim* the essential words of the *Arret*; and precisely accordant with the view I have been maintaining, in regard to it.

The report proceeds :—

" There does not however appear among the " records of the province, any edict of the French " King fixing the exact *quantum* of the *reditus* or " *cens et rentes seigneuriales*; but prior to the " conquest, a rule taken from the concessions " made by the Crown, where the King was the " immediate seignior, was much followed. By " this rule, to render any one estimate applicable " to the whole province, the *cens* is fixed at one " *sol argent tournois*, or a half penny, for every " acre in breadth by forty in depth, and one capon " or ten pence sterling at the seignior's option, or " half a bushel of wheat where the *reditus* was " made in grain.

" There are two judgments, one of the Intendant " Begon of the 18th April 1710, and the other of " the Intendant Hocquart of the 20th July 1733, " in some degree confirming this customary regu- " lation; but it must however be remarked, that " this rule was not absolutely general, and that " the *reditus* in the district of Montreal has al- " ways been greater than that of the district of " Quebec. It was perhaps impossible, from dif- " ference of soil, situation and climate; and upon " the whole, I do not think that any general rent " was by law established, and I conceive the edict " of 6th July 171[illegible] to be the only guide for de- " termining the question."

Still, of course, other than confirmatory of the high authority of Mr. Williams. And evidently, I might add, taken from the statement on the same matter, of Cugnet's book, on which I have already commented. Even to the misprint of the date of the Begon judgment of 1713, the two agree. Cugnet's two citations cannot possibly have been verified. Had they been so, they could not have been reproduced.

But this matters comparatively little. The important point of the case, is the fact, that Mr. Monk, (as Cugnet had done before him) admits distinctly the non-existence of any authoritatively fixed rate, before 1760.

I continue to cite the words of the report:—

" This edict clearly shows an intention, in the " Legislature of the day, to compel the Seigniors " to grant their unconceded lands to the inhabi- " tants, and in my apprehension to grant them " at the customary rent in their respective Seig- " niories, because that is declared to be the " standard by which the Intendant, who conceded " in case of the Seignior's refusal, was directed to " estimate the legal *reditus* which he was author- " ized to establish.

" I am therefore of opinion, that the present " seigniors of Canada have in no instance a right " to exact from their tenants more than the ac- " customary *reditus* fixed by their predecessors " before the conquest; and that the legal *reditus* " in each Seigniory is a matter of fact established " by the evidence of ancient deeds of concession. " And if it was then in the tenant's power to " compel his lord to grant his land to him as he " had granted it to others, through the interven- " tion of the Court of the Intendant, these terms " were and still are his legal right; the edict of " the 6th July 1711 is still in force.

" As to the clauses of the petition complaining that " the Seignior has arbitrarily increased the *reditus* " paid for lands formerly granted to the petitioners, " I am clearly of opinion, that in all cases of leases " or concessions already made by the Seigniors to " their tenants, the *reditus* fixed by the deeds of " concession can never be increased under any pre- " tence whatsoever, But it is a question whether " the petitioners have at present a legal mode of re- " dress against the innovations of which they com- " plain.

" As the law stood before the conquest, the tenant, " in cases similar to the present, would have found " an immediate remedy upon application to the Court " of the Intendant; and I am of opinion that the " present Courts of the Province are adequate to the " purpose f affording them effectual relief."

Not having the petition to refer to, one cannot be sure as to the precise intent of this opinion, on some points. Part, at least, of the complaint, seems to have been, that the Scignior was exacting from parties who held under concessions made by his predecessors, more than the terms of their grants warranted. As to that charge (the one last reported on in the extract I have read,) there can be no question of the correctness of the opinion given, that such exaction was illegal, and that the parties had their remedy. As to the other part of the complaint, it is not so clear what it was, or what redress the petitioners had asked, or even how far the Attorney General, meant to go in the expression of his opinion in the premises.

His words may be twisted into meaning—I believe they have been cited as though they did mean—that even from tenants who had agreed to pay a higher rate than was common before the conquest, such higher rate could not be recovered. But I cannot pay the writer so poor a compliment, as to believe him to have so meant them. His argument amounts to this. No one rate was ever fixed. The *arrêt* of Marly alone, which fixed none, must guide us. I infer from it *an intention* on the part of the legislator to enable parties to compel Seigniors to grant at the rates theretofore usual in their respective Seigniories. And I therefore think that a Seignior has no right to stand out for a higher rate, when parties call on him for grants.—But, suppose a party not to have stood out upon this supposed right, but to have made his bargain at such higher rate, does it follow that the bargain is to just so far set aside as to relieve him from such rate, and no further,—no one pretending that any law ever said it should be? One has no right to say that any lawyer can have meant to advance so monstrous a doctrine,—unless, indeed, his words were too clear (as here they are not) to

make it possible to put any other sense upon them.

Giving the expressions here used, then, the other meaning; understanding them to go no further than to advance the doctrine, that people could enforce concession at some customary rate, to be established according to circumstances for each case; a single remark will suffice. Not to repeat the considerations of fact, which I have already urged, as to the constant recognitions under the French Government, of all sorts of rates as prevailing everywhere, the comminatory character of this *arrêt* of Marly, the manifest expressions of the King's will, subsequently to its promulgation, that no uniformity of rate or contract was to be enforced under it, and so forth, —considerations of fact, decisive of the whole question, in the sense adverse to the conclusions I combat,—I observe, that it proceeds on a further mistaken impression, into which, after correctly reciting the *arrêt* of Marly, it is most unaccountable that the writer should have fallen, as to the procedure which alone that *arrêt* indicated and allowed. "*If* it was "in the tenant's power," says the report, "to com- "pel his lord to grant his land to him as he had "granted it to others, *through the intervention of* "*the Court of the Intendant*,, these terms were, and "still are, his legal right." It never was. The *arrêt* was express. The sole recourse was to Governor and Intendant together. That recourse, if ever practically enforced or available, had, at all events, ceased to exist, from the day on which there had ceased to be a Governor and Intendant in the land, to give effect to it.

But to return from this digression.

I have remarked on every authority I have been able to find, that either has been, or (so far as my researches go) can be cited in support of this tradition, during these first 34 years of the history of Canada after its cession to Great Britain. And to what do they amount? An absurd, unjust, illegal sentence passed by four military men in 1762; a careless, passing phrase or two of Maseres, in 1769; some loose, inaccurate sentences, and references to *arrêts*, by Cugnet, in 1775; some extravagant mistakes made in 1790; an Attorney General's opinion, not coun tenancing them, in 1794.

A few years later, in 1803 and 1806, we reach the time of the printing of the two well-known volumes of our *Edits et Ordonnances*. And from that time, there have been before the public, in print, in those volumes, most of the successive comminatory *arrêts* of the French King as to the escheating of Seignories, on which I have had occasion to remark; and the *arrêt* of Marly, with the untrue recital on its face, that the taking of money for land by Seigniors, was "entirely contrary to the clauses of the titles of their "concessions, whereby they are permitted only to "concede lands subject to dues (*à titre de rede-* "*vance*)"; but there has not been before the public, that context—so to speak—of the *arrêts*, title deeds, and other documents of the period, which I have had the advantage of being here able to bring to bear upon their interpretation. In the absence of the proof these furnish, it could not but be, that such recitals as these two volumes contain, should have tended most powerfully to confirm the impression, that the old state of the law and jurisprudence of the Province, as to all these matters, was anything but what it really was.

Still following down the history of the Province; considering the long feuds of its contending parties; the natural influences on the feelings, views and language of what was inevitably the popular party in the land,—of the passing of the Imperial Trade and Tenures' Acts, in 1822 and 1825; the fact, undoubted, that this whole matter had for long years before been, and has ever since been, and is, a leading matter of political faith and profession; that it could not but be a pleasant stlye of address to the many debtors of the few—to become a popular doctrine with the many—that their indebtedness to the few ought not to be, and of right was not, what the few held it,—that lands held by the few were not properly theirs, but were held under a sort of trust for them, the many; and that, with all these influences at work, the full half of the very facts of the case lay buried, so to speak; I cannot affect to wonder at the fact—which I admit—of the gradual settling down of the minds of most men, into the impression against which I have now to contend; an impression, however, be it noted well, not at all consonant with the tenor, during all this period, of the jurisprudence of the Courts of Law,—the course of policy of the Executive and Legislature,—the inferences fairly to be drawn as to the effect, in equity and law, of thi eried of our history, upon this question.

We come, then, to the further proposition I have laid down; that since the cession of this country to the British Crown, there has nothing occurred to abate my clients' rights, or in any any wise unfavorably affect their position, such as I have established it, as proprietors not holding under any kind of trust; that on the contrary, the jurisprudence of the Courts of Law, the action of the Executive and Legislative powers,—all that for these ninety-three years past has gone to make up the history of this matter,—has gone to strengthen this their position, would suffice to assure them in it now, were there even a doubt (as there is not) how far it attached to them before.

One thing must be tolerably apparent. By the cession, an instant end was put, for the time at any rate, to that whole system of interference and control which had previously pressed, somewhat (it may be) upon the Seignior, but most surely far more heavily upon the *censitaire*. Both had become, to use the brief phrase of the capitulation, "subjects of the King." They could no longer be so controlled, either as to person or as to property. The inalienable right at common law, the major prerogative (so to speak) of the British subject, had settled that point, beyond question or appeal. The *habitant* of the *côtes de Montréal* could no longer be told by an Intendant how many horses, mares, or colts, he might be allowed to keep; nor the *habitant* of Longueuil be condemned unheard, to the rendering of *corvées* not stipulated by his deed; nor the *habitant* of whatever parish be forbidden to choose a town life, without written leave. Prevented, under the *Ordonnance* of 1745, from building house or stable on land of any less width or depth than suited the pleasure of the French King, he became free to build what and where he pleased. The *arrêt* of 1732, making the sale of wild land, whether by him or by the Seignior, illegal, on pain of nullity and escheat,—if indeed it ever was, for any practical purpose, law,—ceased so to be. The provision of the one *arrêt* of Marly, under which a Governor and Intendant might grant a Seignior's land, in the King's name, to the complaining applicant whom the Seignior should have refused,—if, again, ever mattre

of practically enforced law,— also ceased so to be; for (besides that it was repugnant to principle) there was no Court or body through whom it could be put in force. And the corresponding provision of the other *arrêt* of Marly, under which the *habitant's* land could be—and had been—escheated on mere certificate, and without his being heard or summoned, also lapsed; for (besides that it, too, was in derogation of common right) there had ceased to exist in the land, the machinery to give effect to it.

And the passing of the Quebec Act in 1774, made no change in this behalf. These powers of control exorbitant of the common public law, could not be, were not, in whole or part revived.

Indeed, as regards this peculiar procedure for the granting by the Crown, of a Seignior's land, the case is most especially clear. For, though the Courts of Common Pleas, at first, and afterwards the Courts of King's Bench, were invested with the judicial powers formerly held by the Intendant, they never were invested,—no Court or body ever was invested,—with any power, judicial or otherwise, that before the cession had been held by the Governor and Intendant jointly.

I am aware that this omission has been spoken of, as a sort of oversight. But I apprehend that, duly considered, it will be apparent enough that it was n such thing. This power, on the Crown's behalf to grant what was not the Crown's to grant, was no judicial power. There was involved in its exercise the *quasi*-adjudication (at private suit) of an implied escheat to the Crown, and the executive act besides, of a grant by the Crown to such party, of the land so impliedly escheated. A king of France might vest such powers in his Governor and Intendant, the two officers who together represented all his own despotism, executive and judicial. But a king of England could not. Under English rule, escheat to the Crown is a matter for the Crown alone to prosecute, and is a direct—not an implied—process. Under English rule, a grant by the Crown, is a grant of what the Crown holds as its own; and made by executive authority,—not through a court of law, by a proceeding to which the Crown is no party. The whole procedure is one alien to every principle of our public law. No court or judge, no governor and court or judge together, could have been set to give effect to it.

And yet, unless by means of this procedure, or else under the *arrêt* of 1732, which declared all sale of wild land (by whomsoever made) to be null,—an enactment, which I believe no one has the courage to call law,—there was no means ever by any law provided, to give effect to the French king's will, signified in 1711, that the seigniors of Canada—proprietors holding their land under no such condition—should not exact money for it while uncleared, but should grant it "*à titre de redevance*," by tenure of *redevance*, for the consideration of dues *in futuro*.

Nor is this negative evidence, all. I turn to the positive jurisprudence of our courts.

One thing is notorious. The standing complaint of all the complainers against what are called the exactions or usurpations of seigniors, has ever been of the seigniorial character of that jurisprudence. It has passed into a by-word with them, that all our courts have constantly been seigniorial; and many, no doubt, have been led into the mistake of fancying that the judges, as a general rule, must have been seigniors, or in some way interested on the seigniors' side.

Secure in this notoriety of the general course of the decisions of our courts, I shall content myself with a passing remark or two, as to a very few only, of the most leading cases.

Six are specially referred to, and the proceedings in them given more or less fully, in the appendix to the report of the commissioners of inquiry into the seigniorial tenure, printed in 1843.

The first in order of time, is that of Johnson*vs.* Hutchins; adjudged upon in 1818, by the Court of Queen's Bench for the District of Montreal, and afterwards in 1821 by the Court of Appeals. (See pp. 88 and following, of the English—110 and following, of the French version, of the third of the Volumes laid before this House.)

The Plaintiff in this case was the Seignior of Argenteuil. A previous Seignior had some time before granted a block of some thousands of acres of wild land in that Seigniory, by a deed, on the face of which it was set forth that he received for such grant a large amount of ready money; and by which he stipulated the extremely small yearly quitrent of one half penny for every 40 acres, adding a release of the grantee from all future claim on his part, to *lods et ventes*, or the enforcement of any other seigniorial burthens. Some years after, the seigniory was seized and sold under judicial process. And the new Seignior sued the holder of a part of the land thus granted; seeking to recover from him some years' arrears of *cens et rentes*, calculated not at the rate of a half penny per 40 acres, but at that of 3 bushels of wheat and 5 shillings currency per 90 acres—the rate usually paid for the neighbouring lands; together with the fines for not having shown his deeds, and all *lods et ventes* or mutation fines accrued on the several sales of the property which had taken place. The Defendant, of course, set up the title, under which the original grantee from the Plaintiff's predecessor, held; and said, your predecessor agreed, when he so granted to my predecessor, that in consideration of the large sum of money paid, the quit-rent on this grant was to be the small quit-rent stipulated by the deed; and that *lods et ventes* were never to accrue upon it. I therefore, can be made to pay no higher yearly rent, and am liable for no *lods et ventes*. The Seignior in reply pleaded, that the act of the former Seignior was illegal; that he could not so alienate his land as to bar *lods et ventes* upon it, or even prevent its being charged with the usual and proper rate of *cens et rentes*. It was proved in the cause, that (irrespective of the particular grant of this tract) the lands in the seigniory were by no means all granted at one rate; but that the rate above mentioned was that charged on most of them. The Court condemned the Defendant to pay his arrears of *cens et rentes* at the ruling rate thus established, and the fines for not having exhibited his title-deeds; implying thereby, of course, that they held him liable to pay *lods et ventes*.

The judgment was appealed from, and in 1821 reversed, in so far only as related to this rate of *cens et rentes*; the Court of Appeals holding the quit rent stipulated to be, by operation of law, *cens*, recognitive of the tenure of the land *en censive* of the seigniory, and necessarily importing liability to *lods et ventes* on all sales of the land; but not admitting of alteration in amount, from that borne on the face of the deed creating it.

The sale of this wild land by the former seignior (for, a sale, and at a cash price, it was) was thus no nullity; as the *arrêt* of 1732, if law, would have made it. The quit-rent stipulated was the only rate of *cens*, that could be recovered; and could not be altered, to bring it into conformity with any ruling or common rate. The whole restriction on the seignior's power to alienate, held to obtain, was this: that, alienating *en censive*—giving to his vendee the quality of *censitaire*, he could not (by private contract with such *censitaire*) prevent the ordinary legal incidents of the tenure *en censive* from attaching to the grant,—could not free the land from liability towards the domain of his seigniory, for *lods et ventes*. —Had the alienation, indeed, been held not to be a grant *en censive*,—it must in law have been taken for a sale of a part of the *fief* or seigniory; the acquirer, a co-vassal with the vendor; the sale, and all after sales, of the land, chargeable with the heavier mutation fine of the *quint*, or fifth part of the price, to the Crown as the *Seignior Dominant*, or superior lord.

The second of the cases in question, is that of Duchesnay *vs.* Hamilton, decided by the Court of Queen's Bench for the District of Quebec, in 1826, and to be found on pp. 84 and following, of the French—106 and following, of the English version, of the same volume.

It was an action instituted by an advocate not very likely to be absurdly wrong in his view of the law that governed it—a gentleman more, perhaps, than almost any other of his day, the admitted ornament and honor of the profession in Lower Canada—the late Mr. Chief Justice Vallières. The action was against certain parties holding land in the Seigniory of Fossambault; to require them to pass a deed acknowledging such land to be charged with *cens et rentes* at the rate of 4 pence currency, as well as with other seigniorial burdens, as the neighbouring lands were; and to pay three years' arrears of such *cens et rentes*. The Defendant pleaded, that when he acquired the land, no such rent was stipulated or mentioned as charged on it, by the Plaintiff, or by the party of whom the land was bought; that he had ever been and was willing to take a deed of the land at the rate of 1 *sol* per arpent, being that at which a great part of the lands in the Seigniory had been granted; and that the rate demanded, of four pence currency, was a higher rate than by law could be demanded; a Seignior having by law no right to grant at a rate higher than that of the old rates in his Seigniory. But he was expressly condemned to take title as demanded; and to pay the three years' arrears in question, at the rate demanded; being double the rate fixed by the bill now before this Honorable House, as the *maximum* rate legally chargeable by a Seignior—the rate to which all higher rates ever stipulated are to be cut down. The Court of Queen's Bench so fixed this very rate, by a judgment never appealed from. Can it be, that it is proposed, by Act of Parliament, to cut it down, for all time to come, by one half!

The third case I have to notice, is that of McCallum *vs.* Grey, adjudicated upon by the Court of Queen's Bench for the District of Montreal, in 1828. This action was brought by the owner of one of the Seigniories within the township of Sherrington, held by a peculiar tenure to be presently adverted to; and was a Petitory Action, to turn out the Defendant from the occupation of a lot of land in the Seigniory. It was a hard action—not to say a very hard one. The fact was pleaded, and clearly shown in evidence, that the Plaintiff, having reason to apprehend that his lands might be taken possession of by parties claimant under adverse title, had in effect induced the Defendant to go upon the lot in question upon a clear understanding, that he should have the land on easy terms. This, of itself, was a decisive consideration in the case; for if one man get another to go and settle on his land with a promise to let him have the land on favorable terms, he cannot afterwards, by a common Petitory Action, turn him out of it. The judgment, accordingly, was for the Defendant; but in giving reasons for their judgment, the Court, after reciting this sufficient reason, went on with what may be called an *obiter dictum*—a further reason, not necessary to their conclusion, to the effect that moreover, "every subject of His Majesty "is entitled to demand and obtain, from every or any "Seignior holding waste and ungranted lands in his "Seigniory, a lot or concession of a portion of said "waste and ungranted lands, to be by every such "subject, his heirs and assigns, held and possessed "as his and their own proper estate, for ever, upon "the condition of cultivating and improving the "the same, and of paying and allowing to every such "Seignior the reasonable, usual and ordinary rents, "dues, profits and acknowledgments, which, by the "feudal tenure in force in this Province, are paid, "made and allowed to such Seigniors by their tenants "or *censitaires*, for all such and similar lots of land;" by reason of all which, they dismissed the Plaintiff's Action.

Now, it is to be observed, that even admitting this *considerant* ever so unreservedly, it is far from affirming (on the contrary, it does not so much as countenance) the notion of a fixed or *maximum* rate for the whole country—much less, the notion that contracts entered into for higher rates, are not thereafter to be enforced, as made. But it was, besides, a *considerant*, not necessary as a reason for the judgment given; and it is an obvious and universally admitted rule, that reasoning not necessary to a judgment, is not to be held part of such judgment. Indeed, as regards this particular case, whatever may or may not be the law as to any other Seigniory, it is at least certain that the Seigniory in this judgment referred to, was held by such a tenure as to be out of the purview of this supposed rule of law.

This case is referred to, in the report of the Seigniorial Tenure Commissioners, as the "single instance," so far as they were aware, in which a Seignior had been unsuccessful in contest against a *censitaire*, upon any point connected with this matter of the rights of Seignior and *censitaire* under the *arrets* of Marly. I am myself aware of no other of like tenor. Though I am of course aware, that the doctrine incidentally laid down in it, and on which I have remarked, has often been spoken of, as though it had the support of a settled jurisprudence to the same effect.

The next case to be noted is that of Guichaud *vs.* Jones, also decided by the Court of King's Bench for the District of Montreal, in 1828, and to be found fully reported on p. 93 and following, of the French,—and 116 and following, of the English version of the same volume. The action was one of a large number of the same date and tenor, all involving the same considerations, decided alike, and submitted to without appeal by the defendants. The Seigniory involved was that of St. Armand, one of those granted in the

later days of the French *régime*. About the year 1796, the then Seignior of that *fief* granted nearly if not quite the whole of its extent, in lots, to a number of grantees, by deeds very much of the character of the deed I remarked upon some moments ago in speaking of the case of Johnson vs. Hutchins. They were called deeds of sale and concession; and set forth the engagement of the vendee to pay the price agreed upon with interest, by a day fixed, as also a small quit-rent for ever. And it was added, that the Seignior released the lands from *lods et ventes*, and every other claim seigniorial or otherwise, forever, such quit-rent alone excepted. The action in question was against the holder of one of these lots, for this unpaid purchase money, with a long arrear of interest, and the arrears of this quit rent. The question of the exigibility of *lods et ventes* was not raised; the Plaintiffs setting out the terms of their predecessor's grant in that behalf, and not pretending by their Declaration that any *lods et ventes* had accrued, or indeed that the land had ever been sold since the date of its original grant to the defendant's predecessor.

The case was keenly contested by Counsel of the very highest standing and ability at the Bar; Mr. Ogden and the late Mr. Buchanan, for the Plaintiffs; the late Mr. Walker for the Defendant. The latter by his pleadings most distinctly and precisely raised the whole question of the validity of the *arrets* of 1711 and 1732; averring that the late Seignior, the grantor of the land, was bound by law to have granted *à titre de redevance* only, and, without exacting or receiving any further price; and that being wild land, he could not by law sell it, under pain of nullity of the contract, and escheat of the land. And the evidence consisted entirely of the admissions of the Plaintiffs, fyled (so as precisely to meet the whole question of law raised) in tsese words:—

"Firstly.—That the seigniory of Saint-Armand, "in the declaration of the plaintiffs in this cause "mentioned, was granted and conceded under "seigniorial tenure, *à titre de fief et seigneurie*, "by the most Christian King, whilst the Pro"vince of Lower Canada was subject to his au"thority, and previously to the conquest of the "said Province by Great Britain.

"Secondly.—That by virtue of the said origi"nal grant or concession, the said fief and seig"niory of Saint-Armand, from the conquest of "the said Province, anduntil after the day of the "date of the deed specially mentioned and de"clared on, in the declaration of the said plain"tiffs in this cause fyled, was, and continues to be, "held by seigniorial tenure, *à titre de fief et seig"neurie*, of our Lord the King, according to the "laws, usages and customs in force in the said "Province before and at the time of the conquest "thereof as aforesaid.

"Thirdly.—That on the day of the date of the "said deed in the declaration of the said plain"tiffs recited and set forth, the late honorable "Thomas Dunn therein, and also in the said de"claration named, was seignior, proprietor, and "in possession of the said *fief* and seigniory of "Saint Armand.

"Fourthly.—That the tract of land mentioned "and described as well in the said deed as in the "declaration of the said plaintiffs in this cause "fyled, was at the time of the execution thereof "waste, uncultivated and unconceded land, *ter"res en bois debout et non concédées*, of the said "*fief* and seigniory of St. Armand."

That is to say, the admission of the Plaintiffs was, that every averment of fact urged by the Defendant was truly urged,—that the land when sold by the former Seignior was wild land, never before granted, within his Seigniory,—such Seigniory then being held according to the old law of the land, as subsisting under the French *régime*. And their position was, that the sale was nevertheless not null in law, nor the land forfeited; but that the purchase money with interest, and the arrears of the quit-rent, were due and exigible.—The Court maintained that pretension; thus affirming in express terms, that contracts by a Seignior for the sale of wild land in his Seigniory were valid, and must be enforced,—the *arrets* in question, notwithstanding.

Two other cases remain; to be found in the same volume; the one that of Rolland *vs.* Molleur —(see pp. 101 and following, of the French, 115 and following of the English version,) conducted for the Plaintiff by two learned gentlemen, both of whom are now Judges of the Superior Court, and defended by Counsel then & still holding the highest position at the Bar; the other, that of Hamilton *vs.* Lamoureux, (see pp. 119 and following of the French, and 143 and following of the English version,) conducted for the Plaintiff, by one of the gentlemen just referred to, now a Judge of the Superior Court, and defended by another gentleman, also now a Judge of high rank and standing on the same Bench, and by another gentleman still at the Bar, and enjoying there the highest reputation for ability. Both actions were ably and keenly fought; to recover rents very considerably higher than the rate which is assumed by the Bill now before this Honorable House, as the highest that admits of legal sanction or excuse. The pleadings in both causes were put into every form, in which the skill of the ablest Counsel could state them; with the view, in one shape or other, to make out the illegality of these rates and obtain for the Defendants a reduction of them, as excessive. In the former of the two cases, it is true, it was in answer set out and shown that the land had been granted and re-acquired by the Seignior, before its concession at the rate impeached. But in the latter case, (which, by the way, was one of a large number of like cases brought about the same time by the same Plaintiffs, defended on like ground, and decided in the same terms,) there was no such answer; and the question of law came fairly before the Court, as raised by the Pleas. It was clearly proved, however, as in all such cases it can be, that all manner of rates have at all times prevailed, not only as between different Seigniories, but even as between different grants in the same Seigniory. And, notwithstanding all that could be said and cited for the Defendants (and nothing that could be done in their behalf by professional skill and zeal was left undone) it was held by the Court that the high rates sued for were perfectly legal rates; and they were enforced accordingly.

One more case I must notice in this connexion, as of later date,—decided only last year by the Superior Court sitting in the District of Quebec; the case of Langlois *vs.* Martel, to be found on

the 30th and following pages of the 2d volume of Lower Canada Reports.

The concession(in the Seigniory of Bourg Louis) had here been made at the rate per arpent of one *sol* or half-penny of Seignioral *cens et rente* properly so called, and of course irredeemable, and of seven *sols* or three pence half-penny more of *rente constituée*, or redeemable rent not bearing a Seigniorial character,—in all four pence per arpent—double the maximum proposed to be declaratorilyenacted by this Bill. Some years of arrears due under this grant were sued for. The Defendant again raised, by a variety of pleadings, the question of the legality of a grant on such terms. The highest talent of the Quebec Bar was engaged on either side; and the cause, equally with those before remarked upon, was unquestionably contested as keenly and ably as cause possibly could be. Yet,—and notwithstanding the fact that the stipulation in this instance of part of the rate agreed on, in the form of a *rente constituée*, made the case one rather more advantageous for the defence than that of Hamilton vs. Lamoureux, where the whole rate was Seigniorial—the Court again affirmed the antecedent jurisprudence; maintained the contract, as valid, held the *censitaire*, as of right, to the bargain he had made.

And these cases that I have been citing, in which the vanlity of sales and grants (at whatever rate) of wild land by Seigniors, have been thus maintained, after the fullest argument, are no isolated cases, against which counter decisions can be cited, or that fail of support from the constant practice of every Court. All manner of varieties of rates of concession, all manner of varieties of concession deeds, as to quantity of land, rate, mode of payment, charges,—everything that can form part of such deeds—have been put in suit, times without number. Never Court or Judge, administering the law under sanction of the judicial oath, set aside or altered one such deed, in respect of any quantity, or rate, or mode of payment, or charge, by the parties thereto covenanted.

I know it has been said, that these decisions have not been carried to final appeal, and therefore are not to be regarded as constituting a settled jurisprudence, decisive of the tenor of the law. But whose fault has it been, that they were not appealed? Not, certainly, the Seigniors'; for they were the successful parties who could not appeal. The reason is soon given. The Court at Montreal was of the same opinion as the Court at Quebec; the judgments were all of the same character; the Judges all of the same mind. Appeal' so far as the Courts here were in question, was plainly useless; and with every Judge here pronouncing in this matter of local law, favorably to the Seigniors' rights, it was felt to be idle to hope for a reversal of their decision by the Privy Council Able, zealous, determined men, fought the battle, and fought it well; but having lost it, they knew that it was lost. The time has long gone by, when the *censitaires* as a class were too poor to appeal. They are as well the richer—by very far the richer—as the larger and more powerful class. They have failed to carry out their contest in appeal, because their Counsel told them—because they knew and felt—that appeal was hopeless; that the Judges of last resort, sitting in Her Majesty's Privy Council, would interpret and administer the law, as the Courts here had done.

I know, too, that what is called judge-made law has often been held up to popular suspicion; and those whose habit has been to reflect on our Courts of Law as unduly Seigniorial in their jurisprudence, have not failed to derive a certain degree of advantage from the feeling so raised. But there is really here no question of judge-made law, at all. No text of law, nor principle of jurisprudence, adverse to this rule of decision, can be cited. Unvaryingly adhered to, and well known so to be, no text of law ever was enacted to reverse it. If such a rule be not truly law, who shall say what is?

In truth, it is precisely in these decisions of the Courts of Law, that the tenor of the law is for practical purposes to be read. Men do not study the statute book; they do not ask Counsel—Counsel, even, do not content themselves with asking—what is in the statute book? They ask what is the law? That is to say, what is it practically? How do the Courts hold it? What will they enforce? What will they set aside? If for ninety years and more, Courts have gone on enforcing all contracts of a particalar kind,—if in a number of important cases, ably argued and solemnly adjudged, they have adhered to one and the same style of decision,—by what right dare Counsel tell his client that such decision is not law? It argues a most dangerous state of the public mind, when men lightly run down what the Courts of Law have for ages held as law. The land whose Judges are distrusted, where men fear or hope that any day may witness a reversal of the judgments of a century, is a land where all property and all contracts must be unsafe; where man cannot trust man.

But, besides all that the change of public law consequent on the cession of this country to the Crown of Great Britain, has done, and all that this jurisprudence since has done, to confirm and strengthen my client's position, there is yet more.

Grants of Seigniories have been made since the cession, by the British Crown; affected, equally with those of earlier date, by his Bill.

Two of these grants are of Murray Bay & Mount Murray: of the same date (1762) and on the same terms. The former is to be found on page 94 of the (English version of the Third Report of the Special Committee named by the then House of Assembly, on the Seigniorial Tenure, in 1851. It is by Governor Murray; and after acknowledging the "faithful services" of the grantee, an officer of His Majesty's Army, runs thus:—

"I do hereby give, grant and concede unto the "said Capt. John Nairne, his heirs, executors and "administrators for ever, all that extent of land "lying on the north side of the River St. Law-"rence from the *Cap aux Oyes*, limit of the Pa-"rish of *Eboulemens*, to the South side of the "river of *Malbaie* and for three leagues back, to "be known hereafter, at the special request of "said Captain John Nairne, by the name of "Murray's Bay; firmly to hold the same to him-"self, his heirs, executors and administrators for "ever, or until His Majesty's pleasure is further "known, for and in consideration of the posses-"sor's paying liege homage to His Majesty, his

" heirs and successors, at His Castle of St. Lewis " in Quebec, on each mutation of property, and " by way of acknowledgment a piece of gold of " the value of ten shillings, with one year's' rent " of the domain reserved, as customary in this " country, together with the Woods and Rivers, " or other appurtenances within the said extent ; " right of fishing and fowling on the same therein " included, without hindrance or molestation ; all " kinds of traffic with the Indians of the back " country, hereby specially excepted."

Do or do not these terms convey the idea of an absolute property, to be vested in the grantee ?—Was it, or was it not, present to the mind of the grantor, (writing and thinking the King's English,) that the party to whom this grant was thus made, with no reservation except that of trade with the Indians, was thereby constituted a proprietor in fee simple, holding for himself and no other ? Was it understood by grantor or grantee, or any one, that nothing was conveyed, but some sort of trust to subgrant on some terms or other—neither trust nor terms of any sort being hinted at ?

The Mount Murray grant, I have said, was of the same date, and tenor, though not printed. I have, however, an authentic copy of the Letters Patent of 1815, under the Great Seal of the Province, by which it was confirmed,—still in the same terms. And I understand, though I have not seen the Letters Patent, that the grant of Murray Bay also was confirmed at the same time and by an Instrument of the like tenor.

The right of the Crown to grant thus absolutely in 1762, and to ratify such grants in 1815, I presume will be admitted to be clear ; equally with this language of the grants themselves ; unless, indeed, law and language be held alike inscrutable.

These two grants were made in virtue of the undoubted Prerogative of the British Crown. I come now to some others of later date, made in most peculiar terms, under peculiar circumstances, and in literal execution of a Provincial Statute.

The Seigniory of LaSalle, in what is now the County of Huntingdon, was many years ago held by a gentleman who seems to have either not known or not cared where the rear line of his Seigniory ran ; as he granted *à cens* to numbers of *habitans* a large extent of the wild lands of the Crown lying beyond it. Some time after, in 1809, these Crown lands were erected into the Township of Sherrington, and granted to certain applicants, by Letters Patent, in Free and Common Soccage. And in process of time, as was to be expected, a frightful number of suits came to be instituted by these grantees of the Crown, to eject from their holdings the grantees of the Seignior of Lasalle. Parliamentary inquiry, resulting in a compromise was the result. To give effect to that compromise, the Act 3rd Geo. IV, chapter 14, was passed in 1823 ; providing, that the grantees of the Crown might relinquish their grants to the Crown, and take them back *en franc aleu noble*, on most peculiar terms. They were to maintain in their respective possessions, all parties *bona fide* holding under title from the Seignior of La Salles, on the terms of the various grants of that Seignior, themselves receiving all dues, accrued and to accrue, upon such grants ; they were to be indemnified by government for the loss to result to themselves from this obligation ; and, with regard to all that part of their lands not occupied by tenants of La Salle, they were to hold the same with the fullest right to do anything and everything they pleased with it. The words of the 3rd Section of the Act are :—

" And be it further enacted by the authority " aforesaid, that when the said Letters Patent" (meaning the Letters Patent originally granting in Free and Common Soecage) " shall have been " in part revoked in manner aforesaid, it shall " and may be lawful for the Governor, Lieutenant " Governor or Person administering the Govern- " ment, by other Letters Patent under the Great " Seal of this Province, to regrant to the said " grantees or their legal representatives, in *Fief* " and Seigniory, *en franc aleu*, with all Seigniorial " rights, privileges and prerogatiyes, as well the " said lands occupied as foresaid by the said per- " sons claiming as tenants of LaSalle, or of the " said adjoining Seigniories, save and except the " Clergy Reserves comprised therein, as any oth- " er lands within the said Township, in respect of " which the said Letters Patent shall have been " revoked and annulled in the manner hereinbe- " fore mentioned ; with power to the said gran- " tees or to their legal representatives respective- " ly, without limitation or restriction, to aleniate " or dispose of such lands or any part thereof, " either freely or absolutely, or for such rents, re- " servations and acknowledgments, and on such " terms and conditions, or in such other manner " as they shall think proper ; together with the " right of exacting, recovering, and receiving all " such *cens et rentes, lods et ventes, redevances* " and other seigniorial dues and rights whatever, " which shall or may have accrued or become " payable since the said 22nd day of February, " 1809, by the said persons claiming as Tenants of " LaSalle under and by virtue of the deeds of " grants, *titres de concession*, or by virtue of any " other right or title, by or under which they " have held or now hold such lands."

Under this Act, and by Letters Patent reciting its very words, which explicitly set forth the grantee's right to do what he will with so much of the land granted ; to part with it *en franc aleu*, or *en fief*, or *en roture*, at any price, and on any terms—the whole grant to be, free of *Quint* or Seigniorial buthen towards the Crown,—four Seigniories were granted, those of Thwaite, St. James, St. George, and St. Normand. Even since the Union, an augmentation has beea granted on the same terms, to one of these Seigniories, (if not, as I believe, to all,) consisting of the Clergy Reserve Lots in and near it ; Government thereby again granting land Seigniorially, with this power expressly recognized on the grantee's part, not merely to hold the land absolutely as his own property, but even to determine without reserve or limitation, the tenure under which it shou'd be held, if he should see fit to alienate it. The Bill before this Honorable House treats even the holders of these Seigniories, as something short of proprietors. With as good reason, perhaps, as others.

And it has not been with reference to these Sherrington seigniories only that legislation has recognized Seigniors in Canada as proprietors holding for themselves, and under no trust limitation.

The Trade and Tenures Acts, the work of Imperial legislation, not popular (I admit) in Lower Canada, but yet law, and law which Provincial legislation cannot constitutionally touch,—have declared every Seignior to be entitled, upon mere payment to the Crown, of the value of its pecuniary rights over his Seigniory, to obtain commutation, as between the Crown and himself, of the tenure of his Seigniory. This done, he becomes at once, under those acts, owner of his ungranted lands, free from the burthens of their former tenure. But this legislation of necessity implies that those burthens were to the Crown alone—the burthens from which the Seignior so buys relief; that they did not comprehend any burthen, in the nature of an unexpressed trust,—from which he has not to free himself, of the existence of which the law breathes no hint.

And I have further, and Provincial legislation to cite; still in the same sense.

I turn to an Ordinance, of an exceptional Legislature, I admit, but yet of a Legislature of Lower Canada; an Ordinance, too, which this Bill proposes to respect and maintain unaltered; the Ordinance of the 3rd and 4th Vict. chapter 30, for the incorporation of the Seminary of Montreal, and the voluntary gradual commutation of the tenure in its seigniories.

By that Ordinance, that Legislature recognized and treated the seigniories of the Seminary as their absolute property, held by and for themselves,—that is to say, for the mere spiritual and charitable ends of their corporate life,—and not as having been granted to them under any trust for sub-concession to other parties, in any particular way, or on any particular terms. I admit, of course, that terms of commutation were imposed upon them, which under ordinary circumstances would have been objectionable; as not securing to them the true value of the rights to be commuted. But this was done in an enactment which for the first time admitted the corporate character of their body; a character till then disputed, and held open to grave doubt; and the gentlemen of the Seminary, to assure to themselves that character, were willing and consented to submit to those terms, as a fair compromise. This consideration alone can justify the terms of the commutation, which by this Ordinance were imposed upon them. But, aside from this, in what light does this Ordinance regard the Seminary? As proprietors in their own right, or as trustees for the sub-granting of land to *censitaires*? I quote the words of the 2nd section:—

"The right and title of the said Ecclesiastics "of the Seminary of St. Sulpice of Montreal, in "and to all and singular the said *fiefs* and Seig- "niories of the Island of Montreal,—of the Lake "of Two Mountains,—and of St. Sulpice,—and "their several dependencies,—and in and to all "Seigniorial and feudal rights, privileges, dues "and duties arising out of and from the same,— "and in and to all and every the domains, lands, "reservations, buildings, tenements and hereditaments, within the said several *fiefs* and Seig- "niories now held and possessed by them as pro- "prietors thereof,—and also in and to all monies, "debts, *hypothèques* and other real securities, ar- "rears of *lods et rentes*, *cens et rentes*, and other "Seigniorial dues and duties, payable or perform- "able by reason of lands holden by *censitaires*, te- "nants and others, in the said several *fiefs* and "Seigniories, * * * shall be and are hereby "confirmed and declared good, valid and effectual "in law; and the corporation hereby constituted "shall and may have, hold and possess the same "as proprietor thereof, as fully, in the same man- "ner and to the same extent" as the Seminary of St. Sulpice in Paris, or that at Montreal, or either or both of them did or might have done before 1759,—"and to and for the purposes, objects "and intents following, that is to say:—the "cure of souls within the Parish of Montreal,— "the mission of the Lake of the Two Mountains "for the instruction and spiritual care of the "Algonquin and Iroquois Indians,—the support of "the *Petit Séminaire* or *Collége* at Montreal—the "support of schools for children within the Parish of Montreal,—the support of the poor, invalids "and orphans,—the sufficient support and maintenance of the members of the Corporation, its "officers and servants,—and the support of such "other religious, charitable and educational institutions as may, from time to time, be approved and sanctioned by the Governor, &c.,—and "to and for no other objects, purposes and intents "whatever."

The next section of the Ordinance, in the same spirit, goes on to provide, "that all and singular "the said *fiefs* and Seigniories * * * and all and "every the said domains, lands, buildings, messuages, tenements and hereditaments, seigniorial dues and duties, monies, debts, *hypotheques*, "real securities, arrears of *lods et ventes*, *cens et* "*rentes*, and other seigniorial dues, goods, chattles and moveable property whatsoever, shall "be, and the same are hereby vested in the said "Corporation * * * as the true and lawful owners and proprietors of the same, and of every "part and parcel thereof, to the only use, benefit "and behoof of the said Seminary or Corporation and their successors for ever, for the purposes aforesaid," &c.

There is here—there is in this Ordinance—no trace of the notion, that these seigniories were held under trust for settlement, or subject to limitation as to the terms on which land within them could legally be sub-granted,—or as to the reserves, of land, or otherwise, that could legally be made. The corporate capacity of the Seminary admitted, all followed. The seigniories, and whatever formed part of, or belonged to them,—domains, reserves, wild land,—all, were absolutely its own; its past contracts touching them, all binding; its power to contract freely as to them thereafter, beyond question.

Admitted, that as the Trade and Tenures Acts were not of Provincial framing, so also this enactment was not of the work of an ordinarily constituted Provincial Legislature. But its work was law; was never by any legislative or other public Body in the Land, complained of, as wrong in this behalf; is treated by this very Bill as right, and by all means to be respected. It ought to be respected; but while respecting the rights it recognizest, the Legislature cannot ignore the fact that there are other rights besides, which must be respected equally.

Nor can this further fact be ignored; that legislation of the Parliament of this Province of Canada has confirmed the principle upon which the legislation of the Imperial Parliament and Special

Council has thus proceeded. I speak of the Acts of the 8th Vict. cap. 42, passed in 1845, and 12th Vict. cap. 49, passed in 1849, for the facilitating of voluntary commutation of the tenure in Seigniories not held by the Crown; and by the Act of the 10th and 11th Vict. cap. 111, passed in 1847, with the same object, for the Seigniories of the Crown. By these Acts, Seignior and *Censitaire* are empowered to commute the tenure as they please; to agree as to the price, and then freely carry out their bargain. None of these Acts hint at any legal limitation of their right, in time past, to contract as they saw fit—whether as to rate of *cens et rentes*, clauses of reserve, or otherwise. They are to take their contracts as they stand,—as the Courts interpret and enforce them,—and are to treat and deal freely with each other, for the redemption of their rights so established, or for the conversion of the contracts themselves into contracts of a character better suited to the age. The parties are men; who have out grown the tutor-authority—so to speak—of French Governors and Intendants; who may part with or acquire land, wild or cleared, by any kind of contract known to the law, and on any terms they please; who may even change the legal incidents of its tenure (matter though these are, in great part at least, of public law) when and on what terms they please.

And it is not to be forgotten, that this legislation by two successive Parliaments of Canada, was legislation subsequent to, and (in effect) the complement of, the Tenures commutation enactments of the Imperial Parliament; legislation in their spirit; confirmatory of their view as to the relative position and rights of all the parties interested,—Crown, Seigniors and *censitaires*; legislation, which throughout took for granted all that absolute proprietary right, on the part of my clients, for which I here contend; which no where implied, ever so slightly, that trustee limitation of their rights, which nevertheless must be proved in order to the defence of this bill.

In one word, from the cession in 1760 to this day, by the common public law of the British Empire, the jurisprudence of the Courts, the acts of the Crown, and the legislation of Parliament, Imperial and Provincial, the whole system of interference and control, of the French *régime*, alike as to Seignior and *censitaire*, has been set aside and reversed. The antagonist principle has been unreservedly adopted and carried out. Men have been free to make and modify their contracts as they chose; to sell, buy, grant, take—deal in all things with their own—as they might see fit. Such is the spirit of all English law and legislation, whether as to lands held in free and common soccage or *en franc aleu*, or under the obligations of the *Fief* or *Censive* tenures. There can be no exception to the rules, that make property and contract sacred, and men free to hold the one, to frame and give effect to the other.

Now, under all these circumstances of this present case; doing one's best to put out of view that state of the old law of France on which I have insisted as the true view to be taken of it,—the tenor and character of the old grants under which my clients (those of them who hold under French grants) own their property,—the true intent and meaning of all that the King of France ever did, legislatively or otherwise, in respect of those grants and of their rights under them,—and the jurisprudence of his Courts, as fixing all that down to the cession of the country was on these matters law; I say, putting all these things, to the utmost of one's power, out of sight; doing our utmost to believe that there once was a time, when the country—being governed by the French King—Seigniors were not proprietors in their own right, but trustees, bound to grant their lands on some terms or other, as to rate, reserves, or what not; need I ask, whether the state of things so supposed to have then prevailed, is the state of things that prevails now, or towards which in this latter half of the nineteenth century we here are to go back? Is it that, in which this Legislature can declare this country to be, or towards which it can try to carry it back a single step? Have these ninety three years' prescription done nothing? Ninety three years, during which all kinds of property have passed from hand to hand, under all kinds of contracts, and been affected in all kinds of ways known to the law, under security of the great under-lying maxim of all English law, written or unwritten, that none shall be disseized of his freehold, or abated of any his claims of property or right, otherwise than in due course of law. Under the English Crown, and by English law, it was never possible to pretend to put into force either the *arret* of 1711, or that of 1732, of both of which it has lately been the fashion to talk so much and so inaccurately. Attempted in the case of Guichaud *vs.* Jones, the attempt failed; and at all events no one, I feel well assured, will venture to contend that a sale of wild land is null, or that wild land sold is escheated *de pleiu droit* to Her Majesty. Yet if it is not,—if the *arret* of 1732 is effete, how has that of 1711 escaped the like fate? For ninety three years, there has been no machinery to effect either of the two escheats which it threatened; the absolute escheat of the unsettled Seigniory; or the *quasi*-escheat and after grant of the land, part of a Seigniory, which a Seignior might have refused to grant. During all this period, the jurisprudence of all our Courts has maintained all contracts, whether of sale or grant, and at whatever rates. During all this period, the action of the Crown and Legislature has harmonized with that of the Courts; has in no wise contravened their decisions; on the contrary, has lent all countenance to them; has constantly affirmed their principle, the principle of all British law and rule,—that in a British country men are men, not children,—their property their own, not their rulers'—their contracts, what they choose to make them, not what their rulers may choose to wish to have them made. Can it be, that now,—with all men's position, properties and rights, determined by these ninety three years' uniformity of precedent and rule,—it is seriously proposed to go back towards a fancied former state of things; to take up, not the system which prevailed in 1711, in its entirety, but merely a small fraction of it, or rather what is wrongly said to have been such fraction of it,—for (as I have shown) this controlling of the Seignior was in those days more of a pretence than of a reality; to take up just so much of it as shall press hardly, unjustly, on a small class of the community, whose misfortune it is that they have few votes and little influence; and in so doing, to ignore all that far larger and more real remainder of the system

which in its day pressed on the larger class, and the revival of which against that larger class, insanity itself would hardly dream of?

It were to destroy the whole fabric of the relations between man and man. All the relations in life of the proprietor, Seignior or *Censitaire*, are predicated on the value of his rights of property, as the jurisprudence of the Courts, authoritatively establishing the law of the land, has determined and guaranteed them. I gave so much for my Seigniory, borrowed so much on the security of it, bound myself in all manner of ways to all manner of obligations by reason of its being mine; because I knew that the revenue arising from the *cens and rents* and dues stipulated to accrue on the granted part of it, amounted to so much; because I knew that the average of its *lods and ventes* came to so much more; because I knew that it contained such and such an extent of ungranted land, of certain value, and from which I could derive so much, by lumbering on it, cultivating it, or otherwise; because I knew that its mills yielded so much revenue, and had (attached to them) such and such rights; because I knew that this and that water power within it, which other wi might have competed with those I myself should use, were not the property of the *censitaire* holder of the land adjacent, and could not be used in competition with mine. Another bought land in my seigniory, precisely so much below what otherwise would have been its worth; because it was burthened with a certain known rate of *cens and rentes;* because, whenever sold, *lods et ventes* were to be paid upon the sale; because such and such reserves in favor of the Seignior re charged upon it; because the valuable water power in front of it formed no part of it. Is all this state of things to be reversed? Are our respective rights and obligations to be legislatively annulled? Is the property that I bought because it was valuable, to have its value taken from it? Are rights that another did not buy,—rights doubling, trebling the value of the property, for which he paid a low price just because he did not buy them—to be given to him, at my expense? And is this to be done, moreever, notwithstanding that on the faith of the declared law of the land, the Crown in due course took its fifth part of the high price that I so paid, as being its legal right upon that my honest purchase,—or perhaps even sold to me my Seigniory, at such high price, as being the honest value of the rights legally attaching to it?

I refer to no imaginary cases. The Crown does take its *Quint* on the sale of every Seigniory; it has—and lately—sold Seigniorial property at the value predicated on this received state of the law, which is now threatened with legislative reversal.

One of the clients for whom I here speak, came to this country but a few years since, to settle and invest his means here. Before buying the Seigniory which at this moment (unfortunately perhaps for him) is his property, he took advice—the best professional advice to be obtained—as to the nature of Seigniorial property. The Seigniory he thought of buying, was in part granted at rates ranging beyond the *maximum* now talked of, and in great part was wild, ungranted land. He was advised, of course, of the tenor of the jurisprudence of our Courts; bought at the price thereon predicated; paid the Crown the fifth part of that price; the Crown took such payment; and this Bill now threatens—I dare not say what reduction of the value of his property, thus bought in reliance on the law, thus in part paid for to the Crown.

Another of my clients owns a Seigniory on which there was not (I believe) a settler at the time of the cession of this country to the Crown; a Seigniory, every *censitaire* of which holds under grants of later date than the days of the French government, and, (as matter of course, I might say) at rates exceeding—most of them far exceeding—this two pence currency per arpent, which by some wonderful arithmetic has been cyphered out to represent that unknown quantity, the undiscoverable fixed rate of the olden time. He was the purchaser of his Seigniory at Sheriff's sale; and the Plaintiff prosecuting the sale was no other than the Crown. He paid the Crown, not the mere *Quint*, but the entire purchase money; and that purchase money was the price—the market price—of these high rents, which this Bill would make illegal. The Crown took that price, for those rents; which, as vendor, it most surely then held out as legal rents. This Bill threatens that buyer, with something little short of the destruction of the value of the property which the Crown so sold him, for which he so paid the Crown.

What each of these gentlemen bought and paid for, they are not to be allowed to have. No Court of Law, by possibility, could be brought to abridge either of them, of one *iota* of the rights sought to be taken from them. But it is proposed to cut down those rights by Act of Parliament; leaving them—wronged, impoverished losers by such abridgment of their legal rights—to pray thereafter, at their proper cost, risk, and peril, for an uncertain, insufficient, illusory shadow of a so-called indeminity. Is this justice? Is this law? The measure of right to be meted forth by the British Crown, to British subjects? Can such a measure be laid before the Crown for sanction? Can the Crown give it the name and force of law? The Crown cannot—will not.

I have characterized this measure, as one that cannot possibly be defended for an instant, unless upon the ground—which I have proved to be untenable—that my clients are not in very truth proprietors, but public trustees—so in default that no mercy should be shown them; as a measure that unsettles their contracts, abates their legal rights, despoils them in great part of their property, inflicts upon them loss of every kind, and offers them no indemnity, but such as is a very mockery of the term. And to prove this, I proceed now to take up—and, as rapidly as I can, to comment upon—the leading clauses of this Bill.

It is entitled "An Act to define Seigniorial "Rights in Lower Canada, and to facilitate the "redemption thereof"; and it begins by declaring that it is desirable, "to facilitate the commutation of lands held *en roture* in the several "Seigniories of Lower Canada, by more ample and "effectual legislative provisions than are now "in force," and further, "to define the Seigniorial rights to which such lands will in future be "subject, and to restore, in so far as circumstances "will allow, all such legal remedies as the *censitaire* formerly possessed against all encroachment or exaction on the part of the Seignior, "as well as those of which the Seignior could "avail himself for the maintenance of his rights."

Now, as to any facilitating of the redemption of Seigniorial rights, I have not a word to say against it; I repeat, emphatically and sincerely, that I am here to say no word against any redemption of the rights of Seigniors. My clients are anxious to have their property relieved from the odium of an unpopular tenure; and would rejoice, as citizens and as proprietors, to see it change its form. At the same time, it is not their business,—and speaking as I here do for them, it is not mine—to suggest the mode in which this is to be done. The proprietor has no right to urge any particular mode of procedure as that by which (for great ends of public policy) the form & character of his property is to be changed. His right is merely, to insist that the change be not made to his loss; that for what the public take from him, the public see that he be indemnified. Others here propose a change of the tenure, as a change which the public interest demands. My clients, provided only that they be indemnified,—that their rights, before being abrogated, are redeemed,—have no objection to offer. Against any change of the tenure, on this principle to be effected, (no matter what the machinery,) they do not desire me to say—and if they did, I would not say—a single word. But when it is proposed, as here it is, to define Seigniorial rights, and when, besides defining, it is further proposed to alter, by restoring —with modification always—one knows not how much of certain alleged provisions of old laws admitted not now to be law, I have my objections. Define my clients' rights? They are not doubtful. The tenor of their titles is not doubtful; the tenor of their contracts with their *censitaires* is not doubtful; the law, as applicable to the interpretation and enforcement of their contracts, is not doubtful. There is nothing doubtful about the matter. The very mistaken impression that has assumed the form of a popular doubt as to the matter, is not doubtful; but is plainly, clearly, an impression having no basis of fact or law to rest upon. And, restore in part the past? The past never is restored. Everything changes, onward. The further changes we have to make, must be—not backward, towards the past, but onward to the future. If every document which has been laid before this House and the country do not utterly deceive, if every historical authority be not at fault, no part of that state of things which prevailed before the cession of this country to the British Crown, and which that cession abrogated, was of such a character as to make it possible one should be willing (were it possible) to go back to it. What we have to do, is to go honestly forward; further amending, in the spirit of the age, the state of things we have.

But this first section of this Bill, as it proceeds to its enacting portion, savors only of retrogression, not at all of progress. It proposes to repeal the two Provincial Acts of 1845 and 1849, of which I spoke a few moments since, for the facilitating of the optional commutation of the tenure. And the Bill contains no provision in any of its after clauses, for the facilitating or even allowing hereafter of such optional commutation, by mutual consent of the parties, as these acts provided for. My clients regret that this should be proposed. These Acts provide for voluntary commutation, by mutual agreement, between themselves and their *censitaires*. Why should this be made impossible? Why should the machinery for commutation, which the existing law allows, be taken away? Is this, part of a Bill to facilitate the redemption of Seigniorial rights? To that end, there is needed no definition of rights that by law are clear,—no restoration of forms and modes of legal process that are obsolete and forgotten,—no repealing of statutes that already put it into men's power, by mutual agreement, to effect such redemption. Rights must be taken as they are; their redemption on terms fair to both parties, whether ascertained so to be by their mutual consent, or otherwise, must be made easy; those legal processes and those only, that are best calculated to effect this end, and are suited to the spirit and principles of the age, must be provided, as the means by which it is to take effect.

So much for the first section of this Bill.

From the second to the fifteenth sections, it is taken up with provisions by which it is proposed to regulate the matter of the sub-granting or concession of the lands not at present subgranted, in the Seigniories.

The Second section provides:—

"II. That from and after the passing of this "Act, all and every the judicial powers and au- "thority vested in and granted to the Governor "and the Intendant of New France or Canada, by "the *arret* of His Most Christian Majesty, the "King of France, dated at Marly, the 6th of July, "1711, in relation to lands in New France or Ca- "nada aforesaid, conceded in Seigniories, and by "any laws in force in Canada at the time of the "cession of the country to Great Britain, shall "and may be exercised by the Superior Courts "of Lower Canada, and by the Judges of the "said Court, or by the Circuit Courts, due regard "being had to the extensions, restrictions and "modifications of the said judicial powers and "authority made by this Act."

That it is to say, all these powers, be they what they may, are vested, not merely in the Superior Court, but in each individual Judge thereof and also in every single Judge of the Circuit Court. The phrases used are "the Judges" of the Superior Court, and "the Circuit Courts;" but it will be seen presently, that the summary procedure contemplated may be taken before any one Judge of the Superior Court, and therefore never would be taken before the two or three Judges who alone can form a *quorum* of that Court itself; and the Circuit Court existing for Lower Canada, (as I need not say except for the information of gentlemen from Upper Canada not conversant with our system,) though nominally a Court consisting of several Judges, never sits as such,—but must always sit and act as a Court of one Judge only. The proposal is, to vest all the powers as to all land conceeded *en fief*, that were ever vested in the Governor and Intendant together, that is to say, in the two officers of the French Crown who together embodied all its despotic authority, the one the head of its military and state executive, the other its highest civil, financial, police and judicial functionary,—to vest all these powers, I say, in any and every single Judge in Lower Canada, whether of the Superior or Circuit Court. I venture to express the opinion, that this is not to restore the past. The *arrets*, one after another, show that the Intendants jealously guarded from all encroachment by inferior Judges, the high powers

vested in themselves,—much more those yet higher powers entrusted only to the Governors and themselves acting conjointly. These were powers far transcending any mere judicial authority. The Intendant—absolute Chancellor, Chief Justice, and what not, as he was—could not himself exercise them alone; any more than the Governor. Nothing short of the direct interference of the whole embodied absolutism of the French King, could put them into operation. And yet it is proposed—calling them to that end, "judicial powers," as in truth they were not—to place them in the hands of every single Judge of the Circuit Court; of every incumbent of a Judicial office, the qualification for which is five years' standing at the bar, and a willingness to accept a judicial position of inadequate emolument and not of the higher grade; for without meaning the slightest disrespect to the gentlemen who hold that position—and I have the highest respect for every one of them, and only regret that the emolument and rank of their position are not more in accordance with what I believe to be their personal deserts,—it yet is an indisputable fact, that the jurisdiction entrusted to them is the inferior jurisdiction only, of the country. Under this clause, as worded, I do not see but that any one of these gentlemen might decree the escheat to the Crown of an entire Seigniory; and certainly this high power—half state, half judicial—to escheat and grant away Seigniories piecemeal, is meant to be conferred on each of them. Again I say, there is not here any restoring of any feature of the past.

Indeed the concluding words of the Section make it clear that no restoration is meant; for it is there said that this power is only to be exercised, "regard being had to the extensions, restric-
" tions, and modifications of the said judicial
" powers and authority made by this Act." Not merely are they to be exercised by any one of a score or more of functionaries, in place of being exclusively the function of two acting together; not only are they to devolve on functionaries of a rank less elevated; but they are not to be exercised as of old, at all. They are to be extended, restricted and modified,—to be converted intoother powers; and then, and " .. only, put into force,—new powers, by new machinery, to new ends.

I read the next Section, as the first of those clauses that together set forth the extent and nature of these innovations, which it is proposed to make, under color of a restoration of the past.

"III. And in order to facilitate the exercise of
" the said judicial powers and authority—Be it
" enacted, That no Seignior shall hereafter con-
" cede to any one individual any extent of wild
" land, exceeding 120 superficial arpents, other-
" wise than by two or more separate deeds of con-
" cession, bearing date at least two years from
" each other, or unles, the excess over the said
" quantity of 120 arpents be conceded to the fathers
" mother or tutor for the use of one or more min-
" or children; and in the latter case, the extent
" of land conceded for each such minor shall not
" exceed 120 superficial arpents, and the minor in
" favor of whom each such concession shall be
" made, shall be named in the deed of concession."

That this Honorable House may uuderstand the meaning of these words "wild land," as they here occur, I must beg its attention to the 89th Section, nearly the last Section of the Bill, and one of its interpretation clauses. Is it thereby provided that:—

" The words 'wild lands' or 'wild land,' when-
" ever they occur in this Act, shall be construed
" to apply not only to all wood lands or lands
" otherwise in their natural state, bnt also to all
" land in part settled or cleared, or otherwise im-
" proved by any other person than the Seignior of
" the *censive* within which such land shall lie, if
" such land so settled, or in part cleared or im-
" proved, be not yet conceded."

In other words, supposing any land in a Seigniory not theretofore sub-granted by the Seignior, to be partly settled or cleared, or otherwise improved; if this have been done by any one but the Seignior, or a party acting at his instance and for him—for I take it for granted, that it is not meant by the words used, to require that he should himself have been the clearing settler,—such land is to be considered " wild land," within the meaning of that Bill. But need I go into argument, to show this no such idea as this was entertained in 1718, when the French King limited the obligation of the Seminary of Montreal to concede at a certain rate, to wild land, ("*en bois debout*,"—land in forest) and expressly saved their right to deal as they would with any land, a fourth part of which should be cleared ("*dont il y aura un quart de défriché*") no matter by whom or how? Or, in 1730, when Messrs. Beauharnois and Hocquart, writing in a spirit of hostility to the Seigniors, (p. 22, of Vol. 4 of papers before House) proposed to let them take the full advantage of all clearings, and of all natural meadows, ("*des défrichements et des prairies naturelles*,") wherever to be found within their Seigniories? Or in 1735, when the King expressly refused to tie down the Seminary ever so loosely, to any usual rate that shouldli mit their right to take advantage of whatever, for any cause, might be the reasonable excess of value of one lot of land over another? Is it a revival of old law, or a mocking play upon old words, that is intended, when it is said,—first, that wild land is to be granted in such and such quantities only,—and then, that these words " wild land" are to be held to mean—not wild land, but any cleared land which the Seignior may not have sub-granted and may not have cleared himself? If the land be not wild, and belong to the Seignior, what matter by whom it was cleared? Whether it be wild or not, whether it be his or not, are questions to be determined at common law, not by Act of Parliament. To say by Act of Parliament, that land shall be called wild, aad held not the Seignior's property, because it was cleared by some one else, and has not been by him, the Seignior, alienated, is to declare the thing that is not; to enact the thing that ought not to be.

So interpreting these words, however, this Third Section which I have read proposes to declare, that such " wild land " (cleared or not) shall never be granted in quantities exceeding 120 arpents, unless it be to some father, mother, or tutor, on behalf of minor children. That is to say, man or woman with any number of children, on their hands, of a day old or upwards, may get their five, six, seven, or more, hundred arpents. The man without children may not get more than his 120. As though—I say nothing of the wide door to fraud which such a provision opens,—the man burthened with a large family of small children

could clear land faster than the man without. Or as though, in these days, he were to be rewarded by the state, as for public service rendered.

The Fourth Section proceeds thus:—

"IV No Seignior shall hereafter concede any wild "land, of a less extent than 40 superficial arpents, "unless such concession be made for a town or "village lot, or a site for building a mill or other "manufacturing establishment (*autre usine*) or "unless the said land be so circumscribed or si- "tuate as to prevent its being otherwise conceded "than in less quantity than 40 superficial ar- "pents."

Both these limitations of quantity (maximum and minimum alike) are strange to the old law of the country. Take the four grants of Seigniories, of date from 1713 to 1727, by which the Governor and Intendant sought to tie down the Seignior most tightly as the terms on which he was to sub-grant (the King the while undoing what they so sought to do,) and what limitations do we find? You shall concede, said they, at such and such a rate per arpent of frontage by so many arpents in depth; but no word was said as to the whole size of the concession; no requirement thought of, that it should not as a whole contain more than 120 arpents nor less than 40. Among the grants *en censive* which I have had occasion to remark upon, was one (it may be remembered) of 1674, by the Jesuit fathers, of 40 arpents by 40. At all times, grants were made freely, of all possible dimensions. No law or *arret* ever proposed in this respect to regulate or limit them. It is proposed at last to do so; to do so, by provisions that every where leave all possible room for fraudulent evasion by grantor or grantee, or both, and all possible latitude for the discretion (or indiscretion as the case may be) of the one Judge by whom all disputes about them are, summarily and without appeal, to be adjudged upon.

But I proceed to the Fifth and Sixth Sections; which read thus:—

"V. No Seignior shall establish by any Deed or "Contract of Concession, on any wild lands "which shall hereafter be conceded, any rights, "charges, conditions, or reservations other than "that of having the land surveyed and bounded "at the expense of the *concessionnaire*,—of keep- "ing house and home on the land so conceded, "within a year from the date of the Deed of Con- "cession, and of payment by the *concessionnaire* "of an annual rent not exceeding in any case the "sum of pence currency for every super- "ficial arpent of the land conceded."

"VI. All such concessions shall be made in the "terms of the form A annexed to this Act, or in "terms of like import, and shall have the effect "*ipso facto* of changing the tenure of the land "therein mentioned, into *franc-aleu roturier*, and "of freeing it for ever from all seigniorial rights "and all other charges, except the annual rent "mentioned in the section immediately preceding "this section; which said rent shall be consi- "dered, for all legal purposes, as a constituted "rent (*rente constituée*) redeemable at any time, "representing the value of the immoveable charg- "ed therewith, and carrying with it the privileges "of *bailleur de fonds*."

Again I read clauses of innovatory legislation. There never was law in force in the days of the French Government, that thus limited the contents. So far from it, the Seignior by the terms of his own grant was commonly obliged to insert a number of other conditions limitative of his *censitaire's* rights. As to his own power of inserting more than he was so obliged to stipulate, there can be no question. I, of course, do not mean to say that the public law of the land at the present day will allow the stipulating of conditions of a servile character, or otherwise inconsistent with what is held to be public right; nor indeed, that stipulations ever could be made, in contravention of whatsoever might for the time be held as public law. But for practical purposes, such restrictions on the right of the Seignior to stipulate on his own behalf in his concession deeds, was in former days next to nothing; and is still but slight. Within the limits allowed by the public law, which limits are tolerably wide, Seigniors and *censitaires* are in law masters to do as they will in the framing of their deeds. For the first time, it is here proposed to declare that they shall be so no longer; that the Seignior, proprietor as he is, shall be told not merely that he may not grant any more than so much or less than so much, but that he must grant this prescribed quantity on no other than certain prescribed conditions—the same probably not being those which by the terms of his grant he has heretofore been required to stipulate, whether he would or not,—and lastly, that he is to do all this, at a prescribed price in the shape of a yearly rent—the amount of which is in this Bill, as it yet stands, left in blank! The quantities in which, the conditions on which, I must alienate my land, I am told; but the price I am not yet told. It is not yet determined, I suppose; but the blank is satirically significant of an intention not to let it be extravagantly high.

One word of comparison between this proposal of a fixed rate—amount unknown—with that of M. Raudot in 1707 for something of the same sort, and which the King of France would not sanction. When Raudot proposed to compel Seigniors to grant at a rate that should be low, it was on the full understanding that the land was so to be granted subject to the right of *lods et ventes*. This is not here to be the case. And the difference is material; for upon grants *en censive* such as Raudot contemplated, the lower the *cens*, the higher would the *lods* be. If the land be burthened with rent to its full value, so as to yield no surplus profit to the holder, it will be worth nothing, will sell for nothing, will yield no *lods*. If on the other hand, the rent be small, the land at once becomes worth much, sells readily at a fair price, yields a fair return to the Seignior in the shape of *lods*. Raudot proposed to take away on the one hand; but also at the same time to give on the other. This bill proposes that the rent shall be a certain sum of money,—a blank sum, small enough of course,—and that the land shall be held *en franc aleu*, that is to say, by a tenure that shall yield no *lods* at all. Raudot's proposal, as we have seen, was too much an invasion of the right of property, to be acted on in those days. Is this proposal one to be acted on in these?

I look, too, at the form of the deed the Seignior is to give,—annexed to this Bill. And I find that as a thing of course it requires of him as gran-

tor, unreservedly to guarantee to the grantee the quiet possession of his grant. As grantor, I am not to get the value of the land I grant. My price for my land, the law is to limit. But my liability, as having granted it, the law is to leave unlimited. Tied down as to quantity, and conditions, and price,—not alienating my land, —in fact having it taken from me,—I am to be just as unreservedly liable to the man who takes it from me, if he is troubled in his possession, as though I had sold or granted it to him for a fair value, of my own free will. And, as if to keep up throughout, the style of satire in which the whole is drawn, my rent, (of blank amount,) I am told, is to be "considered for all legal puposes "as a constituted rent (*rente constituée*) redeem- "able at any time, representing the value of the "the immoveable charged therewith." It is to be *considered* to represent such value. Why is it not to do so? Why am I not to have that value? My predecessors had it, under the French Crown. My right is, to have it now.

Once more I say; clauses like these could not have entered into the mind of man, unless by reason of the doctrine, in all its length and breadth and fulness that the Seigniors are wrong-doing trustees, to whom no mercy is to be shown. That doctrine disproved,—and disproved it is,—these clauses, one and all, admit of no word of defence or apology.

But there is more to come. The Seventh and Eighth Sections read:—

"VII. All sales, concessions, agreements or sti- "pulations hereafter made, contrary to the prece- "ding provisions, shall be null and of none effect.

"VIII. Every Seignior who shall receive, di- "rectly or indirectly, any sum of money or any "other valuable thing as and for the price or con- "sideration of the concession of a quantity of wild "and unimproved land, over and above the an- "nual rents and dues, or over and above the ca- "pital they represent, shall repay such surplus "to the party who shall have so paid or given the "same, or to his representatives; and any per- "son who shall so pay or give any sum of money "or any other valuable thing, shall have an ac- "tion for the recovery thereof with costs in any "Court of competent jurisdiction."

Again, no restoration of anything that was law before the cession. The one nullity in those days ever thought of, as I have shewn, was that threatened by the *arret* of 1732,—the nullity of every sale of wild lands, by *censitaire* or Seignior. The sale of land not absolutely wild,—the grant of land, in any state, at high rates or under onerous charges,—were never threatened with nullity. There was one remedy and but one, for the one complaint that the *censitaire* might make; and that remedy was by appeal to the Governor and Intendant, and the obtaining from them of the concession, which the arbitrary will of the King had committed to them (on such complaint made, and not otherwise) the right of granting. But by this threatened legislation, I am told the size of the grants I am to make; they are neither to be too large nor too small; all freedom as to conditions and price of grant, is taken from me; and if any man for any cause agree to let me have the advantage of other and to my mind better terms of any sort, such agreement—no matter how freely made—is to be "null and of none effect." I cannot bind him to his word. He cannot bind himself. Nay, in the case, even, of his having given me any kind of consideration whatsoever, to induce me to prefer him to another, for any lot that may chance to have been particularly in demand, I must give it back to him, or his representatives, whenever he or they shall see fit to ask some to do. There is such a thing as immoral legislation; and, as one instance of it, I must say that the law that wantonly enables men of full age and sound mind to unsay their word, to get back what they may have feely given, or keep what they may have agreed to give, for that which at the time was an honest consideration, is not moral. The less we have of such law, the better.

I proceed to the ninth section:—

"IX. Every Seignior who possesses within his "*censive* any wild lands, shall be entitled to dis- "member from such wild lands and to preserve for "his own private use, without being obliged to con- "cede any part thereof, a domain which shall not "consist of more than superficial ar- "pents; Provided always, that Seigniors who have "already domains within their *censives*, intended for "their private use, of the said quantity of "arpents or more, shall not have the right of re- "serving for such use any part of the wild and un- "conceded lands in the same *censive;* and that Seig- "niors whose domains already reserved for their "private use, are under the said quantity of "arpents, shall have the right to reserve only so "much of the wild lands in the said *censive* as will "complete the said quantity of arpents."

Innovation, still.—The old law of the Feudal Tenure, as we have seen, required the grantee of land *en fief* to keep such land himself. Every permission to sub-grant was a relaxation of the rule. And that relaxation was carried in Canada to its utmost length, by the *arrêt* of Marly; under which the granting of land was not merely permitted, but in general terms, and without specification of any particular extent of reservable domain, directed. But there could have been, at the time of the framing of this *arrêt*, no idea of preventing a Seignior from reserving any extent of domain, no matter what, that he could make use of. When the King granted a seigniory of six leagues square, to noblemen of high rank,—as for instance, he did Beauharnois—was it to be supposed that the Marquis de Beauharnois, the Governor of the country, and his brother, men of their position and pretensions, were meant to be limited to a blank number of arpents for their domain? Never. —And the grantees of seigniories were, in the great majority of instances, men of mark and consequence; many were of noble family; many were to be rewarded for valuable service rendered; many rendered special service as a consideration for their grants; some had their seigniories (the *Comtés* of St. Laurent and D'Orsainville, and the *Baronneries* of Portneuf and Longueuil, for example,) so specially ennobled as to give rank to their owners in the peerage of France itself; as a body, all were meant to be the nobles of New France. Was it ever meant to say to them, that they must not hold and use for themselves, more than some fixed *maximum* fraction of the vast grants of land, which by its letters patent the Crown gave them in full property for ever? The *arrêt* of Marly could have meant to threaten no more

than this: you are not to keep these grants wild and unused in your own hands, so as to stop the clearing of the country; the king's object being to get the country cleared, he enjoins on you that you subgrant it to settlers, as occasion shall require, in consideration of dues to be stipulated, and without insisting upon what under the circumstances the king does not choose that intending settlers be required to give payment of money in advance. When the king said this, he said all that he meant to say; more than he meant to have carried out. The enforcement of the order was left to the two highest functionaries in the country; necessarily with the widest range of discretion as to such enforcement; and we know that they were never indisposed to enlarge that range.

Practically, I repeat, no Seignior's domain was ever limited.

But now, it is proposed (under pretext always of restoring the old state of things) to fix upon some blank number of arpents, as such limit; to tell the descendants and representatives of these proprietors of the old time—proprietors, many of them, under titles that only did not quite invest them with sovereign prerogatives within the limits of their properties,—that they are not to retain more than so many arpents for themselves, the number not known, but sure not to be extravagant; and that they must part with all the rest, to whom, on such terms, at such prices, as the Legislature—no, I ought not to say the Legislature—as any Judge of the Superior Court or Circuit Court shall determine.

Let us see, then, what are to be the prerogatives of such Judge, in this proposed new capacity, as representing the Governor and the Intendant of the days of French absolutism. They are rather high.

The tenth and eleventh sections read:—

"X. Any person who, after the passing of this "Act, shall have called upon the seignior of any "seigniory whatsoever to concede to him or to his "minor child, a lot of land forming part of the wild "and unconceded lands of such seigniory, may, if "the seignior so called upon refuse or neglect to "concede such lot of land, summon and sue such "seignior by action or demand in the form of a declaratory petition, (*requête libellée*) in the Superior Court, or before any one of the Judges thereof sitting in the district, or in the Circuit Court sitting in the Circuit, in which such lot of land is situate, for the purpose of obliging such seignior to concede the same.

"XI. Whenever the seignior shall have no domicile in the seigniory in which such concession is demanded, the writ of summons and the petition thereunto annexed shall be served upon his agent, or upon the person charged with the collection of the rents of the said seigniory; and if there be no such agent or no such person having his domicile in the seigniory, the service of the writ of summons and of the petition thereunto annexed, shall be made by posting on the door of the place appointed for the receipt of the seigniorial rents, for the year next preceding such service, a duly certified copy of such writ of summons and of the petition thereunto annexed."

I see nothing as to the length of time to elapse between the service or posting of this petition and its presentation to the Judge. I suppose it is intended, therefore, that it shall be the usual length of time allowed for return of a summons. This in the Superior Court is 10 days, with an allowance for the number of leagues to be travelled; and in the Circuit Court 5 days, with a like allowance. That is to say, within from 5 to 10, or at most 20 days, by a summons that need not be personal, nor even a summons made at his domicile,—of the issue of which he may often not be made aware,—every seignior may be summoned to answer for himself, on this matter, (the refusal to concede his own land to "*any person*"—vagabond, stranger, alien, no matter who—or to any "*minor child*" of such person—boy or girl, no matter how young,) and this before the Judge whom such person may select; and the affair, as the next section of the Bill advises us, is then to be "determined in a summary manner," unless such Judge shall think fit to order a plea to be fyled, and written evidence to be adduced.

I read the clause, lest I be thought to mis-state its tenor:—

"Every such action or demand shall be determined in a summary manner, unless the Court or "the Judge, before whom the same is brought, shall "think fit, for the interests of justice, to order a plea "to be filed and written evidence to be adduced; and "in every such action the said Court or the said "Judges shall condemn the Seignior so sued to give "a Deed of Concession of the lot of land so demanded, in favor of the Plaintiff, on the conditions and "in the manner prescribed by the sections "of this Act, within such delay as shall be appointed "by such Court or Judge, unless the Seignior so "sued, shall show that the lot of land so demanded "as a concession forms part of the lands reserved by "him, under the sanction of the law, as a domain for "his own use, or that he is not by law obliged to "make such concession; and in any case in which it "shall be more in accordance with equity to order "that a lot of land other than the one demanded, be "conceded to the Plaintiff, it shall be lawful for the "said Court or for the said Judge so to do; and "whenever the Seignior shall, after the expiration of "the delay allowed, have neglected to grant a Concession Deed in favour of the Plaintiff, such judgment shall to all intents and purposes be for the "said Plaintiff in the place of a Concession Deed of "the lot of land designated therein, on the conditions "therein specified."

And so, when, as the representative of the grantee of any land held *en fief* (that is to say nobly) whether under grant from the French Crown or from the British Crown—say, as representative of the first grantee of Beauport, Desplaines, Mount Murray, or St. George in Sherrington—holder under grants of property as absolute and unrestricted as can be expressed in French or English words—I find myself impleaded before any Judge whom any person impleading me may have selected, my cause is to be heard "in a summary manner," that is to say, without written plea, or a day's delay for preparation to plead verbally, or record of the evidence taken; unless such Judge see some special cause to order otherwise. Implead me for fifteen pounds and one farthing, or as to any other matter that this, at all affecting real estate, or any right in future; and I have, of right, my delay to plead—my plea fyled in writing—my adversary's written answer—the evidence of every witness recorded—a written Judgment, from which I can appeal. But here, with my property at stake—real estate too—to a value perhaps of hundreds, perhaps of thousands of pou[illegible] I may be impleaded

by a process not amounting to a legal summons, before a Judge to be selected by my adversary; and, unless by that Judge's permission, I am not to have the poor satisfaction of time to plead, or the right to record my plea, or the right to have the evidence reduced to writing, so that I may take my chance of bringing up any scoundrel, who may have committed perjury to my prejudice.

And even this is not all: the Judge, if he please to think such course "more in accordance with equity," may order me to grant any other lot of land than that sued for. I may, perhaps, not be present: I may be ill; the roads or the weather may have detained me; I may have staid away, thinking it of little consequence what was done,—the lot demanded being one I did not value. But my one Judge, if (for whatever cause to his own mind at the moment seeming sufficient) he shall see fit so to do, may give this "any person" any other part of my land than the part he so demanded. Perhaps it may not matter much, as matters are meant to stand by this Bill, what part of my land is given to one, and what part to another, or which parts are to go first. They are all to go; and will not be long in going. Still, the last feather, says the proverb, is what breaks the horse's back.

But we are not come to this last feather yet. The thirteenth section is as follows:—

"XIII. Whenever it shall appear to the said Court "or Judge that the lot of land, so demanded as a "concession, is not susceptible of cultivation, or for "part of a mountain, hill, rock or other land, which "it might be necessary or advantageous to reserve "for the making of maple sugar, either for the use "of those who shall have acquired that right under "agreement with the Seignior, or for the use of the "censitaires of such Seigniory generally, or for any "other object of public usefulness in such Seigniory, "it shall be lawful for the said Courts or Judges to "reject such demand."

That is to say: it shall not be lawful for my Judge to reject the demand, on my production of the titles of my Seigniory, showing that the land claimed is mine; on my showing that the applicant has no more right to it, that any other man on this earth—or perhaps, that as a vagabond or as an alien he has (if possible) less claim to it than most others; on my proving that it is not only mine by written title, but has a house (my property) upon it, and that it is under cultivation by a party holding for me, or at any rate not denying my right. If this one Judge shall [illegible] that it does not form part of the lands reserved under the sanction of the law as a domain for my own use, or that I am by law (this very Bill to be such law) obliged to make concession of it,—I may not keep it. Unless it please the Judge to let me, I may not put in my plea to assert my right to it; nor examine a witness brought against me in writing. But the Judge may, in his discretion, take from me any other lot of land instead. And if (still in his limitless discretion) he shall think the lot "not susceptible of cultivation," or a lot which it would be "advantageous to reserve for the making of maple sugar," or for any other end that he may regard as an "object of public usefulness,"—that is to say, if he think the lot likely to be of use as a reserve, to any one but me its owner,—he may reject the demand; and, I take it for granted, may reserve the lot accordingly.

The Fourteenth Section carries us a step further:

"XIV. In all such demands, the exception based "upon the allegation that the lot so demanded forms "part of the lands reserved by the Seignior as a do-"main for his private use, shall be rejected on un-"contradicted proof by two credible witnesses, that "the Seignior, or his agent, has, before the filing of "such demand, refused to point out to the Plaintiff "the situation and extent of lands so reserved by "him, or that he has pointed out, as forming such "domain, lands in which the lot, demanded as a "concession, was not comprised."

If then, any two persons (on the occasion of this summary hearing) shall come up and make oral deposition that I have refused to point out, whenever asked, the lots on my seigniory, reserved as by this bill required, for my domain; or that I have pointed out as such, other land than that in dispute; unless I have ready upon the spot (as I can scarcely have,) other witnesses to contradict them on this point, my defence—though it be that the land *is* part of such specially reserved domain, and though I prove it never so unanswerably—is not to avail me. If even it be so sworn that my agent ever did such a thing, the result is to be the same.

Any and every man, though not at the time impleading me, or expressing any intention so to do, must be shown by me (or by my agent, as the case may be) punctually and before witnesses, whenever and how often soever he may ask either of us, what lands I claim to have specially reserved for my domain. Or else, I may find him hereafter bringing up his two witnesses, to prove that we would not do so; and thus cutting away my defence to any claim he may make to any land whatever, that he shall choose to claim of me. It is hard to think that such a clause can be meant in earnest. The land may be part of my reserved domain, beyond any kind of question; not a stone's throw from my manor house; but the Judge is take it from me, if it only be sworn by two witnesses, whom I cannot on the spot contradict by others, that I or my agent ever refused to show the plaintiff my reserved domain, or did not show him that land as part of it. The depositions may be false; but I have no right to insist on their being taken down in writing, to help me in a prosecution for forgery. I do not say, there is a Judge in Lower Canada, who would refuse to let me take such evidence in writing. I believe the Judges would be better than the law. But law and Judges alike ought to be above suspicion as to purity. The Bill that leaves to the Judge such discretion as must expose him to suspicion, ought never to be law.

But lastly, to make it impossible to question the intent of this part of this Bill, its fifteenth section (the last affecting this particular part of it) runs thus:—

"XV. And all judgments rendered upon a de-"mand for a concession, either by the Superior Court "or a Judge thereof, or by a Circuit Court, shall be "final and without appeal."

For anything over fifteen pounds currency, as I have said, I have my appeal, first from the Circuit Court to the Superior Court, and then from the Superior Court to the Court of Queen's Bench. For anything over fifty pounds currency, I must be sued in the Superior Court; and have my appeal to the

Queen's Bench. For anything over five hundred pounds sterling, I have my appeal to Her Majesty in Her Privy Council. In any case but this, involving my real estate or rights in future, be the amount never so small, my appeal lies of right to that high tribunal of last resort. But, under this bill, by this one procedure, my land, the land I hold by grant from the Crown of France or of Great Britain, it may be under the direct sanction of the Legislature of the Province, may be taken from me without legal summons, without written pleading fyled or evidence taken, by any single Judge, summarily, finally, without revision or appeal forever. Is this French law? Is it English? Can it ever be Canadian?

I have arrived at the second part of this Bill; which purports to provide for the Reunion to a Seignior's Domain, of lands granted to *censitaires* but not by the latter duly settled upon. This part of the Bill covers from the sixteenth to the twenty-eighth sections, both included.

The sixteenth section reads as follows:—

"XVI. And in order to facilitate the reunion to "the domain, of such lands or parcels of land, in "the cases provided for by law, and to render "such reunion less expensive to the Seigniors and "to the *censitaries*—Be it enacted, that any Seig- "nior, may by one and the same action or de- "mand, in the form of a declaratory petition, "(*requete libellée,*) sue and summon before the "Superior Court, sitting in the District in which "such seigniory is situate, any number of persons "holding lands in the said Seigniory, on the con- "dition of settling on the same, and of keeping "house and home (*tenir feu et lieu*) thereupon, "and who shall have failed to perform any one "of the said conditions, and to demand, in and by "such action, the reunion to the domain of such "Seigniory, within such reasonable delay as shall "be ordered by the Court, of all the lots of land, "in respect to which such condition or conditions "shall not have been fulfilled; and it shall be "lawful for the said Court, to proceed and to "give such judgment in the action as to law and "justice shall appertain, with regard to the re- "union of all such lots of land to the domain of "the Seigniory in which they are situate."

Fully to show its purport, some remarks may be necessary.

The two *arrets* of Marly gave the *habitant* desirous of becoming a *censitaire* a certain right of procedure against the Seignior; and gave the Seignior a certain other right of procedure against the *censitaire*. The *censitaire* by the latter of these two procedures could be turned out of his holding, without summons, upon the certificate of the *curé* and captain of the *côte* that he did not keep hearth and home upon it. Now, I do not approve of that summary proceeding. I do not want to go back in any respect, to the past. Most surely, I do not want to revive this procedure. The present had need be made better for all; not worse for any. But what is it proposed by this Bill, to enable the Seignior to do against his *censitaire?* After the proposal to let a man who has no right to my land, take it from me against my will, by petition to one Judge, summarily and without appeal; what am I to be empowered to do with the *censitaire*, to whom I granted land on express condition (among other things) of settling & living on it, but who has failed to perform his contract on the faith of which I so granted? By this section I am to have the great privilege of being allowed to sue any member of such defaulter, *censitaires*, if I please, in one action; but this action must be before the Superior Court, where written pleas and written evidence are rights at common law. I have heard of persons, thankful for small mercies; but I never met with a well authenticated case of a man thankful for no mercy at all. This privilege is one, of not the very smallest practical value. If I have not it now, the reason is not more to be traced to the technical difficulties in the way of such a procedure, than to the consideration that it was never worth any man's while to try to overcome them. It is easier and safer to sue five hundred men—each on averments of fact affecting himself only,—by five hundred several actions, than it would be to sue them all by one. What sort of a *requete libellée* could I bring into Court, to turn out five hundred *censitaires*, for failure by each to settle on his land? All I could do, would be to write out the substance of five hundred separate declarations, one after another, each complaining of one, but all on the same paper. My *requete* would be only five hundred different *requetes* tacked together. And I should just have to serve a copy of the whole on each man, instead of serving on each man no more than the one *requete* that properly concerned himself. Would it not be simpler to bring each action separately?

Besides, if I brought them all in one, I should have a most unmanageable action on my hands; and—for it is more than doubtful whether I could possibly get judgment against any one or more of the five hundred, till the cases of all should be ready for final hearing—I should further be tolerably sure to have the whole of my procedure hung up before the Court for a somewhat intolerable term of time. By our system of procedure, as it stands, (and I see no proposal here, to alter it in this respect,) any one of several defendants by pleading would delay the suit against all. But supposing that difficulty avoided, this proposal still gives me nothing; for I had better (on other grounds) bring my five hundred suits than be hampered with one unwieldy procedure against five hundred. In the days of the French system things were very different in this respect. Then, the proceeding under the second *arret* of Marly, against the *censitaire* was summary as heart of man unfriendly to the *censitaire* could wish. Then, the Seignior came before the Intendant, with two certificates against any number of *censitaires*; and the Intendant, if so minded, could make out his order against them all, without ever asking them what they had to say. If disposed to be more considerate, he would summon them; one or more would perhaps appear; and on their appearance, or default, as the case might be, judgment would go, as readily and unreservedly against those who might not appear as against those who should. These things were common then. It is well, that they are not so now. The procedure of our Courts, the law, is not such now, as that any man can turn a number of men out of property, without first proving his case distinctly against each. And this being so, it is no boon to tell him that he can sue any number of men, for different causes of action, by the same suit. A suit against each is his best course.

The Seventeenth Section provides for the mode of Summons; and calls for no particular remark.

The eighteenth Section is as follows :—

"XVIII. Whenever the said Court shall be of "opinion, that the lands the reunion whereof to "the domain of the Seigniory in which they are "situate, is demanded, ought to be so reunited, it "shall be the duty of such Court to order, by an "interlocutory judgment, that on a day which "shall be at least six months from the date of the "said judgment, the said lands shall be so reunited "to the domain, unless some party interested shall "then shew to the satisfaction of the said Court, "that the reunion of such lands, or any part there-"of, ought not to take place ; and it shall be law-"ful for every person so sued to prevent the re-"union of his land to the domain, by proving that "he has, within the delay allowed by such inter-"locutory judgment, fulfilled the conditions of his "deed of concession, without however being "thereby exonerated from his share of the costs "incurred in the action."

The differences between the two modes of procedure are beginning to appear.

In that against me, in the procedure by which any man shall demand (for himself, or for his minor child of a day old) to have land that is mine,—or at any rate not his,—he gets a judgment at once, on the day he comes before the one Judge of his choice, if that judge thinks proper. He may get such judgment, though I may have had no such summons as in any other kind of case the law would assure to me, and though I be absent—ignorant of the fact of his demand. And I can have no appeal ; no help, even though the Judge may have made the most obvious blunder. But, when I have a right in strict law, to get back my land, because the man who took it of me has not done with it what he bound himself to do —on express pain of forfeiture of the land—as the condition of his having it ; after written pleadings fyled as of right, with all delays of right, evidence taken in writing, argument by Counsel before the Court, (the Superior Court—no one Judge can be trusted here,) after all the cost, trouble and delay of all this, I get, if the Court are satisfied that I am right—what ? Not a judgment upon my demand, on the day the Court are so satisfied. No such thing. "Any person," in the other sort of case, with no legal right, would get a judgment against me,—a judgment giving me no more delay than the one Judge giving it should appoint,—a judgment executing itself the instant that delay should have expired, were it a week, or a day, or an hour.—a judgment I could not appeal from. But here, with my legal right, after due suit decided by a full Court of high jurisdiction, I am to have a mere Interlocutory judgment, to the effect, that as I have a right to the land, it shall on a day "at least six months" off in the future, and as much longer as may be, become mine ; that is to say, "*unless*" by that time the Defendant—no, not the Defendant—"*unless some party interested,*" no matter who, no matter how, shall then (as by this clause he may) put himself into the suit, and tyle new pleadings in the suit, bunkum pleadings, if he be so minded,—alleging that for any kind of reason imaginable my declared right ought not to be accorded me. In which case, I, perhaps, ought to be thankful that at common law I can answer his pleadings, take down and sift his evidence, argue my cause again, and after such further cost, trouble and delay as may be, perhaps get my right at last.

As the law stands, without this Bill, the Seignior can sue his *censitaire* on this ground of complaint, any day ; and when he has proved his case, is entitled of right to final judgment. He does not so sue, because it is not practically worth his while. This part of this Bill pretends to help him ; offers him the boon of leave to sue any number at once, by way of having on hand a case that never can be got through with ; and assures him in any case, of some extra loss of time and annoyance, to say the least, in the conduct of his cause.

The next Section, the nineteenth, proceeds :—

"XIX.—A copy of every such judgment so ren-"dered shall be published in the *Canada Gazette*, "or other newspaper recognized as the Official "Gazette of the Province, in the English and "French languages, at least three times during the "period which shall intervene between the date of "the said judgment and of the day fixed therein for "the reunion of such lands to the Seigniorial do-"main ; and such publications shall not be made "at an interval of less than four weeks, nor more "than six weeks from each other."

My procedure is to be simplified and made cheap and easy. And I am to be thankful that it is so. But, when I have got my Interlocutory judgment, in place of the Final judgment which the law as it stands would give me ; and while I am waiting my six months or more, to see whether the defendant or any one else will amuse me with a new contest ; my patience is not to be too severely tested. I am to do something,—of course, at some cost. I am to advertise in the Canada Gazette, in both languages. Unless I do, I cannot go on ; for of course the defendant will not. Therefore, I must. And if I have put my five hundred *censitaires* into one action, I may perhaps put them all into one advertisement ; and in the end have the luck to get back the five hundredth part of my costs from each of them. Till that end, I am to amuse myself as best I may, over their outlay.

The twentieth and Twenty-first Sections make detailed provision for the fyling of oppositions by the Defendant's creditors, and others ; that is to say, for the putting of record before the court, of all objections that any one (claiming to be interested) may be disposed to urge against the Plaintiff's getting back his land, as prayed for. Of those details I need not speak. But I cannot but remark, *en passant*, on the fact that in this my procedure, my opponent's creditors—every one claiming on or through him—can come in, to embarrass or defeat me. When the question was, as to the taking away of my land, no creditors of mine, or claimants through me, were allowed a word. The obvious idea pervading the whole Bill, is, that the Seignior is no proprietor, has no rights, can have created none, upon his land, given him by the Crown ever so unreservedly ; but that the moment any part has passed through him to another man, (albeit subject to a condition, the non-fulfilment of which is admitted to have wrought a forfeiture,) that man became its absolute proprietor, and his creditors, and all claimants under him, are to be cared for. Even I, who have a written contract giving me

the right to resume it, cannot get it back, but by a most troublesome and dilatory litigation. Under the old law as it stood before the cession, I might have got it in an hour, by an application that might even be (and sometimes was) *exparte*. It may not be so now. It ought not to be so. My clients do not ask to have it so. But if nothing summary is to be done for them, as of old it was to be, and was, done; why is everything summary to be done against them, as of old it might not be, and was not?

The Twenty second Section reads as follows:—

"XXII. On the day fixed by such Interlocu-
"tory Judgment, or on any other subsequent juri-
"dical day, the Court shall proceed to order the
"reunion to the domain of the Seigniory in which
"they are situate, of such lands as ought, accord-
"ing to law, to be so reunited, and to the reunion
"whereof no opposition shall have been made;
"and to declare the *Censitaires* who took them *à*
"*titre de concession*, or who previously held them,
"to be for ever deprived of all rights of property
"therein."

If, then, no one claiming to be interested shall come forward with an opposition, to make me fight another battle,—if neither Defendant nor any one else pretend anything against me,—if nothing in any wise untoward intervene,—I am at last to have my Final Judgment.

But—says the Twenty third Section:—

"XXIII. In any case in which the Court shall
"maintain any one or more of the oppositions
"made to the reunion to the domain of the lands
"the reunion whereof is so demanded, it shall be
"the duty of the said Court to order the Sheriff of
"the District to proceed to the sale of the lands or
"of such of the lands the reunion whereof to the
"domain is so opposed, subject to such charges
"or servitudes as may have been established by
"such oppositions."

If any man show the *Censitaire* to have done any act of a nature to give him, such opposant, a claim or right over the land—and every such pretension advanced, I must contest at my own cost and risk, unless I make up my mind to let it take effect,—the land is to be sold; but sold at my expense, for of course the Defendant will make no outlay for such sale. By the Twenty fourth Section, the sheriff is to sell in a certain manner; and by the Twenty fifth, he is to make his return within a certain delay; but, of course, I am at the expense of all his doings.

The Twenty-sixth Section at last lets me do a something to protect myself, if I can.

"XXVI. The Seignior, plaintiff in the cause,
"may file in the office of the said Prothonotary,
"at any time between the date of the judgment
"ordering such sale and the expiration of the two
"days immediately following the return made by
"the Sheriff of his proceedings thereon, an oppo-
"sition *à fin de conserver*, in order to obtain pay-
"ment of the arrears due to him upon any land so
"sold."

If arrears are due to me on the land, as presumably they will be, I too may fyle my claim in Court, for payment out of any money, that the Sheriff (after paying himself) may possibly have to pay into Court, from the proceeds of the sale. This is certainly some thing; but not a great deal.

The Twenty-seventh Section says:—

"XXVII. The said Seignior and the other pri-
"vileged opposants, if any there be, shall be the
"first paid out of the amount arising from such
"sale, according to the preference of their respec-
"tive privileges; the hypothecary creditors shall
"be collocated according to the order and rank of
"their respective privileges, and the remainder of
"the amount arising from the sale shall be distri-
"buted among the opposing creditors claiming
"for chirographical debts, at so much in the
"pound, or according to the preference of the pri-
"vileges they may be entitled to."

The proceeds of the sale, if any there be, are to be dealt with, that is to say, in common course. I take it for granted, that my costs, as well as my arrears, are to come out of them, if possible. But the worst of the matter is, that, as the land sold is land on which the *censitaire* would not do settlement duty,—as it is sold merely because he has not thought it worth while to keep it, or get it kept,—it is ten to one if it sell for the Sheriff's charges. My other costs, and my arrears, are in small danger of being paid. If I get them, I may write myself fortunate; if not, rather otherwise.

But there is more behind. The evicted *censitaire* may carrry [illegible] cause [illegible] every appeal; though the evicte[illegible]or (as we have seen) may not through a [illegible]. So [illegible] may any defeated opposant or other par[illegible], whom I may have had to contend. It is only when "any person" wants my land, that I am to have no appeal.

And suppose me ever so fortunate; no second fight with any one, after my interlocutory judgment; no oppositions; no Sheriff's sale; no appeal. Appeal, indeed, we shall soon see, on the part of the Defendant, will be hardly probable.—The land is again mine. But the man I have just evicted, can at once turn round and get it back, again; may implead me summarily before any one Judge, and force it from me, at a nominal rent bearing no relation to its value, the blank amount which this Bill is yet to fix in that behalf.

Will a sane man take this trouble and incur this cost, to get back land, after such delay; when any one may take it from him, the day after? Of course, the thing will never be attempted. No client would think of it. No Counsel could dare suggest it.

Still, the twenty-eighth section reads as though a lurking impression had been entertained, that such a thing might be; as though it were determined to make assurance doubly sure, that it should not. It runs thus:—

"XXVIII. Nothing in this Act or any other
"law contained, shall be interpreted so as to give
"any Seignior the right of demanding the re-
"union to his domain, of any town or village lot
"or emplacement, nor of any land settled and
"cultivated or reserved for cutting firewood, al-
"though the proprietor should not have house and
"home thereon."

So that really, if any man ever were to do so absurd a thing as to institute an action of this kind, all that the Defendant would have to say or prove in order to his defence, would be, that he had reserved the land in question "for cutting firewood;" and this is to be taken to be that keeping of hearth and home, to which his contract in express terms binds him, and which of old meant (and was at law enforced as meaning) not mere clearing, not mere cultivation, but literal residence upon the land.

On the one hand, if, when any man demands my land from me, I answer that it is mine and is not wild land, he has only to reply, and is (according to the new dictionary which under this Bill will be wanted, to interpret the Queen's English) " it is " not yours, and it is wild,—because you never " alienated it, and though cleared, was not " cleared by you." On the other hand, when I bring him before the Court and complain that he does not keep hearth and home, " oh yes !" he will say, " I do ; that is to say, I do not, but I " have reserved it for firewood, and I cut one " faggot last year, and shall cut three sticks this." I trust I have not spoken with too much levity. Sure I am, that I feel none. I feel the matter to be grave enough.

In one word, the old system gave the *censitaire* hardly a chance against the Seignior. It was bad ; bad especially in this. I ask on the Seignior's behalf, for no restoration of any part of it. Under the system proposed by this measure, as such restoration, the Seignior can have no chance against the *censitaire*. I have good right, in the interest of all, to protest against it.

I pass to the third part of the Bill ; that which undertakes to treat of mills, water powers, and Banality ; and which extends from the Twenty ninth to the Thirty second Clauses, both included.

The Twenty ninth Section is in the following words :—

" XXIX. And whereas since the said cession of " the Country, divers Seigniors, Proprietors of " Fiefs in Lower Canada, have imposed on lands " conceded by them, rents exceeding those at " which such lands ought to have been conceded " according to the ancient Laws of the Country, " and have burthened the said lands with various " reserves, charges and conditions which impede " industry, delay the settlement of the Country " and check the progress of its inhabitants ; and " whereas it is just to remedy such abuses—Be " it enacted, That no Seignior shall hereafter be " entitled to the exclusive use of unnavigable riv- " ers, except such part or parts of the said rivers " the waters whereof run through or along the do- " main reserved, or hereafter to be reserved by " him, and through or along the lands and lots of " land acquired, or to be hereafter acquired, by " him for his own private use ; and any agree- " ment made between the Seignior and the pro- " prietor who has the *domaine utile* of any land " held by him *à titre de cens*, in any Seigniory " whatsoever, with the view of depriving such " proprietor of theright of building mill, or oth- " er manufacturing establishments (*autres usines*,) " is hereby declared to be null ; and every such " agreement shall, to all intents and purposes be " hereafter considered as not having taken place, " whether the same be stipulated hereafter, or " made before the passing of this Act."

The reference to excessive rents, is here out of place ; and I suppose must have found its way into the clause, by some error of copyist or print- er ; and therefore I will not here speak of it ; But as respects the remainder of this clause, several considerations suggest themselves.

It is drawn, as though all that is obnoxious in the Seigniorial tenure, were the consequence of contracts which Seigniors have insisted on making in contravention of the ancient laws of the coun- try. Such cannot be the case. The heaviest of the burthens of the Tenure result (independently altogether of contract) from what I may call the public law of the Tenure. The *lods et ventes* or mutation fine of a twelfth part of the purchase money, payable on every sale, the burthen which more than any other presses upon the public, and retards improvement,—and the right of banality, or exclusive privilege of grinding grain at the Seigniorial or Banal Mill, as it here exists and is maintained by our Courts,—are no result of spe- cial contract, but arise out of the law ; the former, out of the old common law of the Custom of Paris ; the latter out of the local legislation, for Canada, of the *Conseil Supérieur de Québec*, and of the French King. And it is these, which form the comparatively onerous and objectionable part of the Seigniorial system, as it here exists. The mere fact of a farm being burthened with a ground rent of at most a few pence per arpent, is a matter of far less moment,—in fact, a matter of no great moment in a political point of view. And as to the other special burthens and reservations stipu- lated by some contracts, they are practically of still less consequence ; being many of them little more than waste paper, not enforced nor likely to be. The *lods et ventes* and *banalité* are what press the most ; and these, as I have said, are not the result of Seigniorial cupidity, but of legal enact- ment.

To return, however, from this digression. The true question is : are or are not any particular clauses and reservations between Seignior and *censitaire*, illegal,—repugnant to public law,— so that, although agreed to by the parties interest- ed, the law will not enforce them ? If the law gave me the right to make a contract, though the making of such contract may not perhaps be for the public interest, no man has the right to require afterwards that it be held null. It was a legal, binding contract, when made ; and such it must remain. Further, the burthen of proving that a contract is thus repugnant to law and null, must rest with those who assert it to be so. Have they, as regards this present matter, cited the text of law that declares clauses of reservation by a Seignior, null ? Or any Jurisprudence of our Courts, that might be presumed to show the law so to be ? There is no such law ; no such Jurisprudence.— They are characterized as prejudicial to the pub- lic. If so, it may be a public benefit to get rid of them ; but in getting rid of them, we have at least no right to punish the one, and to reward the other, of the two parties who originally agreed to constitute them. Take measures now to put an end to them ; put things as they ought to be ; but do not say, the public has changed its mind,— what was once lawful, shall be s no longer,—we are going to make a new world, and so doing, we mean to enrich or ruin whom we may.

The enacting part of this Section proposes to deal only with one description of reserve clause in concession deeds,—that, namely, having for object the reservation from the *censitaire*, of water-pow- ers on non-navigable rivers. All such water- powers, it is proposed to declare to belong to the *censitaire* holding the adjacent land ; all clauses to the contrary in the deeds of concession, it proposes to declare null.

Now the question of the right of property in these minor rivers and streams is tolerably com- plex ; and its solution in each case presented,

must depend on the particular circumstances of such case. It is impossible, in a few lines of an Act of Parliament, to say anything declaratory of the law about them, without doing the greatest injustice to all sorts of people.

Nothing can be more certain, than that under the old French law, when a Seignior (himself having the *droit de peche*, or right of fishing, within his Seigniory) granted land bordering a river, to a *censitaire*, if he did not in terms grant also the right of fishing therein, it was presumed that he kept it. The *censitaire*, to have the right, had to get it. If his deed did not show that he had got it, the Seignior was understood to have retained it. I am not saying that this was as it should be. I am not urging it as a doctrine to be now practically enforced, as of old it was with all the rigour possible. I cite this rule of the old law, merely as showing beyond a doubt, that by law, the *censitaire* who held the land did not as of course hold any right approaching to that of property in the water running past it,—had not even the right to fish in such water. The correspondence between Messrs. Beauharnois and Hocquart, and the French Government, of the years 1734 and 1736, (pages 31 and 32 of volume 1,) on which I have already remarked, (if authority were wanting) is decisive of this point. The Governor and Intendant, it will be remembered, wished to oblige the Seminary to grant this right of fishery to all settlers; but the King would not so far change the law, as at all to fetter the free action of the Seminary that respect.

A constant succession of legal decisions in the Province, also attest the rigour with which this rule was maintained. Two *Ordonnances* or judgments, in particular, I may allude to, rendered by M. Begon, the one in 1723, the other in 1730. (see pages 83 and 133, of volume 2,) in the matter of a somewhat obstinate dispute between the Seignior of Portneuf, and two of his *censitaires*. The Seignior complained of two of his *censitaires* whose deeds gave them no right to fish in front of their lots; alleging that they did so fish, and yet would not pay him the yearly rent which he was willing to take for the right. They replied that though the right had not been expressly granted to them, their neighbours all had it, and they ought to have it too. But the Intendant held them to have no such right, and at once condemned them, either to pay the Seignior or abstain from fishing. Some time after (in 1730) we find the same parties again brought before the same Intendant; the Seignior setting forth, that they had of late refused to pay the rent ordered in 1723, that he had thereupon leased the right of fishing in front of their lots to another party, & that they persisted in fishing and otherwise molesting such party. They were at once condemned, on pain of a heavy fine, to abstain from all fishing, and to leave the Seignior's lessee in exclusive enjoyment of his right.—In 1732 and 1733, again, two other judgments in the same sense (see pages 150 and 151 of volume 2) were rendered with respect to certain disputes between the Seignior of St. François on Lake St. Peter, and a number of his *censitaires*. The title of that Seigniory carries it out a quarter of a league into the Lake. The Seignior insisted on his exclusive right of fishing there, and it was maintained against his *censitaire*, that none but he, and those to whom he should specially grant the right, could fish there; that he could even lease the right to a third party, to the exclusion of the *censitaires* whose land bordered on the Lake, and who were contesting with him the point of their right to fish without his leave.—Later still, in 1750, only ten years before the cession of the country, (see page lxxxix of the 2nd volume of the *Edits et Ordonnances*) the *censitaires* of Sorel were forbidden to fish, under heavy penalty, unless pursuant to written permission from the Seignior; for which of course they had to pay.

I allude to these cases, not because there is at this day any difficulty about the right of fishing; but because it is here proposed to give to every man, whatever the terms of his grant,—though it be thereby expressly stipulated, even, that he did not take the water,—that the water is his; that the stipulation to the contrary, is null; that the man who said, I take the land without the water, who acknowledges that he never acquired the water, shall notwithstanding have it given to him; and that the man who with the consent of his co-contractant reserved it for himself, shall not be suffered to keep it. Was such a reservation contrary to law? The law holding, that even in the absence of any stipulation, a grant of land conveyed so little control over the water, as not to give the grantee so much as a right to take fish in it? If it be said, indeed, that the owner of the land ought, on grounds of public policy, to be the owner of the water in front of it, or to have the right (on payment of the fair price) to become so, I can understand the proposition. If that is to be adopted as a new principle of public policy, let it be so called. Contrive the machinery for effecting the required change; but do not declare away the vested rights of parties, whose relative position, as the law stands, admits of no shade of doubt.

I am of course aware, that there is a certain amount of controversy, as to how far the Seignior is owner of these streams. In the case of Boissonnault vs. Oliva, (Stuart's Report, p. 265,) where, however, the precise point was not material to the decision given, the learned Judge who stated the judgment of the Court, spoke of the waters of non-navigable rivers as belonging to the *Seigneurs Haut Justiciers*, and hinted that as the Seigniors of Canada were practically no longer *Haut Justiciers*, the Crown alone dispensing all Justice, the Crown had became the owner of all these small streams. The doctrine, that the waters of the smaller rivers were in France the property of the *Haut Justiciers*, is undoubtedly the opinion of many writers of high mark: but many again, also of high mark, think differently. No question arising out of the old law of France, has perhaps been contested more keenly; or at this time more divides the opinions of the able men who have examined it. As to which side has the weight of authority, or the abstract truth of the case, I would not wish (referring to the subject as I do incidentally) to be understood as venturing to offer a strong opinion. For certainly, the most satisfactory work I have been able to find on the subject, that of Championnière, holds that these rivers were the property of the Seignior of the *Fief*, or *Seigneur Foncier*, the true owner of the land, that the *Seigneur Haut Justicier* was no owner either of the land or water, but merely a grandee of more or less importance, who owned the right of levying certain dues (*droits de justice*) on persons within his jurisdiction, and of dispens-

ing justice—a profitable employment in the olden time—within limits more or less extensive, among such persons. In France, the *Haut Justicier* was not necessarily the holder of any landed *Fief* whatever; and where he was, the territorial limits of his *Justice* and of his *Fief* were constantly not the same. It became thus a question whether the ownership of the non-navigable streams was in the Seignior who held the *Justice*, or in the Seignior who held the *Fief*. The Crown at an early date had made good its claim to be held the proprietor of all navigable rivers, as a necessary consequence of its rights as being what one may call the supreme *Justicier*, charged with the exercise of all *haute police* and jurisdiction over them. And the *Haut Justiciers* on the like ground claimed a like property in the minor streams. In some parts of France, and at some periods, their claim was maintained; in other localities, and at other times, that of the Seigniors of the mere *Fief* was held good against them. No one ever thought of the doctrine, that the stream in controversy could belong to a *Censitaire*, unless by reason of some unequivocal grant made in his favour by the Seignior (whichever it might be) there and then held, by presumption of law, to be such owner.

Since the abolition of all feudality in France, the question has there assumed a new aspect; but the old controversy remains unsettled. On the assumption that the streams belonged to the Lord of the *Fief*, they must have passed, under the legislation which destroyed the Seigniorial Tenure, to the *censitaire* of the land adjoining. On the assumption that they were the property of the Lord of the *Justice*, they must have passed to the State. As of old in France, the State has its vantage ground, in all controversies with the individual. But, notwithstanding this, the controversy cannot be said to be yet settled either way.

In Canada, the state of things has always been, in these respects, materially different. The Seignior, grantee of a *Fief*, was not always constituted a *Justicier*; though he was so in most cases. But the *Justicier* at least always held a *Fief*, and his *Justice* and *Fief* were co-extensive. Every *Seigneur Haut Justicier* was, therefore, in one quality or other, originally the proprietor of those waters, as well as of the land, within the limits of his *Fief*. Of course the navigable rivers (though in some grants of early date expressly given away) were by virtue of the public law, and have remained, the property of the Crown, whether of France or of Great Britain. Those here who hold that the non-navigable streams were originally the property of the Seignior in his quality of *Justicier*, may hold further (as was hinted in the case of Boissonnault *et al.* v. Oliva) that by reason of the Crown alone exercising jurisdiction of any kind under our public law, such right of property has vested in the Crown; though such inference, by the way, admits of grave controversy. But even admitting such inference we come to the conclusion that the Crown, and not the *censitaire* must be the true owner of those waters. If, on the other hand, there be any flaw in this reasoning,—if the property went to the Seignior as grantee of the *Fief*, and not as grantee of the *Justice*,—or if, going to him in his latter quality, it be not held to have passed from him in consequence of his merely losing the rights of jurisdiction that were once attached to it, the Seignior, and not the Crown, is such owner. On either supposition, the *censitaire* (unless his grant be in such terms as in law may be held to pass title to him) is not such owner.

But the case does not even rest here. Numbers of the grants to Seigniors, as I have had occasion to observe already, in express terms give them the property of certain rivers, or of all rivers in their *Fiefs*. I have only to-day had placed in my hands the original document by which the French king ratified the grant of the Seigniory of Rimouski; and it in so many words grants "the river Rimouski" and so much land adjoining it. There are some scores of such grants; and scores of others that give rivers and streams in general terms; none, that imply the idea of not giving them. Now, in cases where the grant of streams is mentioned in the instrument of concession, it must be clear that the property in such streams granted was not given as an incident of the *Justice*, but as part of the *Fief*. Indeed, it was sometimes so given, where no *Justice* at all was granted. There are certainly cases, therefore, and those not few, where it is impossible to hold the Seignior's right over streams to have ever been that of the *Justicier*,—where it cannot have passed to the Crown,—where it must be his, unless indeed (and this, is matter of legal inference from the deeds of concession he may have granted) he be found to have parted with it to his *censitaire*.

In any and every supposable case, however, the fact is patent, that the *censitaire*, unless his deed—interpreted as the law shall be found to interpret it—has given them to him is not the proprietor of these streams. And whether, in particular cases, the Crown can claim to be such proprietor, or not, it is at all events not for the Legislature to step in and say; this man, who had no right to the water, shall have both land and water and that man, to whom both were given, shall have neither. On principle, you might as justly say, that the land on each side of a stream must belong to the owner of the stream, as that the stream must belong to the owner of the land.

I am not without high local authority, in taking this view of this part of my case. I have had placed in my hands, a public document—an authentic copy of an order in Council, of the Executive of this Province, bearing date as late as 1848, and having reference to this question, as it then arose for decision by government within the Seigniory of Lauzon, a property belonging to the Crown by private title. A *censitaire* holding land in that Seigniory, but who did not own the water power adjoining his lot or rather who had acquired from the former Seignior, one water power only out of two that existed there with a mere permission subject to the Seignior's revocation to use the other for certain special purposes—had applied for a commutation of tenure. The question presented itself, whether by commuting the tenure he would become the proprietor of both water powers, that is to say of the stream in its entirety. If so, the whole value of the stream would have to be taken into account, in fixing his commutation money. If not, not. This question, as the document I speak of, is fully & ably treated, is therein laid down, that non-navigable streams clearly belong either to the *Seigneur Haut Justicier* or to the *Seigneur Foudal*; that on either supposition, this stream had become the property of

the Crown; that this *censitaire* was wrong, if he thought that he could become the proprietor of the other water privilege, by merely commuting the tenure of the land; that therefore, the value of such other privilege was not be taken into account in estimating his commutation fine; and lastly, that (to avoid the risk of a doubt as to the intended effect of his commutation) a clause should be inserted in the deed of commutation, expressly declaratory of the fact, that the water power in question remained the property of th Crown.

That decision was a right one. The Seignior who has once acquired the stream, and has not parted with it, has the right to hold it as his own. No man has the right to take it from him. You may, if you will, provide for its being taken from him, as you may for any other property being taken from him, for any sufficient end of public policy; but he must be paid for it, and paid its full value, when it shall be so taken.—It is not to be taken first; and he left afterwards to prove the fact and amount of loss thence resulting, and to pray for an uncertain indemnity, which he may very likely never succeed in getting.

Yet this is what this section proposes to do, as to this matter.

The thirtieth section proceeds to the kindred subject of the right of banality; and reads thus:—

"XXX. The right of the Seignior to require the "*censitaire* to carry his grain to the *banal* mill to "be there ground, on paying to the Seignior "the ordinary toll for the grinding of such grain, "shall hereafter be considered as applying to no "other grain than such as is grown on the lands "held *à titre de cens* in the Seigniory in which "such *banal* mill is situate, and is intended for "the use of the family or families occupying the "said lands."

Now this right of banality, I may say without doubt, (for I am confirmed in so saying, by all the jurisprudence of the Intendants and Courts before the cession, as well as by that of the Courts since) exists in Canada by virtue of the law, and independently of contract between Seignior and *censitaire*; although it did not exist in France within the local range of the Custom of Paris, unless by virtue of such contract, or other sufficient title; and it involves the right on the part of the Seignior, to prevent any other mills than his own, from being put or kept in operation within the limits of his banality,—to prevent any miller beyond those limits from beating up for custom within them,—and lastly, to oblige his *censitaires* to bring their grain for grinding at his mill, on certain fixed terms, as to price and otherwise. Under the Custom of Paris, I have said, this right did not exist at common law; but it could always be enforced, and was enforced, to the letter, whenever any *censitaire* was shown by his deed to have agreed to it; and it could even be enforced, and was enforced against all the world, whenever the Seignior could show what was called a "*titre valable*"—a sufficient title to warrant such enforcement. I do not here go into the detail of what constituted such *titre valable*; the consent or recognition of such and such a proportion of all the *censitaires*, and so forth. The only important point, here, is the fact, that in Canada, the state of things, as existing under the Custom of Paris, was altogether changed, by two leading *arrets* of a legislative character. The first of these was an *arret* or decree of the *Conseil Supérieur de Québec* (a body undoubtedly capable of making such a law) under date of the 1st of July, 1675. This *arret* ordained, "that all mills, whether water "mills or wind mills,"—by the Custom of Paris, no wind mill could be presumed banal—"which "the Seigniors shall have built or shall cause to "be built hereafter, shall be banal." The other was an *arret* of the King himself in his *Conseil d'état* or Privy Council, under date of the 14th June 1686, which ordained "that all Seigniors, "possessing fiefs within the limits of the said "country of New France, shall be held to cause "to be erected banal mills within a year after pub-"lication of the present *arret*; and, the said delay "expired, in default of their having so done, His "Majesty permits any persons, of what rank or "condition soever, to build such mills, attri-"buting to them to that end the right of bana-"lity, and forbidding all persons to disturb them." By force of these two *arrets*, every Seigniorial mill was constituted a banal mill; and every Seignior was declared to have the right of banality it, it is in respect of such mill. He might lose true, by non-user; and in such case any one else might acquire it. But unless he did so lose it, it was by law his.

And as to his losing it, I should perhaps say a word or two. To any one not conversant with Lower Canadian law, the second of the two *arrets* I have read, may seem to imply that a Seignior who should not have built within the year after its promulgation, would *ipso facto* lose the right. But such is not, and never was held to be, its meaning. Like the first of the two *arrets* of Marly, it merely enjoins a duty—so limiting to a certain degree a pre-existent right which it admits; and after such injunction, it provides a remedy against the possible case of failure to obey. That remedy consisted, in the right to be given to any one else to build mills, and so acquire the banality of the Seigniory, to the exclusion of the Seignior. Till this should have been done, the Seignior, though he might have no mill in operation, retained his right to have such mill, whenever put into operation, held a banal mill. And any other person, in the meantime wishing to avail himself of the remedy provided against the case of the Seignior's neglect to build, had first to summon the Seignior by legal process, so as to establish judicially the fact of his being in default, and thereupon to obtain a judicial sentence forfeiting his right, and attributing it to himself the plaintiff.

It has been argued, with much ingenuity, that the right of banality, as introduced into Canada in 1675, did not comprehend (as in France, wherever existent, it undoubtedly did) the right to prevent the working of any other mills in the seigniory. The *arret* of 1675, after the words I have already cited, declaratory that all mills built or to be built by seignors "shall be banal", proceeds thus:—"And thereupon, that their tenants who "shall be bound by the contracts of concession "that they shall have taken of their lands (*qui se "seront obligez par les titres de concession qu'ils "auront pris de leurs terres*) shall be bound to take "their grain there to be ground, and to leave the "same there at least twice 24 hours, after which

" it shall be lawful for them to take the same away " if not ground, and to take it elsewhere for grind- " ing," &c. And it has been urged, that the only banality granted here, is a banality granted against *censitaires* who by express stipulation to that effect in their deeds should have subjected themselves to it; that the right was therefore not an absolute right of the *fief*, but a mere right to enforce a certain contract, if made. On which latter supposition it is further urged, that it could not go the length of preventing any one not bound by such contract, from setting up a mill within the *fief*. This view, however, has never been maintained judicially; on the contrary, in the last case decided upon the subject,—that of Monk vs. Morris, (see L. C. Reports, vol. 3, p. 3) decided quite lately by the Superior Court at Montreal, —though urged with the utmost ability by the defendant's counsel, it was over-ruled by the Court. And all former decisions, before as well as since the cession of the country, are against it. And with good reason. For, if such were the meaning of the *arret*, it had—so to speak—no meaning at all. By the Custom of Paris, any *censitaire* who had bound himself to grind at the Seignior's mill, was so bound, whether the mill was or was not banal. To say that a mill was banal, was to say a great deal more than that *censitaires*, thereto bound by special contract, must go to it. The mill need not be banal for that. The word banal was a word, the meaning of which was well known, and of wide application. There were in various parts of France, banal rights of various sorts—banal ovens, banal wine presses, and so forth. And the term everywhere imported the ban, prohibition, or exclusion of all rivalry within the territorial limits of the banality. It everywhere imported also the holding all of who came within its range (irrespective altogether of contract) to the obligations it imposed. No *censitaire* within a banality could escape from it. The latter part of this *arret* of 1675 regulated certain details of procedure and so forth, as regarded those obligations. But it could not, and did not import the freedom of any person bound by a deed of concession,—that is to say, of any *censitaire* or holder of land under such a deed,—from such obligations. On the contrary, its very letter imports precisely the reverse.

Now, the clause of this Bill which I read last, this thirtieth section, does not indeed in terms profess to abrogate this right, of exclusion of other millers from a seigniory. But—and more especially as read in connexion with the preceding section—it tacitly imports such abrogation. By the twenty-ninth Section, the Seignior's water-powers are declared to belong to the *censitaire*, and all agreements by the *censitaire* to the effect that he will not build mills on his land, are declared null. By this thirtieth Section, the right of banality is spoken of as though it were a mere right " to require the *censitaire* to carry his grain " to the banal mill." Such enactment and recital once passed, it is clear that any one could build any sort of mill in any seigniory; that this part of the existing right of banality would be lost to the Seignior.

And it is obvious to remark, that this is really the only part of his right worth keeping. It is that, through which alone he can practically be said to have any right at all. In former days, Seigniors used to sue *censitaires*, to oblige them to grind at their mills, or pay the toll of what they ground elsewhere. But those times are past. It is worth no man's while so to sue now. And no man does so sue. The Seignior's only hold is through his ownership or reservations of water-powers, and his right at law to stop rival millers from competing with him. This, it is now proposed most effectually to take from him. It requires to be paid for, before it is so taken.

This clause goes even further. It would give the *censitaire* the legal right to evade the grinding of any of his grain at the so called banal mill; for he would only have to sell his own grain and buy other, or even to exchange it away; and he could then say, the grain you claim to grind, is no grain grown here for my family,—what I raised here was not so intended, and I have parted with it,—this that I am using, I got elsewhere. The evasion is of small practical moment; because such suits are never likely to occur. But it shows the spirit and tendency of the Bill,—that, besides giving every one the right to build rival mills to mine, it should thus go on to give every one the power of evading the nominal obligation which it professes to leave in force, to give my mill a certain measure of preference.

I repeat; I am in no wise contending for the maintenance of banality in any shape. I might, of course, say with truth that the banal mills of Lower Canada grind at a considerably lower rate than obtains any where in the country, beyond the limits of the Seigniories; and that they do their work well, to the satisfaction of those who use them. Indeed, the Seigniors can be compelled at law to keep them in good order; are under stringent legal liability in respect of rate of toll, and quality of grinding. But I have nothing here to do with all this. I am defending no part of the existing system. I only insist, that its pecuniary advantages to my clients, are not to be taken from them piece-meal and by indirection, leaving them to prove their past existence and value, and beg for tardy, inadequate, uncertain compensation afterwards.

I have not quite done, howe ver, with this matter of banality. The Bill contains two more Sections, the Thirty-first and Thirty-second; which I must read, lest I should be thought to paraphrase or represent them otherwise than as they are:—

"XXXI. Every Seignior having more than " one hundred *censitaires* holding lands in his *cen-* " *sive*, and who, after the expiration of two years " from the passing of this Act, shall not have " constructed at least one *banal* mill for the grind- " ing of the grain in his Seigniory, and every " Seignior who, after the expiration of two years " from the period in which there shall be more " than one hundred *censitaires* holding and settled " upon lands in his *censive*, shall not have con- " structed such mill, shall, as well as his heirs " and representatives for ever, ferfeit his right of " banality in such Seigniory; and it shall be law- " ful for any person to construct one or more " mills for the grinding of grain in the said Seig- " niory, and to grind or cause to be ground in any " such mill all grain brought thereto, without be- " ing liable to be disturbed by the Seignior as " such, in the enjoyment of the said rights; but " no such person shall be entitled to exercise the

"right of banality in respect to any mill so con-
"structed.

"XXXII. And whenever a *banal* mill shall not "be in proper order, or shall be insufficient for "the grinding of grain belonging to the *censitaires* "of the Seigniory, or of the part of the Seigniory "in which it is situate, any *censitaire* settled upon "any land in such Seigniory shall be entitled to "sue the Seignior of such Seigniory before the "Superior Court sitting in the District in which "such mill is situate, for the purpose of obliging "him to repair such mill, or to place it in such a "state as will make it sufficient for the wants of "the *censitaires*; and it shall be lawful for the "said Court, to proceed and give such judgment "in every such action, as to law and justice shall "appertain."

The right of banality has been cut down to a shadow; made valueless to the Seignior. His water-powers are taken from him. Every one may build mills to compete with his. No one need prefer his mills to any others. But they are still ironically called banal mills. And enactments of regulation are proposed as to such mills hereafter to be built; as though it were possible any should be. And further enactment is proposed, to make it clear that the Seignior's obligations as to his existing mills are in no wise to be abated. Banal in nothing but name, for any use he is to have from them, his mills are to be every whit as banal as they ever were, for all purposes of annoyance to him by any *censitaire*. With no hold left to him upon his *censitaires*, every one of them is to have firm hold on him.

Again I say, all this is of a style of legislation that cannot be.

We arrive at the fourth part of the Bill; that which treats of honorary rights, pre-emption, (*retrait*,) rents and hypothecary privileges; extending from the Thirty third to the Forty second Sections, both included.

On the Thirty third Section, which proposes to abolish all honorific rights of Seigniors, I need make no comment. My clients will be happy if, abandoning them—such as they are—they can but secure the common immunities, as regards property and personal rights, of all others their fellow subjects. They ask only, in all respects to have the same measure of right dealt forth to *Censitaire* and Seignior equally.

The Thirty fourth Section is as follows:

"XXXIV. The right of conventional pre-emp-
"tion (*retrait conventionnel*) shall not be exer-
"cised in respect of any immoveable property
"sold under a writ of execution, (*par décret*,) or
"other judicial authority, and it shall not be exer-
"cised in the case of any such immoveable pro-
"perty being sold in any other manner than by
"judicial authority, unless the Seignior prove that
"the said sale is tainted with fraud."

To part of this clause I have no objection to offer. That property be not subject to *retrait*, when publicly sold under process of law, is an enactment, which my clients would not be disposed to complain. The remainder of the clause, however, they do complain of, strongly.

To make the whole matter clear to Members of this Honorable House, not conversant with Lower Canadian law, I ought, however, to go into some explanation of what this *retrait* is. By the Custom of Paris, when land has been granted *à cens* it is held subject to payment of a rent—the rent stipulated in the deed—which rent, or at least that part of it designated as the *cens* properly so called, carries with it *lods et ventes*; or in other words, entitles the Seignior to a fine of one-twelfth of the purchase money, whenever the land shall be alienated by sale or other contract equivalent to sale. The same kind of due accrues to the Superior Lord, or Seignior Dominant, upon land by him granted *en fief*; but the fine in that case is much higher. Land granted *en fief* is charged with no annual feudal due payable to the grantor; and for that reason among others, is more heavily burthened as regards casual dues. The mutation fine on its sale, is fixed by the same Custom, at the *Quint* or fifth part of the price.

Historically, no doubt, both these fines had their origin in that uncertainty of tenure which (as I have observed) once characterised both kinds of grants. The holder had no right to alienate, without his Lord's leave, the Lord—owner still of the land granted—being entitled to insist on having no Vassal or *Censitaire* on his land, whom he might not trust or like. In process of time, as the practice of allowing such alienation grew into a right, payment came to be settled by usage, as the price of the Lord's consent. Partly as a remnant of this old right of preventing alienation, and partly as a means of preventing fraud as to the amount of the mutation fine, the Custom of Paris gave the Lord, the right, upon the sale of a *fief* held from him, either to come in for the *quint* or to say, I am not satisfied as to this sale, and decline to take this buyer for my vassal; instead of accepting the *quint* offered me, I take back the *fief*; here is the amount of what you call the purchase money, with that of your reasonable expenses; and now, the *fief* is mine. This *retrait féodal* was of common right throughout France. And many of the Customs gave the Seignior the same right, in reference to land held of him *à cens*, so that when the *censitaire* sold it, the Seignior might in just the same way exercise what was called the *retrait roturier*. The Custom of Paris, however, did not give the Seignior this latter right, as a thing of course; but it did not at all prevent him from stipulating it in his grants made *en censive*. Whenever he did so stipulate, he enjoyed the right. And such stipulation was of course common enough.

The obvious value of the stipulation, as a protection against fraud—more especially where, as was the case in Canada, lands were commonly granted low, and Seigniors looked for their future wealth mainly to the proceeds of their banality and *lods* to accrue thereafter as the land should acquire value,—made the stipulation here, from the earliest period, an almost universal usage. And such it has continued ever since.

The right so stipulated is commonly termed, as in this section of the Bill, that of the "*retrait conventionnel*," or *retrait* stipulated by contract. And it is, precisely what this designation imports.

Now, this Section first proposes to enact, that when land *en censive* is sold under judicial authority, this stipulated right shall not be exercised. The contracts establishing it make no such exception. But at the same time, as the publicity of judicial sales must always enable the Seignior to guard against fraud by bidding at the sale, the right of *retrait* afterwards, is not one that he ought,

on equitable grounds, to have. And I know of no Seignior who would care to object to its being done away with, in that case.

But the Section goes much further. It would enact, that though it is matter of binding contract that this right is mine, I am not to have it, to any practical use whatever. I am not to exercise it, unless I prove the sale fraudulent. Why, if I can prove fraud, I can of course at law have my *lods et ventes*, from the buyer, calculated on the value of the land—its true price. Nine times out of ten, it would better suit me to have that payment, than to buy in the land. Besides, the end for which I made the contract, was to guard against fraud that I might feel sure enough of, but could not prove. Nine times out of ten, I should very likely fail to prove the fraud; however sure I might be that the price stated was a fraud upon me. This *retrait* is the only reliable protection I can have. I stipulated it, lawfully. It is my legal right.—Why is it to be taken away?

Is it said, that like others of my rights of property, it is a kind of right, which had better not be? Take it, then; but indemnify me first, for its loss. I have no right to object. I do not object, to any changing of the law for the public good; but I protest against such changes involving me in ruin.

The thirty fifth Section carries the power of repudiation of contracts as regards this matter, further still. It reads—

"XXXV. Any sum of money, or other valuable "thing, which, after the passing of this Act, shall "be paid or given to any Seignior, either directly "or indirectly, to induce him to refrain from ex- "ercising the right of *retrait* in the case of any "sale or mutation effected within his *censive*, "shall be recoverable, with costs, by action before "any Court of competent jurisdiction."

Conscious of fraud, fearful of my suit—whether for full *lods et ventes*, or for the exercise of my *retrait*—the parties indemnify me. I am satisfied; so too are they. But this Bill is not. It puts into their power to recover back from me the payment they have made, with costs.

I must sue; must risk loss of costs, and more, in an action to prove fraud. If I do not; if I let the party pay me, without the cost and discredit to himself, of such suit; I give him the power to mulct me in costs for my folly, in a suit to get back his money.

I find it hard to think of such a clause, as part of a seriously proposed enactment. Its irony is too cutting.

The next following sections, the thirty-sixth and thirty-seventh, are clauses of extreme importance; and again, extremely open to objection, as injuriously affecting my clients' vested interests. They read as follows:—

"XXXVI. No *censitaire* or occupier of land in "any Seigniory conceded before the passing of "this Act, except building lots in a Town or "Village, shall be required to pay as an annual "seigniorial rent, to fall due hereafter, any sum "of money or other value exceeding the sum of "two pence currency for each superficial arpent "of the land occupied by him *à titre de cens*; "notwithstanding any stipulation to the contrary "made by himself or by his predecessors."

"XXXVII. All seigniorial dues payable annu- "ally in personal labour (*corvées*,) grain or other- "wise than in money, shall hereafter be paid in "money, at the price at which the same shall be "worth at the time the said rents shall fall due, "and shall be reduced to two pence currency for "each superficial arpent of the land upon which "the same shall be charged, in the same manner "as rents payable in money."

By a former clause, the fifth,—as I have shown,—it is proposed to fix a blank price as that at which I must part with my lands not as yet conceded. That, at all events, though affecting my vested rights, was in show a project of prospective legislation. It purported to tell me the terms on which I was to be allowed, or rather forced for the future, to deal with what I claim to hold as my own. But here are clauses referring to land that I have parted with upon terms long ago established, by contracts then freely made under legal sanction. Those who then so dealt with me took such land, engaging to pay me a yearly rent of four pence, sixpence or perhaps a shilling, per arpent; perhaps they agreed with me to pay in wheat, for the express purpose that the rent, being made payable in a kind of food, the chief support of human life, should never thereafter materially change in value. It is now proposed, by law to tell me, that though such was our contract I shall not have the benefit of it. I am not to get more than two pence currency payable in money, per arpent, yearly from this day forever. And on what pretence? Under the French *régime*, it is said, few rents exceeded in amount, what was then the money value of a single penny currency, per arpent; though in fact some, by the way, did. Well, however that may have been as matter of fact, I have at least shown that there never was a maximum rate, fixed by law beyond which it was illegal to stipulate. I have, even shown, on the contrary, that in very truth as a general rule, every man in those days, as regarded these stipulations, did just what was right in his own eyes; that there were about as many different kinds of bargains made, as there were differences of disposition on the part of those who made them. Since those times, land has become much more valuable; some Seigniories were not granted till after the cession; a good many were granted a very short time only, before it. There are Seigniories, little or no part of which, under what I may call the police regulations of the French Government, was suffered to be subgranted before the cession. Many at that time had hardly a settler on them. Since then, what has been the course of the Government and Legislature and Courts of Law, that Parliament should now be called upon to reduce the rates at which I or my predecessors may have granted any portions of our property? If in old time, the control of the Intendant would at all events have tended to keep down our rates, it at least tended to force men to take more of our land than they otherwise would have done; and so would have helped off our land sooner, and made it sooner valuable to us. If granted years ago at lower rates, we should ever since have been in receipt of revenue from it, casual as well as fixed. As the case has been, from the date of the cession, enormous and most improvident grants of land in free and common soccage have been constantly going on. Great difficulties—not precisely legal difficulties, to be sure,

but still real difficulties—have been thrown and kept in the way of extending settlement in the rear of all the seigniorial country. The emigrant population from the old world were drawn by a variety of considerations to the free and common soccage lands of their countrymen. The French Canadian population would not push back into the forest, without their churches and *curés*. Instead of being driven back, as of old, they were kept under special attraction, in their front settlements, by the singularly unwise policy which long discouraged and retarded the establishment of new parishes, the building of churches, the orderly settlement of the clergy of their faith in the rear of what was professedly the land reserved for their especial settlement. In the meantime, while much of my land has thus lain unproductive, the value of money has been falling, and the value of land rising. My predecessors and myself, left free to make our bargains with whom we would, and as we would, have contracted with others equhlly free, und on terms contravening no law whatsoever, past or present. By what show of right are such past contracts to be touched ?

If touched at all, on what show of reason, are they to be cut down to the measure of this twopence currency per arpent? If the two *sols* said to have been seldom exceeded a century ago, cannot now be maintained as a maximum for contracts of yesterday, the process of doubling such two *sols* does not give us an amount, according to the values of these days at all equivalent to the two *sols* of the year 1730.

Besides, with what pretence of right, fix a maximum in money, at all? Because no one knows what may be the real value of twopence currency, a few yaars hence ? Because the value of money is just now changing more than anything else whatsoever ? A bushel of wheat will go as far tc sustain human life, fifty or sixty hence, as now. But two-pence currency in money! Who knows what that may be worth,—even a few years hence? When men have freely bargained for payment in kind, of set purpose to avoid this risk, what pretext can there be for applying to their conventions that very money-rule, which they had a right not to adopt, and deliberately did not adopt, as the rule of their transaction ?

True, the change is one to cause heavy further loss to my clients. But is that reason enough ?

The thirty-eight and thirty-ninth Sections propose to enact as follows:—

" XXXVIII. No sale under writ of execution " (*par décret*) shall have the effect of liberating " any immoveable property held *à titre de cens*, " and so sold, from any of the rights, charges, " conditions or reservations established in respect " of such immoveable property in favor of the " Seignior, but every such immoveable property " shall be considered as having been sold, subject " to all such rights, charges, conditions or reserva- " tions, except in so far as they may exceed those " allowed by the Section — of this Act, without " its being necessary for the Seignior to make an " opposition for the said purpose before the sale.

" XXXIX. If, notwithstanding the provisions " of this Act, any opposition *à fin de charge* be " made hereafter for the preservation of any of " the rights, charges, conditions or reservations " mentioned in the next preceding Section of this " Act, such opposition shall not have the effect of " staying the sale, and the opposant shall not be " entitled to any costs thereon, but it shall be re- " turned into Court by the Sheriff after the sale, " to be dealt with as to justice may appertain. "

Upon these clauses, in so far as they merely tend to obviate the necessity of putting in oppositions in order to the saving of Seigniorial charges upon land *en censive* sold by the Sheriff, I have nothing to say. In connexion with the forty-first Section, I shall presently have occasion to speak of the limitation which this clause hints at, as intended to be wrought, in respect of the charges to be allowed on such land.

The fortieth Section reads :—

" XL. The privileges and preferences granted " by law to Seigniors, to secure to them the pay- " ment of the Seigniorial rights which shall here- " after become due, shall only be exercised for " arrears which shall have fallen due during the " 5 years next preceding the exercise of such pri- " vileges and preferences. "

At present, they can be exercised for 30 years' arrears. And it may be hard to assign a good reason for proposing this piece of exceptional legislation ; unless, indeed, it be such reason that it tends to the disadvantage of the Seignior. There is even a dash of the *ex post facto* in it, as in so many others of the clauses I have had to notice.—Secure in the existing law, Seigniors have refrained from suing; well knowing that at any time within the 30 years, the arrears due to them would be recoverable as a debt having a certain known priority of claim. But they are to find out their error. Whatever amount of such arrears they may have allowed to run, beyond the term of the last 5 years, they are not to be suffered to recover, as such privileged claim.

Raudot, in 1707, suggested a new short term of prescription, against everybody. This proposal is against the Seignior only. And yet, one would be tempted to think that he is hardly the man to be so selected ; since his accruing dues fall in yearly, in such small amounts as to make it no slight hardship that he should have to collect them even for the time to come, (to say nothing of his vested right for the past) within the 5 years, on pain of risking their loss. It forms part of the plan, too, we must remember, to cut them down, in those cases where otherwise their amount might make them worth that sharp collection which this section would enjoin. Straws show the wind. In great matters and in small, it is not the Seignior who is to gain.

The next Section, the forty-first, is in these terms :—

" XLI.—All stipulations in any deed of conces- " sion, new title deed or recognizance (*titre-nou- " vel ou recognitif*) made before the passing of " this Act, in so far as such stipulations tend to es- " tablish in favor of the Seignior upon any land " conceded *à titre de cens*, with the exception of " land conceded as a town or village lot, any " rights, charges, conditions, or reservations " other than or exceeding the following, are with " respect to such excess or difference hereby de- " clared null and void, namely :

" 1.—The obliuation to keep house and home " on the land conceded.

" 2.—That of surveying and bounding the land

" conceded, at the expense of the *concessionaire*.

" 3.—That of paying an annual rent (*redevance*) which shall not in any case exceed the " sum of two penee currency for each superficial " arpent of the land conceded, and which, in any " seigniory wherein the customary rents are below " the said rate, shall not exceed the highest annual rent stipulated or payable in the said seigniory.

" 4.—That of exhibiting deeds of acquisition, " executing new title deeds, (*titres nouvels*) and " paying mutation fines (*lods et ventes*) according " to law.

" 5.—That of grinding at the Banal mill the " grain grown on the conceded land, and intended " for the use of the family or families occupying " the same.

" 6.—The right of the Seignior to take back " (*retraite*) the land conceded, in all cases of fraudulent sale, or mutations made with a view to " defraud such Seignior, or in such manner as to " deprive him of the whole or of part of the *lods* " *et ventes*, or other just rights.

" 7.—The right of the Seignior to take in, any " part of his *censive*, and as often as the case may " happen, a parcel of land for the construction of " a Banal mill and its dependencies, not exceeding six superficial arpents, on payment by him " to the proprietor, of the value of the land and " expenses.

Ex post facto legislation again. In I know not how many thousands of deeds, are contained no one knows how many clauses in favor of Seigniors, freely agreed to, at all dates through the last two centuries. There are clauses too, of course, not always alike, in favor of the *censitaire*. None of these latter are to be touched. But as to the former, though it is most certain that they are not clauses repudiated by the law as it stands, law is to be manufactured to sweep them all away, saving only the seven I have read. Did I say, saving such seven? Saving even them—how?

Why, as to the obligation to keep hearth and home, we have seen that this Bill propose to declare that it shall be held to import no more than the duty of reserving the land for firewood.

That of surveying the land, being no great matter, is left to its natural meaning.

That of paying rent, at a rate often less than the deed promises, is curiously stated. The grantee is to remain under our obligation to pay a rent, never to exceed one fatal two pence currency of money; but in any Seigniory where most rates are below that figure, the payments to be made are not to exceed the highest rate known in the Seigniory! Of course they cannot. They are to be cut down everywhere to the two pence; and sometimes, if this clause means anything at all, they are to be cut down to some lower standard. But, to what?

The exhibiting of deeds, passing of new deeds, and paying of *lods*, according to law, are all proper acts; but with the right of *retrait* practically lost, they are little likely to be too punctually performed.

As for the banality and *retrait* clauses, I have shown that in the shape they are to assume, they are worthless. Like most other things that might be worth the Seignior's keeping, they are to go. It may save appearances, to take them without exactly saying so; but the substance of the act is all the same.

And lastly, there is to be left the power (wherever stipulated) to take not more than 6 arpents for a new banal mill, due payment first made, of course, the supposed payee being a *censitaire*. A likely thing, the building of a new banal mill; after banal mills shall have been made what this Bill would make them.

Is this style of Legislation possible? It is not true, the bold assumption, that the contracts thus all swept aside, are contracts that the law can disallow. They are legal; binding. If they were not, no statute would be wanted to put them out of the way. They cannot be legislated away, merely because one of the two classes of men, parties to them, is more powerful than the other.

The last clause of this part of the Bill, is the forty-second; and reads thus:—

"XLII. And whenever a Corporation shall " have acquired lands *en roture* and shall have " paid the indemnity (*indemnité*) to the Seignior, " no *lods et ventes* shall thereafter be payable on " any mutation of the same land."

I say no more of it, than this. As the law stands, if land held *à cens* be acquired by a Corporation, the Seignior has his right to this indemnity; and if it be afterwards sold, he has his right to *lods et ventes*. This clause is the taking away of one thing more,—a smaller thing than many,—but something. It is in keeping with its predecessors.

The fifth part of the Bill follows; from the forty third to the seventy second Sections; the portion of the bill which takes up the matter of the Commutation of the Tenure of lands held *à cens*.

The first Section of the Bill, it will be remembered, has proposed to repeal the Acts, under which at present Seignior and *Censitaire* can agree as to terms for such Commutation, and can carry into effect their agreement, whatever it may be. These Sections contain no provisions of that character. The *Censitaire* individually, or the *censitaires* of a Seigniory collectively, may be willing to make their bargain with me, and I with them. But under this Bill, no such thing may be. The terms of the transaction are all fixed for us. And how?

By the forty third and forty fourth Sections, we are told that any holder of land *en roture* may commute his tenure, on paying in the way to be designated by after clauses, the price of the redemption of his Seignior's rights,—that is to say, firstly, of the Seignior's fixed rights (whether in kind, money, labor, or otherwise) and banality, —and secondly, of his casual rights or *lods et ventes*.

The forty fifth and forty sixth Sections provide for the appointment by Government, of three Commissioners; to be sworn before a Justice of the Peace, and paid as the Governor shall direct. It is not said, that they are to be professional men of any particular standing, or indeed professional men at all; yet we shall see presently, that they had need be lawyers of high mark; for they will have (or rather, each by himself will have) to decide knotty questions of law in abundance,—to interpret thousands upon thousands of deeds, or rather first to interpret and then alter their interpretation as this Bill directs,—to pronounce on the rights of

property of some hundreds of thousands of people, —and all without appeal; and afterwards, they will together have to sit as an extraordinary Court, and adjudge upon a class of causes, the most intricate and difficult, as well in respect of law as in respect of fact, that ingenuity could well devise. On the other hand, however, it might not do to say they shall be lawyers; for the Advocate is not usually eminent as an investigator of accounts and settler of values of all kinds, as we shall see these Commissioners are bound to be. They are to be sworn to perform their duty. I hope they may be able. But they had need be all but omniscient.

By the forty seventh Section it is to be enacted that each of them is to draw up in triplicate, a tabular Schedule of all the lands in each of the Seigniories to be allotted to him,—showing the amount of the redemption money for each lot of land, and distinguishing such redemption money in every case, into three parts, that is to say, the price set on the yearly fixed charges, on the banality, and on the casual rights.

The forty eighth Section gives some instructions, as to how these prices are to be set.

The yearly fixed charges, we are told, are to be rated at the capital represented by them at 6 per cent. And if this rule were carried out, there would on this score be nothing to complain of. But it is not. There is first to be met the case of the charges stipulated in kind; and how is this met? The Commissioner is to value the articles stipulated, according to their prices as "taken from "the books of the merchants nearest to the place;" and he is to come at his average, by taking the values of each of the last 14 years, thus ascertained, then striking off the 2 highest and the 2 lowest, and lastly striking the average of the remaining 10. Then, the value of all *corvées* or stipulated labor, is to be turned into money by the same not very easy process. And then, the postscript follows; that the whole "shall in no case be "calculated at a higher rate than two pence per "annum for each superficial arpent of the land "subject to such annual charges, unless the said "land be a town or village lot."

Of course, after all that has preceded in the Bill, this last provision could not but follow. But it is not the less a direct reversal of the professed principle of this valuation, that the price of redemption of these charges is to be the capital sum they represent.

Besides,—not to speak of the cumbrousness of this procedure for valuing charges in kind and labor, of the impossibility of the Commissioner's ordinarily finding the evidence that he is told to take, and of its unreliable character when he may find it,—on what principle are 4 years out of the 14 to be struck off? If 14 years are to be looked up, the average from them all will be a truer average, than one drawn from any 10 of them. And in truth, on what principle of right, is an average of any number of past years to be taken at all? Because prices as a general rule have been rising; so that a money value of some years ago will be lower than the money value of to-day? Or on what principle, as I have already urged, on what principle turn all into money,—when, as we shall see, it is not cash payment or even payment within any term of time whatever, that is contemplated? Above all, why cut the result down, to a money *maximum*? Unless, indeed, it be that nothing short of the *maximum* of wrong that can incidentally be inflicted on the Seignior, will suffice to meet the exigencies of this peculiar case?

For the setting of his value on the banality rights of the Seignior over each lot, our Commissioner is thus directed:—

"To establish the price of redemption of the "right of banality, an estimate shall be made of "the decrease in the annual receipts of the banal "mills to arise from the suppression of the right "of banality and from the inhabitants being freed "therefrom; the amount of the said estimate shall "represent the interest at six per cent, of the "capital which shall be the price of redemption "of the banality for the whole of the Seigniory, "and the said capital shall be apportioned among "all the lands subject thereto, according to their "superficial extent."

Good. But how is he to make this estimate? And when? If immediately, what will it be, but a sheer guess? Five years hence, or ten? Is the whole machine to stand still so long? And if it were; to what use? For 5 years or 10, no new mill may be built in my Seigniory; and I may in that case have lost nothing. The next year, when I have been pronounced to have lost nothing, an enterprizing miller steps in; and I find I have lost all.

Further,—though, perhaps, the ending part of this clause may seem to be more my *censitaires'* business than mine,—I cannot help asking myself, why this value of my banality thus to be guessed at for my whole Seigniory, is to be "apportioned "among all the lands subject thereto, according "to their superficial extent?" Is it merely, that the poor *censitaire* who keeps hearth and home, by keeping up an intention to cut his firewood, on 90 arpents of land that he can hardly sell for its very worthlessness, may have to pay as much to to clear it from my banality, as his neighbour is to pay to the same end, for the 90 arpents, all laid down in grain, that form part of his abundant wealth? Or, is it also, that the extent of my unconceded lands, which I am not to keep, may be made a pretext for throwing only a part of the price of my banality, on those who ought to pay it to me in full?

My casual rights are to be valued by the same sort of process as my rents in kind; that is to say, by an average of 10 years out of 14. Again, I ask why? Perhaps, because income from *lods et ventes*, is the most fluctuating and uncertain income possible. The revenue of the years struck out as highest or lowest may affect the average to any conceivable amount, or to none at all; just as it shall happen. For example, from the public returns of the *quint* revenue of the Crown, (a revenue precisely analogous to the Seignior's revenue from *lods et ventes*,) I find its average for 38 years ending in 1842, was £836 5s 5½d. The maximum year's receipt during that term was £2556 17s 5d; the minimum £5 6s 4d. In 1845, it was £3,470 13s 8d; in 1847, £2 3s —d; in 1851, *nothing*.

But, aside from the objection arising out of these fluctuations, the chances of course are, that a revenue thus valued at an average of past years, will be set below its value. In an old country, this might not be so much the case. But we have here a new country, with its fast-changing

values, to deal with. And there will even be the greatest differences in the working of the rule, as between different Seigniories. In many, it must work the most enormous injustice. A large part of a Seigniory has been conceded within the last ten years; its revenue from *lods et ventes* is of the future. Anotherwas all conceded a century and a half ago. Is this one rule to be the rule for both?

The forty-ninth and fiftieth Sections direct the Commissioner to issue certain notices before he begins his work; and give him certain powers for the conducting of his inquiry. On these Sections I make but a passing remark. His duties are not more all-comprehending than his powers. He can summon and examine any one; and enforce the production of anything. Upon refusal of any body to appear, or "answer any lawful question," or "produce any book, paper, plan, "instrument, document or thing whatsoever, "which may be in his possession and which he "shall have been required to bring with him or to "produce," the Commissioner may arrest him and commit him to the common gaol of the District,—but happily, not for more than one month of confinement, nor with the added pleasure of hard labor. One hopes that no Commissioner will ever want to see what ought not to be shown. For if he should, one's rights would not be too secure.

By the fifty-first section it is provided, that as soon as he has finished with each Seigniory, the Commissioner is to deposit one of his triplicate Schedules with the Receiver General, and another in the office of the Superior Court in the District; keeping the third himself. And this done, he is to give notice of the fact in the Canada Gazette, and in some other newspaper of the District, or adjoining District, as the case may be. Thus deposited, the award is irrevocable. He may have made the grossest blunders or committed the most flagrant injustice; but there is no appeal. He may find out and confess that he has blundered; but even he cannot amend or revise. The triplicates may not accord; but none can be altered, so as to bring them into accord, and make it sure what the true award *is*. The summary judgment that is to give away my land to any person who may want it, is not to be more "final & without appeal," than is to be this Schedule, or rather, each triplicate thereof,—signed, "that it be not changed, according to the law of the Medes and Persians, which altereth not."

Unalterable, these triplicate Schedules of my Seigniory are deposited; and their deposit advertized. The fifty-second section shows the right which is thereupon to accrue to each of my *censitaires*, in respect of the commutation of the tenure of his land:—

"LII. It shall be lawful for the owner of any "land held *en roture*, as soon as the Schedule for "the Seigniory in which such land is situate shall "be completed and deposited as aforesaid, to re-"deem all the Seigniorial rights to which such "land is subject, at the rate specified in such "Schedule, by adding thereto interest calculated "at the rate of one per cent. per annum on the "price at which the casual rights may be redeem-"ed, from the day of the date of the deposit of "the said Schedule, as required by the —— clause "of this Act; and such redemption shall be made "in some one of the modes hereafter provided, "but not otherwise."

The following sections, to the 67th inclusive, are taken up with the subject of these modes of redemption. I shall not comment upon them in detail, because it is not to mere details that I have to object, but to the entire principle upon which they all rest. It is enough to say, that no time is fixed within which the redemption must take place; that every *censitaire* is free to commute when he pleases; or not at all, if he does not please. Till he shall please to commute, the schedule remains a dead letter, so far as he is concerned. He remains a *censitaire*, freed from half his obligations, or more, as the case may be,—but in name a *censitaire*; and the obnoxious tenure of his land subsists. When he wants to change it, he is to go, not to me, but to the Receiver General of the Province, or such officer as the Receiver General shall name to that end; and is either to pay him the redemption money, or simply declare to him his desire to commute,—in which latter case, the redemption money becomes a constituted rent (*rente constituée*) or redeemable charge upon the land bearing interest till redeemed. Such constituted rent, again, whenever redeemed, is so to be by payment to the Receiver General. And all monies so paid, whenever paid, are to find their way to me, by a process not the quickest in the world, calculated in some measure to protect my creditors, who are not to be left quite so badly off as I. If, three months after any payment, I can give the Receiver General a certificate from the Clerk of the Superior Court for my District, that he has no opposition in his hands on the part of any of my creditors, I can get the amount with the interest on it, paid over to myself. If not,—the more probable case, by the way with most Seigniors,—my money is to lie with the Receiver General for three years, or till it amount to £500, as the case may be, and is then to be paid into Court, with interest, for my creditors and myself to fight over, as we best may.

And this is a valuing and redeeming of my rights. Not by agreement between my debtors (individually or collectively) and myself; nor by the matter of course process of an arbitration between us, if we should not agree. A man named by neither of us, is in all sorts of indirect ways to undervalue, by a slow, costly, uncertain process; and then he is to cut down his undervaluing; neither of us—not even he—can correct any error or injustice he may commit. And when all is done, I am not to have my mockery of a cash price, in cash, nor even in one sum at any time; as, were it valued ever so fairly, my right would be to have it. It is to be paid in dribblets, no one knows where, just as any one but myself may choose.

True, it is provided by the fifty second section just read, that as each dribblet shall be paid (or promised as the case shall be) there is to be added to its amount, what is oddly called "*interest* "calculated at the rate of one per per cent. per "annum on the price at which the casual rights "may be redeemed, from the day of the date of "the deposit of the said Schedule." But why "one per cent? Why such one per cent, on part only of the price? Above all, why only on that part which represents my casual rights? "In-

terest" it clearly is not ; and is not meant to be. It can be taken only as a sort of recognition of the certain fact, that as years pass on, the value of money certainly will be falling, and the value of my Seigniorial rights rising. But who will say how fast either process is to go on ? Most persons believe money is on the eve of a rapid and long continued fall in value. Will a rise of one per cent per annum protect me even against that ? If it will, it still ought to be taken, not upon a a part, but upon the whole of the so-called money value fixed for the redemption of my rights. But apart from all fall in the value of money, it is to be remembered that the value of all property is rising ; lands becoming more extensively cleared and better cultivated,—sales more frequent,—crops to be found at the Seigniory mills, larger. My revenues from banality and *lods et ventes* must be held to be increasing revenues. In many Seigniories, they are fast increasing revenues. What is now their money value, I could afford to take now. But if I am to be paid twenty years hence, I must have what their value will be then. Adding one per cent. per annum, merely, to an undervaluing of my *lods et ventes* alone, is a mockery ; another mockery added to the many that this Bill offers me.

And not one payment ever is to be to myself. When my land was to be taken from me, my creditors were not remembered. Against any person wanting it below its value, they are to have no rights, any more than I. But when money is to come to me, they are remembered. Against me, they are not to lose their rights. I do not ask that they should. Protect them by all means. But protect me too. It is my right—and theirs too—that my property be not dealt with after this fashion. What other class of men was it ever proposed so to treat ? Ask the merchant or professional man, how he would like to have his books handed over to a stranger, all his accounts squared without appeal, and all his debtors told to settle when they pleased, with a public functionary, who should then hand over the proceeds to his creditors. Bankruptcy ! No Bankrupt law that ever was, ever dealt so hardly with its victims. Protect my creditors, I repeat ; by all means. But at least do not ruin me. If my rights are to be taken, take them ; but secure to my creditors and myself their honest value. To do this, that value must be settled fairly, and laid before us in one sum ; not every separate six and eight pence, five pounds, ten pounds, twenty pounds, of an understated value, paid in at all sorts of intervals, just as a thousand people may chance to choose. There is no way but one, in which to take private property for the public good.

The remaining Sections of this part of the Bill, from the Fifty-eighth to the Seventy-second inclusive, are clauses which contemplate the contingency of two thirds of the *censitaires* of a seigniory desiring to commute upon the terms set forth by the schedule ; and which enable them in that case to effect the conversion of all Seigniorial dues thereln into constituted rents,—and further, if they shall so please, to act together as a corporation for the redemption of such constituted rents.

Upon these clauses I have no other remark to make, than that I regret not to find in the Bill a far more complete developement of the principle upon which they rest ; as it is to that principle one must look (if we are to look at all) for any real commutation of the tenure upon the voluntary principle. They create no machinery by which the Seignior on the one hand, and his *censitaires* as a corporate body on the other, can agree on terms of commutation, or failing to agree can settle any difference by the ready means of arbitration. There could be no material difficulty in arranging the details of such a system, in a way to work neither inconvenience nor wrong. But these clauses as they stand, do not do this ; and failing in this respect, they can hardly be said to be of any practical importance as part of the Bill. The despotic machinery for cutting down the value of my rights, remains. And it is not even likely that these clauses (limited as their scope is) will ever be thought worth acting on ; so as to lessen the additional injury to be done me by the piecemeal mode of settling for them as so cut down, which is established as the rule of procedure under this Bill.

I have done, then, with this portion of the Bill, and pass to the next or sixth part, extending from the seventy-third to the eighty-fifth sections inclusive ; and which treats of the proposed indemnity to Seigniors.

The recital of the seventy-third section commences thus :—

" LXXIII.—And whereas some of the powers " formerly vested in the Governor and Intendant " of New France, under the laws promulgated by " the Kings of France, for the purpose of res- " training all undue pretentions on the part of " Seigniors, have not been exercised since the " said cession of the country ; and whereas dif- " ferences of opinion have existed in Lower Ca- " nada, and conflicting decisions have been pro- " nounced by the tribunals established since that " time in reference to the character and extent of " various Seigniorial rights ;"

An unfair recital. If powers adverse to Seigniors have remained unexercised since the cession to what has it been owing, but to the fact that the law of the land has not provided for, or allowed their exercise ? And have no other powers, far more vexatious, adverse to *censitaires*, remained unexercised ? Are they alluded to ? Or proposal made for their revival ? And " conflicting decisions" of the tribunals of Lower Canada ? As to what points ; in what causes ; when ? I will not here undertake to say, that there have been none. But I do say, that I never heard any cited, or their existence asserted by any one. Why, as I have said, the notorious complaint has been, that the Courts of Lower Canada have decided always for the Seignior. " Differences of opinion" I well know there have been ; a difference of opinion between a large class of persons not judges on the one hand, and the tribunals on the other. But for the Courts ! If anything in this world can be certain, it is that this large class of whom I speak, have for years steadily assailed them for the uniformly Seigniorial tenor of their decisions. If anything can be new it is this assertion that their decisions, the meanwhile, have been conflicting.

But I proceed with this recital :—

" And whereas while it is the duty of the " Legislature to restore to persons continu-

" ing to hold lands *en roture*, (in so far as " present circumstances will permit,) the rights " and immunities secured to them by law as inter- " preted and administered at the last mentioned " period, it is at the same time just that Seigniors " who have enjoyed lucrative privileges, of which " they will in future be deprived by this Act, " notwithstanding the enjoyment of such pri- " vileges may have been sanctioned by the " said tribunals since they ceased to exercise " the aforesaid powers, should be indemnified for " the losses they will suffer from the manner in " which the rights to be hereafter exercised by " Seigniors are defined by this Act, Be it there- " fore enacted,—That it shall be lawful for any " Seignior to lay before the said Commissioners, " a statement in detail of the amount of loss sus- " tained or thereafter to be sustained by him, by " reason of his having been curtailed, limited or " restrained by this Act, in the exercise of any " lucrative privilege, or in the receipt of any " rents or profits which as such Seignior he would " have been entitled to exercise or receive before " the passing of this Act."

When the Seignior's land is wanted by any person, we have seen how, summarily and with- out appeal, one Judge is to take it from him.— When his contract with his *censitaire* is to be en- forced, we have seen how formally and deliberate- ly and subject to appeal, a Court of three Judges is not to enforce it. When his rights are to be first undervalued, and then cut down below such un- dervaluing, we have seen how, again summarily and without appeal, one Commissioner is to do all that that case requires. We have now to see how, after loss suffered by the Seignior from these pro- cesses, loss amounting (it well may be) to ruin, he is to proceed, hopefully if he can, formally and subject to appeal at all events, with his after prayer for some measure of Indemnity for his loss.

He is to begin, by laying before the three Commissioners—not before one—his precise " statement in detail of the amount of loss sustain- " ed or thereafter to be sustained by him, by reason " of his having been curtailed, limited or restrain- " ed by this Act, in the exercise of any lucrative " privilege, or in the receipt of any rents or pro- " fits which as such Seignior he would have been " entitled to exercise or receive before the passing " of this Act." All I can say, is, that any Sei- gnior who shall sit down to make his statement for himself, will find it pretty hard; and any one who shall get it done for him, will find it pretty costly. A statement in detail, of all his losses by this Bill? Why, the best lawyer, and the best ac- countant and man of figures, in the country, toge- ther, could not draw it as it had need be drawn.— And all would depend on a detail of facts, which if denied, no man could prove. It would be the pro- cedure the most difficult and sureto fail, that could be; worse, if possible, than the suing of five hun- dred *censitaires* together, for failure to keep hearth and home on land, by reserving it for cutting fire- wood.

Well; by the following Sections it is set forth, that my "statement or petition," when ready, is to be fyled "in duplicate" with theCommissioners; who, after handing the duplicate of it to the Secre- tary of the Province, are to meet and take the matter into consideration, first giving notice by advertisement, of the when and where. Whenever the interests of the Crown may require it, the Attorney General or other Counsel duly authoriz- ed, is to represent Her Majesty, and oppose the prayer of the petition. And, as the interest of the Crown will require this in all cases,—the indem- nity coming out of a public fund,—it will of course always be the duty of the Attorney General or his deputy, to oppose and sift the statements (of law and fact) of every petitioner.

The Commissioners—not necessarily profession- al men—are to sit as Judges; and, after hearing the petitioner "in person or by attorney," and the Crown by the Attorney General or otherwise, are to render their judgment in writing. And by the Seventy eighth Section, it is specially provided that "every such judgment shall contain the grounds thereof," No easy matter. Petition in detail; judgment in detail; reasons in detail. The Commissioners may find their job as hard as the Seignior will have previously found his. It is the Seignior's remedy that is in question. Delay and difficulty are no matter.

Certainly not. By the Seventy ninth Section, he is to have the right of appeal—as also is the Crown—to the Queen's Bench; and thence, to the Privy Council, whenever (as must commonly be the case) the demand shall amount to £500 Sterling.—Such appeal, upon such matter, may be slow and costly. Still no matter.

The next clause, the Eightieth, carries us one step further; and had need be read carefully, for its tenor to be seized, or credited:—

" LXXX. The said Commissioners, and the Courts which shall hear any such petition in ap- peal, shall reject every demand for indemnity based on the privilege granted by this Act, to persons possessing lands *en roture* to free them from that tenure by the redemption of the dues with which they are charged, *and shall establish the amount of indemnity* due to the petitioner, *only upon the difference* existing *between the manner in which the rights hereafter to be exercised by the Seignior are defined by this Act, and that by which the rights they exercised before the passing of this Act would have been interpreted if this Act had not been pass- ed.*"

The question is not then to be, how much the petitioner has lost. No loss to result from the piece-meal and round-about way in which his rights are to be (as the phrase is) redeemed,—no loss from any under-valuing or cutting down of them, in the redemption schedules,—no loss, even, from any quantity of sheer mistake that a Com- missioner may have made in such Schedules,—is not to count. The measure of his loss is to be the difference between two unknown quantities,— between "the manner in which his rights hereaf- ter to be exercised are defined by this Bill, and that in which his rights as now exercised would have been interpreted but for this Bill." Ascertain- ed, such difference would not compensate him. But how ascertain it? How state it in his peti- tion? How prove it before the Commissioners? How get it written, and the grounds of it set forth in their judgment? How attack or defend it in appeal? This Bill purports to call it doubtful, how his rights as now exercised should or would be interpreted at law. Suppose the Commissioners to hold the recitals of this Bill; to define these rights

as now exercised, so as on legal grounds to give him nothing, let him prove as matter of fact what he may. If they will, they can. And the Crown is to be by,—party to the suit, to require them (so far as may be) so to do.

The Eighty first Section takes the next step, thus :—

" LXXXI. Every judge who shall have presented a petition for indemnity in his own behalf, in virtue of this Act, shall be liable to recusation in every case in appeal from the judgment rendered by the said Commissions upon any such petition; and every judge who shall have sat in appeal from any one of such judgments, shall be deemed to have renounced all right to present any such petition in his own behalf.

Was ever law heard of, or proposed, that a landlord judge might not sit in a cause between landlord and tenant; or a proprietor judge, in a case against a squatter; or a judge that had taken or given or endorsed a promissory note, in a case involving promissory note law? By this Bill, the *censitaire*, Judge of any Court, is to take away the Seignior's land; the *censitaire* Commissioner, Judge of no Court at all, is to cut down the Seignior's rights; all without recusation or appeal. But the Chief Justice or Judge of the Queen's Bench, the highest tribunal in the land if he be a Seignior injured by this Bill, is not to sit—though with other judges, and subject to appeal to the Privy Council—upon any Seignior's claim of right against like injury. The Judge of the highest grade, whose character may not suffer but with that of his Country, is to have a stigma cast upon him, such as the old French law—all unworthily suspicious as it is of judges—never put upon the pettiest magistrate. Any man but such Judge, is to be trusted, as though wrong or error to be wrought by him were the thing that could not be.

The eighty second and eighty third sections of the Bill take care, that if a Seignior shall make good a claim, its amount shall not be paid, till his Creditors shall have had their opportunity of making good their claims upon it.

And, fittingly to conclude this part of the Bill, the eighty fourth and eighty fifth sections read :—

" LXXXIV.—And be it enacted, That the endowments and disbursements of the Commissioners who shall be named under this Act, the expenses to be incurred, and the amount of indemnity which shall become due under the authority of this Act, shall not be paid out of the consolidated Revenue Fund of the Province; but it shall be lawful for the Governor to raise by loan, on debentures to be issued for that purpose, the interest of which shall be payable annually, and the principal at such time as the Governor shall deem most advantageous for the public interest, out of the Special Fund, hereinafter mentioned, such sum as may be required for the payment of the said emoluments, disbursements, expenses and indemnity.

" LXXXV.—The said Special Fund shall be designated as the " *Seignorial Fund*," and shall consist of.

" 1st.—All monies arising from *Quint*, *Relief* and other dues which shall become payable to the Crown in all the Seigniories of which the crown is the Seignior *dominant*, as well as all arrears of such dues.

" 2nd.—The Revenue of the Seigniory of Lauzon and the proceeds of the sale of any part of the said Seigniory that may be hereafter made.

" 3rd.—All monies arising from auction duties and auctioneer's licenses in Lower Canada.

I have, then, at last got something awarded. Appeal or no appeal—at whatever cost, and after whatever delay—the award is final. No creditor, even, contests my right to take it. But the credit of the Province is not pledged that I shall have it. It is " not" to come—so reads the Bill—it is not to come out of the Consolidated Fund. If the Special Fund here designated, suffice to pay it, after paying all Commissioners' salaries and schedule-making and other disbursements whatsoever,—no small sum,—I am to be paid. If not, I am not to be paid. In the best case supposable, my award is not to cover all my loss; I am to get it in no hurry; and no clause gives me a hope of getting, along with it, any award of costs on my petition, or on any unsuccessful contestation of it, or on any appeal or appeals, that I may have suffered from. In the worst case, I have lost the whole; money, time, costs, together.

As to the sufficiency of the proposed Fund, one is bound to presume that it is intended to be ample. But if so, why not at once give the guarantee of the Consolidated Fund? As that is not to be done, one must feel an uncomfortable misgiving that when the Commissioners are paid, and all the rest of the expenses are paid, there may not be enough to discharge the awards of indemnity; that is to say, indeed, unless—as well enough may be the case—there be next to none made, at all.—The designated sources of revenue are, besides, not remarkable for productiveness and security. *Relief* is never exacted by the Crown; and it is hard to say why it is named here as a source of revenue. *Quint* can accrue no more, after this Bill should have become law; for no man can be fool enough under such a law to buy a Seigniory. The Seigniory of Lauzon is a property yielding but a very moderate revenue. And auction duties and auctioneers' licenses in Lower Canada, yield no large sum; to say nothing of questions that may arise, as to the permanent maintenance of that form of tax, at its present rate of productiveness.

The last part of the Bill remains; the concluding Sections, headed as Interpretation clauses.

The first of these- the Eighty-sixth of the Bill —is this :—

" LXXXVI. And, for the interpretation of this Act—Be it enacted, That nothing in this Act contained shall extend or apply to any Seigniory held of the Crown, nor to any Seigniory of the late Order of Jesuits, nor to any Seigniory held by the Ecclesiastics of the Seminary of St. Sulpice, nor to either of the Fiefs Nazareth, Saint Augustin and Saint Joseph, in the City and County of Montreal, nor to any of the lands held *en roture* in any of the said Fiefs and Seigniories."

Against so much of this clause as relates to the Seigniories of the Seminary of Montreal, and the Fiefs Nazareth, St. Augustin and St. Joseph, I have not a word to say. They are regulated by express legislative enactment; and (as I have already said) it is well that at least that one enactment should be respected. It is respected, precisely as the whole body of law by which the

property of all my clients is assured to them, ought also to to be respected.

But there is a further exception here made, which I cannot admit. By what right is it proposed to save from the operation of this Bill, the Seigniories held by the Crown, whether as part of the domain, or as having belonged to the late order of Jesuits, or—as the Seigniory of Lauzon is—by purchase. These Seigniories contain ungranted lands, lands granted at higher rates than two-pence and under reserves of all kinds, water-powers, banal mills,—everything this Bill proposes to meddle with. Surely, if any *censitaires* can be favored as to such matters, theirs can. If the Province can give any rights away, it might give its own. This Bill, however, provides otherwise. The Province is to guard its own rights jealously; to be liberal, at the expense of every rule of right, with mine.

The Eighty-seventh Section purports to save from the operation of this Bill, arrears accrued, and past payments, and leases of mills or water powers, and lands conceded after cultivation, improvement or reacquisition by the Seignior, or dismemberment from his reserved domain. So far, so good. But upon what principle? Unless, that such arrears are legally due; that such payments were made in discharge of legal debts; that such leases and grants are valid in a word, that my contracts—one and all—are not contrary to law nor null? If so, on what principle can they be dealt with, as this Bill would deal with them? If they are not contrary to law nor null, why are they not let alone? Either they are legal, and as such sacred; or they are illegal, and as such worthless. They are my right as they stand; or they are not my right at all. Once cut down for the future, they cannot be made safe to me for the past. The first blow struck, I cannot be secure from blows to follow.

The Eighty eighth section defines, among other words, the word "Seigniory;" and so defines it as to conclude within it, every kind of Seigniory, however held,—the Sherrington Seigniories given with the unlimited powers, and under the circumstances I have alluded to, the Seigniories of Mount Murray and Murray Bay, given by the British Crown to subjects who had shed their blood in its service; the Seigniories granted in *franc aleu*, or otherwise on terms all but importing sovereignty as well as property, by or for the French Crown. The grantor, and the terms of the grants, are to import nothing. In this at least, the bill is to be consistent. No Seignior is or can be a proprietor; or shall be so treated. Our property—the property of every one of us—is to be denied to us; our contracts are to avail against us, but not for us; our whole civil *status* is to be changed; we are to be dealt with, just as it suits the interests of the more powerful class of the community to deal with us; mocked with the offer of a future indemnity, that shall be no indemnity,—which, however it may keep its present word of promise to the ear, shall break it hereafter to the hope.

The Eighty-ninth Section, the last I notice, fittingly adds—as I have observed already—that, for the ends of this Bill the words "wild land" are not to be held as meaning wild land, but something else.

My task is nearly done. I have not willingly taken up so much of the time of this Honorable House; nor spoken more at length than I could help. But I cannot, before concluding, avoid asking once again, after this review of the clauses of this Bill, whether Legislation of the kind thereby proposed can be held to be in any sense or shape a restoration of any old law which ever at any former time regulated Seigniorial property; whether there would be any going back to the past, in the enactment of a new law, containing such provisions as this Bill contains; whether any such project of law ought to be enacted, or indeed can so much as be discussed, as being likely to become law,—unless with the most disastrous consequences. It cannot be, that such a measure should be the last project of its kind. Were it passed to-morrow—as it cannot be,—its effect would only be to maintain in morbid existence the very Tenure which it purports to intend to sweep away. It would have declared much, and implied more; would have unsettled everything; established nothing. The legislative word would have gone forth, that my clients are not proprietors; that their rights are nothing but what the Legislature may see fit to make them. We should be sure to be told, that what this Bill may leave us is no more ours, than what it should have taken from us. We must defend ourselves, as well against the proposal of this measure as against those that must come after it. We must set forth—here, every where—the whole strength of our case. We must declare,—for we are ruined otherwise,—however unwillingly, however we may love this our country, however anxious we may be to maintain her character and credit, we must declare,—and so declared, what we say must everywhere instinctively be felt to be true,—that measures such as we are threatened with, are measures, of a kind to destroy all trust in our institutions, or in the character of our people. We may save ourselves; or we may be ruined. But we cannot be ruined alone. The agitation that shall have beggared us, will have demoralised this country, and destroyed all public faith in its institutions. Public confidence is of slow growth. We have seen how slowly, as regards this country, it has grown to be what it is,—to give promise of the fruit, which it does at this day promise to the lately reviving hopes of our community. Is it so, that we are to see those hopes fail,—the tree cut down to its roots, its re-growth doubtful,—at best, to be but after long delay, yet more slowly, with less promise to others than now to ourselves?

Nothing by any possibility to be gained—and there is in fact nothing whatever that by this measure can be gained—could compensate for such loss. I know indeed that many people ignorant of the facts think of this Seigniorial Tenure, with what they call its abuses and extortions, as of a something so monstrous and oppressive, as to make it hardly any matter what means may be taken to get rid of it. With a vague impression of the horrors that accompanied the destruction of the Seigniorial system in France, and ascribing them (as is often done) to unwise delay, resistance and I know not what, they draw the inference that here in Canada, by whatever means—one need not care how—the country population must be freed from its burthens; or, before long, the whole fabric of Society will be broken up. No mistake can be greater. The Seigniorial tenure as it existed in France in 1789, was a system, to which nothing can be

more unlike, than that which now subsists under the same name here. The two have hardly a feature in common. There, indeed, there was extortion; an extortion dating back through long ages of oppression and wrong of every kind, to the conquest of one race by another; extortion, sometimes indeed more or less veiling itself under the form of contract, but oftener subsisting as mere custom, the custom of a conquering tyranny; extortion, that under every variety of form, by exactions the most multiplied and oppressive,—the very names of most of which have long since lost meaning, save to the antiquary—ground down and kept in abject want and prostration the whole rural population of the land. It was swept away utterly, in a moment of madness, and with every accompaniment of crime and horror. It was not swept away, without violation of contracts and rights of property. But, may it not at least be suggested, that the sweeping away of that system, all bad as the system was, has perhaps not yielded all the fruits that were hoped for, by those who then did the wrong, of abolishing it otherwise than with a due regard to right. They sowed the wind. Did they not—do they not—reap the whirlwind? Who will say, that the French nation, so far, has cause to congratulate itself on the results of its fearful experiment of social and political destruction? But to all that state of things, I repeat, there is here nothing that can be compared. Here, everything appertaining to the system is matter of contract and law. What in France was mainly action, has here been fact. The obligations that subsist, are obligations resulting from *bona fide* grants of land; obligations, partly of free contract, partly superadded by public law upon the basis of such contract. Besides, there the rural population had for ages been kept in a state of poverty and wrong, not much more humanizing in its influences than a state of slavery would have been, and may be said to have first woke to political existence, at the very moment when it seized on all the powers of the State. Here, we have a rural population, as easy in its circumstances, as respectable for every moral quality, as respectful of law and property, as any on the face of the globe. To liken our population to that of France in 1789, is a mistake as great as a man well can make; and one as well calculated, by the way, as anything can be, to destroy our character. The matter in dispute here, what is it? A question whether lands shall continue to pay a penny, two pence, two pence half penny—possibly a shilling—an arpent, of yearly rent. The system, unless as carrying with it *lods et ventes*, is not one of hardship. The burthens it imposes, are not heavily felt by those on whom they fall. That, upon public grounds, it were well to put an end to it, I do not question. But it were better it remained forever, than that it should be put an end to unjustly,—at the cost of the character of the country. I say no word against the commutation of the Tenure. I desire it. My clients desire it. It can be effected, without involving them in loss. It ought, if done at all, to be so done. It must be so done.—They are not guilty trustees to be punished; but proprietors to be protected. They have the right to require that their property be protected. They have the right to except, they do most respectfully but firmly except, to the competency of this Legislature—of any Legislature—to destroy their vested rights, to give away what is theirs to others. The great Judge, whose name perhaps more than that of any other is of the history of our Common Public Law, long ago laid down the maxim, as appearing from the books, that "in many cases the common law will "control Acts of Parliament, and sometimes ad-"judge them to be void: For when an Act of "Parliament is against Common Right and Reason "or repugnant or impossible to be performed, "the Common Law will control it, and adjudge "such Act to be void." The tradition of that maxim of that great man has never been lost; but remains yet, a maxim of the Common Public Law, by the side even of that other tradition which holds that Parliament—the Imperial Parliament—is omnipotent, may do what it will. And most surely it is not too much for me to say, that this Parliament—a Parliament not Imperial—has not, at Common Law, the right to break contracts, to take from one man what is his, to give it to another.

My clients ask—I here ask for them—no preference or privilege over any class of our countrymen. They have no wish to go back towards that past, wherein they were judged by one tribunal, and their *censitaires* by another; their position then the favorable one. But they do ask, that they be not carried into a future, wherein they shall be judged by one tribunal to their ruin, and their *censitaires* by another to their own gain. They do ask—ask of right—that upon the Statute Book of this Province, as touching them and theirs, that only be declared which is true, that only enacted which is right. And pleading here this their cause, before this Honorable House, the Commons House of Parliament of this British country of Canada,—appealing to this country here represented,—recalling, too, the assurance but lately given as to this very matter from the Throne, and the answering pledge of the country, signified through both Houses of its Parliament,—I have too firm faith in the absolute omnipotence, here and now, of the true and right, to be able to feel a fear as to the final judgment which the country and the Crown shall pass upon it.