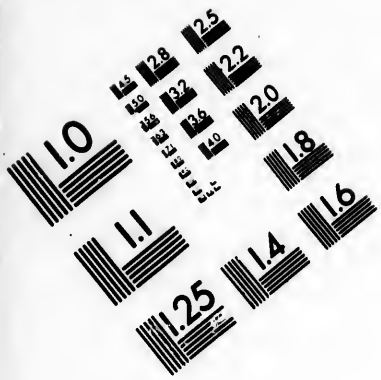

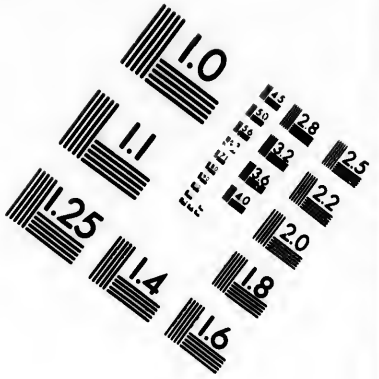

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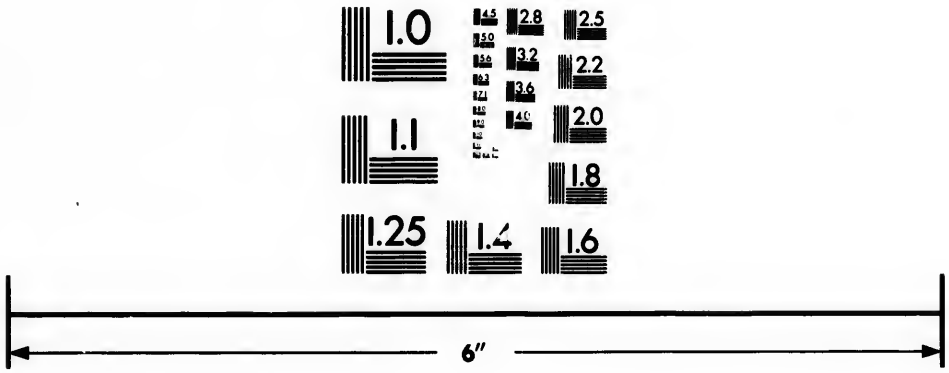

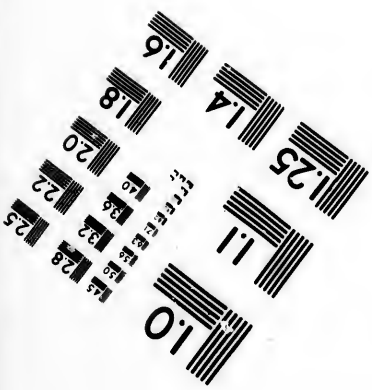

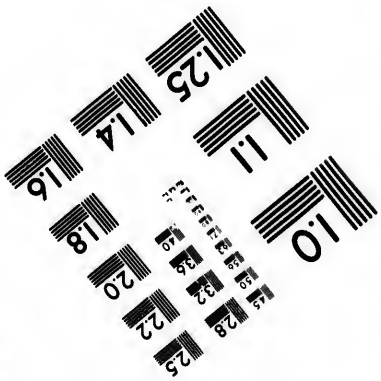

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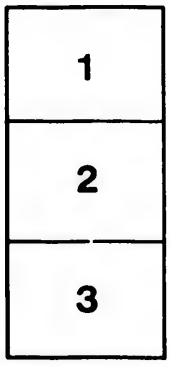

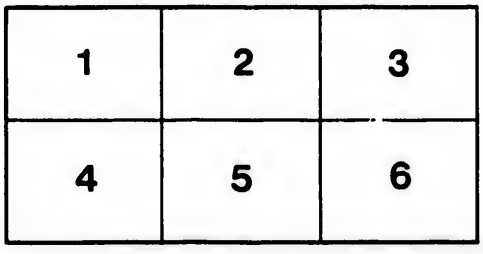

CASE

TO BE FOUND AT PAGE 36 OF THE SECOND VOLUME

OF THE

LOWER CANADA REPORTS,

OFFICIALLY REPORTED AND PUBLISHED BY AUTHORITY.

LANGLOIS vs. MARTEL.

"There is no law in this country fixing a uniform rate of *cens et rentes*— "the *arrêts* of 1711 and 1732, apply, the first only to cases where the Sei- "gnior refuses to grant unconceded lands, and the last to the clearing of forest "lands, the sale of which it prohibits,—a concession in which a portion of the "*rente* is stipulated *rente constituée rachetable*, is not a sale."

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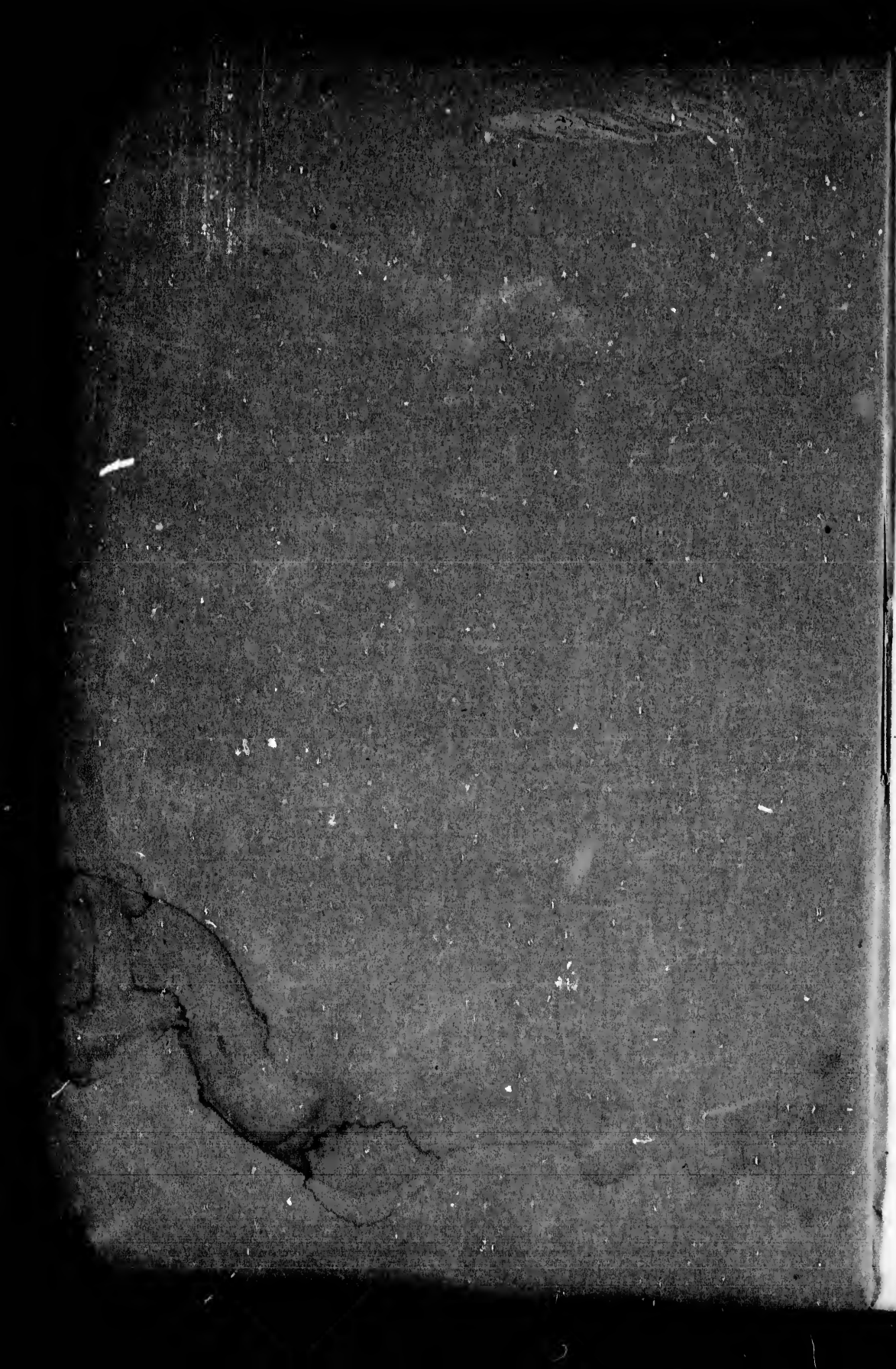

CASE FROM LOWER CANADA REPORTS.

PAGE 36.

SUPERIOR COURT, QUEBEC.

Before Bowen, Chief Justice, Duval and Meredith, Justices.

1594 of 1852 } Langlois, *Plaintiff.*
vs.
Martel, *Defendant.*

Held that the *arrêt* of the King of France, of the 6th of July, 1711, can only be made to apply to cases where the Seignior has refused to grant his unconceded lands; that the *arrêt* of the 17th March, 1732, merely enjoins the clearing of forest-lands, interdicting the sale of such lands; but that these two *arrêts* afford no remedy to a Censitaire who complains that the rate of *rentes* is too high; that there is no positive law limiting the rate of *cens et rentes*; that a deed of concession imposing one *sol* of *cens et rentes* and seven *sols* of *rente constituée* is not a deed of sale; and is not consequently void or voidable; and that in the case submitted, the Court has no power to reduce the rate of *cens et rentes.*

TRANSLATION.

Judgment 13th January, 1852.

This was an action brought by a Seignior against his Censitaire to recover the arrears of a constituted ground rent (*cens et rentes foncières et constituées,*) due under a deed of concession.

The plaintiff's declaration alleged " that by a deed executed before Panet, Notary, on the 10th September, 1839, the Plaintiff, Seignior of part of Bourg Louis or New Guernsey, did concede to the Defendant subject to the payment of *cens,* irredeemable ground rents and constituted rents, (*à titre de cens, de rentes foncières non rachetables et rentes constituées,*) a land" described in the said deed.

" That the said concession was made subject to the payment, for each arpent in superficies of the land so conceded, of *one* sol *or half-penny currency, of perpetual and irredeemable Seigniorial* cens et rente, *and seven* sols *or three pence half-penny currency annual and constituted rent, at the rate of six per cent per annum, redeemable at pleasure, forming in the whole eight* sols *or four pence currency of* cens et rentes, foncière et constituée *for each arpent in superficies.* "

That the arrears amount to £16, and the Plaintiff prays that the Defendant be condemned to pay the said sum.

To this action the Defendant pleaded:

1. That the land described in the Plaintiff's declaration and in the deed of concession mentioned, before and at the time of the passing of the said deed, consisted of unconceded forest land, and formed part of the Seigniory of Bourg Louis, also called New Guernsey, and of the domain thereof, having never been conceded nor charged with Seigniorial rights and dues.

2. That by the law of the Country and the titles and grants of the said Seigniory, the Seignior thereof, and especially the Plaintiff, acting as Seignior of a portion thereof, was bound to concede the lands of the said portion of the Seigniory, subject to the payment of *cens et rentes* or Seigniorial dues, according to the legal rate acknowledged in this Province, and according to the rate of *cens et rentes* recognized at and before that time in the said Seigniory; the said rate being one *sol* for each arpent in superficies; but that the Seignior or the Plaintiff were forbidden to sell the said lands for a price or sum of money.

3. Now the Defendant alleges that by the deed of concession in the Plaintiff's declaration mentioned, he, the said Plaintiff, did sell the said land and establish a price to be paid for the concession thereof, as follows: that the said concession is made subject to the payment by the said Defendant to whom the land is conceded, to the said Plaintiff, the Seignior conceding the same, of one *sol* or halfpenny currency perpetual and irredeemable Seigniorial *cens et rentes*, *and seven* sols *or three pence halfpenny currency, annual and constituted rent at the rate of six per cent per annum, redeemable at pleasure*, for each arpent in superficies of the said land; the said *cens et rentes* carrying *lods et ventes*, and being *payable, as well as* the said constituted rents, on the first of November in each year.

4. That consequently, so much of the said deed as stipulates a price of sale, or the payment of seven *sols* annual and constituted rent, redeemable at pleasure, over and above the ordinary *cens et rentes*, is null, illegal and of none effect, inasmuch as by the laws of the country, and especially by the *arrêts* and ordinances of the sixth of July, one thousand seven hundred and eleven, and of the fifteenth of March, one thousand seven hundred and thirty-two, the Seignior is forbidden to sell the unconceded lands in his Seigniory, in any form or under any pretext whatsoever, on pain of the said sale being null, and of reimbursing the Censitaire, the sums of money so illegally demanded of him for such sale.

5. Wherefore, in consideration of the premises, the Defendant hath a right to pray and doth pray, that so much of the said deed as stipulates a price for the sale of the said land, namely: seven *sols* annual and constituted rent, redeemable at pleasure, for each arpent in superficies, be declared null and of none effect, illegal and void, and that by the judgment of this Court the Plaintiff's action be dismissed with costs.

6. And the Defendant doth further allege, as another perpetual peremptory exception in law, in answer to the Plaintiff's *demande*, that the rate of *cens* and Seignioral rents and dues at which the Plaintiff was bound to concede the said land, was the old and ordinary rate at which lands were and have been formerly conceded in the said Seigniory of Bourg Louis.

7. That the said rate was no more than one *sol* of Seigniorial *cens et rentes* for

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

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

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

LELIEVRE for Plaintiff:

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

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

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

TESSIER, for the Defendant:

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

(1) Poquet do Livonière, p. 534:—Dic. de droit, vbo. *cens*, p. 249:—*Renauldon* Dr. Seig. pp. 152, 157:—Prud'homme, pp. 87, 129.

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

Seignior might claim the capital of this constituted rent, and by the redemption and gradual extinction of these rents, the right of *quint* would be less, and the Crown, as well as the Censitaire, is interested in preventing the Seignior from selling his forest lands. Besides the edict is positive, and declares that these sales shall not be made, on pain of nullity, and even of the reimbursement of the price of sale, if the same shall have been paid.

As to the rate of ***cens et rentes***, the edicts of the 6th of July, 1711, and of the 15th of March, 1732, declare that the lands shall be conceded at the ordinary rate now, no example can be found before 1763, of any rate exceeding four ***sols*** per arpent ; a rate exceeding this one is not therefore an ordinary rate.

The Censitaires have made constant efforts to maintain their rights before the Courts, and among the numerous precedents to be found (and which are hereafter cited) there are a great many in which decisions have been given in favor of the Censitaires, under the French Government, and there are none in which the Courts, since the Cession of the Country, have decided these old ordinances not to be in force ; it is true that the tribunals have often avoided deciding the questions upon their real merits ; the present Courts have therefore nothing left but the duty of carrying these ordinances into execution in the interest of the Censitaires and of the Seigniors.

The Report of the Commissioners on the Seigniorial Tenure, of 1843, declares these edicts to be in force, and that the powers of the Intendant are transferred to our present Courts. (1)

BOWEN, Chief Justice :

This important case has been pleaded with great care on both sides, and yet the questions which it presents are not new. The action was brought for the recovery of a sum of £16 currency, arrears of ***cens et rentes*** due to the Plaintiff by the Defendant, under a deed of concession.

To this action the Defendant pleaded the provisions of the ***arrêt*** of the 6th July, 1711, contained in the 1st vol. of the ***Edits et Ord.*** p. 321 (2) and the provisions of the ***arrêt*** of the 25th March, 1732 also contained in the 1st vol. of the ***Edits et Ord.*** p. 486. (3)

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(1) Act. 17, George III: Act 34 George III :—Report of the Commissioners on the Seignorial Tenure, 1843 :—*Cugnet, Traité des Fiefs*, p. 60 :—1 *Henrion de Pansey, Dissertations Féodales*, pp. 275 and 276 :—*Ancien Denisart*, vbo. *cens* :—*Arrêt* of the 29th May, 1713 : 2 *Edits et Ordonnances*, p. 39 :—*Arrêts* of the 15th February 1716, of the 28th June, 1721, of the 20th September, 1721, of the 16th October, 1721, of the 21st February, 1731, of the 20th July, 1733, of the 23rd January, 1738, and of the 23rd February, 1748. On the question whether a portion of a deed can be declared null without declaring the whole deed to be null :—*Perrin, Traité des nullités....* :—*Guyot, Repertoire de jurisprudence*, vbo. *nullités : Ferrière, Dictionnaire de droit* vbo. *nullités.*

Arrêt of the 6th July, 1711.

(2) 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 others on which there are as yet no settlers to bring them into a state of 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 domain thereon.

And His Majesty being also informed that there are some Seigniors who refuse, under various pretexts,

The object of these *arrêts* was to oblige the Seigniors to concede the lands in their Seigniories, and to prevent them from selling their forest lands. The Defendant

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 intentions, and to the clauses and conditions of the concessions, by which they are merely permitted to concede lands at an annual ground rent; whereby very great detriment is done to the new settlers, who find less land open to settlement in the places best adapted to commerce.

For remedy whereof His Majesty, being in His Council, has ordained and ordains that, within one year at the farthest from the day on which the present decree 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 settlers 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 re-united to his domain after the lapse of the said period at the diligence of the Attorney General of the Superior Council of Quebec, and on the orders to be given in that behalf by the Governor and Lieutenant General of His Majesty, and the Intendant in the said Country.

And His Majesty ordains also, that all the Seigniors in the said County of New France shall concede to the settlers the lots of Land which they may demand of them in their Seigniories, at a ground rent, and without exacting from them any sum of money as a consideration for such concessions; otherwise, and in default of their so doing, His Majesty permits the said settlers to demand the said Lots of land from them by a formal summons, and in case of their refusal, to make application to the Governor and Lieutenant General and Intendant of the said Country, whom His Majesty enjoins to concede to the settlers 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 into the hands of the Receiver of His Majesty's domain, in the city of Quebec, without its being in the power of the Seigniors to claim from them any dues of any kind whatever.

And this decree shall be registered in the registry of the Superior Council of Quebec, and read and published wherever need shall be.

Done in the King's Council of state held at Marly, His Majesty being present, the 6th day of July, 1711.

(Signed,) PHELIPPEAUX.

Arrêt of 1732.

(3) The King having caused the production before him, in His Council, of the decree rendered therein the 6th July, 1711, ordering that the inhabitants of New France, to whom lands or fiefs have been granted, and who have not yet cleared any portion thereof as a domain, nor caused the inhabitants to settle therein, should be held to put them in a state of cultivation, and to place settlers thereon, within a year from the publication of the said decree, after the expiration of which delay, such fiefs should be re-united to the domain of His Majesty; and that the said Seigniors should also be held to concede to the inhabitants demanding them, subject to the usual seigniorial dues (*à titre de redevances*), and without exacting any sum of money, in default whereof the said inhabitants, in case of a refusal on the part of the Seigniors, after demand to that effect, are permitted to apply to the Governor and Lieutenant General and Intendant of the said Country, to obtain concessions of such lands, subject to the dues imposed upon the lands already conceded, which dues should be paid to the Receiver of the domain of His Majesty, without the Seigniors being allowed to claim any thing upon the lands so conceded; and another decree of the same day, 6th July, 1711, ordering that the tenants of lands *en rôture* should be held to reside thereon, *tenir feu et lieu*, and to put them in a state of cultivation within a year from the day of publication, on pain of re-union to the domain of the Seigniors, by virtue of the Ordinances of the Intendant.

And His Majesty being informed that, in contravention to those two decrees, there are Seigniors who have reserved for themselves, in their Seigniories, extensive domains, which they sell as wood lands, instead of conceding them merely subject to the usual Seigniorial dues (*à titre de redevances,*) and that inhabitants who have obtained concession of lands from the Seigniors, sell such lands to others who do as much, which gives rise to a system of bartering contrary to the welfare of the Colony; and it being necessary to put a stop to abuses so prejudicial, His Majesty, sitting in Council, has ordained, and doth ordain, that, within two years from the day of publication of the present decree, all proprietors of Seigniories not yet in a state of cultivation, shall be held to put them in a state of cultivation, and to locate inhabitants therein; in default whereof, and after the expiration of such delay, the said Seigniories shall be re-united to the domain of His Majesty, by virtue of the present decree, and without any other proceeding being required.

His Majesty expressly prohibiting all Seigniors, or other proprietors, from selling any woodland, on pain of nullity of the deed of sale, and of restitution of the price of lands sold as aforesaid, which lands shall, in the same manner, be re-united by force of law to the domain of His Majesty; and furthermore, the said two decrees of the 16th July, 1711, shall be executed according to their tenor and effect, and the present decree shall be registered in the Registry Office of the Superior Council of Quebec, and shall be read and published wherever it will be necessary.

Done in the King's Council, in presence of His Majesty, at Versailles, the 15th March, 1732.

(Signed), PHELIPPEAUX.

is not within the cases provided by these *arrêts*, and yet he wants to have his deed in part annulled, and in part maintained. The *arrêt* of 1711 is in the nature of a penal Statute, and must be interpreted according to the letter. I am of opinion that the Defendant does not come at all within the case provided. There has been no calling upon the Seignior to concede, nor refusal on his part to do so: on the contrary, the agreement entered into between the parties has been entirely free and voluntary. The Defendant has not even made the necessary allegations in his pleas, in order to succeed, namely, the fact of a concession having been demanded, and the refusal on the part of the Seignior to make such concession.

I have said that the question was not a new one; in support of this assertion, I will cite a decision applicable to this case, rendered in the Court of Queen's Bench, at Quebec, in 1820, No. 92, Dubois *vs.* Caldwell. It was an action *in factum* brought by a Censitaire against his Seignior. The declaration alleged in substance, that the Defendant had had 1000 *livres* paid him for the concession of a land in the Seigniory of Gaspé, at a fixed rate of interest, over and above the *cens;* and prayed that the land in question be discharged from this annual *redevance*, imposed in addition to the *cens*, and that the Plaintiff be exempted from the payment of this capital of 1000 *livres*. To this action the Defendant answered by a *défense en droit.*— *Per Curiam*:—This action (Dubois *vs.* Caldwell,) is founded on one of the clauses of the *arrêt* of the 6th July, 1711, which enacts: "That all the Seigniors in the said "Country of New France, shall concede to the settlers, the lots of land which they "may demand of them in their Seigniories, at a ground rent, and without exacting "from them any sum of money as a consideration for such concessions; otherwise, "and in default of their so doing, His Majesty permits the said settlers to demand "the said lots of land from them by a formal summons, and in case of their refusal, "to make application to the Governor and Lieutenant General and Intendant of the "Country, whom His Majesty enjoins to concede to the said settlers 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 into the hands of the Receiver of His Majesty's Domain." This law must be assimilated to a penal Statute, so that in order that the Plaintiff should succeed, his case must come within the very letter of the law. The *arrêt* requires, in the first place, that the Seignior shall be called upon to concede at the rate usual in his Seigniory, and for no other consideration, and the recourse which it grants can only be had in case of refusal. As the declaration neither alleges such calling upon the Seignior to concede, nor his refusal to do so, it is defective in one essential point, and the *défense en droit* must be maintained.

Such is the decision rendered as far back as 1820 on the subject, and the same defects as were in Dubois' declaration are also to be found in Martel's exception.

It may be asked with reason (and this question arose in the cause above mentioned,) whether the Court has jurisdiction in this case, inasmuch as the authority conferred by the *arrêt* of the 6th July, 1711, is not within the ordinary province of the judicial power? In effect, it was the authority to make a concession of lands, in the place of the Seignior, and this authority was vested in the Governor and in the Intendant. The first was a purely political functionary; the second was invested

with administrative and judiciary authority. *Vide* also; "*Ferjan et Déguise*, in Appeal, 5th January, 1789, before Chief Justice Smith." It might also be asked, whether the Censitaire, in having agreed to the concession deed and taken possession of the land, had not renounced the benefit of the *arrêt*, according to the rule; ***unicuique licet juri pro se introducto renuntiari.***

It is therefore evident that we cannot apply the *arrêts* of 1711 and 1732 to the present case, and that judgment must be rendered in favor of the Plaintiff.

DUVAL, Justice.

This cause is one of great importance, both for the Seignior and for the Censitaire; but the question, in the way in which it is brought, does not present much difficulty. The Defendant pleads that he is only bound to pay one *sol* of *cens*, and that as to the sum or annual *redevance* of seven *sols*, imposed upon him in the form of a constituted rent, he ought to be discharged therefrom, and he prays that part of the deed of concession, to wit: so much thereof as imposes a due of seven *sols*, be annulled. What does he found this pretension upon? It cannot assuredly be upon the *arrêts* of 1711 and 1732; both these *arrêts*, the only ones that can be cited, only apply to the refusal of the Seignior to concede, and to the sale of forest lands, in both of which cases, the matter had to be brought before the Intendant. No reference whatever is made therein to the rate of the concessions. (*Vide* these *arrêts* above cited.) If they are still law, the Court cannot apply them in part; they must have their full effect, and render the concession entirely null. Besides, these *arrêts* conferred upon the Governor and the Intendant, administrative and extra judiciary powers which do not belong to this Court.

These *arrêts* in no wise justify the exception pleaded in this case. The Defendant might have pleaded an error in Law, and alleged that he had signed that deed without due cause or motive, but he has not thought proper to do so, and cannot therefore avail himself of that ground of defence (1.) He should have made it the subject of a special plea, and the Defendant might then have answered and proved, in consequence of the uncertainty, or of the ambiguity of the Law, that the parties had entered into a transaction among themselves; and this answer would have been conclusive. It has been pretended that this deed was a sale, but such is not the case; in my opinion it is purely a deed of Concession.

MEREDITH, Justice.

It would be almost useless for me to add any thing to the observations of the other Members of the Court on this important case, but I think it my duty to quote the very words of the *arrêt* of 1732, which are supposed to apply to the present case. They are as follows:

(1.) *Revue de Woloski*, 18 vol. p. 159:—6 Toullier, Nos. 58 to 71:—1 Pothier, ob. 17:—2 Evans Pothier, 369:—La Revue, *loco citato*.

"His Majesty expressly prohibits all Seigniors or other proprietors, from selling "any wood lands, on pain of nullity of the deed of sale and of restitution of the "price of lands sold as aforesaid, which lands shall in the same manner be re-united "by force of law to the Domain of His Majesty."

The Defendant, in order to come within the case provided by the *arrêt* of 1732, has alleged in his plea "That the land described in the Plaintiff's declaration, be- "fore and at the time of the execution of the said Deed of Concession, consisted of "unconceded woodland &c." If the Defendant had proved this allegation, we should have been called upon to decide a number of important questions, which, in the absence of such proof do not arise.

CARON, Counsel for Defendant.

I must call attention to the fact, that the Deed of Concession granted by the Plaintiff to the Defendant, contains a clause imposing the condition that the Censitaire *shall clear and improve the said land.*

MEREDITH, Justice.

I do not think that, according to this stipulation, it must necessarily be inferred that no part of that land had been improved, and that it consisted of woodland within the meaning of the *arrêt* of 1732.

DUVAL, Justice.

It is not a Deed of Sale, and besides there is no proof that it is wood land.

MEREDITH, Justice, in continuation :—

The *arrêts* of 1711 and 1732 were introductory of new Law into the system of French law introduced into the Colony, a system by which a Seignior could concede his land at a rate agreed upon between himself and the Censitaire (1). These *arrêts* are penal laws. In order to subject any one to the penalties imposed by these *arrêts*; the infraction complained of must be a violation of the letter and of the spirit of the law, (2) and the Court cannot be satisfied with a presumption as to an essential fact which it was easy to prove. In the present case, six witnesses examined by the Defendant, state that they know the land in question, none of them state that it was wood land at the time it was conceded. I consider the proof of the Defendant on this point to be defective, but as there may be a variety of opinions in this respect, I do not hesitate to say (and I have examined this question also) that I concur in the opinion of the other Members of the Court, namely, that the deed in question is not a deed of sale within the meaning of the *arrêt* of 1732.

It is possible, (though I know no example of a Deed of Concession having been annulled) it is possible, I repeat, that if a case of this nature had been submitted to the Governor, or to the Intendant, under the French Government, the Censitaire

(1) *Hervé*, 5 v. p. 91 to 422 :—*Dunod*, part III c. X. p. 341 :---1 *Argou* p. 519.
(2) Dwarris, p. 737 :---3 Bingham p. 583.

might have succeeded. But these officers exercised very different powers from those vested in us, and a very great latitude was allowed them in the interpretation and execution of the Laws, which is not allowed us. It would seem that it was sufficient for these officers to know the intention of the Sovereign, in order to impose a duty or an obligation, without its being necessary that such intention should be expressed in a law; while in a case like this, with the powers which we exercise, we must confine ourselves to the letter of the law.

In order to show what the extraordinary powers were, that the authorities under the French Government exercised from time to time, in respect to the Concession of lands, I refer to a judgment of the 20th July, 1733. (1) "which on the petition of "the Seigniors of Portneuf, condemns the Censitaires of the said Seigniory to "furnish them copies of their deeds, and those who have not taken them, to "procure the same on the same conditions as the former ones, unless they would "rather submit to the rent of thirty *sols* and one capon for each arpent in front by "thirty arpents in depth, of six *deniers* of *cens* and the eleventh fish, which choice "they will be bound to make, or leave the choice to the Seignior, &c.

I refer also to an enactment of the 4th October, 1743, passed by virtue of orders from the King, requiring the Seigniors of the Mingan Island, to concede certain Islands, on the condition of the payment of a *redevance* of three per cent upon the Seal Skins and Seal Oil prepared by the Censitaires. (2.)

I refer, moreover, to an Ordinance of the 27th May, 1758, which subjects all lands within the domain of the Crown, in the city of Quebec, to an annual payment of five *sols* six *deniers* per arpent, and those of the *banlieue* to one *denier* per arpent. (3.)

With respect to the *Arrêt* of 1711, the obligations which it imposes upon the Seigniors, as regards the concession of lands are in the following terms:

"And His Majesty ordains also, that all the Seigniors in the said Country of "New France, shall concede to the settlers the lots of land which they may demand "of them in their Seigniories, at a ground rent, and without exacting from them any "sum of money as a consideration for such concessions."

This *arrêt* does not define the rate at which the Seigniors were to concede their lands to the Censitaires, but it is evident, from the provisions therein contained, with respect to the rate at which the Governor, Lieutenant General and Intendant were bound to concede, and it appears from divers *arrêts* and regulations, that the intention of the Kings of France was to oblige the Seigniors to concede their lands at the ordinary rates, and that these rates were less than those charged at the present day. Many persons believed, formerly, that there must have been a law in existence in the colony, regulating the rate of concessions, and determining the maximum thereof. It is nevertheless universally admitted, I believe, that this supposition had no foundation. The Courts of Justice then, in this Colony, in the presence of a law obliging the Seignior to concede and in the absence of any law fixing the rate of concessions,

(1) 2 Edits et Ordonnance, p. LXXI of Table.
(2) 2 Edits et Ordonnance, p. LXXXII of Table.
(3) 2 Edits et Ordonnance, p. 121.

or forbidding the Censitaires to pay any such *redevances* whatsoever agreed upon between them and the Seigniors, have always, since the conquest, so far as I have been enabled to ascertain, determined that a voluntary convention agreed to between the Seignior and the Censitaire, regulating the price of the *redevance*, cannot be annulled on the grounds that the said *redevance* is higher than those imposed in 1711 and 1732, or than those formerly imposed in the Seigniory in which the Censitaire asking for the reduction of his concession, is settled. This doctrine has been applied in several causes in which I was myself employed as an Advocate. In 1840, I brought several actions in the Court of Queen's Bench at Montreal, at the suit of the representatives of the late Gen. N. C. Burton, against censitaires in the Seigniories of Bleury, DeLéry, Lacolle and Noyan for arrears of *cens et rentes* the rate whereof was higher than in the present case. These Censitaires and some other persons, interested in the question, joined together in contesting the legality of those demands, and for that purpose secured the professional services of the first lawyers of the Montreal Bar. Four of these cases (Hamilton *vs.* Fortin; the same *vs.* Chouinard; the same *vs.* Lamoureux; the same *vs.* Brouillette;) were brought to judgment. The sole question submitted to the Court was this: "Can the reduction of the *cens* "*et rentes* stipulated in a deed of concession be demanded?" This proposition was supported in the affirmative with great ability but without success. The judgment in one of these cases, and the reasons on which it is founded, are detailed at length in the Report of the Commissioners on the Seigniorial Tenure.

The question of appealing these cases was mooted, but that idea was abandoned; and similar judgments were rendered in all the other cases. At that period, the researches which I was obliged to make had convinced me that those judgments were correct, and now, after a new examination of the question, I can find no reason to set aside the doctrine which those decisions has laid down. I concur, therefore, in the judgment, which is in support of the Plaintiff's action.

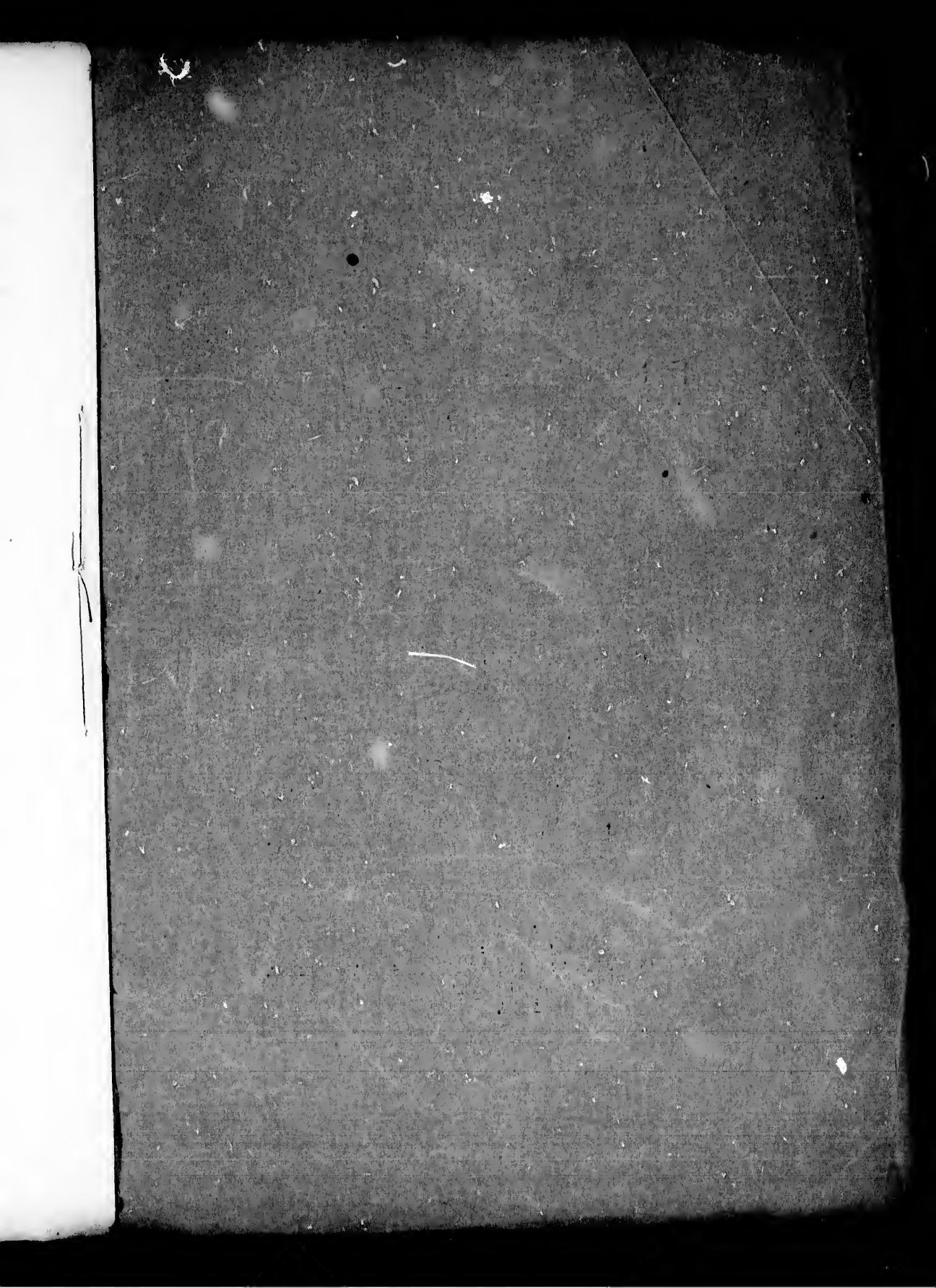
The judgment is as follows:—

The Court, considering that the *arrêt* of the King of France, dated the 6th of July, 1711, cited by the Defendant in support of his plea, only applies to the case in which the Seignior has refused to concede to the inhabitants the lands which they require of him, and that the *arrêt* of the King of France, dated the 15th of March, 1732, also cited by the Defendant in support of his defence, orders all proprietors of lands in Seigniories, yet uncleared. to put them in a state of cultivation and place settlers thereon, and that, by the said *arrêt*, His Majesty expressly prohibits all Seigniors, or other proprietors, from selling any wood land, on pain of nullity of the deed of sale, and of restitution of the price of lands sold as aforesaid, which lands shall be re-united by force of law to the domain of His Majesty; considering that it is established that the Plaintiff in this cause, Seignior of the north-east half of the Seigniory of Bourg Louis, now called New Guernsey, did, in and by a deed made and executed before Mtre. Panet and his colleague, Notaries, at New Guernsey, on the 17th September, in the year 1839, concede, but not sell, to the Defendant, the land therein described, subject to the several charges, clauses and dues therein mentioned, which concession of the said land, and the said land, he hath held since the passing of the said deed until this day; considering that the allegations contained in

the peremptory exception in law, which are established by the proof adduced in this cause, are not sufficient in law to annul the said deed of concession, in whole or in part, doth dismiss the perpetual peremptory exception in law in this cause filed by the Defendant, and condemn the said Defendant to pay to the Plaintiff the sum of thirteen pounds four shillings and eight pence, being the balance of the sum of £16 11s. 4d., currency, for eight years' arrears of *cens et rentes* due by the Defendant to the Plaintiff by virtue of the aforesaid deed of concession, due the 1st November, 1848, with interest from the 28th April, 1849, and costs.

LELIÈVRE and ANGERS, Attorneys for Plaintiff.
A. STUART, Counsel.

TESSIER, Attorney for Defendant.
CARON, Counsel.



CASE

TO BE FOUND AT PAGE 36 OF THE SECOND VOLUME

OF THE

LOWER CANADA REPORTS,

OFFICIALLY REPORTED AND PUBLISHED BY AUTHORITY.

LANGLOIS vs. MARTEL.

"There is no law in this country fixing a uniform rate of *cens et rentes*— "the *arrêts* of 1711 and 1732, apply, the first only to cases where the Sei- "gnior refuses to grant unconceded lands, and the last to the clearing of forest "lands, the sale of which it prohibits,—a concession in which a portion of the "*rente* is stipulated *rente constituée rachetable*, is not a sale."

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