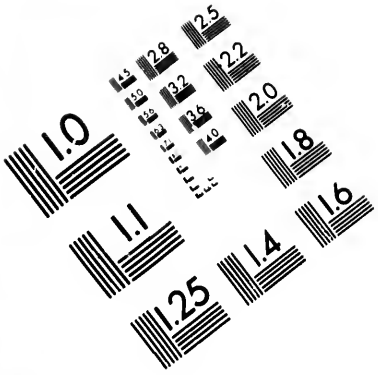

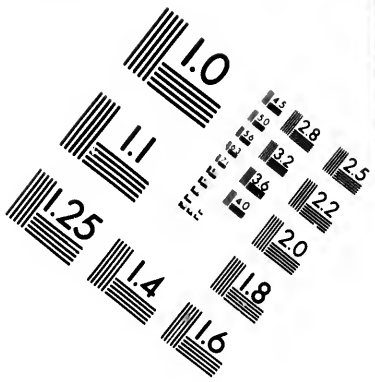

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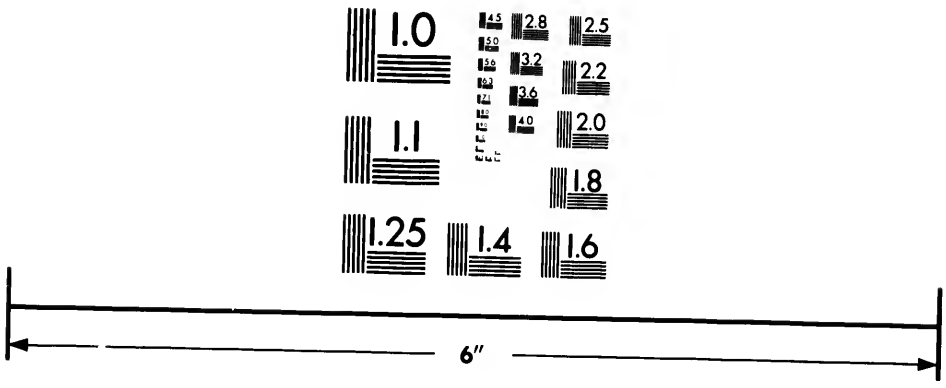

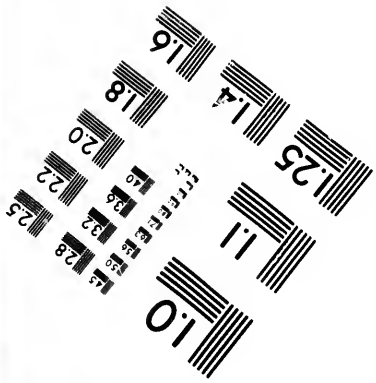

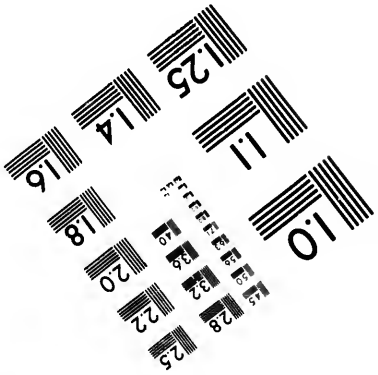

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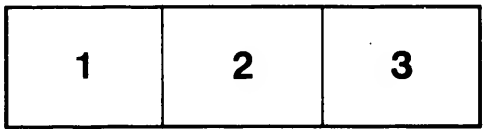

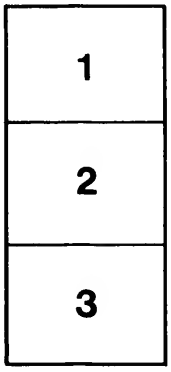

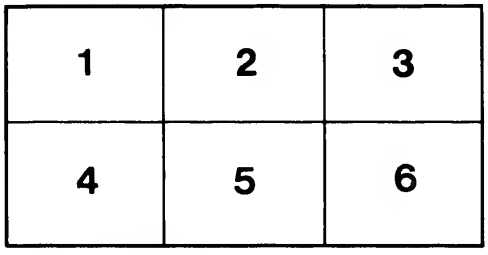

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LOWER CANADA REPORTS.

DECISIONS DES TRIBUNAUX

DU BAS-CANADA.

SEIGNIORIAL

QUESTIONS;

A COMPILATION

Containing the Seignorial Act of 1854, the amendment to the Seignorial Act, of 1854, the Questions submitted by the Attorney General for Lower Canada, the Counter-Questions submitted by divers Seigniors, the Proceedings and Decisions of the Special Court constituted under the authority of the Seignorial Act of 1854, the Pleadings and Memoirs of the Advocates, and the Observations of the Judges &c., &c.

EDITORS : MM. LELIEVRE ET ANGERS.

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BY DUVERNAY BROTHERS.

1856.

TABLE

Of the Contents of this first Volume.

FIRST SERIES.

SECOND SERIES.

Opinion of Sir L. H. LaFontaine, Bt.

(Translated by M. McIver, Esq.)

ANNO DECIMO-OCTAVO

VICTORIÆ REGINÆ.

CAP. III.

An Act for the abolition of feudal rights and duties in Lower Canada.

[*Assented to 18th December*, 1854.]

Preamble.

WHEREAS it is expedient to abolish all feudal rights and duties in Lower Canada, whether bearing upon the *Censitaire* or upon the Seignior, and to secure fair compensation to the latter for every lucrative right which is now legally his, and which he will lose by such abolition; And whereas in consideration of the great advantages which must result to the Province from the abolition of the said feudal rights and duties and the substitution of a free tenure for that under which the property subject thereto hath heretofore been held, it is expedient to aid the *Censitaire* in the redemption of the said charges, more especially as regards those which while they press most heavily on industry and enterprize, cannot, from their very nature, be otherwise made immediately redeemable without grievous hardship and injustice in many cases: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, as follows:

Acts 8 V. c. 42, And 12 V. c. 49

I. The Act passed in the eighth year of Her Majesty's Reign, intituled, *An Act the better to facilitate optional commutation of the tenure of lands* en roture *in the seigniories and fiefs, in Lower Canada, into that of franc-aleu roturier*, and the Act passed in the twelfth year of Her Majesty's Reign, and intituled, *An Act to amend the Act passed in the eighth year of Her Majesty's Reign, intituled,* "*An Act the* "*better to facilitate optional commutation of the tenure of* "*lands* en roture *in the seigniories and fiefs, in Lower Ca-* "*nada, into that of franc-aleu roturier*," shall be and they are hereby repealed in so far as regards the seigniories to which this Act applies: but deeds of commutation granted, or other things done under them, shall remain in full force and have the same effect as if the said Acts had not been repealed.

Repealed as regards seigniories to which this Act extends.

DETERMINATION OF THE PRICE TO BE PAID BY SEIGNIOR AND CENSITAIRE FOR THE COMMUTATION OF THE TENURE OF THEIR PROPERTY.

Governor to appoint Commissioners.

II. It shall be lawful for the Governor to appoint Commissioners under this Act, and, from time to time, to remove them and to appoint others in the place of any removed, or dying, or resigning office; and each of the said Commissioners shall, before entering upon the duties of his office, take and subscribe, before a Judge of the Superior Court, the following oath:

Their oath of office.

"I, , swear that I will faithfully, and without "partiality, fear, favor or affection, perform my duty as "Commissioner under the Seigniorial Act of 1854."

Remuneration.

III. The said Commissioners shall receive for their services under this Act, and for their necessary expenses and disbursements, such compensation as shall be allowed to them respectively by the Governor, and no other fees or emoluments whatsoever.

IV. Each of the said Commissioners shall and may act as such in any part of Lower Canada, and they shall be aiding to each other, so that any one of them, if need be, may continue and complete the work begun by any other of them; but subject to this provision the Governor may, from time to time, assign the seigniory or seigniories in and for which each of them shall act. Commissioners to act in the seigniories assigned to them respectively

V. It shall be the duty of each of the said Commissioners to value the several rights hereinafter mentioned, with regard to each seigniory, which shall be assigned to him as aforesaid by the Governor, and to draw up, in tabular form in triplicate, a schedule of such seigniory, shewing: They shall make a schedule of each seigniory, shewing:

1. The total value of the seigniory, that is to say, of all the property and lucrative rights which the Seignior holds as such, whether as Seignior *dominant* of any fief held of him as such Seignior, or otherwise, including in such total value, the value of the rights of the Crown; The total value of the seigniory;

2. The value of the rights of the Crown in the seigniory, including the value of the *droit de quint*, and all other valuable rights of the Crown therein as Seignior *dominant*, or by reason of any reservation in the original grant of the seigniory, and any difference between the absolute value in *franc aleu roturier* of all unconceded lands, waters and water powers in the seigniory, and appertaining thereto, and the value of the seigniorial rights therein, as they may be ascertained by the decision of the Judges, under the provisions hereinafter mentioned. The value of the rights of the Crown therein;

3. The value of the lucrative rights of the Seignior *dominant*, of whom the seigniory for which the schedule is made may be held, if the seigniory be an *arrière-fief*; And of those of any other Seignior *dominant*;

4. The yearly value of the seigniorial rights upon each land, that is to say, each parcel of land originally conceded as a separate lot, or actually owned at the time of making the schedule by a separate person; entering severally,—the The yearly value of the seigniorial rights on each lot;

yearly value of the *lods et ventes*,—the yearly value (if any) of the *droit de banalité*, and of the exclusive right to build mills in the seigniory, as distinguished from the right to the water powers, if such rights be recognised by the decision of the Judges who are to enquire of the same as hereinafter provided, but not otherwise,—the yearly value of the *cens et rentes* and other fixed rights, and of any other legal charges to which the land may be subject; but the *droit de retrait* shall not be deemed a lucrative right;

The extent of each lot;

5. The extent of such land according to the title of the owner, if produced, and whether it is held for agricultural purposes, or is a mere emplacement or building lot;

How the charges on any lot shall be determined;

And its extent;

6. In determining seigniorial charges to which each land is subject, the Commissioner shall be guided by the title of the owner from the Seignior, subject to the decision of the Judges hereinafter mentioned, if such decision shall in any way limit the rights of the Seignior under the said title; and in the absence of the title of the owner, the Commissioner shall determine the extent of the land and the seigniorial charges to which it is subject by such books, plans, *procès-verbaux*, or other secondary evidence as he may be able to procure;

How each lot shall be described in the schedule:

7. Each land shall be described in the schedule by the number, and concession, under which it stands in the land-roll of the Seignior, (or if it bear no such description therein, then by the best brief designation the Commissioner can assign to it,) and the name of the owner as it appears on the land-roll, and in default of information on any of the said points, the Commissioner may describe it in such manner as he may think most convenient, provided he assign to each land a separate and distinct number;

Commuted lands how to be entered.

8. The Commissioner shall also include in the schedule all lands in regard to which the seigniorial rights have been commuted, and write opposite thereto the word "commuted" only.

VI. In order to determine the value of the seigniorial rights on lands held *en roture*, the Commissioner shall observe the following rules, namely : General rules for valuation.

1. The amount of the *cens et rentes* and annual charges shall be taken as the yearly value thereof; and if any such rents or charges be payable in grain, fowls or other provisions or fruits of the earth, their average value shall be computed according to the average price of articles of the same kind, taken from the books of the merchants nearest to the place, or ascertained in any other manner the Commissioner shall think most equitable ; to establish such average year, the fourteen years immediately preceding the period at which the valuation is made, shall be taken, the two highest and the two lowest shall be struck out, and the average year shall be established on the ten remaining years ; the value of personal labour (*corvées*) shall be estimated in the same manner ; *Cens et rentes* and annual charges. Average year

2. In order to establish the yearly value of the casual rights, an average year of their value shall be computed for each of the two classes of lands hereinafter mentioned, upon the ten years immediately preceding the passing of this Act, and the amount of the valuation of the said average year shall be the yearly value of the said casual rights for all the lands in the seigniory of the same class ; and the Commissioners in estimating the yearly value of the *lods et ventes* in any seigniory, shall distinguish those accruing on lands held as *emplacements* or building lots or for other than agricultural purposes, which shall form one class, from those on lands held for agricultural purposes, which shall form another class ; and the Commissioner shall apportion the yearly value of the *lods et ventes* on each class, upon the lands belonging to that class, charging each land with a portion thereof proportionate to its value with regard to lands held as *emplacements* or building lots, or for other than agricultural purposes, and proportionate to its extent with regard Casual rights. Value of *lods et ventes* on agricultural lands and on emplacements to be distinguished. How apportioned.

As to *rente* representing *lods et ventes* under deed of commutation.

to lands held for agricultural purposes : and any *rente* expressly charged in any deed of partial commutation under the Acts hereby repealed, as an indemnity to be paid by the *Censitaire* instead of *lods et ventes*, shall be held to represent the value of the right to *lods et ventes* on the land referred to, and shall be entered and dealt with in all respects accordingly ;

Droit de banalité.

3. In order to establish the yearly value of the *droit de banalité* and the exclusive right of having mills in the seigniory, (independently of the right to the water power,) if any such rights be recognized by the said Judges as aforesaid, the Commissioner shall estimate the probable decrease (if any) in the nett yearly income of the Seignior from his mills, to arise from the loss of such right, and the said sum shall be deemed the yearly value of such right, and shall be apportioned upon the lands subject to the said right in proportion to their extent ;

Other rights.

4. Any other rights shall be valued according to the revenue or profits which may have accrued therefrom to be ascertained by the Commissioner in such manner as he shall deem most equitable, and shall be charged upon the lands subject thereto respectively ;

Yearly value of all rights to be converted into a *rente constituée*, on each land.

5. The yearly value of each class of rights upon each land, shall become a *rente constituée* charged upon the same as the compensation payable to the Seignior thereof, and the total amount of such *rentes constituées* on any land, after the deduction to be made therefrom as hereinafter provided, shall be payable to the Seignior yearly, at the time and

When payable.

place where the *cens et rentes* on such land are now payable, unless it be otherwise agreed between the Seignior and the *Censitaire*, and shall accrue from the day on which notice of the deposit of the schedule of the seigniory shall be given in the *Canada Gazette*, on which day the present *cens et rentes* and other annual charges upon the land shall cease

to accrue ; and both they and the *rentes constituées*, under this Act, shall accrue rateably for any broken period less a year, during which they may exist ; As to broken periods.

6. The value of the rights of the Seignior *dominant* in any *arrière-fief*, shall from the capital of a *rente constituée* payable yearly by the seignior of the *arrière-fief*, on the day of the date of the publication in the *Canada Gazette* of the notice of the deposit of the schedule of such *arrière-fief*, and accruing from the day of such publication ; but out of the moneys coming to the Seignior of the *arrière-fief*, from the Provincial aid hereinafter mentioned, a sum bearing the same proportion to the whole of such monies as the value of the rights of the Seignior *dominant* in such *arrière-fief* bears to the value set upon the seignorial rights of the Seignior *servant* in such *arrière-fief*, shall belong to the Seignior *domimant*, and his said *rente constituée* shall be diminished by the amount of the yearly interest, at six per cent per annum, of the sum so coming to him out of the said Provincial aid ; Value of the rights of Seignior *dominant* to be the capital of a *rente constituée* payable to him. His share in the Fund provided by this Act.

7. And, in estimating the value of the casual rights of the Crown, in relation to each seigniory, the Commissioner shall be guided, as nearly as possible, by the same rules as are hereby prescribed for the determination of the yearly value of the casual rights of the Seigniors. Casual rights of the Crown how valued.

VII. Before beginning to prepare the schedule for any seigniory, the Commissioner entrusted with that duty, shall give public notice of the place, day and hour, at which he will begin his inquiry ; and such notice shall be made by placards and publications in the english and french languages, at the door of every parish church in such seigniory, during four consecutive sundays, at the conclusion of divine service in the forenoon, or by placards in both langages, posted, during four consecutive weeks, in the most frequented place in any seigniory in which there shall be no church. Notice by the Commissioner before commencing his inquiry.

He may enter upon lands for the purposes of the inquiry.

VIII. It shall be lawful for the Commissioner to enter upon all lands situate in the seigniory the schedule whereof is to be made by him, in order to make such examination thereof as may be necessary, without his being subject in respect thereof to any obstruction or prosecution, and with the right to command the assistance of all Justices, Peace Officers and others, in order to enter and make such examination, in case of opposition.

Powers of the Commissioners obtaining information.

IX. The said Commissioners, and each of them separately, shall have full power and authority to examine on oath any person who shall appear before them, or any of them, either as a party interested or as a witness, and to summon before them, or any of them, all persons whom they or any of them may deem it expedient to examine upon the matters subject to their consideration, and the facts which they may require to ascertain in order to carry this Act into effect, and to require any such person to bring with him and produce before them or any of them any book, paper, plan, instrument, document or thing mentioned in such summons, and necessary for the purpose of this Act:

Punishment of persons refusing to appear before them, or to give information.

And if any person so summoned shall refuse or neglect to appear before them, or before the Commissioner who shall have summoned him, or appearing, shall refuse to answer any lawful question put to him, or to produce any such book, paper, plan, instrument, document or thing whatsoever which may be in his possession, and which he shall have been required by such summons to bring with him or to produce, such person shall, for every such refusal or neglect, incur a penalty of not less than ten nor more than fifty pounds currency, payable to Her Majesty, to be recovered with costs upon summary plaint by such Commissioner before any Judge of the Superior or Circuit Court, and, in default of immediate payment, shall, by warrant of such Judge, be apprehended and committed to the common gaol of the District for a period not exceeding one calendar month.

X. Whenever the Commissioner, charged with the making of the schedule of a seigniory, shall be of opinion that the rules prescribed in this Act for determining any value which he is hereby required to determine, do not form an equitable basis for determining the same, or when the Seignior, or not less than twelve *Censitaires* of the seigniory, shall call upon the said Commissioner in writing, within a period not exceeding eight days, after the day fixed for the commencement of the inquiry by the Commissioner, requiring that *experts* be appointed to determine the value of the seigniorial rights therein, the said Commissioner shall call a public meeting of the *Censitaires* of the seigniory, at such place therein, and on such day and at such hour, as shall be specified in the public notice thereof, which he shall give in the manner prescribed by this Act, with respect to the commencement of his inquiry, for the purpose of appointing two *experts*, one of whom shall be appointed by the Seignior, and the other shall be elected by the majority of the *Censitaires* present at such meeting; and in case the Seignior or his agent, shall not be present at the said meeting, or being present, shall refuse or neglect to appoint an *expert*, the said Commissioner shall appoint one on behalf of the Seignior, and such *expert* shall have the same powers as he would have had if he had been appointed by the Seignior, and in the event of the *Censitaires* refusing or neglecting to appoint an *expert* on their behalf the Commissioner shall in like manner appoint an *expert* to act for them.

Value may be estimated by *experts* if required by Seigniors or *Censitaires*

How such *experts* shall be appointed.

2. The two *experts* so appointed shall have and exercise the same powers with respect to the valuation of the seigniorial rights as could be exercised by the Commissioner himself, except that they shall not in any case be bound by the rules aforesaid; and the said two *experts* shall appoint a third *expert*, but in case the two *experts* shall not agree upon the person to be the third *expert*, then any Judge of the Superior Court in the District in which the seigniory or the greater part thereof lies, shall, on the application of either

Powers of *experts*.

They shall not be bound by the foregoing rules.

Third *expert*.

expert, after three clear days' notice to the other, appoint such third *expert* : and the sums fixed by any two of such *experts* as the yearly value of the seigniorial rights respectively, shall be taken by the Commissioner as the value thereof, and shall be apportioned by him in the manner hereinbefore prescribed, upon or among the lands subject to such rights ; and the Commissioner shall mention in the schedule that the value was determined by *expertise*.

The value fixed by the *experts* to be entered in the schedule.

3. Provided that, when the Seignior and the *Censitaires* shall agree to appoint and elect, or shall appoint and elect one and the same *expert*, such sole *expert* shall have the same powers as the three *experts* would have had, and his decision shall be final : And provided also, that the Commissioner may be appointed either third *expert* or sole *expert*.

Sole *expert* may be chosen.

Commissioner may be sole or third *expert*.

4. In the event of one of the said *experts* dying, becoming incapacitated, or refusing to act, the appointment or election of another in his stead shall be proceeded with in the manner above prescribed, excepting that it shall not be necessary to call a public meeting of the *Censitaires* for the appointment of an *expert* in the stead of the person representing the Seignior ; but if the Seignior refuse, or neglect during eight days to appoint another *expert*, after having been required so to do by the Commissioner, the Commissioner shall appoint an *expert* on behalf of the said Seignior.

Case of *experts* dying, &c, provided for.

5. If the Commissioner be appointed third *expert* or sole *expert*, then if he be prevented from acting by any cause, the Commissioner who shall be directed by the Governor to continue the proceedings in the seigniory, shall be third *expert* or sole *expert* in the place of the former Commissioner.

And if the Commissioner be the *expert*.

6. The said *experts* shall be entitled to receive, out of the funds provided by this Act, such fees as the Commissioner shall deem proper to tax, provided that they do not exceed the sum of fifteen shillings for each day of necessary attendance. And the said fees shall be paid by the Receiver General upon the certificate of the Commissioner.

Fees of *experts*.

Commissioner excepted.

XI. The said Commissioner, immediately after the making of the schedule of a seigniory, shall give eight days' public notice, in the manner prescribed by the seventh section of this Act, that such schedule will remain open for the inspection of the Seignior and the *Censitaires* of the seigniory during the thirty days following the said notice ; and during that time, the Commissioner may correct any error and supply any omission which may be pointed out to him by any party interested, or which shall come to his knowledge in any other manner, but he shall not alter any value determined by *expertise* without the consent of the majority of the *experts* or of the sole *expert ;*

Notice that schedule is ready for inspection.

Inspection, and correction of errors.

2. The proprietor or possessor of the seigniory may appear, either in person or by his agent, before the Commissioner, for the purpose of having any error corrected which may have crept into the said schedule ; and for the like purpose the *Censitaires* of the seigniory may appear before the said Commissioner by their agent to be appointed by a majority of the *Censitaires* of the seigniory present at a meeting called for that purpose by any three or more of the *Censitaires* thereof, eight days' public notice thereof having been previously given in the manner prescribed in the seventh section of this Act ;

Who may appear to demand corrections.

3. But no schedule shall be completed until the Judges of the Special Court shall have given judgment upon the Questions to be submitted to them as hereinafter mentioned ; and in the event of any of the decisions pronounced by the said Special Court, being reversed or altered upon appeal to the privy Council, the Commissioners forming the Court of Revision of schedules hereinafter mentioned shall alter and amend the schedules accordingly ;

Schedule not to be completed until Seignior's rights are decided.

XII. It shall be lawful for the Governor, by letter under the signature of the Provincial Secretary, to select, from the Commissioners so to be appointed, four of their number, of whom any three shall form a Court for the revision of sche-

Four revising Commissioners to be selected.

Three to sit. dules made under this Act, and in like manner, from time to time, to remove them and to appoint others in the place of any so removed, dying, resigning office or being incapacitated to act;

Two may decide. 2. The decision of any two of the Commissioners so selected, whether the others be present or not, on any matter relating to the revision of any schedule made under this Act, shall be final;

They may require evidence. 3. In making such revision, the Commissioners shall proceed summarily, but they may order any evidence to be adduced which they may think requisite to enable them to pronounce a correct decision, and for that purpose shall have the same powers as in making a schedule;

Not to revise their own schedules. 4. No Commissioner so selected shall sit in revision of any schedule made by him;

When and how a revision may be obtained. 5. And no revision of any schedule shall be allowed, unless application be made for the same within fifteen days from the expiration of the time, allowed under the eleventh section of this Act, for the correction thereof by the Commissioner by whom it was made; and every such application shall be made by a petition, presented on behalf of the party interested to the Governor, specifying the objections made to such schedule and the amendments demanded, and praying for the revision thereof;

How schedules shall be referred to them for revision. 6. Upon the receipt of any such petition, the Provincial Secretary shall refer the same to the Commissioners forming the Court of Revision aforesaid, whose duty it shall be, after having given eight days' notice in the manner provided by the seventh section of this Act, to proceed to revise the schedule therein mentioned, and if they find any error; to correct the same, in so far as, but no farther than, it shall have been so specially objected to; but they shall not alter any value determined by *expertise* without the consent of the majority of the *experts* or of the sole *expert;*

7. The said Court of Revision may award and tax costs against any party who may in their opinion have demanded or opposed the revision of the schedule without reasonable cause, and such costs may be recovered on the certificate of any one of the said Commissioners as a debt due by the party against whom they shall have been awarded, to the party in whose favour they have been taxed.

Costs against party wantonly requiring a revision.

XIII. As soon as the schedule of a seigniory shall be completed in the manner hereinbefore provided, the Commissioner, who shall have made it, shall transmit a triplicate, thereof to the Receiver General of this Province; he shall deposit another triplicate in the office of the Superior Court in the District in which the seigniory is situate, or if such seigniory be situate in two Districts, then in the office of the said Court in that District in which the greater part of such seigniory is situate; and shall retain the other triplicate in his hands until it shall be otherwise provided by law; and he shall give public notice of his having so deposited the same, in the terms of the form A, annexed to his Act, or in other terms of like import, in the english and french languages in the *Canada Gazette*, or other newspaper recognized as the official gazette of the Province, and in at least one newspaper published in the District in which such seigniory or the greater part thereof is situate, or if there be no newspaper published in such District, such notice shall be so published in the nearest District wherein one or more newspapers are published. And the Clerk of the Superior Court shall furnish copies of or extracts from such schedule duly certified in the usual form, to any person applying for the same, and may demand three pence currency for every hundred words or figures in any such copy or extract; and he shall also furnish one copy of every such schedule on demand to the Seignior of the seigniory to which it relates, and the costs thereof shall be paid out of the funds provided by this Act; and all such copies and extracts, whether in words or figures, shall be deemed authentic, and shall serve as *primâ facie* proof of all matters therein set forth.

Notice of completion and deposit of schedule with the Receiver General.

Triplicates how disposed of

Copies and extracts to be furnished.

Fee therefor.

Their legal effect.

Upon the publication of the notice of deposit of the schedule of a seigniory, all lands therein to be held in *franc-aleu.*

XIV. Upon, from and after the date of the publication in the *Canada Gazette*, or other official gazette as aforesaid, of a notice of the deposit of the schedule of any seigniory as aforesaid, every *Censitaire*, in such seigniory shall, by virtue thereof hold his land in *franc-aleu roturier*, free and clear of all *cens*, *lods et ventes*, *droit de banalité*, *droit de retrait*, and other feudal and seigniorial duties and charges whatever, except the *rente constituée* which will be substituted for all seigniorial duties and charges; and every Seigniory shall thereafter hold his domain and the unconceded lands in his seigniory, and all water power and real estate now belonging to him in *franc-aleu roturier*, by virtue of this Act, and the same and the *rentes constituées* payable to him under this Act by his *Censitaires*, or by any Seignior of whose fief or seigniory he his the Seignior *dominant*, shall be held and enjoyed by him free and clear of all *quint*, *relief* or other feudal dues or duties to the Crown or to any Seignior *dominant* of whom his fief or seigniory is now held; subject always, both as regards Seignior and *Censitaire*, to the provisions of this Act: Nor shall the Seignior as such, after the said time, be subject to any onerous obligation towards his *Censitaires*, or be entitled to any honorary rights, nor shall any land be thereafter granted by any Seignior to be held by any other tenure than *franc-aleu roturier*, or subject to any mutation fines or other feudal dues; Provided always, that no Seignior shall concede or alienate any part of the unconceded lands in his seigniory, until after the notice of the deposit of the schedule thereof has been given as aforesaid, and any such concession or alienation shall be null and void.

And the Seignior to be free from quint, &c. to the Crown.

No seigniorial right or duty to remain or be established.

Proviso: Seigniors not to concede before the schedule is completed.

Certain powers as to taking land for mills, to remain if made *after* the deed of concession.

XV. But no right, which any Seignior may have acquired by any legal stipulation entered into before the passing of this Act, by any deed subsequent to the deed of concession, to take any land for the purpose of using the water power

adjoining the same and belonging to such Seignior, on paying for such land the full value thereof and of all improvements thereon, shall cease by reason of the passing of this Act, but the same shall remain in full force : Provided always, that the owner of any land adjoining water power, so acquired by the Seignior, and not then used by him, may, at any time, after the expiration of one year from the passing of this Act, demand the right to use such water power from the Seignior, on paying him the full value of such right, which value, if not agreed upon, shall be fixed by arbitrators, one to be named by the owner of such land, another by the Seignior, and the third by the other two, or if they disagree, then by a Judge of the Superior Court or of the Circuit Court, and the award of any two of them shall be conclusive ; and upon payment or tender to the Seignior of the value awarded, the owner of such land shall have the right to use such water power in the manner mentioned in the demand thereof and in the said award.

Proviso : owner of land adjoining a water power may demand it in certain cases.

DETERMINATION OF THE LEGAL RIGHTS OF THE SEIGNIOR AND CENSITAIRE.

XVI. And in order to avoid, as far as may be possible, unneeessary expense, uncertainty and delay in the valuation of the several rights aforesaid, and in the completion of the schedules of the seigniories respectively, and all errors as to matters of law on the part of the Commisioners under this Act, Her Majesty's Attorney General for Lower Canada, shall, as soon as may be practicable after the passing of this Act, frame such Questions to be submitted for the decision of the Juges of the Court of Queen's Bench and of the Superior Court for Lower Canada, as he shall deem best calculated to decide the points of law, which will, in his opinion, come under the consideration of the said Commissioners, in determining the value of the rights of the Crown, of the Seignior, and of the *Censitaires*, and he shall file a

Questions to be submitted by the Attorney General to all the Judges for determining Seignior's rights.

To be filed.

copy of such Questions in the Office of the said Court of Queen's Bench, and cause a copy thereof to be transmitted by post to each of the Judges of the said Courts;

They shall be published.

2. The said Questions shall then be published at least once a week, during six consecutive weeks, in the *Canada Gazette*, with a notice to all concerned that they have been filed as aforesaid, and are submitted for the decision of the said Judges;

They shall be taken into consideration, and decided on as soon as possible.

3. The said Judges shall take the said Questions into consideration, and shall hear the Attorney General, or Solicitor General, and such counsel as such Attorney General or Solicitor General may deem it advisable to associate with them, at as early a time as may be praticable, after the expiration of thirty days from the last publication of the said Questions in the *Canada Gazette;* and it shall be the duty of the said Judges to give the consideration of the said Questions and the hearing thereof such precedence over other matters before them, and to adopt such other measures with regard to them, as will ensure a decision thereon at as early a period as may be conveniently practicable;

Seigniors may file Counter-Questions and propositions.

4. Any Seignior may, at any time, before the end of the said period of thirty days after the last publication of the said Questions, or with leave of the said Judges at any time before the hearing thereon, cause an appearance to be filed for him in the Office of the Court of Queen's Bench, in the matter of the said Questions, and having caused such appearance to be so filed, shall be entitle to be heard by his counsel upon such Questions, and may submit any Supplementary or Counter-Questions and may append to every such Question, a statement of the proposition, or propositions he intends to maintain with regard thereto; but no more than five counsel shall be heard on the part of all the Seigniors so appearing, except by special permission of the Court, and if more claim to be heard, the Judges shall decide between them which shall be heard;

Number of counsels limited.

5. The *Censitaires* of any seigniory, acting by their agent to be elected in the manner provided by the eleventh section of this Act, may also, in like manner and within a like delay, cause an appearance to be filed for them in the office of the said Court, and, having so done, shall be entitled to be heard by their counsel, upon the Questions filed by the Attorney General as well as upon any Questions or Propositions filed by any Seigniour, and may submit Supplementary or Counter-Questions or Propositions to those of the Crown or of any Seignior; but no more than five counsels shall be heard on the part of all the *Censitaires*, unless by the special permission of the Court, and if more claim to be heard, the Court shall decide between them which shall be heard; And so may *Censitaires* Number of counsel limited

6. No publication or service of any such Supplementary or Counter-Questions or Propositions shall be necessary, but the same shall be printed, and, when they are filed, at least fifty copies thereof shall be delivered to the Clerk of Appeals, who shall give copies to the Attorney General and to the advocates appearing for Seigniors or *Censitaires*; Copies of counter-questions, &c. to be furnished to all parties.

7. From the expiration of the said thirty days after the last publication of the said Questions, the matter shall be dealt with by the said Judges, as if an appeal were pending and inscribed and ready for hearing, in which the said Questions had arisen for decision, but no case, or pleadings, or other proceeding than such as are herein prescribed, shall be required previously to such hearing; no technical objection of procedure shall be entertained, and if any question arise as to the proceedings in any matter not provided for by this Act, the Judges sitting shall *instanter* make such order therein as shall seem most equitable and convenient; How the questions shall be heard, &c.

8. The decision and opinions of the said Judges shall be *motivées* and delivered as in a judgment on a case in appeal in which all the Questions had arisen and were put in issue, but without any further sentence in favor of the Crown, the Seigniors or the *Censitaires*, whether as to costs or otherwise; Form of decisions.

Effect of decisions.

9. The decision so to be pronounced on each of the said Questions and Propositions shall guide the Commissioners and the Attorney General, and shall, in any actual case thereafter to arise, be held to have been a judgment in appeal *en dernier ressort* on the point raised by such Question, in a like case, though between other parties ; Provided always, that it shall be competent to the said Judges to render separate decisions upon any particular question or questions ; And provided also, that if, as to any such decision, there be any dissentient Judge, either party may, within one month, by summary petition duly notified to the others, appeal from such decision to Her Majesty in Her Privy Council ; but otherwise, there shall be no appeal from any such decision ;

Proviso.

Proviso : in what case an appeal shall lie.

Special Session to be held for the purposes of this Act.

10. The Governor may, at any time and from time to time, by proclamation, direct a Special Session of the said Judges to be held at the City of Quebec or at the City of Montreal, and to commence on the day to be named for that purpose in such proclamation, which shall be issued at least twenty clear days before the commencement of such Special Session ; and to any such Special Session all the provisions of the Act constituting the said Court of Queen's Bench, and of the law with regard to the ordinary terms of the said Court (*Appeal side*) shall apply ; except that, at every such Special Session, nine of the said Judges shall be a Quorum : and the Questions to be proposed under this Act, and no other business, shall be taken up at such Session ; and such Special Session shall continue until no further matter or proceeding relating to this Act shall be before the said Judges, who shall at such Session form a special Court for the purposes of this Act ; Provided always, that if, for the purpose of holding any term, either of the Court of Queen's Bench or Superior Court, it become necessary to suspend the sittings of such Special Session, the Judges shall adjourn such Special Session to the first convenient day after the close of such term ; and the said Special Court may,

Quorum.

Duration.

Proviso.

Adjournment.

after hearing all parties on the various matters submitted to them, adjourn, for the purpose of rendering judgment only, any day thereafter, on and after which day, they may adjourn for the like purpose ; and such adjournments for rendering judgment may be to any day during or between any terms of the said Court of Queen's Bench or Superior Court ; And provided also, that it shall be lawful for the Governor, by any proclamation directing such Special Session, to suspend or postpone any term or terms of either of the said Courts, or to alter the duration thereof ; and also to name any Circuit Judge or Judges, or Barrister or Barristers of at least ten years' standing at the Bar of Lower Canada, to be and act as Assistant Judges of the said Courts, or of either of them, during the pendency of any such Special Session, and of all adjournments thereof, and for such term of time before or after as he may deem necessary ; and every person so named shall, for the term of such appointment, have all the powers of a Judge of the Court whereof he shall have been named an Assistant Judge, except the powers given by this Act. The presiding Judge at every such special session shall be the Chief Justice of the Court of Queen's Bench, if present : if absent, the Chief Justice of the Superior Court, and in the absence of both Chief Justices, the Senior of the Puisné Judges of the Court of Queen's Bench then present

for rendering judgment.

Proviso : terms of other Courts may be suspended, &c., or Assistant Judges appointed.

Who shall preside at such Special Session.

PROVINCIAL APPROPRIATION FOR RELIEF OF CENSITAIRES AND EXPENSES OF THIS ACT.

XVII. The emoluments and disbursements of the Commissioners who shall be appointed under this Act, with the expenses to be incurred under the same, shall be paid out of the Consolidated Revenue Fund of this Province, by Warrant of the Governor : and a sum, not exceeding in the whole what shall remain of the amount hereinafter limited after deducting therefrom the said emoluments, disbursements and expenses, may likewise be paid out of the said Fund for the purposes of this Act : and it shall be lawful for the Go-

Expenses under this Act how paid.

Fund for other purposes of this Act.

Money may be raised by debentures.

vernor in Council to cause any sum or sums not exceeding in the whole the sum required for defraying the expenditure authorized by this Act, to be raised by debentures to be issued on the credit of the said Consolidated Revenue Fund, in such form, bearing such rate of interest, and the principal and interest whereof shall be payable out of the said Fund at such times and places as the Governor in Council shall think most advantageous for the public interest : and the moneys so raised as aforesaid shall make part of the said Consolidated revenue Fund of this Province : Provided always, that the total amount of moneys to be paid, whether in money or debentures, under this Act, shall not exceed by more than one hundred and fifty thousand pounds, the sum of which the average yearly proceeds of the other sources of revenue hereinafter mentioned (upon an average of the last five years) would be the yearly interest at six per cent per annum added to the value of the Crown's rights in the seigniories affected by this Act.

Proviso: total amount limited

Special appropriated money from certain sources.

XVIII. The moneys arising from the following sources of revenue, shall be and are hereby specially appropriated to make good to the said Consolidated Revenue Fund, the amount which may by taken out of the same for the purpose of paying the sums charged upon it under the next preceeding section, that is to say :

Crown rights in seigniories.

All moneys arising from the value of the rights of the Crown, from *droits de quint* and other dues, in or upon the seigniories of which the Crown is Seignior *dominant*, and which are to be commuted by this Act as such value shall be fixed by the schedules of the said seigniories respectively, and all arrears of such dues ;

Lauzon.

All moneys arising from the revenues of the seigniory of Lauzon, or from the sale of any part of the said seigniory which may hereafter be sold, and all arrears of such revenues ;

Auction duties,

All moneys arising from auction duties and auctioneers' licenses in Lower Canada ;

All moneys arising in Lower Canada from licenses to sell spirituous, vinous or fermented liquors by retail in places other than places of public entertainment, commonly called shop or store licenses ; Shop licenses.

All moneys which shall arise from tavern licenses in Lower Canada, after the present charges on that Fund shall have been paid off, except however, such portion of that Fund as shall be levied in the townships. Tavern licenses in certain cases.

And separate accounts shall be kept of all moneys arising from the sources of revenue aforesaid, and of the moneys disbursed under this Act, allowing interest on both sides at the then current rate on provincial debentures, to the end that if the sums payable out of the Consolidated Revenue Fund under this Act, shall exceed in the whole the total amount of the sums arising from the sources of revenue so specially appropriated and any interest allowed thereon as aforesaid, a sum equal to such excess may and the same shall be set apart, to be appropriated by Parliament for some local purpose or purposes in Upper Canada. Separate accounts to be kept with a view to an appropriation for Upper Canada purposes.

XIX. The Special Fund constituted as aforesaid for the purposes of this Act, shall, after deducting the expenses incurred under this Act, be appropriated in aid of the *Censitaires* in the several seigniories, in the following manner : How the money hereby appropriated shall be applied in aid of the *Censitaires*.

2. The sum to be established as the value of the rights of the Crown in each seigniory as aforesaid, and the difference between the absolute value in *franc-aleu roturier* of all unconceded lands, waters and water powers in the seigniories and the value of the Seigniors' rights therein, shall be appropriated in aid of the *Censitaires* of such seigniory in reduction of the *rentes constituées* representing the *lods et ventes* or other mutation fines therein, by an equal per centage of reduction on each such *rente ;* Value of Crown rights in each seigniory to be given the *Censitaires*, therein, in reduction of commutation for *lods et ventes*.

3. The remainder of the said Special Fund shall be apportioned by the Receiver General (amongst the several seigni- Remainder among all the seigniories in

proportion to the charges on each.

ories to which this Act extends,) giving to each an equal per centage on the total amount of the constituted rents established by the schedule of each such seigniory, after deducting the value of the Crown's rights therein ; And the sum as apportioned to each seigniory shall be applied by the Receiver General in the following order, which shall be the order of charges thereon :

How the aid shall be applied :

To redemption of commutation money of *lods et ventes;*

1st. To the redemption of so much of the said *rentes constituées* representing the *lods et ventes* or other mutation fines in the seigniory as may remain after the reduction made by the application of the value of the Crown's rights as aforesaid, by an equal per centage of reduction on such remaining *rentes* in each case ;

Of banality ;

2dly. To the redemption of the *rentes constituées* representing the banality in the seigniory, by an equal per centage of reduction on each such *rente ;*

Of *cens et rentes* exceeding 1d. per arpent ;

3dly. To the redemption of the *rentes constituées* representing the *cens et rentes* and other charges on lands held for agricultural purposes in the seigniory, by an equal per centage of reduction on each such *rente constituée*, exceeding the rate of one penny half penny per annum, per *arpent ;*

Reduction of *rente* in any case ;

4. The reduction of such *rentes constituées* shall always be in proportion to the capital sum applied to effect such reduction, the reduction being equal to the legal interest of such capital ;

Sum apportioned to belong to the Seigniors.

5. The sums so apportioned for each seigniory shall belong to the Seignior thereof, subject always to the right of the Seignior *dominant*, and shall be dealt with in every respect, as moneys paid in redemption of the *rentes constituées* mentioned in the schedule of such seigniory, subject to the special provisions hereinafter made.

APPLICATION OF MONEYS ARISING FROM THE REDEMPTION OF SEIGNIORIAL RIGHTS, &c.

Oppositions to be filed by persons having claims on seigniories.

XX. Every proprietor of a seigniory, who shall have within his *mouvance* another or several fiefs, (unless the value of his rights has been entered in the schedule thereof,) and every person having an hypothecary claim on any seigniory the schedule relative to which shall be deposited in the office of the Clerk of the Superior Court in the District in which such seigniory or part thereof is situated, must, for the preservation of his privileges, within six months from the date of the notice in the *Canada Gazette* of the deposit of the schedule of such seigniory, file an opposition to the distribution of all moneys arising or which may arise from the redemption of the seigniorial rights in such seigniory; every such opposition shall be filed in the said office and have effect for thirty years, unless sooner withdrawn, or by judgment of the Court dismissed; and if any such opposition be renewed within a less time than thirty years, the opposant shall only be entitled to the costs of one single opposition; and while such opposition shall so remain in force, any *Censitaire* who shall pay the capital or redemption money, of the *rente constituée* to the Seignior, shall do so at his peril, and on pain of being liable to any such opposant for any loss he may thereby sustain.

Effect and duration of opposition.

What parties must file oppositions to preserve their privileges.

XXI. All minors, interdicted persons and married women, even in the case of dower not yet open (*non encore ouvert,*) and all who have entailed or contingent rights, by themselves or their tutors, curators, husbands or others, who may act for them, shall be also required, for the preservation of their privileges, to file their opposition to the distribution of all such moneys in the manner provided in the next preceeding section; but tutors, curators, husbands or others who shall have neglected to file such oppositions shall, nevertheless, continue to be responsible towards the persons under their charge or authority for any loss which may result from their negligence in the said behalf.

In default of opposition, Seign'or may receive his share of the fund, &c.

XXII. If, after the expiration of six months, from the date of the first publication in the *Canada Gazette* of the notice by the Receiver General of the deposit of the schedule of the seigniory in which such land is situated, the possessor of such seigniory produce to the Receiver General a certificate, granted by the Clerk of the Superior Court for the District, in which the schedule relative to such seigniory, or a triplicate thereof, is deposited, stating that there is no opposition to the payment of the redemption moneys in such seigniory, the said Receiver General shall pay to the said Seignior, on his giving a duplicate receipt thereof, the amount of any moneys coming to such Seignior out of the Special Fund hereinbefore mentioned, with interest thereon, at six per cent per annum, to be computed from the date of the said notice, and thereafter the Seignior shall have full right to receive the price of the *rentes constituées* in his seigniory directly from the *Censitaires*, and to deal with such *rentes* as he shall see fit.

And the capital of the *rentes constituées.*

How money in Receiver General's hands shall be dealt with in case of opposition filed.

XXIII. Whenever the Receiver General shall have ascertained the amount of money coming to any Seignior out of the Special Fund hereby appropriated in aid of the *Censitaires*, and there shall be an opposition filed as aforesaid to the distribution of such money, the Receiver General shall deposit a certificate of the said amount in the hands of the Clerk of the Superior Court in the District wherein the schedule relative to the said seigniory, shall have been deposited; and the said Court shall make the distribution of the said moneys among the opposants, according to the order of their hypothees, and the preference of their respective privileges; and the Receiver General shall pay the same to the Clerk of the Court to be distributed according to such order, but the interest on any sum coming to a Seignior, and in the Receiver General's hands, shall always be payable to such Seignior.

Corporations, tutors, &c., empowered to

XXIV. All persons holding in mortmain, corporations, tutors, curators and administrators possessing lands held *en*

roture, or persons holding entailed lands, the *rentes constituées* upon which may be redeemed with advantage to those whom they represent, may effect the redemption of any *rente constituée* under the provisions of this Act by paying the price of redemption out of the moneys of those whom they represent: Provided that tutors, curators and usufructuary proprietors (*usufruitiers*) and holders of entailed lands, observe the formalities required by law in the alienation of the persons whose rights shall be represented by them; but persons holding in mortmain and corporations shall not be required to observe any other formality in or before the redemption of any such *rente constituée* than those prescribed by this Act.

pay off the capital of *rentes constituées* under this Act

Proviso.

XXV. And it shall be lawful for the several religious or ecclesiastical communities, holding in mortmain fiefs or seigniories in Lower Canada, to invest, from time to time as they shall see fit, in any lands or tenements in this Province, or in any public or private securities in this Province, which they shall deem the most advisable or advantageous to their respective communities, any sums of money that may accrue to them from the redemption of any *rente constituée* created under this Act, or out of the Special Fund appropriated by this Act.

Religious communities holding seigniories may invest commutation money in real estate.

DESTINATION AND LEGAL CHARACTER OF PROPERTIES AND RIGHTS HEREAFTER TO REPRESENT SEIGNIORIES.

XXVI. In respect of all rights acquired in, to or upon, any seigniory, before the publication in the *Canada Gazette* of the notice of the Receiver General of the deposit of the schedule of any seigniory in his hands, and for the preservation whereof an opposition shall have been filed within six months from the date of the said publication, all lands and real rights which, at and immediately before the passing of this Act, were held by the Seignior as part of his seigniory, all rights secured to him under the schedule thereof, all *rentes* under this Act to be created, all moneys to arise from the redemption of any such *rentes*, or to be received by the Sei-

As respects claims existing before the notice of deposit of the schedule, and for which oppositions shall be filed, the *rentes constituées* shall be dealt with as the seigniory

gnior out of the aid granted by this Act to the *Censitaires* towards the redemption of seigniorial rights, duties and dues, and all properties and rights so by such Seignior acquired as to represent such moneys, shall be held and taken as though attached to the *domaine* of such seigniory, and as representing such seigniory; but in respect of all rights thereafter to accrue, or for the preservation whereof no opposition shall have been filed within the delay aforesaid, all such lands, rights, *rentes* and moneys, shall be held and taken to be, and shall be to all intents separate and independent properties and rights; and it shall not be requisite that any person, in order to the holding, recovery or enforcement of any thereof should qualify himself as being, or as ever having been, a Seignior.

As regards other rights the said *rentes* shall be distinct properties.

Privileges for securing such *rentes*.

XXVII. All *rentes constituées* to be created under this Act, shall have the same privileges *ex causâ* as the right of the *bailleur de fonds*, and the like preference over all other hypothecary claims affecting the land, as any seigniorial dues upon or arising out of such land would have had previous to the redemption of the said dues, without any registration in any Registry office to that end; but the creditor shall not have the right to recover more than five years' arrears of any such rent; and in default of moveables out of which the amount of any judgment for such arrears, though amounting to less than ten pounds currency, may be levied, execution may issue against such land after a delay of one year from the date of such judgment, and not sooner.

No more than five years' arrears to be recoverable.

In what cases any such *rentes* shall be redeemable.

XXVIII. Every *rente constituée*, established by virtue of this Act, shall always be redeemable by consent of the owner of the land and of the Seignior, in cases where the Seignior has the right to the capital thereof for his own use, and not otherwise; but if the seigniory be entailed (*substituée*) or held by a tutor, curator or usufructuary proprietor (*usufruitier*), and an opposition be filed and then in force, the *rente* and arrears only shall be received, subject always to the exception in the next following section, which shall apply to all cases of redemption of such *rentes*.

XXIX. Provided always, that it shall not be lawful to redeem any such *rente constituée* except by the consent of the Seignior having the right to the capital thereof for his own use, at any other time, in any year, than the day on which such *rente* is payable; But provided also, that at any time and whether the Seignior have or have not the right to the capital of the *rentes constituées* under this Act, for his own use, it shall be lawful for the *Censitaires* in any seigniory to redeem by one payment all the said *rentes constituées* then remaining in the seigniory, and, in such case, the redemption money shall be paid to the Seignior, if there be then no opposition filed as aforesaid and in force; and if there be such opposition, then it shall be paid to the Receiver General, and shall be dealt with in all respects as money coming to the Seignior out of the Special Fund appropriated in aid of the *Censitaires;* and the paying of such redemption money shall always be one of the purposes for which money may be raised on the credit of the Consolidated Municipal Loan Fund for Lower Canada, under any law in force for raising money on the credit of such fund: and the redemption money under this section shall always be the capital sum of which the *rentes* redeemed shall be equal to the legal interest, unless another rate be agreed upon by the *Censitaires* and a Seignior having the right to such redemption money, for his own use.

Such *rentes* shall be redeemable in every case if paid off at once for the whole seigniory.

How the redemption money shall be dealt with

Money may always be raised for this purpose on the credit of the municipal loan fund.

MISCELLANEOUS PROVISIONS.

XXX. No sale under writ of execution (*par décret*) shall have the effect of liberating any immoveable property then or theretofore 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, due before the completion of the schedule of the seigniory in which such property lies, or from any *rente constituée* payable thereon under such schedule, but every such immo-

Décret not to purge seigniorial rights or any *rente constituée* representing them.

veable property shall be considered as having been sold subject thereafter to all such rights, charges, conditions or reservations, whithout its being necessary for the Seignior to make an opposition for the said purpose before the sale.

Opposition for such rights or *rente* to be null.

XXXI. If notwithstanding the provisions of this Act, any opposition *afin 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 returned into Court by the Sheriff after the sale, to be dealt with as to law may appertain.

Seignior's privilege for arrears before commutation maintained.

XXXII. The Seignior of whom any land the tenure of which shall be commuted under this Act, was held, shall be maintained, in his privileges and hypothecs on the land, for the payment of all arrears of seigniorial rights lawfully due at the time of such commutation.

CERTAIN LANDS DECLARED TO BE AND TO HAVE BEEN HOLDEN IN FRANC-ALEU ROTURIER.

Lands heretofore commuted to be held in *franc aleu*.

XXXIII. All lands which any Seignior has, by any act (*acte*) or deed in writing heretofore executed, released or agreed to release from all seigniorial rights in consideration of the payment of any sum of money or of any annual rent, are hereby declared to be and to have been, from the day of the date of every such act (*acte*) or deed, free from all such seigniorial rights and holden in *franc-aleu roturier*; but the Commissioners, for the purpose of making the schedules of seigniories in which any such lands are situated, shall deal with all such land as if they were now held *en roture*, and when the same are liable to an annual rent, shall establish, and specify in the schedule, the capital of every such rent, in order that the same may be redeemed by the person liable therefor, in the same manner as any *rente constituée* established by this Act.

Rentes imposed on them may be redeemed, &c.

XXXIV. All lands upon which mortmain dues (*lods et ventes d'indemnité*) have been paid to any Seigniors, and which have not been sold or conceded since such payment to parties holding otherwise than in mortmain, are hereby declared to be and to have been, from the day of the date of such payment or of any act (*acte*) or deed in writing, binding the owner to pay the same, released from all seigniorial dues and duties and held *en franc aleu-roturier*, but subject to the payment of a *rente constituée* equal to the *cens* and rent legally due thereon.

Certain lands on which mortmain dues have been paid to be held en franc aleu roturier.

INTERPRETATION AND EXTENT OF THIS ACT.

XXXV. And, for the interpretation of this Act—Be it enacted, That none of the provisions of this Act shall extend to the wild and unconceded lands in seigniories held by the Crown in trust for the Indians, nor to the seigniories held by the Ecclesiastics of the Seminary of St. Sulpice of Montreal, nor to either of the fiefs Nazareth, Saint Augustin, Saint Joseph, Closse and Lagauchetière, in the City and County of Montreal, nor to any other *arrière fief* depending upon (*relevant de*) any of the said seigniories, nor to the seigniories of the late order of Jesuits or other seigniories held by the Crown and not above mentioned, nor to the seigniories held by the Principal Officers of Her Majesty's Ordnance, nor to any lands held *en franc-aleu noble* and granted under and by virtue of the Act of the Parliament of the late Province of Lower Canada, passed in the third year of the Reign of His late Majesty King George the Fourth, and intituled: *An Act for the relief of certain* Censitaires *or grantees of La Salle and others therein mentioned, possessing lands within the limits of the township of Sherrington:* Provided always, that the Governor in Council may if he shall see fit, grant to the *Censitaires* of the Crown seigniories the revenues whereof belong to the Province, (including the seigniories of the late order of Jesuits), upon commutation of their lands, equal advantages and relief as are hereby granted to the *Censitaires* of seigniories not excepted from the operation of this Act.

Act not to extend to certain seigniories.

Seigniory of the Seminary of St. Sulpice, and certain *fiefs* held of it

Crown and Jesuits' Seigniories.

Ordnance Seigniories.

Certain lands in Sherrington.

Act. of L. C. 3 Geo. 4, c. 14.

Proviso: Governor may grant equal advantages to *Censitaires* in Crown seigniories.

Act not to affect arrears, &c.

XXXVI. Nothing herein contained shall affect the right to, or the recovery of, any arrears of seigniorial dues accrued before the passing of this Act, or shall give any person whomsoever any right of action for the recovery of money of other value paid by him or his predecessors in the form of rents or other seigniorial dues, or for the recovery of damages which he may pretend to claim for the privation of any right of which he may deem that he has been illegally deprived by his Seignior, unless he would have had such right of action if this Act had not been passed; nor shall any thing in this Act be construed to weaken or to support any claim of any Seignior or of any *Censitaires* to any right claimed by or for them respectively, at the hearing on the questions and propositions to be submitted under this Act to the Judges for their decision, but the same shall be decided by the law as it stood immediately before the passing of this Act.

Seigniors' rights to be decided as they stood before the passing of this Act.

Interpretation of words;

Seigniory;

Seignior;

Seignior and *Censitaire*;

Seigniorial rights;

XXXVII. The word "seigniory," wherever it occurs in this Act, shall be construed as meaning any part of a fief, *arrière-fief* or seigniory held by a single individual, or by a corporation, or held by several persons in common (*par indivis*) as well as the whole of a *fief*, *arrière-fief*, or seigniory, except in such parts of this Act in which the words "*arrière-fief*" and "*seigniory*" are made use of to distinguish the *fief dominant* from the *fief servant*; and the word "Seignior" shall be construed as meaning any coporation, or any sole proprietor, and all persons who are proprietors in common (*par indivis*) of any part of a *fief*, *arrière-fief* or seigniory, as well as any person or corporation, being sole proprietor, and all persons, proprietors jointly and *par indivis* of the whole of any such *fief*, *arrière-fief*, or seigniory: the words "Seignior" and "*Censitaire*" shall apply to the owner of any *rente constituée* created under this Act, and the person charged therewith, respectively, as well as to the owner of and person charged with the rights and duties represented by such *rente*; the words "seigniorial rights," whenever they occur in this Act, shall include and be construed as

including all rights, duties, charges, obligations and seigniorial or feudal dues whatsoever; the word "land" shall mean any lot, piece or parcel of land, and shall include the buildings thereon constructed, and all its appertenances. Land.

XXXVIII. The Legislature reserves the right of making any provision, declaratory or otherwise which may be found necessary for the purpose of fully carrying out the intent of this Act; which intent is declared to be,—to abolish as soon as practicable, all feudal or seigniorial rights, duties and dues, substituting therefore *rentes constituées* of equal value,—to grant to the Seignior a fair indemnity, and no more, for all the lucrative rights which the law gives him, and which this Act will abolish,—to preserve the rights of third parties, unless such rights be lost by their own neglect or laches;—and to aid the *Censitaire* out of the Provincial Funds in the redemption of those seigniorial charges which interfere most injuriously with his independence, industry and enterprise; and every enactment and provision of this Act shall receive the most liberal construction possible with a view to ensure the accomplishment of the intention of the Legislature, as hereby declared. Right to amend this Act in furtherance of its intent reserved. Its intent declared.

XXXIX. The "Interpretation Act" shall apply to this Act. Interpretation Act to apply

XL. This Act shall be known, cited and referred to, as "The Seigniorial Act of 1854." Short title.

XLI. This Act shall apply to Lower Canada only. Extent of Act

FORM A.

Public notice is hereby given that the schedule (*of the fief, arrière fief* or *of the seigniory*) of (*name of fief, arrière-fief* or *seigniory*) shewing the *rentes constituées* into which the feudal and seigniorial rights, dues, charges, obligations and rents due and payable upon each land in such (*fief, arrière-*

fief or *seigniory*) are converted, is completed, and that a triplicate thereof has been deposited in the office of the Receiver General, and another in the office of the Superior Court in the District of and that the third remains in the possession of the undersigned.

(*Here give the name of the locality in which the Commissioner is sitting, and the date.*)

A. B.
Commissioner under the Seigniorial Act of 1854.

ANNO DECIMO-OCTAVO

VICTORIÆ REGINÆ.

CAP. III.

An Act to amend the Seigniorial Act of 1854.

[*Assented to 30th May*, 1854.]

Preamble. WHEREAS it is expedient to amend *The Seigniorial Act of* 1854, so as to facilitate the operation thereof: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, as follows:

18 V. c. 3.

Rente constituée in seigniories, in respect of which oppositions are filed, may be redeemed, and how

1. Notwithstanding any thing in the twenty-eighth and twenty-ninth sections or in any other part of the said Act contained, any constituted rent (*rente constituée*) established by virtue thereof in any seigniory, in relation to which an opposition shall have been filed under any of the provisions of the said Act, may, at any time, be redeemed by payment to the Receiver General of the capital thereof with interest computed up to the date of such redemption:

2. And the Receiver General shall dispose of all such moneys as follows:

If the opposition be founded on a substitution.

If they accrue in a seigniory, in relation to which opposition has been made on the ground that such seigniory is entailed (*substituée*) or held by a curator, tutor or other person holding in trust for others, and not as absolute proprietor (*jure proprietario*,) the Receiver General shall, on the day in each year, on which the *rente* would have become due if it had not been redeemed, and so long as such entail (*substitution*) or tenancy in trust (*fidéicommis*) shall subsist, pay to the person entitled to the revenue of the seigniory, interest upon the capital of all such *rentes* at the rate of six *per centum per annum*, and he shall pay the capital thereof at the expiration of the substitution, or tenancy in trust, to such person as shall be designated by the Judgment of the Court before which such opposition shall have been made :

Proviso : Court may, on petition, order the money to be laid out in the purchase of real estate to be held on the same conditions to which the money itself was subject.

Provided always, that it shall be lawful for the said Court, on petition of such curator, tutor or other person holding in trust for others, at any time, before the expiration of the substitution or tenancy in trust, to order that such capital, or any portion thereof, shall be, by such curator, tutor or other person, laid out and invested in real or immoveable property to be designated in the order, and thereupon, it shall be lawful for the Receiver General to pay the sum mentioned in such order to the person or party therein designated as the vendor of such real or immoveable property, or as otherwise entitled to receive the price thereof, and thereafter such real or immoveable property shall be subject to all such and the same trusts (*fidéicommis*) or entails (*substitutions*) as the seigniory, in respect to which the same was so ordered to be acquired as aforesaid.

And if upon hypothecary claims.

And if they accrue in a seigniory, in relation to which such opposition has been made by reason of hypothecary claims thereon, and not upon the ground of the same being entailed or held in trust as aforesaid, the Receiver General shall deal with such moneys in the same manner as with money accruing to the Seignior out of the Special Fund appropriated by said Act in aid of the *Censitaires*.

3. And in every seigniory, the Seignior whereof shall have the right to receive the capital of the *rentes constituées* to be established under the said Act, such *rentes* may be redeemed, without the consent of the Seignior, by payment of the capital thereof to the Seignior or to his agent, either on the day on which such *rente* shall annually become due, or on any one of the seven days immediately following; and whenever the capital of any such *rente* shall have been duly tendered to any such Seignior or to his agent, on any one of the said days, and the same, or a receipt therefor, shall have been refused, such *rente* shall become redeemable at any time thereafter.

In other seigniories, *Censitaires* to have eight days in each year on which to redeem.

II. And whereas the objects, for which Seigniors under the existing law are permitted to obtain *lettres de terrier* for the purpose of forming a new terrar (*papier terrier*) or land-roll, will be secured in a manner less onerous to the *Censitaires* by the provisions of the said Seigniorial Act of 1854, in so far as such objects are reconcilable with the intention of the Legislature in passing the said Act: therefore the right of Seigniors, in Lower Canada, to obtain such *lettres de terrier* in or for any seigniory to which the said Seigniorial Act of 1854, as amended by this Act, extends, is hereby abolished, and the Act of the Legislature of Lower Canada, passed in the forty-eighth year of the Reign of King George the Third, and intituled, *An Act which declares in whom is vested the power of granting* des lettres de terrier *in this Province*, in so far as regards every such seigniory, is hereby repealed.

No *lettres de terrier* to be hereafter issued in seigniories to which the said Act applies.

Act of L. C. 48 G. 3, c. 6, repealed as to such seigniories.

III. And whereas, under the said Act, no mutation fine will be payable on any mutation of land in a seigniory subject to its provisions, or of such seigniory itself, occurring after the publication of the notice of the deposit of the schedule thereof, and there is therefore a strong temptation to defer mutations until after such publications, or to conceal the fact of their being made before it, to the great inconvenience and loss of all parties; And whereas some time will elapse be-

Recital

fore the schedules of all the seigniories can be completed; And whereas the appropriation in aid of the *Censitaires*, made by the said Act, was made with the intent that it should take effect immediately, and until it is payable, the interest upon loan necessary to raise the sum required, is saved to the Province: Be it therefore enacted, That no *lods et ventes*, *quint*, *relief* or other mutation fine, shall accrue upon any mutation which shall take place after the passing of this Act, in any fief or seigniory to which the said Seigniorial Act of 1854, as amended by this Act, extends or applies, but instead thereof the Receiver General shall credit the Fund appropriated by the said Act in aid of the said *Censitaires*, with interest, from the passing of this Act, on the total amount of the appropriation, and the *rente constituée* payable by any Seignior to his Seignior *dominant* shall accrue from the passing of this Act; And if the schedules of all the seigniories be not deposited by the first day of January, one thousand eight hundred and fifty-six, so that the said Fund can be finally devided among them, the Commissioners, under the said Act, or any one or more of them authorized for that purpose by instructions from the Governor through the Provincial Secretary, shall, forthwith, make an approximate estimate of the share thereof coming to each Seignior or Seignior *dominant*, to the best of their ability and according to the best information they can obtain, and the interest from the passing of this Act on the share coming to each Seignior *dominant*, shall be paid to him on the first day of January and July, until his share shall be finally ascertained, when the amount so paid shall be debited to him, and he shall be credited with the interest from the passing of this Act on his share as so ascertained, and the difference shall be balanced by crediting or debiting him, as the case may require, in his account with the Receiver General in respect of such share, with a sum equal to such difference; and for the purpose of making such approximate estimate as aforesaid, the said Commissioners may require and receive from the several Seigniors such statements, attested on oath before a Judge of

No mutation fine to be hereafter payable in seigniories to which the said Act applies; interest on the sum to which he may be entitled out of the provincial aid to the *Censitaire*, to be payable to the Seignior instead thereof and approximate estimate to be made until the schedules are prepared.

the Superior Court or a Circuit Judge, as they shall consider expedient for the purpose: Provided always, that the sum paid by the Receiver General as interest under the section, shall be taken into account in ascertaining the sum to which Upper Canada may be entitled for local purposes under section nineteen of the said Act.

Proviso: as to the claims of U. C.

IV. The right of *retrait conventionnel*, which the Seignor was allowed to stipulate solely for the purpose of securing to him the payment of mutation fines, is hereby abolished.

Retrait conventionnel abolished.

V. The Receiver General shall, from time to time, place any moneys in his hands as part of the Fund appropriated by the said Act, and not then required for the purposes thereof, at interest in any Chartered Bank, or invest the same in provincial debentures or debentures guaranted by the Province, and shall apply the interest thereon towards making good that allowed under the Act.

Receiver General may invest moneys appropriated by the said Act, and not immediately required.

VI. And for the avoidance of doubts, Be it declared and enacted, That any Commissioner, under the said Act, may give any notice required by the seventh section or by any other part thereof, with respect to any seigniory or seigniories, and another or others of them may afterwards act in any way under the said Act with respect to such seigniory or seigniories; and generally each Commissioner who shall act with respect to any seigniory, shall be held to be the Commissioner assigned to act in and for the same under the fourth section of the said Act, unless the Governor shall have otherwise directed and ordered.

Doubts as to certain powers of the Commissioners removed.

VII. So much of the said Seigniorial Act of 1851, as provides that none of its provisions shall apply to any lands held on *franc-alen noble*, and granted under and by virtue of the Act of the Parliament of the late Province of Lower Canada passed in the third year of the Reign of His late Majesty King George the Fourth, and intituled, *An Act for the relief of certain* Censitaires *or Grantees of La Salle and others*

The said Act shall apply to certain lands in Sherrington

therein mentioned possessing lands within the Township of Sherrington, shall be and is hereby repealed, and the said Act shall apply to the said lands; but inasmuch as the decision of the Special Court to be constituted under the sixteenth section of the said Seigniorial Act of 1854, cannot affect the said lands, therefore the schedule relating thereto may be completed and deposited without waiting for the decison of the said Special Court.

Shedules may be made for the Crown seigneries, held for provincial purposes.

VIII. Notwithstanding anything in the said Seigniorial Act of 1854, schedules may, if the Governor shall see fit so to direct, be made under the provisions thereof for the seigneries held by the Crown, and the revenues whereof belong to the Province, including the seigneries of the late order of Jesuits, in like manner and under the same provisions as for other seigneries (omitting such particulars as cannot apply to Crown seigneries), and with like power to the Commissioners; Provided that no part of the appropriation in aid of the *Censitaires* made by the said Act, shall be applied towards the redemption of seigniorial rights in such Crown seigneries, nor shall any such schedule be deposited in the manner provided in the thirteenth section of the said Act, or operate any compulsory commutation of tenure, or substitution of any *rente constituée* for the seigniorial rights and dues in such seigniory; but the Governor in Council may, if he see fit, allow the *Censitaires* in the said seigneries, upon commutation of their lands, equal advantages and relief with those which *Censitaires* in other seigneries shall be found to obtain under the said Act, and the schedules made under this section shall serve as the basis for cultivating the extent of such advantages and relief to be so allowed to the *Censitaires* in the said Crown seigneries.

Effect and use of such schedules.

Errors in french version of the said Act, corrected.

IX. And whereas some errors have crept into the french version of the said Act which it is desirable to correct: Be it enacted, that in the said french version, for the words "*tel que désigné*," in the eight line of the fourth paragraph of the

fifth section of the said Act, the words "*comme étant distinct*" shall be substituted;—and for the words "*quinze jours d'avis*", in the fourth line of the sixth paragraph of the twelfth section, the words "*huit jours d'avis*" shall be substituted,—the lines herein refered to being those in the first official edition of the said Act printed by the Queen's Printer.

Schedules and proceedings completed under the said Act, not to be afterwards impeached for want of form.

X. After any schedules shall have been completed and deposited under the said Act, it shall not be impeached or its effect impaired for any informality, error or defect in any prior proceeding in relation to it, or in any thing required by the said Act to be done before it was so completed and deposited, but all such prior proceedings and things shall be held to have been rightly and formally had and done, unless the contrary expressly appear on the face of such schedule; and the same rule shall apply to all proceedings of the Commissioners under the said Act, so that no one of them, when completed, shall be impeached or questioned for any informality, error or defect in any previous proceeding, or in any thing therefore done or omitted to be done by the Commissioners or any of them.

Certain persons occupying lands with consent of Seignior to be deemed *Censitaires.*

XI. For the purposes of the said Act, every person occupying or possessing any land in any seigniory with the permission of the Seignior, or from whom the Seignior shall have received *rentes* or other seigniorial dues in respect of such land, shall be held to be the proprietor thereof as *Censitaire.*

Persons unlawfully impeding in any way the execution of the said Act, how to be dealt with and punished.

XII. Any person who shall in any manner interrupt, obstruct, impede or molest a Commissioner named under "The Seigniorial Act of 1854," or any person acting under his instructions, in the execution of his duty in any matter connected with the carrying into effect of the said Seigniorial Act of 1854 or of this Act, or shall in any manner deter, prevent or hinder, by force, threats or otherwise, any such Commissioner, or person acting under his instructions from performing any duties assigned to him by and under either of the said Acts, shall be liable to be imprisoned for every such

such offense for a period not exceeding two months, and it shall be lawful for any one Justice of the Peace to commit any person convicted before him, on the oath of one credible witness, of any such offence ; and no conviction, order, warrant or other matter made or purporting to be made under this Act, shall be quashed for want of form, or be removed, by *certiorari* or otherwise, into any of Her Majesty's Courts of record for want of such form.

Conviction not to be quashed for want of form, &c.

Short title of this Act.

XIII. In citing or referring to this Act in any Act or proceeding whatsoever, it shall be sufficient to refer to it as the "*Seigniorial Amendment Act of* 1855," by which title it shall be known and called.

PROCEEDINGS OF THE SPECIAL COURT,

Held under the authority of the Seigniorial Act of 1854, *passed by the Provincial Parliament of Canada, in the* 18*th year of Her Majesty's Reign, Cap.* 3.

Thursday, the 22*nd of Febrruary,* 1855.

The Honorable Lewis T. Drummond, Her Majesty's Attorney General for Lower Canada, files "Questions" in the english and french languages, to be submitted to the Judges of the Court of Queen's Bench and of the Superior Court for Lower Canada, under the provisions of the Seigniorial Act of 1854. (1).

APPEARANCES FILED.

Date.	Names of Seigniors	Names of seigniories.	Attorneys.
1855.			
May, 5	L. M. Viger	Repentigny	C. S. Cherrier.
	Dme Marie Aurélie Faribault	L'Assomption Bayeul	"
	Hon: John Pangman	Lachenaie	C. Dunkin.
	John Fraser	Contre-Cœur, Cournoyer	"
	Hon. J. R Rolland	Monnoir	"
	Dme C C DeLotbinière	Rigaud	"
	Hon: John M. Fraser	Mount-Murray	"
	J. S. C. Wurtele	Rivière David & Bourg-Marie de l'Est	Robt. Mackay.
	Arthur Ro s	St. Gi'es de Beaurivage.	"
May, 7	John S. Campbell	L'Islet du Portage (Quebec)	"
	William Pozer	Aubert-Gallion	"
	Hon: D. B. Viger	Isle Bizard	C. S. Cherrier
	George H. Monk	Blainville	"
	Ol. T. Bruneau	Montarville	"
	Hon: L. J Papineau	Petite-Nation	"
	Dme M. H. C. Juchereau Duchesnay, ès qualité	Deschaillons (Quebec). St. Ours (Montreal)	"

(1) See the judgment hereinafter cited.

Date.	Names of Seigniors.	Names of seigniories	Attorneys.
1855.			
May, 7	Dme Thérèse Eugenie Panet et Benjamin Abbott	Ramezay	C. S Cherrier
	Dme Marie Louise Panet et Art Lamothe	Part of D'Aillebout	"
	Pierre Louis Panet	Part of D'aillebout and of Ramezay	"
	Ursulines Nuns of Quebec	Ste Croix and other places	C. Dunkin.
	W. Berczy and D. L. Aurelie Panet.	Part of D'aillebout..	C S. Cherrier
	Dme Charlotte Mélanie Panet	" " "	"
	Charles Alfred Cuthbert, Edward Octavian Cuthbert, and Dme Cécilia Anna F. Cuthbert and vir	Berthier and St Cuthbert.	"
	Hon: James Leslie	Bourchemin and Ramsay	"
	Hon: Ross Cuthbert	Lanoraie and d'Autré	"
	Henry W. Trigge & Thomas Trigge tutor to Alfred Trigge	Nicolet	C. Dunkin.
	Hon: Dominique Mondelet	Part of Delartzch and of Rougemont	"
	John Yule	Chambly East	"
	John Nairne	Murray (Quebec)	"
	Ol. Perrault de Linière	Taschereau, Linière & St Joseph de la Beauce.	"
	Charles James Unwin Grant	Longueuil	"
	Alex. E. Kierzkowski & al	St. François le Neuf	"
	Susan Johnson	Argenteuil	"
	Dme Louisa Sophia Campbell	St. François and Lussandière (3 Rivers)	"
	Joseph Frederick Allard	Foucault	"
	Charles Aug. Max. Globenski & al.	Mille Isle and part of 2 Mountains	"
	Thos. Edmund Campbell	Rouville	"
	Dme Louise Chartier de Lotbinière and viz	Vaudreuil	"
	Dme Marie Eliz. Grant	Belœil and Augmentation	"
	Samuel Gerrard	Maskinonge	"
	Dme Marie A. T. T. DeLanaudière	Lavaltrie, (Part) (Fief Tailland)	"
	The same and Chs. Leodel	Lavaltrie	"
	Amelia Martha Bowman	Bleury	"
	George Casimir Dessaulles	Yamaska	"
	Louis Antoine Dessaulles	Dessaulles	"
	Dme Rosalie Eugénie Dessaulles	Rosalie	"
	Dme Charlotte Tarieu De Lanaudière	Joliette	"
	William Fraser & all	Rivière-du-Loup (Quebec)	"
	Charles B. T. T. DeLanaudière	Part of Lavaltrie	"
	Chs. J. Chaussegros De Lery & al.	Rigaud-Vaudreuil (Quebec)	"
	Sir Edmund Filmer & al	Champlain (3 Rivers)	"
	Mary Christian Burton & vir	Noyan	"
	Dme Marie Geneviève Sophie Raymond	Terrebonne	"
	Catherine Anna Gordon	Sabrevois	"
	David Shaw Ramsay	Ramsay and Bourchemin	T. R Ramsay

Monday, the 7th of May, 1855.

C. Dunkin, esquire, files, on behalf of Dame Charlotte Chartier de Lotbinière, wife of William Bingham, esquire, Seigniores of the fief and seigniory of Rigaud, in the District of Montreal, a series of "Supplementary Questions" or "Counter-Questions."

He also files another series of "Supplementary Questions" on behalf of Dame Louise Chartier de Lotbinière, wife of the Honorable Robert Unwin Harwood, Seigniores of the fief and seigniory of Vaudreuil.

Also, another series of "Supplementary Questions" on behalf of the Honorable John Pangman, Seignior of the fief and seigniory of Lachenaie, in the District of Montreal.

Also, another series of "Supplementary Question" on behalf of the Honorable John Malcolm Fraser, Seignior of the fief and seigniory of Mount-Murray, in the District of Quebec.

Also, another series of "Supplementary Questions" on behalf of the Honorable Jean Roch Rolland, Seignior of the fief and seigniory of Monnoir, in the District of Montreal. (1)

Wednesday, the 24th day of August.

E. Parant, esquire, Assistant-Provincial Secretary, transmits, this day, to the Deputy Clerk of Appeals, Charles Drolet, esquire, at Quebec, a Proclamation of which the following is a copy.

(1) See the judgment hereinafter cited.

" PROVINCE OF CANADA, }
LOWER CANADA. }

" *His Excellency* SIR EDMUND WALKER HEAD, *Baronet, Governor General of British North America and Captain General and Governor in Chief in and over the Provinces of Canada, Nova Scotia, New Brunswick and the Island of Prince Edward and Vice-Admiral of the same, &c., &c., &c.*

" To all to whom these presents shall come,——GREETING :

" L. T. DRUMMOND, } KNOW ye that pursuant to the Pro-
Atty-Genl. } visions of an Act of the Legislature of the Province of Canada, passed in the eighteenth year of Her Majesty's Reign, intituled " An Act for the abolition of feudal rights and duties in Lower Canada," and in virtue of the authority in me vested by the said Act, I, Sir Edmund Walker Head, Baronet, Governor-General of the said Province, do, by this my Proclamation, direct that a special session of the Judges of the Court of Queen's Bench and of the Superior Court for Lower Canada, for the purposes of the said Act, shall be held at the City of Quebec, in the said Province, on Tuesday, the fourth day of September now next ensuing, at the place known as the Court House for the District of Quebec ; of all which Her Majesty's Judges of the said Courts and all Seigniors and others whom these presents do or may in any wise concern, are hereby required to take notice and govern themselves accordingly.

" Given under my Hand and Seal at Arms, at Quebec, this twenty-third day of July in the year of Our Lord one thousand eight hundred and fifty-five and in the nineteenth year of Her Majesty's Reign,

EDMUND HEAD,

" By Command,

GEO. ET. CARTIER,
Secretary."

Tuesday, the 4th day of September, 1855.

The Special Court, composed of the Judges of the Court of Queen's Bench and of the Superior Court for Lower Canada, constituted under the authority of "The Seigniorial Act of 1854," passed by the Legislature of this Province in the eighteenth year of Her Majesty's Reign, and intituled "An Act for the abolition of feudal rights and duties in Lower Canada," met in the City of Quebec, on Tuesday, the fourth day of the month of September, in the year 1855, being the day fixed by the Proclamation of His Excellency the Governor General, bearing date the 23rd July, 1855.

Present :—The Honble. Sir Louis Hippolyte La Fontaine, *Bt. Chief Justice of the Court of Queen's Bench.*

The Honble. Edward Bowen, *Chief Justice of the Superior Court.*

The Honble. Mr. Justice Aylwin, " Mr. Justice Duval, " Mr. Justice Caron, } *Puisné Judges of the said Court of Queen's Bench.*

AND

The Honble. Mr. Justice Day, " Mr. Justice Smith, " Mr. Justice Vanfelson, " Mr. Justice C. Mondelet, " Mr. Justice Meredith, " Mr. Justice Short, " Mr. Justice Morin, " Mr. Justice Badgley, } *Puisné Judges of the said Superior Court.*

The Clerk of Appeals reads the Proclamation above set forth.

The Attorney-General produces six numbers of the Canada Gazette, containing the Questions submitted by him, to wit :

No.	8	Vol.	XIV.	of the	24	February,	1855.
"	9	"	"	"	3	March,	"
"	10	"	"	"	10	"	"
"	11	"	"	"	17	"	"
"	12	"	"	"	24	"	"
"	13	"	"	"	31	"	"

On motion of C. S. Cherrier, esquire, advocate, permission is granted to the Reverend Gentlemen of the Seminary *des Missions Etrangères*, established at Quebec, in the District of Quebec, Seigniors and proprietors in possession of the fiefs and seigniories of Beaupré, Sault-au-Matelot and Coulonge, in the said District, and of the fief and seigniory of *Isle Jesus*, in the District of Montreal, and of other places, to appear and file their appearance subject to all legal objection.

Messrs. F. Real Angers and T. J. J. Loranger appear as counsel on behalf of the Crown, to be heard upon the "Questions" prepared and submitted to the Court by the Attorney-General.

Upon the suggestion of the Honble. L. T. Drummund, Attorney-General, the Court is adjourned till the following day, in order that the Parties may come to an understanding, as to the order to be observed in the argument of the "Questions," and "Supplementary Questions" submitted to the decision of the Tribunal.

Wednesday, the 5th day of September, 1855.

Present :—The Honble. Sir Louis Hippolyte LaFontaine,
Bt. Chief Justice of the Court of Queen's Bench.

The Honble. Edward Bowen,
Chief Justice of the Superior Court.

The Honble. Mr. Justice Aylwin,
" Mr. Justice Duval,
" Mr. Justice Caron,
} *Puisné Judges of the said Court of Queen's Bench.*

AND

The Honble. Mr. Justice Day,
" Mr. Justice Smith,
" Mr. Justice Vanfelson,
" Mr. Justice C. Mondelet,
" Mr. Justice Meredith,
" Mr. Justice Short,
" Mr. Justice Morin,
" Mr. Justice Badgley.
} *Puisné Judges of the said Superior Court.*

The Honorable Attorney General, Lewis T. Drummond, submits fo the Court the "Questions" prepared by him, and verbally takes his conclusions upon them, and at the same time files a printed summary of legal propositions (1)

The argument commenced between Messrs. Angers, Loranger and Barnard, Counsel for the Crown, on the one side, and Messrs. Cherrier, Mackay and Dunkin, on behalf of the Seigniors, on the other, both upon the "Questions" submitted by the Attorney General, and upon the "Supplementary Questions" of the Seigniors, occupies the attention of the Court during the 5, 6, 7, 8, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28 and 29th days of September, and during the 3, 4, 5, 6, 8, 10, 11, 12, 13 and 17th days of October. (2)

On the 8th of September, 1855, the Honorable Henry Black, D. L. and C. Dunkin, file a series of "supplementary Questions" or "Counter-Questions," on behalf of Sir Edmund Filmer, of East Sutton Place, in the County of Kent, Baronet, and Member of the Imperial Parliament, of David Arthur Munro, Major in Her Majesty's 12th regiment of Lancers, and of William Woodroofle of London, gentleman, Seigniors, in possession of the seigniory of Champlain, in the District of Three-Rivers. (3)

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(1) See the judgment hereinafter cited.

(2) Persons composing the Court:—Judges:—Sir L. H. La Fontaine, Baronet, Chief Justice of the Province of Lower Canada, President of the Court of Queen's Bench; the Honorable E. Bowen, Chief Justice of the superior Court for Lower Canada; the Honorable T. C. Aylwin, the Honorable John Duval, the Honorable R. E. Caron, (the three latter Judges of the Court of Queen's Bench), the Honorable C. D. Day, the Honorable J. Smith, the Honorable G. Vanfelson, (deceased during the sitting of the Court), the Honorable C. Mondelet, (the four last Judges of the Superior Court at Montreal), the Honorable W. C. Meredith, Judge of the Superior Court at Quebec, the Honorable E. Short, Judge of the Superior Court at Sherbrooke, the Honorable A. N. Morin and the Honorable W. Badgley, (the two last Judges of the Superior Court at Quebec) comprising all the Judges of the Court of Appeals, or Queen's Bench, and of the Superior Court, with the exception of the Honorable D. Mondelet, Judge of the Superior Court at Three-Rivers, who abstained from sitting, being himself a proprietor of fiefs.

Mr. J. U. Beaudry is the Clerk of the Court. The advocates employed on behalf of the Crown are the Honorable L. T. Drummond, Attorney General, F. R. Angers, of the Quebec Bar, T. J. J. Loranger, Q. C., and E. Barnard, of the Montreal Bar. C. S. Cherrier, Q. C., R. Mackay and C. Dunkin, all three of the Montreal Bar, appear on behalf of the Seigniors.

(3) See the judgment hereinafter cited.

On the 18th of October, 1855, the Court adjourned to the 10th of January, 1856, then to the 15th and then to the 18th of the same month, and form that day to the 25th of February and finally to the 6th of March, to render judgment.

The argument took place in the following order :

On the 5th of September, 1855, Drummond, Angers ; 6, Angers, Loranger ; 7, 8, 10, Loranger ; 11, 12, Angers, Loranger ; Mackay ; 14, 18, 19, 20, 21, 22, 24, Dunkin ; 25, 26, 27, 28, 29, (Oct.) 3, 4, 5, 6, 8, Cherrier ; 9, 10, Dunkin ; 11, 12, Angers, Loranger ; 13, Loranger ; 17, Dunkin, Cherrier, Mackay, Barnard, Angers & Loranger.

During the Sittings of the 6th, 7th, 8th, 10th and 11th of of march, 1856, the Juges give their respective opinions ; and, at the last of these Sittings, the Decisions and Answers of the Court upon the " Questions " submitted both by the Attorney General and by the Seigniors, are pronounced and given.

LOWER CANADA.

SPECIAL COURT

HELD UNDER AUTHORITY OF

"THE SEIGNIORIAL ACT OF 1854."

Quebec, 11*th of March*, 1856.

Present :—The Honble. Sir Louis Hippolyte Lafontaine,
Bt. Chief Justice of the Court of Queen's Bench.

The Honble. Edward Bowen,
Chief Justice of the Superior Court.

The Honble. Mr. Justice Aylwin,
" Mr. Justice Duval,
" Mr. Justice Caron,
} *Puisné Judges of the said Court of Queen's Bench.*

AND

The Honble. Mr. Justice Day,
" Mr. Justice Smith,
" Mr. Justice C. Mondelet,
" Mr. Justice Meredith,
" Mr. Justice Short,
" Mr. Justice Morin,
" Mr. Justice Badgley.
} *Puisné Judges of the said Superior Court.*

The Court proceeding to adjudicate, as well on the Questions framed and submitted by Her Majesty's Attorney General for Lower Canada, as upon the Supplementary or Counter Questions of the Seigniors hereinafter named, doth, by these presents, pronounce and deliver the decisions and

opinions of the said Judges, in the manner set forth in the following answers, to wit:

I.

IN THE INSTANCE UPON THE

QUESTIONS OF THE ATTORNEY GENERAL.

First question.—At the time of the introduction of the Custom of Paris (*Coutume de Paris*) into Canada, what was the effect of the feudal contract as to the division of the property between the Seignior of a *fief* and his Feudatory or *Censitaire*, in the part of France formerly known as "*La Prévoté et Vicomté de Paris*"?

Second question.—Had that contract the effect of dividing the property between the Seignior and the *Censitaire*, so as to give the *dominium directum* (*domaine direct*) to the former, and the *dominium utile* (*domaine utile*) to the latter?

Legal Proposition submitted on behalf of the Crown.—Nos. 1 and 2. At the time of the introduction of the Custom of Paris (*Coutume de Paris*) into Canada, the effect of the feudal contract, in that part of France formerly known as "*La Prévoté et Vicomté de Paris*," was to divide the property between the Seignior of a *fief* and his Feudatory or *Censitaire*, so as to give the *dominium directum* (*domaine direct*) to the former, and the *dominium utile* (*domaine utile*) to the latter.

Answer of the Court.—1 and 2. At the time of the introduction of the Custom of Paris into Canada, the effect of the feudal contract, whether by subinfeudation or accensement in that part of France formerly known as "*La Prévoté et Vicomté de Paris*," was to divide the estate between the Seignior of the *fief* and his Subfeudatory or Tenant, *Censitaire*, in such manner as to retain to the former the immediate demesne, *dominium directum*, and to convey the useful demesne, *dominium utile*, to the latter.—Adopted unanimously.

Third question.—In what did the *dominium directum* consist ? did it consist in the right to impose on the *Censitaire* the payment of certain rents or dues, *reditus* ?

Fourth question.—In what did the *dominum utile* consist ? did it consist in the right of occupying the soil and enjoying the produce thereof ? and did this right of occupation and enjoyment extend to the waters and woods as well as to the land ?

Legal Proposition submitted on behalf of the Crown.—3. The profits of the *dominium directum* consisted in the obligations or *rederances* to which the Feudatory or *Censitaire* was subject, such as the *foi et hommage*, the *cens*, the rents, (*reditus*) the *lods*, &c.

Legal Proposition submitted on behalf of the Crown,—4 Those of the *dominium utile* consisted in the product of the soil which the Feudatory or *Censitaire* had the right of occupying, as proprietor, and comprised the use of the un-navigable waters, and of the forests connected therewith.

Answer of the Court.—3 and 4.—§ 1 The immediate demesne consisted of the duties or dues, obligations or *redevances*, to which the Subfendatory or Tenant, *Censitaire*, was subjected ; the useful demesne consisted of the produce of the land or thing subinfeudated, or *accensé*, which the Subinfeudatory or Tenant had the right to occupy and enjoy as proprietor ; previous to the subinfeudation or *accensement*, both the useful and the immediate demesne were united in full demesne in the Seignior.— Adopted unanimously.

§ 2. Woods and waters not navigable and not floatable might form a part of the useful demesne.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 3. The Subfeudatory, in like manner, before his infeudation or *accensement*, had the full demesne, saving the rights of the Seignior *dominant*, and also retained an immediate demesne over what he had himself infeudated or *accensé*.

For the affirmative :—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

Fifth question.—Under the Custom of Paris, at the period above mentioned was the subinfeudation of lands held *en fief*, an essential part of the feudal system, and was the alienation of the *fief*, or of the lands composing it, forbidden?

Legal Proposition submitted on behalf of the Crown.—5. Under the Custom of Paris, at the period above mentioned, the subinfeudation of lands held *en fief* was an essential part of the feudal system, and the proprietor of a *fief* could not, without the consent of his Seignior *dominant*, dispose of the lands composing it otherwise than by subinfeudation, or *bail à cens*, according to the articles 51 and 52 of the Custom of Paris, which are as follows :

Article 51. " The Vassal cannot dismember his *fief* to the " prejudice, and without the consent of his Seignior; although " he may get rid (*se jouer*), and dispose of, or make his own " profit out of any hereditaments, *rentes* or *cens*, belonging " to such *fief*, without paying mutation fines to the Seignior " *dominant*, provided the alienation do not exceed two thirds " and that he retain the full fealty and some seigniorial and " domanial right on that which he alienates."

Article 52. " And nevertheless, if the *fief* become open, " the Seignior may take his profits out of (*exploiter*) the " whole *fief*, as well out of the part retained as the part " sold, unless the feudal Seignior had infeoffed the doma- " nial right retained in making such alienation, or had re- " ceived it, together with the acknowledgment thereof."

Answer of the Court.—5. Under the Custom of Paris, at the period above mentioned, the Seignior was not obliged to alienate his lands held *en fief*, but when he did alienate them, subinfeudation or *accensement* were of the essence of the feudal system; moreover, alienation was governed by the 51 article of the Custom of Paris, which is in the terms following:

Article 51.—"The Vassal cannot dismember his *fief* to the "prejudice, and without the consent of his Seignior; although "he may alienate (*se joner*) and dispose of, or make his own "profit out of any hereditaments, *rentes* or *cens*, belonging to "such *fief*, without paying mutation profits to the Seignior "*dominant*, provided the alienation do not exceed two thirds, "and that he retain the full fealty and some seigniorial and "domanial right on that which he alienates."—Adopted unanimously.

Sixth question.—In order to transfer this feudal system, as it existed in a country where the soil had been occupied and cultivated for ages by a numerous population, to a new, uninhabited and uncultivated region, was it necessary to render subinfeudation, or in other words, the granting of lands to settlers to put them into a state of cultivation, binding on all proprietors of *fiefs*?

Legal Proposition submitted on behalf of the Crown.—6. To transfer this feudal system from France to the New World, it was necessary to render subinfeudation, or in other words, "the granting of lands to settlers to put them into a state of cultivation," binding on all proprietors of *fiefs;* and in this respect the feudal laws, as introduced into Canada, have been considerably modified by divers enactments found in the Royal Decrees, Edicts and Ordinances, (*Arrêts, Edits Ordonnces,*) the titles of concession, and the ordinances and judgments of the superior council and of the *Intendants.*

Answer of the Court.—6. This question presenting no legal point for decision, this Court abstains from an answer to it.—Adopted unanimously.

Seventh question.—In granting, or in permitting others to grant lands in *fief* and seigniory in Canada, was it the intention of the Kings of France to make the concession of lands to settlers for the purpose of cultivation obligatory on all Seigniors ?

Legal Proposition submitted on behalf of the Crown.—7. In granting, or in permitting others to grant lands in *fief* and seigniory in Canada, the Kings of France intended to make the concession of lands to settlers for the purpose of cultivation, obligatory on all Seigniors ; and that intention was clearly and explicitly manifested.

Answer of the Court.—7. The manifest intention of the French Kings was to promote the settlement and cultivation of the lands of the country ; but the concession of lands for that purpose was not made obligatory by any law anterior to the *Arrêt* of 6th July, 1711.

For the affirmative :—Bowen, Aylwin, Duval, Caron, Day, Meredith, Short, Badgley.
For the negative :—LaFontaine, Smith, Mondelet, Morin.

Eighth question.—Has that intention been made manifest by special laws or indicated by any other means, which would allow Courts of Justice to take cognizance of it in adjudicating on matters concerning the concession of lands held *en fief* or *en roture* in this country ? Would it have been possible to carry out that intention otherwise than by limiting the rents, *redevances*, for which the lands held *en fief* should be conceded ?

Legal Proposition submitted on behalf of the Crown.—8. That intention was made manifest by special laws and by divers other means of which Courts of Justice should take

cognizance, when adjudicating on matters concerning the concession of lands held *en fief* or *en roture*, in this country ; and it would have been impossible to carry out that intention otherwise than by limiting the rents (*redditus*) for which the lands held *en fief* should be conceded.

Answer of the Court.—8. Whatever difference of opinion may prevail with reference to the period anterior to 1711, the manifestation of the French King's intention for the compulsory concession by Seigniors of their lands to settlers (*habitants*) for cultivation, was shewn in the *Arrêt* of that year, intituled, "An *Arrêt* of the King commanding the cultivation and occupation by settlers of the lands granted them ;" its execution was ordered in the following terms :— "His Majesty also commands that all Seigniors in New France do concede to settlers the lands demanded by them in their seigniories at a rent charge (*à titre de redevances*), whithout exacting any sum of money for such concessions, in default whereof the settlers may demand the said lands of the Seigniors by summons, and, on their refusal, may take proceedings against them before the Governor General and Intendant of the country, whom His Majesty commands to concede the said lands to the settlers, charged with the same rights (*droits*) as those imposed upon the other conceded lands in the same seigniories, which rights should be paid by the new settlers to the Receiver of the King's demesne in the City of Quebec, without any claim whatever thereto by the Seigniors."—Adopted unanimously.

Ninth question.—Did the ancient laws of the country oblige the proprietors of *fiefs* and seigniories in Canada to concede their lands at a rent (*à titre de redevances*,) when thereunto required ; and was their right of property in those lands restricted and limited by such obligation to concede them ?

Legal Proposition submitted on behalf of the Crown.—9. The ancient laws of the country obliged the proprietors of *fiefs* and seigniories in Canada to concede their lands for a

rent (*à titre de redevances*) whenever thereunto required ; and their right of property in those lands was restricted and limited by such obligation to concede them.

Answer of the Court.—9. The ancient laws of the country, that is to say, those anterior to the cession of Canada to Great Britain, obliged the proprietors of *fiefs* and seigniories to grant (*concéder*) their lands, on demand, at a rent charge, (*à titre de redevances*) and this obligation limited the exercise of the rights of the Seigniors in the disposal of their lands.—Adopted unanimously.

Tenth question.—If that obligation existed, had it its origin in the feudal rules ? in the deed of infeudation ? in custom ? or in special laws ? did it extend to every *fief* and seigniory without regard to the motives of the date of the concession ? if not, to what seigniories did it extend ?

Legal Proposition submitted on behalf of the Crown.—10. The obligation of conceding lands, either *en arrière-fief*, or *en censive*, had its origin in the feudal rules which prohibited the dismemberment of the *fief*. In Canada, that obligation is expressed in a majority of the seigniorial titles ; moreover, it was established by several Decrees (*Arrêts*) and Judgments, and seems to have been imposed upon all Seigniors holding their properties *à titre de fief*.

Answer of the Court.—10.—§ 1. This obligation did not result from the feudal rules of France, but proceed from special laws affecting Canada.—Adopted unanimously.

§ 2. The obligation to concede was not contained generally in the grants of seigniories ; it was stipulated in a few of them.

For the affirmative :—Bowen, Aylwin, Duval, Caron, Day, Meredith, Short, Badgley.

For the negative :—La Fontaine, Smith, Mondelet, Morin.

§ 3. It did not take its origin in the Custom, but in a special law, namely, the *Arrêt* of 1711.

For the affirmative :—Bowen, Sylwin, Duval, Caron, Day, Meredith, Short, Badgley.

For the negative :—La Fontaine, Smith, Mondelet, Morin.

§ 4. It extended to every *fief* and seigniory, without regard to the motives of the grant, but might be controlled by a special derogation in the royal grant to the Seignior.—Adopted unanimously.

§ 5. The *Arrêt* of 1711 applied to royal grants already made at the time of its promulgation, as well as to those made unanimously.

Eleventh question.—Did these laws provide means for compelling Seigniors to fulfil this obligation ?

Legal Proposition submitted on behalf of the Crown.—11. The law provided means for compelling Seigniors to concede their lands.

Answer of the Court.—11. The laws did provide means for compelling Seigniors to concede their lands.—Adopted unanimously.

Twelfth question.—By what tribunals or public officers, and how, could they be so compelled ?

Legal Proposition submitted on behalf of the Crown.—12. The Governors and *Intendants* were invested with the powers necessary to compel the Seigniors to concede their lands.

Answer of the Court.—12. In the case of the application of individuals demanding concessions upon the Seignior's refusal, the authority, called upon to give effect to the obligation of concession, was that of the Governor and Lieutenant General and of the Intendant, in conformity with the said

Arrêt of 1711, explained and extended by that of the 15th March 1732, intituled: "*Arrêt* of the Council of State, commanding Seigniors to settle their seigniories (*de faire tenir feu et lieu dans leurs seigneuries*,) and prohibiting them from making sales of wild lands, (*en bois debout*);" and by the Royal Declarations of 17th July, 1743, and 1st October, 1747.—Adopted unanimously.

Thirteenth question.—Were the rates and conditions of the concession of lands in the seigniories regulated by special laws? by custom? or by the title deeds granting those lands to the Seigniors? and were those concessions to be made "at an annual rent (*à titre de redevances annuelles*) of small value established and regulated by the usual and accustomed rates of concessions" according to the custom of each seigniory in particular, or according to the custom of the country in general?

Legal Proposition submitted on behalf of the Crown.—13. The rates and conditions of the concession of lands in the seigniories of Canada, were regulated by special enactments to be found in divers Royal Edicts and Ordinances, as interpreted by usage, by the judgments of the *Intendants* and by a large number of concessions *en fief*, or by the acts (*brevets*) confirming such concessions. Those concessions were to be made only at an annual rent (*à titre de redevances*) of small value, established and regulated by the usual and accustomed rates of concessions, according to the usage of the country in general.

Answer of the Court.—13.—§ 1. The rates of the concession of lands in the seigniories were not regulated by special laws nor by custom.

For the affirmative:—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Meredith, Short, Morin, Badgley.

For the negative:—Smith, Mondelet.

§ 2. Nevertheless, whenever the Governor and Lieutenant General and the Intendant were required to concede upon the Seignior's refusal, the rate of such concession was governed by the terms of the *Arrêt* of 1711, which charges the concession with the same rights as imposed upon the other conceded lands in the same seigniories.—Adopted unanimously.

§ 3. The grants to the Seigniors did not regulate the act of concession, except in four of those which have come to the knowledge of the Court.

For the affirmative:—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Meredith, Short, Morin, Badgley.

For the negative:—Smith, Mondelet.

§ 4. The question being thus put.—"Were the concessions to be made at an annual rent charge, (*à titre de redevances annuelles*) only?"

For the affirmative:—La Fontaine, Caron, Smith, Mondelet, Short, Morin.

For the negative:—Bowen, Aylwin, Duval, Day, Meredith, Badgley.

§ 5. The dues were not commanded by authority to be of small value, nor was the amount established or regulated by any usual and accustomed rates of concession, according to the custom of each particular seigniory or the custom of the country in general, except in the case of a concession made by the Governor and Lieutenant General and the Intendant upon the Seignior's refusal, as explained above.

For the affirmative:—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Meredith, Short, Morin, Badgley.

For the negative:—Smith, Mondelet.

Fourteenth question.—What was the amount, per *arpent*, of the customary dues (*redevances accoutumées*) mentioned in the Decrees, Edicts and Ordinances (*Arrêts, Edits et Or-*

donnances,) and among others in the Decree (*Arrêt*) of 6 July, 1711, intituled: "Decree of the King which directs that the lands, which have been conceded, shall be brought into a state of cultivation and occupied by inhabitants (*habitants*)"

Legal Proposition submitted on behalf of the Crown.—14. The amount of the customary dues (*redevances accoutumées*) mentioned in the Decrees, Edicts and Ordinances (*Arrêts, Edits et Ordonnances*), and among others in the Decree (*Arrêt*) of 6th July, 1711, is 1 *sol* of quit rent (*cens*) by every *arpent* in front of the conceded land, 40 *sols* for every *arpent* in front by 40 in depth; besides 1 capon (*chapon*) for every *arpent* in front by 40 in depth, or 20 *sols tournois*, or half a bushel of wheat for seigniorial ground rents (*rentes foncières et seigneuriales*); the maximum of these customary rents (*rentes accoutumées*) not exceeding two *sols* by every *arpent* in superficies.

Answer of the Court.—14. The dues varied in amount at the promulgation of the *Arrêt* of 1711, and they varied both before and since that *Arrêt*, but nevertheless gradually increasing in amount; no amount is mentioned in the *Arrêts*, Edicts and Ordinances.

For the affirmative—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Meredith, Short, Morin Badgley.

For the negative.—Smith, Mondelet.

Fifteenth question.—Was the amount of seigniorial dues (*redevances seigneuriales*) fixed by that Decree (*Arrêt*) of 6th July, 1711, for all seigniories, at the rate then established by custom in the country?

Legal Proposition submitted on behalf of the Crown.—15. Whatever may have been the variety of the seigniorial dues (*cens et rentes*) when the country was first settled, it must be held that by the Decree (*Arrêt*) of 6th July, 1711, intituled: "Decree of the King which directs that the lands, which

have been conceded, shall be brought into a state of cultivation, &c.," they were irrevocably fixed at the rate then established in the country, and the amount of that rate is sufficiently proved, by the contracts of concession produced in this cause, not to have exceeded the amount mentioned in the last proceding article.

Answer of the Court.—15. The amount of seigniorial dues was not fixed at any rate by the *Arrêt* of 6th July, 1711, except in the case provided for and mentioned above, upon the Seignior's refusal to concede.

For the affirmative :—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Meredith, Short, Morin, Badgley.

For the negative :—Smith, Mondelet.

Sixteenth question.—Were the ancient laws of the country, relating to the concession of seigniorial lands, and more particularly the said Decree (*Arrêt*) of 6th July, 1711, the Decree (*Arrêt*) of 15th March, 1732, and the Royal Declaration of 17th July, 1743, still in force at the time of the cession of Canada by France to England, and had they been enforced or observed up to that time ?

Legal Proposition submitted on behalf of the Crown.—16. The ancient laws of the country, relating to the concession of seigniorial lands, and more particularly the said Decree (*Arrêt*) of 6th July, 1711, the Decree (*Arrêt*) of 15th March, 1732, and the Royal Declaration of 17th July, 1743, were in force at the time of the cession of Canada by France to England, and had been observed and executed, up to that time and even at a later period.

Answer of the Court.—16.—§ 1. The ancient laws of the country, relating to the concession of seigniorial lands, and namely the *Arrets* of 6th July, 1711, and 15th March, 1732, and the Declaration of 17th July, 1743, were in force at the cession of Canada by France to England, Adopted unanimously.

§ 2.—These laws were generally observed up to that period.

For the affirmative :—La Fontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin.

Seventeenth question.—According to the laws in force in Canada before the cession of the country, had the persons, to whom lands had been granted by the Crown of France, in *fief* or seigniory, a full, entire and absolute right of property in those lands (*dominium plenum et jus integrum*) free from any obligation to concede them at a rent payable periodically, and with the right of alienating them ? Did they possess the *dominium utile* (*domaine utile*) as well as the *dominium directum* (*domaine direct*) of those lands ? If not, how were they required to concede or forbidden to sell them ? How, and to what extent was the right of alienating those lands restricted or limited ?

Legal Proposition submitted on behalf of the Crown.—17. According to the laws in force in Canada before the cession of the country, the persons to whom lands had been granted by the Crown of France, in *fief* or seigniory, had in those lands a right of property limited and restricted by the obligation of conceding them at an annual rent (*à titre de redevances*), and by their inability to alienate them otherwise.

Answer of the Court.—17.—§ 1. According to the laws in force in Canada before the cession of the country, the grantees of lands in *fief* and seigniory by the Crown of France, had the full and entire property in them (*dominium plenum*), but the could only alienate them in the manner above mentioned.

For the affirmative.—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 2.—The Seigniors, before the sub-grant of their lands, had the full demesne in them (*domaine plein*), the useful and immediate demesnes being united in the full demesne, as above mentioned.

For the affirmative :—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 3.—The *Arrêt* of 1711, required Seigniors to concede without exacting a money price for the concession ; the *Arrêt* of 1732, confirmatory of the former, expressly prohibited and interdicted all Seignors and proprietors from selling wild lands (*terres en bois debout*), under the penalty of the nullity of the contract of sale, the restitution of the price, and reunion (*pleno jure*) of the land to the royal demesne. Adopted unanimously.

§ 4.—Seigniors were, in this manner, required to concede at a rent charge.

For the affirmative :—La Fontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin.

§ 5.—The prohibition to exact a money price for concessions applied only to uncleared and unimproved lands (*terres non défrichées et non mises en valeur*)—Adopted unanimously.

Eighteenth question :—Ought those laws, which, at the time of their promulgation, affected the tenure of all the lands in this country, to be considered as laws of public policy (*d'ordre public*) ?

Nineteenth question.—Were private individuals allowed to contravene those laws in contracts entered into between them ?

Twentieth question.—Were covenants entered into between Seigniors and *Censitaires*, in contravention to these laws binding ? if not, were they absolutely void, or merely voidable ?

Legal Proposition submitted on behalf of the Crown.—18. These laws, which, at the time of their promulgation, affected the tenure of all the lands of the country, ought to be considered as laws of public policy (*d'ordre public*), having for object the settlement and colonization of the country.

Legal Proposition submitted on behalf of the Crown.—19. Private individuals could not contravene these laws in contracts entered into between them.

Legal Proposition submitted on behalf of the Crown.—20. Covenants entered into between Seigniors and *Censitaires* in contravention of these laws of public policy (*d'ordre public*), were absolutely null.

Answer of the Court.—18, 19 and 20.—§ 1. In so far as those laws had relation to the tenure and regulated the essence of the feudal contract, they were laws of public policy (*d'ordre public.*)

For the affirmative.—La Fontaine, Bowen, Duval, Caron, Mondelet, Morin, Badgley.

For the négative.—Aylwin, Day, Smith, Meredith, Short.

§ 2.—Individuals could not contravene those laws in so far as they related to the tenure or to the essence of the feudal contract.

For the affirmative :—La Fontaine, Bowen, Duval, Caron, Mondelet, Short, Morin, Badgley.

For the negative :—Aylwin, Day, Smith, Meredith.

§ 3.—Contracts between Seigniors and Tenants (*Censitaires*), in contravention of those laws, in so far as they were thus of public policy, were not binding, but were null (*pleno juro.*)

For the affirmative :—La Fontaine, Bowen, Duval, Caron, Mondelet, Short, Morin, Badgley.

For the negative.—Aylwin, Day, Smith, Meredith.

Twenty first question.—Were those law repealed since the cession of the country, or were they still in force at the time of the passing of " The Seigniorial Act of 1854?"

Legal Proposition submitted on behalf of the Crown.—21. These laws were not repealed since the cession of the country ; they were still in force at the time of the passing of " The Seigniorial Act of 1854."

Answer of the Court.—21. Those laws were in force at the passing of " The Seigniorial Act of 1854."

For the affirmative :—LaFontaine, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin.

For the negative :—Bowen, Aylwin, Badgley.

Twenty second question.—During the period, between the cession of the country and the passing of " The Seigniorial Act of 1854," did there exist a tribunal competent to exercise the powers and jurisdiction conferred on the Governor and Intendant by the said Decree of 6th July, 1711, relating to the concession of seigniorial lands ? if such a tribunal existed, did it exercise those powers, or did it refuse or omit to do so ?

Legal Proposition submitted on behalf of the Crown.—22. During the period between the cession of the country and the passing of " The Seigniorial Act of 1854," the Courts of original jurisdiction (*de première instance*), were competent to exercise the powers and jurisdiction conferred in the Governor and Intendant by the said Decree of 6th July, 1711, relating to the concession of seigniorial lands ; but, *de facto* these Courts declared themselves incompetent, or abstained from exercising these powers.

Answer of the Court.—22. The question being thus put :—During the period, between the cession of the country and the passing of " The Seigniorial Act of 1854," did there exist a tribunal competent to exercise the powers and jurisdiction

conferred on the Governor and Intendant by the said Decree of 6th July, 1711, relating to the concession of seigniorial lands?

For the affirmative :—LaFontaine, Caron, Smith, Mondelet, Short, Morin.

For the negative :—Bowen, Aylwin, Duval, Day, Meredith, Badgley.

Twenty third question.—If it be true that some of the powers exercised by the Intendant before the cession, were conferred on tribunals existing since that time, what are those powers, and on what tribunals have they devolved?

Legal Proposition submitted on behalf of the Crown.—23. The said Courts of Justice could, and should have decided that, in default of the Seignior giving a title of concession for a lot demanded of him upon the usual conditions, the judgment should be a title in favour of the *Censitaire*, who in this case, would have had to pay the annual rents (*redevances annuelles*) to the domain of the Crown, according to the terms of the Decree (*Arrêt*) of 6th July, 1711.

Answer of the Court.—23. All the judiciary powers exercised by the Intendant in civil matters, before the cession of the contry, have devolved upon the civil tribunals of the Province. Adopted unanimously.

Twenty fourth question.—Was there any tribunal, during that period, competent to declare the nullity of covenants made between private individuals in contravention to the laws above mentioned?

Legal Proposition submitted on behalf of the Crown.—24. Those same Courts could, and should, have pronounced the nullity of all covenants, made between private individuals, in contravention to those laws of public policy.

Answer of the Court.—24. These same tribunals were competent to declare the nullity of contracts made between individuals, in contravention of those laws.

For the affimative :—LaFontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin.

Twenty fifth question.—Under the law, as it existed in this country immediatly before the passing of " The Seigniorial Act of 1854," have *Censitaires* to whom seigniorial concessions had been made after the cession at higher rates than those which were customary before that time, a right to be relieved from the excess of those onerous dues ? if they have this right, to what sum per *arpent* should these dues be reduced, and at what rate should they be entered in the schedule to be made as required by the said Seigniorial Act ?

Legal Proposition submitted on behalf of the Crown.—25. Under the law, as it existed in this Country immediately before the passing of " The Seigniorial Act of 1854," *Censitaires* to whom seigniorial concessions have been made after the cession, at higher rates than those which were customary before that time, have a right to be relieved from the excess of those onerous dues ; and in all such cases the seigniorial rents should be reduced, and entered in the schedules at the rate of two *sols* for every *arpent* in superficies of the conceded land.

Answer of the Court.—25. By the law, as it existed in this country immediately defore the passing of " The Seigniorial Act of 1854," the Tenants (*Censitaires*) to whom seigniorial concessions have been made since the cession, at higher rates than those which were customary before that time, have no right to be relieved from the excess of those dues.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

Twenty sixth question.—What were the Seigniors' rights over navigable rivers, in Lower Canada, immediately before the passing of the said Act?

Legal Proposition submitted on behalf of the Crown.—26. Immediately before the passing of "The Seigniorial Act of 1854," the Seigniors, as such, had no right over navigable rivers in Lower Canada.

Answer of the Court.—26. Before the passing of "The Seigniorial Act of 1854," Seigniors had no other rights over navigable rivers and streams, than those specially conveyed to them by their grants; provided these rights were not inconsistent with the public use of the water of those rivers and streams, which is inalienable and imprescriptible.

For the affirmative :—LaFontaine, Bowen, Aylwin, Caron, Duval, Day, Smith, Meredith, Short, Morin, Badgley.
For the negative :—Mondelet.

Twenty seventh question.—In seigniories bounded by a navigable river, could the Seigniors legally reserve the right of fishing therein, or impose dues on their *Censitaires* for the exercise of that right? what were their rights over the beaches of those rivers? and were they, namely, entitled to *lods et ventes* upon the mutation of beaches situated, between high and low water mark, on the river St. Lawrence?

Legal Proposition submitted on behalf of the Crown.—27. In seigniories bounded by a navigable river, the Seigniors could not legally reserve the right of fishing therein, or impose dues on their *Censitaires* for the exercise of that right; they had no right over the beaches of those rivers are public property; and are not, as one of the consequences, entitled to *lods et ventes* upon the sale of beaches situated, between high and low water mark, on the river St. Lawrence.

Answer of the Court.—27.—§ 1. In seigniories bounded by a navigable river or stream, Seigniors could lawfully reserve to themselves the right of fishing therein, or impose dues on their Tenants (*Censitaires*) for the exercise of that right, when the right of fishing in the same had been granted to them, but they could not make the reservation nor impose the dues without grant and as Seigniors only.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 2. Where the right of fishing in navigable rivers and streams was granted to Seigniors, the Tenants (*Censitaires*) could not have that right without special concession from the Seignior.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 3. The rights of Seigniors in tidal navigable rivers and streams, over the space of ground covered and uncovered by the tide are derived from special grant, and, without that, extend to high water mark only ; in navigable rivers and streams or parts of them and subject to the tidal flow, the rights of Seigniors extend to the water line, saving all legal servitudes and without prejudice to the special grants in navigable rivers, above mentioned and referred to.

For the affirmative : LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 4. The mutation of beaches, between high and low water mark, on the river St. Lawrence or in other navigable rivers held by Seigniors under special grants as aforesaid, and conceded by them, entitles Seigniors to the mutation fine (*lods et ventes*) in the same cases in which it would have accrued in other sales in the seigniories.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

Twenty eighth question.–What were the Seigniors rights, at the same period, over unnavigable rivers, rivulets and other running waters which passed through, or bordered upon the lands of his censive, as well as over the lakes and ponds situate wholly or in part therein ?

Legal Proposition submitted on behalf of the Crown.—28. At the time of the passing of " The Seigniorial Act of 1854," the Seigniors were not proprietors of unnavigable rivers, rivulets and other waters, flowing through, or by, the lands given by them in concession, or of lakes and ponds situated wholly or in part therein. It must be held that the absolute ownership of the rivers and other unnavigable waters intented for common use belonged, properly speaking, to no one individual ; but that the riparian proprietors had a right to make use of those waters, as they passed through or by their lands, either for driving mills, or for any other purpose within the sphere of their wants ; nevertheless, the Seigniors upon whom the Decree (*Arrêt*) of the 4th June, 1686, had imposed the obligation of building mills, had a right to take, even on conceded land, an *emplacement*, or building lot, of not more than six *arpents* in superficies, and of making use of the waters connected with it, for the *banal* or seigniorial mill, after having indemnified the *Censitaire* for the damages resulting to him, from the loss of the land, and water power.

Answer of the Court.—28. § 1. By the grant of the *fief* to the Seignior, he became proprietor of the non-navigable rivers, rivulets and other running waters which passed through or were wholly or in part within the *fief;* the same principle applied to the property in such rivers, rivulets and waters to the middle of the stream ; it is also in virtue of the same grant that he became proprietor of non-navigable lakes as well as of ponds.

For the affirmative :—La Fontaine, Bowen, Aylwin, Duval, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Caron, Mondelet.

§ 2. The Seignior was proprietor of these waters in manner aforesaid as belonging to, and forming a portion of the *fief*, unless they were excluded by the grant, subject nevertheless to legal servitudes.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Caron, Mondelet.

Twenty ninth question.—At the time of the cession of the country, were the Seigniors of Canada the legal proprietors of these waters and unnavigable rivers, or did they possess the right of making use of them for industrial or other purposes, to the exclusion of the *Censitaires ?*

Legal Propositions submitted on behalf of the Crown.—29. After the time of the cession of the country, the Seigniors of Canada were not legal proprietors of the waters and unnavigable rivers, flowing by, or through the lands of the *Censitaires*, nor did they possess the right of making use of them for industrial, or other purposes, to the exclusion of the *Censitaires.*

Answer of the Court.—29.—§ 1. At the cession of the country, the Seigniors of Canada were lawful proprietors as aforesaid of these non-navigable and non-floatable waters, in whole or to the middle of the stream (*filum aquæ*), as the case might be on their unconceded lands and might make use of them for industrial and other purposes to the exclusion of all other persons.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 2. The Subfeudatory or Tenant, *Censitaire*, by the subinfeudation or accensement, became in the same manner proprietor in whole or to the middle of the stream, according to the several cases mentioned, of these non-navigable and non-floatable waters which passed through, or were bordered the conceded land, unless they were specially excluded by the title ; the Tenant, grantee, *concessionnaire*, becoming proprietor of them was also subjected to legal servitudes.

For the affirmative :—LaFontaine, Bowen, Duval, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin, Caron, Mondelet.

Thirtieth question.—If this right then existed, from what source was it derived? was it a feudal right, or did it belong to the class of rights designated as *justiciæ*, (*doits de justice*)? was it recognized by the Custom of Paris, or was it established by laws promulgated expressly for Canada ?

Legal Proposition submitted on behalf of the Crown.—30. This right, as claimed by the Seigniors, at that time, was an abuse arising out of an illegal usurpation, and out of the error by which feudal rights were confounded with that class of rights designated as *justiciæ* (*droits de justice*). The High Judiciars were entrusted with a police jurisdiction over unnavigable rivers, as one of the attributes of high justicial authority (*haute justice ;*) thence they attributed to themselves a right of property over those rivers, and illegally claimed it, as a feudal right. The Custom of Paris did not recognize this right, and it never was established by any law promulgated specially for Canada.

Answer of the Court.—30. When the right of property in rivers, as above explained, was not governed by the grant, it was not a right of *justiciæ* (*droits de justice :*) it resulted from the conveyance of, and followed the estate granted ; when the estate was conveyed in seigniory, the right became seigniorial as being attached to the particular seigniory : it

resulted from the general laws of property in force in the country, and not from the text of the Custom of Paris, nor from any law specially promulgated for Canada.

For the affirmative:—LaFontaine, Bowen, Aylwin, Duval, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative:—Caron, Mondelet.

Thirty first question.—Was the *dominium* (*domaine*) over rivers and other unnavigable waters incidental to the administration of high justice (*haute justice*), and could it be claimed by any Seigniors other than those who were entrusted with a police jurisdiction over such waters, and who performed the duties of High Justiciars? If it were so, did those Seigniors lose their *dominium* over the rivers, and their exclusive right to those waters when, by the cession of the country, the administration of justice became the exclusive attribute of the Crown of England?

Legal Proposition submitted on behalf of the Crown.—31. According to the theory of those who recognize in the Seigniors the *dominium* (*domaine*) over rivers and other unnavigable waters—a theory rejected by Championnière and other jurists, and opposed in the preceding articles—it must be allowed that this alleged *dominium* was merely an accessory to the administration of high justice, which could not be claimed by any Seigniors other than those who were entrusted with a police jurisdiction over such waters, and who performed the duties of High Justiciaries; and in this hypothesis, the *dominium* (*domaine*) over rivers, or the exclusive right over these waters, was lost even to those Seigniors, when, by the cession of the country, the administration of justice became the exclusive attribute of the Crown of England.

Answer of the Court.—31. The answer to this question will be found in the answer to the previous question.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Caron.

Thirty second question.—Ought the property of the Seigniors in unnavigable waters to be divided, like the property in the soil, into the *dominum directum* and the *dominium utile* ? And could this division exist in any other way than by allowing each Censitaire the possession and enjoyment of those waters within the limits of his concession ?

Legal Proposition submitted on behalf of the Crown.—32. The property of Seigniors in unnavigable waters was divided, like the property of the soil, into the *dominium directum* and the *dominium utile*, according to the principles laid down in the articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10; and this division could not exist, in any other way, than by allowing, to each *Censitaire*, the possestion and enjoyment of those waters within the limits of his concession.

Answer of the Court.—22.—§ 1. The property of Seigniors in non-navigable and non-floatable waters was susceptible of division into the immediate demesne and the useful demesne like the property in the soil.

For the affirmative:—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 2. The concession operating this division, conveyed to the Tenant (*Censitaire*) the possession and enjoyment of these waters that were within the limits of the concession.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

Thirty third question.—At the time of the passing of "The Seigniorial Act of 1854" had the Seigniors in Canada the exclusive right of building grist mills, and had they the right of demanding the demolition of all mills of that kind built within their censives by other persons?

Legal Proposition submitted on behalf of the Crown.—33. At the time of the passing of "The Seigniorial Act of 1854," the Seigniors in Canada had not the exclusive right of building grist mills, and had not the right of demanding the demolition of all mills, of that kind, built within their *censives*, by other persons.

Answer of the Court.—33.—§ 1. At the passing of "The Seigniorial Act of 1854," The Seigniors, in Canada, who had erected grist mills, (*moulins à farine*) had the right of preventing all others from building such mills within the extent of their *banalité*.

For the affirmative :—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 2. They also had the right of demanding the demolition of all mills of that kind built within their censive by other persons.

For the affirmative :—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

Thirty fourth question.—Did these rights extend to all seigniories? if not, to what seigniories did they extend? if the Seigniors could exercise these rights against their *Censitaires*, could they also demand the demolition of grist mills built on lands the tenure of which had been commuted into *franc-alleu roturier*, or into free and common soccage, within the limits of their respective *fiefs*?

Legal Proposition submitted on behalf of the Crown.—34. Until the promulgation of the Decree (*Arrêt*) of the Council of State of 4th June, 1686, it must be held, that, inasmuch as the 71st article of the Custom of Paris granted the right of *banalité*, only in cases when there was a title, those Seigniors only who had stipulated the obligation on the part of their *Censitaires*, of carrying their grain to the seigniorial mill, had the right of *banalité ;* it must also be held, that, since the Decree (*Arrêts*) of 4th June, 1686, all Seigniors have the right of *banalité* in virtue of that Decree ; but the Decree (*Arrêt*), never attributed to Seigniors the property of unnavigable waters ; and consequently the right of prohibiting the construction of all mills on lands held *en censive*, *en franc-alleu*, or in free and common soccage, within the limits of their seigniories, never belonged to them.

Answer of the Court.—34.—§ 1. These rights extended to all seigniories.

For the affirmative—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Meredith, Short, Morin, Badgley.

For the negative.—Smith, Mondelet.

§ 2. The Seigniors could not demand the demolition of grist mills built upon lands whose tenure had been commuted into that of *franc-alleu roturier* or that of free and common soccage within the limits of their respective *fiefs*.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

Thirty fifth question.—If these rights existed, did they extend to mills of any other kind and to all works propelled by water ? ought they to be considered as incidental to the right of *banalité* ? had they their origin in the Custom of Paris or in special laws ?

Legal Proposition submitted on behalf of the Crown.—35. The right of *banalité* established by the Decree (*Arrêt*) of 4th June, 1686, belongs to the Seigniors of Canada, but it does not give them the right of preventing the construction of all mills and other works propelled by water; this pretended right is not incidental to the right of *banalité*, nor is it recognized by the Custom of Paris, or sanctioned by any special laws.

Answer of the Court.—35.—These rights did not extend to other than grist mills, nor to any works, (usines,) of any kind: they are comprehended in and form a part of the law of *banalité*, and have their origin in the Civil Laws of France on the subject.

For the affirmative:—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative:—Mondelet.

Thirty sixth question.—At the time of the passing of "The Seigniorial Act of 1854" what was the nature and extent of the right of *banalité* claimed by the Seigniors in Lower Canada? what was its origin? was it a feudal right or did it belong to that class of rights designated as *justitiæ* (*droits de justice*)? was it recognized by the Custom of Paris? was it introduced into this Country, regulated and defined by the Decree (*Arrêt*) of 4th June, 1686? to what obligations were the Seigniors, on one side, and the *Censitaires*, on the other, subjected by this right?

Legal Proposition submitted on behalf of the Crown.—36. At the time of the passing of "The Seigniorial Act of 1854," the right of *banalité* in Canada, as established by the Decree (*Arrêt*) of 1686, imposed upon Seigniors, the obligation of building mills (*moulins banaux*), and, upon *Censitaires*, the duty of carrying their grain thereto, to be ground. This right derives its origin from private stipulations contained in contracts of concession, and from the Decree (*Arrêt*) of 1686; in Canada, it is neither a feudal right nor a right of the class

designated as *justitiæ* (*droits de justice*), but a right specially established, regulated and defined by the Decree (*Arrêt*) of the 4th June, 1686, which, tending, as it does, to restrict the liberty of the subject, must be interpreted in a strict, litteral and rigourous sense, in relation to those who were to benefit by it.

Answer of the Court.—36.—§ 1. At the passing of "The Seigniorial Act of 1854," the right of *banalité*, as established in the country, obliged Seigniors, to build banal mills, and Tenants (*Censitaires*) to bring their grain to the mill to be ground, which was necessary for the sustenance of their families, whether the grain was raised or brought within the extent of the *banalité* and ground for that purpose.

For the affimative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative ;—Mondelet.

§ 2. This right, which was conventional in the origin, was afterwards rendered general and obligatory upon all Seigniors and Tenants (*Censitaires*).

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 3. The Royal *Arrêt* of the 4th June, 1686, was the first law which rendered *banalité* general and obligatory upon Seigniors and Tenants in Lower Canada.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Day, Mondelet.

§ 4. In this country, *banalité* was feudal as being attached to a *fief*.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 5. *Banalité* was only conventional under the Custom of Paris. Adopted unanimously.

§ 6. Seigniors, who had no mills built at the passing of "The Seigniorial Act of 1854," have no right, under the provisions of the said Act, to indemnity for *banalité*. Adopted unanimously.

Thirty seventh question.—What was the jurisprudence followed in Lower Canada, since the cession of the country, in relation to the various rights claimed by Seigniors in the waters which pass through, or border upon, the lands comprised in their respective censives?

Thirty eighth question.—Was this jurisprudence based on the will of the legislator, or on immemorial custom, and ought it to be maintained?

Legal Proposition submitted on behalf of the Crown.—37. Although several judgments favorable to the pretentions of the Seigniors, in this matters, have been pronounced, they are not such as the law requires to establish a jurisprudence.

Legal Proposition submitted on behalf of the Crown.—38. If such a jurisprudence exists, it is not based, either on the will of the legislator, or on immemorial custom, and should, consequently, be set at naught.

Answer of the Court.—37 and 38. There has been no established jurisprudence in Lower Canada, since the cession, in relation to the right in the waters, which pass through or border upon the lands. Adopted unanimously.

Thirty ninth question.—In various deeds of concession of lands held *en roture*, covenants are found tending to establish, in favor of the Seigniors, reservations similar or analogous to the following, viz.:

1. A reservation of timber for the building of the manor-house, mills and churches, without indemnity.

2. A reservation of fire wood for the use of the Seignior.
3. A reservation of all marketable timber.
4. A reservation of all mines, quarries, sand, stone and other materials of the same kind.
5. A reservation of all rivers, rivulets and streams for all kinds of mills, works and manufactures.
6. A revervation of the right of diverting the course of streams, and of interseeting lands by channels, for that purpose.
7. A reservation of the right of taking the land requisite for the building of any kind of mills or manufactures, with or without indemnity.
8. A reservation of indemnity for the value of the lands of the *Censitaires* required for the construction of rail-roads.
9. A reservation of the right of changing the place and time of payment of the *cens et rentes* and other seigniorial dues.
10. A reservation of the right of fishing and hunting on the lands conceded.

Where these reservations, or any and which of them, legally made, and do they give the Seigniors a right to be indemnified for the suppression of them to be effected by the said Seigniorial Act?

Legal Proposition submitted on behalf of the Crown.—39. 1. Custom seems to have sanctioned the reservation of timber for the building of the manor-house, mills and churches, without indemnity; moreover, such reservations were made for the general good, and were calculated to promote the colonization and settlement of the country;

2. The reservation of fire wood for the use of the Seignior has not received the same sanction, and is repugnant to the principle of the feudal contract, which gives to the *Censitaire* the entire property of the *dominium utile* (*domaine utile*); therefore, all such reservations are null, and cannot give rise to any indemnity;

3. The same thing must be said of marketable timber;

4. The same with regard to the reservation of all mines, quarries, sand, stone, and other materials of the like kind, except the reservation of mines in favor of the Kind or *Suzerain*, according to the conditions set forth in the original grants of seigniories and *fiefs*;

5. The same with regard to the reservation of all rivers, rivulets, and streams for all kinds of mills, works and manufactures, unless the soil as well as the waters have been reserved;

6. The Seignior could not legally reserve the right of diverting and directing, at his will, the course of streams, and of cutting canals through the farms for that purpose, except for the use of seigniorial mills, (*moulins banaux*), and, in every such case, he was obliged to indemnify the *Censitaires*;

7. The reservation of the right of taking the land requisite for the building of any kind of mills or manufactures, with or without indemnity, is null and illegal, as contrary to the principle of the feudal contract which imports an alienation entire, and for ever, of the *dominium utile* (*domaine utile*);

8. The same must be said of the reservation of the indemnity for the value of the lands of the *Censitaires* required for the construction of railroads;

9. The payment of the *cens et rentes* and other seigniorial dues, should be made at the seigniorial manor, or, at all events, within the limits of the seigniory, and not elsewhere;

10. The reservation of the right of fishing and hunting on the lands conceded, is illegal and null, as having a tendency to deprive the *Censitaire* of a part of the *dominium utile* (*domaine utile*);

None of the reservations declared null and illegal in the above enumeration, give to the Seigniors a right to be indemnified for the suppression of them, in virtue of "The Seigniorial Act of 1854."

Answer of the Court.—39. § 1. The obligation to concede at a *rente* charge (*à titre de redevances*,) imposed upon Seigniors, must be understood as being exclusive of all reserves, which cannot be comprehended within the term dues (*redevances*), and which were not otherwise rendered legal.

For the affirmative:—LaFontaine, Bowen, Caron, Smith, Mondelet, Short, Morin.

For the negative:—Aylwin, Duval, Day, Meredith, Badgley.

§ 2. All reserves must be held to be legal, the object of which was the obligation upon the Tenant (*Censitaire*) to allow the accomplishment by the Seignior, and the observance by himself, on his part, of the obligations of that nature, stipulated by the King in the grant of the *fief*.

For the affirmative:—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley:

For the negative:—Mondelet.

§ 3. The following reservations, or others analogous to them, were illegal, and do not give to the Seignior a right to any indemnity by reason of their suppression:

Art. 1. A reservation of firewood for the use of the Seignior.

Art. 2. A reservation of all marketable timber.

Art. 3. A reservation of all mines, quarries, sand, stone and other materials of the same kind.

Art. 4. A reservation of all rivers, rivulets and streams for all kinds of mills, works and manufactures.

Art. 5. A reservation of the right of diverting and directing the course of streams, and of intersecting lands by channels for that purpose.

Art. 6. A reservation of the right of taking the land requisite for the building of any kind of mills or manufactures, with or without indemnity.

For the affirmative :—LaFontaine, Bowen, Caron, Smith, Mondelet, Short, Morin.

For the negative :—Aylwin, Duval, Day, Meredith, Badgley.

§ 4. A reservation of indemnity for the value of the lands of the *Censitaires*, required for the construction of railroads, is also illegal, and gives no right to indemnity.

For the affirmative :—LaFontaine, Bowen, Caron, Duval, Smith, Mondelet, Short, Morin, Badgley.

For the negative :—Aylwin, Day, Meredith.

§ 5. Reservation of the right of changing the place and time of payment of the *cens et rentes* and other seigniorial dues, the Seignior might make the reservation, provided the place newly indicated was within the limits of the seigniory. Adopted unanimously.

§ 6. The reservation of timber for the construction of churches, without indemnity, and the reservation of the right of fishing and hunting on the lands conceded, are illegal and give rise to no indemnity.

For the affirmative :—LaFontaine, Bowen, Caron, Smith, Mondelet, Short, Morin, Badgley.

For the negative :—Aylwin, Duval, Day, Meredith.

§ 7. The question being put :—

Is the reservation of timber for the building of the manor-house and mills, without indemnity, legal, and does it give to the Seignior a right to an indemnity for its suppression

For the affirmative :—Bowen, Aylwin, Duval, Day, Meredith, Badgley.

For the negative :—LaFontaine, Caron, Smith, Mondelet, Short, Morin.

Fortieth question.—Are any other reservations, which have been stipulated in deeds of concession, and which are not recognized by the Custom of Paris, nor by laws promulgated specially for this country, to be considered legal? and have Seigniors a right to indemnity, by reason of the suppression of such reservation, or of any of them.

Legal Proposition submitted on behalf of the Crown.—40 It must be held, that all the reservations, stipulated in the deed of concession, apart from those set forth in the original grants of the *fief*, or recognized by common law, or those sanctioned by usage, such as the reservation of timber for the building of the manor-house, mills and churches, are null and illegal.

Answer of the Court.—40. Without a specification of the reservations to which this question applies, the answer to it must be regulated, for each particular case, upon the basis established in the answer to the preceding question.

For the affirmative :—LaFontaine, Bowen, Caron, Smith, Mondelet, Short, Morin.

For the negative :— Aylwin, Duval, Day, Meredith, Badgley.

Forty first question.—In such deeds there are also found prohibitions, made for the advantage of the Seignior, of the following kind, viz :

1. A prohibition to build any kind of mills manufactures or other works (*usines*), moved by water, wind or steam.

2. A prohibition to sell marketable timber, to make deals, to grind grain, not subject to *banalité*, grown beyond the *censive*, and intended for market.

3. A prohibition to use streams passing over, or bordering upon, the lands of the *Censitaires* to propel mills, manufactures or other works (*usines*).

Are these legal or not, and does the suppression of them give the Seigniors a right to indemnity ?

Legal Proposition submitted on behalf of the Crown.—41. Prohibitions of the following kind stipulated for the advantage of the Seignior, viz : 1. A prohibition to build any kind of mills, manufactures or other works (*usines*), moved by water, wind or steam ;

2. A prohibition to sell marketable timber, to make deals, to grind grain, not subject to *banalité*, grown beyond the *censive*, and intended for market ;

3. A prohibition to use streams passing by, or through, the lands of the *Censitaires*, to propel mills, manufactures or other works (*usines*), are illegal ; and the suppression of them cannot give the Seigniors a right to indemnity.

Answer of the Court.—41.—§ 1. When prohibitions of that kind were made for the protection of other legal seigniorial rights, they might be legal.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

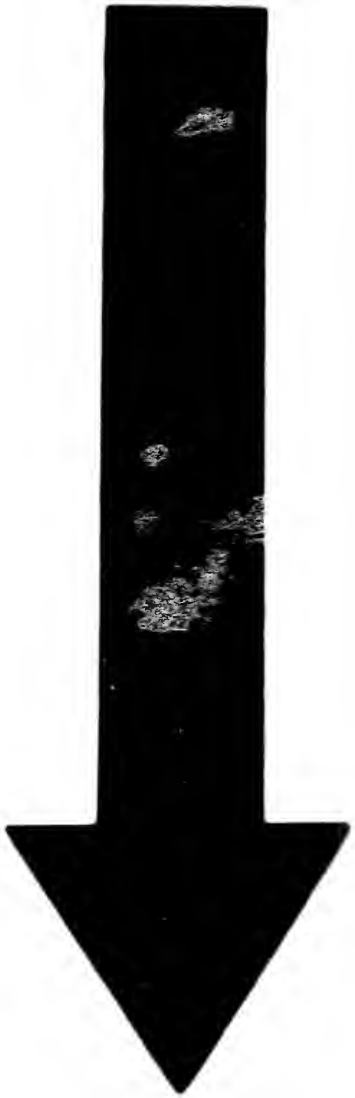
For the negative :—Mondelet.

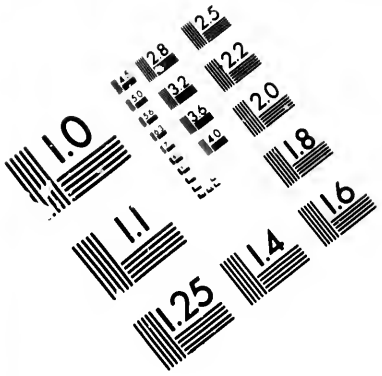
§ 2. But their disappearance, by the effect of " The Seigniorial Act of 1854," does not give rise to any indemnity, because they were only accessory to a principal right, for which the Seignior has indemnity.—Adopted unanimously.

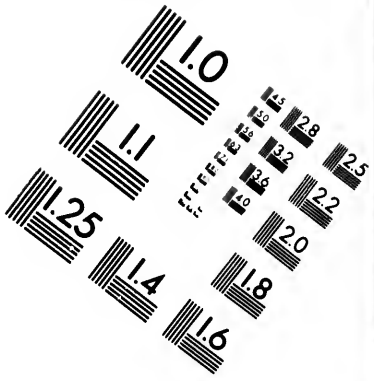
§ 3. 1. The prohibition to build any kind of mills, manufactures or other works (*usines*), moved by water, wind or steam.

For the affirmative :—LaFontaine, Bowen, Duval, Caron, Smith, Mondelet, Short, Morin, Badgley.

For the negative :—Aylwin, Day, Meredith.







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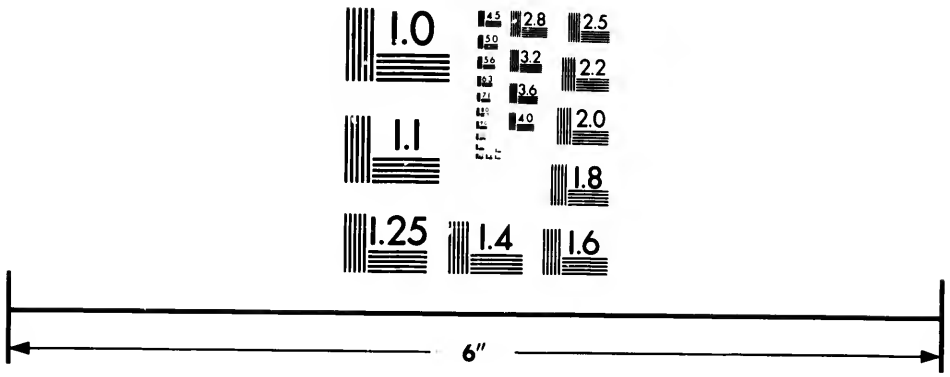

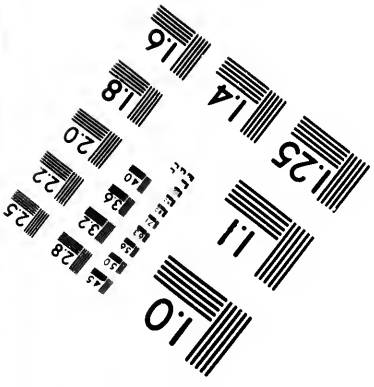

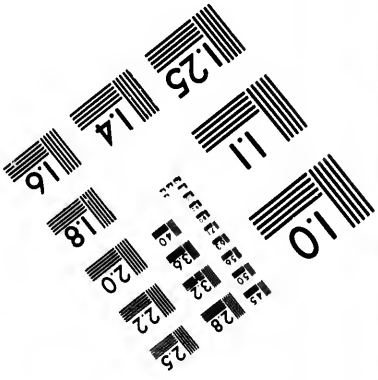

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2. The prohibition to sell marketable timber, to make deals, to grind grain, not subject to *banalité*, grown beyond the *censive*, and intended for market.

For the affirmative :—LaFontaine, Bowen, Duval, Caron, Smith, Mondelet, Short, Morin, Badgley.

For the negative :—Aylwin, Day, Meredith.

3. The prohibition to use streams passing over or bordering upon the lands of the *Censitaires*, to propel mills, manufactures or other works (*usines*), were illegal, and do not give rise to indemnity.

For the affirmative :—LaFontaine, Bowen, Duval, Caron, Smith, Mondelet, Short, Morin, Badgley.

For the negative :—Aylwin, Day, Meredith.

Forty second question.—Are the covenants contained in certain deeds of concession, by which personal labour (*corvées*) is imposed on the *Censitaires* for the advantage of the Seigniors, legal ? and do they give the Seignior a right to indemnity ?

Legal Proposition submitted on behalf of the Crown.—42. The covenants contained in certain deeds of concession, by which personal labour (*corvées*) is imposed on the *Censitaires*, for the advantage of the Seigniors, are illegal, and give no claim to the Seigniors for indemnity. In France, personal labour (*corvées*) was the price of the redemption of mort main (*main-morte*) ; this servitude not existing in Canada, the covenant establishing personal labours (*corvées*) remained without cause or consideration, and is therefore null. Moreover the imposition of personal labour (*corvées*) was prohibited by a Decree (*Arrêt*) of the Intendant Hocquart, dated 22nd January, 1716.

Answer of the Court.—42. The covenants contained in some deeds of concession, imposing personal days labour

(*journées de corvée*) upon the Tenants (*Censitaires*) for the advantage of the Seigniors, are legal, and give rise to indemnity.

For the affirmative :—LaFontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative.—Mondelet.

Forty third question.—At the time of the passing of the said Seigniorial Act, could the Seignior legally demand *lods et ventes* upon the exchange of two lands, estimated of equal value (*sans soulte*), the one situate within his *censive*, and the other held in *franc alleu-roturier* or in free and common soccage, beyond the limits thereof ?

Legal Proposition submitted on behalf of the Crown.—43. At the time of the passing of " The Seigniorial Act of 1854," the Seignior could not legally demand *lods et ventes* upon the exchange of two lands, estimated of equal value (*sans soulte*) the one situate within his *censive*, and the other held in *franc-alleu roturier* or in free and common soccage, beyond the limits thereof.

Answer of the Court.—43. At the time of the passing of the Seigniorial Act, the Seigniors, subject to its operation, could not lawfully demand the mutation fine (*droits de lods et ventes*) upon the exchange, without *soulte* of land within their seigniory for others held in *franc-alleu roturier*, or in free and common soccage, beyond their seigniory.—Adopted unanimously.

Fourty fourth question.—What are the rights of the Crown, the value of which is to be deducted in the schedules to be made under " The Seigniorial Act of 1854," from the price to be paid by the *Censitaires* to the Seigniors for the redemption of the seigniorial dues ?

Legal Proposition submitted on behalf of the Crown.—44. In the schedules to be made under " The Seigniorial Act of 1854," the rights of the Crown, the value of which is to be deducted therein from the price to be paid by the *Censitaires* to the Seigniors for the redemption of the seigniorial dues, are the rights of *quint*, *requint* and *relief ;* one year of the average revenue accruing to the Crown from these rights, throughout Lower Canada, should be computed as representing the interest of a capital to be distributed among all seigniories according to their value ; the proportion attributed to each seigniory will represent the rights of the Crown therein, and will be put down in deduction of the price to be paid by the *Censitaires* as aforesaid.

Answer of the Court.—44. The rights of the Crown, the value of which is to be deducted in the schedules to be made under " The Seigniorial Act of 1854," from the price to be paid by the Tenants (*Censitaires*) to the Seigniors for the redemption of the seigniorial dues, are those of *quint* and *relief*, in the cases in which they were due under the Custom of Paris, unless the lucrative rights of the Crown to be deducted, should have been otherwise regulated by the particular grant of each seigniory, to which reference must be had. But it is the duty of this Court to observe that, it has not come to the knowledge of this Court that the Crown has ever exercised the right of *retief*, except that due under the Custom of Vexin-le-Français, included within that of Paris, by which some grants *en fief* are governed.

For the affirmative :—LaFontaine, Bowen, Duval, Caron, Smith, Mondelet, Short, Morin.

For the negative :—Aylwin, Day, Meredith, Badgley.

Forty fifth question.—Ought the additional value given to the unconceded lands by the abolition, under the said Act, of the obligation to concede them, to be ascertained and inserted in the said schedules in deduction of the said price of redemption ?

Legal Proposition submitted on behalf of the Crown.—45. The additional value given to the unconceded lands by the abolition, under the said Act, of the obligation to concede them, is to be ascertained and inserted in the said schedules in deduction of the said price of redemption.

Answer of the Court.—45. Whenever by the abolition, under the Seigniorial Act, of the obligation to subinfeudate the lands, an additional value may be given by it to the unconceded lands, that value must be ascertained and inserted in the schedules, in deduction of the price of redemption.

For the affirmative :—LaFontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin.

Forty sixth question.—What are the rights, dues, duties, reservations and prohibitions which are to be valued in making up the whole price of redemption of the seigniorial rights contemplated by the said Seigniorial Act?

.....

Answer of the Court.—46. They are the rights, dues, duties, and reservations, the legallity whereof is acknowledged, and which are appreciable in money.—Adopted unanimously.

II.

COUNTER-QUESTIONS OF THE SEIGNIORS'

—

IN THE INSTANCE.

Upon the counter-questions, submitted on behalf of the Honorable John Pangman, of the Parish of St. Henri de Mascouche, in the District of Montreal, esquire, Seignior and proprietor in possession of the *fief* and seigniory of Lachenaie, in the District of Montreal, to wit:

First counter-question.—At the period of the introduction into Canada of the Custom of Paris, (*Coutume de Paris,*) and within the territory of that Custom, what was the legal effect of the contract whereby a Seignior, holding land *en franc-alleu noble* granted therefrom *en fief,*—as to the division, between him and his Vassal, of the property (*domaine*) of the land granted?—And did such contract subvide such property (*domaine*) between the Vassal and any Sub-Vassals (*Arrière Vassaux*) or *Censitaires*, to whom he might thereafter make sub-grants, *en fief* or *en censive*, as the case might be; or import obligation on him to make such sub-grants, whether *en fief* or *en censive*?

Legal Proposition submitted on behalf of the Honorable John Pangman.—1. Such contract was held to divide the property (*domaine*) in question, between such Seignior and Vassal, into a *domaine direct* retained by the former, and which consisted in the aggregate of the proprietary rights reserved to him,—and a *domaine utile* granted to the latter, and which consisted in the aggregate of all other proprietary rights whatever, in the lands granted.

It could operate no sub-division of property (*domaine*) between the Vassal and any future Sub-Vassals (*Arrière Vassaux*) or *Censitaires*. And it imported no obligation on the Vassal to sub-grant, whether *en fief* or *en censive*.

Answer of the Court.—1.—§ 1. At the period of the introduction of the Custom of Paris into Canada, and within the territory of that Custom, the legal effect of the contract, whereby a person, holding lands *en franc-alleu noble*, granted therefrom a part *en fief* or *en censive*, was the same as above explained in the answers to the questions of the Attorney General, as to the division of the property between the *Noble Alleutier* and his Vassal or Tenant (*Censitaire*), between whom such concession established seigniorial relations.—Adopted unanimously.

§ 2. Under the law of that Custom, at the period above mentioned, the *Noble Alleutier* was under no obligation to alienate the said lands.—Adopted unanimously.

Second counter-question.—At the same period, and within the same territory, what was the legal effect of the contract, whereby a Seignior, holding land *en fief* sub-granted therefrom *en fief*,—as to the division, between him and his Vassal, of the estate or property (*domaine*) or such Seignior in the land so granted? Wherein, if at all, did such division differ from what wrought by the contract enquired of in the preceding question? And did it sub-divide the estate or property (*domaine*) involved therein, between the Vassal and any Sub-Vassals (*Arrière Vassaux*) or *Censitaires*, to whom he might thereafter sub-grant; or import obligation on the Vassal, further to sub-grant, whether *en fief* or *censive*?

Legal Proposition submitted on behalf of the Honorable John Pangman.—2. Such contract was held to operate a like division of property (*domaine*), into what was called a *domaine direct* of the Seignior, and a *domaine utile* of the Vassal; the distinction between this case and that inquired of by the proceding question being, that the estate or property (*domaine*) in this case divided, was itself, in another and stricter sense, only a *domaine utile*, being limited by the reserved rights or *domaine direct* of the Seignior *dominant*,—or, if he again held *en fief*, then by the reserved

rights, in ascending series, of the several Seigniors through whom the land granted might have passed from the Seignior *suzerain*.

The contract here inquired of could not sub-divide the estate or property (*domaine*) involved therein, between the Vassal and any future Sub-Vassals (*Arrière Vassaux*) or *Censitaires*, and it imported no obligation on the Vassal, further to sub-grant, whether *en fief* or *en censive*.

Answer of the Court.—2. This question has been answered by the answers given to the questions of the Attorney General upon the same subject matter.—Adopted unanimously.

Third counter-question.—At the same period, and within the same territory, what was the legal effect of the contract whereby a Seignior holding land, whether *en franc-alleu noble* or *en fief*, granted or sub-granted therefrom *en censive*,—as to the division between him and his *Censitaire*, of his property (*domaine*) in the land so granted or sub-granted? And wherein did such division differ from that wrought by the contract whereby such land might have been granted or sub-granted *en fief*?

Legal Proposition submitted on behalf of the Honorable John Pangman.—3. Such contract was held to operate a like division of property (*domaine*), into what was called a *domaine direct* of the Seignior, and a *domaine utile* of the *Censitaires*. But the *domaine utile* of the *Censitaire* differed from that of the Vassal, in this, that the estate or property (*domaine utile*) of the Vassal, by reason of the *seigneurie honorifique* forming part thereof, imported a capacity on his part to sub-grant either *en fief* or *en censive*, while the estate or property (*domaine utile*) of the *Censitaire* had in it no quality of *seigneurie honorifique*, and was therefore held to import an incapacity on his part to sub-grant, either *en fief* or *en censive*.

Answer of the Court.—3. This question has been answered by the answers given to the questions of the Attorney General upon the same subject matter.—Adopted unanimously.

Fourth counter-question.—At the same period, and within the same territory, was a Seignior holding land *en fief*, by law prohibited from taking money or other value as a consideration for any sub-grant which he might make, whether *en fief* or *en censive*,—or limited as to the amount thereof, or as to the rents or other charges or burthens which he might impose on any land so to be sub-granted by him, whether *en fief* or *en censive*, by way of consideration for such sub-granting?

Legal Proposition submitted on behalf of the Honorable John Pangman.—4. Such Seignior was not by law prohibited from taking money or other value as a consideration for any sub-grant which he might make, whether *en fief* or *en censive*,—nor yet limited as to the amount thereof, nor as to the rents or other charges or burthens which he might impose on any land so to be sub-granted by him, whether *en fief* or *en censive*, by way of consideration for such sub-grant?

Answer of the Court.—4. This question has been answered by the answers given to the questions of the Attorney General upon the same subject matter.—Aopted unanimously.

Fifth counter question.—At the same period, and within the same territory, had a Seignior, holding land *en fief*, such an estate or property (*domaine*) therein, as imported a capacity on his part, to alienate such land, in whole or part, by sale or otherwise, on any terms as regarded price and otherwise, and this, either with or without retention to himself of a *domaine direct* therein? And in whose favor, and to what extent, if at all, was the freedom of action of the parties to any such alienation in any wise limited?

Legal Proposition submitted on behalf of the Honorable John Pangman.—5. The estate or property (*domaine*) of such Seignior in such land, imported a capacity on his part to alienate such land in whole or part, by sale or otherwise, on any terms as regarded price and otherwise,—and this,

either with or without retention to himself of a *domaine direct* therein. No nullity attached to such alienation. If, indeed, he so alienated, without retention of any *domaine direct*, or if (whether with or without such retention) he so alienated beyond the limit of the two-thirds of his *fief*, his Seignior *dominant* had the right, inherent in and forming part, so to speak, of the *domaine direct* of such Seignior *dominant*) either to take the acquiring party as a Vassal of his own, and exact any accruing feudal dues on the mutation, or else to ignore the transaction and deal with the *fief* thereafter as though the same had never taken place. But, provided the Seignior alienating retained a *domaine direct*, however trifling in value, and had not alienated in all more than the two-thirds of his *fief*, even this right of his Seignior *dominant* did not accrue, to limit in any measure the freedom of action of the contracting parties. And no other party could interfere at all, to limit such freedom.

Answer of the Court.—5. This question has been answered by the answers given to the questions of the Attorney General upon the same subject matter.—Adopted unanimously.

Sixth counter question.—Before the enregistration (on the 12th day of December, 1712,) by the *Conseil Supérieur de Québec*, of the two *Arrêts* of the King of France, rendered in his *Conseil d'Etat* and bearing date at Marly of the 6th day of July, 1711, the one intituled "*Arrêt du Roi qui or-*" *donne que les terres, dont les concessions ont été faites, soient* "*mises en culture et occupées par des habitants,*" and the other intituled "*Arrêt du Roi qui déchoit les habitants de la* "*propriété des terres qui leur auront été concédées, s'ils ne* "*les mettent en valeur, en y tenant feu et lieu, dans un an et* "*jour de la publication du dit Arrêt du 6e Juillet,* 1711," being the *Arrêts* commonly known as the *Arrêts* of Marly, did the contract whereby a Seignior acquired land *en fief*, according to the law of Canada as then in force, operate any subdivision of the estate or property (*domaine*) thereby granted, between him and any Vassals or *Censitaires*, to whom he

might thereafter make sub-grants *en fief* or *en censive*, as the case might be,—or import obligation on his part to make sub-grants, *en fief* or *en censive*, or to dispos of such land, in whole or part, to third parties, on any particular terms,—or leave him less free than he would have been in France, under the Custom of Paris, (*Coutume de Paris*,) at the time of its introduction into Canada, as touching the alienation of such land, in whole or part, by sale or otherwise, as he should see fit? If so, when, by what Act or Acts of legislative authority, in what terms, and to what extent, had the law, as it formerly obtained in France under the Custom of Paris (*Coutume de Paris*,) been in any of these particulars derogated from or altered?

Legal Proposition submitted on behalf of the Honorable John Pangman.—6. Before the enregistration of the *Arrêts* in question, the contract whereby a Seignior acquired land *en fief*, did, not, according to the law of Canada as then in force, either operate any sub-division of the estate or property (*domaine*) thereby granted, between him and any Vassals or *Censitaires* to whom he might thereafter make sub-grants *en fief* or *en censive*,—or import obligation on his part to make sub-grants *en fief* or *en censive*, or to dispose of such land, in whole or part, to third parties, on any particular term,—or leave him less free than he would have been in France, under the Custom of Paris (*Coutume de Paris*,) at the time of its introduction into Canada, as touching the alienation of such land, in whole or part, by sale or otherwise, as he should see fit.

Answer of the Court,—6.—§ 1. The concession *en fief*, neither before nor after the enregistration of the *Arrêt* of Marly, did not operate a division of the estate, between Seignior and Vassal or Tenant (*Censitaire*), of what might be afterwards sub-granted to either, but the division was effected by the subsequent deed of subinfeudation or *accensement*.—Adopted unanimously.

§ 2. The other portions of this question have been answered by the answers given to the questions of the Attorney General upon the subject matter.—Adopted unanimously.

Seventh counter question.—From the time of the enregistration of the said *Arrêts*, to that of the Cession of Canada to the British Crown, could effect have been given, according to law, to so much of the first of the said *Arrêts* as purported, after enjoining concession by Seigniors to *habitants*, "*à titre de redevances, et sans exiger d'eux aucune somme d'argent pour raison des dites concessions*," to provide against the case of such concession being refused.—as against any Seignior, either holding *en franc-alleu noble*, or holding *en fief*, under or through a title whereby the Crown should not have expressly imposed that obligation, as a condition of its original grant?

Legal Proposition submitted on behalf of the Honorable John Pangman.—7. Through the period in question, effect could not have been given, according to law, to so much of the said *Arrêts* as purported, after enjoining concession by Seigniors to *habitants*, "*à titre de redevances, et sans exiger d'eux aucune somme d'argent pour raison des dites concessions*," to provide against the case of such concession being refused, —as against the Seignior, either holding *en franc-alleu noble*, or holding *en fief*, under or through a title whereby the Crown should not have expressly imposed that obligation, as a condition of its original grant.

Answer of the Court.—7. This question has been answered by the answers given to the questions of the Attorney General upon the same subject matter.—Adopted unanimously.

Eighth counter-question.—Before the enregistration (on the 4th day of September, 1732), by the *Conseil Supérieur de Québec*, of the *Arrêt* of the King of France, rendered in his *Conseil d'Etat* and bearing date at Versailles of the 15th day

of March, 1732, which purported to direct the enforcement of the said two *Arrets* of Marly, and to attach to the sale of wild lands (*terres en bois de bout*) the penalties of nullity of the contract of sale, of restitution of the price, and of re-union *de plano* (*de plein droit*) of such land to the Crown domain, did the law of Canada, as then in force, prohibit such sale of wild lands (*terres en bois de bout*,) or subject the parties thereto to such penalties or to any description of penalty whatever?

Legal Proposition submitted on behalf of the Honorable John Pangman.—8. Before the enregistration of the *Arrêt* here in question, the law of Canada did not prohibit the sale of wild lands, (*terres en bois debout*,) or subject the parties thereto to any description of penalty whatever.

Answer of the Court.—8. This question has been answered by the answers given to the questions of the Attorney General upon the same subject matter.—Adopted unanimously.

Ninth counter-question.—Did the said *Arrêt* of the year 1732, purport to make, or in fact make any distinction, between the case of the sale of wild lands (*terres en bois de bout*) by a proprietor holding *en fief*, and that of such sale by a proprietor holding *en censive*,—or between either of these cases, and that of such sale by a proprietor holding *en franc-alleu*?

Legal Proposition submitted on behalf of the Honorable John Pangman.—9. The said *Arrêt* of the year 1732, dit not purport to make, and in fact did not make any distinction, between the case of the sale of wild lands (*terres en bois debout*) by a proprietor holding *en fief*, and that of such sale by a proprietor holding *en censive*,—not yet between either of these cases, and that of such sale by a proprietor holding *en franc-alleu.*

Answer of the Court.—9.—§ 1. The last *Arrêt* dit not make, nor did it purport to make any distinction in the sale of wild lands (*terres en bois debout*) between a proprietor holding *en fief* and a proprietor holding *en censive.*—Adopted unanimously.

§ 2. It did not make nor purport to make any distinction for the lands held *en franc-alleu*.—Adopted unanimously.

Tenth counter-question.—From the time of the enregistration of the said *Arrêt* of the year 1732, to that of the cession of Canada to the British Crown, could effect have been given according to law, to so much thereof as purported to attach to the sale of wild lands (*terres en bois debout*) the penalties of nullity of the contract of sale, of restitution of the price, and of re-union *de plano* (*de plein droit*) of such lands to the Crown domain,—as against the vendor and vendee of any wild land (*terre en bois debout*) holden *en franc-alleu*, or of any wild land (*terre en bois debout*) holden either *en fief* or *en censive*, under or through a title whereby the Crown should not have expressly prohibited such sale under such penalties, as a condition of its original grant thereof?

Legal Proposition submitted on behalf of the Honorable John Pangman.—10. Through the period in question, effect could not have been given, according to law, to so much of the said *Arrêt* as attached to the sale of wild lands (*terres en bois debout*) the penalties of nullity of the contract of sale, of restitution of the price, and of re-union *de plano* (*de plein droit*) of such lands to the Crown domain,—as against the vender or vendee of any wild land (*terres en bois de bout*) holden *en franc-alleu*, or of any wild land (*terre en bois debout*,) holden either *en fief* or *en censive*, under or through a title whereby the Crown should not have expressly prohibited such sale under such penalties, as a condition of its original grant thereof.

Answer of the Crown.—10. From the enregistration of the *Arrêt* of 1732 to the cession of the country, effect might have been given to its provisons, which attached the penalty of nullity, that of restitution of the price and re-union to the Crown demesne, to sales of wild lands (*terres en bois debout*) held either *en franc-alleu* or *en fief*, or *en censive*, under any title whatsoever, even if the prohibition had not been specially imposed in the original grant.—Adopted unanimously.

Eleventh counter-question.—From the time of the cession of Canada to the British Crown, to that of the passing of "The Seigniorial Act of 1854," could effect have been given in Canada, according to law, as against any Seignior or class of Seigniors whatever, to so much of the said first *Arrêt* of Marly, as purported to require concession by a Seignior to any *habitants*, of any land in his seigniory, "*à titre de redevances, et sans exiger d'eux aucune somme d'argent*," under pain, as thereby threatened, as having such land conceded for account of the domain of the Crown?

Legal Proposition submitted on behalf of the Honorable John Pangman.—11, Through the period in question, effect could not have been given, according to law, as against any Seignior or class of Seigniors whatever, to so much of the said *Arrêt*, as purported to require concession by a Seignior to any *habitants*, of any land in his seigniory, "*à titre de redevances, et sans exiger d'eux aucune somme d'argent*," under pain, as thereby threatened, as having such land conceded for account of the domain of the Crown.

Answer of the Court.—11. The question has been answered by the answers to the questions of the Attorney General.

For the affirmative :—La Fontaine, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin.

For the negative :—Bowen, Aylwin, Badgley.

Twelfth counter-question.—From the time of such cession to that of the passing of the said Act, could effect have been given in Canada, according to law, as against the vendor or vendee of any wild land, (*terre en bois debout*,) by whatever tenure holden, or on whatever terms first granted by the Crown,—to so much of the said *Arrêt* of the year 1732, as purported to prohibit the sale of wild lands, (*terres en bois debout*,) under pain of nullity of the contract of sale, of restitution of the price, and of re-union *de plano* (*de plein droit*,) of such lands to the Crown domain?

Legal Proposition submitted on behalf of the Honorable John Pangman.—12. Through the period here in question, effect could not have been given in Canada, according to law, as against the vendor or vendee of any wild land, (*terre en bois debout*,) by whatever tenure holden, or on whatever terms first granted by the Crown,—to so much of the said *Arrêt* of the year 1732, as purported to prohibit the sale of wild lands (*terres en bois debout*,) under pain of nullity of the contract of sale, of restitution of the price, and of re-union *de plano* (*de plein droit*) of such lands, to the Crown domain.

Answer of the Court.—12. This question applies to a contract not in its nature seigniorial, and can only interest individuals as such; all contestations arising out of such a contract, must be submitted to the ordinary tribunals; should such contestation be pending, the opinion of this Court would prejudge the question to the injury to one or the other party; this Court abstains, therefore, from the expression of an answer to this question.—Adopted unanimously:

Thirteenth counter-question.—Without prejudice to the general decisions in the pending matter to be rendered, will it not be right of every Seignior to invoke,—as well before any Commissioner or Commissioners named under the said Act, and acting for his seigniory, whether in the first resort, or in revision of the schedule thereof, as before any *experts* who may be named under the said Act therefor, or before any Court of law or the Judges of any Court of law having to decide any matter involving question as to such schedule, or as to the rights of such Seignior in the premises,—the terms of the original grant or title under or through which his seigniory is holden, whether emanating mediately or immediately from the Crown of France or from the British Crown,—the tenor of any *aveux et dénombrements* rendered by him or any of his *auteurs*,—the tenor of any *actes de foi et hommage*, and of any Crown acquittances for *quint* or feudal dues generally, granted to him or any of such *auteurs*,—and the character and term, longer or shorter, as may be, of his and their possession or enjoyment of any rights or claims

which may be in question,—and this, as well a view to the matter of the ascertaining and apportioning of the casual rights of the Crown in relation to his seigniory, as for any other purposes for which the same may require to be invoked, in order to the maintenance of his rights, or the establishment of the value thereof? And will it be competent to such Commissioner or Commissioners, whether acting in the first resort, or in revision of any schedule, to reject any such title or matter of evidence pertinentiy invoked to such end?

Legal Proposition submitted on behalf of the Honorable John Pangman.—13. It will be the right of every Seignior to invoke,—as well before any Commissioner or Commissioners named under the said Act, and acting for his seigniory, whether in the first resort, or in revision of the schedule thereof as before any *experts* who may be named under the said Act therefor, or before any Court of law having to decide any matter involving question as to such schedule, or as to the rights of such Seignior in the premises,—the terms of the original grant or title under or through which his seigniory is holden, whether emanating mediately or immediately from the Crown of France or from the British Crown,—the tenor of any *aveux et dénombrements* rendered by him or any of his *auteurs*,—the tenor of any *actes de foi et hommage*, and of any Crown acquittances for *quint* or feudal dues generally, granted to him or any of such *auteurs*,—and the character and term, longer or shorter (as may be) of his and their possession or enjoyment of any rights or claims which may be in question,—and this, as well with a view to the matter of the ascertaining and apportioning of the casual rights of the Crown in relation to his seigniory, as for any other purposes for which the same may require to be invoked, in order to the maintenance of his rights, or the establishment of the value thereof. It will not be competent to such Commissioner or Commissioners, whether acting in the first resort, or in revision of any schedule, to reject any such title or matter of evidence pertinently invoked to such end.

Answer of the Court.—13.—§ 1. Seigniors will have the right to invoke, for all legal purposes, before the Commissioners acting in virtue of the Seigniorial Act, whether in the first resort or in the revision of the schedules, as well as before the *experts* and before Courts of law having jurisdiction over and cognizance of the matter, *saisis du sujet*, the terms of the original grant by which they hold their seigniories, whether the grants have proceeded from the Crown of France or the British Crown—Adopted unanimously.

§ 2. With reference to the tenor of the *aveux et dénombrements*, and of the acts of fealty and hommage, and of the Crown acquittances for *quint* or other dues granted to them or their predecessors (*auteurs*), the same legal effect must be given to them in relation to the obligation of the Seigniors to the Crown, according to the circumstances of each case ; but they cannot affect the relative position of Seigniors and Tenants (*Censitaires*), because the *aveux et dénombrements*, acts of fealty and hommage, and acquittances of other dues, only have legal effect between the Seignior *dominant* and the Vassal, as executed between them, and do not affect others not parties to them.—Adopted unanimously.

§ 3. The character and terms of the possession and enjoyment of any rights, either between the Seigniors and the Crown, or the Seigniors and any Tenants (*Censitaires*,) in so far as that possession and enjoyment may have a known legal effect, whith a view to the seigniorial law, and the present decisions of this Court in particular, may also be taken into consideration.—Adopted unanimously.

§ 4. The Commissioners may order the adduction of any evidence which they may require, to enable them to adjuge correctly in all cases, this Court cannot be called upon to lay down in its decisions all the rules applicable to the admissibility and appreciation of evidence : the application of the rules enunciated in this answer are subject, nevertheless, in all cases, to the observance of the decisions of this Court. —Adopted unanimously.

III.

COUNTER-QUESTIONS OF THE SEIGNIORS.

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IN THE INSTANCE.

Upon the counter-questions, submitted on behalf of Sir Edmund Filmer, of East Sutton Place, in the county of Kent, Baronet, Member of the Imperial Parliament, David Arthur Monro, a Major in Her Majesty's Twelfth Regiment of Lancers, and William Woodrooffe, of London, Gentleman, Seigniors in possession of the seigniory of Champlain, in the district of Three Rivers, to wit :

———

First counter-question.—Whether the *Arrêt* of the King of France, dated the 6th July, 1711, commonly called the *Arrêt* of Marly, the preamble of which expressly refers to the intentions of His Majesty, and to clauses alleged to be inserted in grants of seigniories, whereby Seigniors are said to be only permitted to concede lands for an annual rent (*à titre de redevances*) and the *Arrêt* of the 15th March, 1732, to give effect to the former *Arrêt*, can, by any rule of legal construction, be made to apply, in so far as their provisions purport to provide for enforcing such concession, to seigniories granted by the King, in the grants whereof such intentions of His Majesty are not expressed nor such conditions inserted,—and more especially if such seigniories were granted in consideration of and as a reward for services rendered to the Crown ;—or whether those *Arrêts* (if in force in any case) ought not to be restricted, as regards such provisions, to seigniories in the grants of which such intentions as aforesaid are expressed and such conditions inserted ?

Legal Proposition submitted on behalf of Sir Edmund Filmer et al.—1. The said *Arrêts* (if in force in any case)

can only apply, as regards the provisions in question, to seigniories in the grants of which such intentions as aforesaid were expressed or such conditions inserted.

Answer of the Court.—1. This question has been answered by the answers to the questions of the Attorney General on the same subject matter.

For the affirmative :—La Fontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.
For the negative :—Aylwin.

Second counter-question.—Whether the provisions of the said *Arrêts* which make it accessary that the Governor and Lieutenant General, (an officer representing the person of the King of France, but unconnected with the administration of justice in civil matters in the Courts of original jurisdiction), should concur with the Intendant, who had power to decide alone in civil matters (*de juger souverainement seul en matières civiles*), in any sentence inflicting upon a Seignior the forfeiture of his lands for contravention of the *Arrêts* by refusal to concede, do not clearly shew that these *Arrêts*, were of a discretionary and administrative rather than of a judicial character ; and whether any discretionary or administrative power, thereby vested in the Governor and Lieutenant General, could, after the conquest, be continued in, or exercised by any Judge, officer or functionary, except by express delegation from the British Crown ?

Legal Proposition submitted on behalf of Sir Edmund Filmer et al.—2. The said provisions (if not purely penal) were of an administrative character ; the powers conferred by them were administrative and discretionary, and could not be continued after the conquest, except by express delegation from the British Crown.

Answer of the Court.—2. This question has been answered by the answers to the questions of the Attorney General on thesame subject matter.

For the affirmative :—LaFontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin.

For the negative :—Aylwin, Badgley.

Third counter-question.—Whether these *Arrêts* and the forfeiture of lands imposed as a penalty for such contravention, were not dictated by a temporary policy, which had for its object to promote the immediate settlement of the waste lands of the French King in Canada, with a view to strengthen the colony and enable it the better to contend with the adjoining english colonies ; and whether they were not temporary regulations adapted to the then condition of the country, and intended to meet present exigencies, rather than permanent laws, to receive execution in all future time ?

Legal proposition submitted on behalf of Sir Edmund Filmer et al.—3. They were dictated by such temporary policy, and could not be considered as permanent laws, but were mere temporary regulations.

Answer of the Court.—3. A part of this question not offering any point of law for decision, the Court abstains from answering thereto; with reference to the answer to be given to the other part of this question, it is contained in the answers given to the questions of the Attorney General on the same subject matter.

For the affirmative :—LaFontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin.

For the negative :—Aylwin, Badgley.

Fourth counter-question.—Whether, if the said *Arrêts* applied as matter of public policy (*d'ordre public*), to all seigniories, granted before or after their date, and although no declaration of the King's intention or clause binding the Seignior to concede *à titre de redevances* only, or in any other

way, was inserted in the grant,—the provision that every Seignior shall concede his lands in the manner therein mentioned, and shall, for any contravention of that provision, incur the penalty of forfeiture to the Crown of the lands and of the rents and profits thereof which would otherwise be payable to him,—does not treat such refusal by the Seignior, as " violation of a law considered in reference to the evil tendency of such violation as regards the state," and does not therefore make such refusal a crime or offence punishable by forfeiture ; and whether that provision is not therefore a penal enactment, creating and providing for the punishment of an offence against the public policy of the Sovereign who enacted it : and whether such penal enactment was not repealed by the Act of the Imperial Parliament, commonly called the Quebec Act, (14 Geo. 3, cap. 83,) which introduced the criminal law of England, and directed that it should be observed as well in the description and quality of the offence, as in the method of prosecution and trial and the punishement and forfeitures thereby inflicted, to the exclusion of every other rule which prevailed in Canada before 1764 ; if indeed all laws in force before the conquest connected with matters of public policy, and imposing forfeitures for offences against such policy, were not necessarily abrogated by the conquest and cession of the country, and the consequent introduction of the public law and policy of Great Britain ?

Legal Proposition submitted on behalf of Sir Edmund Filmer et al.—4. On the supposition here involved, the provision in question was a penal enactment, which was expressly repealed by the Quebec Act, and had in fact been abrogated by the conquest and cession of Canada, and its consequent subjection to a new and different rule and public policy.

Answer of the Court.—4. Admitting the consequences of a violation of those laws to be forfeitures, the forfeitures were only of a civil nature ; these consequences and the laws

from which they proceeded, have not been repealed, by reason of their penal nature, by the introduction of the criminal laws of England into Canada.—Adopted unanimously.

Fifth counter-question.—Whether in fact, if the supposition that the *Arrêts* applied to all seigniories, as matter of public policy above mentioned, be correct, it was not because the provision in question was considered, not as a merely civil matter, but as one involving the exercise of a penal, but at the same time administrative and discretionary authority, that the power to inflict the forfeiture thereby imposed was vested in the Governor and Lieutenant General and the Intendant conjointly, and not in the Intendant alone, who, in virtue of his commission had power and authority (*pouvoir et faculté*) to decide absolutely and alone in civil matters, (*même de juger souverainement seul en matière civile*); and whether the Intendant alone ever could pronounce a sentence of forfeiture under the said provision; whether, after the conquest, the power of the Governor and Lieutenant General and Intendant conjointly, or of the Intendant alone in any matter involving penalty or forfeiture, was, by any competent authority, transferred to or vested in any judicial tribunal whatever; and whether all such his powers did not, after the conquest, wholly cease, together with the other powers given by his commission as Intendant of justice, police and finance?

Legal Proposition submitted on behalf of Sir Edmund Filmer et al.—5. On the supposition aforesaid, the presumption is, that it was because the provision in question was considered, not as a merely civil matter, but as one involving a penal, but at the same time administrative and discretionary authority, that the power here in question was not given to the Intendant alone; the sentence of forfeiture could never be pronounced by the Intendant alone; this power ceased at the conquest, and was never revived or vested in

any Judge, officer or tribunal since that time; and any such power would be inconsistent with the rights of british subjects, and those acquired by the inhabitants of this Province when they passed from the French to the British Rule, under which no freeman can be disseized of his freehold unless by the legal judgment of his peers, or by the laws of the land.

Answer of the Court.—5.—§ 1. This question has been answered by the answers to the preceding questions, and by the answers to the questions of the Attorney General, in so far as this question has relation as well to the nature of the powers of the Governor and Intendant, under the above *Arrêts*, to concede lands during the french dominion, as to the devolution of those powers to Courts of justice, under the british dominion.

For the affirmative :—LaFontaine, Bowen, Duval, Caron. Day, Smith, Mondelet, Meredith, Short, Morin.

For the negative :—Aylwin, Badgley.

§ 2.—The other portion of the question is foreign to the object and disposition of the Seigniorial Act, in so far as it relates to other powers and attributes exercised by those functionaries, either conjointly or separately, and to their devolution to the new tribunals, and therefore this Court abstains from an answer thereto.

For the affirmative :—LaFontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin.

Sixth counter-question.—Whether, in Lower Canada, a law may not become void by desuetude; and whether even if the *Arrêts* in question were at any period in force, and were not repealed or abrogated as above mentioned, they have not in fact fallen into desuetude and become obsolete; whether in fact ordinance after ordinance and act after act,

Imperial and provincial, touching the constitution of the country, the administration of justice and the commutation of the seigniorial tenure, have not been passed, and instructions given by the Sovereign for carrying out Imperial Acts for the commutation of the said tenure, and commutation after commutation effected under them by the Governor, with the advice of the law officers of the Crown, in the Province,—without any attempt to give effect to the said *Arrets;* whether the Courts of law, within the Province, have not constantly treated them as not in force; and whether these circumstances, apart from the considerations before mentioned, do not show that these *Arrêts* have, for nearly a century, fallen into utter desuetude, and have so become obsolete and void?

Legal Proposition submitted on behalf of Sir Edmund Filmer et al.—6. In Lower Canada, a law may lose its force by disuse, without any express repeal, or go into desuetude as it is termed, and the facts above mentioned shew that the *Arrêts*, if they were not repealed or abrogated, have in fact gone into desuetude and become a dead letter.

Answer of the Court.—6. These *Arrêts* have not fallen into desuetude.

For the affirmative:—LaFontaine, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin.

For the negative:—Bowen, Aylwin, Badgley.

Seventh counter-question.—Whether any *Arrêt* or Ordinance made by the King of France, when Canada was subject to his royal will and pleasure, would not cease to be in force, whenever the parliament of the United Kingdom should, after the conquest, pass an Act inconsistent with it,—and whether the provisions of the Imperial Act, 3 Geo. 4, cap. 119, sect. 31 and 32, (commonly called the Canada Trade Act,) and those of the Imperial Act, 6 Geo. 4, cap. 50, (commonly called the Tenures Act,) are not utterly inconsis-

tent with those of the *Arrêts* before mentioned; and whether in the royal instructions issued under the said Acts, to the Governors of Lower Canada or of Canada, or in the practice of the provincial government under them, or the instruments by which the commutation of tenure has been effected, it is stated, assumed or implied that the rights of the Seignior in the unconceded lands in his seigniory are limited in any way except by those of the Crown or of the Seignior *dominant*, and the terms of the original grant:—whether the said Acts of the British Parliament have not virtually repealed the said *Arrêts*, and all other laws inconsistent with those Acts, (if the said *Arrêts* or any such laws were in force at the time of the passing of the said Acts,) and whether therefore the said *Arrêts* or Laws can be legally invoked against the Seigniors of Lower Canada, who are, by the express terms of the Seigniorial Act of 1854, to be indemnified for their rights as they stood at the time of the passing of that Act?

Legal Proposition submitted on behalf of Sir Edmund Filmer et al.—7. Every French *Arrêt* or law ceased to be in force whenever a British Act, inconsistent with it was passed after the conquest; the Canada Trade Act and Tenures Act, are utterly inconsistent with the said *Arrêts*, which are therefore repealed, and cannot now be invoked against the Seigniors of Lower Canada.

Answer of the Court.—7. These *Arrêts* have not been repealed by the said Imperial Statutes.

For the affirmative:—LaFontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin.

For the negative:—Aylwin, Badgley.

IV.

COUNTER-QUESTIONS OF THE SEIGNIORS.

IN THE INSTANCE.

Upon the counter-questions submitted on behalf of Dame Louise Chartier de Lotbinière, wife of the Honorable Robert Unwin Harwood, of the parish of St. Michel de Vaudreuil, in the district of Montreal, esquire, duly separated as to property from her said husband, and by him hereunto duly and specially authorized, Seigniores and proprietor in possession of the *fief* and seigniory of Vaudreuil in the said district, and the said Honorable Robert Unwin Harwood, as the husband of the said Dame Louise Chartier de Lotbinière, and authorising her for the purpose hereof.

First counter-question.—Independently of question as to any legal effect or operation of the *Arrêt* of the King of France, rendered in his *Conseil d'Etat*, and bearing date at Marly, of the 6th day of July, 1711, intituled: "*Arrêt du Roi qui ordonne que les terres, dont les concessions ont été faites, soient mises en culture et occupées par des habitants*," or of the *Arrêt* of the King of France, rendered in his *Conseil d'Etat*, and bearing date at Versailles of the 15th day of March, 1732, having reference thereto and to sales of wild lands (*terres en bois debout*) in Canada, or of the Declaration of the King of France, bearing date at Versailles of the 17th day of July, 1743, intituled "*Déclaration du Roi concernant les concessions dans les colonies*," in respect of any lands in Canada, other than those hereinafter specified, or of any persons holding the same, or of any contracts thereto relating, and without hereby admitting that the same have any such legal effect or operation,—can the said two *Arrêts* and Declaration, or any of their provisions, be held to have any legal effect or operation whatever, in respect of any lands in

Canada being within the *enclave* of any *fief* or seigniory, as to which the Seignior, holding the same, may have obtained from the Crown, under authority of the Statutes of the Imperial Parliament made and passed in the third year and in the sixth year, respectively, of the Reign of His late Majesty George the Fourth, the former intituled " An Act to regulate " the trade of the Provinces of Lower and Upper Canada, " and for other purposes relating to the said Provinces," and the latter intituled " An Act to provide for the extention of " feudal and seigniorial rights and burthens on lands held " *à titre de fief* and *à titre de cens*, in the Province of Lower " Canada, and for the gradual conversion of these tenures " into the tenure of free and common soccage, and for other " purposes relating to the said Province," or under authority of either of such Statutes, a commutation of and release from all feudal burthens due to the Crown thereon, and a re-grant of the lands thereof, or of all parts and parcels thereof remaining in his possession ungranted,—or in respect of any lands being within the *enclave* of any *fief* or seigniory, as to which the Seignior holding the same may in terms of and under the said Statutes or either of them, duly have applied to Her majesty or any of her predecessors, or may hereafter so apply, for such commutation, release and re-grant,—or in respect of any contracts thereto relating ?—And if at all, then how, and to what extent, can any of such lands, persons or contracts be held to be so thereby legally affected ?

Legal Proposition submitted on behalf of Dame Harwood et al.—1. The said *Arrêts* and the said *Déclaration* cannot be held to effect in any wise any lands in Canada, being within the *enclave* of any *fief* or *seigneurie*, as to which the Seignior holding the same may have obtained from the Crown, under authority of the said Imperial Statutes or of either thereof, a commutation of all feudal burthens due to the Crown thereon, and a re-grant of the lands thereof, or of all parts and parcels thereof remaining in his possession

ungranted,—nor in respect of any lands being within the *enclave* of any *fief* or *seigneurie*, as to which the *Seigneur* holding the same may, in terms of and under the said Statutes or either of them, duly have applied to Her Majesty or any of her predecessors, or may hereafter so apply, for such commutation, release and regrant,—nor in respect of any persons holding any of such lands, whether *en fief* or otherwise,—nor in respect of any contracts thereto relating.

Answer of the Court.—1.—§ 1. The Acts of the Imperial Parliament, commonly called the Trade Act and the Tenures Act of Canada, have effected changes in seigniories for which a commutation of tenure has been obtained under their provisions, with reference to the portions of these seigniories not conceded at the time of the commutation.

For the affirmative :—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 2. These portions were by the commutation subjected to the tenure of free and common soccage, and relieved from rights and dues to the Crown, and generally withdrawn from seigniorial laws and obligations.

For the affirmative:—La Fontaine, Bowen, Aylwin, Duval, Caron, Day, Smith, Meredith, Short, Morin, Badgley.

For the negative :—Mondelet.

§ 3. At the time of the commutation, Tenants (*Censitaires*) in the other portions of such seigniories, remained subject to their obligations as such Tenants (*Censitaires*), and the Seigniors, on their part, continued to be subject to their obligations towards their Tenants (*Censitaires*), although the Seignior had obtained a re-grant of the entire seigniory under the tenure of free and common soccage.—Adopted unanimously.

§ 4. The laws which regulate the relations, between the Seigniors and Tenants (*Censitaires*) apply equally to the case

where a commutation has been demanded by the Seignior, in virtue of the Imperial Acts, but not obtained at the passing of the Seigniorial Act of 1854.

For the affirmative :—La Fontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin.

§ 5. They also apply to the case when a commutation has not been demanded by the Seignior under the provisions of the Imperial Acts.

For the affirmative :—La Fontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin.

Second counter-question.—Can any contract, or clause of contract, not being in itself immoral (*contrà bonos mores*) not yet prohibited by the british public law, as the same since the said cession of Canada has prevailed therein,—which from the time of the said cession to that of the passing of " the Seigniorial Act of 1854," may have been freely and without fraud entered into, touching the terms of any alienation whatsoever of any of the lands enquired of in the preceding question, be held to be either null or annullable, or in law liable to be set aside, or at all altered or restricted, as between the parties thereto ?—And if so, how, to what extent, and by virtue of what law statutory or otherwise, can any such contract or clause be so held ?

Legal Proposition submitted on behalf of Dame Harwood et al·—2. No contract or clause of a contract, whatever, unless in itself immoral, (*contrà bonos mores*,) or prohibited by british public law, as the same since the said cession of Canada has prevailed therein,—which from the time of the said cession to that of the passing of " the Seigniorial Act of 1854," may have been freely and without fraud entered into, touching the terms of any alienation whatsoever of any of the lands enquired of in the preceding question,—can be

held to be either null, or annullable, or in law liable to be set aside or at all altered or restricted as between the parties thereto.

Answer of the Court.—2. Such a contract, or clause of such a contract, in violation of the laws of Canada, although not in itself immoral, nor yet prohibited by british public law, may be null or annullable.

For the affirmative :—LaFontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin.

Third counter-question.—Can any Commissioner or Commissioners under " the Seigniorial Act of 1854," lawfully treat any contract, or any clause of any contract, such as is enquired of by the last preceding question, as being null, or assume to set aside, or at all alter or restrict the same?—And if so, in what cases, and to what extent, may such Commissioner or Commissioners lawfully so do?

Legal Proposition submitted on behalf of Dame Harwood et al.—3. Such Commissioner or Commissioners may not lawfully treat any contract, or any clause of any contract, such as is here and in the last preceding question enquired of, as being null, or assume to set aside, or at all alter or restrict the same.

Answer of the Court.—3. Such commissioner may not lawfully assume to treat any contract, or clause of such contract, as in this and the last preceding question inquired of, as being null; unless such nullity has been pronounced by the judgment of a Court of competent jurisdiction, or such contract, or clause of such contract, has been declared illegal by the decision of this Special Court.—Adopted unanimously.

Fourth counter-question.—Can any such Commissioner or Commissioners lawfully assume within any *fief* or seigniory, falling within either of the two classes of *fiefs* or seigniories

enquired of by the first preceding interrogatory, to enforce upon the Seignior or upon any *Censitaire* thereof any co-operation on the part of such Seignior and *Censitaire* in any procedure under " the Seigniorial Act of 1854,"—if such Seignior or *Censitaire* shall elect to maintain the application of the provisions of the said Imperial Statutes in the premises?—And if so, to what extent and how may such co-operation lawfully be enforced?

Legal Proposition submitted on behalf of Dame Harwood et al.—4. Such Commissioner or Commissioners may not lawfully assume to enforce such co-operation.

Answer of the Court.—4. The Commissioners may enforce the Seigniorial Act of 1854, in any *fief* or seigniory to which this question refers, even if the Seignior should elect to maintain the application of the provisions of the Imperial Acts.

For the affirmative :—LaFontaine, Duval, Caron, Smith, Mondelet, Meredith, Short, Morin.

For the negative : Bowen, Aylwin, Badgley.

Judge Day abstains from pronouncing upon this question.

V.

COUNTER-QUESTIONS OF THE SEIGNIORS.

IN THE INSTANCE.

Upon the counter-questions submitted on behalf of Dame Marie Charlotte Chartier de Lotbinière, wife of William Bingham, of the city of Paris, in France, esquire, duly separated as to property from her said husband, and by him hereunto duly and specially authorized, Seignioress and proprietor in possession of the *fief* and seigniory of Rigaud, in the district of Montreal, and the said William Bingham, as the husband of the said Dame Marie Charlotte Chartier de Lotbinière, and authorizing her for the purposes hereof :—

First counter-question.—Independently of question as to any legal effect or operation of the *Arrêt* of the King of France, rendered in his *Conseil d'Etat*, and bearing date at Marly of the 6th day of July, 1711, intituled "*Arrêt du Roi qui ordonne que les terres, dont les concessions ont été faites, soient mises en culture et occupées par des habitants,*" or of the *Arrêt* of the King of France, rendered in his *Conseil d'Etat*, and bearing date at Versailles of the 15th day of March, 1732, having reference thereto and to sales of wild lands (*terres en bois debout*) in Canada, or of the Declaration of the King of France, bearing date at Versailles of the 17th day of July, 1743, intituled, "*Déclaration du Roi concernant les concessions dans les colonies,*" in respect of any lands in Canada, other than those hereinafter specified, or of any persons holding the same, or of any contracts thereto relating, and without hereby admitting that the same have had any such legal effect or operation ;—can the said two *Arrêts* and the said Declaration, or any of the provisions thereof, be held to have had, from the time of the cession of Canada to the British Crown, to that of the passing of "the Seigniorial Act of 1854," any legal effect or operation, in respect of any lands in Canada which, at the time of the said cession, were holden *en franc-alleu*, or in respect of any lands in Canada, which, at the time of the said cession, were holden *en fief*, whether directly of the Crown or of any other immediate Seignior *dominant*,—or in respect of any persons who, since the time of the said cession, have ever held any of such lands, whether *en franc-alleu* or *en fief* or *en censive*,—or in respect of any contracts thereto relating ?—And if at all, then how, and to what extent, have any of such lands, persons or contracts, been so thereby affected ?

Legal Proposition submitted on behalf of Dame Bingham,—1. The said *Arrets* and the said *Déclaration* cannot be held to have had, from the time of the cession of Canada to the British Crown, to that of the passing of "the Seigniorial Act of 1854," any legal effect or operation, in respect of any lands in Canada, which, at the time of the said cession,

were holden *en franc-alleu*,—nor in respect of any lands in Canada, which, at the time of the said cession, were holden *en fief*, whether directly of the Crown or of any other immediate Seignior *dominant*,—nor in respect of any persons who since the said cession have ever held any of such lands, whether *en franc-alleu* or *en fief*, or *en censive*,—nor in resrespect of any contracts thereto relating.

Answer of the Court.—1. This question has been answered in the answers to the questions of the Attorney General, and in the answers to the questions of the Seigniors above named.

For the affirmative :—La Fontaine, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin.

For the negative :—Bowen, Aylwin, Badgley.

Second counter-question.—From the time of the cession of Canada to the British Crown, to that of the passing of "the Seigniorial Act 1854," according to the law of Canada as then in force, have Seigniors who during that period may have holden *en fief* any of the lands enquired of by the last question, been any less free than they would have been in France under the Custom of Paris (*Coutume de Paris*) at the time of its introduction into Canada,—as touching the alienation of such lands, in whole or part, by sale or otherwise, as they should see fit?—If so, when, by what act or acts of legislative authority, in what terms, and to what extent, had the Custom of Paris (*Coutume de Paris*) come to be so derogated from in Canada, or altered?

Legal Proposition submitted on behalf of Dame Bingham.—2. Through the period here in question, such Seigniors were not less free than they would have been in France under the Custom of Paris (*Coutume de Paris*) at the time of its introduction into Canada,—as touching the alienation of such lands, in whole or part, by sale or otherwise, as they should see fit.

Answer of the Court.—2. This question has been answered in the answers to the questions of the Attorney General, and in the answers to the questions of the Seigniors above named.—Adopted unanimously.

Third counter-question.—Can any contract, or clause of a contract, not being in itself immoral, *contrà bonos mores*, not yet prohibited by british public law, as the same, since the said cession of Canada, has prevailed therein,—which, from the time of the said cession to that of the passing of "the Seigniorial Act of 1854," may have been freely and without fraud enterred into, touching the terms of any alienation whatsoever of any of the lands enquired of in the preceding questions,—be held to be either null or annullable, or in law liable to be set aside or at all altered or restricted, as between the parties thereto?—And if so, how, to what extent, and by virtue of what law, statutory or otherwise, can any such contract or clause be so held?

Legal Proposition submitted on behalf of Dame Bingham.—3. No contract or clause of a contract, whatever, unless in itself immoral, (*contrà bonos mores*,) or prohibited by british public law as the same since the said cession of Canada has prevailed therein,—which, from the time of the said cession to that of the passing of "the Seigniorial Act of 1854," may have been freely and without fraud entered into, touching the terms of any alienation whatsoever of any of the lands enquired of in the preceding questions,—can be held to be either null, or annullable, or in law liable to be set aside or at all altered or restricted, as between the parties thereto.

Answer of the Court.—3. This question has been answered in the answers to the questions of the Attorney General, and in the answers to the questions of the Seigniors above named.—Adopted unanimously.

Fourth counter-question.—Can any Commissioner or Commssioners under "the Seigniorial Act of 1854," lawfully

treat any contract, or any clause of any contract, such as is enquired of by the last preceding question, as being null, or assume to set aside, or at all alter or restrict the same?—And if so, in what cases, and to what extent, may such Commissioner or Commissioners lawfully so do?

Legal Proposition submitted on behalf of Dame Bingham.—4. Such Commissioner or Commissioners may not lawfully treat any contract, or any clause of any contract, such as is here and in the the last preceding question enquired of, as being null, or assume to set aside, or at all alter or restrict the same.

Answer of the Court.—4. This question has been answered in the answers to the questions of the Attorney General, and in the answers to the questions of the Seigniors above named.—Adopted unanimously.

VI.

COUNTER-QUESTIONS OF THE SEIGNIORS.

IN THE INSTANCE.

Upon the counter-questions submitted on behalf of the Honorable John Malcolm Fraser, of the city of Quebec, in the district of Quebec, esquire, Seignior and proprietor in possession of the *fief* and seigniory of Mount Murray in the district of Quebec, to wit:

First counter-question.—Independently of question as to any legal effect or operation of the *Arrêt* of the King of France, rendered in his *Conseil d'Etat*, and bearing date at Marly, of the 6th of July, 1711, intituled "*Arrêt du Roi qui ordonne que les terres, dont les concessions ont été faites, soient mises en culture et occupées par des habitants,*" or of the *Arrêt* of the King of France, rendered in his *Conseil d'Etat*, and bearing date at Versailles, of the 15th day of March,

1732, having reference thereto and to sales of wild lands, (*terres en bois debout*,) in Canada, or of the Declaration of the King of France, bearing date at Versailles, of the 17th day of July, 1743, intituled "*Declaration du Roi concernant les concessions dans les colonies*," in respect of any lands in Canada, other than those hereinafter specified, or of any persons holding the same, of any contracts thereto relating, and without hereby admitting that the same have had any such legal effect or operation,—can the said two *Arrêts* and the said Declaration, or any of the provisions thereof, be held to have had, from the time of the cession of Canada to the British Crown, to that of the passing of "the Seigniorial Act of 1854," any legal effect or operation in respect of any lands in Canada originally granted *en fief* by the British Crown, or of any persons holding the same, whether *en fief* or otherwise, or of any contracts thereto relating ?—And if at all, then to what extent, and how, have any such lands, persons or contracts been so thereby legally affected ?

Legal Proposition submitted on behalf of the Honorable M. Fraser.—1. The said *Arrêts* and *Déclaration* cannot be held to have had, from the time of the cession of Canada to the British Crown, to that of the passing of "the Seigniorial Act of 1854," any legal effect or operation in respect of any lands in Canada originally granted *en fief* by the British Crown, or of any persons holding the same, whether *en fief* or otherwise, or of any contracts thereto relating.

Answer of the Court.—1. Grants in *fief* in this country made by the British Crown, from the cession to the passing of "the Seigniorial Act of 1854," are subject to the same laws as the other grants made under the same tenure, unless the grant contain certain special dispositions by which a derogation in certain respects shall be established.

For the affirmative :—La Fontaine, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin.

For the negative :—Bowen, Aylwin, Badgley.

Second counter-question.—According to the law of Canada as then in force, did the contract whereby the British Crown granted such lands *en fief*, either operate any subdivision of the estate or property (*domaine*) thereby granted, between the Seignior and any Vassals or *Censitaires* to whom he might thereafter make sub-grants, *en fief* or *en censive*, as the case might be,—or import obligation on him to make sub-grants, whether *en fief* or *en censive*, or to dispose of such lands in whole or part, to third parties, on any particular terms,—or leave him less free than he would have been in France, under the Custom of Paris (*Coutume de Paris,*) at the time of its introduction into Canada, as touching the alienation of such lands, in whole or part, by sale or otherwise, as he should see fit?—If so, what such subdivision of such estate or property (*domaine*) was so operated, and in whose favor; what such obligation to sub-grant such lands or at all dispose thereof to third parties, was so imported; and when, by what act or acts, of legislative authority, in what terms, and to what extent, had the Custom of Paris (*Coutume de Paris*), as to any such particular, come to be so derogated from in Canada, or altered?

Legal Proposition submitted on behalf of the Honorable M. Fraser.—2. Such contract did not, according to the law of Canada as then in force, either operate any subdivision of the estate or property (*domaine*) thereby granted, between such Seignior and any Vassals or *Censitaires* to whom he might thereafter make sub-grants *en fief* or *en censive*,—nor import obligation on him to make sub-grants *en fief* or *en censive* or to dispose of such lands, in whole or part, to third parties on any particular terms,—nor leave him less free than he would have been in France, under the Custom of Paris, (*Coutume de Paris,*) at the time of its introduction into Canada, as touching the alienation of such lands, in whole or part, by sale or otherwise, as he should see fit.

Answer of the Court.—2. This question has been answered by the answers to the questions of the Attorney General,

and by the answers to the questions of the Seigniors above named.

For the affirmative :—LaFontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin.

Third counter-question.—Can any contract, or any clause of any contract, not being in itself immoral, (*contrà bonos mores,*) nor yet prohibited by british public law, as the same since the said cession of Canada has prevailed therein, which may have been freely and without fraud entered into, touching the terms of any alienation whatsoever of any of the land enquired of in the preceding questions,—be held to be either null or annullable, or in law liable to be set aside, or at all altered or restricted, as between the parties thereto ?—And if so,—how, to what extent, and by virtue of what law, statutory or otherwise, can any such contract or clause be so held ?

Legal Proposition submitted on behalf of the Honorable M. Fraser.—3. No contract or clause of a contract, whatever, unless in itself immoral, (*contrà bonos mores,*) or prohibited by british public law, as the same since the said cession of Canada has prevailed therein, which may have been freely and without fraud entered into, touching the terms of any alienation whatsoever of any of the lands enquired of in the preceding questions,—can be held to be either null, or annullable, or in law liable to be set aside or at all altered or restricted, as between the parties thereto.

Answer of the Court.—3. This question has been answered by the answers to the questions of the Attorney General, and by the answers to the questions of the Seigniors above named.

For the affirmative :—LaFontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin.

Fourth counter-question.—Can any Commissioner or Commissioners under "the Seigniorial Act of 1854," lawfully treat any contract, or any clause of any contract, such as is enquired of by the last preceding question, as being null, or assume to set aside, or at all alter or restrict the same?—And if so, in what cases, and to what extent, may such Commissioner or Commissioners lawfully so do?

Legal Proposition submitted on behalf of the Honorable M. Fraser.—4. Such Commissioner or Commissioners may not lawfully treat any contract, or any clause of any contract, such as is here and in the last preceding question enquired of, as being null, or assume to set aside, or at all alter or restrict the same.

Answer of the Court.—4. This question has been answered by the answers to the questions of the Attorney General, and by the answers to the questions of the Seigniors above named.

For the affirmative :—LaFontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin.

VII.

COUNTER-QUESTIONS OF THE SEIGNIORS.

IN THE INSTANCE.

Upon the counter question submitted on behalf of the Honorable Jean Roch Rolland, of the parish of Ste. Marie de Monnoir, in the district of Montreal, esquire, Seignior and proprietor in possession of the *fief* and seigniory of Monnoir, in the said district, to wit :

Counter-question.—In case of any Seignior having a banal mill constructed upon a non-navigable stream, where, for the due working of such mill, it is required to dam such

stream, so as to flood lands granted to other parties, which lands such Seignior is not entitled so to flood unless by his *droit de banalité*,—is not such Seignior, from the fact that upon the loss of his *droit de banalité* he can be compelled to lower or even remove such dam, to the decrease, if not to the total loss, of the income from such mill, entitled to have such decrease or loss made good to him by a due estimate and proportionment, in terms of the third sub-section of the sixth section of "the Seigniorial Act of 1854," of such decrease or loss, as entering into value of his *droit de banalité*, whereof he is to be deprived by the said Act ?

Legal Proposition submitted on behalf of the Honorable Jean Roch Rolland.—Such Seignior is entitled to have such decrease or loss made good to him, by a due estimate and apportionment (in terms of the third sub-section of "the Seigniorial Act of 1854,") of such decrease or loss, as entering into the value of his *droit de banalité*, whereof he is to be deprived by the said Act.

Answer of the Court.—Seigniors cannot flood the lands granted to their Tenants, *Censitaires*, in virtue of *banalité* alone ; if they possess the right to flood those lands, it can only proceed from valid titles, the effect of which cannot be changed by " the Seigniorial Act of 1854."

For the affirmative :—La Fontaine, Bowen, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin, Badgley.

For the negative :—Aylwin.

SUMMARY

OF THE

JUDGMENT OE THE SPECIAL COURT

Held under authority of the Seigniorial Act of 1854.

I.

SUMMARY OF THE JUDGMENT OF THE COURT UPON THE QUESTIONS SUBMITTED BY THE ATTORNEY GENERAL.

Cens et Rentes.

1 & 2. (1)—Under the Custom of Paris, the effect of the feudal contract, whether by subinfeudation, or *accensement*, was to devide the estate between the Seignior of the *fief* or his Subfeudatory or Tenant, *Censitaire*, in such manner as to retain, in the Former, the immediate demesne, *dominium directum*, and to convey the useful demesne, *dominium utile*, to the latter. " The Subfeudatory could dispose of his useful demesne, *dominium utile*, and convert it into an immediate demesne, *dominium directum*." (*) (2) (V, 3 & 4, § 3.)

3 & 4.—§ 1. The immediate demesne consisted of the duties or dues, obligations or *redevances*, to which the Subfeudatory or Tenant, *Censitaire*, was subjected ; the useful demesne consisted of the produce of the land or thing subinfeudated or *accensée*. Previous to the subinfeudation or *accensement*, both the useful and immediate demesnes were united in full demesne in the Seignior. (*) § 2. Woods and waters not navigable might form part of the useful demesne. (For the affirmative, 11, for the negative, 1.)

(1) These figures correspond with the numbers of the Questions and Answers.
(2) * This indicates that the proposition was adopted unanimously.

§ 3. The Subfeudatory, in like manner, before his infeudation or *accensement* had the full demesne, saving the rights of the *dominant* Seignior, and also retained an immediate demesne over what he had himself infeudated or *accensé*. (F. 11, A. 1.)

5.—Under the Custom of Paris, the Seignior was not obliged to alienate his lands held *en fief*, but when he did alienate them, subinfeudation or *accensement* were of the essence of the feudal system, according to the 51 article of the Custom of Paris. (*)

6.—The 6th question, " was it necessary to render subinfeudation or *accensement* binding in Canada," presenting no legal point for decision, this Court abstains from an answer to it. (*)

7.—The intention of the French Kings was to promote the settlement and cultivation of the lands of the country; but the concession of lands for that purpose was not made obligatory by any law anterior to the *Arrêt* of the 6th of July, 1711, (F. 8, A. 4.)

8.—The concession of lands to settlers for cultivation, was rendered obligatory by the *Arrêt* of the 6th of July, 1711. (*)

9.—Before the cession of the country, the laws obliged the Seigniors to grant (*concéder*) their lands, on demand, at a rent charge, (*à titre de redevances*), and this obligation limited the exercise of the rights of the Seigniors in the disposal of their lands. (*)

10.—§ 1. This obligation did result from special laws affecting Canada, particularly the *Arrêt* of the 6th of July, 1711. (*) § 2. The obligation to concede was not contained generally in the grants of seigniories; but it was stipulated in a few of them. (F. 8, A. 4.) § 3. It originated with the *Arrêt* of 1711. (F. 8, A. 4.) § 4. It extended to every seigniory, without regard to the motives of

the grant, but might be controlled by a special derogation in the royal grant to the Seignior. (*) § 5. The *Arrêt* of 1711, applied to royal grants already made at the time of its promulgation, as well as to those made subsequently. (*)

11 & 12.—The laws did provide means for compelling Seigniors to concede their lands; the Governors and Intendants were invested with the necessary powers for compelling them, in cases where they refused, and upon complaints to that effect, according to the dispositions of the *Arrêt* of the 6th of July, 1711, of that of the 15th of March, 1732, and of the Declaration of the 17th of July, 1743. (*)

13.—§ 1. The rate of the concession of lands in the seigniories was not regulated by special laws nor by Custom; (F. 10, A. 2.) § 2. Nevertheless, whenever the Governor and Intendant were called upon to concede upon the Seignior's refusal, the *Arrêt* of 1711 decided that the concession should be made "upon the same rights as imposed upon the other conceded lands in the same seigniories." (*) § 3. The grants to the Seigniors did not regulate the act of concession, except in four of those which have come to the knowledge of the Court. (F. 10, A. 2.) § 4. Upon the question, "were the concessions to be made at an annual rent charge (*à titre de redevances annuelles*) only?" the Court is equally divided. (F. 6, A. 6.) It will be seen further on, that the majority of the Court agreed to this proposition, so far as the reservations are concerned, with one exception; (No. 39, § 1. F. 7, A. 5.) this explains the reason why the Court did not adopt it here in the strongest terms, "for an annual rent charge only." § 5. The rate of dues was not established by custom, except in the case of a concession made by the Governor and the Intendant. (F. 10, A. 2.)

14.—The dues varied in amount at the promulgation of the *Arrêt* of the 6th of July, 1711; this *Arrêt* does not establish any fixed rate; the dues have varied since the

promulgation of that *Arrêt*, but have gradually increased. F. 10, A. 2.)

15. The *Arrêt* of the 6th of July, 1711, does not establish any fixed rate, except in case of the refusal of the Seignior to concede. (F. 10, A. 2.)

16.—§ 1. The *Arrêt* of the 6th of July, 1711, *Arrêt* of the 15th of March, 1732, and the Declaration of the 17th of July, 1743, were in force at the time of the session of the Country ; (*) § 2. and these laws were generally observed up to that time. (F. 11, A. 1)

17.—§ 1. According to the laws of the Country, the proprietors of *fiefs* had the full and entire property in their lands, before they had conceded them. (F. 11, A. 1.) § 2. That is to say, that the useful and full demesnes were united in them. (F. 11, A. 1.) § 3. The *Arrêt* of 1711, required Seigniors to concede without exacting a money price for the concession (*deniers d'entrée*). The *Arrêt* of 1732, prohibited the sale of wild lands (*terres en bois debout*), under the penalty of nullity. (*) § 4. The Seigniors were required to concede at a rent charge. (F. 11, A. 1.) § 5. The prohibition to exact a money price applied only to uncleared lands *(terres non défrichées.* (*)

18, 19 & 20.—§ 1, In so far as those laws had relation to the tenure, and regulated the essence of the contract, they were laws of public policy, *(d'ordre public.)* (F. 7, A. 5.) § 2. Taking them in that sense, individuals could not contravene them. (F. 8, A. 4.) § 3. Contracts, in contravention of those laws, in so far as they were thus of public policy, were not binding, but were null, *(pleno jure)* (F. 8, A. 4.)

21.—Those laws were in force at the passsing of the Seigniorial Act of 1854. (F. 9, A. 3.)

22.—Upon the question' "since the cession, did there exist a tribunal competent to exercise the power conferred

on the Governor and Intendant by the *Arrêt* of the 6th of July, 1711, relating to the concession of seigniorial lands," the Court is equally devided. (F. 6, A. 6.(

23.—All the JUDICIARY powers, exercised by the INTENDANT in civil matters, before the cession of the Country, have devolved upon the civil tribunals of the Province. (*)

24.—These same tribunals were competent to declare the nullity of contracts made between private individuals in contravention to the laws above mentioned. (F. 11, A. 1.)

25.—The Tenants *(Censitaires)* to whom concessions have been made, since the cession, at higher rates than those which were customary before that time, have no right to be relcived from the excess of those dues. (F. 11, A. 1.)

Navigable Rivers.

26.—Seigniors had no other rights over navigable rivers than those specially conveyed to them by their grants, provided these rights were not inconsistent with the public use of the water of those rivers, which is inalienable and imprescriptible. (F. 11, A. 1.)

27.—§ 1. In seigniories, bounded by a navigable river, Seigniors could lawfully reserve to themselves the right of fishing therein, or impose dues on their Tenants (*Censitaires*) for the exercise of that right, when the right of fishing in the same had been granted to them ; but they could not make the reservation, or impose the dues, without grant and as Seigniors only. (F. 11, A. 1.)

§ 2. Where the right of fishing in navigable rivers was granted to Seigniors, the Tenants *(Censitaires*) could not have that right without special concession. (F. 11, A. 1.)

§ 3. The rights of Seigniors in tidal navigable rivers over he space of ground covered and uncovered by the tide, are dirived from special grant, and without that extend to high

water mark only ; in navigable rivers not subject to the tidal flow, the rights of Seigniors extended to the water line, saving all legal servitudes, and without prejudice to the special grants in navigable rivers above mentioned. (F. 11, A. 1.)

§ 4. The mutation of beaches, between high and low water mark, on the river St. Lawrence, or in other navigable rivers, held by Seigniors by virtue of grants, as aforesaid, and conceded by them, entitles Seigniors to the mutation fine (*lods et ventes*) in the same cases in which it would have accrued in other sales. (F. 11, A. 1.)

Non-Navigable Rivers.

28.—§ 1. By the grant of the *fief* to the Seignior, he became proprietor of the non-navigable rivers, rivulets and other running waters, which passed through or were wholly or in part within the *fief ;* the same principle applied to the property in such rivers and rivulets to the middle of the steam. It is also in virtue of the same grant, that he became proprietor of non-navigable lakes as well as of ponds. (F. 10, A. 2.)

§ 2. He was thus proprietor of these waters in manner aforesaid, as belonging to and forming a portion of the *fief ;* unless they were excluded by the grant ; subject nevertheless to legal servitudes. (F. 10, A. 2.)

29.—§ 1. At the cession of the Country, the Seigniors of Canada were lawful proprietors of these non-navigable et non-floatable waters, in whole or to the middle of the stream, as the case might be, on the whole of their unconceded lands, and might make use of them for industrial or other purposes, to the exclusion of all other persons. (F. 11, A. 1.)

§ 2. The Subfeudatory or Tenant, *Censitaire*, by the subinfeudation or *accensement* became in the same manner proprietor in whole or to the middle of the stream, according

to the several cases mentioned of these non-navigable and non-floatable waters, which passed through or which bordered the conceded land, unless they were excluded by the title ; the grantee (*concessionnaire*) becoming proprietor of them, was also subjected to legal servitudes. (F. 9, A. 3.) " Nevertheless the general reservations of the waters which the Seigniors might have made, are declared to be null ; (V. No. 39, § 3, art. 4, p. 7, c. 5,) from which we must understand by these words, " unless they were excluded by the title," that they meant the exclusion of the soil or land as well as the exclusion of the waters."

30.—The right of property in rivers was not a right of *justiciæ* (*droit de justice*,) it resulted from the conveyance of and followed the estate granted ; when the estate was conveyed in seigniory, the right resulted from the general laws of property in force in the Country, and not from the text of the Custom of Paris, nor from any law specially promulgated for Canada. (F. 10, A. 2.)

31.—It was not a right of *justiciæ* (*droit de justice.*) F. 11, A. 1.)

32.—§ 1. The property of Seigniors in non-navigable and non-floatable waters, was susceptible of division into the immediate demesne and the useful demesne like the property in the soil. (F. 11, A. 1.)

§ 2. The concession operating this division, conveyed to the Tenant (*Censitaire*) the possession and enjoyment of those waters which were within the limits of the concession. (F. 11, A. 1.)

37 and 38.—There has been no established jurisprudence in Lower Canada, since the cession of the Country, in relation to the rights in the waters which pass through or border upon their lands. (*)

Right of Banalité.

33.—§ 1. At the passing of the Seigniorial Act of 1854, the Seigniors in Canada, who had erected grist mills (*moulins à farine*,) had the right of preventing all others from building such mills within the extent of their *banalité*. (F. 11, A. 1.)

§ 2. They had also the right of demanding the demolition of all mills of that kind built within their *censive* by other persons. (F. 11, A. 1.)

At this part of tne subject, the Court has not been asked if the suppression of the rights mentioned in the two preceding § should be a reason for indemnifying the Seignior, but in relation to prohibitions the Court has stated elsewhere : (41, § 1 and 2.) " The disappearance of prohibitions made for the protection of otheir legitimate seigniorial rights, although legal, does not give rise to any indemnity, because those prohibitions were only accessory to a principal right for which the Seignior has indemnity.

34.—§ 1. These rights extented to all seigniories. (F. 10, A. 2.)

§ 2. The Seigniors could not demand the demolition of grist mills built upon lands whose tenure had been commuted into that of *franc-alleu roturier*, or that of free and common soccage, within the limits of their respective *fiefs*. (F. 11, A. 1.)

35.—These rights did not extent to other than grist mills, nor to any works (*usines*) of any kind ; they are comprehended in and from part of the law of *banalité*, and have their origin in the civil laws of France on the subject. (F. 11, A. 1.)

36.—§ 1. The right of *banalité*, as established in the Country, obliged Seigniors to build banal mills, and Tenants (*Censitaires*) to bring their grain to the mill to be

ground, which was necessary for the sustenance of their families, whether the grain was raised or brought within the extent of the *banalité* and ground for that purpose. (F. 11, A. 1.)

§ 2. This right, which was conventional in the origin, was afterwards rendered general and obligatory upon all Seigniors and Tenants *(Censitaires.)* (F. 11, A. 1.)

§ 3. The *Arrêt* of the 4th of June, 1686, was the first law which rendered *banalité* general and obligatory upon Seigniors and Tenants. (F. 11, A. 1.)

§ 4. In this Country *banalité* was feudal as being attached to a *fief*. (F. 11, A. 1.)

§ 5. *Banalité* was only conventional under the Custom of Paris. (*)

§ 6. Seigniors, who had no mills built at the passing of the Seigniorial Act of 1854, have no right, under the provisions of the said Act, to any indemnity for *banalité*. (*)

Nos. 37 and 38 are given above.

Reservations.

39.—§ 1. The obligation to concede at a rent charge, (*à titre de redevances*) imposed upon Seigniors, must be understood as being exclusive of all reserves which cannot be comprehend within the term dues (*redevances*), and which were not otherwise rendered legal. (F. 7, A. 5.)

§ 2. All reserves must be held to be legal, the object of which was the obligation uponthe Tenant (*Censitaire*) to allow the accomplishment by the Seignior, on his part, of the obligations of that nature stipulated by the King in the grant of the *fief*. (F. 11, A. 1.)

§ 3. The following reservations or other analogous to them, were illegal, and do not give to the Seignior a

right to any indemnity by reason of their suppression : Art. 1. A reservation of firewood for the use of the Seignior ; Art. 2. A reservation of all marketable timber ; Art. 3. A reservation of all mines, quarries, sand, stone and other materials of the same kind ; Art. 4. A reservation of all rivers, rivulets and streams for all kinds of mills, works and manufactures ; Art. 5. A reservation of the right of diverting and directing the course of streams and of intersecting lands by channels for that purpose ; Art. 6. A reservation of the right of taking the land requisite for the building of any kind of mills or manufactures, with or without indemnity. (F. 7, A. 5.)

§ 4. A reservation of indemnity for the value of the lands of the *Censitaires* required for the construction of railroads, is also illegal and gives no right to indemnity,) F. 9, A. 3.)

§ 5. Reservation of the right of changing the place and time of payment of the *cens et rentes* and other seigniorial dues, the Seigniors might make the reservation, provided the place newly indicated was within the limits of the seigniory. (*).

§ 6. The reservation of timber for the construction of churches without indemnity, and the reservation of the right of fishing and hunting on the lands conceded, are illegal and give no right to indemnity. (F. 8, A. 4.)

§ 7. The question being put : " is the reservation of timber for the building of the manor house and mills without indemnity, legal, and does it give to the Seignior a right to an indemnity for its suppression? " the Court is equally divided. (F. 6, A. 6.)—But it is stated at § 1 : " All reservations which cannot be comprehended within the term dues (*redevances*) are illegal."

40.—The 40th question is too general, the Court does not answer it.

Prohibitions.

41.—§ 1. When prohibitions were made for the protection of other legal seigniorial rights, they might be legal. (F. 11, A. 1.)

§ 2. But their disappearance, by virtue of the Seigniorial Act of 1854, does not give rise to any indemnity, because they were only accessory to a principal right for which the Seignior has indemnity. (*)—Can this rule of law apply to the legal prohibition to build flour mills, which is one of the accessories of the right of *banalité* ?

§ 3. The following were nevertheless illegal and do not give rise to any indemnity ; Art. 1. The prohibition to build any kind of mills, manufactures or other works, (*usines*) moved by water, wind or steam. (F. 9, A. 3.) ; Art. 2. The prohibition to sell marketable timber, to make deals, to grind grain not subject to *banalité*, grown beyond the *censive* and intended for market. (F. 9, A. 3.) ; Art. 3. The prohibition to use streams passing over or bordering upon the lands of the *Censitaires* to propel mills, manufactures or other works (*usines*) (F. 9, A. 3.)

Personal labor (corvées.)

42.—The covenants contained in some deeds of concession, imposing personal days' labor (*journées de corvées*) upon the Tenants (*Censitaires*), for the advantage of the Seigniors, are legal and give rise to indemnity. (F. 11, A 1.)

Lods et Ventes.

43.—At the time of the passing of the Seigniorial Act, the Seigniors subject to its operation could not lawfully demand the mutation fine (*droits de lods et ventes*) upon the exchange, without *soulte* of lands within their seigniory for others held in *franc-alleu roturier* or in free and common soccage beyond their seigniory. (*)

Rights of the Crown.

44.—The rights of the Crown, the value of which is to be deducted in the schedule to be made under the Seigniorial Act of 1854, from the price to be paid by the Tenants (*Censitaires*) to the Seigniors for the redemption of the seigniorial dues, are those of *quint* and *relief* in the cases under which they were due under the Custom of Paris, unless the lucrative rights of the Crown, to be deducted, should have been otherwise regulated by the particular grant of each seigniory, to which reference must be had ; but it is the duty of this Court to observe that it has not come to the knowledge of this Court that the Crown has ever exercised the right of *relief*, except that due under the Custom of Vexin-le-Français, included within that of Paris, by which some grants *en fief* are governed. (F. 8, A. 4.)

45.—Whenever, by the abolition, under the Seigniorial Act, of the obligation to subinfeudate the lands, an additional value may be given by it to the unconceded lands, that value must be ascertained and inserted in the schedules in deduction of the price of redemption. (F. 11, A. 1.)

Rights to be valued.

45.—The rights, dues, duties and reservations, the l lity whereof is acknowledged, and which are appreciable in money, should be valued in making up the whole price of redemption of the seigniorial rights. (*)

II.

SUMMARY OF THE JUDGMENT OF THE COURT UPON THE COUNTER-QUESTIONS SUBMITTED BY THE HONORABLE PANGMAN.

1. (†)—§ 1. At the period of the introduction of the Custom of Paris into Canada, the legal effect of the contract whereby a person, holding lands *en franc-alleu noble*, granted

(†) This figure corresponds with the numbers of the questions and answers ; the numbers followed by····· are those to which there is no answer, the point under consideration being comprised in the preceding decisions, &c., &c.

therefrom a part *en fief* or *en censive*, was to devide the property into a *domaine direct* and into a *domaine utile*. (*)

§ 2. Under the law of that Custom, the *noble alleutier* was under no obligation to alienate the said lands. (*)

2. ..... 3. ..... 4. ..... 5. .....

6.—The concession *en fief*, neither before nor after the enregistration of the two *Arrêts* of 1711, and of 1732, did not operate a division of the estate between Seignior and Vassal or tenant (*Censitaires*), of what might be afterwards sub-granted : but the division was effected by the subsequent deed of subinfeudation or *accensement*.

7. ..... 8, ...

9.—§ 1 and 2. The *Arrêt* of 1732 did not make any distinction between the sale of wild lands (*terres en bois debout*) by a proprietor holding *en fief*, *en censive* or *en franc-alleu*. (*)

10.—According to the *Arrêt* of 1732, the penalty of nullity was attached to the sale of wild lands (*terres en bois debout*), held either *en fief* or *en censive* or *en franc-alleu*, even if the prohibition had not been specially imposed by the Crown in the original grant. (*)

11. ..... 12. .....

13.—§ 1. Seigniors will have the right to invoke, for all legal purposes, before the Commissioners acting in virtue of the Seigniorial Act, whether in the first resort or in the revision of the schedules, as well as before the *experts*, and before Courts of law, having jurisdiction over and cognizance of the matter (*saisies du sujet*), the terms of the original grant by which they hold their seigniories, whether the grants have proceeded from the Crown of France or from the British Crown. (*)

§ 2. With reference to the tenor of the *aveux et dénombrements*, and of the acts of fealty and homage and of the Crown acquittances for *quint* and other dues granted to

them or their predecessors (*auteurs*), the same legal effect must be given to them in relation to the obligation of the Seigniors to the Crown, according to the circumstances of each case; but they cannot affect the relative position of Seigniors and Tenants (*Censitaires*), because the *aveux et dénombrements*, acts of fealty and homage, and acquittances of dues, only have legal effect between the dominant Seignior and the Vassal, as executed between them, and do not affect others not parties to them. (*)

§ 3. The character and terms of the possession and enjoyment of any rights, either between the Seigniors and the Crown, or the Seigniors and any Tenants (*Censitaires*), in so far as that possession may have a known legal effect, with a view to the seigniorial law and the present decisions of this Court in particular, may also be taken into consideration. (*)

§ 4. The Commissioners may order the adduction of any evidence which they may require to enable them to judge correctly in all cases. This Court cannot be called upon to lay down in its decision all the rules applicable to the admissibility and appreciation of evidence: the application of the rules enunciated in this answer are subject nevertheless, in all cases, to the observance of the decisions of this Court. (*)

III.

SUMMARY OF THE JUDGMENT OF THE COURT UPON THE COUNTER-QUESTIONS OF SIR EDMUND FILMER ET AL.

1. ..... 2. ..... 3. .....

4.—The introduction of the criminal laws of England into Canada, since the cession of the Country, has not had the effect of abrogating the penal enactments of 1711, and 1732; those in question were merely of a civil nature. (*)

5. .....

6.—These *Arrêts* have not fallen into desuetude. (F. 9, A. 3.)

7.—These *Arrêts* have not been repealed by the Imperial Act, 3 Geo. IV, cap. 19, (commonly called the Canada Trade Act,) nor by the Imperial Act, 6 Geo. IV, cap. 59, (commonly called the Tenures Act.) (F. 10, A. 2.)

IV.

SUMMARY OF THE JUDGMENT OF THE COURT UPON THE COUNTER-QUESTIONS OF DAME MARIE LOUISE CHARTIER DE LOTBINIÈRE, MRS. HARWOOD.

1. § 1.—The Acts of the Imperial Parliament, commonly called the trade Act and the Tenures Act of Canada, have effected changes in seigniories for which a commutation of tenure has been obtained under their provisions, with reference to the portions of these seigniories not conceded at the time of the commutation. (F. 11, A. 1.)

§ 2.—These portions were by the commutation subjected to the tenure of free and common soccage, and relieved from rights and dues to the Crown, and generally withdrawn from seigniorial laws and obligations. (F. 10, A. 2.)

§ 3.—At the time of the commutation, Tenants (*Censitaires*) and the Seigniors, on their part, continued to be subject to their obligations towards their Tenants (*Censitaires*,) although the Seigniors had obtained a regrant of the entire seigniory under the tenure of free and common soccage. (*)

§ 3.—The laws which regulate the relations between the Seigniors and the Tenants (*Censitaires*), apply equally to the case where a commutation has been demanded by the Seigior, in virtue of the Imperial Acts, but not obtained at the passing of the Seigniorial Act of 1854. (F. 11, A. 1.)

§ 5. They apply also to the case when a commutation has not been demanded by the Seignior, under the provisions of the Imperial Acts. (F. 11, A. 1.)

2. A contract or a clause of a contract, touching the terms of any alienation of lands, which might be contrary to the laws of Canada, although not in itself immoral or prohibited by british public law, can be held to be null or annullable. (F. 11, A. 1.)

3. The Commissioners may not lawfully assume to treat any contract touching the terms of alienation of any lands, unless such nullity has been pronounced by the judgment of a Court of competent jurisdiction, or such contract, or such clause of a contract has been declared illegal by the Special Court. (*)

4. In any *fief* or seigniory, for which it was possible to demand a commutation in virtue of the Imperial Acts above mentioned, the Commissioners have a right to enforce the Seigniorial Act of 1854, even if the Seignior or the Tenant (*Censitaire*) should elect to maintain the application of the provision of the Imperial Acts. (F. 8, A. 3.)

Judge Day abstains from pronouncing on this question.

V.

The judgment upon the counter-questions of Dame Marie Charlotte Chartier De Lotbinière, (Mrs· Bingham,) is contained in the preceding answers.

VI.

SUMMARY OF THE JUDGMENT OF THE COURT UPON THE COUNTER-QUESTIONS OF THE HONORABLE MALCOLM FRASER.

1.—Grants in *fief* in this Country, made by the British Crown, from the cession to the passing of the Seigniorial Act of 1854, are subject to the same laws as the other grants

made under the same tenure, unless the grant contains certain special dispositions by which a derogation in certain respects shall be established. (F. 9, A. 3.)

VII.

SUMMARY OF THE JUDGMENT OF THE COURT UPON THE COUNTER-QUESTIONS OF THE HONORABLE JEAN ROCH ROLLAND.

Seigniors cannot flood the lands granted to their Tenants (*Censitaires*,) in virtue of their right of *banalité ;* if they possess the right, it commonly proceed from valid titles, the effect of which cannot be changed by the Seigniorial Act of 1854. (F. 11, A. 1.)

VIII.

The result of this judgment is : 1o That since the *Arrêt* of 1711, the Seigniors were obliged to concede their lands ; 2o that they were bound to concede them at a rent charge, (*à titre de redevances*) ; 3o that neither the law nor custom had fixed the rates of *cens et rentes*, except in the case of a concession by the Governors and the Intendant upon the Seignior's refusal ; 4o that the *cens et rentes* should be maintained in conformity with the stipulations contained in the deeds of concession ; 5o that the Seigniors had no right in the navigable rivers, unless they held such right by virtue of a special title ; 6o that, when they had such a title they might subinfeudate or *accensé* those rights at a rent charge (*à titre de redevances*) ; 7o that the non-navigable rivers form part of the private demesne and follow the property, no matter into whose hands it may pass ; 8o that, the non-navigable rivers, upon conceded lands, belong to the Tenants (*Censitaires*), and, in such a case, any reservation which might be made of them would be illegal ; 9o that, since the *Arrêt* of 1686, *banalité* was legal and universal in Canada, and consisted, on the part of the Seigniors, of the obligation to build mills, and on that of the Tenants (*Censitaires*) to bring the grain, for the use of their families, to

be gronnd in them ; 10o that the rights to prevent the building of flour mills, was an accessory of the right of *banalité* which it was intended to protect ; 11o that such prohibition does not give a right of indemnity, if the principal due (*droit principal*) be paid ; 12o that all the charges, reservations and prohibitions, which cannot be comprised within the meaning of the word "dues" (*redevances*), and which would have the effect of retaining a portion of the useful demesne, are null and illegal ; 13o that the imposition of personal days labor, (*journées de corvées*) is legal ; 14o that it is requisite to ascertain the increase in the value of unconceded lands given to the Seigniors in *franc-alleu ;* 15o that the Imperial Acts, commonly called the Canada Trade Act and the Tenures Act, do not impose any limit upon the working of the Seigniorial Act of 1854 ; 16o that those seigniories which were conceded both before and since the conquest, are equally subject to the enactment of this law, except in the case where unconceded lands have been duly converted into free and common soccage ; 17o that the parties interested will be allowed to produce every kind of legal evidence, in support of their pretentions, before the Commissioners (1)

(1) It is necessary to inform the reader that this summary which commences at page 126, does not form part of the judgment : it is an analysis got up for the purpose of facilitating the study of the subject.

OBSERVATIONS

OF

SIR L. H. LAFONTAINE, BART.

CHIEF JUSTICE.

Preliminary Remarks.

On the 26th June 1850, the Legislative Assembly, upon my motion, as one of its members, adopted the following resolutions :

1o. *Resolved*,—That the Seigniorial tenure in Lower Canada is a matter of Public Policy (*ordre public*) which it is the duty of the Provincial Legislature to take into consideration, more especially now that the subject has attracted the public attention in a high degree ; and that it is therefore important to effect, at as early a period as possible, the conversion of the said tenure into a free one, taking care that all the interests concerned are protected and equitably adjusted.

2o. *Resolved*,—That such commutation of tenure can only be effected by securing a fair indemnity to all parties whose just rights it will affect.

These resolutions, adopted by a majority of 53 against 1, established the principles of justice and equity, as based on the respect due to the sacred right of property, on which, to render it legitimate, the great revolution which the " Seigniorial Act of 1854 " is destined to operate in the institutions of Lower Canada ought to be carried out.

The institution of feudality, as introduced into Canada by the Kings of France, and as afterwards modified by special laws for adapting it to the settlement of a country newly added to the Crown of these Kings, a country covered with gigantic forests, subject to a very severe climate, and inhabited solely by savage hordes, has been regarded by impartial men as eminently calculated, at its outset, to secure the success of that settlement. In the circumstances, indeed, under which the colony of New France was founded, it could not be expected that the mass of the earlier colonists, who, sooner or later, were to become proprietors of the soil, could bring with them other means than their energy and love of labour, to aid in laying the foundations of a new home in the New World.

If I am one of those who, appreciating impartially the history of the establishment of the country, believe that the Seigniorial Tenure, up to a period comparatively recent, has had the success which was expected, and ought to have been expected, from it, I am equally one of those who, forming a deliberate judgment of the changes which have since come into operation, in the condition, the wants and ideas of Canadian Society, are convinced that the laws which govern this tenure, and the relations thereby established between the Seigniors and censitaires (tenants) have ceased to be in harmony with the social usages of that same society. Now, laws which are not in unison with the habits of a people cannot long exist under our new form of government, above all when, however just and beneficial they may originally have been, they become, at a later date, although wrongly, to be regarded by that same people, not as creating a legitimate debt, but in the light of a tax to which, they easily convince themselves, they have never yielded a free consent.

It is, then, (and the history of the last years have furnish-

ed proof of the fact) that agitation takes its full course; agitation which, unhappily, is not always conducted with the respect due to the rights of property. And when there is, comparatively, but a very small number of individuals interested in maintaining the law which is the cause of this agitation, one must be very blind not to see what must be the result. The minority have nothing to gain; they have, on the contrary, all to lose.

So, "the Seigniorial Act of 1854" having, for its object, to put an end to this agitation, the country ought to applaud its promulgation, as bearing on the interest of the Censitaires as well as that of the Seigniors. On the one hand, it consecrates, in principle, the respect due to the legitimate rights of the Seignior; on the other hand, it equally consecrates in principle the protection which the Censitaire has a right to expect from exactions, on the part of this same Seignior. Let us hope, then, that this two-fold result will be obtained by a faithful and impartial execution of the law.

Viewed from a still more elevated point, we ought to applaud the passing of "the Seigniorial Act of 1854." It is an entire revolution in our institutions. And while, in other countries, this revolution could not be effected without bloodshed and the upheaving of the social edifice from its foundations, all things promise, nay we have even the certainty, that in Canada, to the honor of its people, the change will be accomplished without trouble or commotion of any kind.

In order the better to insure the execution of the law abolishing the Seigniorial Tenure, the Legislature has judged it necessary to create a special tribunal for deciding, before hand, certain questions of law put, in an abstract form, at the discretion of the Attorney General; such, says the statute, as "he shall deem best calculated to decide the points of law "which will, in his opinion, come under the consideration

" of the commissioners in determining the value of the " rights of the Crown, of the Seignior, and of the Censi- " taires."

On the other hand, the Seigniors and the Censitaires are authorised to submit " supplementary questions or counter questions." The first only have availed themselves of their right.

Then, the statute adds, " the decision so to be pro- " nounced on each of the said questions and propositions " shall guide the Commissioners and the Attorney General, " and shall, in any actual case thereafter to arise, be held to " have been a judgment in appeal, *en dernier ressort*, on any " point raised by such question, in a like case, though be- " tween other parties."

This special tribunal which our Legislature has, thus, thought proper to create, composed of all the judges of the two principal Courts of Lower Canada, is called, without reference to any particular case to which the existing laws may apply, to pronounce, in an abstract manner, decisions or rather rescripts, so to speak, which shall, virtually, determine the fate of the respective pretensions of the Seigniors and the Censitaires.

The task is arduous ; the responsibility, is greater still.

A single example will suffice. One of the most important questions which we have now to examine is, at the present hour, a subject of dispute among the first jurisconsults of the Country from which the origin of our laws is derived. I allude to the question of property in waters (*propriété des eaux.*) Meanwhile circumstances force us, after a deliberation of scarcely five months, to pronounce a decision, not only on that question, but, also, on a very great number of others which embrace, I may say, almost the whole system of our laws of property.

While our deliberation was in progress, we have had to regret the death of one of our brethren ; (1) and, quite recently, at the moment of coming to a definitive decision upon the several subjects submitted to our examination, a cruel malady has, suddenly, given us serious ground of apprehension for the life of that member of the Court who, to a great extent, prepared the draft of the judgment which we are about to render. (2) These fears have, happily, been dissipated, and we hope that, on the day on which Judgment shall be pronounced, the improved state of his health will allow of the presence of our learned brother in Court, for at least some moments, to fulfil a purely legal formality, as, without such presence, he cannot be deemed to participate in the judgment about to be delivered.

Under those circumstances, no citizen acting in good faith, no lawyer, if even moderately versed in the knowledge of our Feudal system, who respects himself, can find fault with the short delay which has occurred from the argument on the " Seigniorial questions " to the present day.

If blame there be, it is, rather, in our deciding, in so short a time, questions of such importance. This blame I allow, might appear to be deserved, were it not that there were urgent reasons for pronouncing judgment as early as possible.

In the first place, one of the parties to this important suit (the Seigniors)—the party which the law subjects to the expropriation required by the public interest,—are virtually deprived of the use of their property, that property having while the question is in abeyance, become unsaleable. The complete execution of the law can, alone, restore its value.

In the second place, the Censitaires, if they truly consi-

(1) M. Justice Van Felson.
(2) Mr. Justice Morin.

der their own interests, ought to desire that the proceedings should come to a close, without loss of time ; for a prolonged agitation of the question of the Seigniorial tenure will be most injudicious, there being reason to fear that if a similar agitation should again bring this subject before the Legislature, the Censitaires would be deprived of the aid which the " Seigniorial Act of 1854 " so liberally granted in their favor, with a view to facilitate and render less onerous to them the redemption of Seigniorial dues.

We also, the judges of this special Tribunal, desire (and that desire is very natural) to bring to a conclusion a mission which is wholly out of the sphere of our duties, as judges of the Court of Queen's Bench and of the Superior Court, a mission which, consequently, was unexpected on our part. But we ought not to dwell on this point, as it is one that regards us personally.

In another respect, this remark will serve to explain, as far, at least, as I am concerned, the reason why the notes which I am about to read, as containing my views and opinions on our Feudal system, are only in their first cast, and ought to be received as such. If made public, it must be in that state, for neither time nor health will permit me to revise them.

It is my duty to make one other remark, and I do it with the approbation of all my brother judges, namely, that many of the questions which have been submitted to us, although bearing upon points of seigniorial law, cannot have any practical effect on the execution of the act of 1854, whether these questions be resolved in the affirmative or negative. Yet, we have considered it our duty, in obedience to the Statute, to devote considerable time to the examination of these questions.

In another respect, some of the questions and counter-

questions not presenting any point of law for decision, we have thought right, in that case, to abstain from replying to them. In the same manner, we have considered it right to abstain from replying to other propositions which, while raising questions of law, are, nevertheless, entirely foreign to the objects of " the seigniorial Act of 1854."

Finally, I cannot close these preliminary remarks, without a public acknowledgement of the abilities of the Advocates who have sustained and defended the respective interests and pretensions of the parties to this great contestation, to the zeal which they have displayed, to the profound acquaintance with the subject of which they have given proof, and by which this Court, in its deliberation, has very much profited.

If the Censitaires have not thought proper to appear and be represented as a body, in accordance with the Statute, it is, undoubtedly, because knowing, before hand, the bearing of the propositions of the Attorney General, and the line of argument which must necessarily follow from them, they were convinced that they could not entrust the defence of their rights to abler hands than those of the advocates whom the Attorney General had selected to maintain these same propositions before this Court, propositions, the whole of which, so to speak, tended to the triumph of the most extreme pretensions of the Censitaires. In that respect these last have not committed a mistake.

In rendering this justice to the Advocates concerned on the one side as well as the other, I do not express, merely, my own individual opinion, but also that of my brother judges.

PART FIRST.

Alienation of the Fief.

(*Jeu de Fief.*)

1. In Seigniorial Canada has the "Jeu de Fief," that is to say, the alienation that a Seignior can make of his Fief, been restrained within the same limits and subjected to the same conditions that it was in France, under the authority of the Custom of Paris? Such is the principal question to be determined in this matter, and which naturally leads me to examine, in the first place, what this "Jeu de Fief" was, in France.

2. Henrion de Pansey (1) gives, as belonging to the greater part of the Customs (*coutumes*,) the following definition of the "Jeu de Fief," : "a species of alienation by which the proprietor of a Fief, severs the title thereof from the realty, by the reservation of fealty (*foi*) and the alienation of the domain, and subordinates the part which he has alienated to that which he retains, by the imposition of a Seigniorial right, or duty." (2) "A Fief, adds the author, is a mixed entity composed of services, such as fealty, the obligation to be faithful to one's Seignior, which form its title

(1) *Dissertations féodales*, at the art. Jeu de fief, v. 2, p. 363. This work, written a short time before the French Revolution, was published in 1789.

(2) "Une espèce d'aliénation par laquelle le propriétaire d'un fief en sépare le titre et le corps par la réserve de la foi et l'aliénation du domaine, et subalterne la partie qu'il aliène à celle qu'il retient, par l'imposition d'un droit ou d'un devoir seigneurial."

and constitute its essence; also of corporeal domains, of beneficial and honorary rights, which form the realty, or as the Feudalists call it, *subjectum materiale*. The body and the title of the Fief are equally *in commerce*." etc., etc. (1)

The alienation of the Fief is effected in two ways, by sub-infeudation and by concession on a rent charge; and when it takes place in favor of the church, it can also be made in a third way, that of frank-almoigne ("*franche aumône*.") "The seignior gives in Fief" says the same author p. 564, "when he stipulates the obligation to render him homage; he gives on a rent charge (*a cens*) when he burthens the portion alienated with *tenant* dues." "The Seignior alienates his Fief by the way of Frank-almoigne, when giving to the Church without resignation of fealty, without reservation of any dues, he declares in the deed, that he gives in alms, *in puram eleemosynam*." (2)

3. Under the old Custom of Paris, compiled in the year 1510, the vassal had an unlimited liberty to dispose of his Fief. "A vassal," said the 41st. article of that Custom, "can alienate his Fief, as far as the resignation of fealty, without paying mutation profits to the Seignior.

(1) "Un fief, ajoute l'auteur, est un être mixte composé de devoirs, tels que la foi, l'obligation d'être fidèle à son Seigneur, qui en forment le titre et en constituent l'essence; et de domaines corporels, de droits utiles et honorifiques qui en forment le corps, ce que les feudistes appellent *subjectum materiale*. Le corps et le titre du fief sont également dans le commerce, etc., etc.

(2) "Le Seigneur donne en fief, lorsqu'il stipule l'obligation de lui rendre hommage: il donne à cens, lorsqu'il grève la portion aliénée de prestations roturières."

"Le seigneur se joue de son fief par la voie de franche-aumone, lorsque donnant à l'Église sans démission de foi, sans réserve d'aucune prestation, il déclare dans l'acte qu'il donne en aumône, *in puram eleemosynam*."

" This absolute faculty of disposing of his Fief, once constituted law by the Custom of Paris, became, in some sort, says Henrion de Pansey, p. 370, the common law of the kingdom." (1)

Let us observe that, as respects the dismemberment (*démembrement*) of the Fief, the article 35 of the same Custom of Paris says: " The vassal cannot dismember (*démembrer*) his Fief, to the prejudice, and without the consent, of his Seignior."

4. Since the new compilation (*rédaction*) of the Custum of Paris, in 1580, the following article, which is the 51st., was substituted for the articles 35 and 41 of the old Custom: " The vassal cannot dismember his Fief, to the prejudice, and without the consent of his Seignior; although he may alienate and dispose of, and make his own profit out of, any hereditaments, rents, or cens, belonging to such Fief, without paying mutation profits to the Seignior dominant, provided the alienation do not exceed two thirds, and that he retain the full fealty and some seigniorial and domanial right upon that which he alienates." (2)

In the first part of this article of the new Custom, we find that the 35th article of the old on the dismemberment of the Fief, is reproduced; and in the second part we also find, all the substance, but in terms more explicit, of the dispositions of the 41st. article of the same Custom on the

(1) " Cette faculté absolue de se jouer de son fief, une fois érigée en loi par la Coutume de Paris, devint en quelque sorte le droit commun du royaume."

(2) " Le Vassal ne peut démembrer son fief au préjudice et sans le " consentement de son seigneur: bien se peut jouer et disposer, et faire " son profit des héritages, rentes ou cens étant du dit fief, sans payer " profit au seigneur dominant, pourvû que l'aliénation n'excède les " deux tiers, et qu'il en retienne la foi entière, et quelque droit seigneu- " rial et domanial sur ce qu'il aliène."

"Jeu de Fief;" and, moreover, the following new restriction, *viz* : that the alienation do not exceed two thirds of the Fief, that is of the body of the Fief.

Guyot, (1) observes on this article, that the words, "to retain full fealty" (*retenir la foi entière*) have the same meaning as the words "as far as the resignation of fealty" (*jusqu'à la démission de foi*) of the ancient Custom, by which was understood, "providing that he does not resign the fealty, which is literally the same thing as retaining the fealty" ; that those words of the old Custom, "can alienate his Fief," and those of the new "may alienate, dispose of, and make his own profit out of, any hereditaments rents and cens belonging to such Fief," signify the same thing. "When the new Custom," says the same author, directs the Vassal "to retain a Seigniorial and domanial right," it was the invariable law of the old : it is this, that constitutes the "Fiefs en Pair," or incorporeal fiefs, which but consisted of cens, rents and dues (*cens, rentes et mouvances*) : in the old, they distinguished the alienation from the dismemberment, only that in the alienation the cens or the monvance was retained : in the dismemberment, far from retaining a right, they made of the part alienated a distinct Fief, separated from the principal, and subsisting *per se*, which is precisely the same in the new."

Henrion de Pansey goes even so far as to say, (p. 370, and 385,) that in the words of the 41st article of the old Custom of Paris, "a mere retention of fealty sufficed to make valid the alienation of the Fief. (2) So we see that, if under the ancient Custom, the "Jeu de Fief" was, as Guyot remarks, subject to two conditions, that of the retention of fealty, and that of the retention of a domanial and

(1) *Traité des Fiefs*, v. 1, p. 115 and 116, Edit. of 1767.

(2) Une rétention sèche de la foi suffisait pour la régularité du Jeu de Fief.

Seigniorial right, it was the same under the authority of the new : the alienation of the Fief, to be regular, ought also to be made under those two conditions, and, moreover, on the condition that it did not exceed the two thirds of the body of the Fief ; whilst under the ancient Custom it might extend to the whole. This is the only difference which the dispositions of the two Customs present in the matter of the alienation of the Fief. In all other points with respect to this subject they are similar.

5. Another important question in this discussion is to know, if by the Custom of Paris, the alienation of the Fief could be effected for a money price, (*à prix d'argent*) that is, if the Seignior could, according to the language of most Feudalists, receive an entrance money (*deniers d'entrée.*)

Upon this point, as well as upon that respecting the portion of the Fief which the vassal was allowed to alienate, Henrion de Pansey, p. 375, informs us that the different dispositions of the Customs divided them into four general classes.

" In those of the first class," says he, the vassal is at liberty to alienate his Fief by concession on a rent-charge, by sale, in one word *as he thinks proper* ; but he cannot alienate in this way but such or such part of his domain. These are the two thirds at Paris ; it is one third in Anjou, etc.

" The Customs of the second class allow the alienation of the whole of the domain, but they exact that such alienation be made by way of concession, carrying *cens et rentes.*

" Others conform to the old Custom of Paris, leaving to the vassal *the most unlimited liberty* : they permit him to divest himself of the whole of the domain, and to do so, either by sale, or by concession on a rent charge, *with or without entrance money, as he thinks proper.*

" Finally, there exists a fourth class of Customs, which

have no disposition respecting the alienation of the Fief. Jurisprudence has supplied the silence of these Customs. In general, these are ranked in the first class. The vassals are there obliged to conform themselves to the Custom of Paris, which permits entrance money, but which forbids alienation beyond two thirds of the hereditaments, cens and rents belonging to such Fief." (1)

Then, after having cited the text, on the alienation of the Fief, of the Custom of Montfort (2) and of the Custom of Clermont in Beauvoisis (3) which he ranks, with the old Custom of Paris, in the third class, Henrion de Pansey adds : " dispositions so unlimited left nothing for the vassal

(1) " Dans celles de la première classe, le Vassal est libre de se jouer de son fief, par bail à cens, *par vente*, en un mot, *comme il le juge à propos* ; mais il ne peut aliéner par cette voie que telle ou telle partie de son domaine. Ce sont les deux tiers à Paris, c'est le tiers en Anjou, etc., etc.

" Les Coutumes de la deuxième classe permettent d'aliéner la totalité du domaine, mais elles exigent que l'aliénation soit faite *par la voie du bail à cens et rentes*.

" D'autres, *conformes à l'ancienne Coutume de Paris*, laissent au Vassal *la liberté la plus indéfinie* ; elles lui permettent de se jouer de *la totalité du domaine*, et de le faire par *vente* ou par *bail à cens et rentes, avec* ou *sans deniers d'entrée, comme il le juge à propos*.

" Enfin il existe une quatrième classe de Coutumes, qui n'ont aucune disposition sur le Jeu de fief. La Jurisprudence a suppléé au silence de ces Coutumes. En général, on les range dans la première classe. Les Vassaux y sont obligés de se conformer à la Coutume de Paris, *qui permet les deniers d'entrée*, mais qui défend d'aliéner au de là des deux tiers des *héritages, cens et rentes étant du dit fief*.

(2) p. 376 " Le vassal se peut jouer de son fief jusqu'à démission de foi ; art 32 .... peut faire de son fief son domaine."

(3) Il peut " le bailler en tout ou en partie à rente ou gros cens, et autrement contracter, sans se démettre de la foi, et sans, pour ce, devoir aucun droit." Art. 96.

to desire; they allow him the arbitrary disposal of the Fief; they allow him the alienation *of the entire Fief, and to receive the actual value of it in money.*

" This is precisely the error that has crept into the Custom of Paris as compiled in 1510 :

" All the inconveniences of the unlimited alienation of the fief were felt, with as much force as now, in the interval between the first and second compilation of the Custom of Paris. Yet, it was considered in that Custom, then resembling that of which we speak, that the vassal could alienate the entire domain, even with entrance money (*deniers d'entrée* .) There are two Arrêts to that effect of the 25th June 1516 and 17 February 1537. These *Arrets* have, for the Custom of Clermont and the like, the same authority as for the old Custom of Paris, since that old Custom of Paris had the same provision. (1)

The Customs of the first class (to which the new Custom of Paris belongs) do not offer any difficulty, adds Henrion de Pansey, " either as regards the quantity of the domain that the vassal can alienate, nor as to the right to receive entrance money ****; the words " to alienate and

(1) " Voilà précisément l'erreur qui s'était glissé dans la Coutume de Paris de la rédaction de 1510.

" Tous les inconvénients du Jeu de Fief indéfini se faisaient sentir avec autant de force qu'aujourd'hui, dans l'intervalle de la première à la seconde rédaction de la Coutume de Paris ; Cependant on jugeait dans cette Coutume alors semblable à celle dont nous parlons, que le vassal pouvait se jouer de la *totalité* de son domaine, *même avec deniers d'entrée.* Il y en a deux arrêts des 25 Juin 1516, et 17 Février 1537. Ces arrêts ont pour la Coutume de Clermont et ses semblables, la même autorité que pour l'ancienne de Paris, puisque cette ancienne Coutume de Paris avait la même disposition."

make his profit" are, says he, p. 380, general expressions which authorise every sort of alienation.

With the authority of the author of "*Dissertations féodales*," that of his contemporary Hervé who, like him, is one of the last Feudalists who have written before the French Revolution naturally coincides. Hervé (1) says that the article 51 of the Custom of Paris does not absolutely forbid any description of contract. It declares, without distinction and in the most general terms, that the vassal can alienate, dispose and make his profit of the hereditaments, rents, &c. Therefore, the alienation may take place by concession charging *cens*, or a rent charge, by donation, by bequest, by exchange, by sale, by sub-infeudation, in a word, by all the contracts which transfer property; but none of these contracts must be wanting in any of the conditions requisite for the validity of the alienation of the Fief. (2)

6. Such was the "Jeu de fief" in France, at the time that her Kings undertook the establishment of the Colonies founded by them in America. Having, thus, explained the character, nature, extent and provisions of this kind of alienation of Feudal Lands under the authority of the Custom of Paris, become the common law of New-France, I have now to consider the same subject in its relations

(1) Théorie des matières féodales et censuelles V. 3 p. 374.

(2) See Brodeau on the C. of Paris V. 1, p. 534, nos. 19, 20, 23, 25, & 26, "le Vassal peut vendre et aliener les deux tiers de son fie *à prix d'argent*, ou les bailler à cens, rente ou emphytéose, etc., Ferriere on art. 57 "Fiefs" p. 842 No. 3, p. 843, No. 6, p. 845, no. 17, p. 847 no. 26, 27, p. 852 no. 45, p. 855 no. 1, where it is said that by the words of this article "faire son profit etc., etc., c'est disposer par vente ou autre maniere d'alienation *dont il puisse tirer quelqu'argent en cas de besoins*."

Fonmaur on "Lods et ventes" v. 2, chap. 21, pp. 86, 87, 89 et 91.

with the state of things existing in Seigniorial Canada, and to examine if by the force of this state of things, or by the nature and provisions of the Legislation peculiar to our country, the 51st article of the Custom of Paris has been wholly set aside, or if it has only been modified ; and in the latter case, if such modification has had the effect of imposing new restrictions on the alienation of the Fief, or of giving it a larger extension.

7. Our Fendal history may be divided into several periods ; the first includes the time that elapsed from the first attempts made to colonize, to the establishment of the Sovereign Council of Quebec in the year 1663. This period may be again sub-divided into two parts, the first of which extends to the time of the formation of the Company of the Hundred Associates (*la Compagnie des Cent Associés*) of New-France, in the year 1627–28 ; and the other to the resignation of that Company in 1663.

As respects the first period, the documents that have come to our knowledge are not numerous. They are not, on that account, the less important, for they bear testimony that, from the beginning, the intention of the Government of the mother Country was to introduce the Seigniorial system into the American colonies.

The first of these documents is dated the 12th January 1598. It consits of Letters Patent by which the King of France names the Sieur de La Roche his " Lieutenant General and Governor " in the Countries of Canada, Hochelaga, Newfoundland, Labrador, the River of the Great Bay (1), of Norembégue and countries adjacent.

" And in order to increase and extend the good will, courage, and affection of those who are about to embark in

(1) " *Rivière de la Grande Baie.*" It is so that the River St. Lawrence was then commonly called. Charlevoix v. 1, p. 108.

the said undertaking, and even of those persons who shall settle in the said Countries," says his Majesty, " we have given him authority, as respects the said lands, so to be acquired for us, in the course of the said voyage, to grant the same in full property to all those to whom he may concede them, that is to say : to gentlemen and those whom he shall consider persons of merit, in the form of Fiefs, Seigniories, Chatellenies, Earldoms, Viscounties, Baronies and other dignities, to be held of us, in such manner as he shall consider due to the services performed by the respective parties, on the condition that they shall aid in the support and defence of the Countries : and to other persons of inferior rank, on such dues and annual rents as he may deem just, of which we agree that they shall remain quit and discharged for the first six years, or such other period as our said Lieutenant shall believe to be right and necessary, excepting always the duty and service in the event of war." (1)

8. The second document that we find in which mention is made of the concession of land in Canada, bears the date of the last day of February 1626. (2) It consists of letters of confirmation and concession, given at Paris by the Duke de Vantadour, " Vice-Roy of New-France," at the request of Louis Hébert, " one of the subjects and inhabitants of the said Country," and " the head of the first family which has settled and dwelt therein, from the year 1600, until now." Hébert showed that he had, " at the place called

(1) Charlevoix, tells us that the Marquis de La Roche after having landed at Sable Island and reconnoitred the coasts of Acadia returned to France, where several untoward circumstances detained him during the years following, and prevented him from continuing his enterprise. v. 1. p. 109.

(2) Page 373 of the vol. entitled " Titres de Seigneuries," published at Quebec, in 1852, forming the first vol. of the compilation entitled " Pieces et Documens relatifs a la tenure Seigneuriale "

Quebec, cleared a certain portion of land, surrounded by an enclosure," (which is said to be the place known, at present, in the city of Quebec, under the name of ***Sault au Matelot***,) "and built and constructed a dwelling for himself, his family and cattle." He further alleged that he had obtained from the Duke de Montmorency, the predecessor of the Duke de Vantadour, in the office of Vice-Roy, the gift in perpetuity of that portion of land, by letters-patent passed on the 4th February 1623. The new Vice-Roy confirms him in this concession "to enjoy the same, to have and to hold the same *en fief noble*, unto him, his heirs and assigns for ever, as his own and lawfully acquired property, and to dispose thereof fully and peaceably, as he may think proper, the whole depending on the fort and castle of Quebec, subject to the charges and conditions which shall hereafter be imposed by us." By the same letters, the Duke de Vantadour has "moreover given to the said Hébert and his successors and assigns, the extent of one French league of land, lying and being near Quebec aforesaid, on the river St. Charles, which has been bounded and limited by the Sieurs de Champlain and de Caen, to possess, clear and cultivate and inhabit the same, as he may seem fit, on the same conditions as the first donation."

We see by this concession, that "the charges and conditions" could *afterwards* be fixed by the Vice-roy; being the first indication of the retention of that power, which the King and his representatives exercised so often, of intervening by legislative means, or means purely administrative, in the concessions already made, in order the better to insure the accomplishment of the object of these same concessions, namely, the colonization, clearing and cultivation of the lands. The sequel will show that this continual intervention has given to the Seigniorial system of New-France a character altogether peculiar.

9. Of the documents relative to our subject, and anterior to the Company of the Hundred Associates, the title of the first concession of the extent of land, known now under the name of the Seigniory of "Notre Dame des Anges," on the river St. Charles near Quebec, form the third and last, which we have had it in our power to consult. If there are others, we are not aware of their existence.

This concession of "four leagues of land" was made by the Duke de Vantadour, in his quality of Vice-roy of New-France, to the Reverend Fathers of the Company of Jesus, on the 10th March 1626; "our will," he says, "being that they enjoy peaceably the whole of the woods, lakes, ponds, rivers, streams, fields and other things, which they may find on the said land, on which they shall have the right to build, if so they deem proper, a habitation, dwelling place, noviciate or seminary for themselves, and to rear and instruct therein the children of the Indians.

In these three documents, we have the commencement of our Feudal history. If, considered merely by themselves, independently of what has taken place at a later period in Canada, they appear to be without influence on the question of the alienation of the Fief, they, at least, serve to show what, in its origin, that system has been, which was intended to be followed in the concession of lands, as being the most proper, according to the ideas which prevailed at that period, to realize the great end which the French Government had in view, in founding this Colony.

10. I pass now to the establishment, in 1627-28, of the Company of New-France (*la Compagnie de la Nouvelle-France*)—the charter of which constituted Canada a Proprietary Government (1) (*gouvernement proprietaire*). The whole tenour of this charter, composed of divers articles, attests that in the creation of the Company, the King had, as

(1) The Act of Association granted by the Cardinal de Richelieu,

an object, according to the energetic expression of the preamble of the articles of the 29th April 1627, to establish "a powerful colony" in order that "New France, with all its dependencies, might, once for all, become a possession of the Crown, without danger of its being taken away from the French by the King's enemies, as might be the case, if precautionary measures were not taken against such a contingency."

He wished, by these means, to remedy the faults of the past, as under the management of the merchants who had possessed the whole of its trade, the Country had been left uncultivated and almost without population.

Canada is given to the Company of New-France "for ever, in full property, justice and Seigniory." The King only makes the reservation of the "right of fealty and hommage ..... with a golden crown weighing eight marks, upon each mutation of the Crown, and the appointment of the Officers of Royal Courts (Justice souveraine), who shall be named and presented to him by the said Associates, when it shall be deemed proper to establish such Courts." (Art. 4, of the Art. of 29th April 1627.)

"It will be lawful for the said Associates," says the 5 Art. "to improve and ameliorate the said lands, as they may deem it necessary, and *distribute the same to those who will 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

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"Grand-Master, Chief and Superintendant General of the Navigation and Commerce of France." is dated 29th April 1627, and was ratified and confirmed by *Arrêt* of the King in Council, and by Letters Patent of the 6th May 1628. "Edits et Ord: Edition in-8o. published at Quebec in 1854, vol. 1, p. 1; et seq.

to the quality, condition and merits of the individuals, and generally upon *such charges, reserves and conditions* as they may think proper."

By the first article the Company oblige themselves "to carry over to New-France aforesaid, in the course of the ensuing year 1628, two or three hundred men *of all trades*, and during the next fifteen years, to increase that number to four thousand of both sexes, which fifteen years shall be completed in the year 1643; to provide food and lodging and all things generally, which may be necessary to life during three years only, after which period the said Associates will be discharged, as long as aforesaid, from the obligation of providing for them, by giving them a sufficient quantity of cleared lands to enable them to support themselves, with the necessary wheat to sow them for the first time, and to live upon the same until the next ensuing crop, or otherwise to provide for them in such way that they may, by their labor and industry, subsist in the said Country and support themselves."

The 3rd. article imposes on the Company the obligation to support, during 15 years, a certain number of Ecclesiastics, "for the purpose of converting the savage tribes, and of affording the consolations of religion to the French who shall have settled in New-France aforesaid.....unless the said Associates shall prefer giving to the said Ecclesiastics cleared land sufficient for their subsistence."

To the article 7, which "grants to the associates for ever, the trade of all leathers, furs and peltries of New-France," an exception is made, by article 8, which says: "It will nevertheless be lawful for French subjects *settled in the said Countries with their families, and who will not be supported and maintained by the said company*, (see, above, art. 1,) to trade freely in peltries with the Indians, provided

that the beaver obtained by them be afterwards sold to the said Company or their clerks or agents who will be bound to purchase the same, "the *castor* at forty *sols tournois* each."

Finally by the 4 *vers* of article 17, "the children of French subjects who shall be born in the said Country, and also the Indians who shall be brought to a knowledge of the Christian Faith, and who will profess the same, will be considered *naturel born subjects of France*, &c."

11. If we look to the subsidiary articles of the 7th May 1627, we see that they confer on the Directors of the Company the power to "grant the lands of New-France, on such clauses and conditions as they shall deem to them most advantageous for the Company, as mentioned in the said Act (of 29th April): even to appoint, at the different times, such agents as they may deem fit, for the distribution of the said lands and to regulate the conditions of the same." And by 11th Article, the concessions of lands not to consist of two hundred arpents or of a less quantity, as is provided that in case the directors "wished to *dispose of* and *allot* to the said *associates*, or *others*, any lands in New-France aforesaid, *exceeding* 200 *arpents*, they should be bound to assemble the greatest number of the associates possible," and that to render the grant legal, the deliberation should be subscribed by, at least, twenty of the said associates, including the Directors or their attorneys, in the presence of "the Intendant "of the affairs of the said Country of New-France." (1)

12. Such is the sovereign control which the singed France, who then held Canada so despotically as a great vassal (*Franc-alleu*,) made with the company of the Hundred Associates. The Company became proprietors of this part of America, in virtue of that grant which gave it to them "for ever, in

(1) This Intendant appointed by the Cardinal de Richelieu, was to reside at Paris, Art. 21, 26, 29, 31.

full property, justice and Seigniory." The fealty and homnage reserved by the King established the tie which should exist between him and the grantees; it is the feudal tie which cannot be broken by the latter without the consent of the former; it governs the future dependency by which the Company hold this immense territory from the King, thereby become their seignior dominant. This tie ought to be respected by them in the alienation and in the dispositions made by them of the lands; in other words, all the steps of the Feudal Lord, from its first to its last, which is a concession at a rent charge, ought to mark the subsequent grants of the Company.

13. The Feudal institution throughout the whole of New France derives its origin from this Royal concession of 1627 1628. It is the first charter given to the inhabitants of the Country. Feudalism, it is true, existed at that period in old France, in which its origin is lost, as it were, in the night of ages. But that Institution, different as it was under the several customs, which in large numbers were scattered over the Kingdom, was created, formed, and consolidated under the influence of a state of things, of a class of facts and circumstances, and of local usages, which, regarded in a political as well as in a social point of view, were necessarily foreign to a Country newly discovered and still in its infancy as a Colony. If it be also true (and it is a truth springing from necessity) that when the inhabitants of a civilized Country leave it, for the purpose of seeking a home in another land, as yet uninhabited, and, in consequence, not subjected to any system of laws recognized by civilized communities, they are supposed to take with them the laws of the mother Country, by which hitherto their liberties, their rights as citizens, and their properties had been governed; if this, I say, be true, it is no less true that such a rule of public and political right can only comprise such of those laws as naturally suit the new position in which they are

placed, due regard being had to their circumstances and wants, in the Country into which they are about to settle. Now the Feudal institution cannot be said to belong to the class of laws which the colonists are deemed thus to have brought with them in their immigration. It is, to some extent, an exotic plant which they have not the power to transfer themselves to another climate. This can only be effected by a stronger arm, that, namely, of the Prince or the Legislator.

That by the law of nature all property is free, is an acknowledged principle. If, following the necessities of political and civil society, that property ceases to be free, it is then stamped with servitude, as is the property subjected to Feudal authority. It is, then, in the laws which constitute this order of things that we must search for the source of this servitude. Now, there had, as yet, been no law of this nature made for the lands of Canada. The first discoverers and founders of that Colony, Jacques Cartier, Champlain, and others, found these lands in all their natural wildness, which, therefore, constituted a great freehold, belonging to the Crown of France. The Sovereign alone could impress on them the character of Feudality. This is what he did by the grant of 1627-1628 in favor of the Company of New-France. I am therefore justified in saying that that charter is the origin of our Feudal institution.

14. We must now examine the character of that institution, under the provisions of its own charter, making allowances for the geographical position of the Country, for its natural condition, and for the circumstances and wants of an infant Colony, establishing itself amid the vast forests of the New World.

It has been pretended that the grant of 1627-1628, was a free gift in favor of the Hundred Associates; that this gift

had constituted the Company absolute proprietors of the lands of Canada, so absolute indeed that they were at liberty to dispose, or not to dispose, of them, at their pleasure. This pretension is evidently based on error; to be convinced of this, it is only necessary to peruse the clauses transcribed above, from the contract of 1627-28, and to bear in mind, at the same time, the chief object for which the Sovereign had made the grant. Beyond a doubt, the property in the lands was acquired by the Company of New France, but that property was not conceded to them without onerous conditions, which they could not infringe with impunity. It is true that the Company may be supposed to have consulted merely their own interests, when they demanded this immense grant; but the King, while wishing to favor them in that respect, was governed in making the concession by the consideration of still more important interests, arising from high political motives, having in view, on the one hand, the aggrandizement of his Crown, and, on the other, the advantage not only of the Hundred Associates, but also of all his subjects. These considerations and motives govern every clause of this Contract. It was a permanent Colony that the King was desirous of founding; not a small and feeble settlement consisting of simple servants of the Company, but, above all a "powerful Colony," as he says himself in the preamble of the Contract. Could this Colony become powerful, so sufficiently powerful, that "New-France" could be said to be acquired for the King, in its whole extent, "once for all," if no other persons beside the Company were to take part in the [illegible] Evidently [illegible] such a pretension is absurd. [illegible] of the powers of which the King, in contracting with the Company, wished to procure the return. One of the strongest proofs that the [illegible] of this wish, is his revocation by the 7th of the articles of the 29th April 1627 in favor of the

Hundred Associates, of the grant which had previously been made to Guillaume de Caen and his associates, for carrying on the trade of New-France. Another proof not less striking of the same wish, joined to so many besides that may be found in the same contract, is the stipulation which imposes on the Company the obligation to send to the Country, in a given time, as many as four thousand persons of both sexes, and to concede to them, after three years' residence, a quantity of land which was even to be cleared, and sufficient for their support. These persons, emigrating to Canada by means of the Company, were intended to assist in the creation of the Colony : and the King wished that they should have the hope, even in some respects, the right, at no distant period, to participate in the ownership of the soil. it was the King who stipulated for this hope, this right. This stipulation was then sacred ; the Company were therefore obliged to concede the lands, in order to fulfill the views of the King, clearly expressed in the Contract. That was the law of this Contract, a law which, in accordance with the design and object of the Sovereign who dictated it, ought to be supposed to have been made, not solely for the benefit of that portion of his subjects who had emigrated to Canada as servants of the Company, but also in favor of all his other subjects. It was, in fact, a Feudal association that the King created, with a view to the public interest, and into which he wished his other subjects, as well as the Hundred Associates, should be admitted, in different degrees, " according to the quality, condition and merit of the individuals." (Art. 5.)

15. We shall soon see that the obligation to concede and to increase, by such means, the population of the Colony,—an obligation from which springs the feudal association of which I have spoken—has never been denied by the Company of the Hundred Associates ; that on the contrary they were eager, immediately after being put in possession

of Canada, to concede the lands there, by subinfendation and *accensement*, interpreting their contract, themselves, in the same manner as I have just interpreted it.

Had the Company repudiated this obligation, had they persisted in retaining Canada in its uncultivated and unpeopled state, it would have been, on their part, a refusal to fulfil their engagements, a violation of the law of their contract; they would have acted contrary to the views of the Sovereign who had dictated that law to them, and destroyed for ever a Colony in its infancy and which that sovereign had confided to their care, so that they might assist in making it a "powerful Colony" under the feudal system.

If we ask: who, in the event of the non-performance of their engagements, by the Company, ought to be judge of such non-performance; I reply: the king himself, although a party to the contract, and that in the same manner as he was judge in the matter of the Company of William de Caen. We must not lose sight of this important fact, that the contract in question was not an ordinary contract, like that between private individuals, the non-performance of which gives only a claim for damages, in the shape of a sum of money, the amount of which is to be decided by the ordinary Courts of Justice. The contract of 1627-28 was not of so private and limited a character. The King did not contract, merely as a Seignior, in possession of a free territory, for the benefit of some hundred persons, in order to make them simple vassals, only bound to fealty and homage, together with the payment of "a golden crown, weighing eight marks upon each mutation of the Crown"; no: one ought not so to judge the character of the solemn contract of 1627-28. It was, at once, private, and public or political: private, under relations extremely restricted, but public or political, under all the others. It was a charter wherein the King spoke both as Sovereign and as

Legislator, conferring a Constitution and a new form of Government on this portion of the New-World, and establishing therein at the same time the Feudal Institution. It was, on his part, an exercise of the public authority with which he was vested, an act bearing the title of " the Edict of the establishment of the Company," and in the concessions of land made by the Company themselves and in the Legislative and administrative monuments which have descended to us from the French domination.

The new system of Government, from which the King hoped to see a " powerful Colony " arise on this Continent, is that which is known in Colonial history, under the name of a *Proprietary Government.* But this Government and the authority which flowed from it, could not have the effect of withdrawing the Company of the Hundred Associates from the *surveillance* and the exercise of the power of the Sovereign, whenever the latter, either to carry out his political objects, or with a view to the interests of his subjects, thought proper to exercise that *surveillance* and put forth that power, against the acts of the Company, whether for the purpose of forcing them to respect the provisions and spirit of the charter and to execute it faithfully, or to punish any violation of it, whereof they might be guilty. In one of these cases, the King might interfere, by laws more or less severe, by regulations, and even, by acts purely administrative : in the other, by virtue of the high-handed exercise of his power, acknowledged by the political system of those days, he might declare the *forfeiture* of the rights and privileges that he had granted, regarding those associates only as his delegates, appointed by him to represent him, and carry out his intentions. Such intervention, on the part of the King, has been frequent in Canada, under the Government of France, and the History of other French Colonies in America bear testimony to the same fact. An acquaintance with the legislation of all these French Colonies, teaches

as that this right of intervention was a rule of their public policy, always active and continually kept in practice. (1)

The great Fief which thus came to be conceded to the Company of the Hundred Associates, could not therefore remain uncultivated in the hands of that association, nor could its forests remain in a state of nature. The Country must be cleared and improved, and this could only be done by means of sub-granting the lands. The Company was, therefore, forced to alienate, *de se jouer de son fief*. Even if this obligation had not been imposed upon them by their charter, it would necessarily have arisen from the force of circumstances, from necessity and from the natural condition of the Country. Owing to the same causes, we are bound to allege that as respects the Canadian Seigniors, to whom the Company granted, *en fief*, lands of immense extent, which it was not in their power to clear, so as to cultivate them as their own proper domain or property, they were bound by the same obligation, whether that obligation was or was not, written in their title Deeds. The feudal tie, with all the burthens imposed by the original title, had to be respected and followed, in all the steps of the ladder. The obligation to sub-grant, therefore, bound the vassals of the Company as well as the Company themselves. Had it been otherwise, if, from the moment that a large sub-infeudation had been made by the Company, and by the simple fact of this sub-infeudation, the vassal had acquired the right to claim an exemption from conceding the lands on his part, that is to say from having them cleared, cultivated and improved, in one word, to cause the Country to be settled, the object of the charter of 1627-28

(1) Moreau de St. Mery. "Lois et constitutions des colonies françaises de l'Amérique sous le vent."

Petit :—Droit public ou gouvernement des colonies françaises. The Same.—"Dissertations sur le droit public des colonies françaises, espagnoles et anglaises.

could not have been attained; the vast forests of Canada would have remained in a state of nature, or even if inhabited, it would be solely by the class of adventurers known by the name of *coureurs de bois;* and the "powerful Colony" which the King of France was anxious to establish would never have existed. It would, then, have been sufficient for the Company, to enable them to say that they had fulfilled the terms of their Charter, to grant in several fiefs, the immense territory of New-France. And, in extending to their vassals by this act of sub-infeudation, an exemption with they were not allowed by their own titles, they would have conferred on them greater rights than were given to themselves. Such a proposition can, in no way, be sustained. It can be no more justified than can that drawn from what has been said in the fifth of the articles of the 29th April 1627, and the 7th of those of the 7th May following, to the effect that the members of the Company, could concede their lands at such charges, reservations and conditions, as they may see fit" a *proposition*, of which I shall speak, when I come to the question of the rates of Seigniorial dues...

17. Up to this point, we do not find, in the acts of the French Government, any allusion to the Custom of Paris, or to any other Custom, as intended to be that which was to be followed in Canada. We shall very soon see that we were subjected to the authority of the Custom of Paris, as might naturally arise when no other Custom of the Kingdom was promulgated by the Sovereign, inasmuch as that of Paris, superior as it was to all the others, constituted the Common Law of France. It must need therefore prevail under the Proprietary Government of 1627–28, especially in such of its provisions as might answer the circumstances of the new Colony.

The Feudal institution was created in Canada; it is therefore quite natural to pretend that it was, from the be-

ginning, subjected to the provisions of the Custom of Paris, in this matter as far as possible, but only in so far as those provisions had not been derogated from by the title introducing the institution itself.

The alienation of the Fief allowed to the Seignior by the Custom of Paris, is only facultative; the Seignior is not under any obligation to alienate. If the charter of 1627–28 has ordered otherwise, as respects Canada; if our Feudal System imposes on the Seignior, as I believe that I have shown, the obligation to concede - it is evident that there is a difference, between the alienation of the Fief under the Custom of Paris and that of this Country; the one is facultative, the other obligatory. It will be seen, bye and bye, that this difference became more marked, in proportion as the Feudal institution became developed in Canada, by means of our special laws, our Customs and wants.

18. Quebec having fallen into the hands of the English in the year 1629, the operations by the Company of New-France were necessarily suspended. It was not until the year 1663, that this Company re-entered on all their rights, in consequence of the treaty signed at St. Germain en Laye on the 29th March 1632. (1)

The first sub-infeudation made by the Company was that of the Seigniory of Beauport; it bears the date of the 15th January 1634. (2) This Grant, like many others that succeded it, concedes, "in full justice, property and seigniory, for ever," and we also find in it these words, "in such manner and with such rights as it has pleased His Majesty to give the Country of New-France to the said Company," words which are to be found in a great number of the Grants in Fief. I will only make one re-

(1) Charlevoix, v. 1, p. 168, to 178.
(2) Titres des Seigneuries p. 386–7.

mark on the subject of these words which have led the successors of the Grantees of these Fiefs to assert that they have thereby become absolute proprietors of them, free to alienate or not to alienate ; that remark is, that, by such concession, the Company has only transferred to these persons the rights which *they*, the Company, *had themselves*, (they could not, for that matter, give more ;) and that if, in the hands of the Company, these rights were burthened with the obligation to sub-grant, they could not pass into the hands of their vassals without being liable to the same obligation.

To this Grant of the 15th January 1634, made to the Sieur Robert Giffard, five conditions are attached.

1st. " With the reservation, however, of fealty and homage which the said Sieur Giffard, his successors or assigns shall be bound to render at the Fort St. Louis of Quebec, or at any other place which shall be appointed by the said Company, by one full homage, at each mutation of possessor of the said lands.

2nd. " With a piece of gold weighing one ounce, and one years revenue of what the said Sieur Giffard shall have reserved to himself after he shall have granted in Fief or *à cens et rentes*, the whole or part of the said lands.

3rd. That the appeals of the Judge who may be established at the said place shall be immediately before the Court of Supreme Jurisdiction which shall hereafter be established in the same Country.

4th. That the men whom the said Sieur Giffard, or his successors, shall send to New-France, shall serve to the discharge of the said Company, in diminution of the number which it is obliged to send to the said Country, and to that end, he shall deliver, each year, a list of them

at the Office of the said Company, so that it may be certified thereof.

5th. " Without however the said Sieur Giffard, or his successors, having the right to trade for furs or skins in the said place, or any other place in New-France, otherwise than under the conditions of the Edict establishing the said Company. (See the 8th of the articles of the 29th April 1627.)

By the same deed the Company grants on a rent charge, (*à cens*,) to the same grantee, but without mention of the amount or the nature of the rent "a place near the Fort of Quebec, containing two arpents, to erect thereon a dwelling house, with the convenience of a yard and garden." The following condition comes immediately after: "without the said sieur Giffard, his successors or assigns, having the right to dispose of the whole, or part of the lands herein above granted to him, without the will and consent of the said Company, during the term and space of ten years to be computed from the date hereof, after which time it shall be at his option to dispose of the same in favor of persons possessing the qualities required by the Edict establishing the said Company," that is to say, of persons who wished to settle in the country, in accordance with the object of the Charter of 1627–1628.

The conditions required under the grant of the Fief of Beauport are inserted either literally, or in equivalent terms, in a great number of grants, made by the Company, also the condition excluding the right to build without their consent, fortifications on the lands granted, which is likewise to be found in the grant made to the sieur Giffard.

Two of those conditions are important, in as much as they tend to show how the Company interpreted the grant

made to themselves, and the others which [illegible] necessarily had on those persons who [illegible] participate in it, as their vassals.

The second condition, in stipulating "one year's *revenue* of what the said sieur Gouland will have reserved to himself, after he shall have granted in Fief or *à cens* the whole or part of the said lands," receives the acknowledgement, on the one part, of the obligation to concede the lands, and of the faculty of doing so either by the intendation or by *accensement* [illegible], which is an admission of the right [illegible], the alienation of the Fief different tenures [illegible] of Paris in so far that it might be without limit. In stipulating for a years revenue, the Company, it seems, only expected a real profit to be realised [illegible], according to the progress the Colony might make.

This profit must be derived from payments imposed by their vassals, when concessions were granted in mind of, or on a *rent charge*; if the vassal had the liberty of refusing to concede, when overseas cleared, it would have been in his power to render any expectation of profit, on the part of the Seigniory dominant, an utter illusion.

In the Fief [illegible] that the men whom the said sieur Gou[illegible], or his successors, [illegible] send to New France, shall [illegible] the discharge of the said Company, in diminution of [illegible] which it is enlisted to [illegible]" we leave the [illegible] to the parties that according to the letter and the spirit of the Charter of 1627-28, these men were not to be mere servants of the Company, employed wholly in assisting to draw the greatest possible profit from the Fur trade in Canada, but colonists destined, as required by the Feudal association of which I have spoken, to participate in the ownership of the soil with a view to

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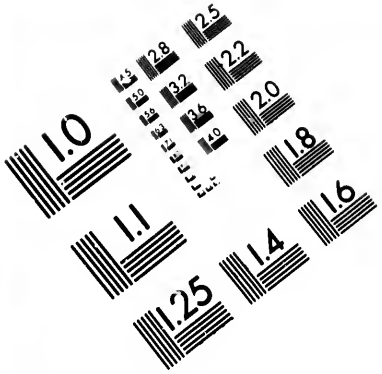
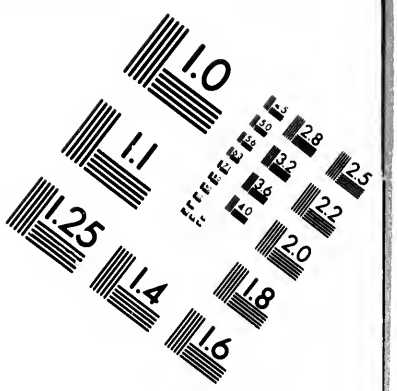
(1) [illegible] the amount awarded by ex[illegible] seem certain offered by the vassal, at [illegible] Coût. de Paris, art. 47."

(2) Titres des seigneuries, p. 587.





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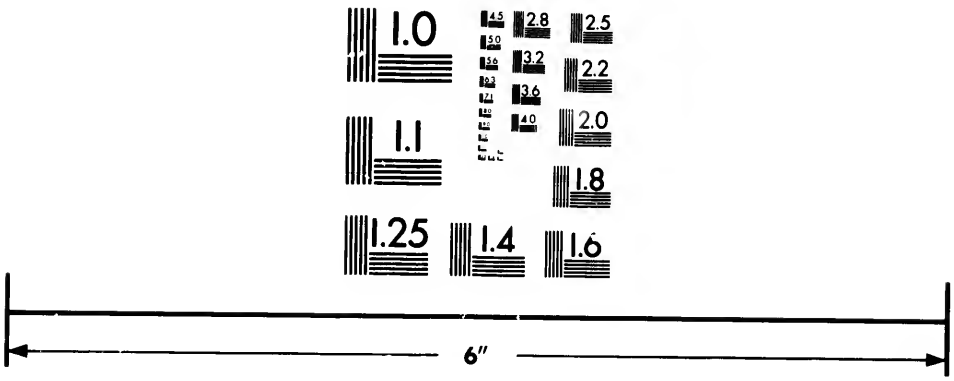

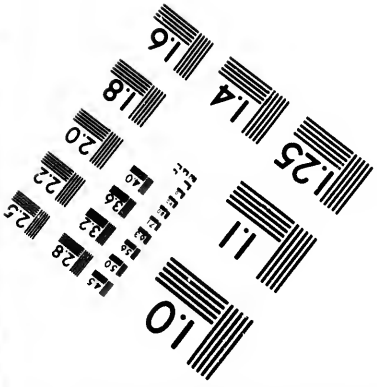

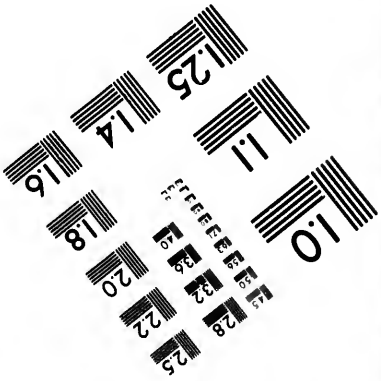

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" On this, the last day of December 1635, before Marc Antoine de Bras-de-fer, Esquire, Sieur de Chasteaufort, Lieutenant General along the whole extent of the River St. Lawrence in New France, on behalf of Monseigneur the Cardinal Duke de Richelieu, Peer of France, and Grand Master, Chief and Superintendant General of the navigation and commerce of this Kingdom, Maitre Robert Giffard, Sieur de Beauport, who has promised to follow the Laws and ordinances concerning which he shall be enjoined and notified and in which he shall not fail, (*lequel a promis suivre les lois et ordonnances qui lui seront enjoints et signifiés et auxquels il ne manquera,*) rendering in this matter fealty and homage for his land of Beauport holding expressly of the Fort and Castle of Quebec."

The perusal of this document is sufficient to convince any one of the existence and recognition of the rule of which I have spoken, that rule which the history of our Feudal institution shows us to have been incessantly active and put in practice.

21. The second Grant in Fief was made, in mortmain, on the 15th February 1634, one month after that of Beauport. The Company give to the Fathers of the Society of Jesus 600 arpents of land to be taken at Three Rivers " on which lands," it is said, in terms perhaps more imperative than those of the first, " the said Reverend Fathers and others of their Society shall send (*feront passer*) such persons as they may choose, to *cultivate* them and erect the necessary buildings ..... so that they (the Company) may be so far discharged, the said persons being of the number of those whom the said Company are obliged to send over in pursuance of the Edict above mentioned." It was not therefore simple *servants*, to be employed merely in their own service, which the Company had undertaken to send to New France.

22. On the 23rd May 1637, (or theretofore,) Montmagny the Governor, acting in the name of the Company, " distributes and allots, " that is to say, grants to Jean Bourdon " Master Land Surveyor and Engineer in New France," fifty arpents of land in the *banlieue* of Quebec, in *simple roture*, under the charges and *censives* which Messieurs of the Company of N. F. shall *order*, and on condition that the said Sieur Bourdon *shall cause the said lands to be cleared, &c., &c.*

On the 5th April 1639, the Company confirms this Grant " under the said charges and conditions above mentioned, and moreover subject to the payment of one *denier* of *cens* for each arpent every year, of which, nevertheless, they shall have nothing to pay during the first ten years to be computed from the date of the said Grant." (1)

23. We have seen, in No. 9, that on the 10th March 1626, the Seigniory of *Notre-Dame des Anges* had been granted to the Jesuit Fathers by the Duke de Ventadour. Nevertheless the Company of N. F. made them a new grant of it on the 15 January 1637; and why was this if the King had not the right to intervene in a Grant already made, if this grant were to be irrevocable, if the Grantee had the liberty to preserve intact the forests with which the land was covered ? Let us allow the Company themselves to give their reasons in the matter. " The Reverend Fathers of the Society of Jesus have shown to us that they have heretofore (been) put in possession of certain lands situate on the River St. Charles in N. F. and inasmuch as by the Edict of the King establishing our Company, all gifts and Grants anterior thereto have been revoked and the whole given to the said Company to dispose of the same, (*tous dons et concessions précédents ont été revoqués et le tout remis à la dite Compagnie pour en disposer*,)

(1) Titres des seigneuries, p. 351.

they have demanded of our said Company to maintain and guard them, by the authority thereof, in that which was formely conceded to them." (1)

We have here the first proof of the intervention of the Sovereign in the Grants made in Canada, and this proof, even by the admission of the Company for whose benefit the intervention took place, is made in a foreign character which has introduced the feudal system into Canada, and which they [illegible] the Fief of the King. Is not that a solemn declaration made on the part of the Company of this right of intervention by the Sovereign?

24. A Grant made on the same day, the 15th January 1637, by the Company to Jean de Beauvais, Commissioner of the French navy, for the purpose of founding at Quebec a convent for the Religious Hospitalers of St. Joseph, contains the two following conditions: " and on the further obligation to cause to pass over to New France in the next ensuing year, at least six persons to *begin to clear, cultivate and build upon the lands so granted*, and a like number of six persons in the following year, *otherwise the said grant shall be null*, and to *cause the King's Edict for the* establishment of the Company to be observed, without permitting or suffering that any of those persons whom they shall send to New France shall deal in Furs and Skins in the said Country, otherwise than on the conditions contained in the said Edict." (2)

This grant is followed by another of the date of 18th March of the same year, passed for the same object and on the same conditions and charges as the first.

25. In the grant of a part of the Fief Dautré, made on the 1st December 1637, by the Company to Jean Bour-

(1) " Titre des Seigneuries," p. 54.
(2) Analyse des titres des Seigneuries, by M. Dunkin p. 3.

don " Engineer, who has resided for some years in New France," (1) we read the following conditions ; 2nd " and to pay the usual dues and profits in the cases in which they become due in France according to the Custom of the Prevoté and Viscounty of Paris ; 3rd " and without the said Sieur [illegible] having the power to cede or transfer *the whole or any portion* of the above granted lands, except for the benefit of Frenchmen already residing in New France aforesaid, or of those who in such case, would oblige themselves to go there, in order to clear and cultivate the said lands."

This grant is the first that makes express mention of the Custom of Paris. But this mention is repeated in many others.

26. The grant of the Seigniory of Deschambault, made by the Company on the 4th December 1640, to " Francois de Chavigny Esquire, Sieur de Berchereau and Dame Eléonore de Grand-Maison his wife," sets forth : 4th " and moreover, neither the said Sieur de Chavigny, his successors and assigns, nor any person who may go over from France *to inhabit and cultivate the said conceded lands*, nor any other person residing thereon, shall have the right of trading for beaver skins or other furs with the Indians, *except by way of truck or exchange for the produce of the said conceded lands, &c. &c. &c.* ; 8th, and the said Sieur de Chavigny shall send, at least, four working men *to commence the clearing*, besides his wife and servant maid, and that by the first ship which shall sail from Dieppe or La Rochelle, together with the goods and provisions for their support *during three years, &c., &c.*,..... the whole on pain of the nullity of these presents," 9th " And in order that the Company may be assured of *the work which shall be performed for the clearing of the said lands*, the

(1) ib. p. 4. Titres des Seigneuries p. 356.

said.....shall be held to deliver each year into the hands of the Secretary of the said Company a list of the men whom they shall send, and who are to be accounted in the number of those whom the Company are obliged to send, according to the articles granted to them by the King *to form the Colony.*" (1)

In this class of men, intended to *clear*, *cultivate* and *inhabit* these lands, and who were allowed to trade with the Indians for Furs, by " truck or exchange," with the produce of the said lands, we must see, not simple servants of the Company or of their vassals, but Colonists who ought to become proprietors of the soil, and who would aid in *forming the Colony*, as expressly admitted by the parties themselves in the Deed of Concession. (2)

27. On the 17th December 1640, (3) the Company conceded to Pierre Chevrier, Esq., Sieur de Faucamps and to Jerome Le Royer, Sieur de la Dauversière, a large portion of the Seigniory of the Island of Montreal and that of St. Sulpice, subject to fealty and homage, " and to pay a piece of gold weighing one ounce, on which shall be engraved the figure of New France.. besides such duties and dues as are incident to Fiefs of this nature, and moreover to give their *aveus et dénombrements* : the whole agreably to and in conformity with the Custom of the Provostship and Viscounty

(1) Titres des Seigneuries p. 375.

(2) By the same Deed, the Company grant to the Sieur de Chavigny " 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*.... 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 said *cens* bearing *lods et ventes, saisines et amendes.*"

(3) " Titres des Seigneuries, p. 365.

of Paris, *which the Company intend shall be followed and observed throughout the whole of New France.* By the 7th clause of this grant the Company reserve to themselve the right to take lands for building forts, and say : " should it " be found advisable to build the said forts on lands ***which*** " *shall have been cleared*, in that case the *proprietors* thereof " shall be indemnified by the Company." The *clearers* would, then, have to be proprietors.

The 8th clause has a character altogether peculiar : " Neither shall the said..... have the right to cede or " transfer the *whole* or *any portion* of the lands herein above " granted for the use of those who may be already settled " in the Country, either at Quebec, Three Rivers, or any " other place in New France, but of those only who may " be willing to go there for the *express purpose of settling* " *thereon, so that the Colony may be so much the more ex-* " *tended.*"

Then the 11th Article has these words : " In order to " commence the settlement of the said granted lands, the " said..... shall be held to send to New France a " number of men, by the first shipment which the said " Company shall make, with the provision necessary for their " food, *and shall continue from year to year so that the said* " *lands may not remain uncultivated, and that the colony* " *may be so much extended.*"

It is the Company themselves who speak : it is they who tell us what are the spirit and object of their charter, and what are their own obligations and those of their vassals. They so well knew that the inexecution of these concessions in Fief, must involve the revocation of the same, that in this deed of the 17th December 1640, they themselves give an example, in connection with that same Island of Montreal, and inform the new grantees of it, by way of warning, so to speak, in order to put them on their guard

against the same danger. The deed adds, " and without the said Sieurs Chevrier and Le Royer, their successors or assigns being enabled to avail themselves of what was granted at the general meeting of the 16th January 1636, to the Sieur de la Chaussée, nor of the concessions and transfers which have since been made of the same pretended rights of the said Sieur de la Chaussée, *the whole remaining null and revoked in default of being executed within the time* prescribed by the regulations of the Company." (1)

28. In the number of the stipulations contained in the grant made on the 5th may 1646, by the Company of New France to Governor de Montmagny, of the seigniory of *Rivière du Sud* (or, St. Thomas), of Goose Island and Crane Island, (2) we find the following : " and moreover, neither the said Sieur de Montmagny nor his successors or assigns, nor any person who may go to the said country, *to inhabit and cultivate the lands hereinabove conceded*, shall have the right of trading for skins and furs with the Indians, *unless they have been acknowledged as inhabitants of the said country, and, in that capacity, form part of the community of the inhabitants.*" This stipulation is repeated, in the same terms, in other grants.

29. We have seen, in no. 26, that the Seigniory of Deschambault had been conceded on the 4th December 1640, to the Sieur de Chavigny. He took possession of it ; and, afterwards, on the 16th April 1647, (3) the Company added to that concession in Fief, and on the same conditions, another

(1) The grant in favor of the Sieur de la Chaussée cannot be found. Messieurs Chevrier and Le Royer were two of the members of the Society formed for the conversion of the Indians. Their grant of the 17th December 1640 was confirmed by the King on the 13th February 1644. See " *Brevets de Ratification*," p. 23, printed at Quebec in 1853.

(2) Titres des seigneuries, p. 370.

(3) Titres des seigneuries, p. 377.

portion of land equal in extent to the first. Their motive for so doing is thus stated by the Company: " inasmuch as the said Sieur de Chavigny has given us to understand that he has disposed of the greater part of the said lands contained in the said grant (that of the 4th December 1640) on a rent charge, *à cens et rentes*, in favor of several individuals, and that he had occasion for more land, with the view of clearing the same, the whole being for the well being and increase of the Colony." It will be seen that sub-granting was, to such an extent, a part of the obligations of the vassal, that the latter knew it to be necessary to state the performance of that obligation in order to entitle him to the increase of his first grant.

It appears that Mr. de Chavigny afterwards went to France, abandoning all his possessions in Canada ; at all events, that is what we find in a new deed of concession of the same Seigniory of Deschambault, made by Jean de Lauzon, " Governor and Lieutenant General for His Majesty in New France, throughout the extent of the River St. Lawrence, " and, at the same time, authorised by the Company of the Hundred Associates to concede their lands. (1) This deed is of sufficient importance to entitle it to be transcribed here, at full length :—

" The intention of the Company of New France having always been to do all that is possible for the *peopling* of New France, and to look after those who, under the pretence of having that object in view, might have obtained from the said Company concessions on favorable conditions, *so that, in case of neglect on their part, it might give them to others to be improved by them ;* on the report made to us that François de Chavigny, Sieur de Berchereau, having left New France, has abandoned all that be possessed there, and that leaving the affairs in that uncertainty *might prevent*

(1) Titres des Seigneuries, p. 378.

other individuals from cultivating the said lands to the advantage of the country ; and having heretofore caused our ordinance to be published by which we have ordered all individuals holding grants from the company not only to cause themselves to be immediately put in possession, but also to work incessantly at the clearing thereof, in default of which they should forfeit their concessions, which we would dispose of in favor of other persons who would improve them.

" Now therefore, the said Sieur de Chavigny having as aforesaid, by retiring to France, abandoned all that he possessed in this country, we have by these presents disposed of the lands by him thus abandoned, and granted to him by concessions of the 4th December 1640, and the 29th March 1649, (1) in favor of the Damoiselle Eléonore de Grand Maison, to whom we have given and conceded and by these presents do give and concede them, to have and to hold the same unto her, her heirs and assigns, for ever, under the same charges, clauses and conditions as they had been heretofore granted to the said Sieur de Chavigny. Done at Quebec this first day of March 1652."

We have not the date of the Ordinance of which mention is made in this title. It must have been recent, as Mr. De Lauzon only arrived in Canada in the year 1651. (2)

From the tenor of this ordinance, we can have a correct idea of the manner in which the authorities of the day

(1) This last date is evidentley erroneaus, the 2nd concession to Chavigny bearing the date of the 16 April 1647.

(2) Charlevoix vo. 1, p. 308 ; " The year 1650.....ended by a a change of the Governor General. Mr. de Lauzon, one of the principal members of the Canada Company, was appointed to succeed M. d'Aillebout, whose three years had expired ; but he arrived in Quebec only the next year.....The new Governor had always taken a greater interest in the affairs of the Company than any other person."

interpreted the obligations of the Company and its vassals. The ordinance makes no distinction between grantees; it strikes all equally, and this irrespective of the insertion or omission of this or that stipulation in their titles, whether the obligation " of working incessantly in clearing" be or be not, therein written, or that the grantee be or be not in possession. The obligation existing as respects the company, it exists *de pleno jure* as respects the vassals, and the forfeiture is the penalty of its inexecution. M. de Lauzon, proclaims this, in his ordinance, both in the name of the Sovereign whom he represents, and in the name of the Company whose powers he exercises. (1)

30. The concession of the Seigniory of ***Mille Vaches***, made on the 15 Nov. 1653, by M. de Lauzon to Robert Giffard, seignior of Beauport (2) seems to me to be the first which expressly mentions the Custom of ***Vexin-le-François***: " and for the redemption fine (*rachapt*)," it is therein declared, " one years revenue at each mutation of possessor, according to the Custom of ***Vexin François included in that of Paris***; " while the concession of the augmentation of the Seigniory of Gaudarville, although made the same day, merely states: " and the revenue of one year at each mutation, " (3) which nevertheless must mean the same thing; besides, " the revenue of one year " is stipulated in one way or the other in several concessions.

31. One of the conditions inserted in the title of concession of a part of the seigniory of ***Pointe du Lac*** made on the 31th July 1656 (4) is to cause " the said lands to be inhabited throughout their extent, and work to be done thereon within *four years* from this date."

(1) Titres des Seigneuries, p. 378.
(2) ib., p. 352.
(3) ib., p. 384.
(4) ib., p. 120.

32. On the 9th April 1656, the company erects in favor of the Sr. d'Aillebout, " Director of the Trade of N. F." the land of Coulonge " by the title of *Chatellenie* with superior, mean and inferior justice (*justice haute, moyenne et basse*) *according to the Custom of Paris*, to be enjoyed by him, his heirs and assigns, under the said title of *Chatellenie.* (1)

33. By concession of the 21 April 1659, the remainder of the Island of Montreal, a great part of which had been conceded on the 17th Dec. 1640 (see no. 27, preceding) is given (less 500 arpents granted to the Sr. de Fancamps,) to the Montreal company, " subject to the same duties, charges and conditions as the first concession made to the said Montreal company; " (2) and we have seen that immediate clearing was its principal object.

34. Finally another proof that the concessions made by the Company of New France imposed upon the vassals the obligation or sub-conceding, is furnished to us by the terms of the condition, which is found in several of these concessions, to leave for the service of navigation, a road of twenty toises a long the River St. Lawrence: " from the bank of the said river, at the time of the year when it is highest, up to the *adjoining lands or habitations which shall be made thereon*, (seig. de Deschambault:) " from the bank thereof to the *conceded lands* " (seig. of Montreal.)

35. I have now come to the year 1663, and consequently to the end of the first period of our feudal history. In this year, the Company of N. F. *reduced to* 45 *associates* (3), " well knowing that the King was desirous of putting himself in possession of the country and of the seigniory of

(1) M. Dunkin's analyse, p. 16.
(2) Title of Seigniories, p. 369.
(3) Charlevoix, vol. 1, p. 379.

New France, (1) adopted a resolution to that effect on the 24 February 1663, and the same day before notaries, made a deed of surrender " of the property and seigniory of the said country of New France to be disposed of by His Majesty according to His pleasure," which deed was accepted by the King in the month of March following (2). " Instead " of finding, says the King, that this country is settled as it " ought to be, after so long an occupation thereof by our " subjects, we have learned with regret that not only the " number of its *inhabitants* is very limited, but that they " are every day exposed to be expelled by the Iroquois ; " *against which evil it is necessary to provide*, and consid- " ering that the said company is nearly extinct by the " volontary retirement of most of its associates, and that the " few remaining associates have not the means of maintai- " ning that country, and of sending thereto the necessary " troops and settlers, both to defend and *settle* the same, *we* " *have resolved to with draw it from the hands of the said* " *company*, after having the said associates upon resolution, " etc., etc." The King further declares and orders : " that " all rights of property, justice, seigniory, right to appoint to " offices of Governors, and lieutenants general in the said " country, to name officers to administer Sovereign justice " and all and every other rights granted by our most " honored and glorious predecessor and father, by the treaty " of the 29th April 1628, be and the same are hereby " *reunited* to our Crown, to be hereafter exercised in our " name by the officers that we shall appoint in this behalf."

36. From this moment, the government of New France ceases to be a proprietary government and becomes a royal government.

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(1) Deliberations of the Company 24 February 1663. Edit and Ord., vo. 1, p. 30. Act of resignation, p. 31.

(2) Edits and Ord. p. 31, 32.

37. A few days after the acceptance of the surrender of the Company, we see the King passing in his Council of state, an *Arrêt* revoking the *uncleared* concessions, founded upon the fact that " one of the principal causes that the said " country has not increased in population as it is desirable " it should have been, and that even many dwelling houses " have been destroyed by the Iroquois, proceeds from the " concessions of a great extent of lands which have been ma- " de to all the private inhabitants of the said country....." This Arrêt is of the 21th March 1663. (1) It declares that, in six months from the day of its publication in this country, " all the private inhabitants thereof shall cause the lands " mentioned in their concessions to be cleared, otherwise " and in default thereof, and the said delay expired, His " Majesty commands that all the lands *still unclear-* " *ed*, shall be distributed by new concessions in the " name of His Majesty, either to the old inhabitants " thereof, or to the new. His Majesty hereby revoking " and annulling all concessions of the said lands " uncleared by those (the grantees) of the said company ; " His Majesty orders and commands the Sieurs de Mézy, " Governor, the Bishop of Pétrée, and Robert, intendant " in the said country, to see to the punctual execution of " this present Arrêt ; as well as to make the distribution of " the said uncleared lands, and to grant concessions thereof " in the name of His Majesty."

38. In this re-union to the domain of the Crown, of the rights of the company of New France ; in this Arrêt revoking the concessions made to the vassals of this company, we have the strongest, and the most authentic evidence, of that rule always persistent of the public colonial law of which I have already spoken, which gave to the King of France the power of intervening in the concessions of lands to watch and assure the establishment thereof. The Arrêt of

(1) Edit and Ord., in-8, p. 33.

revocation has the same character and the same enactment which the ordinance of M. de Lauzon, mentioned above in no. 29, had. Like the latter, it makes no distinction between grantees or between their titles; it reaches them all equally; all are obliged to *clear*: and as they cannot perform this clearing but by making sub-concessions, they are all then obliged to concede, an obligation which does not take its origin in this Arrêt, but which this Arrêt merely confirms, in as much as it goes back to the Edict of the establishment of the company of New France. This obligation stamps the *Jeu de Fief* in Canada with two distinct characters which make it, in this respect, different from that permitted by the 51th article of the Custom of Paris; on the one hand, the canadian seignior has the power to dispose of the *whole* of his fief, *de se jouer de la totalité de son fief*, and, in this point of view, his condition becomes similar to that of the seigniors in France under the old Custom of Paris; and on the other hand, being obliged to concede his lands *which are yet wild*, under the penalty of the *forfeiture* of his rights, the *Jeu de Fief* becomes obligatory upon him for these same lands. At the most there could exist only the exception for that which the the seignior may have the right to reserve for his *domain* properly called

39. The re-establishment of the Royal Government in Canada was soon followed by an Edict of the King creating a Sovereign Council, *Conseil Souverain*, sitting at Quebec. This Edict is of the month of April 1663. (1) The Council has "the power to take cognizance of all causes civil and "criminal, to judge *souverainement* and in the last resort

(1) Edit and Ord. in-8vo, t. 1, p. 37.

NOTE.—This Edit was passed the 30 April, 1663, [illegible] Commissions of Governors and intendants, printed at Orleans in 1676, (Com. de Sr. de Mézy; and the *arrêt* of the Council which ordered the registrations of the Edit was made the [illegible] (Edit and Ord. in 8vo, t. 1, p. 6.

" according to the laws and ordinances of Our Kingdom,
" and to proceed therein as much as it can in the manner
" and form which are practised in our Court of the Parlia-
" ment of Paris, reserving to ourselves nevertheless, accord-
" ing to our Sovereign power, the right to change, reform and
" amplify the said laws and ordinances, of derogating the-
" refrom, of abolishing them, of making new ones, or such
" rules, statutes and constitutions which we shall consider
" to be the most useful to our service and to the good of our
" subjects of the said country. Willing, intending, and it
" being our pleasure that in the said council the expen-
" diture of the public funds shall be decided upon, and
" the trade in fur with the Indians be regulated, as well as
" all the trade that the inhabitants may make with the
" merchants of this Kingdom ; *even that all affairs of poli-*
" *ce, public and private, of all the country may be determined*
" *upon &c.* "

40. The King had scarcely created the Sovereign Council, that he named the Sr. Gaudais commissioner to examine the situation and state of the Country and to make a report to him. This commissioner who was named on the 7 May 1663, and whose instructions bear the same date, (1) accompanied the new Governor M. de Mésy and the Bishop of Pétrée, to Canada. (2)

The fourth article of Gaudais instructions informs him
" that the principal thing which must be attended to for
" the maintenance of the colonies of the said country and
" for their augmentation being *to cultivate* the greatest possi-
" ble quantity of land, and to do in such a way that the
" dwellings of the inhabitants may be brought close to one
" another without which the inhabitants cannot assist each
" other &c., &c., there is nothing of so much consequence

(1) Com. of Gov. and Intend. p. 22, 23.

(2) Charlevoix, vol. 1, p. 370.

" as to endeavour to settle the inhabitants in parishes or villa-
" ges, and *to oblige them to clear their lands from neighbour*
" *to neigh bour*, to the end that they may help one another in
" case of necessity. And altho this method was the most
" certain, he will assuredly find, being or the spot, that the
" little care and knowledge that the Company which hereto-
" fore possessed the country had, and the avidity of those
" who wished to settle themselves there, who have always
" asked for grants of great extent, upon which they have
" settled, have caused this separation of dwellings, which
" are found far distant one from the other, not only, the
" private individuals who have obtained the concessions
" *have not been in a situation to clear them*, but has even
" given great facility to the Iroquois, to murder, massacre
" and make a desert of nearly all occupied places, *and this*
" *is what has obliged the King to make his Arrêt*, the copy
" of which is put into the hands of Sr. Gaudais, likewise to
" cause to be written to the Bishop of Pétrée, that he deli-
" ver the original of the said Arrêt to him, to have it pu-
" blished and affixed every where as soon as it has arrived ;"
(the said arrêt of Revocation of the 21th March 1663.)

The fifth article of the instructions further states : " and
" as he clearly perceives from the reasons above ex-
" plained, that it is impossible ever to be able to assure
" oneself of the said country and to make a considerable
" number of dwellings, until we oblige all those who have
" had concessions of land to abandon them, and to unite
" themselves in as many villages and parishes as possible,
" in order to cultivate all the neighbouring lands, *in which*
" *case it will be necessary to partition the said lands and to*
" *give portions of them to each village or parish*, according
" to the number of families of which it will be composed,
" he will endeavor then to persuade of this truth, by all
" kinds of means, the said Lord Bishop, the Governor and
" the principal men of the country, to the end that they may

" concur unanimously to make the demand accord. which " he will make them know to be not only of an absolute " necessity for their preservation, *but that His Majesty will* " *even have it executed by a general revocation of all con-* " *cessions.*"

60. " In the event that some of those to whom these concessions have been made, urging occupations to *clear them entirely*, and that before the expiration of the six months mentioned in the said Arrêt, they have commenced to clear a good part thereof, the intention of His Majesty is, that, on their petition, the Sovereign Council do give them another delay of six months only, *which being terminated he wishes that all the said concessions be declared null*" "

41. As we perceive the King persists, on every occasion, in his right of inspection and intervention, he exercises it more or less rigorously as, in his discretion, circumstances require; the instructions which he gives to his commissioners and the *Arrêt* of the 24 March of which he explains the motives and object in these same instructions, leave no doubt as to his wishes and intentions to act without relaxation, in relation to the grantees, in such a way as to compel them to accomplish their obligation. This active intervention of the Sovereign constitute a feature, altogether characteristi of the Canadian feudal institution

42. The Edict erecting the Sovereign Council and the *Arrêt* revoking the uncleared concessions, had been delivered to the Bishop of Pétrée (1) who was the second member of the Council, and who jointly with the governor, had the right of appointing the other five members. This Edict had been enregistered at the office of the Clerk of the Council or the 18th Sept. 1663.

On the 6th August 1664, the governor and the Bishop

(1) Gaudais, instructions. art. 4 and 19.

[illegible] Robert (1) were specially charged [illegible] the [illegible] vocation of the 21th March of the preceding year, executed, presented the *Arrêt* to the council and " require[d] that the said arrêt be executed in every res- " pect according to its tenor and form, and, in so doing, *that all the lands which are not at this day cultivated and cultivated*, be declared re-united to the King's domain, " to be disposed of in the name of His Majesty by new " concessions in favor of those who require the same as " is above mentioned ; the said governor and Bishop " declaring, that they do not pretend in any manner " to interfere with the people settled in the Coun- " try, nor to oblige them to leave their houses and habi- " tations, consenting that these remain in the state they are, " but for those concessions which it will be necessary to " make, they will see to it that the intention of the King " shall be followed and that they shall be reduced in towns " and villages, as much as possible, likewise that all pre- " tended seigniors shall *be prohibited from disposing by* " *concessions of any unimproved lands*, on *pain of nullity*, " the King's Attorney General having required that all " uncleared lands be *re-united* to the King's domain ;"

Upon this demand and requisition, " the Council, be- " fore deciding thereupon, has ordered that the said *Arrêt* " be communicated to the syndic of the inhabitants at the di- " ligence of the King's Attorney General, so that, his answer " being had, it be ordered as it may seem reasonable."

43. No concessions of land seems to have been made

(1) Charlevoix, v. 1, p. 372, says : " M. Robert, Councillor of State, would have been named this same year (1663) Intendant of Justice, police, finance and admiralty for N. F. and his patents are dated the 21 March ; but he did not make the voyage to Canada, and M. Talon who arrived in 1665, is the first who fulfilled the duties of the office."

in 1663. But we have the titles of two grants, made the following year, on the same day, the 8th August, by the Governor de Mésy, and the Bishop of Pétrée, the one of a piece of land at Three Rivers, to the Reverend the Jesuit Fathers (1) and the other of the seigniory of Champlain to Etienne Pezard, Sr. de la Touche. (2) These concessions were made, as declared in the first, " in virtue of the power granted to us and duly enregistered," that is to say, in virtue of the *Arrêt* of revocation, of the 21th March 1663. The concession thus made to the Jesuits is of a certain " quantity of uncleared land," joining a piece of 14 arpents which had been given to them in exchange for the same quantity of land ceded to the inhabitants of Three Rivers to make a common ; and this concession contains the declaration : " in full property, under the same rights and privi- " leges that their said 14 arpents exchanged were given to " them by the Gentlemen of the General Company."

The concession of the Seigniory of Champlain is made " in full property, with the rights of seigniory and jurisdic- " tion, superior, mean and inferior, and the ordinary hono- " rific rights of seigniors of parishes in the Churches when " they shall have been therein built," 1o. " at the charge " that the appeals from the jurisdiction that the said..... " may therein establish, shall be made to the Royal Judge " at Three Rivers ; 2o. " that as to fealty which he shall " be obliged to pay, by one homage at each change of pos- " sessor,..... he will render it at the Sovereign Council " at Quebec," 3o. with one years revenue, according to " the Custom of the Prevostship and Viscounty of Paris ;" probably intending to say according to the Custom of *Vexin François*, recognised by that of Paris, and in which *one year's revenue*, that is to say, the relief or redemption, is due at each mutation.

(1) Seigniory Titles p. 72.

(2) Dunkin's analysis, p. 18.

44. The interval which elapsed between the re-establishment of the Royal Government in the year 1663, and the establishment of the West India Company by the Edict of the month of May 1664, may be regarded as the second period of our Feudal history. In this short interval, we find but one single *Arrêt* of the Sovereign Council of Quebec, in which they had occasion to apply the King's Arrêt of the 21th March 1663. It is an Arrêt of the 8th November 1664 which enjoins the inhabitants of the Côte de Lauzon to pay into the hands of the clerk of the Council the price of the lease of their fishing grounds. (1) The defendants were impleaded by the petition of Paul Chalifour " for their parts and portions " of the property leased. Having shown that the said fisheries were upon *uncleared and unsettled places*," the governor had ordered the Attorney General " to make an " opposition to the distribution of the monies, the said farms " for which the suits were brought being *in the hands of his* " *said Majesty*, according to his Arrêt of the 3rd. (21th) " March 1663, enregistered, published and affixed where " the same was necessary, and, moreover, by the declara- " tion which was made thereof by Us (the Governor) and " and the Lord Bishop, dated 8th. (6th) August last, accor- " ding to the order given us by the King."

" The Attorney General has required that *all* seigniors " be prohibited from leasing any lands or fisheries upon " *uncleared and unsettled* places, and from availing them- " selves of the titles granted to them by the General Sei- " gniors, requiring that the monies that are due and de- " manded be placed in the office of the clerk, for the " benefit of His Majesty, and that these presents be read, " published and affixed."

" Upon which the Council, having duly considered, " has ordered that these *said Arrêts* of His Majesty be

(1) Edit and Ord. in-8o, t. 2, p. 21.

" *executed* according to their tenor and form, *until fresh*
" *orders of the King*, this being done that the said.....
" and *Others owing for like demands*, being lessees, pay the
" price of their lease into the hands of the clerk of this
" Council, who will give them a good and valid discharge
" therefor, and that these presents be read, published and
" affixed *that none be unacquainted with them.*

45. We now enter in the third period of the history of our Feudal institution, commencing with the West India Company and finishing with it in 1674.

The Edict of the month of May 1664 (1) which established this Company, granted it " Canada, Acadia, the " Islands of Newfounland and other islands and main-land " from the North of the said Country of Canada as far as " Virginia and Florida " *in all seigniory, property and ju* " *risdiction.*"

Art. 15. " The Company shall alone, *during forty* " *years*, carry on trade and navigation in the countries " granted, to the exclusion of all other our subjects who shall " not enter into the said Company," etc.

Art. 19. " All lands which the Company may settle " or acquire by conquest during the said forty years, " within the extent of the country conceded and herein " before described, shall belong to the said Company in full " property, with the rights of seigniory and jurisdiction, as " also the islands of America known as the Antilles or Lee " ward Islands, inhabited by the French, which were sold " to several individuals by a Company formed in 1642, " upon the condition that the company shall re-imburse to " the seigniors proprietors of the said islands the amount of " purchase money paid by them, as established by their " deeds of purchase, and the value of the ameliorations and

(1) Edit and Ord, in 8, t. 1, p. 19

" improvements, according to the valuation of the commis-
" sioners to be named by us for that purpose, and permitting
" them the enjoyment of the settlements made by them
" since the purchase of the said islands."

Art. 20. " All which countries and islands, places and
" forts, which may have been built and established therein
" by our subjects, we have given, granted and conceded and
" do hereby give, grant and concede to the said Company,
" to be by the said Company had and enjoyed *in full proper-*
" *ty, seigniory, and jurisdiction for ever*, reserving to ourscl-
" ves neither rights nor duties, save and except fealty and
" homage, which the said Company will be bound to ren-
" der us and our royal successors, upon each mutation
" of the Crown, with a payment of a gold Crown of the
" weight of thirty marks.

Art. 21. " The said Company shall not be held liable to
" pay any indemnity to any of the Companies to whom we or
" our royal predecessors, may have made grants, which said
" indemnities, if any be due, shall be paid by us; for
" which purpose we have *revoked, and do hereby revoke*
" *any grant which we have heretofore made to them*, to
" which grants, in so far as the same may be necessary, we
" have substituted the said Company, to enjoy all the pri-
" vileges of the same in manner as if all such privileges
" were herein particularly expressed.

Art. 22. " The said Company as seigniors of the said
" land and islands, shall enjoy the *seigniorial rights*
" *which are at present established therein upon the inhabi-*
" *tants of the same*, as such rights are now levied by the
" seigniors in possession, unless the said Company should
" deem it proper to *commute such rights for the relief of*
" *the said inhabitants.*

Art. 23. " The said Company shall have power to sell
" or dispose of the said lands by way of infeofment, either

" in the said islands or continent of America, or elsewhere " in the countries granted, upon payment of and for such " *cens et rentes* and other seigniorial rights as may be deem- " ed proper, and to such persons as the said Company may " see fit.

Art. 24. " The said Company shall have the enjoy- " ment of all the mines and minerals, capes, gulfs, ports, " harbors, rivers, rivulets, islands and islets which may be " found within the said granted tracts, without being obli- " ged to pay us by reason of the said mines and minerals, " any royal dues whatever, which dues are hereby remit- " ted."

Art. 26. " The said Company shall also have power " to appoint such Governors as may be deemed requisite, " either upon the mainland by separate sections or pro- " vinces, or in the said islands, which said Governors shall " be presented to us by the Directors of the said Company, " in order that they may be provided with our commissions ; " with power also to the said Company, when and so often " as may be deemed necessary, to displace such Governors " and to appoint others in their place, to whom our com- " missions will be forthwith issued, it being lawful for " such newly appointed Governors to act as such, under " the commission of such directors, for six months or for " one year at the utmost. "

Art. 31. " The said Company shall have power, as " seigniors *haut justiciers* of all the said countries, to " appoint judges and officers wherever need be, and to " displace and dismiss them whenever found necessary, " which said judges and officers shall take cognizance of " all matters concerning justice, police, commerce and " navigation, as well civil as criminal ; and in such places " as it will be necessary to establish supreme councils, the

" officers composing the same shall be nominated and " presented to us by the directors general of the said " Company, and thereupon the commissions of such officers " shall be issued.

Art. 33. " The judges appointed in the said places " will be held to give judgment *according to the laws and* " *ordinances of this realm*, and the officers of justice bound " to follow and to comply with *the Custom of Paris*, " *according to which the inhabitants shall enter into con-* " *tracts*, without its being lawful to introduce any other " custom, in order to ensure uniformity.

46. The edict of the month of may 1664 created another *proprietary government*. To the new company belonged the right to name governors and all the officers ; nevertheless it appears that they did not exercise this privilege during their short existence, at least as regards the offices of Governor and Intendant. The nomination of these two functionaries continued to be made directly by the King who, thus, retained, in some manner, the governing hand in the administration of the Colony, until the suppression of the Company by the Edict of the month of December 1674.

Charlevoix v. 1, p. 379, remarks upon this subject ; " as this new Company, says Colbert in a memorial which I have in my hands, had not yet sufficient knowledge of the persons fit to fill the first places, they prayed the King to make the appointments, until such time as they were in a situation to make use of the privilege, that His Majesty had been pleased to grant to them, and it was in consequence of this petition that M. de Mézy was appointed Governor General and Mr. Robert intendant of New France. (1)

(1) Messrs. de Mezy and Robert were named in the year 1663, and consequently before the creation of the Company. The commissions of their successors make no mention of their *presentation* to the King by the Company, to receive the commissions for their offices.

47. It does not appear that any concession was made in the name of the Company before the arrival, in the year 1665, of MM. de Courcelles and Talon, one named Governor and the other Intendant. By an extract, reported by Charlevoix, (1) of the instructions given to this intendant by the minister Colbert, we see that these instructions, as regards the concessions and the necessity of having the dwellings near one to the other, had the same character with those given to the commissioner Gaudais in the year 1663. In these instructions which make mention of the *Arrêt* of the Council of State of the 21st march of this last year, it is said: "This arrêt has remained without effect because, to "unite the inhabitants into one body in villages, it would "be necessary to oblige them to make new clearances, and "abandon their own. Yet as this is an evil for which "some remedy must be found, His Majesty leaves it to the "prudence of sieur Talon to advise with the sieur de "Courcelles and the officers of the Sovereign Council, *to the* "*end that his wishes may be carried out.*"

These instructions furnish a fresh proof of the intervention, always active, of the King of France, for the purpose of superintending the concessions of land in his colonies, and to put into operation the system which he thought most fit for their establishment.

48. In that same year 1665, the West India Company appointed Mr. Le Barroys its general agent in Canada. His commission which bears date the 8th April (2) and which was enregistered at Quebec on the 23rd day of September following, gives him the power "of distributing or having "distributed to private individuals, the lands at the rent "*cens et rentes* which will be found proper," and "to see "that the Company be paid the seigniorial rights, and other

(1) T. 1, p. 387.

(2) Com. of the Gov. and Int. p. 36, 37.

" dues which are now paid or which may be hereafter " paid by the inhabitants of the said country. "

It appears that the Company had experienced some difficulty to have itself put in possession. (1) Mr. de Tracy, the King's Lieutenant-General in America, having come to Canada, we see M. Le Barroys, the 18 August 1666, presenting him a petition, to him, to the Governor M. de Courcelles, and to the intendant M. Talon, demanding, among other things, by the first article, that " The Gentlemen of the Company be acknowledged and " declared as it has been by him required, *since the* 10 " July of the year 1665, Seigniors of the Countries named " in the Edict of His Majesty given at Paris for the " establishment of the said Company in the month of " May 1664, to enjoy the same in all property and juris- " diction, as well as all the other rights conceded by the " said Edict, enregistered in the Sovereign Council of this " Country, the sixth day of July of last year :" which is

(1) According to Charlevoix, t. 1, p. 382–3, the Intendant Talon, in " his memorial to Colbert, of the 4th Oct. 1665, had said : " But if his Majesty wishes to make something of Canada, it seems " to me that he will not succeed unless he withdraws it from the hands " of the West India Company, and by granting in it a wide liberty of " commerce to the inhabitants, to the exclusion of strangers only. If, " on the contrary, he looks upon the Country only as a seat of commerce " proper for the fur trade, and for the sale of certain commodities exported " from the Kingdom, the profit, which will result therefrom, is not " worth his attention, and deserves very little of yours. It would thus " seem more useful to *leave the entire direction* to the Company in " the same manner as it has that of the Islands. The King in taking " this resolution, might calculate upon the loss of this Colony ; " because on the first declaration, that the Company made, of allow- " ing no liberty of commerce, and of not permitting to the inha- " bitants the right of having commodities brought to them from " France on their account, even for their subsistance, the whole people " was excited to indignation. The Company, by that means, will " profit much in *empoverishing* the Country, and will not only take " from it the means of subsistance, but will be a strong obstacle to its " establishment."

" granted by the word " Good" written in a marginal note " to the article.

The 26th article of the petition demands " that the concessions which shall hereafter be made, be granted by the said Intendant, at such *rent cens et rentes which shall seen reasona-* " *ble to him*, in presence of the said agent or head clerk of " the said Company, in the name of which all deeds of " concession shall be made." The answer to this demand states ; " Nothing seems more in conformity with His Ma- " jesty's intentions, it therefore seems to be most just to grant " that which is asked by the present article." (1)

The Intendant, this functionary whom the King appoints and whom he can dismiss whenever it is his pleasure so to do, thus still retains the power of conceding lands, authority which had already been granted to him by the arrêt of the 21st March 1663, and the attribution and exercice of which attest, without ceasing, the right of intervention and super-intendance by the King in this matter, as inherent to the feudal institution with which he had endowed Canada.

49. In the regulations " concerning justice, police and maintenance of the colony" prepared by Talon and signed by him and M. de Tracy, afterwards adopted by the Sover-

(1) The answers to the 31 articles of this petition are dated at Quebec on the 11 Sept. 1666, and signed " Tracy, Courcelles and Talon ;" Ed. and Ord. in 8, vo. 1. p. 59. It is probably to this fact that Charlevoix makes allusion in the following passage '. 1, p. 388 ; " At the moment that the navigation became free (1667) M. de Tracy returned to France, and *the last act of authority*, which he performed in America, was to *establish the West India Company in all the rights*, of which the Hundred Associates had the enjoyment. Much was expected from it ; but it took scarcely more at heart the interests of New France, than the preceding had done, as M. Talon had foreseen."

eign Council on the 24th January 1667, (1) we see the plan which the intendant presents of establishing *military colonies* in the neighborhood of Quebec in " hamlets, villages " and boroughs (*bourgades*) that His Majesty, it is therein " stated, makes or will make at his expense, to be distribu- " ted to the poor families which he will send from France " and with which he proposes peopling Canada, or which he " may wish to grant to those soldiers who may desire to " settle therein." It is further said that as the preceding articles treat merely of the dues to be established in these hamlets, villages and boroughs, " it is most fit to examine " by what titles and under what conditions the lands will " be granted, and concessions will be made to private indi- " viduals who may choose to make the expense and give " their attention to the cultivation of Canada, themselves " forming hamlets, villages and boroughs."

We also read in these regulations what follows : " as in all this distribution, nothing is reserved for the profit of the West India Company, that His Majesty is desirous of gratifying to the extent of the advantage which in like cases the right of Seigniory gives, either the inhabitants will hold *directly* from it, and in that case, the high, mean and inferior jurisdiction may be attributed to it, with the right of *Lods et Ventes*, *saisines et amendes*, and even a light *cens*, if it is judged proper, or if His Majesty deem that it will be most advantageous for him to have for vassals, officers of his troops who have over the *roturiers* the useful and domanial seigniory, he may create in their favor some inconsiderable rights of *cens*, which may be rather marks of honor than useful revenues, and grant them mean and inferior jurisdiction, reserving to himself the superior, which he will attach to a Sovereign Court of Fiefs or to some officers created for the preservation of the Seignior *suzerain or dominantissime*."

(1) Ed. and Ord. in-8, vo. 2 p. 28 and foll.

Such are the suggestions made by the intendant Talon, approved of by M. de Tracy and by the Sovereign Council.

50. On the 28th March 1667, the Council intervenes on the subject of the proprietors of mills and of their millers, by an *arrêt* of which I will speak hereafter in treating of the right of *banalité* ; also of the *arrêt* of the same Council of the 20th June following, which enacts that " the multure taken in this Country will be the fourteenth part. I cite them here merely to prove the intervention, always active, of the public authority between seigniors and censitaires, according to circumtances and necessities.

51. M. Talon who returned to France in 1668, and came back again a few years afterwards (1), seems to have made but two concessions during his first sejourn in Canada ; one of the fief St. Maurice on the 10th January 1668, and the other of the fief St. Michel on the 20th June following. (2) The first is mentioned in a subsequent concession of the 4th August 1676 (3) as having been made by a simple letter missive to Maurice Poulin, sieur de La Fontaine, King's Attorney at Three Rivers, permitting him, his wife said, " to have work performed on a farm . . . with promise to give him a title of concession." The second appears to have been made to sieur de Tilly. (4)

52. Under date of the 3rd January 1669 (5) the Governor M. de Courcelles gives the letter of concession which

(1) Charlevoix, t. 1, p. 405.

(2) M. Dunkin's Analysis p. 18. The author has been unable to find the titles.

(3) Seignorial Titles, p. 154.

(4) Report of the Commissioners on the Seigniorial Tenure, p. 75, where the Inspector of the Domain remarks that this concession had already been made to the Sr. de Tilly by the Company of N. F., on the 7th April 1660 ; which may make one suppose it was re-united to the Domain.

(5) Title of Seigniories, p. 29.

follows: " I have granted to the Sieur Lemoyne, an inha-
" bitant of the Cap de la Madelaine, the extent of land
" which is between the concession of the (Jesuit) Fathers
" and the River St. Anne, on the River St. Lawrence, and
" in the event of their being only three forths of a league
" in the said tract of land and half a league ascending the Ri-
" ver St. Anne, including the Isle of Pines, which is opposite
" the said grant, *in order that he may work thereon imme-*
" *diately*, provided always that the same be not granted to
" any other person, and a *title-deed* thereof shall be given
" him as to others."

This contract was in fact given to him at a later date, on the return of the intendant Talon, on the 3rd November 1672. (1)

53. On the representations of the Intendant Mr. de Bouteroue, Talon's successor, the Council, on the 13th April 1669, (1) passed an *arret* which " enjoins all those who in future will make concessions of land, to have them measured, surveyed and the lines drawn of ten arpents in depth, beginning by the oldest from the first year of the distribution, at the expense nevertheless of those who shall receive them, under the penalty of the said grantors being responsible in their own proper and private name for such loss and damage as may be claimed by those who shall be injured, and until such time as the said line of ten arpents in depth shall be laid out, they are forbidden to pay any dues or rents mentioned in their contracts."

This obligation to fix boundaries (*bornage*,) which was not expressed in the titles of concessions, made to the Seigniors, the public authority intervened to impose upon them under the penalty of not recovering their seigniorial dues; a new incident which adds to the special character

(1) Title of Seigniories, p. 28.
(2) Ed. and Ord. in 8, v. 2, p. 45.

which our Feudal institution has to take, proportionally as it developes itself.

54. In a Deed of the 14 August 1676, (2) concerning the Seigniory of Gentilly, mention is made of a grant of the 17th June 1669, by which the Intendant Bouteroue had given to Michel Peltier, Sieur de la Prade, a portion of the lands constituting the said seigniory, promising him to grant him in His Majesty's name a title of concession thereof," which was done on the said 14th day of August 1676.

We find two grants made in the year 1670, by simple letters of the Governor M. de Courcelles, the one bearing date the 10th February, and the other the 10th July; the first to the Sieur de la Badie of 20 arpents along the River St. Lawrence.....ending at the habitation of M. Boucher ..... under the obligation of *labouring there incessantly and to improve the said land, according to, and in conformity with, the intentions of the King, and on the same clauses and conditions*; the second to the Sieur Normanville " on the obligation of *labouring there incessantly according to the intentions of the King.*"

55. The Intendant Talon returned to Canada in the year 1670, (1) replacing M. de Bouteroue.

On the 14th March 1671, M. Talon, proprietor of the Seigniory of the Islets, obtained letters patent from the King (2) which conceded and assigned to him " the three *villages* thereunto adjoining, and *belonging to us* " said His Majesty, " the first called *Bourg Royal* the second *Bourg la Reyne* and the third, *Bourg Talon*," and united and incorporated *them with his property of the Islets*, " *so that* henceforth they shall constitute but one and the same Fief and

(1) " Titres des Seig." p. 12.

(2) Charlevoix, t. 1, p. 424-25.

(3) Journal du Conseil Législatif, 1852-53 appendice no. 2, p. 694.

seigniory," and erected the whole "into the title and dignity "of a Barony," and "without that by reason of the pre- "sent gift, union and, erection, the inhabitants, tenants, "men, and vassals of the said lands and *Boroughs*, "(*Bourgs*) shall be held liable for other and greater dues than "those which they now owe." *Conditions* : 1st "the whole "under the obligation that there shall be no change in the "Tenure (*mourance*) by which the whole of the said coun- "try is held of us, *n'y aura aucun changement de la mou- "rance à nous appartenant en l'estendue du dit pays* ; 2nd "of a simple fealty and homage ; 3rd *Aveu et dénombre- "ment* of the said land and Barony ; 4th with the rights and "duties to us due and ordered in the said country : 5th and "without that, by default of heirs male, born in lawful "wedlock, neither we, nor the Kings our successors can pre- "tend to reunite the said barony to our domain in accor- "dance with the ordinance of the month of July 1566, etc., "etc." (1)

These letters patent inform us that the three villages or boroughs, to which reference is made, and *belonging* to the King, had been established in conformity with the plan suggested in the instructions of the Commissioner Gaudais, and in the regulations of Police of the 24th January 1667, prepared by the Intendant Talon. One of these Boroughs even bore the name of the Intendant.

56. From the arrival of Talon, in the year 1670, until the month of October 1672, it does not appear that any concession of land was made in Canada, either in the name of

(1) Thise letters patent authorised "the Sieur Baron des Islets to establish prisons, gallows on four posts, wherever he might think proper throughout the extent of the said Barony ; as also a set of common stocks surmounted by his coat of arms."

At a later date, the Barony of the Islets was, at the request of Talon, erected into an Earldom [*Comté*] by the name of Orsainville, by letters patent of the King, of the month of May 1675. ["Titres des seig." p. 348.

the King or of the West Indian Company, but in the course of the months of October and November 1672, the Intendant Talon made a great number of grants in Fief, especially to the Officers of the Regiment of Carignan. These amount to more than sixty, according to M. Dunkin's analysis.

It is remarkable that these grants did not take place until after the passing of an *arrêt de retranchement* by the King, in his Council of state, on the 4th day of the previous month of June. (1)

The arrêt is in these words :

" The King being informed that all his subjects who " passed over to New France have obtained grants of large " quantities of land along the rivers of the said country, " which lands they were unable to clear because of their too " great extent, a circumstance which incommodes the other " inhabitants of the said country, and even prevents other " Frenchmen from passing over for the purpose of settling " there, which being entirely contrary to His Majesty's in- " tentions as regards the said Country, and to the care and " attention which he has been desirous of giving during " eight or ten years to augment the colonies which are " there established, seing that only a portion of the lands " along the rivers are cultivated, the remainder not being " so, and not being capable of so being, in consequence of " the too great extent of the said concessions and the weak- " ness of the proprietors thereof.

" It being necessary to provide for the same, His Ma- " jesty being in his council, has ordained and ordains that " there shall be made by the Sieur Talon, Councillor in " the King's Councils, Intendant of Justice, Police and Fi- " nance, in the said country, a precise and exact declara- " tion of the quality of the lands conceded to the principal

(1) Edits et Ord. in-8o. t. I, p. 70.

" inhabitants of the said country of the number of arpents, or " other measure used in the said Country, which they contain " on the banks of the rivers and inlands, of the number of " persons and cattle fit for and employed in the cultivation " and clearing of the said lands, in consequence of which " declaration the half of the lands, which had been conceded " previous to the last ten years shall be taken from the con- " cessions, and given to individuals who shall demand them " to be cultivated and cleared.

" It is ordered by His Majesty that the ordinances " which shall be made by the said sieur Talon shall be " executed according to their form and tenor, *souverainе-* " *ment et en dernier ressort*, like judgments of a superior " Court, His Majesty confering on him for that purpose " all power, jurisdiction and authority. His Majesty fur- " ther orders that the said sieur Talon shall give grants of " the lands so retrenched to new settlers, on the condition " always that they shall clear them entirely, during the first " four years next ensuing, otherwise and in default of so " doing, and the said time being passed, the said grants " shall remain null. Enjoins His Majesty on the sieur " Count de Frontenac, Governor and Lieutenant General " for His Majesty in the said Country and on the Officers " of the Sovereign Council thereof, to look to the execution " of the present *Arrêt*, which shall be executed, any opposi- " tion or hinderance whatever notwithstanding."

The *Arrêt* is accompanied with a " mandate and order" by the King, bearing the same date, addressed to the Governor, the Count de Frontenac, and to the Officers of the Sovereign Council established at Quebec, enjoining them " to look to the execution of the said *Arrêt* and to all " that shall be done regulated and ordered by the said " sieur Talon in consequence, and we command our first " bailiff or sergeant, on being thereunto required, to exe-

" cute in full all necessary *actes* and necessary summonses " without other authority."

57. On this occasion, the intervention of the King in the Canadian concessions, shows itself more active and makes him pronounce against the seignior a forfeiture more severe than heretofore : one half of the lands conceded " before the last ten years," must be retrenched from the concessions, and the new grantees must clear then entirely in the four following years, on pain of the nullity of their concessions.

It is proper to remark that the *Arrêt* of the 4th June 1672 makes no mention of the West India Company.

57. *bis.* Another *Arrêt* of the Council of state bearing date the same day, the 4th June 1672 (1) based upon " the " accounts which had reached France, towards the end of the " last year, of the Canadian country or New France relating " to the state of that country," enjoins upon the intendant " Talon to make " regulations of police as well generally for " the country as for private dwellings, to be brought to His " Majesty, and to be afterwards ordered according to the " report which will be made to him in his Council, as it " may be deemed reasonable, and nevertheless His Majesty " desires that the said regulations made by the said Sr. " Talon, be *provisionally executed according to their form* " *and tenor.*"

58. The first concession that Talon, " in virtue of the authority," it is therein stated, " given to us by His Majesty," made after the *Arrêt* of retrenchment of the 4th June, is that of the fief d'Orvilliers ; it is of the 10th Oct. 1672. (2) It was given to the Sieur De Comporté, officer of the Regiment de Carignan " in fief and seigniory, and jurisdiction."

(1) Ed. and Ord. in-8o., t. 1, p. 72.

(2) Title of seig., p. 66.

Conditions 1o : " at the charge of faith and homage which " the said..... will be held to pay at the castle St. Louis " at Quebec of which he shall hold."

2o. " Subject to the customary rights and dues and " agreably to the custom of the Provotship and Viscounty " of Paris which shall be followed in this respect provisio- " nally until ordained by His Majesty.

3o. " And that the appeals from the decisions of the " Judge who may be established at the said place shall lie " before.....

4o. " Under the condition that he shall keep house and " home, (*feu et lieu*) on his said seigniory within one " year.

5o. " And that he shall stipulate *in the title deeds which " he shall give to his tenants that they shall be obliged " within one year to reside and keep house and home on the " concessions which he shall have granted* them and that in " default of so doing, he shall re-enter *pleno jure* in posses- " sion of the said lands.

6o. " That the said ..... shall preserve the oak " timber which may be found within the limits of the land " wich he shall have set aside for his principal manor.

7o. " Moreover that he shall stipulate in the private " grants which he shall make to his tenants the reservation " of such oak timber fit for ship building.

8o. " Also that he shall give immediate notice to the " King or to the West India Company of all the mines, " ores and minerals if any be found within the limits of " the said fief.

9o. " Also that he shall leave all necessary roads and " passages.

100. " The whole under the will and pleasure of His " Majesty, by whom he shall be held to have these presents " confirmed within one year from the date hereof."

These conditions, with the exception of the three first, are new, if it be not as regards their effect, with respect to some, at least as regards their form. We do not find them in preceding concessions. But they are often repeated litterally, or in equivalent terms, in the concessions subsequent to that in question, as well as the following words, applicable to the Custom of Paris, which are in the second condition, viz: " *which shall be followed in this respect* " *provisionally, and until ordained by His Majesty;*" these words, also, are not in the first concessions, but we find them at a later date in a great number of others with the addition of the word " otherwise" that is to say " until otherwise ordained by His Majesty."

59. The second concession made by Talon is of the 17 Oct. 1672. (1)

It appears that a concession containing " more than 50 leagues in front " in Acadia, had been granted several years before to the Sieur de Latour, who had since died, leaving several creditors, among the number of which was Martin d'Arpentigny, Sieur de Martignon, his son in law. The last, being advised to take possession of the whole of the grant of his father in law, he considered he should not do so. " But having learned," he says in his memorial to the Intendant, " that the King had the right of resuming possession of all the lands granted *previously to the last ten years* in consequence of their not having been settled and brought into cultivation (making allusion, without the least doubt, to the *Arrêt* of retrenchment of the 4th June 1672), D'Arpentigny asked the intendant to concede to him " the whole or " part of the said lands, offering immediately to improve the

(1) Titles of Seigneries p. 254.

" same by cultivation." Talon concedes to him " in fief and in all the rights of jurisdiction, and seigniory," a part only, viz, six leagues in front by six leagues in depth, by these means putting into execution the above-mentioned *Arrêt* of retrenchment.

Among the conditions of the new concession is this one : 2o. " and as a redemption fine (rachat) one year's revenue on each change of possessor, according to the Custom of *Vexin Français* included in the Custom of Paris." This stipulation is repeated in several subsequent concessions.

60. On the 18 Oct. 1672 (1) concession in fief by Talon to Jacques Potier, Sr. de St. Denis, on the River St. John in Acadia ; with the clause, " to keep house and home within " the year ; that he shall stipulate the same clause in the " contracts which he shall grant to his tenants, in default " whereof, *the King* shall of right resume the possession of " the said lands."

61. 18 November 1672. (2) Here is the very short title of the seigniory of Matane, granted by Talon :—

" We do hereby certify to all to whom it may appertain that we have granted leave unto the Sieur Damour, councillor in the Supreme Council of this country, to cause works to be performed on a tract of land of one league in front by one league and a half in depth, to wit : one half league this side and one half league beyond the River Matane ; the whole under the will and pleasure of His Majesty, *by whom he shall be held to have these presents confirmed.*" (3)

(1) Titles of Seigniories, p. 255.

(2) ib p. 317.

(3) This concession, with its augmentation conceded by the Intendant Duchesneau on the 26 June 1677 to Mathieu Damour [M. Dunkin's analysis p. 36] was confirmed by the *arrêt* of the King in his Council of state on the 29 Mai 1680, [Ed. and Ord. in-8o, t. 1, p. 240.]

There is no doubt that several concessions were made in the same manner, and that afterwards the grantees who were already in possession, took more formal titles; which can explain this clause inserted in several of the titles, that is, that the grantee " shall *continue* to keep house and home " on the concessions which he shall make or which he *may* " *have made*, etc., etc."

62. In the year 1673, the Governor, M. de Frontenac himself " in virtue of the authority granted to him by His Majesty," he stated, made some concessions; they appear to be six in number, according to M. Dunkin's analysis (p. 26, 27).

The first of these concessions which bears the date of the 9th January, is that of the Correelles Islands along the shore of the Island of Montreal; it is given to the Abbé de Fenelon " with all the rights of Fief and Seigniory, and upon the condition of having the same cultivated and inhabited as far as their extent will permit." (1)

63. M. Dunkin's analysis (p. 27 and 28) makes mention of four concessions made in the years 1673 by the West India Company itself; they are almost all alike, the first dated the 15th November and the three others the 23 December. (2) *Conditions*: 1o. subject by the said.... to " fealty and homage, which they shall be held to render to " the said Company at each change of possessor, at the " Fort St. Louis of Quebec, or *in this city of Paris*, at the " office of the directors general of the said company."

2o. " With a gold crown (écu d'or) which shall be

(1) Titles of Seigniories, p. 359.

(2) Tit. of seigniories, p. 38, 39, 40, and " *Brevêts* de ratification," p. 3. This last concession, that of Terrebonne, bears, in the printed paper, the date of the 23 Dec. 1676. This is evidently an error, as the West India Company had been suppresed two years before.

" paid on rendering the said homage, of which an acknow-
" ledgment shall be delivered.

3o. " And moreover subject to the charge and condi-
" tion that the said..... shall, *within three years*, begin to
" cause the said tract of land to be cleared.

4o. " *Which shall be surveyed and bounded within the*
" *said space of time.*

5o. " In default of the fulfilment of which conditions,
" the lands contained in the said concession shall be
" *re-united* to the domain of the said company which shall
" have the right to dispose of them as it may think fit,
" without the said.... having, on that account, the right
" to claim any indemnity, which said conditions have been
" accepted by the said.....

We read in the concession of the 15th Nov:

" For which purpose we have *revoked* and do by these
" presents *revoke* all other concessions which may have
" been heretofore made of the said tract of land or part
" thereof, *provided the same be not under cultivation.*"
A similar revocation is pronounced in two of the conces-
sions of the 23 December, those made to M. Daulier du
Pare and to M. Daulier Deslandes.

64. M. Dunkin's analysis (p. 28, 29 and 30) speaks of 9 concessions made in the year 1674, from the 25th April to the 13 September, by the count de Frontenac " in virtue of the authority granted to him by His Majesty" (1) and

(1) " Titles of Seigniories," p. 367, 369, 357, 324, 374, 315, 382, 376.

The first of these concessions [p. 367] had been preceded by " a " title from M. de Talon, *heretofore* intendant, etc., giving permission " to work on the said land with a promise of giving him a deed thereof;" and in the fourth [p. 324] we read: " on which [lands] he has already " caused some work to be done for the establishment of a sedentary

also of two other titles of concession given in the same year by the West India Company, the first dated the 28 March and the second the 6 May, both in favor of M. de Laval, Bishop of Petrée.

To obtain the first of these titles, the Bishop represents that the original concessions of the Seigniories of *Beaupré* and of the *Island of Orleans* which he had acquired, had been made upon the condition of " paying at each mutation of possessor, *one year's revenue* of the lands and domains which shall be retained..... *after having conceded to private individuals* that which they did not desire to keep," and that this charge was too onerous " regard being had to " the great expense attendant upon the establishment of " domains in the said country."

The new title discharges him from the obligation to pay this revenue of one year, remaining for the future subject to the charge : " of rendering fealty and homage to the " said company every twenty years, at the Castle of Quebec, " with a piece of gold of half an ounce for each of the said " seigniories."

In the second title which is that of the concession of the " Seigniory de la Petite Nation," we see the following conditions : 1o. " subject to the charge by the " said ..... of fealty and homage which he will be " held..... to pay to the said Company every twenty " years at the Fort St. Louis of Quebec, or in this city of " Paris, at the office of its Directors General,—

" fishery, according to the written permission which he had from us on " the 30 Oct. 1673, until we should grant him a deed of concession."

We remark in the concession of the 17 August 1674 [p. 315] which is that of the Islands of Beauregard, the following words : " and to cultivate the same well and inhabit them as much as their extent will permit."

2o. " With a piece of wrought gold fixed to a *louis* " *d'Or* worth eleven livres,—

4o. " And by means of the said clauses and condi- " tions, the said concession shall remain discharged for " ever from all rights and dues generally whatever,—

5o. " The said..... shall be obliged to have the " clearing of the said concession commenced within four " years, unless he is prevented by some war or other rea- " sonable cause,—

6o. " And that the boundaries shall be fixed at both " ends of the said concession only, by a surveyor,—

7o. " In default whereof the said Company may dis- " pose of the said lands as it may think fit and re-unite " them to its domain, without the said..... having in " this respect any claim for indemnity, which said condi- " tions have been accepted by the said....."

65. Such is the character of the Grants in Fief, made during the third period of our Feudal history, that is to say, from 1664 to 1674 inclusively. As much by the nature of the divers stipulations contained in the deed, of concession as by those of the legislation which took place during that period and the Royal Government of 1663, we see that the obigation to clear and consequently to subgrant, as the one could not be made without the other, had become, if possible, more imperative than in the former time.

66. The suppression of the West Indian Company, by the Ediet of the month of December 1674, (1) brings us to the beginning of the fourth period which terminates by the promulgation of the two celebrated *Arrêts* of Marly, rendered on the 6th August 1711 and enregistered in the superior Council of Quebec on the 5th December 1712.

(1) Ed. et Ord. in-8o vo. 1, p. 74.

The Edict of the suppression of the Company, in *reuniting* New France, to the domain of the Crown, caused the Government of Canada to lose the character of a Proprietary Government which it might have had during the existence of that Company, and gave it back that of *a Royal Government* which it preserved from that time until the end of the French domination.

By this Edict the King extended the freedom of trade to all his subjects, and confirmed " the concessions of lands granted by the Directors of the Company, their Agents and Attornies."

67. Two concessions made on the 22nd April and 6th May 1675 by the Count de Frontenac, " by virtue of the power to him given by H. M." contain, " at the customary rights and dues and in accordance with the Custom of Paris, and until ordained by H. M."

68. On the 10th May 1675, the King made an *arrêt* in the Council of State, in which he confirmed many concessions made by the Count de Frontenac from the 22nd March to the 2nd September 1674, and " ordains that the grantees shall enjoy the same, in the form and manner mentioned in the deeds of concession, without being liable to be troubled in the possession and enjoyment for any cause or occasion whatever, under the obligation of paying the dues with which they shall be burthened."

69. On the 13 May 1675 (1) a grant of a character altogether peculiar was made to Robert Cavelier, Sieur de la Salle, in virtue of an *Arrêt* of the Council of state, and by letters patent from the King. It is sufficient in this place to recapitulate its motives and conditions to show how imperative was the obligation to *clear* and sub-grant.

(1) *Brevêts de Ratification*, p. 28.

" The King having in His Council examined the pro-
" positions made by..... setting forth that if it should
" please H. M. to grant to him his heirs successors and
" assigns, as a simple gift the Fort called " Frontenac "
" together with four leagues of the neighbouring Country,
" the islands called..... and other isles adjacent, with
" the right of hunting and fishing on the said lands, and on
" the lake called Ontario or Frontenac, and the neighbour-
" ing rivers, the whole in the right of Fief, Seigniory and
" jurisdiction, whereof the appeals from the judge, shall lie
" before the Lieutenant General of Quebec, with the Go-
" vernment of the said Fort of Frontenac, and letters of
" nobility, he would cause to pass over to the said Country
" of N. F. numerous effects which he possesses in this King-
" dom, therewith to raise and construct dwellings which, in
" the course of time, may greatly contribute to the increase
" of the colonies in the said Country, and besides, this said
" ..... offers to reimburse the sum of 10,000 livres, being
" the amount expended in constructing the said Fort of Fron-
" tenac, to maintain the said Fort in good order and condi-
" tion and the garrison for the defence of the same, which
" may not be less than that of Montreal, to maintain 20
" men during two years for clearing the lands that shall be
" conceded to him, and until he has built a Church, to
" maintain a priest or monk to perform divine service
" and administer the sacraments, which undertakings and
" other things the said.....shall do at his own costs and
" expense until such time as there shall be established
" above the Long Sault.... some private individuals, with
" grants similar to those which he prays for, in which case
" those who shall have obtained the said grants shall be
" held to contribute to the said undertakings in proportion
" to the lands which shall be conceded to them. And
" having heard the report of the Sieur Colbert..... H. M. in
" his Council has accepted and accepts the offers of the

" said.....and in consequence, H. M. grants him the pro-
" perty of the said Fort called " Frontenac" and four leagues
" of the adjacent country.... along the lakes and rivers
" above and below the said Fort and ½ league in lands there-
" from ; the islands called..... and the isles adjacent,
" with the right of hunting and fishing on the said lake
" Ontario and the surrounding rivers, the whole in title of
" Fief and full seigniory and jurisdiction,

" *Conditions :—*

a.—" On the condition of sending immediately to Cana-
" da all the effects that he has in this Kingdom which can-
" not be less than the sum of 10,000 livres in money or
" effects.

b.—" And to forward a certificate to that effect from
" the Sieur Count de Frontenac.

c.—" And to reimburse the sum of 10,000 livres for the
" cost of constructing the said Fort.

d.—To maintain and put it in a good state of defence,
" to pay the necessary garrison for the defence of the same
" and which will be at least equal to that of Montreal.

e.—" As also maintain 20 men for the clearing of the
" lands and who shall not be employed at other work dur-
" ing the said time.

f.—" To build a church in the first six years of the
" concession, and in the meantime to maintain a priest or
" monk there for the administration of the sacraments.

g.—" As also to cause Indians to come thither, to
" whom dwellings shall be given and who shall be formed
" into villages, together with Frenchmen to whom he shall
" give a part of the said lands, to be cleared.

h.—" All which lands shall be cleared and made pro
" ductive in the time and space of 20 years, to count from the
" present year, 1676, otherwise, the said time being passed,
" H. M. may dispose of the lands which shall not be cleared
" or made productive.

i.—" H. M. desires that the appeals from the Courts
" which shall be established by the said....shall be to the
" Lieutenant General of Quebec.

j.—" And with this intent H. M. desires that all the
" deeds of gift and concession in this matter necessary,
" may be expedited for the said....together with a com
" mission for the Government of the said Fort Frontenac,
" and letters of nobility for him and his posterity.

In consequence of which *Arrêt*, the grant itself was made in these terms :

" Have given and give him by these presents signed
" by our own hands the property of the Fort called " Fron-
" tenac"....with 4 leagues of land....along the lakes and
" rivers above and below the said Fort.....
" together with the islands called.....and the adjacent
" iles, with the right of hunting and fishing on the said
" lands and in the said lake Ontario or Frontenac and the
" surrounding rivers; which Forts, lands, islands, isles,
" hunting and fishing, it is our desire and pleasure that
" the said ..... enjoy by the title of Fief and all rights of
" seigniory and jurisdiction,

Conditions :—

1st. " With the obligation of fealty and homage which
" the said ..... shall be held to render to us at every
" change of possessor holding the whole of us and of our
" Crown,—

2nd; " And to pay the customary rights and dues ac-
" cording to the Custom of the Provostship and Viscounty
" of Paris,—

3rd. " And that the appeals from the Court which shall " be established, at the said Fort of Frontenac shall be be- " fore the Lieutenant General of Quebec,—

4th. " It is also our pleasure that the said Cavelier be " and remain Governor for us of the said Fort of Frontenac " under the orders of our Lieutenant General in the said " Country of New France, and that these presents shall " serve him for all necessary purpose to that effect.—

5th. " And to make known how agreeable to us is the " increase of the Colonies of the said Country, We, in " consideration of the trouble and expense which the said " Cavelier has had and shall hereafter have, hereby have " ennobled and do ennoble him—desiring for that purpose " that all letters of nobility may be granted to him.

6th. " We permit nevertheless all the inhabitants of " the said country, and others who shall hereafter settle " therein, to trade with the Indians in the usual manner, in " accordance with the rules of police and *Arrêts* of our " Council of Quebec, without that under pretext of the pre- " sent concession the petitioner can prevent them in any " sort or manner whatever,—

7th. " Which concession we have made to the said Ca- " velier under the obligations, clauses and conditions, set " forth in the *Arrêt* of our Council.....of this date, bear- " ing the counter seal of our Chancellery, which undertak- " ing the petitioner shall be bound to make at his sole " cost and expense, so far and for such time as there shall " be no other persons besides him and his successors esta- " blished in the said Fort of Frontenac and other lands " and seigniories of the present concession,—

8th. " And in case that there may hereafter be granted " ....concessions in Seigniory above the Long Sault....

" those in whose favor the said concesssions shall be made " shall be bound to contribute to the ordinary and extraordi- " nary expenses of the Garrison and to the maintenance of " the fortifications of the said Fort of Frontenac, in propor- " tion to the lands and hereditaments which shall be con- " ceded to them."

70. An *arrêt* of the Council of State rendered on the 4th June 1675 and in the same terms as that of the 4th June 1672, quoted above (No. 56,) ordered the *retrenchment*, that is to say, the *reunion* to the domain, of " the one half of those lands which had been conceded previously to the last ten years," adding " and which shall not be found to have been cleared and cultivated into arrable land, or meadows," words which were not in the first of these *arrêts.*

71. On the same day, the 4th June 1675, a declaration of the King confirmed the establishment of the Sovereign Council in 1663, which was in future to consist of the Governor, of the Bishop of Quebec, or, in his absence, of his Grand Vicar, of the Intendant, and of seven councillors.

72. On the 11th May 1676, (1) present the Intendant Duchesneau, successor to Talon ; the Sovereign Council " taking into consideration its *Arrêt* of the 14th January last setting forth that rules of Police should be prepared in conformity with the orders given by the King to the Sieur Duchesneau, the Intendant ..... included in his commission....." (2) issued a decree containing general rules

(1) Ed. et ord. in-8o. vo. 2, p. 65, and seq.

(2) The commission of the Intendant Duchesneau, bearing date the 5th June 1675, and enregistered in the Sovereign Council on the 17th September following (*com. des gouv. et int. in-8o, p.* 42 *et seq.*) conferred on him the power to " make together with the said Sovereign Council all the regulations which you will deem necessary for the general police of the Country ....." and in case " adds the commission, " that you consider it more proper and necessary for the

of police, to be executed provisionally, until it should please His Majesty to confirm them.

These rules, reproduced those already made on the 13th April 1669 (No. 53 above,) relative to the obligation, on the part of the Seigniors, to have the conceded lands " measured and surveyed," under the penalty of not recovering their seigniorial dues (art. 26.) These rules, nevertheless, left them " the liberty of making such lines as they might wish on the lands of their Fiefs" (art. 28.) And the 35th article prescribed rules concerning millers, of which mention shall be made on the article on banality.

73. Letters patent of the King, dated the 20th May 1676, and enregistered in the Sovereign Council on the 19 October following, addressed to the Governor, M. de Frontenac, and to the Intendant, M. Duchesneau, confer upon them the power " *conjointly* to give grants of lands, as " well to the *ancient* inhabitants of the said country as to " those who shall newly come to settle there, on the condi- " tion that the said grants shall be presented to us within " the year of their date, to be confirmed, otherwise and in " default of so doing, the said time being passed, we shall " declare them null from the present period. It is our " further pleasure that the said Grants be not made save

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good of our service, whether from the difficulty or from the delay of making the said regulations with the said Council, we give you the power and authority by these presents to make them alone and even to adjudicate *souverainement*, alone, in civil matters, and to order the whole as to you may appear just and proper, declaring valid, from this time forward, the judgments, regulations and ordinances which shall so by you be rendered, in the same manner as if they proceeded from our Sovereign Courts, notwithstanding all recusations, *prise à partie*, Edicts and ordinances and other things hereunto contrary.....It being our wish that your judgments may be executed like unto *arrêts* of the Sovereign Courts, notwithstanding all oppositions, &c., &c.

" on the condition of *clearing* the lands thereof and to " render them productive, in the course of the six years " next ensuing, *otherwise they will remain null;* and that " you cannot grant them excepting from neighbor to neigh- " bor, and contiguous to the concessions which have for- " merly been made, *and which are cleared.*"

74. We read in M. Dunkin's analysis (p. 33) that *à propos* to the making of the *papier-terrier*, the attorney of the Religious Ursuline Ladies, Seignioresses of Ste.-Croix, had, on the 22nd May 1678, declared to the Intendant Duchesneau " that he had no *dénombrement* to give of these " lands, other than the present declaration, there being as " yet, no inhabitant on them, and which he offers in his said " quality to cause to be *settled* and *cleared*, as soon as pos- " sible ; wherefore we have or*dered him to settle the whole* " *or part* of the said seigniory *within a year* from the date " of these presents."

The original Grant of this Seigniory had been made to the Religious Ladies on the 15th January 1637 (see above No. 24,) under the obligation to *clear*, cultivate, and build &c., ... under the penalty of the concession being null. A deed confirming this concession, given by the Governor M. de Lauzon, on the 6th March 1652 (1) declares that the religious Ladies should enjoy the same in *franc-alleu* and mortmain, with power to dispose of the said lands *en fief, cens et rentes* carrying *lods et ventes, saisines et amendes*.....

The Intendant Duchesneau proceeding to make the Terrier (*papier-terrier*) in order to put in execution the *arrêt* of Retrenchment of 4th June 1675, gives to the Religious ladies a further delay of one year to settle the said Seigniory. The *clearing* was not therefore merely facultative.

(1) Mr. Dunkin's analysis p. 12.

75. In the year 1676, M. Charles Le Moyne was in possession of a large portion of what, in the present day, forms the Seigniory of Longueuil, by virtue of three separate Grants. The first obtained from the Sieur de Lauzon de la Citière on the 24th September 1657, comprised 50 arpents in front by 100 in depth, under the obligation of the revenue of one " year, upon each change of possessor, according to the Custom of *Vexin-françois;*" the second which gave to him the island of St. Helen and the *islet Rond*, opposite Montreal, had previously been made to him by letter from the Sieur de *Lauzon Charny* dated the 30th May 1664, under the obligation which it shall please the Sieur de Lauzon to impose for the same," and afterwards, by a deed dated at Paris on the 20th March 1665, given by the Sieur de Lauzon " as tutor and having the guardian- " ship (*garde noble*) of the minor children of the late Sieur " de Lauzon *Grand Seneschal* of this Country *to whom* " *belonged the Seigniory of La Citière*.....to be by " him enjoyed in Fief with mean and inferior jurisdiction " (*justice moyenne et basse*) only, holding of the said Sei- " gniory of La Citière and full fealty and homage, subject " to the payment of ten minots of merchantable wheat *de* " *rente noble*, *féodale et foncière*, payable on every *fête* of " St. Martin in the winter, with one year's revenue of the " said island on each change of possessor, in accordance " with the said Custom of Vexin-François.....at the foot " of which deed the said Sieur de Charny acknowledges " that the rent stated by the same is exorbitant, and much " beyond what should be exacted under the said Grant, " and by virtue of the power to him, given by the said " Sieur de Lauzon, he reduces the said Rent to ten livres " in money, by writing signed by him, and dated at Que- " bec the 12th December of the said year 1665."

Finally, by the third of these Grants, the Intendant Talon, had, by deed dated the 3rd Nov. 1672, granted to

the Sieur Le Moyne a certain quantity of land on each side of his first Grant of 50 arpents " in Fief and right of jurisdiction and seigniory," holding of the Castle of St. Louis of Quebec ..... " at the customary rates ; and in accordance with the Custom of the *Provostship* and viscounty of Paris."

All those facts are set forth in a new deed of the 10th July 1676 (1) which at the request of M. Le Moyne was given him by the Intendant Duchesneau, while the latter proceeded to make out the *terrier* of New-France. In his petition this seignior explained that his three Grants were of too small value to constitute separate seigniories, that their revenue, even if they were wholly rendered productive, would not suffice for the maintenance of the officers of three jurisdictions which it would be necessary to establish in them as required by his titles which were different from each other, and which would be more burthensome than profitable to him if he were obliged to conform to them, especially those which had been given to him by the said Sieur de Lauzon and La Citière under the Custom of *Vexin-françois*. He added that this Custom did not prevail in this Country, and that the said titles could not even subsist, *the said seigniory of La Citiere having been reunited to the domain of the Crown.*" In fine, he demanded that his three concessions should be reunited into one Seigniory, under the name of Longueuil :

"Having seen, the Intendant says, the above dated title " deeds, and it appearing to us by several concessions " granted by the said Sieur Talon in *His Majesty's name*, " in the places *depending on and of which was composed* " *the said Seigniory of la Citière*, that no mention was " therein made of the same, nor of the conditions under " which M. de Lauzon, heretofore Governor of this Coun-

(1) " Titres des Seig." p. 99.

" try, having the Guardianship (*garde noble*) of the children " of the said Grand Seneschal his son, Seignior of La Ci- " tière, had conceded and granted part of the said seigni- " ory of la Citière, *which has been reunited to the King's* " *domain*, nor of the charges allowed by the Custom of " *Vexin François*, which shows that it is not his Majesty's " intention that any other Custom than that of the provost- " ship and viscounty of Paris should be followed in this " Country ; and considering also the great services which " the said Sieur Le Moyne has rendered to this Colony, " which has obliged the King to acknowledge them by " granting unto him and all his descendants the title of " nobility with which His Majesty has been pleased to " honor him, and being unable too much to acknowledge " those which he daily renders ; we, in virtue of the power " conferred on us by H. M. and under his pleasure, have " reunited and by these presents do reunite the places " hereinbefore mentioned ..... into one and the same " which shall in future be called Longueuil ..... in " Fief with all the rights of Seigniory, and superior, mean " and inferior jurisdiction."—*Conditions :*

1st. " Subject to the condition of fealty and homage " which the said..... shall be held to perform at the " Castle of St. Louis in Quebec of which he shall hold for " the future,—

2nd. " Under the Customary rights and dues and " agreably to the Custom of the Provostship and viscounty " of Paris,—

3rd. " And that the appeals from the judge who may " be established in the said Seigniory of Longueuil shall " lie before the royal jurisdiction of the town of Three " Rivers, until the King shall be pleased to establish one " nearer the said Seigniory,—

4th. " That he shall continue to keep, and cause to be " kept by his tenants, house and home (*feu et lieu*) on this " said Seigniory,—

5th. " That he shall preserve, and cause to be preserv- " ed, the oak timber fit for shipbuilding which shall be found " thereon,—

6th. " That he shall give immediate notice to the King " of the mines, ores, or minerals, if any be found, on the " said Fief,

2th. " That he shall leave therein the necessary road- " ways and passages,—

The Intendant did not grant to the Sieur Le Moyne the *augmentation* which he wished to have, saying on that subject : " reserving to extend the said Seigniory of Longueuil as far as the two leagues and a half prayed for, *until after terrier shall have been made.*" He then gives him a certificate that he had performed the fealty and homage he was bound to render. (1)

The reunion of La Citière, the truth of which is established in this manner, although the certificate of that reunion cannot up to the present time be discovered, furnishes a proof of the execution of the *arrêts* of retrenchment, in default of the Seignior having performed his engagement.

The seigniory of ***La Citière*** which appears to have been conceded in January 1635 to M. François de Lauzon, son of M. Jean de Lauzon, who was then one of the principal associates of the Company of N. F. and who was, at a later period, Governor of Canada, was of immense extent, beginning at the river St. Francis, on lake St. Peter, and extending *above the Sault St. Louis, in ascending the river St. Lawrence*, to limits which cannot be now ascertained.

(1) This Grant of the 10th July 1676 was confirmed by the King on the 23d April 1700. (Brevets de rat. p. 68.)

We have not the deed of concession, but we have the *acte* giving possession, made by the Governor, M. de Montmagny, on the 29th July 1638. According to the description contained in this *acte* of which a copy will be found in the note below, it is evident that this Seigniory comprised a part of the territory of the United States. It would have constituted a Kingdom in Europe. Can it possibly be maintained that the Grantee could *clear* it and render it productive or put it in cultivation, by means of mere *servants*? (1)

76. On the 8th July 1676, another deed similar to the foregoing was given by the same Intendant to Jacques LeBer, proprietor of two thirds of the island of St. Paul, opposite the island of Montreal, and holding theretofore of the Seigniory of La Citière, and to Claude Robutel, Sieur de St. André, proprietor of the other third. (2) On the 14th

(1) Copy of this *acte* of possession.

" We, Charles Huault de Montmagny, Knight of the Order of St. John of Jerusalem, Lieutenant of His Majesty throughout the whole extent of the River St. Lawrence in New France in conformity with a mandate accompanying a grant made by the Gentlemen of the Company of New France, under date of the 15th January 1635, in favor of François de Lauzon, esquire, son of Mr. Jean de Lauzon, Knight, Councillor of the King in his Council of state, of the quantity of lands hereinafter described, We have visited the places mentioned in the said grant, and being at the mouth of a River on the South side which descends from the Lake or from the neighbourhood of Lake Champlain, have entered therein and ascended thereto, and for more easy cognisance have named the river the St, Francis ; and having landed assisted by the sieur Paul, William Hebert, Gaspard le Poutourel, the sieur Bourdon Engineer, and Jean Guytet, Notary, *Commis-Greffier*, we have declared to Nicolas Trevet esquire thereunto present, that we put him in possession, real and actual, of the extent of lands islands, rivers, sea and lakes mentioned in the said Grant, in the name and as the Attorney of the said Sieur de Lauzon, the younger (fils,)

(2) " Titres des Seig." p. 121, 137

August following, he reunited three previous grants into one, forming the Seigniory of Gentilly. (1)

77. By letters patent of the preceding month of April at the request of Sieur François Berthelot, " Councillor of the King, secretary and commissary General of artillery, powder and saltpetre of France," His Majesty had erected into an earldom (*comté*,) under the name of St. Laurent, the seigniory of the island of Orléans, which M. Berthelot had acquired from the Bishop of Quebec, and " of which, it is " said, a good part is cleared and peopled by more than a " thousand persons, who compose four large parishes " in which there is already a church entirely built, and two " begun which shall be finished and completed in

to enjoy the same by him his heirs and assigns ; to which consenting, the said Sieur Trevet, in the name aforesaid, did cut wood and pluck grass growing on the said lands and performed the ceremonies requisite in such cases. And as a sign of taking of possession we have caused to be buried in the ground on the left hand side, on the land opposite the upper end of the first island, a stone with four plates of lead at the foot of a sicamore, upon which we have caused to be engraved a cross by the said Sieur Bourdon in presence of the above mentioned ; which plates and stone which we have caused to be buried merely serve as signs of the taking of possession, and not for boundaries, in as much as the said river St. Francis serves for boundaries, at the one end of the said lands, and at the other end there are for boundaries an island called St. John and a River called the River St. Mary which are *above the Sault St. Louis in ascending the said river St. Lawrence*, the said River St. Francis, Island of St. John and river St. Mary being comprised in the said conceded lands to which we have given (*) the seigniory of La Citière, agreably to the wish of the Sieur Francoys de Lauzon. And whereas the said River St. Francis and the Islands of St. John are immutable marks, which cannot vary nor be changed we have not considered it necessary to visit these places, and of all

(1) " Titres des seig." p. 12.

(*) The words " the name of " (le nom de) appears to be wanting in the original.

" the course of the present year and the fourth " in the following year, in such manner that these are four " large boroughs (bourgs) and villages at this time formed " besides several considerable Fiefs and of great extent in " the said island which are held of the said Berthelot " ...." (1)

78. At No. 73 we have seen that the letters patent which gave to the Governor and the Intendant the power to make, *conjointly*, the concessions of lands, had been enregistered in the Sovereign Council on the 19th October 1676. The first concession which had taken place after this enregistration, appears to have been that made to the Seignior of Berthier, of an island " at the end of that known as

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that is above declared the said Sieur Trevet has demanded *acte* from us and the same was granted to him.

Done at the Fort of Three Rivers, 29 June 1638.

(Signed)

C. H. Montmagny,

N. Trevet, with a flourish,

Jean Bourdon, with a flourish,

LePost, with a flourish,

Guillaume Hébert,

Pouterel, with a flourish,

The minute of this deed has been found among the papers of Mr. Jean Guytet, Notary, deposited in the archives of the District of Quebec of which the prothonataries of the Superior Court are the Keepers.

The Seigniory of Laprairie de la Magdeleine made part of *La Citière*. It was conceded to the Jesuits by Frs. de Lauzon on the 1st

(1) Journal du Conseil Législatif of 1852–53. App. No. 2, p. 706.

Beaver Island" (1) It is made in two different deeds, but similar in their provisions ; the first was given at Quebec, on the 15th March 1677, and was signed by the Governor the Count de Frontenac, alone ; and the second was also given at Quebec, on the 25th of the same month, and was signed by the Intendant M. Duchesneau, alone.

Conditions :

1st. " On condition of paying fealty and homage which " the said.....shall be held to do at the Castle of St. " Louis in Quebec. of which he shall hold,—

April 1647. I have seen the copy of a Deed confirming this concession, given by the Intendant Duchesneau on the occasion of the terrier made by him in conformity with the *arrêt* of the King's Council of State of the 4th June 1675 and the ordinance of this Intendant of the 9th February 1671. In the copy of this deed of confirmation, which is in the possession of M. Varin, Notary at Laprairie and agent for the seigniory and which has been communicated to me by our learned Canadian [illegible]logist the Hon. M. Jacques Viger, it is mentioned that the Sie[illegible]auzon possessed a seigniory (that is to say the seigniory of la Citiere) " of *more than sixty leagues* in extent of land, on the said conditions that the King had granted the country to the Company of New France," and that the said Seigniory *was now reunited to the domain of His Majesty.*

The date of this deed of confirmation does not appear in the copy.

Note.—I ought here to express to the Hon. M. Jacques Viger my deep acknowledgment of the services which he was eager to render me with that desire to oblige which distinguishes him and which I have learned to appreciate on more than one occasion, in assisting me to establish or verify important facts connected with the present observations.

Note.—I am bound also to express to Mr. Beaudry, clerk of appeals, my acknowledgment of the intelligent and efficient aid that I have received from him in the numerous researches it was necessary for me to make.

(1) " Titres des Seig." p. 135.

2nd. " At the Customary rates and dues, agreably to " the Custom of the Provostship and Viscounty of Paris, " which shall be followed in this respect provisionally, " and until otherwise ordained by His Majesty,—

3rd. " And also that he shall keep and cause to be " kept house and home (*feu et lieu*) by his tenants, on the " *concessions* which he shall grant to them, and in default " of this being done, that he shall reenter *de pleno jure* " into possession of the said lands,—

4th. " And he shall preserve and cause to be preser- " ved the timber fit for ship building,—

5th. " And that he shall give notice to the King or to " us of mines, ores and minerals, if any be found there " in,—

6th. " That he shall leave and cause to be left therein " all necessary roadways and passages,—

7th. " The whole under the pleasure of H. M., by " whom he shall be held to have these presents confirmed " within one year,"—

79. Many concessions were made in the same manner, by separate deeds, by the Governor and the Intendant, in the years 1677 and those following, up to 1780. (1) The first deed appears to have been always given by the Governor, excepting in one instance, (2) yet this was but a promise to concede, " in case that it should please H. M., that the

(1) M. Dunkin's analysis p. 35 to. 40 ; and " titres des seigneuries" p. 44, 45, *Réaume* ; p. 93, 94, *Isles Bouchard* ; p. 7, 8, *Aug. de Verchères* ; p. 80, 81, *St. François du Lac* ; p. 76, 77, *Isle Bicard* ; p. 25, *St. Pierre les Becquets* ; p. 402, *Ste. Marguerite* ; p. 372, *Argenteuil* ; p. 74, *Aug. du Sault St. Louis* ; p. 18, *Isle à la fourche.*

(2) " Titres des Seig." p. 372. Argenteuil.

lands above the Island of Montreal should be settled" the promise of the Intendant Duchesneau bears the date of the 7th June 1680, and that of the Count of Frontenac of the 15th June 1682. Two of these concessions under date of the 31st Oct. and 4th Nov. 1680 are made each by one and the same deed. (1) Four concessions appear to have been made in the same interval by the Governor alone, (2) and five by the Intendant alone. (3) At least if there be a second deed of these concessions, made by either of these functionaries, it has not been published or pointed out.

80. Letters of mortmain granted by the King in favor of the Jesuit Fathers on the 12th May 1678, enregistered at Quebec the last day of October in the following year (4) declare : " always upon condition that they *shall put all the* " *said lands in cultivation and value* in the four following " and consecutive years, commencing from the day of the " date of these presents, in default of which we declare " from this time forward, the said concessions and these " presents null and of no force and authority."

81. A new *Arrêt* of retrenchment of uncleared lands is rendered by the King in his Council of State of the 9th May 1679 and enregistered at Quebec the last day of October following. (5) After having related the tenor of that of the 4th June 1675 (no. 70 *ante*), and having set out that the intendant Duchesneau, in conformity to this *Arrêt*, had

(1) " Tit. des Seig." p. 74 *Aug. du Sault St. Louis ;* p. 18 *Isle à la fourche.*

(2) " Tit. des Seig." p. 374, *Islet St. Jean ;* p. 130. *Port Joli ;* p. 340, *St. Denis ;* Journal du Cons. Leg. app. No. 2, p. 708 ; and again M. Dunkin's Analysis p. 36, to. 38.

(3) " Tit. des Seig." p. 380, *Isles Mingan ;* p. 360, Islands opposite that of Montreal ; p. 378, *Anticosti ;* M. Dunkin's Analysis p 36, to. 38, *Matane* and *Bonsecours.*

(4) Edit and Ord. in-8o, t. 1, p. 102.

(5) [illegible] t. 1, 233

made a declaration (or *papier-tenier*) " containing the ex " tent of each concession and the number of arpents which " are cultivated and inhabited therein, by which it appears " that these concessions are of so great an extent that the " largest part has remained useless to the proprietors in " default of men and cattle to *cultivate and ameliorate them*," the new *Arrêt* thus proceeds : " His Majesty, considering " that the lands remaining to be conceded in the said coun- " try are the least commodious and most difficult to culti- " vate by reason of their situation and distance from navi- " gable rivers, in so much that those of our subjects who " go to that country lose the idea of residing and establis- " hing themselves therein for that reason only, which is most " prejudicial to the welfare and augmentation of that colo- " ny ; against which it being necessary to provide, His " Majesty, being in his Council has ordained and ordains " that the arrêt rendered therein of the 4th June 1675, be " executed according to its tenor and form, and in conse- " quence thereof declares the fourth of the lands conceded " before the year 1665 *which are not yet cleared and culti- " vated, from this moment, taken away from the proprietors " and possessors thereof.*

" His Majesty further ordains that in future, there shall " be taken every year commencing with the year 1680, the " twentieth portion of the said concessions *which shall not " be found cleared*, to be distributed to His Majesty's sub- " jects inhabiting the said country, *who are in a situation " to cultivate them*, or to Frenchmen who will go to the said " country to reside."

" His Majesty enjoins to his Lordship the Count de " Frontenac..... and to the said sieur Duchesneau, to " see to the strict execution of the present *Arrêt*, and to " proceed to the distribution and new concession of the said " lands, according to the authority granted to them by

" letters patent of the 20th May 1676 (no. 73 *ante*.)" Afterwards comes a mandate of the King, of the same date, *conformable* to the *Arrêt* (1)

82. This new arrêt of *retrenchment* like the preceding ones, makes no distinction between grantees nor of their titles ; it applies to all those whose concessions are anterior to the year 1665. But, in the place of the one half which, in the terms of the two arrets of the 11th June 1672 and of the 11th June 1675, were to be *taken away*, the new *arrêt* orders the immediate *retrenchment* but of the fourth, and of the fifth for each subsequent year. In his discretion, the King regards this measure as sufficing to induce the Seigniors to fulfil the obligations of their grants, and to realise his views of colonisation. The *Arrêt* orders at the same time to *distribute i. e.* : to *concede* lands anew, but it does not repeat in express terms, as the preceding *arrêts* had, the obligation, for the new grantees, to *clear* their lands within a given time ; nevertheless, in ordaining that the *arrêt* of the 4th June 1675 be executed according to its tenor and form, he must be considered as ordaining that these new grantees " shall clear them entirely in the four first follo-

(1) It appears that it is in this same year 1679 that the first commission of intendant of justice, police et finance of the French islands in America was given. It is dated of the 1st April and appoints M. Patoulet who has the authority to " distribute provisionally, the lands to the inhabitants of the islands, and to those who will go there, well intentioned disposed to cultivate them and ameliorate them to reside thereon, until they shall have laid their application before us, to demand confirmation thereof (Moreau de St. Mezy ; Loix et constitutions des colonies françaises of windward America, v. 1, p. 318

An arrêt of the Council of State of the King, rendered for the said islands on the 14th of June 1680, (like the Arrêts of the 11th June 1672 and 1675 for Canada), ordains the retrenchment " of one half of " the lands which shall have been conceded before the last ten years " and which shall not be found cleared and cultivated in come in for " sugar, and merchandise used in the commerce of the said Islands." The concessions are to be given by the Governor and Intendant. This Arrêt is followed by letters patent dated the same day and resembling those of the 20 May 1676 for Canada. (Ib t. 1, p. 335.)

wing and consecutive years," the more so as he establishes as a rule that the concessions should be made to those " who are in a situation to cultivate them."

83. By an arrêt rendered in his Council of state, on the 29th May 1680 (1) in which the tenor of the letters patent of the 20 May 1676 is related (see *Ante* no 73) giving to the Governor and Intendant autority to make, jointly, the concessions of lands, the King confirms the concessions which they have made since the 12th Oct. 1676 up to the 5th September inclusively, " upon the condition of clearing " and bringing the land conceded to them in good condition " in six years, reckoning from the date of the said conces- " sions, *on pain of nullity thereof*, and also subject to the " payment of the dues with which they shall be charged," the arrêt thus expresses itself, which is accompanied by a mandate of the King *conformable* thereto, dated the same day.

84. In the Journal of the Legislative Council 1852–53, appendix No. 2, p. 710, are inserted without date (2) the letters patent of the King erecting the Seigniory of Portneuf into a *Barony*, in favor of René Robineau, sieur de Bécancourt.—*Conditions :*

1o. " Holding under us in right of our Crown by one " only fealty and homage, and by acknowledgment and " enumeration (*aveu et dénombrement*) required *by the laws of our Kingdom* and the *customs of the said Country*, under the title, name and dignity of Barony.

2o. " Without, however, that the said vassals shall be held, by reason of any thing in the presents contained, to

(1) Ed. and Ord. t. 1, p. 240.

(2) In his analysis, p. 41, M. Dunkin places the date of these letters-patent between March 1681 and the 27th April 1683.

other greater dues and duties than those with which they are charged at present."

85. In the years 1682, 1683 et 1684 (1) several concessions are made by the new Governor, M. de la Barre and the new Intendant M. de Meulle. Besides several conditions which are inserted in preceding concessions those which it may be proper to notice in some of these new concessions, are the following :

1o. Seig. *Bonhomme* or *Belair*, 24 Nov. 1682 :

IX. " And on condition that *he shall cause the said* " *lands to be cleared, inhabited and furnished with building* " *and cattle, within two years from the date hereof, in* " *default of which the present concession shall be null and* " *void.*"

This conditions is often repeated, either in giving the same delay or a delay more or less long, to execute it.

2e. Seig. of the *Eboulements*, 1 April 1633 :

IV. " And shall preserve and shall cause to be preser- " ved the oak timber fit for the building of vessels, *and the* " *red pine fit for the making of tar*, which may be found " within the extent of the said places."

3o. *Rivière du Loup, en haut*, 20 April 1683 :

This seigniory had already been conceded by the intendant Talon, on the 3rd Nov. 1672, to M. de Mannereuil who had been Count Frontenac's secretary. In the title of this new concession, the Governor and intendant thus express themselves :

(1) Analysis of M. Dunkin p. 40 to 45, where the references to the titles of the Seigniories are indicated.

" Having by our ordinance of the twelfth day of March " last, and for the causes therein stated, declared the sieur " de Mannereuil to have *forfeited* his title of concession of " Rivière du Loup..... and *re-united* the said concession " to His Majesty's *domain*, to be disposed of by us under " his pleasure as we might think fit..... and after having " caused our said ordinance of the said 12th *March*, *ren-* " *dered in consequence of the arrêts of the King's Council* " *of the 4th June* 1672 *and 9th May* 1679 *regarding the* " *retrenchment of concessions, to be shown to us.*" We read further at the end of this new concession : " hereby com- " manding the inhabitants who have settled on the said " land without title or permission to acknowledge the said " sieur Le Chasseur (new grantee) as the seignior of the " said lands and hereafter pay him the *customary dues.*"

4o. *Isle Madame*, 27th April 1683 :

Like mention (and in the same terms as the last) of *forfeiture*, by ordinance of the same date, of the first concession of this seigniory made by the intendant Talon, in the year 1672, to the late Romain Bequet.

5. *Augmentation of Neuville or Pointe aux Trembles ;* 27 April 1683 : " to have and to hold the same unto him his heirs and assigns under the same rights of fief and jurisdiction as he holds his said fief (of Neuville,) the whole forming but one seigniory and jurisdiction, and subject to the same charges, clauses and conditions as he is now charged with towards the King for his said fief of Neuville," which had been conceded on the 15th Dec. 1653 by the Governor M. de Lauzon, to Jean Bourdon under the custom of *Vexin-Français*, (1)

6o. *Lussaudière* ; 26 July 1683 :

(1) Titles of seig., p. 390.

Like mention (and in the same terms as the new concession of ***Rivière du Loup***) of *forfeiture* and *re-union to the domain*, by ordinance of the 26th May preceding, of a first concession of this seigniory made by the Intendant Talon on the 29th October 1672.

2o. *Isle Verte* (Green Island), 27th April 1684:

"This is a new concession in the title of which we read: "and altho' it appears that the said two leagues have been heretofore conceded to several private individuals more than thirty years ago, who have not since that time taken possession, nor performed any work nor made any clearing thereon, having for these reasons acquired no property in the lands, and this being contrary to the intentions of His Majesty, as appears by the *Arrêts* of his Council of the 4th June 1672 and 9th May 1679, with regard to the retrenchment of concessions, as much as is or may be necessary, we have *re-united* the whole to the King's domain, and, in consequence of the said re-union, moreover, we give, grant and concede, &c., &c."

8o. *Freuneuse* in Acadia; 20 Sept. 1684:

Conditions:—2o. "at the accustomed rights and dues according to the Custom of the Prevostship and Viscounty of Paris, *by which the said country is governed*;"

5o.—"That he will not suffer the said rivers St. John and Ramouctou, to be embarassed so that the navigation may be free.

All these concessions are made by one and the same act, signed by the Governor and Intendant; and as we see, some of them mention *forfeitures* and *re-unions* to the do-

main in conformity to the *Arrêts* of retrenchment. These *arrêts* have therefore been put in force. (11)

86. By the *Arrêt* of the Council of state of the 15th April 1684 (1) in which the tenor of the letters patent of the 20th May 1676 is related, the King confirms the concessions made by M. de la Barre and de Meulles since the 5th January 1682 up to the 17th Sept. 1683 inclusively, and orders that the grantees " shall enjoy the same in manner and " form as set forth in the deeds of concession, without being " liable to be disturbed in the possession and enjoyment " thereof for any cause or reason whatsoever, upon the con- " dition of clearing and making productive the lands con- " ceded to them, within six years, reckoning from the date " of the said concessions, on pain of nullity thereof, and " subject also to the payment of the dues with which they " shall be charged."

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(11) Moreau de St. Méry ; t. 1, p. 392.

Arrêt of retrenchment for the French Islands of the 12th October 1683, enregistered at Martinique the 2 May 1684: by which the King " ordains that the portion of lands which shall have been conceded " and cultivated in the said French islands of America, will incontes- " tably remain to those inhabitants who will have made the clearing, " without having any regard to the most ancient or most recent con- " cessions, unless that the proprietor of the most *ancient* shall have " before the end of the first month of the beginning of the work noti- " fied the proprietor of the *older* (newer) concession to cease the " clearing of the same until it has been otherwise ordained ; His Ma- " jesty desires that all the lands which shall have been conceded before " the last three years, and which shall not have been cultivated and " cleared, be re-united to his domain ; and with regard to those which " are only partly cleared, and which by the too great extent of the re- " mainder of their concessions, cannot be cultivated by their proprie- " tors, His Majesty ordains that one half of the said extent, which " shall have remained uncultivated, will be retrenched by the portion " situated at the greatest distance from the said clearing and re-united

(1) Ed. and Ord. t. 1, p. 251.

This Arrêt is followed by a mandate of the King ordering its execution. It confirms the new concessions of lands which had been *re-united* to his domain either by a former ordinance, or by the title itself of the new concession. So, in whatever manner the re-union is made, His Majesty gives it his sanction, because it accomplishes the object of his legislation on that matter.

87. The concession of the augmentation of the Seigniory of Lotbinière, made by Messieurs de la Barre and de Meulles on the 1st April 1685 (1) sets forth, among other conditions, this one : " shall leave and shall cause to be " left, *put and held in good order*, the necessary roads and " passage ways, *otherwise the said concession shall be null* " *and of no effect.*"

88. The 4th June 1686, the King in his Council of state renders an *Arrêt* on the subject of mills. This is the *arrêt* upon which the Seigniors chiefly found their pretensions

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" to his domain, to be provisionally distributed anew to individuals " who shall present themselves to clear and cultivate them; with " regard to those upon which no clearance has been made in one year " after the date of the said concession, His Majesty desires that they " be given to other inhabitants by the sieurs comte de Blénac Gover- " nor and Lieutenant General and Begon, Intendant of Justice, Police " and Finance at the said Islands, jointly, upon the condition never- " theless that the concessions which shall have been newly granted, " will be cleared and wholly made productive by the new inhabitants " within the six following and consecutive years, otherwise and in " default thereof and the said length of time elapsed, that which will " remain uncleared, will be re-united to his domain ; His Majesty " orders that the ordinances which shall be made by the said sieur " Begon, on the subject of the re-union of lands, be executed according " to their tenor and form *souverainement and in last resort*, His " Majesty giving him for that purpose all power jurisdiction and " authority."

(1) Titres de Seig., p. 364.

that the *banalité* of mills, in this country has become a legal *banalité*, that is to say, existing independently of all conventions. I will speak of it in another place.

89. From 1686 to 1689, inclusively (1) several concessions were made by the new Governor and Intendant, Messrs. Denonville and de Champigny. We again find, either in the one or the other, all the stipulations of anterior concessions; I will transcribe here those only which we can notice as particular in these new concessions.

1o. *Isles aux Coudres;* 29 October 1687, " and that the same shall be inhabited by no other persons than those belonging to the said Seminary." (Seminary of Quebec.) (11)

(1) M. Dunkins Analysis p. 46 to 54 where the references to the concessions are to be found. All these concessions are given, each by one only act signed by the Governor and Intendant.

(11) Moreau de St. Méry, vo. 1, p. 453.

By letters patent of the month of March 1687, the King confirms a concession made at St. Domingue the 16 Dec. 1684, by the Intendant Begon to the Governor M. de Cussy, " subject to the charge " that he shall not be enabled to sell nor alienate the standing wood " which shall be found on the said place, until he shall have cleared " two thirds thereof, in conformity with the said deed of conces- " sion."

Ib. p. 459, *Arrêt* of the King's Council of State of the 22 August 1687 which gives to the Governor and Intendant of the Islands authority " partly to reduce the concessions which are of too large an " extent, and which the proprietors cannot make productive in a short " time; concede to others the parts taken away, appoint to one and " the other the necessary time to clear them, and regrant to others " those which shall not have been cleared within the prescribed time, " desiring that in the concessions as well by the reduction of the old, as " in default of clearing, they oblige those to whom they shall make " concessions to plant a quantity of mulberry trees, in proportion to " the quantity of lands conceded to them, and to cultivate them until " they are in a state to feed silk-worms."

2o. ***Bay and River Cape Chat*** ; concession *en censive* made 12 March 1688.

I. Upon condition of keeping house and home.

II. " And one penny of *cens* payable each and every " year, to the receiver of the King's domain in this Country, " at Quebec,—

III. " That he shall preserve and cause to be preserved " the oak timber which may be found within the said lim- " its.

IV. " That he shall give immediate notice to the King, " of the mines, ores and minerals which may be found " therein,—

V. " And that he shall leave the necessary roads and passages,—

VI. " The whole under the will and pleasure of His " Majesty, and *in conformity with his ordinances and regu-* " *lations, from whom he shall be bound* to obtain the confir- " mation of these presents within a year, from the date of " the same,"—

3o. ***Rimouski*** ; 24 April 1688 :

V. " The said ..... shall preserve and cause to be " preserved the oak timber fit for ship building, which may " be found o*n the land which he shall have set aside for his* " *principal manor.*"

4o. ***Lanoraie*** ; 27 April 1688 :

Certain heirs of Charles Sévestre set forth in their petition that this Seigniory had been conceded to him more than thirty years, and more than twenty six since it became theirs by succession ; that it had always remained uninhabited and

undivided among the co-heirs, having not been so far able to come to division : " on account of the number of co-heirs whose residence is distant from each other, and *as some of them are indifferent on the subject*, that His Majesty granted such concessions only in order that they may be *inhabited, cleared and cultivated*," they had moreover learned " that the deed of concession which had been granted for the said tract of land had been burnt at the time that the house of the Sieur de Villeray had been destroyed by fire." They further prayed the *re-union* to the domain " in accordance with the *Arrêts* of the King's Council of State" and a new concession for their benefit ; which is done by the title in question.

5o. *Rivière de la Magdeleine* ; 28 March 1689 : This is a new concession of this Seigniory to sieur Denis Riverin, and in the title of which we read as follows : " Having " notified Charlotte La Combe, widow of Antoine Caddé, " residing at Quebec, that we were desirous, *in conformity* " *with the King's intentions*, that she should *improve and* " *settle* the River de la Magdeleine.....the whole granted " and conceded to the said late Antoine Caddé,.....ac- " cording to the deeds of concession dated the 30th and 31st " May 1679, and no settlement having been commenced on " the said river nor on the said conceded tract of land, " wherefore we declared unto her that in accordance with " the order and authority which we have received from " His Majesty, we were about to *re-unite* the said river and " the said lands conceded to the said Caddé, to His " Majesty's domain, so that the same might be granted to " some other person who would be willing to open a settle- " ment thereon for the good and improvement of the " Colony, whereupon the said widow having declared unto " us her inability to make use of the said concession or to " open any settlement thereon, she has this day by act " renounced the possession of the same, wherefore we have

" *re-united* and *re-unite* the same to His Majesty's domain,
" so that neither the said widow Caddé nor the heirs of her
" husband may never claim any right thereto as if the same
" had never been conceded. "

60. In *Lauzon*, 14 October 1689 ; concession by the Governor and Intendant to the Jesuit Fathers of one fourth of a league in front in the said Seigniory of Lauzon to establish therein, a mision to the Indians of the Abénaquis nation. It is therein said : " and although *we might* " *have granted of our own authority* the aforesaid fourth of a " league, *there never having been any work performed on* " *the said concession*, nevertheless, in order to indemnify " and satisfy in some manner the Seignior proprietor of " the said *côte Lauzon* for the *curtailment* of the aforesaid " Seigniory of Lauzon, we have conceded to him one " fourth of a league in front unconceded.... and annex the " said quarter of a league to the said Seigniory,...the whole " subject to the same *penalties* and privileges as those sub- " ject to which he now holds the said seigniory.

90. In the years 1688 and 1689 (1) the King confirms several concessions by simple acts. We remark, that in some of these acts, such as that of the 1st January 1688 for the Seigniory of Trois Pistoles, it is said " subject to the " accustomed rights and dues according to the Custom of " Paris," while the deed of concession declared : " subject " to the accustomed rights and dues according to the cus- " tom of the Prevotship and Viscounty of Paris, *which in* " *this regard will be followed provisionally, until it be ordained* " *by His Majesty.*"

91. On the 14th July 1690 (2) the concessions made by Messieurs Denonville and Champigny from the 15th Nov.

(1) Dunkin's analysis, p. 49 and 53.
(2) Ed. and Ord. t. 1, p. 262.

1688 up to the 15th Oct. 1689 are confirmed by an *Arrêt* of the King in his Council, similar to the Arrêts of confirmation already cited, and consequently containing the clause of *clearing* and *making the same productive* within six years.

92. From 1690 a 1699 (1) the Governor and Intendant Messieurs de Frontenac and Champigny make a very large number of concessions, and the King gives several acts of ratification. This is what we can remark as singular in these concessions, as distinguishing them from the others of which, they further more or less reproduce the stipulations.

1o. *Miramichi*, 18 April 1690 :

We read in this title given by the intendant Champigny " commissioner appointed for the execution of the arrêt " of the King's Council, of the 17th April 1687," " considering the said *Arrêt* and the commission obtained according thereto the same day..... by which we are commanded to regulate and set limits to a certain extent of a land for Nicolas Denis, on the footing of the largest concessions granted in this country, upon the conditions therein set forth, we, in conformity with the said Arrêt..... have determined the concession of the said Nicolas Denis to be fifteen leagues in front by fifteen leagues in depth.... upon the condition that *he shall clear it*, namely, one third within three years, reckoning from this date, and the remainder in the three following years, in default of which and the said time passed, it will remain *forfeited*, and the said extent of land *re-united* to His Majesty's domain, to dispose thereof according to his pleasure; hereby prohibiting the said Denis.... in any manner to trouble or hinder those who are and those who shall hereafter be, established, under any possible pretext .... the whole in conformity with the said *Arrêt* of the King's Council."

(1) Dunkin's analysis, p. 55, t. 76, containing the references to the titles of concessions and acts of ratification.

2o. *Ste. Marguerite*, 27 July 1691.

We read in this title : " Having been informed that the " lands which have been conceded..... to the sieur Boy- " vinet.... under and in virtue of the title deed of the said " concession bearing date the 1st February 1679, have been " abandoned since the decease of the said sieur Boyvinet " which took place in the year 1686, and as it is *the King's* " *intention that the lands which have been conceded should* " *be cleared and brought under cultivation*, we have *re-* " *united* to His Majesty's domain the lands mentioned in " the title-deeds of the said concession," and by the same title a new concession is made of these lands to sieur Jacques Duboys.

By act of the 18th February 1692, the King, well informed, it is stated, " that the lands which had been conceded " on the 1st Febuary 1679 to sieur Boyvinet had been aban- " doned since his decease which took place in the year " 1686, and the grant thereof had been made in His Majes- " ty's name on the 27th July 1691 to the said sieur Jacques " Du Bois," confirms this new concession. Thus it was with the knowledge of the manner in which the act of *re-union* had been made, that the King gives his approbation. This manner of proceeding then sufficed for the validity of the re-union.

3o. *Augm. of Lotbinière*, 25 March 1693 :

" Which (concession) shall be divided amongst his children by equal portions, which shall form as many distinct fiefs, the one independant of the other, and without the right of primogeniture amongst them, and there shall be one only jurisdiction which shall be indivisible, and of which they will all equally benefit, if it should happen that the said..... depart this life, without having disposed of the present concession, without which it would not have

been granted."—*Conditions* : 8o. " He, his successors and assigns shall cause to be kept house and home by the inhabitants whom they may place thereon, on condition of paying *cens and rentes*, otherwise and in default thereof, they shall enter *pleno jure* in possession of the lands which they shall have granted them."

4o. *Rivière de Pocmouche*, in Acadia, 17th August 1693 :

Concession to Philippe Esnault ; it includes one league of land in front which had already been conceded to one Degrais " who," Esnault declared in his petition, " has " retired with the English of Boston, and married an " English woman, although he was married to an Indian " woman, and his marriage had been solemnised in the pre- " sence of the church, and who owes him about two hun- " dred *livres, there having been no work on the land of the* " *said Degrais.*" A new concession is granted to Esnault ; " in consequence of the *abandonment* which the said Degrais has made thereof according to the above statement provided the same be found true ;" this concession is ratified by the King on the 15th April 1694.

5o. *Rouville* ; 18 January 1694.

VI. " Likewise to hold house and home on the *domain* " *which he shall have reserved* for himself, and to cause " the same to be kept by the tenants on the concessions " which he shall grant them."

VII. *To inhabit and cause the said concession to be* " *cleared, as soon as the present war shall be finished.*

This last stipulation which is to be found, I believe, for the first time in this grant, is repeated in several others.

6o. *St. François le neuf* ; 1 March 1695 :

V. " He shall likewise be held to reserve and have " reserved by his tenants, the oak timber *and other* timber suitable for the construction of His Majesty vessels."

7o. *Lussaudière* ; 1 March 1695 :

This title makes a new deed of concession to M. du Bourchemin of this seigniory already conceded the 29th October 1672, after having, by the same title, pronounced the *forfeiture* by the first grantee, and the *re-union* to the domain, this last, it is stated, having only had a few trees cut down and having left the country the following year to proceed to France without having since returned, *having abandoned his said lands*, " which was contrary to His " Majesty intentions set forth by the *Arrêts* of his Council " of the 4th June of the year 1672 and 9th May 1679."

8. *Lessard* ; 8 March 1696 : (11)

Concession made upon " the condition that the chil- " dren born of the marriages of the said Madame Fortin, " shall equally divide the said lands among them after the " death of the said grantees."

(11) Moreau de St. Mery vo. 1, p. 557.

By arrêt of the 26 Sept. 1696, the King " ordains, that within six years reckoning from the day of the date of this present *Arrêt* for all prefixion and delay, the inhabitants of the French islands of America, who still have part of their lands uncleared, shall be held to cultivate them in sugar cane, and to raise food and provisions for subsistence, or the commerce of the colony ; in default of which, His Majesty desires that they be reunited to his domain at the diligence of the Attorney General of the Sovereign Council, in accordance with the ordinances which shall be made by the Governor General of the said Islands and by the Intendant whom he has appointed for this purpose, new concessions of the said lands to be afterwards made by them in the acustomed manner."

VI. " To *clear and to cause to be cleared, immediately*, upon the penalty of forfeiting its possession."

This last clause is repeated *verbatim* in several other concessions.

9o. *Arrière fief in Lauzon* ; 1698 and 1699 :

" Upon the condition.... of a silver cup of the weight of a mark or its value in money, at each change of possessor or seignior dominant."

93. From 1699 to 1703 inclusively (1) we notice several concessions made by the Governor de Callières, either with intendant Champigny, or with the intendant de Beauharnois, and also several distinct acts of ratification, given by the King. This is what distinguishes the provisions of the said titles from those of anterior ones ;

1o. *Longueuil* ; 26 January 1700 :

By this title the Seigniory of Longueuil is erected into a Barony : 1o. " holding from us by reason of our regal " right, by one only fealty and homage, acknowledgment " and enumeration required by the laws of our Kingdom " and Custom of Paris *followed in the said country*, under " the said title, name and dignity of Barony,—

II.—" without nevertheless the said tenants being held by reason of the contents of these presents, *to any greater dues and duties than those with which they are now charged*,"

III.—" No change of ressort, nor to contravene royal cases."

2o. *St. François du Lac* ; 23 May 1701 :

(1) Dunkin's analysis, p. 77, to. 84, containing references to titles. All these grants appear to have been made, each by one and the same Act.

This is a single deed of confirmation of much earlier concessions, given by the King. These concessions go back to the year 1678, and we read in the deed: " And in " as much as the widow and heirs or assigns of the said " late sieur Crevier might be *troubled* with regard to the " enjoyment of the said concessions, as they have not yet " been confirmed and ratified by His Majesty within the " time which they should have been."

If a grantee could be *troubled* for not having, within the given time, required a deed of ratification of his concession, might he not be afraid of being so, and with much better cause, for not having accomplished the obligation of *clearing* and *causing to be inhabited* and consequently of sub-conceding.

3o. *Soulanges*, 23 October 1702.

I.—" With the reserve of six arpents of land which " will best answer for the construction of a fort for the " King's service, which land, may be taken by the said " Governor-General, without the said..... being able to " claim any indemnity, as well as the wood for the construc- " tion of the fort and *fuel* for the garrison."

4o.—*Concession* to the Ursulines at Quebec, or near Quebec, 1 June 1703.

This is a deed of ratification of this concession, given by the King, " although the confirmation, it is therein sta- " ted, was not made by His Majesty within one year reeko- " ning from the said 26th day of December 1696, date of " the concession." (11)

(11) Moreau de St. Mery, t. 1, p. 711-715.

Extract from the instructions of the King to sieur Deslandes, first *Commissaire ordonnateur*, performing the duties of intendant at St. Domingue, p. 715: " There has been little method so far in the con

94. An *arrêt* of the Superior Council, dated the 6th May 1704 (1) orders the enregistration in that Council and at the Royal Jurisdiction of Acadia, of an arrêt of the King's Council of state of the 20 March 1703, " by which," it is stated, " His Majesty orders among other things that the " province of Acadia shall remain re-united to his domain " in all its extent, circumstances and dependencies, and " dismisses the opposition of the Duke of Vandosme and " the Sieur LeBorgne, on behalf of those in whose names " they proceeded, and which they had made to the Arrêts of " the last February 1682 and 9th February 1700, as likewise " of their demands and conclusions, as well as the Sieurs " de la Tour, Doublet, de Brevedent and others, and not- " withstanding His Majesty, for good reasons, grants sever- " al quantities of land, as well to the said Sieur Le-

" cessions of the lands of St. Domingue; the Governors have granted " them to the inhabitants who have asked them, without examining " whether they were in a situation to make them productive, and " whether it were necessary to take precautions, for the public benefit, " or to reserve some for those who might hereafter follow. His Majesty " recommends to the sieur Deslandes to apply himself to this matter, " in concert with the said sieur Auger; and after he shall have visited " the localities, to cause the said inhabitants to produce the titles under " which they possess the lands they have; and in the event that they " shall be of opinion that some of them are of too great an extent, " they will reduce them to that which they can cultivate, in leaving " thereon standingwood and other necessary commodities, in having " boundaries placed to avoid all contestations with those to whom shall " be afterwards granted that which shall be taken away. If there be " any who have carried their residences upon the rivers or upon the " roads, so that they have deprived the public of a passage, they shall " cause it to be re-established, and they shall together prepare *Procès-* " *Verbaux*. They shall take care not to concede lands in which they " shall think fit to place towns or fortifications, in order that we may " not be compelled to pay an indemnity, as has taken place in Canada."

(1) Ed. and Ord. t. 1, p. 132.

" Borgne as to the said Sieur de la Tour and others, subject " to the charges and conditions therein expressed, with " several reductions of concessions heretofore made."

95. Several concessions were made by the Governor and Intendant from 1704 to 1711 inclusively, and in this interval several distinct deeds of ratification are given by the King, besides his general deed of the 6th July 1711. (1) The clauses hereafter transcribed will make known that in which these concessions may differ from preceding ones.

1o. *St. Paul* ; 20 March 1706 :

I. " Subject to the condition of leaving the beach free " to all fishermen except the portion which he may require " for his own fishery."

I believe this is the first title which contains that stipulation. It has been often repeated since that time.

2o. *Cloridan* ; 2 May 1707 ;

X. " And after the said ratification and after the con- " clusion of the present war, *in default of holding house* " *and home thereon*, the said concession shall be *re-united* " to His Majesty's domain ;" condition reproduced in the same terms in subsequent concessions.—

3o. " *Monnoir* ; 25 March 1708 :

VII. " The whole under the pleasure of His Majesty " who hereby reserves to himself the right of disposing of " the grounds which he may require, without paying any " indemnity, should he be hereafter obliged to cause forts " or others buildings to be erected on the said concession, " and the right of taking on the same the timber fit for

(1) M. Dunkin's Analysis, p. 84 to 90, containing references to the titles and deeds [*Brevêts*] of ratification.

" building, fencing and fortifying, which may be necessary " to him, also without being held to pay any indemnity " therefor." This reserve is repeated in several other concessions.

96. We have now reached the conclusion of the fourth period of the history of our feudal institution. The fifth commences with the two *Arrêts* of Marly of the 6th July 1711, become celebrated in the discussion of the law abolishing the seigniorial tenure. They were enregistered in the Sovereign Council of Quebec the 5th December 1712. (1)

Before commencing the examination of the provisions of these two Arrêts, it is proper to make mention of a correspondence which took place in the years 1707 and 1708 between the intendant M. Raudot, Sr., and the minister M. de Pontchartrain, at least in so far as the suggestions contained in that correspondence might have exercised some influence upon the *Jeu de Fief* in Canada, if they had been adopted and put in force. (2)

In letter of the 10th November 1707, M. Raudot points out to the minister certain facts, which, in his opinion, are serious abuses in the Government of Canada and more particularly in that which relates to the concessions of lands : " Many inhabitants " he says " have worked on the word of " the seigniors, others on simple tickets which did not " express the charges of the grant. Hence a great abuse " has arisen, which is, that the inhabitants who had worked " without a safe title, have been subjected to very heavy " rents and dues, the seigniors refusing to grant them deeds " except on these conditions, which they were obliged to

(1) Ed. and Ord., p. 324, t. 327.

(2) This correspondence forms part of certain documents recently printed, and obtained from the archives in the admiralty and colonial departments at Paris, by M. Faribault, at the time of his trip to Europe in 1851 p. 7, to 12.

" accept, because otherwise they would have lost their " labor: *the consequence of which is, that, in almost all the " seigniories, the dues are different*; some pay *in one way*, " others in another, according to the different characters of " the seigniors by whom the grants were made..... I " should therefore think, my Lord, under your pleasure, " that to place things *in some sort of uniformity* and render " the inhabitants that justice which the seigniors have not " rendered them hitherto, and to prevent the latter from " committing the vexations to which the former will here- " after undoubtedly be exposed, it would be necessary that " His Majesty *should give a declaration reforming, and " even regulating for the future, all the rights and dues* " which the seigniors have taken and will in future take for " themselves, and that His Majesty should ordain *that they " should only take for each arpent* of the contents of the " grants *one half-penny of rente and a capon for each ar- " pent in front or ten-pence at the choice of the grantee, that " the preference* (*Retrait*) *which the seignior stipulates for " himself in case of the sale of the lands* held *en roture* " should be suppressed; that the exclusive right of baking " should also be suppressed; that in the places where fish " is taken, the right of the seignior should be reduced to " one tenth purely and simply, without any other condi- " tions; that the exclusive right of grinding (*banalité*) " should be preserved to the seigniors on condition of their " building a mill on their seigniory within one year, failing " in which, their right should be forfeited, and without the " inhabitants being compelled, when one was built, to " have their grain ground there; otherwise, my Lord, they " will never be induced to erect mills, from the privation of " which the inhabitants suffer greatly, being unable for " want of means, to avail themselves of the favor which " His Majesty has granted them, by permitting them to " erect mills in case the seigniors should not do so within a " year." (Namely by the *Arrêt* of the 4th June 1686.)

M. de Pontchartrain replies, under date of the 13th June 1708 :

" It would be very desirable to reduce the seigniorial " dues throughout the whole extent of Canada to the same " level. See what could be done towards this end and " report it to me.

" As to the dues paid to the seigniors, the valuation " complained of ought only to take place where it cannot " be paid in kind, unless the deed of concession say, *at* " *the choice of the seignior ;* but *I would be for abolishing* " *this dues, because they afford an opportunity for vexation.* " I will see what can be done in this respect, and *I will* " *inform you of it.* With respect, to the privilege of bak- " ing (*fours banaux*) all that is to be done is to follow and " enforce the decree rendered in the year 1686 by which " that matter has been settled." (1)

On the 10th July following, M. de Pontchartrain writes to M. Deshaguais at Fontainebleau :

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

(1) The arrêt does not speak of ovens but only of banal mills.

" seau *as you propose.* Here is a letter by which I request " him to draw it up *at his leisure*, because I believe the Ca- " nada ships have now left so that we cannot send this " declaration till next year. I return you M. Raudot's " letter, with the memorandum of your observations."

In his letter to M. d'Aguesseau, the minister said : " M. Raudot, intendant in Canada, has written to me, Sir, " that the seigniors of parishes in that country who have " granted lands to settlers have subjected them to all the " dues they pleased, *which are almost all different from* " *each other ;* that in most of these grants there are dues " *which ought not to be tolerated*, because they afford an " opportunity of vexation, and that it would be necessary " to issue a declaration fixing the rents and dues of these " seigniors, as well for the past as for the future. I have " requested M. Deshaguais to see you and take your *leisure* " to draw up this declaration.—I send him M. Raudot's " letter which will inform you of what he writes on the " subject."

97. If I have transcribed this correspondence, it is because the Advocates who support the Attorney General's propositions, and consequently the largest pretensions that the *censitaires* could themselves have set forth, have appeared me to attach great importance to it, forgetting, it may be, in their zeal, otherwise laudable, to defend those propositions, that the seigniorial court, whatever may be the latitude given to it, is not called upon to state *what the law should be*, but merely *what the existing law is.* The correspondence in question contains suggestions only, which might be more or less judicious, more or less demanded by circumstances and the situation of the colony at the time when they were thus made. It would be absurd for Judges, in the year 1856, to express an opinion in this respect. Suggestions of reform, however good they may be, are not

legal rules, before the authority of the legislator has interposed to give them legal sanction. On the contrary, they suppose a legal pre-existing state, which they have, as an object, to modify; a legal state which is the duty of judges scrupulously to respect, as long as no modification is made by superior authority.

The suggestions of M. Raudot, no more than the instructions of the minister, M. de Pontchartrain to M. Deshaguais and to M. D'Aguesseau, could not have the effect of changing or modifying the existing laws, as moreover the one did not approve all the suggestions of the other. The minister asked fresh information from the Intendant, which this last gave him in a letter of the 18th October 1708; at the same time, by an excess of politeness, he prayed M. D'Aguesseau to take care of his health, to labor upon the draught of the law which he charged him, *only at his leisure.* This last made such a draught of the law, is true; but returning politeness for politeness, he in fact took his own time, as it was only in the year 1717 that he ushered it into the world. This draught even, as it has reached us, always remained in the situation of a simple project. It is therefore not a law! How can we then be seriously asked, we, who have no other duty than that of *declaring* what *the law is* between seigniors and censitaires, to look upon this projected law as having something of a legislative character? It is carrying zeal too far; we cannot go to that extent.

As regards the new informations communicated to the minister by M. Raudot in his letter of the 18th October 1708, I will speak of them more particularly in the article or *cens et rentes.*

98. It is in 1707 that M. Raudot's zeal leads him to make suggestions, which, had they been adopted, would have attested, in a very perceptible manner, to say no more, how far in the then existing system, the intervention

of the King in the concessions of colonial lands could be carried. It is 1708 that the King's minister, seemingly desirous of acting upon these suggestions, charges M. D'Aguesseau to prepare a draught of a law conformable thereto, at the same time telling him *to take his time.* What does the King in this interval? Does he wait, to intevene, that M. D'Aguesseau's project become law? Not at all. While this last seems to give himself up to the enjoyment of a peaceable life in his study, the King promulgates the two *arrêts* of Marly of the 6th July 1711 (1); *arrêts* which, in resuming the past, and having no other effect than *declaratory laws*, imprint anew upon the Canadian feudal institution, but in terms much more explicit that the preceding *Edits and arrêts* had done, that distinct and particular character, which the Kings of France wished to give it from its very origin, and which we cannot misunderstand when we study the first monuments of that institution.

99. It is worthy of remark that the two *arrêts* of Marly were preceded by Letters-Patent of the King, dated the same day, 6th July 1711, enregistered at Quebec the 6th November following, and consequently long, before the enregistration of these two *arrêts*, which only took place on the 5th December 1712 (2); by which Letters-Patent, the King confirms a great number of concessions made by messieurs de Callières, Talon and Champigny, and Messrs. de Vaudreuil and Raudot, on the 29th October 1672, 7th April 1701, 8th August 1702, 25th March, 1st August, 26th September, 24th October 1708, 7th November 1709, 8th July, 6th September and 17th October 1710: "Upon the condi- "tion of performing fealty and homage at the Castle St. "Louis at Quebec of which they shall hold, and other "ordinary dues; of preserving and causing to be preserved "the oak timber fit for the construction of His Majesty's

(1) Ed. et Ord. vo. 1, p. 324 to 326.
(2) Ib. p. 323.

" vessels, that they shall give notice to His Majesty, or to " the Governors and intendants of the said country, of all " mines, ores and minerals, if any be found within the li- " mits of the said concessions : of holding house and home " and causing them to be kept by their tenants, ***in default " of which they shall be re-united to His Majesty's domain*** ; " ***of clearing and causing to be cleared without delay***, the " said lands ; of leaving the necessary roads for public " utility ; leaving the beaches free to all fishermen, with " the exception of those which they shall require for their " own fishing ; and in the event of His Majesty hereafter " requiring any part of the said lands to have forts, batte- " ries, exercise grounds, magasines and other public works, " His Majesty shall be able to take them as well as the " wood necessary for the said public works, without being " held to pay any indemnity. His Majesty desiring that " the concessions contained in the present deed be subject " to the conditions hereinbefore mentioned, without any " exception, under the pretext that they were not stipulated " in the said concessions."

We see that these letters-patent make no distinction between grantees, whatever may be their titles, when they order to ***hold and cause to be held house and home, to clear and to cause to be cleared without delay.***

100. It follows from what precedes that, until the conclusion of the fourth period of our feudal institution, the alienation of the fief was unlimited, that is to say that it could extend to the whole body of the fief, with this difference that as regards ***uncleared*** lands, it was obligatory upon the seignior, while it was only optional with respect to those lands which the seignior ***had cleared and made productive*** ; thus having, in the latter point of view, the quality of the alienation of the Fief under the 51st article of the Custom of Paris. But the canadian seignior, in thus

alienating his fief, could he legally, as the seignior in France within the jurisdiction of that custom, receive *entrance money* (*deniers d'entrée*,) besides the cens et rentes? This is what we shall see in treating of the two *arrêts* of Marly of the 6th July 1711.

101. The first of these *arrêts* relates to the Seigniors, to their obligation to concede; the second relates to the censitaires, to their obligation to hold *house and home* and to put their lands in a *productive* state.

The first " ordains that within a year from the date of " the publication of the present *arrêt*, for all prefixion and " delay, the inhabitants of New France to whom His Ma- " jesty has granted lands in seigniory, who have no domain " cleared and who have no inhabitants thereon, shall be " held to put the same in cultivation and to settle inhabitants " thereon, in default of which and the said delay expired " His Majesty wishes that they be re-united to his domain " at the diligence of the Attorney General of the Superior " Council of Quebec and according to the ordinances which " shall be rendered by the Governor and Lieutenant Gene- " ral of His Majesty and the Intendant of the said Country; " and His Majesty ordains 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 con- " cession; otherwise and in default of their so doing, His " Majesty permits the said inhabitants to demand the said " lots of land by a formal summons, and in case of their " refusal, to make application to the Governor Lieutenant " General and intendant of the said country, whom His " Majesty enjoins to concede to the said inhabitans " the lands demanded by them in the said Seig- " niories, subject to the same dues as are laid upon other

" lands conceded 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." (11)

102. We read in the preamble of this *Arrêt* :—

" His Majesty having also been informed that there " are *some* seigniors who *refuse*, under different pretexts, " to *concede* lands to the inhabitants who demand the same " *in the hope of being able to sell them*, at the same time " charging *them the dues and rentes* paid by the established " settlers, *which is entirely contrary to His Majesty's inten-* " *tions and to the clauses of the titles of concessions by* " *which they are only permitted to concede subject to a rent.*"

This statement has been objected to on the pretext that the titles of concessions *en fief* given until that time, did not contain the prohibition to sell, which this preamble presupposes. The discussion of this question would be an idle one, since it would lead to no practical result. These times are too remote, that the prohibition to sell, that is to say of taking *money*, *deniers d'entrée*, of which the preamble to the *arrêt* makes mention, could give occasion to any

(11) Moreau de St. Méry, v. 2, p. 226.

Arrêt of the Council of State of the 1st Dec. 1710, for the re-union of the un-cultivated lands in Turtle Island [Isle de la Tortue] and coast of St. Domingo, resembling that of the 26th Sept. 1696 [*ante* p. 101] except that it grants to the settlers but six months delay to put them " in cultivation in sugar cane, indigo, and provisions ne- " cessary for the subsistance or commerce of the colony" otherwise " re-union to the Crown at the diligence of the Attorney General of the " Sovereign Councils of Leogane and of the Cape; and upon the ordinan- " ces which shall be rendered by the Governor of the said Island and " coast of St. Domingo, and by the *commissaire ordonnateur* which " it has appointed [illegible] "

claim. I will content myself by remarking that the King was more than any one in a situation to explain what were his intentions in the concessions of the seigniories in Canada ; that, if the prohibition to sell is not written in express terms in the deeds of infeudation, it can be reasonably presumed that it results from the whole of the stipulations, from their spirit and their tenor, as well as from preceding legislation with regard to the obligation to clear and consequently to sub-concede. To exact entrance *money* at the epoch in question, was, it may be said without exaggeration, equivalent in fact to a refusal to concede, and therefore a refusal to execute the obligation *to clear and render productive*, an obligation written in formal terms either in the very titles, or in the *édits* and *arrêts*. Can it not even be further said that the prohibition to sell is found in some way written in terms sufficiently precise in two solemn documents already cited in numbers 42 and 44. I allude to the *arrêts* of the Sovereign Council of the 6th August and 8th November 1664. In the first, of which the execution, according to its form and tenor, is ordered by the second, we see the Governor and Bishop, who were specially charged to have the *arrêt* of retrenchment of the 24th March 1663 executed, requiring and concluding " that all pretended seigniors be prohibited from *disposing* of any *unproductive* lands by *concession*, *on pain of nullity*." The word " concession " is not here employed to signify a concession made subject to a simple rent charge, a mere lease *à cens*, which would be nonsense, but it is certainly meant as an alienation for a money price, in one word, a sale. And when the *arrêt* of the 8th Nov. 1664 deprives the seigniors, for the benefit of the King, of the price of fisheries leased by them on their *uncultivated and uninhabited* lands, does it not carry with it a virtual prohibition to traffic in the said lands at a money price ? Besides, if, before the first *arrêt* of Marly, there could exist some doubts as to this point under discus-

sion, there can be none since the enregistration of this *arrêt*. The prohibition which it makes to the seignior to take entrance money, joined to the injunction of conceding only at a rent charge, is therein written in terms too formal and too precise.

103. I must here change the order of dates which I have so far followed, and cite the *arrêt* of the Council of State of the 15th March 1732, (1) as being very closely connected with the *arrêts* of Marly, the dispositions of which it first relates. We afterwards therein read : " And His Ma- " jesty having been informed that, contrary to the exigen- " cies of these *arrêts*, certain Seigniors have reserved to " themselves extensive domains within their estates which " domains, while still in standing wood, they sell *instead* " *of merely conceding them for rents*, and that some inha- " bitants, having obtained grants from the seigniors, have " sold them to others, who successively sold them again, " whereby a traffic, adverse to the good of the colony, is " effected ; and it being necessary to remedy such perni- " cious abuses, His Majesty in Council hath ordained and " doth ordain, that, within two years from the date of the " publication of this *arrêt*, all proprietors of land in Seig- " niory, as yet uncleared, shall be held to bring them into " cultivation and settle inhabitants thereon, otherwise, after " the expiration of that time, the said lands shall be re- " united to His Majesty's domain, by virtue of this *arrêt*, " without a necessity for any other. His Majesty doth " most expressly prohibit all seigniors and other proprie- " tors from selling any wood land on pain of nullity of the " deeds of sale and restitution of the price of the lands " sold, which lands shall, in like manner, be reunited to " His Majesty's domain ; and further both the arrêts afore- " said of the 6th July 1711 shall be put in execution accord- " ing to their tenor and form."

(1) Ed. and Ord. v. 1, p. 531.

104. On the part of the Seigniors, it has been said that all the effect which the provision of the first *arrêt* of Marly which makes it obligatory to concede could have, was to give the right to the inhabitants to obtain concession *en roture*, subject to the mere payment of rent, without being compelled to pay any entrance money, if they refused this payment ; but that, from the moment they gave their consent thereto, the nullity of the concession could not be had, nor the restitution of the money paid, as the *arrêt* pronounced neither the one nor the other. In support of this pretension they draw an argument from the fact, that, by the *arrêt* of the 15 March 1732, the penalty of the nullity of the contract and the restitution of the price is attached to the sale which Seigniors made of their lands ; from which it is concluded that this penalty was not in the *arrêt* of Marly.

This may be true, in so far as the contract included a concession subject to rent charge ; the *arrêt* of Marly allowed it to subsist : but to conclude from this that the restitution of the entrance money could not be had, is to reason falsely, and to expose oneself to fall into the absurdity of pretending that the legislator, in one part of his law, permitted to do that which he prohibited from being done in another part of the same law ; a prohibition which, in the preamble, is declared to be one of the principal objects of this law.

105. It must be said, then, the penalty of the restitution of the entrance money, that is to say, of the price of the sale, is to be found in the *arrêt* of 1711, although that of the nullity of the grant is not to be found in it. But the abuse which this *arrêt* had, for its object, to prevent, still continuing to exist, the King went yet further, in his *arrêt* of the 15th March 1732 ; he maintained, not only the penalty of the restitution of the money price, but he declared also the penalty of the nullity of the contract, both as a grant and as

a sale, in ordaining that in such case the lands sold should be reunited to his domain. The penalty fell on the two parties to the contract, the censitaire equally with the seignior, which, by the *arrêt* of 1711, it extended only to the seignior.

106. Besides this, the *arrêt* of 1732 includes a provision which is not to be found, in the *arrêt* of Marly. It appears that the seigniors were not the only persons who were guilty of the abuse which the King wished to repress namely, that of selling lands before they were cleared. Their censitaires had learned to imitate them by selling, in their turn, before clearing them, the lands which they had received in concession, and the buyers resold them, in the same way, to others, without putting them in cultivation. This new abuse the King wished, likewise, to repress by his *arrêt* of 1732. He believed he would succeed in this by declaring against these sales of the censitaires the penalty of nullity, the restitution of the price, and the reunion of the lands to his domain, just in the same way as he had declared against the sales made by the seigniors.

107. From 1713 to 1718, some grants were made by the Governor and the Intendant, Messieurs de Vaudreuil and Begon, and patents of ratification were given by the King to some individual grantees. (1), (11).

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(1) M. Dunkin's analysis; part 2, p. 1, to 5.

(11) Moreau de St. Méry, v. 2. p. 395.

Ordinance of the King of the 16 October 1713 which enacts: " that the proprietors of lands situate in the Island of La Tortue and " Côte St. Domingue, whether by concession or contract of acquisi- " tion, be held to make an establishment thereon and to commence " the clearing of the same within a year from the day of the date of " these presents, and to clear two thirds of the same in the space of " the six following years; namely one third in the first three years, " and the other third in the three ensuing years," under the penalty

One of these concessions, that of the *augmentation* of the seigniory of Beaumont, made on the 10th April 1713 (1), is distinguished from the previous concessions by a condition altogether peculiar, and which we meet here for the first time : it is that " he shall concede the said lands on a " mere rent charge of 20 sols and a capon (*à simple titre de* " *redevance de* 20 *sols et un chapon*) for each arpent of front " by 40 in depth, and six *deniers* of *cens*, without power " to insert in the said concessions either any sum of money " or any other obligation than that of the mere rent charge, " and those hereinbefore mentioned, agreeably to the inten- " tions of His Majesty."

The seigniory of *Mille-Isles*, conceded [illegible] sieur Dugué, on the 14th September 1683, not having been cleared, was reunited to the domain of the Crown, on the demand and the conclusions of the Attorney General, by an ordinance of the Governor and the Intendant, Messrs. Vaudreuil and Begon, rendered on the 1st March 1714, in conformity with

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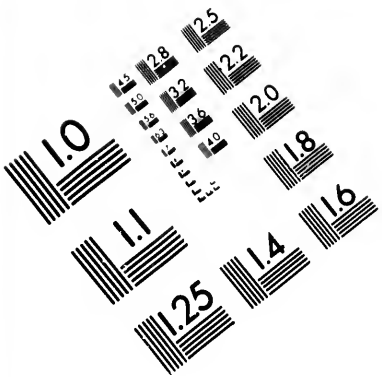
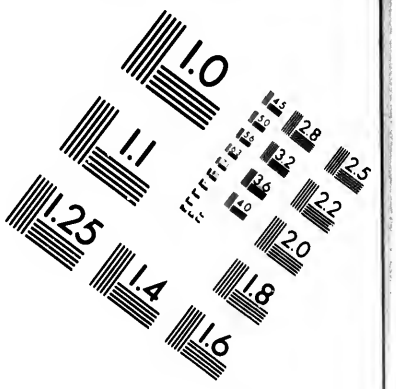
of reunion to the domain ; directs the insertion of a clause to that effect in the new concessions ; " we give permission to the proprietors of the " said lands to preserve one third thereof in standing wood ; and we " forbid them to sell the lots which are conceded to them, or which " they shall have bought, unless there be one third cleared, under the " penalty of re-union to our domain, of restitution of the price of the " sale, and of a fine of one thousand livres .... forbidding them also " to sell any wood from the said lands, excepting it be wood for dying, " unless they have cleared one third, under the penalty of a fine " of one hundred livres.... it being our wish that all the penalties of " re-union and fine, mentioned in and by these presents, shall not be " reputed, in any instance, comminatory penalty [*peines comminatoires*] ; and that all the disputes and matters that may arise in con- " nection with the execution of these presents may be judged by the " Governor and the *Commissaire-ordonnateur* of our Island of La " Tortue and Côte St. Domingue.

(1) " Titres des seig. " p. 64.





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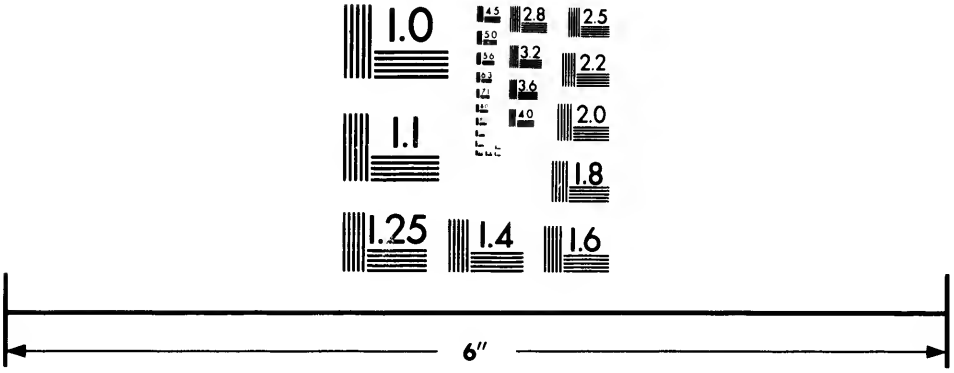

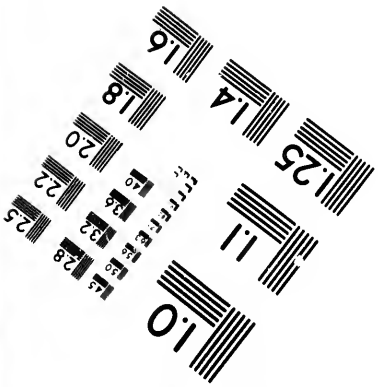

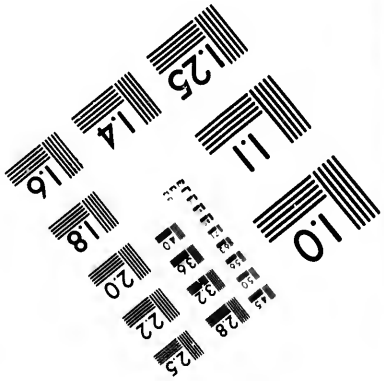

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the first *arrêt* of Marly : and on the 5th of the same month, it was conceded anew to Messrs. de Langloiserie and Petit, (1).

Besides the ordinary conditions, and particularly those which are inserted in the general patent of ratification of the 6th July 1711, this new concession contains also that of subgranting at a fixed rate, like the grant for Beaumont, with this difference, nevertheless, that such rate in the seigniory of Mille-Isles might be exacted on a land of 30 arpents in depth, instead of 40.

The concession of the first part of the seigniory of the Lake of Two Montains contains the special clauses which follow : (2)

1st. " On the condition that they shall, at their own " cost, make all the necessary outlay for the change of the " said mission (the transfer of the Indian mission from the " *Sault au Recollet* to the lands of this new seigniory.)

2nd. " And to cause to be erected there, at their ex- " pense, a Church and a fort of stone for the security of the " Indians, in conformity with the plans which shall be sent " to us by them immediately, to be by us seen and appro- " ved, and that the said buildings shall be completed within " the space of two years.

10th. " To concede the said lands on a mere rent " charge of 20 sols and a capon, for every arpent of land in " front by 40 arpents in depth, and of 6 *deniers* of *cens*, " without that there can be inserted in the said concessions " either sums of money or any other charge than a mere " rent charge, according to the intentions of H. M."

(1) Titre des Seig. ; p. 59.
(2) Titre des Seig. ; p. 337.

The patent of ratification of this concession, given by the King on the 27th April 1718 (1), has this peculiarity that it modifies many of the clauses of the deed of concession, and that it is therein said that the concession is made valid, " only as regards the charges clauses and conditions which " shall be expressly mentioned in the present patent."

The 10th clause of the deed, which is the 12th in the patent, we find thus modified: " to concede the said lands " *which shall be in standing wood*, on a mere rent charge of " 20 sols and 1 capon for each arpent in front by 40 arpents " in depth, and of 6 *deniers* of *cens*, without that there can " be inserted in the said concessions either sums of money " or any other charge besides a mere rent charge, *H. M.* " *nevertheless permitting them to sell, or give on a higher* " *rent charge, the lands of which there shall be at least one* " *fourth cleared.*"

108. In the interval which embraces the preceding No. the King by letters patent of the month of July 1714, renewed in favor of the Eclesiastics of the Seminary of St. Sulpice the concession which he had already made to them by *arrêt* of the 22th April 1704, of the right to receive the seigniorial dues, upon the exchanges of lands in their seigniories of " the island of Montreal, Côte St. Sulpice, islands Courcelles, and dependencies," in conformity with " his Edicts and Declarations of the 20th March 1673 and 20th February 1674, and others given in consequence," (2). This concession had been made to them by way of in-

(1) Brevets de Ratification ; p. 7.

(2) Ed. and Ord. v. 1, p. 342.

It is stated in these letters patent that the arrêt of 1704 had not, as yet, received execution, because the copies which had been sent to New France had been lost with the vessel which carried them.

demnity on account of their resignation of the superior jurisdiction (la haute justice). (11)

109. According to the chronological order pursued by M. Dunkin in his analysis of the Titles of the Seigniories, it does not appear that any concession was made from 1717 to 1727. The fact is explained by the following extract of a "*mémoire* from the King to MM. de Vaudreuil "and Begon," of the 23 May 1719. (1) " H. M. " has seen the memoir of the sieur Desjord Moreau, cap " tain in the forces, who demands a concession of land to

(11) Moreau de St. Mery ; v. 2, p. 474.

Ordinance of the Governor and the *Commissaire Ordonnateur*, of the 3rd Dec. 1715, which, on the remonstrance of the King's Attorney General to the Superior Council of the Cape, and in execution of the *arrêt* of the 1st Dec. 1710 and of the Declaration of the King of the 16th October 1713 [above p. 128,) " reunites to " the domain the *hattes* and *corails* of the said place called Limbé, lands " abandoned, concessions which have not been rendered productive, " and of those which shall be more than one thousand square paces " although partly cleared..... declares the pretended proprietors of " the said *hattes* and *corails* and lands abandoned, deprived of their pre- " tentions, whether they have acquired them by concession, acquisition " or otherwise, in default of their having maintained, settled, and pro- " vided them with cattle, in conformity with the terms of the conces- " sions, the practice observed in the colony at all times, and the *arrêts* " and declaration of the King rendered on this subject ..... and " again adjudicating upon the said remonstrance of the Attorney Ge- " neral, on the occasion of some proprietors of the said *hattes* and *corails* " having sold of those *raques* standing wood without having wholly " cleared them, or even the said wood, to workmen, contrary to the " express prohibitions of H. M. mentioned in the said declaration of " the King, under the penalty of a fine of one thousand *livres* against " the former, and one hundred *livres* against those who have only sold " the wood ; we declare the sales made of the said lots, standing wood " and timber null and of none effect. &c."

(1) Documents obtained in Paris ; p. XV. see *ante* no. 96.

" be held in Fief and Seigniory, with (*sic*) ***all*** mean and " inferior jurisdiction : this grace would be willingly gran- " ted to him, but the great number of Seigniories having " proved but too prejudicial to the settlement of Canada, it " has for many years been determined to grant no more of " them, which H. M. has again explained to the sieurs de " de Vaudreuil and Begon, by his dispatch of the 15th " June 1716, and his intention is not to change any thing. " He does not for the future wish to grant concessions " except ***en roture.*** In the mean time, although he has " ordered them to make the said concessions only of 3 ar- " pents in front and 40 in depth, in good lands, he will " approve of their making them larger if they think proper."

It was in the year 1717 that M. D'Aguesseau concerted the project of law of which mention has been made in no. 97, and to which he gave the title of " ***arrêt*** to annul in the " grants and contracts of concession made in Canada the " clauses contrary to the Custom of Paris, and to order that " it shall be observed there for the future."

No notice was taken of it, and the work of M. D'Aguesseau remained in the state of a mere project. Still further (1) we see the King in letters patent of the month of August, by which he established the Western Company, and conceded to them the Province of Louisiana, giving that Company (art. 8.) the right " to sell and alienate the " lands of their concession ***at such cens et rentes*** as they " may judge proper, even to grant them in ***franc-aleu***, without " jurisdiction or Seigniory." (11)

(1) Edits et Ord. in-8o. t. 1, p. 377.

(11) Moreau de St. Méry ; t. 2, p. 590.

Ordinance of the administrators, of the 14th September 1717, which on the remonstrance of the King's Attorney General to the Council of the Cape, and in execution of the *arrêts* of the council of state, and the declaration of the King, of the 1st Dec. 1710, and 16 Oct. 1713 and

110. After a laps of ten years, we see the concessions in Fief revived in Canada. The first, which is dated the 18th August 1727, (1) is that of the *augmentation* of the Fief *St. Jean*, adjoining the Fief of *Rivière du Loup*, in the district of 3 Rivers : It was given by the Governor, the Marquis de Beauharnois, and the Intendant Dupuy, to the Religious Ursuline Ladies of 3 Rivers, with the right of inferior jurisdiction only " for the *cens et rentes*, *redevances*, " *lods et ventes*, *quint et relief*, and all other seigniorial rights " and dues.. whatever may be the sums they may amount to.." Their judge, also, was to have cognizance..... of all personal matters between " their subjects and vassals, as high " as the sum of 50 *sols*, and of all offences, the penalty for " which shall not exceed 10 sols." The conditions peculiar to this Grant, as distinguishing it from former concessions, are :

1st. " Under the obligation that the appeals of their " officers shall be immediately before the royal jurisdic- " tion, and the Lieutenant General of 3 Rivers, to *whom* " *their judge shall be obliged to give notice in case of offen-* " *ces punishable by a larger fine.*

2nd. " Under the obligation to cause all the criminals, " who shall be found within the extent of their Fief to be

of the regulations of the 3rd Dec. 1715 [above p. 124, 128, 132,] reunites to the domain several concessions which had not been made productive, declares null and of no effect all the sales and transfers of uncleared lands, whether made before Notaries, or privately, orders that the vendors and grantees of such lands shall be sued at the instance of the Attorney General or his substitutes..... so that they may be condemned in the fine of one thousand livres, mentioned in the declaration of the 16th October 1713..... and the price restored to the purchaser, whose lands shall be reunited, to be conceded, if considered reasonable, either to said purchasers or to others who present themselves and who have no lands."

(1) Brevêts de Ratif. p. 84.

" conducted to the prisons of the Royal jurisdiction at 3 " Rivers, in consideration whereof they may themselves " have sergeants and prison,

9th. The usual reservation of land and wood for the construction of forts, " without being liable to any indem- " nity towards the said Religious Ladies, nor towards the " proprietors of the said lands necessary fo His Majesty,

11th " And not to concede, on the part of the said Re- " ligious Ladies, the said lands, but on a simple rent charge " of 20 sols and 1 Capon for each arpent of front by 20 ar- " pents of depth, without that there can be inserted in the " said concessions either any sums of money whatsoever, " or any other charge besides that of a simple rent charge " according to the intentions of H. M." (11)

The second concession, which is that of Beauharnois, or Villechauve, was made by the King himself on the 12th April 1729, (1) to the Governor, the Marquis of Beauharnois and to his brother the sieur Claude de Beauharnois de Beaumont. It contains only the conditions inserted in the general patent of ratification of the 6th July 1711 (above no. 99.) So it makes no mention of the rates of the rent charges for subgrants to be made *en censive.*

The third of the concessions made since 1727, is that of Desplaines, in augmentation of that of Terrebonne, which had been conceded on the 23th December 1673 (above p. 175)

(11) Moreau de St. Mery, v. 3, p. 250.

Ordinance of the administrators of the 30th April 1728, which annuls concessions of which there had been made " *trafic* and commerce, in contempt of the ordinance of the King and the regulation on that subject" and ordains that the price of sales or transfers shall be paid back by the grantees or vendors.

(1) 2nd vol. of " *documents seigneuriaux* " published at Quebec in 1852, p. 260.

The Governor and the Intendant, by letters of the 22th July 1730 (1) had allowed the Seignior of Terrebonne, the sieur Louis Lepage de St. Clair, to continue to make settlements, to the depth of two leagues, under the King's pleasure, who on the 10th April 1731 (2), gave him a grant of that depth, on all the front of his Seigniory of Terrebonne, " at the same dues which are attached to the said seigniory, and on the same rents, clauses and conditions to which the same is liable."

Finally, the fourth of these concessions, which were anterior to the *arrêt* of the 15th March 1732, (above no. 103,) was made, on the River Yamaska, by the Governor and Intendant, Hocquart, to the Bishop of Samos, Coadjutor of Quebec. It bears the date of the 15th Oct. 1731. (3) That which distinguishes this from previous concessions is the following clauses : " and that he shall cause the same conditions to be inserted in the concessions which he shall make to his tenants, *subject to the Customary cens et rentes and dues* for each arpent of land in front by 40 in depth." (4)This clause is found in subsequent concessions.

III. In No. 103, I have given an account of the *arrêt* of the Council of State of the 15 March 1732 which was enregistered at Quebec on the 4th September of the same year. It was rendered in consequence of the representations made by Messieurs de Beauharnois and Hocquart, in a letter of the 10th October 1730 and reiterated in another letter of the 3rd October 1731, which they addressed to the minister, in reply to that which he had written on the pre-

(1) Ib. p. 140.

(2) Brevets des Ratif., p. 4.

(3) Titres des Seig. p. 156.

(4) This concession was re-united to the domain by ordinance of 10th May 1741, with many other seigniories in default of their having been cleared.

vious 24th of April. (1) The enacting part of the arrêt is borrowed almost litterally from the letter 3rd October 1731.

To transcribe here the letter of the minister will suffice to show how persistent was the King's desire relative to the obligation of Canadian Seigniors to clear and, as a consequence, to concede :—

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

" It will be only by examining the *terrier* that the " extent of these forests can be well and usefully ascertai- " ned. M. Hocquart cannot therefore pay too much atten- " tion to this long protracted work."

(1) Documents obtained from Paris. p. III, IV, V, and XVI.

112. We see mention of this *arrêt* of 15 March 1732,— in a deed anterior to its enregistration in Canada. It is in a patent of ratification, given by the King on the 8th April 1732, of the concession made to the Bishop of Samos on the 15th Oct. 1731 (above no. 110). The 6th clause of this patent says : " under the obligation to make it produc- " tive, and to keep house and home and to cause the same " to be kept by his tenants, within the time limited by the " *arrêt* of the council of state of the 15th March last, in " default of which it shall be reunited to H. M. domain."

113. From the enregistration of the *arrêt* of the 15th March 1732 to the year 1740, inclusively, a very great number of concessions were made by the Governor and Intendant Messieurs de Beauharnois and Hocquart, and many patents of ratification were obtained from the King. The clauses of most of these concessions, especially those given along the borders of Lake Champlain, are almost always alike; they contain the conditions inserted in the general patent of the 6th July 1711 (1). The following may serve to distinguish some of these concessions from each other and from those that preceded them :

1st. Augmention of the seigniory of the Lake of Two Mountains ; 26 Sept. 1733. (2)

At the end of the usual clause, " to cause the same " conditions to be inserted in the concessions which they " shall make to their tenants, " the deed adds these words : " subject to the customary *cens et rentes* and dues for " each arpent of land in front by 40 arpents in depth. " The patent of ratification is dated the 1st March 1735 (3) We read therein : " The King.....on the representation

(1) M. Dunkin's analysis ; part 2, p. 8, t. 24.
(2) Titre des Seig. ; p. 171.
(3) Brevets de ratif. p. 8.

" to him of the concession made on the 26 Sept. 1733.....
" also.....of the patent of the 27th April 1718, by which
" he has conceded to the same Seminary the said seigniory
" called the ***Lake of Two Mountains***..... confirms the
" said concession, subject to the charges, clauses and con-
" ditions hereinafter mentioned, namely,.... 11o. to cause
" the same conditions to be inserted in the concessions by
" deed which they will make to their tenants, subject to
" the usual *cens*, *rentes* and dues on each arpent of land in
" the neighbouring seigniories, regard being had to the
" quality and situation of the lands at the time of these
" particular concessions, that which H. M. wishes also to
" be observed as regards the lands and hereditaments of
" the seigniory of the Lake of Two Mountains belonging
" to the said Ecclesiastics, ***notwithstanding the fixity of the***
" ***said cens and dues and of the quantity of land*** of each
" concession mentioned in the said patent of 1718, from
" which H. M. has derogated ..... 12th. H. M. desiring
" that the said concessions (that is to say, the two parts of
" the seigniory) may be restricted and subjected to the
" above mentioned conditions without any exception under
" pretence that they shall not have been stipulated, as well
" in the said concessions of 1733 as in the said patent of
" the 17th April 1718.

2nd. St. Mary, St. Joseph, and St. François, Beauce, on the 23rd Sept. 1736. Three similar concessions were made, on the same day, to MM. Taschereau, Rigaud de Vaudreuil and Fleury de la Gorgendière ; (1) and on the offer of the grantees, their title deeds imposed upon them the obligation " to make, within three years, jointly, a highway for horses and carriages.... to commence from the bank of the river St. Lawrence and be continued through the lands of the concessions belonging to the heirs Charest (seig. of Lau-

(1) Tit. des Seig. p. 178 to 181.

zon) and to the heirs Joliet, without interception until opposite the ***Islet au Sapin***, even to cause bridges to be made at the places where they shall be considered necessary for the passage and the accomodation of the inhabitants who would wish to go and establish themselves, as well in the said two old concessions as in that granted by these presents, and those which are and shall be granted above the same.

3rd. St. Etienne, 15th April 1737. (1)

" Under the obligation by the said sieur Cuguet to " contribute, for his portion, to the road which the said " sieurs Taschereau, Rigaud de Vaudreuil and de la Gor- " gendière are bound to make, by the terms of their con- " cessions."

4th. Fief St. Etienne, at 3-Rivers, 12 Sept. 1737.

New concession of this Fief to the " Company of the forges established at St. Maurice "; 3rd, under the ordinary obligation to give notice of mines, " with the exception of " iron mines, of which the privilege has been granted to " the said parties interested."

There had been a previous concession of this Fief; and in the new title-deed which makes express mention of the *arrêt* of the 15th March 1732, it is stated that this first concession had been reunited to the domain by ordinance of the 6th April, then last.

5th. St. Giles de Beaurivage; 1st April 1738. (2)

Concession by the Governor and the Intendant to Gilles Rageot, containing, on the demand of this latter, the following clause " We declare that after the decease of the peti- " tioner and his wife, the said Fief shall be divided equal-

(1) Tit. des Seig. p. 189.
(2) Titre des Seig.; p. 200.

" ly among the said three children, or those of them that " shall survive, derogating therein as far as necessary from " all Customs hereunto contrary, in that respect only."

111. We have already seen that at different periods there had been, in virtue of the *arrêts* of retrenchment, of those of 1711 and 1732, several reunions of seigniories to the King's domain, in default of their having fulfilled the obligation to clear. Twenty were effected by a single stroke by one judgment or ordinance rendered by the Governor and Intendant Beauharnois and Hocquart, on the 10th May 1741, (1), on the requisition of the Attorney General against the same number of Seigniors duly summoned, (of whom 17 appeared and 3 made default) " in order " that it should be adjudged and ordained, that failing on " their part, agreeably to the terms of the *arrêts* of the " King's Council of state of the 6th July 1711 and the 15th " March 1732, and within the time therein mentioned, to " have put into cultivation and made productive the lands " in Seigniories which have been conceded to them, and to " have placed, and established inhabitants thereon, they " shall be and remain reunited to the domain of His Ma- " jesty in this country." Notwithstanding the reasons given by the Defendants and their demand of a new delay, the reunion was pronounced by the judgment which declares: " Considering His Majesty's ordinances of the 6th July " 1711 and the 15th March 1732, and his orders addressed " to us, last year, by which he commands us most express- " ly to proceed to the reunion to his domain of lands conceded " *of old* and *lately*, in default of the proprietors thereof ha- " ving fulfilled the conditions explained in their titles."

" We rendering judgment, on the requisition of the " King's Attorney General, have reunited and do reunite

(1) Edit and Ord. in-8o. t. 2, p. 555.

" to H. M's. domain the lands hereinafter mentioned, to " wit.....

" We have in consequence declared all the grantees " above named deprived of all right in and property to the " said lands ; and nevertheless considering in some sort " the representations made by some of the said Defendants, " we reserve to ourselves, under the King's pleasure, the " power to give new deeds of concession for the same lands " to such of the said defendants as will prove to us, within " a year, that they have, in good earnest, by expenditure " and actual work, rendered productive a considerable part " of the said lands, or placed settlers thereon, in the course " of the said year, which time being passed, in virtue and " execution of these presents, and without that there shall " be occasion for any other, the said lands shall be conce- " ded to whom and as it may appertain." (1)

115. Between the date of the reunion of these 20 seigniories and the 20th April 1743, (2), we notice several patents of ratification and some concessions, of which one, made by the King to the Intendant Hocquart on the said day, the 20th April 1743, was " on Lake Champlain and " opposite Fort St. Frederic."

In the number of these concessions is that of the 22nd

(1) All these concessions, so reunited to the domain, dated from 1731 to 1737 inclusively, and were all situated in the Upper part of the River Chambly and on Lake Champlain, with the exception of two, one of which, made on the 15th October 1731 to the Bishop of Samos, afterwards Bishop of Quebec, was on the River Yamaska, and the other made on the 6th October 1736 to the sieur d'Argenteuil, was situated at the end of seigniory of Lanoraie. Several of the lands so reunited were reconceded, some of them even to the first grantees.

(2) M. Dunkin's analysis ; p. 25 and 26.

March 1743, (1) made by Messieurs Beauharnois and Hocquart to the sieur Daniel Lienard de Beaujeu, of a seigniory (now Lacolle) which, it was said, had been reunited to His Majesty's domain by our Ordinance of 10 May 1741, in conformity with the *arrêt* of the King's Council of State of the 6th July 1711;" subject to the condition, 7th " to " clear and cause to be cleared, without delay the said " lands, and to prove to us that he has performed work " therein, between this time and the ensuing autumn, fail- " ing which the present concession shall be and remain null " and void by virtue of the said *arrêt* of the King's Coun- " cil of State and of our said Ordinance of the said 10th " May 1741 and without that there shall be necessity for " any other."

On the 1st May 1743, the Sieur Foucault, whose seigniory was one of those reunited by the Ordinance of the 10th May 1741, having proved that he had performed work, in clearing, which was considered sufficient, obtained a new grant of the seigniory, with the augmentation of a league of front (2)

116. We pereeive by the deed of concession of *Livaudière* dated the 20 Sept. 1744 (3) that it was made by the Governor and the Intendant, in execution of two *Arrêts* of the King's Council of State, one of which is dated the 20th April 1742 and the other the 10th April 1743. The first of these arrêts, rendered in a contestation between the sieur Hugues Jacques Péan de Livaudiere and the sieur Jacques de la Fontaine, had declared null and void a patent of the 30th April 1737, confirming a concession made to the latter on the 10th October 1736, and ordered to concede to the former the seigniory in question. The second *arrêt* had

(1) Titres des seig. p. 203
(2) Tit. des Seig. p. 205.
(3) Tit. des Seig. p. 208.

dismissed the *demande* of the Religious Ladies of the General Hospital, made by them praying for delay in granting the deed of concession in favor of the said Sieur Péan until such time as their claim to the ownership of half the said concession should be decided.

117. On the 17th July 1743, (1) the King rendered a *Déclaration* concerning the concession of lands in the colonies. But this Declaration having relation chiefly to the mode of proceeding in reunions to the domain of the Crown and to the contestations arising between the grantees, I shall speak of it in another place, contenting myself with quoting the two first articles :— " The Governors and Lieute-
" nants General acting for us, and the Intendants of our
' colonies, will continue to make jointly the concessions of
" lands to the inhabitants who shall be in the position to ob-
" tain the same, for making them productive, and shall ex-
" pedite the deeds thereof to such persons, on the ordinary
" and customary clauses and conditions ; art 1st. They
" shall proceed in a like manner, to reunite to our domain
" lands which ought to be reunited thereunto, and that, at
" the suit of our Attornies of the ordinary jurisdictions,
" within which the said lands shall be situated," art. 2.

118. From 1743 to the end of the French dominion in

(1) Ed. ord. in-8o. v. 1, p. 572.

Moreau de St. Méry ; v. 3, p. 745, 864.

The declaration of the King of the 17th July 1743 " concerning the concessions in the colonies" was enregistered in the Council of the Cape on the 9th December following, and in that of Léogane on the 24th January 1744. It was not enregistered in the Superior Council of Quebec until the 5th Oct. 1744 ; and that of the 1st Oct. 1747 rendered in interpretation of the first, was enregistered in the Council of Leogane on the 16 Sept. 1748, and in that of the Cape on the 4th Nov. following. It had been enregistered in the Superior Council of Quebec on the 19th June of the same year.

Canada, the Governor and the Intendant made a great number of concessions in Fief, followed, for the most part, by patents of ratification given by the King. (1) These concessions, of which the two last, according to M. Dunkin's analysis, are dated in 1755 and 1758, do not contain any particular clause to distinguish them from preceding ones, to such extent *as would require notice.*

119. The details into which I have entered in order to show the history of our Feudal institution, may perhaps appear fastidious. Convinced, however, of the necessity of giving that history, in order the better to explain the nature and extent of the *Jeu de Fief* in Canada, that is to say, of the right or the power of the seigniors to dispose of their lands, a matter which forms the point of departure in the examination of the grave and important questions which are submitted to us, I have thought that I should not attain my object, nor fulfill my duty, if I did not, by a minute analysis of the titles of concession, of the administrative and judicial acts of public authority, and of the legislation peculiar to the country, make known this feudal institution, as well in its origin as in its successive developements under the French Government.

120. It results from the foregoing remarks that the *Jeu de fief* was considerably modified, as respects Canada. The first modification consisted in this, that the seignior of a fief, was from the commencement, according to my opinion, subjected to the obligation of *clearing* the lands and, consequently, of disposing of them; the second consists in this that in disposing of his *uncleared* lands, he had not the right, at least since the first *arrêt* of 6 July 1711, to sell them, that is to say to take *entrance money.* He had no right to dispose of them except at a simple annual rent.

(1) M. Dunkin's analysis; part 2, p. 26, to. 32.

But, it will be asked: What are the lands the sale of which is thus prohibited to the seigniors? Are they only lands in *standing wood*? These words, " lands in standing wood," which are those of the *arrêt* of 15th March 1732,—ought they to receive an interpretation so vigourous as to exclude from the prohibition, lands which may not be entirely in standing wood, though not cultivated, or not cleared, or not rendered productive? I do not believe it. The *arrêts* and the various documents which I have cited make use of different terms to designate one and the same thing. I think that all the lands which are " in the condition of being reunited to the domain in default of having been rendered productive, (Declaration of 17 July 1743) are comprised in the prohibition. They are the lands :—1st " as yet uncleared," (*arrêt* of retrenchment of the 21st March 1663.)

2nd. " Not cleared, not cultivated," (*arrêt* of retrenchment of 4th June 1672.)

3rd. " Not cleared and cultivated into arable land and meadows," (*arrêt* of retrenchment 4th June 1675.)

4th. " Not cleared and cultivated (arrêt of retrenchment of the 9th May 1679.)

5th. " Not cleared and rendered productive," (patents of confirmation of the 29th May 1680, 15th April 1684 and 14th July 1690, and letters patent of 20th May 1676.)

6th. " Not cleared, " (patent of confirmation of 6 July 1711.)

7th. " Lands which have no domain cleared and on which there are no settlers : not rendered productive," (1st Arrêt 6 July 1711.)

8th. " In standing wood ; not yet cleared : not rendered productive : having no inhabitants settled,") *arrêt* of the 15th March 1732.)

9th. Which may be reunited, " in default of having put in cultivation and rendered productive the lands in seigniories which have been conceded to them, and of having placed and established settlers thereon." (Requisition of the Attorney General followed by the ord. of 10th May 1741.)

Such are the lands which, we are bound to say, in giving to all these different expressions an interpretation conformable to the spirit of the *arrêts* cited, and in making a just application of them, ought to be affected by the prohibition to sell, that is to say, the lands which the seigniors ought to concede to the *habitants* who demand them, (and let us add, *who are in a condition to cultivate them.* (*Arrêt* of the 9th May 1679) at a simple annual rent, " without exacting from them any sum of money for such concessions" (1st *Arrêt* of the 6th July 1711.) Each special case, as was reasonable, had to be left to the decision of the Judge, according to the circumstances. No precise rule was, nor could be, given, as to the extent and the nature of the clearing which a lot of land ought to have, so that a seignior could be under the obligation to concede it, without exacting entrance money. If, by analogy, the rule established for the seignior, by the *arrêt* of the 4th June 1675, ought to guide in similar cases, assuredly the lot of land which a seignior had " cleared and cultivated into arable land or meadow," would not come under the prohibition in question. On the other hand, according to the 2nd Arrêt of the 6th July 1711, it would be necessary, in following out the same analogy, to take as a rule that " some felling of wood could not suffice to constitute a *clearing or a making productive*, but that it would be necessary, according to the opi-

nion expressed by the Governor and the Intendant, who rendered the ordinance of reunion of the 10th May 1741, " to give proof of having, in good earnest, and by expenditure and real work, rendered productive a considerable portion" of the lot so demanded in concession. If this rule was good in one case, to save the seignior from forfeiture by reunion to the domain, of his right to the property of his Fief, it ought to be good, in the other case to save him equally as regards the prohibition to sell or to take entrance money in sub-granting. The right which a colonist might have, by virtue of the Feudal institution, to participate in the ownership of the soil by paying only an annual rent, would not entitle him to profit, without compensation, by the real and actual works which the Seignior might have done.

121. So, during the fifth period of our Feudal institution, which ends with the possession of Canada by France, the *Jeu de fief*, in my opinion, continued to be without limit, as it had been in the course of the preceding period. It might extent to the entire body of the Fief, with this difference already stated above no. 100, that, with respect to the *uncleared* lands, the *Jeu de Fief* was obligatory on the seignior, but that it was only facultative as regarded the lands which the Seignior *had cleared* or made *productive*; that in the first of these cases, the seignior had not the right to take entrance money, but that he could validly stipulate for it in the second; seeing that in this last case the part of the 51st article of the Custom of Paris, which allows the vassal to dispose of his fief, *with profit*, had not undergone any modification in the seigniorial system of Canada; leaving, naturally and from necessity, to the judge the full liberty to appreciate the facts and the circumstances in each particular case.

It follows, therefore, from what has been said, that, in Canada, the vassal can, by the *Jeu de Fief* either by way

of sub-infeudation or by *bail à cens*, alienate more than *two thirds*, nay *the whole* of the *body of his fief*, without that the seignior dominant has the power to exercise against the portion so alienated beyond the two thirds, the rights which he could enforce under the authority of the Custom of Paris, when he had not sub-infeudated the *cens*. In other words, the effect of the laws peculiar to Canada, on the Feudal Institution, will only be that, as regards the Seignior Dominant, the *cens* imposed in the concession made by his vassal, ought to be considered as infeudated *de pleno jure*, without the necessity of approbation, either express or tacit on his part.

122. With these observations on the *Jeu de Fief*, concludes the history of the Feudal institution of Canada, until the cession of the country to England in the year 1763. The history of this institution, reckoning from the last epoch, will be given, as far as the subject can permit of so doing, in my observations on the question of the amount of the *cens et rentes*; of the nature of the power of the Governor and the Intendant to reunite to the domain and to make new concessions; of the mill privilege (*banalité de moulin*); of the ownership of running waters, and of the reservations stipulated by the seigniors.

PART SECOND.

CENS ET RENTES.

Was the amount of Seigniorial *cens et rentes* fixed by the Custom of Paris or the Jurisprudence of the parliament of Paris ?

If not under the authority of that Custom, has it ever been fixed in Canada ?

123. Let us see, first, as respects France. Quotations ought to suffice. I shall make a large number, knowing the necessity of drawing the public mind strongly to this important point of the *seigniorial questions*. Of all these questions, that of the amount of the *cens et rentes* appears to have had the principal part in the warm agitation which preceded the passing of the law abolishing the seigniorial tenure.

124. Let us observe, in the first place, that there is no text in the Custom of Paris which fixes that amount, or which limits it in any way.

As to the jurisprudence of the Parliament of Paris, if it established such amount within certain limits, of which mention will shortly be made, it was, only, when the due was not fixed by deed or long possession, that is to say, by an agreement, written or supposed, between the seignior and his censitaire.

The Custom of Paris did not oblige the seignior to concede, that is, to alienate his fief. It merely gave him

the faculty so to do, provided that he retained, on the part alienated, " same seigniorial and domainal right," but the Custom indicated neither the nature nor the amount of such right. Again was that faculty limited to two thirds of the fief in order that the alienation might be made without paying dues to the Seignior Dominant? (art. 51)

125. Dumoulin, who has written on the old Custom of Paris, defined the cens " *modicum annum canon quod prestatur in recognitionem dominii directi;*" upon which Henrion de Pansey, in the article *cens* in his feudal dissertations (1) observes : " When Dumoulin says that the *cens* is " a moderate payment, *modicum canon*, one knows well that " he speaks according to the *common acceptation*, and one " surely will not suppose that he was not aware that the " *cens* might be *more or less considerable;* indeed there " cannot be the least doubt on that head since, before giving " the definition we have quoted, he had said that the pay- " ment known in the *Nivernois*, under the name of *Borde-* " *lage*, is a *cens* of *the most onerous* kind."

The word *cens*, in fact, is a *generic denomination* which " includes *all* the dues recognitory of the direct seigniory, " *all* the dues imposed in *recognitionem dominii directi.* (p. " 265)

" A first rent-charge (the first of all the charges with " which the land is burthened,) under whatever denomina- " tion it may be designated, or in whatever manner the " payment may be made, be it *in money*, *be it in kind*, so " long as it is due to the Seignior of the hereditament, *is a* " *veritable cens*, and has all its attributes and all its privileges. " p. 206. (2)

(1) Published in 1789.

(2) The author cites : Cout. d'Auvergne, art. 1, tit. 3; The *Ancien Coutumier* of France, bk. 2, tit. 6, " du champart;" Loiseau, " de la distinction des rentes," bk 1, c. 5 ; Chopin who reports an *arrêt* of the 23 Feby 1577.

The seignior, continues Henrion de Pansey, § 3, is the Judge of the *qualification*, of the *nature* and of the *amount* of the *cens*.....(1)

126. We read on the same subject in the *new* Denizart, v. 4, *in verbo* " cens" p. 341 ; " If this jurisconsult (Du- " moulin) defined the cens a moderate due, it is because " that, in the existing state of things, the greatest portion of " such dues have become so moderate that they are less " considered as forming a revenue than as a sort of mark " of honour and superiority. But that does not prevent " even Dumoulin from acknowledging that the *cens* is " sometime, *sufficiently large* to be considered as a reve- " nue."

" The author of the " *Institutions au droit françois*," " book 2, chap, 4, observes that, in ancient times, the *cens* " was about equal to the value of the profits of the heredi- " tament given *à cens* as our ground rents (*rentes foncières*) " are in the present day; in such manner that the censitaires " were, in some respect, but the perpetual tenants of the " seignior, whose most considerable revenues consisted of " their *censives*. The *sols* and the *deniers* were pure gold and " silver money, which was of incomparably higher value " than are the *sous* and the *deniers* of the present day " (1786.) The value of these monies, at the different per- " iods, is explained in Leblanc's historical treatise concern- " ing monies, in which it is remarked that, in the course of " the alterations which have been made, little by little, and " which have at last reduced them to the low price which " they now bear, the seignior whose *censives* and seigni- " orial rents were in *sous* and *in deniers*, were wholly " ruined, and that, on the contrary those seigniors who had " constituted them in *corn* or in kind have lost nothing of " their ordinary revenue."

(1) He cites Basnage on the art. 204 of the Cust. of Normandy.

" This great alteration in monies, we read in the same " work on French law, composed towards the end of the " last century, has misled most of the writers who have " written for two hundred years on the subject of ***censives*** ; " they have seen that ***ordinarily***, the ***cens*** was only for ***one*** " or ***two sols*** the arpent, ***more*** or ***less*** ; a circumstance " which has led them to believe that the seigniors had im- " posed this charge, rather as a mark of honor and superio- " rity than as an ordinary revenue ; but that is only true, as " regards those ***censives*** which were not created until after " these descriptions of monies were reduced to the rate at " which we now see them."

127. Hervé says the same thing. (1) After having discussed the question " if the ***cens*** is simply an honorary charge, or if it is a charge proportioned to the actual product of the thing accensed," he adopts the last proposition, and shows that the authors who are of opinion that the ***cens*** ought to be a moderate charge (***redevance modique***) have not taken into consideration the changes which have taken place in the value of monies.

" The author (p. 96) says that it appears by the ***polyp-*** " ***tique*** of St. Germain " that a simple censitaire paid in " money 4 l. 4s. 9d. and that for 4 perches of land there " was paid 12d. Now, under Charlemagne, the ***denier*** was " worth 6s. 6d. of o r money. So this proprietor paid, in cash, " more than 330 ***livres*** of the money of this day, and a " perch of land produced nearly 20s. of the same money.

p. 109, " In the beginning of the 13th century, the " silver mark, which is of fixed weight, was worth three " ***livres*** ; to day it is worth about 54 livres. The actual " numerical ***livre*** therefore corresponds intrinsically but to

(1) " Théorie des matières féodales et censuelles," v. 5, published in 1786, § 9.

" one eighteenth of the *livre* which was current in the com
" mencement of the 13th century ; and as the division and
" the sub-division of the *livre* are, at present, the same as
" they then were, the existing *sou* and *denier* are, also,
" worth only the 18th part of the *sou* and the *denier* of the
" former time, if we consider only the weight and the deno-
" mination of the article, and suppose that this weight and
" this denomination had not varied."

" If the matter be considered in another point of view,
" if it be supposed, for example, that there is, in the present
" day, ten times more money than there was at the begin-
" ning of the 13th century, all things being equal in other
" respects, it will be of ten times less value in barter ; and
" in place of the 18th, the present *livre* would not be worth
" more than the 10th of the 18th, that is to say, the 180th
" of what was the value of the *livre* in the beginning of the
" 13th century.

p. 111. "..... 20 sols corresponded in 1350 to more
" than 40 *francs* of our present money.

p. 113. " A charter of Landrecies informs us that each
" burgess owed to his seignior, on the 4th day after Christ-
" mas, two capons and two loaves of bread *the finest in his*
" *house*, for a *courtil* ; and that if he had no loaves of
" bread, he was bound to buy two in the market, for the
" price of *two deniers*. So then one *denier* was the price of
" the finest loaf of bread that a burgess ordinarily had in
" his house.

" In 1514, an arpent of land, was rented for 8 bushells
" of wheat in Marly-la-Ville, and the 8 bushells were worth
" 16 *sols* 8 *deniers*. M. Dupré de Saint-Maur observes that
" in his time those same 8 bushells were worth 12 *francs*,
" and to day they are worth, at least, double that amount

" The ancient Custom of Perche, compiled in 1505, " estimates the arpent of wheat land at 5 sols per annum, " the arpent of rye and *mesteil* land at 3 *sols*, 4 *deniers*; the " arpent of pasture land at 2 *sols*, 6 *deniers*, etc.

" The ancient Custom of Bourbonnois, compiled in " 1493, estimates 1 *sétier* of wheat at 8 *sols tournois*; one " *sétier* of rye at 6 sols; 1 *sétier* of corn at 4 sols; of oats at " 3 sols; a hen at 4 *deniers*; a lamb at 15 *deniers*; 1 lb. of " wax at 8 *deniers*; a cart load of hay in meadow at 5 sols " etc."

128. The cens, therefore, was not merely honorary; it could constitute a revenue. It was not merely a duty; it was a debt and a duty at the same time.

129. In France, could the seignior, by the " *bail à cens*," stipulate for such dues as he might think proper; and those dues, however high they might be, having once been accepted by the censitaire, were they binding on this last? Could he object to his contract?

Here again authorities will suffice. Some authors have adopted the system of the distinction between seigniorial dues as *ordinary dues*, forming a common right, and as *extraordinary* dues requiring, before they could be exacted, a special title, or, at least, a long possession. The quotations which follow, in so far as they may relate to the question discussed by these authors, namely, to what extent could those dues be affected, either by prescription or by a judicial sale, are without any bearing on the propositions which I am just now examining. I invoke these authorities only to prove that under the reign of the Custom of Paris, it was permitted, by means of the " *bail à cens*," which is the primitive convention between a seignior and a censitaire, to fix the amount of *cens et rentes* and that this amount governed the relations between them.

130. Henrion de Pansey has already said that " the seignior is the *judge* of the *qualification*, of the *nature* and of the *amount* of the cens. Let us again cite this author § 8. p. 273 :

" There are two descriptions of cens, the one moderate " only of a few *deniers*, which is the most *ordinary* and " which is regarded as being of *common right* in the " *coutumes censuelles ;*" the other more *considerable*, much " more rare, and which consists of a rent in money, or an " important portion (*partie notable*) of the product of the " hereditament.

" Although these two descriptions of payment bear, " alike, the denomination of *cens*, and although they, alike, " recognize the *dominium directum* (*recognitive de la di-* " *recte*,) yet there is a very important difference between " them. As the first is of common right, it is not neces- " sary that the Seignior establish it by titles ; his quality " of seignior is sufficient ; but as the second infers a con- " vention which has fixed its amount, it is requisite that " the seignior show the title deed of such convention or a " possession which presumes one.

" It were vain for him to prove that the surrounding " hereditaments were burthened with the dues which he " demands ; that would be insufficient ; such is the opinion " of Dumoulin ; *anc. cout. de Paris*, §. 2, gl. 6. No. 6.

" In order that the Seignior should have the right to " exact an extraordinary charge, he must either have titles " or at least a long possession. (1)

§. 9, p. 275. " When the hereditament sold is burthen- " ed with the greater *cens* (*gros cens*,) for instance with a

(1) He cites, on the question of possession, Boutaric, ch. 1, N. 41, Dumoulin, on the 3rd art. of the C. of Paris, gl. 6. No. 4 ; Dargentré, art. 227, " Bretagne."

" *droit de terrage* (1) and that the contract, without declaring this *terrage*, states, nevertheless, " *subject to the charge of* " *the seigniorial rights which may be due*," is the purchaser " entitled to demand an indemnity? (on the principle that " the vendor owes an indemnity to the purchaser for *all* " *the real charges which he has not declared to him and of* " *which he might be ignorant.*) Henrion de Pansey replies " by repeating the distinction of which he had already " spoken: " the appellation of seigniorial due appertains " to every species of payment established *in traditionem* " *fundi et in recognitionem dominii;* this payment may be " more or less heavy, may be in money, or in kind.

" In that respect, the seignior who disposes of the land has no other law than his own will; all the rights that he reserves *in recognitionem dominii*, are seigniorial, and enjoy the same privileges.

" Nevertheless the difference observable between those " different payments has caused the admission of the dis- " tinction which we have just announced. The seigniorial " dues are divided into two classes; the *ordinary* dues, and the " *exorbitant* dues. The first of these denominations is " given to that payment which is of common right, to that " which the local custom admits and indicates as the sign " specially and generally recognitive of the lordship, *such* " *is the cens of ten or twelve deniers per arpent in the Cus-* " *tom of Paris.* Still there is nothing in that Custom *to* " *prevent* a seignior from imposing a *terrage* on the lands " which he alienates. This example may be followed by " a very great number; the payment in question, thereby " become very common within the limits of the Custom, " will not constitute a common right thereof, nor will be the

(1) *Terrage*; the word is usually synonimous with *Champart*; it means a certain portion of the product of the land, and especially of fields or arable land, which the proprietor is obliged to give to the seignior byvirtue of the concession.

" natural sign of the *dominium directum*. The due wi.., " in truth, be seigniorial, but exorbitant ; no one can claim " it, but *by virtue of special titles*, and the vendor of the here- " ditament which is liable for it will be bound to declare " it by name, to the purchaser, which is not the case as " respects the *ordinary cens*, which it is not absolutely ne- " cessary to enunciate in the contract, because the public " law itself notifies all the purchasers as well as all the " tenants that they cannot possess without being subject to " such *cens*."

131. Freminville, " Pratique des terriers" v. 1, 2d Ed. p. 10. Quest. 6.

The " *bail à cens*," says he, is susceptible of all sorts of clauses : " by reason that as it is free for him who gives " to give or not to give, it is allowed him to impose on his " donation such charges and conditions as may seem good " to him ; *it is for the grantee to accept them, or to refuse* " *them* by not taking the hereditament, and so the giver and " the taker have the same faculty, the one to make the law, " and the other to reject it : and the acceptance by the one " of the law made by the other, secures the accomplish- " ment of the " *bail à cens*."

Under the 7th question, the author even says that clauses contrary to the Custom of the place wherein the hereditaments given *à cens*, are situated, can be inserted, renouncing that Custom.

132. *Ancien* Denizart vo. 1, at the word " cens," p. 48, No. 27 ; " as regards the amount of the *cens*, it is regulated by the titles and the possession."

133. Pocquet de Livonière, p. 534 :

" The *cens* is, *ordinarily*, a light charge which may be joined to a large rent, for example, if it be one *sol* of *cens* and a *septier* of wheat, of rent."

p. 536..... " When the subject owes to his seignior only one rent however considerable, for all duties, without any distinct and separate *cens* ; in that case, such rent takes the place of *cens*, with the same privileges as the *cens*, and, like the *cens*, is not liable to prescription. (1)

134. Freminville, *Dict. des fiefs*, at the word " cens" p. 211 : " A seignior who gives hereditaments on a *bail à cens* ought to *measure prudently* the charge of *cens* by the goodness of the land and to have regard thereto " etc., etc. After having remarked that there existed a law among the Romans to that effect (law 10, cod. *de fundis patrimonialibus*,) he adds: " it is that which was reenacted by the " wisdom of Louis XIV, in his Edict of the month of March " 1655, for the alienation of hereditaments depending of his " domain, which should be sold by the commissioners: " upon which this prince wishes that there shall be reser- " ved a *cens* which may be regulated at the 20th of one " year's revenue.....

135. Prudhomme, " des biens en roture," book 2, " *du cens*, ch. 1, p. 38: " this charge (the *cens*) is ordinarily in " money, grain, poultry or other payment in kind, *accor- " ding to the title of the seignior* of whom the *censive* " depends, or *in accordance with his long possession.*

P. 47, ch. 3. Speaking of the prescription of the " amount the author says: " A Seignior who, *in virtue of* " *his title*, can claim 10 sols per arpent for land and who is

(1) He cites an *arrêt* of the 12th March 1667 reported in the " Journal des Audiences," v. 2, c. 19, p. 541, confirming a judgment rendered in the Custom of Anjou, on the 11th May 1665, which had condemned Ribard to pay to the respondent " 28 years' arrears of " *cens et rentes foncières*," noble, seigniorial and feudal of five *septiers* of wheat, of the measure of Mirebeau, and some other *small* dues, and so to continue for the future as long as he shall be proprietor and possessor of 14 *raisneaux* of land.

‘ contented, during 30 years, to receive four for the same, “ is obliged to submit to the law which he has imposed on “ himself, by tacitly discharging the property from the sur- “ plus of the amount which he had right to levy.

136. Pothier, “ *du cens*,” sect 1, art. 1, § 3: “ the “ amount of the *cens* is liable to prescription. For exam- “ ple, if one has paid during 30 years, 2 *sols* of *cens* for a “ property which had been given for 4 *sols* of *cens*, the cen- “ sitaire shall have acquired the liberation of the two *sols*, “ etc., etc.

137. Ferrière, *Grand com*; v. 1, “ *des censives*,” p. 1061, no. 14: “ The *cens* and *censives* are paid as is set “ forth in the *primitive and original concessions*, and in the “ declarations and acknowledgments which have been made, “ in money, in grain, or in poultry or other payments in “ kind.”

“ As respects the quantity it is paid *in conformity* “ *with the agreement* that has been made.

p. 1081, no. 3. “ The *champart* is much in use in “ some Custom..... but in the Custom of Paris there “ are few lands given *en champart*, and when it is the only “ due without the *cens*, it carries *lods et ventes* like the cens (1).

“ It is a charge, levied on the product of the lands, of “ *one sheaf in* 12, *if not otherwise stipulated*, as well in

(1) Ferrière, on the article 51 of the C. of Paris p. 845, in speaking of the alienation of the Fief, says: “ It appears to me there are “ five seigniorial and domainal dues which take the place of the realty “ and which represent it, subject to which a part of the Fief can be “ alienated, namely the *cens*, the ground rent, the rent charge on a “ long lease [*l'emphyteose*], the champart and the fealty and homage “ or sub-infeudation,” and at page 852, no. 45... “ although in our “ custom there is no mention of *champart*, it may be constituted by “ the parties...”

" wheat, barley, oats, peas, beans, turnips, hemp, flax, as in " other products, as provided by art. 4 tit. 3 of the Custom " of Montargis.

" The *champart* is not of the same amount every " where ; in some places it is of the 3d sheaf, in others of " the 4th, 5th, 6th and 7th ; in that respect, it must be go- " verned *by the Customs of the different places, and in ac- " cordance with the particular conventions.*

138. Henrion de Pansey, at the article *champart* § 2, p. 236, acknowledges that these two payments, " a *cens*," and " *a champart*," may be stipulated by the same " *bail à* " *cens*," by stating that every time that the seignior ex- " presses himself in such a manner that we must conclude " that his intention has been to extend to the *champart*, " the same charges and the same privilege as to the cens " property so called," the *champart*, is *censuel* and reco- " gnitive of the direct property. (1)

The same author, in the article on the alienation of the fief authorised by the Custom of Paris, says p. 386, " If " the alienation of the fief be effected by " *bail à cens*, the " vassal may indifferently, impose *a cens* properly so called, " a ground rent, *a droit de champart*, a *terrage*, or dispose " of it in mortmain or in *bordelage*. (2) In fine, at p. 440, he says" the charges of a fief may be of two sorts, *ordinary* " and *extraordinary*. The ordinary charges of fiefs are " those which the Custom itself establishes ; the extraordi- " nary dues are rents and charges imposed on the fief, *by* " *a convention* between the seignior and the vassal.

(1) He cites Basset who says that when the *champart* is joined with the cens, or in *augmentum* thereof, it is on a par with the *cens* and is not liable to prescription [*arrêts* of the Parl. of Grenoble, t. 2, liv. 6, tit. 8.]

(2) *Bordelage* was the name given in the Custom of Bourbonnois and Nivernois when a proprietor gave a domain to a husbandman for him and his ; subject to the charge of paying a certain rent and dues.

139. Bourjon, tit. " des *censives*," sec. 3, art. 14, p. 266, says ; " as regards the amount of *cens*, it is regulated " by the titles, if there be any.....

140. Hervé, v. 5, p. 241, in speaking of the *champart* says ; " by the admission of all the authors, when the *cham-* " *part* is alone, it is a true *cens*; and, nevertheless, it is not " the smaller *cens* (*le menu cens*) and the symbolical and " fictitious *cens* of Dumoulin. An important and consi- " derable charge may be, then, a real *cens*, even according " to the authors whom I oppose. Now why could not a " charge of this nature be composed of several parts which " should constitute one *censuel* whole....." and, p. 260," " as respects the amount of the *champart*, there is no other " general rule to follow, but *the titles and the possession*, " etc., etc."

141. It appears to me that enough has been said to prove, even to the most incredulous, that, in France, and particularly under the rule of the Custom of Paris, the seignior was permitted to stipulate in a " *bail à cens* " such amount of *cens et rentes* as he deemed proper.

But when there was no title, upon what footing must the payment be made? That is what I now go to establish by quotations, of which many confirm the authorities advanced in support of the first proposition, that, namely, of the legality of the amount fixed by the agreement of the parties, at the time of the " *bail à cens.*"

142. Henrion de Pansey, in the article " cens " p. 269 : " If from time immemorial, the seignior has neglected to " act, if there remain no trace of original cens, one must be " created ; it is what is done every day." He cites two *arrêts* of which one of the 12th Sept. 1746 which declares the territories of Agen, Condon and Marmande to be in the universal dependency (*sous la directe universelle*) of the King, and

which ordains, that, " in the places wherein the taking of " *cens*, may have been interrupted, the same may be im- " posed anew *at the same rates as are paid in the neigbou-* " *ring seigniories.*"

The other *arrêt* is of the 28th August 1776; it shall be noticed immediately. The author repeats the same thing in § 26, p. 295, and adds: " and although, this may be *cens* " newly imposed, nevertheless the censitaires owe the " arrears of it for the 29 years antecedent to the demand." (1)

143. *Nouveau* Denisart, v. 4, at the word " cens," p. 347 : " The maxim *nulle terre sans seigneur*, (no land " without a seignior) has a second remarkable effect; " which is, that it gives occasion to establish a universal " *cens* in districts in which, from time immemorial, there " was only a small number of hereditaments that were sub- " ject to it, and even in places wherein there had been no " payment of *cens* from time immemorial.

" It is presumed that in the apparent seignior of a " territory is vested the *domaine* of all the lands which are " therein situated. If he has not levied the *cens*, it is a " negligence, on his part or on the part of his agents, which " ought not to prejudice him; the seigniories constituting " with us a part of the public law against which prescrip- " tion does not run.....

" For the rest, when there is room to establish the uni- " versal *cens*, of which we have just spoken, it is only " done by observing *a very equitable temperament.* The " lands newly subjected to *cens* are never burthened with " other than a moderate *cens*, even when there may be lands " in the parish subject to a *very heavy cens.*

(1) Besides the *arrêt* of the 28th August 1776, he cites the *arrêt* of Chaource of the 26th April 1755.

" But the seignior is always adjuged to be entitled to " 29 years *arrears* of the *cens* which *have not as yet* been " paid to him, because this is not a new right which is " granted to him, but he is given authority merely to " exercise an ancient right. " Several *arrêts* are cited, among other one of the 6th April 1781 which in the Custom of Vermandois, which is a " *coutume censuelle*, " granted to the Monks of St. Remy, seigniors of the one half of Terron, " a universal *cens* of two *deniers* by the acre for " arable land and meadow, or for the *quartel* of wine, " or such other lesser *cens* as may be established on the " *neighbouring hereditaments* of the said Terron, *saving* " *the right however*, of the said Monks to demand such " cens, or *droit de terrage*, as they may prove by *special* " *titles*, and *saving to the inhabitants* of Terron, the benefit " arising, to each individually, from the titles of exemption " which they may have ; " Again the *arrêt* of the 28th Aug. 1776 already cited, rendered on the demand of the Sieur Le Tellier, Marquis de Courtanveaux, who claimed the *directe universelle* on the territory of the town of Tonnerre, governed by the Custom of Sens, wherein prevailed the maxim *nulle terre sans Seigneur*, which *arrêt* " condemns " the inhabitants of Tonnerre to acknowledge the *directe* " *universelle*, of the town liberties and territory of Tonnerre, " in which he is maintained ; rejects the demand *en cham-* " *part* of the Count de Tonnerre ; condemns the inhabitants " to pay the *cens* at *the rate of one sou per arpent of land*, " of whatever kind the same may be, within the liberty " and territory of Tonnerre ; the said *cens* carrying a fine " of 20 *deniers tournois* by the inhabitants and of 5 sols " by strangers ; condemns the inhabitants to pay 29 years' " arrears, preceding the 30th May 1776, the day of the ins- " titution of the suit - condemns the said inhabitants to pay " the said fine of cens in default of having paid the *cens*, " and the fines of concealed sales, if such there be ; the " whole *without prejudice to special titles of the seignior*

" *against any of the inhabitants, and of any of the inhabi-*
" *tants against the seignior.*"

(In speaking of this *arrêt*, Henrion de Pansey, p. 269, observes : " As the proprietors had never paid any *cens*, at " least, as far as any trace existed, the *arrêt* imposes on " every arpent of lands *the most ordinary cens* in the *neigh-* " *bouring* territories."

We further read in the *Nouv. Denizart*, p. 351, No. 3, " the *directe* once recognized, it cannot be doubted that an " ancient, peaceable and continuous possession authorises " the seignior to prescribe for his benefit the amount of the " rent charge however heavy it may be.

144. *Ancien Denizart* v. 1, at the word " *cens*," p. 408, No. 27 : " As to the amount of *cens*, it is regulated by " the titles or by possession, and if there be neither titles " or possession, the seignior may, in the countries subject " to the Customs in which the maxim *nulle terre sans sei-* " *gneur* is admitted, exact it on the footing on which it is " paid by the neigbouring hereditaments. The art. 35, of the " Custom of Angoumois, which, in that respect, is conform- " able to the common law, contains a precise provision on " the subject : it says : " every seignior ..... having a " defined territory, is entitled by the ..... common prac- " tice ..... to declare and comport himself as seignior " direct of all the lands and hereditaments in his territory " ... ..and by means of that *directité*, if he finds, within " his limits, lands possessed without charges, he may im- " pose *cens* on the same such as is imposed on the lands " *in the neighbourhood* of his territory, and conformable " and similar thereto." He cites an *Arrêt* of the 22nd " August 1760 in favor of the Sieur Saulniers de Pierre " Levée. (1)

(1) Prudhomme, p. 51, ch. 4.

145. Bosquet, Dict. du domaine, at the word " cens," v. 1, p. 388 : " if the proprietor does not prove a franc-aleu " by titles, cens ought to be imposed on his hereditaments, " for the lands of the King's domain, on the footing of that " of *the neighbouring lands which pay censive.*

146. The commentator of Boutaric, p. 18, No. 43, says ; " the seignior, by getting himself acknowledged as " such from neighbour to neighbour, may exact all the dues " which he finds established against *the neigbouring* " *tenants.*

147. Prudhomme, " des biens en roture," p. 92. " The seignior who has neither title nor acknowledgment of the *censive*, nor note or register of payments, " nor possession, " may demand the *censive*, on the house and the heredita- " ments found situated and being within the limits of his " domain, based on the maxim *nulle terre sans seigneur ;* " but to fix the censive, regard must be had to the *neigh-* " *bouring lands*, to their *situation*, and to the *revenue* which " they produce, the whole in proportion to the value of the " land.

148. Bourjon v. 1, " des censives" tit. 4, s. 3, art. 14, p. 266 : " as regards the amount of *cens*, it is regulated by " the titles if any there be ; and where there is no title fixing " that amount, custom, that is to say, the amount *which is* " *the most ordinary in the same place*, governs it : it is in " this last case a sure and decisive guide.

" This is the practice of the Chatelet in such a case.

149. Ferrière, p. 1061 : " in the event that the seignior " does not show his right to the *cens* paid to him, *by valid* " *title and by writing*..... the cens ought to be regulated " on the footing of the *censive* due by the hereditaments " contained in the boundaries of the territory of the sei- " gniory and the fief.

p. 1066 no. 32: On the question of ascertaining, " if in " case of a *resale* by a seignior of a hereditament acquired " by him in his *censive*, with declaration in accordance with " the 53d article of the Custom, *without declaring that it is* " *in his censive*, the *cens* on it will be due, as was the case " before the seignior made the acquisition of it "; Ferrière says that " if the *cens* with which it was charged is conform- " able to the *cens* for which the neighbouring hereditaments are liable, in that case the purchaser ought to pay " *the same cens*, although it might be considerable.... But " if the hereditament was subject to *a higher cens*, the purchaser will be bound to pay only the *cens* due by the " other hereditaments; because the seignior ought to blame " himself *for not having stipulated for the cens*, with which " he wished the hereditament to be charged in his favor; " the more so, as having purchased it, the *censive* has become entirely extinguished.

He adds that " the Custom of Auxerre, art. 23, decides " that the proprietor is bound to pay the *censive* at the rate " paid by the other hereditaments subject to *cens*, and, " when there are in the said place *censives* of divers " amounts, at the rate of the lower *cens*.

150. Brodeau, v. 1, " des censives," p. 787. " The " *extraordinary*, *unusual*, *and irregular*, seigniorial rights, " which neither depend on the *nature* of fiefs, nor are governed by the law and general rule of the custom, but by " *the ancient concessions and investitures* are liable to prescription and are purged by a judicial sale, failing opposition " on the part of the seignior, who cannot claim them without " title, as are the droits *de champart* or *terrage*, *bourdelage*, " *vinage*, *la banalité de moulin*, *four*, *pressoir*, *banvin et* " *corvées*, and other similar dues.

p. 798. " The *censive* of a hereditament which it is not " shown, to have at any time paid any thing to the seignior,

" and which the proprietor does not prove, by valid title
" and by writing, to be held in ***Franc-aleu***, is regulated on
" the footing of the *censive* of the *surrounding hereditaments*
" in the limits of the territory of the seigniory and the fief.

151. Pothier, Ed- in 4, v. 5, " des Champarts, " p. 370 :
" When the *champart* is seigniorial, it is sufficient for the
" seignior to prove that the land upon which they deny his
" right of *champart* is within the limits of his seigniory, and
" that all the lands which surround the contested land are
" subject to *champart* ; for as in those provinces, the maxim
" *nulle terre sans seigneur*, prevails, the possessor of the
" contested land not proving that he holds of another
" seignior, is presumed to hold, for that land, of the
" seigniory within bounds of which it is found, and *subject*
" *to the same charges as those which the other lands of that*
" *seigniory are held.* (1)

152. It is, then, well established that, in France, the seignior, in disposing of a hereditament *à cens*, might fix the amount of the dues ; and that, with respect to a concession already made, but the title of which the parties did not produce, or for which the possessor had never paid any dues to the seignior, the amount of the dues was regulated on the footing of the most ordinary or *customary censive*, whether of the neighbouring lands within the same limits, or of those of the neighbouring seigniories. It is solely with a view to demonstrate the accuracy of those two propositions to the most skeptical partisans of one of the parties to this great contestation, that I have transcribed so many authorities on the subject drawn from the French Feudists.

153. Let us now see if those two rules enunciated in the last number, and which prevailed in France, have also

(1) Hervé expresses himself in the same manner v· 5, p. 258.

prevailed in the feudal institution of Canada, with or without modification.

The Marquis de la Roche, (1) by his commission which bears date the 12th January 1598, had the power to concede to ***gentlemen*** and ***persons of merit*** lands in fief, seigniory etc " and to others of ***inferior*** rank at ***such dues and annual*** " ***rents as he may deem just.*** "

The same authority must have been exercised by his successors, or by those whose delegates they were, until the formation of the Company of New France in 1627 28.

154. Under the government of this Company, the concessions of land could have been made " subject to such charges, reservations and conditions as to the associates might seem good." These might " even settle such persons throughout the Country as they might think proper for the distribution of the lands and to regulate the conditions thereof." (2)

So, no limit was fixed to the amount of dues which " this Company had the right to impose.

155. In the *arrêt* of retrenchment of the 21 March 1663, (3) which directs new concessions to be made, the amount of the dues that could be exacted was not fixed ; there is even no mention made of ***cens*** and ***dues***, at least those words are not to be found in that *arrêt*.

156. The West India Company, (4) created in 1664, had the power " to sell, or dispose by way of enfeoffment, " .....for such ***cens et rentes***, and ***other seigniorial***

(1) See my remarks on the *Jeu de Fief*, No. 7.

(2) Observations on the " Jeu de Fief," nos. 10 and 11.

(3) Ibid. no. 37.

(4) Ibid. no. 45.

" *rights, as may be deemed proper*, and to such persons as " the Company think fit." Their agent-general, M. Le Barroys, (1) was authorised by his commission to " distri- " bute the lands, or cause them to be distributed, to indi- " viduals, *at such cens et rentes as shall be found right.*" In virtue of the 26th art. of the requisition of this agent, (2) the Intendant had the right to make the concessions, " subject to such *cens et rentes* as shall by him be con- " sidered right," and " nothing," says Messieurs de Tracy, Courcelles and Talon in the apostille granting this request, " appears more conformable to His Majesty intentions." All that does not tend to fix the amount of *cens et rentes.*

Nor was there any mention made of it in the *arrêts* of retrenchment of the 4th June 1672, 4th June 1675 and of the 9th May 1679, (3), nor in the letters patent of the 20th May 1676 which gave authority to the Governor and the Intendant to make concessions conjointly, (4), nor in the five general patents of confirmation given by the King on the 10th May 1675, the 29th May 1680, the 15th April 1684, the 14th July 1690 and 6th July 1711. (5) In all the concessions in fief made previous to the two *arrêts* of Marly of the 6th July 1711, and which have come to our knowledge, I have not found one which makes mention of the *amount* of the dues which a seignior might exact from his censitaire.

157. What, then, was the state of things, at the time that these *arrêts* were promulgated ? The same that it was until that period in France ; the Canadian Seignior might , by contract *à cens*, stipulate for such amount of dues as he might think proper ; this stipulation, authorised by the Cus-

(1) Observations on the " Jeu de Fief," no. 48.
(2) Ibid. no. 48.
(3) Ib. nos. 56, 70, 81.
(4) Ib. no. 73.
(5) Ib. no. 68, 83, 86, 91, 99.

tom of Paris, was legal among us ; the Edict establishing the West India Company has even an express provision in that respect (art. 33), where it declares that the judges shall be held, " to give judgment according to the laws and " ordinances of the realm, and the officers of justice bound " to follow and to comply with the Custom of Paris, accor- " ding to which the inhabitants shall enter into contracts."

If it be objected that the Canadian Seignior, being bound to concede, was obliged to do so at a certain rate ; that otherwise such obligation became a delusion; I answer ; the obligation *to clear* the lands, was that which was imposed upon the seignior principally; this obligation, it is true, carried with it, as a consequence, that of sub-granting, because it was the only means to effect the *clearing*. But that did not go so far as to deprive him of the right he had to enter into a contract, *à cens*, as advantageous to him as possible. If he found colonists disposed to accept this or that amount of dues, and *to clear* the lands which he so conceded to them, he had fulfilled his obligation *to clear*. He could, before 1711, refuse to concede ; the law had not yet given to the colonists *a right of action* to compell him to do so; but if, as the result of such refusal, his fief remained *uncleared*, and *not rendered productive*, the forfeiture of his right of property and the *re-union*, to the domain of the Crown were there to subject him to the penalty of his unjust refusal.

If the seignior had conceded without stipulation, as to the amount of the dues, or if he could not show a title which established that amount, nor prove a sufficient possession, then that amount would have to be regulated, as was the practice in France, on the footing of the *censive* the most ordinary or usual, either of the neighbouring lands in the same *enclave*, or in those of the *neighbouring* seigniories.

158. I have examined the title deeds of a considerable number of grants, *en censive*, made before the year 1711, in the domain of the Crown, and in that of individual seigniors, and the result of that examination proves that the rate of *cens et rentes* has never been uniform, that it has constantly varied, even in one and the same seigniory. In the domain of the Crown, this rate varied, during the period of which I am speaking, from 6 *deniers* of *cens* for a concession of 2 × 2 leagues, to six *deniers* of *cens* for each arpent in superficies; and even when the dues were so distributed by the arpent, it was established at the rate of one, three or six *deniers* per arpent.

159. Such was the legal state of things at the time of the promulgation of the two *arrêts* of Marly of the 6th July 1711. (1) No law had fixed the amount of the dues that a seignior could stipulate in a contract *à cens*.

I have, in another place, given the entire text of the first of these *arrêts*, explaining the part of it which might effect the alienation of the fief. The part which may have relation to the present subject is that which, after having imposed on the seigniors, in express terms, the obligation to concede *on a rent charge*, and given, on their refusal, to the inhabitants the right to apply to the Governor and the Intendant to obtain a concession of the land, directs these last to make that concession, subject *to the same dues imposed on the other lands conceded in the said seigniory*," *and* " which dues," adds the *arrêt* " shall be paid by the new settlers into the hands of the Receiver of H. M's. domain."

Assuredly it cannot be said that the preexisting state of things, as far as a conventional rate was concerned, whatever that rate might be, has been changed by the letter of that law. As regards its spirit, we shall soon see, with the

(1) Observations on the " Jeu de Fief no. 101.

help of the jurisprudence which prevailed under the French Government, if it admitted of inferring such a change and of acknowledging it. By the words "subject to the same "dues imposed on the other lands conceded in the same "seigniories," the *arrêt* seems but to have had in view to prescribe to the Governor and the Intendant a rule of conduct and decision for avoiding all desagreement between them, when, in the particular case provided for by the *arrêt*, these two functionaries should have been called upon to exercise the special authority which the *arrêt* conferred on them. The legislator would be chargeable with giving them this authority *uselessly*, if he had not, at the same time, prescribed a binding rule, by means of which they were in a position to establish easily the amount of the dues, and which left no pretext for opposing the concessions so demanded, whether by disagreement or refusal, without rendering themselves, guilty of a reprehensible abuse of their authority. The provision of the *arrêt* appears, then, intended to be only applied to the single case in which the intervention of the Governor and the Intendant could be rendered necessary. Now, this single case was the refusal of the seignior to concede. There could, therefore, be no room for such intervention, when, willingly and freely, the settler had accepted the concession which he had demanded from the seignior, whatever might be the *amount* of the dues contained in this concession, because he could not allege a refusal to concede, on the part of the seignior.

Besides, the rule of decision so prescribed to the Governor and the Intendant was not new; it was that which prevailed in France for regulating the *amount* of *cens et rentes*, when the seignior could not invoke against his censitaire either title or long possession, to justify the amount which the first demanded and the second refused. It was the only equitable rule to follow in such a case; and it was also the only equitable rule to follow, in the special case provided

for by the *arrêt* of 1711, the settler who obtained a concession by the intervention of the Governor and the Intendant, on the unjust refusal of the Seignior to make such concession, having Seigniorial dues to pay.

160. As to the laws posterior to the *Arrêt* of 1711, and which relate to the concessions of land in Canada, namely the arrêt of the King's Council of State of the 15th March 1732, the Declaration of the 17th July 1743 and that of the 1st Oct. 1747, they, in no way, touch on the question of the amount of *cens et rentes*. In that respect the condition of the Censitaire remains as it was made by the *Arrêt* of 1711.

161. I pass now to the jurisprudence which the French dominion has left us on this matter.

The persons who believe firmly in the fixity of the amount of *cens et rentes* by some act or regulation of the Sovereign authority, without, nevertheless, having been able, hitherto, to produce such act or regulation, cite chiefly in support of its existence, a judgment rendered for the seigniory of Gaudarville, by the Intendant Hocquart, on the 23 January 1738. (1) There are, in fact, in this judgment, some expressions, which, at the first glance, and without explanation, might tend to support the impression which those persons entertain. The circumstances under which the judgment was given are these :

The Dame Peuvret, Seignioress of the place, had made five concessions *en censive* either verbally or by letter, as was the frequent practice ; but she had not fixed the amount nor the species of the dues for which the grantees were to

(1) Ed. et Ord. in So. v. 2, p. 545.

Note. The concession of Gaudarville dates from the 8th Feby. 1652, for the first portion, and the 15th Nov. 1653 for the second. (Tit. des seig. p. 383-4.)

be liable. The last demanded in their petition, that the seigniores should be condemned to grant them " titles in " good form, of the lands which she had conceded to them " and this on the footing of the deeds of concession of " other lands in the same seigniory." It was, as one may see, to invoke, almost literally, the rule prescribed by the *Arrêt* of 1711.

The Defendant replied that she " *offers* and *consents* to " grant and pass to the said inhabitants, the Plantiffs, contracts for the new lands which she had conceded to them (thus admitting the fact of the concession) to begin imme- " diately at the end of the first concessions of the said " seigniory, and subject to the *cens*, *rentes* and seignorial " dues which it shall please us to regulate, " says the In- " tendant."

The contestation seems to have turned simply upon the point of ascertaining if the lands ought to be taken in one or another range of the seigniory. To overcome this difficulty, a visit of the Grand-Voyer was ordered. After his report, and after having " seen also," it is said, " the letters of concession " of two other habitants " of 3 × 30-ar- " pents, to commence, for front, at the end of lands of the *Côte de Champigny*, together with many deeds given by " the Dlle. Peuvret to the inhabitants of the 3rd range, etc., " etc., the Intendant orders that the Plaintiffs shall be bound " to take deeds of concession from the Dlle. Peuvret, of the " lands which have been conceded to them of thirty arpents " in depth.....subject to the *cens*, *rentes*, ordered by H. " M. namely, one *sol* of *cens* for each arpent in front (1) and

(1) These words *in front* (*de front*) are omitted ; they are to be found in the judgment as inserted at p. 170 of the 2d vol. of the documents *styled* " documents seigneuriaux," published in 1852. The omission of words so important for the proper understanding of this judgment, added to so many other inaccuracies which disfigure those

" one *sol* of rent for each arpent in superficies, and one
" capon or twenty sols, at the election of the said Demoi
" selle, for each arpent in front."

162. This judgment of the Intendant Hocquart is the only document in which we find these words *cens et rentes* ordered by His Majesty." If there really had existed an order or regulation of the King, limiting, in an absolute manner the amount of the seigniorial dues, intended to govern, without distinction, all the concessions *en censive* made by his vassals, no contestation or difficulty could ever have arisen on that matter. If the words of the judgment are proof of the existence of such regulation, distinct from the rule enunciated in the first *arrêt* of the 6th July 1711, then, the *cens et rentes* could not be constituted otherwise than in money and in capons, the capon valued at 20 sols and no more ; the seigniorial dues, in that case, would have been uniform, or, at all events, could not have exceeded that amount or that limit, unless, indeed, the rate stipulated by agreement between the parties be excepted, thereby admitting its legality. Such limiting regulation existing, the Intendants empowered to decide the contestations of parties would have had no discretion to exercise ; they would have been obliged, on the case occuring, to be governed by the rate of the regulation. But, once again, why is not that limiting regulation produced ? The fact is that it has never existed. We have the proof of this in the very silence, on this question of a fixed amount, of the special laws of the country which have been cited.

For the rest, it is easy to explain these expressions of the Intendant Hocquart, " *ordered by the King*," and to give them their true sense, the only one in which he could

publications, so interesting to the history of the colonisation of Canada, bear testimony, in a manner greatly to be regretted, to the little care taken in these publications.

have employed them. He wished, beyond a doubt, thus to qualify the words generally used in this matter, " ordinary *cens et rentes*, " customary *cens et rentes*," or other such words having the same sense and which the King, in conformity with the rule of the common law, has reproduced in his arrêt of 1711, in these words ; " subject to the same " dues imposed on the other lands conceded in the said " seigniories "; expressions, which necessarily leave to the judge a fact to appreciate, since they suppose the existence of *ordinary* dues and *extraordinary* dues, usual dues and *unusual, dues* amongst which, in case of contestation, the judge was bound to chose *the most ordinary and the most usual.*

It is in this light that the parties to the Gaudarville suit have understood their respective rights and obligations ; the censitaires in asking the Intendant to fix the *cens et rentes* " on the footing of the titles of concession of other lands, of the said seigniory," and the seigniores, in *offering* and *consenting* to pass contract " subject to the seigniorial *cens et* " *rentes* and dues which it will please him to regulate."

It is further thus, we must say, that the Intendant has understood the position of the parties and his own judicial authority. For, in granting by his judgment, rendered only after having seen " several deeds given by the Dlle. Peuvret to the inhabitants of the third range " the *cens et rentes* enunciated in this judgment, he ought to be supposed, under the circumstances, to have only granted the *ordinary* or *usual cens et rentes* of the seigniory, that is to say, " the same dues imposed on the other lands conceded in the said seigniory," according to the rule recognized by the *arrêt* of 1711 ; dues which by this *arrêt*, the King orders expressly to be imposed in an analogous case. The Intendant could, therefore, say with reason that the *cens et rentes* to which he subjected the five censitaires of Gaudarville were really, " the *cens et rentes* ordered by His Majesty " for a like sort,

without his being considered to have wished to have it understood that there existed a limitating regulation distinct from the rule of the common law repeated in the *arrêt* of 1711.

That which leads me further to say that the Intendant Hocquart only granted to the seigniores of Gaudarville the *ordinary* and *customary cens et rentes* in the seigniory, is the following fact. At the rates mentioned in the judgment, the rent in money and in capons, for a land of 3 ✕ 30 would be (without including the three sols of *cens*) 1 *sol* 3 *deniers* per arpent in superficies, the price of the capon being fixed at 20 *sols*. I have seen a deed of concession of the 13th Sept. 1708 (La Citière, Notary), given by the Seignior of Gaudarville, of a land of 3 ✕ 20 arpents adjoining the River of Cape Rouge. This concession, anterior by 30 years to the judgment of which we speak, is made upon the consideration of "3 *livres* and 2 live capons for the whole of the said concession, or 40 *sols* in money in default of furnishing the said two capons, and 2 *sols* of *cens*," that is to say, for this land of 60 arpents in superficies, at the rate of 1 *sol* 8 *deniers* of *rente* for each arpent in superficies, inclusive of the 2 sols of *cens*. It is the same amount as that contained in the judgment of the Intendant Hocquart.

163. Let us now look at another judgment rendered by the same Intendant, Hocquart, for the seigniory of Portneuf a few years before his judgment for Gaudarville, namely on the 20th July 1733. (1) There is no mention in it of the *cens et rentes* ordered by the King.

The Seignior, M. Charles Le Gardeur, demanded, by his petition, that all the censitaires who had deeds of concession should be bound to give him a copy of them in proper form, and that those among them who had not con-

(1) Edits and Ord. in 8o. v. 2, p. 531.

tracts nor letters of concession, should be bound to take deeds of concession before Notaries, conformably to the ancient deeds and in accordance with the clauses of *corvées* and *cens et rentes* therein mentioned, together with that of paying the 11th fish for the right of fishing in front of their lands.

After having heard the inhabitants, and having *seen* two contracts of concession *in that seigniory*, one of which dated the 3rd Nov. 1684, was made to Jean Catelan and the other of the 23rd April 1685 to Mathurin Corneau, the Intendant ordered that, in regard to those persons who had not as yet taken deeds, they should be bound so to do within a certain delay, and to give copies thereof to their seignior, " and that, subject to the same clauses and conditions as " those set forth in the two deeds above mentioned, if the " should not prefer to become liable to the dues of 30 *sols* " and a capon for each arpent in front by 40 in depth, of " six *deniers* of *cens* and of the 11th fish, which they will " be bound to adopt at the time of the passing of the con- " tracts, otherwise the option to lie with the seignior."

I have procured the two contracts of Catelan and Corneau, which contain, each, a concession of 1 × 40 arpents, the two lands being next each other, and the two contracts having been passed before Genaple, Notary. In respect to the dues the two concessions are alike ; that made to Catelan states " subject to the charge of four *livres* and four good fat capons, with 4 *deniers* of *cens*, on the whole of the said concession, at the rate of 20 *sols* and 1 capon for each of the said 4 arpents in front. " And moreover the 11th of " each fish caught in front of the said concession in " the said river.....and two days of *corvée* in each " year....."

The second alternative presented by this judgment gave for the dues in money, one third more than what

was stated in the two contracts of Catelan and Corneau, since it gave 30 *sols* by 1 ⋈ 40 arpents and 6 *deniers* of *cens*. The last paid at the rate of one *sol* per arpent in superficies, the capon valued at 20 *sols*, while under the second alternative of the judgment the censitaire would have had to pay 1 *sols* 3 *deniers*.

Five years later, the same Intendant granted to the Seigniores of Gaudarville two fifths more than he had granted to his second neighbour, the seignior of Portneuf. Can it be, then, that it was in the interval between these two judgments that a royal regulation, *ordering* fixed *cens et rentes* had been made ?

164. If, notwithstanding the Portneuf judgment (1733,) there are persons whose firm belief in the existence of such a limitating regulation, traces back that existence to an anterior date, they cannot fail to perceive their error, in reading the analysis which I have given of several ordinances pronounced in one single case, the last of which dated the 22nd April 1730 by the Intendant Hocquart himself.

This analysis, although necessarily long, has nevertheless a particular interest, in as much as the first of these ordinances is almost two years anterior to the enregistration of the *arrêts* of the 6th July 1711.

This ordinance rendered by the Intendant Raudot, on the 8th March 1710, condemns the sieur Tremblay, Seignior of Eboulements, to grant to Louis Gauthier a deed of concession of a land of 12 ⋈ 40 arpents " subject to the same clauses and conditions as those contained in the concessions to the inhabitants of ***La Petite Rivière***." (1) Tremblay did nothing in the matter. But on the arrival of the new Intendant Begon, he presented a petition to him upon which he obtained an ordinance dated

(1) " Doc. Seig." ; v. 2, p. 91.

the 18th April 1713, (1) *without informing him of that made by Raudot*. The seignior demanded the re-union to his domain, in default of sufficient clearing of the one half of the land in question, conceded by a letter of his predecessors, and prayed that Gauthier should be bound " to take a " title from him under the obligation of paying him every " year, on the day of the feast of St. Rémy, 20 *sols and* 1 " *capon or* 20 *sols at the choice of the said Tremblay, for* " *each arpent of land in front by* 40 *in depth, and* 1 *sol of* " *cens* for the said six remaining arpents of front," that is to say, one *sol* for each arpent in superficies; which, as we shall immediately see, was exactly double the rent imposed on the lands of ***La Petite Rivière***, one of the neighbouring seigniories. The prayer of the petition was granted by this ordinance of 18th April 1713.

Upon another demand instituted, no doubt, on the petition of Gauthier, the same Intendant Begon rendered on the 3rd February 1717, another ordinance, which sets forth that without hindrance from that of the 18th April 1713 (which he declared to have been given without Tremblay having informed him of that by Raudot, of the 8th March 1710), this last ordinance should be executed according to its form and tenor, and " that the said sieur Tremblay should " be held to allow the said Gauthier to enjoy peaceably the " said 12 arpents which he had been condemned to concede " to him subject *to the same clauses and conditions as those* " *mentioned in the deeds of other concessions given to the* " *inhabitants of La Petite Rivière*, on the condition that he " should pay him all the arrears of rent to commence on " the 8th March 1710."

Another suit intervened, followed, first, by an ordinance of the Intendant Begon of the 28th June 1723, ordering the nomination of arbitrators to regulate the depth of Gau-

(1) " Doc. Seig." v. 2, p. 40.

thier's land, afterwards by a second ordinance of the same Intendant dated the 12th April 1724 (1) which condemned anew the said Tremblay " to concede to Gauthier 12 ×
" 40 arpents in his seigniory, *upon the same conditions and*
" *at the same rates mentioned in the concessions made to the*
" *inhabitants of La Petite Rivière*, and as has been hereto-
" fore ordered by the ordinance of M. Raudot of the 8th
" March 1710, and by that which we have made in conse-
" quence on the 3rd February 1717 ; and being informed
" that the inhabitants of *La Petite Rivière* pay, *according*
" *to their deeds of concession, ten sols current money of this*
" *country per arpent of front and the half of a capon*,) we
" condemn the said Gauthier to pay to the said Tremblay
" the arrears of rents of his said land in specie, or equiva-
" lents beginning on the 8th March 1710, at the rate of 6
" *livres* current money of this country, equal in currency of
" France to 4 *livres*, 10 *sols*, and 6 *capons* or a like sum of
" 4 *livres* and 10 *sols*, and 9 *deniers* of *cens* per arpent,
" yearly ; and we order the said Tremblay to execute a
" deed of concession to the said Gauthier *on the clauses and*
" *conditions above mentioned*, and upon the default of the
" said Tremblay to make the said concession to him within
" a month from this day, and the same being passed, we
" order that our present ordinance shall serve the said
" Gauthier as a deed of concession."

Behold, then, the Seignior of Eboulements once more reduced to the necessity of not being able to exact from his censitaire, Gauthier, higher dues than at the rate of half a *sol* per arpent in superficies. But he does not lose courage ; he gives no deed to his tenant ; he awaits the arrival of a new Intendant, and that Intendant is M. Hocquart, who, at a later date, rendered the ordinance of Gaudarville. Gauthier was by this time, dead ; and without any summons, the Seignior obtained against his widow and children, for

(1) " Doc. Seig." ; v. 2, p. 91.

the same land, an Ordinance from the new Intendant, rendered, it is declared, " on the *verbal* petition to us made by the sieur Pierre Tremblay, on the " subject of some inhabitants of his Seigniory of Eboulements, who refuse to take from him deeds for the concessions " which he has made to them, *more especially the widow* " *and heirs of the late Louis Gauthier* who hold and possess a land in the said Seigniory, of 6 × 40 arpents, " which formed part of one of 12 arpents formerly possessed " by the late Louis Gauthier, whereof the half was reunited " to the domain of the said sieur Tremblay by order of M. " Begon dated the 18th April 1713; the said sieur Tremblay praying that it may please us to oblige the said " widow and heirs to take a deed for the said land of 6 arpents, conformably to the said ordinance, that is to say, " *at the rate of 20 sols and a capon per arpent or of 40 sols* " *without a capon, at the choice of the said sieur Tremblay,* " *and of one sol of cens for the said 6 arpents.*"

The prayer of the seignior was granted to him, and the Intendant Hocquart condemned the widow and the heirs Gauthier in consequence, under the penalty of reunion to the domain, by an ordinance of the 22nd April 1730, (1) " which," adds the Intendant, " shall likewise take place " as respects the lands of the other settlers of the said sieur " Tremblay who shall refuse to take deeds for them."

165. In this way ended, after the death of Gauthier, the struggle begun between him and his seignior. We see that the latter had acted in the matter towards the Intendant Hocquart as he had towards the Intendant Begon. He took good care to keep from his knowledge the ordinances of 1710, 1717 and 1724, which had rejected his pretensions. He laid before him only that of 1712 which had ordered the reunion to his domain of the half of Gauthier's

(1) " Doc. Seig." v. 2, p. 132.

land and had granted to him a *sol* of rent per arpent in superficies.

Gauthier was in possession ; but the amount of his rent was not fixed by any title deed. It was a case wherein to make application of the rule of the common law, by the aid of which that rent ought to be settled on the footing of the most o*rdinary* and usual rate, in the limits of the same Seigniory, or of the neighbouring ones. In 1710, the Intendant Raudot adopted the rate of *La Petite Rivière* ; that is, half a *sol* per arpent ; at a later date we see his successors, who had the same fact to appreciate and the same rule to apply, adopting a rate double that of the first, because without doubt, its existence had been proved to them on other lands in the same or another seigniory. There was then nothing that was less fixed than the amount of seigniorial dues, at the different periods which comprise the ordinances above cited. Assuredly if there had existed a regulation fixing that amount at 1 *sol* 8 *deniers* per arpent in superficies, which is that stated in the ordinance of Gaudarville of the 23rd January 1738, as having been ordained by the King, the Intendants who rendered these ordinances, and M. Hocquart himself would have been acquainted with it, and would have acted in conformity with it ; a seignior so persevering in his efforts to create a reserve for himself as was the Sieur Tremblay, would not have failed to invoke the benefit of it, in as much as such a regulation would have given him the right to two thirds more than what he demanded from his censitaire Gauthier.

166. The partisans of the system of a fixed rate depend further on that which is said in an ordinance rendered by the Intendant Begon, a few years after the *arrêts* of 1711, namely, that the Seignior of *Demaure* could not impose new charges. This ordinance, which is dated the 15 Feb. 1716 (1) condemned such of the censitaires as had not yet deeds

(1) Ed. and Ord. in 8o. v. 2, p. 448.

of concession " to report the letters which they had from the late Sieur Demaure, in order that the said Sieur Aubert may pass deeds to them *at the charges and conditions of the ancient deeds, without the power of increasing the same by new charges.*"

If the amount and the nature of the *cens et rentes* had been established in a fixed manner, as is pretended, would not the Intendant have said at once ; " at the rate of so much..... " (1 *sol* 8 *deniers* as for Gandarville,) rather than render a judgment which did not end the contestation, because it ordered a reference to the ancient title deeds, which, if they had differed, must necessarily have been considered, before they could arrive at the conclusion of the fixity of the amount of rents. What need would there have been of adding these words : " without the power of increasing the same by new charges."

The tenants, although only bearers of letters, were already not the less grantees ; the lands belonged to them ; only, the amount and the nature of the charges might not have been fixed in these letters. In that case, they ought, in the absence of a written agreement, to be supposed not to have taken their lands at other than the *ordinary* and *usual cens et rentes*, which could be none but those contained *in the ancient deeds*, without that in such a case, the Seignior had the right to add to them. Now, by the insertion of these words " new charges" in the ordinance of which we speak, whether they comprise the *cens et rentes*, or whether they should be understood to allude only to charges properly speaking, it is evident that the new seignior of Demaure had attempted to subject the bearers of letters to payments more burdensome than those which were found in the *ancient deeds*, the only ones to which the inhabitants were supposed to have submitted themselves.

Thence the very simple explanation of the prohibition made by the Intendant and resulting from the words " without the power of increasing the same by new charges ;" a prohibition which was thus made, only to protect grantees who were already in possession, and who refused to bind themselves under new charges.

167. The Intendant Hocquart, himself, on the 15 January 1738 (1), that is to say a few days before his judgment of Gaudarville, rendered an ordinance for this same Seigniory of Demaure, then belonging to the poor of the Hotel-Dieu of Quebec. The Religious administratrixes of the seigniory demanded from one Jean Desroches one year's *cens et rentes*, at the rate of *one sol per each arpent in superficies, and of one capon per each arpent of front by thirty arpents in depth.*

Desroches prayed for delay, " to make search for the title deed of his land, according to which deed, he pretended that he was not bound to pay rents so high, as those which the Religious Ladies demanded from him." The Intendant granted him a delay of 8 days " to produce the deed in question " and " which time being expired, and in default of his having given satisfaction in the premises," the Intendant condemned him to pay " the year of arrears at the rate herein above mentioned."

This ordinance was so made only 8 days before that of Gaudarville, nevertheless the Intendant Hocquart made no mention in it of " the *cens et rentes* ordered by H. M.," even though the amount of the rent in money and in capons was the same. Can it, then, be possible that the royal order or regulation fixing the amount of the dues, should have arrived in Canada in the interval of 8 days ? and that the Intendant hastened to proclaim it on the first opportu-

(1) " Doc. Seig."; v. 2, p. 168.

nity that offered for so doing? Where, then, is this regulation? Has it been enregistered? What is its date? What is that of its enregistration? M. Hocquart has forgotten to tell us.

168. Let us proceed to establish the jurisprudence of the period in question.

On the 11th Nov. 1718, Joseph Robillard obtained from the Seignior of La Valtrie a concession of 6 × 20 arpents, in continuation of a former concession, and adjoining a third belonging to him. The original or minute of the contract was not signed by the notary (Lepailleur) nor by the parties, nor by witnesses. In the meantime, Robillard took possession. In the royal jurisdiction of Montreal, on the 29th Nov. 1743, the seignior obtained a judgment against him by default, which, from there being no signature to the minute of the contract, paid no regard to it and condemned Robillard to take a deed of concession in due form, and to pay to the Seignior the *quantity of* 3 *minots of merchantable wheat*, 6 *livres in money*, for one year's arrears due on the 11th Nov. 1743, and so to continue from year to year. Robillard entered an appeal; he produced his contract, which did not mention for all the concession, but ½ *a minot of merchantable wheat and* 6 *livres* 6 *sols* of *cens et rentes*. He produced at the same time, 23 acquittances from 1718 to 1743. He contended that he was not bound to pay but at the rate named in his contract, in the same way as he had always done, yet with the reduction of one fourth (1), in conformity with the

(1) By a declaration of the 5th July 1717, explained by that of the 21st March 1718 and that of the 25st March 1730, the King had reduced the value of card money to one half the amount written on those cards in such a manner that a card of 4 *livres*, money of the country, ought not to have currency but for 2 *livres* of the same money and to be worth only 1 *livre* 10 *sols* money of France.

It was declared that the payments, even those of the *cens et rentes*,

King's Declarations of 1718 and 1719 " in as much, he " says, as he was invested with a sufficient title, as well by " a possession of 25 years and boundaries, as by the said " acquittances, and the " ***grosse***," and copy of the said " contract of concession of the 11th Nov. 1718 duty signed " by the said Lepailleur, notary."

Before instituting an appeal, Robillard had, on execution, but after making the necessary protestations, paid to the bailiff the amount of the judgment, that is to say, besides the costs, 6 *livres* for one year's arrears of rent due on the 11th Nov. 1743, and 12 *livres* for 3 *minots* of wheat (the wheat valued at 4 *francs*), making 3 ***sols per arpent in superficies.***

The Superior Council, " considering the King's de- " claration of the 6th May 1733 concerning the defective " documents of notaries deceased or who have given up " their office, enregistered in the Council on the 26th Au- " gust following," maintained Robillard in possession of the concession made to him in the contract of the 11th Nov. 1718, " which shall be carried out according to its form and tenor," declared the *arrêt* which is dated the 2d March 1744, (1) ; and the Seignior was condemned, in consequence, to render and pay back to Robillard the sum of 35 *livres* 8 *sols*, which the latter had paid to the seizing bailiff, with the deduction of 8 *livres* 6 *sols*, namely, 6 *livres* for the

when it was not stipulated that they should be " monnaie de France " (Decl. of 5th July 1717) or " monnaie tournoise ou parisis " (Decl. of 25th March 1730), should be made in money of France, deducting one fourth, which was the reduction of the money of the country into money of France : and that, when " monnaie de France ou monnaie tournoise ou parisis," had been stipulated, the payment should be made on the footing of the money of France *without any reduction* (Ed. and Ord. in-8o. v. 1. p. 370, 393 and 525).

(1) Ed. and Ord. in-8o, v. 1, p. 217.

ground rent, 6 *sols* of *cens* and 2 livres for half a minot of wheat, making a rent of 1 *sol* 4 *deniers* per arpent.

M. Hocquart was still, at this time, Intendant of justice in Canada; but it does not appear that he was present in the Council when the *arrêt* was rendered. The affair is not the less important on that account. The judgment of the Court at Montreal, which was set aside only because the contract of concession, although defective from the want of signature, was maintained by the *arrêt*, proves clearly that there was no regulation limiting the amount of the *cens et rentes* at the rates set forth in the judgment of Gaudarville; in the first place, because it granted a rent in wheat, and further because that, valuing the wheat at 4 *francs*, it gave the Seignior a rent of three *sols* per arpent in superficies. Had such a regulation existed, the court at Montreal could not have avoided applying it, and the Superior Council, the first tribunal of the Colony, nay that among the records of which, by its own order, this regulation ought to have been enregistered, would not have kept silent respecting a decision which, in violation of the regulation, would thus have granted an excessive rate. We may remark, besides, that the concession to Robillard was posterior to the *arrêts* of 1711.

169. In another ordinance rendered by the Intendant Hocquart on the 13th April 1745, (1) mention is made of several deeds of concession in the island of Orleans, setting forth different rates. One even, bearing date the 19th March 1659 (Audouart, notary), had been made to Jacques Bernier, called John of Paris, subject to the charge of "10 *sols* "per arpent in superficies, and 3 *live* capons, yearly, and "3 *deniers* of *cens* for the whole of the said concession." It is true that, prior to the contestation which gave occasion for this ordinance, the principal of the rent had been redee-

(1) "Doc. Seig.": v. 2, p. 187.

med ; but this rent must, under the circumstances, have appeared so high, that if the limiting regulation in which persons wish to believe, had really existed, we could not but be surprised at the silence of the Intendant on that head, since the very land which had been the object of that concession, and the charges to which it was liable, were equally the object of the contestation carried before him.

170. There is another judgment of the Royal Court of Montreal, rendered on the 25th June 1745, (1) allowing *cens et rentes* exceeding, by far, the rates enunciated in the Ordinance of Gaudarville.

Michel Colin dit Laliberté possessed 120 acres of land in Isle Bouchard. The seigniores demanded from him *cens et rentes* " in conformity with the ancient deeds of " concession of the other inhabitants of the said seigniory.." The judgment condemned the defendant to pay " 3 *livres* for two days of *corvée* for the last year (2) together with 4 *livres* 10 *sols*, one *sol* of *cens* and 6 capons for one year's *cens et rentes* and the 11th of all the fishes, &c., &c.

The capons being valued at 30 *sols* each, this decision gave, including the *corvées*, *cens et rentes* at the rate of 2 *sols* 9 *deniers* per arpent in superficies, and 2 *sols*, 3 *deniers* without the *corvées*. The judgment states that a deed of concession for a land in the same island, made to one Jacques Foisy on the 14th Dec. 1709, (Raimbault, notary) had been produced before the judge. There is reason to believe that it was in accordance with that deed that the price of the *corvées* and *cens et rentes* was fixed in this instance. I have seen the *minute* of this deed which comprises a con-

(1) " Doc. Seig." v. 3, p. 79.

(2) The seigniores demanded 40 *sols* for every day of *corvée*. An ordinance of the Intendant Begon of the 3rd June 1714 rendered on the petition of the inhabitants of Isle Bouchard, had allowed them to exempt themselves from the said *Corvées* by giving to the seignior 40 *sols* for every such *Corvée* Edits and ord. 8o. v. 2, p. 437.

cession of about 90 arpents in superficies, setting forth, " 1 *sol* of *cens* and a seigniorial rent of 4 *liv.* 10 *sols* and 4½ good and lawful capons, or 30 *sols* in money for each capon, for the whole of the said concession.....the 11th of all the fishes.....and 3 days of *corvée* yearly..... or 30 *sols* of the country, for each day.

Without the *corvées* this concession of Foisy was at the rate of 2½ *sols* per arpent in superficies, and of 3½ *sols* with the *corvées.*

How could the Court of Montreal have given judgment for *cens et rentes*, comparatively so high, if there had been a regulation in existence limiting them to 1 *sol* 8 *deniers* ? How, in presence of such a regulation, could that court take for the basis of its judgment a deed of concession in which a rent charge was stipulated at a rate exceeding that of the regulation ? Was not this to acknowledge the validity of a conventional rate, however high it might be ? Has not the Court decided, by its judgment of the 25th June 1745, that the defendant, by taking a land subject to *cens*, without a contract in writing, was supposed to have subjected himself to the same rate imposed upon the neighbouring lands ? (1)

(1) The minute of Foisy's deed of concession is not signed either by the parties or the notary. Nevertheless this deed has served as the basis of the judgment against Colin. The notary had no doubt, delivered a copy of it in proper form (as in the case of Robillard,) in the same way as if the minute had been signed. Colin's concession adjoined that of a man named Gabriel Ladouceur whose deed of concession I have examined ; it is dated the 24th January 1710 (Rainbault, notary) and is duly signed. This last concession is described as being of " 4½ arpents in front by the whole breadth of the Island, subject to the charge of 4 *liv.* and 4 fat capons of rent with 4 *deniers* of *cens* for the whole of the said concession," together with " the right of fishing on payment of the 11th fish."

I have further examined a deed of concession of the month of

171. The Intendant M. Hocquart, has left us another judgment on this matter, made on the 23rd February 1748 (1) for the Seigniory of Berthier (district of Montreal).

By letter of the 3rd Nov. 1710, the Seigniores had given to the Church of Berthier a land containing about 120 arpents in superficies. The *fabrique* demanded, at a later date, a deed of concession in due form. The Seigniores of the time consented to give it, but with the provision " that " in case the said church should sell or alienate the said " land, the possessor thereof should be held to pay the rents " wherewith the lands of the other inhabitants of the said " Seigniory were charged, that is to say, 2 *sols* of *cens*, 1 " *sol* for every arpent in superficies, and half a minot of " merchantable wheat for every 20 arpents."

So, the parties did not agree either as to the amount or the nature of the rent which ought to be imposed; the attorney of the defendants declaring " that they will submit to that which shall be decided by the Intendant." It is plain that there was already, at this time, rents in wheat, and that the

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January 1710 (the same notary,) to Laurent Degannes, of 3 arpents in front, in Isle Bouchard " from one side to the other of the said island containing about 60 arpents in superficies....." at " 3 *livres* 3 fat capons of seigniorial rent with 4 *deniers* of *cens* ..... the 11th of every kind of fish &c., and 2 days of *corvées*" (price not fixed.) By valuing the capons and the *corvées* at 30 *sols*, as they were in Poisy's deed of the 14 Dec. 1709, this concession would be, including the *corvées*, at the rate of 3¼ *sols* per arpent in superficies, and of 2¼ *sols* without the *corvées*.

Another concession of the same quantity of land, in the same island, was made to Michel Desmarets, on the 24 January 1710 (same notary) subject to the same rents as the preceding one; it only differs from it as to the amount of *cens* properly so called, which is 3 *deniers* in place of 4.

(1) Ed. and Ord. in-8o, v. 2, p. 581

rate of the dues in this seigniory was not uniform. The rent in wheat might, therefore, not be the most *ordinary* rent, the *usual*. To apply that rule, there was therefore room for a consideration of the facts by the Intendant. If, on the contrary, there had existed a regulation fixing a certain and uniform rate, there would have been no difficulty; M. Hocquart, having no alternative would have been obliged to give judgment in 1748 as he had adjudged in 1738 by his ordinance of Gaudarville. And what then does he do in this instance. He orders the Attorney of the Seignioresses of Berther to give to the church a deed of concession, " on the condition only that in case the said church should alienate the said land, the new possessor shall be bound to pay to the proprietor of the Seigniory the *cens et rentes* at the *ordinary rate of* 1 *sol of rent for each arpent in superficies*, 3 *capons for all the land and* 2 *sols of cens.*" At this rate, and fixing the price of capons at 20 *sols*, as had been done by the ordinance of Gaudarville, the concession to the church was, without the *cens*, at the rate of 1 *sol* 6 *deniers* per arpent in superficies, that is to say, a little less than the rate adjudged for the seigniory of Gaudarville. At the rate for the latter, the Seignior of Berthier would have received 4 *sols* of *cens*, 4 capons, besides the *sol* of rent for each arpent in superficies.

Thus M. Hocquart himself has before his departure left us (1) a very convincing proof both of the non existence of any regulation limiting the *cens et rentes*, such as his ordinance of Gaudarville might, at the first glance, lead one to suppose, and also, in default of a conventional rate, of the perseverance in the rule of the common law, which directs the imposition, in similar cases, of the *ordinary* or *usual* dues, a rule recognized by the *arrêt* of 1711.

(1) The Intendant Hocquart arrived in Canada in the year 1729; and it was not until 1748 that the King send Mr Bigot to succeed him. Hist. of Canada by Mr. Garneau v. 1 p. 380 & 487.

172. Taking leave of M. Hocquart, I shall continue to analyse some other decisions rendered as well before as after the *arrêts* of 1711.

We find in two ordinances of M. Bégon, of the 3rd July and 14 Sept. 1720, (1) the circumstances of a suit which was contested a long time between the Seigniores of Vercheres and one of her censitaires.

By letter of the 4th July 1685 the seignior of Verchères had given in concession to one André Berjat a land of 3 × 30 arpents, on the condition of furnishing " 1½ minots of wheat, the *seignorial dues* and the day's work for the use of the common." Nicolas Bissonet, a party to the suit, had succeeded to Berjat. An Ordinance of the Intendant Raudot, of the 9th June 1686, rendered on the contestation with Bissonet, declared that the latter should receive his deed of concession " subject to the clauses and conditions " mentioned in the said letter, and, as respect the clauses " not expressed therein, subject to the clauses and con- " ditions mentioned in the deeds of concession which have " been given to the other inhabitants. " A deed of concession was made by the seigniores of Verchères in favor of the said Bissonet, on the 25th June 1704 (Adhémar notary.) The censitaire says that in the year 1707 the seigniores of Vercheres having refused to give him an acquittance for 5 years' rent, at the rate of 1½ minot of wheat, per annum, pretending that the rent was 3 minots of wheat, he had been obliged to institute legal proceedings before the intendant Raudot, who, by ordinance of the 25th June of the same year, had condemned the seigniores to give him a deed, on the clauses and conditions mentioned in the said letter of concession.

On the 2nd July of the same year (1707) the Seigniores of Verchères, on her part, had obtained from Raudot

(1) " Doc. Seig. " v. 2 p. 63 & 67.

another ordinance to the effect that Bissonet should pay for the said 3 × 30 arpents " 4 *livres* 10 *sols* and 1½ minot of wheat yearly." The latter said that this ordinance had not been served on him; that it had been rendered in his absence, and that he had not had any knowledge of it, except by a judgment of the 18th July 1719 which the said lady had obtained in the royal jurisdiction of Montreal. By an ordinance of the Intendant Begon of the 3rd July 1720, Bissonet was allowed to constitute himself opposant to the execution of that of the 2nd July 1707. The judgment rendered at Montreal by M. Raimbault had condemned Bissonet to pay the arrears of *cens et rentes* at the rate of 4 *livres* 10 *sols* and 1½ minot of wheat yearly.

Upon this new demand, intervened the ordinance of the 11th September 1720, which set aside Raimbault's decision, " inasmuch as he could not, nor ought he to take cognizance," it is said, " of ordinances rendered by M. Raudot, enunciated therein, " and which declared that," the order of 2nd July 1707 shall be executed according to its form and tenor, and that the said Bissonet shall pay to the said seigniores of Verchères the Seigniorial *cens et rentes* for the land which he enjoys conformably to the letter of the sieur de Verchères and to the titles of concession given him by the said seigniores, by contract passed before Adhemar, notary, at Montreal on the 25 June 1704. (1)

We see here a concession of 90 arpents, the dues for which, sanctioned by ordinances as well anterior as posterior to the *arrêts* of 6 July 1711, amounting (the wheat being valued at 4 *livres* a minot,) to 2 *sols* 4 *deniers*, and exceeding consequently, by 2/7th, the rate enunciated in the ordinance of Gaudarville. Even by valuing the Wheat at 3 francs only, these dues would have still exceeded that rate, because they would have been equal to 2 *sols* per ar-

(1) The *minute* of this deed could not be found.

pent. There was, therefore, no limiting regulation, or if there was such, it was allowable to derogate from it by the agreement of parties, both with respect to the nature and to the amount of the *cens et rentes*.

173. A concession *en censive* had been made by the Seignior of Becancourt to one Louis Larose, by a simple letter of the 9th September 1700, followed by a procès verbal of the boundaries, dated the 22th February 1703. Michel Perrot who, by contract of exchange, had acquired this concession from Larose was maintained in the property and enjoyment of this concession, by an ordinance rendered after contestation, by the Intendant Raudot, the elder, on the 15th June 1708; and the Seignior of Becancourt was ordered "to deliver to him a deed of concession for the same "according to the letter of concession of the 9th September "1700 and the limits stated in the said procès-verbal, and "subject to the other clauses and conditions mentioned in "and by the said procès-verbal and to the deeds of con-"cession which he has given to the other inhabitants."

Then, after an ordinance of delay dated the 22th Feby. 1709, another of the 24th August 1710 which was rendered by the Intendant Raudot, the younger, declared that his father's ordinance of the 15th June 1708 should be executed according to its form and tenor. (1)

There is, also, an ordinance rendered by the Intendant Jacques Raudot, the 8th March 1711 (2) on the petition of the widow Tonpin who had exhibited to him a concession, in seigniory, made to her on the 20th January 1706 to the rear of the Seigniory of Belair. The Dame Dauteuil claimed to have had a prior concession of it, but as she had passed over to France, the Dame Tonpin

(1) "Doc. Seig." v. 2, p. 38.
(2) Ib. p. 39.

obtained by this ordinance permission to concede lands in this new Fief " to the inhabitants who shall come forward for the purpose of establishing themselves, on the same conditions as the inhabitants who were established on the said Seigniory of Belair," the neighbouring seigniory.

These ordinances are not of a nature to teach us, nor even to lead us the least in the world, to suppose that previously to the *arrêts* of 1711, there had been any order of the King fixing a limit to the *cens et rentes* payable in Canada.

174. We find very important information in a deed of concession of the 13th October 1721, given by the Governor and the Intendant, Messieurs de Vaudreuil and Begon, to the widow of the sieur Petit, in his lifetime councillor of the superior council of Quebec, in conformity with an *arrêt* of King's council of state, dated the 2d June 1720 (1), and the tenor of which is stated in this deed.

His Majesty, it is said, had by this arrêt ordained, " that the Religious Ladies of the Hotel-Dieu of Quebec, " should grant to the Sieur Petit the uncleared land of " which they have taken possession, and which formed " part of their grant to the late Martin Le Pirs, of the " 28th June 1698, subject to the usual charges and rents " which shall be paid by the said Dame Petit in her said " quality together with all the arrears that will be due on " the day of such grant ; and in case the said Religious " Ladies would not make such grant, when requested so to " do, or at least within eight days from the day of the " service of the said decree, His Majesty had ordained that " the said lot of land should remain re-united to the King's " domain, in like manner as His Majesty has re-united the " same, by virtue of the said *arrêt*, and that a " grant of the same should be made by us (the Governor

(1) " Doc. Seig." ; v. 2, p. 72.

" and Intendant) to the said late Petit, subject to the same " rents and charges as are imposed upon the other conceded " lands of the Seigniory of St. Ignace belonging to the said " Religious Ladies, which rents should be paid in future " into the hands of the receiver of the King's domain in this " city, without that the said Religious Ladies should be " permitted to claim any right whatever upon the said lot, " provided nevertheless that the said late sieur Petit should " pay all the arrears of *cens et rentes* that should be due up " to the day of service of the said *arrêt*."

The Religious Ladies having refused to conform to this *arrêt*, the Governor and the Intendant, by the deed of the 13th October 1721, conceded to the widow Petit the land in question, " containing," say they " with the one she now possesses, 5 arpents, 4 perches, in front by 50 in depth which is the whole of the said grant made to the said late Martin Le Pirs..... 380 arpents of land in superficies.... under the condition of paying, every year, at the usual time, to the domain of His Majesty the same *cens et rentes* and dues that she pays to the said Religious ladies for the land forming part of the said concession, which holds of the said seigniory of St. Ignace, and under the ordinary clauses and conditions, and that, in proportion to the number of arpents, in superficies contained in the present grant....."

I have seen the deed of concession of these 380 arpents in superficies to Martin Pire dit le Portugais" subject to " 19 *livres* and 8 good live capons, and 8 *sols* of *cens* for the whole of the said concession," which, (the capon being valued at 20 *sols* as in the ordinance of Gaudarville,) even by including the 8 *sols* of *cens*, will not make quite 1 *sol* 6 *deniers* for the arpent in superficies. So, this would be less than the rate enunciated in that ordinance. The Governor and the Intendant having to guide themselves by the rule of the common law, which ought to govern in such cases,

could not make a more exact application of it than that which they have made in adopting the rate already existing on the rest of the original concession.

What is important to remark in this affair is, that the *arrêt* of the King attests anew the obligation under which the seigniors were to concede their uncleared and wild lands," under the penalty of forfeiture of their rights and reunion to the domain of the Crown, conformably to the first *arrêt* of 1711, the tenor of which, as being its basis, is set forth in this new *arrêt* rendered in a case resembling that provided for by the *arrêt* of 1711 ; that there is no mention of *cens et rentes ordered* by His Majesty otherwise than by the *Arrêt* of 1711 ; whence we ought necessarily to conclude that there existed no limiting regulation distinct from that same *arrêt*, and that seigniors and censitaires continued to be under the authority of the common law rule already pointed out. (1)

175. We may further profitably consult an ordinance of the Intendant Begon, dated the 28th June 1721 (2) in a suit

(1) There is nothing to explain the motive which induced the Sieur Petit to appeal to the King himself. The Religious Ladies, having by their refusal to concede, placed themselves in the situation provided for by the *arrêt* of the 6 July 1711, had there been in the matter an ordinance of reunion to the domain by the Governor and the Intendant and an appeal from that ordinance to His Majesty by the Religious Ladies ? Or had there been a disagreement between the Governor and the Intendant, or had they refused to intervene, or abstained from so doing ? and then a direct application of the Sieur Petit to the King ? This is what the published documents do not enable us to establish. In the one or the other of these hypothetical cases, the absence of knowledge in these respects might perhaps be reasonably accounted for by the fact that the record in the suit having been sent to France, was never sent back.

(2) Ed. and Ord. in So. v. 2, p. 161.

instituted against Joseph Amiot, seignior of Vincelotte, by four of his censitaires who had settled on lands of 40 arpents in depth " on the faith of the promises," they said, " which the defendant had given them in 1718, by his letter " under private signature, to concede the same to them " subject to the conditions of the concessions which he had previously made."

" At the hearing of the case, the Plaintiffs showed to " the Intendant that they had, in their petition offered to " take deeds in conformity with that which François Richard, *near neighbour* to the said Jean François Fournier, " had furnished to the Defendant, but that they have observed since, that in this deed (a copy of which they produced) there are very onerous conditions, such as to go and " bake in the *banal* oven of the said Seigniory, when one " should be constructed, which " they added " is not practicable in this country, especially in the winter, in consequence of the great cold and the distance between the " habitations, and other conditions contrary to the King's " intentions; wherefore they revoke in that respect their " offers, seeing that the Defendant had not even accepted " the same, and that on the contrary he had persisted in " requiring from them to pass deeds with conditions still " more onerous than those contained in that of Richard; that " he relies upon his having by the promises which he has " given to them, written and signed by his own hand agreed " to concede to them the lands which they actually possess on " the conditions contained in the deed which he has previously " given and that under pretext of this clause he wishes to " impose upon them the same conditions that he had imposed on Mathieu Guillet, one of his tenants, by the letter " which he had given him on the 21th May 1712, to concede " to him a land of 4 arpents in front, setting forth that the " said Guillet should have the enjoyment thereof on the same " conditions as the others and that the said Guillet should not

" besides be allowed to sell nor give from the said conces-
" sion any sort of wood, but only to take some for his own
" use, the said Defendant reserving for himself so much
" thereof as he might wish to take, on the further con-
" dition that if there still be along the Bras St. Nicolas,
" within the extent of the said concession, any place fit for
" erecting a mill thereon, he could do so without any con-
" sideration." The Plaintiffs added that the words, contai-
ned in their letters, "on the conditions of the concessions which he had previously made," could only mean those dues for which alone the Seigniors were permitted to stipulate.

Richard's deed of concession, which was dated the 30th October 1711, comprised a land of 5 × 40 arpents, liable to a charge " of one live capon and 30 *sols* for each of the 5 arpents in front, and 2 *sols* of *cens* ; " the whole tenor of this deed is set forth in the ordinance of the Intendant by which the Defendant is condemned " to pass in favor of
" each of the Plaintiffs within a month of receiving notice,
" a deed of concession for the number of acres of land as
" well in front as in depth which he has promised to con-
" cede to them in his letters, forbidding him to impose any
" other dues on the said lands than those of rent charges,
" and to cause to be inserted in the said deeds, any other
" conditions but those of keeping house and home, of pre-
" serving the oak trees fit for ship building, of cutting the
" trees along their neighbours' boundaries (*donner du*
" *découvert*) and of allowing roads which shall be neces-
" sary, of which deeds the Plaintiffs will each at his own
" expence furnish a copy ; and in default of the said Defen-
" dant, passing the said deeds of concession to the Plain-
" tiffs within the said period of one month, and the said
" time passed, we permit the said Plaintiffs to appear
" before Monsieur le Marquis de Vaudreuil and us to de-
" mand the said concessions in His Majesty's name *at the*

" *same rent charges and on the same conditions*, conforma-
" bly to the said *arrêt* of the King's Council of state of 6th
" July 1711."

This last portion of the ordinance is evidently erroneous; the object was not to force the seignior to concede, as he had done that already; and the Plaintiffs, by his own admission, were in possession of their lands. What was aimed at was to establish the charges on the concession; in which matter the Intendant alone had jurisdiction. (1)

If a case could have occured in which it would have been right to apply a regulation fixing the nature and the amount of the *cens et rentes*, this certainly was one. An end would thereby have been put to th proceeding. Nevertheless, the Intendant, Begon, who, considering the fact reported in the note below, cannot be accused of partiality towards the Seigniors, makes no mention of it. His ordinance is remarkable in many ways, with respect to the question of the *cens et rentes*. In the first place, it extends to no other persons besides the Plaintiffs in the case; it is not, as in the case of the Seignior of Eboulements (*suprà* no. 164), declared common to the other censitaires of Vincelotte; again it makes a vigorous application of the rule of

(1) The ordonnance was rendered without the Seignior having pleaded to the merits. After having appeared in person, he presented, *in limine*, said the Intendant, a petition, " praying for the reasons therein " contained, that it may please us to allow him forthwith to leave the " Court and to send the proceedings in question before the natural judges " of the parties, where the delays shall be observed, the more so as we " had expressed our opinion on the fact at issue in presence of witnes- " ses; upon which, adds the Intendant, seeing that since the 9th April last " when the Defendant was summoned, he has had time to prepare his de- " fence, and to employ an attorney to act for him; that the contesta- " tion depends merely on the non-execution of the *arrêt* of the King's " council of state of the 6th July 1711, the cognisance whereof is " given to no judge but us, in as much as is H. M. has directed the Go-

the common law in similar matters, already cited; founded chiefly on the *arrêt* of 1711, it avoids imposing on the Plaintiffs certain conditions or charges which the Seignior considered himself justified in stipulating in other deeds of concession.

In Richard's deed, which was produced in the suit, the annual rent properly speaking, a rent to which the Intendant applied the word "droits," as distinct from other charges and conditions of the concession, was fixed at "1 live capon and 30 *sols* for each of these 5 arpents in front, and 2 *sols* of *cens*, making, without the *cens*, 1 *sol* 3 *deniers* per arpent, in superficies (the capon valued at 20 *sols*) and 1 *sol* 6 *deniers* (the capon valued at 30 *sols*;) even in this last case, the rate would have been below that adjudged by the ordinance of Gaudarville; a rate of which the Seignior Vincelotte ought to have had the benefit, if such rate was intended to govern all the concessions, and to form, as a consequence, the common law, in the event of contestation, prescribing a limit which it was not permitted to pass. How happened it, then, that the Intendant Begon dit not, in the

"vernor and Lieutenant Governor in this country and us to concede "in his name the lands, in case of refusal by the Seigniors to concede "them on a rent charge, and without exacting any sum in money; "and considering that we have only said to the Defendant that we "will not permit that either he or the other Seigniors shall exact other "dues than those of rent charges allowed by the said *arrêt*, in conse- "quence of the orders given us to act strictly in the matter; we have "dismissed and do dismiss the dilatory pleas offered by the defendant, "together with the *renvoi* demanded by him; declaring the said cau- "ses of recusation impertinent and inadmissible, and order in conse- "quence, that the parties shall plead forthwith, and we condemn the "defendant, to pay a fine of 50 *livres*, one half payable to the King "and the other half to the Plaintiffs; and the said defendant having "withdrawn, after having refused to plead to the merits, the said "Plaintiffs have concluded, etc., etc.

matter in question, impose the rate named in the ordinance of Gaudarville, or that stipulated in Richard's deed. By imposing the one or the other, he would have put an end to the contestation. But he thought that, in the absence of agreement between the parties, there was only one rule to follow, that of the common law which prescribed, in such case, the imposition of that rate which was most ordinary and most customary. The rate of rent being far from uniform in the seignior of Vincelotte, (1) it would have been necessary to have had recourse to an *enquête* to ascertain the fact. A conventional rate not being excluded by the rule of the common law,the Intendant, in the exercise of his discretion, in accordance with the knowledge which he had acquired of the circumstances and the relations preexisting between the parties, believed that he could not do better than declare, merely that the seignior ought not to concede excepting on a rent charge, and leave to the parties the chance of agreeing among themselves as to the amount and the nature of this rent charge, thereby admitting the legality of a conventional rate, whatever it might be.

176. An ordinance of the Intendant Bigot dated the 1st June 1754, (2) rendered in the suit of a censitaire of the seigniory of La Pocatière, the Sieur J. B. Dumont, against

(1) I have verified this absence of uniformity by the examination of several deeds of concession: 1st one of the 2nd October 1697 (Rageot, notary) given to François Thibault; 2nd that made to the same, on the 30th June, 1703, (Génaple, notary); 3rd that of the 3rd May 1734 (Rageot, notary) made to J. B. Vincelotte, son of the seignior.

A judgment of the 20th January 1733, rendered at the *Prévoté* of Quebec, condemned a tenant of the same seigniory, one Dupéré who possessed a land of about 17 perches in front only, at the rate of 30 sols per arpent and 1 *sol* for the cens. Mr. Perrault's *Extraits*, published in 1824, p. 20.

(2) " Doc. Seig. " v. 2, p. 215.

the agent of the seignior, declares that the Plaintiff shall take possession of the land in dispute, conformably to a letter of concession of the 16th July 1731 given by the seignior to Louis Loziers, whose rights Dumont had acquired and that the Sieur Dionne, the agent of the Seignior, shall be bound to pass him a title deed in good form, on the plaintiff paying the *cens et rentes* on the whole of the said land from the 16th July 1731, the date of the letter, at the rate paid by the other inhabitants of the same range.

The letter was in these words :—

" I concede to Louis Loziers a place of 4 ⋈ 42 arpents in the second range, joining François Paradis, subject to the charges, conditions and dues of the other inhabitants of that range, whereof he will take a deed in proper form, and give a copy thereof to the seignior at his own expense."

I have seen the deed which Dumont took in consequence of this ordinance ; it is dated the 5th June 1756, passed in the shape of a new title (*titre nouvel*) before Dionne, notary. It mentions " 6 *livres* for the said 4 arpents in front and 1 *sol* of cens for each arpent, the whole making 6 *livres* 4 *sols* " ; that is to say, the rent is at the rate of 9 *deniers* only, per arpent in superficies, for a land of 4 ⋈ 40 arpents. (1)

I have further seen a deed of concession of the 16 May 1701 (Chambellan, notary) to André Minier dit Lagassé, of a land of 4 ⋈ 42 arpents in the first range of the same seigniory, subject to the charge of " 20 *sols* and 1 good capon of the brood of the month of May, or 20 *sols* for each capon, at the choice of the said seignior, of seigniorial rent, and 1 *sol*

(1) In the greatest number of the deeds of concession that I have examined, when the depth is given as being ½ league or 42 arpents, I have remarked that the rents were imposed as on a land of 40 arpents only.

of *cens*, the whole for each arpent in front, and 25 *sols* of other seigniorial rent for the right of beach for the whole of the said concession." For a concession of 4 × 40, the rent (not including that for the beach) would be at the rate of 12 *deniers* per arpent in superficies, that is to say, 3 *deniers* more than for the land in the second range.

All this proves that the rates and nature of the rents were different even in the same seigniory. In Dumont's concession, the letter and the Intendant's ordinance, by saying " on the footing of the other inhabitants of the same *range*," prove that the parties contracted with the full knowledge of the existence of a rate for this *second* range different from that of the first. This rate was less, it is true, but does not that prove that the parties, in order to fix the amount of the rent, be it more or less, might take into consideration the value of the lands, their quality, their situation, etc., etc.

177. We see by an ordinance of the Intendant Bigot, under date of the 7th August 1756 (1), that on the 2nd August 1754, M. Marchand, proprietor of the Seigniory of St. François le Neuf (parish of St. Charles, River Chambly,) had, by deed passed on the said day before Duvernay, notary, conceded to Amable Beaudry *an emplacement* (building lot) of 61 × 179 feet, subject to the charge of 30 *livres* and of building a house thereon; which lot was near the church. Beaudry had built this house, but by an ordinance of the same Intendant, bearing date the 27th July 1756, he had been condemned to demolish it, and to pay a fine of 100 *livres*, seeing that he had contravened the King's ordinance of the 6th February 1745 (2) which prohibited building outside of towns, villages and upon less land than 1|2 × 30 to 40 arpents, and there being neither village nor borough

(1) " Doc. Seig."; v. 2, p. 217.
(2) Ed. and Ord. in-8o. v. 1, p. 585.

erected in the said parish of St. Charles. Beaudry demanded, in consequence, that his contract should be rescinded, and the seignior adjudged to reimburse him the amount which it had cost him to build the said house, by the decision of experts, and to pay him 1500 *livres* damages and costs. The ordinance rescinded the concession, annulled the deed of the 2nd August 1754, allowed the defendant to dispose of the lot of ground, and condemned him in 200 *livres* only of damages in favor of Beaudry.

I have examined the *minute* of this deed of concession; "it is made subject to *cens et rentes* seigniorial, *foncière*, and not redeemable." And to the condition "of paying each year on St. Martin's day, 11th November, 30 *livres tournois* in money.... of concession of hereditaments, of Seigniorial ground rent, and 3 *sols* of *cens* for the said emplacement. This rent of 30 *livres* in money ought, for the time in which the agreement took place, to appear very high, if not even excessive. Nevertheless, it was not the object of any remark on the part of the Intendant. Although the contract was annulled for another reason, can it be believed that the Intendant would have kept silent respecting the amount of this rent if that amount had been illegal? This is still one more proof that where the agreement between the parties in the *bail à cens* had established the amount of the dues, such a convention was not liable to attack.

178. François Massicot, censitaire of Batiscan possessed more land than was contained in his title deed. This gave occasion to a suit between the seigniors and him, before the seigniorial judge, who decided the cause in favor of the former. Massicot appealed to the royal jurisdiction of 3 Rivers, where he obtained a judgment setting aside that of the judge of Batiscan, and maintaining the appellant in the enjoyment and property of the surplus of the land on

payment by him of 29 years of *cens et rentes* at the *pro rata* of his concession, without prejudice to the current year, and continuing these *cens* in perpetuity, ***and subject, for the said surplus, to all the charges mentioned in the said deed of concession.*** The seigniors carried the case before the Superior Council of Quebec which by *arrêt* dated the 15th Nov. 1756, confirmed the judgment of the Court of Three Rivers. (1)

This suit affords new proof that, when the tribunals were called upon to fix the *cens et rentes*, they followed the rule of the common law, already indicated, which in a similar case, allowed them to weigh the circumstances. If there had been a limiting regulation, they would have, at once, applied it, rather than prolong the litigation to ascertain the ordinary or customary dues in the seigniory or the neighbouring seigniories.

179. I have given a statement of such of the decisions of the judicial authorities under the French Government, to be found in our books as may have any influence on the point under discussion. I have established that prior to the *arrêt* of 6th July 1711, the amount and the nature of the *cens et rentes* were not uniform, even in the concessions *à cens* made in the King's domain. Let us see if, after that period, they became fixed and uniform in that domain itself and if the rule that governed these concession was that enunciated by the Intendant Hocquart in his Ordinance of Gaudarville, namely, 1 *sol* 3 *deniers* per arpent in superficies.

180. Beginning at page 242 of the volume containing deeds of concession, we find 5 of them, from 1734 to 1750, granting *en censive*, several lots of land situate in the

(1) Ed. and Ord. in-8o, v. 2, p. 246.

straight (*Détroit*) of Lake Erie. (1) Three of these concessions were made by the Governor and the Intendant Hocquart himself and two by the Governor and the Intendant Bigot.

All are made on the same footing, with regard to the *cens et rentes*, which are stipulated in money and in wheat namely, 1 *sol* of *cens* for each arpent of front and 20 *sols* of rent for each 20 arpents in superficies, and moreover half a minot of wheat for every two arpents in front, the rent thus making (valuing the wheat at 4 *francs*) 1 *sol* 6 *deniers* per arpent in superficies.

We further find there three other concessions, made in the same place from 1751 to 1753, by the Governor and Intendant Bigot, each at different rates: the first dated the 10th October 1751, to the Abbé Piquet, misssionary, of $\frac{1}{2} \times \frac{1}{2}$ arpent, for the consideration of " 5 *sols* of rent and 6 *deniers* of *cens*, yearly," for the whole lot of land, making 1 *sol* 10 *deniers* per arpent; the second, dated 12th June 1752, to Donville Dequindre of the Hog Island of about $\frac{1}{2}$ a league in length by 20 arpents in breadth " at the rate" of 2 *sols* of *cens* and 4 *livres* of rent, and besides of 1 minot of merchantable wheat for the whole of the said concession, giving only about 2 *deniers* per arpent in superficies, valuing the wheat at 4 francs the minot: the 3rd concession dated the 16th May 1753, to the same Dequindre, of 8×60 arpents, at the rate of " 1 *sol* of *cens* for each arpent in front and 20 *sols* of rent for every 20 arpents in superficies making for the said 8×60, 8 *sols* of *cens* and 24 *livres* of rent and besides of 2 minots of merchantable wheat for

(1) Concession of 2×40, to Chauvin, 16 June 1734.
" 4×40, to Bonhomme, 1 Sept. 1736.
" 3×40, to Navarre, 1 May 1747.
" 12×40, to de Longueuil, 1 April 1750.
" 2×40, to Réaume, " "

the said 8 arpents of front," thus giv[illegible] at 6 francs) 1 *sol* 4 *deniers* per arpent in superficies.

Far from being uniform, the dues for these concessions varied from 2 *deniers* to 1 *sol* 10 *deniers* per arpent in superficies. The amount of 1 *sol* 6 *deniers* is that of the three concessions to which the Intendant Hocquart was himself a party. This amount is, it is true, less by 2 *deniers* than the rate contained in his ordinance of Gaudarville, as being the " *cens et rentes* ordered by H. M."; but it differs in the circumstance that part of the rent is in *wheat*, while it ought to have been in capons agreeably to that ordinance ; a new reason for not believing in any regulation limiting the amount and the nature of the dues. It will perhaps be said that the rate of those three concessions made at Detroit being less than the other, the Intendant Hocquart confined himself within the limits announced in his ordinance of 1738. Be it so. But scarcely three years had passed after that ordinance, when we see this M. Hocquart and the Governor M. de Beauharnois, granting, on the 1st May 1741, (1) to François Moquier, a concession of 5 arpents in front, to the south of Fort St. Frederic, at the rate of 1 *sol* of *cens* for each arpent in front, and 20 *sols* of rent for every 20 arpents in superficies, and further 1p2 a minot of merchantable wheat for every 40 arpents also in superficies," that is to say, for 5 × 40 arpents at the rate of 2 *sols* per arpent in superficies, the wheat valued at 4 francs the minot ; which makes one sixth more than the dues contained in the ordinance of Gaudarville. Another similar concession of a lot of land, situated in the same place, was made, on the 15th March 1744, by the same Intendant and the same Gorvernor to the sieur Hertel Beaubassin. (2)

(1) Tit. des Seig. p. 245-246.

(2) Titre des Seig. ; p. 246.

Note.—The *arrêt* of the Superior Council (above, no. 168) which in the case of Robillard with his seignior, had fixed the value of the

181. Thus *after* the Ordinance of the Intendant Hocquart in which he is supposed to have said that the King had regulated the dues in money and in capons, and, in fact, had fixed them at a rate equivalent to 1 *sol* 8 *deniers* by the arpent in superficies, we see this Intendant himself making concessions, *en censive*, in His Majesty's name, at a rate now lower and now higher. The *cens et rentes* not being capable of being an object of revenue for the King, which they necessarily would be for his vassals, is it to be presumed that, if he had limited the *cens et rentes* exigible by these last from their censitaires, he would have permitted that those who took concessions *en censive* in his domain would, by a pure caprice, of the Governor and the Intendant have been treated less favorably than the tenants of seigniors? That alone ought to prove that the King had never made a limiting regulation, different from that which might arise out of the provisions of the *arrêt* of the 6th July 1711; and, further, this provision was made only for a case altogether peculiar. Even for this last case it may be said that the seignior had himself, in some sort, already fixed the rate of the dues for the concession which the Governor and Intendant ought to give on his refusal to do so, because they were to give "subject to the same dues imposed on the other lands conceded in the said seigniory," (*Arrêt* of 1711,) and that it was he himself, the Seignior, who by previous concessions, had already established these same dues in his *censive*. There might then be two different rates, one for the King's *censive*, the other for that of his vassal, and without any limitation of the amount in either case,

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wheat at 4 *francs* the minot, is dated the 2nd March of the same year, 1744. As far back as the 19th March 1669, an *arrêt* of the Superior Council had valued the wheat at 4 francs the minot, by ordaining "that provisionally, for the space of 3 months from the day of "its publication, debtors might give in payment, as well to merchants "as to other creditors, good and merchantable wheat at the price of "4 *livres* the minot, forbidding the same to be refused, etc."
(Ed. and Ord. v. 2, p. 47.)

which amount might be sometimes higher, sometimes lower, in the one *censive* than in the other. (1) But the disposition of the *arrêt* presumes the possibility of a difference between the rates of two *censives*. In the special case to which it is intended to apply, there was *reunion* to the domain of the crown, of the land, *refused* by the seignior, and the dues for the concession of this land, made by the Governor and the Intendant, ought to belong to His Majesty: Nevertheless, His Majesty does not direct that the concession shall be made subject to the same dues imposed in his own *censives*, but subject to the dues imposed in the seigniory of his vassal, although the land thus conceded should be severed from it.

182. One fact very important to establish, in this matter of the amount of the *cens et rentes*, is that no concession in fief, anterior to the *arrêts* of 1711, specifies the rate of the rent charge which the vassal could impose on his tenants; and that of all the concessions which are posterior to these

(1) In a letter of the 6th Oct. 1734 (p. XVII of "Documents" received from France) Messieurs de Beauharnois and Hocquart, rendering to the ministers, an account of the concessions which they had made, say: "those which are *en censive* are situated at Detroit, and almost all settled already. The title deeds which they have received contain nearly the same clauses, with respect to the reservations, as the concessions in fief, and the charges are also the same, as those to which the individual seignior ordinarily subjects their vassals, with the exception of the liberty that is given to the grantees at Detroit, to pay to the receiver of the domain the *cens et rentes* in furs, until such time as money shall be established at that post.

Thus, far from the concessions *en censive* made in the name of the King, serving as a rule for fixing the dues for those made by particular seigniors, it was, on the contrary, these last that were, on this occasion, adopted by the Governor and Intendant as intended to serve as a rule for the former; which excludes all idea of the existence of a limiting regulation.

arrêts, and which are very numerous, four only make mention of a specific rate ; even in that respect, too, these four concessions are not all alike.

The first, which bears date the 10 April 1713 (1) is that of the second part (or augmentation) of the Seigniory of Beaumont, near Quebec. It was made by the Governor, the Marquis of Vaudreuil, and the Intendant Begon, to Charles Couillard, sieur de Beaumont, the son (2), " subject to the condition of conceding " the said lands on a simple " rent charge of 20 *sols* and 1 capon for every arpent by 40 " in depth, and 6 *deniers* of *cens*, without that he could " insert in the said concessions either a sum of money or " any charge, but that of a simple rent charge and those

(1) Tit. des Seig., p. 64.

(2) In his petition the grantee alleges the following facts : " That the sieur de Beaumont, his father, has not only settled the Seigniory of Beaumont,.... granted to him and of which he is in possession for more than 40 years, but that he has extended farther in depth by about one league and a half beyond the said concession, *upon which land not conceded to him he has been at much expence and conceded several lots of land*, believing that the said depth belonged to him, and not discerning the contrary but within 2 or 3 years, when he received the deed of concession of the said seigniory of Beaumont, and as it is more just that the said sieur de Beaumont his father, or his family, should profit by the said land rather than any other, seeing the considerable expence that he has incurred in its settlement and that he is in possession of it, etc., etc."

Without any doubt, the rate specified in the deed of the 10th April 1713 was that already adopted by the seignior as well for this as the first concession. Either the mention of the rate might have been suggested by the petitioner himself, the better to succeed in his claim, and to excuse the encroachments of his father, or probably it was made, only to protect the tenants against any attempts which the seignior might have made to raise the rates of their *cens et rentes* under pretext of his new title.

" herein above according to the intentions of His Majesty," that is to say, certain charges or reservations contained in the title deed of the fief itself and which the seignior was allowed or enjoined to stipulate in the deeds which he should give to his tenants.

In valuing the capon at 20 *sols*, as was done afterwards in the Ordinance of Gaudarville, a concession, on the terms above specified, would amount to only 1 *sol* of rent by the arpent in superficies, that is to say, 2|5ths less than the rate enunciated in that Ordinance as being the rate ordered by His Majesty. It follows, then, that the rate contained in the second concession of Beaumont was not a general rate, established by the King for all the seigniories, but merely one peculiar to this seigniory.

183. The second concession in Fief making mention of a specific rate of dues is that of the first portion of the seigniory of Mille Isles (St. Eustache, District of Montreal,) given on the 5th March 1714, (1) by the same Governor and Intendant to the Sieurs de Langloiserie and Petit, under the obligation ..... " to concede the said lands, subject to " the simple dues of 20 *sols* and 1 capon for each arpent of " land in front by 30 in depth, and 6 *deniers* of *cens*, " without that there can be inserted in the said concessions, " either any sum of money or any other charge besides that " of a simple rent charge and those herein above, according " to the intentions of H. M." (2) which would make (the capon being valued at 20 *sols* and the concession being only of 30 arpents in depth) a rent of 1 *sol* 4 *deniers* per arpent in superficies, exceeding the rate fixed by the deed of concession of the second portion of Beaumont, but less than that of the ordinance of Gaudarville.

(1) Tit. des Seig. p. 59.

(2) For the meaning by the words, "those herein above," see the foregoing no.

The King's Patent confirming this concession of Mille-Isles is dated the 5th May 1716. (1) It recites almost all the charges or conditions inserted in the deed of concession, with the exception, nevertheless, of that of the ***cens et rentes***, of which it makes no mention under any form whatever.

That is not all; there is a second portion (or augmentation) of the seigniory of Mille-Isles. This concession was made to M. Dumont on the 20 January 1752, by the Governor M. de la Jonquière and the Intendant Bigot. (2) It is said therein that he will cause " the like conditions to be inserted " (that is to say such as are contained in his own) " in the concessions which he will make to his tenants, subject to the ***cens et rentes*** and dues customary by the arpent of land in front by 40 in depth." The same thing is repeated in the patent of ratification which is of the date of 1st June 1753. (3)

There are two remarks to make regarding these two concessions which, I believe, form at present but one seigniory :

1st. From the fact that the clause in the deed of the second concession relating to the ***cens et rentes*** is repeated in the patent of confirmation, and that the clause in the deed of the second concession limiting the amount of these same ***cens et rentes*** was not so repeated in the patent which concerns it, might we not conclude that the King was not desirous to give effect to the limiting clause of the deed of the first concession?

2nd. By the second concession, the ***cens et rentes*** were to be the usual ***cens et rentes*** for every 40 arpents in depth, while in the first they were fixed for lands only 20 arpents

(1) Brevets de Ratifit., p. 10.
(2) Titre des Seig. ; p. 229.
(3) Brevets de ratif, p. 131.

in depth. The new concession does not state that it will be the usual *cens et rentes* in the first concession ; let us suppose that such was understood, there would then be a difference of ¼th beween the dues in the two portions of the seigniory. Now these two concessions are posterior to the two celebrated *arrêts* of the 6th July 1711 ; and the last is even posterior to the ordinance of Gaudarville of the 23rd January 1738. Would it not have been lawful for the seignior to have adopted the rate enunciated in that ordinance for the second portion of Mille Isles, if such rate had really been ordered, or authorised by the King ?

184. The third concession which makes mention of a fixed rate is that of the first portion of the seigniory of the Lake of Two Mountains, made to the Seminary of Montreal on the 17th Oct. 1717, (1) under the obligation ..... " to concede the said lands at the simple charge of 20 *sols* " and 1 capon for each arpent of land in front by 40 in " depth, and of 6 *deniers* of *cens*, without that there can be " inserted in the said concession, either sums of money or " any other charge besides a simple rent charge, according " to His Majesty's intentions."

This restriction on the alienation of the fief, which the seigniors of the Lake of Two Mountains might make, is considerably modified by the patent of ratification, which is dated the 27th April 1718, (2) which patent mentions, " under the obligation.....to concede the said lands " which are in standing wood, on the simple condition of a " rent charge of 20 *sols* and 1 capon for each arpent of " land in front by 40 in depth, and of 6 *deniers* of *cens*, " without that there can be inserted in the said concessions " either any sum of money or any other charge than that " of a simple rent charge, His Majesty, nevertheless, per-

(1) Tit. des Seig. p. 337.
(2) Brevets de ratif. p. 7.

" mitting them to sell or give at a higher rent charge, the " lands whereof one fourth, at least, shall be cleared."

We may here remark that the rate of *cens et rentes* of this concession is similar to that mentioned in the concession of the second part of Beaumont (valuing the capon as for this last seigniory at 20 *sols*) save in the exceptional case mentioned in the patent of the 27th April 1718. But matter did not long continue thus, as we shall see by the deed of concession of the second portion of the Seigniory of the Lake, which bears date the 26th September 1733 (1) This concession was made to the same Eclesiastics, " on " the condition..... therein to keep and cause to be kept " *house and home*, by their tenants within the year and day, " in default whereof it shall be reunited to H. M.'s domain ; " to clear and cause to be cleared incessantly the said land ; " to allow the King's highways and others necessary for " public use in the said concession, and to cause the inser- " tion of the like conditions in the concessions which they " shall make to their tenants at the usual *cens et rentes* " and dues per arpent of land in front by 40 in depth."

The patent of ratification which is dated the 1st March 1735 (2), is similar to the extract above given from the deed, as far as the words " in the said concession " ; it then says, " and to cause the like conditions to be inserted in the con- " cessions by deed which they shall make to their tenants, " subject to the usual *cens*, *rentes* and dues for *each* arpent " of land *in the neighbouring seigniories*, *regard being had* " *to the quality and situation of the hereditaments*, at *the* " *time* of the said concession, of each land of, *being that which* " *His Majesty wishes also to be observed, as respects the* " *lands and hereditaments of the seigniory of the Lake of* " *Two Mountains, belonging to the said Eclesiastics, not-*

(1) Titres des seig. p. 171.

(2) Brevet de ratification, p. "

" *withstanding the fixing of the said cens and dues and of*
" *the quantity of land of each concession, mentioned in the*
" *said patent of* 1718, *from which His Majesty has deroga*
" *ted.*"

The words of the patent which are in *Italics* were not contained in the deed of concession. They embrace the *first* as well as the second portion of the seigniory, and in consequence obliterated from the deed of concession of that first portion the exceptional clause limiting to one *sol* (as for Beaumont) the rent payable by the censitaire. If this limiting clause had the effect, as has been pretended, to establish a general rate, binding on all the other seigniories the result must have been that the dues in the neighbouring seigniories to that of the Lake, would have been reduced to the amount of this last. In that case, it would, therefore have been an absurdity to say, as was done in the patent of 1735, that the seigniors of Two Mountains, notwithstanding the limiting clause, might concede at the rates of " the usual *cens*, rents and dues, for each arpent of land in the neighbouring seigniories," since this would have been the same rate, as that theretofore existing in their own seigniory, and established under the influence of their own title deed.

There is one last remark to make, as to the special titles of this seigniory. The concession of 1717, containing the limiting clause under review, makes no mention of other seigniories; neither does the patent of ratification of 1735, which revokes this clause. If, reasoning by induction, one would consider himself justified in maintaining that this limiting clause has had the result of affecting all the other seigniories, for it may be said, such must have been the King's intention, although that intention does not appear otherwise than by the mere fact of the insertion of this clause in a particular deed; assuredly the same reasoning ought to apply, with no less force, to the patent of 1735

and to lead us to the inevitable conclusion that this patent, by annulling the clause of limitation as regards the seigniors of Two Mountains, has necessarily had the effect of exempting all the other seigniories from its operation, for such ought equally to have been the King's intention. There is the same reason to infer by induction this royal intention, in the one case as in the other.

185. In fine, the fourth and last concession, in which the amount of *cens et rentes* is found mentioned, is dated the 18th April 1727. (1) It is a concession of the fief Saint Jean (or its augmentation), situate in the District of Three Rivers. It was made to the Religious Ursuline Ladies of Three Rivers (2), "subject to the condition..... not to "concede the said lands except on a simple rent charge of "20 *sols* and 1 capon for each arpent in front by twenty ar- "pents in depth, and 6 *deniers* of *cens*, without that there "can be inserted in the said concessions either any sum of "money whatsoever or any other charge but that of a sim "ple rent charge, according to H. M's. intentions." (3)

It will be seen that the rate of dues, as fixed for this fief St. Jean, is *double* that which had been established for the second part of Beaumont, in the first place, and afterwards for the first part of Two Mountains. It amounts to 2 *sols* per arpent in superficies, by valuing the capon at 20 *sols* as for the two other seigniories and that of Mille-Isles. It, consequently, exceeds by 2/6ths the rate of this last.

186. It is further to be remarked that these four concessions were not the first that had been given after the enregistration of the *arrêt* of 1711. Two others had preceded

(1) Brevets de ratif., p. 84.

(2) See no. 121.

(3) The patent of ratification of this concession is mentioned under no. 400 in M. Dunkin's analysis, part 2, p. 12. It does not appear that this clause limiting the rate was repeated in the patent.

them, made on the 24 March 1713, one on the river Yamaska to M. de Ramesay, Governor of Montreal, and the other, *the augmentation of Belœil*, to the Sieur de Longuenil, the King's Lieutenant in the Government of Montreal. (1) Now, there is no mention of the dues which the two grantees could impose on their tenants. There had, therefore, been, as yet, no discovery of a fixed general and uniform rate in the provisions of the *arrêts* of Marly.

186 (twice.) But of the four special concessions whereof we speak, which of them is it that the partisans of a fixed and general rate will bring forward to support their pretensions? Is it that which authorises the rate that is highest in amount, or that which enunciates the lowest? Or will they declare that the average of those four concessions must be taken? In that case, it will follow that in granting the highest dues, as to the Ursulines of 3 Rivers, or the lowest, as to the Seignior of Beaumont, the King had not, at the time of making those concessions, the intention to establish a general rule for the other seigniories of Canada, by adopting the one or the other of these two amounts, but merely to make individual exceptions, one of which treated more favorably the proprietors of the fief St. Jean, and less favorably the proprietor of the fief Beaumont. In the contrary system, we should be forcibly led to this, almost absurd, conclusion; that in acknowledging that, until the year 1713, there had been no limit to the rate of *cens et rentes*, things were wholly changed at that period, by the adoption of a universal rate, arising from the concession of Beaumont, and equivalent to the fixed sum of one *sol* per arpent in superficies; that matters changed eleven months thereafter, by the adoption, in 1714, of another universal rate of 1 *sol* 4 *deniers* resulting from the first concession of Mille-Isles; that either this rate, or the mean between this rate and that of Beau-

(1) Tit. des seig. p. 454 and 455.

mont, must have been the general rule until the year 1717, and perhaps even until 1727, the date of the concession of the fief of St. Jean, according as the first concession of Two Mountains, which dates from the first of those two years, is capable of being interpreted as having had the effect either of allowing this mean to subsist or of making it to disappear, and thereby to reduce anew to one *sol* the rate of the *cens et rentes*, even for the seignior of Mille-Isles; Since, the concession of Two Mountains would have brought us back again, in that case, to the state of things in 1713, that *innocent* state of which the Intendant, M. Randot, spoke: that, in fine the rate of dues would have been merely modified anew in the year 1727, by the adoption of the rate of 2 *sols* authorised by the concession of the fief St. Jean, and that since this last period, either that rate of 2 *sols*, or the average, between that rate and the rate, either of Beaumont or of the first average above indicated, must have been the general rule for all the concessions, as well past as future. Does not the demonstration of the fallaciousness of the system against which I have been contending amount to the highest evidence! It seems to be a matter of cause.

187. Another authentic document which further repels this system is the Intendant Bigot's ordinance of the 27th May 1758 (1), which appears to have been the last rendered on this subject under the French Government. That Intendant had, by a judgment of the 8th October 1754, enjoined on possessors of lands, holding of the King in the censive of Quebec, to report, at the Office of the domain, all their title deeds, in order that they might be enregistered, by *extracts*. The director afterwards presented a petition to the Intendant setting forth that in proceeding in execution of his jugment, he had assertained that the *cens et rentes* of three fourths of the emplacements were *unknown* and *to be regulated*, the

(1) "Doc. Seig." v. 2, p. 222.

original deeds being lost; that he had seen, by the deeds of the other fourth, that all the concessions in the town had been granted by the Governors and Intendants, subject to the charge of 5 *sols* 6 *deniers* of *cens et rentes*, payable yearly, at the office of the receiver of the domain; that the concessions of lands in the *banlieue* of Quebec had been made, subject to the charge of *one denier of cens et rentes* for every arpent in superficies, and that it were well that the *cens et rentes* should be fixed.

The Intendant, by his ordinance, fixed at the respective amounts above mentioned, the said *cens et rentes*, permitted the director to sue for the recovery of them, on that footing, for 29 years back, and ordered that, in future, they should be recovered every ten years.

The first reflection which presents itself to the mind is, that if the King had, as is pretended, fixed the amount of the *cens et rentes*, there would not have been any necessity for the Intendant to do so, on this occasion; the second is, that the concessions in the *banlieue* of Quebec, being the most ancient, the rate of *cens et rentes* adopted in these concessions must, according to the system of the "seigniorial questions," have become the general and uniform rule in the neighbouring seigniories, and have extended, successively, from seigniory to seigniory, descending, on the one hand, as far as Acadie, and, on the other hand, ascending as far up as Detroit on Lake Erie. This rate would have had the double advantage of being fixed and very moderate, only one *denier* per arpent in superficies. This would really have been the *modicum canon* of which Dumoulin speaks. Under this system, the 124th article of the Custom of Paris, which allows the censitaire to prescribe against his seignior as to the amount of his *cens*, would have been simply an absurdity or nonsense.

But it was not thus, even in the King's domain. There, as in the individual seigniories, the rate of *cens et rentes* had constantly varied, both as regarded their *amount* and their *nature*. The concessions already referred to, made at Detroit and Fort St. Frederic, prove that ; and the extract of a register deposited in the office of the Provincial Registrar (1), setting forth " the King's rights and reservations in the concessions " affords new evidence of it. From that extract we learn that the *ordinary* rate of the dues in the King's *censives* had increased, even under the French Government, to *one sol* of *cens* for each arpent in front, and 20 sols of rent for every 20 arpents in superficies, and half a minot of merchantable wheat for every two arpents of front. There is a wide difference between the humble and moderate rate of the *banlieue* of Quebec, imposed at the time the first concessions were made in the colony, and this comparatively considerable rate which thus became, at a later date, the ordinary rate in the King's *censives*. But the one, no more than the other, did not establish a general rule, binding on his vassals.

188. The ordinance of the Intendant Bigot, cited in the preceding number, fixes another important point in connection with the amount of the dues, the mere *emplacements* were distinguished from *lands* properly called. These *emplacements* were, in general, charged with much heavier dues, often varying according to the places and the circumstances. By this ordinance, which acknowledged the legality of these rates, although different, the rate of a *land* in the *banlieue* of Quebec, would not have been more than one sixtieth of that of an *emplacement* in the town, supposing that the extent of this *emplacement* amounted to an acre. We have seen, at No. 177, that an *emplacement* of 61 × 179 feet adjoining the church of St. Charles, (River Chambly,) had

(1) " Doc. Seig." v. 2, p. 258.

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been conceded in the year 1754, subject to a charge of a seigniorial rent of thirty *francs* besides 1 *cens* of 3 *sols*. I have examined the titles of a great number of *emplacements*, of less than one arpent, conceded in the town of 3 Rivers, at different times, from 1683 to 1752, the seigniorial dues of which vary from 1 *denier* for 50 feet of front by 7 *toises* in lenght, to 15 *livres* in money, with 1 live capon, and 2 *deniers* of *cens* for an *emplacement* of 40 × 20 feet.

By an *arrêt* of the Superior Council, dated the 29 May 1713 (1) in a suit between the seignior and the possessor of *emplacements* in the *bourg* of Fargy (Beauport), explaining a previous *arrêt* of the 22rd July 1669, the dues which the seignior might exact on these *emplacements* are regulated at " 1 *sol* per arpent of *cens* and a chicken ready to capon of seigniorial rent, " making, thus, a rent of 20 *sols* for an acre by estimating at that sum the value of the capon. The *arrêt* grants, therefore to a particular seignior 15 *sols* above what was paid in the King's *censive* at Quebec by the proprietor of an *emplacement* of the same extent ; a new proof that the rate with which His Majesty was content in his own *censives* was not a rule for those of his vassals. Yet the *arrêt* for the *bourg* of Fargy was posterior, not only to the *arrêt* of Marly, but also to the Beaumont concession, which fixed the dues at one *sol*, without making a distinction between the concessions of lands and those of *emplacements*.

Such a distinction has, not the less, existed from the commencement of the Colony. It was the result of the common law which, on the one hand, recognized, in all cases, the legality of a conventional rate, and, on the other, specially gave to the Seignior the right to alienate, that is to say, to dispose of his *cleared* lands in such manner as he might think proper. This distinction was continued to our

(1) Ed. and Ord. in 8, v. 2, p. 161.

day. It is formally acknowledged by the law abolishing the seigniorial tenure, when it declares (art. 2, of the 6th section) that " the commissioners, in estimating the yearly " value of the *lods et ventes* in any seigniory, shall distin- " guish those accruing on lands held as *emplacements*, or " building lots, or for other than, agricultural purposes, " *which shall form one class*, from those on lands held for " agricultural purposes, *which shall form another class ;* " and the commissioner shall apportion the yearly value of " the *lods et ventes* on each class upon the lands belonging " to that class, charging each land with a portion thereof " proportionate to its value with regard to lands held as " *emplacements* or building lots, or for other than agricul- " tural purposes and proportionate to its extent with regard " to lands held for agricultural purposes. "

189. It is in vain that the partizans of a fixed, limited and uniform rate attempt to seek support from the correspondence of the Intendants with the King's ministers ; the result of that correspondence militates against their system. In his letter of the 10th Nov. 1707, the Intendant Raudot establishes " that almost in all the seigniories the dues were different, some paying in one way, some in another, according to the different characters of the seignior," and desiring, he says, " to put things into a kind of uniformity," he asks for a law under the form of a Declaration by the King which would regulate for the past as well as for the future the dues for concessions at 1 *sol* of rent for each arpent in extent, and one capon for each arpent of front or 20 *sols* at the choice of the grantee. M. de Pontchartrain, in his letter of the 13th June 1708, thus answers him. " It is greatly to be desired that the seigniorial dues throughout the whole extent of Canada could be reduced on the same footing. See what can be done in the matter, and inform me of it." Then, without waiting for a new statement from the Intendant, he directs M. Deshaguais to prepare in

concert with M. d'Aguesseau, the draft of a law for the purpose of regulating, as well for the past as for the future, the dues of the seignior at one *sou* of rent and one capon for each arpent of land in front, or 20 *sols* at the choice of the grantee," going, in this still further than M. Raudot, since the latter proposed that the rent in money should be one *sol* for the arpent in extent, or superficies, while the minister seems to desire a rent in money of only one *sol* for each arpent of front. M. Raudot reiterates his suggestions of reform in a letter of the 18th October 1708, accompanying it with a memorial, " containing, he says, the dues " which I have found in several deeds of concession, *all* " *different*, on the margin of which I have stated my opi- " nion concerning the diminutions and reductions which " might be made therein, and I have in that acted in con- " formity with the first concessions which have been given " in innocent times (*dans un tems innocent*) and in which " people did not seek all those advantages." Well, then, what was it that the King did with all those suggestions? Did he adopt them and give them effect by a law? No Three years afterwards, he promulgated the *arrêt* of the 6th July 1711, and he did not touch on the question of the amount of dues to fix their limits, as suggested by the Intendant and the minister. He left the parties free, as they had always theretofore been, to fix them by agreement, He prescribed, nevertheless, a rule for establishing this amount, but it was merely for the exceptional case in which the concession should be made by the Governor and the Intendant, on an unjust refusal of the Seignior to make it; and, still this rule is only that of the common law in analogous cases. The concession was to be made, " subject to the same dues as those imposed on the other lands conceded in the same seigniories;" and when the King prescribed this rule, he was well and duly informed that those dues were *different in almost all the seigniories*. He acknowledged, therefore,

their legality, however different they might be! He wished therefore the existing state of things to be continued in this respect.

Such was the case with the *arrêts* of the King of France subsequent to that of the 6th July 1711, more particularly the *arrêt* of the 15th March 1732 rendered in consequence of suggestions made by Messieurs de Beauharnois and Hocquart who, even they, seemed to think that the seigniors were bound to concede at the rate of one sol of rent per arpent, and a capon for each arpent of front. (Letter of the 3rd October 1731.) none of those *arrêts* contain limiting regulations on that head.

190. Such was the law and such the jurisprudence under the French Government.

I shall add but one remark. Our printed documents contain the details of a large number of contestations which took place between the seigniors and their censitaires. But we do not find any of them in which there was a claim for the reduction of seigniorial rents that had been fixed by a long possession, on the plea that the rate was too high. Is not this fact alone enough to prove, in a manner the most incontestable, that under the French dominion, the legality of rates thus fixed has never been called in question?

But if no demand by the *censitaire* for the reduction of this rate is to be found, there is one such, at least, on the reverse side. An ordinance of the Intendant Raudot, bearing date the 15th June 1707, (1) informs us that Robert Drason had brought a complaint before him against the

(1) "*Extraits* des Régitres du conseil supérieur et des régitres d'intendance," by Cugnet; Quebec, 1775, p. 23.
I have verified Cugnet's extract by a manuscript copy of the Ordinance.

sieur Hertel who, he said, threatened to eject him from a habitation which had been conceded to him by the sieur de St. Ours, when he was seignior of the Cote St. Louis, under the pretext that he had got it at too low a price and for too moderate rents, although he had paid him those rents until then. Drason's deed was dated the last day of January 1685. The Intendant declared Drason " proprietor by long possession of the habitation, with prohibition to the Sieur de Hertel from troubling him in the enjoyment of the same." No one will doubt the justice of this decision. If the stipulation of any rate whatever is binding as against the censitaire, it is equally binding as against the seignior.

That which may cause astonishment in this affair is the hardihood of the seignior's pretension. That pretention, however, appears to have been advanced but on one occasion.

191. I pass now to the English Government of Canada.

By article 37 of the capitulation of Montreal, bearing date the 8th September 1760, the seigniors and censitaires are preserved in the entire peaceable property and possession of their property seigniorial and *en roture.*

Thus their respective rights and obligations remained the same as they were under the French Government.

As early as the 23rd December of the same year, Mr. Jean Noël was received by Governor Murray to do fealty and homage to His Britannic Majesty," by reason of his land and seigniory of Tilly and Bonsecours," in conformity, it is said, with the *arrêt* rendered by the Military Council of Quebec on the 12th November previous. (1)

(1) The following is copy of this act of fealty and homage.

" In the year one thousand seven hundred and sixty, on the twenty

192. Among the seigniorial documents recently published, we find an *Arrêt* relative to the *cens et rentes* rendered by the military council of Montreal on the 20th April 1762, between the sieur Leduc, seignior of Isle Perrot, appellant from a judgment pronounced by the Militia Court (Chambre des Milices)of the Parish of Pointe Claire on the 15th March previous, and Joseph Hunault respondent.

It appears that Mr. Leduc had been condemned by this Judgment to receive, for the future, the rents of the land which the respondent possessed in his seigniory, at the rate of thirty *sols* yearly, and half a minot of wheat, " not being able, the judgment says, to alter any thing of the clauses contained in the deed of concession passed before Mr. Lepailleur, notary on the fifth August 1718. "

" third December in the forenoon, in the presence and in the company " of Royal notaries in the Military Court and Council of Quebec, Jean " Noël, dwelling in this City, in compliance with the *Arrêt* rendered " by the said Council on the twelfth November last, which ordains " that the said Noël conformably to his offers, shall render fealty and " homage to His Britannic Majesty in the customary manner, and " shall pay dues and rent charges conformably to his title deeds, has " repaired to the Government House of Quebec, and at the principal " door and entrance of the said House, where being, the said Noël " having knocked at the door, there immediately came a ser- " vant of His Excellency James Murray, Governor General of " Quebec, and the said Noël having demanded of the said servant if " His Excellency was in his aforesaid Government House, the " said servant said that His Excellency was within and that he would " go and give him notice, and His Excellency having appeared, the " said Jean Noël, in accordance with his duty as vassal, without sword " or spur, his head uncovered, and one knee on the ground, said to him " that he performed faith and homage on account of his land and " seigniory of Tilly and Bonsecours holden in full fief and homage of " His Britannic Majesty, which fiefs belongs to him as eldest son and " heir of the late Philippe Noël his father to whom it belonged by " means of the purchase made by him thereof from Dame Angelique

The *arrêt* of the Council, on the appeal of Mr. Leduc, is in these words; "The parties having been heard, the "Council being convinced that the clause contained in the "said contract which obliges the lessee to furnish, yearly, "half a minot of wheat and 10 *sols*, for each arpent, is an "error of the notary, the ordinary rate of concessions in "this country being to pay one *sol* for each arpent of land "in superficies and half a minot of wheat for each arpent "of front by twenty in depth; it is ordered that for the "future the rents for the land in question shall be paid at "the rate of 54 *sols* in money and one minot and a half of "wheat yearly."

"LeGardeur widow de Gaspé, Demoiselle Charlotte LeGardeur and "Sieur Aubert de Gaspé, as well in their own names as holding "powers of Attorney from their other co-heirs by deed passed before "Mtre Barolet and Panet, Royal Notaries, on the 21st August one "thousand seven hundred and forty eight, and duly *ensaisiné*, to "which fealty and homage His Excellency has received the said Jean "Noël who has made oath on the Holy Evangelists to be faithful to "His Britannic Majesty, to do nothing contrary to his interest, to "obey the orders that shall be given to him in his name, and to keep "his vassals in the obedience which they owe to their King, the "present fealty and homage received subject to the condition on the "part of the said Noël to furnish his *aveu et denombrement* within "the usual time and of the dues which he may owe by reason of the "mutation of the said fiefs and seigniories agreeably to the original "title deeds. Of all which the said Jean Noël has demanded *Acte* "of the undersigned Notaries who have granted him the same. Done "and passed at the principal door and entrance of the Government "the day and year aforesaid, and His Excellency has signed, also the "said Jean Noël together with us the undersigned notaries.

(Signed) J. Murray,

(Signed) Jean Noel,

(Signed) Panet.

This *arrêt* has been invoked as being favorable to the claims set forth on the part of the censitaires. I do not think that all the censitaires, and especially those of the *banlieue* of Quebec, who pay only one *denier* per arpent in superficies, approve of the principle of this *arrêt.* They would not with satisfaction see attributed to an error of the notary the clause in their contract which fixes their dues at this rate of a simple *denier* to raise as a consequence those dues to the ordinary rate of concessions in this country, even to that established by the *arrêt.* In fact this *arrêt* gave more to the seignior than was given him by the deed and the judgment founded on that deed.

The *arrêt* does not rest on the principle of the increase of these obligations : and so to cause the triumph of this latter principle, it sets aside the agreement of the parties.

The *arrêt* having adjudged 54 *sols* for the rent in money and half a minot of wheat per arpent of front, it is evident that the land in question contained 3 × 18 arpents,

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Here is the *Arrêt* of the 12th November 1760 mentioned in the foregoing act of fealty and homage :

" Considering the petition presented to this Council by Jean Noël " whereby he shows that in consequence of the decease of Philippe " Noël his father, in his lifetime seignior of the fiefs of Tilly and " Bonsecours, and that in the quality of his eldest son he becomes " seignior of the said fiefs, he desired to perform and render fealty " and homage to His Britannic Majesty, wherefore he prays to the " effect that it may please His Excellency to receive him to the said " fealty and homage on the offers which he makes to furnish the *aveu* " *et dénombrement* of the said fiefs and seigniory of Tilly and Bon- " secours. Having heard Monsieur de La Fontaine, Attorney General ; " the Council orders that the said Noël, conformably to his offers shal " perform fealty and homage to His Britannic Majesty in the Cus- " tomary manner and shall pay the dues and rent charges in conformity " with his title deeds. Signed in the Register, H. T. Cramahé.

that is to say, 54 arpents in superficies. By valuing the wheat at 4 *francs* the minot, the *arrêt* condemned the censitaire to pay eight *livres* and fourteen *sols* yearly, while according to his deed and the judgment of the Militia Court, he was not bound to pay but three *livres* ten *sols*. This difference of more than one half explains the interest M. Leduc had in entering an appeal. The seignior of Isle Perrot was more lucky before the tribunal of this military council of 1762 than the seignior of Cote St. Louis had been, in 1707, before the tribunal of the civil Intendant, M. Raudot.

192. (bis) On the 8th November 1760, the Military Council of Quebec, on the petition of Mr. de la Martinière, had rendered an *arrêt* which ordered the tenant on his seigniories, " to pay him, on St. Martin's day, the eleventh of " the present month, the year's rent which will fall due on " the said day, in specie, current money, and that at the " domicile and place fixed by their deeds of concession ..... which present *arrêt*, it is said, will serve for a " rule to all the inhabitants within this government, and " which for that purpose shall be read and published where " necessary at the expense of the seignior who shall have " occasion for the same."

As early as the twenty sixth of the same month, the same council, on the petition of Jean Lafond, master baker and miller, ofthe mill of Beauport, " rendered another *arrêt* " which ordered all the inhabitants of that seigniory to carry " for the future their grain to the mill of the said seigniory, " on the condition that the said miller should keep the said " mill in good repair, should make good flour and render a " faithful account ; the said inhabitants being prohibited " from carrying their grain to be ground at other mills " under the penalty of paying the ordinary sum for grin " ding and a fine of ten shillings, which present *arrêt* shall

" be read and published at the cost and expense of the said " miller."

Another *arrêt* of the same council, dated the 11th March 1761, rendered on the petition of Charles Couillard, seignior of Beaumont, condemned six of his censitaires " to " pay their dues for grinding which they owe since the " publication of our *arrêt* of the 26th November last, we " prohibiting them from carrying their corn to be ground " elsewhere than at the mill of the said seigniory, under " the penalty of the fine incurred under the said *arrêt*, ex- " cusing them, for this time only, in consideration of the " badness of the times ; and condemn the defendants to " the costs taxed at ten dollars, expense of travel included " and these presents ; reserving to the said inhabitants the " right to apply to the council if they have matter of com- " plaint against the miller or against the seignior on ac- " count of the said mill, which *arrêt* shall be read, pu- " blished and posted up at the door of the Parish Church of " Beaumont."

193. Thus, in the short time that elapsed between the capitulation of Montreal and the cession of Canada to England by the treaty of Paris of the 10th February 1763, there had passed nothing which cõuld, in the least, affect the reciprocal relations of the seigniors and censitaires, or their respective rights and obligations and consequently the question of the amount of *cens et rentes*.

The Quebec act (1774, 14 Geo. 3, cap. 83, sec. 8,) does no more than confirm and guarantee, on the one hand, the exercise of these rights, and on the other, the performance of these obligations, when after having declared that His Majesty's Canadian subjects, " may *hold* and enjoy their property and possessions, *together with all customs and usages relative thereto*," it adds, " that in all matters of controversy, relative to property and civils rights, resort shall

be had to the laws of Canada, as the rule for the decision of the same ; and all causes that shall hereafter be instituted ..... shall be determined agreably to the said laws and customs of Canada, until they shall be varied or altered by any ordinances that shall from time to time be passed" by the Governor and Legislative Council created by this imperial act.

In this manner, the reciprocal relations of the seigniors and censitaires remained the same as they were before. Neither were they changed by the constitutional act of 1791, which introduced the system of representative government into Canada.

194. It were fastidious to cite documents upon documents, to accumulate proofs upon proofs, for the purpose of establishing that, since the cession of the country, the rate of *cens et rentes* has continually varied, as was the case before that period and that in such variations many seigniors have distinguished themselves by their acquaintance with the rules of arithmetical progression.

This it was that constituted the precise cause of the complaints of the censitaires and of the anti-seigniorial agitation which has terminated by the seigniorial act of 1854.

Since 1763, the tribunals have had to decide on a great number of suits between the seigniors and the censitaires, but it is only at a date comparatively recent that the rate of *cens et rentes* was brought in question ; and, in every instance, the pretensions of the censitaires have been, in principle, rejected by the decisions of the Courts of justice, whether these pretensions had, for their object, to obtain an acknowledgment of the legal existence of a universal, fixed, and moderate rate, or simply to obtain a declaration to the effect that an agreement whereby a censitaire

was subjected, when taking a hereditament, *à cens*, at a higher rate than the ordinary or usual rate, was liable to be adjudged null and void.

195. The first cause in which I find that this question of ***cens et rentes not fixed in the agreement***, was made the subject of judicial discussion, is that of Cuvillier, Plaintiff, Stanley, curator to the succession of Richard Hart, defendant, and Burton, Proprietor of the seigniory of DeLery, opposant; decided in the Court of King's Bench of the district of Montreal on the 19th April 1827.

The seignior alleged in his opposition *afin de conserver*, that his agent had, in 1814, made a verbal concession to Richard Hart of two lots of land in his seigniory on the condition to pay, annually, the ***cens et rentes*** at the ordinary rate of the concession in the said seigniory, that is to say, 12 ***sols*** of ***cens*** for each of these lots, and a rent of 9 ***sols*** for each arpent in superficies, making for the two lots £2 5s currency. He claimed the arrears from 1815 to 1824 inclusively, namely £38 5s 0d.

In the reasons set forth in the contestation, the Plaintiff said, among other things, that the opposant had never conceded the lots of land at the rate above mentioned; that the law did not give him the right to make such a concession, the dues payable to the seignior in like cases being limited to one ***sol*** of ***cens*** and one ***sol*** of rent per arpent in superficies, and one capon or 20 ***sols*** per arpent of front; that the ***cens et rentes*** demanded of the opposant were contrary to law and ought to be reduced to the legal rate; that the opposant could not maintain that the concession in question, which he himself admitted to have been made without any special agreement between the parties, gave him the right to receive, as being the ordinary and usual rate of the seigniory, the sum of 12 ***sols*** of ***cens*** and 9 ***sols*** of rent, because

he could not exact in the said seigniory any ordinary rate of *cens et rentes* of higher amount than that recognised by the law, and which is 1 *sol* of *cens*, one *sol* of rent and a capon as hereinabove set forth. The Plaintiff lost the suit. (1)

(1) The summary which I give is extracted from the notes of Judge Reid, who in pronouncing judgment expressed himself in these words :—

" The question now is, whether the seignior is entitled to maintain his claim.

" The grants of seigniories by the Crown of France to individuals in this colony, were generally made from gratuitous motives, and frequently as a reward for the services of meritorious officers ; and although good policy required that these grants should be subservient to the great and beneficial object of the settlement and improvement of the colony by the concession to be made to the subtenants or censitaires ; still however, the immediate object of the grant was the benefit of the grantee or seignior, who according to the principles of the feudal tenure, became the vassal of the Crown and the undoubted proprietor of the estate, and it is therefore reasonable to presume that he would endeavour so to manage and dispose thereof as would prove most beneficial for him ; and however far his conduct in this respect might infringe the conditions of the grant, or counteract the policy of the Crown, yet none but the Crown had the right of interference or complaint ; the censitaire was not a party to the grant, he had acquired no beneficial interest in the estate which entitled him to any redress against the seignior, hence it was found necessary to confer this right by legislative authority, and for this purpose the several *declarations* and *arrêts* which we find recorded in the archives of the country were made by the French King and under his authority. The *arrêt* of the 6th July 1711 appears to constitute the principal authority upon which the Plaintiff resists the claim of the opposant to his *cens et rentes* as demanded ; but this *arrêt* as well as several others now extant, on the subject of granting lands in Canada, have not provided for the matter here in contest. All these *arrêts* seem levelled against the sale of lands by the seignior and directing that they

196. I now present a case altogether peculiar, reported in the 3rd volume of the " Documents seigneuriaux," p. 88 to 91.

The seignior of Argenteuil, sir John Johnson, who had acquired that seigniory at Sheriff's sale in the year 1807, demanded from one Hutchins, *lods et ventes* on two lots of land containing each 100 arpents in superficies. (1)

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should be conceded to the censitaire upon annual revenue, in fact the whole bent and object of all those *arrêts* was to encourage the clearing of the land and settling the country, which could best be effected by concessions of this kind, which were understood to be made on moderate terms and within the ability of every industrious man to satisfy, while the sale of lands in large tracts and for larger sum of money, and all kinds of speculations and jobbing, which operated merely as a transfer of the lands without promoting their actual settlement and improvement, are most expressly prohibited. But while the principle of granting lands upon a *redevance annuelle* is thus maintained, we find no *arrêt* or *law* now extant in the country which establishes what the rate of these redevances should be. Perhaps it was not necessary that any should have been made, because by prohibiting the seignior from selling his lands, as above stated it necessarily became his interest to dispose of them in the way pointed out by the above *arrêts*, that is, by concessions *à redevances annuelles* to such persons who would take them and if we could form an opinion of the state of the country for a century back we may readily believe that the same motive, a view to his interest, would induce the seignior to concede his lands at a low rate, as the then state of population required that the seignior should rather hold out inducements, than exact unusual rights, in the granting of the lands, as there was then more lands to concede than tenants who wanted concessions. From this circumstance, we may account that no suit or judgment appears in the courts prior to the conquest by which a seignior is adjudged to grant land to a *censitaire* under the penalty of the *arrêt* of 1711, that is from an extravagant rate of con-

(1) He claimed also the arrears of *cens et rentes* ; a circumstance of which the report of the cause makes no mention. I have verified the fact, by an examination of the record.

In his answer, Hutchins said that, by deed of sale of the 3rd December 1796 (Lukin and Delisle, notaries) M. Patrick Murray, then seignior of Argenteuil, had granted those two lots of land to Jedediah Lane renouncing at the same time, " all the rights and pretensions which he might have as to any mutation, or alienation *fine*, under the description of *lods et ventes*, *retrait* or otherwise, and also the toll commonly called *banalité* and in general every other right and pretension as seignior over his *terre-tenant*, *except the rent in the record deed reserved*, namely an annual rent

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cession. It would therefore seem that there could be but little danger or injury likely to arise to the rights of the parties to allow the concessions to be made according to the phraseology of the day, *aux cens et rentes et redevances accoutumées*, as the parties could agree ; on the one hand it was the interest of the seignior when he could not sell his lands to grant them on an annual revenue, so as to increase the value of his property by actual settlement of the lands, so, on the other hand, it was the interest of the censitaire to obtain such grants in concession upon the easiest terms possible. In the deed of grant made by the King of France on the 6th April 1733, of the seigniory of DeLery, we find inserted among the conditions of the grant the following, " d'y " tenir feu et lieu, et le faire tenir par ses tenanciers *à faute de quoi* " *elle sera réunie au domaine de Sa Majesté*, de déserter et faire " déserter incessamment la dite terre, laisser les chemins du Roi et " autres jugés nécessaires pour l'utilité publique sur la dite concession, " et de faire insérer pareilles conditions dans les concessions qu'il fera " à ses tenanciers *aux cens et rentes et redevances accoutumées par* " *arpent de terre de front sur* 10 *de profondeur*, &c.

Here we find the settlement and clearing of the lands, as being the principal object of this and of every other grant of the day, enjoined under a penalty while the rate of concession seems inserted more as words of course than of particularizing injunction, nor is any penalty attached to the infringement of this part of the grant, which was usual where any particular law existed which bore on the point; we are then called upon to say, what these words, " cens rentes et redevances accoutumées," mean.

of one *sol* for every 40 arpents of land, payable yearly on the 11th November, at the Manor house of the seignior. Price of the sale 1500 spanish silver dollars. In consequence of this renunciation, the Defendant, who had acquired the two lots of land by deed of the 3rd June 1813 (Lukin and Desautels, notaries), contended that these lands" were not liable to the payment of " any *lods et ventes* or *cens et rentes*, " or any rent whatever, with the exception of the said rent " charge of one *sol* for every 40 arpents of land."

These words would no doubt carry the impression that there existed some general principle either established by law or generally practised in the colony, by which concessions to the censitaire were regulated, and therefore, as a necessary consequence, we should expect to find all the concessions of this description, at least prior to this deed of grant by the French King, made subject to the very same *cens, rentes et redevances* for if there was a law to this effect it must be general in its operation and bind all the property in the country equally. But we see as well from the judgments on record of that time and since, as from the generally known fact, that the *cens, rentes et redevances* of different seigniories were very frequently different, varying according to circumstances and situation ; and at the present day we may almost say that scarcely any two seigniories are alike in this respect. This fact, a general usage in the country, strongly militates against the existence of any rule of law on this point, or if any ever was made and did exist, that its injunctions could not have been of a permanent nature or of general extent. In the absence therefore of any positive regulation we are left to form that opinion which shall appear to us the most consistent with reason and justice. As a rule of right therefore it cannot be presumed that what could have been a reasonable rate of concession in the year 1733 by the seignior to his censitaires could be considered to be equally so nearly a century afterwards, unless we could presume that all the relations and conventions in life between man and man, had continued to be the same and that the improvements both in the moral and physical world had caused no change in our habits of life or in those transactions wherein the value of money is the medium of estimation. If the revenue which the seignior obtained from the concession made by him a century past, cannot now pro-

The new seignior, who very well understood the provisions of the *arrêts* of the 6th July 1711, and 15th March 1732, replied, " that the deed of the 3rd December 1796, was " null and void, that M. Murray, in his quality of seignior, " could not dispose of, nor divest himself of, any part of the " said seigniory of Argenteuil, which was in standing wood " for any sum of money, being bound by the laws of the " country to grant and concede the same for an annual " ground-rent, for the ordinary and usual seigniorial rights " profits and issues ; that he could not by any act, deed, or " instrument in writing change the tenure of the said sei- " gniory or any part or parcel thereof or abandon, give up, " quit and release his pretensions, as seignior of the said " seigniory of Argenteuil to any mutation or alienation fine, " under the description of *lods et ventes*, *retraits* or other- " wise, or to the toll commonly called *banalité*, or to any

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cure him the same competency and facilities in life as at that time, while the means and resources. of the *censitaire* arising out of the very land so granted to him has multiplied tenfold, there can in such case be neither reason nor justice in compelling a seignior to grant his lands at the same rate at the present day as a century ago, when there is no rule of law applicable to the present case arising out of the facts which have been proved. It appears that the general rate of concession of lands in the seigniory of DeLery for the last twenty years has been proved to be 6 pence of cens and 9 sols for every superficial acre of every lot so granted and of this rate of concession the late Rd. Hart had a knowledge and must be considered to have submitted thereto by taking possession of the two lots of land in question, this was binding on him even without a deed of concession, and no more has been demanded of him than was usual and customary in that seigniory.

Hervé v. 1, p. " 415. L'usage général d'une seigneurie appelée "usan- " ce" ou " usement" de fief peut quelquefois suppléer à la coutume et " aux titres particuliers, et suffire pour soumettre à un droit, ou à une " prestation qui s'exerce généralement dans l'étendue du fief, quelques " vassaux ou censitaires qui prétendraient se soustraire à ce droit ou à " cette prestation. Car, lorsqu'un droit quelconque est énoncé dans

" other right or pretension as seignior as aforesaid, contrary " to the positive law of the l nd," and as a subsidiary reason, the Plaintiff said that, supposing that the deed of the 3rd December 1796 had been valid, the sheriff's sale on execution, by virtue of which he had made the purchase of the seigniory with the right of *cens et rentes*, *lods et ventes*, *retrait, etc.*, *etc.*, had had the effect to clear and do away with the discharges or exemptions from these rights on the lands in question, mentioned in the said deed of 1796.

The court of King's Bench, at Montreal, by its judgment of the 20th April 1818, ordered the Defendant to pay to the seignior the *cens et rentes* at the rate of three minots of wheat and five shillings in money for every 90 aeres in

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" presque tous les titres du fief, et s'exerce sur presque tous les sujets " de ce fief, il doit être regardé comme un droit naturel de la terre " dont personne n'est exempt, à moins qu'il n'ait un titre précis d'ex- " emption."

This principle is applicable where there is no concession, which is the case here, for had there been a deed of concession it must have formed the law between the parties and the rule of decision on the question before us.

The court therefore are of opinion that in the judgment of distribution to be rendered in this cause the opposant be ranked and according to his privilege for the amount of his claim as stated in his opposition with costs."

Note.—I owe to the kindness of M. Taylor, advocate, nephew of Chief Justice Reid, and the possessor, of his manuscripts, the advantage of having had communication of the grounds of this judgment,—as well as of some other which I have occasion to mention in the course of my observations.

It is to be hoped that the collection of decisions which are known to have been gathered with care by this learned judge, may soon be given to the public.

superficies, and that since the sale by the Sheriff of the seigniory of Argenteuil. (1)

But this judgment was set aside by the court of appeals on the 20th January 1821, " in so far as the same relates " to the rent therein mentioned at the rate of three bushels " of wheat and five shillings in money for every ninety su- " perficial acres " ; and the court of appeals, deciding that the annual rent charge of one *sol* for every 40 acres of land stipulated in the deed of the 3rd December 1796, " was and " is by law *cens*, and as such a recognition that the said " land was and is held *en roture* of the seignior of the said " seigniory of Argenteuil according to law," condemned the appellant to pay to the respondent one shilling for arrears of *cens*, since the 21st Novembre 1807 and the 16th January 1813, together with another sum of £4 2 6 current money for *lods et ventes* on his purchase.

The judgment of the Court of appeal is right, in so far as it maintains the rent fixed by the agreement of parties ; but the judgment at Montreal proves, no less, that, at that day, a rent equivalent, at least, to four *sols* per arpent in superficies, (the wheat valued at four *francs* the minot) was not considered an illegal rate.

197. A judgment of the Court of King's Bench for the district of Quebec, dated the 10th February 1827 (2) condemned William Hamilton to pay to the seignior of Fossambault and Gaudarville, M. Duchesnay, the *cens et rentes* of a land of 3 by 34 arpents which he possessed in the seigniory of Fossambault, a continuation of that of Gaudarville, at the rate of eight *sous* per annum for each arpent in superficies.

(1) Present :—M. Chief Justice Monk and M. Justice Reid.

(2) " Doc. Seig." v. 3, p. 84 to 87.

The Defendant, in his plea of peremptory exception, contended that the seignior could not obtain the conclusions of his demand, 1st. " because, that at the time when he " acquired the said lot of land from one John Walsh by an " instrument under private signature bearing date the 3rd " day of February 1825, which said instrument was there- " after ratified and confirmed by the said Plaintiff by writ- " ten instrument under private signature bearing date the " 12th day of February, in the said year, the amount of the " *cens* which the said defendant was to pay to the seignior " within whose *censive* the said land lay was not stipula- " ted nor mentioned either by the Plaintiff or by the said " John Walsh to the said Defendant.

2nd. " Because, the said William Hamilton has never " refused to pass a title deed, declaration and acknowledg- " ment of the *cens et rentes* and other seigniorial charges due " the seignior of the place in which the said land is situate, " at the rate of one *sol tournois* currency for each superfi- " cial arpent which is the rate at which a great number of " the lands situate in the same seigniory have been conce- " ded ; which title and declaration the said defendant hath " often, before the commencement of this action, offered to " the seignior of whom the said land is holden on the con- " ditions aforesaid."

3rd. " Because, that by the law now in force in this " province, a seignior is bound to concede all his lands at the " *ordinary rate for which lands have been conceded in his* " seigniory."

This last proposition being incontestable and based on the rule of the common law which governs in such cases, it is evident that it served for foundation to the judgment of the Court of Quebec, regard being had to the evidence which had been produced as to the rate then existing in the

seigniory of Fossambault, being the continuation of that of Gaudarville, the name of which has become so famous in the anti-seigniorial agitation, thanks to the language of the Intendant Hocquart's Ordinance of the 23rd January 1738. From the amount of one *sol* eight *deniers*, per arpent in superficies, mentioned in that ordinance to the amount of eight *sous*, adjudged by the Court of Quebec, the difference is very great. Still the seigniorial rent, at this last rate, was not the less considered as being perfectly legal.

198. In a judgment of the court of King's Bench, at Montreal, rendered on the 18 April 1828. (1) We read that one William Gray had in 1819 taken possession, in good faith, of certain lots of land in the seigniory of St. Jacques, under the promise of guarantee by the seignior M. James McCallum that he would give him a title deed in proper form, but without any mention of the conditions in which the concession was to be made. The court, " considering " that by the *laws*, *usages* and *custom* of this Province, and " in order to facilitate and encourage the *settling* and *clear-* " *ing* of the *waste* lands held in fief and seigniory therein, " *every subject of His Majesty is entitled to demand and* " *obtain from every or any seignior* holding *waste* and *un-* " *granted* lands in his seigniory *a lot or concession of a* " *portion of said waste or 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 con- " dition of cultivating and improving the same and of " paying and allowing to every such seignior the *reasona-* " *ble*, *usual* and *ordinary* rents, dues, profits and acknow- " ledgments which by the feudal tenure in force in this " Province are paid, made and allowed to such seignior by " their tenants and *censitaires*, for all such or similar lots

(1) " Doc. Seig." v. 3, p. 92.

Present:—M. Chief Justice Reid, M. Justice Foucher, M. Justice Uniacke.

" of land," maintained the said William Grey in the property and enjoyment of the lots of land in question, on his paying to the seignior " the *reasonable usual and ordinary* rents, dues profits and acknowledgments."……

199. Henriette Guichaud et al, against John Jones, adjudged in the court of King's Bench, Montreal, on the 18th February 1831. (1)

On the 31st August 1796, (Chaboillez, notary), the late Thomas Dunn, seignior of St. Armand, made to one Brewer Dodge a sale and concession of a land in standing wood ; price of the sale £20 currency, payable on the 1st March 1804, with interest ; annual rent one shilling, that is 24 *sols*. The deed contains a renunciation on the part of the seignior, of the seigniorial rights, similar to that of the seignior of Argenteuil (above, no. 196.)

Jones having become proprietor, an hypothecary action was instituted against him, in 1828, by the representatives of M. Dunn, for the payment of the said sum of twenty pounds, with interest from the 1st May 1799, and the arrears of the rent of one shilling accrued since the same date. He pleaded to the demand a peremptory exception, by which he insisted that, according to the laws of Lower Canada, M. Dunn, like all other seigniors, was obliged to concede his lands in standing wood in his seigniory, at an annual rent, on a rent charge, without exacting or receiving any sum of money ; that the sale of such lands was expressly prohibited to them, under penalty of the absolute nullity of their contracts, of the restitution of the price and of reunion to the domain of the Crown, etc., etc. He then prayed that the deed of the 31st August 1796 should be declared null and void, " in so far as the said deed includes a sale." At the

(1) " Doc. Seig." v. 3, p. 93 to 101.

Presents :—M. Chief Justice Reid, M. Justice Pyke and M. Justice Rolland.

Enquête, the Plaintiff and Defendant admitted that the land in question was in standing wood (*en bois debout*,) when the said deed was passed.

The judgment, which is not *motivé*, granted purely and simply the demand of the seigniors. (1)

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(1) The following notes of Chief Justice Reid, explain the grounds of the judgment :—

" In this case it was contended on the part of the Defendant that " the deed of sale made by the late M. Dunn to Brewer Dodge on " 31st August 1796, was null and void in law in as much as it was a " sale of land *en bois debout* prohibited by the *arrêts* of 6th July " 1711 and 15th March 1732. That the said late M. Dunn had, " besides, changed the nature of the tenure of the said lot of land, by " giving up the rights of *lods et ventes*, of *banalité* to the tenant, " which he could not do as these rights were inherent in the seigniory " and could not be detached from it. That the Defendant was there- " fore exposed to have these rights demanded of him at a future day, as " another seignior could not be bound by the alienation of those rights " made by M. Dunn.

" On the part of the Plaintiffs it was argued that the two *arrêts* " cited could not now be considered as law in the country, being made " merely for a momentary purpose and not applicable to the present " state of the country ; but allowing them to be in force nothing was " done here upon which they could take effect ; that the *bail à cens*, " like all other contracts was susceptible of many modifications. The " quantum of *cens* is within the power of the seignior and he may also, " for valuable consideration, transfer all his personal interests to the " tenant and he may in the same way renounce his right to the *lods et* " *ventes* and to the right of *banalité*, although he cannot convey them " to another. That the Defendant has no right to complain until he " be troubled, and he is sufficiently secure, as the plaintiffs would be " bound to indemnify him if he were troubled, but this question is not " raised by the plea and the court cannot take notice of it.

" The court said that the argument had been extended to points not

200. Rolland against Molleur : a cause decided in the court of King's Bench, Montreal, on the 15th June 1840. (2)

By deed of the 31st December 1832, (Boudreau, notary), M. Justice Rolland, seignior of Monnoir, sold and conceded to J. B. Molleur two lands in his seigniory, the one of 5 ×

" before it; that the only question they had to consider was whether " the contract of the 31st August 1796, was legal or not. It was " called a deed of sale and concession, although, strictly speaking, it " ought to be viewed as a deed of concession only, as it conveyed to " the censitaire all the right and interest of the seignior in the soil as " effectually as any deed of sale could do, but it was the terms and " conditions of the deed that must determine its nature and validity. " It is true that this deed restrains the rights of the seignior to a " trifling sum for *cens* with the payment of a sum of twenty pounds " and interest, and gives up the right of *lods et ventes* and of *banalité* " in favor of the *censitaire*, yet this will not change the nature of the " tenure nor alienate those seigniorial rights. The only question is as " to the construction to be put upon the deed in question. If it is to " be considered as a sale of land *en bois debout* it is illegal and void " according to the laws of the country, but if, on the contrary, this " sum of twenty ponds stipulated to be paid by the *censitaire*, was " the consideration for which M. Dunn consented to give up his right " to the *lods et ventes* and *banalité* it will be legal and valid, as he " could abstain from demanding any of his rights as seignior from his " censitaire upon a sufficient consideration. And the court thinks that " the latter construction ought to prevail not merely because this con- " tract, like every other, should be so construed that it may rather " stand than fall, but because they are of opinion that the expressions " in the deed seem to imply that this was the consideration for which " the money was to be paid. The court cannot here take up the " question as to the future liability of the tenant to be troubled by " another seignior and the consequent rights of the tenant thereon as " the question has not been raised by the pleadings and cannot now be " determined."

(2) " Doc. Seig." v. 3, p. 101 to 118.
Present :—M. Justice Pyke and M. Justice Gale.

30 arpents, being numbers 131 and 132 in the third concession ; the other likewise of 5 × 30, being the numbers 146 and 147 in the fourth concession of the seigniory. Price of the sale 2,500 *livres* ancient currency paid down ; seigniorial dues 2 *sols* of *cens* 18 *livres* in money and three minots of wheat for every 90 arpents, and so in proportion. The seignior claimed by his action, arrears of *cens et rentes* amounting to £24 0 0, currency, " the said rent of wheat being included therein and estimated at the value of wheat at the times and places at which the same became due.

Molleur opposed to this action the same reasons that had been advanced by Jones against the heirs Dunn in the cause reported in the last number, alleging that these two lands, being lands in standing wood, as he said in a plea of peremptory exception, the seignior was bound to concede to him on a rent charge, without exacting any sum of money ; that the rate of the rent charge " ought to be the " same at which lands were conceded *en censive* in this " country, and which is the only legal rate which should " be acknowledged in this Province, or at least, at the rate " of those concessions *en censive* made by the seigniors of " the country before the year 1711, or at least at the rate of " the concessions *en censive* made in the said seigniory of " Monnoir by the predecessors of the Plaintiff; that the charge " for the concession made to the Defendant was exorbitant, " illegal, exceeding the usual legal rate of the country, " which ought to be and is 1 *sol* of *cens* and 1 *franc* in " money and 1 *minot* of wheat for each 90 arpents in su- " perficies and no more ; to which rate that of his said " concession ought to be reduced as well for the past as for " the future."

Molleur consequently demanded that so much of the deed as related to the sale of the said lands should be declared null and void, that so much thereof as related to the concession *en censive* should be maintained, and that the

rent charges should be reduced to the amount above stated. He also, by an Incidental demand, prayed for the restitution of the 2500 *francs* which he had paid.

The seignior set forth the following facts in his answer to the Defendant's exception and to his incidental demand :

1st. The first of the two lands forming the nos. 131 & 132 was conceded on the 12th March 1818 by Sir John Johnson, then seignior of Monnoir , to John Johnson, his son, charged with a *minot* of wheat and 6 *livres* in money, for every 30 arpents in superficies. On the 23rd January 1832, these two lots were sold at sheriff's sale, in a suit instituted against the said John Johnson by the said M. Rolland, who had for some years, been proprietor of the seigniory, and adjudged to him by the sheriff, namely No. 131 for the sum of £5 currency and no. 132 for £4 5s. 0d. but without the reunion of these two lots to his domain, he having made the necessary declaration to avoid such reunion, as appeared by the sheriff's deed of the 7th February 1832. He possessed them therefore *en roture* until the time that he sold them to the Defendant.

2nd. With respect to the other land forming Nos. 146 and 147, it had been conceded by the seignior Johnson, on the 12th June 1797, to William Radenhurst, subject to the payment of 2¼ *minots* of wheat and 102 *sols* for every 90 arpents, and so in proportion. On the 19th April 1821, Johnson obtained a judgment which, on consideration of the offers and consent of Radenhurst to abandon the said land, reunited the same to the domain of the seigniory and discharged Radenhurst, who had attached that condition to his offer, from the arrears of seigniorial rents for which he had been sued and which amounted to £61 5s. 6d. currency ; thus, the land became the property of the Plaintiff by means of his purchase of the seigniory.

3rd. The expenses incurred by Sir John Johnson in his action against Radenhurst amounted to £15 currency.

4th. He also asserted that the arrears of seigniorial rights due on no. 131, at the time of the adjudication, amounted to £20, which, with the costs of the sale, made £30 ; that the arrears of the same rights due on no. 132, at the same date, were equal to £20, and including the cost of the adjudication, to £30.

5th. He further alleged that during his possession of nos. 131 and 132, that is, from the 23rd January to the 31st December 1831, he expended large sums to improve them, both in making and repairing the roads, as well in these concessions as in those in the neighbourhood, and which by law the proprietor of these lots was bound to make and repair ; that he paid divers public dues and taxes amounting to £10, to which these lots were liable ; and that from these causes the value thereof had greatly increased ; that during the time that he and his predecessors had been in possession of lots 146 and 147, namely from 19th April 1821 to the 31st December 1832, they were deprived of the *cens et rentes* to which they would have been entitled, if the two lots had remained in the possession of the first or any other censitaire ; that they had expended large sums to make useful improvements on these lots, in making and repairing the roads in the same manner as on the two others ; that the had also paid divers public and other dues to which these lots were liable, amounting to the sum of £50 currency. &c., &c.

6th. That the two lands had not been conceded to the Defendant at a higher rate than the *usual* rate, at which the neighbouring lands had been conceded for 20 years or more before the said concession, nor that at which, generally, in the said seigniory and the other seigniories in the district,

the lands had been conceded for the last 30 years and more previous to the concession made to the defendant.

7th. Finally for all those reasons he had the right to sell the said lands and to dispose of them as he might think right.

Only two witnesses were called. They were proprietors of lands in the same place, for which the only paid 24 minots of wheat and 102 *sols* in money for every 90 arpents in superficies. They deposed that in this seigniory and in the same range, there were many lands conceded on the same terms as their own but that there were a great number conceded at the same rates as those of the defendant Molleur, one of these witnesses adding; " there are a great number who pay my rate, Molleur's rate is the new rate; " and the other saying; " the lands to the south of the road of this concession are conceded at the same rates as those of the defendant; the lands to the north of that road are conceded at the same rates as mine." They testified also that Molleur's lands were all in standing wood. So there was no evidence of the improvements which the Plaintiffs alleged that had been made.

I lost my cause (for I appeared for Molleur,) and my client, whose incidental demand was dismissed, was, at the same time, condemned to pay the arrears of *cens et rentes*, in conformity with the seignior's demand.

201. The same question was raised anew before the same tribunal in the case of Hamilton and others against Michel Lamoureux, censitaire in the seigniory of de Lery, and decided in October 1842. (1)

The defendant as actual possessor of a land of 2 × 28

(1) " Doc. seig." v. 3, p. 119 to 135.
Present;—Mr. Justice Pyke, Rolland and Gale.

arpents, conceded on the 17th September 1796 by General Christie to J. B. Bigouesse dit Beaucaire, was sued *en déclaration d'hypothèque* for arrears of *cens et rentes* including a right of *corvée*.

By the deed of concession this land had been subjected to a seigniorial annual rent of 19 *livres* 12 *sols tournois* and 1 *sol tournois* of *cens* for each arpent of front by the whole depth, and further, to a right of *corvée*, valued at 3 *francs*, making £1. 1s. 1d. currency per annum.

The Defendant opposed to this demand exceptions similar in substance to those which had been pleaded by Molleur. Mr. Justice Day, appeared for Lamoureux who was not more fortunate than I was. His client underwent the fate of mine ; he was condemned by a Judgment of the 2nd February 1842. The grounds of this judgment, as given by Mr. Justice Pyke, deserve to be read and considered, they will be found in the note at foot. (1)

(1) The second, third and fourth pleas are exceptions of a very peculiar description, and the law invoked therein, would seem to be either unknown or to be of so doubtful a description, as not to admit of its being stated with any certainty, the object of the whole is not to set aside the deed of concession itself but to reduce the rate of rent therein stipulated to the rate at which it is alleged, by law, the land should have been conceded, and at which the seignior was bound to concede ; the law however is so variously stated in these exceptions, and in a manner so contradictory the one to the other that it is evident that the defendant has been groping in the dark and scarcely knowing were to turn, in order to find something upon which to resist the plaintiffs' claim for rent as stipulated in the original deed of concession, and it is evident by invoking laws so much at variance the one with the other, the defendant must have been aware that in truth there was no certain or precise law upon the subject, and that he had not been able to discover any.

In the first exception it is alleged that, by law, the seignior could not

202. The case presented itself anew, but this time before-

claim a higher rent than that at which wild lands were first conceded in the seigniories of this country.

In the second, that, by law, the seignior was bound to concede, at the same rate at which wild lands were first conceded in the seigniory of De Léry, in which the land is situated.

The third is, that by law, he is bound to concede at the rate at which wild lands were first conceded in this province, or at the rate at which they were conceded before the year 1711, or at which they were first conceded in the seigniory of De Léry.

But to crown the whole, and in order that the Court should remain in the state of darkness and uncertainty in which the defendant appears, himself, to have been as to what the rate of rent was originally in this country, what it was in the seigniory of De Léry, or what it was in Canada previous to 1711, the defendant has not taken upon himself to state, so that it is impossible from any thing set forth in these pleas that the Court can discover, whether the reduction claimed can be awarded or not; there is therefore nothing stated with that certainty which is essential to every pleading to enable the Court at once to say, if these facts are proved the conclusions taken are correct.

But the trouble is, that the defendant found that the rates of rent were so various that it negatived the idea, at once, of any fixed rate established by law, and therefore he thought it most prudent to trust to chance, and what he might be enabled to adduce in evidence and leave the Court to say or find out what reduction of rent should be made and thus exercice an arbitary control and power over a rent which the censitaire had, by a solemn act, stipulated and agreed to pay; it would require something more than what has been cited of the law of Canada upon the subject, to justify us in setting aside such a solemn agreement entered into voluntarily by the censitaire, and that in accordance with the common law of France and common sense also, " que toujours le cens a été proportionné au véritable produit de la chose accensée," (*) the censitaire paying *secundum facultatem bonorum*, and what more rea-

(*) Hervé.—Théorie des matières féodales et censuelles, v. 5, from p. 91 to 121.

re the Superior Court sitting in Quebec, and was decided on the merits, on the 13th January 1852, in the same sense

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sonable ? Is the censitaire alone to benefit from the increase in the value of lands, and the seignior to be excluded from that benefit, or is it right to suppose that in the decrease in the value of money that persons now applying for concessions should have them at the same low rate as the ancient censitaire, for if so the modern censitaire would have the avantage, in paying much less than those for whose benefit any restriction of the rent was originally intended, as one *livre* in those days was of as much value to the possessor as three in these days. This, however, is an equitable view of the question, but where is the law which authorises us thus to interfere ? We see none, the custom which now prevails of stipulating higher rents than those which were formerly taken in the first settlement of the country, has tacitly sanctioned it, and the Courts of Justice enforced it ; nor has there a judgment been cited in which the Courts of this Province, have interfered between the seignior and censitaire to set aside the stipulated rent agreed between them. It is not pretended that the censitaire ever claimed the land at a lower rent, he obtained the land that he required, and it is to be presumed from his acquiescence and engagement that he recognised the right to the rent stipulated and that he paid no more than other applicants for land at that period. We must therefore leave these rents to be regulated by the agreement of the parties which once concluded must be binding, and enforced as all other obligations and undertakings ; we can make no arbitrary regulations upon the subject, and if any abuse hereafter may be found to exist in matters regarding the feudal tenure as modified and now existing in Canada, it is for the legislature and not the Courts to apply the remedy. Besides the same question as that raised in this cause was so solemnly determined in in the cause of and again recently in the case of Rolland against Molleur in which my brother, Gale, who delivered the judgment of the Court particularly adverted to the different authorities again resorted to in this cause and in a manner so fully and satisfactorily that it renders any further observations or rather a repetition of those of M. Justice Gale unnecessary ; we adhere to the principle of those decisions until the superior tribunal has convinced us that we are in error and afforded a better principle whereon to determine.

that it had been at Montreal against Molleur and Lamoureux. (1) The Hon. and learned judge, Mr. Caron, who appeared in this instance, as counsel for the censitaire, had no greater success than had his two brethren at Montreal.

We notice, however, in the deed of concession of the 10th September 1839, given to the Defendant Martel by the seignior of Bourg Louis a stipulation that was not in the concessions made to Molleur and Bigonesse. The deed mentions that the concession is made subject to the payment for every arpent in superficies of " one *sol* or one half pen- " ny currency of seignorial and unredeemable *cens et rentes* " and seven *sols* or three and a half pence currency of *an-* " *nual and constituted* (*constituée*) *rent on the footing of* " *six per cent per annum redeemable at pleasure*, making " altogether eight *sols* or four pence currency of *cens et* " *rentes* as well ground rent as constituted rent, for every arpent of land in superficies.

The Defendant, who had alleged, but without proving it, that the land was in standing wood, at the time of the concession, considered that there was a sale *pro tanto* in the provision of this *rente constituée* redeemable at pleasure, and demanded the nullity thereof, in conformity with the *arrêts* of 6th July 1711 and 15th March 1732. He maintained further, " that the rate of seigniorial *cens* and dues " at which the Plaintiff was bound to concede the said " land was the ancient and ordinary rate at which the lands " were primarily and anciently conceded in the said seig- " niory of Bourg Louis ; that such rate was not more than " one *sol* of seigniorial *cens et rentes* for each arpent in su- " perficies, which rate is mentioned and fixed by the Plain- " tiff himself in the said deed of concession.....that

(1) Langlois vs. Martel.
Present.—Mr. Chief Justice Bowen, Mr. Justice Duval and Mr. Justice Meredith.
L. C. Reports v. 2, p. 36.

" consequently a rate of *cens et rentes* exceeding one *sol*
" per arpent in superficies, was illegal and that the excess
" ought to be reduced and diminished."

The judgment is contained in these terms :

"The Court,...considering that the *arrêt* of the King of
" France bearing date 6th July 1711, invoked by the defen-
" dant as the basis of his defence, is applicable only in a
" case wherein the seignior has refused to concede to the
" inhabitants the lands which they demand from him, and
" that the *arrêt* of the King of France, dated the 15th March
" 1732, also invoked by the defendant in support of his
" plea, directs all the proprietors of lands in seiguiory not
" then cleared, to make them productive and to establish in-
" habitants thereon, and that by the said *arrêt*, His Ma-
" jesty most expressly prohibits all seigniors and other pro-
" prietors from selling any lands in standing wood under
" penalty of the nullity of the deeds of sale and of restitu-
" tion of the price of the said lands so sold, which lands
" shall be reunited *de pleno jure* to the King's domain ;
" considering that it is proved that the Plaintiff in this
" cause, seignior of the North East of the seigniory of
" Bourg Louis, now called New Guernesey, has by deed
" made and passed before Mtre. Panet and his colleague,
" notaries, at New Guernesey, on the 17th September in
" the year 1839 conceded, not sold, to the defendant the
" land therein described subject to divers charges, clauses
" and dues therein enunciated, which concession of the
" said land and appurtenances he has possessed from the
" time of the passing of the said deed to the present day ;
" considering that the allegations contained in the peremp-
" tory exception in law and established by the evidence
" produced in this cause, are not sufficient in law to annul
" the said deed of concession, in whole or in part, dismis-
" ses the peremptory exception in law pleaded by the de-

" fendant in this cause, and condems the defendant to pay " to the Plaintiff the sum of £16. 11. 4. currency, for " eight years arrears of *cens et rentes* due by the defendant " by the Plaintiffs in virtue of the above mentioned deed of " concession, payable the 1st November 1848, with interest " from the 28th April 1849, and costs.

203. Finally, the same decision was pronounced by the same judges, on the 17th October 1853, in a suit brought by the same seignior against one Trudel.

We read in the collection of " Lower Canada Reports," v. 3, p. 475 :

" In this cause and in five other causes instituted by " the same Plaintiff against divers censitaires of the seig- " niory of Bourg Louis or New Guernsey, all decided the " same day, the facts were the same as in the case of Lan- " glois against Martel, and the judgments in these causes " were in all respects in conformity with the decision in " that cause of Langlois against Martel."

204. All the judgments which have been cited establish, in an incontestable manner, that from the time that the amount of the *cens et rentes* became the subject of judicial investigation, the Courts have constantly maintained the legality of any rate whatever, when it had been freely fixed by the agreement of the parties, or when, in the absence of written title, it was supported by possession, founded on the rule of the common law, which allowed in the like case, to exact " the same dues imposed on the other lands conceded in the seigniory." There has been, as far as I am aware, no contrary decision rendered. If even one such existed it would without doubt have been cited.

Yet the authority of these decisions is not the only authority that can be invoked. That no less imposing, of the

Legislature may also be produced, at least in so far as that Legislature has been able by its acts to recognise the validity of the agreement between seigniors and censitaires concerning the amount of the *cens et rentes*, and the applying of the rule of the common law in similar cases to regulate that amount, in the absence of such agreement.

1st. In 1801, chap. 11. " An act for better regulating the common belonging to the town of 3 Rivers."

We learn from the preamble that this common, which contained about 468 arpents, was possessed by the inhabitants of that town by virtue of two titles, the one granted by the Governor, M. de Montmagny, on the 15th August 1648, and the other by the Reverend Fathers, the Jesuits, on the 9th June 1650; that both before and since the cession of the country, many persons had built houses in consequence of grants made to them on this common by a majority of the inhabitants of the town.

By the 6th section of this Act, the Legislature gives to the trustees the power " to ratify and confirm such grants " of building lots on the said common as have been here- " tofore assented to, *bona fide*, by a majority of the inhabi- " tants.....and to pass regular and valid titles for the " same, at the rents and on the conditions andservices *in* " *such grants set forth*, or if no such rents, conditions and " services are specified in such grant, then at the rents and " on such conditions and services as were customary at or " next before the time of making the same.

Then the 7th section authorises them " to grant by " deed, to such person or persons as to them may seem " proper such lots of ground for building on the said com " mon as shall have been fixed and determined on at a ge- " neral meeting (of the inhabitants) and *at the rent and on* " *the conditions and services at such general meeting also*

" *fixed and determined on.* Each building lot so conceded " in the course of 12 years not to contain more than half an " acre french measure."

Behold, then, how more than 50 years ago, an act of our Legislature acknowledged the validity of a conventional rate. or of that which was the usage, at or immediately before the time of the concession. (1)

2nd.—1821, chap. 17. Act to partition the common of the seigniory of Boucherville.

Section 13; " Nothing herein contained shall extend " or be construed to extend to prevent the seigniors of Bou- " cherville ..... from asking, demanding, having and " exercising all, each and every the rights, *cens et rentes*, " *lods et ventes, corvées, retrait* and other rights to him or

(1) At no. 188, I have already established that the dues for a great number of *emplacements* (building lots) conceded in the town of Three Rivers from 1683 to 1752, varied from 1 *denier* for a lot of 50 feet of front by 7 toises in length to 15 *livres* in money, together with a capon and 2 deniers of *cens* for an emplacement of 40 ⋈ 20 feet. Here follow some concessions in the town, the titles of which I have examined, and which are posterior in date to those already given, but anterior to the act of Parliament.

1774 June 22 (Badeaux, notary) concession *by the commissioners for the common* to Samuel Sills; 47 ⋈ 100 feet; " 12 shillings of the Province of *cens et rentes*."

1784 May 9th (Badeaux, notary,) concession by the Chevalier de Niverville to F. Dubé; 1st 40 ⋈ 80 feet; " 12 livres of seigniorial rent and 2 *sols* of cens;" 2d, 60 ⋈ 80; " 16 *livres* of rent and 2 *sols* of cens."

1799 April 16th, (Badeaux, notary,) concession by the widow de Tonnancour to L. J. Le Proust; 100 ⋈ 100 feet; " 15 *livres* and 1 *denier* of *cens*.

" them due and owing and which may become due, and " owing by virtue of the original deed of grant of the said " common, or by virtue of the deeds of grant of the lands or " dwellings of the said proprietors or by virtue of the ins- " trument of grant of the said seigniory generally, all each " and every which right and rights whatsover are wholly " and specially reserved, which reservation shall be ex- " pressly stipulated in the contracts which shall be passed " in manner hereinbefore prescribed."

3rd.—1823, chap. 18. Act to provide for the better regulation of the common of the seigniory of Yamaska.

Section 12. " No rule or order that may at any time " be made in virtue, of this act, shall in any wise prejudice

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1799 August 17, (Badeaux, notary,) concession by M. de Niverville to Pierre Rouet; 60 ⋈ 80 feet; " 16 *livres* 2 *sols* of *cens et rentes*."

1800, March 29th, (Badeaux, notary,) concession by the same to Nicolas Grondin; 40 ⋈ 80 feet; " 15 *livres* 2 *sols* of *cens et rentes*."

Concessions by the trustees of the common after the act of the Legislature;

1801 (Doucet, secretary) concession to Chs. Giroux; 73 ⋈ 120 feet; " 1 *sol* for every 50 feet in superficies and 2 *sols* of *cens* for the whole, that is to say, 8 *liv.* 15 sols and 2 *deniers*."

1817 Sept. 3d (Badeaux, notary,) concession to Etienne Ranvoyzé; 42 feet by 54 in one line and 60 in the other, " 2 *sols* of *cens* and 2 shillings current money for all *cens et rentes*."

1817, Sept. 18th, (Ranvoyzé, notary,) concession to Marie Vézina; 105 ⋈ 120 feet; " 2 *sols* of *cens* and 10 shillings and 7 pence current money for all *cens et rentes*."

1829, April 20th. (Leblanc, notary,) concession of no. 25, 100 feet in depth; " 5 shillings of rent and 2 *sols* of *cens*."

" or affect..... such reciprocal rights and privileges as " the seigniors and inhabitants of the aforesaid seigniory " may in virtue of their deeds, titles or contracts have guar- " anteed to each other, previous to the passing of this act."

4th.—1824, chap. 30. Act to partition the common of the seigniory of Varennes between the co-proprietors thereof.

Sect. 6 : " If it shall appear to the commissioner ...that " any agreement or convention has been heretofore made, " and entered into between the seignior.... and a majority " of the co-proprietors interested in the said common *fixing* " *or establishing the rights of the said seignior*, he shall in " the partition of the said common,....be guided with " respect to the rights of the said seignior by such agree- " ment or convention ; but if there shall have been no such " agreement or convention, then he shall be guided by the " rights of the parties *as they may be made apparent to* " *him*."

The 12th section of this act is similar to the 13th of the act for the common of Boucherville.

5th.—1831, chap. 32. Act for the division of the common of the *fief* of Grosbois.

Section 7th. Similar to the 6th sect. of the act of the common of Varennes ; and section 12, similar to the same section of that act and to the 13th of the act of Boucherville.

6th.—1833, chap. 24. Act for the division of the common of Rivière du Loup. Section 4th similar to the 7th of the act of Grosbois ; and sect. 9, similar to the 12th of that act.

205. We may further mention, though it may be of altogether a special character, the Act of 1823 chap. 14, " for the relief of certain censitaires or grantees of La Salle,

and others therein mentioned, possessing lands within the limits of the township of Sherrington."

This township had been erected by the King's Letters patent of the 22th February 1809. From the year 1766 to the year 1805, the seigniors of La Salle and of the adjacent seigniories had, at different times, made concessions of lands which were comprised within the limits of that township. Difficulties had arisen between individuals who were grantees of lands in the township, by virtue of divers letters patent from the Crown, and a large number of individuals who were then in possession of the same lands, by their having been conceded to them by the seigniors of La Salle or of the neighbouring seigniories, before the year 1809, either by purchase or by other titles transferring the property from the original grantees of these same lands. The grantees of the Crown had instituted suits at law which were still pending in the Courts of justice, *to the number of about five hundred*, with the view of ejecting the persons who were in possession as censitaires of La Salle and of other adjacent seigniories. A report by commissioners appointed by the Governor, under a special commission dated 31st May 1819, had established that those persons were possessors in good faith of the lands occupied by them within the limits of the township, and that a large portion of these lands were in a high state of cultivation and inhabited by a considerable population. Upon these representations of the Legislature, and the King having manifested his intentions that the censitaires should be maintained in their possession, the Governor had made offers of indemnity to the grantees of the Crown or their representatives ; which offers had been accepted under certain conditions, by the whole of the parties interested, excepting with regard to the law expenses incurred by them.

It was to put an end to those difficulties that the Legis-

lature intervened by passing the act in question. The first section permits the Governor to annul the letters patent of the 22th February 1809, erecting the township, as also other letters patent bearing date the 29th May of the same year and 30th December 1812, by which the Crown had alienated some portions of the township, and that " in so far as the said letters patent relate to the lands occupied as aforesaid by the persons claiming them as tenants of La Salle, or of the said adjacent seigniories.....and also to any other lands in the said township which the said grantees or their legal representatives owning the same may wish to hold in fief and seigniory."....

By the 3rd section the Governor is authorised " to regrant to the said grantees or their legal representatives in *fief* and seigniory, *en franc aleu*, with all seigniorial rights, privileges and prerogatives, as well the said lands occupied as aforesaid by the said persons claiming as tenants of La Salle, or of the said adjacent seigniories, save and except the Clergy Reserves comprised therein, as any other lands within the said township, in respect of which the said letters patent shall have been revoked and annulled in the manner herein before mentioned, with power to the said grantees or their legal representatives respectively, without limitation or restriction to alienate or dispose of such lands or any part thereof, either freely and absolutely, or for such rents, reservations 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 February 1809 by the said persons claiming as tenants of La Salle under and by virtue of the deeds of grant, *titres de concession*, or by vir-

tue of any other right or title, by or under which they have held or now hold such lands.

In fine, the 5th section enacts that the possessors as tenants of La Salle or of any of the said adjacent seigniories, before the said year 1809, and whose land are found to be within the limits of the said township of Sherrington, shall from thenceforth be and remain in the quiet possession and enjoyment of those parts of the said lands so occupied by them in respect of which the said letters patents shall have been revoked in manner aforesaid by the same tenure and upon the same condition and in the same manner as they now respectively hold the same either by virtue of their several deeds of concession or other titles transferring property, *translatifs de propriété* or by prescriptive possession according to law, and they shall thenceforth be held and deemed " to be the just and lawful " proprietors of such parts of the said lands and shall not " thereafter in any manner or way be dispossessed of the " same except for lawful cause."

Thus, all the deeds of concession made by the seignior of La Salle by encroaching on the wild lands of the Crown, were confirmed and as a consequence, the rate of dues *stipulated* in those deeds.

I have seen several of these deeds of concession and among others that given to Joseph Marie Longtin dit Jérome, on the 11th February 1795, (Chaboillez, Notary.) This deed which contains a concession of 6 × 30 arpents, mentions " 1 *sol tournois* money of France for every ar- " pent in superficies, ½ a minot of wheat dry, clean, fair " and merchantable for every 20 arpents in superficies " and 3 *sols tournois* of *cens* for all the said concession," which makes (even by valuing the wheat at 4 *francs* the minot) 3 *sols* by the acre in superficies.

206. In fine, if we required further proof, to establish that the rate of *cens et rentes* has continually varied and, consequently this *negative*, that there has never been a law limiting that rate, distinct from the *arrêt* of 1711, we might go and seek them even in the acts of that branch of our legislature in which, in these latter days, the question of the seigniorial tenure has been debated with the greatest eagerness and zeal in the interest of the censitaires.

In a Bill, " to define seigniorial dues in Lower Canada and to facilitate the redemption thereof, " *reprinted, as amended*, in the Legislative Assembly, during the session of 1852-53, we read, sect. 5, that no seignior shall have power to establish an annual rent exceeding " the sum of three pence and a half currency (that is to say seven *sols*) for every acre in superficies, " upon any uncultivated lands which shall be conceded in future. On the other hand, in another bill submitted to the same branch of the Legislature, it was proposed to reduce the rate of the dues and annual charges to 2 *sols* per arpent in superficies, declaring null all stipulations to the contrary; city, town, or village *emplacements* and the lots of land in the *banlieue* of a town, were, nevertheless, excepted, the redemption value of which were to be calculated on the total amount of the said dues and annual charges. This proposition was sanctioned by the Assembly. But it disappeared among the numerous and important modifications which this last bill had to undergo in the Legislative Council, before it became " the Seigniorial act of 1854," that is, the law abolishing the feudal institution.

Although the difference may be great between a rent charge of seven *sols* and a rent charge of two *sols*, the transition from the one to the other was not, on that account, less rapid in the deliberations of the Legislative Assembly, without however carrying along with it any decisive conse-

quence. So true it is that persons who go in search of a fixed, legal and universal rate of seigniorial dues do not sail in the open seas.

POST-SCRIPT.

207. Since the foregoing was written, a judgment was communicated to me, which was recently discovered (even since the "seigniorial questions" have been under consideration,) rendered on the 5th February 1675, by M. C. d'Aillebout, *juge-bailli* at Montreal. I am told that those who made the discovery of this judgment regard it as deciding the question of the amount of *cens et rentes*, and that they attach to it, at least, as much importance (if not more) as to the celebrated ordinance of Gaudarville. This is another error into which their zeal has hurried them : an error which they must soon have perceived, if they had carried their research a few steps farther.

According to the documents in the cause, one François Noir dit Rolland, proprietor of a land of 2 × 20 arpents, held by him, *en censive*, in the sub-fief of Chailly, situate at *Bout de l'Isle*, in the Island of Montreal, presented to M. d'Aillebout a petition dated the 30th January 1675, in which he complained of the high rate of the rent charge which the seignior M. Gabriel de Berthé, sieur de la Joubardière, wished to impose on him and demanding that the latter should be directed to deliver him a deed at the usual *cens et rentes*.

Rolland alleges "that the said sieur de Chailly has sub-
" jected the land, by him granted to the said Plaintiff, si-
" tuate in the said fief, to thirty *sols* of *cens* for each of the
" said forty arpents, and two capons of annual and
" perpetual rent, contrary to all the ordinary rent charges
" of this country, and especially, those of Messieurs the
" seigniors of this Island, which consist only of 6 *deniers*

" for every arpent, and two capons of rent, or a minot of " wheat for two arpents in breath, *for which the said Sieur* " *de Chailly had given him a deed which is among the pa-* " *pers of this Court.*

The defendant replied, " that there being no restriction " in his deed of concession of the *fief*, binding him as " to the *cens* and rent charges which he could exact from " his vassals and tenants, and therefore that he could dis- " pose of them at such *cens* and rent charges as he should " think proper, especially in consequence of the advanta- " geous situation of the said land conceded to the said sieur " Rolland."

On the 3rd February 1675 the judge ordered that " the " whole should be communicated to Messieurs the seigniors " of this Island."

On the next day, the procurator-fiscal, M. Migeon de Branssart, opposed the pretensions of the sub-vassal, saying among other things, that these pretensions were " contrary " to the *intention* of the seigniors dominant of the said " Island, who do not consent that the sub-fiefs should draw " such great profits, burdensome to their vassals, seeing " that the said fiefs have been given gratis to the said par- " ticular seigniors, and contrary to the usage and Custom " of this country established by the seigniors, neighbours " to this Island, or of the country, from the dues and char- " ges which they impose on their tenants."

Adopting the conclusions of the procurator fiscal, M. d'Aillebout ordered " that the sieur de Chailly shall deli- " ver to the said Plaintiff a deed of concession for the lands " by him granted to the said Plaintiff, *at the rate of eleven* " *deniers* of *cens for every arpent, and two capons of an-* " *nual rent for two arpents in breath*, and other charges " contained in the *ordinary deeds of the said seigniors*,

" forbidding him, in future, to give lands in his fief at hig-
" her rates than those by us above prescribed, under the
" penalty of forfeiting the benefits of his said fief, which
" shall return, *de jure*, to the possession of the said seig-
" niors, to dispose thereof as to them may seem advis-
" able."

The conclusions of the procurator fiscal, who invoked the interest of the seigniors dominant and *their intentions* in sub-infeudating, as also the judgment of M. d'Aillebout, lead, at first, to the presumption that the sub-infeudation had been made on the condition, at least tacit, for it is not written in the deed, that the sub-vassal should not concede at higher rates than those imposed by the seigniors dominant, themselves. This explains the prohibition, relative to the concessions to come, contained in this judgment.

At the first glance, one may be induced to believe that the judgment decreed the reduction of the *cens et rentes* stipulated between the parties ; nevertheless, such is not the case, as can be ascertained by, merely, an attentive examination of the record.

But there is further proof, in the first place, of the absence of agreement as to the amount of rent, and, secondly, that the Plaintiff had not accepted the rate that his seignior wished to impose on him. I have procured the deed of concession of the sub-fief which is dated the 30th July 1672 (Basset *greffier*), and that which the sieur Chailly had deposited in Court concerning the land which he had conceded. The fief containing 20 × 20 arpents, had been conceded by the seigniors of Montreal to the Plaintiff and his brother. In the second deed deposited in Court, which bears date the 30th July 1675, (Basset, ***Royal*** notary,) the defendant declares as well in his own name as in that of his brother, that he has ***given***, ***granted*** and ***conceded*** to the Plaintiff the quantity of 40 arpents of land making part of

the above mentioned fief, subject to the charge of paying annually, " thirty *sols tournois* of rent for each of the said 40 arpents, two capons of annual, perpetual and unredeemable rent." *But the Plaintiff is not a party to this deed ; the seignior alone speaks.* The rate which he wished to impose on his censitaire was not accepted by the latter : the amount of the rate charge was not, therefore, fixed by the agreement. Thus, there was room, in the absence of such agreement, to fix that rate by the application of the rule of the common law ; in accordance with which the censitaire demanded that is seignior should pass a deed in his favor. This is what was done by the judgment in question. The rate so adjudged (by valuing the capon at 20 *sols*) amounted to 2 *sols* per arpent in superficies. It was already more than the rate adjudged sixty years later by the Intendant Hocquart, in his ordinance of Gaudarville. What then can result from this judgment, so recently discovered, if it be not a proof incontestable, in addition to many others of a continual variation in the amount of the seigniorial dues.

PART THIRD.

RESERVATIONS. (1)

208. The relations between the seigniors and their grantees *à titre de cens*, have not been well defined and established except by the *arrêt* of Marly. The condition of settlement which has existed at all periods, which carried along with it the necessity of such concession for all that the seigniors could not render productive by themselves, presupposed easy terms and such as would not prevent the attainment of the object aimed at. This condition inherent and acknowledged, and put in execution by the Edicts of retrenchment, is also to be found in almost all the title deeds of the seigniors anterior to the *arrêt* of 1711. I regard it as a law of public policy, modifiying in a considerable degree, the tenure *à cens*, such as it would otherwise have been deduced from the jurisprudence and the practice in France. If it can be said that, in the absence of precise interpretation, it did not destroy that which was essentially inherent in the *fief*, such as the acknowledgment of the *dominium directum* and the profits of mutation which flowed therefrom, we are bound equally to say that it modified the exercise of all the other conventional and facultative rights. At least, it left in the hands of the legislator still more than there existed by the law of *fiefs* in France, considering its imperfection and insufficiency, the power to explain how far these additions to the principal profits might extend, at least for the

(1) The first part of this dissertation on the subject of the " Reservations " (from No. 208 to 211), was prepared by my honorable colleague Mr. Justice Morin. I have included it in my remarks in consequence of his absence owing to ill health.

future. This right of the King to legislate is provided for in most of the deeds of concession to seigniors, even as giving far beyond a limitation of dues not essentially seigniorial, and as liable to affect those last, since the entire tenure and " the usual dues and rent charges " might be changed in favor of the Crown in accordance with the Custom of Paris, which ought to be followed " provisionally and until it were otherwise ordered. "

209. From this position of things at the period of the *arrêt* of 1711, I draw the following conclusions :

1st. The Sovereign Legislator, who could do much more, could, without violating the rights which he had granted, prohibit the charges, reservations and servitudes imposed on the censitaires in diminution of the *dominium utile*, when such were not essentially attached to the *dominium directum*, or specially established and acknowledged as being necessary for the exercise of the other rights of the seignior.

2nd. The legislator made this prohibition by the *arrêt* of 1711, explained by that of 1732, with respect to the charges, reservations and servitudes not comprised in the above limitations, and which do not consist of dues or annual payments.

3rd. This prohibition was of public policy, established the tenure and could not validly be derogated from.

4th. No posterior circumstance has annulled or abolished this prohibition, nor changed the tenure in that respect.

210. These propositions may be supported briefly by a few arguments.

1st. If the sovereign authority found that the imposition of a rent or *surcens*, or a *cens* which was in itself a source of profit, and not simply a recognition, prevented its intention from being carried out, it could limit this *cens* to the smallest sum. This was the actual practice in France. It was so that it was looked upon in the same manner here. With still greater right the same authority could fix it arbitrarily and for ever. It was not done so, if it be not by the establishment of a forfeiture in the cases in which the seignior should wish to exceed the usual rates. But in giving to the latter all the profits which the value of his lands could allow of, it found another method to regulate and simplify the tenure and to proscribe the abuses which were complained of, by ordering that the concessions should be made on a rent charge. It thus legalised a portion of the charges not inherent in the feudal system, and prohibited the remainder. These reservations, charges and servitudes, by means of which the seignior continued to participate in the *dominium utile*, could not be called rent charges. A rent charge is a payment (*prestation*,) and the censitaire could neither owe nor give that which never belonged to him, but which the seignior always retained in his own hands. It is because a rent charge, properly so called, was always defined and had an appreciable value, that it could not retard the settlement of the country, as would concessions in which the seignior while appearing to give the property, had, in fact, retained a large part of it.

2nd. A distinction is made, in establishing legal nullities, between the prohibitive form and the simply imperative form, used by the Legislator. But even in the case in which the latter only has been employed, nullities may exist, when the legislation relates to public law, because then there is question, not of defining the nature and consequences of certain contracts or of authorising certain modes of effecting them, in case of omission, but of esta-

blishing, concerning matters of general interest and affecting the public policy, laws which all are bound to respect.

3rd. The establishment or regulation of a tenure affecting all the lands of the country legislated for, all the persons who inhabit or shall inhabit it for ever, all those who shall possess its lands, not only under a general title as representing first grantees, but under any title whatever, is assured by one of these fundamental laws and part of the public policy. If the *cens* had been limited and rendered fixed for ever by the *arrêt* of 1711, this law would have had that character. The amount has been left in it to the private agreement of the parties, but the partition of the conceded land between the seignior and the grantee has been prohibited. The distinction was so clear, and has been so well understood, that, in the concessions of seigniories made after the *arrêt* of Marly, the title prohibits to insert in the sub-concessions : " either sum of money or any other charge, but that of a simple rent charge." These words " simple rent charge (*simple titre de redevance*) have no doubtful meaning, and are adopted by the sovereign authority in the *Arrêt* of 1732, as recapitulating the more detailed legislation that had been contemplated and proposed in the interval. If they ceased to insert the same prohibitions in all the posterior titles it is because those titles were subordinate to the law of the country which was perfectly known ; and in fact these reservations and charges were not imposed under the ancient government, nor even for a long time after.

This is not the place to examine into the consequences of fixing the rents by any of those titles.

4th. The judgments rendered on oppositions *afin de charge* or *afin de conserver*, maintaining the charges, reservations, and servitudes of this nature, whether by default

or without direct contestation on that point, do not appear to me sufficient to set aside the tenure of lands in the country. And if there had in latter days been contestation, or even a uniform jurisprudence, evidently founded on error, it ought not to prevail at present, when a more thorough examination has shewn it to be erroneous. Now, that error has been the supposition, inferred partly from the change of organisation and even of ideas consequent on a new domination, that the seigniors were absolute masters of their seigniories, in the same way as proprietors in soccage. They, no doubt, do not now claim this. If they were claiming it, the legislation which has, at all periods exempted the seigniors from the duties and charges of highways (*voirie*) with respect to unconceded lands, the pertinacity even with which the seigniors, as we see in Cugnet, claimed this exemption, would be inexplicable.

211. The cession could not, besides, have had the effect of increasing the property of seigniors, nor to legalise, for their benefit, that which had before been illegal. Neither has any other law, positive or inductive, done so.

212. I may add the following observations in support of those of my learned brother. (1)

At the same time that the King's *Arrêt* of the 6th July 1711, directing the seigniors to concede on a rent charge, was promulgated, His Majesty gave, on the same day, a general patent of ratification for several concessions in *fief* made by the Governor and Intendant. (2) This patent recapitulated all the conditions and reservations which the King meant to be imposed on these kinds of concessions as well as on the sub-grants which the seignior ought to make to their tenants. We do not there find any of the reservations

(1) See above p. 270 in the note.

(2) Ed. and Ord. in-8. v. 1, p. 323.

which the seigniors have taken upon themselves to stipulate for their benefit, and which are now submitted for the examination of this Court.

213. The proof that such reservations were repudiated by the tribunals of the country under the French Government, especially since the *arrêt* of 6th July 1711, is presented to us in many judgments and ordinances of the Intendants.

The first ordinance to be cited, because it was rendered on the occasion of a demand of a concession *en censive*, is that of the Intendant Begon dated the 28th June 1721, given against the seignior of Vincelotte and founded on the *arrêt* of 1711. (1)

The Defendant is condemned to pass a deed of concession to each of the Plaintiffs; then the ordinance goes on to say: "we prohibit him from establishing *other* dues "or the said lands than those of rent charges, and from "causing to be inserted in the said deeds other conditions "besides those of keeping house and home, preserving the "oak timber fit for the construction of vessels, giving the "usual clearing along the boundaries of their neighbours "and allowing the roads which shall be necessary."

214. Of these illegal reservations, that of wood appears to have been most insisted upon by the seigniors. Yet, previous to the *arrêt* of 1711, we find this pretension repelled by a judgment of the Intendant Raudot, bearing date the 15th June 1707 (2) This judgment prohibits the seignior, the sieur de Hertel, from troubling his censitaire in his possession and *from taking or carrying therefrom any wood.*

(1) Ed. and Ord. in 8, v. 2, p. 461. See no. 175.
(5) Extraits de Cugnet p. 23.

215 On the 7th June 1711 [illegible] de Intendant Begon rendered an ordinance in a contestation between the seigniors of Chambly and their censitaires, which contestation raised several questions.

The petition of the inhabitants set forth that the sieur Hertel, seignior of Chambly, had given permission to M. de Ramesay, Governor of Montreal, to build a saw-mill on the Huron River; that the waters raised by the dam of this mill partly inundated their lands and caused them very considerable loss: that these waters, owing to their great fall in proceeding from the said mill carried down the saw dust and the slabs, which settled on their fields, injuring the soil, whereby, they were placed under the necessity of removing the said wood to prevent the roots of the grass from rotting; that a considerable number of *pine* trees had been carried away which the said sieur Hertel had furnished to the said mill, without his paying them the price that was due to them, they being the owners of the pines which were on their lands. They also asked that they should be allowed to take wood on the unconceded lands of the seigniory.

The seigniors *donataires en avancement d'hoirie* of the said sieur de Hertel, agreed to cause the damages which the inhabitants were suffering by the raising of the waters, to be valued by arbitrators and to abandon to them *all the slabs* which "the waters proceeding from the said mill would throw on their lands, as an indemnity for the damage which they pretended to have been done to them, as well by the said slabs as by the saw dust which was scattered over their fields; praying that in regard to the demand of payment for the pine wood cut on their lands, to delay judgment in that respect, until the return of M. de Ramesay from his voyage to France, in consideration of the agreements which the said sieur de Hertel had made with

(1) "Doc. Seig." v. 2, p. 45.

him, and as to the demand of the inhabitants to take wood on the *unconceded* lands, the seignior would not consent to their so doing.

The ordinance directed that experts should be named to estimate the damages arising from the over-flow of the waters caused by the canal of the mill, and for the indemnity to be paid to the inhabitants according to the *procès-verbal* which should be made of the same; ordered that the slabs which had gathered and which should thereafter gather upon their fields should belong to them in lieu of indemnity, as well for the past as for the future, for the loss which they claimed that the said wood and saw dust had done them; that *the pine wood which had been cut on the lands of the said inhabitants, by order of the sieur Hertel, should be paid for by him to the said inhabitants at the rate of six sols for each tree*, saving his recourse against whom it might concern ..... the said inhabitants being prohibited from taking wood on the lands of the said seigniory not conceded, under penalty, &c.

216. On the 4th July 1715, (1) ordinance of the Intendant Begon in a suit between Joseph Amiot, sieur de Vincelotte, Plaintiff, against seven of his censitaires.

By the title deed of the seigniory of Cap St. Ignace, conceded on the 3rd Nov. 1672 to Geneviève de Chavigny, widow Amiot, and mother of the Plaintiff, it was said "that the said Dame Amiot will preserve the oak wood "which may be found on the land which she shall re-"serve as her chief manor; that she shall even make the "reservation of the said oaks in the extent of the particu-"lar concessions made or to be made to her tenants, which "shall be fit for ship building."

On petition presented to Messieurs de Frontenac and

(1) "Doc. Seig." v. 2, p. 52.

Duchesneau, this lady had obtained an ordinance of the 29th October 1680 " giving permission to the petitioner," says the Intendant in that of the 4th July 1715, " to take " wood throughout the extent of the seigniory, to build the " houses for which she shall have occasion and to cons- " truct *barques*, without that the said Ordinance can preju- " dice the clause contained in M. Talon's deed of conces- " sion, nor that the said Dlle Amiot can take from an indi- " vidual inhabitant all the wood that shall be necessary for " her, nor in the places in which the inhabitants of the said " seigniory had preserved them as ornaments of their con- " cessions and for the use of their households." In his petition, the Plaintiff contended that in virtue of the ordinance obtained by his mother, he had the power " to take the oak throughout the extent of his seigniory of Vincelotte *to build as well by sea as by land*, and that with that purpose he had, about a year before, begun to cut and draw a portion of the oak wood necessary for a ship, which he wished to have built, which oak wood he had drawn from a distance of a league and a half from his house, with the view of preserving trees of the same wood at a nearer distance on the land of one of his tenants, to make use of them as soon as he should know, by the progress of the work, when he would have occasion for them ; but that having been obliged to come to Quebec, sick, last winter, to attempt to recover his health, the said tenants, *notwithstanding the reservations made of the said wood on their censives*, had, immediately after his departure, sold and caused to be carried away all the oaks that they had on their land, in order to defraud the Plaintiff, and to profit by property which did not belong to them" ; praying to the effect that it might please the Intendant " to permit him to cause to said inhabitants who have fraudulently sold the said oaks, to appear before him to be condemned to such penalty as he may please to order ; that all the sums to which the said sales may amount shall be delivered to the said Plaintiff as pro-

prietor of the said wood, and, to avoid expense, that the Captain of Militia of the said locality shall read the said petition to the parties interested ; and to seize in the hands of the purchaser of the said oaks the payment agreed upon by them."

Upon this petition, permission was given " to seize at the risk and peril of the said petitioner, as prayed for, in the hands of the sieur Prat.

Three of the defendants " admit to have sold some oaks that *were on their lands*, to the sieur Prat, for the construction of a vessel that he was getting built ; but that the said oaks did not belong to the said sieur Vincelotte, as he states in his said petition ; but to His Majesty, who in all the concessions in seigniory made by him of the lands of this country, has reserved for himself the oak wood for ship building, and who has directed the seigniors to make the same reservation, in the concessions which they shall make of the lands of their seigniories, to the inhabitants of this country, which reservation is not made with the object *that the seigniors may profit by it*, but only in order that the oak wood being preserved in this colony, His Majesty may dispose of it for the construction of vessels ; that the Plaintiff ought not to avail himself of the permission which his mother obtained from Messieurs de Frontenac and Duchesneau to take wood on the lands conceded to her tenants to erect buildings for sea and land, because that permission is granted only on the condition that she shall not do prejudice to the clause mentioned in Talon's deed of concession, which subjected the said Dame de Chavigny, like all the other seigniors of this country, to preserve and cause to be preserved, by their tenants, the oak wood, not for herself but for the King ; and that even if it were a favor that Messieurs de Frontenac and Duchesneau wished to confer to the said Dame de Chavigny, *it could not prejudice her*

tenants, in as much as they were not heard, this petition having been granted on a simple petition ; that if Messieurs de Frontenac and Duchesneau had intended that the said Dame Chavigny should be treated more favorably than other seigniors of the colony, in granting her the property in oak wood, which His Majesty has reserved for himself, they would have obtained a patent from the King to confirm the gift which the sieur de Vincelotte claims to have been made to his mother, of the said wood ; that ever since the settlement of this country the seigniors have sold the oak wood found within the bounds of their domains, and the inhabitants such as was found on their concessions, when they found occasion to get rid of it, without either of them being disturbed by the Governors and Intendants, by reason of the contravention made by the said seigniors and inhabitants to the clause of their deeds of concession forbidding them to dispose of oak wood, which apparently has been tolerated in favor of those who wished to undertake the construction of vessels, in consequence of the advantage derived by the colony therefrom, but that this toleration having always been extended equally, as respects the seigniors and the inhabitants, it is right that each should profit by the oak wood to be found on their lands, and in fact, no other seignior besides the said sieur de Vincelotte has advanced this pretension against their tenants up to the present time."

In this suit, there was produced a deed of concession of 4 × 40 arpents granted by the said Dame Amiot to Pierre Glonet on the 14th October 1678 (Becquet notary,) by which deed Glonet was bound to preserve standing all the trees of oak wood which were to be found on the said concession, fit for ship building.

Mark what is contained in the Ordinance of the Intendant Begon on this contestation : " the whole being seen and

" considered, we have suspended proceedings in the suit " of the said Vincelotte until such time as it has pleased " His Majesty to inform us of his intentions as to the said " demand, *and in the mean time, provisionally, we have* " *granted main levée of the seizure made in the hands of* " *the said Prat.* "

217. There are two remarks to make on this Ordinance.

Since Madame Amiot believed that there was occasion for an ordinance of the Governor and Intendant, to authorise her to take oak wood on the lands of her censitaires, it was because she did not consider that the reservation that she had made of it in their deeds of concession gave her that authority.

On the other hand, the Intendant Bégon, in discharging the seizure, must to be supposed to have been of opinion that the Governor Frontenac and Intendant Duchesneau had exceeded their powers in rendering the ordinance invoked by the Plaintiff. We may further remark that this last ordinance was anterior to the *arrêt* of the 6th July 1711.

218. Two other ordinances by the Intendant Begon, the one of the 18th Dec. 1715, and the other of the 20th March 1716, (1) prohibit the inhabitants from cutting down any wood, or from tapping the maple trees, on the lands *not conceded* in the seigniory, but not on their own lands.

219. Michel Laliberté, an inhabitant of Isle Bouchard, represented to the Intendant Begon, " that to extend the clearing of his land, he has been obliged to cut down, last winter, the wood on that part of his land which he had rendered productive, among which there being found several oaks, he had sawed and caused them to be sawn into planks rather than have the said trees burnt on the said lands ; that

(1) Ed. and Ord. in 8, v. 2, p. 285, 451.

the sieur Desjordy, major of the town of Three Rivers, and seignior of Isles Bouchard, pretending that he had no right to make the said oaks into planks because of the *reservation* of oak wood contained in his deed of concession and in those of all the inhabitants of this colony, has retained in his hands, as the price of the said trees, thirty six minots of wheat which came to the said Laliberté as his share of the crop of a land belonging to the said sieur Desjordy, and which he had cultivated and sown last year. He demanded of the Intendant that it might please him to condemn the said sieur Desjordy to render and deliver to him the said 36 minots of wheat, which he had retained in consideration of the said oak trees."

" Having regard to which, says the Intendant in his " Judgment of the 29th July 1722," (1) and considering that " the reservation made by the seigniors, in the deeds of concession which they give to their tenants, is made in consequence of the clause inserted in all the concessions of the seigniories of this colony, by which His Majesty reserves for himself the oak wood for ship building, and obliges the proprietors of the said seigniories to preserve and cause to be preserved the said oak wood by their tenants ; that this clause does not confer on the seigniors the property in oak wood which is to be found in the extent of the lands which they concede ; that His Majestys intention also is that the lands conceded may be made productive, which can only be done, by the inhabitants cutting done all the wood found thereon ; that it is for the public benefit that all the wood that the inhabitants cut down to advance the clearing of their lands should be usefully employed in firewood or in planks, deals and boards, rather than be burnt on the ground, the sale of wood being a necessary business in this country ; that the

(1) Ed. et Ord. in 8o. vo. 2, p. 471.

" price which the inhabitants receive for the same places
" them in a position to advance their settlement, and to pay
" a part of the expense which they have incurred, a cir-
" cumstance which tends to the settlement of the colony,
" *and that moreover the proprietors of seigniories cannot*
" *preserve any property in the lands which they have con-*
" *ceded subject to seigniorial cens et rente.*

" We forbid the sieur Desjordy to trouble the inhabi-
" tants of his seigniory in the felling and the sale of oak
" wood which they cut down to effect and advance their
" clearings, and to make any demand on them on account
" of the said wood, with the exception of those persons
" who may cut down the said wood merely to sell the same
" without going afterwards to work to clear the lands on
" which they had cut it, in which case we give him per-
" mission to seize the said wood and to come afterwards
" before us to have the same confiscated, without that he
" can, under any pretext, exact any thing from the said in-
" habitants on account of the said wood.

" And before passing judgment on the demand of the
" said Laliberté, in the matter of the 36 minot of wheat, we
" order that the said sieur Desjordy, or his Attorney, shall
" appear before us on the 29th August next."

The two parties appeared by persons authorised to that effect; the representative of the seignior saying that the statement in the petition of Laliberté is not true, in as much as it is not the intention of the said sieur Desjordy to prevent the inhabitants from deriving advantage from the oak wood so far as they clear their lands, but merely to prevent them from cutting down the oak wood in the heart of the lands conceded, and which they do not clear, because that when they have bared the said lands of the said oak wood, they abandon them and that inhabitants cannot then be found to settle on the said lands when the oak wood has been re-

moved therefrom, consenting to execute the ordinance of the 29th July last and offering to prove that the oak wood cut by Laliberté *was not on his land only*, but on those of other inhabitants and unconceded lands, and that this it is that obliges him to retain the said 36 minots of wheat until such time as the said proof has been produced." These allegations were denied on behalf of the other party who, on his side, asked to adduce evidence and prayed for the restitution of his wheat.

By an ordinance of the 30th August 1722, (1) the Intendant, before rendering judgment on the restitution of the 36 minots of wheat, gives permission to the parties respectively to adduce evidence in support of their allegations, before the sieur Raimbault, the King's Attorney for the royal jurisdiction of Montreal, whom he appoints and substitutes to hear the witnesses whom the parties shall summon before him to show, respectively, namely, on the part of the sr. Desjordy, that the oak wood cut by Laliberté was not on his land only, but on those of other inhabitants and unconceded lands, and on the part of Laliberté, that the said oak wood, which he has cut, has been on his own land, so far as he has advanced his clearing and not in the rear of other inhabitants and lands not conceded.

220. We read in an ordinance of the Intendant Dupuy, dated the 5th April 1727, rendered on the complaint of several seigniors, among others on that of the widow de Joibert " seigniores of the *fief* and seigniory of Islet du Portage," (2) " considering the indispensable necessity of preserving the wood of every description, in every seigniory, as well for the use of the particular seigniors on whose lands the said trees and wood are, as for the preservation of those which ought to be reserved for the King by the titles

(1) " Doc. Seig." v. 2, p. 79.

(2) " Doc. Seig." v. 2, p. 101.

of each concession.....and further, in order that the inhabitants of each of the seigniories may not longer give themselves licence and liberty to cut wood, without distinction, and *elsewhere than on the lands conceded to them* nor even to do any injury to the trees of their seigniors or neighbours.

" We expressly forbid all seigniors to cut or cause to be cut any wood beyond the bounds of their seigniories, also all inhabitants to cut any wood, nor cut or notch any trees, and that without permission in writing from those of the said seigniors or inhabitants to whom the said trees belong.....

221. All these ordinances cited by me establish that the censitaires were proprietors of the wood found on their lands, and that the seigniors had not the right to reserve it for their own benefit, " not being able," as the Intendant says, in the ordinance of the 29th July 1722, above referred to, " to preserve for themselves any property in lands which they had conceded subject to seigniorial *cens et rentes.*"

222. For the rest, when we find, in a deed of concession, the reservation of oak or other woods, such reservation ought to be supposed to have been made for the benefit of the King, who had imposed on his vassal the obligation to make the stipulation in the title deeds which he should give to his tenants. Even in that case, the property in these woods is not the less that of the censitaire, as it was that of the seignior before the sub-infeudation. In fact, the stipulation of this reservation made by the King, in a concession in *fief*, had not the effect of preserving for him the property in the wood which was its object; such is the opinion of " three distinguished advocates of the Parliament of Paris," which is to be found at page 232 of the second volume of the

" *documents seigneuriaux.*" (1) " The clause to preserve and cause to preserve by his tenants the oak wood fit for the construction of His Majesty's ships (inserted in certain of the King's patents) does not in any way preserve the property of those woods for the King," say those three jurisconsults.

The meaning of this clause, they add, " is then merely to subject the proprietor of oak wood to certain rules which are in force in France, in order to insure to the King that he shall always, and in preference to all others, find in the woods belonging to his subjects such as he may require for maintaining his navy and building his ships. It is in the same spirit that the 2nd article of the title of the ord. of the woods and forests concerning *building wood for the royal houses and ships*, enacts ; " If however any pieces " should be wanted of such length and thickness as not to " be met at ordinary sales, in that case the grand master, " upon statements thereof agreed upon in Our Council, and " letters patent duly verified, may mark such trees in the " least disadvantageous places in our forests, and cause " them to be cut down, and if he should find none there, " he shall cause them to be chosen and taken in the woods " of our subjects, as well ecclesiastics as others, without " distinction of rank, and on condition of paying the fair " value thereof which shall be estimated by skilled persons

(1) " Opinion of three distinguished advocates in the parliament of Paris as to the legality of certain clauses and conditions contained in the titles of seigniories, duly registered at Quebec on the 28th August 1782."

This opinion is dated the 14th February 1767 and is signed by

ELIE DE BEAUMONT,

TARGET,

ROUCHET.

" to be agreed upon by our Attorney in the rangership and " the parties, before the Grand master, who shall name " them *ex officio* in case of default or refusal."

223. This is what has been practised in Canada. The first proof which I find of it and which goes back to the year 1664, is contained in an *Arrêt* of the Superior Council, of Quebec bearing date the 10th July of that year. (1)

" Upon the representation made by the sieur Poyrier, " it says, that a quantity of wood had been taken from his " concession by order of the sieur Baron Dubois Davau- " gour for the erection of casemates without his having any " compensation although he has suffered much loss, praying " that something should be granted in that respect ;

" The sieur Bourdon having been heard who declared that he had seen the places from which the said wood has been taken, the Council has ordered that the said sieur Charron shall pay out of the sum of one hundred and fifty *livres* which he owes as the price of a casemate, the sum of fifty *livres tournois* to the sieur Poyrier. So doing and exhibiting these presents and a receipt he will be discharged therefor.

224. The following documents serve to support the remarks I have recently made.

1st. Ordinance of the Intendant Hocquart dated the 5th October 1731. (2)

" Permission is given to the sieur Abbé Le Page to cut " down in the seigniories of Berthier and Dautray two " thousand cubic feet of oak wood in conformity with the " frames and models which we have caused to be sent, to

(1) Ed. and Ord. in 8. v. 2, p. 18.

(2) Ed. and Ord. in 8. v. 2, p. 348.

" serve for the construction of a ship *en flutte* of 500 tons,
" which timber he shall cause to be taken down in rafts,
" as far as the river St. Charles, before the Court house of
" that city to be there received and examined in the cus-
" tomary manner. The present permission given agreea-
" bly to the reservations made by His Majesty of such tim-
" ber for his own use, in the concessions of lands and seig-
" niories of this colony.

" We command the seigniors, captains and officers of
" ranges, *côtes*, and all others whose duty it is, to assist and
" cause to be assisted the said sieur Le Page in the said
" work, in consideration of reasonable wages to those
" whom he shall employ in cutting the said timber.

" *Nota.* A similar permission has been forwarded to
" the sieur de Bleury in the seigniory of Chambly and in
" the rear of the seigniory of Longueuil adjoining the said
" seigniory of Chambly, and for a distance of three leagues
" along the river Sorel on both sides thereof from the said
" seigniory of Chambly in descending the said river
" Sorel."

2nd. " Ordinance of the Intendant Hocquart dated the 7th February 1740 (1) " which prohibits several proprietors " of lands in the neighbourhood of Nicolet, from cutting " any oak wood on the said lands, until such time as the " same should be visited, under penalty of the confiscation " of the wood cut and a fine of ten livres for the benefit of " the poor, for every oak tree cut."

3rd. Ordinance of the same Intendant bearing date the 20th March 1740. (2)

" Having been informed that there is to be found in " Isle Jesus, in the seigniories of the Lake of two Moun-

(1) Extraits de Cugnet p. 72.

(2) Ed. and Ord. in 8. v. 2, p. 382.

" tains, of Madame d'Argenteuil, and of M. de Vaudreuil,
" and in Isle Bizard, a very considerable quantity of oak
" trees, fit for building the King's ships :

" We very expressly prohibit and forbid the proprietors,
" of whatever quality and condition they may be, to cut or
" cause to be cut any oak trees, until we have caused them
" to be inspected and until we have caused to be marked
" and reserved such of the said oak trees as shall be found
" fit for the construction of His Majesty's ships, under the
" penalty against the parties offending, of the confiscation
" of the wood cut, and a fine of ten *livres* for every oak
" tree which they shall so have unduly cut, the said fine
" payable to the informers.

" We command the judges of the places, officers of
" militia, and others whose duty it is, to enforce our present
" ordinance, which shall be read, published, and posted
" up, wherever there shall be occasion, so that no one can
" pretend ignorance of it, enjoining them to inform us or
" our substitute at Montreal of infractions hereof."

4th. Ordinance of the same Intendant dated 20 July 1740 (1)

" It being necessary to provide for the masting of vessels which His Majesty has ordered to be built, and which he may order in future, we have observed in the visits which we have ourselves made to the neighbourhood of Lake Champlain and elsewhere, the different pine woods fit for that purpose and in particular that there is in the seigniory of Sorel a pine wood of a league in extent along the bank of the river Richelieu commencing half a league above Fort Sorel in ascending on the left side where a considerable quantity of Red Pine of good quality is to be found,

(1) " Doc. Seig." v. 2. p. 177

the said red pine being of fine proportions and calculated for making masts for the King's ships. We have considered the rendering of the present ordinance to be for the good of his service, which in insuring His Majesty's benefit shall also be advantageous to the Dame de Ramezay, seignioress and proprietor of Sorel aforesaid whom we have heard and to the inhabitants, grantees, whom we have seen in the different places that is to say :

FIRST.

" We forbid all persons generally whatsoever, whe-
" ther merchants or others, to cut or cause to be cut any
" red pine trees within the extent of the said pinery here-
" inabove specified, without an express permission, and
" that in writing, under the penalty of a fine of 50 *livres*
" against the offending parties, for every red pine tree cut,
" and of a fine of double the amount in case of a repeti-
" tion of the offense, the said fines payable to the inform-
" er.

SECONDLY.

" And in order the more to induce both the said pro-
" prietors of the said seigniory and the inhabitants to whom
" concessions have been made in the said place, to pre-
" serve the said pinetrees, we promise to pay them when
" we shall cut down the same, that is to say ;

" For every red pine tree of twenty four inches in dia-
" meter and more at the large end, stripped of the bark,
" the sum of three *livres* ; thirty *sols* for those of twenty
" three inches and down to nineteen inches, and twenty
" *sols* only for those of eighteen inches down to fifteen in-
" ches."

5th. Ordinance of the same Intendant dated the 18th July 1742. (1)

(1) " Doc. seig." v. 2, p. 183.

" It is ordered that Noël Langlois dit Traversy depart forthwith with Pierre Abraham dit Desmarets for the upper part of the River St. François, for the purpose of inspecting the timber to be found there, whether red pine, oak, or other wood, proper for the construction and masting of His Majesty's ships.

The said Traversy and Desmarets will observe attentively the quality of the timber, its size and length, if it be knotty ; they will examine the quality of the land, the facilities, conveniences or difficulties which may be met in bringing the said timber to the water side, whereof they will prepare a written report.

PART FOURTH

MILL. BANALITY.

225. On this subject, the Attorney General put the following questions :

THIRTY-THIRD QUESTION.—At the time of the passing of " the Seigniorial Act of 1854, " had the seigniors in Canada the exclusive right of building Grist Mills, and had they the right of demanding the demolition of all mills of that kind built within their *censives* by other persons ?

THIRTY-FOURTH QUESTION.—Did these rights extend to all seigniories ? If not, to what seigniories did they extend ? If the seigniors could exercise these rights against their censitaires, could they also demand the demolition of grist mills built on lands the tenure of which had been commuted into *franc-aleu roturier*, or into free and common soccage, within the limits of their respective *fiefs* ?

THIRTY-FIFTH QUESTION.—If these rights existed, did they extend to mills of any other kind and to all works propelled by water ? ought they to be considered as incidental to the right of *banalité* ? had they their origin in the Custom of Paris or in special laws ?

THIRTY-SIXTH QUESTION.—At the time of the passing of the Seigniorial Act of 1854 what was the nature and the extent of the right of *banalité* claimed by the seigniors in Lower Canada ? what was its origin ? was it a feudal right or did it belong to that class of rights designated as *justitiæ* (*droits de justice*) ? was it recognized by the Custom of

Paris? was it introduced into this country, regulated and defined by the Decree (*Arrêt*) of 4th June, 1686? to what obligations were the seigniors, on one side, and the censitaires, on the other, subjected by this right?

226. According to the 71st article of the Custom of Paris, " no seignior can compel his subjects to go to the " oven or mill which he pretends *banal*, make *corvées*, if he " have not a valid title, or an old *aveu et dénombrement*, " and no title is reputed valid, if it have not been executed " more than 25 years. "

The 72nd article adds ; " the wind-mill, cannot be " *banal*, nor under this pretext, can the neighboring millers " be prevented from looking for grain (*chasser*,) if there be " not a title or a written acknowledgment, as above. "

227. According to Henrion de Pansey, (1) there were in France, but eleven customs " which by law made *ban-* " *nalité* a seigniorial right ; so that under their empire, " whoever held a *fief*, was authorized to compel his men or " subjects to make exclusive use of his mills, ovens and " presses.

" All these customs" the author adds, " have the same " spirit, and are expressed pretty much in the same terms. " They however have some shades of difference. In the " custom of Angoumois, the seignior cannot enjoy the right " of banality except when he has an *exercised jurisdiction*. " The customs of Tours and of Loudunois require for the " mill *bannalité*, that the water which drives the mill " be *perpetual*. In the terms of the custom of Sole, the " subject is not obliged to go to the mill of his seignior, " *when he is nearer to another*. "

" As in these different Provinces, it is the law which " establishes the *bannalités*, they are called legal *bannalités*.

(1) t. 1, " Bannalités " § 2, p. 175.

" The other Customs, are either silent upon the subject " of *bannalité*, or speak of it only as a possible servitude. " In these customs, no *bannalité* without title, consequently " all *bannalités* therein are *conventional.*

.....

" § 3 " No difficulty exists, with respect to legal *bannalités ;* " the custom has established them, and this title is sufficient for the seigniors.

" With respect to the *conventional bannalités*, in the " customs which treat of this point, we must conform to " that which they ordain : in the others, the disposition of " the 71st article of the Custom of Paris is followed. It is " therefore very important to know the true sense of that " disposition.

" As this article, added at the time of the reform of " the custom in 1580, did not exist in the old one drawn up " in 1510, to seize its proper spirit, we must in the first " place remember the practice before this epoch of 1580.

" In looking over the written depositaries of our old " usages, we are led to believe that at that time the " *bannalité* was an ordinary right of all the seigniories, " that each seignior was authorized to compel his censitaires to make exclusive use of his ovens, mills or presses, " this in fact results from the 108th chap. of the *Etablissements de St. Louis,*" which most expressly states that " whenever a seignior pleases to have a mill constructed in " his castellany (*châtellenie*), all his men are obliged to have " their grain ground therein.

.....

" This ancient law, this primitive and perhaps universal law, survives in the eleven customs which attach to " *fief* the right of *bannalité.*

" With regard to the others, opinions have taken ano-
" ther turn. *Bannalités* have been from time to time, with
" one accord, regarded with a less favorable eye, in so
" much that they came to be placed in the class of real ser-
" vitudes. But this change, like all the revolutions which
" take place in the manners and usages, progressed but
" slowly ; here are its shades and gradations.

" In ceasing to regard *bannalités* as natural dependen-
" cies of all seigniories, they were not at first lowered to the
" rank of servitudes, they were looked upon as *accidental*
" *seigniorial rights.* This is the character which the juris-
" consults of the 14th and 15th centuries give them. (1)....

" The *bannalités* at that time thus blended with the
" seigniorial rights, enjoyed the same favor, were acquired
" and preserved like them. About the 16th century opi-
" nions changed anew ; nevertheless it was not at first
" broadly asserted in absolute terms, that *bannalités* were
" nothing else but servitudes ; it was stated they are a
" species of servitudes.

" Dumoulin who saw the birth of that opinion, combat-
" ted it (2).....

" Nevertheless the new opinion took root and when in
" 1580 the reform of the Custom of Paris was proceeded
" with, this opinion had so much prevailed that the reform-
" ers of the Custom added the 71st article ; the article
" which decides that all *bannalités* are so many servitudes.

" This decision, as we see, introduced a new law ; but
" it could have no influence upon the past, nor weaken the
" right to the *bannalités* which were established under the
" authority of ancient principles, under the maxim that
" laws have no retroactive effect.

(1) Bouteillier " somme rurale."

(2) De *dividuo* et *individuo*, p. 3, no. 269.

" The new article added to the Custom was thus to
" bear a double character. At one and the same time de-
" claratory as well for the past as for the future, it was re-
" quired to say that with respect to *bannalités* theretofore ex-
" isting, the right to it would be sufficiently justified by
" possessory acts, but that for the future to establish a ba-
" nality, it would require, as for all other servitudes, a for-
" mal title between the parties."

228. Mill banality (1) having thus become *conventional* only in the Custom of Paris, it could not exist in Canada but under that title, after the introduction of that custom. Since that time, has the legislation particular to the country modified the dispositions of the Custom of Paris? and if it have, have these modifications made the mill banality *legal*, instead of *conventional* which it was in its origin?

That the acts of this legislation may be better understood, as well as the jurisprudence which these acts have created, principally under the French dominion, it is necessary to give an analysis as complete as possible of the *arrêts* and decisions of the courts. But, previous thereto, it seems to me proper to make some observations upon the two articles of the Custom of Paris above quoted, as well as upon the right of inspection which the public authority could exercise with respect to mills.

229. The 71st article in speaking of the banal mill, does not make any distinction between a mill driven by water and a wind-mill; it only uses the word *mill*. The 72nd article makes special mention of wind-mills. Although at first sight, the two kinds of mills seem to be placed upon the same footing as regards the effects of the banality, with respect to the form and the date necessary for mill banality

(1) I do not speak of the oven banality. I believe that the example of M. Amiot, seignior of Vincelotte, has been followed by but very few of the old seigniors.

generally, yet, to attach the right of banality to a wind-mill, the convention required to contain a particular statement, which was not nevertheless required to attach that right to a water-mill.

Hear Henrion de Pansey on this point, §. 27, p. 227:

" When titles, and regular titles, give to the seignior " the banality of a water-mill, or of a mill *generally*, can " we thence conclude that he has also the banality in favor " of a *wind-mill?*

Basnage, on the 210th article of Normandy, resolves the difficulty in this manner: " It is a maxim that a wind- " mill cannot be *bannal*, even in favor of the seignior au- " thorised by title and by acknowledgment in writing to " have the banality of a water-mill, *if the title does not* " *make express mention of the quality of the mill, and does* " *not declare and does not precisely determine that it is a* " *wind-mill.* The *general and indefinite expression of ba-* " *nal-mill only applies to water-mills*; and the seignior hav- " ing none of that kind, but only a wind-mill, the opera- " tion of which depends upon the most uncertain of causes, " the most inconstant and the most casual in the world; " and as it would often happen that the mill could not " work for the want of wind, it could not supply those sub- " ject to the banality and these last would suffer grievous " inconvenience in consequence."

Further, after stating the contrary opinion of the President Bouhier, and having observed that " these two opi- " nions could be sustained by reasons of almost equal " strength," the author of " Dissertations féodales," says: " but the same problem seems resolved by the Custom of " Paris, and by all those of which it forms the common " law, by the manner in which this same Custom of Paris " is drawn up.

38

"The 71st article determines what titles are necessary "for the establishment of banality: "no seignior can com- "pel his subjects to use the oven or mill which he pretends "banal, if he have no titles," &c.

"If the reformers had intended to include wind-mills "under the general denomination of mill; if they had "thought that the titles granting the mill banality in gene- "ral, or of a water-mill, also gave the same right in favor "of a wind-mill, this 71st article, leaving nothing to desire, "left nothing to say upon mill-banality. They nevertheless "devote a particular article to wind-mills, an article added "with a distinguished intent, since it is nothing but a repe- "tition of the preceding: an article drawn up in a manner "which would oblige us to accuse the reformers of the "custom to have thrown these provisions at hazard and "without motives, of which we are not permitted to sus- "pect them, or else we must acknowledge that their inten- "tion was to decide that, to create a wind-mill banal a "*special title* is necessary, and that to make a mill of that "kind banal, it is not sufficient to have general titles of "banality.

"Such is the manner in which the commentators on the "Custom of Paris view the matter."

This distinction between the title necessary to attribute the right of banality to a wind-mill, and that which suffices to give it to a water-mill, will serve to explain a certain part of the *arrêt* of the Superior Council of the 1st July 1675, mention of which will shortly be made, a part which seems to have been up to this day unexplained.

230. One word, now, as to the right of inspection (*police*) regarding mills. In speaking of the restriction attached to the natural liberty of constructing them, particularly of that which results from the feudal law, Henrion de

Pansey observes, §. 19, p. 215 : "But above the authority " of the seigniors, there is an authority of an higher order, " to which belongs all that can interest public policy, the " general government (*la police générale*), and which has the " right to restrict the liberty of each individual for the good " of the greatest number.

" The mills intended to give the first preparation to the " chief article of food, must necessarily be subject to the " inspection of this supreme authority : it has then the right " not only to control it, but to regulate the number..... " p. 216: Those even who have the liberty to grind where " they think proper, who enjoy the most indefinite liberty " to build mills, may be prevented from doing so by " those to whom is committed the guardianship over the " public rights."

Henrion de Pansey further devotes a particular paragraph respecting the control of the working of mills, which is the 21st of his dissertation upon banality, commencing with two ordinances, one of which is of 1350 and the other of 1439, and citing the articles of several customs which contain regulations upon this matter, and which, he says, " form the common law upon this subject." We shall see that this right of regulating the management of mills has been often exercised in Canada.

231. The first regulation seems to have been an ordinance of the Governor, M. de Lauzon (1) given in 1652 res-

(1) The commission of M. Lauzon, which is of the 17th January 1651, gives him the power of "judging of all differences which may arise among them, (officers, ministers and subjects of the King) have delinquents punished, and even have the penalty of death inflicted, if the necessity happen, the whole of sovereign right and without appeal ; commanding them to do what he shall see and know to be necessary for our service and the benefit of our affairs, and to the care and preservation of the said country in obedience to us ; and this with the

pecting millers. This ordinance is not transcribed; but mention is made of it in an *arrêt* of the Superior Council of the 28th March 1667. (1)

This *arrêt* is as follows: " Considering that which was " been represented to us by the Attorney-General, that seve- " ral abuses are committed by the millers of this country, " *with respect to the grinding of grain*, and to remedy

same rights, honors and prerogatives as preceding governors.

Note.—By the edict of its creation, of the month of April 1663, the Superior Council had the power to regulate " all affairs of police, public and private, of all the country.

The 24 January 1667, the council enregistered, upon the requisition of the Attorney-General, and " to be followed and observed according to their tenor and form" certain regulations" concerning " the administration of justice, police and maintenance of the colony," and prepared by the intendant Talon. This last had not the power to make these regulations. The first intendant to whom this power seems to have been first granted is M. Duchesneau, whose commission, bearing date the 5th June 1675, states: " to make with the said Sovereign Council all the regulations which you shall deem necessary for the general government of the said country, at the same time for fairs and markets, the sale, purchase, and delivery of all provisions and merchandise, which general regulations, you will have executed by the inferior judges who take cognizance of private cases within the extent of their jurisdiction; and *should you deem it* most fit and necessary for the good of our service, either from the difficulty or from delay to make the said regulations with our said Council, *we give you the power and authority by these same presents to make them alone*, even to judge alone with sovereign authority in civil matters, and to ordain all which may seem just and proper, confirming at the present time as for the future, the judgments, regulations and ordinances which shall thus be rendered by you, as if they had emanated from our sovereign courts, notwithstanding any recusations, *prise à partie*, edicts, ordinances and other things to the contrary.

(1) Ed. and Ord. in S. v. 2, p. 36.

" which, it would be fit to *re-iterate* the ordinance made in " 1652 by the late M. de Lauzon heretofore governor of this " country; considering the said ordinance the council adju- " dicating thereon hath ordained and doth ordain that it shall " have its full and entire force, saving the right of adding " to it in future, if the necessity should happen; and that " the damages suffered by the proprietors carrying grain to " be ground at the mills, shall be had from the owners of " the said mills, saving to these the right of deducting them " from the wages of their salaried millers, and the present " *arrêt* shall be added to the foot of the said ordinance, " that the whole together, may be read, published and affix- " ed wherever the same shall be necessary, *that none may* " *be ignorant of its contents.*"

The ordinance and the *arrêt*, which I have just mentioned, are the first Canadian regulations which we have concerning mills. At least, I have not found any of prior date. The word *re-iterate* which is inserted in the *arrêt*, would lead me to believe that the ordinance of M. de Lauzon regulated the *damages* which the parties carrying grain to be ground had the right to claim; of which damages the proprietor of the mill was declared to be personally responsible, with the reserve of his recourse against his miller, *culpable of abuse in the toll of grain.* But a short time after, a modification of this responsibility of the master, was made by another *arrêt* of the Superior Council of the 20th June 1667. (1)

This *arrêt* is rendered on a petition presented to the Council " by most of the proprietors of mills in this country, " tending to show that the mills of this country cost double " and triple those of France, as well for their construction, " their repair and maintenance, as for the wages and board of " the millers; in consideration of which, they said, they

(1) Edits and ord. in Can. v. 2, p. 39.

" might ask that the toll be proportioned to the above ex-
" penses, and consequently above the ordinary one in
" France; that they are nevertheless satisfied with that
" which has been the practice in this country since its
" commencement conformably to the ordinances and royal
" edicts, and that it be continued hereafter as it has been
" up to this day, and that the Custom of Paris which is the
" only one adopted here for all things, be also received for
" this."

The *arrêt* "ordains that the right of toll shall, in this
" country, be the one-fourteenth; enjoins the *Lieutenant*
" *Civil* to have the present *arrêt* strictly executed, even
" from time to time to go from place to place to guage the
" measures and to see what is doing; and moreover that
" the ordinance of the Sieur Lauzon have its effect, with
" this modification, that in the event of malversation by the
" millers, that those who shall find themselves interested
" shall have their recourse but upon the lessees, if the mills
" are leased, if otherwise, upon the proprietors thereof; and
" for the support of the present ordinance, the proprietors
" of grain which shall be taken to be ground, shall be held,
" or a party in their behalf, to have the grain weighed at
" the mill by the miller, and when ground, to have the flour
" weighed, in default of which their complaints shall not
" be heard.

In this *arrêt* and in the petition which gave rise to the *arrêt*, we see an acknowledgment of the right of the public authorities to make regulations with regard to mills. Thus far, there is no modification of the 71st and 72nd articles of the Custom of Paris. The mill banality is then in the conditions of conventional banality between the seignior and the *censitaire*, subject nevertheless to the intervention of the authorities to regulate the relations which must result therefrom. It is well to remark, again, that, in the

ordinance and *arrêts* already cited, the only question relates to proprietors of mills generally, without distinguishing whether they are seigniors or not.

232. The first of July 1675, an *arrêt* or ordinance of the Superior Council which, upon the case of a contestation between two millers, declares all mills, whether water or wind, to be banal. (1)

There were two lessees of the mill of the seigniory of Dombourg, Pierre Lefebvre dit Ladouceur and Pierre Lafaye dit Mouture. A petition was presented to the council by Charles Morin " the miller of the seigniory of Demaure " praying that sieur Lefebvre dit Ladouceur, one of the " lessees of the mill of the seigniory of Dombourg be con- " demned to restore him the flour he has taken from the said " Morin, and in as much as the mill of Dombourg *is not a* " *banal mill* and *cannot supply the inhabitants thereof with* " *flour*, the said Morin *be allowed to grind* for the said in- " habitants, and that the said Ladouceur be forbidden from " disturbing him in that respect."

Mouture appeared for his co-lessee. The Attorney General, to whom the petition had been communicated by order of the Council, takes his conclusions. The council afterwards : " dismissed the demand and pretentions of the " said Morin ; and adjudicating upon the said conclusions, " hath ordained and doth hereby ordain, that the mills " *whether they be water mills or wind mills*, which the " seigniors have built, or will build hereafter in their " seigniories, shall be *banal* mills ; and that their te- " nants, *who shall be bound by their deeds of concession* " *to that effect*, shall carry their grain to such mills, and " leave it there at least forty eight hours, after which if not " converted into flour, they will be allowed to take it else-

(1) Ed. and Ord. in-8. v. 2, p. 62.

" where, without paying toll to the miller of the seignior
" it is moreover expressly forbidden to proprietors of mills,
" as aforesaid, to induce the tenants of another proprietor
" to come to their mills, under a penalty of one *écu* (half a
" crown) in favor of the seignior, and on pain of confisca-
" tion of the grain and vehicles containing the same. And
" it is further ordered that copies of this *regulation* shall be
" sent by the Attorney General, to all the jurisdictions of
" this country, to be registered and to be published and
" posted up in the usual manner, at the request of the
" King's Attorneys or fiscal attorneys, so that none may be
" ignorant of its contents. "

233. It has been pretended that this *arrêt* created a legal mill banality in Canada, in the place of the conventional, which it had heretofore been. I am not of this opinion and I see nothing in the *arrêt*, nor in the contestation which gave rise to it, which can justify such a pretention. It is evident that the miller of *Demaure* had (1) sought the tenants of his neighbors, and that the flour taken in his bags by the miller of *Dombourg*, was the toll obtained at the prejudice of this last. It is equally evident, and this results from the statements in the petition of the former, that there was a mill in the seigniory of *Dombourg*, and that it was a *wind-mill.* Hence the reason invoked by the miller of *Demaure* for his justification, that this mill was not a *banal* mill ; which must necessarily make us suppose that the inhabitants of *Dombourg*, whose grain he had ground, had either not obliged themselves, by their contracts of concession, to the mill banality in favor of their seignior, or that, if they had so obliged themselves, the convention had not made *express* mention of a wind-mill. If the mill in question had been a water mill, the miller of Demaure had no pretext to pretend that it was not a *banal* mill to which the tenants, *obliged*

(1) The word used in the french law works is *chassé*, litterally, hunted on his neighbors, property for toll.

by their deeds of concession, were bound to carry their grain.

According to the miller of ***Demaure***, the wind mill of ***Dombourg***, in default of express mention in the deed of concession, could not be reputed, as regards the ***censitaire***, as a ***banal*** mill. The interpretation given to the 72nd article of the Custom of Paris was in his favor. Under these circumstances, what is the bearing of the regulation promulgated by the *arrêt* ? Does it make ***conventional banality*** to disappear, to make it ***legal*** banality in future ? Not at all. The words ***who shall have obliged themselves by their titles of concession which they shall have taken of their lands***, far from admitting this interpretation, have an altogether different meaning. They recognise that the mill banality then existed and ought only to exist but under the title of ***conventional*** banality. Otherwise these words would have no signification, no effect. The legislator did not wish to extend the application of his new regulation of general inspection over mills, to other that those who had obliged themselves to banality in favor of their seignior by their deeds of concession, although mention was not made, in these contracts, of wind mills, water mills being in the case of a stipulation of banality, comprised by law by this stipulation. All the effect, then, of this new regulation, is to place wind mills upon the same footing as a water mill, in this sense that, without express mention, the first will be considered, like the last, included in the convention which stipulates the mill banality, whether it be for the past or for the future.

The right of mill banality then remains in the condition of conventional banality ; only that the *arrêt* seems to prejudge, in the negative, the question whether the convention could be legally made by another deed than that of the concession of the land to the ***censitaire.***

234. On the 11th May 1676 (1) the superior council makes general regulations of police. The 35th article prohibits all millers " to causing more than one fourteenth to be paid for the toll of grain, and to interfere (*chasser*) one with the other," and reproduced almost litterally the remainder of the dispositions of the *arrêt* of the 20th June 1667 (no. 231 *supra*) upon the recourse to be adopted in case of malversation by millers, and enjoins upon these " to have scales to weigh."

235. In the order of dates, the *arrêt* the most important upon this matter presents itself, it is that of the King's council of State of the 4th June 1686. (2) It is in these terms :

" His Majesty the King, sitting in council, having been " informed that *most* of the seigniors who are proprietors of " *fiefs* in New France, neglect to erect the *banal* mills ne- " cessary for the *subsistence* of the inhabitants of the said " country, and in order to remedy an evil so prejudicial to the " welfare of the colony, His Majesty being in his council, " has ordained and doth hereby ordain, that all the seig- " niors who are proprietors of *fiefs* within the territory of " New France, shall be bound to erect banal mills therein " within one year after the publication of the present decree " and after the expiration of this delay, in default of their " having done so, His Majesty doth permit all *individuals*, " of whatever conditions and rank they may be, to erect " such mills, granting to them in that respect the right of " banality, and prohibit any persons to disturb them in the " enjoyment thereof."

236. This *arrêt* was enregistered at Quebec, on the 21st October 1686, according to an *arrêt* of the Superior Council of the same day, which, at the same time had or-

(1) Ed. and Ord. in 8. v. 2, p. 65, 71.

(2) Ed. and Ord. in 8. v. 1, p. 255.

dered its publication at the necessary and accustomed places; but this publication was not made, in the three jurisdiction then existing, till twenty years afterwards, namely at Montreal and at Three Rivers in January, and at Quebec in February 1707, in consequence of an order expressly made in an *arrêt* of the Superior Council of the 20th December 1706. (1)

The delay brought to its publication is a proof that the *arrêt* of the council of state was not pleasing to the seigniors, altho' they had taken care, by their deeds of concession, to subject their tenants to the mill banality, ***whenever a mill should be built in their seigniory.*** This is the ordinary stipulation which we find in the deeds of concession. The Intendant Raudot accounts for this delay in the following passage of his letter of the 10th November 1707:

" I should therefore think, Mylord,... it would be necessary... that the exclusive right of grinding (*banalité*) should be preserved to the seigniors on condition of their building a mill on their seigniory within one year, failing in which, their right would be forfeited and the inhabitants would not be obliged, when one was built, to have their corn ground there: otherwise, Mylord, they will never be induced to erect mills, from the privation of which the inhabitants suffer greatly, being unable, for want of means, to avail themselves of the favor which His Majesty has granted them, *by permitting them to erect mills in case the seigniors should not do so within a year.*

" This was granted to them in the year 1686, by a decree (*arrêt*) which was registered in the council of this country; but the decree of registration not having been sent to the subordinate jurisdictions *to be published*, the inhabitants

(1) Ed. and Ord. in 8, v. 2, p. 145-150.

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

237. Has the *arrêt* of the 4th June 1686 had the effect of making the mill banality *legal* in Canada, or has it maintained it in the situation of ***conventional*** banality, at the same time obliging the seigniors to construct mills, under the penalty of being deprived of their right to this banality ? I believe that we cannot do otherwise than to pronounce ourselves in the affirmative upon the first of these questions and consequently for the negative upon the last. In a contrary way, the *arrêt* in my opinion, would be a non-sense. In fact, if the banality continues, notwithstanding this *arrêt*, to be conventional, the censitaire cannot be subject to it, but with his consent and that of the seignior. It is between them that the contract must take place which subjects the first to the mill banality, and not between the censitaire and another person. This agreement is made by the deed of concession. The seignior, only, can give this deed ; consequently, he only can stipulate the banality.

In the case foreseen by the *arrêt*, after the seignior shall have forfeited his right, on account of his negligence to construct a mill, all private individuals might obtain the permission to build one, and, in that case, the *arrêt* invest him with the right of banality. In the system which I combat, upon whom will a private individual exercise his

right of banality? Assuredly it will only be upon those who *shall have subjected themselves* (to the banality) *by the titles of concession which they shall have taken for their farms*, to make use of the terms of the *arrêt* of the 1st July 1675. Those who shall not have so bound themselves will continue to be exempt from this banality.

Let us now suppose two possible cases, at the time of the forfeiture pronounced against the seignior and the erection of a mill by a private individual who has obtained the permission to do so: the first, that of a seigniory altogether or almost all settled, but none of the inhabitants of which has been subjected to the banality by his deed of concession; the second, that of a seigniory thinly settled, but all the inhabitants of which, or a part only have been subjected to this banality.

In the first of these cases, what would avail the right of banality that the *arrêt* invests a private individual with, who has built the mill? Would it be very profitable? He could not reach any of the *censitaires*, they are all exempt. It would even be impossible that it should exist, since they are no *banal* subjects. It is not the material erection of a mill which constitutes banality, but the subjection of the tenants to carry his grain to this mill, whether it be in virtue of the law or of the agreement. The president Bouhier defines banality to be: "the right to deprive those which "are subject to it of the right to do a certain thing, other- "wise than in the manner which is prescribed to them, "under the penalty created by law, agreements or the cus- "tom."

Now, in the case supposed, of which we are speaking, no tenant is bound, either by law or by agreement, or by the custom, to carry his grain to be ground at the seigniorial mill. The right of banality therefore does not exist against them. We should then be obliged to say that

if the private individual who has constructed the mill, has by that acquired any right of banality, it is but a banality in the *air*, a banality *without* banal subjects! What private individual would be so foolish as to prosecute the seignior in forfeiture of his right to have himself invested with it? We could not conceive such an idea. Do we not see that this system leads to an absurd conclusion! That it renders worthless the *arrêt* of the 4th June 1686, altho' it was rendered in the interest of all the inhabitants of the colony?

Let us now see what would be the effect of the operation of this system in the second supposed case, that of a thinly settled seigniory, but the tenants of which, or a part only, have been by their contracts of concession, subjected to the banality. In this seigniory, the greatest number of the lands are yet to be conceded. The third party who shall have erected a mill, after the forfeiture pronounced against the seignior, will certainly have the right of banality over his tenants who have subjected themselves to it; and if there be but a small number who have so subjected themselves, he will only be entitled to exercise this right against that small number. But will this be the case with the future grantees? By what means can these last be subjected by the sytem of *conventional* banality? I avow that so far, I have not been able to understand in what manner that could be done. The seignior's right of banality only is forfeited, he is not prevented from conceding the lands in his seigniory. He will then continue to make the concessions. The agreements which shall be therein inserted, will be contracts which will be made between him and his *consitaires*, and not between these last and the third party who shall have built the mill; this last will be altogether a stranger to them. In supposing, even for an instant, that in such a deed of concession, a seignior could yet stipulate banality, notwithstanding his forfeiture of that right, he his at liberty to do

so or not to do so; if he does not do so, the censitaire is free from the banality; the seignior in abstaining from stipulating banality, would then have the power to extend this exemption to all future grantees. On the other hand if this right was stipulated, he would not stipulate it for the benefit of a third party, proprietor of this mill, he does not represent this third party, he has preserved nothing in the property which has been given to this last. Who then could ask the execution of this contract in pleading against a censitaire? It could not assuredly be the seignior: he has no banal mill, he cannot even have one, for not only has he forfeited the right of banality, but he is also prohibited by the *arrêt*, he as well as all others, from *troubling* a third party in the enjoyment of this right which has been transferred to him; it will not be, either, the proprietor of the mill because he is a stranger to the agreement. No one then can ask the execution of this agreement! Such is the conclusion to which we must necessarily arrive.

On the other hand, how can we reasonably suppose that a seignior, who shall have had his right of banality forfeited, can stipulate the exercise of this same right? It seems to me that such proposition would be of the number of those which it is sufficient to mention to show how far they can be sustained.

238. I am, therefore, of opinion that, by the *arrêt* of the 4th June 1686, the King was desirous of granting and in fact granted to the seigniors of Canada, for the matter of mill banality, a general title which gives them the right to exercise this banality, whether it have been stipulated or not; and that this title is in the same manner acquired to the private individual who, in the case provided for by the *arrêt*, has obtained permission to erect a mill with the right of banality attached thereto, and has in fact erected it. Moreover, it is equally the opinion, not only of the advocates of

the seigniors, but also of those who have been entrusted to support the opinions of the Attorney General. These last in the printed analysis of their propositions, admit " that it " be held that, since the *arrêt* of the 4th June 1686, all " the seigniors have the right of banality in virtue of that " *arrêt*."

239. The first *arrêts* of the Superior Council which have been rendered upon this matter, after that of the Council of State of 1686 ; are those of the 16th August and 13th September 1706. (1) Both relate to the same seigniory.

It appears that M. François Berthelot, had, on the 25th February 1702, sold to Madame de la Forêt " the island and county of St. Laurent" (Isle of Orleans) but that he had re-entered into possession thereof in virtue of an *arrêt* of the 7th December 1705, rendered between him and the said Dame de la Forêt.

" He has found, he says in his new petition, that the " said Dame de la Forêt has abandoned a water mill built " at the place called *la Sainte Famille*, to have another one " built in the parish of *St. Pierre*, during the time of the " seizure (*saisie réelle*) of the said island at the suit of the " sieur Duchesnay, her brother, and in which he has been " subrogated ; that having re-entered into possession of the " said island conformably only to the sale which he has " made thereof to the said Dame de la Forêt, and the mill be- " longing to the said Dame de la Forêt, he cannot nor should " he of right enjoy the said mill ; and *as he is the only one* " *who has the right of mill in the said island*, that the one " of the said dame de la Forêt daily makes flour, and that " she profits by its revenues to his prejudice, he requires " that considering the said *arrêt* of the 7th December, well

(1) Ed. and Ord. in 8, vo. 2, p. 139 and 142.

" and duly signified, it be ordained that the said dame de
" la Forêt shall cease and stop the said mill from grinding
" and that the said Dame de la Foret as well as all other per-
" sons be prohibited from having any grain ground at the
" said mill hereafter, under and subject to such penalty and
" fine which the court shall please to order.

The said Dame de la Forêt made default, but after having protested that she persisted in her " acts of evocation, citing of the judge, (*prise à partie.*) and others signified at her request to M. Berthelot's Attorney; she appealed to the King. So that the *arrêt* of the 16th August 1706 was rendered by default. It ordains " that the said dame de la Forêt
" *shall cease grinding, and stop the mill* which she has had
" erected in the said island and county of St. Laurent,
" *prohibits her and all other persons from having any grain*
" *ground at the said mill* hereafter, under a penalty of one
" hundred *livres.*" We see that this *arrêt* is rendered in conformity to the conclusions of the petition.

Upon this, a petition is presented to the Intendant on behalf of the inhabitants of St. Pierre, and by him referred to the Superior Council; in which petition they set forth " that the inconvenience which they have had up to the
" year 1701, of having no mill in the said parish to have
" their grain ground, has obliged them to carry it to the
" mills on the neighbouring shores, there having been in
" the said island nothing but mills very badly kept, not fit
" to be used, and besides far removed from their residen-
" ces, and to which it is not possible for them to carry their
" grain, being at a great distance from them, by roads
" which it would be necessary to make through the woods,
" and still farther to go by water, all which obliged them
" to solliciť Mrs. de la Forêt to have a water mill built in
" the said parish of St. Pierre for their convenience, and to
" engage her in it, they all themselves offered to give her

" six days of their own time to dig its foundations, " which they did in the hope of receiving from it all the " help and convenience which they could expect from its " proximity." After this the inhabitants make mention of the *arrêt* of the 16th August, in consequence of which the miller, they say, " refuses to grind their grain," and they add " it does not appear to them either just nor reasonable " to be deprived of the fruits of their labors, and of the " contribution which they have made towards the construc- " tion of the said mill ; wherefore they request that in con- " sequence of the bad state of the other mills which are " in the said Island, and of their distance from the said " parish of St. Pierre, and of the impracticability of their " roads, and that besides the said mill.....has been cons- " tructed in the quality of *lady and proprietor*, at that " time, of the said island, for the utility and convenience " of the inhabitants, it please the council, without having " any regard to the said *arrêt* which orders that the said " mill shall be shut, to ordain that the said mill shall be " open and that the miller thereof be bound to grind their " grain as customary."

Mrs. De La Forêt refused to answer the summons which had been served upon her by order of the Council. Upon this petition the *arrêt* of the 13th Sept. 1706 was given, which is in these terms : " Having heard the said sieur Gaillard, " in the name and as the Attorney of the said sieur Berthe- " lot, who has asked the execution of the said *arrêt*, and " who has refused to lease the said mill, being unwilling " to run the risks which there might be, likewise the said " Maranda and Noël for all the inhabitants of the said " parish, the Council having *considered the petition of* the " said inhabitants of the parish of St. Pierre, in the isle " and county of St. Laurent, and *seeing the necessity which* " *there is of having the said mill in operation, the two others* " *which are in the said island not being in a state to grind*

" *the grain necessary for all the inhabitants thereof, has* " delayed the execution of the *arrêt* rendered in this coun- " cil on the 16th August last, and in consequence permit " the said Dame de La Forêt to put the said mill in opera- " tion, on the condition that she shall draw but half of the " tolls and that the other half shall be remitted to the said " Gaillard, attorney of the said sieur Berthelot, for his right " of banality, and this, until the said sieur Berthelot has " erected another ; which he shall be held to choose within " three days from the day of the service of the present *arrêt*, " if not and in default of so doing within the said time, and " that being elapsed, the offers which Michel Maranda " and Philippe Noël make of leasing the said mill and " keeping it in operation, even to be answerable for the " accidents, which may happen to it, for one hundred minots " of wheat annually, shall be adjudicated upon on Monday " next, the said lease also shall last only until the said " sieur Berthelot has had another one erected. "

240. Here is an *arrêt* of the Superior Council of the 20th December 1706 (1) which ordains that a mill built upon an *arrière-fief* in the seigniory of Lauzon, shall be shut.

On the 15th Oct. 1648, a contract of concession is made by the sieur de Lauzon, seignior of the *Côte of Lauzon*, to François Bissot of 200 arpents of land, that is to say of a land of 5 by 40 arpents, *en pure roture* this land having its front on the river St. Lawrence.

On the 28th Oct. 1698 sieur de Bermon de la Martinière, attorney of the sieur Thomas Bertrand " at the time proprietor of the said *fief* and seigniory of Lauzon," grants a title, by which, " for the reasons to him given by the late " Etienne Charêt, father of the defendant, he has created

(1) Edits et ord. in 8o. v. 2 p. 145.

" and erected as an *arrière fief* the said [illegible]
" and to this *arrière fief* he leaves a *right of mill*, and this
" right conceded to the extent that the same may be neces-
" sary for ever, [illegible] *without banality* and *without jurisdic-*
" *tion*, on the contrary holding of that of the said seigniory
and upon condition that the inhabitants thereof shall grind
" their grain at the said mill in preference to any other of
the neighboring places *until a banal one is erected*" which title was ratified by the said sieur Bertrand on the 15th Sept. 1699.

The sieur Duplessis, having purchased the seigniory of Lauzon by deed of the 14th October 1699, caused " two mills for the utility of the inhabitants of the said seigniory" to be constructed, he states in his petition; but " as the " said Charêt (the defendant) one of the said inhabitants " previously had a mill erected upon his land (*arrière fief*) " *without any title but that of sufferance until the seignior* " *caused one to be constructed*, at which mill the inhabi-" tants of the said seigniory carried their wheat and other " grain, every night, to be ground, notwithstanding the pro-" hibitions which were made to them, which does him con-siderable injury, in as much as the said Charêt was not " and cannot have any right of mill *which is not directly* " *attached but to the said seigniory*, and that consequently " there can be but himself (Duplessis) who alone has this right;" for these reasons the seignior had summoned the said Charêt and other heirs of the said late Etienne Charêt and Bissot, his father and mother: " to hear it ordained " that he shall be immediately held to *shut up* his mill, and " that he be prohibited to grind any grain therein as well " for himself as for others, and that he be held to carry his grain to the mill of the said seigniory "

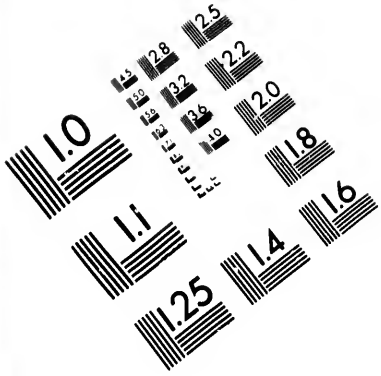
Upon this contestation the arrêt of the 20th December 1706 was pronounced, which after having stated at length

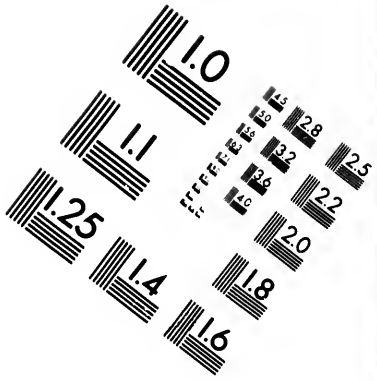
the dispositions of the *arrêt* of the Council of state of the 4th June 1686, and mentioned its enregistration at the Superior council, maintains the said Charêt " in his right of *arrière-*" *fief* of Point Levy, upon the conditions contained in the " title thereof which he has had of the said sieur de la " Martinière, ... condemns the said Charêt to *close* " the water mill erected upon the said *arrière-fief*, hereby " prohibiting him to grind grain therein or to suffer any " grain to be ground, subject to such penalties as may be " reasonable, permitting him nevertheless to have his grain " ground wherever he thinks proper."

211. A short time after the *publication*, in the government of Montreal, of the *arrêt* of the 4th June 1686, the intendant Raudot pronounces, against the seignior of *Mille Isles*, the forfeiture of the right of banality, by an ordinance of the 14th June 1707. (1) I transcribe it in full length, because it is the first given upon this subject :

" All the inhabitants of the seigniory of ***Mille-Isles***, " otherwise called Terrebonne, having caused the said **sr.** " Duprê (probably *Dugué*) proprietor of the said seigniory " to come before us, that he may be condemned to build a " mill for them, if he do not prefer to consent that they " shall build one for themselves, that they be discharged " from the right of banality, and that they be permitted to " erect one for their own benefit, and this, according to the " *arrêt* of the Council of State of the 4th June 1686 ; the " said sieur Duprê declared to them that, altho' he might " take advantage of the delay from the publication of the said " *arrêt*, that nevertheless he desists from his right, and " consents that the said inhabitants do immediately build " the said mill, and by reason of that they be discharg- " ed from the right of banality; whereof the said inhabitants " having demanded *acte*; considering the said *arrêt* of the

(1) Ed. and Ord. in So. v. 2, p. 127.





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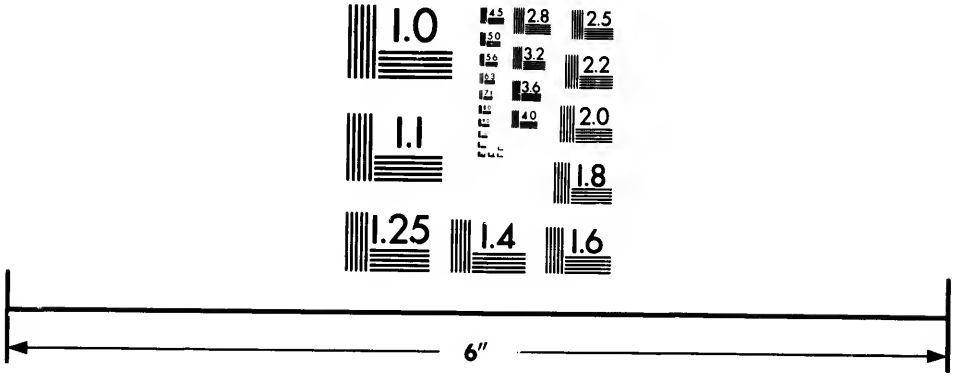

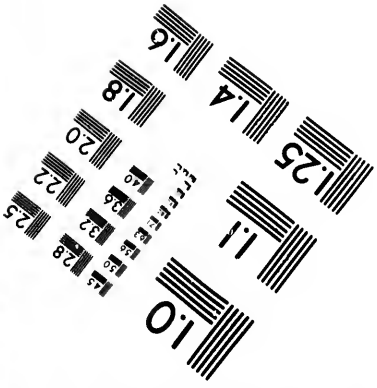

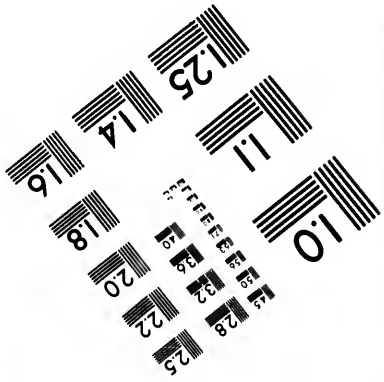

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" Council of state of the said 4th June 1686, published on " the 23st January 1700 (1); we grant *acte* to the inhabi- " tants of the consent of the said sieur Dupré, and in con- " quence thereof, we permit them to build a mill in such " part of the said seigniory as they shall deem fit, and by " so doing they will be discharged for ever from the right of " banality, and they are hereby permitted to erect it for " their own benefit."

242. On the 29th June 1707. (2) The intendant Raudot rendered a judgment, which, " by the consent of the " seignior of Varennes, discharges his censitaires of *Trem-* " *blay* (3) from the right which he had over them, to carry " their grain to the mill of the cape of Varennes to be " ground, being more than two leagues and a half from " their dwellings, upon the condition of paying to the said " seignior, each and every year, a minot of wheat for each two " arpents in front, and which also exempts them, by his " consent, to come *to plant the may-pole* before his manor- " house."

243. The *arrêt* of 7th July 1710, (4) which, after having stated at full length that of the Council of state of the 4th June 1686, and mentioned its enregistration at the Superior council conformably to the *arrêt* of the 21st Octobre 1686, as well as the *arrêt* of the 20th December 1706, already cited, and " of the return of the enregistrations, publica- " tions and advertisements of the said *arrêt*, made, as well " at the *Prévoté* of this town (Quebec) as in the royal juris- " dictions of Three-Rivers and Montreal, on the 24th and " 25th January and 15th February 1707," ordains, upon the

(1) This is an error, the publication of the *arrêt* was made in 1707.

(2) Cugnet's Extraits p. 23.

(3) The fief Tremblay is separated from the seigniory of Varennes by that of Boucherville.

(4) Ed. and Ord. in-8 v. 2, p. 157.

requisition of M. Charles Macart, councillor, performing the duties of the King's Attorney-General, that, at the diligence of the King's Attorney General for Acadia, " the *arrêt* of " the Council of state of the King of the 4th June 1686, shall " be enregistered in the said royal jurisdiction of Acadia, " established at Port-Royal and that it be read, published " and affixed in all places where necessary, to be executed " according to its tenor and form, of which the said King's " Attorney General will certify to the court within six " months."

244. Following the order of the dates of Canadian legislation, I must here mention an *arrêt* of the Superior Council of the 2nd December 1715 (1) promulgating regulations relating to bakers and *millers*, upon the representation made by the Attorney General.

The 5th article declares : " that the proprietors of mills " shall be held, subject to an arbitrary penalty, to have " scales and weights stamped and marked, to weigh the " wheat which shall be carried there to be ground, and " the flour which shall be made therefrom ; the local judges are enjoined to see to the execution thereof and to " have them at the expense of negligent proprietors ; even " to have the workmen, who have executed them or those " who have furnished them, paid in preference to all " others."

6. " In case of malversation on the part of millers, the " complainants shall have recourse against them when they " shall be the lessees of the mill ; but if they are not lessees, then recourse shall be had against the proprietors, " without prejudice of that of the proprietors against the " millers.

7. " Millers are prohibited to exact more than one

(1) Ed. and Ord. in 8. v. 2, p. 169.

" fourteenth for the toll of grain, (*mouture*) under " the penalty of an arbitrary fine ; the local judges are " enjoined to examine the toll measure of each mill and " to have it made exact and stamped, prohibiting all millers " to take toll with any other measure than that which shall " have been so stamped.

8. " Those who shall carry or send grain to mills, shall " be held to have it weighed in the presence of the miller, " and the flour also, after the grain shall have been ground, " in default of which their complaint shall not be heard.

9. " That the weight of the grain may be certain and " to avoid contestations upon this subject, millers are enjoin- " ed under the pain of arbitrary fines, to have the weight " of the grain, the toll deducted, marked upon a tally, and " to hand over to each individual the duplicate of the said " tally to help them to verify the said weight when the flour " shall be delivered to them ; the millers are hereby prohi- " bited, under the same penalty, even of corporal punish- " ment when the necessity should happen, to wet the grain " which shall be carried to them, to make the flour thereof " heavier."

245. On the 15th February 1716 (1) the Intendant Raudot makes an ordinance, which, upon the petition of the seignior of *Demaure*, condemns his *censitaires* " to carry their grain to be ground at the mill of the said seigniory."

In his petition, the seignior M. Aubert, " as recent proprietor of the seigniory" asked an exhibition of the title deeds of those of his tenants who had them ; he asked at the same time " that those who possessed lands in virtue of letters of concession" be held to take deeds of concession.

(1) Ed. and Ord. v. 2, p. 448.

These *letters of concession*, generally, proved only the fact of the concession, with the understanding that the conditions would at a later period be drawn up in an authentic title, passed before notaries.

M. Aubert, by his petition, further asked, that his *censitaires*, without distinction between those who had contracts of concession and those who had none, should be condemned " to carry their grain to be ground at the mill of the said seigniory."

" We condemn," says the ordinance, " the said inhabi-
" tants of the seigniory of *Demaure* to exhibit to the said
" sieur Aubert, the titles and deeds by virtue of which they
" hold their lands, and *likewise those who have none*, to
" exhibit *the letters of concession*, they have obtained from the
" late sieur Demaure, *in order that the said sieur Aubert*
" *may give them deeds subject to the clauses and conditions*
" *contained in the old ones, without the right of adding new*
" *charges*.....

" *We do further condemn the said inhabitants to carry*
" *their grain to the mill of the said seigniory to be ground.*"

In this judgment, to carry the grain to the mill of the seigniory to be ground, were included those who had *letters of concession* only, and which, as I have observed, did not contain any condition, and consequently, no subjection to mill banality. Nevertheless they are, without there appearing any agreement, condemned to follow this banality.

246. On the 27th May 1716 (1) we have an ordinance of the Intendant Begon, which, upon the complaint of the seignioress of Champlain, that several of the inhabitants of that seigniory, refuse to carry their grain to her mill to be ground, *altho' they are obliged thereto by their contracts*, condemns

(1) Ed. and Ord. v. 2, p. 452.

the said inhabitants " to take to the mill of the said seigniory the grain intended for the *consumption and sustenance of their family*, to be ground there, on pain of paying a fine of ten *livres* to the church of the parish of the said seigniory, and also to pay to the dame de Cabanac the toll for such grain as they shall cause to be ground at any other mills. (1)

217. It appears that doubts had been raised upon the subject of the banality of wind-mills, as it may be seen by an *arrêt* rendered by the Superior Council on the 7th March 1718. These doubts perhaps arose from the fact that these mills were not expressly mentioned in the *arrêt* of the 4th June 1686.

In the year 1714, the seignior of Vincelotte had summoned his *censitaire*, Jean Fournier, before the *Prévoté* of Quebec, praying that he be condemned : " to restore to him " the toll of all the grain which he had ground *for the* " *sustenance of his family*, at strange mills during several " years, in the penalty according to his deed, and that he " be held to exhibit the deed in virtue of which he held " his farm whereon he resided in the said seigniory." The defendant replied : " that he had been obliged to have " part of his grain ground elsewhere than at the mill of the " seigniory, because it was worth nothing, that it made but " very bad flour, and that the miller who worked the mill " gave them a very small return." On the 26th June 1714, the judgment of the *Prévoté*, ordains " that the said sieur

(1) Cuguet (p. 36) makes the following remark :

" This judgment is rendered in consequence of several *arrêts* of the " Parliament of Paris, which have decided upon the 71st article of the " Custom, that the seigniors having mills *entitled banal*, cannot claim " from the censitaires but the toll of grain *consumed* by their family, " because the *censitaires* have the unrestricted right of having *the* " *grain they have for sale* ground at other mills."

" de Vincelotte shall put his mill in order that it may make " good flour, and that the said Fournier shall be held to " carry his grain thereto conformably to his deed of conces- " sion."

On the 1st March 1717, the seignior appeales from this judgment to the Superior Council; Fournier makes default notwithstanding his being summoned twice. On the 7th March of the following year, " the Council before granting " the benefit of the said default, has suspended its judg- " ment upon the merits until it is made aware, it is said, *of* " *the intentions of His Majesty, respecting the banality of* " *wind-mills*, and nevertheless provisionally ordains that the " said Fournier and other *censitaires* of the said sieur de " Vincelotte shall carry their grain to be ground at the *wind-* " *mill* of his seigniory." (1)

This case having been sent before the King, His Majesty, on the 16th April 1719, addressed the following letter to the Superior Council, which, at the request of the Attorney-General, caused it to be enregistered at its office on the 2nd October following: (2)

" We have caused to be examined in Our Council the " *arrêt* of the 4th June 1686, in relation to the banality of " the mills in New France, and also of the *arrêt* rendered " in our Superior Council of Quebec, on the 7th March 1718, " in relation to the *wind-mill* built by the said sieur Joseph " Amyotte in his seigniory of Vincelotte, whose right of " banality was disputed by Jean Fournier, an inhabitant of " the said seigniory, by which *arrêt* you have suspended " rendering judgment on the principal matter in issue until " ***you should be informed of our intentions in relation to the***

(1) The judgment and the *arrêts* upon this contestation have not been printed. I have an authentic copy thereof in my possession.

(2) 2 v. " doc. seig," p. 224.

" *banality of wind-mills*, and you have, however, ordered " in the mean time, that the said Fournier and other inha- " bitants of the said sieur Amyotte shall carry their grain " to be ground at the wind-mill of his seigniory of Vince- " lotte. We have also had explanations given us touching " the articles of the Custom of the *Prévoté* and *Vicomté* of " Paris, which treats of the banality of mills, and by the " advice of our dear and well beloved Uncle, the Duke of " Orleans, Regent, we send you this letter to inform you " that our intention is, that you should declare the wind- " mill belonging to the said sieur Amyotte, in the seigniory " of Vincelotte to be a *bannal* mill, and that nevertheless " you will permit the tenants of the said seigniory to have " their grain ground elsewhere, when the said mill shall be " stopped in any manner and for any cause whatsoever. " We recommend you also to prevent the said sieur " Amyotte from molesting his vassals in relation to this " matter, to which you shall pay particular attention, " without therein making default; for such is our pleasure."

248. The intendant Dupuy rendered a judgment on the 10th July 1728, in relation to the wind-mill of the seigniory of Grondines belonging to sieur Hamelin.

Several inhabitants set forth in their petition " that as " they are obliged to go to the wind-mill in the said seigniory, " it is both grievous and prejudicial to them to take their " grain there, in as much as the mill only breaks their " wheat, both because the mill is absolutely spoilt by the " different persons who have worked it heretofore, and " because the sieur Hamelin who now works it, not being " a miller by trade, increases the defects in the flour made " by him, and praying us, for the purpose of proving what " they state in their petition, to order that the said mill be " visited and examined by men of skill."

The sieur Hamelin replies that his mill : " is in good " order, that it is true he has had no miller for some time, " because his miller was a soldier, and the General has " taken him away, but that having hired, in his place, a " man who is able to work the mill, he, persisting in stating " that his mill makes good flour and is provided with " every thing necessary for it, also requests that it should " be examined by men of skill and experience (*experts*) in " such things."

The judgment ordains that this visit of *experts* be made and " that the inhabitants shall then continue to go to the " mill as they are bound to do, under a penalty of a fine " and of the confiscation of the grain that may be taken " elsewhere, which grain we allow the said sieur Hamelin " to follow and seize."

249. On the same day 10th July 1728, (1) the intendant Dupuy made another ordinance declaring the seizure of the grain of the curé and inhabitants of Ste. Anne de la Perade in the possession of the miller of St. Pierre les Becquets, to be good and valid.

It appears that on the 30th August 1707, the seignior of St. Anne had got an ordinance from the intendant Raudot, enjoining the *curé* and all the inhabitants to carry their grain to the mill of the said place to be ground, with prohibition of going elsewhere upon pain of confiscation and payment of a fine.

He again complained that " a number of inhabitants of his seigniory do not bring their grain to his mill, altho' they are bound to do so by their deeds of concession." He had caused a seizure to be made in the hands of Brisson, miller of St. Pierre, summoning at the same time all the inhabitants to whom belonged the wheat at the miller's, as

(1) Ed. and Ord. v. 2, p. 497.

well as the miller, " to declare the quantity of wheat or flour he has belonging to the said inhabitants." Eight of the latter appear and plead for their justification, the mill of the said seignior is out of order, and the bad conduct of his miller who, they stated, was a dishonest man and well known as such to the said sieur de la Pérade : they further stated that the mill was insufficient " to grind the grain required for the maintenance of their families." They also asked that the seignior be obliged to have mill-weights and scales at his mill " that after weighing their wheat in the presence of the said miller, they might weigh their flour before him."

The seignior denied the facts set forth by the defendants for their justification, and prayed that the seizure be declared good and valid, and that " all the inhabitants, who have " taken their grain to any but the seigniorial mill to which " they are bound to go, be condemned to pay toll *in proportion to the quantity used by their families.*

" Taking into consideration, it is said, the deeds of concession of the said inhabitants, by which deeds they are indispensably obliged to take their grain to be ground at the said mill of the said seigniory ; an ordinance of M. Raudot passed in consequence of a like difficulty, on the 30th August 1707 which obliges them so to do under penalty &c ;" the Intendant declares the seizure good and valid, condemns the miller of St. Pierre to hand over the wheat and flour seized in his hands, to those of the seignior of Ste. Anne, and again prohibits the *curé* and all the other inhabitants from taking their grain to be ground elsewhere than to the *banal* mill of the said seigniory, under penalty of the confiscation of the grain and of such fine as he may think proper, and of paying toll for the grain which they shall have taken elsewhere to be ground. (1)

(1) The mill of Ste. Anne, was a wind-mill.

250. On the 22nd July 1730, (1) the Intendant Hocquart passed an ordinance in the words following :

" Upon the complaint made to us by the Dame de Ra-
" mesay, that some of the inhabitants of her seigniory of
" Sorel do not send, and refuse to send, their grain to her
mill, although obliged to do so by their deeds:

" Seing the regulations upon that subject, made by the
" Superior Council of this country, we prohibit the said
" inhabitants from carrying their grain to be ground else-
" where than at the said mill under a penalty of a fine of
" ten *livres* to be paid to the *fabrique* of the parish ; we
" only allow them, in case the said mill should not be work-
" ing and in case their grain shall not have been ground
" within twice twenty four hours after being taken to the
" said mill, to carry it to such mill as they may think pro-
" per."

251. By an ordinance of the intendant Hocquart of the 22nd Nov. 1730 (2) five inhabitants of the seigniory of Neuville, summoned at the request of Pierre Savarit " proprie-
" tor of the wind and water mills in the seigniory of Neu-
" ville, sold to him *with the right of banality*" by the Abbé de Lotbinière on the 29th June 1720, " to explain their rea-
sons for not bringing their wheat to be ground at the mills of the petitioner, although they are bound to do so," are condemned by default " to pay the said plaintiff, the toll of all
" the grain they shall have had ground elsewhere than at his
" mills, during the last two years, according to the estimation
" to be made by the *curé* (rector) and captain of militia of the
" place, forbidding them and all other inhabitants of the
" said seigniory, from henceforth carrying their grain to be
" ground elsewhere than to the mill of the said petitioner,

(1) Ed. and Ord. v. 2, p. 340.

(2) Doc. Seig. 2d. vol. p. 142.

" under the penalty of paying the same dues as those they " would be bound to pay if they had it ground there, and " also of paying a fine of ten *livres.*"

252. The inhabitants of the *fief de la Durantaye* had presented a petition to the intendant Hocquart, praying that the sieur d'Auteuil, as agent of the seigniors, be held " to have a mill built to grind their grain." It appears that there was an old mill, but that it was in bad order. Mr. d'Auteuil offered to repair it the following spring. By the judgment of the 18th February 1731 (1) the Intendant ordered " that in conformity with his offers, the sieur d'Auteuil in " his said quality, shall immediately repair the mill of La " Durantaye, and in default on his part, we do allow the said " inhabitants to build one at their own expense, upon the " conditions stated in the decree of the King's Council of " State of the 4th June 1686."

253. On the 29th. September 1732, (2) Messieurs de Beauharnois and Hocquart passed an ordinance in relation to fanning mills for wheat.

It is therein said that on the 18th May preceding, the King had made a regulation respecting the flour sent from Canada to the *Isle Royale* and other french islands in America, and to facilitate the execution thereof, His Majesty had sent six cylindrical fanning-mills, and that " altho' " these six fanning mills be not sufficient to supply all the " mills in which merchants ordinarily have their grain " ground for commercial purposes, it was nevertheless ne- " cessary to prescribe their usage, even from this year in " the principal mills of the government of Quebec."

By the first article, these fanning mills were appointed to be sent to the proprietors of the mills of Sault-à-la puce,

(1) Ed. and Ord. v. 2, p. 519.

(2) Ed. and Ord. v. 2, p. 352.

Petit-Pré, Beauport, Pointe de Lévy, St. Nicolas and Ste. Famille in the isle of Orleans " to have all the wheat in " general of whatever quality sent to these mills passed " and fanned, before converting them into flour."

The 2nd article prohibits all proprietors of mills and their millers " from grinding any wheat which has not " been passed thro' the fanning-mill as above, under the " penalty, &c.

The 3rd article, as an indemnity to the proprietors, grants them six *deniers* for each minot brought to the mill, " upon the condition, that the said proprietors and millers " shall return to the proprietor of the wheat, the tailings " which shall be got from it. "

And according to the fourth article : " and in conse- " quence of these six *deniers*, the said millers shall take " their toll merely upon the clean and fanned wheat and " not upon the whole quantity of wheat which shall have " been brought to them, nor upon a larger rate than " that established. "

Five new fanning mills were sent the following year for the government of Montreal, which gave occasion for the passing of another ordinance, like the first, and made by the same governor and intendant on the 8th February 1734. (1) These fanning mills were to be given to the proprietors of the mills of Lachine, Isle Jésus, Island of St. Hélène and Terrebonne.

251. On the 20th March 1733 (2) a new ordinance was passed by the intendant Hocquart, upon the petition of Pierre Savarit " proprietor of the wind and water banal mills " of Neuville, the same who had already obtained by default

(1) Ed. and Ord. v. 2, p. 363.

(2) 2 Doc. Seign. p. 155.

the ordinance of the 22nd November 1730 (*supra* no. 251.) He renews his complaint against the inhabitants who go elsewhere to have their grain ground. The latter reply in this manner that : " his water mills do not at present make " flour and that his wind-mill is not *fitted up* in a manner " so as to supply the wants of the public. " The grand-voyer, Mr. de Boiscler, receives orders to ascertain the state of the place ; and upon his report the ordinance in question is passed. It declares " that the said Savarit shall be " bound to place in his wind-mill a miller by trade and no " other, who shall live in the neighborhood of the said mill, " so that he may at all times take care of it, receive the " wheat from the inhabitants and return them the flour " when it is ground, and also to keep in one of his mills " worked by water and in his wind-mill, a scale and stamp-" ed weights of iron and not of stone of which the weight " is not known, and to keep the said mills in good order so " that they can grind when there is wind or water.

" And as to the inconvenience brought under our " consideration by the inhabitants to the effect that when " the wind fails for the wind-mill, or water for the other " mill, the said Savarit wishes them to carry their grain " from one mill to another, as often as three different times.

" We ordain that in that case the said Savarit shall be " bound to carry the wheat at his own cost and expense, " and in default of his doing so, we allow the inhabitants " to carry their grain to be ground where they please.

" We also order the said inhabitants to carry the grain " they may require *for their own subsistance*, to be ground " at the mills of the said Savarit, as being in the place and " stead of the seignior, and to leave it there during twice " twenty four hours in either of the mills, after which time " they shall be at liberty to take it away and carry it " where they please, without the said Savarit or his repre-

" sentatives having any right to demand toll ; in conformity " to the decree of the Superior council of this country of " the 1st July 1675, in relation to banal mills.

" We charge the said Savarit faithfully and promptly " to serve the said inhabitants, in preference to all citizens " and traders, and to keep his mills provided with all " necessary implements, under the penalty of an arbitra- " ry fine and heavier penalties if necessary. "

255. On the 15th December 1733 (1) an ordinance is passed by the intendant Hocquart upon the petition of the seignior of Beaumont who complained that Joseph Roy, his *censitaire*, therein named, had recently built a mill upon the seigniory of Dame de Vincennes, to which he *induces* a number of the inhabitants to go : " which," he said, " is " not permitted but is even altogether contrary to the rights " of the petitioner, to the custom in relation to banal mills " and to the clauses contained in the deeds of concession " of the petitioner's inhabitants, by which they are expressly " obliged to carry their grain to be ground at the seigniorial " mill."

Roy in his defence stated that " the mill of the seigniory " of Beaumont being unable to make good flour on account " of the defective mill-stones, the seignior had allowed his " inhabitants to take their grain elsewhere than to the said " banal mill to be ground."

The ordinance prohibits him from " receiving any of the " inhabitants of the seigniory of Beaumont in the mill he " has lately caused to be built in the seigniory of the " Dame de Vincennes, without the consent in writing of the " said sieur de Beaumont, under a penalty of ten *livres*, we " also prohibit the said inhabitants of Beaumont, under the

(1) 2nd v. " doc. seig." p. 159.

" same penalties, from taking their grain to be ground " elsewhere than at the banal mill of the said seigniory.

" We command the said sieur de Beaumont to have his " banal mill put in order so as to make good flour, and to " have scales and stamped weights therein."

256. On the 10th March 1734 (1) an ordinance is passed by the intendant Hocquart upon the petition of five of the inhabitants of the fief Gentilly, represented by Frs. Rivard dit Lavigne, one of them, for the purpose of having it ordained that the widow Poisson, tutrix of her son, proprietor of this *fief* should " immediately build a grist mill " upon the said *fief* for the use and advantage of her tenants, " otherwise and in default thereof, that she be deprived, in " her said quality, of the right of banality, and that the said " Rivard Lavigne, one of the petitioners, be allowed to " build a mill, which he offers to do at his own expense, " and keep the same in good order and condition, for him- " self, his heirs and assigns for ever, so that it shall supply " the wants and necessities of all the inhabitants of the said " *fief*; and in that case the said Rivard shall enjoy the " rights and privileges of a banal mill !

" We, says the intendant, with the consent of the said " Richard Lavigne acting as aforesaid, have granted to the " said widow Poisson, acting also as aforesaid, a delay of " two years from the day of the signification of the present " ordinance, to procure the means to build the banal mill, " as required by the said inhabitants of the seigniory of " Gentilly, after which period we shall order what may be " right and proper."

257. The inhabitants of the seigniory of Argentenay, parish of St. François de Salles, in the island of Orleans, present a petition to the intendant Hocquart, setting forth

(1) Ed. and Ord. in-8, v. 2, p. 364.

that by the ordinance of sieur André his sub-delegate, they are obliged to carry their grain to the mill of the said parish to be ground; that they are desirous of submitting to this ordinance, as they have done up to this time, but that they cannot do so " without suffering a considerable loss by the " bad flour which the miller makes them every day, not " only that which they consume in their family, but even " that which they are obliged to sell is found to be badly " manufactured, and in respect to which the have continual " reproches, which is caused by defective mill-stones."

Upon a report of *experts*, showing that the said mill was in good order and made good flour the complaint of the inhabitants is dismissed by a judgment of the 23rd June 1736, (1) which declares that " conformably to the " ordinance of the said sieur André, the said inhabitants " shall be bound to have their grain ground at the mill of " d'Argentenay under the penalties therein set forth."

258. On the 12th March 1738 (2) the same intendant passed an ordinance, which, upon a report of *experts* establishing that the miller of Beaumont " is not at all skillful " ordains " that a *good miller* shall be immediately placed " in the mill of Beaumont, other than the one at present " there, and until it is so done, we allow the said inhabi- " tants to have their grain ground where they please."

In the preliminary observations, it said that " as to the " new demand made by the said inhabitants that the " miller of the said mill should be bound not only to grind " the wheat belonging to the inhabitants, but also their " *other grains*, the sieur de Beaumont *having agreed* to the " justice of the demand and consented to it, we have given " *acte* thereof to the plaintiffs, and in consequence order

(1) Ed. and Ord. in-8, v. 2, p. 539.

(2) 2nd vol., " doc. seig." p. 173.

" that their other grain be ground in the said mill as well " as their wheat."

259. On the 24th July 1741 (1) a decree was made by the Superior Council upon a contestation between the Ecclesiastics of the Seminary of Montreal and the Brethren of the Hospital, (Frères Charron) with respect to a mill.

On the 5th Nov. 1726, the Council had made a decree which, upon the petition of the Seminary, permitted to have the Brethren summoned " to the end that they be condem- " ned to pull down a mill upon the land which the said " Ecclesiastics had given them in their seigniory."

It appears that by deed of the 11th February 1730, the Brethren had ceded to the Seminary a wind-mill with all its gear, and an arpent of land upon which a small house was built for the miller. On the 12th Sept. 1740, the Brethren obtained authority to ask the rescision of this deed (*lettres de rescision*) and prayed for a judgment rescinding the deed, stating that the Ecclesiastics had induced them to make this cession without the consent of the administrators general of the Hospital.

The Ecclesiastics consented to the rescision of the deed, but they persisted in praying for the demolition of the mill.

It appears that as far back as 1705, by protest of the 14th February (Adhémar, notary,) the Seminary had " op- " posed the building and construction of the mill or mills " driven by water or by wind, which the Brethren intended " to make, in whatever part of the Island of Montreal it " might be."

The *arrêt*, by the consent of the parties to the resilia-

(1) This *arrêt* is not printed.

tion of the deed of the 11th February 1730, granted the rescision of the deed and entire restitution of the property, condemned the Ecclesiastics to leave the possession and enjoyment of the wind-mill in dispute to the Brethren, and likewise the arpent of land and the house; " and taking into " consideration, the *arrêt* adds, that the said wind-mill has " only been tolerated for the domestic and private use of " hospital and community of the said Brethren of the " Hospital, the said Brethren are enjoined to have ground " at the said mill the wheat belonging to them only and " which is consumed in the said hospital and community; " the said Brethren of the Hospital are prohibited from " receiving or having ground at the said mill, under any " pretext whatever, any other wheat of any person what- " soever, under the penalty, in the event of contravention, " of a fine of two hundred livres for the first time, and of " double that sum in case of a second offence, the whole in " favor of the said gentlemen of the Seminary, and for the " third offence, of the demolition of the said wind-mill, and " this by virtue of the present *arrêt* and without there being " any necessity for another."

260. On the 13th February 1742 (1) an ordinance is passed by the Intendant Hocquart upon a petition of the missionary and the inhabitants of Contrecœur, of the one part, and the co-seigniors of the said *fief*, of the other part.

The former asked, by their petition, that it be ordained " that the co-seigniors of Contrecœur shall, within the de- " lay to be fixed by the Intendant, build a banal mill in " the said seigniory, and that in default of so doing within " the said delay, it be declared that they have forfeited " their said privilege of banality; and that it be granted " to any of the inhabitants or others of the said seigniory

(1) Ed. and Ord. in-8, v. 2, p. 562.

" desirous of building such mill within a year and a day ; " the said sieurs de Contrecœur, father and son, having " declared they will not erect a mill in consequence of the " multiplicity of joint-seigniors, who have the same privi- " lege with them."

In this case the sieur de Contrecœur the younger, offered to " within such delay as it may please the intendant " to fix, erect the mill in question, upon the charges, " clauses and conditions, that he will be and remain the " proprietor thereof, and that the right of banality, in all " the extent of the seigniors of Contrecœur shall belong " thereto exclusively."

M. de Contrecœur, the father, and Mrs. widow de la Corne by deed before notary of the 4th May 1741 had consented : " that the said missionary or tenants or any other " person be authorised to erect a banal mill, in the said " seigniory of Contrecœur," yielding for this purpose the right of banality in favor of the persons who should construct the mill, upon condition that the mill should be built and put into order to grind within one year.

M. de Fosseneuve, one of the co-seigniors, then offered to build the mill, within two year, and M. de Contrecœur the younger *during the present year*, adding that, if the said Fosseneuve wished to have it constructed within the same delay, he agreed to it, and further that the banality be attached to it throughout the whole extent of the said seigniory.

The ordinance of the intendant authorises M. de Contrecœur the younger, " to build the said mill within one " year ; unless the said sieur de Fosseneuve do, within " fifteen days after the service upon him of our present or- " dinance, make his declaration at the office of the clerk " of the jurisdiction of Montreal, that he consents to build

" the said mill, in the same delay of one year, on the con
" ditions and with the same obligations and privileges
" mentioned, as well in the ediet of the King's Council of
" State, of the 4th June 1686, as in the petition in interven-
" tion of the said sieur de Contrecœur the younger, and in
" default by the said sieur de Fosseneuve of making his said
" declaration, within fifteen days as aforesaid, he will not
" be allowed to erect the said mill ; and by virtue of the
" present ordinance, the said sieur de Contrecœur the
" younger, shall be held to erect the same within one year,
" as he is hereby authorised to do, on pain of all costs,
" damages and interest, in favor of whomsoever it may
" concern."

261. On the 11th July 1742 (1), the Intendant Hocquart passes an ordinance upon a contestation between the miller of Argentenay and some inhabitants of that seigniory, on the same question as that which gave rise to the ordinance of the 23rd June 1736 (*supra* no. 257.)

The miller sets forth, in his petition, that : " Jacques
" Asselin and several other inhabitants have, for several
" years, refused to bring their wheat to be ground at the
" said mill, under the pretext that the Plaintiff manufactu-
" res bad flour, although it is notorious that he has always
" made it very good..... conduct, the more repre-
" hensible, he declares, as by the regulations of police, and
" lastly by an *arrêt* of the King's council of State on the
" subject of banal mills" they were bound to go to his mill.

" Seeing our ordinance of the 23rd June 1736.... we
" order, says the intendant, that *all* the inhabitants of
" d'Argentenay aforesaid, shall be held to have their grain
" ground at the said mill under a penalty of ten livres etc.

(1) Ed. and Ord. in 8, v. 2. p. 565.

" We further order the said miller to keep his said " mill always in good order, and moreover to comply with " the regulations in respect to banal mills, under the pen- " alties imposed by the same.

" We condemn the inhabitants hereinafter named to " pay to the said miller the tolls due to him for the time " during which they have failed to bring their grain to be " ground at the said mill, to wit:..... which said re- " imbursement, the said inhabitants shall be held to make " in wheat or in money at the rate of three livres per minot, " at their option."

262. By a judgment of the *Juge-Bailli* (inferior judge) of the jurisdiction of La Rivière du Sud, the inhabitants were condemned to carry their grain to be ground at the mill of that Seigniory. An appeal had been made to the *Prévoté* of Quebec, which, on the 13th April 1742, had confirmed the original judgment, and prohibited the farmers from carrying their grain elsewhere than at the banal mill of the Seigniory, if it be not upon the conditions mentioned in their deeds. The inhabitants having appealed to the Superior Council, the *arrêt* of the 12th November 1742 (1) was given, by the Council, which dismissed their appeal, in consequence of a report of *experts* showing : " that the " mills of the Seignior were in very good order and provi- " ded with millers and machinery and tools necessary to " keep it in good condition, and that they made excellent " flour."

263. On the 12th February 1746, (2) the intendant Hocquart passes an ordinance respecting the erection of a second mill in the Seigniory of Lauzon, upon a petition of

(1) Ed. and Ord. in-8. v. 2, p. 210.

(2) Ib. p. 578.

about sixty farmers, " all grantees of lands in the seigniory of Lauzon, in the rear part thereof."

There were co-seigniors, the defendant M. Etienne Charet, his brother, and the minors Charly, children of their deceased sister. The plaintiffs " more than three leagues distant from the river, without a mill," prayed that the defendant be condemned " to have a grist mill built " upon the river d'Etchemin in the village Ste. Geneviève, " unless he would rather cede the right of banality to one " of the Plaintiffs, or to the whole of them, they being un- " able, any longer to withstand the great fatigue endured " in carrying their grain more than three leagues through " impassable roads for the purpose of having it ground at " Point-Levy."

The defendant replied that in consequence of a like demand made to him by the farmers two years ago, he had had the mill-stones and part of the materials and machinery necessary for the construction of the mill in question taken upon the spot (which was admitted by the plaintiffs,) but that he was unable to make the building on account of the difficulties raised by the father of the minors Charly. The defendant, as well for himself as for his absent brother, offered to erect the mill in the course of the following summer, for the convenience of the plaintiffs, provided that Mr. Charly was obliged to join in the expense of the said mill according to his rights in the seigniory; by which means he would be entitled to his share of the profits; unless the said Charly should prefer to renounce his right of banality in the mill, which he should be obliged to decide upon within a month.

The ordinance is conformable to the conclusions of the defendant.

264. A judgment of the *Prévoté* of Quebec, of the

12th January 1751, condemns the defendant Joseph Turgeon to carry his grain to be ground at the banal mill of Montapeine, upon the seignior furnishing a practical road to go thereto. (1)

265. To conclude, the last document relating to this matter, during the French dominion, that our printed records furnish us, is an ordinance of the intendant Bigot, of the 25th May 1757, (2) rendered in a suit in relation to the banality of a mill, between Claude de Pécaudy, seignior of Contrecœur, and the sieur Martel, seignior of *fief* St. Antoine, situate in said seigniory of Contrecœur, as having acquired it from the co-heirs of the late widow of Jean Louis de Chapt, Esquire, sieur de la Corne.

The Plaintiff is the same who, by the ordinance of the 13th February 1742 (*supra* no. 260), was obliged to erect a banal mill in the seigniory of Contrecœur, which mill he had in fact constructed. It was a wind-mill. Mrs. de la Corne had renounced to the banality by deed of the 4th May 1741, mentioned in these two ordinances. She was the *vendor* of the defendant. The plaintiff complained that the latter had had a mill erected, in his absence, " upon the part and portion by him acquired and had the grain of the farmers of the seigniory of Contrecœur and particularly that of the vassals of the Plaintiff, ground every day." The latter had summoned the sieur Martel " to be condemned " to demolish the mill which he has unlawfully built in the " said seigniory of St. Antoine, otherwise, and in default of " his so doing, within fifteen days after the notification of " the ordinance, that the Plaintiff be authorised to demolish " the said mill, at the cost and charges of the said defendant, and that for the injury which the said mill has " caused to the Plaintiff by reason of the tolls received by

(1) M. Perrault's extract, p. 71.

(2) 2nd vol. " doc. seig." p. 219.

" the defendant, that he be condemned to such damages " and interest as the intendant shall please to fix.

The sieur Martel pretended that " the mill built by the plaintiff cannot be considered as a banal mill, according to the terms of the 71st and 72nd articles of the Custom of Paris; that by the ordinance made by the Intendant M. Hocquart, on the 13th February 1742, the said plaintiff was authorised to build, within " one year in the fief of Contre- " cœur, a banal mill, according to the terms of the said " ordinance which was a title in his favor, but that he had " lost the right acquired in virtue of such title, for want of " compliance with the terms of the said ordinance within " the time prescribed, which non-compliance still continues " as no mill has been built, which can be considered as a " banal mill under the terms of the said articles of the " Custom, which decide that a wind-mill cannot be consi- " dered as a banal mill, without a title or acknowledgment " in writing, therefore the plaintiff's mill cannot be looked " upon as such; that even, if the plaintiff had the right of " banality, he could merely prevent the neighboring millers " from entering upon his lands to seek in grain to grind " (*empêcher de chasser sur ses terres*), and could not ask the " demolition of a mill that the defendant did and could " build upon his own ground for himself, and for the inha- " bitants of his seigniory, and which is not established for " those of the plaintiff; finally he relies upon this essential " point, that the plaintiff has no right of banality, and that " his wind-mill cannot be considered as such, according to " the terms of 71st and 72nd articles of the Custom; that " the plaintiff cannot take advantage of the renunciation " of his predecessors, to whose rights he has succeeded; that " the said renunciation cannot be of any use, as the defen- " dant has not taken advantage of it."

The plaintiff replied "that the defendant had been careful " not to cite the 71st and 72nd articles of the custom, which

" alone would be a suffieient refutation of his pretensions ;
" that by the 71st article no seignior can oblige his tenants
" to go to the banal oven or mill, unless he have a valid title ;
" that the plaintiff has a valid one which is the ordinance
" of M. Hocquart, of which the defendant himself appro-
" ves by his defence, to which must be added the complian-
" ce of all the inhabitants of the plaintiff's seigniory who
" have submitted to it ; that by the renunciation of the de-
" fendant's predecessors to the right of banality, the said
" defendant had no right to build a banal mill without the
" consent of the seignior who had that right."

After having seen the deed of the 4th May 1741, by which M. Contrecœur the elder, and the widow of the late M. Jean Louis de La Corne had renounced " to the right " which they had to build flour mills, and to the right of " banality which belonged to them within the bounds of the " said seigniory, and having seen the ordinance of M. " Hocquart of the 13th February 1742, which authorised the " plaintiff to build a mill in the delay of one year, the in-" tendant declares : " the mill built by the plaintiff upon " the seigniory of Contrecœur, in accordance with the ordin-" ance of M. Hocquart of the 13th February 1742, to be " banal ; we therefore prohibit the sieur Martel from recei-" ving in his mill any wheat of the inhabitants, either of the " seigniory of Contrecœur, or of the *fief* St. Antoine which " belongs to him and even to grind the grain grown upon " his domain, *destined for the use of his family and servants* " *upon the said domain*, and this, in conformity to the Cus-" tom of Paris, under pain of all costs, damages, and inte-" rests in favor of the said plaintiff, and as to the other de-" mands of the said seignior of Contrecœur, we dismiss " them."

266. Since the change of dominion, the tribunals have constantly maintained the seigniors in their right of mill

banality, as being a legal right of banality. This Court must therefore declare its existence.

As to its extent, I am of opinion that the law restrained it to the quantity of grain only necessary for the *subsistence* of the family of the *censitaire levant et couchant*, that is of the censitaire residing upon the seigniory. The subjection to the banality did not extend further.

The seigniors who, at the time of the promulgation of the Seigniorial Act of 1854, had built flour mills, could prevent all persons from constructing them within the limits of their banality; and if any were to build one, they had the right to have it demolished, in having it so changed that it would not be any longer fit for a flour mill. This right is sanctioned by a constant jurisprudence which we cannot ignore. But the seigniors had not, in virtue of their banality, the right to prevent the construction of other than flour mills, nor of factories of any kind.

Finally, I am of opinion that the seigniors who had no mills at the time of the passing of the Seigniorial Act of 1854, cannot claim, by reason of their banality, any indemnity, under that act.

PART FIFTH.

WATERS.

267. The rights which the Canadian seigniors claim in connection with rivers are not confined to rivers not navigable nor floatable, but, as they, the seigniors, insist, *extend* in particular cases, to navigable rivers.

I shall begin with the first of these.

268. The seigniors contend that they have the exclusive property in rivers that are not navigable nor floatable.

In support of this pretension, they invoke three *moyens* or reasons:

1st. Their quality of feudal seignior,—that is to say of proprietor of the *fief*.

2nd. The concession, whether express or tacit, of the river itself, resulting from their title.

3rd. The quality of seignior *haut-justicier*.

269. Nearly all the seigniories which are traversed or washed by one of these rivers have been conceded "the said river included" or "together with the rivers, etc. to be found within the extent of the said concession," or as is sometimes said "the said rivers being in common" (mitoyenne),—between the grantee and the neighbouring seignior. There are also some concessions, the titles of which, expressly exclude the river by mentioning "the said river not included." These last concessions are very few in number. Finally there are some

that make no mention of rivers, as being comprised in the concession, or being excluded from it.

270. There are concessions, and they are very numerous, which give to the seigniors superior, mean, and inferior jurisdiction, (*haute, moyenne et basse justice*), or mean or inferior jusrisdiction only.

The concession of jurisdiction (*justice*) does not appear in any way to have been made to any other person besides the seignior of the fief; and, with few exceptions, the jurisdiction has been granted in the original title deed of the seigniory. The examples of such grants posterior to the concession of the fief, are very rare. It sometimes occurred, however, that, when a seignior, who had not obtained the concession of jurisdiction by his original title, asked for an *augmentation*, that is a second concession adjoining the first, the exercise of jurisdiction was granted to him by the new title, not only for this second concession but also for the first.

271. Whether it be by virtue of the Common Law or by virtue of the concession, express or tacit, derived from their titles, have the Canadian seigniors, independently of their quality of *haut-justiciers*, but merely as feudal seigniors, acquired any right over the rivers not navigable nor floatable? I am of opinion that in the one as well as in the other case, they have acquired an indisputable right to the property in these rivers, that is to say, both in virtue of the common law relating to *fiefs*, and of a title of concession such as above indicated.

From the double fact, that in several concessions, the river which traverses or waters the Seigniory, is *expressly included* and that in others, *it is not*, we cannot, as appears to me, infer the exclusion of the river in these last concessions. Much less could we do so because concessions are

to be found which exclude the river in express terms ; from which we ought to conclude that, without such express exclusion, the river would, according to the places and circumstances, have been comprised in the concession, otherwise the exclusion would have been without motive and without object. I think, therefore, that when mention has been made of the river, as constituting part of the concession, it has been only by way of description, mere measure of wise precaution to which recourse was had, only to point more correctly, the extent, the amount and the limits of the concessions.

272. The rivers which are not navigable nor floatable belong to the private domain ; they are *in commercio*. They naturally make a part of the hereditaments which they wash, or in the midst of which they flow. They were intended to water and fertilize these hereditaments. This was one of the chief means which enabled the feudal seigniors in France and their tenants to claim the property in them, contrary to the pretensions of the seigniors *haut-justiciers*, and which led the best feudists to award it to them, to the exclusion of the latter. These rivers are in the limits of the *fief*; the Canadian seigniors may invoke the maxim in virtue of which " every feudal seignior has, either in do- " main, or as holding of him the universal and private pro- " perty within the limits of his *censive*." (1) I ought then to acknowledge that the grantees of *fiefs* in Canada have become *de pleno jure*, proprietors of the rivers in question, excepting in the cases wherein their titles contain an express exclusion of thesse rivers.

273. Time not having permitted my giving on this subject as I have on the others, an analysis of the opinions of feudists, I must content myself with pointing ont to those

(1) Revue critique de la jurisprudence, year 1852 p. 784, art by Mr. Duwarnet.

who would wish to consult them the list of their names, and the extracts from this works, which are to be found at page 692, and those which follow, of the treatise on " la propriété des eaux courantes" by Championnière. He divides those authors into several categories :

1o. Authors who make a distinction between small rivers and rivulets : Bouteiller, Loysel, Boutaric, Dupare-Poulain, Delalande ;

2o. Authors who attach the right to the titles and the possession : Guy-Pape, Chassenenx, Baequet, Loyseau, Choppin, Gallon, Coquille, Legrand, Marcilly, Bouhier Bouvot, Fabert, ancien Repertoire, vo. rivière, Pothier, Chabrol, Hervé ;

3o. Authors who assign the water courses to the riparian proprietors : Bocrius, Domat, Boucheul, Hévin, Ricard, Ferrière, *traité historique de la sonveraineté du Roy ;*

4o. Authors who assign the property in rivers to the feudal seigniors : Lebret, Fuyot, Henrion de Pansey, Basnage, Hervé ;

5o. Authors who assign the property in small rivers to the seigniors *haut-justiciers :* LaRocheflavin Despeisses, Bobé, Bretonnier, Laplace, Pelée de Chenonteau, Lapoix-Fréminville.

274. The rivers not navigable nor floatable could never, in my opinion, be claimed by the canadian seigniors in their quality of *haut-justiciers*, a quality which they invoke as forming their third title. Recognizing their right to these rivers by a title which, for all practical effects connected with " the seigniorial act of 1854," ought to suffice for the exercise of their claims, I might abstain from examining this third reason, based on this quality of *haut-justicier.* Nevertheless, the question having been proposed to us, I

shall willingly express my opinion, that this reason does not appear to me to rest on a solid foundation.

Whatever might have been in France the pretensions of the seigniors *haut-justiciers* to the property in rivers, not navigable nor floatable as being an attribute of their jurisdiction, pretensions which appear to me very difficult to admit beyond the bounds of those customs which, very few in number, attached such property to the quality of *haut-justiciers*. The canadian seigniors on whom such jurisdiction has been conferred, are in a very different position; they cannot justify their claims by those of the french seigniors. Their titles are not lost, like those of the latter, in the darkness of ages. We are acquainted with the whole of them: we have had them all under our eyes and all without exception sustain the remark which I have already made, that whenever the superior jurisdiction (*la haute justice*) was given, it was always in favor of the grantee of the *fief*, the *feudal seignior*, whether it was by the title of the *fief* itself or by a subsequent title. Thus, there are two very different things to consider in the titles which contain, at the same time, both the concession of the *fief* properly speaking, that is to say, of the hereditaments and their dependencies, which being susceptible of private ownership, are *in commercio*, and the granting of jurisdiction which is an appendage of the sovereign authority. To the first of these, namely, the concession of the *fief* has always been attached the concession of the river, when that river was included in the deed of sub-infeudation, while on the contrary, it never was to the second, that is to say to the concession of jurisdiction. If there exist an exception to the assertion which I make, I have not had the advantage of discovering it in the course of my researches, or else I am greatly mistaken in the appreciation which I have made, in this respect, of the titles of our seigniors.

275. However, it appears to me very reasonable to say

that the jurisdiction could not be attached to a *fief* before that *fief* had been created. Now what was the chief element in a title of concession *en fief* in Lower Canada, if it was not, in the first instance, to erect under such title a certain extent of land, then to create a *feudal seignior*, who thereby became, in virtue of this title alone, proprietor of the land thus made a *fief*, and of every thing which naturally formed a part of it as being within the bounds or *enclave* of this *fief*? The rivers not navigable nor floatable found within those bounds ought naturally therefore to make a part of that original concession creating the *fief*, and as a consequence, made to the feudal seignior and not to the seignior *haut-justicier*, a quality which could not exist but as a consequence of the existence of the former, according to the manner in which the Crown has made the concessions in *fief* in this country. The feudal seignior could in such quality alone, have a *directe*, on those rivers, and not in his quality of seignior *haut-justicier*, which was not given him, so to speak, but afterwards, and that, because he was already seignior of the *fief*.

" It is a general principle of the Customs," says Guyot, *traité des fiefs* v. 5, part 2, p. 669, edition of 1751, " that all " the land which is in the limits of a seigniory belongs to " the feudal seignior, either in useful property or direct " property ; thence the water which runs on this land, runs " incontestably on the land of the feudal seignior.

" These rivers are by the customs and the authors, cal- " led *rivières de cens :* the reason is simple ; it is that, as " the right in water, courses which in law is called *aquas* " *aquarumve decursus*, carries the right to buil mills and " to fish therein, these rights are conceded *à cens* ; now " the jurisdiction, as jurisdiction, has no *directe* ; which is " so true that if a hereditament be adjudged to a *haut-jus-*

" *ticier*, who is not, at the same time, *feudal*, he will pay " *relief* for it, if it be a *fief*, or *cens* if it be *rôture*; that does " not extinguish the direct or feudal seigniory : thence it " seems to follow, as Coquille and LeBret say, that the " right in the river is a right of domanial property, that is to " say of feudal seigniory.

" I hold with Chopin, *loco citato*, and I can say, with " Coquille and Mr. LeBret, that these small rivers, these " water courses, belong *in property* to the feudal seignior " whose seigniory they water, if the texts of the custom do " not give them to the superior or mean *justicier*, like Bour- " bonnais."

277. In conformity with those sentiments, then, we are bound to say that by the concession of canadian *fiefs*, the river was given to the feudal seignior and not to the seignior *haut-justicier* ; to the proprietor of the *fief* as making the said river a part of the body of the said *fief*, and not as being an attribute of the jurisdiction which had been joined to the concession ; more especially would it be so in those cases in which the jurisdiction had been granted to the feudal seignior by a title subsequent to the original concession of the *fief*, since that concession, in the system which I uphold, had already made him proprietor of the river.

It seems to me only necessary to show the distinction which I have pointed out, and which rests on the nature and the tenor of titles of concession in *fief*, to prove in an evident manner, how ill-founded are the pretensions of the seigniors to the property in rivers not navigable nor floatable, in their qnality of *haut-justiciers*, which they might have had in former days.

278. There is another point of view from which we may consider the claim of the seigniors, as derived from the title of seigniors *haut-justiciers*. Is not this right of superior

jurisdiction, as granted in Canada, of the number of those rights which are called *facultative rights*, one of those prerogatives which, to secure the advantages or the benefits acquired, require the previous accomplishment of certain facts, of certain obligations ? For example, the care of foundlings, the cost of the administration of criminal justice &c. &c. (1).

We scarcely find any instances under the French domination of the exercise of the superior jurisdiction conferred on the seigniors of Canada. Very few of these seigniors appear to have exercised even the mean or inferior jurisdiction.

Governor Carleton wrote to the secretary of State under date of the 12th April 1768 (2). " Some of the privileges " contained in these grants appear, at first, to convey dan- " gerous powers into the lands of the seigniors, that, upon a " more minute enquiry, are found to be little less than ideal. " The *haute, moyenne et basse justice*, are terms of high im- " port, but even under the french government, were so cor- " rected as to prove of litle signification to the proprietors ; " for besides that they could appoint no judge, without the " approbation of government, there lay an appeal from all " the private to the royal jurisdictions, in every matter ex- " ceeding half a crown ; it could not therefore be produc- " tive of abuse and as the keeping of their own judges be-

(1) We see by the edict creating a royal jurisdiction at Montreal in the month of May 1693, that as an indemnity for the loss of their jurisdiction, the seigniors of the Island of Montreal were " discharged for ever, from the salaries payable to the newly created officers and from being responsible for their mistakes and *prises à partie*, likewise from the costs of prosecutions, furnishing prisons, the food of prisoners, the support of foundlings, and generally from all the expenses of justice.

(2) Doc. Seig. vo. 4 or 5, p. 11.

" came too much burdensome for the scanty income of the " canadian seigniors, it was grown into so general a disuse " that there were hardly three of them in the whole province " at the time of the conquest."

279. Far from being a source of profit to the seigniors, it seems that the establishment of a jurisdiction could not be otherwise than burdensome in most cases. On the 12st November 1664 (1), on the representation of the Attorney General against the abuses committed in the seigniorial jurisdictions, the Superior council had rendered an *arrêt* " forbidding all inferior judges and procurators fiscal to " take any payment or fees from the parties, under the " penalty of being treated as extortioners, saving their " right to receive salaries from those who have named " them to the said situations; forbidding them also to ex- " ercise the same, until they have previously taken the oath " in such cases required by the royal judges of whom their " jurisdictions hold, and as respects the salaries of the " clerks of the Courts, notaries and bailiffs, they shall be " taxed by the royal judges in case of dispute."

" As for the seigniorial jurisdictions" says M. Garneau, in his history of Canada, (2) " no mention was made of " them in creating the Sovereign council, but in the follow- " ing year, the Council abolished the law expenses in the " courts; a circumstance which was sufficient to prevent " their existence. Later still, in 1679, Louis XIV passed an " Edict (3) by which he ordered that the appeals from the

(1) Ed. and Ord. in 8o v. 2, p. 22.

(2) 2e Edit v. 1, p. 166.

(3) Ed. and Ord. in 8, v. 1, p. 236-37. The King's Edict respecting the Ord. of 1667.

Art. " It is also our will that an appeal shall lie from the seignior- " ial jurisdictions, which are within the limits of Our Prévoté of " Quebec, to the said Prévoté, and that appeals from the said Prévoté " shall lie before Our said Council of Quebec, which we prohibit

" seigniorial jurisdictions should be before the Royal Courts
" or the Sovereign council, a circumstance which restrained
" anew their power. All the seigniories, with but few
" exceptions, possessed the redoubtable right of superior,
" mean and inferior jurisdiction, which was acquired by
" an express grant from the King. This was in America
" an anachronism, at once, of time and place. Thus, al-
" though the seigniorial judges and the officers of their courts,
" were obliged to obtain for themselves, the sanction of the
" royal jurisdiction, to which they were obliged to make
" oath to fulfill their duties faithfully, this would not have
" have been enough, if there had not been added other
" shackles, which caused that scarcely a seignior could be
" found who wished to exercise it at any period : for, to
" increase the difficulties of the system, the costs of justice
" as is stated above, were suppressed in 1664, by an *arrêt*
" of the Sovereign council which prohibited the inferior
" judges and the procurators fiscal from taking any pay-
" ment or emoluments, under the penalty of being treated
" as extortioners, saving their recourse to get paid by those
" from whom they derived their appointments, that is to
" say, from the seigniors, who were known to be too poor
" to pay the expenses of a court of justice, of a prison, of
" judges &c., &c."

" from receiving any immediate appeal from the said seigniorial juris-
" diction.

Art. " And with respect to the other seigniorial jurisdictions which
" are not within the limits of the said Prévoté of Quebec, until such
" time as we have established other royal jurisdictions, the appeals
" from them shall lie immediately before Our said Council. "

Ibid p. 242. The King's declaration of the month of June 1680, who, on the representation made to him that there was a royal court for the ordinary jurisdiction of Three Rivers, directed that the appeals from the seigniorial jurisdictions within the limits of that jurisdiction, would lie before this royal court, subject to appeal to the Sovereign Council of Quebec.

280. By an *arrêt* of the 24th Oct. 1707, (1) the Superior Council ordered the enregistration in its records of an ordinance of the Intendant Raudot, of the 22nd of the same month, by which, in consequence of the King's orders, he had suppressed the superior jurisdiction of the seigniory of Sillery, belonging to the Jesuit Fathers, as well as that of the *fief* which they possessed in the town of Three Rivers, and ordered that the inhabitants of Sillery, should bring their suits, in first resort, before the *Prévoté* of Quebec, and those of the *fief* of Three-Rivers, before the royal jurisdiction of that town.

281. By the edict of the month of March 1693, (2) creating a royal jurisdiction at Montreal, we see that the seigniors of the island of Montreal resigned the jurisdiction belonging to them in that island ; and by another edict of the month of July 1714, (3) we also see that the same seigniors had made resignation of the superior and mean jurisdiction, which belonged to them in their seigniory of the Côte St. Sulpice and the isles Courcelles, and which was by that edict reunited to the island of Montreal, the King reserving to them only the inferior jurisdiction, as well in that island as in St. Sulpice, for the recovery of their seigniorial rights.

282. I do not know if the seigniory of Sillery is traversed by any river not navigable not floatable, but that of St. Sulpice is, by the river St. Esprit. Notwithstanding their resignation of the superior jurisdiction, the seigniors of St. Sulpice, did not the less, continue to be proprietors as feudal seigniors of that river. Therefore, it belonged to them, by that title, from the very moment of the concession of the seigniory and not by the title of *hauts-justiciers.*

(1) Ed. and Ord. in 8. v. 2, p. 152.
(2) Ed. and Ord. in 8. v. 1, p. 276.
(3) Ed. et Ord. in 8o. vo. 1, p. 342.

283- In fine, the seigniorial jurisdictions, which as shown by Governor Carleton, were scarcely three in number at the close of the French dominion, disappeared altogether with the new *régime*. Ninety five years have since elapsed. With the disappearance of the right of jurisdiction, the basis of the pretensions of the canadian *hauts-justiciers* could not but necessarily disappear. In fact it seems to me that we may say of them what Merlin said of the *haut-justiciers* of France : " To effect the cessation of their claim to the " property in rivers, it was therefore sufficient to destroy " the basis on which these pretensions rested ; and that " basis was, as has already been said, their quality of *seigneurs-justiciers*.

284. I shall terminate this examination by remarking that, by the system which attributes the property in these rivers exclusively to the title of seignior *haut-justicier*, it will follow that the seigniors of this country, whose concessions do not contain a grant of jurisdiction, will have no right to the property in rivers not navigable nor floatable which traverse or wash their seigniories.

285. These rivers which, in the system that I have adopted, have become the property of the seigniors, being part of the private domain, it follows that they may become the object of a concession *à cens*, and of every other contract transferring property. This is admitted by the counsel for the seigniors. But they contend that, in that case, the river must be *expressly* included in the concession made to the *censitaire* ; that if the seignior concedes *à cens* a land with its boundaries on the river without saying any thing more, the river ought to be supposed to be excluded from the concession ; that even if it flows through the midst of the land, the river is equally excluded, if it be not expressly stated in the agreement that it shall constitute a part of the concession.

In support of this pretension, the seigniors invoke the following passage from the *Dissertations féodales.* (1) " The " roads belong to the public (he speaks of the epoch of the " feudal *régime.*) There has not been the smallest doubt " on that point ; they ought therefore to be given to him in " whose hands were found centred all the rights of the pu- " blic, that is to say to the seignior *haut-justicier.*"

" But it was not the same with respect to rivers. The " long usage by which the riparian proprietors appropriate " to themselves every thing in the bed of rivers that could " be susceptible of being private property ought to cause " them to be considered as *proprietors of the soil.*"

" Since that time, the developement of the feudal sys- " tem has led to the maxim that it must be presumed that " all the private properties are reunited in the hands of the " feudal seigniors ; that these latter conceded them ; and that " no one can claim but that which he will show to belong " to him by a deed of concession or by a possession which " presumes one ; which, in every *censuel* territory, gives to " the feudal seignior, *either in domaine* or *en directe*, the " universal private property, as in every judicial district the " *haut-justicier* has the public property."

" Thus it can be said : the feudal seignior has the pro- " perty in the rivers, because they were regarded as apper- " taining to the class of private properties at the time of the " supposed reunion of these properties in his hands, *and* " *that he has not since included them in the concessions a* " *cens which he has made of different portions of the terri-* " *tory.* But the roads have never been other than public " property, so there is no similarity between roads and " rivers."

286. From this remark of the author, " it can be said

(1) Henrion de Pansey, v. 1, des eaux, § 7, p. 659 and 660.

" that the feudal seignior has not included the rivers in the " concessions *a cens* which he has made of different por- " tions of the seigniory," I do not believe that we ought to infer that he wished to enunciate as a legal doctrine or maxim that the exclusion of the river resulted, *de pleno jure*, from the fact that it had not been expressly included in the concession *à cens*. It rather appears to me that he only wished to declare a fact then existing, the state of the possession of rivers, such as he saw it at the time that he wrote his dissertations. To his eyes the fact of the possession in the hands of the feudal seigniors appeared to be a general fact in France, and thence he concluded that the rivers had not been included in the concessions *à cens* of the territory which they traversed or washed. But it does not follow from this that it was his intention to attribute that state of things solely to the absence of express mention of the river, as being included in the concession. Judging from the manner in which he expresses himself, nothing prevents our believing that, in his estimation, the fact that he verified might be the result of an express stipulation to the effect of excluding the river from the concession, made to the censitaires. We may so much more easily believe it, that in paragraph XI of the same dissertation on waters, p. 664, he expresses himself, in a manner clearly to be understood, that such was, in fact, his idea.

" In general," says he, " all the hereditaments proceed " from the seignior, such at least is the presumption of the " law.

" It is then the seignior, who, being originally the " proprietor of all that which borders on the rivers, *has dives-* " *ted himself of it*, in order to give it to different individuals, " and that, in consideration of a *cens* generally of very mo- " derate amount."

" But since, in giving the adjacent lands, the seignior

" *has reserved to himself the river and specifically the right of* " *fishing* must not there necessarily be supposed between " him and his tenants an agreement, at least tacit, that he " shall have the free use of the banks, and that the riparian " proprietors could do nothing that might be prejudicial to " the exercise of the rights which he preserved. ***Quis vult*** " ***finem vult et media.***"

This last passage of the dissertation, from the point of view of the doctrine on the legal effect of contracts, sanctions in my opinion, the principle that, at least in the absence of an express exclusion, or an equivalent reservation of the river, that river is, by law, supposed to form a part of the concession given to the censitaire by the act of sub-infeudation (*accensement*).

287. We read in Pothier, traité du droit de propriété, no. 53, " With respect to the rivers not navigable, they belong to the different individuals who have titles or who are in possession so as to call themselves proprietors, in the limits contained in their *titles or possession.*

288. Souchet, in his commentary on the Custom of Angoumois, published in 1780 (1) thus expresses himself: " The seigniors who have sub-infeudated their domains, " *without reserving to themselves specially the rivers which* " *water them, have tacitly included in their accensement the* " *rivers and the rivulets.*" " For that reason, the best au- " thors have strenuously maintained that the rivulets and " the rivers, which are not navigable from their source, be- " long without distinction to the riparian proprietors of the

(1) Titre des fiefs, chap. 1, art 29.

Championière who cites him in his chapter *des eaux courantes* no. 402, says that Souchet, according to Merlin, " has treated the question of rivers better than any other. He adds: " Perhaps it would be true to say that he is the only one who truly treated it."

" hereditaments which these rivulets or rivers wash with
" their waters.....

" The seigniors of fiefs who have jurisdiction, and those
" who have no jurisdiction, have equally the property in
" rivers and rivulets which flow in their hereditaments:
" beyond their domains they have no right of useful proper-
" ty in the waters of rivers which have left their possessons.
" *They have not even any right within the limits of the*
" *hereditaments of their censitaires.*"

289. If, as might be supposed from the passage above transcribed from the *Dissertations feodales*, the feudal seigniors in France, notwithstanding the concession of riparian hereditaments, remained in possession of rivers not navigable nor floatable, to the exclusion of the proprietors of those hereditaments, could not that be explained by the fact, that the French seigniors, not being obliged to concede, had the power to reserve in their deeds of sub-infeudation, the property in rivers, thereby excluding it from the concession, either in express terms, or tacitly, by remaining always in possession of those rivers? Or might we not reasonnably believe that, if, in the first instance, these rivers had passed into the hands of the proprietors of the adjacent hereditaments, the seigniors had, at a later period, acquired the property in them anew, whether by means of prescription or otherwise?

290. Moreover, even supposing for a moment that, under the authority of the Custom of Paris and of its jurisprudence, it was a rule of law that, in default of express mention, the seignior was not supposed to have included the river in his concession *à cens*, could not the origin of that rule and its justification have been found, solely in the fact that the French seignior was not obliged to concede. Being at liberty to concede or not to concede, he could say

that an extension which he had not expressed ought not, by way of interpretation, to be given to his liberty, and which extension the censitaire could not himself hope to obtain, because he had not even the right to get the land which was conceded to him; that in such cases one ought to perceive a tacit agreement to exclude the river.

The hypothesis which I have brought forward can have no application in Canada, where the seignior was obliged to concede. Even for that reason, the rule ought to be different. When a river not navigable nor floatable, flows in the midst of a conceded land, the whole bed of such river is on the soil of that land; when the river only borders the hereditaments, the half of its bed, that is to say, as far as the middle of the stream, is, equally, situated on the same soil. The waters of this river being naturally intended to flow through the hereditament, to serve for its improvement, the censitaire who had the right to demand and obtain the concession of this same hereditament, ought to be supposed, in the absence of all agreement to the contrary, to have wished to obtain it with all its natural advantages and dependencies, in the number of which are, in the first rank, the waters of the river, more particularly still, when the river flows in the midst of the territory so conceded.

291. These waters being susceptible of being private property, the domain in them may, under the feudal *régime*, like that of lands properly so called, be divided into direct domain and useful domain, the first appertaining to the seignior, the second to the censitaire. Now, the use of waters and their bed, the profits which the hand of man can draw from them, form part on the useful domain; it was the whole of this useful domain that the canadian seignior was obliged to concede, to transfer by concession *à cens*. This domain ought therefore to belong wholly to the riparian censitaire, when the agreement does not expressly exclude

the river, since there cannot be two proprietors of the same thing otherwise than in copartnery.

292. The seigniors say that, if they are bound to concede, that obligation does not extend but to the lands *in standing wood*, and that the small rivers and the rivulets do not come under that condition. To this, there are two answers to be made. In the first place, these rivers or rivulets are, by nature, a dependency of the riparian hereditaments, and ought, in consequence, to make a part of the alienation of these hereditaments, every time that an express agreement does not exclude them. Then, is it true to say that, in the uncultivated state of the canadian territory, the small rivers or rivulets which *traversed* or washed the lands in *standing wood* were themselves *without standing wood* growing on the soil which served as their bed? I believe that such an assertion will be in contradiction to the facts. Besides, I do not know any law which fixes the number of trees, their quality, their dimensions, as serving for a rule to determine what part of the soil ought to be considered in *standing wood*, and what part ought not.

If the objection, which I oppose at present, was well founded, and that, in consequence, the river, even when it flows through the midst of the conceded territory, ought not to be considered as being included in the deed of sub-infeudation, this could only be by reason of the absence of standing wood on the soil of that river. In that case, would not the objection be equally valid, if applied to every other parts of the hereditaments conceded, however small it might be, which might not be in *standing wood* at the time of the concession *à cens*. Evidently, there would be the same reason to say that the one ought, like the other, to be considered as not being included in the concession.

293. Could not the censitaires, by analogy, invoke the laws which govern the right of property in the alluvion

formed on the borders of a river which is even navigable ? These borders belong to the private domain of the riparian proprietors, although the river itself, properly so called, may belong to the public domain. What proves it clearly is, that as well in the Roman law as in the French law, the increase of land and the alluvions formed on the border of the rivers can only be for the benefit of the riparian proprietors. Could it be so, if the borders of the rivers were not already a part of the private domain ? Were it otherwise, that is to say, if the borders of the rivers were public property, it would follow, in the system which confers on the riparian proprietor the property in the alluvions, that the two parts of which the hereditament of this riparian proprietor would, in future, be composed, would not be contiguous, but on the contrary would be separated by *that public property* consisting often of a line almost *imaginary* or *imperceptible.* Would it not be more natural and more conformable to reason to attribute, in that case, the property in the land formed by the alluvion, to the King or the public, since the border of the river being already their property, and not that of the former riparian proprietor, it is the King or the public who would be the proprietor of the land to which the alluvion would thus come to be joined.

Let us remark, besides, that under the feudal regime the seignior also profited by this alluvion, in this way that the *directe*, which he had on the riparian hereditament, extended to the increase which that hereditament had derived from the alluvion. Now he was not, previous to this alluvion, proprietor of that part of the bed of the navigable river in which it was formed. There are cases therefore wherein a portion of even the bed of a navigable river may, according to circumstances, fall into the private domain of the riparian proprietor, and this latter becomes proprietor of the soil. It is true that this only takes place when the soil in question ceases to be in the condition of public property, a condition which, as

long as it continues, does not admit of private appropriation; But for that very reason, the rivers not navigable nor floatable, and the soil on which they flow, being in the opposite condition, that is, being always in the state of private domain, the soil of these rivers, it would seem, constitute naturally part of this uncovered land of which it is only the continuation. The one, like the other, ought to have a proprietor, whether it be the seignior, or whether it be the riparian *censitaire*. I have already shewn that the latter ought to be supposed to have become the proprietor of it, *de pleno jure*, by the concession *à cens*, when the river was not excluded therefrom.

294. Let us now suppose that the property in rivers not navigable nor floatable is in the hands of the feudal seignior, to the exclusion of his riparian *censitaires*, alluvions may be formed in these rivers, or the receding of the waters may uncover a portion of their bed, which adjoins the hereditament of a censitaire, to whom, in that case, would belong the alluvion or the part of the soil left uncovered? Will it belong to the seignior, or to the *censitaire*?

" The rights of the riparian proprietors of water cour-
" ses, not navigable nor floatable, to the benefit of the al-
" luvion, are, says Daviel (1), governed by the same princi-
" ples as those relating to the riparian proprietor of the
" water courses of the public domain."

These rights will, therefore, belong to the proprietor of the riparian hereditament, yet in the system of the seigniors, he was not proprietor of the soil on which the river flowed before the formation of the alluvion; it is the seignior of the *fief* who was so, not having, or not being supposed to have, included the river in his deed of sub-infeudation. This seignior will therefore be deprived of his property by an act

(1) Des cours d'eaux, 3e. ed. v. 2, p. 72, no. 547.

to which he is wholly a stranger and which, *his censitaire* being equally a stranger to it, forbids every idea of a concurrence of will on their part that their contract should produce this effect. The relation between them, arising originally from that contract, will therefore be changed; the one will therefore be deprived of his property for the benefit of the other! Whatever happens, the alluvion, as will be seen, will not the less belong to the riparian *censitaire*. Since the matter here only relates to private property, upon what principle could the alluvion be thus assigned to this *censitaire*? Is it not reasonable to reply, that it ought to be on the principle that, being already proprietor of the soil which previous to the alluvion was bordered by the waters of the river, he had by that alone, an established right to the property of the continuation of this same soil on which the waters formerly flowed. Now, this right could not be acquired by him but by a concession *à cens*. This concession included, therefore, the part of the soil of which we speak, in the same manner as the rest of the soil of his hereditament. There was only one difference between these two parts of his property, in relation to the improvement of the soil. The one uncovered since the very beginning of the concession had become, from that moment, improveable for certain purposes; while the other had not so become, for the same purposes, but by the formation of the alluvion or the retreat of the waters, nature having until then placed an obstacle in the way of such common improvement.

295. I shall further add one remark founded on the act abolishing the Feudal tenure. Whether the land formed by the alluvion, or uncovered by the receding of the waters, ought to belong to the riparian proprietor, in virtue of a right of accession resulting from the concession *à cens*, or in virtue of a similar right recognized by the common law in such matters, nevertheless this right, which has the effect of causing the return, so to speak, of the part to the whole,

was acquired by him before the promulgation of " the seigniorial Act of 1854. " If this act, which *is silent on this right of property*, has not caused him to lose it by its general provisions, the riparian proprietor may then avail himself of it when the occasion shall present itself. The feudal seignior, if he should be proprietor of the river and its bed, will not therefore have but a *resolvable* property, (if one may use such an expression here) for the benefit of the riparian proprietor within the limits of the alluvion or of the retreat of the waters. The case occurring, this right will then be decided, without that the seignior can pretend to any indemnity. For if he is now, as he contends, sole proprietor of the river, he has not the right to advance any claim on the money which the legislature has appropriated for aiding the censitaires in indemnifying the seigniors for the loss of their seigniorial rights. If the censitaire is not proprietor of the river, his hereditament is worth so much the less. The seignior, therefore, at the time of the valuation which shall be made by the commissioners in the schedules, will lose in the same proportion, his right of *lods et ventes* on this hereditament.

296. Among the French Feudists, there are some who, in order to confer on the *seigneur haut justicier* the property in rivers, assimilate these to the public roads which they give to these seigniors. If that similarity could be correct as regards France, and could furnish for the seigniors a plausible argument in support of their pretentions, it would not be so, it seems to me, in Canada. Here, on the contrary this manner of reasoning by analogy from the roads to the rivers would militate in favor of the riparian proprietor. Our road law of 1796 recognises that the lands on which these roads are made, belong to the land-owners which furnished them, by enacting that when these lands become useless as public highways, they should return to these proprietors. Cannot the same thing be said of rivers which,

to use the words of a celebrated author, are " roads that travel " (*chemins qui marchent*) ?

297. A still stronger argument, one even decisive of the question in favor of the riparian censitaire, is that which the seigniors themselves invoke for their own benefit, against their *suzerain*, the Crown.

They contend that when the concession of the *fief* has been made to them *with boundaries on the river*, without further explanation, the river is included, *de pleno jure*, in the concession. If in their turn, they, in obedience to the law, extend to their property another step of the feudal ladder, by the concession *à cens*, with the same boundary, what reason is there to exclude the river from this sub-concession, that is to say, to pretend that the river ought not to be supposed to be included in it ? Where is the law which would sanction in this manner, to the benefit of the seigniors, and to the prejudice of their censitaires, a like exception to the general rule of the assignment of property which the former make for themselves as against their *suzerain*. They cannot produce it, much less in Canada, where the seignior, obliged to concede in preserving the tie of the feudal institution in all its degrees, necessarily transmits to these grantees all the useful domain of that which he concedes ; and that which he so concedes, he is reputed to concede as amply as he has received it himself from the Crown, on the condition of making this sub-concession ; a condition which gives to a third party the right to obtain that concession with the extension which I have pointed out. Such was the desire, such was the object of the feudal association established in Canada.

298. From what I have said, it is easy to ascertain the opinion which I have formed respecting the property in rivers not navigable nor floatable, in what can concern the censitaires.

Belonging to the private domain and being in consequence *in commercio*, and moreover, being by their nature a dependency of the hereditaments which they traverse, or which they wash, these rivers ought to belong, *de pleno jure* to the riparian proprietors, within the limits of his hereditament, at least if they have not been excluded from the concession, either expressly or tacitly, according to the circumstances. (1)

299. Belonging to the private domain, as I have remarked, these rivers may be the object of every description of covenant between individuals. Now every thing that is susceptible of covenant is susceptible of prescription. The property in these rivers may therefore be further acquired by prescription, which is one mode of acquiring the property in things, under our civil laws. " By the common law, says Henrion de Pansey, (2) the property in a piece of water and even in a river can be acquired *by prescription.*" But this mode of acquiring by prescription, m*ay profit the seignior as well as the censitaire.* That is a question of fact for consideration ; it depends on the titles or on the possession ; titles and possession which, in every particular case, ought to lead to a decision which is peculiar to it, without that it should be allowed to argue from such decision to that which ought to be rendered in an other case, which would not present the same elements.

Thus, by the system which attributes to the concession *à cens*, made simply with boundary to the river, the effect of including that river in the concession, the seignior might have re-acquired the property in the river by prescription : in the same way, by the contrary system, the censitaire might,

(1) " When a riparian hereditament has been sold *bounded by the river* although in consequence of an alluvion, the extent indicated is found enormously surpassed, the vendor can not recover the excess." Daviel, v. 1, p. 146, no. 140.

(2) *Des eaux* §. 13, p. 670.

by the same means, acquire that property to the prejudice of the seignior.

It ought to be the same with respect to other modes of transferring property which seigniors and censitaires, like other individuals, may invoke and make available the one against the other.

300. That the rivers of which we speak, are susceptible of passing into the hands of censitaires by means of concession, appears to me to be beyond question. The law abolishing the seigniorial tenure itself acknowledges it in principle and in fact, when, in the fifth and the nineteenth sections, it makes provision concerning all unconceded lands, waters and water powers. (1) Is this not to declare that not only the water and the water-powers may be the object of a concession, like the lands themselves, but that they have already been so in fact. If by the word " unconceded " the legislature gives it to be understood that there are waters and water powers in that condition, it equally gives it to be understood that there some, or that there may be some, which are in the opposite condition. In the same

(1) There is an error in the french version of the second article of the fifth section. It says that in the valuation, the commissioners shall point out " toute différence entre la valeur absolue en franc-aleu roturier" of " toutes terres non concédées, eaux et pouvoirs d'eau" in the seigniory, " et appartenant à icelle et la valeur des droits du seigneur en *icelle* etc., etc." This last word *icelle* should be replaced by the word *iceux* ; and the word *non-concédées* in *lieu* of being placed immediately after *terres* should have been after " pouvoirs d'eau." The english version is this : " Any difference between the absolute value in *franc-aleu roturier* of " all *unconceded* lands, waters and water powers," in the seigniory and appertaining thereto, and the value of the seigniorial rights therein &c." It is evident that this word *therein* has reference not to that of the seigniory, but to the words *lands*, *waters* and *water powers*, and that the word *lands* does not relates merely to that word, but also to the words *waters* and *water powers* ; that

manner, when, in the fifth section, it speaks generally of unconceded *waters* and *water powers belonging* to a seigniory, and when, in the fifteenth, it makes mention of a particular water power *belonging* to the seignior, does it not suppose that there may be some which have ceased to belong to him, because he has alienated them? The legislature has further expressed itself in the same sense, in still more precise terms, by the fourteenth section which fixes the period at which the conversion of the seigniorial tenure into that of *franc-aleu roturier* shall take place; which period is for every seigniory that of the publication in the Canada Gazette of the notice of the deposit of its schedule (*Cadastre*). As regards the seignior, it says that he shall possess from that moment in *franc-aleu roturier* "all the water powers and immoveable *which now belong* to him." These last words exclude all idea that the seignior had not the power to alienate, and had not, in fact, alienated, the water powers of his seigniory. On the contrary, they lead necessarily to the supposition that there might have been *water powers* which now no longer belong to the seignior, he having placed them out of his hands. In short, if all the *water powers* could never cease to belong to the seignior, if they constituted for him a property which could not be

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which proves it clearly is the more exact translation of the same phrase to be found in the nineteenth section, which fixes the appropriation to be made of this difference between the two values, when it has been established. We there read: "The difference between the absolute value in *franc-aleu roturier* of "all *unconceded lands*, "*waters* and *water powers*" in the seigniories and the value of the "seignior's rights *therein* &c." This sentence is rendered in french as follow: "La difference entre la valeur absolue en franc aleu roturier de "tous fonds, eaux et pouvoirs d'eau non-concédés," dans "les seigneuries, et la valeur des droits du seigneur &c."

It is plain that the provision was first written in the english language and that the french version is only a translation.

alienated separately from the beds of each, to the words of the statute, *which now belong to him*, would be altogether destitute of sense.

591. This last system would consecrate the principle that the rivers not navigable, nor floatable, are not susceptible of being private property, and cannot consequently be in *commerce*. This would sink very low the pretensions of the seigniors themselves to the property in these rivers because by that system, such property could never have been acquired by them. However, our legislature has acknowledged that even navigable rivers were susceptible of concession in favor of individuals. For still stronger reasons, the first ought to be so.

592. The act 17 Geo. III, (1807) chap. 12, sect. 1, allows all His Majesty's subjects, "to fish in any river, creek, harbour "or roadstead, with liberty to go on shore on any part within "the inferior district of Gaspé, between cap Cirat, on the south "side of the river St. Lawrence and the first rapid of the "river Restigouche, within the said district, and on the "island of Bonaventure, opposite to Percé, for the purpose "of salting, curing and drying their fish, to cut wood for "making and repairing stages, flakes, huttes, cook-"rooms and other purposes necessary for preparing their "fish for exportation, or that may be useful to their fishing "trade, without hindrance, interruption, denial or molesta-"tion from any person or persons whomsoever. *Provided* "*such* river creek, harbour, or roadstead, *or the land upon* "*which such wood* may *be cut doth not lie within* the *bounds* "of *any private* property, by grant from His Majesty *or other* "*title proceeding* from such *grant made* prior to the year "1760, or held under and by virtue of any location certifi-"cate or title derived from any such location certificate.

The second section which gives to the master of every vessel belonging to the United Kingdom and its dominions

the ref[illegible] the pres[illegible] on the [illegible] of Gaspé, of much of [illegible] such as may be necessary for curing his fish, &c. . . . [illegible] the same restriction." It is moved, it is said, "that the said Lords [illegible] &c. &c." as it from H. M. &c.

These two provisions [illegible] fication which includes, besides, "any [illegible] in virtue of any act of the legislature of its province" [illegible] capitulated in the first two sections of an act of 14 Geo. 4, and further extended to the coasts of Cyprus, [illegible] county of Northumberland [illegible] ropes.

The fourth section [illegible] however the following proviso: "Provided always that no such nets or "seines as aforesaid, shall be [illegible] to incommode "or obstruct the [illegible] or anchorage in any harbour "or inlet, save [illegible] necessary for the common pur- "poses of navigation."

29 Vict. [illegible] of 1865, chap. 11, gives to justices of the peace the authority to make regulations for keeping in good order such parts of the beaches of the St. Lawrence and of the river St. Charles in the [illegible] of Quebec as *are not private property.*

391. The act of 1851, chap. 58, sect. 1, declares "that "the proprietors of the lands bordering on the south side of "the said river, below the city of Quebec, shall be entitled "to cut and cure the grass on the beaches or strands there- "of, *between high and low water marks, in the front of "their respective lots of land and farms*, to the exclusion "of all other persons and provided always that in all cases "of difficulty which may arise, *the quiet and public possession, as had before the passing of this act, shall avail and "be maintained.*

In the third section, not only the rights of H. M. but also those " of *individuals* in any such beach or strand of the said river St. Lawrence" are expressly reserved.

Then, the fourth section says that " nothing in this act " contained shall be construed to extend or give to the pro- " prietors of the said river any right or title whatsoever to " inclose or imbank by fences or otherwise the said beaches " or strands, or in any manner to impede the free and open " liberty of navigation and commerce over the said river to " all His Majesty's subjects, or to deprive any one of the " free use of the beaches of the said river St. Lawrence, as " by the laws heretofore provided and in force it is enacted ' and ordained.

These provisions of the act of 1831 are repeated in the act of 1836, chap. 55.

305. An act of 1853, chap. 92, relating to the fisheries on the Labrador coast and north shore of the Gulph of St. Lawrence contains in substance, in respect to the right of fishing " on any and every river, creek, harbour, or roadstead," and of cutting wood necessary for carrying on the fishery, the same provisions, as the above mentioned acts of 1807 and 1824: " Provided that such river, creek, harbour, or road- " stead, be navigable by boats and crafts usually employed in " the fisheries, and be not private property, and the land upon " which such wood may be cut, be unconceded by the seig- " nior, or proprietor of the seigniory within which the same " is situated, or if conceded, remains unimproved or unoc- " cupied at the time, when such wood is cut for the said " purposes;

" Provided that such beach *be not private property pursuant to a concession or title deed therefor from the seignior or proprietor of the seigniory, to which the same may*

appertain, or be held by a virtue of a location certificate from the Crown or title derived therefrom.

306. I ought not to close this analysis of the laws of our legislature, relative to this matter, without making mention of two of its acts bearing on the use of rivers and rivulets.

In the session of 1855, a Bill having for its object " to provide for the remedy of abuses prejudicial to agriculture," originated with a special committee of the legislative assembly. It became law on the tenth August. It is chapter 40 of the acts of that session. The second section has the following provision :

" No person shall enter into or pass through any field, " whether it be sown or unsown, nor *along the banks of* " *any river or rivulet*, nor into nor through any garden, cop- " pice, or any property whatsoever, *without the permission* " of the *proprietor*, or some person duly authorised by him " to grant such permission, under a penalty of not less than " five shillings nor more than thirty shillings currency, for " every such offence, and over and above the amount of all " damages occasioned thereby, any law, usage or custom " to the contrary notwithstanding."

In the succeeding year, haste was made to pass another act (chapter 102) declaring that the second chapter of the former, " shall not be construed to prevent any person " or persons *from the full and free use of any navigable* " *river, rivulet, stream or water course, and the banks thereof* " *on either side*, in that part of this province, which formerly " constituted Lower Canada, *proper for the floating and* " *conveyance of wood or timber, or for the general purposes* " *of navigation*, but that all such rivers, rivulets, streams " and water courses and the banks thereof on either side, " to such extent as may be necessary, and in accordance

" with the laws, usages and Customs of that part of this " province which formerly constituted Lower Canada, shall " be and remain free to the public, as fully and entirely, to " all intents and purposes as if the above recited clause of " the aforesaid act had never been passed nor made part " thereof. Provided always, that all persons so passing or " landing on the bank of any such river, rivulet, stream or " water course shall repair immediately thereafter the " fences, drains or ditches which they shall have damaged and " be liable for all other damage resulting therefrom.

397. From the foregoing, I conclude that the seigniors, like all other individuals, could acquire rights in navigable rivers, but not, *de plano jure*, as seigniors of the *fiefs* adjoining these rivers, with the exception of rivers not navigable nor floatable, the property in which devolved on them by that mere title. In order to acquire such right in a navigable river, it was necessary that they should have an express concession from the Sovereign, and further, it was necessary that to give validity to the concession of these rights, they should not be contrary to the public usage of these rivers, in regard to navigation and commerce, which usage is inalienable and imprescriptible.

398. The same thing must be said of the property in rivers not navigable nor floatable, whether they remain in the hands of the seigniors or whether they have passed into those of the censitaires, which is only a question of title or possession. The seignior or the *censitaire* is bound to submit to the servitudes to which the law of nature or the civil law, as well as the regulations of police made by a competent authority, may subject these rivers.

PART SIXTH.

Of the nature of the power attributed to the Governor and to Intendant by the first of the two arrets of the 6th July 1711, on the refusal of any particular Seignior to concede.

309. The 22nd question of the Attorney General is in the following termes:

"During the period between the cession of the country and the passing of the "Seigniorial Act of 1854," did there exist a tribunal competent to exercise the powers and jurisdiction conferred on the Governor and Intendant by the said Decree of January, 1711, relating to the concession of seigniorial lands? if such a tribunal existed, did it exercise those powers, or did it refuse or omit to do so?" (1)

310. After having prescribed the *reunion*, to the Crown domain, of *vacant and ungranted seigneuries*, "at the diligence of the "Attorney General of the Superior council of Quebec, and "upon the ordinances which shall be thereon rendered by the Governor and Intendant," the *arret* orders "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 con-"sideration for such concession; otherwise and in default "of their so doing, His Majesty permits the said inhabitants "to demand the said lots of land by a summons, and

(1) The *arret* is transcribed with its preamble, in my observations upon the *Jeu de fief* nos. 101 and 102.

" in case of their refusal, to make application to the Gover-
" nor, Lieutenant General and Intendant of the said coun-
" try, whom His Majesty enjoins to concede to the said in-
" habitans the lands demanded by them in the said seig-
" niories, subject to the same dues as are laid upon other
" lands conceded 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."

311. It must in the first place be remarked that to render the proceeding required in such a case more regular, the concession which, according to the *arrêt*, could be granted by the Governor and the Intendant, should have been preceded, as I will shortly shew, by the re-union to His Majesty's domain, of the land which the seignior should have thus refused to concede, whether the *concession* and the *re-union* were made by special acts, or by one and the same deed, by the power appointed to pronounce upon the contestation.

There were, therefore, two kinds of re-union *provided for by the arrêt*; 1o. the re-union of the whole seigniory, in default of cultivation; 2o. partial re-union, owing to the refusal to concede; but both tending to the same result. The re-union in the one and in the other case, was the act of an authority which, altho' conferred upon these two functionnaries, had not the less a judicial character.

As there are two principal things to be considered in in the enacting clauses of the *arrêt*, namely, *re-union* and *concession*, let us see what had been practised up to that time to attain this double object, if it were possible, even easy, to obtain it under the system of concession heretofore adopted to realise the views of the Sovereign upon the establishment of his new colony.

312. At the time of the first concession *en fief* that is, during the existence of the company of the hundred associates, the judicial authority was confided to the Governors, " provisionally and until there be judges of the highest au- " thority established upon the spot for the administration of " justice." (1)

In number 29 of my observations upon the *Jeu de fief*, I have made mention of the ordinance of Mr. de Lauzon upon the subject of immediate cultivation upon the pain of *forfeiture*; and in number 37, I have related the *arret* of the Council of State of the 21st March 1663, rendered a few days after the resignation of the Company of New France, and carrying with it the revocation of uncultivated concessions within a certain delay. The Governor, the Bishop and the Intendant are specially charged " to see strictly to the punc- " tual execution of the present *arret*, also to distribute the " said uncultivated lands, and to grant concessions thereof " in the name of His Majesty." The *arret*, thus, conferred upon them, both the power to re-unite and the power to concede anew. But even before their arrival at Quebec, they were virtually deprived of the first of these powers, by the creation of the Sovereign Council in the month of April of the same year 1663. They retained, notwithstanding, that of conceding. In fact, the power *to re-unite*, in default of the execution of the obligations of the grantee, was, immediately after the establishment of the council, acknowledged to belong to that body as a court of law, not only by the council itself and by the governor and intendant who were members thereof, but also by the King and his Attorney General. It follows that this power to re-unite was, in its nature, a judicial attribute. (2)

(1) Commission of Governor Montmagny, of the month of June 1645.

(2) These re-unions to the Crown domain, gave rise to questions of property. In France, these questions were brought before particular

313. The King thus expresses himself, in the sixth article of his instructions to the commissioner Gaudais, dated the 7th May 1663 (1) and signed by his own hand:

" Should any of those to whom the said concessions
" were made, proceed to clear them entirely, and that be-
" fore the expiration of the six months mentioned in the
" said *arrêt* (of the 21st March 1663), they shall have com-
" menced to clear a good part thereof, His Majesty's intention
" is that, upon their petition, *the Sovereign Council* shall
" grant them a new delay of six months only, which being
" finished, he wishes that *all the said concessions be de-*
" *clared null.*"

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judges generally called " Judges of the Domain," and this in virtue of a special power, which was granted now to one tribunal, then to another according to the place and circumstances. We read in the new collection of Denizart, under the word *Domaine de la Couronne* § 10: " By the " treatise on domain of Lefevre de la Planche we learn that the cogni- " zance of matters relating to the domain, after having in its origin " belonged to the alone Parliament of Paris, afterwards to the *Baillis* " and *Sénéchaux*, finally definitively taken from these, was in 1627 " granted to the treasurers of France, with the right of appeal to the " high court of parliament.....

" A contestation arose in 1700 between the courts of *enquêtes* and " the high court of parliament, in relation to the right of jurisdiction " in matters of domain..... It was decided, 1o. that from the moment " the right of the domain should be in contestation, whether the Attor- " ney General, his substitutes, or *engagistes* be parties, the suits should " be carried to the parliament, in whatever state the case might be; " 2o. that, when the question was confined to the receipt of uncon- " tested rights, to leases and their execution, the suits should be " brought before the *enquêtes*.

" We find in the works of D'Aguesseau, t. 7, p. 533, a memo- " rial relative to this question.

(1) No. 40 of the observations upon the Jeu de fief.

It is also in this way that we see the Governor and the Bishop (the Intendant Robert had not arrived in Canada) present to the sovereign council, on the 6th August 1664, this *arrêt* of retrenchment, and ask that it be executed in every particular according to its tenor and form (1) and although the word *re-union* itself is not written in this *arrêt*, it was nevertheless so well understood (that which in fact as a matter of course followed from the enactment of the *arrêt*) that it was necessary previously to pronounce the re-union, that the Governor and the Bishop in the first place ask the execution of this *arrêt*, " that all the lands " which are not now cultivated and made productive be " declared re-united to the King's domain, to be disposed " of in the name of His Majesty by new concession &c.," and that afterwards the Attorney General in his petition, asks " that all lands held in *a wild state* be *re-united* to the " King's domain &c."

We have already seen that upon this demand and request, " the council, before deciding thereupon, had ordered " that the *arrêt* be communicated to the *syndic* of the in- " habitants at the diligence of the King's Attorney General " &c."

I have established in another place (2) that during the short existence of the royal government re-established in the year 1663, the Sovereign Council had rendered an *arrêt* making an application of the *arrêt* of retrenchment of the 21st March 1663. It is that of the 8th November 1664 which orders the inhabitants of Lauzon to pay, in the hands of the clerk of the council, the amount of their lease of fishing grounds. During the same period, the Governor and Intendant who had retained the power thereof, seem to have made but two grants which I have spoken of elsewhere. (3)

(1) No. 42 of the observations upon the Jeu de fief.

(2) No. 44 of the observations upon the Jeu de fief.

(3) No. 45 of the observations upon the Jeu de fief.

314. In number 56 of my observations on the *Jeu de fief*, I have related at length the *arrêt* of retrenchment of the 4th June 1672. From the establishment of the West India company up to this period, all the concessions seem to have been made by the Intendant, in virtue, doubtless, of the authority which had been already given to him by the *arrêt* of the 24st March 1663, and which had been confirmed to him by the agreement which had been made in 1666 with the agent of the company. (1)

315. According to this *arrêt* of the 4th June 1672, the *retrenchment* (or re-union) which can be made of the one-half of the uncleared lands, must be pronounced by *ordinances of the intendant*; these ordinances must be executed *according to their tenor and form, absolutely and in last resort as judgments of superior courts;* His Majesty granting him "*for this purpose all authority, jurisdiction and cognizance.*"

If the authority thus conferred upon the intendant, in terms so characteristic of the attributes of courts, whether it relates to a contestation between the Sovereign and a subject, or a contestation between one private individual and another, is not a judicial authority, properly so called, I think that we, the judges of the court of Queen's Bench and and of the Superior court, ought at least to have some doubts as to the authority with which we are invested. The jurisdiction which we exercise every day, has not been granted to us in terms more characteristic of the judicial authority than that which was given to the intendant of the nature or within the limits spoken of in the *arrêt* of the 4th June 1672.

316. By means of this delegation of jurisdiction, the intendant is therefore erected into a tribunal of *attribution*, to the exclusion even of the Sovereign council, for the deci-

(1) No 48 of the observations upon the Jeu de fief.

sion of contestations which, without this exceptional attribution, would have been, preserving their *contested* character, within the jurisdiction of the ordinary tribunals. The ordinances of retrenchment (or *re-union*) which he is called to render in conformity with the *arrêt*, should the case occur, are ordinances which pronounce, to the prejudice of private individuals, by reason of the non-execution of their obligations, the rescision of their title, the *forfeiture* of their rights of property, and the *re-union* of their lands to the Crown domain. These ordinances are, for all purposes, *judgments;* the *arrêt* says so in formal terms. An appeal might have been had from these *judgments* to another tribunal; if the *arrêt* had not declared them *judgments in last resort*.

317. On the 4th June 1675, the King in his council of State renders an *arrêt* of retrenchment, like that of the 4th June 1672, adding thereto, as regards the condition of the lands which were to be re-united to the Crown domain, some explanatory words which were not in the first of these *arrêts*. Concerning the attribution of jurisdiction in this matter given to the intendant Duchesneau by the new *arrêt*, it is the same, and conferred in the same terms, as that which had been given to his predecessor, Mr. Talon, by the *arrêt* of the 4th June 1672; and relative to the power of conceding, it is stated that the intendant shall, *provisionally*, grant concessions of lands.

These two last *arrêts* had thus maintained the Intendant in the exercise of the power to make concessions of lands himself. But by letters patent of the 20th May 1676, (1) the Governor was called to exercise this power jointly with him.

318. Another *arrêt* of retrenchment, is rendered by the King in his council of State on the 9th May 1679, in conse-

(1) No. 73 obs. on *Jeu de fief*.

quence of the *papier-terrier* or *declaration* which the Intendant Duchesneau had made in conformity to the *arrêt* of the 4th June 1675, the substance of which is reproduced in the new. The King orders the immediate retrenchment of one fourth of the lands conceded before the year 1665, and not yet cleared or cultivated, and the retrenchment of the twentieth part of these lands, thereafter, every year. His Majesty further orders that the *arrêt* of the 4th June 1675 be executed according to its tenor and form, and enjoins the *Governor* and *Intendant* "to see to the strict execution of the present *arrêt*, and to proceed to the distribution and new concession of the said lands, according to the power given to them by the letters patent of the 20th May 1676."

It appears that this disposition of the *arrêt* of the 9th May 1679 was interpreted as investing the Governor, as well as the Intendant, with judicial powers in matters of re-union to the Crown domain. In fact, since the enregistration of that *arrêt*, up to the first *arrêt* of the 6th July 1711, we see them almost always acting together in the exercise of that power. (1)

319. There are two very distinct parts in the enactments of the *arrêt* of 1711 (see nos. 310 and 311 *supra*). The first which is of the same nature and founded upon the same motives as the *arrêt* of retrenchment of which I have already spoken, desires that the uncleared seigniories "be *re-*
" *united* to His Majesty's domain at the diligence of the At-
" torney General of the Superior council of Quebec, and upon
" the ordinances which shall be rendered thereon by the
" Governor and lieutenant general for His Majesty and the
" Intendant of the same country."

It is perhaps proper to remark that the words *re-union to the domain* are inserted in this *arrêt* altho' they are not to

(1) See the mentions of re-unions in nos. 85, 89 and 92 of obs. on *Jeu de fief*.

be found in the preceding *arrêts*, in which the word *retrenchment* only is used, to express nevertheless the same thing. The object and the operation being the same, it follows that these first *arrêts*, like the last, decreed a *re-union to the domain.*

320. The re-union which must take place by virtue of the first part of the *arrêt* of 1711, must be sought for by the Attorney General; it is a new formality which was not prescribed by the preceding *arrêts*, but which do not the less serve to bring out in a greater degree the judicial character of the re-union to the domain. The Attorney General had intervened in the demand made by the Governor and the Bishop to the Sovereign council to have the *arrêt* of the 21st March 1663 executed, although no mention is made in the *arrêt*, of his appearance.

321. The second part of the *arrêt* of 1711 also relates to the re-union to the King's domain, to the prejudice of his vassal, not to a re-union of the whole of his seigniory, but only of a very small portion, that is to say, of a lot of land which a farmer has asked in concession, and which the seignior has refused to him. The only question in that case is of partial re-union, or, if it be desired, of a land properly so called. But this re-union, although it be partial, is none the less of the same nature as the first; it has all its essential characteristics. Like the first, it must be sought for; but having for its principal object to insure the exercise of an acquired right to a private individual, it can only be asked by that individual, who, by *summons*, has demanded from the seignior, in conformity with the *arrêt*, to concede him a land subject to a rent charge, and has put him *en demeure* to do so. The arrêt gives him the right of appealing in that case before the Governor and the Intendant. It is a law suit which is entered into between him and the seignior on the one side, to have the latter incur the penalty for his refusal, if that refusal be unjust, and, on the other to obtain

the land, to the concession of which he has thus acquired a right. Before the *arrêt* of 1711, altho' the seignior was obliged to concede his *wild* or uncleared lands, the law had not yet given to the settler a right of action to compel him to fulfil his obligation. But in this *arrêt*, he finds the necessary remedy for the obtaining of his demand against the seignior, that is to say a right of action which he can exercise in his own name.

The penalty of refusal on the part of the seignior to concede, is the *forfeiture* of his right of property in the land demanded in concession. This forfeiture, if it be pronounced, does not take place except by a judgment or ordinance of reunion to the Crown domain, because in such a case no concession can be made to the prosecutor in His Majesty's name, before the land has been re-united. The matter in question between the settler and the seignior is a *contentious* one ; there is consequently *a suit* to decide, and should the event happen, a judgment of re-union to be rendered by a competent tribunal, as in the case of a re-union of the whole of the seigniory. (1) There is nothing to prevent the tribunal thus called to pronounce a penalty against one of the parties, and, on the other hand, to declare the right of the other party to the concession of the land, to adjudge the one and the other by one and the same ordinance, as the courts of justice do every day in a petitory action, upon an action for execution of a title. The judgment is in such a case declared to be equivalent to, and to serve as a title to him who has succeeded in the suit. To constitute the particular tribunal of the arrêt of 1711, the legislator has delegated the Governor and Intendant. They are therefore to pronounce

(1) " *Contentious* Jurisdiction"; is thus called, " in opposition to " the *gracious* or *voluntary* jurisdiction, that which takes place " between two or more parties who contest their respective pretentions, " and which concludes by a judgment in favor of the one and to the " disadvantage of the other" (Merlin Rep. *verbo* " jurisdiction.")

the judgment in question ; it is therefore a judicial authority which they exercise in virtue of a special attribution of jurisdiction. (2)

(2) M. Petit, " deputy of the Superior Councils of the French colonies " says, speaking of the tribunals of these colonies, in his work intituled " Droit public ou Gouvernement des Colonies françoises," (Paris 1783, t. 2, p. 224) :

" All the matters, which are not specially fixed, are within the juris-
" diction of the ordinary Royal Judges in the first instance, and of the
" Superior Councils by appeal.

" There are but two judges of *attribution* in the colonies ; the land
" tribunal (*tribunal terrier*) for the decision of certain matters rela-
" tive to lands, and the admiralty, or the attribution to the tribunals of
" that name, of matters of a commercial nature.

" The laws upon the composition, the jurisdiction and authority of
" this tribunal (the tribunal *terrier*) are the declaration of the 17th
" July 1743 and that of the 1st October 1747 for all the Islands....
" (the same two declarations which have been enregistered in Canada.)

" The fourth article of the declaration of 1743, Petit adds, supposes
" *to be already existing and confirms* the attribution to the Gover-
" nors and Intendants, *excluding all other judges*, of all contesta-
" tions upon the validity and execution of concessions, and relative to
" the localities, extents and limits of concessions. The second article
" had already invested these officers with the power to proceed to the
" re-union to the domain of the lands, the grantees of which shall
" not have executed the conditions of the concessions."

Note.—For New France, these powers had been granted to both by the first *arrêt* of 6th July 1711. There existed, besides, for the French Leeward colonies in America, *arrêts* of retrenchment of the 11th June 1680, 12 October 1683, 22nd August 1687, 26 Sept. 1696, 1st December 1710, 16 October 1713, like those made for Canada, and cited in my notes on the *Jeu de fief*, giving the same jurisdiction to the Governor and Intendant. They are published in the collection of Moreau de St. Mery, v. 1, p. 335, 392, 459, 557 ; v. 2, p. 226 and 395.

322. The second *arrêt* of the 6th July 1711, is in these words : (1)

" The King being informed that there are lands conce-
" ded to the inhabitants of New France which are neither
" settled nor cleared, and on which these inhabitants con-
" tent themselves with cutting down some trees, thinking by
" this means, and by means of the concessions thereof
" made to them by those to whom His Majesty has granted
" tracts of the said lands in seigniory, to secure to them-
" selves the right of property therein, which prevents these
" lands being conceded to other and more laborious settlers,
" who might occupy them and bring them into a state of
" cultivation, and which is also very prejudicial to the other
" inhabitants settled in those seigniories; because, those
" who do not reside upon their lands nor bring them into a
" state of cultivation, do not contribute their share of labor
" to the public works which are ordered for the good of the
" country and of the said seigniories, which is quite con-
" trary to the intentions of His Majesty, who only permit-
" ted those concessions to be made with a view to the set-
" tlement of the country, and on condition that the lands
" should be settled and brought into a state of cultivation,
" and it being necessary to remedy such an abuse; His
" Majesty being in his Council, has ordained and ordains,
" that in a year and a day at the furthest from the date of
" the publication of the present decree, the settlers in New
" France who do not reside upon the lands which have
" been conceded to them, shall be held to reside thereon
" (*d'y tenir feu et lieu*) and to bring them into a state of
" cultivation, in default of which, and after the lapse of the
" said time, it is His Majesty's will that on the certificates
" of the curates and of the captains of militia in the settle-
" ment (*capitaines de la côte*), to the effect that the said
" settlers have been a year without keeping house and

(1) Ed. and Ord., in-8o, v. 1, p. 326.

" home on their lands, and have not brought them into a " state of cultivation, they shall be declared to have forfei- " ted the right of property therein, and the same shall " thereupon be re-united to the domain of the respective " seigniories, in pursuance of orders to be pronounced by " the sieur Begon, Intendant in the said country of New " France, whom His Majesty commands to see to the exe- " cution of the present decree."

323. It is not a new jurisdiction which this *arrêt* gives to the Intendant in matters of re-union to the domain of the seigniors. This jurisdiction had often been exercised by his predecessors. (1) Altogether favorable to the seigniors, the latter never expressed a doubt as to the judicial nature of the power with which it had invested the Intendant to pronoun ce these reunions to their domains. The nature of this authority, the object of its exercise, its effects, are, nevertheless, the same as those granted to the Governor and the Intendant to pronounce the reunion, whether of the entire, or of a part of a seigniory, to the Crown domain.

324. To this general jurisdiction of the Intendant in matters of reunion to the domain of the seigniory, an excep tion was made by an *arrêt* of the King's Council of state of the 5th May 1716, in favor of the Ecclesiastics of the Seminary of St. Sulpice, seigniors of the Island of Montreal and of St. Sulpice : (2)

(1) Ord. of the 31 October 1708 for the seigniory of Berthier, of the 7th July 1710, 30 June 1712 for the seigniory of St. Ours (these two last are not printed, but are mentioned in an ordinance of the Intendant Bégon of the 27th June 1714), of 5th June 1707 for the Island of Montreal (Cugnet's Extraits p. 22) of the 22nd June 1706, 27th May 1707, 26th May 1708 and 5th July 1710 mentioned in an *arrêt* of the King's Council of state of the 5th May 1716, rendered upon the petition of the Seminary of St. Sulpice.

(2) Ed. and Ord. in-8o, v. 1, p. 357.

" His Majesty taking into considera tion that if the " said Ecclesiastics were compelled to have recourse to the " Intendant of the said country, respecting the said uncul- " tivated or abandoned concessions, they would become " exposed to lenghtened proceedings, by their remoteness " from the city of Quebec, where the said Intendant resides, " whose stay at Montreal is not long enough for the dis- " cussion of such matters, moreover in case of appeal from " his ordinances, the parties interested therein are held to " institute them in France. For all which His Majesty being " willing to provide, having heard the report and having taken " every thing into consideration, His Majesty in council, " by the advice of the Duke of Orleans, Regent, hath or- " dained and doth ordain, that upon the demands of the " Ecclesiastics of the Seminary of St. Sulpice, for the re- " nion to their seigniory of the concessions by them made, " they shall proceed before the royal judges of Montreal, " and by appeal to the superior council of Quebec for their " decree in the premises. Provided, nevertheless, that the said " officers shall not take cognizance of ordinances heretofore " rendered by the Intendant of the said country, with respect " to which proceedings shall obtain in the usual manner, and " according to the terms of the ordinances in cases wherein " the proprietors of the said concessions or their assigns " seek a remedy against them. His Majesty doth neverthe- " less ordain, that the said ordinances shall be put in exe- " cution according to their form and tenor provisionally, " until it be otherwise ordained."

It is perhaps puerile to remark that this *arrêt* acknowledges the fact that the reunions to the domain belonging to a *contentious* authority, are necessarily within the jurisdiction of a judicial tribunal, be it an ordinary, or a particular one.

325. The abuses, which the two *arrêts* of 1711 sought to remedy, continuing to exist, the King thought fit to

render an other *arrêt* bearing date the 15th March 1732, (1) by which he prohibits not only seigniors, but also *all other proprietors*, from selling any lands which are uncultivated, *en bois debout*, upon the pain of the nullity of the deeds of sale, of the restitution of the price and of the reunion of these lands to his domain, and orders that the two *arrêts* of the 6th July 1711 be executed according to their tenor and form.

326. I have already stated that, under the operation of the different *arrêts* of retrenchment, it seemed to me necessary, to proceed *regularly*, previously to pronounce the reunion to the Crown domain, even when the word *reunion*, was not written in the *arrêt*. The King's declaration of the 17th July 1743 (2), " concerning the concessions in colonies " proves it in an incontestable manner.

It seems notwithstanding that the form of proceeding in this matter had *varied* in the different colonies, even in the one and the same colony, as we learn from the preamble of this declaration, which is thus conceived :

" We have, after the example of the Kings, our ances-
" tors, authorized the Governors and Intendants of our colo-
" nies in America, not only to grant alone the lands
" which we cause to be distributed to such of our subjects
" as are willing to settle thereon, but also to proceed to
" re-unite to our domain such granted lands as are liable to
" reunion, by not having been brought into cultivation;
" and they have also cognizance, to the exclusion of the
" ordinary judges, of all differences arising between the
" grantees or their assigns, as well with respect to the
" validity and execution of the grants, as to their situation,
" extent and limits; but we are informed that, up to this

(1) Ed. and Ord. in-8, v. 1, p. 531. See obs. on the *Jeu de fief* no. 103.

(2) Ib p. 572.

" time, there hath been scarcely any thing certain, either " with respect to the form of proceeding, in case of the " reunion of grants, or of the trial and adjudication of suits " between the grantees or their assigns, or with respect to " the method to be adopted for obtaining relief against the " ordinances rendered by the Governors and Intendants on " this matter, so that not only have different customs been " introduced in the several colonies, but also in one and " the same colony there have been frequent variations in " this respect: In order to put an end to that state of un- " certainty, upon matters of such interest to the security " and tranquillity of families, we have resolved on establish- " ing by express law, fixed and invariable rules to be " observed throughout our colonies, both as to form of pro- " ceeding to the reunion to our domain of the concessions " which are liable to be thereunto re-united, and as to the " trial of issues arising therefrom, also as to the modes " of recourse to be pursued by those who may deem them- " selves aggrieved by the judgments which may be ren- " dered."

The first article confirms the power of the Governor and Intendant to make concessions jointly.

The second article states:

—" They shall in like manner proceed to *re-unite* to " our domain the lands which are liable to be re-united " thereto, and this shall be at the diligence of our attornies, " in the ordinary jurisdictions within the limits of whose " cognisance the said lands shall be situated,"—and ac " cording to the third article:"

—" They shall not grant lands that have once been " conceded, although liable to re-union, *until after their re-* " *union shall have been adjudged*, on pain of nullity of the " new concessions, without prejudice nevertheless to the

" re-union which may always be sued for against the first
" grantees.

—" They shall also *continue* to have cognisance, *to the* " *exclusion of all other judges*, of all differences arising bet-
" ween the grantees and their assigns, as well as to the
" validity and execution of the grants, as on the subject of
" their situations, extent and limits, etc., etc., etc."

Art. 5.—" We declare to be null and of none effect all
" grants which shall not be made by the Governor and In-
" tendant jointly, or by the officers respectively represen-
" ting them, as also all reunions which shall not be pro-
" nounced, and all judgments which shall not be rendered
" in common by them or their representatives. Neverthe-
" less we empower either of them, in case of the decease of
" the other, or of his absence from the colony, and of a defect
" of officers capable of representing such as may be dead
" or absent, to make the grants alone, and even proceed to
" the reunions to our domain, and to the adjudication of
" suits between the grantees, calling nevertheless upon such
" officers of the superior councils or jurisdictions as he
" shall think fit. And he shall be held to make mention
" as well on the concessions and reunions, as in the judg-
" ments upon private suits, of the necessity in which he
" may have been so to proceed, on pain of nullity.

Art. 6.—" In cases in which the Governors and Inten-
" dants shall be of different opinions, on applications made
" to them for land, it is our pleasure that they do suspend
" the issuing of grants until they receive our orders, upon
" the statements they shall make to us of their motives;
" and in cases of a division of opinion between them, whe-
" ther as to judgments of reunion, or upon differences bet-
" ween proprietors of grants, they shall call in the senior
" member of the superior council, or in case of absence or

" lawful impediment, two councillors next following him " in the order of the list, the whole without prejudice to the " casting vote of the Governors in matters concerning our " service, in which, it is to obtain.

Art. 7.—" In matters in which it shall happen that local " visitations, and nominations, and reports of experts or in- " quests are ordered, the enactments in that behalf of the " twenty-first and twenty-second titles of the ordinance of " one thousand six hundred and sixty-seven, shall be ob- " served on pain of nullity.

Art. 8.—" The parties may have the remedy by appeal " to our council from judgments rendered by the Governors " and Intendants upon the said private differences and upon " reunions to our domain. The said appeals may be insti- " tuted by mere " actes," and the petitions which shall be " presented accordingly, shall together with the paper- " writings of the parties be transmitted to the Secretary of " state for the marine department, in order that upon his " report thereon, in our council, we may do therein as shall " be meet."

327. Afterward, by another declaration, made on the 1st October 1747, (1) for the interpretation of the preceeding, and to prevent, " the many appeals that parties condemned, it is said, make, for the purpose of maintaining themselves in their unjust possessions " the King ordains" that the judgments which shall be rendered in consequence of our declaration, " by the Governors Our Lieutenant-generals, and the " Intendants in our colonies, or by the officers who repre- " sent them in these matters, the cognisance of which is " attributed to them in preference to all other judges, be " provisionally executed, and notwithstanding the appeal " thereof which may be instituted, and without prejudice

(1) Ed. and Ord. in-8, v. 1, p. 590.

" thereto: leaving nevertheless to the prudence of our said " Governors and Intendants, in the cases in which they shall " deem proper, not to order the provisional execution of " their judgments, except upon the condition of giving good " and sufficient security by the party in favor of whom they " shall have been rendered, and our said declaration shall " moreover be executed according to its tenor and form."

328. These two declarations, in prescribing a more regular form for proceeding in future to the reunions to the domain, virtually confirm the preceeding reunions, in however irregular a manner these may have been made, such as the reunion which necessarily followed from a new concession, made by the Governor and Intendant, of a seigniory, abandoned or uncleared by the original grantee, without mention of reunion having been made, or that this reunion was adjudged in express terms by the title of the new concession, or by an ordinance distinct from the title. Moreover several of the new concessions thus made had been confirmed by the King. (1)

329. I have seen three ordinances of reunion, rendered after the *arrêt* of the 6th July 1711.

The first, which is of the 1st March 1714, and which has not been published, is that of Messrs. Vaudreuil and Bégon, pronouncing the reunion of the Seigniory of Mille-Isles conceded to sieur Dugué on the 24th September 1683. Mention thereof is made in the title of the new concession of this Seigniory to MM. de Langloiserie and Petit, of the 5th March 1714. (2)

(1) See Obs; upon the " Jeu de Fief " nos. 59, 63, 75, 76, 85, 89 92 and 94, where mention is made of retrenchments or reunions, made in different ways, before the *arrêt* of the 6th July 1711.

(2) See my notes upon the Jeu de Fief, no. 107, and Titles of Seigniories p. 59.

The second which, also, is not published, is that which *re-unites* the fief St. Etienne, near Three Rivers. It was rendered by MM. de Beauharnois and De la Rouvillière, on the 6th April 1737, and is founded upon the *arrêts* of 1711 and 1732. Mention thereof is made in the new title granted to the company of the St. Maurice Forges, on the 12th September 1737. (1)

The third ordinance is that which re-unites twenty seigniories at one time, and of which I have rendered an account in my observations upon the *Jeu de Fief*, no. 114. It was rendered by Messrs. Beauharnois and Hocquart, on the 10th May 1741. (2)

330. The "Seigniorial documents" furnish us with but one case of the *partial* reunion of a Seigniory, upon the refusal of the seignior to concede. It is that which I have reported no. 174 of my observations, upon the *cens et rentes*, and which gave rise to the concession of the 13th October 1721, made to the widow Petit in consequence of an *arrêt* of the King's Council of state of the 2nd June 1720. (3)

331. As regards the reunions of lands *en censive* to the domain of the seigniors, pronounced by the Intendant alone, they are in great number. It is sufficient to open M. Cugnet's collection to convince one's self. There are also some ordinances of the Intendants, declaring the reunion of *arrière-fiefs* to the domain of the dominant seignior. On the 3rd October 1731, Messrs. Beauharnois and Hocquart write to the minister that the Intendant (M. Hocquart) in conforming himself to the second *arrêt* of the 6th July 1711, had pronounced, since he had been in Canada, the reunion of more than two hundred concessions to the do-

(1) Documens Seig. p. 191.

(2) Ed. and Ord. in-8, v. 2, p. 555.

(3) 2nd vol. "Doc. Seig." p. 72.

main of seigniors, in default of the grantees holding hearth and home (*feu et lieu*).

332. In the reunions to the Crown domain in virtue of the first *arrêt* of the 6th July 1711, there exists an essential difference between the reunion of an entire seigniory, in default *of its being cleared*, and the partial reunion of this same seigniory, that is to say, of a lot of land within its limits, upon the unjust refusal of the seignior to concede to the settler who demands it of him. In the first case, *there is no right acquired to a third party* ; this third party is the settler who has *summoned* the seignior to concede him a land within the limits of his fief, and has put him *en demeure* to make him this concession ; it is he alone, and not the attorney general, who has the right, in such a case, to seek the reunion to the Crown domain, of the land the concession of which has thus been refused ; not that the said land may be afterwards, according to the wishes of the Governor and the Intendant, conceded to the first comer, but that, in conformity to his acquired right, it be conceded to the prosecutor himself by these two officers, in execution of the judgment of reunion which they have been obliged to render against the other party in default, the seignior. The *arrêt* of the King does not content itself, as in the first case, to give to these two officers the power to concede ; it orders them to make this concession to the individual himself who has obtained the judgment of reunion. This concession is not therefore a simple act of administration of His Majesty's domain, but truly and purely an act executing this judgment, an act which is necessarily the fulfilment of it. In the one or the other, it is a question, it is true, of a *contentious* right, in the exercise of which the Crown finds itself interested ; but, in the first case, the Crown is so alone ; in the second, on the contrary, it is a third party in the first instance, and principally ; the Crown which is not a party to the suit, is interested in but a secondary degree, only

tor the collection, for its own profit, of the rents which the reunion has the effect of making it acquire. The right being contentious, the tribunal called upon to judge, whatever it may be, cannot but be a tribunal invested with judicial authority, were that authority even restrained to that simple object ; and consequently the acts of that tribunal cannot have a different character.

If the cognisance of such a contestation had devolved to the Superior Council, instead of the Governor and Intendant, it could not be doubted that the authority exercised by that court in virtue of that devolution, would have been a judicial one. How can it be reasonably pretended that it has lost this character, only because the King thought fit to grant it to a particular tribunal which he created expressly to exercise it ? Is it that the nature of that authority does not always remain the same, whether it be exercised by one tribunal rather than by another ? If we could suppose the contrary, that is to say, that that authority, at the moment of devolving upon the Governor and the Intendant, must have completely changed its character, ceasing to be *judicial* to become purely *administrative*, the cause of this change could be attributed to this sole fact that one of these functionaries was the Governor of the country, thence concluding, I do not know upon what principle, that he could be nothing else than a simple administrator, that all the authority which he could be called upon to exercise, whatever it might be, could have no other character than that of a purely *administrative* authority, that this character must be supreme in all its acts, although these acts could not have been completed except by virtue of a special law relating to the administration of justice, and appointing the Governor to participate in this administration. Where would this system take us under the new government which has followed the cession of Canada ? Until a very late period, the first tribunal of the province, the Court of appeals, was al-

most exclusively composed of the Governor and the members of the Executive Council, all of whom, as such, were merely *administrators*. Nevertheless it was never pretended, and I do not believe it will ever be, that when the Governor and his councillors took their places upon the bench of that Court, that the functions which they filled were *administrative* and not *judicial*.

333. Such was the state of things under the French Government.

The seigniors who pretend that, since the cession of Canada to England, there has existed no competent tribunal to exercise the authority, devolved upon the Governor and the Intendant, to re-unite to the domain and to concede, upon the refusal of the seignior to make that concession, found themselves principally, if not exclusively, upon the eighth section of the Judicature act of 1794 (34 Geo. 3 chap. 6) (1) which had established the old Courts of King's Bench which sat in superior and inferior terms.

We read in that section :

" The said Courts of King's Bench shall, respectively, " in the superior terms aforesaid, have full power and ju- " risdiction, and be competent to hear and determine all " plaints, suits and demands of what nature soever, which " might have been heard and determined in the Courts of " *Prévoté*, *Justice Royale*, *Intendant*, or *Superior Council*, " under the government of the province, prior to the year one " thousand seven hundred and fifty nine, touching rights, " remedies and actions of a civil nature, and which are not " specially provided for by the laws and ordinances of this " province, since the said year one thousand seven hundred " and fifty nine, and the said Courts of King's Bench shall " respectively be competent to award and grant all such reme-

(1) Sanctioned by the Governor on the 31st May 1794.

" dy, as may be necessary for effectuating and carrying en-
" to execution the judgment or judgments thereof, which
" may be made in the premises aforesaid, and which to
" law and justice shall appertain. Provided always, and
" it is also enacted, that nothing in the present act shall ex-
" tend to grant to the aforesaid courts of King's Bench, any
" power of a *legislative* nature, possessed by any *Court*
" prior to the conquest. . . .

334. Thus, as regards the first part of the 22nd question of the Attorney General, that by which he asks if, in the matter of reunion to the Crown domain, the tribunals created after the cession of the country were competent to exercise the authority devolved upon the Governor and the Intendant; the partisans of the negative side ought, to justify their system, either to base it upon this eighth section of the judicature act of 1794, and consequently maintain that the Courts of King's Bench created by that act, were not invested, or were deprived, of the judicial authority which might have belonged, in civil matters, to any tribunal previous to the cession, other than that of the *Prévoté*, or of the *Justice Royale*, or of the *Intendant*, or of the *Superior Council;* or else, they must pretend that the authority in question was not a *judicial* one, but merely an *administrative* or *legislative* authority.

We cannot, for any time, entertain the last of these propositions, that which would result in attributing a *legislative* character to the authority exercised by the Governor and Intendant in matters of reunion to the Crown domain under the french government. It is sufficient to express it to perceive its falsehood, not to speak of its absurdity.

I will not return to the other question, that of knowing, whether that authority was judicial or administrative. I think I have already clearly established that it had the first of these characters. Those even who support the negative

admit, in view of the fact that there was a Court of the Intendant, that it was in the quality of a judge that that functionary exercised the authority, which was given to him alone by the second *arrêt* of the 6th July 1711, to re-unite to the domain of a private seignior the land of his *censitaire* in default of holding "hearth and home" by the latter. They acknowledge then that an authority of this kind is a judicial authority. Now, how can they at the same time refuse to recognise the same character in the authority granted by the first *arrêt* of the 6th July 1711, jointly to the Governor and Intendant, since that authority is of the same kind, has the same object and produces the same effects.

335. We must then fall back upon the provincial statute of 1794 and see if its eighth section excludes all other jurisdiction, than that which was exercised by the four french tribunals therein named. If that be the case, the objection which is made, may appear plausible; because then all the authority of the Courts of King's Bench would have been restricted to the attributions which are enumerated in this eighth section. But is it correct to say that the authority of these Courts was thus restricted within the limits that this enumeration, considered by itself, would seem to show? I do not believe it, and the statute of 1794, and the judicature acts preceding it, equally prevent me from believing it. The authority which was confided to the court of King's Bench, and which has devolved to the present tribunals, in civil matters, is as general, as extended as possible; it is, at least as much as that which had been granted to the tribunals, to which these courts succeeded in 1794, and which had administered justice since the cession of the country.

In fact, it is not exclusively in this eighth section, that we must search to find the extent of the jurisdiction of these courts. The second section of the statute which creates them, had already declared that they shall have "original

" jurisdiction to take cognizance of, hear, try, and determine
" *all causes* as well *civil* as criminal, and where the
" King is a party, except those of purely admiralty jurisdic-
" tion."

" In all civil cases" says the statute. These words, it seems to me, are extended enough, general enough, to include all suits, all contestations, all causes of whatever kind, which, under the existing laws, might arise, and be carried according to the judicial organization of those times, before any tribunal in Canada, under the French dominion, whether the tribunal of the superior council, or *la justice royale*, or the *prévoté*, whether the tribunal of the Intendant only or *that* of the *Governor and of the Intendant*. The statute, in merely excepting the admiralty jurisdiction, conferred, by that alone, upon the Courts of King's Bench all kinds of necessary jurisdiction, in civil matters, to give justice to the citizens and to maintain them in the plenitude of their rights and in the enjoyment of their property, whether these rights had been acquired by them in virtue of contracts or in virtue of the laws of the State. The legislator did not desire and could not desire to deprive them of any part of the one or of the other. The citizens were therefore maintained in the actions proper to guarantee them, on the one hand, the exercise of these same rights, and on the other, the recovery of that same property.

We must not then take, in a restrictive sense, the enumeration which, by a simple measure of precaution, the legislature has thought fit to make in the eighth section of the statute of 1794. It has not proceeded in a way to restrain the dispositions of the second section. This enumeration in an explanatory way may have been regarded as an act of prudence, so as to prevent the raising of some possible difficulty, as for example, in a case where the consent of another authority might have been necessary for the entry

of a suit in the tribunals of the old *régime*. This statement of certain " plaints, suits and demands" is not in any way made in terms excluding " other plaints, suits and demands" which were, as those we are speaking of, within the jurisdiction of a tribunal different from that of the *Prévoté*, or *justice royale*, or of the Intendant, or of the superior council.

As a further proof that this enumeration was neither exclusive nor restrictive, the *proviso* which is inserted in the same section is in these terms: " Provided always, and " it is also enacted, that nothing in the *present* act (not in " the present section) shall extend to grant to the aforesaid " Courts of King's Bench any power of a *legislative* na- " ture, possessed by *any Court* prior to the conquest." These words *any court*, as we perceive, are not restricted, in their signification, to the four courts specially named in another preceding part of the eighth section: they also refer to *any court*, that is to say, to every other court the jurisdiction of which is equally, by virtue of the general dispositions of the second section, devolved upon the courts of King's Bench; the dispositions which are declared, by the *proviso*, not to have the effect of granting any power of a *legislative* nature, altho' attributive of the judicial authority, are not only those previously contained in the eighth section, but, in a general manner, those which are included in the whole body of the statute, *the present act*, it is stated. According to the spirit and letter of the statute, then, the intention of the legislature was to grant, in civil matters, to the courts of King's Bench the powers of all the French Courts, the legislative power and the admiralty jurisdiction excepted. The jurisdiction of the tribunal of the Governor and Intendant in matters of re-union to the Crown domain, therefore devolved upon these new courts. If such was not the case, the obligation to concede, imposed upon the seignior by the *arrêt* of 1711, became illusory, since the right of civil action which arose from this obligation, and which the *arrêt*

gave in express terms to a third party, could not be exercised.

336. I must here make the remark that, in the preceding observations, I have spoken of the eighth section of the statute of 1794 as if, by the words *justice royale*, it had been intended to designate but a few particular tribunals which had been *specially* created in Canada under that name, to the exclusion of other tribunals possessing the attributes of *justice royale*, but under a different name. I do not, nevertheless, believe that the words in question bear such a limited sense. The statute says: the *courts*.... of *justice royale* .... now, the judges of the tribunals created by the King were *royal* judges, either *ordinary* or *extraordinary*; but under the last title as well under the first, it was always the *justice royale* which was granted to them. Such was the power granted to the Governor and Intendant by the first *arrêt* of Marly. Altho' only a particular or extraordinary tribunal, these two officers did not the less form a court of *justice royale* under the authority of that *arrêt*. So that, in this point of view, it can be said that that Court is included in the terms of the eighth section of the statute.

337. Let us now see what has been the extent of the jurisdiction exercised, in civil matters, by the tribunals which have existed in the country since the cession, and to which the statute of 1794 substituted the Courts of King's Bench.

Under the temporary operation of an ordinance of the Governor in council of the 17th September 1764, (1) we have

(1) The power of Governor Murray to make this ordinance, has been called in question, even denied, by authorities greatly to be respected. This is a question which I am not called upon to speak of here. I must therefore abstain from discussing it, and for this reason, and also because I am informed that I will soon have to pronounce my opinion in the Court of appeals. But it is sufficient that this ordinance

had a Court, called " Court of common pleas," taking cognisance of the suits of seigniors for the reunion to their domain of lands conceded by them, in default by the *censitaires* of holding " hearth and home" ; a jurisdiction which, under the former government, belonged exclusively to the Intendant. There are not, nevertheless, any dispositions in this ordinance, like those of the eighth section of the statute of 1794, which make any special grant to that Court of the judicial powers of the Intendant. The ordinance does not even mention the Court of that officer, no more than that of *Prévoté*, of the *justice royale*, or of the Superior Council.

These are the terms of the ordinance in which the jurisdiction exercised by the Court of common pleas, had been conferred upon it: " A Court of inferior jurisdiction, or " common pleas, is by this present act established, with " power and authority to decide *upon all cases concerning* " *property*, above the value of ten pounds, with permission " to the parties to appeal to the superior Court, or Court of " King's Bench, (1) when the matter at issue shall be of twenty pounds and upwards."

Surely, the same grant of jurisdiction is to be found included in that given to the Courts of King's Bench, by the second section of the statute of 1794, and if that Court of

had an existence, if not a legal one, at least a *de facto* one, that I may be permitted to invoke in support of my opinions upon the subject with which we are now occupied, the acts of the tribunals which were in operation under the authority of that ordinance.

(1) The ordinance had established " a superior Court of jurisdiction or Court of King's Bench " in which the chief justice presided. This Court had " power and authority to hear and determine all causes, " criminal and civil." There was an appeal from this Court to the Governor and Council, when the matter in dispute exceeded £300 sterling, and from the Governor and Council to the King in Council, when it was of the value of £500 sterling or more.

common pleas had jurisdiction in matters of reunion to the domain of seigniors, these Courts of King's Bench ought equally to have it by virtue of the second section of the statute, which conferred upon them a general jurisdiction in civil matters, even had the eighth section of the statute been omitted, and had no mention of the Intendant been made in that law. Notwithstanding, under the contrary system, it would be necessary to say that the Court of common pleas of 1764, could not exercise the jurisdiction of the Intendant in matters of reunion to the domain of seigniors, nor in any other matter, nor any more in the jurisdiction of the Superior Council, or of the *Prévoté*, or of the *justice royale*, because the ordinance had not specially named these four tribunals, and had not made to the new court a special grant of their different jurisdictions. For the same reason, it would be equally necessary to conclude that, without the eighth section of the statute of 1794, the Courts of King's Bench which were created by that act, could not have exercised any of these same jurisdictions, notwithstanding the dispositions of the second section, making a general grant of judicial authority in civil matters, with the sole exception of the admiralty jurisdiction.

338. After the revocation, decreed by the Quebec act (1774, 14 Geo. 3, chap. 83), of the laws which had given existence to the tribunals subsequent to the cession of Canada, the Legislative Council created by that chart of 1774, promulgated in the year 1777 (17 Geo 3, chap. 1) an ordinance intituled "an ordinance which establish-"es civil courts of judicature in the province of Que-"bec."

This ordinance divides the province into two districts, that of Quebec and that of Montreal, and establishes a Court of civil Jurisdiction called "court of common pleas" for each of these districts. "The said court"

" it is therein said, shall have full power, jurisdiction and " authority to hear and adjudge *all suits which relate to the* " *property and rights of the subject.*" Such is the grant of jurisdiction made to this court. Is it not made in terms as general as was the grant of jurisdiction made at a later date to the courts of King's Bench, by the second section of the statute of 1794, and as had been that of the ordinance of 1764? No mention is made of the Intendant or of his court, no more than of the Superior Council, of the *Prévoté* or of the *Justice Royale*. This new tribunal, notwithstanding, often exercised, as that which previously existed under the same name had done, the jurisdiction of Intendant in matters of reunion to the domain of seigniors.

339. If then the authority exercised by the Governor and Intendant, in matters of reunion to the Crown domain, was of the same nature, had the same object, and produced the same effects, as the authority exercised by the Intendant alone in matters of reunion to the domain of the seigniors ; in one word, if that authority was a judicial authority, no other conclusion could be drawn from what precedes than this ; that is, if the two courts of common pleas of 1764 and 1777 were invested with one of these powers, and could exercise it by virtue of the general attribution which had been given to them, they were equally invested with the other, and could exercise it by virtue of the same general attribution ; that the same authority, in the one case or the other, passed from the court of common pleas to the courts of King's Bench, independently of the eighth section of the Statute of 1794, and from the courts of King's Bench to the now existing tribunals of original jurisdiction.

340. The seigniors may also have recourse to another objection. They will admit, hypothetically, that the *acte* of reunion may well be a judicial act, but they will say that the act of concession which succeeds to the reunion is not :

and there not having been in Canada, according to them, public officers who represented, in this last point of view the Governor and Intendant, the first *arrêt* of the 6th July 1711 could not be executed since the cession of the country. They deceive themselves. It is easy to perceive that even in that case, the *arrêt* could be executed.

The deed of concession of a seigniory, after the reunion of all the rights of the vassal to the Crown domain, in default of cultivation, under the operation of the first part of the *arrêt*, was not, it is true, a judicial act, since it was not made to execute, for the benefit of a third party, a judgment which this third party should have obtained. The reunion took place for the benefit of the Crown only, and the King was free to concede or not to concede anew. When he did so, it was an act of pure liberality on his part in favor of the grantee. But such was not the case, I believe I have already shown, in the partial reunion which might take place by virtue of the second part of the *arrêt*, upon the refusal of the seignior to concede. This reunion was made for the advantage of a third party who had acquired a right to the concession of the land thus re-united. The reunion was for him but a simple formality ; it was the concession which was the principal object or rather the sole object of his suit before the Governor and Intendant ; the concession being the thing demanded by his action ; consequently it was this which these two officers were obliged to adjudge to him by their judgment ; it was the end of the suit, without it this suit was not concluded. If the Governor and Intendant had the power to make, at their discretion, this concession to another person than the one who had made the demand, it would have been a mockery to have submitted the latter to all the troubles of a suit and to the costs of proceedings from which he would have derived no advantage, altho' he only had the right to sue. The concession which could be made to him, either by the judgment of the reunion

itself, or in execution of that judgment, was then a judicial act.

Supposing for a moment, so as to answer to the objection, that this concession is not a judicial act, and that, consequently, such an act could not emanate from our tribunals. Be it so. But the act of reunion was a judicial act, it must be admitted, in this system of distinction between that and the deed of concession, that the third party who had summoned the seignior to concede him a land, had the right to prosecute the reunion of that land before the tribunal *terrier* of the Governor and Intendant to a definitive judgment, saving his right to obtain the concession thereof afterwards. Thus, the authority which caused this reunion to be pronounced was a *judicial* authority, it follows that it devolved upon the tribunals established since the cession of the country; that the right of a third party to provoke the reunion, acquired by virtue of the arrêt of 1711, can be exercised, and that these tribunals are obliged to pronounce a judgment adjudicating this reunion.

After this judgment, shall this third party, in the system which I combat, be without a remedy, without recourse to obtain the concession which he has demanded, and which the law gives him the right of having? Not at all. The law must be executed, and it shall be. Under the new government, the English Governor has replaced, since the year 1763, the French Governor and Intendant in the concessions of lands of the Crown. This first magistrate of the colony will then give the concession prayed for; he cannot refuse without failing in his duty, without disobedience to the law.

341. Believing that I have established that: I now reply to the second part of the question of the Attorney General, viz: "if such a tribunal existed, did it exercise those "powers, or did it refuse or omit to do so."

If, on the one hand, I am happy to be able to say that, in all my researches, I have found no example of refusal or abstinence on the part of this tribunal; on the other hand, I must in the same manner say that I have not, any more, found up to this time any example of a demand in reunion and in concession of a land, addressed to that tribunal upon the refusal of a seignior to concede, by an inhabitant who had previously fulfilled the formalities prescribed by the *arrêt* of 1711, to summon this seignior.

There have been instances certainly, of which I shall shortly speak, in which the conclusions sought the application of the arrêt of 1711, but they were chiefly of different kinds from that which the question supposes. It is needless to search for the causes which might account for the absence either of actions or decisions, if such an action was ever instituted, in matters of reunion to the domain upon the refusal of a seignior to concede. Who knows? an error in the pleading, or perhaps sometimes, another motive for the decision of the point litigated between the parties, resulting from the facts of the case, may have prevented a judgment pronouncing the application of the *arrêt* to the question now before us. It suffices to establish the fact, observing at the same time that one of the best reasons that could be given therefor is that of Attorney General Monk, who became shortly after Chief-Justice of the Court of King's Bench for the district of Montreal, given in 1794, in a report dated the 27th February (1), which he made to the Governor, upon the occasion of a petition of divers inhabitants of the seigniory of Longueuil, wherein they complained that their seignior, M. David Alexander Grant, had increased, in an arbitrary manner, the rents established upon the lands of his censitaires. M. Monk, who was of opinion that " the *arrêt* of the 6th July 1711 was still in full force,"

(1) 3rd vol. Seig. Doc., p. 73.

concludes his report by saying: "they (the tenants) are "able to institute and carry on their suits to judgment in "the common pleas; equal perhaps to meet the costs of the "Court of Appeals; but the enormous expense attending "an appeal to His Majesty in Council, to which the seig- "nior is entitled, as his rights in future may be bound by "the decision, deprives them of the possibility of obtaining "justice and compels them to abandon their rights and "throw themselves upon the mercy of their antagonist who "compromises the action and grants a new deed of con- "cession upon his own terms." (1)

342. In the form of an appendix to these notes, I shall report several judgments relating to the questions now before us, and rendered since the cession of the country.

I. Court of common pleas: Present, Judges Mabane and Monier; at Montreal: Clement Sabrevois De Bleury, Plaintiff, versus J. B. Boucher de Niverville, Defendant.

The plaintiff claimed from the defendant, his seignior, the value of the hay which the latter had caused to be cut upon his land. The defendant replied that this land had been re-united to his domain by a judgment of Justices of the peace, (2) in conformity to the ordinance of General Burton. The plaintiff denied the fact.

(1) Since the "seigniorial questions" have been taken into deliberation, and since these notes have been written, I have had the advantage of finding two suits brought before the court of King's Bench of Montreal, which oblige me to correct the assertion which I have just made under this number that there was no example of a demand in concession carried before the tribunal, upon the refusal of the seignior to concede, after summons made to him to do so; not having had the time to write these notes over again, I add at the end under the numbers XVII and XVIII of *Precedents*, an analysis of these two cases.

(2) Under the judicature ordinance of the 17th Sept. 1764, a Justice of the peace was competent to decide "all causes, or matters of

The judgment of the Court of common pleas, which is of the 17th February 1767, condemns the defendant to pay the value of the hay, and prohibits him from troubling the plaintiff in the possession of his land, seeing that this land was not mentioned in the ordinance of General Burton, and that moreover the plaintiff had ameliorated it and put it into cultivation.

II. Below is a judgment of the same Court, dated the 16th February 1765, rendered in the French language.

" Sitting held on Friday 15 February 1765.

" Christie Gabriel's seigniory } " The Court taking into consideration an ordinance made by " Brigadier Burton, then Governor of Montreal, on the 2nd of " April 1764, upon the petition of Gabriel Christie, Esquire, " lieutenant colonel and quarter master general of the King's " *armies*, and John Campbell, captain of the 27th regiment, " proprietors of a seigniory situated on the borders of the " River Chambly, heretofore belonging to Mr. De Noan, by " which it is ordered to one J. Bte. Parent (and six " other *censitaires*), to hold hearth and home upon the lands " conceded to them in the said seigniory, also to render the " same productive, from the day of the publication of the " said ordinance up to the first day of October then next for " all appointment, in default of which and the said delay " expired, that the remion of the same shall be definitive- " ly made to the domain of the said seigniory, upon the

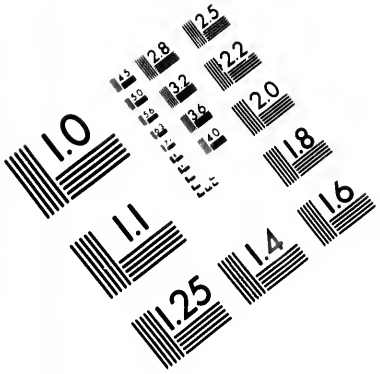
property the value whereof did not exceed five pounds, Quebec currency;" two justices of the peace were equally competent to decide the same causes when the value did not exceed ten pounds. In the one case or the other their decisions were without appeal. Three justices of the peace constituted a Court which had jurisdiction in " all cases and matters of property the value whereof was under £10 and did not exceed £30 "; the parties being at liberty to appeal from their decisions to the Superior Court of King's Bench.

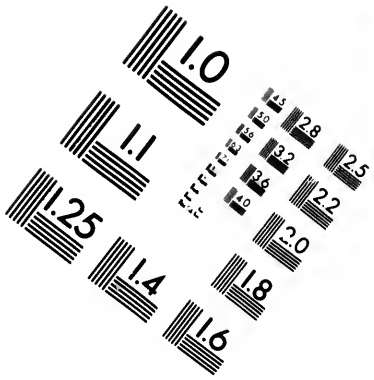
" certificate of the captains of militia of Montreal that
" the said tenants have not taken advantage of the delay
" granted to them, and that the said ordinance shall be
" published three consecutive Sundays at the church door
" of the Parish church of Montreal, on the conclusion of
" Grand Mass, to the end that none may pretend ignorance
" thereof.

" The certificate of Decoste the younger, serjeant of
" militia of Montreal, being at the bottom of the said ordi-
" nance by which he testifies that he published the same,
" at the conclusion of Montreal Parish Grand Mass, on
" Sunday the 8th and 15th April, and on Monday the second
" day of the Easter holydays, the twenty third day of the
" month of April of the said year 1764.

" The declarations of Jean Inwood and Alexandre
" Barron affirmed by them under oath before Mr. Moses
" Esquire, one of His Majesty's justices of the Peace at
" Montreal, bearing date the 15th January last, by which
" it is justified that the said grantees have not profited by
" the delay granted to them by the ordinance of the said
" Governor Burton and have not held hearth and home up-
" on the said lands;

" The petition presented in this Court by the said
" Messrs. Christie and Campbell, having for its object the
" obtaining the reunion of the said lands; and the whole
" duly considered, the Court has declared the said J. Bte.
" Parent (and the six other *censitaires*) to have forfeited the
" said lands conceded to them in the said seigniory, in de-
" fault of their having satisfied the conditions of their con-
" tracts of concession and the ordinance above mentioned;
" in consequence whereof ordains that the said lands be by
" these present re-united to the domain of the seigniory of
" the said Messrs. Christie and Campbell who shall dispose





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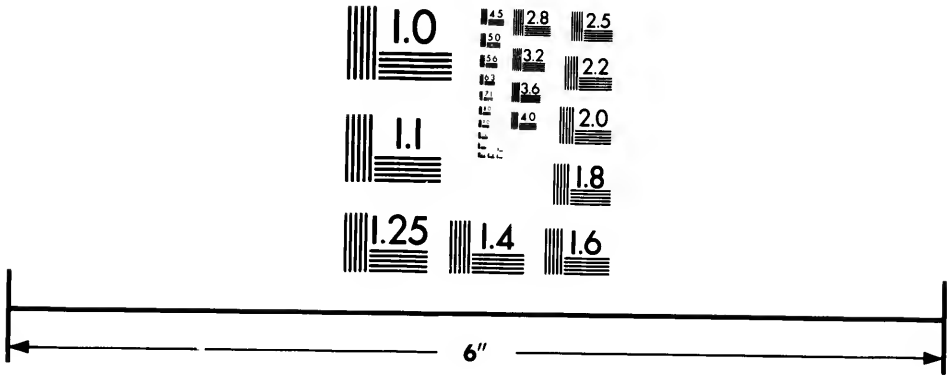

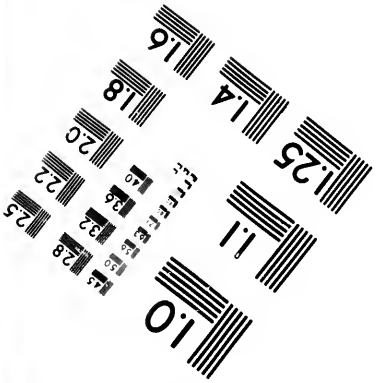

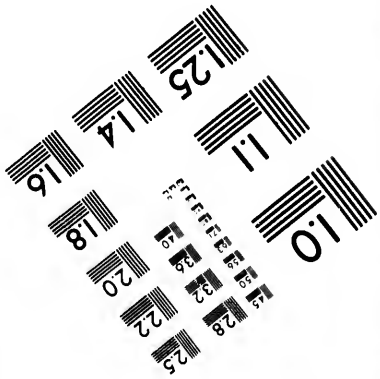

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" of the same as they may think fit. Made and given at " Montreal by us John Fraser and François Mounier, Es- " quires, two of the judges of the Court of common pleas, " sitting the Court on the 16th February 1765." Signed. " John Fraser.

III. On the same day 16th February 1765, a judgment similar to the preceding is rendered by the same Court in favor of " the ecclesiastics of the seminary of the *Isle Jésus*," that is to say in favor of the seminary of Quebec proprietor of that seigniory.

" Having seen," it is there said, " three ordinances " rendered by Major General Gage, then Governor of Mont- " real, on the 12*th July* 1763, upon the petition of the gen- " tlemen ecclesiastics of the seminary of Quebec, seigniors " and proprietors of the *Isle Jésus*, by which Jean Lacoste ," (and twenty four other *censitaires*) residing or who ought " to reside upon the lands conceded to them in the said " seigniory of Isle Jesus, parish of St. Vincent de Paul, " J. Bte Périllard (and eight other *censitaires*) residing " or who ought to reside upon the lands conceded to them " in the said seigniory, in the part called Ste. Geneviève, " and one Antoine Caron (and seven other *censitaires*) " residing or who ought to reside in the said seigniory of " Isle Jesus, parish of Ste. Rose, were ordered to hold " hearth and home &c., (the remainder as in the preceding " judgment.)

The certificate &c., &c., (the remainder as in the pre- " ceding judgment.)

" Another ordinance of Brigadier general Burton, bear- " ing date the 13th August 1764, by which it was ordained " that a superabundant publication of the ordinances of " Major general Gage be made, and that certificates in " writing be made by the captains of the militia of the place

" that the parties named in the said ordinances have not
" obeyed the said commands since the first publication up
" to the said 13th August 1764.

" The certificate of the said Messrs. Ségouin, Hétier
" and Presseau, captains of militia, who certify that the
" said superabundant advertisement has been made, and
" that not one of the said parties presented himself;

" The petition presented to this Court &c., &c., (the
" same as in the preceding judgment.)

IV. J. Bte. Laporte dit Labonté, in his quality of tutor to the minors Lebeau, prayed to be re-instated in the possession of a land farm, of which the seignior Mr. de Niver-
" ville, had evicted him. The latter replied that this farm had been re-united to his domain by the ordinance of Mr. Burton of the 6th March 1764, confirmed by the justices of the peace, by judgment of the 27th June 1765.

On the 7th March 1769, the Court of common pleas (present, judges Fraser and Mabane) renders a judgment which condemns the seignior to re-instate the plaintiff in the possession of the said farm, giving this, among other reasons for its judgment:

" Having also seen that general Burton, by his ordi-
" nance of April 1764, being at the time Governor of Mont-
" real, had only summoned the inhabitants that Mr. de Ni-
" verville declared not hold hearth and home, to fulfil
" their contracts, without which he would proceed in a
" final manner to reunite the said farm to the domain of
" the seignior, and Messrs. the justices of the peace having
" only intended to confirm that which had been done by Mr.
" Burton, and Mr. Burton never having definitively proce-
" ded to reunite the same, and the whole duly considered,
" the Court finds that Mr. de Niverville has improperly re-
" united the said continuation of 3 ⋈ 44 arpents."

The preceding judgments establish the fact of the exercise, by the first Court of common pleas, of the jurisdiction of the Intendant in matters of re-union to the domain of the seigniors, altho' no mention was made of the Court of that officer in the ordinance of the 17th September 1764. The judgments which follow establish the same fact as regards the second Court of common pleas created by the ordinance of 1777, which like the first made no mention of the Intendant's Court.

V. At Quebec: Descheneau, seignior of Neuville, against the widow and heirs Girard or Girardin, judgment of the 5th December 1781, which " considering the *arrêt* of " the 6th July 1711 upon the subject of lands uninhabited " or abandoned, orders that in default by.... of presenting " themselves, of holding hearth and home upon the said " land and ameliorating the same within the delay of " one year commencing from the publication of the present " ordinance, the Court will proceed to the reunion of the " said land to the domain of the said *fief* of Neuville, upon " the certificate of the Rector (*curé*) and captain of militia " of the parish, that the above mentioned have not com- " plied with the present ordinance, which shall be read and " published at the church door of the said parish, for three " consecutive Sundays, immediately after divine service, " and in as much as it appears that some ameliorations " have been made upon the said land, the Court orders " that at the diligence of the said sieur Descheneau, there " be inserted an advertisement in the Quebec Gazette, for " three consecutive publications, (1) containing in an abrid- " ged form the reunion of the said land, and notifying those " who may have some claims upon it to make their written " declaration and to produce their titles, if any they have, " at the office of the prothonotary's office of this Court, with- " in the said delay of one year; in default of which, the re-

(1) Published in the Quebec Gazette of the 27th Dec. 1781. No. 851.

" union shall be immediately declared : the Court reserving " to itself, at the time of the reunion, the right to order that " it be made only upon the condition that the said sieur " Deschesneau shall have the same offered to the last and " highest bidder, for three consecutive Sundays, at the door " of the church of Neuville, and that the monies arising " therefrom shall remain in the hands of the purchaser for " the benefit of the said widow and heirs Girard, whenever " they shall present themselves or until it be ordered by " the Court."

VI. At Quebec : The same plaintiff, as seignior of St. Michel and Livaudière, against Jacques Nicole, 5th December 1781, a judgment similar to the preceding one, followed by a final judgment of reunion. A curator is named " to the land abandoned," which is afterwards sold upon the condition of paying in cash, out of the price of the adjudication, " the work and ameliorations which shall be es- " tablished to be due and belong to François Sirié" who " had made a demand to that effect.

VII. At Quebec, the same plaintiff, as seignior of St. Michel against Thomas Lapierre ; 14th January 1786, similar judgment, followed by a final judgment of reunion on the 31st March 1787.

VIII. At Quebec, the same plaintiff, as seignior of Neuville, against Joseph Tellier ; similar judgment of the 24th December 1785.

IX. At Montreal, in a petition dated the 7th August 1784, Simon Sanguinet, seignior of Lasalle, sets forth to the judges of the Court of common pleas : " that there are se- " veral farms conceded in the said seigniory to divers per- " sons, who do not hold hearth and home according to the " clause of their contracts of concession, and many have " not even worked upon them and have not paid their rents.

" Firstly. Pierre Poissant, a farm of 6 × 30 arpents &c.,
" &c., (and fourteen other *censitaires*); and in as much as
" the proprietors of the said farms do not fulfil in any way
" the clauses mentioned in their contracts of concession:
" that which being duly considered, it may please your
" honors to authorise the petitioner to re-unite to his domain
" the said farms, to dispose of the same as he may think fit,
" in observing the formalities required in such cases."

This is the final judgment rendered upon that petition, on the first of October 1785. (1)

" Be it known that taking into consideration the or-
" dinance of the 7th August 1784 rendered by us upon the
" petition presented by Simon Sanguinet, Esquire, seignior
" and proprietor of the seigniory of Lasalle, stating that se-
" veral farms in the said seigniory have been conceded,
" namely to Pierre Poissant &c., &c.,.... upon the clauses,
" charges, and conditions of holding hearth and home upon
" the said farms and that the said grantees have not to the
" present time fulfilled their obligations, our said ordinance
" declaring that in default by the said grantees to hold
" hearth and home upon the said farms within the delay
" of one year, for all prefixion, counting from the day of the
" publication of the said ordinance, we should proceed to
" the final reunion of the said lands to the domain of the
" said seigniory upon the certificate of Messrs. the Rectors
" (*curés*) and captains of militia of the Parish of the said
" place, that the said grantees do not hold hearth and home
" upon the said lands, likewise the certificates of François
" Glind, public crier, of the 30th August that he has published
" the above mentioned ordinance for three consecutive Sun-
" days at the church door immediately after divine service,
" the certificates of sieur AlbertDupuis, c aptain of militia
" of the same place and that of Mr. Lalanne Noty of the twenty

(1) Present judges John Fraser and Hertel de Rouville.

" eighth of the said month, stating that the grantees named " in the above mentioned ordinance do not hold hearth and " home upon the said lands, with the exception of Julien " Vachereau and Antoine Daigneau ; considering also the " *arrêt* of the King's council of State of the sixth of July 1711 " upon the subject of reunions, the whole duly considered, " the Court after having deliberated, has divested the par- " ties above named of their right of property in the said " farms conceded to them in the said seigniory, with the " exception of the said Julien Vachereau and Antoine Dai- " gneau who have obeyed our said ordinance ; ordains that " the said farms be and remain re-united to the domain " thereof to be by the said Simon Sanguinet, seignior of " the said place of Lasalle conceded to whom and in " the manner he may deem fit : ordering &c."

X. At Montreal : James Cuthbert, seignior of Berthier, plaintiff against François Barril, senior, and François Barril, junior. Below is the judgment of the 27th August 1790 which was appealed from. As the two decisions are *motivées*, I think it important to give them at length, without, for that raison, approving the whole of the motives. That of the court of appeals makes known the opinion of the Chief Justice, M. Smith, upon the *arrêts* of 1711 and upon the extent of the jurisdiction of the court of common pleas. The judgment of the latter tribunal is in these terms : (1)

" The court, having considered its preparatory judgment " of the 24th March 1787, the different certificates of publi- " cations thereof afterwards, and particularly that of Pierre " Martin dit Pelland and Louis Vadnay, captains of militia " bearing date the 16th October 1788,..... and the " depositions of the witnesses, the whole duly considered " and examined, is of opinion :

(1) Present : Judges, John Fraser, H. de Rouville, P. Panet.

1o. " That the preparatory judgment and above dated " has not divested the defendants of the farms conceded to " them, altho' they were thereby compelled to hold hearth " and home upon the said farms within a year and a day " of the publication of the said judgment, the pain of for- " feiture being comminatory and which could not be pro- " nounced until a second definitive judgment.

2o. " That the plaintiff having neglected to take " legal proceedings against the defendants at the " expiration of the year and a day granted to them by the " said judgment, and having been silent for more than two " years, during which time the defendants have made ame- " liorations, constructed small houses and have maintained " the public roads at their own cost and charges, it would " be unjust that the plaintiff should have the benefit of their " labors, through his negligence :

3o. " That finally the defendants having paid the agent " of the plaintiff his seigniorial rents for the year 1787, sub- " sequent to the preparatory judgment of this court, we must " thence conclude that the plaintiff looked upon them as " true proprietors of the said lands and was willing to suffer " them, (*leur donner souffrance*).

" From these considerations the court dismisses the " plaintiff's demand to reunite the farms in question to the " domain; in so doing, maintains the defendants in the " enjoyment and property of the said farms, upon which " they shall continue to hold hearth and home. And in as " much as these said parties are respectively in the wrong, " there having been negligence on both sides, the court " orders that each party pay his own costs and that those of " the prothonotary's office be paid, each for the one half by " the plaintiff and the defendants."

Below is the judgment in appeal, preceded by the rea-

sons given by the Chief Justice, M. Smith, (1) and pronounced on 2nd April 1792, in the English language :

" The appellant was plaintiff below. The object of his " action was the re-acquisition of the right and possession of " two farms of his seigniory upon the charge of a want of oc- " cupation and cultivation by the defendants as his tenants. " The question before the common pleas was whether the " plaintiff had right to such reacquisition. The sentence " below was that he had not. If he had such right, it stands " entirely upon an edict of the French King, of 6th July 1711.

" Without the provision made by that edict, the seigniors, " remedy on the tenants, failure in cens, rents or covenants, " was by an action against him or by *saisie censuelle.*

" Neither of these two modes of relief was pursued and " the reason is plain because both had results short of the " plaintiff's views, of being not only paid for the rent in arrear " but to have power to regrant the farms to other tenants. " When France gave Canada to a company in 1628, it was for " an *exclusive* commerce, or the monopoly of the trade of the " new discovered Country. The company had no tittle to " the soil until 1642.

" The idea of planting the country for a dominion and " an addition to the national force did not become a serious " object, till after the Crown was reseized, by the surrender " of the company in 1663.

" The seigniories were numerous by 1672, but the actual " settlements being inadequate to their extent, the Crown " took measures to compel to correspondent cultivation. There " are divers edicts and laws for this purpose of the compul-

(1) Present : His Excellency Lieutenant Governor Alured Clark, president ; the honorable William Smith, Chief-Justice, M. Finlay, M. Baby, M. de Longueuil.

" sory course devised, was a reassumption of the granted but " unsettled seigniories, or a portion of them to the royal do- " main :

" The edicts and royal declarations and *arrêts* of the " council of state, to effect this annihilation of titles are of " the 4th June 1672, 4th June 1675, 9th May 1679, 6th June " (July) 1711, 17th July 1743 and 1st October 1747. These " laws to be just suppose the seignior in fault, for the non-set- " tlement of the estate granted to him, and that the seigniors " had refused to make leases or sub-grants. On compel- " ling the land-lord to people his estate or forfeit his right to " the unsettled portions, the French law-giver could not refuse " the seignior a like remedy against his lessees, for the neglect " of the settlement of the demised farms, and this is the " origin of the 2nd edict of the 6th July 1711. The conces- " sions in desert are to be reunited to the seignior's domain.

" According to the laws of the country before the conquest, " to wit, the *arrêts* of 6th July 1711 and of March 1732, every " tenant not commorant upon his concession and neglecting " to cultivate it for a year, forfeited his lease and by the edict " the cognisance of the default and the effectuating the reu- " nion, was committed at first to Begon, the Intendant of the " day, and was exercised by him and his successors Dupuy, " Hocquart and Bigot, to the time of the conquest in 1760. " The patents had been vacated before by Begon's predeces- " sors Raudot, Beauharnois, De Champigny, Demeules and " Duchesneau, up to Talon the Intendant at issuing the edict " of 1672. (1)

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(1) List of the Intendants in Canada, according to the date of their appointment.

1. M. Robert 1663. He did not come to Canada.
2. Talon, commission of the 23rd March 1665.
3. M. de Bouteroue, com. of the 8th April 1668.

" What was law at the conquest, is law now, in all cases compatible with the sovereignty of the conqueror and not revoked by his authority, or the authority of parliament or by the province ordinances authorized thereby.

" The Chief court for securing property and civil rights in this province is the common pleas ; what is the extent of its cognisance is the question ? The whole powers vested in the French Intendant it certainly has not, for he could appoint to offices, make laws of police and levy taxes, and represented the Sovereign in his double character of maker and executor of the laws. To attribute to the common pleas such an extent of powers would therefore be absurd and the position as untenable , that the common pleas might in no case exercise those branches of his jurisdiction as a judge that were requisite for the security of the property and

4. M. Talon, returned to Canada in 1670.
5. M. Duchesneau, commission 5th June 1675.
6. M. de Meulles, " 1 May 1682.
7. M. de Champigny, " 24 April 1686.
8. M. de Beauharnois, " 1 April 1702.
9. M. Raudot, sr., " 1 Jan. 1705.
10. M. Raudot, jr., " 1 " "

The latter was thus named to fulfil the duties of his father in " his absence, sickness or other legitimate preventative, even in his default."

11. M. Begon, commission 31st March 1710.
12. M. Chazel, he was lost on the voyage coming to Canada, [Garneau, t. 2, p. 369.]
13. M. Dupuy, commission of the 23rd November 1725.
14. M. Hocquart 21th February 1731. Although M. Garneau makes him arrive in Canada in 1729, v. 2, p. 380. His commission describes him as being already " commissary general of the marine, commander (*ordonnateur*) in Canada."
15. M. Bigot, commission of the 1st January 1748. He was the last Intendant.

civil rights of the subject, powers trusted wholly to no one court, but parcelled out amongst them; and with the share to the Intendant's court which gave a relief before him to be had *in no other court.*

" In reunions to the seigniorial domain, the Intendant had authority alone, but in the reunion of seigniories to the royal domain, the Governor's co-operation was necessary from the year 1676. (1)

" The decrees pronounced here in the controversies relating to the Churches and parsonage houses of the Parish of Machiche (5 November 1787,) and Nouvelle Beauce (5 January 1789) proceeded on the distinction just now suggested. The Court of common pleas most certainly cannot exercise the authority of the French Intendant in legislation, as in levies of money and the vindications of the magistratic authority, against the claims of the French Clergy, or of both the Gallican Crown and Church, against the encroachments of the see of Rome. The interposition of the common pleas for effectuating the ecclesiastical taxations afore mentioned were therefore unauthorized by the law as it stood at that time, and the decrees in appeal, were virtually confirmed by the late ordinance vesting the Governor with the authority the Intendant had exercised respecting the assessment of the Parishioners for Churches and presbyteres or parsonages houses and Glebes. This Court's admission therefore, and the power of the common pleas, over the reunions executable by the Intendant, will be in no degree repugnant to

(1) M. Garneau, can invoke M. Cugnet's extracts p. 51 : " Ordinance of M. Hocquart, *Intendant*, of the 22nd November 1729, Edits and Ord. in-8o. v. 2, p. 337, Ordinance of 7th Dec. 1729, of " Gilles Hocquart, counsellor of the King in his Councils, *Intendant* " of Justice, police and finances in new France."

2nd vol. " Seig. Doc. " p. 129. Ord : of M. Hocquart of the 14th October 1729.

the adjudications afore mentioned and the denial of it would leave the now british without the remedy granted to the French seigniors. The objection that the defendants below were not summoned to the court has no weight, that being cured by their actual appearance and defence. And tho' the common pleas had proceeded with more regularity, if the parties had been driven to written pleadings for a clear issue in fact, the ground of exception, on that account, is weak, both parties appearing to be apprised that the controversy turned upon the enquiry respecting the use made of the farms, and there being a mutual voluntary recourse to parol examinations upon the main point in controversy.

" The validity of the sentence of the common pleas, must therefore turn upon the incompetency of the plaintiff's proof to sustain the charge of forfeiture, and a consequent right to the reunion he claimed. If the proof was full, the sentence must be reversed and such judgment be pronounced here as ought to have been rendered below. If it fell short of what the law made necessary, the judgment must be confirmed. But if this Court is left at an uncertainty, as to the proof before the court below, we have no other course in dispensing Justice than to put the lower tribunal, in a condition to remove the doubts by a reversal of the present sentence and a remission of the cause.

" The leases the defendants held by are in 1765. The prosecution for non settlement in 1790. The commorancy and cultivation are not shewn to be older than 1788. If that is fact, the right to a reunion may have incurred above twenty years before, the term allowed for settlement expiring in 1766.

" Had the defendants explicitly confessed in the pleadings that the farms continued dereliet and in desert, for that period, the action had been fully maintained and judgment should have passed for the plaintiff; but such confession

there is not, and there being no certificate of the parson of the Parish and two capitains of the militia (which by the Edict was to suffice to drive the tenant to contrariant proof) to be found in the apostillas, the plaintiff who adduced but one witness cannot expect more than a remission of the cause.

" The presomption from the papers sent up, that such a certificate there was before the court below, and of the long dereliction of the facts, compels to such remission ; for as to the plaintiff's receipts of arrears of cens et rente for 1787, tho' they discharge from that debt they can't extinguish the distinct right to restitution for the default of settlement founded upon an express law, and that supported by the general policy of peopling the province and the justice of saving the landlord from *the loss* of his seigniory thro' the neglect of his tenants, whenever the Crown thought proper to insist upon the latch in the seigniory.

" These remarks made in conformity to the ordinance of 1787 will suffice to shew the main foundation of the decree in appeal, which is,

" That the parties by their Counsel being fully heard, it is by the consideration of this court adjudged that the sentence below be reversed, but without costs of appeal to either party ; and that the cause and proceedings be remitted, for such further proceeding in the common pleas, as law and Justice may require. (1)

(1) In the following extract of his Report of the 27th February 1794, already cited, Attorney General Monk alludes to this case :

" The Chief Court for securing the property and civil rights of the " subject is the court of common pleas. The whole powers vested in " the Intendant are not, certainly, transferred to that court ; for, the " Intendant could appoint to offices, make laws of police and levy taxes ; " but I am of opinion that the court of common pleas is vested with

The cause was a second time taken to the court of appeals, by the seignior whose action had been dismissed. The judgment was confirmed by the court of appeals on the 20th January 1796. (1) The reasons given by the court are these : " This is a penal action founded upon an *arrêt* of the 6th July 1711, which ordains..... " and as the cer- " tificates, produced in evidence, given by the captains of " militia bearing date the 16th October 1788 state only that " they found " personne tenant feu et lieu " on the place " in question ; and as the certificate given by the curé " bearing date the 10th October 1790, and likewise produ- " ced in evidence states only that none of his parishioners " " *tient feu et lieu*," on the premises, and neither of the " said certificates contains any averment respecting the cul- " tivation of the lands, nor state that they are holden " *sans* " *les mettre en valeur* " as by the *arrêt* is required. This " court is of opinion that the penalty by the said *arrêt* in- " flicted cannot be enforced on such defective evidence, " and that therefore the judgment of the Court below " to " débouter le demandeur et le condamner aux frais" " (whatever reasons have been assigned for the same) was " well founded and ought to be supported.

XI. At Montreal ; Court of King's Bench. The Hon. J. D. E. Lemoine de Longueuil, seignior of Soulanges, against Basile Dagenais ; judgment, 20th February 1796 :

" The Court.... considering that it is established by " the deposition of witnesses that the said defendant does

" those branches of his jurisdiction as a judge, which he held for the " security of the property and civil rights of the subject ; and this has " been lately adjudged in the Provincial Court of appeals, in the case " of *Cuthbert vs Bazil* " (Barril).

(1) Present : The Honorable M. Osgoode, Chief-Justice, president ; the Lord Bishop of Quebec, Frs. Baby, John Lees, John Young, Pierre Amable De Bonne.

" not hold hearth and home upon the land described in the " declaration, that there have been improvements hereto- " fore made thereon, but that it is not now actually made " productive and is entirely abandoned, orders that in de- " fault by the defendant or some one for him to make the " said farm productive and to hold hearth and home thereon " within the delay of one year to commence from the publi- " cation and advertisement of the present judgment at the " church door of the place where the above mentioned land " is situate, immediately after divine service, and upon " legal proof of such default the Court will proceed to the " final reunion of the said land to the domain of plaintiff's " seigniory."

The final judgment of reunion was pronounced on the 15th April 1797. (1)

XII. At Montreal: Court of King's Bench, Constant Cartier, plaintiff, against the Baroness de Longueuil, widow of David Alexander Grant, and others, defendants.

According to the allegations of the plaintiff's declaration, Mr. Grant employed as his agent or *prête-nom* Busby, one of the defendants, as well as the said Louis Honoré Joubert, to make sales of lands in his seigniory. When a farmer asked him a farm in concession, he at once passed a deed of concession to one of these two individuals, and the latter afterwards made a deed of sale to the farmer, who by these means, found himself obliged to pay sums of money to the seignior, to obtain the land he was desirous of having.

The plaintiff alleges that on the 12th May 1800, Mr. Grant had agreed to sell him a wild land (*en bois debout*) of 12 by

(1) Present, the chief justice [Monk] and justices Walker and Panet.

At the same time Mr. de Longueuil obtained four other judgments of reunion against Jacques Charlebois, Joseph Poirier dit Deloge, Charlotte Champenois, veuve Prieur, et Etienne Chatel.

28 arpents, subject to the charge of certain seigniorial rents consisting of "*one sol tournois*, money of France, for each arpent in superficies, "one half minot of merchantable wheat for "each twenty arpents in superficies, and three sols tournois "of *cens* for the said land.... and moreover for the price "and sum of 4400 livres old currency" on account of which sum the plaintiff had already paid the defendant Thomas Busby for the seignior, 1200 livres.

With a view to evade the *arrêts* of 1711 and 1732, Mr. Grant made a contrat of concession *à cens* of this land to his *prête-nom* Busby ostensible grantee, by deed of the 30th May 1800, before Chaboillez, notary, and on the 13th June following, Busby passes a deed of sale thereof to the plaintiff for the price of 4400 *livres*, acknowledging having already received 1200 livres on account. On the 6th March 1802, the plaintiff pays Mr. Grant the *lods et ventes* upon the purchase money, and on the 6th July 1804, he hands to Busby, for his seignior, the balance of the purchase namely 3200 livres, with interest from the 13th October 1800.

By his conclusions Mr. Cartier prayed that it be declared, 1o that Mr. Grant was obliged to concede the above mentioned farm and could not sell it upon pain of nullity of the deed of sale, of the restitution of the price, and of the reunion of the same *pleno jure* to His Majesty's domain; 2o that the said deed of the 30th May 1800 (deed of concession to Busby) was a simulated act, as well as the deed of sale of the 13th of June by Busby to plaintiff; 3o that Grant and Busby were bound to restore the sums of money thus paid by the plaintiff, and that the said land was reunited *pleno jure* to His Majesty's domain, upon the same conditions placed upon the other conceded lands in the said Barony of Longueuil - finally concluding that the defendants be condemned jointly and severally to restitute and pay to the plaintiff the said sum .... upon the condition that the

said plaintiff pay for the future to His Majesty's Receiver General in this province, or such other person as His Majesty may authorize to that effect, the same charges that are placed upon the other conceded lands in the said barony of Longueuil.

Cartier's action had been instituted in the month of May 1810. On the 5th June following, Mr. Bedard, the plaintiff's attorney, gives notice to "Stephen Sewell Esquire, His Majesty's Solicitor General for the province of Lower Canada " that he has brought an action against the defendants," in the result of which the Crown is interested, and " that on Friday the eighth day of June instant, the day of " the return of the said action before the said Court of " King's Bench, he shall make application to the judges of " the said Court, that the Crown officers be informed that " the said cause is pending in Court, to the end that they " may intervene and take such conclusions as they shall " think proper."

On the 8th June 1810, Cartier prays " that as the Crown " is interested in the result of this case, it may please the " Court to order that the Crown law officers be notified that " this case is actually pending in this Court, that they may " intervene, if they think proper, and take such conclusions " as they shall deem fit ;" upon this, it is ordered " that the " plaintiff take such means as he may be advised to notify " the Crown officers."

On the 9th October 1811, the defendants contest the action by a demurrer, *défense au fonds en droit*, and a general denegation, *défense au fonds en fait*. And on the 19th April 1813, after having heard the parties upon the first of these pleas, the Court decides against the defendants, and orders that the parties proceed to the proof (*enquête*) of the facts mentioned in plaintiff's declaration. (1)

(1) Present, Monk, chief justice, Ogden, Reid, Foucher, justices.

An interlocutory judgment of the 19th October 1814, orders that the *enquête* be fixed for the 2nd day of December then next, and permits the plaintiff to examine the defendants on *faits et articles.*

On the 1st February 1815, Cartier prays that the interrogatories (*faits et articles*) served upon three defendants be taken as acknowledged and confessed, by reason of their neglect in not appearing to answer the same. On their part, the defendants pretend that they cannot be held to answer to the interrogatories submitted to them, as these are *not pertinent* and illegal.

On the 10th April following, the Court declares the interrogatories to be pertinent and orders that the defendants be held to answer thereto the first day fixed for the examination of witnesses in vacation, without any further summons. (1)

An appeal is instituted by the defendants, from this last decision which is reversed by a judgment of the 30th July 1817. (2)

It is a question of the *pertinence* of the interrogatoires upon *Faits et Articles*, which is decided here, and not the right of action of the plaintiff. On the contrary this right of action, which could only be based upon the first *arrêt* of the 6th July 1711 and that of the 15th March 1732, is acknowledged in this case, expressly by the judgments of the court of Montreal, upon the demurrer and upon the obligation to answer to the Interrogatories upon *Faits et Articles* and, tacitly by the judgment of the court of appeals. Is it to be supposed that, if the two *arrêts* in question, had, at that time, ceased to be in force, either by desuetude or otherwise,

(1) Present, Monk, chief justice, Ogden, Reid, Foucher, justices.

(2) Present, Sewell, chief justice, and MM. Young, Irwine, Mure and Smith;

the Plaintiff would have been permitted to go on with his case? The idea of such a thing is a slander upon the judges of these two tribunals; because it would be an accusation of a culpable ignorance of the state of the law, and a still more culpable indifference, in the execution of their duties.

The law gave Cartier a right of action; for the success of his suit, he required, either a complete avowal of the facts by the adverse party, or a commencement of proof in writing. It appears that, under the circumstances, this commencement of proof could not be acquired by him but by means an examination of the defendants upon ***Faits and Articles.*** The court of Montreal, admitting the right of action, was consistent with itself, when it decided in favor of the examination upon ***Faits et Articles***, since it was one of the means, and even the only way, in the particular case, to assure the plaintiff of the benefit of a principle which it sanctioned. As much cannot be said of the court of appeals, which, by sending back the cause to the court of original jurisdiction, to continue the proceedings, admitted the same principle, the right of action, but which, at the same time, refused the application of the only efficient remedy. It is decisions of this kind which may have given cause to think that these tribunals, had refused or had abstained from making the application of the *arrêts* in question. (1)

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(1) I have reason to believe that at the same time, there were two other suits against the Baroness de Longueuil, similar to that of Cartier and which had the same result. One of these suits must have been that of Jean Terrien. Not being able to find the Record, I cannot give an analysis of them. After the judgment of the court of appeals it was impossible to carry on these contestations; since *the commencement of proof in writing* which was absolutely necessary, depended upon the examination of the defendants upon *Faits et Articles,* an examination which the Court of Appeals had refused.

XIII. At Quebec, Court of King's Bench; case of Dubois vs. Caldwell, of the same kind as the preceding one decided in 1820, mentioned p. 508 of the first volume of the "Revue de législation, etc.," p. 206 of the second volume and reported at length in the "Lower Canada Reports" in the case of Langlois vs Martel, v. 2, p. 44.

"This action, says the Court at Quebec, is founded "upon one of the clauses of the *arrêt* of 6th July 1711, which "declares that all seigniors, etc., etc. This law must be as- "similated to a penal statute, so that the plaintiff, to succeed, "finds himself comprised within the letter of the law. The "*arrêt* requires, in the first place, that the seignior be sum- "moned to concede at the ordinary rent in his seigniory, "and upon no other consideration, and the recourse which "it grants can only be taken advantage of in the case of a "refusal. As the declaration does not allege any such "summons nor such refusal, it is defective in an essential "point and the *défense en droit* must be maintained." The Court of Quebec must then have considered the first *arrêt* of 1711 as being in full force.

XIV. At Montreal: case of Sir John Johnson against John S. Hutchins, decided upon the 20th April 1818, and in appeal, on the 20th January 1821 and analysed in number 196 of my observations upon *Cens et rentes*. The seignior himself ackowledged that it was not permitted to sell seigniorial lands in a wild state. Several other causes, which I there cited, prove that the tribunals were far from regarding the *arrêts* of 1711 and 1732, as fallen in desuetude and having ceased to have the force of law; among others, the cases of Cuvillier against Stanley and Burton opposant; McCallum against Grey; Guichaud against Jones.

XV. At Quebec, Court of King's Bench: Bertrand, seignior of Isle-Verte against Rouleau, curator; judgment

of the 20th April 1827, reuniting to the domain of the seignior.

XVI. At Quebec; Court of Queen's Bench (1) Mrs. M. R. Eckart, seignioress of St. Charles d'Aubin de l'Isle, against Gaspard Veilleux ; judgment of the 21st May 1744, reuniting to the domain of that seigniory. (2)

XVII. Here follows an analysis of the facts and arguments in the two cases mentioned *in notis* under the number 341.

The first is that of Lavoie, jr., plaintiff, against the Baroness de Longueuil, defendant, returned in June 1818. According to the allegations of the declaration :

1o. The defendant was bound: " as well by the deed " of concession of the Barony of Longueuil, as by the law " in force in this province, to concede to the inhabitants " of this country, upon their demand to that effect, the " lands ungranted and in a wild state..... upon a rent- " charge, and upon the same terms and conditions as the " other lands which have been granted in the said Barony, " without being entitled to ask any sum of money for con- " sideration of such grant or concession, on pain of being " deprived of all right of property in the lots of land of " which the grant or concession is so demanded."

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(1) Present, the honorable Justices Panet and Bedard.

(2) Since these notes were written, I have had the opportunity of seeing judgments of reunion to the domain of seigniors in several other cases, among others the following :

1780, 16th March. Geneviève Sicard, veuve Duchény, " proprietor of fief Carufel" against Pierre Frelan and two other censitaires.

1780, 16th March. Joseph Neveu, seignior of Dautray and Lanoraie against Nicolas Beaubien.

1780, 15th June. The Revd. Jésuit Fathers, seigniors of Laprairie de la Magdelaine against Jérome Chapuis dit Dauphiné and two other censitaires.

2o. In May 1815, there was a certain lot of land in the said Barony, in a place indicated, of 90 by 28 arpents in a wild state and unconceded.

3o. The Plaintiff and twenty other inhabitants " being " desirous of establishing themselves thereon and making " the same productive, according to law," had, in the said month of May 1815, demanded from the agent of the defendant, the said lot of land in concession, at a rent charge, upon the same terms and conditions as the other lots of land had been granted in the Barony of Longueuil," the said plaintiff specially describing the part of the lot he was desirous of obtaining under these conditions, namely, 4 by 28 arpents.

But the agent refused to make this concession.

4o. On the 5th August 1815, the plaintiff had proceeded, accompanied by two *notaries*, to the manor house of the defendant, and had duly notified her that, in the month of may preceding, he had made a demand of the concession which interested him, to M. Busby, and that the latter had refused to give it. " In consequence whereof he the plain- " tiff then and there (to wit at the said manor house on the " 5th August 1815) in the presence of the said *notaries*, in " speaking to Charles Grant, Esquire, son of the defendant, " in her absence, had prayed, summoned and required the " said defendant to concede to him the said lot of land " above described, and containing 4 by 28 arpents, at a rent " charge and upon the same terms and conditions as the " other conceded lands in the said Barony of Longueuil " are subject to, notifying her, that in default of her so do- " ing, he the plaintiff protested against her, for all such " costs and damages as he might suffer, and that he would " take proceedings in law, to obtain the said extent of " land, in concession, at a rent charge, and upon the same

" terms and conditions as the other conceded lands in the " said Barony of Longueuil are subject to."

The defendant had refused to make him the concession thus demanded.

5o.—The plaintiff, believing in good faith, that by means of his demand, by him made from the said Thomas Busby, of the said lot of land in concession, he had a vested right, by the law, to the said lot of land, had entered into possession thereof, in the month of May 1815, had cleared the front road, in conformity to the *procès-verbal* of the Grand Voyer, as well as a part of the said farm.

6th.—In February 1816, the defendant had prosecuted for the recovery of the land (*en complainte et réintégrande*); and that by a judgment of the 17th April 1817, he had been condemned to abandon the said lot, and to pay to the seigniores, two pounds currency for costs and damages.

7o.—On the 13th June following, the plaintiff, in obedience to the judgment, a copy of which had been notified to him, only on the 31st May preceding, had abandoned the possession of the above-mentioned land.

8o.—The next day, namely, on the 14th June 1817, the plaintiff had notified the defendant, by the ministry of Mtre. Doucet, and two witnesses, that in obedience to the judgment, he had abandoned the said lot, and that he was ready to pay the amount of the condemnation money laid against him, as well in principal as costs, if the defendant would inform him the amount thereof, which nevertheless she had refused to do.

9o. On the 7th April 1818, he had paid defendant's attorney £10 on account of the judgment and had always been ready to pay the balance.

10o.—Further, on the 14th day of June 1817, the plaintiff had in the presence of the notary Doucet and two witnesses, " prayed, required, summoned and notified anew, the said defendant, to concede to him at a rent-charge, and " upon the same terms and conditions as those upon which " the other conceded lands in the said Barony of Longueuil " are granted, the said lot of land which he had demanded " in concession, the said fifth day of August 1815, by notifying her, that in default of her so doing he would take " such legal proceedings to obtain it, as authorized by law," which the defendant had again refused.

11o.—In consequence of the facts above mentioned the plaintiff alleged that he was well founded in suing the defendant and in demanding that she be condemned to concede the said lot of land to him, upon the penalty imposed by law, and moreover, to pay him £100 for his damages.

12o. Conclusion. That the defendant be condemned to *concede* to the plaintiff, the said lot of land, " at a rent-" charge upon the same terms and conditions as the other " conceded lands in the said Barony of Longueuil are granted and to execute in favor of the plaintiff a good title of " the concession thereof and before a notary, within the de-" lay of fifteen days, and on default of her so conceding the " said lot of land to the said Plaintiff as above mentioned " and in a proper form, and before notary within the said " delay, the judgment to be rendered by the Court, be held " as a good deed of concession of the said lot of land to the " plaintiff, upon the condition, that the plaintiff pay to His " Majesty's receiver general, in this province, the same rights " and dues as are paid by the grantees of the other lands " conceded in the said Barony of Longueuil; to the exclu-" sion of the defendant, her heirs and assigns, who shall " have no claim of any kind whatsoever upon the same, " and finally, that the defendant do pay the said sum of £100 " to the plaintiff as damages....

Mr. James Stuart (1) pleading for the defendant filed a plea to the jurisdiction *exception déclinatoire*, in these words :

" The said defendant for *exception déclinatoire* to the " jurisdiction of this Court saith that this Court cannot and " ought not to take cognizance of the matters the subject " of the said action of the said Joseph Lavoie, in as much " as that is not of the cognizance nor of the jurisdiction of " this Court and that it cannot render any judgment on that " behalf."

On the 10th April 1820, (2) " the Court after having " heard the parties, by their attorneys, upon the *exception* " *déclinatoire* of the defendant, to the jurisdiction of this " Court, dismisses the said exception with costs." (3)

(1) Sir James Stuart, afterwards chief justice of the Court of King's Bench, and who died in the year 1853.

(2) Present, justices Reid and Foucher.

(3) The following are the grounds of the decision, as given by Mr. justice Reid.

The Defendant pleaded to the Jurisdiction of the Court that the demand in question was not within their cognizance.

Under this plea Mr. Stuart for the defendant contended that the *arrêt* of 1711 on which the action was founded had become a dead letter and could not now be executed as the officers who were authorized to do so under the French Government no longer exist. That the question here involves two points, first a judicial authority to ascertain the default or refusal of the seignior and the sufficiency or insufficiency of his reasons for such refusal, and secondly, an executive power on the part of the Crown to make the grant demanded upon such default of the seignior; on this account the above *arrêt* united the judicial and executive power of the Crown by authorizing the " Gouverneur Lieutenant Général et l'Intendant du dit pays" to hear, determine and make all such grants, erecting for this purpose a special Jurisdiction over all such matters, out of the usual and common course of proceeding before the courts of ordinary Jurisdiction. That this court however far as it may

On the 5th June 1820, Mr. Sewell appeared for the de-

conceive itself competent to determine upon the validity of the excuse to be offered by the defendant in this cause, yet certainly are vested with no power to make a grant to the plaintiff in the name of the Crown, which is the principle object of the remedy sought for by the plaintiff in this action.

Bedard, for the plaintiff, contended that this court possessed all the authority at least the Judicial authority, which were possessed by the Governor and Intendant, under the French Government. By the 2d sec. of the Judicature Act, all powers in regard of determining and adjudging upon civil rights, is vested in the Judges of the Court of King's Bench. That the object demanded by the present action is a civil right to which the Plaintiff is entitled by the laws of the Country and it would be a failure of Justice if there existed no means to enforce this right ; that before the existence of the *arrêt* of 1711 the habitants had a right to apply to his Majesty's Courts in Canada, to obtain a concession from the seignior in case he should wrongfully withhold it, because the seignior held his lands from the Crown, upon this express condition of making concessions and grants to the *censitaire*. The object of this action is not to obtain a grant from the Crown, nor from the Court in the name of the Crown, but to divest the defendant of her right over the lot of land in question and that the same be held by the plaintiff accountable to the Crown for all the rights and profits that may become due thereon, and this the court has the power to adjudge under the Judicature Act.

By the Court; the first point to be considered is whether the power given by the King by the *arrêt* of 1711 was judicial or was merely an authority emanating from the Sovereign as the *seigneur suzerain*. The words of this *arrêt* would imply the latter meaning and construction, as it is thereby directed that on the refusal of the seignior to grant lands to the tenants, they would apply to the " Gouverneur et Lieutenant Général et l'Intendant du dit pays, auxquels Sa Majesté ordonne de concéder aux dits habitants les terres par eux demandées" and which seems to contemplate no course of judicial proceeding but contains the mandate of the Sovereign to his servants to execute his will in this respect. But if we consider the more explicit and clear terms and dispositions of the " Declaration du Roi concernant les con-

fendant, in the place of Mr. Stuart; and on the 12th of the

cessions dans les colonies," of the 17 July 1743, we there find a similar authority vested in the "Gouverneur, et Lieutenant-Général et l'Intendant, but here they are to proceed as judges under certain forms, to hear the contestation before them, and to adjudge thereon, and from their judgment an appeal was given to the Superior Council.

The Jurisdiction here given was therefore a Jurisdiction *extraordinaire*, as being for a particular purpose and distinguished from that attributed to the ordinary Courts of the Country. This Jurisdiction was erected by Sovereign authority and was exercised by officiers named and appointed by the Crown; it was therefore a part of the *Justice Royale* which prevailed in the country and as such this Court is vested with the authority it exercised, under the Judicature Act 34th Geo. III. ch. 1 sec. 8, by which it is enacted "That the Courts "of King's Bench shall respectively in the superior terms aforesaid "have full power and Jurisdiction and be competent to hear and deter- "mine all plaints, suits and demands of what nature soever which "might have been heard and determined in the courts of *Prévoté*, "*Justice Royale*, *Intendant*, or Superior Council under the Govern- "ment of the Province, prior to the year 1759, touching rights, reme- "dies and actions of a civil nature, and which are not specially provided "for by the laws and ordinances of this province since the year 1759." We have therefore only to be satisfied that the court erected by the King of France in this Province under the Declaration of 12th July 1743, could be considered as forming a part of the "*Justice Royale*," to be convinced that the Courts of King's Bench under this Statute can hold and exercise the Jurisdiction attributed to the Special Court.

All justice emanates from the Sovereign and it is his right and his duty to administer it to his subjects, but as he cannot do this in person he has delegated his authority in this respect to certain persons and divided it among them in such manner as to answer this purpose. (1)

This division of judicial authority was made into three branches; 1st the Ecclesiastical; 2d the *Seigneurial*, and 3rd the *Royale*.

(1) Pigeau, 85.

Fer. Dic. vo. *Justice and Jurisdiction*.

Actes de notoriété p. 228, note.

same month, he files, 1o. a demurrer (*défense en droit,*) 2o.

1. " Ecclésiastique, consiste dans le pouvoir de vuider par la voie " judiciaire, les différends (purs personnels) entre Ecclésiastiques. (1)

2. " La Seigneuriale : la justice exercée par les seigneurs émane " aussi du Roi, qui la leur a concédée, ou tacitement en gardant le " silence sur l'arrogation qu'ils s'en sont faite, ou expressément par " une concession. (2) This is subdivided into *Haute* et *Moyenne* et " *Basse*.

3. " Royale, outre que la justice royale est supérieure aux deux " autres que l'on vient de voir, elle est infiniment plus étendue, en ce " que les Rois ont réservé à leurs officiers la connaissance de nombre " d'affaires. (3)

" Les juges royaux sont des officiers en titre pourvus par le Roi pour " rendre la justice à ses sujets dans l'étendue de leur ressort (4).... " En un mot, tous les tribunaux établis par le Roi sont composés de " juges royaux.

This jurisdiction royale is divided into *ordinaire* and *extraordinaire* (5).

The *jurisdiction royale ordinaire* took cognisance of all kinds of matters, excepting such as a particular jurisdiction established, such as " les juges des seigneurs, les Prévôts et Chatelains, les baillifs et " Sénéchaux, les Présidiaux &c. (6)

The *Jurisdiction Royale extraordinaire* was of a more special and limited nature ; the Judges thereof " ne peuvent juger que certaines " matières et connaitre de certains crimes, pour lesquels ils ont une at- " tribution spéciale. Tels sont les prévots des maréchaux, les lieute- " nants criminels de robe courte, les juges des élections, des greniers à

(1) Couchot, Praticien Univ : 1 vol. p. 8 and seq.
(2) Pigeau, 84.
(3) Pigeau 86.
(4) Rép. vo. Juges, p. 588.
(5) Denisart ; vo. Juges, nos. 7 et 8. Rép. vo. Juges. p. 589.
(6) Denizard vo. Juges nos. 9 et 10.

a general denegation (*défense en fait*) 3o. an exception, alleging that at the time of the action, and for *thirty years* previously, the lot of land in question was not the property of the defendant, but that of divers *censitaires* of the Barony of Longueuil to whom it had been heretofore legally conceded by the seignior; 4o. another exception, alleging that at the time of the action, and for more than *four* years previously, the said lot of land was not the property of the defendant, but that of divers *censitaires* of the Barony, to whom it had been then promised in concession, and to whom it had since been, to wit on the 24th July 1817, legally conceded; 5o. finally a third exception, alleging that at the time of the different pretended demands made by the plaintiff to the defendant to concede to him the said lot of land, and even for a long time before, there were no more unconceded lands left in the Barony, than were required for her private domain and for her own proper use, and that she could not be compelled to concede to him any part thereof.

To one of these exceptions, the plaintiff replied that the said lot of land was in a wild state, and formed part of the unconceded lands, on the 5th August 1815, the day upon

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" sel, des monnoies, les intendants des provinces, les bureaux de finan-
" ces, les eaux et forêts, les amirautés, les tables de marbre, les con-
" seils, les chambres des comptes, la cour des aides et des monnoies.

From the above authorities it is evident that the Jurisdiction attributed to the " Gouverneur et Lieutenant-Général et l'Intendant" was of Royal appointment and of that description called *Justice Royale extraordinaire* from the limited and special authority granted to them, and that this Jurisdiction being a part of the *Justice Royale* referred to by the above Statute, the judges of the Courts of King's Bench have now the right to exercise the same.

The Plea to the Jurisdiction in this case must therefore be dismissed with costs.

which the demand to concede it to him was made to the defendant, also on the 19th April 1817, the date of the judgment rendered against him upon the demand of the seigniores to recover the possession of the property, and on the 14th June 1817, the day upon which he had again demanded the concession of the said lot from the defendant, denying that it had been conceded before the fourteenth day of June 1817, and that the defendant could not now be permitted to allege, in contradiction to the judgment of the 19th April 1817, that the said lot of land was conceded before that day.

The answer to the second exception is, in substance, that any concession of the said lot of land made by the defendant since the 14th June 1817, was null, that his action was not the less well founded, having by his summons of the 5th August 1815 and 14th June 1817 acquired a right to the concession of the said lot; that the pretended deeds of concession of the 24th July 1817 were null and should be so declared by the Court, because they had been passed by collusion, and with the sole view to defraud the plaintiff and the inhabitants who had demanded deeds of concession of the lands described in these pretended deeds, of their just rights.

In conclusion the plaintiff said that the defendant was debarred from pleading his last exception, 1o. because the defendant pretending, by her first exceptions, that she had conceded the said lot of land, could not be allowed to plead that she had the right to retain the same as part of her domain, 2o. because she could not under the pretext of retaining the said lot of land as being part of her domain, refuse to concede to the plaintiff upon the demand made to her, 3o. because finally she had, independently of the said lot of land, considerable domains and of a much larger extent than she had a right, by law, to reserve for herself, and

that moreover the said lot of land had been set out for conceding.

Upon plaintiff's motion of the 19th February 1821, the cause is fixed for *enquête*, for the 5th March following.

We find, in the registers of the Court, an interlocutory dated the next day, namely the 20th February 1821, rendered by *consent of parties*, which orders that, by two surveyors who are named, " it shall be proceeded to view, visit and " measure on all sides the extent of the lot of land demand- " ed in concession by the plaintiff from the defendant and " described in the said declaration.... to ascertain at what " distance from the River Richelieu is the line which bounds " the said quantity of land demanded in concession on the " south west, by measuring this distance, as well upon the " seigniorial line as upon a parallel line and drawn at " twenty eight arpents to the north east of the same, and by " making the *relevé* of the sinuosities of the said river be- " tween these two parallels.... to look for and establish " where is situated the said place called *le petit détroit de* " *St. Jean* and what its situation is relatively to the " point called *pointe à la Mule*, moreover to establish *if* " *any part of the said extent of land demanded in concession* " *was conceded before the 5th of August* 1815, what part " was thus conceded, if any have been conceded, and to " whom, and mentioning the deeds of concession, *procès* " *verbaux* of *bornage*, and other titles which may be brought " before them, the situation of the old concessions, the " rhomb lines which they must take and the names of the " old grantees and their assigns up to this day...."

The sickness of one of the surveyors at first delayed the execution of this interlocutory judgment, and afterwards occasioned the appointment of another. Finally, on the 6th February 1822, by consent of parties, the action is *discontinued* without costs.

XVIII. This is the second action mentioned in the note under number 341.

It was an action brought by Jérome Tremblay, one of the twenty one inhabitants of whom mention is made in the preceding cause, against the Baroness of Longueuil and Mr. Benjamin Holmes, before the Court of King's Bench, at Montreal, at the superior term held in the month of June 1824.

The grounds, urged by the plaintiff in his declaration, were, in substance, the same as those invoked by Lavoie; and further, that the defendant Holmes, he alleged, notwithstanding his knowledge of all the facts and especially of the *demande* made by the plaintiff from the defendant, of his right acquired in consequence of the refusal of the defendant to concede, and of the forfeiture which this refusal caused her " had asked the said lot of land and about two " hundred and twenty four arpents more land, in superficies " joining thereto from the defendant,in concession,promising " and obliging himself to pay, or giving to understand that " he would pay to the defendant, or to other persons for the " defendant, a sum of about two hundred pounds currency, " for, and in consideration of, or upon the occasion of the " said land above described and of the 224 arpents of land " in superficies." That to the prejudice of plaintiff's rights, the defendant had, by the interposition of the honorable Charles William Grant, her son and agent, made the aforesaid concession to the said Benjamin Holmes, at a seigniorial rent charge, by deed passed before Doucet and colleague, notaries, on the 24th July 1817; and altho' it appeared, by that deed, that the concession to Holmes was made at a seigniorial rent simply, he the plaintiff was ready to prove " that the said deed of the 24th July 1817 had been passed " and signed by the said Charles William Grant, agent of " the said defendant, only under the verbal or written pro-

" mise of the said Benjamin Holmes, the defendant, or of " some other person on behalf of the said defendant, to " pay to the said defendant or other persons on behalf of the " said defendant, a sum exceeding £150, currency, that " the said Benjamin Holmes had promised and obliged " himself to pay for, and in consideration, or upon the oc- " casion...."

In conclusion Tremblay prayed that the deed of the 24th July 1817 be declared null, and that the defendant be condemned to make him the concession demanded.

Mrs. de Longueuil had filed a demurrer and a general denegation. The defendant Holmes had done the same thing.

After the hearing of the parties upon law, which took place on the 9th February 1825, the Court, composed of Chief justice Reid and justices Foucher and Pyke, rendered judgment on the 19th April 1825, dismissing the demurrer.

The plaintiff immediately inscribed upon the *rôle d'enquête*; he afterwards obtained permission to examine the defendants upon *faits et articles*.

On the 16th May 1825, Holmes appears in person, and objects " to the pertinency of the interrogatories upon *faits et articles* proposed to him by the plaintiff"; and on the 18th he files his objections in writing. He says, among other things, that several of the interrogatories tend to compromise his character, to touch his reputation, and to have him looked upon as guilty of the fraudulent acts set forth in plaintiff's declaration.

On the 20th June 1825, adjudging upon a motion made to that effect, by the plaintiff, the Court, composed of the same judges, declares the interrogatories upon *faits et arti-*

cles to be pertinent and admissible, and orders that the said Benjamin Holmes answer thereto in the manner he is required to do, on the 8th August following.

Holmes institutes an appeal from this judgment which on the 20th January 1826 is reversed, and the Court declares the 11th 13th 14th 15th 16th and 18th interrogatories to be inadmissible, and sends back the cause to the Court of original jurisdiction, that further proceeding may be therein had according to law and justice.

After a commencement of proof, the Court, upon the motion of Mr. Bedard, attorney of the plaintiff, on the 13th October 1826 permits him to *discontinue* the action, *the parties declaring that they have settled.*

ADDENDA.

Notes, p. 15 and 16.

Louis Hebert " head of the first family which has inhabited since the *year* 1600 up to this time." There is an error of date; but this error exists in the printed title of the concession. It has since been verified, by an examination of the register, that the said Hébert says, in his petition" that he is head of the first family " which has inhabited " since the year 1606" and not 1600. Hébert could not be in Quebec, before Champlain laid the foundation of the town in 1608. In his petition he undoubtedly speaks without distinction of L'Acadie as of Canada. It appears that he proceeded to L'Acadie in 1606 and did not come to Quebec until 1617 or 1618. We read the following with respect to him in the " Notes upon the registers of Notre Dame of Quebec by J. B. A. Ferland, ptre.," Quebec 1854, p. 6.

" He (Champlain) returned to France, the year following (1609) " to procure succours which he brought with him in 1610; and in 1612, " he was named the King's Lieutenant General and commandant for " the new colony. The settlement of Quebec was then composed of " but a few houses; and the few inhabitants to be found remained

" deprived of religious assistance. It was only in 1615 that four of " the Recollet fathers arrived, charged to attend to the spiritual wants " of the small colony, and to commence the laborious task of the mis- " sions to the Indians. Two years later, Louis Hébert brought his " family. In a petition, addressed to the Duke of Ventadour, Hébert " sets forth that he is the head of the first French family which has set- " tled in this country, since the commencement of the century, which " he has brought with all his means and property which he had in " Paris, having left his relations and friends to give a beginning to a " christian colony and settlement."

" Several Canadian families can justly claim this enterprising " man among their ancestors ; because the numerous posterity of his son " Guillaume Hébert, and of his daughter Guillemette, wife of Guillau- " me Couillard allied itself with a good number of families who " came, at a later date, to settle in the country. Louis Hebert ap- " pears to have been born in Paris where he had married Marie " Rollet. In 1606, he passed to L'Acadie ; and Lescarbot speaks of " him in the following terms, liv. IV : (1) " Poutrincourt caused a " piece of land to be cultivated to sow wheat with the help of our apo- " thecary, Louis Hébert, a man who, besides the experience he has in " his profession, takes great pleasure in the cultivation of the ground." " Having arrived in Quebec in 1617, he at once begun to cause the " land to be cleared upon which are the Cathedral, the Seminary and " that part of the Upper-Town, which extends from Sainte Famille as " far as the Hotel-Dieu ; he built a house and a mill, near that part of " St. Joseph Street, where the St. François et St. Flavien Streets " meet. These buildings seem to have been the first which were " erected upon the lot of land occupied as the Upper-Town. Louis " Hebert died, from the effects of a fall, sincerely regretted by all the " members of the growing colony, in the month of January of the year " 1627."

(1) Ed. of 1609, liv. 2, ch. 44, p. 602-3.

ERRATA.

Page 15, line 4, (of note,) in lieu of *fie*, read : *fief.*

18, line 22, in lieu of *seem*, read : *deem.*

26, line 17, in lieu of *fulfill*, read : *fulfil.*

29, line 10, in lieu of *impossed*, read : *imposed.*

30, line 8, in lieu of *several*, read : *a few.*

35, line 10, in lieu of *tittle*, read : *title.*

41, line 3, in lieu of *themselve*, read : *themselves.*

46, line 1, (of note,) in lieu of *analyse*, read : *analysis.*

47, line 7, in lieu of *setled*, read : *settled.*

53, line 2, (of note,) in lieu of *would have*, read : *had.*

64, line 14, in lieu of *sejourn*, read : *sojourn.*

82, line 13, in lieu of *arrable*, read : *arable.*

100, line 28, in lieu of *or*, read : *on.*

119, line 24, in lieu of *appeared me*, read : *appeared to me.*

120, line 4, in lieu of *which is*, read : *which it is.*

121, line 2, in lieu of *it is* 1708, read : *it is in* 1708.

149, line 10, in lieu of *to bo*, read : *to be.*

151, line 2, in lieu of *same*, read : *some.*

161, line 16, in lieu of *property*, read : *properly.*

171, line 21, in lieu of *compell*, read : *compel.*

183, line 32, in lieu of 1712, read : 1715

188, line 5, in lieu of *duty*, read : *duly*.

217, line 29, in lieu of *of each land of*, read : *of each land*.

221, line 21, in lieu of *cause*, read : *course*.

250, line 26, in lieu of *the had*, read : *they had*.

269, line 11, in lieu of *is seignior*, read : *his seignior*

300, line 4, in lieu of *was*, read : *has*.

304, line 35, in lieu of *neighbors, property*, read *neighbor's property*.

308, line 32, in lieu of *invest*, read : *invests*.

309, line 20, in lieu of *they*, read : *there*.

" line 22,, in lieu of *tenants*, read : *tenant*.

323, line 5, in lieu of *appeales*, read : *appeals*.

333, line 10, in lieu of *reproches*, read : *reproaches*.

346, line 32, in lieu of *pointing ont*, read : *pointing out*.

347, line 18, in lieu of *Fuyot*, read : *Guyot*.

351, line 16, in lieu of *lands*, read : *hands*.

395, line 11, after the words " no right acquired to a third party " add the following :

the King or his delegates are free to concede anew or not to concede the seigniory thus re-united to His Majesty's domain : it is the attorney general and not a private individual, who has the right to seek this re-union. In the second case, on the contrary, ***there is a right acquired to a third party*** ;

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