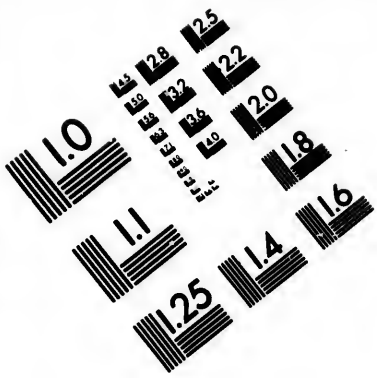

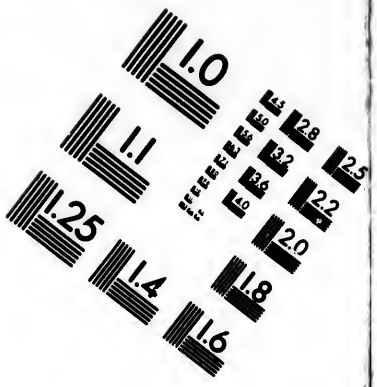

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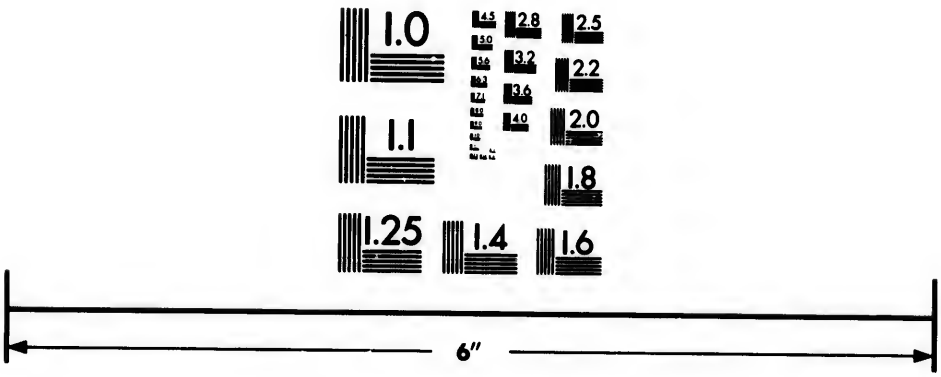

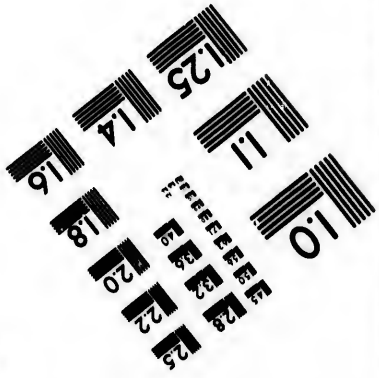

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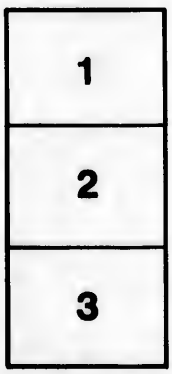

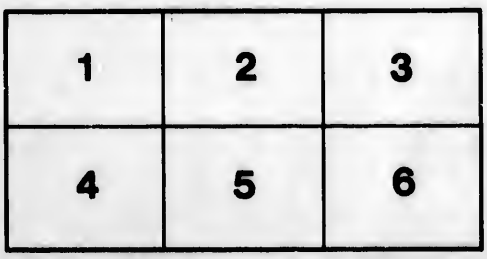

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REFUTATION

OF THE

CROWN OFFICERS

ON THE

RIGHT OF THE SEMINARY

OF

MONTREAL

TO THE

PROPERTY IN ITS POSSESSION.

MONTREAL:

PRINTED AT C. P. LEPROHON'S PRINTING OFFICE,
Notre-Dame Street, at the Sign of the Golden-Arm,

1840.

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REFUTATION

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OF THE

SEMINARY OF MONTREAL

TO THE PROPERTY IN ITS POSSESSION.

We have in a former Memoir, frequently spoken of the opinion of the Crown Officers, against the rights of the Seminary, and have raised a desire to know what that opinion is. There is even a species of good faith in making known to the public the arguments used by these Gentlemen in combating the right of the Seminary to the property in question. We are acquainted only with the opinion of Sir J. Mariot, in 1774, and that of the Crown Officers in 1789; but we know from the most authentic sources, that all, that others have been able to say on the subject, is to be found in the Memoir of 1789.

We shall begin with Sir J. Mariott.—All that we know of this Attorney General, is derived from a work intitled, "Plan of a code of Laws for the Province of Quebec." (London 1774.) Si· J.Mariot.

This plan consists in the Establishment of the English Laws in Canada, and destroying the Catholic Religion, thereby interdicting all communication with the Pope, all the Spiritual independence of the Church, all its right in the appointment of Bishops, and the principal part of the

Catholic Dogmas. But Parliament more generous and more faithful to the Capitulation and Treaty of Peace, passed the famous Quebec Act, which establishes the French **Laws, and the free exercice of the Roman Catholic Religion** in the Province.

In this work, Sir J. Mariot displays the most odious partiality against the Catholic Religion. After having spoken (page 136) of Purgatory, Sacramental Absolution, Episcopal Sentences and Papal Power, he adds, " these are sufficient " reasons why a system of this nature cannot safely be tole- " rated, as far as certain portions of its doctrines are concer- " ned. (p. 141.) A Bishop is necessary to uphold these Doc- " trines under the political power of the Court of France. " (page 175.) The Convents form the worst of Schools, " being nothing but a mass of bigotry, ignorance, malice " and hatred of the Civil power; it is a state contrary to " nature. The profession of Vows against marriage, or a " solemn obligation not to continue the human species, is " so far from being virtue or religion, that it is a crime against " the State, which it deprives of its subjects, and is produc- " tive of secret vices which are a disgrace to human na- " ture." It seems as if we heard the furious Luther speaking against the Vows which he had sacrilegiously violated. Again (page 235) be says, " The more fervent Roman " Catholics believe that those who approach the persons of " Protestants, living or dead, are condemned to perdition." It would be difficult to embody in so many words more calumny and fanaticism.

Let us see what he says of the Seminary of Montreal: and first with regard to its possessions. The Sulpicians (he says,

page 210) possess property worth eight thousand pounds Sterling. Yet the Attorney General Mazeres, in 1772, reckoned it only at four thousand; (additional papers printed at London in 1776, page 260) and immediately before the Conquest, the Seminary of Montreal received from the Government an annual aid of about £230 Sterling; a Memoir addressed to Governor Sir J. Murray in 1766, makes the Revenue only £1500; and in the Accounts of the Seminary approved by Sir R. Milnes, in 1800, the Revenue was estimated at only £3300 Sterling. So much for Sir J. Mariot's correctness. The property of Communities has always been exaggerated. Thus Sir John Shelburne, in his Letter of the 14th November 1767, to Lieutenant Governor Sir Guy Carleton, made the Revenue of the Jesuits amount to near £4000 (*Report of Committee printed by order of the British Parliament, in* 1812, *page* 472); and the official Report of Sir Robert S. Milnes in 1801, estimates them only at about £1300, (the property in the towns of Quebec and Montreal not included (*same work*, page 480) ; and on the 23rd of January 1799, His Majesty's Council sanctioned a Report which made a special reservation when the Revenue should amount to £2400, (page 481) that is to say, that at a time when the whole Revenue was doubled, it did not amount to one half of that which the Government had supposed the Jesuits to enjoy in 1767, (without however, pretending to any certain information.)

But Sir J. Mariot, who was commanded by His Majesty to draw up his said plan with regard to Canada, could not be ignorant of the information possessed by the Government at London, and the latter could not but be aware

of that furnished by the Seminary to Sir J. Murray in 1766; how then could he suppose that Revenue to be equal to eight thousand pounds Sterling, which the Seminary had stated at only £1500, in an authentic Memoir addressed to the Governor of the Province? That Revenue which Mr. Mazeres himself had only estimated at £4000, in a paper which could not have been unknown to Sir J. Mariot? It is not for us to qualify an inaccuracy so serious, in one so well acquainted with the facts. But why thus seek to exaggerate the value of our property? The motive is simple; it was done for the purpose of exciting the cupidity of the Government, and of obtaining a favorable reception for the reasons which were to sanction the spoliation.

After having spoken of their property, Sir J. Mariot brings forward a singular notion as to the nature of the Order of Sulpicians, drawn from his ideas of secular Communities. He pretends that the Archbishop of Paris had the control over the dependencies of the Sulpicians in Canada. (page 219.) It is nevertheless certain, that the Archbishop of Paris never had any authority over the Sulpicians as a body: that his authority extended solely to such establishments of the Order as were within his Diocese, and that even over them his authority was purely spiritual; that each establishment of the Sulpicians was in like manner subjected to the authority of the Bishop of the Diocese; that for this reason, the establishment at Montreal was subject, in spiritual matters, to the Bishop of Quebec, but was subject to no Bishop whatever in temporal matters; that neither the Seminary at Paris, nor that at Montreal,

was ever, as far as their property was concerned, subject to any Bishop whatever. But Sir J. Mariot found it to his account in placing the Seminary of Montreal under the control of the Archbishop of Paris, for the purpose of exciting the suspicions of the Government against it, and so despoiling it the more easily. And yet his error with regard to the nature of the Order of St. Sulpice, shows that he was unacquainted with this Ecclesiastical Body, and with the rights of its several Establishments, and of the members thereof, as also with regard to the property of the Order,—and was therefore only able to pronounce at random any opinion upon the cession made in 1764, which was an act to which the Members of the Order of St. Sulpice were the sole parties.

Yet (page 211,) he pronounces this opinion: "it is a great question whether this property has not fallen to Your Majesty, and the holders and possessors of it ought to keep it for such uses as it shall please Your Majesty to appoint. He gives the reason of this (page 216)—by the Ecclesiastical Law of France, no Congregation can alienate its property, nor can such Societies be divisible in such manner that one portion may transfer property to another.

At first these reasons do not appear to him to be quite conclusive, since he goes no further than to doubt, *it is a great question*; and since he is willing that the property should remain in the hands of its then possessors,—How strong must the reasons in favor of the Seminary have been, when they thus counterbalanced in the mind of Sir J. Mariot, his extreme zeal on behalf of the Crown, and his fanatical hatred against every thing Catholic?—His doubts then, are a triumph to the Seminary.—How weighty must have

been the reasons by which these rights were supported, when a man like Sir J. Mariot, at the same time that he expresses his doubt whether the property does not belong to the Crown, yet proposes to leave it in the hands of the Seminary!—And this too in a work in which no measure of policy is observed, and in which he frankly avows his wish to take from the Canadians, the Pope, the Bishop, their Dogmas and their Processions—in one word, their Religion.

He then gives his reasons more in detail; he cites authorities, and cites none but the Ecclesiastical Laws of France. It is well known that Sir J. Mariot was but slightly acquainted with those Laws;—because English Lawyers in general are not acquainted with them, (avowal of Justices Hay and Mazeres, cited in Parliament in 1774, British American Review, 29th January:)—and because he acknowledged this himself in his celebrated examination before Parliament in 1774, on the affairs of Canada.—His ignorance of French Law appears again from the strange answer which he gave on the subject of the *retrait lignager*.—He enounces the said Laws, anddoes not prove their existence; —his propositions are always unaccompanied by proof.—He enounces the said Laws, and he does not apply them in any way to the present question concerning the cession made by the Sulpicians to the Seminary of Montreal:—he does not show that this cession could not be made to co-proprietors:—that it could not be made even if it was merely a partition of property held in common, under all which circumstances it is demonstrated in our Memoir to be legal.—He himself confesses in his examination that his conclusions were not *positive;* how can mere unsupported opinions be cited.

But our cause is so strong, that we may boldly discuss the pretended principles which are opposed to us: they are in fact, all false, as general principles.

It is false that one portion of a Corporation cannot make a Donation to another; this was done every day by corporations without any interference on the part of the authorities; it was an Act of internal Government which concerned no third party, so long as the members of the corporation did not complain. Now in the present case no Sulpician has complained or even can complain. Those of Montreal cannot, for they have gained every thing:—nor those of France, for being foreigners they could retain nothing.

It is false that corporations cannot alienate their property,—they can do so in cases of necessity; now this necessity existed in order that the work might he performed and the property applied to accomplish that work; the reason is stated in the cession.—Alienations are made under the observance of certain formalities, which consist principally in their being authorized by the Church and State.—But in what manner could the Sulpicians be authorized by the King or the Church of France, to alienate property in Canada, a country in which neither of them had then any power whatever.—These formalities then having become impossible to the Sulpicians, they could not be required. Still less could those formalities which were established for the preservation of endowments, be required, when it was absolutely necessary that they should not be followed, if the endowment was to be preserved. To save one's property is the first law, and we do not, when it is in danger, consider too curiously the formalities according to which

it is saved.—An alienation was absolutely necessary, that is, it was necessary that the property should pass out of the hands of the Sulpicians in France, either voluntarily (as it did), or forcibly by confiscation.—The execution of the Law which forbade alienation became impossible, and the Law itself ceased from that moment to be binding.—Why are corporations forbidden to alienate?—It is that their property may be secured to them;but here the property was lost if it was not alienated, and the very principle on which alienation was otherwise forbidden, made alienation necessary.

Suppose we admit that alienation was forbidden: was there any alienation in the present instance?—We have proved (Memoir, pages 36, 37,) that there was none, because the Cession was made to co-proprietors; because it was only a partition of property held in common.—There was no alienation.—The cession being merely a declaration of the fact of the conquest. The conquest had made the Sulpicians of France Aliens, with regard to Canada, and therefore incapable of holding property there.—The Sulpicians of France therefore ceased to be co-proprietors, and the Sulpicians of Canada became the sole proprietors, instead of co-proprietors as they had therefore been; just as it happens when any of the members of a corporation die, or separate from it,—they are no longer co-proprietors, and those who remain become sole proprietors.—These ideas are simple and decisive, and no Crown Officer has ever even attempted to contest them.

The Sulpicians had a special right to alienate, because in cases of conquest property is preserved, and therefore

those who do not wish to become subjects of the conquering party, may sell their property:—because the 48th Article of the capitulation, authorized *absentees* to enjoy this right by Attorney, and *all persons* to sell their property, if Canada remained in the possession of England;—and the 34th and 35th Articles specially provided that Communities should have the same rights as individuals;—because if the Treaty only mentions *habitans*, it is because having become British subjects by the 41st Article of the capitulation, they required a special permission to cease to be subjects, and to sell their property and abandon their new Prince; whereas those who were not *habitans* required no authority to sell, nor to renounce a Prince whom they had not recognized;—because, as all confiscations are odious, they ought to be as few as possible, and therefore for the purpose of avoiding them, the word *habitant* ought to be construed in the most extensive sense, and as comprising all those who were present in Canada either as being represented by their property or bytheir Attornies;—because the sole end proposed, was that none should hold property in Canada except British subjects. Now this end was accomplished when those who remained in France sold their propery in Canada to British subjects;—because the Sulpicians were present as being represented by their co-proprietors, who by their presence preserved the rights of those who were absent;—because it is certain that many Frenchmen had property in Canada without residing there, and not one act of confiscation took place on the part of the Government;–this last fact,to which during seventy six years there has been no exception, shows the sense of the Treaty

to have been that every proprietor, even though not resident in the country, should retain the power of selling during the period of eighteen months from the date of the ratification, that is to say, at least from the conclusion of the Treaty, on the 10th February 1763, to the 10th August 1764. Now the cession bears date the 29th April 1764.

It is astonishing that all these reasons connected with the grand principle of the Law of Nations, should have escaped the penetration of the Crown Officers in 1789, andthat confining themselves to mere verbal puerilities, they should have given it as their opinion that foreigners could not make a donation, as if the ancient Inhabitants of Canada did not preserve all their rights until the consummation of the Conquest, that is to say, until the Treaty of Peace, and as far as their property was concerned, until the expiration of the time necessary for disposing of it (if no time was fixed) or until the time fixed by the Treaty itself.

It is asserted also, *that corporations cannot be divided;* a principle which leads to nothing; for if it be true, then the Sulpicians form one Corporation by which all the property of the Order is possessed through its several Establishments;as the ReligiousOrders hold property in Spain by their establishments inSpain,–in Flanders,by their Establishments in Flanders, &c. And this is so much the more evidently the case,because the existence of the severalEstablishments of the Orders, is real, and it only becomes real through its several Establishments, and therefore can only hold property through them. The principal is false; because the Abbot and the religious Brethren could separate from each other, and the parties interested were alone entitled to complain. The

application is false: the Sulpicians who did not separate themselves, but whom the conquest separated, cannot be made to bear a penalty for that which is not their act. The principle again is false as a general one,—because the law could effect this division. Now the Law did effect it with regard to the Sulpicians; the Law of Nations by the conquest, the Law of the Treaty which separated Canada from France, the Law concerning Aliens which made one portion of their body foreign to the other as far as property and dependence were concerned.—because conquests and the will of Sovereigns have frequently effected a similar division of Bodies possessing in different States,Establishments which are interdicted from communication with each other.

Again, it is asserted *that one portion of the Corporation so divided cannot transfer property to another;* this principle is also shown to be false by the division of property between Abbots and their religious Brethren who composed only one Corporation; and we have several times observed that the cession was a true partition. The application is false; because the divison of the Corporation being legal (as we have before shown) the transfer is made from one Corporation to another, and not from one portion of a Corporation to another; because the transfer is made, not by a portion of the Sulpicians, but by the whole body, represented by the Superiors of the Order; because this transfer is not made to a mere portion of a Corporation, but to a Corporation legally erected, which forms a portion of a Corporation as far as the Sulpicians are concerned, but is still a true Corporation complete in itself, by virtue of its having been erected into a Seminary;

because, as we have just shown, there was no alienation, and consequently no transfer; there was no transfer, because there can be no change of proprietors when a cession is made to co-proprietors; there is no transfer, because the conquest having destroyed the rights of those who became Aliens the Sulpicians of Montreal alone remained, and therefore the cession gave nothing, but only recognized what the conquest had effected.

For the rest, we have here only the opinion of one man in opposition to the cession alone; and that man, one who has not even glanced over the other triumphant reasons assigned in our Memoir.

However keenly the minute subtleties of the Law may be urged against us, we have answers to them of a nobler kind, and more worthy of the Government whose claims we combat, or rather whose honor we defend. Let the situation of the Sulpicians and the dignity of their conduct be remembered. They had the power of selling a large property, and of receiving its value; and with admirable generosity they prefer giving it to subjects of the King, and for the advancement of the work, and the advantage of the King's subjects: and His Majesty would confiscate this property,—and would confiscate it because the Sulpicians has performed an act so noble: that is to say, he would punish the most elevated disinterestedness by dispoiling his own subjects; and that on account of a defect of mere form which the King can so easily remedy! and for a defect of mere form (the want of Letters Patent) of which from the publicity of the cession the Government could not have been ignorant and of which it took no notice at first, when

the eighteen months given by the Treaty not being expired, the Sulpicians could, by selling the property, have repaired the mischief! and His Majesty would confiscate it now—when the property appears to be of so high a value! and he would confiscate it to the injury of those who have given this value to the property by forming establishments of every kind, Colleges, Mills, &c. valued at £40,000, created by means of privations of every sort! It is thus that with the petty subtlety of an Advocate, our enemies seek to cover the Government with shame, and the Sulpicians with glory.

To understand the full value of the reasons thus drawn from the lowest subtleties of the Bar, it is necessary to recollect the circumstances under which the Sulpicians were placed, and which are so faithfully depicted in the cession. They were charged with a work of importance to the cause of Religion in Canada, and to enable them to accomplish it, large property had been given to them. But the Sulpicians as a body, could not after the conquest, keep this property, which was necessary for the accomplishment of the work aforesaid; if they had done so it would have been confiscated. They could not sell it, for then they would have destroyed the very means of effecting the work entrusted to their zeal. There remained but one way of fulfilling the intentions of the founders, and that was to give the property to the Sulpicians of Montreal. By doing this the object of the foundation was accomplished, and the work was performed by the very persons who had theretofore performed it, by the only persons who could represent the body, to whom the work had been entrusted, and by men, who,

being subjects of the King, were capable of holding the property. Let us here take leave of the Law of detail which is brought against us. The cession was necessary and necessity is above all Law. It was made during the time of the conquest, which lasted until the Treaty of Peace was concluded, and with regard to property until the time allowed for disposing of it. But at an epoch of this nature which produces a change in the Government, and when the mixture of the subjects and of the Laws of the ancient and of the new Sovereign unsettles the whole jurisprudence of the country, the great rule to be followed is equity. And the Proclamation of the King of England in 1763, refers the Judges of Canada to the Laws of England, and to *equity*.—The Laws concerning the administration of property, whether they relate to persons holding in mortmain or others, were intended for ordinary seasons of Government, and were not, and cannot be applicable to the extraordinary occurrence of a conquest; and moreover the rule which forbids corporations to alienate their property no longer exists in such a case, as we have before shown. The Capitulation and the Treaty give the right of selling to all without exception, even to the Jesuits and Recollets who under the ordinary Laws possess nothing. But if in these extraordinary seasons, corporations may alienate, they may also acquire property, since the prohibition from acquiring is only a consequence of the prohibition from alienating; —it was necessary to prohibit purchasing from men who being unable to alienate, would have engrossed all the property of the country; and therefore whenever Corporations are permitted to alienate there no longer exists any

reason for prohibiting them from purchasing, and the prohibition against their purchasing ceases accordingly to be in force. During the time of the conquest, then the Sulpicians had the power of alienating, and the Seminary of Montreal that of acquiring property; more especially when it acquired it only from the corporation by which it was alienated, and the mass of property possessed by the corporation was not increased; and still more when the Seminary only acquired (if this can be called acquiring) from its own body, and property to which it had already a right; and still further again when it acquired property destined for a work which it had always performed, and which it alone, ought to, or indeed could, perform.

But waving for a moment the right conferred by the Conquest, we find that the Treaty authorizes the Corporation of the Sulpicians to alienate: but the Donation of 1663, and the Letters Patent of 1667, which confirm it in favor of the Ecclesiastics of St. Sulpice can only receive their execution in the Ecclesiastics of St. Sulpice at Montreal, who are alone capable of possessing the property given.—If then by the Treaty the Sulpicians become capable of alienating, they can, under the Donation and Letters Patent, only do so in favor of the Seminary of Montreal;—that is to say, the alienation, as well as the acquisition, or cession, are founded on the Treaty, the Donation and the Letters Patent.—But if the Donation be null, is the property to be confiscated on that account?—It is a principle that the property of a corporation belongs to the last members of it. Therefore the Eccle-

siastics of the Seminary of Montreal being members of the corporation of Sulpicians, the property of the corporation belongs to them;—after they are extinct only, can it be confiscated, or the crown become entitled to it.

Such,then,is the authority of Sir J.Mariot,the Officer of the Crown who first attacked us.--It is the authority of a man who respects neither the capitulation nor Treaties.It is the authority of a man full of fury and calumny against the Catholic Religion, and who pronounces an opinion affecting the fate of a Society of Priests; and of an establishment of the utmost importance to the support of a Religion which he abhors.—It is the authority of a man who, exaggerating enormously and knowingly the value of the property of the Sulpicians for the purpose of exciting the Government to take possession of it, is, by reason of his ignorance and of his evil disposition towards them, deserving of no confidence in what he advances for the purpose of despoilling them.—It is the authority of a man, who being unacquainted with the nature of the corporation of the Sulpicians and the rights of the members thereof to its property, is incapable of judging of an Act passed solely between members of that corporation. It is the authority of a man who cites against the rights of the Seminary, French Laws with which he publicly declares himself unacquainted; who enounces these Laws without giving any proof of their existence or shewing their application to the Sulpicians.—It is the authority of a man who advances principles which are false in themselves and falsely applied; principles founded on the Laws of detail which are not applicable to the extraordinary epoch of a Conquest—on Laws which His Majesty has not fol-

lowed—on Laws which it is wished to make subservient to the purpose of punishing the most noble disinterestedness, and against the honor of the crown--upon Laws which ought to yield to the first of all Laws,—necessity.

It is the authority of a man who declared before Parliament, that in his plan of Laws for Canada, his conclusions were not positive (British American Review, 29th January)—of a man who doubts whether the property in question belongs to the Crown, saying "it is a great question;"—of a man who would be willing, it is true, to see this property applied to the use of the Crown, but who at the same time wishes that it should remain in the hands of the Seminary which possesses it:—of a man whose conclusions against the Seminary are avowedly inconsequent and unjust;—inconsequent because he would have the Crown regulate the application of the property at its pleasure and that at the same time the application should be made by a Society of Priests. If the application is to be for spiritual purposes, why should it be regulated by the Crown?—If the application be for temporal purposes, why should it be left to a Society of Priests? —Inconsequent and unjust—inconsequent because he doubts whether the property belongs to the Crown, and yet advises that it should be applied as if it belonged to the Crown, by leaving it to the Crown to dispose of the Revenue; unjust, because he doubts whether the property does not belong to the Seminary, and yet takes from that body the disposal of it. We perceive here what springs from rectitude, and what is to be attributed to passion;—it is right that by reason of a mere doubt the property should not be taken out of the hands of those who possess it; but

the scheme of wresting the disposal of it from them, for the purpose of placing it in the hands of the Crown, springs from passion and from hatred to Religion and to its ministers And what does Sir J. Mariot avow?—He declares that his conclusions are not positive; and therefore that they are founded on a mere opinion; but it is clear that the Seminary ought not to be despoiled on a mere opinion.—He confesses that he doubts whether the property had fallen to the Crown. Now, since in a doubtful case the possessor ought not to be despoiled, he is compelled to confess that the Seminary ought not to be despoiled;and in fact the force of truth makes him allow this expressly, although passion afterwards leads him to decide that the whole ought to be employed by the Seminary to the use of the Crown.—He doubts whether the property belongs to the Seminary: this is to confess the weakness of his reasons, which were only sufficient to raise a doubt in the mind of this most furious enemy to all that is Catholic.—Doubt in such a man demonstrates that our rights are evident.–Yes–so clear is the evidence of our right, that this most able man brings forward nothing but inconsistencies; this most upright man counsels nothing but palpable injustice, and this most ardent adversary of the Catholic Religion,—this most zealous supporter of the interests of the crown, has produced nothing but conclusions which tend to preserve the possession of the property to the Seminary,and to establish the fact that no solid argument can be brought against its rights.—So evident are our rights, that seven years after the plan of Sir J. Mariot, was published by His Majesty's order, the Government itself solemnly recognized that the right of proper-

ty was in the Seminary, and certified this formally by the reception of Fealty and Homage from it in 1781.

After this dissertation we hope that Sir J. Mariot will not be again exhumed and that his ashes will be allowed to rest quietly in the tomb.—Let us see whether the Crown Officers of 1739 will be more succesful.

Officers of the Crown of 1789.

The Seminary gave occasion to this attack by a Memorial which it presented to the Governor in 1788, complaining of the claim laid by the Indians to the Seigniory du Lac, and of the appointment which the Government had just made of a *Greffier* at Montreal. These were the sole subjects of this Memorial, and the reference made by the Governor to the council on the 29th December 1788, mentions no other whatever. The council appointed a day for the Crown Officers to give in their remarks, and ordered that the Advocate of the Seminary should give in his ten days afterwards. On the appointed day the written remarks of the gentlemen in question appeared;—they spoke but little of the two subjects then under consideration, and affected to discourse at length upon the right of the Seminary to the property, which was not in any wise under consideration. They did not fail to observe that the Seminary had not produced any other titles than those, which they then enumerated, and they concluded that the Council must be of opinion that the property belonged to the Crown, and not to the Seminary, which was only the Trustee or Guardian of it for the benefit of His Majesty. The Advocate of the Seminary had only ten days to draw up an answer upon points perfectly unexpected,and upon which he had to consult his clients who

were sixty leagues from him, to receive their titles and instructions, to consider them, and to write his defenses; of all this he complained in his Memorial, and made every exception on the part of the Seminary. The Council came to no decision,and referred the business to the Courts of Law, on the Judgments of which it would decide in Appeal, declaring at the same time that the discussion might change the appearance of the Cause. In this view of the case the Council made a Report to the Governor, and the Governor in his letter to the Seminary, gave his answer with regard to the two subjects of the Memorial of the Seminary, without saying a word on the question concerning the property.—Thus the opinion of the Crown Officers produced no result, and remained for twenty-two years (until 1811,) buried in the Government Offices. We have all the papers connected with this business in our Archives, and we believe they are also to be found in those of the Council.

From this statement it will appear, that if the Memoir of 1789 be considered with regard to the Government, it will be seen that it could have had no influence, because it was got up without any instruction from the Governor, who had subjected nothing to examination except the claims of the Indians to the Seigniory du Lac, and the appointment of the *Greffier*, as appears from the fact that the Governor in his final letter to the Seminary mentions these two subjects only, without saying a word on the question of the property; and from the other fact that the Memoir remained for twenty-two years unnoticed in the public Offices, and if it was then brought to light, it was in consequence of the order of

the then Governor, who after so great a lapse of time could not be aware of the far from honorable circumstances of this business.

Yes,—far from honorable, if they are examined with reference to the Seminary.—How little delicacy did the Officers of the Crown shew, in thus changing in an instant the question at issue,—in glancing lightly over the two subjects which alone were under consideration, and making a long Memoir on the right to the property of the Seminary, concerning which there was no question before them, and in calling this odious surprise a matter of duty on their part. What degree of delicacy was there in this off hand manner of treating a question of prime importance to the Seminary, whose very existence depended on it, without giving that body time for preparation;—and in allowing it only ten days to draw up its answer, which it was impossible to do in so short a space of time, as we have before remarked?—And when the Seminary was only called upon to exhibit such of its titles as were necessary to exclude the Indians from their claims to the Seigniory du Lac, and to establish its right to appoint the *Greffier*, what degree of delicacy was there in taking advantage of the non-exhibition of other titles to prove its right to the property possessed by it about which right no question had been raised?—Or in taking advantage of this circumstance for the purpose of deciding positively that the said property belongs to the Crown, and of pressing the Council to come to the same decision?—(Towards the close of the Memoir).

Let it not be said the question of the right to the property, depended upon that, of the right to the Seigniory du

Lac, and of the *Greffe*, since the question relating to the said Seigniory was decided against the Indians who claimed it without any title ; and since the right to the *Greffe* was annexed to the Seigniory of Montreal, the Seminary being in possession of the Seigniory had a right to the *Greffe*.

If the Memoir in question be examined with reference to the effect it ought to have on the question of the right of property, it will be found to have none, but to be absolutely null in that respect ; as positively null as the proceedings of a party who in an action relative to one object should pretend to decide an entirely different action.—For when the questions were merely, whether the Indians had any right to the Seigniory du Lac, and whether the Seminary had a right to appoint a *Greffier* at Montreal, the Crown Lawyers prayed for a decision that all the property of the Seminary belonged to the crown.—It would be null, because the Seminary would of course only file of record the titles relative to the Seigniory du Lac,and to the *Greffe*,and therefore would not file the divers titles which establish its right to the property ; and because, consequently, the Crown Officers could not for want of these titles determine that the property possessed by the Seminary did not belong to it.—It was null even in the eye of the Council which did not dare to decide upon it, however favorably it might be disposed towards the Crown ; not only because the question might come before it in Appeal ; but because (as it states) the discussion might change the face of the business and make it wear a different aspect.—The Memoir then did not firmly establish the right of the Crown, and is therefore in-

sufficient for the decision of the question, and consequently null with regard to the spoliation of the Seminary.—It is null, because no reasonable decision can be had unless the Seminary be cited to appear, and all its means of defence be heard.—It is more than null; because a species of fraud having been introduced into it, it makes against its authors, who would not have employed means so equivocal if they had had any solid arguments to bring forward, and would not have sought to surprise the Seminary, if they had not been afraid of the light which it could have afforded to its judges.

Let us now examine the Memoir itself—at first, like Sir J. Mariot, its authors speak of the French Law, with which they are about as well acquainted as he; they decide beyond all question, that all acquisitions of property made without Letters Patent, by persons for the purpose of holding it in mortmain, are null, and were so at all times, even before the declaration of 1743, since they apply this principle to the acquisition of the Seigniory of Bourchemin, made, as they themselves admit, by the Sulpicians in 1735. It is nevertheless well known, that according to the French Jurisprudence of that period, persons holding in mortmain were merely bound to dispose of the property within the year and day after being summoned to do so by the King or by the Seignior. They repeat frequently that Corporations could not be established without Letters Patent, and on this subject they specially appeal to the declaration of 1743. But they do not make the exception made by the 9th Article of the said declaration in favor of the es-

tablishments previously existing, nor the exception made by the Ordinances in favor of Seminaries, to which the matter under discussion related. (See our Memoir, page 4.) If the Crown Officers were so little acquainted with the French Laws, even on the subject of mortmain, of what authority will their opinion be in the eyes of Government, when they speak against the cession made by the Sulpicians to the Seminary of Montreal, on which they, like Sir J. Mariot, pretend to decide according to the Ecclesiastical Laws of France.

Like the Attorney General aforesaid, they are equally ignorant of the organization of the Sulpicians. They say, that they (the Sulpicians,) are a community or congregation of secular Priests, having a domicile or residence near Paris, and composed of different establishments, each of which has its particular Chief or Superior, under the government of the diocesan Bishop, the Archbishop of Paris. These ideas are extremely incorrect; Each establishment of the Sulpicians has its legal domicile—that of Paris has it at Paris, that of Montreal at Montreal. The Superior resides ordinarily at Paris, but he may reside elsewhere: they have one Superior, and also several officers for certain affairs, and more particularly for temporal business. Each establishment is under the spiritual authority of the Bishop; but the corporation is under the authority of none, and the temporalities of the corporation are managed by the corporation alone.

It appears from this, that the Crown Officers are not acquainted with the organisation of the Sulpicians, that they

did not know the rights of each Member to the property of the corporation, and to that of each of its establishments; and that therefore they were unfit to give an opinion with regard to the cession of 1764, on an act made between Members of the corporation. But if the Officers of the Crown were incompetent to offer an opinion with regard to the cession, it follows that the Government cannot in consequence of their opinion regard the cession as null, and despoil the Seminary. It follows that those who attacked us have not proved their allegations, and that the judgment ought therefore to be in favor of the Defendant, that is, of the Seminary. It follows that the right of the Crown is not proved, and consequently that the judgment must be for the possessor, that is, for the Seminary. It follows that the cession has not been proved null, and every act which is not proved to be null ought, according to all Laws, to be held as valid. It follows, that those who argue against the cession, are those who know least about it, being unacquainted with the organization of the Sulpicians, by whom it was made; and that those who support the cession, are the Sulpicians who are better acquainted with the Members of their Body, and are best able to form an opinion on the subject; that is to say, those who are against the cession, are those least capable of forming an opinion about it, and those who are for the cession, are those who are most so. Let us develope farther this moral proof drawn from the quality of the parties to the cession

Who were in fact these parties? They were persons holding property in mortmain, who could not be ignorant

of the Laws made against themselves, which must have habitually regulated their conduct. On one side we have Mr. Montgolfier, who was always allowed to be one of the wisest and most enlightened men in Canada; and on the other the Doctors of the Sorbone and the Superiors of a Body eminently prudent. They were men who acted in a matter of the utmost importance, in which property of great value was at stake, and in which the great interests of Religion were concerned, and where the question was how to preserve an important trust confided to the zeal of the Sulpicians. They were men who must have acted with all possible precaution, must have consulted the best Jurisconsults and Canonists, in order that nothing might be risked in a matter of this nature, more especially in an act which, as it was to be examined by a Protestant Power, it was necessary to guard against all kinds of hostile attacks. They were men who acted in opposition to their most important interest, and who ceded property of very great value when they could have sold it and received the price. Wise men do not decide on steps of this nature without being perfectly sure of what they are about. Two Notaries of Paris, in high estimation, and perfectly familiar with the Law of mortmain, drew up and signed the Instrument, although they could not be ignorant of the heavy penalties imposed by Law on Notaries who passed Acts of a forbidden nature. The man who signed the Instrument as Attorney for the Ecclesiastics of Montreal was Mr. Mauri, an Advocate of the Parliament of Paris, highly estimated in his profession. The Act is so little doubtful, that Mr. Montgolfier on his return to Canada in 1765,

caused it to be immediately enregistered in the Archives of the Province; and when in 1781 he was called upon for the performance of Fealty and Homage, he confidently presented the cession to the Government. Can there be the least likelihood that men so well informed, should in a matter which formed part of their profession, be ignorant of what the meerest novice in the Law is acquainted with; that able Notaries should have been ignorant of it; that an Advocate in high estimation, and several other Jurisconsults who gave their opinions, should have been ignorant of it; that all these enlightened men should have been ignorant of a nullity which it is pretended is so evident? That men possessing common sense should, against their manifest interest, have executed an Instrument, the only effect of which would be to render ownerless the great property which belongs to them?—That all of them with the intention of preserving a rich endowment, should have taken the most effectual means to destroy it?—That in order to prevent the confiscation of the said property, they should have adopted the best means of causing it to be conficated, and this at a time when by selling the property they could have secured its value, and might in the place of the work for which the endowment was made and which had become impossible, have undertaken the accomplishment of other objects not less important! That they should by enregistering it, publish an Instrumeut of this kind, and thus awake the passions they had to dread, and hasten the destruction of the whole? That they should, by exhibiting it as their Title to be received to perform Fealty and Homage, have forced the Government to an explanation, and thus compel

it, as it were, to notice the nullity of the cession and the rights of the Crown? Let the parties to the cession be compared with the Officers of the Crown in 1789, who after the lapse of 25 years, attempt to set it aside, and let a judgment be thence formed as to the side to which the preference ought to be given.

Like Sir J. Mariot, the Crown Officers of 1789, appeal to principles concerning partitions, alienations and transfers made between one portion of a corporation and another; they prove no more than he does, and their arguments, like his are refuted by what we have said.

Like Sir J. Mariot, when they attack the cession, they do not attack a cession made as ours is to co-proprietors, a cession which is a mere partition of property held in common; their arguments like his are beside the question, and like his, they are refuted by our Memoir.

Like Sir J. Mariot, their arguments are directed against the cession only, and they do not touch upon the numerous reasons set forth in our Memoir, which consequently remain in full force. We can even add others to them.

The question here relates to the application of Ecclesiastical property. Now the Rule is unvarying, that the property of the Church shall be employed in pious works: and this rule has accordingly been always followed in the legal suppression of Orders, and of Monasteries. Even with regard to benefices illegally held, the Declaration of 1681 had ordered that this rule should be observed, and that the revenues should, after the incumbrances were discharged, be employed according to the pleasure of the Bishop. (Mémoir du Clergé, Vol. XI. 1787.) But if the

whole property must, after the incumbrances are discharged, be employed in pious works at the pleasure of the Bishop, even in the case of the suppression of the Body, the Crown is evidently without any interest, and the Seminary cannot in any way be troubled.

Even if others than the Sulpicians were to be entrusted with the discharge of the work for which the endowment was made, an act of the Legislature would be necessary to authorize this departure from the will of the Founder, supposing it to be found impossible to accomplish it. Thus when the Jesuits, by their suppression, became incapable of accomplishing the object for which the Order had been endowed by the King Stanislas ; an Act of Louis XV. was necessary before others could be substituted for them. (Répertoire de Jurisprudence, Edition in 8vo. Vol. 25. p. 207.)

We have seen by the Letters Patent of 1677, that the property in question was *dedicated to God ;* it can therefore be no longer an object of commerce to men, which it would become if it were possessed by the Crown. Being *dedicated to God,* it can no longer be subject to human contracts ; it can therefore be no longer subject to the Law concerning Aliens, under which alone it can be claimed by the Crown. The property having been given for the benefit of the Canadians and of the Indians, was in fact their property, the property of Subjects of the King, and cannot therefore be liable to confiscation as belonging to Aliens. When the Crown Officers in England were consulted on the subject of the Jesuits Estates in Canada, they answered, that it was necessary that the reservations made by the Donors should

be examined. (Official Report printed by order of the Imperial Parliament in 1812, p. 480, &c.) This answer is according to the strict Rules of Justice. Now in the instance under consideration what are the reservations made by the Donors? They are—that the property should be applied to promoting the conversion of the Indians, and to the instruction of the French Inhabitants of the Island of Montreal. It cannot therefore belong to the Crown.

Let us examine more minutely the manner in which the Sulpicians are concerned in this Donation. It is made to the Ecclesiastics of St. Sulpice at Paris, and is therefore made also to those Ecclesiastics of St. Sulpice who passed over into Canada, and were subsequently erected into a Seminary at Montreal, as appears by the Letters Patent of 1677: it was therefore made to the Seminary of Montreal. The Ecclesiastics of the Seminary of Montreal, being of Montreal, being of the number of those to whom the Donation was made, lost none of their rights when the King erected them into a Seminary at Montreal; they acquired on the contrary the legal quality of a Community, by which they became capable of accepting a Donation, even in case of their being separated from the rest of their Body. The Donation made to the Ecclesiastics of St. Sulpice at Paris was made to the same Ecclesiastics who were sent from Paris into divers Seminaries of the Sulpicians in France, Canada, &c. It was made to the Ecclesiastics sent from Paris to the Seminary of Montreal and composing the said Seminary of Montreal. The Donation was made to the Ecclesiastics of St. Sulpice, but at the same, for the spiritual welfare of the Indians, and of the French Inhabitants

of the Island of Montreal, it was made to those Ecclesiastics of St. Sulpice who came to the Seminary of Montreal to accomplish this object, much more specially than to those Ecclesiastics of St. Sulpice who were sent elsewhere, and who had no claim to the property in Canada, except through the Body of which they were members. The Ecclesiastics at Montreal, on the contrary, had a claim on the said property, not only as members of the Body, but because they themselves performed the work, for which the property was given. The Donation then was made to that portion of the Sulpicians who formed the Seminary of Montreal. The Donation was made to *all* the Sulpicians, to those who *sent* members of that body to Montreal, and to those *engaged in the performance* of the work at Montreal. If then those who *sent* became incapable as Aliens of holding the property, the Donation will avail to those who were engaged in the performance of the work, that is to say, to the Seminary of Montreal. Let the Founders be called from their tombs, and let them be asked, whether under the circumstances of the conquest it was their intention that their Donation should avail to the only Establishment of the Sulpicians, through which the Sulpicians could remain entrusted with the performance of the work and with the management of the property. We seem to hear them say: We made the Donation to the Sulpicians; we therefore intended to make it to the only Establishment of the Sulpicians by whom the property could be applied to the accomplishment of our object, that is to say, to the Seminary of Montreal. If they were asked—Did you give to the Crown or to the Seminary of Montreal? They would

answer—No: none of our intentions were for the Crown, all rested on the Sulpicians, and especially on those Sulpicians who were to perform the work, and still more on those who alone were capable of continuing it. Such was the intention of the Donors; that is to say, the great rule to be followed with regard to Donations.

The Donation was made to the Sulpicians for ever, according to the deed of 1663, and the Letters Patent of 1677: the expression, "*for ever*," marks the strongest determination that the property should belong to all the Sulpicians if possible, or if not, then to a portion of that Body; but at any rate to Ecclesiastics of St. Sulpice, and consequently to those of the Seminary of Montreal, if the Donation could not avail to other Sulpicians. To limit the Donation to the whole Body, is to limit what it was intended should be without limit, and perpetual; it is to run counter to the express tenor of the Donation. If then the entire Body becomes incapable, it becomes necessary in order to preserve this perpetuity to the Sulpicians, and to the continuation of the work, that the Donation should avail to that portion of the Sulpicians who can comply with all its conditions and possess the property given, that is to say, to the Seminary of Montreal. To limit the endowment to the entire Body, when a portion only should be capable of benefiting by it, would have been to adopt measures for preventing the perpetuity in question, at the same moment that it was ordained. "*To the Sulpicians for ever*," is an expression which shews the intention of the Founder, that so long as it should be possible the property should belong to Sulpicians, and therefore that at the Conquest the only

possible mode of effecting this, which was by transferring it to the Seminary of Montreal, should be adopted.—Can it be supposed that in a Donation made to the Sulpicians, those only should be excepted from benefiting by it, by whom the conditions were to be performed, and who as performing the work ought also to enjoy the advantages;—those who could best do so,—and through whom alone the property could be preserved in case of a Conquest which France had always reason to dread from its rival?—Besides the Donation is entitled to a favorable construction, because it is an act of liberality, an endowment made for the public good; it must therefore be interpreted in the most liberal manner, in order that it may be effectual, and therefore so interpreted that the conditions attached to it, may be fulfilled by the Sulpicians who alone are able to fulfil them, that is to say, by the Seminary of Montreal.—What are in fact the principles applicable to Religious Corporations?—If the members of such corporations are transferred from the Country into Towns, the Bishops are commanded to transfer their Revenues to Convents in the Towns,to be applied to the purposes for which it was given.(Mémoire du Clergé, Vol.IV.p.1829,1845.)-If Convents are suppressed,the Revenue becomes the property of those which remain—The property of a Convent which becomes tenantless through war, contagion,&c.,goes to other Convents.(Ferrière,Grand Coutu.I.p.78, No.26.)--In every case the property of such Corporations belongs to the still subsisting establishments; and the reason is because the property is always supposed to belong to the Corporation when it belongs to the several establishments which are members of it.—Each member of the Cor-

poration in fact, being liable to be made a member of any one of the establishments, has radically the rights of a member of such establishment. The last member of the corporation represents it, and has a right to all its property. Therefore the Seminary of St. Sulpice at Montreal, being the only portion of the Body in Canada capable of holding, is alone entitled to all the property of St. Sulpice in Canada, on the same principle by which when some of the children of a family lose their rights the rest succeed to them.

The Seminary of Montreal does not merely represent the whole body of the Sulpicians, it is the whole body so far as Canada is concerned.—If during the period between the conquest and the Treaty of Peace, the Sulpicians had been abolished in France, it is clear that the Seminary of Montreal would have become literally the whole body of the Sulpicians.—Yet France having lost Canada, could not have affected in any way the establishments in the latter Country; therefore it made no difference with regard to the Seminary of Montreal, whether the Sulpicians were preserved or abolished in France;—therefore the state of the Sulpicians cannot affect the Seminary of Montreal;—Therefore the Seminary of Montreal is, as far as Canada is concerned, the whole body of the Sulpicians.—The fact supposed has happened, the Sulpicians were suppressed in France in 1790; and were re-established in 1814;—what has been the effect of this upon the Seminary of Montreal?—None whatever. It did not become the whole body of the Sulpicians by the suppression of 1790, nor a portion of that body by its re-establishment in 1814:—therefore the existence of the Sulpi-

cians of Canada has no longer any connection with those of the Sulpicians of France, and is not affected by any modifications in the state of the latter:—they are therefore as far as Canada is concerned the whole body of the Sulpicians. If we suppose that they become alternately the whole of the said body, and a portion of it according to decrees made in France, we suppose an authority in France affecting this country, and thereby deny in part the Sovereignty of the King.

What does a Government effect, when after the conquest it forbids the Communities within its Territory from communicating with the rest of their respective bodies?—It no longer recognizes any portions of such bodies except those within its Territory. Therefore, with respect to the Government, the Seminary of Montreal forms the whole body of the Sulpicians.—Princes who forbid all interference of foreign authority and dependence on foreign communities, do not touch the property of the body, they leave it to be enjoyed by such of its establishments as are within their Territory.—On the same principle then, His Majesty when at the conquest he forbade all such interference on the part of the Sulpicians of France, left the property of that body to the establishment of the Sulpicians at Montreal.—To shut out from a succession some of the children who are incapacitated, is not to shut out the rest who have no such incapacity: and in like manner to prevent the members of a body who are Aliens, from the possession of the property of that body, is not to prevent those members who are subjects of the State from enjoying it; it is merely to reduce the number of the co-proprietors, and thereby to

give those who are subjects a greater share than they had before.

If any one of the reasons we have alleged should appear insufficient, it is impossible that they should be all null: since then one good reason alone is necessary to establish our right, it follows that the justice of our cause has received the last degree of demonstration. But supposing what is impossible, supposing that all that we have said is only sufficient to render the matter doubtful: even this doubtfulness would not the less prove the right of the Seminary.

1stly. Because it is a principle that the obligation to prove lies on him who attacks: now, in this case, it would be the Crown which attacks; the Seminary would be the defendant: if then, the matter is doubtful, no proof having been made against us, the attack is void, and the Seminary which was not bound to prove remains in the enjoyment of the property.

2ndly. Because in all doubtful cases, the decision according to all Laws is in favor of possession, and a *fortiori* in favor of a possession of 80 years, publicly known, and never contested by the Government, which alone can contest it, or is affected by it.

3rdly. If doubt exists, the decision must be in favor of the Seminary, which the King has so frequently recognized.

4thly. Where doubt exists, the decision must be against spoliation which is always odious.

5thly. Were doubt exists, the decision must be that the property of the church should remain to the church, in order that it may be applied to the purposes for which it was destined, and retain its elevated condition, and that the

property dedicated to God may not become the property of man.

6thly. If doubt exists, the decision must be in favor of those who are most clearly designated in the Donation.—Now the Sulpicians being expressly named the Seminary of St. Sulpice at Montreal, is more clearly designated than the Crown.

7thly. Where doubt exists, the decision is always in favor of those who have the preferable right of succession; and therefore the right of the children of St. Sulpice, the right of the successors of those who received the property, who improved it, gave it value and increased its extent, is preferable to the odious right of confiscation,–to that of the Crown which has neither sowed nor planted, which has done nothing for the property,and which would assume the place of the living children of those who have done every thing.

8thly. If doubt exists, the decision must be that an endowment made for the Sulpicians must belong to the Sulpicians to whom alone it can avail; that an endowment so made for ever, must belong to that portion of the Sulpicians who can alone render it perpetually advantageous to the Body;—that an endowment made for the Sulpicians and for the accomplishment of certain objects, must belong more especially to those Sulpicians by whom alone they can be accomplished;—that an endowment cannot avail to those to whom it has no relation and who could only frustrate its object;—that it cannot avail to the Crown which can neither accomplish the object nor represent the Sulpicians, but would on the contrary annihilate all traces of them.

9thly. Where doubt exists, the decision must be that the

property of a Community remains to the last member capable of holding it, the only one who can represent the community and succeed to his predecessors; and consequently that the property of the Sulpicians in Canada must belong to the Sulpicians of Montreal.

10thly. If any doubt exists, the decision must be in favor of the Sulpicians who remain subjects of the King, because His Majesty's right extends only to the confiscation of the property of those who are not His Subjects; His Subjects not being liable to the penalty imposed on those who are not so.

11thly. If any doubt exists, the decision must be in favor of the Seminary of Montreal, which is, in the eyes of Government, the whole Body of the Sulpicians, the remainder of them not being legally known to it; which is the whole Body of the Sulpicians, the conquest having cut them off from all communication with the rest of the Body, and having thus reduced the whole Body of the Sulpicians to the Seminary of Montreal.

12thly. If any doubt exists, the decision must be that the property given for the accomplishment of any object must follow that object; that the task of accomplishing it remains with those who have hitherto performed the work necessary to its accomplishment; and above all, that a spiritual work cannot be ridiculously entrusted to the Crown; or a Catholic work, ordained by Founders who were most strictly Catholic, be entrusted to a Protestant Prince.

13thly. In case of doubt, the decision must be that the accomplishment of the object of the endowment must be ensured: now the Sulpicians of Montreal ensure this ac-

complishment in every way. The decision cannot be such as would frustrate this object, or at least render its accomplishment exceedingly hazardous: now if the property were given to the Crown, the accomplishment of the object aforesaid would evidently either be frustrated or rendered hazardous; particularly if the property were applied to the public uses of the Province.

14thly. If doubt exists, the decision ought to be in favor of the community for the establishment of which the property in question was destined by the Donation and by the Letters Patent of 1677, that is to say, of the community of the Sulpicians at Montreal, much rather than of the Crown, to which neither the Donation nor the Letters Patent in any wise refer, but which on the contrary they exclude, by destining the property to spiritual objects, and by *dedicating it to God.*

15thly. If there be any doubt, the decision ought to be in favor of the cession, the presumption being always in favor of an Instrument, the nullity of which is not demonstrated; in favor of a cession which ensures the object of the endowment; in favor of a cession which being necessary to the accomplishment of this object is authorized by all the Letters Patent by which the endowment itself is sanctioned. And since the property is, in fact, appropriated to the object, the decision must be in favour of a cession which has none of the vices common to acquisitions made by corporations, since it transfers not the property, but the administration of it. The decision must be in favor of a cession by which the Sulpicians of France being foreigners, give up every thing to subjects of the Crown; rather than in favor

of a confiscation of an odious kind, enforced by the Crown to the prejudice of its own subjects: in favor of a cession, which being necessary, was ordained by a Law superior to all others, that is, by the Law of necessity.

It is thus that if any doubt exists, all those presumptions on which a decision can be grounded, tend to the exclusion of the Crown, and the preservation of the rights of the Seminary.

But in comparing the opinions of the Crown Officers, with that of Sir J. Mariot, we shall find new assertions; they proceed as follows: They first deny the legal existence of the Seminary of Montreal, and then assign the following reasons—" They (the Seminary) will not try " to show that the Sulpicians had any power to create one " or more bodies of their own members, with power to " possess and hold property in mortmain ;" and again they say, " It (the Seminary) will not try to shew in itself the " legal establishment of an Ecclesiastical Body, with pow- " ers independent of the Order of St. Sulpice at Paris, to " take and to hold property in mortmain."

" *They will not try they will not try.*" And these are the reasons they offer. Nothing but assertions without proof. We deny their truth, also without proof; and do so with the more justice, because we are in possession, and those who are in possession are not bound to prove; with so much the more justice, because Sir J. Mariot, who neither wants talent, nor zeal against the Catholics, nor in favor of the Crown, has not even dreamed of reproaching us with not offering proof, any more than the Attorney General Mazeres who in his Plans has contested neither our possession nor our right of property ; with so much the more justice,-because the Crown

Officers in 1789, were the first who offered to contest our right from the time of the establishment of the Seminary in 1677, that is to say, during a period of more than a century; with so much the more justice,--because this right has been without intermission recognized by the most august authorities; in 1677 in the Letters Patent which erected the community into a Seminary; in 1678 when the Bishop of Quebec united to the Seminary of Montreal several Curacies mentioned in the Letters Patent by which that union was effected; in 1693, when the Edict of the King vested the property of the *Greffe* in the Seminary; in 1694, when the Bishop united to it several other Curacies, also mentioned in the Letters Patent effecting the union; in 1695, by *Lettres de Terrier*, which mention this community erected by permission of the King; in 1696, when the corporation of the Sulpicians and the Bishop of Quebec gave the Seminary a considerable sum to be placed at interest; in 1702, in the *Arrêts* and Letters Patent which unite several Curacies to it, and confirm the preceding decrees of the Bishops; in 1714, in the Letters Patent, bearing the form of an Edict, which recognize the Seminary as in possession of certain property; in 1716, in the *Arrêt* concerning fortifications, which recognizes it as a Community and as Seignior, and levies certain dues on it accordingly; in 1717, in the Grant of the Seigniory du Lac, made to it by the Governor and Intendant; in 1718, by the Ratification of the King, in which the Seminary is recognized as existing and as dependent on that at Paris; in the *Arrêt* concerning fortifications in 1722, as in that of 1716; in 1724, in *Lettres de Terrier*, as in those of 1695; in 1732, by the notification of

an Ordinance made solely with reference to communities; in 1743, by a similar notification of the declaration of 1743; during several years consecutively, and until 1726, by an annual allowance from the king of France, in 1760, in the Capitulation of Montreal; in 1763, by the payment of the rent of the *Greffe;* in 1776, in a Letter from the Governor concerning the appointment of a *Greffier;* in 1781, by the reception of Fealty and Homage.

Who could believe that while they defend their cause so badly against arguments so strong as ours, these gentlemen would conclude with so much assurance! after the most mature consideration, they say, they cannot have *a doubt* that the property in question has fallen to the Crown in Sovereignty: that the cession by the Laws, both of England and of France, is *ipso facto* null: that their Honors are not warranted by any document before them, in entertaining an opinion that the Memorialists (the Seminary) have shown any right or title to the said property which belonged to the Order or Seminary of St. Sulpice, before the conquest; but will support His Majesty, by declaring (in their Report to the Governor) that the said property fell to His Majesty at the conquest; and that by the Laws of England, those who have been in possession of it since that time have held the property and the proceeds of it for the use of the Crown.

Who is there that would not here remark another difference between Sir J. Mariot and the Crown Officers in question. Sir J. Mariott asserts principles boldly hazarded and unproved, but he only doubts; the Crown Officers of 1789 assign only the same reasons, and offer no more

poof than he, aud yet they decide positively, and *after the most profound reflection.* Sir J. Mariot is willing that the Seminary should possess the property, although in consequence of his prejudices he wishes that it should in future possess it only as a Trustee for the use of the Crown; the Crown Officers of 1789 would take away the possession entirely. They will have it that the Seminary had heretofore possessed the property only as a Trustee for the use of the Crown, when there has never been any Act creating a Trustee; when even the object of the trust is not known; when the Seminary has never performed a single act in that capacity; when it has constantly acted as Proprietor,—when even in its intercouse with the Government it has constantly acted, not as a Trustee but as Proprietor. (See the Instruments cited in our Memoir.)

Let us see whether these Gentlemen are more fortunate with regard to the difficulties they raise about the reception of Fealty and Homage. In the first place they say; *valeat quantum valere potest,* or—*let it pass for what it is worth:* and it is in this contemptuous manner that an act of the Crown is treated, and that too by Officers of the Crown itself! But the same thing may be said of all conventions, *they are worth what they are worth,* and they may therefore easily be set aside. If in a Court of Law, when a Contract is alleged, the adverse party should say, "*it is worth what it may be worth*"—would the Judge be satisfied with this answer? There is but one reasonable conclusion, every act avails according to its nature; a Donation, as a Donation, the reception of Fealty and Homage as such, and in our Memoir (pages 34, 35) we have shown the im-

portance and force of this Act. It is asserted *that the Act of Fealty and Homage makes no change in the Deeds, and confers no title.* We answer, let it be supposed that it makes no change in the Deed. and gives no title, we may grant this for a moment; yet it prevents any exception being taken to defects in those deeds; for even under the Law of mortmain, the parties interested, the Seignior and the King are all that can take such exception; Now in this instance the Sulpicians as parties interested can take no exception, the Seignior is identified with the King, and the King can form no exception against his own act; nor more especially can He do so against the reception of Fealty and Homage, as we have shewn in our Memoir.(page 35). The reception of Fealty and Homage so completely bars any exception, that it forms a warranty of protection. (page 35). *It makes no change in the Deeds;* but it proves them to be valid; for the presumption is always in favor of a Deed, and more especially of one assented to by the King, until its nullity is demonstrated, for in order to demonstrate it, it would be necessary to show that Letters Patent were necessary to the validity of the cession, and that none were granted. But far from being demonstrated, both these allegations are false. We have in fact proved in our Memoir, that Letters Patent were not necessary to co-proprietors, that they were not necessary to give validity to a partition of property held in common: and that by the Law relative to Communities, the last survivors have no need of them. And if Letters Patent were necessary, those of 1677, granted to the Corporation of the Sulpicians, are applicable to the portion of that Body which is

capable of holding the property; they apply to that portion which is now the whole Corporation of the Sulpicians in Canada: they apply of right to the last surviving portion of the Corporation, which is the natural heir of the Corporation; therefore this Act of the King being proved to be valid, rather than demonstrated to be null, ought to remain in force. *The reception of Fealty and Homage makes no change in the Deeds, &c.* This is untrue; the reception of Fealty and Homage places those who perform it in possession; and to be put into possession by the King, is a title, and no Letters Patent are necessary; this is the case also when the King makes a Donation; and it is evident that it is not necessary that the King should authorize what the King has himself done. *The reception of Fealty and Homage makes no change in the Deeds.* But it stengthens those Deeds by the recognition of their validity, and this recognition is of the most valid kind, for it is that of the party interested in contesting them; it is of the most august nature, for it is that of the Crown itself after an examination of all the Titles which can throw light on the subject; can a more decisive authority than this be imagined? *The reception of Fealty and Homage makes no change in the Deeds*—but the same thing might be said of all arrangements and amicable compromises, or even of Judgments, all of which make no change in the Deeds it is true, but they form a proof of the recognition of certain rights either by the parties interested or by the Judge. Thus the reception of Fealty and Homage is a recognition of our right of property on the part of the King himself, and the party interested, and ought like a compromise or the judgment of a Court of Law, to

terminate every difficulty. This recognition is more than a mere transitory act; it goes back to the cession of 1764, the time when the corporation of the Sulpicians, renouncing the right of selling, transferred its rights to the Seminary of Montreal, which from being a co-proprietor became sole proprietor. Thus the Government by the reception of Fealty and Homage, recognized the Seminary of Montreal as sole proprietor after the year 1764, and as every Act once passed remains in force until it is revoked, the Government has continued to recognize the rights of the Seminary up to the present time. Therefore, the effect of the reception of Fealty and Homage is that the Government has not, during seventy nine years, ceased to recognize the right of the Seminary. It has not merely tolerated the claim by its silence, it has recognized the right by an Act which has continued in force during seventy nine years, and which still continues to be in force: let an Act of equal validity be cited against us.

We have been led to say this much by petty difficulties raised by the Crown Officers of 1789. We had not all these arguments to oppose to Sir J. Marriot, who wrote seven years before the reception of Fealty and Homage. It is to be presumed that he would have had good faith enough to abandon his doubts and arguments when they had been adjudged to be null by the Government. And as the arguments he uses are the same as those used by the Crown Officers in 1789, we may conclude that the latter were beforehand adjudged to be null by the Government, and cannot, therefore, be again brought forward, especially by Officers of Government.

But what will appear astonishing, is, that these gentlemen of 1789, while concluding so decisively in favor of the Crown, were forced to admit principles which are destructive of the pretended rights of the Crown, and go to establish those of the Seminary. They never cease to repeat that the Donation was made for promoting the conversion of the Indians, and the instruction (*religious instruction*) of the Canadians of the Island of Montreal. But if the property was given on the condition of the accomplishment of any object, it ought to be devoted to the attainment of that object, and the Crown therefore can have no claim to it. The intention of the Founders is to be followed; therefore the said property ought to be devoted to the accomplishment of the object pointed out by them, and cannot fall to the Crown.--The property was destined to promote a spiritual work with which a temporal Sovereign can have nothing to do.—Nothing would be more ridiculous than to bind a King to convert the Indians, and to give instruction in Religion; it is evident that this was not the intention of the Donors, as the Donors were either Priests or persons very zealous in favor of the Catholic Faith, it is clear that the property was destined to the conversion of the Indians to that faith, and to the instruction of the Canadians in it;—a Prince who is not a Catholic is therefore evidently excluded.

The Gentlemen in question do not cease to repeat that the property was given in trust; that the Sulpicians were only Trustees to see the work performed;—to substitute the King for them then, would be to confer on him the petty office of a Trustee, which is productive of no real advantage, and would be a change purely onerous and of no value

whatever to the Crown. They enounce this yet more expressly—" *The fruits and benefits of the Estates so given* " *and granted in contemplation of the Donation, were to be* " *applied to the conversion of the Savages, and for the in-* " *struction of the French residing on the said Island.*"—If the fruits and revenues of the said property are to be employed in performing a certain work,what purpose would it answer to call in the Crown, which has no interest in the property, the destination of the revenues of which is determined by the Donation.

They establish the right of the Seminary.—In the first place they remove all the difficulties which they had raised with regard to the cession of 1764.—For when the Sulpicians become according to them, nothing but Trustees, the cession becomes nothing more than a mere nomination of Trustees.—But one set of Trustees had surely a right to appoint similar Trustees who were well qualified to represent them, and had, from the year 1663, constantly performed the function of such Trustees; and to appoint them to perform a duty already legally established and defined, and with regard to which no new Letters Patent were required to make this appointment effective.—The Officers of the Crown aforesaid, ought therefore to consider the cession as legitimate.

In reading the cession, they find that the Seminary of Montreal formed a *portion* of the Sulpicians, that it sprang from them, and that the Priests of St. Sulpice called those of Montreal, *Priests belonging to their own body;* they cite the words of the Sulpicians of Paris, who, in the Edict of

1693, call the Seminary of Montreal *their* Seminary. They cite the words of the Council in registering the Letters Patent of 1677, in which Mr. Le Fêvre is said to be, *a Priest of the Seminary of St. Sulpice at Paris, and Superior of that at Montreal.* They cite also several Acts in which Mr. Le Normand is so qualified, adding that this is the ordinary style of Commissions from the *Greffe.*—It follows from this that the Ecclesiastics of the Seminary of Montreal were members of that at Paris, that they were sent from it, that they belonged to the body of that Seminary, and were formally styled Ecclesiastics of the Seminary of St. Sulpice at Paris :—it follows also, that the gentlemen of 1789 must acknowledge that the cession was made to co-proprietors ; —that it was a partition of common property among members of the same body, and consequently that Letters Patent were unnecessary (our Memoir 37, 38, 39 ;)—that the Donation made to the Ecclesiastics of St. Sulpice at Paris was made to those of the Seminary of Montreal, and consequently to *them only* from the time when those in France having become Aliens, became also incapable of holding the property ;—that the Donation made to the Sulpicians as a body was made to the Seminary of Montreal which represents the whole body of the Sulpicians in Canada ;—and that as the Donation made to the Sulpicians must avail to the last surviving portion of their body, it ought to avail to the Seminary of Montreal, which is, in Canada, the last surviving portion of the Sulpicians.

But, according to these gentlemen, the Donation is made for a spiritual work, it ought therefore to avail to those who have the care of spiritual things, that is to say, to Ecclesias-

tics and consequently to those by whom that work has been constantly carried on; that is, to the Seminary of Montreal by which it has always been executed.

According to these gentlemen, the Donation points out those who are charged with the work, that is to say, the corporation of the Sulpicians; but nothing can more truly represent the corporation of the Sulpicians in Canada than the Seminary of Montreal, which is the whole Corporation of the Sulpicians, as far as Canada is concerned. But when a Body is spoken of with reference to a work to be performed in the Colonies, that portion of such body is intended which has always performed the said work in the Colonies (our Memoir 21, 22, 27,): and therefore the Sulpicians of Montreal are pointed out by the Donation.

They cite the Letters Patent of 1677, in which the King of France approves the Donation of 1663, *with a view to facilitate the establishment* of the Seminary of Montreal: the property given ought therefore to be applied to the support of the Seminary of Montreal. They cite the words of the Edict of 1693, in which the Seigniorial Jurisdiction is said to form a large portion of the endowment of the Seminary of Montreal. This property was therefore given to promote the establishment of, and to endow the Seminary of Montreal: and cannot, therefore, be separated from it.

Thus, according to the principles laid down by the Crown Officers of 1789, and drawn from other titles, the Donation was made to the Seminary of Montreal:—1stly. Because it was made to the corporation of the Sulpicians to the end that they might superintend and direct the application of the property; and the Seminary of Montreal alone can repre-

sent that Body: 2ndly. Because the Donation was made for the purpose of founding the Seminary of Montreal, and therefore the property belongs to it, as having been given to endow it. 3rdly. Because the Donation was made in consideration of the work, and consequently in favor of those who perform it; and because the Seminary of Montreal has always performed the work. In this manner the Crown Officers of 1789, establish the rights of the Seminary in a Memoir written expressly to destroy them.

To conclude: The Crown Officers of 1789, have, like Sir J. Mariot, shown themselves ignorant of the French Law, and ignorant of the organization of the Sulpicians. They have made assertions without proof; they have brought forward false principles which they have not even applied to the question. All their essential reasons with regard to the alienation may be solved into those of Sir J. Mariot. They have attacked the cession only; they have attacked it badly, and have argued beside the question, saying nothing of the partition of property held in common, nor of the quality of co-proprietor. On all these points therefore we may conclude against them, as against Sir J. Mariot.

It is true that Sir J. Mariot had not, like the Crown Officers of 1789, denied the legal existence of the Seminary. But we have seen that the latter did this without offering any proof, and on mere assertions; that they had been the first to make the discovery in question; that the existence of the Seminary had been constantly recognized for more than a century from the time of its establishment; that it had been recognized by the cor-

poration of the Sulpicians, by the Bishops, by the Courts of Law, by the Governors and Intendants, in several public Acts of the Kings of France,and,since the conquest, bythe representatives of the British Crown in the most solemn Acts, in the Capitulation, and in the reception of Fealty and Homage; that the Seminary had been recognized by the King himself as a Community erected with the King's permission; that it was a Community according to the principles of the Law of 1743, Art. 9; and that it had been erected into a Community by the Letters Patent of 1677. This is all that they have been able to add to Sir J. Mariot. That is to say, they have given a new proof that in whatever manner the Seminary is attacked, the effect is only to add to its triumph.

We have seen that Sir J. Mariot acted with good faith, in regard to his doubts as to the rights of the Seminary, and the possession of the property which he would have to be left to it. But the Crown Officers of 1789, while like Sir J. Mariot they make assertions without proof, and repeat the same reasons, decide absolutely, do not entertain the slightest doubt, and will not permit a contrary opinion in the Council, but press it to pronounce one with regard to the past, declaring that the Seminary had only the quality of Trustee, a quality of which no one had ever throught. And in order to arrive at this conclusion, we have seen that they changed the state of the question; of a special question, they made a general one relative to the whole property, and took advantage of the Seminary's not having exhibited titles sufficient to establish a point which was not at issue. From this we argue, that the Memoir

of these Gentlemen which changes the whole state of the question is a nullity; their Memoir is null; because it was impossible for the Seminary to file its title with reference to a point not in dispute; their Memoir was null, and there was a want of delicacy in pressing the Council to decide against the Seminary, because that Institution had exhibited no Title on a point which related to another subject altogether, and when by suddenly raising a new question, they allowed the Seminary no time to prepare a defence. The Government will not render itself an accomplice to these manœuvres, by giving any credit to the said Memoir.

In what manner, indeed, was the affair regarded by the authorities at a time when the facts were better known?— 1stly. It was acknowledged that the Crown Officers had acted without the sanction of the Government, since the Governor had only called their attention to the two objects really at issue, and mentioned no other in his official Letter to the Seminary. 2ndly. The Council refused to follow the advice of the said Crown Officers, and would not give a decision, because, as they said in their Report, the discussion of the matter in the Courts of Law might change the state of the question; this was to doubt the justice of the conclusion taken in the Memoir. This doubt on the part of the Governor's Council, chosen by the Governor, advising the Governor, and sometimes performing his functions, is even more strongly in our favor than the doubts of Sir J. Mariot, which we have already shown to be of so much weight. 3rdly. The Governor looked on this Memoir as so completely null, that he allowed it to remain

22 years in the public offices, from which it was only brought out in 1811, when the unfavorable circumstances under which it was drawn up were forgotten. 4thly. The King's Instructions which were formerly secret, and became public by order of the British Parliament in 1812, have been frequently renewed to different Governors, in 1775, 1786, 1791 and 1811, and their tenor constantly is, that the Seminaries of Quebec and Montreal shall continue to hold the property to which they had titles in 1759, and that they may receive new Members; how ridiculous would it be to say of an establishment which possessed no property whatever, that it should preserve the property to which it had titles, and that it might receive new Members, in order that they might die of hunger. The Memoir of 1789, therefore, made no impression on the Cabinet of London, since it effected no change in its instructions. 5thly. As the reasons assigned in 1789, are those used by Sir J. Mariot in 1774, and as these latter were deemed inconclusive by the Government which recognized the right of property in the Seminary in 1781, it follows that the Government at that very time condemned so to say by anticipation the reasons offered in 1789, and those of any other Crown Officers whomsoever, who might at any time contest that right of property which it has so frequently recognized.

We shall not answer the "*let it pass for what it is worth*" of the Crown Officers against the reception of Fealty and Homage: the exception contains no argument, but is a contempt of an Act of the King. If as they assert the reception of Fealty and Homage gives no title, at any rate it prevents the contestation of titles; at any rate it supposes

ancient title in favor of the Seminary ; at any rate it proves that such title existed since it took place after the titles had been examined ; it gives a title when the King gives possession ; and lastly, it is a proof of the recognition of the title by the party interested, that is by the King.

It is thus that the Crown Officers of 1789 have given new force to the reception of Fealty and Homage, by shewing how feeble the reasons are, which can be urged against the Royal Sanction thus given to the rights of the Seminary. It is thus that they have proved that in order to attack the Seminary, it is necessary to attack the Act of the King; and that, therefore, our cause becomes that of the King himself. It is thus that they have proved, that in order to attack the rights of the Seminary it is necessary to attack an Act of the King continued since the conquest, and so to destroy all confidence in the Acts of the Government.

They have done more: for with a want of consistency common to people who are actuated by passion they have taken away the right of property from the Crown, by making a Protestant Sovereign a mere Trustee, for the purpose of converting the Indians and instructing the Canadians in the Catholic Faith, and as they declare the property to be attached to a work of this nature, it is evident that the Crown is excluded from any claim on it in as much as it unqualified to perform the work.

With the same inconsistency by which they wished to destroy the rights of the Seminary, they have done nothing but adduce arguments in its favor, by proving the said property belongs to the Sulpicians of Montreal, under a three-

fold title;—because they alone represent in Canada the corporation of the Sulpicians to which it was given;—because it was for the endowment of the Seminary of Montreal that the property was given;—and because that Institution has constantly performed the work for which the property was given. And now let a judgment be formed with regard to the Memoir of 1789, on which so just a judgment was passed by the then Governor, who condemned it to well merited obscurity.

If the opinions of any other Crown Officers are alleged against us, we answer: That we are unacquainted with them; and that we are prepared to refute them, whenever such opinions and the motives of them are made known to us. 2ndly. That we know officially that their opinions are all to be found in the Memoir of 1789, and are therefore refuted in this Memoir. 3rdly. That they have given their opinions without hearing the Seminary, and that justice forbids the giving of a Judgment without hearing both parties. 4thly. That the opinion of the Attorney General (as Sir J. Mariot says in his answers before Parliament in 1774) is only the opinion of an Advocate in favor of his Client, however august that Client may be. That the Officers in question being engaged to plead in favor of the King, are forced to give opinions favorable to His Majesty; that their interests and their hopes for the future all induce them to do so, and that their opinions are therefore always to be received with suspicion. 5thly. That these gentlemen are but slightly acquainted with the organization of Catholic Communities, and still less with that of the Sulpicians, and that therefore they could

only offer an opinion formed at hazard with regard to a transaction which took place solely between Sulpicians ;and for this reason, as the opinion is without foundation, the presumption must be in favor of the transaction which ought to avail according to its tenor. The presumption must be in favor of a transaction which took place between the Superiors and the Members of the Order of St. Sulpice, who must be better acquainted than any other persons with the organization of that body, and were more interested than others could have been in observing all the requisite formalities in the said transaction. 6thly. To the opinions of the Crown Officers aforesaid we oppose those of several learned French counsellors and of twelve of the most celebrated French Advocates. It appears to us that the opinions of the latter are entitled to the preference ; because they were disinterested, as their fees were to be the same whether their opinion was favorable or unfavorable, and because they had no hope of themselves pleading the cause before the English Tribunals ; because as the greatest possible publicity was to be given to their opinions, they were bound both for their personal honor and for that of their country to give them conformably to Law ; because, as Sir J. Mariot had cited nothing but French Law, and the Crown Officers of 1789, had confined themselves to the reasons assigned by him, it was by that Law that the question was to be decided, and therefore French Jurisconsults were the most likely to give a correct opinion ; because as the question related to the organization of Communities, and to transactions between members of the same community, French Jurisconsults to whom questions of this nature were familiar must have been

better able to understand them than English Jurisconsults, who in their own country must have been absolute strangers to them, and who perhaps had never considered any other than this solitary case iu Canada; because in fact, M. d'Outremont, Counsellor of the Parliament of Paris, looks on the *cession as made to co-proprietors;* Mr. Dupin considers it as a *partition of common property* between members of the same community; and that in the opinion of the twelve Advocates the right of the Seminary is considered as *that of the community vested* in its only remaining members: all these opinions presenting, in consequence of the knowledge of the Laws concerning communities possessed by those who offered them, that true view of the question, of which the Crown Officers had not even entertained a suspicion. 7thly. This preference acquires new force, when we see a most zealous Crown Officer expressing nothing more than a doubt; when we see another, (Mr. Mazeres) not less zealous both *for* the Crown and *against* the Seminary, acknowledge the right of property in the latter; assuredly the opinion of one Crown Officer in favor of the Seminary is worth the opinions of twenty in favor of the Crown; when the Crown Officers of 1789 were reduced to adopt so many principles without proof and without application, advanced at hazard and false in themselves, so many inconsistencies and so much bad faith, and could after all create nothing but doubts in a council so favorable to the Crown,–when they were forced to admit principles and facts which exclude the right of the Crown and establish that of the Seminary ;-and when we see, not the Officers of the Government, but the Government itself so frequently

recognizing in so many different ways, and still more solemnly in 1781, the right of property in the Seminary.

Objection founded on the Quebec Bill.

It will not perhaps be useless to allude here to an objection which some have pretended to found on the Quebec Bill, Section 8, the tenor of which is as follows:—" All " His Majesty's Canadian Subjects, (the Religious Orders " and Communities only excepted) may hold and enjoy " their property and possessions, together with all customs " and usages relative thereto; and all other their civil " rights, in as large, ample and beneficial manner as if the " said Proclamation (of 1763) commissions, (of the Go- " vernors) Ordinances or other Acts and Instruments had " not been made, and as may consist with their allegiance " to His Majesty; and in all matters of controversy rela- " tive to property and civil rights, resort shall be had to the " Laws of Canada, &c."

The 4th Section had enacted that " the said Proclama- " tion, and the commissions under the authority whereof " the said Province was governed, and all and every the " Ordinance or Ordinances made by the Governor and " Council of Quebec for the time being, relative to the " Civil Government and the Administration of Justice in " the said Province, and all Commissions to Judges and " other Officers thereof, were thereby revoked, &c."

It has been attempted to draw from the parenthesis in the 8th section, a conclusion which must appear most extraordinary, viz: that all the communities in Canada were excepted from the right of holding property granted by the said Act of Parliament: we are about to show that this sense cannot be given to the exception in question.

In fact how can we suppose that the British Parliament

would at once despoil and deprive of their estate and customs, three hundred of the King's Subjects, who had not in any way deserved such treatment, and who were reproached with no fault, who held an honorable rank in the Province, who were bound to society by so many ties, and were entirely devoted to its service; and this in that very Act in which the British Parliament proposed to improve the condition of that society, and condescended to pay attention to its affection for its ancient Laws?

2ndly. How can we suppose that a Parliament which was neither insensate nor furious, would at once attempt to destroy all the institutions of Canada? and to despoil them, would be to destroy them. That it would at once destroy throughout the whole country all the means of instruction provided for the youth of the country, all the means of rendering that youth fit for honorable and useful employments,—for the Priesthood, for the Bar, for commerce?—That it would destroy throughout the whole country, all the resources of the sick, the aged, the infirm, and the helpless, the destitute widow and the orphan, without substituting for them any other institutions,without assigning any reason for so strange, so despotic and so insensate an exercise of authority, and in a public Act especially favorable to the people of this country?

3rdly. How are we to suppose that the Parliament would have intended to suppress so many Institutions without clearly enouncing its intention, and would have contrived to effect the suppression by a method unheard of before, by a mere parenthesis, vague and insignificant, and occurring in a sentence relating to an entirely different

subject; now when the clearest expressions would hardly induce us to believe that such a spoliation was intended, how can we believe that it was so when facts have put quite a different interpretation upon the sense of that article; when facts have proved that all those Communities which existed before the Bill, have not ceased to exist and to enjoy their rights since, not excepting even the Jesuits and Récollets, to the very last Members who represented those Orders?

4thly. What, in fact, is the exception in question? It is a declaration that the section does not relate to communities; that they continue to be in the situation in which they were before the section was passed. This section then cannot be urged as an argument for their spoliation. The effect of the section is to confer a favor on the Canadians, from which the communities are excepted; that is, they receive no benefit from it; but they also lose nothing by it, they remain in the situation in which they previously were, and therefore as they had not previously been despoiled, neither were they so in consequence of that section. They are excepted from the favor conferred on the Canadians; but as the favor conferred on the Canadians does not consist in giving them property, because their right to it had never been contested, it follows that the communities are not excluded from the right of holding property to which right the section in no wise relates,

5thly. What is the favor which Parliament conferred on the Canadians by this section? An opinion may be formed on this subject, from the Debates in Parliament, in which the whole question turns upon a system of Laws; this is the

only subject agitated-in the plans proposed at the command of the Government; by Sir J.Mariot, by the Attorney General Mazeres, by General Carlton,-in the different interrogatories of these Gentlemen,-and in the discussion relative to the Trial by Jury, *Habeas Corpus* &c.—(see the details in the British Review for 1803.) The 7th section of the Bill declares clearly, that the Canadians shall thereafter enjoy their property and their rights, not according to the Laws mentionned in the Proclamation, but according to the French Law:—That is to say, it simply substitutes the Law of France for the Laws mentioned in the Proclamation.—The Communities then being mercly excepted from the favors conferred on the Canadians, are only excepted from the benefit of the French Laws which gave them so many privileges.—And this is evidently the whole amount of the exception thus objected against us.

6thly. If any doubt remained, it could be demonstrated that the said section has no reference to the spoliation of the communities: 1stly. By the nature of conquests, which leaves all persons, communities as well as individuals, in possession of their respective property.—2ndly. By the capitulation which guarantees to all the communities in Canada the property theretofore belonging to them.--Would it be possible to render void an Act so solemn, made in the name of the King, and which could not be violated without rendering void all capitulations, and thus making all Wars, Wars of extermination?—3rdly. By the Treaty of Peace, which preserves the free exercice of the Roman Catholic Religion, and consequently preserves the Seminaries which are its support, and consequently the right of the latter to

the property without which they cannot subsist.—4thly, By the conduct of the Government, which certainly was not ignorant of the meaning of the Bill, and yet in 1781, seven years after it was passed, solemnly recognized the right of property in the Seminary of Montreal and other communities, by receiving them to perform Fealty and Homage.—5thly. By His Majesty's Instructions in 1775.—The King could not be ignorant of the meaning of the Bill which he had Himself passed jointly with His Parliament, and yet He says in his instructions that the Seminary of Quebec and Montreal are to enjoy the property, establishments, &c. to which they had titles in 1759, and that they may receive new members. 6thly. By instructions perfectly similar, frequently repeated, even in 1811;—these instructions prove a perfect understanding on the part of His Majesty that the meaning of the Bill of 1774, was not to despoil and destroy all the communities in Canada, since they direct that the said communities shall enjoy their property and perpetuate their existence. 7thly. By the silence of the Crown Officers of 1789, who have not said a word on the subject of this difficulty in a Memoir in which they omit no possible argument in favor of the spoliation of the Seminary; so far were they from suspecting that this clause in the Quebec Bill could be brought to bear against the right of property in the communities of Canada. 8thly. By the conduct of the Provincial Parliament, which has on various occasions granted sums of money to communities:—in 1814 to the Grey Nuns:—in 1812 to the Nuns of the General Hospital:—in 1818 to those of the *Hotel-Dieu*; thus recognizing the existence of the said communities, and

their possession of establishments and property without which no community can subsist.—By the Letters Patent *de Terrier* granted to the Ursuline Nuns at Three Rivers, and to the Grey Nuns in 1819; the Government recognizing by these Acts, both the existence of these communities, and that they were in possession of Seigniories.

It has therefore been demonstrated that the Quebec Bill cannot be construed to authorize the spoliation and destruction of all the communities of Canada.—And if by the 8th section they are excepted from the benefit of the French Laws, they are left as they were before, in the enjoyment of religious liberty, and under the Proclamation of 1763, that is to say, under the English Laws, modified by equity. This exception, would in the eyes of any Englishman, appear a real privilege.

Recapitulation.

On summing up what we have said, it will appear that according to whatever Law the question is to be decided, the Seminary of Montreal is entitled to the property in its possession.

The Law of honor.—The corporation of the Sulpicians could have sold their property, and they gave it all away, for the benefit of Canada, with regard to which they were to be foreigners, and gave it to subjects of the British Crown:—and the Crown would confiscate the property of its own subjects, to the injury of the Sulpicians of Canada, of the Canadians, and of the Indians for whom that property was given!—It is a point of honor to keep a promise made to the French Ambassador, and in consequence of which the Sulpicians made a Donation of their property to the Seminary of Montreal. Where would be the honor

of the Crown, if this promise were not kept!—especially if it were only a trap laid to induce the Donation of property which it was intended afterwards to confiscate on the ground that the Donation was illegal!—Honor requires that the promise made by the British General in the name of his Master should be kept;—and by the capitulation a promise was made to preserve to the communities all their property, and consequently to the Sulpicians the property belonging to them,—and consequently to those of the Sulpicians who by becoming subjects of the King enabled themselves to hold it.—Honor requires the keeping of the Royal word given in the Treaty, to preserve to the Canadians their Religion, and consequently the Seminaries which are its support, and the property with which they are endowed, which can be no other than that which they have always possessed, and which those institutions had been authorized to hold in mortmain. (Letters Patent of 1677.)—Honor requires that those rights which have been so frequently recognized by Government, as belonging to the Seminary, should be still recognized by it;—and that a character of vaccillation and uncertainty which would destroy all confidence in the supreme authority should not be impressed on the acts of the government.—Honor requires the fulfilment of the solemn promise given by the Government to regard the Seminary as its Vassal, and, by a necessary consequence, to protect its rights to its Seigniories.—Where would be the honor of Government, if instead of affording this protection, it should despoil the Seminary of its possessions?

The Law of good faith, which is so well deserving of regard.—The Sulpicians acted in good faith, when in the

Deed of cession they frankly stated that they were bound to leave the property (in order that it might be applied to the work for the advancement of which it was given,) to the Seminary of Montreal which was their Executor for accomplishing the work for which the endowment was made.—The Seminary acted in good faith, when it caused the said Deed to be forthwith enregistered in the Archives of the Province, and afterwards presented it openly to the Governor as the instrument on which its right to be received to perform Fealty and Homage was founded.—Is this good faith to be found in Sir J. Mariot, who with all the information possessed by Government with regard to Canada at his disposal,represents the property of the Sulpicians to be five times as great as it really was ; and who in treating a legal question thus found means to appeal to the passions.—Is it to be found in the Crown Officers of 1789, who suddenly change a particular question into a general one affecting the whole property of the Seminary, giving the latter only ten days to answer ;—take advantage of its not having exhibited sufficient titles to prove its rights, to assert that it had none, and press the Council to decide as they had done, that the whole belongs to the Crown. It cannot be doubtful where the preference ought to be given; and weighty reasons would be necessary to counterbalance that preference.

The Law of the Preservation of existing establishments, in order that the people may not be indiscreetly troubled; now they would be troubled if the property which they have always seen in the hands of the Sulpicians of Montreal, were taken away from that body, with regard to whom

the conquest has made no other change than to withdraw them from the superintendence of the rest of the Order.—The law of *preservation* being always to be most *favorably* construed, more especially when contrasted with the *odious* law of confiscation.

The law of Succession by which children succeed to their parents;—now communities are also families, and the said law of succession takes effect wherever they are established, and is still stronger with regard to them, because even during the life of their parents they enjoy a portion of their heritage, since they all possess it *per modum unius* being all *one whole*, whatever their number may be. This law is still more strongly in favor of the successors of the Sulpicians who succeed to those who acquired the property, who made it valuable, who died in promoting the settlement of this Island; while the Crown could only have in its favor the *odious* law of confiscation, which cannot be enforced except on good evidence, more especially when opposed to a law which ought to be so favorably construed as that of succession.

The Law of Possession which is so strong that it confers a right on the possessor, unless the proprietor can demonstrate his title, and even although he can demonstrate it, if the possession has been sufficiently long to create a prescription: now the Seminary of Montreal has incontestibly been in possession for more than 80 years; and the corporation of the Sulpicians, which was reduced by the conquest to the Seminary of Montreal alone, has been in possession for more than 170 years;—that is to say, the Seminary of Montreal has, *as such*, a possession against which incontes-

tible Titles would be required, and as a portion of the corporation of the Sulpicians, that possession against which no title can avail.

The Law of Deeds which are presumed to be legitimate and ought to be held valid, so long as they are not proved to be illegal: now the cession under the circumstances above stated not having been proved illegal, ought to be held valid; more especially as those who oppose it, (the Officers of the Crown,) form their opinions at random with regard to a body with the organization of which they are unacquainted, while those by whom the cession was made, being the Superiors of the Order of St. Sulpice, were perfectly acquainted with the body to which they belonged and the laws which relate to it, and were in every way interested in attending to both for the purpose of forwarding the *work* they had commenced and preventing the confiscation of the property given for the said *work*.

The French Law, which (rigorous as it is with regard to those who hold property in mortmain,) does not prohibit a cession made to members of the same body; and still less a cession which is in fact only a partition of property held in common; still less a cession which was only a recognition of the effect of the conquest, in destroying the rights of the Sulpicians who had become foreigners, and sparing those only which belonged to the Sulpicians of Canada.

The Law of Trustees, by which when property is given in trust for the performance of a certain work for ever, the Trustees may appoint their successors who are to continue to perform it, which is all that the Sulpicians did by the cession when they substituted the Seminary of Montreal to

themselves: Being trustees themselves, (according to the Crown Officers of 1789) they did no more than appoint other Trustees in their place to perform the work which they had in charge. The corporation of the Sulpicians would the more naturally choose the Seminary of Montreal to be trustee in their place, because being no longer able to hold the office themselves, and having lost the power of complying with this accidental condition of the endowment, it was necessary that they should provide for the accomplishment of the essential condition, that is, of the work itself. The Sulpicians would more readily choose as they did, because it was the only way in which they could accomplish the intentions of those by whom the property was given. When the whole Body could no longer be the Trustee, it was necessary that a portion of it, and all that portion of it which was capable of so doing, should become the Trustee, and this portion consisted of the Sulpicians of Canada, the portion of the Body which became, with regard to Canada, the whole corporation of the Sulpicians, (the Sulpicians of France being nothing as far as this country was concerned) and the portion of the Body which had always performed the work, and which was described in the Act of endowment as the community by whom it was always to be performed.

The Law of England, which, as far as regards persons holding property in mortmain, is more favorable than the Law of France, since it makes exceptions in favor of charitable Institutions and Hospitals, and in favor of certain corporations, Universities, &c. (Blackstone, French Edition, Vol. II. page 208, page 212, and Vol. III. page 106)

which the French Law does not make. It follows therefore that as the latter does not forbid the cession, the spirit of the English Law which is in this respect less harsh cannot forbid it either; more especially when the exceptions made by the English Law, being in favor of Public Schools, Universities, &c. that is to say, of Institutions for the encouragement of Education, are applicable to Seminaries which are places of public Instruction: and the Laws against the Catholic Religion in England formed no obstacle to the existence of these Institutions in Canada, where the free exercice of that Religion made part of the public Law.

The Law of Conquests, on the occasion of which the uncertainty with regard to the Sovereign and the mixture of old and new Subjects, effect a suspension of the Laws of detail, and leave scarcely any thing in force but the Law of Nations. Now as far as the right of disposing of property was concerned, this state of conquest lasted 18 months after the signing of the Treaty, (as we have already proved) and it was during this period that the cession, which is not in any point at variance with the Law of Nations, was made. —The Law of the conquest of Canada, as established in the capitulation, which guarantees their property to communities, Sulpicians, Jesuits and Récollets, and that without any enquiry whether such property belongs to the whole Body of the Order; the remainder of the Body being nothing in Canada as far as the Government is concerned, and the Government recogniziug no other Sulpicians or Jesuits than those of Canada.—The Law of the conquest as set forth in the Treaty which guarantees the Catholic Religion, and consequently the Seminaries and their property, as we

have before shown,—The Law of the conquest as stated in the capitulation and Treaty which allows all, without exception, (and consequently communities) to sell their property; and more especially in the capitulation, which gives special permission so to do to the Jesuits and Récollets, who otherwise were forbidden by the civil Laws, and which thus suspend the law touching alienations,aud consequently that concerning acquisitions, which naturally depends on the other, as we have before said.—The Law of the conquest, as set forth in the Proclamation of 1763, which directs the Judges to decide as far as may be possible according to the *Law of England* and to *Equity*; and in thus authorizing a certain latitude, establishes Equity as the chief rule to be followed: now the rule of Equity was certainly not violated by the cession.—The Law of the conquest, which, as we have seen, vested in the Sulpicians the right of selling; Now if the cession be declared null, this right of selling has not been exercised by the Sulpicians, and therefore they have a right to exercice it at the present time. Let it not be said that they are debarred by the expiration of the eighteen months; since no confiscation was directed in default of sale; since the time runs only against those who have not sold, and not against those who effected a sale which becomes null; and since every thing is to be interpreted rigorously in opposition to the *odious* penalty of confiscation. Their quality of foreigners cannot be objected against the Sulpicians; because their right dates from the time of the conquest, when this objection could not have been made against them. Thus the effect of invalidating the *cession* would only be to take the pro-

perty from Subjects of the Crown in order to give the value of it to foreigners, without conferring any advantage on the Crown.

The Law of necessity. It was necessary to provide for the performance of the work; but if the property was not sold, it was liable to confiscation also, and the work could no longer be performed when there were no funds provided for its performance. It was necessary that the Sulpicians should perpetually perform the work. The cession of it to a body like the Seminary of Montreal, was therefore *necessary* to the accomplishment of the work.—The endowment was made for the work, but was made to the Sulpicians who were charged with its performance; now there was no other means of leaving the work in the hands of Sulpicians, than by confiding it to the Seminary of Montreal, who should continue to perform it; and it was therefore *necessary* that the cession should be made to the Seminary of Montreal.—The endowment was made in favor of the Sulpicians, but on condition that they should establish a Seminary at Montreal, by which the work in question should be performed; it was therefore necessary that the cession should be made to the Seminary of Montreal, in order that the work might be accomplished. But from the moment the cession became *necessary*, it became *lawful* also; *necessity* being above all Law.

The Feudal Law, by which the King in receiving the Seminary to perform Fealty and Homage, invested it with the property, put it in possession of it, and engaged to protect the Vassal thus received in the possession of its Seigniories. But, according to Blackstone, (Vol. 2. page 297) to invest is to confirm the Donation; and he who confirms

a Donation cannot afterwards oppose it, any more than the person who made it, or the King who originally granted the Seigniories. But to put into possession is to confer the last degree of right to the property, and to put a seal to that right. The King then has put His seal to the right of the Seminary; how therefore can He attack it? But to oblige one's self to protect is surely something more than to bind one's self not to despoil; and therefore the King has no right to despoil the Seminary.

The Law of Church property, by which such property is vested in the Church for ever; and therefore the property given to the Sulpicians should remain to the Sulpicians; the Crown then is here more especially without any interest, and the Church alone is interested.—The Law of Church property, the property in question, was *dedicated to God* by the Letters Patent of 1677, and the Kings of France having for ever renounced all claim to it, the Kings of England have therefore no right to it, since they can have no other rights than those which belonged to the Kings of France.

The Law of the property of Communities which always belongs to the last member of the Community. And this is the more strictly true, because the Crown being the *ultimus hæres*, can only succeed after the failure of the last surviving member, in whose person the community is supposed still to exist. A maxim recognized in Canada by His Majesty, who permitted the last survivors of the Jesuits and Récollets to enjoy the property belonging to those Orders.

The Law of the act of Endowment, by which the property is given to the Corporation of the Sulpicians, and

consequently to such members of that community as might be capable of enjoying it, that is to say, after the conquest to the Seminary of Montreal.--Which by giving the property to the whole community, gives it to the Seminary of Montreal, the sole representative of the community in Canada;--which by giving it to the whole community, gives it to those Members of it who perform on the spot the work for which it was given, and consequently to the Seminary of Montreal;—which was made for the express purpose of founding the Seminary of Montreal, and consequently ought to avail to the Seminary, reserving always to the corporation of the Sulpicians those rights of superintendence and direction which they lost by the conquest;—which being made with a view to the performance of a spiritual and of a Catholic work, cannot vest the property in a temporal authority, and still less in a Protestant Prince;—which being made with a view to the performance of a work on the spot, was made for the benefit of those persons on the spot who perform that work, and consequently cannot avail to the King by the Law of confiscation.

The Law of natural rights, according to which, if the endowment becomes void, if the property cannot belong to the Sulpicians, if the work for which it was given cannot be performed, the property ought to return to the Donors. " The Law(says Blackstone)annexes to the Gifts made to " a Corporation, the condition that if it be dissolved, the " Donor shall enter again into possession of the property " given by him, since the reason for which the Donation " was made no longer exists, and cannot exist, since the " corporation itself has no longer any existence." The

first Donors were, among others, Messrs. Ollier, Bretonvilliers, &c. members of the Order of St. Sulpice, and whose rights are vested in the Order. The second Donors were the Sulpicians themselves, who gave the whole to the Seminary. These are they to whom the property ought to revert, if the Act of endowment becomes void, if the community of the Sulpicians is no longer recognized; nor can it be objected to them that they are foreigners, since their right dates from a time when they were not so. Any proceedings therefore on the part of the Crown to obtain possession of the property aforesaid would be against the interests of its *own Subjects* and no way in favor of the Crown itself; but would be solely in favor of foreigners who would receive the whole value of the property.

The strong agument drawn from the avowal of the adverse party.—The avowal made indirectly by the Crown Officers, by their manner of attacking the right of the Seminary to the property; their mere assertions without proof, their silence with regard to the principal points; their directing their attack solely against a single act of a Body with the organization of which they were unacquainted; their arguing beside the question throughout the whole of this attack;—when this is all that the efforts of 80 years have been able to effect against the Seminary, does not this fact amount to a demonstration of its rights and of the impotence of its enemies?—The avowal of the most ardent enemy of Catholicism, and consequently of the Institution in question, and of a man most zealous for the Crown, of the Attorney General Sir J. Mariot, who could give birth to nothing more than doubts;---to doubts,which on the part of

such an enemy, form a strong proof in favor of the Seminary ;—to doubts, which if we suppose the reasons *for* and *against* the Seminary to have been equally strong in the eyes of Sir J. Mariot, prove that those in its favor, were in themselves by far the strongest ;—to doubts which decide the question in favor of the Seminary which is in possession : *in dubio melior est conditio possidentis.*—The avowal of Mr. Mazeres an Officer of the Crown, who acknowledges the right of property to be in the Seminary, and this acknowledgment in favor of the Seminary is worth more than all the opinions of the Crown Officers against it.—The avowal contained in the Memoir of the Crown Officers of 1789, who were not in the first instance consulted with reference to this question, as Officers of the Crown, since the Government did not direct them to discuss it, but limited their intervention to the objects contested, and who thus lose in the eyes of the Government the authority which their situation as its Officers would have given them.--The avowal contained in the Memoir in question, which could raise nothing more than a doubt in a Council so decidedly in favor of the Crown, and which concludes by a declaration of principles contrary to the claims of the Crown, and establishing the legality of the cession, and with it all the other points on which the rights of the Seminary are founded. How strong must the evidence in favor of the Seminary have been, to have compelled such an avowal in a Memoir which has become the arsenal from which all the arms with which we are attacked are drawn.--The avowal of the Government. Firstly, by its acts ; it is a thing unheard of that the proprietor should

publicly allow another to enjoy his property, and property of great value too, during a period of eighty years. The Government therefore having permitted others so to enjoy the property, is supposed to have acknowledged that it is not itself the Proprietor. If the *cession* had been illegal, and contrary to the rights of the Crown, would the Government have authorized it by allowing it to be enregistered, and permitting it to have effect during sixty years, in order to take advantage of its supposed informalities afterwards. If the Government at London, which in 1767 had demanded a detailed account of the communities in Canada, and which assuredly received such an account, had thought that the Seminary had no legal title to the property, would it have permitted the Seminary to receive new members who could only have created embarrassment, when the King should have confiscated the property of the community?—An avowal expressly by the reception of Fealty and Homage, which we have shewn to be so strong, because it was made after the examination of the titles, and with a perfect knowledge of the objections made by the Officers of the Crown;—and so much the more so, because the reception was the act of one who was aided by all the information of the Province;—so much the more so, because it was the act of him who alone could have any interest in the property, if it did not belong to the Seminary;--so much the more so, because it was the act of the Representative of the Sovereign himself;--so much the more so, because it was the act of that dignified personage in whose power it lay to render the cession valid, by giving the property, and whose honor required that he

should do all in his power to render effectual his own act; so much the more, because he who alone can contest its validity, cannot by the law of natural justice contest his own act,—cannot by the Feudal Law contest the right of his Vassal, even if the latter were an usurper; so much the more, in fine—because this act not having been revoked, its effect continues, and has continued at least during fifty-nine years, and is therefore equal to a recognition of the rights of the Seminary, continually renewed by the government, during a period of fifty-nine years