

Case
(in part)
of the
Seigniors of Lower Canada,

submitted to the
Judges of the Court of Queen's
Bench and of the Superior
Court for ^{Lower} Canada,
in reference to the Questions
~~submitted under the~~
and counter-questions
before them, under
~~provisions of the~~
"The Seigniorial Act of 1854."

By Christopher Dunkin,
M.A.
Advocate.

Case.

§1. — In support of his declaratory Siquiorial Bill of 1851, the Attorney (then Solicitor) general for Lower Canada maintained, that the Siquiorial system, as ~~introduced~~ introduced into Canada, "was regulated by special laws of the most beneficial kind, which gave every man a vested right in every acre of wild land throughout the colony," — that "the Lord held the land not for himself, but for all comers, upon the strict condition of settlement," — that "the first condition of the tenure was that the Siquior should concede ^{not only} a hke de redevance — for a small annual rent — but that he should make it his business to obtain settlers for his lands," — that "not only were the Siquiors bound to concede lands on demand, but the Attorney general was especially required to see that Siquiors did not abuse the rights given them for the purpose of settling the country," — that "thus everything makes it evident that the Siquiors did not hold for themselves, but that they were looked on by the law as trustees for the public."

§2. — Indeed, this doctrine of the trustee-capacity of the Canadian Siquior had come to be so often asserted and so widely believed, and was so plainly the basis, not only of the Bills of 1851, but also of the Bill which followed them in 1852, that when called upon to oppose the latter measure at the Bar of the House in 1853, it was necessarily the main object of my argument to show its groundless-ness, by such induction of facts as was then at my command.

(Foot-note)

* Speech of 18th August 1851, on Second Reading of Bill, — as reported in Montreal Herald of 22nd, and Pilot of 26th.

3) S 4. - In the Attorney General's ~~the~~
Propositions now maintained ^{and}
~~before this court,~~ ^{before this court,}
was this definition is not re-affirmed,
any more than the golden rule
proposition ^{doctrine} of 1851. The nearest ap-
proach to either is to be found in
the ~~Answers~~ following Answers
to Questions 9 and 17: -

"9. Les anciennes lois du pays
imposaient aux propriétaires de fiefs
et seigneuries l'obligation de concéder
leurs terres à titre de redevances, qu'ils
en étaient requis, et leurs devoirs
de propriété dans ces terres étaient
restreints et limités par cette obliga-
tion de les concéder."

"17. - Suivant les lois en force en
Canada, avant la cession du pays, les
personnes auxquelles des terres avaient
été accordées par la Couronne de France,
en fief et seigneurie, avaient dans
ces terres un droit de propriété limi-
té et restreint par l'obligation de
les concéder à titre de redevances
annuelles, sans qu'elles pussent
être aliénées."

An omission the more striking
from the fact that Question 17 reads
thus: -

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

- and was plainly ^{so} drawn, on
purpose that this very definition
of 1853 might be called for from
this court in answer to it. - Odd, that
it follows Questions 3 and 4, which
were thus drawn: -

Third Question. - In what did
the dominium directum consist?
Did it consist in the right to impose
upon the ceutitane the payment of
certain rents or dues, redevances?

Fourth Question. - In what
did the dominium utile consist?
Did it consist in the right of occupy-
ing the soil and enjoying the pro-
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[Foot-note.]

* Writing in English, I of course
cite these Questions, ^{and} ~~in~~ ^{English}
English. The Propositions, ^{and} ~~in~~ ^{English}
to general in answer to them, I have
to cite in French; from not having
been able to obtain a copy of them
in ^{an} authorized English form.

"duce thereof? And did this right
"of occupation and enjoyment
"extend to the waters and woods,
"as well as to the land?"

— and which are now answered,
or rather not answered, thus:—

"3. — Les profits du domaine
"direct consistaient dans les obliga-
"tions ou redevances dont le fenda-
"taire ou censitaire était tenu
"comme la foi et hommage, le
"cens, les rentes, les lods, etc.

"4. — Cens du domaine utile
"consistait dans les produits
"du sol, que le fendaire ou cens-
"itaire avait droit d'occuper à
"titre de propriétaire, et compre-
"naient l'usage des eaux non-navi-
"gables et des forêts qui s'y trou-
"vaient."

So that, in truth, the failure
now to hazard before this Court the
definition so boldly urged on the
House of Assembly two years ago,
has involved the ^{allowing} ~~leaving~~ of no less
than three of the Attorney gene-
ral's Questions, to remain unan-
swered by himself.

Propositions before this Court,

S5. And yet, it will be within the
memory of the Court, that one at least
of the learned Counsel on whom
it devolved to ^{support} ~~maintain~~ the Attorney
general's ~~Conclusions~~ went the
whole length of maintaining the
Seigniors to be mere administra-
tors, agents and trustees, ("admin-
"istratores, agens et fidei-commis-
"saries") and their tenure of what
they call their property, ~~was~~
to be truly a trust, though of
a kind so peculiar as to ^{call for} ~~require~~ the
invention of a new name — vide
"fidei-commis seigneurial" — fit-
tingly to designate it.

~~No. 5. Reg.~~

S6. ^{However, as} ~~Hardly, it~~ may be, under
such circumstances, to say what
is or is not the precise definition
of this tenure, upon which the
Propositions of the ^{Attorney} ~~Attorney~~ ~~general~~ ~~are~~ ~~conclusions~~
^{at present} ~~presently~~ in controversy, are
intended to be based, it is at
least comparatively easy to say
what kind of definition they
require, as matter of logical
inference, in order to their being
held good in law.

whether complained of by
the censitaires or not, and

[Foot-note.]

Proposition 25. - In terms, this demand relates to no grants but those made since the cession. But as matter of principle, it is obvious that the rule must apply to all or none. - It seems to have been for ~~the~~ overlooked, that there were numbers of earlier grants so made as to come within its operation.

[Foot-note.]

Proposition 26.

[Foot-note.]

Proposition 27.

[Foot-note.]

Propositions 28, 29, 32, 39, 40 & 41.

[Foot-note.]

Propositions 33, 34, 35 & 36. - Proposition 36 defines the censitaires obligation of the Censitaires as being "celle d'acquiescer sans grans," without limit of quantity or kind. But in argument, it will be remembered that the learned Counsel limited the obligation, both as to kind and as to quantity.

[Foot-note.]

Propositions 39, 40, 41 & 42.

[Foot-note.]

Propositions 9, 17, 25 & 45.

[Foot-note.]

I resort to this long explanatory passage, that I may (if possible) avoid being misunderstood or mis-stated, as to the fundamental idea involved in the proposition that the Seigniors are veritable proprietors of their Seigniories.

In 1850, speaking to a Parliamentary Body, most of whose members were neither lawyers nor familiar with French law terms, I said in English, more or less, with as little reserve to them as possible. With this view I made use of the phrase "holders of an estate in fee simple," as an English law phrase conveying the idea of "proprietary," as compared with "tenants in common." In the report of my speech, as first printed, this phrase was shortened into "holders of freehold estate." The gentleman who ably translated the report into French was materially puzzled by this not quite accurate expression, - and (not being himself a lawyer) rendered it "possesseurs de franc alleu." I only saw he had translated after it was published.

The tenor of the speech, as a whole, shows clearly enough that this could not have been my meaning. - I refer to the matter, because it had been often said that very argument for the Seigniors tends to claim for them the quality of holders in alien. It does no such thing; and never was by me so stated as to admit of such inference being drawn from what I said.

§7. Practically, they call upon this Court to declare collaw, - that all cases of charge upon censitaires, whether in kind or money, exceeding the present money value of 2 sols per superficial arpent, even though contracted for since the cession of Canada to the British Crown, must be ~~reduced~~ ^{cut down} to that value; that the Seignior, no matter what his ^{own} title or the terms of his grants to others, can have no right whatever upon any navigable water, or to any reserve, redevance or profit, in respect thereof, - nor yet upon any other water travelling or bathing any land that he may have conceded, or by reason of any special concession, reservation or prohibition in respect thereof, - that his banality is ^{nothing more than a} ~~nothing more than a~~ conditional right to make his Censitaires grind certain particular grain at his mill, ^{or} ~~or~~ certain ^{grains} ~~grains~~; that every reservation or prohibition of any ^{real} ~~real~~ possible value to him, and all concessions in his favor, stipulated by any concession deed, are absolutely null; that his rights in his ungranted and in his granted lands are to be valued, in effect, by one and the same rule; in a word, that over and above his house and mill, ^{in popular language is} ~~people~~ called his domain as comprehending his ^{the rest of} ~~his~~ ungranted lands, he has and can have no manner of right in, to or from any realty in his Seignior, beyond the value, in the appraise, of this rent of 2 sols or less per arpent, of the casual rights incident thereto, and of the profits (if any) of this limited banality.

§8. - Yes, (looking back to the time of its first concession by the Crown) whose was the Seignior, - the domaine utile, in its large entirety, of the whole part of land, then granted under the reserve simply of the rights of the Crown which formed the domaine direct of the Crown? #

§9. Not the Seignior's own. For he had nothing like the power of doing as he would with it. All of it that he might take to his own use, - all of it that he could hold for himself, - all of ~~the~~ it that, as Seignior, he had the right to make his own, -

b) is supposed to be this house and these mills which he is to build, this so-called domain which he may receive, and these low rents and contingent rights and profits, which he may realize if he can.

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S10. Nor his, subject to the mere charge or obligation towards his feudal lord, the crown, that he should sub-grant from it on given terms, when thereto requested. For such charge or obligation could always be given up or released by the crown; could ~~only~~ ^{only} be enforced by the crown ^{alone}, in its discretion, and in favor of such as might invoke its enforcement; could import no ^{absolute} nullity of every clause ~~of every contract~~ ^{of every contract} falling out from such terms, which might find its way into his contracts, ~~with parties who~~ ^{with parties who} either should not have invoked, or should have invoked ~~to~~ ^{no purpose} such enforcement.

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S11. Nor yet his, "jointly with the Censitaire", - he holds ^{in it} or in some part of it, a mere ^{imaginary} ~~direct~~ ^{domaine direct} and the Censitaire an equally ~~direct~~ ^{imaginary} ~~domaine utile~~ ^{domaine utile}. For, till such time as he shall have sub-granted from it, it is a mere undivided domaine utile in his hands, and there is no Censitaire in being, to be holder of the lessextensive domaine utile, which alone a Censitaire can hold, and which can ~~be~~ ^{be} off-set from ~~the~~ ^{the} domaine utile ^{of the fief} by his contract of accensement with such Censitaire. His contract with the crown could not possibly sub-divide his grant between him and an échevif - so to speak - not party to the contract, not yet existent, perhaps never to exist. - The idea has been insisted on; or one ^{might} ~~could~~ have thought it never could be.

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S12. Nor, ^{again} can one ~~say~~ say, that it was partly his, and partly held by him in trust by him for this échevif ^{there contingent} ~~community of censitaires~~ thereafter to be or not to be; that in so far as regarded whatever land or water he might take for his house, his mills and his so-called domain, he held it as his own, and that in so far as regarded all the rest, he but held it ~~in trust~~ ^{in trust} for the population to all comers, with the right

& this contingent censitaire population, thereafter

47.1
Should he should discharge his trust to pay himself pro rata, with so much and no more of rents and profits out of the lands distributed. For if anything in law be certain, it is this; that a feif is essentially a whole — one property, to be held ^{under one tenure} ~~as such~~ by one vassal, or by several co-vassals, as may be, — not an aggregate of properties, ~~to be held, some as the vassal's own, and some in trust for others than co-vassals.~~
§ 13. It will it ^{even} meet the case to say, that he holds the whole seignior as a simple trust, for ~~such~~ distribution, with the right to pay himself by taking so much for his house, mills and domain, and realising such and such rents and profits out of the rest as it should be distributed ~~subsequently~~. For on that theory, the nullity attaching to whatever he might do in excess of such his right, would be only relative, not absolute. Supposing him to take too much or give up too little, — to bargain for expensive rents or take undue advantage of his position in any way, the matter would be one for private suit ~~state redress~~, not one of public policy. The parties injured must complain; and it would be for him then to defend himself, if he could. Contracts, made en Couraissance de cause, after dealings and recognitions, — prescription, even, as in other matters, — might make good his case. But the pretension here is, that without such complaint, as matter of public policy, treating every variance from the supposed terms of the supposed trust as an utter nullity, — contracts, dealings, prescription, prescriptions, all set aside as immaterial, — the entire fabric of the relations of the parties is to be built up anew from the foundation.

§ 14. In truth, there is but one theory large enough to cover this pretension, — the theory of a purely public trust, — the theory which would vest in the seignior a mere trust estate, so absolutely regulated even in its details by the public law, as to admit of no legal capacity in any one (seignior, or cessionaire, or intending cessionaire) to transgress any of them. If the grant to the seignior (so far from being to himself, of a property) was but of a public trust for the distribution of real estate, so much to himself, and so much to such and such terms to others, he, incapable

8) of holding more, and they equally so of holding less, of the realty to be distributed, — all bargains, after dealings, recognitions, possession and prescription, if tending to give him more and then less, but not otherwise to be null and void, as contra-vening a fundamental law of public policy, — then, indeed, the practical conclusions now taken by the Attorney General may be maintained. On no other ^{any other} ~~ground~~ can they ~~be~~.

x be. Either the Seigneur's grant, as first made, must have meant all this, and nothing more than this. Or, if it did not, legislation must have brought it ~~to~~ to do.

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§15. The Seigniors on the other hand submit that this abstract theory and these practical conclusions are alike preposterous. The grant by the French crown of a Canadian Seignior ^{est seigneuriale} involved not such, ~~just~~ as this, — involved no trust ~~at~~ all, — was a ^{simple} ~~trust~~ grant of a property. Particular titles may have had in them one or ^{another} ~~other~~ form of words imposing more or less of requirement as to the matter of sub-granting. But such cases were the ~~rule~~ exception, not the rule. And even in such cases, this kind of clause could not possibly divide the property granted, between the Seignior and all the world, — or make him and all the world incapable of ~~grants~~ dividing it ~~as~~ to let him have more than a certain minute share of it, — or turn him into a trustee for every body, — or give every body a vested right in it, — or do more than lay on him an obligation towards the crown, which the crown alone could enforce, which it might enforce or not, ~~at its discretion~~ which it has not enforced, which for the last ninety years and more it has had no machinery for enforcing, — or, in a word, ^{at all} affect ~~at all~~ his right of property, unless ^{discretionary} as this right of the crown, may be held to have formed part of its domaine direct, and so to have limited in theory the domaine utile in such cases granted, which formed its grant to him. In every case, without exception, ~~the reserved rights or domaine direct of the crown~~, all manner of proprietary right in all land real estate (land or water) covered by the grant, was made over by it en domaine utile to the grantee Seignior, for himself, and became his own.

⊗ to hold him to his contract if it would,

x3

⊕ left only the reserved rights or domaine direct of the crown,

Such proprietary right was necessarily not less, but larger, than the proprietary right of the curtain, made him not less, but more, of a proprietor ^{Archives de la Ville de Montreal} ~~was or could be~~ ~~and~~ ~~the~~

for. H.

9) was or could be. — And this state
of things ^{continued} ~~remained~~. In the days
of the French government, no doubt,
under the profane notions of that
day, there were interferences in
plenty with all sorts of rights,
proprietary and personal, and some-
times interferences (or threats of
interference) with his rights, ^{as}
with other people's. But these
could not specially abate his
rights. They even touched him
less than they did others; for his
was the ruling and favored class.
And they made no law. As before
the law, they abated no right. They
passed by with their times — all
of them, on whatever class they
might have pressed, — leaving, as
matter of law, no trace even of
the fact that they ever were. ~~The~~
~~the~~ legislation ~~nor~~ quasi-legislation
ever made the Canadian Seigneur
less a proprietor than his title made
him, gave any one but himself
a vested interest in his property,
or, in a word, at all altered the real
estate law of Canada to his dis-
advantage.

XOX

§ 16. - Change to say, ^{however} the argu-
ment for the anti-seigniorial
doctrine has been made to rest
in part on an assumption of its
antecedent probability.

It is said, that the colonis-
ation of Canada was begun after
the French crown had broken
down the power of the great
nobles, and when its policy
(as this argument assumes) was
consequently anti-aristocratic
and favorable to the develop-
ment of the tiers état; that this
development had even made
considerable progress; that the
custom of Paris, which ^{the crown} ~~was~~
introduced into Canada, was
distinguished among the cus-
toms of France as favourable
to the curtilaine, serfdom,
mainmorte and ~~the~~ ^{of the} more
odious features ~~generally~~ of the
older feudal system of Europe,
forming no part of it. That
the roturier element, ~~settled~~ ^{predominated in}
~~Canada~~ ^{settled} into the ^{whole} system of the
settlement of Canada, - nobles
from an early day, being ^{they} allowed
to trade without derogation
from their rank, - the two
Companies to which the country
was first granted, having
been having Companies, into
which nobles could not have
entered but for the special
permission, ^{which was} granted them
to do so without loss of rank,
- the direction of those Com-
panies having been, of neces-
sity, in the main left to rotu-
rier hands, - and many of
the grantees of seigniories
having from the first been
roturiers; that it is, therefore,
to be presumed that the Seigni-
ors of Canada were ^{not} meant
to be a ^{body of} ~~very~~ different class of
men lauded lords, at all ana-
logous to the classe of Seignior
Classe in France.

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11) S17. - If all this were admitted, no great progress would be made towards the conclusion requiring to be reached.

S18. - But, excepting for the facts, - that the crown had aggrandized itself at the cost of its greater fealties, - that the tiers état was beginning to rise into notice, - that the custom of Paris, socially considered, was an advance upon most of the many other customs of France, - and that the roturier element, as was unavoidable, entered somewhat largely into the machinery of Canadian trade and colonization, - no such admission can be given.

S19. - The policy of the French crown never was, in the true sense of the term, anti-aristocratic; never sought, as an end, the advancement of the tiers état, - much less, any real development of the popular element, properly so called, in the political or social system of the country. ^{What it} ~~it~~ aimed at, was the consolidation and extension of its own prerogatives and power, and of this object it never lost sight for an hour. First breaking down the power (hostile and rival to its own) of the great nobles, - then undermining that of the nobles generally, so far as its one end required, and no further, - always ^{during to the crown} ~~taking~~ every possible fragment of every power taken from the nobles of whatever class, - conquering by turns ^{commonly} ~~near~~ with all orders, peasants, ^{commonly} ~~near~~ lawyers, clergy and nobles, - it gradually resulted in a throne as ^{dispositive over} ~~masterful~~ of both aristocracy and people, an aristocracy as subservient to the throne and as oppressive to the people, and a people as odiously oppressed by throne and aristocracy alike, and could well exist with one another.

S20. - The terms "people" and "tiers état", it must be borne in mind, were far from meaning the same thing. Long before the end came, the tiers état proper - "roturiers des villes", as they have been called - a small class only, as compared with the great body of the nation - had ^{relatively} ~~so far~~ risen as to have become almost more a lower class of the aristocracy than an upper class of what may be in the stricter sense called the people. The "roturiers des campagnes", who formed the mass of the rural population - the people proper - had by no means risen

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were left almost when the redaction of the several Customs found them, — everywhere subjects of all manner of exactions, feudal, judicial and otherwise, — over a great part of the country, mainmortables even, or absolutely serfs.

§ 21. — In fact, it was only in August 1779, that the King by Edit abolished la mainmorte et condition servile,

[Foot-Note.]

* Championnière, describing the state of things on the eve of the Revolution, says: —
"403. Les derniers États généraux du 15^e siècle, le laboureur était représenté et ses intérêts chèrement défendus: Quand le pauvre laboureur, disait Corneille au tiers État, a toute sa journée travaillée à grand'peine pour le soutien de son corps, et qu'il a cueilli le fruit de son labour, dont il s'attendait à vivre, on vient lui ôter partie du fruit de son labour pour bailler à tel seigneur qui battra le pauvre laboureur avant la fin du mois... et même le pauvre homme laboureur a payé à grand'peine la cote en quoi il était de sa taille pour la solde de deux gendarmes et qu'il se suicide conforter à ce qui lui est demeuré, que ce d'homme vire et plaigne son amie ou pour semer, vient une esgrape de gendarmes qui manant obligeant ce pauvre de bien que le pauvre homme aura réservé pour son vivre. Et encore ça peine. Et la vérité, se n'était Dieu qui conseille les seigneurs et leur donne patience, ils cherdient en désespoir." — [Rathery, Hist. des États généraux, p. 162.]

"C'est cette époque de l'histoire de la ville et le vilain des campagnes avaient des intérêts communs, et non avaient point d'opposés.
"En 1789, ces choses avaient changé. Le bourgeois était devenu riche, isolé, indépendant; il était presque partout possesseur de fiefs et de censives; acquiescent de ces franchises féodales et de droits seigneuriaux; par son état ou officier de justice seigneuriale. La domination des seigneurs avait disparu dans les villes. La position du vilain ne s'était guère améliorée sous le rapport des obligations et des tributs; il n'avait eu que d'être tiré sous le poids des impôts: il payait, comme par le passé, les dîmes ecclésiastiques, les coutumes judiciaires et les devoirs féodaux; tel qu'il était encore les vassalités et les privilèges, les corvées et la main morte. Si les exigences qui pesaient sur lui étaient moins brutales et moins humiliantes, elles n'étaient pas moins rigoureusement exécutées. Souvent il avait plus perdu que gagné à passer sous le joug d'un seigneur noble de race dans celui d'un seigneur bourgeois ou un tel.

"Dans le nouvel état des choses le vilain des villes et celui des campagnes, réunis par un intérêt commun, étaient divisés par des intérêts opposés. Le laboureur baillait son seigneur noble, comme seigneur et non comme noble, et cette appartenance se était ni subordonnée, ni différente, quand le seigneur était bourgeois.
"Quelques fois même étaient cloués depuis que les États généraux de 1789 étaient réunis pour organiser la révolution, et les députés du tiers état n'avaient encore aucun des privilèges de l'habit de la campagne; aucune acclamation ne s'était élevée contre les droits seigneuriaux; il semblait que le vilain ne doit pas prendre, encore cette fois, part au banquet de la révolution qui s'effectuait, et que la science était renvoyée à un autre temps.

"Le tiers état substituait leur communauté d'origine, et ses députés croyaient ne représenter que les bourgeois qui l'avaient élu. [C'est défaut de représentation des laboureurs avait si bien senti que plusieurs cahiers proposaient d'établir une seconde assemblée de ceux des communes, sous le titre de députés des Campagnes. V. l'histoire de la révolution de France, t. 2, p. 176.] Les intérêts seuls de la bourgeoisie la préoccupaient dans la lutte avec la noblesse, qu'elle ne cherchait qu'à mettre à son niveau ou à remplacer. Les cahiers avaient généralement posé en principe à l'égard des propriétés, x x

"404. — Les paysans n'avaient point ainsi compris la liberté qu'ils s'entendaient mettre de toutes parts; x x les Campagnes se soulevèrent de toutes parts, x x les laboureurs insultaient encore une fois les châteaux, envahissaient les domaines, détruisaient les archives, brûlaient les chartes et les dépôts des rôles de redevance. x x des villes effrayées invoquaient le secours de l'Assemblée nationale. Un projet d'arrêt fut décrété, déclarant x x. Mais quand il s'agit de discuter cette déclaration, l'Assemblée devint plus manifeste. x x L'Assemblée vota dans la nuit célèbre du 4 août, cette réforme qui fut en comportant pas de nature à satisfaire l'aristocratie, et à satisfaire aux réclamations de leurs sujets." — Émile Coustantes, pp. 105

Some of Coustantes for some measure of exaggeration as to the quasi-aristocratic nature of the tiers état, and under notice as to the strange mistake made in the nine words which about the disappearance of "a domination des seigneurs dans les villes"; — the distinction of the marks distinction between the new state, and the mass of the French people, is beyond controvert.

13) Ensemble tous les droits qui
 "en sont des suites et des
 "dépendances," within the ~~Seignio-~~
 "ties of his own domain, - gave
 leave to other Seigniors to follow
 his example free of tax or "in-
 demnité" to himself, - and
 suppressed the "droit de suite"
 "sur les mainmortables" through-
 out France, ~~and till then, France~~
 till then, even within ^{the crown} the crown
 domain as fell under the influ-
 ence of the coutumes mainmort-
ables, the state of the rural pop-
 ulation ~~required~~ ^{was such as}
 to require description, ~~to~~ copied
 from this Edonnance Edit: -

"qu'un grand nombre de nos
 "sujets, servilement attachés encore
 "à la glèbe, sont regardés comme
 "un faisceau paré, et confondus,
 "non ainsi d'ice, avec elle; que,
 "privés de la liberté de leurs per-
 "sonnes et des prérogatives de la
 "propriété, ils sont mis eux-mêmes
 "au nombre des propriétés féodales,
 "qu'ils n'ont pas la consolation
 "de disposer de leurs biens après
 "eux; et qu'excepté dans certains
 "cas ~~ré~~ ^{spécialement} circonscrits, ils ne
 "peuvent pas même transmettre
 "à leurs propres enfans le fruit
 "de leurs travaux."

And even then, ~~all~~ the crown ventured
 upon no ^{greater} innovation upon this
 state of things, ~~beyond~~ ^{out of} the limits of its
 own domain, than this: -

"que le droit de suite sur les main-
 "mortables demeurera éteint et supprimé
 "dans tout notre royaume, dès que
 "un serf ou mainmortable aura
 "acquis un véritable domicile dans
 "un lieu franc; voulons qu'alors il
 "devienne franc au regard de sa
 "personne, de ses meubles, et même
 "de ses immeubles qui ne seraient
 "pas mainmortables par leur situ-
 "ation ou par des titres ~~particuliers~~
 "particuliers."

- And, according to the opinions
 of the enlightened of that day, even
 this was much. Ten years later,
 no less distinguished a writer than
Henri de Pansy, commented
 upon this Edit (little, after all, as it
 sought to do in comparison with
 what in truth needed to be done) in
 terms of the highest eulogy. Evid-
 ently ~~delighted~~ ^{impressed} with it as an exor-
 dinary monument of Royal States-
 manship and benevolence. ^{Archives de la Ville de Montréal}

[Foot-note.]

* Précis de l'Edit du mois
d'Avril 1774. - See Leclercq,
Vol. 2. * Henri de Pansy,
Dip. Hist. Vol. 2, p. 183.

[Foot-note.]

* Leclercq of same Edit. - See
Leclercq, Vol. 2. *
Henri de Pansy, Dip. Hist.,
Vol. 2, p. 185.

14 words are not a little remarkable; published, as they are said to have been, almost if not literally, on the day of the sudden sweeping away of the whole system of which serfdom ^{the} ~~was~~ ^{largest moment} formed an integral part: -

"Tandis que les hommes travaillaient avec une espèce de fureur à s'apercevoir les uns les autres, le beau spectacle d'un monument élevé à la liberté par la main d'un roi. Qu'importe cette exemple être imitée par tous les seigneurs! Qu'importe cette loi devenir la loi d'Europe entière! Les Princes de l'Europe font tant de conventions inutiles; en feront-ils une enfin en faveur de la miséricorde et de la pitié?"

[Foot-note.]

* Reunion de Panselg. - Disc. Feod. Vol. 2, p. 185.

W.P.

§22. The Decree of that 4th of August 1789, among other things enacted: -

"1. - L'Assemblée Nationale détruit entièrement le régime féodal, et déclare que, dans les ~~seigneurs~~ droits et devoirs tant féodaux que censuels, ceux qui tiennent à la main-morte réelle ou personnelle, et ceux qui les représentent, sont abolis."

⊕ et à la servitude personnelle,

"2. - Le droit exclusif des fiefs et coloniens est aboli; &c.

"3. - Le droit exclusif de la chasse et des garennes ouvertes et pareillement aboli; &c.

et la vénalité des offices

"4. - Toutes les justices seigneuriales sont supprimées; &c.

"7. - La vénalité des offices de judicature et de municipalité est supprimée; &c.

"9. - Les privilèges pécuniaires personnels ou ~~reels~~ réels en matière de subsides sont abolis à jamais.

"La perception se fera sur tous les citoyens et sur tous les biens, de la même manière et dans la même forme; &c.

"11. - Tous les citoyens, sans distinction de naissance, pourront être admis à tous les emplois et dignités ecclésiastiques, civils et militaires, et nulle profession noble n'importera de préférence."

[Foot-note.]

* Rondoumeau - Collection juv. des lois de Vol. 1, pp. 12-14.

M. Nov. 12 1789

§23. Till then there had thus been maintained in France, a favored few, all but monopolizers of its higher and more lucrative callings and dignities, whose vast properties and wealth ~~paid~~ paid nothing or next to nothing in the way of taxation to the State; an unfavored many, whose pursuits were a degradation, but on whom ^{Archives de la Ville de Montréal} the burden of the State was made to press;

15 The public trust of municipal and judicial office, a property, - so held, bought, sold and dealt with; "justices seigneuriales", covering (besides the public trust of dispensing or so-called justice) the right, so called, of levying exactions without number, - a property also; exclusive rights (among others) of dove-house, warren and hunting; a country population, here held, there hardly not held, in servitude or mainmort, - everywhere branded, more or less, as having been so held. - And yet, the lower orders had been rising, however slowly, ^{and} from the days of the first settlement of Canada, ^{rather} slowly than before.

H.P.

S24. But the anti-seigniorial doctrine requires one to believe, that ~~at this time~~ ^{before this time} for more than a century, from 1528 and so on down to 1760, the policy of King and Court of France had been steadily fashioning in Canada a state of things the precise antipodes of all that prevailed at home. In show, by way of fancy, it kept up ~~the aristocratic~~ ^{popularity} (so far as in a new country it could keep up) the aristocratic system of the age; distinguished always the noble or quasi-noble class from the ignoble; entitled and qualified each, almost if not exactly, as at home; granted land, sometimes by noble tenure, sometimes by ignoble; even specially ennobled men, and their lands too, as the highest reward that it could give. In substance and ~~sober earnest~~ ^{sober earnest}, it was all the while so postponing this higher class to the lower, and no democracy was ever known to do; where it granted by the lower tenure, giving a true property - where by the higher, but the fiction of a property; making it constitutive to all intents a land-lord, and its Seigneur ^{###} (justicier, baron, comte perhaps; in name) ^{###} no land-lord at all, but simply a holder of land for future constituted ^{###} "seigneur de campagne", men of the class lowest in the social scale, lower than the hiers etats ^{###} under a trust so in their interest and so exportant of all rule as to make

16
him and them incapable ^{forever} of
determining it on terms ~~the~~
~~least~~ ^{any} more favorable to ~~themselves~~
him than those which it
laid down, but quite free
always to determine it on any
terms more favorable to them.

W.P.

§25. May there not be less of
paradox, more of probabilit-
ity, in holding that words
had a meaning, — that Leigni-
ors and Centitaines in Cana-
da were meant to be, and
were, as nearly as might be,
what Leigniors and ~~Centitaines~~
Centitaines are known to have
been in France?

17

§26. Be it said at once, ^{however} that it is not meant here at all to rest the Leignior's case upon this consideration. All ^{that} they care to infer from it, is this, — and it is a conclusion too ~~of~~ ^{plain} ~~obvious~~, to need to be stated as an inference, — that the doctrine adverse to them, whether probable or not, is ~~not~~ ^{at least} not quite to be taken upon trust; ~~and~~ that something ^{or} ~~other~~ ⁱⁿ the way of fact must be put forward and made good, for it to rest upon.

§26. The Leignior, grantee of the French crown, — proprietor ~~or holder for himself~~ (unless words are meaningless) of some thing, — presumably, to say the ~~very~~ ^{least}, as much proprietor, as truly holder for himself, as his co-grantee censitaire of the same crown, who never yet was called trustee or holder for another, — is not to be held for ousted of his status as such holder for himself, till there shall have been some cause shown why he should be.

§27. Where, ^{then,} is such cause to be found?

There are but three quarters in which it can be looked for. All limitation or qualification that can ever have attached, or can now attach, to the Leignior's holding, must be traceable to some feature or features of the purely French law of the tenure as first introduced into Canada, — or of what may be called its Franco-Canadian law, including under that phrase, the terms of the grants, and all

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18/ ^{and all} local laws, regulations, juris-
prudence ~~and usage~~ having force
of law in Canada, through the
French period of its history, —
or of what (in like manner)
may be called its Anglo-Canada-
an law; must result, in other
words, from something in the
law of France as brought into
Canada, — or from something
done here or by the French au-
thorities in France while Cana-
da was French, — or from some-
thing done since it became
English. Unless such limitation
or qualification can be made
out by reference to some one
or more of these three sources
of authority, it cannot be
made out at all.

N.P.

§28. The Seigniors ~~unhesitatingly~~
~~submit~~, that no such limit-
ation or qualification, tending
even so remotely to warrant either
the anti-seigniorial doctrine de-
veloped in the Attorney General's
Propositions now before this
Court, or the practical conclusions
by those Propositions taken,
can be made out from any of
these ~~of these~~ sources, or from
all of them together. And they
are so confident of their position
as to be well content to waive
all trust in the mere weakness
of the case tendered against them
and to go themselves at once into
the whole history of their grants,
and of the laws, regulations, ju-
risprudence and usages of the
Country in regard to them. A
negative is said to be unprovable.
But so far as history can
prove anything, they will here
prove the quasi-negative, — that
they are not agents or trustees
in any sense whatever, but
proprietary, holding by such a
tenure as not to be subject
to the disabilities nor liable
to the pains and penalties
now sought to be put in
force against them.

" sans le consentement de son
 " seigneur dominant disposer
 " des fiefs qui le composaient,
 " autrement qu'au moyen de la
 " sub-inféodation ou du bail à
 " cens: suivant les articles 51 et
 " 52 de la Coutume de Paris, qui
 " sont ainsi conçus: -

" Article 51. - "Le vassal ne peut
" démembrer son fief au préjudice
" et sans le consentement de son
" seigneur; bien se peut jouir et
" disposer, et faire son profit des
" héritages, ventes ou cens étant
" du dit fief, sans payer profit
" au seigneur dominant, pourvu
" que l'aliénation n'excède les
" deux tiers, et qu'il en retienne
" la foi entière, et quelque droit
" seigneurial et domanial sur
" ce qu'il aliène".

" Article 52. - "Et néanmoins
" si il y a ouverture du dit fief,
" le seigneur peut exploiter tout
" le dit fief, tant pour ce qui
" est retenu qu'aliéné, sinon
" que le seigneur féodal eût
" infodé le droit domanial
" retenu en faisant la dite
" aliénation, ou bien qu'il l'eût
" reçu par aveu".

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

" Proposition. - "Pour trans-
 " porter de la France au nouveau
 " monde ce système féodal,
 " il était nécessaire de rendre
 " la sub-inféodation, ou en
 " d'autres mots la concession
 " des terres à des habitants pour
 " les mettre en culture, obligatoire

21 pour tous les propriétaires
de fiefs; et sous ce rapport
le régime féodal, tel qu'il intro-
duisit en Canada, a été considéra-
blement modifié par des dis-
positions particulières qui se
trouvent dans les arrêtés, édits
et ordonnances royaux, les
titres de concession, les ordonnances
et jugements du Conseil supé-
rieur et des intendants.

Fifth Question. — Did the ancient
laws of the country oblige the proprietors
of fiefs and seigniories in Canada
to concede their lands at a rent, (à
like de redevances,) when thereto re-
quired; and was their right of property
in those lands restricted and limited
by such obligation to concede them?

Proposition. — Les anciennes lois
du pays imposaient aux propriétaires
de fiefs et seigneuries l'obligation de
concéder leurs terres à titre de redevan-
ces, quand ils en étaient requis,
et leurs droits de propriété dans ces
terres étaient restreints et limités par
cette obligation de les concéder.

Sixth Question. — If that obliga-
tion existed, had it its origin in the
feudal rules? in the laws of feudalism?
in custom? or in special laws?

"did it ~~con~~ extend to every fief
and seigniorie without regard
to the motives or the date of
the concession? if not, to what
seigniories did it extend?"

Proposition. — "L'obligation
de concéder les terres, soit
au arrière fief, soit au cens-
ive, avait son origine dans
les règles féodales, qui inter-
disaient le démembrement
du fief. En Canada, la plu-
part des titres des seigneurs
contiennent expressément
cette obligation. Elle est ~~de~~
d'ailleurs établie par plu-
sieurs arrêts et jugements, et
paraît avoir été imposée
à tous les seigneurs qui tenaient
leurs propriétés à titre de
fief."

5x

X §33. Taking over everything here,
but what is directly relevant to the
one question ~~of~~ of the influence
of the feudal law of France upon
that of Canada, in reference to
this asserted quality of the Ca-
nadian seignior, the doctrine of
the above Proposition (exactly
stated) seems to be this: —

Firstly. — According to French
law as introduced into Canada the
subinfeudation [meaning ^{of course, here} ~~of course, here~~
the sub-granting either in fief ^{or} en
censive] of lands held ^{in fief} ~~en fief~~, was
of the essence of the feudal sys-
tem. [First Clause of Proposition 5.]

Secondly. - According to such French law, the Seigneur could not without the consent of his Seigneur dominant, dispose of the lands which formed his Seigneurie, otherwise than by means of sub-infeudation [meaning here, sub-granting en arriere fief only] or bail a cens. [Second Clause of same Proposition.]

Thirdly. - According to Canadian law, sub-infeudation [defined anew, as "the granting of lands to settlers to put them into a state of cultivation"] was obligatory on all Seigneurs. [First Clause of Proposition 8.]

Fourthly. - In this respect, Canadian law differed from French law, - being "considerably modified" by local legislation or quasi-legislation. [Second Clause of same Proposition.]

Fifthly. - According to such Canadian law, this obligation [described now, as the obligation "to concede their lands at a rent (à titre de cedeances) when thereunto required"] restricted and limited the Seigneurs' right of property in the lands forming their Seigneuries. [Proposition 9.]

Sixthly. - This obligation of the Canadian law [defined anew, however, as the obligation "to concede lands either en arriere fief or en censive,"] while established by local legislation or quasi-legislation, had its origin in the provisions of the French law prohibitive of the "démembrement du fief." [Proposition 10.]

[Foot note.]

* To be perfectly exact, it should be noted, that besides the indications as to the nature and extent of this need of legislation, which are to be gathered from the quasi-definitions of Propositions 6, 9 & 14, it is to be collected from Proposition 17 that such obligation did not involve an increase of the Seigneur's revenue otherwise than by grant à titre de cedeances annuelles, - and from Propositions 8, 13, 14, 15, 25, 32, 39, 40, 41 & 42, that it involved concession at some rate not exceeding so much, and on conditions most restrictive fixed as to the Seigneur.

W.P.

S34. - What is of the essence of a system, according to the received meaning of words, is what must be in order to such system, - what the existence of the system ~~requires~~ involves as necessary. To say that by the French law, as introduced into Canada, sub-granting en arriere fief or en censive was of the essence of the feudal system, is to say that by that law such sub-granting was what the feudal system absolutely required as essential to its existence, - made obligatory, ex necessitate rei, on the Seigneur ^{of the} ~~in the~~ Company. ^{Archives de la Ville de Montreal} doctrine was no doubt in effect implied

23) by the acknowledgment (whether
inadvertently made or not, in
the Attorney General's (The Propos-
ition) that as to the alleged oblig-
ation of the Canadian Seigneur
to sub-grant to settlers for culti-
vation, the law of Canada dif-
fered from that of France; and
the admission has since been
unequivocally made by the
learned counsel who here repre-
sent the Attorney General. In
truth, the point could not ^{have} been
argued. Before a court, no one
pretends to say, that by the
~~feudal~~ law of France, in any
of its forms, sub-granting by
any Seigneur was ever oblig-
atory on him, - that is to say,
was ever of the essence of the
feudal system, or any thing
but one of its inessential accidents.

R.P.

§35. Looking back, however, to the
Attorney General's Questions, it is
impossible not to see that when
they were drawn, another strange
notion besides this of a fancied
obligation on the ^{French} Seigneur to sub-
grant, ~~in France~~ was marked
out by their author for sugges-
tion to this Court. This Fifth ques-
tion goes on to ask (still in refer-
ence to this same French law)
"and was the alienation of the
fief, or of the lands composing
it, forbidden?" - The answer
was not to have been "No." That
much is clear enough. But
how could it be ~~Yes~~ "Yes"? If
alienation of the fief, or of any
part of the lands composing it,
was forbidden, how could the
sub-granting (or alienation in
one certain manner) of such
lands be ~~obligatory~~ enjoined,
as of the essence of the system?
The writer must have thought
~~that~~ sub-granting was no alienation,
- a view taken by no known
authority on such matters; and
so, must have meant to ask
the Court ~~whether~~ ^{whether} the
alienation of the fief, or of the

Ap. 18.

* of the Seventeenth Century)

* that in the Seventeenth
Century

24 lands composing it, otherwise than by sub-granting, was forbidden, - a doctrine the precise counterpart and fitting complement of the other that was to go with it. The French Seigneur was bound to alienate by sub-granting, - and was forbidden to alienate in any other way.

* either the fief or the lands composing it,

W.P.

§ 114 The former of these two doctrines (as has been seen) was laid down in the Attorney General's Proposition, to be given up in argument. The latter, when the time came for giving this Proposition, could not be so much as printed. Accordingly, arrivé à la Casade that, ^{cause} ~~part~~ of the question is of the number of the unanswered; and the Court is called upon (as though the question had been read - "and could the Propri-
"etor of the fief, without the con-
"sent of his Seigneur Dominant,
"dispose of the lands composing
"his fief, otherwise than by
"means of sub-infeudation or
"bail-à-cens?") to declare this,
"et le propriétaire du fief
"ne pouvait, sans le consente-
"ment de son Seigneur Domin-
"ant, disposer des terres qui
"le composaient, autrement
"qu'au moyen de la sub-infeod-
"ation ou bail à cens." Quite
another thing. For here, the sup-
posed prohibition of the law
is not made to attach to any
mode of alienation whatever
of the whole fief, under any
circumstances, - nor yet to
any alienation, otherwise
than by sub-granting, of the
lands of the fief, if only the
Seigneur Dominant be a
consenting party.

W.P.

§ 114 + But, ^{again} what a man cannot do, - still taking the received meaning of words, - is what it is not possible for a Seigneur to do. To say that the Seigneur

25
could not, without the consent of his Seigneur Dominant, alienate the lands of his Seigneur, otherwise than by sub-granting them, is to say, that without such consent such alienation otherwise than by sub-grant was impossible, could not take effect, — if attempted, would be a nullity. Of course, Counsel could no more argue before this Court for this doctrine, than for that of the obligation to sub-grant which ~~was~~ ^{has been} put into print with it. And therefore, though it may not have been in the same express terms given up, it must be enough here to have noted the ^{strange fact} ~~fact~~ that two such theses could possibly have been so laid down as these have been.

36
W.P.
§ 2. Another point, however, — involved in the Attorney General's ~~the~~ ^{the} Proposition, — remains to be noticed. It is there laid down, that the obligation alleged to attach to the Canadian Seigneur, while established by local legislation or quasi-legislation, has its origin in the provisions of the French Law prohibitive of the démembrement du fief. As there defined, this obligation merely is, "to concede lands either en arrière fief or en censive"; but from the tenor of ~~the~~ the Proposition read together, this is obviously not all that is meant. The obligation alleged involves ~~con-~~ (as has been shown) concession on certain terms most restrictively fixed as against the Seigneur, and which neither he nor any one else can vary in his favor. And this is held to have had its origin in the French law as to the "démembrement du fief."

W.P.
§ 3. The text of that Law is in these few words: —
"Le vassal ne peut démembrer son fief au préjudice et sans le consentement de son Seigneur": —

~~the~~ ^{the} former part of Article 51 of the Custom of Paris; which (by the way) with Article 52, is appended bodily to Proposition 5 as if the two doctrines of that Proposition

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27^u sur chacune des parties du
" corps du fief, soit in qualiter
" parte; lors de leur désunion,
" il passe tout entier avec cha-
" que d'elles, et c'est unique-
" ment à lui que s'applique la
" prohibition de la coutume,
" de Vassal ne peut démembrer
" son fief!"

" Ainsi un Vassal peut à son
" gré diviser le corps de son fief,
" pourvu que le titre demeure
" toujours un. Ainsi, des co-propri-
"étaires, des co-héritiers, peuvent
" partager, comme ils se jurent à pro-
" pos, le domaine du fief qui leur
" est commun, pourvu que ils reportent
" la foi entière au Seigneur, et non
" comme propriétaires de fiefs dis-
" tincts et séparés. En un mot, ce
" n'est que sur le titre du fief que
" porte la prohibition de la coutume,
" et toutes les fois que ce titre n'est
" point altéré, divisé, — toutes
" les fois que d'un fief, on ne pu-
" t'en pas faire plusieurs tenures
" séparées, et toutes les fois enfin, que
" chaque division est reportée comme
" partie intégrante du tout, le
" Dominant n'a aucun droit de
" critiquer les arrangements de
" son Vassal, de quelque manière
" qu'il ait disposé du corps de
" son fief."

And, that this restriction,
such as it is, in respect of the alter-
ation of the title of the fief, goes
no further than to the protection
of the Seigneur Dominant; says
merely, that the thing cannot
be done to his prejudice, unless
by his consent; in other words,
simply gives him, the right, if he likes,
to ignore it in his own interest.
So that the contract, which (with-
out his consent) should purport
to effect it, is not null as be-
tween the parties, nor as between
them and others, but only as
~~between~~ against him the Seigni-
or Dominant.

On the one hand, then, we
have this French law of démemb-
rement, which lets the Seig-
nior deal as he will with

[Foot-note.]

* Acquisition de Landeg, sur Du-
roulin, pp. 475 + 6.

28) The corps of his fief, and limits him ~~to~~ as to ~~dealing with~~ the title, ^{only} in the ~~sole~~ ^{mere} interest of his Dominant, ~~but~~ not as between himself and others. On the other hand, we have the alleged trustee-obligation of the Canadian Seigneur, which is held to necessitate his dealing with the corps of his fief in one certain way, and to leave him no capacity of dealing with it in any other, and which has nothing to do with the title of his fief. — This latter is said to have had its origin in the former. It is not easy to see, how.

+ §37. — So much for the doctrine of the Attorney General's Propositions on this question of the influence of the feudal law of France upon that of Canada, as to the asserted trustee-quality of the Canadian Seigneur.

It remains, however to examine the question itself, on its own merits, independently altogether of all ~~merits of~~ question as to the merits of the view taken of it, in the duke-seigniorial interest, before this Court. The case of the Seigniors is by far too strong for them to rest it ever so little on any mere weakness of what may have been offered as the case against them.

R.P.

§38. — Was there, then, in the law of France as brought into Canada, anything whatever that at all tended towards the fastening ^{upon} ~~the~~ the Canadian Seigneur, of this trustee-quality, — anything that limited or qualified his holding, ever so little, in the sense thereby implied, ~~or~~ anything that could have been the ~~ground~~ ^{even} from which this ~~so~~ alleged Canadian ~~seigniorial~~ ^{seigniorial} law may have had its origin?

30/ (to speak) for its being held of him, in whole or part, as might be, by proprietors who should be in a position of feudal inferiority to himself.

§41. The holder en franc alleu roturier, not having this seigneurie honorifique of his land, though holding it of no one, and bound to no duty for it, and therefore fully entitled to keep or alienate it, either wholly or by parts, as he might please, could not by any form of contract cause his land, or any part of it, to be held of him by proprietors who should be feudally his dependants for it; and in so far, therefore, however absolutely proprietor to all other ends, had not a property that can be exactly characterized as unlimited and unqualified.

§42. The position of the Ecclesiastical Body, holder en franche aumône, noble or roturier, (as might be,) differed from that of the holder by the corresponding franc alleu seigneurie, in this, - that ^{such body} he held always of a Lord, or Seigneur Dominant; for whom, by way of ^{all} feudal duty, it was ^{simply} bound to offer prayer; and who, whenever the land so held, or any part of it, should have been alienated in any way by such holder, ^{would become} ~~thereby~~ thereby seized of all such feudal rights over the land alienated whether ^{directly} accruing from ^{such} the alienation itself or to accrue thereafter, as should either have been stipulated by his grant, or be implied from it by the Custom, - according to the nature of the alienation, and the tenure (as en franc or en censive) thence ~~it~~

[Foot-note.]

* Indeterminately, that is to say, - and it is the performance of any state service or duty - however purely religious. Where such religious duty was determinate, the tenure became that par service divin, assimilating itself in some respects to that en franc or en censive, as might be. The nice distinctions between such tenure and franche aumône on the one hand and between it and the franc or censive tenure on the other, are for present purposes immaterial. See Gourion de Panssey, Dip. Feod., Vol. 2, pp. 58, 9; 141-4.

Where the grant, though en aumône, might have been so made as to leave the grantee Body liable to any feudal claim on the part of its Seigneur Dominant, other than for purely religious duty, the tenure retained the essential character, either of the franc or of the censive, - according to the seigneurie honorifique right or right not have been granted by it. - See Gourion de Panssey, Dip. Feod., Vol. 2, pp. 57-9.

Nov. 21. 2
22 5

31
resultant. Add, that if such
lord again held of a higher Seignior
Dominant, whatever of right
such higher Dominant might
have over or in the land, would
also still attach to it, — in the
hands even of its franche au-
monne holder, ^{supposing} such higher
Dominant ~~had~~ ^{to have} not sanctioned
the grant en franche au-
monne, — or upon alienation, if he
should have done so. And so
on, for any number of Seignior
Dominants, in ascending series,
to the highest, or Lord Para-
mount. — But, subject to these
rights of the Seignior Dominant,
or of the respective, ^{ascending} Seignior Dom-
inant, as might be, (rights form-
ing their several shares, so to
speak, of the entire property of
the land, — the ^{total of the} domaine direct
reserved by each of them therein,
— and which each could always,
in whole or part, either waive or
not waive, as he pleased,) such
Body, holder by either of the
franche au-
monne tenures, ob-
serving only the requirements of
the Law as to jeus de main-morte
was free to keep or to alienate,
either wholly or by parts, pre-
cisely as it would. Its right of
property (domaine utile) was
simply limited by these rights
(the domaine direct) of its Seignior
Dominant or ascending Domin-
ants, as might be. And this
domaine utile was larger, when
the tenure was en franche au-
monne noble, than when it was en franche
au-
monne roturiere, by this, —
that by the former the grantee
Body took a seigneurie honor-
ifique of the land granted, and
so might have the land held
in whole or part by proprie-
tors its own feudal tenants,
while by the latter it could
not.

543. The ^{feudal} holder en fief held also
of a Seignior Dominant; who, again,
might hold of a higher; and so on,
indefinitely. And, like the holder
en franc alleu noble or en franche
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32) seigneurie noble, he held a seigneurie honorigique inherent in his right of property, which admitted of the land (in whole or part) being again held of himself by proprietors his feudal inferiors. But his right of property, or domaine utile, was otherwise of a more restricted character, being limited ~~not only~~ by the appropiate of all the rights of his ^{immediates} lord, as well as by those of any higher lords in ascending series to the Lord Paramount, — as the same, at each step might have been reserved by ^{each} grant, or might be implied therefrom by the Custom. Among these rights of the immediate lord, there was generally that of exacting so much of mutation fine or profit upon alienations, when effected under certain circumstances. But subject to such fine, wherever accruing, and to whatever else might be the rights of the lord or lords above him, he was entirely free to keep or to alienate, as he might see fit.

§44. And lastly, the tenancier, or holder en censive (limited as to his right of property in like manner with the holder en fief, but to a greater extent) held his land subject to all rights of his ^{own} lord and of any higher lords, — and without any seigneurie honorigique inherent in such his right of property therein. He, therefore, could not alienate by feudal sub-grant. And, as a general rule, he was besides, ^{much} more pressed upon than the vassal, by the reserved rights of his lord. His right of property, or domaine utile, was altogether less than the vassal's; this tenure, the most restricted, ^{and} unless under very peculiar circumstances, by far the least desirable of the six.

§45. Under the three roturier tenures, — from the ⁺ incapacity of the holder to sub-grant feudally, — the entire property held had always of necessity one and the same ^{Archives de la ville de Paris} character, as an immeuble; ^{consistait} consisted

[Foot-note.] * as matter of general rule, ~~and at the time here in question~~

[Foot-note.] * As matter of general rule, and at the time here in question. In special cases, and more especially at a later period, the censive tenure, ~~made on easy terms as regard~~ though in most restricted in its nature, might not be the least desirable. Where its fixed dues and reservations were light, ~~it~~ it might be more advantageous than the tenure en fief, in a merely pecuniary point of view, — but not otherwise.

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* essential want in all of them, of the seigneurie honorigique, and the consequent

23) certain ~~of, or rather how much,~~ visible real estate, which was said to belong to such holder, but of which, when holding en franchise aumône or en censive, he was really no more than a part-owner, — the reserved rights of his lord or lords forming a part of the entire property of the soil, which (in the shape of an immeuble incorporel) remained in other hands than his.

from the essential quality of seigneurie honorifique common to all of them, —

(no matter how small)

§46. Under the three noble tenures on the other hand, the property held might or might not have this character. Each holding might be wholly an immeuble incorporel, or wholly an immeuble corporel, or might be an immeuble partly incorporel and partly corporel; might or might not consist, in whole or part, of any number of sub-holdings, en franchise aumône, noble or roturier, en fief or en censive; might not or might consist, in whole or part, of real estate not subgranted, whether land or water, improved or unimproved, contiguous or not contiguous. Each sub-holding, again, either en franchise aumône noble or en fief, whether large or small, might equally be an immeuble incorporel, or corporel, or both; and so on, for ever. — And the distinction between the three noble tenures, answering to that between the three non-noble, lay in this, — that the allotier owned by himself, — the holder en franchise aumône, jointly with a superior or superiors, whose share (an immeuble incorporel) made no great matter, — and the vassal, Seigneur or holder en fief, jointly with a superior or superiors who held an incorporeal share of more importance, though by no means of so large extent as that held by the superior or superiors of the censitaire.

[Foot-note.]

* Properly, of course, this word Seigneur applies as much to the holder en franchise aumône noble or en franchise aumône noble as to the holder en fief. In this work, dealing especially with the rights of Seigniors holding en fief, it is necessarily almost always used in this latter and more restricted sense. It is an odd illustration of the common-sense of the revolution which a short time may work in men's ideas and modes of speech, that this word "Seigneur" (Seignior, "otium", in Latin, — "lord", in English), which to the days of the French Revolution — though sometimes by a sort of licence used to mean a mere proprietor — always of right meant in France a proprietor of the higher class, — ~~was~~ one who held as well the "seigneurie" as well the mere "propriété" of the thing owned, should by this time have come to be associated in Canada with the notion of a somebody not so much as a proprietor at all.

§47. But, besides this primary and essential distinction of the roturier from the noble tenures, that the one necessarily imported the holding, and the other the not holding, of the seigneurie honorifique de Chépitaf, there was another, which may be called secondary or accidental; namely, that what was termed "justice" might also be held by the one, but could not be by the other. What this justice was, it is not easy in very few words to state exactly. It import-
ed a proprietary right (more or

slip extensive, according as it was
 haute, moyenne or basse) to ad-
 minister justice and exercise
 police authority in his own
 name and by his own officers,
 — liability to some charges,
 more or less incidental to his
 exercise of such right, — the own-
 ership of all profits thence ac-
 cruing, whether from his preffes,
 from fines or otherwise, — the own-
 ership of a variety of other revenues
 or sources of revenue, exactions
 mostly, of anomalous and odious
 character, — and, in some parts
 of France at least, if not (~~as some~~
~~writers held~~) generally, the own-
 ership also of certain waters, a tittle
 of immeuble corporel superadded
 (so to speak) to the complex immeu-
 ble incorporel which formed the
 basis, if not the whole, of his property
 as a justicier. This most peculiar
 kind of property, like the seigneurie
 honorifique, could only be held
 by noble tenure; but, unlike the
seigneurie honorifique, formed no
 necessary adjunct of such noble
 tenure. The land-holder en franc
 aleu noble, or en franchise aumône
 noble, or en fief, might hold it, or
 might not. Its territorial limits
 had no fixed reference to those
 of any description of landed
 properties. Particular lands, claps
 of people, and persons, were un-
 affected by it; [#] and in particu-
 lar cases, it was even held en
 franc aleu noble, or en franchise
 aumône noble, or en fief, as might
 be, by parties having no seigneurie
 honorifique de Chéritage, or other
 right than that of mere justice, in
 or over the territory that fell with-
 in its influence.

[#] or were affected by it
 in very different degrees.

548. The country, then, was
 covered in great part with fiefs
 of all descriptions and dimensions,
 in every degree of feudal remove,
 from the crown or other aleu, of
 which (originally) they depended;
 some of vast extent, consisting,
 — firstly, of numbers of scattered
 tracts of ungranted lands, large
 and small, improved and unim-
 proved, forests, landes, manors,
chateaux mills, parcs, champs, parcs,

farms, lakes, streams and what not, collectively forming their domain, - secondly, of a shaggy variety of real rights over numbers of other facts as variant in dimension and as irregularly situate, held of them nobly en franchise aumône or en fief, and themselves again more or less sub-granted, or not at all, as might be, - and thirdly, of a variety not less shaggy, of other real rights over numbers of other facts in like manner variant and scattered, held of them en franchise aumône reperie or en censive, as might be; others, of smaller extent, but almost if not quite as heterogeneous in

their composition; others, so small as to make the idea of their being sub-granted from, the next thing to a farce, - yet, perhaps, with their arrise-fief or friefs, or their censive, still smaller than themselves; others, some large, some small, having no censives, or no dependency of the noble class, - or no dependency at all, or no ungranted territory or domain whatever mere incorporeal rights of some one or more sub-granted territories, fiefs en Clair. - Of all these fiefs, again, irrespectively of every other quality, some had justice in one degree; others, in another; and others, none. Here, with a small fief, the Seigneur might be a haut justicier; there, with a large one, no justicier at all. Here a justice, perhaps held with a landed fief or other property, or perhaps held as a property per se, en fief or otherwise, extended over a number of fiefs and other landed properties, plene among the number; there, a fief part into one justice, and part into another, - or was, partly or in whole, exempt from all justice but that of the Crown.

§50. Fully to comprehend this anomalous state of things, one must refer back to its origin, bearing in mind, always, that however quickly the theory of the law, as laid down by the feudists generally, traced the relation of feudal dependance (whether as affecting the noble or the non-noble tenured) with all its incidents, to the assumed fact of a direct grant in every case by the superior to the inferior, such an assumed fact in a large proportion of cases was far from being historically true.

§50. In the earliest days of the feudal system, - when the grant of the franchise or fief passed to the vassal, not a property, but a mere temporary usufruct and when fiefs (at least, generally) were the rewards of a sovereign or quasi-sovereign leader, to his most powerful chiefs, and were of an Archieve ville Montreal such rewards, - the lands so

[Foot-note.]

* So common were these small fiefs, that even the text of the custom of Paris contain three incidental references to them.

In Art. 13, referring to the preciput of the eldest son, it is said: -

"Et outre ce qui appartient au arpent de terre de l'enclos ou jardin joignant le dit manoir, si faut y en a; et si le dit manoir contient davantage, l'ainé y peut obtenir le tout en baillant décompte aux voisins de ce qui est outre le dit arpent en terres de même fief, si faut y en a, sinon." &c.

Again, in Art. 17, on the same subject: -

"Les esdites successions de père et mère, ayeul et ayeule, y a un seul fief consistant seulement en un manoir, bailliage et enclos d'un arpent, sans autre appartenances, &c."

And in Art. 58, speaking of the Relief of the Seigneur dominant: -

"Et si le fief consiste en une maison seule, si elle est louée par le vassal, se doit le seigneur contenter du loyer; et si elle n'est louée, il prendra le loyer au dire de gens à ce convenans."

§54. Nov.

granted were neither given nor taken with any view to their improvement, or even to their regular settlement, by sub-grant or otherwise. The grant was temporary; any sub-grant could be nothing more. The grantee was no agriculturist, or peaceful settler, but a soldier, full of hearty contempt for all manner of peaceful men. The men he brought with him were in this like himself; hunters when not fighters; after at turning farms into forest, than forest into farms. Priests, large or little, to be killed by him or them, would have been what neither he nor they would have taken at a gift. The worth of the gift of those days was not in the land, though that was generally, in great part at least, in an improved state, — so much as in the resident population that went with it. That population, the accumulated result of the history of the Roman Empire and of the earlier incursions of the Barbarians, was of different classes; a remnant of ex-proprietors, ~~large and small~~ Roman and Barbarian, degraded by successive conquests from their rank as owners of the soil; a larger class, never proprietors, and yet (for some time past, at least) not slaves, — Colons, or by whatever other name they might be called, tillers of the soil at once for others and for themselves; and a third class, often the most numerous, the serfs, ~~and~~ ^{and} slaves of the older time, some bound to the soil and owned with it, others not, — the property, perhaps, of men who themselves did not own the soil. It was upon the means and industry of all these people, upon the rents and exactions of all kinds that could be made good out of them, that the grantee of the gift of this old time and his followers maintained themselves; and not upon any productive industry of their own.

[Foot-note.]

* Few, no doubt, in number; more especially ⁱⁿ so far as ex-proprietors of the Roman class may be in question. For the Roman system was one that kept the land in vast estates, public and private, cultivated by colons and slaves, who seldom wiled under the eye of a resident proprietor. — Nor indeed, is it even likely that the earlier Barbarians inconsiderably settled down in any great numbers, as petty land-owners. Their residences, and that of the age, were hardly that way.

(37) ~~at~~ §5. But, so to maintain themselves, it would never have done for them at once to frame among themselves a feudal hierarchy, (of the fashion fancied by some writers,) the leaders, picked men and privates of the band becoming their lord's sub-vassals in descending degrees, and the older population, his and their ceusitaires, serfs and so forth. With the feif a usufruct, determinable any day, sub-infeudation could not have been carried far. The usufruct of a fraction of a usufruct might be something, though not much. But, carrying the process on another step or two, one would come at a result sufficiently absurd. Re-distribution of the territory would have become the endless business of its lords; for with every change of master of every feif, whatever its grade, every sub-grant would have lapsed, leaving it to every new lord, with new followers presumably, to re-parcel out the whole. Besides, this ~~supposed~~ imagined regularity of system formed no part of the style of thought of these semi-savage lords of feifs, or of their followers; nor was it in the least suited to their position in other respects. The population upon whom they were to live, were not moulded to their hand a well ordered body of ceusitaires and serfs; but were a conquered population, more or less completely conquered, of various origins and claps, some easy enough to deal with, others far enough from being so. And the rule to be imposed on them was not the easiest in the world. The feudal usufructuary and his retainers were not too strictly bound down to the wholesome rule of exploitation en bon père de famille. They were for making ~~the~~ all they could, of a possession that was not to be theirs for long. If doing so did cost more or less of violence, it only cost ~~what~~ ^{as much as} they rather liked to pay. Fighting for the Lignior Dominant, grants of the feif, when he wanted them, they had no thought of any little by-fighting on their own score for the realisation of their revenues, as unwelcome to any

titles of honor, Roman and Barbarian, - in the number and military organisation of their retainers, - in the rapacity of their exactions from their unfortunate dependants of the lower grades, the self and colona population of their ~~many~~ estates, - and in the contempt with which they viewed that population, and all those industrial pursuits by which it had to maintain at once its own poverty and their wealth. ~~It~~ Not, of course, that every property of this class was exactly a property of the first magnitude, so as to admit of its owner taking high title, - as Emperor, King, Duke or Count. They were of many grades, and often far below such rank. But, as a distinguishing characteristic, their owners (assuming all they could of rank and consequence) maintained themselves upon their dependants, and not by industry of their own; were lords of the land and of those who tilled it, - not simply land-owners who tilled or saw to the tilling of their land themselves.

2. 20. Part

§ 53. Of franc alleu roturier properties, there may equally be said to have been more than one description; some, small estates, or fragments of estates, of the Roman period, in the hands of undisturbed representatives of their old proprietors; others, fragments of such estates, in the hands of ex-slaves or colons, whom here and there the chances of the times might have raised instead of lowering; others, fragments of free Barbarian allotments; and others, perhaps, Barbarian allotments, from the first of small extent. Many, perhaps most, of such properties, like the larger alleus, may have been cultivated by the actual labor of a class of men almost or quite in the condition of slaves or mainmortables. But their owners, whether laboring themselves or not, had at least to live either by their own industry or by an industry that they personally superintended. Though propri-

etors, they were tillers of the soil. As contradistinguished from the lay proprietors, and from the holders of fiefs, who all, surrounded by dependants, ranked as seniores, they were ~~not~~ supplices, roturiers; as much so as the coloni, serf, mainmortable or other vilain however styled, who otherwise in the social scale ranked far below them.

§54. For what afterwards became the censive, it is enough to say that it ~~was~~ then bore no resemblance to a property in the hands of the vilains, of all ^{styles and} grades, whose labor and degradation were the wealth of the great proprietor or of the vassal. Some below others, all were too low, because too weak, to have ^{any defined} rights ^{with regard} as against their lords. Their payments, of all amounts and kinds and names, measured ^{as} often by his rapacity ~~was~~ by any other rule, did not more resemble the census of the later Roman period, in ^{their} variety of form and oppressiveness, than in their essential character of impost as opposed to rent properly so called. They were a price paid for living on his land; not for any ~~part~~ ~~of~~ ownership or even regulated usufruct of land, ^{that was} in any sense not his.

§55. So far, then, the alien, partible inheritance in one or other of its forms was the rule; the fief, not as yet a true property, the exception; the arruie-fief, hardly if at all known; the censive, considered as at all a property, unknown.

§56. With the growing disorganization of the social system, which by degrees changed the fief, ~~the~~ first into a usufruct for life, ~~the~~ then into an estate of inheritance, ~~the~~ and at last, into a property alienable even inter vivos, there came also ~~the~~ changes.

§57. As authority decayed, the mutual relations of the proprietor class (including ^{Archives de la Villa de Montreuil} ~~the~~ vassal as well the vassal

* into operation new influences, and consequently upon them expensive

or holder en fief, as the alcuier (whether noble or roturier) became more and more what the relations of that class had before been towards the classes below them, — relations, ~~not~~ ^{not} of law and right, ~~but~~ ^{but} of power and wrong. All men's recourse, if any where, was in the strong arm; their own, or their neighbour's. If not strong enough himself, each must buy help. And the feudal tie, as developing ^{itself} in the organisation of the fief, offered everywhere ~~the means~~ ^{to the proprietor, the means}. The weak appealed one, and armed himself against others, by becoming vassal of a stronger than himself; who in turn not only strengthened himself by every vassal he could ~~not~~ get, but if not thereby strong enough, sought further help by making himself vassal of some one stronger. Nor was interest the only motive. A ~~higher~~ man's rank was raised, and his vanity gratified, by the number and importance of his vassals. Violence even became common, for the mere purpose of forcing men of means into vassalage. Fiefs in great numbers, of all grades, thus came to be created by a process quite other than that of concession. — Besides which, the same considerations all added to the inducements for the creation of fiefs by concession, in favor of men already holding other properties and therefore eligible as vassals, but whom for any reason it might ~~not~~ be thought better to tempt, than to try to force, into that position. — Everywhere, the franc alleu and large fief were fast resolving themselves into an endless complexity of fiefs and arrises fiefs. The smallest properties came to be so qualified, — and as such to be held divisible in the way of sub-grant to sub-vassals. Properties that by the process of sub-granting had lost substance and become converted into mere rights, were yet ~~not~~ ^{not} granted in their incorporeal state as fiefs en l'air. Incorporeal rights, not so much as saving of realty, immoveables by mere fiction, — rentes constituées ^{rentes} of profit, trust, and honor, in the service even of the state, were ~~not~~ ^{even} granted as properties en fief, and so owned and dealt with for the consideration of vassalage to the grant.

[Foot Note.]

* "Enfin, ils achetèrent des vassaux en dormant une certaine somme d'argent, ou en payant une pension annuelle." — Herbier, Vol. 1, p. 125.

* With the growing prevalence of the fief, came ^{every} the maxim of "nullus terre sans seigneur"; over the greater part of France, reversing the true presumption as to tenure, and converting all land into the fief or dependence of the fief, unless shown by title to be free. — In many localities, the very process of sub-division of the fief between co-proprietors, tended to sub-infundation; the younger sons or other holders of the smaller shares submitting themselves to hold of the eldest son or other holder of the chief share, instead of claiming to hold with him of their common lord. —

* rentes foncières,

[Foot Note.]

* See Herbier, Vol. 1, pp. 123 seq.; also Brupel, pp. 41 seq.; 496 seq.

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often hardly at all settled,

(47) #1 §58. The terms of such vassalage must have been as variant as the circumstances which in different cases led to it; sometimes in the vassal's interest, sometimes in the lord's; sometimes formally settled, sometimes not at all; sometimes the fair contract of the parties, sometimes the half-yielding of a beaten man to a yoke that he means to throw off at the first instant he can; of few not faithfully recorded; of few, on one side or other, or on both, not faithfully adhered to. There was always, of course, recognition by the vassal, of his lord; but the manner and extent of it might be anything. Through the age of anarchy, and disappearing with it, there was, almost of course, some measure of military obligation; but it, too, might be anything. Commonly, there would be casual rights of the lucrative kind upon mutations, by way of souvenir of the usufructuary character traditionally attaching to the fief; but what mutations, what rights, and how to be taken, were open questions. In general, these would hardly be fixed dues in kind or money; but these always might be, without limit of amount or otherwise. However all this might be, or at first might have been meant to be, one result was uniform, — that sooner or later, often and long, lord and vassal must have their controversies of every kind, as to what ~~it~~ was or should be. Every where, these controversies were settled somehow, — but not always by the same means, nor yet to the same end; sometimes, by fighting and defeat of the weaker; sometimes, by compromise before defeat; sometimes, without fighting, by the fears of one or other, or of both in turn; sometimes, by such show of judicial decision as the times allowed; sometimes, by interference (invited or not) of friends, enemies, neighbours or feudal superior; sometimes, — on grand occasions, or where numbers were interested in a like way, — by vote of bodies of lords and vassals, and promulgation thereon of a peace, charter or other rule, by baron, count, duke, king or emperor, to be carried into practice afterwards, or not, as might be; in the one interest or the other, on this principle or that, with show of right or without; no two neighbourhoods alike, no one neighbourhood uniform in usage; everything so mobile as to make it impossible to say that there was fixed rule or usage anywhere at all. When at last the attempt was made, the result was found to match the process. The confusion of the French Customs, labyrinthine everywhere, was a fact tracing here. Record of the bizareries of the tenure en fief, could not be made. Here and there, as if for fear even negation of rule might itself be a sort of sale, particular Customs stereotyped as absolute, some one or other unaccountable reservation. But such Customs were the exception. The conclusion had to be, — and the Customs of Paris fully recognized it, — that the conditions of the tenure in each case were what the contract of the parties in each case might have made them; that the parties could always remodel their contract as they would; that in default of better proof, their after admissions (if ascertainable) settled the question of what they had made. The church, and the growing manorial

At 2/20/80.

had made it; that in its silence,
Custom merely showed what they
^{had} presumably meant to make it;
in a word, that it had no reference
to public or general law, but was
a purely private contract. It ~~took~~
^{grew into form.} ~~was~~ in times when the idea of a
public or general law was un-
known.

§59. Another change incident to
these times of disorder and ^{after} transi-
tion, was that which brought the
Censive into existence as a pro-
perty in the hands of the Censi-
taire. — ^{Under the influence of}
the church, and the growing unsecu-

ity of their own position, all combined to make the proprietor clap a lax something of their hold upon those beneath them. From living on his lord's land à titre de vassal, and paying his lord's exactions whatever they might be, himself all but his lord's property, ~~or perhaps quite~~ ^{or} ~~if not quite so~~ — the villain ~~presumably~~ ^{by degrees} came to be looked upon as a man who was to pay so much, and on that condition was not to be dispossessed, whose possession (such as it was) might be inherited, or even alienated, as a vested right. Imperceptibly, the slave became a serf; the serf, a mainmortable; the mainmortable, ^{*} a censitaire; the censitaire, a quasi-member of the feudal confederacy. — And while one class thus rose to this position, others fell into it (so to speak) without rising, or even with loss of rank. Accensement once viewed as a quasi-feudal contract, men of whatever class took land upon that tenure; the Seigneur and they freely contracting as they would. Poorer men of the allodial class, were forced to become censitaires; or bought protection by so becoming; or, under the influence of the "nulla terra sans seigneur" doctrine, found themselves held so to be. The grade of ~~vassal~~ censitaire, equally with that of vassal, was recruited for in all sorts of ways.

So. — And of course, the ~~contract~~ terms of the contract, real or supposed as might be, were as variant as the circumstances under which it had been made, or had come to be held for made. Essentially, it was not the contract of honorable recognition, distinctive of the vassal, — but one of subjection, distinctive of a rank below the vassal's. Otherwise, it might be almost anything. It had, presumably, its casual rights; and these might be carried up to any limit. Fixed dues and services (of the ignoble kind) it imported, and all but required, though they might be ~~of the~~ light, — or again might be ~~of the~~

* a colon; the colon,

[Footnote.]

* That is to say, when first fixed to pay as they were fixed in money, they of course became greatly lighter. Indeed even for what were fixed in kind, the rule was always at work, which makes a nominally fixed rent really almost always a falling rent, by reason of the increasing value of the rented property.

heavy, as indeed they generally were, and various also, - money payments, renders in kind, labor, obedience, subjection to monopoly - anything whatever tending to the Seigneur's profit or gratification. And it admitted of any amount of reserved right on the Seigneur's part, - and even (unlike that of vassalage) implied much; for, unless by special contract, there was always much of the ordinary right of a proprietor, - in respects, especially of water, fishing, hunting and so forth, - which the censitaire did not enjoy. - No rule put the cens in holdings of any two seigniories, or even of any single seignior on one and the same footing. The parties were free to make all the anomalies they would; and made them without stint. In process and result, the history of the development of the two tenures corresponded. The Chapter of the Censive, in the Customs, was as irreducible to rule or order as that of the Fief. Equally clear of influence from general or public law, the contract of accensement differed from that of vassalage, only in the lower quality and more limited extent of the proprietary right which it created and conferred.

+ S¹. - Strictly speaking, indeed, the feudal system may be almost called a pure negation of all idea of public authority and law. It was of anarchy, anarchical; an endless struggle of private power and will; not more essentially and inevitably aristocratic, than it was anomalous. The influence of the Roman law, as it brought into recognition the principles of contractual right and obligation, checked it to some extent. French Royalty (once feudal, afterwards so nearly despotic as in that respect to have become anti-feudal) in the course of centuries built up over it an authority that seemed absolute. A more public power at last suddenly destroyed it. But to the last, as from the first, if carried with it no character of public authority or law, - was all irregular, contractual and private.

S². There is always a difficulty in choosing ^{every thing} citations to prove what ~~all that is to be~~ ^{is} written on a subject by any author of mark combined to prove. All cannot be given; and one is apt to think that none need be. In this case, but that the Propositions of the Attorney General so rest upon the postulate that in Canada the feudal system was all iron uniformity and public law, none would here be given. As it is, the plain fact as to what the system was always well known to be in France, may require to be stated in the words of Archives de la ville de Paris whose names, on the subject, are of the first authority.

AP

Sb3. Of the essential freedom of the parties, to contract as they would for the grant of the feif, (and, by necessary inference, for that of the curtise also, — the two, in this respect, ^{never} having been distinguished) and of the immediatibility — unless by their joint action — of such contract, what ever its terms might have been, — Dumoulin thus wrote: —

"Sicut fundus constituitur solus
"patrisfamilias destinatione à qua de-
"pendet, l. quid in rem. §. 1 ff. de leg. 1.
"ita feudum constituitur destina-
"tione patroni et clientis simul,
"et non alterius eorum tantum, quia
"non dependet à voluntate unius, de
"duorum, et à vero contractu et ipso
"citroque obligatoris. l. Labeo. §. con-
"tractum. ff. de ver. sign. x x

"constitutis et titulus feudi non de-
"pendet à voluntate ut potestate uni-
"us, sed duorum, vel plurium, et om-
"nium dominorum dominantibus et ser-
"vatis feudi. x x Et ita debet declar-
"ari quod dicit Ande. Ser. in c. unico
"C. I. quali. vasal. jura deb., quod
"potest Rex, vel alius dominus qui
"constituit feuda sicut vult, dare
"vixi feudum in pluribus terris
"et locis, sine distinctione sive coher-

"entibus, quia destinatione domini
"voluntatis domini hoc fit, sicut
"et feudi fiunt: hoc enim est intel-
"legendum ratione principii dispos-
"itionis que incipit à domino, qui
"potest conceptioni sive ab initio
"adhibere quem vult modum, l.
"in traditionibus. ff. de pacte. l. legem.

"Ser. C. eo., sed non respectu perfec-
"tionis et substantie dispositionis, que
"non inducitur adefe, nisi secus con-
"suetudinem vasalli; quo facto, non licet
"alteri quicquam immutare aut
"der. are." — Vol. 1. p. 137, 8.
"S. 3, Gl. 4, n. 30: Vol. 1, p. 137, 8.
— and D'Argentié, thus: —

"Tenor investiture derogat omni
"nature feudorum. x x Sed quia rarum
"est ut in tanta rerum antiquitate et ca-
"sius reperiri investiture queant, sicut
"his non docetur, potissima habenda ea-
"ris possessionum, in quibus quisquam
"repperit dominus feudi, que ex recipi-
"tionibus et actualibus prestationibus
"et apochis probantur, quia ubi sigilla
"non ostenditur, is determinatur à pos-
"sionibus, ut è consuetudine cum apparet
"titulus possessionis ab eo. legem accipi-
"unt. x x
"Nam infundationem, cum instru-
"mentis apparet, tanta vis est, ut res
"ipsum naturaliter Archives de la Ville de Montréal
"et alterare. x x
"Quod si horum nihil est, id est neque con-

« si feudi apparet, nec justa est proba-
«tio possessionum, quid, quale, quan-
«tum debeatur, tum servanda
«est consuetudo, à qua regularis,
«ordinaria et fixa feudorum natura
«in quaque regione determinatur. Est
«verum natura feudorum querenda
«in consuetudine. Et Ideoque Bald.
«l. liberi libertate C. de lib. sibi,
«quod si clare non constat de certo

41) ~~45~~
"modo casus et possessionis, iudicantur
"unum est de eo secundum appellationem
"naturam pendit; et ubi non invenitur
"per conventionem, aut determinationem
"hominis, ~~quod~~ querenda est ab lege,
"quae idem valet in casu dubio quod
"positum et conventio in casu certo." -
"Art. 277, gl. 1, nos. 5, 6: Col. 1185.

Saget is at least a good authority
for the fact that, to his day, this doctrine
had never been called in
question: -

"Un premier principe, vrai et
"immuable, que Dumoulin nous
"donne, S. 2, hodie 3, ff. 4, nomb. 30,
"et qu'aucun docteur n'a désavoué,
"est que le Seigneur potest conceptioni
"suae adhibere modum quem vult;
"le seigneur concède sous telles con-
"ditions qu'il lui plaît; c'est au
"vassal, dit-on, viens à celui qui
"demande la concession, à accepter
"ou à refuser. Le contrat une fois
"fait, il est irrévocable par l'un
"ou par l'autre seul." - Vol. 5, p. 6.

Fournier brings down the
doctrine to a later date: -

"Comme le Seigneur a pu, lors de
"la concession du fief, imposer au vail
"de son vassal, telle loi qu'il trouveroit
"bon, et que l'acceptation qu'a fait
"le preneur du susdit bail l'oblige
"d'en remplir les conditions, il en
"résulte que le bail est la suprême
"loi vis-à-vis des parties contractantes,
"et de leurs ayant-cause, et qu'il pré-
"vaut même sur le statut municipi-
"al, en vertu de la règle semper in
"contractibus id sequimur quod
"actum est, quand même il con-
"tiendrait des droits extraordinaires,
"et contraires tout à la fois à la
"coutume écrite et au droit généra-
"al; de là vient que les rédactions
"des coutumes portent la clause,
"sans préjudice des conventions
"anciennes des fiefs." - N. 124:
p. 104.

Arrivé, after full discussion
and appreciation of all that could
be said upon the matter in the
way of general principle, - in the
last days of the system, reduced his
exact definition of the two contracts to
the following terms: -

"Il [le contrat de fief] doit
"donc être défini une concession faite
"à la charge d'une reconnaissance
"toujours subsistante, qui doit
"se manifester de la manière
"convenue." Archives de la ville de Montréal
"Vol. 1, p. 372.

"Quod si in renovatione de certa
"scientia et animo disponendi sit ap-
"posita nova qualitas aut novam sive
"vel forma, crebrius tenent, ut Bald. x
"x, esse novam conceptionem. Sed
"not est ita; imò retinet veteris feud-
"nam vel census. nec dicitur novum,
"nisi in qualitate instituta dumtax-
"at." — §74, G. 2, n. 5: Vol. 1, p. 714.

— or from Poquet de Livonière : —

"Si c'est avec connaissance de
"cause et sciemment, que le seigneur
"et le sujet ont voulu se départir
"des premiers titres, pour changer la
"qualité de la mouvance, il faut
"en ce cas se tenir au dernier état."

— Des Fiefs, Liv. 6, Ch. 1 : p. 527.

"Il en est de même du surcens,
"et de toute autre prestation ajoutée par
"le seigneur de fief à la première con-
"stitution du cens; qui n'a pas le
"même faveur que le cens; mais pour
"faire cette distinction du cens et du
"surcens, il faut examiner la forme
"de son institution; car si le surcens
"a été établi par une espèce de reform-
"ation du premier cens, ou pour com-
"pensation d'autres devoirs seigneur-
"iaux dont le sujet a été déchargé,
"il a les mêmes avantages que
"le cens. Si au contraire le surcens
"a été ajouté comme une nouvelle
"charge distincte du premier cens,
"il n'est plus considéré que comme
"une rente, bien moins favorable
"que le cens." Ibid. pp. 534, 5.

— or again, see this amendment of
from Hervey : —

"Le croist de cens pourroit bien
"être autre un supplément de cens, s'i-
"pule entre le seigneur et le censitaire,
"pour des raisons particulières surve-
"nues depuis le bail à cens; par exem-
"ple, pour tenir lieu de certains de-
"voirs dont le censitaire auroit deman-
"dé à être déchargé en payant un cens
"plus fort. Rien n'empêcherait que ce
"supplément de cens ne fût de même
"nature que le premier cens: la con-
"vention auroit pu lui imprimer le
"même caractère et la même quali-
"té qu'au chef cens." — Vol. 5, p. 131.

§65. Again, for the ^{general} comparison of
the two tenures, — a matter too ele-
mentary for citation upon it to be
excusable, were it not that the Pro-
positions of the Attorney General sup-
pose the conveyance, in Canada, of
so much ^{more} ~~less~~ by the grant en
censive, than by the grant en
fief. So elementary a citation cannot
be more fittingly taken than from
Pothier : —

* "Je suppose qu'on ne trouve pas
"dans les dénombrements les plus récents,
"la même précision qu'on a eu intention
"de déroger à l'état ancien: si cette
"précision n'y seroit, alors les derniers
"dénombrements ne seroient pas de
"simples titres recognitifs; ils seroient
"en même temps des titres constitu-
"tifs, quant au chan. ement couve-
"nant; ou plutôt, celui qui porteroit
"la stipulation de chan. ement
"deviendrait titre constitutif quant
"à cet objet, et les suivants le con-
"firmeroient. — Vol. 1, p. 411.

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" il n'y a que le propriétaire
 " de l'héritage, dont le droit de propriété
 " renferme quelque seigneurie honori-
 " fique de l'héritage, qui puisse le
 " donner à cens. * * Le propriétaire
 " de l'héritage qui le tient à titre de
 " fief, peut aussi le donner à cens;
 " car, quoiqu'il ne soit lui-même
 " qu'un seigneur utile vis-à-vis de ce-
 " lui de qui il tient son héritage en
 " fief, néanmoins cette seigneurie
 " utile qu'il a, n'est pas bornée à
 " ce qu'il y a de purement utile dans
 " la seigneurie; elle renferme aussi
 " une seigneurie honorifique de
 " l'héritage, quoique subordonnée
 " à celle du seigneur de qui il re-
 " tient en fief." — Des Cens, Chap. Prel.

" La seigneurie utile de celui qui
 " tient un héritage à titre de fief a
 " quelque chose de plus que celle de
 " celui qui le tient à titre de cens:
 " celui n'a que l'utilité pécuniaire
 " de sa chose, et ne peut se rien arro-
 " ger de ce qui consiste plus en hon-
 " neur qu'en utilité pécuniaire. * *
 " De là naît cette autre différence entre
 " celui qui tient un héritage en fief,
 " et celui qui le tient à cens; savoir,
 " que celui qui le tient à cens ne peut
 " pas sous-bailler à cens. * * Au
 " contraire, celui qui tient un héri-
 " tage à titre de fief peut le donner,
 " soit à pareil titre de fief, soit à
 " titre de cens." — Des Fiefs, Part. 1, § 3.

Championnières comparison
 more historically stated, may be added:—

" En général, le droit du possesseur
 " des censives fut toujours plus précieuse
 " et moins puissant que celui du possesseur
 " d'un fief; ce fait se rattache à plusieurs
 " causes: d'abord, l'infériorité des personnes,
 " le feudataire fut originellement un
 " militaire, par conséquent un noble;
 " souvent le vassal fut l'égal du seigneur,
 " et parfois plus puissant que lui; mais
 " le censitaire occupa toujours une posi-
 " tion plus humble, quoiqu'il pût le
 " disputer ~~quelquefois~~ parfois à son sei-
 " gneur par ses richesses acquises ou hé-
 " réditaires; il lui fut toujours inférieur
 " à raison de son rang, et plus encore
 " parce qu'il n'était pas armé comme
 " lui. Lorsque le régime féodal n'existait
 " plus qu'à l'état de souvenir, dont la loi
 " des possessions fut un vestige, le possesseur
 " de terres censives devint pauvre,
 " dans la société, l'égal ou même le
 " supérieur du propriétaire de la di-
 " recte. Mais les principes étaient
 " posés, car toute était imbuée de la
 " qualité qu'elle avait eue pendant
 " plusieurs siècles, et sa nature légale
 " resta toujours inférieure à celle du fief.
 " Ainsi, la directe seigneuriale affecta-t-elle
 " toujours plus immédiatement les

* " terres en censives; le caracté-
 " rère des possessions corrélatives
 " consista plus ~~en~~ efficace-
 " ment sa race de son origine."
 — Empire Comantès, p. 270.

(50) 49/56. Further, for the more special matter of the non-existence of the notion of a limit of any kind, as to the conventional dues and burthens of the Censive tenure. — The Postulate of the Attornes generals Canadian system, ^{creation} ~~and~~ part of its public law, ~~is~~ such limit, ~~is~~ ^{is} ~~incorably~~ laid down, as to every possible particular. Were it not so, there could be no excuse for citing, ^{as} a writer of the age of the settlement of Canada, the following from Galland: —

* on such a point, — as from

“Les charges et redevances ordinaires et annuelles d'héritages tenues en censive (ouhe les lods et ventes, et autres parables à champement) n'ont d'autres règles que la volonté des seigneurs: souvent rudes, pénibles, peu convenables à des conditions libres: prestations annuelles d'argent, volailles, grains, oublies, hostizes, chevages, manopera, manœuvres, carroperce, biens, bidanda, biannia, arbaux, oyances, hayes, faucher les prez, porter les grains au sauf du seigneur, cueir les foibles, et autres semblables, qui se justifient par nombre de fibres.” — Du Franc Aleu, p. 91.

— or the later ~~conclusion~~ express conclusion as to it, of Arvé: —

“Je conclus, en un mot, d'après tout le développement qui précède, que toujours le cens a été proportionné au véritable produit de la chose accensée, lorsqu'on a fait de véritables baux à cens, et non pas des ventes sous le nom de baux à cens.” — Vol. 5, pp. 121, 2.

“Concluons donc qu'aucune redevance, propre ou même, n'est de l'essence du bail à cens, et que la définition de ce bail ne peut se tirer de la redevance censuelle, plus ou moins forte, prescrite toujours, stipulée par ce même bail, ou attribuée par la coutume et par l'usage. * * Toute autre prestation qu'une redevance fixe, tout autre devoir, toute autre manière de marquer la sujétion et de reconnaître de qui l'on tient la chose censuelle, peut également s'appeler cens. On peut ainsi appeler de ce nom, l'ensemble des prestations, des devoirs et de profits quelconques, que le bailleur stipule et se réserve par Archives de la Ville de Montréal.” — pp. 144, 5.

" Lorsque Dumoulin dit que
" le cens est une prestation arithmétique
" modicum canon, on sent bien qu'il
" parle suivant l'acception commune,
" et sûrement on ne le soupçonne
" pas d'avoir ignoré que le cens peut
" être plus ou moins considérable: x x

" Le mot cens, en effet, est une
" dénomination générale qui com-
" prend tous les droits récapitulatifs de
" la seigneurie directe, tous les droits
" imposés in recognitionem domini
" dominii directi!

" Quelque soit la nature et la
" prestation réservée, de quelque man-
" ière ~~que~~ que l'on juge à propos de la
" qualifier, toutes les fois qu'elle
" est établie comme droit récapitulatif
" de la directe, qu'elle est la première
" de toutes les charges dont l'immeuble
" est grevé, et qu'elle se paie au sei-
" gneur territorial, elle tient lieu de
" cens, ou plutôt elle forme un véri-
" table cens; elle en a tous les attributs,
" tous les prérogatives.

" Tel est donc le principe. Une re-
" devance première, sous quelque dénomi-
" nation qu'elle soit désignée, de quelque
" manière que s'en fasse le paiement,
" soit en argent, soit en nature lorsqu'
" elle est due au seigneur de l'héritage,
" est un véritable cens, en a tous
" les attributs, ~~tous~~ les privilèges
" ~~et~~ tous les privilèges. x x

" Celui qui accense un héritage
" peut donc le grever de tel droit
" seigneurial qu'il juge à propos, et
" ce droit aura les prérogatives du
" cens, formera le véritable cens de
" l'héritage, quelle que soit sa dé-
" nomination". — Disp. Féod. Vol. 1, pp.
" 265, b.

" La désignation de droit seigneurial
appartient

A 20 X 10

Sb7. - So far, there is contrast certainly, between what is known to have been the feudal system of France, and what is said to have been that of Canada. ^{As} there anything else? Can, ^{so much as} a grain of the feud be found in the other, - in that part of it, (that is to say) which related to the matters of the démembrement and jeu de fief? For at all events, it must be there, or no-where.

Sb8. - As has been observed, it is clear that through the first age of the fief, while it was yet a usufruct, more or less uncertain, sub-infeudation could not have been practically carried to any great extent, and accensement (as a special contract of the vassal, or of ~~his~~ his sub-vassals, with individual granters of the laboring class) must have been pretty much out of the question. On the other hand, however, it is equally clear that the Dominant could then ~~have~~ had no interest adverse to either. The vassal could not give more than he had got. With the expiry or revocation of the grant to himself, all his grants to others must fall too. So that the Dominant had always the same means of securing service from a new vassal as from the old.

Sb9. - But as the usage slowly grew up, of treating the fief as ^a something more, - of letting the grantee hold for life, and then of suffering the grant to pass (for compensation or without) to the heir, direct or even collateral, - and still more, ^{the fief} as ~~it~~ came to be held a property that might be sold with leave, and at last for a fine without leave - this state of things was changed entirely. Sub-infeudation grew into a usage also; the vassal, the sub-vassal and his sub-vassal, - every one in the chain of ~~Archives de la Ville de Montréal~~ ^{Archives de la Ville de Montréal} leaning upon and exaggerating his

own property in the grant made to him, and, ~~to pay~~ ^{to secure} by means of a body of immediate dependants of his own. The Dominant who had granted a tract of land, for military service in proportion, thus found himself with a vassal who had let go much of it to others, under like promise of service to such vassal, and not to him the Dominant. These other persons, holders of such land and of course not admitting his right to dispossess them, might be particularly obnoxious to him, would seldom have been chosen as not being so, and would always be more his vassal's men than his. When he wanted service, they might be backward, whether the vassal, their chief, was or not. The vassal's own ^{direct} ability to serve would be the less. If threatened, for want of service, with a forfeiture that should affect himself only, his liability would be the less also, though his power to resist might not be. And on the other hand, if threatened with a forfeiture that should affect his sub-vassals, his power of resistance would presumably be even greater than it would have been if the whole fief had remained in his own hands. The Dominant had thus a strong interest, of the military or political kind, against sub-infundation by his vassal.

J.P.

§70. As time wore on, he came to feel that he had another, — which by degrees became even more pressing than this. With the patrimoniality of the fief, and the recognition of the casique as a tenure of property, there grew up also the system of casual profits from mutations, and otherwise, which outlived that of military service and may almost be said to have superseded it. But every conversion of territory within the fief, into arrière fief or casique, brought with it a diminution of these profits. The vassal would claim ~~to pay~~ ^{to receive} the revenue, price or value of

the feif in its form as granted, but only so much of the revenue, price or value of the feif in its form as held. This mere profit from whatever he might have created of arrerie feif or censive, taking the place of the territory thereby covered; a deduction, the more notable from the consideration, that he was of course master, when subgranting, and even afterwards, as to contract as to make such profits as trifling as he pleased.

¶ Sp. The feif thus dealt with, was therefore likely not to yield the military service, and sure not to yield the profits which together were its price. But the obvious claim (and indeed right) of the Dominant would be, to have the feif so held by the vassal as that it should be full security for both. The older contracts of inféodation, made while the transition was in progress, could not have provided as to this; and the newer, in the natural course of things, would not often do so satisfactorily. Hence a long conflict between Dominant and vassal, sometimes settled in one way, sometimes in another; and as its consequence, that chaos of varying local usages, which has been called the law of the feudal tenure as to this matter of the denombrement and jeu de feif.

§ 72. - The Apices de Jerusalem form one of the oldest historical documents, notable in this connexion. The usage which they laid down for the Kingdom of Jerusalem, was presumably one more

or less prevalent in France, before and about the time of their date, - A.D. 1099. It is

[Foot Note.]

* "Les Apices, comme on le voit par un aveu qui est à la fin, sont les lois, statuts et coutumes accordés au royaume de Jerusalem par Godefroi de Bouillon, l'an 1099, par les patriarches et des barons."

"Comme ces barons étoient presque tous des chevaliers français, et de toutes les parties du royaume de France, il faut regarder ces apices comme le recueil des usages qui régnoient en France vers le milieu du 11^e siècle." - Henri de Valenciennes, dis. de l'édif., vol. 2, pp. 366, 7.

Beugnot, in his notes on the papal bulls cited in the text from the Apices, takes another view; holding the view which they embody to have been an innovation upon French usage, consequent upon the fact of the Crusaders having been in such pressing need of reliable military service. But, in the 11th Century, good military service was almost everywhere throughout feudal Europe, in nearly if not quite as great demand as in Palestine. Beugnot's reference (to Beaumont in and the front of his view) in support of his view are of too late date, by a century and a half or more; besides that they fail to bear out this position even for such late date. - So far nothing of the close analogy between this tenure of the Kingdom of Jerusalem and that of the Italian portion of the Roman Empire, presently to be noticed, which, of itself, is far

“but ne peut desmembrer fie, par
“Capice ou Cusage dou reiaume de Jeru-
“salem, se le fie ne doit serweise de plus
“d’une chevalerie. Et qui vient des-
“membrer fie qui doit serweise de plus
“ors chevaleries, il doit donee partie
“de son fie por partie de son serweise
“que le fie doit: et enti que le plus
“dou fie demorre au seigneur que le
“desmembre” x — Chap. 182.

By this usage, then, there were three restrictive conditions to the dé-
membrement par l’apise ou Cusage
du royaume, or sub-infeudation which
the Dominant might not call in ques-
tion, — viz:—

- 1^{stly}. — That the fief must owe more than one knight’s service.
- 2^{dly}. — That the sub-infeudation must not extend to the half of it.
- 3^{dly}. — That it must be made for part of the service.

Under these conditions, the vassal had the right, as against his lord, to sub-infeud; otherwise, he had not.

As to the second of these conditions, it should be remarked, that though clearly enough expressed in the text as given above by Jean d’Ibelin, and (if possible) yet more clearly by de Sout and Jacques d’Ibelin, its ~~original~~ sense became matter of controversy. Jean d’Ibelin tells us that in his day (about or before the middle of the 13th Century) it was a grave question, and one ^{which} he was not prepared to answer, whether it meant that all the arrière fiefs together must be left than the half of the original fief, or merely, that the first arrière fief must be left than the half of the whole, the second less than the half of the remainder, and so on, leaving a final remainder of more than one knight’s fee. And Navarre states the same question, adding that he inclined to the latter solution. — This latter doctrine, in fact, seeming pretty clearly to have been a vassal encroachment upon what in the first instance the Dominant had laid down as their right.

Even in the 11th century, the fief was at least generally patrimonial, and the usage of mutation fines as a substitute for the express assent of the Dominant to each alienation, must have been in process of establishment. In Palestine, according to the Assises, the fief was patrimonial; but the right to sell was very ~~strictly~~ admitted, only under a good deal of restriction:—

“Home ou femme qui a fie ne peut,
“par Capice ou Cusage dou reiaume de
“Jerusalem, vendre partie de son fie;
“mais tot son fie peut lon bien vendre,
“sin la dite assise. Et Capice de la vaise
“dou fie est ^{des} archives de la Villa de Montreuil
“ne vendre por dette contue ~~ou~~ provée

[Foot-note.]

* Assises de Jerusalem, Vol. 1, p. 284; 2^{de} par Beugnot, 1841.

This text is from the livre de Jean d’Ibelin, who died about 1266. (See note on pp. 212.)

The same doctrine is laid down in other words on p. 553, from the livre de Philippe le Navarre, a contemporary of Jean d’Ibelin, but who ^{wrote} ~~seems to have written~~ before him. (See note on pp. 47006; and Ant. p. 11.)

Also on pp. 436 & 439, from the livre de Coffroy le Tort, another contemporary who wrote after Jean d’Ibelin. (See note on p. 436; and Ant. p. 1187.)

Also on p. 464, from the livre de Jacques d’Ibelin, another contemporary who wrote after Jean d’Ibelin. (See note on p. 458; and Ant. p. 1187.)

And on p. 596, from La Cuf. des Assises, a later compilation. (See Ant. p. 1187.)

2^{de}, p. 449.
— “et si en doit lon donee mains de la moitié. — Jacques d’Ibelin, p. 464.

[Foot-note.]

* Ibid. p. 285.

[Foot-note.]

* Ibid. pp. 553, 4.

[Foot-note.]

* Augustus Capet’s accession was in 987; and that of Louis the 8th, who followed his example in declaring the fiefs of Germany hereditary was in 1024. Still, there were non-hereditary fiefs till much later. — See Arrêt, Vol. 1, pp. 71, 91, 211; also Lib. Lud., lib. 1, tit. 1, — in Corp. Jen. Civ., Vol. 2, c. 1857, ed^{de} of 1767.

en Court, ce celui de qui est le fie
"si en a autre de quei il puisse la dehe
"paier fors que de la vente dou fie."
- Chap. 180.

Upon such vente par Caprice, the
Dominant necessarily judicial and public,
the Dominant could no more interpose re-
shaint or exact a mutation fine, than
he could upon a démembrement par
Caprice. For any other sale, his consent
was necessary, so that he could charge
what he would.

The consequence of a vassal's viol-
ation of the rule, either as to sale or sub-
grant, is doubly stated; first, as it would
seem, with reference to the case of a fiel
the propre of the delinquent; and, then,
with reference to a fiel acquêt. In the former
case, it is said: -

"chose que il en face n'est valable en
"estable, xx se ce n'est à aucun de ses
"heis, et par Cotei dou seignor ~~seigneur~~
"fiel est fie xx. Et qui auhemment le fera,
"son heis l'en peut apeler, ce il viant;
"et ce ^{seigneur} l'en apelle, la chose que il fait
"ne vandra ni ne sera tenue. Et si le
"fie vient en la main dou seignor par
"eschete ou par deffunt de seruisse ou
"auhemment, le seignor peut apeler et
"avein ce qui en sera fait sans assise
"et sanz usage, se le seignor ne la
"otrei en Court, ou se il ne li a done
"en Court poein ^{plourant} de faire le." - Chap. 142.

- In the latter case, the more summary
decision is -

~~Par ailleurs~~
"le seignor de qui il tient cel fie peut
"prendre ce que il a aliene, et tenir et
"later come la soe chose: car le seignor
"dou fie qui a tot ou partie aliene sanz
"apier et sanz usage et sanz otrei dou
"seignor de qui il tient le fie, est po
"le fait que il en a fait encheu
"vers son seignor de perdre à toz jors,
"lui et ses heis, ce que il a dou fie
"dit fie aliene sanz apise et sanz us-
"age et sanz otrei dou seignor; et le
"peut et doit avin le seignor de qui
"il le tenoit en fie, à lui et à ses
"heis, come de la soe propre
"chose, et faire ent totes ces ~~toles~~
"volentes come dou sien." - Chap.
"143.

- That is to say, in the latter case, where the
question lay merely between the vassal
and the Dominant, was ^{himself} ^{at once} entitled to an
escheat; but in the former, where the
vassal's heirs were presumably the
parties ~~most~~ first entitled to make
good their right, it was ^{be} left for them
to do so. - Possibly enough, in default
of their doing so, the Dominant would
have been allowed his remedy of escheat.

However this may have been, it is
at least ~~the~~ clear that these restrictions upon
sub-infeudation or other alienation
were merely in private interest, and
could be waived to any extent. The

[Foot-note.]

* Opus de Jerusalem, Vol. 1, pp.
288, 9; livre de Jean d'Abelin; where the
procedure for such vente par Caprice
is very fully stated. - See also pp. 449
& 464; where the same is more briefly
stated by de Jost and Jacques d'Abelin,
respectively.

[Foot-note.]

* Capitula J. de Jerusalem, Vol. 1, pp.
216 & 217, respectively; livre de Jean d'Abelin.

Benquet suggests in his note in loc.,
that the distinction between these two cases is
probably that adopted in the text. - Another,
however, ~~may be suggested~~ ^{may be suggested} ~~is suggested~~ ^{is suggested}
is suggested by way of note. Chapter 142
expressly refers to the two cases of vente
sale and sub-grant; but in Chapter 143
the only word used is aliene, - a word
which may or may not have been meant
to cover both. If this word we here taken
in the narrower sense, one may per-
haps suppose that the penalty of fiel
what may be called illicit démembre-
ment, as opposed to sale, was the lighter
forfeit of Chapter 142. It seems, how-
ever, more reasonable to give the word
here its larger sense.

Although giving the substance of
a set of rules of the 13th Century, d'Abelin
wrote in the 18th and may be supposed
to have used words rather in the sense
of his own time than in that of a
Century or two before, - especially, where
the context seems to require such
supposition.

57) ~~57~~ him was the judge how far he would insist upon his rights over the people, the Dominant, equally so, as to his rights over people or acquit. With their assent anything could be done, and would be held good. Without it, anything could be done as between the parties, but might be undone in another interest. The law, such as it was, was private and particular, not public or general. And its practical enforcement must have been ~~maximally~~ irregular.

From the distinction drawn between démembrement and rente, it may be inferred that through this period sub-infeudation was not apt to be otherwise than quasi-gratuitous. Perhaps, indeed, the use of the word "donner" in connection with it, ^{may imply} ~~implies~~ that the taking of any other ^{consideration} ~~price~~ than ^{the promise} ~~future~~ service would have exposed the parties to the consequences of a rente sans apise. The Dominant, at least, would have so contended. But there is nothing to show that the precise point ~~was~~ was decided.

There is no hint at the possibility of a sub-grant otherwise than en fait, and for military service. In fact, the Apices are silent, ^{as to} ~~as to~~ any ^{other} ~~other~~ ^{rank} ~~rank~~ of the retinuer, ^{like} ~~like~~ ^{classe} ~~classe~~, and as to any class of retinuer above the rank of Serps or slaves. They are of the military period of the feudal system; and even the measure of protection which, in this matter of sub-granting, they afforded to the Dominant, was essentially a protection of his military right, — to which every other was deemed secondary.

§3. Another usage, of about the ~~same~~ same age of the first promulgation of the Apices, or somewhat earlier, ~~is~~ is thus given in the Liber Feudorum, as prevalent in Lombardy: —

"Similiter nec vasallus feudum sine voluntate domini alienabit: in feudum tamen recte dabit, si secunda persona sit talis, quae feudum sive possit, ut si datus miles est et illi qui accepit feudum iniatur miles, ad hoc ut feudum, si contigerit, domino similiter servire ut et prior possit: et hoc ut dare liceat in infinitum. In quibusdam tamen curiis, ultra tertiam personam feudi concessio non extenditur: ut cum feudum pervenit in quartam personam, ei auferre dominus potest possit. Profecto ille, qui suum beneficium ^{alio} ~~alio~~ dat in feudum, non

[Foot-Note.]

The first sentence of the epistola given in the text is referred to by its context as a "Lex Conrad". It is evidently of earlier date than the Constitution of Lothaire Basile, of the year 1130, presently to be noted; and must therefore presumably date back to the reign of Conrad the 2^d, from 1024 to 1039. — But the remaining sentences, forming the Claps upon this first sentence, are no evidently of later date, ^{possibly} ~~possibly~~ ^{earlier} ~~earlier~~ than Lothaire's Constitution of 1130.

§4.

§5.

58 55
"debet alia lege dare nisi qua
"ipse habeat: ut, si habeat
"sibi suisque heredibus, (quod
"intelligi debet de solis mascul-
"is,) non debet alii dare, ut hab-
"eat ipse et sui heredes mas-
"culi et feminae. Unde quibus-
"dam placet, quod qui taliter
"dedit, eo ipso beneficium a-
"mittit. Gerardus et alii dicunt,
"quod qui dedit, et cui datum
"est beneficium, perdit. Secund-
"um alios, vero hunc dominus
"aperitur, cum masculi defe-
"cerint." — Lib. 2, Tit. 34.

In Lombardy, then, ^{at} this
time, the usage of allowing the
sale of a feif, [&] upon more payment
of a fine to the Dominant, ^{or} ~~with~~
with his express leave, was not ~~yet~~
established; and as a consequence,
the granting in arriere feif was
not called an alienation. In fact,
the idea of antiposition between
Dominant and vassal, in the mat-
ter of sub-infeudation, was
hardly ~~yet established~~ developed.
Sub-infeudation, accordingly, it
was generally held, might go
on to any extent, and through
any number of degrees, without
~~reference~~ regard to any objection
by the Dominant, ~~partly~~ upon
two conditions only: —

1^{stly}. — That the sub-vassal
must be of a class to be ^{as} capable
of feudal service as the vassal,
— as, for instance, that the sub-
vassal of the soldier must be
a soldier.

2^{dly}. — That the sub-vassal
must hold by a title analogous
to that of the vassal, — as, for
instance, that if the feif de-
scended only to heirs male,
the arriere feif must not be
granted, with descent to fe-
males.

Both of them, conditions
having obvious reference
to the Dominant's ~~mere~~ milit-
ary right, more than to any other.
— As to the latter, ~~it is~~ ^{it is} ~~to be~~ ^{to be} ~~not~~ ^{not} ~~obscure~~ ^{obscure}
that there were two conflicting

[Foot-note.]

* See Corp. Jur. Civ. Vol. 2, p.
1382. — Ed. of 1759.

J. A. A.

* ~~It is~~ ^{It is} ~~not~~ ^{not} ~~clear~~ ^{clear} ~~that~~ ^{that} ~~it~~ ^{it} ~~was~~ ^{was} ~~not~~ ^{not} ~~clear~~ ^{clear}
that it was ~~not~~ ^{not} ~~clear~~ ^{clear} ~~that~~ ^{that} ~~it~~ ^{it} ~~was~~ ^{was} ~~not~~ ^{not} ~~clear~~ ^{clear}
that it was ~~not~~ ^{not} ~~clear~~ ^{clear} ~~that~~ ^{that} ~~it~~ ^{it} ~~was~~ ^{was} ~~not~~ ^{not} ~~clear~~ ^{clear}

& under any circumstances what-
ever,

doctrines held; the one, ^{in the Dominant's interest,} making the sub-grant with descent to females (in the case supposed) a cause of ^{immediate} ~~escheat~~ ^{the Dominant}; the other, ^{in the vassal's interest,} merely regarding the enlargement of the title as inoperative against the Dominant, - so that, in default of male heirs, he would come in for the reversion.

It is observable also, that the inconvenience of this lay rule, ^{was} evidently beginning to be felt; some Courts holding, that the right to sub-infeud ceased with the third holder, or sub-vassal of the first sub-vassal, - so as to give the Dominant the right of taking away land from any one ^{whom} ~~to~~ ^{such} third holder should ^{have sought} ~~seek~~ to make a further sub-grant.

The distinctions between this rule and that of the Assises are obvious. By the Assises, it was distinctly stated, instead of being left matter of implication, that the assise feif was to be burdened with its share of military service. And although sub-infeudation might go on for any number of degrees, as under ^{original form of the} the Milan rule, there was an indirect limit set to it, by the non-allowance of sub-grants from any feif of less than a certain extent, and by the requirement that every grantee should retain more than the half of his feif. The feif en lain, and indeed even the inconveniently small feif, were thus impossible in Palestine, unless by the consent or connivance of the Dominant. But there was nothing in the Lombard rule, to prevent either.

§7. Nor was it long before this evil was felt to require a remedy. In 1136, the Emperor Lothaire, at the instance of the chief feudatories and nobles of the Empire, promulgated as a Constitution - ^{Archives de la Villa de Monteb} Libera Feudorum - the following: -

* as to sub-infeudation

* in succession

— Permultas enim interpetra-
“tiones ad nos factas comperimus, milites
“sua beneficia papam distrahere, ac
“ita omnibus ex hancis, eorum senior-
“um servitia subterfugere; per quod vires
“imperii maxime attenuatas cognovi-
“mus, dum proceres nostri milites suos
“omnibus beneficiis suis exatos ad
“illicita nostri munitionis expeditionem
“nullo modo transducere valeant. Nos
“ita itaque et Consilio archiepiscopo-
“rum, episcoporum, ducum, comitum,
“marchionum, palatinorum, ceterorum
“que nobilitum, similiter etiam iudicum
“hac edictali lege in omne ævum, deo
“propitio, valiturâ, declinamus:—

“Nemini licere beneficia que à
“suis senioribus habent, sine ipsorum
“permissione distrahere, vel aliquod
“commercium aduersus tenorem nos-
“tre constitutionis excohitare, per quod
“imperii vel dominorum munitionis
“utilitas. Si quis vero contra hæc nos-
“tre legis saluberrime præcepta ad hu-
“iusmodi illicitum commercium
“acceperit, vel aliquod in fraudem nu-
“us legis machinari tentaverit, prehis
“et beneficiis se cariturum agnoscat.
“Notarium vero qui super hoc tali con-
“tractu libellum vel aliud instrument-
“um conseripserit, post amissionem

60 officii, ipsam insaniam pericul-
"tum sustinere saluimus." - Lib. 2,
lit. 52.

[Foot-note.]

* See sup. par. Civ. Vol. 2, p. 138.
- 87th of 1759.

[Foot-note.]

* If the more reading of this one
Constitution could have a doubt
as to this, the terms of the Constitu-
tion of Frederic the 2^d, next cited
in the text, ~~was removed~~ [vid.
infra, § 75] would remove it.

The word "distrachere" must
have been used here, as of wider
sense than the "alienare" of the
older rule, - as covering sub-infeud-
ation equally with sale. * The
prohibition (by general consent)
went to all distrachion from
movance, whether with price
paid or without, unless by con-
sent of the immediate Domin-
ant, interested against it. And
it is remarkable, that though a
reason of state is recited, and the
law (in so far) bears the color of
a public Law, its effect was
still left to depend ~~wholly~~ wholly on
private will, and the remedy pro-
vided by it was of private appli-
cation and in private interest.
Each Dominant could permit sub-
infeudation, or distrachion from
his own movance, with price
paid or without, to any extent,
and could always waive (whether
by inaction or otherwise) his right
to the penalty threatened in his
favor.

§ 75. In fact, it is certain that they
must commonly have done so, or
else must have found themselves in
the position of not being able to en-
force their asserted right. For in the
earlier half of the next century
(the 13th) we meet with the follow-
ing further Constitution of Freder-
ic the Second, * - also in the Liber
Fendorum: -

[Foot-note.]

* Who reigned from 1212 to 1249.

- "a principibus Italicis, tam
"republicis ecclesiarum quam aliis
"fidelibus regni, non modicas ac-
"tionibus querelas, quo quod beneficiorum
"eorum et fenda, que ~~sub~~ vassalli
"ab eis retinebant, suis dominor-
"um licentia pignori obligaverant,
"et quadam collatione nomine
"vassalli vendiderant, unde debita
"servitia amittebant; et honor
"imperii, et nosse felicit exped-
"tionis complementum minueba-
"nt. Habito ergo consilio episcoporum,
"duum, marchionum et comitum,
"simul etiam et palatinorum judi-
"cium, et aliorum procerum, hac
"edictali, Deo propitio, perpetuo vali-
"dum esse, sancimus: -
"ut nulli liceat feudum totum
"vel partem aliquam, pro modo dis-
"ponere, vel quocunque modo dis-
"ponere eum alienare, vel pro anima

61. ⁵² "judicare, sine permissione illius
domini, ad quem feudum spectare
dignoscitur.

"Unde Imperator Lotharius tantum
in futurum necamus ne fieri, legem
non mutavit. Nos autem ad pleni-
orem regni utilitatem providentes, non
solum in posterum, sed etiam hujus-
modi alienationes illicitas hactenus
perpetuas, hac presenti sanctione
Caxanus, et in irritum deducimus,
nullius temporis prescriptione impedi-
ente: quia quod ab initio de jure non
valuit, hactenus temporis convales-
cent non debet; emptori bonae fidei
exempto actione de pretio contra
venditorem competente.

"Callidis insuper machinationibus
quorundam obviantes, qui pretio ac-
cepto, quasi sub colore investiturae,
quam sibi licere dicunt, feudum
vendunt, et ita alios traxerunt, -
ne tale figmentum vel aliud alterius
in fraudem hujus noxae constitutum
excogitetur, modis omnibus prohibe-
mus: -

"Penam auctoritate nostra imponimus
ut venditor et emptor, qui tam illicitas
as alienationes ceperint fuerint con-
traxerint, feudum amittant, et ad
dominum liberè revertatur. Scriba
vero, qui hoc instrumentum sciens
conscripserit, post emissionem of-
ficii, cum infamia periculo ma-
num amittat." - Lib. 2, Tit. 55.*

Several considerations here pre-
sent themselves.

"Alienare" is in this document used
as a synonym of "disshabere"; and not
as in the 11th Century, in contra-dic-
tinction to the phrase "in feudum
dare". ^{At that time,} as we have seen,
sub-infundation was thought a
something short of alienation.
And, such as it was, conveying
an estate that still savored of
the usufruct, it was naturally
quasi-gratuitous. Men would
not commonly pay for it, unless
by promise of future service.

The phrase "in feudum dare,"
was the correct one. But as the feif became in
public estimation more and more of a property
and the fancy for sub-infundation grew upon
the public mind, sales naturally tended
to take that form, and payment in other
value ^{as well as by} future service, to become common.
Add to these influences, that of the old rule
which coupled the right to sub-infundate
with the want of right to sell un-
less by special leave of the dominant, -
and it is ^{easy} to understand the fact, that
there had grown up what may be called
a double abuse. The bulk of the feif,
if not withdrawn, was in rapid process of
withdrawal ^{from the direct dominion of the}
dominant, without his leave, or in other
words without suitable compensa-

[Foot-note.]

* The Constitution of 1106;
above cited.

[Foot-note.]

* See corp. jur. Civ. Vol. 2, p. 1390.
- Ed. of 1754.

(62/59)
ation to him, — not merely by sub-infeudation of the quasi-feudal kind, where the grant had no other consideration than that of service to be rendered, — but sales by sub-infeudation savouring of sale, disavowal of movance effected for a price paid to the vassal. It was natural, that in the 12th Century, the Dominants, with the Emperor at their head, should denounce this, and declare that they would thereafter hold every disavowal of movance, attempted without leave of the Dominant, to be a matter involving forfeiture ^{in favor of the} Dominant, and punishment of the notary; and that in the 13th Century, — this having failed, — they should repeat their threat with increased emphasis, and as applying alike to the past and to the future.

Not was it strange, considering the spirit of the times, and of the feudal system as their result, that while again reciting a public interest, this Constitution like that which preceded it should have stopped short at a merely private remedy; each Dominant in turn having power to allow any amount of sub-infeudation at pleasure; and indeed, all sub-infeudation that the immediate Dominant might not have at once the will and the ^{power} physical force to set aside, remaining practically operative.

It is rather strange, however, that in the anxiety of the parties to give energy to their threat, such as it was, they should have used language calculated to admit of a doubt as to their meaning with regard to sub-infeudation veritably effected for mere promise of service and with no price paid. After declaring that no sale, pledging, or disavowal or alienation of any sort, even pro animâ should be good unless by permission of the immediate Dominant, — a prohibition clearly large enough to cover all sub-infeudation whatever,

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— there follows a special prohibition of all ^{unpermitted} colorable sub-infeudation præcisè accepto as if the threatened forfeiture were meant to attach to it only, and not to bona-fide sub-infeudation where no notice should have been taken. Henri de Pansy * gives to this Constitution the wider application; and no doubt, rightly. But it is not to be supposed that the équivoque failed to add to the uncertainty of its execution. In fact, it obviously could not have had any general or large effect. Practically, sub-infeudation must have gone on, much as before.

§ In England, again, events took quite another course.

The clause of Magna Charta, first promulgated in 1215, in reference to this matter, reads thus:—

"Nullus liber homo de cetero amplius alicui, vel vasa-
at, de terra sua, quam ut de
residuo terre sue sufficienter
popit fieri domino, ^{feodi} ~~feodi~~
servitium ei debitur, quod
pertinet ad ^{feodum} ~~feodum~~ illud."

A rule analogous to those of the Assises de Jerusalem and Libet Feodorum, in these respects, — that it ^{also} went ^{on} to the ~~same~~ protection of the immediate Superior Dominant, — that it referred more especially to his military right, — and that its enforcement in each case depended on his will and power to assert his right. But so much more vague, as really to amount to a mere ^{application} ~~application~~ of the principle that he was entitled to have his grant so held and dealt with by his vassal, so that his security for the services which were his due should not be destroyed. In fact, for any practical purpose, no real rule at all.

Incidentally, it shows that sub-infeudation ^{was} ~~was~~ of all

[Foot-Note.]

* Dip. Feod., Vol. 2, p. 366.

§ (sometimes asserted to, sometimes not efficiently dependent from, by the Dominant)

[Foot-Note.]

* Statut Laye. Vol. 1, p. 8.

(64) had by this time become common in England, as elsewhere. "Det" "vel vendat" were the alternative expressions used for the two styles of sub-infeuding contract. In England and Italy, like causes had been at work, and in this respect with like effect.

§7. But in England the matter was soon dealt with by veritable legislation. The Statute of Quia Emptores, in 1290, enacted thus:-

"Quia emptores terrarum et tenementorum de feodis magnatum et aliorum, in prejudicium eorumdem, temporibus retroactis multo his in feodis suis sicut in feodi, - quibus tunc tenentes eorumdem magnatum et aliorum terras et tenementa sua vendiderunt, tenenda in feodo sibi et heredibus suis, et non de capitibus dominis feodorum; ~~ita~~ per quod idem capitales domini ecclesiarum, maritima et custodias terrarum et tenementorum de feodis suis existentium sapienter amiserunt, quod eisdem magnatibus et aliis dominis quam plurimis durum et difficile videbatur, et similiter in hoc casu ephemeratio manifesta; Dominus Rex in Parlamento suo ad instantiam magnatum regni sui concepit, providit et statuit.

"Quod de cetero liceat unicuique liberis homini terram suam seu tenementum, seu partem inde, pro voluntate sua vendere, - ita tamen, quod feoffatus teneat terram illam seu tenementum de capitali domino per eadem servitia et consuetudines per quae feoffator suus illa prius tenuit.

"Et si partem aliquam earundem terrarum et tenementorum alicui vendiderit, feoffatus illam teneat immediate de capitali domino, et oneretur statim de servis quantum pertinet sive pertinere debet eidem capitali domino pro particula illa, secundum quantitatem terre seu tenementi venditi: * * - 18th Edw. 1, Stat. 1, Cap. 1 & 2.

Making, therefore, this radical innovation; that instead of the vassal's being liable to restraint on the part of his dominant in this matter, and more or less dependant on his agent in order to the sub-granting of more than some uncertain fraction of his fief, - he was now made free to alienate as he would, ^{practically} but unable in so doing to sub-infeudate ^{at all} the right of the dominant being preserved by the simple expedient of making the

* de feoffatoribus suis,

[Foot-note.]

* Statutes at Large. Vol. 1, p. 122.

new holder hold of him and not of the vassal, and for his fair share of the vassal's service and dues. Such protection was, of course, not perfect; because it left him exposed to the inconvenience of having his grant cut up into small holdings, - unable to insist upon it that it should remain in name one fief. But it saved his substantial rights in a simpler and more effectual way than any regulation of the sub-infeudation practice could possibly have done. - ~~Even~~ The freedom of the vassal, also, was not perfect; as all further sub-infeudation was made impossible. But he, too, had the substantial of the right, as he could, ^{alienate} ~~sell~~ at will, on what terms he pleased, under reserve only, that he could not make himself a Seigneur Dominant over the land alienated.

It is, by the way, a further indication of what has already been shown to have long been the tendency of the system, - that the word "vendre" ^{about} is here used, as the equivalent of the "distrahere" or "alienare" of the ^{some what earlier} Italian texts. The quasi-gratuitous form of sub-infeudation must have been the exception, and the form of quasi-sale the rule, - at least in England.

§78. In Scotland, the same remedy was thought of; and a Statute, as nearly as possible in the same words, promulgated, ^{not many} ~~few~~ years later, - that of the 2d. Robert I, cap. 25. Though it does not seem to have been carried into practical effect, as that of Quia Emptores was in England.

§79. It has been suggested, ^{the idea of the} that the ^{English} Statute of Quia Emptores was probably taken from an Ordinance of Philip Augustus, commonly cited as of the date of 1210, but, ^{apparently} ~~really~~ promulgated in 1209. Such may have been the case; but the lapse of more than 80 years between them renders it hardly probable. - The like grievance ^{might well have} suggested, ~~naturally~~ in the two cases, a like remedy.

The text of the material clauses of this Ordinance of Philip Augustus, is thus given in Isambert's Recueil: - Archives de la Ville de Montréal

Nor is it altogether uninteresting, in this ^{same} historical point of view, to make the contrast between the ^{seemingly} military requirement of Magna Charta, and the ^{seemingly} for the mere protection of the Dominants' military right and the emphatic ^{recital} reference of the Statute of Quia Emptores, as to "escheak, marriages and wardships" and the "main-fief disinheritance" which then lay involved. - In England, at least, the military value of the fief had ~~already~~ become the secondary consideration.

See

Foot-note 7

* See Howard, Traites sur les Coutumes Anglo-Normandes, Vol. 2, p. 642, 3; where this Statute is given in long; also Henri de Paucy, Dip. Ed., Vol. 2, p. 366.

It is not alluded to by Eukine or Bell, when treating of this subject; and the law of Scotland is by them stated in a manner inconsistent with the idea of its having been effectually ~~acted upon~~. - See Eukine, Int., Pt. 2, Tit. 3 No. 13; p. 233 of Ed. of 1828; also Bell, Princ. of Law of Scotland, Nos. 675-91, p. 266, 1, of Ed. of 1829.

Foot-note 7

* See Cruise's Digest, Ch. 2, Sec. 12, note; Vol. 1, p. 22 (old paging) 28 (new) of reprint of Ed. of 1849.

(Independently of the fact, presently to be noticed, of the non-enforcement of the Ordinance)

Philippus, Dei gratia, Franco-

rum rex, -
"C. dux Burgundia, Ac. Comes Ni-
"vernensis, R. comes Bolonia, G. Comes
"Laneri-Pauli, G. de Donna Petra, et
"plures alii magnates de regno Francie,
"unanimitè convocaverunt, et assensu
"publico firmaverunt, ut à primo die
"mai in posterum ita sit de feudatibus
"tenementis.

"Quicquid tenebat de dominio legit-
"vel alio modo, si contigerit per suc-
"cessionem hereditariam, vel quocumque alio
"modo divisionem inde fieri, quocum-
"que modo fiat, omnis qui de illo feodo
"tenebit, de domino feodi principaliter
"in et nullo modo tenebit, sicut antea
"antea tenebat priusquam divisio facta
"esset. "Et quando cunque contigerit pro
"illo totali feodo servitium dominici
"fieri, quilibet eorum, secundum
"quod de feodo illo tenebit, servitium
"tenebitur exhibere, et illo domino
"deservire, et reddere ~~servi~~ ^{restitutionem}
"et omnem justitiam". * * - Vol. 1, pp. 203, 204.

besides citing this Ordinance, au Cours
of the 8th of the 2^d Volume of his
"L'Esprit des Loix", refers to it twice on pages
15 & 16 of this 1st Volume; on page 14 para-
phrasing

Foot-note.

* See Cruise's Digest, Ch. 1, s. 53;
Vol. 1, p. 13 (old) 16, 7 (new) of Green-
leaf's Ed. of 1849.

Brupel, ~~in his~~ ^{in his} ~~work~~ ^{work} ~~on~~ ^{on} ~~pages~~ ^{pages} ~~15 & 16~~ ^{15 & 16} ~~of~~ ^{of} ~~the~~ ^{the} ~~1st~~ ^{1st} ~~volume~~ ^{volume} ~~of~~ ^{of} ~~his~~ ^{of} ~~his~~ ^{his} ~~1st~~ ^{1st} ~~volume~~ ^{volume} ~~refers~~ ^{refers} ~~loosely~~ ^{loosely} ~~to~~ ^{to} ~~Brupel~~ ^{Brupel}, ~~repeating~~ ^{repeating} ~~the~~ ^{the} ~~inaccurate~~ ^{inaccurate} ~~paraphrase~~ ^{paraphrase}. ~~And~~ ^{And} ~~Cruise~~ ^{Cruise} ~~makes~~ ^{makes} ~~his~~ ^{his} ~~remark~~ ^{remark} ~~on~~ ^{on} ~~Brupel~~ ^{Brupel}; ~~who~~ ^{who}, ~~though~~ ^{though} ~~his~~ ^{his} ~~remark~~ ^{remark} ~~is~~ ^{is} ~~inaccurate~~ ^{inaccurate}, ~~did~~ ^{did} ~~not~~ ^{not} ~~by~~ ^{by} ~~any~~ ^{any} ~~means~~ ^{means} ~~push~~ ^{push} ~~the~~ ^{the} ~~error~~ ^{error} ~~to~~ ^{to} ~~Cruise's~~ ^{Cruise's} ~~length~~ ^{length}.

Referring inaccurately, to a re-
ference by Hervé (itself ⁱⁿ inaccurately
made through the medium of
Brupel) to this Ordinance, Cruise
treats it as if it had put an end
to sub-infeudation in France; and,
no doubt the Statute of "Quia Em-
pres" did in England. But it is cer-
tain that it ~~could~~ ^{could} ~~have~~ ^{have} had no such
effect.

In fact, it purported to be no-
thing more than an agreement be-
tween the King and some ^{five} or more
of his great feudatories, that they
would respectively enforce this rule,
each, of course, in his own domains.
It is not probable that any one of the
contracting parties ~~really~~ ^{really} found him-
self ^{really} strong enough to do so. They may
some of them have made the effort;
and in particular instances, ^{may}
have more or less succeeded. Some
of the Customs of France indicate
the influence of some such effort
on the part of the ^{greater} ~~greater~~ ^{lords} ~~lords~~. But
most of ~~them~~ ^{them} rest upon principles
altogether different, - not pretend-
ing to make sub-infeudation impos-
sible, but merely to regulate it, and
~~seeking to do that~~ ^{seeking to do that} in all manner of
ways. Had this Ordinance been a
general law, and as such enforced, it
would no doubt have done for France
what the Statute of Quia Em-
pres ^{did for} ~~did for~~ ^{England} ~~England. ^{It} ~~It~~ ^{was} ~~was~~ ^{not} ~~not~~ ^{having} ~~having~~ ^{been} ~~been ^{no} ~~no~~ ^{such} ~~such~~ ^{character,} ~~character, ~~and~~ ^{and} ~~not~~ ^{not} ~~having~~ ^{having} ~~been~~ ^{been}~~~~~~

* or as regarded particular
territories,

[Foot-note.]

* See the notes on this Ordinance, in Saunders, Vol. 1, pp. 203, 4.

enforced, it left matters to take their course in France in a manner altogether different.

§80 Beaumanoir, writing of the Customs du Beauvoisis, about the year 1270, shows the course which matters took in this respect, in part of France, down to that date. His words are:—

"Selon le Coustume de Beauvoisis, je puis bien fere du hies de mon fief, arrière fief, et certain ent Commaige, si comme se je marie aucun de mes enfans, mais se je en oste plus du hies, li hommages du hies, et du surplus vient au seigneur."

"Et en tel maniere le poroie je fere que je poroie plus paider; si comme se je reteroie les hommages de plus de hies, que je queroie en Commaige de mes seigneur de soixante livres par le mesfet."

"Et se convenoit que je garantisse li mes enfans ce que je li avoie donee ou le vaillant, se li seies voloit tenir tant sans home, come un enfant Caroit tenu sans cote en son hommage: le quele cote il poroie fere s'il li plesoit." — Cap. 14, de 25.

"Je ne vois pas que mes fies puist estre mis en arrière fief du seigneur, sans l'assentement du seigneur, fors par reson de partie qui vient de descendant" * * * — Cap. 47, de 7.

The conditions, then, under which by this custom, the vassal had the right to sub-infeud, in spite of his Dominant, were two in number:—

1^{stly}. — That the sub-grant must have in view the transmission or division of the fief, in the direct line.

2^{dly}. — That it must not extend to more than the third part of the fief.

So far, we may be said to have a modification of the older rules of the Assises de Jerusalem, Liber Feudorum and Magna Charta. The limitation of the extent of the fief from which one may sub-grant, — that, as to service to be stipulated or fitness of the grantee for service, and that, as to the sufficiency of the ~~remaining~~ remainder for the service of the fief, — are abandoned. That, as to the extent sub-grantable, is fixed at "not more than the third." And the new element is introduced of limiting the sub-grant to the immediate family of the vassal.

Besides this, however, there is perhaps traceable in this Custom, a something of the influence of the Ordinance of Philippe Augustus. The case of any attempted sub-infeudation beyond the limit of the one third, is met by the expedient of saving to the dominant, notwithstanding the contrary agreement

[Foot-note.]

* Vol. 1, pp. 203, 4; 25 = of 10 pds.

AMM

[Foot-note.]

* Vol. 2, p. 244.

[Foot-note.]

* Henri de Panscy (Dis. Feud. Vol. 2, p. 387) cites only the first of the paragraphs above cited in the text; and omits from it the words "si comme se je marie a aucun de mes enfans." He comments therefore, he overlooks this condition. But the entire context of the 47th Chapter of Beaumanoir, shows clearly that it was only by division en partie, or marriage or other gift in the direct line, that this sub-infeudation malgré le dominant was allowed.

& policy involved in the

of the vassal and sub-vassal. The Dominant might assume such movance to himself, and so reduce the

(68) (65) Attempted sub-infeudation into a mere alienation of property, with no other change ^{as to} ~~or~~ ^{of} ~~the~~ ^{movance} than was implied in the breaking up of the ^{one} ~~feif~~ ^{feif} into two or more. But he was not obliged - as the principle of the Ordonnance of Philip Augustus, and of the Statutes of Quia Emptores, would have obliged him - to content himself with this. In the first place, he ^{might} ~~could~~ exact from his delinquent vassal ~~the~~ a fine of 60 livres. And in the next, it would seem that, in case of his not choosing to take the homage of the ^{delinquent} ~~sub~~ vassal, he ^{might} ~~could~~ annoy the parties by the saisie feudale, and ^{thereby} ~~by~~ (presumably) force them to rescind their contract, or so modify it as to keep the movance of the one feif unbroken. - In these respects, the old notion of ^{an} ~~the~~ forfeiture of land or price, or both, to the Dominant, as for a grave breach of feudal duty, - which was embodied ⁱⁿ the Constitutions of Lothaire and Frederic, and ^{indeed} followed naturally from the principles of the feudal system in its older state, - may still be traced, though materially modified to suit the altered relations of the parties.

To: 5 Dec.

in the Apices de Jerusalem and }

the explanation left us as to }

Another peculiarity of this custom, as contrasted with the earlier customs above noticed, lay in this. Beaumanoir adds: -

• Le li sires soufroie a son home
"qu'il feist ~~peu~~ ^{peu} ~~grand~~ ^{plus grande} ~~par~~
"le a ses mains - nés que ce qu'il devoient
"avoir en cascun feif, sans
"perdre l'oumage, - ou s'il soufroie les
"feif a abregier, ou a amortir, ou
"aucunne autre chose par quoi li feif
"seroient empires, - li li sires ne
"est pas tenu a souffrir,
"ancors y pot yeter le main, par le
"forfeiture de son souget qui le sou-
"fri. Et Combien qu'il y eust de
"seigneurs, l'un desor de l'autre, ~~se~~
"dunques au conte ^{comte} ~~se~~ ^{se} soufroient
"tuit [tous], - ne cest pas tenu li
"guelns [Comte] a souffrir, se il ne
"li plect, ancors y pot yeter le
"main, se li souget n'en out
"fet lor devoir. - Cap. 47, n. 15.

[Foot-note.]
* Vol. 2, p. 253.

- In other words, the check upon right to put a check ^{Archives de l'Evêque de Montpelier} upon sub-infeudation was not left altogether to the immediate Dominant. Suppos-

(69) ~~the~~ giving him to waive his right, the Dominant next above him in the scale would not be bound by his waiver, but whenever any default on his part should give such higher Dominant the right, ~~seizure~~ ^{seizure} ~~saisie féodale~~, might seize such ^{exceptive} sub-granted as if it were by seizure in his vassal's hands, — and so on, ~~for ever~~ up to the Count, or highest Lord known to the custom, at least in this connection.

* The older ^{usage} ~~customs~~ of Palestine and Italy, which threatened absolute escheat, — as I recorded, — are silent as to any right of the Dominant higher than the one immediately interested in the forfeiture. But they probably ~~implied~~ ^{admitted} a right, ~~analogous~~ ^{closely} analogous to this; a right, that is to say, — whenever the fief of the immediate Dominant should be escheated, or become seizable by, the Lord next above him, — on the part of such higher Lord to enforce, ~~the~~ ^{any} escheat which ~~such~~ the immediate Dominant might have failed to enforce.

But there was nothing in such probable feature of the older usage, nor yet in the corresponding feature which is recorded as appertaining to the later usage of the Beauvoisis, which partook at all of the character of a public and general law. The parties interested were all in turn masters of their own course, as to their respective rights. There was no fixing of such rights, in respectively of their own will, — such as was absolutely undertaken by the Statutes of "Quia Emptores", such as would have been effected by the Ordinance of Philip Augustus, had it been put into execution as a law of France.

§81. Another rule, of earlier date as regards redaction, probably, than this of the Beauvoisis, indeed apparently antecedent to the Anglo-Norman rule laid down by Magna Charta, — is presented in a recent French work, as extant in Normandy. It reads thus: —

"Chascun peut donner juregu'à la
"sine part de son franc fiefement
"in assone. Archives de la Ville de Montreuil
"li sires del fief ni oit damage;

[Foot-note.]

* Manciver; Stablissemens de
de Normandie, Paris, 1839.

(70) ¹⁵⁶ "car il fera toujours sa justice en
"son fieu, - ne il n'est pas tenuz
"à oir [oyer] celui à qui la terre
"est ~~donnée~~ donnée, se il ne done
"pleges d'avoir son garant à jor,
"por fere vers lui (ce que il devra)
"- e cil qui li dona est tenuz
"à venir et à delivrer le, ou il
"est contrainz par la justice le
"roi.

"Le cil qui donna la terre muent
"sanz oir [hoir], ou il porfet terre, se li
"fief revandra au seigneur, ja ne remain-
"dra por le don, s'il ne s'it assenti; ce
"pudist cote fet malore au oirs." - p. 78.

Following this passage are provisions as
to the sale and as to the pieffement (this latter
term answering nearly to the aveuement or
baile à rente of the custom of Paris) of land. Ei-
ther of these contracts, it is stated, might be
carried out to any extent, - subject always
to the same saving of the Dominant's rights
as is here provided for the case of the con-
tracts of "don en arriere et por service".

In other words, a third part of the
fief could be granted either en arriere or
en arriere fief, or it might be sold or rented
without limit; but not to the prejudice
of the Dominant, unless indeed he should
have given his assent. The Dominant need
not recognize the transactions, any one claim-
ing from his vassal, might still hold his
vassal to the full service of the fief, and
upon failure of the vassal's heirs, or
forfeiture by him or them, might take
the whole fief to himself, to the exclu-
sion of all claimants ~~by~~ under title
from the vassal, in fact, was free
wholly to ignore ~~the transaction~~
such claim.

These Establishments are given
us a compilation of Norman usages,
apparently made under Philip Aug-
ustus, about the time of the loss of
Normandy by King John; and they
certainly show a state of matters,
which such as (modified, perhaps,
more or less by local ^{Anglo-Norman} ~~English~~ usage)
may very well be supposed to have
led to the rule laid down by
Magna Charta. They show the vas-
sal free to sell or ~~rent~~ inalienably
to rent his land, without limit,
and to sub-infeud it to the extent
of the one third part, without regard
to his Dominant, and the Domin-
ant, with no other ~~seem~~ means of
making good his giving force to his
objection than that of holding the
transactions ^{contract for} non-avenue ad against
himself. In such a state of things
we can well understand that ^{every} the
declaration of the Magna Charta may have
been a serious object ~~with~~ with the
great lords who ^{indicated} on it.

[Foot-note]

* See Marnier, p. xviii.

71 (see) However this may have been, there is at least evidence of the early prevalence of a Norman usage, like that of the Beauvoisis in its character of mere private law, and in its rule of quantitative limitation of the feudal sub-grant, but not otherwise a usage, which substituted for the ~~land~~ down as its condition the two maxims:

1stly. - That the sub-grant must not extend to more than the third part of the fief: ~~or~~

2ndly. - That unless assented to by the Dominant, it should not ^{be} operative as against him: -

- and as to which, we are without the means of saying to what extent or by what procedure it held the Dominant to be authorized to proceed for the punishment of his vassal, in case of his transgressing its limit.

§82. But, as if to show that in those days the irregular litigation of Dominant and vassal could hardly by any chance arrive at any result that one may cite as the fixed rule, even of a particular locality, we find in the Grand Coutumier du pays et duché de Normandie, a compilation of probably not much later date, the following:

"Aulcun ne peut vendre ne engager, se n'est du consentement au seigneur, la terre que tient de luy par hommage. Non pourtant aucuns ont acoustumé à vendre ou engager le tiers ou moins, pourtant qu'il remaine du fief tant que les droictmes et les faisances des seigneurs et dignitez puissent estre faites et payées aux seigneurs." - Chap. 29, in fin. #

- A mode of stating the case, considerably more in the Dominants' interest, and not indicative of a general acquiescence on their part, in what may be called the vassal-doctrine of the Etablissements.

§83. The old Coutumes de Champagne et de Brie, near in point of time to those of the Beauvoisis, as recorded by Beaumanoir, - being of date somewhere from 1224 to 1299, - also resemble them in the one respect of their non-public character, but hardly in any other. Their tenor is as follows: -

"Coustume est en Champagne, que li chastellains et li barons de Champagne donnent bien au fief et en hommage, de lor héritage, aus gentishous, et les enissent repleure à hommes, en recompensation de leur

[Foot-note.]

* It has been ascribed to a date very much earlier, - that of St. Edward, King of England, or of Ransul, Duke of Normandy, or of William the Conqueror. - See Coutumier général, Vol. 4, p. 1, note a.

But, however, as regards it to the reign of Philip the 3rd, which ended in 1285, and Kilmrath and Marnier to that of St. Louis, from 1226 to 1270; and Marnier, to some date between 1226 and 1270 in one or other of these reigns. - See Basnage, Vol. 1, p. 7; Kilmrath, Vol. 2, p. 33; Marnier, Etablissements de Normandie, p. XVIII.

Whenever compiled, one is tempted to suggest, that at least the first sentence of the extract given in the text reads, as if taken from some authority of quite early date, - earlier, even, than the Etablissements brought to light by Marnier. The ~~most~~ broad doctrine that the vassal could neither sell nor hypothecate without his lord's consent, is of an age anterior to that of the qualified doctrine that if he does the lord shall simply not be affected by his act. - On the other hand, however, the second sentence reads rather as of a date later than that of Magna Charta.

[Foot-note.]

* Coutumier général, Vol. 4, p. 15.

[Foot-note.]

See Coutumier général, Vol. 3, p. 209, note a; and Kilmrath, Vol. 2, p. 15.

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(73) ~~the~~ § 84. Not long after the time of the compilation of this Constitution, this state of things seems to have been brought into question. An Ordinance of Louis the Tenth, of the year 1315, addressed "aux nobles, et aux autres personnes de nosse Comté de Champagne," in answer to the Com-plaints on their part, contains the following:—

"En ce qu'ils disoient qu'ils out usé, et accoustumé de donner à leurs seign-ieurs nobles ou autres, en recompens-ation de lor services, tant de lor terre comme il leur plaisoit, et retenu devers eux le fief et l'hommage sur quoy il avoient esté et estoient empêché, si comme il disoient:—
"Nous voullons et leur avons octroyé, que il ce puissent faire, si comme de puis est dit, aux personnes nobles tant seulement, mais que le fief ne soit trop amenuisié." — Art. 1.*

[Foot-note.]

* See Leaumont, Vol. 3, p. 87; Ord- onnances des Rois, Vol. 1, p. 574.

[Foot-note.]

* The terms of the Ordinance clearly enough import this. — But however this may have been, the result shows the Ord- onnance to have had little or no real effect. The Constitution de Vergy (the official redaction of the old Constitution de Champagne here in question) in 1509, maintained the dis- tinction, ^{almost} ~~exactly~~ in the words of the old Constitution, between the titled and ^{the} untitled vassal, and applied the requirement as to retention of a sufficient part of the fief, only to the latter. — See Art. 24 & 25: Constitution Général, Vol. 3, pp. 310 & 311; Henri de Panssey, Dip. Feod., Vol. 2, p. 47.

The claim, therefore, of the châtelain or baron to sub-infeud, had come to be resisted; and it would seem that the untitled holders of fiefs had come to advance the claim. The King, upon ap- peal, assumed to recognize the claim, as of a right ex antiquo; on the one hand, apparently, putting them all on the same footing; but on the other, guarding as two points, — that is to say, repeating that sub-grants must be to nobles, and adding that the part of the fief retained must be enough to secure the service due to the Domin- ant, — and overlooking a third, the prohib- ition of the sub-grant mêlé de vente, by the titled vassal.

[Foot-note.]

* See Klunrath, Vol. 2, p. 15

[Foot-note.]

* Henri de Panssey, Dip. Feod., Vol. 2, p. 368.

§ 85. Henri de Panssey cites, ~~also~~ as analogous to this provision of the old Constitution de Champagne, the following, from the Anciennes Constitutions du Châtelet, — a compilation supposed to be of date of about the end of the 13th Century:—

"Il puet bien être que un comte, et un baron puet tenir son fief du roi, nu à nu, ligeement, et icelui bailler d'icelui fief à autre, s'il vent." — Art. 13.*

A citation which sufficiently imports the fact, that it was then held under the custom of Paris, that the comte or baron holding directly of the crown, might sub-grant en fief at will, and without restraint or hindrance from the crown, — but (as Henri de Panssey observes, remarking on the ex- pression "bailier d'icelui fief") not to the extent of granting it away altogether, and reducing his own holding to a mere fief en l'air.

See also, in the same connection, the following from the Summe Rurale of Boutteillier, of about the same date:—

"Quand icelui qui tient le fie, en
"veut partie pour son profit, et pour
"l'accroissement du dit fie,
"arrenter, ^{ou vendre?} un bounier ou deux, ou ma-
"noir ou aucune chose, faire le peut
"à vie ou à toujours, sous son seel
"tant seulement, et sans son seigneur
"de qui il tient le fie appeller; et en
"ce faisant, il n'ébranche pas le
"fie, mais il l'accroit." — Tit. 82.

A mode of expression, indicative of an increasing laxity of opinion and practice on this subject; but which implies, by the use of the word "arrenter" a quasi-recognition of the non-noble ^{equally with the noble} tenure, — and ~~infers~~ ^{appears} also, by the "un bounier ou deux, ou manoir ou aucune chose" the existence of some limit (how-
ever uncertain) to the ^{apparently} right of alienation "sans son seigneur appeller."

MS

[Foot-note.]

x Toussaint, Vies des seigneurs de la Vallée, p. 84.
Manoir, seigneur de la Vallée, p. 84.

[Foot-note.]

x Heurion de Poussy, ^{Dip. Fro.} ob. 2, l. 389.

arrenter "partie" and
terms "partie" and

[Foot-note.]

* See Acquisition de terres, Dip. Feod. Vol. 2, p. 443: grand coutumier, Vol. 4, p. 199, chap. 2: and Acquis, en Feud., Vol. 2, Ch. 98, No. 21, pp. 558, 9, where the reasons are given for preferring this date to that of a later one assigned by D'Argenteau.

[Foot-note.]

* See Grand Coutumier Général, Vol. 4, p. 262; and Acquisition de terres, Dip. Feod. Vol. 2, p. 443, where, however, the citation is obviously incorrect, ~~and is~~ ^{and is} not long enough ~~to give~~ ^{to give} the full sense of the passage. See also Acquis, en Feud., Vol. 2, Ch. 98, No. 25, p. 382; where, however, the citation begins "Celuy qui est seigneur de domaine, il en peut feoiger et heritaier à auke, et aukes, par certaines conditions et rentes," &c.

[Foot-note.]

* The Capitule au Comte Geoffroy was a charter granted in 1185 by Geoffroy, Duke of Brittany, at the instance (as recorded) of the nobles and of all the barons of the Province, establishing a succession rule of inheritance for the baronies and military fiefs (in baronibus et feodis militum) of Brittany. — See Coutumier Général, Vol. 4, pp. 289, 290, where it is given in extenso; and Acquis, en Feud., Vol. 2, Ch. 98, No. 17, pp. 570 et seq., where it is given with a commentary.

[Foot-note.]

* It is possible to interpret the passage as applying only to such land as the seignior may have re-acquired from his vassal, or granted en tenure. But it is not reasonable so to limit its meaning; and the terms of the Ordinance of 1420, presently to be noticed, clearly show that the usage then existing recognized no such limitation.

§8. Reverting, for further illustration, to a somewhat earlier date, we find that the Grand Coutumier de Bretagne, probably of date of about 1330*, shows, yet again, an entirely different state of things to have grown up in that Province, in every respect but ~~that~~ ^{that} of the non-public character of the rule laid down. After recital to the effect that the Dominant may acquire the fief held by his vassal, and convert it into domaine of his own, and that the Seigneur may do the same with land held of himself en tenure, this Custom adds, —

"Et puisque ~~le~~ ^{celuy} est seigneur du domaine [domaine] il en peut feoiger en heritaier auke ou aukes, par certaines conditions rentes, comme il verra que vous sera; mais que celui qui prendra le feoige ne face auke bonte, ne auke personne pour luy, dont il peut ipso rentes au seigneur: il en peut recevoir l'obéissance à soy, pource que celui fief se gouverne ex selon l'apise au Comte Geoffroy; * * * et si le seigneur qui auroit fait le feoige en auroit print aucune bonte, ou faise le feoige, dont rentes present ipso à seigneur, — car pour * * * n'en feroit nulles rentes à seigneur, — mais, s'il y avoit auke bonte faise, rentes en devoient ipso à seigneur, * * * &c. — Art. 268, in med."

That is to say, the Seigneur of any fief held under the apise au Comte Geoffroy, (or, in other words, held nobly, — for in the law language of Bretagne the word fief, applied seigneur and seigneur were used with reference as well to non-noble as to noble tenure,) having ungranted land* of his fief, may grant it, on such conditions and for such rents as he pleases, retaining always feudal superiority over ^{the} ~~the~~ land granted; provided he ~~take~~ ^{take} no such payment as to entitle the Dominant to a mutation fine. But if there should have been such payment made, beyond the limit allowed by usage, the Dominant may exact his mutation fine upon such excess.

The most marked peculiarity of this case, lies in the fact that the style of sub-granting contemplated is not necessarily sub-infeudation or granting en fief, using these terms in their proper or stricter sense. Indeed, it is not even clear that the rule had in view any other

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(76) ¹⁸ than the fease or fiel of the coloni
 er class, or what would generally
 have been called the censive. A
 rent, (elsewhere the usual character-
 istic of this latter form of grant, as
 opposed to the fiel proper) is presumed
 of course. And although it is not like-
 ly that ~~the~~ it was intended to say
 that the non-noble ^{mode of feudal} sub-grant was
 allowed to the exclusion of the noble,
 it is at least tolerably clear that the redac-
tion meant to characterize it as usual and
 allowed. The older texts as to this matter,
 so far as I have been able trace them,
 neither refer to any other form of feudal
 sub-grant than the noble, nor yet to the
 idea of a rent as naturally con-

[Foot-note.]

* The only earlier reference to a
 rent, which I have been able to find, and
 having any ~~connection~~ connection with this
 matter, is in Married Establishments.
de Normandie p. 148. — But it really was
 not such connexion. The matter there treated
 of, is the retrait lignager, not the

jeu de fiel; and the "rent" must be re-
 ferred; not to the case of the "son for
 censive" [impudation proprie on prode-
niers] sale or impudation favoring of sale,
 but to the case of the "firvemanz" [fiel
meut] which was a mere vaiica-rente,
 involving no feudal rights, and in
 fact having ^{proper} feudal character.
see Howard, Dic. de Dr. Normand, vol. 2, p. 320.

needed with it. ^{however,}
 noble or non-noble, there is no
 suggestion of limit to the allowed
 extent of the alienation. It does
 not seem that the vassal need keep
 any land in his own hands. Cer-
 tainly, he was not limited as to the
 rents or ^{other} conditions that he might
 stipulate. In a word, there are
 but two restrictions:—

1^{stly}. — That some limitative
 condition or condition ("obeyance", as the term is,
 certainly, — and a "rente", no matter what,
 presumably) should go with the grant.

2^{dly}. — That there should not be
 more than a certain moderate amount
 of other — or, as it may be called, cash-
 payment for the grant.

And lastly, the rule was express,
 that the one penalty for the infrac-
 tion of this latter requirement, was
 in the liability of the parties to the
 payment of a mutation fine to the
 Dominant, — and that, ^{too} as it would seem,
 without loss to the vassal, of the future
mouvance of the land. The other of the
 two requirements was so little likely
 to be transgressed, that probably no
 one in those days thought of provid-
 ing against its transgression. But it
 is not easy to see how the penalty
 could have been heavier than that
 of liability to a mutation fine
 with loss of ^{the future} mouvance of the
 land alienated, if the Dominant
 so chose, — or to a saisie feodale,
 by which he might bring about a
 rescinding or modification of the
 contract, if he preferred that re-
 medy. In any case, the matter
 was one of private controversy
 with the interested Dominant.

1420
§88. In ~~1420~~ we arrive at an un-
equivocal recognition, by authority
and of certain date, of this right
(in Brittany) to sub-grant indefi-
nitely, — to be found in an Ordonnance
of Duke Jean the Fifth, as follows:—

"Comme par Coutume générale
toute personne noble puisse
"fine de son domaine noble son
"fief, et de son fief son domaine,
"et soit ainsi que plusieurs
"en aucuns endroits de noble
"pays, de ainsi les faire faisoient
"difficulté, de doute d'en perdre
"l'obéissance, —

"Voulons et ordonnons que
"dorenavant chacun qui aura
"domaine noble, quicunque il
"soit, le pourra bailler par
"héritage, et en faire son fief
"à le tenir de lui roturierement
"et en retenir à soy l'obéissance".
— Art. 19.

It would seem that the Trevelin-
Cienne Coutume above quoted (and
which was but an unauthorized com-
pilation) was either not then suffi-
ciently known, or which is more likely
was not thought a decisive authority on
the point; or, perhaps, that it was doubt-
ed whether every fief noble was a fief
selon l'usage au Comte de Bretagne. For
whatever reason, the usage had come
to be uncertain. Lapins were appre-
hensive there was an apprehension, that
where the vassal granted en fief roturier
en, (or, to use the phrase of the Custom
of Paris, en censive), the Dominant
might be entitled to claim the imme-
diate mouvance as forfeited to
himself. This Ordonnance removed
that doubt; and made it clear (so
far as the authority of the Duke could
make it — and in his Courts that author-
ity would of course go far) that every
holder of a fief proper in Brittany
had the right to sub-grant en censive
the whole of his fief, or in other
words, could convert it into a fief
en Cain by accensement; the Dom-
inant having no right, pecuniary
or otherwise, ^{in the case} unless there should be
an exceptive "boute" paid. — The
Ordonnance is silent as to sub-infeudation
proper. Accensement may have the con-
tract then most affected by the Breton
vassal. Or, ^{his part as to the} mouvance
reference to it only. Or, the Dominants
may have been shrewd enough, by way
of compromise, to confine his right
to it.

W.P.

[Foot-note.]

* La Seigneurie de Pansy, Div. Féod.
Vol. 2, pp. 369 & 443; and Hevin,
sur Feud., Vol. 2, p. 36, p. 25,
p. 382.

[Foot-note.]

* This case is Hevin's explanation.
— p. 382.

[Foot-note.]

†† Against this last supposition,
however, is the fact, that ^{both} the
official redactions of the Custom of
Brittany (in 1539 & 1580, respectively)
allow en Cain de fief by either
two forms of contract. — See Seigneurie
de Pansy, Div. Féod., Vol. 2, p. 447; and
Soullain du Parc, Principes du Dr. Féod., Vol. 2, p. 85.

[Foot-note.]

* Henri de Panssey, Dip. Feod., Vol. 2, pp. 369, 370.

I have endeavored to verify the citation here made from the Grand Coutumier, but without success.

The Grand Coutumier du pays et duché de Normandie, as printed in the Coutumier Général, is not divided into books, but in Chapter 29 contains a passage which I have elsewhere quoted, (Supra, §) the only one I can find in it at all bearing upon this subject, but which is not to this effect. It is, however, nothing of the sort that it must be of much earlier date than the passage here referred to.

Presumably, the quotation is made either from some commentator on this work, who was writing of the 15th century, or else from the very rare Grand Coutumier de France, commonly known as the Little, which was of this later date. — See Klunigk, Vol. 2, p. 15; and Dupin, Bibl. de Dr., No. 1174.

when the official redaction of the customs was carried out,

[Foot-note.]

so that there had come to be anything like a general approach to uniformity, or general agreement, as to any matter connected with the jeu de fief. On the contrary — to cite Henri de Panssey —

"C'est égard some l'état des choses à l'époque de la redaction des Coutumes. Rien d'uniforme; presque autant d'usages différents que de provinces, et même de grandes seigneuries."

Soi le vassal pouvoit se jouer de la stabilité du domaine; ailleurs il ne pouvoit en aliéner par cette voie qu'une partie plus ou moins considérable. Dans telle seigneurie, le jeu de fief par inféodation étoit défendu; dans telle autre, il étoit permis. Même variété, relativement à la faculté de recevoir des deniers d'entrée. Dans certains cantons, la portion détachée du fief ne s'élevait plus qu'en arrière-mouvance du seigneur dominant; dans d'autres, il conservoit sur cette portion les mêmes droits que si elle fût demeurée dans les mains de son vassal. Enfin dans telle province, le vassal étoit obligé d'imposer un droit seigneurial sur la partie aliénée; et dans la province voisine il jouissoit, à cet égard, de la liberté la plus indéfinie." — Dip. Feod. Vol. 2, pp. 376, 3.

§89. Henri de Panssey, after remarking on this Ordonnance, as decisive proof of the recognition of an unlimited jeu de fief in Brittany as early as 1420, proceeds:—

"La Normandie adopta le même usage; et l'auteur du Grand Coutumier mit en maxime, que le vassal peut se jouer de son fief jusqu'à la démission de foi. 'Un noble ou non noble vend son fief... le seigneur de qui il est tenu ne peut rien demander jusqu'au jour au de-mettre de la foi.' Liv. 2, Ch. 29. Voilà le jeu de fief indéfini."

"A la vérité, cet auteur s'empresse d'ajouter, 'mais qu'il n'y ait point de fraude contre le seigneur.' Ces derniers mots limitent sans doute la faculté de sous-inféoder; mais une restriction aussi vague ne donnant aucune borne sensible au jeu de fief, les vassaux, sur la foi de cet auteur, devroient naturellement se persuader qu'il étoit indéfiniment permis."

§90. By the beginning of the 16th Century, this ^{idea} doctrine of the unlimited jeu de fief had so gained ground, that in 1509 the custom of Orleans was thus ~~expressly~~ worded:—

"Un vassal peut bailler à rente, cens, ferme ou pension, son domaine, à vie, temps ou à toujours, mais en retenant à lui les foy et hommage. Et s'il y a en ce faisant le seigneur de fief aucun profit, toutefois quand le dit fief cherra en profit, le seigneur qui y aura concouru et inféodé le dit bail pourra exploiter entièrement son dit fief." — Art. 4.

"Quand le vassal baille à cens ou rente perpétuelle son héritage qu'il tient en fief, retenu à lui les foy et hommage, celui qui prend le dit héritage à cens ou rente ne doit aucun profit." — Art. 5.

And in 1570, the Custom of Paris, drawn up ^{in terms} the distinction between the démembrement ^{strictly} so called, and the jeu de fief, followed in these terms, — clause which, as regarded the scope given by them to the latter:—

"Le vassal ne peut démembre son fief, au préjudice et sans le consente-ment de son seigneur." — Art. 35.

"Un vassal ne peut jouer de son fief, jusques à démission de foy, sans que le seigneur lui en fuit demandé profit." — Art. 41.

[Foot-note.]

~~Jean~~ Contumier général, Vol. 3, pp. 736
et 739.

[Foot-note.]

Contumier général, Vol. 3, p. 3.

of these Customs
 - The former, laying it down, that the vassal might dispose of his ~~land~~ ^{property} by certain forms of contract, keeping always to himself the seigneurie honorifique, without thereby giving his Dominant any right to profit upon the transaction, but always without prejudice to the Dominant's right (whenever occasion should offer) to treat it in his own interest as with a vassal. The latter saying ~~extending~~ ^{the same thing} in effect saying the same thing, but with ~~intention~~ ^{withal extending} of the vassal's right to make profit ~~out of~~ ^{out of} his fief (se jouir de son fief) to ~~all~~ ^{all} possible forms of contract. Neither of them imposing any limit as to the extent or value of ~~the fief~~ ^{what} should be so disposed of, or requiring the actual intention by the vassal, of any thing more than the foy et hommage, or mere lordship over the fief. In a word, both of them admitting of the fief en Cain.

* seigneurie honorifique or
 # unrestricted conversion of the
 ^ landed fief into the

[Foot-note]
 * Le Henrion de Panscy, Dip. Feod.
 Vol. 2, pp. 370 & 377.

[Foot-note]
 * See art. 346 & 347 of the Ord., and art. 358 & 359 of the new Customs of Brittany, under dates of 1539 & 1580; in Coutumes générales, Vol. 1, pp. also Henrion de Panscy, Dip. Feod. Vol. 2, pp. 440 seq.

§91. Many other Customs were drawn in the like sense, in this respect; but by no means all in the same terms. Some nearly followed the Paris model; others, the Orleans. Others, again, were more restrictive as to the form of contract to be favored, - ^{to the length} ~~the length~~, even ^{in some cases} ~~not~~ allowing the exemption from dues to the Dominant, except upon the bail à cens sans deniers d'enchère.

Elsewhere, again, where the unlimited jeu de fief was allowed, ~~a different~~ ^{quite another} system was recognized for the protection of the Dominant's rights. As in Brittany, for example; where, carrying out the principle of the Tres-Ancienne Coutume above remarked upon (§ 87) - ~~the~~ the rule was declared to be, that the vassal might avail himself of the contract of ferme, noble or vassal, but might not give up or lower any rente ever established, or take more than so much of deniers d'enchère, under pain of liability in such case to the Dominant.

2, (supra, § 87,)

[Foot-note]
 # Coutumes générales, Vol. 4, p. 14.
 - a restriction, at least, of very small, nominal value. - Le Henrion de Panscy, Dip. Feod., Vol. 2, pp. 439 seq.

§92. In other cases, the extent of the privileged jeu de fief was limited; sometimes ^{to one} ~~to one~~ ^{other} proportion; & sometimes, not. The Norman rule, for instance, was stated, nearly in the terms of Magna Charta and the Grand Coutumier, thus:

"Le vassal se peut esjouir des
 "terres, rentes et autres appartenances
 "de son fief, sans payer treizieme
 "à son seigneur féodal, ni que
 "à demisiou & de foy et hommage
 "exclusivement, pourveu qu'il
 "demeure a ses pour satisfaire
 "aux rentes & redouvances
 "denies au Archives de la Ville de Montbray."

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the custom of Paris was thereby brought into the class of Customs definitively restrictive as to the extent and character of the privileged jeu de fief.

§94. The influence of this change was felt in some others of the later redactions of customs in France, but not in all; as, for instance, it did not affect the second redaction of the custom of Orleans, in 1583, which in this respect was worded substantially as in 1509*. In an indirect way it gradually made itself felt, as affecting the interpretation given to those Customs which, without being wholly unlike that of Paris, were silent ^{on this point}. But otherwise it was of course inoperative, beyond the territory of the ^{indirect} custom of Paris. — On the whole, the redaction of the Customs probably did not do much to lessen the varieties and anomalies of usage every where prevalent as to this matter.

§95. — In a certain sense, this change of the Custom of Paris may be said to have partaken of the character of an act of legislation. It was an authoritative declaration by all the parties interested, that so far as the territory of that custom was concerned, the rule to which the name of custom had been given several years before, was admitted by them to have been wrongly so named; and that, failing proof of the terms of any special contract on the point, the true rule of local usage was and thereafter should be held to be, — ^{not that} the vassal had the all but unrestricted license of the old custom, — but that he had the more restricted license of the new. But, except in this sense, it had not the character even of a ^{local} enactment. Above all, it had nothing of the character of a public, state enactment. It fixed no right irrespectively of private contract; laid down no rule that was not to be derogated from; left all parties to do as they pleased for the regulating, enforcing or waiving, of what it admitted to be their purely private rights. — A closer criticism of its provisions will show this, only the more clearly.

§96. — And first, for the matter of the jeu de fief.

The privileged jeu de fief of the Custom of Paris, is simply a declared customary or presumed right of the vassal to do certain acts for his own advantage, sans payer profit au seigneur dominant. He need not

[Foot Note.]

* see Contumace générale, Vol. 3, p. 776; text. 7-11 incl., compared with text. 4057, cited above §90.

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 do any of such acts, unless he likes. The dominant may always let him do other acts on the same terms, if he will. He may give such leave tacitly, or by express contract; or he may have given it by express contract already. Or, again, the vassal, by the special terms of the contract of inféodation, may have renounced, or by contract thereafter may renounce, to what would otherwise have been his right under the Custom ~~as to~~ in reference to these acts or any of them.

[Foot-note.]

* *vide supra*, SS 68 & 64, and authorities there cited; also *infra*, § 110.

§ 97. - Further, as to the nature of these acts, presumably privileged to this extent, of not giving rise to profit thereon to the Seigneur Dominant. There are to be found passages, in authors of repute, from which one might infer that they held the property alienated thereby to be necessarily arroté, - or in fact, that they admitted ~~but~~ but one such form of act, the contract of accensement. For instance, from the writings of Henri de Panses may be cited, - "le jeu transformé en roture une partie du fief," - "le jeu du jeu de fief ou bail à cens," and other expressions of the same kind. But it is certain that the fact was not so; that other forms of contract were just as much privileged; and that such authors could not have so written, but for the accident of their happening at the moment to have in mind the common contract of accensement, and not to have, ~~had~~ ^{had} occasion to ~~mention~~ ^{add the remark} that other kinds of contract (then less common) fell equally within the purview of the jeu de fief rule of which they were ~~written~~.

[Foot-note.]

* *See Dumoulin*, p. 477.

[Foot-note.]

** *Dip. Feod.*, Vol. 1, p. 288.

In fact, no writer can admit this truth more unhesitatingly, than Henri de Panses does, when the question is more precisely before him. As to sub-inféodation proper, for instance, - writing of the Custom of Paris and the other Customs of the Claps, he says: -

[Foot-note.]

* *Dip. Feod.*, Vol. 2, p. 388.

"Dans ces Coutumes, le jeu de fief est regalié, toutes les fois qu'il y a protection de la fief, et réserve d'un droit seigneurial et de main-morte: or, cette double condition se trouve remplie dans le bail à fief comme dans le bail à cens. C'est Dumoulin, dit-il, qui affirmativement, que dans la Coutume de Paris, il est dit que de la Ville de Montpelier, pour de cens fiefs par inféodation."

83) Again, as to bail à rente, still speaking of the Custom of Paris:—
 "Le propriétaire d'un domaine féodal peut également s'en jouir par bail à cens, ou par bail à rente; ~~tantôt~~
 " ~~seulement~~ * * * cependant il y a cette différence entre ces deux espèces d'aliénations, que dans la première, l'imposition du cens suffit, sans qu'il soit nécessaire que le vassal stipule qu'il retient la foi, parce que le cens implique par lui-même la réserve du domaine direct. Mais la chose est différente, lorsque le vassal n'a pas donné la qualification de cens à la prestation qu'il a imposée sur la partie aliénée; * * * pour que le bail à rente forme l'équivalent d'un bail à cens, en un mot, pour qu'il y ait un véritable jeu de fief [c. a. d. sans profit] il faut une réserve expresse de la foi. * * *

[Foot-note]

* Dip. Feod., Vol. 2, p. 374.

[Foot-note]

* Dip. Feod., Vol. 2, p. 381 seq.

[Foot-note]

* Dip. Feod., Vol. 2, p. 388 seq.

[Foot-note]

* Dip. Feod., Vol. 2, p. 393 seq.

— Not to say, that he treats especially of the jeu de fief by grant en franchise au moulin, par échange, par partage, &c.

§ 92 A sort of equivocal, or show of difference of opinion among authors may be said to arise from the fact, that the contracts in question are sometimes designated according to their true character, and sometimes according to their mere form. Arrivé follows the former of these rules, when he says:—

"Ainsi le jeu de fief peut s'opérer par bail à cens, par bail à rente, par donation, par legs, par échange, par vente, par sous-inféodation; en un mot, par tous les contrats qui transfèrent la propriété; ~~Vol. 2, p. 374~~

— A form of expression ^{exactly copied} by Pothier's paraphrase of Dumoulin,—

"Les termes, se jouir, comme nous l'avons observé après Dumoulin, signifient disposer avec une liberté au plus étendue qu'on puisse concevoir qu'ont des jouisseurs de disposer à quelque titre que ce soit, pourvu que le vassal ne se démette par la foi, et qu'il revienne dans l'héritage dont il dispose, quelque droit qu'il puisse être représentatif d'un dominium civile par lui retenu, et auquel soit attachée la charge de la foi et des devoirs féodaux. * * *

8" mais il ne faut détacher de pas un de ces contrats, aucune des conditions requises pour la validité du jeu de fief. + Vol. 2, p. 374

[Foot-note]

88 Vol. 3, p. 375.

[Foot-note]

Des Fiefs, Part 2, Chap. 3, Liv. 2, Vol. 2, p. 375

§ 101. Intimately connected with this question, there arose another; but apparently not until quite a late date. I find it ^{indeed, discussed long before} in Henri-ou de Panscy. It is this; whether, ~~not~~ in reckoning the extent of the corporeal ~~third part of the corporeal~~ which the Dominant vassal might not alienate, ^{except as the cost of} ~~without~~ ^{with a view to} his Dominant to a mutation fine, the landes et tenes incultes within the fief were to be reckoned, or whether ~~the~~ interest of agriculture and public improvement, the vassal might not claim to alienate these without interference from his lord. This question Henri-ou de Panscy inclines to answer in the latter sense; perhaps, with more leaning to the vassal side of the controversy than would have characterized the 18th Century, had ~~the question been raised and answered~~ ^{the question been raised and answered} them. Indeed, the fact of its not having been then raised, ^{is, the first proof of} the little regard paid, in respect of these controversies, to considerations of ^{mere} public interest. The matter was not, whether these landes et tenes incultes could be alienated in the ~~interest~~ ^{with a view to their improvement.} Of course, they could be. It was merely as to one of the incidental results of their being so alienated. Was the Dominant to have a mutation fine on the occasion? Upon such lands, the vassal could have made little profit, and the Dominant (by his mutation fines) still less. But no one appears to have thought of postponing even this small interest, for what would then probably have seemed an interest yet smaller. - At a date somewhat earlier, authority set a special value on the forest. In the 18th Century, ~~it still failed to realize~~ ^{it still failed to realize} the special value of the farm.

[Foot-note.]
* Dip. Feod., Vol. 2, pp. 390-391.

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* nor for so long afterwards,

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and ^{for} long after,

enjoying ~~the~~ immunity from immediate mutation fine, (relief or quint, as might be) yet contacted

§ 102. - The provision of the 52d Article of the Custom formed a material part of the system. For the privileged alienations which, on the one hand, gave the Dominant no immediate mutation fine, on the other hand, ^{were} ~~was~~ not allowed (unless ^{by his own consent}) to ~~tell~~ ^{be} against them in the matter of ~~any other~~ mutation fines otherwise to accrue upon the fief. At least, such was the case, for ~~the~~ ^{what was then, the more important of them, - the relief.} As regarded the quint or fifth part of the price of the fief whenever sold, the precaution was not ~~at all~~ ^{at all} to take, and was not taken. But as regarded the relief, or year's revenue of the fief whenever such mutation of the fief occurred as gave rise to it, it was to be taken upon the fief without deduction for such privileged alienations, - unless, indeed, in the case of the Dominant's having expressly aperted to and intended them. The vassal and those with whom he dealt in the way of the feu de fief, ^{subject to this Article, is a right of the} ~~subject to this Article, is a right of the~~ ^{lord Dominant, - a right that (sooner or later)} ~~lord Dominant, - a right that~~ ^{one or other of them was pretty sure to} one or other of them was pretty sure to

have to recognize, either by submitting from him to its enforcement, or by redeeming it, - but which, whether left over for enforcement, or redeemed, was always essentially a mere matter of private interest, to be settled between all the parties interested, precisely as they would.

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§ 103. - The ^{question} ~~matter~~ of the penalty ~~incurred by~~ consequent upon what may be called the ^{unprivileged} ~~alienation~~ jeu de fief, - ^{or} ~~the~~ alienation by the vassal, of too much, or without due retention of a directe to himself in the thing alienated, - was one that ^{had} given rise to ~~some~~ ^{very} discussion.

§ 104. - In argument before this Court, it was contended by one of the Learned Counsel who sustained the Attorney General's Propositions, that such act was a démembrement de fief, involving commise on the part of the vassal, or confiscation of the fief in favor of the Dominant.

If it were so, the forfeiture would shalt be only private, - a potestative right of the Dominant, which he could always waive, tacitly or expressly, for the past or for the future.

But in truth, it was not so. Between the unprivileged jeu de fief and the démembrement de fief, there was a marked distinction, as will presently be shown. ^{And}, that the commise, being an extreme penalty, was always strictissimi juris, the pain of nothing short of desacquer or felonie.

§ 105. Under the oldest of the known rules as to the matter of the démembrement and jeu de fief, - those of the ~~Capitulum de Jerusalem~~ and ~~Libri Feudorum~~, ^{as has been} ~~already~~ ^{above} ~~shown~~ ^{above shown}, there was, a species of quasi-commise, or forfeiture of the alienated part of the fief, threatened in favor of the Dominant, for enforcement of ~~his~~ what were then held to be his rights.

But under the later rule of the coutumes du Beauvoisis, the Dominant of the 13th Century had no larger right than that of the saisie féodale, by which to force the parties to rescind their bargain.

And elsewhere in France, from the 13th to the 16th Century, there is no trace of the larger right; and it may be a question whether even that of the saisie féodale was universally available.

[Foot-note.]

* id. infra, § 113.

Capitulum de Jerusalem and Libri Feudorum, - as has been

[Foot-note.]

* Vide supra, §§ 73-75, inclusive.

[Foot-note.]

* Vide supra, § 80.

[Foot-note.]

Vide supra, §§ 87-89 inclusive.

(90) here,
 "in repeating the idea of everyone
 of his predecessors,"
 - "quand le preneur ou l'acqué-
 "reux souffre de l'exces ou de l'i-
 "régularité du jeu de fief, il ~~est~~
 "doit être garanti et indemnisé
 "par le baillieu ou vendeur,
 "ainsi que je l'ai déjà observé,
 "parce que ce baillieu ou ven-
 "deur ne le fait point jouer
 "de la manière convenue." -
 Vol. 3, p. 387.

[Insert rule here.]

* in contra-distinction to the
 "jeu de fief,"

§ 109. - Of the démembrement
de fief, there does not require to
 be much said.

In the days of the redaction
 of the Capitules de Jérusalem, the
 phrase was used in a sense
 quite other than that in which a-
 long it was afterwards used by
 writers on feudal law under the
 Custom of Paris. There was then,
 as has been shown, the "démem-
 "brement par l'apense ou par l'usage",
 which was nearly analogous to
 what under the Custom of Paris
 was known as the "jeu de fief
 "sans profit"; and, opposed to it,
 there was the "démembrement
 "sans apense et sans usage", an-
 swering to what under the Custom
 of Paris became the "jeu de fief
 "exceptif ou irrégulier, ou avec
 "profit," and was by some writers
 sometimes called démembrement
~~par~~ characterized as a "démem-
 brement de fief."

According to this, its old and
 literal sense, it meant, of course,
 any ^{and every} ~~dismemberment~~
 or ^{breaking up} ~~division~~ of the body ^{corporeal}
 realty or body of the fief. Within
 certain limits, the dominant (if it
 said) could not object to this. Beyond
 them, he could.

§ 110. But when in 1576, the au-
 thors of the old custom of Paris
 laid down the maxim, that the
 vassal could not at all ~~dis-~~
 dismember (démembler) his
 fief, to the prejudice and with-
 out the consent of his domini-
 ant, - and followed ~~in the 4th~~
 this up, in the 4th Article, by the
 counter - ~~maxim~~ ^{maxim} ~~of the~~ ^{of the} ~~Monte~~
 vassal might play off (se jouer de)

[Foot-note.]

* Vide supra, § 72. - Colas
Aurion de Paussey, Dix. Feod.,
 Vol. 2, p. 367.

[Foot-note.]

* Vide supra, § 90.

* by its 35th Article,

This feif as he would, without reference to his Dominant or payment to him, if truly he reserved to himself ~~the feif~~ or mere title of the feif, ~~the words Dominant~~ ~~it was evident they~~ ~~evident~~ ~~by either of the words in the last~~ ~~and first inaccurate way, or else~~ meant by "démembrement" something quite different from the breaking ^{up} of the ~~corporal~~ ~~realty~~ or body of the feif. This latter procept was precisely what they allowed to any extent, irrespectively of the Dominant's interests or will. ~~The~~ ~~was~~ breaking of the feif ~~or mere title~~, or nominal unity of the feif, was all that they could be supposed to intend to ~~prohibit~~, and this they ~~prohibited~~ ~~only~~ ~~forbad~~, only under the limitation that it was not to be done, to the prejudice and without the consent of the Dominant. As against any one else, or with his consent, ~~it might be, carried~~ to any length.

* had ~~become~~ become an ordinary matter of course affair, and

* (however given, whether tacitly or expressly for the past or for the future, by ~~the~~ ~~contract~~ of infundation or by agreement afterwards.)

[Foot Note.]

* Vide supra §§ 10 & 64, and authorities here cited; also § 93 & 96.

W.P.

S.M. Dumoulin, accordingly, writing under this old custom, stated this conclusion, fully and exactly. His words are:—

"Saque non possunt sine unius
 "et idem vasallus, sive plures, ab
 "initio investiti aut ex post facto, heredes vel emptores (non resus) ejusdem
 "fendi, multiplicare feudum in
 "plura fenda: quod est proprie dividere ipsum feudum in se, sive
 "titulum ipsum et formam fendi,
 "sine consensu domini.

"Sed bene possunt feudum dividere inter se, in partes singulas assignandas, pro diviso, non tamen tanquam fenda separata, sed tanquam partes fendi, et sub denominatione formae et tituli ejusdem fendi, sicut ab initio unum constitutum fuit. Et idem proprie non est divisio fendi, sed distributio partium fendi ~~pro parte~~ pro portione et jure cujuslibet vasallorum, sive sint partes quotae, sive partes integrales. Et hoc modo potest sine consensu patroni feudum, sive constet in re corporali sive in re incorporali, dividi, tam in diviso quam in indiviso, et tam aequaliter quam inaequaliter. xx

& doctrine, and followed it to its

92 "Sed antequam inde aliqua juris
 "debeantur ratione? dicendum est, quod
 "sic, et diverso, si ab iudice unus
 "vassallus aut vassales fuerint investiti de
 "pluribus feudis, tanquam diversi et
 "separatis per se feudis, non poterunt
 "illos feudos unire, nec confundere in
 "unum feudum, ~~et nisi~~ sed debe-
 "bunt possidere tanquam diversa et
 "separata feuda, nisi in his omnibus
 "tam uniendo quam separando titu-
 "lum feudi, domini consensus et
 "auctoritas intervenierit; multum
 "enim interest domini".
 "Manente uno et eodem titulo
 "feudi, potest pro parte aperiri vel
 "etiam in totum committi domino,
 "pro parte uno, ~~et pro~~ ~~parte~~ ~~pro~~ ~~parte~~
 "partem feudi à domino teneri deue-
 "gantur, — pro parte preteriti,
 "pro parte à manu dominicâ relax-
 "ari, recognosci et investiturâ reus-
 "tari, et pro parte uno. — § 3,
 "gl. 4, R. 31."

[Foot-note.]
 * Vol. 1, p. 138.

In all manner of ways, by
 sale or otherwise, the mere body of
 the fief could be broken up. The
 35th Article of the old Custom only
 went no further than to recognize
 the right of the dominant to insist
 on the maintenance of the title or
 nominal unity of the fief. He could
 not prevent himself from having
 any number of co-vassals, for any
 number of parts (divided or undi-
 vided) of the fief. And for almost
 every conceivable practical pur-
 pose, he could not help treating
 them, for most purposes, almost
 exactly as though each owned a
 separate fief. His interests, in truth,
 were defeated ~~as to~~ more in form
 than in substance.

§ 112. The new custom, ^{repeating}
 as to this matter the words of
 the old, ^{meant of course} ~~was always understood~~
 to mean exactly the same thing.
 And notwithstanding some laxity
 of phrase on the part of some
 writers, — arising probably, ^{in the main, out}
 of the fact that the new custom
~~by~~ ^{of the fact, in which it linked} ~~was~~ ^{together} ~~of~~ ^{its} ~~clauses~~
 as to the démembrement and
 jeu de fief, and, ^{at the same time} ~~searching~~
 (provis limited the latter) made
 the sense this peculiar sense
 given to the former, ^{private} ~~some~~

* a great deal of redundancy

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 what less obvious, — Dumoulin's rendering of it ~~was~~ was always followed. ~~See Annon de Paris~~ followed. It was never held that this clause meant more than he made it mean. In the words of Annon de Paris, ~~it~~ ^{it} embody what may be called an unanimous finding of the ~~authorities~~ authorities: —

[Foot-note]

* Cited supra, § 36; See Du-moulin, p. ~~475~~ 475.

* Toutes les fois, enfin, que chaque di-
 vision est reportée comme partie intégrante
 du tout, le Dominant n'a aucun droit de criti-
 quer les arrangements de son vassal, de quelque
 manière qu'il ait disposé du corps de son fief.

— C'est uniquement à lui [au
 "fief"] que s'applique la prohibi-
 tion de la Coutume, Le vassal
ne peut démembrer son fief.

[Foot-note]

* Though without drawing from such use of the term, the inference as to commise, which has been suggested in argument to this Court by the learned Counsel retained against the Lignors. — Vide supra, § 106.

§ 113. — It is not denied that a certain ~~measure~~ degree of ambiguity has been made to attach to the term "démembrement," under the Custom of Paris, by some writers, who have applied ^{it} to the excessive or irregular jeu de fief. * But it is a manifest confusion of terms ~~to do so~~. The two things are not alike, and have even no neces- sary connexion with each other.

§ 114. — There may be démembrement, without any jeu de fief at all. As for in- stance, in the case of co-vassals who (with consent of the Dominant) convert their parts of ~~their~~ ^a fief into separate fiefs; or of the vassal who (with the like consent) breaks the title of his fief into two or more which he still holds himself, — or combines the titles of two or more fiefs into one, — or transfers his fief, wholly or for part of his holding, to another Dominant.

Or there may ensue démembrement upon a jeu de fief neither excessive nor irreg- ular; if, for instance, the parties after break- ing up the body of the fief within the privileged limit and ~~within~~ ⁱⁿ privi- leged form, should agree with the Dominant for the like breaking up of the title, so as to make of each part a separate fief to be held ~~separately~~ ^{separately} other- wise than of the vassal.

* No matter how excessive or irregular,

§ 115. — And there may be jeu de fief, of any kind or degree, ^{without any} démembrement ^{resulting}.

For example, the jeu de fief may be merely irregular, in any one of three de- grees. The vassal, alienating a property from his fief without retention of the

the relief or quint, as the case may be, not having kept within the terms of the jeu sans profit, there ~~can~~ clearly no démembrement re- sult from what they have done. They have sub-divided the ~~corpus~~ ^{body} of the fief, ^{Archives de la Ville de Montreuil} and the number of the co-vassals hold-

~~the~~ required directer, may either
alienate it as ^{being part of} ~~part of~~ ^{such} the fief,
assuming to make the acquirer
his co-vassal, — or as though it
were a fief of itself, assuming
to make the acquirer ^a vassal
for it, of his Dominant, — or as
though it were a fief holding of some
other Dominant, or an alleu holding of none.
In the first case, though the
parties cannot claim exemption from

the relief or quint, as the case
may be, not having kept within the
terms of the jeu sans profit, there
~~is~~ ^{can} clearly no démembrement re-
sult from what they have done.
They have sub-divided the corpus
body of the fief, ^{added to the}
number of the Co-vassals hold-

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ing it, but they have left the title untouched. In the second case, they have done what they could to effect a démembrement, having assumed to divide as well the title as the body of the fief; but without the ~~co-~~co-operation or assent of the Dominant, they

cannot gain their end. He can exact his relief or quint, as may be, but need not acknowledge the acquirer as a vassal holding a separate fief, unless he pleases. Whoever assumes to hold the property, he can force him to hold it as part of the fief, all démembrement disallowed. As against him, without his ^{own} consent, the change of title simply cannot be.

He who has been guilty of it

In the third case, also, the parties would have tried to effect a démembrement; and ~~the vassal would have added the feudal crime~~ ^{the vassal} besides have been guilty of the disavow of his lord, excusable or inexcusable according to the circumstances. For such disavow, if inexcusable, the Dominant might enforce against him the ^{confiscation} ~~confiscation~~ of the property. But ~~that~~ ^{the} cannot finally result, unless the Dominant by the consent (express or tacit) of the Dominant. The parties may have so contracted; but their contract can have no avail against his right, ~~to better~~ ^{to better} he enforce supposing him the commissaire not enforced, whether from the act being excused or ~~otherwise~~ from any other cause, he can exact his mutation fine, and force the holder (whoever he may be) to acknowledge himself his vassal, and that, as for part of the original fief, under, under its old title.

if he chooses to insist upon it.

~~These demands, the case of the merely jeu de fief partly from~~
Or again, the jeu de fief may be merely excessive. If so, the parties have ~~deliberately~~ ^{deliberately} effected a démembrement. But ~~if~~ ^{if} the

(96) § 117. - Reverting for the moment, to the analogies between the fief and censive tenures. It has been remarked already, in effect, that the censive, equally with the fief, passed through what may be called its merely quasi-property phase of being, during which it could not be alienated or hypothecated, - that indeed it was later in passing through it, than the fief, - and that as matter of history, the result of the process was as irreducible to rule in the one case as in the other. It might have been added, that generally speaking, the process was not ^{as a whole} ~~as a whole~~ ^{as completely} gone through, with the censive, as with the fief.

Under the custom of Paris, the usually smaller value of the censive ~~made~~ made it not worth while to apply to it an express and formal rule as to its démembrement.

But for all useful practical ~~use~~ ^{purpose} the rule subsisted notwithstanding. The censitaire could no more throw off or at all change the manance that ~~he~~ ^{he} held his censive, than the vassal could that which ~~he~~ ^{he} held his fief. He could not, to the prejudice and without the consent of his Seigneur, ~~break~~ ^{break} his censive into separate holdings, or turn several holdings or parts of holdings into one, and more than the vassal could. ~~He~~ ^{He} do what he might, he would find that his Seigneur Censier could keep just as firm hold - for the matters of solidarité for dues, the wording of recognitions, and so forth, in fact for all practical purposes - of the title of the censive in its form ^{originally constituted} ~~as~~ ^{as} the Seigneur Dominant in the like case could, of that of the fief.

There was no mention of a jeu de censive, - for another and shorter reason. There was no such thing. The censive, it is true, being liable to no mutation fine except upon sales, and then only to the amount of a twelfth in place of a fifth, required it less than the fief did. But it is not the less true, as matter of comparison between the two tenures, that the privilege here accorded to the one was not accorded to the other. The censitaire, when he sold, could not help incurring lods et ventes on the sale; the vassal, within certain limits, by observance of a certain form, could avoid the quint. Both could sell, - wholly or by piecemeal,

[Foot-Note]

⊗ Vide supra, §§ 54, 59 & 60.

* constituted the title of

[Foot-Note]

Perhaps, indeed, ^{as far as regarded} ~~for~~ this matter of solidarité for certain of ^{its} ~~its~~ ^{some} ~~some~~ ^{what} ~~what~~ ^{rather} ~~rather~~ ^{than} ~~than~~ the Dominant had over the fief.

97) The one ~~must~~ ^{must} pay in case the fine,
the other need not always do so.
The vassal had a privilege, which
the censitaire had not; in this,
as in so many other respects,
~~had~~ ^{had} more of ~~the~~ property in his
land than the censitaire had.

S 118. — In all this, need
one ask what there is, that
by any amount of ingenuity
— short of that which should
invent ~~all~~ ^{all the} facts wanted to
make good its theories — can
be made to look as though
it possibly could have been
the germ, out of which the
pretended system of Ca-
nadian feudal law, in
the Attorney General's Pro-
positions set forth, may
have been developed?

[Insert rule here.]

§ 119

§ 119. - Not to compli-
cate matters more than
could be helped, the subject
of the justice, ^{originally} as congru-
tinguished from the feif, has
been, so far, as much as possi-
ble kept out of view. But a
few ^{words} ~~remarks~~ in reference to
it are unavoidable.

* in his work De la propriété
des Eaux Courantes,

* (necessary to the support of his
thesis as to such property)

x (as all writers admit it to have had)

§ 120. - Championnière
has expended an immense a-
mount of ^{learning and} ~~research and~~
ingenuity upon an argument
for the entire separation - as
matter of history - between the
origin of the feif and that of
the justice. The feif he holds
to have had reference, from
the earliest times, to the soil or
very realty of the territory covered
by it. The justice he
holds to have had no such
reference; but on the contrary
to be traceable back to the
anomalous and oppressive
fiscal exactions of the Rom-
an Empire, - degraded into pri-
vate property, - as such held by
Roman or Barbarian, accord-
ing as either might be strong
enough to appropriate and keep
them, - drawing to themselves
gradually, ^{more or less of the}
droit de jurer, of course with
its attendant profits, - alienated
in all sorts of combinations, and
under all sorts of change restric-
tions, sometimes by infendation
and sub-infendation, sometimes
without reserve of feudal superi-
ority, - here, broken down into
fractions, locally, personally and
in every other way, - there, built up
out of any number of fractions into
a ^{single or other} non-descript ^{form} ~~kind~~ of whole, -
at last ^{often} so mixed up and
confounded with the feif proper,
or territorial, ^{in some respects} ~~as for practical purposes~~ to have
become all but inseparable from it, even
in theory, ~~by~~ ^{the} most careful
historical investigation.

x in greater or less degree, the

x, direct and indirect,

* after a time,

S/21. - In maintaining this theory, however, Championniere stands alone.

S/22. - To a considerable extent he rests it upon a distinction which he draws between the words, honor, proprium and beneficium, as used down to and during the 9th Century. The first, according to him, meant simply this supposed property of tribute, as contradistinguished from property or possession of the territorial kind; the second, ^{entire} that property of the soil, strictly ~~so-called~~ which was afterwards known as the alleu; the third, that holding of territory which afterwards became the pief. - La Ferriere, contesting his conclusions, cites passages from documents of that age, to show that this distinction does not hold, - that the word honor had more than one sense, was used sometimes as meaning a mere dignity, charge or office, and sometimes as an equivalent for beneficium, if not perhaps even more loosely still. And unless these citations (conary to appearance) are untruly made, - a point which one had here no sufficient means of ascertaining, - the inference ~~to be~~ drawn from them is unavoidable.

[Foot-note]

* Championniere, Essai Com-
antes, pp. 111 et seq.

[Foot-note.]

* Laferriere, Histoire du
Droit Francois, Vol. 4, pp. 88 et seq.

[Foot-note.]

In truth, ^{line of} no argument can well be more hazardous than that of relying on the constant use of words by different people at different times, in the same precise sense; especially, when it is carried back to a remote and illiterate age, and to the case of a people using an almost dead language in place of ~~their~~ vernacular tongue!

As a later illustration. - According to Championniere's theory of the essential non-territorial antagonism, in idea, ^{between} the justice and pief, the distinction between the words justitia and feudum ought not to have been lost sight of in the 13th Century. ^{It certainly was not} ~~lost~~ ^{in some documents of that time, it may} not have been. But in one, of considerable interest, ^{it} ~~it~~ ^{was} certainly was. The Ordinance of Philip Augustus, of the year 1209, (Cited supra S/79) uses justitia as meaning the whole of the ^{profits} ~~profits~~ of the feudum or pief territorial pief, - evidently, with no idea of distinguishing between the profits of the justice proper and the rest of the profits of the pief. And there is abundance of other proof of the prevalence, at least at that period, over great part of France, of the idea that pief and justice, so far from being antagonistic expressions, were inseparable. vide infra, S/127.

S/23. - Independently of this consideration, however, it is ~~hardly~~ ^{impossible} to defend Championniere from the charge of exaggerating by his theory, the maxim ^{upon} which he ~~rests~~ ^{insisted} ~~so~~ ^{strongly} insisted upon in his argument, the import of his favourite maxim, pief et justice

S 121. - In maintaining this
 these, however, Championnière
 stands alone. And it is not easy
 to defend him from the charge
 of thereby exaggerating the theorin
 "fief et justice n'ont rien de com-
 mun", much as the feudists of
 the fiscal school are shown
 by him to have exaggerated the
 other maxim of "nulle terre
 "sans seigneur". This latter, as he
 has shown, and as every one now
 admits, was a mere statement
 of the result of the long process
 by which (over a great part of France)
 the fief encroached upon the alien,
 and not a reliable statement of
 the ^{historical} doctrine that, for each part of
 France, the alien originally was an
^{unknown or even} exceptional form of holding, - ~~as~~
 as the feudists of ^{that} school long
 pretended that it was. The former
 he holds for a ^{correct} expression of a
 great historical truth. It would
 be more consistent ^{and exact} to interpret
 the two on the same principle;
 to take ^{both} ~~as being~~ ^{as being} a mere
 proverbial record of ~~what~~
 these popularly known results,
 not as ^{intending} proof in reference to a
 process of historical develop-
 ment that was popularly un-
 known; in a word, to treat them as

S 124. - Admitting ^{the ana-}
 logies between the ^{provable} droit de justice
 and the fiscal exactions of the
 Roman Empire, and that these
 latter may well have come to
 be regarded as a property independ-
 ent of the property of the soil,
 and so to be more or less exten-
 sively dealt with, and developed
 into the justice seigneuriale of
 a later age, much as ^{Championnière} ~~he~~ sup-
 poses, - it would only follow
 that ^{such} ~~the~~ justice seigneuriale
 may well be supposed in some
 cases to have had this origin.
 It ~~is~~ ^{is} ~~not~~ ^{no} ~~more~~ ^{more} a
 sound inference from
 the known history of those times,
 - and no one has done more than
 Championnière ~~to prove the fact,~~
~~to show~~ ^{to show} this, - to suppose
 all justice in France to have had
 one and the origine de la justice seigneuriale
 than it would be to suppose

Presumed to be held
 with as much reference to the justice of
 Paris as to any other:

[Foot-note.]

* And those, by the way, no
 more universal in the one case than in
 the other. To match the allodial customs,
 and the exceptional alien justice ex-
 isting under the Customs that were not
 allodial, we have Customs that, insepar-
 ably connected the fief and the justice,
 and called ~~not~~ under Customs ^{not} of that class
 where the fief and the justice, by reason
 of their being held, ~~not~~ presumed to be
 held, under one and the same title, formed
 one and the same holding or seigniority.
 Hennequin de Pansey says of three cases,
 speaking with as much reference to the
 Customs of Paris as to any other: -

"L'origine d'ancienneté la justice est
 venue au fief, et relève des mêmes seig-
 neurs que le fief, elle ne forme avec
 lui qu'une seule et même seigneurie."
 - Dip. Feod., Vol. 2, p. 491.

Lafont's ^{historical} appreciation of this rule, is this: -

"Les faits, en se développant, ont produit
 ainsi en plusieurs points de la France
 des résultats contraires à l'ancien droit
 féodal en l'union de la justice et du
 fief; et ces résultats ont donné lieu
 à la formule trop générale, que l'on
 est venue dans des coutumes

coutumières, ~~et~~ ^{et} que nous avons
 la règle, fief, ~~justice~~ ^{justice} reportet just-
 ice n'ont rien de commun ensemble."

* * Charondas, disant, avec plus de
 justice et de précision que l'on est dans
 la formule trop absolue, le fief ne fait
 pas le territoire de justice. Toutefois,
 l'ancien usage avait laissé, dans ces
 coutumes, qu'il suffisait d'une possession
 immémoriale, sans preuve par écrit pour
 établir le droit de justice en faveur du
 seigneur de fief ~~seigneur de fief~~
~~seigneur de fief~~; et chose bien remarquable, la
 préservation de la justice et de ~~le fief~~ ^{le fief} n'avait
 lieu, dans ces provinces même, qu'à l'égard
 de simples fiefs; la juridiction était toujours
 attachée de plein droit, aux fiefs qu'on
 appelait de dignité, savoir aux ducs, les
 comtes, marguivats, vicomtes, baronnies
 et ~~châtellenies~~ ^{châtellenies}, châtelainies, vives,
 et ~~seigneurie de Paris~~ ^{seigneurie de Paris} jusqu'en 1664,
 que le droit de justice ne pouvait être
 tenu en séparation du duc de la
 Marche ~~seigneur de Paris~~ ^{seigneur de Paris}, ~~seigneur de Paris~~
~~seigneur de Paris~~ * * Au vu et par la
 combien la maxime de l'art. 1, entendue
 dans un sens trop absolu, s'éloignerait
 de la vérité historique et juridique."

- Histoire du Droit Français, Vol. 4, pp. 99
 - 101 -
 Feod. art. 1, S 127, note

P. 2. 491. Palais Supérieur, Dist. de Montréal adajst.

It ^{absolutely} must treat a number of other proverbial sayings of the same class, - that, for example, of the ~~which the feudists set up of~~ "route justice émane du roi," which in the hands of the crown feudists bore ~~the~~ ^{much the} same relation to the justice, that its "nulle tene sans seigneur" counterpart bore to the fief #

* that there are shouf

literally

[Foot-note]

Vide infra, S 127, & note to case, also Green SS 130 et seq.

that all the feifs had. Indeed, the justice was actually the more ~~unsystematic~~ ^{unsystematic} property of the two, - that as to which the greater number of utterly unaccountable, ^{varieties} anomalies and contradictions everywhere prevailed, - the harder of the two ^{to} be haced back to the ^{exclusive} operation of any one ~~set of causes~~ ^{of any set of causes}.

How would they

§125. - Looking back, indeed, to the early days of the feif, to the time when it was a usufruct, generally of ~~pretty large extent~~ ^{small extent}, seldom of small extent, generally ~~in powerful hands~~ ^{and in powerful hands}, and little (if at all) cut up by ~~sub-division~~ ^{sub-division} into arriere-feifs, - it is out of the question to fancy that this supposed, ^{entire} separation of the feif and justice can then have been universal, ^{so much as} ~~or~~ ^{common}; that the great men (potentes) holders of alleu nobles and feifs, held them subject to the ownership by other men of their class, of a multitude of vexatious exactions to be collected from their people, and of ~~rights~~ ^{rights} more or less extensive of administering justice, ~~as a source of profit~~ ^{at their cost}. Such great men may ~~have~~ ^{have} enforced acquiescence in their ^{own} claim ~~to~~ ^{to} such exactions and rights, upon the poorer and weaker neighbours, whom they may yet not have ~~been~~ ^{been} presumed to deprive altogether of their equality as petty proprietors, holders of alleu of the inferior or roturier kind. But they cannot generally have submitted to such pretension themselves, on the part of others. - For the raising of their ~~own~~ ^{own} revenues, they may also have followed in some measure the ingenious precedents of the Roman exaction established for them by the Roman tax-gatherer. But

* indeed large

[Foot Note]

* vide supra, §§ 50 et seq.

* as a general rule,

* and ~~so~~ ^{so} may have extended what a justice of their own (originally, ^{much} as Champanoise supposed) beyond the territorial limits of their ^{own} alleu or feif.

* whether within or beyond the territory of their own alleu or feif,

And nothing is more unlike-
ly than that they should have
followed them exactly. The
strong dealing with the weak
are not apt to follow preced-
ent exactly. What they wanted
they would get, ~~and of their own~~
~~if they could.~~ ~~the idea~~
that their exactions were com-
ing to ~~some use~~ be more
regular and their people ^{to}
rise ^{to} the position of cen-
sary proprietors, the ~~tradition~~
of the old exactions of the
Roman fisc, would have
pretty well died out.

However this may have
been, it at least seems pretty
clear that the justice of this
early time, - viewing it, as
Championniere does, in the
light of what one may call an
appropriated right of exaction,
must in the nature of things
have been held generally by
men who would be holders
also of aleu nobles or of feif,
or of both ^{and}, who within their
own territory would not com-
monly submit to ~~exaction~~
~~by others on their own people~~
much interference at their
own expense; in a word that such
justice could not ^{be} ~~be~~
have been a property wholly wholly
disconnected from, and inde-
pendent of the territorial aleu
or feif territorial holding
of the aleu or feif.

§ 124. - Indeed, it is even
certain as matter of historical
induction, that many justices
had quite another origin than
this, ^{for} which ~~Championniere~~
contends, ~~was~~ - and one, too,
intimately connected with ~~the~~
a territorial holding ^{on the part of} ~~of~~ the justi-
cier. Klunath succinctly states
two such origins, thus: -

"Des les Carlovingiens, on voit
"successivement des évêques, des ab-
"bés, et biens ^{de la ville de Montréal} ~~de la ville de Montréal~~
"laïques, exemptés par privilège

counts. By the time

& usages as to such matters
would have varied ~~at~~
little, and ~~the~~ often and
widely, - and the traditions

x all

grandee

de la puissance du Comte
 et de ses délégués. Une fois
 que les officiers ne purent plus
 venir sur les terres de ces seig-
 neurs, pour y faire exploit de
 justice, tous les hommes, même
 libres de leurs corps, qui y hab-
 itaient, tombèrent sous la puis-
 sance privée des seigneurs et
 ne furent leurs justiciables.
 On appelait cela immunités:
 C'est le premier cas de l'origine
 des justices seigneuriales.

Plus tard, mais toujours
 sous les Carolingiens, un change-
 ment plus grave encore, parce
 qu'il ne fut plus seulement
 une exception, mais la règle.
 L'opéra dans la même mesure
 des pouvoirs que le comte,
 et les autres officiers publics
 exerçaient dans leurs territoires,
 démembrés et dépecés par
 les immunités ecclésiastiques
 et laïques. Profitant de l'avit-
 issement du pouvoir royal
 pour se rendre héritiers et
 indépendants, ils exercèrent
 en leur propre nom, et comme
 une propriété privée, la
 même autorité judiciaire
 qu'ils avaient exercé jusque-
 là au nom du roi et comme
 fonction publique. Tel est
 le second cas de l'origine
 des justices seigneuriales.

And he might, probably, have
 given them a still earlier date,
 or at any rate might have added
 to them another, of earlier date.
 For, with the unsettled ideas,
 and practices, as of the Mer-
 ovingian as of the Carolingian
 era, there can be little
 no serious doubt of the real existence
 of these immunities, and of
 their real exercise of public func-
 tions for private ^{profit} advantage,
 profited as though they formed a
 private property, long before
 the days of the second dynasty;
 and under ^{Abbas de la ville de Paris} beyond question, without refer-

[Foot-note.]

* Klimrath, therefore, not
 recognizing the Champion-
 nile ^{idea}, even as matter
 of local or exceptional ap-
 plication.

[Foot-note]

Vol. 1, pp. 136 & 137.

*(under some form or other)

judiciary

[Foot-note.]

& Championniere's favorite maxim given by Loysel in the form "fief, ~~no~~ ressort of justice about rien de commun ensemble" is in fact traced in the coutumes no further back than to their origin of Auvergne, of 1510, - and to like clauses in the Customs of Bourbonnais ~~of 1521~~ (of 1521; see Cout. fcu., vol. 3, p. 445), La Marche (same year; ibid., vol. 4, pp. 1102 & 1115), Blois (of 1523; ibid., vol. 3, p. 1052), Berry (of 1539; ibid., vol. 3, p. 123) and Combraille (of 1559; ibid., vol. 4, p. 675).

Of these, one only - that of Blois - states the proposition per se. The rest all qualify it in such as that of Auvergne does. One, the Custom of Combraille, states it only as an exceptional rule for some particular seigneuries.

Dupin and Laboulaye, in their additions to De Lauriere's notes on Loysel, give as an equivalent expression, the maxim "plenus est alius et dominus jurisdictionis, alius dominus beneficii"; and characterize the Customs which held in effect that "fief et justice et tout un", as being "plus d'articles sans origine feodales".

See Loysel, Instr. Cout., Ed. par Dupin et Laboulaye, 1846; Vol. 1, p. 274, no 274. - also, supra, § 123, & notes to same.

* in one form or another (at least as a usual thing)

* usual, and came to be held

[Foot-note.]

See Laferriere, Hist. au Droit Francais, Vol. 4, pp. 97 ~~98~~ ⁹⁹ and authorities there cited.

- but apparently, not with ^{any} the idea of doing more by the latter of these clauses, than to repeat in more striking and proverbial phrase, the substantive fact set forth in the former.

On a number of other Customs there was no such change. Some, to the last, assigned more or less of justice, either to certain classes of fiefs, or to all, as their natural and presumed attribute. And some ~~even~~ ^{went the length of} maintaining it as their inseparable from them.

§ 128. Now is there ^{any} ~~no~~ difficulty, upon the supposition of ^{there having been} an original connexion, ~~more~~ ^{at least} intimate, (at least, in most cases) between the justice seigneuriale on the one hand, and the territorial alien or fief on the other, - in accounting for the fact of their having come to be in practice so far disunited, over a great part of France, as to have made the later margin, "fief et justice a'out rien de commun", seem like the entire ~~expression~~ ^{expression} of the true usage of Customary France.

It is certain that in very early times, ~~at least~~ for the exercise of all feudal jurisdiction of the higher order, it was ~~not~~ necessary for the Seigneur justice to form his Court of at least three or four persons holding of him land ~~by~~ ^{the} tenure en fief. Failing such Court, the vassal had the right to carry his cause to the Court of the Dominant. The holders of the smaller class of fiefs, or of parts only of fiefs, - and their number was constantly on the increase, - must have continually found themselves unable ^{or unimproved} to form such Courts, and so have lost at least this particular jurisdiction.

Independently of this, again, ~~and~~ ^{and} whether ^{one} adopt Championniere's view or not, to the extent of referring the early justice seigneuriale in some measure to the prospect of appropriation of a mere right of exacting tribute justice to be presumed, that as the realisation of justiciary profits and the exercise of justiciary power, required the force ^{some} of the constant maintenance of a respectable ^{army} ~~army~~ ^{force}, ~~these~~ ^{different} Seigniors ~~would~~ ^{would} ~~either~~ ^{either} ~~have~~ ^{must} ~~claimed~~ ^{have} ~~this~~ ^{claimed} ~~power~~ ^{power} and these profits in very variant degrees, - and some either ^{never} ~~never~~ ^{could} ~~could~~ ^{have} ~~claimed~~ ^{claimed} ~~them~~ ^{them}, or if they did, must soon

have had to give up the ~~the~~ claim. The matter was at once one of pride and profit, ^{and thus,} in an age of violence. The more powerful Seigniors must have been continually interfering with the less powerful; sometimes, merely checking their pretensions, — often going further, and subjecting them to pretensions of their own.

Besides all which, in the natural course of sub-infeudation, and of the partages of seignories (whether with or without the parage reserve in favor of the eldest son), all sorts of reserves of justice ^{political or judicial}, ~~in~~ ^{qualified or unqualified}, were continually made, and, ~~when~~ once accustomed to the idea of the separation of the fief from the justice, people ~~learned to take the other course and alienate the justice (by sale or otherwise) the justice~~ ^{separately} from the fief. #

Under all the circumstances, one might perhaps rather wonder that the maxim "fief et justice est tout un" should have held its ground any where, than ~~it~~ that the counter-maxim should as matter of ~~fact~~ ^{fact}, should have so far prevailed as ~~it did~~ in fact it did.

§129. — Developed, then, presumably, from a variety ^{originating} of ~~causes~~ ^{causes}, and in a variety of ways, the justice seigneuriale (one hardly need repeat) assumed, if possible, a still greater variety of forms than even the fief did.

§130. After a time, no doubt, the royal authority, ~~as it assumed the~~ ^{gained strength} ~~utterly~~, under the third race, made its encroachments more felt, from the necessity of the case, upon the justice than upon the fief, and so did more to bring it into ^{something like} connexion with something like public rules and of law. The crown could not rule without administering justice, and could not administer justice without checking and bringing into more or less of subjection to itself, ^{all} ~~this~~ administration of justice by other ~~than~~ authority than its own.

* however occasioned, and

* added to it another, and as matter of fair contract ~~learned~~ (of sale or otherwise) learned also to alienate, on all sorts of terms,

[Foot Note]

Le Supérieur, Hist. du droit Français, Vol. 4, pp. 99 & 100.

M.P.

107 ^{accordingly, the crown}
 By slow degrees, the Royal
 Courts were made to assume a
 constantly enlarging jurisdic-
 tion, appellate and original; and
 their general superiority, ^{in point}
~~of~~ character and capacity of their
 judges, and the efficiency of
 the machinery for the carrying
 out of their judgments, gave
 them a constantly increasing
 advantage in their rivalry
 with those courts; an advant-
 age that became still more
 decisive, as the royal power
 (*apex vanae*) ~~took the~~ ~~step~~ ~~of~~ ~~interfering~~ ~~gradually~~
~~pushing its interference~~
 the very administration by the
 Seigniors, of their judicial
 prerogatives, — prescribing rules
 for them, as well of procedure
 as of law, and, ^{eventually} ~~at last~~ making
 them defer to its sanction, in
^{a great measure} even in the matter of
~~their~~ justice the appointment
 of their officers of justice.
 And thus, at length, ^{people's}
 minds became familiarised to
 the idea, ^{that} of the ~~rightful eman-~~
~~ation~~ of all judicial author-
 ity, ~~from the frown~~ should e-
 manate or be held to have
 emanated from the crown.

§ 131. — As a result
 of this revolution in opinion,

§ 131. — From this re-
 volution in opinion, it
 naturally resulted, that — while the
 "nulle tene sans seigneur"
 dogma never so far pre-
 vailed as to destroy the

* over the Seigniorial Courts,
 as regarded the

* went on gradually to extend
 its interference to

That, while ~~the~~ ^{the} ~~seignior~~ ^{seignior} ~~was~~ ^{was} ~~so~~ ^{so} ~~far~~ ^{far} ~~prevalled~~ ^{prevalled} ~~as~~ ^{as} ~~to~~ ^{to} ~~destroy~~ ^{destroy} ~~the~~ ^{the} ~~territorial~~ ^{territorial} ~~aleu~~ ^{aleu}, and reduce all land to the position of ~~the~~ ^{the} ~~feif~~ ^{feif} or ~~Centive~~ ^{Centive} under the crown as ~~the~~ ^{the} ~~ultimate~~ ^{ultimate} ~~feudal~~ ^{feudal} ~~dominant~~ ^{dominant}, — the ~~justiciary~~ ^{justiciary} ~~aleu~~ ^{aleu} may be said to have been got rid of under cover of the ~~more~~ ^{more} ~~public~~ ^{public} ~~maxim~~ ^{maxim} "justice émane du roi". Although, even as to this, ~~shougly~~ ^{shougly} as the point was maintained by the feudists of the fiscal school, the language of Henrion de Pansey went only to this length: —

"L'opinion commune est qu'il n'y a point de justice allodiale: —"

— words guarded enough to ~~show~~ ^{show} indicate the fact, that he was not prepared so far to ignore history, as quite to call the opinion his own.

§ 132. — Again, ~~besides~~ ^{besides} bringing of litigation, by appeal and otherwise, ~~with~~ ^{with} ever increasing facility, within the ~~resort~~ ^{resort} of its own courts, the crown of course ~~set~~ ^{set} itself against all ~~dis-~~ ^{dis-} ~~trachion~~ ^{trachion} of seigniorial justices either from ~~the~~ ^{the} ~~seigniorial~~ ^{seigniorial} ~~manor~~ ^{manor} ~~ance~~ ^{ance}, ~~or~~ ^{or} from the ~~ressort~~ ^{ressort} of ~~its~~ ^{its} ~~own~~ ^{own} courts. By about the middle of the 10th Century, or rather later, it had made good the rule that such distraction of ~~ressort~~ ^{ressort} could not ~~take~~ ^{take} ~~effect~~ ^{effect}, — ~~in~~ ⁱⁿ that is to say, that ~~sub~~ ^{sub} ~~infeudation~~ ^{infeudation} from a ~~justice~~ ^{justice} could not ~~be~~ ^{be} ~~so~~ ^{so} ~~made~~ ^{made} as to interpose a new appeal before reaching the Royal Courts,

— unless, indeed, it were confirmed by letters-patent of the crown.

§ 133. With the assumed feudal dependence of ~~all~~ ^{all} ~~justice~~ ^{justice} from the crown, and the ~~recognition~~ ^{recognition} of the essentially public character of whatever was related

to the judiciary or police system of the country, the further conclusion followed, that the ~~démembrement~~ ^{démembrement} ~~de~~ ^{de} ~~justice~~ ^{justice}, properly so called, or ~~division~~ ^{division} of it into distinct and separate ~~justices~~ ^{justices}, — even though without distraction of ~~ressort~~ ^{ressort}, — was also a ~~subject~~ ^{subject} to Royal disallowance.

* by the war,

[Foot-note.]

* Dip. Feod. Vol. 2 p. 490.

as part of its policy for the

as should tend to remove them in any degree

division of or

[Foot-note.]

* See Henrion de Pansey, Dip. Feod. Vol. 2, pp. 490 et seq.; and pp. 558 et seq.

Before this period, ~~as~~ ^{as} ~~this~~ ^{this} ~~author~~ ^{author} (about 1558 or 1553,) says his author, ~~et~~ ^{et} "les seigneurs ~~en~~ ^{en} ~~ont~~ ^{ont} ~~eu~~ ^{eu} ~~la~~ ^{la} ~~plus~~ ^{plus} ~~libre~~ ^{libre} ~~et~~ ^{et} ~~la~~ ^{la} ~~plus~~ ^{plus} ~~indéfinie~~ ^{indéfinie}, du droit de démembrer leurs justices, et de se réserver le ~~ressort~~ ^{ressort} de celles qu'ils concédoient." — p. 558.

§ 134. - According to Henri-
on de Pansy, this principle had come
to be carried so far, by his time, as
(in his opinion) to make any partial sub-infeuda-
tion of a justice, otherwise than
in its entirety, an act ^{not} subject to
Royal disallowance, ~~disallow-~~
ment is this: -

"Que le propriétaire d'une sei-
gneurie en aliène moitié avec
moitié du droit de justice; une
pareille aliénation n'opère ni
division ni multiplication du
droit de justice, - tout son effet
est de rendre le vassal et l'ac-
quéreur co-propriétaires de la
justice; et pour appartenir à
deux personnes différentes, cette
justice n'en est pas moins
une justice seule et unique:
le fief n'éprouve ni division
ni multiplication.

"Mais l'effet de la sous-
infeodation est bien différent:
la partie que le propriétaire in-
feode est subalterne à celle qui
se réserve; l'une forme un fief
dominant, l'autre un fief servant.
après l'infeodation ce n'est pas
une portion intégrante de la jus-
tice que le feudataire possède,
mais une justice bien séparée,
bien distincte de la portion demeurée
dans les mains du seigneur infeodant:
il y a donc division de la
justice, ^{ainsi} aliénée; il y a donc multi-
plication de justice.

"A la vérité, le seigneur in-
feodant, se réservant la mouvance
de cette portion de justice, la con-
tient sous son hommage, et re-
tient la justice entière à son
seigneur immédiat, - il n'y a pas
de démembrement, proprement
dit, et dans le sens des lois féodales;
mais la loi publique, plus sévère
que la loi des fiefs, voit deux
justices, où précédemment elle
n'en voyoit qu'une seule; et cette
multiplication, elle la reprouve."

* with that ~~out~~ of ^{the} démembrement
of such justice; a doctrine, as to
which one may at least pre-
sume with some confidence, that
it was ~~then~~ even then not quite
established for law. His argu-

[Foot-note.]
* Indeed, he ^{in produces} ~~in produces~~ ~~it as~~
constituting a restriction on the
in de justice, after mention of
two restrictions, ^{(the 1st, that justice}
could not be alienated, and ^{the 2d, that}
the report must not be affected, ^{the}
with this ~~the~~ preamble, "il vous
semble qu'il faut en admettre
une troisième", etc., words
significant ⁱⁿ ~~indicating~~ ^{of} his feeling,
that the point ^{required} was quite
open to argument.

[Foot-note.]
* Dip. Feod., Vol. 2, pp. 491, 2.

~~§ 135. - Of course, besides these
protestations by the crown, the despo-
sitions and jeu de justice were
everywhere subject to the ^{same} restrictions on
the part of any other interested
Seignior Dominant, as prevailed
for the démembrement and jeu
de fief ^{strictly} so called.~~
Archives de la Ville de Montréal

110 § 135. - Not, however, that ~~it~~ ^{the doctrine of} ~~was supposed that~~ this Royal veto (so to call it) ^{or} ~~the~~ ^{the} disaction of ~~resort~~, or ^{or} ~~the~~ ^{the} ~~démembrement~~ or partial sub-infeudation of a justice, though essentially based on a principle of public law, was thought to involve ^{as a} consequence, ~~of~~ ^{the} ~~absolute~~ ^{the} nullity of whatever ~~was~~ ^{might} be done in defiance or disregard of it. On this point, Henri de Pansy expresses himself without any doubt. His words are:

[In making up the page, leave space here for a line or line half of quotation, at the beginning of this paragraph.]

"quelque irrégulière que soit la convention par laquelle le Roy n'en a concédé un droit de justice et s'en est réservé le ressort, cependant comme cette irrégularité résulte uniquement de l'ordre public et de l'intérêt des justiciables, et que personne ne peut se prévaloir du droit d'autrui, le seigneur lié par l'acte qu'il a souscrit, est non recevable à l'attaquer; le ministère public, et les justiciables grevés d'un nouveau degré de juridiction, peuvent seuls en demander en faire prononcer la nullité."

[Foot-note.]

* Dip. Feod., Vol. 2, p. 561.

The mere opposition of the justiciables might of course fail; because independently of the rules of usage of the French courts as to the part to be played in such matters by the ministère public, and the almost ~~certain~~ ^{certainty} ~~of their failing~~, if the ministère public supported it, the crown at any stage of the proceedings might grant the required sanction. Practically, therefore, it was the crown ^{alone} that could here act. ~~It~~ ^{was} ~~the~~ ^{the} ~~parties to the contract~~ ^{held}.

* Certainty of such opposition failing unless of the ministère public.

[Foot-note.]

Of course, the crown ^{would} ~~would~~ ~~be~~ such Seigneur Dominant; and in that case, ~~it~~ ^{it} ~~would~~ ^{would} be master of both ~~the~~ ^{the} ~~cases of~~ ^{cases of} ~~exceptions~~.

[Foot-note.]

vide supra, §§ 96-118. ^{inclusive.}

§ 136. - Of course, besides ^{being} ~~being~~ ^{subject to these facultative} ~~restrictions by~~ ^{the} crown, the démembrement and jeu de justice were ^{also} everywhere subject to the same ^{facultative} ~~restrictions~~ ^{restrictions} on the part of ^{the} ~~any~~ ^{any} other interested Seigneur Dominant, as prevailed in reference to the démembrement and jeu de fief, strictly so called.
 Archives de la Ville de Montréal

Whether such Seigneur Dominant

111/137/138. Added to which, there was another of quite a different kind, in reference to the feu de justice, - arising out of the essentially noble quality of the justice; that it could not be alienated by accensement. Whatever rente or prestation might be stipulated for it, ^{much as could be paid for a noble property} ~~it must be~~ ^{it must be} ~~could not be a~~ rente.

§ 138. Henriou de Pansey suggested, besides ~~this, one more~~ ^{one more} ~~peculiar to the feustate of Paris,~~ ~~and other customs of a certain~~ ^{the custom} ~~that of Paris being one of them.~~ His words are:

Les dispositions des Coutumes sur ce point ne sont pas, à beaucoup près, conçues dans les mêmes termes: les unes disent en termes indéfinis que le vassal peut se jouer des droits et des domaines de son fief: des expressions aussi générales autorisent les vassaux à se jouer de leurs justices comme de leurs domaines; parceque la justice n'est autre chose qu'un droit seigneurial et féodal.

Mais toutes les Coutumes ne sont pas rédigées dans des termes aussi absolus. Celle de Paris, par exemple, permet et rien de plus, à un vassal, de se jouer des héritages, rentes ou cens étant du dit fief. Il n'est aucune de ces expressions qui ait trait à la justice: on peut donc raisonnablement soutenir que cette Coutume et les semblables ne permettent que le feu de fiefs et proprement dit, et non celui des justices.

From the terms of this suggestion, one ~~might~~ ^{may} infer that the point ~~had~~ was not one that had ~~been~~ been practically raised and determined. Of course, it could only have been raised by a Seignior Dominant, who upon alienation of justice by his vassal, ^{made} within the limits of the custom, ^{and} ~~was~~ ^{was} ~~claim~~ ^{claim} of exemption from dues, - should assert his right to such dues, and insist on receiving the alienated justice ^{directly} ~~himself~~ ^{himself}, and not through his vassal.

* (however qualified) ~~must~~
 [Foot-note.]
 * Henriou de Pansey, Dip. Feod., Vol. 2, p. 491.

∆ this, one more, - of the class of restrictions potestative to the Dominant, - as peculiar to a certain class of Customs,

[Foot-note.]
 * Dip. Feod., Vol. 2, p. 492.

* vassal; in which case, it is hard to see ^{on what principle} ~~his~~ demand could have been resisted. Such a case, however,

∆ (that is to say, ^{under} the form of sub-infeudation, and for a part only),

∆ was not likely to ~~arise~~ ^{come up} ~~for~~ ^{for} ~~adjudication~~ ^{adjudication}, after the crown had once begun to

116/ ^{super-adding} claim the right of ^{adding} its disallowance to that of the direct Seigneur Dominant, as a practical obstacle in the way of the distraction of ressort, or démembrement of a justice; much less, after it had become a question whether partial sub-infeudation of a justice might not always be prevented by the crown. The Dominant's claim would ^{probably} be frustrated. If the vassal could not get the Royal letters-patent, the Crown's disallowance would settle the matter. If he could, and did, the Dominant's claim might be ^{thought} late, as seeking to ^{undo} ~~undo~~ ^{in a lower} ~~in a lower~~ interests ~~that were~~ ^{only private}, what the highest authority ^{if it had not quite} helped to do, had at least said might be done.

* be apt to yield precedence to the Crown's pretension.

* in a practical point of view, and looking to the Custom of Paris, —

§ 139. — To what, then, do we find all these restrictions to amount?

Justice could not be accensée. Any rente ^{stipulated} for it ~~would not~~ ^{would not} have the legal attributes of a Cent. (however designated) ^{would not}

If sub-infeuded, within the limit of the Custom and without distraction of ressort, the Dominant ^{might} ~~might~~ ^{probably} have been entitled to claim a mutation fine, and oblige the acquirer to hold directly of him, instead of holding as a sub-vassal, — and the crown, ^{possibly}, (or — speaking of a time later than that of the settlement of Canada — one might perhaps say, probably,) might have ~~required~~ obliged him either to obtain its letters-patent, or submit ^{to hold} ~~to hold~~ of the Dominant, as a co-vassal.

[Foot-note.]

Vide supra, § 138. ^{as a co-vassal,}

[Foot-note.]

* Vide supra, § 134.

* (should such letters-patent be refused)

If sub-infeuded in part, but beyond such limit, though without distraction of ressort, — ~~the~~ ^{the} ~~claim~~ ^{claim} of the Dominant could ^{as to} there could have been no question of this claim of the Dominant, — and that of the Crown would have stood as in the other case of sub-infeudation within limit.

[Foot-note.]

Vide supra, §§ 136, and 134.

If sub-infeuded ^{as a whole}, still without distraction of ressort, — the Dominant could clearly make good his claim, — ~~but~~ ^{and} the crown, ^{and} clearly, would have ~~been~~ been without pretension to interfere.

[Foot-note.]
* Vide supra, § 132.

[Foot-note.]
* Vide supra, § 136.

[Foot-note.]
* Vide supra, § 138.

and their representatives, the }

* Kept by its proprietor if he would, or could be alienated at his sole pleasure, ~~whenever he would~~ whenever he pleased,

#3/ If alienated, with dishaction of report, — the crown might require the taking out of ~~its~~ letters patent, or (should they be refused) the ~~annulling~~ annulling of such dishaction of report.

If assumed to be démembre, — the Dominant* could not be made to recognize the change unless he chose, and without his recognition it would not have been effected, — and the crown* might besides require the taking out of its letters patent or (should they be refused) the ~~annulling~~ annulling of such démembrement.

§ 140. — ~~As between~~ as between the parties ~~to~~ ^{the} contract (whatever its terms) was a good contract, just as with the ~~feif~~ alienating the property parties with; fixing the terms of the alienation; giving right to parashe, if (by action of Dominant or crown) ~~such~~ ^{such} terms should come to be at all ~~altered~~ ^{altered}.

And as against all ~~the~~ ^{the} others, Dominant and crown excepted, ~~it was equally~~ ^{it was equally} ~~unaltered~~ ^{unaltered} ~~so changed~~ ^{so changed} it was equally good, if not so ~~altered~~ ^{altered} or until such ~~change~~ ^{alteration} should be ~~effected~~ ^{effected} have been ~~wrought~~ ^{wrought} required.

There was the same absence of the absolute nullity, as in the case of the territorial feif.

§ 141. — In a word — subject to this incapacity (so to speak) for being held in censive, — to the ~~contingency~~ ^{risk} of these Royal disallowances of démembrement, dishaction of ressort, and (perhaps) partial sub-infeudation, — and to the risk of the Dominant's disallowance of démembrement, and exaction of a mutation fine as from a co-vassal, — this ~~particular~~ ^{particular} property called justice could be ~~alienated~~ ^{alienated} in whole or part, by any imaginable description of contract and on any imaginable terms.

x exercise of the

Involving, it is true, in so far as the droit de juger and of the powers thence resulting may be in question, what our modern view of public law would regard as a purely public trust, ~~but~~ it was essentially a private property, held by the Seigneur-vassal for his own profit, — subject (like the territorial fief proper) to reservation of the feudal share known as the directe, in favor of ~~the~~ ^{the} Seigneur or Seigniors Dominant, — and subject, ~~further~~ ^{further} (as the territorial fief was not) to ~~a certain~~ ^{some degree} measure of Crown interference as ~~reg~~ regulation as to such mere powers, — ~~but in no sense~~ ~~to~~ be no means in trust for ^{the profit of} any one but himself, least of all in trust for those whose ill-fortune it was, as subjects of his justice, to have to be always contributing by fees, fines, forfeitures and otherwise, to the making up of his revenues as justice.

* ~~These revenues of~~
* these revenues, and

Whether, with Champagnie, ~~we~~ we race back, ^{this} droit de juger and ~~these~~ these powers arising out of it, ~~in the main~~ to an ^{original} appropriation of tribute as opposed to appropriation of soil, — or, with other ~~writers~~ writers, ~~refer them~~ regard them as originally accipitry, in one way or other, to an ownership of territory — or adopt both ~~views~~ ^{views} in part, and conclude that ~~they~~ ^{they} may ~~some~~ have partaken of both origins, sometimes and at first have been accipitry, sometimes of the one kind of property, and sometimes of the other, — the case is not in the ~~least~~ least altered. The fact remains, that ~~they~~ ^{they} became ~~a~~ ^a property ~~property~~ ~~and~~ ~~ever~~ ~~ceased~~ ~~to~~ ~~be~~ ~~so~~ ~~all~~ ~~the~~ ~~so~~ ~~continued~~ ~~to~~

(as everyone would now hold)

~~although on public grounds, they ought ~~not~~ to have been so, they in fact were a property, ~~the~~ the property of a privileged class, and not~~

Contrary to what every one would now hold for sound public principle, they were a property, the property of a privileged class, and not a trust.

* the constant normal existence of ^{some kind} of general controlling power, over each grade of feudal land holders in turn, - vested, of course, pre-eminently in the crown, as head

[Foot-Note.]

* The speech that ~~was~~ most insisted on it, was not reported; and ~~was~~ not repeated, in terms before this point. So that it cannot well be referred to here, otherwise than impersonally. - Still, in its time so much was made of it, - and ^{important} ~~whereas~~ ~~it~~ ~~was~~ ~~not~~ ~~the~~ ~~question~~ ~~of~~ ~~the~~ ~~power~~ ~~of~~ ~~the~~ ~~French~~ ~~King~~ ~~into~~ ~~as~~ ~~he~~ ~~is~~ ~~said~~ ~~to~~ ~~have~~ ~~done~~ ~~in~~ ~~Canada~~, is so closely connected with it, that it ^{perhaps} ~~is~~ ~~not~~ ~~to~~ ~~be~~ ~~omitted~~ ~~from~~ ~~the~~ ~~paper~~ ~~by~~ ~~any~~ ~~means~~.

S 142. - In 1853, ^{the argument} ~~it~~ was authoritatively argued, on the floor of the House of Assembly, that the feudal system in some way implied ^{the constant} ~~the~~ ~~existence~~ ~~of~~ ~~a~~ ~~controlling~~ ~~power~~ ~~over~~ ~~the~~ ~~feudal~~ ~~land~~ ~~holders~~, ~~vested~~ ~~pre-eminently~~ ~~of~~ ~~course~~, ~~in~~ ~~the~~ ~~crown~~ ~~as~~ ~~head~~ ~~of~~ ~~the~~ ~~feudal~~ ~~hierarchy~~; that this feature of the system made it natural, ^{and} ~~that~~ in Canada the Crown should have controlled matters, as the ~~the~~ theory of the Attorney General's Propositions holds it to have done; that the control so ^{needed} ~~was~~ to have been exercised, was thus a feudal control; and that ~~its~~ ~~non-exercise~~ ~~the~~ ~~want~~ ~~of~~ ~~it~~ since Canada ^{has} ~~been~~ ~~made~~ a sort of abandonment by the crown, of a feudal duty. - If this were so, one might regard ~~that~~ ~~the~~ ~~feudal~~ ~~system~~ ~~as~~ ~~the~~ ~~firm~~, ~~out~~ ~~of~~ ~~which~~ ~~the~~ ~~alleged~~ ~~new~~ ~~Canadian~~ ~~system~~ ~~may~~ ~~have~~ ~~been~~ ~~developed~~.

S 143. - ^{But} ~~that~~ ~~the~~ ~~feudal~~ ~~system~~ ~~has~~ ~~no~~ ~~such~~ ~~feature~~ ~~as~~ ~~a~~ ~~proposition~~ ~~almost~~ ~~too~~ ~~plain~~ ~~to~~ ~~admit~~ ~~of~~ ~~being~~ ~~argued~~, ~~or~~ ~~to~~ ~~be~~ ~~admitted~~ ~~as~~ ~~stated~~. ^{to} ~~suppose~~ ~~of~~ ~~supposing~~ ~~a~~ ~~general~~ ~~controlling~~ ~~power~~ ~~in~~ ~~ascending~~ ~~degrees~~, ~~up~~ ~~to~~ ~~the~~ ~~one~~ ~~head~~ ~~of~~ ~~the~~ ~~feudal~~ ~~confederacy~~, ~~in~~ ~~whom~~ ~~therefore~~ ~~it~~ ~~should~~ ~~centre~~, - the feudal system rested on a supposition as nearly as possible the precise ^{opposite} ~~to~~ ~~what~~ ~~was~~ ~~asserted~~. It had no one head, even in theory, till after other than feudal principles ^{influenced} ~~had~~ ~~been~~ ~~long~~ ~~at~~ ~~work~~ ~~to~~ ~~bring~~ ~~over~~ ~~the~~ ~~fashioning~~ ~~of~~ ~~the~~ ~~theory~~. ^{Indee} ~~It~~ ~~may~~ ~~be~~ ~~said~~ ~~never~~ ~~quite~~ ~~to~~ ~~had~~ ~~it~~ ~~in~~ ~~theory~~; ~~for~~ ~~not~~ ~~even~~ ~~the~~ ~~theory~~, ~~to~~ ~~the~~ ~~last~~, ~~could~~ ~~deny~~ ~~the~~ ~~existence~~ ~~of~~ ~~the~~ ~~alien~~ ~~or~~ ~~its~~ ~~prevalence~~ ~~as~~ ~~the~~ ~~rule~~ ~~of~~ ~~tenure~~ ~~over~~ ~~much~~ ~~of~~ ~~France~~. ~~And~~,

^{my} ~~It~~ ~~never~~ ~~had~~ ~~such~~ ~~one~~ ~~head~~ ~~in~~ ~~fact~~, ~~even~~ ~~in~~ ~~France~~.

~~of~~ ~~noble~~, ~~as~~ ~~well~~ ~~as~~ ~~serfs~~ -

normal
exercise of ~~power~~

at ~~every~~ ^{every} step downwards, from
the alien noble, ^{whether} ~~Kingly~~ or ~~not~~ ~~Kingly~~
ly, to the censive, it ~~expressly~~ ^{precluded} ~~cut~~
~~off~~ all general controlling power
by grantor over grantee; ~~supra~~ ~~are-~~
~~fering~~ ^{as it did on all points} ~~for~~ the ~~asces-~~
~~tainment~~ ^{of} their relations, ^{to} ~~each~~
other, to the ^{more} terms of their contract.
The higher contracting ^{party} ~~had~~
no more legal control over the
contract, ^{as} ~~once~~ established, than
the lower had. Herve puts this
so ~~sharply~~ ^{and so clearly} that, at the risk of
almost repeating what other
citations ^{may} be thought to have
fully established, one cannot
help recurring to his words:—

[Foot-note.]

* Supra, §§ 63 and 64.

— la conception en fief est un
"contrat parfaitement synallag-
"matique ou bilatéral. En effet,
"l'obligation que le seigneur a
"contractée au moment de la
"conception, de laisser jouir
"le vassal de la chose concei-
"die, en la manière conve-
"nue, et l'obligation que le
"vassal a contractée de son
"côté, de conserver une resou-
"voissance toujours subsist-
"ante, sont deux obligations
"essentiellement corrélatives
"et également principales, qui ne
"peuvent subsister l'une sans
"l'autre, et desquelles résulte
"de part et d'autre, une action
"directe. * * *

W. S. P. 1386/7

— le Seigneur et le vassal
"ne peuvent ni l'un ni l'autre,
"rien changer au contrat sans un
"consentement commun; mais
"ils peuvent, de concert, y apporter
"tel changement et telle modifi-
"cation qu'ils jugeront à propos,
"en ce qui ne touche point à son
"essence. Resolvi enim tam natu-
"rale est, quam eo generis quodque
"resolvi quo colligatum est
"est. * * *

W. S. P. 1387

"Quelqu'ouïerences que soient
"les charges du vassal, il ne peut
"s'y soustraire, les modifier, les
"substituer d'autres, ni changer
"le temps, le lieu et la manière
"de s'acquitter; car ce seroit
"perdre de vue la condition
"presumée de l'inféodation.

"Le seigneur, de son côté,
"ne peut étendre ses droits sous
"prétexte d'interprétation et de
"presomption de la volonté
"des parties, lorsqu'elles ont
"contracté: ce seroit ajouter
"au titre primitif. Rou espotes
"ab ex hanc jure suppleti, quo
"spontanea omnia repudi-
"avit."*

The King was as much
bound by these rules, as any other
seignior — alientier or vassal. It was
never ^{held} ~~pretended~~, ^{claimed} as matter of feud-
al law, that he ^{was not} ~~was~~ in
practice he ^{broke through and} ~~set~~ them, ^{as if}
he as much did wrong, a wrong
that his ^{own} courts, ^{according to} ~~the~~ ^{of} law,
would have been bound to ~~set~~
~~set~~ set right — as any other
member of the feudal confeder-
acy so acting would have done.
There ^{may be} ~~is~~ no doubt that such wrongs
were done, ~~by the king and~~ and not
by the king only; ^{and that} ~~they~~ ^{were not} ~~at~~
ways righted, ^{where} ~~the~~ ^{the} ~~king's~~
redress was ~~sought~~ called for. ~~But~~
All that has nothing to do with what
should have been.

§ 144. — Supposing ^{the} French
King to have undertaken in (can-
did) ^{to} set aside his feudal con-
tracts after they were made, or
(which is the same thing) to engraft
upon them conditions that ~~were~~
formed no part of them as
made, — he exercised no feudal
normal power known to the feudal
system, but a prerogative utter-
ly alien and antagonistic to it.
We shall see presently what
he really did or pretended to do
in this way; and how far short
it falls, of what the anti-seig-
norial theory ^{Archives de la Ville de Montréal} ~~has~~
have done. — But in the mean-

Vol. 4, pp. 392-3

Vol. 4, pp. 392-3
[Foot-note.]
* Vol. 1, pp. 386-393.

Or indeed as matter of ~~feudal~~
constitutional law generally,

[Foot-note.]
to see discussion and authorities
as to this, in the factious of the
Chénier and Mackay.

* of his sole authority,

time, it is impossible to avoid the remark that ^{such} ~~the~~ violation by the crown, of its ~~of~~ contract by the crown, is not more contrary to ^{the} feudal ~~law~~ ^{system} than to constitutional law; and that law in general; and that, whatever theories may be broached as to the extent of the arbitrary prerogatives of the French King ~~from~~ ⁱⁿ the 16th and 17th Centuries, there can be no doubt as to ~~the~~ ^{happily} ~~limitation~~ ^{the} ~~of~~ the measure of the ^{non-arbitrary} prerogative of the British crown, since that time, and still.

§ 145. — If ^{they} the feudal system of Canada under the French crown was what the Attorney General's Propositions make it ~~was~~ to have been, it was the antipodes of that of France, as then extant, ~~in~~ — (at least) some not unimportant particulars. It made the King master of his contracts after they were made, instead of being bound by them; insisted on all ^{but} uniformity (except, of course as against him), in place of endless variety; hedged ~~everything~~ ^{everything} ~~with~~ ^{with} rules of public law, ~~and~~ ^{and} absolute nullities thence resulting, in place of leaving everything to the operation of the relative nullities of the private law; substituted control by the crown in the interest of the certaine, for protection of the interest of the Dominant; ~~made~~ ^{made} ~~converted~~ ^{converted} ~~into~~ ^{into} an onerous charge converted the feudal sub-grant, from a prized right, into an onerous obligation; made property a public trust instead of ~~letting~~ leaving public trusts for property. — Yet the King professed to bind himself ^{Archives de la Ville de Montréal} ~~by~~ ^{by} contracts ~~of~~ ^{of} ~~inferior~~ ^{inferior}

to solemn contracts of infen-
ation, - and these anything but
uniform; and all men called
~~the~~ things as in France, to the
extent even of heaking the
partly public trust involved
in the peculiar property called
justice, ~~as~~ just as though
it was the same property
in Canada as in France. ~~But~~
~~ing the ^{words}, did they not think~~
~~infer that they thought the~~
thoughts of their ~~eye and~~
Country and time?

* France. granted ^{readily} that things
in Canada, ^{are} ~~cannot~~ ^{to} be supposed
to have ~~been~~ placed on exactly
the footing of things ⁱⁿ France.
A new Country and ~~an~~ old have
their differences, of course. ~~Are they~~
Have they ~~an analogy~~ ^{nothing}
else? Using the words, do not
people think the

S 146. - But the argu-
ment here offered need rest
nothing on probabilities.
It is enough, that as yet we
have not found what ~~we~~
~~is said to have been~~ the feudal sys-
tem of Canada; nor anything
in the ~~known~~ feudal system
of France, that, ~~could have~~
by any process of natural
development, ^{could} have been
fashioned into it.

If it is to be found in any
thing that one ~~can call~~ Canadian legislation or quasi-
legislation, let it be. Duty, -
and ~~this~~ inference one surely
has a right to draw, - to be
admitted as so found, it must be some-
where stated, ^{and} on ^{some} ~~competent~~
~~text~~ authority ~~that~~ that one
~~can take~~ for competent. Doubtful
words, ^{and} doubtful authority,
one must have the right to
interpret weight by a stand-
ard not doubtful.

* in terms that one
can take for reasonably
explicit, -



§147. — the ^{advance} ~~parts~~ ^{then}, from the consideration of ^{French} ~~the~~ antecedent law, of ~~France~~, to that of Canadian legislation or quasi-legislation. And first, — for the French period of Canadian history.

Is the doctrine of the Attorney General's Propositions to be found in ^{what may be called} the Franco-Canadian law of Canada, including under that phrase the terms of the grants, and all local laws, and all regulations, jurisprudence and usage having force of law in Canada, through this French period of its history? Does it result from anything done here, or by the authorities in France, while Canada was French?

(for all practical purposes)

* documents, that the anti-seigniorial system ~~is~~ in those Propositions developed, is thereby made or meant to rest upon.

§148. — It is one of the hardships of which the ^{have} ~~seigniors~~ ^{are entitled} to complain, that they are left by the Attorney General's Propositions, ^{so} ~~entirely~~ ^{wholly} in the dark, as to what it is, in the shape of ^{alleged} authoritative document ^{of} ~~the~~ ^{the} ~~Propositions~~ ^{that} ~~they~~ ^{it} ~~is~~ ^{made} ~~or~~ ^{meant} ~~to~~ ^{rest} ~~upon~~.

The sixth Proposition lays it down, that in respect of the rendering of sub-infeudation, defined as "la concession des terres à des habitants pour les mettre en culture", obligatoire on all proprietors of fiefs, "le régime féodal, tel qu'introduit en Canada, a été considérablement modifié par des dispositions particulières qui se trouvent dans les arrêtés, édits et ordonnances royaux, les titres de conceptions, les ordonnances et jugements du Conseil supérieur et des intendans."

The seventh Proposition, ^{declares} that the intention of the King to ^{this effect} impose this obligation, "s'est manifesté d'une manière claire et explicite."

The eighth adds, that this intention "s'est manifestée"

"appelés à statuer sur les
"matières qui concernent la
"concession des terres tenues
"en fief ou en censive dans
"ce pays."

The ninth briefly avers
has it, that "les anciennes
"lois du pays" ~~bound~~ obliged
"Seigniors to concede their lands
"à titre de redevances, quand ils
"en étaient requis," and ~~then~~ in
that behalf restricted and
limited their right of pro-
perty therein.

"par des lois spéciales, et de
"diverses autres manières dont
"les tribunaux doivent prendre
"connaissance, lorsqu'ils sont"

The tenth, speaking of an
obligation to concede "soit en
"ancien fief, soit en censive,"
after referring its origin to the
feudal rules prohibitory
of the "démembrement du fief,"
proceeds, — "en Canada, la plu-
"part des titres des seigneurs con-
"tiennent expressément cette obli-
"gation; elle est d'ailleurs établie
"par plusieurs arrêts et jugemens,
"et paraît avoir été imposée à
"tous les seigneurs qui tenaient
"leurs propriétés à titre de
"fief."

The thirteenth, going a step
further, and speaking of ~~the same~~
"le taux et les conditions des
"concessions de terres dans les
"seigneuries en Canada," holds
them to have been "soumis à
"des dispositions spéciales qui
"se trouvent dans plusieurs
"édits et ordonnances royaux,
"tels qu'interprétés par l'usage,
"par les jugemens des intendans,
"et par un grand nombre des
"concessions en fief, ou par
"les brevets de confirmation
"de ces concessions."

The fourteenth speaks of
a "montant des redevances ac-
"coutumées, dont parlent les
"arrêts, édits et ordonnances,
"et entre autres l'arrêt du 6
"juillet 1711."

The fifteenth, after admit-
ting the variety of the rates ~~then~~
prevalent, lays it down that
by this ~~arrêt~~ "arrêt" of 1711 "le taux
"arrêt du 6 juillet 1711" "le taux
"en fut irrévocablement fixé
"à celui alors usité et établi
"dans le pays," — ~~which is~~
~~it is said to be proved as not~~
~~exceeding the 2 sols maximum,~~
"par les contrats de la ville de ~~la ville de~~ ~~la ville de~~ ~~la ville de~~
"produits en cette cause."

x before 1711,

[!]

and adds, that such
"taux" is proved not to
have exceeded ~~more~~
the 2 sols maximum,

(122) The sixteenth refers generally to "les anciennes lois du pays, concernant la concession des terres seigneuriales, et notamment cet Arrêt du 6 Juillet 1711, l'Arrêt du 15 Mars 1732, et la Déclaration Royale du 17 Juillet 1748."

* The seventeenth and following Propositions fall back on the cautious generality, "les lois en force en Canada avant la cession du pays."

And lastly, the thirty fourth and following Propositions refer to the "Arrêt"

And the ~~thirty fourth~~ ^{thirty fifth} and ~~thirty sixth~~ refer to the "Arrêt du Conseil d'Etat du 4 Juin 1700," as ^{reference to Banality} constitutive of a "droit de banalité" in Canada; the ~~thirty seventh~~ ^{and forty} refers to "usage", as seeming to have sanctioned such reservations, as that of "bois pour la construction du manoir, des moulins et des églises, sans indemnité," but apparently no others; and the forty second refers to an "Arrêt de l'intendant Hocquet en date du 22 Janvier 1710," as prohibitive of corvées.

Otherwise than by aid of these expressions, which they surely ~~are~~ ^{are entitled} to characterize as ineffectual, and therefore unfair, the Seigniors have no means of ascertaining from these Propositions, by what process of legislation or quasi-legislation the great change said to have been wrought ~~in~~ ^{into} feudal law in Canada, ^{is} held by their author, ^{of these Propositions} to have been so wrought.

§149. - It may be, that this is ^{not much} to be wondered at; considering ^{the fact,} that the nature and extent of the change itself, ^{is left} to be collected ~~is~~ ^{is stated,} instead of being ^{all} clearly and succinctly stated, as one would think ^{they should} have been, ^{are left} for matter of not ^{quite} obvious inference, from a comparison of the Propositions with each other, and with some ^{of the} ^{rather} ^{of the} anti-seignioral parts, besides.

And ~~the~~ even its result as ^{is} extant in the actual supposed present system of Canadian feudal law, -

[Foot-note.]

Vide Supra, §§1-15, and especially §7, and notes thereto; also §33, and Note (1) thereto.

§150. - Only, with all this difficulty that there seems to be, in the way of a clear statement as to where these laws are to be read, and as to what is to be read in them, it is noticeable that no difficulty is found in ~~stating~~ stating most clearly - by the eighteenth Proposition, that they are "lois d'ordre public", "lie", - by the nineteenth, that "les particuliers ne pouvaient déroger à ces lois dans les conventions faites entre eux", and by the twentieth, that "les conventions faites entre seigneurs et censitaires en convention de ces lois d'ordre public étaient absolument nulles", - by the twenty-first, that they remain unrevoked - and by the twenty-fifth and others, that rents stipulated since the ^{of Canada to Great Britain} cession, are to be ~~cut~~ cut down, and rights of all sorts, (reservations, prohibitions, corvées and so forth) disallowed, peremptorily - complaint or no complaint - accordingly.

[Foot-note.]

* Overlooking those stipulations before. - Vide supra, §7, note (f)

- not it, but something else -
 * introduce, ~~and~~ ^{thus} ~~introduce~~ this other system, ~~to~~ materially differing from it. ~~etc~~
 The words of the Proposition are -

§151. - For fitting complement to all this, the sixth Proposition, while it admits that ~~the feudal law of Canada differed materially from that of France~~ as to the obligation to concede therein asserted, the feudal ^{systems} of Canada differed materially from that of France, - gravely, ^{malgré ce que} ~~sets forth~~ ⁱⁿ ~~the~~ way of argument, that in order to introduce this latter system into Canada it was necessary to ~~alter it~~.

"Pour transporter de la France
 "au nouveau monde ce système
 "féodal [c. à d. le système féodal
 "de la France] il était nécessaire
 "nécessaire de rendre la sub-infeudation,
 "ou en d'autres mots la
 "conception des terres à des habitants
 "pour les mettre en culture,
 "obligatoire pour tous les proprié-
 "étaires de fiefs; et sous ce rap-
 "port le régime féodal, tel qu'il
 "introduit en Canada, a été con-
 "sidérablement modifié."

(124) As though it were not too plain for argument, that as the feudal system had grown up in France without ~~any~~ such obligation as part of it, so it almost must be held for possible, that it should grow up or be introduced elsewhere also, without such obligation being superadded to it.

Or, as though the whole of the anti-feudal argument did not in fact rest upon the assumption, that it was not the feudal system of France, ~~but~~ a something ^{quite} altogether different, that was sought to be introduced into Canada, after all.

§ 152. — Hardly less ^{of} naïveté ^{is there, in} the inquiry addressed to this Court, by the latter part of the Attorney General's eighth Question, — ~~with~~ ^{and in} the answer to it, forming the latter clause of his eighth Proposition: —

— "Would it have been possible to carry out that intention of the alleged intention of the King to impose this obligation, other-wise than by limiting the redevances, for which the lands held en fief should be conceded?"

— "Et il n'eût pas été possible de mettre cette intention à effet, autrement qu'en limitant les redevances auxquelles les terres tenues en fief devaient être concédées."

Perhaps so. — But, to have first helped out an argument for the existence of this intention by asserting its abstract necessity ^{in order to} the carrying out of an assumed ulterior end, — and then to have helped out an argument for the existence of a fixed rate of rent, by asserting its abstract necessity ^{in order to} the carrying out of this intention, — may be thought indicative of a bold to look like the boldness ^{of the case} of the cause, rather than of the shrewd.

Both questions are of fact. Both arguments are to conclusions are to be proved for fact, against the Seigniors; ~~the~~ the case against them being no-where, till both are ~~so~~ ~~fact~~ proved. If the fact be so, it must be readily provable, by citation of documents of some sort. The documents of the time are not lost.

And unless evidenced at the time by documents, the fact was not so. State intentions, constitutive of laws of state policy, d'ordre public, for the regulating of all the real estate of a country under sanction of absolute nullities against all contravention, - are not to be taken upon trust, or as matter of guess or hearsay.

To have existed, they must have been authoritatively put in writing and promulgated. Suppose it to have been even so necessary, in a logical point of view, that in order to intend to introduce the French feudal system into Canada, the King should have intended not to introduce it but something else ~~very~~ ~~different~~, - ~~and~~ ~~approved~~ if the fact of his intention to introduce that something else to be otherwise doubtful, - this doubt is not ~~in~~ ~~the~~ ~~fact~~, but merely reflected back and made to cover both intentions. ~~Suppose~~ ~~if~~ ~~they~~ ~~had~~ ~~been~~ ~~able~~ ~~to~~ ~~carry~~ ~~out~~ ~~the~~ ~~intention~~ ~~to~~ ~~introduce~~ ~~the~~ ~~French~~ ~~feudal~~ ~~system~~ ~~into~~ ~~Canada~~ ~~by~~ ~~the~~ ~~King~~ ~~in~~ ~~1763~~ ~~or~~ ~~thereabouts~~ ~~by~~ ~~the~~ ~~introduction~~ ~~of~~ ~~a~~ ~~rate~~ ~~of~~ ~~rent~~ ~~and~~ ~~indeed~~ ~~one~~ ~~may~~ ~~say~~ ~~a~~ ~~great~~ ~~deal~~ ~~more~~ ~~besides~~ ~~the~~ ~~supposition~~ ~~that~~ ~~the~~ ~~re-~~ ~~quest~~ ~~limitation~~ ~~of~~ ~~a~~ ~~rate~~ ~~of~~ ~~rent~~ ~~and~~ ~~of~~ ~~these~~ ~~other~~ ~~matters~~ ~~is~~ ~~not~~ ~~to~~ ~~be~~ ~~found~~ ~~the~~ ~~doubt~~ ~~is~~ ~~only~~ ~~changed~~ ~~into~~ ~~a~~ ~~certainly~~ ~~adverse~~ ~~to~~ ~~the~~ ~~theory~~ ~~of~~ ~~the~~ ~~intention~~ ~~what~~ ~~must~~ ~~have~~ ~~been~~ ~~done~~ ~~in~~ ~~order~~ ~~to~~ ~~give~~ ~~effect~~ ~~to~~ ~~it~~ ~~the~~ ~~King~~ ~~did~~ ~~not~~ ~~do~~ ~~it~~ ~~He~~ ~~did~~ ~~not~~ ~~give~~ ~~effect~~ ~~to~~ ~~it~~ ~~For~~ ~~any~~ ~~state~~ ~~or~~ ~~legislative~~ ~~purpose~~ ~~he~~ ~~did~~ ~~not~~ ~~entertain~~ ~~it~~ ~~The~~ ~~Seigniors~~ ~~need~~ ~~not~~ ~~trouble~~ ~~themselves~~ ~~with~~ ~~the~~ ~~logic~~ ~~of~~ ~~either~~ ~~argument~~ ~~They~~ ~~join~~ ~~issue~~ ~~as~~ ~~to~~ ~~the~~ ~~fact~~ ~~§ 103.~~ ~~The~~ ~~number~~ ~~of~~ ~~state~~ ~~documents~~ ~~referred~~ ~~to~~ ~~in~~ ~~argument~~ ~~before~~ ~~this~~ ~~court~~ ~~by~~ ~~the~~ ~~learned~~ ~~counsel~~ ~~representing~~ ~~the~~ ~~anti-seigniorial~~ ~~interest~~ ~~though~~ ~~considerable~~ ~~was~~ ~~not~~ ~~very~~ ~~great~~ ~~And~~ ~~it~~ ~~would~~ ~~be~~ ~~comparatively~~ ~~easy~~ ~~for~~ ~~the~~ ~~Seigniors~~ ~~by~~ ~~a~~ ~~mere~~ ~~criticism~~

HAHA

by the supposition,

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the intention of introducing this something else, unless by

Further, to have been ^{logically} impossible to carry out the intention to introduce the French feudal system into Canada by the King in 1763 or thereabouts by the introduction of a rate of rent, (and indeed, one may say, a great deal more besides) ^{the} and add the ^{further} supposition that, ^{in very fact} the request limitation of a rate of rent, and of these other matters, ^{besides} is not to be found, - the doubt is only changed into a certainty adverse to the theory of ^{the exigence of} the intention. What must have been done ^{in order} to give effect to it, the King did not do.

He did not give effect to it. ~~For any state or legislative purpose, he did not entertain it.~~

The Seigniors need not trouble themselves ^{with} the logic of either argument. They join issue as to the fact.

as bearing upon this issue,

§ 103. - The number of ^{state} documents ^{referred} ^{to} ⁱⁿ ^{argument} before this court, by the learned counsel ^{representing} the anti-seigniorial interest, though considerable, was not very great. And it would be comparatively ^{easy} for the Seigniors, by a mere criticism

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 of them, to show that they ^{not only} ~~fail~~ ^{require} making out the case against the Seigniors, but even, that ^{they} ~~they~~ ^{might} rest their ^{whole} ~~case~~ upon them. But the Seigniors have undertaken to do more than this; as well from their confidence in the strength of their cause, as from the certainty that any mere ^{criticism} ~~criticism~~ of documents cited against them would be unsatisfactory ^{in this respect}. ~~That these citations are always made, not as being all that can be made, but simply as citations to that whatever however they may be dealt with, it might still seem a possible ^{thing} for others to be brought forward, that ^{might} ~~should~~ ^{present} ~~greater~~ ^{and perhaps insuperable} difficulties be harder, if not impossible, to answer.~~

* These ^{accounts} ~~accounts~~, — that other ^{of} ~~of~~ citations may always be made in the printed factums to be submitted to this Court against them, — ~~and~~ that all such citations, whether put forward as the argument or merely ^{printed} ~~printed~~, illustratively, and

They ^{enter} ~~pass~~ ^{therefore}, accordingly, without fear, upon the discussion of the actual history of the feudal tenure, in Canada, through the French period of Canadian history.

§ 154. — This period, however, obviously requires subdivision.

It is proposed to divide it into four periods:—

Firstly. — That ending with the surrender of the Charter of the Company of New France, in 1663.

Secondly. — The following period, ending with the surrender of the Charter of the Company of the West Indies, in 1674.

Thirdly. — The following period, ending with the enregistrement in Canada, of the Arrêts of Charly, in 1712.

Fourthly. — The concluding period, ending with the cession of Canada to the British Crown, in 1763-1763.

§ 155. — For the earlier part of the First of these Periods the materials for a history of the tenure of land in Canada are not abundant.

§ 156. — It ^{perhaps} may be doubted whether or not it was at first the intention of the King of France to effect a bona-fide settlement of Canada by emigrants from France who should take title to land there from himself. The Commission from Francis the First to Jacques Cartier in 1540 (Oct. 17), as ^{Captain} ~~Master~~ ^{General} and ~~Master~~ ^{Pilot} of the expedition then on foot, without hinting at any appropriation of the soil, merely sets forth that he is sent —

— "avec bon nombre de navires et de toutes qualités arts et industries, pour plus avant entrer et dits pays, converser avec les peuples d'iceux, et avec eux habiter, si besoin est." *

But on the other hand, the Commission to the ^{Marquis} ~~Comte~~ de la Roche, presently to be noted, ^{refers to} ~~recites~~ as fact the issue of a previous Commission to the Sieur de Roberval, under date of 1540, Jan. 15; presumably, as Lieutenant General and Governor ⁱⁿ Chief, and in the same terms as that to de la Roche. If it was so, the large power of land granting vested in the latter, dates ~~back~~ back to the time of this earlier expedition.

§ 157. The Commission to de la Roche, of 1598 (Jan. 12), sets forth those powers thus:—

"Et afin d'augmenter et accroître le bon vouloir, amour et affection de ceux qui serviront à l'exécution et l'expédition de la dite entreprise, et même de ceux qui demeureront es dites terres:—

"Nous lui avons donné pouvoir, d'icelles terres qu'il nous pourroit avoir acquises au dit voyage, faire bail, pour en jouir par ceux à qui elles seront affectées, et leurs successeurs, en tous droits de propriété:—

"à savoir, avec gentils hommes et et ceux qu'il ^{Archives de la Ville de Montréal} en fiefs, seigneuries, châtellenies

[Foot-note.]

* Edits et Ordonnances, 4^e Edⁿ of 1803-6; Vol. 2, pp. 1-4; and Commissions des Gouverneurs et Intendants, 8^e Edⁿ of 1854; pp. 4-7.

comtes, vicomtes, baronnies et autres dignités relevant de nous, telles qu'il jugera convenir à leurs services, - à la charge qu'ils serviront à la milice et défense du dit pays, -

Et aux autres de moindre condition, à telles charges et redevances annuelles qu'il verra, dont nous consentons qu'ils en demeurent quittes pour les six premières années, ou tel autre temps que notre dit Lieutenant verra bon être et connoitra bon être nécessaire, - excepté toutefois du devoir et service pour la guerre."*

§ 158. - The Commissions given in 1612 by the Comte de Loignon, and in 1625 by the Duc de Ventadour, to Champlain as Commandant under them respectively, depute to him no power of disposal of land.*

§ 159. - To what extent, ^{the Marquis de la Roche, and his several successors,} the Comte de Loignon, the Prince de Condé, the Duc de Montmorenci and the Duc de Ventadour, (whose powers as to land-granting were presumably much the same as his,) actually made grants of land, - and more especially, grants importing dignity, - does not appear. Their grants, &c.

§ 160. But at least one grant made during the period covered by their ^{own} names, was either made as a Barony, or else erected into one, in favor of Guillaume de Caen. In the King's letters-patent, ^{erecting} a grant made to him of several islands in the West Indies, into a Barony, it is recited as a motive, that he had been déposé

"dépouillé de la Baronnie du Cap de Tourmente située en notre pays de la Nouvelle France, laquelle lui avoit été donnée et exigée par des titres illustres d'honneur, et en considération des grands périls, hasards et aventures qu'il a courus, tant pour prendre entrée et habitudes en notre dit pays de la N. F. que pour la conservation et défense d'icelui & &, et des grands frais et dépenses qu'il s'est obligé à faire de"

[Footnote]

* Edits et Or., Vol. 2, pp. 4-7; and Com. des pouv. et Int., pp. 7-10.

[Foot-note.]

* Edits et Or., Vol. 2, pp. 8-13; and Com. des pouv. et Int., pp. 11-14.

* as Lieutenant general,

& if they made many, ~~had not~~ could not generally have been taken ^{effectively} possession of by the grantees; and, with the ~~exception~~ ^{exceptions} of the two or three ^{presently} to be noticed, seems all to have lapsed.

[Foot-note.]

* Vide infra, §§ 161-3 inclusive.

* of the King, of the year 1640,

[Foot-note.]

* Nouveau de L. Méry, Vol. 1, pp. 48 et seq.

The disproportion of which de Caen had complained, was no doubt the consequence of the grant to the Company of New France in 1627; whereby the articles that had been granted to him and his associates were revoked. ^{See} Documents de 1623, pp. 10-11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100. 1652, Vol. 2, p. 4; also infra, §§ 166, 169 and 187.

testing the sufficiency and correctness of its extracts, or in

in 1022 or 1023,

[Foot-note.]

Numbered tab in Abstract of titles. For convenience, of reference, as these titles are to be found printed in the most confused manner in the original documents and other books I propose to refer for these titles, to my abstract compiled for this purpose and laid before this Court, instead of referring to the original document or other source from which they have been carried into the abstract. - In the abstract, I have indicated those sources with extreme care; so that there can be no difficulty in ascertaining the tenor of the context omitted as unimportant. And I have done my utmost to facilitate reference from every title to all others at all connected with it.

It contains all the titles which I had been able to bring together to the time when I had to send it to press, shortly before the meeting of this Court. Some have been ascertained since; and for these I must of course refer special to the P.S. or other authority, to which my citations may rest.

[Foot-note.]

n^o 1 of Abstract.

[Foot-note.]

n^o 2 of Abstract.

and of the year 1626; and was

instrument, by which Champlain, as Lieutenant of the Duke, granted acte to Hebert, of the deposit in his hands of an authentic copy of the document, and certified that he had accordingly put him in possession of the lands newly granted to him by it, in these words,

"à ces causes sur le commandement qui nous a été fait par les d. Labarre de mon d. Seigneur, je me suis transporté ce 8^e d'octobre 1626, à une petite lieue de Québec sur la rivière St. Charles, devant la maison des Pères Recollets, de l'autre côté de la rivière au nord, pour mettre le dit Hebert en possession de ces terres, lesquelles consistent en bois, pâturages et ruisseaux, et de l'autre côté d'un petit ruisseau qui appartient au dit Hebert, et de l'autre côté d'un ruisseau des bornes que j'y ai mises sur les lieux, qui séparent la d. terre de ce qu'il y a à donner à ceux qui se présenteront."

§ 161. - Another grant of the same period, ^{is known to have been} made by the Duc de Montmorenci, ^{to Louis} being the first grant of the Seigneurie now known as the Laultan Matelot, - presumably, much in the same terms in which the second ^{or confirmatory} grant of that property it was made in 1620 by the Duc de Ventadour.

§ 162. - This second grant covered, besides the Laultan-Matelot, the Seigneurie on the River St. Charles, ^{near Québec,} known as St. Joseph or Sepinay. It was made to one Louis Hebert, and after recital of his claims as head of the first family settled in the country, and as having enclosed, cleared and built upon certain lands of which he had obtained from the Duc de Montmorenci "le don et octroy à perpétuité," being the grant last referred to, - it proceeds first to confirm that grant thus: -

"pour les considérations sus-alleguées et pour encourager ceux qui desireront ey apres peupler et habiter le dit pais de Canada, avons donné, ratifié et confirmé, donnons, ratifions et confirmons au susdit Louis Hebert et ses successeurs et héritiers, et suivant le pouvoir à nous octroyé par Sa Majesté, toutes les susdites terres labourables desfrichées et comprises dans l'enclos du dit Hebert, ensemble la maison et batimens ainsy que le tout s'estend et compoite au dit lieu de Québec sur la grande rivière ou fleuve de St. Laurents, pour en jouir en fief noble par luy ses héritiers et ayant cause a l'avenir comme de son propre et loyal acquest et en disposer pleinement et paisiblement comme il verra bon estre, le tout relevant du fort et chateau de Québec aux charges et conditions qui luy seront ey apres par nous imposées," -

- and then to add the grant of St. Joseph or Sepinay, thus: -

"et pour les mêmes considérations, avons de plus fait don au dit Hebert et à ses successeurs, hoirs et héritiers, de l'estendue d'une lieue françoise de terre située proche le dit Québec sur la rivière Saint Charles, qui a esté bornée et limitée par les sieurs de Champlain et de Caën, pour les posséder, desfricher, cultiver et habiter ainsy qu'il jugera bon estre, aux mêmes conditions de la première donation."

One of the documents laid before this Court by Jougoussant (No. 42, second series) is aptly

§ 163. - The third, and only other known grant of this class, was also by the Duc de Ventadour, and was the first grant made of Notre Dame des Anges, to the Jesuit fathers. After a recital, setting forth the zeal of the grantees in sending out missionaries to settle, build and teach in Canada, the grant itself is thus made: -

"pour ces causes, et afin de leur donner plus de moyens de le faire, **, avons aux susdits Pères de la Compagnie de Jesus donné, et donnons par ces présentes, en don irrévocable et perpétuel, près de l'habitation du Fort de Québec en la dite N. F., la quantité de quatre lieues de terres tirant vers **; item, nous leur avons donné et donnons comme une pointe de terre avec tous les bois et prairies et toutes autres choses contenues dans la dite pointe scituée **: Notre volonté estant qu'ils jouissent paisiblement de tous les bois, lacs, etangs, rivières, ruisseaux, prairies, carrières, papiers et autres choses qui se rencontreront dans le contenu de ces dites terres, esquelles terres ils pourront bâtir si bon leur semble une habitation, demeure, noviciat ou seminaire pour eux et pour y eslever et instruire les enfants des sauvages."

The idea of the "fiduciary" or "seigniorial" was not thought of at that time.

[Foot-note.]

Doc. Seign., Vol. 2, pp. 3-8; also Ed. des, 4^e, Vol. 1, pp. 1 et seq. i and 8^e, Vol. 1, pp. 5 et seq.

S165. - An attempt was made in argument before this Court to find some trace of it in the instrument by which the King in 1627 granted the Country to the Company of New France. - That instrument is certainly important enough to require the most careful examination. But no amount of examination will detect in it this idea.

x of making such settlement of native French Catholics in the country, as should dispose the natives to the King's successive Lieutenants general and Vice-Roys being apparently the parties here meant.

S166. - Its preamble recites, truly or untruly, that those to whom the King had confided the duty of settling the natives to the Christian faith and to civilization, and of establishing the royal authority, had been so negligent that there was still only one settlement, with some 40 or 50 Frenchmen in habitants, in the interest of the merchants rather than of the King, and where agriculture was neglected that a month's delay in the arrival of the ships, to famine, that those also who had obtained the monopoly of the trade had undertaken to send out 18 men in the course of the 15 years of their monopoly, but had done nothing towards the discharge of that obligation during the 7 years for which it had then expired of their term then past, - for (though bound to give passage to New France for 36 livres to all comers) they made such difficulties, and so worried Frenchmen there, as practically to keep everything in their own hands; and that in

Guillaume de Caen and his associates (presumably) had only

[Foot-note.]

These recitals are strange, as seem to require citation, in the wording of the original: -

"Néanmoins ceux auxquels on avoit confié ce soin, de peupler les dits pays de naturels François catholiques, pour, par leur exemple, disposer ces nations à la religion chrétienne, à la vie civile, et même y établissant l'autorité royale, tirer des dites terres nouvellement découvertes, quelque avantageux commerce pour l'utilité des sujets du roi"

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qu'encore à présent il ne s'y est fait qu'une habitation, en laquelle, bien que pour l'ordinaire on y entretienne cinquante ou cinquante François, plutôt pour l'intérêt des marchands que pour le bien et l'avancement du service du roi au dit pays, si est-ce qu'ils ont été mal assistés jusqu'à ce jour, que le roi a reçu diverses plaintes en son conseil, et la culture du pays y a été si peu avancée, que si on avoit manqué à y porter une année les farines et autres choses nécessaires pour ce petit nombre d'hommes, ils seroient contraints d'y périr de faim, n'ayant pas de quoi se nourrir un mois après le temps auquel les vaisseaux ont accoutumé d'arriver tous les ans.

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"Ceux aussi qui avoient jusqu'à présent obtenu par eux seuls tout le commerce des dits pays, ont eu si peu de pouvoir ou de volonté de le peupler et cultiver, qu'en quinze années que devoit durer leur traité, ils ne se sont proposés d'y faire conduire au plus que dix-huit hommes; et encore jusqu'à présent qu'il y a sept ans que les articles en furent dressés, ils ne se sont mis en aucun devoir, ni commencé de satisfaire à ce dont ils s'étoient obligés. Car bien qu'ils soient tenus de passer pour cent livres chacun de ceux qui voudroient aller au dit pays de la Nouvelle France, ils se sont rendus si difficiles, et ont tellement effarouché les François qui voudroient aller habiter, que bien qu'il semble que l'on leur permette pour leur usage le commerce avec les sauvages, néanmoins c'est une telle restriction, que s'ils ont un boisseau de blé par leur travail plus qu'il ne leur faut pour vivre, il leur est défendu d'en secourir les François, et autres qui en pourroient avoir besoin, et sont contraints de l'abandonner à ceux qui ont la traite, leur étant de plus la liberté ôtée de le donner à qui leur pourroit apporter de France les commodités nécessaires pour la vie."

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consequence, the Cardinal ^{de} Richelieu, after examination of a variety of projects had determined on the revocation of the "articles" granted to de laun and his associates, and on the formation of a powerful Company of 100 associates on the terms therein set forth.

§ 167. - The 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th. They were to send out from 200 to 300 men of all trades in the year 1628, and to raise the number ^{to 4000 persons}, both sexes counted, within the 15 years to end in 1643. They were to provide these their colonists with shelter, food and all other necessaries, for three years ~~only~~; after which, they might discharge themselves of further obligation in that behalf, ^{if they} ~~if they~~ ^{provided} ~~provided~~ ^{enough cleared land} for their maintenance, with grain enough for one sowing and for their subsistence till harvest, - or by ~~providing any other way~~ ^{providing any other way} ~~for their subsistence by their own industry and labor~~.

They were not to send out any but French-born Catholics.

In every settlement, they were to maintain at least 3 Ecclesiastics, with ^{ing} ~~ing~~ ^{needed} ~~needed ^{for their ministry,} ~~for their ministry, ^{in 15 years,} ~~in 15 years,~~ ^{unless, indeed, they} ~~unless, indeed, they ^{prefer to assign them} ~~prefer to assign them~~ ^{enough cleared land for their} ~~enough cleared land for their~~ ^{ance.} ~~ance.~~ ^{And, they were to send} ~~And, they were to send~~ ^{3 Ecclesiastics, if they thought} ~~3 Ecclesiastics, if they thought~~ ^{maintaining them always for} ~~maintaining them always for~~ ^{ant.} ~~ant.~~ ^{After which, the King} ~~After which, the King~~ ^{the matter to the devotion of} ~~the matter to the devotion of~~ ^{every and of the settlers.} ~~every and of the settlers.~~~~~~~~

* read in connexion with the tenth,

* 1643; ^{as many as} 1500 of the whole number, being sent out ^{(according to Section 10) within} the first 10 years of each term.

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* enabling them to ~~subsist~~ in any other way to subsist upon their own

[Foot-Note.]

1. - les dits x x associés, promettont faire passer au dit pays de la Nouvelle France, deux à trois cents hommes de tous métiers dès l'année prochaine 1628, et pendant les années suivantes en augmenter le nombre jusqu'à quatre mille ⁴⁰⁰⁰ de l'un et de l'autre sexe, dans quinze ans prochainement venans, et qui finiront en décembre, que l'on comptera 1643, les y loger, nourrir et entretenir de toutes choses généralement quelconques, nécessaires à la vie pendant trois ans seulement; les quels expirés, les dits associés seront déchargés, si bon leur semble, de leur nourriture et entretenement, en leur assignant la quantité de terres défrichées suffisantes pour leur subvenir, avec le blé nécessaire pour les ensemençer la première fois, et pour vivre jusqu'à la récolte lors prochaine, ou autrement leur pourvoir en telle sorte qu'ils puissent de leur industrie et travail subsister au dit pays, et s'y entretenir par eux-mêmes.

2. - Sans toute fois qu'il soit loisible aux dits associés et autres, faire passer aucun étranger es dits lieux, ains peupler la colonie de naturels François catholiques; et sera enjoint à ceux qui commanderont en la Nouvelle France, de tenir la main à ce qu'exactement le présent article soit exécuté selon sa forme et teneur, ne souffrant qu'il y soit contrevenu pour quelque cause ou occasion que ce soit, à peine d'en répondre en leur propre et privé nom.

3. - En chacune habitation qui sera construite par les dits associés, afin de vaquer à la conversion des Sauvages et consolation des François qui seront en la dite Nouvelle France, y aura trois Ecclésiastiques au moins, lesquels les dits associés seront tenus loger, fournir de vivres, ornemens, et généralement les entretenir de toutes choses nécessaires, tant pour leur vie que fonction de leur ministère, pendant les dits quinze années, si mieux n'aiment les dits associés, pour se décharger de la dite dépense, distribuer aux dits Ecclésiastiques des terres défrichées, suffisantes pour leur entretien. Même sera envoyé en la dite Nouvelle France plus grand nombre d'Ecclésiastiques, si métier est, et que la compagnie le juge expédient, soit pour les dites habitations, soit pour les missions: le tout aux dépens des dits associés durant le temps des dites quinze années; et icelles expirées, remettra Sa Majesté le surplus à la dévotion et charité tant de ceux de la dite compagnie, que des François qui seront sur les lieux, lesquels seront exhortés de subvenir abondamment, tant aux dits Ecclésiastiques, qu'à tous autres qui passeront en la Nouvelle France pour travailler au salut des âmes.

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For Section 10, see S 172, Note

S 168. — The fourth, fifth and sixth sections state, ^{with the same} ~~as~~ ^{the} ~~terms~~ ^{terms} of the King's grant to them of the whole country, for ever, en toute propriété, justice et seigneurie, ~~as~~ ^{as} part of the consideration ^{upon} ~~for~~ these undertakings on their part: —

4. —

Et pour aucunement récompenser la dite compagnie, des grands frais et avances qu'il lui conviendra faire pour parvenir à la dite peuplade, entretien et conservation d'icelle, Sa Majesté donnera à perpétuité aux dits cent associés, leurs hoirs et ayans cause, en toute propriété, justice et seigneurie, le fort et habitation de Québec, avec tout le dit pays de la Nouvelle France, dite Canada, tant le long des côtes depuis la Floride, que les prédécesseurs rois de Sa Majesté ont fait habiter, en rangeant les côtes de la mer jusqu'au cercle Arctique pour latitude, et de longitude depuis l'Isle de Terre-Neuve, tirant à l'ouest, jusqu'au grand lac, dit la mer douce, et au-delà, que dedans les terres, ~~et le long des rivières qui y passent, et se déchargent dans le fleuve appelé Saint Laurent, autrement la grande rivière de Canada, et dans tous les autres fleuves qui les portent à la mer, terres, mines, minières, pour jouir toutefois des dites mines conformément à l'ordonnance ports et havres, fleuves, rivières, étangs, isles, islots, et généralement toute l'étendue du dit pays au long et au large et par de là, tant et si avant qu'ils pourront étendre et faire connoître le nom de Sa Majesté, se réservant Sa dite Majesté, que le ressort de la foi et hommage qui lui sera portée, et à ses successeurs rois, par les dits associés ou l'un d'eux, avec une couronne d'or du poids de~~

— et le long des rivières qui y passent, et se déchargent dans le fleuve appelé St. Laurent, autrement la grande rivière de Canada, — et dans tous les autres fleuves qui les portent à la mer, — terres,

* L. M.; Ne

8 marcs à chaque mutation de rois, et la provision des officiers de la justice souveraine, qui lui seront nommés et présentés par les dits associés lorsqu'il sera jugé à propos d'y en établir: permettant aux dits associés faire fondre canons, boulets, forger toutes sortes d'armes offensives, et défensives, faire poudre à canon, bâtir et fortifier places, et faire généralement es dits lieux toutes choses nécessaires, soit pour la sûreté du dit pays, soit pour la conservation du commerce.

5. —

Pourront les dits associés améliorer et aménager les dites terres, ainsi qu'ils verront être à faire, et icelles distribuer à ceux qui habiteront le dit pays et autres, en telle quantité et ainsi qu'ils jugeront à propos; leur donner et attribuer tels titres et honneurs, droits, pouvoirs et facultés qu'ils jugeront être bons, besoin ou nécessaires, selon les qualités, conditions et mérites des personnes, et généralement à telles charges, réserves et conditions qu'ils verront bon être. Et néanmoins, en cas d'érection de duchés, marquisats, comtés et baronnies, seront prises lettres de confirmation de Sa Majesté sur la présentation de mon dit seigneur grand-maitre, chef et surintendant général de la navigation et commerce de France.

6. —

Et afin que les dits associés puissent jouir pleinement et paisiblement de ce qui leur sera donné et accordé, Sa Majesté révoquera tous dons faits des dites terres, parts ou portions d'icelles.

S 169. — Besides which, the seventh section sets forth the following large grant of Commercial monopoly, — as further consideration for these same undertakings: —

7. — Davantage Sa Majesté accordera aux dits associés, pour toujours, le trafic de tous cuirs, peaux et pelleteries de la dite Nouvelle France; et pour quinze années seulement, ~~commencer au premier jour de janvier de l'année 1628, et finissant au dernier décembre que l'on comptera 1643, tout autre commerce, soit terrestre ou naval, qui se pourra faire, tirer, traiter et trafiquer, en quelque sorte et manière que ce soit, en l'étendue du dit pays, et autant qu'il se pourra étendre; la réserve de la pêche des morues et baleines seulement, que Sa Majesté veut être libre à tous ses sujets, révoquant à cet effet toutes autres concessions contraires à l'effet que dessus, même les articles ci-devant accordés à Guillaume de Caen et ses associés; et à ces fins interdira Sa dite Majesté, pour le dit temps, tout le dit commerce, tant au dit de Caen qu'à ses autres sujets, à peine de confiscation de vaisseaux et marchandises, laquelle confiscation appartiendra à la dite compagnie; et mon dit seigneur le grand-maitre ne baillera aucun congé, passe-port ou permission, à autres qu'aux dits associés pour les voyages et commerces sus-dits en tout ou partie des dits lieux.~~

§ 170. — By the eighth Section, this monopoly was so far limited as this, ^{in the interest of} such French residents of the Country as should not be receiving ~~the~~ support from the Company, — ~~but~~ and no further; that such residents might deal for peltry with the Indians, ~~on condition of having~~ but must give over all beaver skins so procured, to the Company at 40 sols tournois apiece, on pain of confiscation, — the Company, ~~to~~ however, ^{not} to be bound to give that price for any skin not "bonne, loyale et marchande".

§ 171. — The ninth Section provided, ~~further~~ for further compensation to the Company, in the shape of two vessels of war ~~which~~ the King was ^{to} ~~provide~~ ^{by the King} ~~them~~, ^{fully} equipped, but not victualled, which the Company was to maintain, and to replace, if lost, unless indeed such loss should have been caused in open war by the King's enemies.

§ 172. — The contingency of ~~the~~ ~~failure~~ on the part of the Company to fulfil its obligations, was carefully provided against by the tenth Section.

If ^{they should fail} within the first 10 years of their 15 years, ~~they should fail~~ to send out 1500 souls, both sexes counted, ~~they were simply~~ — or within the remaining 5 years, to send out the remainder of the 4000, — they were, in full of all damages, ^{to pay over} ~~to~~ ~~the King~~ the value of these two vessels; ~~saving~~ always, in the case of the loss of these vessels to the King's enemies, to plead as such payment was from their Company funds; them, by the apocrites, in his own shape. And he was further to lose special privileges.

Foot-note.

* 10. — Davantage a été stipulé qu'en cas que les dits associés manquent à faire passer dans les dix ¹⁰ années des ¹⁵ quinze, jusqu'à ¹⁵⁰⁰ quinze cents François de l'un et de l'autre sexe, pour tout dédommagement de la dite inexécution, ils restitueront à Sa Majesté la somme à laquelle la prise des dits vaisseaux se trouvera monter, comme aussi si dans les cinq ⁵ années restantes des ¹⁵ quinze, ils manquoient à faire passer le reste des hommes et femmes stipulé ci-dessus, sauf si (comme dit est) les dits vaisseaux étoient pris par les ennemis de Sa Majesté; et sera la restitution de la prise des dits vaisseaux prise sur le fonds de la dite société, si tant se peut monter; et s'il ne suffit, ce qui en restera sera levé au sol la livre sur chacun des dits associés, sans aucune solidité, en telle sorte qu'un chacun n'en payera qu'un centième; et seront privés de la jouissance du commerce à eux accordée par les présents articles."

§ 173. — By the eleventh and twelfth Sections, it was provided, that the Company was to man and officer these vessels as it saw fit; but that the Captains of them, and ~~also~~ also the officers who ^{should} ~~were~~ be in command in New France and in all its fortified posts, were to take the King's Commission, — which, however, he was to give, for terms of 3 years, ~~at~~ according to selection by the Cardinal, ~~as from~~ ~~en~~ ~~the~~ from lists to be submitted by the Company.

For ^{only} other vessels, the Company were to name their own Captains.

And the King was to give them four specified pieces of artillery.

§ 174. — From the thirteenth to the seventeenth Sections, ⁱⁿ ~~including~~ provision was made for ^{certain} incidental inducements to the settlement of the Country, and to the formation of the Company.

Whosoever, of the number of those ~~engaged~~ ~~to be~~ sent out by the Company, after exercise of their calling in New France for 3 years, ~~and~~ should they wish to return to France, were to be "reputés pour maîtres de chef-d'œuvre", and to be entitled to keep "boutique ~~ou~~ ouverte" in Paris or in any other town of France.

All ^{kinds of} merchandize from New France ~~were~~ to be free of ~~all~~ ~~taxes~~ of impost or toll, in France, for 15 years; as also all military and other stores destined for New France.

All persons, ecclesiastics, nobles, officers and others, were to be privileged to join the Company without derogation from their rank. A second hundred of partners might be admitted. As many as twelve of the first hundred partners, should there be so many not nobles, were to be ennobled, — the King placing that number of blank letters of nobility for distribution to those members of the Company whom it might select for that honor.

And lastly, all descendants of the French settlers of the Country, and all ^{connected} Indians, were to be taken for French-born subjects.

§ 175. — The remaining Sections provided that in case of war, civil or foreign, due delays should be granted to the Company; and that all needful further documents were to issue as of right in order to the giving of full effect to all these arrangements.

* at the disposal of the Cardinal,

§ 176. - Under ^{authority of} this instrument executed by the Cardinal of the one part, and ^{by six} ~~five~~ members of the proposed company of the other, the Company immediately proceeded to organize itself by the adoption of certain "Articles et conventions de Société et Compagnie"; in some clauses of which, again, the influence of the learned Counsel ^{was} retained against the Seigniors, has thought to depict a something favorable to the anti-seigniorial theory.

[Foot-note.]

* Ed. A. O. A., 4^o, Vol. 1, pp. 9 et seq.; and 8^o, Vol. 1, pp. 12 et seq.

* to be raised ~~in~~ ^{on} certain terms, ~~of~~

§ 177. - By these, they formed themselves into the required Company, ~~with a certain amount of capital~~ under the name of "La Compagnie de la Nouvelle France," with a certain amount of capital, to be raised ~~in a certain way~~ on certain terms, its affairs to be conducted by 12 Directors, to be chosen from time to time, and one third of whom at least were to be merchants. ~~with a special charge of administrative charge~~

These Directors were to have the naming, for royal sanction, of the members of the company who should have command of the two vessels of war, and also of the country of New France and the fortified places therein; were to name and commission all other officers and functionaries of the company; to make its grants of land, and to commission whom they ^{should} ~~would~~ to make such grants in the country, - the whole, on such conditions as they pleased, ^{and} to carry on all the Company's business, naming, appointing such factors and agents as they pleased, where and with whatever powers they pleased.

The only clauses ^{of any interest} ~~of any interest~~ are the following, ^{in reference} ~~to~~ ^{to} certain of the powers and duties of these Directors:

"5. - ~~xxx~~ nous leur donnons la faculté de nommer et présenter au roi ceux qu'ils jugeront capables, du nombre des dits associés, pour commander aux deux vaisseaux que le roi donnera, même en toute l'étendue de la dite Nouvelle France, en l'absence de mon dit seigneur le grand maître, chef et surintendant général de la navigation et commerce de France, places et forts qui se bâtiront en icelle.

"6. - Donner lettres et provisions aux officiers et gens de commandement qui doivent être établis par la compagnie, excepté ceux qui commanderont aux places et forts et en toute l'étendue du dit pays qui seront pourvus, comme il est dit ci-dessus.

"7. - Distribuer les terres de la dite Nouvelle France, à telles clauses et conditions qu'ils verront être les plus avantageuses pour la compagnie, ainsi qu'il est porté par les dits articles; même commettre tels sur les lieux qu'ils trouveront à propos pour la distribution des dites terres, et en régler les conditions."

"9. - Etablir tels facteurs et commis que bon leur semblera, tant en royaume qu'en la Nouvelle France et ailleurs, avec tels pouvoirs qu'ils jugeront nécessaires pour le bien de la dite compagnie."

* , under certain restrictions, ^{were} ~~to~~

at all bearing on the matters ^{here} ~~in~~ question,

—/

11. Ne seront les directeurs obligés, en leurs assemblées et délibérations particulières, d'appeler plus grand nombre des dits associés pour les assister, qu'en cas qu'il soit question de présenter au roi et nommer quelques officiers ou personnes de commandement, ou bien de leur delivrer provisions à cet effet, ou qu'ils voulussent distribuer et aliéner aux dits associés et autres quelques terres de la dite Nouvelle-France, excédant deux cents arpents; pour ce qu'aux dits cas ils seront tenus d'appeler en leur assemblée le plus grand nombre des associés que faire se pourra; et ne vaudra ce qui aura été par eux résolu, que la dite délibération ne soit au moins souscrite de cinq des dits associés, y compris les directeurs ou leurs procureurs, en la présence du sieur intendant des affaires du dit pays de la Nouvelle-France: et pour les autres affaires, les résolutions ne seront valables qu'elles ne soient au moins souscrites de quatre des directeurs et du secrétaire de la compagnie."

16. Auront le soin, les dits directeurs et administrateurs, de rechercher et choisir à leur possible les soldats, artisans, ouvriers et autres personnes, tant hommes que femmes, que l'on est tenu passer en la Nouvelle-France, avec telle diligence qu'ils soient prêts à s'embarquer au temps du passage: préféreront néanmoins ceux qui leur seront nommés par les dits associés; et pour éviter à la confusion qui pourroit survenir, seront tenus les dits associés donner quatre mois auparavant le temps de l'embarquement les noms, surnoms et demeure de ceux qu'ils voudront faire passer."

[Foot-note.]

* Ed. et Ord., 4^e, Vol. 1, pp. 15 et seq;
and 8^e, Vol. 1, pp. 18 et seq.

Handwritten initials

§178. — In the year following, on the 6th of May 1688, both these instruments having been laid before the King received his sanction; and royal letters patent issued in due form, ordering —

"qu'ils aient lieu et portent leur plein et entier effet, et que du contenu en iceux les sieurs ~~et~~ et leurs associés jouissent pleinement et paisiblement sans qu'il y soit contrevenu en quelque sorte et manière que ce soit, sous les peines portées en iceux."

§179. — It was contended, that in the King's undertaking (by the sixth ~~and~~ section of this grant expressed) to revoke all former grants of land in Canada, there was to be found ^{a sort of} indication of the trust-character of such grants.

§180. — If so, the argument would affect only those grants, ^{concerning} ~~the~~ ^{the character of this grant} of the whole Country to the Company of New France, to be ~~interpreted~~ made out, according to the known rules of legal interpretation, from the words used in its recitation.

* Cardinal or the

§181. — But in truth, the argument fails even of this. There is nothing to show that the King held these older grants to have been less than what they described them as having been, "dons faits des dites terres." On the contrary, from their ~~so called~~ calling them, it is clear that they had not idea

of their having been any-
 thing less. The fact of the King's
 having promised that he would
 revoke all grants ^{and} made in his
 name, ~~instead of~~ so far from
 proving that he had made
 none, proves that it ^{to have been} ~~was~~
 known and admitted that
 he had; that his grants
 were of a kind (unless can-
 celled) to ~~meditate~~ ~~against~~
~~the peaceable~~ interfere with
 the operation of the grants he
 was then making. Nor does
 it even prove that he, the
 King, had the legal right to
 revoke such grants, by the
 mere operation of his will and
 pleasure. Every one knew
 that the maxim "domine et
"reterui ne valet" was as good
 in law, against the crown as against
 the subject; that what the
 crown had given, it could
 not legally ~~take back~~ resume
 at will. If the recitals of
 this Act are to be believed,
~~and, subject to some allow-~~
~~ances, they must be~~ + these
 earlier grants, ~~had absolutely~~
~~absolutely~~ had absolutely failed
 to ~~take advantage~~ ^{avail} themselves of their
 grants. It is certain as any
 matter of history can be,
 that with very few exceptions
 indeed, they ~~had never taken~~
 possession, even as matter
 of form. No doubt they were,
 all or nearly all, in gross
 default as regarded the con-
 ditions of their grants. When
 the King engaged to revoke
 their grants, he must be
~~supposed~~ presumed to have
 had this fact in view. In-
 deed, he in effect recited
 it as in his view. His
 meaning ^{must} be under-
 stood ^{to be} that he would
~~revoke his grants~~ do what
 he ^{was} engaged to do in a legal
 way, and not in an illegal

* or pretended to have

* had no sort of possession, and generally ^{they} could not have ~~so~~ much as taken

(for all ends of legal interpretation)

way; either enforcing an escheat, ~~according to law~~, or else inducing the interested parties to abandon a claim liable to, ^{be} legally defeated. As ~~the~~ engaged with the new Company, that they should have no trouble from these claims; and - the lands being worthless, and the claimants well aware that the claims would ^{not} ~~never~~ stand much looking at - the presumption is, that the Company had none.

It is observable, ^{moreover,} ~~by~~ the way, in reference to the four grants above remarked upon, (SS 160-163) that the Company renewed that of Notre Dame des Anges to the Jesuits, as we shall presently see; that Hebert, ^{was left to} ~~held~~ hold his grants of Sault-au-Loup and St. Joseph, ^{unrevoked,} and without ~~any confirmation~~ or confirmation; and that the King compensated Guillaume de Caen, - not as for ^{an escheat} the revocation of the grant of his Barony of Cap de L'ourment, but simply as having been "dépouillé," - by the granting ^{him} another Barony elsewhere.

In these cases, perhaps the only cases where the parties might have made out a grievance, the matter was ^{the} ~~the~~ ^{arranged,} ~~arranged,~~ without any testing of the promised revocation. In others, ^{there} was no need of arrangement. The King had engaged with the new Company that they should have no trouble from claimants under his grants; and, - the lands being worth nothing, and the claimants ^{being} ~~well aware~~ that acquiescent, whether ~~because~~ from this cause, or from poverty, or from consciousness that their claims would not bear looking ^{into}, - ~~it is to be presumed~~ ^{one may} that the Company had no ^{Archives de la Ville de Montréal} source to complain of, or,

[Foot-note.]
* Page 78 of Abstract.

[Foot-note]
* Vide supra, S 164, and note *.

[Foot-note.]
* Vide supra, S 160.

it is likely enough that

if they had, that the Crown
in one way or other easily
put an end to it.

§ 182. - The other supposed
face of the trust-idea, ^{which was} suggested
by the learned counsel in the
anti-seigniorial interest, is
to be found in the fifth sec-
tion of the ~~Royal~~ grant, and
in the seventh ^{of the Company's} articles of asso-
ciation.

It was contended, that the
royal authorisation granted to the
Company by the former, for
the improvement, ~~management~~
regulation and distribution
of ~~the~~ lands of ~~the country~~ ^{the}
~~granted~~ New France, imported
a trust for such distribution;
and that the ~~assigning~~ of
assignment of that charge by
the Company to ~~the~~ ^{their} Directors,
imported a recognition on
their part, of such trust.

§ 183. ^{Trifling for the moment, to suppose}
~~the~~ ^{the} case
so to be, a just and very obvious
remark is that suggests itself,
as to the character and extent
of this supposed trust.

The authority given to the
Company is this:

"Pourront les dits associés
"améliorer et aménager les dites
"terres, ainsi qu'ils verront être
"à faire, et icelles distribuer
"à ceux qui habiteront le dit
"pays et arches, en telle quan-
"tité et ainsi qu'ils jugeront
"à propos; leur donner et attri-
"buer tels titres et honneurs,
"droits, pouvoirs et facultés,
"qu'ils jugeront être bons, be-
"soin ou nécessaires, selon
"les qualités, conditions et né-
"cessités des personnes, et géne-
"ralement à telles charges, ré-
"serves et conditions qu'ils
"verront bon être. Et néan-
"moins, en cas d'exception de duchés,
"marquisats, Comtes et baronnies,
"seront prises lettres de confirmation
"de S. M. le R. C.

14) And that which they delegated to their Directors, is this: -
 "Distribuer les terres & à telles clauses et conditions qu'ils verront être les plus avantageuses pour la Compagnie, ainsi qu'il est porté par les dits articles; même, et même, tel sur les lieux qu'ils trouveront à propos pour la distribution des dites terres, et en régler les conditions."

In a word, the company are authorized by the King, and the Directors (with the King's sanction) are authorized by the company, to do every thing as they may please, ^{and they} for advantage merely of the company; under restriction only, that if their pleasure should be to call their grant dukedoms, marquises, earldoms or baronies, the grantees must get the King's letters patent of confirmation in order to the real enjoyment of such territorial dignity.

If this must be called a trust, it is at least a very odd one; a trust to do as one will - for one's self - with what is called one's own; a trust, giving no one else a particle of right or claim in, to or on, the thing & said to be held in trust.

S 184. - Supposing, even, that the words which here ^{amount to} refer everything to the discretion of the company, to be exercised with a view solely to its own interest and ^{the} pleasure, had been left strong, the inference ^{ought} would still be far from following.

The Company was bound to take out so many settlers. ~~And every French Catholic~~ a right to be taken out, if he ~~would~~ wished it? - The ~~Articles~~ sixteenth of the Articles of Association of the Company, approved by the King, and above quoted (S 177) also answers it, by showing ^{in terms} that the Directors were ^{of course} to exercise ^{the} choice and that the partners ^(not being Directors) were to have as much of patronage as courts will be given them in the matter. No trace is to be found of their having any one else, ^{to} ~~maintain~~ a number of priests, ^{and} ecclesiastics. ^{Could any such} ecclesiastics, ^{prefer} a claim to such maintenance?

The Articles of Association charge the Directors to select ~~partners~~ members of the company ^{for} ~~command~~ ^{command}. ~~Could any such~~ member therefore claim such command?

They direct the commissioning of other officers, ^{and of clerks and factors} in the same style in which they direct (by Art. 7) the distribution of land. ~~Had any man, therefore,~~ a right to, ^{any} ~~any~~ such employment?

It was not the discretion of the Company, and of the Directors, ^{was left just} as free, ^{in any one of} these cases as in any other. ~~Indeed,~~ the eleventh of the Articles of Association, of itself, ^{is} a full proof that no one thought of the Company as under obligation to grant land to any one, or in any particular way attend to any one's claims requests for land, otherwise than as it should suit the views and interests of its Directors and other members to do so. ^{To what} end, otherwise, the ^{requirement of 20} signature of ^{all} ~~all~~ grants of more than 20 arpents, while 4 signatures, ^{of Directors,} with that of the Secretary of the company, were to be enough for any other act whatever?

S 185. - If, indeed, these last quoted words ^{had} ~~had~~ stood unexplained by any context,

* (with the King's express sanction)

* Until such number should have been taken out, had

* question answers itself. But the

* choose freely for the Company and

* to do with it.

* (Art. 5), for certain commands.

* (Art. 6), and of Clerks and factors (Art. 9),

* alone, is

* Directors and other partners, set in presence of an Intendant,

H.P.

H.P.

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there might ^{seem to} be some show of
reason for an argument to
this effect, — that although no
one but the Company took
an interest in the grant, so
as to be able to require a sub-
grant on any specified terms,
or even any sub grant at all,
yet the Company itself might
be viewed as the depositee
of a high public trust, and
as bound thereby to a public
duty, limitative ^{*} of ~~what the~~
~~its~~ proprietary rights, properly
so called.

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~~It then~~
* (though in a very inde-
finite degree, and at
the instance of the crown
only) of its

§184. — But, in the first place, they are of a date when and of a country, ~~uncon-~~ ~~flin~~ repellent of such interpretation. The seventeenth Century was not the time, and the France of that age was not the country, for ~~such~~ this kind of refinements in the ^{mere} interest of an abstract public right.

And they occur, ^{besides,} in instruments of that age and country which fully and clearly show ^{what} their meaning was; and that that meaning was precisely accordant with the temper, ^{and habits} of that ^{time} and country.

* (as has been shown,)

§187. — It was always held in principle, that the grant of a feif was an essentially bilateral contract; the ~~mere~~ ~~acceptance~~ grant itself, ~~whether~~ ~~however~~ imperfectly phrased or recorded, binding the grantor — expressly or by implication of custom — on every point involved therein, ^{and} also the acceptance, even though it ~~might~~ ~~be~~ were the mere ^{act of} taking possession of the realty granted, ^{as} ^{carefully and as} ~~and~~ ~~lay~~ ~~bind-~~ ~~ing~~ the grantee.

* and that, irrevocably;

But ~~there~~ ~~was~~ here extraordinary pains ^{were} taken to show that it was meant by both parties to, ^{put of record the fact} ~~therefore~~ that this grant was in the strictest possible sense, ^{a bargain} ~~a~~ ~~contract~~ between contracting parties, after full ~~con~~ discussion and appreciation on both sides, of all its terms.

* for its purposes,

§188. — The very preamble shows that the neglect of duty of ^{the} Vice-Roy, and the inadequacy of the ^{magnificence of} ~~the~~ ~~trading~~ ~~company~~ in the hands of ~~de~~ ~~la~~ ~~Roche~~ and his associates, were ~~strongly~~ felt by the King's government; that the proper mode of remedying the evils so felt, had been discussed; that ~~propos-~~ ~~itions~~ from different quarters

143 had been invited and considered; and that, thereupon, the Cardinal and the representatives of the Company had concluded upon the bargain about to be put in writing. It is out of the question to suppose that the real bargain ^{can have been} ~~was~~ ^{was} quite different from what was written.

S. ~~the~~ ^{159.2} - The consideration to be given by the Company is the matter ^{not} recorded; and purports to be recorded with exactness.

And it is a consideration the precise opposite in its nature, of what it should have been ~~recorded~~ for the carrying out of the anti-seigniorial theory. If the idea had been to make the Company a holder of wild land on public account, for quasi-gratuitous allotment to all comers, the fitting complement ^{counterpart} to such project would have been to make it also the cheap carrier ^{of all comers}, across the ocean, to such wild lands. This latter project does seem to have been tried, with deffen and his ~~co-adventurers~~ ^{co-adventurers} - who had been bound (as the preamble ^{of this indenture} throws) to take out emigrants at so much ~~per~~ a head. The former never had been tried; and could not be, in earnest, without the latter. Yet not only is there here no word of ~~the~~ any obligation to part with ~~with~~ wild land on any given terms, but there is also a marked abandonment of the deffen project of cheap passage for offering emigrants. Instead of it, the Company ~~was~~ to find, take out and settle ~~in~~ ^{just} in New France, ~~so~~ many persons, of certain quality, in so many years, at its own cost, maintaining them for so long after getting them out, and then establishing them on cleared land, or in any other adequate way providing them with ~~means of~~ ^{means of} ~~support~~ a means of living. ~~And~~ ^{And} this, that besides these charges, the burthen ~~then~~ of a heavy religious establishment for them and for the Indians, was to rest upon the Company; and one sect at once, that the ~~whole~~ ^{whole} plan ~~was~~ ^{went upon} ~~rested on~~ the other principle ^{simply requiring} of the Company to effect a given result, ^{as to settlement} in a given time, ^{of course, by such} and on ^{such} ~~whatever~~ terms of bargain with its settlers as it could. ~~It is impossible to imagine~~ ^{it is impossible to imagine} ~~unless it were distinctly stated, that~~ that a Company, bound ~~to~~ ^{to} buy so much emigration of a certain

(with no obligation to employ any more than two ships of some 300 tons each) is

* - their number, what we should ^{now} call trifling, though probably then thought large -

Hindell

kind within so long, and not limited as to the terms it was to make with the emigrants whom it was to buy, or with any one else, can have been otherwise than free to make just such terms as it would

* 190.

* of the phrase

S¹⁹⁰ - To this add the further fact, that the extent and nature of the territorial grant made, by way of recompense ~~in part~~ for this the Company's precise undertaking, is stated with no less exactness; that the King, besides declaring that he gave to the Company for ever, in

"all property, justice and lordship, l'entouree propriete, justice et seigneurie" - ~~the~~ ^{these} other words, "Cannul

abively ~~extensive~~ ^{he whole} extensive of ~~the~~ the former, and, ^{implying} that the grant was of ~~property~~ ^{the very largest} that a King

could ^{grant} (the whole country of New France, "lands, mines and

"minerals (such ^{always} mines, ~~to be held~~ and

"subject to the ordonnance) ports, harbours, rivers of all large and less (fleuves,

"rivieres) ponds, islands, islets, and generally the whole extent of the said country in length and breadth

"and further, so far as it shall be possible for them to extend and make known the name of His Majesty"

- under reserve ^{of nothing but} ~~only~~ of foi et hommage, a woman with ~~a~~ a light crown of gold at each accession to the throne, and the function of ^{simple commissaries} ~~the highest~~ officers of justice, on the Company's nomination, - specially added, that the Company might grant its lands do just as it would with all its lands, and might part with them

just as it would, only not with any dignity as high as or higher than the prized rank of baron, unless with his sanction. And one may be thought to ^{be reading} ~~be reading~~ ^{see below} ~~see below~~ length a ~~argument~~ ^{may be} ~~may be~~ have shown a pretty explicit contract for the grant a pretty ^{extensive} ~~large~~ proprietary grant.

S¹⁹¹. But even with this, one will not have shown the whole case. For this contract imported two grants to the Company, both for the one consideration so precisely defined stated. And it provided especially ^{for} ~~against~~ the case of a failure on the part of the Company as to ~~this consideration~~ ^{and} this, in two ways. It caused ~~by~~ ^{Archives de la Ville de Montreal} fault of the Company, further

* what was no doubt regarded as the ~~special~~ most onerous part of this consideration, - the getting out of the required number of emigrants in the required time; and

* that of ^{captives} ~~in~~ the first territory, with its large adjuncts, in the first place, and that of a ^{large} ~~large~~ commercial monopoly, with its adjuncts, in the second;

* by war, foreign or civil, that is to say, not by

(by Section 18) delay, was to be granted. If not, (by Section 10) the King's two ships were to be paid for, and the Commercial monopoly to be forfeited. Nothing more. — The grant of the land, with all its incidents, was to hold; unless indeed, in the case (as understood, necessarily, under every compact that is ever made) of ~~such~~ ^{such} ~~an~~ ^{an} failure of performance as should ~~be~~ ^{be} in law involve ^{an} utter forfeiture.

§ 192. — Expressions ^{fell} ~~sometimes~~ from the learned Counsel retained against the Seigniors, of a nature to imply that there was ^a something in ^{respect of} ~~that~~ liability to forfeiture for non-performance of compact, that distinguished the Canadian fief from the French, and tended to impart ^{the former} ~~it~~ a trust-character.

In this respect, there was no particle of difference between the two. For failure ~~to~~ of his contractual obligation, the French vassal always incurred forfeiture, just as certainly as the Canadian ^{vassal} could do. ~~Felonie and~~ Desaveu and félonie imported forfeiture, ~~and~~ ^{being} under this rule; simply as ^{such} failures, in respect of certain clauses of the feudal contract, ~~essential or~~ ^{essential or} natural to it, as might be. Every dominant and vassal, in regulating the terms of their compact, might make or unmake ~~these~~ causes of forfeiture, ~~at pleasure~~ under their compact, as they would. ~~But~~

It is no part of the Seigniors' pretension, that the King could not do this in Canada; or even, ~~that~~ ^{that} within certain limits he did not do it. All they say is, that ~~he never did it~~ ^{in this way} what he did, was not much, and had no practical tendency in the trustee-direction. — In this particular ^{Archives de la Ville de Montréal} ~~case~~, ^{conclusion} ~~no~~ ^{difficultly} conclusion can present ^{any} difficulty.

x Their doing this affected no one else. The vassal liable to a hundred ^{special} contractual forfeitures, was as little of a trustee for third parties, as the vassal not liable to one.

§193. - Wherein, then, did this grant differ from the ordinary grant of a fief by the crown of France, under the ~~provisions of the~~ metropolitan Custom of Paris?

There certainly were several points of difference. But none of them were such as ^{that} the Seigniors can have occasion ~~for~~ to wish them kept out of view.

§194. - As to this matter of liability to forfeiture, ^{one} ~~only~~ special cause that could ^{have} arisen under the contract, would have been, a failure on the part of the company ^{in the performance of its special} ~~as to~~ obligations, so much ~~less~~ more extensive than that provided against by the tenth section of the contract, as to have entitled the Crown to demand the annulling of the contract. ~~Under~~ Under a grant merely regulated by the custom of Paris, there would not have been this cause of forfeiture.

The nature of those obligations (as we have seen) makes this peculiarity, for all purposes of this argument, perfectly immaterial.

§195. - It was ~~not~~ a grant of a fief, and of large privileges, ~~besides, commercial and otherwise besides us.~~ But that, also, is a peculiarity of no importance to this argument.

§196. - Independently of these peculiar privileges, the grant was of a fief of extreme extent, - not only in the territorial point of view, but also in respect of its incidents of the kind which one may characterise as ^{naturally} ~~as~~ more or less associated with the notion of the landed fief.

Besides that large right of property (signified by the two words propriété and seigneurie) in the whole soil, land and water alike, - which was inherent in the immediate vassal of the crown having no feudal tenant under him, it ~~vested~~ ^{vested} in the company almost everything more that could be vested in it without absolutely

x the occurrence of

x besides, of the commercial kind, ~~and not such as were~~ ordinarily associated with the fief.

divesting the crown of everything right of every kind of right. everything. It cut off all ^{question} ~~doubt~~ as to navigable rivers (fleuves), the St. Lawrence included, by expressly giving them.

It as expressly gave up all mines and minerals, - subject only to the Ordonnance in that behalf.

It granted a proprietary justice, so large as to have involved abdication by the crown of the right of establishing Royal Courts ^{of} appeal - at least within the granted territory. The officers of the "Justice Souveraine" of New France were to be named by the Company, and only to take commissions of the King. His ~~Most~~ ^{High} highest Royal Court in France might there exercise its measure of appellate control; but there was to be none ~~near~~ nearer.

It went almost as far towards giving away his executive supremacy as his judicial. For he was not to have the direct choice of a single functionary connected with the ~~court~~ affairs of New France.

And it received ~~to~~ to the Crown, as sovereign, a ^{proprietary} ~~feudal~~ directe as small as was well possible; homage, with an honorary ~~that~~ periodical prestation, of nominal value, - to the exclusion of all pretence to quint, relief or other feudal due of any kind.

§ 197. - It went ^{even} further. In ^{thus} abandoning the quint, ^{and the relief}, it in effect, for practical purposes, involved the ~~grant~~ ^{to all the lands} of an unlimited jeu de fief on the part of the Company. ^{For, the crown} ~~having~~ ^{here being} no dues on mutations, however made, there could be no distinction of privileged and unprivileged, - ~~no~~ ^{no} ~~check~~ ^{check} or working check on any. The Crown could neither demand dues of any one acquiring land from the Company, under pretence of making him a Co. vassal with the ~~the~~ Company, for his part of the fief of New France; nor yet even ~~the~~ ^{the} ~~land~~ ^{land} ~~as~~ ^{as} ~~non-avenue~~ ^{non-avenue}, in the interest of the crown.

But, that there might be no possible question as to ~~this~~ the effect of all such alienations, it ~~expressly~~ ^{expressly} (by that fifth Section which has so strangely been read ^{as if it could have been} meant for limitative of the Company's powers) that the Company ~~should~~ was to have this unlimited jeu de fief, as against the crown. ^{The crown bound itself to recognise and admit all manner of titles to land that the Company should ~~acquire~~ ^{acquire} ~~to~~ ^{to} ~~issue~~ ^{issue}; ~~derogating~~ ^{derogating}, ~~therein~~ ^{therein}, ~~from~~ ^{from} the ~~the~~ ^{the} ~~feudal~~ ^{feudal} ~~rule~~ ^{rule} in all times.}

general operation of the

[Foot-note.]

Vide supra, §§ 102, 103 et seq.

* subject him to the Co., from having his title heated

[Foot-note.]

* Vide supra, §§ 182 et seq.

* known and settled, remaining to the contrary.

§198. — There was never any doubt as to the capacity of Dominions and vassals to derogate, as between themselves, from this rule, or from any of the usages as to the jeu de fief that grew out of it. So that, of course, the Company would have been free, even without this clause in their grant, to let their vassals do what they would as to this matter, so far as the Company's rights went. But this clause gave them the further freedom of so doing, as against the Crown also.

All feudal bar was removed from the introduction (if the Company should see fit) of ~~an~~ ^{that} ~~absolute~~ unrestricted jeu de fief which it was obviously desirable, in the public interest, to introduce. But at the same time, ^{the age was too} ~~the~~ ~~feudal~~ ~~notion~~ ~~was~~ ~~too~~ ~~prevalent~~ for the idea to be entertained of absolutely introducing it. The Company was as free to maintain it, or even to enhance its rigor as between themselves and their grantees, as they were to ~~not~~ do otherwise.

~~So little~~ was it ^{from being of} ~~of~~ the temper of the times, to tie the hands of a proprietor by public rule, ~~and~~ for mere public ~~advantage~~ interests.

§199. — A larger consequence of this fifth section — which was thus, in truth, far from ~~being~~ insignificant — was its release of the Company from all restriction as to the jeu de justice.

The power to ~~grant~~ deal with and grant their lands as they would, and to attribute to such lands "such titles and honors, rights, powers and faculties, as they may judge to be ~~fit~~ ~~and~~ ~~requisite~~ or necessary, according to the qualities, conditions and merits of the grantees individuals, and generally under such charges, reservations and conditions as they may think fitting," — imported the most unrestricted faculty of ^{dealing with their} ~~granting~~ justice in every possible way, ^{of all} ~~of~~ ~~the~~ ~~crowns~~ ~~control~~ ~~at~~ ~~or~~ ~~interference~~ by the crown ^{whether as} ~~whether~~ ~~as~~ ~~sovereign~~ ~~Dominant~~ or otherwise.

* [sep the barony, etc.]

[Foot-note.]

* Vide supra, SS 139 etc.

§ 200. — Of this grant, the Seigniors ^{now} hear it argued, ~~that~~ — that, not meaning a word of what it says, but just everything that it does not say, it is to be viewed as a first document of a series, introductory (in their entirety) of the pretended Canadian feudal law of the "fidei-commis seigneurial".

They have no occasion to argue that it fails of suiting well with the series of documents that followed it.

The Articles setting forth the terms of this cession, open thus:—

1.º - La Compagnie de la N.
se retient et conserve les noms
titres, autorité et droits qui lui
ont été donnés par le défunt roy
de glorieuse mémoire, et ce fai-
sant demeurera en pleine propriété
été, possession, justice et seigneurie
de tout le pays et toute l'étendue
déclarée par l'édit du mois
de mai 1628 portant l'établisse-
ment de la dite Compagnie, et
par suite elle disposera comme elle
a ci-devant fait, toutes les terres,
bois, prés, fleuves, îles, rivières,
mines et minières, et en fera ex-
écution des concessions avec telles
charges et conditions qu'elle
jugera à propos. *x

It hardly need be said that the context ^{records in terms} ~~recites~~ the fact, that all par-
ties held the trade sold to the settlers,
to be worth far more than the land
not sold to them. For, the fact of the
price paid for the one, under reser-
vation of the other by the vendor, is
proof enough of this.

The interesting fact is, that the set-
tlers, at the moment when (as a commu-
auté) they were buying the trade at a high
price left it of record that they claimed
no right in the land, — unless as indi-
viduals under title from the company;
and that the Company was to remain
as it always had been, proprietor of
such land in the largest sense, ~~pos-
sible~~ absolute master of its own terms
as to ^{all} alienating thereof.

S203. — To enable the settlers
to act as a communauté for the ob-
jects of this apace agreement, con-
tract, ~~it was necessary~~ the King's sanc-
tion was required; and it was
accordingly given on the 5th of
March of the same year.

The Arrêt for this purpose, after
reciting ~~the royal examination of this~~
contract, as ^{being} ~~the~~ —

par lequel, entr'autres choses,
la compagnie de la Nouvelle-France, relevant et conservant les nom,
titres, autorités, droit et pouvoirs qui lui ont été donnés par l'édit de
son établissement, pour demeurer en pleine propriété, possession,
justice et seigneurie de tous les pays et étendue des terres de la No-
velle-France, auroit accordé ~~adé~~ et remis, sous le bon plaisir de
S. M. ~~par lequel~~ etc. —

— declares the King's sanction
and approval of it, in the usual terms.

[Foot-note]

* See U.S. Documents of Quebec Historical Society; 2^d Series, Vol. 1, pp. 152-162.

The document cited in the text is to be found, as above, in one of the volumes of the literary and historical society of Quebec, procured at public cost, and ^{now} in the ~~possession~~ ^{keeping} of Mr. Fauriol, at Quebec.

Three series of these volumes are cited will be more or less quoted from, in these papers:—

The first, a set of volumes copied some years ago, at Albany, from Col. Brothard's copies, ^{and extracts} of documents by him taken in Paris.

The second, a set ^{since} copied in Paris, and received here a year more ago.

The third, another set copied in Paris, and received here during last year.

* [retained?]

La N. F.

[Foot-note]

2 Édits de 1628, 4^o, Vol. 1, pp. 18 and 19;
8^o, Vol. 1, pp. 28 and 29.

S 204. - In 1663, when the increasing embarrassments of the Company necessitated their surrender of their grant into the King's hands, the words of the Company's vote of the 24th of February recorded their ordered the making of -

C/

une démission entre les mains de Sa Majesté, de la propriété et seigneurie du dit pays appartenant à la dite Compagnie, pour en disposer par Sa Majesté comme il lui plaira, se rapportant à son équité et bonne justice, d'accorder un dédommagement etc. etc. x

The notarial instrument passed under this vote, on the same day, records the appearance of the parties -

sur ce qu'ils ont appris que Sa Majesté desiroit avoir la propriété et seigneurie de la Nouvelle France, appartenante à la dite compagnie, ont en conséquence de la délibération de la dite compagnie de ce jourd'hui, x x

supplié et supplient par ces présentes Sa Majesté d'agrèer la démission qu'ils font à son profit x x

de la propriété et seigneurie du dit pays de la Nouvelle France, pour en disposer par Sa Majesté ainsi que bon lui semblera, se remettant à son équité et justice de leur ordonner tels dédommagements etc. x

And the King's acceptance of this surrender, in March of the same year, after recital of it, reads thus:

Nous avons dit, déclaré et ordonné, nous, déclarons et ordonnons, voulons et nous plaît, que tous droits de propriété, justice, seigneurie, de pourvoir aux offices de gouvernement, et lieux tenans généraux des dits pays et places, même de nous nommer des officiers pour rendre la justice souveraine, et autres généralement quelconques, accordés par notre très honoré seigneur et père de glorieuse mémoire en conséquence du traité du 29 avril 1628, soient et demeurent réunis à notre couronne, etc. x

[Foot-note.] Documents Seigneux, Vol. 3, pp. 8 et seq. Edits et Ors., 4^o, Vol. 1, pp. 14 et seq.; 8^o, Vol. 1, pp. 30 et seq.

* refers to these transactions, in that its preamble, thus: -

S 205. - The Edit of the King, creating the Conseil Supérieur de Québec, in the month of April of the same year 1663, begins thus -

"La propriété du pays de la Nouvelle France, qui appartenoit à une compagnie de nos sujets, laquelle s'étoit formée pour y établir des colonies, en vertu des concessions qui lui en auroient été accordées par le feu roi notre très honoré seigneur et père de glorieuse mémoire, par le traité passé le vingt-neuf avril mil six cent vingt-huit, nous ayant été cédée par un contrat volontaire, que les intéressés en la dite compagnie en ont fait à notre profit le vingt-neuf février dernier," etc.

[Foot-note.] * Edits et Ors., 4^o, Vol. 1, pp. 21 et seq. et seq.; 8^o, Vol. 1, pp. 37 et seq.

and again, in its enacting clause: - "avons créé, érigé, ordonné et établi, et par ces présentes signées de notre main, créons, érigeons, ordonnons et établissons un conseil souverain, en notre dit pays de la Nouvelle France, à nous cédé comme dit est, par le contrat de cession de la compagnie à laquelle la propriété en appartenoit pour être le dit conseil souverain scéant en notre Ville de Québec," etc.

* under date of the 7th of May
^ of the same year,

[Foot-note.]

* Edict Ord., 4^e, Vol. 2, pp. 24 et seq.
Commissions des Gov. et Ind., pp. 22 et seq.

[Foot-note]

Inst. Doc. Que. Hist. Soc.,
2^e Series, Vol. 1, pp. 49-51.

S 200. - Again, in the King's instructions, to M. Gaudais, ~~who~~ who was sent out as a Commissioner to report upon the state of the colony, there occurs this incidental reference:

"Luce qu'il a été remouvé au roi, que jusqu'à présent la propriété du dit pays ayant appartenu à la Compagnie de ses Sujets, laquelle depuis peu a remis ses droits entre les mains de S. M., il n'y avoit point de justice réglée" etc.

S 201. - A manuscript document in the French archives shows, again, the language in which the members of the company, some eight years afterwards, referred to this transaction, when preferring their prayer to the King for the reimbursement to which "dédommement" in hope of which they had made their surrender: -

"S. M. considerera, s'il lui plaît, que par la dite remise elle est euee une droits dont la Compagnie jouissoit, qui sont, ~~le million de livres, les cens et rentes des concessions valant plus de 20,000 livres de rente, outre les droits casuels à cause des foies et hommages,~~

"Plus la propriété de tout le pays, d'où il se peut tirer des bois considérables pour la construction et mastage des vaisseaux, forts et autres bâtimens.

"Plus les forts et habitations, avec les canons, magasins et munitions."

S 202. - Strange, if what the King gave, as a property, - what ~~was~~ the settlers admitted ~~to~~ the Company's property, and did not buy, - what the Company gave back to the King as a property, - what the King called a property that he had acquired by such retrocession, - what its proprietors never hesitated to characterize as having been their property, when asking ~~for some sort of~~ ^{the King to} ~~reimbursement~~ ^{them} for it, - was all the while a property, but a ^{public} trust in which every French Catholic had a vested right! - To what extent?

& the Company

(with the King's approval)

* again and again

154 § 209. — The Saigniors (be it repeated) have no occasion to maintain that rights of property, when given in those times, were always scrupulously respected. On the contrary, as part of their case, they will have occasion to show, presently, to what extent and how the temper and habits of those times caused those rights to be often more or less set aside. — The fact of things having been done against law, even by those in authority, is wholly aside from the question of what the law was. Property was not the less property in law, because in fact power may at times have put in hazard some of its essential incidents.

§ 210. — In this case, however, and with reference to this grant to the Company of New France, there is no ^{question} ~~question~~ of its having had effect ~~very~~ given to it, very fully and exactly, at least, ~~from the~~ ^{from the} ~~time~~ when the ~~re-acquisition~~ ^{re-acquisition} of Canada and of ~~who~~ ^{the} ~~cession~~ ^{cession} by England (in 1632-3, under the Treaty of St. Germain-en-Laye) of Canada and ~~of the~~ ^{of the} ~~part~~ ^{part} portions of Acadie which the English had ~~been~~ ^{been} ~~run~~ ^{run}, enabled the French crown to place the ^{country} ~~country~~ in the effective possession of the Company, down to the time when, in 1645, the settlers (as we have seen) were allowed to acquire a great part of ~~their~~ ^{its} rights. And from this latter date, ~~the~~ ^{the} ~~rights~~ ^{rights} ~~not~~ ^{not} so acquired by the settlers, and especially as regards the Company's absolute proprietary right in the soil, it was still very fully carried out until 1663, when the crown re-acquired those rights by ~~the~~ ^{the} voluntary surrender of the Company.

§ 211. — ^{with regard to} ~~It is~~ ^{that} part of New France, ^{now} ~~now~~ forming the lower ^{Archives de la Ville de Montpelier} ~~part~~ of Gaspe, ~~then~~ ~~known~~ ~~as~~ ~~Acadie~~

time ^{regarded} far as Canada, ~~was~~ ^{is} ~~in~~ ⁱⁿ ~~question~~ ^{question}, — from the

then known as Acadie, and

The ~~story~~ story cannot be told in so few words.

S 212 Acadie formed part of the territory granted to the Company, and, though none of the Company's grants, lately published from the Provincial records, extend into it, a number of the Company's grants were ~~made~~ made from it.

The recitals of the Arrêt of the Conseil d'Etat of 1703, for the regulation of Acadian titles by Louis mention of such grants, viz:-

1. - In 1682 (May 19), to Claude de Razilly, Lieut. pour le Roy en la N.F., of "la riviere et baie de Ste. Anne, îles y contenues et terres adjacentes:-

2. - In 1684 (Jan. 15), to the same, of the "fort et habitation appelle le Port Royal, et de terres adjacentes dans l'etendue de 5 lieues au dessus et de 5 lieues au dessous, la long de la Côte, sur 10 lieues de profondeur:-

3. - On the same day to the same, of the "île de Table":-

4. - On the same day to the same, of the "fort et habitation de la Heve":-

5. - In 1685 (Jan. 15), to Charles de St. Etienne de la Tour, of the "fort et habitation de la Tour, avec les terres adjacentes dans l'etendue de 5 lieues au dessus et de 5 lieues au dessous, en rangeant la Côte, sur 10 lieues de profondeur:-

6. - On the same day to the same, of the "fort et habitation de St. Louis au port de la Tour, avec les mêmes etendues du fort et habitation de la Tour":-

7. - In 1686 (Jan. 25), to the same father, named as "Claude de St. Etienne, père", of the "habitation appellee 'le vieux Logis' à Pentagouet, de l'etendue de 10 lieues de large sur 10 lieues de profondeur:-

8. - In 1687 (Nov. 20), to Emmanuel le Borgne, who then claimed to hold Razilly's rights, - a grant which is Archives de la Ville de Montreal one "par laquelle

[Foot-note.]

* M.S. Doc. Que. Hist. Soc.,

3rd Series, Vol. 2, pp. 538-549.

The volumes of this third series were received ~~late~~ recently. Several of them, ~~within the walls~~ of this Court that had hardly been only received in Canada

* Razilly, who is described as

[Foot-note.]

* These grants are not noted in my Abstract; the Hist. volume containing this Arrêt of 1703, having only come to hand just before, or during, the sitting of this Court in September. At the time of the argument, I was not aware of the fact of its being there obtainable.

The conditions of these grants do not appear; but this is of the less consequence, as there is no reason to suppose them unlike the grants of the same kind issued in Canada.

* La Tour, who is ~~des~~ named as

* or part of the report

[Foot-note.]

The name of the grantee of this grant is not given in the Arrêt of 1703, but is to be found in a "Mémoire ~~sur~~ ~~les~~ contestations ~~qui~~ ~~ont~~ ~~eu~~ ~~lieu~~ ~~sur~~ ~~les~~ ~~contestations~~ qui ont à régler au sujet de l'Acadie", evidently by a lawyer or Committee charged to report upon the case with a view to the redaction of the Arrêt, and which may be the report of Messrs. Daguesseau, Amelot and Deschamps, mentioned in the Arrêt. - This Mémoire is to be found in the M.S. Doc. Que. Hist. Soc., 3rd Series, Vol. 2, pp. 582-588.

this last date, there is no doubt that the embarrasments of the Company ~~see the~~

[Foot-note.]

& Ind. C. Soc. Que. Hist. Soc.,
2^e Series, Vol. 1, pp. 182-190.

S~~214~~ In 1647 (Feb.), the Company having in the meantime, ~~as we have seen~~, abdicated no small part of its functions, even in Canada, in favor of the settlers there, — Charminay, who had ~~not only~~ destroyed La Louis's ~~settlement~~ establishments, ^{but also} and ~~effectually~~ also his character at Court, obtained ^{by which} letters-patent from the King.

He after reciting his distinguished services for the last 14 years, as a ^{local} governor and otherwise, and the suppression of La Louis's reasonable projects being ^{not} the least of dwell upon ad not the least of them, — he was confirmed ~~in the~~ or appointed ~~to the~~ ^{mercator} ~~language~~ — one cannot say which — as governor of the whole of Acadie, with most extensive powers, ~~to~~ which, however, he was apparently to find his own means of ^{enforcing} ~~enforcing~~ and ~~at~~ that at his own cost.

He administrative, legislative and even diplomatic, — all of

The clause ^{in this instrument} defining his powers as to land, is the following:

"Voulons et entendons que ce dit Sieur d'Aulnay Charminay jouisse et lui donnons pouvoir de se réserver et approprier ce qu'il jugera estre plus commode et propre à son établissement et usage, des terres du dit pais à lui, — et d'en donner et départir telle part qu'il advisera, tant à nosdits sujets qui s'y habitueront, qu'à nosdits originaires, — et de leur attribuer tels titres, honneurs, moeurs, pouvoirs et facultés, qu'il ^{Archives de la Ville de Montréal} verra estre convenables, mérites et services des personnes."

158) The whole ^{of this} grant, inclusive, ^{as of course,} among other things, ^{of the} ~~which~~ ^{as of a property} ~~most~~ monopoly of the trade in peltry - was made, ^{in fact,} in these terms: -

"avons au dit Sieur d'Aulnay
 "Charnisay, privativement à tous autres,
 "concédé, octroyé et attribué, et par
 "ces présentes concédons, octroyons
 "et attribuons, en confirmant la pos-
 "session en laquelle il est de ~~de~~
 "faite, la haite des pelleteries avec
 "les dits sauvages de la Cadze depuis
 "la rivière Saint Laurent jusques à
 "la mer et tant que le dit pays et
 "costes pourront s'estendre jusqi-
 "aux Virgines, ~~en~~
 "à pour en jouir, ensemble les
 "herbes, mines d'or, argent et cuivre,
 "et autres mines métaux et miné-
 "raux, et de toutes les choses ci-
 "dessus ~~nommées~~ déclarées, à lui,
 "ses hoirs, successeurs, ~~et~~ agents
 "droit, -
 "à cause de nous, en faisant
 "Charnisay, en personne ou par
 "procureur, attendu la distance
 "des lieux" etc.

x of what was altogether its
 the most valuable item, and

§ 215. - The death of Charnisay, however, not long after, made an opening for La Tour; of which he was not slow to take advantage. In 1651 (Feb. 27) he obtained accordingly, in him, the King's letters patent, setting forth his distinguished services, covering for the longer term of 40 years, and especially against Charnisay (from all of whose charges he ^{by the way} is declared to have been acquitted on the 10th of that month) and confirming or appointing him - the phrases are again ambiguous - ~~to be~~ as governor of all Acadie, with powers nearly answering to those conferred on Charnisay in 1647; though ^{rather} more briefly stated, ~~but~~ ^{and} not ^{in fact,} nor with ^{any} ~~the~~ ^{right} in his government.

These letters patent contained the following clause, in reference to his ~~old~~ ^{old} grants of land; ~~and~~ ^{it is to be presumed, by} ~~and~~ ^{advisable,} it is to be presumed, by reason of the very different disposition which the King had indirectly assumed to make of them by his grant of 1647 to Charnisay: -

[Foot-note]

2. Can. Soc. Publ. Hist. Soc.,
2^d Series, Vol. 1, pp. 208-210.

expressed hereditary right
 of property

"Voulons et entendons que le dit
"Sr. de St. Etienne ~~de la Tour~~ [de la Tour]
"se réserve, approprie et jouisse p^{re}sentement
"sagement et paisiblement de toutes les terres
"à luy ci-devant accordées, et d'icelles
"en donner et départir telle part qu'il
"vouldra, ~~à tous nos dits sujets qui~~
"~~luy habitent à tout temps~~
"sans à nos dits sujets qui s'y habitent
"croient, qu'aux d^{its} originaires, ainsi
"qu'il jugera bon être, suivant les
"qualités, mérites et services des per-
"sonnes."

§215. — La Tour's fortune, how-
ever, was in this too good to last.
In September of the same year, he
executed a transaction with the widow
Chamisaq, for the restitution of his
fort and property on the river St.
Jean; and shortly afterwards, he
married her, and assumed possession
of all the property of ~~the~~ the ~~widow~~
children of his old rival, as well
as of his own property. But in the
meantime, suspected at Court notwith-
standing his acquittal, he had new
hostilities to encounter.

Emmanuel le Borgne, one of the
principal merchants of La Rochelle,
who had advanced Chamisaq large
sums for his Acadian adventures,
and with whom ^{the widow} ~~Madame~~ Cham-
isaq had passed a hantachon* in
1050 (Nov. 9), settling the amount due
by the estate, and (apparently) making
over to him a 9 years' usufruct of
all Chamisaq's Acadian rights, —
found means to ~~get~~ get himself autho-
rised* to seize them, notwithstanding
La Tour's ~~own~~ letters-patent of 1087.

A new civil war resulted;
in which Derys, ^{also} ~~disagreeably~~ im-
plicated; and which was brought
to an unlooked for end, by ~~the~~ a
new conquest of ^{most of} Acadie, in 1054,
by the New Englanders.

After which, in 1050, Cromwell
made a grant of the ^{whole} country* to La Tour
and his English associates, Temple
and Crown; and ~~Acadie~~ it only ~~was~~
re-passed into the uncontested possession
of the French Crown ⁱⁿ 1067, under the
Treaty of Breda.

§216. — Pending these transactions,
there appeared as a rival claimant un-
der the letters-patent to Chamisaq,
of 1047, no less ~~than~~ a personage than
a Prince of the blood-royal, the Duc
de Vendôme, who, in 1052 (Feb. 18), ^{as}
~~signed~~ a deed of ~~partnership~~ partnership or a so-
cietation between himself and the heirs
Chamisaq, — he to maintain their rights
at Court and otherwise, and they in con-
sideration to make over ^{to him} to him
the ~~half~~ half of their assumed fief of
Acadie.

[Foot-note.]
* Recited in the Arrêt of 1703;
ubi supra.

[Foot-note.]
* Recited in the Arrêt of 1703;
ubi supra.

[Foot-note.]
* Recited in Arrêt of 1703; also
in Mémoire introductory to
same; ubi supra.

[Foot-note.]
* "Mais ses menées avec les Anglais
"Coyant rendu suspect à Mazarin,
"un nommé le Borgne, se fit
"autoriser à se saisir des héritages
"laissés par son débiteur en Acadie, et
"à luy en main armée s'il étoit nécessaire."
— Carneau, Vol. 1, p. 157.

[Foot-note.]
* Man. M. S. Soc. Soc. Hist. Soc.
Series, Vol. 1, pp. 157, 2;
Also recited in Arrêt of 1703, ubi supra.

[Foot-note.]
* Carneau, Vol. 1, pp. 157, 2; also
documents recited in Arrêt of 1703,
ubi supra.

so executed, with a party acting as attorney
for the widow Chamisaq;

[Foot-note.]
* Recited in Arrêt of 1703;
and in Mémoire;
ubi supra.

160) Indeed, under date of December of the same year (1652), the French archives furnish a document implying an acceptance by the King, of the Duke, as Co-Seignior of Acadie, in virtue of this instrument. It does not appear to have put forward in 1703, by the Duke's representatives, in support of their then claims; and it may, therefore, be a question whether or not the King regularly executed it. But its existence, in the archives, as a document ever so much as submitted ^{for perusal}, is ^{a sufficient} ~~an~~ ~~undeniable~~ ~~proof~~ ~~of~~ ~~what~~ ~~the~~ ~~times~~ ~~were~~, and ~~of~~ ~~in~~ ~~the~~ ~~matter~~ ~~even~~ ~~of~~ ~~private~~ ~~right~~, and ~~must~~ ~~indication~~ ~~of~~ ~~how~~ ~~far~~ ~~removed~~ ~~men's~~ ~~minds~~ ~~were~~ ~~in~~ ~~those~~ ~~days~~, from any ~~too~~ ~~high~~ ~~idea~~ ~~of~~ ~~public~~ ~~right~~, or of ~~the~~ ~~public~~ ~~trust~~ ~~involved~~ ~~in~~ ~~the~~ ~~highest~~ ~~offices~~ ~~of~~ ~~the~~ ~~state~~.

* in such an interest,

The preamble of this instrument (or ^{perhaps} draft of instrument) for recognizing the ~~King's~~ ~~successor~~ ~~to~~ ~~Richelieu's~~ ~~office~~ ~~of~~ ~~"grand-maître"~~ ~~he~~, ~~chef~~, ~~intendant~~, ~~général~~ ~~de~~ ~~la~~ ~~navigation~~ ~~et~~ ~~commerce~~ ~~de~~ ~~ce~~ ~~roy-~~ ~~aume~~, ~~and~~ ~~uncle~~ ~~of~~ ~~the~~ ~~King~~, ~~as~~ ~~Co-~~ ~~seignior~~ ~~with~~ ~~the~~ ~~heirs~~ ~~Charpeisay~~, ~~reads~~

[Foot-note.]

* M.H. Doc. Que. Hist. Soc. 2^d Series, Vol. 1, pp. 221-3.

Comme nous serons toujours bien-
 "aise de maintenir nos sujets dans la
 "jouissance de ce qui leur appartient,
 "auprès nous très agréable que pour
 "de conserver dans la propriété des
 "grâces et bienfaits que nous leur avons
 "départis, ils se servent des moyens
 "qu'ils trouveront propres et commodes
 "à cet effet, - or, estant arrivé depuis
 "quelque temps que certains particuliers se
 "(entre autres, les nommés Charles de
 "Lingis de St. Estienne de la Tou, Simon
 "et Nicolas Denis, frères, et Maillet) ont
 "usurpé sur notre chef et bien aimée
 "De. Jeanne Pothin, veuve de Charles
 "de la Tou vivant seigneur d'Aulnay, ~~son~~
 "(auquel et ses enfans, par nos lettres
 "patentes du mois de Février de
 "l'année 1647, nous donnâmes le
 "gouvernement perpétuel et la pro-
 "priété de toute l'estendue des pays
 "costes d'Acadie, et d'isles adjacentes,
 "de la Nouvelle N. E. en l'Amérique
 "(du Nord, Septentrionale) et divers
 "ports et places considérables du dit
 "pays, et qu'elle a grand sujet d'ap-
 "prendre, si elle n'est pas prompte-
 "ment et promptement secourue d'hommes
 "de vivres, d'argent et de vaibeaux, elle
 "sera entièrement dépossédée de ce qui
 "est en son pouvoir.
 "Elle a eu recours dans un si pres-
 "sant besoin, à notre très cher et très ami

Archives de la ville de Montréal

1615 Oncle le Duc de Vandosme, pair de France, grand maistre, chef surintendant
 " aut general de la navigation et Com-
 " merce de ce Royaume, sur la con-
 " fiance qu'elle a prise que la Consid-
 " eration de sa naissance auqy bien
 " que le rang qu'il tient luy seroit
 " une protection assurée, et que d'ail-
 " leurs par l'authorité que la charge
 " luy donne, il pourroit ^{mieux} ~~plus~~ que
 " personne la rétablir dans ce qui
 " luy a esté usurpé, la retirer
 " d'oppression, et la garantir avec
 " ses enfans d'une ruine totale
 " qui seroit inevitable s'ils perdoient
 " la propriété ~~du~~ pays, ~~parce~~ parce que
 " tout ~~le~~ ce qu'ils avoient de bien
 " a esté employé dans le bastiment
 " des d. forts, à faire des replades,
 " et à l'establissement des semin-
 " aires de personnes ecclésiastiques
 " pour vacquer à la conversion des
 " sauvages et au salut des âmes de
 " ceux qui se sont habités en ces
 " quartiers là, -

" Mais d'autant que noble d. on-
 " cle le Duc de Vandosme sera obli-
 " gé de faire de grandes et immenses
 " dépenses pour donner secours à la
 " dame d'Aulnay, et recouvrer son
 " les susnommes les lieux dont
 " ils se sont emparés, - et qu'il ne
 " seroit pas raisonnable qu'il les
 " fist sans quelque espoir de rem-
 " boursement, - elle a donné charge
 " de convenir en son nom avec
 " noble oncle le Duc de Vandosme,
 " que moyennant cela il demeurera
 " ensemble ses hoirs, successeurs et
 " ayant cause, conjointement avec
 " elle, ses enfans et ayant cause
 " Co seigneurs de ses terres et pays
 " de Acadie et isles adjacentes de
 " la N.F. en l'Amérique septentriona-
 " ale, gouvernement et pouvoirs y
 " attribués, et d'en signer et arrester
 " ainsi qu'il a été fait un traité
 " d'association, etc.

* des d.

* citable in this connection,

[Foot-note.]

Edits et Ors., 4^o, Vol. 2, pp. 17 seq.;
 ## Com. des Gouver. et Ind., pp. 17 seq.

the parts

Darling's Journal, the

§ 21. - The only remaining document which I have been able to find, is the Commission granted by the King to Nicolas Denys, in 1654 (Jan. 30), just before LeBoispe after having made war on Denys was pending his struggles with LeBoispe, and just before the submission (by La Tour and LeBoispe) of most of Acadie for which they were fighting, to the English.

162) This Commission recognizes
 Denys as formerly "installe et
 établi par la Compagnie de la
 Nouvelle France" as governor of the
 territory from Cap Rosiers to
 Causeaux*; eulogizes, in turn, his
 services for the last 19 years;
 condemns ^{shrewdly} the ~~interferences~~ ^{conduct} under
 he had had to complain of, at
 the hands of Charvisay, ~~logged~~
 "à main armée et sans aucun droit"
 [!] in having destroyed his settlements
 "à main armée et sans aucun
 droit"; and confirms - or names
 him governor of that part and of
 Newfoundland, Cape Breton and other
 islands "pour y rétablir notre dom-
 ination et la dite Compagnie de la
 N.F." etc.

Like the Commission to La Tour,
 this instrument purports to confirm
 the Company's grants to him, -
 and in these words: -

"Voulons et entendons que le
 dit Sieur Denys se réserve, ap-
 propre et jouisse pleinement
 et paisiblement de toutes les
 terres à lui ci-devant con-
 cédées par la dite Compagnie
 de la N.F., lui et les siens;
 et que d'icelles il puisse en
 donner et départir telle part
 qu'il averra, tant à nos dits
 sujets qui s'y habitueront,
 qu'à aucuns dits originaires, ainsi
 qu'il jugera bon ~~être~~ être,
 selonc les qualités, mérites et
 services des personnes."

§218. - In all this, ^{what is} ~~what is~~
 there to control, or modify even so
 slightly, the obvious interpretation
 of the grant to the Company of
 New France, in respect of ^{the} ~~the~~ pri-
 vate right & thereby conveyed?

~~their titles granted~~
 It was their titles granted to
 Denys, that the King confirmed
 in 1654, - ~~when was just~~ after
 Denys had been violently dispos-
 sessed, and (probably) under color
 of royal sanction. ~~It was not~~
 merely ~~the King's power~~ ^{and it} but
 that of the Company also, that
 he then proposed to change Denys
 to re-establish ~~and maintain~~

[Foot-note.]
 * To making it sufficiently ap-
 parent that any Commissions
 originally granted to Razilly,
 La Tour, or Charvisay, must also
 have been so also from the
 Company or at its instance.

& with the same ^{happy} ambiguity
 of phrase that marks the Com-
 missions of Charvisay, of 1647,
 and of La Tour, &

* the King's rights, but

It had been their ~~their~~ titles, that La Touche had got the King to confirm to him in 1657; after the King had ~~assumed~~ ^{in 1647} ~~assumed~~ to sanction his being dispossessed for alleged treason, by Charnisaz.

And le Borgne, in 1657, forfeited his titles, — derived, mainly, ^{from them} through Razilly and Charnisaz, and secondarily from the King himself through Charnisaz, — by an express grant from them; and this, although it is probable that he had obtained direct royal authority for taking to himself all that had been Charnisaz's.

§ 219. — The King's grant to Charnisaz, in 1647, ^{certainly} ~~no doubt~~ assumed to ignore their rights.

But how was it regarded in 1703, when the confusion ~~of~~ as to all Acadian Land titles had become such as to force from the Crown a general regulation ^{as to} them?

The representatives of the Duc de Vendôme then claimed ~~the~~ under it. But their claim was wholly ~~set aside~~ disallowed. In the Mémoire ^{###} already referred to, ^{Charnisaz} other criticisms, ^{occuring} there ~~at~~ ⁱⁿ this paper:

Ces lettres [de Fév. 1647, au Sr. Charnisaz] n'étaient point enregistrées, et si on avait voulu les faire enregistrer, on n'eût pas manqué d'y faire opposition de la part de la Compagnie de la N.F., à qui tout l'Acadie et le commerce des pelleteries exclusif avait été concédé ^{###} par ~~dit~~ édit du mois de Mai 1628, enregistré au parlement de Bordeaux, laquelle Compagnie subsistait, et au préjudice de laquelle ces lettres patentes ne pourraient pas avoir été obtenues."

— showing that ~~in the judgment~~ of the Crown lawyers of that day, were far enough from fancying that the Crown had any dispensing power over its

& showing the weak points of the claim,

[Foot-note]

N.S.S. Doc. Que. Hist. Soc., 3rd Series, Vol. 2, pp. 582-588. — Vide supra § 211, note

contracts, or that its contract with the Company of New France had ~~conveyed~~ passed to that ~~power~~ body anything short of the bona fide proprietorship of the soil, - as the deed said.

S²²⁰. - ~~As if to put this~~ ~~the same~~ Mémoire

S²²⁰. - Indeed, this Mémoire goes further; for it follows up the foregoing extract, thus: -

"Quand on prendrait droit
" sur ces lettres, elles ne donneraient
" au Sieur d'Aulnay [Charnisay]
" que le pouvoir de s'approprier
" ce qu'il ~~pouvait~~ jugerait être
" plus commode et propre à
" son établissement et usage.
" Le droit de la veuve et de ses
" enfants était donc réduit
" à ce qu'il s'en était appro-
" prié seulement, et ne compre-
" nait pas toute l'Acadie."

Distinguishing exactly this smaller grant to Charnisay, from the larger grant to the Company, the ^{reporter} ~~writer~~ makes it ^{plausibly} larger than the anti-seigniorial theory would allow that to the Company to have been. Charnisay was free to take to himself what he would; and what he should have taken, would have become his own. The Company, without having to appropriate anything, ~~owed~~ had all for its own. - By the anti-seigniorial theory, ~~it~~ holding all in trust, ~~and~~ could not so much as appropriate anything in derogation of its trust. No such theory.

\$²²¹ Another reference is made to the same document

S²²¹. - Chamisay's grant of 1647, such as it was, and these confirmations to la Touche and Denny, of 1651 and 1654, all provide for sub-granting, - equally with the grant to the Company. - But how?

In Chamisay there purported to be given a power of granting lands not specially granted to ~~him~~ made his own; in other words, a power of granting what was treated by that instrument as crown land. And with such

* (upon the supposition, always, of its having ^{had} any force at all,)

Daguepean, or by any less distinguished

* could have been hinted at to the Council d'Etat, or (for that matter) to any ^{body} in those times, - whether by a ^{the} crown law officer, or by any ~~was~~ body else.

* or other right,

were to be killed, or other-
wise privileged? Who,

(165) grants, ~~these~~ ^{still} according to that in-
strument, he was authorized to
confer any kind of title, ^{*} without
restriction. - Could any one under
that instrument demand a grant
of him, as a right? If so, on ~~what~~
what terms? Who, [#] but Chamisay,
was to judge of the "qualités, mé-
rites et services des personnes,"
according ^{to} which, always, his
grant purported to ~~constitute~~
make him free to ^{to} mete out
his ~~rewards~~ ^{grants} grants, by
way of reward, as he should see
fit?

To La Tou and Dery, ~~and~~
- as to the Company, - the permission
came, as having reference to what
was admitted to be their own
property with them, ~~also, then~~
And it came with those added
words "ainsi qu'il jugera bon
être, suivant les qualités, mé-
rites et services des personnes."

* Could it have borne

Freeing them ~~wholly~~ from
control or interference as to
their jeu de fief, it
was a privilege - sought
by them; not a burden

- what other sense ^{*} had it, ~~than~~
in their case, than what it bore
in the grant to the Company?
~~It was a privilege, that they were~~
~~sought to be put upon them.~~
There was no thought of putting
burdens on them, of any kind.

he have had a thought,
that after

He and his Co-seigniors
should have ap.

§ 222. - Again, this grant
to Chamisay, such as it was, ~~was~~
- smaller ^{though it was} than that to the Company
of New France, - was a grant
in which, ~~due de Vendôme~~
~~bought an interest for the price~~
of a promised exercise of ~~his~~
official and other influence,
a Duc de Vendôme could be
induced to buy a half share.
Did he buy that share, as
part of a property, or as part
of a trust? Could ~~he have~~
~~been made had an idea~~
proprietary ^{such and such} ~~of that~~ tracts
of Acadia land as "Commodés
"et propres ~~pour~~ à leur établis-
"ment et usage, ^{"he might} they, ~~could~~
~~would run~~ ^{a serious} ~~the~~ ^{smallest} risk
of being ~~thereafter~~ ^{Archives de la Ville de Montreal} told that

their appropriation did not ^{matter} signify that they held a like de fideli-commis seigniorial, for the établissements et usages of every one but themselves? ~~the Duke~~

In 1833, by way of anti-seigniorial eulogy upon the Kings of France, collectively, the Attorney General ~~to~~ ~~improvement~~ appeared the House of Assembly, that —

"In the whole history of the world, more benevolence cannot be found, than in the arrêts, edicts and ordinances of the Kings of France relative to the settlement of Canada."*

Were the Duc de Vendôme and the King, in this case equally benevolent?

Is the anti-seigniorial picture of these times, ^{an} Arcadian ~~sketch~~ picture — or a true one?

[Foot-note.]

* Speech of 22d March, 1833, reported in Quebec Morning Chronicle of 13th April, and (French version) in pamphlet "Débats" from ~~the~~ Canadien Office, p. 18.

§ 224. - As a next step, then, in our inquiry, - how, to whom, and upon what terms, (of quantity, tenure and so forth) did the Company dispose of the lands thus granted to itself?

Did it deal with them, as if they were its own; and as if it meant to make ^{them} the bona fide property of its grantees? Or, did it act as if it ~~was a trustee for others~~ held under any trust for its grantees; or as if it meant its grantees, or any of them, so to hold?

§ 225. - As ^{regards} its Acadian territory, - having no copies of any of the Company's Acadian grants, - we can offer no more precise answer to these questions, than may result from the considerations above suggested, aided by the obvious presumption of there having ~~been~~ probably been no great difference between them and those made within the limits of what is now Canada.

§ 226. - ~~There remain~~ enough of its Canadian grants remain - not merely ^{as} extant in recorded copies, but even as titles, ^{that are} still of force to determine the legal rights of ~~a great number~~ many by the Seigniors now appearing before this Court - to ~~enable us very fully~~ admit of the fullest and most precise answer to these questions, in regard to Canada.

§ 227. - A first class of these grants consists of those made ~~to~~ to ~~the~~ ^{three} religious bodies, which received grants directly from the Company; the Jesuit Fathers; the ~~the~~ Ladies of the Hotel Dieu of Quebec; ~~and~~ ^{and} the Ladies Ursulines of Quebec; ~~and the Recollets.~~

§ 228. - The seven properties acquired ^{by} the Jesuits were the following: -

1. - Land at Three Rivers (600 arpents), under ~~grant~~ ^{title} n^o 4 of Abstract.
2. - Notre Dame des Anges, originally granted by the Duc de Ventadour (~~title~~ ^{title} n^o 2, of ~~tract~~ ^{tract}, cited ^{supra}, § 163); Confirmed by ~~titles~~ ^{titles} nos 18 and 32 of Abstract.
3. - Their College ground at Quebec, ^{called} at first 12 arpents, under ~~title~~ ^{title} n^o 32 of Abstract, and ^{at} Montreal

169) Isle des Ruars, a small property, was given, by Title 13, "à toujours en toute propriété et seigneurie;" and this, for the special purpose of supplying the grantees with "nourriture de bestiaux pour l'entretien de leurs maisons et résidences."

Isle St. Christophe, another small property, seems to have been given (Title 38c) en franche aumône noble.

~~Isle~~ Ladoupac, (Title 42) en franche aumône seigneurie, "sans aucune charge, à perpétuité, en pleine propriété."

§200. - Turning to the conditions attached to ~~some~~ ^{certain} of them.

Titles 4 and 5 (for the land at Three Rivers) ~~and the Isle Christophe des Ruars~~ ^{and the Isle Christophe} bind the grantees imposes the following, and no others: -

1. - " sans qu'ils soient obligés à aucune chose, sinon que d'en donner l'adveu pour cette seule fois seulement, les dispensant pour toujours après cela, et tant que besoin est ou seroit, avons amorty et amortissons les dites terres cy-dessus concédées, dans lesquelles les dits * * feront passer telles personnes qu'ils choisiront pour les cultiver et dresser les habitations nécessaires, -
2. - " et néanmoins dans l'estendue des terres cy-dessus, non plus qu'ailleurs en la dite N. F., les y habituez ne pourront traiter des peaux, pelleteries, autrement qu'aux conditions de l'édit du roy, fait pour l'établissement de notre Compagnie, -
3. - " et faisant, par les dits * * passer des hommes pour la culture des dites terres, ils en remettront tous les ans les rolles au bureau de notre dite Compagnie, afin qu'elle en soit certifiée et que cela tourne à sa décharge, estant réputés du nombre de ceux qu'elle doit faire passer suivant l'édit cy-dessus."

Title 13 (for Isle des Ruars) says the same thing in other words, - except that it requires an aven every 20 years, and omits the reference to the amortissement of the grant.

Titles 8 and 9 (the first grants, by the company, of Notre Dame des Anges and the College land) differ from Title 13, only in form of exception, and from their having some clauses added (in the former) as to reservation of land, and as to religious services, and (in the latter) as to honors to the Company. Of these, the reservation of land clauses, are the only ones that I have any interest here: -

1. - " à la charge toutes fois, que hors la dite palissade il sera laissé de la place autant qu'il en faut pour un chemin royal propre pour venir d'en haut au fort de Québec, et en la ville que l'on y fera bastir, -
6. - " et si la ville de Québec s'estendait un jour jusques aux dites terres et que la Compagnie eut besoin de partye des dites terres pour y faire bastir un fort ou autres bastimens, la dite Compagnie pourra reprendre ce qu'elle aura besoin des dites terres, en rendant aux dits * * d'autres terres suivant qu'il est porté par la délibération de l'assemblée générale de ce jour, -
7. - " et dès à présent ils laisseront, pour la commodité publique, un chemin royal de vingt toises de largeur le long des bords de la dite rivière St. Charles et du dit fleuve St. Laurent, en l'estendue des terres à eux concédées."

- X - Title 32, of course, did away with all condition as to these two properties, and as to la Vacherie. And the Isle St. Christophe and land at Ladoupac were also granted, ~~without~~ without condition of any kind.

§201. - The Company, then, although bound ~~to~~ ^{to} ~~prevent~~ ^{to} ~~the~~ ^{the} King to ~~can~~ ^{can} ~~cause~~ ^{cause} the emigration

* " en toute sa consistence et estendue, sans en rien réserver ni réserver,"

* was given, either en franche aumône seigneurie, or en franche aumône noble,

~~the grant of the Isle des Ruars~~

170/ S 202. - The Company, then, though bound towards the King, to cause a certain amount of emigration to New France, did not bind these ~~grant~~ grantees to ~~produce~~ effect any part of it. For the Jesuits, these contracts created ~~not~~ an obligation to carry out any given number to the satisfaction of the Company - but a right to take out and settle in the Country whom they pleased, without reference to the satisfaction or dissatisfaction of the Company as to their choice. ~~The~~ All the obligation of the Jesuits was, to give in the rolls of ~~the~~ ^{their} shipmen, to the Company, in order that the Company might include them in its returns to the King, for its own discharge towards the King. - The Jesuits ~~were~~ ^{need not} ~~under~~ ~~no~~ obligation ~~to~~ send out a single settler, unless they chose.

* that they should make,

Much less did the Company receive a particle of control, under their contracts, as to the way in which the Jesuits should ~~that~~ ^{dispose of} their lands, - whether by as their own property, or in the way of alienation ~~to any one~~ by sub-grant or otherwise. ~~As to the~~ ^{large} grants ~~and~~ or small, all are alike in this. Indeed as the large grant, the ~~best~~ ^{most striking} incidental proof is given of the absolute nature of the ~~grant~~ ^{property} meant to be transferred, by the ^{terms of the} special reservations of roads, and of the provision for the conditional resumption of land for ports or other public buildings. Without these, it was ^{not} thought that the grantees would have been sufficiently held to the render of their land, even for these public uses. With these ^{reservations} made, - was the sweeping reservation of a right to force conception on such and such terms, meant, though not made? - Even where made, they were given up.

So far were these grantees from the disposition to hold under restriction, - and the Company from the disposition to restrict them.

§ 233. - Three properties are to be noted, as acquired by the Hotel Dieu of Quebec: -

1. - Lands at and near Quebec (12 arpents in town, 30 in the banlieue, and 200 near it), under Title 9a of Abstract.

2. - Grounds (w. part), under Title 10.

3. - St. Ignace, under Title 34b.

§ 234. - The first of these titles seems to have been lost; but it is sufficiently recited in the second of them. (No 10)

By this latter, the land in the town is declared to be given for the building of the Convent, - and founded (1 league by 10) by way of a further endowment of it. The ~~four tracts are all granted on the same terms conditions (if any) of the three smaller tracts are not stated.~~ Those of the fourth and large tract make it a grant ^(strictly speaking) ~~of~~ ^{par} service divin; under ~~terms of~~ ^{an} ~~avenue~~ every 20 years, - ~~obligation~~ ^{to} offer a yearly map, - to hand in rolls of any emigrants ^{that might} ~~be sent~~ out, - and ^{lastly} to enforce the Edict as to the trade in peltry.

§ 235. - The St. Ignace title (No. 34b) recites a donation ^{by Robert Giffard,} of a part of a grant formally made to him by the Company, - and on their prayer thus confirms and modifies their ownership: -

-"avons confirmé et confirmons, et en tant que besoin est ou seroit, donné, concédé et accordé, donnons, concédons et accordons, aux dites * * la dite 1/2 lieue de front sur la rivière St. Charles et 10 lieues de profondeur, à prendre * * et pardevant à la rivière St. Charles, la dite rivière comprise, isles et i-lets estant en icelle, vis à vis la dite 1/2 lieue de concession, pour jour par les dites * * de la dite étendue de terre en franche aumône et franc aleu sans justice à perpétuité, - sans aucune charge que d'en donner adveu et denombrement de 20 ans en 20 ans aux officiers de la dite Compagnie."

The words ^{en} ~~franche~~ ^{et} ~~aumône~~ ^{et} ~~franc~~ ^{et} ~~aleu~~ are certainly here out of place; as the two ~~terms~~ are incompatible, and indeed, the obligation to render an avenue every 20 years is (in strictness) incompatible with either. But we certainly have here a grant ~~of~~ ^{one that will} ~~in~~ ^{par} service divin, and free of all ~~every~~ ^{any} burthen save this of rendering avenue.

x to be held nobly

obligation - to render an

to the monks,

with each other, -

& grant, of noble tenure, whether it be more correct to characterize it as en aumône or as

—“à la charge toutes fois que les dits sauvages seront et demeureront toujours sous la conduite, direction et protection des pères de la Compagnie de Jésus,—

—“sans l'avis et consentement des quels ils ne pourront remettre, concéder, vendre ny aliéner les dites terres que nous leur accordons, ny permettre la chasse ny la pesche à aucuns particuliers que par la permission des dits pères aux quels nous accordons la direction des affaires des dits sauvages, sans néanmoins qu'ils soient tenus d'en rendre compte qu'à leurs supérieurs.

—“Voulons en outre que si quelques Européens se trouvaient établis dans les limites, qu'ils soient et demeurent dépendants des Capitaines Chrétiens et direction des dits pères, tout ainsy qu'ils étoient de ceux qui leur avoient accordé la portion de terre qu'ils possédoient,—

—“et que dorénavant ne sera donné terre dans cette estendue, que par l'ordre des Capitaines Chrétiens et avec et consentement des dits pères leurs protecteurs, le tout au profit de ces peuples.”

§ 241. — There can, of course, be no pretence here of any other limitation of property, as against these Indian grantees, than is involved in their being subjected to the directorate of the Jesuits.

The Company had created a ~~franc~~ franc seigneur noble; and the King signified his approval of the act.

In doing so, and by way of indicating clearly what were to be the powers of the Jesuits, he declared ~~that~~ the Indians incapable of ~~retroceding~~ ^{retroceding}, conceding, ~~selling~~ ^{giving} or otherwise alienating the lands of their grant, ~~unless~~ ^{and} ~~also~~ ^{every} of ~~granting~~ ^{granting} allowing people to hunt or fish thereon, — unless with the leave of the Jesuits. With that leave, they were to be ~~at~~ ^{equally} free to do any one of these things as to do any other. The words — “mettre, concéder, vendre ny aliéner” — naturally run together; no distinction made between them.

The notion was unknown, of a proprietor (under whatever noble name) not being just as capable of selling as of ~~conceding~~ ^{conceding} as much capacity to sell as to concede.

§ 242. — The ordinary grant of the Company admit of division into several claps.

Some purport to ~~give~~ ^{pass to} the grantee the same description of ~~the~~ ^{estate in} the land, as that by which the Company held it under their grant from the King.

Others, without using words of reprehensiveness a vindictive of the ~~the~~ ^{the} estate granted, to the estate held by the Company, yet purport to grant justice ~~in~~ ⁱⁿ its entirety.

One, at least, purports to grant justice, mozerne et vape only.

Others are en fief, sans justice.

Some ^{that} which are known to have been made, are not extant; so that their tenor cannot be stated.

One of those extant, hardly admits of being claped.

And, lastly, some are en cens we.

§ 243. - The ^{purported} grant purporting to pass the same ^{measure} of estate ^{as property} as the Company held, ^{is} the following properties: -

1. - Beauport, under Titles 3 and 35 of Abstract.
2. - La Cihier, under a Title not noted in Abstract.
3. - Lauzon, ~~under Title 5~~ (6 leagues by 6 leagues), under Title 5.
4. - Beauport (from Beauport to the Rivière du foufre, by a depth of 6 leagues), under Title 6.
5. - The Isle d'Orléans, under Title 7.
6. - The Isle de Montreal, under Titles 7a, 15, 16 and 46.
7. - St. Sulpice (2 leagues by 6), under Titles 15 and 16.
8. - Gandarville ^{not large in compass} (4 leagues by 4 leagues), under Titles 33 and 37.
9. - Mille Vaches (3 leagues by 4), under Title 36.
10. - Newville, Dombourg or Pointe aux Trembles, (from 2 to 3 leagues, by 4), under Title 38.
11. - St. Roch des Annais (3 leagues by 2), under Title 41.

in two parts, together -

- and which is the procès verbal of the prise de possession of the grant by the grantees agent, it is called the Ste. Marie,

by the words, "par le lac" and must be a matter of course.

* (1 league by 1 1/2 leagues, with augmentation ^{of} in depth of 2 1/2 leagues more),

(of ^{unascertained} extent, but presumably covering all the south District of Montreal, south of the St. Lawrence, and more),

[Foot note]

It may be a question whether this property ought to be claped here, or under the head of the grants of unascertained tenor.

I rank it here, because from Document 40 of ^{the first series of} ~~the~~ laws by Government before this Court, it appears to have issued at the yearly meeting of the Company 1635, one year after the grant of Beauport, and one year before the grants of Lauzon, Beauport &c., when the Company's grants were issuing in this form; as well as because from its extent, and the fact of its being a grant to Francois de Lauzon, son of Jean de Lauzon, there can be no doubt of its having ^{issued} in this form most favorable form then known used for grants to laymen.

The extent of the grant appears from the facts, - that Caprairie (Title 18), parts of Rougemont (Titles 44b and 50a), the Isle St. Paul near Montreal (Title a 49), and part of St. Francois du Lac (Title, wrongly numbered as 57a), were all originally sub-granted from it, as will also ~~be~~ be seen on Document 40 above referred to, it is described as "la Consistance des

Trois [a clerical error, evidently, for pays] isles, rivieres, mer et lac mentionnées par la dite concession."

A river falling into the St. Lawrence above the Canal St. Louis, called the Ste. Marie and an island called the Isle St. Jean, are given as its upper boundary and the Rivière St. Francois is made its lower boundary. What was meant

176/7
S244 - The common granting phrase of these titles reads thus: -

"en toute propriété, justice et seigneurie, à perpétuelle, tout ainsi et à pareils droits qu'il a plu à La Majesté donner le pays de la Nouvelle France à la dite Compagnie."

Where these are not the precise words, others equivalent to them ~~are~~ ~~used~~ ~~instead~~ take their place.

S245. - Of the intent of these words, as purporting to grant every description of stream, large and small, and indeed all land covered with water, as well as all mines, within the territory covered by each grant title, there can be no question. Independently of the effect of the words Justice and seigneurie and justice as super-added to the word propriété, - the Company took their grant, as expressly including "terres, mines, rivières, (from joint) "toutefois des dites mines conformément à l'ordonnance, ports et havres, fleuves, rivières, étangs, isles, idots, et généralement toute l'étendue du dit pays;" and they here gave all ^{that} they had taken.

X and that of the Augmentation of Jaudarville (title 37), like that of Beauport, bounding the grant by a river ~~and~~ which was all meant to fall within it - add "icelle Rivière du Cap Rouge comprise" -

River called the same de Beauport falls into the St. Lawrence; and the words are added "icelle rivière comprise" - words that could not have been so added, ~~without~~ if had not meant that the river formed part of the very property meant to be granted. - In Lanson, again, (title 5) the case is stronger, if possible; for there the description ~~of~~ of the ~~grant~~ object granted ~~reads~~ reads, "la Rivière Bruyante, ~~avec~~ ^{scilicet} dans les terres, ~~et~~ avec 6 lieues de profondeur, et 3 lieues à chaque côté de la dite rivière" - making the river the first object of the grant, ^{giving} the land on either side with it. - The grant of Jaudarville (title 33) contains the unnecessary words, "et de tout le compris en icelle, tant en bois, prés, rivières, ruisseaux, lacs, isles, et généralement de tout le contenu entre les dites bornes;" ^{des} ~~des~~ The prise de possession of La Sibie describes that grant as "la consistance des pays, isles, rivières, ~~ou~~ et lac mentionnés par la dite Ordonnance" (Montigny, S243, Note 2). - And the second grant ^{is} ~~is~~ ~~indeed~~ the reading with

the ~~subject~~ ^{whofat} matter of course, the conception of a navigable ~~lake~~ stream or lake as a property was then taken for.

[Foot-note] ^{et} ~~indeed~~ ^{seigneurie} ~~the~~ reading with which in those days water (even though navigable) was held for property in the hands of the owner under noble ~~title~~ title, cannot be questioned by anyone familiar with the documents of the period. The Ordonnance of 1669 (not registered in New France, by the way) in its assertion of the special property of the crown afterward insisted on, was notoriously and confessedly an innovation, and that was but partially carried into practical effect. - As to the titles granted in New France, it will be seen that they were continually ^{declaring} ~~granting~~ making waters that were navigable, to be ^{the} private property of grantees ~~seigniors~~ ^{or} ~~one or~~ other grantees seigniors.

S244. - In the matter of the conditions attached to these grants, there was a good deal of variety. But no one of these varieties approached the form required by the anti-seigniorial theory.

S245. - As to the dues payable to the Company as Dominant, four varieties are observable.

For Beauport, La Sibiè (presumably), Lauzon, Beauport, the Isle d'Orléans, and the first grant (Title 7a) of Montreal, they were, ~~with the rendering of homage, "une maille d'or du poids de deux onces"~~ at each mutation of possessor, ~~with the rendering of homage, "une maille d'or du poids d'une once"~~ For Beauport, "du poids d'une once" ~~est~~ "et le revenu ~~de~~ d'une année de ce que le dit x x se sera réservé après avoir donné en fief ou à cens et rentes tout ou partie des dits lieux."

& rendering of homage lige, "une maille d'or du poids de deux onces"

* - with the render of ordinary homage

For Montreal, as granted the second time, and for St. Salpice, (Titles 15, 10 and 40,) there was to be, ~~le~~ payment of "une pièce d'or du poids d'une once en laquelle sera gravée la figure de la Nouvelle France telle qu'elle est empreinte au sceau dont la Compagnie se sert en ses expéditions, outre tous droits et redevances qui peuvent escheoir pour les fiefs de cette qualité"; these last words, taken in connection with ~~the words that follow~~ "le tout suivant et conformément à la coutume de Paris" which follows the next clause, which ends with words recognitive of the custom of Paris as a rule meant to be followed every where in New France, - establishing the relief and the quint of that custom.

For Candarville, ^{as first granted (Title 37)} a very peculiar rule was laid down. With the lige render of homage lige, at each mutation of possessor of the fief, there was combined "le revenu d'une année, et de plus une maille d'or du poids d'une once à chaque mutation de Roy."

While, for Mille Vaches, Beauville and St. Roch des Annales, the rule was ^{made to be} the rendering of an ordinary homage, ~~with the rendering of homage~~ ^{Archives de la Ville de Montreal} and with payment

to the words that follow

of "pour rachapt, le revenu d'une année à chaque mutation de possesseur, suivant la Coutume du Vexin Francois enclavé de celle de Paris." And for Candarville, upon the grant of its augmentation (by Title 37), the rule was ~~not~~ modified into the render of homage lige, with payment of "le revenu d'une année à chaque mutation."

Suppose that the Seigniors have cause to shrink from the closest examination of these ^{particular} titles. On the contrary it would be odd, if they had; for the titles are of grants made to men ^{of} special influence with the Company, and were not likely to have taken grants on worse terms than other people. Interpreting indeed, ~~interpreting~~ ^{comparing} this clause in these titles with the ^{analogous} ~~corresponding~~ clause in the other titles of the same general class, ~~by the common rules of~~ ^{and applying to their interpretation} those rules of common sense which ^{everybody} ~~would~~ ^{would} apply unconsciously, — these titles will be found ~~the~~ (as one would have expected) the most favorable to the ~~grantees~~ grantees. — There were grants, liable to pay, besides ~~the~~ the nominal coin, ~~at long intervals~~ the quint and the relief of the custom of Paris, ~~— a~~ ^{the} grant that, besides such nominal coin, was to ~~pay~~ pay a year's revenue of the whole fief at every accession of a King, — and grants that were to pay a year's revenue of the whole fief at every mutation of possessor; — while these favored grants, with the nominal coin, were to pay — not the revenue of the whole fief — but that of such part only, ~~as they~~ might not have chosen to alienate by sub-granting en fief or en censive.

Under all of these grants, except these last the Company thus retained ^{all} ~~its~~ ^{its} fiscal ^{check} (as Dominant) over ^{its appeals, in the matter of} the jeu de fief. They could not alienate, in whole or part, except under liability to ^{pay} dues ~~for~~ wherever the jeu should, ^{within} the limits of the Custom, ^{and to future} relief, irrespective of it, though it ~~should~~ ^{should} not.

Under these favored grants, it was made clear that the Company waived these ^{its} fiscal ~~rights~~ ^{rights}.
 ~~Under the Custom of Paris, can be thought applicable to this period, it would go to even their prejudice at the outset, and so long as the land ^{of the Company} should be generally wild, — but would not avail to ~~remove~~ ^{do away with them as matter of Canadian law.} Archives de la Ville de Montréal~~

who certainly had

the former the fifth part of the price ^{every} on sale, the latter a year's revenue of the whole fief on every mutation not being by sale nor yet en ligne directe.

Q as the holder

* immediate payment of [Foot-note]

* Vide supra, § 102, etc.

It is assumed here, that the custom of Paris, in the absence of contract to the contrary, governed New France even at this time. By the second grant of Montreal (in 1640) the Company recognized it, apparently for the first time. ~~Some~~ Some of their later grants, ~~and~~ ^{and} also their treaties with the habitants in 1645, (supra, §) confirmed by the King, — repeat the recognition. But, as the metropolitan Customs, it may be probably be taken to have been the presumed rule from the first.

of seigneur de Paroisse's idea (supra, § 107) ~~into the~~ ^{into the} exception of Landes et terres incultes from the restrictions of the jeu de fief

* must recognise as withdrawn
from his immediate morwance,
and inféodés in spite of him,

187. In those days, independently
of the ^{mere} smaller amount of this con-
pachal relief, this privilege of
creating arrière fiefs and censives
that the Dominant ~~was~~ ~~had~~
~~choice of not recognising~~ was
deemed of the highest value; so
much so, that it was claimed
by the great feudatories of the
Crown, as one of their peculiar
privileges. Loysseau speaks of
this claim thus:—

"La quatrième prerogative des
grandes seigneuries, qui est d'une
notable importance, * * est que
ceux qui les ont, et non autres,
peuvent créer des fiefs et des cens-
ives * * au préjudice du roy; at-
tendu qu'il a été dit tout au com-
mencement du livre des fiefs,
qu'il n'y a que les vassaux du
roy qui penda dans proprieté, — ce
qu'il faut entendre, qu'il n'y a
~~pas~~ ^{le} qu'eux qui les puissent
donner de leur propre autorité
et sans permission du souve-
rain, et en telle sorte qu'ils
soient distraits de sa tenure
immédiate, et soient faits
arrière fiefs ou cens inféodés."

[Foot-note.]

* Des Seigneuries, Chap. 6,
§ 22; p. 31, Edn. of 1701.

This right, pushed to the ex-
treme limit of the reduction of the
grant to the fief en Cain, these
titles gave to these favored par-
ties. — ~~The~~ The anti-seigniorial
argument, ~~it~~ has to be ~~twisted~~ ^{heavily}
~~that it is a~~ twist it into a ^{blu-}
then; and to make ~~the~~ ^{burthen}
prep — not on these ^{parties} ~~only~~
~~but on every~~ ^{parties} ~~only~~
— but on every body else.

§ 259. — If proof that this
view is the correct one, could be
wanting, it would be found in
the scutals of a later grant
having reference to two of these
properties.

In 1674, when Canada had
passed into the hands of the Company
of the West Indies, Bishop Laval,
then proprietor of Beauport
and the Isle d'Océans, (as well
as of Sault au Rapetot) re-
housed the ^{Archives de la Ville de Montréal} Company to release
those two fiefs from the burthens

imposed by these grants; and his petition was granted. The deed granting it (Title 134a), recites this clause by the following paraphrase:—

— "mais d'autant qu'il est spécifié dans les contrats de concession qui ont été fait, ^{aux dits} qu'ils payeront à chaque mutation de possesseur une année de revenus des terres et domaines qui seront ~~retenus~~ par eux ou leurs successeurs ayant cause, après avoir concédé aux particuliers ce qu'ils ne voudront garder, ~~et garder~~ — la quelle clause le dit seigneur Evêque estime trop onéreuse," etc.

And upon this representation by the Bishop, the burthen was remitted, and all the conditions of these grants reduced to ^{four} ~~two~~ and this not simply by the Company, but by and with the advice ^{also} of the Commissioners, ^{who were} then acting for the Crown in reference to the Company's affairs, ~~which were then on the point of their not in the most flourishing state.~~ — The words of the deed are these:—

— "avons, pour et au nom de la dite Compagnie, et de l'avis de ** commissaires nommés par le Roy pour l'utile employ des effets de la dite Compagnie, ~~avons~~, et remettons par ces présentes au dit Seigneur Evêque tout ce qu'il pourroit devoir ** et avons déchargé et déchargeons les dits domaines, terres et seigneuries de Beaupré et Isle d'Orléans du devoir et obligation de payer à la dite Compagnie le revenu d'une année à chaque mutation de possesseur **; demeureront ~~le dit~~ à l'avenir obligé—

- 1.— "de rendre la foy et hommage à la dite Compagnie de 20 ans en 20 ans, au Château de Québec,—
- 2.— "avec une maille d'or du pois de demi once pour chacune des dites seigneuries,—
- 3.— "dont les appellations ressortiront au Conseil souverain de Québec,—

4.— "et sera en outre obligé le dit ~~seigneur~~ en reconnaissance de la dite remise de faire célébrer tous les ans une messe, ~~de~~

— "moyennant les quelles charges et les present règlement, les d. terres et acquisitions, tant le dit emplacement ^[vaux] ~~[vaux]~~ ^[sur] ~~[sur]~~ ^{un} ~~un~~ ^{lot} ~~lot~~ que les dites seigneuries de Beaupré et Isle d'Orléans demeureront quittes et déchargé pour toujours de tous autres droits quelconques."

So much for the ^{present} ~~present~~ ^{that} ~~that ^{clause} ~~clause~~ (reductive of the ordinary dues of the fiefs— though not enough so far to meet the wishes of the Bishop) ~~to have~~ meant the opposite of what it said.~~

of and which has been furnished by the Company

below stated;

remis

savoir

seulement le dit seigneur Evêque, Séminaire ou autres qui les posséderont.

Seigneur Evêque, ou ses ayant cause,

(and further, for indulgence as to all three signs)

* *apud*, whether by sub-grant or other-
wise
* Not only do they not ^{require it in any shape, yet} ~~command~~ sub-grant,
or otherwise. They simply restrain it,
and by two rules not in the least alike.

[Foot-note.]
* The only other grant, ^{of the Company,} directly referring
to the matter, also restrains aliena-
tion, ^{and} again, by a kind rule.
see *infra*, § 260.

* proprietary

§ 250. — To proceed, then, to
another.

Two of these grants, and two
only, do contain ^{an express reference to} ~~an~~ express clause
~~as to sub-granting~~ alienation. But
in what sense? ^{Restrictively, of alienation}
That of Beauport (Title 3) reads—

6.—“ sans que le dit * * puissent disposer de tout ou de partie des lieux cy dessus a luy concédés
“ qu'avec le gré et consentement de la dite Compagnie, pendant le terme et espace de 10 ans à
“ compter du jour des présentes, après lequel temps il luy sera loisible d'en disposer au profit de
“ personne qui soit de la qualité requise par l'edit de l'establissement de la dite Compagnie.”

and ^{the} ~~second~~ grant of Montreal
and St. Sulpice
(Title 15) reads—

8.—“ ne pourront aussi les dits * * faire cession ou transport de tout ou de parties des choses cy
“ dessus concédées au profit de ceux qui seront desjà habitez sur les lieux, soit à Québec, aux
“ Trois Rivières ou ailleurs en la N. F., mais seulement à ceux qui voudront passer exprès, afin
“ que la colonie en soit d'autant plus augmentée.”

[Foot-note.]

* This title was specially ratified by
the King of France (1674), and the Seminary of
Montreal held their seigniories of
Montreal and St. Sulpice under it,
to this day; bound, therefore, at all
times (according to this clause) not
to part with an acre — by sub-grant
or otherwise — to any one not di-
rectly emigrant from France.

Whereas ^{seems to} the anti-sligniorial
theory, ^{to do so} these clauses are
held to limit the estate of the
grantee, ipso facto, to all intents
whatever. Any hint at sub-grant-
ing by the grantee, however ~~slight~~
slight, is magnified into an obli-
gation giving every one but himself
a vested interest in the grant. ~~It~~
~~is not~~ ^{is not} known ^{that any one}
~~was ever so~~ ^{is not} absurd as to doubt the ~~capa-~~
city of these seigniors to contravene
this clause.

Here (no exigency pressing) the
rule of common sense that these
clauses are all mere facultative
stipulations of the grantor, is ad-
mitted readily by every one. No
other rule of interpretation could
be suggested, but by a pressing
necessity.

* This same

The grantee of the former (in 1674)
(in 1634, when the Company was just
beginning to make their grants) was
bound by contract not to alienate
in any way — whether by sub-grant
or otherwise — to any one, ^{whatsoever} any part
of his grant, for ten years to come,
unless with leave of the Company;
but after that time he may do so,
as he may choose, to any one being
a French-born Catholic.

The grantees of the latter (in
1640, when six years afterwards)
were bound by contract not to alienate
in any way — whether by sub-grant
or otherwise — to any one resident in
New France, any part of their grant,
for all time to come; but might
do so as they should please, at
all times, to any one whom they
might see fit to send out from
France on purpose.

One does not wonder at the
fact that ^{neither of these} ~~neither of these~~
clauses ^{seems} to have ~~been found~~
its way into any other contract
of conveyance.

But one well may wonder
that it should have become neces-
sary to contest the marvellous pre-
tension — that ~~those who hold and~~
~~these grants, and those too would con-~~
vert the ~~lands~~ ^{lands} under all these con-
tracts, alike, into hold-ers of just a
trust-estate, for alienation on
certain terms and on no other.

§ 250. — Closely connected with the
subject matter of these clauses last
noted, is a peculiarity ^{that} ~~marking~~
one grant, only, of this class, ^{the} ~~the~~
15, of Montreal and St. Sulpice. It reads thus:—

11.—“ pour commencer à faire valoir les terres cy dessus concédées, seront tenus les * * de faire
“ passer nombre d'hommes en la N. F., par le prochain embarquement que fera la dite Compagnie,
“ avec les provisions necessaires pour leur nourriture, et de continuer d'année en année, afin que
“ les dites terres ne demeurent incultes, mais que la colonie en puisse être augmentée, —
12.—“ et afin que la Compagnie soit certifiée de la diligence qu'ils y feront, et que cela luy serve
“ à la décharge de ceux qu'elle doit faire passer pour la Colonie, les dits * * ou autres qui y con-
“ duiront les hommes aux embarquemens, en tel nombre toutefois que la Compagnie sera disposée
“ de les recevoir, seront tenus d'en remettre les rôles entre les mains du secretaire de la dite
“ Compagnie, le tout conformément aux reglemens d'icelle Compagnie.”

184) Some of the other titles of this class bind the grantee to the simple furnishing of a roll of such emigrants as he may send out; as we have seen, some of the titles granted to religious bodies also did. This is the only grant, ~~which~~ ^{of the class, ~~that~~} like one of those to the Ursulines (~~that~~ above noted (Title 18a, ~~and~~ see § 253)), directly bound the grantee to anything in the way of procuring emigration. Unlike that, however, it is vague, as specifying no required number, ~~though~~ ^{it is observable, too, that each number is limited, by the consideration of the Company's dispositions} ~~and~~ it is to be limited by the Company's readiness to take furnish passages. It suited well enough with the special insertion in this grant suited well enough with the insertion of the special clause as to not granting lands to any but emigrants, also thrown into it; ~~both~~ ^{both} were both requirements facultative — experimentative — and apparently, ~~some~~ ^{some} repeated peculiar to this ~~one~~ simple grant.

§ 253. — This grant of Montreal and St. Sulpice is peculiar as regards ^{two} ~~another~~ ^{connected} clauses: — 20

9. — "entend la dite Compagnie que la présente concession ne puisse préjudicier à la liberté de la navigation, qui sera commune aux habitants de la N. F., et par tous les lieux cy-dessus concédés, —
10. — "et à cet effet qu'il soit laissé un grand chemin royal de ~~vingt~~ toises de large tout à l'entour de la dite isle depuis la rivière jusques aux terres, et pareille distance sur le fleuve St. Laurent depuis la rive d'iceluy jusques aux terres concédées, le tout pour servir à la dite navigation et "et passage qui se fait par terre."

— indicative of an impression, ^{last} ~~to~~ which we shall find ~~to be~~ further marked ~~in~~ indications in other grants presently to be noted, that the grant was of a property of so large ^{and high} a kind, as, ^{in the absence of} ~~without~~ ~~that~~ ~~as~~ ~~resurrection~~ of this kind might warrant the grantees in the exercise of a power of interference, by absolute prohibition or by toll, with the very navigation of the St. Lawrence.

§ 254. — In the same spirit, the grantee of Beauport was bound to build no fortifications, unless with permission; and the grantees of Monreal and St. Sulpice, ~~also~~ — except for defence against the Indians.

And the grants of ~~Beauport~~ Langou, Beauport, the Isle d'Orléans, Monreal and St. Sulpice, all contained a clause ^{of reference to the future pleasure of the King} ~~of reference to the future pleasure of the King~~ as of reference to an intended ~~granting~~ ~~attaching~~ ~~conferring~~ of a "nom et titre plus honorable".

* of reference to an intended procurement ~~from the King~~, of letters patent for the ~~confering~~ ~~of attaching~~ them, ^{to} ~~the~~ ~~title~~ ~~some~~ ~~one~~ ~~or~~ ~~other~~ ~~of~~ ~~the~~ ~~reserved~~ ~~titles~~ ~~of~~ ~~Barony~~, ~~with~~ ~~the~~ ~~insertion~~ ~~of~~ ~~special~~ ~~titles~~, of duchy, marquissate, earldom or barony, reserved for royal confirmation.

§ 255. — Several of these grants, again, on the other hand, — that is to say, those of Pandarville (Titles 33 and 37), Guille Vaches (Title 36), Neuville (Title 38), and St. Roch des Annales (Title 41), ~~are~~ were made under no conditions whatever, except those for homage, dues to the Company, and regulation of the appeal ^{of course} (provided, in all the grants of this class) from the justice of the grantee.

185 § 256. — One of these ^{last} grants, ^{last referred to,} that of Gaudarville, — is remarkable, from the terms used in of the title (No 37) for the Augmentation, ^{that was} made to it in 1653.

That recital of that title, run thus:—

"Levon faisons que les ~~insupportables~~ ^{inutiles} des Inguois paroissant journellement aux habitans du Cap Rouge où ils ont fait plusieurs massacres et enlevé nombre d'habitans, le peu d'habitations qu'il y a demeurent [demeurant] abandonnées, soit par le mort de ceux qui les faisoient valloir, soit parce qu'ils effectivement ces habitans les ont quitté, — de manière que ce lieu court fortune d'estre entièrement perdu pour estre éloigné de tout secours, et avoir besoin de quelque personne paipante qui avec l'assistance de ses amis peut soutenir l'effort de ces barbares, y faisant construire quelque eduit; et jugeant que Louis de Lauzon, Recuyer, seigneur de la Citière et de Gaudarville, se pourroit résoudre à la defence de ce poste si on luy vouloit accorder ce petit espace de terre, et le joindre, ensemble la censive qui est sur iceluy, à sa terre et seigneurie de Gaudarville, &c.

* (granted by Jean de Lauzon, then governor)

[Foot note]

vide infra, § 281.

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avons accordé, donné et concédé, accordons, donnons et concédons par ces présentes au dit * * l'espace de terre qui est enelos entre * * et à la Rivière du Cap Rouge, icelle Rivière du Cap Rouge comprise; laquelle étendue de terre, ensemble la censive y établie, uny, joint et incorporé, unissons, joignons et incorporons à sa dite seigneurie de Gaudarville, pour en jouir et user, et le tout posséder à perpétuité, * * aux mêmes droits de fief, haute, moyenne et basse justice et seigneurie, qui luy ont esté accordées par la dite concession du 8me febvrier, et généralement aux mêmes droits que la Compagnie de la N. F. a droit de jouir des dits lieux par l'édit de son établissement, —

- 1.—"à la charge d'en porter la foy à la sénéchaussée de Québec par un seul hommage lige,—
- 2.—"et revenu d'une année à chaque mutation,—
- 3.—"et que la justice sera exercée par son juge de Gaudarville, le tout ne composant qu'une seigneurie, les appellations duquel juge ressortiront par devant le sénéchal de la N. F. ou son lieutenant à Québec."

& being specially distinguished as a censive, that is to say, as ^{consisting} ^{only} ^{in a certain} directe over the land in the other part, as a while in its entirety, of the kind which ^{serve}

for this same purpose of ^{pronouncing the grant} ^{for the defence of} Québec and its neighbourhood against the Indians, — by

* perhaps of smaller means and ^{no doubt}

[Foot-note]

* This grantee was the near relative — ^{mother, son, or nephew} — ^{or cognate} — of the governor.

Part of the small tract, ^(petit espace de terre) here added to Gaudarville, had thus been granted en censive by the Company; part had not. The whole was ~~added granted~~ ^{added} to Gaudarville; this granted part, ^{was a censive}, that is to say, as ^{impartible} ^{only} ^{at the request} ^{directe} of the Company, ^{of the other part}, ^{as in its entirety}, ^{was a while}, and ^{in a case} of nothing ^{a while}, which the grantee might or might not afterwards subdivide into directe and while, as he ~~was~~ ^{should} please.

We shall have to notice presently two grants ^{to} made en censive, some ^{two} or ^{three} weeks later, close to this spot, ^{by} this same governor, to ^{two} persons of less influence ^{than} ^{the grantee of} Gaudarville. — The anti-seigniorial theory would require one to believe that this grant, to the more powerful ^{made} ^{by} ^{of} ^{all} ^{the} ^{grantees} ^{there}, to the less powerful, a property.

§ 257. — The title (No. 15) already more than once adverted to, of Moutreal and St. Sulpice, is rendered the more interesting from the fact of its having received the direct sanction of the King, — by Title No. 16.

"As in the case of Lillery already noticed (*supra*, § 240), this confirmation was probably obtained in consequence of ~~the~~ peculiar circumstances connected with the grant.

The Island of Moutreal had been granted to "Mestre Jacques Fian, Chevalier, Seigneur de la Chapelle" in 1030, by Title 7^a; who, however, ~~would seem, never to have taken~~ ^{possession} of his grant. On the ~~17th of~~ ^{17th of} ~~May~~ ^{May} in 1038 (April 30), he declared by deed, that he had only taken the grant as prête-nom for Jean de Langon; who again, in 1040 (Aug. 7), under the style of "Mestre Jean de Langon, Conseiller du Roy & en ses Conseils d'Etat et privé, Intendant de la justice, police et finance ^{by deed of} en Dauphiné," made it over ~~as a~~ gift to "Pierre Cheverier, Ecuyer, Seigneur de Lancamps, et Jérôme Le Royer, Seigneur de la Dauvergne." In December of the same year, these donees ~~obtained~~ obtained from the Company a new grant, Title 15 above mentioned, which ~~set forth~~ setting forth a revocation of the old grant, gave them most of the Island of Moutreal, and also the ~~seignior~~ ^{since known as} ~~seignior~~ the seignior of St. Sulpice, which would seem to have been thus thrown in as an equivalent for the part of the Island given up to the Company. These grants, however, were again ^{advised} ~~advised~~ ^{by deed of} ~~advised~~

for an association afterwards known as "la Compagnie de Moutreal," consisting of themselves and several other persons of very considerable influence, and which though, for some reason, they seem not to have passed their notarial declarations to that end till after the obtaining of the Royal confirmation here in question.

[Foot-note.]
* *Mss. Doc. Que. Hist. Soc.*,
2^d Series, Vol. 1, pp. 84-80.

[Foot-note.]
* *Mss. Doc. Que. Hist. Soc.*,
2^d Series, Vol. 1, pp. 86-88.

[Foot-note.]
* Of 1644, March 25, and
1650, March 21. — See
Edicts & Ord., 8^o, Vol. 1, pp. 26-28.

* and they certainly obtained,
* even got their grant described in it, as
being of the whole island, as well as
of the part on the mainland given
in lieu of part of the island.

[Foot note.]

* This ratification, somewhat
strangely, ~~recites~~ refers not only
to the grant of the 17th of Decem-
ber (Title 15) but also to the ^{previous} deed
of the 7th of August, ~~which they~~
as if it also had been from the
Company, instead of being only
from one of its leading members.

The grantees, notwithstanding
their admission to the Company,
that they gave up that title,
thus got it comprehended in
their ratification. Indeed, they

In 1659 (April 21) by Title 40, they
got from the Company a grant of the
rest of the island of Montreal, ^{on}
the terms of their former grant,
saving only a small tract, granted
to M. de Tancamps personally. —

How far the encroaching recitals of
this ratification of 1644, may have
been ^{meant} ~~intended~~ to cover a pretension
thereafter to his further grant, ~~and~~
— or whether they were errors of
carelessness, it may ~~not~~ be doubtful.

* receive "legs pieus" for support
of their religious foundations,

* according to the principles
of law as then held,

By that confirmation
(Title 12) they seem to have bought an indi-
rect allowance of their ^{own} quasi-corporate
existence, as well as certain
very important rights to the future
Communauté d'habitans of their
Island of Montreal. — It was
granted them "tant pour eux que
pour les habitans de Montreal
en la N.F., et leurs apocies pour
la conversion des sauvages du
dit dict pays," "pour ce que les
exposans douttent devoi eshe
troubles en l'execution de leur
entreprise, s'ils n'ont pas eue ce
nos lettres de ratification," etc.
And besides ratifying the grant
in all particulars, — so showing
that the its terms were in as wide
a ~~scope~~ ^{range} as the King was prepared
repugnant to the King's views, —
It gave special power to the grantees
to act as a corps de ville govern
and fortify their island, to erect
their habit people into a "corps
de ville ou communauté," and
further, ~~leur à~~

"faire descendre et monter en liberté par la rivière de St. Laurent leurs barques ou canots de
Québec à Montréal, pour y porter les vivres et munitions nécessaires aux habitans, sans qu'ils
soient tenus mouiller l'ancre en aucun lieu, sinon pour leur commodité, ni qu'ils puissent être
troublés et empêchés sous quelque prétexte que ce soit."

Another paping indication of the reali-
ness with which in those days peo-
ple entertained apprehension of
the exercise of feudal rights of
property (by the way of toll and
otherwise) over navigable rivers,
and of ^{an evidence of the} official knowledge of
the crown — so ^{call it} ~~is~~ ^{is} of the
fact that the Company of New
France had, and that its ^{other} trans-
ees might have, such rights in
their behalf as the Company
grantees of Montreal and their
settlers had good reason to ~~stand~~
against, ~~by before~~ ^{by before} ~~stand~~ ^{stand} against,
so far as they might, by such
letters-patent as these from
the crown.

S 258. - The ~~grant~~ ^{titles grants} of which we have the particulars, the next class, not so ~~precisely~~ ^{precisely} assimilated to the ~~grant~~ ^{grant} original title of the Company of New France but yet purporting ^{competent} to ~~grant~~ ^{grant} lands, not merely as a property and ~~propriété~~ ^{and} seigneurie, but also with the justice in its entirety, as well as the propriété and seigneurie, of the tract granted, are the following. -

x in two parts, each of 1/2 a

* (1 1/2 by 4 leagues),

[Foot Note]

* This grant is peculiar, from the fact ^{that} of the first half of ~~the~~ ^{it} having been ~~granted~~ ^{granted} by title 12 "en propriété et fief", with no mention of justice, and that by ~~the~~ ^{title} 14, for the second half, the two were thrown together "en toute propriété, justice et seigneurie."

1. - Deschambault (1/2 league by 3), under ~~by~~ ^{titles} 14, 24 and 34.
2. - Rivière du Sud ^{and the Isles aux Oies and aux Lynes,} ~~under~~ ^{under} Title 17.
3. - Dautier (in two parts, each 1/2 a league by 2), under Titles 12 and 19.
4. - The tract, afterwards divided into St. Gabriel and St. Ignace, (1/2 2 leagues by 10), under Titles 23 and 25; the latter merely authorising a change of ~~location~~ ^{location} site, the tract first described being found to have been granted before.
5. - Portneuf (1 1/2 by 3 leagues), under Title 24.
6. - The tract since known as forming Repentigny, Lachenaie and Capomphon (4 ~~by~~ ^{by} leagues by 6), under Title 22.
7. - Becancour in the District of Three Rivers (~~some~~ ^{some} about 2 leagues square), under Titles 23, 26 and 47; ~~the two latter are only a digression~~
8. - St. Etienne ^(?) in the District of Three Rivers (1/2 a league by 3), under Title 39.
9. - Coulouge ^{less than 500} ~~about 400~~ arpents, near Quebec, under Title 44a.
10. - An unnamed property on ~~the~~ ^{the} St. Charles near Quebec, of unknown extent, a ~~part~~ ^{part} of an abandoned grant ~~to the~~ ^{to the} Recollets, ~~that~~ ^{that} had been made ~~probably~~ ^{probably} before the grant of ~~same~~ ^{same} time of the Company of New France. -

* the St. Charles near Quebec (of unknown size, part of an abandoned grant that had been made, probably before the time of the Company, to the Recollets), under Title 48a.

§ 259. - Whether or not a grant of this class would have been held in those days to pass the property of a navigable stream within its limits, may be a ^{made} question; but there can be none, as to its passing the full property of every stream not absolutely navigable. And indeed, as has already been observed (supra, § 245, note #) the distinctive claim of the crown to ^{all} navigable ~~the~~ streams is of ~~late~~ ^{date} ^{later} than this period.

One of these grants, however, is excepted as ^(perhaps) ~~one~~ of the principal streams comprehended within their limits. - The title of Rivière du Sud (N^o 17) is, ^{exactly} like that of Langou, in respect of its being a grant primarily of that river, and ^{but} secondarily of so much land on either side of it.

Another, that of Becancour (N^o 23) mentions incidentally a "lac St Paul", as forming part of it.

§ 260. - Indeed, so strongly prevalent were the impressions of those days, as to the inherent rights of a feudal lord, even over navigable rivers of the largest class, that six of these grants contain clauses to prevent their exercise over the St. Lawrence; and this, although none of the grants (any more than that of Inouheal ^{above referred to}) purport to grant that river ~~or any right in it~~.

In the grant of Deschambault (N^o 14), ^{there is} ~~it is~~ coupled with a prohibition of the building of fortresses, thus:

- 5. - "ne pourront aussi le dit ** bâtir aucun fort ou forteresse dans le dit lieu tenu en fief, -
- 6. - "ny empêcher en quelque manière que ce soit la navigation sur le dit fleuve St. Laurent à l'endroit des terres concédées, -
- 7. - "ains seront tenus, pour servir à la dite navigation et passage sur le dit fleuve, de laisser un grand chemin de ~~vingt~~ toises de large depuis la rive du dit fleuve en la saison qu'il est le plus eslevé jusques aux prochaines terres ou habitations qui seront faites sur icelle.

In that of Rivière du Sud (N^o 17), they read thus: -

- 6. - "et encore que les dits lieux soient concédés en pleine propriété, néanmoins entend la dite Compagnie que la présente concession ne puisse préjudicier à la liberté de la navigation sur le dit fleuve St. Laurent qui sera commune à tous les habitans et autres allants ou venants, -
- 7. - "et à cet effet qu'il soit laissé un grand chemin royal de ~~vingt~~ toises de large au bord du dit fleuve St. Laurent et depuis iceluy jusques aux terres fermes, les droits de seigneurie sur le dit fleuve St. Laurent réservés à la dite Compagnie."

And in those of Danke (N^o 19), Portneuf (N^o 21), Repentigny &c. (N^o 22), and Becancour (N^o 23), the difficulty apprehended is more expressly stated and guarded, thus: -

[Foot-note.]
* Vide supra, § 245.

[Foot-note.]
* Vide supra, §§ 259 and ²⁵⁷ ~~258~~.

8 / X

20 / X

20 /

- 5. - "et encore que les dits lieux soient accordés et concédés en pleine propriété, néanmoins ne pourra le dit ** ou autres habitans d'icelle empêcher le cours de la rivière St. Laurent, ny d'autre qui pourroient se trouver dans les dites terres cy-dessus concédés en pleine propriété, ny prétendre aucun droit sur les barques ou vaisseaux qui passeront en montant ou descendant, ou s'ingérer de les arrester pour cause ou occasion que ce soit, -
- 6. - "et mesme seront tenus de laisser un chemin royal sur le dit fleuve de St. Laurent de ~~vingt~~ toises de large à prendre sur le bord du dit fleuve St. Laurent en la saison qui est le plus elevé, jusqu'aux terres plus proches d'iceluy."

20 /

For the matter of the dues, ^{especially} to the Company, these grants were not uniform; one of them - Title 39 - imposing the relief of the Custom of Kevin Francois; and the rest, either expressly or by implication, the quint and relief of the Custom of Paris.

None of them, therefore, specially relieved the grantees from the ^{original} ~~the~~ limitations of the Custom as to the jeu de fief and jeu de justice.

S 262. - One of them, and one only, contains a stipulation as to the alienation of the land granted.

And it is like those of Beauport and Monheal ~~above~~ already remarked upon (supra S 257), in this; that it restricts alienation of all sorts, instead of requiring it to be made in any particular way. But on the other hand, it imposes an entirely different rule of restriction from either of the two rules there imposed. The words are -

3. - "et sans que le dit ** puisse faire cession ou transport de tout ou de partie des lieux à luy
"cy-dessus concedées si ce n'est au profit des François desja resident en la dite N. F., ou qui en
"ce cas s'obligeroit d'y passer pour les defricher et faire valloir."

S 263. - Again, one other of them, and but one, ^{as} that of Deschambault (~~the title~~) (No. 114), resembled the title ~~of~~ of Monheal and St. Lubrice (~~supra~~ S 257), in the particular respect of super-adding to the obligation - not uncommon - to furnish rolls of any emigrants sent out, in order to the discharge pro tanto of the Company, the further charge of ~~finding~~ furnishing some amount of emigration. The clause is this: -

8. - "fera le dit ** passer jusques a 4 hommes de travail au moins pour commencer le defrichement, outre sa femme et sa servante, et ce par le prochain qui se fera à Dieppe ou à la Rochelle, ensemble les biens et provisions pour la subsistance d'iceux durant ~~une~~ années, qui lui seront passés et portés gratuitement jusques à Québec en la N. F., à la charge de rendre le tout abord des vaisseaux de la dite Compagnie à Dieppe ou à la Rochelle, le tout à peine de nullité de la présente."

Not identical, therefore, ~~to~~ with the like clause in either of the other two titles that ^{alluded} alluded to this matter. The same sort of thing, ~~the~~ it would seem, could not be done twice in quite the same way.

And, that it was here made clear that the bargain as to ^{Archives de la Ville de Montreal} ~~the~~ emigration was most perfectly bilateral. The

(No. 12)

* - the title of the grant of the first half of ~~the~~ Danké, -

#, but also at the same time far from universal -

[Foot-note.]

* Vide supra, §§ 237 and 252.

grantee was to send out so many, and need send no more; and the Company was to give free passage. In the other cases, ^{the like} ~~the~~ promise of free passage was presumably understood.

* already

~~S. 263.~~ — They was laid in argu-
ment, ~~by the~~ before this court, by the
learned counsel acting against the
Leignous, upon the fact that one
of these titles (No. 34), being the third
of those relative to Deschambault,
purported to deal with the land grant-
ed by two other titles (Nos. 14 and 15);
as though it in some way gave color
to the idea of ^{a something of} trust-character as
involved in them.

But how stands the case? The
first of the three grants was to Fran-
cois de Chavigny, Ecuyer, Sieur de Bes-
cheveau, and Delle. Eleonore de Grand
Maison his wife; the second, of an
augmentation on the same terms,
purported to be to him alone. ~~The~~
~~third set forth~~ Both of these grants
were ^{made} by the company at home. The
third, issued by Jean de Lauzon, then
governor in Canada, in the company's
name, ^{set forth} (truly or falsely, we
cannot now say) that Chavigny had
left the country and abandoned every-
thing he had in it, leaving his affairs
in confusion, and apparently desert-
ing his wife — whom, it will be remem-
bered, he had become bound to bring
out with her servant maid and his
own ~~4~~ ^{own} labouring men, to settle
upon their grant. For some reason,
probably to give color to her claim to
hold the property from his creditors,
or from himself, or from both, —
she seems to have sought a decla-
ration from the governor that the pro-
perty should be held for her own;
and the governor granted it, thus:

— "avons par ces presentes dispose des lieux par luy ainsi abandonnés et à luy accordés par con-
cession des 4 Dec. 1640 et 29 Mars 1649, en faveur de Delle. Eleonore de Grand Maison, à laquelle
" nous les avons donnés et concédés, donnons et concédons par ces presentes, pour en jouir par elle
" et les siens et ayans cause à perpétuité, aux mêmes charges, clauses et conditions qu'elles avoient
" esté cy-devant octroyées au dit sieur de Chavigny."

— whether equitably or not, we
cannot now say; but most sure-
ly, not with any ^{too} exact adhe-
rence to anything that can be
called a rule of law.

There is nothing, however, to
show that any question of law
was ever raised about it. ~~Probably~~
Presumably, Chavigny took no more
thought of the property, or of the
wife, that he had run away from.
And whether he did ~~so~~ or not, the
proceeding at all events left her
no more a trustee for all the world
as to this property, than he and
she, or he alone, ^{had been before}
under the former grant, which most
surely furnish no hint to that effect.

142 S 265. — One of these ^{titles} grants is — that of Couloupe (No. 442), is interesting from the fact of its having imposed no grant of property, in the narrowed sense of the word, — but only a grant of seigneurie and justice.

Strictly speaking, it was no grant but a mere section of certain lands held en censive into a fief bearing the title of a Châtellenie, and (of course) the attributes of ^{justice} ~~justice~~, ~~haute, moyenne et basse~~ justice. From the title copy furnished me by the gentlemen of the Seminary, its present ~~own~~ proprietors, and a number of other titles en censive with which also they have supplied me, it appears that Dr. Daillebout, ^{and} ~~high officer~~ ^{of the Company}, ~~Director~~ ^{de la haute de la Nouvelle France} being proprietor of several contiguous grants made by the Company en censive, near Quebec, in all ~~not~~ ^{not} ~~more~~ ^{more} than 500 arpents in extent, obtained from the Company ~~the~~ this new title-deed, setting forth, that —

* a high functionary of those days, "Directeur"

— "Désirant reconnoître les bons services qu'elle a cy-devant reçus, et ceux qu'elle espère recevoir cy-après du Sr. * * à ces causes elle a érigé la terre de Couloupe sise * * ses circonstances et dépendances en titre de Châtellenie, avec justice, haute, moyenne et basse, suivant la Coutume de Paris, pour en jouir par luy et les siens ou ayans cause, au dit titre de Châtellenie, —

- 1. — "mouvant par un seul hommage lige de Québec, —
- 2. — "et que les terres qui se trouveront enclausées dans ses bornes, releveront de la dite Châtellenie, et luy payeront les cens et rentes que la dite Compagnie s'étoit réservés."

From the terms of this latter condition one might infer that the Company were probably under the impression that the territory in question comprised some lands held en censive by ~~some~~ other parties than Dr. Daillebout; although that does not seem to have been the case. But certainly, no one can fancy that the change of his tenure from the lower to the higher grade, involved any ^{obligation} ~~liability~~ ~~to~~ ~~the~~ ~~alienation~~ ~~to~~ ~~alienate~~ his land or any part of it, on any particular terms to any one, — or did anything but extend the range of his previous existing proprietary rights property in it.

* obligation, or even any legal

The ~~same~~ conditions of the title are simply the two above given. And the existence of the title simply evidences the fact, that Dr. Daillebout in seeking, and the Company in granting, the quality of a fief of this high ^{grade} ~~grade~~, to this petty plot of ground, were faithfully transplanting to the new world the ideas and usages of the old, — were not bent on creating for the new world, a new, ^{separate} ~~separate~~ law and usage.

[Insert a rule here.]

193) S 264. — Another illustration, almost more striking, to the same effect, is to be found in the case of the one ^{title} ~~partly~~ which purports to have ^{granted a} ~~been made in~~ justice, moyenne et basse ~~justice~~ only.

S 267. — This title (n^o 45) is of the fief Bécancour, on the Cap Rouge road near Quebec, a property of 10 ~~acres~~ (ten) arpents only; and was granted, by the company's direct vote, to a high local functionary; the "Sieur René Babinéau, Chevalier de l'Ordre du Roy, grand Voyer en la Nouvelle France, fils de M. Babinéau, l'un des anciens Directeurs de la Compagnie," being the grantee; and the grant consisting of granted grant being in the following words — only: —

— "désirant reconnoître les bons services qu'elle a reçus de * * elle luy a donné et concède en fief mouvant de Québec, avec moyenne et basse justice, suivant la coutume de la ville, prévosté et vicomté de Paris, 10 arpents de terre de profondeur, sur un de large, lequel s'appellera le fief de Bécancourt, size sur le chemin du grand Cap Rouge, qui étoit cy-devant des terres de la ferme appartenante à la dite Compagnie, lesquels 10 arpents sont chargés de bois revenus depuis qu'ils sont defrichés."

S 268. The ~~titles of~~ grants en fief, sans justice, are the following: —

1. — Part of Genhilly ($\frac{1}{2}$ a league by 2 ~~arpents~~), under Title 24a.
2. — Viengpont (?) (1 league by 5), under Title 27.
3. — Jacques Cartier ($\frac{1}{2}$ a league by 5), under Title 28.
4. — Isle St. Joseph (40 or 50 arpents), under Title 40.
5. — Part of Pointe du Lac (un-stated width by $\frac{3}{4}$ of a league), under Titles 43 and 43a.
6. — Boucher (200 arpents), under Title 44.
7. — St. Michel (some 150 arpents), under Title 47.
8. — St. Jean ~~la Houle~~ (60 arpents), under Title 48.

* Title 46b. *

[Foot-note.]

* Since the printing of my Abstract, I have obtained a copy of this title from the gentlemen of the Seminary of Quebec; and find it to fall into this class, and, in these words, — direct from the Company: —

— "avons donné en fief au ~~Sieur~~ de Lilly, une concession appelée appelée de St. Michel, size près de Sillery * * pour en jouir par le dit ~~Sieur~~ * * en toute propriété, — et de payer à chaque mutation ce qui est accoutumé de payer suivant la Coutume de Paris, au receveur de la dite Compagnie à Québec."

194/ § 269. — Of which grants, five — fentilly, Viengpoud(?), Jacques Carlier, St. Michel and St. Jean — were charged with quint and relief in terms of the Custom of Paris; and the other three, with the relief of the Custom of Vexin Francois.

§²⁷⁰~~268~~ — One only of these grants, Q (N^o 43), that of part of Pointe du Lac, contains any condition beyond that of homage and payment of feudal dues; and its further conditions are but two in number, ~~the furnishing of land for roads, a condition which does not link a good many others of the larger grants, at these two: —~~

- 3.—“feront les dits ** habituer les dites terres en leur estendue, et y travailler dans 4 ans de ce jour,—
 4.—“souffriront, les dits ** ou autres jouissant des dites terres, que les chemins qui se pourront établir par les officiers de la N. F., passent par leurs dites terres, si ainsi les dits officiers le trouvent expédient,—

— the former of ^{these clauses} ~~them~~ ^{presenting} ~~more nearly~~ approaching ^{to the character of} the only case, where the Company is known to have imposed an obligation to settle the lands granted “en leur estendue” and (of course) leaving the grantee free as to his mode of doing it, — the latter, an obligation far from universal, though not so uncommon.

§²⁷¹~~269~~ — The small extent of four of these grants, St. Joseph, Boucher, St. Michel and St. Jean, ^{to say nothing of the} ~~in whole or in part~~ ^{especially,} in connection with the small extent of Coulouze and Becancorn (Q supra, §§ 263-5), — ^{is decisive of the fact} ~~is decisive of the fact~~ evidence that grants en fief were not in those days imagined to be saddled with any condition of sub-granting.

~~If there is~~
 In this respect, there was no ^{distinction} made between the 10 arpents of Becancorn, and the ^{league or leagues of} ~~league or leagues of~~ Beaupré that formed Beaupré or La Fitière. All fell under the common rule; which common rule ~~left~~ ^{imposed no} condition of the seigneur de la Ville de Montréal

* Contractual

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"pour jour des dits lieux par le dit ** en toute justice, propriété et seigneurie a perpétuité,
"tout ainsy et à pareils droits qu'il a plu à Sa Majesté donner le pays de la N. F. à la dite
"Compagnie,—

- 1.—"à la reserve toutesfois de la foy et hommage que le dit ** seront tenus porter au Fort St.
"Louis à Québec ou autre lieu qui sera désigné par la dite Compagnie, par un seul hommage
"lige à chaque mutation de possesseur des dits lieux,
2.—"avec une maille d'or du poids d'une once et le revenu d'une année de ce que le dit ** se
"sera reservé après avoir donné en fief ou à cens et rentes tout ou partie des dits lieux,—
3.—"et que les appellations du juge des dits lieux ressortiront niement à la cour et justice sou-
"veraine qui sera cy après établie au dit pays,
4.—"que les hommes que le dit ** feront passer en la N. F. tourneront à la décharge de la dite
"Compagnie en diminution du nombre qu'elle doit y faire passer, et à cet effet en remettra tous
"les ans les rolles au bureau de la dite Compagnie, affin qu'elle en soit certifiée,—
5.—"sans toutesfois que le dit ** puissent traiter des peaux et pelleteries au dit lieu ny ailleurs
"en la N. F. qu'aux conditions de l'édit de l'establissement de la dite Compagnie,"

xxx
f

~~is after which follows a grant~~
and then two arpents of land
are added en censive,
thus: — 2

—"outre lesquelles choses cy la Compagnie a encore accordé au dit ** une place proche le fort
"de Québec contenant deux arpents pour y construire une maison avec les commodités de cour et
"jardin, lesquels lieux il tiendra à cens du dit lieu de Québec,—

are stipulated ^{as} equally

— and then ~~grant then~~ with two more conditions, appli-
cable ^{apparently} to both grants
alike: —

- 6.—"sans que le dit ** puissent disposer de tout ou de partie des lieux cy dessus a luy concédés
"qu'avec le gré et consentement de la dite Compagnie, pendant le terme et espace de 10 ans
"compter du jour des présentes, après lequel temps il luy sera loisible d'en disposer au profit de
"personne qui soit de la qualité requise par l'édit de l'establissement de la dite Compagnie,—
7.—"et sans que le dit ** puisse fortifier les lieux cy dessus concédés sans la permission de la
"dite Compagnie."

Records in date ^{of 1640} is the
first grant of ^{the first part of} Deschambault (Title
+14 and 14 Cens 3), by which the fief
is first granted as a league and a
half of land, — a censive is first
granted, thus: — 30

—"nous avons au dit ** donné, concédé et octroyé, et ** donnons, concédons et octroyons par
"ces presentes les terres et lieux cy après déclarées, c'est a sçavoir: deux arpents de terre à prendre
"dans le lieu désigné pour la ville et banlieue de Québec s'y trouvant des places non encore con-
"cédés, ou de proche en proche pour y faire un logement avec jardinage où il se puisse retirer
"avec sa famille, plus, deux arpents de terre à prendre hors la dite banlieue de la ville de Québec
"et de proche en proche icelle en lieux non encore concédés,—

— then, the fief, thus: —

—"nous encore avons au dit **
"donné, concédé et octroyé, donnons,
"concedons et octroyons par ces presentes,
"en un ~~lieu~~ $\frac{1}{2}$ lieue de terre en large à prendre
"en 3 lieues" —

The habendum follows, common
to the two grants: —

—"pour jouir par luy, ses suc-
"cessors ou ayans cause, des terres
"cy dessus concédées, en pleine
"propriété, et les posséder, sçavoir:"

— then, the particularisation of
the censive, thus: —

—"les dits 2 arpents de terre xx et
"les 30 arpents xx en roture, —"

- 1.—"à la charge d'un denier de cens payable au fort de Québec par chacun an, au jour qui sera cy
"après désigné,—
2.—"le dit cens portant lots et ventes, surme et amendes,—

— and then, that of the fief, thus: —

—"et la dite $\frac{1}{2}$ lieue de terre xx en
"3 xx, en toute propriété, justice et
"seigneurie, tant à toujours xx
1.—"à la reserve ^{de la ville de Montréal} de la foy et hommage, que le dit xx soient
tenus de porter au xx

1940

2. — " et de payer les droits et profits de fief x x
3. — à la charge aussi que les appellations du just qui podraoit être étably par le dit x x repositiours niemeu ail x x

4. — " en outre ne pourront les dits * * et autres qui passeront de France ou qui se trouveront sur les lieux pour habiter et cultiver les dites terres concédées, traiter de peaux de castors et peltries avec les sauvages, si ce n'est par trope et échange des choses qu'ils pourront recueillir sur les terres cy dessus concédées, et en ce cas ils seront tenus de remettre les dits castors et peltries entre les mains des commis de la dite Compagnie en leur payant le prix porté par l'édit du Roy fait pour l'établissement de la dite Compagnie, le tout à peine de confiscation des dits castors et peltries et d'amende qui sera arbitrée par le gouverneur de Québec. —
5. — " ne pourront aussi le dit * * bâtir aucun fort ou forteresse dans le dit lieu tenu en fief. —
6. — " ny empêcher en quelque manière que ce soit la navigation sur le dit fleuve St. Laurent à l'endroit des terres concédées, —

xxx -

7. — ainsi seront fermes x x de largeur un grand chemin de 20 toises x x

8. — " fera le dit * * passer jusques à 4 hommes de travail au moins pour commencer le défrichement, outre sa femme et sa servante, et ce par le prochain qui se fera à Dieppe ou à la Rochelle, ensemble les biens et provisions pour la subsistance d'eux durant trois années, qui lui seront passés et portés gratuitement jusques à Québec en la N. F., à la charge de rendre le tout abord des vaisseaux de la dite Compagnie à Dieppe ou à la Rochelle, le tout à peine de nullité de la présente. —
9. — " et afin que la Compagnie soit certifiée du travail qui se fera pour le défrichement des dites terres, seront les dits * * obligés de remettre tous les ans entre les mains du secrétaire de la dite Compagnie le rolle des hommes qu'ils feront passer, qui doivent être réputés de ceux que la Compagnie doit envoyer suivant les articles à elle accordés par le Roy pour former la colonie. —

xxx -

"etc. Lxx
Third and last, ^{in date,} of 1649, is the grant of Jacques Cartier (Title 28 and 28 Cens), by which there is first conveyed the fief, thus: —

— " avons donné, concédé et octroyé, et * * donnons, concédons et octroyons par ces présentes les terres et lieux cy après déclarés, c'est à sçavoir: ~~denys~~ lieue de large sur le bord du fleuve St. Laurent, avec cinq lieues de profondeur, à la charge que ce soit en lieu non concédé, et de laisser un chemin de cent pieds de large entre le dit fleuve et les terres concédées, pour en jouir par la dite * * à toujours, à l'avenir, à titre de fief. —

100/57

1/2

1. — " mouvant et relevant de notre Compagnie à Québec par un seul hommage lige. —
2. — " et à la charge de payer à l'avenir les droits seigneuriaux et féodaux, ainsi et au cas qu'il se pratique en France, selon la Coutume de la provosté et vicomté de Paris. —

— and then a censive, thus: —

— " et de plus avons donné, concédé et octroyé, et * * donnons, concédons et octroyons à la dite * * un arpent de terre x x à la charge aussi que ce soit en lieu non concédé, pour en jouir par reillement par la dite * * en toute propriété. —

1. — " à la charge du cens qui sera de six deniers pour le dit arpent par chacun an, payable à celui qui sera commis par notre Compagnie à Québec. —
2. — " le dit cens portant lods et ventes, saisines et amendes, suivant et au cas qu'il y eschet portés par la Coutume de Paris. —

dans Censente
"designe pour la ville de
"Québec, ou aux environs Rivière, x x
charter and

If, in ^{any of} these cases, it was meant to make the fief grant less of a property than the censive grant, the parties ^{at least} took an odd way of expressing the intention, so that it was saying so.

S²⁸⁰ 278. — The earliest separate grant in censive, by the Company, that I have found, is that made by Titles 7 Cens 1a and 13 Cens 2 of Albion, — and which ^{appears} to have been the Com grant to Boudon, afterwards erected into his fief of St. Jean. (Supra, S 272).

It was first made here by the resident governor, about 1637, thus: —
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—“avons distribué et departy sous le bon plaisir de Messieurs de la dite Compagnie au sieur * * la consistence de 50 arpens de bois ou environ mesure de Paris en roture, situées dans la banlieue de Québec et compris * *, pour en jouir luy ses héritiers et ayans cause pleinement et paisiblement en pure roture,—

- 1.—“aux charges et censives que Messieurs de la Compagnie de la N. F. ordonneront,—
- 2.—“et à la charge que le dit * * fera travailler au défrichement des dits bois,—
- 3.—“et souffrira que les chemins qui se pourront établir par les officiers de messieurs de la dite Compagnie passent par ses terres si ainsy les dits officiers le jugent expedient,—
- 4.—“et prendra concession de messieurs de la dite Compagnie des dits bois à luy par nous “distribués.”

[Foot-note.]

They are printed in the Seigniorial Documents (Vol. 2, pp. 114 et seq. French version), under the caption of “titre du fief de St. Francois”; but the title by which the change of tenure was made effected, is not printed. I have not been able to procure it; but have no reason to doubt it, ^{having been} substantially in terms of the title of St. Jean,

(Titles 16 Cens 4 and 5, and 38 Cens 1 and 8, of St. Michel)

* it was presumably something not unlike the title of St. Jean or else of St. Michel or Coulogne.

* M. Jean LeLieur, Esuyer, Presche,

[Foot-note.]

* Vide supra S 256, for terms of grant in fief, made ^{in same year, and} with same view of inducing grantees to special service against the Indians.

—“avons donné, concédé et octroyé, donnons, concédons et octroyons au Sr. * * l'estendue de terre qui sera et se rencontrera entre la concession de * * et la rivière St. Charles,— pour en jouir par le dit * * à toujours,—

— and, in 1639, it was thus confirmed by the company, after recital of the above grant:—

Compagnie a confirmé et confirme la dite distribution des terres, et en tant que besoin est, de nouveau fait don et concession au dit Jean Boudon pour en jouir par luy ses successeurs tant cause aux dites charges et conditions cy dessus exprimées, et outre moyennant un denier ens pour chaque arpent par chaque an, dont pourtant ils payeront aucune chose durant les 10 premières années à compter du jour de la dite distribution.”

S 281. Next in date, still referring to the titles printed among the Seigniorial Documents of 1652, are the titles of St. Jean Censive grants, — apparently ~~these~~ afterwards rected into a fief St. Francois, for the same M. Boudon.

By Titles 16 Cens 4 and 10 Cens 5, ^{in 1646,} the Governor granted to Boudon ~~an~~ two tracts in the banlieue of Quebec, — the one, of 75 arpents, to Boudon, — the other, of 50 arpents, to the Curé de St. Laurent; and on the terms of his previous grant above mentioned, — that is to say, leaving the rate of Cens to be fixed by the company. How the company fixed it, does not appear; their confirmation not being extant.

By Titles 38 Cens 9 and 38 Cens 8, respectively, his successor, in 1653, — ~~in~~ en regard à la dépense que les Sieurs Boudon et St. Laurent font sur les dits lieux pour couvrir Québec de l'irruption des Iroquois, et leur donner couraige de continuer, — granted each of them an augmentation of ~~their~~ ^{his} former grants, ~~to extend to~~ ⁱⁿ the river St. Charles, ~~on~~ ⁱⁿ the following terms:—

- 1.—“aux conditions portés par sa dite concession,—
- 2.—“et outre à la charge de six deniers de cens pour chacun arpent par chacun an, payable au jour de St. Remy, chef d'octobre, à la récepte du domaine de la Compagnie de Québec,—
- 3.—“le dit cens portant lods et ventes, saisine et amende, suivant la coutume de la prévosté et vicomté de Paris.”

S 282

S 282. — Intermediate in date, between the first and second pair of these four grants, we have one other printed at large in the Seigniorial Documents, — No. 27 Cens 6 of Abshack.

This grant, ~~of~~ ^{of} 1649, is of 10 arpents near & close to Three Rivers, with a neighbouring Isle aux Cochons; and is made by the Company directly, ^{without reference to} any previous ~~action~~ ^{allotment} by the Governor. It

(200) is only noticeable, as fixing the rate of cens at 3 deniers per arpent, yearly.

x (24 Cens 5 a)

§ 283. - A later ^{printed} title (No 140) demonstrates by its recitals the existence of a more remarkable ^{censive} grant by the Company, under date of 1647, - being for a tract of ~~one~~ a quarter of a league of front by one league of depth, now part of the seigniorie of Genilly, -

"à la charge d'un denier de cens pour chaque arpent, ~~et~~ lorsqu'il sera en valeur seulement."

* by the gentlemen of the Seminary of Quebec, since my Abstract was printed, -

§ 284. - Besides which, there have been placed in my hands ^{several other} grants en censive, covering the for ~~the~~ parts of what afterwards became the Châtellenie of Loubouze and the fief St. Michel.

One of these, ^{for 100 arpents,} first made here by the governor in 1637, and then confirmed by the Company in 1639, answers closely to the grant to Boudou of corresponding dates (Supra, § 280), except that it contains some special clauses as to the use of certain unbearable by the grantees and their neighbors.

The others, ranging from 1646 ^{two} confirmed by the Company, ^{two} confirmed by de Lauzon as governor, and ^{two} ~~others~~ simply granted by him, ^{all} between 1649 and 1652, - ^{in substance to the same effect as} answer ~~to the~~ ^{to Boudou and St. Lawrence in} grants ^{to Boudou and St. Lawrence in} 1653. (Supra, § 286) x

as regards their rate and other conditions, to be made

§ 285. - Beyond question, all these rates were low; and the other conditions of all these grants, easy. Land was plenty and settlers were few. One should almost rather, ^{would} that any rate ~~could~~ could be obtained, than that no higher ~~it~~ should have been obtainable.

But, at all events, ~~the idea of a~~ ^{was} uniform rate ~~was~~ there ~~as yet~~ no notion of a uniform rate. ~~The~~ Even the Company had none for its own censive. Much less, as we shall presently see, had the Seigniors who held under it, the Company, for theirs.

§ 286. - ^{There is a} document which has gone far to ^{archives de la Ville de Québec -} ~~disappear~~ ^{disappear}, and which was cited with

(201) That view in argument before this court. But it is of far too late a date to be trustworthy on such a point; it does not say what, for the ~~purpose~~ sake of the argument sought to be drawn from it, it had need need say; and what it does say, is shown by the documents of the time not to have been the truth.

This document is an Ordonnance of Bigot, the last Intendant of Canada, under date of 1758; issued for the fixing of the rates of Cens et rentes within the Censive of Quebec. It recites, as fact, that the directeur du domaine du roi had represented to him the Intendant, ~~and that~~ that ~~he had~~ set himself to record the titles to properties in that Censive:—

"Que par l'examen d'icelles, il auroit reconnu que les cens et rentes des trois quarts des emplacements, ^{en} morvant en la dite Censive, étoient inconnus et à régler; les titres primitifs étant perdus;—

"Qu'il auroit vu par les titres primitifs de l'autre part, que toutes les conceptions des terrains dans la dite ville avoient été accordées par les gouvernements et intendants, à la charge de 5 sols, 6 deniers, de cens et rentes payables tous les ans à la recette du dit domaine indistinctement du plus ou moins de terrain;—

"Qu'il auroit également vu que les conceptions de terres dans la banlieue du dit Québec, avoient été faites à la charge d'un denier de Cens et rentes par chaque arpent en superficie, — et qu'il seroit à propos de pouvoir à la fixation de ces cens et rentes," etc.

Whereupon, as recommended, he the Intendant ordered that those rates should forthwith be exacted for the 29 years past, and at intervals of 10 years forever thereafter.

X All this, however, is far enough from showing that even within the Quebec censive there had existed, before 1758, a known uniform rate, and further still from showing that such ^{uniform} rate was one of the early institutions of the country. On the contrary, it is apparent that the thing ~~requiring then to be enacted~~ and ~~had to be enacted~~ remained for enactment, ~~##~~ was only enacted under

color of the top of most of the original titles, and had to be adapted to the different circumstances of town and banlieue by the adoption of two entirely different principles of rating.

The rates, ^{thus} pretended to have been ascertained by this directeur du domaine, and which were thus enacted by this Intendant in 1758, contrast with those, ^{really} ascertainable as imposed by the Company of New France, thus:—

On the one hand, we have—

~~Upon town & banlieue~~ ^{part of} upon all ~~lots~~ ^{lots in} ~~in~~ ⁱⁿ Quebec, ~~at~~ ^{per lot,} 5 sols, 6 deniers, ~~in~~ ^{inspective of} extent, —

And upon all ~~the~~ ^{the} properties in the banlieue of Quebec, 1 denier per arpent.

On the other hand, we have, ~~see~~ as facts, for this ^{first} period of the real history of Canada, —

In 1634, grant (with Beauport) of 2 arpens in town of Quebec, ~~no rate stated.~~

In 1639, two grants ^{afterwards} of St. Jean and part of Coulonge) of 50 and 160 arpents respectively, in banlieue of Quebec, — at 1 denier per arpent, but with ~~also~~ release from that charge for the first 10 years. (Supra, §§ 280 and 284.)

In 1640, grant (with Deschambault) of 2 arpents in town or banlieue of Quebec, and 30 arpents close to latter, — at 1 denier for the whole 32 arpents. (Supra, § 279.)

In 1647, grant (afterwards part of St. Hily) of a quarter of a square league quite away from town or banlieue, — at 1 denier per arpent, as the same should be brought into value only. (Supra, § 283.)

In 1649, grant (with Jacques Carlier) of 1 arpent at Quebec or Three Rivers, — at 6 deniers per arpent. (Supra, § 279.)

Same year, grant (of Isle aux Cochons, &c.) of uncertain extent at and near Three Rivers, — at 3 deniers per arpent. (Supra, § 282.)

From 1649 to 1653, eight or perhaps ~~ten~~ grants (afterwards St. Francois and part of Coulonge, &c.) of various sizes, — at 6 deniers per arpent. (Supra, §§ 281 and 284.)

200

* as a result of what may have passed for research on the part of a government official, in 1758, —

2 (Supra, § 279.)

§287. - It is no sort of answer to all this accumulation of evidence showing the conduct of the Company to have been thus uniformly that of a proprietor, ^{holding} under the largest title, and alienating after the fashion of those times by every kind of variant title to proprietors parties evidently meant for proprietors, all ^{of them} in their own right and not at all in trust, to say, that ~~in~~ some of its deeds of grant (for the fact is not so, in regard to ~~a great many~~ a great many of them) there is ~~more or less~~ reference made to a "pouvoir" "à nous donné par sa Majesté", ~~or~~ in one or another form of words.

A preamble that is clear may control the interpretation of an instrument otherwise ambiguous. But an ambiguous preamble, ^{by no means always} ~~is not~~ used, can have no effect upon the interpretation of a ^{whole} ~~part~~ ^{host} of instruments ~~not~~ ^{not} at all ambiguous in themselves. Here the titles are ^{all} clear; the preamble ~~is~~ ^{is} neither clear occasional and ^{not} clear.

References to a power derived from the King, were courtly and politic; and are to be ranged with the expressions of ~~ambition~~ "desir d'avancer la Colonie de la Nouvelle France suivant la volonté du roy", which also in various forms are to be found in some of these titles. They ^{had, moreover,} ~~had~~ more of both ~~about~~ and meaning in them, than these latter had. For, unquestionably, the King, by granting ^{to the Company} the property he did grant, ~~gave~~ ^{had given} it a ~~formal~~ power that admitted of such mention; and ^{he} had gone further, and by the fifth section of his grant, had ~~expressly~~ ^{expressly} extended that power, so as to ^{as to} make such mention of it, ^{as most} and proper ^{part} of any grant that the Company might thereafter ^{make}. ^{These occasional preambles are} ~~These occasional preambles are~~ thus, in no antagonism to the uniform tenor

* The preambles of

a great many of them) there is ~~more or less~~ reference made to a "pouvoir" "à nous donné par sa Majesté", ~~or~~ in one or another form of words.

& (for any anti-seigniorial interpretation of it, at least)

* and so forth,

(as we have seen)

of the body of these grants. That uniform tenor is irreconcilable with any anti-seigniorial interpretation of such preambles ~~originally from~~ ^{expressly} these occasional ~~forms~~ preambles. - There can be no question as to the inference of ~~law~~ ^{of law} or ~~public conscience~~ ^{public conscience} [insert rule.]

§288. - Such, then, being the style of the Company's direct grants, - what was that of the grants of its grantees?

Did they deal - were they allowed to deal, ~~and every one dealt~~ ~~with their grants, as if they were their own?~~ Or, as if ~~property in land - or any particular description of kind of property, is~~ ^{called,} ~~to the exclusion of any other -~~ was meant to be no property, but only ^a trust for those who were not called its proprietors?

did every one deal with them - as if their grants

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above made, of the Company's deeds of grant, ~~by the~~

§289. - The answer to this question cannot be based on ^{so} ~~collation~~ ^(relatively speaking) of large a ~~proportion of~~ the deeds of grants of these grantees, as has been ~~offered~~ ^{by way of} answer to the like question, in reference to ^{those} ~~Company's~~ grants. You have not ~~at~~ ^{the} ~~same~~ ^{nearly} proportion of the ~~forms~~ ^{one} at command, as of the other. The public records, ~~have been more~~ ^{imperfect} ~~fragmentary and imper-~~ ^{fect} ~~fect~~ ^{have not been} ~~officially~~ ^{officially} searched for titles of sub-grants ^{in piec,} - nor yet ^{until almost} at the last moment before the meeting of this Court ^{for} titles of such grants ⁱⁿ ~~censive~~. - I have ~~not~~ ^{not} had time to collect ^{inform} ~~documents~~ ^{elsewhere} of any considerable number of titles, of either of these classes; nor even, ^{to} ~~to~~ ^{grants} ~~to~~ ^{and} ~~to~~ ^{of} the comparatively few titles quite lately exhumed in manuscript for production before this Court by order of government, as to be able to make half the use of them that I might otherwise with more time at command I could have made.

until

and then very slightly

[Foot Note.]

any considerable.

The Council for the Seigniors ~~have~~ ^{not} ~~fully~~ ^{not} ~~been~~ ^{not} ~~indeed,~~ ^{not} ~~studied~~ ^{not} ~~to~~ ^{not} ~~place~~ ^{not} ~~before~~ ^{not} the Court the facts, ~~that~~ ^{that} ~~some~~ ^{some} of the ~~deeds~~ ^{deeds} produced by government were communicated to them ~~until~~ ^{until} ~~shortly~~ ^{shortly} before the meeting of the Court, - that a good many ~~of~~ ^{of} ~~them~~ ^{of} were not seen by them ~~until~~ ^{until} after their production, - and that some (they do not know how many) ~~have~~ ^{have} ~~never~~ ^{never} ~~been~~ ^{been} ~~seen~~ ^{seen} have not been communicated to them ~~at~~ ^{at} ~~all~~ ^{at}. In particular, the ~~tables~~ ^{tables} of rates and clauses of ~~censive~~ ^{censive} grants - of which they ~~are~~ ^{are} aware that a number of copies ~~it~~ ^{it} were handed in to the Court, were never shown to them; nor yet any copies, or note, of the deeds from which it was prepared.

§290. - Still, there is material enough to indicate the fact, which, indeed, might be presumed in the absence of all indication, - that these grants of the Company were taken, as they were given, and not otherwise; that King, Company and settlers, all alike acted ^{as} ~~under~~ ^{under} the ~~their~~ ^{their} ~~common~~ ^{common} feudal rules of ~~France~~ ^{France}, and not as under any ~~other~~ ^{other} ~~rule~~ ^{rule} ~~of~~ ^{of} ~~Canada~~ ^{Canada} in the peculiar feudal rule of Canada in

that behalf.

S 291. - Mention has been made (*supra*, S 273) of a grant or grants by the company, out of which the ~~propre~~ ^{the} ~~seigniories~~ of which, ~~the~~ ^{the} ~~Cap de la~~ ^{Cap de la} ~~Magdeleine~~ ^{Magdeleine} were constituted.

The grantee, Jacques de la Ferte, one of the members of the company (as indeed ~~more~~ were most of the holders of its ~~the~~ grants of the ~~the~~ highest class as to size and tenure), granted Bahiscan, 2 leagues by an unnoted depth afterwards fixed at 20 leagues, to the Jesuits, ~~to~~ in 1639, as an *arriere-fief*, to be held of himself, with all rights of justice, subject ~~to~~ ^{apparently} to the ~~the~~ ^{ordinary} ~~laws~~ ^{of} the Custom of Paris, and of a ~~price~~ ^{piece} of silver coin every ~~to~~ 20 years. The title itself is not printed; but from the ~~the~~ ^{short} ~~abstract~~ ^{paragraph} of it given by Bouchette (See N^o 13^a of Abstract), it would seem to have provided that the lands comprehended in the grant were -

- "to be possessed by the Fathers Jesuits, or applied and transferred to savages or others becoming Christians, and in such manner as the Fathers shall think proper, so that these lands shall not be taken out of their hands while they shall think proper to hold and possess them;" -

- a style of grant not altogether savouring of a trust for distribution to settlers, otherwise than as the grantee proprietors should choose.

Cap de la Magdeleine, made over in 1657, by the same grantee ~~to persons~~ and to the same parties, seems (according to the same authority) not to have been granted as an *arriere-fief*, but simply given as a *fief* holding of the Company. (See N^o 31 of Abstract.) When given, it had in it two *arriere-fiefs*, Mansolet and Hertel; ~~on~~ ^{on} what terms granted, does not appear. It is said to have been -

* fragment of

given to the reverend fathers in Canada, for "their Colleges and houses, to be by them held in the same manner as they were before that time possessed by the donors, to be enjoyed, done with and disposed of by the fathers, Jesuits, and their successors in N. F., as they shall think proper, for the benefit of the savages converted to the Christian faith, and in order to help towards subsisting the Jesuits in the said country; the whole conformable and according to the customs and constitutions of the Company of Jesus, without any civil obligation."

The presumption is, that de la Ferté's title was of the highest class of titles granted, ^{by the crown} to others than religious bodies, - and relieving him therefore from all restriction as to the jeu de fief (supra, S) ^{and} that he waived himself of his privilege, by alienating the whole of one of his grants by infundation, and simply gave away the other, after having granted two arrière-fiefs from it. It is certain, that he dealt with them both ~~as properties, with no sort of indication of any to the Jesuits~~ and he regarded both of them as substantial properties in the strictest sense.

x (supra, S note)

127 S 292. - The great seigniorship of La Prairie, ^{finer} furnishes several illustrations.

In 1647, the grantee of it made the following sub-grant from it, of the seigniorship of La Prairie, ^{also} to the Jesuits, - being No. 18 of the Abstract: -

* 2 leagues by 4,

"ayant lu la requête que nous a présenté, en leur nom, le procureur des dits religieux, par laquelle il nous demand une partie des terres qui nous ont été concédées par Messieurs de la Compagnie de la N. F., quelles terres sont scittuées le long du grand fleuve St. Laurent du côté du midy, ** nous leur avons bien volontiers donné et accordé ce qu'ils nous demandent, par ces présentes leur donnons et accordons ~~quatre~~ lieues de terre le long de la dite rivière St. Laurent du côté du sud, à commencer depuis ** , sur ~~quatre~~ lieues de profondeur dans les terres tirant vers le sud, ensemble les bois, prairies, lacs, rivières, estangs et carrières qui se trouveront dans l'estendue des dites terres, dans lesquels les religieux de la compagnie feront passer telles personnes qu'il leur plaira pour les cultiver.

"Cette donation ainsi faite, afin d'estre participant de leurs prières et saints sacrifices."

- a grant, unmistakably en franche aumône noble, clear of definite condition altogether.

x (see No. 744 b of Abstract)

S 293. In 1657, the proprietor of this same seigniorship made another sub-grant, of 50 arpents by 100, ^{was afterwards united into} part of what ~~is now~~ ^{the} became the seigniorship of Longueuil, (see No. 744 b of Abstract) on the following terms, as shown by the recitals of the later title, consolidating several grants into ~~one~~ that ~~was~~ fief: -

"haute, moyenne et basse justice, - en fief et seigneurie, avec tous droits de

- 1. - "à la charge de la foy et hommage, -
- 2. - "et que les appellations du jugé d'icelle ressortiront aux Trois Rivières, -
- 3. - "et du revenu d'une année ~~des~~ dits 50 arpens de front à chaque mutation de possesseur, suivant la Coutume du Vexin français."

Considerably different,

S 294. In 1662, the gardien noble of the ~~seigniorship~~ ^{seigniorship} then holding, ~~the~~ ^{of} seigniorship made another ^{sub} grant, - part of what became the seigniorship of St. François du Lac, ~~of~~ ^{of} Abstract (misplaced in Abstract, as No. 754 a under date of 1672, instead of being No. 748 b under date of 1662,) on ~~very~~ ^{quite} different terms, as shown by like recitals of a title consolidated ^{de Montjeu} several grants into the seigniorship of St. François du Lac.

20 The description of this sub grant and of its conditions, as ^{printed, reads thus:} ~~is~~ follows:—

"une terre en titre de fief et seigneurie, appelée Saint François des Prés, qui est en remontant le long du grand fleuve St. Laurent, jusques à my chemin de l'embouchure de la rivière des Iroquois dans le dit fleuve, et une lieue de profondeur dans les terres en la seigneurie de la Cité, et un quart de lieue dans le dit fleuve St. Laurent, avec le droit de chasse et de pesche dans la dite estendue, aussy jusqu'à un quart de lieue dans le dit fleuve St. Laurent, avec le droit de chasse et de pesche entre les dites isles et la terre ferme de la dite estendue, * *

— pour en jouir en pleine propriété et fief, avec moyenne et basse justice, —

- 1.— "à la réserve d'une rente noble et seigneuriale de 5 minots de bled froment bon et loyal, non rachetable, qui se devoit payer par chacun an au jour de St. Martin d'hyver, au lieu seigneurial de la Cité, * * *"
- 2.— "et à la charge de la foy et hommage que le dit * * * seroient tenus de porter à la dite seigneurie à perpétuité, * * *"
- 3.— "avec le revenu d'une année pour droit de rachapt à chaque mutation de possesseur, suivant la Coutume du Vexin François enclavé de la Coutume de Paris."

§295. In 1664, the Isle St. Paul, some arpents, was granted by the same party, from the same seignior, to three grantees, thus:—

avec les isles et bastures adjacentes, * * * pour, par eux, leurs hoirs et ayans cause, en jouir en pleine propriété, à titre de fief noble, avec justice moyenne et basse seulement, —

- 1.— "à la réserve d'une rente noble et seigneuriale de 6 minots de bled froment, bon, loyal et marchand, non rachetable et solidaire tant qu'ils en jouiroient en commun, —"
- 2.— "et arrivant qu'elle soit divisée entr'eux par égales portions, il se ferroit trois fiefs et trois hommages des dits lieux, et la rente pareillement partagée entre eux, qui seroit 2 minots de bled chaeun sans solidité, —"
- 3.— "la dite rente payable tous les ans, au jour et fête de St. Martin d'hyver, au lieu seigneurial de la Cité, à perpétuité, * * *"
- 4.— "avec le revenu d'une année pour droit de rachapt à chaque mutation de possesseur, suivant la coutume du Vexin François enclavé de celle de Paris."

§296. — And in 1665, the Isle Ste. Hélène and Islet Rouge, some arpents, since consolidated with the seignior of Orpèuil, were granted (see Title 150a of Abstract) by the same party, from the same seignior —

- en fief, avec justice moyenne et basse seulement, —
- 1.— "relevant de la dite Seigneurie de la Cité, en pleine foy et hommage, —"
 - 2.— "à la charge de 10 minots de bled froment de rente noble, féodale et foncière, payable à chaque fête de St. Martin d'hyver, * * *"
 - 3.— "avec le revenu d'une année de la dite isle à chaque mutation de possesseur, suivant la dite coutume du Vexin François, —"

— the grantor, however, by his agent, shortly afterwards admitting that this rent was too high, and reducing it by a postscript, to 10 livres in money.

that the seignior of the fief here granted only a droit de pesche over this quarter a league of the bed of the St. Lawrence along the frontage indicated, — although the words of the grant import more, as claims as words can, — he would yet have been exercising a proprietary right over the St. Lawrence; and the authorities must be admitted to have at least failed to question or doubt his legal capacity so to do. — Not that the fact matters much, in reference to the then notions of what was about property in the navigable waters generally; but for more striking facts about the grant in 1674 (Title 135) of the whole width of the Ottawa as part of Petite Nation, to be noted hereafter, is only one of them.

appelé * * *

[Foot note.]

* At the argument before this Court, it was suggested, in opposition to my citation of this title, that these words may have been meant to indicate only the frontage of the seignior on the St. Lawrence, and not an extension of the grant for a depth of a quarter of a league into its bed along such frontage. If so, the express and odd form of sentence has been adopted to convey such meaning.

In the after portions of the title (No. 155 of Abstract, — pp. 87-3 of 2^d vol. of Doc. Seig.) it is plain that there occurs some error of a clerk or printer, and there may be a word or two left out in this earlier recital. But whether they have been or not, it at least appears to me to be clearly clear, that the words frontage of the seignior grant was meant to be indicated before the stating of its depth, and that the grant of a league in the St. Lawrence, was an added grant in depth through the frontage.

It certainly must have been intended that the error or errors alluded to, in the latter part of Title 155, make it impossible to say confidently, with perfect certainty how ^{unprofitably} in 1678, when consolidated a fief in question, dealt with this quarter of a league; but they ^{at least} seem to have at taken it as here read it, and there is no hint at the notion of ~~it~~ ^{it} except an, certainly, there is nothing in a mind at any excess of grant in the case, ^{with intention to cut it down.}

In 1732 and 1733, the titles of the seignior were drawn into contestation before the Intendant, in reference to the exclusive right of pesche of the seignior within this quarter of a league; and it was then taken (as indeed, from recitals, it had been before) for a quarter of a league in the bed of the St. Lawrence along a frontage of 2 leagues. No one ^{clearly} ~~pretended~~ thought of it as a frontage. — see Doc. Seig., Vol. 2, pp. 150-155.

Approving, even for the sake of argument, [Foot note.]

These two grants fall just beyond the period of the Company of New France, but their connexion, as regards sub-jur, is here, and I therefore take them up here.

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—“avons donné et concédé, donnons et concédons par ces présentes à titre de cens et rentes seigneuriales, à * * le nombre de 280 arpens de terre à bois en notre seigneurie de Lauzon, et bornés * * , pour en jouir par le dit * * avec tout droit de chasse et de pêche audevant de la concession,—

- 1.—“à la charge de s’y établir dans la présente année, et y avoir feu et lieu, ou autre pour lui, et y continuer à l’avenir, autrement la présente concession nulle sans autre formalité et sans que le dit * * puisse prétendre aucun dommage et intérêt ni restitution des dépenses qu’il y pourrait avoir faites pour bâtir ou défricher,— *xx from*
- 2.—“et de plus un denier de cens portant lods et ventes, saisine et amende, pour chacun des dits 280 arpens de terre, payable à la recette de notre domaine le jour de St. Rémi, 1er Oct. par chaque année, et la trentième partie de l’anguille ou saumon que le dit * * pêchera ou fera pêcher au droit de la concession, sallée et bien conditionnée, portable à la dite recette à chaque jour St. Martin d’hiver, avec 2 chapons vifs,— *xx*
- 3.—“enverra moudre ses grains au moulin banal, quand il y en aura un construit sur la dite seigneurie,—
- 4.—“et clora les terres de fossés, et de plus [autrement ?] ne pourra prétendre aucun dommage contre ses voisins pour les dégâts que les bestiaux y pourraient faire à l’avenir,—
- 5.—*Same as 4 of Grant 38a.*
- 6.—“ne pourra le dit * * vendre ni aliéner la présente concession, qu’il y ait au moins mis 10 ou 12 arpens de terre en labour,—
- 7.—“et en cas de vente, nous ou ceux qui auront droit de nous, pourront retirer la dite concession en remboursant le son principal de la vente, frais et loyaux comptes suivant la Coutume de Normandie, que nous voulons être suivie en ce chef, le surplus étant régi par celle de Paris.”

“souffrira en ces terres les chemins qui seront jugés nécessaires par nos officiers, ensemble sur le bord de la rivière St. Laurent pour faciliter la navigation et la montée à l’abord des terres,—

After which, in 1658 (May 29), upon Boudon's petition to that effect, the Seigneur granted him a new title (No. 45a of Abshack) in these terms:—

—“à quoi obtempérant, nous, voulant favorablement traiter le dit * * , avons augmenté la dite concession d’un arpent de front sur le dit fleuve, et 160 arpens de terre en bois de profondeur sur chacun des dits 9 arpens de front, et icelle créée et érigée en fief noble, ensemble le dite augmentation, avec tout droit de haute, moyenne et basse justice, pour en jouir * * à perpétuité,—

- 1.—“à la charge de la foi et hommage,— *xx*
- 2.—“et du revenu d’une année à chaque mutation de possesseur, suivant la Coutume du Vexin François enclavé de la Coutume de Paris,—
- 3.—“et que les appellations du juge qui sera établi sur les lieux ressortiront pardevant le juge prévost de notre dite seigneurie,—
- 4.—“ce faisant, déchargée la dite concession des cens et redevances et charges dont elle était ci-devant chargée.”

see No. 311a of Abshack,—

§ 302. — Another censive grant by the same Seigneur in the same fief (and which also, as late as 1688 or 1699, was created into an arrière fief, but “sans banalité et sans justice”) was made in 1648 (Oct. 15), of 200 arpents, 5 arpents by 40, with rights of chape and pêche, on quite different terms from those of the above grant in 1655,— thus:—

[Foot-note.]
 * see No. 726 Cens of Abshack.
 * Only title, and that of the arrière fief, in 1648 or 9, we taken from the minutes of an arrêt of the Conseil Supérieur, of 1700 (Dec. 20), where the whole affair is recited as a matter of Coutume sans action.
 The creation into arrière fief (No. 311a of Abshack) was on these terms:— *is then recited:—*

- 1.—“à la charge de 12 deniers de censive par chacun arpent qui sera défriché et mis en terre labourable ou en nature de pré,—
- 2.—“et sans autre charge annuelle que de mettre par chacun an es mains du procureur fiscal ou autre ayant pouvoir, dans le jour et fête de St. Michel par chacune année, un quattron [quart] — *xx*
- 3.—“à la charge de retrait en cas de vente.” *xx*

§ 303. — A third grant of the same date of the same Seigneur, furnished me by the Ladies Ursulines, is of the date of 1654 (May 4), en franchise aumône rognée, under reservation by the Seigneur, of the entire property of a right bank falling within it, and of 18 feet of ground on either bank, — and of the right to see fit, in case of the property passing out of the Ursulines' hands. This grant was (No. 38a of Abshack) thus:—

—“il a créé et érigé en arrière-fief les 5 arpens de terre de front sur et à icelui arrière-fief laissé le droit de moulin, et icelui droit concédé à toujours et sans banalité et sans justice, au contraire relevant de ce moyennant que les habitants d’icelle moudroient préférentiellement leurs autres des côtes voisines, en attendant qu’il y en ait un banal de con-

- 1.—“à la charge de la foi et hommage par le dit * * à perpétuité,—
- 2.—“et d’une tasse d’argent du poids d’un marc, ou la valeur en argent de possesseur ou seigneur dominant.”

—“avons donné et accordé, donnons et accordons par ces présentes * * le nombre de 320 arpens de terre en notre dite Seigneurie de Lauzon, * * ainsi qu’il suit, à savoir : 8 arpens de front sur le grand fleuve St. Laurent à commencer à 3 arpens près de l’embouchure du ruisseau du moulin à scie * * et 40 arpens de profondeur * * à la réserve du cours du dit ruisseau du moulin à scie que nous nous réservons en tout son contenu avec 18 pieds de chaque côté, et en sorte que les dites Mères ne puissent user du dit ruisseau, ni autres ayant droit d’elles, que par notre permission particulière,—pour en jouir par les dites * * avec tout droit de pêche et de chasse audevant et audehors de la dite concession en main morte, franchise aumône, tant et si longuement que cette concession sera entre leurs mains,—

1.—“pour ce qu’en cas d’aliénation nous la pourrions charger ainsi que nous jugerons raisonnable,—

*Archives de la Ville de Montréal
 2, 3, 4, 5 - minutes of the Seigneur Boudon's, volume 3, 4, 5-8, respective of the minutes of Boudon, volume 3, 301.*

—“avons donné et concédé, donnons et concédons par ces présentes à titre de cens et rentes seigneuriales, à * * le nombre de 280 arpens de terre à bois en notre seigneurie de Lauzon, et bornés * * , pour en jouir par le dit * * avec tout droit de chasse et de pêche au devant de la concession, —

- 1.—“à la charge de s’y établir dans la présente année, et y avoir feu et lieu, ou autre pour lui, et y continuer à l’avenir, autrement la présente concession nulle sans autre formalité et sans que le dit * * puisse prétendre aucun dommage et intérêt ni restitution des dépenses qu’il y pourrait avoir faites pour bâtir ou défricher, — ~~xx~~ *from*
- 2.—“et de plus du denier de cens portant lods et ventes, saisine et amende, pour chacun des dits 280 arpens de terre, payable à la recette de notre domaine le jour de St. Rémi, 1er Oct. pour chaque année, et la trentième partie de l’anguille ou saumon que le dit * * pêchera ou fera pêcher au droit de la concession, salée et bien conditionnée, portable à la dite recette à chaque jour St. Martin d’hiver, avec 2 chapons vifs, — ~~xx~~
- 3.—“enverra moudre ses grains au moulin banal, quand il y en aura un construit sur la dite seigneurie, —
- 4.—“et clora les terres de fossés, et de plus [autrement ?] ne pourra prétendre aucun dommage contre ses voisins pour les dégâts que les bestiaux y pourraient faire à l’avenir, —
- 5.—~~Same as 4 of Grant 38a.~~
- 6.—“ne pourra le dit * * vendre ni aliéner la présente concession, qu’il y ait au moins mis 10 ou 12 arpens de terre en labour, —
- 7.—“et en cas de vente, nous ou ceux qui auront droit de nous, pourront retirer la dite concession en remboursant le son principal de la vente, frais et loyaux comptes, suivant la Coutume de Normandie, que nous voulons être suivie en ce chef, le surplus étant régi par celle de Paris.”

“souffrira en ses terres les chemins qui seront jugés nécessaires par nos officiers, ensemble sur le bord de la rivière St. Laurent pour faciliter la navigation et la montée à l’abord des terres, —

After which, in 1658 (May 29), upon Bourdon's petition to that effect, the Seignior granted him a new title (No 45a of Abstract) in these terms: —

—“à quoi obtempérant, nous, voulant favorablement traiter le dit * *, avons augmenté la dite concession d’un arpent de front sur le dit fleuve, et 160 arpens de terre en bois de profondeur sur chacun des dits 9 arpens de front, et icelle créée et érigée en fief noble, ensemble le dite augmentation, avec tout droit de haute, moyenne et basse justice, pour en jouir * * à perpétuité, —

- 1.—“à la charge de la foi et hommage, — ~~xx~~
- 2.—“et du revenu d’une année à chaque mutation de possesseur suivant la Coutume du Vexin François enclavé de la Coutume de Paris, —
- 3.—“et que les appellations du juge qui sera établi sur les lieux ressortiront par devant le juge-prévost de notre dite seigneurie, —
- 4.—“ce faisant, déchargée la dite concession des cens et redevances et charges dont elle était ci-devant chargée.”

*see Title 311a
see No 311a of Abstract, —*

§ 302. — Another censive grant by the same seignior in the same fief (and which also, as late as 1668 or 1699, was erected into an arrière fief, but “sans banalité et sans justice”) was made in 1648 (Oct. 15) of 200 arpents, 5 arpents by 40, with rights of chape and pêche, on quite different terms from those of the above grant in 1655, — thus: —

[Foot-note.]
* see No 126 Cens of Abstract.
* *of record of this title, and that of the arrière fief, in 1678 or 9, are taken from the records of an arrêt of the Conseil Supérieur, of 1700 (Dec. 20), where the whole affair is recited as a matter of course sans action.*
The erection into arrière fief of the title of Abstract was on these terms: —

- 1.—“à la charge de 12 deniers de censive par chacun arpent qui sera défriché et mis en terre labourable ou en nature de pré, —
- 2.—“et sans autre charge annuelle que de mettre par chacun an es mains du procureur fiscal ~~ou autre ayant pouvoir, dans le jour et fête de St. Michel~~ par chacune année, un quattron [quart] d’anguille salée et bien conditionnée, —
- 3.—“à la charge de retrait en cas de vente.” ~~xx~~

§ 303. — A third grant of the same class of the same seignior, furnished me by the Ladies Ursulines, is of the date of 1654 (May 4), en franchise aumône rovinée, under reservation of the seignior, of the entire property of a suiffan falling within it, and of 88 feet of ground on the bank, — and of the right to be pecuniary dues as he might see fit, in case of the property falling into the Ursulines' hands. This was (No 38a of Abstract) thus: —

—“il a créé et érigé en arrière-fief les 5 arpens de terre de front sur 40 de profondeur, sis * * et à icelui arrière-fief laissé le droit de moulin, et icelui droit concédé, en tant quebesoin seroit à toujours et sans banalité et sans justice, au contraire relevant de celle de la dite seigneurie, et moyennant que les habitants d’icelle moudroient préferablement leurs grains au dit moulin à tous autres des côtes voisines, en attendant qu’il y en ait un banal de construit, —

- 1.—“à la charge de la foy et hommage par le dit * * à perpétuité, —
- 2.—“et d’une tasse d’argent du poids d’un marc, ou la valeur en argent monnoyé, à chaque mutation de possesseur ou seigneur dominant.”

—“avons donné et accordé, donnons et accordons par ces présentes * * le nombre de 320 arpens de terre en notre dite Seigneurie de Lauzon, * * ainsi qu’il suit, à savoir: 8 arpens de front sur le grand fleuve St. Laurent à commencer à 3 arpens près de l’embouchure du ruisseau du moulin à scie * * et 40 arpens de profondeur * * à la réserve du cours du dit ruisseau du moulin à scie que nous nous réservons en tout son contenu avec 18 pieds de chaque côté, et en sorte que les dites Mères ne puissent user du dit ruisseau, ni autres ayant droit d’elles, que par notre permission particulière, — pour en jouir par les dites * * avec tout droit de pêche et de chasse au devant et au dedans de la dite concession en main morte, franchise aumône, tant et si longuement que cette concession sera entre leurs mains, —

1.—“pour ce qu’en cas d’aliénation nous la pourrions charger ainsi que nous jugerons raisonnable, —

Archives de la Ville de Montréal
2, 3, 4 — *Abstract of the original of Bourdon, supra, § 301.*
587, respecting 2, of the grant of Bourdon, supra, § 301.

§ 304. - A fourth title (N^o 384) indicates a rate of 1 denier per arpent and $\frac{1}{30}$ a thirtieth of the eels and salmon caught, as having been charged in 1654, in this seigniorie, without the 2 live capons, which formed part of the Boudon grant in question.

And a fifth, ~~is~~ being for a grant of 3 arpents by $\frac{1}{80}$, which has been laid before this Court in N^o 27 of 1st Series, - shows, under date of 1655 (Nov. 18), ~~is~~ another rate still; being 1 denier per arpent, one eleventh of the eels and salmon caught, duly salted, and 2 live capons.

& with conditions answering substantially to those of this Boudon grant,

^{1st} Seigniorie of Beauport furnishes the

§ 305. - The ^x earliest cessive grant, in Canada, made by ~~a~~ in point of date, of which I have been able to obtain a copy; N^o 26 of the 1st Series of ~~the~~ documents laid before this Court by government. It was made by the grantee of the seigniorie in 1637 (Jan. 29), to an old servant, apparently; and its terms are so peculiar, and so significant of the entire freedom of the ~~the~~ contracts of acquittement in those days, as to warrant its insertion here: -

"le dit Sr. de Beauport a donne
" et donne par ces presentes, a titre here-
" ditaine, audit Saultois, 300 arpents de
" terre en rogne, selon la Coutume de
" Paris, plantee en bois de haute futaie,
" icelle terre situee x x, -

" pour par le dit Saultois etre cultivee,
" defrichie et ensemencee, -
" laquelle terre le dit Sr. sera tenu lui
" faire mesurer et border, commençant
" x x

1. - "a la charge que le dit Saultois bail-
" lera par chacun an, x x 5 sols de
" rente avec 2 chapons et 2 journées
" de corvée d'homme, une à la mois-
" son et l'autre à la finisson des foins,

2. - "avec les autres droits seigneuriaux
" x x selon la Coutume de Paris.

3. - "Le dit Sr. x x se retient le droit
" de pâturage, sans que le dit Sr. soit
" tenu à aucun guide de bestiaux
" à lui appartenant; -

4. - "Plus, le dit Sr. donne au dit Saultois
" 1 arpent de terre ensemencee en blé
" avec un poinçon de farine, x x et
" le dit Saultois a promis et s'est obligé
" au dit Sr. x x lui vendre l'arpent de
" terre, moyennant que le dit Sr. x x lui
" faye défricher un autre arpent de
" terre au même état qu'estant à lui.

5. - "que le dit Launlois sera tenu
"de se faire bâtir une maison dans
"Beaufort, ~~et donner~~

6. - "y donner et faire verser des
"farines au moulin du dit Sr. x x

7. - "et par ces présentes le dit Laun-
"lois et sa femme tiennent quitte le
"dit Sr. de tous les services qu'ils lui
"ont rendus, -

8. - "et le dit Sr. x x donne quittance
"et tient pour rentes les rentes et sou-
"missions que le dit Launlois est tenu
"de faire sur icelle, -

9. - "devant même lui donner ses
"mission de chape et de pêche sur le
"fret de son étendue, et sur le son
"la grande rivière."

§306. - Two other censive grants
of this period, belonging to this
Seignior of Beaufort, have been
laid before this Court by government;
neither of them, in the least like
this, as to ^{their} terms, - or, indeed, like
any other yet noticed.

One (No. 2 of 2^d Series) is of 1644,
- 6 arpents by $\frac{1}{2}$ a league and a
half, with no mention of chape or
pêche; at a rate of 20 sols tournois
per arpent of front, with 1 sol per
of cens per arpent of front, ~~of~~ and 2 Capons
(or 30 sols, at the Seignior's choice)
for the whole; the grantee to sur-
vey ^{his lot,} and to make all roads, and
~~addly enough~~ otherwise to be bound
as under the Custom of Paris, - "droits
de moulin" being oddly enough referred
to, as if established under that Custom.

The other (No. 6 of 2^d Series) is
of 1650, of two lots together compris-
ing 30 arpents, also without mention
of chape or pêche; at a rate of 1
sol per arpent, - and with no speci-
al conditions whatever.

§307. - A censive grant in
Deschambault, (No. 3 of ~~Series~~
2^d Series), laid before this Court by
government, outdoes even the above
grant of 1637 in Beaufort for the
anomalous speciality of its conditions. It
is of 8 arpents by 20, at a ^{rate of cens of} ~~rent~~
rentes, of 2 Capons for the whole and of
6 deniers for every "arpent de terre
deffrichée"; and the added conditions
read thus: -

- "et pour donner comage au
"dit ~~Sr.~~ ^{Archives de la Ville de Montréal}
"le moyen de vivre, le dit Sr. x x promet

* under date of 1645,

"oblige luy donner et avancer /
 "arpent de terre prest à labourer, et
 "2 autres arpents sur lesquels le bois
 "est abattu et débité, estant les
 "dits 3 arpents sur la présente ca-
 "ception, -
 "et a été accordé qu'il sera per-
 "mise au dit Sr. xx de rente si bon
 "luy semble sur les terres de la
 "présente conception, et sur toutes
 "popesens dedans Paris, ensemble
 "les bâtiments qui seront fait sur
 "celle, - en donnant toutefois une
 "autre conception de pareille terre
 "au dit Pierre Mapié, et luy faisant
 "désenter et bastir autant de terre
 "et maison qu'il s'en pourra trouver
 "sur la présente conception, à
 "pareille condition cy dessus spécifi-
 "ez, desquels ~~est~~ est prest à labourer
 "et les 2 autres il n'y a que le bois
 "d'abattu et débité, - et si le dit
 "Sr. xx ne prest point popesens de-
 "dans les dits Paris de la présente
 "conception, il n'y pourra plus re-
 "venir, et elle appartiendra enti-
 "èrement au dit Pierre Mapié, -

"lequel en ce cas sera tenu et
 "obligé xx de désenter sur les terres
 "du dit Sr. xx l'arpent de terre, - et
 "le dit Pierre Mapié rendra le dit 1/2
 "arpent prest à mettre en labour
 "ainsy qu'il est accoustumé de
 "faire en ce pays, - au lieu ou le
 "dit Sr. xx destinera, xx

"promettant le dit Sr. xx de donner
 "au dit Pierre Mapié 6 journées de
 "son charpentier pour aider à se loger
 "et sa famille, - sans que le dit
 "Pierre Mapié soit tenu nourrir
 "le dit charpentier, ny rendre aucune
 "journée au dit Sr. xx

"et le dit Sr. xx n'emhera point en
 "popesens de la dite conception, terres
 "désentées et logement, qu'il n'en ayt
 "autant fait désenter et bastir, afin
 "qu'en entrant en popesens xx le
 "dit Pierre Mapié aille demeurer en
 "la conception que le dit Sr. xx luy
 "pourra faire."

like any of the foregoing,
 * not ~~entirely~~ as to dimensions,
 rate or conditions;

for 4 and 3 arpents respectively by

§ 308. - Among the documents
 laid by government before this Court,
 there are also 3 three cursive drafts
 in Notre-Dame des Anxes (Nos 4, 5
 and 8 of 2d Series), + one of them ~~is~~ like
 the other two, ~~in any of the~~ ~~same~~ ~~and~~ ~~confi-~~
 * these respects; ~~and~~ ~~the~~ ~~two~~ ~~that~~ ~~are~~ ~~alike~~ ~~being~~ ~~of~~
 a depth of 4 leagues. E
 Archives de la Ville de Montréal

* (No. 7 of 2d Series)

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§309. - There is one grant, furnished from Lillery; also made by the Jesuit Fathers, the proprietary of Notre Dame des Anges, - but on terms ^{of a} as peculiar as was well possible.

It was a grant of 2 arpents by 40, for a rent ~~initially~~ of 12 deniers per arpent as fast as it should be cleared, of 20 sols per arpent of fruit, of 2 deniers as cens, and of 2 Capons or "poulets venus," yearly - in all, 3 sols or more per arpent so soon as the clearance should have been made; and under the following special conditions: -

4 +

- "sera obligé avec ceux qui auront droit de pesche vis à vis de leur conception, de faire un chemin commun ~~entre~~ afin que puissent commodément descendre la cote x x

- "et encore à la charge de commencer à faire défricher dans un mois commençant x x

- "et bâti et habités x x sur la dite conception dans un an d'après pour tout débaix, -

- "et les années suivantes de culture les dites terres en sorte que les dits cens et rentes puissent être cashés par chacun an, -

- "sinon, et à faute de les percevoir, le dit x x Supérieur de la résidence de Lillery, ~~doit~~ x x renfermer en la possession des d. héritages par un délai de ~~et~~ prendront sans forme ni figure de procès, et sans le remboursement des fraiz qui ils auront pu y faire, ~~sur la terre~~

- "sera tenu le dit x x de permettre aux sauvages de Lillery de couper et prendre du bois de chauffage, et pour autres usages sur la dite conception, sans qu'il les puisse empêcher ou molester, quant et lorsqu'ils en auront besoin, -

- "sera aussi tenu le dit x x de moudre ses grains au moulin qui sera bâti sur les terres signifiées des sauvages de Lillery, en cas qu'on en fasse bâtir un."

§310. - Three ^{titles} grants are produced within the Seigneurie of Beauport (Nos. 9, 10 and 53 of 2d Series), all of a league and a half in depth; but otherwise, no two of them alike, ~~thicker~~ speaking they are not grants; not being made by the Seigneur, but they seem to recite the title, and more or less of the conditions, stipulated by the Seigneur.

* x x ou quelqu' autre personne qui en soit commis x x de

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* and none of them following any of the above forms.

§ 311. - Lastly, in the lelle ^{les gouvernements} d'Orléans, there are furnished ^{from} three ^{more} ^{censive} grants of this period, and ~~two~~ ^{two} ~~more~~ have been placed in my hands by client.

* (N^{os} 23 and 25 of 1st Series)

* In the terres of Quebec, which was shortly afterwards converted into a franche aumône rovinée. (N^o 35_a of Abbeché)

* At the extremity of the Island just opposite Quebec, are particularly

One of these (N^o 24 of 1st Series) is of 8 arpents by 10 in an arrière fief then called Beschereau; ~~the other~~ and the other two ~~were~~ are in the small arrière fief of Beaulieu.

Of the latter, one is in this same arrière fief; and the other (N^o 28 Cens 7^e of Abbeché) a direct censive grant by the Seigniors of the Island.

None two of these are alike in terms; and no one of them follows any of one of the forms in terms, any one of these ~~forms~~ above mentioned upon.

§ 312. - The three grants in the little arrière fief of Beaulieu, ~~is~~ remarkable.

The earliest in date (N^o 23 of 1st Series) was of 1652, for 4 arpents by an unstated depth which ~~hardly~~ could not have been great, and a ~~small~~ ^{smaller} lot of 20 perches near; with a right of pêche subsidiary to that of the Seignior, and also a right of pasturage for his own cattle only, on the margin of the river on either side of the grant; at the rate of 20 sols ^{yearly} per arpent of front, "un double de cens" for the whole, and 3 live capons; the special conditions being, settlement, ^{within the} ~~year~~ ^{year}, and residence forever, on pain of summary escheat without compensation for any improvements, - suit to the banal mill, whenever there should be one, - the render of land for roads, - the stipulation not to sell till at least 10 or 12 arpents should be in cultivation, - and that the meadow (meaning, apparently, the river beach open to the pasturage above spoken of) might be mowed by the grantee, but not to the extent of over 100 boites de foin.

* adjoining the above, and

The second in date (N^o 25 of 1st Series) was of 1659, - the grant to Jacques Bernier dit Jean de Paris, ~~of~~ ^{of} 2 arpents by a like depth; and its conditions are these: -

[Foot-note.]

* In all, therefore, including the capons, ~~over~~ 11 or 12 sols, or more, per arpent.

1. - "le dit x x s'oblige payer par chaque an, x x 10 sols pour chaque arpent de terre à quoi se pourra monter la dite concession, tant en terre desertée que complantée en haut bois, et 3 chapons vifs, aussi par chacun an, x x avec 3 deniers de cens pour toutes la dite concession."
2. - "les dits cens et rentes payables en

- (216) "effets du cûm du pays, au prix courant,
3. - "portant lods et ventes, saisine
"et amendes, selon la Coutume x x de
"Paris x x.
 4. - "sera permis au dit preneur de
"d'envoyer ses bestiaux à lui appar-
"tenant en propre, paître à la prairie
"et bois, et non à d'autres; -
 5. - "aura le dit preneur droit de
"chape et de pêche devant la dite
"Conception et dans toute l'étendue
"de la dite terre.
 6. - "sera loisible au dit seigneur
"bailleur, si ~~le~~ bon lui semble, de
"prendre quelques filets au devant de
"la dite Conception.
 7. - "sera obligé le dit preneur de
"faire mesurer la dite terre dans
"le jour et an, à ses dépens; -
 8. - "comme aussi d'envoyer mou-
"dre ses grains au moulin banal du
"dit seigneur bailleur, en cas qu'il
"y en ait un bâti; -
 9. - "sera tenu faire garder ses
"bestiaux, pour éviter tous dégats
"qu'ils pourraient faire à l'avenir;
 10. - "ensemble de se faire bâtir
"dans le village qui sera proposé
"pour cet effet; -
 11. - "tiendra le dit preneur feu
"et lieu sur la dite terre, ou autre
"pour lui, faute de quoi la pré-
"sente sera nulle.

x la one Jean Foucher,

The latest in ^{date} ~~the~~ (which
has been furnished to me, in the ~~year~~
of 1001 (Sep. 25), a grant of 2 arpents
by a like unstated depth, and also
of a village lot, ~~to one Jean Foucher~~
with right of chape and pêche, and
pasturage on the ~~meadow~~
at the rate of 6 deniers of cens, and
with 6 livres and 2 capons, for the farm,
and 1 poulle for the village lot;
the ^{other} special conditions simply being
simply, that the grantee should
build a house and barn in the year
and day, on pain of nullity of his
grant, - and that he should do suit
to the banal mill, wherever
one should have been built.

[Inscribed here]

JEAN FOUCHER

217 S313. — That the second of these grants, that to Jean de Paris, should have ~~been~~ forced ^{itself} on the notice of the learned Counsel retained against the Seigniors, was unavoidable. So also was, perhaps, the line of argument taken by them in reference to it.

If a rate of 10 sols ^{per arpent} in money, with an addition in kind raising it ^{according to the value of those days} to 12 ^{sols} thereabouts, could be stipulated in 1659, ~~there is great difficulty to say no more in understanding~~ ~~how~~ the sequence is not thence easy, to the doctrine that all rates over 2 sols of money value of this day, are absolutely illegal, and must ^{now} be cut down! To warrant it, there ~~is~~ must be shown some text of law ^{enacted} by competent authority, and in clear and precise terms. Every one knows that no such text exists.

The learned Counsel, accordingly, sought to put in question the fact; and argued that this rate was ^{really} of 10 sols per arpent of frontage. Its words are expres, to the company. In ~~the~~ ^{the} long record of an ~~obscured~~ ^{obscured} Law-suit in 1745, between the then Seignior of Beaulieu and the then holder of this land, this grant is cited and argued upon by both parties, always in its obvious sense as fixing a rate per superficial arpent, and neither the parties, nor the Intendant before whom the suit was pending, ever thought of questioning the perfect legality of such rate. Yet the ~~grant~~ ^{deed}, found by search at government instance among the ~~records~~ ^{records} of the notarial records, is now impeached! It is said, that it must have been a mistake. It was even argued that its style proved this, inasmuch as in those days it was de style to fix rates by the arpent of frontage, and not by the superficial arpent; the fact being, that every known censive grant by the company, and by far the major part of all the known censive grants of this period made ~~after~~ ^{by} the Compagnie de la Ville de Montpelier, ~~no mention~~ take the rule of the

and was

[Foot-note.]

* Printed in the 2d Vol. of the Documents Seigneuriaux, pp. 187 et seq.

superficial arpent or of the total extent, to the exclusion of the arpent of frontage.

That the rate was high, there is no doubt; higher than the values of that time warranted. The grant was afterwards abandoned, in consequence; the high rent declared redeemed, by subsequent dealings of the parties; and a ~~new~~ grant made at a low rate. But no one ^{will now} ^{in a desperate} ~~argument~~ ^{argument} drives to all lengths, ~~is~~ ^{that it was} ~~doubted~~ ^{the fact of its} ~~having been~~ ^{so made}, and was perfectly legal as ~~so~~ ^{made}.

[Insert rule here.]

S 314. Arrived at the end of the discussion of this period of Canadian history, I may surely again say, that as yet we have come to nothing that should tend even so remotely to indicate the notion, on the part either of the King, or of the Company, or of their grantees or sub-grantees, ~~that the feudal system of Canada~~ ^{either was, in any wise a different thing from property in land in} or was, ^{meant} to be, a something different from the feudal system of France.

If ~~fe~~ holders of land en fief in Canada were to be land-distributors, and not veritably landowners, it was absolutely necessary that their grants should, ^{say so}, not one grant is there, that ~~does~~ ^{or even hints} either say this, or so much as hint it.

To make it possible to imagine that such a system was then ~~so much as~~ thought of, the grants en fief should (at the very least) have been uniformly large, so as to admit of and require distribution; and those en censive uniformly small, so as not to ~~admit of~~ ^{require} ~~or admit~~ it. Instead of which, we have fiefs of all sizes, ranging from the hundred leagues ^{and} more, to the ten arpents; and we have censive grants of all sizes, from the arpent or less, to the ~~best~~ ^{measured} thousand arpents and ~~over~~ upwards.

Every one dealt with all manner of contracts for disposal of land, precisely as in France, exercising all that freedom of private contract, which distinguished the characterised the feudal system. The franc alleu noble, the franche amsoué, noble and roturier, the tenue par service divin, ^{Archives de la Ville de Montréal} every grade ^{below} the baronial

* not merely hint at such a thing, but shout plainly

*, if not (as in the case of the fief Pachevigny) to the fraction of a ^{single} arpent;

of franchises - not to say, license -

[Foot-note.]

See at least, Ville suprà, S 160.

*, and granted under all manner of variant conditions as to privilege and otherwise, - and

as well the châtellenie, the fief with justice of every grade ^{downwards}, and of every possible size, the censive, of most variant degrees of size and burthen, - were all these; no one contracting otherwise than as under a system that imposed no check of the political ~~allowed every sort of contract.~~

+

Fiefs ^{made} upon any sort of contract for the alienating of real estate. Fiefs of higher grade than the baronial were expressly contemplated; though none seem to have been created. Justice was parcelled out with the fief, ^{more or less} extensively, ~~or was~~ held back, capriciously from it, ~~as~~ with all the aristocratic caprice and puerility of ^{the} France of that day.

* - but never any clause hinting at that obligation to sub-grant, which the anti-seigniorial theory now makes out to have been the ~~end~~ and aim of all of

The dues to be paid by the seigneur or to his dominant, were fixed at will; clauses in factum, ^{were} introduced into their grants at will, ~~but~~ ^{nevertheless} ~~which the any offer~~ ~~any approach to this clause of~~ ~~enforced sub-grant or from which~~ ~~the anti-seigniorial theory now~~ ~~derives its force~~ ~~rests upon as having been~~ the essence of all grants en fief in Canada. Holders en fief of the Company, sub-leased with as large license as the Company had intended to them, - still with this pregnant omission of the ^{special} clause that they should all have put in, according to the anti-seigniorial hypothesis.

Seignior-

And the Company and its ^{their} grantees made grants en censive just as they pleased, at rates ~~as~~ with as large license, - at rates ranging from ~~one to the denier~~ ^{to the} for 32 arpents, or for each arpent cleared, or for each arpent granted ^{with release from} ~~under reserve of~~ ~~own~~ payment for a first 10 years, ^{then} up to the 10 or 12 ~~sol~~ ^{per arpent} - per arpent, - without ^{special} burthen of any kind, or with any kind of bargain, ~~that~~ ^{that} they saw fit to make and could make as to ^{too} any.

or twelfth of a sol

* every one's contracts were ^{carefully} all ^{worded} to mislead as to their meaning.

any. And men sought for the great favor of having their censive grants converted into grants en fief.

Unless every one then looked upon the fief as a mere property ^{was} ~~was~~ ~~not~~ ~~the~~ ~~result~~ of what they meant.

S 315. — And this is not all.

The ^{Seigniors'} case is not merely, that thus far we have come upon no trace of the fiduciary-commiss seigniorial. Although that is much. ~~Allowing for lapsed grants some thing something like three tenths~~ of all the land now held seigniorially in Lower Canada, is still held under the seigniorial ~~title~~ ^{titles} from the crown or from the company — of this period. The Attorney General's Propositions ~~make an exception~~ for titles of any class.

But nothing is more certain, than that by feudal law — herein coincident with the very first principle of all law — that ~~the~~ no mere will or word of the crown which had bound itself to these grants, could ever ~~reverse~~ change them ^{into} into what these Propositions ~~now~~ assert that they ~~now~~ are now.

and renewed

R.P.

x disproperty (so to speak — one almost ^{has to} coin a new word for ~~express~~ a new idea) every feet, without exception

contractually

from what they ~~found~~ ~~made them~~ were }
were when made,

[Insert double rule here.]

§ 316. - We arrive, then, at the second Period of our history of Canadian land-granting; that which ended with the surrender of the Charter of the Company of the West Indies, in 1674.

§ 317. - It was an objection repeated, insisted on in argument, before this Court, by the learned Counsel retained against the Seigniors, - and not without reason, in view of the ^{necessities} ~~consequences~~ of their argument, - that all the grants of the Company of New France were revoked by the King.

This objection has been more than once indirectly contradicted in the foregoing pages, by anticipation. It is now time to deal with it directly.

§ 318. - In the first place, and without reference to the tenor of any document or documents emanating from the King or from any one else, that may be cited in support of it, - it cannot be true; because an examination of the titles to seigniorial properties ~~is~~ furnishes ample proof to the contrary.

Some of the titles granted by the Company, there is no doubt, lapsed; their holders either never taking ^{possession} or else before long giving it up; and the land, after a time, being granted de novo to other parties, without reference to any former grant as having been made of it, and without remonstrance on the part of the ^{prior} ~~original~~ grantees. La Fière, above mentioned, was so dealt with; though not to the extent of ignoring the titles which its proprietors had granted while they still appeared to hold it. * And it is not to be doubted that there must have been other grants in the like case. Though their names have not come down to us.

[Foot-note.]

* Vide supra, §§ 292-296.

Some other grants were modified, — generally, in the way of ^{enlargement} of privilege or extent, or both, — by later grants, at the instance of the grantee. As for instance, in the case of the Saulx-au-Matelot, Beaupré and the Isle d'Orléans, [by Title 134] already noted, where onerous conditions were relaxed. Or, ^{as in the cases of} Portneuf and the Isle d'Orléans, ^{hereafter} to be noted; where those grants were ^{raised} ~~converted~~ into the one into a baronnie, and the other into a comté. But in all these cases, whatever the change made, the ^{entire} validity of the old title was always most expressly recognized.

And every where else, it always was so, tacitly; the proprietors holding and claiming to hold under these old titles, and not otherwise.

There was never anything like a ^{real} revocation of the company's grants. So far from it, that of La Chine is the only instance of a known grant that failed to remain of force. It was no doubt ~~abandoned~~ abandoned; but even as to it, there is no presumption that it ever was, properly speaking, revoked.

§319. — In the next place, looking to the instruments which are said to have wrought this revocation, it will be easy to show that they could have done no such thing.

§320. — The first of these is an Arrêt of 1003 (March 21), headed printed ^{with} under the heading of "Révocation des conceptions non defrichées"; not the last document of its class, by the way, that has ^{taken} ~~been~~ ^{characteristically} ~~referred to~~ and quoted ^{as its} ~~from~~ ^{heading} given to it by the printer, and not rather than from its real contents.

Those contents are as follows:—

"Le Roi s'étant fait représenter en son conseil, son édit du présent mois, par lequel S. M. en conséquence de sa décision et détermination, a ordonné qu'en la compagnie de la N. F. auroit après tous les droits qui lui avoient

[Foot-note.]

Vide supra, § 164, note (x), and § 250.

x of the company

of the King in his Conseil d'Etat, under date

[Foot-note.]

Doc. Leign., Vol. 3, pp. 135, 6; édits et Ords., 4^e, Vol. 1, pp. 24, 5; 8^e, Vol. 1, p. 33.

[Foot-note.]

Vide supra, § 204.

« été accordés par le Roi défunt, en
« conséquence du traité du 29 avril
« 1627, —

— et ayant été remontré à S. M. que
« l'une des principales causes que le
« dit pays ne s'est pas peuplé comme
« il auroit été à désirer, et même que
« plusieurs habitations ont été dé-
« fruites par les Iroquois, provient
« des conceptions de grande quantité
« de terres qui ont été accordées à
« tous les particuliers habitants du
« dit pays, qui n'ayant jamais été
« et n'étant pas en pouvoir de dé-
« fricher, et ayant établi leur de-
« meure dans le milieu des dites
« terres, ils se sont par ce moyen
« trouvés fort éloignés les uns des
« autres, et hors d'état de se secou-
« rir et s'assistes, et même d'être
« secourus par les officiers et soldats
« des garnisons de Québec et autres
« places du dit pays, — et même il
« se trouve par ce moyen que dans
« un fort grande étendue de pays, le
« peu de terres qui se trouvent aux
« environs des demeures des donataires
« se trouvant défrichées, le reste est
« hors d'état de le pouvoir jamais
« être; —

« A quoi étant nécessaire de pourvoir
« pourvoir, S. M. étant en son Conseil
« a ordonné et ordonne, —

— que dans trois mois du jour de la
« publication du présent arrêt dans le
« dit pays, tous les particuliers habit-
« ans d'icelui seront défricher les
« terres contournes en leurs conce-
« sions, —

— sinon, et à faute de ce faire,
« le dit temps passé, ordonne S. M.
« que toutes les terres encore en friche
« seront distribuées par nouvelles
« conceptions au nom de S. M., soit
« aux anciens habitants d'icelui, soit
« aux nouveaux, ~~etc.~~ Révoquant et an-
« nullant S. dite M. toutes conceptions
« des dites terres non encore défrichées,
« par ceux de la dite Compag-
« nie.

« Mande et ordonne S. dite M. aux
« Sr. de Méry, gouverneur, Evêque de
« Paris, et Robert, intendant du dit pays,
« de tenir la main à l'exécution pour-
« suite du présent arrêt; même de
« faire la distribution des dites terres
« non défrichées, et d'en accorder
« des conceptions au nom de S. M.

§ 321. — The recital here given as to the evil to be remedied, is significant, as well from what it says, as from ~~which~~ what it does not say. All that it complains of, is the too great size of the grants, and the consequent dispersion of the grantee settlers.

Of ~~the~~ distinction between grants en fief and grants en censive, there is not a word.

But, upon the anti-seigniorial theory, that the grants en fief were made for sub-grant en censive, and ~~under~~ implied obligation thereto, ~~neither~~ this complaint and this silence ~~were~~ ^{were} equally misplaced. The grants en fief, ^{viewed, perhaps} except the very largest, ~~would not~~ ^{could} hardly have been ^{called} too large. Those en censive, in most instances, — except in always as regarded their excessive depth, an evil not by that time felt or suspected, — ~~were~~ ^{were} hardly ~~were~~ so. — ~~Viewing~~ ^{Taking} ~~them~~ ^{them} all together, as undoubtedly they all were, ~~viewed~~ ^{viewed} for grants of a mere property to the grantees, the fief a larger more nearly absolute property than the censive, — the ~~complaint~~ ^{undisputed} of their generally excessive size was most natural and well founded. Upon the anti-seigniorial theory hypothesis, it was ~~unaccountable~~ ^{quite} another style of grant ~~should~~ ^{should} have been resorted to, document was called for.

§ 322. — So also, with the main enactment. ~~Nothing~~ ^{Nothing} ~~was~~ ^{was} ~~mentioned~~ ^{mentioned} from the publication of the Anêt, every grant was to have been cleared! ~~But~~ ^{But} ~~no~~ ^{no} distinction of the fief from the censive. And yet, upon this anti-seigniorial hypothesis, the former ~~had~~ ^{had} in it a

particle of that element now called the "fidei commissi seigneurial," such distinction must have been made. The ~~mere~~ holder of land under any sort of trust for the letting of it ^{out} to others to clear, could ~~not~~ ^{not} have been required under pain of forfeiture, instantly to clear it all himself.

§ 323. — Nor ^{was} ~~was~~ the ^{threatened} ~~penalty~~ ^{penalty} less significant; the simple distribution of the uncleared lands to others. On what tenure? — How account for these ~~being~~ ^{nothing} ~~nothing~~ ^{nothing} ~~said~~ ^{said} of this; if, indeed, the distinction of the ~~two~~ tenured partook even so slightly of the character now ~~attempted~~ ^{attempted} sought to be ~~made~~ ^{made} ~~out~~ ^{out} set up?

(225) § 324. — In truth, it is impossible not to see, that however sensibly the preamble may be said to have stated the evil that pressed for remedy, the enactments as to the remedy, ~~itself~~ were ~~so~~ preposterous to grasp for earnest. Even the ignorance of a home Council of State, ^{of those days,} as to the posture of affairs in a new Colony, could not have been so utter, as to have admitted of the idea that any considerable amount of clearing could really be done in the 6 months set for it, — or that (upon the inevitable failure to clear) any considerable demand for grants ~~could~~ of the uncleared land, could really be got up as a means of punishing the inevitable delinquency of ~~all the~~ every grantee in the Colony. ~~They~~ ^{It was} at least known that the ~~total~~ population of New France was a handful; and ~~New France~~ that these vast conceptions of land in it spread over leagues ~~and~~ ^{led} hundreds of leagues of forests, had to clear from its timber and its climate, ~~and~~ to say nothing of its Indians.

What was meant, was to check the tendency of the settlers towards dispersion, — the one evil complained of. To that end, every one was ~~ordered~~ ordered to clear his lands at once; a command ~~which~~ impossible to be obeyed even in the letter any where, and to which no show of obedience could be made, except in the immediate vicinity of the few posts that were held in force. ~~By~~ All granted land, not cleared, it was added, should be held liable to grant to other applicants. ~~The~~ Revocation ~~of~~ was not pronounced, of all existing grants; much less, of all existing grants ~~in~~ ⁱⁿ ~~fee~~. What was said as to revocation of grants, though separated in ^{my} printed version from ^{the} ~~what~~ immediately precedes it, by a full stop and the use of a capital letter — was obviously nothing ~~more~~ ^{but} ~~than~~ a formal ending added to ~~it~~ that clause, for the completion of the ^{same} sentence. The King's order ran, that the uncleared lands should be re-distributed in his name to new applicants, he the King to that end, ~~revoking~~ ^{and} annulling ~~the~~ ^{the} ~~grants~~ whatever older grants might have been made thereof.

§ 325. — It is quite unnecessary to go into any discussion of as to the King's legal right to promulgate a rule of ~~haute police~~ ^{Archives de la Marine de France}. Had it been enforced against any one

* from parties ~~who~~ ^{more} ~~capable~~ ^{able} and disposed to clear,

* what in sense was all one and

* and in that case

* under the circumstances,

having the Comage and the pecuniary means to maintain his legal rights under a grant, ^{as} presumed to be revoked, that question would have been tried. ~~But~~ It never was tried, ^{and that,} not merely for want of a party comageous and rich enough to raise it; but because the Arrêt ~~never~~ was ^{not} enforced, and ~~never~~ was ^{not} meant to be enforced, — was, in a word, a mere arrêt consuetudinaire, such as the French Court of Paris was in the everyday practice of issuing, for all sorts of purposes.

§ 326. — A first link in the chain of extraneous proof, adducible as to the nature and intent of this Arrêt, is to be found in the Royal Instructions to the Sr. Gaudais, who was sent out in July of this same year, 1663, as a Commissioner to report upon the state of matters in New France.

These Instructions thus treat of the subject-matter of this Arrêt :

Le dit Sr. Gaudais étant informé que la principale chose qu'il faut examiner pour la manutention des colonies du dit pays, et pour

leur augmentation étant de défricher la plus grande quantité de terres qu'il se pourra, et de faire en sorte que tous les habitans soient dans leurs demeures, et qu'ils ne soient pas éloignés les uns des autres d'une grande distance, (sans quoi ils ne peuvent s'assister pour toutes les choses qui regardent la culture de leurs champs, mais même sont exposés aux insultes des sauvages et particulièrement des Iroquois, lesquels par le moyen de cette séparation, peuvent venir presque à couvert dans les bois jusqu'aux habitations des dits Français, les surprennent facilement, et parcequ'ils ne peuvent être secourus, les massacrent et font désertier ainsi ces habitations qui sont éparses qui ca qui là) il n'y a rien de si grande conséquence que de travailler à réunir les dits habitans en des corps de paroisses ou bourgades, et les obliger à défricher leurs terres de proche en proche, afin de s'entresecourir au besoin, et quoique ce moyen fut le plus certain, il trouvera assurément, étant sur les lieux, que le peu de soin et de connaissance que la compagnie qui a ci-devant possédé le pays en a eu, et l'avidité de ceux qui ont voulu s'y habituer, (lesquels ont toujours demandé des concessions de terres de grande étendue, dans lesquelles ils se sont établis) ont donné lieu à cette séparation d'habitations, qui se trouvant fort éloignées les unes des autres, non seulement les particuliers qui ont obtenu des concessions n'ont pas été en état d'en faire les défrichemens, mais même a donné grande facilité aux Iroquois à couper la gorge, massacrer et rendre désertes presque toutes les dites habitations, et c'est ce qui a obligé le roi de rendre l'arrêt dont la copie est mise entre les mains du dit sieur Gaudais, ensemble de faire écrire au sieur évêque de Pétrée, de remettre entre ses mains l'original du dit arrêt, pour le faire publier et afficher partout aussitôt après son arrivée.

Et comme il voit clairement par les raisons ci-dessus expliquées, qu'il est impossible de se pouvoir jamais assurer de ce pays et d'y faire des habitations considérables, que l'on n'oblige tous ceux qui ont eu ces concessions de les abandonner, et de s'unir en des bourgades et paroisses les plus nombreuses qu'il se pourra, pour défricher toutes les terres qui se trouveront aux environs de proche en proche, lesquelles en ce cas il faudroit de nouveau partager et en donner à chacune bourgade ou paroisse, selon le nombre de familles dont elle seroit composée, il tâchera de persuader cette vérité par toutes sortes de moyens au dit sieur évêque, au gouverneur et aux principaux du pays, afin qu'ils concourent unanimement à faire réussir ce dessein, lequel il leur fera connoître être non seulement d'une nécessité absolue pour leur conservation, mais même que Sa Majesté le fera exécuter par une révocation générale de toutes les concessions.

Au cas que quelques-uns de ceux auxquels les dites concessions ont été faites, se mettent en devoir de les défricher entièrement, et qu'avant l'expiration des six mois portés par le dit arrêt, ils aient commencé d'en défricher une bonne partie, l'intention de Sa Majesté est que sur leur requête le conseil souverain les puisse pourvoir d'un nouveau droit de six mois seulement, lequel et de même l'arrêt que toutes les susdites concessions soient déclarées nulles.

[Foot-note.]

* Edicts & Ord., 4^e, Vol. 2, pp. 24 et seq.; Commissions des Jours. et Ord., pp. 22 et seq.

2 X

[Foot-note.]

* Evidently this ~~was~~ Arrêt of the 21st of March.

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 S 327. — Here, then, we have the King ^{plainly} telling his Commissioner that this Arrêt had for object, simply to oblige the holders of land-grants to give up the idea of going off to bargain themselves on their respective properties, — in a word "to abandon" their grants, and come together into "bourgades et paroisses," where they could unite their clearances upon smaller grants to be made them with that special view; that he, the Commissioner, was to explain this ~~is~~ to the ~~the~~ Bishop, the Governor, and the leading settlers, and by all sorts of means was to try to persuade them into co-operation for the carrying out of this policy, — ~~threatening them~~ ^{and} even as a last resort, ~~with the risk~~ of a general revocation of all grants by the King, if nothing else would serve.

* besides that all grants, feif and conive, are still treated alike, —

Surely, nothing can be clearer, ^{if that} the King ^{did not suppose he had} already effected ^{that} revocation by that Arrêt.

The last paragraph of ~~the~~ the exact is amusing; as indicative of anything but a clear idea of the ^{practical} value of an extra 6 months of indulgence in the matter of the clearing of a boundless extent of forest. But ~~it~~ it at least confirms this comminatory view of the Arrêt. ~~and~~ and itself, indeed, can ^{but} be read as ^{comminatory}.

* either unmeaning, or else

S 328. — ~~these~~ ^{another} instructions, ~~and~~ ^{another} account ~~of that~~ ^{that} requires to be made has reference to a somewhat different ^{clearly} though ^{con-} nected subject.

We have seen (^{supra}, S 202) that the SS 202, 3) that in 1645 the company sold ^{their} ~~the~~ monopoly of the fur trade to the settlers as a Communauté d'habitants, with the King's express sanction; and also (^{supra}, SS 227 to 284) how capriciously, ^{and} ~~land~~ ^{land} in many cases ~~how~~ ^{lightly} they reserved to themselves by their contracts of concession to their grantees, they ~~reserved~~ ^{reserved} to themselves ~~parted~~ ^{parted} with ~~made away~~ ^{made away} fixed their profitable rights ~~of~~ upon their grants of land, — ~~the~~ ^{the} profitable rights, so fixed being all that ^{by law} the King ~~by law~~ could at this time (1663) assume to claim upon the lands ~~so granted~~ ^{so granted}.

* often gave away, in whole or part, or fixed at ~~the~~ lighter rates than they need have done, their pro-

As to these ^{Archives de la Ville de Montreal} matters, the King thus instructed his Commissioner: —

Et d'autant que le principal revenu dont la compagnie jouissoit, consistoit en l'achat et traite des pelleteries, qu'elle avoit seule et qu'elle a cédés par un traité particulier, à la réserve d'un millier de castors par chacun an, et que cette cession s'est trouvée fort dommageable au dit pays, en ce que les habitans ont appliqué la meilleure partie de leurs soins à ce trafic, au lieu de les appliquer entièrement, comme ils faisoient autrefois, au défrichement et culture des terres, et même que l'achat des dites pelleteries étant libre à tous les habitans et ne se faisant que des mains des sauvages, ils les ont encherés à l'envi les uns des autres, en sorte que tout l'avantage est passé aux sauvages et toute la perte aux François,

le Roi veut que le dit Sieur, Gaudais s'informe particulièrement des moyens de retirer au profit de SA Majesté la dite traite, en faisant connoître aux habitans que c'est leur bien, et qu'elle n'entend tirer aucune utilité du pays, et au contraire qu'elle veut y employer une somme considérable, tous les ans, pour le maintenir et l'entretenir, et pour le peupler.

Le dit Sieur, Gaudais observera tout ce qui se peut et doit faire pour l'établissement des droits de souveraineté et de seigneurie directe et foncière, dans toute l'étendue du dit pays, sans toutefois fouler les dits habitans que SA Majesté veut soulager en toutes choses.

Gaudais was thus to try to persuade the ~~the~~ settlers into another little act of complaisance. They were to be brought, ^{if possible,} for their own good, not merely ~~into~~ to abandon their individual grants of land, but also their corporate purchase of the right to have in furs.

And he was further to ascertain and report, as to all that could possibly be done, to establish for the King every where throughout ~~the~~ ^{the country,} those ^{fiscal} rights ~~of the~~ of sovereignty, and ~~also~~ of direct feudal lordship, which the Company had so largely made away with, as regarded a great part of its extent.

Instructions, both of them, ^{marking} ~~marking~~ of fiscality, and Court craft, — rather ^{more} than of that pure benevolence which ~~the anti-seigniorial has been said~~ on high anti-seigniorial authority is said to have so ~~marked the whole~~ ^{marked the whole} policy of the Kings of France in reference to Canada.

Not to say, that the latter is, yet again, a super-abundant proof of the non-revocation ^{of} ~~of~~ ^{even} ~~even~~ the non-intention to revoke — the Company's seigniorial grants. These ~~alone~~ ^{grants} could have stood in the way of the recognition of ~~the Crown's~~ ^{the Crown's} ~~directe~~ ^{directe} ~~foncière~~ ^{foncière} over all land in Canada. Had they been revoked, these fiscal rights would have come into revocation, would have established these fiscal rights in their entirety, ^{ipso facto}. Had it been ^{even intended} ~~intended~~ to revoke them, no enquiry or report could have been wanted, for the ~~purpose~~ ^{purpose} of finding ~~any~~ ^{any} other way to establish them.

[Foot-note.]

* ~~Vide~~ ^{Vide} ~~Vide~~ ^{Vide} ~~supra~~, S229.

& all manner of fiscal right of the crown, whether as arising out of its souveraineté, or out of the directe foncière in and over

S 329. - An incidental procedure which happens to have come down to us, shows that in October of this year (1663) the governor and Bishop had occasion to recognise, and did recognise most unhesitatingly, the Company's grant of the Island of Montreal as a grant, in full force, of the full property of such Island.

The governor commisioned the Sr. de Maisonneuve as local governor of Montreal. The ^{latter at once} laid his Commission before the Conseil Supérieur, the governor and Bishop present; and with leave of the Council called the "Srs. intéressés en la seigneurie" ^{gave notice of} "et propriété de la dite isle de Montreal", of his application that it should be enregistered. The Curé of the Island appeared ^{and} stated that he was their agent only for the taking possession ^{of their property}, but that he knew they held letters patent of the King (being title 10, supra S 25) ^{re} which conferred on them the further right to name the governors of the Island. Whereupon, the Council ^{allowed} a delay of 8 months for the production of their titles and of these letters patent with the rest; and in the meantime registered the Commission, to be acted on till the further pleasure of the King should be known.

What the final decision was, does not appear. But ^{capitally} neither the validity of the Company's grant, nor yet its proprietary character, were for a moment put in question.

S 330. - In fact, it was not until the 6th of August of the year ^{following} (1664) that the Governor and Bishop laid the Arrêt before the Conseil Supérieur. When the proceedings had ^{been} were as follows:-

"Nous. le gouverneur et Monsieur l'évêque ayant présenté au conseil l'arrêt du conseil d'état du Roi, du 21e. mars, 1663, portant ordonnance que dans six mois du jour de la publication d'icelui, tous les particuliers habitans feront défricher toutes les terres contenues en leurs concessions, sinon et à faute de ce, que toutes celles qui se trouveront en friche seront distribuées par nouvelles concessions au nom de Sa Majesté, révoquant et annullant Sa dite Majesté toutes concessions des dites terres non encore défrichées, faites par les ci-devant intéressés en la Compagnie de la Nouvelle France, par lequel il leur est ordonné tenir la main à l'exécution ponctuelle du dit arrêt, même de faire la distribution des dites terres non encore défrichées et d'en accorder des concessions au nom de Sa Majesté."

"ils demandent que le dit arrêt soit exécuté de point en point selon sa forme et teneur, et en ce faisant, que toutes les terres qui ne sont aujourd'hui désertées et mises en valeur, soient déclarées réunies au domaine du Roi, pour en être disposé au nom de Sa Majesté par nouvelles concessions en faveur de ceux qui en demanderont comme dit est, déclarant les dits gouverneur et évêque, qu'ils ne prétendent en aucune façon intéresser les peuples habitans de ce pays, ni les obliger de quitter leurs maisons et habitations, consentant qu'elles demeurent en l'état qu'elles sont, mais que pour celles

[Foot-note.]
* Edict Ord., 4°, Vol. 2, p. 340;

of the Island, "en vertu des concessions et transports à eux faits de la propriété d'icelle";

[Foot-note.]
* Edict Ord., 4°, Vol. 2, p. xxii;
8°, Vol. 2, p. 12.

[Foot-note.]
Doc. Ligu., Vol. ~~9~~ 3, p. 143;
Edict Ord., 4°, Vol. 2, pp. xxiii & 125, 6;
8°. Vol. 2, pp. 18 & 19.

* Desquelles il faudra accorder des concessions, ils tiendront la main à ce que l'intention du Roi y soit suivie et qu'elles soient réduites en bourgs et bourgades, autant que faire se pourra, comme aussi qu'il soit défendu à tous prétendus seigneurs de disposer par concessions d'aucunes terres en non-valeur, à peine de nullité, —

ouï sur ce le procureur-général du Roi qui a requis que toutes les terres occupées de bois debout soient réunies au domaine du Roi.

"Le conseil, avant faire droit, a ordonné que le dit arrêt sera communiqué au syndic des habitans, à la diligence du procureur-général du Roi, pour, sa réponse vue, être ordonné ce que de raison."

Srs. Archives de la Ville de Montréal

* it is clear, had either not
tried, or else had failed

(most inconsistent, ^{one} must
admit, with this promise)

230) § 331. All which further shows the same
state of things, and puts still the same
interpretation upon this Arêt. The Gov-
ernor and Bishop formally call for an
order to put the Arêt into precise ex-
ecution; but at the same time declare
as formally, that it shall not be executed.
Gaudais, had wholly failed to persuade
all parties of the expedience of an ex-
act compliance with the King's will.
The holders of grants were not ready to
abandon them; and ^{they} were promised accord-
ingly that the Arêt, when registered, should
not have effect ~~only~~ ^{as} against them, to make
them leave their houses and settlements
however unclear, but should ^{merely} ~~simply~~
regulate as to future grants, — and be ac-
companied with a prohibition to all
claimant Seigniors to sub-grant wild
land on pain of nullity. Notwithstand-
ing which, on the demand that all ~~the~~
wild land be declared reunited to the
Crown domain, the order that passed
went no further than to the Communica-
tion of the Arêt to the syndic
des habitans, for such remonstrance
as he might have to offer.

What remonstrance he offered,
again does not appear; or whether
he offered any. The matter rested there.
The Arêt was ^{not} ~~never~~ registered, ^{perhaps}
~~was never~~ ^{it had not been} meant to be.

§ 332. — However this may have
been, one inference from one clause
of this entry on the Council journals
is unavoidable.

The Governor and Bishop offered
so to modify the Arêt, as regulated in
practice, as to make out of it, or ^{rather} ~~add~~
add to it a prohibition —

— à tous prétendus seigneurs de dis-
poser par concussions d'aucunes
terres en non valeur, à peine de
nullité.

On the understanding that the object
in view was what the King called it in
the preamble of the Arêt, ^{and in his} ~~the~~ ^{own} ~~instructions~~ ^{instructions} to Gaudais, ^{and this is intel-}
ligible enough. The holders of extant
grants were to be let alone, ~~except as~~
~~to any matter of compromise,~~ ^{by way} as to any
shanty settlements ^{that} they might have made,
but were to be restrained from sub-grant-
ing as Seigniors (and the holders of the ^{the}
~~remote grants were generally~~
~~held by Seigniors~~) any land
not first cleared.

On the anti-seigniorial theory,
which makes the Seigniors to have been
agents for the granting of wild land,
and treats this Arêt, not as a police
threat, but as a real, ^{and specific} revocation of
all extant grants ~~de la Haute de Montreuil~~
clause is unintelligible.

* the prevention of ^{shanty} ~~scattered~~ settle-
ment on remote grants, —

grants at any distance were
generally holders by Seignior-
ial title)

for a temporary end, and having
no more reference (to say the least)
to grants en fief than to grants
en censive,

231 § 333. — The records of the Cou-
seil Supérieur furnish note of ~~the~~
another procedure, having reference to
this Arrêt; and still in the same
sense. The entry is this, ~~and~~ under
date of ^{the month of} ~~the~~ 1664, Nov. 8: —

"Sur les assignations qui ont été faites à Pierre Lefebvre et Nicolas
Bouloger et Leonard Loblau, à la requête de Paul Clunior,
pour leurs parts et portions de leurs fermes de pêches sur la côte de
Lauzon, qui ont remontré que les dites pêches sont sur des lieux non
défrichés ni habitués,
ce qui fait que nous, sieur de Mézy, gouverneur
et lieutenant général pour Sa Majesté en la Nouvelle France, avons
ordonné au procureur-général du Roi, de s'opposer à la distribution
de leurs deniers, comme étant les dites fermes (pourquoi on leur de-
mande) entre les mains de Sa dite Majesté, suivant son arrêt du con-
seil du ~~premier~~ ^{vingt} mars, mil six cent soixante trois, enregistré, publié et
affiché où besoin a été le ~~fait~~, et de plus, par la déclaration qui en
a été faite par nous et Monsieur l'évêque en date du ~~quatrième~~ ^{quatrième} août
dernier, suivant l'ordre que le Roi nous en a donné, et qu'il soit or-
donné que les deniers provenant des dites fermes soient mis entre les
mains du greffier pour en disposer au nom de Sa dite Majesté.

"Pourquoi le dit sieur procureur-général du Roi a requis que défenses
soient faites à tous seigneurs d'affirmer aucunes terres ni pêches sur
les lieux non défrichés ni habitués, et de se prévaloir des titres à eux
concedés par les seigneurs généraux, requérant que les deniers qui
sont dûs et demandés soient mis au greffe au profit de Sa Majesté, et
que le présent soit lu, publié et affiché.

"Sur quoi le conseil, faisant droit, a ordonné que les dits arrêts de Sa
dite Majesté seront exécutés selon leur forme et teneur jusques à
nouvel ordre du Roi,

ce faisant, que les dits Pierre Lefebvre, Nicolas
Catherine et Leonard Loblau et autres redevables de pareille
nature, paieront le prix de leurs fermes entre les mains du
greffier de ce conseil, qui leur en donnera bonne et valable décharge,
et que le présent sera lu, publié et affiché afin que nul n'en ignore.

[Foot-note.]

x Doc. Leign., Vol. 6, pp. 9 & 10; Edif
et Ord., 4^e, Vol. 2, p. xxiii; 8^e, Vol. 2,
p. 21.

pour l'In. au la N.F., avons

30.

the Leigning of

for the rents due,

Commence here

§ 334. ^{In this case,} Upon suit by the grantee
of Lauzon, or in his right, against parties
renting of him certain rights of fishery
on the St. Lawrence, opposite uncleared
land, the foreman ~~has~~ ordered the crown
law officer to interweave and claim
such rents as ~~Crown property~~ belong-
ing to the crown. The dates given to the
king's Arrêt, and to the declaration of the
Bishop and himself, upon which he
bases his claim, are wrongly stated; but
there can be no doubt that the reference
is to ~~the~~ ^{the} Arrêt of the ~~21st~~ ^{21st} of March, and
to the ^{explanatory} declaration of the 6th of August,
above cited (supra, § 330); how-
ever had it may be to show that they pre-
cisely made out the claim. The blank
left for the date of the ^{intended} ~~enregistrations~~
and publication of the Arrêt, tallies
well with the failure of the Council
in August (as we have seen) to order such ~~enregistra-
tion and publication~~ the taking of
those steps in the case.

The law officer of the crown interweaves,
and demands three things

1. — A general prohibition to all Leig-
niers of the leasing out of wild land or
of fishing rights opposite to wild land,
and also of all other ^{prohibited} ~~acts~~ ^{which they}
under their titles from the defunct Com-
pany: —

2. — Payment of the monies in suit, to the
king's use.

The Council evaded the first of these conclusions, by just prefacing their order at the second and third, with the court formula, that the King's Arêt be executed; in a formula, by the way, that they ^{seem to have drawn} ~~here drew so loosely~~ as to make it ~~seem~~ as if they had thought ^{more} than one such Arêt was in question, - but to which they took ~~good~~ ^{care} to add, ^{as a} "saving clause," until the further order "of the King."

~~§ 335. - It is of course out of the question to attribute to any attribute authority~~

§ 335. - Of course, no one can ascribe weight ^{to} any procedure at the mere instance of de Mézy, before the Council Supérieur of his troubled administration. Even if one could, the fact that that Arêt had not been proposed for registration till August ~~of the year in question~~ (en juin, § 330) would be decisive that its six months of delay could not have expired in November of the same year, and therefore, that the Arêt could have ^{had} no operation as to the case in hand, - independently of all considerations arising out of its tenor and of the fact that it was not ^{even then} registered. For some reason ~~or other~~ ^{the} ~~son~~ or other, it is manifest that the governor was ~~best~~ ⁱⁿ ~~mere~~ ⁱⁿ ~~an~~ ⁱⁿ sketch of power; ~~which the~~ ~~could only get~~ Council seconded him, - but not to the ^{full} extent. ~~that he~~

But the use ^{here} of the word affaire ~~is not without its significance~~. It must be presumed to have held under a lease, far short of a bail à cens; and such leases are here referred to as ^{common} ~~in~~ ~~ordinary~~ use. -

It is one of the ^{necessary} ~~assumptions~~ of the anti-seigniorial theory, ~~that~~ ~~not~~ to ignore ^{the} ~~fact~~ of the resort to such leases, ~~and~~ ~~to~~ ~~treat~~ ~~the~~ bail à cens

~~that the~~
The ^{failure} of the Council, - or in other words, its refusal - to order the ~~required~~ such prohibition, shows anything but a disposition ~~to~~ to have them ~~revoked~~ at all.

~~Add, that the King's~~

§ 336. - Add, that the King's further order could not have con-
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* in a legal point of view,

[Foot note] #

"fermes" and "affermis" is still not wholly without significance. They are not the proper words for the case of any form of feudal subgrant. The defendants here sued

* Jump to the conclusion

the demand of a prohibition to be addressed to the ^{set of} ~~seigniors~~, is again of itself ^{a new evidence} ~~an assumption~~ of the known fact that their ^{titles} were ~~not~~ held to have been ~~revoked~~; and the

even
firmed, the temporary sequestra-
tion here ordered. The seignior
of Langou has been held ever since,
as it had been till then, under the title
granted by the Company. #

[Foot-note.]

* A title, it may be remembered,
that assimilated the estate of the
grantee to that of the company,
but gave no special right of
fishing, in the St. Lawrence, -
where it is ~~fully~~ obvious enough
these fisheries must have been.
It occurred to us one in those days,
to suggest a distinction on that score,
as to the seignior's ~~ownership~~
the vein ~~as well as the land~~
fishing ~~rights~~ adjoining.

(Pl. 5, supra, § 243 etc.)

§ 337. - I pass, then, to another
and most important document.
The year following - the year

of the de Meigy government having
reached their height - an entire change
of administration was effected;
the Marquis de Tracy being com-
missioned to the Chief Command-
er over all the French possessions
in America, the West India Islands
included; and Mespiens de Coucelles
and Talon, respectively, as Governor
and Intendant of New France.

The King's instructions to Talon
in this capacity, draw, presuma-
bly by Colbert, thus bear of this
matter: -

* Under date of 1665, March 27, -

[Foot-note.]

* Hist. Doc. Que. Hist. Soc., 1st
Series, Vol. 1, pp. 40-42.

"L'une des choses qui a apporté plus
d'obstacles à la peuplade du Canada
a été que les habitants qui y sont
allés établis, ont fondé leurs habitations
où il leur a plu, et sans se précaution-
ner de les joindre les uns aux autres
et faire leurs défrichements de proche
en proche, pour mieux s'entre-
secourir les uns aux autres en be-
soin. Ils ont pris des Concessions
pour une espace de terres qui ils n'ont
jamais été en état de cultiver, par
leur peu grande étendue, et étant
ainsi épars, se sont trouvés exposés
aux embûches des Iroquois, qui par
leur vitesse ont toujours fait leurs
massacres avant que ceux qu'ils ont
compris aient pu être secourus
de leurs voisins.

"C'est aussi par cette raison que
le Roi vit prendre il y a deux ans un
Arrêt du Conseil, dont il sera dit
une expédition au d. Sr. Talon, par
lequel pour remédier à ces accidens
le Roi ordonnoit qu'il ne seroit plus
fait à l'avenir aucun défrichement
de proche en proche, et que l'on
indiqueroit les habitations en la forme
de nos paroisses et de nos bourgs
autant qu'il sera dans la possi-
bilité; ce qui a été ordonné
de même sans effet, sur ce que pour

à rendre les habitants sans des corps
de vilgars, il

W.P.

Il faudroit les assujettir à faire
de nouveaux défrichemens, et à abandonner les terres. Et toutes fois, Comme
C'est un mal auquel il faut trouver
quelque remède pour garantir les sujets
du Roi des incursions des sauvages
qui ne sont pas dans leur alliance,
~~La dite Majesté S. dite M. laisse à la~~
prudence du dit Sr. Talon, d'aviser
avec le dit Sr. de Cousselles et les officiers
du Conseil souverain de Québec,
à tout ce qui sera praticable pour
parvenir à un bien si nécessaire.

La difficulté qui s'est rencontrée,
ainsi qu'il est dit ci-dessus, à l'exécution
de cet arrêt pour réunir les habitans
en corps de paroisses, ayant eu
presque l'effet d'une chose qui est tout à
fait salubre au pays, et laquelle peut
le plus contribuer à rendre cette colonie
flourissante, il sera important que, sans
l'arrêter à vouloir exécuter cet arrêt à la
rigueur, le dit Sr. Talon travaille de concert
avec les habitants à l'exécution en
partie; s'il ne peut être exécuté entièrement;
et le tempérément que l'on y pourroit
apporter seroit, par exemple, qu'un
habitant qui auroit une concession pour
500 arpens de terre, dont il n'auroit défriché
que 50 arpens, en abandonneroit
100 arpens aux nouveaux François
qui viendront s'habiter au pays;
à quoi, s'il s'opposoit, on pourroit
même menacer de lui ôter toutes celles
qu'il n'auroit pas encore mises en
culture; et effectivement, en cas de
besoin, il sera expédié une déclaration
pour être enregistrée au d. Conseil
Souverain de Québec, portant que les
dix habitants seront obligés de défricher
toutes les terres qui leur ont été
concedées, sin on et à faute de ce faire,
il leur en sera retranché chaque année
le dixième ou quinzième pour
les donner à ~~des~~ de nouveaux colons,
et par ce moyen il y auroit lieu
d'espérer que dans un petit nombre
d'années toutes les terres concedées
seroient généralement mises en culture.

* et ensemençer les terres que
l'on aura défrichées aux dépens
de S. M.

Il reste encore une chose à faire
sur la même matière, qui servira beaucoup
à l'augmentation de la Colonie
que est que le Roi desire que dans le
cours de chacune année le d. Sr.
Talon fasse préparer 30 mille arpens
non défrichés, au tant de nouveaux
familles, en faisant abattre les bois,

236 seems to have ~~not~~ ^{not} been registered, and most surely was not promulgated and acted on.

§ 340. - These instructions to Lalou even ^{indicate} ~~show~~ what one may call ^{an} inveterate tendency of the French Court of that age, to proceed in this way, - by outrage not meant in earnest.

This Arrêt is said to have been issued in a certain sense, and for an end of the last importance. It is said to have lain for two years unacted upon. Lalou is told ~~without further~~ that he need not try to execute it exactly; but that it is very desirable that he should try to persuade the settlers to act with him, so as to give it ~~the~~ ^a ~~some~~ some degree of effect, - say, by abandoning a fifth of their grants, when of a certain size. Then, he is told that with this view he may threaten them with a confiscation, if they should be refractory, of all their uncleared lands. Not that the King so much as pretended to Lalou or to himself, that in that case he ^{really} contemplated so ~~bold~~ ^{bold} a step. On the contrary, the step thought of is declared to be a mere further ~~public~~ threat for publication, of an escheat, year by year, of a tenth or fifteenth part of the uncleared lands; a threat, ~~not meant in earnest~~ ^{not meant in earnest} to have been carried into effect, ~~probably~~ ^{probably}, than the other.

§ 341. - Lalou ~~answers~~ ^{answers} to the ~~dispatch~~ ^{dispatch} in answer ~~by~~ ^{by} his by a dispatch written home that year (1665, Oct. 4), answered the above instructions thus: -

"Vous avez trop bien reconnu que
"tandis que les habitations ne se feront
"pas de proche en proche le pays
"ne sera pas en état de se contenir
"par lui-même contre les Iroquois,
"ses ennemis irréconciliables. On ap-
"portera autant qu'on le pourra le
"remède au mal paré, et on ne
"tombera pas dans cet inconvé-
"nient à l'avenir. Je projette une forme
"de défrièvement pour bâtir une

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[Foot-Note.]

* The size illustratively given, is at least illustrative of the ~~not~~ ^{loose} looseness of notion prevalent in Lat. Court, as to these Canadian grants. The writer of these instructions evidently thought 500 arpents ~~an~~ ^{and} a large grant, - such as ought to be reduced, was he aware that there were ^{numbers of} ~~many~~ censive grants that ran far beyond the 1000 arpents; and that, for a pief grant anything below 10000 arpents might be counted ^{as far} ~~as far~~ ^{relatively} ~~as far~~ ^{large} for below the average.

It is supposable enough, no doubt, that ~~he~~ ^{neither} he nor the author of the Arrêt, had these ^{great} pief grants in view at all; that what they were thinking of, was the settlement of the more immediate environs of Quebec and Three Rivers, ~~and~~ - where the practical question arose, ~~with~~ ^{rather} as to censive and small pief holdings, than otherwise. But if so, what - on that ~~supposition~~ ^{supposition} - becomes of the ~~trust~~ ^{trust} - theory, or of its sister fiction of a revocation of these trust-grants?

[Foot-Note.]

* Mss. Doc. Que. Hist. Soc., 1st Series, Vol. 1, pp. 58, 9.

"première bougade; quand elle sera tout à fait résolue, je vous enverrai le plan."

[Foot-Note.]

* Vide infra, § 367.

23/ "J'espère que vous jugerez la
 "déclaration que je vous demande
 "dans la réponse que je donne à
 "l'instruction du Roi, si non néces-
 "saire, au moins utile à l'établis-
 "sement du pays; puisqu'elle ne peut
 "qu'exciter les habitans au travail.
 "Ainsi, je crois que vous ordonnerez
 "qu'elle me soit envoyée.
 "On peut toujours à bonne heure
 "disposer des familles à peupler dans
 "l'année prochaine en ce pays, sur
 "l'assurance que je donne qu'il y aura
 "des habitations préparées; et quand
 "au lieu de 40 que vous m'ordonnez
 "dans la comante, le Roi voudra pour
 "les suivantes qu'on en dispose un plus
 "grand nombre, j'en ferai faire autant
 "qu'il plaira à S. M., si de sa part elle
 "me donne les secours nécessaires."

The draft of declaration here re-
 ferred to, or of its tenor, I find no fur-
 ther trace. So that it could not have
 been sent out in form and acted on.
 Unless, indeed, it is not impossible
 it ~~is supposed to have been the~~
 Arrêt of 1672, presently to be noticed
 (infra, §§ 4 seq.), be taken for
 a tardy promulgation of it.

§ 342. — It must be admitted, how-
 ever, that Lalou, ^{can have thought} had no ~~idea~~ of putting
 into execution the Arrêt of 1663. He
 was ^{not} instructed, and he did not pro-
 pose, so to do.

[Insert rule here]

§ 343. — In the meantime, that
 is to say, just shortly before the
 sending out of Lalou as Intendant,
 the King had chartered the Compa-
 ny of the West Indies.

His Edit^x to that end bore date
 of the month of May 1664; but
 was not enregistered at Quebec,
 and so did not take effect for
 Canada, until the 5th of July
 1665, — after the arrival of the ^{ships}
 Tracy, Coucelles and Lalou. #

§ 344. — The preamble recited
 the recent organisation^{tt} of a "Compagnie
 "de la terre ferme de l'Amérique" ^{an-}
 "térieurement appelée France Esquima-
 "chiale"; the

[Foot-note.]

* Doc. Lign., Vol. 2, pp. 11 et seq;
 also Edits et Ord., 4^e, Vol. 1, pp. 29
 et seq; ^{and} Vol. 1, pp. 40 et seq.

[Foot-note.]

Document no. 50 of 1st Series, laid
 before this Court by Government.

[Foot-note.]

"On venoit, par un édit d'Octobre
 "1663, de former une compagnie, sous le
 "nom de Compagnie de la France Esquima-
 "chiale, pour l'établissement de Cayenne, et de
 "la partie française de la Guyane, avec la sé-
 "rie des Amérindiens et celle d'Orénoque; cette compa-
 "gnie parut même à che plusieurs chartes en même
 "temps des autres colonies, sans à lui même
 "le nombre des associés. Un édit de Mai 1664 consacra ce projet," etc. — Del. Journal des Colonies

Colonies Françaises 1771 Vol. 4 p. 107
 Archives de la Ville de Montréal
 Del. Journal des Colonies

Foot-note.]

The words of the Edict as to this, are these: -
"agent reconnu xx,"

et que dans les Isles de l'Amérique, où la fertilité des terres y a attiré un grand nombre de François, ceux de la compagnie à laquelle nous les avons concédées en l'année 1642, six cent quarante deux, au lieu de s'appliquer à l'agrandissement de cette Colonie et d'établir dans cette grande étendue du pays un commerce qui leur devoit être très-avantageux, se sont contentés de vendre les dites Isles à divers particuliers, lesquels s'étant seulement appliqués à cultiver les terres, n'ont subsisté depuis ce temps-là que par le secours des étrangers, en sorte que jusques à présent ils ont seuls profité du courage des François qui ont les premiers découvert et habité les dites Isles et du travail de plusieurs milliers de personnes qui ont cultivé les dites terres,

In the course of the argument before this Court, the question was suggested, as to whether or not the Company of New France under their Charter had the right to sell, - and was answered unhesitatingly for the Seigniors in the affirmative.

If authority or precedent can be of any use to prove what is the question on the score of principle, the ^{supra} Compagnie des Isles de l'Amérique may be of such use.

Its Charter is that Company was almost exactly in the terms of that of the Company of New France. The clauses, ^{in its} corresponding to the 4th and 5th of the latter (subna, §108), are given in the following words, in Petit, Vol. 1, pp. 13-15, and in Journal de St. Méry, Vol. 1, p. 13.

"3. - Nous nous accordé et accordons, à perpétuité, aux associés de la dite Compagnie, leurs Loix, successions et agents cause, la propriété des dites Isles situées xx, en toute justice et Seigneurie, les forêts, forcs, rivières, ports, haies, fleuves, étangs, et même ment les mines et minières, pour jouir des dites mines conformément aux ordonnances; et de toutes les autres choses susdites nous nous réservons seulement le ressort la foi et hommage, qui nous sera fait et à nos successeurs Rois de France par l'un des dits associés au nom de tous, à chaque mutation de Roi, et la provision des officiers de justice souveraine que nous auront nommés et présentés par les dits associés, lorsqu'il sera besoin d'y en établir."

"7. - Les dits associés disposeront des dites choses à eux accordées, de telle façon qu'ils avisent pour le mieux; distribueront les terres entre eux, et à ceux qui s'habitueront sur les lieux, avec réserve de tels droits et devoirs, et à telles charges et conditions qu'ils jugeront plus à propos, et même en fief, avec haute, moyenne et basse justice; et en cas qu'ils désireront avoir titre de baronnies, comtes et marquisats, se retireront par-devers nous pour leur être pourvu de lettres nécessaires."

Petit (Vol. 1, pp. 17, 18) gives the following account of the sales made by the Company: -

"La Guadeloupe et ses dépendances, la Desevade, Marie Galante et les Saintes furent vendues au bailli de la ville de Paris, le 4 sept. 1649, pour une somme de 60,000 livres, et une vente de 600 livres de sucre fin, qui fut à la même jour rachetée pour une somme de 1500 livres en argent, à raison de 12

necessity of strengthening that Company for commercial purposes; the abandonment of Canada by the Company of New France; the mere sale, by the Compagnie des Isles de l'Amérique, of the ^{West India} Islands granted to them in 1642, to individuals who were who had wholly failed to establish a French trade there; the King's acceptance of the reho-

etc. / 8 livres 10 sols le cent pesant de sucre.

"Le gouvernement de la Martinique acheta cette Isle et ses dépendances de son gouverneur, le 27 sept. 1650, pour la somme de 6,000 livres, par acte du 27 sept. 1650.

"Le gouvernement de St. Christophe, chevalier de Malthe acheta sous le nom de son Ordre, pour une somme de 120,000 livres, cette Isle, et des prétentions à celles de St. Martin et de St. Barthelemy, par acte du 24 mai 1651."

Disparaged in 1664, with the result of all these sales, and the failure of the vendors to get up French trade with their Island, the King yet made no pretence of questioning their legality; but simply undertook, as we shall see, to provide for the carrying out of the same under them. - Had a doubt been possible, of the legality of the transactions, it is not to be supposed, that they would have been ~~thus~~ mentioned, ^{without} ^{conscience} ^{and} in the matter of course was in which they here are mentioned, ^{that} ^{is} ^{the} ^{only} ^{mode} ^{by} ^{which} they were felt to have entailed.

Between the case of this Company and that of the Company of New France, there was but the ^{one} difference hinted at in this preamble of the Edict of 1664, - that, ^{by} the resulting soil and climate, of the West India Islands enabled them to get a price paid, ^{for} ^{those} ^{islands}, while the less fertile productive forests, and colder climate, and more warlike Indians, of New France, ⁱⁿ ^{this} ^{respect}, ^{was} ^{at} ^{disadvantage} ⁱⁿ ^{this} ^{respect}. ^{of} ^{the} ^{same} ^{power}. If the Company of New France took no money for its grants, - and ^{one} is ^{not} ^{entitled} ^{to} ^{do} ^{with} ^{any} ^{degree} ^{of} ^{confidence} ^{that} ^{it} ^{did} ^{not} ^{want} ^{of} ^{any} ^{right}, ^{or} ^{doubt} ^{or} ^{cavil} ^{as} ^{to} ^{such} ^{right}, but simply in the fact that the grants ^{was} ^{not} ^{tempting} ^{enough} ^{to} ^{compel} ^{men} ^{to} ^{give} ^{money} ^{for} ^{them}.

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 -cession of New France; ^{and} his intention
 to redeem the sole West India Islands,
 and grant them ^{and every other possession}
~~the east territories to this lately formed~~
 Company and all else that he could
 grant, to the new Company, augmented al-
 ways by the addition of new members
 all who would enter into it.

§345. - After which, the Edit pro-
 ceeds: -

"A ces causes et autres bonnes considérations à ce nous mouvans, savoir
 faisons, qu'après ~~avoir~~ fait mettre cette affaire en délibération en notre
 conseil où étoient la reine notre très honorée dame et mère, notre très
 cher frère le duc d'Orléans, plusieurs princes et autres grands de notre dit
 conseil, de notre certaine science, pleine puissance et autorité royale, nous
 avons par le présent édit, établi et établissons une Compagnie des Indes
 Occidentales, qui sera composée des intéressés en la terre ferme de l'Amé-
 rique et de tous nos sujets qui voudront y entrer, pour faire tout le commerce
 qui se peut faire en l'étendue des dits pays de la terre ferme de l'Amérique
 depuis la rivière des Amazones jusqu'à celle d'Orenoc, et Isles appelées
 Antilles, possédées par les François, et dans le Canada, l'Acadie, Isles de
 Terre-neuve, et autres Isles et terre ferme depuis le nord du dit pays de
 Canada, jusqu'à la Virginie et Floride, ensemble la côte de l'Afrique des-
 puis le Cap Vert jusqu'au Cap de Bonne-Espérance, tant et si avant qu'elle
 pourra s'étendre dans les terres, soit que les dits pays nous appartiennent
 pour être ou avoir été ci-devant habités par les François, soit que la dite
 Compagnie s'y établisse en chassant ou soumettant les sauvages ou naturels
 habitants des dits pays ou les autres nations de l'Europe, qui ~~ne sont dans~~
 notre alliance, lesquels pays nous avons concédés et concédons à la dite
 Compagnie en toute seigneurie, propriété et justice, et après avoir examiné
 les articles et conditions qui nous ont été présentés par les intéressés en la
 dite Compagnie, nous les avons agréés et accordés, agréons et accordons,
 ainsi qu'elles sont insérées ci-après: - etc.

* ne sont dans notre alliance, -
 - les quels pays nous avons concé-
 - dés et concédons à la dite compa-
 - gnie, en toute seigneurie, propriété
 - et justice, - ~~agréés et accordés~~
 - et après avoir examiné les
 - articles et conditions qui nous ont
 - été présentés par les intéressés
 - en la

Foot

§346. - Those of the subjoined
 "articles et conditions" which ^{more} directly relate
 to and qualify the grant conveyed by the
 last concluding words of the Edit above
 above extract, are the following: -

[Foot Note.]

* The 40 years limited by
 the 15th Article, for
 the commercial monopoly
 of the Company. *Supra*, §347.

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

"20. - ~~XXI.~~ Tous lesquels pays, isles et terres, places et forts, qui peuvent y avoir été construits
 et établis par nos sujets, nous avons donné, octroyé et concédé, donnons, octroyons et con-
 cédons à la dite Compagnie, pour en jouir à perpétuité en toute propriété, seigneurie et jus-
 tice; ne nous réservant autre droit, ni devoir que la seule foi et hommage-lige, que la dite
 Compagnie sera tenue de nous rendre et à nos successeurs rois, à chaque mutation de roi,
 avec une couronne d'or du poids de ~~deux~~ ³⁰ marcs.

"21. - ~~XXI.~~ Ne sera tenue la dite Compagnie d'aucun remboursement ni dédommagement en-
 vers les Compagnies auxquelles nous ou nos prédécesseurs rois ont concédé les dites terres

et isles, nous chargeant d'y satisfaire si aucun leur est du, auquel effet nous avons révoqué
 et révoquons à leur égard toutes les concessions que nous leur en avons accordées, aux-
 quelles, en tems que besoin, nous avons subrogé la dite Compagnie, pour jouir de tout le
 contenu en icelles, ainsi et comme si elles étoient particulièrement exprimées.

"22. - ~~XXII.~~ Jouira la dite Compagnie en qualité de seigneur des dites terres et isles, des droits
 seigneuriaux qui y sont présentement établis sur les habitants des dites terres et isles, ainsi
 qu'ils se levent à présent par les seigneurs propriétaires, si ce n'est que la Compagnie trouve
 à propos de les commuer en autres droits pour le soulagement des dits habitants.

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

"24. - ~~XXIV.~~ Jouira la dite Compagnie de toutes les mines et minières, caps, golfes, ports,
 havres, fleuves, rivières, isles, et islots, étant dans l'étendue des dits pays concédés, sans
 être tenue de nous payer pour raison des dites mines et minières aucuns droits de souverai-
 neté, desquels nous lui avons fait don.

[tant?]

Après les dites ~~quarante~~ années expirées, s'il n'est jugé à propos de continuer le privilège du commerce, toutes les terres et isles que la compagnie aura conquises, habitées ou fait habiter, avec les droits et devoirs seigneuriaux et redevances qui seroat dus par les dits habitants, lui demeureront à toute perpétuité en toute propriété, seigneurie et justice, pour en faire et disposer ainsi que bon lui semblera, comme de son propre héritage, comme aussi des forts, armes, et munitions, meubles, ustencils, vaisseaux et marchandises qu'elle aura dans les dits pays, sans pouvoir être trouble, ni que nous puissions retirer les dites terres et isles pour quelque cause, occasion et prétexte que ce soit; à quoi nous avons renoncé dès à présent, à condition que la dite compagnie ne pourra vendre les dites terres à aucuns étrangers sans notre permission expresse.

§347. - By the fifteenth and three following articles it was provided, that the Company was to have a 40 years monopoly of all he had off the east territories thus made over to ~~them~~ ^{the} ~~them~~, their fisheries alone excepted, that they were to be paid a bounty of 30 livres a ton on all goods ^{to be} imported by them into such territories, - and of 40 livres a ton on all goods to be thence brought back to France; that any of such goods which the Company might wish to re-ship to foreign parts, should be free of export duty, if freighted in French vessels; and that the Company should pay no duties of export or import on any stores of war, or provisions or other necessaries for their ships.

§348. - By the twenty fifth and six following articles, the Company was invested with ~~power~~ the right to build forts, manufacture all munitions of war and raise forces; to appoint governors, at pleasure, who were to be commissioned by the King; to remove such governors, also at pleasure, - their own Commissions for the suspending of a governor to have force for 6 months of a year, so as to ~~bring~~ ^{bring} ~~all~~ difficulty from ^{any} ~~the~~ ^{the} ~~issue~~ of a Royal Commission; to maintain and officer and man a ~~fleet~~ navy; to capture prizes therewith ^{for themselves}, subject to the ordonnances de marine; to ~~make~~ make treaties of peace and alliance with all Kings and princes ~~within~~ of their territories, subject to the King's approval; to make war upon them, ^{en cas d'insulte}; to ~~the~~ ^{the} ~~King's~~ ^{King's} ~~aid~~ ^{aid} to demand the King's aid, at his own cost, against all enemies of the state, who should molest them ^{and} to appoint and remove all local officers of justice, of every kind and degree, - under reservation only, that the members of such Conseils Souverains as they should create, were to take Commissions from the ^{Archives de la Ville de Montreuil} ~~Crown~~, upon the Company's nomination.

§349. - The thirty third and ~~last~~ following articles provided for the observance of the Custom of Paris throughout the territories in question; ~~maintained~~ ^{maintained} all ~~settlers and their descendants in~~ ^{settlers and their descendants in} ~~the~~ ^{the} ~~lands~~ ^{lands} as though resident in France; all their descendants, and all ~~descendants of~~ ^{of} ~~free~~ ^{free} converted ~~Indians~~ ^{Indians} savages, to be natural born Frenchmen; ^{and} gave all artisans who should have exercised their art there ^{throughout} ~~for~~ ^{for} 10 consecutive years, to be "maîtres de chefs d'écoles" in all ~~French towns~~ ^{French towns} and gave power ~~to~~ ^{to} towns of France.

[Foot-note.]

X The words of this article are -
"33. - Seront les juges établis en tous les dits lieux tenus de juger suivant les loix et ordonnances du royaume, et les officiers de suivre et se conformer à la Coutume de la prévôté et vicomté de Paris, suivant laquelle les habitants pourront contracter, sans que l'on y puisse introduire aucune autre coutume, pour éviter la diversité.

It cannot be said that this provision was necessary for the introduction of the custom of Paris - at any rate into Canada. As the Metropolitan Custom, it may safely be held to have been a presumed rule, in the absence of contrary stipulation, from the first as early as 1649, ^{and repeatedly afterwards} ~~as we have seen~~ ^{as we have seen}.

^{supra} §249, note (n) - the Company of New France recognized it ^{as a universal rule} ~~as a rule~~ ^{and} the King confirmed ^{on two occasions} ~~his~~ ^{his} recognition of it. ^{and} the Edit of April 1663 ~~is~~ ^{is} registered in September of that year, for the first creation of the Conseil Supérieur de Québec (see Edicts & Ords., 4^o, Vol. 1, p. 23, and 5^o, Vol. 1, p. 38) that body ^{was} ~~was~~ enjoined to proceed -

- "autant qu'il se pourra en la forme et manière qui se pratique et se garde dans le report de notre cour de parlement de Paris."

All that ^{can be called} ~~was~~ peculiar or novel here, as regarded Canada, was ^{the} ~~the~~ prohibition of the introduction of any other Custom; and even that ~~can hardly~~ ^{can hardly} ~~be~~ ^{be} ~~regarded~~ ^{regarded} as necessary. The Custom of Paris once introduced universally, ^{as it had} ~~as it had~~ ^{been} ~~been~~ ^{no} ~~no authority short of legislative was competent to introduce any other.~~

A sharp ^{equivocal} ~~interpretation~~ ^{interpretation} of this prohibition, ~~has~~ ^{has} been ventured upon in the anti-seigniorial interest. It is said ~~to have made it illegal,~~ ^{to have made it illegal,} ~~as if it meant that no~~ ^{as if it meant that no} ~~thing could be done~~ ^{thing could be done} ~~to make it illegal~~ ^{to make it illegal} to stipulate in a contract of accensement, ^{otherwise than as provided} ~~any change~~ ^{any change} ~~not~~ ^{not} ~~provided~~ ^{provided} by the custom of Paris, ~~and~~ ^{and} ~~as though~~ ^{as though} such ~~argument~~ ^{argument} ~~does~~ ^{does} not import ~~an~~ ^{an} infinitely too much, ~~for~~ ^{for} ~~it~~ ^{it} ~~is~~ ^{is} ~~or~~ ^{or} ~~infinitely~~ ^{infinitely} too little.

If it be ^{held to mean} ~~held to mean~~ ^{held to mean} that such contracts must have nothing in them ~~but~~ ^{but} what the Custom of Paris would import as appertaining to them; all that need be said is, that of course the same rule must be applied to all other contracts; and being so applied, the King might ~~as well~~ ^{as well} have said that his subjects should not contract at all as to any detail of any matter,

but must leave all details of their contracts of every kind to such interpretation as the Custom (in the silence of the parties) would ~~not~~ ^{not} supply. No one ~~could~~ ^{could} ever start such a notion, unless it were for the uses of an anti-seigniorial ~~pleading~~ ^{pleading} argument.

If on the other hand, it be held to mean merely, that men could ^{never} ~~never~~ make such contract ~~as under another Custom,~~ ^{as under another Custom,} and with the so as to introduce bodily the incidents of such other Custom, ~~nor yet~~ ^{nor yet} ~~transgress~~ ^{transgress} any ~~express~~ ^{express} ~~prohibition~~ ^{prohibition} of the universal Custom; ~~the rule~~ ^{the rule} may most safely be applied to all contracts, but will serve no ~~anti-seigniorial~~ ^{anti-seigniorial} ~~purpose~~ ^{purpose} but.

The ~~fact~~ ^{fact} The introduction of the Custom of Paris and the prohibition of the introduction of any other, ~~is~~ ^{is} ~~not~~ ^{not} ~~respected~~ ^{respected} ~~more~~ ^{more} ~~as to their~~ ^{as to their} ~~contracts~~ ^{contracts} of accensement, than as to their contracts of marriage ~~or any other~~ ^{or any other} ~~of~~ ^{of} ~~and~~ ^{and} other contracts generally.

X6

§350. - By the second and following thirteen articles, the thirty second, the thirty fifth and following four ~~and~~ articles, and the forty first and forty second articles, provision was made for the organization of the Company, and the conduct of its affairs.

Every one was to be free to join it, (without derogation to their nobility, or even exclusion of foreigners,) within a term of 4 months, and to subscribe any sum, not less than 3000 livres to its Capital Stock; ~~of from 1000 to 20,000 livres, might attend and deliberate at its general meetings.~~ Large privileges were granted to all large holders. A board of 9 Directors, 3 at least to be merchants, was created, with large powers, - subject to the yearly general meeting of the company. The Company's effects, and the shares therein of its members (even though aliens) were declared ^{not subject to seizure for} ~~not subject to seizure for~~ the King, and almost free of seizure at other instance.

Special provisions in favor of the Company and of its members were made, as to the course of all civil litigation having reference to its affairs.

And the King ~~was engaged to draw~~ ^{was} ~~to make~~ ^{it} certain pretty heavy advances, on ^{most} ~~very~~ favorable terms.

§351. - The only direct ~~express~~ ^{imposed upon} obligation of the Company is to be found in the first article, - which reads thus: -

Comme nous regardons dans l'établissement des dites colonies principalement la gloire de Dieu en procurant le salut des Indiens et Sauvages, auxquels nous désirons faire connoître la vraie religion, la dite compagnie, ~~présentement établie sous le nom de Compagnie des Indes Occidentales,~~ sera obligée de faire passer aux pays ci-dessus concédés le nombre d'ecclésiastiques nécessaire pour y prêcher le saint Évangile et instruire ces peuples de la créance la Religion Catholique, apostolique et Romaine, comme aussi de bâtir des Églises et y établir des Cures et Presbitères, dont elle aura la nomination, pour faire le service divin aux jours et heures ordinaires et administrer les Sacremens aux habitans, lesquelles Églises, Cures et Presbitères, la dite compagnie sera tenue d'entretenir décentement et avec honneur, en attendant qu'elle les puisse fonder raisonnablement, sans toute fois que la dite compagnie puisse changer aucun des dits Ecclésiastiques qui sont à présent établis dans le dit pays, sur lesquels elle aura néanmoins le même pouvoir et autorité que les mêmes gouverneurs et propriétaires des dites isles."

x which stock was made transferable at will by the holders.
Extensive

[Insert a rule here]

§ 352. - It is obvious to remark, that the terms of the real estate grant conveyed by this instrument, are not altogether the same as those of the like grant as made to the Company of New France.

The general words of the opening clause ~~of the~~ ^{(supra, § 345),} ~~and~~ which, of themselves, might read as an ^{absolutely unqualified} grant of property, are qualified by the subjoined articles (^{supra, § 346}); although ~~not by any means~~ ^{neither} to the extent, nor in the way, required by the anti-seigniorial theory.

§ 352. - Instead of at once taking an estate forever in the whole of the conceded territory, as the Company of New France did, - the Company of the West Indies had the whole of their larger territories made over ^{to them} (in property, and with the superadded attributes of lordship, and justice) under this very peculiar ^{limitation} ~~in~~ that so much of ~~them~~ ^{as they should get possession of and settle during the} ~~40 years~~ ^{40 years} ~~as the~~ ^{of their commercial monopoly} ~~old~~ ^{the} ~~west~~ ^{together} ~~India~~ ^{Islands} ~~should~~ ^{upon their acquisition if re-} ~~deemed by them from them~~ ^{should re-} ~~main theirs for ever on the easy~~ ^{and comprehensive} ~~terms~~ ^{agreed upon,} - everything else, ^{presumably,} in the event of their ^{the term of} ~~commercial~~ ^{monopoly} ~~not being~~ ^{extended,} their reverting to the crown.

§ 353. - But all that thus was granted to them, was granted to them as a property of their own; and with a license ^{very} as to their disposal of it, that was ^{very} nearly if not quite as ^{large} ~~absolute~~ as that allowed to the Company of New France.

§ 354. - Indeed, in one particular that license was larger; for they were to pay no "droits de souveraineté" ^{their} ~~our~~ ^{names,} while the Company of New France was only entitled to hold them "conformément à l'ordonnance", that is to say, ~~subject~~ ^{subject} to payment of such dues.

§ 355. - And in another particular, it ~~may sound as if~~ ^{it} ~~is~~ ^{is} as if larger; for the ~~thirtieth~~ ^{thirtieth} article, in ^{place of the} ~~the~~ ^{general} terms used in the fifth section of the

~~of the~~

* limitation -

^{and also} (if redeemed from the vendees)

* with all seigniorial ~~and~~ and other dues thereto appertaining,

* has been spoken of,

[Foot-note.]

x Supra, § 168 and § 183, ~~granting~~
Answering to section 7 of the grant
of the West India Islands, in 1642, to
the Compagnie des Isles de l'A-
merique. - Supra, § 344, note x.

[Foot-note.]

§§ 197, 8, and
Vide supra, § 344, note x.

[Foot-note.]

Vide supra, § 230, note (k).

[Foot-note.]

Vide supra, § 199.

[Foot-note.]

Vide supra, § 265.

^{important} ~~feudal~~ ~~rights~~

feifs with title, if short of the
baronial, # and ~~also~~ aleux,

older grant* which have been spoken
of as though they did not comprehend
the contract of sale, - expressly
declared that they Company of the
West Indies might sell, as well
as well as sub-grant, on what terms
and to whom it would.

In this respect, however, the truth
is, that a comparison of the two clauses shows
the older grant to have involved
a larger delegation of power, instead of less, to
the grantee Company.

Under the older grant, the right
to sell, not needing to be mentioned,
passed to the Company by opera-
tion of law, and was even amply
protected in its hands from li-
ability to mutation fines. # And
with it, under the general words
used, went the right on the part
of the company, to create ^{leases} ~~leases~~
as also the right ^{of disposing of its justice} ~~of disposing of its justice~~
at will, without restriction. #

Under this later grant, the rights
to create ^{chateleens and} ~~chateleens and~~ aleux, and to dispose of justice
at pleasure, are not so clear.

§ 356. - Practically, however,
and for all ~~present~~ purposes of the pre-
sent argument, these ^{minor} ~~minor~~ shades
of distinction are utterly unimport-
ant.

What is at once certain and
important, may be summed up in
few words.

Both grants alike dealt with all
the three ^{cumulative} ~~elements~~ (so to speak) of
the real estate of those days, -
the propriete, the seigneurie and
the justice of the ~~lands~~ territories
granted.

Both alike, granted in express
terms every all manner of waters,
navigable or not, and all mines.

Both alike, ~~left the grantee~~
~~also left sale and feud at sub-grant~~
(whether in feif or in feud), precisely
as it would, ^{and} under no obligation or
liability to be brought under obligation
to sell or sub-grant to anyone, unless
it would, or on any terms other than
such as it should determine upon
in its own interest.

And the latter grant, ^{of selling} ~~of selling~~
the new Company, in the rights of the
Compagnie de la Ville de Montreal, ~~was~~
~~deprived of all seigniorial dues~~, ^{estab-}
lished by the old, (see articles ^{23, 24} cited

left the grantee company free
to sell or to sub-grant feudally

by expressly vesting in the new
Company all the seigniorial dues
that had been esta-

Article 23,

245) ^{supra}, § 340, with the mere right ^{of} ~~only~~ ^{in its} discretion, of commencing them ^{pour le soulagement des habitans}, of course, at the instance of the latter, ~~admitted~~ ^{immediately} unmistakably, that all such dues, however variant, ~~were taken for granted as not essential~~ had been legally and rightly established, and were not to be altered ~~unless~~ by otherwise than by consent of the parties interested.

[Direct rule here.] ~~X~~ 2

§ 350. — There is no doubt, however, that this grant to the Company of the West Indies was much more imperfectly carried into execution in Canada, than that to the Company of New France had been.

The royal instructions to Talon, already ~~quoted~~ ^{quoted} (^{supra}, § 337),

§ 357. The royal instructions to Talon, of 1665, March 27, already referred to (^{supra}, § 337), contain the following significant passage:—

— "S. M. a joint le d. pays à la
 "concession qu'elle a faite à la Com-
 "pagnie des Indes Occidentales, dont il
 "est nécessaire que le d. Sr. Talon voye
 "les lettres de concession, par lesquelles
 "la compagnie est en droit de nommer
 "le Gouverneur et tous les autres of-
 "ficiers; et comme la compagnie con-
 "naît assez qu'elle ne pourroit pas trou-
 "ver des personnes qui eussent assez
 "de mérite, et qui fussent assez abso-
 "lues pour occuper ces postes et les
 "remplir dignement, elle a été bien
 "avisé que le ~~Roi~~ ^{Roi} fit cette nomina-
 "tion, jusques à ce que par la contin-
 "uation des bontés et de la protection
 "de S. M. ~~ce~~ cette colonie s'augmentant
 "considérablement, la d. Compagnie
 "puisse alors par elle-même trouver
 "des sujets propres pour y envoyer.
 "Il a été bon que le d. Sr. Talon
 "sçeut toutes ces choses pour lui
 "faire ~~connaître~~ ^{connaître} que l'in-
 "tention et la volonté du Roi sont
 "qu'il protège, appuie, et travaille au-
 "tant qu'il sera en son pouvoir à bien
 "établir l'autorité de la compagnie
 "dans le d. pays; etc. #"

§ 358. — It was not till after Talon's arrival
 as has already been observed (^{supra}, § 343), that
 the first step was taken ^{de la Ville de Montréal}
 giving effect to the grant in Canada, — by its en-
 gagement here.

[Foot-Note.]

* That this was a mere right is plain from the terms used. If the idea had been, to require of the Company to grant such soulage-ment, otherwise than in its own discretion, quite other ^{terms} ~~expressions~~ should have been ~~—~~ resorted to.

Had the grant to this Company been an absolutely indefeasible grant forever, it ~~would~~ would of course have been a waste of words to say that it had this right. But as, at the end of 40 years, an indefinite ~~part~~ part of it was apparently intended to revert to the Crown, the words were ~~not~~ wholly wasted which expressly gave it ~~to~~ the power during those 40 years to reduce dues, the property of the Crown at the time of the grant, — and ^{and} which, therefore, the Crown might be held entitled to require, that they should ~~be maintained~~ ~~at the rates~~ not be reduced to the prejudice of its fiscal inter-ests.

* [mais?]

[Foot-Note.]

Hist. Doc. Que. Hist. Soc., 1st Series, Vol. 6, p. 35.

S359. - Having taken this first step, ~~and apparently not done much more,~~ Talon - in the same despatch of 1685, Oct. 4, which has ~~been~~ been cited (supra, S341) - wrote home, remonstratively, thus:

"Lorsque par la réponse que je
"donne au ~~me.~~ article de mon instruc-
"tion, vous pourriez bien connaître s'il
"est avantageux au ~~Roi~~ Roi de céder à la
"compagnie la propriété de ce grand
"pays, avec le droit de pourvoir au
"gouvernement, ou de conserver l'un
"et l'autre à S. M., - je m'explique
"sur le motif qui a pu la porter à
"faire cette cession à la dite Compag-
"nie; et je dis, que s'il a été d'augmenter
"les profits pour lui donner d'autant
"plus de moyens de soutenir ses
"premières dépenses, augmenter le
"nombre de ses vaisseaux et faire
"un grand commerce utile à son état
"sans avoir pour objet l'étendue
"des habitations de ce pays et la
"multiplication de ses colons, il
"est à mon sens plus utile au Roi
"de laisser à la dite Compagnie cette
"propriété sans aucune réserve;
"mais, si elle [c. à d., S. M.] a regardé
"ce pays comme un beau plan,
"dans lequel on peut former un grand
"royaume, et fonder une ~~bonne~~ monar-
"chie ou du moins un état fort con-
"sidérable, je ne puis me persuade-
"der qu'elle s'empresse dans son
"dessein, laissant bien d'autres ma-
"nières les seigneurs, la seigneurie, la
"propriété des terres, la nomination
"aux cures et adjoints, même le Com-
"merce qui fait l'âme de l'établisse-
"ment qu'elle prétend.
"Ce que j'ai vu jusqu'ici depuis
"mon arrivée, m'a bien persuadé
"ce que j'avance; puisque depuis
"que les agents de la Compagnie ont fait
"entendre qu'elle ne souffrirait aucune
"liberté de commerce, non seulement aux
"Français qui avoient coutume de pas-
"ser en ce pays pour le transport des
"marchandises de France, mais même
"aux propres habitants du Canada jusqu'à
"à leur disputer le droit de faire venir
"pour leur compte des denrées du
"royaume, desquelles ils se servent
"tant pour leur subsistance que pour
"faire la traite avec les sauvages, qui
"seule arrêterait ce qu'il y a de plus
"considérable entre les habitants, qui
"peuvent y demeurer avec leurs familles
"ne peuvent ~~être~~ être de charmés
"en la seule culture des terres."

[Foot Note.]

* This other despatch here re-
ferred to, is not given; nor any fur-
ther ~~indication~~ ^{indication} of its tenor, than
the report in the text furnished
above.

"Enfin je reconnais très bien que
"la Compagnie continuant de pousser
"son établissement jusqu'au elle
"le prétend porter, profitera sans
"doute beaucoup en dégraissant
"le pays; et non seulement elle
"lui ôtera les moyens de se
"soutenir, mais encore elle fera
"un obstacle essentiel à son éta-
"blissement, et dans 10 ans il
"sera moins peuplé qu'il ne
"l'est aujourd'hui."

"On a mis la compagnie en possession, non seulement des droits honorifiques et de seigneurie, mais encore de tous ceux qui rendent quelque utilité." Avant au commencement j'appréhende qu'elle ne le fasse dans une trop grande étendue. Elle se [fonde ?] pour cela des termes de la conception qui le lui donne privativement à tous autres; et je crains que par là elle fasse perdre cœur à la plus nombreuse et considérable partie des habitants du Canada. Comme sa prétention et les ordres que le Roi m'a donné par mon instruction, par lesquels S. M. me commande d'exciter les dits habitants au commerce, ne s'accordent pas trop, je tiendrai tant que je pourrai les choses en balance, pour nourrir quelque espérance de lucre et de profit dans les esprits que je trouve abattus - jus qu'à ce que dans l'année prochaine S. M. me soit mieux expliqué de ses intentions sur ce sujet, sur lequel je m'étendrai davantage dans mes premières dépêches.

[Foot-note.]

* M.M. Doc. Que. Hist. Soc., 1st Series, Vol. 1, pp. 52-54.

[Foot-note.]

* M.M. Doc. Que. Hist. Soc., 1st Series, Vol. 1, pp. 87-85.

S 360. - These views, ^{however were, in great} ~~which were~~ ^{part} combated, the year following, by a despatch of the great Colbert under date of 1668, April 5; in which ^{referring} ~~referring~~ either to the above papers, or to the corresponding paper of ^{the} ~~the~~ despatch there referred to mentioned, ^{to both,} - that minister thus wrote: -

"L'autre raisonnement que vous faites sur l'abandonnement que le Roi a fait du pays à la Compagnie des Indes Occidentales, et les inconvénients que vous en appréhendez, peut être aussi combattu par une raison qui est capable, elle seule, de détruire toutes les autres que vous apportez au contraire; c'est que nous avons vu par l'expérience que cette colonie n'est tombée dans l'état languissant où elle a été jusqu'ici, que parce que l'ancienne compagnie étoit trop faible, et parce que cette même Compagnie l'a ensuite abandonnée entre les mains des habitants, et si vous étiez bien ce qui s'est passé sur ce fait là, vous demeurerez d'accord que ces deux causes ont produit la désertion des anciens colons, et empêché que d'autres ne s'y soient allés établir, comme ils auroient fait autrement si une compagnie ^{Archives de la Ville de Montréal} s'étoit présentée, comme celle-ci l'avoit soutenue.

[Foot-note.]

** By the contract of 1645 - Supra, S 252.

"Il est constant que vous aurez
 "trouvé de grandes difficultés dans les
 "commencements, et par l'inexpérience
 "et peut être par l'avidité des agents et com-
 "mis de la Compagnie; mais vous en
 "serez bientôt débarrassé par les remèdes que
 "la Compagnie même y aura apportés,
 "et par les soins qu'elle prendra de révoquer
 "ceux de ses agents et commis qui auront
 "quelque emportement, pour en substituer
 "des autres plus modérés en leur place.

"Ce n'est pas dans ces seules précau-
 "tions que le ~~roi~~ veut donner les moyens
 "de faire subsister les habitants du Ca-
 "nada; S. M. a fait condescendre la Com-
 "pagnie à se relâcher en leur faveur
 "de la haine avec les sauvages, quoi-
 "qu'elle pût se prétendre aux termes
 "de sa conception, et qu'il auroit été
 "même plus avantageux de la lui lais-
 "ser, parce qu'il est à craindre que par le
 "moyen de la haine, les habitants ne de-
 "meurent une bonne partie de l'année
 "dans l'oisiveté, au lieu que s'ils n'avoient
 "pas la liberté de la faire, ils seroient
 "obligés de s'appliquer à bien cul-
 "tiver leurs terres.

"Tout ce que vous allégués pour
 "faire connoître qu'il seroit plus avan-
 "tageux de laisser la Commerce au Cadis-
 "sion de tous les habitants, que de
 "le renfermer es mains de la seule Com-
 "pagnie, étant particulièrement fondé
 "sur la mauvaise administration des
 "agents et commis, il sembleroit que
 "les précautions que l'on prendra à l'ave-
 "nir d'en faire de tous choix, suffiroient
 "pour vous persuader du contraire &c.
 "Mais, pour vous donner lieu de juger
 "encore avec plus de certitude, la Com-
 "pagnie, sur les instances que je lui
 "en ai faites, en a accordé la liberté
 "pour cette année indistinctement à toutes
 "sortes de personnes; quoiqu'il soit fort
 "à craindre que ces particuliers n'enverront
 "de France que les marchandises et denrées
 "sur lesquelles ils trouveront du bénéfice,
 "et laisseront manquer le pays de celles
 "qui lui seront peut être les plus neces-
 "saires, - outre que par ce moyen les
 "Castors étant en différentes mains, il est
 "certain que le débit s'en fera à vil prix."

The Minister ^{then} proceeds

Proceeding then to another subject, the
 Minister answers certain a question which
 Talon had raised, as to the right of the
 Company to certain dues - "Le grant
 "sur les Castors et le dixième sur les
 "originaux" - originally imposed (it would
 seem) by the Commandanté d'habitants
 upon themselves, to meet their liabilities
 under their contract with the Com-
 pany of New France (supra, § 202)
 in 1645. These dues, he says, have been
 rightly made over to the ^{new} Company, and
 belong both along the King's highway
 claims to them, - nor get any claim
 whatever upon any monies that should

* to defray the charges of the
 local government of the country,
 * for the purchase of the fur-trade

& be worked in the country.

[Foot-Note.]

* "Le ~~roi~~ lui ayant concédé le Canada,
 "ainsi que tous les autres pays de sa con-
 "ception, en toute seigneurie et propriété,
 "et s'en étant réservé que la souveraineté"
 etc.

249) After which follow these two paragraphs; the one, an evidence of the same disposition to seek revenue from Canada which ^{showed itself} ~~appeared~~ in the instructions to Landais (^{supra}, §328) three years before; the other, the only further reference that I find in this correspondence, to the matter of land-ownership in Canada.

"Sur quoi il étoit néanmoins à considérer que comme par les nouveaux établissements qui sont faits et par l'augmentation du nombre des colons, la traite augmentera au point de valeur, il est juste que non seulement elle acquitte avec régularité les charges ordinaires, mais qu'elle supplée de quelque chose aux extraordinaires, - convenant déjà de faire un fonds annuel de 2000 livres pour subvenir aux parties inspinées, et même que si le Roi forme une reprise dans laquelle son propre avantage et celui du pays se trouvent également, de faire fournir aux frais qu'il sera nécessaire de faire.

"La même raison qui fait constituer à la Compagnie le droit du quart sur les castors, qui est x x, vous obligera à vous déterminer sur l'incertitude où vous étiez de faire toutes les impositions au nom de la Compagnie, et de procéder à la confection du papier terrier, sur la requête de la Compagnie son agent général."

§361. - Under date of the same year 1667 (registered the 10th of Sept. 10), ^{has been} ~~never~~ preserved in the archives of the Conseil Supérieur, another document x which throws ^{some further} ~~considerable~~ light on this subject of the imperfect ~~action~~ ^{action} had to given effect to this grant made to the Company of the West Indies.

This document is a Requête submitted by le Barrois, the agent general of the Company, to Messrs de Tracy, de Courcelles and Talon, with their notes of reply in the margin. It presents 31 heads of demands on a ^{variety} ~~variety~~ of subjects, ~~some for the~~ ^{enforcement of the Company's commercial} ~~enforcement of the Company's commercial~~ ^{privileges, some as to its merely} ~~some as to its merely~~ ^{honorary} ~~honorary~~ ^{rights of very different degree} ~~rights of very different degree~~ ^{of practical importance, - some which} ~~of practical importance, - some which~~ ^{are answered in a variety of ways, and} ~~are answered in a variety of ways, and~~ ^{by no means always in the sense, such as} ~~by no means always in the sense, such as~~ ^{the spirit of the Company's Edit de création would} ~~the spirit of the Company's Edit de création would~~ ^{have required. The King had begun by} ~~have required. The King had begun by~~ ^{naming those three officers himself, instead} ~~naming those three officers himself, instead~~ ^{of taking them at the College de Montreal} ~~of taking them at the College de Montreal~~ ^{now, as the Edit provided. And they by} ~~now, as the Edit provided. And they by~~ ^{means acted as its servants.} ~~means acted as its servants.~~

[Foot-note.]

x Edits et Ord., 4^e, Vol. 1, pp. 45 et seq. 7 8^e, Vol. 1, pp. 57 et seq.

x ^{with the full consent of the Company, and} ~~with the full consent of the Company, and~~ ^{he obliges it that himself,} ~~he obliges it that himself,~~ ^{as he told Talon in his instructions,} ~~as he told Talon in his instructions,~~ ^{- supra, §35) -} ~~- supra, §35) -~~

x ^{notwithstanding their} ~~notwithstanding their~~ ^{irregular mode of their} ~~irregular mode of their ^{selection, they may get} ~~selection, they may get ^{however much they have been in a} ~~however much they have been in a~~ ^{certain theoretical sense} ~~certain theoretical sense~~ ^{the Company's servants, rather} ~~the Company's servants, rather~~ ^{they be no means acted as so being.} ~~they be no means acted as so being.~~~~~~

[Foot-note.]
Publ. Doc. Que. Hist. Soc., 2^e Series,
Vol. 2, pp. 301, 2.

is the note made, - again indicative, apparently, of a wish on de Councelles' part to assent, and of an opposition on Talon's part that was more the less obstinate for the fact that he ~~could~~ ^{did} not venture on a plain refusal. -

* [c. à d. Renvoie à Mons. l'intendant.]

[Foot-note.]
It may be suggested, perhaps, that Talon's signature of these answers is to be taken to import acquiescence, or reflection, in de Councelles' written views. Such does not seem to me to be its meaning. De Councelle referred the matter to Talon, and ^{added} a note of his own idea. Talon's signature is ^{directly} to the reference of the matter for ^{himself} to look into and act upon thereafter. If he had meant more, he should have added a memorandum by way of statement of his own view.

From his despatches ~~above quoted~~ and Colbert's answer, ^{above quoted}, we know that he was ^{arguing adversely to} ~~in favour of~~ the Company, with the Minister, - on these points, among others; ~~it is more likely that he meant~~ ~~to leave them still open, that~~ ^{and the} ~~argument seems to have been in a~~ ^{state} ~~to offer him considerable encouragement for holding them still open.~~

Besides all which there is ^{the strong presumption} that he neither went on at once with the paper ^{in the Company's name, nor yet even} granted land in the Company's name, and these demands required that he should have done. ^{Every reference to the papier terrier shows it as unfinished work, down to 1678.} (See citation from despatch of Frontenac, ^{infra} § 362,) when Talon ^{left the country, and indeed} it seems never ^{to have been} completed till some years after the Company had ceased to exist. And no grant by Talon, in the Company's name, is extant.

strong, and the answers themselves to have meant assent, the case is not ~~materially~~ altered. - The facts would still remain, that till then these compliances with the Edit of 1663 had been refused or evaded, - and that, though then promised, they were ^{not} ~~altogether~~ carried into effect.

[Foot-note.]
Vide infra § 3

* according to the ordinary sense of the words used in it, the ^{so} ~~of~~ argument might have been got up, on the basis of such facts, for the application of the anti-disjunctive hypothesis to that ground.

251) And lastly the twelfth sixth, the only other demand having any reference to the land-granting, ran thus: -

26. - Que les concessions qui se feront a l'avenir seront donnees par mon dit sieur l'intendant, a tels cens et rentes qu'il sera par lui juge a propos, en presence du dit agent ou commis general de la dite compagnie, au nom de laquelle tous les titres de concessions seront passes.

- Upon which ~~is~~ the following ~~note~~ ^{is} like the former, ~~seeming to show the assent of de Councelles' part to assent~~ ^{but with an opposition on Talon's part that would not go the length of a plain refusal.}

* Idem. - Rien ne paroît plus conforme aux intentions de S. M.; ainsi il semble tres-juste d'accorder ce qui est demandé par cet article.

§ 362. - The only other documents that I have been able to find, throwing any material light upon this subject of the practical relations between the Crown and the Company in Canada, are -

1^{stly}. - Two, which - ^{only bear upon} ~~as they relate~~ to this point incidentally - will be better cited hereafter (infra, §§ and) than here; more especially, as they do little more than confirm the inferences to be drawn from the foregoing.

2^{dly}. - The grants of land made through this ^{period, - which, at all} ~~period~~ ^{will require fuller examination} hereafter (infra, §§ to); it being enough here to say, that they were of two classes, - the greater part by the King's officers, ^{and the} ~~very slight~~ ^{very slight} mention of the Company, and indeed ^{occasionally} ~~of none~~ at all, - and a smaller number made by the Company itself, in its own right, and afterwards recognised for valid by the King.

3^{dly}. - The following despatch from a despatch by Frontenac ^{to the Minister} under date of 1673, Nov. 19, ^{having} immediate reference to the former of these two classes of grants, - the map of which had been issued by Talon about a year previous: -

"Il est aussi renuoye une autre difficulte pour la confection du terrier de Mepris de la Compagnie, touchant les foi et hommages que doivent rendre les officiers des trouppes et autres personnes des plus considerables de ce pays, a qui M. Talon a donne des concessions; parce que les ayant toutes accordees au nom du roi avec injonction d'en prendre la confirmation de S. M. dans un an, sans parler de Mepris de la Compagnie, dans les titres qu'il en a donne, ils ont soutenu qu'il ne point devoit porter la foi et hommages aux officiers de Mepris de la Compagnie, mais seulement au roi ou a ceux qui le representent. C'est ce qui m'a obligé de faire surseoir le terrier a cet egard, jusqu'a ce que vous le supiez réglé, - pour ne point donner d'affaire aux titres accordés par M. Talon suivant l'avis du conseil qui lui donnait permission de le faire, et les ordres qu'il en avait reçus, conformes a ce que j'ai vu de vous au sujet de ces titres. Mais, pour finir toutes ces sortes

[Foot. Note.]
D. Sub. Doc. Que. Hist. Soc., P. 115,
Vol. 2, pp. 301, 2.

is the note made, - again indicative, apparently, of a wish on de Councelles' part to assent, and of an opposition on Talon's part that was more the less obstinate for the fact that he ^{did} not venture on a plain refusal: -

* [c. à d. Renvoyé à Mons. l'intendant.]

[Foot. Note.]
It ^{is} ~~may be suggested~~, perhaps, that Talon's signature of these answers is to be taken to import ^{his} acquiescence, or reflection, in de Councelles' written views. Such, ^{however,} does not seem to me to be its meaning. De Councelle referred the matter to Talon ^{and} ~~advised~~ ^{noted} ~~note~~ of his own idea. Talon ^{signed} ~~signed~~ ^{in assent} to the reference of the matter, for ^{him} to look into and act upon thereafter. ~~not as though~~ If he had meant more, he should have added a memorandum by way of statement of his own view.

From his despatches ~~above quoted~~ and Colbert's answer, above quoted, we know that he was ^{arguing as personally to} ~~convinced~~ ^{opposed} the company, with the Minister, - on these points, among others; ~~it is more likely that he meant~~ ^{to leave them still open, that} and the argument seems to have been in a ^{state} ~~state~~ of ^{offer} ~~offer~~ him considerable encouragement for holding them still open.

Besides all which there is ^{the strong} ~~strong~~ presumption that he neither went on at once with the paper ^{in the} ~~in the~~ Company's name, nor yet even granted land in the Company's name, as these demands required that he should have done. ^{was} ~~was~~ referred to the habit

Indeed, ^{even} ~~supposing~~ ^{under} the interpretation here set upon these answers to be wrong, and the answers themselves to have meant assent, the case is not ~~materially~~ ^{materially} altered. - The facts would still remain, that till then these compliances with the Edit of 1663 had been refused or evaded, - and that, though then promised, they ^{were} ~~were~~ not ^{altogether} ~~altogether~~ carried into effect.

[Foot. Note.]
Vide infra §

* according to the ordinary sense of the words used in it, ^{the} ~~the~~ ^{basis} ~~basis~~ of such facts, for the application of the anti-seigniorial hypothesis to that grant.

251 / And lastly the twenty sixth, the
"de contestations, j'estime qu'il seroit
"nécessaire qu'il vous plût faire expli-
"quer S. M. en l'exécution de l'arrêt
"par lequel elle avoit autrefois donné la
"propriété de ce pays à Messrs. de la Com-
"pagnie, et que je remarque n'avoit été
"négligé suivi en aucun article par
"Messrs. de Tracy et les ministres du roi,
"ce qui l'ont suivi, hormis dans la
"perception des droits seigneuriaux
"pour leur a toujours laissé par
"ce que si le roi entend, comme il
"y a bien de l'apparence, qu'on ne
"les regarderoit plus que comme des in-
"registres ou des Seigneurs utiles,
"il est aisé de terminer toutes les
"difficultés de cette nature sur
"le pied de ce qui se pratique en
"France." The King's Edit of 1674, accepting the
"§ 363. - Through later years of
the Company's existence, ~~indeed,~~
is pecuniary

Barreter of its Charter.
Infra, §

embarrassment, were not likely to add to its capacity for the struggle by which alone it could have secured the full ^{and use} enjoyment of the wide immense properties and franchises originally ~~vested in~~ ^{vested} ~~in~~ ⁱⁿ ~~confided~~ ⁱⁿ granted to it by its Charter.

§ 364. - But admitting all that has thus ^{been} ~~shown~~, the obvious ^{answer} ~~as~~ in the case of the Company of New France (^{supra}, § 209) - that it has nothing whatever to do with the question of the legal interpretation ~~and~~ of the grant itself.

§ 365. - If indeed, the facts had been, that this Charter was exactly acted up to, ⁱⁿ ~~in~~ every particular, except as regarded ^{property} ~~property~~ in the ^{it} ~~it~~ grant (so-called) of the ^{property} ~~property~~ of the ^{its} ~~its~~ territorial property, - and that that grant had been treated (noted ^{Archives de la Ville de Montréal} ~~noted~~ ^{the} ~~the~~ ^{absolue-} ~~absolue- ^{ness} ~~ness~~ of its wording) as if it were a mere ^{first} ~~first~~ grant, - a plausible show~~

because the clear and precise words of an instrument are not ~~changed to their sense~~ ~~to their meaning~~ for ~~purposes~~ any end of legal interpretation, ~~and~~ ^{having} the mere fact of the parties not ^{holding} up to their ~~meaning~~ ^{sense}.

Foot-note.

* Vide supra, § 357.

& the king's chief officers in the country, having once been named by the king and not by the Company, had a natural leaning the other way, - as also had the body of incumbents in the country; and

Foot-note.

* Vide supra, § 361.

& ~~with~~ the king's chief officers in ~~the~~ country, ~~and~~ the body of the incumbents, had their natural leaning ~~against~~ another way; and

Foot-note.

* Vide supra, §§ 359, 360.
* supra, §§ 359, 360.

in speaking of the country

trustee-quality of the now anti-seigniorial code of ^{now} feudal law. - The king ^{used no phrase of qualification} ~~of the country~~ as granted to the Company (supra, § 357); Lalou remonstrated, ^{with no phrase of qualification}, against the policy of ceding to a Company "la propriété de ce grand pays", and of ^{what?} supra, § 359; Colbert, in his reply (partly cited supra, § 360);

Although, even in that case, and though pushed no further, the argument would have been, ^{shamed} and ^{unsound} one; - And most surely ^{the argument} could have had no show of application to any other grants, than simply the one grant ~~to the Company~~ ~~so supposed~~ not to have been acted on.

§ 366. - But the facts are not so. The imperfect execution of this Charter affected several others of its provisions, the sense of which, equally with that of its land-granting clauses, was beyond controversy, - ~~more~~ ^{more} ~~than~~ it did those ~~land-granting~~ ~~of~~ clauses.

Beyond controversy, the Company was ^{have} named and removed ^{all its governing} at will. The king understood ^{the} grant to ~~import~~ have meant ^{as no doubt} it did, though the words were rather vague ^{that it was to name} ^{all its other} officers also; for he so instructed Lalou (supra, § 357). But the Company found it well to acquiesce, and the king told Lalou that it acquiesced gladly, in an arrangement purporting to be temporary, but which ~~did~~ proved otherwise; under which the king named its three highest officers for Canada. (supra, § 357.)

In the clearest terms, by its Charter, it had the unrestricted nomination of all its judicial officers; the members of the Conseil Supérieur alone having to take Commissions from the crown after such nomination. But, in 1688, its demands to that end were still only in part granted, and in part ~~not answered~~ ~~or~~ answered evasively, or not at all. (supra, § 361.)

Its commercial monopoly, ~~for~~ ~~every~~ except as to the fisheries, was for 40 years to have been unlimited. So Lalou admitted, and Colbert. But here, there was the whole body of the colonists for ~~them~~ ^{it} to contend against, and Lalou ^{took} ^{the} ^{colonist} ~~side~~ ^{side}. The Minister, ^{while he thought} ^{then} ^{its} ^{pre} ^{textion} ~~was~~ ~~based~~ ~~on~~ ~~politico-econom~~ ~~ical~~ ~~grounds~~ ~~as~~ ~~well~~ ~~as~~ ~~on~~ ~~those~~ ~~of~~ ~~supporting~~ ~~its~~ ~~pretension~~ ~~on~~ ~~politico-economical~~ ~~grounds~~, as well as on the grounds of the written letter of the Charter, found it necessary to induce the Company to give up no small part of such pretension.

Frontenac's resumé of the whole case, as late as 1673, has it, that except for the receipt of ~~the~~ ~~grant~~ ~~had~~ ~~had~~ seigniorial dues, ^{the} Charter had hard-ly been carried out in a single particular. (supra, § 362.)
For the matter of its land-ownership, if ⁱⁿ ^{regard} ^{to} so many other matters, the Charter was not acted ^{up} ^{to} ^{by} ^{the} ^{Company} ^{at} ^{any} ^{rate}, ^{nothing} ^{like} ^{an} ^{ap} ^{er} ^{ip} ^{er} ^{ation} of its quality to the

in two parts: first, with reference to the ~~land-granting~~ which it was suggested should be formed at the King's expense, near Quebec; and secondly, with reference to any others that should be formed elsewhere, at other cost than the King's. The first part of this project reads thus:

[Foot-note.]

* Edits et Ord., 4^o, Vol. 2, pp. 128 et seq. i 8^o, Vol. 2, pp. 28 et seq.

[Foot-note.]

judicial procedure and some

[Foot-note.]

Vide supra, 346; for Talon's first promise, to the Minister, as to the preparation of a plan of this sort.

* Carignan-Salières, ou }

S 367 - The next evidence, ^{estant pièce of} to be used, ^{at} as to the land-granting projects of those times, is to be found in certain "Projets de Règlements," ^{drafted} drafted by Talon, signed ^(without date) by de Tracy and himself, and ordered for enregistrement ^{at a meeting of} by the Conseil Supérieur, ⁱⁿ 1667 (Jan. 24), at which de Coucilles, the Bishop and five other Councillors, the agent general of the Company not being one of them, were also present, - "pour être observés selon leur forme et teneur, ^{avant} que la récepte le requerra."

After a number of provisions as to other subjects, this subject is taken up, and dealt with ~~thus~~

"Après qu'il aura été estimé à propos de former des villages en corps de communauté, il est bon d'observer qu'il importe très-fort au service du Roi, et au salut du pays de Canada, de les planter tant qu'il se pourra dans le voisinage de Québec, pour les raisons suivantes: * *

Et pour parler dans son ordre des villages à former pour les habitations des nouvelles familles qui seront envoyées par Sa Majesté, après avoir reconnu qu'il importe de les planter près de Québec, il faut convenir que leur forme devant se prendre de la nature et situation du terrain, il n'est pas aisé de la déterminer; que cependant la ronde ou la quarrée semble la plus commode, si le lieu la souffre, et que l'étendue de chaque habitation doit être d'autant de terre qu'il en faut pour, étant distribuée en 20, 30, 40 ou 50 parts, donner ~~environ~~ ^{environ} 20 arpents à chacune d'icelles, et ce nombre d'habitations différent et inégal, fera les bourgs, villages et les hameaux selon l'exigence du terrain.

"Il faut pareillement arrêter qu'après avoir réservé dans ces hameaux, villages ou bourgades, les habitations nécessaires aux familles qui seront envoyées dans la présente année, il semble que la distribution de ce qui en restera devra se faire à de vieux hivernans, capables d'informer les chefs de familles nouvellement venues et établies, de la manière de cultiver plus utilement la terre en la travaillant dans ses saisons, soit de vive voix, soit par l'exemple de leur application au travail: et j'ajoute que s'il se trouve des gens de différents métiers, servant ordinairement à fournir quelque chose de leur profession qui soit utile à l'usage commun des habitans de ces bourgades, comme charpentier, maçon, savetier et autres, il sera très à propos de les introduire en icelles, afin que sans sortir du bourg, toutes les choses nécessaires, tant à la nourriture qu'au logement et vêtement de l'homme, se trouvent pour la commodité de celui qui l'habite.

"Quant aux clauses et charges qui seront stipulées dans les contrats qui seront faits en faveur des concessionnaires, il semble qu'elles doivent être différentes selon la différence des sujets qui en seront gratifiés.

"Les soldats du régiment de Carignan-Salières ou des garnisons des forts de Québec, des Trois-Rivières et Montréal, étant de droit et de fait engagés au Roi par la solde qu'ils ont reçue, ne pouvant se dispenser de continuer de rendre dans le tems et dans les occasions futures leurs services à Sa Majesté, soit ~~pour~~ ^{pour} la défense du pays, dans laquelle ils s'intéressent, comme dans la chose publique et le salut commun de tous, ~~soit~~ ^{soit} pour toutes entreprises qui regarderont l'utilité ~~et l'avantage~~ de l'ancienne et Nouvelle France, ainsi il n'y a aucun inconvénient de leur donner les terres qu'ils défricheront à cette condition; qui ne leur sera pas onéreuse, puisqu'elle ne les sortira pas de celle dans laquelle ils se trouvent à présent, et parcequ'ils ne se peuvent établir par leur seul travail, il faut de nécessité les assister dans les premières années. Il semble autant utile à Sa Majesté que juste, de leur donner quelque secours de vivres et d'outils propres à leur travail, et de leur payer la culture des ~~deux~~ ^{deux} premiers arpents de terre qu'ils abattront et brûleront, quoique pour leur compte et à leur profit, les obligeant d'en cultiver en échange ~~deux~~ ^{deux} autres dans les ~~deux~~ ^{deux} ou ~~quatre~~ ^{quatre} années suivantes, au profit des familles qui passeront de France ici, sans que pour ce il leur en soit rien payé: Par cet expédient on leur fournit les moyens de se faire un fonds de subsistance pour l'hiver, et on prépare des terres pour les familles que le Roi semble vouloir établir à ses dépens. * *

Les vieux hivernans qui demanderont des habitations pourroient trouver cette condition du service à rendre à Sa Majesté, moins agréable que les soldats, si d'un côté les droits naturels qui les obligent à se mettre en campagne, lorsqu'ils sont commandés, de l'autre, l'honneur dont on les peut toucher, et la remise qu'on leur peut faire des autres droits onéreux qui suivent ordinairement les concessions, ne les engageoient suffisamment à la recevoir; ainsi on la peut stipuler dans les contrats qui leur seront passés.

Et comme Sa Majesté semble prétendre faire la dépense entière pour former le commencement des habitations par l'abattis du bois, la culture et semence de deux arpens de terre, l'avance de quelques farines aux familles venantes, on peut à leur égard demander en premier lieu ce qui est demandé des vieux hivernans, qu'ayant reçu deux arpens en état de rendre les fruits de la culture et de la semence qui aura été confiée à la terre, ils en cultivent deux autres dans les trois ou quatre années suivantes celle de leur arrivée, pour ne leur pas demander ce remplacement dans la première ou la seconde, ce qui les divertiroit trop de l'amélioration de leur habitation dans un tems auquel elles ont besoin de toute leur application pour leur donner l'établissement duquel dépend celui de toute leur famille; et pour le bénéfice qu'elles reçoivent par la concession de la terre, au lieu de cens surcens, censives ou autres redevances, qu'emportent avec soi les concessions de ce pays, ils engageront au service du roi leur premier-né lorsqu'il aura atteint l'âge de quinze ans, qui commencera son noviciat dans une garnison des forts, sans qu'il puisse prétendre autre solde que celle de sa subsistance, ou celle qui lui pourra être ordonnée par les états de Sa Majesté durant le service qu'il rendra. Cette obligation n'ajoute presque rien à celle qu'un véritable sujet apporte au monde avec sa naissance, mais il semble que lorsque cette condition est stipulée, elle est moins rude quand elle est exigée, que lorsqu'il n'en est rien dit dans les contrats des terres données comme se donnent toutes celles du Canada.

Comme dans toute cette distribution, il n'est rien réservé au profit de la Compagnie des Indes Occidentales, que Sa Majesté veut bien gratifier de l'avantage que donne en cas pareil le droit de seigneurie, on les habitations relèveront immédiatement d'elle, et en ce cas, la haute, moyenne et basse justice pourra lui être attribuée, avec le droit de lods et ventes, saisines et amendes, et même un cens léger, s'il est jugé à propos ou si Sa Majesté, estimant qu'il soit plus avantageux

pour elle d'avoir pour vassaux des officiers de ses troupes qui aient pour les roturiers la seigneurie utile et domaniale, elle peut créer en leur faveur quelques droits de cens ou censives peu considérables, qui soient plutôt des marques d'honneur que des revenus utiles, et leur accorder la moyenne et basse justice, se réservant la haute, qu'elle attachera à une cour souveraine des fiefs ou à quelques officiers créés pour la conservation des droits de seigneur suzerain ou dominantissime.

The second part of the project immediately follows, in these words, - fewer, and (to say the least) less intelligible: -

Les articles précédens ne traitant que de droits à établir dans les hameaux, villages et bourgades que Sa Majesté fait ou fera former à ses dépens, pour être distribués aux pauvres familles qu'elle enverra de France et dont elle prétend peupler le Canada, ou qu'elle voudra distribuer aux soldats qui voudront s'y habituer, il est très-à-propos d'examiner à quels titres et sous quelles conditions on distribuera des terres et on fera des concessions aux particuliers qui voudront faire dépense et employer leurs soins à la culture du Canada, formant eux-mêmes des hameaux, des villages ou bourgades.

Posant toujours le même principe que l'obéissance et la fidélité dues au prince souffrent plutôt altération dans les pays de l'état éloignés que dans les voisins de l'autorité souveraine, résident principalement en la personne du prince et y ayant plus de force et de vertu qu'en tout autre, il est de la prudence de prévenir, dans l'établissement de l'état naissant du Canada, toutes les fâcheuses révolutions qui pourroient le rendre de monarchique aristocratique ou démocratique, ou bien, par une puissance et autorité balancées entre les sujets, le partager en ses parties et donner lieu à un démembrement tel que la France a vu par l'élection des souverainetés dans les royaumes de Bourbonnais, d'Orléans, comtés de Champagne et autres.

X 57

[Foot-note.]
x Doc. Leiga., Vol. 4, p. 5.

S368. - In connexion with this document should be read another which bears date of the same day, and has been printed by government as found in the archives of Paris, in the winter of 1852-3. It is printed under the heading of "Extrait du Projet de Règlement fait par M^{rs}. de La Rochelle et Talon pour la Justice et la distribution des terres du Canada;" and is in the following words: Archives de la Ville de Montréal.

" Sur la distribution des terres du Canada et des concessions faites et à faire, avec leurs clauses, ils demandent —
 " Qu'il soit fait une Ordonnance qui enjoigne à tous habitants et à tous étrangers possédant des terres, de déclarer ce qu'ils possèdent, soit en fief d'hommage lige, soit d'hommage simple, arrière-fief, ou roture, par dénombrement et aveu en faveur de la Compagnie des Indes Occidentales, donnant les conditions et clauses portées par leurs titres; pour qu'il puisse être connu, si les seigneurs dominants n'ont rien fait insérer dans les contrats qui leur ont été donnés par les seigneurs suzerains ou dominants, au préjudice des droits de souveraineté, si eux-mêmes distribuant les terres de leur fief dominant à leurs vassaux, ils n'ont rien exigé

qui puissent
 "bleser les droits de la Couronne, et
 " cause de la subjection d'iceux seulement
 " au roi; —

" Et pour que cette déclaration, ou dénombrement, se fasse avec plus d'exactitude, que les copies des contrats des concessions soient fournies aux personnes dénommées dans les Ordonnances qui seront à cet effet affichées partout où besoin est.
 " Par là il sera connu ce qu'on prétend avoir été distribué de terres en Canada, ce qui en a été travaillé et mis en valeur, ce qui en reste à distribuer de celles qui sont commodément situées; si les concessionnaires ont satisfait aux clauses mises dans leurs contrats; et surtout s'ils n'ont pas empêché ou retardé par leur négligence l'établissement du Canada.
 " Il sera pareillement connu, de qui importe à M. de Tracy et à M. de Courcelles, quel nombre de concessions a été distribué et mis en valeur depuis leur arrivée; par où le Roi veut être informé du changement qu'ils auront causé en l'avancement du pays.

" que pour éviter toute confusion et donner au Roi une parfaite connaissance des changements qui se feront tous les ans en Canada, il soit ordonné qu'à l'avenir il ne se fera aucune concession particulière ou générale, au nom de la Compagnie des Indes Occidentales, soit de la part des seigneurs de fiefs qui distribueront leur domaine utile à des habitants, qui pour être valable ne soit vérifiée, ratifiée par celui qui aura le pouvoir de Sa Majesté, et insinuée au greffe du domaine de la dite Compagnie, au profit de laquelle il sera incessamment travaillé à la confection d'un papier terrier.

* *Compagnie, —*
 * *of the Canadian authorities*

" au profit de laquelle il sera incessamment travaillé à la confection d'un papier terrier."

~~Foot-note.~~
 * The text we read ~~rather~~ as though the suggestion might rather have come from de Tracy and de Courcelles, than from de Tracy and Talon; ~~consideration~~ consider

§369. It is sufficiently apparent from the style of this ~~last extract~~ ^{letter document}, that it is not, ~~properly speaking~~ ^{as drawn up} an extract from any Projet de Règlement ~~presented~~ ^{drawn up} by de Tracy and Talon, — but an extract from a piécis drawn up in the office of the Minister, for the purpose of exhibiting to the Minister or to the King, or to both, the tenor of their recommendations, as to some such projected matter.

as the heading of it would ~~indicate~~ indicate.

For yet, so far as internal evidence goes, we can very well suppose it a piécis of any recommendations of de Tracy and Talon. In the body of ~~the~~ ^{document, the} names mentioned are those of de Tracy and de Courcelles; and the tone of it, as regards the Company of the West Indies, while it ~~answers~~ ^{answers} exactly to de Courcelles' views, expressed (as we have seen) a few months before, as exactly conflicts with Talon's. (Lupin, §361, etc.)

* part of a

§370. — Reading the two documents together, as their identity of date and subject requires, one or two inferences ^{would} seem to be tolerably plain.

The one here first printed, we know to have been drawn by Talon, and registered as a Projet de Règlement, with the assent of de Tracy and de Courcelles, by the Conseil Supérieur. The first part of it, as to the settlement to be made ^{in the King's} ^{cost}, is clear enough; even the Archives de la Ville de Montréal had to be mentioned, though somewhat mystified, but ~~blame~~ ^{not blame} merely, so. But the second part of it,

A

* the "Traité de Tadoussac révisé", and also

Foot-note.

(b) Edicts of Ord., 4^o, Vol. 1, pp.

43 et seq.; 8^o, Vol. 1, pp. 60 et seq.

This Arrêt also ^{regard} speaks of New France as "concedée en toute propriété, seigneurie et justice" to the Company.

To carry out pro tanto the views of this despatch, there was sent with it an Arrêt of the Council d'Etat dated three days later; by which the King, in consideration of the voluntary waiver by the Company, of its trading monopoly to the extent above indicated, and on condition of its assuming the charges of local government (which the contract of 1645 had cast upon the habitants, ^{formally} made over to it ^{these dues upon peltry} ~~the habitants~~ ~~in payment of them~~ ~~in lieu of their obligation under that contract.~~ (c)

~~peltry~~ ~~Grand~~

peltry, with the monopoly of the "Traité de Tadoussac révisé". (d)

Archives de la Ville de Montréal

The terms to be offered to ^{the} different classes of settlers in these bourgades, were to be different.

One class of the vieux hivernans would naturally be soldiers, detailed for that ^{service}, whether they would or not. These were to get some allowances of food and tools, ~~and~~ to be paid for wages for the clearance of their first 2 arpents, and to be reunited in return, in the course of the next 3 or 4 years, to clear 2 other arpents for new-comers, without being paid for such clearance further pay. It is evident, that it was not intended that these men should cease to be soldiers, ~~however they might~~ subject to discipline control as soldiers; and it is not clear that it was meant to give them a written title to their lands on which they should be placed.

The other ^{or volunteer} class of vieux hivernans was ~~could~~ not be forced into these terms. But it was agreed that, in consideration of release from the other onerous ~~and~~ dues that commonly attached to concessions, and it was proposed accordingly to bind them to the same service by their deeds of concession which they, certainly, were to receive.

For the new-comers, it was proposed in the first place to give a first 2 arpents ready for cultivation, ~~and~~ ^{with} ~~some~~ supply for sowing, and apparently some supply of food. For which, they were to be bound to a like cultivation of 2 arpents in the next 3 or 4 years, without pay, — and further ~~instead of the various dues otherwise attaching to concessions in the country, (au lieu de cens, succens, censives ou anches redevances, qui importent avec etc les concessions de ce pays) &~~ they were to bind ^{each his} eldest son, from the age of 16, to military service for a maintenance, ^{only} ~~and~~ or such pay as ^{the king} government should please to give ^{proposed} to give ^{rights} to give ^{re-} served, were all in favor of the king; while the lands on which they were to be secured had been granted to the Company, by its Charter. The question returned; therefore, ^{of the} Company's rights upon them. And this question was answered by the suggestion of one or other of two alternatives.

* they could be induced to agree to them,

* ("des anches droits ouïevens qui suivent ordinairement les concessions");

[Foot-note.]

It is manifest that ^{Salon} the plan contemplated the founding of these bourgades upon land that had not passed into private hands.

[Foot-note.]

Both of them, very much in the spirit of ^{light was notably made} Frontenac's own suggestion (supra, Note D to § 300) of assimilating the Company to what he calls the "Leign-nem white". The crown, that is to say, disposing of the property ~~and letting~~ the Company; but letting the Company "directe" as was more especially valuable, take so itself ~~so~~ much of the reserved.

On the one hand, the grants might ~~not~~ depend directly of the Company, - in which case, it would have, for its profits, the justice of every grade, with a light cens ("un cens léger") and the ~~fixed~~ lods et ventes, saisines and amendes thereto naturally attaching.

On the other hand, they might be made to depend directly of ~~officers~~ parties who should be vassals of the Company, and who in that case should have over the settlers a like light cens ("quelques droits de cens, ~~sur~~ on censives, pen consid- erables"), which, however, would ~~carry with it~~ with the justice, no genre and base only, ~~it~~ ^{however,} should be added, though the Draft is silent on that point, that the light cens would have carried with it, of course, the lods et ventes, saisines and amendes also, as a source of profit to such vassals.

* leaving the haute justice to the Company. It

* ~~with~~ one breath,

ordinarily attaching

* and ordinarily

§ 3/4. Talon, then, and his colleagues, while proposing ^{as} a matter of special favor, and in order to cover ^{the} reaction for the Crown of obligations ~~to~~ ~~clear~~ ~~land~~ ~~for~~ for the Crown without pay, and give up ones eldest son to military service for less than pay) to relieve these ~~settlers~~ certain classes of these settlers from the ~~usual~~ ~~oneros~~ ~~dues~~ ~~attaching~~ ~~to~~ ~~concessions~~, - in the next breath suggested that they should all have to pay a light cens, with the full casual dues incident thereto, and all usual burdens of the justice seigneuriale, - either to the Company, or else partly to it and partly to vassals holding under it. The two suggestions, it is plain, were not thought inconsistent. Nor were they; if one remembers the fact that ~~all~~ ~~sets~~ the cens ^{is} taken in its large ^{and true} sense as covering the sur-cens, ~~and other~~ rentes and dues of various kinds, that formed the fixed consideration of a grant, ^{was} naturally heavy, and that besides the regular casual dues and the profits ^{of the justice}, a variety of other ^{burdens} anything

260 but light, ^{was} also ordinary. It may be true, that, considering the ~~circumstances~~ proper values of things, Talon was promising little by his proposed exemptions because, in truth, ~~these~~ ^{not} could, for any long time and to any great extent, have been kept up. But he was not ~~promising~~ ^{promising} what ~~what in fact~~ ^{showed to amount to} from the terms that he used, ~~promising~~ ^{nothing}.

system of
 * Conceptions at high rates and under burdensome conditions,

* which they proposed either to give to the Company or to divide between it and its vassals, -

§375. Again, he and his associates ^{in effect} plainly ^{viewed} here ~~the~~ the justice, ^{as a} pecuniary revenue; ~~and~~ such was the light in which it is well known to have been universally regarded.

* to men whom ^{servants} he should have selected and located ~~at discretion~~ at discretion, -

§376. In a word, their plan was just a contradiction of ^{what} the anti-seigniorial theory holds to have been the plan of Canadian colonization.

* those of the justice seigneuriale among these number,

For the special case where the King was supposed to be spending ^{his} money for a public end, land partly cleared was to be granted, ^{on terms uncommonly} ~~as~~ ^{favorable} as regarded rate of cens and exemption from certain burdens ^{ordinarily} ~~commonly~~ stipulated though not imposed (so to speak) by Custom, but still subject to all the burdens of the Custom, and to some others of a special kind that were by as means light.

* whose inevitable obligation it was to grant away their lands uncles, -

If Talon had ^{ever heard or thought} of the plan of colonization by trust-holding Seigniors, ~~he must make grants on certain terms far easier than those which he thought to be specially favorable~~ - ^{to every applicant who demanded it, without right of} he at least gave no hint of such notions here.

So far as is known, their plan was never more than a plan. ^{How} the ^{long} ^{ages} ^{formed} near Quebec under Talon's supervision, were founded upon this model, or upon other terms, is not known. The tenor of the plan is not, however, for this, ^{any} the less of an indication as to what the notions of the age were as to the way in which such matters should be set about should be dealt with.

If Talon ~~and~~ his colleagues had ever heard or thought of a plan of colonization by trust-holding Seigniors, whose inevitable obligation it should be to grant away their lands, uncles, - ~~on terms incomparably~~ ^{far} easier than by this real plan were held for specially favorable, - ~~and~~ to every applicant who should demand it, - ^{this, their real plan, at least} ~~throws out no hint of it~~ ^{Archives de la Ville de Montréal} has no likeness to it.

(262) § 380. - The first and second of these ^{questions} had special and exclusive reference to grantees en fief. The third and fourth referred to them, apparently, in common with other grantees.

§ 381. - It will be seen presently that hardly (infra, §), that hardly any grants en fief had ~~state~~ been made in Canada. So that these ^{questions}, so far as they related to such grants, must have referred almost ^{exclusively} to those of the Company of ~~the West~~ New France.

§ 382. These ^{the} were referred to, not simply as being taken for granted as grants of a something less than property, but as grants so large a property, ~~of so much more than a mere property,~~ - of so much more than a mere property, - as to warrant the representatives of the Crown in an apprehension lest ~~even~~ the prerogatives of the Crown should be found to be prejudiced by them. Even the grants made under them en arriere fief, it was apprehended, might be liable to the same suspicion.

In those days, and for long afterwards, grants were not ^{kept} in the ^{public} archives, ~~made~~ so that the ~~authorities~~ authors of this despatch had not at hand the means of getting ^{all} the information that they wanted. But, as we may see from the grants of that time still extant, they were not altogether wrong as to their general notion of the tenor of these grants.

§ 383. - As to all ^{the} grants made, without exception, they wanted also to ascertain whether or not the grantees had complied with the ~~grant~~ conditions of their grants, and whether or not, by negligence in the premises, they had retarded the settlement of the country.

~~But~~ Why so, - upon the theory now broached, of all the uncles grants having been revoked in 1683?

No one thought of such theory then. On the contrary, it was felt that in order to a revocation, there must be shown to have been a failure to comply with the essential conditions of the grant, - or such other misconduct as on public grounds might be held against them. The writers of this despatch ~~the~~ ^{the} writers of this despatch had

* from the time of the surrender of the Charter of the Company of New France to this date,

x by ~~the Crown~~ ^{for either the Crown} and ^{office of the} ~~and~~ ^{of the} Company of the West Indies,

* (The fact of their ^{position as} ~~unrevoked~~ ^{unrevoked} ~~being~~ ^{being})

* (unrevoked, of course)

placed of record, as ^{they were} made, & or elsewhere where their tenor could be ascertained by the authorities.

~~affected to have,~~ ^{might} ~~so~~ may have had some ^{ulterior} plan of escheat in view; but they first had to come at their facts, to warrant it, - indeed, to enable them to put into words what it was to be.

§384. — Besides this paper-
 tenier work, and ^{that} Ordinance for
 the ~~makers~~ required in order to it, they
 proposed another step, — also ~~very~~
 significant as to the style of thought
 of that age.

To avoid confusion, and keep the
 King well informed of all that was
 passing, they proposed to ordain —
 what? That the Company, ^{and the} ~~any~~
 holders under it in fief, or any
 of them, should be compelled to make
 sub-grants on such and such terms,
 and to keep the King's ~~own~~ officers
 advised thereof. On the ~~anti-seigniorial~~
^{anti-seigniorial} theory of the fief, a ~~trust~~
 for land-distribution, ~~this is what~~
~~we would have looked for~~
 this should have been their plan.

Instead of which, it was pre-
 cisely the reverse. Neither the Com-
 pany, nor ^{yet} any Seigneur under
 it, was to be suffered to make
 a grant, unless with leave of
the King's officers! All such
~~grants~~ grants, to be valid, were to be
 verified, ratified ~~by~~ by the King's
 agent, ~~and substituted in the~~
~~Company's registers in the Com-~~
~~pany's~~ ~~registers~~ ~~with~~ ~~among~~ ~~the~~
representative, and registered in the Company's ar-
 chives.

§385. — Is it suggested, that
 these Seigniors were therefore not
 veritable proprietors, but mere
 holders subject to an arbitrary
 veto of a King's officer?

The answer is obvious, — that
 a proposal by ~~the~~ ^{one or more} ~~seigniors~~ ^{make} ~~of~~ ^{by} ~~the~~
 the Crown in Canada, ^{to} ~~the~~ ^{higher}
 servant of the Crown at home,
 having ~~for~~ for an act of ^{manifest} ~~high-handed~~
 interference with proprietary right,
 shows no real legal limitation
 of such right. — Even if it had been
 backed upon, ~~and~~ ^{such} legal lim-
 itation would, ~~not~~ ^{not} have resulted.
 The ~~Seignior~~ Company's rights
 would have been, in practice,
 a little more ~~not~~ encroached
 upon than they were before;
 and other Seigniors' rights,
 much more. But the rights
 themselves at law, would
 have remained precisely what
 they were.

* by the issue of the proposed
 Ordinance, it may be a
 question whether such legal
 limitation would have resulted.
 The aggrieved proprietors would
 have had their recourse by opposition
 to its registration, and failing that by
 remonstrance and litigation ~~for its~~
~~removal~~ ~~and~~ ~~so~~ ~~oner~~ ~~or~~ ~~later~~, it
 must have been got rid of. If acted
 on by mere royal order, ^{not} ~~unregis-~~
 tered ~~in~~ ⁱⁿ form, it is certain that

204) But in fact, we know that neither of these courses was taken. No such Ordinance was ~~proposed~~ registered, or ~~signed~~ (for anything that appears) so much as drafted. No such order of the King was ^{set up as} even intended to be put in force.

The proposal, followed by ~~refusal~~ failure to act upon it, shows that the idea found no favor; ~~that~~ that this policy of curtailment of proprietary right was ~~not only~~ not adopted, ~~but~~ — and this, not simply from oversight, but because ~~after~~ being suggested it was held not to be the policy that should be adopted.

§386. — Still further, — the fact remains, that so far as is known, the rest of these suggestions shared what certainly was the fate of this.

The papier-terrier does not seem to have been gone on with. No Ordinance to that effect, in terms of this despatch, is extant. No steps are known to have been taken to ascertain the ~~terms~~ procedure for retrenchment of ~~arbitrary~~ seigniorial rights ~~dangerous~~ dangerous to the King's prerogative, nor for the enforcement of clauses of titles, nor for punishment of remissness of grantees. The Crown was ~~not~~ ^{not so} anxious to give its officers enormous powers in Canada, as those officers were to get them. A Canadian Seigneur's powers might, ~~be~~ ^{be some} ~~restrained~~ ^{on} by a Governor or Intendant; and the Crown might sometimes rather like such restraint to exist than otherwise. Absolute governments do not always want agents that are too absolute. The whole system was one of distrust of every body; Governor, Intendant, Bishop, checking each other, checking other people, and meant to be suitably held in check by other people. * In this very instance Lalou and his colleagues were at ~~cop-~~ ^{copy-} purposes. The Canadian Seigniors, a good many of them, ~~were~~ ^{were} by no means without Court influence. ~~with~~ ^{only} ~~left~~ ^{left} as ~~Attorneys~~ ^{Attorneys} ~~de~~ ^{de} ~~la~~ ^{la} ~~ville~~ ^{ville} ~~de~~ ^{de} ~~Montréal~~ ^{Montréal} were seigniorial.

[Foot-note.]

* Vide supra, §370, note & }

* — and among others, the Religious orders —

[Insert rule here]

§ 387. — That such was the fate of these projects, is further shown by the next ~~document~~ ^{being upon this subject} in order of date, that remain to us. To arrive at them we pass over a few years. ~~There are some years later~~

§ 388. — The first of these to be noted, is the following extract, under date of 1672, April 7th, ~~to~~ the Count Frontenac, with his Commission as Governor: —

"de dit Sr. de Frontenac doit ex-
 "citer par tous moyens possibles les
 "dits habitans à la culture et au
 "défrichement des terres; et comme
 "l'éloignement des habitations les unes
 "des autres a considérablement retardé
 "l'augmentation des colonies et a facilité
 "les autres fois les moyens aux ~~Indiens~~
 "Ingrais de s'enfermer dans leurs funestes
 "entreprises, le dit Sr. de Frontenac
 "examinera ce qui est praticable
 "pour assujettir les dits habitans à
 "défricher de proche en proche, soit en
 "obligeant les anciens colons à y tra-
 "vailler dans un certain temps, soit en
 "proposant des conceptions nouvelles aux
 "Français qui viendront s'établir
 "au dit pays."

This passage — all that I find here relative to this matter — is consist-ent enough with ~~all~~ ^{simply} that its antecedents, showing their comminatory and imperative character. Frontenac was to try to do what Jaudais and Talon had ~~been~~ ^{been} ~~suggested~~ ^{suggested} to do.

§ 389. — Another document, of so nearly the same date as to require to be read with the foregoing, ~~is~~ ^{that} is always cited in the anti-seigniorial interest, and was ar-gued upon before this Court in con-nection with the Arrêt of 1683, — and with the same ignoring of its real ~~tenor and effect~~ ^{purpose}.

~~Like the Arrêt of 1683, the~~
 As with the Arrêt of 1683, the anti-seigniorial argument from it is based, not upon what it is, but upon what, ~~the~~ by the printed heading given to it, it is said to be. That heading, ~~calls it~~ ^{is styled} "Arrêt
 "du Conseil d'État du Roi pour
 "retrancher la moitié des conces-
 "sions". But the document itself reads thus: — Archives de la Ville de Montréal

* from Colbert's instructions ~~to~~ addressed in the King's name to the Count Frontenac, with his Commission as Governor: —

[Foot-note.]
 * Publ. Doc. Que. Hist. Soc., 10 Series,
 Vol. 1, p. 218.

* an Arrêt of the Conseil d'État, under date of 1672, June 4th, ~~registered here in September of the same year~~ which ~~is~~ ^{is} June 4th, which

[Foot-note.]
 * édits et Arr., 4^o, Vol. 1, pp.
 60 et seq.; 8^o, Vol. 1, pp. 70 et seq.

* 8ou 10

Le roi étant informé que tous ses sujets qui ont passé de l'ancienne en la Nouvelle-France ont obtenu des concessions d'une très grande quantité de terres le long des rivières du dit pays, lesquelles ils n'ont pu défricher à cause de la trop grande étendue, ce qui incommode les autres habitans du dit pays, et même empêche que d'autres François n'y passent pour s'y habituer, ce qui étant entièrement contraire aux intentions de Sa Majesté pour le dit pays, et à l'application qu'elle a bien voulu donner depuis ~~huit~~ ~~vingt~~ années pour augmenter les colonies qui y sont établies, attendu qu'il ne se trouve qu'une partie des terres le long des rivières cultivées, le reste ne l'étant point, et ne le pouvant être à cause de la trop grande étendue des dites concessions et de la foiblesse des propriétaires d'icelles

A quoi étant nécessaire de pourvoir, Sa Majesté étant en son conseil, a ordonné et ordonne

que par le sieur Talon, conseiller en ses conseils, intendant de la justice, police et finances au dit pays, sera fait une déclaration précise et exacte de la qualité des terres concédées aux principaux habitans du dit pays, du nombre d'arpents ou autre mesure usitée du dit pays qu'elles contiennent sur le bord des rivières et au dedans des terres, du nombre de personnes et de bestiaux propres et employés à la culture et au défrichement d'icelles, en conséquence de la quelle déclaration la moitié des terres qui avoient été concédées auparavant les ~~vingt~~ dernières années sera retranchée des concessions, et donnée aux particuliers qui se présenteront pour les cultiver et défricher.

Ordonne Sa Majesté que les ordonnances qui seront faites par le dit sieur Talon seront exécutées selon leur forme et teneur, souverainement et en dernier ressort, comme jugemens de cour supérieure, Sa Majesté lui attribuant pour cet effet toute cour, juridiction et connaissance

ordonne en outre Sa Majesté que le dit sieur Talon donnera les concessions des terres qui auront été ainsi retranchées à de nouveaux habitans, à condition toutefois qu'ils les défricheront entièrement dans les ~~quatre~~ premières années suivantes et consécutives, autrement et à faute de ce faire, et le dit temps passé, les dites concessions demeureront nulles.

Enjoint Sa Majesté au sieur comte de Frontenac, gouverneur et lieutenant général pour Sa Majesté au dit pays, et aux officiers du conseil souverain d'icelui, de tenir la main à l'exécution du présent arrêt, lequel sera exécuté nonobstant opposition et empêchement quelconques.

§390. Unlike that of 1663, this Arrêt was enregistré in Canada, ~~in~~ in the September ^{next} following its date. But it would be a great mistake to infer ^{from this} ~~therefore~~ that it was therefore otherwise carried into effect.

§391. - Had it been so, however, ~~it would be~~ what would have been its effect?

Not an escheat de plans of the half of ~~all~~ ~~each~~ every concession of older date than 1662; but the preparation by Talon of a statement in exact detail, ^{as to} ~~of~~ the quality and extent of every grant ~~in~~ in the country, and the number of persons and of cattle upon each, - ~~from~~ ~~which~~ consequently upon which statement there ~~was~~ should follow a certain ^{measure of} escheat ~~over~~.

* the holding of

But ~~to~~ this consequent measure of escheat, ~~there certainly seems to follow, certainly?~~ ~~Even so, if the~~ ^{of the} ~~words~~ ^{words} above given, ^{as seen to} ~~was so~~. But it is evident they read, that the half of every grant made before 1662 shall be escheated. But here, the words of an ^{Arrêt de la Ville de Montréal} ~~arrêt~~ of 1679, which will presently have to be noticed

267
(infra, S), and which otherwise
 is an exact copy of this, may help
 us some way towards what was
 meant. They ^{clearly} ~~should~~ there reads—

en con-
 "séquence de laquelle déclaration la moitié des terres qui avoient été
 "concedées auparavant les ~~deux~~ dernières années, et qui ne se trouve-
 "ront défrichées et cultivées en terres labourables ou en prés, sera
 "retranchée des concessions, et donnée aux particuliers qui se présen-
 "teront pour les cultiver et les défricher."

— It is evident, that the words here printed
 in italics have been left out of the
 Arrêt of 1672, by a mere error of
 the ^a copyist. The ~~escheat~~ could not
 have been meant to fall on ^{any} ~~land~~
~~cleared and cul that was under the~~
 cleared or ~~in~~ meadow land.

But was it even meant to attack
 even to the half of all other land,
de plans, and without absolutely?

If so, why was it that the Arrêt
 went on to provide for ordonnances
 of a judicial character, by Talon, ^{in order to the} ~~for~~ effect to ^{each} ~~such~~
 escheat, — and for execution to be
 granted upon such ordonnances,
 notwithstanding opposition or ap-
 peal?

* instruction and authorisation,
 † addressed

The Arrêt was ^{neither} ~~nothing~~ more
 nor less than a published ~~ordinance~~
~~which~~ granted to Talon, to ascertain
 the state of all these holdings, and
 thereupon to enforce escheat, ~~ac-~~
~~ording to~~ within a certain lim-
 it, summarily, but yet by a pro-
 cedure that was to be held for
 judicial; and as to which, notwith-
 standing the order for ^{instant} execution,
 there must have lain ~~at common~~
 law an appeal, or right of petition
 in the nature of appeal, to the
 King's Courts at home, or to him-
 self through his Ministers at
 home.

For an arpent was or could
 be escheated under this Arrêt,
 unless after ^{due} preparation ~~by Talon~~
 of this detailed statement ~~for~~
 the King's information by Talon,
 and under judgment by him
 consequent ^{du} thereon ~~of~~ predicated
 thereon.

§ 39. — There remains no
 trace of such statement as having
 ever been made by Talon. On the
 contrary, ~~in 1675~~ ^{as we shall}
 see hereafter, ^{the order to make} precisely this same
 statement ~~order~~ had to be repeated in 1675
 to his Duchesneau his succes-
 sor, — and ^{Archives de la Ville de Montréal} ~~by him~~
 had not been obeyed until 1679.

[Foot-note.]

Vide infra, S

Of course, there remains also no trace of one such judgment. ^{judges, till} ~~the~~ after the statement should have been drawn, ~~there could be~~ ^{such} no judgment rendered as the King here ordered, could ~~so much as~~ have been put into the form of words requisite to give it a show of conformity to the Arrêt. But even apart from this, ^{after} ~~the~~ careful collation of every title, ^{that I have been able} ~~anywhere to trace out~~, I can state that ~~nowhere~~ ^{so much as} find a trace of any one of them having actually been reduced in extent, ~~as was here threat-~~ ^{ened,} ~~with or without such judgment.~~

* and further, without reference to the fact of there being no ~~such~~ ^{judgment, for escheat} of half grant the wild land of any ~~grant,~~ ^{in fief,}

there having ever been effected as to any one of them, any such reduction of extent as was here threat-

§392. - Again, as to any lands that should be escheated under this Arrêt, the order therein contained was express, that they should be granted to new settlers on condition of entire clearance ^{within} the next 4 years ^{under} ~~the~~ pain of nullity of the grant on failure so to clear.

Within the two months next following the enregistrement of this Arrêt, Talon, ^{as we shall see} ~~present by~~ ^{made} ~~the~~ grants, ^{all of} them ^{in fief} 1-4 in Acadie and ⁱⁿ ~~the~~ Canada, - none of them reciting any ^{such} ~~condition~~ as preparatory thereto, - and none of them containing this ^{condition} ~~condition~~, ^{under} ~~which~~ ^{the} Arrêt ^{had} ~~obtained~~ ^{as} ~~an~~ ^{essential} authorised his re-grants of any escheated land.

They could not, therefore, have been grants of such escheated land. - Talon could not have got up

§393. - For the supposition is inadmissible, of Talon's having in this matter ^{disobeyed} ~~the~~ King's ^{real} ~~orders~~ ^{however} ~~to~~ ^{execute} ~~them~~ ^{that} he did not execute this Arrêt.

The day before he caused this Arrêt to be ^{was} ~~en~~registered, he had enregistered here the King's letters-patent ^{erecting} ~~a~~ ^{property} of his near Quebec into a ~~barony~~ ^{barony}. ^{Very} ~~in~~ the year following, he returned to France, still

* being all the grants extant under his name, -

[Foot note.]
* Vide infra, §

his statements, and ^{rendered} ~~made~~ his judgments in the time. ~~And~~ ^{if} ~~he could~~ ^{he could} not have ~~cannot~~ ^{been} ~~if~~ the grants had fallen within the purview of the Arrêt, he could not ~~so~~ have ignored all its provisions in the making of them.

making him, for his distinguished services in Canada, a Baron, and

269 in high favor; and two years later, he was made a Count, and his barony near Quebec a ~~County~~ county, - still by way of reward for these services.

He knew well enough what his real orders were, and must be supposed to have obeyed them to his master's satisfaction. The despatches or despatches that conveyed them are not extant; ~~But, judging from precedent, it is likely, if not probably~~ enough, they were ^{substantially} ~~not unlike~~ those of 1605. (Supra, §

Indeed, the very Arêt may have been, in substance, his own old draft of declaration of the same year. (Supra, §

§394. - At any rate, and whether it was so or not, the inference is unavoidable, not merely that it was not ^{acted on} ~~acted on~~, but that it was not meant to be acted on; that it was ^{of the year 1605} like its predecessor, an Arêt communaire; the true intent that its true meaning and object and intention was simply to add to the ^{and influence} ~~extensive~~ powers of the authority of the King's servants, in the matter of control over the people of the country as to their settlement of their lands, - an authority and influence which were to be exercised, according to ~~the~~ ^{his} ~~circumstances and~~ as they should arise.

~~Arêt~~
§395. - In another ^{important} respect also, this Arêt resembled its predecessor.

It makes no distinction of the grants en fief from those en censive. All alike, are characterized as objectionable on the One sweeping objection, and but one, is made - to their excessive size. The holders of them all are characterized, alike, as "propriétaires" and were threatened alike, ^{on a ground} ~~in an~~ alleged public policy.

Still, as in 1603, ^{the} ~~the~~ idea of the "fidei-commis seigneurial" is to be found.

Foot Note.
* vide supra, § 1

* over the people of the country,

* with a large discretion, subject to instruction by despatch, and according to

[Insert rule here.]

no germ of a notion of a

[Insert rule here.]

§ 396 - Approved The non-
revocation of the grants of our first
Period thus established, in the terms
of the grants of this second Period.

x made in the name either
of the King or of the
Company, may be

These, speaking of ~~grants~~
first of the grants in ~~fact~~ & ~~examples~~
~~best adapted~~ most conveniently adapted
thus:

Those ^{issued} prior to the creation of
the Company of the West Indies.

Those issued ^{in Canada} from that time to
1672, when Lalou issued the
great bulk of his grants.

The Lalou grants, of 1672.

Frontenac's grants, of 1673 and 1674.

The Company's grants, of
the same two years.

And lastly, one by the King
himself, in 1671, registered here
the year following.

[Insert line here.]

§ 398 - Of grants two only
are extant, of the period between
the surrender of the Charter of the
Company of New France, and the
issue of that of the Company of the
West Indies; both of

~~them~~ ^{these} are grants by De Meij
and LaVal, the Governor and Bishop
respectively, in the King's name,
and under the same date, 1684,
Aug. 8.

apparently

§ 399. - One (Title 49 of Abstract
is in favor of the Jesuits, for an
~~uncertain remainder of 25 arpents~~
~~inclusive of a boundary line,~~
~~to replace a certain 14 arpents~~
~~which they in consideration of~~
~~an exchange of apparently small~~
~~remainder of 6 wide land near~~
Three, in consideration of an ex-
change ^{of 14 arpents} made by them with the
habitants habitans for the Com-
mon. The grant was en toute

*"en toute propriété -
- aux mêmes droits et privilèges
que ceux susdits 14 arpents eschan-
gés leur ont été données par Mes-
sieurs de la Compagnie générale."*

Presumably, the 14 arpents formed
part of the grant of 200 arpents made
by the Company of New France
to the Jesuits, by Title 49 (Supra,
SS 230 and 231) ^{in which it is made}
so making these latter chacun recev-
alent à un grant avec tous les
full rights of the Company of New France.

* Captain of the garrison of Three Rivers,

400. S. 379. - The other was of the Seigneur of Champlain, to an Officer of the army, and in express consideration of his services, - in these words: -

“avons donné et concédé, donnons et concédons par ces présentes, à ** en consideration des services qu'il a rendus à S. M. en ce dit pays, et qu'il continue de rendre journellement, la quantité d'une lieue et demie de terre de front à prendre ** sur une lieue de profondeur dans les terres, la dite Rivière Champlain mitoyenne avec **
“pour jouir de la dite estendue de terre, et de tout le contenu entre les dites bornes, par le dit ** en toute propriété, avec droit de toute seigneurie et justice, haute, moyenne et basse, et aux droits honorifiques ordinaires aux seigneurs de paroisses dans les églises, lorsqu'ils y seront bâtis, -
1. - à la charge que les appellations de la justice que le dit ** pourra y établir, ressortiront à la justice royale des Trois Rivières, -
2. - et pour la foy, qu'il y sera tenu porter par un seul hommage lige à chaque mutation de possesseur, ** la portera au Conseil Souverain à Québec, -
3. - avec le revenu d'une année, selon la Coutume de la prévosté et vicomté de Paris.”

* Kaspar

- Equivalent, therefore, to the shorter form of grants by the Company of New France, of its most favored class (supra, §255); the assimilation to the original grant of the Company of New France, resulting - not from the use of the words "tout ainsi &c." as there used, but from the terms ~~proprietor's detail of all that was comprehended the~~ detail resorted to, in the setting out of the nature of the grant.

[Insert line here.]

[Foot Note.]

* No 500 of Abstract, I find not to have been really a grant; but only an ordinance by Talon, in reference to a dispute between the proprietors of Coucoux (No 442) and St. Michel (No 467).

§401. - Between these and the Talon grant, ^{can ascertain} there are ^{no more than} some ^{five or six} dozen grants (Titles 7, 50b, 51, 51a, 52 and 53); none of them large. -
§402. - Three only of these (Titles 51, 52 and 53) are extant; and they may perhaps rather be called

Called 'location tickets, or promises of grants, than actual grants; more especially as they appear all to have been embodied in three of the subsequent Talon grants evidently embody them. They were thus worded: -

No 51. - By de Foucelle. -
“J'ay accordé au ** la terre qui est entre la concession des Pères et la rivière Sainte Anne, le long du fleuve Saint-Laurent, ** avec l'isle des Pins qui se trouve vis-à-vis de la dite concession, pour y travailler incessamment, le tout en cas que cela ne soit concédé à personne, et le contract luy sera fourny comme aux autres.”

No 52. - By same. -
“Nous avons accordé une concession au ** de 20 arpens sur le fleuve St. Laurent, à commencer depuis ** en cas qu'elle ne soit concédée à personne, et à la charge d'y faire travailler incessamment et la mettre en valeur, suivant et conformément aux intentions du roy, et aux memes clauses et conditions.”

No 53. - By same. - xx
“Sur ce que nous a représenté le Sieur Nomanville, qu'estant chargé de famille il n'avoit point d'habitation, nous lui avons accordé une concession au dessus de la dite concession d'une demie lieue sur le bord du dit lac; à la charge d'y faire travailler incessamment suivant l'intention du roy.”

* during the interval between
 Talon's two terms of
 service as Superintendent.

(272) §403. - The other two are merely
 referred to in subsequent grants, as
 written promises, - the one by Boutin
 Talon, the other by ~~Boutin~~ ^{Boutin}, who
~~at that time acted as Superintendent~~
 in his room. Probably, they were
 not unlike the above.

§404. - Indeed, it is probable
 that a considerable number of the
 grants ~~are to be referred to other~~
 grants were first made in some-
 thing like this form, - or, one
 might say, with something like
 this want of form.

[Insert rule here.]

~~the~~ ^{apparently}
~~was~~ ^{along with} with an aug-
 mentation -

§405. - Of the Talon ^{titles,} grants
 of ^{the months of October and December,} 1672, - one (title #110) was a
 mere location ^{like the above} ~~that~~
~~was~~ ^{worked} covered by an after grant, ^{the}
 and thus worded: -

"Certifions à tous qu'il appartiendra que nous avons permis au ** de faire travailler sur
 "lieu de terre de front et ~~de~~ ^{de} de profondeur, savoir, **
 "le tout souz le bon plaisir de Sa Majesté, de laquelle il sera tenu prendre la confirmation des
 "presentes."

§405. - Four ~~were granted for~~
 grants in Acadie.

§406. - Another (No. 58) was
 of the little Isle au Héron near the
 land of Monreal. The grantee, it is
 recited, had obtained from the Seminary
 of St. Sulpice, by that time proprietors
 of the ~~land~~ ^{territory} of Montreal, a grant
 opposite this little island, together
 with a droit de pêche in the St. Lawrence
 opposite his grant; but doubting ~~his~~
 title the right of the Seminary to grant
 such pêche, he prayed for it from
 Talon, together with the island, and
 the pêche thereto appertaining. Talon,
 in consideration of his services,
 granted him the island as a fief
 sans justice, with its pêche, and
 (evading the question of this right
 under the Seminary ^{grant}) so far
 as need might be, ^{the} pêche opposite
 that grant, ^{also}, - the whole, ^{under}
 no other condition than ^{the} render
 of foi et hommage, and the pay-
 ment of the relief of the ^{land} ~~land~~ ^{land} ~~land~~

* ("en tant que besoin seroit")

[Insert rule here]

§407. - Four (Nos 50, 57, 59 and
 60) were grants in Acadie.

§408. - The preamble of one of
 these (No. 50) was made the text of
 some ^{anti-proprietary} ~~anti-proprietary~~ argument, at
 the hearing before this Court.

* show of

Savoir

"Savoir faisons que sur ce qui nous
"a esté rembruté par Martin d'Aspen-
"igny, Sr. de Martignon, ancien habit-
"ant du dit pays de l'Acadie, —

— "que depuis les années 1652, 1653 et 1654
"il est créancier de la succession du def-
"unct Sr. de la Loue, son beau-père, possi-
"sion et propriétaire de la Rivière St.
"Jean depuis x x jusqu'aux x x, de la
"somme de 40,000 livres et des intérêts
"d'icelle, dont il n'a pu jusqu'à pré-
"sent estre payé, à cause particuli-
"èrement que les Anglois ayant pris la
"plus grande partie de l'Acadie et une
"partie de ce qui appartenoit au dit
"deffunct, et mesme pillé entière-
"ment tous ses biens et ceux de
"son Martignon, —

— "lequel, comme bon et fidèle sa-
"jet et serviteur de S. M., avoit mesme
"aimé abandonner le tout et se re-
"tirer en France que de servir sous
"les Anglois, —

— "mais, comme depuis quelques
"années les dits Anglois ont rendu
"ce qu'ils avoient usurpé du dit
"pays, qui par ce moyen estoit le-
"mement vague et inhabité, icelluy
"Martignon auroit esté conseillé
"de se mettre en possession de toute
"la concession qui appartenoit au
"dit deffunct, qui contenoit plus
"de 50 lieues de front x x, de laquelle
"il se luy esportant se pourroit bien
"propriétaire, soit qu'on le regardast
"comme créancier ou comme héritier
"à cause de sa femme, fille du dit
"deffunct, — mais ayant appris que
"le roy estoit en droit de rentrer en
"toutes les terres concédées auparavant
"les 10 dernières années faute de les
"avoir habitées et mises en valeur,
"il se seroit retiré pardevant nous
"à ce qu'il nous plust luy concéder
"le tout ou partie des dites terres, —

— "offrant de les mettre incessamment
"en valeur en les cultivant, et — et
"particulièrement d'y faire porter
"quantité de bestiaux de toute espèce
"dont il pourroit avec le temps secourir
"ni, non seulement ce pays, mais en-
"core les Isles Antilles et autres lieux
"de l'obéissance de S. M., — mesme
"d'y establir les pesches indiennes
"de morues et autres poissons que la
"côte produit, —

— "en quoi il espéroit d'autant plus
"réussir, qu'il desiroit associer avec luy
"quelques François accoustumés des-
"quels il avoit parloir ^{Archives de la Ville de Montréal}
"à quoi ayant égard, etc. etc.

[Foot-note.]
* Vide Lupia, SS 212, et seq.

[Foot-note.]
* In 1654. — Lupia, S 216.

/// x x avons donné " etc.

274/ From all this preamble there was extracted the fragment of a sentence which represents the grantee in his petitioner-quality, as "ayant appris que le roy estoit en droit de rendre en toutes les conceptions tenues concédées au paravant les 10 dernières années faute de les avoir habitées et ouïes en valeur"; and these words were pressed into service, as, ^{somehow} ~~far from~~ confirming the doctrine of the ~~existence~~ of the old grants doctrine that the seigniorial grants on this continent passed something less than a property, and were but in the land granted.

§ 400. - But what, ~~after all~~, was this preamble, and what were the facts as to this grant, - that, ^{such} ~~any~~ ^{as} ~~large~~ inference should be drawn from them?

De Marignou, a son-in-law of La Tour, ~~the old grantee under the Company of New France~~ and creditor (on his own showing) of La Tour who in his life time had held large grants in Acadie from the old Company, had ~~his~~ his projects for the raising of cattle for export, and the establishing of fisheries, in Acadie, ~~and to that end petitioned for a grant within his late father-in-law's limits.~~ La Tour, it will be remembered, ~~had been~~ had been violently dispossessed by Charvoisay, under a royal warrant; then, after Charvoisay's death, had been confirmed in his rights by like warrant, ^{and by manifest} had put himself into possession of Charvoisay's estate as well as of his own. Then, ^{again} under Court authority, le Borgue had sought to dispossess him; and while the struggle was going on between them, - no one of all these ~~successive~~ successive rivals having ever seriously set himself to ^{show} ~~any~~ ^{other} ~~with~~ ^{the} ~~making~~ ^{of} ~~any~~ ^{settlements} ~~except for~~ ⁱⁿ their own hands.

Under such circumstances, de Marignou could not, ^{safely} ~~not~~ ^{have} ~~trusted~~ ^{to} the La Tour titles, - ~~and~~ if his claim through them had been ever so good; and he ^{even} failed by his petition to show that ~~it~~ it was good. He, ^{called himself} ~~was~~ a son-in-law and a creditor of a ~~deceased~~ ^{ruined} man, ~~and~~ ^{not} the only creditor, ^{Archives de la Ville de Montréal} and presumably, not the husband of a sole heiress.

* with the fact of the grant having been made, ^{to} this party out of the larger grants formerly made to La Tour and by him not improved, -

* make any settlement in the country except only for the carrying on of the fur trade, - the English had driven them ~~out~~ out, and from 1654 to 1667 had pretty much held the territory in their own hands.

*, whose rights while living had all been matter of dispute;

He petitioned, accordingly for a ^{new} grant; and we have in this preamble a recital of his petition, - ~~the~~ his own way of ~~telling his story~~ putting his case. Part of that case ~~is~~ He had to ~~put forward~~ to name la Toue and his grants, by way of basing upon them his own claim; and he had to represent la Toue's grants as escheated or open to escheat, ~~for, else, they would have based his claim.~~ I have called them grants in full force, and ~~is~~ ^{is} indefeasible, would have been ^{to base his own claim on} thrown himself back upon a ~~bad~~ defective pretension under them. ~~He professed himself for his own sake, to call them indefeasible.~~ Of course, he told his story to suit his purpose; no one else was there, to tell any other; and the new grant passed ~~accordingly~~ as he asked for it. - Whether or not any other claim, ^{should be} ~~is~~ under la Toue ever ^{admitted} ~~presented~~, it, does not appear. Upon such challenge, its ~~value~~ ^{value} might have been tested. In the meantime, the ~~But to magnify~~ ^{such a} ~~and separate~~ trying to twist ~~the~~ matter into a proof that the ~~grant itself~~ ^{grant itself}, and the other grants of the time, ~~was~~ ^{was} quite at variance meant one thing though they said another, - is, again, no proof of a strong cause.

§ 410. - In ^{direct contradiction} ~~opposition~~, however, by the way, to the ^{unclear} ~~assumption~~ that the old Company's grants were ~~revoked~~ ^{revoked} in 1683 by the Arrêt of 1683, ^{their recital} ~~make~~ them only ~~revocable~~ ^{revocable}. ~~Adress de Marignou's~~ petition admitting this, (and if would not have suited his plea to admit more) ~~Labou~~ seems ~~never to have put in any~~ ^{particular} ~~claims.~~ We have for the King, did not put in the longer claim. - We have seen, from other evidence, that he could not ^{possibly} ~~have~~ done so.

§ 411. - The preamble of the second Acadian grant (No 57), issued the day following, was shorter; showing only that the grantee had ~~petitioned~~ ^{set forth} the excellence of certain lands on the St. John, whether for cultivation or for establishment of a fishery, - and his own readiness to bring out next year a sufficient supply of men from France, if he could get a sufficient grant.

* recital, even if taken to the letter, would

« venir de France l'an prochain et
 « établir, s'il vous plaidroit sur
 « accorder une étendue de terre
 « raisonnable, non seulement pour
 « son principal manoir, mais
 « même pour un nombre de
 « tenanciers suffisants pour
 « former une bourgade ou com-
 « munité, -
 « à quoi ayant regard xx avons
 « donné etc.

* as the consideration for it,
* rendered and to be rendered by

§ 412. - That of the third (No. 59), dated two ~~the~~ days later, was shorter still; setting forth only the services, ^{of} the grantee, de Louanges, as an officer, ^{then} commissioned by Frontenac to command under him the territories upon the St. John, - and as its object, the giving him more means to continue such services, ^{et} (pour lui donner d'au- tant plus de moyen de les contin- uer).

§ 413. - While the ~~the~~ fourth (No. 60), to his brother and of the same date, ~~had no preamble~~ ~~who~~ was without a preamble.

§ 414. - The grants to de Charignon and de Louanges, - of 6 leagues by 5, and 4 leagues by 1, respectively, - were granted with justice of every grade.

The other two, - of 2 leagues by an unstated depth, and 1 ~~league~~ league square, respectively, - were granted with a justice, moeune et bape, only.

§ 415. - ~~They~~ ^{They} all differed from the class of ~~grants~~ titles next to be spoken of, - in this; that they ~~changed~~ ^{changed} the grants with the relief of the Custom of Vein Francais.

But otherwise, their conditions were, ~~so~~ ^{so} nearly like those of the class next to be noticed, as not to ~~call~~ ^{call} for separate discussion separately from them.

* ~~As~~ The conditions upon which these grants were made, ~~they~~ were ~~so~~ sufficiently like those of the class next to be noticed, for ~~so~~ ^{so} separate discussion of them to be unnecessary. (Infra, §§

[Insert rule here.] -

[Foot-note.]

* One grant, for instance, in (No. 77) is to the widow of an officer, and recites of course his services. Two (Nos 102 and 115) do not purport to be to officers; though, probably, they were so. - Two (Nos 75 and 76) were to officers of other regiments than that of Carignan-Salieres. They rest, although one or two ~~do~~ ^{do} not expressly say so, appear all to have been to officers of that regiment.

* Acknowled

* ~~being~~ all, or nearly all of them, to officers, and principally ~~of~~ ^{of} the Carignan-Salieres regiment,

to Officers

§ 416. - The Remaining Titles of this class, are 58 in ~~number~~ ^{number}; and of these, 50 are printed, - leaving only 2 (Nos ~~the~~ 112a and 110a), of unknown tenor.

Of these 50 ^{titles}, 34 ~~were~~ ^{were} covered justice, without limitation of grade, that is to say, of every degree; the remaining 16 ~~did not~~ ^{did not} justice.

§ ⁴¹⁷ ~~the~~ - The ~~part~~ ^{part} of the ³⁴ justice any grants, again, 22 (being Nos 55, 61 to 72, 79, 80, ~~and~~ ^{and} 115) ^{have} the following preamble, - with here and there some slight verbal variance.

277
"Sa Majesté ayant de tout temps recherché avec soin et le zèle convenable au juste titre
"de fils aîné de l'Église, les moyens de pousser dans les pays les plus inconnus, par la propa-
"gation de la Foy et la publication de l'Évangile, la gloire de Dieu, avec le nom chrestien, fin
"première et principale de l'establissement de la colonie françoise en Canada, et par acces-
"soire de faire connoître aux parties de la terre les plus éloignées du commerce des hommes
"sociables, la grandeur de son nom et la force de ses armes,

et n'ayant pas estimé qu'il y en eut
"de plus seures que de composer cette colonie de gens capables de la bien remplir par leurs
"travaux et leur application à la culture des terres, la soutenir par une vigoureuse deffense
"contre les insultes et les attaques auxquelles elle pourroit estre exposée dans la suite des
"temps,

a fait passer en ce pays bon nombre de ses fidels sujets, officiers de ses troupes dans
"le régiment de Carignan et autres,

15 X
dont la pluspart, conformément aux grands et pieux des-
"seins de Sa Majesté, voulant bien se lier au pays en y formant des terres et seigneuries d'une
"estendue proportionnée à leurs forces,

et le Sr. xx nous ayant requis de luy en départir,
Nous, en considéra-
"tion des bons, utiles et louables services qu'il a rendus à Sa Majesté en différents endroits,
"tant en l'ancienne France que dans la Nouvelle depuis qu'il y est passé par ordre de Sa Ma-
"jesté, et encore de ceux qu'il témoigne encore vouloir rendre cy-après, en vertu du pouvoir
"par elle à nous donné, avons etc.

S418. - Of the same class, 6
(being nos 78, 81, 83, 85, and 91),
apparently not officers, have
the following shorter preamble,
- varied in one instance (no 85) to
meet the case of a grantee who
is not said to have begun a settle-
ment: -

Sa Majesté désirant qu'on gratifie les personnes qui, se conformans aux grands et pieux
"desseins, veulent bien se lier au pays en y formant des terres d'une estendue proportionnée à
"leur force,

et le sieur de la Bouteillerie ayant desjà commencé de faire valloir les intentions
"de Sa Majesté, nous auroit requis de luy en départir;

"nous, en vertu du pouvoir à nous donné
"par S. M., avons etc.

with the exception
X, also not to officers,

S419. - While the remaining
6 (nos 86 to 90, and 112) are
without preamble, thus: -

"Leavon faisons qu'en vertu du
"pouvoir à nous donné par S. M.,
"nous avons etc.

One of these (no 86) afterwards
gives as a reason for the grant, the
following: -

"et ce, en considération du nom à
"luy imposé en celuy du roy sur les
"fonds-baptismans, - et pour rem-
"placer le Sr. de St. Ours son père de
"ce qui peut manquer de liens
"qui devoient lui estre fournis sur
"le fleuve St. Laurent pour sa con-
"cession particulière" c. à d. nos 65 etc.

#, being to a son of one of
the grantee-officers of the
Carignan-Labrousse regiment, adds

278/ § 420. - Of the 22 non-justiciary grants, ~~15~~ ¹⁴ (being nos 93 to 97) some are made to officers; ~~5~~ ⁵ the short preamble ~~to these~~ ^{jointly} ~~(supra, § 417)~~; 1 (No 92) briefly gives the services of the deceased husband of the grantee, as the reason of the grant to her; and the remaining 10 ~~are~~ ^{are} without preamble, in the form of those referred to above in § last above given.

§ 421. - In 7 of the justiciary grants (nos 61, 67, 71, 75, 78, 78² and 91), and in 1 of the non-justiciary (No 111), there is expressly declared to be a ^{considerable} river or channel (chenail) of a river, ~~to~~ ^{to} be comprised within the grant. In ~~two~~ ^{of} 2 cases (nos 64 and 69), the precaution was taken of excepting from the grant a ~~limited~~ ^{portion} of river or chenail. And in another (No 60), the half of a ~~boundary~~ ^{river} was said to be granted.

§ 422. - ~~The~~ The size of these grants varied greatly, ~~and~~ ^{and} the justiciary ^{grants} were generally much larger than the non-justiciary; ~~the former~~ ^{few of the former} were ~~less~~ ^{less} than ~~one~~ ^{one} square league in extent most of the former ranging from between 1 square league to 5, and most of the latter being of less extent than ~~one~~ ^{one} square league, some as small as an eighth ~~of a league~~.

§ 423. - It has been observed (supra, § 414), that the conditions of these Talon grants in ~~the~~ Canada ~~and~~ those of the ⁴ Talon grants in Acadie, were ~~not~~ ^{not} dissimilar sufficiently like to admit of their being ^{altogether} ~~discussed~~ ^{discussed} together.

§ 424. - They first had ~~reference~~ ^{reference} related to the following points: -
 1. - Homage.
 2. - Dues to accrue to the Dominant.
 3. - Appeals from the grantee's justice, - when the grant was ^a justiciary one.
 4. - Residence.
 5. - The preservation of timber.
 6. - Mines and Minerals.
 7. - Roads, ~~and~~ ^{and} la Ville de Montréal.
 8. - Ratification by the King.

* (being nos 93 to 97) have the shorter of the two preambles just given, ~~in~~ ⁱⁿ (supra, § 417);

* (being nos. 98 to ~~111~~ ¹¹¹, 113 and ~~114~~ ¹¹⁴) begin

[Foot-note]

* The Le. Anne of Acadie
 * Among others, the Nicolet, Rivière Opelle, Masquinonge and Rivière du Loup ^{in hand}.

* Though not nearly so much as ^{we have seen} ~~was~~ the case with the ^{earlier} grants; and

* 1 square league, - say, from less than an eighth of a league or less than 900 arpents, upwards.

[Insert rule, here.]

§ 425. - For the Acadian grants, homage was to be rendered, at Fort Pentagouet, provisionally, and until other order of the King, (par provision seulement, et en attendant que par l. Sa. il en soit autrement ordonné) at Fort Pentagouet.

The Canadian titles, ~~was to be rendered~~ ^{homage was rendered} permanently at the "Château de St. Louis de Québec", - adding, as a permanent arrangement, "duquel il relevait".

But with the exception of one ^{title} in Canada, (No. 114) none of them explained whether the ~~grant was~~ ^{grant was} intended to be held of the crown or of the Company. That one title declared the grant in question to be made "en fief mouvant de la Compagnie Royale des Indes Occidentales".

~~From the omission of fact of this not being said in the other grants, the grantee, as we have seen (supra, § 362, Note 4) raised the question whether~~

§ 426. - The Acadian titles settled the dues payable to the Dominant (whether Crown or Company), by reference to the Custom of Vexin Français, - that is to say, at the relief or year's revenue of the entire fief at every change of ownership of the fief.

The Canadian titles, ~~show~~ a hesitation on the other hand, read thus: -

2. - "aux droiets et redevances, accoustumez, et au désir de la Coutume de la prévosté et vicomté de Paris, qui sera suivie à cet esgard par provision et en attendant qu'il en soit ordonné par Sa. M. J. P. 1674"

"S. M." - therefore, - ^{therefore,} ~~Galon~~ ^{either hesitating} as to whether that rule or the rule of the Vexin Français ~~should~~ ^{should} be adopted, - or ~~indeed~~ ^{indeed} wishing to keep the grantees liable, in case of need, to ~~the adoption~~ ^{be placed under} ~~some other~~ ^{some other} and more available scheme of taxation, (or, perhaps like a good minister of finance, ^{who entered} ~~readily~~ ^{readily} into ~~the~~ ^{fiscal} instructions ^{of the} ~~King~~ ^{King} and then to

* bound the grantee, to render homage

* been settled, all the

[Not note.]

* The silence of the other grants, ~~at this point~~, ^{on this point}, as we have seen (supra, Note (c) to § 362), led the grantees to claim the right of rendering homage to the crown, and not to the Company; a claim ~~which~~ ^{which} that by its means followed from the mere act of the crown having a power to make the grant. Since both Fort Pentagouet and the Château de Louis had been granted to the Company; or that, ^{according to} ~~the~~ ^{feudal} idea, "dependance" of a fief from them was a dependance from the Company. ~~As a question does not seem to have been determined by the Company's Charter in 1674, settled it.~~

* had better himself, acting under both influences.

Not that this quasi-casualty ending of this clause was of any practical importance, however. No further or other order ~~was~~ ^{was} made in the premises was ever made. ~~And even if the whole~~ ^{And even if the whole} so that the grants in question remained subject to the dues of the Custom of Paris and to no others; as, indeed, they would have been had these titles been silent on the subject.

280/ S⁴²⁷ ~~427~~. - The condition as to appeals, in the justiciary grants, was left open to future regulation; the Acadian titles expressly saying so in the Canadian leaving a blank ^{and} for the words ^{descriptive} where the appellate tribunal should have been.

S⁴²⁸. - As to residence, the clause generally read thus: -

- 4. - "à la charge qu'il continuera de tenir ou faire tenir feu et lieu sur sa dite seigneurie, -
- 5. - "et qu'il stipulera dans les contrats qu'il fera à ses tenanciers, qu'ils seront tenus de résider dans l'an sur les concessions qu'il leur accordera ou leur auront accordées, et qu'à faute de ce faire il rentrera de plein droit en possession des dites terres."

~~In some instances, where the grantee had not seen to have begun his settlement~~

In some instances, these clauses are so drawn as to imply that the grantee had not begun his settlement, - thus: -

- 4. - "à la charge qu'il tiendra feu et lieu sur sa dite seigneurie dans l'an, -
- 5. - "et qu'il stipulera dans les contrats qu'il fera à ses tenanciers, qu'ils seront tenus de résider dans l'an, et tenir feu et lieu sur les concessions qu'il leur aura accordées, et qu'à faute de ce faire il rentrera de plein droit en possession des dites terres."

One of the Acadian grants, No 50, being the largest of them - that of Martignou (^{supra}, §§ 407 et seq.), omits these clauses altogether. And the other three vary them from the latter of the above forms, by stipulating that on default the ~~grantee~~ King instead of the ~~grantee~~ Leignior was to re-enter into possession, of the said lands, - thus: -

- 4. - "Cette concession ainsi faite à la charge que le dit * * y tiendra feu et lieu dans l'an, -
- 5. - "qu'il stipulera la mesme clause dans les contrats qu'il fera à ses tenanciers, et qu'à faute de ce faire le Roy rentrera de plein droit en possession des dites terres."

S⁴²⁹. - The preservation of timber was provided for by clauses, generally in the following words: -

- 6. - "que le dit * * conservera les bois de chesnes qui se trouveront sur la terre qu'il se sera réservée pour faire son principal manoir, -
- 7. - "mesme qu'il fera la reserve des dits chesnes dans l'estendue des concessions particulières faites à ses tenanciers, qui seront propres à la construction des vaisseaux."

S⁴³⁰. - And lastly, the ^{three} matters of ~~timber and chesne~~ mines, roads, and habitation of grant, were thus disposed of: -

- 8. - "pareillement, qu'il donnera incessamment avis au Roy ou à la Compagnie royale des Indes Occidentales, des mines, minières ou minéraux, sy aucuns se trouvent dans l'estendue du dit fief, -
- 9. - "et à la charge d'y laisser les chemins ou passages nécessaires, -
- 10. - "le tout sous le bon plaisir de S. M., de laquelle il sera tenu prendre la confirmation des présentes dans un an du jour d'icelles."

"accordées, et qu'à faute de le faire, il rentrera de plein droit en possession des dites terres."

[Foot-note.]

* That is to say, in the words here given, or in words equivalent. There occur a number of ^{minor} changes in particular cases, ^{probably owing to} inaccuracy in copying from a common form. The words here and elsewhere given in the text, seem to have been ^{such} common form. - ^{Only the} more important variations, ^{are} noted in the text. In my abstract, I have tried to indicate them all; but some of them may be mere misprints in the Leignioral documents as laid before Parliament.

The numbering given to these clauses is that usual ⁱⁿ the justiciary grants. For the now-justiciary, ^{and} where the appeal clause does not appear, - and for some few others that ^{are} depart from the usual arrangement are otherwise exceptional, - ^{such} numbering is not exact.

[Foot-note.]

One or both of the ^{last} two conditions being, however, omitted in a few grants. ^{e.g.} Nos 59 and 60; both in No 50 and ^{the} 57; and the last, in No 115.

[Insert rule here.]

280/ S⁴²⁷. - The condition as to appeals, in the justiciary grants, was left open to future regulation; the Acadian titles expressly saying so; the Canadian leaving a blank ^{and} for the words ^{descriptive} where the appellate tribunal should have been.

S⁴²⁸. - As to residence, the clause generally read thus: -

- 4. - "à la charge qu'il continuera de tenir ou faire tenir feu et lieu sur sa dite seigneurie, -
- 5. - "et qu'il stipulera dans les contrats qu'il fera à ses tenanciers, qu'ils seront tenus de résider dans l'an sur les concessions qu'il leur accordera ou leur auront accordées, et qu'à faute de ce faire il rentrera de plein droit en possession des dites terres." #

"accordées, et qu'à faute de ce faire, il rentrera de plein droit en possession des dites terres."

[Foot-note.]

* That is to say, in the words here given, or in words equivalent. There occur a number of changes in particular cases, ^{mostly} ^{probably} ^{owing to} inaccuracies in copying from a common form. The words here and elsewhere given in the text, seem to have been ^{such} common form. - ^{Only the} ^{more} ^{important} ^{variances} are noted in the text. In my abstract, I have tried to indicate them all; but some of them may be mere misprints in the Leignioral Document as laid before Parliament.

The numbering given to these clauses is that usual ⁱⁿ the justiciary grants. For the now-justiciary, ^{and} where the appeal clause does not appear, - and for some few others that ^{depart from} the usual arrangement are otherwise exceptional, - ^{such} numbering is not exact.

~~In some instances, these clauses have not been given his settlement.~~
In some instances, these clauses are so drawn as to imply that the grantee had not begun his settlement, - thus: -

1. - "Le tout feu et lieu sur sa dite seigneurie dans l'an, -
es contrats qu'il fera à ses tenanciers, qu'ils seront tenus de résider sur les concessions qu'il leur aura accordées, et qu'à faute de ce faire en possession des dites terres." #

One of the Acadian grants, No. 50, ^{being the largest of them - that} of Marignou (^{supra}, §§ 407 et seq.), omits these clauses altogether. And the other three vary them from the latter of the above forms, by stipulating, that on default the ^{grantee} King, instead of the Leignior, was to re-enter into possession, of the said lands, - thus: -

- 4. - "Cette concession ainsi faite à la charge que le dit * * y tiendra feu et lieu dans l'an, -
- 5. - "qu'il stipulera la mesme clause dans les contrats qu'il fera à ses tenanciers, et qu'à faute de ce faire le Roy rentrera de plein droit en possession des dites terres." #

S⁴²⁹. - The ~~time~~ preservation of timber was provided for by clauses, generally in the following words: -

- 6. - "que le dit * * conservera les bois de chesnes qui se trouveront sur la terre qu'il se sera réservée pour faire son principal manoir, -
- 7. - "mesme qu'il fera la reserve des dits chesnes dans l'estendue des concessions particulières faites à ses tenanciers, qui seront propres à la construction des vaisseaux." #

S⁴³⁰. - And lastly, the ^{three} matters of ~~timber and~~ ^{mines, roads, and} habitation of grant, were thus ^{dis-}posed of: -

- 8. - "pareillement, qu'il donnera incessamment avis au Roy ou à la Compagnie royale des Indes Occidentales, des mines, minières ou minéraux, sy aucuns se trouvent dans l'estendue du dit fief, -
- 9. - "et à la charge d'y laisser les chemins ou passages nécessaires, -
- 10. - "le tout sous le bon plaisir de S. M., de laquelle il sera tenu prendre la confirmation des pré-sentes dans un an du jour d'icelles."

[Foot-note.]

One or both of the ^{last} ^{two} conditions being, however, omitted in a few grants. e.g., Nos 59 and 60; both ^{of them} in No 50 and ^{the last but one} in No 57; and the last, in No 115.

[Must rule here.]

Frontenac's grants, made before the time of Talon's leaving the country in 1673, and the revocation of the Company's Charter in 1674, so far as ascertained, were 15 in number, - all of these in Canada.

Of these

One of these (No. 133a) is not extant.

* (Nos 119, 120, 122, 128, ¹²⁹ 131 and 134)

Seven ~~of~~ grants of trifling ~~importance~~ ^{are} of small importance to certain of the Talon grants; and were made, with no new specification of conditions, upon the terms of such former grants.

§433. - Four (Nos 121, 127, 130 and 133) were justiciary grants, in the main analogous to Talon's of the same class; but still, variant from them in several particulars that require notice.

The preambles ~~require~~ are all special. That of No. 121 - the grant of Chateauguay to Lemoine de Longueuil - recites his very distinguished services; and also a promise of grant made him by de Boucelles. Those of Nos 127 and 130 also recite services and promise, while that of No. 133 recites only a petition by the grantee.

They all fix the locale of the Appeal from the justice granted.

They all cut down the two clauses as to residence (supra, §427) into one; though not ~~two~~ of them do so in exactly the same words, ~~the~~ ^{the} No. 130, which is shorter by a word or two than the rest, renders the clause thus: -

4. - "comme aussi qu'il tiendra feu et lieu et le fera tenir par ses tenanciers sur les concessions qu'il leur accordera, à faute de quoi il rentrera de plein droit en possession d'icelles."

And lastly, two of them (Nos 130 and 133) cut down ~~the~~ ^{two} ~~two~~ ^{two} clauses into ~~one~~ ^{one}, though, again, not in the same words. Those of No. 130 read -

vera, le dit **, et fera conserver par ses tenanciers, les bois de chesne qui se trouvent pour la construction des vaisseaux dans l'étendue des dits lieux.

* they vary more or less as to the timber clauses; and

And all were }
homage, and obtaining the }
King's ratification.

§434. - The other three (Nos 117, 118 and 132) are ~~peculiar~~ ^{peculiar} in their terms are small grants, having no justice attached to them, and no conditions except those of rendering

\$438 The only conditions of these 4 grants were the following:—

- 1.—“à la charge par le dit ** de la foi et hommage, qu'ils seront obligés de rendre à la dite Compagnie à chaque mutation de possesseur, au fort St. Louis de Québec, ou en cette ville de Paris, au bureau de la direction générale d'icelle Compagnie,—
- 2.—“ avec un écu d'or qui sera payé en rendant le dit hommage, dont il sera expédié acte,—
- 3.—“ et encore à la charge et condition que le dit ** fera commencer dans 3 ans le défrichement des terres de la dite concession,—
- 4.—“ dont l'arpentage sera fait et les bornes plantées dans le dit temps,—
- 5.—“ à faute de l'exécution desquelles charges, les terres contenues en icelle concession seront réunies au domaine de la dite Compagnie, qui en pourra disposer comme bon lui semblera, sans que pour ce sujet le dit ** puissent prétendre aucun dédommagement, lesquelles conditions ont été acceptées par le dit **.”

\$438. — The last grant of the (No. 135) ^{with justice} was made to Bishop Laval — a grant of a territory of 25 square leagues ^{together} with the whole bed of the Ottawa river along its breadth front — made as follows, after a recital like that of the foregoing:—

—“ avons, au nom de la dite Compagnie, donné et concédé, donnons et concédons par ces présentes, au dit ** la dite étendue de terre de 5 lieues de face sur 5 lieues de profondeur, à prendre depuis ** sur le grand fleuve St. Laurent, **

—“ pour par le dit ** jouir à perpétuité de la dite terre en toute propriété, seigneurie et justice, qui s'y pourront trouver, et même de toute la largeur de l'étendue du dit fleuve, et encore des batures, isles, et islets dans l'espace des dites 5 lieues de face de la dite concession, avec droit de pesche et de chasse dans toute l'étendue d'icelle,—

- 1.—“ à la charge par le dit ** de la foi et hommage, qu'il sera tenu ** de rendre à la dite Compagnie, de 20 en 20 ans au Fort Louis de Québec, ou en cette ville de Paris, au bureau de la direction générale d'icelle,—
- 2.—“ avec une maille d'or apprêtée ou fixée à un louis d'or vallant 11 livres,—
- 3.—“ et que les appellations de la justice ressortiront, directement ou immédiatement, au Conseil Souverain de Québec,—
- 4.—“ et moyennant les dites clauses et conditions, la dite concession demeurera quitte pour toujours de tous autres droits et redevances généralement quelconques,—
- 5.—“ sera obligé le dit ** de faire commencer des défrichés sur la dite concession dans 4 ans, à moins qu'il n'en soit empêché par quelque guerre ou autre cause raisonnable,—
- 6.—“ et que les bornes seront plantées aux deux bouts de la dite concession sur le fleuve St. Laurent, seulement, par un arpenteur,—
- 7.—“ à faute de quoi la dite Compagnie pourra disposer comme bon lui semblera des dites terres, et les réunir à son domaine, sans que pour ce sujet le dit ** puissent prétendre aucun dédommagement, lesquelles conditions ont été acceptées par le dit **.”

[Foot-note.]

x Nos 125 and 126 read here “propriétaire”.

x No. 124 reads “2 ans.”

that of Petite Nation,

[Foot-note]

* The Ottawa was then considered the main stream, and called the “grand fleuve St. Laurent.”

[Insert a line here.]

\$439. — The one grant title granted under the King's own hand during this period, was of rather earlier date than most of the other titles of this period, — being No. 54 of the Abstract, issued dated 1671, March 14, and registered in Canada on the 1672, Sept. 17, the day before the registration of the Règle Arrière of that year (supra, § 389), and about a month before Talon began the issue of his titles also above noted. (Supra, §§ 405 et seq.)

It was an instrument by which the King added 3 bougades which had been made at this cost near Quebec, to a ^{neighbouring} property of no great size which Talon had registered, and belonging to Talon, and erected the whole into a Baronnie et Châtellenie in his favour, Baronnie de Deschamps Barony, with rank to Talon and his male heirs as Baron Châtelain des Isles.

summary
* of 1667, Jan 24

[Foot-note.]

* Hist. Doc. Que. Hist. Soc.,
1st Series, Vol. 1, pp. 144, 2.

[Foot-note.]

* Hist. Doc. Que. Hist. Soc.,
1st Series, Vol. 1, pp. 168, 9.

3 bougades were still the only settlements of their class near Quebec, — and that Lalou had come to entertain a project more directly to his own advantage, as regards the ownership of the domaine which proprietorship which in the first instance he had proposed to attribute either to the King who had borne the cost, or to the Company whose ^{right} ~~claim~~ under the King's grant was unquestionable.

284/ S440. — We have seen (supra, S) Lalou's plan for the formation of these bougade settlements. How far it was carried out or modified in practice, I have been unable to ascertain; but the following extract from a despatch of his to the Minister under date of the 27th of October of the same year, would indicate that these 3 villages settlements had in the mean time been begun, upon something like the system there proposed: —

« Conformément à votre sentiment, j'attache au fort de St. Louis de Québec la mouvance des 3 villages que j'ai fait former fort près d'ici pour fortifier ce poste principal par un plus grand nombre de colons, et le roi, ou au choix de S. M., la Compagnie, en demeurera propriétaire jouissant du domaine utile et des droits que je stipule dans les contrats des habitations que je fais distribuer aux soldats, aux familles nouvellement venues, et aux volontaires du pays qui se lient par mariage aux filles que vous m'avez envoyées, auxquelles je fais même donner la terre que j'ai fait préparer aux dépens du roi, à condition que les possesseurs en rendront autant dans l'espace de 3 ans, au profit des familles envoyées de France que mes successeurs auront ordre d'établir, — prétendant que par là le pays aura, ce terme expiré, un fonds certain et perpétuel pour la meilleure partie de la subsistance des familles dont il sera chargé. Mon but principal est en ceci de peupler le voisinage de Québec de bon nombre de gens capable de contribuer à sa défense, sans que le roi en est aucun à sa solde. Je pratiquerai autant que je pourrai cette même coutume dans tous les endroits où je ferai des bougades, villages et hamlets, mêlant ainsi les soldats et les habitants, pour qu'ils puissent s'entre-instruire de la culture de la terre, et se rendre secourus au besoin. »

S440. — Three years later, according to the following extract from a further despatch of Lalou to the Minister ^{Archives de la Ville de Montréal, Nov. 10,} it would seem that these

[Foot-note.]

* I have not been able to ascertain from whom Lalou made this purchase, nor how the land in question was originally granted, nor even by what tenure it was held as he bought it. Presumably, however, it was en fief.

In 1675, by Title 84, Lalou obtained the further favor of the erection of his Barony des Isles, consisting of this grant and the King's 3 bougades, into the Comté d'Orléans, which, as now held under a sub-grant by the King who had acquired it from the Count du to the Hôpital général de

[Foot-note.]

* No doubt, the Mons. Berthelot to whom Lalou afterwards (1672, Nov. 3) granted the Isle Jésus, under Title 89, — who exchanged that grant with Monsieur de Caval in 1675 (see recitals of Title 313) for the Isle Jésus, — and in whose favor, under the Isle d'Orléans was erected into the Comté de St. Laurent in 1678, by Title 148.

In that Title, he is described as the L. Francois Berthelot, seigneur Conseiller et Secrétaire général de l'Artillerie, roades et sal-pêtres de France.

* Québec, — is a tract of little more than half a square league in extent, being 4 leagues in depth, by an average width of less than 11 arpents.

Decidedly, therefore, it was of the smaller class of seigniorial grant properties, rather than standing the magnificent tenement in which

The magnificent style of description resorted to in the letters-patent for its successive erections, as barony and earldom, does not prove much for the truth says little for the truthfulness of that class of documents in those days.

* — nous

" Pour contribuer en effet
" autant que par conseil à l'établisse-
" ment du Canada, je me suis donné
" pour exemple par l'achat que j'ai
" fait d'une terre couverte de bois,
" hors 2 arpents qui se sont trou-
" vés abattus. Je l'ai fait cultiver
" et augmenter, de manière que je
" la tiens dire une des plus considérables
" du pays. Je suis encore dans la
" résolution de l'amplifier. Elle a
" suffisamment de terrain pour rece-
" voir quelques bougades. Elle est
" voisine à Québec, et peut devenir
" utile à cette ville. *

" Elle peut recevoir un titre, si il
" plaît au roi lui en donner; et
" pour la rendre plus susceptible
" d'une marque d'honneur que
" j'espère de S. M., elle peut y joindre
" les 3 villages que j'ai fait faire,
" sous tels noms qu'il lui plaira.
" Elle ne sera peut-être pas jachée
" de commencer par moi à mettre
" l'émulation parmi les officiers
" et les colons accommodés; qui
" travailleront fortement à étendre
" leurs terres, dans l'espérance
" qu'ils auront de recevoir quelque
" titre.

" Vous savez, Monsieur, que
" Monsieur Berthelot m'a chargé
" d'employer de sa part 10,000 livres
" pour lui faire une terre. D'autres
" personnes de France sollicitent
" de leur en faire faire à la vente,
" de moindre dépense. Ces titres que
" je propose, auxquels il faudrait
" proportionner les terres, seraient
" un moyen fort utile à l'avance-
" ment de la Colonie."

§ 442. — These hints were not thus adroitly thrown out were not lost. The bougades were granted, and the whole property put on the desired footing, by the by an instrument of the following tenor in the following terms: —

" Le
" soin que nous prenons depuis plusieurs années de fortifier et augmenter la colonie de nos sujets qui s'est formée en la Nouvelle France, nous ayant porté
" à rechercher tous les moyens d'avancer le défrichement et la culture de la terre dont
" il leur reviendra tant d'avantages et d'utilité, nous avons crû qu'il n'y en avoit point de
" meilleure pour les y exciter, que de distinguer par des marques d'honneur les conces-
" sions qui seroient entièrement défrichées et d'une estendue assez considérable pour
" recevoir un titre; —

R. F.

Rom / Rom / Rom / Rom / Rom / Rom /

" Pour cet effet ayant esté informé que le Sieur Talon, conseiller en nos conseils, intendant de la justice, police et finances au dict pays, a mis en cet estat celle qui luy a esté faicte des Islets, en sorte que joignant cette seigneurie aux trois villages qui y sont voysins et à nous appartenant, le premier appelé le Bourg Royal, le second, le Bourg la Reyne, et le troisiemes, le Bourg Talon, nous pourrions en composer une d'un revenu assez considerable pour pouvoir estre justement décorée du titre de Baronnie, en faveur du dit Sieur Talon, et d'ailleurs considérant les bons et agréables services qu'il nous a rendus dans les differens employs que nous luy avons donné tant en ce pays-là que dans les provinces de nostre royaume ;

by d/ Ital / Rom /

" A ces causes ** avons par les présentes signées de nostre main, fait et faisons au dict ** don, cession et transport des dictz 3 Bourgs ** et de leurs appartenances et dépendances en quoy qu'ils puissent consister, et en conséquence ** les avons unis et incorporez, unissons et incorporons à la dicte terre et seigneurie Des Islets dont il est présentement propriétaire et possesseur, pour dorénavant ne faire qu'une seule et même terre, fief et seigneurie, laquelle nous avons créée et érigeé, créons et érigeons en titre et dignité de Baronnie, — voulons et nous plaist qu'il se puisse dire, nommer et qualifier Baron des Islets en tous actes ** qu'en cette qualité il jouisse des honneurs, armes, blazons, prérogatives, rang et pré-éminence ** tel et tout ainsi que les autres Barons de nostre royaume, ** — que tous les habitants, tenanciers, hommes et vassaux des dictes terres et Bourgs, le reconnaissent pour Baron, et luy facent en cette qualité leur foi et hommage, baillent leurs adveux, dénombrements et déclarations, le cas y eschéant.

" sans que pour raison des présents don, union et erection, ils soient tenus à autres et plus grands droicts que ceux qu'ils doivent à présent; et pour plus favorablement traicter le dit ** avons ** fait et faisons don par ces dictes présentes du droict de justice, haute, moyenne et basse, en toute l'estendue tant de la dicte terre et seigneurie des Islets, que des dictz Bourgs, appartenances et dépendances, pour la dicte justice faire à l'advenir exercer conjointement sous le dict titre et qualité de Baron Chastelain ** par un seul juge Chastelain, lieutenant, greffier, procureur fiscal et autres officiers qu'il y voudra et pourra établir, avec tels droicts, pouvoir et autorité qui appartient aux autres Barons Chastelains, hauts justiciers de nostre royaume; lesquels juges intituleront leurs sentences et jugemens de la qualité de Baronnie et Chastellenie des Islets ** permettons au dict Sr. Baron des Islets d'establir prisons, fourches patibulaires à 4 pilliers ** comme encore un pillier à carcan où ses armoires seront empreintes.

- 1.—" Le tout à le charge qu'il n'y aura aucun changement de la mouvance à nous appartenant en l'estendue du dict pais,—
- 2.—" et à une seule foy et hommage,—
- 3.—" adveu et dénombrement de la dicte terre et Baronnie,—
- 4.—" aux droicts et devoirs à nous deubz et ordonnez au dict pais,—
- 5.—" et sans qu'à défaut d'hoirs masles nez en loyal mariage, nous puissions, ny nos successeurs, nous, prétendre la dicte Baronnie estre réunie à nostre domaine ** sans laquelle condition le dict ** n'auroit accepté nostre présente grace."

[Insert rule here.]

§ 443. — A few papaves, occurring in some of these only out of all these grants of this period, have been torn from their connection, and twisted from their true sense, for the service of the anti-seigniorial argument.

One of these, occurring in the preamble of one of Talon's Acadian grants, that is de Marignon, has been incidentally disposed of. (Supra, §§ 408 et seq.)

[Insert a rule here.]

The rest now call for remark.

§ 444. — The preambles, ~~of~~ of the longer or shorter form, ~~that~~ set to a number of Talon's Acadian grants (supra, §§ 417, 418, and 429), have also been pressed into the service.

It is said, that they show the King's intention, that the grantees should settle their lands by sub-granting from them to others.

parties who were expected thereafter to colonise on their own account. Unless expressly fettered by conditions set forth in their titles, it was a necessity of their position that they must be held ~~to be~~ free to bargain as they best could for the carrying on of such colonisation.

A condition, even, for the effecting of ~~any~~ given result in the way of colonisation, could ^{have} not ^{been} ~~been~~ his freedom.

And no one ^{will} find in these preambles, or in any one of them, there is not one of them, that so much as expresses or implies a tangible condition of any kind whatever.

§ 449. - The residence and clauses as to residence and the preservation of timber, to be found generally in most of the Talon and Frontenac grants (^{supra}, §§ 428, 429 and 433), are also played upon.

It is said, that they show the King's intention to have been, that the grantees should settle their lands by placing ^{and} censitaires, upon them, - reserving to themselves only a ^{manoir} "principal ^{manoir}."

§ 450. - Again, even if so, the inference would affect only those grants, - and not the many other grants where ~~these clauses~~ ^{these words} neither ^{tenanciers} there is no word of "tenanciers" or "principal manoir" at all.

~~Presumably~~ ^{not to say} that even in the titles where these clauses contain these ^{words}, there is not the remotest hint as to any terms of contract with such tenants or as to any limit, of extent or otherwise, of such manor ~~property~~.

The question is of conditions, limitative of ^{contract} ~~contract~~ common law right to make ^{contracts} as one will. ~~There, here, ^{Archives de la Ville de Montreal} ~~contracts~~ to be found, limitative of this,~~

[Foot note.]

* Vide supra, § 189.

* Can pretend to say, that there is ^{even this} condition to that effect

[Insert a rule here.]

"tenanciers," of ^{the} particular class called

#, save only as to the two points of their being required to reside and to preserve certain timber,

& right, otherwise than just in these two precise particulars.

[Foot-note.]

* The fact being, that many of the grantees - and indeed, as one would infer from these titles, by far the major part of them, had begun their settlements some time before Talon gave them their titles.

Frontenac, in a despatch home, under date of 1672, Nov. 2, (see Hist. Doc. Que. Hist. Soc., 2d Series, Vol. 2, p. 137) ~~written~~ ^{written} ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~titles~~ ^{titles} ~~of~~ ^{of} ~~the~~ ^{the} ~~Officers~~ ^{Officers}.

grantees more particularly, says: - "Ils étoient tous à accommoder leurs habitations le mieux qu'ils pouvoient, mais le retardement que le Talon a jusques ici apporté à leur donner leurs Conkats les ayant mis dans de grandes incertitudes, & en a même empêché, à ce que la plupart m'ont dit, de travailler avec autant de soin et de dépense qu'ils auroient pu faire, - dans l'appréhension que leur travail leur fût inutile, et ne leur demeurât pas."

Their apprehensions on this score were not set at rest by Talon's issue of their titles. For in the year following, in the same despatch of 1673, Nov. 19, from which I have already quoted (*supra*, S 363; vide p. 340 of Hist. Vol.), Frontenac again writes of these Officers: -

"Ils sont en peine de n'avoir point vu de S. M. la confirmation des titres de concessions que M. Talon donna l'année dernière, et qu'il leur avait promis de vous demander. Je vous envoie aussi le mémoire coté C & de celles que j'ai concédées depuis son départ pour vous demander la même grace au nom de ceux auxquels je les ai accordées."

And again, the year following, 1674, Nov. 14, he had still to write (see Hist. Doc. Que. Hist. Soc., 2d Series, Vol. 2, p. 144) he had still to write in the same tone: -

"Vous ne m'avez point fait l'honneur de me répondre sur le sujet de la confirmation des concessions que M. Talon a obligé nos Officiers et les autres particuliers de prendre de S. M.; qui est une condition qu'à son exemple j'ai mise aussi au peu que j'en ai donnée depuis, et dont je vous envoie l'état coté B. Cependant, l'incertitude où ils sont, leur a fait avoir de la retenue pour travailler à l'amélioration de leurs habitations, attendant qu'elles,

1stly. - To keep - or, as the common phrase was, to continual to keep - I hearth and home upon his grant.

And 2dly. - To bind his tenants to do the same.

"leur soient entièrement assurés; C'est pourquoi il vous plaira d'y répondre." Notwithstanding all which, the great majority of these Talon grants seem never to have been confirmed - otherwise, that is to say, than tacitly. For it is certain, lastly, by constant recognition ever since, there is no doubt of their having been so.

The influence Frontenac, in 1673, when the facts could not have been forgotten, wrote of them (see exact, *supra*, S 362) as "accordées par M. Talon suivant l'avis du Conseil qui lui donnaient permis de le faire, et les ordres qu'il en avait reçus conformes à ceux qui vous en furent portés par mes instructions."

The arrêt referred to, almost must have been that above given in S 389; which, however, as we have seen (*supra*, SS 390 et seq.), was by no means carried into effect. The instructions, therefore, must have been in other terms; though none in the terms required, so far as I can ascertain, are extant. The only passage bearing on the subject that I have been able to find is that from Frontenac's instructions of 1672, given above in S 388; and the clause of which is, ~~also~~ ^{also} rather ~~in~~ ⁱⁿ ~~an~~ ^{an} ~~injunction~~ ^{injunction} to adhere to the bona fide policy, and (so far) adverse to the granting issue of titles for new outlying grants, such as these of Talon's were.

Still in the same spirit, ~~with~~ ^{with} more precision and emphasis, Colbert in 1674, May 14, (see Hist. Doc. Que. Hist. Soc., 1st Series, Vol. 1, p. 243) thus wrote to Frontenac: -

"L'intention de S. M. est, xx qu'à l'égard des habitations des habitants s'étend, autant qu'ils ont fait par le passé; au contraire elle veut que vous habilitiez incessamment et pendant tout le temps que vous demeurerez en ce pays à les repenser, et à les assembler, et en composer des villes et des villages, pour les mettre avec d'autant plus de facilité en état de se bien défendre," etc.

Frontenac promised obedience in his despatch of the same year, assured the Minister, in his despatch of the same year (above quoted in this Note), of his entire acquiescence in this policy. And I shall have to show hereafter, that

it was rigorously carried out, - or at least that the King's officers in Canada said it was, - for quite a number of years from this time.

Talon was honored and rewarded; and must, therefore, be supposed to have acted by authority. But it is not the less probable, that the King at Court of the policy adverse to the extension of the Colony by advanced settlements, ~~and its effect was to~~ ^{and its effect was to} ~~bring~~ ^{bring} ~~the~~ ^{the} ~~express~~ ^{express} confirmation of his acts, and keeping his grantees long in that state of uncertainty, of which they had ~~been~~ ^{been} ~~the~~ ^{the} ~~cause~~ ^{cause} de la ville de Montréal

("tenanciers") to do the same, - under penalty, against them, in case of their failing to do, of ^{summary} escheat of their lands to him the Seigneur.

Three of his Acadian titles, ^{varied} this form, by making the escheat ^{entire} to the Crown, - upon failure, therefore by the grantee, thus to reside and ~~thereby~~ bind his tenants to residence.

Frontenac ^{shortened} the Canadian form, ~~but simply shorted~~ ^{shortening it in no way} ~~the same~~ - ^{but using words that} ~~hardly import~~ ^{made} the grantee's personal residence upon his grant, or bound him to more than ~~the acquisition~~ ^{in fact} - probably, with no definite intention of altering its sense, - but still, so as to make the obligation to personal residence on the Seigneur's part ^{some people} explicit.

^{§ 452.} It will be seen hereafter, that this ^{varying and} shortening process went on, through the ~~next~~ ^{next} period of our history which will require to be considered; ^{while} among other ^{equivalent} forms, ^{many} some of them ~~hardly~~ ^{no longer}, and all of them ~~meant~~ ^{were} used apparently as answering the object of this double clause of Talon's, ^{we} find, for one ^{form} "d'y faire résider lems tenanciers", - and for another ^{form} "d'y tenir feu et lieu", with no mention of tenanciers at all.

§ 453. - By the timber clauses, as Talon drew them (^{supra}, § 429), the grantee was in like ^{double} form ~~bound~~ bound: -

1stly. - To preserve the oak timber fit for ship-building, on whatever land he should keep for his own chief manor ("principal manoir").

And 2ndly. - To bind his tenants to do the same.

But there was no stipulation ~~as to what was to be the penalty in case of their failing~~ as to penalty, either on him or on them, ^{Archives de la Ville de Montréal} ~~in case of their failing~~. Frontenac ~~shortened~~ ^{shortened} these clauses also, into one, - omitting ~~the~~ ^{the} mention of

* (^{supra}, § 428)

* shortening it, with no view, probably, to make any

* it, and more especially so much of it as imported

* (^{supra}, § 433.)

[Foot-note.]

* See Titles ~~282 and~~ 328 and 282 of Abstract.

* [à la charge]

* either of his failing to bind them, or

* the manor, and ^{stating} ~~resolving~~ ^{the obligation} ~~condition~~ ^{simply} ~~bound~~ ^{the grantee} to preserve, and cause his tenants to preserve, such timber. (^{supra}, § 433.)

(291) §454. - Tracing down these clauses, again, through our next period, we shall find them assuming a great variety of forms, - ~~all mention~~ all reference to a ~~part~~ ^{single} principal manoir hardly ever occurring in them, ^{mention} ~~and~~ that of tenanciers made or omitted indifferently, - other timber sometimes specially ordered to be reserved, - and at last the whole matter resolved ~~into~~ ^{into} such forms as [à la charge] de conserver et faire conserver les bois de chesnes propres pour la construction des vaisseaux de F.M., or de conserver et faire conserver les bois de chesnes."

[Foot Note]
* See Titles 243 and 304 of Abstract.

§455. - At common law, the grantee of wild land en fief would have been under no obligation to bind his tenants of whatever sort, either to reside or to ^{the present} ~~any~~ ^{of any} particular sort of timber.

These titles, ^{subjected} ~~placed~~ the parties who took them, ^{under} ~~to~~ this obligation, - and to no other.

In so far, they restricted the ~~grantee's~~ ^{grantee's} what would otherwise be the grantee's right to sub-grant.

§456. - As to imposing on him an obligation to sub-grant, - if such had been the idea, the ~~language~~ terms used must have been quite different.

To ^{of state} ~~create~~ an obligation, ^{ad-} ~~verse~~ ^{verse} to every received principle of antecedent law, and to all existing social usages, express words ~~to that effect~~ ^{are} required. - And in this case, in order ^{really} to create such obligation, ~~and~~ ^{and} no very small number of such ^{express} words would have been requisite required. The extent reservable for the manoir, - the extent to be ^{sub-} granted to each applicant, - the qualifications of such such applicant, - the terms ~~of~~ ^{of} ~~reservable~~ insisted on or allowed for such sub-grant, - ~~all~~ ^{all} ~~needed~~ ^{needed} to had need all ^{to} be stated. ~~without~~ ^{without} ~~leaving~~ ^{leaving} Or, ~~the~~ ^{the} ~~obligation~~ ^{obligation} ~~de~~ ^{de} ~~conservation~~ ^{conservation} would have been left ^{un-} ~~un-~~ ^{un-} ~~stated~~ ^{stated} ~~and~~ ^{and} ~~therefore~~ ^{therefore}

[Foot-note.]
* The Legislative Assembly of Lower Canada, and (later) that of Canada, so felt this, that when seeking to obtain enforcement of the ~~supposed~~ ^{they always proposed} obligation to sub-grant, ~~then~~ ^{then} ~~they~~ ^{they} ~~tried~~ ^{tried} so as to go into these particulars.

It was felt that unless ~~by~~ ^{by} ~~these~~ ^{these} ~~particulars~~ ^{particulars} ~~the~~ ^{the} ~~obligation~~ ^{obligation} as matter of law could not ~~practically~~ ^{practically} ~~subsist~~ ^{subsist}. But they were ~~admittedly~~ ^{admittedly} ~~novel~~ ^{novel}; unknown to the history of French Canada.

The inference is self-evident.

~~un-~~ ^{un-} ~~stated~~ ^{stated}, because ~~un-~~ ^{un-} ~~stated~~ ^{stated}, and therefore ~~ex vi termini~~ ^{ex vi termini} ~~un-~~ ^{un-} ~~stipulated~~ ^{stipulated}.

(292) § 457. - Instead of doing into these particulars, ^{and that this is the} requisite direct form, these clauses not merely (as we have seen) tended in the opposite direction, that of restricting the ^{grantee} ~~grantee~~ in respect of his right to sub-grant, - but in doing this, ^{they} ~~they~~ used terms so vague as not even to amount to a ^{distinct} mention of censitaires, in any sense at all.

The word used was as vague ~~and~~ as could be found, - "tenanciers"; in its most restricted ~~sense~~ sense covering the holder under bail à cens or bail emphytéotique, equally with the holder under bail à cens; ~~and~~ in its looser sense, comprehending equally the holder under bail à ferme, or meuse were ~~left~~ ^{not} ~~left~~ ^{excluded}; ~~and~~ ^{not} ~~excluding~~ ^{the} ~~the~~ ^{holder} ~~holder~~ ^{under} ~~noble~~ ^{noble} ~~tenure~~ ^{tenure}.

One may readily admit it to be likely enough, that the author of these clauses, ~~thought~~ ^{thought} rather, when drafting them, of censitaires, than of any other class of tenants, feudal or non-feudal. They were the class of tenants most likely to be taken; no other form of contract being so suitable to the time and country, as that of the bail à cens.

Every one in the country ~~might~~ ^{might} have known, and if asked ~~might~~ ^{might} perhaps ~~might~~ ^{might} have said, that no ~~large~~ ^{great} class of tenants of any other kind, was then and there likely to be ~~procured~~ ^{procured}.

But that is not the question. It is sought to draw ~~from these~~ from these clauses the inference, that these grants were somehow made under ~~an~~ obligation (at the least, implied) that the grantee was to sub-grant to censitaires all but some ~~modicum~~ ^{modicum} of reservable modicum of his grant.

The facts being, that they ~~meant only~~ ^{meant only} ~~an~~ ^{an} ~~absolutely~~ ^{absolutely} ~~entire~~ ^{entire} ~~grant~~ ^{grant}.

[Foot note.]

* Ferrière, Dict. de droit, ~~et~~ ^{et} Vo. "Censitaires".

[Foot note.]

I say, "perhaps", because, however certain it may be that the grant en censive was then the ^{predominant} ~~predominant~~ ^{most} ~~most ^{common} ~~common form of contract, ~~rather~~ ^{rather} ~~greater~~ ^{greater} ~~certainty~~ ^{certainty} it is equally certain that it was far from being the only form in received use. That the bail à ferme was ~~so~~ ^{also}, is evident from the ~~terms~~ ^{terms} of the ~~original~~ ^{original} language of the ~~copy~~ ^{copy} on the record of the Council Supérieur in 1664, cited supra, § 380.~~~~

Another incidental proof of the same fact, ~~is~~ ^{is} to be found in a ~~copy~~ ^{copy} of a ~~copy~~ ^{copy} of Ordonnance of the Gouverneur and Intendant, ~~in~~ ⁱⁿ ~~the~~ ^{the} ~~year~~ ^{year} ~~1690~~ ¹⁶⁹⁰, allowing the Loche Indians to occupy ~~some~~ ^{some} ~~land~~ ^{land} then in dispute between two claimant grantees, on condition "qu'ils quitteront les dites terres au bout de 12 années pour rebourner aux propriétaires des dits lieux, et mieux valent les dits Sauvages leur en payer les centes à point et temps qu'ils en voudront encore jouir, comme ~~elles~~ ^{elles} ~~étaient~~ ^{étaient} ~~affermées~~ ^{affermées} à des français." - see Doc. Leijn., Vol. 1, p. 428.

A manifest invasion of a right of property, such as in those days every body was in fact liable to, - and that, in reference to all sorts of property whatever. But an equally manifest proof of the received ~~use~~ ^{use} of the bail à ferme.

on that subject is that their only allusion to the matter of sub-granting was made, not to require it, but to restrain it, ~~to require it~~ ^{to require it} ~~to require it~~ ^{to require it} the grantee to put away the obligation that he and his tenants every one holding under him should reside upon the property and preserve a certain ~~wood~~ growth of wood upon it; that they left him just as free as he was before, to have or not to have tenants of any particular kind, ~~or~~ whether vassals, censitaires or others, ~~or~~ ^{in all other respects} on whatever terms ~~in all other respects~~ might suit them and himself, - in a word, to ~~settle~~ ^{settle} ~~his grant himself, dealing with~~ ^{his grant himself, dealing with} none but farmers ~~or even serfs~~ ^{or even serfs} if he could and would, or to put upon it tenants of any ~~kind to his liking~~ ^{kind to his liking}, to these two requirements of residence and care of the oak timber on it.

§458. - It was urged, by way of ~~excuse~~ ^{excuse} evading this conclusion, that the size of the grants ~~is large~~ ^{is large} or of many of them, must have made want to help out ~~the~~ ^{the} what might otherwise have been ambiguous in ^{the wording of} these titles, on this point.

Such argument is a confession of its own weakness. But the fact is not even so; for, as we have seen, these clauses are to be found, ^{as well} ~~as~~ in grants of less than 900 arpents, as in grants of more. - As to many of them, there was not even a presumable practical difficulty in the way of their being wholly cleared and settled without ~~the~~ ^{the} resort to a single censive grant.

§459. - Nor is the argument from ~~that~~ ^{that} the fact of this ~~fact~~ ^{fact} requirement to sub-grant or settle in any particular way, - merely negative, as to ^{the} ~~the~~ intention of the local authorities on this head.

Their ^{Archives de la Ville de Montreal} ~~archives~~ for grants drawn to this

* and to deal with them

* have ~~upon~~ his grants ^{as he pleased, by} held, ~~by~~ ^{by} ~~his~~ ^{his} ~~own~~ ^{own} ~~tenants~~ ^{tenants} or by ~~farmers~~ ^{farmers} ~~leaves~~ ^{leaves}, or censitaires, or sub-vassals, or co-vassals, ~~and they only bound~~ ^{and they only bound} ~~upon~~ ^{upon} ~~them~~ ^{them} ~~so only as that they should be bound~~ ^{so only as that they should be bound}

* absence of ~~any~~

* what ~~may~~ ^{may} or may not have been the ~~intention~~ ^{intention} of the ~~local~~

matter. Seven years before, Talon had set himself to the preparing of a plan (suprà, § 341) for the settlement by boungades. Five years before, he had drawn up such plan (suprà, §§ 367 et seq.); and, so far as such settlement was to be done by the crown at its own cost, had gone into every full detail as to the terms on which the ~~lot~~ settlers of the laboring class were to be dealt with by the Crown. Whether or not he ever drew a like plan as to what should be the relations between future Crown grantees en fief, and their laboring settlers, does not appear, — and does not matter. What is material and certain, is, that the de Councelle, and he, and ~~his successor~~, put these intended future Crown grantees en fief in possession of their grants under location tickets, thinking at nothing of the kind; ~~that~~ that under such possession they were left ~~to~~ to make their settlements at their own cost and risk, complaining of — and hindered by — the delay that took place in the issue of their titles; that these titles were what we find them; and ~~that~~ ^{that} though that the delay as to their confirmation left the grantees, ~~scarcely where in that respect~~ ^{scarcely where in that respect} ~~scarcely where in that respect~~ ^{scarcely where in that respect} almost where they had been before; and lastly, that for a long ^{number} of years, ~~we~~ so far from ~~settling~~ ^{settling} ~~under them~~ ^{under them} ~~requiring~~ ^{requiring} the grantees, ~~to~~ ^{to} ~~reside~~ ^{reside}, and make any body ~~else~~ ^{else} reside upon their grants, ~~we~~ the exceptional controlling power of the haute police of those days was all directed to the end of ~~preventing~~ ^{preventing} ~~that~~ ^{that} ~~them~~ ^{them} ~~from doing~~ ^{from doing} of the kind, ~~that~~ ^{that} ~~any~~ ^{any} ~~thing~~ ^{thing} ~~of the kind~~ ^{of the kind} ~~was~~ ^{was} ~~not~~ ^{not} ~~allowed~~ ^{allowed} ~~to~~ ^{to} ~~take~~ ^{take} ~~possession~~ ^{possession} of their properties, ~~at all~~ ^{at all} of the properties that had been thus granted to them. ~~Archives de la Ville de Montréal~~

Bouteroue (as Intendant through the interval between his two terms of service),

x (suprà, §§ 401 et seq.)

(suprà, Note x to § 457)

still in a position of almost ^{the same} ~~as great~~ hardship as before; and that the tacit confirmation wrought as to them all by the lapse of time, left them unchanged in any particular;

sub-grant on any given term, ^{see to}

[Foot-note.]

Vide suprà, Note x to § 457; also infra

* Surely it must be admitted, that if in spite of

all this, the intention ^{of the parties} ~~of the parties~~ ^{of these grants} ~~of these grants~~ ^{was} ~~was~~ to have created ^{something} ~~something~~ ^{even} ~~even~~ so little like the fidei-commiss "seigniorial" ^{of our} ~~of our~~ Canada of the 19th Century, they ^{failed} ~~failed~~ ^{most} ~~most~~ ^{marvellously} ~~marvellously~~ of indicating ~~of~~ such intention, by what they said and did, and did not say and did not do.

§ 401. — ~~And~~ ^{that} besides these particular grants by Talon and ~~Frontenac~~ ^{Frontenac}, to which alone ~~this~~ ^{the} above anti-seigniorial quasi-arguments can apply, — there were ^{issued} ~~issued~~ during this period, as we have seen, —

1stly. — ^{titles} ~~titles~~ by de Mezy and Laval ^{that} ~~that~~ carry us back to the ^{more} ~~more~~ terms of the old grants of the ^{most} ~~most~~ favored class, ~~of~~ ^{made} ~~made by the Company of New France, one of which, that of Champlain — ~~it may be~~ ^{as will} ~~as will~~ ^{presently} ~~presently~~ hereafter have to be shown, was at a later date specially ratified by King on the terms therein set forth, and without suggestion of any other. *~~

2dly. — Titles by Talon and Frontenac (SS 400 ^{et} ~~et~~ ^{seq.} ~~seq.~~), that neither by preamble nor ~~set~~ ^{by} ~~by~~ clause hint at colonisation, tenant, ^{manor} ~~manor~~.

3rdly. — Titles by the Company of the West Indies (SS ^{et} ~~et~~ ^{seq.} ~~seq.~~), that cut short ^{off} ~~off~~ all quibble as to what ~~was~~ ^{meant} ~~meant~~ by property ^{en} ~~en~~ ^{feif} ~~feif in Canada, ^{meant} ~~meant~~ in Canada, by relaxing conditions stipulated in older grants ^{of} ~~of~~ the favored class, — by describing the property granted in terms so large as expressly to cover even navigable water, — and by attaching no condition ^{whatever} ~~whatever~~ relative to settlement, except that of ^{beginning} ~~beginning~~ to clear ^{making} ~~making~~ a ^{survey} ~~survey~~ and planting certain ^{boundary} ~~boundary~~ posts within so many years; ⁱⁿ ~~in~~ which titles also, the~~

* (supra, SS 398 et seq.)

[Foot-note]

* Title 212 of Abstract.

[leave room for three figures here]

* King ratified.

274 And Why. — A title direct
emanating directly from the
King, by which he ~~raised a~~
made the grantee a Baron,
and his grant a Barony, — of
course, with no hint at
obligations so unbaronial
as the theory of the fidei-commissary
seigniorial would ~~have~~
require one to admit as ~~at~~
lacking ^{essentially} all seigniorial pro-
perty in Canada.

§ 462. — ~~If these~~ These ^{grants}
also are all ^{now} equally held for grants
en fidei-commissary seigniorial.

~~If they were so meant
made, what limit is there
the liberties that can be
be taken men may
this is here limit to the
of using words for mean
express the ^{opposite} of what ~~they say~~
they mean.~~

If they were so held when
made, is there limit to the
license of using language
to mean the opposite of what
one says?