SEIGNIORIAL TENURE.

REPORT OF THE COMMISSIONERS

Appointed to inquire into the state of the Laws and other circumstances connected with the Seigniorial Tenure, as it obtains in that part of the Province of Canada heretofore Lower-Canada, laid before the Legislative Assembly, by Message from His Excellency the Governor-General, on the 4th October, 1843.

To His Excellency the Right Honorable Sir Charles Bagot, G. C. B., one of Her Majesty's Most Honorable Privy Council, Governor General of British North America, and Captain General and Governor in Chief in and over the Provinces of Canada, Nova Scotia, etc., etc.

May it Please Your Excellency,

We, the Commissioners appointed by Your Excellency, to inquire into the Feudal and Seigniorial Tenure of lands, in that part of the Province of Canada called Lower Canada, in pursuance of an Address of the Honorable the House of Assembly, of the 7th September 1841, have the honor to represent to Your Excellency:

That, in pursuance of the Commission appointing us Joint Commissioners for the purposes therein set forth, and of the instructions accompanying it, we have, with all possible diligence, and to the extent of the powers reposed in us, proceeded in the investigation of the subjects submitted for our inquiry.

Before proceeding to submit to Your Excellency the result of our examination of the important subjects which have engaged our attention, we beg to refer Your Excellency to a preliminary Report, dated the 28th day of September last, in which we had the honor to inform Your Excellency that, owing to the limited powers conferred on us, it was wholly out of our power to report upon many of the subjects pointed out in our Commission, as we possessed no means to compel the attendance of persons, and the productions of papers essentially requisite for enabling us to lay before Your Excellency correct information touching many of the subjects of our investigation, and, in fact, that full and satisfactory information, on some parts of the subject, which the Honorable the House of Assembly had a desire to obtain, as expressed in our Commission.

Since that period, we have been honored by a communication from the Honorable Mr. Secretary Daly, by the command of Your Excellency, informing us that the powers adverted to in our preliminary Report can only be conferred by Parliament, and requiring us to transmit to Your Excellency the result of our investigations under the limited powers conferred on us.

We therefore respectfully beg leave to submit for Your Excellency's consideration, this our Report, containing our views on the momentous subjects proposed for inquiry, and exhibiting the nature and extent of such information on those topics as we have been enabled to procure.

The several matters, submitted for enquiry by our Commission, may, for the sake of perspicuity and more easy elucidation, be arranged under the following heads :

1st.—To make the necessary examination and search into all Public Records and Notarial Acts, from the time of the settlement of the Country, and to establish, for several distinct periods, the true conditions on which grants of land in seigniory have been made by the Crown, and on which lands have been conceded *en arrière-fief ou en censive* (*rôture*), and to collect all other requisite information connected with the said subject, and to inquire into the laws which have from time to time governed and now govern the said Tenures.

2nd.—To inquire generally into the present working of the system, by proper investigations into every section of Lower Canada, in a number of seigniories indifferently chosen, for the purpose of ascertaining, as far as possible, the present rents, dues, reservations and charges of any kind.

3rd.—The probable quantity of unconceded seigniorial lands in the Province, and their quality and value, and also the quantity of land conceded but not improved.

The value of seigniorial mills in the Province.

The annual average value of *lods et ventes* paid or accruing thereon.

Lastly.—To consult the seigniors and *censitaires* respectively, upon the most proper and equitable means of effecting by Law a commutation of the seigniorial and feudal Tenures, (such commutation being founded upon a due regard to the rights and interests of all parties), and also of the most proper means of effecting an arbitration in cases where it may be required.

Upon the first subject :—

Having had the advantage of consulting a great number of grants of seigniories in this province, as well from the *Compagnie de la Nouvelle-France*, as from the Crown, from the earliest period down to the Conquest of the Colony, we have found that, although the settlement of Canada under the French Crown was, as to the tenure of land, established upon the feudal system, and, although military service, necessarily for the purposes of defence, did exist in the colony, yet this obligation was not an

express condition in those grants, nor was the seignior invested with many of the odious and offensive rights and privileges which characterize the feudal lord in Europe.

The colonists have emigrated from that part of the Mother Country, in which the customary law prevailed, where the principle, as to land, of *nulle terre sans seigneur* was recognized, it was natural that a like tenure should be introduced to regulate the rights and obligations of those who should become possessed of the soil, modified, however, by reason of the different circumstances which marked, and the opposite spirit and sentiments which animated, the establishment of the feudal relations in France and in this Country, in the one, the motives being the love of conquest and military glory; in the other, the pacific diffusion of civilization and of the light of the Gospel.

It will thus appear, that many of the earliest grants were made to Religious Bodies, and were avowedly bestowed on them for the purpose of reclaiming the natives from barbarism and converting them to Christianity.

Under this tenure the superior lords and immediate grantees of the Crown, exercised some sovereign powers within the limits of their seigniories.

They held the power of *haute, moyenne et basse justice,* and all the privileges appertaining thereto, which comprised the holding of Courts of Justice, yielding certain emoluments, the right to all confiscated or forfeited estates, the right of all property escheating *pro defectu hæredum*, or from other causes, and to all waifs, estrays and treasure trove.

The exclusive rights of trading with the Indians, and of fishing and hunting within the limits of the fief, was also expressly conferred on the grantee.

In this way, large tracts of land were granted by the Crown, or by the *Compagnie de la Nouvelle-France* while it held this Country *en fief et seigneurie,* upon the condition of the performance of certain services and obligations which we shall now proceed to consider,

With but very few exceptions, these feudal grants were made subject to the provisions of the Custom of Paris, and imposed on the grantee the obligation of performing fealty and homage to the King, or his representative at the Castle of St. Louis, in Quebec,—of making his *aveu et dénombrement*, that is to say, to render a true statement of his title, the extent of his fief, setting forth its dependencies and prerogatives,—whether he had a right to hold Courts of Justice, of the amount of fees incidental to his jurisdiction, of the fines and other rights to which he was entitled; of his manor house, the lands of his domain, the quantity and quality of his arable, meadow, pasture and wood-lands, the revenue of his domain, and the improvements and buildings on his domain, the annual amount of the *cens et rentes* and other dues, with the number and names of his *censitaires* or others subjected to pay rent to him, and the extent of the concessions, the rights and services he owed on account of his fief, whether he had the right of compelling suit at his mill, and a particular designation of the *arrière-fiefs* or subinfeudations; how he became possessed of his fief or

seigniory, whether by succession in the direct or collateral line ; by purchase, gift, or otherwise.

The only pecuniary right due under the Custom of Paris, by the vassal to the Crown, is the *quint*, which is the fifth part of the price of sale of the fief or seigniory accruing upon every mutation of ownership of the fief, by sale or contract equivalent to sale (but not in case of succession and donation in the direct line), and payable to the Crown by the purchaser on his rendering fealty and homage.

In all cases of collateral inheritance, or of legacy or donation to collateral relations or strangers, the Custom of Paris gave to the Crown one year's revenue (*relief*) of the fief; but this right has not been claimed or enforced in this colony.

It is however to be observed regarding lands governed by the Custom of *Vexin le Français*, under which Custom some few grants were made at a remote period, and one year's gross revenue of the estate was payable instead of the *quint*, and thus under every change of ownership without any exception.

It was competent to the Crown to exercise the right of pre-emption, *retrait*, or *jus retractus*, within forty days after notice of the sale, upon reimbursing to the purchaser the price and all the costs and charges.

These may be considered to be the legal and inherent conditions of the grants of most of the fiefs and seigniories.

But there were some few seigniories, granted by the India Company and the *Compagnie de la Nouvelle-France*, under less onerous conditions than those arising from Custom of Paris, such as the payment of a medal of half an ounce or one ounce of gold, *une maille d'or*, to the Company in lieu of the *quint*. The fief of Beauport was granted on this condition in the year 1675.

In addition to the grants in fief and seigniory above mentioned, it may be observed that there are two instances of grants *en franc aleu noble*, made by the French Crown to the Order of the Jesuits, viz : Charlebourg in the District of Quebec, and another in Three-Rivers.

The above obligations may be considered to be inherent in every grant from the Crown, and imposed upon all feudatories under the Custom of Paris.

But, independently of these legal burthens the grants from the Crown appear, for the most part, to have contained the following specific reservations and conditions :

1st.—The obligation to do fealty and homage.

2nd.—Payment of the usual rights and dues according to the Custom.

3rd.—The preservation of all oak timber for the construction of His Majesty's ships.

4th.—To make known to the King the discovery of all mines, ores and minerals.

6th.—That appeals from the seigniorial Courts should be made to the provostship of Quebec.

6th.—To build a habitation on the land and to dwell there, *tenir feu et lieu*, and to cause his *sub-feudataires* and tenants to do the same.

7th.—To clear and settle the land or cause it to be cleared and settled without delay.

8th.—To suffer all roads necessary for public utility to be made.

9th.—To concede to tenants, *à titre de redevances*, lands of not less extent than one arpent in front by thirty or forty in depth, and to insert similar clauses in their concessions to their *sub-feudataires* and tenants.

10th.—To permit the beaches to be free for all fishermen, with exception of such part as the seignior should have occasion to use for his own fishery.

11th.—To suffer the occupation, by the Crown, of all land necessary for the construction of forts, batteries and public works for the use of the King, together with the right of taking all the timber necessary for the construction thereof, and firewood for the garrison, and this without entitling the grantee to any indemnity.

In some of the grants from the Crown of more recent date, that is after the year 1711, it was made a stipulation that the seigniors should concede to their tenants at the accustomed rents and dues, *cens et rentes et redevances accoutumés*.

These conditions, charges and reservations are contained in almost all the grants from the Crown, some of them being essential to the seigniorial Tenure itself, and others rendered expedient for promoting the speedy settlement of the Country and advancing its prosperity.

Apart from those regulated by the Custom of Paris, partially brought into force on the first settlement of the Country, and universally adopted after the surrender by the Company of New France of its rights to the Crown, the other above mentioned conditions and obligations were more clearly defined, reiterated and enforced by the Edicts and Ordinances of the French Kings promulgated from time to time, according to the exigencies of the Colony.

The latter remarks we would particularly apply to all grants and concessions made by the French Crown after the surrender to it, by the Company of New France, of all its rights and territory, and the erection of the *Conseil Supérieur* at Quebec, under the Edict of 1663, which grants were all made according to the Custom of Paris.

The obligations to grant out the land to applicants, in suitable parcels, is a permanent feature of all the grants by the Crown after 1663, and in conjunction with contemporaneous legislative measures hereafter mentioned, evinces how anxiously and perseveringly the French government pursued its policy of rapidly extending the settlement of the Colony, and of diffusing its population over a large surface.

It was incumbent on the seignior to parcel out his fief to settlers, reserving a mere *reditus* or rent; he was bound to commence and effect the settlement of his territory within a certain limited period, in default of which his estate escheated to the Crown. The views and intentions of the French government in this respect may be gathered from two Edicts or Declarations of the King, the first of which is dated in March 1663, immediately after the surrender of the *Compagnie de la Nouvelle-France*, of its rights to the Crown, by which all grants whereon no settlement had been made, were cancelled and revoke; and the second in June 1675, by which all grants of too great an extent of land were revoked, and the intendant Duchesneau was ordered to make new grants of less extent, to such persons as would undertake to settle on them.

Edicts & Ord., Vol. 1, p. 24.

Edicts & Ord., Vol. 1, p. 71.

Edits et Ord. Vol. 1, p. 74.

These Edicts were followed by the declaration of the King of France, dated in April 1676, granting power to Messieurs De-Frontenac and Duchesneau, to concede Lands for settlement, upon the express condition that such concessions should be laid before the King for confirmation within a year from their dates, and that the Lands should be in fact settled and brought under cultivation within the period of six years, otherwise the said grants and concessions should be null and void.

Edicts & Ord. Vo 1, p. 311.

The Arrest of the 6th July 1711, the general instructions given to Governors of the Colony to hasten its settlement, and the more specific and stringent obligation, imposed in subsequent grants of fiefs, to settle and concede hereafter referred to, manifest a continuance of the same policy in the Crown of France.

From these Edicts, Arrests and Ordinances, it appears obvious that, although the granting of Lands by the Crown, under the Feudal and Seigniorial Tenure, may in the first instance be considered to have been attended with the creation or introduction of the rights, immunities and advantages incident to that Tenure as it existed in France, yet, by means of those Legislative measures, made while that system of proprietary relations was developing in the Colony, and of the terms of the Grants themselves, the respective rights and obligations of the Seignior and Vassal underwent much modification, and express enactments defined the exact nature and extent of the rights of the Grantees of the Crown, and the obligations by them assumed upon their investure with their several possessions.

In truth, the modifications so affected, restored the Tenure, as between the lord and Vassal, to the condition in which appears to have existed at an early age in the parent country, when the protective Colonial policy of the Roman Empire, under nearly similar relations, was adopted by the Frank Conquerors, and incorporated in their system of law. (*)

(*) See Code Théodose, lib. V, tit. 4, Const. 3. Code Justinian, lib. XI, tit. 48. 1. 5, 20, 23. tit, 49. 1. 1. Savigny on Roman Colonies in his Law Journal, vol. 6, p. 273, 320. Guizot, Histoire de la Civilization en France, vol. III. p. 388 to 402. vol. IV, p. 2. 22. Henrion de Pansey,—Dissertations Féodales, v. cens. § VI. vol 1. p. 270.

These provisions we shall have occasion to use more at length when we come to treat of that branch of the subject which more particularly concerns the duty of the seignior to concede lands within his fief.

Generally speaking, the conditions contained in the grants from the Crown, whereby the Seigniors are required to concede lands to applicants, are not marked by any essential difference; but there are a few which contain an express declaration that the grantees should concede at the usual and accustomed rates, *cens et rentes et redevances accoutumés*, and in one particular instance, namely, that of the Royal grant to the Seminary of Montreal of the Seigniory of the Lake of Two Mountains, dated 17th October, 1717, the rate at which every concession shall be made is prescribed, viz.—twenty *sols* and a capon for each arpent in front by forty arpents in depth, and six *deniers* (a farthing).

Appendix B. No. 103.

This is the only instance which has come to our knowledge, after a most diligent search, of specification in the Royal grants of the rate of *cens et rentes* at which the seignior shall be bound to concede his lands.

The conditions upon which grants from the Crown were usually made have thus been pointed out, at least as to such as were expressly contained in the Royal grants, or were imposed by the Custom of Paris, under the influence of which those grant were made; but, in order the more justly to appreciate the spirit of the essential terms upon which seigniors were bound to concede their lands to applicants, constituting a prominent object of our inquiry, it becomes necessary to consider somewhat at large, the legal enactments touching this obligation to concede, and the judicial decisions interpretative of them.

It appears to us sufficiently obvious that, between the year 1663, when the French Crown became re-invested with full sovereignty over this country, and the year 1711 when the Edict hereafter mentioned was promulgated, some of the Seigniors had violated the trust reposed in them, by exacting, from the applicants for uncultivated lands, a price, in addition to the usual rent, as consideration for concessions *en roture*; an abuse repugnant to the views and intentions of Government, and calculated to retrad the settlement of the Country.

In our estimation, the Royal grants involved a trust to re-grant such of the land as might be in an uncultivated state, *en boit de bout*, in parcels, to actual settlers, upon certain moderate rents, that is, *à simple titre de redevance*, without its being in the power of the Seignior to demand any money whatever, in the way of capital, for the concession.

This rent, *redevance*, *cens et rentes*, carried with it the right of *lods et ventes*, being a mutation fine levied by the Seignior upon every sale of the land or transfer of it equivalent to sale, of one-twelfth of the price or consideration of such conveyance.

This alienation fine is incidental to the Seigniorial Tenure of land, and is the legal consequence of a recognitive rent, called *cens*, being stipulated or reserved in the Deed concession, and was intended to be a source of revenue to the Seignior.

The right of *banalité de moulin*, or paying suit to the Lord's mill, is not incidental to the Seigniorial Tenure under the Custom of Paris, but, in the circumstances of a country under process of colonization by emigrants unable to bear the expense of erecting mills for their own accommodation, there arose a necessity to provide some means to obviate the evils flowing from this cause, by imposing on the Seignior the obligation to build mills, for which they should have the corresponding right of compelling the tenants to carry their grain to be ground there, yielding a certain proportion as toll or multure.

Edicts & Ord. vol. 1, p. 266.

This was effected by the arrêt of 4th June 1686, declaring it to be a right of the Seignior in the realty, and inseparably attached to his fief and seigniory.

It was, however, provided that this right should be forfeited by the Seignior, if a banal mill should not be built within one year after the passing of the said ordinance, and any *censitaire* or other person, on complying with its requirements, was authorized to exercise this privilege.

Under the Custom of Paris, this right was purely conventional, and could only be claimed by the Seignior under a title.

Although in France the right of *banalité* extended to mills, ovens and other matters, it was only exercised in this colony with respect to mills for grinding corn.

According to the principles of the common law, and the arrêts rendered concerning that matter, this right was restricted to the grinding of the corn consumed within the Seigniory and did not comprise corn ground for exportation, or for use without the limits of the Seigniory.

Edicts & Ord. vol. 2, p. 131.

The arrêt of the 20th June 1667, provided that the toll or *droit de mouture* should be fixed at one-fourteenth of the corn ground at the mills, which was an increase of the rate that obtained under the Custom of Paris.

In all other respects, the law was left as it existed under the jurisdiction of the parliament of Paris.

It was however usual to stipulate the right of *banalité* in deeds of concession; but that stipulation did not affect the *arrêt* of the 4th of June 1686, in respect of the obligation of the Seignior to build mills, which was frequently enforced.

Upon this point there are many judgments of the intendants vesting the right of *banalité* in *censitaires* when the Seignior had neglected to build the mill, or had failed to keep one already built in repair and fit for the wants and uses of the inhabitants.

Edicts & Ord. vol. 2.

Among others on this subject may be mentioned the ordinance of the 22nd July 1730, the 18th February 1731, the 10th March 1734, the 13th February 1746, the 1st October 1742, and the 12th Fe-

bruary 1746, and an ordinance passed by the *Conseil Supérieur*, on the 1st July, 1675.

This was the law of the country at the time of the conquest, and which is still in force and effect under the provisions of the 14th George the Third, hereafter cited.

These may be considered to be in truth the only claims of the Seignior upon his tenant, sanctioned merely by the law regulating the tenure in this colony, considered apart from special conditions, charges and reservations provided for in the original grants of the Seigniory and in the deeds of concession to the tenant.

The conditions, charges and reservations expressed in the deeds of concession *en roture*, with the exception of the *reditus* or *cens et rentes*, the right of *lods et ventes* and *banalité*, are therefore purely conventional and may be considered obligatory on the tenant, unless they are repugnant to some edict, *arrêt*, or ordinance.

What conditions, charges and reservations may be deemed questionable, on the score of legality, will be a matter of discussion in a subsequent part of this section.

With regard to such conditions and reservations in the deeds of concession to *censitaires*, as secure certain advantages to the public, in accordance with the corresponding clauses in the Royal grants to the Seigniors, no observation appears requisite; they are obviously legitimate and binding on all parties.

By many of the Royal grants of Seigniories, although not in all cases, it is made imperative on the Seigniors to parcel out their fiefs in grants *à titre de redevance*, according to the Custom of Paris.

These *redevances*, in the parts where that custom prevailed, consisted,—

1° Of the *cens* or *reditus* of one half penny, or one penny, recognitive of the Lord's Seigniorial right, *dominium directum*, and was so essential that, without it, no mutation fines could accrue on changes in the ownership of the land;

2° Of a moderate rent not essential to the tenure, which was variously payable in money, grain, poultry or other products.

From the period of the earliest concessions, which have come into our hands, made in 1652 by the Jesuits, who held by grants from the Company of New France, down to the year 1663, the date of the surrender by the Company of its rights to the Crown, the rate of *cens et rentes* in the province was nearly uniform.

See Table in Appendix B. No. 128.

In the Seigniories where the King was the immediate Seignior, the rates were fixed at one *sol*, *argent tournois*, or one half penny, for every superficial arpent, and a capon or ten pence, at the option of the Seignior, for every arpent in front, and one *sol* of *cens*, equal to about six shillings and four pence half penny, for a frontage of three arpents, by a depth of thirty arpents, making ninety arpents in superficies.

This rule would appear to have been much followed during the aforesaid period, and there is ample evidence to shew that, in the district of Quebec particularly, those were the usual and established terms; for we do not find an instance of excess over this rate, while, in some cases, a lower rent was agreed upon.

After the cession of the Company of New France of its rights to the Crown, a number of grants were made by the Crown, chiefly to persons who had served in the King's army and navy, in some of which the concessions are stated to be made in consideration of the services rendered by the grantees.

In these Seigniories, comprising, with the exception of the Island of Montreal, and one or two others, the most valuable possessions in the district of Montreal, the rents reserved were nearly uniform, being at the rate of about one penny for every superficial arpent, that is to say, from one to two *sols* for every arpent in superficies, and one capon of the value of ten pence, or a half bushel of wheat instead, making, valuing the wheat at that time at two *livres* a bushel, about one penny for every arpent of the concession.

Generally speaking, it may be assumed that, upon a grant of ninety superficial arpents, the rents in the district of Montreal exceeded those in Quebec and Tree Rivers by about one-fifth.

This rate prevailed until about the year 1711, when it is observable that some changes had taken place in the conditions and reservations, rendering them more burthensome to the tenants.

These additional charges consisted of reservations of wood growing on land conceded, and the establishment of *corvées*.

Between the year 1711, the year in which the Royal edict enjoining on the Seigniors to concede *à titre de redevance* was promulgated, and the year 1732, there is no perceptible or material alteration in the rate of *cens et rentes*, even in the concessions made by the proprietors of Seigniories granted by the Crown after the passing of the said edict of the sixth July 1711, the rates of *cens et rentes* then general in the colony being in most instances followed.

See Table in Appendix B. No, 128.

Nor from 1732 to the year 1759, was the rent materially augmented, except in a few cases; and the rate throughout the district of Montreal may be taken on an average to have been about one penny for every superficial arpent.

It is true that, in many Seigniories in the district of Montreal, the rents where rather higher than in the district of Quebec; but the difference was, in fact, not considerable, and may have been agreed to in consideration of the superior quality of the soil and its productions in grain, and may be ascribed partly to the practice of stipulating the payment of the *reditus* in grain, the fluctuating value of which was more lucrative to the Seignior than its being rendered in money or capons at a fixed value.

The rent in the district of Montreal was generally one *sol* and one quart of wheat, for every superficial arpent, or one half bushel of wheat for every twenty superficial arpents, although in the Seigniories belonging to religious bodies capons were generally stipulated instead of the money rent.

The value of such rent may be taken on an average to be about seven shillings and six pence for every ninety arpents, estimating the wheat in all these cases at one shilling and eight pence per bushel, the value set upon it in early judicial decisions.

Edicts and Ord. vol. 2. p. 81.

The appreciation of wheat, however, underwent a change; for, in July 1742, we find that by a judgment rendered against the *censitaires* of Argentenay, they were condemned to pay to the miller of that Seigniory, for the wheat not ground at the banal mill, at the rate of three *livres*, equal to two shillings and six pence, a bushel.

In some instances, the rent was payable in so many *minots* of wheat for the whole concession, in others a pint or quart or *pot* for each arpent in front by the depth of the land; while it was often agreed that so much grain should be rendered for every superficial arpent.

Notwithstanding these different modes in which the wheat rent was made payable, it is a remarkable fact, that on a just calculation, the result will be found the same, and the highest rate of concession in the district of Montreal, previous to the conquest, will be found not to exceed one penny for every superficial arpent, valuing the wheat at one shilling and eight pence per bushel.

Edicts and Ord. vol. 2, p. 268, 280.

In corroboration of this opinion, we refer to the ordinances of the eighth of May and the sixteenth of November, 1727, the first rendered on the application of the Sieur Levrard, Seignior of Saint Pierre, and the other on the application of the Sieur Rigouville. wherein the usual and accustomed rates of concession in the whole colony are incidentally mentioned.

But whatever inconsiderable diversity may have existed in this particular between the seigniories themselves, for there did exist a trifling variance, yet, with the exception of three or four cases, there was no difference in the rates of concession in any one seigniory.

The terms, as established by the old concession deeds, continued, without any change whatever, to be the guide and rule on all subsequent grants.

In those three or four excepted seigniories only does there appear, before the year 1759, any departure from the usual rates of concession, and the absence of this change in all the other seigniories must lead to the conviction that, notwithstanding the trifling difference in the rates of concession throughout the seigniories, a uniform rate, founded on the early concessions, was adhered to in each, and attests the vigilance of that branch of the government to which was confided the execution of the laws, and the accomplishment of the Royal intentions regarding the tenures.

The usages in respect of the rates of concession thus determined and established, continued to be the guide in many of the seigniories long after the conquest in 1759.

Soon after the conquest, a relaxation of these rules and a disregard of the legal obligations of the seignior, and in some instances of the *censitaire,* is perceptible, which may in some degree be ascribed to the proclamation of the King in 1763, whereby it was declared that, from thenceforward, the laws of England should be the rule of decision with regard to the civil rights of the inhabitants.

Many of the seigniors, believing that the laws, customs and usages in force in the colony prior to the conquest, had been superseded by the English law, considered themselves no longer bound by the old regulations respecting the tenure of their estates, and the granting of the uncleared lands in the seigniories ; so that, in many instances, they departed from the established rules and usages, and exacted higher quit-rents, *cens et rentes,* than would have been permitted by the French government before the conquest.

The *censitaires* themselves, equally anxious to elude the laws binding upon them, and enacted to promote the settlement of the country, forbear to seek grants of wild land from the seigniors, who were disposed to exact more onerous terms than of old ; and, in defiance of the laws which expressly prohibited the subdivision of farms beyond certain limits and dimensions, parcelled out their possessions into portions of ten, twenty or thirty arpents, whereby the population, instead of diffusing itself in the extension of the settlements, became crowded within a smaller space, contrary to the wise policy of the ancient government.

These abuses, which under the French government would have been immediately checked by the interposition of the intendant's authority, were, amid the confusion attendant on the establishment of a new order of things, and the changes supposed to have been introduced by the promulgation of a new system of laws, suffered to prevail ; and, although, by the Act of 1774, their ancient laws, usages and customs were restored and secured to the inhabitants, becoming thenceforth the settled rules of decision in all civil matters, the wise and beneficent intentions of the old government in respect of the tenure of lands (a point of the greatest importance to the welfare and settlement of a country) were wholly frustrated, and the seigniors for ever afterwards continued at liberty to exact rents and to impose conditions at their absolute discretion.

With the limited information we have acquired, it would be difficult to point out, with much accuracy, the various epochs at which fresh progress was made in infringement of the laws in this respect.

Having in our possession comparatively few concession deeds, no general and positive rule can be laid down applicable to the whole Province ; but it is sufficiently manifest, from those deeds which we have had an opportunity of consulting, that a change took place almost immediately after the conquest in some seigniories, and that in others a change occurred about the year 1785, and again in 1800.

From the last mentioned period down to the present time, the rates of concession have been progressively augmented in many parts, until, from about one penny per superficial arpent, which was the original rate, the *cens et rentes* have swollen to three pence, and from that rate to six pence, and even eight pence, per superficial arpent.

See Tables, Appendix B, N° 128,

So, also, by means of clauses and stipulations inserted in the deeds of concession, to which nothing parallel can be found before the conquest, the seigniors, since that event, have diminished the value and extent of the rights and estates of the *censitaires* in the lands granted to them, imposing many burthensome conditions, reserving wood and timber for private uses, as well as all mill-sites, not merely for the lawful exercise of the *banalité*, but for the establishment of all kinds of mills and manufactories.

In France, and particularly under the Custom of Paris, the *cens* and other annual rents and dues were regulated by no express law, but there was a usage as to the amount of the *cens* strictly so called; (*) and indeed, from the earliest times, fixedness of the rate of this rent (*fixité*) would appear to have been a ruling principle (§).

The seignior was at liberty to stipulate such rents and dues on the alienation of his land as he thought proper; but, although the stipulated additional rents and dues were not contrary to any law, and were clothed with the same lien or privilege as attached to the *cens*, they were not recognized as being founded upon the common law, nor considered essential to the seigniorial tenure, but were the creatures of positive contract and title.

Thus, although these charges were generally called seigniorial rights, and as such were secured by the usual privileges in favour of the seignior for their recovery, yet the law established certain important distinctions between them.

These rights were therefore divided by feudists into two classes :—

1st.—The natural or ordinary right, which the particular custom regulated in the absence of express stipulation.

2d.—Extraordinary rights, foreign to the common law, which were the subject matter of especial covenant.

In the first category were the *cens*, the essential characteristic mark of the direct seigniory, established by the common law, and which the local custom indicated as the natural charge upon the land; and the *lods et ventes* or mutation fines, and a certain pecuniary penalty due by the tenant neglecting to exhibit his title of acquisition to the seignior.

The other class consisted of numerous burthens and services, such as the *gros cens*, or additional rent, the right of *retractus*, pre-emption; neither emanating from the common law, but purely conventional.

(*) See Henrion de Pansey—Dissertations Féodales—Cens., § IX, vol. 1, p. 275-6.

(§) See note antè, page 3.

These rights, arising from contract only, became extinguished upon the judicial sale of the land, unless they were preserved by a legal demand on the seignior's part.

They were considered in the light of extraordinary incumbrances upon the land, and, as they were not classed among the charges legally due, a vendor was bound to declare them in order to absolve himself from the obligation of warranty with regard to them, which otherwise he would have incurred.

This was the state of the law under the influence of the Custom of Paris when it came to prevail generally in this colony under the edict of 1663.

To treat properly the subject of the peculiar regulations which exist in this colony with regard to the seigniorial tenure, it is necessary to revert to the earliest settlement of the country by the Company of New-France.

By a charter granted to this Company, in 1627, by Louis XIII, the most extensive powers for the purpose of effecting a settlement of the country were given, and the Company were authorized to make grants of land to such persons, in such quantities and upon such terms, as they might think proper for attaining that impartial object.

This Company having introduced the tenure which prevailed in Paris, where it was formed, granted lands to be held *en fief et seigneurie*, on terms and conditions calculated to promote settlements.

The grants were made, for the most part, under the Custom of Paris, although some few were made under the Custon of *le Vexin Français ;* and, after the surrender to the French Crown by the Company of New France, in 1663, of all its rights and territories, all grants of land in fief and seigniory were made subject to the provisions of the Custom of Paris.

In 1663, the *Conseil Supérieur* was erected by an Edict of the French King, and it was therein declared that the colony of New France should be governed by the law and custom of the Parliament of Paris; and powers were granted to the said *Conseil* to make laws for the good government of the colony.

In looking to the original grant to the Company of New France, and the Act of Cession of its rights to the Crown, it is apparent that the great object of the French Government was the settlement of the country.

The Company of New France, with limited means, although possessed of indefinite powers, had made little progress towards that object, at the time of the surrender of its rights.

Almost all their grants were merely nominal, no actual settlement having been made.

The first act of the Crown, on obtaining the cession of the colony, was to revoke all grants in that predicament.

The Edict promulgated by the King on the 21st of March 1663, declared that all grants should be null and void on which no settlement should be made six months after

the passing thereof, and granted full power to the governor and intendant of the colony to distribute anew the various seigniories, on condition, however, of actual settlement.

An *Arrêt* of the 4th June 1672, reduced the concessions already made in the colony to one half their extent, and the lands were distributed again among such persons as would undertake settlements within the period of four years, and in default thereof the said concessions were to be reunited to the domain, ordering at the same time the Intendant Talon to make an exact return to His Majesty of all concessions made in the colony, of their quality and extent, in the number of arpents, or other standard measurement used in the colony, the number of inhabitants, &c., &c.

This arrêt was followed by another of similar import, dated 4th June 1675; and by the arrêt of the 15th April 1676, full power and authority were given to the governor and intendant of the Colony to make all concessions, upon the condition however of having the said concessions ratified.

To this may be added, on the same subject, the arrêt of the 9th of May 1679, again diminishing by one fourth the extent of the concessions already made upon which no settlement had been made.

These Arrêts and Edicts are cited more for the purpose of shewing the intentions of the King in making the various grants and concessions, than as establishing any law on the subject; but they are important in their bearing on the Edicts promulgated subsequently to this period by His Most Christian Majesty, in relation to the tenure and the conditions on which grants of land in seigniories should be made.

Aware of the prevalent belief that there existed an Edict fixing the rate of concession generally at a certain specific amount, we conceived it our duty to make strict search among the Archives of the Province and the Records of the Provincial Tribunals under the French Government, and a thorough investigation of the whole matter enables us to state our firm conviction that no Royal Edict, or other legislative measure creating an obligation to concede lands *en roture* throughout the colony at any given rate, either in money, produce or commodities, was ever issued or enacted.

We have, however, arrived at the conclusion, from consideration of the Edicts, declarations and decisions hereafter referred to, that something nearly equivalent or approaching to such a regulation became established before the Conquest.

The before mentioned Edict of the 6th July 1711, is the first legislative Act of the King, made to regulate the concession of lands *en censive*, and to fix the conditions under which it should be imperative on the seignior to concede them.

By this Edict it was declared that there were many seigniories in New France in which no settlement had been made, and in which even the original grantees had made no progress towards the cultivation and settlement of the property, and that many seigniors had, under various pretexts, refused to concede lands to persons offering to perform acts of settlement, with the intention of making sales of the said land, at the same time that they imposed on the grantees the same dues *(les mêmes droits de rede-*

vance) as were imposed usually in concessions; which was wholly contrary to the intentions of His Majesty and the very conditions of the original grants to the seigniors themselves, by which they were permitted only to make concessions in consideration of rents *(à titre de redevance)*; and with the view of avoiding such abuses for the future, it was ordered that all seigniors, within a year after the promulgation of the said Edict, should make settlements and concessions in the said seigniories, in default of which they should be reunited to the Domain of the Crown, and that all seignior, having lands to concede within their seigniories, should be bound to concede to all persons demanding concessions *à titre de redevance*, on payment of a rent only, and without exacting any money for the same; and that on refusal of the seigniors so to concede, it should be in the power of the Intendant, on application for that purpose, to make concessions, on the same conditions as were imposed on the other concessions in the seigniories *(aux mêmes droits imposés sur les autres terres concédées dans les dites seigneuries)*, which rights and dues should be paid into the hands of the Receiver General of His Majesty's Domain, without its being in the power of the seignior to demand any dues whatever from them.

This Edict was followed by another of the same date, declaring all concessions made to *censitaires*, on which no actual settlement had been made, to be null and void, and that, on the certificate of the curate and captain of the *côte*, to that effect, they should be deprived of the concessions.

The intentions of His Most Christian Majesty, manifested by the said Edict of 6th July, was to compel the grantees of the Crown to concede lands on their seigniories at a mere rent, without exacting any *bonus* or capital, and that the concessions should be made at the rates already fixed in the seigniories by former concessions.

Upon this point, no reasonable doubt can be entertained, as full power was granted to the Intendant to make the concessions at the rate already established, in the event of the refusal on the part of the seignior to make them.

This Edict would seem to have determined the principle on which concessions should be made, and, although no rate is in terms mentioned in it, the previous concessions made in the seigniory were declared to be the standard for the future.

See Table in Appendix B. No. 128.

That the standard was nearly uniform throughout the colony, will appear by reference to the concessions made by the Seigniors up to the promulgation of the edict, the rate in no instance exceeding two *sols* per superficial arpent, and in a great many being only one *sol*.

In fact, upon the subject of the rate of concession, no difficulty appears to have existed in the colony, as a usual and accustomed rate was by universal consent acknowledged to be settled; but the great grantees of the Crown endeavoured to violate the conditions of those grants, and, by exacting sums of money for making a concession to effect sales of their land, contrary to the known laws of the tenure and the very conditions of the grants themselves.

This abusive practice of the Seigniors was, in truth, the origin of the edict of 1711.

In addition to the evidence to be drawn from the edict, and the very motives of its promulgation, there is ample evidence to be found in the decisions of the intendants, both before and after the passing of the edict, that upon the subject of rates no difference of opinion existed.

The first judgment on record on this subject, is a judgment of the intendant Mr. Raudot, of the 15th June, 1708, by which it was ordered that the seignior of Bécancour should concede certain lands to an inhabitant of the name of Perrault, upon the same clauses and conditions, *aux mêmes clauses et conditions*, as were contained in the deeds of other *censitaires*, and that in default thereof the judgment should be held as his title.

See Cugnet—Extracts of the edicts, &c., p. 26.

This judgment was followed, after the edict of 6th July 1711, by several judgments rendered by the intendant on the same subject, namely, the judgments of the 15th February 1716, the 28th June 1721, the 20th September 1721, the 16th October 1721, the 21st February 1731, the 20th July 1733, the 23rd January 1738, and the 23rd February 1748.

Edicts and Ord. vol. 2, p. 45, 50, 51, 71, 75, 82.

To these may be added, judgment of the intendant Begon, of the 11th March 1723, rendered against the Seignior of St. Pierre, and an ordinance of the intendant Dupuy, in the case of the same Seignior (Levrard) rendered on the 8th May 1727.

Edicts and Ord. vol. 2, p. 268, 272.

The whole of these judgments were founded on the edicts of the 6th July 1711, and most clearly demonstrated not only that an accustomed rate of concession was established by universal practice in the colony, but that the Seigniors were bound to concede at that accustomed rate to all persons soliciting concessions : the power to make these concessions, in the event of refusal on the part of the Seignior, being vested in the intendant.

That this authority was acted upon by the intendants, is manifest from the *arrêt* of the 29th of May 1713, only two years after the passing of the edict of 1711, by which the Seignior Duchesnay was prohibited from making any concessions, in the bourg du Fargy de Beauport, at a higher rate than that of one *sol* for each arpent, and a capon, to which *redevance* all concessions made by his predecessor at a higher rate in the Seigniory were reduced.

Edicts and Ord. vol. 2, p. 33.

This *arrêt* may be adduced as evidence of the operation of the edict of 1711, and of its prohibitory character, with reference to the rates of concession in the Seigniories.

In confirmation of this law of 1711, the *arrêt* of the Council of State of the 15th March 1732, was passed.

Edicts and Ord. vol. 1, p. 486.

This *arrêt* is important, not only on account of the positive nature of its enactments, but as explaining and confirming the dispositions of the edicts of 1711.

By this *arrêt*, after recital of the edict of 1711, whereby the King had declared that, in some of the Seigniories which had been conceded by him, no settlement or habitations had been made, and that if, at the expiration of one year from the date of the promulgation of that edict, they continued in that unsettled state, they should be re-united to the domain of the Crown, and that the said Seigniors had been ordered to concede upon a mere rent (*à titre de redevance*) and without demanding any sum of money whatever for the concession, and had granted permission to the inhabitants, in case of refusal on the part of the Seignior to concede, to apply to the governor, lieutenant-governor aud intendant, to obtain the said concessions, upon the terms and conditions, (*aux mêmes droits imposés sur les autres terres concédées*) and that the dues accruing therefrom should be paid into the hands of the receiver general of the King's domain, to the loss of the Seignior in that respect.

And the recital of another edict of the same date, whereby the King had declared that the inhabitants, who had obtained concessions, should be held to occupy and inhabit the same (*y tenir feu et lieu*), and in default thereof, that the lands should be re-united to the domain of the Seignior upon the judgment of the intendants, His Majesty being informed that notwithstanding these edicts, the Seigniors had reserved in their domain large tracts of country which they sold *en bois debout* in lieu of conceding only upon a *reditus* or rent (*au lieu de les concéder simplement à titre de redevance,*) and that the inhabitants who had so obtained sales of the wild lands, had again sold them to others, thereby making a trafic of the land, contrary to the well being of the colony, and it being necessary to apply a remedy to abuses so prejudicial in their effects, did order that, within ten years after the publication of that *arrêt*, all proprietors of land held *en seigneurie*, and not yet cleared, should be bound to make settlements and place inhabitants there to reside, and that, if after the expiration of the said term, such had not been done, that the said lands should be re-united to the domain in virtue of the said *arrêt*, and without any further order. And His Majesty did also most expressly prohibit and forbid any Seigniors or other proprietors to sell any wild land whatever, *de ne vendre aucune terre en bois debout*, on pain of nullity of the contract, and the restitution of the price thereof, and that the said lands so sold should be re-united to the domain of the Crown; and further ordained expressly that the said two edicts of 1711 should be carried into effect according to their tenor.

This *arrêt* therefore is a full confirmation of the edicts of 1711, being even more stringent in its dispositions; and if anything were wanting to ascertain the principle upon which concessions of land *en censive* were required to be made, the deficiencies may be supplied from this source.

So far from the estate of the Seignior in the fief granted to him by the Crown being absolute, free and unconditional, for the sole purpose of his own profit, it may be said that the land was held incumbered with a species of trust, to promote the speedy settlement of the property. — He was bound to concede upon a mere *reditus*, or

rent, without its being in his power to extend the obligation of the *censitaire* beyond that rent.

In the event of refusal, the power to concede upon the rate imposed in the other concessions was given to the governor, lieutenant-governor and intendant, and as a penalty for not conceding, he forfeited his land to the Crown.

To hold that these were not the true conditions upon which lands *en censive* were required to be made, would be to convert an estate subject to a trust into an absolute freehold; to deny that the Seignior was bound to concede at the usual and accustomed rates established in his Seigniory by the old concessions prior to 6th July 1711, would be to frustrate the very ends for which the edicts and *arrêts* had been made.

We can recognize no difference between demanding, for the concession, a sum of money in the nature of a price, and the stipulation of that price in the shape of rent chargeable on the land; in truth, they are identical in their results.

In both instances there would be a violation by the Seignior of the original conditions of his grant, because it would tend to impose more onerous charges than the law of the tenure allowed.

In looking to the latter part of the edict of 1711 (which may be said to remove all doubts concerning the rate of concession of land in the same Seigniories) we find that it enables any inhabitant, upon refusal of a Seignior to concede lands, to apply to the intendant, who was specially ordered to make the grant upon the same terms and conditions as were imposed upon the other lands in the same Seigniory, (*aux mêmes droits imposés sur les autres terres de la seigneurie*), thereby most plainly shewing that the rate of concession first established in a Seigniory was to be a guide for all future concessions in the same Seigniory, from which no Seignior could depart without a violation of the law.

It may be contended that the edict applies only to cases wherein the seignior refuses absolutely to concede his lands for an annual rent, whereupon the dues would become payable to the Crown; and that it cannot be extended to the case where the seignior is willing to grant *à titre de redevance*, although at an increased rate.

The answer to this objection, we conceive, is obvious.

The end which the edict had in view, in prohibiting the seignior from selling his wood-lands, and exacting sums of money in the nature of prices of sales, was the rapid settlement of the country, by placing within the reach of every man the means of obtaining land, subject only to a small annual rent; and it may be asked whether a departure by the seignior from the established rule of concession in his seigniory, by which it would be in his power to raise his dues without limit, would not defeat the object of the legislature; he might, indeed, style his grant a concession *à titre de redevance*, but it would differ from a contract of sale only in name.

It therefore follows, that a willingness on the part of the seignior to concede his lands, but upon terms and conditions more onerous than those already established in his seigniory, would have been considered as an absolute refusal to grant, which would have justified any applicant, under the law of 1711, in demanding, from the intendant, a concession of land upon payment of the same dues as were imposed on the other lands of the seigniory.

In confirmation of this view of the subject, it may be again stated that, if it were in the power of the seignior to raise his dues, his situation would be better than that of the sovereign, who was bound by the edict to exact no higher dues than those already established, in the seigniory, in those cases where the revenues escheated to the Crown on the refusal of the seignior to concede.

In conclusion, it is only necessary to advert to the wording of the edict (*aux mêmes droits imposés sur les autres terres dans les dites seigneuries,*) to be convinced that it sufficiently implies an uniform rate of concession in the same seigniory, no difference of rates being mentioned by which the grants made by the intendant for the benefit of the Crown should be distinguished.

If any inhabitant had, at the time this edict was enacted, a right to obtain a grant of land upon the same terms as any *censitaire* within the same seigniory, it is the undoubted privilege of any of the Queen's subjects to obtain the same grant at this day, the edict of 1711 being still the law of the land.

But controvertible evidence of the meaning and operation of this edict of 1711, and of the *arrêt* of 1732, and of the intentions of His Most Christian Majesty in promulgating them, may be gathered from the declaration issued by the King (Louis the XV) on the 17th July, 1743, concerning concessions in the colonies.

Edicts and Ord. vol. 1, p. 533.

This declaration states that authority had been granted to the governors and intendants of the colonies in America to make grants of land, for the purpose of promoting the settlement of the colonies, and to re-unite them to the domain of the Crown in default of settlement, and that full judicial power had been given to them, to the exclusion of the ordinary judges of the land, to determine upon all contestations which might arise among grantees and their assigns, as well in relation to the validity and the execution of concessions, as to their position, extent and limits ; but that no certain rules had been established as to the form of proceeding, either with respect to the re-uniting to the domain, for want of settlement, or to the course of proceeding on the contestations arising in relation thereto, nor as to the course to be pursued in appeals from the ordinances and judgments of the governors and intendants upon these points, so that different rules and usages obtained in different colonies and even in the same colony.

That for the purpose of removing all doubts and uncertainty upon subjects so interesting, and to secure the repose and tranquillity of families, he had determined to make certain fixed and invariable rules to guide in all the colonies, as well as to the forms

of proceeding to effect a re-union to the domain of concessions when the case might require it, as to all discussions arising thereupon, and the course of bringing appeals from the judgments therein rendered.

In the first article of this declaration it is directed, that the governors, lieutenant-governor, and intendants of the colonies, or the officers representing them in their absence, should continue to make concessions to the inhabitants who might be entitled to obtain them for settlement, and should grant titles to them on the ordinary and accustomed clauses and conditions (*clauses et conditions ordinaires et accoutumées.*)

This article of the declaration is cited as bearing more particularly on the subject of concession, and as shewing that an ordinary and accustomed rent was then (1743) recognized and acted upon.

It is true that the whole of the declaration may be viewed more as an *arrêt de réglement* in reference to the course of proceeding before the governors and intendants and in appeals therefrom, than as a declaration in which any legal enactment in respect of the tenure itself is set forth ; yet the terms of the first article cited above, and the express authority and order given to the governors and intendants to make concessions upon the accustomed and ordinary rent, in applications made to them founded on a refusal of the seignior to concede, in our humble opinion, remove all doubts upon the subject, and characterize the *arrêt* of 1732 as prohibitory in their operations, and fixing unalterably the receiprocal obligations and rights of the seignior and *censitaire.*

We may therefore be permitted to inquire what law it was the intention of the Crown to introduce by the edict of 1663, with reference to the tenure of land, (*les lois et ordonnances de notre royaume et y procéder autant qu'il se pourra en la forme et manière qui se pratique dans les ressorts de notre cour du parlement de Paris ;*) was it the common rule under the parliament of Paris in relation to the tenure *(en censive)* and the usual and ordinary quit-rent, *cens,* or was it the intention to give unlimited power, and to permit the seignior to impose such charges on the land upon its alienation, as he thought proper ?

Upon this point, we think that no reasonable doubt can be entertained.

The rule followed by the Crown in its own *censives,* and the rates of concession down to the conquest of this country, afford the most conclusive proof of the intention in this respect ; for whatever latitude may have existed, under the Custom of Paris, in the imposition of seigniorial charges and dues, beyond those incidental to the tenure under the common law rule, (*) it is clear that under the operation of the edict of 1711, and the *arrêt* of 1732, certain fixed and unalterable rules were established in the colony to regulate the concession of land, from which the seignior could not depart.

(*) See Henrion de Pansey—Dissertations Féodales, v. Cens. ubi suprà.

The fixedness of the rate of rent, as a ruling principle, is manifested in a striking manner by the remarkable fact, that it required the express authority of the King to enable the seigniors of Montreal to raise the established rent under peculiar circumstances.

See Appendix B. No. 103.

These rules were manifestly imposed from the necessity of the case, for if the jurisprudence of the parliament of Paris in this respect had been allowed to become the law of the colony, the intention of the Crown in the settlement of the country would have been altogether frustrated.

In expressing our opinion on this branch of the subject, which we feel to be one of a delicate nature, and involving interests of great magnitude, we have calmly and dispassionately considered the matter as a purely legal question, irrespectively of cases of individual hardships, or of what may be deemed vested rights founded on long and uninterrupted possession, or the obligation of contracts.

The Courts of Justice, in later days, swayed, no doubt, by these considerations, have, for the most part, disallowed the principle of a usual and accustomed rate.

See Appendix B, Nos. 111, 112, 114, 115, 116.

By their judgments they have maintained that the seignior had the right of conceding upon such terms and for such rents as he might agree upon with his tenants, and have refused to give relief to the *censitaires* from such conventional burthens.

They have departed not only from the strict letter of the law regulating the tenure under the French Government, but from the true spirit and policy of that law, and the conditions of the original grants.

And however unfounded the pretension of the seignior might have been considered in the Court of the intendant, he has in the Courts of a later erection invariably been successful in all his contests with his tenants, with the exception of a single instance, which occurred in the Court of King's Bench at Montreal in 1828.

See Appendix B, No. 113.

Being of opinion that the Edict of 1711 is still the law of the land, it remains to be inquired whether there resides in any tribunal the authority competent to enforce it.

By the Act of 1774, commonly called the Quebec Act, the inhabitants of this colony were confirmed in all the laws, customs and usages relative to their civil rights ; and it was enacted that in all matters of controversy relative to property and civil rights, resort should be had to the laws of Canada, as the rule for the decision of the same, and that all causes thereafter instituted in any Courts of Justice to be appointed within and for the said Province by His Majesty, his heirs and successors, should, with respect to such property and rights, be determined agreeably to the said laws and customs of Canada, until they should be varied or altered by any Ordinances that should from time to time be passed in the Province by the governor, lieutenant-governor, or commander in chief for the time being, by and with the advice and consent of the Legislative Council of the same to be appointed in manner thereinafter mentioned.

This Act therefore guaranteed to the Canadians their civil rights, and, of necessity, the tenure and the laws regulating the same were fully and unreservedly maintained.

That such was the intention of His Majesty's government, is apparent on reference to the instructions conveyed to general Carleton, transmitted to him immediately after the passing of the act above quoted.

The article 38th of the instructions is in the following terms: " By our commission to you under our great seal of Great Britain, you are authorized and empowered, with the advice and consent of our Council, to settle and agree with the inhabitants of our said Province of Quebec for such lands, tenements and hereditaments as are now or shall hereafter be in our power to dispose of.

" It is, therefore, our will and pleasure, that all lands which are now or hereafter may be subject to our disposal, be granted in fief or seigniory, in like manner as was practised antecedent to the conquest of the said Province, omitting however, in any grant that shall be passed of such lands, the reservation of any judicial powers or privileges whatsoever.

" And it is our further will and pleasure that all grants in fief or seigniory, to be passed by you as aforesaid, be made subject to our Royal ratification or disallowance, and a due registry thereof within a limited time, in like manner as was practised in regard to grants and concessions held in fief and seigniory under the French government."

From these passages it appears unquestionably that the laws in force at the time of the conquest in 1759 were preserved in all their force ; and that, in relation to the tenures of land in the Province, the law of 1711, and the custom which prevailed in the colony prior to the conquest, respecting grants *en censive*, remained to all intents and purposes the law of the land.

We proceed now to consider whether the judicial authority, which was vested by the King of France in the intendants to enforce the Edict of 1711, can be exercised by any tribunal now in existence in this Province.

Under the Ordinance creating the Court of Common Pleas in this Province, passed in the 17th year of His Majesty George the Third, we think the judicial power of the intendant was transferred to that Court.

It was the Court erected under that Act to decide controversies respecting the property and civil rights of the colonists ; and, although the legislative powers vested in the intendant could not, consistently with the principles of the new government, be delegated to that Court, yet all the jurisdiction of that officer, exercisable for the protection of the civil rights of the subject, was transferred to the new tribunal ; and by the 34th George 3rd, establishing the Court of King's Bench in this Province, and repealing the 17th George 3rd, the judicial powers of the inteudant are expressly given to that Court, to be exercised in the most full and ample manner.

See Appendix B, No. 102.

Under these circumstances, therefore, we consider that the Court of King's Bench now estatablished has full power and authority to enforce the Edicts of 1711, with the Arrêt of 1732, and to carry out the jurisprudence established before the conquest.

Having reviewed the laws of the seigniorial tenure as they existed under the French government, and as they continue to exist in the Province of Lower Canada after the conquest, it becomes our duty to advert to the alterations which these laws have undergone by legislative enactments.

The first provision affecting the law of tenures in this Province, is to be found in the Imperial Statute of 3rd George IV, chapter 119, intituled, " An Act to regulate the Trade of the Provinces of Lower and Upper Canada, and for other purposes relating to the said Provinces."

The chief part of this law concerns the revenue, but the thirty-first and thirty-second sections affect the seigniorial tenure of land.

The defects of this Act were however soon perceived, for, as it was limited in its provisions to commutations between the Crown and the seignior, or between the Crown and its grantees *en roture*, the *censitaires* in many of the seigniories were left wholly unprotected, and were doomed to live under a tenure which they might consider of a most burthensome and odious character, while the Act gave to the seigniors an absolute and unconditional property in the ungranted portions of their fiefs, in direct violation of the wise and beneficent intentions of the Edicts of 1711, and the Arrêt of 1732, and the Declaration of 1743, by which, as we have already shown, the seigniors are bound to grant lands to such persons as apply for them, subject only to the accustomed rents and dues.

To remedy the defects of this Act, and to provide for a commutation between the seignior and *censitaire*, another Act was passed by the Imperial Parliament, in the sixth year of His late Majesty George the Fourth, intituled, " An Act to provide for the extinction of feudal and seigniorial rights and burthens on land held *à titre de fief et à titre de cens*, in the Province of Lower Canada, and for the gradual conversion of those tenures into the tenure of free and common soccage, and for other purposes relating to the said Province."

Under this act, the most objectionable part of the act 3 George IV, whereby the seignior is clothed with an absolute and uncontrolled property in the wild lands of his seigniory, not only stands unrepealed, but is confirmed.

On the legitimacy of these enactments, it is not our province to comment; but we are gratified to find the views we entertain, regarding the vesting in the seigniors of an absolute freehold estate in those unconceded lands, are supported by the authority of an address of the honorable House of Assembly of Lower Canada to His Excellency the Governor in Chief, presented in the session of 1824.

The concluding part of that address is in the following terms:—" That the unconceded lands held by the seigniors *en fief* in this Province are held by them subject to be regranted to any applicant engaging to settle thereon, subject only to the accustomed dues and conditions, and that it is on grants of those lands that the cultivators of the soil in this Province depend for the settlement of their children, the said cultivators and their children having a legal right to obtain such grants.

"That any arrangement made under the said act 3 George IV, between His Majesty and the holders of such waste lands in fief and seigniory, would be to deprive a third party of an equal right which is beneficial to the individual, advantageous to the community, and guaranteed by the capitulation of the colony, and by the act of the fourteenth year of the reign of His late Majesty.

"That this House conceiving that it is a duty incumbent on it, in so far as may depend upon this House, to protect every right of its constituents, humbly represent the matter to your Excellency, and pray that, in any conditions which may be imposed on any seignior surrendering lands under the said act, to obtain a grant thereof in free and common soccage, such conditions may be imposed on such seignior, in conformity to the said act, as may preserve entire the right of the subject to a grant of the said waste lands, at the usual *redevances* or dues and conditions."

We come now to the second branch of the subject of our investigation, namely, as to the present working of the feudal and seigniorial tenure in this Province.

In stating our views on this branch of the enquiry, we must necessarily proceed on the assumption that the exorbitant pretensions of the seigniors, at the present day, are just and founded in law as now administered.

Taking this for granted, it cannot be denied that this system of tenure is in many respects vicious and is productive of extreme injury.

The dues and services exacted, without considering the more common abuses, are oppressive to the land owner, not only from their variety, but from their nature.

The pecuniary dues of the *censitaire* are, in many instances, more than he can liquidate; while the reservations to which he was forced to submit by his lord, deprive him of the free use of his land as proprietor. He is, in many instances, subjected to fines for neglect of certain services, in some cases of mere form, by which his condition is fettered.

Instead of being able to add to his resources by developing such advantages as his soil or its natural position may present in the free exercise of mechanical skill, he is bound to the land for the mere purpose of cultivation, and is dependent on its return for a precarious subsistence.

Thus, if he be possessed of a mill-site, or a spot of land favorable to the construction and operation of machinery, he is prohibited from using it. The reservations contained in his deed of concession deprive him of the advantage of it, except at a heavy cost. If his crop fail him, he may be kept in a state of indigence, although able and willing to better his condition by mechanical pursuits. He is thus kept in a perpetual state of feebleness and dependence. He can never escape from the tie that binds him and his progeny forever to the soil—as a cultivator he is born, as a cultivator he is doomed to live and die.

By these means, all progressive improvement in the country is checked; its resources for advancement in the arts of civilized life are in the hands of the seigniors, and they may alone

reap the advantage. But even in the limited sphere of action allowed to the *censitaire* under this tennre, he is controlled.

The odious claim of *lods et ventes* or the mutation fine of one-twelfth, eight and one quarter per cent on the price of his farm, which he is bound to pay on every mutation of property by sale, or act equivalent to sale, not only diminishes the value of his property, but checks the spirit of enterprize.

This fine is levied on his improvements, thereby taxing his industry to an unlimited extent. The right to *lods et ventes* is unquestionably legal; but its injurious operation is not the less felt.

Although principally oppressive in towns and villages, it paralises the whole country by its influence, for, by affecting property in the towns and populous villages, the seats of wealth and intelligence, its baneful operation is extended in every direction.

The demoralising effect of this right is unquestionable; because, to avoid its payment, the *censitaires* frequently resort to frauds, often involving in their consequences the crime of perjury. This is an event, at any rate in the District of Montreal, of no unfreqnent occurrence, and as the value of property becomes augmented, too likely to be continued.

In addition to these, are the rights of pre-emption, *retrait*, and *corvée*, or days labour, impeding in some degree the improvement of the country; the *retrait*, when misapplied, preventing the free conveyance or transfer of property, and the *corvée* being odious and humiliuting to the man.

This right of pre-emption may be rendered most oppressive. It not only gives rise to great abuses in respect of the tenant, by frustrating and interfering with his most cherished plans of amelioration, but it opens the door to exactions on the part of the seignior, against which it is wholly out of the power of the tenant to protect himself, by enabling the seignior to demand any sum he pleases for relinquishment of his right, under the name of a mutation fine.

This is no unfounded charge, for there exists evidence of such abuse in some cases.

The right of *corvée* is hateful in the eyes of the *censitaires*, and it is a badge of servitude.

In many instances these *corvées*, at the execution of *titres-nouvels*, have been illegally superadded to the contents of the original deeds of concession.

We cannot overlook a stratagem of which some seigniors, as we are informed, have availed themselves to elude the law prohibiting the sale, by the seignior, of uncleared lands on their concession for rent and an additional *bonus*.

The mode of proceeding to attain this object is by making a fictitious concession to an agent or friend, who forthwith sells the land and pays the price to the seignior.

Besides the burthens above mentioned, there are in many seigniories the prohibitions to build mills, the right of appropriating six arpents for the erection of any mill by the seignior,

and this without indemnity for the land, but paying for improvements only, should there be any; the right of taking all timber, such as pine, oak and saw logs, all stone, sand and materials necessary for building, and this without indemnity; the right of changing the course of all streams or rivers for manufacturing purposes, and the right of ferry over rivers. It is even made the subject of covenant, in some early concessions, that the tenant shall have the privilege of using any wood on his land which he may require for his own use.

These reservations are past comment; no system can be devised better calculated to keep a man in perpetual subjection. Under it, all the generous emotions of his nature are stifled. Thus he gradually becomes impoverished; he toils through existence without the hope of relief, and transmits to his posterity a worthless inheritance. Under the operation of such a tenure, his right of property may become a mere delusion; as a moral being, he is degraded, and his position is one of perpetual dependence.

Let us now consider the means which the laws afford to the seignior for the recovery of his rights, and the practical consequences of the exercise of such legal remedies.

To secure these rights, the law awards to the seignior an especial privilege. He is entitled to claim, on the estate of his vassal, a preference over all persons. He can recover arrears of *cens et rentes* for twenty-nine years. These arrears are not only secured by a priviledged lien on the land on which they accrued, in preference to all other persons, even to the vendor of the soil, but operates as an incumbrance on all the other possessions of the grantee from the date of his concession deed. For the recovery of his *lods et ventes* he is equally preferred, and it frequently happens that for arrears of that right, he sweeps away the whole of the money arising from the sale of the farm. The tenant is also subject to an action at law for each of the rights and services due under his concession. Although the amount of such dues in money may be trifling, they have hitherto been deemed recoverable in the highest courts of the province.

As the dues are charged upon the land itself, a judgment must be there obtained to enable the seignior to bring it to sale, and obtain payment. Thus the tenant is liable to heavy costs for the recovery of a sum which, but for the nature of the debt, would have been the subject matter of a suit in a court of inferior jurisdiction.

An instance of the mischievous tendency of the law in reference to the compulsory observance of seigniorial services, may be found in the case of the *censitaire* of the seigniory of Beauharnois.

The proprietor of the seigniory obtained Letters Patent for the foundation of a land-roll *(lettres de terrier)*, that is, the right of compelling the *censitaires* to take new titles, which consist of an acknowledgement of re-iteration of the terms and conditions of the original grants.

Those *censitaires* who neglected to take such titles, for which also they were bound to pay a fee to the notary, were prosecuted, and judgments were rendered against them, condemning them to accept new titles, and to pay five pounds damages and costs, for having neglected to conform to the requirements of the law. The costs, on

an average, amounted to about ten pounds, thereby entailing an expense which, in some instances, would lead to the sale of the tenant's property.

See Appendix B. N° 123. The files of the Court of King's Bench for the District of Montreal fearfully illustrate the practical working of the system; for it will there be found that, out of the whole number of actions brought in that Court during the last thre years, about one-fifth part were instituted by seigniors for the recovery of rights and services due under the tennre.

Appendix B. N° 124. The result, appearing from official returns and information, is that, during the same period, somewhat more than one-fifth of the judicial sales were made at the instance of seigniors to enforce their judgments.

Such is the operation of a tennre declared by its apologists to be of surpassing excellence, and suitable to the wants and condition of the inhabitants of this province: but this is not the view entertained by the inhabitants themselves, who are desirous of a change although they differ in opinion respecting the nature of such change. They declare that their burthens are intolerable, and that unless the Legislature come to their relief, inevitable ruin awaits them.

Profoundly impressed with the importance of this subject, and its ultimate effect on the prosperity of this province and the welfare of its inhabtiants, we feel that the time has arrived when a change or modification of the law in respect of the tenure of land can no longer with safety be withheld. It has even been asserted, by persons from various sections of the district of Montreal, that the feudal exactions, and the neglect of the government to enforce the ancient laws of the province in relation to the tenure, conduced in no small degree to the outbreaks in 1837 and 1838,

The principal argument used by the advocates of the feudal tenure is that, if the feudal property were converted into free tenure, facilities would be afforded to land speculators to become proprietors of large tracts of land in the seigniories, to the great inconvenience and, in some cases, to the ruin of its inhabitants.

This argument is not only ill founded, but wholly inapplicable, for, under the present system, in some seigniories, the real land speculators are the seigniors themselves.

The lands are brought to sale for payment of the high rents, and the seignior, free from all competition, buys the finest farms for sums scarcely adequate to the payment of the arrears, and makes a traffic of the land by selling again for large sums, or by conceding on conditions infinitely more onerous, thereby securing to himself a monopoly ultimately ruinous to his *censitaires*.

The operation of the tenure in this respect is an abuse and a departure from its true spirit, and one likely to be continued from the very nature of the burthens imposed on the tenant.

In submitting our views upon a scheme of commutation, we feel compelled to declare that we do so with great hesitation and diffidence.

A subject of such vast importance to the welfare of the community ought not to be lightly treated, nor should any scheme be proposed without possessing all that statistical information relative to the seigniories without which its justice and feasibility cannot be tested, and without a full knowledge of the views and opinions of those most interested in so great a change.

The conversion of a tenure ought not to be recommended without the most unquestionable necessity, nor should the change be determined upon except upon due consideration of the necessary consequences to the rights and privileges of those destined to be affected by it.

Viewing a conversion of tenure in the abstract, or as a mere measure of public utility, called for by the advancement of a country in intelligence and civilisation, it would be less difficult to give the general outlines of a plan calculated to effect it; but regarding the tenure as one under which the inhabitants of this country have lived since its first settlement, as one intimately blended with their laws and customs, the subject becomes intricate and demands the maturest examination.

It cannot be denied that sound policy, for the ultimate well-being of the inhabitants of this community, requires that the feudal tenure should be abolished.

It is no longer suited to the spirit of the age nor the actual wants of the population; it is the relic of a barbarous age, and, in its practical operations, antagonist to the growth and permanency of free institutions.

However advantageous it might have been in the infancy of the colony, and favorable under wholesome restrictions to the rapid settlement of the wilderness, its necessity is no longer felt; and in a more advanced community, it operates as a bar to general improvement and the prosperity of the people.

Situated as is this country, with a belt of land on either bank of the River Saint Lawrence, and along its tributary streams, held under the seigniorial tenure, but surrounded on all sides by a population wholly opposed to it, and holding their lands under rules of an adverse character, calculated to create and to cherish opinions in unison with a higher state of civilisation, it is manifest that the force of circumstances and the general advancement of the country most sooner or later lead to this change.

In the one case, we should see a population rapidly advancing to a high state of prosperity in agricultural and mechanical pursuits, holding their lands under a tenure eminently adapted to foster the principles of freedom and develope the energies of the man; in the other case, a population struggling under the artificial and antiquated system of a by-gone age, with no ultimate hope of relief, and rendered discontented by a comparison with their more fortunate neighbours.

A result so certain to arrive, it should be the wise policy of a government to prevent. Under such circumstances, the conversion of a tenure is no longer a matter of expe-

diency, it is one of necessity, and is the only measure by which one portion of the population can be rescued from certain degradation. Were the tenure free, they would feel that they are no longer bound to the soil, they would experience the promptings of a generous emulation, and the necessary result would be the emancipation of a people, and their advancement in all the arts of civilized life.

Assuming therefore that the conversion of the tenure would be expedient, it may be inquired whether such a change is wished for by the entire population of the province. Upon the very limited information possessed by us, we cannot found a general opinion as to that point.

The subject, although of the greatest importance to the whole community, has not, throughout the country, received that degree of attention which it merits. We are possessed of scattered opinions from various sections of the province, but it would be improper to take these few communications as the general sense of the whole population.

We think that the inhabitants of French origin have no great wish to change the tenure of their lands, if it were to be attended by the introduction of any alteration of the laws affecting their rights, although extremely desirous to be relieved from seigniorial burthens. They are anxious to be exonerated from the burthens pressing most heavily on them, but in few instances do they express a willingness to pay any equivalent.

The great majority of the English population are in favor of a commutation, and, in some instances, seem disposed to give a fair indemnity to the seignior.

Modifications of the seigniorial tenure requisite to meet the views of the majority of the French Canadian population we think impraticable, without a great stretch of power.

The seignior must receive a compensation for his rights, and this compensation can only be given by means of a commutation.

If the *lods et ventes*, *banalité*, and excessive rents be taken away without indemnity, it would be a measure fraught with manifest injustice ; for these rights, to a certain extent, are incidental to the very tenure, and in that degree are guaranteed by law. If the tenure be allowed to continue, these rights must also subsist as an essential part of it, and the evils arising from it, the removal of which is so loudly called for, must also remain unabated.

A commutation, therefore, is the only resource left, and this commutation should be based on strictly just principles.

Before proceeding to discuss the various plans submitted to us in the course of our inquiry, it is proper to determine the exact position of the seignior towards his *censitaire*, and the nature of his claims, and to distinguish those rights for which he is intitled to an indemnity, from those which are in their nature honorary or conventional, and which ought to be, without any hesitation, utterly abolished.

The claims, for whose surrender the seignior is intitled to an indemnity, are, first, the rent or *cens et rentes*, comprising the *corvées* when stipulated ; secondly, the *lods et ventes*. These two rights are those upon which the principle of commutation will chiefly turn.

Reserving the right of *banalité* for future discussion, we have to observe, that for all the other rights and claims of the seignior, such as *retrait* and reservations of every description, except such as are made in the interests of the Crown, the seignior is not, in our estimation, entitled to any pecuniary indemnity, and they ought to be for ever abolished ; because the right of *retrait* is only admitted as the means of obviating frauds on the seignior, and not as a profitable right, and the reservations for the most part are unauthorized by law and repugnant to the principles of the tenure as introduced into this province.

See Edicts & Ord. vol. II. p. 45, 46, 50, and 100.

On the subject of the rate of *cens et rentes*, we have already expressed our opinion, and it will rest with the legislature itself to determine that question as it may affect the *quantum* of indemnity.

The various schemes of commutation which have been proposed to us may be classed under three general heads, which will be discussed in their order.

The authors of the first scheme conceive that all the rights of the seignior should be extinguished on payment of a capital sum, of which the *cens et rentes* will be the interest at the rate of six per centum par annum, and of one *lods et ventes*, in full and entire extinguishment of the rights under the tenure, such mutation fine being computed on the value of the farm, less the capital of the rent, by *experts* or arbitrators, one of whom should be chosen by the seignior, and a second by the *censitaire*, and by an umpire, who in all cases should be a commissioner appointed by government : that the commutation should be voluntary on the part of the *censitaire*, and compulsory on the seignior.

This scheme is recommended by men of all opinions, and by many whose knowledge and experience are entitled to the greatest respect. It is contended by some of those who enunciate this scheme that one *lods et ventes* so calculated will be an adequate remuneration to the seignior for the surrender of all his rights, apart from the *cens et rentes*.

The principle, upon which the calculation is based, is that, on an average, every property in a seigniory changes hands once in not less than twenty years, and that, perhaps, the average may be lower.

If then the seignior obtains his mutation fine once in twenty years, the same fine once paid and invested at simple interest, will double itself in fourteen years. It is therefore considered more than an equivalent for the *lods et ventes* alone, and that the overplus would pay for the surrender of all the other rights.

This may be considered to be a very equitable scheme, and one which would secure to the seignior, making a judicious investment, a full indemnity for his rights. The

capital sum thus obtained might either be paid to the seignior or be converted into a *rente constituée*, with its privileges clearly defined by law, chargeable on the land and redeemable at the will of the *censitaire*, in sums of not less than five or ten pounds The advocates of this scheme consider that the seignior is not entitled to any further indemnity.

In reference to this plan of commutation, we deem it our duty to point out those objections which naturally present themselves, and which might be worthy of consideration in framing any bill founded upon this scheme.

It is proposed that the commutation shall be voluntary on the part of the *censitaire*, but compulsory on the seignior. On behalf of the seignior, it may be urged that, if it be optional for the *censitaire* to commute and not compulsory, such commutation may be forced upon him at all times, on the demand of any one *censitaire*. By this means, he would be compelled to take his indemnity in small sums, and possibly at remote periods of time.

The benefit, therefore, which it is expected he would derive from an investment of his capital to produce a rental equivalent to his rights, would be impaired, while he would be obliged to maintain the same system of expense in agency, &c., for the recovery of his rents, until it should please the *censitaires* to commute.

This objection is not without reason, but it may be observed that, until the commutation takes place, the seignior is still in possession of all his rights, and that, if a limited time were fixed after which it should not be competent for the *censitaire* to commute upon the same favourable but upon more onerous terms, this evil or inconvenience would be mitigated or removed; for this limitation of time would excite the attention of the *censitaire* to the interest which he would clearly have to effect a commutation. But moreover, this objection we deem of no weight when compared to the manifest injustice and hardships which would result to the *censitaire*, if he were compelled at once to redeem rights which he might not have the means to extinguish.

The *censitaires* being the more numerous class, in whose well-being that of the community is more immediately concerned, their interests ought in this particular to preponderate over those of the seignior.

On the part of the *censitaire* it may be urged, that if the scheme should make it compulsory on him to commute immediately, he would be burthened, if unable to pay the capital of the indemnity, with the payment of a yearly rent, in the shape of interest beyond the usual *cens et rentes*, and that, until he chose to sell his land, no mutation fine would accrue, and he would have no more to pay than his usual rent. This argument of the *censitaire*, arising out of purely personal considerations, is merged in the general interests of the commuuity; and, if it be beneficial to him to effect his liberation from seigniorial burthens, the disadvantage arising from the payment of the yearly interest of a small indemnity, is more than compensated by the enfranchisement of his lands and himself upon favorable terms. It will be observed that in this scheme, no time is specified within which the commutation should take place, and the plan would seem defective in this respect.

The indemnity should in our opinion be liable, after the expiration of a certain time, to a small annual increase ; for the basis of calculation being that all properties change hands once in every twenty years, it should not be in the power of the *censitaire* to await until the twentieth year to effect his commutation.

Upon the conversion of the seigniorial tenure in France in 1790, the rate of indemnity for the right of *lods et ventes* was fixed at one twenty-fourth part, or one half a mutation fine, and two years was the period allowed for the commutation on this principle ; but it was provided that, if the redemption was made at any time after the two years, and that a sale of the same property should be effected by a voluntary contract within two years after such redemption, another half of the mutation fine would accrue to the seignior notwithstanding the commutation. A limitation of time as an expedient, as well for protecting the interests of the seignior, as for inducing a speedy enfranchisement, was adopted in the Ordinance respecting the commutation of seigniorial rights in the seigniory of the Island of Montreal.

We think that some rule of this description should be followed.

The second general scheme to which we now refer, is that proposed by the *censitaires* of the seigniory of De Léry, Foucault and Lacolle, as set forth in the answers of the Rev. Mr. Townsend transmitted to us.

The scheme by them suggested, is to the following effect: 1st. That the *censitaire* should pay to the seignior a capital sum, of which the rents, that he is legally entitled to demand by his charter, should be the legal interest, with the privilege of paying the capital in sums of not less than two pounds ; 2nd. That he should pay in the same manner a capital sum, of which the annual value of *lods et ventes* should be the legal interest, which amount should be established by a reference to the seignior's books, and by an average on the receipts arising from that right, for a period of five or ten years. That interest should be allowed to the *censitaires* on all sums which should be found on such rent day to be over and above the seigniortal dues. That the seignior's present rights should remain intact until the whole amount of the commutation should be paid, upon which final payment the feudal tenure should cease to exist, and the *censitaire* should obtain a deed in free and common soccage of his land.

It is also considered that the Crown should surrender its rights of *quint* and *relief*, and that a corresponding diminution should be made in the value of the *lods et ventes*. By this plan, it is proposed, that all the other rights of the seignior, such as the right of *banalité*, *retrait*, and all reservations should be abolished.

This scheme is recommended by the *censitaires* of Foucault and Noyan, and they expressly deny the right of their seignior to any indemnity for the *banalité*, because no *banal* mill has been built in those seigniories, with the exception of an old mill in Foucault, erected long ago by Mr. Caldwell, but which is altogether insufficient, whereby the *censitaires* are compelled to go a distance of ten, twenty, and thirty miles, to get their corn ground.

This violation of the obligation to build proper mills for the uses of the *censitaires*, they consider, entitles them to some indemnity from the seignior.

But they say that in other seigniories where *banal* mills have been erected, if it should be considered proper to grant an indemnity for that right, a like rule might be applied, and a capital taken of the clear yearly rental of the mills, after deduction of all expenses and charges, and of the interest of the capital invested in the mill.

The principle of the scheme is that it should be voluntary for the *censitaire* to commute, and compulsory on the seignior; and it is recommended that some definite rules should be established by law, as the basis of commutation, which should be applicable to all rural seigniories, leaving the minor details to be settled by the circumstances of each case.

This scheme does not state any particular period within which the commutation should take place, nor does it state in what way the capital sums thus reckoned should be levied in the seigniory; but it is presumed to be their intention that the capital be divided and apportioned among the farms according to their value, to be ascertained by appraisement.

With regard to this scheme, we deem it our duty to declare that, however just the principle may be upon which it is based, that is in giving to the seignior the capital of which the yearly rent is the interest, it is defective on the ground of its being voluntary.

If the time for commutation be unlimited, great uncertainty would prevail in ascertaining the just value of the various rights, particularly the *lods et ventes*, which is fluctuating in its results, and dependent upon circumstances for increase or diminution.

Therefore a certain period should be fixed by law as the time for the valuation of these rights throughout all the seigniories, and that estimate should be taken as the rule for all future commutations; unless it should be deemed preferable to fix some period by law within which the *censitaire* should be bound to commute.

This scheme we cannot but consider as one of great liberality on the part of the *censitaires*, and deserving of serious consideration, for it secures to the seignior the full value of his property; but correct statistical information would be requisite to determine whether or not the apportionment of the capital would not, when the rents are very high, create an incumbrance altogether disproportioned to the value of the farms. In investigating this scheme, much will depend upon obtaining accurate information of the annual value of these rights, and, from some details with which we have been furnished, we are inclined to think that it will be calclulated, in the old seigniories, to produce a fair and equitable basis of commutation.

On this head, we may be permitted to refer, for illustration, to the seigniories of W. P. Christie, Esquire, by whose *censitaires* the plan is suggested.

Appendix B, No. 121. From a statement exhibited by that gentleman, of the annual rental of his seigniories in *cens et rentes* and *lods et ventes*, it will appear that the proportion which his rental in *cens et rentes* bears to his rental in *lods et ventes*, is as four or five to one. Then, if the lands are charged with an annual *cens et rentes* of four

pence per acre, the additional charge created by adding the *lods et ventes* will be about one penny.

A capital, therefore, of which these two sums would be the interest, that is, of five pence, would be the full amount, upon a recognition of the rights of the seignior in their fullest extent, which he would be entitlee to demand from the censitaires for their surrender; for this sum would of necessity produce the full amount of his income in both particulars.

Thus the commutation would be given upon a payment of a capital of which five pence per acre would be the interest, a sum very little more than the present annual amount of the *cens et rentes*. In further illustration, the cases of the seigniories of St. Denis (Quebec), Ste. Anne de la Pocatière, and St. Roch des Aulnets, may be referred to.

Appendix B. N° 14.

In the old seigniories, where the rents are very low, the rate of commutation would be much more moderate, but still equal to the annual income; in support of which fact we refer to the statement of Mr. Parent, agent for the seigniory of Lauzon. From his evidence, it will appear that the rental of the *lods et ventes* is, on an average, about one half that of the *cens et rentes*. In that seigniory, probably one of the oldest in the province, where the *rentes* are very low, the cost of redemption of the right of *lods et ventes* would be very trifling, and in truth a mere addition of about one or at most two *sols* an acre to the amount of the *cens et rentes*.

Appendix A. N° 3.

These calculations are necessarily in some degree defective, from want of more accurate details of the seigniorial revenues; but the principle on which they have been made, is unquestionably correct, and is sufficiently elucidated to shew the justness and feasibility of the scheme. This plan is deserving of being more closely examined as conducive to the attainment of a result so important to the community. It possess one great advantage over the first plan in this, that considerable doubts may be entertained whether the mutations in the old and well settled seigniories occur once in every twenty years; and, if the mutations do not occur in those seigniories more than once in thirty years, which we are inclined to think near the truth, by giving one *lods et ventes*, which at interest would be doubled in fourteen years, as indemnity to the seignior for that right, a sum infinitely greater than he derives from that portion of his income would be allowed to him.

By ascertaining, therefore, the correct annual income derived from that source, more certain justice would be done to the *censitaire*, while the seignior would obtain the full amount of his dues.

In the majority of the old and well settled seigniories throughout the province, it may be safely said that the annual income from *lods et ventes* is about one half the annual income from *cens et rentes*, and seldom, if ever, exceeds it. In a small number of seigniories, the revenue accruing from *lods et ventes* may be found to be double the income arising from *cens et rentes*. Assuming this statement to be true, the addition of one half to the amount of *cens et rentes* would be the sum in interest, the capital of which would be a full indemnity.

It is in reference to these old and well settled seigniories, where the rent is low, that this scheme is particularly desirable, for the commutation money would be but a trifling increase on the rent stipulated.

But, even supposing that in these seigniories where the rents are so moderate, the revenue arising from *lods et ventes* were equal to the rental of the *cens et rentes*, the principle would apply with greater justice than the other plan based on the uncertain supposition that all properties change once in twenty years, and the indemnity would fall with much less weight on the *censitaire*.

We feel bound to remark that some of the statements, as to the proportion of *lods et ventes* and *cens et rentes*, submitted to us, are inaccurate; but the errors are easily discoverable by calculations made upon the data afforded. In some instances, where it is stated that the rental of the *lods et ventes* is double that of the *cens et rentes*, we find that the assertion is inconsistent with the very data submitted.

With reference, however, to the newly conceded seigniories, where the rents are very high, we do not feel justified in recommending this scheme, as we are certain the payment of a capital for *lods et ventes* in addition to the enormous capital based upon the *cens et rentes*, would entail a burthen intolerable to the *censitaires*, and one which would, in a vast majority of instances, swallow up his entire property.

The cases, therefore, of Foucault, Noyan and other seigniories, are cited purely for the sake of illustration, as detailed statements were received from those seigniories, of the amount of *cens et rentes* and *lods et ventes*.

We have, however, to observe that in the newly settled seigniories, mutations are more frequent than in the old ones, as the seignior, for the recovery of his high rent, is often under the necessity of bringing the property of his tenant to sale, and the inability to pay such high rents leads to the abandonment of the property, or its sale by the tenant at a sacrifice.

The third plan to which we shall now advert is that suggested by Pierre De Boucherville, Esquire, himself a seignior, as set forth in his letter to the late Board of Commissioners, dated 20th June 1842.

It differs entirely from the other schemes submitted, not only in the manner of effecting the commutation, but in the principle on which it should be based, and is to the following effect:

He proposes that the commutation during the first ten years should be voluntary between the parties, if possible; but if not consensual within that period, it should then be optional on the part of the *censitaire*, and compulsory on the seignior, the *censitaire* paying to his seignior, on the estimation of appraisers, one fifth part of the real value of the property affranchised, such arbitrators being named by the seignior and *censitaire*, and in case of necessity, a third being appointed by the district judge on the application of the parties. If delay should be demanded by the *censitaire* for the payment of the money agreed upon for the commutation, he conceives that ten years delay

should be given on payment of the interest at six per cent, with privilege to the seignior of *bailleur de fonds*.

At the expiration of the ten years to be fixed for voluntary commutation, it should be in the power of the seignior, or any five of the *censitaires*, to demand a commutation, on notice given at the door of the parish church during three sundays, the amount of indemnity to be settled by agreement, if possible, and if not, then that it should be imperative on the seignior and *censitaire*, by application to the government, to demand the appointment of three commissioners duly qualified by law, who should arbitrarily estimate the whole seigniory or fief according to its probable value, if brought to forced sale. From the value thus ascertained should be deducted the value: 1st—of the manor-house; 2nd—of the domain; 3rd—of the mill or mills, after abating one third on the value of the mills, for the loss of *banalité*; 4th—of the unconceded land, valued at so much the arpent; and lastly, of the voluntary commutation had during the first ten years.

The balance thus obtained would be the amount which should be paid to the seignior. Of these proceedings a *procès-verbal* should be made, and, at the end of three weeks, it should, at the request of the commissioners, be homologated in the Supreme Court of the District, where all oppositions to it should be heard and determined. The value of the fief or seigniory thus definitely settled should be paid by the *censituires* whose lands had not been freed by agreement during the first ten years, and if not paid in money, should be left at interest for a certain number of years, or converted into a *rente* redeemable at the will of the *censitaire*, but paying eight per cent interest.

The manner followed in assessing property for the erection of a church or other public work, should be followed in assessing the property for the payment of the indemnity.

This outline embraces the chief features of the scheme suggested by Mr. De Boucherville. It is difficult for us, with the imperfect knowledge in our possession of the actual state of the seigniories, to express an opinion upon the merits of this scheme.

There are, however, many objectionable points in it which cannot be overlooked.

The rate established for the voluntary commutation within the the ten years is, in our opinion, exorbitant; one-fifth of the actual value of the land commuted is a proportion which we feel it would be entirely out of the power of the population to pay, even if they were willing, which we think they would not be.

Another objection is, that it would vest unconditionally in the seignior the whole of the unconceded lands in his seigniory. This we cannot recommend.

A modification of this scheme is to be found in the evidence of Mr. Dupuy, public notary, of Laprairie, whose plan is to estimate the actual value of the soil, without buildings or improvements, and to assess it generally on the whole seigniory.

Referring to the plan first noticed by us, we have to observe that this scheme is put forth, not so much as containing a rate of indemnity agreed upon in the various opinions submitted on the question, but rather as embodying the principle on which the commutation should be based.

Thus the reverend Mr. Compte, of the seminary of Montreal, thinks that *lods et ventes* would be sufficient, in addition to the capital of the *cens et rentes*, allowing an indemnity for *banalité* when the case might require it.

Mr. chief justice Reid, whose opinion is unquestionably entitled to the greatest respect, not only from his profound knowledge of the law, but also from the great experience which his long residence in the province, his acquaintance with the people, and the practical working of the seigniorial system, have enabled him to acquire, conceives that a lower rate should, in some instances, be fixed as a compensation for the right of *lods et ventes*, and he accordingly gives as the basis of commutation a graduated scale, varying from one-tenth to one-sixteenth in proportion to the value of the property.

In the opinion of others, such as Mr. Spink, (for many years employed as a seigniorial agent,) one tenth part of the value of the property would constitute a just equivalent for all the seigniorial rights.

There are some persons again who think that the rate should be established on the value of the soil only, and not on the improvements ; while others think that one *lods* and a half should be given.

The opinion, then, of Mr. Compte is selected to develope the principle of commutation suggested in the first scheme, and is taken as a medium.

That of Mr. Townsend is corroborated by others, but under various modifications, all concurring, however, with regard to the mode of indemnity and its apportionment on the property within the seigniory.

The third plan rests upon the sole opinion of Mr. DeBoucherville, supported in some degree by Mr. Dupuy.

The subject of commutation has thus far been treated solely with respect to the seignior and *censitaire*, and their mutual relations. This partial examination of the question would not lead to a satisfactory result, inasmuch as it does not embrace all the points necessary to accomplish the important object in view. It is obvious that the question of commutation, with a view to its complete development, should be examined with reference to its effects on the rights of third persons. We humbly conceive that the bill, reported by the committe of the honorable house of assembly in the session of 1841, is in this particular defective—the rights of third persons having been, in some respects, overlooked. Those here denominated third persons may be divided into two classes :

1st. Those having real rights in or upon the seigniories by virtue of the law or by contract ;

2nd. The creditors of the seignior. Any scheme, therefore, of commutation to be devised, must necessarily embrace these considerations, and the procedure to be observed must be framed in such manner as will secure, to those entitled, the possession of their rights, or an equivalent out of the commutation money.

If in any scheme to be adopted, the commutation be made voluntary, without fixing a time within which it shall be imperative on all persons to commute, great difficulty would be experienced in securing to those concerned their just rights.

It is evident that, under a scheme of voluntary character, the commutations would take place at intervals, and be paid for in small sums. Where should the money, arising from time to time by commutation, be placed to meet the just claims of the creditors, or of persons having real rights in the seigniory? Under whose control, and how should they be invested to produce interest, and to accumulate for the formation of a capital to represent the seigniory so far, out of which all claimants upon it should be paid?

To secure these rights, it would seem necessary, before any commutation should be allowed, that public notice should be given of the intention of the parties to commute; that the money arising from such commutation should be deposited in some public office or chartered institution, or be invested at interest in public securities under the management of some public officer; that the commutation money should be allowed to accumulate until a certain amount should have been invested, or should be distributed after a certain time without reference to the amount paid in, and that the money of claimants under a substitution not yet accrued, and of others in the like situation, should be invested in real property under the authority of some public officer or tribunal.

We consider it right that in all cases the *censtaire* should have the power of paying up the capital of the commutation money at all times, for, if the capital were in any case to be converted into a perpetual irredeemable rent charge, no relief would, in truth, be afforded to the *censitaire*, and one of the objects of the commutation would not be attained; for the land would continue burthened with much heavier rent than the actual *cens et rentes*.

In the commutation of seigniories held in mortmain, or belonging to bodies incompetent to alienate, there should be a provision requiring the investment of the commutation money, to fulfil the conditions of the charter, or the objects of the institution. If some precautions of this description were not taken, and the seigniors were allowed to receive the commutation money as they might agree with the *censitaire*, it is evident that the effect would be to convert a real right into personal property, and the rights of creditors and of others interested might be lost or endangered.

These observations we have thought it necessary to make on the schemes proposed, and their propriety will be matter for the determination of the legislature in framing any law on the subject.

Having thus stated and considered the three prominent schemes proposed for accomplishing the conversion of the feudal tenure into one of a free character, we now

proceed respectfully to offer our views as to the provisions which would seem expedient to effect so desirable, a change.

For this purpose, we shall divide the seigniories into two classes : first, those where the rent is moderate and at the *ancien taux ;* secondly, those where the rents are higher, say, two pence, and upwards, an acre.

With regard to the second class of cases, it is to be observed that, if the capital is to be paid upon the rent at the rate settled by the concession deed, in many seigniories one *lods et ventes* might be too great an indemnity for the *censitaire* to meet ; while, in the old and well settled seigniories, falling within the first class, one *lods et ventes* on farms of great value, might also be considered as excessive, more particularly as we rather think that in the best settled seigniories, and where property is highly improved, the mutations do not occur on an average of once in twenty years as has been supposed and the payment of one mutation fine would amount to levying contribution on the industry of the man rather than on the land itself.

We would prefer the adoption of the plan of Mr. Chief Justice Reid, more particularly in the cases of low rents, inverting however the order of calculation as being better suited to attain justice. His plan is that the commutation money or indemnity should consist of from one sixteenth to one tenth of the value of the property, but subjecting the properties of the greatest value to the payment of the higher rate.

In our opinion, this rule should be reversed, and the lower rate of one sixteenth be made to apply to the valuable farms.

This would tend greatly to facilitate the change, and would be less objectionable, as it would not be taxing the improvements of the farmer; and, by applying the higher rate, but restricting it to one twelfth instead of one tenth, to the properties of less value, and on which little improvement had been made, the indemnity would be levied on its more legitimate object, namely, the soil itself, by which means the *censitaire* would have less reason to complain.

Independently of our conviction that the more improved and valuable farms do not, on an average, change hands once in twenty years, we consider this modification of Mr. Reid's plan worthy of adoption, as it would tend to remove many of the objections to commute, the principal of which is, in the minds of the *censitaires* in the old seigniories, that the indemnity would be levied on their industry and improvements. In the farms of small value and least improved, the payment of one *lods et ventes*, we think, ought not to be considered as heavy, the more so as it would be levied on the value of the soil with little or no improvements.

In the case of newly settled seigniories, more difficulty naturally exists from the rents being high ; but as the lands, in the majority of these cases, are unimproved, or not much improved, the right of *lods et ventes*, after deducting the capital of the rent, would on this principle be moderate.

Such a scheme would be better calculated to operate as a general rule, than any founded on the views of the Revd. Mr. Townsend, in this, that there are many seig-

niories in which there are high and low rents according as the concessions are new or old.

In these seigniories the *lods et ventes* have principally been derived from the sales of the lands more lately conceded, and, in a great many instances, the lands have been sold at the suit of the seignior for the payment of the high rents.

If, according to Mr. Townsend's suggestion with regard to the extinction of the right of *lods et ventes*, an average revenue of the last ten years be taken and assessed on all the properties, it would be levying the indemnity on many properties which had not contributed to the revenue, and would in all probability meet with opposition.

Besides, in some seigniories the revenue is greatly augmented by the act of the seignior. Thus, by reference to the statement of the sheriff of Montreal, it will be found that the sales of property, for the recovery of seigniorial dues, are as one to five of the whole sales in the whole district, a proportion, we think, affording conclusive evidence as to the working of the seigniorial tenure. It would be manifestly unjust to adopt a revenue thus augmented as the basis of an average to be apportioned over the whole seigniory. It may be added that the sales by the sheriff occur principally in those seigniories were the rents are exorbitant; for in the old seigniories, where the rents are low, the mutations are operated by the ordinary transfers of property.

The scheme of Mr. Townsend, which is moreover objectionable as requiring the expensive process of an immediate valuation of all the seigniories in the province, may be considered as better adapted to the old seigniories, where the rates of *cens et rentes* are uniform and low; but, whether or not it should be preferred to the graduated scale of Chief Justice Reid modified as above, would depend upon an accurate knowledge, which we do not possess, of the actual revenue of the seigniories derived from the right of *lods et ventes*.

It is evident that no great law reform can be devised without the occurrence of individual cases of hardship, and that scheme must be considered the most eligible which contains the best general rule.

As we have before stated, the graduated scale of Chief Justice Reid would apply well to the old and highly improved seigniories; but, in reference to the new seigniories, we have to consider what the charges are for which the seignior is entitled to an indemnity from his *censitaires*.

We must here confess that we have been much embarrassed in our endeavours to discover a scheme of commutation by which the interests and feelings of all parties might be reconciled, and more especially as regards the *quantum* of the annual rent, *cens et rentes*, which, in such cases, ought to be allowed to those seigniors who have either infringed the conditions of their charter, or raised the rent above the legal rate.

We have already given our opinion respecting the legal rate of *cens et rentes;* but we are bound, in justice, to report the arguments used by both seigniors and *censitaires* upon this important subject.

On behalf of the seigniors, it is alleged that they have in their favor a long and uninterrupted possession of the right of conceding at any rate to which the *censitaire* will accede, evidenced by contracts, and sanctioned by the decisions of the courts of law; that, relying on this usage and the judgments of the courts, they have invested their capital in the purchase of seigniories, and have in good faith mortgaged those possessions to creditors, and secured on them the rights of their wives and children; that the value of landed property and its produce, when seigniories were first granted, was much lower than at the present day, and that it would be unjust to force them to grant their lands at the same rent as was imposed under the French Government, when money was of greater value and every thing comparatively cheaper.

On behalf of the *censitaires*, we are told that, if the standard of rents imposed by some seigniors be illegal, they ought not to be compelled to pay them an indemnity for what is not their due, and for what never can be considered as a vested right; and that the seigniors ought to be satisfied with what they have already received; that whatever may be the good faith of those seigniors or others who have invested their capital in the purchase of seigniories, or taken mortgages on them, their case is not favorable, and that they stand in the position of a creditor who, having secured an *hypothèque* or mortgage on a property which he supposed to be his debtor's, cannot pretend to a greater right in it than his debtor had; and that, if the *censitaires* be compelled to pay the capital, of which the rent as stipulated in late concessions is the interest, together with an indemnity for the other rights of the seignior, it would have the effect of making a commutation almost impraticable.

We feel the weight of this argument of the *censitaires*, in considering the case as an abstract question of law; but in framing a legislative measure for the conversion of a tenure, the matter may be viewed in a different light.

Thus it may be equitably urged that the rents imposed on seigniorial lands are a fixed and certain payment, and are rights upon which purchasers and creditors in general have most relied in the investment of their capital; that those rights are moreover secured by contracts followed by long possession, and confirmed by judgments of the courts.

If, therefore, any reduction in the rate of rents should be determined on, it might break up a long chain of rights which, relatively to third persons, may be considered inviolable, the consequences of which might be most injurious to the whole community. Should it be deemed proper to maintain the seigniorial rents as established by contract, and to regard the *censitaire* as held by a contract which in law, it is contended, is not obligatory upon him, are there no other seigniorial charges in respect of which the seignior might be compelled to make a corresponding sacrifice?

After much reflection, we think that in those seigniories where the high rates of rent are most complained of, a different rule might with justice be adopted; and, as the right of *lods et ventes* is in its nature uncertain, and dependent on many contingencies, it might, with greater safety and with much less injury to society, be reduced, than the rate of *cens et rentes*.

Viewing, therefore, this proposition as a measure of justice towards the *censitaires*, and as a set-off for the higher rent which, on commutation, they would be bound to redeem, we would divide the seigniories into two classes.

In the first class we would rank all those seigniories where the usual and accustomed rent is charged, such as was established before the conquest, and continued for many years afterwards, but limited to two pence an acre ; thus assuming that an augmentation of the *cens et rentes* to the amount of double that imposed under the French government, that is to say, two pence an acre, would be fair compensation to the seignior for any change that may have taken place, since the conquest, in the value of money and of produce ; and, in the second class, we would place all those seigniories in which the rate is higher than two pence, whether the same be payable in money or in grain, valuing the grain at the market price at the time of the commutation.

In respect of the first class of cases, where the rent does not exceed two pence an acre, we think they might properly fall under our modified scheme founded on the graduated scheme of Chief Justice Reid.

As to the second class of cases, where the rent may exceed two pence an acre, we would recommend that, upon payment of the capital of the rent stipulated, all the other seigniorial burthens, except the right of *banalité* to be determined upon as hereinafter proposed, should be extinguished on payment of a sum, according to the value of the property, reducible in the same ratio as the rent stipulated rises above the rate of two pence an acre.

These suggestions are offered on the supposition that the high rents charged are sufficient to produce a capital nearly, if not altogether, adequate to cover the loss of any indemnity which it might be considered just to allow to the seignior in the old and well settled seigniories, where the rents are generally low.

The right of compelling suit at the manor mill or *banalité* is one of which we find it difficult to treat, for, on the one hand, it may be said that, if indemnity be granted to seigniors for the surrender of that right, the *censitaire* will be subjected to the payment of a double toll, as he might still be necessarily, for some years, obliged to resort to the seigniorial mill ; that the seigniors are in possession of all the water powers within their seigniories to the exclusion of the tenants ; that, being in possession of those water powers, the seigniors would solely have the benefit of deriving a revenue from mills, and that even such *censitaires* as might have mill-sites, would, from their limited means, in many cases, be unable to enter into competition with their seigniors.

On the other hand, the seigniors may contend that, if the right of *banalité* be a legal one, they are entitled to an indemnity for the surrender of it in all cases.

It seems difficult to reconcile the interests of seigniors and *censitaires* in the valuation of a right dependent on so many contingencies, that no general fixed rule can be adopted for establishing the consideration for its surrender.

Much would depend on the peculiar position or circumstances of the seigniories, in the appreciation of this right ; for, in some seigniories there are no water privileges, in others

where they do exist, the seigniors have neglected to fulfil the requirements of the law. There are seigniories in which the right is of value, while in others the maintenance of a mill would be more burthensome than profitable.

Those seigniors, who are in possession of all the mill-sites in their seigniories, having no competition to apprehend from *censitaires*, ought not to except full compensation for a loss which may never be incurred.

Other seigniors, within whose territory *censitaires* may be in possession of mill-sites, might fear competition, which should be taken into consideration.

Thus it would seem scarcely possible to establish any fixed rate of consideration which seigniors ought to receive for the relinquishment of this right ; and, therefore, the case of each seigniory will stand on its own peculiar merits, and the seignior will either be entitled to indemnity, or not, according to circumstances.

The only mode by which the valuation of this right could be made would be by the appraisement or decision of arbitrators, who, taking these circumstances into consideration, would grant, or deny, to the seignior an indemnity for the same. Wind-mills being *banal* mils according to law, ought not to be overlooked.

In proceeding to legislate on the seigniorial tenure, the subject of the unconceded lands in the seigniories must inevitably be discussed. This is a matter whorthy of grave consideration, and pregnant with important consequences to the inhabitants.

It is our duty to remark that, under the seigniorial system as now in operation, it is a great subject of complaint and discontent among the rural population, that some seigniors either absolutely refuse to concede their lands, in the expectation of an increase of their value, or impose on those inhabitants who desire concessions, such terms and conditions as they are incompetent to meet.

This is an assumption of power which, even if the seigniorial system be continued, requires, in our opinion, a very prompt remedy.

Even in the case of the conversion of the tenure, it would be necessary to secure the inhabitants from such exorbitant demands.

Any law authorizing a change of tenure, ought not, we conceive, to vest in the seignior a free and unconditional right of property in the unconceded land in his seigniory ; and we would recommend that, in such a law, a price should be established at which seigniors should be bound to sell their wild lands.

It might be sufficient to establish a general rule for all seigniories, as the advantages they may possess in point of situation, soil or climate, might require a departure from a general standard ; but the adoption of the principle of a maximum and minimum price, dependent on the value of the land, securing to the seignior a just compensation for his right of *lods*

et ventes, and for the moderate fixed rent he would have been entitled by law to demand under the seigniorial system, would perhaps be the fairest mode which could be devised to do justice to both parties.

The subject of arbitration, as connected with a scheme of commutation, has been canvassed by both seignior and *censitaire*.

Whilst the seigniors would suggest that, in all cases of commutation, one arbitrator should be named by each party, and that in the event of disagreement between these arbitrators, the Court of Superior Jurisdiction of the district should be invested with the nomination of the third arbitrator, the *censitaire* would object to the jurisdiction of the ordinary Courts of Justice in these matters, and would prefer leaving the nomination of that third arbitrator to the Excutive Government.

We conceive that, with regard to every scheme of commutation, great apprehensions will be entertained from the difficulty of securing fairness in the valuation of property, by means of impartial and disinterested arbitrations.

In our opinion, the most fair and equitable mode of rendering justice to both seignior and *censitaire* in such cases, would be the nomination of one arbitrator by each, in the manner usual in practice, and the appointment by government of one competent person, possessed of the power and qualifications of an *expert en titre d'office*, as practised in France, or a commissioner whose jurisdiction should extend over each superior district, and whose decision should be liable to a revision before a Board of Commissioners to be named by government, upon an appeal instituted in a summary way by the aggrieved party.

It is pretended by some, that, in all such cases of valuation of property by such means, the seigniors should have the privilege of pre-emption, upon paying to the *censitaire* the estimated value; but we fear that this privilege would, in some cases, be liable to abuse, and might savour too much of the seigniorial right of *retrait*, against which so great an outcry has been raised.

If this mode of arbitration be adopted, we feel confident that neither seignior nor *censitaire* will have cause to apprehend partiality or unfairness in the appreciation of their respective rights.

In the event of the adoption of such a scheme for the conversion of the tenure as would necessarily involve a valuation of all the seigniories, with a view to an apportionment upon the lands held *en censive* of the average annual revenue for which the seignior may be considered entitled to indemnity, we conceive that the appreciation should be entrusted to a Board of Commissioners to be appointed by government.

See Appendix B. N° 125.

Although the subject of the *droit de quint*, and other rights due to the Crown on mutation in the ownership of fiefs, has not been specifically referred to us for enquiry, we have been necessarily led into a consideration of the course which it might be recommended to Her Majesty's government to pursue with regard to that branch of the revenue which, on an average, seems to be inconsiderable.

The question as to whether any indemnity should be claimed by the Crown for the loss of those rights, consequent on a conversion of the tenure, has been agitated as well by the seigniors as by the *censitaires*.

After due reflection on the matter, we have to state our humble opinion, that those rights should be relinquished by the Crown without compensation.

If the small amount of the revenue arising from this source be taken into account, its loss to the Crown would be of little importance.

Its surrender would not only be conducive to the favorable reception of a plan for the conversion of the tenure, but would be viewed as an act of justice compensating the seigniors for the extinction of valuable rights and privileges, such as their jurisdiction, the right of exclusive trade with the Indians, and escheat, of which they were dispossessed by the operation of the conquest, and, at the same time, it would supply the indemnity to those seigniors whose peculiar interests might be unprovided for in a general scheme of commutation.

In our views, concerning the surrender of this right, we have the good fortune to be borne out, not only by the authority of the committee of the House of Commons in 1828, which recommended that this right should not be suffered to stand in the way of commutation, but we are supported by the almost unanimous opinion of the inhabitants of this province.

Having brought to a termination our report touching those branches of enquiry which we have been provided with the means of examining and considering, it remains for us to observe with regret, that we have, from the want of the power of compelling the production of evidence, been unable to acquire the desired information on the other objects submitted for our investigation.

The matters which we have thus been forced to leave untouched, are the following:

1st.—The conditions on which lands have been conceded by sub-infeudation *(en arrière-fief)*.

2ndly.—The probable quantity of unconceded seigniorial lands in the province, and their quality and value, and also the quantity of lands conceded but not improved.

3rdly.—The value of the seigniorial mills in the province.

4thly.—The annual average of *lods et ventes* paid or accruing in the seigniories.

It is very obvious that on all these subjects we could expect to obtain any accurate knowledge but from one source, namely, the statements of the proprietors of the seigniories and of their agents.

Accordingly, in addition to the questions proposed to them by the first Board of Commissionners, we addressed letters to the proprietors of seigniories, soliciting them to impart to us information on these various points, either personally or by letter; but our just expectation of receiving such valuable intelligence has been disappointed, and but very few of the proprietors have deemed it advisable to respond to our solicitations. Those communications with which we have been favored, are not so full or particular as they could, with no unreasonable degree of labour, have been rendered.

All which is humbly submitted by Your Excellency's most obedient servants,

A. BUCHANAN,

J. A. TASCHEREAU,

JAMES SMITH.

Montreal, 29th March 1843.
