IIII

Seigneurial Tenure Court.

From 770 to 807

Dunkin Sept.r 20

Sept.r 21.st

dians; and he was complained of because he got leave to go up there to trade with the Indians. The grant of 1223 was as I have said made in 1691, after the death of Lasalle to two persons who had been associated with him, in his exploits and who had been in possession of the fort in Illinois since his decease, and in maintaining it at their expence. The terms of the grant to Lasalle I do not know precisely, but there are documents which show that they were very much like those of Fort Frontenac which was given about the same time, and I have no doubt that they contain clauses compelling the grantee to arrange the Indians to come in, and to concede land. At any rate the subsequent grant to Mess.rs de la Forêt and Tonty were in the same terms and conditions.

I must now say a few words of the grant of Sault St Louis made

the Company of Jesus. After a recital of the petition by his Agents in which they stated that the Mission of Laprairie was not so good as they would like, and that the Indians did not choose to live there they asked for a grant in favour of the Iroquois under their direction, the grant was made of "two leagues of country in front by a like depth, with "two isles, or islets and "the batture which are found "in front of and joining "to the lands of the said "Prairie de la Madeleine. "At the charge that the "said land shall belong "to us all cleared, when "the Indians shall abandon "it. With permission to all "who desire to carry to the "said Iroquois Corn, Knives "and other small articles "and similar things, but "with the express prohibition "and to the French who shall "reside among the said Iro "quois and other Savage "nations who shall establish "the said land, to have or "own any cattle. And "to all persons to establish

"any tavern in the village of
"the said Iroquois, which
"shall be built on the said
"land". The governor and
Intendant afterwards
granted an augmentation
of this beginning, which the
King ratified. Having
~~Having this proof~~
~~before~~ all these grants
I come now to the
Arrêt of the 4th June
1675, called "an arrêt for
"the retrenchment of causes
"ions of too great an ex
"tent, and for their con
"cession to new habitans
"; and for passing for
"a census." It is almost
a copy of the instrument
of 1672, of which I have
already remarked. This
early after
came out soon after
Talon, and was a direction
to him to make a census
in pursuance of which
there was the ~~the~~ a return
ment of one half of such
lands as were found to
be uncleared. It is
plain that Talon neither
made the census, nor
escheated any half seig
niory, though he did
make the hasty grants

of which I have been speaking. Therefore on the very day before Duchesneau was commissioned as the new Intendant this arrêt of 1675 was passed. Apropos of the appointment, new instructions and new powers were given to him as they had been given three years before to his predecessor. Here is the same preamble as in the arrêt of 1672, and then comes the call upon Duchesneau to make the retrenchments, and afterwards to regrant any lands he should have to escheated, provisionally, and upon condition that they should be cleared in four years. All that can be said of such an arrêt is that it was in addition to M. Duchesneau to make a passe-partout, and that we find he did make, as will be found by reference to grant to 142, and others containing the same recitals, in which it is stated that M. Duchesneau was then engaged in making the

species of census, in consequence of which such or such a grantee came before him to pray that his grant might be altered in such or such a manner. Hence it is evident that his arrêt was an order to make a declaration of the entire state of the country, and that the retrenchment was entirely subsidiary matter. That was done and nothing more.

The next document I have to mention is the arrêt of May 25th 1675, giving power to Messrs Duchesneau and Frontenac to grant concessions conjointly. In the seigniorial documents we do not find the powers conferred upon Talon, or upon de Frontenac & the King; but probably they were not very different from this except that up to this period the business of concession was left to a single person only, whereas it was now given to two — the Chief executive and the Chief provincial officer in the Colony. A condition

was attached to this power
that the grants were to be
made subject to the obliga
tion of obtaining ratification from
the King within a year of
their date failing of which
they were to be null,
and besides it was provi
ded that the said conces
sions should be made
"on condition that the gran
"tees should clear the lands
"and render them value
"ble (les mettre en valeur)
"in the six next following
"years, otherwise they shall
"be null, and that the
"said grants should only
"be accorded from one
"neighbour to the other, (de
"proche en proche) contiguous
"to the concessions which
"have been hitherto made
"and which have been
"cleared". But the condition
of clearing in six years, it
was ~~if~~ impossible to fulfil,
and ~~so far as I know,~~
not one grant by Denonville
and Frontenac,
~~or~~ so far as I know,
of any other grantors ever
contained it. The condition
was never insisted upon
the restriction complied

with, and no one took any
particular notice of the
fact of the disobedience
though it must have been
notorious to all the world.
Before passing to the next
arrêt of retrenchment
properly so called, I will
allude to a despatch
in which Duchesneau
stated to the Government
at home that De Frontenac
bought it below his dignity
to sign less grant. The
latter would not put his
name to the same docu-
ment as the other, and
hence here more frequently
two documents passed for
such grant. Duchesneau
having complained of this, the
two contestants were with-
drawn from the scene. Afte-
wards in the year 1679, appea
ed another arrêt which is
to be found at the 9th
of 2016 Ordonnances Page
233. In the last arrêt the
census was to be made.
Now we find that it has
been completed. It sets out
that the King having seen
the declaration made in
consequence of his previous
arrêt by the said Sieur

Duchesneau, "containing the
"extent of each concession and
"the number of arpents
"cleared and inhabited, by
"which it appears that those
"concessions are of so great
"extent that the greater part
"has remained useless to
"the proprietors, from want
"of men and animals to
"clear them and give them
"value, and his Majesty
"considering that the lands
"which remain to concede
"in the said county are
"the least convenient and
"most difficult to cultivate
"on account of their situation
"and distance from navigable
"rivers, so that those of
"his subjects who pass into
"the said county to settle
"themselves, finding and
"establishing themselves
"there, for this reason only
"— a thing very prejudicial to the good and the augmentation of this colony:
For these reasons his Majesty adjusts "that the arrêt
"rendered on this subject
"the fourth day of June 1675
"shall be executed accord-
"ing to its form and tenor
"and accordingly declares

"the fourth of the lands conceded
"before the year 1665, which
"have not been cleared and
"cultivated, retrenched from
"the proprietor and possessors
"thereof." His Majesty for
"Her orders that for the fu-
"ture there shall be taken
"each year, to commence
"from the next year 1680, the
"twentieth part of the said
"concessions which shall
"not have been cleared, to
"be distributed to the sub-
"jects of Her Majesty, In-
"habitans of the said Country
"who are in a condition to
"cultivate them, or to those
"who shall pass into the
"said country to live there".

Thus it appeared that the
King having before him this
Census, and thinking
that to be proved, which he
had believed before; viz:
that the concessions were
too large, orders that the
former arrêt shall be
followed according to
it's form and tenor. But
even here there is some
thing very inconsistent;
for the arrêt never says
that the retrenchment
of one quarter is to be car

reid out, and then for the future a retranchment of not of a fourth, but of a twentieth part every Year. Did this writ operate any escheat? No: it was an instruction to the Governor and Intendant because escheat to take place in certain circumstances, but it was perhaps accompanied by instructions like those given to Talon, that he was to do the best he could, under existing circumstances with an executive discretion. There is however, not a trace of any quarter, or any twentieth part of the grants being taken away. Finding no record of the fact I suppose it never took place; but suppose it had taken place — that would not show that any attempt had been made on the grants — that in short there was any escheat. The man who held the three fourths of the grant would have the same right as formerly in the fourth that remained. The rest would merely have

have gone in contravention to the requirements of a high police; but the only way to show that this was done legally would be to show that it had been done by the Courts of Law, and that their decisions had been carried up to appeal. Doubtless that would have happened if such a step had ever been taken with the property of powerful people, just as we saw happened in the case of Seigneurie de Lauzon with respect to the Seigniory of Two Mountains, and then we should probably have seen the Courts doing what they often did — telling the King that his ministers had acted illegally. I do not mean to say that there were no escheats of seigniories, but I say there was none under the arrêt of 1653; none of one half the seigniory under that of 1672; nor under that of 1675; nor any of one quarter nor of one twentieth under that of 1679. While I say that no seigniories

were escheated under the arrêt, I do not mean that that could not be done as an act of high police; nor that a man who did not go near his land for ten, fifteen, or twenty years, after concession, apart from the strict legality must not be liable to be deprived of a mere nominal proprietorship. ~~But was~~ The right of taking the grant back under such circumstances depended upon this — that the grantee was not the real proprietor — that he had gone away, where he could not be found. The King under such circumstances rightly gave the land to others, sometimes saying that it was reunited to the Domain, sometimes not going through that form. One can easily understand these double grants of the same land, even when no intention of escheating existed. In the present day we think that cases of this kind can only be decided by regular legal proceedings. ~~[illegible]~~

does it happen that a second patent is issued by inadvertence covering ground already granted by an earlier grant? But the second patent is always good until the first is set up in opposition to it. This was the case with the grant obtained by the wife of Champigny, who had gone away. So it was in the case of the grant obtained by D'Ailleboust who though he knew he could claim a tract of land in right of his wife preferred to get a second title. It was not that there was in these case a regular cession of the first grant, but a body can claiming a second grant was made. The case of La Citière is one of these, and I too can make my learned friend a present of many others.

If the Court will look at the ratification of concessions they will find that the King confirmed a large number of grants of which we now have no trace. The inference is that the grantees

though they took the trouble to get ratifications, never made any registry of their titles.

Thus no trace of the concession of la Citière to who found. All we know of that large grant is deemed from the event of his being put in possession. The claim was not worth following and was dropped. It is said indeed in some grants of arrière fiefs that they were taken from this grant, but that they were not ratified and at the taking of the Census. It is in one of the documents it is said that la Citière was reunited to the Domain; and in fact many of the existing grants had been made by Talon before this date of land in la Citière, without a word about the former title.

Lafontaine J. The question is not whether seigniories were reunited to the Crown Domain; but whether they could be reunited. I think your adversaries do no doubt that in order to a legal reunion a judgment would be necessary. But do admit that there is much that

many things were done origin
ally. The question is whether
these reserves were really
penalties on non-concession.

Mr Dunkin The complaint
was against a grantee,
who was supposed to
have neglected the fulfil
ment of his obligations never
could have been that he did
not clear conceded; but that
he did not clear (Officier).
If he did not do that, he was
to lose part by the first and
one half; then one quarter;
then one twentieth. But
before this obligation of
clearing was put in it
could not be done legally
, and could only be the
act of a sovereign power
exercising a high police
and then exercising it in
an irregular manner.

Mr Angers asked if there
were not reserves, in which
it was mentioned that
the land granted under
the first instrument had
been resumed under the
arrêt.

Mr Dunkin will be ready to
answer that question at
the next sitting of the Court.

Friday Sept. 21st. 1866

Mr Dunkin continued his argument this morning. ~~At a late hour yesterday~~ When the Court rose yesterday I was about to terminate the examination of the ~~cedents~~ of certain seigniories and I had stated that neither the arrêt of 1663; nor that of 1672; nor that of 1675; nor that of 1679 were ever carried into practical effect. Mr Angers however, has reminded me that I should probably find in some of these ~~arrêts of certain~~ mention grants ~~which~~ had in fact been remitted to the domain after having been already ~~given~~ a first time. I now admit that such mention ~~of~~ reunions is to be found in some of these grants, ~~and~~ with ordonnances and others ~~subsequent~~; but I adhere to the statement I have already made really made in accordance with these arrêts, though certainly there are to be found in the regents ~~reference~~ to the arrêts. I will mention ~~each~~ of these which contain such reference ~~expressed~~ or implied and

and that there were such reunions in fact now in accordance

I will show what they really do say. The first is at No 169 and is a regrant of Rivers du Loup en haut. The recital set forth that on the 12th March of the year 1683, there had been issued by the Governor and Intendant an ordinance declaring the former proprietor of this seigniory deprived of his property, and the grant proceeds:-

We, after having caused our said ordinance of the said twelfth day of March, rendered in consequence of the decrees of the King's council of the third day of June one thousand six hundred and seventy-two and the ninth day of May one thousand six hundred and seventy-nine, regarding the forfeiture of concessions, to be laid before us, and considering that he has served during the said period of time with honor and fidelity Monsieur le comte de Frontenac, heretofore governor and lieutenant general in this said country, in the capacity of secretary, and in order to enable him to settle therein, have, in virtue of the power jointly entrusted to us by His Majesty, given, granted and conceded and by these presents do give, grant and concede unto the said Sieur Lechasseur, the above described lands; to have and to hold the same unto him, his heirs and assigns, for ever, under the title of fief, seigniory, superior, mean and inferior jurisdiction, with the right of hunting and fishing within the limits of the said place, subject to the condition of fealty and homage (*foi et hommage*) which the said Sieur Lechasseur, his said heirs and assigns shall be held to perform at the Castle of St. Louis in Quebec, of which he shall hold under the customary rights and dues, agreeably to the Custom of the provostship and viscounty of Paris, which shall be followed in this respect provisionally and until otherwise ordained by His Majesty, and that the appeals from the decisions of the Judge who may be appointed at the said place shall lie before the lieutenant general of Three Rivers; also on condition that he shall keep house and home (*feu et lieu*) and cause the same to be kept by his tenants on the concessions which he may grant them, and that in default of their so doing he shall re-enter *pleno jure* into the possession of the same; that the said Sieur Le Chasseur shall preserve and cause to be preserved by his tenants the oak timber fit for ship-building which may be found within the said extent; that he shall give immediate notice to the King or to us of the mines, ores or minerals if any be found therein; that he shall leave and cause to be left therein all necessary roadways and passages; on condition moreover that he shall cause the said lands to be cleared, inhabited, and furnished with buildings and cattle within two years from the date of these presents, otherwise the said concession shall be null and void; the whole under the pleasure of His Majesty, by whom he shall be held to have these presents confirmed.

There is then no doubt mention of the arrêts and Ordonnance of 1672 & 1679; but the question is not whether it mentions the arrêts; but whether it is rendered in pursuance of them. How one can read of one half a seigniory only and

the other of only one quarter immediately and subsequently of one twentieth part every year; but the ordinance ~~which~~ which is quoted unites the whole property at once. The only meaning, therefore, of the reference is that there are not were expressions of the will of the King that unimproved lands should be resumed in whole or part. Again by these arrêts an express mode of proceeding was enjoined, and that was not carried out. The conclusion, therefore, to which I arrive is, that this escheat was the result of the exercise of a power of haute police — of the power of escheating lands abandoned by the first grantees. I come next to grant No 170, which is a re concession of Isle Madame and Lenard refers to an ordinance of the same date by which the whole land was granted, and to which therefore it thus refers, and not carry out the ordinance two arrêts, which provided only for the escheating of a part, and the effect was one

simply because the two properties in question had not been taken possession of, or because in fact the gift was abandoned. But the grant to was made here, not as in the former case, to a stranger, but to the minor Children of a Mr. Becquet deceased, who had been the proprietor. This shows that the Intendants did not carry out these arrêts de rigueur. At No 173, I find another reference to an ordinance of the 26th May 1683 by which the grantors had escheated a tract of land now the Seigniory of Lussan. Here, the grant is made to a stranger, and then comes grant No 181, of the year 1684, in which there is no mention of any ordinance, and indeed it is clear that there never was any anterior to the grant. The only reference to the arrêt is that the new grant is made to the Sieur Villeray of the Isle of Jorte which he is said to have petitioned for, and which has been granted to him

of the year 1684, in which there is no mention of any ordinance, and indeed

accordingly, and then these words are added "though it appears that the land "has been already conceded "over thirty years ago to parties "who never took possession "and whose grants are therefore "hereby recalled." This Ingnal ler contains a far more correct statement than the preceding ones of the principles on which the Governor and Intendant proceeded. They say these grants have been made thirty years ago, and has no one has done anything with them we now declare them reunited to the Crown Domain. The true principle in all these cases, I repeat, is that the man, who merely took a title and did nothing else did not in reality take the property at all, but to regrant lands so abandoned was not carrying out the arrêt though it may have been in keeping with the intentions of the King as gleaned from the arrêt. I come now to No 191 (Lanoraie) which accords very much to regrant of Ile Madame

and Leonard. The Seneschal and his wife had obtained this seigniory some time previously, and they being both dead, the heirs make a representation to the Governor and Intendant, that the original titles have been lost probably burned — ~~that~~ they say further that the property belongs to them par indivis; but that they ~~are~~ are so numerous that they ~~could~~ can do nothing with it, and that the land remains without inhabitants; and then they pray that the said land may be first reunited to the domain of the Crown and then granted to them. In this case then the heirs of Seneschal merely apply to the Governor and Intendant and say will you be good enough to give us a new title. & they get a new title. No 201 is as nearly as possible the same thing as that. From this grant it would seem that the heirs of the original grantee only had title that she ought to do something with the land because it from Confiscation

made a voluntary abandonment of it and gave a regrant that a regrant was made to the Sieur Louis Riverin. The extraordinary grant of 6 lots with in the Seigniory of Longueuil may be said to be another instance in which this has been done both places, since the governor and intendant say they could take possession of the property without indemnity, but in this instrument there is no reference to any arrêt. Another grant is that of
No 220 (Ste Marguerite); but here again the land was said to be abandoned by the proprietor. Next there is a second regrant of Lussaudière, which seems to have been an unfortunate piece of ground, but no more than in the others was there anything like a proceeding under the arrêt. In all the cases the governor and intendant did what they pleased alleging the authority of His Majesty; but in fact acting de plano without any legal process of any whatever. I now

alleged

speak of the reunion of Canada to Acadie in which Mr. Adam Dumont laid a great deal of stress, ~~and which took place in 1703~~. The arrêt by which it was effected is to be found at Page 132 vol 2nd of the Edits & Ordonnances; but we have not the instrument itself. In the year 1703 it appears that the King ordered the reunion of this property to his Domain. From the arrêt of enregistration it appears that the King ordered "among other things that "the Province of L'Acadie "should remain reunited & "his Domain in ale to extend "circumstances and dependen "cies, and dismissed M. le "Duc de Lauzun and the "Sieur le Borgne, in the "terms that they proceeded "in, from the oppositions which "they had raised to the arrêt "of the last day of February "1682 and the 9th of February "1700, as also from their "~~said oppositions~~ causes (fins) demands together with "and conclusions, as to "the said Sieurs de la Tour "Doublet de Bonaventure and "others, and however, his

This reunion was ordered to be enregistered

"Majesty, for good considera-
"tions, accord many & pieces
"of land as well to the Sieur
"le Borgne as to the said
"Sieur de la Tour and
"others, at the charges and
"conditions here expressed
"with many retrenchments
"of the concession heretofore
"made". It is most clear
from reading this docu-
ment that ~~nothing was~~
~~further from the intention~~
~~of the [illegible] it did not form~~
the occasion of this large
grant did not in any way
fulfil the provisions of the
articles of retrenchment.
What was done was done in
the exercise of a great
state power, vacating alto-
gether the title & property in
the Province of Acadia, which
title had fallen into such
a condition that the real
wonder is that some such
instrument had not been
passed long before. I have
already ~~mentioned~~ described
the extraordinary confusion
into which the grants in
Acadia had fallen. ~~The~~
D'Aulnais Charnisay had
obtained a grant of the
whole country. Sieur de La Tour

post one of which we know
not the extent; but do
know ~~enough~~ ~~that~~ that it
must have encroached on
the former posts to D'Aubrais
Charnisy. The Sieur Davis
had also received a large
grant from the Company
of the St. Croix, and from
the King who confirmed their
concession. We know more
over as matter of history
that these grantees engaged
in civil war — that ~~Dau~~
D'Aubrais Charnisy he
seized De la Tour and that
De la Tour allied himself
with the New Englanders —
that D'Aubrais Charnisy
did the same thing, and
that the King of France at
one time declared the one
and at another the other
a traitor. We know also
that the English had got
possession of the Province
and that the King got it
back by a treaty — that
after De la Tour died
the Duc de Vendôme got
part of the land of his
widow, ~~and~~ Ultimately
I believe it vested in the
person more intimately
the D'Aubrais Charnisy

D'Aulnais Charnisy married
Madame De la Tour. The
creditors of D'Aulnais Charnisy
subsequently obtained posse-
sion for nine years, but
kept the country for long
after and in the meantime
exercised all the proprietary
rights. While all this was
going on the Governor and
Intendant in Canada had been
making all sorts of crude
concessions in Acadie,
and among them all
nobody could tell who
owned anything, till the
only remedy that remained
was to dismiss all manner
of oppositions and provide
the land out again. In
the course of this last
proceeding many grants
were cut down, so the
only means to dispose
of concessions that often
lapped over one another.
All that, however, had
nothing to do with the nature
of the Acadian property
— it arose merely out of
a necessity caused by the
inextricable confusion
which had prevailed. Be-
sides this arrêt was not
the final disposition of the

matter as will be easily ~~pro~~ proved by the documents I shall send up; but I may be allowed previously to doing so to read a word or two from a despatch from Messrs Vaudreuil and Beauharnois of the 15th November 1703, which is to be found in the tenth volume of Mr Faribault's papers. Page 152. In this paper these gentlemen say that they have received this document and will cause it to be published in order that anybody who feels himself aggrieved by it may represent his rights. To this I may add another instrument that I have fallen in with, ~~it is which this~~ — a short résumé of a petition of one M. St Aubin, who believed himself injured by this arrêt and made a representation against it, which is also to be found in Mr Faribault's manuscripts.

Take in from fact[illegible] of manuscripts of Dunlin[illegible] the place is not given

The answer to this was "God, if he can clear it" There is however nothing in this at all like an idea that any thing was required of this Gentleman besides the clearing of his land. He had nineteen children and grand children, and some other people working on his property, and it was he said that five leagues would not prove too much to divide. All this squares with my theory, while there is no trace of any thing to establish the probability of the other theory.

I now pass to another matter to which I only alluded yesterday — the grants of Fort Frontenac and Fort St Louis. I should have been contented with what I have already said had not documents, which I had not previously seen been put into my hands by my friends on the other side, of which they will hereafter make use, and on which I may, therefore, say a few words. It would seem from this document that Duvalle acting under

by one this concession that he was bound to concede lands at these forts, as the condition on which he had received them from the King, and he undertakes to make grants accordingly. I think with that he was in a certain manner bound to concede because by the title of Fort Frontenac, already granted he was bound to cause the French and Indians to come & come round the fort and to give them lands & in habit. I am not then surprized that in certain grants by this particular gentleman, he should still intimate that he was bound to give away his land I have not found the concession of Fort St Louis; but Lasalle in one paper alleges that he has obtained it at the same conditions as Fort Frontenac. The date of the paper on which I am now remarking is of December 1682 If I could trespass on the time of the Court I could readily prove however that Lasalle was never compelled by any executive authority to grant his land; but that

he was really prevented from doing so — that representations were constantly made against him by the Intendants that all his grants were but to the results of a plan by which he intended to get rid of the Indians.

Mr Mackay. But that does not refer to this part of the Motion.

Mr Dunkin. But I shall show that the same principle was constantly carried out, & all over the country with a view of driving the people into towns and villages. But what I have to show is that Lasalle received these grants with clauses importing obligations, not to be found in any other deeds, and yet that the public policy of the country did not allow even him to carry out his obligations. Both these forts were ultimately abandoned, and during the time that Lasalle owned Fort Frontenac, the King was at a great expense in maintaining it, while after Lasalles death his creditors

held it. At Fort St Louis it was not, as we have seen, absolute over the credits but ungranted, though the creditors claimed to have a lien upon it. This is a proof that in those days trust property, and not property trusts, since nothing could seem to be more inalienably trust than these forts.

If time allowed I should be able to prove that down to the year 1700, the essential policy of the government was not to enforce, but to prevent settlement in a majority of the seigniories. Let us however take a hasty glance at the history of the country during that period. We must first remember that at opening I invited to the fact that the first grant to the Company of New France, of the property and trade were given together, and that it was not the property in the soil, nor the desire to get as much land as they wanted which troubled the inhabitants; but that the thing they

valued was the trade. We saw also that the representations of the inhabitants induced the Company to grant them the trade in return for an annual revenue. To the grant to the W. India Company was a grant of trade as well as of land, and that something like what had happened before took place again. In reference to documents of which I will hand a note to the Court it will be seen that immediately after the formation of the last named association, Talon remonstrated against the monopoly of trade which was accorded them, and that in 1667 a change was made by which the Company authorised the trade in favour of the inhabitants. Yet coming down later to the years 1673 to 1679 no less than five arrêts of the King have been issued to prevent ~~prevent~~ abuses of this privilege. The first of these arrêts was directed against the coureurs de bois, and no less a punishment than death was declared to be the penalty of those who left their homes for more than

twenty four hours. This severity arose from more than one cause. for instance
Here was the religious influence of the Clergy who dreaded the men going into the woods where they became more savage than the savages, and when they made the savages worse than they were by nature by carrying them brandy. After a time leave was granted to a small number of persons at first limited to twenty, to deal with the Indians for peltries, but only upon payment of 1000 livres for the licence. Then again these licences were suppressed, and the severest penalties again denounced against all who should trade with the Indians out of the Towns of Montreal, Three Rivers, and Quebec. The true object, as I have shown of the 2nd edict of retrenchment was not to cheat the lands of the Seigniors, but to force the habitants to come in and live in towns and villages. I have shown that in the first instance that was not carried out; but that after a

& for years it was passed with the utmost vigour and so stringently during the period from 1686 to 1691 that at the End of it, the Governor and Intendant reported that here ~~was scarcely~~ the population above Three Rivers had been reduced into villages. But to complete the work they suggest the issuing of an arrêt, which perhaps was issued, compelling the inhabitants under the severest penalties to leave their dwellings in the country. That was evidently a great restraint on the Seigniors who had lands to concede. I have already mentioned two of the causes of the establishment of this policy and the third was the danger that was apprehended of incursions of Iroquois. For a long period, too, there was a direct prohibition of the settlement of lands above Montreal. Of course even then the intention of the Government was to settle the country, by what was judged to be the best means. All I insist on here is that the fact of the prohibi

tion of settlement proves that the immediate concession of lands for settlement was no obligation upon the proprietors of Seigniorial grants.

During this period I have met with some document indicative of the ideas of the time as to property, to which I will refer before taking up the Baudot correspondence, which is supposed to have led to the arrêt of March. The 1st Vol of the Edits & Ordonnances Page 91 is a ratification by the King of a grant of the Island of Montreal to the Ecclesiastics of the Seminary of St Sulpice of Paris, and on reference to pages 94 and 95 it will be found that the Govr made a most detailed enumeration of what he was giving to be granted. No one who will read the deed can think it creates any kind of trust unless it be by construction of the donation and the formation of certain religious establishment. In a despatch of somewhat later date of the year 1686, Page 266 [illegible]

of Jacques Cartier there will be found something very ~~important~~ significant as to this grant.

Take in quotation

Thus to conclude there were two gentlemen of the Seminary masters of these lands that it was only at their request of the Government that they allowed a private individual to build a mill where the Government wanted to have one as a redoubt even in time of approaching war. En passant I may remark that this passage has great bearing upon the speeches of banality and the ideas entertained on that subject at the time. The same kind of promise of the right of property was made in reference to the erection of a ~~justice~~ Cour Royale in Montreal. The Government would only establish it at the request of the Seminary; at the same time paying them most liberally for the concession.

Having made these

Take in quotation as to the building a fort Roberval serve for a redoubt at the question mentioned in the text

to serve

cerations, I come now to Mr. de Ste correspondence. The first letter is of the 10th November 1707, and he begins by deploring the spirit of ~~affaires~~ trafficking d'affaires, which he thinks might be a good thing for the future, but which has working much mischief at the time of writing. It seems indeed that every body whom he met were fools, and that if he were not so excellent a judge as he says he is, everything would go wrong. I think I shall prove hereafter that he himself was the chief cause of the trouble. However he applies to Pontchartrain for a declaration on the part of the King, which would secure the ownership of the lands with all their appurtenances and according to the lines which have been drawn to those who have been four years in possession thereof, either by working on them, or in virtue of any title whatever, which would also validate all partitions of

debates that have hitherto been made; it would prohibit the bringing of any lawsuit concerning the accounts of partnerships rendered, and the renunciations made by women of the community with their husbands, and would forbid the judges to admit the parties to sue in such matters — finally my bill contains a declaration which would invalidate all judgments that have been given, and all deeds and contracts that have been passed up to this time, and the rights that individuals have acquired against each other, except in various matters, such as deeds and contracts "in which there may be usury, deceit or fraud, and possessions in which there may be violence or authority." That is to say whatever had been done wrong must be held to be right. No man must institute an action of any sort. No judge must judge any cause — unless indeed the judge should think there is or has something

doors with, and then at his discretion he might permit the parties to be heard. No more circumstance that such a proposal should come from a man exercising a high office in the government is the best proof of the character of the man. He actually proposed that everything should be held & he might unless he put up before he had heard the cause should think there was something particularly and remarkably wrong. That was the only way in which he thought that peace could be restored. He informed the minister that he had already rendered many ordinances that would render many and that people finding him very of access "came to him to prevent them from being sued for their debts. I daresay many debtors at the present day would be very glad if they could have the same thing done for them. At any rate it seems that he was to attend at his day

~~every~~ very ~~often~~ often did
L. Fortier in his deputation
it is stated that many per
sons had taken lands on pro
mises of concession only — a
kind of location ticket —
and then he says the Leg
islature took advantage
of the ~~ignorance~~ position of these
people to make them submit
to the imposition of onerous
dues. If that were true
however, there were legal
remedies. Panet himself
was the highest provincial
functionary in the country
and he could easily take
care that the Seigniors
should impose no dues
but such as were stipulated
in the original contract. When
the promise was in mere
words, indeed, there might
have been some difficulty;
but whenever it was rec
ed to writing there could
be very little — touching
perhaps, upon what were
the customary rates when
the agreement was to con
cede at such rates. Yet
upon this pretence he wan
ted the King to interfere
and interrupt the ordinary
course of all kinds of law.

In consequence of this, he goes on to say, there has arisen a difference in the rates of rent in almost all the seigniories according to the character of the seigniors. Now this statement is historically incorrect. It is perfectly true that the rates were various not only between one seigniory and another, but even in the same seigniory, but it is too absurd to say that this arose from the disposition of the seigniors in some of them to impose higher rates than were charged in others. Indeed the farther back we go in the history of the country the greater is the variety which we discover in the rates of concession and this for the obvious reason that in the early times of settlement the ideas ascertained of the value of land were as vague as they could possibly be. One man might think that land was likely to rise very high and would promise a very high rent. Others probably thought that persons de Paris for example, contracted to pay a rent that was

circulons. But we shall from
that besides Jean de Paris
there were other persons who
were willing to pay three and
four sous per arpent,
while on the other hand
cole occasionally ran down
to the low charge of one
denier. As to the charges
and reserves they were as
different as light from
darkness. Some concessions
of concession contained no
reserves. In others there were
banal mills and banal ov-
ens, pasturage for cattle
without keepers, and other
extraordinary conditions. But
as the country got older the
usages began to get less diffe
rent. People began to ascer
tain the value of the land with
some approach to uniformity
of estimation. But it was
long before that happened
and whatever may be said
now about the odious character
of certain reserves, there
was no such
in modern grants, as to
be found in contracts of
the very earliest period
of settlement. When Raudot
wrote, however, he had
but recently come to the Com

country, and knowing nothing
of what had taken place in
it, he wrote to Pontchartrain
saying that all this variety
had arisen from Seigniors
letting people go on the lands
with mere promises of con-
cession and then raising
the rates, upon them, accor-
ding to the greater or less
~~badness~~ hardness of their
characters exacting more
or less onerous dues. After
having treated this point
of his subject he goes to
another ~~point~~ in this manner:—
"They have even introduced
"in nearly all the contracts
"a certain clause of which
"no mention is made in the
"Custom of Paris, although
"it is the custom observed
"in this country, by stipula-
"ting that the Seigniors at
"each sale might withdraw
"the lands which he gives on
"censive at the same price
"at which they would be
"sold and they have thus abused
"the right of conditional redemp-
"tion, which constituted
"spoken of in that Custom
"which is sometimes stipu-
"lated in deeds of sale
"whereby the vendor some

"him reserves to himself the
"the right of redemption faculté
"de réméré; but which
"is not established as from
"the Seignior & the Tenant".
Really a statement of that
kind cannot but be regar-
ded in a Court of law as
something very extraordi-
nary ~~indeed~~, and something
against which it can be
necessary to urge no argu-
ments. Who does not know
that the retrait lignager is
an ~~implied~~ ~~spoken~~ in the Customs
of Paris? On the other
hand who does not know
that there was a perfectly legal
stipulation under that Cus-
tom, and was inserted as
a condition in all contracts
of accensement as the
protection and the only
protection, which the Seig-
nior could have against
fraud in the payment of
his lods et ventes? Of the
strange confusion which the
Intendant makes between
the retrait lignager and
that retrait conventionel
which he says ~~was~~ spoken
of in the Customs, I need
say nothing. But I find
~~that~~ in the next para-

graph he complains of the conversion of the payment in capons into a money payment, and states that the option of the mode of payment should always be with the debtor, when any option exists. In that here is nothing very new for use the option is with the debtor, except when it has been reserved to the creditor. The affair depended upon a bargain and it was not for Mr Randolph to introduce his own arbitrary method of interpreting its terms. Again he thinks it very wrong that the seigniors should stipulate for banal ovens, and I shall certainly say nothing in their favour. But shall I discuss what he says about the [illegible] of the Custom of Vitry le François though I think he understood little of what he was writing about on that subject. I pass at once to the end of the letter where he says he thinks it "would be necessary that his Majesty should give a declaration

"reforming and ~~to~~ regula
"ting even for the future, all
"the rights and dues which
"the Seigniors have ~~grea~~ assumed
"and ~~take~~ may hereafter
"assume, and that His
"Majesty should ordain that
"they shall only take for
"each arpent of the contents
"of the grants one sou of
"rent and a capon, for
"each arpent in front, a
"twenty sous at the choice
"of the grantee." This shows
a very careless notion on
the part of Mr. Randot: "Even
"for the future" he says, as
if nothing could be more
plain and easy and simple
than to make these regulations
retroactive. Such a re-
mark shows an obliquity
of vision which I do not
know how to characterize.
At present when we want
to apply a remedy to an abuse
we do so for the future: it
must be something very bad
indeed, when we apply retroactive
all ~~the~~ laws. But Mr Randot
reverses all this, but what
ever men had undertaken
to pay, no matter how
various their engagements,
he would put them all

on the same footing. The man who bargained for two acres is to come down to one, and he who undertook to pay a couple of denies is to pay one. The declaration is also to contain the clause to suppress the retrait seigneurial and the banal oven, the introduction of which though I am not much inclined to defend it may be accounted for very legitimately when we reflect on the policy pursued by the Government of making all the inhabitants come into villages and communities. I think that must have been the origin of this convention, and it may sometimes have been the interest of such a community that the seigneur should have an oven, though I do not believe there were many cases, in which such a convention took place, and I think that where it was made, it might have been suppressed by public authority without much hardship being done. It