

~~XX~~  
Seigneurie de la Pointe-aux-Croix

Année 1723

Dunkerque Sept 19<sup>th</sup>  
à Sept 20<sup>th</sup>

~~22~~  
 of the same date, Ob<sup>re</sup> Jan<sup>er</sup> 1667, must probably have at least some connection with the extract. I repeat first of the longer of the two fragments, from which it appears that the Council met and determined that certain regulations ought to be registered and observed "according to their form and tenor." with a long description of the policy of reducing the population into villages and bourgades, and then comes the first mention which I find of the intention of introducing the soldiers of the Regiment Carignan to settle the country. In fact this part of the paper is a requisition on military colonization, proposed to be made at the King's expense. That is far was the basis of the whole scheme, and the new colonies were to be settled over in hamlets, with certain of the old settlers venez heur

32 Page Paroiss at Ordre was 2nd vol from the word "Les s'wats ou" to "Pommery" occurs in this paper.

like in ~~order~~ (like in)

ou ses depens

But nobody entertained a notion that these charges were to borne by the free. The King was to make the best bargain he could and the settlements were in the end to pay themselves over cost. And the bargains were to be different according to the different classes of settlers — one <sup>set of</sup> conditions with the soldiers, another with the Nouis Habitans. In fact he was to induce people to settle by meeting what it was presumed would be their wishes. (Take in)

Page 33 vol 2<sup>nd</sup> 8<sup>th</sup> ords  
from Nouis habitans  
to count passés

also  
from et pour le  
benefice to qu'il  
seroit

Also  
from Comme dans toute  
to  
Suzerain ou Dominion  
trésine.

Thus according to this plan the Company who really were the owners of the land were to be left out of consideration entirely. But at any rate the country was to be settled by people some of whom were to have more favorable terms — some a military allowance to pay. And it is suggested that the N. India Company may have a stake as claimed which they might grant to their vassals.

This is easily understood, as the King was to be at all the expense of settlement the Seigneur was to get very little rent. But this was only for settlements in villages and townships to be created before settlements, the next thing was to consider what should be done with persons who desired to settle on lands, and it is said that lands ought to be conceded to such persons if they would make hamlets and villets at their own expense. There is some further reference to this matter; but it is very obscure:—  
(Take in)

P 34 vol 2 & 10  
from Poissant to you  
to Champagnes et  
autres.

This plan of 1667 was not adopted but the fact that it was proposed proves that the Crown about to bring out settlers itself intended to charge just such rates of rent as it might think proper and was going to take care to be remunerated for his outlay I cannot say help suspecting that the broken piece of extract of Lucy and Talon's regulation in the 4th vol of the

of the Seigniorial documents  
 is a little piece of ~~the~~ this  
 regulation. ~~In the said~~  
~~is said that it~~ requests <sup>that</sup> an  
 Ordinance should be made  
 "en voyant all inhabitants  
 of the Country and all shaw  
 pers possessing lands therein  
 to declare what they possess."  
 . . . . . so that it may be  
 "ascertained whether the  
 "Seigniors' ordinances have  
 "had anything inserted in  
 "the deeds given them by the  
 "lord paramount of the  
 "prejice of the rights of so  
 "verignty". The object was  
 not to see whether this  
 supposed fideicommission  
 had been carried out;  
 but whether lands had  
 been granted in a manner  
 to interfere with that droit  
forcier, which saunders  
 had been instructed to  
 introduce in favour of  
 the King as quickly as  
 he could. The Company of  
 New France had granted  
 in so extraordinary a  
 manner that they wanted  
 to know what the grants  
 were. At the same time  
 they admitted the grants  
 to be & valid.

"Further on it is said: "it  
 "will thus be ascertained  
 "how much of the lands in  
 "Canada is alleged to have  
 "been distributed, how  
 "much has been cleared  
 "and improved how much  
 "remains to be distributed  
 "of those that are common-  
 "ly situated, whether  
 "the grantees have complied  
 "with the clauses inserted  
 "in their contracts, and a  
 "bove all whether by neg-  
 "lecting to do so they have  
 "not impeded or retarded the  
 "settlement of Canada." What  
 "It is evidently still the idea  
 "that the tracts granted  
 "were so large that sovereign-  
 "ty might be superintended  
 "upon property, and as it  
 "was desired to give infor-  
 "mation to the King, an  
 "extraordinary step was  
 "taken recommended, which  
 "was to prevent the M.  
 "Horn Company or the Sieg-  
 "nors of fees making any  
 "part of their lands to be  
 "habitable, which in order  
 "to be valid shall not  
 "have been verified and  
 "ratified by the persons  
 "having power from the

"registered in the Office of the  
 "Commissary of the said Com-  
 "pany." This was certainly  
 a restriction of right; but  
 a restriction made for  
 a public object, — to  
 avoid the scattering of the  
 population. Hee was  
 no idea of escheating the  
 land; for that would  
 have interfered with peo-  
 ple of influence, such  
 as religious orders and  
 others powerful persons.  
 Of course neither the longer  
 or shorter of these docu-  
 ments had any practical  
 consequence, as neither  
 of them ever passed beyond  
 the stage of projects.

A few years later, we  
 find a despatch from  
 Colbert to the Comte de  
 Frontenac, in which the  
 former again speaks of  
 the reduction <sup>of the people</sup> into four  
 grades and villages; but  
 in which ~~while~~ he says  
 this ~~project~~ <sup>however</sup> he fully admits  
 the right of <sup>the Indians</sup> those persons  
 & their property.

We have now reached the  
 date of the second work of a  
 trenchment 4<sup>th</sup> June 1672

Page 70 Sorts 10

Page 70 vol 1<sup>st</sup> Sorts 3<sup>rd</sup> Ordon  
nance. It is as follows: —

(Take in.)

This it will <sup>have</sup> <sup>been</sup> seen provides  
for the retrenchment of  
half the lands, the previous  
arrêt of 1653 having de-  
clared the forfeiture of the  
whole. But putting that  
aside I ask if this is  
a law which confiscates  
any property whatever?  
It is on the contrary a  
mere order to M. Fabre  
to make a census of  
the country, and the people,  
requiring the latter to give  
a declaration of what they  
possessed, in consequence  
of which declaration, and  
not by it, <sup>the</sup> half of any lands  
~~be~~ conceded ten years before  
and not cleared at all ~~should~~  
~~be~~ was to be taken back, <sup>and</sup>  
Fabre <sup>who</sup> <sup>perhaps</sup> should report thereon on  
certain specified terms. The  
law did nothing at all,  
except order something  
that Fabre was to do after  
he had made a census.  
I shall show presently how  
long that census took  
to make, in the meantime  
until it is finished he can  
make no retrenchment.

Rather I should say even  
 than I doubt whether he  
 can do so; for I am not  
 sure that the act is not  
 reserved for the King.  
 Whoeven ~~was~~ <sup>is</sup> to do it, it  
 is certain that ~~the~~ <sup>the</sup> ~~Film~~  
 or the King must go be  
 yond; his ~~dedication~~ <sup>dedication</sup> be  
 fore they shall have  
 carried out the confisca-  
 tion: even the recense-  
 ment will not be enough.  
 Be it remembered that  
 here as in Orcomental  
 ready & commented on  
 there is no distinction  
 between the sergent and  
 the consulaire; all are  
 alike subject to the rule  
 such as it is. It follows  
 that if on account of  
 this arrest the sergent is sup-  
 posed not to have property  
 the application of the ~~same~~  
 reason will deprive the  
consulaire also. Be Be  
 all this as it may I ~~state~~  
 state what I believe to  
 be a fact, when I say  
 that I believe ~~that~~ <sup>that</sup> there is  
 never was an ordinance by  
 which any one was condem-  
 ned to this ~~half~~ <sup>half</sup> attachment  
 of one half ~~of~~ <sup>of</sup> ~~the~~ <sup>the</sup> ~~property~~

a negative of course; but I ask your Honors to satisfy yourselves as I have done by going through the records of the Jurisdiction of the Country, and I think you will not find an instance, in which you will be led by any circumstance to ~~think~~ suspect that half of any Seigniorie was escheated under the act. I shall show indeed from a statement of the King himself that it could not have been carried out. Certainly Salva did take back and regrant many Seigniories, but this was done without any reference to this law. Thus in November and December 1662 he granted some one hundred proprietries in Lower Canada; <sup>but</sup> there is there mention of any preceding grants, or of what the King directed should be put into grants of lands thus recommended. That indeed is worth notice — that in none of the new grants which he made did he put

suspect

There is no bet, no record of such a thing and I am entitled therefore, to say that it did not take place

is the reason that there were none with mention of former grants or mines.

in these emblems ordered  
 by the King to be inserted in  
~~new~~ regrants, and this is  
 an answer to the peti-  
 tion that some such  
 regrants were included  
 in the <sup>large</sup> number of Seignie-  
 ries which he distributed.  
 But as I have already  
 stated he made some  
 new grants of old ences-  
 sions, which had been  
 abandoned, as in the  
 case of La Citie, and  
 they were treated as if  
 lapsed entirely, and in  
 no respect in the way  
~~proposed~~ pointed out in  
 the arrêt. I shall not  
 now allude to the des-  
 patch of De Fontenac, in  
 which he shows that no  
 thing was done to exe-  
 cute the declaration; <sup>but</sup>  
~~rather hasten to start another~~  
~~piece - at once - to another~~

proceed at once to a

recurrence of <sup>the</sup> ~~the~~ date near  
 the end of the reign of  
 the Company of West In-  
 dies. ~~These papers are of the~~

This paper is of the

year 1672 <sup>at the</sup> ~~the~~ dis-  
 solution of the Association  
 which took place in 1674. This  
 evident ~~to see~~ that ~~xxx~~  
~~the~~ ~~values~~ ~~they~~ they were  
~~getting~~ tired of their bar-

gain and heavily in debt; and so they were too glad to get out of it and let the King take the territory back, which was done not by a confiscation; but an <sup>act of</sup> voluntary abandonment, which revoked all that they had granted or sold. It is true that a large number of these concessions had been made in the name of the King; though in behalf of the Company; but half a dozen of the grants were by the Company itself, and these were as I have said <sup>and expressly</sup> completely confirmed.

Among the grants made <sup>immediately before</sup> ~~during~~ this later period <sup>there</sup> was by the King; ~~but~~ the greater number by the King's officers; and some by the Company. The one made by the King is of No 54 of the date of 1672 Sept. 17<sup>th</sup>. It erected a piece of land belonging to Talon into a Barony and Chateaux, and in connection with this creation I cite page 141 and 142 of the 1<sup>st</sup> vol of Brodeur's ~~manuscripts~~ manuscripts. In these papers we have the

in writing to Colbert as follows  
(Take in)

So it appears that  
the Intendant had ~~made~~  
established three villages  
at the expense of the Crown  
and bought a beautiful  
piece of land fit for the  
erection of a Barony;  
but much more fit if  
the three neighbouring vil-  
lages were added to it. Be-  
sides all this he had  
10000 livres to invest. In  
consequence of this ap-  
plication there came out  
an edict of the Kings, which  
in compliance with the  
request of his Majesty's  
officer ~~made~~ he added  
the three villages to his  
property under the names  
of Bourg le Roi, Bourg  
la Reine, and Bourg  
Falon, and created the  
whole into a Barony under  
the condition, however,  
that there was to be no  
change of ownership  
nor division of for the  
homage. I cannot say  
whether Falon bought this  
land en cens or en fief.  
I think the former, as I

Proved not 1<sup>st</sup>  
1418742  
also  
another letter dated  
10 Apr. 1670

can find no trace of any  
 full grant of the property.  
 If so I cannot believe that  
 he thought when he got his  
 other holding made into  
 the Barony of Des Isles  
 that he was bound to con-  
 cede it ~~at~~ to any who as-  
 ked for it. The three vil-  
 lages were of course gi-  
 ven with the inhabitants  
 residing upon them and  
 the only right of the owner  
 in them was to exercise  
 the dominium directum  
 according to the con-  
 tracts; but the rest was  
 his own property. The  
 transaction is a part of  
 the evidence of which I  
 shall furnish abundance  
 of the essentially aristo-  
 cratic idea that ~~was~~ lay  
 behind the whole settlement  
 of Canada. I speak next  
 of the grants made by the  
 King's Officers. First in  
 1664, we find two Nos  
 49 and 50, made by Messrs  
 De Hezy and De Naval.  
 The first is a grant to the  
 heirs of a small piece  
 of land near Three Rivers,  
 is most absolute property.  
 The next, on the same day

<sup>lands on</sup>  
 is a grant of the River Cham-  
 plain, short, simple and  
 meaning a great deal. It  
 is to H. Regard, made  
 in consideration of servi-  
 ces & which he that he  
 has rendered his Majesty  
 in this country, and which  
 he continues daily to render  
 of a quantity of land a  
 league and a half in front  
 by a league in depth in the  
 lands, the said River  
 Champlain being ~~along~~  
 inclosed (the boundary)  
 to enjoy the said tract of  
 land and all comprised  
 therein, as well ~~say~~ wood,  
<sup>as</sup> meadows, rivers, swamps,  
 rivulets, lakes, isles, islets  
 and generally all contain-  
 ed within the said limits  
 in full property with right  
 of all seigniorie and  
 justice haute ~~roy~~ ~~seigneurie~~  
 and basse, and to the  
 usual honorary rights of  
 seigniors of Parishes in the  
 Churches when they shall  
 be built. From that time  
 to 1672 very little was done  
 in the way of granting land.  
 What was effected is recor-  
 ded in short instruments  
 of a kind that we may

call location tickets. Nos  
50 B. (St Maurice); 50 C (St  
Michel); 51 (St Marie);  
57 to 52 (Sabadie); and 53  
Ponte du Lac are of this  
kind. They are in the  
shortest possible form

I grant you so - and so,  
without any more words.  
No 16<sup>m</sup> 1672 is also of this kind; it  
is the title of what is now  
Matane. "We signify to all  
whom it may concern that  
we have permitted the Sieur  
D'Amour to cause a league  
of land in front on a league  
and a half in depth to be  
laid; to wit: to the  
whole under the good pleasure  
of His Majesty from whom  
he will be bound to take  
confirmation of these presents.  
and the confirmation is  
at No 163 with <sup>that of</sup> a great num-  
ber of other grants.

Next in order come the  
grants by Talon in more  
full and correct form  
from ~~from~~ out of which I  
begin by mentioning a  
few which are peculiar.  
Of these is No 58 / Lele aux  
Heron / from which it  
appears that Zacharie  
Dupuis had obtained

from the Summary of Humboldt  
 a grant of land opposite  
 that Island, with a right  
 of fishery; but he states  
 he has learned that the  
 right of fishery could only  
 be granted by the  
 Crown, and therefore he peti-  
 tions for Sheron Island  
 in order that he may get  
 the fishery with it. He  
 accordingly got the said  
 "Dele aux Sheron with the  
 "adjacent islets, and there  
 "with the right of fishery  
 "in the River St Lawrence  
 "opposite the said isle  
 "and inasmuch as he <sup>said</sup>  
 "may be opposite his <sup>said</sup>  
 "cession." Almost at the  
 same time four grants  
 were made in Canada  
 Nos 57; 58; 59 and 60. They  
 are so like others in which  
 I shall presently remark  
 that I here say only this  
 that they are unlike  
 those <sup>commonly</sup> made by Palou in  
 Canada. Of these two give  
 justice; two royalme and  
 base justice only, and  
 they are <sup>chiefly</sup> remarkable  
 as showing again the utter  
 absence of uniformity.  
 Upon one however I must

+  
 At the charge of fees &  
 homage and a great  
 revenue at each suc-  
 cession according to the  
 Customs of Fexin le Francois.  
 +

say a few words because  
 it has been mentioned on  
 the other side. No 56 was  
 given to the Sieur d'Arpentis  
 my son unto justice. He  
 was the son in law of  
 the Sieur de la Tour and  
 put in his claim  $\&$  in that  
 capacity. He described  
 "Salou as seigneur and  
 "proprietor of the River St  
 "Jean from the River Ma  
 "gic to the houses on the said  
 "country of Acadie, and  
 then speaks of his ~~choix~~  
 choice to pray for a  
 new fe grant rather than  
 claim as heir and executor  
 on account of Salou's  
 failure to clear, and he  
 offers to settle ~~himself~~  
 self and make improve-  
 ments. At all the fail-  
 ure to clear is one thing  
 but the failure to make  
 free gratuitous grants to  
 the first comers is quite  
 another

Smith J. But on what  
 authority did the seigneur  
 make this grant if not  
 on that of the arret

In Dunkin Upon  
 no authority. Upon the  
 sic volo sic jubeo

ciple. It is plain that this is  
 not done ~~or~~ under the act,  
 for that only authorizes the  
 confiscation of one half the  
 property. The whole  
 Country had been granted  
 to D'Aulnais Charnisy,  
 and Latour had a conflic  
 ting claim <sup>in the negative</sup> — all the  
 region had been in the  
 hands of the English, and  
 had been conquered back,  
 sometimes after which  
 went, & comes the Sieur  
 D'Aupentigny, who says  
 I am the Son in law of  
 Latour; I think I might  
 call myself his heir; but  
 I am told the King could  
 claim the land for want  
 of settlement. He does  
 not however, say that the  
 King has claimed it. The  
 truth ~~was~~ <sup>is</sup> that the whole  
 tract of the grants in the  
 tract had lapsed by the  
 conquest and had become  
 the King's again by recon-  
 quest, and there was no  
 contradictory party opposing  
 the petitioner, so that  
 nothing was more natural  
 than to give it to the man  
 who seemed to have the  
 only claim.

September 25<sup>th</sup> 1855

We have now ~~then~~ come to the period when Talbot made the large number of grants which I have already spoken of, and all in nearly the same form; so that the discussion of that form will clear a considerable period and prevent further comment hereafter of subsequent concessions. Except with an occasional variety the form will be found at length to be that in all essential features the same as in Nos 55 and 61. He had two or three <sup>in the long form</sup> preambles; he had a short or form of grant which he put into several concessions, and there were many without any preambles at all. In all the emotions are nearly alike, though they vary now and then from the apparent impossibility of ever saying the same thing in the same words. He was also <sup>very</sup> ~~very~~ <sup>skillful</sup> ~~skillful~~ in this in 55, the feudal clause reads thus: "At the charge of that he will hold <sup>seignior</sup> ~~seignior~~ and home feudal on

"said  
 the seignior within a year and  
 "that he will stipulate in the  
 "contracts that he shall  
 "make with his tenants that  
 "they shall be held to reside  
 "within the year and keep  
 "hearth and home on the  
 "concessions which shall  
 "have been granted to them,  
 "in default of which he  
 "shall enter of plein droit  
 "in possession of the said  
 "lands." While in 1761  
 (St. Lande de la Parade) the clauses  
 and thus: - "At the charge  
 "that they shall continue to  
 "keep and cause to be kept  
 "hearth and home on their said  
 "seignions, and that they  
 "shall stipulate in the con-  
 "tracts they shall make  
 "with their tenants that they  
 "shall be held to reside within  
 "the year upon these concessions  
 "which shall have been given  
 "them, in default of doing which  
 "they will enter of plein droit  
 "in possession of their lands"  
 Most of these grants were  
<sup>verbally</sup> made before the  
 deeds passed, and when  
 the deeds did pass the  
 grantees were already  
 residents so that the obli-  
 gation set is in one case to

continue, while it is to do in  
~~the other~~ another. From <sup>no</sup> 55 to  
 no 91 they usually give justice,  
 from <sup>no</sup> 92 to no 114 they do not;  
~~and~~ but here are two or three  
 grants of which I cannot  
 say whether they give justice  
 or not, for while there  
 is no clause which does so,  
 there is the clause which  
 is necessary to it that  
 an appeal from the local  
 judge shall lie to the  
 Sovereign Court. I do not  
 know which is the error  
 the omission of the one  
 clause or the insertion  
 of the other. ~~Next~~ The Fa  
 vor grants were all or  
 nearly all in 1672, and  
 that Intendant returned  
 to France in 1673 or 1674,  
 and De Frontenac made  
 the rest of the concession  
 of the period of the St. James  
 Company. Of these two or  
 three are peculiar and  
 I shall remark on them par  
 ticularly. Seven or eight  
 are augmentations of grants  
 by Talon; ~~two~~ contain all the  
 same charges <sup>and</sup> conditions;  
 and four or five at the  
 very end of De Frontenac's  
 time are like Talon's long

~~form~~, with a few slight, but  
 not insignificant alterations.  
~~But~~ But now first of the  
 preamble in Talon's long  
 form: it will be found  
 contains a recital with  
 reference of the disposi-  
 tion of the parties to settle  
 and form a settlement.  
 No 55 (D'Arville) will be is  
~~found at least~~ printed at  
 length in the 1<sup>st</sup> vol of  
 the Parliamentary <sup>specimen of the</sup> ~~original~~  
 Documents, and is a grant  
 to ~~an~~ officers of the Carig-  
 non Regiment and to  
 gentlemen of that rank. In  
 it the King sets forth that  
 being anxious to maintain  
 his character for zeal as  
~~the elect~~  
 a true son of the Church  
 and to ~~advance~~ advance the glo-  
 ry of God, and also to  
 spread the ~~and~~ increase and  
 make known his own de-  
 vinity.

... and having judged that there were no surer means to that effect than to  
 compose this colony of persons qualified properly to fill it up, to extend it by their labor  
 and application to agriculture, and to maintain it by a vigorous defence against the insults  
 and attacks to which it might be exposed hereafter, has sent to this country a number of his  
 faithful subjects, officers of his troops in the Regiment of Carignan and others, most of them  
 agreeably to the great and pious designs of His Majesty, being willing to connect themselves  
 with the country by forming therein settlements and seignories of an extent proportionate to  
 their means; and the Sieur De Comporté having petitioned us to grant him a part thereof:

Accordingly he makes the  
 successive petitions for.  
 Here is a shorter form of the  
 same preamble; and what  
 does it signify? Clearly that

who took grants  
 these persons, agreed to form  
 settlements proportioned to  
 their pecuniary means, <sup>perme</sup> at  
 their own expense. They took  
 the land to settle upon it,  
~~and~~ and the fact they did  
 so, and did not take it  
 as prepared at the expense of  
 the King, proves I submit  
 that they were to make their  
 own terms with the people  
 they employed in clearing.  
 If a man had a large  
 family - tant mieux pour  
 lui. He could arrange with  
 them to form a settlement.  
 If he had a great number  
 of dependents, but in what  
 way he accomplished  
 it, he was to make a settle-  
 ment, and the presumption  
 is that the grantor suppo-  
 sed he had sufficient  
 proof of the capacity of the  
 grantees to fulfil this condi-  
 tion. There is no idea here  
 of conveying to the Seigneur  
 merely a light rent, such  
 as it was proposed to convey  
 to the Seigniors, who might  
 receive concessions of ~~at~~  
 settlements ~~also~~ made at  
 the expense of the King.  
 - who would be merely  
 nominal seigniors and

who must therefore be con-  
 tented with whatever trifling  
 cens they might be gratified  
 with. True these grantees  
 were not generally rich men.  
 They were captains or lieutenant  
 nants in the army; but  
 still, it is evident that they  
 were themselves to make the  
 settlements, at their own  
 cost. It would be very  
 singular if they were to ex-  
 pected to do so with no  
 reward or a very insigni-  
 ficant one. But in truth  
 there was nothing to limit  
 the means by which settle-  
 ment was to be effected;  
 if it were only effected at  
 all. ~~The grantee~~ The grantee  
 is not even bound to any  
 specific amount of settle-  
 ment within any specific  
 time. But before insisting  
 on this I point I beg attention  
 to the second condition, the  
 words of which once inter-  
 puzzled myself. <sup>the second</sup> condition  
 is that he shall

x  
 The first condition is the  
for et homage

shall hold, subject to the customary rights and dues, and agreeably to the Custom of Paris, which shall be followed in this respect provisionally and until otherwise ordained by His Majesty.

— a form of words which was retained for a considerable time and number of years after Talon had disappeared.

After ~~a~~ <sup>the</sup> lapse of that time  
 the ~~words~~ <sup>provisionally</sup> (for provision)  
~~is introduced~~ is sometimes  
 dropped and sometimes left  
 in, and the words ~~follow~~  
 "in this country" are sometimes  
~~inserted~~ after followed in  
 this respect, ~~and~~ while  
 at other times the mere  
 mention of the Custom of  
 Paris is continued. Now  
 it is undoubted that the  
 Custom of Paris was intro-  
 duced by the act which  
 created the N. India  
 Company, after having been  
 partially, at least, ~~made~~  
 been made the law by the  
 creation of the Conseil  
 Superior. It is not intended  
 here that the Custom of Paris  
 should be so made the  
 law provisionally; but I  
 think the important words  
 are "in this respect" (à cet  
égard) and that the meaning  
 of the phrase is that His  
 Majesty reserves to himself  
 the right of hereafter <sup>augmenting</sup> ~~changing~~  
 the rates <sup>payable to him</sup> and  
 the ~~rules~~ <sup>fixed</sup> according  
 to the Custom. & This is  
 entirely in accordance  
 with those ideas of fiscality  
 which I noticed in speaking  
 of the Superior of Canada.

The idea of allowing the King to make what he thought a reasonable amount out of everybody, who took his lands. He was constantly short of money; always felt the expense of a war to be very great; and never ceased his efforts to make it pay its own expenses. The intention of the phrase in question in my opinion, therefore, was just to prevent the Seigniors, when their lands should be come taxable from setting up that exemption from taxation which was pretended by the Seigniors of France. The 3rd condition is to be found only in the grants of justice, it merely provides for appeals, and in some instances the place where the appeal ~~was~~<sup>was to be</sup> was pointed out, while in others it ~~was~~<sup>is</sup> not. The 4th and 5th conditions are grouped together in this way

heath

... subject also to the condition that he shall keep house and home on his said seigniority within one year, and that he shall stipulate in the title deeds which he shall give to his tenants, that they shall be obliged within one year to reside and keep house and home on the concessions which he shall have granted them, and that in default thereof he shall re-enter, *pleno jure*, into the possession of the said lands.

then comes the 6th and 7th providing that the grantee

shall preserve all the oak timber which may be found within the limits of the land which he shall have set aside for his principal manor house, moreover that he shall stipulate in the private grants which he shall make to his tenants, the reservation of such oak timber fit for ship building;

; and

shall give immediate notice to the King  
or to the Royal West India Company of all the mines, ores and minerals if any be found  
within the limits of the said fief.

The last condition is that he shall leave all the necessary road ways and passages. I take up the feudal clause first, and I submit that it imports no obligation whatever to have censitaires; but on the contrary is a restraint upon doing so. The grantee is to hold keep hearth and home in his seigniorie within the year, is to continue to do so, and is to stipulate with all who take his lands that they will go and live there. The condition is simply to pass no deed to a censitaire without inserting that clause.

Rondelet Jr. Do you mean that the King desired to give the country out to seigniors, who as when they had got it were to let it shift for itself?

Mr. Dunken I say that in point of law there was no obligation. Of course de facto they were obliged to concede in order to make any profit. It was present to the mind of every man that they

would concede; but they were not bound in law to do it.

in the second condition

I think if you apply the words "subject to the customary rights and dues/ports et redevances" of the payment which the Seigneur was to make to the Crown. Do you think they apply only to the payment to the Crown — is the word redevance ever applied to the quit.

Or Mr Dunkin Certainly you know, it has the largest meaning possible, standing for any dues which are to be paid.

Explicative Lafontaine C.F.  
It seems to me you find the phrase its proper sense, and you can show hereafter that when the King grants or concede he does so at cas et redevances redevances. Redevance is a word with the largest widest possible meaning.

Mr Dunkin I shall show presently that the word occurs twice in the same grant — once in describing what is to be paid to the King and again in speaking of what is to be paid to the Seigneur.

As the same the oak tree

Clause like the feudal clause, obliges the Seigneur to impose the same condition on his tenants, and these are parallel <sup>phrases in the</sup> clauses as to the discovery of mines, and the leaving of space for roads. In the condition for the preservation of ~~the~~ oak trees it is remarkable that the obligation is extended only to those which grew upon the principal manor; so that it is plain it was supposed there might be more manors than one. For this as in the other conditions the King is the stipulating party, and the clause can not be pushed beyond its literal meaning - indeed according to all rules of interpretation if it can be read so as to leave the King party free, that is the case in which it must be taken.

It would I think this sort of fact a great argument to those who say the Seigneur is the absolute proprietor? Can they not say here is a reserve made, of what otherwise would be entirely ours, and if it be not ours

why make the reserve?

Lafontaine J. But would it not follow, too, that if there were a seignior covered with oak trees the seignior could not clear at all?

Mr Dunkin All these conditions are to be understood with a certain degree of administrative latitude. They are merely engagements between the King and the seignior to be enforced only at the discretion of the former. If there <sup>had been</sup> ~~were~~ a concession completely covered with oak trees I have no doubt the ~~gr~~ condition would have been taken out in its entirety.

Lafontaine C. J. There is ~~it~~ It has, however, to be recalled with the clause which requires the clearing of the land.

Mr Dunkin There is no such clause in these grants your Honor. That comes afterwards. After this large number of grants by Lalor in a very short space of time he came to those of Fontaine and the rights which were usually granted seem to have been abridged by him. He granted Namuraska with a prescription

very much like that of his prede-  
 cessor; but the two clauses  
 relating to keeping hearts  
 and home are cut down  
 into one, shortened and made  
 to look still less like an  
 obligation to concede than they  
 looked before. The oak tree  
 clause is cut down still  
 more and now appears in  
 this shape "And shall  
 'conserve the said grants  
 "and cause to be conserved  
 "by his tenants the oak trees  
 "which shall be found within  
 "the extent of the said places  
 "proper for the construction  
 "of His Majesty's ships." The  
 words about the domain  
 which we met with before, so  
 far from being essential  
 are the first dropped. The  
 word tenancies is left in  
 for some time longer; but  
 at last that goes too, as be-  
 ing really of no more  
 importance; the whole obli-  
 gation intended to be imposed  
 being simply this: "You  
 "shall preserve the oak trees  
 "on your seigniorie and  
 "make everybody else pre-  
 serve them.

Rondelet Jr. It thus leads  
 me to conclude that the letters

intended that the Seigneur should concede, is the fact that these terms about making the tenants preserve the oak trees is to be found in all concessions. Therefore it must be supposed that it was intended there should be tenants.

In Dunham they give <sup>the clause in</sup> the <sup>word</sup> <sup>is to be</sup> found in very few grants.

They are merely accidental words where they do occur; for the essence of the conditions imposed are comprised in four injunctions you shall keep <sup>the</sup> hearth and home; give notice of the discovery of mines; preserve the oak trees; and leave space for roads — and this no matter whether you retain the land yourself or concede it. ~~There~~ It was supposed that the oak trees, here as elsewhere, were found dispersed through the woods; but the clause did not always relate to oak trees only. Sometimes red pine was inserted by itself or with the oak trees; and sometimes the clause included all wood fit for ship building. Far from making

concession imperative, it ~~was~~  
 must ~~be~~ in its effect have  
 restrained concession by mak-  
 ing the possession of land  
 less desirable. Grants <sup>No</sup> 117  
 (Iles fourcelles); <sup>No</sup> 118 (Recollets  
 Quarts or St Charles); and <sup>No</sup> 132  
 (Ile de Beauvegard) were  
 made about the same period.  
 - No. 117 in 1673 to the Abbe Joret  
 without any charge ~~was~~

3-17

of the same as he may think proper, with all the rights of fief and seignior, and have the same cultivated and inhabited as far as their extent will permit, on condition that he shall pay fealty and homage (*foi et hommage*) at the Castle of Quebec, agreeably to the Custom of the provostship and viscounty of Paris, and that he shall cause these presents to be confirmed by His Majesty within eighteen months.

That certainly could not bind  
 the abbe to have sub-granted,  
 since he was to dispose of it  
 just as seemed good to him.  
 No 118 ~~was~~ is a peculiar grant  
 which required nothing but  
 the keeping of hearth and  
 home; and ~~the~~ <sup>No</sup> 132 is given  
~~to the same words like the other~~

Grant was; to hold, enjoy and dispose of the same, himself, his heirs and assigns, for ever, as he may deem meet, with all the rights of fief and seignior, and cause the same to be well cultivated and settled as far as their extent will permit, subject to the performance of fealty and homage (*foi et hommage*) at the Castle of Quebec, agreeably to the Custom of the provostship and viscounty of Paris, and to have these presents confirmed by His Majesty within one year from this date.  
 In testimony whereof we have signed these presents and caused

The meaning is clearly that the  
 grantee is to get the island culti-  
 vated in the best way he can.  
 Mordellet J. When I spoke  
 just now I had no reference  
 to the oak tree clause  
 Mordellet J. When I spoke just  
 now I had no reference to the

Oak Tree Clause, but in all the concessions of Seigniors which I have seen I find manifested an idea that there were to be tenants, which seems to imply that the land was to be conceded.

Mr Dunken If your Honor will read the grants anterior to those of Salon you will find that if the King or Intendant meant to bind the grantee to have tenants they took a very strange way of showing their intention. There is no such word as tenants there nor any manifestation of intention.

Smith J. What was meant by the land being held en fief and Seigniorie?

Mr Dunken That the grantee should render foi et homage and the other rights due from a vassal to his lord.

Mondelet J. Now If they had no tenants they must have had the honor of being Seigniors without consequence — a queer state of things to suppose.

Mr Dunken Yet nothing was more common in France, since there are

three articles in the Customs  
relating to signiorie of that  
kind. But I do not say  
there were to be no tenants.  
On the contrary. All I say  
is there was no legal  
obligation to have them.

Duval J. The practical  
view is that the French  
government did not re-  
quire to be told that no  
body meant to cultivate  
square leagues of land.  
But if they wanted to make  
concessions  
~~at~~ a legal obligation, so  
as to have the consequences  
of a contract why did  
they not say so?

Duval J. Of course there  
were to be concessions.  
Without them there could  
be no cens et rentes nor  
any lods et ventes.

Imbulet J. What is the  
difference between a legal  
obligation to concede,  
and the practical necessity  
of doing so?

Mr. Dunkin. Why in ~~the~~  
the first case it seems  
according to the Customs  
notions of my friends on  
the other side that my  
clients would be mere  
trustees, because <sup>they are</sup> these

bound to get rid of my  
land at certain rates, and  
that, therefore, took only so  
much interest in the pro-  
perty as <sup>should</sup> remain after  
making these concessions.  
On the other hand I say  
that took the whole interest  
with the former merely  
of making concessions.

The distinction is a most  
important one. But I  
shall show presently  
that so far from any pre-  
sumption of obligation on  
seigniors to concede, a  
resulting from the fact that  
they could not cultivate  
their seigniories themselves  
— so far from that, it  
was customary to grant  
in censive tracts of  
land that no one would  
think of cultivating &  
merely with individual  
resources. Now are en-  
censives in censive four  
leagues deep, three a  
league and a half deep,  
depths larger than the  
average depth of seignior-  
ies. I shall show too  
that the domain of la  
chenais was understood  
to be of a league and

and a half in depth. But that is perhaps less conclusive than the other fact, that the government granted an exclusive a tenure <sup>in fee</sup> which of course every holder could do what he pleased immense tracts of land. This as I have said altogether destroys any presumption of a legal obligation on the part of the Viceroy drawn from the extent of their grant. I am, however, anticipating and I come now to the consideration of grants No 123 (Lac Beauport) No 124 (Baie du Loup) <sup>No 125</sup> (Baie du Loup en bas) <sup>No 126</sup> (Lac Beauport) No 134 a. (Beauport Isle d'Orleans, and Saint au Matelot) No 135 (Petite Nation) Most of these are not grants with jurisdiction, but they all mention the rights of fishing and hunting and express the grant very clearly to the extent of the concession on the water front. Thus in No 123 (Lac Beauport) we have it thus: "With all rights of fishing and hunting and the property of mines, minerals

"Lakes and rivers, which  
 "may be found in the extent of  
 "the said concession, over  
 "the whole and nature of the  
 "River St. Lawrence opposite  
 "Keok." That is the whole  
 terms of the grant, and  
 it will be noticed that the  
 Company took the precau-  
 tion of saying expressly  
 that they gave the mines  
 and minerals. The only  
 reservation was an annu-  
al to be paid at each  
 annulation with the first  
 homage, and the other  
 conditions were only to be  
 for the clearing within three  
 years, and survey the land.  
 I suppose that it was from  
 not having well read these  
 grants that one of my friends  
 on the opposite side sup-  
 posed these conditions were  
 added to those which had  
 been usual before; but  
 in truth they are instead  
 of all others, & though I  
<sup>no doubt</sup> ~~am~~ <sup>sure</sup> say that many of  
 the conditions to be found  
 elsewhere might be brought  
 in afterward. I do not  
 mean for instance to  
 say that the law could  
 not have compelled the

leave  
 granted to ~~the~~ <sup>leave</sup> ~~road~~; but  
 however, that may be so far  
 from the grantees not having  
 the entire property, the whole  
 was given in the most express  
 and complete manner. There  
 is not a grant in fee and  
 common soccage made  
 since Canada was a British  
 Province without conditions  
 more stringent than these.

The grant of Petite Nation  
 goes still further. It was  
 made to Monsieur <sup>de</sup> La  
 Sal, while he was at Paris  
 and is numbered together  
 with the No (34<sup>th</sup>) Petite  
 Nation of five leagues by  
 five leagues on the Ottawa  
 River, in all property such  
 "ivory and justice, as also  
 "the Lakes and Rivers, mines  
 "and minerals, which shall  
 "be found therein and are  
 "all the <sup>breadth of the</sup> extent of the said  
 "River et même de toute  
 "la largeur de l'étendue de  
 "dit fleuve) and also of  
 "the batures, isles and  
 "islets in the space of the  
 "said five leagues of front  
 "of the said concession  
 "with right of fishing and  
 "hunting in the whole ex  
 "cept thereof." That was

a very large grant and  
 three years to begin his  
 clearing did not satisfy  
 the Bishop. He was only to  
 clear when commencement  
 and beyond that and the  
 fixing of boundary marks  
 he was bound by no condi-  
 tions whatever. The other  
 grant which his Prelate  
 obtained is No 134 A, and  
 the recital shows that he  
 had acquired from <sup>the</sup> Herberts  
 a grant of Sault de Sault au Matelot, &  
 some ground in the island  
 of Orleans, and the Seigneurie  
 of Beauport. He complained  
 of the burdens imposed  
 upon <sup>the proprietors of</sup> these properties which  
 consisted of the years rent  
 and payable at rack ren-  
 tation, of what had not  
 been granted in feif or à  
rens. He stated, too, that  
 he only held the lands for  
 the purposes of a <sup>the</sup> College,  
 and he got relieved of the  
 inconveniences of which  
 he complained, upon condi-  
 tion ~~that~~ ~~he~~ ~~should~~ ~~pay~~  
 a maille d'or with his  
 first homage, for ~~the~~ ~~of~~  
 Beauport and Isle d'Orleans,  
 and a piece of gold worth  
 three livres with his  
 first homage for Sault

and the Seigneurie of the ~~feif~~ ~~of~~ ~~the~~ ~~island~~

instead of the years revenue

an <sup>of the previous</sup> <sup>occupation</sup> ~~estate~~ <sup>as</sup> ~~was~~ <sup>was</sup> ~~to~~ <sup>to</sup> ~~be~~ <sup>be</sup> ~~covered~~ <sup>covered</sup> ~~at~~ <sup>at</sup> ~~all~~ <sup>all</sup>. Can anyone then conceive that the Bishop de LaVal had less than a pevrem estate — it is to be supposed that he bound himself to the grantor to do anything but what he pleased with the land itself.

I shall say nothing to the Court of the style in which ~~these~~ ~~was~~ ~~made~~ <sup>the supposed</sup> grants in this period dealt with the land of the country, as to grants in censive. When I come to that I shall show not only that these grants are bounded with whimsical considerations and conditions like those in fief; but that some of them were much in excess of the rate which it is now said must be the limit.

from the dissolution of the N. <sup>west of 1711</sup> ~~Company~~ <sup>Company</sup> & the ~~Company~~ <sup>Company</sup>

I go at once to the next <sup>period</sup> ~~period~~ of Canadian history, beginning with the title, after reviewing which I shall have the pleasure to task of commenting upon the jurisprudence.

The period is long and the

number of grants made in its course great. There were one hundred and seventy three or more seigniorial grants by the Governor and Intendant of which we have a record, and probably thirty or forty more of which we have none. There were besides ~~seventeen~~ seventeen grants à cens made by the Governor and Intendant.

One seigniorial grant was made on the express authority of the King, given in his Council d'Etat. The King himself testified about the forty six by two or three confirmations in bloc and upwards of seventy by single confirmations. Comparing then to the grants in seigneurie it will be found that I have put down nineteen as <sup>to</sup> ~~seventeen~~ <sup>given</sup> unknown terms; but in truth by comparing these grants with those which went before and those which followed it is easy to tell their character. Two of these unknown titles have been, since I compile à my digest

furnished ~~as~~ in manuscript  
 to; one of them having been  
 laid before the Court by the  
 Crown, and another having  
 been handed to me. Of  
 the rest twelve are augmen-  
 tations of former grants, and  
 seven of them augmentations  
 of grants made before  
 this period, all of them be-  
 -ing given with very large powers,  
 and in most instances  
 at the same rates as the  
 Seigniories thus augmented.  
 Three of them are peculiar  
 ; one of them being given  
 with a fief; another  
 with hunting and fishing,  
 and the third is, the con-  
 version of a land held à  
con into a fief. Some  
 others have more or less  
 peculiarity. The ordinary  
 grants are one hundred  
 and twenty four in num-  
 ber, and of these only nine-  
 teen are without justice.  
 Two were arrière fiefs; ten  
 were with hunting and  
 fishing, seven were with  
 fishing only hunting  
 and trade with the In-  
 dians. Fifteen were  
with justice and justice;  
justice and justice;

Sixteen had justice, hunting  
 and fishing. One had justice  
 and trade with the Indians.  
 Four more had with justice,  
 hunting and trade; <sup>and</sup> Sixty  
~~and~~ nine had justice,  
 fishing, hunting and trade.  
 As I mention this to show  
 the immoderate variation  
 which prevailed in the  
 style of the concessions,  
 for here are one hundred  
 and twenty four grants  
 which I call ordinary  
 ones, and I find them  
 divisible into the many  
 different classes, which  
 I have mentioned. The  
 grants of the trade with the  
 Indians began to appear  
 in 1684, and may be  
 found first in grants No  
 181 and 185, where they  
 are made in a manner  
 which implies that ~~they~~  
 it had been usual to  
~~grant~~ <sup>concede</sup> it before, I think  
 however, though singular  
 by enough there never  
 was such a grant, so  
 far as I can find, up  
 to that date. I believe  
 without standing that  
 the trade with the Indians  
 was more valued than

the right of property. Both  
 Nos 181 and 185 <sup>was given</sup> were made to  
 a member of the Sovereign Coun-  
 cil at Quebec, ~~who were~~  
~~so and~~ No 184 for his sons;  
 and No 186 was given to  
 another member of the Coun-  
 cil. Both of these gentle-  
 men were no doubt desir-  
 ous of smuggling into their  
 dees the valuable privi-  
 lege of romance after  
 romance had been  
 made against it. People  
 had been prohibited from  
 going into the woods. They  
 were permitted to deal in  
 peltry no where but at  
 Montreal, Quebec, and the  
 Rivers. Sometimes 100 li-  
 ves were given for licenses  
 to trade for a single year  
 or two. At others the former  
 our even was not allowed  
 to ~~grant~~ <sup>permit</sup> the advantage  
 being ~~that~~ the obtained  
 by anyone whatever. I  
 repeat then that I believe  
 the concession was in  
 the first instance smug-  
 gled into these two grants  
 under the pretence that  
 it had been usual to  
 pay it there. Probably  
 other seigniors had

already combined both their  
 trade winked at, and thereafter  
 it became general. The  
 right of fishing had not  
 been inserted in the early  
 grants; but I think it was  
 there impliedly, and when  
 the justice was given especi-  
 ally, there can be no doubt  
 that the seignior possessed  
 the privilege. Henceforth  
 they made some conces-  
 sions with and some with-  
 out fishing, whether with  
 any intention or not, I  
 do not know.

I turn now to the con-  
 titions of the concessions.  
 I have <sup>classified</sup> spoken of one, <sup>from</sup>  
 red and twenty four <sup>others</sup>  
 being <sup>nearly</sup> alike; but this <sup>ap-  
 plication</sup> is to be taken with al-  
 lowance, for they <sup>concessions</sup>  
 are transposed in all  
 sorts of ways, and very  
 few of them express the  
 same thing in the same  
 words. De la bois de  
Chêne clause and the  
feu et hew clause there  
 are fifty <sup>of varieties</sup>,  
 some with great difference  
 of meaning; others with  
 very little. Le foi et  
homage is of course in