XVI

Seigniorial Court.

Nos 487 to 534

Jenkin.

Friday 14th Sept.

and to enquire whether it is likely or unlikely that that the grantees of land en Seigneurie were the ~~mere~~ ~~trustees~~ trustees for others peoples benefit. I must say that I am surprized at the boldness with which my learned friends on the other side have urged that the antecedent probabilities were against my clients — that because the French Crown had at the settlement of Canada, past put down the feudal tenures it was unlikely to introduce into Canada a system of an aristocratic kind. It has always seemed to me an historical axiom that ~~in cases such as~~ we must judge of the reasons which actuated men in times gone by, by the feelings of their own age. The age in which the settlement of Canada was commenced was an aristocratic age tempered by to no doubt by the democratical principle which was gaining ground

ground rapidly; but still
an age in which ~~the real~~
such
ideas about the as that of the
"greatest good for the greatest
number had never been
thought of. Nothing was
doubtless jealous of the
great feudatories, and
had greatly abused their
power; but that power
was still infinitely superior to that now ~~exercised~~
enjoyed by the very highest
nobles even in England,
where the power of the
higher nobility is still very
considerable indeed.
The wealth and the influ-
ence ~~of the~~ exercised
there by that class is doubt-
less enormous; but the
power of the very smallest
noble then was greater
than ~~that of~~ any two of the wealthiest
and most influential aristocrat of the present
day would seem. It is
impossible that the king
at such a period could
have contemplated any other
condition of society than
one more or less ap-
proaching that of France,
where the few had many
more rights and advantages
than the many. It is true

that things even then had improved — that under the Coutume de Paris maintenance had ceased to exist — that the worst exactions of the feudal period were on the decline. No doubt the tenure that was rising; but it had risen very little, and if the tiers état of to-day could see the condition in which their predecessors of that day lived, they would hardly think that the latter formed any great object of concern in the minds of the superior classes. No doubt the King had great honor of that class of nobles, which stood on the heels of Majesty; but he had no patronage of the second class who stood on the heels of the first, nor any objection to their treading on the necks of the people. I shall hereafter show ample proof that while even in Canada the Crown was jealous of the power of Seigniors who affected any state, it had no objection to create nobles who might serve to keep in check

the possible ambition of the freemen and the intendants It is those who are nearest themselves of whom the powerful are afraid, they care little for the oppressions exercised by those below them or ~~those who~~ a class still lower.

Happily for us times are changed, ~~for~~ but this very circumstance ~~gives~~ obliges us to make an effort to understand a period, when the ruler cared nothing for the wants feelings or opinions of the ruled — when every ~~thing~~ ~~was~~ power and every appointment was centered in the hands of great men, whose greatest fear ought to keep down by raising up little men, for his own purposes, and with no regard for the welfare of the mass. I do not choose to act any thing, even on such a point as this, upon my own assertion, and I therefore call to my support Champonnière, the at the 706 and 708 page of his book on ~~the~~ River

Wakes says in substance that the state of the labouring classes towards the end of the seventeenth century was as bad as it was possible for the condition of human beings to be. Before 1789 indeed the bourgeois class had become rich; but the state of the labouring classes had hardly changed at all. While the two états had risen there was a fourth class — the country people — who down to the very day when feudality sank into ruins continued — at least great numbers of them — to live in misery, and in a state of the greatest misery and oppression. That this was so can admit of no doubt, from other facts, apart from the testimony authority of Champfleurie or any other writer. It was only in 1779, ten years before the abolition of feudality in France, and in the beginning of that period of liberalism which preceded — and caused — the

French revolution, that the
King took the bold and ~~hum~~
~~bant~~ humane step of abolishing
main-morte on his own
estates, and those
de main morte throughout
France. This has coincide
-ed as extraordinary an
act of ~~human~~ benevolence
that Henrion de Pansey
Vol 2. P. 182 & 185, writing
ten years after, when the
whole feudal fabric was
just about to fall into
merited destruction,
writes of it in the following
language:—

Henrion de
Pansey
P. 182 & 185

The ~~first~~ edict is given in the 26th
vol. of Isambert, which
I ~~cont~~ cite, not because it is
not generally known, but
only for its value as a fact
speaking volumes of the
public opinion in France.
Many ~~or~~ customs & that day
continued the main-
mortes, and the men held
in main-morte, possessed
none of the privileges of a
free man. He could not
at his death even bequeath
his property, and was in
deed in all but the name
a slave. Up to the time
of this edict the King
had held thousands of
such ~~men~~ bondmen;
every penny of their ear-
nings going to him, and
when he put an end en-
tirely to the system as re-
garded his own property,
and ventured to put a
stop to it on the properties
of others to the extent of
preventing them from fol-
lowing the produce of the
labour of the main-mortes
~~to~~ out of the seigniorial
limits — when he did this
good men and wise men
were astonished, and

almost feared he went to far. This was many years after Canada was colonized; many years during which France remained as aris tocratic as ever. To learn how aristocratic, we have but to read the decret of 1789 which put an end to the feudal regime. It is to be found in the 1st vol of the Code féodal and was passed as I have mentioned two years after the King had struck the first blow at the main-morte.

Read 8 9 11 arts

Up to this day too, the army, navy, and all the liberal professions were the perquisites of the nobles or quasi noble. It was impossible for the man of the fourth estate to advance at all. Or if by accident he succe ded in reaching the quasi privileged ranks of the tiers état he had vast difficulties to surmount on the way to farther progress. The nobles were exempted from every possible trou ble — they were nati consecrare fruges; the

theirs exposed to all ~~the~~ hardships hard only to provide the food, which ~~they~~ their more fortunate ones consumed. Is it possible here — is it even within the bounds of possibility — that a century before ~~the~~ periods the period when Denys de Ronsey wrote, — in 1628, when the Company of Cent Associés was formed, or later, at the establishment of the other Company — is it possible, I say, that ~~any~~ Governors and the Intendants should all be seized with the idea of raising up an Acadia at some King Philip's times in Canada? ~~Was~~ Is it possible they meant to have no nobles and no privileges, or ~~rather~~ indeed they created some nobles with all the powers of seigniory and justice, did they mean ~~that~~ these classes ~~should~~ to have nothing of what ~~that~~ which they were said to have, but something different? Did they means really that with high connecting names these persons should be

only trustees and agents for others?, and these others not even the tiers état; but laboureis, only just removed, if they were removed from the condition of main morte.? — all gens de pointe, men crushed by oppressions that it would fatigue any many to describe or listen to? The burden of proof is not with me at all; but I am confident, not only that I can make out a case for myself, even on such premises as these.

There is no case against me; but that

I pass, however, to the proposition which I set out, that the Seigniors are proprietors, and I ~~must be pardoned if I make use of a word or two~~ — I said as much proprietors as any others. There is in fact but one perfectly free tenure in the world and that is the tenure of the man who holds of God and his sword — who has no master, and is bound by no law. Such a man really owns the land, an absolery

but he has any right to it
it or, other against it. That
man is the holder in franc
alleu noble; but even he un-
less he be the king of a
great state with absolute
power does not hold
so that he can or just
what he will with it. Even
he is a member of civil
society, and subject to the laws. Besides
and he may have
mortgages, encumbrances, and
other charges which de-
tract from his absolute
freedom of his power
disposal of it, and
thus modify his right of
property. In a civilized
community there no
one can be said to
hold property ab-
solutely. Even
the owner in franc alleu
roturier cannot grant
land en fief or à cens,
and therefore, does not
hold in the same absolute
manner as the latter
proprietor in franc alleu
noble. The holder in
franc aleu roturier again
is a proprietor with very
large rights, but also
he is not without his
obligations. He is bound

to certain religious service
to certain prayers and ce
remonies without which
he forfeits his grant. Apart
Apart from such new
backs as these the Seig
neur also was "and
is proprietor. He holds
by a noble tenure subject
to whatever duties
his Lord were created by
his contract of infeodation.
— For everything to impose
be accepted by taking the
grant —, subject also to
whatever other duties the
Customs made legal.
To nobody but his Lord
did he owe anything.
Under the Customs of
Paris and many other
Customs he was under no
incapacity of selling his
land. The contract of sale
was a good contract be
tween him and the pur
chaser, and against all
the world; except that in
certain particulars the
Lord had the power
of pre
venting such sale from
injuring his right. The
latter such a
was not bound to sue grant
nor to have vassals.

much less to have vassals or censitaires on any given terms. When he chose to state a censitaire, he was free to contract with him, and upon ~~that~~ agreement was as much the law of ~~their~~ that contract d'accensement as the contract between the seignior and his own lord. The only feudal control over him with respect to these contracts was the ~~power~~ right of fief that his feudal superior ~~perhaps had~~ of strictly enforcing them; but he was not to stand between seignior and censitaire to create a contract.

especially when in addition to the fief, he has the pretence sometimes has

Such I conceive to have been under the French law the position of the seignior. Now for the censitaire. He too was a proprietor; but ~~a kind of~~ a proprietor not with more, but with less property than the seignior. — one who did not hold nobly, and who, therefore not having the rights of a gentleman could have no feudal superior — could not grant his land en vasal or censitaire

his property then was worse not better; less not more than that of the Seignior. He was bound, too, to his Lord by all the obligations he had contracted, unless they were immoral ones. — All could be stipulated in the contract of accensement just as they might be in the contract of infeodation. Both censitaire and vassal, as regarded their respective grantors held the mere dominium utile; but the utile of the censitaire could not be again divided into the directum and the utile, and could only be disposed of by some convention other than accensement or infeodation.

It seems to be supposed because the Kings of France or their servants frequently spoke of the royal intentions, that these monarchs really possessed power to control the contracts they had made; and that this power, whatever it was,

~~the power~~ they probably thought they possessed,

was somehow inherent in the feudal system. If he [illegible] whatever power of this kind the King had or assumed to have ~~had~~ had nothing to do with feudality. I am not now ~~stating~~ stating the limits of the power which he undertook to exercise; but I allege ~~to him~~ that be its extent ~~or~~ what it might it was non-feudal, post-feudal, and antifeudal. It did not begin ~~to exist~~ to exist till the feudal system had ceased to possess any vigour, and was in its nature antagonistic to the principle on which the feudal system rested.

Having laid down these propositions, I will now venture to quote an authority or two; and they are selected from ~~a~~ hundreds or a thousands which I might cite, since there is not a writer on feudality who has not said something pertinent to the support of my principle. Let me first of all of

Take in 5th Answer

& the 51st and 52nd articles of the Coutume quoted by the Attorney Gen for the support of his proposations — propositions with which I think they have nothing to do.

This is his statement:—

(Take in print to copy)

Fortunately both the law and the articles go together, ~~for the articles of the Coutume~~ and if any lawyer will undertake to say that the articles appealed to contain the doctrine said to be concealed from them I shall be very much mistaken. The word ~~in~~ simply that the vassal cannot "dismember" his fief — not that he can not sell it, and instead of disputing with my friend on the other side about whether their interpretation or mine is the correct one I shall read the opinion of Hervé who is generally supposed to know something of the matter

Take in Hervé 3rd vol p374, 375

He could not dismember the fief; but that was a very different thing from selling the lentages, and the Seignior could do even that with the consent of his lord. Of course he ~~ther~~ he kept within the limits of the fief de fief of not he must do nothing to the prejudice of the ~~Seignior~~ Domain, so that whenever a mise saisine or relief was incurred, the latter might agree & such transactions and the lord accept as if they had not occurred.

Otherwise I repeat these sales were perfectly good against all the world.

On Page 377 of Henrys that author says:-

Henrys P. 377 tells the Customs do not give the same liberty to

2 y of these are done O.K.

Besides until the arrêts of 1675 and 1680, within the Custom of Orleans, though ~~they~~ Seigniors were not allowed by the letter of the Custom to sell, sales were allowed in practice sans profit to the lord. "Of course there must be a domanial right preserved, which thus made the sale in some respects an accensement, but the ~~sea~~ true nature of the transaction was ~~the~~ that of a sale.

Henriot de Pansey
Dumoulin 497.8.500

The question here was not if the sale were null — nobody thought of that; but if it opened a profit to the dominant. That was denied. It was in fact ^as if it were^ said: "No matter if you receive the full value for your property, if you only keep within the quantity allowed to be alienated; ~~and~~ if you retain the foi; and if you retain the domain at siege of the direct, do what you please. But when once the ouverture de fief ~~takes~~ ^took^ place the vendee might claim against the vendor damages for the relief, which the Superior might demand from him since that ~~would by law fall upon~~ ought to fall on ~~your~~ ^the^ head ~~of the~~ of the seller not on that of the ~~to~~ buyer. I understand ~~that~~ it ~~has~~ ^to have^ been asserted that whenever the Seignior disposed of more than of two thirds of the Seigniory he committed a species of commise

2y

and so forfeited his fief; ~~a~~ and that, therefore, such excessive disposal of the property was null. But Henriot de Pansey is of a different opinion & he says:—

H de P. Dumoulin read the passage 3 opinions have been entertained and [illegible]

There is therefore no anomaly in all this. The highest penalty is that I or any vendee must go and offer the grant, provided I do not divide the fief to which I cannot compel the tenant to consent. As to the legal opinions as to the effect of his support

With such opinions as those for his support one is at least in a respectable position in following any doctrine. It is those who maintain the third view of the question who alone afford the slightest aid to the doctrine advanced on the other side.

But passing from authority to the rationale of this affair, what alternative could be more consistent with common sense? I think this will be readily answered after reading Merlin's definition of infeodation

in favour of the two first views

Merlin, Rep. vol. p. 372

There may then be any
kind of agreement, if
only some kind of acknow-
ledgment of the mach-
ine matter what — is pre
served.
Now let us see what is
the definition of
acceptance as given
by the same author.

Homer Vol 157

Thus acknowlegement is the essence of the fief; subjection of the censive. To enjoy nobility is the advantage of the first; to be limited in the manner of alienation the disadvantage of the second. But in one case and the other ~~you may either~~ the parties may make their own bargains. For many ages before the ~~use~~ settlement of Canada both contracts had alike transferred property, just in such a manner as the parties themselves saw fit.

One word more. Not only was it no part of the system of feudality that the owner in seigniorie should be bound to sub-grant, but it was impossible that such a provision could be introduced into ~~this~~ any feudal country, without special provisions to meet all cases. Fiefs were of all kinds. Some contained many manors, and farm houses, rivers, and all ~~of~~ kinds of real property.

divided into all sorts of sub holdings, some in franche aumône, some in aleus, some en villenage &c. These great fiefs were held by men of great wealth and power; but there were ~~of~~ fiefs of an infinitesimal character; some of which all the land had been granted away, and of which there remained nothing but rents and rights in the hands of the holders. Other fiefs had never had real estate belonging to them; but consisted of offices, money rents and so forth. It is simply impossible, therefore, that any idea of the obligation to subgrant could attach to the idea of a fief. That might be expected to be was might have been if all fiefs had been so large as to be held by one person; but besides what the fiefs well known facts I have already mentioned, there are no less than three articles of the Custom having reference to special re-

ference to ~~the smallness of fiefs to~~ ~~small~~ fiefs too small to divide. In one it was said that ~~seigniories~~ fiefs of not more than an arpent fell within the preciput; another spoke of the case of a fief consisting of only one house; In none of these cases could there be any obligation to subgrant. I have already cited Herné, I will now quote from Dumoulin

Pages 137 & 138 fol edit ~~Tit~~ of the Custom of P. Glose 4 art 3, no 30 About as the Patisfa... inclus was the smaller so is the Seignior dominant

Demolombe indeed is not discussing the question before us, for he would never have thought it could be a question. But D'Argentenaye page 185 No 5 Tome 1 & article 277 says that the contracts between seigniors and vassals are so perfectly free that the natural conditions of the contract may be omitted if the parties are willing. Guyot says:

Look at this place D'Argentenaye

Guyot 5 Vol des fiefs 6th subsequent pages
To more 12th Pages

Champion — 1 16 & 150

I am told by the proposition of the Attorney Gen that it was of the essence of the feudal contract that the Proprietor should do so and so, but I have produced ample authority to prove that he could do just what he pleased so long as he did not injure the rights of the Lord.

Mr Lonergan ~~That~~ I never denied that.

Mr Duncan But your admission is contrary to the proposition laid down by the Attorney General.

Read the answer of the Attorney Gen & the proposition & proposes to settle matter.

Mr Lafontaine C. J. - There is no contradiction in that. By the Custom of Paris the Seigneur could take entrance money for concessions; but the tenure must subsist as it

was before the sale.

Mr Dunkin All I mean to say is that the contract of sale was good. It did not create an alien certainly; but it could do even that if the Superior consented. Take the case of the Seigniory of Thwaites, which is in franc aleu noble. Suppose the proprietor granted the a part of his land en seigniory; if I sell it out and out, the new dee has a perfectly good title. All that the Seignior could or could be to demand his quint on the alienation. From the last holder in of an arrière fief up to the head of the feudal hierarchy, each seignior can claim his own right within his own limits notwithstanding any transactions of those below him; but the transfer of the property subject to his rights is perfectly good. It is not that the Seignior cannot sell; but that

2ay

of he sells he must pay a fine. Suppose I am a seignior, with a dozen seigniors above me, up to the K Aleatier, who is perhaps the King himself, if I sell, and these persons above me do not blame my alienation, the thing is done, and I thought a seignior may have created an alien within my censive.

Meredith J. It was admitted that in France a seignior could keep his whole fief; and that he could for conceding it take enhancement money. That seems to me to be the practical point, — no matter what you call the transaction.

Mr Dunkin. I say further that the contract of sale would be good against all the world except the seignior, who can come in and claim his own rights in spite of the sale made by the inferior seignior.

In Granger my proposition is that the seignior

servant could take in
france money, but for
concessions; but that
when there was arrear
tre of fief, the Seignior
dominant not being
obliged to recognize the
transaction might
disavow it.

Mr Dunkin Well I
will cite only one more
authority to show the ex
treme license which
was allowed. It is the
Grand Coutumier

Art 76 vol 2 ... 206
vol 1 column 1123 & 24
, 2010 — ~~columns~~ 1125 & 26

The following were not read
Remarks of Lamus 1130

1st Dumoulin 569 ... Ps

Pocquet de la Livonnière

526 527 534

Guyot des fiefs 5 vol
Henrion

Ps 160 161
vol 5 131

These quotations ...

The doctrine made out by all these authorities is, not only that the parties are masters of their own agreements in a feudal contract; but that they can add to diminish or alter them as they please at any subsequent time. See 2nd vol of Henrion de Pensey ~~on~~ Dissertation feodale P.365.

Verify the citation

~~A the~~ De Pencey shows ~~that~~ from the history of the jeu de fief that there is not a particle of political right involved in it. Its rules varied at different times. At one time it was admitted ad libitum in most of the Customs. Afterwards one Custom admitted of no ~~[illegible]~~ other alienation ~~[illegible]~~ than that which took place by the contract of infeodation; while other Customs, including that of Paris, admitted every kind of alienation. Some limited the amount of entrance money which might be received; others imposed no such limit; but

in all and every where the limitations were in the interest of the Superior, more in that of the superior or of what we now call the public. ~~Real~~ limitations such as they were were as numerous, as abnormal as possible, and one of the best proofs of that they were always in the interest of the Lord Superior ~~was~~ to be found in the fact that the great feudatories had the right to ~~dispose with their allogatter~~ do as they pleased without any regard to the public law. I must however, cite another authority to be found on pages 390 and 391 note of the same author under the word Jus de fief. It touches on the application of the ordonnance to a new country, and he asks the question whether the rule of the jus de fief ought to apply to uncultivated ~~lands, and places~~ lands and wastes never brought under tillage

Jus Recognitionis

the question as whether a vassal within whose fief such property is to be found is obliged to keep two thirds. ~~Henri Do~~ Henriot de Pensey ~~[illegible]~~ thought not — that the rule ~~Droit~~ did not apply to such lands, as it could never be intended that a proprietor should keep unprofitable lands in his own hands. Without saying that he is right in this opinion, I am very much inclined to agree with him. But the chief reason for my notice of the passage is that the very discussion shows the limitation of the custom to be a limitation of the right of parting with property, not an obligation to part with it — and that a very good authority was of opi~~nion~~nion, that the rule could not apply where the public interest require the bringing of the land under cultivation.

To come back to first principles — The uses of the words ~~Direct~~ direction and title

may easily lead to an equivoque, and there appears to be such an equivoque in the propositions of the Crown. The question put by the Attorney Gen is whether the contract of infeodation divided the directum and the utile respectively between the Seignior and the Vassal, or the Seignior and the Censitaire. That I presume to be the meaning; but it is good that it may be taken to mean this question whether the King and by his grant to the Seignior divided the property and gave the direct to the Seignior and the utile to the Censitaire or not to any else. The truth is that the direct and the utile are merely relative terms. The Seignior utile which he took from the Lord who retained his direct, was of a noble kind, which he might again divide between his vassals direct and the utile which he granted to another, who could even subinfeodate it in the same way, and thus in the direct fief

give another opportunity for another discussion. ~~One word~~ I desire to say one word here as to the use of the term fixity of tenure. We do not pretend to deny that fixity belongs to the contract in this sense, that once fixed between two parties there can be no change of terms between them, without the consent of both, and as to any ~~other~~ feudal power such as is alleged by the attorney for to effect such changes, the truth is that the whole matter falling within the rules of a private contract, all the rights of the Seigniors as to the ~~Seigniors~~ Seigniors must be found either in the grant of the fief, or in the law which comes in to supplement the convention. On this head I make one more citation.

R de Percy on Dominion law P 745 746
verbo denombrement
The body and title of a seigniory are both in commerce

Now let me compare this position of the holder en censive, with that of the holder en fief. The latter if he gave out his land without certain limitations, had the ~~right to~~ advantage of dies without the payment of any mutation fine. On the other hand the holder en censive, must pay a lods et ventes whenever he sold any portion of his estate. If he sold a part ~~the~~ contract was good against all the world; ~~but~~ but not to the injury of the Lord. He could not however, divide his holding without the consent of the Lord. He could not grant en fief; he could not grant à cens, while the owner en fief could do either. In this respect he had a great advantage, ~~while~~ for while the censitaire could not alienate except by sale, whenever he sold the lods et ventes were down upon him. ~~For~~ For this see Henré

Qy if this is correct

1st vol 386, 387, 393

Harvey has discussed the
law as it prevailed in France
before the settlement of
Canada, I now come
to the history of the period
of French domination.
It is natural to divide
it into four parts. 1st
during the domination of
the Company of New France
or the Hundred Associates;
2nd during the domina-
tion of the W. India Company
; 3rd from the creation
of that Company in
1674 to the year 1712,
when the edicts of Marly
were registered; and
4th from the last date
to the cession of the
country.

In some time before
the establishment of the
Company of New France
Feudal engagees had
more or less visited this
country; but the first
document I find of the
intentions of the King of France
in respect
to Canada is that the
commission to Jacques Car-
tier at the beginning of the
first quarto volume of
the Edits & Ordonnances

It is dated 17th Feb 1540, and in it I see no power given to deal with the land, though there is authority to reside among the natives of the country, if he saw fit occasion. Fifty nine years after on the 5th Jan 1598, I find the Commission given to M. De la Roche. To him the ~~five~~ King gives ~~to the~~ an account of his intentions, as follows:—

Read part of the commission to De la Roche &c quoting words about the N. N. ...

It is plain that no one class of people were to be proprietors, as men of the same rank were proprietors in France; and that poorer men were to pay an annual redevance for their holdings. There is in fact something shocking to the common sense in the idea that the King would give to a nobleman or gentleman a smaller ~~less than~~ description of ~~to~~ property than he would give to every plain man of main-morte. The noble man and the man of merit could not, and was never intended to take a less estate than the man of no merit and of no standing.

I now refer to my Digest* and it will be found that the ~~gran~~ first grant of which we have any record was made by the Duc de Montmorenci to Louis Hebert.† His grant is not to be found, and it is only mentioned. The next ~~was~~ is

† who had another grant of the same property from the Duc de Ventadour Feby 28 1626

* A book, prepared by Mr Dunkin, in tabular form, containing the dates ~~and other~~ terms, conditions, and other particulars of most of the ~~letters~~ ~~or~~ grants in Seigniory of which are now extant. ~~to~~ ~~Seigniories~~

also originally made to Hebert

the grant under which the Seminary of Quebec holds the Seigniory of Sault au Recollet, and another property, known as St Joseph or L'Epinay on the River St Charles. In this grant after the recital of the claims of Hebert & Farran, here are the found terms. "We have granted and confirmed "to the aforementioned Louis "Hebert and his successors "and heirs, according to "the power granted to us "by His Majesty, all the "said lands arable and "cleared, comprised within "the fences of the said Hebert, "together with the house "and buildings as standing "the whole is spread out "and disposed in the said "place called Quebec on "the great River or the "river St Laurence, to enjoy "in fief noble, by him, his "heirs and successors, for "ever as his propre and "loyal acquêt, and "to dispose thereof fully and "peaceably, as he shall "see good, the whole "relevant from the fort

as the head of the first family settled in the country and the description of the grant

"and Castle of Quebec, at
"the charges and conditions
"which shall be hereafter
"by us imposed upon him."
St Joseph was added to
his grant of Sault au Recollet
in the following terms.
"And for the same con-
"siderations we have
"further given & the said
"Robert his successors
"and heirs, the extent of a
"French league situated
"near to the said Quebec
"on the river St Charles
"which has been surveyed
"and bounded by the
"Lieus Champlain and
"Caen, that he may pos-
"sess clear, cultivate,
"and inhabit it as he shall
"judge good, on the same
"conditions as the first do-
"nation." My friends on
the other side may per-
haps say that by the
clause respecting the
charges and conditions to
be imposed by us, the
King reserved the right
to impose new conditions.
But no such new condi-
tions were imposed. The grant
for might no doubt have
made new conditions; but

if they did not suit him
he granted upon having notice
of them might if he
pleased reject them, and
claim damages for his ex
penses in improvement.
That, however, is not am
so much the question as
this:— What kind of pro
perty was given? I think
it was evidently property
in the soil — land. Others
had cleared it, and
though he was doubtless
a ~~seig~~ Seigneur de toute
Seigneurie, yet a man of his
condition could at that
time hold a noble fief,
such as was his grant.
But you cannot think
the grant made to him of
the land he had himself
cleared, or which he had
left his house, could ever
have been on the condition
that thereafter he was to
be obliged to grant it out
to any one who asked for
a slice. You may imagine
that under this clause there
might have been an idea
of imposing upon him liberty
to some taxes or even
some rent; but as to the last
thing you cannot suppose

that I was to be anything else than what which a proprietor would have held in France. No doubt there was an understanding that the grantee should take actual possession of the land, should clear and cultivate it — no doubt if he did not do so it might be taken back, for the King would then of course say you have not really accepted my gift. I will give it to some one who will really make use of it. Yet though this might follow upon any grant whatever the property in the meantime was held by the grantee for his own benefit, and that of no one else.

The next grant is that of Notre Dame des Anges to the Jesuits. It grants four leagues of land and a point of land and all "wood prairies and every "other thing contained in the "said point. Our will being "that they should peaceably "enjoy all the woods, lakes "ponds, rivers, rivulets "meadows, prairies "and other things that may "be found in the contents,"

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"of the said lands, in which
"they may build, if it seems
"good to them a habitation
"with dwelling house, and
"appropriate a Seminary for
"themselves and for the pur-
"pose of educating and in-
"structing the Indians". That
is as absolute a grant it
seems to me as it is possible
for any one to make,
without charge or condition
of any kind whatever.
Indeed that Company in
those days was so power-
ful to ask or accept fa-
vours embarrassed with extraordinary
burdens. To suppose they
took grants which
amounted to nothing and
which the King might
cut down at any time
was something which never
entered into their minds.
Hence &c &c &c &c.

I go on now to the
part of the whole country
the Company of New France
or the Cent Associés, an instru-
ment of the very much greater im-
portance as the ones I have
already referred to are
mere indicia of the spirit
in which the land granting
of the period was conducted.

We have not here all the documents in connection with this grant, for there is a reference to a grant to William Caen which I have not found; but I suppose Caen to have been a trader only, who made no settlement. All going wrong in the country the Council took a new mode of settling them with, which was the creation of this Company to hold the government. The first obligation which the Company assumed by this instrument, was "to pass of the "said country of Canada two or three hundred men of all trades "in the course of the next year 1628; "and during the following "years Payment the number to 4000 of the one and "the other sex, within fifteen years next ensuing "which will expire in December 1643, and should not "be reckoned from" Item "To keep, feed, and maintain them in all things, "generally, whatever was necessary for life during the "years only, which being

"inded, the said associate
"shall be discharged, if
"so it shall seem good to
"them for their food and en
"tertainment, upon a giv
"ing to them a quantity
"of cleared land suffici
"ent to ~~afford~~ maintain them, with
"the wheat necessary to
"sow the land the first
"time and live till the
"next harvest, or otherwise
"provide for them in such
"a manner, that they
"may by their industry
"and labour subsist in
"the said country and
"maintain themselves".
Inclusio unius, exclusio
~~alterius~~ alterius. There
is a promise to take over
from three to four hun
dred men at first, to make
up the number to four
thousand afterwards, to
take care of them so that
they should not starve
and at the end of a cer
tain time grant them suf
ficient land, ~~or~~ — or
provide for them in some
other way. Here was this
limitation, ~~however~~, upon
the class of persons that
they were to take over

—they were to be none other that Frenchmen and Catholics ~~For the H~~ By another promise the Company bound themselves also to appoint a certain Ecclesiastical establishment, to the Priests of which they were to give land; — but cleared land, as indeed they were to the emigrants should they choose finally to settle them on the land. There was here no obligation to give to Tom, Dick, and Harry to uncleared land for nothing. ~~Loite~~ No: they were to take out a very small number of people and give them after a time not lands to clear; but cleared lands capable of supporting them.

Then comes the fourth article, by which his Majesty gives "for ever to "the said Cent Associés "their heirs and assigns "in all property, justice "and seigniory the fort "and habitation of Quebec "with all the said Country "of New France called "Canada, and ~~the~~ all "the Coast from Florida