XXIV

Seigniorial Tenure
from 85 to 90

Dunkin Sept. 21st
Sept 22nd

cases in a seigniory, within the limits of which a habitant demanded land.

Mr Dunkin The words accustomed rates have been continually spoken of as if they were to be found in this arrêt. The truth is that they are not there, and were not used in any public documents for twenty years after. Under this arrêt what was a casus omissus. The same thing must have happened in such a case, as in the event of the governor and lieutenant failing to agree to order a proportion. They must apply to their master at home. The King commanded them to concede at the same rate and fees as in the same seigniories. In case there were no such rates the governor and lieutenant would be without the King's command; but I dare say they would have presumed to take the rates in the next seigniory. It is however a part of my case to show that the arrêt was so vague as to be of impracticable execution.

Smith J. Do the words "said seigniories" mean the seigniories where the land in question may be situated, or all seigniories.

Mr Dunkin. I can only repeat that here is a casus omissis. I do not suppose the King meant that the first applicant for land in a seigniory should not be listened to, but he did not provide the rule which his officers were to apply in that case. They could only make a rule for themselves or apply to him, for the royal censives would furnish no better or more uniform rule than those of individuals, and hereafter I shall show with respect to the seigniory of Two Mountains that he wished to have different rates charged according to the quality of the land, and not to make one iron inflexible rule to apply everywhere. The King was going to take the land away from the seigniors and so far as he was concerned it mattered nothing how the King exercised his right power. I have been qua

so far of the faculty which the Governor and Lieutenant Governor possessed of applying to their Master for instructions in cases of doubt. But now comes the question, whether if they made an order there were any appeal de plano to His Majesty. I submit that there was. I have said that the Governor and Intendant did not compose a tribunal and my words would seem (perhaps) simply that their decision was not a judgement. But I do not mean to say that. It matters very little whether we call the Governor and Intendant a Court, or whether we agree that it would be an abuse of words to call them so— it was in my opinion the subject of an appeal. If the Seigneur thought hard measure had been dealt out to him, he could appeal, and the Seigneur owner of Soulanges to grant a value the piece of land important to grant it would be more likely to put a high price upon it than flatly to refuse the concession.

Lafontaine C.J. Reserving

to your theory there would be no difficulty on the part of any intelligent seigneur, before he would take care to give a grant at a high price to some complacent person and then would say my price is fixed

Mr Dunkin I believe the precise case which the legislators were thinking of was that of seigniories where there were concessions; but this being an act introducing a new law must be strictly construed I know that the enactment does not meet the precise case of a seigniory where there no grants; there was no occasion for the King to make it so, and part of my case is that he did not make it so, as he could always supply any omission. He could have given later order for that case; but he never did and the act must not be enlarged, but construed favorably so as to preserve the rights of parties to make their own contracts. As to grants made subsequent to the act. I have no more hesitation in saying

that the arrêt had no effect upon them, than I have in saying that it had no effect upon ~~producing~~ anterior grants. The seigneur was as much the master of his lands after it had passed as he was before. He was only in danger of a certain procedure being undertaken against him, which never was adopted. As to the seigniors respecting whose grants it was said that these questions were in their titles, though they never were in their titles, I am convinced that the Court of last resort in France would have given a judgment under this arrêt, which would either have annulled it, or at least set it aside.

Coming now to the second arrêt, which specially attacks the concessions, we find that it has but one preamble and one enactment. The procedure which is directed to take place under it is far more summary and raises a far less number of practical questions. It is almost left

out of sight by the other side, and it is therefore our business to give it its proper prominence. It stated that the King is informed that lands have been given to habitans, which had not been cleared, but upon which they had cut down a little wood thinking thus to secure the property, "which prevents the lands "from being conceded to "other habitans residing in "these seigniories, because "those who do not reside "there neither render their "lands valuable, nor labour "upon the public works "which are ordered for "the good of the country and "of the said seigniories, "all which is contrary "to the intentions of his "Majesty, who has only "allowed these concessions "with a view of causing "the establishment of the "country and on condi"tion that the lands shall "be inhabited and made "valuable. To "provide against this abuse he orders that— "That in one year from the

"publication of this arrêt
"for all forewarning and
"delay the inhabitants of
"New France who do not have
"let the lands which have
"been conceded to them,
"shall be held to keep fire
"and hearth and home there, and to
"cause them valuable
"in default of which and
"the said time being pas
"sed, wills, His Majesty,
"that on the certificates of
"the Curés and Captains
"of the Côte that the said
"habitans have been
"a year without keeping
"hearth and home on their
"lands, and have not cau
"sed them valuable,
"they shall be deprived of all
"property, and the said
"lands reunited to the Do
"main of the Seigniories
"or the Ordinances which
"shall be rendered by
"the Sieur Regon Intendant
"in the said Country of
"New France."

There will be observed a
marked distinction between
the preamble of this and
the preamble of the former
arrêt. In this the preamble
makes a near approach

& the Courts, for in a great
majority of all the grants to
the Seigniors there is the found-
ation obligation on the grantor
~~of the~~ & bind his grantees
if he have any to keep hearth
and home, and no doubt
that obligation was to be
found in the large majority
of deeds of concession. Inde-
pendently of this ~~arrêt~~ the
censitaire was under the
obligation to keep hearth
and home under their con-
tract, which most Seigniors
were bound under their con-
tract with the King to enforce.
The reunion then in default
of clearing was the result
of that contract, and it
was sometimes enforced
with hardship and as I
think unfairly. However
in addition to all that has
comes the law that the
censitaires are to have their
lands escheated like the
Seigniors; but with this
difference that it is to
be done in their case by a
very summary judicial
proceeding instead of hav-
ing the Attorney Gen. to
go before the Supreme of
the Province and the Ex-

lieutant, here was the a pos
session by the lieutenant, or
the certificate of two public
functionaries. Now I
understand any thing of the gran
to
argument on the other
side can only amounts to this that
independently of the idea
of the seigniors being fi
dei commissaries before the
arrêt, and I think no
one will pretend they were
that, after it was passed
they were subjected to one
of two tricome and in
probable proceeding the
first Evict them from
the whole, the second from
a part of their properties.
In the meantime, however,
they were certainly proprie
tors, for no other individ
ual had any claim to
our their lands. Nothing
was taken from them; or
by something might be
taken. The censitaire, too,
if absent from his pro
perty was subject to lose
it after a summary
and far less troublesome
proceeding. Yet no one pre
tends that the censitaire
by this law has lost any
part of his property.

why this is to be supposed that the Seignior has more so. While however, the Seigniors were subjected to the operation of the one arrêt, by two ordinances only, the censitaire was harassed out times and times without number. After the first arrêt has rendered the Seignior less a proprietor, the other must have rendered the censitaire not a proprietor. Really neither one nor the other was a statute; neither one nor the other affected the property in land. The King said if they did not as a certain thing he would dispossess them; but he did not dispossess them — he did not make either one class or the other fideicommissaries. One party, however, was subject to a very advantage and the other to a very disadvantageous contract — one class was never interfered with, the other has been harried, and vexed, and annoyed at every turn.

Saturday Sept 22nd

Mr Dunkin continued his address as follows: Upon the other questions suggested

by this arrêt of 1711, I have still some observations to make. I have never intended to say that the Governor and Intendant might not have conceded land, on the refusal of the Seigneur to do so, provided their intervention was demanded by the Habitants. All that I assert is that no such case as been found; that therefore I am warranted in believing that no such case occurred; and that the proceeding was so surrounded with difficulty as to make it improbable that it would be undertaken. I say moreover that the question of this grant must have been one subject to appeal from the tribunal in Canada to the authorities at home. for this was the right of every subject of the French Crown and could not be denied to any. It now however allege that these arrêts can not be considered in the light of penal statutes having a general and permanent application and affecting the rights of property every

there throughout the country
and for all time. There is
nothing about [illegible] which indi-
cates such an intention.
Every thing is discretionary
nothing defined as to the
quantity of land to be given
and other rules that would
be necessary for the enforce-
ment of such a law, if it
where intended to have
any other effect than that
of a departmental nature
for from the head of the
State to the Officers in
trusted with the business
of granting land. I can
see in it nothing but a
temporary police regulation
intended to alarm the
Indians and stimulate
them to carry out the allow
policy of the King — the
policy which lately put
settlement but now requires
it. Nothing more is requi-
red to sustain this proposi-
tion than to look at the
vague, loose, uncertain
wording of its enact-
ments, which leaves us
entirely in doubt when we
come to consider how to
put the law into practical
operation. Let us be

is at least plain in this respect that it is not a prohibition to sell, nor to take enhanced money; but only a mandate to concede ~~de~~ à titre de redevance. There is no nullity declared as in a succeeding arrêt prohibiting the sale of lands en bois de bout. All agreements between the parties were still perfectly good. Besides there are evidently as many cases omitted in the arrêt as there are provided for. We have already seen the difficulty that must result from the case of a seigniory that had no settlements made upon it previous to the demand by the habitant upon the seignior made to through the tribunals of the Province and tenantail; but that is not the only cases omissus. It would seem that the King intended to provide for the settlement of all the lands in the country, yet so little care is manifested — so little of that careful inquiry into and attention to facts which we might

effect in a law such as this is pretended on the other side to be, that we find no provision made for the King's own tenanciers. I have shown that there were many grants à cens in tract as extensive as those of the grants du fief. Yet nothing whatever is provided here by which their settlement was rendered compulsory, beyond the obligation to go and reside on their grants. They were each forced to concede by the first arrêt, and as to the second they were only by it held to do what any other censitaire must do, go and keep hearth and home, and commence the bona fide clearing and cultivation of the property. I mention this to show that the cases which I have been suggesting already are not the only ones which there has been an evident neglect to provide for. If I have been asked what was to be done in cases where there were no accustomed rates because no settlements on the seigniories within those limits the grants [illegible]

might be demanded, and I have answered accordingly that I did not know, unless whether instructions were to be applied for to the King; but I say that difficulty does not prove my interpretation of the Law to be wrong; but only that it was an act which could not be put into execution — that as was not and could not be, any general and permanent. Another proof of this difficulty is to be found in the want of any direction as to the mode of fixing the rate to be charged when the different rate prevailed in the same seigniory. And again we find the same fact in the want of this limit application of the law to seigniories granted at a period subsequent to the passing of the act. We must consider the whole law together must take the enacting clauses with the preamble, and then we find that the last enactment, that which relates to the method of exempting concessions by feudal confiscation and grants can only apply to such seigniories as are mentioned in the recital

as having the obligation to concede in their titles. Neither was there any exception on account of the incapacity of any particular seignior to fulfil the wishes of His Majesty within the required time, though it is obvious Again the terms of the law ~~was~~ were altogether too absolute to be enforced without some temperament at the discretion of the tribunal. Anyone could demand land under its terms, no matter what his character — no matter how undesireable a neighbour or how useless unthrifty a settler he might be. And in the same way there is no limit as to the quantity of land which any one man might apply for nor as to the locality he might choose to ~~selet~~ select. But such a regulation (in such general terms) ~~con~~ can not be supposed to have any effect upon the whole real property of a country. It ~~must~~ would have been necessary to enter into details on all these points to take the execution out of the mere arbitrary ~~sole~~ discretion of the Governor and Intendant, and give it the character and scope of a ~~sub ch~~ grand Charter such as may

may be supposed to confer rights of property or every individual. Even the claims of these parties were not saved. If we desire to see the full weight and force of these objections, we have nothing to do but to contrast the terms of this arrêt with the provisions which have been found necessary in every bill which during late years has been drawn for the purpose of ~~putting it in force~~ moving it and again putting it in force. In these we have every thing clear, distinct, definite. It is found necessary to fix the quantity of land each man might claim, and the manner in which he should demand concession and in which concession should be granted to him. All this belongs to a system of law — ~~and such~~ is essential even to it, since without it the law cannot exist; but when the King merely gave certain orders to his officers a very few words was sufficient, for he was always there as the referee and he might supply what was wanting not only in the regulation already made; but in respect to particular

circumstances of any case, or the change of the general circumstances of the country. This discretionary power whole proceeding afforded constant opportunities to elude the operation of the law. In fact of all the fact of the refusal, had to be made out, and that the magistrate must have always known how to have avoided it, for instance. Different as the second arrêt is from the first there is still the same character of vagueness though in a less degree; and so little did the authors of the law intend to make it permanent that they refer its execution to the ordinances of Region, the Intendant of that day, only, instead of making use of the general word hitherto, or of any equivalent expression to mark the fact that he indicate that his successors should have the same powers and duties in that regard.

Let us now compare this piece of legislation with a parallel act made for the island of St Domingo the arrêt of the 6th Oct. 1713 1713, only two years after the arrêt of March, which

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Take in the arrêt
The passage ~~??~~ contains
the words à la reserve
des biens des ?

we find reported in Moreau de St Mery history of St Domi &c

(Take in here)

It must be observed that in the West Indies the concession in fief ~~fell with the ??~~ fell into disuse, from the unfitness of the ~~use~~ ~~or circumstances~~ modes of cultivation, necessary in that and other tropical islands for the application of the feudal system. There the labour was performed by negroes bought with large capital, or by people of loose character brought out to the colonies and engaged for terms of years at considerable expense. ~~the~~ It was a necessity of that mode of cultivation ~~was~~ that the ~~profession~~ proprietor of the land should be also a man of previously acquired wealth, there was no chance — no opening for the man of small means, who could rely only on the labour of his own hands and ~~that~~ those of his family. Extensive plantations alone undertaken by men of fortune capable of commanding the labour of many mere laborers

was the regime under which
alone prosperity could be hoped for. It was for these reasons
that the settlers in St Domingo
exerted themselves to obtain
the change of the tenure, and
in this ordinance of 1713
we find no distinction what
ever between the and the
other kind of property. It seems
that previous to this arrêt
the order of the King to insist
on the establishment being
made upon lands conceded
had not been put in force on
account of the war; but
now we come to the new orders
having that tendency and
applicable like those of Cane
as especially as prohibitions
against the sale of land in
standing wood as before
it had been rendered valu
able. All these disposition
are made with a de
gree of detail which makes
the arrêt resemble in many
respects a veritable law,
though I think that even this
is not to be looked upon
as anything more than a
temporary regulation of police.
Among other disposi enactments
we find in this arrêt one that
obliges the former grantees

of new concessions in that island to insert the same prohibition in de the titles. This is provisions to which we find no parallel in the arrêts of Marly, and the contrast I think is not without its significance. But throughout the arrêt for St Domingo is distinguished from the arrêts of Marly by its capacity for and adaptability for practical enforcement. The penalties in case of contravention are true penalties to be enforced de rigueur by men acting as juges; not merely threatened punishments left very much at the discretion of the Governor and Intendant to carry out or not. In this respect again they differ entirely from the arrêt of Marly.

Here I break down for want of means to reexamine the arrêts mentioned. I therefore copy the notes of Beaudry ad interim.
Arrêt de 1716. 5 Mai. P 138. 3 vol Ed & Ord
Ordonnance pour recevoir les rapports. Ordre d'assigner. Arrêt que Seigneurs de St Sulpice se pourvoiront devant la prévôté Royal de Montl. Appel au Conseil Supérieur — Begon pas assez complaisant sans cependant rien changer d'ordonnances déjà rendues.
Preuve que c'étaient police regulations only

A peu près dans le même temps
Janvier 15th 1716. Défense de
concéder fief 0 18 4 00 c.

Of course every instruction from the King & his officers must have remained in force until a new instruction was given; and but upon that case happening they ceased to have any effect. These arrêts had no more permanence than the simple instruction. All that they possessed was greater solemnity, for the King could change them at pleasure as great facility as his officers, and the King's officers were equally bound to act in accordance with his intentions. I pass now to the consideration of the correspondence of the following year, and of a proposed arrêt, which had it passed would undoubtedly have changed very materially the laws of Canada. In the fourth volume of the Parliamentary Documents we find an extract from a letter from the Minister to Mr Begon under date 15th June 1716, which reads as follows:—

..... It has examined what you stated on the subject of the grants made by the seigniors of parishes in Canada, and of what they exact from their grantees, according to the different Customs under which they have granted. The intention of the council is that the Custom of Paris should be followed; that all acts done against that Custom should be declared null, unless at the time when the Custom of Paris was established in Canada, the King excepted the grants previously made according to other Customs. It is necessary that you should ascertain this and send the documents, in order that the council may put this matter completely to rights.

We have not the letter here spoken of; but we may gather its contents in some measure from the next document which is to be found printed under date of the 9th May 1717 it is said:—

Mr. Begon last year observed that in the deeds of concession which proprietors of seigniories grant to those who take lands therein, they introduce a variety of obligations contrary to the Custom and to the settlement of the colony.

As to the settlement of the Colony perhaps the Intendant may have been correct; but as to the first part of his statement that the variety of obligations he speaks of were contrary to the Custom of Paris, I believe he was perfectly wrong, since we know that the Custom admitted of any conventions whatever to which the parties could themselves agree. That this is so is proved by the great number of judgments rendered by the Intendants by which these charges were enforced, so that there is scarcely one to be found in all the deeds of concession, which has not the authority of an ordinance from one of the Intendants in its support. However the extract which I have

* a memorandum which seems to have been the first step towards the preparation

just read mentioning the contents of Regnos letter is part of # this projet on which I am about to comment. This draft seems from its present shape to have gone through something like what in our present Parliamentary language we should call the first reading of the bill. But here it stopped. It was never passed into law, and no doubt for very good reasons. It was against all correct notions of law, against all established customs, and it never ought to have passed. Under it every thing improperly permitted, every thing that had previously supposed to be valid and binding was declared to be null. Yet it is to such a draft that with no Royal sanction, and with no reason whatever, it is attempted to attach the authority of the great name of D'Aguesseau. If it were we are still unable to judge of his opinion by it, since we have nothing to show us upon what statement of facts, or in what terms the reference was made to him.

whether in fact he has acted for an opinion, or merely required to draw up a law with a particular object, and always determined on. But the truth is I believe it to have been almost impossible for any lawyer to have prepared such a plan, nothing could be more absurd and nor more mischievous, and we may fairly conclude that this was felt the whole body of from the fact that it was rejected, and never did become law. If any proof be required that it did not become law it is to be found in the extract from a memorandum of the King addressed to Bigon of the date of the 26th June 1717. The project contained the following provisions: —

[illegible], the inhabitants of the said country of New-France shall have power to contract only according to and in conformity with the Custom of Paris; His Majesty prohibits the introduction of any other Custom in the said country, and wills that all clauses inserted in deeds and contracts of concession or others, contrary to the provisions of the said Custom, be and remain null, as well for the past as for the future, and in consequence His Majesty has discharged and does discharge the inhabitants of the said country, towards the said seigniors, of all husbandry service *(corvées)*, for any cause whatsoever; of the reservation of the right of conventional redemption *(retrait conventionnel)*, as also of that of taking any wood, of what kind soever, whether for building or for fuel, without payment; of the preference for anything whatsoever that they may have for sale; of the reservation of the 11th fish to be taken by them; of the obligation to have their corn ground at the wind-mills, and of the execution of all other clauses contrary to the provisions of the said Custom; but the said inhabitants shall not have any claim against the said seigniors on account of anything which they may have given or paid, up to the day of publication of this decree, for servitudes or clauses contrary to the said Custom; and His Majesty forbids the seigniors to grant permission to cut timber on the lands which they have not yet granted, under the reservation of one tenth of the boards, planks and deals to be made therefrom, or under any other reservation or condition whatsoever; and His Majesty enjoins the said seigniors to grant the said lands to such inhabitants as may apply for them, subject to the usual dues, in default whereof he permits the said inhabitants to appeal to His Majesty's governor and lieutenant-general and the intendant of the said country, according to the decree of his council of the 6th July, 1711: [illegible]

Let when we come to the

memorandum of the 26th of
the next month we find
from instructions of the Governor
and Intendant for enforcing
the policy which prohibited
the sale of standing wood
but not a word about the
law drawn with such care
to enforce the same prohibi-
tion. This extract Lewis says:—
"Their attention to enforcing
"the decree of the 6th June 1711
"which remits to the King's
"domain the seigniories that
"are not settled and to
"obliging the seigniors ha-
"ving lands to be granted
"within the extent of their
"seigniories to grant them
"is very necessary for the
"extension and settlement
"of the Colony; they should
"present Petit seigniors
"from receiving money for the
"wood lands which they grant
"as it is not just that they
"should sell lands on which
"they have spent nothing
"and which are given them
"only for the purpose of be-
"ing settled." Not a word
about the law; yet had
that law been passed it is impos-
sible to suppose that all
mention of it would have

been omitted in such a document.

The question has sometimes been raised whether under the arrêt of Marly the Seigniors would be allowed to reserve to themselves a domain. If we appeal to the latter now under our consideration we shall find no intention expressed upon that subject, and nothing definite said about the rates or charges at which concession was to be made. If therefore the King meant to impose a fixed rate as the limit of [illegible] at which the Seigniors might concede in 1711, he seems to have entirely forgotten that intention in 1717 since in renewing his instructions relative to enforcing concession he says not a word about this fixity of cent.

P25. 2 vol Doc Louisiane cédée (?) 18 sept 5.7.8 pouvoir de conceder sans redevances quelconques pas de maximum ni de minimum. Fiscal actions. Roi voulait revenue pour suffire aux dépenses. Même idée would have prevented him from keeping titling permanently. Otherwise he would have made some reserves for the fisc

the truth is that these fiscal ideas were always prominent in the motives which actuated the French Crown, and the King watched as strictly as the Seigniors could do within their own territories, the preparation of the papers terriers which showed what revenue was to be expected from his domains. Of these fiscal ideas I can give any amount of proof that might be desired. I will mention, however, one ~~or two~~ document in support of my statement. Thus on the 2 R October 1727 we find an extract from a letter from M. Dupuy the Intendant of that day in which he says:—

"The representations of the Attorney
"Gen. have been confined to
"observing that the King had
"issued a declaration in the
"month of July 1714 by which

to indemnify the ecclesiastics of the Seminary of Saint Sulpitius,..... His Majesty had granted them *the right of exchange throughout their seigniory, without their paying anything as a pecuniary consideration therefor to the King who (?)*.... nevertheless, by abandonment which he has effectively made to the Seminary, has reserved to himself the registry *(le greffe)*, whereby he has appropriated to himself all the profits, while relieving himself of the expense and care of the administration of justice: so that the Seminary has had granted to it and *claims to enjoy, under what it calls an onerous title, rights which are purely royal, not established by the Custom* (la Coutume), but merely by the edicts and declarations of 1673 and 1674, which, besides, have not been sent to Canada, where His Majesty *does not enjoy any rights of exchange.*

I have not failed, My Lord, to refer to the title-deed, in order to ascertain precisely what the King has been pleased to grant, and on what grounds it has been obtained, so as to see whether the favor has been secured by a true statetement. I have found, My Lord, that the onerous title spoken of does not consist of the relinquishment of the administration of justice.

The real burthen which has been imposed upon them, and which gives them occasion to allege that they have obtained *the right of exchange under an onerous title, is that they have bound themselves for the past, but not for the future, not to exact any indemnity from all the regular communities, such as the Ladies Hospitallers, the Frères Charon, and the Sisters of the Congregation*, for whatever these communities have required previously to the date of the declaration made in favor of the Seminary, and the amortisement of which they have obtained from the King. This remission would however, My Lord, amount to considerable sums, considering the quantity of lands and estates which these communities hold in the Island of Montreal and its vicinity. This, then, is the burden which has been imposed upon the Seminary of Saint Sulpitius. It is also what they have fulfilled and what *gives them occasion to say that they have the right of exchange under an onerous title*, in addition to which it is further said that it is in consideration of the lands and mills they have abandoned to the King for the fortifications of the city. But in this the King only granted them a bounty and compensation similar to that which His Majesty granted, in a similar case, at Paris, when, in 1674, to avoid the conflicts of jurisdiction between the several judges appointed by the seigniors who had the right of superior jurisdiction *(la haute justice)* in Paris, the plan was adopted of uniting them with the *Châtelet* in 1674—75—76—77.

The King, as an indemnity for so much of their jurisdiction as was united with the Châtelet, grants, by way of exchange, the seigniorial rights for the exchanges of fiefs, lands and demesnes holden of them *(qui sont de leur mouvance)*, to enjoy the same in conformity with the edicts and declarations of the 20th March, 1673, and February, 1674, etc., without their being obliged to pay, on account of these rights of exchange, any sum of money to His Majesty, from which he releases them, as was also done with respect to several religious communities,

It is true that *the seigniorial rights for exchanges are not established by the various Customs, and are in no wise so by the Custom of Paris*, notwithstanding which the

usage had been gradually introduced of exacting payment of dues in contracts of exchange, where some money was given as a balance *(soulte)*.

But they were finally created and *regulated* by the King in 1673 and 1674, and all contracts of exchange, as well of estates for estates, as of estates for rents, have been reduced by the edicts and declarations of His Majesty to the condition of contracts of sale.

The seigniors hove been made to purchase these rights, and the King has made a gift of them to whom he pleased.

This is now the case, and His Majesty has granted them, under an onerous title, to the Seminary of Saint Sulpitius.

Had the grant been made under a gratuitous title *(à titre gracieux)*, that would not affect the interests of the country, and might suit those of the King.

The right of exchange is a demesnial right; it was necessary to establish it, in order to prevent frauds. The registration in Canada of the edicts and declarations of 1673 and 1674 was unnecessary for that purpose, it was sufficient that the King had his domain in Canada; and as the rights of the domain are not separable, because the crown being round, it suffers no diminution nor section in any of its parts, wherever the King has his domain established, the rights attached to the domain exist in their integrity.

I shall have the honor to represent to you, My Lord, that the right of exchange ought to exist in Canada so much the more as it will be there, as everywhere else, the only means of putting a stop to fictitious contracts made for the purpose of disguising all sales under the name of an exchange, or of making fictitious sales and defrauding the seigniors and inattentive creditors, as you may well concieve that was, which I have just had the honor to mention to to you, and this without the pretended purchasers being liable (to pay)?..... the mntation fines *(lods et ventes)*.

Extract from the King's Memorandum to Messieurs de Beauharnois and Hocquart, of the 25th April, 1730, on the subject of the contestations arising in the colony between the owners of fiefs and the parties owing them seigniorial rents and dues. — Ordinance rendered by Mr. Begon, June 21st, 1723, and those subsequently rendered by Mr. Dupuy, November 16th, 1727, and January 13th, 1728.

..... On the account which I gave the King, as well of the provisions of these ordinances, which contradict each other in everything, as of the memorials which were sent last year on the part of the seigniors of fiefs and of their tenants, His Majesty has thought necessary to make his declaration hereunto annexed, in interpretation of the 9th article of that of the 5th July, 1717. He ordains that without

I think that is sufficient to prove that the King was by no means careless about the revenue which he hoped to derive from the Colony.

Let me now say one word on the grants made about this period time, and in order to do so I must divide the period into ~~four~~ three. From 1710 to 1727 there was an actual prohibition to concessions in fief. There were three or four concessions between the years 1727 & 1732; and there were a great number after the latter year. And here I may observe that seven tenths ~~in~~ of all the grants were made before the arrêt of March of which about one fourth were grants of the Company of the West Indies, and about three tenths since that date. From 1711 till the order to cease conceding came out there were but five really new grants. Of these the first of the Seigniory of Yamaska, No 36, was in substance like those of the preceding period, containing as the chief conditions those of the clauses to clear the

the land, keep heart and home, and leave space for the roads. ~~There was also during the same period one grant en censive~~ There is also, however, a clause obliging the grantee to pay an annual cens, so that the character of the concession is somewhat doubtful, but it resembles very closely that one of the year 1689, 205 cens 11, upon which I have already remarked. ~~That~~ The truth is, that both grantors and grantees seem to have ~~his~~ had very little regard to any other rules than their own wills, and to have extended very far indeed the liberty of stipulating. No 368 (Beloeil) is the next grant and ~~is~~ seems to have been precisely like that of ~~Yama~~ Yamaska. ~~It was~~ As printed it merely refers to the grant of Yamaska and says that this property is given on the same terms. No 369, (Beaumont) is of the 18th Apl. 1713. Here we have an entirely new condition. After the usual clauses about the oak trees which are to be taken if required without payment, and that with refe

to the lands which might be required for fortifications we come to a new clause of marked peculiarity. It seems that the Governor and Intendant being still under the impressions which had dictated the arrêt of Marly, and feeling that that law was not enough to compel seigniors under titles which made no mention of the obligation, to concede drawn up this clause in order not to leave the obligation to the simple operation of the arrêt. They, therefore, sought to establish a rule which would be really obligatory, as such a condition in a title no doubt would be. There was no other additional charge, and there is here no reference in words to the arrêt of Marly. The next is the concession No 37 of Petite Isle, 17th March 1714. This grant was reunited to the Crown domain by an ordinance of 13 March 1st of the same year, and though the confiscation is stated to be in accordance with the arrêt of Marly, the truth is that it could have been effected equally well had that law not been passed. It was done in fact

~~like~~ as confiscations had been done before that law in many other cases in virtue of the utter abandonment of the property by the owner. Most of the conditions are nearly the same as in the preceding grant, but the clause which allows the King to take the oak trees without paying is not there. ~~He is to~~ The grantee is however, bound to ~~conserve~~ preserve that kind of timber on his property. The tenth condition is not precisely the same as in grant 369, inasmuch as the depth of the grants in the first are to be forty arpents and in the second of thirty ~~arpe~~ arpents only. This ~~pass~~ is a proof ~~after all~~ that, after, no intention existed of compelling an absolute uniformity. At the next (No. 371) we have the King's ratification of this grant under date May 17th 1716, and it is in the same form or very nearly so as the ratifications ~~original grant~~ ~~ratifications on~~ at No 366.

It adds to the terms of the original grant the condition of leaving the beach clear to all fishers, except in so far as the grantees may ~~of~~ require for themselves

~~except that it mentions the fishes and the right [?] of hunting and fishing which were omitted in the ratification of the earlier date.~~ ~~But when we come to the conditions we~~

but on the other hand it
omits the important

from ~~almost precisely the~~
~~same wording~~ the clause which
in the grant of the province and
Intendant bound the grantee
to concede their lands at a
specified rate. My observa-
tion of the habitual forms of
the French Chancellerie leads
me to the conclusion, that
the King did not satisfy the
clauses which he omitted.
It must be remarked here
that with respect to these con-
ditions the King was the stipu-
lating party. In respect to the
terms of the grant that is not
so; but when we come to the con-
ditions obligations he imposes
we must interpret them strictly
against him. This is the rule
of interpretation to be adopted
if with respect merely to
the titles, and supposing that
the omission of this clause was
merely accidental. But I
go much further than that
and I say that in the habitual
systematic omission of this
clause at first in the ratifica-
tions and afterwards in the
concessions, we see good reason
to believe that the King did not
suppose the obligation to con-
cede was any fixed and
of fundamental law of the

they must be extended under
stood against the grantee so far as
the words admit

State.

Taylor J. On what authority do you found your doctrine of the interpretation of the King's stipulations against himself? There are special rules which regulate royal grants.

Mr Dunkin I thought the position so clear that I have not even looked for authorities to support it. By the [illegible] of Nantes the King always ratifies all the charges and conditions contained in the deed of concession; but from that time there was a new form, and no ratification makes any allusion to the charges in the deed of concession; but all the conditions are enumerated.

Ratification

Ritchie J. There was no necessity whatever to mention the charges if the intention to ratify the whole deed was distinctly marked.

Mr Dunkin In some of the [illegible] as in that of Rouville in 1695 and others about the same period the one of the conditions is "and all the other clauses and conditions annexed in the title of the said concession", in others the form was different; but the sense was the same in

all title we come to the ratification of 1711, after which we do not find it again. I imagine that this was not an accident; but that the King being displeased with the mode of concession adopted by his agents, and having decided on the conditions of concession which he wished to have inserted, ~~both cases~~ but in those conditions in all his ratifications and to both case that all grantees should be alike subjected to them. From that moment he took the disposition of ~~cases~~ conditions out of the hands of his agents. But supposing that in the ratifications we find some deviations from the original grant, it does not follow on that account, that a third party should acquire any right in the property. All the stipulations in favour of the Crown are of the same character. No property may be confiscated for ~~their~~ want of execution; but I insist that that cannot make the proprietor a ~~mere~~ depositary for the benefit of others. The essential nature

of the property is not affected by these clauses, which only bind so far as the grantee requires their execution. It is true that the Crown could intervene & compel the execution of these conditions in favour of a third party, if they were made in favour of such parties; but he could do so only as the Legislature would want. As to the clause however I contend that their omission shows that the King did not intend them to be binding. It is true that the I have not authority for saying so, because the King appeared to me to be perfectly clear, as he here against common sense reasoning; but I believe I shall be able to furnish ample authority, and to make it appear that the King when he did not wish any conditions enforced, as it appeared on the original grants contented himself with omitting it, as he has done in these cases. On the same day on which the grant of Mille Isles was ratified the King also gave confirmatory [illegible] Nos 372 and 373 Lotbinière

and Vaudreuil. Both had been conceded before the year 1711, and both ratifications had, with some little variations, the conditions like those of the original grants. When we come, however, to the year 1718, we have the ratification of the grant of Two Mountains (No 375), the original concession having been made the year before (No 374), and here we find a much greater difference between the terms of the grant and of its confirmation. The first difference which we remark is that, whereas the grant is first made to the Seminary of St Sulpice established at Montreal, the confirmation is made to "the Seminary of St Sulpice "established at Paris upon "which those of the Seminary "of St Sulpice "established at Montreal de-"pend". These words are alone sufficient to destroy the first concession; and then come the conditions which it will be found are amended upon another point. In the grant the grantees were bound to construct a Church and

a stone fort in two years, while the ratification enlarged the time to seven years. The clause with respect to oak trees was retained, and also that one obliging the Seminary to concede at 20 sous and one ½ capon per arpent of front by forty of depth and six deniers de cens, which was a slight difference as compared with Mille Isles as respected the depth, and was of little importance, especially as it could always be modified by the governor and intendant according to the wishes of the king. The probability was that there may have been thought to be some difference in the value of the soil of the respective seigniories, or perhaps the extent ~~may~~ of concession in depth may have been fixed according to the requests of the respective concessionaires, or again the instructions of the king may have been changed. What we see plainly is that in point of fact there was no uniformity.

Bylow. J. The difference may have depended on the

greater or less quantity of
wood on the two seigniories.
Or perhaps part of one of them
was occasionally flooded.
In Dunkin Act any rate
my pretension that here
were varieties of rate and
conditions inserted according
to the temporary pleasure of
the Sovereign is fully borne
out. No doubt there are some
of these clauses, whose con-
stant occurrence — as
for instance that of the road
— must cause us to regard
them as intended to be
a part of
a matter of fact
the law; but when we find
a clause which differs in
the concession of Belle Isle
from the form in which it ap-
pears in the concession of
Beaumont, when we see
it again changed from the
form applied to Belle
Isle when it is made ap-
plicable to Two Mountains,
and then we find it in still
another shape when we
come to the next concession
we see at once that it is
a mere regulation which
the Crown inserted in
whatever form it might
see dictated by exactitude

or caprice, that in fact it had nothing like the quality of law about it. The clause too was changed in another point of very considerable importance. In the grant it was absolutely to concede at the price fixed, whereas in the ratification the rule ~~which was so often enforced~~ of conceding ~~of having all concessions to be made~~ relating to the ~~of~~ of land in standing wood, ~~and~~ was departed from and the Seigniors were to be allowed to demand for lands one quarter cleared a much higher rate. The power of insisting on the obligation to concede at the low rate of course still remained merely facultative in the hands of the Crown. ~~With~~ In all likelihood the brevet of ratification was drawn by the Seminary themselves and merely sent to the King for signature, and the power to sell or concede partially cleared land of course practically released them from the condition which was imposed by the other part of the clause. This was the last grant made after the order to concede

no more lands en fief. The next grant, therefore, he has not made till the 1727, and this grant contains a new form by which we have an explicit admission of the right of the grantees to give out their lands en arrière fiefs, since the right of basse justice is given them over them "sujets et vassaux"; they and yet they were bound at the same time consistently to concede only à simple titre de redevance of twenty "sous and one capon for each "arpent in front by twenty "arpents of depth, and six "deniers of cens, without in "serting in the said concessions any sum of money "or any other charge whatever except that of simple "titre de redevance, accord "ing to the intentions of his "Majesty". Of course it was again according to the ~~same~~ true intentions of his Majesty, though his Majesty had never expressed any intentions on the subject. It was evident, too, that if those seigniories were to have vassals they might impose other charges than ~~cens~~

those set down in the condition.
This must therefore have been
drawn up, if it was not by
accident, with a view to the
late regulation. When we
come to No 400, however,
the ratification of this grant,
we find in the same remar-
kable fact as which I
have noticed with respect
to Rente Sale, that the
whole clause is omitted.
These are the only grants
which contain any mention of
sales of rent; viz Beaumont,
Rente Sale, the Augmen-
tation of Two Mountains, and
St Jean. The four contain
three variations of rates.
The ratification of one of them
is not to be found and of
the ratifications of the other
three only one retains the
obligation. One word more
on this variation these
clauses. We are told that
the intention entertained
when these grants were
made was to limit the
rent to a rate per arpent
superficial, and yet this
grants plainly that at that
time they did not regard
the depth of the land at all.
The first concessions had
many only

sometimes as much as two leagues of depth, and no doubt, it was the inconvenience which thence resulted which led to the fixing of the ~~[illegible]~~ the depth ~~[illegible]~~ the depth at which the concession was to be made; but for the rent they seem to have thought only of the frontage.

~~[illegible]~~

To Lafontaine. C. J. — You say that the rule was not ~~[illegible]~~ to calculate the rent per superficial arpent; but that is the mode spoken of in many arrêts. There are several such cases, and in a large number of contracts of concession they calculated the rent at so much a superficial arpent.

Mr Dunkin The earliest concessions were I believe at so much per superficial arpent. Then later in the history of the country, the great majority of the grants were so much per arpent of frontage. The grantors did not take much account of the depth, and the payments in kind were almost constantly regulated by the frontage. The result

will I believe very rarely ex-
ceed two sous per arpent
for in three days hands here
work very little. But he pre-
tends is not whether cents were
sous, but whether there was
were any fixed rate, or even
any usual and ordinary
rate. Perhaps not there were not.
The rate of the concession
Goulet to Jean de Paris, must
have been understated at
that time by a fool, although
it would now not be very
extravagant.

Going on to No. 377 (Beauharnois)
we have again a grant subject
ratification, or rather a grant
made directly by the King.
It is nearly in the form of
the ratifications numbered
365; but neither rate of rent
nor depth of concession is are
fixed. There can be no diffi-
culty as to the manner in
which this concession is to
be interpreted. No 378
is an augmentation of Des
Plaines of date 22nd July 1730.
ratified by the King the 18th
April following. This though
called a concession is in fact
only a license to cut wood.
Will it be pretended that in
this concession and in that
of Beauharnois the obligation

* the same charges and
obligations as the former
grant of Terrebonne &c
126.

to ~~be~~ concede is to be found.? It seems to me much easier to judge of the King's intentions by these ratifications and grants of his own than by those documents in which his officers take on them selves, without any reason that we are acquainted with, to say what his intentions are.

I come now to the correspondence, which is said and I believe truly said to have given rise to the arrêt of 1732, and which I shall hereafter interpret as I have done ~~that~~ the arrêts of Marly in the manner which seems to me to be correct.

This correspondence begins with a letter from Messrs Beauharnois and Hocquart dated the 15th October 1730 & Eighteen years after the arrêts of Marly had been passed. And here let me say that I do not now pretend to interpret those arrêts by anything done ~~fifteen or twenty years~~ subsequent to them. But while I agree that the intentions of Louis the ~~14th~~ 15th are not to ~~interpret~~ explain the intentions of Louis the 14th.