XXVIII

Seigniorial Tenure Court

From 1525 to

The Dunkin Act 9th

setting forth that they had des billets de concession from her and wanted her to give them titles, which is no exception to the general rule of all these cases. She replied that she was ready to do what they desired if they would only take the lands, which land behind a certain range at the rear line of the first concession, and that as to sales she would grant the lands at whatever the Intendant should determine. The censitaires said they would not take the lands in that concession because there was a swamp there, and that they wanted them on the other side. The Seigniress replied that they must take their share of the swamp, and not leave it all on her lands. Thereupon the Intendant sent the Grand Voyer to see the land and he made a report in favour of the Seigniress, who was then ordered to grant the lands according to the terms of her own offer. There is certainly in the judgment mention made of the rules ordained by his Majesty, but the Plaintiff was ordered to pay costs and no reason can be assigned for

putting in these words, "ordered by His Majesty". The Governor and Intendant, however, were always talking about these intentions of the King, or orders of the King without any particular expression of the Royal wishes, and so far as appears only with the view of giving weight to their own directions. It is remarkable, however that by this proposment the choice between the capons or the money rent was given to the Seigniors though the option was usually left to the debtor. In many cases where authority stepped in to fix the rate, the rent was set given in money value.

Lafontaine C.J. You might explain that word ordered by his Majesty, if you believed the arrêt of March was in force. It appears that for more than thirty years the rates of concession in that seigniory were fixed alike.

Mr Dunkin Very probably that was the idea of the Intendant when he wrote the words. He may have considered that the rate in question was ordered by the King in that sense; but at any rate the words are perfectly [illegible] for the purposes

of the ordinance.

Another ordinance is to be found in the same volume, pronounced in the year 1748, with respect to the Seigniory of Berthier. Here again the question was one of billets de concession. The former Seignior had granted some land to the Jesuits; but the latter body, having some apprehensions lest they might have trouble from the recent declaration of the King about mortmain, and having doubts of their capacity to take a deed from the Seignior, they came before the Intendant with the idea that by obtaining an ordinance from him they would get a more authoritative title. The Seignior replied that he was perfectly willing to give a deed, but wished it to be inserted as a condition, that if the Jesuits should sell the purchasers should thereafter pay the cens, which were usually paid in the Seigniory, and which are stated to be "the 12th of cent for every half a "arpent in superficies, three "bushel of wheat, for each twenty arpents ~~capons for the whole of the land~~ "and two sous of cens," which at the present [illegible]

days as fixed by documents of the time would come to three sous per arpent. The order of the Intendant directs a different rate to be inserted in the deed because instead of wheat cens are mentioned. Whether this was mere inadvertence we know not. At any rate there was no contestation in the matter.

In the same volume there is another document of the date of 20th July 1733. On this occasion the requisition was the Plaintiff and prayed that the habitants, this requisition should be bound to take contracts in the terms of their billets, and to pay the arrears of cens et rentes conformably to the ancient contracts. It appears from this that the seigneur had granted a certain alternative instead of the corvées. The Crown has laid before the Court a document, No 41, which is supposed, I imagine, to prohibit corvées; but in fact it does quite the reverse. In that case the censitaires pray to be relieved from the corvées, and on that demand they were sent out of Court. It is evident that the corvées were enforced at least up to the time when the corvée royale.

gave a judgment for the pay
ment against Laliberté and
others.

I now come again to the 2nd
volume of the Seigniorial doc
ments at Pages of the French co
py 120; 68, and 83. The doc
ment at 120 relate merely to
the question of banality, and
I find nothing about the late
of rent in it. The other two
have a certain connection
with that subject; but they
were both cases in which the
censitaires had got an old
grant, which had been tak
ken away for the purpose of
levying upon it a banal
mill; and in both cases the
Seignior said I have taken
away your land; but I will
give you another; that was
all right; but in it there is
nothing to raise the slightest
idea one in favour of the anti
-Seigniorial pretences. Refe
rences have also been made
there are other judgments to
be found at Pages 58; 212, and
214 of the 2nd vol French copy;
but they may all be dismissed
with a word. They are all cases
of billets de concession. The only
question raised by them was
this — Whether or not having

and in both cases the judgment went accordingly

having such a billet, what does it mean? On Page 48 is another example of the same thing — the Seignior has ordered to lay down the boundaries of the lands conceded, and give concessions to the habitans to whom he had promised them. On Page 66 is another case of billet de concession, which and that is connected with those on Pages 63 and 87, the suit having been prolonged with a great deal of trouble between the Bisconette and the Seigniores of Vaucheres; but the latter undoubtedly had the best of it. Another proposement on P. 165 of the same volume, there is no question about fixing the rates; but here is a controversy between the Seignior and the Censitaire, in which the latter brought an action, which appears to have been a bad one. There was a deed granted by the Attorney of the Seignior; but the Seignior came in and prayed the Intendant to raise the rate of the rent, because he said there was a mistake in the deed. He therefore dismissed his agent, and prayed that notwithstanding the grant, as it was made by the

censitaire should be compelled to pay a higher rent, he produced two deeds besides the one he sought to set aside, in support of his pretension that the rate charged was too low. The Defendant pleaded that all was perfectly right; that the land was of little value, and that he would not have taken it at a high rate. The Intendant dismissed the petition. This case shows that so far from there being any usual rate, when a man had to prove what the rate should be, he produced two rates differing from one another. In the Edits et Ordonnances volume. P. 217 is an arrêt in a case dealt with by the Conseil Supérieur. There a seigneur complained of defects in a contract sued to have it set aside altogether, and to have a jugement for a rate of rent usual in the neighbourhood: the rate being in wheat and chickens at a valuation contained in the jugement amounted at that day to three sous per arpent or what at present prices would be eight or nine. The censitaire appealed and succeeded on a declaration of the King as to defects in deeds, as to the

and held that the defects were not sufficient to set the deed aside, and therefore maintained and reversed the judgment of the Court below, which had given the rent no doubt at the usual rate in that particular neighborhood. Shew come to a number of cases in each of which the Seigneur was the Plaintiff. The first is in the 2nd vol of the Seigniorial Documents at the year 1727. It was the purest and de circonstance, which could be imagined. The Seigneur had sometime before succeeded in causing himself to be held as proprietor of a Seigniory, the former possessor being declared merely a usufructuary, and being ordered to make no concessions without the consent of the true proprietor. Notwithstanding this judgment the usufructuary had made (especially two) concessions of his lot, which were annulled by an arrêt. Shew it appears that later, viz in 1714 all the concessions made by Thaspen the usufructuary were annulled and the habitants were ordered to take new contracts at a certain price from the real Seigneurs. In this case

the whole question at issue was whether the Mason grants were good or bad. The decision was that they were bad and the censitaires were adjudged to come and take new grants from the Seignior Leonard; The ordinance in the same volume at Page 117 (French copy) is very much of the same character; the contestation being between two co-seigniors, owning each a part of the Seigniory of Ste Anne de la Pérade. One of these party holding lands within the censive of the other, was order to take deeds for them at certain rates. In the case reported at P. 169 (French copy) of the same volume the Seignior was the Plaintiff, and the rate is presumably that for which the Seignior asked. The ordinances at Pages 134 and 144 (French copy) are examples of the Seigniors being allowed to choose themselves whether they should receive their rents in kind or money. That at P. 162 (French version) either amounts to nothing, or it proves a trifle on the same side. The habitants, here, had made a tender in kind, which the Seignior refused to take. The

defendant ~~refused~~ induced him to take it, and declared if he did not the habitant should be discharged from the debt. That is a very odd kind of judgment and proves only that the judges knew and cared very little about law. There are also several instruments at P. 304 of the Edits et Ordonnances 2nd Vol.; and at Pages 108; 157; and 204. 2nd Vol. of Seigniorial Documents (French version) which contain incidental mention of the rate of rent, and are more or less interesting; but in them all the real question was whether or not in contracts passed by old deeds the reduction of one quarter, consequent on the change from monnaie des cartes should take place or not. At P. 187 there is some thing interesting with respect to the Cote des Neiges lot of land. I maintain that the recitals prove that at that time of the agnomination it was well known and publically recognized that this Seigniorial rent had been redeemed by the parties; and that there was no pretence at all that it was illegal; but on the contrary an acknowledgement that the rent was so high that the land was

not worth holding. The holder therefore had entered into a transaction with another person who had claims upon the land and, then, with the consent of the Seignior had got rid of the rent.

Now supposing the terms of all these ordinances were different from what I have shown them to be — supposing there were many more of them and that they went a great deal further than they do — the question still is how far that ought to weigh with us in interpreting a law which we can readily interpret for ourselves upon the ordinary principles. We have certain acts of legislation or quasi legislation, which go a very little way indeed in the direction ~~intended~~ desired by the counsel for the Crown; and we have ~~and~~ acts which do not even carry out what this legislation threatened. We have all kinds of practices, and all sorts of charges and reserves — in fact every one made his bargain as he could. If I had time I could show not only that all these varieties of obligation [illegible] in the

old times; but that they were sanctioned by the legal proceedings of those times. Indeed the rule which is to be found prevailing in the jurisprudence of the times before the cession is that the Seigniors got more than their rights — though they sometimes got less. In one instance of a long dispute between the Seignior of the Isles Ronchard and a habitant named Valiberté, the latter had the misfortune to succeed against his Seignior, which seems to have led to his subsequent imprisonment by the Governor for some offence given to the great man, until he should make an apology on his knees, with his hat in his hand for his impertinence, and kiss the after he had done so until the Seignior should ask for his release. We do not want to have a restoration of the times when these things were done; but at the same time we object to certain facts being picked out here and there from the mass, and made to appear, by being pieced together, that the system which existed was something very different from what it

really did exist. If there were some few interferences with the rights of the seigniors, there were many more, and much graver interferences with the rights of the censitaires.

But some part of the argument against me is drawn from the jurisprudence, which has prevailed subsequently to the cession of the country to the British Crown. I shall not follow my learned opponents into that; but I consider a part of what I should say were I to do so is to be found in the speech I addressed to the Legislature some time ago. I could say much more on the subject, and I may yet have to go over some part of it when I come to deal with our counter propositions. As Raising a Court of Justice, however, instead of a popular body it is necessary to say a few words with regard to the evidence which is relied on to make a case against the seigniors. And I here remark not only that the best evidence which can be obtained ought to be adduced, but that the opinions of men best expressed long after the

the most are not to be taken in
opposition to the evidence sup
plied by the ~~re gesta~~. We
have got ~~ancient~~ ordinances, and
practice. It is our duty to in
terpret them ourselves and to
ask how other people ~~interpreted them~~, with less information
than we possess, interpreted
them. I know that men of
great eminence have expressed
opinions widely different from
those which my friend, Mr
Chevrier any myself have been
called upon to maintain. We
cast no reflection on those —
our superiors in many respects
— who before us have promul
gated views adverse to ours.
We do not doubt — it is not part
of our case nor of our disp
osition to doubt the honesty of
purpose of the gentlemen to
whom I allude. But this I
venture to say, that no man
who has read the title deeds
of the Seigniors, and who knows
what they contain, can be call
ed upon to believe that there
is something there which
~~there~~ is not, merely because
men who have not read the
deeds ~~or~~ thought it was there. Here
are the deeds — let them be read,
and then let us be both safe —

there the obligations said to be imposed upon the seigniors ~~by~~ are to be found in them. These quasi acts of legislation are ~~[illegible]~~ here and can be read and expounded — What do they mean? It is no answer to me to say that at one time, and another, an opinion has been entertained that out of these deeds and these pieces of legislation certain conclusions could be built up. I know these conclusions have been drawn; but it was at a time when the titles were not printed, and when the arrêts and other instruments bearing on the subject were not attainable. As to the opinions posterior to the conquest which have been cited, I can show that they differ greatly one from the other; that many of them were held on account of manifest misconceptions of facts; but here we appeal to our titles; to the laws; to jurisprudence, which far from proving anything against us proves very much in our favor. It is not the opinions which have been held by any men whatever with which we have to do, but the documents

themselves. The doctrine we contest rests, I believe, except as regard a very few points which is put on the question whether or not the seigniors originally became the proprietors of their lands. If they did, as we maintain they did — if they became proprietors in the sense of the law — in the sense of a certain well understood, well defined tenure, then before they can be deprived of any part of their property, it must be proved that the tenure has been altered, and the burden of proof is cast upon us as though we have acted as if it were. If there be failure, flaw, or doubt, anywhere in that failure, that flaw, and that doubt is in our favour. There can be no question as to the antecedent law, and when the question relates to is whether that was changed by a later law the task [illegible] of proof rests with those who seek to impugn the established position of things. The Court is asked by the censitaires to declare that every kind of charge mentioned in the 39th question is null. What is said on this point in the answers is a little inaccurately stated, this

said

(Take in)

answers about reserves for Churches, and that the water can't be reserved without the soil

It is said then that I cannot reserve the water unless I reserve the soil. Why not? According to the proposition on which all the ~~pres~~ argument on the other side proceeds, it ought to be declared that these reserves are illegal; because I am not the full proprietor but only proprietor in common with some body else. Now if that be true — if the Seignior holds all that he holds as a fidei commissary — if the ~~are~~ is compelled to grant all that has been conceded to him at a low fixed rent, then he can no more refuse to grant the ~~body~~ bed of the stream than he can refuse to grant the rest of the ~~property~~ land. The person who drew this answer must certainly have doubted his own theory. He says I cannot reserve the water unless I reserve the soil which it flows over; but upon this theory by which I am precluded from reserving the ~~soil~~ water I am prevented equally from reserving the soil or

which the water flows. The only consistent intelligible proposition is that nothing whatever water or land is mine, though it has been given to me and declared to be my property; but that all is held by me for the public good. I reject the whole case against us rests upon one main proposition, which I think we have disproved; but which if we have not disproved our opponents have not proved.

Lafontaine C. J. There are in the Seigniorial act certain enactments directing the Commissioners to value the casual profits of the land as held at present, and then to value the land, as it will be held under a system of free and common soccage, they do as to arrive at the difference in the value between the two kinds of holdings. The Legislature then took it for granted that there was a difference; but if according to your system the Seignior could sell or do what he pleased with his land, then there would be no difference.

Mr Cherrier I do not think the act can be interpreted so as to make it decide in

sense mentioned by the Presi-
dent of the Court, for that point
like all others is subordinated
to the opinion of the Court. If
the Court should say that the
Seigniors are full proprietors
there will be no difference be-
tween the value of the lands
under the two systems to be
estimated. The same reasoning
would apply to the banalité,
and I should not have had
occasion to speak for two days
on it, if the duty of the Com-
missioners is to make law. If
it will be upon the decision
of this Court that the future
grant and final decision
must be based. If the Court
says there is no banalité and
no property in the running
waters the Commissioners
will not value those rights—
they will value them if the
Court says those right exist
so with the lands. If the
Seignior is already the proprie-
tor he can concede at any
rate he pleases, and then
the difference between the
values of the land under
the two systems will be no
thing at all, and will
not enter into the cadastre.
Mr Dunkin. I agree to

1544

to make a single remark as to the 41st answer of the Attorney General, that certain ~~reser~~ ~~vations~~ prohibitions, frequently inserted in deeds of concession, are illegal. I will not say what might be the case if any such prohibitions were made contrary to public law. All I assert is this that though whatever convention good manners or the English public law prohibits is null, yet that the question has no practical operation inasmuch as all reserves are to be destroyed and an estimate made of them predicated on their money value. The valuation is to be a real one. Now if there be any mere, simple prohibitions which have not been of value for practical purposes it is quite indifferent whether they are legal or illegal, since they will produce no result. I think all reserves are perfectly legal unless they be mere restraints upon the censitaire preventing him from doing what he will with his own or mere dog-in-the-manger clauses the Seignior will get nothing for. As to the 41st question, I believe the corvées were pretty nearly

all established as the price of real estate, and in that there can be no illegality, though one ordinance did prohibit the exaction of or the payment of corvée labour at particular times of the year.

Now as to whether lods et ventes accrue on exchanges, I should think the question might have been as properly asked, whether they accrued on donations. When an exchange is without fraud or simulation there can be no doubt, and the only difficulty is whether the answer of the Court may not have the simple effect of misleading the Commissioners.

As to the 4th question we have no objection to the distribution per die to seigniors of the Capital of the revenues accruing to the crown, according to the value of such seigniory; but there are many seigniories which are not liable to the payment of these revenues, or if liable are so for a mere nominal payment. The question, therefore, arises how far in shaping an answer to this question the Court can guard against the

injustice by ~~saying~~ excepting from the general rule the ~~case~~ case of seigniories which have not to pay anything to the Crown and which, therefore, should not be rendered liable for any share of the burden caused by the commutation of the quint and the relief. With regard to the forty fifth question our proposition is this — that there is no additional value to be given to the lands held in seigneurie by their conversion into hot days into ~~fee and common socage~~ franc aleu, otherwise than by the redemption of the quint and the relief; and the law having declared that the Court is to pronounce its judgment according to the law as it stood before the passing of the act, it is perfectly competent for Your Honours to say that the only difference between the two tenures is that under the one the fief owes something to the Crown, which it ceases to owe from the moment that it passes under the other system. The 46th question the Crown has not undertaken to answer and I think that its failure

to do so is a pretty good proof that it is impossible to answer it except in the most general manner — that the rights of the Seigniors are such as are stipulated in their contracts — that unless the Court have before it the title deeds of both Seigniors and censitaires, it cannot give a to catalogue party of the rights which either can claim. ~~We claim whatever~~ to We claim and the law bears out our pretensions, that the reservation of woods by the Seignior is not contrary to statute nor to public law, and is an incident of his direct — a perfectly legal right.

Apropos of rights in the main honorary but possessing at the same time a pecuniary value, as for example, the Seignior have a right to be buried in the Church without paying for it, or to have a pew without being charged rent, whatever extent they have a money value they fall within the catalogue of property to be estimated. Upon the whole we believe the Court must accept the conclusion of the Attorney

who can give no
General, ~~but he~~ answer to
his own question — the ques
tion which comprises all the
rest, unless indeed it should
think that it must accept
the Attorney Generals whole
system, and then the ans
wer will no doubt follow
in the sense he would desire.
Otherwise I believe it will
be utterly impossible to
answer his last question
except in the most general
manner.