

THE  
SEIGNIORIAL SYSTEM  
IN CANADA

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# THE SEIGNIORIAL SYSTEM IN CANADA

A Study in French Colonial Policy

BY

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## PREFACE

NOT a few thoughtful readers have laid aside Parkman's interesting little sketch of Canadian feudalism with some desire to know more about an institution which played such a picturesque and conspicuous part in the stirring drama of the old régime in French Canada. It was this desire that prompted, some ten years ago, the beginnings of the present study, which in due time was elaborated into a dissertation and presented in partial fulfilment of the requirements for the degree of Doctor of Philosophy in Political Science at Harvard University, and which in 1900 was awarded the Toppan Prize in that institution. The whole study has since been revised, somewhat rearranged, and considerably enlarged. It is now given to the press with a feeling that, whatever its organic and incidental defects, no apology need be offered for the publication of a volume dealing with a topic so important in the institutional history of New France, and yet hitherto so slightly studied by writers on the policy and achievements of France in the New World.

It has been my aim to base the study of the structure and workings of the seigniorial system in Canada wholly upon primary materials, — to accept, so far as possible, no point of importance from other than authoritative sources. A general adherence to this policy has limited the scope of the monograph to an uneven range of original materials, and has of necessity seriously impaired

the symmetry of the study. If the discussion of the various incidents of the system is not nicely adjusted to their relative importance, this fault is perhaps due, not so much to a defective sense of proportion, as to the fact that an abundance of available data on some phases is offset by a meagreness on others. If more attention is given to the legal than to the economic aspects of the system, it is because the materials, from their very nature, deal more with the legal relations of sovereign, seignior, and censitaire, than with the actual working of these relations.

Most of the material from which information has been gleaned is not at present accessible to the general reader; much of it is still in manuscript, while such of it as is in print is to be had, for the most part, only in government publications issued in limited numbers more than a half-century ago and now not easy to obtain. It is expected, however, that during the coming year the more important documents bearing on the seigniorial tenure will be published, under the editorship of the present writer, by the Champlain Society of Canada.

I should indeed be unmindful of the many obligations under which I have been placed in the preparation of this volume, were I not to record my very sincere appreciation of the kind assistance cheerfully tendered me from various quarters. More particularly must I thank the Hon. R. W. Scott, secretary of state, Dr. A. G. Doughty, Dominion archivist, and Mr. Benjamin Sulte of Ottawa, for aid in the acquisition of material. To Professor Adam Shortt of Queen's University, under whose guidance the study was begun, to Professors C. W. Colby and F. P. Walton of McGill University, to Professor G. M. Wrong of the University of Toronto, and to

Professors Emerton, Gross, and Haskins of Harvard University, I am indebted for various suggestions which have proved helpful. Miss Magdalene Casey of the Dominion Archives has carefully verified the references to unpublished documents, and Miss A. F. Rowe of Cambridge has rendered faithful expert service in the preparation of the manuscript for the press. Most of all, however, must I acknowledge a heavy debt of gratitude to my kind friend and former master, Professor Edward Channing, whose inspiration, guidance, criticism, and encouragement have been of unflinching value to me at all stages of the study.

WILLIAM BENNETT MUNRO.

CAMBRIDGE, MASSACHUSETTS,  
April, 1906.



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The physiognomy of a government may be best judged in its colonies, for there its features are magnified and rendered more conspicuous. When I wish to study the merits and faults of the administration of Louis XIV, I must go to Canada; its deformity is there seen as through a microscope.—ALEXIS DE TOCQUEVILLE, *The Old Régime and the Revolution*.

# THE SEIGNIORIAL SYSTEM IN CANADA.

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## CHAPTER I.

### THE EUROPEAN BACKGROUND.

IF the respective colonial policies of France and England in North America stand somewhat sharply in contrast with each other, this contrast is due, in no small measure, to the different circumstances in which the two parent states found themselves in regard to their own internal development at the beginning of the era of colonial expansion. The whole system of land tenure, including the system of public and private relations based upon the possession of land, is by no means the least reliable gauge of the general position which a state has reached in the scale of political, social, and economic evolution; for, as every careful student of institutional history knows, the progress of nations has been reflected, step by step, in the development of customs and laws relating to the tenure of landed property. The system of landholding introduced by any state into its colonies, and its liberal or strict administration of such system, may very well serve, therefore, as an index to the general breadth or narrowness of its colonial policy.

Into her North American territories France introduced, in the seventeenth century, that complex code of relations based upon the holding of land commonly known as the seigniorial system. This system, the essential incidents of which had been developed from the feudal organization of an earlier period, the French authorities in Canada fostered and elaborated for more than a century, modifying it to suit the needs of pioneers

in a new land, and giving to Canadian feudalism a character different in several important respects from that which marked the system in the parent state from which it was derived. With the passing of Canada into English hands in 1760, the maintenance of the system and its future development were committed to the somewhat unsympathetic care of the new suzerains, who continued it in existence for almost a century longer. The twilight of feudalism was thus more prolonged in French Canada than in any other territory controlled by a European state or peopled by men of European stock.

As to the origin of the feudal relation, students of institutional history have never found themselves in complete agreement. Its beginnings have been sought, without entire conclusiveness, both in the institutions of Rome and in the elementary relations upon which the rude organization of the Teutonic tribes was based. With this controverted question of origins, however, it is not necessary here to deal; it is sufficient to note that by the middle of the ninth century the feudal idea — that of service in return for protection — had become clearly prominent in determining social and political relations throughout the greater part of Western Europe. Owing to the economic and military conditions under which the peoples of this part of Europe found themselves during the next two or three centuries, the idea was naturally and steadily elaborated into an extensive system of personal relations based upon the tenure of land.

At this stage, feudalism might have been defined in general as a system of social and political relations founded on the tenure of landed property and resulting from the absence of a strong central power. Such absence of authority cast the whole burden of preserving order, and of forestalling a reign of *faustrecht*, upon certain powerful men in every community; and it was by the attempts of these men to provide protection for their dependents in the most natural way that the various feudal relations were developed and strengthened. This most natural way seemed to be that, in return for grants of land, the magnates of each community should be assured of what was at the time of the utmost value to them, — service and support in time of war. The man who took land from a lord put himself under obligation to appear

in arms with his followers at the summons of his chief. He, in turn, distributed lands to these followers subject to a similar obligation; and this process might be several times repeated. Thus the feudal system created a military hierarchy, in which each tenant of lands from humblest to highest was liegeman to his immediate feudal superior. Service and submission to jurisdiction as the price of enfeoffment were the essential phenomena of feudalism in its early form. The lord gave and guarded; the vassal took and served.

Although this primary feudal idea was essentially the same throughout Western Europe, the elaboration of relations founded upon it was guided by no uniform principles. In different parts of the country and among different classes of the population it developed as conditions and environment seemed to dictate. Consequently it never at any stage in its evolution presented exactly the same features throughout the whole feudal area. Among the military classes the obligation of military service was kept well in the foreground until the fourteenth century, but with the agricultural classes this obligation never had a like prominence. With them the bond of mutual service and protection, while always existent, was not the most essential relation, but certain obligations of a non-military nature characterized more prominently the relations between the landed lord and his dependents. These non-military obligations, which are sometimes emphasized as seigniorial or manorial rather than feudal, were of wide scope and variety, and in extent and importance varied greatly in different parts of Western Europe, and even in the same part at different periods in the evolution of the system. Indeed, it is this kaleidoscopic shifting of incidents which has given feudalism a history so complex as to defy description in general terms.

The feudalism of France had a more consistent development than that of any other nation; but even in France there was at every stage a marked absence of any uniformity or homogeneity. In general, however, the steady growth of the central power from the twelfth century onward reflected itself in the declining importance of the feudal military obligation

and the growing prominence of the non-military duties. The altered conditions and methods of warfare, and the establishment of standing armies under the control of the monarchy, gave to the feudal array a steadily decreasing importance in the general military organization; until by the fifteenth century the system had almost completely lost its characteristic feudal features, and had throughout France become predominantly seigniorial in character.

Of the various non-military obligations imposed upon all feudal dependents, one of the earliest and most general was that of paying certain annual dues, or *redevances*. The most common of these was the payment known as the *cens et rentes*, which at an early period became more or less definitely fixed in amount either by contract between seignior and dependent or by the custom of the seigniorial jurisdiction. Other payments were required, not annually, but upon the occasion of transfers of dependent lands; for, as the seigniorial relation was, in the earlier stages of the system at any rate, largely a personal one, the successor to lands within a fief, whether by purchase or by inheritance, was required to secure by the payment of a fine the permission of his superior to the establishment of this relation. In the thirteenth century the exaction of a fine, known as the *lods et ventes*, upon mutations of small holdings may be said to have become general throughout the greater part of France.

Along with these dues developed the various seigniorial monopolies, or rights of the seignior exclusively to supply certain services required by the landholders within his jurisdiction. These were the various banal rights (*banalités*), examples of which are to be found from the tenth century onward. The seigniors provided grist-mills, wine-presses, ovens, and various other facilities of a similar nature, and assumed the right to compel their dependents to make use of these, and of these alone, upon payment of charges regulated by the customs of the various jurisdictions. From the tenth to the fifteenth century the number and the scope of these banal rights seem to have steadily expanded, but more widely, of course, in some parts of France than in others.



The *corvée*, or obligation of the dependent to give his seigniorial lord a number of days of free labor in each year, is another incident which made its appearance at a very early stage in the development of the system. At first the amount of labor which might be exacted seems to have been indefinite, and to have depended largely upon the wish of the seignior or lord; but, as time went on, both the number of days and the conditions under which the labor might be exacted were fixed by the custom of the neighborhood.

By the close of the thirteenth century all of the foregoing rights had become sources of emolument to the French seigniorial magnate;<sup>1</sup> but even at this period they did not exhaust his list of privileges, for he possessed in addition various rights of jurisdiction and a number of honorary privileges, which might, and usually did, prove of pecuniary advantage to him. Within the confines of his fief the lord exercised the right of administering justice either in person or through appointed judicial officers, and of taking to himself whatever profits accrued from fines, fees, and forfeitures. Different degrees of judicial power came to be distinguished; but in France many of the seigniors assumed complete and unlimited rights of jurisdiction over their dependents, and retained these rights until, with the growth of the royal power and the consequent encroachments of the royal courts, feudal justice became subordinated to royal. It was not, however, till the fifteenth century that this subordination had been completed in the greater part of the kingdom.

The honorary privileges of the seigniors, at first few and unimportant, came in time to form a rather formidable category. In this matter there was perhaps a greater lack of uniformity than in regard to the pecuniary rights; and custom did not, as in case of those rights, seem to crystallize into very definite principles. Some of these privileges, such as the right of the lord to hunt over the lands of his dependents, came to be numbered among the most harsh and odious incidents of the system.

<sup>1</sup> On the origin and development of these various seigniorial incidents, see Renaudon, *Traité Historique et Pratique des Droits Seigneuriaux* (1765); Achille Luchaire, *Manuel des Institutions Françaises* (1892); Adhémar Esmein, *Cours Élémentaire d'Histoire du Droit Français* (1905); and E. D. Glasson, *Précis Élémentaire de l'Histoire du Droit Français* (1904).

Throughout this development the feudal military obligation still maintained its existence; but, since the disorganized conditions which had given prominence to that feature several centuries before no longer characterized France, its importance had become wholly secondary. By the fifteenth century the two most distinguishing characteristics of feudalism — military service and unsubordinated private justice — had been completely undermined by the waxing strength of the monarchical power; and from this time onward the development of the other features makes up the history of the seigniorial system.

It has been pointed out that the nature and extent of the various rentals (*redevances*) and other seigniorial obligations were fixed in different parts of France by local custom. To this rule, however, there was one important exception, — the considerable part of France, commonly known as the *pays de droit écrit*, in which the definite and well-known rules of Roman law were applied. The exact limits of French territory within which this written law continued in existence are difficult to define precisely; but in general the *pays de droit écrit* comprised the southern provinces of France, where Roman influence had naturally been most strongly stamped. Within this area relations were usually determined by Roman law modified very considerably by local custom. In the remaining parts of France,<sup>1</sup> known as the *pays de coutume*, or *pays coutumiers*, they were regulated not by written law but by the long-standing customs of the various jurisdictions. The number of these jurisdictions was very large, and in extent and importance they differed greatly; hence one finds a bewildering number of local *coutumes*, some applying to extensive and populous districts, others restricted in their application to single small fiefs.<sup>2</sup>

These bodies of local customary law had the advantage of being indigenous, and of adjusting themselves to local environment; but they had the cardinal defects of not being precise, and of presenting the greatest variation from place to place

<sup>1</sup> See the map of the two regions in J. Brissaud, *Manuel d'Histoire du Droit Français* (1904), 152.

<sup>2</sup> On this decentralization of the French legal system, see Viollet, *Histoire du Droit Civil Français* (1893), 149-150; and Glasson, *Précis Élémentaire de l'Histoire du Droit Français*, 169-186.

throughout the kingdom. It was to obviate the former of these defects that the movement for the *rédaction*, or codification, of the customs was begun. Unofficial codifications began to appear as early as the beginning of the thirteenth century, but these seem to have been neither exact nor complete; it was not until the closing years of the century that the first compilations under official patronage were made.<sup>1</sup> During the first half of the fifteenth century a few of the customs, notably those of Anjou, Maine, and Poitou, were codified under the auspices of the authorities of these respective provinces without any instigation from the monarchy.<sup>2</sup> The desirability of codifying the customs had, however, become apparent; and in 1453 a royal ordinance of Charles VII commanded that all the local customs should be forthwith collected by a procedure which was definitely set forth in the ordinance, and that the compilations should be transmitted to the king for the approval of his *parlement*.<sup>3</sup> The response to this ordinance was not general, however; and Louis XI, who came to the French throne a few years later (1461), seems to have had in mind the desirability of a single *coutume*, or system of common law for the whole kingdom, rather than a continuance of the policy of compiling and stereotyping the various local bodies of customary law.<sup>4</sup> At any rate, he did little or nothing to advance the work of local codification which his father had begun.<sup>5</sup> Under Charles VIII and Louis XII—during the closing years of the fifteenth and the early years of the sixteenth century—the work was, in obedience to royal decrees, pushed rapidly on; and in a short time a large number of the customs had been officially put into written form and approved.

It was during the reign of Louis XII that the first official

<sup>1</sup> Klimrath, *Études sur les Coutumes* (1837), ch. i.

<sup>2</sup> Viollet, *Histoire du Droit Civil Français*, 142.

<sup>3</sup> *Ordonnances des Rois de France de la Troisième Race* (Paris, 1729-1849), xiv. 312-313. Part of this ordinance is as follows: "Nous voulans abrèger les procez et litiges d'entre nos subjectz, et les relever de mises et dépens, et mettre certaineté ès jugemens tant que faire se pourra, . . . ordonnons et décernons, déclarons et statuons: que les coutumes, usages, et stiles de tous les pays de nostre royaume soyent redigez et mis en escrit."

<sup>4</sup> Viollet, *Histoire du Droit Civil Français*, 145.

<sup>5</sup> Isambert, *Recueil Général des Anciennes Loix Françaises*, xi. 458.

codification of the custom of the viscounty and provostship of Paris was accomplished, in 1510, though before that date there had been unofficial and incomplete compilations of the customary law of this jurisdiction.<sup>1</sup> The work of official compilation was performed by commissioners designated by the king; and their work, when finished, received the approval of the Parliament of Paris.<sup>2</sup> This first official codification regulated seigniorial and other relations during a period of only seventy years; for in 1579 a revision was ordered by Henry III, and in the following year was accomplished by a commission under the presidency of the celebrated juriconsult, Christophe de Thou.<sup>3</sup>

In this revision a number of important changes were made, and the general arrangement of the custom was much improved. As thus revised, the Custom of Paris consists of sixteen titles (*titres*) or divisions, each of which is divided into a number of chapters, and these again are subdivided into articles or sections. In all there are three hundred and sixty-two articles, numbered consecutively. The form is eminently satisfactory, and the various rules are set forth with marked clearness and brevity. On the whole, the Custom of Paris is distinguished chiefly by its thoroughly native spirit: there is in it little of Roman, and still less of canon, law. These various characteristics, as well as the fact that it formed the groundwork of the legal system in vogue at the national centre, served to give it from the outset a certain prestige over the other French *coutumes*, and in the subsequent revisions of the customs of other jurisdictions caused it to exert a very perceptible influence.<sup>4</sup> Although it formed the general code of law regulating civil relations within the viscounty and provostship of Paris, it might be modified at any time by royal ordinance or decree.

<sup>1</sup> Buche, *Essai sur l'Ancienne Coutume de Paris aux xiii<sup>e</sup> et xiv<sup>e</sup> Siècles*, in *Nouvelle Revue Historique*, viii. 45-86.

<sup>2</sup> Klimrath, *Etudes sur les Coutumes*, ch. i.

<sup>3</sup> *Ibid.* ch. ii.

<sup>4</sup> There are at least sixteen commentaries on the *Coutume de Paris*,—those of Dumoulin (1539), Charondas (1582), Chopin (1586), Fortin (1595), Pithon (1601), Troncon (1618), Tournet (1623), Guérin (1634), Brodeau (1658), Ricard (1661), Ferrière (1679), Bobe (1683), Duplessis (1699), Laurière (1699), Le Maître (1700), Auzault (1708). Some of these have passed through several editions. The most serviceable of the various commentaries are mentioned below, p. 264.

This was the system of law which, in 1664, Louis XIV introduced by royal arrêt into his colony of New France,<sup>1</sup> ordaining that, except in so far as its provisions should be from time to time modified by royal edicts or by the decrees of the local authorities, it should form the rule of law regulating all colonial relations. The colony was therefore equipped, almost on the threshold of its history, with a complete and well-developed code of customary law.

While the action of the French king and his advisers in providing a uniform system of jurisprudence for Canada was perfectly natural, and quite in accordance with the policy which the French government was pursuing at the time, the choice of this custom from among the many then in operation was perhaps not altogether a fortunate one. In many ways the Custom of Paris was, as a code of laws, superior to its contemporaries; but it was adapted to the circumstances of a thickly populated and highly developed community, not to the needs of pioneer settlers in a new land. Furthermore, the population of the colony upon which it was imposed was very largely of Norman origin;<sup>2</sup> for most of the earliest settlers in New France came from the rugged old Norman ports of Dieppe, Rouen, and Honfleur. Many came from Perche, and a few from other provinces of France; but, while it is true that between 1627 and 1664 the immigrants included many from Aunis, Poitou, Brittany, Saintonge, and even from Paris and its immediate vicinity, the Normans continued to form a substantial portion of the influx.<sup>3</sup> The colonial church registers, which have been kept with scrupulous care, show that of the considerable number of settlers who came to Canada during the decade after 1664 more than half were of Norman stock; and the strength of the Norman

<sup>1</sup> See below, p. 31; also Lareau, *Histoire du Droit Canadien*, ch. v.

<sup>2</sup> See Sulte, *Origin of the French Canadians*, in Royal Society of Canada, *Proceedings*, 1905, *Mémoires*, sec. ii. 99 ff.

<sup>3</sup> Ferland (*Cours d'Histoire du Canada*, i. 511-516) has traced the origin of about four hundred immigrants to Canada during the period 1615-1666. Of these 125 were from Normandy, 57 from Perche, 37 from Aunis, 34 from Poitou, 14 from Brittany, and 13 from Saintonge. Paris contributed only 20. On this point see also Rameau, *La France aux Colonies* (1859), ch. vi; and Salone, *La Colonisation de la Nouvelle-France* (1906), 112-113.

element in the colony is further attested by the fact that in 1680 an official estimate declared that at least four-fifths of the colonial population either were Normans by birth or by parentage, or had married Norman wives. The settlers who came from Paris and its environs were for the most part officials, priests, and merchants, who took up their abode in the towns; the Normans, on the other hand, were mainly peasants, who went on the land. Thus it came about that, while the Norman element dominated the colonial population as a whole, it was overwhelmingly strong among the "habitants," as the people of the colonial seignories were called. Since, then, the greater part of the colonists were most familiar with the *Coutume de Normandie* (codified in 1583),<sup>1</sup> the introduction of this custom, while it might have involved some difficulties, would undoubtedly have obviated many of the evils which attended the working of the seigniorial system in the colony.

The establishment of the Custom of Paris in New France had some important and interesting consequences. In the first place, there was always considerable difficulty in bringing the peasantry to a proper understanding of its provisions: again and again the colonial courts and the administrative officials found themselves called upon to settle disputes which, but for the almost entire ignorance of the custom on the part of the disputants, would not have arisen.<sup>2</sup> Moreover, the circumstances of the colony were such that some of the provisions were physically incapable of literal application and hence were allowed to lapse into desuetude; while others, although capable of being applied, were abrogated because their enforcement would have been out of harmony with the general policy of the crown in the colony. As will be pointed out later, several important provisions of the Custom of Paris had to be either considerably modified by the authorities or entirely set aside;<sup>3</sup> while some others were tacitly disregarded by the Norman agricultural population.<sup>4</sup>

The compilation of the customs under official auspices in the

<sup>1</sup> Klimrath, *Etudes sur les Coutumes*, 22-23.

<sup>2</sup> For example, see below, p. 129.

<sup>3</sup> Below, pp. 110-111.

<sup>4</sup> Below, p. 139.

sixteenth century marks an important epoch in the history of French seigniorial relations; for, while it did not stereotype these relations in any strict sense, it gave them a degree of definiteness which they had not hitherto obtained.<sup>1</sup> It did not in any way, however, produce uniformity in the relations of landed classes throughout France, but, on the contrary, seems to have accentuated and perpetuated the heterogeneity. It is, therefore, as difficult to draw a true general picture of French seigniorialism in the seventeenth century as of French feudalism in the twelfth or the thirteenth. The widest variation in the nature and scope of seigniorial rights and duties prevailed in the various jurisdictions: in some the seignior's rights were numerous and extensive, in others few and of much less importance.<sup>2</sup> Some seigniorial privileges were recognized in almost all the customs, as, for example, the right to the *cens et rentes*, and to the *lods et ventes*, or relief; others, like the right to demand *corvées*, were recognized either with or without restrictions in the majority of the compilations; while some rights, like the banalities, received recognition in but a small number of them. To add to this lack of uniformity, there were important changes and revisions of the customs at short intervals, a circumstance which Voltaire had in mind when he spoke of "things changing in France as often as *coutumes* or post-horses." In these revisions, seigniorial rights were added, extended, restricted, or abolished as local circumstances seemed to dictate or permit, with no general principle to serve as a guide.<sup>3</sup>

After the beginning of the sixteenth century, moreover, there was an increasingly large number of royal ordinances, decrees of the Council of State, judgments of provincial intendants, and various other manifestations of the rapidly growing royal authority, all of which served greatly to modify the incidents of the land-tenure system and the complex mass of relations

<sup>1</sup> Klimrath, *Etudes sur les Coutumes*, ch. i.

<sup>2</sup> On the extent of this variation, see Pardessus, *Mémoires sur l'Origine du Droit Coutumier en France*, in *Mémoires de l'Académie des Inscriptions*, x. 666-765; Laferrière, *Coutumes de France dans les Diverses Provinces*, in his *Histoire du Droit Français* (1858), vol. v; Glasson, *Précis Élémentaire de l'Histoire du Droit Français*, 437-448.

<sup>3</sup> See *La Grande Encyclopédie*, under "Coutume."

built upon it.<sup>1</sup> This development of the central power had fundamentally altered the spirit of the system, even though the outer shell had been for the most part preserved intact. The seigniors, for example, still preserved their rights of private judicial administration, but their powers in this domain were no longer final: the growth of the royal courts had thoroughly subordinated private to national jurisdiction.

The personal relation between the seignior and his dependents also bore but little real resemblance to that which had, several centuries before, formed a bond between the feudal lord and his vassal.<sup>2</sup> By the beginning of the seventeenth century many of the seigniors were beginning to leave their rural manors and take up their residence in the capital or in the other large towns, leaving their seigniories in charge of bailiffs, who collected the various dues and saw that the tenants or censitaires performed their required corvées and other services. The movement of the seigniors away from their holdings seems to have gone on rapidly, until their absence became a prominent characteristic of the seigniorial system. It is said that, before the end of the seventeenth century, there were many seigniors in France who had never visited their estates in the lapse of a lifetime.<sup>3</sup> The seignior came more and more to look upon his fief as a source of revenue; his interest in his dependents became a wholly pecuniary one; and hence the bailiffs who managed the affairs of the seigniories were impelled by the very nature of things to stretch the seigniorial rights and privileges to the utmost productive point.<sup>4</sup> The elasticity of some of the seigniorial incidents, and the varying protection against seigniorial extortion afforded to the peasantry by the royal officers and courts in different parts of France, added new causes of variation in the several jurisdictions.

<sup>1</sup> See the list of decrees in Viollet, *Histoire du Droit Civil Français*, 151-155.

<sup>2</sup> Manesse, *Les Paysans et leurs Seigneurs avant 1789* (1895), ch. viii.

<sup>3</sup> The extent and evils of this absenteeism are discussed in Taine, *L'Ancien Régime*, ch. iii, and in Manesse, *Les Paysans et leurs Seigneurs*, ch. viii.

<sup>4</sup> Renaudon (*Traité Historique*, 628) speaks in scathing terms of the seigniorial bailiff: "He is a ravenous wolf let loose on the estate, who drains it to the last sou, crushes the peasants, and renders odious the seignior, who finds it necessary to tolerate his extortion for the sake of the profits which accrue."



Thus, when the seigniorial system was transplanted from France to the New World, its strength had already begun to show inherent signs of decline. Absenteeism, and the resultant severing of the personal nexus between the seigniors and their dependents, together with the increasing importance of the privileges which the seigniors as a class enjoyed, served to sap the system of much of its pristine vitality. This vitality, however, through the close contact of the seigniors with their dependents and the entire absence of any code of privileges, it was destined to regain in New France to a very considerable degree. With the direct personal relation of seignior to dependent, with the prominence given to the military aspect, and with the comparative paucity and simplicity of the seigniorial rights and obligations, the land-tenure system of French Canada bore a much closer resemblance to French feudalism of an earlier period than to French seigniorialism of the seventeenth and eighteenth centuries.<sup>1</sup> To this circumstance must be largely attributed the new lease of life which the system enjoyed in the colony, and by which it was enabled to outlive its parent stem in France.

When France undertook the planting of the seigniorial tenure on the shores of the St. Lawrence, she was in theory and in practice a despotism. The two institutions, feudalism and absolutism, had long since passed their era of antagonism, and through the entire subordination of the former to the latter had become reconciled. With its fangs drawn, feudalism was no longer dangerous; on the contrary, it might be, and was, used by the crown in supporting the complete centralization of royal power. The age of Louis Quatorze, during which seigniorialism entrenched itself in Canada, may be said to have marked the zenith of political centralization in France: the epigram "*L'état c'est moi*" expressed no mere fiction of royal power. The political organization of France was, in fact, as simple as its social structure was complicated; for all its lines converged upward, and its base was as broad as the extensive dominions of the Bourbons whether in Europe or elsewhere.<sup>2</sup>

<sup>1</sup> See below, especially ch. iv.

<sup>2</sup> Cheyney, *European Background of American History*, 115-116.

In the sixteenth and seventeenth centuries the chief councils of the king were the Royal Council (*conseil du roi*)— more often called the Council of State (*conseil d'état du roi*)— and the Parliament of Paris (*parlement de Paris*). The former was the chief executive council of the realm, the body in which the king issued his arrêts and ordinances both for France and for the colonies. This council was further brought into relation with the affairs of New France in that it heard and determined appeals from the intendant or from the Sovereign (Superior) Council in the colony whenever these were transmitted to it. The Parliament of Paris, on the other hand, was intrusted, among other duties, with the registration of royal decrees and ordinances. It had no appellate jurisdiction in the colony, and hence its work is reflected there to little extent.

Subject, of course, to the will of the monarch, the direct control and supervision of colonial affairs was, at the outset, in the hands of the chief minister of state. When the beginnings of settlement in New France were made, Cardinal Richelieu possessed among his various titles that of "grand master, chief, and superintendent-general of the navigation and commerce of France," and in virtue of this position exercised a general oversight of colonial affairs. Indeed, the introduction of seigniorialism in New France has been commonly regarded as his personal work.<sup>1</sup> Mazarin took comparatively little interest in the affairs of the colony; but his successor, Colbert, gave vigorous attention to the exploitation of French colonies in both the West and the East. During his first few years in office he made a careful study of Canadian affairs, conducting a large part of the correspondence with the colonial officials; but in 1669 the immediate administration of colonial affairs was turned over to the minister of marine,<sup>2</sup> who from this time down to the period of the French Revolution was the medium of communication between all colonial officials and the king, countersigning all the royal edicts and instructions which were sent out to New France. Although there were at intervals changes in the occu-

<sup>1</sup> "It was Richelieu who first planted feudalism in Canada" (Parkman, *The Old Régime in Canada*, ii. 41).

<sup>2</sup> Petit, *Les Colonies Françaises* (1902), i. 15.

pancy of this post, such changes brought about very little alteration in the trend of French colonial policy; for, during the reign of Louis XIV especially, the hand of the monarch was very influential in determining the course of affairs in the colony.

A well-known writer on the institutions of the old régime has pointed out that the merits and the faults of the French political, social, and economic system before the Revolution may be best seen and studied in the colonial possessions of the Bourbons, more particularly in Canada.<sup>1</sup> This is because many traditional obstacles which hinder the logical working out of governmental policy in the mother land do not exist in a new country. The development of feudalism in its later stages was therefore more uniform and consistent in New France than in Old, its workings were less obscured by the clouds of privilege, and as a system it had much more symmetry. On the whole, Canadian feudalism had all the merits of the system which formed its background at home, while it lacked many of the odious incidents that had served to make the latter a heavy burden upon the agricultural classes of France. This fact is shown by the different attitudes displayed toward the existing land-tenure system by the peasantry in France and in Canada.

After 1760, when the colony passed permanently out of the hands of the French monarchy, the background was very decisively altered; for England had, a full century before, swept from her dominions the last of the important relics of feudal tenure.<sup>2</sup> The administration of the Canadian tenure system now passed into strange and not altogether sympathetic hands, its retention and development being due, not so much to a belief in its utility and suitability as to a determination to carry out literally the pledges made to the conquered race in the articles of capitulation. Furthermore, the administration of colonial affairs by the new suzerains was far less centralized than it had been under the old; for, despite the important recrudescence in royal power and influence under George III, the ultimate supremacy of Parliament in the direction of colonial

<sup>1</sup> Tocqueville, *The Old Régime and the Revolution*, 299.

<sup>2</sup> By statute 12 Charles II. c. 24 (1660).

policy had become assured. Public opinion in the home country now became an important factor in the determination of colonial relations, a factor which under French rule had served in no degree to mould the policy of the home authorities. For these various reasons, the attitude of the English government toward the seigniorial system in Canada was less consistent and less decisive than had been the attitude of the French before 1760, and was too often based upon a much less accurate knowledge of colonial conditions. To this indecision and lack of definiteness in policy must be attributed in a considerable degree many of the abuses which characterized Canadian seigniorialism under British administration.<sup>1</sup>

<sup>1</sup> See below, ch. xi.

## CHAPTER II.

### EARLY SEIGNIORIAL GRANTS.

1598-1666.

DURING the first three decades of the sixteenth century, Spanish, Portuguese, and English navigators coasted along the northeastern shores of North America without discovering the existence of the great river which drains the waters of the inland lakes to the eastern seas. It remained for the navigators of France, late though these were in entering the field of westward exploration, to penetrate the valley of the St. Lawrence and to discover its adaptability to colonization.

The Cartier expeditions of 1534-1535 may be said to mark the beginning of French interest in the New World. While, however, the work of the sturdy seaman of St. Malo served to clear up the geography of the new region and to establish for the Bourbon king a claim to sovereignty over the vast Northland, the work of actual colonization was not yet to be begun; for the experiences of Cartier and Roberval were not such as to encourage the hope that France would find in these regions a second Mexico or a new Brazil. The country appeared entirely devoid of mineral wealth; the climate, as the two hibernations of the explorers attested, was disastrously rigorous; and the soil did not appear to possess any very attractive agricultural possibilities. All in all, the Cartier-Roberval expeditions resulted in little but disappointment; and it is not to be wondered at that France, rent asunder as she was by the religious wars which marked the second half of the sixteenth century, should have cast aside for the time being whatever projects she may have been entertaining for the establishment of a colonial empire in the valley of the St. Lawrence.

During this period, however, Norman and Breton fishermen continued to visit the fishing banks of Terre-neuve, and year by year to garner the lucrative harvests of the sea; and, while it may well be doubted whether, during a full half-century following the date of Roberval's voyage, even a single French vessel passed beyond the Saguenay, the annual visits of the fishermen sufficed, in the seaports of France at least, to keep alive the feeling that these northern regions were within the French sphere of influence.

Toward the end of the century peace returned to the French people; and the issue of the Edict of Nantes in 1598 gave the kingdom for the first time in fifty years an appearance of internal quiet. By a somewhat curious coincidence, it is in this same year that one finds official France once again turning its eyes to the northwestward. The possibilities of the St. Lawrence region as a favorable field for the exploitation of the fur trade had attracted the attention of the Marquis de la Roche, a nobleman of Brittany, who possessed some influence at the royal court. Some years previously La Roche had received a commission empowering him to establish a colony in Newfoundland, but misfortune overtook his enterprise even before his vessels left the shores of France.<sup>1</sup> He did not, however, abandon his design, and in 1598 was successful in obtaining appointment to the post of "lieutenant-general and governor of the countries of Canada, Hochelaga, Newfoundland, Labrador, the River of the Great Bay, Norembega, and of the countries adjacent to the said territories and rivers."<sup>2</sup>

Within this vaguely defined area La Roche was invested with almost sovereign powers: he might make war and peace, maintain an army, legislate, punish and pardon, found cities, and erect fortifications. "We have given him power," runs his commission more specifically, "to grant lands . . . to gentlemen and to those whom he shall consider persons of merit, in the form of fiefs, seigniories, châtellenies, countships, viscount-

<sup>1</sup> Hakluyt, *Discourse on Western Planting*, in Maine Historical Society, *Collections*, 4th series, ii. 26.

<sup>2</sup> For La Roche's commission, January 12, 1598, see *Edits et Ordonnances*, iii. 7-10.

ships, baronies, and other dignities, to be held in such manner as he shall deem in keeping with their services, and on such terms and conditions as shall conduce to the defence of the said countries; and to other persons of inferior rank at such charges and annual rentals as he shall deem advisable, of which latter we agree that they shall be exempt and discharged during the first six years, or during such further period as our said lieutenant-general shall believe to be right and necessary, excepting always the duty of service in time of war." Thus, says Parkman, was an effete and cumbrous feudalism to make its first lodgement in the New World.<sup>1</sup>

Armed with these extensive powers and privileges, the Breton nobleman made haste to assume the duties of his post. By the terms of his commission he was, however, under obligation to transport settlers to the new territories at his own expense, a requirement in which he found the first obstacle to his enterprise, for it proved very difficult to persuade respectable Frenchmen to join his venture. He finally resorted to the jails of Rouen, from which he obtained a band of sixty convicts;<sup>2</sup> and in due time the expedition sailed for the St. Lawrence. On reaching Sable Island, off the Acadian coasts, La Roche landed his convicts, while he cast about for a suitable place of settlement on the mainland; but by a sudden storm he was driven back to France, and his miserable followers were left to their fate on the almost barren island, where, five years later, a relief expedition found less than a dozen survivors.<sup>3</sup>

The disastrous outcome of La Roche's attempt did not, however, entirely deaden French enterprise. During the next quarter of a century many other men came to the front, all professing eagerness to try their hands at the establishment of settlements in Canada in return for a monopoly of the fur trade. To one after another the desired opportunity was given; but in each case it took but a few years to show that the real aim was to exploit the fur trade for personal enrichment, and that there was little or no sincere desire to undertake the much less lucra-

<sup>1</sup> Parkman, *Pioneers of France in the New World* (Frontenac ed.), ii. 54.

<sup>2</sup> Biggar, *Early Trading Companies of New France*, 41.

<sup>3</sup> Marc Lescarbot, *Histoire de la Nouvelle-France*, ii. 396 ff.

tive work of serious colonization. In vain the king revoked one monopoly and granted another. Each new recipient promised much and performed little, individuals and companies proving very much alike in this respect; for each took out just as few settlers as seemed absolutely necessary to lull the royal suspicions for the time being.<sup>1</sup>

The work of these exploiters was, however, not altogether barren of results; for it was under the auspices of one of them that Samuel Champlain was sent on his earlier voyages to America. He it was who first secured for France and for Frenchmen a permanent foothold in North America; he was the real founder alike of Acadia and of New France. Clear in his ideas and vigorous in their execution, this rugged seaman of Brouage was admirably fitted to become the pioneer of French colonization in the New World; and, had he been favored with even a moderate support by those in authority at home, his work would have been far more valuable. Even as it was, his settlement at Quebec became the nucleus of a powerful military colony, which influenced the affairs of a whole continent for quite a century and a half after its foundation.

From the time of its establishment in 1608 down to 1629, when the colony passed for the time being into English hands, Champlain's little settlement on the St. Lawrence had a tempestuous existence. The few settlers sent out from time to time by the various monopolists were a rough and unruly set of men whom Champlain found very hard to control. Although his legal powers were ample enough, he received so little financial aid from his superiors that it was only with the utmost difficulty that he kept the settlement in existence at all. By the terms of his various commissions he had a wide range of vice-regal powers. He was military head of the colony, as well as legislator, administrator, and supreme judge, with full authority to arrange for grants of lands to settlers on such terms as he might deem fit;<sup>2</sup> and yet during the whole period intervening

<sup>1</sup> For a detailed account of the operations of these various monopolists and their relations to the new colony, see Biggar, *Early Trading Companies of New France*, chs. iii-iv.

<sup>2</sup> "Commission de Commandant en la Nouvelle-France . . . en faveur du Sieur de Champlain," *Edits et Ordonnances*, iii. 11.



between 1608 and 1627 only three seigniorial grants appear to have been made. Most of those who came out to the colony during this interval seem to have had little interest in agricultural pursuits; they sought to enrich themselves through the exploitation of the fur trade, but showed no desire to acquire lands.

The first of these three seigniorial grants was made in 1623 to one Louis Hébert, described as "head of the first family settled in the country."<sup>1</sup> The grant comprised the seigniorship of Sault au Matelot, near Quebec, to be held "on such charges and conditions as shall be hereafter imposed."<sup>2</sup> Three years later Hébert received a confirmation of this grant, with an extension of the area comprised.

The second grant was that of the seigniorship and barony of Cap Tourmente to Guillaume de Caën in 1624. The grantee in this case seems to have made a small beginning toward clearing and cultivating his tract; but, when the colony passed into the hands of the Company of One Hundred Associates, his grant was revoked, and he left the colony.<sup>3</sup>

The third grant was that made on March 10, 1626, to the "Reverend Fathers of the Society and Company of Jesus," of the seigniorship of Notre Dame des Anges, lying along the river St. Charles, near Quebec.<sup>4</sup> This grant, in which no conditions or charges whatever are specified, is significant as being the first in a long series of grants made to the Jesuit order in New France, the extent and value of which enabled the order, before the British conquest, to become quite the largest individual landholder in the colony.<sup>5</sup>

So far as can be ascertained, these three were the only grants made by the authorities in France down to 1627. Each of them appears to have been made on the advice of Champlain; and the absence, in all three, of definite charges and conditions would

<sup>1</sup> The grant was made on February 4, 1623, by the Duc de Montmorenci, the confirmation on February 26, 1626, by the Duc de Ventadour. See *Titres des Seigneuries*, 373.

<sup>2</sup> The words used were, "pour en jouir en fief noble aux charges et conditions que lui seront ci-apres imposées." For the nature and incidents of tenure *en fief noble*, see below, p. 52.

<sup>3</sup> See below, p. 166.

<sup>4</sup> *Titres des Seigneuries*, 53.

<sup>5</sup> See below, ch. x.

seem to show that no general policy with regard to the land-tenure system had yet been formulated. In 1627, however, Louis XIII decided to make a radical change in the administration of the colony. Among his advisers Cardinal Richelieu was now supreme, and it was mainly through his influence that the change was decided upon. Flushed with his victories over the Huguenots, the cardinal conceived the plan of forming a great company which, in return for the grant of a monopoly of the fur trade, should undertake the work of making a powerful colony out of the struggling settlements in Canada.<sup>1</sup> In accordance with this plan, the Company of New France, more commonly called the Company of One Hundred Associates, was organized; and in the spring of 1627 Cardinal Richelieu, on behalf of the king, handed over to the new organization all the territories claimed by France in North America "from the coasts of Florida to the Arctic circle and from Newfoundland west to the great lake commonly called the fresh sea," to be holden in perpetuity as one immense fief.<sup>2</sup>

The preamble of this charter states succinctly the royal motives in taking this step. "Having in view," it declares, "the establishment of a powerful colony in order that New France with all its dependencies may, once for all, become a dependency of the crown without any danger of its being seized by the king's enemies, — as might be the case if precautionary measures are not taken against such a contingency, — and wishing, likewise, to remedy the faults of the past, since under the management of individuals who possessed the whole of its trade the country has been left uncultivated and almost wholly void of population . . . , His Eminence the cardinal deems it incumbent upon him to apply a remedy and to correct such abuses, thereby following the wishes of His Majesty."

By the terms of the charter the company received its grant

<sup>1</sup> Georges d'Avenel, *Richelieu et la Monarchie Absolue* (1884-1890), iii, 221-224.

<sup>2</sup> "Acte pour l'établissement de la Compagnie des Cent Associés pour le commerce du Canada, contenant les articles accordés à la dite Compagnie par M. le Cardinal de Richelieu," *Edits et Ordonnances*, i, 5-11. The charter is dated April 29, 1627, but the letters patent confirming its terms were not signed by the king himself until May 6, 1628 (*Ibid.* 19).

“in full property, jurisdiction, and seigniority,” subject only to the condition of fealty, together with the payment, to each successive king of France, of a gold crown weighing eight marks.<sup>1</sup> The company also received a complete monopoly of the trade of the granted territories during a period of fifteen years, such trade to be exempt from the French custom duties.<sup>2</sup> “It will be lawful,” the charter continues, “for the said associates to improve and to settle the said lands as they may deem it necessary, and to distribute the same to those who will inhabit the said country and to others in such quantities and in such manner as they may deem proper; to give and to grant to these such titles and honors, rights and powers, as they may deem essential and suitable according to the qualities, merits, and conditions of the original grantees, and generally upon such charges, reservations, and conditions as they may think proper.”<sup>3</sup>

The company, on its part, undertook to transport to the colony, during the first year of its operations, between two and three hundred men of all trades, and during the ensuing fifteen years to increase this number to four thousand of both sexes. It agreed to provide for these settlers shelter and subsistence for the first three years following their arrival in the colony, an obligation, however, from which it was to be released “on furnishing to each family of colonists a sufficient area of cleared land to enable it to support itself, together with the necessary corn for the first seeding, and subsistence until the first harvest.”<sup>4</sup> Upon the company was also imposed the responsibility, not only of sending to Canada a sufficient number of priests and missionaries, “for the purpose of converting the savage tribes and of affording the consolations of religion to Frenchmen who settle in New France,” but also of maintaining these clergymen unless the company should “prefer to give them cleared lands sufficient to ensure them a living.”<sup>5</sup>

A few days after the granting of this charter a supplementary decree was issued, two of the provisions in which relate to the granting of lands.<sup>6</sup> By one of these clauses the directors of the

<sup>1</sup> Article iv.

<sup>2</sup> Article vii.

<sup>3</sup> Article v.

<sup>4</sup> Article i.

<sup>5</sup> Article iii.

<sup>6</sup> *Edits et Ordonnances*, i. 12-17.

company were empowered to appoint, at various places, such agents as they might think fit, "for the distribution of lands and the regulation of conditions concerning the same."<sup>1</sup> By the other provision it was ordered that a grant of land should not exceed two hundred arpents in any individual case; but it was arranged that if, for any good reason, the directors should desire to make a grant of larger area, they should "call together as great a number of associates as possible," and that the assent of these to the grant should be attested by the signatures of at least twenty of them.<sup>2</sup>

The organization of the Company of One Hundred Associates was in due time completed, its capital being fixed at three hundred thousand livres in one hundred shares of three thousand livres each. Although each share might be again subdivided, it was entitled to but one representative at the meetings of the company. The hundred associates or shareholders, more than half of whom were Parisians, elected a board of twelve directors and a president.<sup>3</sup>

Little time was lost in assuming charge of the colony and in appointing Champlain its governor. In the spring of 1628 the first fleet of vessels laden with settlers, cattle, provisions, and munitions set sail from Dieppe for Quebec;<sup>4</sup> but the occasion was extremely inopportune, for war had broken out between France and England, and a fleet of English privateers under the command of David Kirke was already lying in wait for the company's vessels near the entrance of the St. Lawrence. Intercepting the French vessels, Kirke overpowered and took them to England.

In the following year (1629) the English commander once more entered the St. Lawrence, and appearing before Quebec

<sup>1</sup> Article vii.

<sup>2</sup> Article xi. The *arpent de Paris*, which was the usual land unit of the colony, is used either as a unit of length or as a unit of area. A lineal arpent is the equivalent of 192 English feet. The superficial arpent comprises 0.32400 French hectares, and may be reckoned as about five-sixths of an English acre. The term arpent is evidently from the Gallic *aripennis*, which has been identified with the Roman *actus* or half *jugerum*.

<sup>3</sup> Biggar, *Early Trading Companies of New France*, 137.

<sup>4</sup> Sagard, *Histoire du Canada*, iv. 858.

demanded its surrender. Champlain was in no position to offer resistance, and the colony passed into English hands.<sup>1</sup> By these events the operations of the company were necessarily suspended until 1632, when by the Treaty of St. Germain-en-Laye the colony was handed back to France. Still another delay occurred, however; for, as the warehouse of Caën, a former monopolist of the fur trade, had been looted by the English traders, the French king granted him a monopoly of the trade for a year in order to recoup himself. The operations of the Company of One Hundred Associates did not, therefore, begin until 1633.<sup>2</sup>

Once actually in possession, it was not long before the directors of the company made their first seigniorial grant of lands. This was the grant of the seigniorship of Beauport, near Quebec, to Robert Giffard, the deed bearing date of January 15, 1634. The grant comprised a tract of land lying along the north shore of the St. Lawrence River just below Quebec, one league in length by one and one-half leagues in depth, in "full jurisdiction, property, and seigniorship."<sup>3</sup> Just a month later (February 15) the directors made to the Reverend Fathers of the Society and Company of Jesus a grant in *franche aumône*, or mortmain, of a tract of land comprising about six hundred arpents, situated at Three Rivers;<sup>4</sup> and, from this time on, grants were made with considerable frequency.

All together the Company of One Hundred Associates made about sixty seigniorial grants,<sup>5</sup> most of them, however, with little regard to the ability or the intention of the grantees to clear and develop their grants. Many were made to associates and their friends in France, who never came out to the colony at all; in fact, it is doubtful if more than a score of them were ever taken possession of by those to whom they were made.

<sup>1</sup> Henry Kirke, *The First English Conquest of Canada* (1871).

<sup>2</sup> Charlevoix, *Histoire de la Nouvelle-France*, i. 168-178.

<sup>3</sup> *Titres des Seigneuries*, 386. The depth of the Beauport seigniorship was in 1653 increased to four leagues (*Ibid.* 388).

<sup>4</sup> *Ibid.* 70.

<sup>5</sup> The complete list may be found in the appendix to Christopher Dunkin's *Address at the Bar of the Legislative Assembly of Canada on behalf of certain Seigniors in Lower Canada* (1853).

The conditions imposed in the different title-deeds varied greatly; but in many cases the company provided that the settlers whom the seignior should send to the colony should "serve to the discharge of the company, in diminution of the number of settlers which it was under obligation to send; and that to this end the seignior should deliver each year a list of such to the officers of the company, that it might be certified."<sup>1</sup> It would thus seem as if the company made a number of grants in the hope that the recipients would assist the directors in procuring settlers for New France.

During the first fifteen years of the company's operations in Canada comparative peace prevailed, and the profits from the fur trade were large; but after 1647 the Iroquois became more and more aggressive, and by their repeated incursions into the company's sphere of influence proved a source both of danger and of loss. Finally, in the course of 1648, they made their way into the Huron country, and all but extirpated that tribe, hitherto one of the staunchest allies of the French. One of the best sources of the peltry supply was thus cut off,<sup>2</sup> a fact which, together with the possession by hostile Indians of the chief fur-trade routes, served greatly to diminish the company's trade and to reduce its profits. As little or nothing had been accomplished in developing the agricultural resources of the colony, with the decline of the fur trade most of the settlers suffered severely, and sent vigorous complaints to the home authorities that the company was not fulfilling the conditions imposed by the terms of its charter.<sup>3</sup> Furthermore, the Jesuits, who had come out to the colony in considerable numbers, had become involved in a bitter controversy with the company's officials over the question of the liquor trade with the Indians, and both parties had hastened to lay their respective sides of the case before the king. In this way the attention of the young sovereign and his minister Colbert was drawn to the

<sup>1</sup> For examples, see *Titres des Seigneuries*, 32, 58, 375.

<sup>2</sup> Benjamin Sulte, *La Guerre des Iroquois*, in Royal Society of Canada, *Proceedings*, 1897, *Mémoires*, sec. i. 65-92.

<sup>3</sup> The situation had become so acute that in 1661 the colonists sent one of their number, Pierre Boucher, to request royal intervention in person. See Kingsford, *History of Canada*, i. 284.

state of affairs in the colony, with the result that a little investigation convinced them that a radical change was urgently needed; and they determined to revoke the charter of the associates.

Before the royal decision could be announced, however, the directors of the company had resolved to make a voluntary surrender of their privileges, a step which they were the more ready to take, as profits had fallen off almost entirely and it was felt that, if the liquor trade should be prohibited, the colony would have to be maintained at a loss. Accordingly, by a deed of surrender they formally gave up the colony "to be disposed of by His Majesty according to his pleasure."<sup>1</sup> This deed of surrender, dated February 24, 1663, was duly accepted by the king in a royal edict issued the following month. "Instead of finding," says the king in this edict, "that this country is settled as it ought to be after so long an occupation thereof by our subjects, we have learned with regret not only that the number of its inhabitants is very limited, but that even these are every day in danger of annihilation by the Iroquois. It being necessary to provide against this contingency, and considering that the company is nearly extinct by the voluntary retirement of most of its old associates, and that the few remaining have not the means of maintaining the country and of sending thereto troops and settlers both to defend and to inhabit the same, we have resolved to withdraw it from the hands of the said company . . . and have declared and ordered, that all rights of justice, property, and seignior, rights to appoint to offices of governor and lieutenant-general in the said country, to name officers to administer sovereign justice, and all and every other rights granted by our most honored predecessor and father by the edict of April 29, 1627, be and the same are hereby reunited to our crown, to be hereafter exercised in our name by officers whom we shall appoint in this behalf."<sup>2</sup>

By the terms of this edict the administration of the affairs of the colony was once more vested in the crown. A few days later the king showed his lack of sympathy with the policy pur-

<sup>1</sup> "Délibération de la Compagnie de la Nouvelle-France," *Edits et Ordonnances*, i. 30.

<sup>2</sup> *Ibid.* 31-32.

sued by the directors of the company in making grants of seigniories to parties who had no intention of developing them, by the issue of a decree revoking all concessions made by the company and still remaining uncleared. "One of the principal reasons," runs this decree, "as a result of which the said country is not peopled as it should be and that so many dwellings have been destroyed by the Iroquois, is that large tracts of land have been granted to all the private individuals of the colony who have lacked the means of clearing them and who have placed their homes in the middle of their grants. The result has been that they are scattered about at considerable distances from one another, and are neither able to render assistance to one another nor to be conveniently succored by the garrisons at Quebec and other places in the event of an attack. Furthermore it appears that in a large part of the country only small patches of land lying near the dwellings of the grantees have been cleared; the rest is far beyond their power to handle." It is therefore ordered that, during the space of six months from the date of the promulgation of this decree, "all the individual inhabitants of New France shall cause the lands contained in their grants to be cleared; otherwise and in default thereof, on the expiration of that period, all such uncleared lands shall be distributed anew in the name of His Majesty either to inhabitants of the colony or to newcomers." Finally, the decree empowered M. de Mézy, governor, the Bishop of Petræa,<sup>1</sup> and M. Robert, intendant,<sup>2</sup> to see to the execution of the royal directions, to redistribute the escheated grants, and to sign the title-deeds of the new concessions.<sup>3</sup> For the time being, it seemed as if the king intended to supervise the administration of colonial affairs with the same interest in details which was beginning to characterize his administration at home.

<sup>1</sup> François-Xavier de Laval had been appointed to the post of vicar-apostolic in New France in 1659; and, as the colony had not yet been constituted a diocese, he was for the time being made titular bishop of Petræa in Arabia. In 1674 he became bishop of Quebec. See Gosselin, *Vie de Laval* (Quebec, 1890).

<sup>2</sup> Louis Robert was appointed intendant of New France, probably in the spring of 1663; but, so far as can be ascertained, he never assumed the duties of his post. See W. B. Munro, *The Office of Intendant in New France*, in *American Historical Review*, October, 1906.

<sup>3</sup> *Edits et Ordonnances*, i. 33.



The reëstablishment of direct royal control over New France made necessary the provision of a new political administration for the colony. This was arranged for by the issue of an edict which, after reciting the fact that the great distance separating the colony from France interfered with the prompt and diligent administration of affairs by the home authorities, provided for the creation of a Sovereign Council (*conseil souverain*), to be composed of the governor, the bishop, and five inhabitants of the colony to be chosen jointly by these two officials.<sup>1</sup> The new council was empowered "to take cognizance of all causes, criminal and civil, and to judge supremely (*souverainement*) and as a court of last resort." It was intrusted with the registration and promulgation of royal edicts, — its procedure in this regard to follow that observed by the Parliament of Paris, — and was authorized, in general, to carry out and specifically apply the royal instructions in regard to the administration of colonial affairs.<sup>2</sup>

In order the better to inform himself concerning the situation of affairs in New France, the king appointed the Sieur Louis Gaudais as special commissioner, and sent him out to Quebec in the summer of 1663. The instructions given to Gaudais were very comprehensive. He was told to make a particular investigation of the land-granting system, of the progress which the settlers had made in clearing their holdings, and of the general agricultural prospects of the colony. He was further instructed that, "if those to whom grants had been made should begin operations toward clearing them entirely, and should at the expiration of the six months mentioned in the edict of March 21 have cleared a considerable part of them, His Majesty would be willing, on their petition, to instruct the Sovereign Council to allow them a further six months, at the end of which, however, no further extension would be made for any reason whatever."<sup>3</sup>

Notwithstanding this offer, many of the grants remained unimproved; and on August 16 the governor and bishop presented to the council an ordinance providing for the revocation of a number of grants. Before decreeing the promulgation of this

<sup>1</sup> This edict, rather curiously, contains no mention of an intendant.

<sup>2</sup> *Edits et Ordonnances*, i. 37.

<sup>3</sup> For Gaudais's instructions, May 7, 1663, see *Ibid.* iii. 23.

ordinance, the council directed it to be "communicated to the syndic of the inhabitants,"<sup>1</sup> in order that, on receipt of his answer, directions might be given as should "seem advisable."<sup>2</sup> The syndic's reply being duly had, the council ordered that the royal edict of March 21 should be "executed according to its form and tenor until revoked by the further orders of the king." All uncleared lands therefore reverted to the crown; and in keeping with this provision the council undertook to require that any dues or payments which might formerly have been payable to the seigniors should now be collected by the royal officials. Thus, on November 8, it ordained that certain inhabitants of the seigniorie of Côte de Lauzon should pay sums due from them for fishing rights, not to the seignior, but to the royal *greffier* at Quebec.<sup>3</sup> The action of the council left no room for doubt that it was the intention of the king to compel all those who obtained seigniorial grants in the colony to justify their titles by active work in improving their holdings.

The new royal government had been little more than a year in operation when the colony was once more handed over to the care of a commercial company. This new organization, known as the Company of the West Indies, was formed under the auspices of Colbert, just as the Company of One Hundred Associates had been organized under the distinguished patronage of Cardinal Richelieu. The Company of the West Indies was modelled in general upon the lines of the flourishing Dutch commercial companies of the time, and was designed by Colbert to assist materially in the work of gaining for France a share in the growing commerce which Europe was developing in both the East and the West.<sup>4</sup>

<sup>1</sup> The syndic was a local official whose duty it was to note infractions of the laws and to report such to the higher authorities. The office of syndic, although commonly regarded as having been established by the edict of April, 1663, was in existence at Quebec (see *Journal des Jésuites*, 185), Montreal (see Faillon, *Histoire de la Colonie Française*, ii. 547), and Three Rivers (see Sulte, *Chronique Trifluvienne*, 216) several years before that date. The post soon passed out of existence in the colony. See Garneau, *Histoire du Canada*, i. 179.

<sup>2</sup> *Edits et Ordonnances*, ii. 18-19.

<sup>3</sup> *Ibid.* 21.

<sup>4</sup> Cf. Sargent, *The Economic Policy of Colbert* (London School of Economics, *Studies in Economics and Political Science*, No. 5), 80-81; also Pigeonneau, *La Politique Coloniale de Colbert*, in *Annales de l'École Libre des Sciences Politiques*, 1886.

By an edict dated May, 1664,<sup>1</sup> the new company was placed in possession of "Canada, Acadia, Newfoundland, and the other islands and continents from the north of Canada to Virginia and Florida," together with such other portions of the New World as might be secured by conquest or otherwise.<sup>2</sup> It was also invested with very wide powers and very extensive privileges, including a monopoly of trade, the entire profits of mines, forests, and fisheries, the power to appoint "such governors as may be deemed requisite," to whom His Majesty would grant commissions,<sup>3</sup> and the right "to appoint judges and officers of justice wherever need be and to displace and dismiss them whenever found necessary,"<sup>4</sup> together with many other equally important rights. The edict also provided: "The said company, as seigniors of the said lands and islands, shall enjoy the seigniorial rights which are at present established therein upon the inhabitants of the same, as such rights are now levied by the seigniors in possession, unless the said company shall deem it proper to commute such rights for the relief of the said inhabitants;"<sup>5</sup> and it granted authority "to sell or dispose of the said lands by way of enfeoffment . . . upon payment of such *cens et rentes*, and other seigniorial rights as may be deemed proper, and to such persons as the company may see fit."<sup>6</sup> It provided, however, that the *Coutume de Paris* should be the law of the colony, "without its being lawful to introduce any other *coutume*."<sup>7</sup> The king reserved to himself in the grant "neither rights nor duties except those of fealty and homage, which the company shall be bound to render at each mutation of the crown," together with the customary nominal tribute of thirty marks.<sup>8</sup>

Although by the terms of its grant the company had power to name governors and other administrative officers, it does not

<sup>1</sup> The exact date of the edict is not given in the document, which is printed in *Edits et Ordonnances*, i. 40-48.

<sup>2</sup> To the Company of the West Indies were also granted Louisiana, the French West Indies, the French territories in South America, and the whole of the African coast from Cape Verde to the Cape of Good Hope.

<sup>3</sup> Article xxvi.

<sup>4</sup> Article xxxi.

<sup>5</sup> Article xxii.

<sup>6</sup> Article xxxiii.

<sup>7</sup> Article xxxiii.

<sup>8</sup> Article xx.

appear to have exercised this right;<sup>1</sup> at any rate, none of the commissions of colonial officials mention any nomination as having been made to the king by the company. In truth, as a recent writer has remarked, the political situation in Canada at this moment was singular enough. "As a matter of law, the Company of the West Indies possessed the property, the seigniority, and the government of the country; but as a matter of fact the king exercised all administrative rights, recovering with one hand what he granted with the other. At law, moreover, the company possessed the power to establish tribunals and to make them effective; but in fact the king invested the governor, intendant, and the members of the Sovereign Council with supreme powers. At law, furthermore, the power of granting lands pertained to the company; in reality it was the governor or the intendant, officers of the king, who made the grants. This strange dualism, which lasted from 1664 to 1674, is vexingly disconcerting to any one who, without sufficient initiation, undertakes the study of this epoch."<sup>2</sup>

It is true that the company proceeded promptly to send out an agent to the colony in the person of M. le Barroys, enjoining him, among other duties, to concede "to private individuals the lands of the colony at such rents as may be deemed proper," and to see that "the company is paid the seigniorial dues which are now or may hereafter be payable by the inhabitants";<sup>3</sup> but neither the company nor its agent-general seems to have made any energetic movement in the direction of developing the agricultural resources of the colony. Both entered heartily into the

<sup>1</sup> Charlevoix (*Histoire de la Nouvelle France*, i. 379-380) says that, "as the new company had not yet sufficient knowledge of the persons best fitted to fill the positions, the directors prayed the king to make the appointments until such time as they were in a position to make use of the privilege," and that, in consequence, "His Majesty was pleased to appoint M. de Mézy governor and M. Robert intendant of New France"; but this explanation seems scarcely probable in view of the fact that Mézy's commission bears date May 1, 1663 (*Edits et Ordonnances*, iii. 21), and that Robert is mentioned as holding the post of intendant in March, 1663 (*Ibid.* i. 33), whereas the charter of the company was not granted till May, 1664.

<sup>2</sup> Chapais, *Jean Talon*, 49.

<sup>3</sup> *Edits et Ordonnances*, iii. 36-37. The commission of M. le Barroys is dated April 8, 1665, and was enregistered at Quebec on September 23 following (*Jugements et Délibérations du Conseil Souverain de la Nouvelle-France*, i. 364-366).

work of exploiting the fur trade, but neither seemed to think that either advantage or profit was to be had from encouraging settlers to take up lands and devote their energies to the cultivation of them. The apathy of the company in this direction was so marked that it speedily arrested the attention of Jean Talon when he was appointed intendant of New France in March, 1665. Before this vigorous official had been more than a few months in the country, he penned to the minister a plain-spoken warning that the company would never do much toward the permanent upbuilding of the colony. "If His Majesty wishes to make anything of Canada," wrote Talon, "he will never succeed unless he withdraws it from the hands of the company and grants a liberty of commerce to the inhabitants to the exclusion of strangers. If, on the contrary, His Majesty looks on the colony only as a seat of commerce suitable for the fur trade . . . the profit which will result therefrom is not worth his attention and deserves very little of yours . . . for the company alone will profit much to the impoverishment of the country."<sup>1</sup> As subsequent developments amply proved, the warning was a timely one; but it went for the moment unheeded.

For some years previous to 1665 the incursions of the Iroquois had been scourging the population of the colony to such desperation that, in response to repeated requests, the king, in the spring of that year, sent out to Quebec a detachment of regular troops, comprising several companies of the Carignan-Salières regiment.<sup>2</sup> With these troops came M. Prouville de Tracy, who, under the title of lieutenant-general of New France, was to have charge of the military operations, and who was also to note carefully the condition of civil affairs in the colony and to report to the king his opinions on the subject.<sup>3</sup>

On Tracy's arrival in the colony, his attention was called to the apathy of the company's agent in fostering settlement; and it was probably in anticipation of his unfavorable report to the

<sup>1</sup> Talon to Colbert, October 4, 1665, *Correspondance Générale*, ii. 248.

<sup>2</sup> For the previous history of this regiment, see Susane, *Histoire de l'Ancienne Infanterie Française* (8 vols., Paris, 1849-1853), v. 236 ff. Cf. also below, pp. 36, 70.

<sup>3</sup> See Tracy's commission, November 19, 1663, *Edits et Ordonnances*, iii. 27-31.

king on the subject that M. le Barroys hastened to lay before him a proposal that "for the future all grants of land be made by the intendant at such rates as may be deemed proper, such grants to be made in the presence of the agent-general of the company, and all titles to be granted in the name of the company."<sup>1</sup> The proposal was readily accepted by Tracy, Courcelle, and Talon. "Nothing," they wrote on the margin of the document, "appears more in conformity with the wishes of His Majesty; hence it seems very proper to grant the request contained in this article." From this time on, therefore, seigniorial grants were made directly by the officers of the crown in the colony.<sup>2</sup>

<sup>1</sup> "Requête de M. le Barroys à Monseigneur de Tracy concernant les Droits de la Compagnie," *Edits et Ordonnances*, i. 51-60, § xxvi.

<sup>2</sup> In some few cases during the years 1673-1674, however, seigniorial title-deeds were issued by officers of the company. See *Titres des Seigneuries*, 39, 40, 112.

## CHAPTER III.

### LATER SEIGNIORIAL GRANTS.

1666-1760.

It was in the autumn of 1666 that the Company of the West Indies relinquished its right of making land grants in the colony, and cast the responsibility of attending to this incident of colonization upon the royal representatives. Upon the intendant particularly now fell the task of seeing that seigniorial holdings were provided for those settlers who seemed to be entitled to them. Talon appears to have had liberal views on this point; for, in a statement of the projects which he had in mind for the development of the colony, he declares in favor of the granting of seigniories "to all private individuals who may choose to incur the expense of and give attention to their development."<sup>1</sup> In spite of this declaration, however, it appears that up to the late autumn of 1668, when the intendant returned to France for a two years' stay, he had made only two further seigniorial grants, — that of the seigniorie of St. Maurice to one Maurice Poulin, Sieur de la Fontaine, on January 10, 1668, and that of the seigniorie of St. Michel to the Sieur de Tilly on June 20 of the same year.<sup>2</sup>

Shortly after the departure of Talon for France, Governor Courcelle made an informal grant of a seigniorie near Three Rivers to the Sieur Jean Le Moyne, in order that he might "work thereon immediately," promising that a formal title should be conveyed to him later.<sup>3</sup> This title was duly forth-

<sup>1</sup> "Projets de Règlements qui semblent être utiles en Canada, proposés à Messieurs de Tracy et de Courcelle par M. Talon, January 24, 1667," *Edits et Ordonnances*, ii. 29-34.

<sup>2</sup> The titles of these two grants are not printed in *Titres des Seigneuries*, but mention is made of them in the title-deeds of subsequent grants. Cf. *Ibid.* 154.

<sup>3</sup> *Titres des Seigneuries*, 300 (January 3, 1669). This was the seigniorie of Ste. Marie près Batiscan. The grantee, an ancestor of Sir James Macpherson Le Moine, should not be confused with the Lemoynes of Longueuil.

coming in 1672, after Talon had returned from France. During the next few years many seigniorial grants were made, for the most part to officers of the Carignan-Salières regiment, who had decided to become permanent settlers in the colony.<sup>1</sup> At the urgent request of Talon, the king had agreed that this regiment, which had finished its work of crushing the power of the Mohawks, should be disbanded in New France, and that lands should be given to the officers and men, many of whom availed themselves of the very liberal inducements held out by the authorities.<sup>2</sup>

In 1672 the king again turned his attention to those seigniors who had been slothful in the work of clearing and settling their seigniories, and by a royal edict commanded the intendant to prepare "a precise and accurate declaration as to the nature of the lands granted to the leading inhabitants of the country, the number of arpents contained in them, and the number of persons and horses employed in the cultivation and clearing of the grants." He further instructed the intendant that, on the basis of this statement, one-half of all the lands granted prior to the last ten years were to be reunited to the royal domain and re-granted to persons who would undertake to clear and cultivate them; for it was his opinion, as stated in the preamble of the edict, that the development of the colony was being seriously retarded by the possession, in the hands of private individuals, of vast tracts of land which they were not able to utilize profitably, and the undeveloped condition of which was a source of inconvenience to the other inhabitants of the colony.<sup>3</sup> Accompanying this edict was a royal order instructing the intendant that, in regranting the escheated lands, he insert in the title-deeds a provision requiring the grantees to have the grants entirely cleared and under cultivation within the space of four years, on pain of having their titles revoked.<sup>4</sup>

While the statement asked for by the king was being prepared, and pending further royal action upon it, the execution of that

<sup>1</sup> *Titres des Seigneuries*, 301 (November 3, 1672). <sup>2</sup> See below, pp. 67-70.

<sup>3</sup> "Arrêt du Conseil d'Etat du Roi pour retrancher la moitié des Concessions," June 14, 1672, *Edits et Ordonnances*, i. 70-71.

<sup>4</sup> "Mandement et Ordre du Roi sur l'arrêt ci-dessus," June 14, 1672, *Ibid.* 71-72.



part of the edict which provided for the forfeiture of one-half the earlier grants was postponed. The issue of the edict had, however, one important result; for most of the seigniors, from this time forward, provided in the title-deeds of all subgrants made by them within their seignories that, unless the recipients of such grants should clear their allotments, the land should revert to the seignior.

It was at this stage in the development of affairs that the king, in December, 1674, summarily revoked the charter of the Company of the West Indies and extended freedom of trade to all his subjects in New France, expressly stipulating, however, in the decree of revocation, that all land grants made in the colony by the company or its agents should be deemed valid and confirmed.<sup>1</sup> Like its predecessor the Company of One Hundred Associates, the Company of the West Indies had proved a failure both as a colonizer and as a mere exploiter of colonial trade. In the ten years during which it had controlled the French trade of the western hemisphere it had proved a hindrance rather than a help to colonial progress; and, as it had itself lost a large sum of money, estimated at over three and a half millions of livres,<sup>2</sup> its demission was now regarded as a boon to all concerned.

Since 1666 grants of seignories had been made by the intendant, except on a few occasions when they were made by the governor; and even in these cases they were later ratified by the intendant. In 1676, however, a royal order directed that for the future all land grants in the colony should be made by the governor and intendant jointly (*conjointement*), provided always that such action should invariably be submitted to the king for his approval, and that, if this approval were not forthcoming within the space of a year, the grant should be declared null and void. The officials were instructed to take care that all seigniorial grants were contiguous.<sup>3</sup>

Meanwhile His Majesty had examined the statement drawn up at his request by Talon in 1672, and had found, from an

<sup>1</sup> "Edit du Roi portant Révocation de la Compagnie des Indes-Occidentales," etc., *Edits et Ordonnances*, i. 74 ff.

<sup>2</sup> R. S. Weir, *Administration of the Old Régime in Canada* (1897), 41.

<sup>3</sup> *Edits et Ordonnances*, i. 89.

examination of it, that the progress made by the seigniors in getting their seigniories cleared and settled was very far from satisfactory. At the same time he probably felt that to declare the forfeiture of all, or of any very considerable part, of the uncleared and unsettled lands would be a hardship to many seigniors who had received grants of too great extent, but who had nevertheless accomplished a great deal in the face of difficulties. After some delay he decided, therefore, that a gradual retrenchment of uncleared grants should be made year by year, — a system by which those seigniors who were the least active would be the chief sufferers, — and accordingly issued the following order: "Beginning with the year 1680, there shall be taken away from the holder every year a twentieth part of every land grant which shall be found to be uncleared, to be distributed among His Majesty's subjects inhabiting the country or to those who will go thither to reside."<sup>1</sup>

This royal order was duly received at Quebec, and enregistered on the last day of October, 1679, but apparently no steps were taken to carry it into effect; certainly no systematic retrenchment of one-twentieth of the uncleared lands of seigniories was made. Shortly after the receipt of the order the intendant, Duchesneau, despatched a lengthy communication to the minister, in the course of which he discussed the existing system of granting lands and made a number of proposals for the future,<sup>2</sup> — a device, it may be, for deferring the enforcement of the royal order. As the members of the council were themselves seigniors, and as some of them had not been any too energetic in developing their grants, it is very probable that there was some understanding between them and the intendant to delay the execution of the unwelcome order as long as possible. At any rate, it is true that on more than one occasion the explicit orders of the king were left unenforced in the colony when their execution would have been beneficial to all but the seigniors.<sup>3</sup>

<sup>1</sup> "Retranchement des Concessions de trop grande Etendue, et Ordre d'en disposer," May 9, 1679, *Edits et Ordonnances*, i. 233.

<sup>2</sup> Duchesneau to Minister, October 1, 1679, *Correspondance Générale*, v. 30-36.

<sup>3</sup> See below, p. 106.

In spite of the royal opinion, as expressed in the order, that too many seigniorial grants had been made and that the grants were too generous in extent, there seems to have been no marked decrease in the number of seigniories granted year by year from this time on, and no diminution in the area of the grants made to individuals. The title-deeds were drawn up and signed by the governor and intendant jointly, and were then sent to the king for his ratification, which was extended freely, a number of titles usually being ratified in a single royal decree.<sup>1</sup> Occasionally the king, in making the ratification, took occasion to insert some new condition, particularly a clause providing that the grants should be cleared within a certain time; but for the most part he ratified the title-deeds just as they were.

It was understood that the seigniors, in making subgrants, should give the habitants written titles,<sup>2</sup> stating clearly the boundaries of the grants and the conditions incumbent upon the grantees; but this practice was apparently very often omitted, for the habitants frequently took lands in seigniories without first receiving formal written deeds. In 1707 the intendant, Raudot, called the attention of the minister to abuses which had arisen in this connection. "Many habitants," he asserts, "have worked to a considerable extent on their lands merely on the word of the seigniors; others on simple tickets which do not express precisely the terms upon which the grants are made. Hence a great abuse has arisen, which is that the habitants who have worked without safe titles have been subjected to very heavy rents and dues, the seigniors refusing to grant them deeds except on these conditions, which they are obliged to accept because otherwise they would lose their labor. As a consequence of this, the dues are different in almost every seigniority: some pay in one way and some in another, according to the different characters of the seigniors by whom the grants are made."

<sup>1</sup> See *Edits et Ordonnances*, i. 262.

<sup>2</sup> The dependents of the seigniors in New France were not, as at home, known as "censitaires"; they were in their own language "habitants," a term which they seem to have preferred because it did not necessarily involve the idea of dependence.

He proposes that, in order to remedy this condition of affairs, the king shall "give a declaration reforming, and even regulating for the future, all the rights and dues which the seigniors have given and shall in future give to themselves," and, further, that he shall validate all titles of lands which have been in the possession of holders for five years and over. "It is only thus," he declares, "that you can establish peace and quietness in this country which, without this precaution, will always be unhappy and unable to increase its inhabitants; for men cannot attend to the cultivation of their lands when they are daily compelled to leave them in order to defend themselves against unjust lawsuits." Raudot points out that the habitants are entirely ignorant of their rights, and that "they are afraid of the mildest threats on this subject from others as ignorant as themselves." The worthy intendant deplores the spirit of "cunning and chicane" which had begun to show itself in the colony,<sup>1</sup> and which was moving the seigniors to take advantage of legal technicalities in their relations with the habitants. "The notaries, bailiffs, and even judges having been all of them ignorant persons . . .," he continues, "there is no property the possessor of which might not be troubled, no partition that might not be unsettled, no widow who might not be attacked as having possessed in common with her husband, and no guardians against whom a suit might not be brought for the accounts which they have rendered of their guardianship. It is not that all may not have often acted in good faith, but ignorance and the want of rules have produced these disorders. If those who might avail themselves of this spirit were allowed to bring lawsuits, there would soon be more suits in this country than there are persons."<sup>2</sup>

The minister gave due consideration to the representations of the intendant, and on June 13, 1708, replied that he had "been very much pained to hear of the irregularity" with which every-

<sup>1</sup> "L'esprit d'affaires qui a toujours, comme vous savez, beaucoup plus de subtilité et de chicane, qu'il n'a de vérité et de droiture, a commencé à s'introduire ici depuis quelque temps et augmente tous les jours par ses deux mauvais endroits. Si l'on pouvait les retrancher, cet esprit pourrait être bon pour l'avenir; quoique la simplicité dans laquelle on y vivait autrefois fût encore meilleure."

<sup>2</sup> Raudot to Pontchartrain, November 10, 1707, *Correspondance Générale*, xxvi. 9-10.

thing had been done hitherto, but expressed the opinion that a royal declaration covering the matter and providing the remedies suggested by Raudot could not be made ready till the following year.<sup>1</sup> In the meantime he desired the intendant to make a more thorough investigation of the whole matter, and to send a memorandum of the exact provisions which he might think it well to have incorporated in the decree. About a month later, Pontchartrain communicated with Messrs. Deshaguais and Daguesseau, two eminent lawyers of Paris, enclosing to them Raudot's despatch and requesting them to draft for the royal signature a decree such as the intendant desired.<sup>2</sup>

The intendant, meanwhile, did as he was bidden. He made further inquiries; and in the following October, when the ships sailed for France, he sent the minister another lengthy despatch, in which the condition of affairs was explained minutely. "Some of the habitants," he writes, "never had any title-deeds and have had nothing to show in support of their claims to their holding;" they had taken the lands on the oral assignment of the seigniors (*sur la parole des seigneurs*). Others had brief memoranda (*les simples billets*) which proved the allotment of lands, but gave no indication whatever as to the terms upon which the grants had been made. Many had lost even these memoranda, and not a few who had received formal title-deeds had either lost or mislaid them. To make matters worse, many of the habitants had been forced to abandon their lands temporarily in consequence of the Iroquois wars, and hence could not show even continuous possession.<sup>3</sup> Raudot made a list of suggestions which, had they been adopted, would have most materially altered the whole structure of Canadian feudalism; but when his despatch reached Paris, it was found that Messrs.

<sup>1</sup> As the last ships that would go to Quebec in 1708 were to leave France before the middle of July, it seemed impossible to prepare the decree in time.

<sup>2</sup> Pontchartrain to Deshaguais and Daguesseau, July 10, 1708. These letters are printed in *Correspondence between the French Government and the Governors and Intendants of Canada relative to the Seigniorial Tenure* (Quebec, 1853), 10-11. The latter of these two lawyers was probably Henri-François d'Aguesseau, or Daguesseau, who afterward became chancellor of France (cf. Boullée, *Histoire de la Vie et des Ouvrages du Chancelier d'Aguesseau*, Paris, 1835).

<sup>3</sup> Raudot to Pontchartrain, October 18, 1708, *Correspondance Générale*, xxviii. 175-187.

Deshaguais and Daguesseau had not yet drawn up the decree based upon the desires of the intendant as expressed in his first communication. In fact it was not until 1717 that the draft was ready for the signatures of the king and the ministers.<sup>1</sup> These signatures, however, the decree appears never to have received. It is not unlikely, in view of the fact that Raudot's plan proposed to sweep away several of the most important seigniorial rights, including the right of exacting *corvée*, that its recommendations seemed too radical to Louis XIV. At all events, they were set aside; and, without waiting for the draft decree, the king proceeded to correct the evils in his own time and way.

After a careful consideration of the measures necessary, His Majesty issued, on July 8, 1711, two of the most important enactments in the whole history of the colonial land-tenure system, the Arrêts of Marly.<sup>2</sup> The first of these decrees relates to the seigniors, and more especially to the obligation of seigniors to subgrant their lands. The crux of the whole difficulty appeared to be, in the opinion of the king, that the seigniors had not been forced to have their seigniories settled within a reasonable time. His Majesty seems to have believed that, if every seignior were compelled to get settlers for his lands, he would not be likely to resort to legal technicalities in order to impose additional burdens on his habitants, but rather would vie with the other seigniors in offering favorable terms to settlers. The first of the two arrêts, therefore, provided in general that, at the expiration of a year, all seigniors who should have shown conspicuous failure in developing and settling their seigniories should be deprived of their grants. Furthermore, it declared that the practice of exacting anything more than the customary dues and services from those who applied for lands within the seigniories was "entirely contrary to His Majesty's intentions." To prevent the continuance of the practice, it decreed: "All seigniors in the country of New France shall grant to the set-

<sup>1</sup> For a copy of this decree, see *Correspondence between the French Government and the Governors and Intendants of Canada relative to the Seigniorial Tenure*, 17-18.

<sup>2</sup> *Edits et Ordonnances*, i. 324-326. These arrêts took the name of the place at which the royal signature was appended.

tlers whatever lots of land the latter may demand of them, at a ground rent (*à titre de redevance*), without exacting from them any bonus as the price of such grants; otherwise, and in the event of their refusing to do so, the said settlers are permitted to make formal demand on the seigniors for such lands, and, in the case of a further refusal on the part of the seignior, they shall have power to make application to the governor and intendant of the said country, whom His Majesty hereby empowers and orders to make the grants applied for in the said seigniories on the same terms as those imposed upon the other inhabitants in the said seigniories. In such cases the seigniorial dues shall be paid by the new habitants into the hands of the receiver of the royal domain at Quebec, and the seigniors shall have no right to claim anything whatever from them."

The second arrêt relates to the habitants. After reciting the usual tale of royal disappointment at the fact that many subgrants within the seigniories "remained uncultivated and even unoccupied," a condition which "is decidedly detrimental both to the development of the colony and to the interest of the other habitants of the seigniories," this arrêt ordained that all those who did not cultivate and inhabit (*tenir feu et lieu*) their holdings within the space of one year should, on the certificate of the curé and the captain of the militia<sup>1</sup> to this effect, forfeit their lands to the seigniorial domain; such forfeiture to be made effective by order of the governor and intendant.

These two arrêts, as will be seen later, had very important effects. They formed alike a means of protection for the habitants against extortion on the part of the seignior, and a guarantee to the seignior against the acquisition of his lands for speculative purposes. At one stroke they took away any proprietary right which the seignior might have assumed to possess in his ungranted lands, and placed him, as regards them, in the position of a mere trustee for the crown.<sup>2</sup> From 1711

<sup>1</sup> The *capitaine de la milice* was a local military and executive officer appointed in each parish by the colonial authorities. His duties were to prepare and keep the muster-roll of the parish, to promulgate and see to the enforcement of decrees issued by the intendant or the council, and, generally, to perform such administrative duties as might be from time to time laid upon him by the authorities at Quebec.

<sup>2</sup> Cf. Doutré and Lareau, *Histoire Générale du Droit Civil Canadien*, 244.

onward, if a habitant paid a bonus to the seignior for a grant of uncleared lands, or paid higher dues than were customary in the neighborhood, it was not because the crown intended that he should do so.

The machinery provided for the enforcement of the arrêts of 1711 was in some degree effective. Very frequently settlers sought and received grants from the officials after seigniors had refused them lands on reasonable terms; but in many other cases incoming settlers seem to have been unaware of the real situation and to have paid what seigniors unreasonably asked, being mulcted as the price of their ignorance.<sup>1</sup> The seigniors, moreover, used the new provisions to get back a good deal of land which had been left uncleared by the grantees. In 1731 the governor and intendant reported that they had decreed the reannexation to various seigniorial domains of over two hundred grants, "by reason of the grantees having failed to reside thereon."<sup>2</sup> As regards the forfeiture of seigniories which remained uncleared, however, the arrêts seem to have accomplished little or nothing.<sup>3</sup>

During the six years following the issue of the Arrêts of Marly only five grants of seigniories were made,<sup>4</sup> and during

<sup>1</sup> See below, p. 48.

<sup>2</sup> Beauharnois and Hocquart to Maurepas, October 3, 1731, *Correspondance Générale*, liv. 39.

<sup>3</sup> I have found only one case in which a seignior had his title revoked and his lands reunited to the domain of the crown as a result of the issue of these arrêts. On March 1, 1714, the governor and intendant pronounced the forfeiture of the seignior of Mille Isles, granted to the Sieur Dugué on September 24, 1683. So far as I am aware, the ordinance of forfeiture has not been printed; but it is mentioned in the regrant of this seignior to Messieurs de Langloiserie and Petit, a few days after it was taken from its former holder (March 5, 1714, *Titres des Seigneuries*, 59). From this time to 1737 there seems to be no instance of the forfeiture of any seignior under the provisions of the Arrêts of Marly. There are, however, a number of intendant's ordinances, authorizing seigniors to resume possession of lands granted *en arrière fief* to persons who had failed to comply with the conditions imposed in their grants, more particularly with regard to residence (see *Edits et Ordonnances*, ii. 585-589).

<sup>4</sup> These were as follows: Rivière Yamaska to Ramezay, and Belœil to Longueuil, March 24, 1713 (*Titres des Seigneuries*, 454-455); Beaumont to Charles Couillard de Beaumont, April 10, 1713 (*Ibid.* 64); Mille Isles to Gaspard Piot, dit Langloiserie, and Sieur Petit, March 5, 1714 (*Ibid.* 59); and Lac des Deux-Montagnes to Messieurs "Les Ecclésiastiques du Séminaire de St. Sulpice, établis à Mont-



the ten next ensuing years (1717-1727) there were none at all. The reason for this entire absence of seigniorial grants during the latter period may perhaps be found in a clause of a despatch from the minister to the governor and intendant (Vaudreuil and Bégon), dated May 23, 1719, in which the minister, referring to the petition of one "Sieur Desjordy Moreau, captain in His Majesty's forces," for the grant of a seignior, declares: "This favor would be very willingly granted but for the fact that, since it has become apparent that the great number of seigniories is proving prejudicial to the settlement of Canada, it has been for some years the policy of the crown not to grant any more of them, which policy and decision His Majesty communicated to the Sieur Vaudreuil in his despatch of June 15, 1716,<sup>1</sup> . . . and in consequence of which he does not wish to make any grants except *en roture*."<sup>2</sup>

Just what moved the minister to this determination in 1716 there is no way of definitely ascertaining, for the despatch in which he first communicated his decision to the colonial authorities is not at hand. It is not unlikely, however, that the report of the engineer Gédéon de Catalogne,<sup>3</sup> which was transmitted by the intendant to the French authorities in the autumn of 1712, may have had an influence in determining the change of policy. This report gave an exhaustive and very comprehensive description of colonial resources and conditions, dealing particularly with the progress made upon the various seigniories.<sup>4</sup>

réal," October 17, 1717 (*Ibid.* 337). Of these five, the first does not appear to have been taken possession of; the second and third were augmentations of former grants; the fourth was a regrant of a forfeited seignior (see above, p. 44, note 3); and the last was made to a religious corporation in order to provide a site for an Indian mission.

<sup>1</sup> I have been unable to find this despatch; it is not in the *Correspondance Générale*.

<sup>2</sup> Minister to Vaudreuil and Bégon, May 23, 1719, *Correspondance Générale*, xl. 245. See also *Ibid.* xli. 11-16.

<sup>3</sup> For a sketch of the life of Catalogne, see Tanguay, *Etude sur une Famille Canadienne: Famille de Catalogne*, in Royal Society of Canada, *Proceedings*, 1884, *Mémoires*, sec. i. 7 ff.

<sup>4</sup> "Mémoire sur les Plans des Seigneuries et Habitations de Québec, les Trois-Rivières, et de Montréal, par M. de Catalogne, Ingénieur," November 9, 1712, *Correspondance Générale*, xxxiii. 278 ff. A small portion of this report is printed in the appendix to Parkman's *Old Régime in Canada*.

As Catalogne visited most of the important seigniories in the colony, his report contains a great deal of interesting information regarding the topography of the grants, the extent to which the seigniories had been developed, the nature of the crops raised, the relations of the seigniors to their habitants, — in short, a mass of interesting data concerning the structure and incidents of Canadian feudalism in the earlier years of the eighteenth century which can be had nowhere else. He describes ninety-one seigniories in all, of which the majority belonged to the religious orders (more particularly to the Jesuits), to members of the council, to judges, and to other officials. A score or more belonged to discharged officers of the regular army, and a number to the widows and sons of officers; of the remainder, ten belonged to merchants and traders, two to sailors, and only a dozen to those who gave their occupation as laborers. Catalogne remarked that in most of the seigniories a considerable portion of the land was still uncleared, and that the habitants were usually unable to cultivate a quarter of what they held.

Catalogne complained that the people were compelled by the church to leave their work for the too numerous fêtes, a circumstance which was very detrimental to the proper cultivation of the soil. On account of these fêtes, he declared, not more than ninety working days were left to the habitants in the whole busy season between the beginning of May and the end of September. This, he thought, was one of the reasons why so many of them abandoned their lands and went off to the forest, preferring to sacrifice a whole harvest for the chance of making thirty or forty *écus*.<sup>1</sup> Catalogne, it may be remarked, was not the only one to complain of this practice; successive governors and intendants adverted to the great difficulty experienced in persuading the habitants to stay on their farms. The fascination of forest life appealed especially to the young men, who went off to the western wilderness by the score almost every year.

According to Catalogne's report, the methods of agriculture

<sup>1</sup> The *écu* of Louis XIV may be reckoned at slightly more than five francs, or somewhat more than a dollar in American currency.

in the colony were both slovenly and crude. "If the land were not better cultivated in France than here," he wrote, "three-quarters of the people would starve." He found, moreover, that the habitants were uneconomical and improvident, taking little thought for the morrow; even the very poorest of them, he said, kept one or more horses, which did little but eat their heads off for seven or eight months of the year. In his opinion the people would do much better to raise beef cattle, which could be made a source of profit. As for the seigniors, they appeared to him to be lacking in energy as well as in capital. Many of them seemed poorer than their dependents, and, being often men of low extraction, were frequently unable to command the respect of their habitants.

Taken all in all, the report of M. de Catalogne was not such as to convince the king or the minister that the seigniorial system was making very encouraging headway in the colony. As the old king was, however, about to close his long reign, the recommendations contained in the report appear not to have been acted upon at that time; but two years later, when the death of Louis XIV, in 1715, resulted in the establishment of a regency, the decision to cease making further seigniorial grants, at least for the time being, seems to have been one of the early acts of the new government.

After the lapse of a decade, grants of seigniories began to be made once more, the first one to the Ursulines of Three Rivers on April 18, 1727.<sup>1</sup> This seems to have been an isolated grant made for a special reason,<sup>2</sup> and it does not appear that any more were made until 1731; but from that time on they became quite numerous. With the resumption of the grants, however, came a renewal of complaints regarding the existence of seigniorial abuses. Apparently the provisions of the Arrêts of Marly were being evaded by many of the seigniors. If one may trust a report made to the minister by Messrs. Beauhar-

<sup>1</sup> Dunkin, *Address at the Bar of the Legislative Assembly of Canada*, Appendix, No. 376. I have not been able to find a copy of this title-deed; the original was destroyed by fire at Three Rivers in 1806.

<sup>2</sup> The Ursulines of Three Rivers had acquired by purchase and otherwise several small parcels of land. The grant of 1727 consolidated these into a single fief, adding thereto a considerable tract from the ungranted domain.

nois and Hocquart in 1730, the seigniors found several ways of circumventing the provisions of the first of the two arrêts of 1711, which prohibited them from exacting any entrance fee from those taking up uncleared lands within the seigniories, and ordered them to make grants, at the usual terms, to all settlers who applied for them. In this report, complaint is made that some seigniors "reserve considerable domains within their seigniories, and, under the pretext that these lands form part of their own demesne, have refused to grant any part of this reservation, claiming that they have a right to hold it for sale." It is also shown that those who hold lands *en arrière fief* continue to exact a *prix d'entrée*, on the ground that the arrêt applies only to the dominant seigniors and not to sub-seigniors; that many seigniors who "appeared to concede their lands gratis have taken means to secure payment for such lands (without mentioning the fact on the face of the deed), by obtaining separate obligations from the grantees for sums pretended to be due the seigniors for other considerations;" and, again, that some seigniors exact an entry fee under color of some inconsiderable clearing without cultivation, or under pretence that natural prairie land is to be found upon the grant. The governor and intendant refer to the fact that most of the habitants are ignorant of the provisions of the first arrêt of 1711; and they call attention to the existence of considerable land speculation, "which is injurious to the colony and tends to foster indolence among the habitants without furthering the settlement or cultivation of the lands." Naturally enough, as they point out, "the seigniors are doing nothing to discourage this speculation, for a mutation fine (*lods et ventes*) accrues to them whenever the lands change hands; in most cases, therefore, they do not seek to reunite unoccupied lands to their domain (as they have been empowered to do by the second arrêt of 1711), preferring to have such lands made the basis of speculative sales as often as possible." Accordingly the governor and intendant pray the minister to secure the issue of another decree prohibiting the sale of wild lands on any pretext whatever.<sup>1</sup>

<sup>1</sup> Beauharnois and Hocquart to Maurepas, October 10, 1730, *Correspondance Générale*, liv. 106 ff.

In due time the minister, Maurepas, replied that he had taken the matter before the king, who had "learned with pain of the inexecution of the arrêts of 1711."<sup>1</sup> The nonchalant manner in which both Louis XIV and his successor heard again and again that their decrees were either unexecuted or evaded in New France is worthy of remark. Instead of recalling those officials who had been responsible for the outcome, they merely ordered that the decree in question be republished, or they issued a new decree along the old lines. Consequently, the minister now informed the colonial officials that His Majesty stood prepared either to order the republication of the Arrêts of Marly, or to issue a new and more stringent decree, as the governor and intendant might think best. The latter replied that the republication would probably effect the desired end for the time being, but that a census (*terrier*) of the colony was then being taken, an examination of which, when completed, would best indicate what further action would be necessary. They complained, however, that the religious orders were delaying the completion of this enumeration through their failure to respond to requests made to them for information regarding the extensive territories which they held. In the following year a royal decree issued from Versailles reiterated the provisions of the Arrêts of Marly, and ordered that these be forthwith "enforced according to their form and tenor."<sup>2</sup>

As the census was not completed for two years after the issue of this decree, the colonial officials meantime delayed proceeding to the forfeiture of uncleared seignories. Even after the census had been fully taken in 1734,<sup>3</sup> they continued to put off action; and it was not until the spring of 1741 that the governor and in-

<sup>1</sup> Maurepas to Beauharnois and Hocquart, April 24, 1731. This document is calendared in the *Report on Canadian Archives* for 1904, p. 143. It has not yet been transcribed for the *Correspondance Générale*.

<sup>2</sup> *Edits et Ordonnances*, i. 531 (March 15, 1732).

<sup>3</sup> This census was, it is believed, the most exact that had been taken up to this time. The total population of the colony is given as 37,716. The amount of cleared lands is placed at 180,868 arpents, of which 163,111 were under cultivation. Since 1721, when the last previous census had been taken, the area of cleared lands had more than doubled. A manuscript copy of the census is in the archives of the Quebec Historical Society; a summary of it is printed in *Censuses of Canada, 1665-1871*, p. 57.

tendant finally bestirred themselves to the work of enforcing the royal orders in the case of tardy seigniors. On May 10 of that year they issued a joint judgment forfeiting to the crown domain some twenty seigniories, the owners of which were deemed not to have showed sufficient energy in clearing and settling their lands.<sup>1</sup> The stroke was a drastic one, for no compensation whatever was given to the seigniors; but it ought to be mentioned that some of the forfeited lands were later restored to their former owners by grants *de novo*.<sup>2</sup> However, the issue of the ordinance had a very wholesome effect on the remaining seigniors of the colony, who from this time forward seem to have given more attention to the development of their seigniories.

The procedure to be followed by the governor and intendant in making grants of seigniories and in arranging for their forfeiture had never been clearly defined until the summer of 1743, when it was set forth in detail by a royal arrêt. According to the terms of this arrêt, either the governor or the intendant might make grants in the absence of the other from the colony. When the two officials differed as to the advisability of granting a seignior to an applicant, they were to leave the matter in abeyance until the king's wishes could be known; but when they differed as to the advisability of decreeing the forfeiture of a seignior, they were to call in the oldest available member of the Superior Council. Any seignior who felt that his seignior had been wrongfully taken from him was, by the terms of the arrêt, to have the right of appeal to the king.<sup>3</sup>

During the remaining seventeen years of the French régime in Canada (1743-1760) many grants were made; but none of them contained any peculiar features, and the system itself seems to have developed nothing that was new. This was a period of military storm and stress in New France, and all the energies of the population were directed toward the attainment of success in the great struggle. Seigniories were often deserted, for almost the whole adult male population was

<sup>1</sup> *Edits et Ordonnances*, ii. 555-561.

<sup>2</sup> For example, the Sieur Foucault received back his forfeited seignior on May 1, 1743 (*Titres des Seigneuries*, 204).

<sup>3</sup> *Edits et Ordonnances*, i. 572-574.

concentrated at Quebec, Montreal, and the other strategic points. Whenever possible, the habitants were allowed to go back to their farms for short periods during seed-time and harvest; but the enforced absence of the cultivators of the land was severely felt, and when the colony passed into British hands the whole agricultural area showed very plainly the disastrous results of neglect.

## CHAPTER IV.

### THE SEIGNIOR AND HIS SUPERIORS.

IN general it was the policy of the crown to grant out lands in the colony *en seigneurie* only, and of those who received grants *en seigneurie* to subgrant their lands to be held *en censive*. It will be found, however, that, although this was the ordinary procedure, there were some deviations from it; for, strictly speaking, there were no less than six distinct forms of tenure in existence, although four of them were clearly exceptional. These six forms may be enumerated as follows: (1) *en franc aleu noble*, (2) *en franc aleu roturier*, (3) *en franche aumône*, or *frankalmoign*, (4) *en fief*, or *en seigneurie*, (5) *en arrière fief*, (6) *en censive*, or *en roture*. While it is true that there were but very few examples of each of the first three forms of tenure, and while the fifth was not nearly so general as the fourth and the sixth, some consideration must be given to even the exceptional forms.

1. Grants *en franc aleu noble* were not really feudal, but rather allodial, grants; they were held without other condition than that the grantee should render fealty and homage.<sup>1</sup> When made to individuals, they conferred upon the holders rank in the noblesse; but no grants to private individuals were ever made in the colony under this tenure. In fact, only two grants *en franc aleu noble* were made throughout the French régime, and both to the Jesuit order,—one of a small strip of land at Three Rivers in 1634,<sup>2</sup> the other of Charlesbourg, near Quebec, in 1637.<sup>3</sup> The reason given for making the grants in this form rather than *en seigneurie* was that, since the titles of all lands

<sup>1</sup> Henrion de Pansey, *Dissertations Féodales*, i. 11-27.

<sup>2</sup> This tract of about six hundred arpents was known as Pachiriny, or Pachiriné. See *Titres des Seigneuries*, 70; also below, p. 180.

<sup>3</sup> *Titres des Seigneuries*, 346-347.



granted to the Jesuits vested in the general of the order, the quint, or mutation fine, would, in the case of lands held *en fief*, become due and payable each time a change in the headship of the order was made, whereas by the tenure *en franc aleu noble* this payment was avoided.<sup>1</sup> The Jesuits did not, however, find it advisable to adhere to this policy, for in the case of other grants they requested and received the allotments as seigniories. In 1678, however, they secured the issue of a royal edict whereby all their lands were amortised and freed from the usual obligations to the crown.<sup>2</sup>

2. The grant of a tract of land to be held *en franc aleu roturier* did not bring to the grantee any rank in the nobility; but in other respects it corresponded to a grant *en franc aleu noble*. It was, in fact, roughly analogous to a grant in free and common socage. Lands held *en franc aleu roturier* were subject to no dues or payments; indeed, they were not feudal grants at all.<sup>3</sup> Only a few of them were made, and for each one there was usually some good reason, which was not infrequently stated in the preamble of the title-deed. Sometimes, for example, a seignior received *en franc aleu roturier* a grant of land which happened to lie where it was naturally exposed to Indian attacks, and for which, therefore, it would be difficult to obtain settlers; or, as in one case, he received the grant of an island lying off his seigniory, merely in order that he might erect upon it any small works which he might deem essential to the proper defence of his seigniory against Indian raids. On such holdings it seemed only fair that no quint should be made payable.

3. Grants *en franche aumône*, or *frankalmoign*, were made in considerable number, invariably to religious, educational, or charitable orders or institutions. The sole obligation imposed upon the holders of such grants, in addition to that of rendering

<sup>1</sup> Robert Abraham, *Some Remarks on the French Tenure of Franc Aleu Roturier and its relation to the Feudal and other forms of Tenure*, 7.

<sup>2</sup> *Edits et Ordonnances*, i. 102-105. The same royal favor was similarly granted, at various times, to the Récollets, the Ursulines, and to the authorities of the Hôtel-Dieu of Quebec (*Ibid.* 98, 243-244).

<sup>3</sup> "A freehold, exempt from all burdens, and subject to no seigniorial rights or dues, either pecuniary or honorary" (Tocqueville, *The Old Régime and the Revolution*, 342).

fealty and homage, was the duty of performing some specified religious, educational, or charitable service in return for the grant.<sup>1</sup> Usually this latter obligation was definitely set forth in the title-deed. Thus, for example, some of the grants made to the Jesuit order by the Company of One Hundred Associates stipulate that the fathers shall, on the first Tuesday of the month of December, — which is the date of the annual meeting of the company, — “say and celebrate forever a mass for the repose of the souls of the deceased copartners of the company, to which they shall be obliged to invite the officer commanding for the said company within the fort of Quebec, that he may attend thereat if he think fit.”<sup>2</sup> Occasionally, however, the obligation is expressed in more general terms, as, for example, in the case of the grant of La Prairie de la Magdelaine, which was given to the Jesuits in 1647 merely in order, as the title-deed states, “that the company may be participating in their prayers and holy sacrifices.”<sup>3</sup> One can scarcely fail to remark the ostentation with which professions of religious impulses on behalf of the French crown are inserted, not only in all the ecclesiastical title-deeds, but in many of the purely secular ones as well. On more than one occasion laymen are informed, in the preambles of their deeds, that “His Majesty has always sought, with that zeal which is suitable to his title as eldest son of the Church, the means of making known in the most unexplored countries, by the propagation of the faith and the diffusion of the Gospel, the glory of God and the Christian name, — the first and principal object of his establishment of the French colony in Canada.”<sup>4</sup> As the Jesuits were the most active and successful agents in this work, their order was made the recipient of the royal bounty to a very generous degree.<sup>5</sup>

4. By far the greater part of the larger land grants were made *en fief* or *en seigneurie*, terms which were used synonymously in the colony. The few concessions, made either by the com-

<sup>1</sup> On the nature of tenure *en franche aumône*, see Henrion de Pansey, *Dissertations Féodales*, ii. 54-149; and Viollet, *Histoire du Droit Civil Français*, 702-708.

<sup>2</sup> *Titres des Seigneuries*, 344.

<sup>3</sup> *Ibid.* 75.

<sup>4</sup> Cf. *Ibid.* 11-43.

<sup>5</sup> See below, ch. x.

panies or by the crown, to be held under other terms, must be looked upon as exceptions to the general rule; for, when petitioners applied to the colonial authorities for grants of land, they invariably, if their applications were favorably entertained, received grants *en seigneurie*, unless some special circumstance or circumstances rendered some deviation from the rule advisable. The seigniority was the basal unit of the colonial land-tenure system.

Seigniorial grants were not regulated, in regard to their area, by any fixed rule, but were in this respect left to the discretion of the royal officials in the colony. Hence they varied very widely in extent, ranging from small plots containing only a few square arpents, to huge tracts containing many square leagues and more extensive than many European principalities.<sup>1</sup> In determining the area several things were taken into consideration,—the rank of the grantee, his services to the crown, his means, the location of the grant (whether favorable or otherwise), the nature of the land, and so on. As a rule, the boundaries of the grant were stated in the title-deed with a fair degree of definiteness; but not infrequently the delimitation was so vague or ambiguous as to result in subsequent disputes. The reason for this confusion seems to have been that the applicant, in making his petition, usually described the bounds of the territory, and the authorities, in drafting the deeds, merely followed this description, which would later often prove to be inaccurate. Surveys preliminary to the making of seigniorial grants seem almost never to have been made. The common practice was, apparently, to fix the bounds of a new grant by reference to some grant or grants already made;<sup>2</sup> and, when these had themselves been vaguely defined, abundant room for dispute was afforded.<sup>3</sup>

<sup>1</sup> The seigniority of Minville, for example, was sixteen by fifty arpents, that of Gobin ten by twelve leagues. See *Titres des Seigneuries*, 296, 367.

<sup>2</sup> For example, the seigniority Des Islets de Beaumont (1672) comprised "all that quantity of land which may be found on the River St. Lawrence between the property of the Sieur Bissot and that of M. de la Durantaye" (*Ibid.* 298).

<sup>3</sup> In 1676 the king gave orders that all seigniorial grants should be located contiguously (*Edits et Ordonnances*, i. 90). There seem, nevertheless, to have been frequent departures from this rule.

Whatever the area of the seigniorial grant, however, or wherever its location, it invariably assumed the shape of a parallelogram, with the shorter side fronting on the river, a fact which, as will be seen later, had a very interesting and important bearing on the system in the final period of its history, and was indirectly one of the most potent causes of its downfall.<sup>1</sup>

On being placed in possession of his seigniorial grant, the seignior was put under certain well-defined obligations toward the company or the crown as dominant seignior. First among these was the performance of the ceremony of fealty and homage (*foi et hommage*), an obeisance which has always been accounted an indispensable obligation of every seignior to his dominant lord. In the heyday of feudalism the ceremony consisted of two quite distinct parts, — the taking of an oath of fealty or allegiance involving pledge of fidelity, and the performing of some symbolic act of homage expressive of submission to control; but as the two parts were invariably performed on the same visit of the seignior to his dominant lord, the ceremony in time lost its double significance. In New France the seignior was under obligation to appear, within a reasonable time after coming into possession of his fief (whether by grant, purchase, or succession), or upon the occasion of each succession to the French throne of a new sovereign, before the royal representative at the Château de St. Louis in Quebec, there with uncovered head and on bended knee to render his fealty and homage. When the colony passed into the hands of Great Britain the obligation continued in existence, and was regularly rendered by the seigniors to the representative of the new sovereign, the governor-general.<sup>2</sup> The last act of fealty and homage was

<sup>1</sup> Below, pp. 235-238.

<sup>2</sup> In *Actes de Foi et Hommage*, iv. 43, is found a detailed description of this ceremony as performed by one of the seigniors before General Murray, the first British governor-general: "In the year 1760, on the 23rd of December in the forenoon, in the presence and in the company of royal notaries in the military court and council of Quebec, Jean Noël, dwelling in this city . . . repaired to the government house of Quebec, and at the principal door or entrance of the said house, where being, the said Noël, having knocked at the door, there immediately came a servant, of His Excellency James Murray, governor-general of Quebec, and the said Noël having demanded of the said servant if His Excellency James Murray was in his aforesaid

performed on the eve of the abolition of the seigniorial system in Canada, February 3, 1854, by J. S. C. Wurtele, Esq., before Major-General William Rowan, administrator of the colony.

In addition to rendering fealty and homage, the seignior was obliged, within the space of forty days after receiving his grant, to deposit with the proper authorities at Quebec an *aveu et dénombrement*. This was a paper comprising two separate documents, — the *aveu*, which was a general map or plan of the seignior, showing its location in the colony, its boundaries, and configuration, and the *dénombrement*, which was, on the other hand, a detailed description or census of the seignior, setting forth the circumstances under which the grant was originally made and the manner in which it had come into the hands of the present owner, together with the terms of tenure, the acreage (*arpentage*) of the seignior, the degree or degrees of jurisdiction possessed by the seignior, and various other data. Within forty days after a mutation in the ownership of a fief, the *aveu et dénombrement* was filed again, and in this case a detailed statement of the progress made in the development of the seignior was included. This report set forth the number of acres cleared and the number under cultivation, the number of subgrants made either *en arrière fief* or *en censive*, the number of settlers on each grant, the amount of produce raised by these settlers in the last year,

government house, the said servant said that His Excellency was within and that he would go and give him notice, and His Excellency having appeared, the said Jean Noël, in accordance with his duty as a vassal, without sword or spur, his head uncovered, and one knee on the ground, said to him that he performed faith and homage on account of his land and seignior of Tilly and Bonsecours holden in full fief of His Britannic Majesty, which fief belonged to him as eldest son and heir of the late Philippe Noël his father . . . which faith and homage His Excellency received from the said Jean Noël, who made oath on the Holy Evangelists to be faithful to His Britannic Majesty, to do nothing contrary to his interests, to keep his vassals in the obedience which they owe to their king, the present faith and homage received subject to the condition on the part of the said Noël to furnish his *aveu et dénombrement* within the usual time, and the dues which he may owe by reason of the mutation of the said fiefs and seigniories agreeably to the original title-deeds. Of all of which the said Jean Noël has demanded Acte of the undersigned notaries, who have granted him the same . . . and His Excellency has signed, also the said Jean Noël. . . .

“J. MURRAY, JEAN NÖEL, BAROLET, PANET.”

the number of horses, cattle, sheep, and swine in the seignior, the location and structure of the seigniorial manor, mill, and church, if such had been erected, the presence of any oak or pine timber suitable for use in the royal shipyards which might have been found within the limits of the grant, and a statement of the profits annually derived from the seignior.<sup>1</sup>

In many of the title-deeds the stipulation was made that an *aveu et dénombrement* should be made at certain specified times whether the seignior changed hands or not,<sup>2</sup> the usual period in such cases being an interval of twenty years. These returns were placed on file at Quebec, and formed a most convenient source of data for the compilation of the frequent reports required by the home authorities as to the agricultural progress of the colony. One cannot but admire the facility with which the colonial officials were able to present detailed statements of conditions in New France on the shortest notice. Requests for such statements came from the French government by the spring vessels, and the returns had to be transmitted by the same ships when they sailed in the autumn. In almost every case the governor and intendant were able to compile the desired reports from the data on file in their office at Quebec; and, so far as one may judge at the present day, these reports were accurate and trustworthy. It was the system of *aveu et dénombrement* that rendered statistical data so accessible.

A third obligation imposed upon the seigniors was that of subgranting the lands within their seigniories, or, as it was officially called, the *jeu de fief*. This obligation has an especial interest from the fact that it had no existence in France, but was peculiar to the colony; it is one of the features which served to give the seigniorial system in Canada a character and individuality somewhat distinct from that which it possessed in the motherland. Its introduction into the colony marks an attempt on the part of the royal authorities to modify the system in such a way as to adapt it to the circumstances of a

<sup>1</sup> *Coutume de Paris*, articles viii, x, xi; cf. also Report of the Solicitor-General to the Council, 1790, *Titles and Documents relating to the Seigniorial Tenure*, i. 27.

<sup>2</sup> See, for example, the title-deed of the seignior of Isle aux Ruaux, *Titres des Seigneuries*, 46.

new country whose most pressing need was an influx of settlers.

The Custom of Paris, which was, one might say, the common law of New France, imposed upon the seignior no obligation to subinfeudate his fief. On the contrary, it expressly forbade the alienation of more than two-thirds of its extent, and even up to that point permitted alienation only under certain conditions.<sup>1</sup> For a considerable time after the introduction of the seigniorial system in New France, the seigniors were left entirely free to alienate, subgrant, or otherwise dispose of their holdings on whatever terms might seem best to themselves; or, on the other hand, they were left just as free to refuse to alienate or subgrant any portion of their seigniories. Down to 1711 not a single seigniorial title-deed definitely imposed any obligation to subgrant lands; and after that date only four deeds contained any reference to such condition.<sup>2</sup> The seignior was regarded by the crown, not as a mere *fideicommiss*, but as having a *dominium plenum* in his grant.

It was, however, as has been already noted, the earnest desire of the French crown to have the colony settled as rapidly as possible; and it was not very long before the marked propensity of many seigniors to hold their grants for speculative purposes began to stand in the way of the royal desires. Settlers found, on arrival in the colony, that they had either to take up unfavorable locations in out-of-the-way seigniories, or else pay a bonus to the more favored seigniors for choice locations; and, naturally enough, they protested. As it was not the intention of Louis XIV that the seigniorial system should

<sup>1</sup> "Le vassal ne peut démembrement son fief au préjudice et sans le consentement de son seigneur : bien se peut jouir et disposer et faire son profit des héritages, rentes, ou cens, étant du dit fief sans payer profit au seigneur dominant, pourvu que l'aliénation n'excède des deux-tiers et qu'il en retienne la foi entière et quelque droit seigneurial et domainial sur ce qu'il aliène" (*Coutume de Paris*, article li).

<sup>2</sup> These were the deeds to the following seigniories: Beaumont, April 10, 1713, granted "subject to the condition of conceding the said lands at a simple rent charge" (*Titres des Seigneuries*, 64); Mille Isles, March 5, 1714, the grantee "to concede the said lands subject to simple dues" (*Ibid.* 59); Deux Montagnes, October 17, 1717, the grantee "to concede at a simple rent charge . . . as provided" (*Ibid.* 337); St. Jean, April 18, 1727, "subject to the condition . . . not to concede the said lands except on a simple rent charge" (*Brevets de Ratification*, 84).

thus operate as a hindrance to colonial development, he intervened, as soon as the matter was brought to his notice, in such a way as distinctly to limit the seigniorial pretensions.

The first reference — but a very indirect and inconclusive one — to the existence of any obligation on the part of seigniors to subgrant their lands appears in the title-deed of the seignior of Ste. Anne de la Pérade, in 1672. One of the conditions named in this deed was that the seignior should, “in granting lands, stipulate with his habitants or tenants (*tenanciers*) in such wise as to compel the latter to take up residence upon their grants within the space of one year from the date of concession.”<sup>1</sup> This clause can, however, scarcely be taken as implying any obligation to subgrant; it merely provides that, if the seignior did choose to make subgrants, he must, in such cases, impose a certain condition.

From 1672 onward, this or a similar clause appears in a number of deeds.<sup>2</sup> In a few cases the bond stipulates that the seignior himself shall reside on his land, without obliging him to exact any similar condition of his tenants.<sup>3</sup> In at least one case, that of the seignior of Ste. Anne des Monts (1688), the wording of the deed is such as to imply that the power of subgranting seigniorial lands is permissive and not mandatory, for reference is made to “those grants which the seignior will be allowed to make in the said seignior.”<sup>4</sup> As a matter of fact, some of the seigniories were too small in extent to permit any subinfeudation; such, for example, was the seignior of Isle aux Ruaux, granted to the Jesuits to be used as a pasture for their stock, and none too large for this purpose alone.<sup>5</sup> The seignior of Isle St. Joseph, near Three Rivers, which comprised less than fifty arpents in all, is a type of the small seignior to which any requirement of subinfeudation can scarcely have been intended to apply.<sup>6</sup>

In some few cases the right to subgrant lands within seigniories was expressly restricted by provisions contained in the title-deeds. Thus, the deed of the seignior of D’Autray con-

<sup>1</sup> *Titres des Seigneuries*, 275.

<sup>2</sup> For example, the title-deed of Longueuil, *Ibid.* 99.

<sup>4</sup> *Ibid.* 329.

<sup>5</sup> *Ibid.* 46.

<sup>3</sup> *Ibid.* 12.

<sup>6</sup> *Ibid.* 85.



tained a clause providing that grants might be made "only to persons already residing in New France"; while the deed conveying the island of Montreal to the Seminary of St. Sulpice permitted the making of grants "only to persons not already inhabitants of New France but who shall emigrate thither."<sup>1</sup> In the deed of the Isle aux Coudres to the Jesuit seminary at Quebec appears the provision that the lands shall be settled only by persons belonging to the seminary or directly connected therewith.<sup>2</sup>

In the face of these facts, it can hardly be maintained that, down to 1711 at least, any obligation rested upon the Canadian seigniors as a class to subgrant lands within their seigniories to all who should apply for such grants. In fact, during the earlier days of the colony's history there would seem to have been no need of the establishment or imposition of any such obligation; common prudence would ordinarily have been enough to induce any seignior to adopt the means which were obviously the easiest and most effectual for settling his seigniorie and thus increasing its value. From time to time, to be sure, the king emphasized his desire to have the lands of the colony cleared; but down to 1711 no attempt was made to insist upon the adoption of any particular means of attaining this end. So far as the law was concerned, the seignior could fully satisfy the royal desires by having the lands cleared by hired labor if he should see fit, instead of by making *en censive* grants; for the mere reiteration of the royal desire for the speedy clearing of the lands could scarcely be construed as establishing a legal obligation to subinfeudate. Unfortunately, however, the Canadian seignior, by his persistent neglect to have his lands cleared either through his own enterprise or through that of others, and by his policy of holding his uncleared lands for speculative purposes, forced the king, in the end, to drastic action.

His first decisive step was the issue of the Arrêts of Marly in 1711, one of which provided that "within a year at the farthest . . . all the inhabitants of New France to whom His Majesty has granted lands *en seigneurie*, who have no domain cleared and who have no settlers upon their grants, shall be held to bring

<sup>1</sup> *Titres des Seigneuries*, 356, 365.

<sup>2</sup> *Ibid.*, 322.

them under cultivation by placing settlers thereon.”<sup>1</sup> The unequivocal language of this arrêt was fully understood as establishing an obligation to subgrant lands;<sup>2</sup> for, in the arrêt drafted some years later by Messrs. Deshaguais and Daguesseau, reference is made to the Arrêts of Marly as having “obliged seigniors who have lands for concession within the limits of their seigniories, to concede them as an essential to the settlement and growth of the colony.”<sup>3</sup> Furthermore, the whole tenor of the Arrêt of Versailles (1732),<sup>4</sup> and of the royal declaration of 1743,<sup>5</sup> serves to establish beyond doubt that the king desired to place the seigniors under a legal obligation to subgrant the lands within their seigniories; and that it was, moreover, the royal wish that every settler who went to the colony should be entitled to demand a concession out of the ungranted lands of any seignior, and to receive such without the necessity of paying therefor anything save and except the ordinary seigniorial dues at such times as these might become payable. It was in order to insure these rights to settlers that the king empowered the governor and intendant to make the grants whenever the seignior should show an indisposition to do so.<sup>6</sup> In the interest of colonial development, this action on the part of the king was highly commendable; it shows, as many of his orders clearly show, the deep interest which Louis XIV took in everything that pertained to the advantage of New France. After 1711 the Canadian seignior was no longer possessed of any right of property in the ungranted lands of his seignior; he was merely a *fideicommiss* for the crown. His position and powers had, in this respect, become differentiated from those of the seignior at home.

A fourth obligation incumbent upon all holders of lands *en seigneurie* was the payment of a mutation fine known as the quint, the only pecuniary tribute rendered by the seignior to the company or the crown as dominant seignior. The amount of the quint, as fixed by the Custom of Paris,<sup>7</sup> was one-fifth of the muta-

<sup>1</sup> *Edits et Ordonnances*, i. 324-325.

<sup>2</sup> See above, p. 42.

<sup>3</sup> *Ibid.* 572.

<sup>4</sup> Article xxv.

<sup>2</sup> See above, pp. 42-43.

<sup>4</sup> *Edits et Ordonnances*, i. 531.

<sup>6</sup> See above, p. 43.

tion value of the seignior; but it was the custom of the company, and this custom was followed by the crown, to allow a rebate of one-third of the amount paid.<sup>1</sup> In several other French *coutumes*, the payment of the requint, or an additional fifth of the fifth, — making six twenty-fifths in all, — was rendered obligatory; but no attempt seems to have been made to exact the requint in Canada.

The quint became due and payable upon each mutation of the ownership of a seignior, whether by sale, by contract equivalent to sale, by gift, or by inheritance other than in direct succession.<sup>2</sup> Lineal descendants succeeding to seigniorial lands were thus the only ones exempt. As the mutation value of seigniorial lands was never great during any part of the French régime, the amount of revenue derived by the royal treasury from this source was not of importance; and even after the British conquest, when the lands of the colony had undergone a very marked increase in value, the proceeds of the quint formed but a very modest sum per year. In the general list of colonial revenues they make but an insignificant item. During the years intervening between the cession of the colony to Great Britain and the abolition of the seigniorial tenure in 1854, the average income from the quints of all the seigniories was less than fifteen hundred dollars per annum.<sup>3</sup>

During the dominancy of the Company of One Hundred Associates some seigniories had been granted under the special custom of the French *Vexin*, a small body of rules not forming part of the *Coutume de Paris*, but supplementary to it.<sup>4</sup> In these cases a mutation fine, commonly called the relief, was substituted for the quint. The relief was the equivalent of one year's estimated revenue from the seignior, and became due and payable upon every mutation of ownership, whether by

<sup>1</sup> Cugnet, *Traité de la Loi des Fiefs*, 11.

<sup>2</sup> *Coutume de Paris*, articles vi, xxiii. Cf. also Cugnet, *Traité de la Loi des Fiefs*, 9.

<sup>3</sup> During the thirteen years 1775-1788 the amount was £ 3148. 1s. 4d.; during the period 1803-1841 it was £ 7385. 9s. 4d. See *Titles and Documents*, i. 40, 175.

<sup>4</sup> The rules of *Vexin le Français* relating to the payment of the relief are printed in *Abstract of those Parts of the Custom of the Viscounty and Provostship of Paris, which were received and practised in the Province of Québec in the time of the French Government* (1772), 14. See below, p. 198, note.

inheritance, purchase, or otherwise; there were no exemptions. In some cases the company made the stipulation that one ounce of gold (*une maille d'or*) should be paid in lieu of the relief.<sup>1</sup>

The relief does not appear to have been exacted after the conquest. In the collection of laws compiled by order of Governor Carleton, the provisions relating to the obligation of the relief were omitted on the ground that they had "not lately been operative in Canada." Cugnet declares that the right of exacting the relief had been abrogated by the king "in an edict duly registered at Quebec in 1676."<sup>2</sup> This edict does not, however, contain any express abrogation of the right to exact the relief; but it does provide that grants made under the custom of the French *Vexin* shall henceforth be deemed to be held under the Custom of Paris. In other words, the intention of the edict seems to have been to replace the relief by the quint in all cases in which the original title-deeds had made the former payable. In general, it may safely be said that the payment either of the quint or of the relief was never a substantial burden upon the seigniors or a source of considerable profit to the crown, and that apparently its existence did not prove an important hindrance to the transfer of seigniorial holdings.

A fifth duty, that of rendering military service, was expected of the seigniors; but apparently it was not specifically made a condition of tenure, for the obligation does not appear in the title-deeds of any of the seigniorial grants made by the crown. It is true that, in the grant of the whole colony to the Marquis de la Roche, a provision was inserted to the effect that the marquis should make grants to persons on condition that they should "aid in the support and defence of the said country"; and, furthermore, La Roche was permitted for a short term of years to relieve his settlers from all conditions "excepting the duty of service in time of war"; but he made no grants upon this or any other condition.<sup>3</sup>

The fact is, the French government counted upon the service

<sup>1</sup> For example, in the seigniorship of Beauport. See *Titres des Seigneuries*, 386.

<sup>2</sup> Cugnet, *Traité de la Loi des Fiefs*, 5.

<sup>3</sup> See above, pp. 18-19.

of all colonists, whether landholders or not. In all the correspondence which passed between the home and the colonial authorities with reference to the military resources of the colony, the liability, and even the willingness, of the whole adult male population of the colony to render military service was taken as unquestionable. This fact appears clearly in the discussion as to the advisability of disbanding regiments in the colony after the purpose for which they had been sent out had been accomplished. The main advantage claimed for the policy was that the settlement of veterans in New France would add appreciably to its military strength.

According to the laws of France, all those holding *en fief* or *en seigneurie* mediately or immediately from the crown were, with their dependents, liable to be called upon for military service. By an important edict, issued in 1674, Louis XIV made it obligatory that "all nobles, barons, chevaliers, esquires, vassals, and others holding *en fief* or *en arrière-fief* shall, all excuses apart, put themselves in arms, mounted and equipped, according to that to which they shall be held bound, and shall be present on the days and at the places fixed."<sup>1</sup> The terms of this edict, however, were never expressly applied to New France; and it is at least questionable whether any royal decree, issued after 1663, could be binding in the colony without having been enregistered by the Sovereign (Superior) Council at Quebec.<sup>2</sup>

Furthermore, when the seignior took the oath of fealty, which, in the words of one of the prominent seigniors after 1763, pledged "the fidelity and military service of all possessors of fiefs and arrière-fiefs," he promised his service in arms when called upon.<sup>3</sup> In explaining to the home authorities, in 1768,

<sup>1</sup> "Lettres-patentes pour la convocation du ban et arrière-ban," August 11, 1674, in Isambert, *Recueil Général des Anciennes Loix Françaises*, xix. 138-144.

<sup>2</sup> This question is discussed at length in Doutré and Lareau, *Histoire Générale du Droit Civil Canadien*, 118-127.

<sup>3</sup> Cf. the answers of Charles de Lanaudière to some of the questions proposed by the "Honorable Committee of the Whole Council," October 17, 1790, *Titles and Documents*, i. 35, 38. "L'acte de foi et hommage . . . contenant ordinairement une clause relatant les obligations militaires du vassal vis-à-vis du suzerain" (Viollet, *Histoire du Droit Civil Français*, 649).

the main incidents of the seigniorial tenure, Governor Carleton declared: "The oath which the seigniors take is very solemn and binding; they are obliged . . . to discharge whatever they owe to their sovereign, and to appear in arms for his defence in case his province is ever attacked."<sup>1</sup> The obligation of military service on the part of the seigniors, and through them on the part of those holding of them, was thus regarded as having full force and effect, even though it did not appear expressly in any of the title-deeds. This omission has apparently led some writers to the inference that the obligation had no existence in the colony.<sup>2</sup>

During the greater part of the French régime the seigniors were forced by the stern logic of facts to be in constant readiness to defend their seigniories; for, exposed as it was both to the Iroquois and to the English, the valley of the St. Lawrence was almost never free from marauding bands of raiders, both white and red. The seigniories were scattered along the banks of the stream, often far removed from the nearest fortified post; and the small force of royal troops kept in the colony was never adequate for the effective defence of any considerable portion of its area. Left thus to shift for himself, the seignior naturally sought to increase the defensive strength of his own habitans, striving in this way to compensate, as far as possible, for the weakness of the central power.<sup>3</sup> He also aimed to build his manor-house so that it could be defended against Indian assaults, often constructing it of stone, with small windows and stanch hard-wood doors, and planning the whole with an eye to strength as well as to comfort. In a few cases the seigniorial manor-house assumed the proportions of a mediæval castle. The commodious château of Lemoyne de Longueuil, for example, was built of solid masonry and flanked by four strong towers, or bastions, each loopholed in such a way as to permit a

<sup>1</sup> Carleton to Shelburne, April 12, 1768, in State Paper Office, *America and West Indies*, vol. cccxxvi, No. 33.

<sup>2</sup> Cf. Weir, *Administration of the Old Régime in Canada*, 67; and Parkman, *The Old Régime in Canada*, ii. 42.

<sup>3</sup> In 1674 Frontenac informed the minister that he had ordered all the seigniors of the colony to drill their habitans as often as possible (*Documents relating to the Colonial History of New York*, ix. 116).

flanking fire.<sup>1</sup> Its resemblance to the fortified castles of France was noted by Frontenac.<sup>2</sup>

Another way in which the seigniors sought to strengthen themselves in the event of attack was by offering particular inducements to retired soldiers, in order to secure them as settlers on their grants. Such settlers were given desirable locations, and were not infrequently exempted from the payment of the seigniorial dues for a short term of years. They brought their muskets with them, and, in addition to holding themselves in readiness to repel Indian attacks, they rendered effective service in drilling or instructing the other habitants of the seigniories to which they came. Even the religious orders held out special incentives, in their endeavor to have lands within their seigniories taken up by veterans.

Perhaps the most striking exemplification of the earnest desire on the part of the authorities to supplement the defensive strength of the colony is afforded by the numerous seigniorial grants made to the officers of the Carignan-Salières regiment in 1668-1672. This regiment, the first body of regular troops sent out to New France, was one of the best in the French army.<sup>3</sup> Originally recruited from the population of Savoy by the Prince de Carignan, it had seen signal service in the wars of the Fronde, and had won distinction in the service of Austria against the Turks. Under the command of Colonel de Salières it was sent out to Canada with Tracy in 1665, in order that the Mohawks might be crushed once for all and the Five Nations in general impressed with the punitive power of France. When it arrived in the colony the regiment numbered about twelve hundred men of all ranks, among its officers being many dashing young scions of the French noblesse. During the next half-dozen years the operations against the Mohawks and other hostile tribes were carried to a successful outcome, and a per-

<sup>1</sup> Jodoin and Vincent, *Histoire de Longueuil*, 296-297. The structure was 170 by 200 feet in area. See also below, p. 167.

<sup>2</sup> "Son fort et sa maison nous donnent une idée des châteaux de France fortifiés" (Frontenac to Minister, October 15, 1698, *Correspondance Générale*, vol. xvi).

<sup>3</sup> For various details regarding the history of this notable regiment both in Europe and in America, see Benjamin Sulte, *Le Régiment de Carignan*, in Royal Society of Canada, *Proceedings*, 1902, *Mémoires*, sec. i. 25-95.

manent peace, based upon a new and wholesome respect for the military strength of colonial France, was concluded with the Iroquois.

Ordinarily the regiment, when it had finished its work, would have been ordered home again; for the king could scarcely be expected to bear the heavy cost of maintaining so large a force in the colony.<sup>1</sup> Talon, however, came forward with a proposal that an effort be made to keep at least a part of the regiment in the country by inducing officers and men to become settlers; and with this object in mind the intendant, with the approval of Tracy, drew up and despatched to the minister in Paris an elaborate project of military colonization.<sup>2</sup> He placed strong emphasis on the advantages that would accrue from the settlement of so many trained soldiers in the colony, mentioning, among other things, the impetus which would be given to the colonial military spirit. He pointed out that, once firmly established on the land, the soldier would be as completely at the service of the king as if maintained in garrison, while at the same time his support would no longer be a burden on the treasury, — that, in a word, the king would derive all the advantages of maintaining several hundred regular troops in the colony, and this with only the initial expense of placing the soldiers in a position to support themselves. Talon pointed to the Roman system of military colonization as a precedent.<sup>3</sup> The discharged soldier settled in New France would, he claimed, develop a

<sup>1</sup> Part of the regiment was sent home to France in 1668, but four companies were retained.

<sup>2</sup> "Projets de Règlemens qui semblent être utiles en Canada, proposés . . . par M. Talon," January 24, 1667, *Edits et Ordonnances*, ii. 29-34.

<sup>3</sup> "Cette manière de donner un pays de nouvelle conquête a son exemple dans l'antiquité romaine, et peut répondre à celle en laquelle on donnoit autrefois chez les mêmes romains les champs des provinces subjuguées qu'on appeloit *prædia militaria*: la pratique de ces peuples politiques et guerriers peut à mon sentiment être judicieusement introduite, dans un pays éloigné de mille lieues de son monarque et du corps de l'état dont il n'est qu'un membre fort détaché, qui peut se voir souvent réduit à se soutenir par ses propres forces. Elle est à mon sentiment d'autant plus à estimer qu'elle fera quelque jour au roi, un corps de vieilles troupes qui ne seront plus à charge à Sa Majesté, et cependant capables de conserver le corps de cet état naissant de Canada avec tous les accroissemens qu'il peut recevoir contre les incursions des sauvages ou les violentes invasions des européens, même dans les besoins pressants de l'ancienne France, fournir un secours considérable à Sa Majesté" (*Ibid.* 32).



peculiar attachment to the colony as his own heritage, and would in consequence have a more aggressive interest in its defence.<sup>1</sup> He suggested that the lands given both to military and to civilian settlers should be granted on the most favorable terms, ability to serve the crown well in time of war being made the ground of exemption from the usual payments. He proposed, in fact, that the title-deeds should expressly state the military nature of the tenure, and that upon the grantees should be imposed the obligation of sending their eldest sons, on attaining the age of sixteen years, to serve the king for a time on garrison duty without pay.<sup>2</sup>

The proposals of Talon were favorably considered by the king and minister in France; and in due course the intendant received despatches warmly approving of the projects, and giving instructions as to the manner of carrying them into effect. In accordance with these instructions, Talon arranged to grant seigniories to the officers of the regiment, and in so doing gave locations with direct reference to the vulnerable points in the colonial frontier. The most critical spot of all was the country along the Richelieu River. Though well adapted for settlement, it was dangerously exposed to Iroquois attacks, for it lay between the French settlements and the territories of the powerful and aggressive Mohawks; hence, much as the French authorities wished to have the district populated, settlers had shown no disposition to push out into the region. It was only natural, therefore, that Talon should regard this district as most suitable for the settlement of the military colonists. Accord-

<sup>1</sup> "D'un côté, elle épargnoit les finances du trésor public, et que de l'autre, elle intéressoit l'officier et le soldat en la conservation du pays, comme en celle de son propre héritage" (*Edits et Ordonnances*, ii. 33).

<sup>2</sup> "Et pour le bénéfice qu'elles [qu'ils] reçoivent par la concession de la terre au lieu de cens sur cens, censives ou autre redevances qu'emportent avec soi les concessions de ce pays, ils engageront au service du roi leur premier-né lorsqu'il aura atteint l'âge de seize ans, qui commencera son noviciat dans une garnison des forts, sans qu'il puisse prétendre autre solde que celle de sa subsistance, ou celle qui lui pourra être ordonnée par les états de Sa Majesté durant le service qu'il rendra. Cette obligation n'ajoute presque rien à celle qu'un véritable sujet apporte au monde avec sa naissance, mais il semble que lorsque cette condition est stipulée, elle est moins rude quand elle est exigée que lorsqu'il n'en est rien dit dans les contrats des terres données comme se donnent toutes celles du Canada" (*Ibid.*).

ingly, generous tracts lying along the river, from its junction with the St. Lawrence to a point near the present town of Chambly, were parcelled out *en seigneurie* among the Carignan officers, who, in turn, were instructed to subgrant the lands among their former soldiers. In all about twenty-five or thirty officers, chiefly captains and lieutenants, together with somewhat more than four hundred non-commissioned officers and soldiers, decided to avail themselves of the opportunity to become permanent settlers.

As neither officers nor men possessed the capital wherewith to develop their grants, the king provided some twelve thousand livres to be divided among the officers as the intendant might deem fit. The sums apportioned out of this amount do not seem to have been granted according to any fixed rule. To the non-commissioned officers and soldiers fixed amounts were given from the royal treasury, each non-commissioned officer receiving one hundred and fifty livres, or one hundred livres and a year's rations, at his choice, and each soldier one hundred livres in cash, or fifty livres and a year's rations, at his option. It was in this way that the progenitors of some of the leading families of French Canada first became settlers in the country. The names of St. Ours, Saurel (Sorel), Soulanges, Contrecoeur, Dugué, Varennes, La Valterie, Verchères, Perrot, Roque, Morel de la Durantaye, Berthier, Chambly, Lanaudière, Granville, and many others will be found in the list of those who received seignories at this time. Several of these, however, subsequently returned to France.<sup>1</sup>

It is interesting to note that, despite Talon's suggestion, there is no express mention of the obligation of military service among the various conditions of tenure imposed in the title-deeds of the military seignories. In each case, the preamble states clearly the royal expectation that the settlement of the officers in the colony will serve materially to strengthen its capabilities of defence; but there is no definite provision that the rendition of service shall be regarded as an incident of tenure.<sup>2</sup> As later

<sup>1</sup> See Sulte, *Le Régiment de Carignan*, 89.

<sup>2</sup> "His Majesty . . . having judged that there were no surer means of making known the greatness of his name and the strength of his arm than to compose this

events showed, however, there was little occasion for insistence on the obligation: the military seignior proved only too ready to gird on his sword on every possible occasion. Several of them were gentilshommes, who did not take very enthusiastically to the prosaic life of the yeoman, but found their real vocation in border raids along the frontiers of New England and New York.

But when officers and soldiers had been placed on the land the project of the intendant was not entirely fulfilled. If the colony was to grow from within, the military settlers must have wives; and of these New France afforded no adequate supply. Even before his plan of settlement was completed, Talon prayed the minister to send out consignments of women, strong and vigorous peasant girls for the soldiers, and fifteen demoiselles, or ladies of gentle birth, for the unmarried officers who had now become seigniors of New France.<sup>1</sup> The generous king promptly directed that the desire of the intendant be gratified; and for a few years batches of girls in charge of nuns were sent with almost every vessel. As to the character of many of these mothers of French Canada, some contemporary writers have expressed very unfavorable opinions.<sup>2</sup> Lahontan gives a racy description of their arrival and distribution among applicants;<sup>3</sup> but his picture is

colony of people properly qualified to fill it up by their labor and application to agriculture and to maintain it by a vigorous defence against the insults and attacks to which it might hereafter be exposed, has sent to this country a number of his faithful subjects, officers of his troops in the Carignan regiment, most of them, agreeably to the great and pious designs of His Majesty, being willing to connect themselves with the country by forming therein settlements and seigniories . . . and the Sieur de la Durantaye, captain of a company of infantry in the said regiment, having petitioned us to make him a grant of land therein;

"We, in consideration of the good, useful, and praiseworthy services which he has rendered to His Majesty in various places, both in Old and New France since he came thither by order of His Majesty, and in view of those which he declares himself willing to render hereafter, . . . have given and granted," etc. (translated from *Titres des Seigneuries*, 151).

<sup>1</sup> Talon to Colbert, November 10, 1670, *Correspondance Générale*, iii. 86-87.

<sup>2</sup> William Perwich, English agent in Paris, wrote, May 22, 1669: "What y<sup>e</sup> Gazette mentions of 4 or 500 Women going for America voluntarily is false, because they are lewd strumpets gathered up by the officers of the city & transported according to the law" (Camden Society, *Publications*, 1903, p. 13).

<sup>3</sup> Lahontan, *Nouveaux Voyages* (1709), i. 11-12.

in all probability overcolored. There is reason to believe that considerable care was taken by the authorities in selecting the prospective brides who were thus transported to the colony; and yet we have the unimpeachable testimony of Mère Marie de l'Incarnation that there was *beaucoup de canaille* among the arrivals.<sup>1</sup> So far as can be ascertained, about five hundred women were sent out by the authorities during the years 1669-1673,<sup>2</sup> an enterprise of which the result may be seen in the significant report of Laval that eleven hundred baptisms had been performed during the year 1672.<sup>3</sup> According to the census of 1666, the population of the colony was 3,215 souls; in 1673 Frontenac estimated that it was 6,705. If these figures be accepted as accurate, the population had more than doubled in six years; but there is every reason to believe that Frontenac's estimate was below, rather than above, the mark.<sup>4</sup>

The settlement of the officers and soldiers in the colony seems to have stirred up the lay seigniors to make greater efforts in the direction of securing settlers, and for a time there was considerable rivalry in this respect. The majority of the military seigniors, however, were not very successful: as is too often the case, the good soldier made a very indifferent husbandman, for he lacked both the heart and the capacity for pioneer work. Moreover, the soldiers who settled in their seigniories knew for the most part nothing about farming; and, finding it hard to make both ends meet, many of them abandoned their fiefs to their creditors.<sup>5</sup> Nevertheless, the establishment of the military cantonments along the Richelieu proved advantageous to the colony in more ways than one. It formed a barrier against the Mohawk incursions; it enabled the French to establish safe bases from which blows might be directed with stealth and rapidity against the outlying hamlets of New England; and, in addition, on more than one occasion the Richelieu seigniories contributed generously toward the

<sup>1</sup> Mère Marie de l'Incarnation, *Lettres*, October, 1669.

<sup>2</sup> On the increase of population during this period, see Chapais, *Jean Talon*, 412-413.

<sup>3</sup> Colbert, *Lettres, Instructions, et Mémoires* (ed. Pierre Clement), iii. pt. ii. 541.

<sup>4</sup> Cf. Chapais, *Jean Talon*, 418.

<sup>5</sup> Catalogne's report (above, p. 45).

carrying out of various defensive projects. Thus in 1673, when Frontenac decided to build a fort at the junction of the St. Lawrence with Lake Ontario, the personnel of his expedition was, to a considerable extent, drawn from the disbanded Carignons; and the success which attended the expedition was attributed by the governor chiefly to the discipline which was possible among a force composed so largely of veterans.<sup>1</sup>

It is, of course, true that the colony did not depend for its defence upon the seigniorial array alone. As villages and towns grew up, an official known as the captain of the militia (*capitaine de la milice*) was appointed in each to see that all those capable of bearing arms were duly enrolled and drilled. It was this utilization of almost every adult male colonist which served, among other things, to give New France a military strength far greater than her population seemed to warrant. It was this which gave her such remarkable defensive power during the Seven Years' War, when the colony was a huge armed camp.

In addition to the foregoing rents and dues, the holder of lands *en seigneurie* was under obligation to respect certain royal reservations which were inserted in his title-deed. These varied in different grants, some of them appearing in very few deeds, others in almost all, while a few were so common as to be counted among the permanent incidents of the system. These were the reservations (1) of lands for fortifications, (2) of timber suitable for use in the royal navy, (3) of mines, ores, and minerals (*mines, minérés, et minéreaux*), (4) of rights of way, (5) of the use of beaches, (6) of the right of appeal from the seigniorial to the royal courts, (7) of the right to withhold ratification.

Very many of the seigniorial title-deeds contained the provision that His Majesty's representatives might at any time take from the seigniori such land as might be found necessary

<sup>1</sup> Among the officers of the expedition were Dugué, St. Ours, Durantaye, and others. See the journal of the expedition, printed in *Documents relating to the Colonial History of New York*, ix. 95-114; also Frontenac to Colbert, November 13, 1673, *Correspondance Générale*, vol. iv.

for the location of forts, batteries, or other military works; and it was also frequently stipulated that the crown should have the right to take such timber from the forest of the seignior as might be needed for the construction of the fortifications, together with such firewood as might be desired for the use of the military garrisons placed in charge of them. For lands and timber so taken, the king was not bound to give any compensation whatever, but he usually did make some return. When lands were taken, for instance, the seignior was compensated by a grant of equal area elsewhere; when building materials were expropriated, monetary indemnification was given.<sup>1</sup>

In most cases the seignior was required, by a clause in his title-deed, to report to the royal authorities at Quebec the presence on his seignior of any oak timber suitable for use in the construction of ships, and to let this remain standing until it should be demanded by the naval officials, who were permitted to take what they desired without paying for it. In a few cases pine as well as oak timber was included within the reservation, and in one or two instances a special reservation was made of "all red or pitch pine suitable for making tar."

In almost every grant, stipulation was made that the seignior should give immediate notice to the king (or company) of all mines or mineral deposits found within the limits of his seignior, in order that the share accruing to the crown might be exacted. In a very few cases the royal rights in this regard were expressly waived, and stipulation was made that the seignior might retain full ownership in any minerals discovered.

The king usually reserved the right to open such royal highways through the seignories as the public convenience might from time to time dictate. In fact, some of the grants contained a provision that the seignior should himself undertake the building of a road along the water-front of his seignior.

In the case of such seignories as fronted on the St. Lawrence,

<sup>1</sup> A decree of the Sovereign Council in 1664, for example, ordered the payment to the Sieur Poyrier of 150 livres in compensation for timber taken from his seignior for use in the construction of a casemate. See *Edits et Ordonnances*, ii. 18.

the requirement was usually made that the seigniors should refrain from molesting fishermen using the beaches. The colonial as well as the home authorities were desirous of encouraging the fishing industry; and they foresaw that, unless the rights of seigniors to the river-front were strictly limited, the fishermen who plied their vocation in the St. Lawrence would be subjected to restraint and annoyance. As will appear later, however, the seignior was entitled to a share in the fish taken in seigniorial waters.<sup>1</sup>

Whenever seigniors were invested with judicial rights, it was stipulated that they should permit appeals to be carried by suitors from the courts of the seigniorie to the royal courts of the colony. This reservation was intended to form a check upon the spread of feudal jurisdiction, and to obviate a too extensive growth of private, at the expense of royal, judicial jurisdiction, a precaution which, as will be seen later, was scarcely necessary.<sup>2</sup>

As has been said, the title-deed to a seigniorie was drawn up and signed by the governor and intendant at Quebec, and possession was given forthwith; but the title was to be considered valid only in case the ratification of the king should be forthcoming within the space of one year.<sup>3</sup> As a matter of fact, however, this reservation was for the most part purely formal; for it was only on the rarest occasions that the king withheld ratification or made any important modifications in the original terms of the deed.<sup>4</sup>

In addition to these reservations, there were several prohibitions which appeared with considerable frequency in the seigniorial grants. Of these the most common was the provision that the seignior should not carry on any trade with the Indians, or allow his dependents to do so. Seigniorial grants made during the company régime invariably contained this injunction, and for a very obvious reason; but grants made by the crown often omitted it. Other prohibitions, — such, for example, as that which forbade the collection of toll from vessels navigating the waters of the seigniors, — are to be found in isolated cases, but

<sup>1</sup> Below, p. 140.

<sup>2</sup> Below, ch. ix.

<sup>3</sup> *Edits et Ordonnances*, i. 89-90.

<sup>4</sup> Cf. above, p. 39.

they were far from general. In practically every case the insertion of them seems to have been dictated by local circumstances.

These six obligations — of rendering fealty and homage, of filing the *aveu et dénombrement*, of subinfeudating the seigniory, of paying the quint (or relief), of rendering military service, and of observing the reservations and prohibitions contained in the title-deeds — were the only ones imposed upon the Canadian seignior. Taken together, they were far from being oppressive; in fact, they can hardly be called unreasonable. In view of the numerous rights which seigniors enjoyed with reference to lands granted within their seigniories, the holder of a seigniorial grant was by no means the least favored individual in the colony.

It was under one or other of these four forms of tenure that all the larger land grants in the colony were made; but, as has been shown, the typical large grant was that of a seigniory. The others must be looked upon as clearly exceptional.



## CHAPTER V.

### THE SEIGNIOR AND HIS DEPENDENTS.

IN the foregoing chapter an attempt has been made to explain the various tenures under which the larger grants of land in the colony were held, and to analyze the several obligations imposed by the crown upon the grantees. It is now in order to examine the forms of tenure in which the smaller tracts were held, and to consider, one by one, the obligations imposed by the seignior upon those who held lands within his jurisdiction.

Occasionally the seigniors made grants of sub-seigniories, or concessions *en arrière-fief*. Grants of this sort were not numerous, and yet they can scarcely be called rare. So far as can be learned, there was no dearth of applications for them from incoming settlers of all ranks and conditions, and it seems to be beyond doubt that the seigniors had full power to grant such applications at their discretion; but very naturally their general attitude was against the creation of sub-seigniories, for the profits accruing to them therefrom were sure to be small.

The holder of a sub-seignior was subject to the six general obligations which were imposed by the crown upon the seignior.<sup>1</sup> The only difference was that the fealty and homage of the sub-seignior was rendered to the seignior and not to the representative of the crown; the *aveu et dénombrement* was filed with the seignior, and not with the registrar at Quebec; and the quint, when payable, went to the seignior instead of into the royal treasury. In making grants of sub-seigniories, the

<sup>1</sup> At the time of the abolition of the seigniorial system in 1854, the point was raised that the Arrêts of Marly (1711) did not apply the principle of compulsory sub-infeudation to these sub-seigniories. This, however, was not sustained by the Special Court.

seigniors usually inserted such reservations and prohibitions as had been imposed upon themselves; but the only financial emolument accruing to the seignior from the sub-seignior was that derived from the payment of the quint, and the amount of this was rarely of any substantial consequence.

It is not strange, therefore, that seigniors preferred to have settlers take their lands, not *en arrière-fief*, but *en censive*, or *en roture*; for, as will be seen later, the seigniorial rights over such grants were much more extensive, and were more likely to be remunerative. When grants of sub-seigniories were made, there seems always to have been some special reason for giving lands under this tenure. In some cases they were made to relatives of the seignior; in others they were made because the sub-seignior, in return, agreed to bring over from France a certain number of settlers; and in still other cases, especially during the periods when the king decided to make no grants of seigniories, they were made to incoming settlers of rank and influence who would ordinarily have received full seigniorial grants. Sub-seigniories usually took the same physical form as the seignioriy within which they were situated, — the shape of a parallelogram with its shorter side fronting on the river. In extent they varied greatly, sometimes comprising half of the main seignioriy, but more often only a few hundred square arpents of land.

With very few exceptions, when an individual applied to a seignior for a grant of land, he received a small farm to be held *en censive*, or *en roture*, and thus became technically a "censitaire" or "roturier" of the seignior.<sup>1</sup> These terms were, however, held in such aversion by the peasants that they were very rarely used; even in the official documents of the old régime the term "habitant" was usually employed instead.

Between tenure *en censive* and tenure *en roture* there was in the colony practically no difference. The former expression implied that the land was held subject to the payment of an annual due known as the *cens* (*à titre de cens*); while the latter indicated that the tenure was a base and not a noble one, and

<sup>1</sup> Hallam (*Europe during the Middle Ages*, 3d ed., i. 207) points out that there are no English words which properly translate these terms.

that it was, consequently, subject to a different rule of succession from that which regulated the descent of seigniories or sub-seigniories. For all practical purposes the terms may be used synonymously.

In a very few cases, grants *en censive* were obtained directly from the crown and not from a seignior. Some town lots in Quebec were granted in this way, but it was because the land from which the grants were made belonged to the crown. In another instance, some settlers upon *en censive* lands in the vicinity of Fort Pontchartrain (Detroit) received their title-deeds from the governor and intendant. In this case, titles to the lands which they occupied had, in accordance with the royal instructions, originally been given them by Lamotte-Cadillac, commandant of the fort; but, the deeds proving to be irregular, the king, in 1716, ordered all grants to be cancelled and new titles to be issued in regular form,<sup>1</sup> a command which was executed some years later.<sup>2</sup> These two cases must be regarded as exceptional; for, as a rule, incoming settlers were compelled to apply to the seigniors for their locations.

In extent, grants *en censive* varied considerably. Although in almost every case they assumed the oblong shape, they ranged in width of river frontage from one to five lineal arpents, and in depth from ten to eighty arpents.<sup>3</sup> In making subgrants, most of the seigniors do not appear to have followed any fixed system of survey, the boundaries of allotments being indicated with considerable carelessness. One grant would be made; then others would be given alongside it, the more favorable locations being first chosen, and each subsequent grant being delimited in its title-deed by reference to a former concession. Frequently a settler took up a plot of land, and, having decided that it was worth keeping, applied for and received from the seignior a title to the land "held by" him, without any further description of its extent. Many settlers took up locations without titles of any sort, others on the mere word of the seignior,

<sup>1</sup> *Jugements et D lib rations du Conseil Sup rieur de Qu bec*, vi. 1213 (December 1, 1716).

<sup>2</sup> *Titres des Seigneuries*, 173-175.

<sup>3</sup> As noted above (p. 24), the lineal arpent was equivalent to 192 English feet.

and still others on informal tickets which established nothing but the fact of the grant. To this haphazard method of allotting lands *en censive* many of the difficulties which arose between the seignior and his habitants, and between the habitants themselves, can be directly traced.

The one feature in which there was almost absolute uniformity was the peculiar shape assumed by all the landholdings in the colony, whether *en seigneurie*, *en arrière-fief*, or *en censive*. Mr. Sulte has endeavored to determine definitely the origin of this peculiar method of shaping grants, distinct traces of which remain in the configuration of the farms along the St. Lawrence River to-day, and which is further perpetuated in the present counties of Quebec, which in many cases are co-extensive with the old seigniories and bear their names. Mr. Sulte is inclined to credit the origin of the system to Jean Bourdon, the first surveyor-general of New France, who is said to have thought it wise, in locating seigniories, to economize the frontage granted along the river, but to be generous as to the depth of the grants.<sup>1</sup> This plan, it is claimed, gave the seigniors a formula which they followed closely in making their subgrants both *en arrière-fief* and *en censive*.<sup>2</sup>

It seems to be more likely, however, that the system merely grew out of the conflicting desires of the crown and the seigniors. Most of those who petitioned for grants of seigniories in New France were men of some rank, and it was only natural that they should want grants of extensive area. These the king, in his desire to induce men of position to emigrate to the colony, was willing to give them, until he found that most of the lands were allowed to remain undeveloped, and that the seigniors were holding them for speculative purposes. Down to the close of the seventeenth century, therefore, extensive grants were the rule. Now, those who applied for extensive seigniorial grants naturally desired to obtain lands fronting on the St.

<sup>1</sup> See Mr. Sulte's article on "The Seigniorial Tenure in Canada," in *Canada: an Encyclopædia of the Country* (ed. J. Castell Hopkins), vol. iv.

<sup>2</sup> See Jean Bourdon's map of the seigniories on the Lower St. Lawrence (1641), reproduced in Tanguay, *Dictionnaire Généalogique des Familles Canadiennes*, vol. i, Appendix.

Lawrence and situated between Quebec and Montreal, because the river, both in summer and in winter, formed the great highway of communication. As the amount of this frontage was not unlimited, the authorities had to see that individual seigniors did not receive too much of it; on the other hand, since there was plenty of land back from the water-front, there appeared to be no immediate necessity of restricting the depth of grants. Hence they gave the seignior access to the river, but only within moderate limits; and they gave him an extensive area, but only by running his seigniory miles back into the uplands.

There was, moreover, a reason why the seigniors actually preferred the narrow river frontage. At an early period the colonial authorities began the construction of a road along the north shore of the St. Lawrence from Quebec to Montreal, and issued orders that every seignior should build that part of the road which was to lie in his seigniory, while the sections through the ungranted lands were to be built by the crown.<sup>1</sup> As those who applied for seigniorial grants were, of course, not anxious to assume the obligation of constructing any more of this road than was necessary, they probably interposed no objections to receiving their grants in that shape which, while giving them plenty of land as well as access to the river, at the same time reduced the obligation and burden of road-building. Eventually a good road, built by the seigniors and the authorities, extended all the way from Quebec to Montreal along the north shore of the St. Lawrence, passing through the front of each seigniory and giving the whole colony, as Lord Durham afterward remarked, "the appearance of a never-ending, straggling village."<sup>2</sup>

The same reasons which impelled the authorities to grant seigniories in this shape influenced the seigniors to make *en censive* grants in oblong form. The habitants wanted lands along the river in order to be near their neighbors on the common waterway; and after the road was built the desire for front locations was, if anything, even stronger. Moreover, a grant which ran back a long distance from the river had the

<sup>1</sup> *Edits et Ordonnances*, iii. 412-413.

<sup>2</sup> Durham, *Report on the Affairs of British North America* (1839), II.

advantage of giving the holder a variety of land, the slope toward the river being very well suited for cultivation, the uplands affording pasture, and the hills farther inland timber and firewood. These grants along the river-front, extending, as they did, frequently a mile or more inland, formed what was called the "first range"; it was only after all the good land in this belt was taken up that settlers resorted to the "second range" farther back.

But in this adaptation of the shape of the grants to the immediate convenience of the authorities, the seigniors, and the habitants, a very serious ultimate disadvantage was apparently not foreseen. This evil resulted from the repeated partitioning of the seigniories and *en censive* farms among the heirs of holders. By the terms of the Custom of Paris, not more than one-fifth of a holding, whether *en seigneurie* or *en censive*, could be devised or otherwise disposed of, except by actual deed of sale, to the prejudice of direct or collateral heirs, who may be said to have had the expectant reversion of the other four fifths.<sup>1</sup> The rule of succession differed considerably in the two classes of land, however, as the following summary shows:—

In the case of lands held *en seigneurie*, the eldest son took the chief manor-house or seigniorial residence (*château ou manoir principal*), the inner yard (*basse cour*), and one superficial arpent of land adjoining the house, which was supposed to include the garden (*un arpent de terre de l'enclos et jardin*). He also took the banal mill, if it happened to be within this enclosure; but the profits of the mill went to all the heirs in proportion to their landed inheritance. This right on the part of the eldest son was known as the *droit d'aînesse*, or principle of primogeniture.<sup>2</sup> The remaining lands of the seigniorie were disposed of in four ways: (1) when there were but one son and one other child, the eldest son took two-thirds, his brother or sister the remaining third; (2) when there were a son and more than one other child, the eldest son took one half, and the remainder of the seigniorie was divided equally among the other children without distinction of age or sex;<sup>3</sup> (3) when there were no male

<sup>1</sup> *Coutume de Paris*, article cxcvii.

<sup>2</sup> *Ibid.* articles xiii-xiv.

<sup>3</sup> *Ibid.* articles xv-xvi.

children, the daughters divided the whole seigniorly equally among themselves, without any distinction as to priority of birth;<sup>1</sup> (4) when there were no direct heirs, the estate went to collaterals, but male and female collaterals did not share equally.<sup>2</sup>

Lands held *en censive*, on the other hand, were partible among the heirs without any preference of older to younger or of male to female. All direct heirs took share and share alike; in the absence of direct heirs, all collaterals shared equally.<sup>3</sup> Lands held *en franc alcu noble* followed the same rules as lands *en seigneurie*, lands held *en franc alcu roturier* the same as lands *en censive*.<sup>4</sup>

The effects of this system of succession soon began to show themselves. Each participant in an inheritance manifested a desire to have his share front on the river, with the result that at each partition the frontage was narrowed, the depth of each plot remaining as it was in the original grant. In the case of the seigniories the evil was not so great, for in most instances the river frontage had been liberal at the outset; but in the case of *en censive* holdings equal division of the land between all the heirs of a holder soon reduced the frontage to such a narrow margin that the plots assumed a ludicrous shape. The holdings became mere ribbons of land, in some extreme cases with a frontage of less than two hundred feet and a depth of more than a mile. The evil was not, as in France, that of *morcellement*, for in point of superficial area the habitant often continued to be well provided with land; but the abnormal shape of his holding seriously lessened its value. As his house and barns were usually located at the front of his tract, the processes of agriculture necessitated considerable travelling back and forth on the part of those who worked the land, a necessity which too often resulted in the practice

<sup>1</sup> *Coutume de Paris*, article xix.    <sup>2</sup> *Ibid.* article xxv.    <sup>3</sup> *Ibid.* article cccii.

<sup>4</sup> *Ibid.* article lxxviii. These various articles may be conveniently found in *Sequel of the Abstract of those Parts of the Custom of the Viscounty and Provostship of Paris, which were received and practised in the Province of Quebec in the time of the French Government (1772)*. See also Doutré and Lareau, *Histoire Générale du Droit Civil Canadien*, 87 ff; and Report of the Solicitor-General, 1790, *Titles and Documents* i. 31-33.

of tilling the front of the farm and letting the rear grow wild. In more ways than one the peculiar configuration of the farms seems to have militated against rotation of crops, and to have hindered agricultural improvements in general. Furthermore, the fact that the children participated equally in inheritance to *en censive* lands offered a temptation for them to remain at home even after it had become apparent that their shares would be too small to support them properly; and the situation was aggravated by the prevalence of very large families, a feature which has characterized the social development of the Norman race in the New World from its first establishment to the present day.

In the autumn of 1744 the governor and intendant, in a long report to the French minister, complained of the bad effects which were beginning to attend this continued subdivision of farms, an evil to which, among other drawbacks, they attributed in considerable degree the small harvests of 1743 and 1744.<sup>1</sup> To this appeal the king promptly responded in the following year with an ordinance relating to the practice. This document, after declaring the royal opinion that the principal hindrance to agricultural progress in New France was the ill-advised endeavor of a large part of the habitants to eke out a living from farms of too small area, ordered that no habitant should thenceforth build his house and barn on any piece of land less than one and one-half lineal arpents in front by thirty to forty arpents in depth.<sup>2</sup> That the authorities were in earnest in enforcing this ordinance is shown by the fact that four years later the intendant Bigot decreed the demolition of certain houses which had been erected by the habitants of the seigniorship of L'Ange-Gardien upon pieces of land the areas of which were shown to be less than that prescribed in the royal order.<sup>3</sup>

It seems somewhat strange that, in a colony where land was so abundant and where grants could be freely had on such favorable terms, the authorities should have found it necessary to intervene in this rather harsh fashion. Although clearings were made

<sup>1</sup> Beauharnois and Hocquart to Minister, October 12, 1744, *Correspondance Générale*, lxxxi. 35 ff.

<sup>2</sup> *Edits et Ordonnances*, i. 585-586.

<sup>3</sup> *Ibid.* ii. 400.



slowly, at no time during the French era was the population of the colony large in proportion to the amount of land actually granted. It has been estimated that in 1760 the average land-holding, cleared and uncleared, per family was not less than one thousand superficial arpents;<sup>1</sup> and none of this, it must be remembered, could be permanently held for speculative purposes, for the authorities stood ready to see to it that habitants obtained on very reasonable terms all the land that they could properly cultivate. It may be added that the evils of which the officials complained in 1744 have not been eradicated in French Canada even at the present day.

The obligations imposed by the seigniors upon holders of *en censive* grants were determined fundamentally by the Custom of Paris; but the provisions of this custom might be, and frequently were, altered by decrees and ordinances. Though the obligations were numerous, they may be grouped into three categories: those which were remunerative or were a source of profit to the seignior; those connected with the administration of seigniorial justice, which might or might not prove remunerative; and those which were of a purely honorary or ceremonial character.

First in logical order among the remunerative obligations imposed by the seignior upon his habitants was that of paying the annual *cens et rentes*. This payment, though ordinarily regarded as forming a single due, may be separated into two parts, each of which had a different origin and nature. The *cens* has been defined by a leading commentator on the Custom of Paris as "a moderate annual tax imposed in recognition of the seignior's direct authority";<sup>2</sup> and it is true that in New France the *cens* was usually regarded as a merely nominal payment, valuable not in itself but as establishing the seignior's legal right to other and more important dues and services.

As to the origin of the *cens* there is much difference of opinion among writers on the seigniorial system in France.

<sup>1</sup> Taché, *A Plan for the Commutation of the Seigniorial Tenure*, Appendix. In 1739, when the last complete census of the French period was taken, the area of cleared lands was 180,768 arpents, and the population 37,716, — or five arpents of cleared land per capita (*Censuses of Canada, 1665-1871*, p. 57; also below, p. 237).

<sup>2</sup> See Dumoulin, *Coutumes de la Prévôté et Vicomté de Paris (1681)*, under "Cens."

Hervé believes that the payment was not, in its origin, a merely nominal due, but that it was a real rental (*redevance*), entailing a burden upon the censitaire and resulting in substantial profit to the seignior. He claims, however, that through successive depreciations in the value of French currency, it came to be merely nominal in amount. "At the beginning of the thirteenth century," says he, "the silver mark, which is of fixed weight, was worth three livres; to-day [1786] it is worth fifty-four livres, thus showing an eighteenfold depreciation of the latter." He calculates that one sol of *cens* in 1350 would correspond in burden to nearly two livres in the currency of the latter part of the eighteenth century; for, since the rate of *cens* was fixed in sols per superficial arpent, — that is, in fractions of the livre, — a cheapening of the livre meant a diminution in the burden of the *cens*. In other words, he estimates that a censitaire who in the eighteenth century was paying only one or two sols per arpent was rendering to his seignior what would have been a rental of very substantial amount four or five centuries before.<sup>1</sup>

This explanation, though bearing the air of plausibility, is open to some important objections. During the interval between the fourteenth and eighteenth centuries there was no doubt a great depreciation in the value of the livre, and consequently of its fractions the sol and the denier, in terms of which the rate of *cens* per arpent was fixed; but this depreciation seems to have been neither so regular nor so exact as Hervé infers. Great changes in value took place even within a single century. In some years of the fourteenth century, for instance, the depreciation of the livre (in terms of the silver mark) was greater than at any time in the seventeenth.<sup>2</sup>

<sup>1</sup> Hervé, *Théorie des Matières Féodales et Censuelles*, v. 109-110.

<sup>2</sup> The variations in the value of the silver mark in terms of the livre and its fractions, by centuries, seem to have been as follows: —

1200-1300, from 40 sols . . . . .	to 3 livres, 15 sols.
1300-1400, from 2 livres, 4 sols . . . . .	to 102 livres.
1400-1500, from 6 livres, 5 sols . . . . .	to 26 livres.
1500-1600, from 11 livres . . . . .	to 19 livres.
1600-1675, from 20 livres . . . . .	to 33 livres, 16 sols.

This table is compiled from Le Blanc's *Traité Historique des Monnoyes de France* (Amsterdam, 1692). The fluctuations in the value of money during the period in-

Quite another explanation of the low rate at which the *cens* was fixed is that given by Henrion de Pansey, who maintains that the *cens* was from the very first not a source of emolument to the seignior and not intended to be such, but that on the contrary it was imposed as a badge of ignoble tenure. It grew, he claims, out of the principle expressed in the feudal maxim *Nulle terre sans seigneur*, and was exacted as a symbol of seigniorial dominance.<sup>1</sup> In confirmation of his view he cites various royal arrêts providing that, if no payment of the *cens* had been stipulated for by the seignior, or if the payment had been interrupted, the seignior must forthwith create or revive it in order to hold valid his other seigniorial rights; and in creating or reviving the payment, he was, according to the terms of these arrêts, to accept the rates current in the neighboring seignories.<sup>2</sup>

In France, during the seventeenth and eighteenth centuries, there was of course no uniform rate of *cens*. The rate varied in different jurisdictions, but it was never high enough to form a real burden. The rate per arpent was ordinarily fixed by the terms of the original grant *en censive*; when it had not been specified on that occasion, the rate payable was that which happened to be current in the neighborhood.<sup>3</sup> It must be understood, however, that in France the seignior was nowhere compelled to subgrant his lands; nor was he, when he chose to subgrant, bound to do so at the rate current in the vicinity. He was under obligation to accept this current rate only when a stipulation of the precise rate had not been made in the original title-deed. In Canada,

intervening between the twelfth and nineteenth centuries are also discussed in Avenel, *Histoire Economique de la Propriété, des Salaires, des Denrées, et de tous les Prix en général depuis l'an 1200 jusqu' en l'an 1800* (4 vols., Paris, 1894-1898).

<sup>1</sup> This seems to have been the view taken by the colonial authorities: "Une redevance si modique, qui est plutôt donnée *in recognitionem domini* et pour la marque de la directe seigneurie, que pour faire un revenu de quelque considération au seigneur" (*Edits et Ordonnances*, ii. 489).

<sup>2</sup> Henrion de Pansey, *Dissertations Féodales*, i. 269, 295.

<sup>3</sup> "As regards the amount of the *cens*, it is regulated by the titles if such there be; and where there is no title fixing the amount, custom, that is to say the amount most ordinary in the same place, governs it; it is in this last case a sure and decisive guide" (Lafontaine, *Observations*, 166, citing Bourjon, *Le Droit Commun de la France et la Coutume de Paris réduits en Principes*, i. 266). See also the references given by Lafontaine to many other authorities.

on the contrary, owing to the persistent royal intervention in the interest of colonial progress, the fixing of the rate of *cens* was not permanently left to the discretion of the seignior; for early in the eighteenth century he was placed under obligation to subgrant lands to settlers at the rate customary in the neighborhood, without having any legal right to demand a higher rate.<sup>1</sup>

In the charters granted to the Marquis de la Roche in 1598, to the Company of One Hundred Associates in 1627, and to the Company of the West Indies in 1664, no stipulation was made as to the exact terms upon which lands in the colony should be granted; each charter gave to the recipients power to grant upon such terms as might seem advisable to them.<sup>2</sup> Nor did any of the royal arrêts down to the beginning of the eighteenth century make any reference, direct or indirect, to the existence of any uniform rate of *cens*. Consequently the matter was regulated by the "common law" of the colony, which was the Custom of Paris: the colonial seigniors, like those at home, stipulated with their censitaires for such rate of *cens* as they were able to obtain, and, when no title-deed was drawn up, collected such rate as was customary in the neighborhood. In the early days of the colony down to the close of the seventeenth century, settlers came in so slowly that there were not many applications each year for *en censive* grants; hence the seigniors, in their desire to obtain settlers on their lands, were willing to subgrant at a very low rate of *cens*. Toward the end of seventeenth century, however, when the despatch of large numbers of colonists under state auspices caused the applications for land grants to become more numerous, the seigniors began to demand more rent; so that incoming settlers found themselves unable to get locations except on promising to pay a rate of *cens* very much higher than that paid by habitants already on the seigniorial lands. In a word, the seigniors, very much to the detriment of what the authorities conceived to be the best interest of the colony, — namely, facility of settlement upon the land, — began to abuse their right to stipulate at their own discretion for any amount of *cens*.

<sup>1</sup> See below, p. 89.

<sup>2</sup> Cf. above, ch. ii.

It was for this reason that the governor and intendant from time to time asked the king to curb the power of the seigniors in this particular. In 1707, Raudot addressed Pontchartrain very vigorously on the point, asking that an arrêt be issued limiting the *cens* to the uniform rate of "one sou for each arpent in front or twenty sous for the whole grant, at the option of the grantee . . . in order to prevent the seigniors from imposing vexatious conditions."<sup>1</sup> To this despatch the minister replied, expressing the opinion that "it would be very desirable to reduce the seigniorial dues throughout the whole of Canada to the same level," but asking for further information as to the rates imposed in various parts of the colony.<sup>2</sup> To this request the intendant responded in the course of the same year, enclosing a memorandum showing the amount of dues exacted in different seigniories, and commenting upon the marked increase in the rates during the last few decades over those stipulated for "in innocent times when the seigniors did not so much seek their own advantage."<sup>3</sup>

The home government, however, took no decisive action till 1711. In the first Arrêt of Marly, promulgated in that year, explicit provision was made to the effect that no seignior should henceforth exact from an applicant for lands a higher rate of dues than that which was customary in the vicinity. If the seignior should demand more, the arrêt gave the governor and intendant power to step in and make the desired grant at the customary rate, the dues thereafter to become payable to the crown and not to the avaricious seignior.<sup>4</sup> At first glance, it might be thought that this provision of the Arrêt of Marly would have effected what Raudot desired, namely, a uniform rate of *cens* throughout the colony; in fact, some writers of prominence and authority have expressed the opinion that a uni-

<sup>1</sup> Raudot to Pontchartrain, November 10, 1707, *Correspondance Générale*, xxvi. 7-34.

<sup>2</sup> Pontchartrain to Raudot, June 13, 1708, *Correspondence between the French Government and the Governors and Intendants of Canada relative to the Seigniorial Tenure* (1853), 9 ff.

<sup>3</sup> Raudot to Pontchartrain, October 18, 1708, *Correspondance Générale*, xxviii. 175-187. The memorandum referred to as accompanying this despatch has, unfortunately, not been preserved.

<sup>4</sup> *Edits et Ordonnances*, i. 325.

form rate was actually established by this royal decree. Cugnet speaks of the *cens* as having been definitely fixed at "one sol for each arpent in front by forty in depth."<sup>1</sup> Solicitor-General Williams, in his report on the nature and legal bases of seigniorial rights, made in 1790, declared that the rate was fixed at "one half-penny for every acre in front by forty in depth."<sup>2</sup> Judge Hay decided that it was fixed at "one penny for every superficial arpent";<sup>3</sup> and two of the judges of the Special Court established in 1854 to determine the rights of seigniors to compensation for the loss of their privileges, expressed the opinion that the arrêt of 1711 intended to make the rate of *cens* uniform throughout the colony.<sup>4</sup>

Color appears to be lent to this view, furthermore, by the wording of an intendant's ordinance issued in 1737. In that year Hocquart received from certain habitants of the seigniority of Gaudarville a petition setting forth "that the Dame Peuvret, seignioress of that place, had made some five grants *en censive* without having fixed the amount of dues for which the habitants should be held liable," and requesting that she be ordered to grant them titles in good form, "and this on the footing of the deeds of concession of other lands in the same seigniority." The intendant having, as he declares, "inspected the deeds of two other habitants of the same seigniority," ordered that "the petitioners be granted deeds of concession by Dame Peuvret . . . subject to the rate of *cens* ordered by His Majesty, namely, one sol of *cens* for each arpent in front."<sup>5</sup>

This ordinance would at first sight seem to indicate that, in the opinion of the intendant, the arrêt of 1711 had established a definite rate of *cens*; but a closer examination will disclose that it does not necessarily imply this. It should be noted that the intendant first inspected the deeds of other habitants in the

<sup>1</sup> Cugnet, *Traité de la Loi des Fiefs*, 44.

<sup>2</sup> This report may be found in full in *Titles and Documents*, i. 27 ff.

<sup>3</sup> Unpublished manuscript entitled "Government and Justice in Canada," now in the library of the Provincial Parliament at Quebec.

<sup>4</sup> These were Judges Smith and Mondelet. See *Proceedings of the Special Seigniorial Court* (1856), 61; also Judge Smith's *Observations*, 50, and Judge Mondelet's *Observations*, 5.

<sup>5</sup> *Edits et Ordonnances*, ii. 545.

seignior. Why should he have done this if a uniform rate had been definitely fixed for all grants? Was it not that Hocquart wished to find out what was the customary rate of *ccns* in the seignior of Gaudarville, and upon this basis to determine the rate which the dame seignioress, having failed to make stipulation in the original grants, might now exact? In other words, may not the words of the intendant's ordinance be fairly construed to read, "to the rate fixed by the king, [which in this case appears from deeds of other habitants of the seignior to be] one sol per arpent"?

Support is given to this view by the fact that the words "to the rate ordered by His Majesty" do not appear in any other of the numerous ordinances which commanded seigniors to grant title-deeds to habitants at the customary rate, and that no other official document refers to the rate as having been uniformly fixed at one sol per arpent. As a matter of fact, the purpose of the Arrêt of Marly was to keep the seigniors from stipulating for an unfair rate to the detriment of colonial development, an end which did not, however, necessitate the reduction of all dues to the same level. The royal intention, as seen from the wording of certain ratifications of grants made subsequently to 1711, appears to have been to allow the rate to be fixed by the seignior in accordance with the quality and situation of the grant,<sup>1</sup> but at the same time to prevent any abuse of this discretionary power. It seems scarcely possible that the king should have expected or desired seigniors to subgrant all lands, good, bad, and indifferent, at the same rate.

If it was the intention of the crown to establish a uniform rate of *ccns* for the whole colony by the arrêt of 1711, it may fairly be assumed that in those grants which were made by the crown directly, without the intervention of a seignior, a uniform rate would have been prescribed; but an examination of the title-deeds of the *en censive* grants thus made after 1711 shows nothing of the kind. Take, for example, the title-deeds of three *en censive* grants made by the crown during the years 1750-1753, all three of them grants of land near the present

<sup>1</sup> "En égard à la qualité et situation des héritages au temps des concessions" (*Brevets de Ratification*, 9).

site of Detroit.<sup>1</sup> If we might fairly expect to find uniformity anywhere, it would be in the case of grants made by the same authorities at about the same time and in the same locality; but as a matter of fact the rate of *cens* provided for in these three deeds varied considerably. It might furthermore be expected that, if the crown intended that the seigniors should exact a fixed rate of *cens*, it would have so stipulated in the title-deeds of seigniories granted after 1711; but out of the scores of such deeds executed by the governors and intendants from 1711 to 1759 there seem to be only four in which the rate of *cens* which might be exacted by the grantees is definitely fixed, and in each of these four the rate allowed is a different one.<sup>2</sup> It may, then, be fairly concluded that the amount of the *cens* was never regulated by any uniform rule for the whole colony.

When the colonial currency became depreciated, disputes arose between seigniors and habitants as to whether the *cens* should be paid in colonial money (*monnaies de cartes*) or in French (*monnaie de France*). The seigniors, naturally enough, wished to be paid in the latter, the habitants to pay in the former; but an end was promptly put to their disputes by the issue, in 1717, of a royal edict providing that, unless it had been otherwise stipulated in their title-deeds, the habitants should be allowed to pay their dues in French currency with a deduction of one-fourth.<sup>3</sup> This peculiar arrangement is explained by the fact that at this time colonial currency was circulating at about three-fourths of its face value.<sup>4</sup> The edict of 1717 is not to be understood as giving the habitant the option of paying the full rate in colonial currency or three-fourths of the rate in French currency. That, to be

<sup>1</sup> One to Pierre Réaume, April 1, 1750, and two to Douville Dequindre, June 12, 1752, and May 16, 1753. See *Titres des Seigneuries*, 249, 251-252.

<sup>2</sup> For copies of these four deeds, see *Ibid.* 59, 64, 84, 131. In all the others the obligation, when it appears at all, is that grants shall be made "at the customary rate."

<sup>3</sup> *Edits et Ordonnances*, i. 372, § ix; cf. also *Ibid.* 393, 525. On the enforcement of the stipulations contained in the deeds, see Dupuy's elaborate ordinance in the case of the habitants of Bellechasse, *Ibid.* 486-494.

<sup>4</sup> The best outline of the history of currency and exchange during this period is Adam Shortt's *Canadian Currency and Exchange under French Rule*, in *Journal of the Canadian Bankers' Association*, v. 271, 385, vi. 1, 147, 233 (1898-1899).



sure, is what the arrangement practically amounted to at the time the edict was issued; but, as the colonial currency further depreciated, the habitants, when they tendered this money, were required to pay considerably more than the sum specified in their deeds. This was particularly true of the closing years of the French epoch, when the colony was flooded with inconvertible paper money.<sup>1</sup>

The other part of this payment, the *rentes*, was payable sometimes in kind, sometimes in both money and kind, and sometimes entirely in money. In many cases the amount was fixed in terms of both produce and money, — as, for example, for each superficial arpent “twenty sols or one fat capon,” or “twenty sols or one demi-minot of grain.”<sup>2</sup> The amount of the *rentes*, like that of the *cens*, was fixed by the seignior at the time the grant was made, otherwise the rate customary in the neighborhood obtained; and, as in case of the *cens*, the amount stipulated varied in different seigniories, and even in the same seignior at different periods. The *rentes* was no nominal due, but a real burden on the habitant and a tangible source of profit to the seignior. When its amount was fixed in terms of poultry or grain alone, the burden varied with variations in the value of these. The value of the “fat capon,” for instance, rose and fell from year to year. In a deed granting lands within the seignior of Gaudarville in 1708, it is given as twenty sols,<sup>3</sup> while in the title of a grant within the seignior of Isles Bouchard in 1709 it is given as thirty sols.<sup>4</sup> The fluctuations in the price of wheat were also marked, extending, during the last thirty years of French rule, all the way from two to ten livres per minot, as may be seen from the appended table.<sup>5</sup>

<sup>1</sup> Stevenson, *The Card Money of Canada*, in Quebec Literary and Historical Society, *Transactions*, 1873-1875, pp. 84-112. See also Lareau, *Monnaie de Cartes au Canada*, in *Revue de Montréal*, ii. 433-438; and Dionne, *La Monnaie Canadienne sous le Régime Français*, in *Revue Canadienne*, xxix. 30-32, 72-83.

<sup>2</sup> A minot was the equivalent of 39 litres, or 1.072 English bushels.

<sup>3</sup> Cited in Lafontaine, *Observations*, 178.

<sup>4</sup> *Ibid.* 190.

<sup>5</sup> This table is compiled by the Rev. M. Comte, and printed in *Titles and Documents*, i. 177.

YEAR	LIVRES	SOLS	YEAR	LIVRES	SOLS
1729	3		1745	3	
1730	3		1746	2	10
1731	2	10	1747	3	
1732	3		1748	3	
1733	2		1749	2	10
1734	2		1750	3	
1735	2		1751	5	
1736	3	10	1752	4	
1737	4		1753	3	10
1738	3		1754	3	10
1739	2		1755	3	10
1740	2		1756	5	
1741	2	10	1757	10	
1742	3	10	1758		
1743	4	5	1759		
1744	4	2½	1760		

} Figures not obtainable.

In drawing up the deeds, many of the seigniors took care to stipulate strictly as to the quality of produce which might be tendered in payment of the *rentes*; thus, one will find the payments fixed at "one good fat capon of the brood of the month of May for each arpent," or at "one minot of good sound merchantable wheat." When the rate of *rentes* was fixed both in produce and in money, the seignior usually stipulated that the option of payment in one or the other form should rest with him and not with the grantee; if he omitted to do so, the habitants appear to have made it a point to tender their *rentes* in grain or fowl when prices were low and in money when prices were high. The authorities, however, seem to have felt that even in the absence of explicit stipulation the choice as to the form of payment rested with the seignior, a fact of which Raudot complained, in 1707, on the ground that it made the burden upon the habitants unduly heavy. "These dues," he wrote, "are paid to the seignior either in kind or in cash at the seignior's choice. The capons are valued at thirty sols, whereas they are not really worth more than ten. The seigniors often compel the habitants to give them money at great inconvenience, for the latter frequently have no money to give. Thirty sols may seem a mere

trifle, but it is very considerable in a colony where money is so scarce. It seems to me that when there is a choice of payment it should be in favor of the party owing, cash being a sort of penalty against him when he is unable to pay in kind."<sup>1</sup> When, however, the habitants appealed to the authorities at Quebec to be allowed to choose the form of payment, the latter invariably upheld the seignior's contention, and finally, in 1730, decreed by ordinance the enforcement of the general principle that the choice should always rest with the seignior unless the title-deed of the habitant expressly stated the contrary.<sup>2</sup>

Payment of the *cens et rentes* took place once a year, and usually late in the fall. "Every autumn," writes Casgrain, "as Michaelmas (November 11) approached, the seignior warned his habitants at the church door after mass that their *cens et rentes* was payable. As soon as the winter roads were good the manor-house became the centre of as lively activity as is the *presbytère* to-day when the habitants assemble to pay their tithes. Some arrived in carioles, some in sleighs, each bringing with him a capon or two, oats by the bushel, or other products of his lands."<sup>3</sup> The occasion was a gala day for the seignior. There appears to have been "a prodigious consumption of tobacco and a corresponding retail of neighborhood gossip, joined to the outcries of the captive fowls, bundled together with legs securely tied but with throats at full liberty."<sup>4</sup> When, as occasionally happened, the seignior did not reside on his seignior, he was obliged to keep an agent on the ground to receive the payments at the time and place appointed in the deeds of the habitants. An intendant's ordinance, issued in 1714, makes it clear that the habitants could not be called upon to make payments of the *cens et rentes* except on the exact day and at the particular place specified in their title-deeds.<sup>5</sup>

The second financial obligation under which lands *en censive* were held was that of the payment of a mutation fine, known as

<sup>1</sup> Raudot to Pontchartrain, November 10, 1707, *Correspondance Générale*, xxvi. 7 ff.

<sup>2</sup> *Edits et Ordonnances*, ii. 512.

<sup>3</sup> H. R. Casgrain, *Une Paroisse Canadienne au xvii<sup>e</sup> Siècle*, 173.

<sup>4</sup> Parkman, *The Old Régime in Canada*, ii. 47.

<sup>5</sup> *Edits et Ordonnances*, ii. 440.

the *lods et ventes*, which became due and payable upon the occasion of each mutation in ownership of the lands, whether by sale, gift, or inheritance other than in direct descent.<sup>1</sup> In France the amount of the *lods et ventes* varied somewhat in different provinces, amounting sometimes to from one-fourth to one-sixth of the mutation price.<sup>2</sup> In Canada, on the other hand, the amount uniformly exacted was that fixed by the Custom of Paris, namely, one-twelfth, of which the seignior usually remitted one-third, although he was under no legal obligation to do so.<sup>3</sup> A judgment of the Superior Council in 1677, for instance, ordered certain habitants of the seigniorship of Gaudarville to pay the full twelfth without rebate, despite the fact that, as the habitants alleged, "a remission of one-third was made by all the seigniors of the country."<sup>4</sup>

The *lods et ventes* was payable in cash at the seigniorial manor-house within forty days of the date of mutation. In default of payment, the seignior might obtain from the intendant a judgment giving him the right to seize the grain or other personal property of the delinquent habitant; or, if there were not sufficient property to distrain, he might obtain a judgment reuniting the land to the seigniorial domain.<sup>5</sup> At the time of making payment, the new owner of the *en censive* lands exhibited his title and rendered his fealty and homage to the seignior.

Ordinarily the *lods et ventes* could not be collected on the exchange of inheritances between direct heirs any more than on direct inheritances; but by an edict issued in 1673 the king made provision that this exemption should not apply to those *en censive* lands which had been granted directly by the crown;<sup>6</sup> and some time later the Seminary of St. Sulpice, which possessed the seigniorship of the island of Montreal, was given the same

<sup>1</sup> *Coutume de Paris*, article lxxiii.

<sup>2</sup> Taine, *L'Ancien Régime*, 536.

<sup>3</sup> Report of the Commissioners, 1843, *Titles and Documents*, i. 51. Solicitor-General Williams, in his report of 1790, states that "a fourth of the fine was usually remitted by the seignior" (*Ibid.* 30); but this is probably an error.

<sup>4</sup> *Edits et Ordonnances*, ii. 75-76.

<sup>5</sup> *Ibid.* 64, 341.

<sup>6</sup> This edict does not seem to have been printed. It is cited in the report of Solicitor-General Williams, mentioned above.

privilege as the crown, by way of compensation for relinquishing its judicial privileges within the seigniority.<sup>1</sup>

In the earlier period of the French régime the seigniorial profits accruing from the payment of the *lods et ventes* were not large, for lands *en censive* changed hands, except by inheritance in direct succession, very infrequently; but in the later years of French dominion the increase of colonial population made transfers of land, especially in the vicinity of the settlements, much more frequent, and the seigniorial profits became, in consequence, very considerable. Still, the payment does not seem seriously to have hampered the normal course of land transfers until after the conquest, when it became one of the generally accepted evil incidents of the seigniorial system, by operating, especially in the case of valuable lands, as an unwholesome check on the free alienation of real property.

As the seigniorial system developed, it became a common practice to attempt to deprive the seignior of his proper *lods et ventes* by concealing from him the actual transfer price and tendering him one-twelfth of an alleged mutation price, which was, in each case, fixed much below the actual. According to the Custom of Paris, the dominant seignior had the right, in case of mutation in the ownership of seigniories, to protect himself against being defrauded out of his proper quint by exercising his *droit de retrait féodal* (*jus retractum*),<sup>2</sup> which gave him the privilege of buying a sub-seigniority at the alleged price any time within forty days from his receipt of notice of sale. The custom, however, provided no means whereby the seignior might protect himself from being defrauded of his *lods et ventes*. By some of the other French customs, seigniors were allowed to exercise the *droit de retrait* over transfers of land within their seigniories; and it would seem that in Canada they began at an early date to stipulate, in the deeds which they granted to their habitants, for the recognition of this right. Raudot, in his despatch of November 10, 1707, complains that the colonial seigniors "have even introduced in nearly all their deeds a *retrait roturier* [or right to preëempt lands *en roture*], of which no mention is made in the Custom of Paris, — although that is

<sup>1</sup> *Edits et Ordonnances*, i. 342-346.

<sup>2</sup> *Coutume de Paris*, article xx.

the custom observed in this country,—by stipulating that the seignior, at each sale, may withdraw the lands which he grants at the same price as that at which they would be sold; and they have thus abused the right of feudal præemption (*retrait féodal*) spoken of in that custom, and which is sometimes inserted in grants *en fief* . . . but is not established as between seignior and habitant. This claim, My Lord," he concludes, "shackles very injuriously all sales of land." Raudot finished by recommending that a royal decree be issued forbidding the seigniors to stipulate for this right.<sup>1</sup>

In reply to this recommendation, Pontchartrain agreed that, since the Custom of Paris had been adopted as the general rule of seigniorial rights in the colony, the exercise of any *droit de retrait roturier* could not be permitted; and he said further that even the *droit de retrait féodal* should not be insisted upon by the crown unless special stipulation therefor had been made in the title-deeds of the seigniories.<sup>2</sup> This reply only complicated matters: for, according to Pontchartrain, the seigniors were not to exercise the right with reference to the lands of their habitants, even when they had stipulated for it in the title-deeds granted by them, because it was not recognized by the Custom of Paris; while, on the other hand, the representatives of the crown were not to exercise the right in reference to the seigniories unless they had expressly stipulated for it in the deeds, although this right was permitted by the custom.

The intendant did not, of course, wish the policy of suppression to be carried so far; he wanted to have the seigniors curbed in their rights without being freed from one of the checks which the authorities had upon them. He therefore communicated again with the minister on the subject, pointing out that the right of *retrait féodal* was a very serviceable one in several ways. Even if it did hinder the transfer of seigniorial lands, it was, he claimed, not an evil, since it was well that the "ownership of seigniories should be perpetuated in the

<sup>1</sup> Raudot to Pontchartrain, November 10, 1707, *Correspondance Générale*, xxvi. 7 ff.

<sup>2</sup> Pontchartrain to Raudot, June 13, 1708, *Correspondence between the French Government and the Governors and Intendants of Canada*, etc., 9 ff.

same families.”<sup>1</sup> With this correspondence the matter seems to have dropped, for no edict on the subject followed. In the absence of express prohibition, the seigniors made good their claim to exercise the right; and in 1714 the intendant Bégon decided in one of his judgments that they were justified in so doing.<sup>2</sup>

One writer on the subject of land tenure in Lower Canada has remarked that the existence of the *droit de retrait* was necessary in order to keep the seignior from being defrauded of his proper amount of *cens et rentes*.<sup>3</sup> There seems to be no ground for this view, for the *cens et rentes* was reckoned upon area and was a definite annual due; it was only the *lods et ventes* which was reckoned upon the mutation price of the land and hence was liable to variation. In France, where the amount of *lods et ventes* was high, there was naturally a strong temptation on the part of censitaires to report a fictitious mutation price to the seignior; but in Canada, where it amounted to only one-twelfth of the value, the temptation was much less dangerous. Still, the possibility of fraud existed, and the Canadian seignior clung to the *droit de retrait* as a protection. It may be worth while to note that something corresponding to this right may be found in almost every land-tenure system in which the peasant holder pays a mutation fine to him from whom the land is held, and where this fine is paid upon the value and not upon the extent of the lands.<sup>4</sup> It seems, therefore, to have been a natural supplement to the payment, and to have come into being as a preventive to fraud.

Toward the close of the French era, complaints were made that some of the seigniors were asserting their right to purchase not only the lands, but the grain, cattle, and even the personal

<sup>1</sup> Raudot to Pontchartrain, October 18, 1708, *Correspondance Générale*, xxviii. 175-187.

<sup>2</sup> *Edits et Ordonnances*, ii. 438.

<sup>3</sup> Robert Abraham, *Some Remarks on the French Tenure of Franc Aleu Roturier, and its relation to the Feudal and other forms of Tenure*, 25.

<sup>4</sup> M. Emile de Laveleye, in his *De la Propriété et de ses Formes Primitives*, 98, notes the existence, among the Arabs in Algeria, of what was substantially the *droit de retrait* under the name of *cheffa*, or *chefaa*. See also Leroy-Beaulieu, *De la Colonisation chez les Peuples Modernes* (5th ed.), ii. 24-25.

chattels, of their habitants, whenever the latter had these for sale. In some parts of France this right seems to have been exercisable by the seigniors;<sup>1</sup> but the Custom of Paris gave no warrant for it, and in Canada it was never sanctioned by the authorities. Many of the Canadian habitants, however, drawn as they were from the provinces of Normandy, Perche, and Poitou, knew very little about the provisions of the Custom of Paris, and by their absolute ignorance were often led to submit to seigniorial exactions which were without any legal basis. It not unfrequently happened, indeed, that the habitants in various outlying seignories would submit quietly to the enforcement of unfounded seigniorial claims for many years before making the discovery that they were merely being made to pay the price of their ignorance. From time to time, it is true, the authorities deplored this apparent disposition of the seigniors to take unfair advantage of their unsophisticated dependents; but they could deal only with cases which came to their notice.

The *cens et rentes* and the *lods et ventes* were the only direct payments made by the habitants to their seigniors; but there were several other obligations to which the former were subject, some of which came in the course of time to be regarded as little more than direct payments or seigniorial dues. Chief among these were the banalities, or banal rights, of the seigniors, a consideration of the nature and extent of which forms the topic of the next chapter.

<sup>1</sup> See Glasson, *Précis Élémentaire de l'Histoire du Droit Français*, 476.



## CHAPTER VI.

### THE BANALITIES.

AMONG the important incidents of the seigniorial system in France were the various rights and privileges known as the *droits de banal*, *banalités*, or banal rights. These were the rights of the seignior to control exclusively various public or semi-public services within his seignior, and to compel his dependents to make use of these at a stipulated toll or charge. In various parts of France the seigniorial banalities included the right to build and operate grist-mills, cork-factories, hemp-factories, saw-mills, bake-ovens, wine-presses, cider-mills, slaughter-houses, and so on; but the nature and extent of the rights varied very greatly in different provinces. Out of the long list of privileges only two were ever claimed in Canada, the grist-mill and bake-oven banalities; and of these only the former was ever enforced to any extent.

Whether, in their origin, these banal rights resulted from unlawful usurpations on the part of the seigniors, or whether they arose naturally from the mutual wants and interests of the parties concerned, has never been very satisfactorily determined. On this point students of the development of seigniorial institutions disagree.<sup>1</sup> According to Henrion de Pansey, however, there were in France but eleven *coutumes* which expressly recognized the banal rights as accruing to a seignior without special contract made with his dependents.<sup>2</sup> The other customs either are entirely silent upon the whole subject of banalities, or speak of them only as rights which a seignior might exercise as the result of stipulations made in the original grant of lands within his jurisdiction. Whatever their origin, the exaction of

<sup>1</sup> See M. Rioufol, *L'Origine et l'Histoire des Banalités* (1893).

<sup>2</sup> Henrion de Pansey, *Dissertations Féodales*, i. 175.

the banal rights was, at the end of the seventeenth century, more or less general throughout a considerable part of France; in fact, one writer has declared them to have been "the most terrible and the most general abuse" of the whole seigniorial system.<sup>1</sup>

The Custom of Paris recognized the right of the seignior to enforce mill and oven banalities only when he had stipulated to this effect in the title-deeds granted to his dependents, and then only under certain limitations. The articles in the custom that relate to this matter run as follows: (1) "No seignior can compel his dependents to go to the mill or oven which he claims to be banal . . . if he have not such right by title . . . and no title is to be reputed valid if it has not been executed more than twenty-five years;" (2) "A windmill (*moulin à vent*) cannot be a banal mill, nor [when a seignior possesses such only] can neighboring millers be hindered from soliciting grist within the seigniory."<sup>2</sup>

In New France, therefore, after the introduction of the Custom of Paris in 1664,<sup>3</sup> the possession by the seignior of the rights of mill and oven banality was not a necessary incident of the ownership of a seigniory, but accrued to him only when he had made the proper stipulations with his habitants. In the title-deeds which he granted his dependents, however, it was the almost invariable practice of the Canadian seignior to insert a clause providing that the grantee should have his grain ground only at the seigniorial mill; and if no mill had been erected at the time the grant was made, the clause was made to provide that this obligation should go into force whenever a seigniorial mill should be established.<sup>4</sup> As will be seen, however, the provisions of the Custom of Paris requiring that a title, to be

<sup>1</sup> Championnière, *De la Propriété des Eaux Courantes* (1846), 552. Tocqueville, in his *Old Régime and the Revolution*, 336, mentions that there were no banal rights in the provinces of Artois, Flanders, and Hainault.

<sup>2</sup> Articles lxxi-lxxii. These articles were not in the Custom of Paris as drawn up in 1510, but were inserted at the time of its revision in 1580.

<sup>3</sup> See above, p. 31.

<sup>4</sup> "Que le dit . . . seront tenus de porter leurs grains moudre au moulin banal, lorsqu'il y en aura d'établi, à peine de confiscation des grains et d'amende arbitraire" (*Titres des Seigneuries*, 242).

accounted valid, must have been executed more than twenty-five years, and providing that no windmill could be deemed a banal mill, were, like some other provisions of the custom, set aside by the king and by the colonial authorities as being unsuited to conditions existing in New France.<sup>1</sup>

The first mention, so far as official writings are concerned, of the existence of banal mills in the colony is to be found in an ordinance of Governor de Lauzon, issued in 1652. This ordinance has not been preserved; but it is referred to in a decree of the Sovereign Council, which, some fifteen years later (March 28, 1667), reiterated the purport of Lauzon's decree and ordered its enforcement. This later decree,<sup>2</sup> after declaring that sundry complaints had been made regarding abuses of the banal right by millers,—abuses which were apparently in the form of excessive exactions of toll and the rendering of inferior service,—went on to direct that the provisions made by Lauzon for the protection of the habitants should have their full force and effect. What these provisions were cannot, in the absence of any copy of the earlier decree, be definitely stated; but from some passages in the decree of 1667 it would appear that they had given the habitants the right to claim damages from those seigniors at whose mills their grain was improperly ground or whose millers took excessive toll. One clause of the decree, in fact, provided that seigniors who were mulcted in damages might deduct the amount of the damages from the wages of their millers.

Other regulations on the subject of the banal right followed quickly, one of them, issued in June, 1667, fixing definitely the amount of toll which might be taken at the seigniorial mills for the grinding of grain. It appears that a petition, signed by a number of seigniors, had been presented to the authorities, in which attention was called to the fact "that the mills of this colony cost double or treble those of France, as well for their construction, maintenance, and repair as for the wages and board of the millers." In consequence of this circumstance, the petitioners declared that they might

<sup>1</sup> Below, pp. 108-109.

<sup>2</sup> *Edits et Ordonnances*, ii. 36.

very justly ask to have the rate of toll proportioned to the increased expense, — to have it fixed, perhaps, at twice or thrice the rate of toll allowed by the Custom of Paris. They did not, however, ask that this be done; on the contrary, they declared themselves willing to maintain the mills in operation at the existing rate of toll, but requested that an ordinance be issued sanctioning this customary rate throughout the colony. In compliance with the prayer of this petition, the intendant ordered that the rate of toll at the seigniorial mills should be one-fourteenth of the grain ground.<sup>1</sup>

The same ordinance contained various other regulations. It empowered officials, for instance, "to go from time to time and from place to place to gauge the measures used in the banal mills and to find out, in general, what is going on"; it provided that, when seigniors had leased their banal mills to private parties, the habitants, "in the event of malversation by the millers," should have recourse against the lessee and not against the seignior; and finally, in order to guard alike against sharp practices on the part of the millers and unreasonable suspicions on the part of the habitants, it required that "all owners of grain taken to seigniorial mills to be ground shall be held to have their grain weighed in their own presence, in default whereof no subsequent complaints against the miller will be heard." This practice of administrative interference in the management of the banal mills was not peculiar to the colony; it had long been common in France, where it was justified on grounds of public policy.<sup>2</sup>

Despite the assertion of the seigniors to the effect that they would be satisfied with a toll of one-fourteenth, there seems to have been no dearth of attempts to exact a higher rate from the habitants. In the lengthy code of police regulations issued by

<sup>1</sup> *Edits et Ordonnances*, ii. 39.

<sup>2</sup> On this point Henrion de Pansey remarks: "But above the authority of the seigniors there is an authority of a higher order to which belongs all that can interest public policy, . . . and which has the right to restrict the liberty of each individual for the good of the greatest number. The mills intended to give the first preparation to the chief article of food must necessarily be subject to the inspection of the chief authority, which has, then, the right not alone to control them but to regulate their number" (*Dissertations Féodales*, i. 215, cited in Lafontaine, *Observations*, 299).

the Superior Council at Quebec in 1676, it was therefore deemed necessary to provide penalties against all millers who caused "more than one-fourteenth to be paid for the toll of grist," and to prohibit millers from competing with one another (*de chasser les uns sur les autres*), or from soliciting grist in any way from the habitants of seigniories other than their own.<sup>1</sup>

Owing to the comparative poverty of many of the seigniors, the number of banal mills in the colony increased very slowly during the last quarter of the seventeenth century.<sup>2</sup> The establishment of a grist-mill involved considerable expense; for, with the exception of the millstones, which were quarried in the colony, all the machinery and utensils had to be imported from France, and the cost of transportation was very high. Moreover, the amount of toll received was never large enough to make the operation of the mill profitable, unless the seignior in which it was situated happened to be a populous one; in most of the seigniories the toll collected did not even suffice to pay the wages of the miller hired by the seignior to do the grinding. Accordingly, in many seigniories no mills were built, the seigniors allowing their habitants to take their grain wherever they wished.

In course of time this condition of affairs was brought to the attention of the king,<sup>3</sup> with the request that some steps be taken to compel seigniors to provide mills for the use of their dependents even when such mills would be sources of loss rather than of profit; and in prompt response a royal decree was issued along the desired lines. After setting forth the fact that "most of the seigniors who are proprietors of fiefs in New France persistently neglect to erect the mills necessary for the subsistence of the inhabitants of the said country," the decree goes on to declare the necessity of providing some remedy for "an evil so prejudicial to colonial welfare," and to this end it ordains that "all seigniors who are proprietors of fiefs within

<sup>1</sup> "Règlements Généraux du Conseil Supérieur de Québec, pour la Police," May 11, 1676, *Edits et Ordonnances*, ii. 65-73, § xxxv.

<sup>2</sup> The census of 1698 gave the total number of mills in the colony as 43. This included saw-mills as well as grist-mills. See *Censuses of Canada, 1665-1871*, p. 41.

<sup>3</sup> Meulles to Minister, November 12, 1684, *Correspondance Générale*, vi. 145 ff.

the territory of New France shall be bound to erect their banal mills therein within the space of one year after the publication of this decree"; if they fail to do this, "His Majesty permits all individuals, of whatever condition and rank they may be, to erect such mills, granting them in that respect the full right of mill banality, and prohibiting any person from disturbing them in the right thereof."<sup>1</sup> The tenor of this decree is perfectly clear: if the seignior did not build a mill, any private individual might build one and become possessed of the banal right for all time.

On October 21, 1686, this decree was duly recorded in the registers of the Superior Council at Quebec, and ordered to be promulgated at the accustomed times and places.<sup>2</sup> Strange to say, however, this required publication was not made for some twenty years;<sup>3</sup> and, outside the immediate circle of colonial officials, no one seems to have known that such a decree ever emanated from the king. During the period 1686-1707 matters continued just as they were: the seigniors built their mills or not, as they found it profitable or unprofitable to do so. In the latter case they took good care to insert in the deeds of concessions made to dependents the usual obligation on the part of the latter to carry their grain to the seigniorial mill "whenever such shall be erected within the seignioriy."

The reason for the long delay in the publication of the decree of 1686 might easily have been surmised; but in the despatch transmitted to the French minister by Raudot in 1707 it appears very frankly stated. Raudot writes: "I should think, My Lord, that it would be necessary . . . that the exclusive right of grinding should be preserved to the seigniors on condition of their building mills in their seigniories within a year, failing in which their right should be forfeited, and the habitants would not be obliged, when one was built, to have their grain ground there; otherwise, My Lord, they will never be induced to build the mills, from the deprivation of which the habitants suffer greatly, being unable, for want of

<sup>1</sup> *Edits et Ordonnances*, i. 255-256.

<sup>2</sup> *Jugements et Délibérations du Conseil Souverain de la Nouvelle-France*, iii. 87.

<sup>3</sup> See the note appended to the copy of the arrêt in *Edits et Ordonnances*, i. 256.

means, to avail themselves of the favor which His Majesty granted them by permitting them to erect mills in cases where the seigniors omitted to do so. . . . This privilege," he continues, "was granted to them in the year 1686 by an arrêt which was registered by the Superior Council of this country; but, as it was not sent to the subordinate jurisdictions to be promulgated, the inhabitants have not hitherto profited by this favor, and it is only since my arrival here that the decree has been published, the fact of its non-promulgation having but just come to my knowledge in the course of a lawsuit, recently determined, in which the arrêt was produced, but could not be used to advantage by one of the parties because it had never been promulgated. . . . The fault," he adds, "can only be attributed to the Sieur d'Auteuil, whose duty it is, as attorney-general, to transmit such decrees to the subordinate courts; but it was his interest as a seignior, as it was that of some of the other councillors who are also seigniors, not to make known this decree."<sup>1</sup>

In the foregoing despatch we find what was, in all probability, the reason why many of the royal decrees, sent out to the colony and duly enregistered, were never put in force. The members of the Superior Council were, for the most part, owners of seigniories, and hence sought to negative, in every possible way, any attempt to curtail seigniorial powers. Raudot, however, was a fearless and conscientious official; and as soon as the real state of affairs came to his notice, he issued an ordinance commanding the publication of the arrêt at the subordinate jurisdictions without delay.<sup>2</sup> From this time on, the seignior was under legal obligation to erect his banal mill within the space of one year from the date of the creation of his seignior; if he failed to do so, the right might be claimed by any private individual who chose to provide milling facilities for the seignior.

Within a few months of the promulgation of the long-delayed decree, the intendant found himself called upon to enforce its provisions. During the month of June, 1707, he received a

<sup>1</sup> Raudot to Pontchartrain, November 10, 1707, *Correspondance Générale*, xxvi. 7-34.

<sup>2</sup> December 20, 1706, *Edits et Ordonnances*, ii. 145-150.

petition from "all the habitants of the seigniory of Mille Isles," praying that the Sieur Dupré, seignior of that fief, "be ordered to build a mill for them, or, if he will not, to consent that they build one for themselves, and that they be, in consequence, discharged from banal obligations, and be allowed to utilize this right to their own profit." The seignior of Mille Isles, being duly summoned before the intendant at Quebec, admitted his inability to proceed with the erection of a mill; whereupon the intendant issued an ordinance permitting "the said habitants to build a mill in such part of the said seigniory as they deem fit, and by their so doing to be discharged forever from the right of banality."<sup>1</sup>

In the same month a similar enforcement of the provisions of the royal decree was obtained by the habitants of the seigniory of Varennes,<sup>2</sup> and during the next few years there were several examples of like action. These enforcements seem to have had a wholesome effect upon many seigniors, for a good many mills were erected during the years 1707-1720.<sup>3</sup> After Raudot's tenure of the intendency, however, the enforcement of the decree seems to have been tacitly relaxed; for it is certain that many seigniors neither built their mills nor were deprived of their rights.<sup>4</sup> When the habitants could conveniently use the mill of an adjoining seigniory, they resorted to it with the consent of their seignior, who in such cases merely held the banal right in abeyance to be exercised later, when, with the increasing population of his seigniory, the erection of a mill would be justified by the expectations of profit.

It will be remembered that, by the Custom of Paris, no seignior was entitled to exercise the banal right unless he had, in the title-deeds granted to his habitants, expressly stipulated for the exercise of this right. In Canada the seignior, when

<sup>1</sup> *Edits et Ordonnances*, ii. 427. The name Dupré is not a misprint for Dugué, as Lafontaine (*Observations*, 317) supposes. Dupré, a merchant of Montreal, is mentioned by Catalogne as owner of the fief in 1712.

<sup>2</sup> *Edits et Ordonnances*, iii. 132.

<sup>3</sup> The census of 1720 gives the total number of grist-mills as 90. See *Censuses of Canada, 1665-1871*, p. 53.

<sup>4</sup> In some cases seigniors were, by intendant's ordinance, given an extension of time. Cf. *Edits et Ordonnances*, ii. 364.



he granted titles, seems to have taken good care that this stipulation was inserted. Whether, in the event of his failing so to do, the authorities would have supported him in the exercise of the right is not at all certain; the question does not seem to have arisen. In a great many cases, however, as has been pointed out, the habitants took lands on the mere word of the seignior, or on the strength of location tickets, which simply stated the fact of the subgrant without naming any of the conditions on which the land was to be held; and in more than one such case the question arose whether the seignior could, in view of the provision in the custom, compel such habitants to bring their grain to the seigniorial mill. On these occasions the intendant ordered the habitants to exchange their location tickets for regular titles, in which the seignior was allowed to insert the banal obligation in its regular form. The wording of several of the ordinances, moreover, seems to lend color to the idea that the colonial authorities regarded the banal right as accruing to the seigniors whenever they built their mills, whether this right had been stipulated for or not;<sup>1</sup> but the invariable insertion of the stipulation seems to have relieved the officials from the necessity of passing definitely on the point and of determining whether the provision of the custom in this matter should be expressly set aside in the colony.

The Custom of Paris also provided, it will be remembered, that a windmill could not be deemed banal;<sup>2</sup> but as early as 1675 this technical distinction between windmills and water-mills, so far as it served as a basis for banal claims, was abolished in New France. In July of that year a petition was presented to the Superior Council by one Charles Morin, miller of the seignior of Demaure, praying that he might be allowed to grind the grain grown by the habitants of the neighboring seignior of Dombourg, inasmuch as the mill of the latter was a windmill and consequently could not legally be included within the category of banal mills; and also praying that the seignior

<sup>1</sup> See, for example, *Edits et Ordonnances*, ii. 448-449; also Lafontaine, *Observations*, 292 ff.

<sup>2</sup> See above, p. 102.

of Dombourg be forbidden to interfere with those of his habitants who chose to take their grain to the Demaure mill. The council, having heard the defence of the Dombourg seignior and his miller, and having taken the opinion of the attorney-general on the matter, decided "to dismiss the demand of the said Morin and to order that all mills, whether they be water-mills or windmills (*soit à eau soit à vent*), which the seigniors have built or shall hereafter build in their seigniories, shall be deemed banal mills." Furthermore, the judgment forbade millers to offer inducements to habitants of other seigniories than their own, and provided that a habitant who took grain to any mill other than that of his own seignior should be liable to have both his grain and the vehicle carrying it confiscated by his own seignior.<sup>1</sup>

The effect of this judgment was completely to set aside one of the important limitations which the Custom of Paris had placed upon the exercise of the banal rights; indeed, the action of the council was but one of several instances in which the custom was disregarded and its provisions varied to suit the conditions existing in the colony. Many of the seigniories did not possess available water power; and if water-mills alone were to be deemed banal, some of the seigniors would very probably have pleaded the absence of power as an excuse for refusing to proceed with the erection of their mills. In France the peasantry were not likely to suffer through the non-erection of seigniorial grist-mills, for, in the absence of these, facilities would be provided by private entrepreneurs; but in the colony the sparseness of the population precluded any likelihood that private enterprise would undertake to provide flour-mills for the habitants. The burden was therefore imposed upon the seigniors, but with a relaxation of the strict provisions of the Custom of Paris in regard to the nature of the mills. Many of the mills, perhaps most of them, were windmills, for the plain reason that in many seigniories no water power was available; and windmills were discouragingly unreliable. Sometimes, for example, men would bring their grain to the wind-mill of the seignior, and find themselves forced to wait for

<sup>1</sup> *Edits et Ordonnances*, ii. 62-63.

days before the wind was strong enough to drive the clumsy wheels. To protect the habitants in this respect, the council provided that, if grain were not ground within forty-eight hours after its arrival at the mill, it might be taken to the water-mill of some neighboring seignior.<sup>1</sup>

It is evident, then, that by the early years of the eighteenth century the banal right in Canada had become differentiated in three particulars from that existent in France under the Custom of Paris: (1) the Canadian seignior exercised the right over every holder of *en censive* lands within his seignior, — no one was exempt; (2) any seignior who failed to build a mill within the space of twelve months from the time of receiving his seignior was liable, on the petition of any person or persons who chose to provide the service, to lose his banal right; (3) all mills, whether driven by water or by wind power, were capable of being made the basis for the exaction of the banality.

From time to time regulations designed to reform various abuses connected with the milling system were issued by the intendants, for complaints seem to have been by no means few. In 1715, for example, the bakers of the colony complained lustily that the flour made by the colonial mills was very poor, and that they were frequently cheated by the millers because the latter did not have proper weights and measures; whereupon the council forthwith issued a code of regulations for the governance of both bakers and millers. By this code, the owners of mills were to be "held, under pain of fine, to have scales and weights, duly stamped and marked, wherewith to weigh the wheat which shall be carried to them to be ground as well as to weigh the flour which shall be made therefrom"; and when these scales and weights were not provided by the seignior or the lessee of the mill, they were to be furnished at his charge by the judges of the royal courts. The judges were further instructed to examine the toll measure of each mill, "to see that it is made exact and plainly stamped, and to prohibit all millers from using any other measure than that which shall have been so inspected and marked." Millers were also enjoined to mark the weight of the grain on a tally and to hand

<sup>1</sup> *Edits et Ordonnances*, ii. 63.

an exact duplicate of this tally to the owner of the grain, in order that he might therewith verify the weight of his flour when it was returned to him; and, finally, they were prohibited under pain of corporal punishment (*même de punition corporelle*) from "wetting the grain brought to them in order to render the flour thereof heavier," — apparently a common trick of the millers.<sup>1</sup>

In addition to this general code of regulations, ordinances were issued from time to time with a view to improving the machinery, equipment, and management of particular mills; and from the considerable number of these ordinances it would seem that the system of seigniorial flour-making was far from being always satisfactory to the people. A few examples will suffice. In 1714 one of the habitants of the seigniority of Vincelotte, having been summoned before the court of the Prévôté at Quebec to answer to the charge of having sent his grain to "strange mills," urged in his defence that the banal mill of his own seigniority was a poor one, that it "made very bad flour," and that the miller "gave a too small return of flour for the grain."<sup>2</sup> The court declared that the defence was a good one, and forthwith ordered the seignior to have his mill improved, giving him to understand that his exclusive right should be enforced when this order was obeyed. From this decision the seignior of Vincelotte made appeal to the Superior Council, which suspended any definite action pending a reference of the matter to the king.<sup>3</sup> The latter promptly confirmed the action of the court of the Prévôté, and issued instructions that, whenever the seigniorial mill was shown to be defective in any respect whatever, the habitants should be allowed to have their grain ground elsewhere.<sup>4</sup>

<sup>1</sup> "Arrêt du Conseil Supérieur de Québec, portant Règlement pour les Boulangers et Meuniers," December 2, 1715, *Edits et Ordonnances*, ii. 169-170, especially §§ v-x.

<sup>2</sup> A copy of this judgment is not printed, but a manuscript copy of the original was laid before the Special Seigniorial Court in 1854. See Lafontaine, *Observations*, 323, note.

<sup>3</sup> The *Jugements et Délibérations du Conseil Souverain de la Nouvelle-France* does not contain the records of the council proceedings after December, 1716. The documents in this contestation have, therefore, not been printed; but reference is made to them, and extracts are given, in Lafontaine, *Observations*, 322.

<sup>4</sup> The royal despatch was dated April 16, 1719, and was enregistered by the council on October 2, 1720 (*Ibid.* 323).

In 1728 a number of residents in the seigniorie of Grondines set forth, in a petition to the council, that "it is most grievous and prejudicial to them to be compelled to take their grain to the windmill of the seigniorie, inasmuch as the stones of this mill merely crack up the wheat; for the mill has been absolutely ruined by the different persons who have been operating it, and the defects are increased by the fact that the *Sieur Hamelin*, who now works it [*Hamelin* was himself the seignior] is not a miller by trade." The seignior, being called upon for his defence, declared that his mill was in excellent order; that, while it was true that he was trying to work the mill himself, this was not his fault, as his miller had been called out to do military service; that he was about to secure the services of a competent miller, and hence there would be no reasonable ground of complaint in future. Finally, *Hamelin* asked the council to appoint experts to examine the mill in order to verify the truth of his statements. Taking him at his word, the council forthwith appointed a commission to inspect the Grondines mill, but with what result is not recorded.<sup>1</sup>

In the same year the habitants of the seigniorie of Sainte-Anne de la Pérade sent a delegation before the authorities at Quebec to make complaint that the mill of their seigniorie was "entirely out of order," that the miller "not only was a dishonest man but was known to the seignior to be such," and that the mill was not of sufficient capacity to serve the needs of the numerous habitants. For these reasons, they asked to be allowed to take their grist to the mill of a neighboring seigniorie. The intendant, *Dupuy*, finding on careful examination of the complaints that the habitants had greatly exaggerated the real condition of affairs, issued a judgment ordering them to patronize the mill of their own seigniorie.<sup>2</sup>

The inhabitants of the seigniorie of Neuville seemed to be more fortunate than their neighbors; for their seignior had provided two mills for their use, a windmill and a water-mill. This double facility, however, appears not to have rendered them very satisfactory service, for in 1733 they made vigorous

<sup>1</sup> *Edits et Ordonnances*, iii. 241.

<sup>2</sup> *Ibid.* ii. 497-498.

protests to the intendant that one of the mills was seldom in operation and that the other turned out defective flour. "Our seignior," they further complained, "when the windmill fails for wind or the water-mill for water, keeps us hauling grain back and forth from one mill to the other as often as three times."<sup>1</sup> They also enumerated a list of improvements which they desired to have made in the mill of their seignior, asking, among various other things, that the seignior be compelled to employ a professional miller who should live near the mill, "in order that the habitants may not have to travel leagues in search of him when they want their grain ground." In their further request that the seignior be ordered to provide his mill with "stamped weights of iron instead of common stones, the weight whereof is not shown," they unconsciously furnish an interesting commentary on the rude equipment of some of the banal mills.<sup>2</sup>

Complaints were sometimes made that the seigniorial mills were situated in inaccessible places, or at least in places which the habitants could not reach easily. Many seigniors appear to have built their mills along the banks of some rivulet or creek, without taking much thought as to the accessibility of the location; and consequently their habitants were often left to make their way through the forest with loads of grain as best they might. In this difficulty the intendant, as usual, came to the relief of the people. In one case he ordered a seignior to rebuild his mill at a point where it could be reached by water, or else to build a road to the mill at his own expense;<sup>3</sup> and in another case, in which the seignior refused to open up a road, the court of the Prévôté at Quebec rendered a judgment absolving all the habitants from their banal obligations to the recalcitrant seignior until a "passable road" should have been provided for their use.<sup>4</sup> Since a seigniori frequently comprised from fifty

<sup>1</sup> This was not the first complaint on this score; for three years previously (1730) the authorities had found it necessary to issue a decree giving habitants of the seigniori of Saurel the right, when their grain remained unground at a windmill for forty-eight hours, to take it away and have it made into flour wherever they chose. See *Edits et Ordonnances*, ii. 340; also above, p. III.

<sup>2</sup> *Ibid.* iii. 286-289.

<sup>3</sup> *Ibid.* 210.

<sup>4</sup> Perrault, *Extraits ou Précédents tirés des Registres de la Prévôté de Québec*, 71.

to one hundred square miles, the difficulty of transporting grain to the banal mill was at best often a very serious one. Ordinarily transportation took place in winter, when heavy loads could be taken on sleighs along the river; for throughout the greater part of the French era the frozen St. Lawrence was the great inland highway for winter traffic.

Apart from the necessity of building his mill in a place that would be easily accessible to his habitants, the seignior was completely free as to the choice of a mill site. If he saw fit to erect it upon land which had previously been granted to a habitant, he might, on application to the council, obtain a decree reuniting the site to his own domain, the habitant having the privilege of selecting a new concession of similar extent from any portion of the ungranted lands of the seigniory. Several decrees of this sort were obtained.<sup>1</sup>

Through constant pressure upon the seigniors, the intendant Gilles Hocquart managed, during his tenure of office, to improve very noticeably the colonial milling industry. Hocquart hoped that Canada might become a large exporter of flour to the French West Indies, if not to France itself; but his hopes were not realized, for, even with the improvements which he managed to secure, the mills remained extremely crude. Very few seigniors made any profit from them, and with no gain in sight were not easily induced to sink money in machinery; besides, few of them could have afforded to do so even had they been disposed. Moreover, the spur of competition, which serves in modern times to force improved methods in all branches of industry, was entirely lacking in the milling system of the old régime, when the seignior had a monopoly of the grinding of his habitants' grain. Whatever his facilities might be, he received the same amount of toll; for the improving of his mill would not necessarily bring him a single additional minot of grist per year, or a whit more than one-fourteenth as his share. Under these circumstances, it is easy to see why Hocquart found his task of improving the system so difficult, and why the quality of the flour caused the bakers continually to complain.

In one of his despatches, Hocquart advised the minister

<sup>1</sup> See, for example, *Edits et Ordonnances*, ii. 466.

that the quality of the flour might be materially improved if the grain were properly cleaned before it was ground. He reminded him that there were, of course, no fanning-mills in the colony, and hinted that, since it seemed out of the question to compel the seigniors to provide them, His Majesty might lend a hand in the matter.<sup>1</sup> As usual, the king, professing his constant interest in the development of colonial industry, promptly gratified the wish of the intendant by sending out six fanning-mills (*cribles cylindriques et de fil de fer à la façon d'Hollande*) at the royal expense. These arrived in 1732 and were distributed gratis among the more important mills, — those of the seigniories of Sault-à-la-Puce, Petit-Pré, Beauport, Pointe de Lévy, St. Nicholas, and St. Famille. Accompanying the king's gift was an ordinance instructing the millers of these mills "to have all the wheat, of whatever quality, passed and fanned before its conversion into flour," and, furthermore, to take their toll merely upon the cleaned and fanned grain, not upon the whole grist. In compensation for this loss, however, they were to be allowed to exact six deniers per minot on the whole grist, in addition to the usual toll of one-fourteenth. All "tailings" were to be given back to the habitant.<sup>2</sup>

During the next year five more fanning-mills were shipped out by the king, and distributed by the colonial officials among the mills of the Montreal district.<sup>3</sup> The king promised to send out a small number each year until all the mills should have been provided with fans; but apparently he did not carry out his good intentions.

The seigniorial mills were usually constructed of rough-hewn timber, but not a few were built substantially of stone.<sup>4</sup> The stone mills were usually of circular shape, and were frequently loopholed in order that they might be made to serve as places of refuge and defence in the event of sudden Indian attacks. The mill of the seigniori of St. Sulpice at Montreal, for ex-

<sup>1</sup> Hocquart to Minister, October 4, 1731, *Correspondance Générale*, liv. 43.

<sup>2</sup> *Edits et Ordonnances*, ii. 352-353.

<sup>3</sup> They were given, one each to the mills of Lachine, Isle Jesus, and Isle Ste. Hélène, and two to the mill of Terrebonne.

<sup>4</sup> Several of these old stone windmills are still standing.



ample, was a veritable fort, and was rightly counted as one of the chief strongholds of the district. The mills built in seigniories belonging to the various religious orders were, in general, much more substantial and much better equipped than those in the lay seigniories, a fact which is accounted for by the comparative opulence of the orders.

In all cases the seignior took from the lands of the seigniory, both granted and ungranted, such material as he found necessary for construction, and in some cases compelled the habitants to render their corvées in preparing the materials and erecting the mills. He was quite at liberty to have the ordinary annual days of corvée applied to this work when he so desired, but apparently he could not exact any special corvée for the purpose.<sup>1</sup>

In the negotiations which led to the abolition of the seigniorial system in 1854, there were three questions regarding the extent of the banal rights which had to be determined before the amount of compensation due the seigniors for the loss of their seigniorial privileges could be properly ascertained. The first of these was the question whether all grain grown by the habitant was subject to the banal obligation, or only such portion of it as was required for the consumption of the habitant and his family. The seigniors took the ground that their rights extended over all the grain of the habitant, whether it was intended for home consumption or for sale; but the authorities at Quebec did not support them in this view. The Parliament of Paris had decided that, according to Article LXXI of the custom, the seigniors could exercise their banal right only over the grain intended for consumption by the families of their censitaires, who were at complete liberty to have the grain intended for sale ground wherever they chose; and this rule was fully recognized in Canada, as may be seen from the wording of an intendant's ordinance issued by Bégon in 1716, whereby the habitants of the seigniory of Champlain are ordered to take to the mill of the said seigniory the "grain intended for the sustenance of their

<sup>1</sup> In one case, however, the intendant ordered the habitants of a seigniory to give special corvée to rebuild a bridge leading to a seigniorial mill. See *Edits et Ordonnances*, iii. 459.

families on pain of paying a fine of ten livres to the church of the parish of the said seigniori."<sup>1</sup> During the greater part of the French era the question was of no considerable importance, for the amount of grain raised by the habitants was not much more than was necessary for their own use; in many years, indeed, it was found necessary to import grain from France. After the colony passed into British hands, however, the production of grain rapidly increased, and the question whether a seignior lawfully enjoyed a monopoly of milling all the grain raised within his seigniori became one of very considerable moment to both parties concerned.

The second question was whether the banal right extended to all kinds of grain, or to wheat alone. As to the status of this question in France under the Custom of Paris there is some difference of opinion. Henrion de Pansey affirms that the banal right extended not only to wheat but to barley, buckwheat, and all other grains;<sup>2</sup> but other authorities of equal weight declare that the right could be legally enforced in regard to wheat alone.<sup>3</sup> Judge Caron, in his opinion delivered before the Special Seigniorial Court of 1854, declared that, while there might be a difference of opinion regarding the legal extent of the right in France, the fact was that in that country wheat alone was generally ground. "If any other kinds of grain were ground," says he, "it was such a rare occurrence that it was not thought of sufficient importance to be mentioned." In Canada, however, the extent of the right was undoubtedly wider.<sup>4</sup> In the title-deeds granted by the seigniors the phrase "*porter moudre leurs grains*" was almost invariably used; likewise in the various ordinances the term "*grains*" usually appears; in some few instances the expression is "*porter moudre leur bled*," but these cases are distinctly exceptional.<sup>5</sup> The fact that, so far as can be ascertained,

<sup>1</sup> "Grains qu'ils consomment pour la subsistance de leurs familles" (*Edits et Ordonnances*, ii. 452). For other ordinances in which precisely the same words are used, see *Ibid.* i. 225, ii. 497, iii. 119.

<sup>2</sup> *Dissertations Fœodales*, i. 89.

<sup>3</sup> See the authorities cited by Judge Caron in his *Observations*, 38.

<sup>4</sup> *Ibid.* 39.

<sup>5</sup> See ordinances of July 10, 1728, and July 11, 1742, *Edits et Ordonnances*, ii. 497, 565; also *Titres des Seigneuries*, 242-243.

none of the habitants ever appealed to the authorities against the seigniors' claims to the extension of the banal right to all forms of grain would seem to indicate that the extension was not opposed. In fact, if we may judge broadly from the single case in which the matter came before the intendant, it would appear that the habitants actually desired to have all their grain ground at the seigniorial mill. In 1738, for example, the habitants of the seignior of Beaumont petitioned the intendant to have it declared that the miller of the seignior should be bound to grind "not only the wheat of the said habitants but also their other grain"; whereupon the intendant ordered that "their other grain be ground in the said mill as well as their wheat."<sup>1</sup> Since there was little or no profit to be had by the seignior from the grinding of wheat, the work of grinding the less valuable grains must have been attended, in many cases, with actual loss to the mill owners.

The third question was whether a habitant who purchased grain outside the seignior and brought it within was or was not bound to have it ground at the seigniorial mill.<sup>2</sup> There seems to be no colonial ordinance or judgment bearing directly upon this point; but the understanding appears to have been that, when grain was both purchased and ground outside the limits of a seignior, the habitant might bring home the flour without having to pay any toll to his own seignior, but when the grain was purchased outside and brought home unground, it was to be on the same footing as that grown within the seignior. The disposition was to look upon the right of banality as extending in no case beyond the limits of the seignior; the grain was held subject to the obligation if it were brought within the seigniorial limits and made use of there, even if it had been grown outside.<sup>3</sup>

The right of banality carried with it the right, not only to prevent the erection of other than seigniorial mills within the seign-

<sup>1</sup> *Edits et Ordonnances*, iii. 324.

<sup>2</sup> Henrion de Pansey (*Dissertations Féodales*, i. 191) asserts that in France a censitaire who purchased grain elsewhere than within the limits of the seignior might have it ground elsewhere, and might carry the flour home without violating the seignior's right of banality.

<sup>3</sup> See Caron, *Observations*, 39-40.

iory, but even to compel the demolition of such after they had been erected, a power which was sometimes exercised under circumstances which entailed much hardship. For example, in 1698 one of the habitants of the seigniory of Lauzon was permitted by the seignior to erect a mill, as there was at that time no banal mill in operation within the seigniory. Some few years later the seigniory was sold; whereupon the new seignior forthwith ordered the mill to be closed, and upon the refusal of the owner to close it he procured an ordinance compelling compliance.<sup>1</sup> Another case was that of the Brethren of the Hospital (*Frères Charron*) at Montreal, who had erected, on the plot of ground granted to them, a small windmill, which they used solely to grind their own grain. The Seminary of St. Sulpice at Montreal, within whose seigniory the land lay, not only demanded the demolition of this mill, but obtained from the Superior Council an ordinance supporting its demand.<sup>2</sup> Several other instances of the exercise of this right of demolition are on record.<sup>3</sup>

It will be seen from the foregoing consideration that the obligation of mill banality did not bear heavily upon the habitants so long as the country was sparsely settled. On the contrary, the presence of a mill within the limits of the seigniory was a great convenience to the habitant; and the amount of toll exacted was far from exorbitant, especially in view of the limited custom which the mill might expect. Throughout the greater part of the French era the burden, such as it was, fell rather upon the seignior, who was obliged by the authorities to build the mill and work it, — for the most part, at a loss, — on pain of being deprived of what was sure to become in time a very valuable right. Moreover, the authorities showed themselves ready at all times to listen to complaints on the part of the habitants as to the inefficiency of the seigniorial milling facilities, and were equally ready, when these complaints appeared well founded, to order the necessary improvements at the seignior's expense. As the population increased, however,

<sup>1</sup> *Edits et Ordonnances*, ii. 145.

<sup>2</sup> This ordinance is not printed. Its authenticity is vouched for, however, by Chief-Justice Sir L. H. Lafontaine, in his *Observations*, 334.

<sup>3</sup> Cf. Caron, *Observations*, 40.

toward the close of the French period and especially with the British acquisition of the colony, the burden shifted from the seignior to the habitants. The seigniorial mills now had plenty to do, and frequently found it impossible to handle all the grain brought in. In such cases the habitants were compelled either to wait their turn, often at great inconvenience, or to purchase the seignior's permission to take their grain elsewhere. Indeed, as will be seen later, the banal right gradually developed, with the growth of the colony in population, into a right on the part of the seignior to exact a money payment from the habitants for permission to take their grain where they chose.

The other form of banal right which was claimed by the Canadian seignior, — the *droit de four banal*, or right of oven banality, — though exacted in very few instances, deserves some notice if only to show how zealously the authorities sought to curb any unreasonable pretensions on the part of the seigniors and to modify the seigniorial system into accord with colonial conditions. By the terms of the Custom of Paris the right of oven banality was put upon the same footing as that of mill banality; that is to say, it was not an incident of the possession of a seignior, but rested upon the contract made between the seignior and his censitaire when an original grant of lands was made. As the seignior could oblige his censitaire to have his grain ground at the seigniorial mill, so he had the right to stipulate that the censitaire should make exclusive use of a banal oven or ovens erected within the limits of the seignior, paying him a toll for such privilege.<sup>1</sup> At the most, only three or four seigniorial ovens were ever erected in Canada; but a clause requiring the habitants to bring their dough to a banal oven whenever such should be erected appears in a number of title-deeds.<sup>2</sup>

<sup>1</sup> The amount of toll exacted in France seems to have been usually one twenty-fourth of the bread. Cf. Mathieu, *L'Ancien Régime dans la Province de Lorraine* (1879), 285.

<sup>2</sup> A banal oven was erected in the seignior of Vincelotte by the seignior, M. Amiot, and there is some evidence that a few other seigniors followed M. Amiot's example; but it is unquestionably misleading to speak of the obligation of oven banality as having been imposed in any such general fashion as was that of mill banality. Cf. Thwaites, *France in America*, 132

The increasing disposition to insert this obligation seems to have attracted the notice of the intendant in 1707; for in his despatch to the French minister in that year the ever-watchful Raudot speaks of this growing practice as one of the abuses of the seigniorial system. "The seigniors," he writes, "have also introduced into their grants the exclusive right of baking, or maintaining an oven, of which the inhabitants can never avail themselves, because, the habitations being at great distances from the seignior's house, where the oven must be established (which indeed could not be in a more convenient place for them wherever placed, since the habitations are very distant from one another), they could not possibly at all seasons carry their dough to it; in winter it would be frozen before it got there. The seigniors, moreover," continues the intendant, "feel themselves so ill-grounded in claiming this right on account of its impossibility, that they do not exact it now, but they will at some future time make use of this stipulation to compel the inhabitants either to submit to it or to redeem themselves from it by means of a large fine; in this way the seigniors will have acquired a right from which the inhabitants derive no benefit whatever. This, My Lord, is what I call getting a title to vex them afterwards." <sup>1</sup>

In reply to this despatch, the French minister advised the intendant: "With respect to the privilege of baking in seigniorial ovens, all that is to be done is to follow the arrêt of 1686, by which that matter has been definitely settled." <sup>2</sup> The minister, however, was here clearly in error, for the arrêt of 1686 had reference wholly to banal mills, and contained not a single word in either direct or inferential relation to the question of seigniorial ovens; it simply ordered that seigniors who claimed the right of mill banality should forthwith erect their mills, or stand prepared to lose their privilege. <sup>3</sup> Did the minister mean, then, that the same principle should be applied to the right of oven banality,

<sup>1</sup> Raudot to Pontchartrain, November 10, 1707, *Correspondance Générale*, xxvi. 7-34.

<sup>2</sup> Pontchartrain to Raudot, June 13, 1708, *Correspondence between the French Government and the Governors and Intendants of Canada*, etc., 9-10.

<sup>3</sup> See above, p. 105.

namely, that the seigniors who claimed this right should proceed at once with the erection of the ovens, or be deprived of the right for all time? The intendant appears to have taken this to be the purport of the minister's instructions; but as this interpretation would entail the pursuance of a policy which he did not regard as conducive to the interest of the colony, he sent a second despatch to France, in the autumn of 1708, in which he again adverted to the matter in order to show the minister the wide difference in the practical operation of the two forms of banal rights.

In this communication Raudot stated very clearly his reasons for wishing a continuance of the obligation of mill banality and a suppression of the obligation of oven banality. "The only reason," he writes, "for which I have proposed that the privilege of baking (*fours banaux*) be suppressed is that those who are subjected to it find that it is impossible to use the banal ovens on account of the distance at which they live from their seignior's houses, the seigniories in this country not being settled as they are in France, where almost all the inhabitants are collected in villages near each other, and all within reach of the banal ovens. Here the inhabitants of the seigniories, which are at least two leagues in extent along the river St. Lawrence, are all settled along the said river, so that, the banal oven being in the seignior's house (which is always in the centre of the seignior), some of the inhabitants would be compelled to carry their dough a distance of a league, or even two or three leagues, from their homes. Besides the inconvenience to which this would subject them at all seasons, there is even an impossibility in winter, as their dough would be frozen before they could reach the place where the oven was situated. It is a right, My Lord, which must be suppressed, because the inhabitants cannot derive any benefit from it, and because the seigniors have established, or wish to establish it only to oblige the inhabitants to redeem themselves from it by consenting to pay in future some heavy charge in consideration of the servitude from which they wish to be liberated. It is not so, My Lord, with the banal mill, this being always to the advantage of the inhabitants, who have not the means of erecting mills themselves; whereas the banal oven is to their disadvantage, since there is not one of them

who has not an oven in his own house and as much wood as he wants to heat it." <sup>1</sup>

This correspondence is of interest and importance as showing two significant features which seem to have characterized the working of the whole seigniorial system in Canada. In the first place, it emphasizes the occasional disposition on the part of the seigniors to stretch their legal claims to the point of interference with the normal comfort of their dependents, and to stipulate for rights which, from the very nature of things in Canada, could not be enforced in their stipulated form. On the other hand, it as clearly shows the zeal with which the colonial authorities sought to protect the habitants against obligations which, though strictly within the letter of the law, were regarded as unreasonable or detrimental to the interests of colonial development as a whole. It is evident that the authorities viewed the colonial feudal system as resting, partly at least, upon a utilitarian basis. To Raudot the question was not whether the grant of a seigniorship gave the seignior a right to impose the obligation of oven banality upon his dependents, for he knew that by the Custom of Paris the seignior clearly possessed such right; the question was rather whether a seigniorial privilege which operated to the inconvenience of the habitants without giving them any corresponding benefit should not be peremptorily suppressed. The rights of the seigniors, it may be added, were not, under the French rule, regarded as vested rights which might not be taken away without compensation; it was only after the British conquest that they came to be so regarded.

The forebodings of the intendant in regard to the exercise of the right of oven banality proved, however, to be ill founded; for, although no authority seems to have been obtained from the home authorities for the suppression of the right, the seigniors, with very few exceptions, do not appear either to have insisted upon the rendering of the obligation or to have exacted a money payment in its stead.

In France, as has been said, there were many other forms of banality, among them the right of maintaining banal wine-

<sup>1</sup> Raudot to Pontchartrain, October 18, 1708, *Correspondance Générale*, xxvii. 175-187.



presses, banal slaughter-houses, and so on; but none of these privileges seem to have been claimed in Canada. In a few instances the seigniors erected cider-mills; but in each case this was done as a private commercial enterprise on the part of the seignior, and cannot be regarded as the exercise of any right of banality.

It is the practice of most writers on the history of Canada to look upon the banalities as among the most odious incidents of the seigniorial system;<sup>1</sup> and this attitude is, no doubt, accounted for by the fact that, with the growth of the colonial population during the latter days of the system, the enforcement of the seigniorial right of mill banality was attended with large profits to the seigniors and with considerable inconvenience to the inhabitants. The fact is, however, as has been pointed out, that both the French government and its colonial representatives sought to develop the system of banal mills in the interest of the poorer habitants, and not merely to the profit of the seigniorial proprietors. This is shown by the issue of royal edicts like that of 1686,<sup>2</sup> compelling the seigniors to erect their banal mills as "necessary for the subsistence of the inhabitants," as well as by the argument of Raudot that, whereas the mills were a great convenience to the people, the ovens were not, and that the rights of mill and oven banality ought, therefore, to be regarded from two entirely different points of view. It will be noticed that throughout the French period the complaints of the habitants to the authorities were not that the system of banal mills was burdensome as a system, but that individual seigniors were not living up to the obligations imposed upon them in the way of providing proper facilities.

If one may judge from the amount of pressure necessary to compel the erection of the seigniorial mills, it seems probable that, had the milling industry been left to private enterprise, large tracts of sparsely settled territory would have remained

<sup>1</sup> Cf. Parkman, *The Old Régime in Canada*, ii. 48. On the other hand, the milling right seems to have escaped the criticism of some in the belief that it was not enforced. Professor Goldwin Smith, for example (in his *Canada and the Canadian Question*, 72), thinks that it "must have been almost a dead letter."

<sup>2</sup> See above, p. 105.

without any milling facilities at all. Since, at the best, colonial agriculture developed under many very serious difficulties and discouragements, it behooved the authorities to see that any desirable conveniences which could be placed at the disposal of the farmers without expense to the public treasury should be given them, even though such favor imposed a burden upon the seigniors; for, although the latter were by no means opulent as a class, they were better able than their habitants to bear the load.

The action of the authorities of New France in encouraging the seigniorial milling industry is only one feature of a general economic policy which aimed at making agriculture more attractive and more profitable to the colonist; and agriculture was strongly in need of official encouragement, for the attractions and profits of the fur trade exerted an almost irresistible influence in drawing the habitant off his land into the forest. Whatever judgment may be passed upon the methods which the authorities employed in fostering agriculture and in endeavoring to hold the passion for forest trade within its proper bounds, there can be little doubt that the general policy was dictated by the soundest interests of permanent colonial progress. Talon, Raudot, and Hocquart fully recognized that they could lay solid foundations for later colonial growth, not by permitting the population to devote its whole energies to the exploitation of a transitory resource, such as the peltry traffic was sure to be, but by encouraging it to clear and cultivate the land.

## CHAPTER VII.

### THE CORVÉE AND OTHER EXACTIONS.

THE seigniorial rights enumerated in the foregoing chapters by no means exhaust the list of privileges possessed by the seigniors in relation to their dependents. There were various other rights, no one of which constituted in itself an important incident of Canadian feudalism, but which, taken together, contributed substantially to increase the prestige, power, and income of the seigniors. Among these were the right to exact a certain number of days of corvée, or forced labor, in each year; the right to make certain reservations in the deeds of lands granted to habitants, and to insert divers prohibitions in them; the *droit de pêche*, or right to a share of the fish caught by the habitants in seigniorial waters; the right of ferry over rivers within the seigniorial jurisdiction; and various other privileges.

First in point of importance was, of course, the corvée. By the Custom of Paris the seignior's right to exact days of corvée from his dependents stood upon the same basis as his right to enforce the banalities; that is to say, he could legally enforce the right only when he had stipulated for it in the title-deeds of granted lands.<sup>1</sup> It would seem that, during the earlier years of the French rule in Canada, it was not customary to stipulate for or to enforce the exaction. There may have been, and probably were, exceptions to the general rule; but the fact that in Raudot's despatches of 1707-1708 the corvée is not mentioned at all would seem to indicate that forced labor was not being exacted by the seigniors in any general fashion, otherwise the watchful intendant would in all probability have included it with the oven banality and the *droit de retrait* in his list of "vexatious exactions."<sup>2</sup>

<sup>1</sup> "Nul seigneur ne peut contraindre ses sujets . . . faire corvées, s'il n'en a titre valable, ou aveu et dénombryment ancien" (*Coutume de Paris*, article lxxi).

<sup>2</sup> See above, p. 98.

As time went on, however, the seigniors seem to have begun the practice of stipulating for a certain number of days of corvée per year, and apparently of exacting it even in cases in which they had made no such stipulation. In such instances the habitants were sometimes told that the labor was to compensate the seignior for the use of the seigniorial commons by their cattle, or for their privilege of taking wood from the seigniorial forests, or for some other benefit of a like nature.<sup>1</sup> In 1716 the intendant Bégon, in a despatch to the French minister, complained that many of the seigniors induced their habitants to render corvée in clearing the timber off parts of the seigniorial domains, on the understanding that, when the land had been cleared, it would be placed at their disposal for pasturage; but that after the work was done the habitants often found that they were compelled, as the price of using this newly cleared land, to give their seignior a number of days of free labor each year on his other lands. Bégon, therefore, asked for an ordinance forbidding the exaction of corvée, — and particularly upon such pretexts as those mentioned, — except in such cases as the Custom of Paris permitted.<sup>2</sup>

In the spring of the following year (1717) the matter was referred by the minister to the Council of the Regent, which passed a minute declaring that, in the opinion of the council, a decree in accordance with the wishes of the intendant should be issued. No special decree seems to have followed; but in the general arrêt, which was drafted in May, 1717, for the reform of the whole seigniorial system in the colony, a clause was inserted explicitly forbidding the exaction of corvée “under any pretence whatever.” Had this arrêt received the royal assent and been promulgated in Canada, the end sought by Bégon would have been attained; but, as has already been shown,<sup>3</sup> it never received the assent of the authorities, and affairs remained just

<sup>1</sup> In France, the right of the seignior to exact corvée or other compensation from peasants for the privilege of pasturing their cattle upon the waste lands of the seignior was known as the *droit de blairie*. The right was recognized in several *coutumes*. Cf. Tocqueville, *The Old Régime and the Revolution*, 337.

<sup>2</sup> Bégon to Minister, February, 1716, *Correspondance Générale*, xxvi. 90. This despatch does not bear the day of the month.

<sup>3</sup> See above, p. 42. This unsigned arrêt is printed in *Titles and Documents*, i. 18-19.

as they were before Bégon brought the matter to the notice of his superiors.

The unsigned arrêt of May, 1717, proposed to go much farther, however, than the intendant had suggested; for it sought to put an end to the exaction of corvée even when the seignior had stipulated for it, as, according to the Custom of Paris, he had a perfect right to do. On the other hand, the colonial authorities had, on more than one occasion, sanctioned the exaction when the seignior had been able to show them a copy of his contract of concession to the habitant containing the corvée clause.

In 1714, for example, certain habitants of the seigniorship of Desjordy presented to the intendant a petition complaining that the seignior sought to exact days of corvée in proportion to the amount of land held by them; that despite this exaction he refused them the use of the seigniorial domain for pasturage; and that he persisted in asking for the labor in the busiest seasons of the year. The seignior, being called upon for his defence, contended that he was entitled to the corvée which he demanded, "inasmuch as by their deeds of concession the habitants are bound thereto"; that he was not bound by law or custom to allow his habitants the use of his land for pasturage; and that he had a right to select the seasons of the year in which the labor should be given. The intendant, "having heard the parties, considered the petition, and examined a deed of concession," issued the following decree: "The said habitants shall give to the seignior the daily corvée labor mentioned in their deeds, which said corvée labor the said seignior will exact from them at different times and separately, — to wit, one day during seed time, one during hay time, and one during harvest; those who have more than three days to give shall give the additional ones during the season of ploughing; such of the habitants as desire to exempt themselves from the said corvée labor may do so upon payment to the said seignior of forty sols for each day of labor, provided payment be made forthwith to the person notifying them to furnish the labor." <sup>1</sup>

It will be noticed that the exaction was enforced because it

<sup>1</sup> *Edits et Ordonnances*, ii. 437.

had been bargained for, not because it was regarded by the authorities as compensation on the part of the habitants for the use of the seigniorial domain as pasture land. It will also be noticed that the only steps taken by the intendant were in the direction of protecting the habitants against the enforcement of the right to the detriment of their own private employments. This protection he secured, in the first place, by providing that the corvée could be exacted only at different seasons of the year, and in the second place by giving the habitants the option of commuting the obligation to a money payment.

Some two years later (January 22, 1716) a petition was presented to the intendant by François de Chavigny,<sup>1</sup> who styled himself "seignior of the fief and seignior of La Chevrotière," complaining that some of his habitants had refused to perform the days of corvée to which they were bound by the terms of their title-deeds, on the ground that the seignior was not willing to furnish them with food and tools during their period of labor, as, they claimed, he was bound to do. Chavigny asked for an ordinance upholding his refusal to meet the demands of the habitants.

The intendant, on looking into the matter, found that a somewhat similar case had come before his predecessor, Raudot, in 1710, and that in this case the decision had been in the seignior's favor.<sup>2</sup> He therefore ordered that the habitants of La Chevrotière should "give their corvée labor free of all expense to the seignior, and without requiring him to procure for them their food and the necessary tools." In the concluding paragraph of this judgment, however, appears the somewhat startling prohibition: "We do hereby forbid the said Sieur de la Chevrotière and the other seigniors of this colony to introduce into the deeds of concession which they may hereafter grant the said corvée clause (*la dite clause de corvées*) on pain of nullity."<sup>3</sup> It seems strange that, if the intendant had in mind a general inter-

<sup>1</sup> In the *Edits et Ordonnances* this name is erroneously spelled "Champigny."

<sup>2</sup> Although no copy of Raudot's judgment seems to have been preserved, the gist of it is given in Bégon's decree of January 22, 1716, which shows that it was rendered in favor of M. Robineau, seignior of Portneuf, on June 4, 1710. See *Edits et Ordonnances*, ii. 444.

<sup>3</sup> *Ibid.* 445.

diction of future stipulations for corvée labor in the title-deeds of subgrants, he should not have issued, or have had the Superior Council issue, a general ordinance to this effect, instead of inserting the prohibition in a judgment rendered in a private dispute and therefore to be published only in the neighborhood immediately concerned. Still, the intention of Bégon, as shown by the wording of the judgment, seems quite clear.

This judgment was rendered on January 22, 1716; and hence it was with the case fresh in mind that the intendant, sometime during the course of the following month, wrote to the minister asking that a decree be issued dealing with the corvée "and a variety of other obligations contrary to the Custom of Paris and to the interests of colonial development." The outcome of his appeal has already been seen.<sup>1</sup> Those seigniors who had before 1716 stipulated for days of corvée continued to exact them from their dependents, and were supported by the authorities in so doing.<sup>2</sup> There is also evidence that many of them took occasion to insert the stipulation in concessions made after 1716; but it does not appear that they successfully sought the support of the authorities in this procedure.

Extra days of corvée labor were sometimes demanded by the seignior from his dependents for certain special purposes, such, for example, as the building and repair of roads and bridges, the erection and repair of the parish church and presbytery, and occasionally for the erection of the manor-house and mill. While the habitants do not appear to have been under any legal obligation to respond to such demands, in the event of their refusal the seignior could appeal to the intendant, who, if he thought that the case was one in which the habitants ought in the general interest to help the seignior, would issue an ordinance providing a penalty for continued recalcitrancy. Thus, in 1730 the habitants of the seigniorship of Demaure were ordered to proceed to work as

<sup>1</sup> Above, p. 128.

<sup>2</sup> The Special Seigniorial Court of 1854 decided, with only one dissenting opinion, that "the covenants contained in some deeds of concession, imposing days of personal labor (*jours de corvée*) upon the habitants for the advantage of seigniors, are legal and give ground for indemnity." Bégon's judgment of January 22, 1716, was therefore held not to have established a general prohibition.

soon as the harvest should have been garnered in, and "to work incessantly" until the bridge leading to the seigniorial mill should have been repaired.<sup>1</sup>

Ordinances were likewise issued from time to time commanding the habitants to render service in the construction of fortifications, public highways, and other works of general colonial interest. The public roads of the colony were built, for the most part, by the corvée labor of the habitants supervised by the seignior or by the captain of militia in the parish, the whole under the general coördination of a royal official known as the *grand voyer*. The duties of this official, as set forth in an ordinance of 1706, were, in general, "to visit all the seigniories in which main roads have not been built, and to build such in concert with the proprietors of seigniories, or, in their absence, with the *capitaines de la milice*, unless there be a royal justice present; and to decide, in accordance with the opinion of six of the oldest and most prominent habitants of the place, where the roads ought henceforth to traverse, provided always that such roads shall be at least twenty-four feet wide." The ordinance further provided that the habitants of every such place should, "each for himself, aid in the construction of such roads and give his days of corvée for this purpose whenever necessary."<sup>2</sup> This corvée, exacted for the construction of public works under authority of the royal officials at Quebec, was commonly known as the "king's corvée" to distinguish it from the ordinary annual corvée exacted by the seigniors for work upon their own domains.

The amount both of seigniorial and of royal corvée exacted from the habitants varied in different sections and at different periods. Usually, but not always, the amount of seigniorial corvée was proportioned to the size of the grant obtained by the habitant, the seignior exacting from one to thirty days per year. Very rarely, however, did he demand more than six days in all. The amount of royal corvée exacted in any locality obviously depended upon the extent and nature of the public works to be constructed. In the third volume of the collection of *Edits et Ordonnances* will be found

<sup>1</sup> *Edits et Ordonnances*, iii. 459.

<sup>2</sup> *Ibid.* ii. 137, § viii.



many decrees ordering habitants in all parts of the colony to turn out and labor, under the supervision of the *grand voyer*, in the construction of all sorts of public works.<sup>1</sup> The extent of the burden thus imposed upon the population of the colony is not easily estimated, but it does not appear to have been so great as to evoke any general protest from the habitants. As the obligation might be commuted by the payment of a small sum, it may be regarded as little more than a tax upon the people for the construction and repair of necessary public works.<sup>2</sup> It was, in a way, the *trinoda necessitas* of the old régime in Canada, and did not differ very essentially from the so-called "statute labor" obligation which is imposed upon the rural population in some of the Canadian provinces at the present day.

After the British conquest, however, the seigniors seem very generally to have increased their exactions of corvée labor, with the object of augmenting the sum due in commutation by the habitants. In the report of the commission which was appointed by the legislature in 1843 to examine the workings of the seigniorial system, it is affirmed that many of the seigniors had taken occasion, whenever new deeds (*titres nouveaux*) were executed, to insert obligations of corvée labor, and, despite the prohibition contained in the judgment of 1716, had very generally continued the practice. The habitants, for their part, according to the report, regarded the exaction of the corvée as "hateful, odious, humiliating, and a badge of servitude."<sup>3</sup>

In granting lands, it was customary for the seigniors to make certain reservations, the nature and extent of which varied in different parts of the colony and at different periods in the history of the seigniorial system. Although there were in many seignories reservations of a local character made to fit local conditions, there were only four which appeared so fre-

<sup>1</sup> See, for example, *Edits et Ordonnances*, iii. 176, 197, 216, 217, 284, 436, etc.

<sup>2</sup> In response to a petition presented by certain habitants of the seignior of La Chevrotière in 1716, the intendant fixed the amount to be paid in lieu of corvée labor at "twenty sols per year for each farm of three arpents in frontage by forty in depth" (*Ibid.* ii. 449-450).

<sup>3</sup> Report of the Commissioners, 1843, *Titles and Documents*, i. 70.

quently as properly to be termed general features of the system. These were the reservations of wood and stone, of mines, ores, and minerals, of the use of beaches, and of mill, manor, and church sites.

The reservation of wood and stone was the most common of the four; it appears in so large a number of the title-deeds of subgrants that it may very properly be looked upon as an almost invariable incident of tenure *en censive*. In the deeds of seigniories granted by the crown, it was, as has been seen,<sup>1</sup> the custom to stipulate for the reservation by the crown of such timber as might be found suitable for use in the royal ship-yards, as well as of such building materials as might be needed in the construction of forts, batteries, and other public works in the colony. In order, therefore, that these reserved rights of the crown might be protected against any interference by the habitants, the reservations contained in the seigniorial title-deeds were repeated in the deeds of subgrants, whether held *en arrière-fief* or *en censive*.

The seigniors, however, went farther than this. In addition to reserving such materials as might be sought by the royal authorities, they usually stipulated that they should be at liberty to take from the granted lands such quantities of wood and stone as might be found necessary in the construction of the seigniorial manor-house, mill, and church, and frequently, also, such firewood as might be needed for heating any of these buildings when erected. Occasionally, too, they reserved to themselves all the standing timber on granted lands, allowing the habitants to fell it for use or for sale only on condition of paying a tax.

From the beginning to the end, the seigniors seem to have had no legal right to make any reservations beyond what were necessary to give force and effect to the royal reservations stipulated for in their own titles. In general, the colonial authorities supported the habitants in resisting reservations beyond this point. Thus, in 1707 the intendant forbade the Sieur de Hertel to "take or carry away any wood from the lands belonging to his habitants";<sup>2</sup> and in 1714 a further ordi-

<sup>1</sup> Above, ch. iv.

<sup>2</sup> *Edits et Ordonnances*, iii. 130.

nance directed that the seignior of Chambly should pay for all the pine timber which he had taken from the lands of his habitants for use in the construction of his mill.<sup>1</sup> Sometimes, on the other hand, the authorities pursued a different policy. In 1706, for example, the intendant supported the seigniors of the island of Montreal in their claim to the right to take firewood (*bois de chauffage*) from the lands of habitants on the island, whenever they had stipulated for such right in the title-deeds of subgrants.<sup>2</sup> The fact that, in this instance, the seigniors were a religious organization may have been regarded as a circumstance warranting a departure from the usual official policy.

Presently, however, the intendant Bégon, in his long despatch of 1716, complained that the practice of making wide reservations was proving detrimental to the progress of the colony. "Some of the seigniors," he wrote, "reserve to themselves in their deeds of concession, the timber necessary for their houses and other buildings, and the wood necessary for fuel. Others, again, reserve timber for sale. Yet others grant to their habitants leave to cut timber upon the ungranted lands, on condition that they pay ten per cent of the value of the boards obtained therefrom. When they concede woodlands they reserve for themselves all the oak and pine timber thereon without compensation to the habitants, and thus they are able to exact any price they please for this wood, this being not only prejudicial to building, but preventing a trade in such timber with the West Indies and with France."<sup>3</sup>

It is worth noting that the draft arrêt of 1717 proposed to "discharge the habitants from the seigniorial reservation which forbade them to take any wood of what kind soever, whether for building or for fuel, without payment";<sup>4</sup> but the general attitude of the authorities toward the whole matter of timber reservations is best stated in a judgment of the intendant,

<sup>1</sup> *Edits et Ordonnances*, iii. 166.

<sup>2</sup> *Ibid.* 123. By this ordinance the seigniorial right was, however, limited to taking firewood from not more than one arpent in sixty.

<sup>3</sup> Bégon to Minister, February, 1716, *Correspondance Générale*, xxvi. 124.

<sup>4</sup> Printed in *Correspondence between the French Government and the Governors and Intendants of Canada*, etc., 17-18.

rendered in July, 1722, in regard to certain claims on the part of the seignior of Isles Bouchard. It appears that one of the habitants of this seigniory had, in clearing his grant, cut down some oak timber in violation of a clause in his title-deed by virtue of which the seignior had reserved to himself the exclusive right of cutting and using all oak timber in the seigniory; whereupon the seignior, by way of compensating himself, had seized a quantity of his habitant's grain. With a view to securing its restoration, the habitant therefore made appeal to the intendant, who readily granted the redress asked for, and interdicted the seignior from any further interference with the habitants in this direction.<sup>1</sup> In the course of the judgment the official attitude toward the question of timber reservations is clearly stated as follows: "The reservation by the seigniors in their title-deeds of concession is made in consequence of the clause inserted in all the concessions of seigniories in this colony, by which His Majesty reserves for himself oak timber for shipbuilding and obliges the seigniors to reserve and cause to be reserved the said oak by their habitants. This does not confer upon the seigniors any property in oak timber found on the lands which they concede; His Majesty's intention is that the lands conceded shall be made productive, and this can be done only by the habitants cutting down and clearing off all the wood thereon; . . . it would not contribute to the advancement of this colony if seigniors were allowed to retain any property in the lands which they have conceded subject to the seigniorial *cens et rentes*." <sup>2</sup>

This passage shows that the seigniorial rights in regard to reservations of timber were limited by the royal reservations, — that the seigniors were allowed to stipulate in the matter only so far as was essential to the proper enforcement of the reservations made by the crown. From time to time the crown took advantage of the reservations which it had thus made. In 1731, for example, it issued an ordinance giving to certain naval constructors power to take from the seigniories of Berthier and Dautray some two thousand feet of oak timber to be used in the construction of a public vessel, "agreeably to the reserva-

<sup>1</sup> *Edits et Ordonnances*, ii. 471.

<sup>2</sup> *Ibid.* 472.

tions made by His Majesty of such timber for his own use in the concessions of lands and seigniories of the colony.”<sup>1</sup> Even when the reservation had not been made in the original seigniorial title, it was sometimes effected later by ordinance. Thus, in 1740 an intendant’s ordinance, after declaring that information has been brought to the authorities as to the existence of considerable quantities of valuable oak timber in certain seigniories in the vicinity of Montreal, summarily orders all proprietors in that vicinity, “of whatever quality and condition they may be,” to refrain from cutting down any oak trees until “such of the same as shall be found suitable for the construction of His Majesty’s ships shall have been marked and reserved.”<sup>2</sup> In the same year a further ordinance summarily reserved a quantity of standing red pine in the seigniorie of Sorel as being suitable for mastings for the navy;<sup>3</sup> and in 1742, in order that no suitable timber should escape reservation in any of the seigniories, Messrs. Noël Langlois and Pierre Abraham, two carpenters, were commissioned to make a tour of the colony for the purpose of looking up all serviceable timber and presenting a report of their investigations to the council.<sup>4</sup>

The members of the Special Seigniorial Court, which, after 1854, looked into the validity of seigniorial reservations and the right of seigniors to compensation on the abolition of their seigniorial tenure, were, with one exception, convinced that only such reservations were valid as the seignior necessarily imposed in order that he might be able to carry out the obligation laid upon him by the crown in regard to the preservation of suitable standing timber.<sup>5</sup> The practice, therefore, of reserving firewood, stone, sand, and other materials seems to have had no legal basis; and yet the fact remains that many such reservations were made and enforced throughout the whole period of the old régime, and even under British rule.

<sup>1</sup> *Edits et Ordonnances*, ii. 348. <sup>2</sup> *Ibid.* 382. <sup>3</sup> *Ibid.* iii. 447. <sup>4</sup> *Ibid.* 469.

<sup>5</sup> “All reserves must be held to be legal, the object of which was the obligation upon the tenant (*censitaire*) to allow the accomplishment by the seignior, and the observance by himself, on his part, of the obligations of that nature, stipulated by the king in the grant of the *fief*” (*Proceedings of the Special Seigniorial Court*, 1856, p. 82). From this decision the Hon. Mr. Justice Mondelet dissented, for reasons given in his *Observations*, 50–52.

With only two exceptions, all the title-deeds of lands granted *en seigneurie* contained a provision requiring seigniors to report to the representative of the crown in the colony the discovery of any mines or minerals within the limits of the conceded lands. This precaution was taken to secure the king in the exaction of the share due to him as dominant seignior. In order to carry out this obligation, the seigniors, in turn, inserted in the deeds which they granted to their habitants a provision reserving rights to all mineral deposits found in the subgranted lands.<sup>1</sup> As there appear to have been no important discoveries of mineral wealth within the limits of the seigniories, however, this obligation was a formal one.

Most of the seigniories, as has been noted, fronted on the St. Lawrence, in the waters of which a considerable fishing industry was carried on. As many of the seigniors claimed the exclusive right to fish in the waters fronting their seigniories, and as some of them were in the habit of farming out this right,<sup>2</sup> it was customary for them to provide, in the deeds which they gave their habitants to concessions fronting on the river, that the grants should not include the beach between high and low water mark. The use of this the seignior reserved for himself and for those to whom he might sell the fishing rights. In such cases the habitants were not to fish in the waters fronting their lands without the permission of the seignior.<sup>3</sup>

Although this reservation was a common one, it seems in most cases to have had no legal basis. The seignior had the right to reserve for himself the beach between high and low water mark only when in his seigniorial deed this tract had been expressly given to him; otherwise, as the Special Court held,

<sup>1</sup> It was held by the Special Court (see its *Proceedings*, §2) that the terms "mines" and "mineral deposits" did not include stone and slate quarries, sand and gravel pits, and so on, which, after the conquest, some of the seigniors sought to include within them.

<sup>2</sup> In 1723 the seignior of Portneuf, as we are told, leased his fishing rights for the consideration of "four hogsheads of eels (*quatre barriques d'anguille*) per year" (*Edits et Ordonnances*, iii. 205).

<sup>3</sup> The peculiar method of catching fish and eels on the tidal beaches by means of the "traps made of twisted ozers" which were commonly used by the habitants, is described in Kalm's *Travels into North America* (1772), ii. 253-254.

the rights of the seigniors extended "to high water mark only."<sup>1</sup> In only a very few cases had the crown expressly granted to the seigniors the wider right. While many of the seigniors reserved to themselves exclusive rights in the beaches of their seigniories, most of them allowed their habitants to fish freely, subject to the seigniorial *droit de pêche*.<sup>2</sup>

In many cases the seignior reserved the right to take from subgranted lands such locations as might be found suitable for the erection of a mill, manor-house, church, or presbytery. The plots reserved varied in size; but, even when no stipulation had been made, custom seems to have sanctioned the taking of not more than six arpents of land for such a location. No monetary compensation was payable to the habitant, but the practice was to allow him his choice of an equal area in the unconceded lands of the seignior. In one case the intendant, when called upon by a seignior, forced a habitant to accept such an exchange.<sup>3</sup>

After the conquest the number of reservations which the seigniors attempted to make was greatly increased. Some tried to reserve the right to divert watercourses, some to make exclusive use of all waterways for the generation of power, some to take from the habitants any land which might be found necessary for a railroad right of way, some to change the place and time at which the seigniorial dues should be payable, and so on. The Special Seigniorial Court decided that all of these reservations were illegal.<sup>4</sup>

Besides making these numerous reservations, it was customary for seigniors to insert in the deeds given to their habitants various prohibitions, some of which were both legal and reasonable, others clearly illegal or unreasonable. A common prohibition was that which forbade trade with the redskins. Many seigniors had, by their own title-deeds, been forbidden to allow their seigniories to be made bases of trade with the Indians, and were therefore justified in placing a similar prohibition in the deeds of their dependents; but others, although themselves not forbidden to trade, were very ready to deny their habit-

<sup>1</sup> *Proceedings of the Special Seigniorial Court* (1856), 68.

<sup>2</sup> See below, p. 140.

<sup>3</sup> *Edits et Ordonnances*, ii. 468.

<sup>4</sup> *Proceedings of the Special Seigniorial Court*, 79-80.

ants the privilege. This prohibition found consistent support from the colonial authorities, whose aim it was to concentrate the fur traffic at Quebec, Three Rivers, and Montreal: they did not desire to see a trading station at every outlying hamlet or *côte*. It may well be doubted, however, whether the prohibition availed much in the long run; for, when the habitants were forbidden to do a little trading in their spare time, they not uncommonly abandoned their farms and took themselves off to the wilderness to become *coureurs-de-bois*, beyond the reach of both the royal and the seigniorial authorities.

Again, many seigniors inserted clauses in the deeds of their dependents forbidding them to sell marketable timber, to saw deals, to erect any mills, factories, or other works (*usines*) moved by water, wind, or steam, with various other interdictions of a like nature. Most of these prohibitions made their appearance during the period following the conquest; and, although none of them rested upon any legal basis, they seem in many cases to have been respected by the habitants. In so far as they were enforced, such prohibitions assisted in retarding the industrial development of the province.

Finally, there were several minor rights which some seigniors stipulated for and some did not, and which some exacted at one time and not at another. Among these was the *droit de pêche*, or the right of the seignior to one fish in every eleven caught by his dependents.<sup>1</sup> Some writers have mentioned this as a general and important exaction,<sup>2</sup> whereas it appears to have been insisted upon quite infrequently and never to have been regarded by the seigniors as of much account. When the habitants fished for their own use, the seignior usually exacted nothing; but when they made a business of fishing for the market, it was not uncommon for him to exact a hogshead (*barrique*) or so per season in commutation of his *droit de pêche*.<sup>3</sup>

<sup>1</sup> On the origin, nature, and extent of this right in France, see Dufresnoy, *Histoire du Droit de Pêche dans l'Ancien Droit Français* (1896).

<sup>2</sup> For example, Parkman, *The Old Régime in Canada*, ii. 48.

<sup>3</sup> Of certain habitants in one seigniori who were engaged in the porpoise-fishing industry, the seignior exacted one-tenth of the oil produced. See *Edits et Ordonnances*, ii. 541.



In the same category may be placed the *droit de chasse*, or the right of the seignior to hunt over the lands of his dependents.<sup>1</sup> Those who are familiar with the historical literature of the old régime in France need not be reminded of the unreasonable and often outrageous way in which many French seigniors were accustomed to take advantage of the hunting right, by riding with large parties of friends over the growing fields of the hapless censitaires, and destroying in an hour the fruits of a season's toil. In French Canada the habitant was never subjected to any odious exaction of the *droit de chasse*. Some seigniors claimed the privilege as an honorary right (*droit honorifique*); but no one seems to have availed himself of it in such a way as to give his habitants just ground for complaint. The chase-loving Canadian seignior could, of course, find abundant scope on the often too-extensive unconceded lands of his seignioriy. Upon these he had full liberty, in which he was confirmed from time to time by decrees of the authorities enjoining the habitants not to hunt on the unconceded lands without the seignior's express permission.<sup>2</sup>

Some of the seigniors claimed the right of establishing ferries over rivers that ran through their seigniories, and of exacting toll from passengers; and occasionally a seignior leased this privilege to some one who would provide a scow and act as ferryman. The seignior's right in this matter does not seem to have been called in question during the French period; and in connection with the abolition of the seigniorial system in 1854 claims for indemnity were based upon the loss of this ferry privilege. The validity of such claims turned on the question as to what rights a seignior possessed in the waters of his seignioriy. In the case of navigable streams, he had no rights beyond high-water mark, unless such were expressly given him by deed from the crown; but over the smaller, non-navigable streams, as well as over the ponds and lakes within his seignioriy, his authority was complete. When a non-navigable stream divided two seigniories, the littoral seigniors had jurisdiction to the middle of the waterway. On the foregoing points the authori-

<sup>1</sup> L. Moyat, *Etude Historique, Critique, et Comparée sur le Droit de Chasse* (1900).

<sup>2</sup> *Edits et Ordonnances*, ii. 73, 384, 428; iii. 160, 263.

ties in both France and Canada seem to have agreed; but as to the legal basis of the seignior's control of small streams and lakes there is some difference of opinion. Some believe that his right accrued to him as seignior, that it was an incident of seigniorship; others maintain that it belonged to him as a judicial officer, as a seignior with powers of *haute justice*.<sup>1</sup> In France the question was one of academic interest only; in Canada it had a tangible importance. After the conquest all the judicial rights of the seigniors were taken away without compensation; but in accordance with the pledge made in the Treaty of Paris (1763) that all rights of property should be respected by the new British suzerains,<sup>2</sup> their ordinary proprietary rights were left intact. When, therefore, in 1854 the proprietary rights of seigniors were taken from them with compensation, the question was raised whether the seigniorial rights over rivers were among the judicial rights of the seigniors, which had long since been abolished, or among the proprietary rights, which had been preserved. This was one of the most difficult points which the Special Seigniorial Court found itself called upon to decide; but it was finally held by a majority of the justices that seigniorial rights over the smaller streams were proprietary and not judicial in their nature.<sup>3</sup>

The foregoing list does not completely exhaust the rights occasionally claimed by the Canadian seignior; it comprises only those which were exacted with some degree of frequency. Here and there one finds a shred or two of evidence indicating that a seignior laid claim to some other right, but such instances are not numerous. Some few seigniors, for example, appear to have claimed the right to offer their own grain and cattle for sale to buyers a certain number of days in advance of their habitants; the right to maintain banal slaughter-houses; the right to keep for exclusive service in the seignioria banal bull, boar, or ram; the right to keep a seigniorial dove-cote;<sup>4</sup> the *droit de jambage*, or marital right; and various other

<sup>1</sup> See the authorities cited in Mondelet, *Observations*, 34 ff. <sup>2</sup> See below, p. 191.

<sup>3</sup> *Proceedings of the Special Seigniorial Court* (1856), 68-73.

<sup>4</sup> The *droit de colombier* was, by the Custom of Paris (articles lxxix, lxxx), recognized as appertaining to all seigniors possessing more than fifty arpents of land. Cf. Viollet, *Histoire du Droit Civil Français*, 712.

privileges.<sup>1</sup> Although all these rights are mentioned in the data of the French period, it is almost certain that little or no serious attempt was made to enforce any of them, except perhaps in very rare instances.<sup>2</sup> It would be safe to hazard the opinion that most of them were never exacted at all.

Taken as a whole, the burdens imposed upon the habitant by the seignior of the old system in Canada were far from onerous. To declare that they were "more nominal than real"<sup>3</sup> seems scarcely justifiable in view of the general poverty of the class upon which they were imposed; they certainly were not so regarded by the habitants themselves. Still, the Canadian habitant was, in this respect, much better off than his prototype, the French censitaire. In all cases his obligations were fixed with at least some degree of definiteness, and the method of exaction was never harsh or cruel. From the most odious incidents of the seigniorial system in France he was almost entirely free. He was protected, moreover, not alone by the letter and the spirit of the law, but by the administrative jurisdiction of the intendant, to whom he might appeal with little expense and with reasonable hope of success whenever a seigniorial exaction, though legal, seemed unjust or contrary to public policy.

The Canadian habitant, though poor, seems never to have become degraded and hopelessly dispirited like the peasant in France. Various writers of the time commented upon his bonhomie and his ability to make light of his troubles and difficulties. In 1737, Hocquart sent to the minister a very interesting pen portraiture of the Canadians, in the course of which he pointed out that the habitants of New France were not "coarse and boorish rustics" like the peasantry of the provinces at home, but that they were well-dressed and displayed good manners.<sup>4</sup> Their dwellings, built of timber or stone and whitewashed on the outside, though usually small, were comfortable and

<sup>1</sup> On the nature of these various rights in France, cf. Tocqueville, *The Old Régime and the Revolution*, 326 ff.

<sup>2</sup> See Sir J. M. Le Moine on "Tidbits of Feudal Customs in Canada," in his *Maple Leaves*, 4th series, 99 ff.

<sup>3</sup> Thwaites, *France in America*, 132.

<sup>4</sup> Hocquart to Minister, November 8, 1737, *Correspondance Générale*, vol. lxxvii. 40 ff.

cleanly.<sup>1</sup> Their daily fare, while plain, was nourishing and always adequate. Lahontan, during his stay in the colony, was impressed by the rude comfort in which the population of the seigniories lived, and recorded his surprise at finding that "the boors of these manours live with more ease and conveniency than an infinity of the gentlemen in France."<sup>2</sup> Whatever criticisms may be passed upon the seigniorial system as the embodiment of an economic policy, it can scarcely be said with truth that in New France it ever permitted the seigniors to oppress or degrade the peasantry.

<sup>1</sup> Kalm, *Travels into North America* (1772), ii. 241-242. Kalm visited New France in 1749.

<sup>2</sup> Lahontan, *New Voyages* (ed. Thwaites), i. 35.

## CHAPTER VIII.

### SEIGNIORIAL JUSTICE.

“OF all the phenomena of feudalism,” writes Professor F. W. Maitland, “none seems more essential than seigniorial justice;”<sup>1</sup> and yet, as that distinguished student of institutional history has pointed out, disproportionate stress has usually been laid upon the military aspect of the seigniorial system to the consequent neglect of the judicial. The exercise of jurisdiction seems to be, above all else, the distinguishing mark of a seigniorial system of land tenure.<sup>2</sup>

During the earliest period of French operations in Canada, — that is to say, from the first establishment of a permanent settlement at Quebec by Champlain in 1608 down to the formation of the Company of One Hundred Associates in 1627, — the administration of justice was vested by the French crown in the hands of whoever happened to hold the nominal post of “viceroi and lieutenant-general of New France”; and by each viceroy, in turn, it was deputed to Champlain. Although the sparseness of the population during this period might have seemed to render the establishment of any regular tribunal unnecessary, Champlain, as we learn from his writings, found it advisable to promulgate various ordinances for the governance of his somewhat unruly settlers, and to expel those who failed to give obedience. Moreover, a few years later he established the first regular court of the colony, later known as the court of the *Prévôté* at Quebec,<sup>3</sup> and modelled upon the court of similar name in France. As the early registers of this court have not come

<sup>1</sup> Maitland, *Domesday Book and Beyond* (1897), 258.

<sup>2</sup> On the administration of feudal justice in France, see Fustel de Coulanges on “La Justice dans la Société Féodale,” in *Revue des Deux Mondes*, xcii. 274–298 (March, 1871).

<sup>3</sup> On the composition and powers of this court, see Doutré and Lareau, *Histoire Générale du Droit Civil Canadien*, 15 ff.

down to us, it is impossible to tell anything about the number or the character of the cases which came before it; but it is certain that down to 1627 there was no exercise of seigniorial jurisdiction, for only three grants of seigniories had been made prior to that year, and none of these contained any concession of judicial power.<sup>1</sup>

During the supremacy of the Company of One Hundred Associates, from 1627 to 1663, the court of the Prévôté continued in existence; but in 1647 a council, commonly known as the Old Council (*l'ancien conseil*), was organized, consisting of the governor, the superior of the Jesuits in the colony, and some prominent colonists named by the former. From this time on, appeals might be carried from the court to the council; but how far this appellate jurisdiction was exercised it is impossible to tell, for, although the Old Council undoubtedly kept records of its proceedings, these have never been found.<sup>2</sup> What is more important for our purpose, however, is the fact that during this period more than sixty seigniorial grants were made by the company, and in almost every instance judicial rights were given to the seigniors.<sup>3</sup> In no case was the extent of judicial authority precisely defined; but in every grant provision was made that appeals should lie from the seigniorial courts (whenever such should have been established) to the court of the Prévôté. It was in this interval, therefore, that the colonial hierarchy of courts first took on a definite form.

It seems to have been intended that all cases should, in the first instance, come before the seigniorial courts, and that from them appeals should be carried to the court of the Prévôté, from this to the Old Council, and from the council to the king. As a matter of fact, however, there was apparently, before 1663, no serious attempt to establish courts in the seigniories; for many of those who received seigniorial grants never came out to the colony, and of the remainder only a few seem to have taken possession of their lands.

<sup>1</sup> Cf. *Titres des Seigneuries*, 89, 343, 412.

<sup>2</sup> It is highly probable that these registers were destroyed by the fire which burned the intendant's palace at Quebec in 1713. See Chauveau, *Notice sur la Publication des Registres du Conseil Souverain de Québec* (1885), 61.

<sup>3</sup> See above, ch. ii.

It is not till after 1663 that one encounters definite evidence that seigniorial jurisdiction was being exercised. Most of those who received seigniories after that year were invested with judicial rights, and some began to exercise them. Not every colonial seignior, however, possessed the right of private jurisdiction; indeed, it cannot be too strongly emphasized that in Canada the possession of a seigniorie was not *ipso facto* an evidence of private judicial authority.<sup>1</sup> In France, as various writers have pointed out, property and jurisdiction were usually, during the feudal era, inseparable;<sup>2</sup> although several of the *coutumes* explicitly declare that judicial powers were not necessary incidents of the possession of a fief.<sup>3</sup> In Canada, on the other hand, the possession of a seigniorie did not in itself carry any jurisdiction: the latter could be obtained only by express grant.

Judicial power, when given to the seignior, might be conveyed in one or more of three different degrees, — that is, the right of high, of low, or of middle jurisdiction (*haute, moyenne, ou basse justice*) might be granted him. Usually all three degrees were given together; but grants of middle and low justice, or of low alone, were not uncommon.<sup>4</sup> It should be made clear that the degree of jurisdiction was not proportioned to the extent of the seigniorie: in some of the smallest grants the widest degrees of judicial power were given, while in a few of the most extensive only the right of low jurisdiction was be-

<sup>1</sup> A close examination of the seigniorial titles seems to confirm the statement of Garneau (*Histoire du Canada*, i. 166) that a grant of jurisdiction "almost invariably" accompanied the grant of a seigniorie. This is certainly much nearer the truth than the assertion of a recent writer (Douglas, *Old France in the New World*, 236) that "in some few cases" judicial powers were possessed by the seigniors of Canada. Among seigniories *sans justice* may be mentioned those of Gentilly, Vieux-pont, Jacques Cartier, Isle St. Joseph, Pointe du Lac, Boucher (adjoining Labadie), St. Michel, and St. Jean. See *Titres des Seigneuries*, 12, 85, 88, 103, 120, 344.

<sup>2</sup> "The administration of justice both in the old and new fiefs, was a right inherent in the very fief itself,—a lucrative right which constituted a part of it" (Montesquieu, *The Spirit of Laws*, book xx. ch. 20).

<sup>3</sup> "Fief, ressort, et justice n'ont rien de commun ensemble." On this point, see Loisel, *Institutes Coutumières*, ii. 271; and Viollet, *Histoire du Droit Civil Français*, 646.

<sup>4</sup> On the administration of seigniorial justice, cf. Doutré and Lareau, *Histoire Générale du Droit Civil Canadien*, 133 ff.

stowed. In some cases the seigniorial grant was first made without any judicial rights whatever, these being given subsequently on augmentation of the original grant. In a few instances the right of low jurisdiction only was conferred with the original concession; then later, when the holding had been increased either by purchase or by additional grants from the crown, the rights of middle and high jurisdiction were added. All these cases, however, ought to be regarded as exceptional; for in the great majority of seigniorial title-deeds the grants appear to have been made "in full property and seignior, with the rights of high, middle, and low jurisdiction" (*en toute propriété et seigneurie, avec les droits de haute, moyenne, et basse justice*). Seigniories appear to have been granted in these terms unless some special circumstance seemed to dictate a departure from the usual course; but it is not easy to say what prompted the making of exceptions in isolated cases.

The grant of the right of high jurisdiction (*haute justice*) gave the seignior power to deal with all criminal cases, including those punished by death, mutilation, or other corporal penalty, with the exception only of such crimes as were deemed to be perpetrated directly against the royal person or property. These were such crimes as *lèse majesté divine et humaine*, treason, counterfeiting the royal signature, seal, or coinage, unlawfully bearing arms, or taking part in seditious enterprises or assemblies. In civil cases the authority of the seignior possessing this degree of jurisdiction was without limit. He had power to fine or imprison, to award damages, to order *amendes honorables* to be made by his habitants to himself or to one another, to banish obnoxious persons from his seignior, to order the retention in stocks or even the branding of incorrigibles, and to publish all such regulations for the governance of the habitants as were not inconsistent with the Custom of Paris and the laws of the colony. When his habitants were convicted of offences which legally entailed confiscation of property, whether real or personal, he had the right to seize and appropriate it; but in the case of confiscations ordered by the royal courts for offences against the crown, the forfeited property went to the crown and not to the seignior within



whose domain it lay. This rule was in full accord with the well-known feudal maxim that "he who condemns the person confiscates the property" (*qui confisque le corps confisque les biens*).

To the seignior with powers of high jurisdiction appertained also the possession of all stray cattle and other animals found within the limits of his seignior. On finding such estray, a habitant was under obligation to deliver it to the seignior within twenty-four hours, on pain of fine; but the seignior, on his part, was obliged to make public proclamation at the door of the parish church for three consecutive Sundays, announcing that he held such an estray. If, within the space of forty days from the date of the first publication, the rightful claimant did not appear and "pay all lawful costs and expenses," the animal became the property of the seignior in his capacity of high justiciary of the seignior, and this without any compensation to the finder.

To the seignior with high judicial powers reverted also the ownership of all *en censive* lands and all lands *en arrière-fief* left without lawful heirs, as well as of all such lands as did not continue to be held in strict accordance with the terms of the original grant. He was likewise entitled to all flotsam and jetsam found in the waters of the seignior or washed ashore, all treasure trove, and all *bona vacantia*. In the case of treasure trove, however, one-half went to the actual finder if the treasure was discovered by him within the limits of his own grant; if it was found by one habitant on the land of another, the finder received one-third, the owner of the land one-third, and the seignior the remaining third; if it was found on the land of the seignior, the finder was rewarded with one-third of the value, and the seignior took the rest. Furthermore, as has been pointed out,<sup>1</sup> the seignior, by virtue of his possession of high jurisdiction, claimed control over all unnavigable streams and waters within his seignior, together with the exclusive right of establishing ferries across the same. In theory, at least, the grant of high jurisdiction conveyed very extensive judicial rights upon those seigniors who obtained it.

<sup>1</sup> Above, p. 142.

The seignior whose jurisdiction was limited to a grant of *moyenne justice* had authority to take cognizance of all civil actions in which the amount in dispute did not exceed sixty *sols paris*,<sup>1</sup> and of all criminal causes in which the awardable penalty did not exceed the same sum. If the amount in dispute in a civil cause exceeded sixty *sols*, or if the offence were one demanding a punishment more severe than the imposition of a fine of this amount, the whole matter was handed over to the jurisdiction of the nearest royal court. The seignior with rights of middle jurisdiction had authority to order the arrest of an offender; but he was under obligation to give such person a hearing within twenty-four hours after his arrest, and at this hearing he was to decide whether or not he had jurisdiction. Since, however, there was no habeas corpus procedure in the colony, or anything corresponding to it, there was no security for the enforcement of this rule in behalf of a prisoner. It is, of course, true that the friends of an offender held in custody without a hearing might make appeal to the council at Quebec; but from this body redress could be had only after an investigation of the case, and this took some time. If the seignior deemed an offence worthy of more severe punishment than he was empowered to inflict, and sent the case before a royal court, he was entitled to be reimbursed for the costs of the arrest and transport of the prisoner, and to be paid sixty *sols paris* out of the fine imposed by the royal court.

The seignior possessing the rights of middle jurisdiction had power to appoint tutors or curators for minors or persons *non compos mentis*, to determine the compensation to be paid them, and, in general, to supervise the property of all dependents in guardianship. He also had authority to decide disputed questions of measurement and acreage (*faire mesurer et arpenter*), and to determine the boundaries (*bornage*) of lands within his seignior.

The few seigniors who possessed the rights of low jurisdiction only could take cognizance of disputed matters in which the amount at issue did not exceed sixty *sols*, and in criminal cases could award a penalty not exceeding ten *sols*. The pos-

<sup>1</sup> That is, in money of France (see above, p. 92).

session of this degree of jurisdiction merely gave the seignior power to settle trivial disputes between the habitants, or between himself and his dependents, regarding the amount of seigniorial dues. He was bound by the rule regarding immediate hearings for prisoners; when he sent a case before a royal court he was reimbursed for his necessary costs, and, if a fine was imposed, he received ten sols as his share.<sup>1</sup>

These distinctions in degree of jurisdiction were of little or no importance in Canada, for the reason that in the great majority of cases the seignior who had jurisdiction at all had it in all three degrees. Every seignior possessing judicial power was supposed, before beginning to exercise it, to provide a court-room (*auditoire*) in or adjoining his manor-house, together with a prison "on the ground flour and in a dry place." He was also under obligation to provide the necessary court officials (a bailiff, a court clerk, and a crier), and, when he did not preside in person, to appoint a seigniorial justice.<sup>2</sup> As a matter of fact, however, those Canadian seigniors who exercised their judicial rights did not provide any special court-room, but used the living room of the manor-house for the purpose; and in a very few cases only did they provide prisons. In some of the larger seigniories court officials were named by the seignior, and were paid small compensations whenever there was work to be done; and in a few seigniories regular seigniorial justices were appointed, as may be seen from the wording of decrees ordering such officials to hold sessions at frequent intervals, not to take fees from claimants before them, and so on.<sup>3</sup> After the conquest, Governor Carleton declared that under the French rule no seigniorial justice could be appointed without the approval of the royal authorities.<sup>4</sup> In the records of the Superior Council will be found a few instances in which the appointment of a seigniorial justice was thus confirmed, but it does not appear that such confirmation was regarded as indispensable.<sup>5</sup> If the sanction of the council was given to all seigniorial judicial

<sup>1</sup> The precise limits of the three degrees of jurisdiction are very clearly set forth in Doutré and Lareau, *Histoire Générale du Droit Civil Canadien*, 133-136.

<sup>2</sup> *Ibid.* 135.

<sup>3</sup> *Edits et Ordonnances*, iii. 118.

<sup>4</sup> See below, p. 157.

<sup>5</sup> *Edits et Ordonnances*, ii. 23, 566.

appointments, some of these confirmations cannot have been recorded; for the number of seigniorial justices was certainly more than the number of recorded confirmations.<sup>1</sup>

Still, the total number of seigniors who appointed judges was comparatively small; in most cases in which jurisdiction was exercised the seignior appears to have performed the work himself. In such instances seigniorial justice was administered in rough-and-ready fashion, with little regard for the formalities of the law: the average Canadian seignior might as well have been asked to administer the Twelve Tables as to follow the Custom of Paris in his decisions. Ordinarily the disputants or offenders were called by the seignior to the manor-house, where, after a proceeding which partook more of the nature of a conference than a trial, some satisfactory settlement was usually effected. Most of the matters which came before the seigniors in their judicial capacity were concerned with disputes about boundaries of lands or seigniorial dues, with petty squabbles between the habitants, or, frequently, with the division of personal property among heirs. The seigniors very rarely undertook to exercise their powers of high jurisdiction: civil and criminal cases of any importance were almost invariably left to the royal tribunals to be dealt with by them *ab initio*. Although scores of Canadian seigniors had legal power to impose even the death penalty, there is no record that such sentence was ever pronounced in a seigniorial court.

The reasons for the failure of most seigniors to exercise their judicial powers to any very important degree are not difficult to find. In France seigniorial jurisdiction was a source of substantial profit; there, according to various writers, the profits of seigniorial jurisdiction amounted to from one-twentieth to one-tenth of the gross revenue of the seigniory.<sup>2</sup> In Canada, on the contrary, owing to the sparseness of the population very little profit could be hoped for by the seignior from fines, fees, and other incidents of jurisdiction. If any seignior had undertaken to provide himself with the full paraphernalia of jurisdiction, —

<sup>1</sup> Cugnet (*Traité de la Loi des Fiefs*, 53) states that the judges of the royal courts had the right to inspect all seigniorial courts within their districts.

<sup>2</sup> Tocqueville, *The Old Régime and the Revolution*, 341.

a court-room, jail, officials, and so on, — he would certainly have found himself exercising jurisdiction at a loss. It was not that the people were disinclined to litigation; on the contrary, a chronic disposition toward litigiousness was one of the most marked characteristics of the Canadian habitant. The Norman colonist seems to have been naturally quarrelsome,<sup>1</sup> and the long winters afforded him plenty of leisure to indulge in his combative proclivities.<sup>2</sup> Moreover, the loose way in which land boundaries were delimited, and the somewhat indefinite status of many seigniorial obligations, gave the habitant favorable opportunities for squabbling both with his neighbor and with his lord.<sup>3</sup> Talon, in 1667, roundly rebuked the population of New France for their lack of harmony and their disposition to invoke the aid of the higher authorities in the settlement of trivial questions at issue, and strongly urged them to settle differences of opinion among themselves and in friendly fashion.<sup>4</sup> As most of these difficulties were of such nature that their settlement cost the seigniors a good deal of time and patience without affording any tangible profit in return, it is no wonder that the seigniorial judicial powers were so seldom exercised.

Another reason for the infrequent use of the power may be found in the fact that the decision of a seigniorial court was in no case final. When a grant of jurisdiction was made to a seignior, it was accompanied by the provision that in all cases appeal to the royal courts of the colony should be allowed. Before the establishment of the royal courts, appeals went directly to the council at Quebec; but when, in course of time, royal district courts were established at Quebec, Montreal, and Three Rivers, each in charge of a royal justice, appeals were first taken to these, then to the intendant and council, and finally to the king. From the time the colony was taken under the direct

<sup>1</sup> As one writer aptly expresses it, the Norman settler had "beaucoup de chaleur dans la discussion des intérêts privées, et de calme dans celle des intérêts publics" (Bouchette, *British Dominions in North America*, i. 414, note).

<sup>2</sup> Gaspé (*Les Anciens Canadiens*) gives some interesting portrayals of French-Canadian life in the eighteenth century.

<sup>3</sup> See above, p. 40.

<sup>4</sup> *Edits et Ordonnances*, ii. 30.

control of the crown, the royal intention seems to have been to create a hierarchy of courts, — the seigniorial courts to administer justice in the first instance, and the royal courts to be primarily courts of appeal. "It is our will," declares a royal edict of 1667, "that an appeal shall lie from the seigniorial jurisdictions which are within the limits of our Prévôté at Quebec, to the said Prévôté, and from the said Prévôté to our said council at Quebec, which we prohibit from receiving any immediate appeal from the said seigniorial jurisdictions. . . and with respect to the other seigniorial jurisdictions which are not within the limits of the said Prévôté of Quebec, the appeals from them shall be brought immediately before the said council until such time as we shall have established other royal jurisdictions."<sup>1</sup> In accordance with this policy, it was ordained in the decree which established a royal court at Three Rivers in 1680 that appeals should no longer be taken from the seigniorial courts in that district to the council at Quebec, but to the newly established royal court, from which, of course, the issue might be further carried to the council.<sup>2</sup>

The establishment of the royal courts gave many of the neighboring seigniors an excuse for discontinuing their own jurisdiction. When the royal court was first set up at Montreal, the seigniors of the island at once prayed to be relieved of the right of exercising high and middle jurisdiction, but to be allowed the right of low jurisdiction in order that they might on occasion be able to enforce the payment of dues within their seignories. An ordinance depriving them of the two higher degrees of jurisdiction and confirming them in the enjoyment of the lowest one was accordingly issued.<sup>3</sup> Some time earlier the jurisdiction of the Jesuits in their seignories at Sillery and Three Rivers had, at their own request, been suppressed by a decree of the Superior Council, which ordered that cases arising in the first-named seignory should be taken in the first instance before the royal court at Quebec and those in the latter seignory before the royal court at Three Rivers.<sup>4</sup>

<sup>1</sup> *Edits et Ordonnances*, i. 237, § viii.

<sup>2</sup> *Ibid.* 242.

<sup>3</sup> *Ibid.* 342-346 (July, 1714).

<sup>4</sup> *Ibid.* iii. 152-153 (October 24, 1707).

Feudal jurisdiction has generally been looked upon as a usurpation by seigniors of a sovereign function, as the logical result of a weak central power. In France the origin of private justice was, in the earlier stages of feudal development, undoubtedly connected with the weakness of the monarchy; but in Canada we see a strong central power — the strongest perhaps that ever exerted its strength in the New World — endeavoring to establish a system of private jurisdiction, to decentralize the administration of justice, and to force the seigniors to assume judicial functions which most of them wished to discard. Obviously the explanation is that, with the preservation of the right of appeal in every case to the royal courts, the central authority had no reason to fear the development of undue power by those who exercised jurisdiction in the first instance. As Parkman has very aptly remarked, “Louis XIV liked the feudal system, but only with its teeth drawn.”<sup>1</sup>

Although the records of cases heard in the various seigniorial courts have not been preserved, it would seem that the vast majority of cases were brought in the first instance either before the royal courts at Quebec, Three Rivers, or Montreal, or before the council at Quebec; for one finds in the registers of these courts a formidable collection of judgments dealing with all sorts of cases, from the most important to the most trivial.<sup>2</sup> The seigniorial courts seem to have limited their jurisdiction, for the most part, to cases concerning the seigniorial dues and obligations; and it is remarkable how comparatively few were the appeals from these judgments of the seigniors to the royal courts. The seignior, it is true, knew very little about law or procedure; but he knew his suitors, and his disposition of the cases which came before him was usually a satisfactory one.

In some of the seigniorial courts there were, naturally enough, just causes of complaint, and even abuses; but these the authorities did not hesitate to correct when their attention was drawn to them. To this end, various decrees dealing with the seign-

<sup>1</sup> Parkman, *The Old Régime in Canada*, Introduction.

<sup>2</sup> Some of these are printed in Perrault, *Extraits ou Précédents tirés des Registres de la Prévosté de Québec*.

iorial courts were issued from time to time. Thus, in 1664, on the representation of the attorney-general that certain abuses existed in the seigniorial courts,<sup>1</sup> decrees were issued by the council prohibiting "all inferior judges from taking any payment or fees from parties to a suit under pain of being treated as extortioners, saving, however, the right of these officials to receive salaries from those who have named them to their positions," and prohibiting them also "from exercising any jurisdiction until they shall have taken the oath which is required to be taken by the royal judges in their jurisdiction." This ordinance provided further that persons complaining of excessive costs levied in a seigniorial court might appeal to the royal courts to have these reduced.<sup>2</sup> Again, in 1678 an edict was promulgated fixing definitely the amount of charges which might be exacted by judicial officials for any service.<sup>3</sup> Moreover, in several cases the intendant intervened to secure the more prompt and effective administration of justice in the seigniorial courts. In 1705, for example, Raudot issued a decree in which, after declaring that according to his information the seigniorial justices of Batiscan and Champlain held hearings only once each month and compelled the habitants, when they wanted special hearings between times, to pay for the same, he ordered these judges to hold court at least once every week (in Batiscan on Wednesdays and in Champlain on Saturdays), and forbade the practice of exacting charges for special sessions.<sup>4</sup> This is only one of the numerous similar interventions that might be instanced.

On the whole, the administration of justice in both the seigniorial and the royal courts seems to have been carried on with promptness, impartiality, and economy. The difference in this respect between conditions in Old and New France attracted the attention of Lahontan, who commented upon it in his usual facetious vein. "I will not say," he wrote, "that the Goddess

<sup>1</sup> The attorney-general had general supervision over the judicial administration of the colony. The position was at this time held by Jean Bourdon, who had been appointed to the post on the recommendation of Bishop Laval. See Gosselin, *Jean Bourdon* (Quebec, 1904), ch. xiii.

<sup>2</sup> *Edits et Ordonnances*, ii. 22 ff.

<sup>3</sup> *Ibid.* i. 99 ff.

<sup>4</sup> *Ibid.* iii. 118.



of Justice is more chaste and impartial here than in France, but at any rate, if she is sold, she is sold more cheaply. In Canada we do not pass through the clutches of advocates, the talons of attorneys, and the claws of clerks. These vermin do not infest Canada yet. Everybody pleads his own cause. Our Themis is prompt, and she does not bristle with fees, costs, and charges."<sup>1</sup> This is, in truth, very modest praise; but such evidence as may be drawn from the comments of other contemporary writers seems to indicate that maladministration of justice was never an important ground of complaint by the people. No one can read the numerous judgments of the intendants without being impressed with the apparently earnest desire of these officials to be fair to all parties concerned; and the frequency with which their intervention seems to have been sought by seigniors and habitants alike bespeaks a confidence in their impartiality.

It is, of course, true that possibilities of injustice lay in the system of private jurisdiction; but these do not appear to have been realized. This point was very well stated by Governor Guy Carleton in one of his despatches to the British authorities. "Some of the privileges contained in the seigniorial grants," he wrote, "appear to convey dangerous powers into the hands of the seigniors, but upon a more minute enquiry these are found to be really little less than ideal. The *haute, moyenne, et basse justice* are terms of high import, but even under the French government were so corrected as to prove of little significance to the proprietors; for besides that they could appoint no judge without the approbation of the government, there lay an appeal from all the private to the royal jurisdictions in every matter exceeding half a crown. It could not therefore be productive of abuse, and as the keeping of their own judges became much too burthensome for the scanty incomes of the Canadian seigniors, it was grown into so general a disuse that there were hardly three of them in the whole province at the time of the conquest."<sup>2</sup>

<sup>1</sup> Lahontan, *Nouveaux Voyages* (1705), i. 21, cited by Parkman, *The Old Régime in Canada*, ii. 68.

<sup>2</sup> Carleton to Shelburne, April 12, 1768, in State Paper Office, *America and West Indies*, vol. cccxxvi, No. 33.

Almost precisely the same view is expressed by Garneau. "All the seigniories with very few exceptions," he writes, "possessed the redoubtable right of high, mean, and low jurisdiction which was acquired by express grant from the king. This was in America an anachronism at once of time and place. The seigniorial judges and the officers of their courts were obliged to obtain for themselves the sanction of the royal authorities, to whom, moreover, they were obliged to make oath that they would fulfil their duties faithfully and well. But in addition to this there were added other shackles, with the result that scarcely a seignior could be found desirous of exercising his privileges."<sup>1</sup>

The policy of permitting private jurisdiction to be exercised in the colony did not commend itself to the new British authorities; hence, while they were not unwilling to perpetuate the French system of civil law, they gave no consideration to the advisability of permitting even the theory of seigniorial judicial authority to remain. During the period of military rule (1760-1764), all cases were brought in the first instance before the military courts which were established in different parts of the colony.<sup>2</sup> When military rule gave place to a system of civil government, one of the early acts of the new administration was to establish a new system of courts in which no provision for the exercise of any private jurisdiction was made.<sup>3</sup> The judicial prerogatives of the seigniors were in this way quietly eliminated. No compensation seems to have been claimed by them, and none was granted. The attempt of the French crown to establish a system of private justice in New France had failed signally; and the chief cause of failure seems to be found in the simple fact that private jurisdiction could not, except in a very few cases, be made to pay its way.

<sup>1</sup> Garneau, *Histoire du Canada*, i. 173-174. Garneau declares (*Ibid.* 174) that the king forbade the granting of seigniories *avec justice* after 1714; but I have found no trace of any such prohibition. At any rate, seigniories continued to be granted with judicial powers after that date, and these grants were readily ratified by the crown.

<sup>2</sup> Sulte, *Le Régime Militaire, 1760-1764*, in Royal Society of Canada, *Proceedings*, 1905, Appendix A.

<sup>3</sup> Order in council of September 17, 1764, *Ordinances made for the Province of Quebec by the Governor-in-Council of the said Province since the Establishment of the Civil Government* (1767), 9-10.

## CHAPTER IX.

### THE SEIGNIORIAL NOBLESSE.

THE three foregoing chapters have been devoted to a description of the various rights through the exercise of which the seigniors might hope to derive some emolument. Some of these rights, like the *cens et rentes* and the *lods et ventes*, were substantial and lucrative; others, like the banalities and the judicial powers, afforded little profit except under the most favorable circumstances. In every case the amount of emolument derived depended upon the stage of development which the seignior had attained; and this was gauged very accurately by the population within its limits.

The Canadian seignior, however, like his prototype in France, possessed a number of privileges of a purely honorary nature, which gave him some prestige but no profit whatever. On the contrary, they were frequently a source of expense to him; for they made it necessary that he should maintain a corresponding dignity, which was, unfortunately, quite often beyond his means. Some of these honorary privileges he had as seignior, others because he had either inherited rank in the noblesse or received it as the reward of a successful administration and development of his seignior.

Among the honorary privileges possessed by the seignior as seignior, was the right to receive the fealty and homage of each of his habitants upon the occasion of the latter's first entry upon his holding and at every subsequent mutation of ownership. The ceremony took place at the manor-house, and was similar to that performed by the seignior himself to the representative of the crown at Quebec.<sup>1</sup> Again, on the first day of

<sup>1</sup> When the inhabitants failed to render their fealty and homage, the seignior could obtain an ordinance compelling them to perform this ceremony (see *Edits et Ordonnances*, ii. 595). An excellent description of the ceremony is given in William Kirby's *Chien d'Or*. See also above, pp. 56-57.

May, the habitants were bound to appear before the seigniorial manor-house and plant a May-pole near the door. The occasion was made a gala day by them, and especially by the younger folks, who gathered in holiday attire and spent the day in dancing and games, while the seignior showed his appreciation of the honor by a liberal dispensation of refreshments.<sup>1</sup> It seems hardly possible that the habitants could have looked upon this exaction as a burden; and yet on at least one occasion they petitioned the intendant for the discharge of the obligation, and with the consent of the seignior were relieved from further performance of it.<sup>2</sup>

In virtue of his position, moreover, the seignior was entitled to a certain precedence and honor in the religious services of the parish. As there seemed to be some difference of opinion between the seigniors and the curés as to what honorary rights pertained to the former, a decree of the council, issued in 1709, endeavored to make the matter clear. This edict provided that the only seignior entitled to honors in any parish church should be the one in whose territory the church was erected. For his use a special pew was to be prepared "in the most honorable place," that is to say, on the right side of the church and at a distance of four feet from the altar railing (*balustre*); this pew, as the decree went on to provide with an elaboration of detail, was to be of the same length as those used by the ordinary laymen, and was not to be more than double the depth. The seignior was in all cases to be the first layman to approach the sacred bread at the Eucharist, and in his absence this honor was to be accorded to any of his children over the age of sixteen. At the special religious fêtes he was to be the first to approach the altar to receive the tokens of the day, as, for example, the ashes on Ash Wednesday or the palms on Palm Sunday; and in all religious processions he was to take place immediately after the curé. On his decease his remains might be interred beneath the church, and even the determination of the exact spot of burial was provided for by the edict. The honors and privileges to be

<sup>1</sup> An interesting description of the May-pole ceremony is given by Gaspé in his *Les Anciens Canadiens*, ch. xvii.

<sup>2</sup> *Edits et Ordonnances*, iii. 132.

accorded to the wife and children of a seignior were also minutely specified, to the end that no future misunderstandings might arise.<sup>1</sup>

Finally, the seignior was entitled to the general deference and respect of his dependents, who were supposed to salute him respectfully on meeting him, to give his vehicle the right of way, to remain standing when in his presence unless requested to sit, and in general to treat him with that polished deference which the men of the old régime were wont to yield to their social superiors. Naturally enough, matters of this sort were closely related to the wealth and personal dignity of the individual seignior; and in Canada these qualities were frequently lacking. Too often the seignior was as poor as the average habitant; not infrequently he was a man of toil, striving hard to make both ends meet, living a life little removed from that of his habitants, and attaching very little dignity to his office or position.

Although it has been the custom of some writers to use the terms "seigniors" and "noblesse" interchangeably,<sup>2</sup> it should be emphasized at this point that not all the Canadian seigniors were members of the aristocracy. In speaking of France it is approximately correct to say that a seignior was always a member of the noblesse, but in speaking of Canada this use of the terms is clearly misleading. The possession of a fief, or seignior, in New France gave no noble status whatever: the commoner who received a colonial fief remained a commoner. Some seigniors, it is true, received rank in the noblesse, but in every case by special letters patent from the crown and never as an incident of their tenure.

From the beginning, the French government apparently intended to establish in the colony some prototype of the noblesse at home. La Roche, it will be remembered, was in 1598 authorized to create "châtellenies, earldoms, viscountships, baronies, and other dignities," and the Company of One Hundred Associates numbered among its multitude of semi-sovereign privileges that of granting "such titles and honors . . . as the

<sup>1</sup> *Edits et Ordonnances*, ii. 154-156.

<sup>2</sup> E.g., Coffin, *The Province of Quebec and the Early American Revolution*, ch. i; Thwaites, *France in America*, 133.

Associates may deem proper";<sup>1</sup> but neither La Roche nor the company seems to have exercised any of these rights. Patents conferring rank in the noblesse were issued directly by the crown, though most of them, it is true, came to the colony as the result of recommendations made to the king or the minister by the colonial authorities. As such patents of nobility were never granted in Canada except to the owners of seigniories, it will be seen that, while the Canadian seignior was by no means always a noble, the Canadian noble was always a seignior.<sup>2</sup> In France just the reverse was true.

Although the noblesse of New France was never a very numerous body, it included representatives of almost every rank, foremost among whom were the two counts, Jean Talon, Comte d'Orsainville, and François Berthelot, Comte de St. Laurent. Talon, the first active intendant of New France, came to the colony in September, 1665,<sup>3</sup> at the beginning of a considerable movement of immigration to the domains of France in the New World. As he was under instructions to take special interest in the reception and settlement of the incoming colonists, he at once proceeded to act upon the suggestion of the minister that he should have a substantial area of land cleared each year in order that settlers might be set to the work of cultivation as soon as they arrived.<sup>4</sup> A few weeks after his arrival at Quebec, Talon decided to establish three villages, and chose as locations certain lands in the seigniorie of Notre Dame des Anges, on the north shore of the St. Lawrence just below Quebec. This seigniorie had some years previously (1626) been granted to the Jesuits, who now protested against the intendant's plan.<sup>5</sup> Talon pointed out to them, however, that, in the forty years during which the seigniorie had been in Jesuit hands, only a small part of it had been settled; and he further called their attention to the decree of 1663, which provided for the retrenchment to the crown of all seigniorial grants that had been left

<sup>1</sup> See above, ch. ii.

<sup>2</sup> There were, of course, several members of the French noblesse who served in Canada as officers of the forces, and who were not seigniors.

<sup>3</sup> Chapais, *Jean Talon*, 62.

<sup>4</sup> *Ibid.* 92.

<sup>5</sup> *Titres des Seigneuries*, 53. A copy of the Jesuit protest, together with the intendant's reply, is printed in Chapais, *Jean Talon*, Appendix.

uncleared and uncultivated.<sup>1</sup> The villages were therefore laid out, the lands cleared, and as settlers arrived locations were given to many of them, titles being issued in the name of the king. The three villages, to which Talon gave the names of Bourg-Royal, Bourg-la-Reine, and Bourg Talon, soon had small but thriving populations; for these settlers were more fortunate than most of those who came to New France, in that they received lands already cleared and sometimes already placed under seed.<sup>2</sup>

Talon's work did not end with this project, however. During the years 1667-1668 he purchased for himself large tracts of land lying along the St. Charles River, built a house and barns thereon, and proceeded to spend considerable sums from his own private means in improving his property. The example of the intendant was not lost upon the seigniors of the colony, many of whom seem to have been spurred to new effort in the improvement of their holdings.<sup>3</sup> In 1668 Talon went home to France, where he remained until 1670; but during his absence the work of improving his property went on apace. Soon after his return to the colony, he wrote to the minister describing the progress made both in his villages and on the lands which he had purchased, and took occasion to suggest that the king might be pleased to grant him some title of honor, in order that such a recognition of his enterprise might "fill the officers and richer seigniors with a new zeal for the settlement of their lands in the hope of being recompensed with titles as well."<sup>4</sup> This request was readily granted, and in 1671 Talon received letters patent consolidating his properties and the three royal

<sup>1</sup> *Edits et Ordonnances*, i. 33.

<sup>2</sup> "On [les] a formés aux environs de Quebec, tant pour le fortifier, en peuplant son voisinage, que pour y recevoir les familles venues de France, et auxquelles on distribue des terres déjà mises en culture, et dont quelques-unes ont été cette année chargées de blé, pour faire le premier fonds de leur subsistance" (*Relation of 1667*, in Thwaites, *Jesuit Relations and Allied Documents*, i. 244).

<sup>3</sup> The census of 1667 gave the area of cultivated lands as 11,448 arpents; that of 1668 placed it at 15,642 (*Censuses of Canada, 1665-1871*, pp. 7-8). The *Relation of 1668* speaks in a very hopeful strain of the new activity shown on all sides (Thwaites, *Jesuit Relations*, li. 170).

<sup>4</sup> Talon to Colbert, November 10, 1670, *Correspondance Générale*, iii. 76.

villages which he had founded into one fief, the whole to have the "title and dignity of a barony." To this new barony was given the name Des Islets.<sup>1</sup>

This patent gave Talon authority "to call, name, and style himself Baron des Islets in all acts whether judicial or otherwise, and in that quality to enjoy all the honors, armorial bearings, prerogatives, rank, and precedence, as well at war as at meetings of the nobility or otherwise, in the same manner as the barons of our kingdom"; and it commanded "that all tenants, men, and vassals of the said lands" should "acknowledge him as baron, and in such quality render him their fealty and homage." It gave him the right to "establish gaols, a four-post gibbet in such place as he may think fit within the said barony, and a post with an iron collar on which his arms shall be engraved"; and as a special mark of the royal favor it expressly waived the right of the king to escheat the barony in default of legitimate male heirs.

Less than two years after his elevation Talon went home to France, having asked for and received his demission from office;<sup>2</sup> but in 1675 he was honored by the issue of a further patent "creating, erecting, and elevating" the barony Des Islets into "the title, name, quality, and dignity of a countship, which shall hereafter be called the countship of Orsainville." To the new Comte d'Orsainville was given, "for himself, his heirs, successors, and assigns, as well male as female," all the "honors, rights, rank, and precedence belonging to the dignity of a count, although not here specifically detailed"; and the people of the countship were assured that they should not, by reason of the new dignity conferred upon their seigniorial lord, be subjected to "any greater duties than those which they at present owe."<sup>3</sup>

Although Talon never returned to Canada, his zeal for the interests of the colony in general, and for the improvement of his own countship in particular, did not flag. Down to the date of his death in 1694 his watchful care and interest continued; and on more than one occasion he was called by the minister into

<sup>1</sup> *Titres des Seigneuries*, 348; see also *Jugements et Délibérations du Conseil Souverain de la Nouvelle-France*, i. 692.

<sup>2</sup> Chapais, *Jean Talon*, 454.

<sup>3</sup> *Titres des Seigneuries*, 348.



consultation concerning matters of policy in New France.<sup>1</sup> By his last will and testament he bequeathed the countship of Orsainville to his nephew Jean François Talon,<sup>2</sup> who in 1696 sold the estate to Mgr. de St. Vallier, bishop of Quebec. Bishop St. Vallier gave the property to the General Hospital (which he had founded at Quebec) as part of the endowment of that institution, upon condition that it should never be alienated. Two years later, however, an arrangement was made between the authorities of the General Hospital and the Jesuits, whereby the bourgs Royal and La Reine were reunited to the Jesuit seigniority of Notre Dame des Anges, after having been separated for thirty-two years.<sup>3</sup> The remaining lands, with the exception of a part which in 1896 was handed over to the city of Quebec and now forms Victoria Park, still remain the property of the General Hospital. Throughout the old régime in Canada, France found herself served by no inconsiderable number of earnest and public-spirited sons, who gave unsparingly of their vigor and means to the carrying out of the royal projects, often with scant hope of ultimate reward; but on this roll of gifted and energetic Frenchmen who gave some of the best years of their lives to the stupendous task of creating a Bourbon empire beyond the seas, there is no name more honored or more worthy of honor than that of Jean Talon, Comte d'Orsainville.

The only other countship in Canada, that of St. Laurent, comprised the island of Orleans, just below Quebec. This island had originally been granted to the Jesuits; but in 1675 Laval exchanged it for Isle Jésus, at Montreal, the seigniority of François Berthelot, who is described in his title as "notre conseiller et secrétaire général de l'artillerie, poudres, et salpestres de France." In the year following the exchange, and apparently in connection with it, the island of Orleans was made a countship and Berthelot became the Comte de St. Laurent.<sup>4</sup>

<sup>1</sup> Régis Roy, *Les Intendants de la Nouvelle-France*, in Royal Society of Canada, *Proceedings*, 1903, *Mémoires*, sec. i. 69-73.

<sup>2</sup> Further details regarding the life and work of Talon are to be found in Chapais's *Jean Talon*, the appendices to which contain many interesting and hitherto unpublished documents.

<sup>3</sup> Chapais, *Jean Talon*. 494-500.

<sup>4</sup> Dunkin, *Address at the Bar of the Legislative Assembly of Canada*, Appendix,

Of baronies, five in all seem to have been created, — four in Canada and one in Acadia. The first of these, that of Cap Tourmente near Quebec, was given to Guillaume de Caën in 1624 “in consideration of the great dangers, risks, and hardships” which he had incurred in beginning a settlement in New France.<sup>1</sup> As Caën had important commercial interests in the colony, great things were expected of him; but, when the Company of One Hundred Associates came into possession of the colony some half-dozen years later, it was found that a small clearing at the head of the cape marked the limits of the baron’s agricultural achievements. This circumstance, with the fact that Caën was a Huguenot, led Richelieu’s company to secure a revocation of his grant and title; but some years later (1640) the French king recouped him by the grant of a barony in the West Indies.

The second baronial grant in point of time was made in 1653 to the Sieur Philippe Mius d’Entremont in Acadia. In 1651 Entremont, a French gentleman of Norman birth, came out to Acadia with Charles de Saint-Etienne de la Tour, and two years later was given the fief and barony of Pobomcoup. This grant was made by La Tour in his capacity of lieutenant-general of Acadia.<sup>2</sup> The third barony was that already mentioned as having been created for Jean Talon in 1671.<sup>3</sup> The fourth barony, that of Portneuf, was erected by letters patent from the king in 1681. The seignioriy of Portneuf was originally the property of Jacques Leneuf de la Poterie, who received it from the Company of One Hundred Associates

No. 148. Two years before the exchange was made, Talon had brought to the notice of the king Berthelot’s services in the development of Isle Jésus, and had forwarded therewith a request that the fief be made a barony (Talon to Minister, March 9, 1673, *Correspondance Générale*, iv. 94). The population of the countship of St. Laurent is given in the census of 1681 as 1,082 (*Censuses of Canada, 1665-1871*, p. 11).

<sup>1</sup> Moreau de St. Méry, *Lois et Constitutions des Colonies Françaises de l’Amérique*, i. 48 ff.

<sup>2</sup> The barony of Pobomcoup lay north of Cape Sable, at the southern point of the Acadian peninsula. The name has now been corrupted to “Pubnico.” A copy of the patent creating the barony is printed in Rameau de Saint-Père, *Une Colonie Féodale en Amérique* (1889), 412-413.

<sup>3</sup> See above, p. 164.

in 1636.<sup>1</sup> In 1671 Jacques Leneuf gave the seigniorship to his daughter, Marie-Anne, who had, in 1652, married René Robineau, sometime seignior of Bécancour.<sup>2</sup> Robineau proved himself a very progressive seignior. During the years following the establishment of royal government he was so prominent a figure in New France that in 1681 the king recognized his services by elevating the seigniorship to the "title and dignity of a barony," and Robineau became Baron de Portneuf.<sup>3</sup> One of his sons, who had taken possession of his father's former seigniorship of Bécancour, is sometimes referred to as Baron de Bécancour; but this appellation is entirely unwarranted, as Bécancour was never made a barony.<sup>4</sup>

Perhaps the most interesting of all the baronial grants is the last in point of creation, that of Longueuil. About 1654 Charles Lemoyne, the son of a Dieppe innkeeper, arrived in Canada and took up his abode in Montreal, where on more than one occasion he rendered yeoman's service in the operations against the Indians. Some years later he received a seigniorial grant (which he called Longueuil) on the south shore of the St. Lawrence almost opposite the island of Montreal; and in 1668, in recognition of his services, he was rewarded by the king with rank in the noblesse of France. He died in 1685.

Charles Lemoyne had eleven sturdy sons, ten of whom became prominent figures in the history of Canada during the French period. The eldest, Charles, after inheriting the seigniorship, took a prominent part in the repulse of Phipps at Quebec in 1690. Having purchased considerable land contiguous to his seigniorship, he had by the close of the seventeenth century become one of the most extensive lay landholders in the colony; and since his holdings yielded him substantial profits he soon became opulent for a colonial seignior, as was shown by his erection of a pretentious stone castle flanked by four imposing towers.<sup>5</sup> Lemoyne de Longueuil also erected a well-equipped

<sup>1</sup> See below, p. 170. The family of Leneuf de la Poterie must not be confused with that of Bacqueville de la Potherie, the historian.

<sup>2</sup> Tanguay, *Dictionnaire Généalogique*, i. 523.

<sup>3</sup> The patent is printed in Gatiien, *Histoire de la Paroisse du Cap-Sauté*, 367 ff.

<sup>4</sup> Sulte, *Histoire des Canadiens-Français*, v. 106.

<sup>5</sup> See above, p. 66. The original building was gutted by fire in 1782; but a part

seigniorial mill, built good roads throughout his seignior, and in general made it a model seigniorial property.<sup>1</sup> As usual, such enterprise won the appreciation of the French monarch, who, in 1700, consolidated the seignior's extensive holdings into the barony of Longueuil, mentioning in the patent of creation the very notable services rendered by various members of the Lemoyne family in the colony.<sup>2</sup>

Of all the titles of honor granted by the French crown in Canada, that of the Baron de Longueuil is the only one now included in the British peerage. After the conquest of Canada the descendants of Charles Lemoyne maintained that the cession of the colony to Great Britain did not invalidate titles previously conferred; and they therefore assumed the title of Baron de Longueuil according as they were entitled to it in the order of succession under the old French rule.<sup>3</sup> In 1880

of it, including the west tower, remained standing as late as 1885, when it was torn down to make room for the new parish church of Longueuil.

<sup>1</sup> The population of Longueuil and Tremblay is placed by the census of 1698 at 223. Cf. *Censuses of Canada, 1665-1871*, p. 40.

<sup>2</sup> The honor was conferred by the king in response to a request made by the Sieur de Longueuil, through the governor and intendant, two years previously (see Frontenac and Champigny to Minister, October 15, 1698, *Correspondance G n rale*, vol. xvi). The history of the seignior and barony of Longueuil is traced in detail in Jodoin and Vincent's *Histoire de Longueuil et de la Famille de Longueuil* (Montreal, 1889); and there is an interesting little essay on the Baron de Longueuil in Sir J. M. Le Moine's *Maple Leaves*, 1st series, 47-53. For the order to communicate to the attorney-general the letters patent creating the barony, see *Jugements et D lib rations du Conseil Souverain de la Nouvelle-France*, iv. 492.

<sup>3</sup> The first Baron de Longueuil, born in 1656, died governor of Montreal in 1729. His son Charles, second baron, born in 1687, was for a time administrator of the colony, and died in January, 1755. The third baron was Charles Jacques Lemoyne (1724-1755), who, after distinguishing himself on the Monongahela, was killed at Lake George a few months after his father's death. As the third baron had no sons, the barony passed to his only daughter, Marie, who in 1781 married Captain David Alexander Grant of the 94th Regiment. Their son, Charles William Grant, assumed the title of fifth baron in 1841, and died seven years later. The title then passed to his son, Charles James Irwin Grant, who held it till his death in 1879, when his son, Charles Colmore Grant, succeeded him as seventh baron. On the death of the last-named, in 1899, the barony passed to his half-brother, Reginald Charles d'Iberville Grant, who holds the title of eighth Baron de Longueuil at the present time. The house of Longueuil is widely connected by marriage with many prominent families of contemporary French Canada, notably with those of Baby, Beaujeu, Lanaud re, Gasp , and Le Moine.

Her Majesty Queen Victoria, on the advice of the law officers of the crown, accorded recognition to Charles Colmore Grant as seventh Baron of Longueuil.<sup>1</sup>

The barony of Longueuil at one time included an area of about one hundred and fifty square miles, within which were the important towns of St. Johns and Longueuil; but much of it has been sold and is now held in freehold by private owners. Such portions as had not been sold were in 1854 entailed as far as the existing laws would allow; and, as this entail has since been renewed, the eighth baron has at present a life interest only in the estate. In the annals of French Canada from first to last there is probably no family which has consistently maintained a more favorable prominence than that of the former Dieppe innkeeper. One can read but few pages in the history of colonial America without encountering the name of a Lemoyne; for from Hudson's Bay to the Mississippi some member of this virile family seems to have connected himself with almost every phase of French colonization.<sup>2</sup>

Among the noble holdings in New France only one châtelanie is numbered, that of Coulonge, which was given by the company to Louis d'Ailleboust in 1656. D'Ailleboust had come to Montreal shortly after the town was founded, and after filling important civil offices was in 1648 appointed governor of the colony. After the expiration of his gubernatorial term he remained in the country and devoted himself to the improvement of Coulonge, which the company later erected

<sup>1</sup> The royal recognition was officially promulgated as follows: "The Queen has been graciously pleased to recognize the right of Charles Colmore Grant, Esquire, to the title of Baron de Longueuil, of Longueuil in the Province of Quebec, Canada. This title was conferred on his ancestor, Charles Lemoyne, by letters patent of nobility signed by King Louis XIV in the year 1700" (*London Gazette*, December 7, 1880). The Baron de Longueuil is not, however, entitled as such to a seat in the House of Lords.

<sup>2</sup> Among the brothers of the first Baron de Longueuil were Jacques Lemoyne de Ste. Hélène, who fell at the siege of Quebec in 1690; Pierre Lemoyne d'Iberville and Jean Baptiste Lemoyne de Bienville, founders of Louisiana, and the latter governor of that colony; Joseph Lemoyne de Sérigny, naval officer and later governor of Rochefort; and Louis Lemoyne de Châteauguay, killed in action at Fort Bourbon on Hudson's Bay.

into a châtelainie as a mark of appreciation of his efficient services.<sup>1</sup>

There seem to have been two marquisates in the territory of New France, but very little is known about them. About 1645, Jacques Leneuf de la Poterie, who has already been mentioned as having received the seigniority of Portneuf in 1636, removed from this latter place and settled at Three Rivers, where he received from the company a grant of certain lands.<sup>2</sup> This grant passed later into the hands of his son, Michel Leneuf de la Vallières, who, in 1686, sold it to Charles Aubert de la Chesnaye through a deed of sale in which the territory is designated as the "marquisat de Sablé."<sup>3</sup> No trace of any patent creating this marquisate has been found, however, nor does any Marquis de Sablé appear to be mentioned in any of the records of the time. All that can be learned of the other marquisate is that, in the closing years of the seventeenth century, the title of Marquis de Miscou was given to one Michel de Saint-Martin, a French adventurer.<sup>4</sup> The title presumably relates to the island of Miscou in the Gulf of St. Lawrence, but there is no evidence that the marquis ever came to New France.

In addition to the foregoing grants of higher dignities, many "letters of noblesse" were issued from time to time giving seigniors rank among the lesser nobility. The term "noblesse" in its widest sense included all lay members of the privileged orders, no matter what their rank or their method of acquiring it; for the attributes of nobility might be inherited, or obtained by letters patent from the king, or acquired through the tenure of certain designated offices in the royal service, either military or civil.<sup>5</sup> There were, therefore, in France a large number of untitled nobles, or "gentilshommes," who, despite their lack of titles,

<sup>1</sup> This patent is not printed in *Titres des Seigneuries*, but may be found in the *Rapport du Ministre des Travaux Publics de la Province de Québec* (1899), 91. A summary of its contents, taken from the manuscript, is given in Dunkin's *Address*, Appendix, No. 44 a.

<sup>2</sup> *Titres des Seigneuries*, 392.

<sup>3</sup> Sulte, *Histoire des Canadiens-Français*, v. 102.

<sup>4</sup> *Ibid.* 110.

<sup>5</sup> "On distinguait plusieurs espèces de noblesse : la noblesse héréditaire et la noblesse accordée par les rois, la noblesse d'épée et la noblesse de robe" (Chéruel, *Dictionnaire Historique des Institutions de la France*, ii. 858).

possessed all the attributes and privileges of nobility, and transmitted their quality and status to their posterity.<sup>1</sup>

Some of the emigrants to the colony, especially some of those who came out to take positions in the civil or the military service, were already members of the noblesse at home; and these, of course, retained their rank in Canada. Others were commoners upon arrival, but received elevation as a royal reward for their interest in colonial development or for distinguished ability in the service of the crown.<sup>2</sup> As early as 1667, Talon, in his "Mémoire sur l'Etat Présent du Canada," explained that "the noblesse of Canada" was "composed of four old families [that is, members of the noblesse at home] and four others to whom rank has been given by the king."<sup>3</sup> The first four to whom the intendant referred were probably the families of Jacques Leneuf de la Poterie,<sup>4</sup> Charles Le Gardeur de Tilly, Jean Baptiste Le Gardeur de Repentigny, and Charles Joseph d'Ailleboust de Musseaux. The others cannot be definitely ascertained. It seems, however, that in 1661 Pierre Boucher had, on the recommendation of Governor Lauzon, received rank in the noblesse in recognition of his services as governor of Three Rivers, but that for some reason this patent was revoked five years later and Boucher became once more a commoner.<sup>5</sup> Some other grants of noble status had also been made to colonials during this period, and it is probably to the holders of these that Talon had reference when he spoke of the "four other families." In the

<sup>1</sup> Strictly speaking, the term "gentilshommes" included only the hereditary noblesse (Chéruel, *Dictionnaire Historique*, i. 486); but in New France it seems to have been applied to all the untitled noblesse, whether hereditary or not.

<sup>2</sup> Robert Cavellier de la Salle, for example, received his patent in 1675 in appreciation of his zeal and success in exploration. See Gravier, *Cavellier de la Salle de Rouen* (1871), 360-361.

<sup>3</sup> This "Mémoire," which bears date of October 27, 1667, may be found in the *Correspondance Générale*, ii. 493-524. It contains a description of the colonial population at the time, and may be profitably compared with Hocquart's somewhat different characterization of seventy years later (see Hocquart to Minister, November 8, 1737, *Ibid.* vol. lxxvii).

<sup>4</sup> On the matter of Leneuf's claim to rank in the noblesse, see *Jugements et Délivrations du Conseil Souverain de la Nouvelle-France*, i. 997.

<sup>5</sup> This seems to have been an echo in the colony of the wholesale revocation of patents of noblesse which took place in France, under Colbert's auspices, in 1666. See Isambert, *Recueil Général des Anciennes Loix Françaises*, xviii. 73.

same year (1667) the intendant asked that letters of noblesse should be given to five prominent colonists, — Godefroy, Lemoine, Denys, Amiot, and Couillard;<sup>1</sup> and at the same time Lieutenant-General Tracy, who commanded the troops in the colony, asked similar favors for Jean Bourdon, Ruelle d'Auteuil, and Juchereau de la Ferté.<sup>2</sup> Tracy furthermore urged that Boucher's patent should be restored to him. With all of these requests the king appears to have complied.

The grant of these honors seems to have made such an impression in the colony that forthwith traders, artisans, and others were seized with a new desire to obtain seigniories in the hope that social elevation might follow. We are told, for instance, that Noël Langlois was a good carpenter until he secured a seignior and aspired to be a gentilhomme, when he became proud and indolent;<sup>3</sup> and that Jacques Le Ber, a Montreal shopkeeper, who had by years of work and thrift amassed a considerable fortune, readily paid out six thousand livres to become a gentleman.<sup>4</sup> Seigniors, merchants, artisans, and habitants sought patents of noblesse with almost equal vigor; the whole colony became infatuated with aristocratic ideas, and men who failed to get formal recognition made a pretence of having received it. Habitants who had by years of hard labor amassed sufficient to purchase half-developed seigniories strutted about with the airs of born aristocrats, while their wives, in the words of Governor Denonville, "essayed to play the fine lady."<sup>5</sup> The intendant Meulles was disgusted with the spirit: "Every one in the colony," he wrote, "begins by calling himself an écuyer, and ends by thinking himself a gentilhomme."<sup>6</sup>

Many of this class of gentilshommes, genuine and bogus, be-

<sup>1</sup> See Talon's "Mémoire" of October 27, 1667, cited above.

<sup>2</sup> See Tracy's "Mémoire sur le Canada," 1667, a copy of which may be found in the Parkman Papers, Massachusetts Historical Society.

<sup>3</sup> Duchesneau to Minister, November 10, 1679, *Correspondance Générale*, v. 62.

<sup>4</sup> Faillon, *Vie de la Mademoiselle Le Ber*, 325. Le Ber, who became Monsieur de Senneville and seignior of the fief of St. Paul's Island, was reputed to be the richest man in Montreal. Langlois became seignior of the fief of Port-Joly (*Titres des Seigneuries*, 130).

<sup>5</sup> Denonville to Minister, November 10, 1686, *Correspondance Générale*, viii. 210.

<sup>6</sup> Meulles to Minister, November 4, 1683, *Ibid.* vi. 323.



came so conspicuous by their "pride, sloth, and poverty,"<sup>1</sup> that as early as 1679 the colonial authorities began to call the attention of the minister to the danger of granting too many patents of nobility in the colony. "Many of our aristocratic officers," wrote Duchesneau in that year, "lead what in France would be called the life of a country gentleman, spending most of their time in fishing and hunting. As they require more expensive food and better clothes than do the ordinary habitants, and as they do not devote themselves to the cultivation of their lands, but only engage at intervals in illicit trade, they get into debt on all sides and throw out the temptation to their children to become *coureurs-de-bois* in spite of the interdictions of His Majesty . . . ; and notwithstanding their spasmodic trading operations they are in miserable poverty."<sup>2</sup>

In 1685 Governor Denonville expressed himself in a similar way. "Above all things," he wrote to the minister, "let me inform you, Sir, that the noblesse of this colony are a beggarly lot, and that to increase their number is but to increase the number of drones. A new country needs sturdy workmen to wield the axe and to handle the hoe. The only resource of the noblesse is to take to the forest, there to trade a little with the Indians and for the most part to contract their vices."<sup>3</sup> These are strong aspersions, but they were very probably warranted by the condition of many of those who claimed to be noblesse at the time.<sup>4</sup>

In one of his lengthy despatches of the following year, Denonville again drew the royal attention to the condition of the noblesse. This time he mentioned specifically the poverty of several families, notably that of St. Ours, who had been at one time an officer in the Carignan-Salières regiment; and he requested the king to afford some monetary assistance to them.<sup>5</sup>

<sup>1</sup> Champigny to Minister, August 26, 1687, *Correspondance Générale*, ix. 144.

<sup>2</sup> Duchesneau to Minister, November 10, 1679, *Ibid.* v. 62.

<sup>3</sup> Denonville to Minister, November 13, 1685, *Ibid.* vii. 55.

<sup>4</sup> It must not be forgotten, however, that many of the colonial noblesse were quite well-to-do. Such, for example, were the families of Lemoyne, Leneuf, Boucher, Robineau, Villeray, Lotbinière, Saurel, and several others.

<sup>5</sup> An interesting sidelight on the abject poverty of the noblesse is thrown by the correspondence which passed between Governor Frontenac and the minister during

"Otherwise," he continued, "there is grave danger that their sons will turn bandits or go over to the English, since they have no other means of gaining a livelihood." The governor went on to impress upon the minister his belief that the colony would do very well without an aristocracy. "I had much rather," he wrote, "see good habitants in this colony; for a habitant who can and will work can get along very well in this country, while gentlemen who do not work can never be anything but paupers."<sup>1</sup>

As usual, the generous king came to the relief of St. Ours and the rest by sending the governor sums of money to be distributed among the struggling noblesse. This temporary succor did not avail much, however; for before the year was over we find the intendant, Champigny, asking similar assistance for Repentigny, Tilly, and D'Ailleboust, who, it will be remembered, were three of the "old families" to whom Talon had made reference some years before as having brought their "quality" with them from France. All of them had large households, and seem to have found it very difficult to live comfortably on the scanty seigniorial payments. Their younger children, the intendant declares, often went about half clad, while their wives and grown-up daughters found themselves compelled to pocket their pride and labor in the fields.<sup>2</sup>

the years 1690-1698, regarding various recommendations made by the governor in favor of certain seigniors. In 1690 Frontenac asked that letters of noblesse be given to François Hertel, seignior of Rouville, in recognition of his services. The request was promptly granted, but when the documents arrived Hertel did not have funds wherewith to pay the small fee required; whereupon the governor asked the minister to remit the amount on account of Hertel's poverty. This request the minister refused rather testily in a despatch to the governor and intendant, part of which reads as follows: "Sa Majesté n'a pas voulu entrer dans la demande du Sieur de Hertel, et sy cet homme n'est pas en estat de payer le sceau des lettres de noblesse qu'elle luy a accordé, il le sera encore moins d'en soustenir la qualité. Sa Majesté ne les auroit pas accordé sy elle avoit esté informé de sa pauvreté, estant certain que cela ne serviroit qu'à jeter ses enfans dans le désordre qui auroient pu s'addonner à des travaux qui ne conviennent point à des gentilshommes" ("Mémoire du Roy aux Sieurs Comte de Frontenac et de Champigny," May 21, 1698, *Collection de Manuscrits relatifs à la Nouvelle-France*, ii, 301). The language and expression are somewhat peculiar, but the point intended to be made is clear enough.

<sup>1</sup> Denonville to Minister, November 10, 1686, *Correspondance Générale*, viii, 192-266.

<sup>2</sup> "C'est une chose digne de compassion de voir un grand nombre d'enfans

Other measures of relief than direct grants of alms were soon forthcoming. For one thing, the king arranged that male children of the noblesse should receive a limited number of midshipmen's commissions in the royal navy. Others were to be enrolled into cadet companies and regularly drilled in arms, and for this service were to have a small daily compensation. For the benefit of the adults a general congé was given, allowing them to engage in trade without prejudice to their rank; but this permission was of little use to them, for in New France, as elsewhere, trade required both capital and experience, and the gentilhomme lacked both. The authorities also seem to have endeavored, when possible, to give members of the noblesse such civil posts as might fall vacant from time to time; but the number of available offices was never large. In the long run, most of the nobility were forced to eke out a precarious existence from the dues which as seigniors they received from their dependents, supplemented by what they could raise on their ungranted domains. Very often they lived and worked like habitants, making the fruits of a hard season's toil and little more.

One would naturally think that, when the complaints of the authorities as to the poverty of the noblesse first reached the king, the latter would have made an end to the practice of ennobling colonials. Not so, however. The letters patent continued to come, until the intendant fairly implored the king to grant no more patents unless he simply wished "to increase the number of beggars."<sup>1</sup> Then the minister announced that the practice would cease; but the promise was not kept, and before many years had passed rank in the noblesse was again being granted as freely as before. Down to the close of the period of French rule, indeed, the design of creating a colonial noblesse seems never to have been wholly abandoned.

It was, however, in a calling widely different from industry or agriculture that the Canadian gentilhomme found his favorite vocation. Many of the noblesse had military training, and

qu'ils ont, passer tout l'esté avec la simple chemise et leurs femmes et leurs filles travailler à la terre" (Champigny to Minister, August 26, 1687, *Correspondance Générale*, ix. 144-147).

<sup>1</sup> Champigny to Minister, May 10, 1691, *Ibid.* xi. 351.

most of them, perhaps, had military ancestry; at any rate, all seem to have had strongly warlike tastes. The gentilhomme, therefore, betook himself readily to the military service of the colony, and in the almost continual broils that took place either with the Indians or with the English found ample scope for the exercise of his belligerent propensities. He learned the science of forest warfare very quickly, and soon combined the sagacity of the redskin with the intelligence of the European. In all the incursions which wrought untold misery in the outlying hamlets of English America, the gentilhomme took a leading if not always a creditable part. The descent on Schenectady in 1689-1690 was due largely to the initiative of the young Lemoynes, sons of Lemoyne de Longueuil. Lemoyne d'Iberville was in command, and with him were his two adventurous brothers, Lemoyne de St. Hélène and Lemoyne de Bienville; while on the roster of marauders accompanying them one finds the names of Repentigny, D'Ailleboust, and several other young members of the colonial noblesse. The Deerfield raid of 1704 was organized by the Hertels of the Richelieu district; and the expedition which pounced on Haverhill some four years later had among its leaders Hertel de Rouville, Boucher de la Perrière, St. Ours Deschaillons, and various other colonial aristocrats. On the occasion of every butchering raid across the borders of New England, the gentilhomme was readily to the front. Last in peace, he was first in war. "He was," says Parkman, "at home among his tenants, at home among the Indians, and never more at home than when, a gun in his hand and a crucifix on his breast, he took the war-path with a crew of painted savages and Frenchmen nearly as wild, to pounce like a lynx from the forest upon some lonely farm or outlying hamlet of New England. How New England hated him, let her records tell. The reddest blood-streaks on her old annals mark the track of the Canadian gentilhomme."<sup>1</sup>

When the colony passed into British hands, many of the gentilshommes sold their seigniories and went to France. Naturally the percentage of exodus was higher among them than among the habitants. Masères estimated that after the

<sup>1</sup> Parkman, *The Old Régime in Canada*, ii. 61.

treaty was signed in 1763 only twenty-two noble families remained in Canada;<sup>1</sup> and four years later a table submitted to the home authorities by Governor Carleton showed how badly the hegira had depleted their ranks.<sup>2</sup> The new suzerains respected the rank and privileges of all those who remained; and Carleton suggested that, in view of the influence which they possessed over the habitants, the noblesse should be welded into sympathy with the new administration in every possible way.

The institution of the noblesse was not an indispensable part of the seigniorial system, but in some ways served to strengthen it. Many seigniors were unquestionably spurred on to greater efforts in the development of their fiefs by the hope of receiving elevation to rank in the noblesse as a reward of their zeal; for, although those who were so favored did not appear much the better for it, the royal reward was highly prized and zealously sought from first to last. Neither the seigniors nor the noblesse of Canada can properly be said to have formed a privileged order. Since no direct taxes were ever levied in the colony, there were no exemptions in favor of any class of the people. The seigniors and the nobility paid tithes, and if they engaged in trade they paid the regular import and export duties. Before the law they were but the peers of the habitant, and the intendant saw to it that this equality was no mere fiction of judicial administration. Nevertheless, like the attempt to foster a system of private justice, the endeavor to nurture a seigniorial aristocracy and to reproduce beyond the seas a prototype of the French nobility proved a rather discouraging failure. The little band of colonial élite was nursed liberally with royal favor and encouragement, but the gaunt, lean body would not thrive; its debility was chronic from first to last.

<sup>1</sup> Masères, *Additional Papers concerning the Province of Quebec*, 164-168, 171.

<sup>2</sup> This table is printed in the *Report on Canadian Archives* for 1888, p. 41 ff.

## CHAPTER X.

### THE SEIGNIORIAL SYSTEM AND THE CHURCH.

FROM beginning to end, one of the bulwarks of Canadian feudalism was the Catholic church, which, with its various subordinate institutions and orders, entered heartily into the spirit of the system, gave it unvarying support, and was a strong factor in securing its development and extension.

During the seventeenth and eighteenth centuries, French colonial policy in America grounded itself upon a curious mixture of religious and economic motives. "That the people who inhabit these lands may be brought to a knowledge of the only God . . . and that there may be created in these newly discovered regions some trade which may become advantageous to His Majesty's subjects," were these motives as set forth in official language at an early date in the history of New France;<sup>1</sup> and from that time to the day when the fleur-de-lys of the Bourbons fluttered down from the ramparts of Quebec, the royal authorities of France never lost sight of the religious motive in colonization. The priest and the trader, the two most prominent as well as most picturesque figures in the daily life of New France throughout its eventful history, were the living embodiments of Bourbon colonial ideals. But religion and trade were alike militant, and their conflicting interests were often difficult to harmonize. Successive functionaries — governors, intendants, commissioners — wore out their health and their patience in a futile endeavor to reconcile what seemed to be the clashing interests of God and mammon as typified in the respective aspirations of the Jesuit and the *coureur-de-bois*.

With agriculture, however, religion was on much better terms. Men who remained on the land and tilled the soil were well

<sup>1</sup> "Acte pour l'établissement de la Compagnie des Cent Associés," April 29, 1627, *Edits et Ordonnances*, i. 5.

within the reach of both church and state, while the lawless huckster of the wilderness was within arm's length of neither. The seigniors and their habitants could be used by the emissaries of the church to set before the eyes of the savages an example of French civilization; they could be utilized as exemplifying the thrifty, industrious, sober, and godly life. The traders, on the other hand, could never be used to this end; on the contrary, if we may believe the clerical writers of the time, their influence upon the work of the church among the savages was wholly demoralizing, engendering among the redskins a general contempt for the ethics of French conduct. The writings of the Jesuits especially abound in blistering arraignments of these *coureurs-de-bois*, who, it is claimed, taught the savages all the vices of French civilization in its most degenerate days. Indeed, the dishonest and licentious conduct of the trading population was consistently regarded by the church as the greatest obstacle to the propagation of the faith in the northern regions of the New World.

It therefore became the natural aim and policy of the church to support in every way any efforts which the civil authorities might make from time to time toward keeping the people on the land. This support the hierarchy gave, not simply by lending the aid of ecclesiastical discipline against all who disobeyed the laws that forbade men to leave their lands without permission, but, more particularly, by its work and example in developing and cultivating lands given by the crown to the church and its subsidiary organizations.

Foremost among these dependent organizations was that known as the Reverend Fathers of the Society and Company of Jesus, more commonly called the Jesuit order. As early as 1626 this order had obtained from the Duc de Montmorenci, then viceroy of New France, its first grant of lands, the concession of Notre Dame des Anges, near Quebec; and from this time on it received grants in all parts of the colony at frequent intervals. Before the close of the French period it had become by far the largest landholder in the country; on the eve of the conquest it owned not less than a dozen estates, comprising almost a million arpents of land. Nearly a century

before the cession of Canada to Great Britain, a governor whose opinion of the Jesuits was not of the highest had ventured to prophesy that in the course of time the Jesuits would monopolize all the best lands of the colony, a prediction which was on the high road to fulfilment by the middle of the eighteenth century; for the Jesuits then held about one-eighth of all the granted lands. Nor were their lands greater in extent than in value; for comprised within the Jesuit estates were hundreds of thousands of arpents of the very choicest lands of the St. Lawrence valley, the most fertile and the most favorably located for purposes of settlement.<sup>1</sup>

Although the Jesuits were the most favored of the various orders and institutions of the church, they were not by any means the only ones to share largely in the royal bounty. The kings of France, especially Louis XIV, sincerely desired the advancement of all the church interests in the colony, and would gladly have contributed heavily from the royal funds toward the work of the various religious orders; on many occasions, in fact, Louis XIV assisted the church in New France by liberal donations of money. The treasury of the Bourbons, however, in the latter part of the seventeenth and the early

<sup>1</sup> The following lands were held by the Jesuit order: —

Charlesbourg . . . . .	119,720 arpents
Lorette . . . . .	23,944 arpents
Sillery . . . . .	8,979 arpents
Isle aux Ruaux . . . . .	360 arpents
Cap de la Magdelaine . . . . .	282,240 arpents
Batiscan . . . . .	282,240 arpents
La Prairie de la Magdelaine . . . . .	56,448 arpents
St. Gabriel . . . . .	104,850 arpents
Isle St. Christophe . . . . .	80 arpents
Pachiriny . . . . .	585 arpents
La Vacherie . . . . .	73 arpents
St. Nicholas . . . . .	1,180 arpents
Tadoussac . . . . .	6 arpents
Total . . . . .	<u>880,705</u> arpents

For these data, see Taché, *Plan for the Commutation of the Seigniorial Tenure*. This table may be profitably compared with the "Acknowledgment and Enumeration of the Estates of the Jesuit Fathers in Canada, 1781-1788," printed in Thwaites, *Jesuit Relations and Allied Documents*, lxxi. 65-95. See also Smith, *History of Canada*, i, Appendix.



part of the eighteenth century, was not full to overflowing, and hence for the most part the royal interest and appreciation had to show itself in grants of land instead of money. As land in the colony was plentiful, donations were lavish,—frequently tens of thousands of arpents at a time.

Next to the Jesuits as extensive recipients of this form of royal generosity came the Bishop and Seminary of Quebec, with a patrimony of nearly seven hundred thousand arpents of land, an enormous accumulation which was largely the work of Laval, first bishop of Quebec and founder of the Seminary. The Sulpitians had at the time of the conquest succeeded in amassing about a quarter of a million arpents, while the Ursulines of Quebec had acquired a little more than one hundred and sixty thousand. The Récollets, who came to the colony at an early date and for a time bade fair to rival the Jesuits in influence and power, had failed to extend their influence to any appreciable degree, and had enjoyed almost no share in the royal liberality, their land holdings amounting to less than a thousand arpents. The superior power of the Jesuits had all but smothered the budding ambitions of the Récollets. Various other orders and institutions—as, for instance, the Ursulines of Three Rivers, the General Hospitals at Quebec and Montreal, the Hôtel Dieu at Quebec—had also acquired holdings of varying amounts, which, with those of the organizations just mentioned, comprised somewhat less than a million and a quarter arpents, more land than was held by the Jesuits.<sup>1</sup> As all of these orders (including the Jesuits) were either directly

<sup>1</sup> The areas of the holdings were as follows :—

Bishop and Seminary of Quebec . . . . .	693,324 arpents
Sulpitians . . . . .	250,191 arpents
Ursulines of Quebec . . . . .	164,616 arpents
Les Sœurs Grises . . . . .	42,336 arpents
General Hospital at Quebec . . . . .	28,497 arpents
Ursulines of Three Rivers . . . . .	30,909 arpents
Hôtel Dieu at Quebec . . . . .	14,112 arpents
Récollets . . . . .	945 arpents
General Hospital at Montreal . . . . .	404 arpents
	<u>1,225,334 arpents</u>
Jesuits . . . . .	<u>880,705 arpents</u>
Grand Total	2,106,039 arpents

or indirectly under ecclesiastical control, the church had thus acquired in perpetuity the ownership of no less than 2,106,039 arpents of land in the colony, while the laymen had received much less than six million arpents. The church, then, controlled nearly two-sevenths of the granted lands of New France; hence its position there was relatively stronger than at home.

The possession and control by the church, through its various institutions and orders, of such enormous territorial interests naturally gave it a favorable predilection toward that system under which the lands had been acquired and through the maintenance of which they could be firmly held. The seigniorial tenure, therefore, permitting as it did the exaction of important revenues from these extensive holdings, and at the same time placing the holders under no important financial obligations to the state, was looked upon with high favor by those who for nearly a century held in their hands the destinies of Catholicism in North America, — Laval, St. Vallier, and Pontbriand.<sup>1</sup>

Both the seigniorial system and the parochial were strengthened by the fact that the boundaries of the seigniories were in most cases coterminous with those of the parishes. The reason for this is to be found largely in the very late creation of the parishes; for it was not until 1722 that, on the urgent counsel of the intendant Bégon, the church authorities consented to a delimitation of parochial divisions. Up to that time it had been the policy of the bishop to keep all the priests on a missionary basis, sending them out from Quebec or Montreal to the various seigniories,<sup>2</sup> and not permitting any priest to remain very long in one place; for it seemed to the bishops that by this means the priests could be kept more completely under episcopal control than would be possible if they were permanently settled in the various parishes. In this matter the experience of the church in France was not lost upon the heads of the ecclesiastical organization in the colony.

<sup>1</sup> The church lands had, for the most part, been freed from the usual obligations to the crown. See above, p. 52.

<sup>2</sup> Catalogne, in his report (see above, p. 45), makes frequent reference to this practice.

In the division of 1722, forty-one parishes were created in the district of Quebec, twenty-eight in the district of Montreal, and thirteen in the district of Three Rivers. In most cases the new parishes were coterminous with old seigniories; in a few instances, however, larger seigniories were divided into two or more parishes, and in others a number of smaller or sparsely settled seigniories were grouped into a single parish. The seigniorial church, where there was such, now became the parish church; but very often there was no place of worship other than a room in the seignior's house. The parish curé now resided in the seignior; and, as he was seldom provided with a presbytery, he not infrequently made his home with the seignior, with whom he often came to be a fast friend, aiding him with his assistance, counsel, and moral support. The manor-house thus became in a great many cases the centre of the religious as well as of the social relations of the seignior. As the Abbé Casgrain has remarked: "The system rested upon two men, the curé and the seignior, who walked side by side and extended mutual help to each other. The censitaire, who was at the same time parishioner, had his two rallying points, — the church and the manor-house. The interests of the two were usually identical, especially as the limits of the seignior were, with few exceptions, identical with those of the parish."<sup>1</sup>

It was not, however, obligatory upon the seignior to provide for the sustenance of the curé, since the priests were supported out of the tithes, supplemented by gifts from the king or from philanthropic individuals in France. As early as 1663, Bishop Laval ordered an annual tithe of one-thirteenth of the produce of farms to be collected throughout the colony; and in the same year the Sovereign Council gave this order the force of a secular law.<sup>2</sup> At once there was a general outcry from the habitants that the tax was too heavy, and after a good deal of hesitation Laval agreed to reduce it to one twenty-sixth. In 1679 the king confirmed this action, and endowed the church with the

<sup>1</sup> H. R. Casgrain, *Une Paroisse Canadienne au xvii<sup>e</sup> Siècle*, 40-41.

<sup>2</sup> *Mandements des Evêques de Québec*, i. 44-46 (March 26, 1663); *Jugements et Délibérations du Conseil Souverain de la Nouvelle-France*, i. 18-19 (October 10, 1663).

perpetual right to exact one twenty-sixth.<sup>1</sup> The returns from this source were not large, however; as late as 1700 the revenue did not amount to more than four or five thousand livres per year, and this sufficed to maintain only ten curés even at the low stipends paid in the colony.

The tithe could be collected by the curé or by persons appointed by the parishioners for the purpose, the proceeds being delivered at the parish presbytery.<sup>2</sup> The curé had authority to have the crops of the parishioners estimated two weeks before the harvest, in order to satisfy himself as to the amount of tithes accruing to him. At first the tithe was exacted on grain only; but when the habitants began to devote attention to the raising of flax, tobacco, vegetables, roots, and the like, the curés in some cases attempted to extend the obligation to these products as well. Against this the people protested, and in the early years of the eighteenth century the matter was taken before the Superior Council. That body promptly decided against the clerical pretensions,<sup>3</sup> and from this decision an appeal was taken to the king, who two years later confirmed the action of the council.<sup>4</sup>

Churches were erected in the various parishes by one of three means, — by funds provided by friends of the church in France, or by the subscriptions and labor of the people of the parish, or, occasionally, by the seigniors themselves. On application of the curé to the authorities at Quebec, a decree could be had ordering the habitants to furnish either materials or labor in the construction or the repair of the parish church or presbytery. Thus, on the request of the curé of St. Laurent, the inhabitants of that parish were, in 1732, ordered by the intendant to “assemble and estimate the expense of constructing a new church, and to prepare a statement of apportionment among all the said habitants that it may be known how much each must furnish toward the building of the said church.”<sup>5</sup> Having done this, they were, by

<sup>1</sup> *Edits et Ordonnances*, i. 231. It is of interest to note that the parish priests of the province of Quebec still collect a tithe of one twenty-sixth of all grain grown by their parishioners, — a right which has had legal sanction continuously from 1679 to the present time.

<sup>2</sup> *Ibid.* ii. 434.

<sup>4</sup> July 12, 1707, *Ibid.* i. 305.

<sup>3</sup> November 18, 1705, *Ibid.* 133.

<sup>5</sup> *Ibid.* iii. 284.

a further ordinance issued later in the same year, ordered to contribute their allotted shares of material and labor; and the royal officials were instructed to see that they did so. By the provisions of this ordinance the curé could, at his discretion, exempt from contribution any habitants whose poverty would render the exaction a hardship. A number of quite similar ordinances relating to the construction of ecclesiastical edifices in other parishes were issued from time to time.<sup>1</sup>

When the church was erected with funds provided from France or by the contributions of the people, the right of appointment to the parish vested in the bishop; but when the seignior built the church at his own expense it was necessary, down to the closing years of the seventeenth century, to allow him the patronage or advowson.<sup>2</sup> This requirement was not viewed with favor either by Laval or by St. Vallier, who sought to restrict its application by refusing to allow the consecration of any seignior's church unless it were built of stone; and this measure seemed likely to prove effectual from the fact that, without the ceremony of consecration, a church edifice could at best have a missionary and not a fixed curé. Down to 1681 only two stone churches were built by lay seigniors.<sup>3</sup>

Those of the seigniors who had erected wooden churches objected strongly to the episcopal policy, and some went so far as to prevent the bishop from undertaking the erection of stone churches within their seignories. In 1699 the bishop brought the whole matter to the notice of the king, who issued an arrêt giving him power to proceed with the erection of stone churches in any seignories in which such had not already been erected,

<sup>1</sup> Cf. *Edits et Ordonnances*, iii. 205, 216, 217, 303, etc.

<sup>2</sup> *Ibid.* i. 232, §§ vi-vii.

<sup>3</sup> "Every one here is puffed up with the greatest vanity; there is not one but pretends to be a patron, and wants a curé on his land, yet all are heavily in debt and in the most extreme poverty. Exclusive of that at Quebec, there are, throughout the entire colony, only seven stone parochial churches. These are in the seignories of the Bishop, of the Jesuits, of the Seminary of St. Sulpice, and in two private seignories. The rest are constructed of timber and plank at the expense of the proprietors of the fiefs, and of the settlers; the bishop, however, refuses to consecrate them, because, as he says, it is his duty and obligation not to consecrate any buildings except such as are solid and durable" (Duchesneau to Seignelay, November 13, 1681, *Correspondance Générale*, v. 275).

and to assume the right of patronage in regard to these.<sup>1</sup> It seems, however, that in actual practice the seigniors were often consulted before appointments were made; for the episcopal authorities recognized that amicable relations between curé and seignior were highly desirable, and it was always the policy of St. Vallier and Pontbriand to secure this concord.

In no way, however, did the church in Canada contribute so materially to the development and strengthening of the feudal system in the colony as through its example in successfully clearing, improving, and settling the individual seigniories owned by it and by its subsidiary organizations. From bishop to poorest curé, the hierarchy lent its superior intelligence zealously to the work of developing the material as well as the spiritual interests of the church in New France, and with very marked success. Settlers were brought out under clerical auspices and placed upon the ecclesiastical seigniories, and once on the land they were counselled, assisted, and encouraged.<sup>2</sup> As early as 1667, Laval was able to point with pride to the fact that his seigniories of Beaupré and Isle d'Orleans contained more than one-fourth of the colony's total population;<sup>3</sup> and from this time down to the close of the French dominion the fiefs of the church never ceased to comprise within their bounds a very substantial percentage of the people of New France.

Not only were the ecclesiastical seigniories among the most thickly populated, but they were, as Catalogne and others noted, among the best cultivated and the best managed.<sup>4</sup> The provisions made for the welfare and convenience of the habitants in the way of banal mills, roads, and so on, were on the whole much better than in the lay seigniories; and there were fewer trivial disputes regarding seigniorial exactions. As one examines the host of petty difficulties which year by year came before the

<sup>1</sup> *Edits et Ordonnances*, i. 279.

<sup>2</sup> On the services of the Jesuits in the agricultural development of the colony, see Faillon, *Histoire de la Colonie Française en Canada*, i. 161-164; and Rochemonteix, *Les Jésuites*, i. 154-157.

<sup>3</sup> In the census of 1667, the total population of the colony was found to be 3,918. Of this number the seignior of Beaupré contained 667, and that of the Isle d'Orleans 426. Cf. *Censuses of Canada, 1665-1871*, p. 6.

<sup>4</sup> See above, p. 45.

authorities at Quebec for settlement, one cannot but notice that by far the most of them came from the lay seigniories. The ecclesiastical seigniors and their habitants seem to have settled their troubles at home.

The grants of seigniories to church institutions and orders were usually accompanied by the right to administer seigniorial justice. The ecclesiastical seigniors, like the laymen, usually received powers of high, middle, and low justice;<sup>1</sup> but it does not appear that they ever attempted to use these powers in any considerable degree. By virtue of the right of low jurisdiction they frequently enforced the payment of seigniorial dues from recalcitrant habitants, but they seem to have made no serious attempt to exercise the two higher grades of jurisdiction.

In the earlier days of feudalism in Europe, the clerical seigniors, bishops, and abbots administered feudal justice within their fiefs, and succeeded in tincturing the customary law of these domains with those principles of the canon law with which the administrators of justice were naturally the most familiar. Ostensibly administering the customary law of the feudal unit, they in many cases applied the much more highly developed canonical jurisprudence. Had the hierarchy of New France assumed its feudal judicial power, it would have been interesting to note how far it would have departed from the Custom of Paris in favor of that system of jurisprudence with which it was more familiar; but the various clerical officials and orders manifested no desire to exercise judicial authority. Indeed, when the royal court was established at Montreal, the Sulpitians petitioned that their seigniorial judicial powers might be revoked, and secured an ordinance effecting this revocation.<sup>2</sup>

The church in the colony never lost, as in France, the confidence of the masses of the people; the higher ranks in the ecclesiastical hierarchy never lost touch with the lower, or the lower with the people. The Canadian clergy were never regarded as a privileged order; on the contrary, they gave to the colony much more than they took from it. If ever there were laborers worthy of their hire, these were the spiritual pioneers

<sup>1</sup> See the grant of the fief of Sillery to the Jesuits in 1697, *Titres des Seigneuries*, 51.

<sup>2</sup> *Edits et Ordonnances*, i. 276.

of France in the New World. Their influence with the habitants was deservedly powerful, and, in so far as this influence was given in support of feudalism, it formed a factor in the development of the system which is not readily overestimated. The church in New France was the firm friend of both absolutism and feudalism, for a stage in history had been reached wherein these were no longer antagonistic, but mutually helpful. The church owed much to both, and to each it made repayment in staunch loyalty.

But despite the support which the seigniorial system in Canada received from both state and church, there were circumstances which, during the closing years of the French era, served greatly to weaken it. The long English wars, which continued with but little interruption from 1745 to 1760, so hampered immigration from France that during this period the number of settlers who came into the seigniories was very small. The wars also laid a heavy strain upon agricultural conditions, for the authorities found it necessary to put into the field practically the entire adult male population. Whenever it was possible, however, these militiamen were allowed to return to their farms during the seeding and harvest seasons. Even in the late summer of 1759, when Montcalm was bending his utmost energies to the task of repelling Wolfe from the fortifications of Quebec, he found it necessary to allow large numbers of his sorely needed defenders to go home to gather in the harvests; otherwise, a successful defence would have been followed by a winter of famine, for the English control of the seas rendered the importation of food supplies from France all but impossible.

Under these circumstances lands went out of cultivation, or were for years left without proper care; many holdings and even whole seigniories were abandoned; seigniorial dues remained unpaid; mills and churches went into decay; in short, the whole agricultural system became disorganized. The reorganization of economic conditions, more particularly the rearrangement of those which had become entirely deranged by the enormous depreciation of the paper currency during the years preceding the conquest, was the task which first confronted the new British authorities.



## CHAPTER XI.

### THE SEIGNIORIAL SYSTEM UNDER BRITISH ADMINISTRATION.

THE long struggle between France and Great Britain in North America was virtually brought to a close when, on the eighth day of September, 1760, the Marquis de Vaudreuil and General Jeffrey Amherst, on behalf of their respective sovereigns, signed the Articles of Capitulation at Montreal.<sup>1</sup> In this document, which embodied the agreement on the part of the French to withdraw their remaining military forces from the colony of New France, there were several articles which related either directly or indirectly to the existing system of land tenure, and which served in some measure to secure the perpetuation of it under the administration of the new suzerain.

The terms of capitulation stipulated that all religious communities and all officers of the church should be preserved in the enjoyment of their property and "in the profits of their seigniories," as well as in all their "privileges, rights, honors, and exemptions."<sup>2</sup> Furthermore, by express provision, "all seigniors of lands, officers of the militia and of justice, all Canadians whether in the towns or in the rural districts, all Frenchmen whether settled in or trading to the colony, and all other persons" were guaranteed in the "entire and peaceable possession of their property whether *en seigneurie* or *en roture* [*en censive*]." They were not to be molested under any pretext

<sup>1</sup> "Articles de Capitulation," in State Paper Office, *America and West Indies*, xciii. 561-592.

<sup>2</sup> Article xxxiv: "Toutes les Communautés, Et tous les Prestres Conserveront Leurs Meubles, La Propriété, Et L'Usufruit des Seigneuries, Et autres biens que les uns et les autres possèdent dans la Colonie, de quelque Nature qu'ils soient Et Les d. biens seront Conservés dans leurs Privileges, droits, honneurs, et Exemptions."

whatever.<sup>1</sup> By these articles in the capitulation the British authorities virtually bound themselves to maintain the existing system of land tenure; for, by guaranteeing that the holders should suffer no loss through any detrimental action on the part of the new government, they assured all seigniors of a continuance of their privileges.

Acting under instructions from England, General Amherst at once organized a military government for the colony, dividing it for this purpose into three military districts with headquarters at Quebec, Montreal, and Three Rivers respectively. Each district was placed in charge of a military officer, and military courts were established for the hearing of causes both civil and criminal. For the time being the French law, in so far as it could be discovered by the courts, was followed; but from time to time each of the three district officers issued ordinances within his own jurisdiction, modifying the old laws in such respects as seemed necessary. The seigniors were supported in the exaction of their dues as soon as they had taken the oath of fealty and homage to the representatives of their new sovereign; but they were deprived of their judicial authority, all cases now coming in the first instance before the military courts.<sup>2</sup>

Even before the Peace of Paris was signed, Lord Egremont, secretary of state for the Southern Department, asked the officers in charge of the three districts to send him reports on

<sup>1</sup> Article xxxvii: "Les Seigneurs de Terres, Les Officiers militaires Et de Justice, Les Canadiens, Tant des Villes que des Campagnes Les françois Etablis ou Commerçant dans toute L'Etendue de la Colonie du Canada Et Toutes Autres Personnes que ce puisse Estre, Conserveront L'Entiré paisible propriété et possession de leurs biens Seigneuriaux et Roturiers. . . . Il n'y sera point touché ni fait le moindre dommage, sous quelque prétexte que ce soit."

It has sometimes been said (e.g., by Bourinot, *Constitution of Canada*, 7) that the Jesuits, Récollets, and Sulpitians were expressly excepted from the guarantee of proprietary rights until the royal pleasure could be known; but an examination of the articles will show that this exception was made in reference to the operation of Article xxxiii, which pledged a general continuance of ecclesiastical privileges, and not in reference to Article xxxvii, which dealt with rights of property.

<sup>2</sup> *Règne Militaire en Canada, ou Administration Judiciaire de ce Pays par les Anglais du 8 Septembre 1760 au 10 Août 1764* (published by the Montreal Historical Society, 1872). Cf. also Sulte, *Le Régime Militaire, 1760-1764*, in Royal Society of Canada, *Proceedings*, 1905, Appendix A.

the state of their respective jurisdictions, and to make recommendations regarding the future government of the colony. This they did, each giving an estimate of the total population in his district and expressing his opinion on existing conditions and institutions. General Murray's report shows that his short sojourn in the colony had not given him a very favorable opinion of the Canadian seigniors. "They are extremely vain," he wrote, "and have an utter contempt for the trading part of the colony. They were usually provided for in the colonial troops, which consisted of thirty companies. They are in general poor, except such as have had command of distant posts, when they usually made a fortune in three or four years. . . . They are great tyrants to their vassals, who seldom meet with redress, let their grievances be ever so just."<sup>1</sup>

Before the British authorities could make any permanent disposition of affairs in Canada, however, a formal relinquishment of French claims on the colony had to be secured; and this was not forthcoming until March 10, 1763, when the Treaty of Paris was ratified by the high contracting parties concerned. Among other things, this treaty confirmed the inhabitants of Canada in the concessions and privileges guaranteed them by the Articles of Capitulation three years previously, and in addition provided: "The French inhabitants and others who have been subjects of the Most Christian King in Canada may retire in all safety and freedom wherever they may think proper, and may sell their estates, provided it be to subjects of His Britannic Majesty."<sup>2</sup>

A good many landholders in the eastern part of the colony had taken their departure to France immediately after the Articles of Capitulation were signed. Some of these had merely abandoned their lands, others had left them in charge of friends,

<sup>1</sup>This report of June 5, 1762, though in many ways very interesting, shows rather scant knowledge of the real condition of affairs in Canada. It is the work of a man who seems to have made very little study of the questions with which he dealt. It is reprinted in full in Doutré and Lareau, *Histoire Générale du Droit Civil Canadien*, 520 ff.

<sup>2</sup>Treaty of Paris, article iv. The full text of this treaty may be found in George Chalmers, *A Collection of Treaties between Great Britain and other Powers* (London, 1790), i. 467-483.

and some had sold them in the expectation that such sales would be held valid. Now, when announcement of the formal and final cession of the colony to Great Britain was made, a much larger number took advantage of the privilege extended them of selling their lands and leaving for France. Just how great this *hegira* was it is not easy to ascertain, for the census enumerations during the long conflict-period preceding the conquest were very faulty, and the estimates of those who have made special study of the subject vary greatly. The exodus was, however, in all probability not so great as historians have usually supposed. Similarly, there are grave differences of opinion as to the nature of the outflow;<sup>1</sup> but it is unquestionable that among those who left the colony during the years 1760-1765 were most of the former administrative officials, many notaries, and perhaps the majority of the noblesse. In a word, the colony lost many of its natural leaders. On the other hand, English settlers flocked into the country in considerable numbers, and bought the seigniories of those who wished to leave. Many of these English settlers were wise enough to see that the purchase of seigniories at sacrifice prices was an excellent investment; for most of the estates included extensive tracts of ungranted lands, which with the increase of the colony in population would gradually rise in value. They saw, too, that with the settlement of the seigniories the dues payable by the habitants would be a source of considerable profit; and, finally, to many of the new arrivals the position and title of seignior seem to have appealed strongly. To the habitants this change was far from acceptable. They had no native respect for the new English seigniors, who were to them the representatives of an alien race and a heretical creed, and who were, besides, prone to insist rigidly upon the letter of their rights, and were too often, it would appear, somewhat overbearing in their attitude toward their dependents.

During the period intervening between the capitulation and the signing of the treaty, two seigniorial grants to Englishmen

<sup>1</sup> On the extent and nature of the exodus, compare the widely divergent views of Garneau (*Histoire du Canada*, ii. 393 ff.) and Sulte (*Le Régime Militaire*, 85-89). See also below, p. 204, note 2.

were made by General Murray. These were the seigniories of Malbaie (Murray Bay) and Mount Murray, given in 1762, "for faithful services," to Captain John Nairn and Captain Fraser respectively, both of them officers in the regular forces. In the title-deeds or patents conveying these grants the term "seigniority" does not appear; but in defining the conditions upon which the grants were to be held Murray seems to have made some attempt to follow the general tenor of seigniorial grants made during the old régime. He evidently took for his model the title of some earlier grant made under the custom of the French *Vexin* and not under the Custom of Paris; for he provided for the payment of a relief and not of a quint upon mutations of ownership.<sup>1</sup>

Shortly after the ratification of the Treaty of Paris, a royal proclamation was issued (October 7, 1763), making provision for the establishment of a civil administration to replace the military rule which had been maintained since 1760.<sup>2</sup> By the terms of this proclamation the government of the colony was vested in the hands of a governor to be appointed by the crown and to be assisted by a council similarly appointed. Provision was made for supplanting the existing legal system by "the law and equity of England in all cases both civil and criminal." The governor in council was empowered to make grants of land, especially as a means of rewarding those who had rendered service in the army or the navy during the war; but, since the laws of England were prescribed as the legal system of the colony,

<sup>1</sup> "I do hereby give, grant, and concede unto the said Captain John Nairn, his heirs, executors and administrators forever, all that extent of land lying . . . to be known hereafter by the name of Murray Bay . . . for and in consideration of the possessor paying liege and homage to His Majesty, his heirs and successors, at his Castle of St. Lewis in Quebec, on each mutation of property, and by way of acknowledgment a piece of gold of the value of ten shillings with one year's rent of the domain reserved, as customary in this country, together with the woods and rivers, or other appurtenances within the said extent; the right of fishing or fowling on the same therein included, without hindrance or molestation; all kinds of traffic with the Indians of the back country hereby specially excepted." This title-deed is not printed in *Titres des Seigneuries*, but a copy of it will be found in *Troisième Rapport et Délibérations du Comité Spécial de l'Assemblée Législative* (1851), 95-96.

<sup>2</sup> This proclamation will be found at full length in Doutre and Lareau, *Histoire Générale du Droit Civil Canadien*, 330 ff.

he was, presumably, to make such grants in free and common socage and not *en seigneurie* or *en censive*.

Two months after the issue of the proclamation a lengthy code of instructions was sent to Governor Murray by the home authorities, laying down definite regulations both in regard to the attitude to be taken with respect to existing holdings of land and as to the policy to be followed in future.<sup>1</sup> In the first place, the governor was instructed to require all those who claimed to hold grants made to them before the conclusion of peace to present the same for registration and examination to the secretary of the governor's council at Quebec. Such titles, when found valid, were to be respected; but, for the future, grants were to be made only in strict accordance with detailed regulations given in the instructions. These provided, in general, that, since great inconveniences had "arisen in many of our colonies in America, from the granting of excessive quantities of land to particular persons," who had "never cultivated or settled them," and had "thereby prevented others more industrious from improving them," particular care was to be taken to avoid the practice of making to settlers larger grants than they could handle properly. The governor was instructed to observe the general rule of granting one hundred acres of land to the head of a family, with an additional fifty acres "for every white or black man, woman, or child, of which such person's family shall consist at the actual time of making the grant." If it appeared that the grantee possessed the means and the intention of cultivating a larger area, the governor was authorized to depart from the foregoing rules; but in no case was a single family to receive more than one thousand acres. The terms under which the grants were to be made were very simple: after two years from the date of the grant an annual quit-rent of two shillings for every hundred acres was to become due and payable to the crown forever; and within three years the grantee was to clear three acres for every fifty held by him.

<sup>1</sup> "Instructions to Our trusty and well-beloved James Murray, Esquire, Our Captain-General and Governor-in-Chief, in and over Our Province of Quebec in America," December 7, 1763, in State Paper Office, *Board of Trade, Canada*, vol. i. These instructions are printed in Doutre and Lareau, *Histoire Générale*, etc., 552-572, and in the *Report on Canadian Archives* for 1904, pp. 193-210.

Failure to fulfil either obligation was to entail forfeiture of the whole grant.

In the instructions a desire was expressed that the colony should furnish mast timber for use in the royal navy, and to this end the governor was instructed to reserve all such timber land. The policy pursued under French domination had been to grant lands with a specific reservation in the title-deeds that all oak and pine timber should be kept for the king's use.<sup>1</sup> The new policy proposed the adoption of a somewhat different course; for the governor was instructed not to grant the best timber lands at all, but to see that these were held as royal reservations.

It was apparently the intention of the British authorities, as evidenced by these instructions, that all future grants should be made in free and common socage, subject to the payment of a perpetual but merely nominal quit-rent to the crown; and since, by the proclamation of 1763, the English law of real property had become the land law of the colony, this new policy seemed the only logical one.<sup>2</sup> It was not long, however, before the attempt to administer English land law encountered difficulties. A system of courts was established; but the judges and officials were Englishmen, who knew little and cared less about existing conditions in the colony. The new courts, therefore, in their attempt to apply the principles of English law to the cases which came before them, soon found themselves floundering in a maze of complications, inconsistencies, and contradictions, a situation which convinced both judges and suitors that the task of deciding disputes between seigniors and habitants by the rules of English law and procedure was an impossible one.

<sup>1</sup> See above, p. 74.

<sup>2</sup> I do not discuss here the vexed question whether the English law was *validly* introduced by the proclamation of 1763. It is maintained by some legal writers that the proclamation did not actually introduce the English law, but merely gave Murray the power to do so with the advice and consent of his council and the approval of a representative assembly. This power, it is claimed, was never exercised, because no representative assembly was called into existence. It does not seem necessary, for the purposes of the present study, to examine the merits of this contention; but reference may be made to two leading cases in which the point is discussed, — *Stuart vs. Bowman*, 1851, 2 *Lower Canada Reports*, 369, and *Wilcox vs. Wilcox*, 1857, 8 *Lower Canada Reports*, 34.

Accordingly, Governor Murray, with the consent of his council, allowed the courts, for the time being, to apply the old French law to such civil cases as could not otherwise be satisfactorily settled. This action was communicated to the home authorities, and apparently met with their approval; for in 1766 they issued instructions "that in all suits and actions relating to the titles of land, and the descent, alienation, settlement, and encumbrances of real property, and also in the distribution of personal property in cases of intestacy, and the mode of assigning and conveying it, they [the courts] do govern themselves in their proceedings, judgment, and decision, by the local customs and usages which have hitherto prevailed and governed within the province, using and applying the said usages and customs to the cases coming before them in like manner as the customs and usages of Normandy are applied in cases from Jersey before the lords of our privy council."<sup>1</sup>

For the time being, then, the courts applied English law in all cases save those specifically excepted as above. In this way the legal chaos was somewhat relieved, but by no means entirely so; for not only were there inherent difficulties connected with the attempt to administer a system of law which was entirely strange to those who came within its operation, but the judges and officials seem to have been exceedingly incapable and untactful. Most of them, having no knowledge of French, could carry on their proceedings only with the aid of an interpreter; and as practically all of them were paid by fees, they had ample opportunities for extortion, which the covetous were apparently not slow to seize. Governor Murray branded the new English arrivals in the colony, more particularly the traders, as the most immoral collection of men he had ever known.

This was the condition of affairs when Murray, in 1766, returned to England, giving over his post of governor to General Guy Carleton (afterwards Lord Dorchester). On his arrival in England, Murray prepared and presented to the Earl of Shelburne, who as secretary of state for the Southern Department had charge of colonial affairs, a comprehensive report

<sup>1</sup> "Instructions to the Hon<sup>ble</sup>. James Murray, governor of Canada," June 24, 1766, in State Paper Office, *Board of Trade, Canada*, vol. xv.



on the condition of the colony. This report is an interesting one, couched in vigorous language. It begins by giving an estimate of the population and wealth of the colony as recapitulated from the census of 1765. It then proceeds, in marked contrast to his report of 1762, to comment rather favorably upon the seigniorial system of land tenure. "The seigniors," writes Murray, "though not rich, are in a situation to support their dignity. The inhabitants, their *tenanciers*, who pay only an annual quit-rent of about a dollar for one hundred acres, are at their ease and comfortable. They have been accustomed to respect and obey their noblesse, their tenures being military in the feudal manner. They have shared with them the dangers of the field, and natural affection has been increased in proportion to the calamities which have been common to both from the conquest of their country. As they have been taught to respect their superiors, and are not yet intoxicated with the abuse of liberty, they are shocked at the abuse which their noblesse have received from the English traders and lawyers since the civil government took place." He goes on to speak in the most scathing terms of the character and conduct of the new English settlers: "The Canadian noblesse were hated by them because their birth and behavior entitled them to respect; the peasants were abhorred because they were saved from the oppression they were threatened with." It was from this class, he says, that the judges and officials of the colony had been chosen during the years 1763-1766. "Magistrates were made and juries composed from four hundred and fifty contemptible sutlers and traders. . . . The judge pitched upon to conciliate the minds of seventy-five thousand foreigners to the laws and government of Great Britain was taken from a jail, entirely ignorant of law and of the language of the people." Not one of the officials of administration, he declares, understood the language of the people.<sup>1</sup>

Even before Murray's report was made the colonial office had undertaken an investigation of the causes of legal dis-

<sup>1</sup> Murray to Shelburne, August 20, 1766, *Canadian Archives, Haldimand Collection*, B. 8, pp. 1-128.

order in the colony, and had commissioned the law officers of the crown to report some means of remedying the condition of affairs. During the early summer of 1766 these officials presented a list of recommendations which, on the whole, looked toward a further compromise between the two systems of law. In cases affecting land tenure and inheritance and the distribution of personal property in the event of intestacy, they proposed that the French law should be retained; but "in all personal actions grounded upon debts, promises, contracts, and agreements, and upon wrongs proper to be compensated," they suggested that the courts apply "those substantial maxims of law and justice which are everywhere the same."<sup>1</sup>

As the home authorities took no action on either of these reports except to confirm the existing arrangements, Governor Carleton turned his attention to a personal investigation of the matter. Carleton had already spent some time in the colony as an officer of the regular forces, and was therefore fully conversant with the unsatisfactory condition of things. His personal inclination was toward the restoration of French law for the decision of all civil cases. One difficulty, however, lay in the fact that the so-called civil law was not accessible in written form; it consisted not only of the Custom of Paris, but of the whole mass of edicts, ordinances, declarations, and decrees which had been issued either to supplement or to modify the custom. As a first step, therefore, the governor requested a number of "Canadian gentlemen well skilled in the laws of France" to make a compilation of the civil laws of the French period, in order that at least the most important of them might be rendered accessible. This work was done during the next half-dozen years.<sup>2</sup>

<sup>1</sup> Report of Attorney-General Yorke and Solicitor-General de Grey, April 14, 1766, in Smith, *History of Canada*, ii. 35 ff.

<sup>2</sup> The compilation, when finished, was issued in four parts, three of them "drawn up by a Select Committee of Canadian Gentlemen well skilled in the Laws of France and of that Province." The titles were: (1) *An Abstract of those Parts of the Custom of the Viscounty and Provostship of Paris, which were received and practised in the Province of Quebec in the time of the French Government*; (2) *The Sequel of the Abstract . . . containing the thirteen latter Titles of the said Abstract*; (3) *An*

It was Carleton's earnest wish that the home authorities might be brought to see the desirability of reëstablishing the old jurisprudence (especially now that it was being compiled) as the civil law of the colony; and it was with this end in view that on Christmas Eve, 1767, he despatched to the Earl of Shelburne a long communication setting forth his views on the subject. Carleton first reminded the British authorities that they were not now dealing "with a migration of Britons who brought with them the laws of England, but with a populous and long-established colony reduced by the king's arms to submit to his dominion on certain conditions;" that their laws and customs, though widely different from those of England, were "founded on natural justice and equity," and "their honors, profits, and property depended on these laws and customs; . . . and that this system of laws established subordination from the highest to the lowest and preserved the harmony of the colony until our arrival." After reminding the minister of these facts, the governor proceeded to express the opinion that the action of the home authorities in overturning in an hour this complex system and in supplanting it by a system of "laws ill-adapted to the genius of the Canadians, to the situation of the province, and to the interest of Great Britain, unknown and unpublished," had been not only an error "but a sort of severity which had never before been practised by any conqueror, even where the people had, without capitulation, submitted to his will and discretion."

He then pointed out that, notwithstanding the action of the home government in introducing English civil law into the colony, the people continued to "regulate all their transactions by their ancient laws, though unknown and unauthorized in the

*Abstract of the Criminal Laws that were in force in the Province of Quebec in the time of the French Government; (4) An Abstract of the several Royal Edicts, and Declarations, and Provincial Regulations and Ordinances, that were in force in the Province of Quebec in the time of the French Government, and of the Commissions of the several Governours-general and Intendants of the said Province, during the same Period.* The last part was prepared by "Francis Joseph Cugnet, Esquire, Secretary to the Governour and Council of the said Province, for the French Language." All four parts were published in London in 1772-1773. After the reëstablishment of French civil law in the colony in 1774, this compilation became a standard for the courts.

courts, where most of these transactions would be declared invalid." He attributed the absence of much more violent manifestations of discontent among the people to the fact that the enormity of the change was not fully recognized by them, but declared that the recognition of it would in time cause consternation amongst them. The new English courts, he affirmed, had done little or nothing to alleviate the legal chaos. "They have," said he, "introduced all the chicanery of Westminster Hall into this impoverished province, where few fortunes can bear the expense and delay of a law suit." Carleton, therefore, strongly urged the home authorities to repeal entirely the ordinance establishing English civil law in the colony, and, "following the precedent established by Edward the First after the conquest of Wales,"<sup>1</sup> to decree the reëstablishment of the old French law duly codified, with such alterations as might seem necessary.

With his despatch Carleton enclosed the draft of an ordinance which he had at first intended to issue himself with the assent of his council, but which on reflection he had deemed of sufficient importance to submit to the home government.<sup>2</sup> This ordinance proposed to enact, among other provisions, "that all laws and customs which prevailed in this province . . . concerning the rights, privileges, and pre-eminences of tenures, both such as were held immediately of the crown and such as were held of subjects; and concerning the inheritances of the said lands upon the death of any of the proprietors thereof, and concerning the forfeiture, confiscating, re-annexing or re-uniting to the domain of the lord, escheat, reversion, or other devolution whatsoever of the said lands, either to the King's Majesty or to any of His Majesty's subjects of whom they are held; and concerning the power of devising or bequeathing any of the said lands by a last will or testament, and concerning the power of alienating the same by the proprietors thereof in their lifetime; and concerning the power of limiting, hypothecating, charging, and in any way encumbering or affecting any lands in

<sup>1</sup> Carleton to Shelburne, December 24, 1767, in State Paper Office, *Board of Trade, Canada*, vol. vi, No. 23.

<sup>2</sup> This draft accompanies Carleton's despatch in the State Paper Office.

the province, shall continue in full force and vigor until they are changed in some of these particulars by ordinances made for that purpose."

The ordinance proposed to extend its terms "not only to all lands in this province held immediately of the crown by grants made by the French king before the conquest of the country, and to all lands held under the immediate tenants of the crown who are commonly called seigniors, by grants made by the said seigniors to inferior tenants or vassals before the conquest, but likewise to such lands as have been granted by the said seigniors to the said inferior tenants since the conquest, and likewise to all such lands as shall be hereafter granted by the said seigniors to the said inferior tenants or vassals; both those that shall hereafter be made, and those that have been made already, shall be subject to the same rules, restrictions, and conditions as were lawfully in force concerning them in the time of the French government, at or immediately before the said conquest of the country by the British arms." A final clause in the proposed ordinance made provision that lands granted by His Majesty since the conquest in free and common socage should continue to be so held.

As the home authorities were awaiting the compilation of the French civil law before coming to a decision, no immediate acceptance of Carleton's recommendation took place. The work on the laws was hurried on during the spring of 1768; and in April the governor was able to send to England the first part of the compilation, containing an abstract of those parts of the Custom of Paris that had been recognized in the colony. Meanwhile his secretary, Cugnet, busied himself with the abstract of the edicts and ordinances. In transmitting the first part of the compilation to the Earl of Shelburne, Carleton again argued at some length in favor of retaining intact the old system of land tenure. "The Canadian tenures differ, it is true," he wrote, "from those in the other parts of His Majesty's American dominions, but if confirmed (and I cannot see how it can be well avoided without entirely oversetting the properties of the people), will ever secure a proper subordination from this province to Great Britain." Governor Carleton likewise

expressed a desire that he might be authorized to make grants *en seigneurie* and *en censive* under the provisions of the old law as well as in free and common socage.<sup>1</sup>

But not all the officials in the colony were of the same mind as the governor. One of those who differed very decidedly from the royal representative was François Masères, the attorney-general. Masères was of French descent, his ancestors having gone over to England with many other Huguenots when the Edict of Nantes was revoked, toward the close of the seventeenth century. In his sympathies, however, the attorney-general was thoroughly English, and his schooling in English law had given him a veritably Blackstonian love of his profession. Now, as Carleton desired to get the fullest possible information regarding the legal conditions and necessities of the colony, he had asked Masères, among others, for a report elaborating his views and opinions. This request the attorney-general complied with early in 1769.

As might have been anticipated, Masères's report set forth opinions which ran directly counter to the personal views of the governor; for in general the writer insisted that the restoration of the entire fabric of French civil law would be a misfortune both for the colony and for Great Britain. The retention of that part of the old jurisprudence which dealt with real property seemed to Masères justifiable enough; but farther than this he was not prepared to go. He was of the opinion that the people in general were satisfied with the law as it stood, and that their complaints arose from the expense and delays which accompanied the administration of it. What was needed, he thought, was a reform of the judicature and not of the law.<sup>2</sup> This report was a disappointment to Carleton, who wrote to the home authorities deploring the "narrow prejudices" of his attorney-general, which he attributed to his "having conversed more with books than with men."<sup>3</sup>

<sup>1</sup> Carleton to Shelburne, April 12, 1768, in State Paper Office, *America and West Indies*, vol. cccxxvi, No. 33.

<sup>2</sup> François Masères, *Draught of an Act . . . for settling the Laws of Quebec* (London [1771]).

<sup>3</sup> Carleton to Hillsborough, October 3, 1769, in State Paper Office, *America and West Indies*, vol. cccxxvii.

The governor had now apparently come to the conclusion that the concurrence of the home authorities in his own plans could be secured only as the result of a personal visit to England; and, to this end, in the following year (1770) he obtained a short leave of absence from the province. He was firmly convinced that the progress of the colony was being grievously hindered by the unsettled condition of its legal system. The people, for instance, were following the English system of conveyancing as simpler and less expensive than the French, even though it did not lend itself to the existing form of tenure. The seigniors were generally disregarding the provision in the Arrêt of Marly (1711) that no entry fee should be exacted from habitants for grants of land, but that holdings *en censive* should be freely conceded at the rates customary in the neighborhood. Many of them were refusing to pay their quint, some on the ground that the governor in council had no right to revive the Custom of Paris in part, and some on the ground that they had not been called upon to render fealty and homage, a duty which was, by the custom, a prerequisite of the exaction. Many seigniors were exacting dues and services to which they were not entitled, and many habitants were refusing to render even their proper obligations. All this disorder served to produce a torrent of litigation which the inefficient judicial organization was utterly unable to stem with any approach to satisfaction.

On his arrival in England, Carleton laid the question before the authorities and recommended action. Immediate action upon a matter so important was not easy to secure; nevertheless the Board of Trade agreed to recommend to the king the expediency of giving permission for further grants *en seigneurie* in the colony.<sup>1</sup> On June 27, 1771, the king in council issued instructions to the lieutenant-governor "revoking all His Majesty's former instructions for granting lands in the colony, and empowering the governor, with the advice of the council, to grant the lands which remain subject to His Majesty's disposal, in fief or seignior, as hath been practised heretofore, ante-

<sup>1</sup> Report of the Council for Trade to the King, April 24, 1770, in State Paper Office, *Board of Trade, Canada*, vol. xvi.

cedent to the conquest of Canada; omitting, however, in such grants, the reservation of the exercise of such judicial powers, as hath been long disused within the said province."<sup>1</sup>

The practical importance of these new instructions was not great. During the years intervening between 1771 and the outbreak of the Revolutionary War, there were numerous applications for grants of land in the colony, but in very few cases were grants of seigniories desired; almost invariably the applicants asked for concessions in free and common socage. The instructions are important mainly as showing that the British authorities had come to the determination, not only to preserve intact the seigniorial system of the French era, but to give opportunity for its further extension. Wise or unwise as the action of the British authorities on this occasion may be deemed, it was perhaps the only step possible in view of the development of affairs since the conquest; for never, perhaps, has any colony been placed in such a peculiar position with respect to the traditions of its own past as was Canada after 1760. After the conquest many of the higher officials of administration and of justice took their departure, carrying with them the confidential archives, and thus leaving the colony with neither living nor dead depositaries of the colonial law; for the officials who stayed behind were not the most capable of preserving a correct tradition of the legal spirit of the old régime.<sup>2</sup> New rulers and leaders arrived, not only ignorant of the tongue of those among whom they came to live, and strangers to existing laws, usages, and modes of thought and feeling, but bringing with them the opinions and maxims of a nation which was of all nations the least akin to France. The newcomers were, moreover, men who were not at all prepared to seize, or even to try to grasp, the peculiarities of the juristic system which they sought to supersede, whether such had to do with the pre-

<sup>1</sup> Additional Instructions for Governor Carleton, June 27, 1771, in State Paper Office, *Board of Trade, Canada*, vol. vii. These instructions were received and entered on the records of the council at Quebec, June 30, 1772. They are printed in the *Report on Canadian Archives* for 1904, p. 228.

<sup>2</sup> This seems to be shown by subsequent events, despite the fact that, as Judge Baby has pointed out (*L'Exode des Classes Dirigeantes à la Cession du Canada*, Montreal, 1899), a very considerable portion of the official class remained in Canada.



rogatives of the French crown, or with the confusion of executive, legislative, and judicial functions which pervaded the whole French colonial system, or with the uncertain and purely commendatory character habitually attaching to its juridical acts, or with the vast and complex mass of rights of person and property subsisting under it. Under the French rule, for example, the governor and intendant had been wont to exercise a more than prætorian power in respect to land grants and the conditions of land tenure. We have the testimony of one of these officers that they could not, under the circumstances of the colony, follow the strict rules of the Custom of Paris, no matter how much they might be disposed to do so; for any strict adherence to it would have resulted in gross injustice in many individual cases.<sup>1</sup>

The administration of the land laws under the old system was therefore exceedingly elastic. Though customary law is not by nature very flexible, in this case the possession by the intendant and council of wide discretionary powers had permitted elasticity in its application. Under the new government all this was changed. The executive authorities had now no judicial powers; the judiciary had no discretion but to follow the law wherever it could be discerned. It is no doubt true that in most cases the new English courts strove to discover the law and to follow it; but by seeming analogies in English law they were too often misled to a misinterpretation of the ancient land laws of the province.

Perhaps the most common as well as the most natural error made by the new courts in this particular lay in their attempt to apply to *en censive* lands the laws and customs relating to English tenure in copyhold. In England copyhold lands were governed largely, almost entirely, indeed, by the unwritten customs of the various manors; the copyholder's possession of his land was secure so long as he rendered the customary obligation to the lord of the manor. When, therefore, the colonial judges had to decide questions concerning *en censive* lands, they sought to discover the customs of the seignior and to apply these to the cases in hand. The very term "*coutume*" served to mis-

<sup>1</sup> See Raudot to Pontchartrain, November 10, 1707, cited above, p. 124.

lead them. As a matter of fact, during the French period no stress had been laid on the custom of the seignior except in a single particular, — namely, when land within a seignior was granted by the royal authorities because the seignior himself refused to concede at reasonable rates.<sup>1</sup> The rights and responsibilities of seignior and habitant respectively, however, were regulated, not by any local seigniorial custom, but by the Custom of Paris, which applied throughout the colony.

This Custom of Paris, moreover, was not unwritten law, like the customary law of the English manors; it was, like the other French *coutumes*, a written code, systematically drawn up and enacted by authority. In the language of jurisprudence, it was statutory and not customary law. Although it was originally formed by the crystallization of a mass of customary rules, the perpetuation of the term "custom" rendered little service save to mislead. In a word, the English judges did not seem to grasp the fact that the Custom of Paris was a written code of law, subject to modification at any time by the authority possessing legislative power in France and in the colony. They persistently attached too much weight to "customary" rates and "customary" services, and too little both to the written contracts held by the habitants and to the written laws of the land.<sup>2</sup> Again and again seigniors were

<sup>1</sup> See above, p. 89.

<sup>2</sup> Precedents had been set for the judges by the decisions of the military courts which were established during the period of military rule, 1759–1763. An example of the somewhat peculiar attitude taken by these courts is given in the case of *Le Duc vs. Hunaut*, decided by the military court for the district of Montreal in 1762. By the deed of certain *en censive* lands in the seignior of Isle Perrot, executed in 1718, the defendant Hunaut had been placed under obligation to pay the seignior Le Duc "one half minot of wheat and ten sols per year for each superficial arpent" within the grant. Hunaut now appealed to the court against this exaction, on the ground that it was higher than the rate customary in the colony. The court decided that the rate stipulated in the deed must have been "an error of the notary," and ordered that in future the seignior should exact only "the usual rate at which lands are granted in this colony, that is, one sol for each superficial arpent and one half minot of wheat for each arpent in front by twenty in depth" (*Register of Arrêts of the Military Council of Montreal*, April 20, 1762). As has been shown in this study (above, ch. v), the court was quite in error in accepting any definite rate as "usual" throughout the colony. The habitant was entitled, after 1711, to demand a grant at the rate customary in the neighborhood; but if he chose to accept a grant at a higher rate the right of the seignior to exact such dues was incontestable.

called upon to prove that they had in the past exacted certain dues and services from their habitants; and having given this proof they received judgment compelling the habitants to continue the payments. Throughout the French period there had been no dearth of cases in which the seignior enforced unwarranted exactions as the price of the habitant's general ignorance: too often he repaid the confidence of his dependents by abusing his powers. When, however, any such case came to the notice of the authorities, a prompt end was made to the seigniorial abuse, and in most instances a penalty was imposed. To the French authorities a seigniorial claim did not gain validity through long assertion. The only sources of seigniorial privileges were the Custom of Paris, the deeds of concession embodying the contract made by the seignior with the original grantee, and the various edicts, ordinances, and decrees of the higher civil authorities.

The provision which revived the old French law in all cases affecting the tenure of lands and the inheritance of real property did not, therefore, set the lands of the colony back under the old legal system, although this was most certainly what it had intended to do. It placed them rather under what the judges could discover to have been the customs and usages of the period before the conquest. Such a situation was, naturally, very much more to the advantage of the seigniors than to that of the habitants.<sup>1</sup> Prior to the conquest the habitants had had a double protection in the judicial power of the courts and the administrative jurisdiction of the intendant. Of the two the latter was by all means the more effective, and of it the habitants were now deprived.

The three steps taken by the British authorities for the perpetuation of the feudal system in Canada may at this point be recapitulated. They were the guaranteeing to all landholders of

<sup>1</sup> On this point the Report of the Commissioners of 1843 declared: "However unfounded the pretension of the seignior might have been considered in the Court of the Intendant, he has in the Courts of later creation invariably been successful in all his contests with his tenants, with the exception of a single instance, which occurred in the Court of King's Bench at Montreal in 1828" (*Titles and Documents*, i. 66). This exception was the case of *McCallum vs. Grey*, King's Bench, April 18, 1828.

their vested rights, the retention of the old law in all cases relating to the tenure and inheritance of landed property, and the granting to the authorities of permission to continue the concession of seigniories. All three measures together did not, however, secure the maintenance of the old system intact: the framework was retained, but the spirit which characterized the system was gone. For this one can scarcely blame the British authorities either at home or in the colony, since they had endeavored to buttress the old tenure in so far as this could be done by official action. Nor should one overlook the difficulties which even the best of courts would have encountered under the peculiar circumstances; for, even had the justices been disposed to study thoroughly the old system of law,—as they were not,—they would have found the task bewildering. The various sources of the law were difficult to get together, and when collected they presented little that was attractive to an English jurist. The colonial ordinances and decrees were still in manuscript, unarranged, unindexed, to some extent incomplete, and, above all, written in French, in a hand very hard to read. Since, then, the customs of the country were so much easier to discover than the law, it is not surprising that men trained in the common law of England should have sought the former as their rule of decision and neglected any serious attempt to ferret out the latter. During the dozen years intervening between the conquest and the compilation of the French law in 1772, the British officials and judges had thus, from the very nature of things, little accurate grasp of the old jurisprudence.

But to return to the mission of Carleton. The governor had proceeded to England in the autumn of 1770, with the intention of being absent about six months; but various circumstances combined to keep him there for four full years, the affairs of the colony being administered meantime by a lieutenant-governor, the Hon. H. T. Cramahé. Carleton, upon his arrival in England, lost no time in emphasizing to the ministry his desire for the full restoration of the old French civil law. At first the ministry was not willing to accede to this proposal, especially since the opinion of Masères had been recorded against it.

Moreover, the question of legal reform in the colony had now become part of the larger question of political reform. The movement for an elective legislature was gaining force;<sup>1</sup> and the ministry, naturally enough, concluded that the decision of the legal question should depend to some extent upon the disposition of the political.

The preliminary step to action was taken when the ministry requested the three chief law officers of the crown,—the attorney-general, the solicitor-general, and the advocate-general respectively,—to prepare reports upon Carleton's recommendations. The reports of these three officials, presented during the years 1772–1773, were practically at one in recommending the reëstablishment, substantially intact, of the whole of the old civil code.<sup>2</sup> There can be little doubt that these reports carried considerable weight with the ministry, and that they were in no small degree responsible for the legal provisions of the Quebec Bill, which was introduced into the British Parliament during the spring of 1774.

By the terms of the Quebec Bill the criminal law of England was to be maintained in the colony; but “in all cases relative to property and civil rights” resort was to be had to the old civil law through French modes of judicial procedure. Either system of law might be modified, however, by ordinances of the colonial government; and it was expressly provided that owners of land might bequeath their real property according to English rules of bequest, if they chose to do so. Other provisions of the bill ratified the guarantees made to Canadians by the capitulation of Montreal and the subsequent Treaty of Paris, and confirmed the Roman Catholic clergy in the enjoyment of their “accustomed rights and dues.”

<sup>1</sup> The general history of this movement is traced in Christie, *History of the Late Province of Lower Canada*, vol. i, and in Kingsford, *History of Canada*, vol. v.

<sup>2</sup> The reports of Solicitor-General Wedderburn and of Advocate-General James Marriott dealt exhaustively with the whole legal situation in the colony. Wedderburn's report, presented December 6, 1772, is printed in Christie, *History of the Late Province of Lower Canada*, i. 27 ff., and in Doutre and Lareau, *Histoire Générale du Droit Civil Canadien*, 643–658. Marriott's report, submitted on May 3, 1773, was published in the following year under the title *A Plan of a Code of Laws for Quebec* (London, 1774). An excellent summary of its contents is given in Doutre and Lareau, *Histoire Générale*, etc., 658–669.

The debates in Parliament on the Quebec Bill developed considerable opposition to these provisions. One of the points emphasized was that, since the French civil code made no provision for jury trials, questions involving important interests, such as titles to land, would, under the new bill, be decided by a judge alone.<sup>1</sup> Indeed, the French civil procedure in general did not commend itself to most Englishmen. Under that system the evidence in a case was taken at a court of inquiry at which no judge was present; the record of the evidence and exhibits was then laid before the judge, who was addressed by the advocates of the opposing parties on the matters contained in it and on the points of law involved in the case. The judge did not come into contact with the witnesses. Now, while this procedure differed very decidedly from that followed in civil cases at English law, it did not differ so much from English actions at equity; but this seems to have been overlooked by those who opposed the legal provisions of the bill in Parliament.

In due time, however, the Quebec Bill passed through Parliament and became law, going into operation on the first day of May, 1775.<sup>2</sup> In America, as well as in England, most of the provisions of the bill called forth criticism, the legal clause being among the number. Perhaps the most important of the criticisms offered was that of the framers of the Declaration of Independence, who enumerated among the arbitrary and injudicious acts of the home authorities that of "abolishing the free system of English law in a neighboring province." It may very well be doubted, however, whether any other course would have been expedient. The attempt to impose English law relating to civil rights upon the province had failed miserably, and the endeavor to retain parts of the two systems side by side had produced legal chaos of the worst sort. It is therefore not strange that the home authorities should have decided to adopt the third alternative, that of restoring the old system. On the assumption that Quebec

<sup>1</sup> Cavendish, *Debates of the House of Commons in the year 1774, on the Bill for . . . the Government of the Province of Quebec* (ed. J. Wright, London, 1839).

<sup>2</sup> 14 George III, c. 83, printed in Houston, *Constitutional Documents*, 90-96.

would for all time remain predominantly French in language, traits, and traditions, their decision was neither unnatural nor unreasonable. It certainly was not reached hastily, or without due consideration of objections from every quarter.

Having seen the measure safely through Parliament, Carleton resumed his work as governor in Canada; but before the changes in judicial organization necessitated by the act could be properly made, he found his energies wholly taken up with the task of repelling an invasion of the colony by the forces of the revolting seaboard settlements to the south. This threatened danger brought up an important question connected with the obligations imposed upon the seigniors and their dependents by the seigniorial system. It had always been recognized, during the French period, that the governor might call upon the seigniors of the colony to enrol their habitants for military service in the interests of the crown. No such stipulation, it is true, was ever inserted in any of the title-deeds of grants within the colony;<sup>1</sup> but the rights of the crown in this respect seem never to have been questioned. It was now suggested to Carleton that he should issue a proclamation requiring the seigniors of the colony to enrol their dependents into companies, and to hold them at the disposal of those who commanded the small contingents of regular British troops in the colony. As the governor was extremely anxious to increase the defensive strength of the colony to the utmost point, he readily accepted this suggestion, and on June 9, 1775, called upon the seigniors to muster their habitants to repel the invaders. He asked them to have the habitants provide themselves with arms, and to hold themselves in readiness to proceed to designated centres of mobilization.

Most of the seigniors, taking the view that the representative of the crown had a legal right to command their own service and that of their dependents, promptly conveyed the orders of the governor to their habitants; but they met with very little favorable response, for in many cases the habitants took the ground that, with the cession of the colony, their obligation to do military service had passed out of existence. Some of the seigniors pointed out to them that refusal to serve would entail

<sup>1</sup> See above, p. 64.

the forfeiture of their lands, and that as soon as affairs were settled the courts of the province would be called upon to decree this forfeiture ; but the habitants gave little heed to these threats, and a few of the seigniors who attempted to bully their dependents into enrolment were very roughly handled. In some instances the governor sought to assist the seigniors by sending some regular officers into the seigniories ; but the habitants received them coldly and in some cases with open insolence. In one instance the women of the seigniorie put the officers to flight with a well-aimed volley of rocks and other missiles.<sup>1</sup> It ap-

<sup>1</sup> For a detailed account of the disorders which attended the attempts of some of the seigniors to enrol their habitants, see an interesting paper entitled "A Narrative of the tumultuous conduct of the freeholders of divers seigniories in the province of Quebec in the summer of the year 1775, in opposition to the endeavours used by their Seigniors to call them out to take arms against the American army, that had invaded the province : Shewing their aversion to being commanded by their Seigniors, and the little influence their Seigniors, and the other Noblesse of Canada, have over them." This paper, which was "written by a Gentleman very lately arrived from Quebec," is preserved by Masères in his *Additional Papers concerning the Province of Quebec* (1776), 71 ff.

A few extracts from this narrative may be interesting. It begins as follows : "An opinion prevails in the Province of Quebec, (whether just or not I will not pretend to determine,) that the Seigniors owe military service to their Sovereign, by the tenure of their lands ; and that in the acts of *Foi et Hommage*, or fealty and homage, they promise to perform the same to the Crown, when called upon : And that, by the same act, they also engage for the personal service of all their vassals, and other tenants, who hold their lands from them, either *par foi et hommage*, or *par cens et rentes*, or (as it is often expressed) *en Roture*. It is universally believed, that the Seigniors have, by the Customs of Canada, (which are revived by the late Quebec act,) a legal right, to command the personal service of all the holders of land under them, whenever the Sovereign, or his Representative, calls upon them (the seigniors) for that purpose." It then proceeds to recount the experiences of various seigniors. M. La Corne, seignior of Terrebonne, was told by his tenants "that they were now become subjects of England, and did not look on themselves as Frenchmen in any respect whatever," and that consequently he had no right to enforce the obligations imposed by French law. When La Corne attempted to bully them, they mobbed him vigorously and compelled him to hurry back to Montreal ; when he threatened to return with soldiers and force them to their service, they resolved to arm themselves and to resist force with force. M. Deschambaud went over to his seigniorie on the Richelieu and summoned his tenants to arms ; they listened patiently to what he had to say, and then peremptorily refused to accede to his demands. At this the seignior was foolish enough to draw his sword ; whereupon the habitants gave both him and a few friends who accompanied him a severe thrashing and sent them off vowing vengeance. Fearing retaliation, the habitants then armed themselves, and to the number of several hundred prepared to attack any regular forces which might



pears that not more than a few hundred French militiamen were enrolled in all the seigniories; and of these many were apparently induced to render their service through promises of a liberal bounty.

The whole episode is interesting, not only because it shows the somewhat changed attitude of the habitant to the seigniorial system under the new government, but also because it seems to have been the last attempt on the part of the British authorities to enforce the seigniorial obligation of military service. Although the seigniorial system was still in existence during the war of 1812-1815, it does not appear that the enrolment of a feudal ban was even suggested to the authorities. The failure to enforce the obligation in 1775 seems to have ended its existence.

Owing to the disturbances of the year 1775-1776, no steps were taken toward carrying out the terms of the Quebec Act till February, 1777, when a new system of civil courts for the administration of the revived French civil law was established. A little later a proclamation was issued requiring all holders of seigniories to render their fealty and homage to the representative of the crown at Quebec.<sup>1</sup> This step was deemed advisable because, as there had been no general rendering of this obligation since the conquest, some of the seigniors were taking advantage of the fact to refuse payment of their dues to the crown. Since, however, the filing of *aveux et dénombremens* had to accompany the performance of fealty and homage, and since the preparation of these files by the seigniors took time, the date fixed for the rendering of the allegiance was in 1778 extended to the last day of 1779.<sup>2</sup>

be sent against them. Through the discretion of Governor Carleton, however, who hastened to send one of his officers to disavow the action of the seignior and to promise the habitants that if they returned quietly to their homes they should not be molested, they were persuaded to disperse. Mr. Cuthbert, an English gentleman, seignior of Berthier, tried in vain to secure a hearing from his tenants, who refused to assemble at his manor-house. They held a meeting of their own, however, and took oath among themselves that if any one of their number responded to the call "they would directly burn his house and his barn, and destroy his cattle." These and other examples serve to show that the habitants resisted in no uncertain way the attempts of the authorities to enforce the feudal obligation of military service.

<sup>1</sup> State Paper Office, *Board of Trade, Canada*, vol. xx, August 28, 1777.

<sup>2</sup> *Ibid.* November 30, 1778.

Meanwhile Governor Carleton had left the colony and had been succeeded by Governor Haldimand. During the next decade, little occurred in connection with the history and development of the seigniorial system that is worth recording. A number of the regular troops sent out to Canada during the American Revolution took up lands in the colony and became permanent settlers there; but these received their grants in free and common socage. During the latter part of the war, and especially after the conclusion of the peace of 1783, large numbers of loyalists made their way from the seaboard States to Canada. Comparatively few of these, however, took up lands in the settled districts of Quebec, although some came into what are now the "Eastern Townships"; the great majority went either to the maritime provinces or to the western part of Canada, — to what now forms the province of Ontario. Haldimand was instructed to treat the loyalists generously in the matter of land grants, which in every case seem to have been made in free and common socage. Even among the French population of the colony there was a growing feeling in favor of the English freehold tenure; petitioners for public lands almost invariably asked that the grants be given in this form. In the course of this research, not a single instance of a grant *en seigneurie* from the crown between 1775 and 1792 has come to light, though the colonial authorities possessed an undoubted right to make such grants. On the other hand, there seems to have been a desire on the part of some seigniors to have their tenures converted into the new form. This feeling first manifested itself officially in a petition to the governor, in 1788, from M. Charles de Lanaudière, a prominent seignior of the colony and a member of the council, who asked "that the tenure of his estates be converted from tenure in fief to tenure in free and common socage."<sup>1</sup> Lanaudière's petition was promptly referred to a committee of the council, but no action was taken upon it.

In 1790, however, the governor ordered that a committee of the whole council should hear M. de Lanaudière on his petition, and that it should, furthermore, "investigate and report a state-

<sup>1</sup> Minutes of the Council, August 25, 1790, *Titles and Documents*, i. 25-26.

ment of the comparative advantages of the tenure in free and common socage, and the present tenures of the province of a different description, with a view to the public interest, as well as that of the individuals holding under such tenures"; that it "deliberate, and in case a conversion of the present tenures in fief or otherwise into socage tenure shall appear to be advisable," that it "report upon the most eligible mode of effecting the same, without prejudice to the rights of individuals and the general interest of the country." The committee was also instructed to obtain information regarding the seigniorial system from every accessible source, and, if it was deemed advisable, to call upon the law officers of the crown in the colony to assist in the investigation.

Early in September, 1790, the committee began its inquiry by calling upon the surveyor-general for a table showing the number of seigniories granted, the total acreage of the same, and, so far as possible, the conditions on which the grant had been made in each instance. It then proceeded to draw up a series of legal questions, the decisions upon which seemed necessary to a proper understanding of the seigniorial system; and these queries, eleven in number, it submitted to the attorney-general and the solicitor-general for a joint report.<sup>1</sup> Through

<sup>1</sup> The questions (which may be found in *Titles and Documents*, i. 27 ff.) were as follows:—

1. "Upon what tenures were the lands of this country granted by the French crown?"

2. "What kind of tenure was most prevalent, and what may be stated in probable conjecture for the proportion between them?"

3. "What securities had the French crown by the law of the country, or the nature and tenor of the grants, to compel or promote the cultivation and improvement of the land granted?"

4. "What were the legal burdens upon the grantee of the crown in reservations, conditions, rents, and services; or what were the benefits accruing to the French crown from the nature of the grant, founded in the usual reservations, or by the general laws of the country?"

5. "What were the benefits which the grantee of the crown might draw from the subfeudatory; or what were the burdens, the acknowledgments, rents and services, to which the occupants under the royal grantee were liable from the nature of the concession or by the law of the country?"

6. "Was the estate of the grantee of the crown subject to partition by marriage contract, testamentary disposition, or any other mode of alienation, voluntary or

serious illness the attorney-general was prevented from assisting in answering the questions; but early in October the solicitor-general, the Hon. J. Williams, presented the results of his investigation.<sup>1</sup> His answers were for the most part brief, and in general showed that only a cursory inquiry into the matter had been made by him. In one or two cases they were clearly misleading.<sup>2</sup> On the whole, however, the report, considering the haste with which it was prepared, gave a good general outline of the legal bases of the land-tenure system existent during the old régime.

About the same time the council had requested M. de Lanaudière himself to present answers to the same queries. Accordingly, a week or two after the solicitor-general made his report, Lanaudière submitted his replies to the first seven of the eleven questions, his answers agreeing in the main with those given by the solicitor-general.<sup>3</sup>

Having in these various ways possessed itself of information on the subject in hand, the council proceeded to adopt a series of resolutions embodying its views. After summarizing the in-

judicial, and by inheritance in the lines direct or collateral; or was any estate held impartible and unalienable, or in the nature of an English entail?"

7. "Were the subfeudatory farms of the concessions of the tenantry held under the royal grantees, devisable, descendible, alienable, and partible in the like manner without limitation?"

8. "Would a conversion of the French tenures into the tenure of free and common socage be advantageous to the proprietor holding by grant of the French crown in fief, seignior, or roture, discriminating its effects as to the parcels that are settled, or such as are still unconceded and uncultivated; and what in particular appears to you to be the instances of advantage or disadvantage to result from such conversion?"

9. "Would such conversion of the tenure of estates or farms of the subfeudatories be beneficial or detrimental to them; and in what respects as you apprehend, and for what reasons?"

10. "How may the interests of the crown and public be affected by such conversion; stating the points in which it may operate to the loss or emolument of the royal revenue?"

11. "By what mode may such conversion of tenure be accomplished?"

<sup>1</sup> "Report of the Solicitor-General to the Honorable Members of the Council," October 5, 1790, *Titles and Documents*, i. 27-35.

<sup>2</sup> For example, in declaring that the *cens et rentes* was uniform in amount. Cf. above, p. 92.

<sup>3</sup> *Titles and Documents*, i. 35-39 (October 17, 1790).

cidents of the seigniorial system under the French rule, it declared its opinion that "the feudal system . . . was among the main causes of that low condition in which Canada was found at the British conquest." Moreover, it affirmed that in all probability the continuance of the system would operate more detrimentally in the future than it had done in the past, since the population of the country now depended "for its increase upon the introduction of British settlers," who were "known to be all averse to any but English tenures." This being the case, it seemed to the council that the seigniors could hope to increase the number of their censitaires in future only by drawing upon the descendants of present censitaires; and it expressed grave doubts whether even these would be found willing to take grants *en censive*, when grants in free and common socage were to be had from the crown. Accordingly, the council resolved that it would be to the interest of all concerned if the tenure of lands held *en seigneurie* or *en roture* could be commuted into the tenure of free and common socage; but since "an absolute and universal commutation of the ancient tenures, though for a better, would be a measure of doubtful policy," it decided to recommend that legislation be had providing for voluntary but not compulsory commutation. In accordance with this resolution, it submitted to the governor the draft of a bill providing that any seignior might surrender his lands to the crown and receive back the same in free and common socage; that any one who held lands *en censive* directly from the crown might do likewise; and that one who held a grant *en censive* from a seignior might arrange with the seignior for a conversion of the tenure of his holding.<sup>1</sup>

From these resolutions one of the members of the council, Mr. Mabane, strongly dissented on several grounds. "It appears," he declared vigorously, "that the slow progress of population and settlement under the government of France cannot be ascribed to any inherent vice in the several tenures under which lands are held in the colony; that it arose from the difficulties which the first settlers found in contending with the fierce and savage nations which surrounded them, from their

<sup>1</sup> Resolves of the Council, *Titles and Documents*, i. 39-43.

frequent wars with the British colonies, and above all, from their repeated expeditions in the upper countries and toward the Ohio, in which the ambitious policy of France had forced them to engage." As a proof that the present tenures were "not inimical to population and settlement of the colony," Mabane pointed to the fact that the population of the colony had doubled since the conquest. He showed, moreover, — and he was right in so doing, — that the council proposed to allow the seigniors to obtain full property in the ungranted lands of their seigniories, whereas by the provisions of various royal edicts they were merely trustees of these lands and were under obligation to grant them to applicants at the customary rates. The carrying out of the council's recommendations would, Mabane claimed, greatly enhance the value of the seigniories to their holders, and would at the same time deprive the people of the colony of vast areas of lands which the seigniors held in trust for them and for their descendants. "If the conversion of the seigniories into free and common socage should take place," he declared, "the children of the present inhabitants of the country and all others desirous to settle thereon would be left entirely subject to the arbitrary exactions of the seigniors, to their infinite prejudice and the manifest detriment of the country's improvement." In conclusion Mabane asserted that the great mass of the people were satisfied with conditions as they were; "that the services or burdens to which the censitaires under concessions from seigniors" were subject were "few, clearly understood and ascertained, and . . . by no means onerous or oppressive."<sup>1</sup>

The passing of these resolutions by a majority of the council seems to have had no tangible result whatever. The question was raised whether the power to carry out the recommendations was vested in the colonial authorities, or whether it would have to be sought from the home government; but the feeling in the country on the matter of obtaining commutation of tenures was not strong, and for many years after the recommendations of the

<sup>1</sup> "Mr. Mabane's Reasons of Dissent from the Resolutions and Motion of the Chief Justice adopted by the Committee [of the Whole Council]," *Titles and Documents*, i. 43-44.

council were made the whole subject seems to have been left in abeyance. Other important questions, such, for example, as the obtaining and inaugurating of a system of representative government, engaged the minds and attention of the legislators.

Meanwhile, although the colonial authorities in Lower Canada stood ready to grant lands *en seigneurie* whenever application for such a cession was made, there seems to have been no grants under this form of tenure.<sup>1</sup> From time to time petitions were received from seigniors asking for the commutation of the tenures under which they held their lands, but in no case were the authorities bestirred to any action other than the mere acknowledgment of the petitions.

During these years the land laws of the province were administered, so far as possible, as they were during the French period; but although the judges sought to discover and enforce the legal rights of seigniors and censitaires respectively, they encountered many difficulties in their application of the law. During the old régime, for example, the intendant had been endowed with wide discretionary powers, extending, as has been shown, even to the setting aside of seigniorial claims which, however well-founded at law, seemed to him unreasonable in exaction.<sup>2</sup> He had administrative as well as judicial powers: he could not only order a seignior to concede portions of his ungranted lands to a settler, but in the event of the seignior's refusal he and the governor might make the grant and convey a valid title by their own authority.<sup>3</sup> Now, by the Judicature Act of 1793, the court of King's Bench in Lower Canada was invested with "full power and jurisdiction to hear and determine all complaints, suits, and demands of what nature soever which might have been heard and determined in the courts of the Prévôté, Justice Royale, Intendant, or Superior Council under the government of the province, prior to the year 1759, touching rights, remedies, and actions of a civil nature."<sup>4</sup> From the wording of the statute it would appear that the administrative as well as the judicial au-

<sup>1</sup> See Dunkin, *Address at the Bar*, etc., Appendix.

<sup>2</sup> See above, p. 205.

<sup>3</sup> Above, p. 89.

<sup>4</sup> 34 George III, c. 6.

thority of the intendant had been inherited by the new court. In several important cases the court held that the provisions of the arrêts of 1711 and 1732 were still in force in the colony, and, in consequence, that a seignior was under obligation to make grants of land at the rates customary in the neighborhood;<sup>1</sup> but in no case did it assume to follow up this opinion by making such a grant when the seignior refused to do so.<sup>2</sup> In other words, in declining to apply the old remedy, it deprived of its former effectiveness the important rule of law in regard to compulsory subinfeudation.

In a number of other matters, also, the protection of the habitants against their seigniors was far less effective than it had been under the old dispensation. The old court of the intendant exacted no fees whatever for services; its intervention could be had by the poorest habitant. Under the new judicial organization, litigation was very much more expensive; and, although the habitant might in theory still claim the protection of the courts against illegal seigniorial exactions, he was in most cases debarred from doing so by his comparative poverty. This point is very plainly made in a report which the attorney-general submitted to the governor in 1794. In that year some of the habitants of the seignior of Longueuil petitioned the governor for relief against "an arbitrary increase of rents" claimed from them by their seigniors "in open defiance of the ancient ordinances of the kings of France." The governor referred the matter to the attorney-general, who reported that, while the right of the habitants to refuse payment of the increased rentals and dues was perfectly clear, nevertheless the expense to which they had to go in order to make this right effective put them almost entirely at the mercy of their seigniors.<sup>3</sup> The situation

<sup>1</sup> See, for example, *Langlois vs. Martel*, 2 *Lower Canada Reports*, 51.

<sup>2</sup> Meredith, *Observations*, 113.

<sup>3</sup> "They [the habitants] are able to institute and carry on their suits to judgment in the common pleas; equal perhaps to meet the costs of the court of appeals; but the enormous expense attending an appeal to His Majesty in council, to which the seignior is entitled, as his rights in future may be bound by the decision, deprives them of the possibility of obtaining justice, and compels them to abandon their rights,



was one which in practice operated very much to the advantage of the seigniors, and the result was apparent in the very considerable rise in the rate of dues exacted in many of the seignories.

Since 1791 the question had become a matter of concern to Lower Canada only; for by the Constitutional Act of that year the colony had been divided into two provinces, and in Upper Canada provision had been made for the establishment of both the civil and the criminal law of England.<sup>1</sup> In the upper province, lands were to be granted in free and common socage only; in Lower Canada they were to be given under this form of tenure whenever the applicant so desired, but the right of the royal representatives to grant lands *en seigneurie* in other cases was in no wise abridged.<sup>2</sup>

During the fifteen years following the passing of the Constitutional Act, no definite steps appear to have been taken by the authorities in the direction of commuting the tenure of lands held under the old system. It seems to have been the feeling that legislation would have to be sought from the British Parliament before the matter could be properly dealt with; but this point was not regarded as settled. Consequently, toward the close of 1816, when the affairs of the province so long disturbed by war had become settled, the home authorities were asked for their opinion as to whether the colonial government could, of its own powers, accept the surrender of lands held *en seigneurie* for the purpose of regranting them in free and common socage.

On receiving this request, Earl Bathurst, who was then in charge of the colonial office, desired the opinion of the law officers of the crown on the matter. This opinion he promptly received, and forthwith transmitted a copy to Quebec. The crown officers, after reviewing the various enactments relating to the tenure of lands in the colony, expressed the opinion that there did "not seem to be any objection to His Majesty's accend and throw themselves upon the mercy of their antagonist, who compromises the action, and grants a new deed of concession upon his own terms" (Report of the Attorney-General, February 27, 1794, *Titles and Documents*, i. 93-95).

<sup>1</sup> 31 George III, c. 31. This act may be conveniently found in Houston's *Constitutional Documents*, 112-133.

<sup>2</sup> *Ibid.* § xliii.

cepting a surrender of lands holden *en seigneurie* and regranting them in free and common socage," and hence that no special legislation on the point by either the home or the provincial parliament would be necessary. They believed, however, that, if commutation were to be made compulsory, appropriate legislation to this end must be obtained.<sup>1</sup>

The colonial authorities expressed their satisfaction with this opinion, but at once raised another question of a somewhat different nature. It seems that in 1794 Lord Dorchester had assured the colonial legislature that the proceeds of the *droit de quint*, which accrued to the crown from the seigniories, should be used toward defraying the civil expenses of the colony. The question which now presented itself was whether, in the event of permitting the seigniors voluntarily to obtain commutation, this right would not be lost, and whether, therefore, the crown would not, by the use of its prerogative, have broken its pledge to the legislature. Since the permitting of voluntary commutation would reduce the revenues of the colony, ought not the consent of the colonial legislature to the proposed action to be asked?<sup>2</sup> To this question the home government, which was again consulted, returned answer "that to take from them [the legislature] this source of revenue without their assent, or without an equivalent, would be an infringement of what they might fairly consider a pledge or assurance on the part of the crown." Consequently the colonial authorities were advised that it would not be expedient, without securing legislation from the provincial parliament, to make any attempt in the direction of changing the tenure of lands.<sup>3</sup>

One other question, though not so important, is of interest as showing the difficulties in the way of effecting a commutation of

<sup>1</sup> Bathurst to Sherbrooke, February 6, 1817, *Correspondence between the Colonial Office and the Governors of Canada relative to the Seigniorial and Feudal Tenure* (1853), 18-20. The opinion which accompanies Bathurst's despatch is dated January 22, 1817, and is signed by the Hon. W. Caron, attorney-general, and the Hon. J. Shepherd, solicitor-general.

<sup>2</sup> Sherbrooke to Bathurst, May 20, 1817, *Ibid.* 21.

<sup>3</sup> Bathurst to Sherbrooke, August 31, 1817, *Ibid.* 21-23. This despatch is accompanied by an opinion on the question, dated August 1, 1817, addressed to Earl Bathurst and signed by "Messrs. S. Shepherd and R. Gifford, His Majesty's law officers."

tenure even when both the seignior and the authorities were in favor of it. By the provisions of the Constitutional Act of 1791, one-seventh of the ungranted lands of the colony were to be reserved for the support of a Protestant clergy.<sup>1</sup> The point was now made that, if a seignior surrendered his lands to the crown, he could receive back only six-sevenths of them in free and common socage; for, by the very fact of surrender, he would put his property in the category of "ungranted lands," of which one-seventh must be reserved by the crown.<sup>2</sup>

In view of the difficulties in dealing with the matter, it was thought best by the governor and council to ask the British Parliament to pass an act affording facilities for voluntary commutation, by making provision for replacing the quints which would be lost to the colonial treasury thereby, and for obviating the necessity of holding "clergy reserves" out of any part of the regranted lands. This request was acceded to by the British authorities, and in 1822 provisions along the lines desired were incorporated in a bill dealing with Canadian affairs. The bill was passed without difficulty, and went on the statute books as "An Act to regulate the Trade of the Province of Lower and Upper Canada, and for other purposes relating to the said Provinces."<sup>3</sup> This enactment, which is commonly known as the Canada Trade Act, contained two important sections embodying the first legislative step toward the abolition of the feudal system in Canada.<sup>4</sup>

<sup>1</sup> 31 George III, c. 31, § xxxvi.

<sup>2</sup> Cf. below, p. 224.

<sup>3</sup> 3 George IV, c. 119. The sections of this act relating to the commutation of land tenure are printed in *Edicts, Ordinances, Declarations, and Decrees relative to the Seigniorial Tenure* (Quebec, 1852), 290-291.

<sup>4</sup> Sections xxxi-xxxii.

## CHAPTER XII.

### ABOLITION OF THE SEIGNIORIAL SYSTEM.

IT was the design of the Canada Trade Act of 1822 to make possible the voluntary commutation of the tenure of lands held *en seigneurie*. After reciting the fact that doubts had arisen whether the tenure of lands held "in fief and seigniority" could legally be changed, the act provided: "If any person or persons holding any lands in the said province . . . of Lower Canada . . . in fief and seigniority, and having legal power and authority to alienate the same, shall at any time from and after the commencement of this act, surrender the same into the hands of His Majesty . . . and shall by petition . . . set forth that he . . . is desirous of holding the same in free and common socage, [the governor of the said province] . . . shall cause a fresh grant to be made to such person or persons of such lands to be holden in free and common socage, . . . subject nevertheless to payment . . . of such sum or sums of money as and for a commutation for the . . . dues which would have been payable to His Majesty under the original tenures." It further provided that no "clergy reserves" should be retained out of the lands whose tenure was commuted in this way, and made provision for a like commutation of tenure in the case of lands held *en censive* in the seigniories owned by the crown.<sup>1</sup>

The provisions of this act effected very little. It offered facilities for the commutation of the tenure of seigniories, and of that comparatively small category of *en censive* holdings comprised within seigniories belonging to the crown; but it made no provision for the commutation of the tenure of lands held *en censive* within the other seigniories, although the per-

<sup>1</sup> 3 George IV, c. 119, §§ xxxi-xxxii.

sons who desired a change of tenure were the habitants rather than the seigniors.

Three years later an attempt was made to remedy this defect in the act. In 1825 the British Parliament passed the Canada Trade and Tenures Act,<sup>1</sup> designed partly to readjust the trade relations of the two provinces of Upper and Lower Canada, and partly to supplement the previous land-tenure legislation of the latter province. The act of 1825 reenacted the provisions of the act of 1822, and went on to provide that, when a seignior obtained a commutation of the tenure of his seignior, he should be bound to afford his habitants an opportunity to secure a like commutation of their holdings. It also made provision that any seignior who had effected a commutation of his dues with the crown should be bound, "when thereunto required" by any of his censitaires or by any persons who held *à titre de fief, en arrière-fief, or à titre de cens*, to consent to grant to such censitaires "a commutation, release, and extinguishment of and from the *droit de quint . . . or droit de lods et ventes*," as the case might be, and from "all other feudal and seigniorial rights and burdens" to which such censitaires and their lands might be "subject or liable, to such seignior . . . for a just and reasonable price . . . , which price," continues the act, "in case the parties concerned therein shall differ respecting the same, shall be ascertained and fixed by experts, to be in that behalf nominated and appointed according to the due course of law in the said province."<sup>2</sup> Instructions were sent to the governor-general that the commutation of the tenure of seigniories should be effected on a basis of five per cent of the value of the seignior, a rate purposely made low "as an inducement to the seigniors to carry into effect a change of tenure from which considerable public advantage" might be anticipated.<sup>3</sup>

<sup>1</sup> "An Act to provide for the Extinction of Feudal and Seigniorial Rights and Burdens on Lands held *à titre de fief* and *à titre de cens*, in the Province of Lower Canada; and for the gradual Conversion of those Tenures into the Tenure of Free and Common Socage; and for other purposes relating to the said Province" (6 George IV, c. 59).

<sup>2</sup> Section iii.

<sup>3</sup> Bathurst to Dalhousie, August 31, 1825, *Correspondence between the Colonial*

On the receipt of these instructions, the governor-general issued a proclamation stating the main provisions of the Trade and Tenures Act, and asserting that seigniors might take advantage of these provisions on very liberal terms.<sup>1</sup> Apparently, however, the proclamation met with little response; for on June 19 of the same year (1826) the governor reported to the British authorities that, while there were before him some few applications for the commutation of the tenure "of houses and lots in Quebec city," it would "probably be a considerable time" before the proprietors of seigniories would "come forward to avail themselves of the benefits of the measure." They were, he went on to declare, afraid to ask to have their tenures altered lest the habitants should also take advantage of the provisions of the act and demand a commutation of their dues to the seigniors on the same low basis. The seigniors, he said, were not at all averse to commuting their own dues to the crown on a five per cent basis, but they were not willing to give their habitants any such favorable terms; still, if the crown treated them generously in the interest of the "public advantage," they could scarcely hope to avoid giving somewhat generous terms to their habitants in turn. Furthermore, in arranging a commutation with the crown, the seignior would be obliged to have his seigniority valued, and it would of course be to his interest to have it appraised at as low a figure as possible; when it came to commuting the dues of lands held by his habitants, however, it would be to his interest to claim for his seigniority as high a value as possible. This conflict of interests, concluded the governor, served to deter the seigniors from seeking the benefits afforded by the act.<sup>2</sup>

Another flaw in the Trade and Tenures Act lay in the fact that the five per cent commutation rule was to be applied to all seigniorial lands, whether rural or urban. Considerable portions of some of the seigniories were now comprised within the municipalities of Quebec, Montreal, and Three Rivers; and

*Office and the Governors of Canada relative to the Seigniorial and Feudal Tenure* (1853), 24-25.

<sup>1</sup> *Quebec Official Gazette*, April 20, 1826, p. 380.

<sup>2</sup> Dalhousie to Bathurst, June 19, 1826, *Correspondence between the Colonial Office and the Governors of Canada*, etc., 25-26.

as these lands naturally changed hands more often than rural holdings, the mutation fines payable to the crown accrued more frequently. To place these lands on the same basis as rural property was obviously unfair to the holders of the latter; accordingly, Governor Dalhousie promptly pointed out to the home authorities that a distinction should be made between the two classes of lands.<sup>1</sup> In response, instructions were given that a double rate — ten per cent on the gross value of the lots — should be exacted in commuting the dues of lands lying within the limits of municipalities.<sup>2</sup>

In the same year Dalhousie received further orders that, since the act of 1825 “contemplated the entire extinction of the feudal tenure in Lower Canada,” all future grants within the limits of seigniories owned by the crown were to be made in free and common socage and not *en censive*. He was asked, however, to make such reservations of timber, minerals, etc., as had usually been made in the old grants.<sup>3</sup> While the wording of these instructions did not preclude the colonial authorities from making *en censive* grants out of the waste lands of the province not comprised within the crown seigniories, the spirit of them, especially as shown by the statement that the colonial office wished to see the complete extinction of feudal tenures in Lower Canada, seemed to dictate that waste lands should be given out only in free and common socage. A few years later (1830) the governor-general, Lord Aylmer, asked for definite instructions on this point.

In his communication he laid stress on the fact that the policy of refusing to grant waste lands *en seigneurie* or *en censive* would be unfair to the great mass of the population. “I would here take leave to remark,” he wrote, “that the great majority of the inhabitants of Lower Canada hold their lands under the seigniorial tenure, to which they are much attached; and that, in denying them the power of acquiring crown lands under that tenure, they are virtually excluded from the market when crown lands are put up for sale. Nothing can more fully

<sup>1</sup> Dalhousie to Bathurst, June 19, 1826, *Correspondence*, etc., 27.

<sup>2</sup> Bathurst to Dalhousie, August 31, 1826, *Ibid.*

<sup>3</sup> October 30, 1826, *Ibid.* 28.

establish the fact of the predilection to which I allude than the extremely rare occurrence of instances of French Canadians applying for a commutation of tenure from the seigniorial to the tenure of free and common socage. Upon the whole question I have been given to understand that the granting of the power to acquire crown lands on the seigniorial tenure would be considered a very gracious proceeding towards the Canadians of French extraction." Lord Aylmer therefore asked that, if possible, instructions might be given him making clear his authority, despite the prior orders of 1826, to give purchasers of waste crown lands the option of receiving their titles under either the old or the new form of tenure.<sup>1</sup>

To this request the authorities of the colonial office made reply that, since the intention of the Trade and Tenures Act of 1825 was clearly to provide for the gradual extinction of the old system, they could not properly instruct His Majesty's representative in Canada to take any course which would assist in the perpetuation and extension of it. Since Parliament had passed the act of 1825, Parliament alone, they said, could give the authority which Lord Aylmer desired, either by repealing the act in question or by passing an amending act. In the same communication the authorities expressed a desire that a further attempt should be made to reconcile the people to the new tenure. "If the mind of the people," wrote Lord Goderich, "can be reconciled to the change, a very considerable object will be gained, because the lands of the province will thus be delivered from the absurd and injurious incidents of the feudal tenure."<sup>2</sup>

Matters, therefore, remained as they were. Meantime petitions addressed to Parliament began to come to the governor-general from various quarters, praying that those provisions of the Trade and Tenures Act which related to the commutation of the tenure of lands might be repealed. The most important of these petitions was one from the House of Assembly of the province, based upon certain resolutions passed by that

<sup>1</sup> Aylmer to Murray, December 19, 1830, *Correspondence*, etc., 28-29.

<sup>2</sup> Goderich to Aylmer, March 13, 1831, *Ibid.* 29-30.



body in the latter part of March, 1831. After a full discussion of the matter in committee of the whole, the assembly had unanimously adopted the following resolutions:—

“That the introduction of English law into certain parts of this province by the act 6 George IV, c. 59, has introduced the greatest confusion into all parts of the province by destroying acknowledged rights and by affording facilities for fraud and oppression.

“That the law of England as introduced in certain parts of this province . . . is opposed to the feelings of the inhabitants, incompatible with their education and habits of life, and has been forced upon them contrary to their rights, interests, and desires.

“That the said law ought to be repealed.”<sup>1</sup>

These resolutions, embodied in a petition, the governor-general sent to the home authorities in the course of the following month. In transmitting them he drew attention to the fact that the upper and lower houses of the colonial legislature entertained very different views regarding the act in question, and suggested that the appointment of a commission from England to study matters on the spot might be found advisable.<sup>2</sup> Before this communication reached England, however, Parliament had passed an act amending the statute of 1825 in its objectionable provisions. This new enactment, entitled “An Act to explain and amend the Laws relating to Lands holden in Free and Common Socage in the Province of Lower Canada, and for other purposes therein mentioned,” gave the provincial legislature permission to make such laws in relation to the mode of descent, alienation, and tenure of socage lands as might seem desirable.<sup>3</sup> It was hoped, apparently, that, if the incidents of socage tenure were somewhat altered, the people would be reconciled to the general change in tenure.

When the provincial legislature again met in December, 1831, the lower house proceeded to action as if the imperial

<sup>1</sup> Lower Canada, *Assembly Journals*, March 24, 1831.

<sup>2</sup> Aylmer to Goderich, April 7, 1831, *Correspondence*, etc., 30.

<sup>3</sup> 1 & 2 William IV, c. 20. This act was passed on March 30, 1831, and was officially promulgated in the *Quebec Gazette* of September 22 following.

act of the preceding March had given the colonial authorities a virtual right to repeal obnoxious provisions in the act of 1825. It introduced a series of resolutions setting forth the claim that the Trade and Tenures Act was in violation of the guarantees given in the Articles of Capitulation of 1760, the Treaty of Paris of 1763, the Quebec Act of 1774, and the Constitutional Act of 1791, in all of which the inhabitants had been assured of "a right to grants of sufficient portions of wild lands held from the crown *à titre de fief*, subject to the customary dues, and on conditions of cultivation and residence." The effect of the act of 1825, asserted the assembly, had been to deprive the people of this right by "vesting the said lands in the seignior, to dispose of them on such terms and conditions" as he might think fit, and at the same time by subjecting those who might settle thereon to laws with which the great majority of the people of the province were unacquainted, and which were "utterly unsuitable to their circumstances, and repugnant to their feeling and usages." The provisions of the law of 1825 were, it concluded, "contrary to the established rights of the inhabitants of the province, to the extension of settlement, and to the general prosperity."<sup>1</sup>

These resolutions were adopted with little or no dissent, and a bill was forthwith introduced providing for the repeal of those clauses in the act of 1825 which had "provided for the commutation of lands held *à titre de fief* and *à titre de cens* to be held in free and common socage subject to the laws of England." During the month of January, 1832, this bill had its three readings in the lower house, and on February 1 was sent to the upper house or Legislative Council.<sup>2</sup> This body, however, promptly refused concurrence, ostensibly on the ground that it was not within the power of the provincial legislature to repeal the provisions of the imperial act in question, but only to vary the incidents of the tenure which the act sought to establish.<sup>3</sup>

<sup>1</sup> Lower Canada, *Assembly Journals*, January 28, 1832.

<sup>2</sup> The legislature of Lower Canada was at this time composed of two houses, — an upper house, or Legislative Council, the members of which were nominated by the crown, and a lower house, or Legislative Assembly, the members of which were elected by the people.

<sup>3</sup> Lower Canada, *Council Journals*, February 12, 1832.

Baffled in this direction, the assembly turned to the governor-general with "an humble address" praying that, until such time as the repeal of the provisions in question could be secured, commutation of the tenure of seigniories should be granted only with a reservation protecting the inhabitants in their "ancient right to demand from the seigniors concessions of land at the accustomed rates and dues." The address asked further that the same reservation be made in all socage grants given out of the waste crown lands of the province.<sup>1</sup> The governor expressed his regret that the shortness of the time intervening before the end of the session prevented his bestowing upon the subject the attention necessary to a decision, but promised to give it "careful consideration before the next session."<sup>2</sup> When the assembly reconvened, however, its request was firmly negatived by the chief executive, who informed the members rather curtly that, in every instance in which he might be called upon to give effect to the Canada Tenures Act, he would not fail "to require the complete fulfilment of the law."<sup>3</sup> The law, it may be said, required the commutation into socage tenure to be made without any reservation whatsoever.

Here the whole matter rested during the three ensuing years, the assembly contenting itself, meantime, with requesting returns showing the number of applications for commutation whether by seigniors, holders of sub-fiefs, or habitants, and giving a list of all "oppositions, remonstrances, or memorials which may have been presented."<sup>4</sup> These returns, which were duly forthcoming in the spring of 1833,<sup>5</sup> disclose the fact that very few serious applications for the commutation of the tenure of seigniories under the provisions of the act of 1825 had been received, and that down to the date on which the returns were presented a commutation of tenure had been effected in two cases only.<sup>6</sup>

In the early part of 1834, however, the assembly adopted the

<sup>1</sup> Lower Canada, *Assembly Journals*, February 16, 1832.

<sup>2</sup> *Ibid.* February 25, 1832.

<sup>3</sup> *Ibid.* December 7, 1832.

<sup>4</sup> *Ibid.* November 24, 1832.

<sup>5</sup> *Ibid.* March 22, 1833.

<sup>6</sup> These were the seigniories of Ste. Anne de la Pérade and Beauharnois, the tenures of which were commuted on December 28, 1830, and March 10, 1833, respectively. See *Ibid.* 1832-1833, Appendix.

famous Papineau Resolutions, ninety-two in number, which made a violent remonstrance against the policy of the executive authorities in general.<sup>1</sup> Seven of these resolutions were devoted to a condemnation of the existing policy in relation to land tenure.<sup>2</sup> In one of them the assembly laid down its future course of action by declaring: "It is the duty of this house to persist in asking for the repeal of the Canada Tenures Act, and until such repeal shall have been effected, to propose to the other branch of the provincial parliament such measures as may be adapted to weaken the pernicious effects of the said act."<sup>3</sup> No action appears to have been taken along this line during the session of 1835; but in the following year the assembly re-adopted its resolutions of four years previously,<sup>4</sup> and passed a bill similar to that which had been thrown out by the Legislative Council in 1832.<sup>5</sup>

There was no expectation on the part of members of the assembly that the council would pass this bill, nor did it do so. The governor-general, however, was very anxious that some compromise should be effected, and to this end had his law officers make a report to him on such a possibility. This report emphasized the crux of the whole difficulty very well indeed. "There is," it ran, "every reason to hope that, whenever a better understanding may be established between the assembly and the council, there will be no objection on the part of the former to pass some measure for the gradual discharge of lands from feudal duties and services, if not in a manner obligatory on the seigniors, at least by voluntary agreement; and whenever such measure may be passed, we have no hesitation in declaring that, in our opinion, the Tenures Act of 1825 should be repealed, of course making it a condition of the repeal that all titles and advantages acquired under either of the acts are to be held valid."<sup>6</sup>

This report was undoubtedly right in declaring that the main difficulty in the way of a proper settlement of the whole ques-

<sup>1</sup> These resolutions are printed in Kingsford, *History of Canada*, ix. 544-554.

<sup>2</sup> Resolutions 56-62.

<sup>3</sup> Resolution 62.

<sup>4</sup> January 28, 1832. See above, p. 229.

<sup>5</sup> *Assembly Journals*, March 1, 1836.

<sup>6</sup> Report of the Commissioners, 1836, ch. ii. § xx.

tion of tenures lay in the antagonism between the two houses of the legislature, or rather, perhaps, in the antagonism of the lower house to both the upper house and the governor. It is not necessary here to detail the course of events that placed these different organs of government in a state of hostility which clogged the wheels of administration in such a way that it took an armed conflict to set them free. There were, of course, causes of difference even more important than the question of land-tenure laws. The root of the whole difficulty lay in the desire of the assembly to control the executive and to have the membership of the council made elective and not appointive. Deeper still, however, the conflict was between the French-speaking majority of the provincial population, which absolutely controlled the assembly, and the English-speaking minority, which just as absolutely controlled the governor, the governor's council, and the Legislative Council, or upper house of the legislature.<sup>1</sup> It was, as Lord Durham afterwards remarked, a case of "two nations warring in the bosom of a single state," a conflict not of principles but of races.<sup>2</sup>

Since the British conquest many of the seigniories had passed from French into English hands. English settlers with means came to the colony and bought out seigniories, and English merchants of Quebec and Montreal frequently did the same. The new seigniors were often hard masters, enforcing the seigniorial dues and services to the letter, and calling freely — and usually with success — upon the courts for assistance in this direction. They looked upon their seigniories as means of profit, whereas the seigniors of the old régime had been forced to regard themselves merely as royal agents for the upbuilding of the colony, as trustees of lands held for the use of future settlers and for the sons of the people. The habitant therefore disliked his new master, and desired that he should have no such favor before the law as the right to obtain, for a small sum, absolute property in the seigniory.

<sup>1</sup> For a discussion of the course of events during this decade of political conflict, see Kingsford, *History of Canada*, vol. viii; Christie, *History of Lower Canada*, vols. iii-iv; Bradshaw, *Self-Government in Canada*, chs. ii-iv.

<sup>2</sup> See below, p. 237.

The church, too, disliked the incoming of the English seigniors; for most of them were Protestants, and hence not only paid no tithes themselves, but were ready to subgrant lands to Protestant settlers, who also would pay none. By this freedom from the tithe and from the necessity of observing the holy days of the church, the Protestant settler had a great economic advantage in the country; and by working his land more intelligently than his Catholic and French neighbor he became so much more prosperous that the habitant was jealous of him and frequently tried to drive him away by petty persecution and boycott. The new English settler, moreover, turned his attention to the growing of new products, notably hemp, and in this policy the authorities encouraged him; but as hemp paid no tithe the church promptly frowned upon its cultivation by the habitant, despite the fact that it could be made to yield a good profit.

Another class of men who opposed any interference with the old order of things were the notaries. Under the seigniorial system there had been no regular registration of deeds and titles; every transaction relating to land had to be made before a notary, who recorded the sale or mortgage, as the case might be, and gave copies of the record to the parties concerned. Since this system brought the notaries both prestige and profit, it was only natural that the new policy, which greatly simplified the making of transactions relating to real property, should be opposed by this class of men; and, as the notaries were numerous and influential, their opposition of course carried great weight with the people, especially since they insisted that the new law was all in the seignior's favor. One or two instances of their antagonism are conspicuous. It happened, for example, that in the same year in which the Canada Tenures Act was passed (1825) a charter had been given to the British American Land Company, an organization of English capitalists formed for the purpose of taking up large blocks of waste crown lands and settling them with immigrants from England.<sup>1</sup> Taking advantage of the coincidence of date, the notaries throughout the province hastened to suggest that both act and charter were

<sup>1</sup> British Parliamentary Papers, *Papers relating to Lands in Canada* (1837).

parts of a joint scheme for the entire anglicizing of Lower Canada. Again they took up as a substantial grievance the commutation of tenures, although in reality the policy had been pursued to very slight extent; and by flaunting it as an issue before the people many of them obtained seats in the assembly.<sup>1</sup>

Finally, the habitants were as a class showing signs of restlessness and discontent during the earlier thirties. Under the influence of the French law of succession, their domains had been divided and subdivided until a holding, in the peculiar shape which it retained, would scarcely have sufficed to support a family even had the habitant adopted up-to-date methods of cultivation. This he did not do: his methods were for the most part those of his great-grandfather of the old French epoch. Fertilization of the land was rare; systematic rotation of crops would have been most difficult on the narrow strip of land which he held; and implements showed little or no improvement. If anything, the habitant was at this time worse off than he had been before the conquest; for, while his average holding was much smaller, neither his seignior nor his church had in the least relaxed its demands upon him. The maintenance of his numerous progeny — for large families were still the rule — was to him an uphill task, and the loyal attempt at its accomplishment too often made him a spiritless drudge. No wonder, then, that he became an easy prey to the plausible sophistry of his leaders, who exploited him to their own political advantage.

The antagonism of the two arms of government representing the two races in the province came to a climax in 1836, when the assembly definitely refused to grant the funds necessary for the carrying on of the administration. A commission of three, sent over from England under the chairmanship of the Earl of Gosford, investigated the situation, and, according to its report, found the assembly wholly in the wrong. Acting upon this report, the British Parliament, in the spring of 1837, passed a series of resolutions introduced by Lord John Russell, declaring that it was advisable to curtail the powers of the

<sup>1</sup> Cf. Bradshaw, *Self-Government in Canada*, 62-63.

assembly by providing ways and means of financing the provincial administration without the necessity of its assent. With this threat held before it, the assembly was reconvened in the hope that its members would show a more compromising spirit; but by an overwhelming majority it declined to recede a single jot from its former stand. It was accordingly dissolved without further ado, and the last parliament of Lower Canada passed into history.

Before the British Parliament could adopt any measure based upon the Russell resolutions, constitutional opposition on the part of the assembly had given place to armed opposition on the part of the followers of the assembly in the province. Passive resistance had given way to active, and the rebellion of 1837-38 engaged the attention of the executive authorities both in the colony and in the mother country.<sup>1</sup>

For a time the revolt looked ominous enough, but being poorly organized and miserably managed by those who had it in charge, it was suppressed by the authorities without great difficulty. Some of the leaders fled to the United States on the first reverse, leaving the hapless habitants to shift for themselves as best they might. The rising was not, however, without far-reaching results; for it drew the attention of the British authorities to the gravity of the Canadian situation, and caused them to seek fuller information before legislating further for Lower Canada. To this end they decided, in 1838, to send out to the colony a high commissioner with dictatorial powers, who was to assert the supremacy of the law, to hear complaints from all parties, and to recommend to the home authorities some plan of government for the province under which internal conflicts might be avoided.

For this most difficult and dangerous task the British government chose John George Lambton, first earl of Durham, a man whose genius, experience, and disposition seemed eminently to qualify him for the work in hand. Durham arrived in the

<sup>1</sup> For the course of events during the year 1837-38, see Christie, *History of Lower Canada*, vol. iv; Kingsford, *History of Canada*, vol. ix; Dent, *The Upper Canadian Rebellion*; Lindsey, *William Lyon Mackenzie*; Richardson, *Eight Years in Canada*; Theller, *Canada in 1837-1838*; Read, *Rebellion of 1837*.



colony during the early summer of 1838, and having taken what he deemed to be necessary measures for the strengthening of his own authority in the province, proceeded to make an exhaustive study of the various grievances against which the assembly had before its dissolution complained so loudly and so long. Among other things, of course, the workings and the future of the seigniorial system of land tenure came in for his lordship's attention. The study was necessarily a cursory one, but it was conducted under the supervision of a man surpassed by none of his contemporaries in power of quick analysis or in ability to crystallize data into accurate generalizations.<sup>1</sup> The results of the whole investigation, together with recommendations as to the future policy of the home government, were in 1839 presented to Parliament in Durham's famous "Report on the Affairs of British North America."<sup>2</sup>

Durham recognized very clearly the wisdom of the British authorities in seeking the extinction of the old French system of land tenure. He pointed out that, while the rural population of the province was increasing steadily, the amount of cultivated land supporting this population was not increasing in the same proportion. According to an estimate made in 1826, the population of the various seignories had more than quadrupled since the loyalist immigration, that is to say, during the forty-two years intervening between 1784 and 1826; but in this interval the quantity of land under cultivation in the province had increased by only one-third or thereabouts. Since 1826, as Durham had every reason to suppose, the same anomaly of development had been going on. The time was past, he declared, for continuing the maintenance of a system which encouraged this condition of affairs. He showed that the French rules of succession to real property had caused the oblongs of land to be so cut up into long narrow strips that healthy agricultural progress was being strangled, and pointed to the northern shore

<sup>1</sup> The only biography of Lord Durham is by Stuart J. Reid, *The Life and Letters of the First Earl of Durham* (2 vols., London, 1906).

<sup>2</sup> *Report on the Affairs of British North America* (London, 1839), "by the Earl of Durham, Her Majesty's High Commissioner," etc.

of the St. Lawrence, where from Quebec to Montreal the alluvial land was shredded into mere ribbons, often with a river frontage of a few rods and a depth of a mile or more. Along this river-front ran the main road,—the carotid artery of colonial intercourse,—and along the road the habitants had built their dwellings, thus “giving the country of the seigniories the appearance of one never-ending, straggling village.” The people were thus forced, he added, to devote their energies to the pursuit of what was in his opinion “the worst possible method of small farming.”

The commissioner saw, however, that the faults were not all on the side of the habitant. A good deal of the difficulty he very properly laid at the door of the Englishmen who had bought out seigniories from their French-Canadian owners, and had then proceeded to exercise their seigniorial rights in a manner “which the Canadian,” said he, “reasonably regards as oppressive.” Differing from his dependents in race, religion, and language, the new seignior needed to exercise much tact, friendliness, and forbearance in order to get along amicably with them. Too often, however, he displayed none of these qualities. Hence it was in the general estrangement of the two races that the report found one real cause of difficulties regarding the land-tenure system.

Lord Durham did not condemn the advocates, notaries, and other leaders who had stirred up the people against the policy of the administration; he regarded it as an inevitable consequence of the grant of *representative*, but not *responsible*, government that popular leaders should become demagogues. The system of seigniorial land tenure, he believed, had passed its day of usefulness and should make way for a more suitable policy. He did not believe, however, that any radical steps toward its abolition should be undertaken by the British Parliament, but thought that the whole problem should be left for the new colonial government to solve for itself. In general, Durham was disposed to rely upon the “efficacy of reform in the colonial constitutional system for the removal of every abuse in administration which defective institutions have engendered.” In a word, he thought that if the proper relation

between the elective and the appointive organs of colonial government were permanently determined in the way which he proposed, the various grievances would in time right themselves. One of Durham's entourage, Charles Buller, who ably assisted his lordship in gathering information and data regarding the land-tenure system in Lower Canada, outlined a definite scheme for the commutation of seigniorial lands, according to which the annual dues owing by either seignior or habitant should be made an annual rent charge on the land, which annual charge might at any time be commuted to a lump sum on a reasonable basis. It is interesting to note that this plan was substantially followed by the colonial legislature when it undertook to arrange a scheme of commutation some fifteen years later.

As a result of Durham's general recommendations, the British Parliament, in 1840, passed the Canada Act, more commonly known as the Act of Union, because by it the two provinces of Lower and Upper Canada were united, with equal representation in a joint legislature.<sup>1</sup> This new body met in the following year, and lost little time in taking up the seigniorial problem for solution. Its first step was to present to the governor-general of the now united provinces an address asking for the appointment of an impartial commission to examine the grievances of landholders in Lower Canada and to report some definite plan of remedy.<sup>2</sup> To this request Governor Bagot acceded, naming Messrs. Buchanan, Taschereau, and Smith as members of the commission desired.<sup>3</sup> These gentlemen made a very careful study of the situation, and though somewhat hampered, as they declared, by the fact that they had not been vested with power to compel the attendance of witnesses or to enforce the production of papers, they succeeded in laying before the legislature, in October, 1843, an exhaustive report of nearly forty closely-printed pages containing a considerable

<sup>1</sup> 3 & 4 Victoria, c. 35. This act may be conveniently found in Houston's *Constitutional Documents*, 149-173.

<sup>2</sup> Canada, *Assembly Journals*, September 7, 1841.

<sup>3</sup> The governor first appointed Messrs. Vanfelson, McCord, and Doucet; but for some reason these gentlemen declined to serve.

amount of interesting and valuable information relating to the subject of their inquiry.<sup>1</sup>

The report of the commission of 1843 began by tracing at some length the vicissitudes of the feudal system since its first establishment in Canada, and then proceeded to analyze in a general way the various legal rights and duties of the seignior and the habitant under the French dominion. This analysis is tolerably accurate and just to both parties, but the commissioners in some cases displayed a disposition to generalize too broadly from the data at hand. They gave it as their opinion that at the time of the British conquest the Arrêts of Marly (1711) were still in full force, and that, in consequence, the seignior was under legal obligation to subgrant his vacant lands to whoever should apply for them, at the rate of dues customary in the neighborhood. When he refused to do so, the governor and intendant were, under the old dispensation, empowered to step in and make the grant; but in the exercise of this power who were the successors of these French officials? To this question the commissioners replied that, since the reestablishment of French civil law by the Quebec Act of 1774, the power had vested first in the court of Common Pleas and later in its successor the court of King's Bench, to which, on its establishment, certain spheres of jurisdiction formerly belonging to the court of Common Pleas had been assigned. The Canada Tenures Act of 1825 had thus, they maintained, unfairly "given to the seigniors an absolute and unconditional property in the ungranted portions of their fiefs, in direct violation of the wise and beneficent intentions of the arrêts of 1711 . . . by which seigniors are bound to grant lands to such persons as apply for them, subject only to the accustomed rates and dues."<sup>2</sup>

<sup>1</sup> "Report of the Commissioners appointed to inquire into the state of the laws and other circumstances connected with the Seigniorial Tenure," 1843, *Titles and Documents*, i. 45-91. A number of interesting documents are printed as an appendix to this report (*Ibid.* 92-210).

<sup>2</sup> The assertion of the commissioners that the judicial powers of the governor and intendant of the old régime had passed to the high courts of the province is of doubtful validity. Certainly neither the court of Common Pleas nor the court of King's Bench had ever attempted to exercise any powers on the ground that they were the successors of these officials. Cf. Angers, *Résumé de la Plaidoirie*, etc. (1855), 93; and see above, p. 220.

The commission further affirmed that the people of the colony had certain well-established rights in the ungranted lands of seigniories, — rights which the governor and intendant had stood ready to enforce; that the British authorities had on more than one occasion pledged themselves to the observance and preservation of those proprietary rights enjoyed by the inhabitants of the colony at the time of the conquest; and that the courts of law had the power to enforce these rights in behalf of the people. In 1825, however, said the commissioners, the Canada Tenures Act had offered to permit the seigniors, for a small consideration, to acquire absolute property in their ungranted lands, thus defeating the right of the people at large to share in these lands.

Passing to a consideration of the “present working of the feudal system in the province,” the report attempted to show that this form of tenure was “in many respects vicious and . . . productive of extreme injury.” It “paralyzes the whole country by its influence,” ran the vehement words. “No system can be devised better calculated to keep a man in perpetual subjection. Under it, all the generous emotions of his nature are stifled. Thus he gradually becomes impoverished; he toils through existence without the hope of relief, and transmits to his posterity a worthless inheritance. Under the operation of such a tenure, his right of property may become a mere delusion; as a moral being, he is degraded, and his position is one of perpetual dependence.” The present system, moreover, “is no longer suited to the spirit of the age nor the actual wants of the population; it is the relic of a barbarous age, and, in its practical operations, antagonistic to the growth and permanency of free institutions.” Of all the anathemas passed upon the feudal system in Canada from its first establishment to its abolition, whether by investigating officials, commissions, or legislative bodies, none surpasses the foregoing in vigor and virulence. In fact, the report of 1843 breeds suspicion by the very violence of its antagonism to the system.

The commission recommended, in conclusion, that the legislature should proceed to the complete extinction of the seigniorial tenure, indemnifying the seigniors for the loss of such

dues as could be shown to have a legal basis, but bearing in mind that the position of the seignior, in relation to his ungranted lands, was that of a trustee and not that of an owner. Three different schemes for effecting the indemnification of the seigniors were outlined: (1) that the habitants should pay to the seigniors a capital sum, whereof the annual *cens et rentes* would be equivalent to interest at the rate of six per cent, together with one *lods et ventes*; (2) that they pay an annual rent charge, to be agreed upon in lieu of all feudal dues and services; (3) that they pay one-fifth of the value of their holdings (determined by arbitration), in full commutation of all dues and services. The commissioners did not advise the adoption of any one of these three plans, but pointed out the advantages and disadvantages of each.

As a result of the report, a bill was introduced into the assembly, and was passed by both houses during the year 1845 under the title, "An Act the better to facilitate optional Commutation of the Tenure of Lands *en roture* in the Seigniories and Fiefs of Lower Canada, into that of *franc aleu roturier*." <sup>1</sup> Some four years later this act was amended in a few slight particulars.<sup>2</sup> These two acts simply provided that the habitant might arrange with his seignior to commute his feudal dues and services for a lump sum mutually to be agreed upon; and that upon payment of such sum the habitant would receive from his seignior the grant of his holding *en franc aleu roturier*, the form of tenure which, during the French period, had most nearly corresponded to the English system of tenure in free and common socage. This particular provision was intended to retain the lands under the French rules of inheritance; for, except in regard to this matter, the two forms of tenure were substantially the same.

Up to the time when the first of these acts was passed (1845), the habitant could not arrange for the commutation of his dues to his seignior unless the seignior had first arranged for the commutation of his own dues to the crown; and very few of the seigniors had chosen to do this. In fact only nine seigniorial commutations had been arranged between 1825, when permis-

<sup>1</sup> *Statutes of Canada*, 8 Victoria, c. 42.

<sup>2</sup> *Ibid.* 12 Victoria, c. 49.

sion to commute was given, and 1846, a year after the new law was passed.<sup>1</sup> Nine commutations in twenty years scarcely prove the existence of any strong desire on the part of the seigniors to take advantage of the privilege afforded them.

Although the acts of 1845 and 1849 were designed to make possible the commutation of the tenure of holdings within seignories which had not yet been commuted, there were several reasons for doubting that this end would be attained in any general measure. The seigniors, for instance, might be counted upon to stand out for full compensation for the loss of all dues and services which they claimed, even though the legality of some of these was not beyond question. There was, for example, the *corvée*, which in many cases had not been exacted for several years; the right of *four banal*, which had never been enforced at all; and the right of the seignior over navigable rivers, which had been claimed by some to be an incident of seigniorial judicial power and hence to have been abrogated with the latter after the conquest. Until seigniors and habitants could agree as to what seigniorial claims were valid and what were not, it would be very difficult to reach any accord in regard to the sum to be paid in commutation of all dues. Then, too, even if the amount could be satisfactorily agreed upon, most of the habitants were so poor that it seemed impossible for them to get sufficient funds to pay it in a lump sum. A few of them were doubtless in positions to take advantage of the terms of the acts; but, as the lapse of a few years served to show, any general commutation of the smaller holdings from tenure *en censive* to tenure in free and common socage seemed to be prevented by the two obstacles just mentioned.

As time went by, this view impressed itself upon the members of the legislature. It was felt strongly that commutation must be made compulsory in the case of both seignior and habitant; that, if necessary, the crown must forego the exaction of any

<sup>1</sup> These commutations were as follows: Ste. Anne de la Pérade, December 28, 1830; Beauharnois, March 10, 1833; Lotbinière, December 31, 1835; Madawaska and Temiscouata, December 5, 1838; Mont-Louis, June 6, 1839; Perthuis, April 7, 1841; Rivière de la Magdeleine and Pabos, March 8, 1842; Anse du Grand-Etang, February 4, 1846. This list is printed in *Correspondence between the Colonial Office and the Governors of Canada*, etc. (1853), 37.

sum from the seigniors in commutation of their dues; and that the burden upon the habitants should be lightened as much as possible, partly by exact definition of the legal rights of the seignior, partly by permission to pay in annual instalments instead of in a lump sum, and partly by assistance out of the public treasury.<sup>1</sup>

That a plan of commutation might be drafted along these lines, the assembly in the spring of 1851 appointed a special committee to which it delegated this task.<sup>2</sup> The committee, after a number of sessions and hearings, presented its report,<sup>3</sup> together with the draft of a bill;<sup>4</sup> but the legislation outlined was not regarded as satisfactory by the leaders of the house, and action upon it was accordingly postponed.<sup>5</sup> In the year following, however, a new ministry came into office; and in the session of 1853 a government measure was introduced dealing with the question of tenures in Lower Canada. In general this measure proposed to afford seigniors compensation, amounting to a small fixed annual sum per arpent, for the loss of all rights, provided that such rights should be declared legal by the courts; but all seigniorial rights and dues other than the right to this small annual rental were to be abrogated. After a spirited debate the measure passed the assembly, but was subsequently rejected by the council. This action of the upper house greatly irritated the assembly, which showed its temper by passing an address to the home authorities asking that the council be made an elective instead of an appointive body.<sup>6</sup>

The elections of 1854 made it clear that public sentiment was strongly in favor of the abolition of the seigniorial system, for a ministry pledged to accomplish this end was established in

<sup>1</sup> Canada, *Assembly Journals*, June 26, 1850.

<sup>2</sup> The members of this committee were the Hon. L. T. Drummond, chairman, and Messrs. Armstrong, Badgley, Boutillier, La Terrière, and Lemieux.

<sup>3</sup> *Troisième Rapport et Délibérations du Comité Spécial de l'Assemblée Législative . . . au Sujet de la Tenure Seignioriale* (1851).

<sup>4</sup> "Acte pour définir certains droits des seigneurs et des censitaires dans le Bas-Canada, et pour en faciliter l'exercice," *Ibid.* Appendix A.

<sup>5</sup> Cf. *The Seigniorial Question: its present Position* (1854), "by a member of the Legislative Assembly from Upper Canada" [Sir Francis Hincks].

<sup>6</sup> Canada, *Assembly Journals*, February 14 to June 14, 1853, *passim*.



power.<sup>1</sup> After some delay caused by difficulties connected with the ministerial organization, the McNab-Morin ministry prepared and laid before Parliament a comprehensive measure providing for the complete abolition of the whole seigniorial system. The measure encountered much opposition and underwent several important amendments at the hands of the Legislative Council, but finally passed both houses. Under the title "An Act for the Abolition of Feudal Rights and Duties in Lower Canada," it received the viceregal assent on December 18, 1854.<sup>2</sup>

In the first place, the act of 1854 repealed entirely the acts of 1845 and 1849,<sup>3</sup> but provided that deeds of commutation granted under them should remain in full force and should have the same effect as if the acts had not been repealed. It then made provision for the appointment, by the governor-general, of commissioners to such number as might be found necessary, who should visit all the seigniories in Lower Canada and in each draw up a schedule setting forth the total value of the seigniorie, the rights of the crown therein (or, in the case of rear-fiefs, the rights of the dominant seignior), the amount of land held by each habitant, and the annual dues and charges payable therefor. With reference to this last item the schedule was to differentiate the various charges and services, estimating the annual value of those which were not already fixed in money, such as the banal rights or the reservations.<sup>4</sup>

In order that the commissioners might act uniformly in preparing their schedules, certain definite rules were laid down for their guidance. In the case of dues payable in kind (grain, poultry, fruits, etc.), they were instructed to obtain the average prices of such commodities during the last fourteen years "from the books of the merchants nearest the place or in such

<sup>1</sup> The question of the secularization of the clergy reserves was an equally important issue in this election. On the course of events during these years of high party tension in the Canadas, see Galt, *Canada, 1849 to 1859*; Dent, *The Last Forty Years*, vol. ii, chs. xxix-xxxvi; David, *L'Union des Deux Canadas*; and Turcotte, *Le Canada sous l'Union*, vol. ii.

<sup>2</sup> 18 Victoria, c. 3.

<sup>3</sup> 8 Victoria, c. 42, and 12 Victoria, c. 49. See above, p. 242.

<sup>4</sup> Sections ii-v.

other manner as may be thought equitable"; and in computing the annual value of personal labor (*corvée*) they were to follow a similar procedure.<sup>1</sup> Since rural and urban holdings changed hands with different degrees of frequency, the commissioners were instructed to take this fact into consideration in estimating the value of the *lods et ventes*, or alienation fines.<sup>2</sup> In determining the value of the banal rights, they were to "estimate the probable decrease (if any) in the net yearly income of the seignior arising from the loss of such rights."<sup>3</sup> The total value thus set on the lands of each habitant was to become a fixed rent upon the lands, payable upon the day and at the place at which the seigniorial dues had formerly been payable, unless the seignior and the habitant should agree upon some other time or place.

Since the work of the commissioners was of the highest importance, the act gave them every facility for the proper performance of their tasks. Before beginning the work of computation in any seignior, they were to give notice to that effect to all concerned, putting "placards in English and French at the door of every parish church in such seignior for four consecutive Sundays," stating the place, day, and hour at which the work would begin. All parties were to have every possible facility in the presentation of their views, and the commissioners on the other hand were invested with wide powers to enforce the production of information when necessary. They might examine witnesses under oath, order the production of land titles, accounts, and other documents, impose fines for contempt, and command the services of all justices or other peace officers in the province.<sup>4</sup>

Should a seignior or any twelve habitants challenge a computation, the commissioner was required by the act to submit his schedule to the revision of expert valutors, one to be appointed by the seignior, one by the habitants in general meeting, and a third by these two, unless the seignior and the habitants could agree upon the third. The fees of such valutors were to be paid from the public treasury.<sup>5</sup> The governor-

<sup>1</sup> Section vi. 1.

<sup>2</sup> Section vi. 2.

<sup>3</sup> Section vi. 5.

<sup>4</sup> Sections vii-ix.

<sup>5</sup> Section x.

general, moreover, was empowered to select, from the whole corps of commissioners, a committee of four to act as a court of revision to hear appeals against the schedules drawn up by individual commissioners, or against changes made by boards of expert valutors; but this court might make alterations only when errors were clearly shown.<sup>1</sup>

The act provided that, when the schedule for any seigniority was completed and revised, copies of it should be deposited with the proper governmental authorities, and legal notice of such deposit be given in the official *Gazette* and in at least one local newspaper.<sup>2</sup> It then proceeded: "From and after the date of the publication . . . every censitaire in such seigniority shall, by virtue thereof, hold his land in *franc aleu roturier*, free and clear of all *cens, rentes, lods et ventes, droit de banalité, droit de retrait*, and other feudal or seigniorial dues, except the *rente constituée*, which will be substituted for all seigniorial duties and charges; and every seignior shall thereafter hold his domain and the unconceded lands in his seigniority, and all . . . real estate now belonging to him in *franc aleu roturier* . . . free and clear of all quint, relief or other feudal dues or duties to the crown or to any seignior dominant of whom his fief or seigniority is now held." Any reëstablishment of the feudal system was definitely prohibited by the clause, "No seignior as such shall, after the said time, be subject to any onerous obligation towards his censitaires, or be entitled to any honorary rights, nor shall any land be granted by any seignior to be held by any tenure other than *franc aleu roturier*, or subject to any mutation fines or other feudal dues."<sup>3</sup>

Provision was further made for the creation of a special revenue fund to be raised by the issue of debentures, the proceeds of which were to be applied to the reduction of the fixed annual rentals set by the schedules upon the lands of the habitants. Every seignior was to receive a fixed percentage on the total amount of constituted rents established by the schedule in his seigniority, after deducting the value of the crown dues; and by this percentage the annual rentals of all habitants were to be reduced.<sup>4</sup>

<sup>1</sup> Section xii.<sup>2</sup> Section xiii.<sup>3</sup> Section xiv.<sup>4</sup> Sections xvii-xix.

Finally, the act provided for the solution of a very important difficulty, — the question as to what claims of seigniors were valid at law and what were not. This was not a matter which the legislature could very well determine, or one that could properly be left to the commissioners; for the right decision of it assumed a thorough knowledge of the Custom of Paris and of the various modifying edicts, ordinances, and decrees. Obviously, the seigniors could expect compensation only for such alleged rights as might be shown to have a legal basis; but as to the exact extent of these rights there was a wide difference of opinion. The legislature very properly decided, therefore, to make provision for the temporary establishment of a special court, to which should be referred the settlement of questions relating to the validity of seigniorial claims for compensation. The commissioners were not to complete their schedules until the decisions of this court should have been filed.<sup>1</sup>

This special court was to consist of the chief-justice and justices of the court of Queen's Bench, together with the chief-justice and justices of the Superior Court for the province of Lower Canada, — making fifteen judges in all.<sup>2</sup> The attorney-general of the United Provinces was instructed to draw up a list of questions covering all possible matters in dispute, while the seigniors and the habitants (acting through their counsels) were permitted to submit such supplementary questions as they might think fit. The tribunal was, in many ways, an extraordinary one. It was an assemblage of judges, yet the subject in hand was not a strictly judicial one; the judges were to express opinions rather than to give judgment. There was a court, but no suitors, no issue, no evidence, no record, and no sentence. The judges were simply to examine the questions as students of legal history and to express their opinions. In the event of disagreement, a majority was to prevail.

<sup>1</sup> Section xvi.

<sup>2</sup> These were the Hon. Sir Louis Hippolyte Lafontaine, Bart., chief justice of the court of Queen's Bench; the Hon. Edward Bowen, chief justice of the Superior Court; the Hon. Messrs. Aylwin, Duval, and Caron of the court of Queen's Bench; and the Hon. Messrs. Day, Smith, Vanfelson, C. Mondelet, Meredith, Short, Morin, and Badgley of the Superior Court. The Hon. Mr. Justice D. Mondelet, being himself a seignior, abstained from attendance.

The court met on September 4, 1855, and was duly constituted. The Hon. L. H. Drummond, attorney-general, presented a list of forty-six questions covering the whole range of matters in dispute; and on behalf of various seigniors and bodies of habitants thirty more questions were filed. It was arranged that the court should hear the arguments of counsel on the merits of the different questions; and an imposing array of eminent Canadian lawyers appeared before it.<sup>1</sup> Their arguments were exhaustive and showed a close study of the complicated legal points involved, especially that of Christopher Dunkin, who appeared on behalf of some of the seigniors. Although on most points the judges disagreed with him, his argument, which was lengthy, comprehensive, and a model of close legal reasoning, stands as perhaps the most scholarly and able plea ever made before any Canadian judicial body.

After many sessions the Special Seigniorial Court, as it was called, was able to frame answers to all the questions submitted.<sup>2</sup> In a few cases there was entire unanimity, but on almost every important issue one or more of the justices disagreed with the rest. The opinion of the majority was that the *cens et rentes* had never been made uniform; that the seignior was under obligation to subgrant his lands at customary rates, and hence did not hold any full property in his ungranted lands; that the *lods et ventes*, the banalities, and the *corvée* were valid claims; but that prohibitions and reservations, except in so far as they had been made for the protection of the seignior's obligation to the crown, were without validity. In the course of the deliberations, each member of the Special Court gave his individual opinions on the various questions at issue, justifying his accord with the answers agreed upon by the majority of his colleagues or his dissent from them.<sup>3</sup> A careful reading of these opinions

<sup>1</sup> Among the counsel were, in addition to the attorney-general (who was, unfortunately, prevented by illness from attending most of the sessions), Messrs. F. R. Angers, E. Barnard, and T. J. J. Loranger, Q. C., on behalf of the crown; and Messrs. Christopher Dunkin, R. Mackay, and C. S. Cherrier, Q. C., on behalf of various seigniors and others.

<sup>2</sup> These are printed as *Proceedings of the Special Seigniorial Court held under the authority of the Seigniorial Act of 1854* (Quebec, 1856).

<sup>3</sup> These opinions, or *Observations*, were published as public documents, but complete sets are now rare. For a discussion of their scope and value, see below, p. 261.

serves to show that each judge made a very earnest, and sometimes elaborate, study of one or more of the legal phases presented by the seigniorial system and its history both in France and in Canada.

It was upon a basis of the majority opinions that the schedules of fixed rents were drawn up and put in force. As the work of compiling these in all the seigniories took time, it was some years before all had been completed and deposited with the proper authorities. Meantime the legislature had passed a short act changing a few provisions in the act of 1854 which had been found to need amendment, but which were of no great importance.<sup>1</sup> In the session of 1859 the colonial parliament appropriated the funds for the indemnification of the seigniors, and with this measure completed the work of commutation.<sup>2</sup> The act of 1854 had exempted from the compulsory provisions which it contained the seigniories held by the Seminary of St. Sulpice at Montreal, the "seigniories of the late order of Jesuits," the seigniories either belonging to the crown or held in trust by it for the Indians, and a few others which it enumerated.<sup>3</sup> In most of these, however, commutations were later effected by private agreement.<sup>4</sup>

As the act of 1854 changed the tenure of lands, not to free and common socage, but to *franc aleu roturier*, it did not intro-

<sup>1</sup> "An Act to amend the Seigniorial Act of 1854" (18 Victoria, c. 3).

<sup>2</sup> In some cases, however, the amounts were not paid over to the seigniors until as late as 1864.

<sup>3</sup> Act of 1854, § xxxv.

<sup>4</sup> After the suppression of the Jesuit order by Pope Clement XIX in 1773, the Jesuit seigniories in Lower Canada passed into the hands of the crown; but those who had been members of the order were supported by the revenues during the remainder of their lives. When, in 1814, the order was reestablished by Pope Pius VII, it began a movement for regaining its old estates; but recovery was no longer possible, for much of the land had passed into other hands by purchase from the crown. In 1888, however, by the Jesuits' Estates Act, the government of the province of Quebec granted the Papal See the sum of \$400,000 in order to obtain from the Catholic church and its orders a surrender of all their claims to the escheated lands. This measure evoked strong protest from the Protestant section of the population, and the Dominion government was called upon to disallow the act. This, however, it refused to do. While the ecclesiastical claims against the lands had no legal validity, it was found that, in an overwhelmingly Catholic community, the clerical bitterness served seriously to impair the value of such of the lands as the government still held. See Thwaites, *Jesuit Relations and Allied Documents*, lxxi. 392-393.

duce the rules of English law relating to the alienation, bequest, and inheritance of lands : these matters continued to be regulated by the rules of French law. It was therefore thought advisable that the civil laws and procedure of Lower Canada should be revised and recodified ; and in 1857 the attorney-general secured the passage of a measure establishing a commission to undertake this work. Messrs. Justices Caron, Day, and Morin, who had been members of the Special Court, were intrusted with the undertaking, and completed it with high credit in 1864.

The seigniorial system in Canada had, by the middle of the nineteenth century, clearly demonstrated its unsuitability to its new social and economic environment, and by a large proportion of the people the prolongation of its existence had come to be regarded as a public evil. The terms upon which the abolition was effected were, however, by most of the seigniors regarded as unfair, and it is altogether probable that, despite the compensation, most seigniorial properties were worth less after the passing of the act than they had been before 1854. Strong protests were made by the seigniors against the slowness with which the schedules were drawn up, and it was claimed that many commissioners prolonged their work unduly in order to increase their remuneration. The censitaires were given the option of commuting their annual fixed rentals by the payment of a lump sum, the determination of which was provided by the act. Comparatively few of them, however, took advantage of this provision, and to the present day they or their descendants continue to pay their *rente constituée* with more or less punctuality. Most of the habitants still refer to their landlord as "the seignior," though for a full half century no such title has been recognized by the laws of the province.

The problem of abolition was a difficult one, but it may be questioned whether its solution was not attended with as little injustice as usually accompanies such important changes. That the Canadian legislators of 1854 were able to cut away the foundation upon which the social order of Lower Canada rested, without doing any violence to the superstructure, is a tribute alike to their moderation and to their progressive spirit.





## BIBLIOGRAPHICAL APPENDIX.

THROUGHOUT this monograph an earnest endeavor has been made to observe the recognized canons of sound historical writing by giving definite references, page by page, to the sources from which information has been drawn. Nevertheless, it may not be superfluous to summarize in a general way the scope and the relative value of the various materials of which use has been made.

One of the most extensive, and at the same time the most satisfactory, sources of data for the study of land tenure and the state of agriculture during the French period is the formidable collection of manuscript material commonly known as the *Correspondance Générale*. This mass of documents comprises a very large part of the correspondence, memoirs, reports, and returns transmitted by the various officials of New France to the home government throughout the entire period of French dominion in North America. The collection also contains many despatches from the king and minister to the governor and intendant of Canada; for when the French authorities withdrew from the Western world they took with them all their confidential archives.

This vast store of contemporary material is now in the archives of the Ministère des Colonies, which are located in the attic story of the Pavillon de Flore, in the south wing of the Louvre. More than a score of years ago, officials of the Dominion government began the examination and classification of this material for the Canadian archives under the supervision of Mr. Joseph Marmette; but after a portion of the work had been done the project was interrupted, to be resumed some time later under the general direction of Mr. Edouard Richard, and continued till his death a few years ago. At the present time the work of transcribing the documents is again being pushed forward. A large part of the collection was first examined and the subject-matter of the documents calendared chronologically; these calendars may be found in the annual *Report on Canadian Archives* (ed. Douglas Brymner) for the years 1885-1887, 1899-. Such of the transcripts as have been made are in the Dominion Archives (Series F), at Ottawa, and comprise at present nearly two hundred and fifty large folio volumes.

As yet but a very small portion of this *Correspondance Générale* has been rendered available in printed form. Extracts from a large number of the documents have been printed in the *Collection de Manuscrits contenant Lettres, Mémoires, et autres Documents Historiques relatifs à la Nouvelle-France, recueillis aux archives de la Province de Québec, ou copiés à l'étranger* (4 vols., Quebec, 1883-1885) ; but the accuracy of this collection has been seriously called in question. Some of the documents may be found printed in Pierre Margry's *Relations et Mémoires inédits, pour servir à l'Histoire de la France dans les Pays d'Outre Mer, tirés des archives du Ministère de la Marine et des Colonies* (Paris, 1865), and in his *Découvertes et Etablissements des Français dans l'Ouest* (6 vols., Paris, 1879-1888) ; but these papers relate mainly to discovery and exploration. A few of the more important reports are given in Henry Harrisse's *Notes pour servir à l'Histoire . . . de la Nouvelle-France* (Paris, 1872) ; and some fragmentary extracts and incidental quotations from the more significant pieces are printed in the appendices to Francis Parkman's various works, more particularly in the appendix to his *Old Régime in Canada*. Parkman, it may be added, had a large number of the more important documents in the *Correspondance Générale* copied for his own use ; and these transcripts are now in the library of the Massachusetts Historical Society in Boston. Many of the papers which have some bearing on intercolonial relations are included in Volume IX of the *Documents relating to the Colonial History of New York* (ed. O'Callaghan and Fernow, 15 vols., New York, 1853-1883).

In 1851 the Legislative Assembly of Canada ordered that such parts of the correspondence as had relation to the seigniorial system in the colony should be published for the use of its members, and of others who at that time were deeply interested in the movement for the abolition of the system. Consequently a small blue-book entitled *Correspondence between the French Government and the Governors and Intendants of Canada relative to the Seigniorial Tenure* (Quebec, 1853) was published, copies being issued in both French and English. This volume appears, however, to have been compiled hastily and without proper care ; for it is not at all complete within its announced scope.

The correspondence between the British government and the colonial officials relative to the land-tenure system after the conquest is preserved in the collections of the State Paper Office. It has been properly calendared in the annual *Report on Canadian Archives* for the years 1890-1893, along with the other documents in the State Paper Office relating to Canadian affairs. The Haldimand collection is similarly calendared in the annual reports for the years 1886-1889. In 1851 the Legislative

Assembly of Canada ordered that such documents in this correspondence as had any relation to the seigniorial system should be transcribed and printed; accordingly a small publication bearing the title *Correspondence between the Colonial Office and the Governors of Canada relative to the Seigniorial and Feudal Tenure* (Quebec, 1853) was issued in both languages. A comparison with the calendars shows, however, that several important documents were overlooked by the compilers.

Of equal importance with the *Correspondance Générale* is the collection of *Edits, Ordonnances Royaux, Déclarations, et Arrêts du Conseil d'Etat du Roi concernant le Canada* (2 vols., Quebec, 1803-1806; later edition, enlarged and improved, 3 vols., Quebec, 1854-1856). Of the latter set (which is the one referred to throughout this study under the general title of *Edits et Ordonnances*), the first volume contains the *Edits et Ordonnances Royaux*, and the *Arrêts du Conseil d'Etat du Roi* relating to the affairs of New France; the second contains the *Arrêts et Règlements du Conseil Supérieur de Québec*, and the *Ordonnances et Jugements des Intendants du Canada*, the latter comprising the period 1705-1759 only. The third volume, which is entitled *Complément des Ordonnances et Jugements des Gouverneurs et Intendants du Canada*, contains a large number of decrees issued by governors and intendants, as well as the commissions of these officers and of other royal officials in the colony. The collection is a most valuable one, admirably indexed both chronologically and alphabetically; and on any topic connected with the social or the economic life of the French period it is an indispensable source of the most useful data. It was printed in both English and French at the public expense; but, although a large edition was published, sets are now rather difficult to obtain.

In 1851 the Legislative Assembly of Canada requested that a volume be compiled containing all the edicts, ordinances, declarations, and decrees relating directly to the seigniorial tenure; and in the following year this request met response in the issue by the queen's printer of a stout octavo publication entitled *Edicts, Ordinances, Declarations, and Decrees relative to the Seigniorial Tenure* (Quebec, 1852), printed in both English and French. This collection is, however, very incomplete, for it omits many important decrees which have a direct bearing on the question with which it deals. For this reason references are made, throughout the present study, to the French edition of the general collection of *Edits et Ordonnances* rather than to this special compilation.

The records of the Superior Council at Quebec have been preserved in fifty-six ponderous manuscript volumes covering the period from September 18, 1663, to April 8, 1760. Of these the records from 1663 to

1716 have been printed in *Jugements et Délibérations du Conseil Souverain de la Nouvelle-France* (6 vols., Quebec, 1885-1891), a compilation which is a model of scholarly editing. The registers of the royal court of the Prévôté at Quebec are preserved in the provincial archives at Quebec, but many volumes are lacking. These records have not yet been made available in published form, but are now being transcribed for the federal archives and will, it is hoped, be printed in due course. Meanwhile, some of the more important decisions of the court of the Prévôté at Quebec may be found in J. F. Perrault's *Extraits ou Précédents, tirés des Registres de la Prévosté de Québec* (Quebec, 1824). It is beyond reasonable doubt that the Old Council (*l'ancien conseil*), which preceded the Sovereign (Superior) Council, also kept registers; but a diligent search on the part of various Canadian antiquarians has not served to bring them to light. It is more than likely that they were destroyed by the fire which consumed the intendant's palace in 1713. The absence of these records is regrettable; for they would unquestionably serve to throw light upon certain phases of the seigniorial system before 1663, which, for want of reliable data, must be passed over almost untouched.

The various orders in council issued by the British authorities in Canada, from the establishment of civil government in 1764 to the institution of representative government in 1791, are to be found in *Ordonnances made for the Province of Quebec by the Governor and Council since the Establishment of Civil Government* (Quebec, 1767), and in *Ordonnances made and passed by the Governor and Legislative Council of the Province of Quebec, and now in force in the Province of Lower Canada* (Quebec, 1792); but these collections are not entirely complete.

During the years 1852-1854 a very important publication appeared, entitled *Pièces et Documents relatifs à la Tenure Seigneuriale* (2 vols., Quebec). An English edition containing substantially the same material, but differently arranged, was issued at the same time and called *Titles and Documents relating to the Seigniorial Tenure*. The first volume contains a number of miscellaneous documents; but to a considerable extent it duplicates the small compilation of *Correspondence between the Colonial Office and the Governors of Canada* already referred to. In the foregoing pages reference has always been made to the English edition of this volume, since the documents contained in it were originally issued in that language. The second volume, which has been found extremely valuable for the purposes of this study, contains copies of the title-deeds of over three hundred of the most important

seigniorial grants. The French edition of this volume is usually referred to by one of its sub-titles, *Titres des Seigneuries*, or *Titres Seigneuriaux*; of these the former has been used throughout this monograph.

The edicts of the king ratifying concessions *en fief* in the colony may be found in *Edits et Ordonnances*, vol. i; and, in response to a request made by the Legislative Assembly, they were also printed separately as *Brevets de Ratification* (Quebec, 1853). In tracing the descent of seigniories from hand to hand, the *Faalty Rolls* (*Actes de Foi et Hommage*) preserved at Ottawa are most serviceable; abstracts of these rolls are published in the *Report on Canadian Archives* for the years 1883-1885. The task of the student who endeavors to follow the growth and changes in colonial population during the old régime has been greatly simplified by Johnson's *Summary of the Censuses of Canada, 1665-1871* (Ottawa, 1876).

On the topography of the seigniorial system a fruitful source of data are the *Cadastrés*, or topographical and descriptive records compiled from the *aveux et dénombremens* made from time to time by the seigniors. In 1863 an abridgment of these records was published at Quebec in four parts, as follows: *Cadastrés abrégés des Seigneuries du District de Québec*, 2 vols.; *Cadastrés abrégés des Seigneuries du District de Montréal*, 3 vols.; *Cadastrés abrégés des Seigneuries des Trois-Rivières*, 1 vol.; *Cadastrés abrégés des Seigneuries appartenant à la Couronne*, 1 vol. Extremely useful works on the topography of the seigniories are Joseph Bouchette's *British Dominions in North America* (2 vols., London, 1831), and the same writer's earlier volume, *Description Topographique de la Province du Bas-Canada* (London, 1815).

The movement for the modification, and later for the abolition, of the seigniorial system in Lower Canada brought forth a number of interesting publications. Among the earlier of these, special value attaches to the four compilations of the laws of the French period which were published under the auspices of Governor Carleton in 1772-1773 (see above, p. 198, note). F. J. Cugnet's *Traité de la Loi des Fiefs* (Quebec, 1775) and *Traité de la Police* (Quebec, 1775) are useful commentaries on the legal system of the old régime in Canada by a jurist who was thoroughly versed in his subject. Of much less value (for reasons given above, p. 202) is Francis Masères's *Draught of an Act of Parliament for settling the Laws of the Province of Quebec* (London, [1771]); but there is a considerable amount of very interesting contemporary data in the other works of Masères, — *A Collection of several Commissions and other public Instruments . . . relating to the State of the Province of Quebec* (London, 1772), *Additional Papers concerning the*

*Province of Quebec* (London, 1776), and *An Account of the Proceedings of the British and other Inhabitants of Quebec* (London, 1775). Mention may also be made of James Marriott's *Plan of a Code of Laws for the Province of Quebec* (London, 1774).

The various debates in the Legislative Assembly with reference to the seigniorial question may be found in the journals of that body, *Journals of the House of Assembly of Lower Canada, 1792-1837* (53 vols.); and the proceedings of the Legislative Council relating to the same subject are on record in *Journals of the Legislative Council of Lower Canada, 1792-1837* (25 vols.). The parliamentary proceedings leading toward the abolition of the seigniorial tenure in 1854 are printed in full in *Journals of the Legislative Assembly of Canada, 1841-1866* (48 vols.), and *Journals of the Legislative Council of Canada, 1841-1866* (44 vols.). The reports of the various commissions and committees appointed to investigate the workings and effects of the seigniorial system are usually printed in the appendices to the annual volumes of the foregoing journals; and the more important reports, such as those of 1790 and 1843, are also printed in *Titles and Documents* mentioned above (p. 256). In 1853 a small publication, *Débats dans l'Assemblée Législative sur la Tenure Seigneuriale*, was published at Quebec; but this contains only a small portion of the more important debates.

Some of the legislative investigations on the subject, both in England and in Canada, during the period 1841-1854 were very exhaustive. Special attention should be called, for example, to the *Report of the Committee on the State of the Civil Government of Canada* (1828); the *Report of the Committee on the Affairs of Lower Canada; with Evidence* (1834-1837); the *Report of the Commissioners on the Grievances complained of in Lower Canada* (1837); and the *Troisième Rapport et Délibérations du Comité Spécial de l'Assemblée Législative* (Quebec, 1851), which handles well some details of the seigniorial system. The famous *Report on the Affairs of British North America*, "by the Earl of Durham, Her Majesty's High Commissioner and Governor-General of British North America" (London, 1839; new edition without the valuable appendices, London, 1900), devotes comparatively little space to a consideration of the movement for the abolition of the old tenure; but such consideration as it does give to the matter incidentally is of the highest interest and value, for in every paragraph this epoch-marking state paper embodies the genius of a master hand.

The Seigniorial Tenures Abolition Act of 1854, and the amending act, may be found in *Statutes of Canada, 1841-1866*; they are also printed in a separate volume with an excellent analytical index (Quebec, 1854).

Considerable light is thrown on the workings of the seigniorial system, and upon its relation to the general discontent during the period between the conquest and 1854, by the various works of travel and description in which this era was uncommonly fruitful. Volumes of this class which give more than cursory sketches of the matter are, for example, Laroche-foucault-Liancourt's *Travels in the United States . . . with an authentic account of Lower Canada* (4 vols., London, 1803); George Heriot's *Travels through the Canadas* (London, 1807); John Lambert's *Travels through Canada* (3 vols., London, 1814); Joseph Sansom's *Sketches of Lower Canada* (New York, 1817); John Martin's *Travels in Canada* (London, 1824); and Sir Francis Head's *Emigrant* (London, 1847).

When, about the middle of the nineteenth century, the movement for the abolition of seigniorialism reached its final stage, there appeared a veritable flood of pamphlets, articles, and other campaign literature dealing with the question from almost every point of view. Most of these were written either by strong partisans or by strong opponents of abolition, and few have more than a mere passing interest as showing the extent to which public feeling on the matter was wrought up. Those which have proved of some service in the preparation of the present volume are the following: J. C. Taché, *A Plan for the Commutation of the Seigniorial Tenure* (Quebec, 1854), which has in its appendix some serviceable statistical data and some valuable tables; Robert Abraham, *Some Remarks upon the French Tenure of "Franc Aleu Roturier," and on its relation to the Feudal and other Tenures* (Montreal, 1849); Clement Dumesnil, *De l'Abolition des Droits Féodaux et Seigneuriaux en Canada* (Quebec, 1855); Alexis Kierkowski, *The Question of the Seigniorial Tenure in Lower Canada reduced to a Question of Landed Credit* (Quebec, 1850); [A. X. Rambau], *Le Bill Seigneurial exposé sous son Vrai Jour*, etc. (Montreal, 1855); [Sir Francis Hincks], *The Seigniorial Question: its Present Position* (Quebec, 1854); the anonymous pamphlet, *Quelques Avis d'un Cultivateur aux Censitaires du Bas-Canada au sujet de la Loi d'Abolition de la Tenure Seigneuriale* (Quebec, 1855); *Paie, Pauvre Peuple, Paie!* "par le Frère de Jean-Baptiste" (Quebec, 1855); and the pamphlet containing the proceedings of *La Convention Anti-Seigneuriale de Montréal* (Montreal, 1854).

Among this plethora of pamphlets the closing years of the agitation brought forth one publication which must be singled out for special emphasis because of its comprehensiveness, lucidity, and real scholarly value. This was Christopher Dunkin's *Address at the Bar of the Legislative Assembly of Canada on behalf of certain Seigniors in Lower*

*Canada, against the Second Reading of the Bill for the Abolition of the Seigniorial Tenure* (Quebec, 1853). Dunkin's researches went deep into some of the more complicated legal phases of the seigniorial question ; and his argument displays a wealth of learning in feudal law, as well as a close study of the application of some of its provisions in the colony. The analytical table of title-deeds appended to the publication is of prime value in simplifying the task of examining the large number of these documents. Unfortunately, Mr. Dunkin confined himself, in the main, to an attempt to show that the seigniors had full property in their unconceded lands, and were not to be regarded as mere trustees of the crown, — a thesis which even the most convincing jurist could scarcely have found it possible to prove in view of the arrêt of 1711 and the other enactments which placed the seigniors under obligation to subgrant their lands at the customary rate of dues and services.

The act of 1854, which abolished the old tenures, provided for the creation of a special court to unravel some knotty legal problems which the legislature wisely enough did not assume to solve, but upon the solution of which depended, in part at any rate, the amount of compensation to be paid the seigniors for the loss of their rights and privileges. All the parties directly or indirectly concerned were represented before this court by able counsel (see above, p. 249), and the arguments of the leading counsel representing the different interests were subsequently published. Once again Mr. Dunkin made an elaborate appeal on behalf of the seigniors, his printed address to the court covering some two hundred and twenty closely printed pages. This publication, entitled *The Case of the Seigniors of Lower Canada* (Montreal, 1855), contains some new matter ; but to a large extent it duplicates the erudite counsel's address at the bar of the Legislative Assembly a couple of years before. Dunkin's argument is supplemented by those of his colleagues, Robert Mackay, *The Case in Part of the Seigniors of Lower Canada* (Montreal, 1855), and C. S. Cherrier, *Mémoire contenant un Résumé du Plaidoyer . . . sur les Questions soumises à la Décision des Juges de la Cour* (Montreal, 1855). Arguments on the other side of the question were put forth by T. J. J. Loranger, *Mémoire composé de la Plaidoirie . . . devant la Cour Seigneuriale* (Montreal, 1855), and by F. R. Angers, *Résumé de la Plaidoirie . . . à l'Appui des Propositions soumises à la Cour par le Procureur-Général* (Montreal, 1855). These various addresses are all of value as covering different phases of the subject.

The Special Court delivered its decisions in the form of answers to the large number of questions submitted to it ; and in addition each justice recited his own opinions and observations, stating at some length



the reasons which led him to side with the majority or the minority of his colleagues, as the case might be. These opinions and observations were subsequently printed in full at the public expense, under the general editorship of Messieurs Lelièvre and Angers. They are entitled *Lower Canada Reports : Seigniorial Questions* (Quebec and Montreal, 1856), and fill three substantial octavo volumes. Of the various *Observations*, that of Chief-Justice Sir Louis Hippolyte Lafontaine, Bart., is the most elaborate and the most illuminating. Sir Louis was quite the most accomplished Canadian jurist of his generation, and his opinions bear the marks of ripe legal scholarship. He devotes more than four hundred pages to a consideration of the legal status of some five or six different seigniorial claims, and in each case gives abundant evidence of his rare analytical power. Of the very highest interest, for example, are his discussions of the origin and nature of the seigniorial obligation to concede lands, of the question whether the rate of *cens* was ever fixed uniformly throughout the colony, and of the nature and scope of the right of mill banality. While the present writer has had occasion, in the course of this study, to differ from his lordship's opinions on more than one important point, he has done so in no case lightly or without sincere regret that the logic of facts has seemed to compel divergence.

The observations of the Hon. Mr. Justice Mondelet, although much less extended than those of his senior colleague, are not less scholarly. They are of special interest, moreover, from the fact that on almost every disputed point Mondelet reached a conclusion at variance with that agreed upon by a majority of the court. The other justices of the Special Court all discuss, in their printed *Observations*, various phases of the questions at varying lengths ; but on the whole these discussions add surprisingly little of importance to the opinions of Lafontaine and Mondelet. These publications comprise the opinions and observations of the Hon. Messrs. Justices Aylwin, Badgley, Bowen, Caron, Day, Duval, Meredith, Short, and Smith. One of the members of the court, the Hon. Mr. Justice Vanfelson, died during the sittings of the tribunal, and his observations were not included.

The whole collection forms a store of instructive discussions which cannot but be of the highest service to any student of the later history of feudal institutions. Its great limitation lies in the fact that the observations deal only with those points of the seigniorial system which were the subjects of dispute between the seigniors and the habitants in 1854. With many of the most important incidents of the old tenure — as, for example, the *lods et ventes*, the *corvée*, the judicial rights, the honorary privileges of seigniors, and the whole physical aspect of seign-

iorialism — the opinions are not concerned at all. The justices discuss elaborately the legal bases of disputed seigniorial claims, but give no attention to the actual workings of the various incidents of the seigniorial system. They therefore cover at best but a small section of the whole field.

In addition to the foregoing sources of information, a number of general works have been freely drawn upon for incidental data. On the personnel of the system, much has been taken from Benjamin Sulte's monumental *Histoire des Canadiens-Français* (8 vols., Montreal, 1882-1884); while works of prime value on the genealogy of the seigniors and the noblesse in New France are François Daniel's *Histoire des Grandes Familles Françaises du Canada* (Montreal, 1867), and Cyprien Tanguay's *Dictionnaire Généalogique des Familles Canadiennes depuis la Fondation de la Colonie jusqu' à nos jours* (7 vols., Montreal, 1871-1890). Tanguay's *Répertoire Général du Clergé Canadien* (Quebec, 1868) is of value on the personnel of the ecclesiastical seigniories.

Three excellent treatises on the legal history of New France are Edmond Lareau's *Histoire du Droit Canadien, depuis les Origines de la Colonie jusqu' à nos jours* (2 vols., Montreal, 1888-1889); Doutré and Lareau's *Histoire Générale du Droit Civil Canadien* (Montreal, 1872); and B. A. Testard de Montigny's *Histoire du Droit Canadien* (Montreal, 1869). Each of the two latter includes a number of important legal documents relating to land tenure and to the regulation of succession to real property. A much older work of less service is McCarthy's *Dictionnaire de l'Ancien Droit du Canada* (Quebec, 1809).

Many contemporary references to seigniorial matters may be found in the writings of the Jesuits, which, in the collection entitled *The Jesuit Relations and Allied Documents* (ed. R. G. Thwaites, 73 vols., 1896-1901), are now accessible in completeness. There is also some scattered material in the larger contemporary histories of the old régime, such as Marc Lescarbot's *Histoire de la Nouvelle-France* (ed. E. Tross, 3 vols., Paris, 1866); F. X. Charlevoix's *Histoire et Description Générale de la Nouvelle-France* (ed. J. G. Shea, 6 vols., New York, 1866-1872); Gabriel Sagard's *Histoire du Canada* (ed. E. Tross, 4 vols., Paris, 1865-1866); and Nicholas Denys's *Description Géographique et Historique des Costes de l'Amérique Septentrionale* (2 vols., Paris, 1672).

On the social life of the French era there are some interesting comments in Lahontan's *Nouveaux Voyages* (2 vols., The Hague, 1705, and many subsequent editions), and in Peter Kalm's *Travels into North America* (2 vols., London, 1772).

The later historians have paid very little attention to the seigniorial

system. Some works, however, which afford information upon various matters that influenced its development, especially in its later stages, are William Kingsford's *History of Canada* (10 vols., Toronto, 1887-1898), a prosy work but containing much serviceable material; William Smith's *History of Canada* (2 vols., Quebec, 1815), containing a number of documents not elsewhere published; F. X. Garneau's *Histoire du Canada* (4 vols., Montreal, 1882-1883), which shows excellent judgment on men and measures; and Robert Christie's *History of the late Province of Lower Canada* (6 vols., Montreal, 1866), which is particularly valuable on the period following the conquest.

On the general history of the movement for the abolition of the old tenures, serviceable works are Louis P. Turcotte's *Le Canada sous l'Union* (2 vols., Quebec, 1871-1872); J. C. Dent's *The Last Forty Years* (2 vols., Toronto, 1881); Sir Francis Hincks's *Reminiscences* (Montreal, 1884); and F. Bradshaw's *Self-Government in Canada* (London, 1903).

Biographical works which necessarily contain incidental information bearing on seigniorial relations are Francis Parkman's *Count Frontenac* (Frontenac ed., 2 vols., Boston, 1901); Lorin's *Le Comte de Frontenac* (Paris, 1895); Thomas Chapais's *Jean Talon* (Quebec, 1904); Gabriel Gravier's *La Salle* (Paris, 1871); and Auguste Gosselin's *Vie de Laval* (2 vols., Quebec, 1890) and *Jean Bourdon* (Quebec, 1904).

There is an excellent but very short chapter on "Canadian Feudalism" in Parkman's *Old Régime in Canada* (2 vols., Boston, 1901); and references to various details of the seigniorial system are to be found in almost all of the same writer's imperishable volumes, which, taken as a whole, give the most faithful portrayal of the whole political, social, and economic organization of New France. Edmond Lareau has incorporated into his *Mélanges Historiques et Littéraires* (Montreal, 1871) a short chapter entitled "De la Féodalité en Canada," which is, however, little more than a digest of part of Lafontaine's *Observations*. In the third volume of J. Castell Hopkins's *Canada: an Encyclopædia of the Country* (5 vols., Toronto, 1898-1900), there are articles on "The Seigniorial Tenure in Canada" by Benjamin Sulte, and "The Abolition of the Seigniorial Tenure" by Alphonse Desjardins. W. P. Greenough's *Canadian Folk-Life and Folk-Lore* (New York, 1897) attempts, in a chapter on "The Feudal System," to give a popular sketch of the subject.

Local histories to which one may turn with confidence for information within their scope are J. Edmond Roy's *Histoire de la Seigneurie de Lauzon* (5 vols., Montreal, 1897-1904); Jodoin and Vincent's *Histoire de Longueuil* (Montreal, 1889); F. X. Gatiens's *Histoire de la Paroisse*

*du Cap-Santé* (Quebec, 1884); Benjamin Sulte's *Chronique Trifluvienne* (Montreal, 1879); and Robert Sellar's *History of Huntingdon, Chateaugay, and Beauharnois* (Huntingdon, 1888).

Works of a literary rather than of a historical nature which deal to some extent with the daily life of seignior and habitant are William Kirby's *Chien d'Or* (New York and Montreal, 1877); Philippe A. de Gaspé's *Les Anciens Canadiens* (Quebec, 1863); H. R. Casgrain's *Une Paroisse Canadienne au xvii<sup>e</sup> Siècle* (Quebec, 1880); and Sir J. M. Le Moine's *Maple Leaves* (7 series, Quebec, 1863-1906), and *Chronicles of the St. Lawrence* (Montreal, etc., 1878).

Short articles which bear more or less directly on the subject are "La Tenure Seigneuriale" by Benjamin Sulte, in *Revue Canadienne*, July-August, 1882; "The French Canadian Peasantry" by Prosper Bender, in *Magazine of American History*, August, 1890; "Titles of Honor in Canada" by J. D. Edgar, in *Quarterly Review of the University of Toronto*, 1891; "L'Ancienne Noblesse du Canada" by Benjamin Sulte, in *Revue Canadienne*, May-September, 1885; "The Droit de Banalité during the French Régime in Canada" by W. B. Munro, in American Historical Association, *Report* for 1899; and "The Noblesse of the Old Régime" by W. B. Munro, in *Canadian Magazine*, April, 1900.

It is not easy to understand some of the incidents of Canadian feudalism without constant reference to the workings of the land-tenure system in France during the two centuries preceding the Revolution. Bearing upon this topic are a large number of exhaustive and important works. The Bibliothèque Nationale in Paris has on its shelves no less than sixteen different commentaries on the Custom of Paris alone. Of these various commentaries the following have been most serviceable: Charles Dumoulin, *Coutumes de la Prévôté et Vicomté de Paris* (Paris, 1681); Claude Ferrière, *Corps et Compilation de tous les Commentateurs Anciens et Modernes sur la Coutume de Paris* (4 vols., Paris, 1714); François Bourjon, *Le Droit Commun de la France et la Coutume de Paris réduits en Principes* (2 vols., Paris, 1770). Mention should also be made of the "Essai sur l'Ancienne Coutume de Paris" by H. Buche, in the *Nouvelle Revue Historique du Droit Français*, viii. 45-86, ix. 558-579, and of Henri Klimrath's *Etudes sur les Coutumes* (Paris, 1837). Very useful works on the development of the seigniorial system in France are Renauldon's *Traité Historique et Pratique des Droits Seigneuriaux* (Paris, 1765); F. Boutaric's *Traité des Seigneuries et des Matières Féodales* (Toulouse, 1774); Dareste de la Chavanne's *Histoire des Classes Agricoles en France* (Paris, 1858); Paul Viollet's *Histoire*

*du Droit Civil Français* (Paris, 1893), and the same author's *Histoire des Institutions Politiques et Administratives de la France* (3 vols., Paris, 1890-1903); Achille Luchaire's *Manuel des Institutions Françaises* (Paris, 1892); Adhémar Esmein's *Cours Élémentaire d'Histoire du Droit Français* (Paris, 1905); Jean Brissaud's *Manuel d'Histoire du Droit Français* (Paris, 1898 and 1904); and E. D. Glasson's *Précis Élémentaire de l'Histoire du Droit Français* (Paris, 1904). On the various incidents of French seigniorialism, important sources of detailed information are Hervé's *Théorie des Matières Féodales et Censuelles* (8 vols., Paris, 1785-1788); Henrion de Pansey's *Dissertations Féodales* (2 vols., Paris, 1789); Championnière's *De la Propriété des Eaux Courantes* (Paris, 1846); Nicholas Brussel's *Nouvel Examen de l'Usage Général des Fiefs en France* (2 vols., Paris, 1727); and Salvaing de Boissieu's *De l'Usage des Fiefs et autres Droits Seigneuriaux* (Grenoble, 1731).

The ordinances of the French kings may be found in *Ordonnances des Rois de France de la Troisième Race* (22 vols., Paris, 1729-1849), and in Isambert's *Recueil Général des Anciennes Lois Françaises depuis l'an 420 jusqu'à la Révolution de 1789* (30 vols., Paris, 1822-1833).

The Champlain Society of Canada has arranged for the publication, in 1907, of a volume of *Documents relating to the Seigniorial Régime*. This will contain, with an introduction and explanatory notes, all the more important documents to which reference has been made in the course of the present study.



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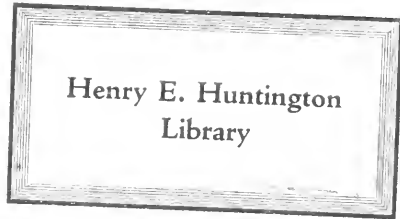


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