

CORRESPONDENCE
BETWEEN THE
COLONIAL OFFICE AND THE GOVERNORS OF CANADA,
RELATIVE TO THE
SEIGNIORIAL AND FEUDAL TENURE,
LAID BEFORE THE
LEGISLATIVE COUNCIL AND LEGISLATIVE ASSEMBLY
PURSUANT TO SPECIAL ADDRESSES TO THAT EFFECT.



QUEBEC:
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1853.

EXTRACT

From a Despatch of the Right Honorable Earl GREY, Secretary of State for the Colonies, to His Excellency the Earl of ELGIN and KINCARDINE, dated

DOWNING STREET, 3rd January, 1852, n° 674.

“ My Lord,

“ I have had the honor to lay before the Queen the address transmitted in Your Lordship’s despatch, n° 102, of the 26th August, from the Legislative Council of Canada, in parliament assembled, praying Her Majesty to cause to be laid before that house copies of certain correspondence on the subject of seigniorial tenure.

“ I am commanded by Her Majesty to transmit to Your Lordship, for the information of the Legislative Council, and in answer to the address from that body, the enclosed copies of correspondence respecting the seigniorial tenure, which has been obtained from the State Paper Office, together with a list of other documents, deposited in that office, relating to the same subject.

“ These papers comprise all the documents referred to in the address, which, after a careful search, can be found amongst the official records of the secretary of state.

(Copy.)

STATE PAPER OFFICE, 10th November, 1851.

Sir,

Agreeably to the direction of earl Grey, conveyed to me by your letter of the 4th instant, that I should cause the colonial department to be supplied with copies of the correspondence which took place, in or about the year 1766, between His Excellency Guy Carleton, governor of the Province of Quebec, and the earl of Shelburne, His Majesty’s principal secretary of state for the colonies, relative to the titles to lands

15th April, 1767.	held à titre de fief et seigneurie avec haute, moyenne et basse justice,
30th October, 1767.	granted in Canada by His Most Christian Majesty the King of
24th Decemb. 1767.	France, and which, after the cession of Canada, passed under the
12th April, 1768.	British Crown; I have the honor to transmit herewith copies of the
6th July, 1781.	correspondence, so far as I have been enabled to find it in this office.

I also beg leave to transmit herewith, for earl Grey's information, a list of documents preserved in this office, relating to the subject of Seigniories in Canada, although not forming part of the correspondence.

I am, etc.

(Signed)

H. HOBHOUSE.

T. F. Elliot, Esquire,
etc., etc., etc.,
Colonial Office.

(Copy.)

STATE PAPER OFFICE.—AMERICA AND WEST INDIES.—Vol. 326.

(Lieutenant Governor CARLETON to the Secretary of State.)

QUEBEC, 15th April, 1767.—R. 1st July.

In obedience to His Lordship's letter of 11th December, he transmits several papers together with a list of them. The revenue of *lods et ventes*, *cens et rentes* and quit rents, he understand, properly belongs to the King's privy purse; the money arising from licences to retail liquors is appropriated to charitable uses, and these are the only funds raised in that province, except the duties laid by acts of parliament, received and accounted for by the collector, so that the expenses of that colony fall entirely on His Majesty's treasury. The charge of supporting the province, he thinks, might be lessened, unless His Majesty should think proper to repair his houses or erect some military works, both of which he thinks highly advisable. The registers of the grants prior to the conquest have been so much tossed about and are in such confusion, that it will require a considerable time to arrange and put them in order. The expense attending the registering them is so considerable, that few have complied with the order for that purpose given by general Murray, so that at present it is impossible to be as particular in that article as His Lordship's letter requires.

The following are the titles of the enclosed papers :

Inclosure n^o 1.—List of the civil establishment of the province of Quebec.

Do. n^o 2.—Estimate of the annual contingent expense for the province of Quebec.

Do. n^o 3.—Military establishment of the garrisons of Quebec and Montreal.

Do. n^o 4.—Account of the *lods et ventes* received by Thomas Mills, Esq., receiver general for the province of Quebec.

Do. n^o 5.—Explanation of the tenure of lands in the province of Quebec before the conquest.

Inclosure n^o 6.—List of persons in arrear for *lods et ventes*.

Do. n^o 7.—Accounts of lands granted since the establishment of civil government, in August, 1764.

Do. n^o 8.—Account of money received for licenses for retailing liquors.

Do. n^o 9.—Debt of the government of Quebec for fees of office, contingencies and claims, upon 24th December, 1766.

Do. n^o 10.—Account of salaries due to the 24th December, 1766.

By the paper n^o 5 (an explanation, etc.), it appears that the *lods et ventes* are fines paid to the King upon the alienation of lands, one-fifth of the purchase money upon the seignior, and one-twelfth upon the *terres en roture*, which were lands granted to the King out of his reserved domain for yearly rent. It has been customary for the King to remit a third of those fines. The *cens et rentes* is the annual quit-rent upon the *terres en roture*, but is very trifling. Both these revenues are perpetual.

(Copy.)

STATE PAPER OFFICE—AMERICA AND WEST INDIES.—Vol. 326.

(MR. FRAS. MACKAY.)

Quebec, 30th October, 1767.—R. 14th December.

He hopes soon to be honored with full instructions from His Lordship, as without them he will be at a loss how to act in his office; for many of the lands within that province having been granted by the French King without the least reservation whatever, those who hold those lands imagine that His Majesty's surveyor is not entitled to appropriate the timber to His Majesty's use. In other grants, the French King reserves the masts and *bois de construction* only.

(Copy.)

STATE PAPER OFFICE—CANADA.—Vol. 6.

(GUY CARLETON to the Earl of SHELBURNE.)

N^o 23.

QUEBEC, 24th December, 1767.

My Lord,

To conceive the true state of the people of this province, so far as the laws and administration of justice are concerned, and the sensations they must feel in their pre-

sent situation, 'tis necessary to recollect, they are not a migration of Britons, who brought with them the laws of England, but 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 were widely different from those of England, but founded on natural justice and equity, as well as these; that their honors, property, and profits, as well as the King's dues, in a great measure depended upon them; that on the mutation of lands by sale, some special cases excepted, they established fines to the King, in lieu of quit-rents, and to the seigneur fines and dues, as his chief profits, obliging him to grant his lands at very low rents.

This system of laws established subordination, from the first to the lowest, which preserved the internal harmony they enjoyed until our arrival, and secured obedience to the supreme seat of government from a very distant province: all this arrangement, in one hour, we overturned by the ordinance of the seventeenth of September, one thousand seven hundred and sixty-four; and 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, were introduced in their stead: a sort of severity, If I remember right, never before practised by any conqueror, even where the people, without capitulation, submitted to his will and discretion.

How far this change of laws which deprives such numbers of their honors, privileges, profits and property, is conformable to the capitulation of Montreal and treaty of Paris; how far this ordinance, which affects the life, limb, liberty, and property of the subject, is within the limits of the power His Majesty has been pleased to grant to the governor and council: how far this ordinance, which, in a summary way, declares the supreme court of judicature shall judge all cases, civil and criminal, by laws unknown and unpublished to the people, is agreeable to the natural rights of mankind, I humbly submit; this much is certain, that it cannot long remain in force without a general confusion and discontent.

To prevent some of the misfortunes that must accrue, the enclosed draft of an ordinance was prepared to be laid before the council; but when I reflected on the many difficulties that would still remain, I thought it more advisable to leave those important matters as I found them, till His Majesty's pleasure was known thereon.

To show more fully the extent of these alterations, several months ago I directed an abridgement of the laws of Canada, in force on our arrival, to be drawn up, and at the same time desired the chief justice and attorney general to give me their opinion upon the mode at present in practice. This I thought absolutely necessary to show the true state of these matters, holding it a great importance to the King's service that all cause of great or general discontent should be removed and prevented.

A few disputes have already appeared, where the English law gives to one what, by the Canadian, would belong to another; a case of this sort, not easy to determine, lies at present in chancery; if decided for the Canadian on the principle that promulgation is necessary to give force to laws, the uniformity of the courts of justice thereby will be still further destroyed, chancery reversing the judgments of the

superior court, as that court reverses those of the common pleas; the people notwithstanding continue to regulate their transactions by their ancient laws, though unknown and unauthorized in the supreme court, where most of these transactions would be declared invalid.

So short-sighted are men, that although these few instances manifest the difference of the old and new law, and give some uneasiness to the parties, yet I have met with only one Canadian who sees this great revolution in its full influence; but when time brings forth events, which shall make known to the Canadians that their modes of inheritance are totally changed, and other alterations which affect the property and interests of every family in the province, the consternation must come general.

The present great and universal complaint arises from the delay and heavy expenses of justice; formerly the King's courts sat once a week at Quebec, Montreal and Three Rivers; from these lay an appeal to the council which also sat once a week, where fees of all sorts were very low, and the decisions immediate. At present the courts sit three times a year at Quebec, and twice a year at Montreal, and have introduced all the chicanery of Westminster Hall into this impoverished province, where few fortunes can bear the expense and delay of a law-suit. The people are thereby deprived of the benefit of the King's courts of justice, which rather prove oppressive and ruinous than a relief to the injured: this, with the weight of fees in general, is the daily complaint, not but a great deal might be said of the inferior administrators of justice, very few of whom have received the education requisite for their office, and are not endowed with all the moderation, impartiality and disinterestedness that were to be wished.

The most advisable method in my opinion for removing the present as well as for preventing future evils, is to repeal that ordinance as null and void in its own nature, and for the present leave the Canadian laws almost entire; such alterations might be afterwards made in them, as time and occurrences rendered the same advisable, so as to reduce them to that system His Majesty should think fit, without risking the dangers of too much precipitation; or else, such alterations might be made in the old, and those new laws judged necessary to be immediately introduced, and publish the whole as a Canadian code, as was practised by Edward the First after the conquest of Wales.

For a more expeditious and easy administration of justice, a judge should reside at each of the three towns of Quebec, Montreal and Three Rivers, with a Canadian assistant, to sit at least once a month; it seems to me no less essential that none of the principal officers of government and justice, neither governor, judge, secretary, provost marshal or clerk of the council, should receive fee, reward, or present from the people, on pain of the King's displeasure, though an equivalent should be allowed them by way of salary, and that the inferior officers be restrained to the fees authorized under the French government, in order to remove the present reproach, that our English justice and English offices are calculated to drain the people of the little substance they have left, as well as to serve as a barrier, to secure the King's interests

at this distance from the throne, from the pestilential dangers of avarice and corruption for ages to come.

What salaries may be necessary to induce gentlemen of the law, of integrity and abilities, with a knowledge of the French language, to come into this country, I cannot tell ; such characters, however, are more indispensably necessary in this than in any other of the King's provinces ; for, here, every fault and error of the man becomes a national reproach. But men of the stamp of our present chief justice and attorney general not being always to be met with, if unexceptionable characters, such as above described, cannot be procured, it will be better for the province to be satisfied with any men of sound sense and probity it can afford, who, with good intentions and the advice and assistance of these two gentlemen, may prove of more service than an ignorant, greedy and factious set.

I could almost venture to promise that in a little time the provincial duties may pay all the officers necessary for government and the administration of justice, on the footing I propose, of procuring persons properly qualified without fees, together with all necessary extraordinary expenses (I except, however, sinecure salaries and all public works) without giving the least discontent. The Canadians in general, particularly the gentlemen, greatly disapprove of the verdict given last year against the Crown, on the trial for the duties, and both Canadian and English merchants, the colonists excepted, would have fixed the rates in the scheme I enclosed to Your Lordship in my letter (N^o 22) higher than I thought judicious for the first essay. These things I thought proper to mention at present, lest the economy, necessary at home, might be an objection to the arrangements essential to the King's service and the interest of Great Britain.

I am, &c.,

(Signed,) GUY CARLETON.

To the Earl of SHELBURNE,
One of His Majesty's Principal Secretaries of State,
&c., &c., &c.

(Copy.)

An Ordinance for continuing and confirming the laws and customs that prevailed in this Province in the time of the French Government, concerning the tenure, inheritance and alienation of lands.

Whereas, from the extensive words used in the great ordinance of this province, dated the 17th day of september, in the year of Our Lord, 1764, intituled, " An Ordinance for regulating and establishing the courts of judicature, justices of the peace, quarter sessions, bailiffs, and other matters relative to the distribution of justice in

this province, by which the two principal courts of judicature, erected thereby in this province," are empowered and directed, the one of them to hear and determine all criminal and civil causes, agreeable to the laws of England and to the ordinances of this province, and the other to determine matters of property above the value of ten pounds agreeable to equity, having regard nevertheless to the laws of England, and an appeal is allowed from this latter court in cases wherein the matter in contest is of the value of twenty pounds and upwards, to the former court, which is strictly enjoined to proceed according to the laws of England and the ordinances of this province as aforesaid ;

Certain doubts have arisen, and may arise, that in consequence thereof, the rules of inheritance of lands and houses in this province, and the terms and conditions of the tenures thereof, and the rights, privileges, profits, and emoluments thence arising either to the King's Most Excellent Majesty, or to divers of his said Majesty's subjects, that are owners of lands in the said province, were in the whole or in part abolished, and the laws and customs of England, relating to the said points, at once introduced in their stead ;

Which great and sudden alteration of the laws concerning these important subjects would not only be in no wise useful to the said province, but by unsettling men's ancient and accustomed rights and reasonable expectations founded thereon, would be attended with innumerable hardships and inconveniences to the inhabitants thereof, and produce a general confusion. In order therefore to prevent these evils, and to quiet the minds of the inhabitants with respect to them :

It is ordained and declared by the lieutenant governor of this province, by and with the advice and consent of the council of the same, that all laws and customs that prevailed in this province, both such as were held immediately of the Crown, and such as were held of subjects, and the terms and conditions of such tenures ; and concerning the rights, privileges and pre-eminences annexed to any of the said tenures, and the burthens, duties, and obligations to which they were subject ; and concerning the inheritance and succession to the said lands upon the death of any of the proprietors thereof, and concerning the forfeiture, confiscation, re-annexing or re-uniting to the demesne of the lord, escheat, reversion or other devolution whatsoever of any of the said lands, either to the King's Majesty or 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 and testament, and concerning the power of alienating the same by the proprietors thereof in their lifetime ; and concerning the power of limiting, hypothecating, charging, or any way incumbering or affecting any lands in the said province, shall continue in full force and vigor until they are changed in some of these particulars by ordinances made for that purpose, and expressly mentioning such changes, and setting forth in a full and distinct manner the laws introduced in the stead of those which shall be so changed or abolished, to the end that all the inhabitants of this province, Canadians as well as English, may fully understand and be made acquainted with the said new laws that shall be so introduced ; any laws, customs, or usages of England, or any ordinances of this province, to the contrary hereof in anywise notwithstanding.

Also the said French laws and customs hereby continued and confirmed, shall be deemed and taken to have continued without interruption, from the time of the conquest of this country by the British arms to the present time; any former ordinance or ordinances of this province to the contrary thereof in anywise notwithstanding.

And further, this ordinance shall extend not only to all lands in this province held immediately of the Crown, by grants made by the French King before the conquest of this country, and to all lands held under the immediate tenants of the Crown, who are commonly called seigneurs, by grants made by the said seigneurs to inferior tenants or vassals before the said conquest, but likewise to such lands as have been granted by the said seigneurs to the said inferior tenants since the said conquest, and likewise to all such lands as shall be granted hereafter by the said seigneurs 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 time of the said conquest of this province by the British arms. But this ordinance shall not extend to or any way affect any new grants of land in this province, made by the King's Majesty since the said conquest, or hereafter to be made by His said Majesty; but the laws and rules relating to such royal grants shall be the same as if this ordinance had not been made.

Given by the honorable Guy Carleton, lieutenant governor and commander in chief of the province of Quebec, brigadier general of His Majesty's forces, &c., &c., in council, at the Castle of St. Lewis, in the city of Quebec, the day of in the year of His Majesty's reign, and in the year of Our Lord, 176 .

(Copy.)

STATE PAPER OFFICE—AMERICA AND WEST INDIES.—Vol. 326.

(GOVERNOR CARLETON to the Secretary of State.)

Nº 33.

QUEBEC, 12th April, 1768.—R. 15th June.

My Lord,

Again I find myself under a necessity to repeat very near the same apologies as in my last about the fees; the truth is, that while offices are farmed out to the best bidder, tenants will make the most of their leases, and in their turn hire such servants as work at the cheapest rate, without much inquiry whether the same is well or ill-done; the

enclosed list of grants prior the conquest of the country has been greatly retarded, from the persons employed therein not being thoroughly versed in the languages ; at the same time it must be fairly acknowledged, the ancient records of the country are by no means so clear and accurate as one could wish ; however, it will in general tolerably well exhibit on what terms the seigniorial grants are held, for as to the *terres en roture* held immediately of the King, in the towns of Quebec or Trois-Rivières or elsewhere, the same is not yet completed, but is in hand and shall be transmitted without loss of time as soon as finished.

Some of the privileges contained in those grants appear at first to convey dangerous powers into the hands of the seigneurs, that, upon a more minute enquiry, are found to be really little else 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 little signification to the proprietors, for besides that they could appoint no judge without the approbation of 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 seigneurs, it was grown into so general a disuse, there were hardly three of them in the whole province at the time of the conquest.

All the lands here are held of His Majesty's Castle of Saint Lewis, and nothing, I am persuaded, would be so agreeable to the people, or tend more to securing the allegiance of the new subjects to His Majesty, as well as ensuring the payment of those fines and dues, which here stand in the lieu of quit rents, than a formal requisition of all those immediately holding of the King, to pay faith and homage to him at his Castle of St-Lewis. The oath which the vassals take upon the occasion is very solemn and binding ; they are obliged to furnish what they here term their *aveu et dénombrement*, which is an exact account of their tenants and revenues, and to discharge whatever they owe their sovereign, and to appear in arms for his defence in case his province is ever attacked. And at the same time that it would prove a confirmation to the people of their estates and immunities, after which they most ardently sigh, it might be a means to recall out of the French service such as have yet possessions in this country, or at least oblige them to dispose of their effects here ; and although it may not be possible, at least for a time, entirely to prevent that intercourse, every measure that can tend towards putting an end to it must be useful.

The Canadian Tenures differ, it is true, from those in the other parts of His Majesty's American dominions, but if confirmed (and I cannot see how it well can be avoided without entirely oversetting the properties of the people) will ever secure a proper subordination from this province to Great Britain ; if its detached situation be constantly remembered, and that on the Canadian stock we can only depend for an increase of population therein, the policy of continuing to them their customs and usages will be sufficiently evinced.

For the foregoing reasons it has occurred to His Majesty's servants here that it might prove of advantage, if whatever lands remain vacant in the interior parts of the pro-

vince bordering upon those where the old customs prevail, were henceforth granted on the like conditions, taking care that those at Gaspey and Chaleur Bay, where the King's old subjects ought chiefly to be encouraged to settle, were granted on such conditions only as are required by his royal instructions; and upon this considération have some grants in the interior parts been deferred carrying into execution until I could receive the sense of government thereupon.

Your Lordship may have perceived by some of my former letters, that long before His Majesty's order in council of the 28th of August came to my hands, the matter therein recommended had been the object of my most serious consideration; the receipt of that order has induced me to alter some part of the plan I at first proposed to myself, and have accordingly directed the abridgement mentioned to Your Lordship in my letter of 24th December, (N^o 23,) and undertaken by some of the ablest men in the province, to be further extended and rendered more full and copious, and to comprise all the laws in force at the conquest; in the meantime, to give Your Lordship and His Majesty's other servants some idea of the nature of them, I herewith transmit to Your Lordship a short sketch exhibiting only the heads of those laws; the several matters recommended by that order to the King's servants here, shall be prepared with all the despatch that the importance as well as extent of the subject can possibly admit of.

I am, &c.,

(Signed), GUY CARLETON.

1st. Inclosure—Abstract of seigneuries granted by the French governor and intendant of Canada, before the conquest in 1760.

2nd. Inclosure—Coutumes et usages anciens de la province de Québec.

(Copy.)

STATE PAPER OFFICE—AMERICA AND WEST INDIES.—Vol. 329.

(GOVERNOR HALDIMAND to Secretary of State.)

(N^o 90.)

QUEBEC, 6th July, 1781.—R. 3rd August.

My Lord,

I have the honor to transmit by the "Quebec," merchant ship, the minutes and proceedings of the legislative council during the session of the present year.

On the 29th of last December I received a letter, in cypher, from sir Henry Clinton, the copy of which is enclosed. I had last October discovered and apprehended several persons who were carrying letters to the congress, Mr. Washington and the Marquis de la Fayette, but though they are confined in separate prisons, I cannot trace the combination further than amongst the lower class of Canadians. At the same time a slip of paper found amongst the letters, contained intelligence wrote in milk, which must have been composed by some person who had more capacity and opportunity to make observations than the lower class of Canadians generally have. Mr. Du Calvet, a merchant at Montreal, is in custody on that occasion. The person who has confessed the writing the letters, says that he put Du Calvet's name to one of them at his desire; and he who was apprehended with the letters upon him, declares that he undertook the journey to the rebel colonies at the instigation of Mr. Du Calvet.

I ordered the council to assemble on the 15th of January, and with their concurrence issued the proclamation which Your Lordship will see amongst the minutes.

I did not adopt the mode proposed by sir Henry Clinton of taking the grain and provisions into my possession, and of leaving with the proprietors only a quantity sufficient for the subsistence of their families. The proclamation appeared equally efficacious and less alarming. If the inhabitants complied with the proclamation, the cattle and corn, upon the approach of an enemy, might have been transported to places of safety, and if they disobeyed it, I would have done my duty with less regret in destroying all provisions which could not otherwise have been prevented from falling into the hands of the enemy. The bishop gave me a proof of his good disposition in writing a circular letter to the clergy, well adapted to the occasion.

The inhabitants of the towns of Quebec and Montreal presented addresses to me full of sentiments of loyalty to the King, and of attachment to the constitutional government of the province. These things, in themselves, are of no great consequence, but as the merchants in the town give the tone to the traders in the country, who have but too often been the instruments of retailing sedition and rebellion to the ignorant inhabitants, I gave my consent to have the addresses with my answers to be published in the Quebec Gazette.

The legislative council renewed the ordinances which I mentioned to Your Lordship, and made in that for regulating the proceedings of the courts of justice, the alterations which I proposed, and which experience had suggested. I refer Your Lordship to my former letters for the state of the clergy.

Sir Guy Carleton had thought proper to require, by proclamation, a performance of the fealty and homage due to His Majesty from the proprietors of seigneuries at the expiration of the year 1777, and had previous to my arrival in the province, by a subsequent proclamation, prolonged the delay till the 31st of December, 1778. Perhaps it would have been better not to have taken up that business during the war, but as it had been agitated, I had reason to think that the not insisting upon it might tend to

lessen the King's authority amongst an ignorant people, many of whom might think that ceremony necessary before their allegiance could be changed from the King of France. I have received the fealty and homage, and the register of the acte de foi and homage may be useful in giving a short and clear view of conditions upon which the different seigneuries have been granted.

A difficulty was stated by the attorney general, relative to the religious communities, and particularly the seminary, the richest of them, and who have been the most useful and the most zealous for government upon many occasions. I thought it right to admit them to the performance of fealty and homage, as well as the other religious communities, that of the jesuits excepted. They presented their titles, and offered foi and homage: I have returned their titles, and allow them to enjoy their estates in the same manner His Majesty has hitherto permitted. In consideration of their poverty and their usefulness, in taking care of the sick and infirm, and in the education of youth, I have remitted to the Nuns of the General Hospitals, and to those of the order of St. Ursule, the quint and other rights which were due to the King.

In my letter of the 25th October last (N^o 66,) I transmitted to Your Lordship an account of part of the moneys in the hands of the receiver general and his agents, arising from the *quints, lods* and *ventes* and *rent* of domain belonging to the King, and proposed that the purchase of the King's house at Montreal, that of the seigneurie of Sorel and of some ground necessary for the fortifications of Quebec, should be defrayed from it. The repairs of the King's houses at Quebec and Montreal, and such charities to indigent people of birth as become the royal munificence to bestow, may be paid from the same fund. I beg that Your Lordship will take that matter into consideration, and acquaint me of His Majesty's determination on that head.

I have, &c.,

(Signed,) FRED. HALDIMAND.

List of Documents preserved in the State Paper Office, relating to the subject of Seigneuries in Canada.

Extract from answers made by colonel Gage, governor of Montreal, to heads of enquiry relative to the state of Canada, transmitted by the lords, 23rd May, 1763. commissioners for trade and plantations in their letter of 9th March, 1763.

“ The lands are held on feudal tenures. They have been granted by the Kings of France or their governors duly authorised, (though all grants confirmed by the King) in lordships from one to three or four leagues in length, upon one, two, or more leagues in breadth, to the lord
Canada, B. T., Vol. 1.

and his heirs for ever, with rights of manor, viz., to hold high and inferior courts of justice, hunting, fishing, and exclusive traffic with savages, on condition of fealty and homage, of accustomed dues and acknowledgments, agreeable to the Customs of Paris, followed in Canada, of preserving and obliging their tenants to preserve all oak timber fit for the King's ships, of giving the King advice of all mines and minerals that shall be discovered, etc."

31st May, 1763, Trois-Rivières.
Canada, B. T., Vol. I. Answers made by colonel Burton, governor of Trois-Rivières, to the heads of enquiry of the lords commissioners for trade in their letter of 9th March, 1763.

24th June, 1765, Quebec.
Canada, B. T., n^o 2. Copy of the French registers at Quebec. of the fishing posts, granted by the French King on the coast of Labrador, enclosed in governor Murray's letter of 24th June, 1765.

24th June, 1766. Extract from instructions to the honorable James Murray, governor of Canada:

Canada, B. T., Vol. 15. " That in all suits and actions relating to titles of land, and the descent, alienation, settlements and incumbrances of real property, and also in the distribution of personal property in cases of intestacy, and the mode of assigning and conveying it, they do govern themselves in their proceedings, judgment and decision, by the local customs and usages, which have heretofore prevailed and governed within that province, using and applying the said usages and customs to the causes coming before them, in like manner as the customs and usages of Normandy are applied in causes from Jersey brought before the lords of our privy council."

1770, April 18th.
Canada, B. T., Vol. 20. Minutes of council.—Read the petition of Duncan Anderson and William Smith, in behalf of themselves and Frederick Dutins, praying that the quantity of 5000 acres of the above mentioned lands be granted to the petitioners at Tracadigauch, and the remaining quantity of 5000 acres at Paspabiac; both tracts in manner of a seigniory, agreeable to the ancient French Custom.

3rd August, 1770,
Quebec. Canada,
B. T., Vol. 60.

Tableau de toutes les seigneuries concédées et établies dans l'étendue de la province de Québec, extrait des registres d'intendance et du conseil supérieur.

3rd August, 1770,
Quebec. Canada,
B. T., Vol. 60.

Tableau des terres en roture, concédées à perpétuité, qui se trouvent aujourd'hui hors des limites de la province de Québec, extrait des registres d'intendance et du conseil supérieur.

24th April, 1771.
Canada, B. T., Vol.
16.

Report of the council for trade to the King, recommending in pursuance of the representations of governor Carleton, that those articles of the royal instructions to the said governor, which relate to the granting lands, should be revoked, and that the governor should be authorized to grant, with the advice of his council, the lands remaining subject to His Majesty's disposal, in fief and seigniorie, as hath been practised heretofore, omitting in such grants *haute, moyenne et basse justice*, the exercise whereof hath been long disused in that colony.

25th May, 1771.
Canada, B. T., Vol.
7.

Report from the committee of council for plantation affairs on the same subject.

19th June, 1771.
Canada, B. T., Vol.
16.

The additional instructions for governor Carleton, agreeably to the preceding report of the 24th April.

27th June, 1771.
Canada, B. T., Vol. 7

The King's approval, in council, of the additional instructions.

30th June, 1772.
Canada, B. T., Vol.
20.

Minutes of council.—“ Read an additional instruction from His Majesty to the governor of this province, revoking all His Majesty's former instructions for granting lands in the said province, 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 seigneurie, as hath been practised heretofore, antecedent to the conquest of Canada; mitting, however, in such grants, the

reservation of the exercise of such judicial powers, as hath been long disused within the said province." (The additional instruction is entered at full at the end of the minutes of Council of 30th June, 1772.)

3rd May, 1773,
Doctors' Commons.
America and West
Indies, Vol. 480.

Report from the King's advocate general to His Majesty, on a general plan of civil and criminal law for the province of Canada.

31st January, 1777.
Canada, B. T., Vol.
20.

Minutes of Council.—“ The act of the 14th of His present Majesty, under which we have the honor to sit as the legislative council of this province, declares that all His Majesty's Canadian subjects, except the religious orders and communities, shall hold and enjoy their property and possessions, together with all customs and usages, relative thereto, and all other their civil rights, in as large and ample manner as may consist with their allegiance to His Majesty, and subjection to the crown and parliament of Great Britain.”

28th August, 1777.
Canada, B. T. Vol.
20.

Minutes of Council.—“ Read the draught of a proclamation, requiring the proprietors of seigniories in this province to attend to render their fealty and homage.” His Excellency approves thereof and orders it to be engrossed for publication, and entered.

30th Novemb. 1778
Canada, B. T., Vol.
20.

Minutes of council.—His Excellency having stated to the board the inconveniences that might at this juncture result to His Majesty's service and the interests of this province, by enforcing obedience to a proclamation of sir Guy Carleton, K. B., late governor of this province, by the advice of His Majesty's council in the same, bearing date the 28th day of August, 1777, and the prejudices which might happen to His Majesty's service by altering the mode of making the *aveux et dénombrements* for seigniories, and the declarations for rotures, practised in this province before the year 1760.

Ordered that the time given by the said proclamation be prolonged to the 31st day of December, which will be in the year of Our Lord 1779, that the manner of making the *aveux et dénombrements* for seigniories, and the declarations for rotures in this province before the year 1760 be, still observed; and that the attorney general do forthwith prepare a proclamation for the aforesaid purposes

RETURN

TO AN ADDRESS of the Legislative Assembly, dated 6th September, 1852, for "Copies of all Despatches and Correspondence which have passed between the Colonial Office in England, and His Excellency the Governor General, relative to the Seigniorial and Feudal Tenure in Lower Canada, since the last Session of the last Parliament; and also, copies of all Despatches and Correspondence between the said Colonial Office and the Government of this Province, relative to the different Tenures of Land in Lower Canada since it has been under British Rule.

By order,

(Signed,)

A. N. MORIN,
Secretary.

Government House,
Quebec, 21st September, 1852.

(Copy.)

N^o 68.

DOWNING STREET, 6th February, 1817.

SIR,

In reply to your despatch, N^o 22, I have the honor to transmit herewith, four your information and guidance, a copy of the opinion of His Majesty's attorney and solicitor general, regarding the power of the crown to accept the surrender of lands granted to individuals in Canada, for the purpose of re-granting them in free and common soccage.

I have, &c.,

BATHURST.

Lt. general

Sir J. C. Sherbrooke, G. C. B.,
&c., &c.

2 LINCOLN'S INN, 22nd January, 1817.

MY LORD,

We have had the honor to receive Your Lordship's letter, dated the 18th instant, transmitting to us the copy of a despatch addressed by Your Lordship to the governor of Canada, and of the reply which has been received from Sir John Sherbrooke, relative to the power of the crown to accept the surrender of lands granted to individuals in Canada, for the purpose of re-granting them in free and common soccage, and Your Lordship is pleased to desire that we will take the same into our consideration, and report to Your Lordship our opinion, whether there is either under the statute of the 31st Geo. III, cap. 31, or under the law originally prevailing in the province, as referred to in the minutes of the executive council, any legal objection to changing the tenure of lands in Canada, in the manner recommended.

In obedience to Your Lordship's commands we have considered the same, and beg leave to observe that, if it was intended to change the tenure of any lands without the consent or desire of the persons possessing such lands, or at once to effect a general alteration of tenure, there is no doubt that it could not be done without an act of the legislative bodies, with the assent of His Majesty; but the question is, whether, if lands are surrendered to His Majesty, and thereby become reverted in the Crown, His Majesty may not, by virtue of his prerogative, grant such lands to be holden by a tenure different from that by which they were formally holden, (provided the tenure on which they are so re-granted, be one which is lawful in the province). That a man holding of the crown may surrender his land to the crown of whom he holds we conceive to be clear, and also that the crown may re-grant them upon such terms or tenure, recognised by law, as shall seem fit, unless restrained by some law or act of parliament. Looking at the British acts which relate to the province of Canada, we do not find any such restriction of the royal prerogative as applicable to this case. By the 14th Geo. 3rd, cap. 83, the title under which any lands were then holden, was not to be affected by that act, but was to remain as if the act had never passed. But by the same act a power to grant lands in free and common soccage by the crown is recognized, because after the eighth section has directed that the laws of Canada shall be the rule of decision in all matters of controversy relative to property and civil rights, the 9th section provides, that such provision shall not extend to any lands that have been or *may be* granted by His Majesty in free and common soccage. This statute imposes no restraint in the ordinary rights of the crown, but merely leaves all subsisting tenure unaffected by that statute. There is by the 43rd section of the 31st Geo. III, cap. 31, a restriction of the prerogative as to the tenure on which lands shall be granted in Upper Canada, because by that section His Majesty can only grant lands in free and common soccage, and all the consequences which follow such tenure by the law of England, must follow such tenure in Upper Canada.

With respect to the province of Lower Canada, there is also a partial restriction upon the prerogative, as to granting lands to be holden by any *other* tenure *than* free and common soccage, namely, where the grantee shall desire to have them *granted* in free and common soccage, there they must be so granted.

These provisions, however, do not affect the right of His Majesty to accept a surrender of lands holden in seigneurie, and to grant such lands in free and common soccage, though they compel His Majesty in certain cases to grant them to be holden by such last mentioned tenure.

The 44th section does not apply at all to this case, and neither enables or restrains His Majesty as to any powers of granting lands in Lower Canada, but relates to the giving good and valid grants of lands in Upper Canada, holden under an incomplete or informal title by a mere certificate of occupation. We do not consider that the message of lord Dorchester, as far as we collect the contents from the papers, could be deemed restrictive upon the prerogative of the crown, to accept a surrender of lands holden in seigneurie, or to grant such lands after they have been revested in the crown, in free and common soccage.

The 36th section of the 31st Geo. III, cap. 31, does not in terms or by inference impose any restriction in the prerogative of the crown, to accept a surrender of lands holden in seigneurie, and to re-grant them in free and common soccage, but we think it would be necessary that at the time of such new grant, proportionable allotments should be made of other land for the support of the protestant clergy, equal in value to the seventh part to be specified in the new grant, for the regulations of that clause are general, and would apply to grants of lands which had become revested in the crown by surrender, as well as to lands which had never before been granted. It is stated by the chief justice, and not disputed by the executive council, that the King of France, before the conquest of Canada, might have accepted a surrender of lands and have re-granted them, and indeed it would have been extraordinary if such had not been the law. His Majesty, of course, must have the same power, and though the King of France might not have had power to grant in free and common soccage, if such tenure had not existed in Canada by the laws then in force (upon which we do not venture to form an opinion), yet His Majesty having power to grant in free and common soccage, and being bound so to grant at the request of the grantee, if he grants at all, we humbly report to Your Lordship, that there does not appear to us to be any legal objection to His Majesty's accepting a surrender of lands holden in seigneurie, and re-granting them in free and common soccage either under the statute of the 31st George III, cap. 31, or under any law which prevailed originally in the province before the conquest.

We have, &c.,

W. GARRON,

J. SHEPHERD.

The Right Honorable
The Earl Bathurst.

(Copy.)

N^o 123.

DOWNING STREET, 31st August, 1817.

Sir,

Having referred to the consideration of His Majesty's law officers your despatch of the 20th May last, respecting the opinion given by them in January last, on the subject of accepting the surrender of certain lands of Mr. Caldwell's, held in seigneurie, and re-granting them in free and common soccage, I now transmit to you the copy of a letter from the attorney and solicitor general, and have the honor to acquaint you, that for the reasons therein stated, I am of opinion that it would not be expedient to change the tenure of lands now holden in seigneurie.

I have, &c.,

BATHURST.

Lieutenant General

Sir J. C. Sherbrooke, G. C. B.

&c., &c., &c.,

 SERGEANTS' INN, 1st August, 1817.

My Lord,

We have had the honor to receive Your Lordship's letter of the 14th July, 1817, referring to an opinion of the 22nd January last, relative to the power of the Crown to accept the surrender of lands held in seigneurie in Canada, for the purpose of re-granting them in free and common soccage, and transmitting to us an enclosed letter from lieut. general sir John S. Sherbrooke, requesting to be informed whether such change of tenure, by abolishing with respect to such lands the *droit de quint*, which was given over to the province by Lord Dorchester's message, would not be in some degree an infringement of the pledge so given by government, or whether a mode could be devised of giving to the province an equivalent for the *droit de quint* so merged and lost to it by such change of tenure, and desiring that we will take the case into our consideration, and report to Your Lordship for the information of His Royal Highness the prince regent, our opinion, whether His Majesty is precluded by the declaration made in Lord Dorchester's message to the provincial legislature on the 29th April, 1794, from changing the tenure of lands granted in seigneurie, which are now subjected to the payment of the *quint* appropriated towards defraying the civil expense of the province, without a legislative act to that effect.

We beg to state to Your Lordship that, in the opinion which His Majesty's law officers gave to Your Lordship on the 22nd January last, they confined themselves to

the consideration of the power of His Majesty to accept a surrender of lands holden in seigneurie and re-grant them in free and common soccage, without any legislative enactment enabling him to do so; that appearing to them to be the point then proposed for their consideration. But the question now presented by the governor's letter is of a very different nature. It is not a question upon the right of the Crown so to alter the tenure, but upon the propriety of such an exercise of His Majesty's prerogative, whereby the province will be deprived of one of the sources of revenue towards defraying its civil expenses, with which it was furnished by the appropriation of the revenue arising from the *droit de quint*, as communicated in Lord Dorchester's message, and upon this point we think that Lord Dorchester's message did give an expectation to the province, that this part of His Majesty's revenues would be continued to be applied to the defraying their civil expenses, and that to take from them this source of revenue without their assent, or without providing an equivalent, would be an infringement of what they might fairly consider a pledge or assurance on the part of the Crown.

We are not aware that His Majesty can in any way give to the province an equivalent out of any other of his revenues, to supply the deficiency that would arise from changing the tenure of the lands from that of seigneurie to free and common soccage; and if any source of revenue to be so applied is to be created in the province, it must be by a legislative act; and the consent of the province to an abolition of the *droit de quint* could only be manifested by such an act, or by an address of the two houses to His Majesty for that purpose. We think therefore that though His Majesty is not precluded in point of law by Lord Dorchester's message from changing the tenure of the lands, yet that such change of tenure without the consent of the provincial legislature, expressed as before mentioned, or without an equivalent provided, would be an infringement of the pledge given by government in that message, and that in that point of view His Majesty is precluded, without such consent or equivalent, from so changing the tenure of the lands.

We have, &c.

(Signed),

S. SHEPHERD.

R. GIFFORD.

Earl Bathurst.

(Copy.)

COLONIAL OFFICE, DOWNING STREET, 31st August, 1822.

My Lord,

Lord Bathurst having, whilst the Canada bill was under consideration, availed himself of the readiness chief justice Monk has shewn upon all occasions to furnish such

observations and information as his official station and long residence in the colony might enable him to offer, he directed me to transmit, for Your Lordship's consideration, the enclosed observations and suggestions with respect to the mode of carrying into effect some of the clauses in the act lately passed, particularly those which relate to the change of the present feudal tenures into those of common soccage.

I have, &c.,

(Signed),

R. WILMOT.

The Earl of Dalhousie, G. C. B.,
&c., &c., &c.,

Extract of a letter from Mr. Justice Monk, to Robert Wilmot, Esquire, dated

July, 1822.

“ The change of the present feudal tenures to those of common soccage.”

Sect. 29.—This section of the act, declaring the King's power, requires particular instructions to be communicated to the governor, prescribing the various modes of carrying that power into execution. It is by the modes to be used, that the intentions and benefits will be more or less effected. The latitude which creates the debt of responsibility is frequently a painful boon; although in relieving the governor by pointing out the progress of measures to fulfil the intentions of government, the steps to be indicated for him to pursue, should lead to the plain conclusion of their correctness, or, at least, afford him relief in venturing to withhold an obedience when such could not have been intended.

“ The act merely extends the declaratory power of the King to convert the tenure of a fief which the seignior could sell. By the fief law, he could only sell the *entre-fief*. The conversion can therefore only operate upon such an estate in the whole. It is by the grant, under a surrender, that conversion can be effected; and although the grant may do it generally over the whole fief, the conditions of the conversion will limit the operation to be:

“ 1st.—Upon the seigniors paying the quint fine, or sum thought to be equitably due to the King.

“ 2nd.—Upon the censitaire paying his commutation to the seignior for the *cens et rentes*, and

“ 3rd.—Upon the censitaires payment of the Crown dues upon his conversion being open or vested.

“ The instructions have been necessarily intended to include the subject in its various parts, with sufficient clearness to understand and correctly execute. Yet, it should be

considered proper in a case involving so many interests, and apparently attended with difficulties, the governor might be required, upon any application for a grant, not to execute any such to a seignior until he shall have made his report upon the general subject; and to submit all such remarks as may tend to elucidate any objections, and remove doubts or difficulties not at present foreseen, although three modes in respect to conditions upon making any grants are suggested for the commutation, it will not be required to adopt any one in particular, as a general rule, upon which the whole of the measures are to be made, though such would be desirable. Some seigniors may prefer one mode to another. The end will be attained in either, though it is thought it will be with more or less benefit on each; and should it be thought requisite to take a preparatory course for the governor's suggestions of facilities, or notice of obstructions, not at present contemplated upon the execution, his report may be directed to be first made upon the subject. This may remove every argument against "having received absolute instructions of direction," should doubts be apprehended in respect to the measures intended.

(Copy.)

DOWNING STREET, August, 1825.

My Lord,

I have the honor to enclose, for Your Lordship's perusal, an act passed in the last session of parliament, to provide for the extinction of feudal services in the province of Lower Canada, and I have especially to direct Your Lordship's attention to the first clause of the act, by which His Majesty is enabled, by instructions to be communicated to the governor of the province, through the secretary of state, to fix the consideration, terms and condition, upon which the commutation of the feudal rights of the Crown is to be made.

I have also the honor to enclose for Your Lordship's perusal the draft of proclamation, fixing the terms upon which it is proposed that these commutations shall be carried into effect, and I am to instruct Your Lordship to cause this proclamation to be published in the province, in whatever manner may be best adapted for insuring the general publicity of it.

You will observe that it is intended to accept from the seigneurs, as the price of commutation, five per cent on the value of the seigneurie, and in cases where the seigneur and the local government may not be able to agree as to the value of the entire seigneurie, it is intended to leave that question to the decision of *experts*. Probably this price may not be a full equivalent for the rights of the Crown, but Your Lordship will readily understand that, in advising the King to accept terms which might in one sense be considered as unfavorable, my object has been to hold out an inducement to the seigniors to carry into effect a change of tenure from which such considerable public advantage may be anticipated.

If Your Lordship, however, bearing in mind these liberal intentions of His Majesty's government, shall nevertheless see cause to disapprove of the proposed terms, you will, without loss of time, report the objections which occur to you, and in the mean time you will consider yourself authorized to withhold the proclamation.

If, on the contrary, Your Lordship should deem the proclamation unobjectionable in substance, any alteration in its style or language, which yourself or the attorney general of the province may judge necessary or convenient, may be made without further reference to me.

I am, etc.,

BATHURST.

Leutenant General

The Earl of Dalhousie, C. C. B.,
etc., etc., etc.

(Copy.)

N^o 27.

QUEBEC, 19th June, 1826.

My Lord,

I have the honor to inform Your Lordship that, pursuant to the instructions contained in Your Lordship's despatch respecting the measures to be taken by the provincial government, for carrying into effect the acts relating to the change of tenure of seigniorial lands, I have, with the advice of the executive council, issued the proclamation (*) of which Your Lordship transmitted me a draft, with such alterations in points of form as were necessary, and with the addition of a clause requiring those who should come forward to avail themselves of the terms offered by the proclamation, to shew that they had discharged all arrears of feudal dues to His Majesty.

There are now several applications before me for commutation of tenure of houses and lots in Quebec, but it will probably be a considerable time before the proprietors of seigniories will come forward to avail themselves of the benefit of this measure. I have no doubt that the liberality of the terms fixed for the commutation, as between the Crown and the seignior, will be generally appreciated; but I think it my duty to state to Your Lordship, that it has been represented to me by persons well acquainted with the subject, that the liberality of the Crown in this respect may of itself indirectly tend to keep back the seignior from asking for a change of tenure, and may thus defeat or retard the accomplishment of the views of His Majesty's government, for it is

(*) NOTE. Proclamation dated 14th April, 1826, published in the *Quebec Official Gazette*, 20th April, 1826, page 380.

said that, as the act lately passed makes it compulsory on the seignior, who shall have obtained *from the Crown* a commutation of his tenure, to grant the like commutation to his vassal, on payment of a compensation to be fixed by *experts* or arbitrators, and as one at least of these *experts* (the one to be named by the vassal), will of course be from that class of people whose interest it will be to keep the rate of compensation to the seignior as low as possible, the seignior will be deterred from putting himself in the situation of being compelled to go to such an arbitration, in which the extremely low and easy terms already granted to him by the Crown, would be taken as the measure of that compensation which he should himself receive from his vassal.

This view of the subject was not suggested to me until after the proclamation was issued, and I now submit it for Your Lordship's consideration and decision.

I think it right also to inform Your Lordship that, although upon the recommendation of the executive council, I have adopted the same scale of compensation with respect to houses in town, which the proclamation fixes with respect to seigniorial lands in the country, and have accordingly acted upon this recommendation in the cases of applications now pending for a commutation of tenure of houses in Quebec; I have forborne to issue any proclamation upon the subject, in consequence of suggestions which I have received from several, that so small a compensation in such cases is a sacrifice on the part of the Crown, not necessary to the success of the measure, and that it should be fixed at a rate considerably higher than on a change of tenure of seigniorial lands, inasmuch as houses and property in towns change owners much more frequently than mere landed property in the country, and the surrender of the feudal dues is, of course, a much greater sacrifice in the former case than in the latter. Not conceiving it to be Your Lordship's intention to give up the advantages now accruing to the Crown to any greater extent than may be necessary to encourage proprietors to avail themselves of the benefits held out to them, I beg to be favored with Your Lordship's instructions on the point I have last stated.

I have, etc.,

DALHOUSIE.

The Earl Bathurst,
etc., etc., etc.

(Copy.)

QUEBEC, 19th June, 1826.

My Lord,

In compliance with an address of the house of assembly in their last session, I have the honor to transmit to Your Lordship herewith their address to His Majesty res-

pecting the acts of the imperial parliament, 3rd Geo. IV., cap. 119, and 6th Geo. IV., cap. 56, providing for the extinction of the feudal tenure, and for other matters connected with this province; also their address to His Majesty respecting the operation of the acts passed in the last session of the imperial parliament for regulating the colonial trade.

Also, their address to His Majesty respecting their right to apply and dispose of the revenues arising from the 14th Geo. III, cap. 88, which addresses they humbly pray may be laid at the foot of the throne.

I have, &c.,

(Signed),

DALHOUSIE.

The Earl of Bathurst,
&c., &c., &c.

(Copy.)

DOWNING STREET, 31st August, 1826.

My Lord,

I have the honor to acknowledge the receipt of Your Lordship's despatch of the 19th of June last, requesting to be furnished with instructions as to the rate of compensation to be paid to the Crown on the change of tenure of houses, &c., in towns, and stating that it has been represented to you that it would be proper to charge a rate considerably higher than on the change of tenure of seigniorial lands. I have to acquaint Your Lordship in reply, that I am decidedly of opinion that a higher rate should be fixed with respect to the commutation of tenure of houses, and that double the amount which the proclamation fixes with respect to seigniorial lands in the country would only be a moderate charge to proprietors of houses, who may avail themselves of this measure.

I have, &c.,

(Signed),

BATHURST.

Lieut. general
The Earl of Dalhousie, G. C. B.,
&c., &c., &c.

(Copy.)

DOWNING STREET, 30th October, 1826.

My Lord,

In the view of carrying into effect the provisions of the acts of parliament 3 Geo. IV, cap. 115, and 6 Geo. IV, cap.—, which contemplate the entire extinction of the feudal tenure in Lower Canada, I am to instruct Your Lordship that whenever it may be necessary to grant any part of the unoccupied waste lands comprised or supposed to be contained within the limits of the seigniories in the possession of the Crown, Your Lordship will direct that the patents conveying the land so granted do expressly declare that the same are to be held under the tenure of free and common socage, liable only to similar reservations of mines, minerals, timber, &c., as are contained in the patents granting waste lands in the townships of the province.

I have, &c.,

(Signed), BATHURST.

Lieut. general

The Earl of Dalhousie, G. C. B.,
&c., &c., &c.

(Copy.)

QUEBEC, 19th December, 1830.

Sir,

The commissioner of Crown lands in Lower Canada having represented to me that in offering for sale certain lands, the property of the Crown, it would be extremely desirable to hold out to those desirous of becoming purchasers, the option of acquiring the same under the seigniorial tenure, or the tenure of free and common socage, as they might think proper; and being doubtful of the extent of my authority in this respect, in regard to the acts of the imperial parliament (3rd Geo. IV, cap. 119, sec. 31 and 32, and 6th Geo. IV, cap. 59,) I caused a reference to be made to the attorney general of this province for his opinion, and I have now the honor of transmitting to you a copy of his report.

From this it appears, that if the acts in question are not exactly binding on this point, they prove at least that it is evidently the policy of the imperial parliament to convert the seigniorial tenure, which is that by which the far greater part of the land in this province is held, into the tenure of free and common socage; and it is upon this point that I beg to be honored with the your instructions for my guidance, in the event of applications being made to me to acquire lands, the property of the Crown, under the seigniorial tenure.

I would here take leave to remark, 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 establish the fact of the predilection to which I allude, than the extremely rare occurrence of instances of French Canadians applying for a mutation of tenure from the seigniorial to the tenure of free and common soccage.

The particular case which was referred by my direction to the attorney-general was not my only motive for desiring his opinion, for similar applications had been made previously to me ; and upon the whole question I was given to understand that the granting of the power to acquire Crown lands on the seigniorial tenure would be considered as a very gracious proceeding towards the Canadians of French extraction.

In this view of the case, I most respectfully submit that I may be furnished with the necessary authority for offering to those who may be desirous of becoming purchasers of Crown lands, the option of acquiring the same on the seigniorial tenure or the tenure of free and common soccage, as they may think proper.

I have, &c.,

(Signed),

AYLMER.

Rt. Honorable

Sir George Murray, G. C. B.,
&c., &c., &c.

(Copy.)

DOWNING STREET, 13th March, 1831.

My Lord,

I have the honor to acknowledge the receipt of Your Lordship's despatch of the 19th December last, stating that it would be extremely desirable to hold out to persons wishing to become purchasers of Crown lands, the option of acquiring the same under the seigniorial tenure or the tenure of free and common soccage, as they might think proper, and being doubtful of the extent of your authority in this respect in regard to the acts of the imperial parliament (3 Geo. IV, cap. 19, sec. 31 & 32, and 6 Geo. IV, cap. 59), you had referred the subject to the attorney general for his opinion, who had reported that the sales ought to be made under the tenure of free and common soccage, and not under the seigniorial or other tenure.

In reply I have the honor to acquaint Your Lordship that you could not lawfully grant lands in Lower Canada to be holden of the Crown in fief and seigneurie, and this

disability could not be removed by any instructions which it is in the power of His Majesty to issue. The bill, however, which is now before the parliament, although it does not directly meet and provide for this case, would, when passed, enable the provincial legislature to regulate the descent, alienation, etc., of soccage lands, and thus to remove all the objections to the soccage tenure, to which the dislike of it is presumably to be attributed. If, by the means proposed, the mind of the people can be reconciled to the change, a very considerable object will be gained, because the lands of the province will be thus at once delivered from the absurd and injurious incidents of the feudal tenure, and from those rules of descent and alienation which alone render the soccage tenure inapplicable to the condition of a new country.

I have, etc.,

GODERICH.

Lieut. General

Lord Aylmer, K. C. B.,
etc., etc., etc.

(Copy.)

QUEBEC, 7th April, 1831.

My Lord,

I have the honor of transmitting to Your Lordship herewith, by desire of the house of assembly of the province of Lower Canada, a copy of a petition to His Majesty, praying for the repeal of the Canada Tenure Act.

I think it proper, at the same time, to transmit to Your Lordship a copy of a set of resolutions which were proposed and recorded on the journal of the legislative council on the day of the prorogation of the provincial parliament.

By the documents above mentioned Your Lordship will observe that the two branches of the colonial legislature entertain very different views in regard to the act in question; and this circumstance may perhaps be considered as an additional motive for the establishment of a commission in this country for the revisal of all the laws, French as well as English, now in force in the province, especially as it appears to be admitted on all lands that a very great degree of uncertainty prevails in regard to many legal points of the greatest importance to the interest of individuals, arising out of the present state of the laws.

I have, etc.

AYLMER.

The Right Honorable

Lord Viscount Goderich,
etc., etc., etc.

(Copy.)

DOWNING STREET, London, 17th May, 1831.

My Lord,

I am directed by Viscount Goderich to transmit to Your Lordship a copy of a memorial which has been received from Dr. Mills, relative to an estate which he holds in the seigniority of Sillery, which formerly belonged to the late Order of Jesuits, and of which he prays that a mutation may be allowed from the seigniorial tenure to that of free and common soccage.

Lord Goderich is not aware that there is anything objectionable in Dr. Mills' application; and as he is desirous, if possible, of forwarding his wishes, he has desired me to request that Your Lordship will facilitate the object which Dr. Mills has in view, should you be of opinion that no inconvenience would arise from a compliance with his request.

I have, etc.

R. W. HAY.

Lieut. General

Lord Aymer, K. C. B.,
etc., etc., etc.,

(Copy.)

To the Right Honorable Lord Goderich, etc., etc., etc.

The memorial of the Reverend Dr. Mills, of Quebec, in the province of Lower Canada,

Most respectfully sheweth :

That your memorialist, being proprietor of the small estate in the seigneurie of Sillery, formerly belonging to the late Order of Jesuits, applied in the year 1828 to the executive government of the province, for a change of tenure.

That your memorialist's application was founded on the clause relating to tenure in the Canada Trade Act, whereby any person holding lands of the Crown *en censive*, has a right to obtain from the Crown a release and commutation of all feudal burthens (paying the Crown an indemnity), and to get a grant *en soccage*.

That your memorialist was therefore not a little surprised at the question raised in the report of the council, 5th September, 1828 (a copy of which is subjoined), a report which, as Your Lordship cannot fail to perceive, while it disclaims any intention of militating against the view of His Majesty's government for a change of tenure of the Jesuits' Estates, suggests, at the same time, plausible arguments against any such change, but merely for the purpose of obtaining an explanation of a despatch in which the intentions of government were pretty clearly expressed.

The prayer of your memorialist is, that instructions may be given to the executive government of the province, directing that a commutation of tenure shall be allowed of lands held within the seigneuries of the Jesuits' Estates.

And your memorialist as in duty bound will ever pray.

T. L. MILLS, D. D.,
50, Sloan Street.

April 7th, 1831.

EXTRACT of a report made by a committee of the whole council, dated 5th September, 1828, on the petitions of Dr. Mills, praying that the lands held by him in the seignior of Sillery, part of the estates of the late Order of Jesuits, may be granted to him in free and common soccage; approved by His Excellency the governor in chief, in council, 6th September, 1828.

“ It appears to the committee that it will be most advantageous for the interest of the Crown to continue the Jesuits' Estates under the feudal tenure.

“ There are many Canadians who prefer the tenure *en roture* to that of free and common soccage, and as a large proportion of the seigniories of the province are in hands of Englishmen, and that many more will be, it seems to be most probable that the unconceded lands in the seigniories generally will, at no very distant day, be converted into free and common soccage tenures, and in such cases the Canadian applicants for grants in the seignior of the Jesuits' Estates would be numerous. It is also certain that by this means the proceeds of the Jesuits' Estates would be more immediately augmented, as the lands in the estates of that Order which remain to be settled are not of the best soil, and if the Canadians are not induced to take them by their attachment to their ancient tenure, they are the last which will be settled.

“ It is by no means the intention of the committee to militate in the smallest degree against any view which Her Majesty's government may entertain with respect to commutations of tenures in the King's seigniories; on the contrary, their object is to ascertain whether the direction contained in Lord Bathurst's despatch of the 30th October, 1826, which speaks only of future grants, is to be taken to extend to the seigniories of the late Order of Jesuits, and to commutation of tenure with respect to lands already granted within those seigniories as well as the future grants, and for this purpose the preceding observations are most respectfully submitted.

“ The committee therefore humbly recommend that all further steps upon this application be suspended until the pleasure of His Majesty's minister for the colonial department, with respect to it, shall be specified.”

(Certified)

(Signed)

GEORGE H. RYLAND.

Extract of a despatch from Governor General Lord Aylmer, to Mr. Secretary Stanley,

Dated Quebec, 5th March, 1834.

CANADA TENURES ACT.

“ It must be taken for granted that this subject was well and duly considered by His Majesty’s government before recommending it to the consideration of the imperial parliament; I will only therefore take the liberty of observing that, having been now for a considerable time in operation, the effects of the tenures act have become interwoven, to a degree which must unavoidably increase every day, with the concerns of the inhabitants of the province in relation to their property; and that the observance of extreme will therefore be necessary in making any attempt to alter or modify its provisions.”

(Copy.)

N^o 116.

GOVERNMENT HOUSE, QUEBEC, 22nd October, 1851.

My lord,

I have the honor to transmit herewith, with a view to its being laid at the foot of the throne, an address to the Queen from Her Majesty’s dutiful and loyal subjects the commons of Canada, in parliament assembled, praying that Her Majesty will be graciously pleased to recommend to the favorable consideration of the imperial parliament, the repeal of certain provisions in the Canada trade and tenure acts, relating to lands held “ *à titre de fief*,” in Lower Canada.

I trust that I shall be able in a few days to furnish Your Lordship with a report on the subject of this address.

I have, &c.,

(Signed)

ELGIN & KINCARDINE.

Rt. Hon. the Earl Grey,
&c., &c., &c.

(Copy.)

N^o 9.

DOWNING STREET, 6th April, 1852.

My Lord,

I have had the honor to lay before the Queen the address transmitted in your despatch, N^o 116, of the 22nd October last, from the legislative assembly of Canada,

praying for the repeal of certain parts of the imperial acts 3 Geo. IV, cap. 119, and 6 Geo. IV, cap. 59, on which my predecessor, lord Grey, had deferred taking any steps until the arrival of the report of Mr. attorney general Drummond, which has now reached me with your despatch, N^o 20, of the 5th ultimo.

2. Her Majesty's government will not fail to give their best attention to the subject of this address; but in the present state of public business, it is out of my power to undertake that the repeal of these acts will be proposed to parliament during the current session.

You will therefore be pleased to make known to the legislative assembly Her Majesty's answer to this address to the above effect.

I have, &c.,

(Signed)

JOHN S. PAKINGTON.

Rt. Hon. the Earl of Elgin and Kincardine, K. T.

&c., &c., &c.

(Copy.)

N^o 20.

GOVERNMENT HOUSE, QUEBEC, 5th March, 1852.

My Lord,

I have the honor to transmit herewith a communication which I have received from Mr. attorney general Drummond, upon the subject of the address of the legislative assembly, of the 29th August last, transmitted in my despatch, N^o 116, of the 22nd October, and praying for the repeal of certain parts of the imperial acts 3 Geo. IV, cap. 119, and 6 Geo IV, cap. 59.

2. The provisions of the above mentioned acts, to which the address of the assembly refers, have been the subject of reiterated complaint on the part of the popular branch of the local legislature, on the ground chiefly of their being unduly favorable to the seigneur, to the prejudice of the right which the intending settler had under the old tenure of demanding the concession of seigniorial lands, on the payment of the customary quit-rents and dues; and also, of the subject being one of internal arrangement, with which the imperial parliament ought not to have interfered. It is also to be observed that the applications for commutation which have been made under the acts have been very limited in number.

I have, &c.,

(Signed)

ELGIN & KINCARDINE.

Right Honorable

Earl Grey,

&c., &c., &c.

Upon the Address of the Legislative Assembly of the 29th August, 1851, praying for the repeal of parts of the Imperial Statutes 3 Geo. IV, cap. 119, and 6 Geo. IV., cap. 59,—Canada Trade and Canada Tenure acts.

CROWN LAW DEPARTMENT, QUEBEC, 26th February, 1852.

I have the honor herewith to submit for the information of His Excellency the governor general, several extracts made from the journals of the house of assembly of Lower Canada, shewing the opinions expressed, and the proceedings adopted by that body on various occasions with reference to the Canada Tenures act.

The object of the address, which it is now proposed to submit to the favorable consideration of the imperial authorities, is solely to obtain the repeal of those clauses of the acts in question which go to deprive the inhabitants of Lower Canada of the right of claiming unconceded lands in seigniories, upon the payment of a moderate annual rent, by enabling the proprietors of lands held *en fief* to commute them into a free tenure, even in cases where, under the old laws of the country, the waste lands so commuted would have been subject to forfeiture from the neglect of the olders to effect settlements upon them.

I would also beg respectfully to refer His Excellency the governor general to the report of the commissioners, who were appointed in 1835, for the investigation of grievances affecting Her Majesty's subjects in Lower Canada, where an opinion is pronounced in favor of the repeal of these enactments in the following terms:—

“ There is every reason to hope that whenever a better understanding may be established between the local legislature and the provincial government, 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 seignior, at least by voluntary agreement; and whenever such a measure may be passed, we have no hesitation in saying that, in our opinion, the tenures act of 1825, and the clauses in the trade act of 1822, which relate to tenures, 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.

(General report, cap. 4, sect. 20, page 63. See also preceding sections, from 7 to 20.)

The hope expressed by the commissioners that a measure for the gradual discharge of lands from feudal duties and services would be passed by the provincial government was fulfilled by the enactment of the optional commutation act, 8 Vict., cap. 42.

I have further deemed it expedient to annex to this report a certificate from the deputy provincial registrar, which, together with the returns made in 1833 and 1835, to be found among the accompanying abstracts from the journals of the house of

assembly, show the number of commutations which have been effected under these acts. From these statements, it will be perceived that commutations have as yet been effected in no more than nine seigniories. The rights acquired by the holders of these fiefs, as well as those of all others who have taken advantage of the facilities accorded to them by the imperial enactments, should of course be maintained, as suggested in the address now under consideration. The imperial parliament is not called upon to any interference with rights acquired under the enactments complained of, but to prevent individual holders of fiefs not yet commuted from availing themselves of the imperial statutes to deprive the *bonâ fide* settler of rights acquired by him under the preceding laws of Canada.

I must not omit to draw His Excellency's attention to that part of Lord Glenelg's instructions to the above commissioners, which relate to the tenure of lands in Lower Canada, from which the following extract is taken :—

“ I next proceed to the consideration of a subject which has given rise to long and embarrassing discussions between the executive government and the house of general assembly; I refer to the tenures on which lands in the province of Lower Canada are holden. Much controversy has prevailed, not only respecting the legal incidents of soccage tenure in that province, but also respecting the comparative advantages of holding land in fief and seigniority, or in soccage, and a question has arisen whether these controversies would be more properly adjusted by parliamentary or by provincial enactments. Convinced of the propriety of referring the whole subject to the provincial legislature, Lord Ripon embodied that principle in an act which was passed in the year 1831. It has been since maintained that the language of that statute is not sufficiently precise or copious to effect the real design of its author, and it has been strongly pressed on His Majesty's government that parliament should be advised to repeal the Canada tenures act of 1825.

On the whole of this subject, I am well convinced that the imperial legislature will adopt any measure *distinctly recommended to them by the legislature of Lower-Canada*. To advance any further, except at the instance of that legislature, and with a perfect assurance of its approbation, would be to disregard every lesson to be derived from the experience of past years.

(Signed)

LEWIS T. DRUMMOND,

Atty. Genl. L. C.

List of Seigniories, the tenure of which has been commuted under the provisions of the Imperial Statute, 6th Geo. IV, cap. 59.

Name of seignioriy.	Date.
Ste. Anne de la Pérade.....	28th December, 1830.
Beauharnois	10th March, 1833.
Lotbinière	21st December, 1835.
Madawaska and Témiscouata.....	5th December, 1838.
Mont-Louis.....	6th June, 1839.
Perthuis.....	7th April, 1841.
Rivière de la Magdeleine.....	8th March, 1842.
Pabos	8th March, 1842.
Anse du Grand-Etang.....	14th February, 1846.

(Signed,)

THOS. AMIOT,

Deputy Registrar.

Quebec, 26 February, 1852.

(Copy.)

Notes of the proceedings of the House of Assembly of Lower Canada, and extracts from its Journals in relation to the Canada Tenures Act.

The imperial act of the 3rd Geo. IV, cap. 119, commonly called the "Canada Trade Act," was made known to the colonial legislature by allusion to its passage in the speech of the Earl of Dalhousie, at the opening of the Lower Canada parliament, on the 11th January, 1823, in the following words :—

" Another act has also been passed regulating our trade with the United States of America, and our intercourse with Upper Canada, and providing for an adjustment of the differences subsisting between the two provinces," without any allusion to the two clauses thereof, (31 and 32), regulating the mode of effecting a change of the seigniorial tenure.

On the 25th of January, 1823, a copy of the above act was laid before the house of assembly, and on the 15th of February following, it was unanimously resolved by the house, on the motion of Mr. Stuart, seconded by Mr. Cuvillier, to take the said act into consideration by a committee of the whole house, on the following Wednesday.

February 19th. Committe sat and reported progress.

February 24th. Committe again sat and reported progress.

March 19th. House resolves to take into their most serious consideration, at an early period in the ensuing session, the act commonly called the "Canada Trade Act."

In the following session, the house having previously sat in committee of the whole house four times on the said bill, on

February 18th. Motion was made for an address to the governor in chief representing :

" That the unconceded lands held by the seigniors *en fief*, in this province, are held by them subject to be regranted to any applicant engaging to settle thereon, subject only to the accustomed dues and conditions, and that it is on grants of those lands that the cultivators of the soil in Lower Canada depend for the settlement of their children, they the said cultivators and their children having a legal right to obtain such grants."

That any arrangement which might be made under the provisions of the Canada trade act between His Majesty and the holders of such waste lands *en fief et seigneurie* would deprive a third party of a legal right, which is beneficial to the individual, advantageous to the community, and guaranteed by the capitulations of the colony, by an act of 14th Geo. III, (1774).

" That this house conceiving that it is a duty incumbent upon it to support, in so far as may depend upon the house, every right of its constituents, humbly represent the matter to Your Excellency, and pray that in any conditions which may be imposed on any seignior rendering lands under the said act, to obtain a grant thereof in free and common soccage, such conditions may be imposed on such seignior in conformity, to the said act, as may preserve entire the right of the subject to a grant of said waste lands, at the usual *redevance* or dues and conditions."

Consideration of motion postponed to 21st February.

Feby. 21.—Above motion lost by adjournment.

Same day.—A motion to appoint a committee of seven to draft an address praying for the repeal of said act, " inasmuch as it contains certain dispositions contrary to the rights and interests of the province," was negatived, 8 to 14.

Also, another motion for the appointment of a committee of seven " to enquire into and report upon the advantages or disadvantages resulting from the execution of the act 3 Geo. IV, cap. 119, to the constitutional rights and interests of the province," was made and carried, 14 to 13.

No report from this committee.

28th Feby., 1824.—The order of the day of 18th inst., then lost by adjournment, was revived, and the address then moved was unanimously adopted.

3rd March.—His Excellency's answer to address was communicated to the house.

" I shall pay every attention to the subject of this address when any exchange of the seigniorial tenure shall come under my consideration."

The Canada tenures act, 6 Geo. IV, cap. 59, was passed by the imperial parliament on 22nd June, 1825, and transmitted to lord Dalhousie by despatch dated August, 1825, and a proclamation fixing the terms upon which the commutations were to be effected, was published in the " Quebec Gazette " by authority of the 20th April, 1826.

In 1829, the legislature of Lower Canada passed an act, (cap. 77), " for rendering valid conveyance of lands and other immoveable property held in free and common soccage within the province of Lower Canada, and for other purposes therein mentioned," and reserved for His Majesty's sanction.

Before the royal assent was given to the above bill, the imperial parliament passed an act (30th March, 1831) intituled, " An act to explain and amend the laws relating to lands holden in free and common soccage in the province of Lower Canada." This act was published in the " Quebec Gazette " of the 22nd september, 1831.

On the 5th March, 1831, it was resolved by the house of assembly to take into consideration, by a committee of the whole house (on the 9th), the expediency of addressing the three branches of the parliament of the United Kingdom, for the repeal or amendment of the 6th Geo. IV, cap. 59.

March 9 }
" 16 } Consideration deferred.

March 24.—Order revived.

House in committee. Chairman reports following resolutions :

1. That the introduction of the English law into certain parts of this province, by an act, &c., (6 Geo. IV, cap. 59), without confirming all such transactions as had been previously entered into in good faith, has introduced the greatest confusion into all parts of the province, by destroying acknowledged rights and by affording facilities for fraud and oppression.

2. That the law of England, as introduced in certain parts of this province, in virtue of the said act, is opposed to the feelings of the inhabitants of this province, incompatible with their education and habits of life, and has been forced upon them contrary to their rights, interests and desires.

3. That the said act ought to be repealed.

The above resolutions were unanimously adopted, and a committee named to draft an address founded thereon, to be submitted to the King in parliament.

March 26.—Addresses to the three branches of the imperial legislature, founded on the above resolutions, were adopted by the house, and an address to the governor in chief, informing him of the same, and requesting him to transmit them to His Majesty's ministers, was also adopted.

It was also resolved,—That the speaker be desired to forward the addresses to the houses of lords and commons, and to see that they be presented according to the resolutions of this house.

28th March, 1831.—The speaker reported the governor's answer to the above address, promising in the usual forms to transmit it to be laid at the foot of the throne.

In the following session, December 20th, 1831, it was

Resolved,—That the house would, on the 27th, resolve itself into a committee of the whole, to consider the expediency of repealing in whole or in part the act, &c., (Canada tenures act), or adopting such legislative provision as may appear best calculated to secure to all His Majesty's subjects in this province, the right given to them by the ancient laws, of obtaining possession, without purchase, of sufficient portions of unconceded wild lands held from the crown *à titre de fief et seigneurie*, at the accustomed rates and dues, on condition of cultivation and residence thereon.

December 27th.—Committee reported progress.

January 24th, 1832.—Committee reported progress.

“ 27th.—Committee reported resolutions.

“ 28th.—The following resolutions, reported by the committee, were unanimously adopted by the house :

1. That by the laws of Canada, guaranteed to the inhabitants of the province by the capitulation of 1760, the act of 1774, cap. 83, and the constitutional act 31 Geo. III, cap. 31, they had 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 condition of cultivation and residence.

2. That the commutation of these lands into the tenure of free and common soccage, under the act 6 Geo. IV, cap. 59, deprives them of this right, and vests the said lands in the seigneur, to dispose of them on such terms and conditions as he thinks fit, at the same time subjecting those who may settle thereon to laws with which the great majority of the people of the province are unacquainted, utterly unsuitable to their circumstances, and repugnant to their feelings and usages.

3. That the provisions of the said law for the said commutation are unjust, and contrary to the established rights of the inhabitants of this province, to the extension of settlement, and to the general prosperity.

4. That it is expedient to repeal so much of the 3rd Geo. IV, cap. 119, and 6th Geo. IV, cap. 59, as provides for the commutation of lands held *à titre de fief* and *à titre de cens*, in this province, to be held in free and common soccage, subject to the laws of England.

On the same day Mr. Neilson obtains leave to bring in a bill to effect the repeal mentioned in the 4th resolution.

Introduced and read 1st time.

January 31st. Read second time and ordered to be engrossed.

February 1st. Read 3rd time and sent to the legislative council.

February 16th. House resolved, on motion of Mr. Neilson,

That an humble address be presented to His Excellency the governor in chief, with a copy of the resolutions of this house of the 28th January last, upon which the bill passed by this house for the repeal of the clauses of the act passed in the parliament of the United Kingdom, authorizing the commutation of lands held *en fief et seigneurie* into free and common soccage, was founded, praying that His Excellency would be pleased to take the same into favorable consideration, and that until such repeal is effected, he would give directions to the law officers of the Crown to support, in all cases, where a commutation of tenure of seigneurie is prayed for, the right of all His Majesty's subjects in this province to obtain concessions of waste lands in the seigneuries, at the accustomed rates and dues, on condition of actual settlement, and oppose, under the 1st and 7th clauses of the act 6th Geo. IV, cap. 59, the making of any fresh grant of such lands, unless the said rights be maintained and reserved, and that without such condition no fresh grants of such waste lands be made.

February 25th. By message His Excellency "expresses his regret that the interval of time between the presentation of the said address and the close of the session, has been too limited to enable him to give to the subject of it the degree of consideration necessary to enable him to come to a decision on a question of so much importance.

"He requests the house to be assured, that he will continue to give to the subject of their address his best consideration, with every desire to comply with their wishes in as far as the provisions of existing statutes will authorize him to do."

During the next session, on the 24th November, 1832, an address was voted to the governor in chief, with reference to the address of the 17th February, respectfully inquiring of His Excellency, whether, in the interval which had elapsed, he had been enabled to place himself in a situation to give any new information on the subject, praying him, in that case, to be pleased to communicate the same to the house.

On the same day another address to His Excellency was adopted, praying for a list of all applications made to government for a mutation of tenure under the 6th Geo. IV, cap. 59, whether by seigneurs holding *fiefs* from the Crown, proprietors of *arrière-fiefs*, or of censitaires, &c., &c.; also a list of all oppositions, remonstrances or memorials which may have been presented, &c.

On the 7th December, the governor in chief, by message, "assures the house that in every instance where he may be called upon to give effect to the Canada tenures act, he will not fail to require the complete fulfilment of every provision of the law."

On the 22nd March, 1833, the documents requested by the address of the house of the 24th November, 1832, were laid before them as follows :

(*Vide Appendix K. K. 1832,-33.*)

On the 20th November, 1835, in reply to an address of the house of the 10th of the same month, a continuation of the above list, up to the 13th November, 1835, was laid before the house, and which is as follows :

(Journal, page 175.)

27th February, 1836. The house, on motion of Mr. Morin, resolved to consider, in committee of the whole, the expediency of repealing, in whole or in part, the Canada tenures act.

On the 1st March, 1836, the house again passed the resolutions adopted on the 28th January, 1832, and Mr. Morin brought in a bill to repeal certain parts of the 3rd Geo. IV, cap. 119, (Canada Trade Act), and of 6th Geo. VI, cap. 59 (Canada Tenures Act.)

March 3rd. Second reading.

“ 4th. Read third time and sent to the legislative council.

The 56th, 57th, 58th, 59th, 60th and 61st of the 92 resolutions of 1834 relate to this subject, and the 62nd concludes :

“ That it is the duty of this house to persist in asking for the absolute repeal of the said tenures act ; and until such repeal shall have been effected, to propose to the other branches of the provincial parliament such measures as may be adapted to weaken the pernicious effects of the said act,” and in the address founded on those resolutions the effect of the tenures act is minutely treated of.”

(N^o 670.)

DOWNING STREET, 27th December, 1851.

My Lord,

I have the honor to transmit for the consideration of Your Lordship, and of your executive council, the accompanying copy of a letter which I have received from the right honorable Edward Ellice on the subject of an act brought into the Canadian parliament in its last session, but which, it appears, was afterwards withdrawn, relative to seigniorial rights in Lower Canada, together with a copy of the answer which I have caused to be returned to Mr. Ellice's letter.

I am, &c.,

(Signed,)

GREY.

The Right Honorable

The Earl of Elgin and Kincardine,

&c., &c., &c.

ARLINGTON STREET, 10th December, 1851.

Sir,

I request you will bring under the consideration of the secretary of state for the colonies, the enclosed copy of a bill brought into the legislature by the solicitor general of Lord Elgin's government in Canada, under the title of "An act to define certain rights of seigniors and censitaires in Lower Canada, and to facilitate the exercise thereof."

This bill, under the pretence of defining certain rights of seigniors in Canada, is in reality for the confiscation of such rights, and, as is alleged in Canada, is brought in more with a view of influencing votes at a general election, by holding out inducement to tenants to vote for candidates willing and able to release them from their engagements than, as it would appear, from any semblance of reason or of expediency, on which an act of direct spoliation could be suggested.

My family and myself have been interested in, or in possession of, the largest and most valuable seigniorship in Canada for the last 70 years.

I made an arrangement with the local government, under the act of parliament of 1825, now nearly 30 years ago, for a commutation of the tenure of the unsettled land, binding myself, among other conditions and according to the provisions of the act, to commute the seigniorial rights and rents of any tenant who should desire the conversion of his tenure, on such terms as should be determined by arbitration named by both parties, or by arbitration named in the court of Queen's bench in the colony.

The rents on the different farms vary from 2d. to 6d. an acre. I think the largest proportion are at 6d. The rents are covenanted for in written leases, signed by both parties, and passed before and recorded in the offices of notaries public, which have been frequently matter of proceeding and judicial determination before the courts of justice in the province, where their provisions have invariably been enforced. It is now sought, for the first time, and certainly in a manner and on principles unknown to the legislature of any country in the world except in France during the first revolution, to release the tenants from their engagements, and to confiscate the rents of the proprietor by an act of the provincial legislature. The same complaint has been made of perpetual leases and of any ancient modes of tenure in the adjoining state of New York, in our colony of Prince Edward's Island, and in other places. Propositions have been made for their abolition or regulation, but only in the colony of Prince Edward's Island without adequate compensation to the proprietor. The government have lately, it is understood, disallowed the act passed in that case although of much less violent character.

Recourse would be had to the supreme court of the United States against a similar attempt on the part of the legislature of any separate State in America. In the colo-

nies, the subject can only look to the protection of the Crown, when parties in the legislature, excited by circumstances of the moment, disregard the sacred rights of property on any supposed view of expediency, or in seeking for popularity to promote their political objects.

It is on this ground that I trouble you with this application.

The secretary of state will have no difficulty in forming his opinion on the import of the provisions of the act. It is scarcely necessary to point out particular claims to his attention, all being more or less of the same character ; but the clause 34, relieving tenants from voluntary engagements, and which, to my knowledge, they have punctually performed during half a century, is probably the most striking.

The bill, after passing the second reading, was withdrawn, but notice was given by the solicitor general of re-introducing it in the first session of the new parliament. A canvass and election are now proceeding in the various seigniories on the faith of candidates returned by the tenants voting for it.

Having brought the matter under the notice of the secretary of state, I have no disposition to suggest any course with respect to it. His Lordship may probably consider it right to express his opinion to lord Elgin, whether it is consistent with the honor of the Crown, or the claims which the subject has to its protection, that his government should encourage an agitation on this subject, by re-introducing a bill to which it would be impossible for the Crown to give its assent.

By the last accounts tenants are paying their rents as heretofore, but the agent expenses great doubts as to the state of things which further agitation might produce.

I have, etc.,

(Signed)

EDWARD ELLICE.

T. F. Elliot, Esq.,
etc., etc., etc.

(Copy.)

DOWNING STREET, December 30th, 1851.

Sir,

I have laid before Earl Grey your letter of the 10th instant (addressed to Mr. Elliot), bringing under His Lordship's consideration a bill which had been brought into the Canadian parliament, in its last session, but afterwards withdrawn, intituled : " An act to define certain rights of seigniors and censitaires in Lower Canada, and to facilitate the exercise thereof."

Lord Grey directs me to acquaint you in reply, that the bill to which you refer has not yet been brought under His Lordship's notice by the governor general of Canada. It is impossible, therefore, for His Lordship to express any opinion, or to advise Her Majesty to interfere with respect to the bill in question, and as to which it is uncertain whether it will pass at all, or if so, in what shape. Lord Grey is, however, persuaded that, in legislating upon a subject of so much difficulty and importance, the provincial legislature will proceed with due caution and deliberation, and that a great majority of its members will be found too enlightened, to understand too well the true interests of the province, and the shock which such a course would give to its rising credit and prosperity, to pass a law which, on examination, would prove to be inconsistent with a scrupulous regard to justice to individuals, and the rights of property.

Lord Grey has a proof that it was not the wish of the leading members of the assembly, which has just been dissolved, to legislate upon this subject, without a careful inquiry into the rights which might be affected by doing so, in the fact that an address has been presented to the Queen from the assembly, praying for Her Majesty's assistance in obtaining a variety of information calculated to throw light on the subject of the feudal tenure in Lower Canada. If, unfortunately, the new house of assembly should proceed to pass an act which would, in your opinion, involve such a violation of private rights as would justify parties similarly aggrieved in one of the states of the American Union in seeking redress in the supreme court of the Union, it would be open to you to bring any objection which you might entertain to its confirmation, under the notice of Her Majesty's government, nor would Her Majesty be advised to confirm any act against which such objections had been urged, until they had been fully considered, and if established, the royal assent would be withheld.

Lord Grey will transmit a copy of your letter and of this reply, for the consideration of the governor general and of his executive council.

I have, etc.,

(Signed)

F. PEEL.

The Right Honorable
Edward Ellice,
etc., etc., etc.

(Copy.)

DOWNING STREET, 19th June, 1852.

N^o 37.

My Lord,

I transmit for Your Lordship's consideration the copy of a letter which I have received from colonel Gugsy, who has arrived in this country, deputed by a body of sei-

gnieurs interested in landed property, to appeal against attempts which they apprehend will be made in the provincial parliament to interfere with their rights.

On this subject it is only at present necessary that I should express my entire concurrence in the observations contained in the letter addressed by earl Grey's direction to Mr. Edward Ellice, which formed the enclosure in His Lordship's despatch n^o 670, of the 31st December last.

I have, etc.,

JOHN S. PAKINTON.

The Right Honorable
The Earl of Elgin and Kincardine,
etc., etc., etc.

(Copy.)

65, STAFFORD PLACE, PIMLICO, 7th June, 1852.

SIR,

I have arrived in this country from Canada, deputed by a body of seigneurs interested like myself in landed property in that colony, to make an appeal to the British government against attempts made in the provincial parliament at Toronto, and the renewal of which is threatened at the approaching meeting thereof at Quebec, to deprive them of rights secured by law, and of which they have been in undisturbed possession since the annexation of Canada to Great Britain.

I pray you will be pleased to admit me to an audience, at which I may more fully explain the grounds for this appeal, but in order that you may be previously aware of the exact nature of our grievance, I beg to submit the following statement on behalf of the interests I represent.

In the course of the session before the last of the provincial legislature, the following resolution was referred for consideration, to a select committee :

10. *Resolved*,—That the seigniorial tenure in Lower Canada is a matter of public concern, which it is the duty of the provincial legislature to take into consideration, more especially now that the subject has attracted the public attention in a high degree; and that it is therefore important to effect, at as early a period as possible, the conversion of the said tenure into a free one, taking care that all the interests concerned are protected and equitably adjusted.

After considerable investigation into the origin and progress of the settlement of the seigneuries, and of the various laws and edicts of the French Government respecting them, the solicitor general, Mr. Drummond, chairman of the committee,

introduced the bill, of which I have the honor to enclose a copy. The bill was read a second time and then dropped, in consequence of the approaching termination of the session.

This measure, as you will see from a perusal of its provisions, instead of providing for a commutation of the feudal tenure, the object of the resolution, enacted an unconditional confiscation of a large portion of the rent, without even the semblance of compensation, either from the tenants or the public. By one of the clauses, all tenants in Lower Canada were absolved from their written engagements voluntarily entered into with the formalities required by law. We venture to assert that no legislative measure of so violent and immoral a character has ever been proposed to, or sanctioned by, any legislature except, possibly, by the French convention in 1789, and most assuredly has never been attempted by any parliament or colonial assembly under the authority of the crown of Great Britain.

We have reason to believe that the attempt was made from the expectation that such a measure might render the parties supporting it popular with the tenants and electors in the seigneuries at the then approaching elections for the present assembly. It is from the engagements of these parties to re-introduce the bill in the approaching session and our knowledge of the extreme lengths to which they are prepared to carry their views, that we feel ourselves compelled to throw ourselves on the protection of the English government. If we were to wait till such a bill, proposed with the sanction of the governor general, passed the legislature, the expectations it would raise among the tenants (and the subsequent disappointment from its necessary disallowance by the crown, for we cannot permit ourselves for an instant to doubt the disallowance) would throw the whole country into discontent and confusion.

The enclosed bill had not even the merit of providing for a commutation of those feudal restrictions which all parties admit to be objectionable in the present circumstances of the colony. The perpetual rent varying generally from two pence to six pence an aere, and in some few instances raised so high as eight pence,—so far from being an evil in a new country, is a much less onerous engagement to the settler than the payment of a capital equivalent to it. It is less than half the interest on the amount now required by this government as the minimum price of wild lands in the colonies. The real evil in Canada is the fine on mutations, varying and increasing with the increased improvement of the country, the *droit de mouture* and other restrictions of that character.

For these grievances the bill proposed no remedy.

The pretext on which an attack was made on rent, was that the seigneurs were restricted by the terms of their original grants from exacting a higher rent than a certain tariff fixed by the obsolete edicts of the French government.

This has been a fruitful topic of agitation by all demagogues for the last fifty years—and has led rarely, probably in ten or twenty cases, to attempt at resistance to the payment of the covenanted rent, by tenants urged by those parties to appeal to the courts of law on the question.

From the first suit of this description to the last, (decided by the superior court of Lower Canada in January last), the judges have invariably and unanimously sustained the validity of the leases, and the legal rights of the proprietors. I refer you for confirmation of this fact to the case of *Langlois vs. Martel*, at page 36 of the Lower Canada Reports, officially published and enclosed herewith.

By way of example, I submit also that my family have held the three seigneuries of Grandpré and Dumontier and the half of Grosbois for about ninety years. These properties were purchased, immediately after the conquest, by my great uncle, at that time an officer in the English army, and from that period our rents have invariably been paid without dispute.

Admitting the policy of some equitable settlement of the feudal tenure, we humbly submit that even if it was justifiable to determine legal rights in this manner by legislation, this act of simple spoliation would be of no benefit to the tenants without ruining the landlords, thus entailing irreparable loss not only on their creditors, but on the community at large, and holding out, as you will admit, an evil example susceptible of imitation elsewhere.

A perusal of the clauses of the bill, especially of the 34th, releasing tenants from their written contracts, (indeed all the clauses are of the same tenor), will enable you to judge how far we are justified in characterising this proceeding in the terms I have ventured to apply to it.

The seigneurs, so far from objecting to any measure for a commutation of their rights, and the abolition of the feudal tenure on equitable conditions, are as much satisfied as any other class of the community of the expediency of such an arrangement. The conditions imposed for this purpose by the Canada Tenures Act, passed in 1822, on proprietors obtaining a commutation of their tenures from the Crown, seem to be equitable, and might be extended with great advantage to all cases of estates, whether held under old or new tenures.

These conditions entitled every tenant desiring to be released either from rent, fines or droits, to a free and common soccage title, on payment of a compensation for the rights of the seigneur, to be fixed by arbitrators mutually chosen; or, failing the appointment of arbitrators on the part of the proprietor, by arbitrators named by the court of Queen's Bench. But whether in this way or in any other, the whole body of proprietors are more than desirous to meet the wishes of the local government for a commutation of the tenure on fair and equal terms; such an arrangement, however, they humbly submit, must be preceded by and based upon an acknowledgment of their legal rights, admitted by the courts of justice and confirmed by prescription since the British possession of Canada. I venture to suggest further that the greatest difficulty in arriving at a settlement of this complicated question will arise out of the indifference of the tenants of French descent, if not from their preference for the present tenure, and it is a fact that few or none of them have availed themselves of the provisions of the above mentioned act, nor has a single case of a commutation of tenure under it taken place at their instance, to my knowledge.

I have taken the liberty of troubling you at length with this statement of the case which I am deputed to represent to you, in order, in the first place, to put you in possession of the facts on which I desire the honor of a conference, and in the second to support an appeal to the justice of Her Majesty's government, that instructions may be sent to the governor general of Canada to withhold his sanction from the introduction of any new bill of a similar character with that proposed, as I have said, by Mr. Drummond, or which may contain provisions inconsistent with public faith, the rights of property, and the principles by which both are secured in the legislation of this country.

I have, etc.,

A. GUGY.

The Right Hon.

Sir John S. Pakington, Bart.,
etc., etc., etc.

(Copy.)

N^o 33.

DOWNING STREET, 29th June, 1852.

My Lord,

With reference to earl Grey's despatch n^o 670, of 27th of December, I have the honor to transmit to Your Lordship, with a view to its being brought under the consideration of your council, the copy of a representation which I have received from Mr. Peter Burnet, upon the subject of two bills introduced, last session, into the provincial legislature, affecting seigniorial rights and the tenure of land in Canada.

I have, etc.,

(Signed)

JOHN S. PAKINGTON.

The Right Honorable

The Earl of Elgin and Kincardine,
etc., etc., etc.

(Copy.)

NICE, Italy, 29th April, 1852.

SIR,

I have the honor to address you on the subject of a heavy grievance and injustice, to which I and other persons holding seigniories in Lower Canada are exposed, in regard

to which an appeal to the British government has become necessary for the protection of the rights of property in that colony. I am desirous to plead the urgency of the case as an excuse for bringing the subject under your notice at the present moment. Two bills were introduced into the house of assembly during last session, one of which to define certain rights of seigniors and censitaires in Lower Canada, and the other to facilitate the redemption of seigniorial rights, and to convert the tenure of the lands into that of *franc-alleu roturier*. Under the influence of circumstances, the breaking up of the Lafontaine ministry, the leading members of which were opposed to many of the provisions of these bills, the question of the clergy reserves, and the re-construction of a mixed ministry, several of the members of which hold very extreme opinions; these two bills are now again about to be brought forward by the present attorney general, and assequently, under the system of self-government now accorded to the colonies, will pass into law, unless the governor general be instructed to withhold his assent, and, by the exercise of the prerogative of the Crown, reserve these two bills for the consideration of the authorities in England.

I hold extensive property in Canada, having at one time been a member of the house of assembly for the city of Quebec. One part of my property is a seigniori granted by the King of France, and liable to *foi* and *homage* to the Crown. Another part of my property I hold as a free gift and grant of a very old date, and I submit my own case, which, however, assimilates to that of the others seignior in Lower Canada, as almost all the seigniors hold their properties under the one or the other of these titles, which titles are enregistered in the *Registre d'Intendance*, at Quebec, and are not contested.

By the enactments of the bills now under consideration, the compensation to be given to the seigniors for the rights and privileges they are required to surrender and give up, is to be estimated, valued and paid for in a manner utterly unjust and contrary to the evidence of the attorney general (Ogden) and of the solicitor general (O'Sullivan), as given in the year 1836, is not only quite inadequate and far less than recommended by the commissioners of grievances in their general report in 1836, and even then the compensation granted to the seignior in France, when under the influence of the Revolution, the *régime féodal* was done away with in 1789-90; but the seigniors in Lower Canada are now about to be deprived of a part of what has hitherto been recognized as their property and their right, and which property is virtually to be confiscated by the provisions of these bills, and without any compensation being given to the seigniors.

That part of my property originally granted as a free gift and not under the seigniorial title, is about to be held liable to the enactments of those bills, to which I do not object, as such lands, although not liable to *foi* and *homage*, or to any fine to the Crown, have hitherto been treated as seigniories by the custom of the country and under the maxim of French law: *nulle terre sans seigneur*; but while this maxim is held to be valid and is about to be adopted so as to bring these lands under the provisions of those bills, it is nevertheless to be abrogated and set aside, as regards the rights and privileges of the proprietor of the lands, and who is to be deprived of the

rights of property and privileges such as unquestionably appertained to such lands and property, when held under the same maxim of law in France, and which rights of property have always been freely exercised under the sanction of the law and custom of the country, and continued to be so exercised up to the present time.

I am aware that these harsh proceedings and legislation in favor of one class only may appear to be so extraordinary as to seem exaggerated, and even to create doubt, but I appeal to the chief justice of Canada, sir James Stuart, bart., who, I trust, may not yet have left England, and who, I am confident, will establish to the full extent these facts, and as more clearly detailed in a statement I have the honor to transmit herewith. All that I ask and desire is that justice be done, that when I am required to give up my property and my rights for the public good, I receive a moderate but equitable compensation for that of which I am deprived, and that no part of my property held by myself and my predecessors, under the sanction of the law and custom of the country, and in perfect reliance on the good faith of the government and of the Crown, shall now be confiscated, and I earnestly appeal to the British government to prevent this gross injustice and violation of the rights of property.

Many years ago, when a bill of the imperial parliament was under consideration for the purpose of settling the question of the tenure of lands in Lower Canada, I had frequent conference with the secretary of the province, then in London, and by desire of the governor general, whose intimacy I had the honor to enjoy, I furnished a variety of information on this and on other subjects connected with Canada, and my name was at that time sufficiently known at the colonial office, where I was requested to attend while some of those matters were under consideration; it may, however, now be necessary for me to refer to any gentleman of old standing connected with Lower Canada, or to the present lord Panmure, who is aware of the position I held in that country and in England, to the hon. admiral Gordon, M. P. for Aberdeenshire.

I have, etc.,

PETER BURNET.

The Right Honorable
Sir John S. Pakington, Bart.,
etc., etc., etc.

(Copy.)

MEMORANDUM

The undersigned having resided for many years in Canada acquired a large extent of property in that colony.

One part of this property, as appears by titles registered in the registre d'intendance at Quebec, in the year 1723, is a seigniorie granted by the King of France, with the

rights of haute, moyenne and basse justice, pêche and chasse, and liable to foi and homage to the Crown.

Another part of his property, as appears by titles enregistered at Quebec in the year 1637, is a free gift and grant, liable to no such conditions, and this grant is not a titre de fief et seigneurie, but by the law and custom of the country, such grants of land, whether made before or since the conquest, have been treated as liable to the seigniorial tenure, under the maxim of French law, nulle terre sans seigneur.

It has been the custom of Lower Canada to concede to censitaires or tenants in perpetuity, the lands in the seigniories liable to very low rents, and to lods et ventes, or a fine of one-twelfth of the value on each mutation of sale, and by an arrêt of the King of France of 1711, it was rendered compulsory in the seigniors to concede their lands without requiring any sum of money by reason of the said concession, but by another arrêt of the King of France of the same year and date, 1711, such concessions and grants are to be made only for actual settlement and improvement; if the censitaire or tenant did not reside on and improve the lands so conceded within a year and a day, the farm or grant became reunited to the domain of the seignior.

The undersigned, and the seigniors generally, have not exacted any sum of money by reason of the concession of their lands, but complaints have been made that there are cases where seigniors have attempted to do so, and although such cases were sought for over the whole space of time since the conquest, are found to have been extremely rare and to have been corrected under the law and custom of the country, a kind of excuse has been given, and as many of the censitaires or tenants have become wealthy in consequence of the very low annual rents they have been subject to, they are now desirous of no longer being held liable to pay to the seignior lods et ventes, or a fine on mutation by sale, and under these circumstances two bills were introduced during the last session of the house of assembly, the one to define certain rights of seigniors and censitaires in Lower Canada, and the other to facilitate the redemption of seigniorial rights, and to convert the tenure of the lands into that of franc roturier, and fixes the indemnity to be given to the seignior as compensation for rents, lods and ventes, and other rights and privileges he is required to surrender and give up. The undersigned, from some experience, and having been a member of the house of assembly for the city of Quebec, is strongly of opinion that the seigniorial tenure is far the most advantageous for the settlement of a new country, and more especially where the inhabitants are habituated thereto; but if a change of tenure be supposed by the legislature to be for the public good, he and many of the seigniors do not complain or remonstrate, all they ask or desire is an equitable, fair and just compensation for that of which they are to be deprived and are required to surrender and give up, and the object of the present is to shew clearly and beyond all manner of doubt, that many of the provisions of these bills are harsh and unjust towards the seignior, a violation of the rights of property by arbitrary legislation in favor of one class only, and contrary to the welfare of the colony by throwing the whole of the unconceded lands into the hands of land jobbers and speculators unconditionally. One arrêt of the King of France of the year 1711, for the protection of the censitaires or

tenants is held to be in force ; while another arrêt of the King of France of the same date, for the protection of the seigniors, is abrogated or rendered unavailable, and the seigniors are by express legislation to be compelled to grant their unconceded lands to all persons who may demand of them, and without any condition or obligation whatsoever, as to residence on, or the improvement of the lands, unless such conditions as contained in the original titles of the seignior, and even in that case, the parties who have enforced the concession to them of such lands, are to be considered as residing thereon, if they occupy any other land, lot, or emplacement, within a distance of 10 leagues from the lands so conceded. It was stated in the house of assembly by the present attorney general that the seigniors who held seigniories *à titre de haute justice* probably enjoyed certain rights and privileges in their quality as high justiciars and not as seigniors, and that their rights ceased to exist after the conquest when justice became vested in the Crown ; this assertion was, however, avowedly a mere speculative opinion, and as many of the grants of land in Lower Canada are not *à titre de fief et seigneurie* by the original titles, consequently those grants, if seigniories at all, can only be held liable to the seigniorial tenure under the maxim of French law *nulle terre sans seigneur*, the proprietor of the lands so held is justly and equitably entitled to the rights, privileges and property, as conferred by the tenure to which it is held to be liable, and not being a high justice, could not by possibility have lost the rights consequent on that title. By the preamble of the bill to define the rights of seigniors and censitaires, it is assumed that certain acts have been done in violation of the conditions under which the original grants of the seigniories were made ; the arrêt of the King of France of 1711, in relation to lands in Canada granted as seigniories, and the same powers are to be conferred on the superior court of Lower Canada, as the powers heretofore exercised by the governor and the intendant. But several enactments of this bill go far beyond the declaration in the preamble, and in direct terms confiscate the property on the unnavigable rivers, and the timber on the lands ; both of which rights and property, incontestibly and beyond all manner of doubt, appear to have formed part of the property of the owners of land in France, not granted as seigniories, but held liable to the seigniorial tenure, under the maxim of French law, *nulle terre sans seigneur*, in the same manner as similar grants of land in Lower Canada have been held liable to the same tenure under sanction of the law and custom of the country.

The effect to result from this legislation palpably is, that practically the proprietors of extensive properties in Lower Canada are held to be liable to the conditions of a certain tenure, but are arbitrarily to be deprived of the rights of property such as hitherto at all times freely exercised under sanction of the law and custom of the country, as consequent on the same tenure, and are not to be compensated for that of which they are so deprived.

That part of the property admitted by these bills to remain vested in the seignior, or persons holding lands under the seigniorial tenure, is to be estimated, valued and paid for on a change of tenure in a manner utterly contrary to equity and justice, and in favor of one class only.

The compensation thus to be awarded to the seignior on a change of tenure is not only rendered very precarious and uncertain, but has no direct relation to the actual and real value of the property, is infinitely less than what was recommended as a just and fair arrangement by the Canada commissioners in their general report in 1836, and is founded on principles entirely contrary to the evidence of the attorney general Ogden and solicitor general O'Sullivan, as annexed thereto, and to the more equitable manner of which the real value of such seigniorial property was established in France, when the *régime féodal* was done away with at the commencement of the Revolution in 1789-90. By the enactments of the bills as now proposed in Canada :

1st. The annual rents are to be estimated by the present rental which is taken to represent the interest of capital at 6 per cent, and thus an annual and increasing rent of £12 is taken to represent £200, which is redeemable at the option of the tenant, but not of the seignior.

In France, although the *régime féodal* was abolished in revolutionary times, the rents were valued at 20 and 25 years purchase, and thus a rent £12 per annum would represent £300 capital payable the seignior, a much more equitable arrangement than that proposed at the present moment in Canada.

2nd. The *lods* and *ventes*, or fine of one twelfth of the real value, payable to the seignior on each mutation by sale, is to be estimated by taking the receipts of fourteen years, and after deducting the receipts of the two highest and two lowest years, then assuming the average of the remaining ten years as the value of the income of the seignior, and to represent the interest of capital at 6 per cent, redeemable at the option of the censitaire or tenant, but not of the seignior, and distributed in proportion to the lands of the whole seignior. This tortuous and confused mode of estimating and valuing a revenue derived from so extremely fluctuating and increasing a source as a fine on each mutation by sale, is palpably unjust and a mere lottery, depending entirely on the accidental circumstance of whether large sums have been paid in two, or the same amount has been paid in three or more years, and a seignior having a seignior or seigniorial lands of ten times the value, and having actually received ten times the amount of income for fourteen years, may nevertheless actually receive less compensation under these bills than a seignior having a seignior of only one tenth of the value, but where the payments of *lods et ventes* have happened to be made differently.

The rents of lands are excessively low, and great source of seigniorial revenue is the *lods et ventes*, or fine due to the seignior when property is sold, and thus from its nature the receipts from *lods et ventes* are liable to very great fluctuation, but of vastly increasing value, and the estimation and valuation to take place under the enactments of these bills, has in fact no relation to the actual and real value of the seignior's property, and the amount so estimated and again revalued, by being converted into capital at 6 per cent interest, is not only quite inadequate, but is arbitrary and unjust, as not being founded on the real and actual value of the rights and property the seignior is required to surrender and give up for the public good, and is in direct contradiction to the opinions of the attorney general Ogden and solicitor general O'Sullivan, as given in their evidence to the Canada commissioners of 1836.

A seignior, who for the last fourteen years has received of *lods et ventes*, or fines on sales within his seignior, an amount of £1,600 in four payments, would have an

average annual income of about £115 per annum, which by this arbitrary and oppressive plan of estimation and valuation would be reduced to about £80 per annum, by deducting the two highest years, and which sum of £80 per annum being taken as representing the interest of capital at 6 per cent, would amount to about £1,333, while the average income actually received by the seignior of £115 per annum, from a source of vastly increasing value, taken at something more near to its actual value and real value and as representing the interest of capital at 4 per cent, would amount to about £2,875. considerably more than double the compensation as proposed to be awarded to the seignior.

In a note attached to the general report of the Canada commissioners of 1836, it is suggested that, on a change of tenure where voluntary on the part of the censitaire, in no case ought the commutation fine to be less than one ordinary fine or *lods et ventes*; on the contrary it ought to exceed the amount of such fine by the present value of all the reversionary fines to which, if the tenure remained unaltered, the land will be subject, and that taking in consideration all the circumstances, it perhaps may be found that in voluntary commutations of one-tenth of the actual value of the property will be sufficient compensation to the seignior for the rights which he surrenders; but that in this allowance no estimation is made for rents or any other feudal burthens beyond *lods et ventes*, and that the rents may be easily calculated and redeemed at so many years purchase, or they might be left as a charge on the property. By this calculation, however, the amount to be paid to the seignior is avowedly decreased under the supposition that, as lands granted as seigniories with the rights of *haute justice*, etc., etc., are liable to or a fine to the Crown on mutation by sale, this claim would be given up by the Crown, and the benefit to arise from the remission by the Crown would thus be divided between the censitaire and the seignior; it is therefore quite evident and clear that, where lands are held under the maxim of law: *nulle terre sans seigneur*, and consequently are not liable to any fine to the Crown on mutation by sale, the seignior, on a change of tenure by the censitaire, is equitably entitled to a proportionate increase of compensation for the difference in the value of that which he is required to surrender and give up.

In the evidence of the attorney general and of the solicitor general it is recommended as equitable and just that the actual value of the property liable to *lods et ventes* be ascertained by *experts* or arbitrators. In France, when the *régime féodal* was done away with, the valuation of the seignior's property subject to *lods et ventes* on a change of tenure was taken as that of the last sale if within ten years, and if no sale had taken place within that term, and that the seignior and his tenant had not come to an agreement, then the actual value was ascertained by *experts* or arbitrators.

3rd. The seigniors in Lower Canada who hold their seigniories of the Crown, and also the proprietors of large grants of land not granted *à titre de fief seigneur*, but held to be liable to the seigniorial tenure under the maxim: *nulle terre sans seigneur*, have hitherto held and exercised the right of property in the timber on the lands and control thereover, as completely and entirely as in and over any other property or real estate whatsoever; this property is nevertheless to be confiscated to the seignior or the

proprietor. The timber on the unconceded lands of the seigniories in France, appears not only to have been considered of a domanial nature, but when under *les ordonnances des eaux et forêts* of 1669, which continued in force 1792. Timber was taken for the royal navy, the seigniors were paid the value of the timber so taken, and it seems quite incontestable and beyond all manner of doubt that, where property was held to be seigniorial under the maxim : *nulle terre sans seigneur*, the right of property in the timber on the lands was just as entirely and completely vested in the proprietor of the lands as the right of property in any other immoveable or real estate whatsoever.

4th. By these bills the seigniors in Canada are deprived of the control over unnavigable rivers, within their seigniories, and of the property in the beds of such rivers, thus summarily and arbitrarily interfering with the rights of property, and assuming as a fact and legislating on, that which is not only very doubtful, but has created so much difficulty as not to be settled in France up to the present time ; and while this enactment is to take place in Canada, from the avowed reason that possibly those seigniors who were high justices in Canada, held some of their rights and privileges as high justices and not as seigniors, yet the same enactments are rendered applicable to lands and rivers held under the maxim of law *nulle terre sans seigneur* where the seigniors or proprietors were not high justiciars, and under which tenure, in France, all such property appears beyond all manner of doubt to have been held as fully and entirely as any other property or immoveable whatever.

5th. The undersigned and his predecessors have erected extensive and valuable saw mills, and under sanction of the law and custom of the country have at all times freely exercised the right of property in the timber on his seignior and lands, but by the enactments of these bills the seignior or proprietor is deprived of the right of property in the timber on his seignior and lands, and consequently those extensive and valuable saw mills will in fact virtually be confiscated. The arrêt of the King of France of 1711, for the protection of the seignior, and to enforce the actual settlement and improvement of the country, being abrogated, or set aside by those bills, and the granting unconditionally of the unconceded lands to all who may demand of them rendered obligatory on the seignior, it inevitably follows that land jobbers and speculators are to be empowered to demand the concession to them of the whole of the lands on which there is timber, and without any intention of the improvement or settlement of those lands, but for the express purpose of cutting and selling the timber, leaving the lands denuded and waste, and this deteriorated, no longer in a fit state to be conceded for actual settlement and improvement, and the seignior without any recourse whatsoever, unless that of resuming the lands after the whole of the timber has been cut and carried off.

(Signed,)

PETER BURNET.

Nice, Italy, April, 1852.

N. B.—The documents which follow the above are omitted here, being already inserted, as published by order of the Legislative Council, at the commencement of the foregoing Correspondence between the Colonial Office and the Governors of Canada, relative to the Seigniorial and Feudal Tenure.

(TRANSLATION.)

EXTRACT

From the Register of Awards (Arrêts) of the Military Council of Montreal, and Ordinance of His Excellency the Governor, Thomas Gage.

—
Council composed of Colonel HALDIMAND, the Baron de MUNSTER, PRÉVÔT and WHARTON, Captains.—Held on the 20th April, 1762.

—
Between the sieur Jean Baptiste Le Duc, seignior of Isle Perrot, appellant, from the sentence of the Militia Court (*Chambre des Milices*) of Pointe-Claire, of the fifteenth March last, of the one part,

And Joseph Hunaut, an inhabitant of Isle Perrot aforesaid, defendant in appeal, of the other part.

Having seen the sentence appealed from, by which the said sieur Le Duc is adjudged to receive in future the rents of the land which the defendant holds in his seigniority at the rate of thirty sous a-year and half a minot of wheat, inasmuch as the court could not amend any of the clauses contained in the deed of concession executed before Maître Lepailleur, notary, on the 5th August, 1718; the petition of appeal presented to this Council by the said sieur Le Duc, the appellant, answered on the 19th March last, and notified on the 3rd instant; a written defense furnished by the defendant, and the deed of concession referred to; and having heard the parties :

The Council, convinced that the clause inserted in the said deed, by which the lessee (*preneur*) is charged with the annual payment of half a minot of wheat and ten sous for each arpent, is an error of the notary, *the usual rate at which lands are granted in this country being one sou for each arpent in superficies and half a minot of wheat for each arpent in front by twenty in depth*, orders that in future the rents of the land in question shall be paid at the rate of fifty-four sous in money and a minot and a half of wheat a-year. Each party to bear his own costs.

(Signed)

PANET,
Clerk.