

## The Legal History of the Militia.

General enquiries having been made with reference to Lieut.-Col. Butler's paper on the Legal History of the Militia, read before the Montreal Military Institute, we have great pleasure in presenting it to our readers, although a little late in the day. The commanding officer of the Prince of Wales Regiment, in introducing his lecture, said:—

I regret very much that neither the Major-General, the Adjutant-General nor one of the Deputy Adjutants General of the 5th or 6th Military Districts was able to accept the invitation of the committee to deliver the first lecture in this Institute, and still more that the time allowed me for getting together the required data has, owing to the determination of the committee that it should be delivered during the year 1893, been so very short.

The subject which I have chosen—The Legal History of the Militia of Canada—requires, to do it full justice, a more careful perusal of the different ordinances and acts of Parliament than could possibly be given to it in the limited time at my disposal. The term "militia," as signifying a class combining the profession of arms with civil avocations, is as old as nationality itself, though in the early ages education and training in the art of war was universal and left but little room for anything else. As civilization advanced and peaceful avocations increased in importance, nations began less and less to present the appearance of a standing army, and the latter to become but a unit instead of the whole, and the necessity arose to make provision for the swelling of this unit in time of emergency by instructing them of peaceful pursuits, so that they might be ready when needed to present to an enemy something like the front of a whole population able to defend their country. All, or any rate a large proportion of the able bodied men of every nation have therefore been called upon from time immemorial to learn to some extent the art of war.

The twelve tables of Rome contained such a provision headed by the maxim, *salus populi suprema est lex*, and Cicero says in this connection that "private inconvenience is to be considered only in proportion to public unity."

Perhaps Worcester's definition of militia as "men enrolled for military service in exigencies, but commonly pursuing their ordinary avocations," was more true than it is, as describing our volunteers, among whom are to be found few, if any, not engaged in earning their daily bread by civil pursuits, and who can give but their spare time and money they can ill-spare to keep up the force required, and when called upon "in exigencies" (as Worcester puts it) are obliged to sacrifice these civil pursuits, and the earnings derived therefrom for the subsistence of their families in order to obey the call of duty. Thank God, none have been found unwilling to make the sacrifice nor any family who would allow them to hesitate when the call came.

It is evident that before the cession of Canada to Great Britain, there was a Regular Militia Force under the French rule—and such must have been necessary to guard the settlers from Indian incursions.

It is, perhaps, one of the best proofs of the confidence which Great Britain, even from the earliest times, placed in her French-Canadian subjects, that she accept-

ed their services in the Militia, and the surrenderers of this faith is also proved by the fact that when Montgomery, less than twenty years after the taking of Quebec by Wolfe, attempted to repeat Wolfe's exploit on behalf of the congressional troops, nearly one half of the defending force was composed of militia, and of them the French Canadian proportion was about five eighths.

Kingsford gives the whole defending force at 1896, including officers, non-commissioned officers and rank and file, of which 326 were militia and British settlers and 571 French-Canadians. Connected with operations at Quebec are the names of Dr. DeBeaujeu and Desfushi—two of our oldest French families assisting against Montgomery, and in the whole campaign the militia cooperated with the British troops against the invading forces. Among others mentioned as leaders defending the country against the troops of Convors, are the names of DeLorimier and DeMontigny, whose descendants are well known to the present generation—while a Canadian corps under Captain DeBoucherville and Morin formed part of Burgoyne's ill-fated expedition—and a large force of Canadian militia also accompanied Hamilton's expedition to Vincennes in 1778-9.

In the war of 1812, also, the French-Canadians proved their loyal appreciation of the trust reposed in them by Great Britain, and the name of DeSalaberry will ever remain green in the memory of Canadians of both French and British origin as a lasting argument for the unity of all races in furthering the progress of our common country, and suggest other distinguished names as a proof how well we can work together for the commonweal if we but make that commonweal our first consideration.

It was not my intention, however, to set forth the doings of our militia but rather briefly to train the progress of the legislative enactments affecting the force.

The Canadian Militia under France was officered by the Seigneurs who, indeed, received their grants or seigniories from the French Crown upon the condition, amongst others, that they should in time of war furnish a certain complement of men to cooperate with the regular troops. This necessitated the keeping up an organization of men drilled sufficiently to be of assistance and must have been of great advantage in the frequent collisions with the Indian tribes.

The first British legislation affecting the Militia—an ordinance proclaimed in November 1765—shows how tenaciously the French subjects clung to the honor of military rank and how ready they were to accept the new Government. This ordinance declares:—

"Whereas several Captains of the Militia formerly established in this Province and afterwards continued until the establishment of Civil Government, within the same, pretend that their commissions and former authority of Captains of Militia still continue and are in force, notwithstanding no ordinance of His Excellency the Governor in Council has ever been made for establishing or continuing them in office, and whereas the keeping up a Militia in this Province at this juncture is not necessary.

"Be it therefore ordained and declared by the authority aforesaid (Governor in Council):—That on the establishment of British Civil Government in this Province, the Militia before that time established in the same was thereby abolished and taken away to all intents and purposes whatsoever, and all power and authority derived from them, or which any Person or Persons whatsoever might claim or pretend to claim by force or in virtue of any Commission or other authority therein did thenceforward cease,

"and was thereby annulled and taken away, and any Person or Persons whatsoever acting or pretending to act under any Commission or authority therein was and were thereby and by means thereof dismissed and discharged from the same accordingly.

"(Signed) J. MURRAY.  
"Quebec, 27 Nov., 1765."

There must have been some sort of Militia allowed, however, as we have seen that the defence of Quebec was largely aided by such a force.

The Quebec Act (1774) established the first Canadian Legislature under British rule—the Legislative Council. One of the acts passed by this council at its first session, 17 Geo. III., cap. 8 (1777) provided for the organization of a regular Militia force in the Province, as follows:

Every person between the ages of 16 and 60 was liable to serve in the company of the parish where he had his residence, and on default of enrolling himself was subject to a penalty of \$20, and on refusing when called upon a second time, was rendered incapable of keeping by him or bearing any fire-arms, besides imprisonment for one month on each conviction of using or keeping a fire-arm. Those found guilty of dishonorable conduct were expelled from the Militia and forbidden to use or keep fire-arms, and, as also were those who neglected to be enrolled, condemned whenever sleighs or other carriages were needed for Militia or regular troops to furnish double their proportionate number.

Captains of Militia were ordered within twenty days after the publication of this ordinance, to report to their colonels, full lists of all liable to serve, and each year, by tenth to fifteenth of March, correct these lists and report corrections to their colonels. Parishes or townships were expected to furnish each a company, and these formed into battalions under Lt.-Cols., which again were incorporated into regiments under colonels.

No militiaman was to change his residence without notice to his captain.

All militia men were indeed on the last two Sundays in June and the first two in July to assemble for inspection of arms, target practice and drill, under a penalty of 10s. fine.

In time of war the number required for service were drawn from the different companies in proportion to their strength and served with the regular troops. All over 60 and those holding lands *en route* were obliged to furnish all carts, sleighs, etc., required for use at such a rate as might be fixed by the Commander in Chief.

Any officer guilty of disobedience or of partiality, either in the selection of the men required for active service or otherwise, was subject to the loss of his commission and compelled to serve as a private. This ordinance was by its terms to expire in 1779.

The strength of the Militia of that part of Canada, now the Province of Quebec—as shown by the lists furnished under the above ordinance—was, on 26 June 1778, 17,198 or nearly 6,000 more than that of the present active or volunteer Militia Force of the Province which as shown by the Militia List of Jan. 1892, is 11,536.

In 1787 (27 Geo. III, cap. 2) a further Militia Act was passed containing similar provisions to that of 1777, with the following amendments:—

Each company was to assemble yearly for inspection of arms, firing at marks and instruction in drill.

Detachments from each company might be ordered for active service for any period not exceeding two years, and when such detachments were ordered, the captains were to make a separate roll of all un-