Then does not it follow from what you have said that all you have said about the English law prevailing in the townships is a mere matter of opinion, unsupported by any proof?—There have been no courts in the townships to determine matters of real property, nor are any likely to be established by the Seignorial Assembly. I have stated what is thought and what is done; I have stated instances. But whether all these amount to any proof or not, is not for me to determine. But I can add, that I have had in my possession hundreds of deeds which have transferred large tracts under English forms, and I know those who hold thousands of acres under such deeds; nor is it my own opinion merely which I have given; I have heard similar opinions expressed by thousands. The full proof can only be obtained from the laws themselves which relate to the subject; and if they have been of doubtful import, the uncertainty, I take it, has been removed by the Tenures Act, of which the townships desire the continuance.

In cases where you have given it as your opinion that the English law prevailed, and where your opinion has been acted upon, have you known any attempt to reverse that opinion?—No, not that I recollect.

It has been stated to the Committee that the French tenure of *franc aleu roturier* is practically the same as the tenure of free and common soccage; is that your opinion?—It would be by no means practically the same, supposing the French tenure of *franc aleu* to be subject to the encumbrances and liabilities sanctioned by the French law, and the English tenure of free and common soccage to be subject only to those established under English laws.

Will you explain how those liabilities affect the question?—The French tenure would be subject to the liabilities of French law; such as general and tacit mortgages or *hypothéques*, peculiar marriage rights of *communauté*, and dower, and various other contingencies, that place the inhabitants of the seigniories of Lower Canada in a situation not to know whether they are secure in many transactions.

Supposing that land is mortgaged for any given sum, and that that land is to be divided under the French Canadian law amongst all the children, how would such a division be consistent with the security of the mortgage, and what is the operation or nature of the mortgage?—The mere division of land under the French law among children is not inconsistent with the security of a mortgage under that law, because the creditor's right would extend to each and every portion; that right could only be defeated by claims superior in privilege, or, if of the same nature, prior in date. What, however, the English in Lower Canada commonly know and call by the name of a mortgage is rather the *hypotheca* of the Roman or civil law, and the French style it an *hypothéque*. It establishes a right to be paid out of the real estate the sum stipulated or due, for which purpose all lands may be brought to sheriff's sale. It is the privilege of notaries and certain official characters, that whatever acts are passed before them, (supposing these acts to be even no more than a simple acknowledgment of a debt, or an engagement to be security,) shall produce a mortgage or *hypothéque* upon all the real property of the obligor; nor is this *hypothéque* confined to the real property which the obligor possesses in the district where the notary officiates, but extends to all the real property of the obligor in other jurisdictions and districts as far as the French tenures extend; nor is this mortgage confined to the property which the obligor possesses at the time of passing the Act, but it attaches to all the real estate which he may afterwards acquire in the French tenures, and remains attached to all and every portion of the property during many years, even though it should have passed into the hands of *bonâ fide* purchasers. Real property, by merely coming into the hands of those who are debtors under Acts passed before such official characters, although it may be immediately transferred to others, is enthralled, and stands charged with all such debts, for which it will remain liable for years, or until payment, into whatever other hands it may pass. As acts passed before notaries are to be paid *in toto*, by preference, according to the order of their dates, creditors are alway desirous to have them so passed, because although they have no means of knowing by how many previous creditors they have been anticipated, they wish to avoid being anticipated by subsequent creditors. The want of information in the generality of the people also compels them to have recourse to notaries. Almost all the legal instruments in seignorial Canada are therefore passed before notaries. The giving bail before a Judge, the becoming tutor or curator, the being executor to a friend, and various other matters, produce also tacit and general mortgages; and if a notarial mortgage or *hypothéque* be given only on a particular piece of land in the seigniories, the law nevertheless makes this also a general mortgage, and extends it over every county, district and jurisdiction throughout the French tenures of Lower Canada; and from all these causes the property of immense numbers is therefore liable, in a manner of which themselves have often no idea. Some of the consequences of such a state of things may not be difficult to be imagined, although it could be hardly possible to state them all. I may suppose a case: A. B. C. & D., like most others in Lower Canada, may have respectively passed notarial acts, or otherwise constituted general and tacit mortgages or *hypothéques* in any of the various modes in which they can be effected: A. sells a farm to B.; the farm is liable for years to be brought to sheriff's sale, not only for the hypothecary or mortgage-claims constituted by A, but also for those constituted by B. B. sells the farm in a few months to C., and it becomes further liable to the hypothecary claims against C. C. in a year or two sells the farm to D. The farm has gone on with increasing burthens, and is now charged with all the claims against A. B. C. & D., when perhaps a British emigrant purchases, pays for it, and after increasing its value by the outlay of money and labour, is called upon to pay some of the claims, and in consequence abandons the property. The case supposed is not fancy, but fact: I have known even a lawyer purchase property, which, after making payments to the vendor and creditors, he afterwards abandoned to the claims of other creditors, whose demands he had previously no means of knowing; and I have known lawyers lend money on mortgage or *hypothéque*, and after a lapse of eight years be deprived of principal and interest by an unsuspected claim of twenty years standing. I have been in this predicament myself. Sheriffs titles are indeed held to bar all hypothecary claims except the French dower, and I have sometimes, for this object, obtained a sheriff's title. On one occasion it cost me upwards of 30*l.*, and on another upwards of 25*l.*, which last was more than the land for which I obtained the title would sell for. It is not surprising if the townships should be desirous to avoid the introduction of these tacit and general mortgages, and should prefer the English laws, which, whatever may be their imperfections, and they are not denied, have nevertheless carried colonies forward in wealth and improvement with a rapidity unexampled under other institutions.

Is is possible that any system of registry could make manifest every security of this description, so as to enable a lender or a purchaser to know what encumbrances exist on the land?—I should consider it extremely difficult, if not impossible, (unless some changes be made in the laws which now exist in the seigniories, whereby almost every act passed before a notary carries a general mortgage, like a judgment of court in Canada without specification of property, and whereby various other acts passed before other public functionaries constitute similar tacit and general mortgages,) to establish for the seigniories a system of registry sufficient to enable persons to know whether they are secure or not in making purchases, or in lending money on mortgage. The objections made by many French Canadians to the establishment of registries in the seigniories is, that they could not be rendered efficient without producing alterations in their French laws. Now this is an objection which cannot hold in the townships if the English laws alone affect real property there; and this is one among other reasons why the inhabitants of the townships, and all who desire the improvement of the country, are so anxious that the lands in the townships should only be subject to English liabilities, because then registers may be established, as they are established in Upper Canada, without interfering with the French laws in the seignories, which the Canadian leaders wish to maintain and extend; besides, if any portions of the English law should occasion inconveniences in their operation, fears are not entertained that the seignorial legislators would be withheld by any fondness for such laws from altering them when desired.

In what form is security given for money borrowed on land in Upper Canada?—It is granted by a mortgage of a description similar to the English mortgage, but shorter, which sets forth the specific property, and this mortgage is registered. There are registers, I believe, in each of the counties. These matters are there attended with no difficulty, although the inhabitants are more scattered than they are in Lower Canada. Enregistration in Upper Canada gives publicity to every deed or encumbrance on land, and a prior instrument, not registered, would not affect a subsequent one which is registered; so that a prudent man in Upper Canada can always ascertain whether he is secure, which in Lower Canada he cannot do.

Can you say, of your own knowledge, whether persons who have accumulated money in that country are more willing to lend on mortgage on the security that exists in Upper Canada than that which exists in Lower Canada?—I do not reside in Upper Canada; but I should take it for granted that they must be more willing to lend where they can ascertain their security than where they cannot.

Will you be good enough to explain why, in your opinion, the law of registry is more easily and more effectually applied to lands held in Upper Canada than to those held upon the French tenure in Lower Canada?—Because in Upper Canada there is no such doctrine of general mortgages affecting property acquired and to be acquired without specification. The notarial or official mortgage, or *hypothéque*, is not known there. The mortgages there are special, and they may be drawn and passed before any persons. Property not described is not bound; and the registry of the land described, which is what gives effect to the mortgage, must take place in the county where the land is situate, to which registry all may have access.

Cannot you register a general mortgage as well as a particular or special one—must not there be an act done in order to create a general mortgage as well as a special one?—There must of course be an act before a notary, or some official act, in order to effect a mortgage in the seignories of Lower Canada; but almost every notarial act does constitute a general mortgage or *hypothéque* upon the whole property which the person has or may afterwards acquire in all the French tenures, throughout every district and count in the province. These acts remain with the notary, and he is legally bound to keep them secret: the laws Lower Canada requiring those things to be concealed which for the interest and safety of the community the laws of many other countries have required to be made public.

Supposing this consequence to follow from the institution of a registry, that every act of that kind would be bad unless it were registered, would not that cure the evil?—I should conceive that the evil could not be cured without abolishing general mortgages or *hypothéques*, and rendering all mortgages special, and confining them to the particular lands they described. But it might be effectually cured if that were done, and registers established.

Why do you think so?—It seems evident that mortgages or *hypothéques* of the number and description which have been stated must destroy the beneficial effects of registers, or that registers must abolish the principles of such mortgages. The land which is not mentioned in the mortgage cannot be specified in the register. The land which is not yet acquired by the debtor cannot be mentioned in the register.

You are aware that a judgment, or any security of that kind, affects not only the property that a man has *in presenti*, but the property that he acquires *in futuro* in this country?—I am not aware that a judgment for a sum of money would in this country affect and enable to be brought to sale, like an *hypothéque*, all the land belonging, or which might afterwards belong to the debtor.

Does not the whole of the difficulty, as you state it, arise from the trouble and inconvenience of registering a great number of transactions?—By no means. That would doubtless be an inconvenience, but the principal utility of registers must depend upon the property being designated or specified.

Has any bill for establishing a registry ever passed the Assembly of Lower Canada?—No.

Did any bill upon that subject go from the Upper House to the Lower?—Yes; I have brought a copy of such a bill passed in the Legislative Council before the passing of the Canada Tenures Act, and wherein care was taken that all mortgages should be special.

Can you state what form of security is given in Upper Canada when money is borrowed upon land?—It is substantially like the English mortgage, but shorter, as I have already stated.

What may be the expense of it?—I suppose it may cost about 1*l.*; but I dare say the expense may depend a good deal upon the person who is employed. One individual may probably be got to draw an instrument of that kind for half the sum which another would charge.

Do you happen to know what form of security is given in the United States?—I know that they in some measure resemble the English, only they are much shorter, because all unnecessary repetitions and prolixity are avoided.

You have spoken of the English law as applicable to free and common soccage lands, according to your notion, prevailing in the townships; has there been any such thing as a court of English equity established there to modify the strict severity of that law?—No court at all, except the inferior of the district of Saint Francis recently established, which has only a trifling jurisdiction in personal causes.

Is there any court of English equity in either Canada?—Yes, I have understood that there is one in Upper Canada.

What is the constitution of it?—It was only established shortly before I left Canada, as I have heard, and I know not its constitution.

Do you conceive that wherever the English law prevails, as applicable to real property, it is almost indispensably necessary that there should be a court of equity?—I conceive that unless there be some modification of the law, it might become necessary that there should be a court of equity; but it was taken for granted, that after the English law was declared all other necessary concomitants would be established in due time.

If you wish to get possession of an estate in the townships, what form of action would you adopt; is there any court in which you could bring an action of ejectment?—There are no courts at present constituted for the townships.

Then how can the English law be said to prevail?—I looked upon the right to the English law, and its being put into actual practical operation, as being two different things?—I never said that the English law had been rendered efficient in the townships. I should state, as my opinion, that the English law was, as near as might be, the law of the Hudson's Bay territories; yet I doubt whether it has ever been carried into practical operation there.

Supposing that previous to the passing of the Canada Tenures Act you had had to advise upon a marriage contract, would you have guarded against the incidents that would follow from the French law, or against the incidents that would follow from the English law?—I would have endeavoured to have framed it so as to have guarded against the incidents of either that it was wished to guard against; but to many the incidents of the English law without contracts would not be so unpleasant with respect to marriage, because they are by no means so burthensome as those of the French law; and they do not interfere so greatly with the right of the husband to the disposal of his property.

Then you would have framed the contract of marriage upon the notion that the French law was the prevailing law, the effects of which were to be guarded against?—I should undoubtedly have endeavoured to guard against the possibility of misinterpretation with regard to the provisions of either law, which might be disagreeable to the parties.

Is there any doubt that the French law applies to personal property and contracts?—I have mentioned that I have heard a difference of opinion expressed on the subject, as to what ought to apply; but if I am asked my own opinion, I believe that the French law, with regard to personal property and contracts, does apply, except that the mere employment of an official character, such as a notary, to pass the contracts, would not produce a mortgage or *hypothéque* upon soccage lands, as it would upon seignorial lands.

Do you happen to know upon what clause in any Act that difference of opinion rests? It is, I suppose, upon the same clause in the Act of the 14th of Geo. 3, before cited, and upon the circumstance of the English law having been considered antecedently the