

REPORT FROM THE SELECT COMMITTEE

As these Petitions appear to comprehend the most material subjects that have of late agitated the Provinces of Upper and Lower-Canada, your Committee thought the best course they could pursue was to examine witnesses as to each Petition in succession; and in communicating to the House the information they have received, and the opinions they have been induced to form as to the Civil Government of Canada, they will treat of the different subjects, as much as possible, in the order in which they were investigated.

Your Committee proceeded to examine into the system of Law established in Lower-Canada, to which their attention was particularly drawn by the Petition from the Townships. Your Committee have examined evidence in great detail on this subject; from which they collect, that uncertainty has long existed on points of law relating to the Tenure of Real Property in that portion of the Province. It appears that shortly after the Cession of the Province, the King of England, in a Proclamation dated the 7th of October 1763, (which will be found in the Appendix), declared, amongst other things, that "all the Inhabitants of the Province, and all others resorting to it, might confide in His Royal protection for enjoying the benefit of the Laws of England;" and he announced that he had "given commands for the erection of Courts of Judicature, with an appeal to His Majesty in Council."

In the year 1774, the first Act of Parliament was passed, making provision for the better government of this part of the British dominions. By this Act the English Criminal Law was preserved. But it was enacted "that in all matters of controversy relating to property and civil rights, resort should be had to the Laws of Canada as the rule and decision of the same; and all causes that should thereafter be established in every Court of Justice, to be appointed within the Province, should, with respect to such property and rights, be determined agreeably to the said Laws and Customs of Canada." There is, however, one marked exception to this concession of the French Law, namely, "that it should not apply to Lands which had been or should be granted in Free and Common Soccage."

After an interval of seventeen years, this Act was followed by the Constitutional Act of 1791. The provisions of this important Act have no bearing upon the subject under our consideration, excepting that it provides, with respect to Lower-Canada, that Lands shall be granted in Free and Common Soccage, if so desired; and further, that such Grants shall be subject to such alteration as to the nature and consequences of Soccage Tenure as may be made by the Provincial Legislature, and with His Majesty's approbation and assent; but no such alteration has been made.

On examining into the application of those provisions in the Province, it appears not only that doubts have existed as to the true interpretation of them, but that the general practice of the Colony has been to convey real property within the Townships according to the Canadian forms, and that it has descended and been subject to the incidents of that Law. In the year 1826 the British Parliament passed an Act, which put its own interpretation of these Statutes beyond the reach of further dispute. This Act, commonly called the Canada Tenure Act, declared that the Law of England was the rule by which real property within the Townships was to be hereafter regulated and administered. In offering any recommendations on points of so much difficulty and importance, Your Committee are fully aware of the disadvantages under which they labour, and of their inability, from their want of sufficient technical and local information, to enter for any useful purpose into minute and intricate details. They do not however decline to offer as their opinion, that it would be advantageous that the declaratory enactment in the Tenure Act, respecting Lands held in Free and Common Soccage, should be retained; that mortgages should be special, and that in proceedings for the conveyance of Land, the simplest and least expensive forms of conveyance should be adopted, upon the principles of the Law of England, that form which prevails in Upper-Canada, being probably, under all circumstances, the best which could be selected; that a registration of deeds relating to Soccage Lands should be established as in Upper-Canada.

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