

Appendix
(D. D.)

7th May.

was led to enquire as to the manner in which Endowments were preserved to Colleges in England, and he found that the same evil which he now complains of existed there, and that its recurrence was prevented by what Lawyers call the restraining Statutes of Queen Elizabeth. That the said Statutes being in their nature general and highly remedial, Your Excellency's Memorialist humbly conceives that they were introduced into this Province by the Provincial Statute which adopted the Law of England in Upper Canada in all matters of civil right.

The Statute 13, Elizabeth, chapter — is reputed by Lord Coke to extend to prevent the alienation of Collegiate Endowments as adjudged in the case of the Master and Fellows of Magdalen College in Cambridge. In that case the College sought to alienate a portion of its Endowment by the device of conveying the same to the Queen, for the purpose of a grant from Her Majesty to a stranger.

And it was unanimously resolved by the Court upon solemn argument, that the said Statute 13, Elizabeth, extended to restrain the Master and Fellows of the said College from conveying parcel of the possessions of the said College to the Queen, although the Queen was not named in the Statute, and the reasons given by the learned Judges of the Law who adjudged that case for extending the construction of the Act so as to make it embrace conveyance to the Queen's Majesty, though not specially named, are, in the mind of Your Excellency's Memorialist, conclusive against any narrowness of construction of the same Act, which would prevent its operation in a Province where the English Law has been generally adopted.

For may it please Your Excellency, if the Court rightly and justly could in the case of Magdalen College say, "God forbid that by any construction of the Queen who made the Act should be exempted out of this Act 13, Elizabeth, which provides necessary and profitable remedy for the maintenance of religion, the advancement of good literature, and the relief of the poor;" It may well be said in this Province, God forbid that by any construction the same Act should be held not to extend to this Province, where the same good is to be accomplished by its provisions, and the same dilapidations prevented by its enforcement as in the country from which our Law was taken.

If, may it please Your Excellency, there was anything in the circumstances of this Province which made it inconvenient that the whole landed Endowment of King's College should be preserved in that shape, it is, as Your Memorialist humbly conceives, but reasonable to suppose, that some mention would have been made of the inconvenience in the College Charter; and instead of an Endowment in land, an Endowment in money, or the proceeds of the sale of the land would have been granted; or if any such circumstances are supposed to exist now the Legislature is competent to provide a remedy by permitting the alienation of a limited portion of the landed Endowment; but it appears to Your Memorialist that nothing short of the clearest case of incompatibility with the circumstances and general Institutions of the Province, or of any Institution of learning being supported in the whole or in part by income arising from land, could authorize the Corporation of King's College of its own head to abrogate the Statute 13, Elizabeth; for, may it please Your Excellency, if it be proper that any portion of the landed Endowment of the College should be preserved, that Statute surely applies to that portion; and if it apply to that portion of the Endowment which should be preserved, that portion comes within the reason and remedy of the Statute; and as all English laws in force in Upper Canada, the reason and remedy of which are applicable to circumstances and things existing in the Province, are law in the Province, and as it is not competent to individuals or bodies public or private to dispense with law, or to limit its operation according to their judgment, it appears to Your Excellency's Memorialist to follow incontrovertibly, that the Statute 13, Elizabeth, is in force in Upper Canada as in England, and that the Corporation of King's College

has no more authority to limit its operation than the Master and Fellows of any College in the English Universities.

Influenced by these considerations Your Excellency's Memorialist has taken occasion to bring the legal question of alienation and the mode thereof, under the notice of the College Council, and on the 24th January last he submitted a motion (*vide* Appendix A No. 1.) to the Council to the effect, that if the system of alienation were to proceed, it should at least do so under the advice of eminent professional men. Knowing that so many individuals of acknowledged and eminent learning and talents had been of the College Council when alienations of the Endowment were permitted, Your Excellency's Memorialist at one time supposed that the legal question had been fully considered, and that sales of the land might legally be made at the full value of the property, and the proceeds thereof reinvested; and Your Excellency's Memorialist was induced from the same fact to suppose that such alienation was known to consist with the intentions of the Sovereign in granting the Endowment; but upon referring carefully to the archives of the Institution, Your Excellency's Memorialist cannot find that the legal question has ever been directly considered, and so far from any intention appearing on the part of the Home Government to permit such alienation, Your Excellency's Memorialist finds that, for the purpose of giving the College an immediate income, the Government had substituted Crown Lands under lease, for a portion of the Wild Lands once intended as the Endowment. This income was at the time of this concession supposed to be one thousand pounds per annum, and to be progressively increasing. And in addition to this, and as it were for the purpose of shewing the intention of Government that no portion of the estate should be alienated, the University was authorized to take from the proceeds of lands sold to the Canada Company one thousand pounds per annum, which latter sum for sixteen years was intended for the erection of the requisite Buildings.

Your Excellency's Memorialist found on examination of the archives of the College, that although the custom of selling the lands prevailed almost from the very foundation of the Institution, and has continued to prevail ever since to a greater or less extent, although that the composition of the Council has constantly varied, yet whenever the Council has considered the subject on its being formally brought under their notice, the alienation of the Estate by sale has invariably been stopped, but the custom appears to have again continually crept in apparently when members were off their guard, and sometimes when there was not even a *quorum* of the Council present. This fact will appear on a reference to the Journals of the College Council, and the Journals will likewise shew, that whatever difference of opinion prevailed in the Council relative to the propriety of selling the land, and funding the Endowment, none of the members seem to have contemplated the appropriation of any portion of the principal to meet current expenses.

During the administration of Sir Charles Bagot in 1812, the custom of selling seems to have been almost abandoned, and the attention of the Council to have been laudably directed to providing ways and means for erecting the necessary buildings without trenching upon the Endowment, and to increasing the annual income so as to enable the University to go into immediate and efficient operation. The Finance Committee made a Report, and the Council passed two resolutions in February and March, 1813, on the subject, (*vide* Appendix No. 2.) yet notwithstanding these facts, and although the Council had for a considerable time abandoned the idea of selling the Endowment, yet afterwards during the time when there was no College Council in existence, in the interval prior to the formation of the present Council, sales of the University lands were effected upon a very extensive scale, and the very first act which the present Council was called upon to perform was the sanctioning the alienation of £3,000 of Government Debentures bearing six per cent, per annum, interest.

This last measure was urged upon the new Council before its members had an opportunity of becoming

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