

place, enabling the city and county to raise a further sum of £220 in order to meet the deficiency.

It does not, however, appear that the whole amount paid by the city and county of St. John was not reimbursed by the Government—on the contrary, the account appears to have been fully audited, and the amount first claimed by the city and county being reduced, it seems to have been satisfied. The necessity of the legislation referred to by Mr. Frith, enabling the city and county to raise a sum of £2,200, probably arose from the fact that the payments made by the city and county consisted in part of sums raised by debentures which had not matured at the time the money was paid by the Government, and that such money was applied by the city and county to other purposes, thus rendering it necessary, on the maturing of the debentures, to raise money to meet them.

I do not, of course, say that such was the case, as the papers before me do not shew it—that such was the case, however, is probable; but, whether the whole money was repaid by the Government or not, it is clear from the Statutes that the intention of the Province was, that the whole amount should be repaid; and should it even yet turn out that some small sum was not in fact paid, that fact cannot affect the question of the intention of the parties.

It is, of course, quite inconsistent with the existence of an agreement such as relied upon by the Justices, that the intention should have been to reimburse them their whole outlay, as the only consideration alleged to support such an agreement would, had it been intended to pay the Justices in full, be removed.

If the memorialists have failed, as I think they have failed, to establish either expressly or impliedly the agreement relied upon, it is hardly necessary to refer to the probabilities of the case, or to consider whether under the circumstances it was probable that such an agreement would have been made.

It will, however, not be useless to refer to these probabilities.

It will be remembered that the right claimed by the Justices is the right in *perpetuity* to commit persons to the penitentiary, there to be held—previous to Confederation—at the expense of the Province, and now since Confederation at the expense of the Dominion of Canada.

The memorial states: “That a reference to the statistics of the said penitentiary from its establishment, will show that fully ninety per cent. of all the convicts sent thereto are from the City and County of St. John; and that of these, above ninety-five per cent. are under two-year convicts.”

The following figures furnished by the Warden shew the yearly average number of convicts confined in the St. John Penitentiary whose sentences are two years and over, and less than two years, respectively, from 1st July, 1867, to 31st December, 1878, with the total yearly cost, and cost per cap. :—

Period.	Two years and over.	Less than two years.	Total cost.	Cost per cap. less than 2 years.	Cost per cap. two years & over.
			\$ cts.	\$ cts.	\$ cts.
July to December, 1867.....	27	90	10,426 40	89 54	91 39
January to December, 1868.....	28	82	14,555 93	131 96	133 39
do 1869.....	30	61	19,546 94	212 05	220 39
do 1870.....	32	59½	17,960 60	195 22	199 30
do 1871.....	29	43½	16,072 32	226 95	224 08
do 1872.....	31½	42½	16,219 59	217 72	223 53
do 1873.....	26½	61	20,635 24	233 82	238 96
do 1874.....	29½	65	21,079 30	220 19	230 69
do 1875.....	40	58	24,209 76	241 95	254 40
do 1876.....	64	69	23,651 61	173 25	182 76
do 1877.....	74	89	25,947 84	154 84	164 42
do 1878.....	74½	79½	25,563 20	153 16	174 41