2nd. But, even if this Proclamation had not been thus formally abrogated and determined previous to the granting of the Indian Lease to Thomas McKee, it should not, and could not, be held to render the lease void at thi day.

(i.) Because it is obsolete and worn out, and wholly inapplicable to the condition of things now, and was so even in 1788—

(ii.) Because, even in its freshness, it did not accomplish the making *null and void* an agreement properly and formally made by Indians for Lands.

(*a.*) It did not so provide by its words. It says: "We forbid *on pain of our displeasure.*" The effect of such expression would be, possibly, to render the offender liable for a misdemeanor, or subject to the punishment of summary eviction.

(*b.*) The evident intention of the Proclamation was for the summary and immediate enforcement in this manner, the Government of the day being more, of an arbitrary, than judicial character.

(c.) It would require an Act of Parliament to make an agreement "*nudum pactum.*"

(*d.*) The Proclamation provided, under its second head, "no one shall *purchase*, without leave, in settlements." If the case of the McCormicks come under this head, leave must be presumed, because, in 1788 the Indians in possession of the Island leased it to Thomas McKee, and two years afterwards, in 1790, the Government treated with the Indians for the main shore opposite; and it is a fair presumption that the Government then were informed of the case, and they did not then repudiate it, nor has the Government, to this day, attempted to treat with the Indians for the Island.

(iii.) The term used in the Proclamation is "*purchase.*" It must be interpreted strictly, and *cannot* be held to *apply* to *leases.*

(iv.) The original Lessee was a half-breed, and, by law, an Indian, and the Proclamation, while in existence, could not, and should not, be held to prevent him from occupying and holding Indian lands.

(v.) The Island passed to Alexander McKee, who was also a half-breed and an Indian, and it was not until the year 1833, that he parted with it to William McCormick, the father of the claimants, when the laws in force in the Province of Upper Canada alone were applicable to dealings between Indians and half-breeds on the one side and whites on the other.

(See 13 and 14 Vic., chap. 74, and compare provisions by which, as well persons married to Indians, as the children of an Indian parent, are permitted to hold lands in Indian Reserves. And see also definition of the word "Indian.")

3rd. The History of Canada may be divided into the following periods, and the Legislation, adopted in reference to the Indians, during each of these periods, was as follows, and, until 1850, it had nothing in it rendering the taking of leases from Indians illegal.

(i.) THE PERIOD OF MILITARY RULE UNDER THE PROCLAMATION OF GEORGE III, 3RD YEAR, CITED BY MR. SPRAGGE AND EXTENDING FROM 1763 TO 1775.

During this period the Proclamation itself simply *forbade* subjects from *purchasing* from Indians in the Territories; ordered them to remove from lands occupied; and not to purchase without leave.

(ii.) THE PERIOD OF THE CONSTITUTION OF QUEBEC—extending from 1775 to 1792, under a Governor and twenty-three Councillors, appointed by the King and authorized to pass Ordinances.

During this period an Ordinance was passed—17 George III, chap. 7, intituled, "An Ordinance to prevent selling liquor to Indians, and to deter persons from buying their clothing and arms, and for other purposes relative to the trade and intercourse with the said Indians."

But this Ordinance enacted nothing against making an agreement with Indians for lands.

(N. B.—This Ordinance was held to be in force in Upper Canada after its erection into a Province.)