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REPORTS

OF THE

COMMISSIONERS

APPOINTED TO INQUIRE INTO THE

GRIEVANCES COMPLAINED OF

IN

LOWER CANADA.

(PRESENTED TO PARLIAMENT BY HIS MAJESTY'S COMMAND.)

Ordered, by The House of Commons, *to be Printed,*
20 *February* 1837.

SCHEDULE.

FIRST REPORT

OF THE CANADA COMMISSIONERS.

COPY of a DESPATCH from the *Lower Canada* Commissioners to Lord *Glenelg*.

My Lord, Quebec, 30 Jan. 1836.

ON the same day on which we transmit to your Lordship a Report to which one of our body has been able to give only a qualified assent, we think it due both to your Lordship and ourselves, in this unamimous communication, to assure you that we are satisfied that every deliberation and inquiry has been conducted with fairness; and that whatever want of unity may exist in our views, is attributable to an honest difference of judgment, and not to any cause that should disturb the harmony with which our duties in this province ought to be discharged.

We enclose extracts of such parts of the minutes of our proceedings as relate to the differences of opinion which have arisen in respect to this Report.

We have, &c.

(signed) *Gosford,*
Chas. Edw. Grey,
Geo. Gipps.

The Lord Glenelg,
&c. &c. &c.

FIRST REPORT.

MAY IT PLEASE YOUR LORDSHIP, Quebec, 23 Jan. 1836.

1. WE the undersigned Commissioners for the Investigation of Grievances affecting His Majesty's subjects of Lower Canada, in what relates to the administration of the government thereof, have the honour of making to your Lordship our first Report.

2. We understand that your Lordship has already been informed by the Governor-in-chief of the reason which retarded the meeting of the Provincial Legislature until the 27th of October. Your Lordship is also aware that in the address delivered on that occasion, his Excellency remarked that he had come into the province not merely as its Governor, but also as the head of a Commission, of which he described the general scope and objects. This statement appears to have given rise to some debate in both houses of the legislature, on the supposition that they were called upon to enter into some sort of formal relation with the Commission. It was argued that the Governor was the only authority with whom the Council or Assembly could communicate, and that to take notice of any other might compromise their rights and dignities; and the consequence of this reasoning was, that in the answer to the speech from the Throne, the Commission was not referred to at all by the Assembly, and by the Legislative Council was only alluded to in a very general and indistinct manner. The opinion thus acted upon appears no more than consistent with the views of His Majesty's Government. We never understood it to be wished that the Commissioners should be competent to hold any direct intercourse with the Legislature; and even should they, for some reason which we cannot anticipate, desire to make any communication to either House, such communication could be made by the Governor, while the real and main object of their employment would remain as it is now, merely to prosecute certain inquiries, and to report the results to His Majesty's Government. For this purpose the course adopted by the Council and Assembly does not offer to us any obstacle. Several members of each legislative body have evinced their readiness to afford the Commissioners any information in their power; and we believe that it was only in their public capacity, from a tenderness for the privileges of the bodies to which they belong, that they exercised a caution which does not at all interfere with the satisfactory discharge of our duties.

3. We have thought it right to say thus much in explanation of a circumstance of which, at a distance, the importance might be exaggerated, or the true intention and effect misunderstood. We would now request your Lordship's attention

attention to the following extracts of the speech delivered by the Governor at the opening of the session. First, in the portion of the speech addressed to the Assembly, it was said,

"I have received the commands of our most gracious Sovereign to acquaint you that His Majesty is disposed to place under the control of the representatives of the people, all public monies payable to His Majesty or to his officers in the Province, whether arising from taxes or from any other Canadian source, but that this cession cannot be made except on conditions which must be maturely weighed, and that to arrange such conditions for your consideration is one of the principal objects of the Commission with which it has pleased His Majesty to charge myself and my colleagues. Our inquiries into this subject shall be pursued with unceasing diligence, and the result shall be submitted with all practicable speed to His Majesty's Government; and I hope in a session to be holden in the ensuing year, I shall be able to lay before you proposals for a satisfactory and conclusive arrangement." Next, in addressing the Council and Assembly jointly, it was observed, "Of the Commission of which I have spoken to you, it will be the first and most urgent duty to prepare with deliberation and the utmost care, and yet without delay, the heads of a Bill for giving up to the appropriation of the House of Assembly the net proceeds of the hereditary revenue, and to prepare it in such a form that it may be acceptable to the various authorities whose sanction it may require, or under whose cognizance it may come. In what form precisely this important concession may be finally made, it would now be out of place to discuss, but it will be necessary that two points should be secured: First, that the management of the sources of that revenue of which the proceeds are to be appropriated by the House of Assembly, should be reserved to officers of the Crown, whose accounts will be open to the inspection of the Legislature of the Province; Secondly, that a provision should be made for the support of the Executive Government, and for the salaries of the Judges, by an adequate civil list."

4. The Governor further requested the House of Assembly to discharge the arrears which are due for the salaries of public officers and for the other ordinary expenditure of the government, and to provide for the maintenance of the public servants pending the inquiries of the Commission, adding, that should they place the government in this position, the surplus Crown Revenues which might afterwards accrue beyond the payments to which they were permanently liable, should not be applied to any purpose during the inquiry, except with the assent of the Assembly. His Excellency also stated that he was commanded to ask of the Assembly repayment of the advance of 31,000 *l.*, issued from the military chest in the year 1834.

5. Upon this request for the means of liquidating all the arrears due by the provincial government, although it has been before the Assembly for more than three months, no definitive step has yet been taken, but we feel that we cannot with propriety defer any longer our First Report. We do not indeed conceive that His Majesty's Government would relinquish before the decision of the legislature be known, the only fund within the province from which the Crown can discharge any part of the large arrears which in the last two years have accumulated, and are now due for the service of the government, or can repay advances which in some instances have been made by public servants from their own means, or refund to the military chest the loan which was made from it by authority of His Majesty's Government; but as soon as all questions connected with those arrears shall be settled, it will probably be desired to lose no time in determining on the contemplated cession of the right of appropriating the casual, territorial and hereditary revenue. We therefore proceed to state, without further delay, the conditions we would annex to the measure.

6. First, we attach great weight to the principle which your Lordship has been pleased to lay down, that the management of the Crown lands is a part of the executive authority that could not with any propriety or advantage be assigned to a legislative body. His Majesty's Government, we doubt not, would be willing to adopt any general and salutary rules calculated to ensure a proper discharge of this important function, and it will be our duty, in a future report, to point out any improvements that may seem to us practicable in the mode of managing the hereditary revenue, and disposing of the wild lands and forests. But we think that it should be a clause of the Bill giving up the revenue, and should also be distinctly pointed out in the message proposing it

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to the Legislature, that the entire management of the Crown property is to remain with the Executive, and that all the expenses of that management are to be deducted before the proceeds are given over to be appropriated by the Assembly, though a promise might be added that accounts should be laid before the Legislature yearly.

7. If an example were requisite of the necessity for the provision we have just mentioned, it would be found in the case of the Jesuits' estates. When the right of applying the proceeds to purposes of education was ceded to the Assembly in 1831, there was no declaration of the extent to which the administration of the property was reserved to the Crown, or the power retained of deducting the payments with which the estates had been previously charged; and we find that a temporary Act to regulate the management of them, as well as the salaries of the officers charged with that duty, was passed by the Legislature, and received the Royal Assent in 1832, and that another Bill, having the same effect, is now in progress in the Assembly. We allude to these measures, not with the intention of condemning them, for we have not thought ourselves called upon to examine their merits, but merely to show that in reserving the right of the Executive to manage the Crown lands, the condition cannot be too plainly stated.

8. The next topic we would notice, is the Civil List, to be applied for in giving up the appropriation of the Crown revenues. In considering this question we have not failed to bear in mind your Lordship's observation, that the amount of a proposal ought not to be measured by the value of the revenues surrendered, nor the transaction to be in any way viewed as a matter of bargain, but that we should rather endeavour to point out those objects for which, on the highest grounds of general utility, His Majesty is bound to secure a permanent provision, before divesting the Crown of funds which His Majesty may be considered to hold in trust for the public good. If we were to proceed on the principle of demanding an equivalent for what is given up, it has been maintained by some of the parties who have given evidence before us, that we ought to claim credit for all which was at the disposal of the Government before 1831, and which, but for the passing of the Act 1 & 2 Will. IV. c. 23, would now constitute an annual sum little short of 60,000 *l.* But we wish to establish a civil list on the single ground of public advantage, and in this point of view the amount of the revenues conceded is indifferent, for whether they be large or whether small, the sum which ought to be secured to the Government remains the same, and the surplus ought to be left to the Assembly in the one case, as much as the deficiency ought to be supplied by them in the other.

9. Having set aside, therefore, the notion of equivalence for what is given up, we have found that independently of some intermediate arrangements, partaking of the nature of both, there are two ruling principles on which a civil list might be proposed. According to one, the object would be to place all the principal departments of Government in such a position that their business could be carried on without any material inconvenience, notwithstanding a stoppage of the supplies; according to the other, the object would be confined to guaranteeing some of the chief functionaries of Government against being affected in their pecuniary interests at the pleasure of the popular branch of the Legislature. The independence to be secured in the one case might be characterized as political, in the other as personal, or such as would insure individuals against being biassed by sordid motives in the discharge of difficult and occasionally unpopular duties. Amongst the plans not going the full length of either of these views, it has been suggested, by one of our own number, that permanent appropriations ought to be made for all those functions of Government of which the necessity is on all hands admitted to be permanent and invariable, whilst it might be left to the Assembly to make annual appropriations, either in the whole or in part, for all charges less obviously necessary, or of more fluctuating character; and it is said that thus the Government would not be free from considerable inconvenience on any occasional refusal to make further appropriations, while yet the country would be saved the extreme evils attendant upon the measure in its present unlimited operation. We have not, however, agreed to proceed upon this basis; and of the two principles previously laid down, we have adopted the second, because we think it more conformable to the spirit of the free institutions which, in imitation of her own, Great Britain has bestowed upon Canada, more consistent with the former proposals made on the same

subject, and therefore more agreeable to the sense which public men in this Province have learned for some years past to attach to the words "civil list." If under that term we were to include a provision, not only for the salaries of a great number of public officers, but also for the contingent expenses of the departments of Government, we feel that our Report would be a surprise to those before whom its propositions must in the first instance be brought in the Province, and that the scheme would be denounced as a departure, not only from the recommendations of the Committee of 1828, and from the proposal of Lord Ripon in 1831, but also from the spirit and meaning of the declarations made by the Governor-in-chief at the late meeting of the Legislature. We do not wish your Lordship to understand that a very large permanent appropriation would not be acceptable to several parties in the Province; on the contrary, it will be seen that many witnesses who appeared before us strongly urged such an appropriation. But even by its advocates the measure appears to us to be chiefly upheld as one of expediency, peculiarly recommended by the harassing distractions of party in the Province, and not as an arrangement suited to any ordinary condition of affairs. If on such grounds as these, an extreme necessity should ever induce an application for the means of carrying on the administration, for a while, without the aid of an annual vote, we think that the demand ought to be advanced distinctly, and on its own merits, and not be veiled under a name which in all late proceedings in this Colony, has borne a far more limited signification.

10. With this explanation of the reasons by which we have been guided, we beg to submit to your Lordship's approval the civil list, of which a schedule is annexed.—(Appendix, No. 8.)

11. In accordance with all former projects of the same kind, we have not stated the Governor's salary at more than the existing rate of 4,500*l.* per annum; but we leave it to your Lordship to consider whether, if he have none but his civil emoluments, a larger amount should not be appropriated to the occupant of that exalted situation.

12. As the existing salary of a member of the Executive Council is 100 *l.* per annum, and as the full number of the board appears in practice to have been considered nine, we have inserted a sum, not to exceed 900 *l.*, to provide for this department of government, but we shall have occasion to make an early report to your Lordship on the subject of the Executive Council generally, and we may then find it necessary to submit new arrangements, which would materially affect the suitableness of the provision now proposed.

13. The Civil Secretary appears to us an officer eminently fit to be included among those whose salaries should be permanently provided for. The propriety of his being able to state his opinions fearlessly on all petitions addressed to the executive government, the close and unreserved connexion he must have with the Governor in the daily conduct of business, and, we must add, the consequent necessity that he should be brought into the Province with the Governor, so as to ensure his being a person in the entire confidence of the head of the administration, all conspire to point out this public servant as one whose remuneration should not be precarious, but who should feel that he enters, without hazard to his pecuniary interests, on his arduous and responsible duties. We also propose that for his department alone, 500 *l.* should be secured for some of the smaller, but more urgent contingencies, of which the payment could not be postponed, and therefore would probably require to be disbursed by himself, out of his own means, were they not otherwise provided for.

14. Another officer, whose salary has been comprised in some former schemes for a civil list, is the Provincial Secretary. He has charge of an important office of record, but as there is nothing in his functions of a discretionary nature, we do not see any reason to recommend that the payment of his services should be more securely provided for than that of any other officer in the Province.

15. We cannot hesitate to advise that a great part of the remuneration of the Attorney and Solicitor-general should be placed beyond the reach of an annual vote. Besides the generally anxious nature of their duties, they are in this Province, to a far greater extent than in England, public prosecutors, having the conduct without exception of every criminal case brought into the superior courts; and they are moreover charged with the peculiarly delicate duty of delivering opinions on Bills, which, after they have passed two branches of the Legislature, are presented to the Governor for his approval. If in addition to

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the difficulties with which they are at any rate beset, it were determined to expose them to pecuniary uncertainties of considerable amount, or to leave them open to the effects of political animosity, the decision would be contrary, as we conceive, to the plainest maxims of sound policy and good government. We therefore recommend that in addition to the law officers' salaries, which together amount to only 500 *l.*, a sum of 1,800 *l.* should be secured towards their further remuneration so long as the present system of paying them by fees shall be continued. We are willing to leave any surplus of their claims above the foregoing amount to be provided for by an annual vote, because in fluctuating expenses of this nature, even where the officer is one whom it is most important to exempt from dependence on a popular body for the main bulk of his income, we still think it unexceptionable, and we may even say salutary, that some part of his charges should be voted by the Assembly, and thus ensure a yearly revision of the whole, sufficient to restrain any increase of them to an excessive amount.

16. Besides the provision for the expenses of the officers of the Crown, many witnesses have insisted on the necessity of demanding that a sum shall be permanently secured for the support of gaols, the expenses of sheriffs and coroners, and generally for all the expenses incurred in the conservation of the peace. It has been urged as a further reason for the measure, that there are no county or local rates, as in England, for the payment of any of these charges, and that at the present moment there is not, nor has been for the last three years, any secure provision even for the maintenance of the prisoners in the common gaols; large sums being now due both at Montreal and Quebec, either to the sheriff or to the tradesmen who have supplied the gaols with what has been required for the inmates of them. After the fullest consideration, we are not prepared to recommend any permanent appropriation under this head. In addition to the general reasons which we have already given for not burthening our civil list with charges which have never in the Province been contemplated as coming under that name, as the same has been understood since the Committee of the House of Commons in 1828, we would observe that the conservation of the peace is a matter which so peculiarly and directly concerns the inhabitants of the country, that the duty of providing for it may safely be left to the representatives of the people, and ought not in our opinion to be taken out of their hands. Should they consider that the end will be best attained by a permanent grant, it will be competent to them in this, as in other cases, to make one; but as the Government can have no greater interest in it than the people, we do not see why it should expose itself to the undeserved suspicion, such as might possibly arise, of its proposing the grant with any exclusive view of its own; indeed we doubt whether, even for the ease and tranquillity of the Executive, it is so expedient as is assumed, to reduce to the utmost possible degree the evils to be incurred by a stoppage of the supplies: for there would then be a risk that the measure would be resorted to on less urgent occasions; and the inconvenience of it might become restricted to the officers of the government instead of affecting the country at large. The general confusion to be apprehended in England from a stoppage of the supplies, is perhaps the chief reason why it is so seldom thought of; but in Canada it would be long before any but the officers of government would experience the effects of a refusal of the usual legislative grants, were it not for the very expenses now under consideration, by which the unpopularity of the measure, if hastily adopted, would soon extend to every dwelling in the country.

17. With respect to the duration of the civil list, we are of opinion that it should not be permanent, but be limited either for the King's life, or for a fixed term of years, not less than seven. The first period is recommended by the usage of the United Kingdom, and would preclude a question which might otherwise arise, whether a longer term, affecting not merely His Majesty, but His Majesty's heirs and successors, could be established by any less authority than an Act of Parliament; the second period has the advantage of being more definite, and thus of allowing at its termination a more leisurely and deliberate revisal of existing arrangements than at the close of an uncertain length of time. On the whole we are disposed to prefer the nomination of a term of years properly limited, but should the duration of the King's life be more agreeable to the Provincial Legislature, we see no conclusive reason why it should not be assented to. We would not recommend that any fixed term should exceed ten

years, or be less than seven, far less that the cession of the revenue should be perpetual or irrevocable.

18. In the preceding suggestions for a civil list we have not included the judges' salaries, because we think that they may most conveniently be provided for in a separate measure; of which, however, it would be necessary that the enactment should precede the completion of the other arrangements connected with the cession of the Crown revenues. We believe that hitherto there has been an extensive concurrence of opinion in favour of rendering the judges independent alike of the Crown for the tenure of their office, and of an annual vote for the receipt of their emoluments. We also apprehend that the propriety of allotting to them some suitable retired allowance when incapacitated by age or infirmities, has been generally perceived and admitted. The real difficulty in making these high and important functionaries independent, is to name the authority by which they shall be removable in case of misconduct. For although there appears to be in the Province a wish for a tribunal to decide not only on accusations against the judges, but against all public officers except the Governor, the differences between the two Houses of the Legislature present, we are sorry to say, great obstacles to the execution of the plan.

19. The example of Great Britain would recommend the Council to be made the tribunal, and a Bill for the purpose passed both houses of the Provincial Legislature in the session of 1831–32; but the dissensions between them have since become so much more rooted, that there is little prospect of seeing the measure again agreed to; and, as there is no probability that the Assembly will grant permanent salaries to the judges until a court be appointed before which they may be tried, it follows that a failure in establishing such a tribunal may involve the failure of our whole plans of adjustment. Adverting to these circumstances, and feeling that on all subjects it ought to be our endeavour to suggest measures which, besides being salutary in themselves, should be likely to meet the concurrence of the several authorities by whom they must be enacted, we thought it our duty to bestow a patient and impartial consideration on such plans as have come under our notice, for enabling impeachments to be determined otherwise than in the Legislative Council. We would not indeed in any case have been prepared to advise that the Council should not have the like jurisdiction; but, if some other unobjectionable court could have been suggested, it might have been admitted as an alternative to which the Assembly should have the option of resorting.

20. The first project which we would bring before your Lordship, is one that was intended to be founded upon certain resolutions on the independence of the judges, introduced into the Assembly at the beginning of this session, but subsequently withdrawn. The mover of these resolutions explained to us his views in person†. His design was, that the Judicial Committee of His Majesty's Privy Council should be the tribunal for the decision of impeachments brought against the judges by the Assembly of this Province, but that such security should be taken for impartiality and justice in the previous inquest before that House, as to dispense, in his opinion, with the necessity of taking any more evidence, and to enable judgment to be given upon a view of the proceedings held upon the original inquiry. By the Bill, which was framed in order to accomplish these purposes, it was provided, that upon the receipt of any report of a Committee of the House, or any petition containing charges against a judge, there should be a call of the whole House to consider whether the alleged matter, if true, were sufficient to support an accusation; and that, if the decision were in the affirmative, 24 members should be chosen by ballot, afterwards to be reduced by challenges and other modes of procedure to 12, the members so chosen to be sworn; that the House should name a chairman to preside over the other 12, and also an agent to conduct the accusation; that full notice should be given to all parties concerned, both for the accusation and the defence, with permission to be present during the whole of the investigation, and that they should respectively be required to send in lists of their witnesses, to which no addition should afterwards be allowed except with the consent of the House; and that if after these precautions the result should be to find that there was sufficient matter of accusation, the whole House should be summoned to consider the report previously to its being acted upon; and that supposing it adopted by the House, copies of the whole proceedings, including reports, evidence and every document, should be furnished to the Governor for transmission to His Majesty's

† *See* Evidence of E. Bedard, Esq.

Majesty's Privy Council, together with articles of impeachment preferred by the Assembly according to the usual form. At this stage of the business, it would have been lawful for the Governor, upon an address from the Assembly, to suspend the accused judge from his functions, and the judge would thereupon be deprived of all emoluments, unless he signified his intention of demanding from the Privy Council its final judgment on the charges against him; in which case he should continue to receive his official income during one year from the date of the address for his removal, and during such further time as, upon any address from the Assembly for the purpose, the Governor might think proper to sanction. Such are the outlines of the Bill which it was proposed to bring forward this session, with a view of establishing the means of deciding on accusations against the judges. We understand that it was given up principally on account of the opposition which its author found reason to expect to the restrictions it would have imposed on the exercise of what the Assembly considers its present undoubted right to prefer accusations. The Assembly is now at liberty to address the Crown for the removal of a judge without going through forms so nearly approaching those of a trial, and it seems doubtful whether it would part with any of this power, even by a law which in other respects might appear calculated to give additional force to the accusations of the House. Your Lordship will not fail to observe, that although His Majesty in Council would nominally be the tribunal for impeachments, the accused party would merely have the option of resorting thither in case he should not acquiesce in the result of the investigation conducted in the Assembly. The judges would in fact be removable on an address of the Assembly, with only an appeal to the Privy Council. Thus a practical decision would be taken in the same body which originated or adopted the charge, and the plan would comprise in itself the evils incident to mixing the characters of judges and accusers.

21. As a less objectionable plan, it has been suggested, that a committee of the Assembly might take informations and examinations analogous to those taken before a magistrate in ordinary criminal proceedings, and that sworn or certified copies of the proceedings of such a committee of the Assembly, up to the stage when the accusation has taken the form of articles of impeachment, should be transmitted through the Governor to His Majesty in Council; that it should then be competent to His Majesty in Council either to stay the proceedings or to appoint a commission, consisting of not more than five persons, nor less than three, one of whom should be either a judge or a barrister of 20 years' standing, either at the English or Canadian bar, to try within the Province the facts of the accusation; and that upon the conclusion of this investigation, if unfavourable, it should be lawful for His Majesty in Council either to remove the party accused, or to set aside the judgment of the commission, or to refrain from passing any sentence or issuing any process thereon. This course of proceeding would have the advantage of providing a regular tribunal, and of not blending the functions of judge and accuser. On the other hand, however, the plan would be attended with some expense and delay; and we apprehend there might be some jealousy on the part of the legal profession here as to the introduction of a barrister from England; and that the Legislative Council might be expected to object to any measure which should remove from them to another tribunal the trial of impeachments.

22. Another expedient might be derived from the precedent of the Imperial Statute 26 Geo. 3, c. 57. According to the provisions of this Act, 26 Peers and 40 Members of the House of Commons are required to be chosen every session for the trial of offences committed in India, in order that from the names thus appointed, there may be selected by ballot (subject to a certain number of challenges, both from the prosecutor and the accused) five Peers and seven Commoners, to try and determine any particular cause which may arise during the session. It is much to be feared that in this Province such a mixed court would be affected by the dissensions which prevail between the bodies out of which it would be selected; and that the difference of the sources from which the judges would be taken, would give rise to comparisons by others and jealousies amongst themselves, by no means conducive to the character or efficiency of any tribunal.

23. Having thus closed our enumeration of the principal plans which have been suggested for the constitution of a court to decide on impeachments, it now remains for us to submit our conclusions on the subject. Although we will

not deny that the Legislative Council is in some respects deficient in the qualities requisite in a court of justice, the reasons in favour of it appear to us so strong, that we must prefer it to any other court which could be devised for the trial of public officers. It is recommended for the purpose by the analogy of Great Britain, and by the sanction which it did once obtain from the whole Provincial Legislature, before political differences ran so high as they do at present; and whatever imperfections might be alleged against it, we are persuaded that, in the main, it would answer the ends of substantial justice. We have, therefore, come to the opinion that the Legislative Council ought to be invested with the power of deciding upon accusations against the judges, and against all public functionaries in the Province, except the Governor. We have already observed that we should not have seen any insuperable objection to the establishment of another court, to be likewise competent to try impeachments; but after the best consideration we can give to the subject, we confess that we cannot venture to state any preference amongst the various expedients we have above described for this purpose, or to recommend any one of them as eligible. We content ourselves with having laid before your Lordship all the suggestions which have come within our view, leaving it to His Majesty's Government to decide whether any of them be fit to be adopted.

24. If all attempts to erect a court for the trial of impeachments should fail, it might still perhaps be possible to obtain a permanent appropriation for the judges' salaries, provided the Crown should consent to divest itself of its present power to dismiss a judge by mere act of the prerogative, and should retain only the power of dismissal on an address from one or both Houses of the Legislature.

25. In order to complete all the information we can afford on the present subject, we must acquaint your Lordship, that it appears once to have been held that the Legislative Council might be enabled to try an impeachment by commission from the King, without the authority of an Act of the Legislature. On the 2d of March 1818, Mr. Justice Foucher being under accusation from the Assembly, a message was sent down to the two Houses of the Legislature, signifying the pleasure of the Prince Regent, that the adjudication of the case should be left to the Legislative Council. This communication was not acted on, for reasons which we cannot state, as the correspondence on the subject between the Secretary of State and the Governor has not been left on record. On the 8th of February 1819, another message on the same subject was transmitted by the Duke of Richmond to the Council, announcing that instead of a trial by that body, some further investigations, of a less formal kind, were to be made in the Province, and the results to be sent to England for decision. Upon this the accusation seems to have been abandoned by the Assembly, and Judge Foucher, after having been two years under suspension, was restored to the exercise of his functions. During the progress of this case the judges of the Court of King's Bench at Quebec delivered an opinion, of which we enclose a copy (Appendix, No. 9), to the effect that a commission from the King would suffice to enable the Council to try an accusation, without any Act of the Legislature constituting them a court for the purpose. We are not aware of any objection to the correctness of this opinion, but we fear that it does not break the chain of difficulties we have pointed out; for if the Assembly refuse to grant permanent salaries to the judges until the establishment of a tribunal agreeable to its own views, its objections will certainly not be less to the Council appointed by commission than to the Council appointed by Act of the Legislature, for the trial of impeachments, and it would easily be able to render such a court inoperative by refusing to bring its accusations before it.

26. Besides the essential point of rendering their remuneration and tenure of office certain, there are some other provisions, which in the province have been thought necessary to the independence of the judges, and on which we will briefly offer our opinion. We see no objection to an express exclusion, by law, of the judges from the Assembly and Legislative Council, and from the Executive Council. The Canada Committee of 1828 would have permitted the chief justice to retain his seat in the Legislative Council, nor are we prepared to condemn that opinion, but seeing that a Bill for the exclusion of all the judges was carried in 1834 in the Council by a large majority, and in the Assembly unanimously, and that its confirmation has since been earnestly petitioned for by parties who cannot be suspected of hostility to the second branch of the Legislature, we cannot say that we feel any objection, which this general consent

consent of opinion might not be considered to outweigh. Should, therefore, the Bill passed for the purpose in 1834 not be previously confirmed, we think its provisions might be introduced into the general measures contemplated by this Report. It is essential, however, that the incapacity of the judges to be members of the Legislative or the Executive Council, should be confined to those actually on the bench, for we hold it most desirable that retired judges should not be debarred from sitting in the Legislative Council, or among the confidential advisers of the Governor, where they would bring knowledge and attainments not perhaps to be found in any other class of persons in the Province; and at the same time, having fixed and permanent allowances, could not be objected to on the ground of dependence.

27. Having thus stated our views on the subjects of a civil list, the independence of the judges, and a court for the trial of impeachments, we would beg to draw your Lordship's attention to the schedule annexed to this Report (Appendix, No. 7), for a statement of the charges at present borne upon the Crown revenues, and of the expenses incidental to the collection of them. Those which are fixed or permanent are contained in the first division of the schedule, and amount to 2,950 *l.* 17 *s.* 8 *d.* They may all, we conceive, be comprehended as expenses of management, excepting the pensions to the amount of 550 *l.* per annum, of which we shall offer more particular notice presently. The expenses in the second division of the schedule, amounting on an average of three years to 1,353 *l.* 2 *s.* 2 *d.*, are of a fluctuating character; they seem to belong to the head of management, with the exception of the last entry of 62 *l.* 8 *s.* 10 *d.* for the expenses of sending special messengers to New York. Setting aside this item, we apprehend that the remaining services, now defrayed from the Crown revenues, must continue to be paid from that source for the present, though we may hope they will in some measure be reduced by an improved system of management.

28. With respect to the pensions above alluded to, every consideration of justice concurs with the rule which your Lordship has prescribed for our guidance, in recommending that their maintenance should be absolutely stipulated for. We could not propose that His Majesty should relinquish His revenues, without reserving a provision for the claims to which they had previously been made liable, and we cannot but share your Lordship's hope that this condition will meet with no opposition, when it is considered that the amount of the charge to be continued is small, that it will be constantly diminishing, and that although His Majesty demands security for the interests of those individuals to whom the Royal bounty is already engaged, He divests Himself of every means of hereafter rewarding public merit, except by aid of the liberality of the Assembly. For the same reasons which require that the pensions should be secured prospectively, it will be proper that if any of them should be in arrear at the time when the Crown revenues are about to be given up, they should be either discharged or guaranteed before the cession takes effect.

29. In addition to the pensions expressly charged upon the revenues now to be given up by the Crown, a claim has been preferred by Mr. Herman Ryland, a very old servant of the public in this Province, for a retired allowance of 67 *l.* 10 *s.* a year as treasurer of the Jesuits' estates, which was granted to him out of that property on the abolition of his office a few years ago, but has not been voted by the Assembly since the proceeds of the Jesuits' estates were placed at their disposal for purposes of education. Mr. Ryland has been since the year 1804 in receipt of a pension of 300 *l.* per annum, bestowed upon him for his general services, and he also continues to occupy the situation of clerk of the Executive Council, with emoluments amounting to about 630 *l.* per annum, but the allowance granted out of the Jesuits' estates has not been granted by the Assembly since the revenue arising from that property passed under their control. It is not necessary for us to review the grounds of the original grant of the pension, nor to consider how far the Assembly, in the absence of any stipulation for it, was called upon in equity to continue the payment of Mr. Ryland's allowance out of the Jesuits' estates; it is enough for us to observe, that as the Crown granted that allowance by a despatch from the Secretary of State in as binding and valid a manner as the generality of pensions or retired allowances in this Province, we can only attribute it to inadvertence that it was not secured when the monies from which it was payable were given up; and we therefore submit to your Lordship that in parting with the only other revenues remaining

at His Majesty's disposal, this allowance may be added to the other charges of a like nature, borne upon the same fund. We also recommend, for the same reasons, that a retired allowance to Mr. George Ryland of 45 *l.* as secretary of the late board for managing the Jesuits' estates, should be secured. The addition of these two items will increase the charges for pensions and superannuations on the present Crown revenues from 555 *l.* to 667 *l.* 10 *s.*

30. The cession of the proceeds of the Jesuits' estates to the Assembly has given rise to another sort of claim, which likewise has been brought under our consideration. The Assembly, in the Bill of 1833, which was rejected by the Council, inserted only 100 *l.* instead of 200 *l.* as the salary to each of the masters of the free grammar schools of Quebec and Montreal, and at the same time required them to instruct 20 additional free scholars, thus entailing, as it is alleged, the necessity of keeping an assistant at the expense of the masters, at the same moment when their remuneration is diminished by one half. The Rev. Mr. Burrage, master of the school at Quebec, has addressed us upon this subject. However we may regret any effect which the proposed reduction may have on the expectations with which the present holders of the situations quitted England, we do not see that there is in this case any such record of an engagement on the part of the Crown as would justify us in recommending the deficient part of the salary to be charged upon the Crown revenues before they are given up.

31. We may take this opportunity of mentioning that we have received from Mr. Ogden a representation of his claim to large arrears due to him for his services as attorney-general. We have acquainted Mr. Ogden that we think it would be premature to enter into the particulars of his case until the decision of the Assembly shall be known respecting the general application for arrears made to them at the commencement of the present session, comprising, amongst others, this very demand; but we added, that should it again be rejected, we should be prepared to consider the subject, and that we do not conceive that any Report of ours in the meanwhile will have the effect of diminishing the funds from which the claim could be satisfied after investigation. This intimation we made because, as we have already stated in paragraph 5, we take it for granted that the Crown revenues will not be given up until either all the arrears due to the public officers for past services be paid, or at least all questions connected with them be settled.

32. As it is only intended to concede the net proceeds of the Crown revenues, we think there should be a clause providing that all rights and powers of His Majesty over the Crown property, except only the monies arising therefrom, shall remain entire. By the general words of such a clause would be effected (and we think that the attention of the Assembly should be expressly drawn to it in any message communicating the measure) the necessary reservation of the power of endowing parsonages; of allowing the usual indulgences in land to military and naval settlers, so long as the practice shall be continued by Government; of completing any existing engagements towards militiamen; and of making whatever corrections or alterations may at any future time be necessary in the boundaries of the Province. We also recommend the insertion of words reserving all the rents and profits of lands kept for military or naval purposes, or held by any military or naval department. Your Lordship will observe by the Evidence*, and by a Memorial which we have included in the Appendix, that the Trustees of the Royal Institution brought before us a claim that the Crown should not deprive itself of the means of granting them an endowment of land. The general reservation which we have just recommended of His Majesty's rights over the Crown lands would, in strictness, comprise this power; but we apprehend that such a grant would be viewed with great jealousy by the Provincial Legislature; and we cannot help thinking that the Royal Institution should be left to be assisted by the Assembly, which we believe has always shown itself liberal in encouraging the promotion of education.

* *Vide* Evidence of Messrs. Moffatt & M'Gill, and of Hon. A. W. Cochran.

33. It is necessary to consider whether the measures recommended by the Report can be made law by a provincial statute, or will require an enactment of the Imperial Parliament. It seems, in the first place, to be pretty clear that the words of the 31st Geo. 3, c. 31, s. 42, apply to this case, inasmuch as a concession of the whole proceeds of the sales of waste lands certainly relates to and affects the prerogative of granting the waste lands, and, consequently, that if a Provincial statute is to be passed, it must be laid before both Houses of the Imperial Parliament for 30 days, before the Royal Assent can be given to it, and that it will be subject to

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the other provisions of the section we have quoted. There are some words, however, in the Act 1 Will. 4, c. 25, which seem to us to make it questionable whether an enactment of the Imperial Parliament is not necessary for establishing the right of any permanent appropriation by the Provincial Legislature of the hereditary revenue; we mean the words in the second section of that Act: "The produce of the hereditary casual Revenues arising from any droits of Admiralty, or droits of the Crown, and from all surplus revenues of Gibraltar, or any other possession of His Majesty out of the United Kingdom, and from all other casual revenues arising either in the foreign possessions of His Majesty or in the United Kingdom, which shall accrue during the life of His present Majesty, shall be carried to and made part of the consolidated fund of the United Kingdom of Great Britain and Ireland."

It is enough for us to have stated these questions. The Crown law officers will, of course, be able to give His Majesty's Ministers advice respecting them, which would make it more than superfluous to offer our own.

34. We have now stated the conditions we should think necessary in giving up the right of appropriating His Majesty's casual, territorial and hereditary revenue, and we have offered such remarks as have occurred to us upon the mode in which the measure should be carried into effect, but in order to render our Report complete, it appears desirable that we should present the best view in our power of the extent of the cession that is to be made. By a return from the inspector-general of accounts (Appendix, No. 1), the average amount of the casual, territorial and hereditary revenue, exclusive of receipts from the North American Land Company, is shewn to be 10,600 *l.* 16 *s.* 10 *d.*; and this revenue we conceive to be an increasing rather than a decreasing one. The payments from the Land Company during the next nine years will amount to 54,000 *l.* In addition to the revenue above-mentioned, we have to remark, that the appropriation of several other funds will, by the measures in contemplation, be vested more absolutely than heretofore in the Provincial Legislature, inasmuch as it was announced, in a passage we have already cited from the Governor's speech, that His Majesty was disposed to relinquish the control of all public monies payable to His Majesty or His officers in the province, whether arising from taxes or any other Canadian source. Under these comprehensive terms must be included:

First, The permanent aid of 5,000 *l.* per annum given to the Executive Government by the Provincial Act 35 Geo. 3, c. 9. The application of this sum in detail would, no doubt, belong to the representatives of the people in any year in which they provided for the exigencies of the public service; but failing such provision by them, the Government has always heretofore held itself entitled to make use of the money, by virtue of the words of general appropriation contained in the Act under which it is levied.

This right will now be renounced.

Secondly, The proceeds of two Provincial Acts, 41 Geo. 3, c. 13 & 14, permanently appropriated to the administration of justice and support of the civil government. The average amount of this revenue, by a return which we have obtained of all the permanent appropriations in the province (Appendix, No. 2), appears to have been 5,995 *l.* 16 *s.* 2 *d.* Of this fund, as well as of the one first mentioned, the Government will no longer be able to make any use, unless under a special grant from the Assembly.

Thirdly, The produce of certain customs' duties, raised under Imperial Acts, passed in the early part of the reign of His Majesty George the Third, and now remitted to England, as likewise the King's share of all custom-house seizures and penalties, also now remitted to England; the average amount of the proceeds appearing, by a return from the collector of customs (Appendix, No. 3), to be 414 *l.* 14 *s.* 2 *d.* per annum.

From circumstances which have already occurred, we apprehend that should there, on investigation, appear to be a net profit from the post-office, the amount of it will also be claimed by the Province. The post-office in all the North American Provinces has hitherto been conducted as an imperial administration, regulated by the Acts of 9th of Anne, c. 10, and 5th Geo. 3, c. 25, and we understand that from Upper and Lower Canada, sums to the amount of about 94,000 *l.* have been remitted to England during the last 13 years, by the deputy postmaster-general. From this sum, however, some portion ought to be deducted on account of the expense of the Halifax packet, though there would be

difficulty in fixing the amount, especially as it may be alleged that the principal correspondence with England is carried on by way of New York, and that the Halifax packet is used for scarcely any purposes but those of the Government.

The subject of the post-office is one that has of late years been much agitated both in Upper and Lower Canada, and an enactment, founded on the Imperial Act of 4th Will. 4, c. 7, has recently been proposed to all the legislatures of British North America, but has not yet been adopted in any of them; and a distinct measure, originated here, is now before the Assembly of this Province. In the uncertainty that pervades everything relating to this question, we do not think we can do more than express our opinion that, should the arrangements we propose be carried into execution, the legislature of Lower Canada will claim any net profit that may be shown to arise from the administration of the post-office within the Province.

We have already adverted to the necessity of expressly excepting from the proposed cession all rents and profits of lands held by the military or naval departments, such as rents arising out of lands under charge of the Board of Ordnance, and particularly the rents and profits accruing from the Grenville Canal, as well as any revenues that might be derived from the seigniory of Sorel, which is a property at the confluence of the rivers Richelieu and St. Lawrence, purchased for military purposes in the year 1780, with money drawn from the British treasury.

The whole revenues, therefore, which will be affected by the measures that are proposed, may be stated as follows:

	£.	s.	d.
1. Casual, territorial and hereditary revenue, exclusive of Land Company (Appendix, No. 1), on an average of three years, ending October 1834	10,600	16	10
2. Land Company for the next nine years (Appendix, No. 1), a sum at the rate of	6,000	–	–
3. Permanent aid under 35 Geo. 3, c. 9 (Appendix, No. 2)	5,000	–	–
4. Proceeds of Local Acts 41 Geo. 3, c. 13 & 14 (Appendix, No. 2), on average of three years, ending October 1834	5,995	16	2
5. Custom-house duties and penalties and seizures now remitted to England (Appendix, No. 3), on average of four years, ending 5 January 1836	414	14	2
TOTAL £.	28,011	7	2

Exclusive of the profits, if any, to be derived from the post-office.

In order to furnish a further idea of the extent of the sacrifices not only present but prospective, which will be made by the projected cession, we also annex a list (*see* Appendix, No. 4), as far as the same can be made out, of all the descriptions of property belonging to the Crown in Lower Canada, as well as of the rights of the Crown, which though they are at present unproductive, may in the course of time become sources of revenue, and to this are added returns (App. Nos. 5 & 6) of the quantity of lands at the disposal of His Majesty, both in the settled districts of the Province and in the portions which are not yet surveyed or inhabited.

35. For your Lordship's further assistance in considering this Report, we have appended a statement, derived from one which was made by the Receiver-general up to the end of 1834, of the net revenue of the Province during ten years, and of the expenditure for the support of Government, including the expenses of the Legislature. Your Lordship will observe that there has always been a considerable surplus, which we understand has been applied by the Legislature to general purposes, chiefly the encouragement of education and the promotion of internal improvements.

We have the honour to be, your Lordship's most obedient humble Servants,

(signed) GOSFORD,
CHAS. EDW. GREY *,
GEO. GIPPS.

* I have affixed my signature to this Report, subject to a statement of my difference of opinion, which has been delivered to the Secretary, to be entered on the minutes, and which, it has been agreed, shall go home with the Report.

(signed) *Chas. Edw. Grey.*

Sir Charles Grey desired to make the following Entry on the Minutes.

A STATEMENT of Sir *Charles Grey*'s Difference of Opinion upon some Points of the First Report of the Commissioners.

1. I JOIN in the main recommendation of the Report, namely, that the net proceeds of the hereditary revenue of the Crown in Canada should be carried, as in England, to the general account of the permanent revenue, and should be appropriated by the representatives of the people, with the concurrence of the other two branches of the Provincial Legislature. I go even beyond what is expressed in the Report, in recommending that laws should be made for regulating, not only the management, but, with certain conditions, and under the guardianship of the Crown, the disposal also and conversion of some of the sources of that revenue; a subject which will very soon occupy the consideration of all the Commissioners. But these steps may be fatal if they are taken without permanent appropriations being secured to the extent which is necessary to enable the ordinary executive and judicial powers of the Civil Government to be exercised without dependence upon annual votes; and my opinions have been formed entirely upon the supposition that the whole of the arrangements are to be for a limited period only.

2. The concession of the hereditary revenue, including the proceeds of the sales of wild lands (of which proceeds I should recommend the interest only to be annually expended) is the last step upon which the Crown can pause before entering upon a new state of affairs. I believe it to be possible, even yet, to find in the remaining rights of the Crown in Lower Canada, resources out of which the executive and judicial government might be sustained. If they are given up without obtaining permanent appropriations sufficient for the maintenance of the ordinary Civil Government, the Crown must either yield to every future demand of the Assembly, whether reasonable or not, or must ask the Imperial Parliament for a revenue wherewith to govern the Province. The concession, if made in this manner, so far from being a healing or quieting measure, would cast upon the arena a heap of new subjects for contention; and the Government, in its destitute state, would be less able than ever to control the strife. In whatever way the concession may be made, the management and disposal of every item of the hereditary revenue and rights of the Crown is sure to be claimed by the Assembly, either as a direct attribute of the representatives of the people, or as a subject on which it is their privilege to advise the Executive, with an expectation that their advice will always be followed. If such claims are, in any case, to be firmly, though calmly resisted, the Government ought not to be dependent upon the claimant for its very existence. I mean no offence to the House of Assembly; but only that the prevailing party in it entertains a sincere, though, in my opinion, a mistaken conviction, that as representatives of the people they are constitutionally entitled to have, in every thing, their own way.

3. I object both to the principle and to the amount of the Civil List which is proposed in the paragraphs of the Report, from paragraph 8 to 16; and in the Appendix, No. 8. The amount, including salaries of judges, is 19,175 *l.* a year, whereas the ordinary annual expenses of the executive and judicial branches of the Civil Government are not far short of 40,000 *l.*; and, with the provision made by the Report, the Government would be as incapable of existing without the annual votes of the Assembly as if there were no Civil List at all.

4. The principles on which the proposal is stated to be made, appear to me to be erroneous, and at variance with those of the British Constitution. Howsoever the term 'Civil List' may have been misapplied, its proper meaning in our constitution, according to my understanding of it, is not merely the provision which is made for His Majesty's household and privy purse, but all the permanent appropriations for those functions of civil, as distinguished from military government, which, on all hands, are admitted to be necessary, and which are made permanent and stable, because it is generally acknowledged that they cannot be suspended or left in a precarious or uncertain state, or dependent upon annual votes, without mischief to the people.

5. Consistently with this understanding of the constitutional principles of

a Civil List, but embarrassed by foregone transactions, I propose, in existing circumstances, as a condition precedent to any concession of the hereditary revenue, that permanent appropriations should be made by the Legislature to an extent which I will state, for the present, only in round numbers. The last and most important item is one which, in England, there is no occasion to provide for by a Parliamentary vote; but, in Canada, it has always been paid out of the general revenue, until the recent stoppage of the issues of that revenue; and there is not the slightest probability at present of its being provided for by district or county rates. I wish further to remark that the following list is formed upon the supposition that the expenses of managing, collecting, receiving and accounting for the revenue, as provided in the Acts establishing duties of customs, and as they are now payable out of the gross proceeds of Crown or waste lands, would be independent of the Civil List.

	£.	s.	d.
1. For salaries to the Governor and to some other executive officers	8,500	–	–
2. Towards the contingent expenses of their offices	2,000	–	–
3. Towards the expenses of Crown prosecutions and lawsuits at the instance of Government	1,500	–	–
4. Salaries of judges	10,000	–	
5. Towards the expenses of superior courts and circuits	2,500	–	
6. Towards the expenses of the common gaols, and of the general conservation of the peace throughout the Province	6,000	–	–
TOTAL £.	30,500	–	–

I believe this to be scarcely sufficient for the existence of the executive and judicial branches of Government. To enable them to act with any freedom and convenience, or to enable the Government to obtain any supplies for miscellaneous services, or public charities or improvements, it would still be constantly necessary to keep up a good understanding and kindly feeling with the representatives of the people; and I should wish that necessity always to exist. The amount proposed by me is less than what has been recommended by any of the persons from whom the Commissioners have taken evidence upon the subject of a Civil List. It is less than what His Majesty's Ministers suggested to Lord Dalhousie before 1828. It is not more than what was recommended by the Committee of 1828, nor than what was demanded by Lord Ripon; for both Lord Ripon and the Committee intended that in addition to what they required as a Civil List, the Crown should retain those proceeds of hereditary revenue which are exhibited in this Report as the main subject of the proposed concession. It is less even than the advance which it was found necessary to make from the military chest, in aid of the Civil Government, in 1834, and which was all expended upon the arrears due for the service of the Civil Government in one year, 1833. There is no item of expenditure covered by it which was not sanctioned by a deliberate and distinct vote of the Assembly in 1825. It will not escape the observation of His Majesty's Ministers, though it was not distinctly in evidence before the Committees either of 1828 or of 1834, that in the recent disputes as to public monies in Lower Canada, there has been no question about raising any new taxes upon the people, nor indeed about any supplies at all, properly so called; that the permanent revenue arising almost entirely from duties of import, or from the property or droits of the Crown, is more than four times as much as I have proposed for a Civil List, and more than three times the ordinary expenditure of the executive and judicial Government, and that there has not for many years been a session in which the Assembly has not divided amongst miscellaneous objects, and principally of its own selection, twice the amount of public money which it has appropriated to the service of the executive and judicial branches of Government.

See Appendix, No. 11.

6. Upon all that is said as to the independence of the judges in the paragraphs of the Report from 18 to 26, I have only to remark, that I consider it to be one of the very first objects of all wise legislation, that the administration of justice should be unbiassed; and that nothing could be more destructive of that object, than to expose the judges more than they

they are at present exposed, to loose accusation and irregular attacks; and that I do not think a popular assembly can, in any way, be made a fair tribunal for the trial of facts. My suggestion would be to make the judges removable by His Majesty, in three ways, for misconduct. 1. Upon the concurrent addresses of the two Houses of the Legislature. 2. Upon an accusation by the Assembly, and an inquest by a commission from the Crown. 3. By an impeachment by the Assembly before the Legislative Council, and a trial by a select number of that body, to which it should be reduced either by ballot or votes amongst themselves, or by the counsel for the prosecution and defence striking names alternately from a list of the whole. Our Report does not express any opinion as to the salaries or pensions of the judges, but all the evidence we have received, is to the effect that their present salaries are not too large. It is understood, however, that a reduction of them is to be proposed in the Assembly, which, from the best information I can obtain, would be injurious, and would not be likely to last, but in its temporary operation might have the effect of driving some of the present judges from office.

7. The sudden abandonment by the Crown of all right to grant pensions for services, unless with the concurrence of the Assembly, will be felt as a hardship by some of the older public servants, who, in the state of dissension into which the Province has fallen, can scarcely flatter themselves that they will be favourably regarded by the Assembly. We are aware of one case in which the period of service has been 43 years.

8. I wished the Report to have been withheld until it could be ascertained, as it is likely to be within a fortnight, whether the Assembly will vote the payment of the arrears due for the service of the Civil Government. Our recommendations on the subject of the hereditary revenue will now be divided and broken into several reports, and it will be less easy to obtain from them a consistent view either of the subject itself, or of what we advise. The necessity of subjoining these compressed and imperfect statements of dissent, forces me reluctantly to augment this inconvenience. As the only means in my power of remedying it, it is my intention as soon as possible after the decision of the two Houses upon the arrears and estimates is known, to put upon the minutes of our proceedings a full and uniform statement of the measures which, in my opinion, it would be desirable to adopt, accompanied by the draft of a Bill; and in the mean time, I abstain from noticing some points in the Report of minor importance, on which I cannot entirely agree with my colleagues, remarking merely, that with a view to the precluding of future disputes, I attach some consequence to two matters. First, that the right of altering the boundaries of the Province should be reserved. Secondly, that, in reserving the rights of the Crown to those sources of revenue of which the proceeds are now to be given up, attention should be paid to the words of the Imperial Statute of 1st Geo. 3, c. 1, s. 10.

(signed) *C. E. Grey.*

True extract from the minute of the proceedings on the 30th of January 1836.

(signed) *T. Fred. Elliot*, Secretary.

Sir George Gipps stated, that in consequence of the Remarks which had just been entered on the Minutes by Sir Charles Grey, it was his desire to place on record the following explanation of his opinions on some of the points therein adverted to.

1. In the remark, No. 5, it is stated that every witness examined on the subject of the Civil List, recommended a larger one than that which the Commissioners have adopted; but it is not stated that the same witnesses acknowledged they saw no probability of getting a Civil List such as they desired, except by the intervention of the Imperial Parliament. Supposing, for argument's sake, such intervention ever to become desirable, it could not, I presume, be resorted to except as an extreme measure; and I would ask whether in that point of view it could be demanded by His Majesty's Ministers, on a refusal from the Assembly, to make so extensive a permanent grant as that proposed in the remarks? or whether it would not be much more likely to be obtained, and much less obnoxious, if it were made to follow the rejection of the moderate demand

suggested in the body of the Report. The Commissioners, I would here observe, did not examine any witnesses for the purpose of showing that the Assembly is disinclined to an extended Civil List, because the fact seemed sufficiently known to them, from the proceedings of that body, without calling evidence to prove it.

2. The financial affairs of Lower Canada have, in my opinion, advanced to a state in which no middle course can be adopted with any prospect of success. The experiment must, I think, be made of carrying on the Government by means of annual appropriations, with the exception, that is to say, of charges of the nature of those contained in our proposed Civil List. Should the experiment fail, the British Parliament will not be less competent to interfere afterwards than now; and whilst I wish not prematurely to convey any opinion of my own on the expediency of the measure, I presume it will not be denied by its advocates, that so grave an exercise of authority would come with a better grace, and with no diminished effect, if preceded by proofs of a desire to avoid it. It should moreover, I think, be remembered that the House of Assembly never absolutely refused to provide for the wants of the Government, until (in 1834) the means of defraying their own contingent expenses were denied them.

3. With reference to what is stated in the same remark, No. 5, respecting the Committee of 1828, and the Civil List proposed in 1830 and 1831 by Lord Ripon, I would observe, that in my opinion it was not with any intention of making the Local Government independent of annual appropriations that the Committee abstained from recommending the cession of the hereditary and territorial revenues; but most probably (seeing the parenthetical manner in which they dismiss the subject) from an impression that to change the appropriation, would needlessly disturb an existing usage considered by them of little moment; and, that Lord Ripon did not look to the funds of the Crown as a means of rendering the Government independent of annual grants from the Assembly, is clear, from the purposes to which he intended to apply them; whilst it is equally certain that the reservation of these revenues was the principal, if not the sole, cause of the failure of the arrangements recommended by his Lordship.

30 January 1836. (signed) GEO. GIPPS.

True extract from the minute of proceedings on the 30th January 1836.

31 January. (signed) *T. Fred. Elliot.*

Lord Gosford then made the following Entry.

I HAVE considered the different points connected with this Report, with a view to a practicable measure in this country. If higher terms than those stated in this Report be required, I see no use in submitting them here; the only mode, in my mind, by which they could be accomplished, would be by at once having recourse to the Imperial Parliament.

(signed) GOSFORD.

True extract from the minute of proceedings on the 30th of January 1836.

(signed) *T. Fred. Elliot*, Secretary.

APPENDIX.

APPENDIX.

LIST OF APPENDIX.

Appendix, No. 1 *a*.

Appendix, No. 1 *a*.

RETURN of all Sums paid into the Hands of the Receiver General on account of the Hereditary, Casual and Territorial Revenue of *Lower Canada*, in the Years 1832, 1833, 1834, and 1835.

Sources from whence the Revenue is derived.	For the Financial Year, ending 10th October.			
	1832.	1833.	1834.	1835.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.
1. Quints (*a*) - - -	232 1 –	99 3 –	2,175 13 1	1,366 17 8½
2. Lods et Ventes (*b*) - -	1,819 17 9	2,356 3 3	1,762 6 8	976 8 8

Remarks.

(*a*) Seigneuries or lands held "a titre de fief" are subject to a duty or fine to the King of one-fifth of the purchase-money on every alienation by sale; and this duty is called a "quint." It is liable, however, to a deduction of one-third, or 33 ⅓ per cent. on voluntary sales, and one-fourth or 25 per cent. on forced or sheriff's sales, if paid within three months from the time of sale. Nearly all the lands on the banks of the St. Lawrence are held "a titre de fief," and consequently subject to this duty.

(*b*) Under the head "lods et ventes," it is common to include all payments to the Crown on account of lands held under it "en roture," or "a titre de cens," though "lods et ventes" are properly the mutation fine of one-twelfth of the purchase-money due to the Crown, as often as such lands are alienated by sale. These lands are also sometimes said to form the "censive of the King," and they consist principally of lots of building land in the town and suburbs of Quebec. "Lods et ventes" are also subject to the same rate of deduction or remission as on "quints," if paid within three months of the time of sale.

Sources from whence the Revenue is derived.	For the Financial Year, ending 10th October.			
	1832.	1833.	1834.	1835.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.
3. Commutations of Tenure (*c*) - - -	82 16 –	1,897 3 11	68 8 –	725 17 5
4. The King's Posts (*d*) -	1,080 – –	1,080 – –	1,080 – –	1,080 – –
5. Forges of St. Maurice (*e*)	900 – –	- - -	675 – –	450 – –
6. King's Wharf (*f*) - -	162 3 10	208 7 11	23 17 11	23 17 11
7. Water Lots (*g*) - -	– 12 7	23 13 –	68 15 1	65 11 7
8. Fines, Forfeitures and Seizures (*h*) - -	—	—	—	—
9. Jesuits' Estates (*i*) -	—	—	—	—
10. Land Fund (*k*) - -	2,700 – –	2,430 – –	2,700 – –	Accounts not yet made up.
11. Timber Fund (*k*) - -	3,008 11 1	1,350 – –	3,817 16 8	
12. British North American Company (*l*) - -	- - -	- - -	6,000 – –	—
£.	9,986 2 3	9,444 11 1	18,371 17 5	4,688 13 3½

Remarks.

(*c*) These are payments made under the Imperial Act 6 Geo. 4, c. 59, for the commutation of tenures "a titre de fief," or "a titre de cens" into the tenure of free and common soccage.

(*d*) This is an annual rent paid by the Hudson's Bay Company for certain trading posts within the province of Lower Canada, the occupation of which secures to them the exclusive right of fishing, hunting and trading over a vast extent of country between the settled lands on the north bank of the St. Lawrence and the territories which the Company possess by charter. The lease will expire in 1842.

(*e*) This is a property near the town of Three Rivers, leased to Mr. Matthew Bell, at 450 *l.* per annum. The rent is only paid up to the end of 1833; and on the new lease which commenced, for 10 years, in 1834, there will be a deduction of 67 *l.* 10 *s.*, it having been agreed that that sum shall be credited to the Jesuits' estates, a part of the property having belonged to the Jesuits.

(*f*) This property consists of two lots (both in Quebec), one of which is held on a lease which will expire in 1841, at the yearly rent of 23 *l.* 17 *s.* 11 *d.*; the other on a lease of 30 years, from May 1833, at 225 *l.* per annum. On this latter lease no rent has yet been paid, an indulgence having been granted to the tenant in consideration of the large outlay that he has made on the property. The rent, however, is recoverable, being only delayed, not remitted. In 1841 the rent of 23 *l.* 17 *s.* 11 *d.* will cease, or rather, become merged in the larger rent of 225 *l.*

(*g*) These lots are situated in the towns of Quebec, Three Rivers and William Henry. They ought to produce 150 *l.* per annum; but the rents on the old grants on leases appear seldom to have been collected.

(*h*) Fines, forfeitures and seizures are in some cases payable to the King, and in others are secured by local Acts to the appropriation of the Legislature; and in consequence of the difficulty of distinguishing between them, nothing has of late years been credited to the Crown revenue from this source.

(*i*) The net income of the Jesuits' estates, after deducting the charges of management, is about 1,500 *l.* sterling per annum; but the proceeds since 1831 have been placed at the disposal of the Legislature, for the purposes of general education.

(*k*) The Land Fund and Timber Fund commenced to be productive only in the year 1828, when gratuitous grants of lands and gratuitous licences to cut timber were discontinued. These funds have always been considered as entirely at the disposal of the Crown; whereas the Crown was, as to its other revenues, supposed to be bound by a pledge given in 1794, to expend them only for purposes connected with the administration of the Government.

On account of the importance which has thus become attached to these funds, a separate return is given of each, much more in detail than the present. (*See* No. 1 *b*.)

(*l*) As yet only one payment has been made by the North American Land Company; but, according to their agreement, the sum of 54,000 *l.* will be due from them for the next nine years, bearing an interest of four per cent.

(signed) *Jos. Cary*, Inspector-General P. P. Accounts.

Quebec, 15 Dec. 1835.

Appendix, No. 1 *b*.

LAND FUND.—ABSTRACT of the Half-yearly Accounts of the Commissioner of Crown Lands in *Lower Canada*, between the 1st day of January 1832 and the 30th day of June 1835.

1. Half-year ending	2. Number of Townships in which Sales were made.	3. Number of Acres Sold.		4. Average Price per Acre.	5. Amount of the Sales.	6. Remitted to Half-pay Officers on account of Purchases made by them under the Regulation of the 1st Aug. 1831.	7. Remitted to other Persons under Special Authority from the Governor or Secretary of State.	8. Amount paid by the Purchaser at the Time of Sale.	9. Amount collected in the course of the Half-year on account of former Sales.	10. Amount collected in the course of the Half-year for Interest on Instalments not paid up.
		Lots.		*s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	
1832—June 30	28	14,925¼	134	5 – ¾	3,790 16 11¼	111 2 2	- nil -	695 10 5	485 19 1½	- nil -
— Dec. 31	23	9,187	59	5 2	2,377 5 1½	441 8 10	- nil -	448 1 5½	456 8 3½	- nil -
1833—June 30	22	10,389	66	4 8¾	2,463 9 7½	222 4 5	436 16 8	343 3 4	497 14 5½	- nil -
— Dec. 31	35	32,180	78	3 1½	5,085 11 9½	1,277 8 2	- nil -	1,632 7 7¼	291 5 8	- nil -
1834—June 30	25	14,184½	70	4 5½	3,174 15 8	1,498 14 4	- nil -	568 8 7	530 6 6	- nil -
— Dec. 31	30	28,928½	212	3 2½	4,647 19 6	1,068 15 6	218 8 –	992 19 5½	546 8 4½	- nil -
1835—June 30	29	26,404	138	2 9½	3,670 8 8½	719 5 10	- nil -	812 – –¾	508 3 –½	- nil -

11. Amount collected in the course of the Half-year on account of Rent for Lands on Lease.	12. Amount collected in the course of the Half-year on account of Quit Rents.	13. Amount collected in the course of the Half-year for the Redemption of Quit Rent.	14. Total collected in the course of the Half-year, being the Amount of Columns 8, 9, 10, 11, 12 & 13.	15. Contingent Expenses deducted by the Commissioner before the Monies are brought to account.	16. Amount paid in the course of the Half-year by the Commissioner to the Receiver General.	17. Balance remaining in the Hands of the Commissioner at the end of the Half-year.	18. Amount of Instalments and Quit Rents unpaid, though actually due to the Commissioner at the end of the Year.	19. Amount of Instalments accruing, though not due, at the end of the Year.	20. Amount of Capital outstanding on Quit Rent, or Interest at Five per Cent.
£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*
81 8 3	172 15 10¼	78 18 1	1,514 11 9½	128 5 8	800 – –	1,060 13 2½	- nil -	- nil -	—
66 16 5	292 13 3	176 5 –	1,440 4 5	244 15 –	2,200 – –	56 2 7½	1,431 14 8½	3,538 11 6	—
21 8 10	198 – 2	89 7 2	1,149 14 –¼	137 12 2	1,000 – –	55 7 11¼	- nil -	- nil -	—
72 6 5½	202 19 9	88 6 3	2,257 5 8½	135 2 6	1,700 – –	507 11 2	3,418 14 1½	5,033 10 1¼	—
- nil -	193 6 7	53 3 1	1,315 4 9	139 2 9½	1,200 – –	508 19 4½	- nil -	- nil -	—
76 2 3½	87 4 6½	118 19 1	1,821 13 9	139 – 1	1,800 – –	359 8 6½	5,060 19 4	6,233 8 5½	—
- nil -	308 2 7	120 9 4	1,748 15 –¼	206 6 5½	1,600 – –	276 17 1¼	5,947 9 9	10,601 1 5¼	24,475 5 –¼

Total of the Outstanding Debt due to the Crown for Land, being the Amount of Columns 18, 19, 20 - - - £. 41,023. 16. 3½.

TIMBER FUND.—ABSTRACT of the Yearly Account of the Commissioner of Crown Lands and Surveyor-General of Woods and Forests in *Lower Canada*, between the 1st day of January 1832 and 31st day of December 1834.

1. YEAR ENDING	2. Number of Licences granted to cut Timber on the Waste Lands of the Crown.	3. Oak Timber.	4. Red Pine.	5. White Pine.	6. Number of Saw Logs.	7. Amount of the Sales.
		Feet.	*Feet.*	*Feet.*		£. *s. d.*
31 December 1832 - -	45	35,271	525,323	411,190	88,400	3,840 7 –
31 December 1833 - -	22	1,190	347,596	152,950	5,000	1,574 7 4
31 December 1834 - -	32	612	929,054	78,750	72,754	4,649 19 3

8. Amount paid at Time of Sale.	9. Amount collected in the Year on account of former Sales.	10. Total collected in the course of the Year, being Amount of Columns 8 & 9.	11. Expense of Collection, deducted before the Monies are brought to Account.	12. Amount paid in the course of the Year by the Commissioner to the Receiver General.	13. Balance remaining on Hand at the end of the Year.	14. Amount of Duties unpaid, though actually due to the Commissioner.	15. Amount of Duties accruing, though not actually due.
£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*
450 – –	2,396 12 8	2,846 12 5	193 – –	2,842 18 6	3 13 11	1,079 18 8	2,310 8 4
93 10 2	1,388 18 1	1,482 8 6	- nil -	1,500 – –	13 17 7 overpaid	2,188 13 4	1,407 14 8
2,897 16 4	1,434 17 8	4,332 14 –	216 5 7	4,042 0 9	307 12 10	1,753 7 –	3,835 4 2

Total Debt to the Crown:
Land Fund - - £. 41,023 16 3½
Timber Fund - - 5,588 11 2
46,612 7 5½

Total of the Outstanding Debt to the Crown for Timber - - - - - - £. 5,588 11 2

Quebec, 3 Dec. 1835.

(signed) *W. B. Felton*,
Commissioner of Crown Lands.

Appendix, No. 2.

Quebec, 18 December 1835.

RETURN of all PERMANENT APPROPRIATIONS made by the Legislature of *Lower Canada*.

ACTS of the Legislature.	FUNDS out of which the Monies are payable, and Purposes for which the Appropriation is made.	AVERAGE of Three Years, ending 10 Oct. 1834.
		£. s. d.
33 Geo. 3, c. 8.	Duties on wines permanently appropriated to the payment of the salaries of the officers of the two Houses of Assembly, and contingent expenses of the same:	
	Collected in 1832 - - - - £. 3,420 1 10 Ditto - 1833 - - - - 4,471 15 6 Ditto - 1834 - - - - 3,337 18 1	3,743 5 2
35 Geo. 3, c. 9.	Permanent grant towards further defraying the charges of the administration of justice and support of the civil government within the Province, charged on certain additional duties on "goods, wares and merchandize" - - - - - -	5,000 – –
36 Geo. 3, c. 9.	Assessments on public buildings, dead walls or void spaces of ground belonging to Government, for making repairs and altering highways and bridges, payable out of any unappropriated monies:	
	Paid in 1832 - - - - - £. 407 11 9 Ditto 1833 - - - - - 316 16 11 Ditto 1834 - - - - - 287 19 7	337 9 5
41 Geo. 3, c. 13.	Duties on licences for billiard tables, permanently appropriated towards the support of the Government of the Province, and the contingent expenses thereof:	
	Amount collected in 1832 - - - £. 67 10 – Ditto - - - 1833 - - - 45 – – Ditto - - - 1834 - - - 78 15 –	63 15 –
41 Geo. 3, c. 14.	Certain new duties on the importation into the Province of all manufactured tobacco and snuff, permanently appropriated towards the further defraying the charge of the civil government of the Province:	
	Amount collected in 1832 - - £. 5,912 19 8 Ditto - - - 1833 - - 6,174 1 8 Ditto - - - 1834 - 5,709 2 2	5,932 1 2
45 Geo. 3, c. 12.	Duties and fines authorized to be levied in the River St. Lawrence, and applied to the improvement of the navigation of the same:	
	Levied and applied in 1832 - - £. 3,252 3 5 Ditto - - - - 1833 - - 3,067 11 6 Ditto - - - - 1834 - - 3,518 7 4	3,279 7 5
55 Geo. 3, c. 10.	Annuities granted to militia-men wounded in the late war with the United States, payable out of the unappropriated funds at the disposal of the Legislature:	
	Paid in 1832 - - - - - £. 330 15 – Ditto 1833 - - - - - 418 10 – Ditto 1834 - - - - - 425 5 –	391 10 –
2 Geo. 4, c. 7.	Duties on steam-boats, authorized to be levied on the River St. Lawrence, and applied to the improvement of the navigation of the same:	
	Levied and applied in 1832 - - £. 360 7 11 Ditto - - - - 1833 - - 504 13 6 Ditto - - - - 1834 - - 392 7 9	419 3 –
5 Geo. 4, c. 33.	Fees and expenses of returning-officers at elections:	
	Amount in 1831 - - - - £. 46 10 2 Ditto - 1832 - - - - 524 13 5 Ditto - 1833 - - - - 316 12 9 Ditto - 1834 - - - - 1,439 7 –	581 15 10
	N.B. The average is here taken for four years, as a general election usually occurs once in that time.	

Appendix, No. 2.

ACTS of the Legislature.	FUNDS out of which the Monies are payable, and Purposes for which the Appropriation is made.	AVERAGE of Three Years, ending 10 Oct. 1834.
		£. s. d.
6 Geo. 4, c. 8.	Fees to the clerks of the civil courts of King's Bench or Provincial Courts, for the duty of preparing and digesting returns of births, marriages and burials, for the purpose of ascertaining the annual increase of population:	
	Amount paid in 1832 - - - - £. 51 6 -	
	Ditto - - 1833 - - - - 7 17 6	61 16 -
	Ditto - - 1834 - - - - 126 4 6	
9 Geo. 4, c. 63.	Pension to widow of the late Hon. Alexis Caron, payable out of any unappropriated monies - - - - - -	75 - -
1 Will. 4, c. 16.	Perpetual annuity to the Roman-catholic Bishop of Quebec, for the acquisition of the episcopal palace at Quebec and of the ground thereunto attached, for the public uses of the the Province, payable out of any unappropriated monies -	1,000 - -
1 Will. 4, c. 48.	Pension to the widow of Frederick Rolette, late captain in the provincial navy on Lake Huron, payable out of any unappropriated monies - - - - - - - - -	75 - -
	TOTAL Sterling - - - £.	20,960 3 -

(signed) *Jos. Cary*, Insp. Gen. Pro^{l} Accounts.

Appendix, No. 3.

Appendix, No. 3.

STATEMENT of DUTIES collected at *Quebec* and *Montreal*, under the Imperial Acts 4 Geo. 3. c. 15, and 6 Geo. 3, c. 52; showing the Sums remitted to *England* in the Years ending 5 January 1833, 1834, 1835 and 1836.

YEARS.	Duties Levied under the Acts 4 Geo. 3, c. 15, and 6 Geo. 3, c. 52.	Sums Remitted to the Receiver-General in England on account of those Duties.	Amount of Incidents paid from those Acts.	Sums paid on Account of Salaries from those Acts.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.
To 5 Jan. 1833 -	2,323 12 9	811 8 6	321 19 10	271 1 6
- - 1834 -	1,733 3 -	500 - -	472 19 4	1,541 5 8
- - 1835 -	1,287 17 11	- - -	675 19 2	360 7 7
- - 1836 -	1,105 17 8	- - -	*714 14 11	410 14 4

* *Note.*—The incidents are only made up to the 10th October last.

STATEMENT of SUMS remitted to *England*, on Account of the King's Share of Seizures and Penalties, in the Years ending the 5th January 1833, 1834, 1835 and 1836.

YEARS.	On Account of Seizures.	On Account of Penalties.
	£. s. d.	£. s. d.
To 5 Jan. 1833 -	76 16 7	—
- - 1834 -	26 13 -	—
- - 1835 -	93 12 10	—
- - 1836 -	145 8 4	4 17 5

Customs, Quebec, 7 Jan. 1836. (signed) *Hy Jessopp*, Coll^{r}.

Appendix, No. 4.

Appendix, No. 4.

STATEMENT, as far as the same can be made out, of all the Sources, whether at present Productive or Unproductive, from which a Revenue may accrue to the Crown in *Lower Canada.*

1.—The wild lands and forests of the whole Province.
2.—The grant to the British North American Land Company.
3.—The King's domain, in the restricted sense in which that term is used in the Province; viz.—
  (*a*) Droit de quint.
  (*b*) Droits de lods et ventes.
  (*c*) Cents et rentes, and other seignorial dues.
  (*d*) The King's wharfs.
  (*e*) Commutations of tenure under the Imperial Act 6 Geo. 4, c. 59.
4.—The King's posts.
5.—The forges of St. Maurice.
6.—The water lots.
7.—Fines, forfeitures and penalties.
8.—The aids granted by the provincial Acts 35 Geo. 3, c. 9, and 41 Geo. 3, c. 13, 14.
9.—The Jesuits' estates.
10.—The claim of the Crown to the seigniory of Montreal.
11.—The claims of the Crown to the beds of tide rivers, and to the land between high and low water-mark.
12.—Certain rights reserved out of seigneuries, and out of the grants of wild lands in free and common soccage, such as gold and silver mines, the right of making roads and of cutting timber for public purposes, together with certain other rights which are known or understood to exist in the Crown, but which are not productive; such as the droit d'aubain, the right to forfeitures of land and to escheats.
13.—The seigniory of Sorel, the site and garden of the castle of St. Lewis, at Quebec, and the Government-house at Montreal.
14.—The forts, barracks and lands under the charge of the Board of Ordnance, or any other military or naval department.
15.—Certain droits of Admiralty.
16.—Certain duties levied under Acts of the British Parliament of a date prior to the 14 Geo. 3.
17.—One-third of all custom-house seizures.
18.—The post-office.

Appendix, No. 5.

STATEMENT exhibiting the actual Condition of the WASTE LANDS of the CROWN comprised within the Surveyed Districts, including the Reservations set apart for the Support of a Protestant Clergy, as they appear on the 26th day of December 1835.

DISTRICT.	COUNTY.	TOWNSHIP.	Quantity of Surveyed Land, subdivided into Lots, now remaining Vacant and Disposable.		Extent of the Part remaining Unsurveyed in each Township.	Total of Vacant and Disposable Land, including the Reservations for the Clergy.
			Crown.	Clergy.		
Montreal	Ottawa	Litchfield	33,654	6,421	—	40,075
		Clarendon	24,409	7,342	16,800	48,551
		Bristol	35,114	6,030	—	41,144
		Onslow	600	1,876	41,325	43,801
		Eardley	19,713	5,870	—	25,583
		Hull	10,050	8,217	—	18,267
		Wakefield	54,215	9,035	—	63,250
		Templeton	33,939	9,021	—	42,960
		Buckingham	16,700	8,785	—	25,485
		Portland	11,000	2,140	46,200	59,340
		Lochaber and Gore	14,071	5,515	11,200	30,786
	Two Mountains	Grenville and Aug	16,526	5,550	—	22,076
		Hannington	40,050	7,898	—	47,948
		Wentworth	35,194	7,158	—	42,352
		Chatham	3,400	1,300	—	4,700
	Terrebonne	Abercrombie	In dispute		—	—
	Vaudrieul	Newton and Aug	1,804	2,344	—	4,148
	Lachenay	Kilkenny	10,775	7,235	—	18,010
	L'Assomption	Rawdon	11,500	8,500	—	20,000
	Berthier	Kildare and Aug	1,300	3,490	—	4,790
		Brandon	8,005	7,980	5,120	21,105

DISTRICT.	COUNTY.	TOWNSHIP.	Quantity of Surveyed Land, subdivided into Lots, now remaining Vacant and Disposable.		Extent of the Part remaining Unsurveyed in each Township.	Total of Vacant and Disposable Land, including the Reservations for the Clergy.
			Crown.	Clergy.		
Montreal - -	Beauharnois -	Hinchinbrooke -	- -	1,170	- - -	1,170
		Hemmingford - -	- -	8,075	- - -	8,075
	Missisquoi - -	Stanbridge - -	2,093	4,785	- - -	6,878
		Dunham - - -	1,706	5,375	- - -	7,081
		Sutton - - -	4,825	8,533	- - -	13,358
St. Francis - -	Stanstead - -	Potton - - -	- -	3,028	- - -	3,028
		Bolton - - -	- -	7,981	- - -	7,981
		Stanstead - -	- -	5,205	- - -	5,205
		Hatley - - -	- -	3,475	- - -	3,475
		Bamston - -	- -	2,617	- - -	2,617
		Barford - - -	- -	600	- - -	600
Montreal - -	Shefford - -	Farnham - -	- -	6,142	- - -	6,142
		Granby - - -	- -	2,968	- - -	2,968
		Milton - - -	- -	3,200	- - -	3,200
		Shefford - - -	- -	7,147	- - -	7,147
		Brome - - -	- -	2,935	- - -	2,935
		Stukely - - -	- -	2,713	- - -	2,713
		Roxton - - -	- -	1,566	- - -	1,566
		Ely - - -	- -	3,000	- - -	3,000
Three Rivers -	St. Maurice - -	Hunterstown - -	- -	400	- - -	400
		Caxton and Aug -	4,168	443	- - -	4,611
Quebec - -	Port Neuf - -	Alton - - -	—	—	—	—
	Quebec - -	Stoneham - -	31,800	8,700	- - -	40,500
		Tewkesbury - -	33,900	9,100	- - -	43,000
	Sayvenay - -	Seltrington - -	2,593	3,189	- - -	5,782
Three Rivers -	Drummond - -	Upton - - -	3,458	3,975	- - -	7,433
		Acton - - -	8,963	2,508	- - -	11,471
		Grantham - -	4,487	4,551	- - -	9,038
		Wendover and Gore	1,948	450	- - -	2,398
		Simpson - - -	319	478	- - -	797
		Wickham - -	7,111	971	- - -	8,082
		Kensey - - -	1,722	5,450	- - -	7,172
		Durham - - -	1,255	6,441	- - -	7,696
		Aston and Aug -	15,352	8,416	- - -	23,768
		Horton - - -	774	320	- - -	1,094
		Bulstrode - -	24,430	5,281	- - -	29,711
		Stanfold - - -	7,682	8,136	- - -	15,818
		Warwick - -	12,867	8,400	- - -	21,267
		Arthabaska - -	2,600	2,000	16,510	21,110
		Tingwick - -	4,760	8,154	- - -	12,914
		Chester - - -	6,583	8,400	- - -	14,983
		Ham and Aug -	7,160	32,190	16,800	56,150
	Nicolet - -	Maddington - -	7,578	3,481	24,200	32,259
		Blandford - -	7,221	420	- - -	7,641
St. Francis - -	Sherbrooke - -	Shipton - - -	- -	8,294	- - -	8,294
		Wendover - - -	- -	9,703	- - -	9,703
		Melbourne - - -	- -	4,477	- - -	4,477
		Brompton - - -	- -	5,116	- - -	5,116
		Orford - - -	- -	8,725	- - -	8,725
		Stoke - - -	- -	6,000	- - -	6,000
		Ascot - - -	- -	2,610	- - -	2,610
		Compton - - -	- -	4,060	- - -	4,060
		Eaton - - -	- -	2,644	- - -	2,644
		Dudswell - - -	- -	1,000	- - -	1,000
		Newport - - -	- -	600	- - -	600
		Weedon - - -	- -	200	- - -	200
		Clifton - - -	- -	400	- - -	400
		Hereford - - -	- -	8,400	- - -	8,400
		Auckland - - -	- -	600	- - -	600
		Bury - - -	- -	200	- - -	200
Quebec - -	Megantic - -	Somerset - -	17,034	5,869	- - -	22,903
		Nelson - - -	16,437	6,819	- - -	23,256
		Halifax - - -	- -	7,600	- - -	7,600
		Leeds - - -	- -	4,103	- - -	4,103
		Ireland - - -	9,600	7,900	- - -	17,500
		Inverness - -	4,200	3,500	- - -	7,700
		Wolfestown - -	28,400	9,000	- - -	37,400
		Thetford - - -	2,200	31,000	- - -	33,200
		Broughton - -	8,400	7,900	- - -	16,300
		Tring - - -	16,300	8,800	- - -	25,100
		Shenley - - -	32,831	5,309	- - -	38,140
		Dorset - - -	5,412	10,625	- - -	16,037

DISTRICT.	COUNTY.	TOWNSHIP.	Quantity of Surveyed Land, subdivided into Lots, now remaining Vacant and Disposable.		Extent of the Part remaining Unsurveyed in each Township.	Total of Vacant and Disposable Land, including the Reservations for the Clergy.
			Crown.	Clergy.		
Quebec - -	Beauce - -	Frampton - -	2,800	6,432	- - -	9,232
		Cranbourne - -	27,985	9,103	- - -	37,088
		Watford - - -	10,717	1,787	- - -	12,504
		Jersey - - -	1,030	1,036	- - -	2,066
	Bellechasse - -	Buckland - -	10,850	4,201	15,400	30,451
		Standon - - -	20,072	4,700	- - -	24,772
		Ware - - -	19,703	5,529	- - -	25,232
		Armagh - - -	44,455	9,300	- - -	53,755
	L'Islet - -	Ashford and Aug -	14,896	2,178	57,498	74,572
		Lessard - - -	5,408	- -	8,112	13,520
	Kamouraska -	Ixworth - - -	300	1,400	51,000	52,700
		Woodbridge - -	11,066	- -	34,460	45,526
	Rimouski - -	Matane - - -	63,537	10,600	- - -	74,137
		St. Dennis - -	31,169	5,103	- - -	36,272
	Gaspé - - -	Cap. Chat - -	5,800	1,200	64,291	71,291
			999,976	568,099	408,916	1,976,991

Quebec, 26 December 1835.

(signed) *William B. Felton*,
Commissioner of Crown Lands.

Appendix, No. 6.

AN ESTIMATE of the Quantity of WASTE LANDS in the Province, Unsurveyed, of the Quantity fit for Cultivation, of the Forest, and Quality of the Timber.

On which Side of the St. Lawrence.	District.	Descriptive Outline of the Tract.	Quantity of Waste Land.	Estimated Quantity of Waste Land fit for Cultivation.	Quality of Timber.
North -	Montreal -	In the country north and east of the Ottawa, from the rear of Grenville, to a point about 100 miles above the falls of the Chaudiere, in Hull, extending back from the surveyed track about 30 miles.	About 4,500 square miles.	Unknown -	- - Principally pine, of two sorts, red and white. Extensive lumbering operations are carrying on this tract.
		A strip of land lying in the rear of the present townships, on the margin of the above described tract, with the average depth of three-fourths of a township, or 7 ½ miles, making about 15 townships.	- - -	500,000	- - Mixed timber; some white pine, spruce and hardwood.
South -	Quebec -	The country on the River St. John, comprised within the disputed territory.	5,000,000	- - -	- - Spruce and white pine.
		In the rear of the seigneuries, south of the St. Lawrence, on the average depth of half a township, or five miles, by a length of about 90 miles.	Unknown -	208,000	- - Principally spruce timber.
North -	Ditto -	The Saguenay country surrounding the Lake St. John.	- - Supposed about 2,000,000	- - Climate supposed to be too severe for wheat.	Spruce.

Quebec, 26 December 1835.

(signed) *William B. Felton*,
Commissioner of Crown Lands.

Appendix, No. 7.

Appendix, No. 7.

Quebec, December 1835.

RETURN of PAYMENTS, of a Permanent Nature, charged upon the LAND and TIMBER FUND.

Authority for the Charge.	NATURE OF THE PAYMENT.	Amount.	General Amount.
	CROWN COMMISSIONERS' DEPARTMENT:	£. s. d.	£. s. d.
	Salary	600 – –	
	Per centage on sales; average of three years ending October 10th, 1835	210 – –	
	Salary of an assistant in the office	250 – –	
			1,060 – –
	Resident Agent for Emigrants:		
	Salary	400 – –	
	Assistant	100 – –	
	Messenger and clerk	40 – –	
	Office rent	30 – –	
	Travelling expenses, not to exceed	50 – –	
	Boat hire ditto	25 – –	
	Postage ditto	10 – –	
	Printing ditto	12 – –	
	Stationery ditto	10 – –	
			677 – –
	Commission of Escheats:		
	Salary of commissioner	450 – –	
	Clerk	135 – –	
	Contingencies, taken on the average of three years	78 17 8	
			663 17 8
	Pensions:		
	Mr. Amyot	400 – –	
	Mrs. Livingston	50 – –	
	Miss Amelia De Salaberry	50 – –	
	Miss Adelaide De Salaberry	50 – –	
			550 – –
	TOTAL £. Sterling		2,950 17 8

STATEMENT of the Circumstances (as far as they can be ascertained) under which the Pensions in the above Return were granted, and the presumed Age of the Persons now holding them.

1. Mr. *Amyot*.—This is the same amount as was formerly allowed to Mr. Amyot for salary as provincial secretary, and converted into a pension, in conformity with His Majesty's warrant, dated 28th January 1828. Age, .

2. Mrs. *Livingston*.—This pension was granted to Mrs. Livingston, as widow of the late Captain Ramsey Livingston, formerly of the Indian department in Canada, by the King's warrant, dated 29th January 1828. Age, .

3. Miss *Amelia De Salaberry*.—
4. Miss *Adelaide De Salaberry*.— } Pensions granted by the Secretary of State's despatch of 22d June 1828, as daughters of the late Hon. Lieutenant De Salaberry. Ages, .

(signed) *Jos. Cary*, Inspector-General P. P. Accounts.

Appendix, No. 7

RETURN of CHARGES incurred in the Management of the CROWN PROPERTY, or for Miscellaneous Purposes, which, not being otherwise provided, are now paid out of the Land and Timber Fund.

Authority.	NATURE OF THE PAYMENT.		Average of the Three Years ending 10th Oct. 1835.
			£. s. d.
	Surveys of Crown Lands:		
	Amount in 1833 - - - -	£. 1,435 4 1	
	Ditto - 1834 - - - -	899 3 7	1,026 19 5
	Ditto - 1835 - - - -	746 10 9	
	Fees on gratuitous grants of land paid to the provincial secretary, and to the Attorney-general:		
	Amount in 1833 - - - -	£. 200 6 3	
	Ditto - 1834 - - - -	247 15 6	263 13 11
	Ditto - 1835 - - - -	343 - -	
	Expenses of sending special messengers to New York:		
	Amount in 1833 - - - -	£. 36 11 3	
	Ditto - 1834 - - - -	38 5 -	62 8 10
	Ditto - 1835 - - - -	112 10 3	
	TOTAL - - -	£. Sterling	1,353 2 2

(signed) *Jos. Cary*, Inspector-General P. P. Accounts.

To the foregoing charges will have to be added, as by the 29th paragraph of the Commissioners' Report, the following retired allowances, viz.:

H. Ryland, esq. - - - - - - - -	£.	67 10 -
G. Ryland, esq. - - - - - - - -		45 - -
TOTAL - - -	£.	112 10 -

Appendix, No 8.

Appendix, No. 8.

CIVIL LIST to be proposed in giving up the Appropriation of the Crown Revenues to the Legislature of *Lower Canada*.

23 Jan. 1836.

	£.	s.	d.
Governor's salary - - - - - - - - - - - - - -	4,500	-	-
Salaries of executive councillors, at 100 *l.* per annum each, not to exceed * -	900	-	-
Salary of civil secretary - - - - - - - - - -	500	-	-
Appropriation towards contingent expenses of civil secretary - - - -	500	-	-
Salary of attorney-general - - - - - - - - -	300	-	-
Ditto of solicitor-general - - - - - - - - - -	200	-	-
Appropriation towards the contingent bills of the Crown law officers - -	1,800	-	-
TOTAL - - - £.	8,700	-	-

* This charge will of course be subject to revision on any substantial alteration of the Executive Council.

Besides the preceding Charges, it will be necessary to provide, in the measure on Judges' Independence, for the following Salaries and Allowances, now received by the Judges.

	£.	s.	d.
Chief justice of Quebec - - - - - - - - - - -	1,500	-	-
Ditto - of Montreal - - - - - - - - - - -	1,100	-	-
Six puisne judges - - - - - - - - - - - -	5,400	-	-
Resident judge at Three Rivers - - - - - - - - -	900	-	-
Ditto - at St. Francis - - - - - - - - -	500	-	-
Ditto - at Gaspé - - - - - - - - - - -	500	-	-
Judge of vice-admiralty - - - - - - - - - -	200	-	-
Circuit allowances for 15 circuits, at 25 *l.* each, exclusive of four circuits in the district of Gaspé, for which the Assembly have always declined to make a grant - - - - - - - - - - - - - - - -	375	-	-
TOTAL - - - £.	10,475	-	-

Appendix, No. 9.

Appendix, No. 9.

OPINION of the Justices of the Court of King's Bench at *Quebec* on the Competence of the Legislative Council to try by Commission the Accusation against Mr. Justice *Foucher*, January 1818.

To his Excellency Sir John Coape Sherbrook, G. C. B., Captain-general and Governor-in-Chief in and over the Provinces of Lower and Upper Canada, &c. &c. &c.

May it please your Excellency,

In obedience to your Excellency's commands we have taken into our consideration the draft of the commission prepared by His Majesty's Attorney and Solicitor-general to enable the Legislative Council to hear and determine the articles of impeachment exhibited by the Assembly against Mr. Justice Foucher; and having also taken into our consideration the despatch of Earl Bathurst, which, on the part of his Royal Highness the Prince Regent, directs that the charges preferred by this impeachment against Mr. Foucher shall be left to the adjudication of the Legislative Council. The references which have been thereupon made by your Excellency to His Majesty's Executive Council, and to the Attorney, Solicitor and Advocate-general, and their respective answers and reports thereon, we are upon the whole of opinion that a commission under the great seal of this province, conformable to the draft prepared by the Attorney and Solicitor-general, and submitted to us, is the proper and the legal course for carrying the commands of his Royal Highness the Prince Regent in this behalf into effect.

The subject upon which your Excellency, by your reference, has been pleased to call for our sentiments, is one of novelty and very great importance, and as we conceive it to be our duty, for these reasons, to lay before your Excellency the grounds of the opinion which we submit, we shall, with your permission, proceed to state them.

The introduction of the criminal law of England into Canada was one of the effects of the conquest of that Province by His Majesty's arms, and its establishment was confirmed by the 11th clause of the British statute 14 Geo. 3, c. 83, commonly called "The Quebec Act," in these words: "Whereas the certainty and lenity of the criminal law of England, and the benefits and advantages resulting from the use of it, have been sensibly felt from an experience of more than nine years, during which it has been uniformly administered; be it therefore enacted, &c. that the same shall continue to be administered, and shall be observed as law in the province of Quebec, as well in the description and quality of the offence, as in the method of prosecution and trial."

The criminal law of England and the criminal law of Canada is therefore one and the same system, and in this system the following are clear propositions: viz.

That an impeachment is an accusation for some criminal offence, and that a commoner cannot be impeached for any other offence than a misdemeanor[1].

That all judicial jurisdiction emanates from the Crown, and that all judges must therefore derive their authority from the King, mediately or immediately[2].

That the King by his prerogative may erect what courts he pleases for the due administration of the law, and in what place he pleases[3], especially where no jurisdiction exists for the trial of the offence for which he erects his court[4]; it being however provided that he cannot by his commission establish a court in derogation of any of his superior and permanent tribunals[5], nor empower a court erected by his commission solely to proceed in any other way than according to the common law[6].

That therefore in all courts of criminal jurisdiction erected solely by the King's commission the trial must be by jury; that is to say, that in such courts the same persons cannot by the commission be authorized to decide both the law and the fact; on the contrary, that in courts so erected a part must alone decide the law, and a part must alone decide the fact; Ad questionem juris respondent judices, ad questionem facti respondent juratores, is a general and fundamental maxim of the common law[7].

As these propositions are equally principles of law in England and in Canada, it would necessarily follow, if the state of things and of facts in both countries were the same, that the result of them, when applied in practice to a case of impeachment, would also in each be the same. But the state of facts and of things in England and in Canada being essentially dissimilar, the result in the latter differs from the result in the former.

In England every impeachment by the Commons must necessarily be tried in the House of Lords, and no commission (not even a commission for the appointment of a Lord High Steward) is required to enable that august body to take cognizance of such accusations.

But this is the case in that kingdom, because the House of Lords is possessed of an inherent judicial jurisdiction, which it derives from the Aula Regis, of which the "Barones Majores" were a constituent part[8].

And as this jurisdiction is exercised by that body upon the ground of immemorial usage, which presupposes a law by which it has been vested in that House, to which the Sovereign has given his assent, or a grant of some description from the Crown, made under the authority of some law to warrant it; it is a jurisdiction emanating either mediately or immediately from the Crown. The House of Lords therefore sits as a court of law as well as a legislative body. It is in fact the supreme tribunal of the kingdom, "the court of the King in Parliament." And during the session it holds and exercises an original jurisdiction over all accusations

[1] Fourth Commentaries, 259, Woodeson's Lectures, vol. 2. 601.

[2] Bacon's Abridgments, vol. 4, p. 171, Prerogative D.

[3] Comyn's Digest, Prerogative D. 28. vol. 6, p. 46.

[4] Fourth Institutes, 164; 3 Leach Hawkins, p. 33.

[5] Coke's Reports, 9, p. 118 b; Lord Sanchar's Case, 3 Leach Hawk. p. 26, s. 3.

[6] Second Ventris, 33; Hobart, 63; Fourth Institutes, 165.

[7] Jenkin's Centuries, 7th century, 18th case, fol. edition, p. 285; Coke's Reports, 8th part, 155 a. Astry's Charge, p. 4.

[8] Bacon's Abridgments, 1. 583, fol. edit.; Gilbert's Forum Romanum, pp. 2 & 8; Reeve's Hist. of the English Law, vol. 2, pp. 61, 62 & 63, &c. &c.

sations for misdemeanors preferred by impeachment against any of His Majesty's subjects, and over all accusations for felony preferred by indictment against its own members, with a general appellate jurisdiction in error as exercised by the Aula Regis[9].

[9] The Authorities under No. 8.

The exercise of that part of the royal prerogative which authorizes the King "to erect what courts he pleases for the due administration of the law, and in what place he pleases," has therefore in England been rendered not only unnecessary, but has been and yet is limited by the erection of the Aula Regis, and the inherent jurisdiction of the House of Lords which has proceeded from that erection.

It is because the King cannot by his commission "establish a court in derogation of any of his superior or permanent tribunals" that no commission has been issued in England for the trial during a session of Parliament of any impeachment.

The supreme tribunal of the House of Lords, "the court of the King in Parliament," opens with every session, and continues open until the Parliament is prorogued, and during this period no other court could or can, under the authority of any commission issued by the Crown for the trial of any impeachment, be opened or sit for that purpose. If it were otherwise, such a commission would derogate from the King's superior and permanent tribunal of the House of Lords, and its operation would be in direct opposition to the established maxim, "in præsentia majoris cessat potestas minoris[10].

[10] Gilbert's Forum Romanum, p. 3, as to the Aula Regis in particular.

But from these facts it does not follow that an impeachment by the Assembly of Lower Canada cannot be tried in that province under the authority of the King's commission in the Legislative Council during a session of the Provincial Parliament, or that it can be then and there tried without a commission. It is true that during the recess the Assembly being prorogued, is in the same situation that the House of Commons are during the recess in England. And as, in consequence of a prorogation, neither the House of Commons in England, nor the Assembly in Canada, can during the recess appear to prosecute in any court, no commission has been or can be executed in any interval of this description either in England or in Canada; but with respect to the period of the sessions during which the Assembly of course can appear to prosecute, if it be true that in England it is the peculiar inherent and exclusive jurisdiction of the House of Lords, which prevents the exercise of the royal prerogative, and the issuing of commissions for the trial of impeachments during a session; and if it be also true that the Legislative Council are not possessed of the peculiar inherent and exclusive jurisdiction of the House of Lords (which we shall proceed to show), it must unavoidably follow, until it is proved that there is some other legal impediment to the exercise of the royal prerogative in this respect, that the King may in this province issue a commission for the trial according to law of persons charged with misdemeanors by impeachments exhibited by the Assembly. In consequence of the general principle which we have stated, and which in Canada, if there be no such inherent jurisdiction in the Legislative Council, is unlimited, viz. "that the King by his prerogative may erect what courts he pleases for the due administration of the law, and in what place he pleases, especially where no jurisdiction exists for the trial of the offence for which he erects his court," a principle distinctly recognised by the 17th section of the Quebec Act, 14 Geo. 3, c. 83, which enacts, "That nothing herein contained shall extend, or be construed to extend, to prevent or hinder His Majesty, his heirs and successors, by his or their letters patent under the Great Seal of Great Britain from erecting, constituting and appointing such courts of civil, criminal and ecclesiastical jurisdiction within and for the said province of Quebec, and appointing from time to time the judges and officers thereof as His Majesty, his heirs and successors, shall think necessary and proper for the circumstances of the said province," and particularly applicable to the state of the province in which no jurisdiction exists for the trial of offences charged against individuals by the impeachments of the Assembly.

We admit that if an impeachment by the Assembly be tried in the province, it must be tried in the Legislative Council, for as an impeachment is an accusation on the part of the entire Commons of the province, all persons resident therein, except the Governor and the members of the Legislative Council, are obviously parties to the prosecution as accusers, and consequently incompetent to try[11]. But we say that, inasmuch as the Legislative Council is not possessed of the inherent jurisdiction of the House of Lords, His Majesty by his commission, in the nature of a commission of Oyer and Terminer, may and must enable the Legislative Council to take cognizance of, and to determine the articles of impeachment exhibited against Mr. Justice Foucher by the Assembly.

[11] *See* the Statute 25 Ed. 3, c. 3, stat. 5.

And this appears to us to be warranted by the course pursued in England to enable the House of Lords to take cognizance of matters which it ought to decide, but which, for want of its inherent jurisdiction at the time such course is required, it cannot otherwise take cognizance.

We have stated that in England no commission has ever been or could be issued for the trial during the session of Parliament of any impeachment or indictment, nor of any impeachment during a recess; and we have also stated the causes why commissions have not at such times respectively been issued for these purposes; that is to say, because during the session the inherent jurisdiction of the House of Lords defeats the commission, and because during the recess the Commons cannot appear to prosecute.

We have now to observe, that when these causes do not exist, the House of Lords, even in matters of its own proper cognizance, *does sit by virtue of the King's commission.* We allude to the various cases of Peers who have been tried in the recess upon indictments for felony, which being at the King's suit are prosecuted by the Attorney-general, who can at all times appear for that purpose. In these instances the Lords have always sat under the authority given by the commission issued for the appointment of the Lord High Steward,

Appendix, No. 9.

which, says Mr. Justice Foster, "is but a commission in the nature of a commission of Oyer and Terminer[12]."

[12] Foster, p. 142.

Consequently, as in England, a commission for the trial of a Peer indicted for felony may issue in the recess, because in that interval the inherent jurisdiction of the House of Lords does not exist to prevent it, and the prosecutor can appear to prosecute; so in Canada, by parity of reason, a commission may in like manner be lawfully issued for the trial of a subject in the Legislative Council during the sessions, impeached by the Assembly, because in Canada during the sessions there is no jurisdiction existing in the Legislative Council to prevent it, and the Assembly, who are prosecutors, can *then* appear to prosecute.

We proceed now to show that the Legislative Council are not possessed of the "peculiar, inherent and exclusive jurisdiction of the House of Lords under which that House takes cognizance of impeachments without a commission."

And as this is a point upon which His Majesty's Attorney and Solicitor-general, and all the judges agree, we shall state our reasons for our opinion on this head more succinctly than we otherwise should have done.

We hold this opinion,

1. Because the judicial authority of the House of Lords is derived from the Aula Regis, and not from its legislative character.

2. Because, by the letter of the statute 31 Geo. 3, c. 31, the Legislative Council is constituted a legislative body *solely*, and is not invested with any *judicial* authority.

3. Because, according to the principles of the constitution, the legislative and judicial powers are distinct and inconsistent with each other, and as such should be vested in different hands, so that judicial power or jurisdiction in either House of the Provincial Legislature cannot be inferred by implication from the statute 31 Geo. 3, c. 31.

4. Because the Legislative Council have solemnly and unanimously resolved, "That the right of hearing and determining impeachments exhibited in this province, by the people of this province, is not vested in the Legislative Council[13]."

[13] Printed Journals of the Legislative Council, anno 1814, p. 73.

Upon which we may be permitted to observe, that it is a resolution similar to that of the House of Lords in 1330 upon the case of Simon de Beresford and other commoners, who having been, "*at the King's suit*," then recently tried by the Peers of the realm for treason, it was by them resolved, "That though they had for this time proceeded (at the King's suit) to give judgment upon those that were no Peers, hereafter these judgments should not be drawn into example or consequence, so that they should be called upon to judge others than their Peers, contrary to the law of the land[14]. Upon which Sir Matthew Hale has observed, in his "Jurisdiction of the House of Lords," "that it was certainly as solemn a declaration by the Lords as could be made, less than Act of Parliament, and is as high an evidence against the jurisdiction of the Lords to try or judge a commoner in a criminal cause (at the suit of the King) as can possibly be thought of; 1st, because done by way of declaration to be against law; and 2dly, because it is a declaration by the Lords in disaffirmance of their own jurisdiction[15].

[14] 4th Hatsell, 67.

[15] Hale's Jurisdiction of the House of Lords, c. 16, p. 92; Fourth Hatsell, 285.

5. Because in conformity to the principle of the above resolution of 1814, the Legislative Council, in the case of Mr. Justice Foucher, have confirmed their previous declaration, by their address to his Royal Highness the Prince Regent, in which they pray that the articles of complaint against him exhibited by the Assembly may be heard and determined in due course of justice in the Legislative Council, "under such commission as his Royal Highness shall see fit to issue for that purpose; with such powers and limitations as to his Royal Highness shall seem meet."[16]

[16] Printed Journal of Legislative Council, anno 1817, pp. 116 & 117.

Lastly, Because the Assembly, by impeaching Mr. Justice Foucher, not to the Legislative Council, but to the King, and by their address praying, "That the authority *of His Majesty's Government*" may be interposed in such way as in the wisdom of his Royal Highness the Prince Regent may appear necessary for bringing him to justice[17], the Legislative Council, by their above-mentioned resolution and address, and the Crown, by its commission empowering the Legislative Council to take cognizance of the impeachment of Mr. Justice Foucher, jointly put a construction upon the constitutional Act, 31 Geo. 3, c. 31, to this effect, viz., that no judicial power was given by that Act to the Legislative Council, but that such power may be given by commission from the Crown, and that the inherent jurisdiction of the House of Lords is not vested in that body; which, if less than an Act of the Provincial Parliament, is at least a joint Parliamentary declaration by the three branches of the Provincial Legislature, not only as to the effect of the statute 31 Geo. 3, c. 31, but as to the ability of the Legislative Council to try, without a commission, and to try with a commission from the Crown, but little, if at all, inferior to a declaratory statute.

[17] Printed Journals of the Assembly, an. 1817, p. 550.

The draft of the commission submitted to us provides for the same course of proceeding under it in the Legislative Council as is pursued in England in the House of Lords, when the Peers sit for trials by virtue of the King's commission, and not of their inherent jurisdiction, and this we take to be correct. The Quebec Act has declared, "That the criminal law of England shall be observed in this province in the method of trial," which implies of course that there must be a jurisdiction legally competent to any method of trial which may happen to be proposed before that method can be adopted. Where there is no jurisdiction there can be no trial whatever, and where the jurisdiction in which a trial may be had is not competent to a particular method of trial, that particular method of trial cannot be pursued, *because as to it there is no jurisdiction.* If, therefore, the Legislative Council have not the inherent jurisdiction of the House of Lords, there can be no trial before them, according to the course of that inherent jurisdiction; for as the principle does not exist, the accessory cannot follow; but, on the contrary, if an offence cognizable in the Legislative Council be brought

brought to trial in that House under a commission from the Crown, it follows, as we conceive, that since the law of England is to be observed in the method of trial, the course of proceeding must be such as is used in England on trials in the House of Lords, when that House is not in the exercise of its inherent jurisdiction, but sits for trial by commission from His Majesty; and this again is strictly conformable to the principle which we have stated, viz., "That in all courts of criminal jurisdiction erected by the King's Commission, the trial must be by jury, that is to say, that in such courts, the same persons cannot by the commission be authorized to decide both the law and the fact; on the contrary, that in courts so erected a part must alone decide the law, and a part must alone decide the fact." Appendix, No. 9.

For although each Peer of the House of Lords, when that House is in the exercise of its inherent jurisdiction, possesses the extraordinary power (derived from the Aula Regis) of deciding both the law and the fact; yet when it sits for trial under the authority of the King's commission, the power of deciding the law is vested exclusively in the Lord High Steward, and the power of deciding the fact exclusively in the rest of the Peers. And this division of powers is the principal effect of the commission submitted to us.

We do not apprehend it to be necessary for us to enter further into the consideration of this part of the subject before us; and to what we have said, we shall only add, that your Excellency being empowered by His Majesty's Commission under the seal of England to erect such courts as you may see fit to erect, with the advice of the Executive Council, your issuing of the commission in question with such advice, under the great seal of this province, appears to us sufficient. The court thus constituted will mediately be erected under the great seal of England, and by His Majesty, in whom the Quebec Act, as before observed, recognizes the prerogative of erecting under the great seal of England, such courts as he may see fit to erect in Canada.

We beg leave to refer to two reports of Sir Philip York and Sir Clement Wearg, and of Sir Dudley Ryder, by which this part of our opinion appears to be fully corroborated[a]. It may, however, be more expedient that it should be issued under the great seal of England.

[a] *See* Chalmer's Opinions, vol. 1, p. 222; and 2d, 238, No. 5, and 240, No. 6.

All which is nevertheless most respectfully submitted.

(signed) *J. Sewell*, Chief Justice.
Ol. Perrault, J. B. R.
Edw. Bowen, J. B. R.

Quebec, January 1818.

Appendix, No. 10.

APPLICATION from the PRESIDENT of the ROYAL INSTITUTION for the ADVANCEMENT of LEARNING.

Province of Lower Canada.

To His Majesty's Commissioners of Inquiry, &c. &c. &c.

THE undersigned having been authorized by a resolution of the corporation of the Royal Institution for the Advancement of Learning, "to bring under the consideration of His Majesty's Commissioners of Inquiry the necessity, before the Crown lands or revenues thereof are surrendered to the Provincial Legislature, of reserving to the Crown the power of making endowments out of those lands or revenues, for the support of the grammar schools of Royal foundation heretofore established in this province, and in aid of the private endowments of M'Gill college, at Montreal, and for the future extension of that establishment or the foundation of a university or other sufficient collegiate institutions in the province, in conformity to the Royal promise, recited in the preamble of the School Act of 1801," respectfully submits to His Majesty's Commissioners a statement of the grounds on which the board of the Royal Institution solicit the attention of the Commissioners to this subject. The claim or expectation of a Royal endowment out of the Crown lands in this province for institutions of education, may be stated as resting on the pledge contained in a communication of the Royal intention to this effect, made by the governor of the province to the Provincial Legislature, and recited in the preamble of the provincial statute of 1801; on the measures which were shortly after taken by the Provincial Government, in pursuance of that promise on the fulfilment of a like pledge, given nearly at the same time, for the benefit of the inhabitants of Upper Canada, who accordingly now enjoy the advantage of such an endowment; on the fact, that in all the other North American Colonies such an endowment has been granted by the Crown; on the establishment of the Royal grammar school at Quebec and Montreal, with a provision for the salaries of the masters, out of the revenues of the Jesuits' estates; on the incorporation of M'Gill's college, under a charter from the Crown, with the declared intention on the part of His Majesty's Government at one period, to assign the revenues of the Jesuits' estates in aid of the private foundation of that institution; and on the total absence of any other means or resource by which the inhabitants of this province, speaking the English language, can hope to see an institution established to which they could send their children for instruction in the higher branches of education. Appendix, No. 10.

The promise of an endowment in land conveyed by the message referred to in the Act of 1801, and the measures adopted by His Majesty's Government, and by the government of the province in consequence thereof, were stated by the Royal Institution, in a memorial to the Earl of Dalhousie in 1826, and as a member of the board has by their request placed

Appendix, No. 10.

before His Majesty's Commissioners a copy of that representation, it is unnecessary for the undersigned to state the terms of that pledge or the nature of those measures.

It may be proper, however, to observe that the Act of 1801 was passed for the establishment and regulation of free lands and other institutions of Royal foundation of a more enlarged and comprehensive nature; and that it is under that Act that the corporation of the Royal Institution has been established and has received the devise and bequest under the will of the late Mr. M'Gill, of Montreal, under which M'Gill college has been chartered by the Crown; under this Act many elementary schools were established and provided for out of the public revenues; but no measures were taken for creating the corporate body contemplated by the Act, or for establishing schools for the higher branches of education until 1815 and 1816, when His Majesty's Government ordered that the Royal Institution should be organized, (with a view in particular to take advantage of the bequest of Mr. M'Gill, who died in 1813,) and directed that the funds of the Jesuits' estates should be applied to the erection of a college under that bequest; and in the year 1816, masters were engaged and sent out from England, who were to have charge of Royal grammar schools, then directed to be established at Quebec and Montreal, with a suitable provision out of those estates.

These measures which were considered as the first steps towards the execution of the promises made by the Crown to assign an endowment for education, were followed by the incorporation of M'Gill college, under a Royal charter in 1821, of which the Royal Institution are the visitors; but it was not until 1829, that after a long course of litigation, the Royal Institution came into possession of the landed property and buildings near Montreal, devised by Mr. M'Gill, nor was it until a few months ago that the judgment was obtained before His Majesty in his Privy Council for the sum of 10,000 *l.*, also bequeathed by Mr. M'Gill in trust for the Royal Institution. This legacy, though now amounting, with the accumulated interest, to 22,000 *l.*, is manifestly insufficient, without the aid of further endowment, for the establishment and maintenance of a university, as contemplated by the testator, or even of a single college.

It is desirable also that inferior academical institutions should be maintained, as nurseries for those of a higher description; but the grammar schools established by His Majesty, in Quebec and Montreal, have been left without support since the revenues of the Jesuits' estates were transferred to the management of the Legislature, without any reservation in favour of those establishments, or for the protection of the teachers whom His Majesty's Government had engaged and sent from England to preside over them; the salaries of the masters were, in 1832, reduced by the Assembly to a sum totally insufficient to enable them to provide the requisite assistance in their schools, without which they cannot apply themselves to the principal object of such institutions, instruction in classical and mathematical knowledge; and there is no reasonable ground to hope that any relief will be afforded to the teachers, or any effectual support to the schools, unless His Majesty shall, in his justice and bounty, secure a provision for them out of his land revenues, at least equal to that, upon the promises of which the establishments were originally formed.

It would also be highly desirable that similar provision should be made for institutions of the same description at Three Rivers, and in the eastern townships.

In the neighbouring provinces of North America, the Crown has provided, either in land or in money, or in both, for the endowment of colleges and institutions of education. In Upper Canada 550,000 acres were set apart, in 1798, for the support of a university and grammar schools, but of this reservation the university of King's College at York has received an endowment of 226,000 acres, besides a royal grant of 1,000 *l.* per annum from the territorial revenue, and the minor college and grammar school at York are endowed with 65,000 acres, and a portion of the revenues of the other reserved lands, together with a grant of 1,000 *l.* from the territorial revenue, and a tract of 195,000 acres has been assigned for the endowment of grammar schools in the other districts of the province.

In Nova Scotia, a college was chartered by the Crown in 1803, and received a grant of 1,000 *l.* per annum from His Majesty's Government, with an endowment of 20,000 acres of land, and further grants to the extent of 16,000 acres have been made for other institutions.

In New Brunswick, the college at Fredericktown receives an annual grant from the territorial revenue of 1,100 *l.* per annum, and has been endowed with 5,000 acres of land, and a valuable estate in Fredericktown, and in every township in the province grants or reservations have been made (amounting now to 20,000 acres), and continue to be made as townships are laid out, for the support of schools, while such provision has been made for education in the neighbouring British colonies, and while the establishments for the education of that part of the population of this province which is of French extraction, and of the Roman Catholic persuasion, are extensive, and supported by large endowments, (which, though originally derived from private donations, have been secured by capitulations granted by the Crown, or have been left by its indulgence in their possession), the other inhabitants of the province feel the want of the same advantage. It is true that the seminaries here alluded to are nominally open to all classes of the population; but it is an undoubted fact, that an almost universal and insuperable reluctance appears to exist among those classes to avail themselves of the means of instruction thus afforded to their youth, and that the instances of young persons of that description being educated in those seminaries have been, and are exceedingly unfrequent, in proportion to the number who have been sent out of the province for education. Independently of this consideration, the range of instruction in one of those seminaries is necessarily limited by particular circumstances, and in neither of them is an education afforded, either founded on the principles or conducted in the manner to which, whether from prejudice or enlightened choice, those who belong to a different

class

class of the population would give a decided preference; and the same observation applies, and will, it is believed, long continue to apply to other seminaries of more recent origin, which have been founded with the most praiseworthy zeal by the Roman Catholic priesthood, aided by annual grants from the Legislature, in those parts of the province inhabited by a population of French extraction.

Circumstances in the political condition of this province, to which the undersigned is desirous not to advert in a more particular manner, but which can neither be wholly kept out of sight, nor their influence changed (as he believes), except in a long lapse of time, render it improbable that any permanent establishment or encouragement can be expected, except from the Crown, for such institutions in the higher branches of education, as would be acceptable to that part of the community deriving its origin from the mother country.

It is at once an evidence of the state of things which has been here described, and of the strength of the feelings and prepossessions from which it has originated, that persons who have been desirous of giving their children an enlarged and complete education, have been obliged to send them out of the province, either to Great Britain or to Upper Canada, (since the establishment of collegiate institutions there,) to Nova Scotia, or even to the United States of America; and it is a fact, that at the present moment there are, at a private institution for classical education, in the State of Vermont, 19 young persons from this province, or the adjacent parts of Upper Canada (chiefly belonging to the most respectable families of British origin), who have been driven to this resource for the better education of their children, in consequence of the absence of any well-endowed and established seminary in this province.

The Royal Institution are aware that it does not belong to the duties of His Majesty's Commissioners to set apart endowments for education from the Crown lands; but they have drawn the attention of the Commissioners to the subject, in the apprehension that, by the measures which the Commissioners are now framing for surrendering the Crown lands or the revenues thereof to the Provincial Legislature, the Crown will be hereafter precluded, as in the instsnce of the surrender of the Jesuits' estates, from exercising any power of providing for the important object out of its territorial possessions, unless such power be expressly, and in terms reserved to it, or a sufficient provision previously assigned.

(signed) *Andrew William Cochrane,*
Quebec, 24 December 1835. President of the Royal Institution.

To His Excellency, *George*, Earl of *Dalhousie*, &c. &c. &c.

The Petition of the Royal Institution for the Advancement of Learning,

Most respectfully sheweth,

That in the preamble of the provincial statute of the year 1801, under which this corporation has been constituted, it is stated that "His Majesty had been graciously pleased to signify his Royal intentions that a suitable proportion of the waste lands of the Crown should be set apart, and the revenues appropriated to those purposes" for the accomplishment of which this corporation has been erected, and that your petitioners cannot but consider this explicit, public and solemn declaration of the Royal purpose as carrying with it a pledge peculiarly strong, as the Act in which it is found was reserved by the Provincial Government for the signification of His Majesty's pleasure thereon, and was then brought under the special consideration of His Majesty's Government before it received His Majesty's final sanction.

That your petitioners, having also referred to sundry documents lodged in the office of their secretary, find that on the 11th November 1801, his Excellency Lieut.-Governor Milner informed the Executive Council that His Majesty, "being desirous to afford all possible encouragement to his province of Lower Canada, in carrying into execution an object of such importance as the instruction and education of youth, had signified to him, through his Grace the Duke of Portland, his Royal pleasure that he should, upon consulting His Majesty's Executive Council, report in what manner and to what extent it would be proper to appropriate a portion of the Crown lands or revenues arising therefrom for this purpose;" and that his Excellency referred this matter to a committee of the whole council for their report thereon.

That the report under this reference was approved in council on the 27th June 1803, by the Lieut.-governor, who informed the board that, according to the directions given to him through the then Secretary of State, he should transmit the same for His Majesty's Royal pleasure. In the above report, a copy of which is lodged with the Royal Institution, the Committee of Council recommend an appropriation from the waste lands of the Crown to the extent of 16 townships, partly for the general purposes of supporting public schools throughout the province, and partly for the endowment of a college.

That it appears from a despatch, dated 9th September 1803, (a copy of which is also lodged with the Royal Institution,) that His Majesty was graciously pleased to approve of the appropriation of a quantity of land for the foundation of two seminaries, one at Quebec and one at Montreal, on the scale recommended by the council, namely, for an endowment to the extent of 20,000 acres for each school.

That at the time when the said report of council was made, and His Majesty's approval thereof notified by Lord Hobart, the average value of ordinary land in the province appears to have been about 2 *s.* 6 *d.* an acre, but that since that period not only has almost the

Appendix. No. 10.

whole of the valuable waste land of the Crown in accessible situations in the province been preoccupied and granted to private individuals, but the value of all waste lands has so greatly diminished, that a grant to this corporation even to the full extent then approved by His Majesty's Government, would be still insufficient for the general purposes intended.

That your petitioners have reason to believe, that at the present moment it is only in the leased Crown reserves that means could be found by His Majesty's Government, without great detriment to the general interests and improvement of the province, of making a grant that would at all be effectual for promoting the purposes of education, or fulfilling, even to a limited extent, the gracious intentions of His Majesty.

That 276 lots of the Crown reserves are now under lease, amounting in all to about 55,000 acres, or about one fifth of the quantity, or one third of the nominal value of the endowment which His Majesty's Government in 1803 directed to be made for the beforementioned purposes. That as no definitive steps have as yet been taken for carrying those instructions into execution, and as circumstances have in the intervening period so very much changed, that a grant of the waste lands of the Crown, unless to an extent which His Majesty's Government would not at the present moment be likely to sanction, would not be effectual for the object which is contemplated.

Your petitioners have no other resource than in applying to His Majesty's Government for a grant of the Crown reserves now under lease, as affording the only means now attainable for fulfilling the gracious intentions of His late Majesty.

Your petitioners most respectfully solicit your Excellency to take the whole of these proceedings into your favourable consideration, and either to give the necessary directions for an immediate appropriation, should your Excellency feel yourself authorized so to do, under the instructions aforesaid, or otherwise to draw the consideration of His Majesty's Ministers again to the subject, in order that the intended appropriation of lands (either from the leased Crown reserves, or from the waste lands of the Crown,) may be vested in the corporation of the Royal Institution with the least possible delay.

Quebec, 10 February 1836. (signed) *T. Sewell*, President.

Appendix, No. 11.

STATEMENT showing the PUBLIC REVENUE and EXPENDITURE of the Province of *Lower Canada*, for Ten Years, for 1825 to 1834, inclusive, derived from a Return made by the Inspector-general of Public Accounts.

YEARS.	Net Revenue of the Province.	Expenditure for the Support of the Civil Government, and the Administration of Justice.	Expenses of the Legislature.		Other Expenses under Appropriations of the Legislature, for General Purposes.	TOTAL EXPENDITURE.
			Legislative Council.	House of Assembly.		
	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.
1825 - -	101,077 11 8	43,957 9 11	4,295 5 3	6,818 2 6	20,700 7 6	75,771 5 2
1826 - -	84,984 3 5	43,901 - 11	3,159 - 2	4,453 16 5	24,996 16 1	76,510 13 7
1827 - -	107,632 7 9	47,986 9 8	6,674 7 9	8,114 7 2	51,332 14 3	114,107 18 10
1828 - -	98,895 19 3	46,043 1 11	3,039 10 5	5,798 17 10	19,377 5 10	74,258 16 -
1829 - -	112,444 4 2	42,379 4 10	5,327 18 -	7,889 10 -	81,150 7 9	136,747 - 7
1830 - -	131,423 8 11	42,102 1 7	5,792 16 7	11,244 8 7	117,849 13 3	176,989 - -
1831 - -	121,951 8 5	* 29,366 6 1	4,370 7 4	9,783 15 10	117,046 2 3	160,566 11 6
1832 - -	142,029 1 2	37,625 13 4	4,978 3 -	13,587 16 6	99,230 19 10	155,422 12 8
1833 - -	139,919 9 3	† 14,058 14 8	3,652 16 11	6,460 - -	92,333 12 2	116,505 3 9
1834 - -	97,337 16 6	† 11,042 19 1	623 17 6	610 - -	76,221 15 3	88,498 11 10

* In consequence of a change of period for paying salaries and allowances being found necessary, the payments made in 1831 were only for nine months.

† Partial payments on account only were made in the two last years, for want of the necessary supplies. The amount estimated for these services in 1833 was 39,687 *l.*, and for 1834, 40,130 *l.*

N. B.—In the Statement of the Net Revenue, the land and timber fund appears not to have been included, never having been until very recently ordered to be exhibited in the general accounts of the province. The usual amount and appropriation of this fund may, however, be seen from other Returns contained in the Appendix to the Commissioners' present Report.

23 January 1836. (signed) *T. Frederick Elliot.*

Appendix, No. 12.

EVIDENCE.

Appendix, No. 12.

Mr. *Hale*, called in; and Examined.

Mr. *Hale*. 8 October 1835.

1. HOW long have you been resident in the province?—About 44 years.

2. You are a considerable proprietor of land in Canada?—Yes; I have property both *en seigneurie*, en roture, and also in freehold.

3. What public situations do you fill?—I am receiver-general, and I am a member of the Legislative Council. I was an executive councillor for a few years, but resigned my seat, because I found it incompatible with my duties as receiver-general.

4. By whom are you appointed?—By letters patent conveyed to me by the Lords Commissioners of the Treasury, in confirmation of an appointment previously conferred on me by Lord Dalhousie.

5. What is the tenure of the office?—During pleasure.

6. What are the duties of the office?—The receipt of all public revenues of the province. The letters patent direct me to receive all the King's revenue; the Acts of Parliament by which duties are imposed, other than those of customs, desire them to be paid to me direct; and Acts imposing customs' duties desire them to be paid over to me by the collectors of customs.

7. What are the emoluments?—A fixed salary of 1,000*l.* sterling per annum, with an additional allowance of 100*l.* per annum for clerks and stationery.

8. Do you understand the Quints to be included in the King's domain?—That is my understanding of the matter; but the inspector of the King's domain is the best authority on this and similar questions.

9. Are the waste lands of the Crown included in the King's domain?—I cannot give any opinion on this.

10. Is the civil division of Canada into districts, counties and parishes?—Yes.

11. Is this division recognised by Acts of the Provincial Parliament?—Yes.

12. Are there any county rates?—I know of none; but there are, I believe, some voluntary rates raised in the parishes by the clergy for the erection or repair of churches.

13. Is there any legal provision for the poor, either in town or country?—None.

14. Is the repair and making of highways and bridges regulated by Act of Provincial Parliament?—There is an old French ordinance which requires proprietors to repair the road in front of their properties. The grand voyer may notice an omission of the duty thus imposed, or private individuals may prosecute.

15. Is there any officer besides the *grand voyer?*—There is, in the three district towns, an inspector of highways for the towns and their suburbs. I know not whether he has a salary, or is paid out of the assessment.

16. What assessment do you speak of?—An assessment imposed by Act of Provincial Parliament upon occupiers in towns.

17. Are the payments made out of that assessment stopped by a stoppage of the supplies?—No.

18. How are the expenses of the highways paid in the country?—Each proprietor keeps up the road in front of his own property.

19. How are gaolers paid?—By warrant out of the public revenues.

20. How are coroners paid?—In the same manner.

21. How are justices of the peace paid?—They have no pay.

Appendix, No. 12.

Mr. *Hale.*

8 October 1835.

22. How are sheriffs paid?—They have a small salary, paid from the public revenue, and also some fees.

23. Then the salaries of the grand voyer, the gaolers, the coroners and the sheriffs have been stopped by the existing stoppage of the supplies?—Yes.

24. How are the duties of constable performed in the country?—By sergeants of the militia, gratuitously.

25. Have sergeants of the militia no pay in their capacity as sergeants?—None.

26. No remuneration whatever?—None,

27. Is there any police in the country?—None; the captains of militia exercise much authority; and every man in the country, from 18 to 60 years of age, is a militiaman.

28. What police is there in the towns?—There are the magistrates, and constables and watchmen. There is a high constable in each district, and I believe he receives a small salary from the public revenue. The watchmen are paid out of the assessment.

29. Has any inconvenience been experienced by the public, as contradistinguished from the individuals immediately affected, by the nonpayment of the several salaries adverted to in the preceding questions?—That is an extensive question; but I cannot help thinking that a man will not do his duty with so much alertness when he is not paid.

30. Have there been no rumours of general inconvenience?—I know not of any great injury to the public, but unquestionably much distress to individuals.

Mr. *Felton,* called in; and Examined.

Mr. *Felton.*

31. How long have you been resident in the province?—A little more than 20 years.

32. What is the name of your office?—Commissioner of Crown lands.

33. How were you appointed?—By warrant under the sign manual, conveyed to me by Lord Bathurst, as Secretary of State.

34. What was the date of your appointment?—November 1826.

35. What is the tenure of your office?—During pleasure.

36. What are the duties of the office?—I am described in the warrant as commissioner for the sale and management of Crown lands; and my instructions from the Treasury direct me to take charge of the Crown lands, to visit them and report their state and condition, and furnish an annual account of them to the Treasury and to the governor of the province, and annually submit to the governor a statement of the quantity and price at which I would recommend lands to be sold.

37. Was sale contemplated in the first instructions to you from the Treasury?—The original instructions from the Treasury did contemplate the sale of the Crown lands.

38. Do you hold more than one office?—In the year 1830, a despatch from the Secretary of State directed a consolidation of the offices of commissioner of crown lands and surveyor of woods and forests; giving me an increased allowance for the increase of duty. The office of surveyor of woods and forests was held previously by Mr. John Davidson.

39. By what authority was the consolidation effected?—By authority of a despatch from the Secretary of State.

40. Did the surveyor of woods and forests hold his office by warrant?—I have reason to believe he did.

41. By what instructions do you act in your capacity of surveyor of woods and forests?—By the same instructions as the former surveyor, and by such further instructions as I from time to time receive from the governor.

42. What are the emoluments of the consolidated office?—A fixed salary of 600 *l.* per annum, with an allowance of 5 per cent. on the amount paid into the receiver-general's hands as proceeds of sales; this allowance not to exceed 600 *l.* in addition to the fixed salary.

* Papers filed, No. 20, and No. 21.

43. Two papers are now handed to you,* which have been furnished from the civil secretary, containing statements of fines and forfeitures for the year ending 10th October 1834, and of the several sources of the Crown revenue and droits of the Crown. Can you state if these papers comprehend all the revenues of the Crown?—To the best of my knowledge they do.

44. Are there fees for the use of the great seal, and to whom paid?—There are fees for the use of the great seal, and they are paid to the secretary and registrar of the province, and constitute, I believe, part of his emoluments.

45. Are fines and recoveries levied in Lower Canada?—I believe fines and recoveries of lands are not used under the laws of this province, which are chiefly French.

46. There are no mines of gold or silver?—No mines of gold or silver have been discovered.

47. Are not mines of gold or silver reserved to the Crown in all grants of waste lands?—They are reserved.

48. Has the Crown claimed any forfeiture of lands or goods?—I am not aware of any forfeitures of lands or goods having been claimed by the Crown in this province.

49. Is there a court of escheats?—A court of escheats for the forfeiture of lands was appointed by the Imperial Act, 7 and 8 Geo. 4; a commissioner was named in the province, and an attempt was made last year (but failed) to call the office into operation.

50. Has any escheat been brought to the hands of the Crown in this province?—None. By escheats I mean what might be more properly termed forfeitures; escheats in the English sense of the term, as lands falling to the Crown, by failure of heirs, are unknown in Lower Canada.

51. Can you describe what profits arise to the King from seigniorial rights?—There are two

two sorts of profits arising to the King from seigniorial rights. The first is the *Quint*, which he has as seigneur suzerain; and which is one-fifth of the value of the seigneurie, payable on alienation, subject to a customary deduction of one-third on prompt payment. This right applies to the seigneuries generally, and the only exemption claimed is by virtue of special provisions in the grants of some seigneuries. The other class of profits is the *Lods et Ventes*, and other dues which the Crown receives from the properties *en seigneurie*, constituting the King's domain.

52. What is generally understood in the province as "King's domain?"—The King's domain consists of lands held under the feudal tenure, of which the King enjoys the seigniorial profits; but there are other lands belonging to the Crown of Great Britain, which are not part of the King's domain. Those which are the King's domain are supposed to have come to him from the King of France by cession.

53. By cession do you mean the treaty which followed the conquest of 1759?—I do.

54. Do you understand the "waste lands" to be included in the "King's domain?"—They are not included.

Mr. *Felton*, again called in; and Examined.

55. Has anything occurred to you in the interval since your last examination on the distinction between the King's domain and the other Crown lands or territorial revenues?—If I might hazard an opinion, the revenue of the King's domain is essentially a part of the patrimony of the community which lives in this province. The waste lands of the Crown belong to the King as head of the empire.

56. Can you furnish a statement containing the following heads of information: the quantity of waste lands in the province still unconceded; what part of it is surveyed, and what unsurveyed; how much of it unfit for cultivation; what is the quantity of forest, and of what woods consisting?—I will send in as accurate a return in writing as I can.

57. Under what regulations do you now act in making sales of land and granting timber licences?—I consider the first instructions, dated in 1826, in full force, both as to sales and licences, subject to some small modifications (introduced in 1831) as to sales, but quite unmodified as to licences to cut timber.

58. Are these instructions of 1826 the same you before mentioned as received from the Treasury?—The same as were received in that year from the Treasury, both by myself and the surveyor of woods and forests.

59. The instructions dated in 1831 are those received from Lord Ripon?—Yes.

60. Are they still in force?—Still in force, except in one particular, viz. as to the terms of payment.

61. What alteration is there in that respect?—The original instructions of 1826 required that one quarter of the purchase-money should be paid down, and the remaining three-quarters in three annual instalments without interest. The instructions of 1831 directed that the three-fourths after the first instalment should be paid half-yearly and with interest; but this has not yet been carried into effect.

62. By what authority was that omission made?—By authority of the late Governor-in-chief, who has lately addressed a despatch to the Secretary of State on the subject.

63. Can you furnish a copy of the instructions of 1826?—Certainly,

64. What are the steps in use in a sale of Crown lands?—In the first place I submit to the Governor-in-chief a list of lands desirable to be exposed to public sale, with the sum I would recommend as the upset price. On receiving the sanction of the Governor-in-chief, the necessary advertisements appointing the time and place of sale are published in the Quebec Gazette, and other newspapers in the province. Purchasers at the public sales are required to pay as soon as conveniently may be after the sale, one quarter part of the purchase-money, on which they are furnished with a document, entitled a licence of occupation, which contains the conditions of sale, the terms of payment, and authority to hold the land. On completion of the payments I submit to the Governor a list containing the names of the parties, and an account of the lots sold to them, and this document, together with a technical description of the land, prepared by the surveyor-general, is, on being approved by the Governor, sent to the Attorney-general, for the preparation of a draft of the patent. The draft is afterwards examined by the auditor of land patents, and then transmitted with the Governor's authority, to the secretary and registrar of the province, who engrosses the patent, takes the fees upon it, and submits it to the Governor for his signature; after being signed, it is again sent to the auditor of land patents and receives his final audit.

I should add that, as a preliminary operation, previously to my submitting the lands for sale, they have been surveyed. In the majority of sales which have taken place within the province, the lands that have been sold had already been surveyed for the purpose of being granted gratuitously, and my information concerning them has been drawn from the plans and surveys extant in the surveyor-general's office; but in cases where it was desirable to dispose of lands not already surveyed, the usual course has been to obtain the approbation of the Governor to the survey of a block of land called a township; and upon the survey being completed, under the instructions of the surveyor-general, and paid for by the Crown, the lands have been valued by me and submitted for sale, in the manner I have before described.

65. How are these sales registered or recorded?—They are entered in a book in the land department, called the land book, transcribed half-yearly and sent to the Treasury, a copy of it being also furnished to the inspector-general of public accounts in the province.

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66. Do you keep any other record of the sales?—No other; but the final record of each sale is the patent which is deposited in the provincial secretary's office.

67. Does the auditor of land patents keep a register of the patents that pass through his hands?—He does.

68. How do you define the term "land patents"?—By land patents I mean the instrument under the Governor's signature and the great seal of the province, by which the land is conveyed from the Crown to the purchaser.

69. What interval usually elapses between the time of paying the purchase-money, and obtaining the patent?—The time between the order of reference, which is made on payment of the last instalment, and the completion of the patent, varies exceedingly from a variety of causes, none of which are incidental to the land department. The draft of the patent is to be prepared by the Attorney-general, whose various avocations frequently delay the completion of that document for some months. When the patent itself is engrossed, it is not considered as perfected until it has passed the audit, and as a condition of the patent requires that the audit shall be made within six months after the date of the patent, to give it validity, it is understood that the auditor of land patents cannot be required to attach his fiat to it in a shorter period. Such at least is the practice. Taking all these circumstances into account, from three to six months is, perhaps, the most frequent delay; 12 months would be considered a long delay.

70. What registry has Government of the patent?—By the provincial Act 36 Geo. 3, c. 3, it is requested that the original patent shall be deposited of record in the office of the secretary of the province, and that a copy thereof shall be deposited in a separate building, in the charge of the registrar of the province. The consequence of this provision is, that the patentee is furnished with a certified copy of the patent, and never with the patent itself.

71. Can he obtain fresh certified copies if he require it?—The same Act, and an amendment thereto, 57 Geo. 3, c. 28, provide, that for a certain fee, the secretary of the province shall furnish copies to every person who may choose to apply for them.

72. Do your instructions under which you act, authorize the granting of leases as well as granting on fee simple?—No: on the contrary, it appeared to be a primary object of the instructions to allow of the sale of all lands held on lease to the lessees.

73. Can you account for the desire to establish a practice so opposite to that by which Crown lands in England are managed according to statute?—The essential difference that existed between Crown property in England, and that in the colonies, is, that one has been brought into a state of productiveness, and the other is in a state of wilderness, which requires a great outlay of capital and labour to reduce it to a state of productiveness.

74. Would not a lease of 999 years be as satisfactory to a purchaser as a fee-simple?—It may be equally useful, but not so satisfactory, taking into consideration the prejudices of all the population on this side the Atlantic.

75. Supposing a term of 999 years made a freehold interest, would that remove those prejudices?—Provided it were unincumbered with payment of rent.

76. Would not substitution of a leasehold interest for 999 years get rid of all the intricacies arising from the English law of real property?—It is generally considered in this province, and the adjoining provinces, where a population of similar origin and habits to the grantees of the waste lands of the Crown dwell, that no title is so secure and so simple as a grant in fee-simple, and in free and common soccage.

77. Have not complaints been made of the English law as to conveyancing?—They have; but the evil has been met by a legislative provision, which permits the adoption in this province of the French method of conveying land; either course may be taken at the option of the parties.

78. Is not the French mode of conveyancing very like the simpler modes of the early English law, before the introduction of uses and trusts?—It is understood to be so.

79. If leases of 999 years were adopted, might not a calculation be made by which a low rent for the whole period would not exceed the present upset price of Crown lands, with interest thereon?—Undoubtedly; but it would be attended with the inconvenience of very minute annual payments, exceedingly expensive in the collection.

80. Would not a rent, however low, be some check on the practice of keeping lands in a wild state?—Not as a detached and isolated measure. To accomplish that object a restriction must exist on the quantity of land which could be accumulated in one hand, for it would not require so great an advance of capital to acquire a given extent of land, as when payment is to be made of the principal of the purchase-money, at, or soon after the time of purchase.

81. Do you not conceive that the practice of keeping lands waste, often arises from a wrong calculation by the purchaser of his means, or from a subsequent alteration of his purpose?—Individual examples of similar miscalculations may occur, but I believe that generally they are kept in their uncultivated state, simply from want, or a sufficiently increasing population to create a demand.

82. There is then no great fault in the purchasers of land who keep it waste?—It appears to me that the holders of land stand in the same relation to the productive occupant, as regraters and forestallers are supposed to have done in respect to other commodities.

83. What is the present upset price per acre of waste lands?—It varies from 1*s.* 3*d.* to 10*s.* per acre, according to circumstances of position and fertility of soil.

84. Do the instructions of 1831 leave you perfectly unfettered as to the upset price you may fix?—The power of fixing the upset price is vested in the Governor, who takes into consideration the suggestions I submit to him.

85. Taking

85. Taking the medium upset price at 5*s*., and the interest of that being 3*d*., would not that rent, on a lease of 999 years, be a considerable check to the purchase of more lands than the parties can cultivate?—Not if land were granted without payment of the principal sum. On the contrary, the speculators in land would be considerably increased.

86. Supposing the number of speculators considerably increased, would it not produce an immediate and permanent increase of the territorial revenue?—A diminution of the present revenue, but unquestionably an increase in the future revenue.

87. Can you furnish a return of the quantity of land sold and timber cut within the last three years, the number of sales and licences during that period, and the gross and net proceeds both of sales and licences, and the general causes of the difference between the amounts?—I will send in a return.

88. Is it not the French Canadian system to admit cultivators of waste lands upon payment of rent without requiring purchase?—It is, and in my opinion it is in that particular the system best adapted for enabling a needy population to become cultivators of the soil.

89. Do you then consider that system the best adapted to the wants of this country?—Unquestionably; but I wish to be understood that my answers to former questions referred to waste lands of the Crown, as they are now held under a tenure different from that of the seigneuries, and it applied to persons usually the purchasers of these waste lands, differing in habits and opinions from that part of the population of the province to which I consider the last question, and my answer thereto, to refer.

90. Do you upon the whole consider that a total or partial substitution of leases at 999 years at a low rent, in place of the present method of selling waste lands on fee-simple, would be advantageous to the province?—A locally partial substitution of that kind would be advantageous, for in those parts of the province adjoining to the seigneuries, I have always considered it desirable to place land within the reach of the Canadian inhabitants of the seigneuries.

91. Do Crown waste lands, in many instances, adjoin the cultivated portions of the seigneuries?—The instances are rare in which the seigneuries bordering on the waste lands of the Crown are cultivated to their full extent, and in those instances the lands held in free and common soccage have been granted, and are now beyond the power of the Crown.

92. There are then but few opportunities for that locally partial substitution of a new system to which you adverted?—Few.

93. Why would that system be desirable for the poorer French Canadians, and not for the emigrants from Great Britain and Ireland?—To a certain extent I have no doubt it might be conveniently adopted with respect to the poorer emigrants from Great Britain and Ireland, were it not that all that description of emigrants arrives in the province prejudiced against a system of holding land upon rent.

94. Are you aware of any particular objection against putting the Crown lands and timber here upon the same footing as the Crown lands and woods and forests in England, the net proceeds being paid to a fund to be charged by the imperial or provincial Legislature, with appropriations for the Civil List?—If the question does not involve the administration of the property, but only the appropriation of the proceeds, I think that so far as regards my department it is a matter of indifference.

95. Do you then mean that it would be objectionable to alter the administration of the Crown lands?—In my opinion that administration must of necessity, to be well conducted, be intrusted to the responsibility of His Majesty's Government.

Mr. *Felton*, again Examined.

96. In reference to the questions before put to you on the substitution of leases for the selling of land, are you aware that the granting of lands, subject to a moderate quit-rent, was the earliest and most extensive system adopted in the settlement of British colonies?—I believe such to have been the historical fact.

97. Do you happen to know that the collection of these rents in the existing British Colonies in North America has failed?—I have reason to believe that the collection of these rents has been found impracticable within the three adjoining provinces of New Brunswick, Nova Scotia and Prince Edward's Island.

98. Has not the Government been frequently compelled to relinquish its claim to these rents, and though it denounced greater rigour for the future, again to abandon its purpose at last?—To the best of my information, that has been the case.

99. Are you aware of any peculiar circumstances as to the mode in which the property is held in Prince Edward's Island?—They are rather reserved rents in that island than quit-rents. They are rather in the nature of interest on the capital collected for the benefit of the original grantees.

100. Do those original grantees derive much revenue from the rents to which they are entitled?—I have understood that they find great difficulty in their collection; some small portion may be collected.

101. Passing from our own colonies, do you happen to know if rents are easily levied in the United States, or whether in the United States such a tenure is deemed eligible?—We know historically that in the present United States, when colonies of Great Britain, the collection of quit-rents was a subject of never-ending complaint, and one of the inducements held out to the people to resist the authority of the mother country, was the hope of their being relieved from the payment of quit-rents, and some of the earliest legislative enactments in the individual states were to abolish the quit-rents due to the Crown. In the

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state of New York, where there are still some relics of the feudal tenure, the payment of the reserved rent upon lands held under that condition is considered very burdensome on the people.

102. Are any quit-rents collected at present in Lower Canada?—There never were any quit-rents, strictly so called, in Lower Canada.

103. To what did you refer in your last examination when you spoke of leasehold tenures, which the Government was desirous to convert into fee-simple?—I adverted to the Crown reserves which were held on leases for 21 years.

104. There are then still tenants paying rent for Crown reserves?—Some few, but only such of them as are unable to show a legal transfer of the lease under which they laid claim to purchase as lessees. The majority of lessees have already acquired the fee-simple, by paying the value of the land they held on lease.

105. What terms were offered to the lessees?—Twenty years' purchase of the rent.

106. In what size are lots generally sold?—The townships are generally divided into farm lots of 200 acres each, and it is competent to the purchaser at the sale to require that there should be put up any number of these lots, not exceeding 1,200 acres in all.

107. Do the lands sold consist for the most part of land now for the first time laid out, or of Crown or clergy reserves?—The greater part of the lands have long since been surveyed, and they comprise the reserves, together with other disposable lands.

108. Do the reserves, whether Crown or clergy, bear a higher value than the ordinary waste lands?—Certainly an enhanced value, proportioned to the advanced state of the surrounding lands. But I should add, that almost the whole of the Crown reserves in the settled parts of the province have been disposed of by His Majesty's Government to the British American Land Company, and are consequently no longer under my management.

109. Are these auctions generally well attended?—Not very numerously.

110. Do you attend personally at the sales?—At large sales, and generally at the first sale in every district.

111. Who attends on behalf of the Crown in your absence?—The receiver of rents, except in some townships which have been placed under resident agents, for facilitating the settlement of poorer emigrants. They hold a sale on the first day of every month in their respective townships.

112. Are no sales made except at auction?—All the sales of the leased Crown reserves have been made under the provision of the instructions of 1826, upon valuation submitted to and approved by the Governor. Private sales have also been made, in some instances, but to no great extent, upon specific application of individual proprietors, sanctioned by the Governor, within townships, where no public sales have been announced to take place. In all other cases the system of auction has been adhered to.

113. In the event of any land left unsold after a public auction, what is the practice?—They used until recently to be open to purchase by any applicant at the upset price, under the authority of the Secretary of State.

114. Has much land been disposed of in that manner?—A good deal has been so disposed of latterly, since the operation of the British American Land Company has given a marketable value to lands.

115. Are lands generally purchased by speculators for the purpose of selling them, or by persons intending themselves to cultivate them?—The greatest number of sales, consisting of small lots, have been made to actual settlers; fewer sales, but consisting of larger quantities of land, have been made to parties professedly for investment, and in most cases to persons who hold other lands, either improved or waste, in the vicinity of the lands they thus acquire by purchase.

116. How long has the British American Land Company been in operation?—Not more than a year.

117. Are you a public accountant?—Yes, I receive money on account of sales of Crown lands, and of licences to cut timber, and pay the whole of it over to the Receiver-general.

118. Do you deduct your own salary, or the expenses of your own department?—I pay over without any deduction the proceeds of the licences to cut timber, and I also pay the whole of the proceeds of the sales of Crown lands, excepting the contingent expenses incurred in the collection of the money, and in the advertisements for sales. My salary is paid at the end of every year out of the treasure paid into the hands of the Receiver-general, by warrant from the Governor.

119. Are you in arrear in the same manner as every other officer in the colony?—I am.

120. Could you furnish a list of the persons employed under you, and of the nature and amount of their emoluments, and how paid?—Yes; their pay, I may observe, constitute the contingent expenses, which are deducted before the revenue is paid to the Receiver-general.

121. What is the usual amount of your contingent expenses?—They have never exceeded, in the years of the greatest collecting, 300*l.*

122. What is the connexion between your department and that of the surveyor-general? That is a point which has never been very satisfactorily arranged; but in order to preserve that dependence of the surveyor-general on the head of the Crown land department, which is essential to its operations, the late Governor-in-chief directed that all communications between the Government and the surveyor-general should pass through the hands of the Commissioner of Crown lands.

123. Does that practically make him subordinate to you?—I conceive that it does so, and that this was the intention of the Treasury in the instructions of 1826.

124. Does the surveyor-general dissent from this view?—Yes; he is an older officer.

125. Has the surveyor-general no duties unconnected with the land department?—None.

126. In your view, then, it would be irregular for the Governor to call upon the surveyor-general for a survey for a railroad, or canal, or other such public work?—Unquestionably. In illustration I would state, that Lord Dalhousie employed the surveyor-general for the collection of a statistical return of the population of the province, but paid him for the performance of that service, as for an entirely extra official duty. Again, the late Governor-in-chief, in surveying the outlines of the block sold to the British American Land Company, placed the operations under the superintendence of an officer not belonging to the surveyor-general's department.

127. How was the land department managed prior to 1826?—The Crown lands were granted gratuitously, either for services, or upon the application of private individuals for settlement. The management was conducted by the Executive Council, who employed the surveyor-general in conducting the details under their superintendence.

128. The Council, then, had the decision on every grant that was made?—Yes.

129. What advantages have accrued to the province from the establishment of your office?—To enumerate its advantages, it might be necessary to point out the great inconveniences and mismanagement of the former system, by which interminable litigation has been entailed on the province. The immediate advantage, laying aside the pecuniary benefit that the Crown may derive for it, is a better regulated system of conveying the rights of the Crown to individuals. The pecuniary advantages may be made to suffice for all the expenses of accurately surveying, not only the lands that are sold, but every other part of the province, of which there is not at this hour one accurate survey extant. The old surveys, made under the system of gratuitous grants, under the instructions of the surveyor-general, are notoriously imperfect and inaccurate. The surplus of the proceeds under the present management will afford a fund either for general improvement, or for any other purpose to which it may be deemed expedient to apply it.

130. How are the expenses of surveys paid?—They are now paid by warrant from the Governor, out of the land and timber fund. When lands were granted gratuitously, the surveys were made at the expense of the grantees, who were bound, in addition to surveying the land granted to them, to survey the Crown and clergy reservations correspondent to their grants.

131. What modification took place in your department in consequence of Lord Ripon's instructions of 1831, and what have been their effects?—It was a mere change of detail, and we have not had time to experience the effects.

132. With the exceptions already noticed by you, have the instructions of 1831 been fully carried into effect?—The regulations of 1831 were not carried into force in the province until the receipt of the circular instructions, dated in August 1834.

133. They were not at all acted upon previously?—Not at all; and subsequently they have only been carried into effect, subject to the two modifications before mentioned, viz., one shortening the period of paying the instalments, and the other directing the discontinuance of selling privately land which had been unsold at the auctions.

134. Can you state any reason for not brining the regulations of 1831 into earlier operation?—I understood, when the despatch from Lord Ripon was received, that it left it optional with the Governor to carry it into force or not, according to the view he took of the expediency of giving effect to the rules it contained. One of the most prominent objections to these rules was, that they prohibited the sale of land on quit-rent; a mode of disposing of small lots of land, upon the payment of interest at five per cent. on the capital, redeemable at pleasure, which was considered to be peculiarly favourable to the establishment of the Canadian population, and of the poorer classes of British emigrants. The Governor-in-chief, I have reason to believe, addressed a remonstrance on this subject to the Secretary of State.

135. How do you reconcile the preceding allusion to quit-rents with your former statement, that there were no quit-rents in Lower Canada?—In this manner. The system of selling small lots, not exceeding 200 acres, to poor purchasers, upon payment of the interest at five per cent., until they found it convenient to pay the capital sum, was designated in the instructions of 1826 a sale upon quit-rent; although it was evident that the denomination was incorrectly given, as this system differs in principle from that of quit-rents properly so called. The quit-rents known to the other colonies are rents reserved in the patent granting the land of a fixed amount, bearing no definite proportion to the real value of the land; and it is to this description of quit-rent that my answers to the questions put to me by the Board, at the opening of this day's examination, refer.

136. Have any deposits been forfeited (agreeably to rule, No. 5, in the regulations of 7th March 1831) in consequence of the non-payment of instalments?—None. Many are in arrears, but in the cases of default I have not felt myself justified in recommending the strict enforcement of the regulation on that subject; because, from my intimate knowledge of the country, I have been aware that there are always mitigating circumstances which would have compelled the Government to forbear exacting the penalty. I allude more particularly to the frequent recurrence of unproductive seasons of late years, and the consequences of the prevalence of cholera, by which the means of the cultivators of the soil have been very much cramped.

137. Have many applications been made, agreeably to the 8th rule of March 1831, for the

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special sale of lands in particular situations?—Many applications; but none of them have been complied with.

138. Have any of these applicants complained of the refusal?—I am not aware of any complaints.

139. The 9th rule of March 1831 directs the reservation of a right to making roads and bridges; is this considered to have involved, not merely a right, but the duty of making public works?—By no means; this article has reference to the old and standing usage of the country, and was probably designed chiefly to apprise emigrants and purchasers of a condition under which alone, by ancient practice, they could obtain land. In consequence of this practice, it has been the custom to make an allowance of five per cent. to purchasers or grantees in addition to the quantity specified in their lot; thus the purchaser of 200 acres would receive 210, described in the patent as "200 acres, with the usual allowance for highways."

140. Are you aware of any inconvenience arising from the manner in which your department is now conducted which you have not the power to remedy; or is there any improvement that you think could be introduced into it?—The question probably refers to the instructions regulating the operations of the land department. An inconvenience of some consequence to purchasers arises from the prohibition of making sales upon payment of interest on the purchase-money, the effect of which is to diminish the competition for, and consequently to reduce the value of small lots of land, as the settler of limited means, who would bid for 200 acres on condition of paying only the interest, is unwilling to expose himself to the risk of becoming a defaulter in payment of instalments. Some reproach falls on the department from the uncertainty of obtaining the patents after the payment of the purchase is completed, and this arises from delay in the preparation of the technical descriptions in the office of the surveyor-general. A great deal of inconvenience is experienced in the practice of allowing officers to take up Crown lands at any time between the public sales, and a considerable reduction in the disposable value of the lands is caused by these grants being thrown on the market. The improvements I should beg leave to suggest are, first, the adoption of a more accurate and efficient system of survey than has been hitherto followed; the entire remodelling of the surveyor-general's office, and a proper arrangement and verification of the documents now in the hands of that officer. In respect to the financial province of the department, it is submitted that great advantage might be derived from the application of the surplus funds arising from the sale of lands to the improvement of the Crown property in constructing roads, building bridges, by which the value of the land would be much enhanced, and the facilities of settlements greatly increased; the management of this revenue being entrusted to a board or commission, under legislative authority.

141. Will you state the extent to which you were concerned in the establishment of the British American Land Company?—It has been made matter of reproach to me, that, as Commissioner of Crown lands, I was hostile to the establishment of the company; but the contrary is the fact; I was favourable to it, in the belief that a liberal expenditure in opening roads, and in other improvements of a public nature in the unsettled townships, would be exceedingly beneficial to the province at large; I had previously suggested an expenditure by the Crown of a considerable sum of money for this purpose, under a conviction that the outlay would be amply repaid by the increased value of the Crown property within the territory in which the improvements were effected. The late Governor-in-chief, I believe, submitted this project for the consideration of His Majesty's Government; but finding that it was not countenanced, I considered the next best measure to be the establishment of a company promising to make the contemplated improvements; but I had no agency nor influence in forwarding the establishment of the company, further than preparing correct returns of the vacant lands, and other materials for the information of the Governor-in-chief, connected with that part of the province, for the purchase of which the company was in treaty with His Majesty's Government. I did not even submit an opinion on the price or value of those lands, not being called upon to do so, and I simply furnished the Governor with a list of the upset prices, and of the selling prices of the Crown lands in the district, and of the prices at which private sales on a large scale had been understood to have been effected.

142. In the disposal of their lands, do the company follow a system in material respects differing from that of Government?—They have not yet disposed of any lands, but I will supply a paper published by them, stating the terms and conditions on which they would be willing to make sales, and the same with respect to the Upper Canada Company.

143. What are the differences between the system in this province and in the United States?—I will send in the information with respect to the practice in the United States.

144. How are the proceeds of sales of waste lands applied in the states?—The proceeds of the sales of waste lands at large are carried to the general treasury, and not to those of the separate states. Each state, however, has a portion of waste lands within its territory assigned to it for its own purposes.

145. How is the price of timber licences regulated?—The instructions fix a price of 1*s.* 2*d.* per foot for white pine, and 1*d.* per foot for red pine; and if an applicant for a licence has no competitor, he takes it at that price at the public sales; nor does competition often arise, the main object having been to prevent contest between the lumberers.

146. Do not private persons frequently obtain much higher prices for the cutting of timber on the estates?—Not to my knowledge.

147. Do you think there is any method by which the Crown could raise a greater revenue from timber licences?—I do not think it practicable.

148. Not

148. Not even if you were unfettered by the instructions?—I am of opinion that a compliance with the instructions produces as great a revenue as can be derived from that property. It is a very fluctuating and uncertain income.

149. Is it your opinion that if capital were advanced by the Government to make improvements, or if you were at liberty to negotiate with capitalists for the purpose, the revenue from the waste lands would be materially increased?—I have no doubt that, by a judicious expenditure in improvements on the waste lands of the Crown, a great increase of their saleable value would arise. But the field has been exceedingly diminished upon which these beneficial operations could be conducted by the Crown, owing to the disposal of the lands within the three counties to the land company.

150. Have you formed any opinion whether or not the Government made a provident bargain with the land company?—The answer to that question depends so much on the object of the Government, that I fear I could not give a very satisfactory reply.

151. Do you think if the object were merely pecuniary, more could have been obtained from a different company?—Without the outlay of a large sum of money it is not probable that they could have obtained more.

152. If Government were desirous to make an outlay on the waste lands, would there be difficulty in borrowing money on the security of the waste lands?—Money no doubt might be borrowed with great facility, provided the fund could be pledged in a manner to give assurance to all lenders.

153. Supposing an Act of Parliament empowered the King to raise money on the revenue of the waste lands of the Crown in Lower Canada, would that security simply suffice to obtain money in the English market?—I have no doubt that it would.

154. Do you conceive that it could be made profitable, either to Government or to the company, to make roads on a great scale if empowered to levy tolls not to exceed a certain interest on capital expended?—There are very few situations within the province where a large expenditure, sufficient to make a good carriage road, would ensure sufficient returns to cover the ordinary interest of capital.

155. Are there any such situations?—For short distances there are no doubt many in the neighbourhood of Montreal, but there are no long lines of communication.

156. If such a system were begun, would it not of itself create other situations in which it might be carried farther?—I think the geography of the lower province is not favourable to that hope.

157. Have you ever seen a plan of a Mr. George for building wharfs or a strand on the St. Lawrence, between the mouth of the St. Charles and Beaufort?—Yes.

158. That would belong to the Crown as being within high-water mark?—I believe part of it would be on property claimed by the seminary; but I do not speak after having bestowed any particular attention on the subject.

159. All below high-water mark in the St. Lawrence would be property belonging to the Crown?—Yes.

160. Would not that and similar improvements in the hands of Government become a source of considerable revenue?—I have no doubt of it.

161. Are you aware of any objection to advertising well-considered plans of improving the Crown lands in order to receive the tenders of capitalists?—On the contrary, I should deem it most desirable; and it would be most convenient to offer the advantages resulting from a well-digested scheme to public competition, as the individuals would most probably derive a profit from the transaction in addition to the advantage the Crown would receive.

162. Is not the expense of a surveyor-general's office necessarily incidental to the management of the Crown lands?—The expense of a subordinate officer to make surveys is indispensable, and it was contemplated by the Treasury to abolish the surveyor-general's office; but upon further consideration of the peculiar situation of this province, wherein almost the whole of the cultivated part lies within seigneuries granted by the Crown of France, of which the boundaries and limits are not in all cases accurately defined, it was deemed expedient to continue the office of surveyor-general, with its establishment of clerks, so long as the Assembly consented to pay for it; but it has at no time formed a charge upon the Crown revenue, properly so called.

163. Does not Mr. Davidson receive some allowance from the land revenue?—I believe he receives an allowance of 250*l.*

164. What other expenses are there incidental to the management of Crown lands besides the contingent expenses, your salary, Mr. Davidson's allowance, and the necessity of having a general surveyor's office?—No other expenses that I know, except the surveys, by provincial surveyors, of lands intended to be sold. These are not included under the head already mentioned of contingent expenses.

165. Who gives the directions for these surveys?—The surveyor-general gives the instructions, but a competent clerk in the Commissioner's office could do the same. The provincial surveyors are entirely independent of the surveyor-general's office.

166. Who calls on the surveyor-general to give these instructions?—The Governor, at the instance of the Commissioners of Crown lands. The Commissioners of Crown lands with the Governor may be considered as a substitute for the Executive Council under the old system prior to 1826.

167. Are the provincial surveyors permanent officers?—They have no appointment from the Government, though they hold a commission from the Crown, but that is in consonance with the existing laws of the country, and in order to give validity to the Acts, which are termed *actes authentiques*, and which are evidence in courts of law. As regards their employment by

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by the Crown, they are selected at pleasure usually by the surveyor-general. They are paid according to the work they perform.

Mr. *Felton.*
13 October 1835.

168. By whom are they paid, and from what fund?—The survey of waste lands designed for sale is paid by warrant from the timber fund, and payment is usually made to the surveyors on performance of the service. The colloquial expression "timber fund" means the proceeds both of sales of land and of licences to cut timber.

169. Why do not the expenses of the surveys appear in the Blue Book?—Because, as I believe, none of the details of the expenditure of the land and timber fund appear in that book.

170. Under what head do they appear in the public accounts?—I doubt if they appear in them. The application of the land and timber fund has not been made public in the province; but I have no doubt returns are made to England.

171. What do you suppose to be the average annual expense of these surveys?—Much depends on the demand for Crown lands. A township contains about 60,000 acres, and the charge of surveying it would be about 300*l.* There are two or three townships sold every year.

172. If a township were sold, what would be the produce?—At the lowest price, viz. half a dollar, about 7,500*l.*

173. To whom are the rents of Crown reserves paid?—To the Commissioners of Crown lands.

174. To whom are the rents of King's posts?—To the receiver-general.

175. Is the land and timber fund an increasing or decreasing revenue?—On the whole an increasing revenue, and likely to increase for some years to come. In this answer I consider the proceeds of the sale to the British American Land Company as forming part of that revenue.

176. Were not the proceeds of the Jesuits' estates part of the Crown revenue?—They have been given up to the Assembly, and are appropriated to education.

177. What officers in the province can best enumerate the charges on the land and timber fund?—The receiver-general and the inspector-general of public accounts.

Mr. *Cary*, called in; and Examined.

Mr. *Cary.*
17 October 1835.

178. Will you be good enough to furnish a detailed account of the whole receipts of revenue which are not to be found in the journals of the Assembly, and also a detailed account of the entire expenditure of the land and timber fund, and of any other expenditure not hitherto laid before the Assembly?—I will.

179. Will you furnish a list of all the pensions and superannuation allowances paid in the province, distinguishing such as are secured by Act of Parliament, such as have been annually voted by the Assembly, and such as are paid merely by authority of the Government, and stating the fund from which each is paid?—I will.

* Filed, No. 23.

[Here Sir Charles Grey showed Mr. Cary a paper*, and asked him whether it was not a return of the gross and net receipts under the heads of Crown revenue furnished by him to the civil secretary? On Mr. Cary's answer in the affirmative, the examination was continued as follows:]

180. Why have you not included in that return the sum of 5,000*l.* out of the proceeds of the provincial Act 35 Geo. 3, which is permanently given to the Government for civil purposes. It is an accidental omission in copying the return, having been called for in great haste. It will be seen in another return made by me about the same time, that there is not the like omission.

181. Had that sum of 5,000*l.* been included, would not the net revenue of 1834 have exceeded 22,000*l.*?—Yes.

182. Are there any other charges beyond what appear in your paper, upon what you have called the net receipts of the Crown revenue, which are paid before it is applicable to general purposes?—Yes; there are the expenses of surveys, the salary of the commissioner of escheats and some pensions, all of which are paid out of the land and timber fund.

183. When those pensions are granted, is any intimation given to the parties, or directions to the officers of Government, as to the fund from which they are to be paid?—The warrants express the fund upon which those pensions are to be charged.

184. Do those warrants state the land and timber fund?—Yes.

185. Is there any document which directs out of what fund the salary and allowances of the commissioner of escheats are to be paid?—All I know is, that orders from the Governor for the issue of the warrant specify that fund.

186. Are those orders standing, or made periodically?—An order is issued at the time of each payment from the Governor to the clerk of the Executive Council, for the preparation of the warrant.

187. You do not know any standing order on the subject, but believe the Governor acts in pursuance of instructions from home?—Yes. In regard to some pensions, I have seen a warrant under the sign manual, directing them to be paid out of any fund at His Majesty's disposal.

188. In the detailed account you are to furnish, will you give, in the way of remarks, any information you think will be useful to the Commissioners as to the mode in which pensions have been directed to be made?—Certainly.

[Mr.

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Mr. *Cary.*

17 October 1835.

[Mr. Cary was now shown a passage in the despatch of Mr. Secretary Stanley, dated June 1833, in which the net proceeds of the revenue at the disposal of the Crown are stated at 15,000 *l.*, and was asked how he reconciled that amount with the sum of 22,119 *l.*, which would appear by his own account, adding thereto the grant of 5,000 *l.* from 35 Geo. 3, to have been the proceeds in 1834. Mr. Cary answered that he could only reconcile it by supposing that the amount of 4,500 *l.*, in Mr. Stanley's estimate of the hereditary revenue, was designed to exclude instead of including, as the despatch stated, the land and timber fund. When the question was agitated in the Council, their opinion was that Mr. Stanley must have taken the casual and territorial revenue at 4,000 *l.*, and allowed for the land and timber fund 500 *l.* as the surplus, after payment of all charges. The returns in the Blue Book for the year 1832 represented the annual and territorial revenue as amounting to 4,000 *l.*, and the surplus on the land and timber fund as 5,000 *l.*]

189. Can you state generally what were those charges on the land and timber fund, which so much exceeded what you have now stated as the present charges?—I forgot to mention among the present charges the allowance to the agent for emigrants, which for salary and contingencies is about 700 *l.* There are since then various other small charges on the fund, which will best appear by reference to the Blue Book.

190. Can you show any place in the Blue Book in which all these charges are brought together?—They appear at page 57 of the Blue Book for 1834, excluding the first and last items; but in that year the payments were only on account, and do not include the whole of the year.

191. In the Blue Book of 1834, at page 56, 2,700 *l.* is entered as the net amount of the sales of Crown lands; can you account for the difference between that and the statement in your return of 1,011 *l.* The entry in the Blue Book as net amount of sales of Crown lands will appear by looking at the opposite page to be the gross amount paid into the receiver-general's hands, and subject to the deductions shown at page 57 of the Blue Book.

192. In which office shall be found the leases of Crown property, under which rent is paid?—The office of the provincial secretary.

193. Are the forges of St. Maurice part of what is called the Jesuits' estates?—Part of the forges of St. Maurice are part of the Jesuits' estates, and another part are at the disposal of the Crown. One portion of the rent, as I have heard, has recently been made payable to the Jesuits' estates, and the other to the casual and territorial revenue; 75 *l.* to the estates, and the balance of 425 *l.* to the revenue. I have no official knowledge of this, but speak from private information. I do not believe the division of the rent under the new lease has yet been acted upon.

194. Why have you omitted the fines and forfeitures among the heads of King's revenues?—I have been directed not to carry them to that account, from the difficulty of distinguishing between the fines at the disposal of the Legislature, and those at the disposal of the Crown. Many fines are, by the Acts imposing them, reserved to the disposal of the Legislature. On account of this difficulty I have not of late years carried any of the fines and forfeitures or seizures to the account of the hereditary revenue. Seizures made in the ports of Quebec and Montreal are remitted to England, those ports being under the directions of the Commissioners of Customs in England; the seizures at inland posts, such as St. John's, Coteau du Lac, &c., are carried to account in the province.

195. Can you state the distinction between the King's domain and the other Crown property?—I know of no other property that is not domain, except the waste land and timber; and as those were not sold previous to 1828, they did not come into any account of King's domain, and they have been kept separate since that time. I understood the King's domain to consist of what belonged to the French king before the conquest.

196. Do you consider the citadel or other lands employed for military purposes as part of the King's domain?—I never heard this included in the King's domain; no account of it is rendered to the civil Government, or to any department of Government, that I know of.

197. Is there any land upon which rent is raised by the military departments?—There is land upon which rent is paid to the military authorities here, and I suppose an account of it is rendered to some department at home.

198. Do you hold the office of inspector of public accounts?—I do.

199. How long have you filled it?—Twenty-eight years, either as assistant in the office, acting as principal, or as principal, to which I was appointed in 1826.

200. Are you chiefly employed in filling up the Blue Book?—I furnish what relates to the finances.

201. Have you been employed in preparing the estimates to be laid before the House of Assembly?—Yes.

202. Could you without much difficulty prepare a list of those expenses which can be stated at a fixed sum for every year, and which are absolutely necessary for the maintenance of civil government in the province?—Yes, I could, certainly.

Mr. *Primrose*, Inspector of the King's Domain, called in; and Examined.

Mr. *Primrose.*

26 October 1835.

203. WHAT offices do you hold under the Government?—I hold what are called two offices, but which, in fact, compose one, although occupied under separate commissions. They are styled Inspector-general of the King's Domain and Clerk of the Land Roll.

204. By what instruments were you appointed?—I was appointed at the same time to the two offices, by instruments under the great seal of the province. The duties are completely

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Mr. *Primrose.*

26 October 1835.

blended together, and some of the proceedings in each are even entered in the same registry; and it would be scarcely possible that the offices should be filled by two separate persons.

205. How long have you held the offices?—I was appointed in February 1828.

206. Have they fixed salaries, or are you paid by fees?—The clerk of the land roll receives 90*l.* sterling as a fixed salary; but has, independently of that, casual emoluments in the shape of fees for acts of fealty and homage, which it is his duty to prepare and to enter in the proper register; also for copies, when required by individuals, of these Acts, or of any other records of the same nature, which are deposited in his office. The inspector-general of the King's domain is paid, in lieu of salary, a per centage of 7½ per cent. upon all quints, lods et ventes, and similar seigneurial dues paid into the receiver-general's hands.

207. Could you furnish an abstract to show all the heads under which the receipts from the King's domain may be classed?—Certainly. I may remark that none of the money is received by me, but is paid at once into the receiver-general's hands, and I receive my charges upon it under warrants from the Governor.

208. Can you define what the King's domain is, as distinguished from other Crown property?—The statement of the sources of the revenue may give you a general idea of the distinction. In the French time I apprehend that the whole province was deemed domain: the seigneuries held *in capite* of the Crown, the lands *en roture* held according to that tenure, franc aleu, franche aumône, and so forth; all were either in the possession of the Crown, or subject to rights which the Crown exercised over them. In respect to my own superintendence of the King's domain, it is chiefly limited to the seigneuries, and such parts as are held of the Crown *en roture*, which parts are almost altogether situated at Quebec or Three Rivers.

209. What is your understanding of the term demesne of the Crown in England?—I presume that question is merely put to me as having some knowledge of law, but not as having any particular information on the point.

210. Would you say that the King's demesne in England, as you have said in Canada, applies to the whole kingdom, seeing that the whole of the lands in the kingdom are subject to escheat, or forfeiture to the Crown?—I do not think the case the same, and for this reason: in this province, previously to the conquest, the principle of the tenures was, that they must be held in one way or the other, either seigneury or roture, under the Crown. In both ways they were liable, not merely to forfeiture, but to all the burthens of the feudal tenure. Even tenants in franc aleu, which most nearly approached free and common soccage, rendered certain services to the King, and so far belonged to the domain as to owe their declarations to the Papier Terrier, or land roll of the King's domain.

211. Do you mean that there was ever a time when the whole lands of the province were comprised in the "Papiers Terriers du Roi"?—Whether or not they were complete I cannot say; but there are in my custody "Papiers Terriers" which purport to contain a statement of every estate whatever in the province. I am not aware that any one individual was exempt from the duty of furnishing his declaration to the Crown. In franc aleu it is often a provision in the original title that a declaration shall be made every 20 years. There were no stated periods for renewing the Papiers Terriers; it depended on the discretion of the officers in charge of the King's domain. The Papiers Terriers did not contain any valuation of the estates.

212. Can you state the distinction between that document and the Doomsday Book of England?—I conclude they must be of the same nature. I do not recollect if Doomsday Book was compiled with the aid of the same authority as the Papier Terrier in this country, though it may contain the same particulars.

213. Do you not consider it a doctrine of the English law at the present day that all land is held of the King?—Yes, as an abstract principle; but I hold the abolition of feudal tenures to have made a great distinction.

214. Before the abolition of feudal tenures by the statute of Charles 2, should you have considered the term "King's demesne" to apply to all the lands in England, or to all those under feudal tenure, or only to those usually called the demesne lands of the Crown?—In the sense in which I have used the term in the province, I should hold it equally applicable to the whole of England previous to that statute. The demesne lands in England apply to what the Crown has reserved for itself; whereas the King's domain, in its largest sense, must include all fines, forfeitures, and every description of burthen or service chargeable on what the Crown may have granted out.

215. Does not "franc aleu" correspond with the allodial lands in England?—I should think it does pretty nearly.

216. Is not the whole system of the French Canadian tenures here, including seigneuries, fiefs, censives and lands, en roture and franc aleu pretty nearly the same as the old Norman system in England, which was not fully abolished till the time of Charles the 2d?—I believe it is.

217. Are the King's wharfs upon your register?—No.

218. Nor the King's posts?—They are not; but in case of any dispute with reference to them, I should be applied to for information.

219. Then why are they not on your register?—Because they are the King's, and have never been granted out, and therefore never appeared in the Papier Terrier, which is a new list of lands held by individuals, and owing dues to the Crown.

220. Are not the King's posts under lease at this moment?—Yes.

221. What is meant by the King's posts?—They are trading posts, occupying a large portion of country on the north of the St. Lawrence below Quebec, let out upon a lease which

which has been assigned to the Hudson's Bay Company. Their exact description might be obtained if wished.

222. Does not the lease of the King's posts carry with it the exclusive right of fishing, trading or hunting with the Indians over a vast extent of country?—I believe it does.

Mr. *Sewell*, Sheriff of *Quebec*, called in; and Examined.

223. WHAT degree of inconvenience in the sheriff's office was experienced in the district of Quebec, through the stoppage of the supplies?—The persons who supplied the gaol were not paid; I had no funds in my hands to pay them. I have advanced from my own resources some part of these expenses; for the remainder I gave a conditional bond, payable when the Government should pay me.

224. What is the amount of the claims on Government for money either advanced by you, or for which you are responsible?—About 2,500 *l.*, excluding the salaries to the sheriff, the gaoler and the turnkeys.

225. Have you had any payment since the sum of 782 *l.*, which appears to have been appropriated to the Quebec gaol out of the advance of 31,000 *l.* from the military chest?—None.

226. Have you turned your attention at all to the subject of a permanent civil list?—No.

227. Could you state in writing the permanent charge of your office?—I will do so. The expenditure has increased largely since I have held the situation.

228. Since the supplies were stopped has the gaol been in a healthy state?—Yes, generally.

229. Has there been no cholera?—Four cases in 1832, and two in 1834.

230. Has the physician's salary been paid?—No.

231. Have the repairs of the gaol been carried on or stopped?—There have been partial repairs, and they have not been stopped.

232. Has the ventilation and cleansing of the gaol been carried on as usual?—Yes; the expense forms part of the arrears of 2,500 *l.*, which I have already mentioned.

233. Suppose there had been a fire in the gaol, and any part of it destroyed, how would you have got money to rebuild it?—I know not. I could not have done so from my own funds.

234. How many gaols are there in Lower Canada?—There are gaols at Montreal, Three Rivers, Quebec, Gaspé and Sherbrooke; I know no others.

235. Have they all been similarly circumstanced?—I believe so.

236. In what way, in Lower Canada, does the arrest of prisoners take place?—In town by police officers; in the country by officers of militia, who are bound to pass them from one parish to the other till they reach the gaol of the district.

237. Are there any constables in Lower Canada?—Yes, in the towns. In the country parishes the duties are performed by serjeants of militia.

238. Is there not a high constable for each district?—For the three principal districts.

239. What are his duties?—To attend the courts, marshal the constables, and see that they do their duty.

240. Are not the high constables salaried officers?—They have both salaries and fees.

241. Have their salaries been stopped?—I believe so.

The Hon. *L. Gugy*, Sheriff of *Montreal*, called in; and Examined.

242. WHAT degree of inconvenience, in the sheriff's office, was experienced in the district of Montreal by the stoppage of the supplies?—Advances which I made from my own resources alleviated the inconvenience. The gaoler, however, suffered much, and would have suffered more if he had not been assisted by loans of money from myself. I advanced money for the support of prisoners; nor had I any hesitation in doing so for one half-year, but when the payments extended to four half-years, it became very inconvenient.

243. What would have been the consequence if you had not made these advances?—I should have been obliged either to open the gaol, or else resign my situation, and leave the Government to find a successor.

244. What is the amount now due to you by the province?—Exclusive of my salary and of allowances, there is due to me on account of my advances 2,486 *l.*, as certified by the inspector of public accounts.

245. Were these advances only for Crown prisoners, or did they include debtors?—They were for Crown prisoners; the debtors are only supplied with fuel and water.

246. How were the expenses of indigent witnesses paid?—The Government issued warrants to me for whatever amount might be requisite. No hardship was suffered in this particular.

247. Can you state the average annual charge of the gaol in Montreal?—When we get into the new gaol the expenses will be largely increased. I should say that 2,000 *l.* would be likely to cover all the expenses. The charge for needy witnesses is a separate head, and would most properly be considered as part of the expense of the administration of justice.

248. What is the average number of prisoners in the gaol?—It fluctuates between 90 and 150.

249. How many of these are usually debtors?—Seldom more than 10.

250. How long have you lived in this province?—Nearly 40 years.

251. You

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Hon. *L. Gugy.*
2 Nov. 1835.

251. You are a member of the Legislative Council?—I have been so for more than 20 years.

252. Have you considered at all the subject of a civil list in this province?—The province will never thrive without one; the public officers have lost all confidence from not knowing whether they can go on from one year to another.

253. Could you give any opinion what would be a proper permanent civil list for the province?—I have thought of the subject, but I really could not undertake to submit anything very precise; I do not know enough of the estimates and expenditure of the Government.

254. Could you send an estimate of what would be the permanent charge of the branch you belong to?—I will endeavour to do so; I imagine I have already said something that will show it.

255. Could you not give us a statement in writing of the permanent charge?—I will.

256. Will the statement you send in include anything beyond the charges of the gaol?—Nothing else.

Mr. *Attorney-General,* called in; and Examined.

Mr.
Attorney-General.
2 Nov. 1835.

257. HAVE you directed your attention to the subject of a civil list?—I have.

258. Could you without much trouble furnish a statement of what, according to your own views, it would be proper to provide for permanently in support of the ordinary functions of civil government, in contradistinction to what is to be provided for annually by the supply and appropriation of the Assembly. I will send such a written statement to the secretary to the Commission.

259. In the criminal prosecutions are you called upon to advance money out of your own funds?—I think that necessity is confined to the sheriffs. I have generally obtained for the sheriffs a warrant from the Governor for the expenses of needy witnesses, but for all the other expenses of their office they have had no payments from the Government that I know of.

260. What would cover the whole annual expense of needy witnesses in Lower Canada? About 800*l.* This would only defray, however, the expenses of witnesses called before the superior courts. In addition to that, there would be a charge for subpœnas and some other expenses, of all of which I will, with permission, furnish an accurate estimate in writing. I will send in a statement of the general expenses of criminal justice.

261. There is nothing here in the nature of county-rate, or fund for paying prosecutions in the same way as in England?—None.

262. All which is paid in England by county-rate here falls on the public treasury?—It does.

263. You were some time in the House of Assembly?—Yes.

264. What has been the course of proceeding as to payment of the contingencies of the Legislative Council?—With respect to the Council I cannot speak with anything like certainty, but I believe the contingencies have always been paid by the Governor, on an address from that body.

265. Have they been paid before the Appropriation Bill?—Before the appropriation.

266. Was that without any vote of credit or address of the Assembly?—Without either; always proceeding on the sufficiency of the fund appropriated by law, with a statement that in case of its falling short the House would concur in making good the deficiency.

267. Do you know any instance in which this has taken place, since the proceeds of the 19 Geo. 3 were surrendered?—I could not speak as to that precisely; but I have no doubt that it has been done. It may be observed, that the provincial Act 39 Geo. 3, c. 9, though not, I believe, actually in force, shows, in the 22d section, the mode in which the Legislature contemplated the payment of the expenses of the two houses.

268. As regards the surplus beyond what was provided for by the old provincial statute on the subject, do you consider it would be properly paid out of the general revenue, on the mere address of the Legislative Council?—I should think not.

269. After votes have been passed in the House of Assembly, what has been the practice as to making payments during the session, and before any Appropriation Bill can be passed?—Excepting the contingencies which have been paid on addresses, I am not aware of any advances having been made for any other public service pending the session, and before the Appropriation Bill was passed.

270. Do you consider it more regular to pay the contingent expenses of the Assembly on an address from that body alone, than the expenses of the Council on an address from the Council alone?—As the payment in both cases is founded on the same provincial statute, I think, to the extent of that statute, it is equally lawful in either case; but as to the excess beyond that statute, as regards that, I think the payment equally irregular in both cases; nevertheless, it has always been made, and without complaint, until within the last few years.

271. The Governor asks for supplies by message, and not through any office in the House?—By way of message. The Government has not any official person in the House at present, though formerly there have been such persons, and they used generally to bring forward the financial business of the Government; Mr. Panet was the last, and he left the Assembly about four years ago. There have been others besides Mr. Panet.

272. Has not the total amount of the public revenue of late years been greater than the expenditure for ordinary purposes of the civil government?—Certainly.

273. Was not the deficiency, previous to that time, made up by England?—I believe so.

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Mr. *Attorney-General*, 2 Nov. 1835.

274. It has not then been the course to proceed, as in England, by the introduction of a budget, and a statement of the supplies, and of the ways and means, but on a message from the Governor; the estimates and state of the revenue are taken into consideration, and a bill of supply and appropriation passed?—That is the case.

275. Then what are called votes of credit in the House of Commons have not been resorted to here?—No. Before concluding my answers on financial subjects, I would observe, that I merely speak from general knowledge, and that I would not wish my information to be relied on as accurate in details.

Honourable *J. Stewart*, Commissioner of Jesuits' Estates, called in; and Examined.

Hon. *J. Stewart*. 4 Nov. 1835.

276. ARE you Commissioner for the management of the Jesuits' Estates?—Yes.

277. How long have you held that appointment?—As sole commissioner, since 1826; but I had sat previously at a board of management since 1815, without any remuneration.

278. How was the change from a board to a sole commission occasioned?—Under a recommendation from Lord Dalhousie to Lord Bathurst, which was not, however, carried into effect till some of the members of the board had died. The board consisted of Mr. Foy, who was also visiting inspector, Mr. Ryland, Mr. Smith and myself; and on Mr. Foy's death the management was transferred to myself as sole commissioner.

279. Was the change effected by a commission?—By a commission to me under the great seal of the province.

280. Does the commission contain instruction for your proceedings, or merely confer upon you the appointment?—It does not prescribe any peculiar or minute rules, but merely directs, in general terms, the amelioration of the estates, and authorizes me to bring suits, collect rents, and so on. I will furnish a copy of the commission.

281. What are your salary and emoluments?—£. 200 currency for myself, and an allowance of 100 *l.* for a clerk. This is the whole amount; there are no fees.

282. Have you any general map, plan or terrier, of the Jesuits' estates?—There are agents to make up the Papier Terrier. I can only furnish a list of the seigneuries, and can show at my office the plans of them; but for the lists of the censitaire within the seigneuries, it would be necessary to refer to the agents; there is great difficulty and expense in obtaining correct rent rolls. The attempt was begun before I became sole commissioner, and has been continued since; but I have only obtained one which can be considered complete. One notary, who was appointed at Laprairie three years ago to make a Papier Terrier, has done nothing since, and is now in the hands of the Attorney-general. The first step in making up the terrier is to obtain a mandamus from the King's Bench, authorizing the appointment of a person for the purpose. The person so named derives his payment from the censitaires.

283. Would not these difficulties be in some degree removed, if the practice were put on the same footing as in manors in England, where the steward keeps the court rolls?——Firstly, it would require an alteration of the law, were it only for the institution of courts similar to the manorial courts in England, for proceedings against the censitaires must be in the King's Bench. The law is in itself adequate to its purpose, but attended with great delay and expense. Secondly, the agents here ought to do nearly the same thing as the stewards of the manor in England; but there are great obstacles, and, amongst the rest, the the court at Three Rivers refuses to give the King any costs, although the decisions of the superior courts have been otherwise.

284. Could you give us a general idea of the extent of the Jesuits' estates?—There are four seigneuries in the district of Quebec, two in Three Rivers, and one in the district of Montreal, besides properties in the towns of Three Rivers and Quebec.

285. What are the net proceeds of these estates?—About 2,400 *l.* a year.

286. If the rent rolls were completed, and a good system were established, could their value be considerably increased?—Not immediately. There are considerable arrears, which the censitaires show a great unwillingness to pay; and they have been supported in that by the opinion that these arrears will be relinquished.

287. Have you, as sole commissioner, allowed arrears to accumulate?—I have been obliged to do so, from the difficulty of suing and other impediments.

288. Are you aware of the amount due for arrears?—I cannot state it, because, as I have already observed, there are scarce any Papiers Terriers that are perfect; and it is in those documents that the censitaires are compelled to return the amount due by them.

289. That obligation of the censitaires to return their arrears is, no doubt, one of the great obstacles to the completion of the rent rolls?—Certainly.

290. Might it not facilitate the management of the estates, if you had an authority to remit all arrears beyond the last three or four years?—I think it might; but there would probably arise a necessity to inquire into the particulars of separate cases; some owe for 30 years, some for five years; some are able to pay, and some not.

291. Would not such an inquiry into individual cases occasion great delay, expense and irritation?—I do not conceive it would cause irritation, but delay. The agent on the spot usually knows the circumstances of every censitaire.

292. Would it not be much more likely to create dissatisfaction, if a detailed investigation were made, than to select some stated limit of time to the remission of arrears?—A general measure, fixing one term for all, would scarcely be fair; the person longest in arrear would thus have the greatest boon. At the same time, the other plan would no doubt be the least dilatory and expensive.

293. Is not the leaving the arrears unsettled the great obstacle to the collection

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Hon. *J. Stewart.*

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even of the annual rents?—It is doubtful what the effect would be, in that respect, of a remission of arrears; it might lead the habitant to expect the same again, and thus encourage him to refuse his yearly rent.

294. Can you state the difference between the whole rent due, and the rent usually received?—The imperfections of the terriers prevents me from being able to state this.

295. Would the complete collection of the rents be likely to double the present receipts?—No; a great proportion of the present revenue comes from mills, coves and farms, of which, generally speaking, the rent is paid regularly.

296. Are these mills, coves and farms leased to substantial persons?—Some of them are so, and others not; there are some of the leases in arrear. It should be observed, that some of the mills are let upon shares, by which I mean that the Jesuits' estate itself has a certain proportion of the monture.

297. Is not part of the Jesuits' estates let to the proprietor of the forges of St. Maurice?—Yes, part of the seigneurie of Cape Madeleine is let to him under lease, and for the same period as the forges. The lease was granted under the authority of the Government last year; but the lessee of the forge had been in possession of a great part of that property since 1819. The lease confined the lessee within certain limits. The Jesuits' estates obtained a rent for this lease, which they had not before.

298. By what instrument was the lessee of the forges in possession of this property previously to the lease?—By a written authority from the Duke of Richmond, which I obtained while I was managing the forges of St. Maurice in Mr. Bell's absence; it was an authority only to cut wood, and to draw ore for the use of the iron works.

299. Was that the origin of the present lease to the occupier of the forges of St. Maurice?—I am not aware of his having any prior title.

300. Does the lease granted last year only apply to the cutting wood and drawing ore?—I think only to those purposes. Mr. Bell obtained a new lease of the forges for 10 years, at the same time as he obtained the lease on the Jesuits' estates last year; and it was at my suggestion that a part of the rent was secured to the Jesuits' estates, in consideration of Mr. Bell's liberty to take wood and ore from them. Mr. Bell holds also, in conjunction with his late partner, Mr. Munro, a concession in the same seigneurie, originally granted by Pere Cagran, on which there is a saw-mill; but I am not sure whether it belongs to Mr. Bell or not.

301. What rent is paid by Messrs. Bell and Munro for that?—The usual seigneurial dues.

302. To whom do you render your accounts?—To the Executive Government.

303. Are they afterwards laid before the Legislature?—Returns have been laid before the Assembly whenever they have been called for, since the date when the proceeds were given up for the purposes of education.

304. Have you legally the same facilities for collecting rents as other proprietors of seigneuries?—Yes.

305. Have you the same facilities in practice?—Certainly.

306. You do not think the purpose to which the proceeds of the estates are applied would affect this collection?—I do not think so.

307. Are other seigneuries, generally speaking, as much in arrear as the Jesuits' estates?—They are all in arrear, but whether so much I cannot say.

308. The Executive Government have from time to time been made acquainted with the above circumstances, which related to the management of the estates, and have received returns of the annual receipts and disbursements?—

The Honourable *J. Stewart*, again called in; and Examined.

27 Nov. 1835.

309. In what way did the commissioners for the management of the Jesuits' estates first receive notice of Mr. Ryland's allowance?—By a letter from Mr. Cochran, secretary of Lord Dalhousie, to Mr. Ryland, president of the former commissioners, dated 19th April 1826, which contained a copy of Lord Bathurst's despatch of March 4, 1825.

[Mr. Stewart then read the following letter from a book containing the proceedings of the commissioners for the management of the Jesuits' estates.]

"Sir, "Castle of St. Lewis, Quebec, 19th April 1826.

"I am commanded by his Excellency the Governor-in-chief to transmit to you, for the information of the commissioners for managing the estates heretofore belonging to the late order of Jesuits in this province, the enclosed copy of a despatch from the Earl Bathurst, authorizing the discontinuance of the present system of managing those estates by a board of commissioners. Although in consequence of objections which have been stated to his Excellency against giving the administration of those estates to the department of the inspector of the King's domain, his Excellency has not thought it expedient to adopt that course, it is his intention, nevertheless, to act upon the principle on which he recommended that measure to my Lord Bathurst, and to entrust the management of the estates to one person as sole commissioner.

The absence of Sir Francis Burton, and the death of Mr. Foy and Mr. Coltman rendering it absolutely necessary to make some change in the board, his Excellency conceives this to be the fittest time for making that change which my Lord Bathurst has authorized; and he therefore directs me to acquaint you, for the information of the board, that their functions, and those of the officers of the board, will terminate (as to the management of the estates) on the 30th of this month. As, however, some further time may be required to bring up the accounts

accounts and books to that period and to make a closing report, his Excellency supposes that two months will suffice for this purpose. Appendix, No. 12.

I have the honour to be, &c. &c. Hon. *J. Stewart.*

" Hon. H. W. Ryland, (signed) *A. W. Cochran.*" 27 Nov. 1835.

" Chairman of the Commissioners of Jesuits' Estates."

(Enclosure.)

" My Lord, " Downing-street, 4th March, 1825.

" I have the honour to acknowledge the receipt of your Lordship's letter of the 16th ultimo, respecting the system under which the Jesuits' estates in Lower Canada are now administered, and suggesting that a total change in that system should take place, by doing away with the board of management, and committing the administration of the estates to the department of the clerk of the terrars and inspector of the King's domain, as being the office under which it appears to you the management might be rendered more effective, the collectors more under control, and the censitaires more effectually compelled to pay their dues; and I am to convey to your Lordship my approbation of the arrangement proposed by you, and my authority to pay to the officers whose services will be discontinued the half of their present salaries, charging the same on the funds of the Jesuits' estates.

" I have the honour to be, &c. &c.

(signed) " *Bathurst.*"

" To Lieut.-General the Earl of Dalhousie, G. C. B."

Mr. Ryland, at that time, was president of the commission for the management of the Jesuits' estates, and also treasurer, in which latter capacity he received 150 *l.* per annum as salary; which constituted his whole emoluments in respect of those estates.

310. Then Mr. Ryland's claim now is only for 75 *l.* a year?—No more.

311. Was Mr. Ryland at that time in receipt of a pension of 300 *l.* a year?—Yes.

312. Was it charged upon any particular fund?—No.

313. Was there any further communication made to the commissioners as to the payment of the allowance to Mr. Ryland?—The book from which I read this letter terminates the proceedings of the former commission. I became sole commissioner, and as such had the whole management of the monies, and I received warrants from the Governor for the payment of Mr. Ryland's retired allowance of 75 *l.* a year.

314. Have you any entries in your books which will show when the first of these warrants was issued?—I have.

315. Will you send the dates of the first of the last warrants?—I can send the first and also the last, that I received; but after the last that I received, there were some ulterior ones upon the Receiver-general, the monies having been ordered to be paid into his chest.

[Mr. Stewart subsequently sent in a note, dated 28 November 1835, by which it appeared that the first warrant for Mr. Ryland's allowance was dated May 28th 1828, and was for two years preceding; and that the last warrant on Mr. Stewart was dated November 1st 1828.]

316. Do you know of any other correspondence respecting Mr. Ryland's allowance, besides the letter from Mr. Cochran you have mentioned, previously to the issue of the first warrant?—None upon his claim to a retired allowance.

317. What occasioned the cessation of the warrants for the allowance?—The giving up of the proceeds of the estates to the Legislature without any condition for payment of the salaries and allowances formerly paid from that fund. The Assembly, I understood, refused to grant the retired allowance of Mr. Ryland.

George Ryland, esq., called in; and Examined.

318. Do you know of any official communications which passed between Lord Aylmer and your father on the subject of his claim?—There was a memorial from my father to the council at the time of the payment made in 1834 from the military chest, and there was a minute of council stating their reasons for omitting him. I know of no other official communication except Mr. Ryland's memorial to the Secretary of State, which Lord Aylmer forwarded, and informed me, about July last, that the answer was, that there were no funds out of which to pay the allowance. I know of no other application in any other quarter; he waited for the adjustment of the financial difficulties, and relied on the faith of the Government for the payment of his arrears. The Secretary of State has always acknowledged his claim. *G. Ryland,* Esq.

319. Would your father have any objection now to petition the House of Assembly?—I think he would; because he would feel it to be hopeless; he thinks there is a personal feeling against him in the Assembly.

320. Has he ever applied to the Assembly?—Never.

321. Has he ever been formally recommended to apply to the Assembly?—Not to my knowledge.

322. Did not Lord Aylmer ever apply to the Assembly?—Never, except by inserting the charges in the estimates.

323. Then no remonstrance or a special report on the subject has ever been addressed to the Assembly?—None further than a note to the estimate for 1832, in the following words: " The disposal of the Jesuits' estates being now under the direction of the Provincial Legislature

Appendix, No. 12.
G. Ryland. Esq.
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lature, the charges which have heretofore been borne by the funds of these estates are now included in the annual estimate, with the hopes of their being provided for by the bounty of theLegislature, as expressed in the despatch of Viscount Lord Goderich of the 7th July last." I should apprehend, that note must be considered as a recommendation from the Governor.

324. Were there any other charges similarly circumstanced on the Jesuits' estates?—I had an allowance of 50*l.* currency, as former secretary of the board, precisely on the same grounds as my father's, except, of course, that my length of service was less.

Mr. *Campbell*, King's Notary, Examined.

Mr. *Campbell.*
30 Nov. 1835.

325. You are King's notary?—Yes.

326. How long have you had the employment?—About 15 years.

327. It is not a salaried office?—No; it is paid according to the nature and quantity of the business.

328. What is the nature of the business?—I merely draw up papers, and prepare the deeds in any case where any conveyancing has to be done on the part of the Crown.

329. You are then acquainted with the foundation and description of different sorts of Crown property?—To a certain extent.

330. How long have you been notary?—Twenty-three years.

331. How far back have you leases of the King's posts?—Only the existing lease. That was the first done by notarial act, as previously the grant was made by letters patent in council. I furnished a copy of this lease the other day to Mr. Walcott, the civil secretary.

332. Have you the lease of the King's wharf?—No; the lease of the King's wharf and many other leases are made by letters patent. Sillery is so leased. It used to be done by notarial act. The same is the case with the other Jesuits' estates.

333. You are a native of this province?—I am.

334. Do you know what are the quit-rents of the Crown, or whether there is any distinction between them and the cens?—The word quit-rent is, I believe, strictly speaking, a translation of the words *cens et rentes* as used in this country, being a small amount and perpetual rent by the tenant to the seigneur, or lord of the manor, in token of subjection.

335. Do you not understand the bed of the St. Lawrence to be Crown property?—Yes; I do not know whether the same is the case with the whole of the St. Charles between high and low-water mark.

336. Are you notary of the Jesuits' estates?—Yes.

337. Do you consider them Crown property?—Yes.

338. Is there no difference of opinion on the subject?—Certainly there is. Some persons suppose it to belong to the province for education.

339. If public property, must there not be some person in whom the legal estate rests; in short, must not the title be in the Crown?—Yes.

340. Did not the old French law, still subsisting, authorize the Crown to take from any seigneurie such lands as were wanted for military purposes?—Yes.

341. The same law, I believe, gives the power of cutting ship timber?—Yes.

342. And the right of making roads?—It does.

343. And the right to certain minerals?—Yes.

344. If the Crown exact its right to land for military purposes, does it not usually pay the value?—I am not sure if the law enjoins it; it is the practice; and in some cases lately the *censitaires* have refused to take out their *titres-nouvelles*, without having a clause for indemnity introduced.

The Honourable *John Molson*, Examined.

Hon. *J. Molson.*
6 Dec. 1835.

345. Have you considered the subject of the independence of the Judges, and the creation of a court of impeachment?—I am of opinion that the Judges should be independent of any bias or sway from any party whatever; that a court of impeachment would be very convenient; for that in referring cases home, the mere suspension of the officer amounts in itself to a punishment. Here, on the contrary, you would have the shortest issue of the causes. If the Council were the Court, I do not see any objection to an appeal from them.

346. Have you ever turned your mind to the difficulties of establishing a court of impeachments?—I have never investigated that question so accurately as to wish to offer an opinion.

347. Have you ever considered particularly any conditions proper to be annexed to the cession of the hereditary revenue?—The misfortune was, the surrender of the revenue given up by Lord Ripon without imposing beforehand whatever conditions were necessary.

348. What conditions would it be your wish to make, supposing the Government as advantageously placed as before the cession of that revenue?—There ought to be a sufficient and permanent civil list. For its duration, a term of years, what number, I will not prescribe, would be preferable to the King's life, because of the uncertainty of that period, and the time that must elapse before its termination became known here.

349. If the judges be made independent of the Crown, there must of course be some tribunal competent to remove them; what tribunal would you recommend?—I presume the Council; that is the analogy. The Council, in its present form, is not acceptable to the Assembly; but, if it were elective, I do not see why you should have the two houses at all.

350. Do you think that if another tribunal than the Council could be formed within the province, it would be generally acceptable?—I have not taken interest enough in politics; I will not undertake to say.

351. Are

351. Are you aware of the recent resolutions proposed in the Assembly on the independence of the judges?—I have not given them any particular attention.

352. You are a legislative councillor?—Yes.

353. You have, I believe, numbered 70 years?—Yes.

354. How long have you resided in Canada?—Fifty-three years.

355. You have been engaged in mercantile pursuits?—I have had breweries on a considerable scale, and since the year 1810 I have been connected with steam navigation. I have been tolerably successful in trade.

356. Have you not been a member of the Lower House?—For one session I sat for the East Ward of Montreal.

357. Where is your residence?—My principal residence is at my brewery at Montreal, but I have property at the Isle Marguerite. Montreal is the chief site of my property.

358. Were you ever president of the Montreal Bank?—Yes; I was chosen to that office without solicitation, having been waited upon by a respectable deputation from the directors to request that I would receive that situation.

359. You have not attended meetings of any of the constitutional or other political associations?—Never.

360. You have not been a keen politician?—No, I have never felt violently on those matters. I am attached to the monarchy; but I should wish it to be restrained within its proper limits.

361. Is it your view in politics that the inhabitants in Canada should have the full enjoyment of the British constitution?—I should have no objection to the adoption of it, although I view our colonial constitution as a written one, and should rather wish to adhere to it. One of the main differences between the English and the provincial constitution is, that in the latter there is no hereditary branch of the legislature, nor indeed any materials for it.

362. Would you propose any alteration in the form of the Legislative Council?—No. In the history of the Council you must remember that the Government had to take such people as they could find. For some time it was indispensable to recur to the civil servants to find individuals qualified; the improvement of the province has now brought forward others equally qualified; but the functionaries previously appointed were named for life, and of course retain their seats, except the judges.

363. The number of the Council has been materially increased?—Yes; it has been materially increased, and by the addition chiefly of gentlemen not connected by any pecuniary ties with the Government. If the majority were selected from the French Canadian part of the community, the power of the Council would be almost as much neutralized as by its being made elective. This is my opinion, and I only mention it as matter of opinion. I have heard a French Canadian gentleman admit, in his arguments in the House, that, having travelled through England, Ireland, Scotland and France, he had nowhere seen peasantry so happy as in this province.

364. Does that coincide with your own observation?—Entirely.

365. Are you a member of the Church of England?—Yes; I am numbered in that church.

366. Have you thought of the best mode of providing for its support?—Not much; but the reservation of a seventh of the lands for it, seems to me utterly objectionable.

367. Are you adverse, then, to any large allotment of lands to a body of clergy?—I decidedly object to grants in mortmain, unless for the site of a church, of a school, a burying ground, or other such limited purpose.

368. Are you aware of the bill confirming in mortmain the existing titles of all religious bodies, now before the Legislature?—I am not aware of its being so worded, but I shall look into it; and if the effect be such, oppose it to the extent of my power.

I have always opposed the claims of the St. Sulpicians at Montreal, and have never made payments to them, but I believe my son has done so.

369. Are you aware of any difficulties which exist respecting the boundary line between Upper and Lower Canada?—Great difficulties arising out of the want of a sea-port, and the apportionment of duties between the provinces.

370. But are there any difficulties as to what actually constitutes the true line of boundary?—I do not think that; I only think the line an unfortunate one, and very injurious to Upper Canada.

371. Have you seen a petition within these few days from a widow, Made. Beaujeu, stating that her rights are subjected to litigation by the want of certainty in the boundary between the two provinces?—I have not seen it.

372. You are not aware that Colonel Bouchette also states difficulties as to the exact line of boundary between the provinces?—I have heard conversations on some uncertainty in the line from Point à Baudet to the Ottawa.

373. Do you know whether the islands of the Ottawa, such as the Callumet Isle, and others, belong to the upper or the lower province?—I do not know; I have little acquaintance with the localities.

374. Do you know anything of the boundaries between Lower Canada and Labrador?—I have not turned my attention at all to the subject of boundaries. I have no knowledge of the lower boundaries.

375. With respect to the commissions of the judges, for how long should they run?—I would not have them merely for the duration of the civil list, or of the cession of the Crown revenues, but would have them for life or good behaviour.

376. Their salaries should be for the same time as their commissions?—Assuredly so; they ought to be permanent; they may be increased; but to subject them to diminution would defeat the principle.

Appendix, No. 12.

Hon. *J. Molson.*
6 Dec. 1835.

377. What is your opinion of the present remuneration of the judges?—They should be well paid. It may be a question whether there should be two chief justices; but the chief justices, whether there be one or two, ought to have 3,000 *l.*, and the puisne judges 2,000 *l.* per annum. It is of great importance that the emoluments should be such as to induce those who have high incomes at the bar, to accept the office. I must say, that I believe I name higher salaries than most persons in the province would do, but that is my opinion.

378. Have you heard of any intention of lowering the salaries of the judges?—Merely as private conversation, of which I would not wish to speak.

379. What, in your opinion, would be the effect of materially lowering the salaries of the judges?—Instead of having the best persons the province can supply, you would only have those who cannot live on their practice.

380. What would be the effect of making the judges removable by the Governor or the King, on the address of the Assembly alone?—I think it would not be constitutional.

381. Would it not be the consequence that either the Government must yield to the Assembly, or the King, or his representatives, be brought into collision with the Assembly?—I think there ought to be an address from both branches.

382. Has your attention ever been turned to the question, how the judges ought to be removeable from office?—I have always understood that at present the King gives the office and the King can take it away; but if one branch were able to demand the dismissal of a judge or public servant, as of right, this would be unconstitutional.

Anything amounting in effect to an order from one of the other branches of the Legislature, with which the King could not refuse to comply, would, in my mind, be extremely injurious.

383. Have you ever formed an opinion whether the judges should be permitted to sit in the Legislative and Executive Councils?—I believe it would be more agreeable to public feeling if the necessary legal information were supplied by a person not holding the office of judge. If, for instance, Mr. A. Stuart, or some such person of considerable legal evidence, were to preside instead of a judge. But legal information is wanted by the members of the Council, for which hitherto I have looked to the chief justice and the law clerk, and I felt that I had reason to complain that they did not make us aware of an objection to an electioneering bill, which I should have opposed had I seen the objection, but which passed into a law, and deprived the partners of mercantile houses of the power of voting for property which they held as a firm. One gentleman in Montreal, who paid 25 *l.* assessment, at the rate of 6 *d.* a pound, had no vote.

384. Would not the legal information you require be secured if retired judges sat in the Legislative Council?—Most assuredly; but as retired judges ought to have a handsome provision, I do not know what would be public feeling as to their sitting in the Council.

385. But if their pension were granted to them unconditionally and for life, ought they not to be considered independent persons?—They ought to be so.

386. Have you ever considered what would have been the terms which you said ought to have been made when Lord Ripon gave up the duties under the 14 Geo. 3?—I have not deliberated much on that, but if I appeared again before the Commissioners I should be more prepared to speak.

John Neilson, Esq., Examined.

John Neilson, Esq.
9 Dec. 1835.

387. You are the same gentleman who was examined in 1828 before the Canada Committee of that year, and who was the bearer of a petition from the Quebec Constitutional Association to England last year?—Yes.

388. You are still a member of the Constitutional Association of Quebec?—Yes; but before proceeding further, I must explain that I hold no power of representing others; I am no longer agent for the petitioners who deputed me to England; nor have I received any authority to speak in my capacity of member of the executive committee of the Constitutional Association. As a private individual, I am willing to give any information, or state any opinion in my power.

389. Upon the question of the surrender of the Crown revenues, could you offer any opinion; or have you had the subject much under your consideration?—I certainly have turned my attention frequently to that subject. I have always been of opinion that there should be a permanent provision for the support of civil government in the province; that as to the amount, it ought to have some relation to the amount of the revenue surrendered; that the administration of justice ought to be made quite independent, both of the Crown and the people; and that the Governor and the principal officers absolutely necessary for carrying on the Government, ought to be made independent of the annual vote of the Assembly. I do not, of course, mean to embrace all the expenses of civil government, but the support of the principal officers.

390. Then your direct object would be, to make the principal officers of Government independent, but you would at the same time have some reference to the amount of revenue surrendered?—Certainly. In all these matters there must be something in the nature of a treaty, in which the independence of all the three branches of the Legislature must be provided for.

391. In the preceding answer, have you reference to the revenues now remaining to be given up, or would you include such as have already been ceded?—I should include the revenue already ceded.

392. You would include the duties under 14 Geo. 3?—Yes; the cession of that revenue having been made upon the understanding that an adequate provision would be made for the support of the civil government.

393. Then

393. Then you approve the cession of the whole revenue of the country, provided a sufficient civil list be secured?—Certainly; they are very bad managers of our revenue in England; they are accustomed in their own persons to a far larger scale of expenditure than we are here; and they are not fitted to deal with a public revenue so moderate as ours.

394. Can you state your idea of what the civil list should be, or who should be the civi officers comprised in it?—That must be a matter of treaty. It is certain that the Crown has a revenue of its own in the province; there can be no question that it has the right of using that revenue according to law; and if it be prepared to give up that right, it must be for itself to make what conditions it can and may think proper, in effecting the surrender.

395. Can you state, proceeding on that principle, what terms you think the Crown is now in a position to make?—It is impossible for me to state what terms the Crown can make, or ought to accept of; but I think it would be very wrong to give up any right or power that it has, without an adequate consideration. There has been too much disposition to encroach upon the Crown, and this requires to be met by a corresponding resistance. It is not well that any part of the state should have all the power to itself.

396. In proposing the civil list, you would exempt the Governor from the necessity of an annual vote?—That was always agreed to in the Assembly; the Governor, the Lieut.-governor, the Executive Council and the judges were always included in a proposed civil list.

397. You would in like manner render the attorney and the solicitor-general independent of the annual vote?—Yes, for their subsistence they should have an adequate fixed salary to constitute their remuneration, but not their contingencies.

398. Their contingencies have been a subject of abuse?—They should be liable to check and control.

399. And the civil secretary?—The civil secretary seems to me to be an officer who ought to be independent of an annual vote. He seems to me so closely connected with the Governor, that unless independent, it would scarcely be possible for the Governor to make use of him. I should say the provincial secretary ought also to be independent of an annual vote; in short, I should be of opinion, in case of a misunderstanding, the Government ought to be able to go on until the matter be fully considered, and reason and justice prevail; it ought not to be subject to the *sic volo, sic jubeo* of any one.

400. Upon that principle would it not be necessary to provide for the contingent expenses of some departments as well as for salaries?—Generally speaking, I should say, the contingent expenses ought to be checked by an annual examination and vote in the Assembly; but for some there ought to be a fixed sum granted. In those cases, the officers ought to be placed in such a condition that they could carry on the Government, but they should not be able to augment their expenses at pleasure and without control; they should have something towards their expenses.

401. Are you then of opinion that on the same principle something towards the contingent expenses of criminal justice, and the support of gaols, ought to be permanently provided for?—Certainly, until the localities be charged with the expenses.

In respect of gaols we are miserably off at present; it is discreditable. As to the administration of criminal justice, I have myself been obliged to advance, out of my own pocket, funds for the apprehension of criminals, and the means of subsistence to petty jurors, who have come from a distance of 20 or 30 miles to serve at quarter sessions, and who were, at that distance from home, in a starving condition.

These advances were made as loans, but great part of them have never been repaid.

402. Are there any more of the officers of Government, besides those already mentioned, whom you would include in the civil list; for instance, the receiver-general?—I think he is already provided for, inasmuch as he pays himself out of his gross receipts. If it be not so, I am of opinion that he ought to be included in the civil list.

403. And the inspector-general of public accounts?—The present system seems to me very defective. There ought to be some general auditor of accounts perfectly independent.

404. Upon the principle you have recommended of enabling the Government to go on for a while during misunderstandings, would it not be as necessary to provide for the subordinate officers of Government as for the others, inasmuch as their functions, though less conspicuous, are not less indispensable; and inasmuch, moreover, as they would be, less than their superiors, able to subsist during a long stoppage of their emoluments?—That is the really difficult question. If the Government could go on permanently, without any check from the Assembly, with all its officers, there would in truth be no check at all.

The real power of control in the Assembly consists in its being able to make some persons suffer. In differences between the branches of the Legislature there must be sufferers; the question is, where the suffering ought to terminate. If the Assembly could not inflict inconvenience, it would not be respected at all, and the Government would naturally be indifferent to its views. It ought to be able to influence the Government, but not to subvert it. We have experienced the first state I adverted to already. The Government in this colony used to be independent of the Assembly, and abused its independence; it was high time to put a check upon it, but perhaps the power has now fallen too much the other way.

405. It appears that, if the duties under the 14 Geo. 3 had not been given up, the revenues at the disposal of the Crown would amount to more than 50,000*l.*; now, such being the case, what, upon the footing of a matter of treaty as you consider it, would you hold a fair proportion to ask for the purposes of a civil list?—In the present disposition of the Assembly I should think that as much should be obtained as might be possible. If an inclination to quiet and reconciliation were shown, I would not hold out on small considerations, but otherwise it appears necessary to keep or to get all you can.

Appendix, No. 12.

John Neilson, Esq.
9 Dec. 1835.

406. The revenues under the 14 Geo. 3 being in fact given up, and the sum now to be surrendered not exceeding one-half of the amount mentioned in the previous question, have you considered the line of policy that it would be prudent for the Government to adopt in the possible case the Assembly should decline to accede to any reasonable conditions?—In the case supposed I should feel no difficulty; I would resume the duties under the 14th of the King; I would retain what I have, and would apply all those funds together to the expenses recognised by the last Act of Appropriation until we should arrive at a better understanding. I would not enter into any expenses which had not previously been sanctioned by the Legislature. That money, under the 14 Geo. 3, was given up to us in the confidence that we would make reasonable provision for the support of the civil government, and we have no right to use what was ceded to us for good purposes in order to coerce the British Government to subvert the constitution.

407. To carry into effect such measures would it not be necessary to have recourse to the Imperial Parliament?—It would, undoubtedly.

408. And would not a minister who introduced a bill to that effect into Parliament appear to make a proposal inconsistent with the Declaratory Act of 1778?—No, not in my opinion. The duties under the 14 Geo. 3 were imposed four years before the Declaratory Act, and, if they had been affected at all by that statute, they in fact could not have been lawfully collected.

409. You adhere then to the argument on this subject used by Mr. W. Horton before the Committee of 1828?—I am of opinion generally that the colonies ought to have the control of all their revenues. I differed from Mr. W. Horton at the time of the Committee of 1828, but he produced opinions of the law officers in his favour, and the Committee took the same view, and then, whether or not I approved of it, I of course was willing to submit to what was the law.

I may here remark that, in common with many other members of the Assembly, I objected to the civil list bill for Canada introduced into Parliament by Sir G. Murray; that I hoped that, if the right of the Colonial Legislature to appropriate the duties under the 14 Geo. 3 was admitted, the Assembly, in good faith, seeing that Parliament would have gone further than even the recommendation of the Canada Committee of 1828, would make a fair provision for the support of the civil government, and re-establish tranquillity in the country. I communicated these views to persons of some influence in England, and was so far, perhaps, instrumental in procuring the enactment of the 2 & 3 Will. 4, c. 23. The expectations I at that time expressed have not been fulfilled.

410. Even if not contrary to the Act of 1778, would there not be great difficulty in carrying through Parliament a bill for restoring the proceeds of the 14 Geo. 3 to the appropriation of the Government?—I do not think there would be difficulty if it could be shown that without it the British Government in this province must become extinct.

411. On going to Parliament would it not be necessary to show that every possible concession, consistent with reason and the constitution of the colony, had been previously made to the Assembly?—Certainly; the Government ought of course to have a good cause.

412. Would it be reconcilable with the establishment of such a case to demand now a much larger civil list than was proposed by Lord Ripon?—You give up more than Lord Ripon did. You have offered to give up everything; the very means of existence; and the materials of a growing revenue in the wild lands. You might readily raise more than enough for the support of the civil government, by the disposal of the King's right on the wild lands; and nobody, I believe, has hitherto disputed that right.

413. Whilst the duties under the 14 Geo. 3, were still at the disposal of the Government, was there less dissension than now, or was the Government able to avoid the same embarrassments, except by courses which have since been condemned as unconstitutional?—Those courses were perfectly unnecessary. The Government had at its disposal the means of lawfully paying all its necessary expenses, had it been economical. There never was a country in which there prevailed so much quiet as in Canada, till the House of Assembly was required to provide for the expenses of the civil government; since that time there have been constant quarrels. The revenue pronounced by the King's lawyers to be at the disposal of the Crown, would have been sufficient to defray all the expenses of the public service, if properly limited; but every Government has been inclined to increase its expenditure, and hence the revenue at the disposal of the Crown was insufficient. The desire was always to find an outlay for all the money that came in. The necessary expenses of Government need not, now, exceed 40,000*l.* per annum.

414. Supposing the Government put by Parliament into the situation you have contemplated, do you think the administration of affairs could be carried on in the face of such an opposition as might be expected from the Assembly, a body invested with the privileges of representatives of the people, and drawing analogies from the House of Commons, or would not further measures become necessary, leading to the suppression of the Assembly?—I think not. There would be clamour; but being unfounded it would have little effect. The bulk of the people seeing that the Assembly had not met the reasonable views of the British Government, would not entertain any warm feeling on the subject. They would see it to be clamour, and would disregard it. There is at least one-fourth of the most active part of the population who are decidedly opposed to the extreme pretensions of the Assembly. They are quite powerful enough to resist any violent proceedings of the others, and to keep peace in the country.

415. Have you considered the effect which the line of policy you have recommended might produce in the upper province, where there are no distinctions of national origin?—The population of Upper Canada is very different from that of Lower Canada. They are

acquainted

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acquainted with the British form of government, and I believe that the majority of them want nothing different from the British constitution, fairly and honestly administered. Their question of a civil list is settled, and the measures contemplated would not affect them in the least. There are national distinctions in Upper Canada, though not to the same extent as in Lower Canada. They all speak the same language, and have been accustomed to the same laws and usages. The new comers from the British isles form something of a distinct class from the others, and do not agree with them quite so well as they ought to do; but they all end by becoming good members of the community of Upper Canada. Here the two races remain always distinct. In Upper Canada, I believe, the whole population, including every class of whatever politics, are sincerely attached to the connexion.

416. You have turned your attention to a Court of Impeachments?—I have thought upon it, and voted upon it; and it has been and continues my opinion, that there ought to be a court in the province, and that court be the Legislative Council, provided, however, it be not elective. The opinion I have expressed, was also that of one of the best and most patriotic men I have known in Canada, the late Judge Bedard, of Three Rivers.

417. Do you suppose the Assembly could be induced to pass a Bill, constituting the Legislative Council a Court of Impeachments?—They have passed such a bill twice; and I do not see why they should not again.

418. Since they attached so much importance to the question of an elective council, have they not pledged themselves against erecting the present Council into a tribunal for impeachments?—I do not know; I only know that they have pledged themselves to an elective council.

419. Have they not twice rejected the measure of making the Legislative Council, as now constituted, the Court of Impeachments?—They have; but I should hope that in the end they would consent to adopt the rule of the British constitution. If they take the constitution in one respect, they ought to accept it in others.

420. Would you think the independence of the judges, and the creation of a Court of Impeachment, so important, that the whole of the projected financial arrangement should be sacrificed, if those two points could not be settled?—Yes. We ought to have the whole constitution, and nothing but the constitution. We ought to have a competent tribunal, in like manner as the House of Lords in England. It would be a great advantage to have a court in which a person who brought an accusation should know that he would have to appear on the spot, and make good his charges. The British constitution, whether or not the best in the world, (as certainly it has been the best in practice,) is, at any rate, one of which you cannot have a part without the rest. It is so wrought together by time and practice, and the good sense of the people during centuries, that one portion will not work without the others. The United States are mainly indebted for their present constitution to the model of the British constitution. The mere machinery of the British constitution is useful; the very forms themselves, if adopted, will in time work into a good system of government.

421. Do you conceive the bulk of the lower classes of Canadians, of every origin, to be favourable to British connexion?—Decidedly. I am satisfied that the great mass of the people of every description, desire a continuance of the connexion with Great Britain.

422. Do you say the same of all persons of political influence in the country?—I have had extensive opportunities of observation, and when I was accustomed to be among them, I never met one who was disaffected to the British Government. I cannot say whether there has been any change since; there may have been examples of change; and I have heard that there are some who entertain views inconsistent with British connexion.

423. How do you understand the 28th of the 92 Resolutions passed in 1834, of which a copy is now put into your hands?—I certainly understand that as meaning that the Governor ought to be elective, and all public officers besides.

424. To what extent do you consider the French Canadians to be under the influence of the leaders, and to be an excitable people?—I consider that they are quite excitable, but not for theories of government; anything that will insult them, or affect them in their feelings and interests, will stir them up very readily. The mass of them are not very much under the influence of their leaders. The truth is, that the best of the French Canadians will take very little part in the public affairs of the community: those affairs are in the hands of lawyers, doctors, notaries, surveyors, small traders, tavern-keepers and mechanics: many of the most respectable *habitans* take no interest in political transactions.

425. Do you think that if there was some scheme to sever Canada from Great Britain, and it were discovered, the majority of the people would be prepared to assist in putting it down?—I am clearly of opinion that they would. If the question advert to anything in the shape of a plot or treasurable conspiracy, or to anything to be carried by violence, or connexion with a foreign power, I am persuaded the people would gladly see it defeated.

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426. Before proposing to Parliament to repeal the 2 and 3 W. 4, ought not the Assembly be asked whether it will repay the arrears, vote the ordinary services, and grant a moderate civil list?—Certainly. As soon as a commission was appointed I thought it no more than natural that every endeavour should be made to ascertain whether the Assembly would do what was reasonable to enable the Government to go on. I was sorry that a commission was appointed, but if it were sent here at all, of course the intention of the Government must have been to try once more whether the Assembly would return to mode-

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rate courses. The appointment of a commission seemed necessarily to imply such a system of conciliation. For my part, I thought there had been evidence enough already.

427. You were several years a member of Assembly?—Seventeen years, from 1818 to 1834 inclusive

428. What is the average duration of the sessions of the Assembly?—If not interrupted by quarrels, their average duration has been about 60 days. If the previous session had been interrupted, the succeeding one would of course be longer.

429. Do they usually sit after March?—The latest prorogation has generally been in March. The Legislature usually separated before the winter roads were broken up. I think there have only been one or two instances since 1791 of their sitting subsequently to the beginning of April.

430. Would it be inconvenient to the members to be detained in summer?—Yes, both as respects business and agriculture.

431. Since the opening of the present session on the 27th of October this year, there has been no apparent progress made towards a supply, either for the arrears of the civil government, or the estimates for the current year?—None that I am aware of. I have not even heard of a report having been made by the Committee to whom the estimates and messages are referred.

432. Are you aware that they have passed one money bill for payment of the members, and also several votes of appropriation for local purposes?—Yes; I must add, that when I was a member of the House, we usually reserved the supplies for the last.

433. Is the course of voting special grants and local appropriations before others usual?—It has frequently been done.

434. If they were to put these appropriations for local purposes into a separate Act, and afterwards pass an Act to pay the arrears and estimates for the current year out of unappropriated monies, would the first Act attach upon the public monies as an appropriation, so as to prevent the application of them to the second grant?—It has been the practice to keep all the Acts to the last day of the session, and all being assented to then on the same day, one Act has not a priority over another.

If the funds in the chest were insufficient to meet all the grants, the Governor would be reduced to the unpleasant necessity of making a selection.

435. But if the assent of the executive were given to a Bill before the end of the session, you are of opinion that it would attach on the public monies?—I do not know how far that might be in law, for in law the session is viewed as but one day. In common understanding, however, such a Bill would no doubt be considered to have a priority.

436. Supposing the assent to be given to a Bill for miscellaneous appropriations in the middle of the session, would not the parties to whom the money is appropriated have an immediate right to demand it?—Certainly.

437. You are aware that two money Acts have passed this session?—Yes.

438. Is it usual that the appropriations for local purposes should be put into a separate Act from the appropriations for the civil government?—It has been the constant practice. In fact, it is no more than conformable to the original instructions to the Governor at the commencement of the constitution, which require that every separate object should have a separate Bill. These instructions were communicated to both Houses of the Legislature. I understand that the ground of the rule was that the two other branches of the Legislature ought to have the power of judging separately upon the different classes of appropriations.

439. Has it been usual to vote the local appropriations first, or the appropriations for purposes of government?—Generally charitable purposes have come first, the expenses of government next, and local improvements last; but latterly, owing to the dissensions which have prevailed, I believe the votes for the Government have been postponed to the last.

440. But by the practice of giving the assent to no Bills until the last day of the session, the different appropriations have been prevented from obtaining any priority over one another?—Yes, there have only been one or two exceptions since the constitution began, to the practice of deferring the assent to the end of the session.

441. What has been about the amount during late years of the appropriations for charitable purposes?—I think from 8,000*l.* to 10,000*l.* a year; but I speak without documents, and only from general information.

442. Do you include in that the appropriations for education?—No; they have been from 20,000*l.* to 30,000*l.* a year; I speak very widely, but I believe the limits I mention are tolerably correct.

443. What is the usual amount voted for local improvements?—The amount for local improvements, such as roads and bridges, has varied according to the state of the public chest. Usually they have taken all that remained after the votes for charitable purposes, education, and the support of the government; and sometimes they have even anticipated the revenue of the coming year. I have known those appropriations for local improvements to be as high as 50,000*l.* a year, and as low as 5,000*l.*

444. Have not those different appropriations for miscellaneous services generally exceeded the appropriation for the support of the civil government?—They have done so.

444*. In the present very unusual state of circumstances, do you apprehend there will be enough money to meet the votes for arrears for the services of the current year, and also the appropriations for improvements?—That must depend on the state of the chest, and the amount of the demands of Government. My knowledge on the subject is very loose. As far as I can form an opinion, I should think that after the grants to charitable purposes and education, there would remain very little in addition to the charges of Government for local

local purposes. I wish to be understood that in all these matters I speak without precise knowledge.

445. Since the passing of the 2d and 3d Will. 4, has there been any Act of Appropriation for the civil government?—Yes, there was one passed in 1832.

446. That Act did not appropriate the money specifically to particular purposes?—No, it did not.

447. The Bill granted about 58,000 *l.* for the purposes of civil government generally?—It gave that amount for the purposes of civil government, the administration of justice and the expenses of the legislature, not for the civil government alone.

448. Was any Act ever passed in Lower Canada appropriating money specifically to particular purposes?—No. In some Acts of indemnity I think there have been particular appropriations, but there has been no general Act containing specific appropriations. There have, however, been examples of bills of that nature passing through the Assembly.

449. Has any Act of Appropriation passed since 1832?—The Assembly sent up a Bill of Appropriation in 1833, but it was rejected by the Council, and no Act of Appropriation has been passed subsequent to 1832.

450. Have the appropriations for miscellaneous services generally been for good and laudable purposes?—The charitable appropriations have generally been for good purposes. The votes for local improvements have also had good objects; but they have frequently degenerated into jobs; I used to vote against them, excepting for roads of communication with adjoining counties, canals and other purposes that seemed for the general advantage of the country; but those which were voted for local purposes in the counties sometimes became a sort of jobs. The members frequently had interested views when they introduced the measures, and the same thing prevailed in the choice of the commissioners whom they recommended to be appointed by the Governor.

451. Has not the practice of voting money for improvements last of all, and making them absorb the surplus revenue, a tendency to bring forward crude and hasty plans of improvement, in consequence of that surplus being of uncertain amount, and varying, as you have said, from 5,000 *l.* to 50,000 *l.*?—It has had that effect.

452. In the present state of the House of Assembly, are the commissioners appointed for improvements chiefly of British or of French origin?—* Some years back many of the commissioners were members of the House, and in consequence of there being great arrears unaccounted for, once I think to the amount of 150,000 *l.*, the Assembly resolved that members should not become accountable for public money, without first vacating their seats; and at last, after much opposition in the Legislative Council and at home, a Bill was passed enacting the beforementioned resolution into law. I should think that, on examination, a large sum might still be found unaccounted for by the commissioners. I never recommended one commission, or accepted a commission myself, from the impression I had about them.

* Mostly of French origin.

453. Would not these commissions, being chiefly bestowed on French Canadians, furnish somewhat of an answer to the complaint which is made that persons of British origin have too large a share of profitable employment?—No, I think not. If the commissioners did their duty, the office would be rather burthensome than otherwise.

454. Supposing you had succeeded in your vote against the appropriations for local purposes, how would you have applied the surplus?—To purposes of a more general nature; the communications with the neighbouring provinces, the improvement of the St. Lawrence, &c. &c. At one time money was voted to purchase seed-corn for farmers, for an object originally good, but finally turned into a job.

455. Might not the desire of a share in this surplus have much to do with the dissensions in the province?—I think not. The jealousies between the inhabitants of English and French origin are the real source of difference. The first have had too much in their hands, and the French Canadians too little, and there has been much competition and jealousy. The struggle has been for place, emolument, power and distinction, more than for a share of the surplus revenue applicable to improvements. The persons who would seek that are not of a class to enter on contests which would distract the province. The surplus revenue is secondary, and moreover the English and the French Canadians have both had their shares pretty equally.

456. Might it not be a good course, if this surplus revenue gave rise to jobs, to take off some of the duties from which the money comes?—I have always thought so. If it is not wanted and applied to proper purposes, we ought to leave the money in the pockets of those to whom it belongs. At the same time, as our revenue is so subject to vary, we ought to have some surplus beyond the actual wants of government. If the surplus was less, I believe that the quarrels would be less also.

457. Were you in the Assembly when the proceeds of the Jesuits' estates were given up?—Yes.

458. Was it your understanding at that time, that not only the proceeds, but the management would be given up?—Not at all. I understood that the sole manager must be the Crown.

459. How did it happen that the Legislature passed an Act by which the salary of the commissioner was limited, and other points of the management regulated?—That was an Act with the assent of the Crown; it is law, and of course it is to be obeyed. I myself, as chairman of a committee on education, brought in the bill.

460. Then the Assembly, after obtaining the proceeds of the estates, passed a Bill for their management?—We did not interfere with the appointment of the officers; we only

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guarded against the whole proceeds being absorbed in salaries, and provided for some objects recommended by Lord Goderich.

461. You fixed the salary of the commissioner?—Yes.

462. Would not the Act prevent the Crown from disposing of the land?—The Act does not mention land; but I do not conceive that the Crown could lawfully dispose of property of which it had given up the revenues for purposes of education. That would require an Act of the Legislature.

463. As you brought in that Act, do you remember if a claim of Mr. Ryland's was preferred for a pension?—Yes.

464. Upon what ground was that claim disregarded?—It was considered that the emoluments he had received as treasurer constituted a sufficient remuneration for all the work he had done. The House of Assembly was always averse to granting pensions.

465. Supposing there had been a lawful grant to Mr. Ryland before the estates were given up, would it have been a sufficient answer to the claim that he had had enough before? If such a grant had been produced, it would, no doubt, have been considered, but I do not remember that any such was produced. Even if it had been brought forward, it is not probable that the pension would have been allowed. It was a general rule with the Assembly to recognize no pension that had been granted since 1818, excepting the pensions for military service during the war, which were sanctioned by an Act of the Legislature.

466. Are you sure that Mr. Ryland did not bring before the Assembly a letter from Lord Bathurst, authorizing the payment to him of a retired allowance?—I do not remember it. If produced, the pension would still not have been granted. The Assembly thought they had done too much already, in taking on them all the pensions granted by the local government for 30 or 40 years previously to 1818.

467. Was that rule of the Assembly, about pensions, prior to 1818, ever made public?—It was very well known to the public and to the Governor; and I think was contained, or at any rate implied, in an address to the Governor.

468. Is there not reason to apprehend that the same objection may be made by the Assembly to pensions charged since 1818 upon the revenues now proposed to be given up?—No doubt, unless the contrary be made a condition of the surrender.

469. Is it not probable that in the same way as in the case of the Jesuits' estates, the Assembly will originate a bill for regulating the management of the Crown lands as soon as they are possessed of the right of appropriating their proceeds?—Certainly. There can be no doubt of it.

470. Do you think that the Assembly would consider that either out of the Jesuits' estates now, or out of the Crown lands after a cession of the revenues, the Crown would have a right to provide for, or endow schools or churches, or to make grants of land, without a sale, to half-pay officers?—I should think not, but I only speak of my own opinion. I cannot undertake to state the sentiments of the Assembly.

471. Then would there, after the cession of the revenue, be any mode of endowing schools or churches, otherwise than by an Act of the Provincial Legislature?—None; unless the Crown made it a condition of the cession. The Crown may, beforehand, propose what conditions it pleases.

472. In your opinion, in the present state of the province, would it be likely that if the cession were made without conditions for these purposes, the Crown and the Assembly could agree in any reasonable provision for such objects?—I should think not at present; the elements of the population of the country are so discordant.

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473. WERE you an advocate for the Bill proposed in 1831, on clergy reserves?—I was opposed to the evils of the clergy reserves, but I cannot exactly say that I was an advocate for that bill. I was rather dubious what might become of the lands after vested unconditionally in the Crown. I thought that the prerogative of the Crown, as to its other lands, had been rather improvidently exercised, and I feared that the same might be the case with the clergy reserves.

474. Did you understand that the proposed bill would have left the power of endowment in the Crown?—I think it would: but if the Crown now gives up the territorial revenues, it distinctly gives up the lands, and therefore could not make endowments unless expressly stipulated for.

475. According to your views, would it be right that land should be applied to the endowment of churches, in the course of settling the country?—As a matter of abstract expediency I should say no; but if the church has any vested legal rights, I think it inexpedient to attack such rights, which ought only to be affected by negociation and the consent of the parties.

476. Are you aware that by the Act of 1774, and also by the Act of 1791, Protestants were required to pay to the receiver-general the same dues as are paid by Roman catholics to their priests, out of which fund His Majesty was to provide for a Protestant clergy, but that those dues never have been called for, and therefore could not be so now?—I am aware of this, and certainly think they could not be exacted now, the Acts not having been enforced from the first.

477. There never has been any provision, I think, by the Provincial Legislature, as to those dues?—None. I have often thought of bringing in a bill to prevent the possibility of their being demanded; but on the whole I thought it needless to stir the question. In Upper Canada small bills have been passed through the Legislature, and I think become law to prevent the exaction of tithes.

478. Do not you imagine that the clergy reserves in 1791, were established either as a sort of compensation for these dues, or as an additional security, inasmuch as it was foreseen they could not be collected?—I have no doubt of it.

479. If these reserves are now to be taken away, ought there not to be either a reservation to the Crown of the power of endowment, or a simultaneous provision for the clergy made by the whole Legislature?—It would be no more than justice that the Crown should consider any rights vested by law.

480. Do you not also think it would be *expedient* to make some provision for a clergy?—My opinion as to expediency is, that in America, the only way to support a clergy is voluntary contribution. The same might be very prejudicial in an old country, where a different state of things has long prevailed, but in new countries I prefer the voluntary method of supporting the clergy. I would not alter what is established unless with the consent of the parties interested.

481. Did you agree in the Canada Committee's opinion in 1828, that the judges ought to be removeable at the pleasure of the Crown?—No. I understood that opinion to be founded on considerations of a temporary nature; my opinion was, that the judges should be put on the same footing as the judges in England.

482. For the trial of impeachments, do you think you might, with advantage, substitute a commission from the King, say of three persons, for the Legislative Council?—I do not think so; but I should prefer such a commission, if the majority of the members came from England or the other colonies, to a tribunal composed entirely of persons within the province, unless it were the Legislative Council. I prefer the Council, because it is the constitutional tribunal, a constantly existing body, one of which the employment for this purpose would entail no new expense, and which the salutary influence of publicity in their proceedings would, I doubt not, lead to do justice.

483. Would you alter the existing salaries or allowances of the judges?—The Assembly is pledged to make good their present emoluments. If any alteration were made, I should be for reduction, rather than an increase, but I conceive the House to be pledged on the subject.

484. Was your opinion in favour of giving the judges pensions?—Certainly. The two bills which the Assembly passed for judges' independence, and in which I concurred, recognised the principle.

485. Were you favourable to the bill for removing the chief justice from the Legislative Council?—I was not; for this reason, that I had adopted the report of the Canada committee in 1828, and accepted it in whole and in part; not considering the question open to me, I really formed no opinion on it.

486. Would the Legislative Council, being made a court of impeachment, be likely to affect your opinion on this point?—No; I should neither think it an additional reason in favour of or against the chief justice's sitting in the Council. As a court of impeachment it would, no doubt, be more necessary than before, that it should have the presence of some law character, but not necessarily the chief justice.

487. Would there be any objection to a retired judge, enjoying a pension for life, having a seat in the Executive or Legislative Council?—No. In a country like this, you must get character and learning everywhere that it exists; so far as this principle extends, I regret that the judges are excluded from the Legislative Council, and I feel that the body is enfeebled by the subtraction of men of their attainments, although I voted for their exclusion at the time, and probably might do so again.

488. In an act surrendering the Crown revenues, would it be necessary to stipulate expressly for the pensions charged on them if they were meant to be retained?—Yes. As to the pensions granted before 1818, the faith of the Assembly is pledged; but they have voted them only annually, and owing to the failure of the supply bills the payment of them has been interrupted for the last two years.

489. From your experience in the province, do you conceive that the Legislative Council could be secure of the necessary contingent expenses for carrying on its business, unless expressly ensured by stipulation?—I think a fund ought to be provided by law for the expenses of both Houses. The fund already existing in that manner ought to be increased, so as to be adequate. The Governor ought then to pay the expenses upon the address of each body, and that has been the practice.

490. There being only one fund, and two bodies to share it, how would you guard against one taking so much as not to leave enough for the other?—You must suppose the existence of some discretion in the legislative bodies, and that they will not exceed the sum appropriated to them.

491. Would it not be the simplest way to give one fund for the Legislative Council, and another for the Assembly?—I see no objection, myself; but it would be contrary to old practice, and on these matters legislative bodies are very jealous, therefore there might be some difficulties.

492. In the present state of the province, do you think it probable that the Assembly would refuse to vote for the expenses of the Legislative Council?—It is not in the usual character of the Assembly; but under present circumstances the thing is probable. The Assembly has generally been fair in these matters, and liberal in voting money; but it is impossible to say what they may do now.

493. Suppose they refused the expenses of the Council, how would the Council be able to get on?—I do not know how. They would be in the same situation as the Government has been for the last two years.

494. As to judiciary expenses; would you make any provision in a civil list for the support

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of the gaols, and as to coroners, clerks of the peace, and other contingent expenses of that nature?—There might be some permanent appropriation towards the expenses of the administration of justice generally, but not covering the whole amount, so as to leave some check to the Assembly.

495. How would you provide for the uncertain, but necessary expenses of prosecutions on the part of the executive?—Out of the same permanent and general appropriation to purposes of justice, which I have just suggested.

496. With reference to your remark, that the existence of some discretion in the legislative bodies ought to be taken for granted, do you not think that any interference of one House with the contingent expenses of the other would be extremely likely to produce misunderstanding between them?—Certainly.

497. Do you not think the same misunderstanding would be produced by the interference of the executive with the contingencies of either House?—It would be very liable to be produced.

498. Do you not think that the Houses of Legislature are unavoidably in all free states exalted in many respects above the operations of ordinary law?—They are, because they are law makers; but in pecuniary matters, by the general constitution of the United States, and the constitution of all the particular states of that Union with which I am acquainted, there is a clause that no money is to be paid except by the express provision of law, passed by all the branches of the Legislature.

499. Is not that equally the law in England?—I apprehend it is so.

500. Are you aware of the practice in the United States as to the contingent expenses of any House of Legislature?—No further than that I have seen Acts of Appropriation, including the expense of both Houses of Legislature, and other expenses of Government.

501. Can you say whether in those states it is the practice to make advances on account of contingent expenses before the Act of Appropriation be passed?—I apprehend in very few of them. The credit of the Houses of Legislature in the United States, and of their officers, is very good.

502. Has it not been the practice in the province to advance money on account of the contingencies on the address of either branch of the Legislature?—Yes; until the refusal of the Assembly in 1834 to make good the amounts previously advanced upon its addresses, and its promises to repay them.

503. In England do you know what is the practice?—I think I have seen the expenses of the Houses of Parliament included in Acts of Appropriation.

504. Do you know what is the practice in England as to making advances?—I am not personally acquainted with the subject, although I have no doubt that advances are made; but they must be unnecessary, for the credit of the Houses and their officers is very good in England.

505. Is it not the desire of the persons who compose the Constitutional Association of this town to see the analogies of government drawn rather from England than from the democratic state of America?—I have already stated that I cannot answer for the Constitutional Association; but for my own part, I should prefer drawing the analogies of government from England.

506. Do you not think the House of Commons in England the constitutional guardians of the public purse?—They are not the keepers; they are the guardians in so far as it is their business to control the expenditure; but it would be dangerous that they should be at the same time the keepers and the guardians of the public purse.

507. Do you not think that the House of Commons has, *de facto*, the entire control over the expenditure of England?—I admit that they can control the expenditure, but I deny that they can expend what they please.

508. Is it not the fact that the consent of the other branches never is withheld from any money Bills originated by the House of Commons?—I do not know as to the fact; but if it be so, the House of Commons must have exercised its privilege with respect to money bills with great discretion.

509. In the event of any indiscretion on the part of the Commons relating to money matters, to what quarter would you look for the correction of the evil?—To the two other branches of the Legislature, and the whole body of the people.

510. Would you not look primarily to their constituents?—I should hope that their constituents would have spirit enough to dismiss them; but I should be sorry to look to the people alone without the other branches of the Legislature. If those branches did not do their duty, the check of the people, being distant, would be insufficient.

511. Did not the Committee of 1828 express an opinion, that "the interests of the province would be best promoted by placing the receipts and expenditure of the whole public revenue under the superintendence and control of the House of Assembly?"—They did, and I concur in it with all my heart. The casual and territorial revenue, I believe, was excepted in the report. By control, I mean, and am sure the Committee must have meant, the constitutional right which belongs to the House of Assembly of originating Bills to be enacted into laws by His Majesty, and with the advice and consent of the Legislative Council.

512. Do you think the Committee used the expression, "House of Assembly," and not "Legislature," intentionally, or inadvertently?—Quite unadvisedly, if they meant to describe it as anything else than as one of the three branches of the Legislature.

513. Do you not suppose they meant to designate the Assembly as peculiarly entitled to control the expenditure?—Peculiarly entitled, no doubt, as having the privilege of originating money bills.

514. What do you think would have been the consequence if the contingent expenses had not

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John Neilson, Esq. 11 Dec. 1835.

not been granted this year?—I think there would have been no session; the members of the House would have dispersed just as they did last year.

515. In such case, the Government being without money, would it not have been necessary immediately to have recourse to the remedial measures you described yesterday?—There is not the least doubt of it.

516. Without any further attempt at conciliation?—I should think so; there could be no further opportunity of any attempt at conciliation after the House had failed for want of a quorum.

517. And you think, in such an event, you would have had a case with which you could have gone with confidence to Parliament and demanded the measures you have described yourself to contemplate?—I doubt it; I should fear the case would not have been well received in the House of Commons.

518. In so small a state as this in point of numbers, if the House of Assembly had the entire disposal of the public money, without any other check than that of their constituents, would there not be a danger of that very money being employed, so as entirely to render the check of no consequence?—Certainly, very great danger; it would, in fact, bring on a division of the whole public revenue of the country in favour of one description of the population alone; and that description happening to form the majority of the people, the members of the House would be sure, or nearly so, of their re-election.

519. Having said that you would not leave the amount of the contingent expenses of either House to its own discretion, in what way would you fix a check upon that amount?—I would have a fund provided by Act passed by the three branches for those expenses; and if it proved insufficient, I would not issue any more till a further fund were provided by the same authority.

Hon. *G. Moffatt* and Hon. *P. M'Gill*. 17 Dec. 1835.

The honourable *G. Moffatt* and the honourable *P. M'Gill*, Legislative Councillors of Lower Canada, attended on behalf of the persons who signed the petition which was presented to Lord Glenelg in June last by Mr. Walker, in consequence of a correspondence which had taken place between the secretary and the Constitutional Association of Montreal.

THESE gentlemen were informed that the Commissioners were ready to listen to any representation they might be authorized to make, but that it would suit the convenience of the Commissioners if they would confine themselves to three points mentioned in their secretary's letter, namely, the conditions to be attached to the cession of the hereditary revenue, the independence of the judges, and the establishment of a court of impeachments.

Messrs. Moffatt and M'Gill proceeded then to state, that, in their opinion, the cession of the hereditary revenue ought to be accompanied with a condition for a permanent appropriation of a sum of money, sufficient to conduct the administration of justice and the business of the principal departments of Government, without the necessity of having recourse to an annual vote of the Legislature; in support of which opinion they stated that, but for the existence of the Imperial Act 1 & 2 Will. 4, c. , the local administration would, at the present moment, be in possession of a revenue sufficient for the purposes, according to the estimate of the present year.

Mr. Moffatt then delivered to the Commissioners the following statement, in order to prove that, though in 1825 there was a deficiency of 20,334*l.* 8*s.* 7*d.*, there would, in 1836, supposing the revenue of that year to equal the present, be a surplus of 712*l.* 2*s.* 5*d.*, but for the Act of 1 & 2 Will. 4:

	£.	s.	d.
Amount of estimates for 1825	64,801	17	8
Deduct salaries and contingencies of the two Houses of Legislature	11,777	8	–
Sterling £.	53,024	9	8
Equal, in currency, to £.	58,416	1	10
Amount of revenue permanently appropriated £.	40,645	15	10
Deduct duties appropriated to the salaries and contingencies of the two Houses	1,964	2	7
Balance, Currency £.	38,581	13	3
Estimated Expenditure as above	58,416	1	10
Deficiency £.	19,834	8	7
Estimate for 1836 £.	62,753	9	6
Deduct contingencies and salaries for the two Houses	16,717	8	–
Sterling £.	46,036	1	6
Or Currency £.	51,151	3	11
Amount which would have been at the disposal of the Executive, but for the Act of 1 & 2 Will. 4 £.	51,863	6	4
Surplus £.	712	2	5

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Mr. Moffatt then contended that, if his view of the subject were acted on, the Legislature would still be in a position similar to that in which they stood prior to the passing of the Act 1 & 2 Will. 4, and proceeded to state, that it is for the interests of the people, as well as of the Government, that this appropriation should be made; moreover, that those interests would not be served, if the appropriation were made for the heads of departments only, and not for the subordinate officers, and contingent expenses of the same.

Messrs. Moffatt and M'Gill next wished to call the attention of the Commissioners to the preamble of the Provincial Act 41 Geo. 3, c. 17, which established the Royal Institution for the advancement of learning; and Mr. Moffatt read a memorial, which was presented to Lord Dalhousie in the month of February 1826 from the trustees of the institution, in which the engagements were set forth that the Government had at different times entered into, to grant lands for the purpose of endowing colleges and schools; and Messrs. Moffatt and M'Gill stated that, in their opinion, the proceeds of the hereditary revenue should not be surrendered before some provision should be made for the fulfilment of these engagements, as the Royal Institution was at present entirely destitute of funds.

They further stated, that there is no adequate provision in the province for the higher branches of English education, and that, though the sum of about 22,000 *l.* is annually granted by the Legislature for the purposes of education, this assistance is principally given to schools quite of an elementary character; and they would wish that two colleges at least should be endowed, where English youths might acquire the higher branches of education, for which at present they are forced to resort to the United States or to Great Britain.

Copy of the said memorial then delivered in.

With respect to the management of the Crown lands, Messrs. Moffatt and M'Gill stated that they understood, from the Governor's speech, it was to be retained in the hands of the executive, and that they would not wish to see anything more than the proceeds given up, after all charges of management were deducted, conceiving that the settlement of the country would be most advantageously promoted by such an arrangement.

Messrs. Moffatt and M'Gill were then asked if they could state the opinion of the association, as to whether any provision for the support of a Protestant clergy should be stipulated for, in the event of the clergy reserves being given up?—Mr. Moffatt stated that he was not aware that, as a body, the association had formed any opinions on the subject. Mr. M'Gill pointed out a paragraph in the annual report of the general committee, which report was read and approved at a general meeting held on the 7th December instant, which he conceived to bear upon the subject, and which he considered to be the opinion of the association.

Mr. Moffatt then explained that he did not think that the association had ever entertained the question, with a view to emitting any settled opinion on it.

Mr. M'Gill then stated, as his opinion, though he would not assert it to be the opinion of the whole association, that, as a general principle, he considered that no man should be taxed to maintain the religion of another, and that every clergyman should derive the means of support from his congregation.

He objected, therefore, both on principle and policy, to any particular church or churches being supported in this country out of the provincial funds or public property.

The population is of so diversified a character, and split into so many Christian sects, that, in his opinion, it would be impossible to frame a measure which could fairly and justly apportion the income accruing from the proceeds of the clergy reserves among the different churches; and a preference being given to any one, two or three of them, would be extremely felt as a wrong would, and would tend to keep alive that heat, strife and contention which it is so desirable to see allayed.

The following questions were then put to these gentlemen separately:

To Mr. *Moffatt.*] Have you any opinion as to what measure ought to be adopted with respect to the clergy reserves?—I do not approve of the measure now before the Legislature. I should wish to see the fund arising from the sale of the clergy reserves, substituted for the land, and considered as a fund at the disposal of the Imperial Parliament for the objects originally intended by the Act of 31 Geo. 3, c. 31. I see no objection to the re-annexation of the clergy reserves to the Crown lands, provided the proceeds of the sales of them are secured for such purposes.

To Mr. *M'Gill.*] Do you concur with Mr. Moffatt in the answer which he has just given?—I am myself a Presbyterian. I subscribed to build the chapel at which I attend; and I am inclined to wish that every church should be, in Canada at least, maintained on what is called the voluntary principle.

If one or two churches were to be supported out of public funds in this province, and others not allowed the same advantage, so much discontent would be created, that I think the measure inexpedient.

To Mr. *M'Gill.*] Do you not conceive that the vast majority of the population of Upper and Lower Canada would be comprehended under the four denominations of *Church of England, Roman Catholics, Church of Scotland,* and *Wesleyan Methodists?*—I think they at present would.

Do you see any probability of any increase of any other sect, so as materially to affect the majority?—There are a great many other sects, but I do not think they are likely to increase so as to affect the majority.

Are you not aware that the doctrines of Wesleyan Methodists do not differ from those of the Church of England?—I have reason to believe their doctrines are the same, and that they differ only in church discipline and church government.

Suppose the province divided into districts, in each of which there should be a building

for worship and a minister's house and a small glebe, and a very moderate stipend annexed, the whole being property of the State, and that on the death of the incumbent, three-fifths of the inhabitants should be allowed to petition for the appointment of a minister for life from any one of the four sects, and that it should be lawful for the Governor, on such petition, to appoint accordingly; what would be your opinion of such a plan?—I am of opinion that the remaining two-fifths would have good reason to complain, and on the whole, that such a plan would be inexpedient. With the exception of Lower Canada, where Catholics prevail, I do not think that in any district, parish or township, three-fifths would be found to concur.

If three-fifths did not concur, would it not be an easy mode of delivering the Government of the burthen of supporting an established clergy?—I have not directed my thoughts particularly to this, and did not come prepared for an examination on these points.

When you say the other two-fifths would have reason to complain, do you bear in mind the circumstance that they would see at the same time, that in those districts where persons of their persuasion formed a majority, their ministers were supported out of the funds of the public?—I think that in very few places three-fifths would concur; but even if they did, I do not think the other two-fifths would be satisfied.

Messrs. *Moffatt* and *M'Gill* then proceeded to the subject of the independence of the Judges, and stated that in the event of a permanent appropriation being made in the manner they had recommended, the association would approve of the enactments on the subject of the independence of the judges and the formation of a court of impeachments contained in a Bill which passed both Houses of the Provincial Legislature in the session of 1831-2, but which was disallowed in England, in consequence of reasons stated in a despatch from Lord Goderich.

The following questions were then put:

In the event of the Assembly refusing to concur in such a Bill, have you ever turned your mind to the consideration of any other principle on which a court of impeachments could be formed?—We have not turned our minds particularly to the consideration of the establishment of a court of impeachment on any other principle than that of the Act referred to, and although it is highly desirable that such a court should be established, we are not prepared to recommend that the authority should be conferred on any other body than the second branch of the Legislature, such being the practice in England and throughout the United States.

Do you consider this of such importance as to make it a *sine qua non*, and thereby put to hazard the success of any financial question which may be proposed?—Should the Assembly refuse to pass such a bill, the case is of sufficient importance, in our opinion, to be referred to the Imperial Parliament.

Do you conceive it probable that an arrangement, to meet the charges of civil government, such as you have proposed by a permanent appropriation, would be acquiesced in by the two Houses of Legislature?—We see little probability of such a measure being entertained at present, as far as respects the popular branch of the Legislature.

In the case of refusal, what is the line of policy you would recommend?—A reference of the whole subject to the Imperial Parliament. To which Mr. M'Gill added, with a view particularly to the repeal of the Act 1 & 2 Will. 4.

Do you think you would then have such a case as you could with full confidence submit to the consideration of Parliament, and demand thereon the strong measures that would be necessary; do you not think it probable that you might be desired to try further measures of conciliation, especially when you bear in mind the recommendation of the committee of 1828, that all the revenues of Lower Canada should, with the exception of the hereditary and territorial revenue, be placed under the control of the House of Assembly? And you are requested to observe that the question is put, on the supposition that the House of Assembly will, in the present session, evince so far a conciliatory spirit as to provide for the arrears and estimates which are now before them?—We cannot suppose that the Committee of 1828 contemplated the state of things which has arisen in the province.

It has been admitted by the House of Commons that the King's Ministers had earnestly endeavoured to carry into execution the suggestions contained in the report of that Committee.

Their ready attention to the complaints afterwards made by the Assembly, and their anxiety to correct every abuse in the administration of the local government, were manifested by the despatch of Lord Goderich of the 7th July 1831. Moreover, in the course of the last-mentioned year, the revenue raised under the 14 Geo. 3, c. 88, was placed at the disposal of the Provincial Legislature, in the full confidence that the judges and other public functionaries immediately connected with the administration would have been rendered independent of an annual vote of the Assembly for their respective salaries; but instead of this, the Assembly has for the last three sessions withheld, or occasioned to be withheld, the necessary appropriation for the public service, and has thereby refused the supplies required to carry into execution the laws by which society is held together; placed the Provincial Government in a state of virtual bankruptcy; subjected the judges and other public functionaries to a state of humiliating pecuniary dependence, and created disgust amongst the people.

Under these circumstances we cannot suppose that the Imperial Parliament, if fully apprised of the state of the case, would desire to make further trial of conciliatory measures at the hazard of involving the province in anarchy and confusion, more especially as it is now proposed to surrender to the control of the Assembly the hereditary and territorial revenue, which was not contemplated by the Committee of 1828.

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With reference to the latter part of the question, even if the Assembly should, during the present session, provide in a constitutional manner for the arrears and estimates now before it, we should still be of opinion that it is expedient to guard against a recurrence of the evils to which we have alluded, by requiring a permanent appropriation as a condition to be annexed to the surrender of the hereditary revenue, such appropriation of course being liable to be varied or repealed by any Act assented to by the three branches of the Provincial Parliament.

Have not the Legislative Council and Assembly been sitting rather more than seven weeks?—Yes.

Do you know of any steps taken by the Assembly for voting either the arrears of the three years, or the estimates for the ensuing year?—The only information we possess is derived from the published routine business of the Assembly, from which we believe it appears that the messages and documents which accompanied them, of the Governor-in-chief in relation to these matters, have been referred to committees of the House.

You have not heard of any report of a committee on that subject having been either made to the House, or in a state of forwardness?—With respect to the first part of the question, we have no recollection of having seen in the routine business of the House any mention of such report; and with respect to the latter part we have no information.

Does not great inconvenience and hardship prevail on the part of the public servants in consequence of the want of their pay; and in the gaols in consequence of the expenses not being provided for by the Legislature?—We have already stated that the public servants have been subjected to great inconvenience, and in some instances to actual distress; and with respect to the gaols, we understand that a good deal of hardship has prevailed; to which Mr. M'Gill added, that with respect to the gaol at Montreal, he had been informed by the deputy-sheriff that unless the sheriff had had monies in his hands arising from civil suits, a part of which he advanced on his own responsibility for the support of the prisoners, the gaol must either have been opened, or the prisoners died; and it is a matter of notoriety that many tradesmen's bills for articles furnished to the gaols, both in Quebec and Montreal, remain unpaid.

As far as the prisoners are concerned, do you think the hardships in the gaol of Montreal have been greater than before?—We do think so.

Do you think that the usual supplies of blankets, fuel and provisions to the prisoners have been withheld or diminished?—We have no precise information on the subject, but from general report we are led to believe that such is the case.

What would have been the state of affairs during the period for which the supplies have been withheld, if the Government had previously divested itself of the hereditary revenue, and if no advance had been made by the British Government?—The state of affairs would have been aggravated, and some of the public servants perhaps reduced to actual want.

Do you not think it an indispensable condition that all arrears due for the service of civil government and administration of justice shall be paid previously to any cession of the hereditary revenue?—Unquestionably; all claims to which the Crown has made itself liable ought to be discharged before it parts with the funds out of which alone it can satisfy them, that is to say, without the assistance of the other branches of the Legislature.

Do you not conceive that, in any application to be made to Parliament for the repeal of Act 1 & 2 of Will. 4, it would constitute a material feature in the case, that the Legislature had or had not provided in their present session for the arrears and estimates now before them?—Unquestionably it would make the case more urgent if they did not provide for them; but on this head we would refer to our answer to a former question.

Do you not think it would be advisable to wait until the close of the session, or until it is known whether the supplies will be granted or not before any application is made for the repeal of 1 & 2 Will. 4?—We have not contemplated any reference to the Imperial Parliament until the result of the present session shall be ascertained.

Has not the Assembly commenced a series of appropriations for charities and other purposes?—Yes; bills have been passed providing for the payment of the members of the Assembly, and providing for the transportation of convicts; besides which there are now before the Legislative Council bills providing for the purchase of Grosse Isle, and making certain appropriations for charitable and other purposes.

Do you think it quite clear, if these miscellaneous appropriations go on, there will be money left sufficient for the payment of arrears?—We do not know sufficiently the state of the chest to give a positive answer.

Have you a recollection of the civil list proposed by Lord Ripon?—Yes.

Did you think it sufficient?—We did not think it sufficient.

Do you not think His Majesty's Government bound to adhere, if not to the items of that civil list, at any rate, to the principle on which it was prepared?—When we consider what has recently occurred in the province, we think not.

Does not the fact of such a proposal having been made lessen the confidence with which you would make your application to the Imperial Parliament?—No.

Do you not think it would have an influence on the decision of Parliament, taken as it must be, in conjunction with the declaration of the Committee of 1828, that the whole revenues of the province should be placed at the disposal of the House of Assembly?—We should hope not, when the Parliament shall have possessed itself fully of the case, especially as the Committee did not contemplate the surrender of the hereditary revenues, as already stated.

What value, as a source of revenue, do you attach to the prerogative of the Crown as to the

the disposal of the wild lands and forests?—If due facilities were afforded to immigration, we would give a very considerable sum. Appendix, No. 12.

Have you any doubt that, if judicious measures were adopted, capitalists might be found to advance money enough for the purposes of civil government on that and the other sources of the hereditary revenue?—If the expenses were to remain as they are now, we think capitalists might be found to do this. It is a subject that would require consideration and calculation; but our impression is, that capitalists would be found to make such an arrangement. Hon. *G. Moffatt* and Hon. *P. M'Gill.* 17 Dec. 1835.

Messrs. *A. Stuart, John Neilson* and ——— *Young* attended on behalf of the Constitutional Association of Quebec, in consequence of a correspondence which had taken place between the Secretary of the Commission and the Secretary of the Executive Committee of that body, and after a previous explanation that the deputation should be furnished with a copy of the minutes as they will be entered on the books of the commission, it was settled, that in lieu of receiving from these gentlemen a statement of their views, as had been done when Messrs. Moffatt and M'Gill attended on the part of the Montreal Association, the information should be elicited by questions from the Commissioners. Messrs. *A. Stuart, John Neilson,* and —— *Young.* 23 Dec. 1835.

The following enumeration of the sources of hereditary revenue and of the public monies now at the disposal of the Government, as also of the Crown property not at present productive, was read:

1. The wild lands and forests of the whole province.
2. The grant to the British North American Land Company.
3. The King's domain, in the restricted sense in which that term is used in the province; viz.
   - (*a*) Droit de quint.
   - (*b*) Droit de lods et ventes.
   - (*c*) Cens et rentes and other seignorial dues.
   - (*d*) The King's wharves.
   - (*e*) Commutations of tenures, under the Imperial Act, 6 Geo. 4. c. 59.
4. The King's posts.
5. The forges of St. Maurice.
6. The water lots.
7. Fines, forfeitures and penalties.
8. The aids granted by the Provisional Acts, 35 Geo. 3, c. 9, and 41 Geo. 3, c. 13 and 14.
9. The Jesuits' estates.
10. The claim of the Crown to the seigniory of Montreal.
11. The claims of the Crown to the beds of the rivers and to the land between high and low-water marks.
12. Certain rights reserved out of seigniories and out of the grants of wild lands in free and common soccage, such as gold and silver mines, the right of making roads and of cutting timber for public purposes, together with certain other rights which are known or understood to exist in the Crown, but which are not productive; such as the droit d'Aubaine, the right to forfeitures of land, and to escheats.
13. The seigniory of Sorel, the site and garden of the castle of St. Lewis at Quebec, and the government-house at Montreal.
14. The forts, barracks and lands under the charge of the board of ordnance, or any other military or naval department.
15. Certain droits of admiralty.
16. Certain duties levied under Acts of the British Parliament, of a date prior to the 14 Geo. 3.
17. One third of all custom-house seizures.
18. The post-office.

Mr. *Neilson* remarked, that the Jesuits' estates should not have been included, as the proceeds were given up.

A discussion took place on the 2 Will. 4, c. 41, for regulating the Jesuits' estates, and it was then explained that nothing was intended contrary to that Act, or to the arrangement under which the proceeds of the estates were surrendered in 1831.

Mr. *Stuart* remarked, that no notice was taken of the droit d'Aubaine and droit de Desherences, and that from the former source a trifling sum was derived about the year 1800, and the same thing might occur again; that both were inherent rights in the Crown and could not be lost by any non user.

To Mr. *Stuart.*] Have any escheats or forfeitures taken place since the Act that constituted the court of escheats?—None. In the month of December last, several inquisitions were for the first time taken by His Majesty's commissioner of escheats and forfeitures; but of these, some were in the month of August last set aside by the Court of King's Bench for the district of St. Francis, for insufficiency, and the remainder are liable to the same objections as the former.

Mr. Neilson suggested, that there was a revenue arising from some imperial Acts prior to the Act 14 Geo. 3, and it was explained that the proceeds of these would be included in the cession proposed to be made.

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Messrs. *A. Stuart*, *John Neilson*, and —— *Young*.

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The post-office being next mentioned, Mr. Neilson expressed his opinion that it ought to remain as an imperial administration, though the profits arising out of it should, as far as they are derived from Canadian sources, be applied to Canadian purposes. If put entirely into the hands of a local administration, he thought confusion would ensue; but the profits might be put at the disposal of the Legislature.

To Mr. *Stuart*.] Have you any knowledge of the King's posts?—I visited the King's posts, as commissioner, under an Act of the Provincial Parliament, for exploring the remote part of the district of Quebec.

Do not the Hudson's Bay Company consider that settlers cannot come within the posts without infringing on their rights?—I understand they do.

Do you not consider that grants of lands within the King's posts might be so made as to be profitable to the Crown?—I think that district might be settled to great advantage. It has advantages for settlement altogether peculiar.

Do you happen to know whether the river Saguenay is ever frozen?—It is frozen every year.

At what time is the navigation closed?—The ice in the Saguenay disappears about the same time as the ice in the St. Lawrence; but the port of Tadousae opens a fortnight or three weeks earlier than the port of Quebec, and closes a fortnight or three weeks later.

Are the exact limits of the King's posts known?—They can be ascertained from an arret of the French government, of an old date, in a volume of the Edits and Ordonnances, printed some years ago, by order of the Assembly, which may be found in any law-library in Quebec.

There is a placed called Ha-Ha Bay; is not that a promising tract of country, or have you any information as to it?—I have no personal knowledge of it.

Do you know what the furs are which are peculiar to the King's posts?—They are not to be found elsewhere, and a complete assortment of furs cannot be made without them.

As the Hudson's Bay Company have only had possession of the King's posts for a few years, how did they manage to get those furs before?—I am not in the fur trade, and speak only on the information of others. I have acted professionally for the North West Company, and speak from information derived from the late Mr. M'Gillivray. The fur trade was principally in the hands of the North West Company until the union which lately was made between it and the Hudson's Bay Company.

Would not the country on this side of the Saguenay afford, for several years, room for the increase of the settled population in that quarter?—I am not able to speak of the extent or nature of the land in that quarter. I would, however, refer to the report of a Mr. Andrews, who was employed under the authority of the Legislature, in exploring the country; which was made to the House of Assembly, and printed in their journals about the year 1825. There is also a report from Mr. Baddely, of the Royal Engineers, on the same subject.

Can you state the reason why, of late years, no fines and forfeitures are credited to the hereditary revenue?—Mr. Young explained, that Sir James Kempt, by a message, in November 1829, claimed these fines, &c., and that the claim was admitted; but in Lord Aylmer's time they were never claimed.

Are there frequent cases in Canada in which the courts of justice impose heavy fines?—(Mr. *Stuart*.) I apprehend not, but my practice does not lead me much into courts of criminal jurisdiction.

Mr. Young explained, that in the year ending 10th October 1836 the fines imposed by magistrates exceeded 500 *l*.; but that only 70 *l*. or 80 *l*. were collected.

Mr. Neilson remarked that sums had been collected and remitted to England by officers of the Court of Admiralty, and this since the conclusion of the war; but he doubted whether such sums could be considered as monies arising from Canadian sources.

Do you consider that the beds of rivers and the spaces between high and low water-mark belong to the Crown?—(Mr. *Stuart*.) I consider that the beds of navigable rivers and the intervals in them between high and low water-mark are, in a special manner, under the King's care, supervision and protection, but are said to appertain to the King's domain, not in reference to the property in the river and beach, but to the public use of them.

The property of these intervals I hold to be in the riparian proprietor.

The rights and powers wherewith the King is vested in relation to navigable rivers are, as I conceive, held by him, not for fiscal purposes, but for the purpose of protecting all his subjects in the use of them, as of public highways by water.

It is proper, however, to add, that a diversity of opinion has existed as to the right of the riparian proprietor in the intervals in question; the Court of King's Bench at Quebec denying any right of property in the riparian proprietor, whilst the Court of Appeals in a late case (Fournier and Oliva, Stuart's L. C., Rep. p. 427,) have maintained this right.

As to lands conceded before the conquest, will it not turn entirely on the terms of the concession?—Not so much upon the terms of the concession as upon its general construction, and upon the effect of the "Ordonnance au sujet des clotures sur les bords du fleuve St. Laurent, le 13 Mai 1665, (Edits & Ordonnances, 11, 126)."

In the French grants, lands are generally bounded "au fleuve St. Laurent," without distinguishing whether this shall be at high or low-water mark; and hence arises the question, whether the Crown shall have a right of property in the interval between high and low-water mark.

It is believed that the old law of France vested in the crown of France no other or higher interest in this interval than the Crown of England possesses, and the words of Sir Matthew Hale have therefore been adopted in the foregoing answer.

As

As to grants since the conquest, if there is no reservation, does not the general law of the empire apply, that all within the King's dominions which is under the flow of the tide, belongs to the Crown *primâ facie?*—This rule seems rather to relate to the jurisdiction over lands covered and uncovered by the tide, than to the property in or use of them. As to the jurisdiction, there is, of course, a *divisum imperium*, but it does not appear that there can be any doubt in the law of England as to the right of the riparian proprietor in the interval in question, subject to the obligation, not in any way to obstruct this highway by water.

What do you understand by the term, "King's Domain?"—I understand by this term the property which was held by the Crown of France at the time of the cession of the country, as sovereign feudal lord. The term "Domain," or "Dominicum," as here used, belongs to the feudal law, and embraces all rights and possessions which the feudal lord reserves, or is understood to reserve, in *patrimonio* on making his original grants.

In Canada there would fall under this denomination lands reserved in property, to the King in his seigniories. All feudal rents, dues and services reserved by him in his grants of lands, and generally all rights accruing to him in, or issuing from the land under his grants, whether *à titre de fief* or *à titre de cens*.

It is hardly necessary for me, after the answer given to the last question, to add, that I do not consider that the rights held by the King in respect to the beds and beaches of navigable rivers, formed any part of this domain.

I am of opinion that the waste lands of the Crown generally, including those of the King's posts, are not comprised in the King's domain. The King holds these waste lands free from all feudal incidents or laws, in the same manner as he holds the waste lands in the adjoining provinces, and in the other colonies and possessions of the empire.

Sir Charles Grey explained to Mr. Stuart, that the inspector of the King's domain did not collect the rents of water lots, or of the King's posts, and asked if he knew why this was the case?—Mr. Stuart said he did not know.

With reference to the rights reserved in all grants from the Crown, have you any knowledge of any mines or minerals in the country?—The ores of St. Maurice and Batiscan, the iron ores of St. Paul's Bay, and it is said that in the seigniory of Vaudrieul, in the parish of St. Francis, La Nouvelle Beauce, gold has been found.

Mr. Neilson added, the whole country abounds in minerals, though he cannot name positively any but iron.

Is there not sulphur?—(Mr. *Neilson.*) Yes; and coal and plaster of Paris. Generally speaking, I should say that there is a great quantity of valuable minerals in the country.

Do you conceive if the Crown were to establish an administration of ponts and chaussees, it might be advantageous to the country, and at the same time be beneficial as a source of revenue?—We do not conceive it could be done so as to be profitable; to which Mr. Stuart and Mr. Neilson added, neither do we consider that it would be advantageous. Mr. Young, however, said he thought it might be advantageous to the country, though not profitable to the Government.

The Duke of Richmond had a plan for a board of works.

Mr. Stuart explained that he considered the application of a portion of the money arising from the sale of waste lands, to the making roads and internal improvements in the parts of the country where such lands are sold, would be extremely desirable, productive of many advantages, and would relieve the system of selling waste lands from many of the inconveniences incident to that measure.

To Mr. *Young.*] Do you know anything of custom-house seizures?—The proceeds of seizures made at maritime ports of entry were formerly paid to the receiver-general, and accounted for in the provincial accounts, except when the forfeiture was incurred under the provisions of the old plantation laws.

In 1820 a difficulty arose as to the distribution of the proceeds, and a representation having been laid before the commissioners of customs, orders were sent to the collector and controller of Quebec to remit the King's share of all seizures to London, and to bring them to account with the Crown duties; this has uniformly been done since the receipt of the order.

The seizures made at the inland ports of entry are accounted for to the Provincial Government, and the King's share paid to the receiver-general. They are chiefly made under the provisions of the Trade Act.

The fines imposed by justices of the peace in special sessions, at Quebec, during the year ending the 10th October 1834, amounted to 852 *l.* 12 *s.* 5 *d.*; the sum levied was 98 *l.* 4 *s.* 7½ *d.* In 1835, the amount imposed 486 *l.* 11 *s.* 5½ *d.*, and 59 *l.* 0 *s.* 7½ *d.* levied. The reason why so small an amount was levied is, that the greater portion was remitted by the Governor, on the recommendation of the magistrates.

Sir James Kempt, in his message to Assembly, in November 1828, claimed the fines and forfeitures as forming part of the Crown revenues, and again in 1830. This will appear on referring to the Journals of 1828–29; and to Appendix (M.) in the Journals of 1830, Statement, No. 1.

The claim was not insisted on by Lord Aylmer. The Assembly, in the preamble to the Bills of Supply, in 1829 and 1830, admitted the correctness of Sir James Kempt's messages relating to the Crown revenues.

Do you know of any distinction between inland and maritime stations as to one-third which goes to the King?—I do not know of any distinction; prior to 1826 inland seizures were divided into fourths, under provision of a Provincial Act.

Can you refer us to anything in the Journals of the Legislature or elsewhere, giving information

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formation on the subject of the post-office?—In the Journals of the Assembly since the year 1830, information on this subject will be found.

For what term do you think the cession of the hereditary revenue in return for a civil list should be made; for ever, for a term of years, or for the King's life?—(Mr. *Stuart*.) Whatever arrangement may be come to on this subject, ought, I think, to be permanent, taking it always for granted that every consideration would be given to a measure, the importance of which would be so much enhanced by the permanency of its character. From this view, however, I am aware that if the arrangement cannot be made absolutely permanent, then I think it ought to be for a period of years; but under no circumstances ought the officers of Government to be made to depend upon annual votes.

You are aware of the present state of the gaols, that the expenses of them have been defrayed of late out of the private funds of the sheriffs, and that there is no district or county rate to provide for the conservation of the peace. Has any better method occurred to you of providing for those objects?—If it could be done, I apprehend it would be more consistent with principle, that these charges, instead of being provincial, should be district or county charges; but whether one or the other, the means of meeting them should be supplied with certainty, and without any reference whatever to that class of charges which is included in the notion of a civil list. As to providing these means from a district or county source, it could not be effected by direct taxation without great inconvenience. I have not present to my mind any form of indirect taxation whereby it could be easily and conveniently obtained.

But there are ample funds out of the general revenue which could be applied?—Unquestionably.

Would you then give up the hereditary revenue, the only source out of which the Crown could provide for them, without securing a permanent appropriation from the Legislature for these purposes?—I can only express on this head my own opinion. I consider these expenses as a part of what is necessary for the general administration of justice, and under all circumstances they ought to be permanent.

Have you come prepared to offer any opinion as to the whole civil list, which ought to be demanded on the occasion of giving up the hereditary revenue?—It is a subject on which I have had occasion to think a good deal, both lately and heretofore, in its general bearings; but I have not been called upon to consider it particularly in its details.

To Mr. *Stuart*.]—What is your general view of it?—I think that in a colony composed of two large and unequal masses of population, differing in national origin and habits, (without reference to any particular people so circumstanced), it is fitting that the monies required for the payment of the public functionaries within the colony necessary for carrying on the public service, should be provided for independent of the annual vote of the Assembly of that colony. The allowance to the public officers should not exceed that fair remuneration for their services, without which the public cannot expect to have efficient servants; but I do not mean to exclude the power in the three branches of the Colonial Legisture to reduce such salaries and allowances as may seem to be excessive, or to augment such as may seem to them insufficient. I consider it essential that there should be an easy and efficient mode of bringing to trial and punishment public functionaries who may fail in the discharge of their duties. By the words, necessary for the payment of functionaries, I mean that no higher sum should be appropriated to any public officer than what is adequate to the services which he performs, and that no permanent appropriation should be made for any officer not necessary for the public service. I would not load a civil list with anything that is not necessary, but I would make it comprehend everything that was necessary, using that word strictly.

In your view of a civil list, then, would there be any necessity for an application to the Assembly for an annual appropriation?—Not for the ordinary and necessary expenses of Government and the administration of justice; but for any additions, either in the form of augmentation of salary, or for extraordinaries of any description, I conceive such an application would be necessary.

To Mr. *Young*.]—Do you agree in the view Mr. Stuart has taken of a civil list?—I do; and I think it applicable to any and every colony; for I think it impossible otherwise to maintain the authority of the mother country, or enforce the due administration of justice.

Have either or any of you formed an estimate of what a civil list on this principle would amount to?—(Mr. *Stuart*.) I think that the last act of the Provincial Legislature, providing for the civil expenditure of the Government in 1831-2, ought to form the basis of such an estimate.

Mr. *Neilson* said he had already given his opinion in his separate examination.

Mr. *Young* said, I think in any arrangement we ought to act as if the proceeds of 14 Geo. 3, were still at the disposal of the Government, because they were only given up on the faith of a permanent appropriation being made; bearing this in mind, I am of opinion that every officer who holds a commission from the King, or under the provincial seal, should be provided for by a permanent appropriation; that every assistant in an office, whose services are required, should likewise be provided for permanently, and that an adequate sum should be secured to meet the contingent expenses attendant on the administration of justice, and for the support of civil government; but that these expenses should be regulated by some fixed tariff, and subject to the strict examination and control of the Government; and I think the total amount required for this would not exceed 40,000 *l.* sterling per annum, exclusive, that is to say, of the expenses and contingencies of the legislature.

In

In the sum of 40,000 *l.*, do you include the contingent expenses of the departments of Government?—I include every expense hitherto incurred by Government, except, as above stated, the expenses of the Legislature. I do include the Judges.

Then you think the expenses of the Government might be limited to the sum of 40,000 *l.*? —I do, for this reason; from the year 1830, inclusive, the total expenditure on account of the administration of justice and the support of the civil government has not in any year exceeded that sum. This will appear from the statement which I now produce*, made up from the accounts laid before the Legislative Council and Assembly during each session. But I am of opinion, that were a strict system of audit established, and the tariffs and instructions regulating the contingent charges revised, a very considerable reduction might be made in the annual expenditure, without impairing the efficiency of the Government. From the same statement it appears that the revenue at the disposal of the Crown, including the duties and licences under the Act of 1774, but excluding the land and timber funds, has, since the year 1830, inclusive, been more than sufficient to defray all the charges of the Government, and this I consider to be an additional reason for making the proposed civil list a permanent measure.

* *Vide* Mr. Young's Statement, at end of this day's evidence.

Bearing in mind what you have said of the faith in which the proceeds of the 14 Geo. 3 were given up, do you think that a civil list, such as you have recommended, was then contemplated?—No, I do not; but I understand the remainder of the Crown revenues are now to be given up.

Do you think there is any probability that a civil list, according to your own idea of what it ought to be, will be acquiesced in by the Assembly?—Mr. *Stuart* said, I am not competent to form an opinion on this question.

Mr. *Young* said, I am of opinion that so long as the House of Assembly is composed as at present, it will vote no permanent civil list, nor adopt any measure for the permanent arrangement of the various points at issue.

Mr. *Neilson* said he had already given his opinion in his separate examination.

Upon what footing would you propose to leave the expenses of the legislative bodies?—(Mr. *Stuart*.) As I look at it, the expenses of the Legislature are distributable into two branches, the ordinary and contingent. In the ordinary expenses are comprised the salaries of all the necessary officers of the Legislature, and the wages of the necessary servants, and any other permanent charges of a definite character. The contingent expenses consist, as I understand them, of such charges as, though necessary, are not susceptible of being ascertained with certainty, such as fuel, stationery, extra servants, &c. &c. All these expenses should be provided for by law.

Mr. *Young*.] I consider the officers of the Legislature to be divided into two classes: one class permanent, which ought to be appointed by the Governor, and paid out of the fund already existing. There is another class, such as writers employed during the session by the clerk of each House, the rate of whose remuneration ought also to be fixed by the Governor, and paid out of funds provided by law for that purpose; and in any Act to be passed, I think provision should be made prohibiting any remuneration to be given for services performed until the amount of that remuneration is approved by the Governor. The contingent expenses of the session must be left to the discretion of the clerk, acting under direction of the Speaker, as is now the case; and the accounts of expenditure ought to be regularly rendered by the clerk, certified by the Speaker, as is directed by a provincial Act passed in 1799, but which is not in operation. This is the arrangement I should approve; and I would appropriate permanently a portion of the revenue to cover these regulated expenses.

To Mr. *Stuart*.] When you say that the expenses of the legislative bodies should be provided by law, do you mean by a permanent statute?—By a permament or temporary one.

By temporary, do you mean annual appropriation?—In this instance I see no essential objection to an annual appropriation; though if the appropriation be not permanent, I think one made at the beginning of each Parliament for the duration of the Parliament would be preferable.

In the present state of the province, do you not think differences might arise between the two Houses of the Legislature as to their expenses, if provided for by annual appropriation? —In the present temper of the two Houses such differences could scarcely be avoided; but these difficulties do not depend upon the permanent or temporary nature of the provision.

Might not the opportunity of the surrender of the Crown revenues be taken advantage of to prevail on the two Houses to make an addition to the permanent provision which already exists for their expenses?—It is highly desirable that the source of difference should be removed if possible; but I am not prepared to say whether such an arrangement could or could not be advantageously proposed as forming a part of the measure of giving up the hereditary revenue.

You are aware of the two permanent aids which have been granted to the Executive Government by Acts of 1795 and 1801; do you not think they might be reasonably asked for as a permanent addition to the fund which exists for the payment of the expenses of the two Houses?—I am not prepared on this subject to give any answer.

Looking at the question prospectively, do you consider that the expenses of the Legislative Council may be paid on the address of that body, or not until an Act of Appropriation has passed?—(Mr. *Stuart*.) As to money required beyond what is permanently appropriated by the Act of 1793, "for paying the Salaries of the Officers of the Legislative Council and Assembly, and for defraying the Contingent Expenses thereof;" I hold that in strictness the general rule applies that no public money can be paid without a law appropriating

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priating the same, and I know nothing in these expenses which would make of them an exception to this general rule; at the same time advances for the future might be made, to be covered by subsequent Acts of Appropriation, where they are absolutely necessary; but the legal liability is upon the officer making them, and his moral responsibility on the urgency of the occasion.

Has not every Governor, since you have had a constitution, made these advances?—Down to the present session of the Provincial Parliament advances have been made by, I believe, every Governor out of the public monies to be applied to the current expenses of the session for which the advance was made. I am not aware of any monies (except in one instance) having been, before the present session, advanced by the head of the Government to either branch of the Legislature, to cover expenses incurred previous to the session for the contingent expenses of either branch of the Legislature, or charged as such. From the very terms, I apprehend that such expenses are to be assimilated to all other unliquidated claims on the public chest, which can only be paid under an Act of the Legislature, recognising their justice, and sanctioning their payment. The exception to which I refer occurred in the year 1823. On the 31st January of that year two several addresses were voted by the Assembly to his Excellency the Earl of Dalhousie, then Governor-in-chief, the one for an advance of money to pay arrears due on the contingent expenses of the House for the year 1821 and to 31st October 1822; the other to pay the expenses incurred and to be incurred for the then current year, that is, from 1st November 1822 to 31st October 1823. His Lordship complied with the desire of the House as to the former; but with respect to the latter, he answered, that as this address applied to prospective services, which would be submitted to the House with other expenses of the year, he must be guided with respect to them by the appropriations that should be made by the Legislature. I have not, however, gone over the various proceedings of the Assembly respecting the contingencies, as contained in the Journals, with reference to the subject of the present question, and cannot, therefore, speak with absolute certainty.

The same question was then put to Mr. *Young*: "Has not every Governor, since you have had a constitution, made these advances?"—Yes; the first address is to be found in the Journals of 1792-3. This was before any fund had been provided towards defraying the expenses of the Legislature.

The then Lieutenant-governor subsequently sent a message to the Assembly, recommending them to provide for the payment of the officers of the Legislative Council; and an Act was in consequence passed by both Houses and sanctioned, "To establish a Fund for paying the Salaries of the Officers of the Legislative Council and Assembly, and for defraying the Contingent Expenses thereof." The fund thus created having (except in 1793, 1798 and 1804) been inadequate to meet the expenditure chargeable against it, addresses praying for advances were annually voted for some years by the Assembly alone, and afterwards by each House, for the amount of its own expenditure.

There are only three instances on record, prior to the administration of the government by Lord Aylmer, of the prayer of these addresses being refused; in the year 1805 by Sir Robert Milnes, in 1806 by Mr. Dunn, and in 1823 by the Earl of Dalhousie.

The deficiency in the permanent fund up to the 5th January 1815, was made good from time to time out of the monies levied under authority of the Acts 35 Geo. 3, c. 8 and 9, and 41 Geo. 3, c. 13 and 14, and out of the unappropriated monies generally; and the amount advanced upon addresses was covered by the following Bills of Appropriation, viz. 35 Geo. 3, c. 9; 42 Geo. 3, c. 4; 44 Geo. 3, c. 12 and 13; 48 Geo. 3, c. 32; and 55 Geo. 3, c. 17.

In the years 1815 and 1816 the expenditure amounted to 9,016 *l.* 6 *s.* 2 ½ *d.*, being 1,522 *l.* 17 *s.* 8 ½ *d.* more than the permanent fund. This sum has not yet been covered by an appropriation. In 1817 the advances amounted to 16,173 *l.* 19 *s.* 11 *d.*, while the fund was only 2,045 *l.* 6 *s.* 10 *d.*, and the appropriation by the Act 57 Geo. 3, c. 31, was for the sum of 4,082 *l.* 12 *s.* 9 ½ *d.* only.

From 1817 to the year 1824, inclusive, the advances uniformly exceeded the amount of the permanent fund, as well as the partial appropriations contained in the Acts 59 Geo. 3, c. 25, and 3 Geo. 4, c. 37 and 38.

In the year 1825 the expenditure was 12,348 *l.* 4 *s.* 2 *d.*, which was provided for in the Supply Bill 5 Geo. 4, c. 27. From 1826 to 1828, both inclusive, the advances exceeded the amount of the fund and also the appropriation by the Act 9 Geo. 4, c. 70.

The expenditure of the years 1829, 1830, 1831 and 1832 is provided for in the Supply Bills of 9 Geo. 4, c. 69; 10 & 11 Geo. 4, c. 53 & 54; 1 Will. 4, c. 45 & 46; 2 Will. 4, c. 61 & 64; and 3 Will. 4, c. 21.

The whole amount advanced by the Governors for the time being, upon addresses from the Legislative Council and Assembly up to the 10th October 1832, and which has not as yet been made good by a bill of appropriation, is 73,290 *l.* 18 *s.* 4 *d.* currency, exclusive of the charges of collecting the duties levied under authority of the Act 33 Geo. 3, c. 8, and the proportion thereof paid to Upper Canada since the 5th January 1815.

Monies have also been advanced on the address of the Assembly alone, for expenses unconnected with either of the two Houses.

Thus in 1795-6, the sum of 100 *l.* was advanced to the Speaker of the Assembly to enable him to purchase standard weights and measures. In the year 1801, the sum of 6,000 *l.* was advanced to the commissioners for building gaols at Quebec and Montreal.

In the years 1802 and 1803, sums of 6,000 *l.* and 1,691 *l.* were advanced to the same commissioners; and in 1818 the whole amount required, above the Crown revenues, to pay the civil expenditure was advanced on an address from the Assembly.

The Legislative Council have since objected to any monies being issued in consequence of

of an address from the Assembly (except for the expenses of that House) unless upon some extraordinary emergency. The following is a copy of the standing rule of the Council upon this point. "Resolved, That the Legislative Council will not proceed upon any bill of appropriation for money issued in consequence of an address of the Assembly to the King's Representative, (addresses of the Assembly for the expenses of that House excepted) unless upon some extraordinary emergency, unforeseen at the commencement of a session, and which unforeseen emergency will not allow of time for passing a bill of appropriation for the same in the session when the address shall have been voted."

I beg to state, that this is only my answer, on my own behalf.

Have the advances ever exceeded the whole amount of revenue at the disposal of the Government?—Mr. *Young* answered, that they never had.

To Mr. *Stuart*.] Would there then have been anything illegal in the Government making advances from its own funds for the expenses of the Legislature; or at any rate, will not the circumstances in which the Governor may be called upon to make advances for the expenses of the Legislature, be very materially different after the cession of the Crown revenues, from what it was before?—I am of opinion that such advances would have been illegal.

To Mr. *Young*.] In the year 1792, when you say advances were first made, was there any annual Act of appropriation for the expenses of Government?—No.

Was there any for many years after?—No, not until 1819.

Were not the expenses of the Government then defrayed out of revenues which had been placed permanently at the disposal of the Crown, and the deficiency, if any, made good by the British Government?—Up to 1810, by the English Government; but from 1810 to 1818 the deficiency was made up, without any appropriation of the Assembly out of provincial funds; during the continuance of the war, however, large sums were paid for militia and other services, into the provincial chest, from the military chest. I have reason to believe that Sir G. Prevost paid up every claim that the province might have had on account of payments out of unappropriated monies, to the close of the year 1812.

In further explanation Mr. Young stated that Sir Robert Milnes, Mr. Dunn and Lord Dalhousie refused to make advances to the House of Assembly, though the monies which they refused were afterwards paid.

Do you know what were the causes of those three refusals?—In the year 1805, addresses were presented to Sir Robert Milnes, praying that he would advance a sum of money to the clerk of the Assembly, to enable him to pay, among other charges, for 200 copies of an index to the French edition of the Lex Parliamentaria, which had been ordered to be printed by the Assembly; and also that he would take into consideration the services rendered by Pierre Edward Desbarats, esq., French translator of the House, and grant him an additional salary, to commence from the 1st of November 1804, assuring his Excellency that if the fund appropriated by law was not sufficient, the House would make good the same.

The Lieutenant-governor answered, that it was not in his power to issue a warrant to pay for the printing of the Lex Parliamentaria, as it was an extraordinary service for which the Legislature had not provided; and that in regard to an increase of salary to the French translator, he must regret, that when those rules which tend to promote a good understanding between the Executive and the other branches of the Legislature were forgotten, the Lieutenant-governor must feel averse to the introduction of a precedent which might lead to consequences so injurious.

The House resolved itself into a committee of the whole, to consider this answer, but its proceedings were interrupted by a prorogation.

In the year 1806, an address was presented to Mr. Dunn, for an advance to the Speaker to defray the expense of translating Hatsell's Precedents, in conformity with a resolution of the House of the 18th March 1805.

To which Mr. Dunn answered, that he referred to the answer given the year before by the Lieutenant-governor; and the House on examining the same, must feel convinced that during the temporary absence of the Governor and Lieutenant-governor, he could not deviate from the precedents referred to, by advancing monies to defray expenses for which the Legislature had not provided.

In the year 1823, two addresses were presented to the Earl of Dalhousie, one praying that he would issue his warrant in favour of the clerk, to pay the amount of arrears due for the contingent expenses of the House for the years 1820–21, and to the 31st October 1822; the other praying for a sum of 3,540*l.* for the expenses then incurred or to be incurred from the 1st of November 1822, to the 31st October 1823.

The Earl of Dalhousie answered that he would comply with the prayer of the first address, because the sum asked for was required for services performed; but that, with regard to the sum of 3,540*l.* for the expenses of the then current year, he must be guided by the appropriation that should be made by the Legislature.

The Assembly voted this sum, and included it in the Act 3 Geo. 4, c. 38. In this I wish to be understood as merely speaking my own opinion.

Was not the payment of money without the appropriation of the Legislature, one of the principal grounds of complaint in 1828?—Yes.

And was it not one of the practices most strongly condemned in the report of the Committee of 1828?—I believe it was; and instructions came out from Mr. Huskisson forbidding the practice in future; which instructions are on the journals of the Assembly in 1829.

Were not those amongst the reasons which induced Lord Aylmer to make the refusal?—I do not know.

Was not there a despatch in 1817 or 1819, from the Secretary of State, to a similar purport?—

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port?—I think in 1817; and that it directed that the Assembly should be called on annually to make good the deficiency in the funds appropriated to the support of the civil government.

Was not the practice condemned by the Committee of the House of Commons, rather the practice of making good the deficiency of the charges for civil government without the appropriation of the House of Assembly, than the practice of paying the contingencies of the House on their own address?—Certainly; more particularly that practice.

Did it relate at all to the other?—(Mr. *Neilson*.) Yes, because the sum mentioned in the report of the Committee included monies advanced for the payment of those contingencies.

Mr. Neilson observed, that he did not recollect to hear the word "contingencies" in England, whilst he was before the House of Commons.

Did Mr. Huskisson's despatch relate to the contingencies of the Houses of Legislature?—(Mr. *Young*.) No; it related to the practice of taking unappropriated money from the provincial chest for the purposes of civil government.

STATEMENT showing the AMOUNT of REVENUE at the Disposal of the Crown, towards paying the Expenses of the Administration of Justice and the Support of the Civil Government, and of the DUTIES levied under the Authority of the Act of Parliament 14 Geo. 3, c. 88, from the 6th January 1830 to the 10th October 1835; also the EXPENDITURE, during the same Period, chargeable against the said Revenue and against the said Duties, prior to the Act 1 & 2 Will. 4, c. 39, being passed; the whole taken from Official Returns made up by the Inspector-general of Provincial Accounts, and annually laid before the Legislative Council and the Assembly.

	Casual and Territorial Revenue, the Land and Timber Funds not included.	Duties and Licences under the Act 14 Geo. 3, c. 88.	Appropriation by the Act 35 Geo. 3, c. 9.	Duties and Licences under the Provincial Act 41 Geo. 3, c. 13 & 14.	Total Revenue collected on account of Lower Canada.	Expenditure.	Excess of the Revenue above Expenditure.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.
Year ending 5 January 1831 -	6,322 5 1	32,979 14 2	5,000 - -	4,086 12 11	48,388 12 2	39,051 18 9	9,336 13 5
Three Quarters, ending 10 October 1831 - - -	3,873 19 11	30,836 2 10	3,750 - -	3,852 14 -	42,312 16 9	29,952 9 -	12,360 7 9
Year ending 10 October 1832 -	4,006 15 8	33,531 1 2	5,000 - -	5,594 19 3	48,132 16 1	38,291 6 6	9,841 9 7
Year ending 10 October 1833 -	5,665 9 -	34,317 18 7	5,000 - -	5,330 5 1	50,313 12 8		
Year ending 10 October 1834 -	5,468 13 9	24,106 1 11	5,000 - -	5,120 10 7	39,095 6 3	118,776 - -	17,236 19 9
Year ending 10 October 1835 -	4,688 13 2	31,115 5 2	5,000 - -	5,200 2 6	46,004 - 10		
				£.	274,847 4 9	226,071 14 3	48,775 10 6

Quebec, 29 December 1835.

(signed) *T. A. Young*.

	£.	s.	d.
Amount due on account of the civil expenditure for the years 1833, 1834 and 1835 (including the sum of 30,519 *l.* 4 *s.* 2 *d.* sterling advanced from the military chest), for which a supply is required -	135,617	9	10
Amount paid, during the same years, out of the Crown Revenues, as detailed by the inspector-general, and printed in the Journals of the Assembly - - - - - - - - - - - - -	27,115	7	6
Total expenditure in Sterling - - - £.	162,732	17	4
From which deduct,			
Legislative Council - - - - £. 11,044 9 9			
House of Assembly - - - - - 23,020 - -			
Militia - - - - - - - - 4,174 13 8			
Jesuits' estates and education - - - 2,310 - -			
Repairs of public buildings - - - - 2,638 13 11			
Inland custom-houses, &c. &c. - - - - 769 - -			
	43,956	17	4
Amount chargeable against the Crown revenues and the Act of 1774, according to my views - - - - - - - - -	118,776	-	-
Average per Annum - - - - £.	39,592	-	-
The total revenue for the same period, including the duties and licences under the Act 14 Geo. 3, c. 88, but excluding the land and timber funds, amounts, in sterling, to - - - - - - - -	136,012	19	9
The expenditure, as above stated - - - - - - - -	118,776	-	-
Surplus Revenue since the 10th October 1832 - - - £.	17,236	19	9

Suppose

Appendix, No. 12.

Messrs. *A. Stuart*, *John Neilson*, and *T. A. Young*.

23 Dec. 1835.

Suppose the Assembly do not provide for the payment of the arrears, and that it becomes necessary to resume the absolute control of the revenue accruing under the Act of 1774, from the time that the last Supply Bill expired, that is, from the 10th of October 1832; in such case, the civil government will be enabled to reimburse the whole amount advanced from the military chest in 1834, and to pay all outstanding claims, as well those on account of the administration of justice and the support of the civil government, as the different items included in the statement of the inspector-general, dated 7th November 1835, but which, in strictness, are not chargeable against the Crown revenues.

		£. s. d.
Thus, the balance of revenue above the expenditure amounts to - -		17,236 19 9
The amount paid out of the advance from the military chest, on account of the Legislative Council and the Assembly, and which must of necessity be repaid, is - - - - - -	£. 4,709 14 6	
The other items, which I have deducted from the gross expenditure (paid in part out of the same advance), are, for the militia - -	£. 4,174 13 8	
Jesuits' estates and education - -	2,310 - -	
Repairs of public buildings - -	2,638 13 11	
Inland custom-houses, &c. &c. - -	769 - -	
In all - - - - - - -		14,602 2 1
Surplus revenue, after paying every outstanding claim, up to the 10th of October 1835 - - - - - - - -	£.	2,634 17 8

The sums advanced since the 10th of October 1832, on account of the Legislative Council and the Assembly (with the exception above-mentioned), are necessarily on the same footing as other advances previously made in aid of the fund established by the Act 33 Geo. 3, c. 8, and not yet covered by an Act of Appropriation.

Quebec, 29 December 1835. (signed) *T. A. Young.*

Hon. *A. W. Cochran*.

24 Dec. 1835.

Hon. *A. W. Cochran* attended by appointment, in order to explain the papers which had been submitted by himself and Mr. M'Gill in support of a claim from the Royal Institution, and in the first instance drew the attention of the Commissioners to the fact, that the preamble to the Act of 41 Geo. 3, c. 17, recites a direct promise from the Crown for an endowment out of the waste lands, which recital is copied verbatim from the speech with which the Governor-in-chief opened the session of 1801: that notwithstanding this distinct promise, no endowment has ever taken place, and that he does not even now desire to claim an immediate endowment, but only to enter a caveat against the adoption of any measure that may deprive the Crown of the power of making one.

Does the institution get any aid from the Jesuits' estates, or has it the prospect of aid from them?—It does not now get any aid from the Jesuits' estates; for one year subsequent to the surrender of the estates, the salaries of the masters of Government schools at Quebec and Montreal, formerly charged on that fund, were paid by an Act of the Legislature. Since that year (1832) those salaries have remained unpaid, and no advantage has been derived from the funds of these estates. As to the prospect for the future, it must be matter of inference and opinion, from what has been done hitherto, and the disposition which may be supposed to prevail. My own apprehension is, as stated in my written document, that the institution has no great cause to expect a portion of that revenue sufficient for the purposes of endowment.

Is the institution at present in active operation?—It is.

What are the duties which it discharges?—It has under its direction the grammar schools of Quebec and Montreal, and also a number of elementary schools throughout the province. The salaries for the masters of these schools are paid out of monies voted for the purpose by the Legislature. A part of their duty also consists in the management of the property devised by Mr. M'Gill.

It was then agreed by the board, that as Mr. Cochran's application did not go to ask any immediate grant, but only to request that the Crown should not be incapacitated from fulfilling the engagements entered into in 1801, it was not necessary at present to do more than assure Mr. Cochran that the commissioners would not lose sight of the subject.

Mr. Cochran, however, added, that his application did not simply go to a fulfilment of the promise made in 1801, but to the enforcement on general principle of the claims of the institution to the protection of Government, particularly as the schools of the country do not now afford to the youth of English extraction the means of acquiring the higher branches of education; for the more elementary branches of education the schools established by the Legislature might suffice, as little objection is made to bring children of English and French extraction together in them; but the repugnance to send children to schools which are chiefly filled with persons of different religion and speaking a different language, is greater amongst the higher classes.

Appendix, No. 12.

Elzear Bédard, Esq.

24 Dec. 1835.

Elzear Bédard, Esq., an advocate practising at the bar of Quebec, and member of the Provincial Parliament, attended at the request of the Commissioners, in order to explain the views with which he lately introduced to the Assembly certain resolutions, with the intention of framing thereon a Bill for the independence of the judges, and for the establishment of a court before which they might be tried in case of malversation in their office.

Mr. Bédard stated that he had submitted resolutions to the House with a view of facilitating the financial arrangements which, as announced in the Governor's speech at the opening of the session, are shortly to be submitted to the consideration of the Legislature, and also with a view of rendering justice to the people and to the judges in cases of accusation.

Mr. Bédard stated that in his opinion the principal impediment to the measure of making the judges independent consists in the difficulty of forming a tribunal for the trial of impeachments, and that he does not consider the Legislative Council, as at present constituted, a proper tribunal for that purpose; that this opinion is, he believes, also entertained by the great majority of the House of Assembly and the people of the province, and that in his belief the House of Assembly will never consent, and ought not to consent, to erect the Legislative Council, either in whole or in part, into a court of impeachments, and principally for this reason; that the Council is not, like the House of Lords, composed of persons of independent principles collected from different parts of the country, but of persons selected by the Crown, and in a great measure dependent on it; and even if the Council were at present well composed, there is no security for its not being changed by the Crown for any given occasion. Mr. Bédard further stated, that the House has already exercised the right of accusing a public servant, and has in some instances succeeded in having the accused person dismissed without confining itself to any judiciary rules, other than the open exercise of its constitutional and parliamentary rights, and without peculiar forms for the defence of the accused: that this bill would have prescribed a formal course of proceeding, which would, in his opinion, have given the accused as fair a trial as by jury: that on account of the particular system intended by his resolutions and projected bill, he thought afterwards that some opposition might have been offered, and that this weighed with him in not pushing his resolutions to a division. Mr. Bédard said that he would hand in a draft of the bill, by which the Commissioners would perceive the course of proceeding that he intended to propose. Other objections were urged as to the competency of the tribunal in England before which he proposed to carry the accusation for final judgment, the Judicial Committee of the Privy Council not being a court of original jurisdiction.

You say you think your course of proceeding would have secured to an accused judge a trial as fair as if it were by jury, who would in fact be the judge and jury by whom the accusation would be tried?—The judge would be in England (that is to say, it would be the Judicial Committee of the Privy Council), the facts constituting the accusation would be ascertained by a jury selected by the body of the people, consisting in the first instance of 88 members of the House of Assembly, reduced by subsequent process, first to 30 or 24, and ultimately to 12.

How would these 12 proceed?—This is all stated in the bill.

Who would preside as judge?—I have already stated that there would be no judges; the functions of the committee in this case would be in some degree of the nature of those of a grand jury, with, however, the benefit to the accused of being heard in defence before that committee. There would be a president named by the Assembly, sworn of course in the same way as the other 12, and the accused person would have liberty of being present either in person or by attorney.

Would this tribunal express any opinion on the evidence?—They would report their opinion to the House as every other committee does; with their proceedings, documents and evidence, and also with the objections urged before them.

Has not the House full power to do the whole of this at present?—I apprehend not; they have not the power of administering an oath, and giving the accused that benefit.

In what other respect would it differ from any other committee of the Assembly?—It would be bound to call in the accused party, which committees do not now do, except by order of the House, or in cases where the accused party may demand it, or when he is wanted as a witness.

Would not this be an entire novelty, to give to a committee of the House judicial powers in criminal matters?—Certainly this would be a new mode of proceeding; but as there is no mode at present established, it is of course requisite to adopt a new one. The House would not have more *judicial* powers than it has now, by the nature itself of its attributions over matters cognizable by the ordinary criminal courts, since it would not be advisable to limit the right of the House, whatever system of proceeding is adopted, in any case where an accusation can be brought pursuant to the law, usage or custom of Parliament in the United Kingdom. The law would regulate the mode of proceeding in the finding of facts.

How is it provided that the matters to be laid before it shall be only matters not cognizable by the ordinary courts?—The House would proceed, in all cases for which an accusation could be brought in England, according to the law, usage and custom of Parliament, as is stated in the bill. This would not interfere with the ordinary course of the criminal courts of law, whose proceedings are of their nature wholly limited and defined contrary to the powers of Parliament.

There have been considerable political differences and animosities of late in the province?—Yes.

Has it not been a subject of complaint on the part of the population of French origin, that there has not been a sufficient number of judges of the French party?—It has been a subject of complaint, that the population of French origin has not had its fair proportion of

public

public employments, including the judicial ones. All they desire, is fair play, and an equal participation in equal rights. The complaint is general, but it is illustrated particularly in the case of the judges. I would not be understood as expressing a wish for judges of any particular party. In answering as to parties, I must say that national distinctions are by no means the foundation of the political differences; but that the differences are founded on principles of public policy and government.

Were you not in the House when the 92 resolutions were passed?--Yes, and I supported them. There is none that I do not approve in substance, though there are some that I would have wished to see differently expressed.

Have not the greater part of the judges been of late years mixed up with, or drawn into the political differences of the province?—Some of them have; especially those who were members of the Legislative and Executive Councils.

That includes the two chief justices, or at any rate the chief justice of Quebec, who has, I believe, been accused by the Assembly?—I would say nothing of the chief justice of Montreal, but the chief justice of Quebec has been greatly implicated with other judges in the political differences, and has been accused before the Privy Council in England of having made improper rules of practice.

Would that offence be one which you would think proper to try before the tribunal you contemplated?—It would be.

Were those rules of practice in contemplation of the persons who drew up the 92 resolutions, where complaint is made of certain rules of practice?—I believe so.

Have not the House of Assembly maintained the same opinion from the time the chief justice was accused, up to the present time, with reference to those rules of practice?—I should suppose so.

Do you not think the Chief Justice Sewell would have stood a bad chance, if he had been tried for that offence before a tribunal such as you contemplate? Do you not think they would have reported against him?—I think he would have had a fair trial, and that complete justice would have been done him. My own impression is, that he acted improperly, but if I had to sit in judgment on his case, I should endeavour to discard that impression from my mind, and to investigate his case with impartiality; still if he suffered injustice, he would have his appeal to England, where, in fact, he has been once acquitted. The decision here would not have been final.

You are aware then that Chief Justice Sewell was acquitted on that accusation by the Privy Council?—I only speak from recollection.

Are you not aware that there was an express acquittal, which was communicated by message, and entered on the journals of the Assembly?—I have heard of it, but never read the message.

How many members out of the 88, of which the House is composed, voted for the 92 resolutions?—I cannot exactly say; the minority is smaller now than it was then; at present it does not consist of more than 8 or 10.

Would it not then be a moral certainty that a judge who had been the subject of political dislike, would have a tribunal composed principally of his political adversaries?—There might be a majority of political adversaries; but that would not prevent his having, in my opinion, a fair trial.

You have expressed your dislike of political judges; would not such a tribunal consist of judges more political than any others in the province?—I believe not; the questions always tend to say that the members would be the judges, while they would be only the accusers, and it is at present their right and duty to accuse. The bill in my view would not give the House any new power, but merely regulate the exercise of its present powers, for the benefit of the public and of the accused. I believe that any other tribunal you could form in the province would equally have a political character; besides which, if you selected private individuals, you would, in a society so small as ours, have persons imbued with personal dislikes, or influenced by prejudices or friendship.

Do I rightly understand it as your opinion that the Assembly will not consent to any measure of making the judges independent, unless they have the power of trying the judges? No; I only said that they would refuse to make the Council, as at present constituted, a tribunal for that purpose.

What alterations would satisfy them in the constitution of that body?—The introduction of the principle of election.

Would anything short of making the Council an elected body, induce the Assembly to take it as a tribunal?—Nothing short of the principle of election; but there might be various modes of carrying the principle of election into effect.

Without a satisfactory tribunal, the Assembly will not consent to make the judges independent?—That is my opinion, but I must always be understood to speak for myself only.

Have you heard of, or are you aware of any plan for a court of impeachments, which would, in your opinion, be acceptable to the majority of the Assembly, without involving the introduction of the elective principle into the Council, or erecting a Committee of the House of Assembly into a tribunal for that purpose?—I am not aware of any other plan that would be agreeable to the majority of the Assembly; some, however, might perhaps be suggested: the main object is, that the inquiry should be on the spot.

When you say this, do you bear in mind that the independence of the judges has been announced as a condition indispensable before the appropriation of the Crown revenues shall be conceded to the Assembly?—Yes: but the House has never ceased to maintain that it has already a right to those revenues, not only from the nature of that property, but from the public Acts (of 18 Geo. 3, c. 12, preamble, and 46th & 47th clauses of 31 Geo. 3, c. 31), but they having been given up by Lord Dorchester, and that the appropriation bill of 1795 was given in consequence of the pledge then made.

Appendix, No. 12.

Elzear Bédard, Esq.

24 Dec. 1835.

You are aware that in England the hereditary revenue is never given up but for the life of the King?—Yes; but I understand great part of that property is personal to the King, which is not the case here, besides the surrender I have mentioned.

What is the difference between the lands of the Crown in England, and the demesne of the Crown here?—I am not prepared to speak of anything in England; but it appears to me that the demesne of the Crown here, is held *jure coronæ*, and not as a personal possession.

What leads you to think that the Crown has not a right to appropriate that which it holds jure coronæ, previous to any surrender of it to the Legislature?—I think that the lands of the country are the property of the country; those held jure coronæ, the same as the rest; the King is the administrator of those lands; but as soon as he makes money out of them, that money becomes the property of the people, because it is raised either on the people, or out of something that belongs to the people, and on this principle it ought to be appropriated by the people.

Is it your notion that, according to the constitution of England, the representatives of the people had a right, independent of any Act of Parliament, to appropriate the revenues derived from lands held by the King "jure coronæ"?—If the question applies to England, I do not sufficiently know the laws on this subject existing in England to be able to answer the question. If it applies to this country, I have already answered.

Do you not understand that the principle of the law of England is what would regulate the rights of the King here, except as far as that right may be modified by his having succeeded to the rights of the king of France?—I consider that the available territorial resources of the country while under the ancient government were particularly destined by law for the advantage of the people; were held by the kings of France as part of the *domaine*, and could not be, and were never considered as the private property of the king. These being the circumstances under the kings of France, they must be considered as applying to the kings of England. The province becoming possessed of a legislature analogous to that of England, the legislation about the *domaine*, and the appropriation of the revenue thereof, became immediately incumbent on that provincial legislature, as one of the subjects concerning the internal affairs of the country for which it was his right and duty to provide. In fact, also, in many particulars, the domains of the Crown have continued to be administered after the forms and regulations in accordance with the laws of the country.

Is there anything in Lord Dorchester's message which could lead you to believe it was his intention to give the appropriation of the hereditary revenue to the House of Assembly?—Most assuredly; and it was only in latter times that difficulties have arisen on this subject. It is considered as a breach of promise to have raised an exclusive claim to the appropriation thereof on the part of the Executive.

Messrs. *A. Stuart*, *J. Neilson*, —— *Duval* and *T. A. Young*, attended by appointment, and the following Questions were proposed to them.

Messrs. *A. Stuart*, *J. Neilson*, —— *Duval*, and *T. A. Young*.

26 Dec. 1835.

You are all agreed that the commissions of the judges should be held during good behaviour, and their salaries secured permanently; do you think the present salaries are upon a proper scale?—Generally, we do think so; and we all agree that their salaries should be permanent, and their commissions held during good behaviour.

Mr. *Young* added, that he would like to see the circuit allowances discontinued, and an increase of salary substituted; 200*l.* a year might be, he thought, a proper sum; it would do away the imputations which were sometimes cast on the judges, of being anxious to go the circuits for the sake of the allowance.

Mr. *Duval* objected that the increase of 200*l.* would be too much; he thought that the expenses of travelling and lodging ought only to be considered in fixing the amount of their circuit allowances, and that if calculated on the principle of allowing about a guinea or 1*l.* 10*s.* for each day they are absent from home, it would be sufficient.

Mr. *Stuart* said, I think the present system of a circuit allowance better than an increase of salary; but it ought to be a fixed sum, for each judge, for each circuit, and given as an allowance for his travelling expenses. We all think their circuit allowances should be secured to them permanently, as well as their salaries.

Mr. *Neilson* said, he thought their total emoluments ought not to exceed what they are at present.

Do you think there ought to be retired allowances or pensions secured to the judges after a certain period of service?—Yes; with proper provisions as to the period of service, and to the proportion which the retired allowance should bear to the full salary. A bill was passed by two branches of the Legislature on the subject not long ago, the provisions of which might probably be found fit and expedient.

Have you formed any opinion as to whether there should be in the province any tribunal before which a judge might be tried, or his conduct inquired into?—It appears to us essential, for the security of the public and stability of the Government, that there should be within the colony a tribunal for the trial, as well of judges as of other high public functionaries, upon impeachment by the Assembly. The sentence not to extend beyond a removal from office, and a disqualification to hold office thereafter; nor to prevent the individual accused from being subject to indictment for the same offence, if cognizable by a court of common law.

How could such a tribunal be formed in the province?—The only tribunal to which such high powers within the province could be confided is the Legislative Council thereof.

What would be the effect of making a sworn commission of the House of Assembly a tribunal for trying impeachments preferred by the Assembly, or by any member of it, against a judge?—

a judge?—The utter insecurity to the public; the subjection of public officers to a tribunal from which they could not reasonably expect anything like justice; and all the consequences which must of necessity result from the selection of an accusing body from and out of its own members, of the judges who are to try the truth of the accusation, confounding thus in the same body the character of accuser and judge. A popular body is too liable to the action of passion and prejudice ever to be fit, alone and uncontrolled, for the exercise of judicial powers. This inherent inefficiency for the purpose is further aggravated by the influence which opinions from without are likely to have upon very many of its members. In truth the nomination by the accusers of the judges finally to try and determine upon the innocence or guilt of the accused would be an idle mockery of justice. The form of tribunal here spoken of is besides novel, and contrary to all legal and constitutional analogies; according to those analogies, the proper tribunal is, as has been already stated, the Legislative Council. The proceedings contemplated would seem to involve an admission of the utter inability of the Legislative Council as an intermediate body, and would superadd to the legislative power already possessed by the Assembly, judicial and penal powers, which would place at their feet all the administrative officers of the Government; thus annihilating the whole executive power of the Government. Such a tribunal once established, all the power of the colony would be merged and lost in the Assembly. These objections to such a tribunal are stated generally and in the abstract, without reference to the peculiar circumstances of this country. It is hardly necessary to advert to those circumstances as giving additional weight to these objections, and rendering such a tribunal still more obnoxious.

Would, in your mind, these objections be materially removed by a provision that the committee should be formed of 30 or 24 members by ballot, and afterwards reduced to 12 by challenges?—We think not; the project is so essentially vicious that it is not susceptible of modification or palliation.

Is it not absolutely necessary, according to the practice of all criminal courts, that the prosecuting officer or counsel should be appointed by, at any rate be in privity with, the accusing party?—Certainly.

And you are aware that in England the managers of an impeachment are members of the House that impeaches?—Yes.

Do not these circumstances constitute additional objections against the tribunal, inasmuch as the prosecuting officers and judges would both belong to the same body?—Yes; this objection is involved in the general objection founded on the character of accusers and judges being the same persons. Mr. Duval here remarked, that in England the managers of an impeachment were not of necessity members of the House of Commons; they generally were, but there is no law that he was aware of to prevent the appointment as managers of persons not members of the House.

Would your objections be materially removed if, instead of the Committee of the House being constituted a tribunal to try the accusation, it were simply a Committee empowered, as in other cases, to inquire into any matter referred to it; that it should be appointed, not in consequence of the House having taken up the accusation, but before the House had pronounced any opinion on the case, or even acquired a knowledge of the case; and that the House should only become a party to the accusation when it should adopt the Report of its Committee, and on it vote an address to the Governor or to the King. The ultimate judgment thus being reserved to the King in Council, and the proceedings before the House bearing only the character of an investigation?—We do not think that the objections already stated are impaired by the modifications just mentioned. The functions of the House are those of a grand inquest; by the present plan they would be erected into a tribunal for the trial of state offences, their sentence subject to the confirmation of the King in Council. The objections against such a tribunal, or against a portion of the House sitting as a court for the trial of impeachments, are insuperable; but over and above this, the plan, as detailed in the question just put, deprives the subject of the right of preliminary inquiry before being put on his trial, which is essential to the due administration of justice. The whole power of the grand inquest of the country would by this project be taken from the body of the House of Assembly, and vested in each particular member of it. The House, thus deprived of its constitutional powers of grand inquest, would have conferred upon it the power of a criminal tribunal, for which it is unfit, and which would be contrary to all legal and constitutional analogy. This plan is full of anomalies. The evidence would be heard by the Committee, who would report their opinion; the finding upon the evidence and decision upon that opinion would be given by a body who did not hear the witnesses, nor the defence of the accused, and the final judgment would be pronounced by the King in Council at the distance of 3,000 miles, where the accused could not appear, except at a ruinous expense, and upon a form of proceeding so unprecedented as to leave the accused without the protection of those rules of law which are intended to serve as barriers for innocence against injustice attempted to be perpetrated by private individuals or bodies of men.

In the present state of the province do you not think there would be some danger, that even the Legislative Council might be under the influence of political feeling, and that their decision on an impeachment might be more determined by political feelings than the decision of the House of Lords would be in England?—There are inconveniences inseparable from a small society, one of which is their greater liability to local and personal prejudices; but this inconvenience would exist under any form of tribunal that we can conceive established within the colony in less or greater degree; and a tribunal without the colony is liable to such great inconveniences as to be equivalent to a denial of justice, and to an encouragement of calumny on the one side, and of neglect of the law on the other; innocence and guilt being thereby put on the same footing. The security and protection of the accused must be founded in the

Appendix, No. 12.

Messrs. *A. Stuart*, *J. Neilson*, —— *Duval*, and *T. A. Young*.

26 Dec. 1835.

fact, that the members of the Legislative Council, being nominated for life, are not liable to be influenced by the same fears as the members of the Assembly, at the same time that, if properly composed, a majority of the Council would be independent of the Crown, thus securing to the subject a tribunal, the majority of whose members would be independent both of the Crown and people. One additional advantage from the nomination of the Legislative Council as a tribunal for trial of impeachments would be, that it would impose a higher responsibility on the Crown in selecting persons for that body; and that the high judicial powers thus conferred upon it would give to, and receive from its legislative powers additional weight, and thereby render it more fit to occupy the intermediate place assigned it by the constitution. Any objections to this measure, founded upon the composition of the Council at any given time, we do not consider of any weight; powers can be conferred on no body that may not be abused; the publicity of the proceedings too within the colony, and the action of public opinion, founded upon fair public legal investigation, would operate as a salutary and sufficient control, both on the accusers and upon the body thus called upon to perform the functions of a judicial tribunal.

In the present state of the colony would not the Legislative Council be defective in this requisite of a criminal tribunal, viz. that such a tribunal shall give public satisfaction; would not both the accusing party, if that party should be the House of Assembly, and the majority of the public, if the constituents of the representatives of the people are so to be considered, be sure to be dissatisfied with the judgment of the Legislative Council?—The end of every tribunal, as we understand it, is justice; and, so far as criminal proceedings are concerned, the sympathies of the people at large will always ultimately support the side of justice. The publicity of the proceedings excludes the artifices by which popular hostility is frequently maintained against individuals who have been invested with high powers, whilst the same publicity obliges the judges to do what is right, and makes public functionaries careful of the manner in which they exercise the powers confided to them; at all events, and under any circumstances, justice is the main end of all governments, and cannot be sacrificed to popular feeling under any circumstances, without leading sooner or later to the subversion of the government that will not support it.

Mr. *Stewart* said, that for himself he thought the decisions of the Legislative Council would give more satisfaction to the people at large than those of any other tribunal that could be devised. On public accusations the sympathies are apt in the first instance to run strongly and decidedly against the party accused, and this down to the instant of the public trial, but it is otherwise then; and the acquittal of a man really innocent will, whatever may have been the violence of the prejudices before against him, soon meet public approbation. The error of the people on this head lies generally rather the other way.

Mr. *Neilson* thought in the present state of the province there would be a want of confidence in the first instance, that ultimately the opinions of enlightened men would prevail, and that if the Council pronounced equitable judgments they would be approved.

Mr. *Young* agreed with Mr. Neilson and Mr. Stuart, as far as the mass of the people was concerned, but in respect to the House of Assembly, as at present comprised, he was of opinion that it would object to the decision of any tribunal whatever which would protect a public officer from an unjust accusation, by permitting him to have a fair trial.

Do you think the Assembly will ever consent to make the Council a court of impeachment?—We think the present House of Assembly would not.

Bearing this in mind, what would you say to a proposal which should go to allow the King on the address of either House to issue a commission appointing two or more members of the other House and a barrister of at least 20 years' standing at the Canadian or English bar, as a court for the trial of the accusation; and in case the commission consisted of less than 12, the trial should be by special jury?—We think the plan objectionable; there is no precedent for it, as far as we know; it would vest an extreme power in the Crown, or rather in the Governor for the time being; the people would have no confidence in such a tribunal; it would be liable to all the prejudices to which the Council is now considered liable as a tribunal for the trial of impeachments, without having the power of that body; liable besides to all the inconveniences belonging to a tribunal selected for a particular occasion; it would not have sufficient weight to determine to the satisfaction of the public the grave matters brought before it; its acquittal or conviction would be considered as the act of the individuals composing the court, and would subject those individuals to praise or blame, without leaving anything stable or fixed behind.

The responsibility too, instead of attaching to a body having a high character to maintain, and whose occasional errors or aberrations might be subsequently corrected and itself restored to its proper weight, would, like other acts of individuals, only end with the individuals themselves. In the cases where it would be necessary to name members of the House of Assembly, they would be under popular influence or under the influence of their constituents. We do not think a jury necessary or proper for the trial of such offences as subject a person to impeachment; some only of which are indictable before a common law court.

Mr. *Neilson* said broadly, that he, for himself, objected to any tribunal for the trial of impeachments that was not conformable to the British constitution; that so long as we have a part of that constitution we ought to have the whole; and in this opinion the other gentlemen afterwards expressed their concurrence.

Amongst the political differences of the colony, may not the case occur of an address against a judge coming from the Legislative Council?—We do not think such cases would occur. If a legislative councillor has a charge to prefer against a judge, we presume he would think it proper to present it to the Assembly as the grand inquest of the country; and

and I do not suppose he would ask the Council (supposing it to be the tribunal before which the accusation was to be tried) to prejudge the question by entering into a previous inquiry.

Then would you not wish that the judges, besides being liable to impeachment, should (as in England) be removable on the address of both Houses?—We would.

Would not the power of addressing the Crown somewhat interfere or clash with its functions as a tribunal of impeachments?—We do not think the two functions would clash; the same two powers exist in the House of Lords.

Considering that the Crown makes it an indispensable condition of surrendering the appropriation of the hereditary revenue that the judges should be made independent, and the Assembly will not join in making them independent, unless a court of impeachment be established, other than the Legislative Council, and you entertain the opinion that the Legislative Council is the only body fit for a court of impeachment; would you let the whole measures fall to the ground, or would you apply to the Imperial Parliament, or what other course would you pursue?—Mr. *Stuart* said, I think that the interposition of the authority of the Imperial Parliament would become necessary.

Mr. *Neilson* said, if by the whole measure be understood the permanent provision for the support of civil government and administration of justice, I should say that the refusal of the Assembly to make such a provision would be sufficient to justify the interference of the Imperial Parliament in support of the Government and constitution.

Mr. *Young* said: Even independent of the consideration of the civil list which is to be obtained by the cession of the hereditary revenue, I think the measure of the independence of the judges, and the establishment of a court of impeachments, to be of sufficient importance to call for the interference of the Imperial Parliament, if they cannot be obtained in any other way. I look upon these measures as essential for the maintenance of the authority of the Judges, and to restore confidence in the administration of justice.

Mr. *Duval*. The refusal of the Assembly to make provision for the necessary and unavoidable expenses of the administration of justice and of civil government, would, in my opinion, not only justify, but make it imperative on the Imperial Parliament to interfere and secure to us by proper legislative enactments the benefits of the English constitution.

Would you wish that the judges, without exception, should be excluded from the Legislative and Executive Council?—Yes; that is the general wish of the whole country.

To which Mr. *Neilson* added, however, that he adhered to his former answer with reference to the recommendation of the Committee of 1828, respecting the chief justice.

Would there be the same objection to retired judges, who would have permanent salaries secured to them by law, sitting in the Legislative or Executive Councils?—Mr *Young* said, he would have an objection to their being members of the Executive, but not of the Legistive Council.

Mr. *Neilson* said that he had formerly answered the same question.

To Mr. *Young*.] What is the ground of your objection to a judge who enjoys a pension under the statute being a member of the Executive Council?—I think the Executive Council ought not to be a court of appeal. I think that it ought to have nothing to do with the audit of accounts; that it should be responsible for any matters of fact which may be stated to the Government in any of its reports, on references made to it; and to accomplish this, it ought to be composed of heads of departments, each head responsible for facts relating to his department, and as a retired judge would not be a head of a department, I think he should not be in the Council.

Why should not a retired judge perform the same functions as the Chancellor does in England, in advising the giving or the refusing of the Royal assent to bills which have passed the other branches of the Legislature, or as to affixing the provincial seal to any Acts of State which require it?—This duty has, as I understand, hitherto been performed in this province by the Attorney-general.

Do you think it would be likely to be better performed by a retired judge?—I should think the Attorney-general more likely to form a correct judgment (being in full practice) than a retired judge, who may not have attended to business for years.

The other gentlemen did not offer any opinion in answer to the three last questions.

SECOND REPORT.

MAY IT PLEASE YOUR LORDSHIP, Quebec, 12th March 1836.

1. IN our Report on the conditions to be annexed to the cession of the Crown Revenues in this Province, we expressed our understanding that the measure would not be carried into effect until the arrears due to the public servants were liquidated. The determination of the Assembly on that matter is now declared. They have voted an Address to His Majesty, in which they announce that they have postponed the consideration of the arrears, and determined to refuse any future provision for the wants of the local administration, in order the better to insist upon the changes which they require from the imperial authorities. Their utmost concession (and they desire it may not be taken for a precedent), is to offer a supply for six months, that time being allowed to His Majesty's Government and the British Parliament to decide on the fundamental alterations of the Constitution, and other important measures included in the demands of the Assembly.

2. This Address appears to have been adopted in consequence of the Assembly's having seen certain extracts of the Commissioners' instructions, published by the Lieutenant-governor of Upper Canada, and having formed the opinion that the tenor of those extracts was not sufficiently favourable to the ends which the House calls for, as required by the public good. As we understand that the particulars of the progress of affairs in the Assembly have been conveyed to your Lordship by the Governor-in-chief, and as a communication of that nature seems to fall more peculiarly within the province of the Executive Government than the sphere of our duties, we shall not enter here into any narrative of the order of proceedings, or any statement of the supposed views of parties in the House. We shall only observe, that the present is the first occasion on which, without any complaint of grievances in the administration, the Assembly has refused the means of conducting the Government, for the sole and avowed purpose of procuring changes in the Constitution. In the year 1833 the Assembly passed a Bill of Supply, with certain conditions, which induced the second branch of the Legislature to reject the measure, as being, in their view, unconstitutional. In the next year the House became involved in disputes with the Executive, which led them to disperse suddenly, and without taking the estimates into consideration. On the meeting of the Provincial Parliament in the ensuing year, 1835, a similar separation of the Assembly took place, for, finding that the Governor's warrant for their contingent expenses was withheld, they declined to proceed to business. In all these cases, the means of carrying on the administration of the country were rather lost indirectly, than deliberately denied by the representatives of the people. The decision is now embraced on its own merits; and the reasons for it are to be collected from the Address to the King.

3. Certainly the conjuncture is one in which His Majesty's Government might suppose that it would find some motive of peculiar urgency among those assigned by the Assembly for its determination. We are far advanced in the fourth year since there has been any appropriation of provincial funds to the use of Government; and although a sum, temporarily contributed from the British Treasury, has relieved the Civil officers, so far as to give them one year's salary during that period, the third year is passing away, during which they have not had the smallest fraction of their earnings in the service of the public. The distress and embarrassment which this state of circumstances has inflicted on the functionaries of the Province may be easily conceived. Many are living on money borrowed at an exorbitant interest; some cannot but be reduced to the verge of ruin: and to show that this suffering of individuals is not unattended with danger to the general welfare, it may be enough to remark, without painfully dwelling on private circumstances, that the Judges of the country are

amongst those who are left to provide for their subsistence as best they may, after three years' stoppage of their official incomes.

4. This condition of affairs might naturally have been expected to terminate with the commencement of the present session. In the two previous years the supplies had failed in the Assembly, either from differences with the Governor for the time being, or from the refusal of funds for the payment of their contingent expenses; but when the Provincial Parliament last met, these grounds of dissension were removed. Your Lordship will not perceive, amongst the grounds assigned for prolonging the financial difficulties, any complaint against the existing Provincial Administration, or the assertion of any demerit in the parties who will continue to be deprived of their lawful remuneration. No local cause of quarrel is alleged, of which the settlement might be indispensable before the public business could proceed; on the contrary, it is stated openly, and without disguise, that changes of a political nature are the end in view, and that, until certain acts be done, competent to no other authority than the Imperial Parliament, and comprising organic changes in the Constitution, by virtue of which the Assembly itself exists, that House will never make another pecuniary grant to the Government. Thus the public servants, no parties to the contest, are afflicted merely as instruments, through whose sufferings to extort concessions totally independent of their will to grant or to refuse. It is scarcely necessary to remark, that the objects, for the enforcement of which even such means as these are thought expedient, have never been positively refused, but have only been referred to a Commission of Inquiry, in order that, before the Executive branch of the Government undertakes to recommend changes of a very important and extensive nature, it may receive advice from persons entrusted with the confidence of His Majesty. This, however, has not proved enough. Apprehensions of delay from the Commission, and doubts of the freedom with which it will act, are expressed in the Address; and the Assembly intimates, with frankness, that it will allow of no deliberation; that either its demands must be acceded to forthwith, or that it will employ its power over the supplies, to render the government of the country impossible.

In thus repeatedly marking the position taken up in the Address to His Majesty from the Assembly, we have no wish to convey any opinion, beyond what the statement of the facts implies, upon the conduct of that body; we only desire to point it out to your Lordship, distinctly and emphatically, that the choice offered to His Majesty's Government and to Parliament is between an instantaneous and unqualified compliance with the demands of the Assembly, on the one hand, or, on the other, a recourse to some other means than their liberality, for the maintenance in Canada of those administrative and judicial establishments, without which society cannot be held together.

5. Finding matters reduced to this issue, we think it our duty to address to your Lordship a Report on the subject. We feel called upon to do this, first, because it is stated in your Lordship's instructions, that to inquire into the financial affairs of the Province, and to aim at relieving the Executive Government and the two Houses of General Assembly from the unhappy distractions of the last fifteen years, may be deemed the main object of our employment; and secondly, because, as Commissioners for the investigation of all grievances affecting His Majesty's subjects in Lower Canada, we know not where we could turn our attention to a more urgent grievance than the unmerited distress of a numerous body of persons whose claims on the public are rejected—than the consequent embarrassment to local trade—and the appearance to the world at large of distractions calculated to injure the commerce of the Province, and prevent the influx of capital and enterprize from the mother country.

6. The demands of the Assembly are as follows:

First, the introduction of popular election into the Legislative Council.

Secondly, the direct responsibility of the Executive Council, "conformably," according to the words of the Address, "to the principles and practice of the British Constitution."

Thirdly, the immediate cession to the House of Assembly of the whole public revenues of the Province, from whatever source derived, without any preliminary stipulation for a Civil List, or for the continuance of a few life charges created

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on some of the hereditary portion of those revenues, before the cession of His Majesty's right to them was contemplated by Government.

Fourthly, the repeal of certain Imperial Statutes, which are described as noxious Acts, comprehending, "amongst others," the Act of 6 Geo. 4, c. 59, commonly called the Tenures Act, and the recent Act passed in the fourth year of His present Majesty's reign, incorporating a Company to hold lands in Lower Canada. The other Acts alluded to under this head are not specified.

Fifthly, the admission of that essential control in the Legislature over the management and settlement of the waste lands, which, it is observed, would be the direct consequence of the principles of the Constitution.

7. The first observation that occurs to us upon these demands is, that most of them go beyond what, by its constitutional powers or privileges, the House of Assembly can ask as a right, and that in particular the demand respecting the Elective Council involves a vital alteration of the Constitution to which alone their own Assembly owes its existence; and therefore if it should happen that in resisting such demands, the privileges of their own body should be curtailed, or even its very existence endangered, the consequences will be only such as the House has brought upon itself by engaging in the contest. In fact the parties who demand the change, do it only upon the presumption that the Constitution of 1791 can work no longer in Lower Canada, and, therefore, even with them the question merely is, in which direction it shall be altered. So long as the pretensions of the House of Assembly were confined to matters of finance, its desire to enjoy the entire control of the receipts and expenditure of the revenue could be supported in great measure by the privileges it sees exercised in the House of Commons; and so long as they withheld their votes of money for the attainment of any object within the exercise of their constitutional rights, taken in their widest sense, their proceedings might be justified by doctrines admitted in the mother country; but in advancing to a demand unquestionably beyond their constitutional privileges, and involving the destruction of a branch of the Legislature co-existent and co-ordinate with their own, no precedent can be looked for but in the unhappy page of our history which contains the record of our civil wars. After these preliminary observations, we proceed to examine the effects of complying with the demands of the Assembly, this being the first of the courses which appear open to the Government.

8. With respect to rendering the Legislative Council elective, it is not necessary that we should pronounce any opinion on the question taken in an abstract and general form: we shall rather confine ourselves to the subject as regards this Province. There is no doubt that the measure would occasion some real and much apparent diminution of authority in the mother country. Lower Canada, with an elective Assembly and an elective Council, would bear a considerable resemblance to the independent States in the neighbourhood; and it is probable that the administration of her affairs would, in point of fact, concentrate itself, somewhat more than at present, within the limits of the Province. We are not, however, prepared to say how far such a state of things might, necessarily and by its own nature, be either inconsistent with good government, or prejudicial to the duration of the connexion with the mother country, in a colony inhabited by a homogeneous and united people. It is enough for us to remark, that in Lower Canada, unfortunately, such is not the condition of the people. We are far from wishing to imply that those who now demand an elective Council in this Province look to shaking off the dependence on the mother country; on the contrary, it would seem a more probable supposition that they desire still to avail themselves of the protection of Great Britain, as of a shield under which their own resources might be developed, and their national existence secured, better than by their incorporation with any other state, or even by the attainment of immediate independence. But they may naturally seek for themselves all real authority in the country, and this we think would unquestionably be effected by the measure which we are contemplating; for we believe it impossible to devise any fair and impartial form of election, through which the great majority of a Council elected by any constituencies in Lower Canada could be other than of the party which dominates in the Assembly. This is precisely the result which is dreaded by those inhabitants of the Province who are opposed to an elective Council. The change demanded in that respect is deprecated in the most earnest and solemn manner by almost the whole of the commercial class in the Province, and by incomparably the largest number of persons of direct British descent.

Should the powers of the Assembly be augmented and consolidated by drawing the second Chamber from the same source as the first, there is a large body in this Province whose writings and declarations show, that there is no injustice or oppression to which they would not think themselves exposed. It is not willingly that we advert to the grievous distrusts which prevail amongst the different inhabitants of this Province; nor, in doing so, do we wish to imply any estimation of the extent to which the impressions of either party regarding the other may be just. But we feel bound to declare our opinion, as to the probable course of events, that the English portion of the community, and especially the commercial classes, will never, without a struggle, consent to the establishment of what they consider little short of a French republic in Canada: we believe that if the measure they regard in this light were adopted, the presence of a commanding British force might become necessary to prevent a collision between the two parties. Under these circumstances, and with a population so divided, it remains to be judged whether the Government can with propriety concede a change in the Constitution, on which so serious a difference of opinion exists. For our own part, we should probably have thought it proper to defer our Report on this subject until we had made more detailed inquiries, specifically directed to the present point: but the Assembly does not admit such a course. It has appealed directly to the Imperial Authorities, and with measures which make it impossible to suspend a decision. If, therefore, our opinion be required by His Majesty's Government now, we must report, in the honest and unbiassed exercise of that free judgment which His Majesty has commanded us to employ on all matters falling under our investigation, that we do not think it advisable, at once and without further consideration, to introduce the principle of popular election into the Legislative Council of Lower Canada.

9. Having been compelled to lay so much stress on the influence of feelings connected with national distinctions, we ought, perhaps, in fairness to apprize your Lordship, that of the persons of British extraction in the Assembly, more, we believe, than half are in the habit of voting with the French Canadian party. The fact however is, that though English by birth or origin, the greater part of them do not represent English constituencies. If proof were wanting that national distinctions do exercise an influence on the course of affairs in this Province, it might be supplied in the absence of all sympathy on the part of the House of Assembly in the existing distress of the public officers. Those officers are for the most part of English origin, a fact on which, taken in itself, it is needless for us to make any comment, but which, we think, explains the treatment of the public functionaries by the members of Assembly. If both spoke the same language, used the same habits, and had those ordinary feelings of sympathy which must follow from any familiar intercourse in private life, we do not believe it possible that one of the two could find resolution to plunge indiscriminately the whole of the other class into difficulties, not for any acts of their own, not even for any obnoxious sentiments they might hold, but in order that, by their losses, a third party might be induced through compassion to surrender objects desired at its hands.

10. Before passing on from the demand for an elective Council, we cannot refrain from mentioning our concern that the mere expression of an indisposition towards it at the outset should have been judged by the Assembly an adequate reason for arresting the course of Government, and threatening to enter into an almost mortal struggle with every authority suspected of repugnance to the favourite plan. Great Britain has dealt out privileges to Lower Canada with no niggardly spirit; she has bestowed upon the Province a constitution closely imitated from her own; and if some unavoidable defects be found to impair the analogy, it is surely no intolerable grievance that the mother country should hesitate to destroy, on that account, the general conformity of the subordinate government to her own. With that order of government which contents the mother country, she may without harshness require that the colony likewise should be content. Even to those, therefore, who are satisfied that the Council ought to be made elective, we do not think that the refusal or delay of such a measure on the part of Great Britain can constitute a valid ground of hostility to the Imperial Government. For such persons the obvious course is the one by which most great changes are attained in free governments, namely, argument, persuasion and perseverance; nor would that country deserve the name of freedom in which extensive alterations were to be accomplished by a mere sudden

sudden enforcement of opinion, not listening to dissent—not allowing of inquiry —but overbearing all liberty of discussion with a violence to which no delay would be endurable.

11. With respect to the Executive Council, we believe the general purpose contemplated by the Assembly to be, that it should be composed of persons removable at will by the Governor, and whom he should change from time to time, so as to keep them in unison with the majority of the Assembly. Although we have bestowed much attention on this project, and have turned it in various lights, there appears to us, on examination, to be involved in the plan one objection which must always render it inadmissible. In England, where it is the maxim of the Constitution that no wrong can be imputed to the sacred person of His Majesty, the responsibility of measures of state is annexed to his confidential advisers; but here the head of the Executive Government is a servant of His Majesty, responsible to the King for his conduct, and amenable as well to public opinion as to impeachment at the bar of Parliament; and it follows that his measures ought to be under his control, in like manner as their consequences rest upon his character. But to render the Executive Councillors answerable to any but the Governor himself, would require that they should have new power proportioned to their new responsibility, and all the power conferred on them must be subtracted from the Governor. It appears, therefore, to be the direct tendency of a Council, responsible in the sense we are now considering, to withdraw part of the administration from His Majesty's representative in this Province, and to abridge, to that extent, the efficiency of the functionary on whom, above all others, His Majesty must rely for retaining the allegiance of the Colony.

There are other questions connected with the Executive Council, of which the consideration will be requisite, but it is not necessary to enter into them upon the present occasion.

12. In proceeding to the remainder of the demands of the Assembly, we must observe, that as the failure of any one has been regarded as a reason to vitiate the concession of all the rest, the remarks we have made on the preceding topics render it of less immediate consequence to adopt a decision on the others.

13. It is entirely our wish that the public revenues of the Province, from whatever source derived, should be subjected to the application of the Legislature; and in every year when they have not declined to make any appropriation at all, the only exception to that rule has consisted of the proceeds of sales of lands, and licences to cut timber. Upon offering for the sake of peace to surrender that fund, and to give up absolutely the control of the other Crown revenues, His Majesty, never doubting his constitutional right to the money, made no stipulation for any prospective advantages from it; the Governor was only commanded to require security for a few life charges placed upon the land and timber fund, before a thought of abandoning it had been contemplated by the Government. The Assembly answers, in the present address, that the money must be surrendered without any condition, and adds an intimation that, with respect to the charges which it is wished to secure, its mind is decided. We regret the continuance of a dispute with the Assembly on any question, and most of all on a question of finance; and it is painful to witness the protraction of a distressing conflict for the sake of a very insignificant sum of money; but we must say, that if the feelings of the House in this matter are so unbending that the Government must choose between standing on its rights or else betraying the honour of the Crown, and sacrificing the established interests of three or four helpless individuals, we think there can be no hesitation which is the proper course. The pensions and allowances at issue amount to less than 700*l.*, and are of a nature continually to decrease. That such a sum as this should be wrested into a ground of dissension between the Province of Lower Canada and the Government of the British Empire, is a truly mortifying consideration. But seeing the variety of matters in which the hostility of the Assembly is used as a threat to compel the Government to unwilling sacrifices, it is plain that any concession from such a motive would be fatal, and consequently that there is the more reason, in the case we are now considering, that His Majesty's Government should not swerve from a principle essential to its character for justice.

14. Next we turn to the Imperial Statutes, of which the repeal is demanded. On the repeal of the Tenures Act, 6 Geo. 4, c. 59, we have not much to add to the remarks in your Lordship's instructions, from which your Lordship draws the conclusion that His Majesty's Ministers ought not to propose to Parliament any

further interference with that statute. Assuming that by the more recent Act of Parliament on the same subject, 1 Will. 4, c. 20, the Provincial Legislature is sufficiently empowered, as your Lordship appears to be satisfied that it is, to alter, amend or repeal the Tenures Act, we cannot but think it far the safest course to leave the subject entirely to the local Legislature, so as to ensure a sufficient knowledge of any interests created under the Imperial Statute, which an abrupt repeal from home might injure. It has been objected, we are aware, that by leaving the subject to the Provincial Legislature, the wishes of the Assembly are liable to be defeated by a contrary opinion in the Council. This, however, is the very nature and condition of their existence. So long as the Legislature is preserved in its present form, the same credit for good intentions must be allowed to one branch as to another, and the naked fact of disagreement cannot be taken as a presumption against either. Your Lordship will observe, that we do not convey the intimation of any judgment of our own with respect to the effects of an absolute repeal of the Tenures Act; but it is precisely from the uncertainty of which the subject admits, that we are sensible of the propriety of referring it to the legislative authorities of the Province. We may, in investigating the matter of Tenures generally, return to this question. Meanwhile, if our statements in this Report be occasionally hypothetical or incomplete, we can only regret a circumstance arising from that premature discussion of almost every question of magnitude, which the address of the Assembly to His Majesty has compelled. One point at least, on which we can speak with confidence, is the repeal of the Land Company's Act, passed in the fourth year of His present Majesty's reign. Whether the institution of such companies in future be desirable, and under what restrictions, or what conditions, if any, of previous approval by the Provincial Legislature, are matters open to debate, on which it will be hereafter our duty to report the result of our investigations. Meanwhile, we have not a moment's doubt in stating, that the call for a repeal of the privileges of the existing company is inadmissible. The nature of the contract with that body seems to have been to a certain degree erroneously conceived by the framers of the address. But whatever might be its defects, to cancel from political motives the title to a large tract of property, lawfully acquired, and on which money has already been expended, would be an act of confiscation, enough to destroy every feeling of security in the Province. We do trust that whenever the Assembly may quit that attitude of hostility which it has assumed towards the Imperial authorities, it will see the necessity of receding from this demand. What other Imperial Statutes are required to be revoked, is not stated, but if the Act 3 Geo. 4, c. 119, commonly called the Canada Trade Act, be one of the number, it is, we apprehend, well understood that there would be no objection to repeal it, so soon as the Provinces of Upper and Lower Canada may provide any other means of obviating the disputes which that Act was passed to cure.

15. We find some difficulty in ascertaining the nature of that essential control over the waste lands of the Crown, which the Assembly considers would flow directly from the principles of the Constitution. In one place it is observed that the waste lands are subject to the supreme authority of Parliament, and that the Provincial Parliament is fully and "*exclusively*" invested with this authority, which, the Assembly adds, that House will never willingly renounce; and with reference to your Lordship's instructions, which state upon this subject, as your Lordship will remember, that the management of the Crown lands may with advantage be regulated by statute, but that the conduct of that management ought to remain with the Government, the Assembly informs His Majesty that there is a disagreement between its own views and those of the Government. Yet in another passage it is declared, that the Assembly does not wish to interfere with the due functions of the executive authorities, and that it only claims its right to legislate jointly with the other branches of the Legislature upon subjects connected with the waste lands. Without undertaking to reconcile these apparen discrepancies, it is enough for us to observe that we entirely adhere to the principle laid down by your Lordship, namely, that the general rules of managing the Crown lands may, with propriety, be prescribed by the Legislature, but that their application must be confined to the Executive; and if this be the view adopted by the Assembly, we are glad that no difference of opinion exists on the subject.

16. Having thus examined the most prominent demands of the Assembly, some at least of which it appears evident cannot be complied with, while not one

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can be rejected without incurring the continuance of that opposition with which the Government is at present paralysed, it remains to be considered how this effect may be counteracted. The only remaining appeal, as the Assembly itself observes, is to the high authority of Parliament; and in the ensuing portion of our remarks, we shall consider ourselves as discussing the proposals which it is open to His Majesty's Government to make to that authority.

17. Various plans, as might naturally be expected, have come under consideration at such a moment. We may enumerate the principal suggestions as follows:

1st. A legislative union of the two Provinces of Upper and Lower Canada. Without entering into any other discussion of it, we would only observe, that we think that this is a question which ought not to be entertained, except with a very general prevalence of opinion in its favour in both Provinces.

2d. The erection within Lower Canada of seven or more districts, of which Montreal and Quebec should be two, and each of the others should consist entirely either of lands held by French or by English tenures; that to each of those districts or cantons municipal institutions of an elective character should be given by charters for the management of their internal affairs, and that from each of them 10 or 12 members should be returned for a House of Assembly; which, together with a Legislative Council and a Governor, should constitute the Legislature of the Province. If the principle of election could ever be applied to the Legislative Council, it would probably be through the means of such municipalities as are contemplated in this proposal. With respect to the whole plan, we wish to say no more at present than that it would require too much time and arrangement to fit the emergency.

3d. An amendment or suspension of the Act of 1 & 2 Will. 4, c. 23. This Act provided that the customs' duties levied under the statute of 14 Geo. 3, c. 88, should be appropriated by the Provincial Legislature instead of by the Lords of the Treasury; and the present proposal is to alter the Act, either by entirely suspending its operation for a limited term of years, or else by enacting that until the several branches of the Provincial Legislature can agree in the exercise of the power of appropriation which it confers, that power shall be exercised by those who had it before.

18. A measure of this nature appears to us the best which the exigency of the case admits. We do not deny that it will curtail powers we should wish to see vested in the Assembly; for we admit that a power of refusing, as well as distributing, an appropriation, would properly belong to them. But we have already observed, that when the Assembly provoked a contest, with the subversion of the existing Constitution in view, the fault became their own should the result lead to injury to their privileges instead of those which they assailed. The step we have proposed is the very mildest, adequate to relieving the Government from its pecuniary embarrassments. The amount of the revenues under the 14 Geo. 3, received into the chest since the last appropriation to the support of Government, would suffice, in conjunction with the Crown revenues, to discharge the whole of the arrears due to the public servants; and by the return, hereto annexed, your Lordship will see, that from an average of four years, the future application of these two classes of revenue in the same manner may be expected to meet the ordinary expenditure of the public service. Thus the Government will be placed in a condition to subsist, without the necessity of immediately assenting to every change of the Constitution which the Assembly may demand; while yet the control of that body over the other portions of the public revenue, and the multifarious and important nature of the powers which it will still retain, will afford very cogent motives to the Government to attend to its wishes, and cultivate its good will.

19. So great indeed will be the powers remaining to the Assembly, that doubts have been suggested whether the alteration of the 1 & 2 W. 4, c. 23, though it may abate the immediate difficulties of the Province, will be of any permanent avail. In this point of view it is observed, that the Assembly may continue its war upon the co-ordinate branches of the Legislature with more violence than ever; that the resumption of the duties under the 14 Geo. 3, c. 88, will only restore the Government to the same position in which it maintained an unsuccessful conflict with the Assembly in former years; and, therefore, that it would be better at once to advance a step further, and suspend the Constitutional Act of 1791, for a limited number of years. However startling

the proposal, it is said that many arguments may be adduced in its support—that not only it will be more decisive, but that, being more evidently based on the difficulty of working the free institutions of Great Britain in a country disturbed by the jealousies of a divided population, the proceeding would be less offensive to the other Colonies of Great Britain than a mode of action from which it might be inferred that, in other cases equally, a refractory Assembly would be deemed liable to a curtailment of privilege.

20. We cannot, however, undertake to recommend such a plan. Independently of the general objections to any course which would be not merely unpopular, but utterly unconceived by the community at large before its adoption; of which therefore neither the advantages nor the defects have been exposed by the light of public discussion, nor the extent of probable opposition to it indicated, we shrink from the measure on a view of its own merits. We are persuaded that a local assembly is a benefit essential to good government in a Province such as Canada, and even though deprived of some of its other attributes, we think that a body armed with powers of debate and remonstrance, affords the best security for a just administration of the executive authority.

21. The plan which we recommend, namely, an alteration of the 1 & 2 W. 4, is not destitute of the advantages of previous discussion, and whether or not it might leave room for serious opposition, unquestionably it would cure the evils now most urgent. It must be remembered that previously to the time when the revenues in question were ceded, they fell short of the wants of Government, and hence the Assembly triumphed by its control over an indispensable supplement; but the resumption of these revenues now, would give the Government as much as its existence requires, and would thus really modify some of the extreme workings of the Constitution, without incurring the evils of its complete suspension. We know not whether we may venture to expect it, but it is proper to hope, that the reasoning may be mistaken which assumes that the Assembly will push to further extremities a desperate contest with the Imperial power. By the measure under consideration it would, for the first time, learn that the mother country may exercise another office besides that of yielding, and that when there has been every recent mark of respect and concession on the one hand, it may be prudent to meet it with some forbearance on the other. If this should not be the issue, but, on the contrary, the Assembly should drive the mother country to either renewed efforts of control, or else the abandonment of every part of the Constitution which the third branch of the Legislature may invade, it will be time enough to determine upon the measures required by such an emergency, when their necessity shall be proved by the event, and not upon its mere apprehension.

Your Lordship will see that in the foregoing remarks we have not adverted to a dissolution of the Legislature. Amongst the many subjects of which we have been forced to a premature discussion, by the unhappy nature of recent portions of the session, we will not allow ourselves to be carried into any remarks on the representation of the people, or the efficiency of public opinion in this Province. We will merely say, without comment, that we cannot at this moment recommend a dissolution of the Provincial Parliament.

We have, &c.

(signed) Gosford.
Chas. Edw. Grey.*
Geo. Gipps.

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* Previously to signing this Report, I have delivered to the Secretary a statement of my difference of opinion as to some parts of it, together with the draft of a Bill referred to in the statement; in order that both of these may be entered upon the minutes of our proceedings, and may go home with the Report.

15 March 1836. (signed) *Chas. Edw. Grey.*

EXTRACTS of the MINUTE of PROCEEDINGS on Monday 14 March 1836.

Sir *Charles Grey* delivered in the following paper.

1. THE single measure to which I would advise His Majesty's Ministers to have recourse at the present juncture, is to procure from the Imperial Parliament, without any delay, an enactment of which the substance should be, that where the different branches of the Provincial Legislature of Lower Canada have been or shall be unable, from disagreement, to exercise the power which it was intended to transfer to them by the 1 & 2 Will. 4, c. 23, that power shall be exercised by those who had the exercise of it before.

2. As the Commissioners are unanimous in recommending this, it is very reluctantly that I qualify my signature to this second Report by any notice of dissent; but it is necessary that I should do so to preserve a consistency, without which my opinions must be worthless. The Report enters rather loosely, as it seems to me, into a discussion of the most important objects of our Commission, which discussion is shown to be immature by the uncertainty and incompleteness of the conclusions in which it results. I should have deemed it sufficient to have marked in our Report, on the present occasion, the absolute incompatibility of the demands of the Assembly with our instructions, and then to have recommended rather more fully and distinctly than we have done, the step which we all think ought to be taken. Upon the Report as it has been settled, I am obliged to remark, that there are sentiments and opinions interspersed in it which I do not entertain; and that of the reasoning, and even of the narrative, there are parts in which I am not able to concur.

3. The objections against substituting popular election for the appointment by the Crown of the members of the Legislative Council, are presented much more dubiously in the Report than they are impressed upon my mind. I think there would be many advantages in establishing a different arrangement of districts within the Province from that which exists at present, and with municipal institutions for the management of their internal affairs; but it will be found, upon examination, that this would not necessarily involve a repeal of any portion of the Act of 1791; and I certainly do not recommend it with the view of its leading, as the Report suggests, to the introduction of an elected Legislative Council for the Province.

4. There is a great deal of the reasoning in the Report as to an Executive Council to which I cannot assent, though I agree in thinking that it would be pernicious to establish either by enactment, or by the instructions of His Majesty's Ministers, any rule that the Executive Council should from time to time be changed, so as to keep it always *en suite* with the majorities of the Assembly. It ought to be borne in mind, that it is the Government of a Province which is in question, and that there are certain relations with the Empire which are to be preserved. With a view to these, the appointment of some of the Executive Council ought to be made in England, whilst a larger number might be appointed by each successive Governor, for the period of his own government, comprising the leading men of all parties in the Province; and of these, two or three at a time only might be summoned to each ordinary Council held for the despatch of business. This would enable the Governor to have the counsel of those who, at the moment, should be in possession of the chief influence; and to bring together those whose opinions, though different, should approximate.

5. I will not enter further into the subject of the Tenures Act, than to observe that the 1 Will. 4, c. 20, does not enable the Provincial Legislature so far to alter the provisions of the Tenures Act; as to prohibit changes from the tenure en fief to that of soccage, which is what the Assembly demands. The repeal of the Land Company's Act is put out of all question by our instructions.

6. As to the wild lands, it is pretty clear that the real meaning of the address is, that instead of the Crown lands and wild lands being subjects which can only be taken up by the Houses of Legislature upon message from the representative of the Crown, the Assembly asserts a right of passing bills respecting these and all other hereditary Crown revenue or property, whenever it may please to do so, and of addressing the Governor on the subject, and of enforcing a compliance with its addresses, by withholding the supplies necessary for the subsistence of the executive power.

7. Having thought myself obliged to make the preceding statements, I will add to them some corroborations of the recommendation into which the Report resolves itself, but which does not appear to me to be placed by the Report on its strongest grounds.

8. The duties imposed by the 14 Geo. 3, c. 88, were not affected by what is called the Declaratory Act of 1778. Whatever opinions, at one time or another, may have been entertained, this is now a settled principle of legislation for the British colonies, an instance of which may be seen in a statute so recent as that of 3 & 4 Will. 4, c. 59, ss. 10, 11. The Act, therefore, of the 1 & 2 Will. 4, c. 23, did not recognise a pre-existing right of the Provincial Legislature, but was meant to permit the exercise by the three branches of that Legislature in conjunction, of a power which was before lawfully exercised by officers of the Crown, under the sanction of an Act of Parliament.

See Report of Committee of 1828, especially Mr. W. Horton's Evidence, p. 295.

9. Those duties were not only imposed permanently by the Parliament of Great Britain in 1774, for defraying the expenses of the administration of Government, and generally of Civil Government in the Province; but the particular application of them was vested in officers of the Crown; and the 14 Geo. 3, c. 88, is regarded by a party which is of great influence in the Province, not simply as a statute, but as partaking, in some degree, of the character of a public compact, upon the faith of which many persons, and especially many American

loyalists, were induced to settle in the Province, who considered that a revenue at the disposal of the Crown, sufficient for all the ordinary expenses of the executive and judicial branches of the Government, was an essential and indispensable element of order and of peace.

10. It was rather hastily concluded in 1828–29, that as the revenues at the disposal of the Crown in Lower Canada then fell short of the expenses of the Civil Government, the Government was altogether in a state of pecuniary dependence on the Assembly. The fact is, that if the contingent expenses of the two Houses of Legislature had been deducted from the estimates, and a few retrenchments had been voluntarily made, which were afterwards compelled by the Assembly, the executive and judicial branches of the Government might even then have been sustained without any absolute necessity of recurring to the annual vote of the Assembly. The duties under 14 Geo. 3, c. 88, were gradually increasing, and at the moment of the passing of the Act of 1 & 2 Will. 4, c. 23, they had actually, by that increase, released the Government from its difficulty, if not from its perplexity, and constituted, with the other monies at the disposal of the Government, a fund more than adequate to all the expenses of the executive and judicial branches.

11. The course of proceeding as to the hereditary revenue and civil list of the United Kingdom, which was adopted for the first time, I believe, on the accession of His present Majesty, was the example probably which induced the Secretary of State for the Colonies, in 1831, to give up the power of appropriating the duties of the 14 Geo. 3, c. 88, without securing by the same, or by a synchronous enactment, an adequate list of permanent appropriations for the support of the Civil Government. But although the Commons of the United Kingdom, after the concession of the hereditary revenue was made by one enactment, did not hesitate to provide permanently by separate and subsequent statutes for the Civil Government, experience shows that the Assembly of a Province, distracted as this is by parties, ought not to be subjected to the same temptation. It is better to appear over cautious, or even suspicious, than to hazard the stability of a Government; and at all events, as the Act 1 & 2 Will. 4, c. 23, conferred a power which was to be executed by three parties, it would not have been superfluous to have provided against the contingency of the parties not being able to agree, or of the power, for any other reason, not being exercised. This is no more than what is done in the ordinary transactions of private life, as where a matter is referred to the arbitration of two or more, or where anything is to be done by the appointment of a party who may omit to make any.

12. The urgent difficulty of the present moment, and the peculiar applicability of the remedy to the crisis, might, without overcharging them, have been more forcibly stated than in the Report. Sir James Kempt, in the Report of the 1834 Committee of the House of Commons on Lower Canada, pp. 111–113, acknowledged that he could not undertake to govern Lower Canada, without having the duties of the 14 Geo. 3, c. 88, or some equivalent revenue placed permanently at his disposal. The necessity of discharging the arrears, and the circumstances by which the faith of Government is pledged to this measure, might have been more fully detailed; the progress and increase of the mischief arising from the present state of affairs more pointedly expressed; and the attention of His Majesty's Ministers might have been drawn to the strong, though justifiable, measure of the Legislative Council's having stopped the greater part of the money bills, to prevent the money due for the services of the Civil Government from being dissipated in miscellaneous appropriations.

13. The bill which I would submit to His Majesty's Ministers for the purpose of its being laid before the House of Commons upon the present emergency, is neither a repeal nor a suspension of the 1 & 2 Will. 4, c. 23, nor can it even be called an amendment so properly as a supplementary enactment, which, as it seems to me, ought to have been an original clause of the Act; and it would leave the three branches of the Provincial Legislature at liberty to exercise at any time, in the whole or in part, the power conferred on them by the 1 & 2 Will. 4, whenever they can agree in doing so. I deliver to the Secretary to the Commission a draft of that bill to be sent home herewith.

14. I am not aware of any other practicable method than that which we have recommended, of at once discharging the arrears due for the administration of justice and service of the Civil Government, and of sustaining the executive and judicial branches in the discharge of their respective functions, unless indeed the Imperial Parliament should think fit to advance what might be necessary for these purposes out of the revenues of the United Kingdom, as in fact it was wont to do, until the Province offered to take the whole on itself. It is questionable, perhaps, in more instances than that of Canada, whether it would not be both politic and just that the mother country should provide for a share of the expenses of the Governor and Executive Council of a Province, on the ground that a part of their duties at least are the management, not of the internal affairs of the Province, but of the relations between the Province and the Empire. If Parliament were to authorize only a loan, it might be secured to an amount more than sufficient for the occasion, upon the hereditary revenue in Canada, and on the proceeds of the sales of wild lands. These suggestions, however, are made only to meet the case of unforeseen objections existing against taking the course which we have pointed out. In preference to any other remedy, I recommend distinctly and decidedly the supplementary enactment set forth in the preceding paragraph; and that although annual *accounts* should be laid before the Assembly by the Government, of the application of the monies thus to be placed at its disposal, nothing should be included in any *estimates* for which an appropriation by the Assembly is not really necessary. A great deal of the present misunderstanding in Canada, as to revenue and finance, will be found to have grown out of a practice of observing no accurate or steady distinction between accounts and estimates.

15. I cannot

15. I cannot express as I should wish the importance which ought to be attached to a prompt use of the opportunity which is presented by the address of the Assembly to His Majesty. If it is missed the Government will go rapidly down stream: if it is rightly, by which I mean temperately, but firmly, used, I see nothing in Canadian affairs which, with skill and forbearance, is not capable of adjustment. The proposal to Parliament of such a bill as we have suggested ought not to be clogged or encumbered by any other measures of Canadian policy; but probably before it can have passed into a law the Commissioners may be prepared to recommend definite and practical measures—

1. For alterations in the Executive Council.
2. In the Legislative Council.
3. For the establishment of municipal districts.

Of these the two first might, according to my opinion, be effected by instructions issued by His Majesty in Council to the Governor, the third by a provincial statute, if the two houses of Legislature could be brought to agree in it.

16. I wish to close my remarks by a statement that I am decidedly adverse to a repeal of the Act of 1791, which is spoken of in the Report. This measure would not be really disagreeable to any of those who from any motives, however discordant and various, desire to change the relations of the Province with the mother country; but to a certainty it would throw the Canadas into confusion, and would be held forth to the world by some as a justification for a declaration of independence.

(True extract.)

(signed) *T. Frederick Elliot.*

EXTRACT of the MINUTE of PROCEEDINGS on Monday, 14 March 1836.

SIR GEORGE GIPPS stated that in conformity with the course of proceeding prescribed to the Commissioners, in their instructions of the 17th of June 1835, No. 2, par. 11, he desired to place upon the Minutes some remarks connected with, and arising out of, their second Report, and he accordingly handed to the Secretary a paper, of which the following is a copy.

1. In the Report which we have this day adopted there is nothing to which I decidedly object; but it does not appear to me to contain so clear and comprehensive a review of the subjects which must now force themselves on the consideration of Government, and of the Imperial Parliament, as will be expected of us now that we have been upwards of six months in the country, and I am therefore desirous of placing on record, in a more decided manner, my own views and the opinions which I have formed on some of the points at issue. It may indeed be said, that the question as to what is now to be done, is a narrow one, and that we should not travel beyond it; but I cannot help thinking that more will be looked for from us, and that the occasion is one in which a general review of the political state of the country is called for.

2. I join in the main recommendation of the Report, namely, that as an immediate measure, recourse must be had to a suspension or alteration of the 1 & 2 Will. 4, c. 23; and I do so, because, whilst I think the demands of the Assembly cannot be complied with, I know no way by which the means of paying the public servants, and of carrying on the Government, can be procured, except by the resumption of the revenues of the 14 Geo. 3, unless, indeed, the Imperial Parliament should be disposed to furnish the money, which I think very improbable; or that it be determined at once to suspend the Constitutional Act of 1791. This latter course is one which I cannot take upon myself the responsibility of advising, though in some respects I think it would be hardly more objectionable than the suspension of the Act of Will. 4, whilst it would unquestionably be more efficacious. I am indeed very far from regarding the resumption of the revenues of the 14 Geo. 3, as a safe, easy or efficacious measure, and it is only with the greatest reluctance that I can contemplate a course of proceeding which will take from the representatives of the people their now acknowledged privilege of disposing of all monies raised within the Province by taxation. A thorough conviction that there has been on the part of the Government a sincere desire to avoid the necessity of such a coercive measure, and that the Assembly have brought it on themselves by their own violent and unconstitutional proceedings, can alone reconcile me to its adoption. I do indeed feel that it is necessary, and therefore I cannot refuse to take my share in the responsibility of advising it.

3. I cannot, however, concur in the opinion entertained by one of my colleagues, that the non-insertion in the Act of the 1 & 2 Will. 4, of a clause authorizing an appropriation by the Treasury, in default of any being made by the local Legislature, was either an oversight or an omission to be deplored. I consider that Act to have been passed in consequence of the opinion broadly expressed by the Committee of the House of Commons in 1828, that "the real interests of the Province would be best promoted, by placing the receipt and expenditure of the whole public revenue under the superintendence and control of the House of Assembly;" and I conceive that the measure was intended to carry with it a full recognition of the principle, that England ought not to interfere in the internal pecuniary concerns of the country; a principle which I believe to be just and proper. I must even add that I can see no good reason why the hereditary revenue was by the Committee excepted from the rule, or why it was not in 1831 conceded with the rest, conceded, I of course mean, in exchange for a civil list.

4. And although I do not mean to deny that an Act of appropriation, like any other Act of Parliament, to be complete must be enacted by the three branches of the Legislature, I am firmly of opinion that the practice which has obtained in England, of vesting the control over the whole revenue, not only primarily, but virtually in the representative branch of it, is a salutary one, and conducive to good government; and I believe that the practice would be no less salutary in Canada than in England.

5. In being forced, then, by the pressure of present circumstances, to recommend a deviation from this wholesome rule, I would earnestly desire that it should be done in the least objectionable manner; and I think it would be less objectionable to suspend the operation of the 1 & 2 Will. 4, for a definite period, say three or five years, or until some stated conditions (such, for instance, as that of paying up all arrears, and providing a civil list) should be complied with, than to suspend it in the indefinite way that would be effected by an additional enactment, providing that in any year in which the *three* branches of the local Legislature could not agree in the appropriation of the revenues, they might be appropriated by the Treasury, or, in other words, by the Governor, who is *one of the three*. Such an enactment, if not limited as to time, would have the effect of excluding for ever any efficient control on the part of the popular branch of the Legislature; and even if limited to three, five or seven years, would seem to carry with it the acknowledgement, that the Legislative Council is to have as much weight in the disposal of the public money as the Assembly, which is what, in my opinion, it ought not to have; I believe it to be absolutely essential for the preservation of harmony between the several branches of any Legislature, that the duty or privilege of controlling the public expenditure should be exercised by one of them only; had this principle been recognised in Canada, I believe that most of the dissensions of the last 20 years would have been avoided, and the mutual respect for each other's privileges, so necessary for the well-being of the whole, have been maintained, which is now so unhappily and so utterly destroyed.

6. With respect to the working of the measure, which in default of any other we have been forced to recommend, I cannot entertain the hope, that unless combined with others of a very firm and judicious, but at the same time healing character, it will prove either efficacious or safe. The Assembly, by the suspension of the Act 1 & 2 Will. 4, will be deprived, it is true, of a portion of its power, but it will still remain in possession of ample means of thwarting the Government, and these means we may expect to see it exert with an unscrupulous hostility. The suspension of this Act is moreover the measure which they expect, for they had due notice of it in 1834, and for which they, to a certain extent, are prepared. The Assembly, even when deprived of the revenues of the 14 Geo. 3, will retain its control over funds nearly twice as great as those in the hands of the Executive; and although the House may not have power to dispose of them at its discretion, it will at any rate be able to lock them up, and especially to prevent the application of them to any purpose favourable to the Government or to the interests of the British party. It may also refuse to pass bills required by the commercial interest, such for instance as bills for the renewal of the charters of the Quebec and Montreal banks, both of which will expire in July 1837. When I consider, therefore, the bitter hostility, or rather fury, with which the Assembly will be animated against the British Government, and against British interests; the invectives which, under the direction of its practised leaders, it will pour forth against England; the power it will possess of spreading disaffection within the Province, and inviting interference from without, I am at a loss to imagine how the Government can be carried on with advantage, and I cannot help fearing that we shall ultimately be driven to abandon the country with all the shame of failure upon us, or to maintain it at a cost infinitely beyond its value.

7. It may be said, on the other hand, that I have drawn an exaggerated picture of the difficulties which the Government will have to encounter; that these difficulties will be found to melt away under a firm yet liberal and impartial administration; or that a sense of patriotism, or even of self-interest, will lead parties to act in harmony; and this, more especially should the sense of Parliament against their recent proceedings be unequivocally pronounced; all this may, I admit (and sincerely do I hope it) come to pass under a wise and firm administration, but nevertheless I cannot but feel an apprehension that it will be otherwise, and entertaining such a feeling, I think it right to express it.

8. The effect, too, that the measure will produce upon the people, and especially on the House of Assembly of the Upper Province, is a matter of very important consideration. The English of Lower Canada look, and I apprehend with reason, for support from the Upper Province, should they ever be engaged in a contest of a national character with the French Canadians; but in a contest growing out of a measure such as that now under discussion, the course to which the democratic portion of the population of Upper Canada, or even the House of Assembly might take, is to me doubtful, to say the least.

9. And so in Lower Canada, should a contest ever arise (as but for the presence of the English authorities and English troops I believe it would) between the French Canadians and the English, I believe that all parties speaking English, including settlers from the United States, would unite with the latter, and probably in the end prevail; but so long as the contest can be made to appear as one, not of nationality, but of political principle, the Americans and a portion even of the British will be on the democratic side. It is the policy of the leaders of the majority in the Assembly to give the dispute the character of a contest between the aristocratic and the democratic principle, rather than one of nationality, and they have succeeded to a great extent; for, of the members from the townships, where there are no persons of French, but numbers of American origin, nearly as many vote with the French party in the Assembly as against them, and if to the persons thus returned by the American or democratic interest be added the Englishmen who are sent to the Assembly by French constituencies, we shall find

find that of the twenty-two individuals with English names, or of English origin, who have seats in the Assembly, thirteen generally vote with the French party, and only nine against them. It is, I believe, the apprehension that their democratic allies of British origin would change sides, should the dispute become one purely of nationality, that renders the leaders of the French party desirous of remaining for the present under the protection of Great Britain.

10. It is by considerations such as these, that I am led to adhere to the opinion expressed in the Report, that even were all the demands of the Assembly conceded it would not necessarily follow that the connexion of the country with England would be broken, or the duration of it materially abridged. I would myself even go farther, and say that if the question only were, by what means the sovereignty of England over Canada could be prolonged for the greatest possible period, I think it would probably be done by keeping the country as much as possible French; but although the first duty of every person employed under the Crown should be, and is, to preserve the integrity of the empire, I think I may be permitted to say that it is not to be aimed at by such means. It is not bare empire, but the raising up an enterprising, happy and enlightened population, and spreading as far as possible over the globe our own laws, our language and our institutions, that I look on as the legitimate ends of colonization; especially when undertaken on the scale that is alone suited to North America: and in the pursuit of such a course, we should not, I think, be deterred by the apprehension that our colonies may eventually become independent; rather should we accustom ourselves to look upon it as the natural termination of the connexion. In Canada, however, at the present moment, the larger portion of the inhabitants of British descent entertain feelings of affection and reverence to the mother country, and next to a subjection to the French party, dread a separation from England as the greatest evil that could befal them. If, therefore, it be not desirable to render the country more French than it is, for the purpose of prolonging a dominion that would be scarcely more than nominal, neither would it be consistent with our honour to abandon it altogether, if in so doing we must desert the interests of a large portion of our immediate fellow countrymen, who desire and deserve our protection.

11. A withdrawal of the protection of England would, I believe, lead to an immediate struggle between the two races, and indeed I can scarcely doubt that, but for the presence of an overwhelming force, the same consequences would ensue were even the present demands of the Assembly complied with; and, as in this case, the English party would probably be the aggressors, the power of the Government would have in the first instance to be directed against men who are not only our fellow subjects, but for the most part the natives of our own isles. The apprehension of this would alone be sufficient to prevent my entertaining the idea of an immediate compliance with the demands of the Assembly, even if those demands were far less extravagant than they are. I wish, however, here to put on record more distinctly than is done in the Report, that my chief objection to a compliance with their demands, at least with such of them as do not involve a violation of the pledged faith either of the Government or the Parliament, would not apply to a case in which similar changes were demanded by an equal majority of an homogeneous people. I consider that it is unwise to endeavour to put out of sight the fact that there is on the continent of America a leaning towards elective institutions, and that this will continue, and must increase in intensity so long as the republics of America continue to exhibit the marvellous display they now make of energy and advancement.

12. And of the Legislative Council of Lower Canada, I would repeat in the language that has been addressed to a former Secretary of State, that "in a country where the people are becoming every day less disposed to respect any authority that does not emanate from themselves, the members of it stand only as nominees of the Crown," without any of those reverential ties to bind them to the people, which are derived in the old countries of Europe, and particularly in England, from the early establishment of aristocratic maxims, from the historical and traditional recollections which attach themselves to our feudal and chivalrous ages, and above all from the splendour of their high rank and riches. With no such holds on the affections of the people to compensate for the want of respect and of moderation towards them evinced by the other House, it is difficult to conceive how they can ever regain the position they occupied before their dissensions with the Assembly, or when the full power over the public purse shall have been recognised as an attribute of the Lower House, (as I at least think it must,) how the Council can avoid sinking into insignificance, how it can act as an efficient check on the more popular body, or as a barrier between it and the Throne. An elected Council would bear probably less of affection and of deference to the person of the Sovereign or his representative than the present Council of Lower Canada; but it would have, at any rate, more power to support his authority whenever it might be disposed so to do; even its right to participate in the control of the public purse might be maintained (should circumstances require it, though I think that they would not) on the grounds of their being, as well as the Assembly, the representatives of the people. The local Government seems to me to have leant hitherto for support too much on the Legislative Council, and taken too little pains to gain adherents in the Assembly, the consequence of which was, that when, towards the end of the late administration, the Assembly had become the most powerful of the two, there was not in it (nor is there indeed now) a single member connected with the Government, or one in any way pledged to the support of its measures. I would add, that although there has never been in the Assembly, since the commencement of the constitution, more than a proportion of about one English to three or four French Canadians, the policy of conciliating the French party, or of gaining adherents amongst them by a show of confidence, or by appointments to office, seems seldom to have been adopted; on

the contrary, as far as I can make out, it seems that in earlier times the Government acted on the expectation that the English population of the Province would shortly outnumber the French, and then become dominant in the Assembly, as well as in the Executive and the Council.

13. I think our Report is deficient in not stating, as we ought surely by this time to be prepared to do, how far the Legislative Council may, in our opinion, admit of modification; and the more particularly so as in the event of Canadian affairs being brought in the present session before Parliament, it may be desirable to dispose at once of all questions for the settlement of which the intervention of the Imperial Parliament is necessary. At present no legislative councillor has the power of resigning his seat, nor is there any way of removing, except by an Act of the Imperial Parliament, a person who may have become a bankrupt, or even of forcibly depriving of his seat a public defaulter, or other delinquent. The idea thrown out in the Report of making persons who had filled certain municipal offices legislative councillors for a term of years, is, I think, a modification of the elective principle that might be advantageously introduced. As yet there are but two municipalities in the country (those of Quebec and Montreal). But if the chief magistrates of those towns, on the completion of their term of service, were to become of right legislative councillors for an equal term, I think it would add at once consideration to the municipal office, and popularity to that of a councillor.

In the same manner, in the event of the establishment of a university, I do not see why the superior, or some officer of it, might not be a legislative councillor, or that one or more legislative councillors might not be elected by the fellows of the university to serve for a definite term of years. So also any other public bodies, say the advocates practising at the bar of Quebec and of Montreal, might elect each one legislative councillor, and the chambers of commerce at Quebec and Montreal each one; and if in this way six or eight persons could be elected, I do not see why five more might not be chosen by districts to represent the agricultural interests; say two for each of the districts of Quebec and Montreal, and one for that of Three Rivers, by means of a double election; that is to say, that each parish might send a deputy or deputies to the chief town, and that the deputies should there elect a councillor; and to whatever might be the number of councillors got together by these various means of election, it might not be unreasonable to stipulate, that an equal number should be added by the King or his representative; the whole to serve, not for life, but for a period of seven years, and to be renewed, not all at once and in a body, but individually, as each individual should complete his term of service. This idea, I beg to say, is merely thrown out for consideration in the event of its being found absolutely necessary to make some alteration in the constitution of the Council.

I will conclude my remarks on the Legislative Council by saying that, in my opinion, no attempt to improve it by the addition of new members from the popular party would be successful. It would require ten or a dozen new members to produce a sensible effect; and they could, I fear, only be obtained by taking from the Assembly the more moderate of the dominant party, and thus making it worse than it is.

14. Neither on the subject of the Executive Council does our Report, I think, express an opinion sufficiently explicit, considering that we have been six months in the Province. As the Governor, in his speech of the 27th of October last, declared the present constitution of the Executive Council to be vicious, and promised an alteration in it, I think we may be expected by this time to have adopted some settled opinions respecting the alterations that are required in it. I look upon the demand for a responsible Executive Council, that is to say, for a Council responsible to, or in other words, removable by the Assembly, as one of a more democratic nature, and which, if granted, would form a step towards independence greater even than that of making the Legislative Council elective, because, in such case, the measures proposed by the Executive to the Legislature would soon come to be considered as the measures of the Executive Council, and not of the Governor, and consequently his responsibility to the authorities at home would be weakened. To preserve his responsibility I consider it very desirable that the method in which measures are now proposed to the Assembly should not be departed from; I mean the method of proposing them by message, instead of having them introduced by a member of the Executive Council, as by a minister of the Crown. Should this latter course ever be adopted, the Executive Councillor proposing the measure will come to be considered as responsible for the success of it, and in such case it will be difficult to avoid falling into the practice of England, and causing him to resign in case of failure. For these reasons, as well as for others that I am prepared to state whenever the subject of the Executive Council is brought more immediately under the consideration of the Commissioners, I am of opinion that it will be dangerous to make any extensive alteration in the constitution of it. I would wish, however, to see an extensive change in the personal composition of it, on the principle set forth in the Governor's speech of the 27th of October last, and I think the number of its members might be advantageously reduced from nine to seven. I should add that, as the Executive Council exists only under the King's prerogative, no legislative enactment will be required to make the alterations in it that are required.

15. I think that our Report is further deficient in not stating what our prospects of success were before the events had occurred in Upper Canada, which led to the adoption by the Assembly of the recent address to the King, and to the loss of the supplies. In doing this it would certainly have been necessary to advert in our Report to some of the proceedings of the Government, with which, as Commissioners, we have no concern, but we must at least be supposed cognizant of them, and therefore I do not think that, to make mention of them, would have been improper. Our Commission had avowedly its origin in a desire to conci-

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liate; and I therefore apprehend that our duty was to follow, as far as possible, a middle course, or one of mediation between the extreme parties by which the country was distracted. We found however these parties so bitter in their hatred, so divided, not only by political and social habits, but also by religion and language, and so unmeasured in their expressions of contempt for each other, that we (or rather I should say I) soon perceived, or thought I perceived, that our only chance of doing good was by keeping the great questions, by which I mean the questions, above all, of an elective legislative Council, and a responsible Executive one, as far as possible out of sight, until, by the general measures of the Government, an improvement could be effected in the public mind, and some few friends at least gained to it in the Assembly.

The demand for an elective Council had been made by the French party so unanimously and so decidedly that we could not expect men, who stood pledged to it, to turn round on a sudden at our bidding and give it up; all we could venture even to hope was, that they would do so when we had proved to them that they could have a security for good government without it. Had we, on our first arrival, declared that the question of an elective Council was absolutely a forbidden one, we should have failed *in limine* with one party, for we have now the best reason for knowing that there would in such case have been no session of the Assembly; had we, on the other hand, spoken of our instructions as more favourable to the democratic party than they were represented in the Governor's opening speech, we should not only have sinned against the truth, but have driven perhaps the English party to violence. I do not think we were ever at liberty to publish our instructions *in extenso*; but had we even done so, no good effect would, in my opinion, have been produced by it. The course which we pursued was so far successful, that there was every reasonable prospect, up to the 9th of the last month, that the arrears of the last three years and supplies of the current year would have been granted. We have the most complete assurances that on the 7th of the last month such a determination was provisionally adopted at a private meeting of the persons of most influence in the Assembly, the question being then to come on in the House on the 11th. On the 9th, however, the extracts from our instructions, which had been published in Upper Canada, reached Quebec, and the course of their proceeding was immediately changed. An exaggerated degree of importance was attached to the disclosures by some of the party who had only with reluctance, and from the fear of showing weakness by a division, consented to give the supplies; and their leader, who had only been waiting for an opportunity to renew the excitement of past times, gladly, and but too successfully availed himself of the opportunity. The question of paying the arrears was entirely set aside; the supplies voted only for six months, and a new address to the King and both Houses of Parliament carried by the same majority that had carried those of 1834 and 1835. On this occasion, too, we saw the minority reduced to the old number of eight, though it had, on the question of the supplies, in spite of the untoward circumstances under which they were brought forward, been carried to 35 against 47. That the new friends of Government should however have thus voted, does not much surprise me, for although the men who had been gained to its support might willingly have allowed the question of an Elective Council to stand over, and even might have voted against any proposal to bring it forward again needlessly, they could not (as they say at least) when forced to a division, refuse to vote in favour of those principles to which they had in former times so solemnly, and so repeatedly pledged themselves. It is true that they might have absented themselves, and it is to timidity rather than to a want of inclination that their not having done so is, I believe, to be ascribed, for however bold or reckless the majority of the Assembly may be when acting *en masse*, the examples of fortitude or independence in individuals are unfortunately very rare.

Without desiring then to exaggerate the evil consequences of the disclosure of our instructions at so critical a juncture, I think I am justified in saying, that if the supplies had been obtained, and the interval that must have elapsed between the present session and the next been well employed in following up the line of policy to which the Government stood pledged, there would have been a fair chance in the next session of its having a majority in the Assembly. But circumstances are now essentially changed, and the only prospect of success from any measure that can be adopted, short of a suspension of the constitution, rests in my mind upon the probability that the Assembly will be inspired with some awe should such a measure pass unanimously or with little opposition through the House of Commons.

The House of Commons is (whatever may be their outward expressions of loyalty) the only authority in England that they now look upon with respect.

(True extract.)

(signed) *T. Fred. Elliot.*

EXTRACT of the MINUTE of PROCEEDINGS, on Tuesday the 15th of March 1836.

Lord *Gosford* desired the following entry to be made.

As this Report has elicited supplementary remarks of considerable length from my colleagues, I think it right to mention, on my part, that I have not signed it without great regret, but that I feel it too plainly called for by the extreme necessity of the case.

(True extract.)

(signed) *T. Fred. Elliot.*

STATEMENT of the Sums now due on account of Arrears for the Expenses of the Civil Government and the Administration of Justice in the Province of *Lower Canada*, as also the probable Amount of the same Expenses for the current Year.

		£.	s.	d.
Due to the military chest for an advance applied to complete payments up to 10 October 1833		31,000	–	–
Due to the officers of Government, and for the contingent expenses of the same, for the two years 1834 and 1835, exclusive of the expenses of the two Houses of the Legislature		77,960	9	4
Estimated amount of the expenses of the current year, exclusive of the expenses of the Legislature, or of any charges for which special provision has been made by the Assembly		52,000	–	–
	£.	160,960	9	4
By amount of monies now in the chest, and at the disposal of the Executive, the same being either the produce of the hereditary, casual and territorial revenue, or of other funds considered as at the disposal of the Crown	£. 45,749 – 10			
N.B.—In this sum is included a small balance of 480 *l.* 15 *s.* 10 *d.* remaining out of the advance of 31,000 *l.* made from the military chest.				
By estimated amount of the same revenues for the remainder of the current year	16,000 – –			
		61,749	–	10
Deficiency	£.	99,211	8	6

STATEMENT of the Net Proceeds of the Duties and Licences levied under the 14 Geo. 3, c. 88, since the last Appropriation by the Legislature, for the support of the Civil Government and Administration of Justice.

	£.	s.	d.
Net proceeds (after deduction of the proportion due for Upper Canada) for the year ended 10 October 1833	34,317	18	6
Ditto for the year ending 10 October 1834	24,106	1	11
Ditto for the year ending 10 October 1835	31,115	3	7
	89,539	4	–
Probable amount of the same for the year ending 10 October 1836	30,000	–	–
	119,539	4	–
Deficiency in Civil Expenditure, as stated above	99,211	8	6
Surplus £.	20,327	15	6

Quebec, 15 March 1836. (signed) *Jos. Cary*, I. G. P. P. Accounts.

STATEMENT

STATEMENT of the Expenses of the Civil Government and Administration of Justice in *Lower Canada*, for Four Years, from 1832 to 1835, inclusive, as also of the Sums which would have been at the Disposal of the Government if the Revenues of the 14 Geo. 3, c. 88, had not been given up.

YEARS.	Expense of Civil Government and Administration of Justice, including the Arrears now due, but exclusive of the Expenses of the Legislature.	REVENUE. Hereditary, Casual and Territorial, including Land and Timber Fund.	Permanent Appropriations by the Legislature.	Revenues of the 14 Geo. 3.	TOTAL of the preceding Revenues.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.
1832 - -	42,867 19 3	8,744 4 10	10,594 19 3	33,531 1 2	52,870 5 3
1833 - -	46,613 7 1	9,171 6 1	10,330 5 1	34,317 18 6	53,819 9 8
1834 - -	47,811 14 8	11,266 10 5	10,120 10 7	24,106 1 11	45,493 2 11
1835 - -	* 51,194 12 -	† 21,749 4 9	10,200 2 6	31,115 3 7	63,064 10 10
£.	188,487 13 -	50,931 6 1	41,245 17 5	123,070 5 2	215,247 8 8
Total Expenditure (as in the first column) - - £.					188,487 13 -
Surplus in Four Years - - £.					26,759 15 8

* *In the expenditure for this year is included a payment of arrears to chairmen of quarter sessions, and a large compensation for land to the Ursuline nuns, constituting altogether a sum of 3,033 l. 0 s. 9 d., not forming any ordinary or recurring kind of expenditure, which should be taken into account on striking an average.*

† In this year's receipts is included a payment of 5,944 *l.* 11 *s.* 9 *d.* from the British American Land Company. The whole of the payments of the Land Company must be completed by the year 1844; and the average payments in each year up to that time will be 6,000 *l.*, exclusive of interest on outstanding instalments.

Quebec, 15 March 1836. (signed) *Jos. Cary*, I. G. P. P. Accounts.

A BILL to be intituled "An Act to provide against difficulties which have arisen in the exercise of the powers conferred by an Act passed in the 2nd year of the reign of His present Majesty," and intituled "An Act to amend an Act passed in the 14th year of the reign of His Majesty King George the Third, for establishing a Fund towards defraying the Charges of the Administration of Justice, and support of the Civil Government within the Province of Quebec in America."

Whereas by an Act passed in the 14th year of his late Majesty King George the Third, intituled "An Act to establish a Fund towards further defraying the Charges of the Administration of Justice and support of the Civil Government within the Province of Quebec in America," it was amongst other things enacted, that from and after the 5th day of April 1775, there should be raised, levied, collected and paid unto his said late Majesty, His Heirs and Successors, for and upon the respective goods thereinafter mentioned, which should be imported and brought into any part of the said Province, over and above all other duties then payable in the said Province by any Act or Acts of Parliament, the several rates and duties therein mentioned, (that is to say,) for every gallon of brandy or other spirits of the manufacture of Great Britain, 3 *d.*; for every gallon of rum or other spirits, which should be imported or brought from any one of His Majesty's sugar colonies in the West Indies, 6 *d.*; for every gallon of rum or other spirits, which should be imported or brought from any other of His Majesty's colonies or dominions, 9 *d.*; for every gallon of foreign brandy, or other spirits of foreign manufacture, imported or brought from Great Britain, 1 *s.*; for every gallon of rum or spirits, of the produce or manufacture of any of the colonies or plantations in America, not in the possession or under the dominion of His Majesty, imported from any place except Great Britain, 1 *s.*; for every gallon of molasses or syrups, which should be imported or brought into the said Province in ships or vessels belonging to His Majesty's subjects in Great Britain or Ireland, or to His Majesty's subjects in the said Province, 3 *d.*; for every gallon of molasses or syrups, which should be imported or brought into the said Province in any other ships or vessels in which the same might be legally imported, 6 *d.*; and after those rates for any greater or less quantity of such goods respectively: and it was thereby further enacted, that all the monies that should arise by the said duties (except the necessary charges of raising, collecting, levying, recovering, answering, paying and accounting for the same,) should be paid by the Collector of His Majesty's Customs into the hands of His Majesty's Receiver-general in the said Province for the time being, and

should be applied in the first place in making a more certain and adequate provision towards paying the expenses of the administration of justice, and of the support of the Civil Government in the said Province, and that the Lord High Treasurer, or the Commissioners of His Majesty's Treasury, or any three or more of them for the time being, should be and they were thereby empowered from time to time, by any warrant or warrants under his or their hand or hands, to cause such money to be applied out of the said produce of the said duties towards defraying the said expenses; and it was thereby enacted, that the residue of the said duties should remain and be reserved in the hands of the said Receiver-general for the future disposition of Parliament. And whereas the said Province of Quebec hath, since the enactment of the said Act, been divided into the two Provinces of Upper and Lower Canada. And whereas also, by another Act passed in the 2nd year of the reign of His present Majesty, and intituled "An Act to amend an Act of the 14th year of His Majesty King George the Third, for establishing a Fund towards defraying the Charges of the Administration of Justice, and support of the Civil Government within the Province of Quebec in America," it was amongst other things enacted, that it should and might be lawful for the Legislative Councils and Assemblies of the said Provinces of Upper and Lower Canada respectively, by any Acts to be by them from time to time passed and assented to by His Majesty, His Heirs and Successors, or on his or their behalf, to appropriate, in such manner and to such purposes as to them respectively should seem meet, all the monies that should thereafter arise by or be produced from the said duties, except so much of such monies as should be necessarily defrayed for the charges of raising, collecting, levying, recovering, answering, paying and accounting for the same. And whereas the dissensions which unhappily have arisen between the Legislative Council and Assembly of Lower Canada have hitherto defeated the intention with which the last-mentioned Act was passed, and have made the same wholly inoperative within the said Province of Lower Canada since the 10th day of October which was in the year of our Lord 1832, during which time the said Legislative Council and Assembly of the said last-mentioned Province have been unable, from disagreement, to exercise the powers which it was intended by the said last-mentioned Act to have transferred to them: BE it therefore enacted, that whenever it shall appear that 12 months have elapsed without any Act or Acts of Appropriation having been passed by the Legislative Council and Assembly of Lower Canada, and assented to by His Majesty, wherein it shall have been particularly set forth and shown that there has been an appropriation made of the whole of the monies which shall have arisen or been produced from the said duties, and which shall have been paid into the hands of the Receiver-general of the Province, previously to the passing of such Act or Acts of Appropriation, it shall be lawful for the Lord High Treasurer, or the Commissioners of His Majesty's Treasury, or any three or more of them for the time being, or for the Governor of Lower Canada under his or their directions, to cause the whole or any part of such monies which shall have so arisen and been paid to the said Receiver-general, and which shall remain unappropriated, to be applied in the like manner and to the same purposes as the said Lord High Treasurer or Commissioners might have applied them, or caused them to have been applied, if the afore-mentioned Act of the 2nd year of the reign of His present Majesty had not been passed.

II. And whereas it has not been customary to keep the said monies arising from the said duties separate and apart from the other monies in the public treasury or hands of the Receiver-general of the said Province of Lower Canada; but since the 10th day of October, which was in the year of our Lord 1832, no Act of Appropriation whatsoever has been passed, nor any general provision has been made, by the said Legislative Council and Assembly of the said Province of Lower Canada, under which the monies which have arisen from the said duties, and which have been paid into the hands of the Receiver-general of the Province, could have been regularly applied either in payment of the expenses of the administration of justice or the support of the Civil Government; and the salaries of the Governor, the Judges, and many other officers and servants of the Government of the same Province, have consequently fallen in arrear and now remain unpaid, and the necessary expenses of the offices of the Government, and of the courts of law, have been supplied on credit, and the prisoners in the common gaols have been in part sustained by advances made by the sheriffs, or by tradesmen or other persons, out of their own proper monies or goods, and much inconvenience and distress has been in divers ways occasioned, to the interruption of good government and order in the said Province of Lower Canada, and to the hazard of the public peace. And whereas the revenues of the province of Lower Canada during the whole time last aforesaid have been and still are much more than sufficient to provide annually for all the expenses of the administration of justice, and support of the Civil Government thereof; and for want of the due appropriation of the said revenues, they have accumulated to a large amount in the hands of the Receiver-general of the said Province: BE it therefore enacted, by the King's most excellent Majesty, by and with the consent, &c., that it shall and may be lawful for the said Lord High Treasurer or Commissioners of His Majesty's Treasury, or any three or more of them, or for the Governor of Lower Canada under his or their directions, from and out of any unappropriated monies of the revenues of Lower Canada, which now are, or hereafter may be, in the hands of the Receiver-general of the said Province, to take, issue and apply to such purposes as are hereinafter stated any sums not exceeding on the whole the amount of the monies which have arisen or been produced, or shall arise or be produced, from the said duties in the said Act of the 14th year of the reign of his late Majesty King George the Third mentioned, between the 10th day of October which was in the year of our Lord 1832 and the 10th day of October now next ensuing, and which shall have been paid into the hands of the said Receiver-general of the Province, and which, if the said Act of the 2d year of the reign of His present Majesty had not been passed, might have been applied

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by the said Lord High Treasurer or Commissioners of His Majesty's Treasury, in defraying the expenses of the administration of justice, and the support of the Civil Government of the said Province of Lower Canada.

III. And be it further enacted, by the authority aforesaid, that the sums so to be taken and issued as last aforesaid, shall be applied, first, in discharging all such arrears and sums of money as shall be found to be due and owing, in the manner hereinafter stated, on account of the administration of justice and support of the Civil Government in the Province of Lower Canada; and secondly, in repaying to His Majesty's Commissary-general in the said Province the sum of thirty-one thousand pounds (31,000*l.*), being the amount, without interest, which, since the said 10th day of October in the year of our Lord 1832, has been advanced by the said Commissary-general, under the authority and direction of His Majesty's Principal Secretary of State for Colonial Affairs, in aid of the Civil Government of the said Province. Provided always, and it is hereby declared and enacted, that whatever services have been rendered, or whatever expenses have been incurred, in the administration of justice, or support or service of the Civil Government of the said Province, since the said 10th day of October in the year of our Lord 1832, by or with the sanction or approbation of the Governor of the said Province, shall be deemed and held to be a sufficient consideration in law to authorize the Governor of the said Province for the time being, out of the monies so to be taken and issued as last aforesaid, to apply and pay, as for a debt or debts due in respect of such services or expenses, all such sums as the Governor of the said Province might lawfully have paid, or caused to be paid, in respect thereof, if a certain Act, passed by the said Legislative Council and Assembly of the Province of Lower Canada in the 2d year of the reign of His present Majesty, and intituled "An Act to make Provision for defraying the Civil Expenditure of the Provincial Government for the present year," had been re-enacted or continued so as to have made or kept the provisions thereof applicable and in force for the defraying of the civil expenditure of the Provincial Government in each and every year since the passing thereof, and until the 10th day of October now next ensuing.

IV. And whereas it is the true intent and meaning of this Act to provide only, that in those cases in which, from disagreement, the Legislative Council and Assembly of the Province of Lower Canada have hitherto been unable, or shall hereafter be unable, by and with the assent of His Majesty, to exercise the power which was intended to be transferred to them by the said Act passed in the second year of the reign of His present Majesty, such power shall be exercised by those who had the exercise of it before. And whereas it is expedient to prevent any misunderstandings as to the application of the monies arising from the said duties which were imposed by the said Act of the fourteenth year of the reign of his Majesty King George the Third: BE it therefore enacted, that nothing in this Act shall extend or be construed to extend to prevent the Legislative Council and Assembly of Lower Canada from appropriating, at any time by any Act to be by them passed, and assented to by His Majesty, His Heirs or Successors, or on his or their behalf, the whole or any part of the monies arising from the said duties, which shall not have been appropriated under the provisions of this Act by the said Lord High Treasurer or Commissioners of the Treasury, or by the Governor of Lower Canada acting under his or their directions; and that whensoever any part of the same shall be appropriated by the said Lord High Treasurer or Commissioners of the Treasury, or by the Governor of Lower Canada under his or their directions, a full and true account thereof, with as little delay as conveniently may be, shall be laid before the Assembly of the said Province by the Governor thereof, and also before the House of Commons of the Imperial Parliament of the United Kingdom of Great Britain and Ireland, by the said Lord High Treasurer or Commissioners of His Majesty's Treasury*.

EXTRACT of MINUTE of PROCEEDINGS on the 15th of March 1836.

With reference to the Bill drawn by Sir Charles Grey, Sir G. Gipps desired to make the following remarks:

The effect of this Bill (if passed into a law) will be, that in any and every year, without any limit as to time, in which the Legislative Council and the Assembly cannot agree upon an appropriation, the Governor may make one of his own authority, and will be the same as if a law were made in England, that whenever the Lords and Commons could not agree as to the way in which the public revenue was to be disposed of, a very considerable portion of it might be disposed of at the pleasure of the Executive.

It is quite evident that such a law would entirely destroy the peculiar privilege enjoyed by the Commons of controlling the expenditure of the revenue; and for this reason I feel it necessary to subjoin the heads of a Bill that would meet the present crisis in a manner more suited to the views I entertain of the constitutional privileges of the representatives of the people.

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* It has been thought best in this draft to restore the power to the Lords of the Treasury which was possessed by them before, the change being in this way made as small and as little liable to objection as possible. But if it is not opposed in the House of Commons, it would, perhaps, be more convenient, on account of the changes which have taken place since 1774 in the arrangements of the business of the different departments of His Majesty's Government, to substitute His Majesty's Principal Secretary of State for Colonial Affairs, or an order of His Majesty in Council, instead of the Lords of the Treasury.

people. I think it better that they should be deprived *in toto* of these privileges for a limited time than curtailed in them for ever.

(True extract.)

(signed) *T. Frederick Elliot.*

Whereas by an Act passed in the 14th year of the reign of his late Majesty King George the Third, intituled, &c. &c. (*here set forth the title and enactments of it*); and whereas another Act was passed in the 1st and 2d year of the reign of His present Majesty, intituled, &c. &c. (*here set forth the title and enactments of it*); and whereas, notwithstanding the authority so given to the Legislative Council and Assembly of Lower Canada, no appropriation (or no sufficient appropriation) has been made of the revenues arising from the said duties and licences, or of any other revenues, to the support of Civil Government and the administration of justice within the said Province since the 10th of October 1832, and that in consequence thereof various sums of money are now due to the officers of Government and to other persons, for arrears of salary, and for the contingent expenses of Government, since the said 10th of October 1832, by reason of which many meritorious servants of His Majesty have suffered and are now suffering distress, and the well-being of society within the said Province is endangered:

Be it therefore enacted, &c. &c., that immediately on the passing of this Act, it shall be lawful for the Governor-in-chief, or the Lieutenant-governor, or the person administering the government in the said Province of Lower Canada, to issue his warrants on the Receiver-general of the said Province, and for the Receiver-general, on the receipt thereof, to pay out of any monies that may be in his hands on the passing of this Act, or which may be afterwards received by him, such sum or sums as may be necessary to defray the arrears which, as aforesaid, were due on the 10th of October last past, or which may be due at the passing of this Act; and also to repay to the Lords Commissioners of His Majesty's Treasury the sum of 31,000 *l.*, advanced from the military chest in the said Province to the Receiver-general, in aid of the Civil Government thereof, and for the payment of salaries not provided for by the Legislative Council and House of Assembly.

Provided always, that the sums for which warrants shall be so issued shall not, in the whole, exceed the proceeds of the duties and licences imposed by the aforesaid Act of the 14th Geo. 3, actually paid into the hands of the Receiver-general since the 10th of October 1832.

Provided also, that no salary shall be included in any such warrant that was not provided for in the last general Act of Appropriation, passed in the said Legislative Council and House, or in some special Act of Appropriation, since the year 1824; and that no charge for contingent expenses shall be included in any such warrant that has not been included in one or more of the Estimates laid before the House of Assembly of the said Province since the 10th of October 1832.

And whereas it is expedient to suspend in the Province of Lower Canada, for a limited time, the aforesaid Act passed in the 1st & 2d Will. 4, intituled, &c. &c.; Be it further enacted, that the said Act shall be, as far as the same relates to the Province of Lower Canada, suspended, until the 10th October that will be in the year 1840.

Provided nevertheless, that in every year after the passing of this Act, during the term for which the aforesaid Act of the 1st & 2d of the reign of His present Majesty is suspended, a statement of the entire receipts and expenditure of the Province shall be laid before the House of Assembly within 15 days after the day of its meeting.

THIRD REPORT.

MAY IT PLEASE YOUR LORDSHIP, Quebec, 3 May 1836.

1. IN our Report of the 12th March we introduced some remarks on the responsibility which, in the Address from the House of Assembly to His Majesty, dated the 26th of February 1836, it was proposed to attach to the Executive Council; but we did not enter upon the consideration of any other question connected with that institution. The discussions which have since arisen upon the same subject in Upper Canada, and the difficulty which the Governor-in-chief must experience in filling up his Council, so long as any question respecting it remains unsettled in this Province, induce us to think this a proper time to offer to your Lordship a general Report of our views on the Executive Council. For this purpose we shall advert briefly to the origin and history of that body, and to its existing functions, and shall then state the complaints which have been preferred against it, the various remedies that have been proposed, and the alterations which we are ourselves prepared to recommend.

2. The existence of a Council to advise the Governor in the conduct of affairs may be traced back to the first establishment of a Civil Government in this Province, under the authority of Great Britain. The Royal instructions to General Murray, dated the 7th of December 1763, commanded him to name a Council, consisting of four principal functionaries therein specified, and of eight other persons chosen from amongst the most considerable inhabitants of the Province; and directed that the body so appointed should have all the powers and privileges usually enjoyed by the Councils in His Majesty's other plantations. Under the authority of this instruction, the Council seems to have exercised the function of deliberating on any matters of administration referred to it by the Governor, and also of assisting him in framing regulations for the peace, order and good government of the Province. The Statute of 14 Geo. 3, c. 83, established the Council in a more formal manner, and directed that it should consist of not more than 23, nor less than 17, persons, empowered to concur with the Governor in making laws for the good government of the Province. The members of this Council appear to have been consulted also as advisers on administrative questions, but to have kept separate records in that capacity; and whilst, for the purpose of making laws, it was necessary that a majority of the whole should be present, five was constituted, by the Royal instructions, a quorum for other business. However distinct the functions of the Council, in its legislative and executive capacity, we believe that, generally speaking, no separation, as to the personal composition of it, had, up to this time, been effected in the American Colonies, though, in a work first published in 1764 by Mr. Pownall, who had been Governor of Massachussett's Bay (Pownall's Administration of the Colonies, ed. 5, vol. i, c. 4, s. 5), the advantages to be derived from such a separation are pointed out. In Canada, the Council created by the Constitutional Act in 1791 was purely legislative, being designed to form one branch of a legislature resembling, as nearly as circumstances would admit, the Parliament of Great Britain; and a Board to advise the Governor was only alluded to incidentally, under the designation of "such Executive Council as shall be appointed by His Majesty for the affairs" of the Province. A Council of this nature was accordingly appointed by the Royal instructions to Lord Dorchester, dated the 16th of September 1791; and the number of its members fixed at nine, with a salary to each of 100*l.*

3. We find that of the nine persons named in Lord Dorchester's instructions to compose his Executive Council, six were also members of the Legislative Council; and that of the whole number of executive councillors who have been sworn in up to the present time, amounting to 42, 20 were also Legislative Councillors; and not more than eight, or at most ten, did not fill salaried offices under the Government, either at the date of their appointment to the Council, or at some time

while they continued in it. The names in Lord Dorchester's Council stood alternately English and French; and of the eight councillors who were actually sworn in (the ninth, Mr. Lymburner, being absent from the Province), four were of French extraction, and four of English. This precedent, however, was early departed from, for the three next appointments were of persons of English origin; and it appears that of 31 persons named as Executive Councillors, between the years 1793 and 1828, 25 were English or of English extraction, and only six were French Canadians; and even of these six, one was Mr. Speaker Papineau, whose appointment seems to have been founded on the office he held as Speaker, and to have lasted but a short time. (*See* Appendix, No. 1, note 5.) Since 1828 three persons only have been appointed, and they are all French Canadians.

4. Upon the foregoing statement there are two remarks which we cannot refrain from making. In the first place, we think it much to be regretted that, at the time of conferring the Constitution on Canada, although the separation between the functions of the Legislative and Executive Councils was duly recognised, yet the faulty practice of making them nearly identical, as to personal composition, was still adhered to; and that, whilst two-thirds of the Executive Council were selected from one branch of the Legislature, the expediency does not seem to have been felt of taking any members from the other, so that the Executive Authority thus early showed a tendency to lean for support rather on the Legislative Council than on the representatives of the people; a bias which, lasting, as it has done, in an undiminished degree, to the most recent times, cannot but have exercised a most unfavourable influence on the course of affairs.

5. We have, secondly, to draw your Lordship's attention to the small proportion of French Canadians introduced into the Executive Council. The course by which persons for the most honourable and ostensible situations in the Government were selected only from one portion of the population, cannot, in our opinion, be too deeply deplored; and however natural it may have been, under the circumstances in which Canada became a British possession, yet, as soon as the attachment of the Province was considered to be secured, and the inhabitants to be worthy of the free institutions of Great Britain, it is difficult to conceive any good cause for the practical exclusion of one class from the chief offices of the country. On the contrary, when so powerful an engine was established, as a House of Assembly, of which the majority could not reasonably be expected to consist of any other description of persons than the majority of the people, there were the strongest motives to aim at interesting that class in the Government, to hold out to them such prospects of public employment as might constitute an inducement to acquire the proper qualifications for it, and in short, to train them by every means to the wise and moderate use of the great powers bestowed upon them.

To the neglect of this policy, combined with the alienation which we previously mentioned of the Executive Authorities from the Assembly, must, we believe, be ascribed a large share of the embarrassments of the present time.

6. We have already observed that the number of Executive Councillors, named in the Royal instructions to Lord Dorchester, and to whom salaries were ordered to be paid, was nine. Additional or honorary members were introduced as early as the year 1794; but although appointed by mandamus, they had no salaries. It has subsequently been the custom for the Governor provisionally to appoint honorary members, who are supposed, however, not capable of sitting in the Court of Appeals until they are confirmed by the King. The salary of each ordinary member is 100 *l.* per annum.

The Clerk of the Council has a salary of 550 *l.*, and about 85 *l.* fees; and an Assistant Clerk has 182 *l.* 10 *s.*

7. Of the functions of the Executive Council, the most comprehensive description is, that they are required to give their opinion or advice to the Governor whenever it is asked for. There are some cases in which, by the provisions of Statutes, imperial or provincial, or under his commission or instructions from His Majesty, it is incumbent on the Governor to act either by and with the advice, or with the advice and consent of the Executive Council; and we have annexed a statement of these cases (Appendix, No. 2.); but in far the greater part of the business of Government he is at liberty to receive advice or not as he pleases; and if he

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does take the opinion of the Council, to proceed in opposition to it without entering his decision, or assigning its reasons on the Council books.

8. Notwithstanding, however, the want of any cogent rules for recurring to it generally, there are two or three extensive matters, of which the right of the Council to take cognizance has always been well established. Up to 1826, when the Office of Commissioner of Crown Lands was created, the Executive Council had the whole superintendence of the business of land granting; it still retains the direction of it in some cases, and is commonly referred to by the Governor in any disputed matters arising in or out of the disposal of the Crown or Wild Lands. The Council has also been charged from the earliest times with the duty of auditing the public accounts. Another old and most important attribute of the Executive Council is that of hearing appeals from the courts of law, which function, in like manner as it had belonged to the former Council of Quebec, was allotted to it by the 34th section of the Constitutional Act, and subsequently regulated by the Provincial Statute 34 Geo. 3, c. 6.

9. The Council can assemble only on summons from the Governor, and cannot sit as such without his being present. It may and frequently does sit in committee to consider matters referred to it by the Governor, and these committees go through almost all the labour of the financial and land business of the Council; but their proceedings require to be confirmed by a regular meeting, with the Governor present, before they can be acted on. The members of Council have not the right of recording their opinions individually, or of entering protests on their minutes (*see* Appendix, No. 1, note 2), and they are sworn to secrecy without any exception or reservation. A copy of the oath is annexed (Appendix, No. 3.)

10. Of the Executive Council, composed as we have mentioned, and exercising the functions which we have just endeavoured to describe, a very general impression exists that it is inadequate to any useful end, and all parties agree in objecting to it, though probably not on the same grounds. The complaints against it were, however, until very lately, less earnestly urged than against many other real or alleged grievances. The subject was not dwelt upon in the petitions brought before the Committee of the House of Commons on Canadian Affairs in 1828, though the number of office-holders in both Councils, and the connexion between the two, were alluded to among the grievances of that time. In the 92 Resolutions of 1834 the composition and irresponsibility of the Executive Council were complained of, as well as the secrecy with which its functions, and even the names of the members, were said to have been withheld from the Assembly. The numerously signed petitions to His Majesty from Quebec and Montreal, in the early part of the year 1835, expressed regret that the Executive Council had become so defective, both in the number of its members and in its composition, as not to answer the purposes of its institution. The wasteful or partial grants which the Council was considered to have sanctioned, while the disposal of the Wild Lands was under its control, has formed another ground of dissatisfaction with it. And there does not appear to be any difference of opinion respecting the unfitness of a Board of this nature to act as a Court of Appeal, as well as the impropriety of its doing so in cases where grants or leases, made under its own authority, are concerned.

11. After this enumeration of the defects complained of in the Council, we shall now proceed to the remedies which have been suggested.

12. The House of Assembly, in their answer to the Governor's speech at the opening of the late session, and in their subsequent Address to His Majesty, dated the 26th of February 1836, expressed their desire for a "constitutional responsibility" of the Executive Council, based on the practice of the United Kingdom. We have already had occasion to advert to this proposal incidentally in our Report of the 12th of March, but a recapitulation of what we then advanced, and some further examination of the project, may not be superfluous here, especially as the subject has excited such keen interest in Upper Canada since the time when we last noticed it. On that occasion we observed, that while in England it was a maxim of the Constitution that no wrong could be imputed to the sacred person of His Majesty, the head of the Executive here was a servant of His Majesty, responsible to the King and to Parliament for his conduct; that therefore it was necessary that his measures should be under his control, in like manner, as their consequences rested upon his character; that to render the Executive Council

responsible to any but the Governor himself would demand the allotment to them of new powers commensurate with their new responsibility, and would require a corresponding diminution of the powers of the Governor; that thus the direct tendency of a Council, responsible in the sense we were then considering, was to withdraw part of the administration from His Majesty's representative in this Province, and to abridge to that extent the efficiency of the functionary on whom, above all others, His Majesty must rely for retaining the allegiance of the Colony.

13. We would now remark further, that the question is not between responsibility and irresponsibility absolutely, but only as to a peculiar sort of responsibility, which it is wished to attach to the Executive Council. The weightiest responsibility which can attach to any man in matters of a public nature for which he is not punishable by law, or by loss of office, is the accountability to public opinion, and from this the Executive Councillors are not even now exempt, though, in consequence of the rule of secrecy (which we shall presently propose materially to relax), they are not so much open to it as might be wished. They are already amenable to the courts of law for any offence, legally punishable, which may be brought home to them; they would also, we apprehend, be made amenable to the jurisdiction of any court which may be established for the trial of impeachments against public functionaries; and they are liable to be dismissed by the same authority which appoints them. These different liabilities constitute a responsibility, than which we know not what other is borne by any public servants.

14. But if the Councillors were rendered accountable for the acts of Government, and accountable not to the Executive Authority by which they are appointed, but immediately to the House of Assembly, we think that a state of things would be produced incompatible with the connexion between a colony and the mother country. The Council having to answer for the course of government must in justice be allowed also to control it; the responsibility, therefore, of the Governor to His Majesty must almost cease, and the very functions of Governor, instead of being discharged by the person expressly nominated for that high trust, would in reality be divided among such gentlemen as from time to time might be carried into the Council by the pleasure of the Assembly. The course of affairs would depend exclusively on the revolutions of party within the Province. All union with the Empire, through the head of the Executive, would be at an end; the country in short would be virtually independent; and if this be the object aimed at, it ought to be put in its proper light, and argued on its proper grounds, and not disguised under the plausible demand of assimilating the Constitution of these Provinces to that of the mother country.

15. We have hitherto considered the question, as it undoubtedly is understood in this Province, of a Council appointed for the purpose of directing in a manner agreeable to the Assembly the conduct of Government. It appears indeed, in a recent Report of a Committee of the Assembly in Upper Canada, dated 14th April 1836, that the demands of those who call in that Province for an increase of the powers of the Council have latterly been represented, more moderately, as a proposal that the Governor should be required only to take the previous advice on public affairs of a Council which should enjoy the confidence of the people as manifested by their representatives. Even this proposal, however, will be found to involve no trifling incongruities. It is true that the Governor, being left a free agent by this plan, would retain his responsibility to the King; but for that very reason it would be incumbent on him not to yield, except on the clearest conviction in his own breast, any of his opinions on matters of moment to the Empire at large. As examples of these subjects, we may mention all questions affecting Imperial Statutes, or the relation of the Province to Great Britain, or the preservation of the due prerogative of the Crown. So far as regards this Province, if the questions be examined by which it has lately been agitated, it will appear that very few of them do not fall under one or other of these heads. Unless, therefore, circumstances should happily be such that the views of the Governor and of the Assembly on the topics we have mentioned coincided, the only result of insisting on his, upon every occasion, taking the advice of a Council to be always kept in harmony with the majority of the Assembly, would be to surround the Governor with Councillors whose advice on the most interesting subjects he would be bound by his duty and his allegiance to overrule. The impediments to Government, and the irritation that such a state of things must produce, need

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not be pointed out. It could not be long before the next step would be taken, of calling for a Council which should control as well as advise; and we have already remarked, that such a Council (depending both as to its appointment and its removal on the pleasure of the Assembly) would be nothing else than an independent Government, carried on under the mockery of a nominal Governor appointed from England.

16. The fact is, that the persons who attempt to draw a direct parallel between the constitutions of Canada and England seem to forget that the Government of one is national, that of the other provincial; and in the arguments which we have heard advanced in favour of a responsible Council, both in this and in the sister Province, the important distinction seems to have been lost sight of, which must of necessity exist between an independent country and one that is subordinate to another. Canada has, we apprehend, a right to the British constitution, as far as it is possible for that constitution to have its operation in a subordinate country; but more than this, so long as Canada remains a Province of the Empire, it cannot have. The Legislature of Canada is incapable of making laws repugnant to the laws of Great Britain; and as the constitution under which they have their political existence is an Imperial Statute, it follows that they cannot make any alteration in that constitution without the consent of England; but in matters not repugnant to the laws of England, and in things respecting their own internal rights, property and jurisdiction, their Legislature (the King, or his representative, being of course a part of it,) is under no such restrictions. It would be easy to deduce from this distinction alone the reasons why the King's representative cannot be placed in a position with respect to the Provincial Government, similar to that in which the King is placed with respect to the Government of England.

17. On these grounds we are forced to discard the idea of transferring any share of the responsibility of Government from the Governor to the Executive Council; but we are still desirous, as will presently appear, that it should possess a greater influence in the Government than heretofore; and we are of opinion, that although not liable to be changed at the will of the Assembly, it should be so composed as to secure as much as possible of the confidence of the people.

18. As one means of improving the Council, your Lordship threw out for our consideration the advantages that might result from reducing its numbers; and we acknowledge that a small Council would be more conducive than a large one to promptitude of decision, to a sense of responsibility in each member, and to unreserve on the part of the Governor. But we find so general a concurrence of opinion here in favour of extending the Council, and are ourselves so much impressed with the utility of introducing into it members from different parts of the country, that we do not think it advisable to try a Council of very limited number in this Province.

19. Another plan which has been under our consideration is, that the number of members appointed by the Crown should be reduced to three or two, and that either there should be no other Council, or that the Governor should have power to appoint in the name of the King any number of additional councillors for the period of his own government; that of the entire Council thus named there should be four full meetings in a year, at which meetings the councillors should be allowed to submit to the Governor the names of persons considered by them as fit to be recommended to His Majesty for the Legislative Council, and for those offices for which the Governor is now by his instructions directed to furnish lists to the King's Ministers in England, the mischievous possibility of this liberty of recommending being perverted into a right of choosing being strictly guarded against; that on ordinary occasions the meetings should not consist of more than five or seven persons, being such members as the Governor should each time choose to summon; and that the Governor should be instructed to summon the members appointed by the Crown upon those occasions on which matters affecting the relations of the Empire with the Province were to come under debate; and that every meeting should have power to refer matters, requiring investigation, to committees of any two or three members selected out of the whole body.

20. Though this plan has been suggested by one of our own body, we cannot collectively undertake to recommend it, as it appears to the majority of us to involve a wide departure from present practice without satisfying the wishes of any class in the Province. If the Council were limited to the two or three mem-

bers appointed by the Crown, it would be open to the objections which we just expressed against a very small Council, while we apprehend that its suitableness to the proposed function of making recommendations for office would be much impaired. On the other hand, if the contemplated addition of councillors appointed within the Province were made, we should deem it objectionable on the following grounds; that by allowing the Governor to choose his councillors on every occasion out of a large body, it would enable him on all questions to insure whatever advice he desired; that we do not see how such a plan could be carried into operation without giving offence, and creating jealousies in the Council; and that as the persons selected to attend the Governor on any particular occasion might often be insufficiently informed of the relation in which the subject under discussion stood to other objects of interest in the Province, or imperfectly acquainted with the general policy and proceedings of the Executive, a want of congruity would be very likely to make itself felt in the Councils of the Governor, whilst not even an appearance of responsibility to public opinion on the part of the councillors would remain, as the people would not even have the means of knowing the parties by whom the advice was given. We learn from the records of the Colony, that, about the year 1778, a course of proceeding, in some respects similar, had obtained, by the Governor's exercising his discretion in calling to any meeting of the Council only such members as he chose. The practice, however, having been complained of, was put a stop to by an instruction from His Majesty to the Governor, dated 29th of March 1779, and directions were given that members of Council should be summoned to all meetings without any other distinction than that which the distance at which they resided might render necessary.

21. We have had an opportunity to see a Report, chiefly relating to the Executive Council, made to Sir Francis Burton in 1825 by Mr. Uniacke and Mr. Vanfelson, at that time the provincial law officers, and we perceive it to have been their opinion that the Executive Council ought to be made more numerous, and to include more men independent in circumstances and influential in the Colony, together with the principal officers of Government.

22. In the paper contained in Mr. Neilson's letter to your Lordship, dated 10th July 1835, explaining the views of the parties by whom that gentleman had been deputed to visit England, the opinion expressed respecting the Executive Council is, that it ought to consist of the heads of the public departments, with a considerable admixture of persons independent of the Government, and of the administration for the time being; and that the members of the latter description should not all be resident at Quebec, "but distributed over the other parts of the Province, giving to the people at large confidence, and checking cabals in the Council itself." By evidence which we received from Mr. Neilson and from Mr. Andrew Stuart, it appears that both those gentlemen adhere to these opinions.

23. Mr. Caron, the late mayor of this city, and until very recently a member of the House of Assembly, informed us, as your Lordship will observe by the Evidence appended to our Report, that although a Council resembling the Ministry in England would appear to him preferable in itself, yet under the existing circumstances of the country, he thought the simplest and most eligible mode of forming an Executive Council, would be merely to appoint to it persons of consideration, enjoying the public confidence, and to leave to the Governor the extent of his present responsibility. Mr. Caron would neither make office a recommendation nor a disqualification for sitting in the Council, but would deem the single good test to be the acknowledged merits of the individual.

24. Having thus described the various suggestions and opinions that have been under our notice, we shall now proceed to state our own views on the subject of an Executive Council.

25. The earliest complaint which was made related, as we have already said, to the too great connexion alleged to subsist between the two Councils. On this point the Governor-in-chief has announced his intention to act upon the principle, that it is neither right, nor consistent with the wholesome separation and independence of the principal bodies of the Government, that out of the limited number of executive councillors in this Province several should hold offices under the Legislative Council and House of Assembly. The adoption of this maxim will, we presume, go to the extent of what is wished in the Province, for we do not suppose that any party would desire to render a seat in either of the legislative bodies incompatible with the office of executive councillor.

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26. With respect to the presence of office-holders, generally, in the Executive Council, no objection to it was urged by any of the gentlemen from whom we took the evidence appended to this Report, nor, from what we can gather of the wishes of the Assembly, do we believe that in itself it would be objected to by them. On the contrary, by an Executive Council or Ministry, formed on the model of that of England, they appear to mean an Executive Council composed in great part of office-holders; but then an essential feature in their plan is that the councillors should remain in office no longer than they continue in unison with the majority of their House, whereby they would virtually secure to themselves the nomination of all the chief officers of Government, and we doubt whether the presence of any great number of office-holders in the Executive Council would be acceptable to the Assembly, except upon these terms.

27. Our own opinion is, that although the holding of office under the Crown ought not to be a disqualification, yet the number of office-holders in the Council should never be considerable, probably not more than, on an average, one in four. It is to be remembered, that the Governor is at all times entitled to call upon any servant of the Crown for his best advice and assistance; and that in all matters, but more especially in those relating to his own department, this advice is given under the weightiest possible responsibility. The Governor also can make this advice available in his Council by calling an individual before it, and examining him as to the matter in hand. In a numerous Council it will probably be found convenient, and even necessary, to have some office-holders, but we do not consider their presence as indispensable, because, in the first place, they cannot be admitted, as in England, to take off responsibility from the highest executive authority, and because, secondly, we do not think it desirable that the heads of departments should be overmuch engaged in political controversies, which might not only render frequent changes of them requisite, but retard in other ways the ordinary business of the country. We should further say that there are some functionaries whose duties are such as to render it inexpedient to place them in the Executive Council, such for instance as the Civil Secretary of the Governor and the Attorney-general. The former was introduced into the Council by Lord Dalhousie in 1820, to sit by virtue of his office; but the measure does not seem to have been repeated. The close connexion of the Civil Secretary with the Governor appears to us to furnish obvious reasons against his belonging to the Council. And with respect to the Attorney-general, as he is in the matter of public prosecutions, and in other duties, in some degree the servant of the Council, it would be somewhat incongruous that he should sit in it also.

28. After these preliminary remarks we shall submit, as succinctly as we can, our propositions on the Council.

29. We recommend that it should never consist of a greater number than 15, nor (for any period exceeding six consecutive months) of less than nine. It seems prudent that this interval of six months should be allowed to obviate any difficulties which might be experienced in filling up the Council on the occasion of any change of its members.

30. We would advise that the councillors should be appointed, in the name of His Majesty, by the Governor under the Great Seal of the Province, and enter at once into all the rights of their office, but subject to confirmation or disallowance by His Majesty within a limited time, say one year.

31. For reasons before mentioned, we think there should be no exclusion of persons holding office under Government, but that in practice it would probably be expedient that the number of that description should not exceed one fourth of the whole Council.

32. We further submit that, amongst the members of Council, there should be no distinction as to powers, functions or form of appointment, excepting that members holding paid offices under Government should not receive salary as councillors.

33. We consider it desirable that the remainder of the councillors should be paid equally, not less than the present amount of 100*l.* per annum, and that it should be proposed to the Assembly to provide for this in any permanent grant hereafter to be made by them; but should the Assembly object to the payment of an increased number of executive councillors, we scarcely think these salaries should be made an indispensable condition in any proposal that may be submitted to them on the basis of our first Report. If all cannot be paid, the junior

members might be required to serve without salary, in like manner as the office-holders.

34. We would suggest, although of course no imperative rule can be laid down upon the subject, that in the Executive Council there should be at least one, and not more than three legislative councillors; at least two, and not more than five members of the Assembly; some gentlemen belonging to the class of landed proprietors, and others connected with commerce; one individual at the least of the legal profession; and that of the persons chosen for the Council it should be endeavoured to take a moderate proportion from different districts of the Province, though it will be necessary that a number sufficient to ensure at all times a quorum should be resident at or near the seat of Government.

35. We think that the appointment of the councillors should not be made to last during good behaviour, nor require for its termination the assignment of any fault, but that the Governor should be able to remove them whenever, on general grounds, he might deem it advisable, reporting his reasons without delay to the Secretary of State.

36. It has been objected, that to invest the Governor with this power would give the Assembly a motive to prefer repeated addresses to him until they could procure the dismissal of any Council they might not approve; and in support of this view it is argued that the Assembly has not an equal inducement to such a course at present, because the Governor's power being as yet limited to suspending officers who are in his opinion unfit for His Majesty's service, he could not suspend any one in consequence of an address from either House, containing no allegation, further than that the person had not its confidence. We must confess, that to the majority of us this argument is not convincing. The office of councillor being a political one, we do not understand why political unfitness should not be a sufficient ground for a Governor to assign for suspension under the terms of his present commission; nor can we conceive that if the Assembly were inclined to make such applications as are supposed in the objection, they would be restrained by the necessity of a reference to England. The only difference would be, that the Governor, instead of replying directly to the applications, would be obliged to answer that he would forward them to England; whereupon renewed complaints, whether or not justly, would be made, of being governed by a power 4,000 miles off, and of the interference of that power in the domestic concerns of the Province.

37. We would propose the following to be amongst the rules of the Council:—

That during the presence of the Governor at the seat of Government there shall be stated days, not less than two in each month, on which the Council shall assemble without a summons:

That it may be assembled by the Governor by special summons, as often and at such places as he may think fit:

That at each meeting of the Council every member shall be entitled to attend; and that in the issuing of summonses, no limitation shall be established save that rendered necessary by distance or difficulty of communication:

That five shall be a quorum:

That upon the internal affairs of the Province each member of the Council shall have the right of suggesting measures, or tendering advice, whether or not upon subjects introduced by the Governor; but that no measures affecting the relations of the Province with the Empire shall be discussed unless they are brought forward by the Governor:

That the Governor have the power of adjourning any question or subject of discussion, the fact of his doing so being noted on the proceedings:

That the Governor have the power of acting in opposition to the majority of the Council; but that when he adopts that determination, he shall enter it on the minutes, assigning his reasons or not as he may prefer:

That the members of the Council have the privilege of recording their dissent on the council-books, with or without their reasons as they may prefer:

That no meeting of Council shall be competent to act as such without the presence of the Governor; but that he shall have the power, as now, to refer business to it as to a committee in his absence, nothing done in that mode taking the form of a proceeding of Council, until ratified when the Governor is present:

That the foregoing rule shall be so far qualified in the Governor's absence from the seat of Government as to authorize him to ratify, by letter or by any other

other mode that may be appointed for the purpose, any proceedings of Council which could not, without injury to the public service, be delayed:

That whatever number of members of either branch of the Legislature may be included in the Executive Council, all communications to the Provincial Parliament shall continue to be made, as now, by message:

That no oath of secrecy shall be taken, and that the members of the Executive Council shall not be considered solemnly bound to secrecy, except on occasions when the Governor may summon them expressly to form a council of secrecy, or resolve any meeting into such a council:

That before any recommendation of an appointment to the Legislative Council be sent to the Secretary of State, the Governor shall acquaint the Executive Council with it, and receive any observations they may make upon it; which observations, whether made collectively by the Council, or individually by any member or members of it, shall be transmitted to England at the same time with the recommendation of the Governor.

38. Although it must necessarily be left very much to the discretion of the Governor, we think that he ought to consult his Council far more frequently than heretofore on important acts of Government.

39. In explanation of some of the preceding suggestions, we would observe that we have advised a strict adherence to the communication with the Legislature by means of message, because, although we think that an Executive Councillor, sitting in either House, might reasonably be expected to explain and defend the measures of Government, as being well acquainted with them, and friendly to the administration, yet it would be most objectionable that he should come to be regarded or acknowledged as an organ of the Government in the Legislature. The relaxation which we have recommended of the rule of secrecy will enable Councillors to avow their personal opinions, and thus to remain far longer connected with a Government with which they might in the main concur, than if they were compelled on all occasions to suppress their dissent from measures to which they had not agreed. If a member of Council found himself in a state of continual difference with the Governor, he would, it is to be presumed, resign voluntarily; or if he placed himself in manifest and systematic opposition to the administration, he must unavoidably be removed, even if his own sense of propriety did not lead him to retire; but we do think it very desirable that, in isolated cases of difference of opinion, and especially in cases where no provincial authorities are competent to decide, valuable Councillors should not be reduced to choose between separating themselves from a Government of which they approve the general policy, or else bearing a share of what to them must appear the odium of measures which they had opposed. Seeing the wholesome tendency of allowing in this manner public opinion to weigh fairly upon the advice given by different members, we think that the Governor should resort very sparingly to his power of binding the Council to secrecy, although the occasions must be frequent where there would be need in the Councillors of that general discretion requisite to the character of every public functionary.

40. We apprehend that the Council must for the present remain charged with the duty of auditing accounts, as the erection of any other board of audit, or the creation of an auditor-general, is properly a subject for the consideration of the Legislature; but it seems presumable that if the existing dissensions did not offer such considerable impediments to public business, some other system of settling the accounts of the province would be established by law.

41. There can be no hesitation in pronouncing the appellate jurisdiction entirely unsuited to the Executive Council, and full of objection. As the 34th section of the Constitutional Act conferred this jurisdiction on the Council, we are aware that it cannot finally be taken away without the sanction of the Imperial Parliament; but we would not recommend the interposition of that authority, further than may be necessary to admit of an Act on the part of the Legislature in this Province. A Bill, altering the system of judicature, passed the Assembly this year, and was rather suspended than rejected in the Legislative Council, which would have created a regular court of appeals, to consist of four judges, invested likewise with a criminal jurisdiction. This circumstance shows that the attention of the Provincial Legislature is alive to the subject; and we think it far preferable that His Majesty should be empowered to assent to any Act which may hereafter be passed in the Province, than that the British Parliament should itself enact a new law on the mode of determining appeals in

Canada. If our own opinion were required, we should say that, as far as the decision of appeals alone is concerned, it would be sufficient to appoint one judge to try all appeals at Quebec and Montreal, with the provision that either party to an appeal should be at liberty, on its being set down for hearing, to require that it should be heard before associates or assessors, in which case the Governor should appoint one or two of the judges either of Quebec or Montreal to be the associate or associates, assessor or assessors, *pro hâc vice*, of the judge of appeal. Although, however, this is the most eligible measure which would occur to us if the judicature of the Province remained in other respects as now, we are far from wishing to pronounce any opinion on the different arrangements which might be found convenient in a general remodelling of the judicial system; nor, as we have already said, do we recommend that our proposal, or any other, should be acted upon, unless it originate in the Legislature of Canada. Seeing the vast importance of the courts of law being so framed as to possess the confidence of the public, and to suit the wants and habits of the country, there is perhaps no matter in which it is more proper to observe the salutary maxim of not interfering unnecessarily in the domestic concerns of the Province.

We have, &c.

(signed) Gosford.
Chas. Edw. Grey.*
Geo. Gipps.

A STATEMENT of Sir *Charles Grey*'s Difference of Opinion upon the Third Report of the Commissioners.

1. My principal objection to our present Report is, that having in the 12th, 14th, 16th and 17th paragraphs shown very forcibly and truly that an Executive Council removable at the will of the Assembly would be incompatible with the subordination of the province to the Empire, we recommend measures in the 30th, 32d, 34th, 35th, 36th and 38th paragraphs, which, taken in conjunction with the recommendation of the majority of the Commissioners in our First Report, would create the institution we have decried.

2. None of the most eager advocates of the powers of the Assembly have claimed that the Executive Council should be expressly declared by any law, or by the instructions of His Majesty to be removable at the will of the Assembly; their terms are only that, in accordance with the practice in England, there shall always be a responsible Council, possessing the confidence of the representatives of the people, by which I understand them to mean, that, 1st, The Executive Council shall give their advice to the Governor on all matters of importance. 2dly, That it shall be in the power of the Governor at any moment to remove the whole of them from office. 3dly, That the Assembly shall have means as effectual of urging the Governor to remove a Council, by whose advice it is offended, as the House of Commons has in England. Now, our 37th and 38th paragraphs recommend that the Executive Council shall have the opportunity of offering advice on all important occasions, to which I do not object; but our 30th, 32d and 35th paragraphs recommend that the selection, appointment, and, whenever upon general grounds it may be thought advisable, the dismissal also of the Executive Council, should rest with the Governor; and if the recommendation of my collegues in the First Report should be acted upon, and the Government should be left with a civil list of only 19,300*l.* at its disposal, as the Assembly has shown that it not only has the privilege of withholding supplies, but is much more ready to use it than our House of Commons is: I am unable to discern any concession in respect of the Executive Council which has been claimed by the popular party either in Upper or Lower Canada, which would not have been yielded by our Reports, or to recognise any other virtue which would be retained by the 12th, 14th, 16th and 17th paragraphs of our present Report, than that of having illustrated the straits to which, by the adoption of our own recommendations, a Governor would be driven between the demands of the Assembly and his duty to the Crown.

3. If the embarrassments of the province arising from the abandonment by the Crown of its right of disposal of the revenues of the 14 Geo. 3, c. 83, and the denial by the Assembly of any appropriations for the service of Government, cannot be relieved by an Act of the Imperial Parliament, I should deem it to be necessary that the Governor should have the power of new modelling and reducing the executive and judicial establishments, so as to make them square with the resources which are still at the disposal of the Crown; and for this purpose, I would sacrifice, amongst other things, all that might be dispensed with in the

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* I have affixed my signature to this Report, subject to a statement of my difference of opinion, which is delivered to the Secretary to be entered upon the Minutes, and which, it has been agreed, shall go home with the Report.

4 May 1836. (signed) *Chas. Edw. Grey.*

the establishment of the Executive Council; but according to my apprehension it would be a mistake to suppose that in circumstances which imply an adverse disposition of the Assembly, and with those cramped resources, or in any other situation than that of being provided independently of the annual votes of the Assembly with an executive and judicial establishment, adequate to the circumstances of the Province, the hands of the Governor would be strengthened by retaining in them the thread of existence of the Executive Council. As long as he may stand in need of the annual vote of an unwilling Assembly, it seems to me that he would by those means be reduced to the situation in which it is so clearly shown in the Report that he ought not, as the Governor of a Province, to be placed.

4. The Executive Council is a creature of the prerogative, as the Governor is. To the Council of Governor Murray in 1763, both an executive and legislative capacity was given; but as the legislative authority was to be exercised only upon the contingency of a general assembly of freeholders being called together, and in conjunction with such assembly, and as that event did not take place during Governor Murray's time, his Council was essentially executive, though with the power of establishing such rules of conduct as it might be absolutely necessary to declare in a newly conquered colony, in which a great portion of the old French laws survived, but into which English law was also introduced. By the commission and instructions of Governor Murray, a negative or veto was given to the Governor in all cases whatsoever; and while he was left in the ordinary routine of executive business to act by his own sole authority, several cases were distinctly specified in which the power was to be exercised only "by and with the advice and consent of the Council." These cases were:—

1. The power to summon General Assemblies of the freeholders and planters.
2. To erect courts of judicature.
3. To build fortifications and furnish them with munitions of war; and again to dismantle them.
4. To dispose by warrant of public monies for the support of the Government.
5. Subject to orders or instructions from the King in Council, to make grants of such lands as it should be in the power of the Crown to dispose of.
6. To appoint fairs, markets, ports and harbours.

There were some other cases in which it was not expressly enjoined by the Commission, that the Governor should act only with the consent of the Council; but which were placed in such juxta-position with the cases above specified that it might be inferred they were considered as matters on which it was very desirable the advice of the Council should be taken, and in some of these the instructions explicitly enjoined the Governor, though the Commission did not, to act only with their consent; such were the appointment of judges, the collation to ecclesiastical benefices, &c. The principle upon which the distinction was made between the Acts which did, and those which did not require the consent of the Council seems to have been this. Whatever the law clearly commanded to be done, the Governor was left to execute by his own sole authority; but in the most weighty of those cases in which occasion might arise for the exercise of the *prerogative*, by which I mean here the discretionary power of the Crown to do what no law commands nor can compel the Crown to do, the Governor was expressly directed by the Commission to act only with the consent of the Council; and in some other instances of this nature, though their consent was not made necessary, sufficient grounds were given for resorting to, or calling for their advice.

5. The difficulty of organizing a Legislature by the authority of the Crown alone having been perceived, and that the colony was not in a fit state for the institution of an Assembly of the people, the Imperial Statute of 14 Geo. 3, c. 83, was passed, by which the King was empowered, by the advice of the Privy Council, to appoint a Council for the affairs of the Province; which Council, or the major part of it, should have power, with the consent of the Governor, to make ordinances for the good government of the Province; and by the instructions to Governer Haldimand, which directed that any five of this Council should be competent for all affairs except legislation, the Crown reconstituted an Executive Council. Governor Haldimand, however, having adopted the practice of selecting such persons as he chose to constitute this Executive Council of five, received additional instructions to the effect that although he was at liberty to proceed in Council when five only were present, yet that he must summon all the members of the Council who should be resident within convenient distance.

6. The Act of 31 Geo. 3, c. 31, s. 34, which established the existing form of Legislature, provided that the Governor, together with such Executive Council as should be appointed by His Majesty for the affairs of the Province, should be a Court of Appeal, subject to such further or other provision as might be made in that behalf, by any Act of the Legislative Council and Assembly of the Province, and assented to by His Majesty. Lord Dorchester's commission and instructions gave the same power which other Governors had possessed of suspending from office those even of the officers of the colony who held their appointments directly from the Crown, but only for just cause and unfitness for His Majesty's service; and the power of final dismissal was retained by the Crown. The commission of the Governor to this day qualifies in the same way the power of suspending those who hold office directly from the Crown.

7. It will be perceived from what has been stated here, and in the body of the Report, that the Executive Council of Lower Canada has always been appointed, and that the provisions of the Imperial Statute of 31 Geo 3, c. 31, require it to be appointed by the Crown, and that the members of it cannot at present be suspended by the Governor from office, except on the ground of unfitness for His Majesty's service; that by the same statute, the

Executive Council so appointed is the Court of Appeal for the Province; that originally its consent was required in most instances of the delegated exercise of the prerogative; and that there are several important Acts of Government in which that consent is at present required in practice, such as the granting of Crown lands and making certain regulations as to commerce. I would add, that if it were well constituted, it would seem to me that very salutary effects might arise from its having the opportunity of offering advice at least, upon some other occasions which grow out of the changes which have taken place in the institutions of the Province, since the original establishment of an Executive Council. I mean, principally, the intercourse and relations of the Governor with the Assembly and Legislative Council, by answers to addresses, by messages, and by the giving or withholding assent to bills. In one word, I think the Governor should always have the advice of some persons appointed by the Crown, and not dependent on the Assembly in matters which may affect the relations of the Province with the Empire. For all these reasons I would retain ultimately in the institutions of Canada an Executive Council, of which the members should be appointed and removed by the Crown, and should be liable to be suspended by the Governor only for misconduct; but I would empower the Governor to act in opposition to their advice when he should think fit to do so; and in point of numbers a very limited Council of this sort would be sufficient.

8. It is not, however, without reason, as it appears to me, that representations are made of a more numerous and more open Council being required for advising the Governor as to the internal affairs of the country. It might very much conduce to the general satisfaction of the Province, if all parts of it, and all professions and classes of men, felt that they had easy channels of communication with the Governor through his Executive Council; and if committees of such a Council, in the intervals between the sessions of the Legislature, were to be employed in digesting plans of legislative improvement, which would enable the Governor, at the opening of each session, to take a creditable and advantageous position in the progress of reform, and to preoccupy the minds of the legislators with sound matter for deliberation, to the exclusion of crudities. I would recommend, therefore, that in addition to the Executive Council appointed by the Crown, the Governor of Lower Canada should have the power of appointing any number of Executive Councillors for the period of his own government, but no longer; and that not more than five out of the whole body of the Council should be summoned to any one meeting for the dispatch of ordinary business. By having different members upon different occasions, I should expect the hostility of the Assembly to be dissipated and avoided; and I avow that I aim at this object for the reasons which would make any Council which should be removable by the Assembly so objectionable an instrument of Government in a Province; and which reasons are so well stated in the 12th, 14th, 16th & 17th paragraphs of the Report.

9. All parties agree in deeming the Executive Council to be a bad court of appeal. The judges of the court for the most part are not lawyers, and have little technical knowledge of the laws they are called upon to interpret. They must have occasionally to sit in judgment upon grants of Crown lands made by themselves, or on other disputes arising out of their acts of government; the two chief justices, of whom one at least is not of the Executive Council, and who sits therefore under a provincial statute, not very easily to be reconciled in this respect with the 31 Geo. 3, c. 31, s. 34, decide alternately the appeals from Quebec and Montreal, the one sitting in judgment on the decisions of the other, so that on points of law on which they differ the chief justice of Montreal gives the first judgment at Montreal and the final one at Quebec; the chief justice of Quebec gives the original judgment at Quebec and the final one at Montreal. I should think it very desirable, as conducing to harmonize the institutions of the two Provinces, to form one Court of Appeal for Upper and Lower Canada, which should sit twice a year at Quebec, at Montreal and at Toronto; but at present I content myself with recommending that the King should be empowered to appoint one or more persons to constitute a Court of Appeal for Lower Canada, without their being of the Executive Council. I do not feel the objections against applying, for this purpose, for an Imperial Act of Parliament as strongly as they are stated in the 41st paragraph of the Report, because where the inconvenience is created by an Imperial Statute, I know no other constitutional or legitimate mode of remedying it. I consider that it would be an unconstitutional, irregular and dangerous innovation to encourage a practice of having bills introduced in the Assembly here which it exceeds the lawful powers of the Provincial Legislature to enact, in order that the chance may be taken of the King's Ministers obtaining an Act of the Imperial Parliament to make it lawful for His Majesty to give the Royal assent to the unlawful bill. I am aware that the Imperial Statute of 1 W. 4, c. 20, is in some degree a precedent for such a practice, but it does not appear on the face of that Act that any unlawful bill had actually passed the Council and Assembly, and was awaiting the Royal assent; if that was the case the precedent appears to me to have been a very bad one; and it may give some notion of the consequences which may be expected, if it is repeated, to mention that a bill for making the Legislative Council elective was introduced into the Assembly last session, is now completely ready to be presented again in the next session, and will certainly pass the Assembly if the practice is countenanced of allowing measures, to the enactment of which the Imperial Parliament alone is competent, to originate in the Provincial Assembly or Legislative Council.

10. As it would be necessary to obtain an Act of the Imperial Parliament for the alterations which I have recommended in the Executive Council and Court of Appeals, those also which are required in the Legislative Council might be included. It is certainly desirable that the members of it should be enabled in some circumstances to resign their seats; and it would elevate the character of the Council if both qualifications and disqualifications for a seat in it were established.

11. The

11. The precise measure, therefore, which I should wish to have been recommended by our present Report is, that a bill should be introduced in the present session of the Imperial Parliament, to be intituled, "An Act for making certain Alterations in the Legislative and Executive Councils of the Province of Lower Canada;" and that by this bill it should be enacted,

1. That it shall be lawful for any member of the Legislative Council to resign his seat, and for the Governor provisionally, and for His Majesty finally, to accept and confirm the same.

2. That every member of the Legislative Council, upon the opening of each session of the Provincial Parliament, shall make a solemn affirmation, that after allowing for the payment of all his just debts, he is lawfully possessed of property to the amount of 5,000 *l.* sterling, or of an income for life of 500 *l.* sterling by the year.

3. That no member of the Legislative Council shall be capable of holding any office or appointment of emolument at the pleasure of the Crown.

4. That a conviction of any fraudulent crime or misdemeanor shall be an avoidance of the office of legislative councillor.

5. That in addition to the members of the Executive Council who have been or hereafter may be appointed by His Majesty, it shall be lawful for the Governor of Lower Canada to appoint such and so many persons as to him may seem fit to be members of the Executive Council for the term and period of his own government, and no longer; and that by the appointment of the Governor there may be four or more full meetings in the year of all the members of the Executive Council, but that on ordinary occasions not more than five members shall be summoned to, or shall attend any meeting of the Executive Council.

6. That the Executive Council shall cease to be a Court of Appeals, and that notwithstanding the 31 Geo. 3, c. 31, s. 34, it shall be lawful for His Majesty to constitute a Court of Appeal for the Province of Lower Canada, by appointing one or more persons to be a judge or judges of such Court of Appeal, without being members of the Executive Council.

These would be all the arrangements which would seem to me to require the sanction of an Imperial Statute. The minor ones that have occurred to me, and of which some are mentioned in the Report, might be left to the judgment and discretion of the Governor, or at most would require to be pointed out by the instructions, or by the commission of the Governor.

12. It seems to me to be an object of great importance that before the next session of the Provincial Parliament the Governor should be enabled to meet them with a statement which would show that neither the Governor nor the Commissioners had been idle, but that there had been some vigour of administration and progress of reform. I conceive it to be quite within the reach of the Commissioners, and of His Majesty's Ministers, to enable the Governor to state,

1. That by the measures which we have recommended in our Second Report, the arrears due for the service of the civil government have been discharged, and that the Government is provided with the means of defraying for the future the necessary expenses of the executive and judicial branches.

2. That by the measures which I have now ventured to recommend, and by the steps taken by the Government in consequence of them, the Legislative and Executive Councils have been put upon an improved and satisfactory footing.

3. That by measures which I would propose to recommend in our next Report, the management of the wild lands and forests, and of the King's domain and other Crown property, have been regulated and improved.

4. That the Governor is prepared to recommend to the Legislative Council and Assembly a bill for establishing, for a limited term, a civil list adequate to all the necessary expenses of the executive and judicial branches of Government, and for placing, during the same term, at the disposal of the Provincial Legislature the net proceeds of all Crown property, and all other monies payable to the Crown which arise from Lower Canada.

5. That the Governor is prepared to recommend another bill for making new divisions of the Province, and for erecting the same into municipal districts; or if that measure should not be approved by the Legislative Council and Assembly, for appointing lieutenants of the present districts, and for giving to the Court of Quarter Sessions in each an assistant barrister and a certain civil jurisdiction, and a power of levying a tax on property in uncultivated lands, to be expended in the making of roads.

13. If the Government could be placed in this position, and elevating itself above all party feelings; if a thoroughly impartial, firm and quiet conduct were to be pursued; if contented with seeing that the existing laws were thoroughly carried into execution, and the judicial tribunals were upheld in independence and security, it should still lend itself willingly to assist the two Houses of Legislature in making new laws, but should never let its feelings become so engaged in this task as to take any offence if new laws were not made, I should entertain only one apprehension of danger or of serious difficulty in the future conduct of the affairs of this Province. There would certainly be irritation, discontent, clamour and abuse, and no human arts will prevent these in Canada for many years to come; but if these were disregarded, as they ought to be both here and at home, the worst that need result from any differences of opinion amongst the three branches of the Legislature would be that old laws must serve till new ones could be agreed upon. From this description of the prospect I have made one exception. It is religion; an element which, in its volatile state, is beyond the control of governments, which is not at present in a state of greater action than is salutary, and possibly may not be inflamed, but which, if it ever should become so, whether by the oppression of the Protestant or the Catholic Church, will be the signal for general confusion.

(True extract from the minute of proceedings of 5 May 1836.)

(signed) *T. Fred. Elliot.*

EXTRACT of the MINUTES of PROCEEDINGS, 5 May 1836.

Sir *George Gipps* desired the following Entry to be made.

1. IT is my desire to place on the minutes of our proceedings a few remarks on the Report respecting the Executive Council which we are now about to forward; and as I feel the necessity of replying to part of the dissent that has been recorded by Sir Charles Grey, I will commence by so doing.

2. In his first paragragh Sir Charles omits to say that the objections in the passages he cites from the Report were against a council of control, removable at the will of the Assembly: to a council of advice, the arguments used in paragraphs 12. 14. 16 and 17, would apply with very diminished force.

3. Our objections against a council of advice, removeable at the pleasure of the Assembly, are mentioned in paragraph 15, which is not one of those cited by Sir Charles; and they amount chiefly to this, that the institution of such a council, if avowedly made removable at the pleasure of the Assembly, would soon lead to a demand for investing it with greater powers. On the subject of this paragraph, connected, as it is, with the demands of the Assembly of Upper Canada, I shall offer some further observations before I conclude. (*See* par. 11, *infrà*.)

4. It is certainly true that, under the arrangement recommended in the Report, the Assembly might, as stated by Sir Charles, stop the supplies to enforce a change in the Council; but they might do the same under any other constitution of that body, as, in fact, they have now done in Upper Canada under the existing one: and it is scarcely, I think, fair to object to any proposal whatsoever, that it does not preclude the Assembly from seeking their ends by a stoppage of the supplies, so long as the power of stopping them is allowed by the constitution of the Province to that body. It might, in a similar way, be objected to Sir Charles's own plan, that if the majority in the Assembly should not approve of it (and of their liking it I confess I see little chance), they might stop the supplies until it were altered. The form of council which we recommend is not intended to prevent their stopping the supplies, but to take away one reasonable cause for their doing so.

5. I wish distinctly to point out that we have recommended a council of advice, and not one of control, and that we propose to give the power of making changes in it, not to the Assembly, but to the Governor; it is true, indeed, that he may occasionally exercise this power in the hope of pleasing the Assembly; but he must be a weak man indeed if he continued to do so, after finding that it was productive of no good, and still weaker if he allowed himself to be led by his Council into measures that were contrary to his duty. I beg here distinctly to repeat, what I have often advanced in our deliberations, that if we are to retain any government over Canada, there must be some point at which our power is to be brought to bear on her. I wish to leave the management of her internal affairs, as far as possible, to her own Legislature; but the distinction between national and provincial Government cannot be entirely done away with.

6. The only other part of Sir Charles Grey's dissent to which I feel it necessary to reply, is that from the 10th paragraph to the end of it, which relates to the introduction of a Bill into the Imperial Parliament, to divest the Executive Council of the functions of a Court of Appeal, and to make some slight modifications in the constitution of the Legislative Council; and I must here beg to recall to the recollection of Sir Charles, that I not only expressed my opinion with respect to the latter, in the Minute which went home with our last Report, but that I made a specific proposition, in writing, 14 days ago, that a letter should be written to the Secretary of State by the Commissioners, recommending a measure of the sort, though not pressing it as to time. I shall now renew that proposition, in the hope that the letter may be forwarded by the next packet from New York; and in the mean time, with respect to the Court of Appeal, I will only say, that though I agree with Sir Charles in thinking that the appointment of a new judge to that court would be an advantageous measure, it is one so entirely of an internal nature, that I doubt whether it should be done under an Imperial statute.

With respect to Sir Charles's proposition for the Legislative Council, I will only remark, that to exclude, without distinction, every man from it who might hold an office under Government, would seem needlessly to cramp it; and that to make a man swear to his qualification, at the opening of every session, might appear vexatious and distrustful.

7. The remaining observations which I have to offer will have reference to the Report itself.

In it we have recommended that the Executive Council shall be increased from nine to fifteen, contrary to an opinion which I expressed in the Minute which accompanied our last Report; and I therefore am desirous of explaining the reasons which have induced me now to acquiesce in the recommendation. I am still of opinion that a council of seven, or even of a smaller number, would be a more efficient instrument of good government than a council of fifteen; but as an increase in the number of its members seems pretty generally to be desired in the Province, I think it can scarcely be wrong, in such a matter, to yield to the public wish.

It is, moreover, worthy of consideration, that, as there is no class of persons in Canada who can afford to devote their whole time to political affairs, unless adequately paid for it, few, if any individuals, are to be found who would remove from their established homes for the sake of a seat in the Executive Council; that, consequently, the members of a small Council must of necessity be chosen almost exclusively from amongst persons resident at or near the seat of Government, and that it is only by adding to their number that persons whose interests lie in the remote parts of the country, or even in the city of Montreal, can be introduced into the Council.

If it were absolutely necessary to have an unanimous Council, this increase to its number would be, I think, extremely objectionable; but, as I apprehend it will be found necessary, for some time to come, to have one of a mixed political character (though avoiding the extremes of either party), the difference of opinion amongst the members may perhaps be found less objectionable in a large Council than in a small one.

8. In this, therefore, as in every other part of the Report, I now concur; and in the few other observations that I shall make, I beg to be understood as in no way attempting to controvert the Report, but only to express my individual opinion on some points in a more marked way than is done in it.

9. We have, in the 38th paragraph, stated that we think it must still be left to the Governor to decide whether he will or not consult his Council on any occasion where he is not now positively required to do so; and, considering the very difficult position which the Governor must continue for a long time to occupy in Lower Canada, I think it might be wrong to take away from him this discretion; at the same time, however, I feel that there are particular acts of Government in which it is desirable that he should consult them, though such has not hitherto been the practice, particularly in all appointments to or removals from office, and on all communications to the Legislature, except such as relate only to business of routine.

10. With all that is said in the Report of the impossibility of making the Council responsible for the acts of Government, and at the same time removable by the Assembly, I entirely agree; and the reasons for it are so plain, that perhaps no farther development of them is necessary; nevertheless, as the subject is such an important one, I will venture to add the following argument:

Besides his duty to the people of the Province, which is analogous to that which the King owes to his people, the Governor has a duty or responsibility which the King cannot have, a responsibility, that is to say, to a superior power, beyond the limits of the community which he governs. If it were possible to draw a line of distinction between these two kinds of responsibility, the former might perhaps be transferred to an Executive Council; but the latter could not, at least it would be impossible, without producing confusion, to transfer it to a body existing at the will of, and punishable to the extent of dismissal by, the local Legislature. If there be any doubt of this, let us suppose that in either of the Canadas the two Houses of Legislature were to pass a bill to render the Legislative Council elective, or to abolish the land company: with what colour of justice, I would ask, could the responsibility of the Governor, in giving or withholding his assent to it, be transferred from himself to his Council? If he assented to the bill, they would be punished for it by the authorities at home; if he refused his assent, they would be punished for it by the authorities in the Province; and in the same way it appears to me that punishment would hang over them, from one side or the other, as often as any question arose respecting the alteration within the Province of any Imperial statute, or the maintenance of the relations between the Province and England as the head of the Empire, or the preservation of the due prerogative of the Crown.

11. When I consider the distance at which our Report is to be read from the country to which it relates, and the difficulty of affording explanations across the Atlantic, I am led to fear that we have not, in the 15th paragraph of our Report, explained with sufficient clearness the difference which exists between the demands of the Houses of Assembly in Upper and Lower Canada.

In Lower Canada the demand is for an absolutely responsible ministry, that shall conduct the affairs of the country, and be responsible to the House of Assembly for the measures of Government in the same way that the ministry is responsible at home; but in Upper Canada they have as yet only asked that the Council should be made more efficient, and the Governor forced to consult it more frequently, leaving to him the power of overruling it, and in cases where he may do so, attaching to him the sole responsibility as at present. These demands may appear to go very little farther than our own recommendations; there is, however, I apprehend, this difference, that whilst we think it only desirable that the Executive Council and the House of Assembly should be, as far as possible, in political harmony, they look to it as an indispensable condition; and what such an indispensable condition would lead to we have endeavoured to set forth in the Report (par. 15.)

In the demands of the Upper Province there is also one feature which we have omitted to notice. In the letter which was addressed, on the 4th of last March, to the Lieutenant-governor of Upper Canada, by the six seceders from his Council, the following passage occurs:

"With the exception of matters of so weighty or general a character, as not properly to fall under any particular department, and therefore fitted for the deliberation of the Council collectively, it is recommended that the affairs of the Province be divided into departments, to the heads of which shall be referred such matters as obviously appertain to them respectively."

This recommendation was evidently made with a view to the model of England, which has so often been appealed to in the course of the argument on the subject in Upper Canada; and if the arrangement had been permitted, an administration would, I apprehend, have been established in lieu of a Council.

(True extract from the minutes.)

(signed) *T. Fred. Elliot.*

APPENDIX.

LIST OF APPENDIX.

Appendix, No. 1.

Appendix, No. 1.

LIST of MEMBERS of the EXECUTIVE COUNCIL of *Lower Canada*, appointed between the Years 1791 and 1836.

NAMES of COUNCILLORS.	DATE OF APPOINTMENT, and AUTHORITY UNDER WHICH APPOINTED.
James M'Gill -	- - Sworn in by Lord Dorchester 22 Nov. 1793; received salary from that period till his death, Dec. 1813; *see* note, No. 1.
William Osgood -	- - Sworn in by Lord Dorchester 19 Sept. 1794; mandamus as ordinary member, dated 5 May 1794; received salary from 19 Sept. 1794 to 30 April 1802; *see* note, No. 2.
James Monk - -	- - Sworn in by Lord Dorchester, in virtue of his commission, 29 Nov. 1794; received salary from that period to 30 April 1822.
P. A. Debonne - -	- - Sworn in by Lord Dorchester, an honorary member, 29 Dec. 1794; as ordinary member, 2 Oct. 1802; mandamus dated 1 June 1802; received salary from that period to the date of his death, 6 Sept. 1816; *see* note, No. 3.
John Lees - -	- - Sworn in by Lord Dorchester 29 Dec. 1794; by the Lieutenant-governor Milnes 24 July 1805; received salary from 20 Nov. 1804 to 3 March 1807, the day of his death; *see* note, No. 3.
A. L. J. Duchesnay -	- - Sworn in by Lord Dorchester 29 Dec. 1794; mandamus as honorary member dated 7 Jan. 1812; mandamus as ordinary member dated 5 Feb. 1817; received salary from 7 Sept. 1816 to 17 Feb. 1825; *see* note, No. 3.
John Young - -	- - Sworn in by Lord Dorchester 29 Dec. 1794; mandamus as ordinary member dated 5 Aug. 1807; received salary from 20 Jan. 1807, the day of Mr. De Longueul's death, to the period of his own death, 14 Nov. 1819; *see* note, No. 3.
The Right Rev. Jacob, Lord Bishop of Quebec.	- - Sworn in by the Governor in Council 19 Nov. 1795; mandamus dated 30 June 1794.
Adam Lymburner -	*See* note, No. 4.
Jenkin Williams -	- - Sworn in by Lieutenant-governor Sir R. S. Milnes 25 May 1801; mandamus as ordinary member dated 7 Jan. 1801; received salary from 4 March 1807 till the date of his death, 30 Oct. 1819.
John Craigie - -	- - Sworn in by Lieutenant-governor Sir R. S. Milnes 25 May 1801; mandamus dated 7 Jan. 1801.
Pierre Louis Panet -	- - Sworn in by Lieutenant-governor Sir R. S. Milnes 25 May 1801; mandamus dated 7 Jan. 1801.
Chief Justice Elmsley	- - Sworn in by Lieutenant-governor Sir R. S. Milnes 29 Oct. 1802; received salary from 14 August 1802 to 30 April 1805; *see* note, No. 5.
S. Richardson - -	- - Sworn in by the Hon. T. Dunn, esq., President of the Province, 25 Nov. 1805; mandamus dated 20 Dec. 1804; received salary from 14 Dec. 1813 to the date of his death, 18 May 1831.

NAMES of COUNCILLORS.	DATE OF APPOINTMENT, and AUTHORITY UNDER WHICH APPOINTED.
Mr. Justice Alcock -	- - Sworn in by the Hon. T. Dunn, esq., President of the Province, 12 August 1806; mandamus dated 1 July 1805; received salary from 1 July 1805 to 22 February 1806.
Mr. Justice Sewell -	- - Sworn in by his Excellency Sir James Craig 8 Sept. 1808; mandamus dated 5 May 1808; received salary from 22 Aug. 1808 to his retirement in 1830.
Mr. James Irvine -	- - Sworn in by the Governor-in-chief 22 Aug. 1809; mandamus as an honorary member dated 17 Nov. 1808; mandamus as an ordinary member dated 4 Feb. 1817; received salary from 11 Aug. 1814 till his retirement in 1822.
J. Kerr - - -	- - Sworn in by Sir George Prevost, in virtue of his commission, as an honorary member, 26 June 1812; mandamus as such dated 8 Jan. 1812; mandamus as ordinary member, 28 Sept. 1820; received salary from 16 April 1818 to 30 Sept. 1831; *see* note, No. 6.
R. Cuthbert - -	- - Sworn in by Sir George Prevost, in virtue of his commission, as an honorary member, 26 June 1812; sworn in ordinary member 15 July 1812; mandamus dated 9 Jan. 1812; *see* note, No. 6.
M. H. Perceval - -	- - Sworn in by Sir George Prevost, in virtue of his commission, as an honorary member, 26 June 1812; mandamus as such dated 10 Jan. 1812; mandamus as ordinary member, 10 Sept. 1820; received salary from 1 Nov. 1819 to 30 June 1829; *see* note, No. 6.
John Mure - -	- - Sworn in by Sir George Prevost, in virtue of his commission, as an honorary member, 26 June 1812; sworn in ordinary member 15 July 1812; mandamus dated 11 Jan. 1812; *see* note, No. 6.
Ol. Perrault -	- - Sworn in by Sir George Prevost, in virtue of his commission, as an honorary member, 26 June 1812; mandamus as such dated 12 Jan. 1812; mandamus as ordinary member dated 22 April 1822; received salary from 7 Oct. 1820 to 19 March 1827; *see* note, No. 6.
W. B. Coltman - -	- - Sworn in by the Governor-in-chief 5 July 1815; mandamus as honorary member 13 Jan. 1812; mandamus as ordinary member 3 April 1823; received salary from that day till his death, in January 1826.
W. Smith - - -	- - Sworn in by the Governor-in-chief, as an honorary member, by mandamus, 3 Feb. 1817; as an ordinary member, by mandamus dated 4 April 1823; received salary from 1 Nov. 1822.
Mr. Hale - - -	- - Sworn in by the Governor-in-chief, in virtue of his commission, 28 Dec. 1820; mandamus as ordinary member dated 21 Nov. 1821; received salary from 18 Feb. 1825 to 2 March 1829; *see* note, No. 7.
Mr. Speaker Papineau	- - Sworn in by the Governor-in-chief, in virtue of his commission, 28 Dec. 1820; *see* note, No. 7.
Mr. Secretary Ready -	- - Sworn in by the Governor-in-chief, in virtue of his commission, 28 Dec. 1820.
Charles J. Stewart, D.D., Lord Bishop of Quebec.	- - Sworn in by the Governor-in-chief 22 Nov. 1826; by mandamus as ordinary member 3 May 1826.
Charles De Lery, esq.	- - Sworn in, as an ordinary member, by the Earl of Dalhousie, in virtue of his commission, 4 Jan. 1826; mandamus dated 15 June 1826; received salary from that period to 31 Dec. 1833.
John Stewart, esq. -	- - Sworn in, as an ordinary member, by the Earl of Dalhousie, in virtue of his commission, 4 Jan. 1826; mandamus dated 2 Sept. 1826; received salary from that period to 31 Dec. 1833.
Andrew W. Cochran, esq.	- - Sworn in by the Governor-in-chief, as an honorary member, 15 May 1827; mandamus as such dated 16 Nov. 1827; mandamus as an ordinary member dated 16 May 1828; received salary from 16 May 1829 to 31 Dec. 1833.
James Stuart, esq. -	- - Sworn in by the Governor-in-chief, as an honorary member, 6 July 1827; mandamus dated 16 Nov. 1827.
P. Panet, esq. - -	- - Sworn in by Lord Aylmer, as an ordinary member, 26 May 1831, under authority of a despatch from Lord Viscount Goderich.
Dominique Mondelet, esq.	- - Sworn in, under authority of his Excellency Lord Aylmer, as an honorary member, 16 Nov. 1832.
Hughes Heney, esq. -	- - Sworn in as an honorary member, by his Excellency Lord Aylmer, under authority of a despatch from Lord Goderich, Secretary of State for the Colonies, dated 28 Jan. 1833; as an ordinary member, under mandamus 1 March 1833; received salary from 24 April 1833 to 31 Dec. 1833.

(Certified.) (signed) *George H. Ryland*, Assist. Clk. Ex. Coun.

Appendix, No. 1.

Note 1.—Mr. M'Gill was the first person sworn into the Executive Council by Lord Dorchester, after he took upon him the administration of the Government.

The names of the Executive Councillors contained in Lord Dorchester's commission were:—W. Smith, Chief Justice, P. R. St. Ours, H. Finlay, F. Baby, T. Dunn, J. De Longueul, A. Maubone, P. Panet, A. Lymburner (absent).

Note 2. Chief Justice Osgood having written his dissent at the foot of a report of Council, dated 1st May 1801, relative to the confection of the Papier Terrier of the King's domain, his Excellency Lientenant-governor Sir R. S. Milnes referred the matter to a committee of the Council, to report whether it was intended by the committee that such writing should accompany the said report.

The board recommending, in their report of 8th May, that the writing in question should be expunged from the foot of the report, the Chief Justice moved, at the next sitting of Council, on the 25th May:

"That the dissent from the approval and order of entry of the report laid before the Board of Council on Friday 8th May, be entered on the Minutes of Council." Upon which his Excellency the Lieutenant-governor informed the board, "That he should defer putting the question on this motion till His Majesty's pleasure respecting the right of the members to enter protests or dissents on the minutes of the Executive Council should be made known."

The following extract of a despatch from the Duke of Portland on the subject was communicated to the board on the 23d October 1801.

"Extract of a despatch from his Grace the Duke of Portland, dated 13th July 1801, to Sir Robert Shore Milnes, bart.

"With respect to the question of entering protests on the minutes of the Executive Council, which is discussed so much at large in No. 48 and its Enclosures, it appears to me that no better rule can be laid down than that by which His Majesty's Privy Council here is guided in similar occasions.

"Although the most unreserved liberty of speech is allowed to all the members of that board in the same manner as it is granted to the Executive Councillors of Lower Canada by His Majesty's instructions, I have reason to believe that not a single instance of a protest is to be found in the minutes of the Privy Council, and occasions most certainly have not unfrequently occurred, and indeed must of necessity often occur, where the sentiments of the members present diametrically differ from each other.

"Having thus stated to you what appears to have been the invariable practice here, in cases similar to that in which Mr. Osgood's protest was entered, I think it unnecessary to enter into any discussion on the question of a right which has never been attempted to be exercised, nor has even been laid claim to."

(A true extract.)

(signed) *H. W. Ryland.*

Note 3.—Messrs. Debonne, Lees, Duchesnay and Young were sworn in by Lord Dorchester on the 29th December 1794, when "his Lordship acquainted the board he had received a letter, dated the 16th September last, from his Grace the Duke of Portland, one of His Majesty's principal Secretaries of State, informing him that 'an instrument especially appointing P. Amable Debonne, John Lees, Antoine Juchereau Duchesnay and John Young to the Executive Council, when summoned to attend, has been long since sent from his office;' which instrument his Lordship informed the board he had not yet received, but that in consequence of the information conveyed to him by the said letter, he had caused those gentlemen to be summoned to attend this day to be sworn into office."

The duplicate mandamus authorizing Lord Dorchester to swear those gentlemen in was communicated to the board on the 10th January 1795, and directs that they shall not, any of them, act as members of the Executive Council, except at such time or times, and upon such occasions when they shall respectively be especially summoned to attend as members by the Governor; nor shall any of them, by virtue of this appointment, be entitled to any salary as members of the Executive Council.

Note 4.—Adam Lymburner, esq. presented himself to the board, and stated that he conceived he had a right to a seat at the board in consequence of his having been named in the 4th article of the Royal Instructions to his Excellency Lord Dorchester, "bearing date the 16th September 1791, and therefore requested that the usual oaths might be administered to him." Reference being had to the said instructions, it appeared that the name of A. Lymburner, esq. is therein mentioned, whereupon it was moved that the 7th article of the Royal Instructions be read; and the said A. Lymburner, esq. being questioned whether he had any leave of absence to produce either from His Majesty or any of His Majesty's representatives in this province, and whether he had any mandamus or other document to produce, he answered in the negative: whereupon he was requested to withdraw, and the question being put,

It was resolved unanimously, That the case of A. Lymburner, esq. comes within the provision of the 7th Royal Instruction, and as he, the said A. Lymburner, esq., hath not produced any further title or authority, he has no right to demand that the said oaths be administered to him, or to a seat at the board.

Council Chamber, Quebec, Monday, 17th June 1799.

Note 5.—

Note 5.—Chief Justice Elmsley. At a meeting of the Council on 8th May 1804, the chairman read the following letter from Mr. Secretary Ryland:

Sir, Castle of St. Lewis, Quebec, 7th May 1804.

As your avocations may frequently render it inconvenient for you to attend the committees of the Executive Council, his Excellency the Lieutenant-governor requests you will inform the board it is his desire that, in your absence, the senior member present should take the chair, and that this should in future be considered as an established regulation.

I have the honour to be, &c. &c.

(signed) *H. W. Ryland.*

Adjourned by order,

(signed) *J. Elmsley,* Chairman.

Note 6.—Messrs. Kerr, Ross, Cuthbert, M. H. Perceval, J. Mure and Olivier Perrault. His Excellency Sir George Prevost, in Council on 26th June 1812, made the following communication to the board respecting these gentlemen:

His Excellency communicated to the board two letters, the one from Mr. M'Gill, and the other from Mr. Richardson, which were received yesterday, containing information that, by an express which left New York on the 20th instant, and Albany on Saturday last, intelligence had been received of a declaration of war on the part of the United States against Great Britain. His Excellency further acquainted the board that soon after taking upon himself the administration of the government of this province he had recommended the following gentlemen to be appointed members of the Executive Council, viz. J. Kerr, Ross Cuthbert, M. H. Perceval, J. Mure and Olivier Perrault, esquires. That he had since received a despatch, dated 31st December 1811, from the Earl of Liverpool, in which his Lordship informs him that the necessary instruments were preparing for the appointment of the persons recommended by him to be members of the Executive Council, and that they would be forwarded as soon as completed, but that the said instrument had not yet reached his hands.

His Excellency, at the same time, observed, that considering the peculiar circumstances in which the province was now placed by the late proceedings on the part of the government of the United States, he was desirous of strengthening the Executive Government of the province, by immediately calling the gentlemen above mentioned to the Council; and that, for this purpose, he had directed them to be summoned to attend the present meeting.

The said gentlemen being called in, took and subscribed the state oaths and the oath of office of councillors, and then took their seats at the board.

Note 7.—Messrs. Papineau, Ready and Hale. At a meeting of the Executive Council on 28th December 1820, his Excellency the Earl of Dalhousie informed the board, "that deeming it a measure that will tend to promote the best interests of this province, he had resolved to call the Honourable Speaker of the House of Assembly to a seat at the board of His Majesty's Executive Council; at the same time his Excellency was pleased to state, that in recommending this measure for His Majesty's approbation, it was his intention to solicit a special mandamus for the Speaker *ex officio*, and that he wished his reasons for this measure to be recorded in Council, and communicated in the proper manner to the Speaker.

"His Excellency observed, first, that he thinks it a distinction due to the person who is chosen and declared the first commoner in this province. Secondly, that he thinks His Majesty's representative thereby has the right to consult and advise with the Speaker officially on public measures. Thirdly, that he thinks it right that the Speaker ought to have the advantage of knowing the sentiments of His Majesty's representative on public measures, and that cannot be in any other way so fully obtained as in the character of a privy councillor of the Governor."

His Excellency further informed the board, "that in the same view it was his intention to recommend to His Majesty's Government that the civil secretary of the Government, in whom also is to be joined the duties of provincial secretary, should have a seat in the Executive Council *ex officio*; and that in virtue of the powers vested in him, he desired that these gentlemen should be called to the board until the pleasure of His Majesty shall be known."

His Excellency added, "that in room of Mr. Mure, long absent, he had called Mr. Hale to the board until the pleasure of His Majesty is known." Whereupon those gentlemen being called in, the usual oaths, &c. were administered to and subscribed by them; after which they took their seats at the board.

On the 25th January 1823, the Earl of Dalhousie made the following communication respecting Mr. Papineau to the board:

His Excellency stated to the board that a seat in the Council had been given to Mr. Papineau two years ago, to be held by him *ex officio* as Speaker of the House of Assembly; that Mr. Papineau being no longer in that public situation, cannot now be considered as a member of the Council; and his Excellency was pleased to direct that this be notified to him by letter.

His Excellency further informed the board, that as the advantages he had expected to result from the presence of the Speaker in the Executive Council have not been realized, it is not his intention to persevere in the measure of calling the Speaker to a seat in the Executive Council.

Appendix, No. 2.

Appendix, No. 2.

MEMORANDUM, showing the Cases in which by Acts Imperial or Provincial, or under the Royal Instructions, the Governor is required to act with the Advice, or with the Advice and Consent of the Executive Council.

THE Constitutional Act, 31 Geo. 3, c. 31, s. 7, empowered the Governor in certain questions respecting the hereditary seats which were contemplated in the Legislative Council, to interrogate a claimant upon oath before the Executive Council. The 34th clause continued in the Executive Council the same power to try and determine appeals as had been vested in the former Council of the province of Quebec. The 38th clause enabled the Governor, by and with the advice of the Executive Council, to erect and endow parsonages according to the establishment of the Church of England. In the 50th clause, the Governor was empowered, in the interval between the commencement of the Act and the first meeting of the Legislative Council and Assembly, to make temporary laws and ordinances, with the consent of the major part of the Executive Council. By the Canada Trade Act, 3 Geo. 4, c. 119, s. 1, the Governors of Upper and Lower Canada are authorized to increase or diminish, with the advice and consent of their Executive Councils, the number of places in each province for the entry of goods from the United States. And by the 31st section of the same Act, the Governor, by and with the consent of the Executive Council, might cause a fresh grant in free and common soccage to be issued in lieu of the tenure in fief and seigneurie, provided such sums were paid in commutation as should seem meet and expedient.

The last-mentioned provision is renewed by the 1st section of the Act 6 Geo. 4, c. 59, commonly called the Tenures Act; and by section 10 of that statute, the Governor is empowered to appoint, with the advice of Council, a commissioner or commissioners of escheats and forfeitures of land within the said province.

The Act of 7 & 8 Geo. 4, c. 62, authorizing the sale of clergy preserves, empowered the Governor to proceed for the purpose, with the consent of the Executive Council, in pursuance of any instructions which he might receive from His Majesty through one of the principal Secretaries of State.

By the 33d clause of the 3d and 4th Will. 4, c. 59, the Governor is empowered, with the advice and consent of the Executive Council, to increase or diminish the number of ports of entry.

There are only two provincial Acts in force by which the Governor is required to act with the advice of his Council. One is the Act of 35 Geo. 3, c. 5, by which the Governor is authorized, with the advice and consent of the Executive Council, to establish a quarantine, and make regulations concerning the same. The other is the Act 4 Geo. 4, c. 14, by which the Governor is empowered, with the advice of the Executive Council, to order the restoration of any custom's seizures made under Provincial Statutes, and to subject every such restoration to any conditions he may, with the advice of the Council, think fit.

Besides these Statutes there was an Ordinance of 17 Geo. 3, regulating the intercourse with the Indians, which gave an appeal to the Executive Council from certain penalties which might be imposed by justices of the peace.

By the Governor's commission he is authorized to grant lands, with the advice of the Council. He is also empowered, with the advice of Council, to constitute townships or parishes, and erect and endow them conformably with the provisions in that respect of the Act of 31 Geo. 3, c. 31. The Governor's commission authorizes and requires the Council to administer to him the several oaths of his office.

The Royal Instructions, under which the Governor now acts, being nearly an exact transcript of those to Lord Dorchester in 1791, direct him to take care, with the advice and assistance of the Executive Council, that such prisons as may at any time be necessary be erected, and that the same or any already erected be kept in a condition proper to secure the prisoners. They provide that the seminaries of Quebec and Montreal, and all other religious communities, may be subjected to such rules as the Governor, by and with the consent of the Council, may think fit to establish. They also empower the Governor, with the same advice, to make any regulations necessary for preserving good order in the fisheries in the Bay of Chaleurs. There is a general and very indefinite clause, that if anything should occur which might be of advantage to the province, not provided for by the instructions or the King's commission, the Governor should be at liberty to act therein, with the advice and consent of the Executive Council, provided, however, that speedy notice should be given to His Majesty, through one of the Secretaries of State, and that war should not be declared by the Governor, except for the purpose of repelling or preventing hostilities, wherein the consent of the Executive Council should be had, and early notice sent to His Majesty. The Executive Council is charged by the Royal Instructions with the duty of auditing the public accounts.

The foregoing constitute, it is believed, all the cases in which the Governor is under an obligation to resort to, or make use of, the Executive Council in Lower Canada. It seems, however, to have been the usage, though not founded on any positive direction, to consult the Council previously to the issuing of proclamations.

Appendix, No. 3.

Oath of Secrecy.

I WILL serve His Majesty truly and faithfully, in the place of His Council, in this, His Majesty's Province of Lower Canada. I will keep close and secret all such matters as shall be treated, debated, and resolved on in Executive Council, without publishing or disclosing the same or any part thereof, by word, writing, or any otherwise, to any person out of the same Council, but to such only as be of the Council. And yet if any matter so propounded, treated and debated in any such Executive Council, shall touch any particular person sworn of the same Council, as shall in anywise concern his loyalty and fidelity to the King's Majesty, I will in nowise open the same to him, but keep it secret, as I would from any other person, until the King's Majesty's pleasure shall be known in that behalf. I will, in all things to be moved, treated and debated in any such Executive Council, faithfully, honestly and truly declare my mind and opinion to the honour and benefit of the King's Majesty, and the good of His subjects, without partiality or exception of persons, in nowise forbearing so to do from any manner of respect, favour, love, meed, displeasure or dread of any person or persons whatsoever.

In general, I will be vigilant, diligent and circumspect in all my doings touching the King's Majesty's affairs; all which matters and things I will faithfully observe and keep as a good councillor ought to do, to the utmost of my power, will and discretion. So help me God.

Appendix No. 4.

EVIDENCE relating to the EXECUTIVE COUNCIL.

Mr. *George Ryland*, Assistant Clerk to the Executive Council, called in; and Examined.

HAVE you received directions from the Governor-in-chief to attend here and supply such information as may be required?—Yes.

And do you consider this to set you at liberty to disclose whatever knowledge the Commissioners may need, without obstacle from your oath of office or your duty to the Council?—Certainly; excepting the opinions of any individual members of Council on particular occasions.

You do not consider it necessary to apply to the other members of Council for permission of this nature?—No, the directions of the Governor are sufficient.

Are the proceedings of Council sent home periodically?—They are sent to the Secretary of State every six months.

Under what authority is the Executive Council constituted?—The Executive (or Privy) Council of Lower Canada it constituted under authority of the Royal Prerogative, His Majesty by mandamus addressed to the Governor directing such persons to be called thereto as the Sovereign shall see fit.

What provincial Acts are there imposing on the Governor the obligation of consulting the Council, or in which any mention of the Council is made?—There are provincial Acts which render it incumbent on the Governor *in certain cases*, to act by advice of the Council, but I cannot specify them from recollection. The Royal Instructions also, which were given to the Governor-in-chief on the establishment of the present constitution, direct on what occasions he shall consult the Council, and act by their advice.

The despatches of the Secretary of State may be considered as a similar authority with the instructions, being written by the King's commands.

In all other cases, I consider the Governor as at liberty to consult the Council, or not, as he shall see fit.

Has the Council always been a Board of Audit, and under what authority was it first so constituted?—The Executive Council has always been a board for auditing the public accounts in this province, as will be seen by the extract which I now produce, from a despatch, dated 3d. August 1796, from the Duke of Portland to General Prescott.

EXTRACT of a LETTER from His Grace the Duke of *Portland* to Lieutenant-General *Prescott*, dated Whitehall, 3d August 1796.

THE public accounts of Lower Canada have hitherto been so ably conducted and arranged by the Governor and Executive Council, that, although I do not mean to object to the appointment of an inspector of provincial accounts, if found necessary, as a relief to the board, and in order to prepare papers and accounts for its inspection, yet I cannot too strongly express my desire that the same system should be pursued by the board, and that it should continue, as usual, to inspect, arrange and report upon all the public accounts of the province.

(Certified.)

(signed) *H. W Ryland.*

Appendix, No. 4.

Mr. G. Ryland.

How often does the Council assemble?—There are no fixed times for the Council assembling. I may observe that there is no "Council" unless the Governor be present. In his absence the members form a committee, and they assemble at such times as suit their convenience, for the purpose of taking into consideration and reporting upon such matters as the Governor may have referred for their opinion; summonses being sent for this purpose by the clerk of the Council, at the desire of the chairman, who is the senior member present.

A committee cannot consist of fewer than three members, and to form a committee of the *whole*, it requires at least one more than half the members of the Council.

All reports of committees on matters of state or land matters are brought into Council, and ordered to be entered, either with the Governor's approval or dissent, as he sees fit, the Governor being responsible to His Majesty if he acts on advice improperly given, and the Council being responsible to the Governor, who is authorized by his commission and instructions to suspend or remove members, giving his reasons to his Sovereign for so doing.

Does a full Council, as distinguished from committees of Council, ever meet except by special summons from the Governor?—Never.

Do the reports from committees of Council require the approval of the whole Council before they can be acted upon?—They require to be approved by the Governor in Council, with the exception of the reports on public accounts, to which the Governor's signature is considered sufficient.

On every other subject, then, but the auditing of accounts, the reports of committees must wait to be acted on till the Governor sits in Council?—Yes.

Of what number is it necessary that a committee should be composed?—Three is the lowest number, and is sufficient on matters of finance; but for matters of state, five members must be present.

Are there standing committees to attend to particular subjects?—No.

What subjects, independently of finances, are usually referred to committees of Council? Grants of land; the issuing of letters patent for a change of tenures; quarantine regulations; the fixing of tolls on canals; the exercise of the Royal prerogative of mercy to prisoners under sentence of death; the issuing of proclamations; and a variety of matters difficult to specify with particularity.

What discretion has the chairman of committees in summoning members to attend?—The chairman directs the clerk to call a committee of Council for a stated day, and the clerk summons all members within a convenient distance of the place of meeting.

What number constitutes a quorum, when the Governor sits in Council?—Five.

Has the Council any standing rules or orders for its own governance?—None that I know of, excepting whatever may be contained in such parts of the Royal Instructions to the Governor as relate to the Executive Council.

Has it been customary for the Governor to consult the Council upon communications to be made to either branch of the Legislature?—It has been customary for the Governors to consult the Council on messages to the two branches of the Legislature, and on the transmission of documents to them, whenever they have deemed it advisable to have the opinion of Council thereon.

It used also to be deemed matter of courtesy to communicate the speeches to be made at the opening and close of the session; but I think the practice in this particular ceased with Sir James Kempt.

Has it ever been the custom for the Governor to impart to the Council despatches from the Secretary of State on important subjects, and to take the advice of the Council before replying to them?—He has frequently communicated despatches to the Council; not however with a view of enabling him to answer the despatch, so much as to decide on the mode of carrying the instructions into effect.

In the appointments to office, has it been usual to take the advice of the Executive Council?—Certainly not; though on the propriety of suspending an officer, the advice of the Council has several times been taken.

How long has Mr. Ryland, senior, been clerk of the Council?—Since the month of July 1796, a period of 40 years.

John Neilson, Esq. called in; and Examined.

John Neilson, Esq. 30 March 1836.

Will you state in respect to the Executive Council, of what number you think it ought to be composed?—That is rather a difficult question. The Governor acts for the King, whose authority extends throughout the empire, and is, in fact, the only legal bond of union. The Governor must be independent of his Council, for if it controlled him, there would be a separate and independent government in each colony, and no single power pervading the whole. I should suppose that heads of departments ought to be in the Executive Council, as being the only persons who can furnish to the Governor the official information to be obtained from their several departments.

Besides these official members, the Council ought to consist of a much larger number of persons of every description whom the Governor might summon to the Council whenever he desired to be more fully informed of the interests, views and feelings of the country at large.

I am of opinion that such a Council would have the effect of creating confidence in the country. Official persons are always presumed to have interests of their own, and it is for that reason I recommend that there should be a number of persons not holding office, and not supposed to be biassed by any particular interest.

There ought to be in the Council a person well acquainted with the laws of the country; but

but I doubt if it ought to be the Attorney-general, because the greater part of his fees depend upon the Council, and he is principally paid by fees. The other heads of departments would have no such interest.

Has the Attorney-general any duties which would render him ineligible for the Council?—Yes. The Attorney-general seems to me to bear the same relation to the Governor and Council as a lawyer to a private individual; he is their servant, to institute such law proceedings as they may determine. Besides, the Governor can have his advice separately, whenever it is thought necessary.

Can you name the situations of which the holders ought, in your opinion, to form a part of the Executive Council?—I should suggest the receiver-general, the inspector of public accounts, the surveyor-general or commissioner of Crown lands, looking upon these as one office; some person, as I have already said, well versed in the laws of Canada, whether or not holding office; the secretary who transacts the principal executive business of the colony. The collector of customs used to belong to the Executive Council; but I believe there was some objection. The Council acts here on behalf of the treasury in checking the the public accounts, and there was supposed some delicacy in allowing the collector of customs to form part of this controlling body. His presence in the Council might diminish confidence.

Having thus suggested five members, how many persons not holding office would you propose to add?—One member of the Legislative Council, two members of the Assembly, one member from each of the districts of Quebec, Three Rivers and St. Francis, two members from the district of Montreal. The choice of men is very limited. The requisites are, education, acknowledged abilities, experience in public affairs, and independence as to pecuniary circumstances.

Although, however, the choice is not very extensive, it is practicable to form such a Council.

Too many members brought into the Executive Council from the Legislature might introduce there the divisions of the bodies whence they came; the persons chosen from the Legislature should be selected for their abilities and influence, and not on account of the locality to which they belong; the others would, of course, also be chosen for influence and merit, but with a regard to the district in which they reside.

I would not fix the limit at 13, which is the number of persons I have now mentioned; but I think it would be a fair Council, and too numerous a one might be inconvenient and more subject to party feelings.

Would you propose the addition of any other persons on account of the eminence of their station?—The heads of the churches might be in the Council, but I should fear danger from it.

It might introduce feelings of religious difference into the Council, and dissenters might feel dissatisfaction, from an impression that the clergy had an interest in the Council adverse to their several denominations.

When there is a civil governor, ought the officer commanding the troops in the colony to be in the Council?—He would be likely to be a qualified person; and as successor to the Government in case of a vacancy, there would be an advantage in his becoming conversant with the business of the province.

Can you suggest any alteration or extension of the functions of the Executive Council?—I am not accurately acquainted with the functions of the Executive Council as heretofore established; but I am persuaded that the instructions in respect to them have been well digested throughout the British colonies, and I should therefore doubt if much alteration of them be required. It is desirable that all public measures to be brought before the Legislature on the part of the Governor should be submitted to the Executive Council for their advice. This may have been the case hitherto, but I doubt it. It does not strike me that anything else is necessary which is not prescribed by the existing instructions, so far as I know them. I may add, however, that on nominations to the Legislative Council, the opinion of the Executive Council ought to be taken. The right of recommending is the Governor's, the right of nomination belongs to the Crown; but the opinion of the Executive Council ought to be taken; and I think it would be proper that the Governor should transmit, together with his own recommendation, such advice as they might give. To confer the initiative on the Council would invade the prerogative of the Crown in respect to appointments; but the observations of the Council would afford a security against private favour and personal interests.

In reference to your remark, that all public measures to be brought before the Legislature should be submitted to the Council, would you recommend that answers to addresses of either House should be submitted?—No, not addresses; and with respect to messages, I think that messages proposing measures ought to be submitted, but otherwise I should not deem it necessary.

In reference to your suggestion on the nomination of legislative councillors, would you think it expedient that the advice of the Council should also be taken on other appointments?—I should think it would be prudent, at least for the higher officers.

In thus taking the advice of the Executive Council, would you have it expressed individually, or according to the vote of the majority?—The opinion of the Council would be that of the majority; but those who dissented ought, in my opinion, to have the right of entering their dissent upon the Council books.

To what extent, if at all, do you think the Governor ought to be under the obligation of laying his correspondence with the Secretary of State before the Council?—Not at all; the whole matter ought to be left to the Governor's discretion.

Appendix, No. 4.

John Neilson, Esq.
30 March 1836.

Should the Council have the right of tendering advice to the Governor, or suggesting measures unasked?—They should not.

Without any reference to existing practice, could you state your opinion as to the extent of the secrecy which it would be desirable to impose upon the members of the Executive Council?—I think it ought to be absolute secrecy, as respects the opinions of individuals.

You would not divulge them even to the highest authority in the land?—No.

What degree of secrecy do you think proper as to the collective opinions of the Council?—The Governor must of course be at liberty to inform the Sovereign what was the opinion on which he acted.

May not cases arise in the colony in which it would be convenient that the Governor should have the power of making public the collective opinion of the Council?—In all cases provided by law, or contemplated in the King's instructions.

Do you think that in no qualified way responsibility could be attached to the Council?—I see none but a moral responsibility, and the liability to be dismissed.

Is there not a very general wish in the country that some responsibility greater than you have mentioned should attach to the Executive Council?—It has been much talked of, but I believe there are very few who have any definite idea on the subject.

How far do you think that the persons who might have seats in the Executive Council, and in either House of the Legislature, should be considered bound to explain or defend in the latter the measures of Government?—They would be able to explain the measures of Government, having become acquainted with them in the Council, and probably would be disposed to do so; but the idea of a ministry as in England seems to me inconsistent with the state of things in the colony.

In the event of their not being disposed to defend the Government, what ought to be the result?—A man in systematic opposition to the Government ought not, I think, to be kept in the Executive Council; but a single difference of opinion would not be a reason for dismissal. You must allow a good deal of freedom, or you would destroy the influence of councillors. A man of proper feeling would resign of his own disposition when he found himself decidedly opposed to the views of Government.

Do you think a Council, of which the ordinary meetings would necessarily comprise so large a proportion of office-holders as the one you have proposed, would be acceptable to the country?—Under the present circumstances, there is no doubt that there would be a certain degree of prejudice. The only way, however, of obtaining confidence is by proper measures for the general welfare; and if the Council, supposing that occasionally there should attend a majority of office-holders, adopted well-grounded measures, they would have as good a chance of public confidence as any others. The office-holders, apart from any bias of private interest, have greater motives than any others to recommend proper measures; the existence of their offices depends upon the stability of the Government, and they are more likely than any others to be losers by instability in Government affairs. They have a large stake in the concern. A Council without public officers would be without its best means of information.

You have in your previous answers limited your view of the functions of Council to advising the Governor; has not the Governor, at any rate, the right of calling upon all public officers for advice, especially upon heads of departments, for advice touching their own offices?—Yes; but that advice would not be equal to their advice in Council, where they had an opportunity of consulting with others more acquainted with the state of affairs and feelings generally throughout the country. The presence of the other members would assist them in forming a correct opinion, and, in return, their own presence would assist the others in coming to just conclusions. Besides, there ought not to be an entire separation held up between the official men and the remainder of the country.

Has it not been frequently included amongst the complaints which have gone home from this country, that there were too many office-holders in the Executive and Legislative Councils?—Yes; but it arose more from the strange intermixture of the servants and members of the different branches of the Government, and the accumulation of offices, than from any dislike of the heads of departments.

Has not their dependence on the Government been among the objections?—Yes, particularly as to the Legislative Council. With regard to the Executive Council, the objection was rather to the intermixture of officers.

Would it not be desirable to have in the Executive Council men connected with commerce?—I would not have men in very active business, but the heads of large houses with sufficient leisure would be very proper. I think there certainly ought to be some mercantile men in the Council; say at least one chosen from Quebec and one from Montreal.

In addition to the official members, who may be assumed to be resident at Quebec, how many councillors would you recommend, resident within such a distance of the seat of Government as to be always able to attend the Council?—If practicable, at least an equal number to the official men; but I do not think it very essential.

What quorum would you advise?—A quorum of seven would probably suffice for ordinary business, and a quorum of 11 for the consideration of measures to be submitted to the Legislature, and of proposed nominations to the Legislative Council, and higher offices.

What rule would you observe as to summoning members?—I think it would be proper to summon all resident members for the ordinary business, and the whole of the members for any of the more important questions I have just specified. It seems to me that it would be improper to cease summoning a member without regularly apprising him that he was removed from the Council.

What pecuniary provision would you make for the executive councillors?—None.

Should

Should they have travelling expenses?—No; not any emolument.

Would your objection to the Attorney-general be removed if he were paid entirely by salary?—No; it would be partly removed, but I have stated an objection to him as a servant of the Government in the courts of justice.

Supposing a Council such as yours, of 16 or more, were resident near Quebec, would it not be inconvenient that they should all be summoned on every Council day?—I do not think inconvenience would arise, for they would not, I believe, ever be so resident.

Supposing there was so large a Council, would not all offence be taken away if it was known that it was not customary to summon the whole for ordinary business?—I think it would excite jealousies, and tend to enfeeble the Government rather than otherwise. It would be said that the Governor had favourite councillors.

Would that exist to an equal extent if the Council were still larger, say 24 or 30?—There would be no harm in a larger Council, provided that only those who reside within a convenient distance of Government were summoned for ordinary business, and the others for business to come before the Legislature, of course with an option to attend or not, as they pleased.

If you had so large a Council, would it not be a sufficient reason to assign for summoning some at one time and some at another, that only those were called whose advice or information was required for the business in hand; as that of the bishops on church matters, the commander of the forces on military, and office-holders on business of their several departments?—I doubt if that reason would satisfy the majority of the councillors; and I should be apprehensive of jealousies being occasioned if those meetings of a few members were to be considered as meetings of the Council.

Would it not be an advantage with a large Council, and the usages of summoning only a limited number at a time, that the Governor might use the advice chiefly of those members of the Legislature who were in a majority of the Assembly, without absolutely dismissing those whose party had become the minority?—I do not think it would be an advantage.

Would not all the offence that you suppose might arise from not being summoned, equally arise from either being dismissed from Council or not appointed to it?—I think not.

Would you have the Council appointed as now, by mandamus from the Crown, or let the Governor appoint the councillors?—I would follow the established usage.

You have said that the Council are not responsible in any way?—I have said that they are morally responsible, and liable to be dismissed by the Governor, which might operate to a certain extent as a disgrace.

Do you not conceive that councillors would be responsible to the laws for any criminal advice given to the Governor?—Every one is responsible to the law, but I doubt whether the councillors would be amenable; I doubt if there would be the means of bringing the charge home to them.

Do you conceive that the exemption would depend on the difficulty of getting evidence, or on their being legally exempt from the consequences of giving any criminal advice?—I should leave that to the courts of law.

Supposing them to be amenable to the courts for criminal advice, and removable by the Governor for anything not amounting to a crime, in what respect does their responsibility differ from any other officer, except that the members are sworn to secrecy?—On that sup position it would be the same, with the exception mentioned.

What further responsibility do you suppose that the Assembly really wishes to be imposed upon the Executive Council?—I cannot tell; but it seems to me that they want to be Council and Governor themselves; that is to say, to have the whole Government in their hands, and that every one should do their bidding.

Are there not many subjects with which the Executive Council has to deal, that affect rather the relations of the province with the empire than merely the internal affairs, such for instance as, 1st, Everything relating to commerce between the mother country and the province. 2dly, The keeping the provincial laws in harmony and subordination to the constitution of the mother country. 3dly, The free admission of all the subjects, and of the capital of the mother country into the colony. 4thly, All questions between the colony and either the neighbouring alien states, or colonies and possessions of the empire. 5thly, Everything relating to the army or navy of the mother country, barracks, forts, ordnance, lands, and other like matters?—I have already said that the Governor acts in the colony for the King; that he must look to the general interests of the empire as well as the interests of the colony; that nothing can be moved in Council without it comes from him; no decision be taken, unless it be from him; and that therefore it is to be presumed that the unity of the empire must be preserved, and its laws maintained by the Governor acting under his responsibility to the Crown, the Parliament and the law.

Such subjects as are mentioned in the question may be brought before the Council, by the Governor, if he sees fit.

Have you not recommended that every message of the Governor to the Legislature, proposing a measure, should be settled with the advice of the Council?—Yes.

Must not those measures frequently bear on the relations of the province with the mother country?—There is no doubt of it.

In those instances, have you made any provision for advice in such measures; or do you trust entirely to the Governor and the King's ministers?—Entirely.

You said that you believed it to be the object of the persons who comprise the majority of the Assembly to subject all the Government of the country to their power?—It seems so to me; indeed, I have no doubt of it; they wish to rule the province some way or other.

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If they can do it through a Governor and Council, they have no objection, but rule they must.

R. E. Caron, Esq., Mayor of Quebec, called in; and Examined.

R. E. Caron, Esq. 9 April 1836.

COULD you explain to us, as having been a member of Assembly during the greater part of the session, the sense in which the word responsible was understood, when it was proposed to render the Executive Council responsible?—It did not become the immediate subject of any discussion in the Assembly this session; and I cannot undertake to pronounce exactly how it may have been understood.

Would you favour us with your own views on the mode of forming an Executive Council?—There might be two ways. The first would be a Council formed, as much as possible, on the model of the ministry in England. This Council to continue in office as long as the administration could succeed in carrying on the Government. This would be one mode; but I confess I think it would be objectionable.

The number of persons fit for such Councils might be found less than necessary; for, in the present state of public affairs, frequent changes of Council would be likely to become necessary, and a difficulty to arise in completing a new Council on each occasion when it was wanted.

But would not the majority of the Assembly always yield a sufficient number of persons to form a ministry, especially if the principal offices were not to be inseparably connected with seats in the Council?—The Commissioners must remember the uncertainty of the re-election of those members who should take seats in the Council; and I am of opinion that, for some time at least, the mere acceptance, by a member of the House of Assembly, of a seat in the Executive Council, would greatly endanger his re-election as member of the Assembly.

If the office of executive councillor were divested of emolument, would the acceptance of it be necessarily attended with the re-election of the member, since the Provincial Act only requires seats to be vacated on taking a place of emolument?—In Mr. Mondelet's case, who, I believe, was to receive no emoluments, his seat was declared vacant under a resolution of the House; and I believe the same would occur again, whether or not the councillors were paid.

What was the other mode you contemplated of forming a Council?—The other, and probably the simplest, mode of forming an Executive Council, would be to appoint persons as independent as you can find, enjoying the public confidence; and this would gain for the Council great weight with the people.

Instead of the councillors being responsible to the will of the people from time to time, as manifested by the representatives, the Governor alone would be responsible on this plan; and if he found that he continually met ill success with one Council, he would, from his own interest, change his Council by his own authority?—The Governor would exercise his discretion. I would prefer the first mode in itself; but in the present circumstances of the country, I think the second the better.

Proceeding on the second plan, of what number would you be disposed to make the Council consist?—From seven to nine.

Do you think it desirable that there should be members of each branch of the Legislature in the Executive Council?—I do not conceive it necessary; the only thing to be looked at should be the qualifications of the persons to be selected; and those persons might and ought to be taken wherever they could be found.

For instance, I must say that I think the Legislative Council, as a body, is very badly composed; but there are excellent persons who might be chosen from it for the Executive Council.

I would establish no rule as to the class of persons from whom the Executive Council was taken, provided they enjoyed public esteem and confidence.

Would you not have councillors chosen from different parts of the province?—I think it would be just to have as many as you could from distinct portions of the country; but the difficulty of travelling in this country would oppose obstacles to it.

Would you think it desirable that any office-holders should sit in the Council?—In the plan we are now considering I should not like to have any members sit *ex officio*. If an individual enjoyed the public esteem or confidence, as I have already said ought to be the case with every person appointed to the Council, I would not exclude him merely because he was a functionary of Government.

As to the Attorney-general, do you think that he ought to be in the Council?—I do not think it necessary; but if qualified in the manner I have already described, I do not think there are sufficient reasons to render him ineligible.

Do you think it would be acceptable to the country that one or both of the Roman-catholic bishops and the Protestant bishop should be in the Council?—I have never reflected on that subject; but at first sight my impression is, that it is better to leave the bishops to their proper and important duties, than introduce them into a political body.

Do you think it desirable that the members of the Executive Council should continue to be sworn to absolute secrecy as now?—If the Council were not so restrained they would have much better opportunities of communicating with the public, of ascertaining prevailing opinions, and making the Governor acquainted with them.

Would you see any objection to allowing the members of Council to take the initiative in offering advice, whether or not the subject of it were proposed by the Governor?—If the

Governor

Governor were not bound to follow the suggestions thus proffered, I think it would be a decided advantage.

You would not then have the Governor to be controlled by the majority of the Council?—I would not, as we are now proceeding on the supposition that the Council is not responsible. If the Governor is responsible, he must have the control of his own acts.

Supposing the Council to be responsible, would you in that case bind the Governor to act by the opinion of the majority?—I would not absolutely bind him to do so, but I would have it as in England; the Governor being then in a situation analogous to that of the King in England.

Is it possible to render an Executive Council here responsible for acts which the Governor is obliged to do by orders from home?—Neither one nor the other could, in justice, be responsible for such acts.

Does it occur to you that any distinction could be made between the purely internal affairs of the province, and those which concern the relations between the province and the rest of the empire, so as to give the Council more power over one than the other?—There would be a great complication in that.

The line of demarcation would be found very difficult, if not impossible to be drawn. I think, however, that the regulation of the internal affairs should be left to the Provincial Legislature.

Has not that principle been recognised by the Government?—Recognised, it is true, but violated sometimes; as, for instance, in the case of the Tenures Act, and the Act establishing the land company.

Would you give any opinion generally, which you may entertain, as to the remuneration of the Executive Council?—I have not a sufficiently definite idea of the duties and the amount of trouble; in short, not sufficient data to give any positive answer to that question.

I think any payment to the councillors should be rather in the nature of an indemnity for time, trouble and expense, than a salary adequate to the importance of the office; but still a fixed allowance, and not an actual repayment of expenses incurred.

With respect to the audit of accounts, have you any opinion as to the present function of the Executive Council?—No; but I believe the House of Assembly to be favourably disposed to the creation of a distinct department of audit, in which case the duties of audit belonging to the Council would cease.

Do you think that more confidence would be enjoyed by a Council removable by the Governor at his own discretion, than as at present?—Upon the basis of the second plan I mentioned, the Governor being completely responsible, I think it better that the Council should be removable at his discretion.

Suppose then that the Assembly should address the Governor to remove them, what would be the consequence?—The Governor would be competent to remove them or not. He would be in the same position as when he receives any other address of the Assembly, to which he accedes if he feels it right, and refuses his assent if he thinks it wrong.

In happier or better circumstances than now, you said that you would wish an Executive Council to resemble as much as possible a ministry in England?—Yes.

You have reflected that the Governor is not irresponsible, as the King, but responsible to the authorities in England?—Yes; and for that reason I only said, the Council should resemble, *as much as possible*, the ministry in England.

You are aware, moreover, of this difference between the position of a Governor here, and a prime minister in England; that he must necessarily be appointed for some years, and cannot be removable as speedily as a ministry?—Yes, I am aware of that.

Upon your first mode, how would the inconveniences arising from the Council being removable upon the address of the Assembly, and the Governor being neither in the circumstances of the King, nor a prime minister, be obviated?—The whole difference between the Governor and the prime minister is, that his removal must, from the nature of the case, be somewhat longer of being effected. That the removal would be made if the Governor failed to give satisfaction and carry on the Government with success, I take for granted; and that the difference of time is all that would exist. The Governor, in fact, would be recalled.

By not giving satisfaction, do you mean not pleasing the representatives of the people?—I mean not being able to make the Government go on; falling into important and lasting disagreements; finding it impossible to get supplies.

Would you wish that being able to get a majority in the Assembly should amount, as in England, to a condition of the Council's existence?—I should see no objection; I do not mean it as a general rule.

The power of *getting on* with the Government is what I would require.

What, then, is the difference between the two modes you mentioned?—In the first case, and the one we are now discussing, almost all the responsibility would be upon the Council, while in the second, it would lie exclusively upon the Governor.

What exception do you mean when you say *almost* all the responsibility on the Council?—The Governor would have the responsibility of making the choice of the Council.

Is it not involved in the plan, that even to the authorities at home, the Governor cannot be responsible?—I would not say that. His personal qualities might do much in the Government, and I have already observed that he is accountable for his choice of councillors.

You would limit the responsibility of the Governor, even to the English authorities, to that of being recalled?—It would be part of the plan, but the Commissioners will remark that I have not deemed the plan eligible now, and that I only contemplate its establishment with the consent of the various authorities who must afterwards be parties to its execution.

On the first plan you mentioned, would you have the Governor liable to any other responsibility

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R. E. Caron, Esq.
9 April 1836.

sibility than that of being recalled?—If the Governor be obliged to follow the advice of his Council, he cannot be answerable further than to be liable to be recalled.

Are you aware that this alteration could not be made except by an Act of the Imperial Parliament?—Yes.

Upon the same plan, what would be the difference from the existing Council?—The principal difference would be only the personal composition of the Council.

Would there not be a more important difference, that the Governor should have the power of removing the councillors at pleasure, without imputing any personal fault to them?—That would no doubt be an important change, but less so than the choice of persons.

Under your second plan, do you see any security against the consequences which have recently happened in Upper Canada?—The Governor would, undoubtedly, have an unlimited choice of councillors, and would have the power to act as the Governor has acted in Upper Canada.

Andrew Stuart, Esq., called in; and Examined.

A. Stuart, Esq.

ARE you cognizant of the report of a committee appointed to draw up instructions for Mr. Neilson when he went to England last year, and of which he communicated a copy to the Secretary of State?—Yes.

With reference to that part of the instructions which contemplates the presence of office-holders in the Council, do you concur in the view contained in those instructions, that office-holders ought to be included?—Yes, I do.

Do you think that in the present state of the colony a Council so constituted would find anything like general satisfaction?—An Executive Council entitled, from the ability and character of its members, to the public confidence, cannot but give satisfaction; and I think that a Council constituted as recommended in the above report would have a right to the confidence of the public. It would, however, be an indispensable condition that the high officers, being members of the Council, should possess the qualifications requisite for the discharge of the duties of executive councillors, without the possession of which qualifications none should be appointed to those offices.

Do you see any objection to placing in the Executive Council the Attorney or Solicitor-general?—I think that the law officers of the Crown ought not to be members of the Executive Council, except in the case of an absolute dearth of other persons of competent qualifications. At the same time it is highly desirable that there should be in the Executive Council, as well as in the other departments of the Government, a competent number of persons who have had the advantage of a legal education, and whose presence in the Executive Council would not be liable to the objections which apply to the law officers of the Crown.

Can you suggest any alteration in, or extension of, the present functions of the Executive Council?—The limits of the functions and duties of the Executive Council do not seem to be agreed upon on all hands; and before being able to answer this question, it would be necessary to know what were considered the existing functions and duties of the Council.

Do you think it proper that they should continue to be sworn to secrecy?—I do not think that in the present circumstances of these colonies the requirement of the oath of secrecy, or its being dispensed with, is a matter of much importance.

Do you think that the Council ought to have the power of deliberating on any subjects except those brought forward by the Governor, or of tendering unasked-for advice?—I consider that the Executive Council ought to have the power of deliberating on subjects of public concern, not brought forward by the Governor, and to make any representation to the Governor which they might think necessary. But this power would, by a Council properly constituted, be exercised only upon extraordinary occasions. In the ordinary course of their duties, I presume that the councillors would confine themselves to deliberating upon such subjects as were brought under their consideration by the Governor, and giving to him their advice thereupon.

Do you think that the Governor should be required to consult his Council before answering addresses of either branch of the Legislature?—My impression is, that upon state affairs of sufficient importance to demand it, the Governor ought to consult his Council; but whether or not the importance be sufficient to call for this, the Governor himself must be the judge, exercising a sound discretion thereupon. I would apply the principle of this remark to the present question.

Do you think a line could be drawn excluding from the cognizance of the Council questions affecting the relations with the empire, unless proposed by the Governor, and thus rendering it possible to allow the Council a wider discretion in the matters left in their more entire competence?—I do not see how a line of this kind could be drawn.

Do you think nine, which has usually been looked upon as the regular number of the Council, to be too large or too small?—Nine members in, and in the neighbourhood of the seat of Government, whose regular attendance might be counted upon, would, I think, be sufficient. It would be fitting that other members resident in the districts of Three Rivers and Montreal should be named. Within certain limits as to number, the addition to the Council from those parts of the province might be made to depend principally upon the character or fitness of the persons to be named.

Supposing the Council to be large, would you make it imperative that all within a convenient distance of the place of meeting should be summoned, or that a discretion might be exercised in that respect?—Certainly. I do not see how any distinction could be made between the members of the same Council which would not be exceedingly objectionable.

Supposing

Supposing, for illustration sake, that the number of the Council were fixed at 15, would you entitle to seats in the Council persons of eminent station, without belonging actually to the official department, such as the Protestant bishop, the Roman-catholic bishops, the commander of the forces, and the speaker of the House of Assembly?—I think that the Protestant and Catholic bishops ought to be members of the Council; I see no sufficient reason why the commander of the forces and the speaker of the Assembly should be so.

In constituting an Executive Council, would you consider it desirable to introduce a certain number of members of either branch of the Legislature?—I do not see that any beneficial consequences would arise from this measure.

How far do you think a council can be made responsible, either for the advice they give or for the acts of the Governor, in a province bearing the relation that Lower Canada does to Great Britain?—I know of no exercise of a public trust in the British dominions which does not carry along with it a responsibility for its faithful performance on the part of those to whom such trust is confided.

Would you favour the Commissioners with your views on the payment of members of the Executive Council; whether there should be any remuneration at all, and if so, its amount; as well as whether it should be given to all the members, or only to the ordinary members, as distinguished from a class of honorary councillors?—The high officers of Government, members of the Council, might be expected to discharge the duty of councillors without any addition to the allowance now given to the ordinary members, and I should think the same sum an adequate allowance to the other councillors.

What should you think of a plan of reducing the number of members appointed by the King to three or two, and giving the Governor an unlimited power of appointing for the period of his own government, and no longer, any number of additional councillors?—The main end of an Executive Council in a colony, as I understand it, is to give stability and uniformity to the government, preventing those changes which would otherwise occur, disadvantageously to the public service, from the frequent changes of governors.

I do not think, therefore, that it would be conducive to the wellbeing of the province that the proposed plan should obtain. It would generally be accompanied by a complete change of system on the arrival of each new governor.

Supposing the Council to amount to 15 or 16, do you think it desirable that all should be summoned upon every occasion, or would there be any objection to fixing a number, as five or seven, to be the maximum for ordinary business, with occasional full meetings at stated periods of the year; the Governor to make up the number of five or seven at ordinary meetings, by such members as he might in his discretion summon, besides the members appointed by the Crown?—I should fear that the effect of this course would be to destroy the weight of the Executive Council in the Government, and make of it a mere instrument in the hands of the Governor for the time being.

In reference to the instructions published by Sir F. Head, for sending to England the names of eligible persons for office, would you think it right that, in the Executive Council, they should be allowed to make recommendations of names either for appointment to the Legislative Council, or to the executive or judicial offices of Government?—I do not see how this change in the manner of exercising the patronage of the Crown can operate beneficially.

The Secretary of State for the Colonies cannot have the requisite local knowledge for the exercise of this patronage. The authorities within the colony will be relieved from the responsibility incident to the patronage, and the Governor's power abridged, without any corresponding advantage to the public.

I have long been of opinion that all recommendations to seats in the Council and upon the bench ought to be submitted by the Governor to the Executive Council, to be reported upon by that body.

Most serious mischiefs have arisen from the manner in which this patronage has been exercised by Governors called upon to make recommendations or appointments without responsible advisers, from whom they could receive that information of which they must personally be deficient.

What would you think of a standing committee of Executive Council, for the purposes of a general audit of accounts and inspection of the administration of the public offices?—I have never had occasion to consider the matter of the audit of public accounts; I believe that there was for many years a committee of the Executive Council for this purpose. Complaints have been made of the manner in which this duty was performed in the Executive Council; but whether well or ill founded I do not know.

Would you confine the intercourse of the Governor with the Legislature entirely, as at present, to messages, or would you allow members of the Legislature to be appointed to the Executive Council, and authorized to speak on behalf of the Government?—The practice of having members of the Executive Council to speak on behalf of the Government in the Assembly, has not, I think, hitherto produced any beneficial effects, nor could this practice be advantageously acted upon without various changes in the existing system.

Do you think the present constitution of the Court of Appeals objectionable?—I do, virtually.

Is it not objectionable that the majority of the members of the Court of Appeal should consist of executive councillors, when the subject of appeal may be grants of land or other acts done by the Executive Council?—Undoubtedly.

Have you formed any judgment what alteration should be made in the Court of Appeal?—My attention has been occasionally directed to this subject, but I am not prepared to

Appendix, No. 4.

A. Stuart, Esq.
April 1836.

offer a scheme for the new modelling of this important branch of the judicature of the country.

Do you see any objection to the Governor's being able to accept provisionally, and the King finally, the resignation of a legislative councillor?—I do not see any.

Would it be desirable to constitute any qualification in respect of property for legislative councillors?—This question involves considerations of very great difficulty, and I should hesitate before adopting restrictions abridging the choice of members, already sufficiently circumscribed.

Ought there to be any disqualification established, such as for insolvency, or conviction of any fraudulent or infamous offence, not amounting to felony?—I think not; it would not be supported by any analogous rule in the British Constitution, with which I am acquainted.

SUPPLEMENT TO THIRD REPORT.

MAY IT PLEASE YOUR LORDSHIP, Quebec, 12th May 1836.

WITH reference to the suggestion in the 41st paragraph of our Report, dated the 3d instant, that an Act should be passed to authorize the Legislature of Lower Canada to alter the constitution of the Court of Appeal notwithstanding anything to the contrary in the Act of 31 Geo. 3, c. 31, we think it desirable to express our opinion that, in the event of any Bill to accomplish that purpose being before Parliament, or any other Bill relating to Canada in which it could be conveniently done, a clause or clauses should be introduced to effect the following objects in respect to the Legislative Council:

First, To enable members, who may be desirous of retiring from the Legislative Council, to resign.

Secondly, To empower His Majesty to remove from the Council any member who may have been convicted of any misdemeanor or other offence in a court of record, or may have become insolvent.

We did not include these objects in our recent Report, because we wished to confine ourselves in it to its proper subject, the Executive Council; and with the same view of rendering each of our regular Reports as far as possible complete and separate on some one branch of inquiry, we shall probably think it right to recur to our present suggestions in any future communication on the Legislative Council. But seeing that on the one hand we are not prepared to treat of that subject generally until we shall be acquainted with the policy which His Majesty's Government, or the Imperial Parliament, may adopt towards Canada in consequence of recent events, and that on the other hand our opinions are fixed, independently of temporary considerations, on some points with which it may be convenient to deal, at the same time with a recommendation we have already made relatively to the Executive Council, we have briefly addressed your Lordship on the present occasion, in order to put His Majesty's Government in possession of so many of our views as it is likely will be thought fit to be brought before Parliament simultaneously.

We have, &c.
(signed) GOSFORD.
GEORGE GIPPS.

I have delivered to the Secretary a statement of the reasons which make me reluctantly decline to add my signature to those of my colleagues.

15 May 1836. (signed) *Chas. Edw. Grey.*

EXTRACT of PROCEEDINGS on 14 May 1836.

Sir *Charles Grey* produced the following Statement.

A STATEMENT of the Reasons which prevent Sir Charles Grey from affixing his signature to the Letter of the Canada Commissioners to Lord Glenelg, dated 12 May 1836.

1. It appears to me to be an unnecessary, inconvenient and otherwise objectionable mode of proceeding, that recommendations of particular measures on which the Commissioners have made up their minds, and which, together with a part of the measures recommended in one of their Reports, they think ought to be provided for by one Act of the Imperial Parliament, should be kept out of the Report, in order that, immediately afterwards, they should be made the subject of a separate and brief communication in what is called, in our minutes, a letter. All our Reports commence and end in the form of letters; but those communications to the authorities at home, which we understand by the latter term, have most of them been upon unimportant and trifling matters which it would be idle to produce as part of the proceedings of the Commission. All our recommendations as to the affairs of Canada, therefore, in our public and joint character of Commissioners, ought, as it seems to me, to be distinguished in the form of a series of numbered Reports, from our official letters upon trivial matters, which do not form any part of those affairs.

2. By the reference in this letter of the Commissioners, to the recommendation contained in the 41st paragraph of their Third Report, that the Imperial Parliament should commit entirely to the Provincial Legislature the task of constituting a new Court of Appeals, I am precluded from signing the letter without repeating, more distinctly than before, in my dissent from the Third Report, and at greater length than would be convenient on this occasion, my objections to that recommendation, and I trust that a copy of the "*Bill for amending the Judicature of the Province*," to which reference is made in the 41st paragraph of our Third Report, will be sent home with the present letter of the Commissioners for the information of His Majesty's Ministers. My copy of the Bill begins by "abolishing" the Court of Appeals provided by the Constitutional Act, 31 Geo. 3, c. 31, s. 34; it makes no provision for any appeal to His Majesty in Council; it would render necessary the creation of four additional judges, without making any provision for their salaries, which would greatly add to the dependence of the Government on the Assembly; and it introduces novel, and, as it seems to me, unconstitutional provisions as to the manner of appointing all the judges in future.

3. As to the recommendations in the letter respecting the Legislative Council, they are so nearly the same as those made by myself in the paper which I annexed to the Third Report, though I believe they originated with Sir George Gipps, that I have only to remark that I should apprehend some inconvenience would arise from adopting the words of the second recommendation, because, in some cases, such as trifling assaults, or incautious writings, amounting to libel, acts which are in law misdemeanors, might or might not be a sufficient reason for removing a legislative councillor, and then it would fall upon the Governor to report the case, and upon His Majesty's Ministers to determine at home the character and colour of the facts. For these reasons I should recommend the substitution of the words "any felony or fraudulent misdemeanor." As there is no system of bankrupt or insolvent laws in Canada, I think the insolvency of a legislative councillor would be better guarded against by my recommendation of establishing a qualification which should be re-affirmed at the opening of each session.

(signed) *Charles Edw. Grey.*

Sir George Gipps said, that with reference to the foregoing statement, he had only to express his wish that so much of the previous Minute of Proceedings on the 10th of May should be sent to the Secretary of State as related to the present question.

EXTRACT of MINUTE OF PROCEEDINGS on 10th May, referred to by Sir *Geo. Gipps*, in the foregoing Extract of the Minute of 14th May.

Sir Geo. Gipps brought forward a proposal to the following effect:

That with reference to the suggestion in the last Report, of a measure to authorize the Provincial Legislature to alter the constitution of the Court of Appeals, a letter should be written to the Secretary of State, recommending that in any Bill introduced for that purpose, or in any other Bill relating to Canada, in which it could conveniently be done, a clause or clauses should be introduced to empower His Majesty to accept the resignation of legislative councillors, and to remove them if convicted of any offence in a court of record.

Sir Charles Grey desired to be informed, in what respect the proposed letter was considered to be different from a Report, and whether he would have the same opportunity which he had had in former Reports of expressing his difference of opinion.

Sir Geo. Gipps answered, first, that Sir Charles Grey would, he supposed, have the same right of annexing an expression of dissent to this as to any other communication. Secondly, with respect to the distinction between a Report and a letter, that perhaps it resided principally in the name; but that he thought it might be found convenient to distinguish (at least in name) between a brief and, as it were, incidental communication, such as the one he proposed, and the regular Reports of the Commissioners, which latter should, he thought, be as far as possible separate and complete on each branch of inquiry. The proposed letter would, doubtless, to a certain extent, be in anticipation of a future Report, but it appeared to him better that it should be so, than that by now making a separate Report on the subject room should be given for the supposition that the Commissioners had no further recommendations to offer respecting the Legislative Council. Sir George Gipps added, that whether or not alterations of a more extensive nature are to be made in the constitution of the Legislative Council must, in his opinion, depend on the nature of the policy which in consequence of recent events may be adopted with respect to Canada by His Majesty's Ministers and the Imperial Parliament; but that the measures now under consideration were recommended upon grounds independent of any temporary or party politics. The difficulty that was felt in the case of the late Receiver-general was sufficiently known, and it did not seem to him improbable that one of a similar nature might arise respecting some of the present judges, whose removal from the Legislative Council is desired by both Houses of the Local Legislature, and was intended to have been effected by a Bill which passed both Houses in 1834.

Sir Charles Grey expressed his objection to the transmission by the Commissioners, in their public and joint capacity, of what he considered to be, in substance, a Report under the name of a letter, and said that he would state more fully his reasons for objecting to this course of proceeding, as well as to what was proposed respecting the Court of Appeal.

Lord Gosford was of opinion that it was proper to make to the Secretary of State such a communication as was proposed, and the secretary was instructed to prepare a draft accordingly.

(True extracts from the Minutes of 14th and 10th of May.)
(signed) *T. Fred. Elliot.*

FOURTH REPORT.

MAY IT PLEASE YOUR LORDSHIP, Quebec, 17 June 1835.

1. As we perceive in a pamphlet which has been published by the agent for the Assembly of this Province, and distributed by him amongst the Members of the House of Commons, some statements of fact which, if correct, would, in our opinion, be very prejudicial to the character of the Commission, we lose no time in furnishing your Lordship with an answer to those statements.

2. At page 38 of the pamphlet occurs the passage which is subjoined:

"When demands of arrears and supplies for the coming year were made to one of the most powerful Members of the House of Assembly, the following, amongst other statements, were made to him in order to induce him to consent to the grant. It was stated to him by one of the authorities, that if the money were given, the Commissioners could recommend, with some chance of success, all the plans of reform proposed by the Assembly; that the Commissioners had already sent their First Report upon the finances of Canada to England, and that the Report was in everything favourable to the demands of the Assembly."

3. With respect to the first of the statements above imputed to one of the authorities, it is plain that none of us could have made it without a gross violation of truth or duty. For no individual in the Commission has at any time entertained opinions favourable to "all the plans of reform proposed by the Assembly;" and we were sent here to report impartially and independently on the various matters referred to us, not to barter the interests of the Province, or our own sincere views of them, for a grant of money from the Assembly. Your Lordship therefore will not be surprised to learn that no one of us ever made any statement of the kind alleged in the pamphlet; neither did any one of us ever say that the First Report "was in everything favourable to the demands of the Assembly." Your Lordship is well aware that we could not have said so with truth; but the fact is, that no such statement was made at all. The Secretary requests to be understood as participating in these denials, and in all the statements in the present letter.

4. After the passage on which we have made these remarks, the pamphlet describes the progress of the alleged negotiation, and asserts that upon the offer of certain terms by the Member of Assembly, the following answer was made by the "authorized person who spoke on this occasion." "Although your conditions are hard, they are somewhat better on the whole than the Bill of 1833; and such a Bill would be accepted with pleasure."

5. As this passage speaks of an authorized person, we beg leave to deny that either of the junior Commissioners, or the Secretary, ever suffered himself to be considered authorized to treat or contract engagements on behalf of the Provincial Government. This is a point on which each of us is satisfied, that by the whole tenor of his language in the Province, he has effectually guarded against the possibility of misconception. In the circumstances in which the Commissioners and Secretary were placed, they of course entered into frequent conversations with Members of the Assembly on the subjects respecting which they came to inquire, and as none of them are in the habit of keeping notes of what may pass in the intercourse of private life, it must be difficult for four persons to contradict, wholly, statements of what is supposed to have been said in that way by one of them; but no one amongst us recollects any conversation of the general tenor of that which is set forth in the passage of the pamphlet which is now under consideration, and there are some stipulations mentioned in it, to which there is not one of us who could have expressed assent.

6th. The next allegation in the pamphlet is as follows:

"It was then asked by the Member of the House of Assembly, 'How will you get the Legislative Council to accede to this Bill?' Mark well the answer of this high functionary: 'Oh, if they will not pass it, we will do without them, and will receive your money upon your address. Vote by address that which you would have voted by Bill; you pass by the Council; and we will receive and distribute the money cheerfully.'"

7. We are obliged to acquaint your Lordship that not only is the communication here ascribed to a high functionary, unfounded in any fact of which we are aware, but that it is in direct opposition to language which appears to have been held on the subject by one Member of the Commission. Your Lordship will see by a statement which has been entered on the minutes by that Member, and which at his request we enclose, that on the question being put to him in conversation, he distinctly expressed an opinion that if the supplies were granted by address, without the concurrence of the Council, they would not be accepted; and no other Member of the Commission, or person attached to it, appears to have spoken on the question at all.

8. The next statement in the pamphlet is true. It is correctly said that the Governor in Chief intimated his desire to enter into no communication on the question, whether or not an offer of six months' supplies by address would be accepted. What is not correct, is the statement that an opposite course was pursued with respect to the idea of granting by address the supplies for three years and a half; and your Lordship will not fail to remark that the second is the material allegation, without which the other is insignificant, except to show that the Governor acted with due circumspection.

9. These are, we believe, the principal statements of fact in the recent publication by the agent for the Assembly of this Province. We are sorry to be obliged to contradict so many statements of that nature; but this appears to us the almost unavoidable consequence of the method which has been adopted in the present instance. Whether or not the publication of private conversations appear to an individual permissible in other respects, there must always remain a strong objection in any considerate mind, owing to the uncertainty whether sentiments dropped in that unguarded way have been correctly understood, and can be truly repeated. The usual result is conflicting accounts by the two parties concerned, and long and unprofitable controversies between them. It is needless to say that we shall avoid such disputes. We have deliberately, and on due recollection, conveyed to your Lordship the real state of the facts, and we should be very reluctant to trouble you with any further discussion of them. We will only observe, that if, instead of sending notes to be printed at a distance from the spot where alone they could be corrected or contradicted, any gentleman who might have wished to make a public use of anything he gathered from one of the Commissioners, had frankly stated his object, we should have been happy to have saved him from the inaccuracies which now, unfortunately, it has been our duty to point out to your Lordship.

We have, &c.

(signed) GOSFORD.
CHARLES EDWARD GREY.
GEORGE GIPPS.

EXTRACT of MINUTE of PROCEEDINGS on the 16th of June 1836.

WITH reference to some of the allegations contained in a pamphlet published in London by the agent for the Assembly of Lower Canada, Sir George Gipps wished to enter on the minutes, that he remembered to have had frequent conversations with different Members of the Assembly respecting the supplies, and that on such occasions he invariably said, that if the Assembly wished to do themselves credit, they would give the whole of them unconditionally; but when it was said to him that there were certain salaries or charges which the House could not give without appearing to depart from their former resolutions, he (Sir G. Gipps) expressed his opinion that they might exclude these salaries or charges from their Bill of Supply, provided they gave them, as they then seemed inclined to do, by address at the end of the session; the essential part of the proposed proceeding being, that their Bill of Supply, though calculated on the principle of that of 1833, should not have the conditions of that Bill expressed on the face of it, or any conditions at all, but that the money should be granted "en bloc," or in the lump, as had frequently been done in former years, without even any specific appropriation of it; also that they should give

by

by address as a peace offering at the close of the session, not (as is stated in the pamphlet) the money that they would have voted by Bill, but the sums which, consistently with their former resolutions, they thought they could not vote by Bill; it being notorious that the Legislative Council, so far from objecting to these salaries or charges, was most anxious that they should be defrayed.

He (Sir George Gipps) also well remembers that when he was asked whether if they gave the whole of the money by address, without passing any Bill at all, it would be accepted, he answered, he could not tell, but he thought not, and that it was a proceeding that he could in no way think desirable.

He further remembers, that when the probability was mentioned of the Bill being thrown out in the Council, he said, that if passed in the understanding that the remainder of the money was to be given by address, he thought the Council would not throw it out, but that, at any rate, they (the Assembly) should try; though he repeated over and over again, that the best thing they could do, even towards forwarding their own views, would be to give the whole of the supplies and arrears by Bill, and without any condition at all.

Sir G. Gipps further stated, that he was anxious to declare in the most explicit manner that he never said, or authorized any person to say, that if the supplies were granted, the Commissioners could recommend, with some chance of success, all the demands of the Assembly; and that with respect to the Legislative Council in particular, he always told them, that even if no other objection existed, he considered the dissensions arising from their difference of origin, to present an insuperable objection, as such a measure would in all probability throw the whole authority in both legislative bodies into the hands of one party; and this argument or opinion was put by him so frequently and so pointedly, that he well remembers, on more than one occasion, the person supposed to have most weight in the Assembly expressed to him his conviction "that the Commissioners did not intend to give them an Elective Council," and therefore he (Sir G. Gipps) thought he had reason to feel surprised when, on the publication of their instructions in Upper Canada, so violent a cry of disappointment was raised by the Assembly.

(True Extract.)

(signed) *T. Fred. Elliot.*

EXTRACT of MINUTES of PROCEEDINGS on 16th June 1836.

I BEG to express my concurrence in this communication on the statements recently published in London by the agent for the Assembly of Lower Canada.

(signed) *T. Fred. Elliot.*

(True Extract.)

(signed) *T. Fred. Elliot.*

FIFTH REPORT.

SEMINARY OF MONTREAL.

MAY IT PLEASE YOUR LORDSHIP, Quebec, 24 October 1836.

1. IN reference to the 54th, 55th, 56th, 57th and 58th paragraphs of your Lordship's instructions, No. 1, dated 17th July 1835, we took advantage of our stay in the city of Montreal to inquire into the several questions connected with the right of the Seminary of St. Sulpice to the seigneury which comprises that city and the island on which it is situated. Your Lordship will see that we gathered extensive and various information on the subject; and lest we should appear to have neglected any important source of information, it is necessary to state that although their names do not appear among those who favoured us with their views, we did not fail to apply to several Members of the Assembly for any facts or opinions they might be disposed to communicate. They declined answering our questions on the ground, as far as we can understand, that the subject-matter of our inquiry could not be regulated by any authority except the Legislature, and that it ought not to be submitted to investigation in any other quarter.

2. In the following pages we shall briefly describe the present state of the Seminary, and its history, so far as is necessary to elucidate the disputed title to the seigneury of Montreal. We shall then proceed to the claims of the inhabitants to be released from the burthens of the feudal tenure, and to the nature of an arrangement that has been proposed for that purpose by the Seminary; and after a few remarks on some of the opinions we have heard upon that plan, we shall conclude with the recommendations which we feel ourselves warranted to offer, and the mode we should suggest for carrying them into execution.

3. The Seminary of Montreal consists of 20 members, who are all in Holy Orders, according to the rites of the Church of Rome, and there are four other Priests attached to it, though not regularly members of the Society. The community of ecclesiastics here, in like manner with the Society of St. Sulpice at Paris, are bound by no vow, but live together by voluntary agreement. Their establishment at Montreal is no inactive institution. They maintain, in whole or in part, a college and various schools, containing altogether 1,511 scholars; they discharge the whole parochial duties for the Roman-catholic population of Montreal and its suburbs, a population of nearly 18,000 souls; and they make extensive distributions in charity. Two of them are constantly resident at the Indian establishment on the Lake of the Two Mountains; and besides these various duties, the whole management of the farms, and other temporal concerns, is carried on by members of the establishment itself.

4. The possessions of the Seminary beyond the Island of Montreal consist of the seigneury of St. Sulpice, in the county of Assomption, and the seigneury of

the Lake of the Two Mountains on the Ottawa. On the island of Montreal they hold in their own hands as their domain:—

1st. Their buildings in the city of Montreal.

2d. A farm on the Mountain, of about 180 acres, used for the recreation of themselves and their scholars.

3d. A wood, of about 800 acres, at the back of the island, from which they are supplied with fuel.

4th. The farm of St. Gabriel, containing about 300 acres, situated on the western border of the town. This, though immediately adjoining the town, and extending for some distance along the line of the Lachine Canal, is still in tillage, and its remaining so is a subject of much complaint from the inhabitants of that quarter, who contend that it prevents all improvement on their side of Montreal. The ecclesiastics of the Seminary, on the other hand, declare, that they would be very willing to dispose of the land for building purposes, and that they have only abstained from doing so heretofore on account of the unsettled state in which the question of their title has been left.

5. According to the information given us by the Superior, the average revenue of the establishment, during the last five years, has been somewhat more, the average expenditure somewhat less, than 8,000 *l.* per annum currency, equal, at the ordinary rate of exchange, to rather less than 6,700 *l.* sterling.

6. For further particulars on the present state and functions of the Seminary, the number and description of its members, the places of instruction it maintains, its revenues, expenditure and possessions, we beg leave to refer your Lordship to the Statement and Tables, Appendix (A).

7. We shall now recapitulate the history of the establishment in Montreal, with a view to the bearing which it has upon the question of the disputed title to the seigneury.

8. In 1663 a society which existed for the conversion of the Indians in Canada, and had derived great benefit from the co-operation of the Seminary of St. Sulpice at Paris, passed a deed of gift, conferring the seigneury of Montreal on the latter body. The moving consideration was said to be the conversion of the Indians; but besides a somewhat indefinite permission that any revenue more than actually sufficient "pour le *maintien* de l'œuvre" should be employed "pour le *bien* de l'œuvre," according to the discretion of the grantees, it was stated that any additional revenue which the grantees might derive from their own improvements, or from the clearing of new lands, should be at their own disposal.

9. In 1677, the King of France issued letters patent, by which he gave permission to the Seminary of St. Sulpice to establish a community and seminary of ecclesiastics in the island of Montreal for the conversion and instruction of his subjects, and to facilitate that establishment, confirmed the abovementioned donation, and put for ever into mortmain the lands and seigneury of Montreal, to be enjoyed by the members of the Seminary and their successors. It appears to us that the permission contained in this instrument, coupled with the previous application for it, and the establishment *de facto* of several priests at Montreal, was deemed sufficient to give existence to a new community there; but on the other hand, that the title to the seigneury was confirmed, as indeed the very word confirmation seems to imply, to the Seminary of St. Sulpice at Paris, upon whom it had been bestowed by the original donation of 1663. To show that the community in Canada was understood to acquire a distinct existence under the letters patent of 1677, it may be enough to observe that from the date of their registration, as appears by M. Quiblier's evidence to us, the Seminary at Montreal began to be publicly and formally described by its own name, and that by the edicts, arrêts and letters patent enumerated in the margin, the eccleciastics established in this island are clearly designated to name the Registrars of the Royal Court, and to fill up vacant cures in Montreal, without the appearance of any necessity of reference to the Seminary at Paris. On the other hand, to prove that the property was vested in the entire Seminary of St. Sulpice, if the language of the instrument of 1677 do not in itself appear sufficient, we would remark that the edits and ordonnances just cited no less directly recognize the Seminary at Paris as owners of the seigneury of Montreal than the ecclesiastics on the spot as the parties to exercise

Mar. 1693; Edits & Ordonnances, vol. 1, p. 289.
May 1702; Edits & Ordonnances, vol. 1, p. 304.
June 1702; Edits & Ordonnances, vol. 1, p. 306.

exercise certain specific functions; that in a subsequent arrêt of 5th May 1716, the Seminary at Paris is expressly named as "Seigneurs de l'isle de Montreal;" that in the whole series of edits and ordonnances we believe there is only one which would lend any support at all to a contrary inference; that the fact was taken for granted in the memoirs and representations of the Seminary at Montreal, before they took the opinion of M. Dupin at Paris; and consequently, that although that eminent advocate, when consulted by them in 1826, endeavoured to establish a different construction, we must adhere to what to us appears the plain interpretation previously admitted by all parties. In support of this view, it may be remarked further, that the seigneury of the Lake of the Two Mountains having been granted by the Governor and intendant in 1717 to the "Seminary of St. Sulpice *at Montreal*," the letters patent from the King of France sanctioning the grant confirmed it to the Seminary *at Paris*, as if showing that it was only the latter body on which the Crown was willing to confer land. And the distinction between the existence of a religious body, and its right to hold land in mortmain, is very forcibly manifested in the Royal declaration of 25th November 1743, whereby existing communities are confirmed by the King of France in their privileges generally, and are allowed to become owners of rents of fixed amount, but are expressly prohibited from acquiring any lands whatever, without letters patent from the King permitting it.

Edits & Ordonnances, vol. 1, p. 339.
Arrêt of 5 May 1716, on Fortifications.
Edits & Ordonnances, vol. 1, p. 337.
Edits & Ordonnances, p. 537.

On these grounds, we adopt the conclusion that at the time of the conquest the society at Montreal had a legal existence as a seminary and a community, but that the right to the estates was vested in the Seminary of St. Sulpice at large, including the members resident at Paris and those at Montreal.

10. Having thus described what we consider to have been the state of the case at the time of the conquest, we now proceed to subsequent events.

11. On the 8th of September 1760, Lord Amherst signed the capitulation of Montreal, which has been so much cited in the discussion of the present question that it requires to be examined. The articles bearing reference to the religious communities of Canada were the 32d, the 33d, and the 34th. The first of these appears to have been proposed to secure the continuance of the female communities then existing in Canada, and was granted without reserve; the second would have secured the like advantage to the religious orders of men, but was refused until the King's pleasure should be known; the third related to all the religious communities, without distinguishing male from female, and demanded that they should preserve their property. This was granted. As regards religious orders of men, the combined effect of the three articles appears to us to be, that it depended on the King to sanction or refuse their existence, but that such as might be allowed to continue, would be entitled to preserve their property. That the King has sanctioned the continuance of the Seminary will be presently shown by quotations from the Royal instructions to the successive Governors of the Province.

12. The treaty of peace concluded on the 10th of February 1763, empowered subjects of France who might not be disposed to remain in Canada under the dominion of England, to remove from the country, and sell their property, provided it were to British subjects, and within 18 months from the date of the treaty.

13. On the 29th April 1764, the Seminary of St. Sulpice at Paris passed a deed of gift, which ceded to the Seminary of Montreal, as far as by such deed it could, all right and title whatever to the seigneury of Montreal and other St. Sulpician estates in Canada. The validity of this act has been the subject of much difference of opinion. It has been very generally denied by the English lawyers who have been consulted upon it: by others it has been maintained. There seems little doubt that if the country had remained under the dominion of France, no such act could have been good without ratification by the King; but the impossibility of that condition being fulfilled after the conquest, at least by the King of France, has been argued by some to avoid the effect of its omission. However this may be, it appears by a certified extract, of which M. Quiblier has furnished us with a copy, from the proceedings of the Seminary of St. Sulpice at Paris, that before executing the cession, a communication was received from the French Ambassador at London, to the following effect: "My Lord Halifax lui a dit que quoique le Roi d'Angleterre se fût engagé par le traité à laisser en Canada le libre exercice de la réligion Catholique et Romaine, suivant les lois d'Angleterre, il ne s'ensuivoit pas que des biens fonds, située en Canada, pussent continuer

d'appartenir à des Français, vivants en France, et sujets du Roi de France. 'Que Sa Majesté Britannique consent que les prêtres du Séminaire de Montreal continuent à en jouir, mais sans dépendance du Séminaire de Paris." Unless the correctness of the Ambassador's representation be impugned, it follows that the deed of gift in 1764, whatever may have been its sufficiency or insufficiency in point of law, was passed in conformity with what had been stated to be the desire of the King of England, and that the act of transfer was sanctioned by his authority as far as the existing state of law and opinion seemed to allow. In 1774, the validity of the Seminary's title was questioned by Sir James Marriot, who was employed by the English Government to make the plan of a code of laws for the Province of Quebec. He expressed doubts of the Seminary being legally in possession, but the Government did not act on his opinion.

14. The Quebec Act of 1774, (14 Geo. 3, c. 88,) after providing for the free exercise of the Roman-catholic religion, and for the receipt by the clergy of that Church of their accustomed dues from persons professing their religion, proceeded to enact in the 8th clause that all His Majesty's Canadian subjects, *the religious orders and communities only excepted*, should enjoy their property with all customs and usages relating thereto, and all other their civil rights, in as ample and beneficial manner, consistently with their allegiance, as before any of the British regulations on the subject. We think it abundantly evident from all other public documents bearing on the subject, and from the course pursued by the Government, that the exception in this clause was not inserted with any intention of confiscating the property of such religious communities as might be allowed to continue in Canada, but only on account of the very comprehensive language of the enactment, to guard against the unintentional confirmation of any civil rights, customs or usages, to any order, of which the existence might have been prejudicial in Canada. The very next document we shall have to mention seems to us to place this construction beyond doubt.

15. New instructions were given to the Governor of Canada on the 3d of January 1775, in consequence of the passing of the Quebec Act in the previous year. The 21st section related to the exercise of the Roman-catholic religion; and by the 11th head of it, it was directed that the Seminaries of Quebec and Montreal should remain in possession of all the houses and lands of which they were in possession on the 13th September 1759, and also that they should be allowed to admit new members according to the rules of their foundations, and to educate youth for the supply of the Catholic church. They were to be subject, however, like all other religious communities, to the visitation of the Governor, as well as to such rules and regulations as he should, with the advice of the Council, think fit to establish. The 12th paragraph of the same section provided for the suppression of the other religious communities in Canada, and under that direction the Jesuits and Récollets have become extinct. These instructions have continued to be given to the successive Governors of Lower Canada up to the present day. They seem to us to establish beyond question the explanation we have mentioned of the exception in the 8th clause of the Quebec Act, 14 Geo. 3, c. 88.

16. On the 3d of February 1781, the priests of St. Sulpice were admitted to do fealty and homage before the Governor for their seigneury of Montreal. They argue on many weighty authorities, that the act of fealty and homage, though it does not confer a title, goes to prevent the King's questioning it; and in this light they would consider the proceeding in 1781 a renewal of the pledge given by Lord Halifax in 1764, through the French ambassador. The Act contained a general reservation of the King's rights, not however one specially inserted on that occasion, but such as is common to all Acts of the same nature.

17. The Seminary having complained in 1789 of a claim made by the Indians to the seigneury of the Lac des Deux Montagnes, and of the nomination by the Crown to the office of greffier at Montreal, which the Seminary considered to be within their disposal, the question came before the provincial law officers, and elicited from them a very decided opinion against the existence of any right at all in the Seminary. Nevertheless no steps were taken against them by the Government; and very few years afterwards, the introduction of fresh priests from France was allowed in order to recruit the establishment at Montreal.

18. In 1804 and in 1811, further legal opinions were delivered adverse to the claim of the Seminary, but still without any consequence.

19. In

19. In 1826, however, an application to commute under the Tenures' Act having been addressed to the Crown, as seigneur of Montreal, His Majesty's Government seems to have come to the conclusion, that it was indispensable to set at rest the question of the title to this seigneury; and the consideration of the subject was continued in a negotiation with M. Roux, the superior of the Seminary, which took place in 1827, but led to no effective agreement. Unfortunately, the records in the colony are by no means complete as to what passed at this period. There is, however, enough to show that although His Majesty's Government thought the bare legal title of the Seminary very uncertain, and considered it highly desirable both to put an end to the doubts on that subject, and to secure for the inhabitants of Montreal the means of enfranchising their property from the feudal tenure, not an idea was entertained of depriving the Seminary of the property they had so long enjoyed, without giving them a fair provision for their establishment in return for it. Their equitable claim to consideration was recognized at the same time that the legal title to the property was assumed, under the successive opinions of many law officers, to belong to the Crown. And when Lord Ripon, in 1831, renewed the expression of great anxiety for the settlement of the question, it was with the same motives, and the same liberal sentiments towards the Seminary, as had been declared by his predecessors.

20. From this review of facts we draw the following conclusions:—

First, that the objects to which the Seminary at present devote their funds, are not inconsistent with the objects of their original foundation; but, on the contrary, that the discretion left them by the gift of 1663, and the extension added by the letters patent of 1677, fully justify the employment of their funds in the education of the people generally; and that it ought to be considered for their credit, to act as extensively as they can on their powers in that respect.

Secondly, that whether or not the legal title be in the Seminary, the King has done numerous acts which would render it very derogatory to the honour of the Crown to contest it, except for the attainment of some great public good which could not be gained by any other means. We do not wish to assert that the Crown has or has not the right; but only that it has constantly pursued a course implying that the right would not be claimed. We do not say, for instance, that the deed of gift in 1764 was valid, but at least that there is every reason to believe that the King, by his Minister, encouraged the execution of it. We will not undertake to assert that the Seminary has legally preserved its corporate character; but we maintain that the King has done all in his power, by his permission from time to time, to introduce new members, and by his Royal instructions to Sir Guy Carleton, to show that His Majesty, as far as was within his competence, has confirmed to them their distinct existence. Nay, even as regards the main question itself, of the possession of the houses and lands, the King has by the same Royal instructions (continued as they are to the present day), commanded that the ecclesiastics shall retain their property. Now, we shall not undertake, in a Report of the present nature, to pronounce a conclusion on such complicated points of law, municipal and national, as have been raised in this matter; but we do say, that after 70 years' uninterrupted possession under the British Crown, confirmed by so uniform a succession of acts tending to its recognition, to enter upon a long, and perhaps doubtful legal contest, capable, as we have seen, of being protracted by a multiplicity of arguments on both sides, could never be justified except for the sake of some great public good, not to be compassed by any other means. If the inhabitants of Montreal were to show, that so long as the property remained in possession of the Seminary, they had no hope of escape from grievous burthens, and therefore solicited the resumption of the property by the King on that ground, it might indeed be requisite to waive all objection to enforcing an extreme right by suit in court, but not otherwise. These are the views with which we approach the immediate question of the enfranchisement of Montreal from the obligations of the feudal tenure. We shall only state, before passing to that topic, that the evils which might otherwise be apprehended from the uncertainty in which the title is involved, have been in great measure averted by the circumstance, that fortunately the French law requires the censitaire only to look to the seigneur *in possession*.

21. It is needless to dwell on the inconvenience which must attach to the existence of the feudal tenure in a great city and its neighbourhood. The payment of a fine on every mutation of property, proportioned to its value, must obviously act as a check to improvement, and a serious obstacle to the circulation of property.

Without enlarging on a point which we believe is hardly questioned by any party, we shall merely observe, that we found a very general desire amongst the inhabitants of Montreal to obtain the means of releasing themselves, on reasonable terms, from this system; that we also found the ecclesiastics of the Seminary of St. Sulpice well disposed to effect an equitable agreement on the subject; and finally, that we had the pleasure of receiving from all quarters such cordial expressions of regard and esteem for the character of that respectable body of clergy, as convinced us that if a satisfactory arrangement could be devised, it would not be obstructed by any want of good-will towards the present holders of the seigneurial rights in this island.

22. The burthens to be removed are the *lods et ventes*, the *cens et rentes*, and the *droit de banalité*. The *lods et ventes* consist of a fine of one-twelfth of the value, payable to the seigneur on every alienation of property held under him; the *cens et rentes* are a fixed rent, usually of very trifling amount; and the *droit de banalité* comprises the double right of having all the tenants' corn ground at the seigneurial mill, and of not suffering the erection of any private mill on the seigneury. In Montreal it has been the custom of the Seminary to take, instead of the *twelfth* which the law allows, only a *twentieth* of the value of the property, for *lods et ventes* in the city generally; and a *sixteenth* in the country or in city-lots which do not bear on them buildings worth 500*l.* But if compelled to recover the amount by law, the full twelfth has been exacted in all cases. The *cens et rentes* at Montreal are half a farthing par arpent in some parts, and a farthing par toise carrée in other parts of the city and suburbs, and a farthing par arpent, with a quart of wheat, in the country.

23. M. Quiblier, the superior, furnished us with a paper explaining the terms on which the gentlemen of the Seminary would be willing to commute with their tenants for these burthens, provided they were allowed to invest the proceeds in real property. Their proposals are, that the *lods et ventes* should be extinguished by a single payment, in the city generally, of one-twentieth the value of the property; and in the country, or in city-lots not bearing on them buildings worth 500*l.*, by a payment of one-twelfth, leaving each individual proprietor to choose his own time for effecting the commutation; that the *cens et rentes* should be redeemable by a sum equal to the capital which they represent, computed according to the usual rate of interest; and that the *droit de banalité* should cease by the same act which extinguished the *lods et ventes*, excepting that in the country there should not be a right of erecting private mills, until the extinction of the seigneurial privileges might become general.

24. There can be little hesitation in pronouncing these proposals to be extremely liberal. We do not know whether there might be some difference of opinion as to the details, but when it is observed that with respect to *lods et ventes*, which are by far the most onerous burthen, a sum not exceeding one payment of the due, or indeed in the most important parts of the seigneury, only three-fifths of one legal payment, is proposed to redeem it for ever, the liberality of the offer becomes obvious. In those parts of Quebec and Three Rivers which stand in the same situation towards the Crown as the city of Montreal does to the Seminary, the established rate of commutation is one-tenth instead of one-twentieth, and yet there has been no complaint. The whole evidence proves that so far as regards the interests of the censitaire, and the single end of enfranchising the seigneury of Montreal, the proposal of the Seminary must be acknowledged to be advantageous and satisfactory.

25. In respect to arrears, however, some apprehension has been expressed, that once armed with an unquestionable title, the Seminary might grow rigorous in enforcing the payment of the debts owing to it, which have been represented as very large; and it has been urged that the sum to be thus collected would be so great as, in addition to the price of commuting the property throughout the seigneury, to threaten an alarming concentration of wealth and influence in the same hands. Your Lordship will observe in the evidence, that the arrears were by different gentlemen conjectured as high as 100,000*l.*, 142,000*l.*, and even 178,000*l.* We therefore thought it proper to request that the Seminary would favour us with an authentic statement of the case; and we learned that the amount of arrears due to it was estimated at 34,000*l.* This certainly is no very formidable sum. And with respect to any rigour, or oppressive change of practice as to the demand for arrears, we think that the well established character of the ecclesiastics, their regard to all the proprieties of their station, and, we might add, the

See Documentary Evidence, M. Quiblier, 22 July.

the interest of a body of this nature not to provoke the hostility of the city in which they dwell, afford strong guarantees against such an evil; in order, however, to quiet apprehension on the subject, we doubt not that the Seminary would readily acquiesce in some general rule precluding any harsh enforcement of old claims. At any rate it appears to us quite necessary that the payment of arrears should be a condition, without which parties should not be entitled to claim the benefit of the proposed terms of commutation.

26. Another objection which has been raised is, that the Seminary ought not to be allowed an unlimited right of investing the proceeds of commutation in real property; and also that no final arrangement ought to be come to, without providing some regular control over the Seminary in the conduct of education, as well as admitting Protestants, if possible, to a definite share in the benefit of the extensive funds applicable to that object. Simultaneously with this objection we must advert to the impression, under which it seems to have been adopted, that the property is unquestionably the King's, depending solely on his pleasure to claim it, so that it is incumbent on His Majesty, before allowing the Seminary an indemnity, to insist on their submitting, without exception, to every regulation and condition which he might deem to be for the public interest.

27. We have already expressed our opinion how undesirable it is to attempt the assertion of the King's right by suit at law. Every consideration, in our view, concurs in recommending an amicable adjustment of the question, giving indeed to the city of Montreal those commercial advantages to which it has such strong claims, but without superfluously bringing into debate on the occasion more general changes, not mooted in any other part of the Province. Because the Seminary of Montreal has consented to one urgently required improvement, there is no reason that further alterations, which, if good, are equally to be wished in every other religious seminary, should be exclusively urged upon this one; nor would it be consistent with the common rules of prudence that an arrangement so long desired in respect to the property of Montreal, should be subjected to the risk of being indefinitely postponed, or even of failing, by adding to it further reforms never coupled with it till it seemed on the point of succeeding.

28. Some gentlemen, however, argue, as will be seen by the evidence, that the King is bound, in good faith, to assert his title, because the Royal proclamation in 1763 promised to all settlers in the Province the benefit of the laws of the realm of England, and the advantage of obtaining from his Majesty, on the same terms as in other British Colonies, all lands which it might be in his power to dispose of. We must observe that this argument, if valid at all, is applicable not to Montreal in particular, but to every part of the Province in which any settlers may have established themselves since 1763. The answer to it is, that in 1774, when a legislative body was created in Canada, the Proclamation of 1763 was repealed by Act of Parliament, as being, in the words of the Act, " inapplicable to the state and circumstances of the said Province (of Quebec), the inhabitants whereof amounted, at the conquest, to above 65,000 persons professing the religion of the Church of Rome, and enjoying an established form of constitution, and system of laws, by which their persons and property had been protected, governed and ordered for a long series of years from the first establishment of the said Province." If between 1763 and 1774 any claims for the benefit of the laws of England, or for lands at the disposal of the Crown, had been preferred and not acceded to, there might, we apprehend, under the proclamation, have been grounds for complaint; but to quote, as if in force at the present day, a proclamation which was formally recalled upwards of 60 years ago, is, we think, altogether unreasonable. If, on the other hand, the present complaint be not of a departure from the proclamation, but of the Act which annulled it, we would only say that the Act was passed long before the great majority of the present British inhabitants of Montreal or their families were settled in the country, and consequently, that whatever may be their opinion of the policy which dictated it, they can have no right to complain of it as a breach of an engagement affecting themselves.

29. In reference more especially to that part of the proclamation wherein the King undertook to grant, on the same terms as in other British colonies, all lands " which it might be in his power to dispose of," it is contended by gentlemen of such influence and intelligence, as to induce us to notice an argument we should otherwise pass by, that after this declaration His Majesty had no choice, but was bound to eject the Seminary, if possible; for that the clause must be taken to apply not only to all lands which might be in His Majesty's *actual possession*, but

to all which it might be *possible to reduce within his power*. We scarce know how to refute, otherwise than by stating it, a proposition by which His Majesty would be supposed to have bound himself to assail every title in the country, where there appeared any chance of being able to wrest property from the hands of the actual holders into those of the King. The obvious meaning of the promise, we apprehend, was, that the Government would grant in free and common soccage such lands as the Crown had, but not that it would enter into a general research into claims, and a general litigation against all titles of which there was the slightest doubt, in hopes of thus adding to the extent of the land which private persons might happen to wish to enjoy under the terms of the Royal proclamation.

30. For these reasons we can no more admit it to be incumbent on His Majesty, than in any way desirable, to dispute the property of the Seminary. And supposing an amicable arrangement to be advisable, we do not see how it could be effected without allowing the Seminary to re-invest part, at least, of its means in real property. They assure us that this is an indispensable condition, without which they could not consent to any adjustment; nor do we believe that the Roman-catholic community generally would be reconciled to their acting otherwise. We are fully alive to the general objections to the holding of large property in Mortmain; but these objections are not more applicable to the Seminary of Montreal than to any other religious society in the Province, and the proper mode of proceeding upon them would be by a law affecting all equally, not by a stipulation aimed especially at a single body of clergy, acknowledged on all hands to be deserving of respect and esteem. The utmost we could do is to recommend that the Seminary should be placed under a restriction, to which we have reason to believe it would not object, limiting the amount it should invest in real property, and providing that not more than one-half should be laid out in property in the parish of Montreal.

31. With respect to their plan of education, it is very possible that the whole existing system in Lower Canada may admit of amendment, and it will be our duty to lay before your Lordship as complete a view of the subject generally, as our time in the Province will allow; but in this instance again we see no reason for dealing singly or exclusively with the Seminary of Montreal. Any improvements hereafter introduced by competent authority, would of course include this, in common with other similar institutions; and being at present engaged on a question of modifying a certain form of property, we think it would be injudicious to prevent its satisfactory conclusion by needlessly uniting it with a question of education.

32. Dismissing, therefore, for the present all foreign topics, however important in themselves, we proceed to state at once the heads of an arrangement by which we conceive it would be advantageous to the public, and equitable towards the Seminary, that provision should be made for the release of the Island of Montreal from the burthens of the feudal tenure.

They may be described as follows:—

1st. Every censitaire should have the right at any time of enfranchising his lands from lods et ventes and the droit de banalité on the terms proposed by the Seminary, viz. in the city generally a payment of 5 per cent. on the value of the property; in the country, or on city-lots not bearing on them buildings worth 500 *l.*, 12½ per cent. In case of dispute the property should be valued by "experts" or arbitrators.

2d. Every censitaire should likewise have the power of redeeming the cens et rentes on payment of the capital which they represent, calculated at the rate of 6 per cent. interest.

3d. Seven years should be allowed for completing payment of the commutation money under the two preceding articles, interest being payable on the outstanding portion at the rate of 6 per cent. per annum. Parties prevented from making good the whole payment should not be enfranchised, but should have credit in all dues for which they might become liable, after expiration of the seven years, for the sums they had actually paid.

4th. It should be allowable by mutual agreement, to charge the whole of the commutation money as a mortgage on the property, or to convert it into a quit-rent, but not without the free consent of both the parties.

5th. No censitaire should have the right of claiming the benefit of the foregoing privileges

privileges without previously paying up all arrears of lods et ventes due from him, or settling for them to the satisfaction of the seigneurs.

6th. In the collection of lods et ventes and of arrears, the Seminary should be bound only to take, as it has hitherto done, a 20th in the city, and a 16th in the country, where payment is made voluntarily; and as a proof that it has no design of abandoning its former leniency, it should agree to originate no suit for lods et ventes, until they had been due seven years. In case of sheriff's sale forced by others, the Seminary would of course be at liberty to exact the full amount of its claims, as at present.

7th. The title of the ecclesiastics to the seigneury of Montreal should be confirmed.

8th. They should be declared a corporation, with all powers necessary to carrying into effect the purposes herein proposed, and with power to re-invest in land or buildings within the Province any sums of money that might come into their hands, not exceeding in the whole 120,000 *l.* currency, on condition, however, that not more than one-half of that sum should be invested in the parish of Montreal.

9th. They should be empowered to invest any further sums of money that might come into their hands at their discretion in any other security except real estate within the Province or in the British funds.

10th. With an exception to be stated in our next proposal, they should retain, unconditionally, all the buildings they now occupy, and all their domain lands in the seigneury of Montreal, and these would not be reckoned in the value of the real property to which they are limited.

11th. The farm of St. Gabriel might be made an exception to the preceding article. It might be provided that it should be retained by the priests or sold immediately as they should prefer; but that if retained, it should be included at a fair estimation in the value of the possessions to which they are limited in Montreal, and should be vested in trustees or commissioners (half to be appointed by the Seminary), upon trust to arrange the property for the benefit of the institution, and to dispose of such parts as might appear desirable for building, on fair valuations; all the net proceeds of such arrangement, whether by sale or otherwise, being handed over to the Seminary at the end of every year. We would not say that this arrangement is altogether free from objection; but the subject is surrounded with difficulties, and we merely throw out for consideration what perhaps may be found the best solution on the whole. It would have the advantage of obviating disputes with the inhabitants of the city, and at the same time would probably result in more profitable dealings for the Seminary than they might think it proper to effect for themselves.

12th. The Seminary would, of course, remain subject to any future regulation by law, and it might be a question whether visitors ought to be appointed specially for this institution, in addition to any control under which it may otherwise fall by the discipline of the Roman-catholic church.

33. For the purpose of carrying into effect as much as may be adopted of the preceding recommendations, two or three methods have been under our consideration.

34. It has been deemed by one of the Commissioners the proper mode, that the Crown should be empowered by the Imperial Parliament to constitute the Seminary a corporation, subject to such conditions as might be required by the proposed arrangement; but we apprehend that there is no actual necessity of an Imperial enactment to give the Crown this power, and the majority of us would think the interference of Parliament very undesirable in a matter of so local and particular a character.

35. Another suggestion, coming from the Seminary itself, is, that letters patent should be issued on the sole authority of the King, enabling the ecclesiastics to hold their lands in franc-aleu, and to discharge their censitaires from the feudal obligations, in consideration of an indemnity, of which the same letters patent should authorize them to invest the amount in real property. The objection to this method of proceeding appears to us twofold, and scarcely to be surmounted unless upon more decided legal opinions than we have obtained in this country. In the first place, we doubt whether the letters patent could have power so effectually to bind the Seminary to observe the required conditions in favour of their tenants, as would satisfy the public mind of the security of the arrangement for all time to come; and next, we fear, that however plainly a bar to any suit at the

instance of the Crown, this instrument might possibly not avail to prevent private individuals from attempting to dispute the title of the Seminary. We have reason to believe that the views of gentlemen at the bar would be found divided on this point; but the very fact of a difference shows that there would be ground to maintain an argument in court, and to cause more or less of inconvenience to the Seminary. Yet it is obviously no less essential a requisite of the desired arrangement, that the priests should be guaranteed against any future disquiet on the subject of their title, than that the censitaires should have full assurance of the benefits held out to them. Both one party and the other ought to be certain of the advantages which they will be led to expect. For these reasons, we think that the issue of letters patent by the King might prove inadequate to the end in view; and there are further grounds on which, at any rate, we should feel bound to recommend another method in the first instance.

36. The present is a subject of great importance and extent, involving numerous interests of which the Local Legislature ought to be the best guardian, and already taken into consideration within a few years past by one branch of that authority. We believe therefore that your Lordship will agree with us in thinking that the most regular and the safest course is to bring the matter before the same tribunal. We do not conceal it from ourselves that, owing to the unfortunate dissensions which have prevailed of late years, a reference to the Provincial Legislature will be dreaded by many who are concerned in a speedy settlement of the business, as a condemnation to great delay and difficulty, if not to complete disappointment. But it is certain, that taken in itself, this is the proper resort; and we have likewise expressed our doubts whether any other mode of effecting the object within the Province would be adequate. We advise therefore that a communication be made to the Legislature by message, proposing the desired arrangement as beneficial to the inhabitants of Montreal, acceptable to the Seminary, and understood to be approved by the higher ecclesiastical authorities; and expressing an earnest hope that no differences which may exist on other points will induce the rejection of an arrangement shown to be satisfactory to all the parties principally concerned in a subject of long anxiety and complaint.

37. We are aware that at the very moment, as we may say, when we are expressing this conclusion, the House of Assembly has demonstrated feelings threatening still more difficulty in accomplishing by legislation any immediate object of public utility in the Province; but as it is obvious that such a state of affairs cannot be regarded as permanent, and that either a more wholesome condition must be restored to the Legislature, or else some very general change introduced which would evidently by its own nature qualify our view on the present point, we think it needless to alter in this Report the opinion we have already signified respecting the mode of executing its recommendations.

38. The only additional remark we have to make is, that the proceeding we have suggested would not quite embrace the whole island of Montreal. Your Lordship will observe by a Return appended to M. Quiblier's evidence, of 9th August 1836, that there are eight arrière fiefs, which are portions of land granted out to seigneurs holding under the Seminary, and not liable to be included in any contracts made by the superior of whom they hold. A Plan is annexed, in which these arrière fiefs are marked out. They are not very extensive, and only four of them come at all within the limits of the city of Montreal. We scarcely thought that it fell within the line of our duty to enter into any particular investigation respecting these properties. With regard to such of them as are within the control of religious communities, it seems probable that there would be a disposition to follow any reasonable example set by the Seminary of Montreal; and in reference to the whole of them, if it be thought allowable and right to make any regulation, it will of course be competent to the Legislature to do so by an authority which must be obeyed; but it is not a subject which especially concerns the Crown, or on which we wish to convey any opinion.

We have, &c.,

(signed) GOSFORD.
CHAS. EDW. GREY.*
GEO. GIPPS.

* I have put my signature to this Report, subject to a statement of a difference of opinion, which is to accompany the Report.

APPENDIX.

LIST OF APPENDIX.

Appendix (A.)

Appendix (A.)

Statistical Account of the Seminary.

STATISTICAL ACCOUNT OF THE SEMINARY.

PRESENT STATE OF THE SEMINARY OF MONTREAL.

1. THE following particulars, illustrated and verified in most respects by the Tables which follow them, have been thrown into the Appendix, in order to relieve, as far as possible, the body of the Report from lengthened details.

2. The seminary of Montreal consists at present of 20 members, of whom nine are natives of France, who have been introduced from the seminary of St. Sulpice at Paris, by express permission from the King. One is an Englishman, who before his arrival in Canada, was also a member of the same society of Paris; eight are Canadians, one is an Irishman, and one is a native of the United States. Four other ecclesiastics also labour in connexion with the seminary, but are not enrolled as members of the society. The priests of the seminary are bound by no vow. They are at liberty to quit the institution when they like, and instances have occurred (though rarely) of their having done so on procuring other preferment. They also are capable of holding, and do sometimes hold, private property. The majority of them are lodged in a building called "the Seminary," situated nearly in the centre of the town, and close to the parish church; such of them as are more immediately engaged in the business of education live at the college, which is in one of the suburbs, at the distance of about half a mile from the seminary. Two of them constantly reside at the Indian establishment, on the lake of the Two Mountains; and one has the

Appendix (A.)

Statistical Account of the Seminary.

charge of a farm distant about a mile from the town, known generally by the appellation of "the Priests' Farm," which serves as a place of occasional recreation both for themselves and their scholars. The priests of the seminary perform the whole of the parochial duty for the Catholic population of Montreal and its suburbs, nor is there any other provision for the office of curé. Besides the parish church of the city of Montreal, which is a new, large, and very handsome building, capable of holding 12,000 persons, they serve two other churches, (those of Bonsecours and the Recollets,) and also the chapels attached to each of the three religious orders of females, and they also perform all the occasional duty of the place, which for a town containing a Catholic population of nearly 18,000 souls, must be very considerable. The only church they do not serve is that of St. Jacques, which has been erected in the suburb of St. Lawrence, since the appointment of a grand vicar to reside at Montreal. The parochial duties of Montreal are performed by the priests of the seminary, without charge to the parishioners, there being no tithes nor duties of any kind levied within the limits of the city. The inhabitants pay only the usual fees for church ceremonies (surplice fees,) and rent for their seats in church, and even these payments go to the support of the buildings, or to the fund known generally in the country as the "Fabrique Fund," and not towards the support of the clergy. The priests go so far as to furnish at their own cost the sacramental elements, and some of the vestments provided in other places by the "fabrique."

In consequence of this arrangement, the "fabrique" fund has occasionally grown rich. The church of Bonsecours was in part built out of it, and 4,500 *l.* was paid out of it for the re-purchase of the church of the Recollets, which, as part of the property of the extinct order of that name, had lapsed to the Crown.

Edits & Ordonnances, vol. 1, p. 304.

3. In the island of Montreal there are nine other parishes, all of which were formerly annexed to the seminary (Edit of 15 May 1702); but from the diminution in the number of their members after the cession of the country in 1763, they ceased to be able to supply these parishes, and for many years past priests have been appointed to them in the ordinary way by the bishop, and they are, like others, supported by tithes.

4. Under direction of the seminary is the college or petit séminaire, at which 204 scholars are educated, 101 being boarders and 103 day scholars. The price is 18 *l.* 17 *s.* 6 *d.* per annum for each boarder, and 1 *l.* 15 *s.* for each day scholar; but several of them obtain a remission of what is due, and some of them are received gratuitously. On the average of the last five years, very nearly a third of the whole expense of the establishment has fallen upon the seminary. The plan of education here is the same as that of the seminary of Quebec, and of the colleges recently established in the Province at St. Anne, Nicolet, and St. Hyacinthe.

5. Eighteen schools in Montreal and its neighbourhood are more or less assisted by the seminary, and some of them supported by it entirely.

6. Besides the seigneurie of Montreal, the seminary possesses that of St. Sulpice, in the county of Assomption. This seigneurie has always been considered a dependence on that of Montreal, and formed part of the original donation of 1763. The seminary also possesses the seigneurie of the "Lake of the Two Mountains," on the River Ottawa, which was granted by the French King, in the year 1717, to the seminary of St. Sulpice. On this estate there are establishments or villages of Indians, Algonquins and Iroquois. Two or more of the priests constantly reside there. The seigneuris is large, but being only in part settled, the revenues fall short of the expenditure. The seminary, at the time of the conquest, possessed parts of two seigneuries (Bourchemin and St. Hermand); but the owner of the other parts having become involved in debt, the whole seigneuries were seized by the sheriff, and the seminary, by omitting to file an opposition, lost its share.

7. On the island of Montreal, the ecclesiastics hold in their own hands, as their domain:—

1st. Their buildings in the city of Montreal:

2d. The farm on the mountain, called "the Priests' Farm," of about 180 acres:

3d. A wood of 800 or 900 acres, situate at the back of the island, and from which they are supplied with fuel:

4th. The farm of St. Gabriel, containing about 300 acres; of which part, bordering on the Lachine Canal, might be rendered very profitable, and of considerable service to commerce.

This, though situate close to the town, is still in tillage, and its remaining so is a subject of dissatisfaction to the inhabitants of that quarter, who conceive that the extension of the town in their neighbourhood would be an improvement.

8. A Statement of the arrière fiefs is annexed, being a Return from M. Quiblier, marked No. 1, showing the situation and extent of the fiefs, the dates of their concessions, and the names of the present owners. By far the greater part of them, it will be observed, were conceded before the property was conferred on the seminary of St. Sulpice.

9. The

Appendix (A.)

Statistical Account of the Seminary.

9. The revenues of the seminary may be taken, in round numbers, as follows:—

	£.
Seigneurie of Montreal:	
Lods et ventes, town	3,006
Ditto country	2,064
	5,070
Droit de banalité	1,112
Produce of domain	486
Seigneurie of St. Sulpice	640
Seigneurie of Two Mountains	969
	£.8,277

10. The Tables and Returns furnished to us by the seminary on several heads of the preceding Statement are annexed.

No. 1.

No. 1.—Arrière Fiefs.

Arrière Fiefs.

1°. Fief Nazareth, occupant une partie du faubourg Ste. Anne ou Griffintown, 100 arpents en superficie; concédées en fief aux pauvres de l'Hôtel Dieu, le 8 Août 1654, par M. Chomedey de Maisonneuve, Gouverneur de Montreal, pour la Compagnie des Associés pour le Conversion des Sauvages, alors propriétaire de l'isle. Les sœurs de l'Hôtel Dieu sont administratrices du dit fief pour les pauvres, qui en ont retenu la censive.

M. John Samuel M'Cord tient ce fief à bail emphytéotique pour encore 50 et quelques années.

2°. Fief St. Joseph, à l'extremité du faubourg du même nom, 200 arpents, concédées aux religieuses hospitalières de l'Hôtel Dieu de Montreal, le 23 Decembre 1659, pour le soutien du communauté.

M. Frederic Auguste Quesnel a le domaine utile de ce fief, dont les réligieuses ont retenu la censive.

3°. Fief St. Augustin, situé au village de St. Henry des Tanneries des Rollauds, au pied du côteau St. Pierre, 400 arpents en superficie, concédées aux pauvres de l'Hôtel Dieu, en deux contrats, le 8 Mars 1650, et le 23 Novembre 1660. Ce fief est concédé en partie en emplacemens, et une partie est donnée à bail emphytéotique pour encore 50 et quelques années. Les sœurs de l'Hôtel Dieu sont administratrices pour le profit des pauvres qui ont retenu la censive du dit fief.

4°. Fief Closse, situé à droite de la grande rue du faubourg St. Laurent, contenant 2 arpents de front à prendre à la Petite Rivière, sur 45 arpents de profondeur, dont 2 arps. sur 20 arps. concédées a Sr. Lambert Closse le 12 Fevrier 1658, et 2 arps. × 25 arps. concédées à Delle. Migeon Vve. Closse le 27 Juin 1672.

Ce fief est actuellement possedé par les héritiers Fortier.

5°. Fief la Gauchetière, situé à droite du précédent, contenant deux arps. de front à prendre de la Petite Rivière sur 90 de profondeur, dont 2 arps. sur 21 arps. données à Mme. J. Bte. Migeon de Bransac; 2 arpents sur 29 arps. concédées à la même le 12 Decembre 1665, et 2 arps. sur 40 arps. concédées au Sr. J. Bte. Migeon de Bransac, dont nous n'avons pas le contrat.

Ce fief appartient aujourd'hui à l'Honble. Zoust. Pothier.

6°. Fief St. Germain, appelé autrement fief Bellevue, situé au haut de l'isle en la paroisse de Ste. Anne, 14 arps. de front sur le bord de la rivière sur 20 arps. de profondeur, concédées le 30 Juillet 1672, à Louis de Barthe, Sr. de Chali, et Gab. de Barthe, Sieur de la Joubardière.

Ce fief appartient actuellement à Simon Fraser, Ecr.

7°. À côté du fief ci-dessus, est l'ancien fief Senneville, réuni au domaine de l'isle de Montréal, et possédé en roture par M. de Montigny.

8°. Fief Morel, situé en la paroisse de la Rivière des Prairies, de 8 arps. de front sur le bord de la Rivière des Prairies sur 25 arps. de profondeur, concédées au Sr. Paul Morel de Ste. Hélène le 8 Décembre 1661; possédé actuellement par le Capitaine J. Bte. Chevaudier dt. L'épine.

(Appendix A.)

Statistical Account of the Seminary.

No. 2. Revenue and Expenditure.

No. 2.—TABLEAU des Revenus du Séminaire de *Montréal* pendant les 5 dernières Années.

ANNÉES	Lods et Ventes de la Ville et des Faubourgs.	Lods et Ventes de l'Isle de Montréal, en Argent et en Grain.	Ditto de St. Sulpice.	Ditto du Lac des Deux Montagnes.	Produit des Moulins.	Fermes et Logers de Maisons.	TOTAL.
	£.	£.	£.	£.	£.	£.	£.
1831 - -	2,800	2,404	628	987	1,191	427	8,347
1832 - -	3,035	2,102	618	937	1,148	482	8,322
1833 - -	3,095	2,249	663	1,334	1,162	569	9,072
1834 - -	3,028	1,695	732	877	1,088	432	7,852
1835 - -	3,072	1,873	672	714	973	521	7,805
Total - £.	15,030	10,325	3,293	4,849	5,562	2,431	41,398

Dans le cas d'un affranchissement général de *droits seigneuriaux*, le produit des moulins diminuera en proportion, et finira par devenir de nulle valeur.

TABLEAU des Dépenses du Séminaire de *Montréal* pendant les 5 dernières Années.

ANNÉES.	Frais de Gestion, Avocats, Notaires, Arpenteurs, &c.	Dépenses Courantes, non compris quelques produits des Fermes, Jardins, Vergers, consumés en nature.			Constructions et Reparations de Bâtimens.	Ecoles et Orphelins et Orphelines.	Aumônes Souscriptions, Institutions Charitables, &c. &c.	TOTAL.
		Séminaire.	Lac des Deux Montagnes.	Collége.				
	£.	£.	£.	£.	£.	£.	£.	£.
1831 - -	463	2,652	760	503	300	320	1,293	6,291
1832 - -	552	2,833	676	900	1,240	400	974	7,575
1833 - -	728	2,930	637	579	3,022	471	1,224	9,591
1834 - -	324	3,175	700	932	1,087	507	1,837	9,552
1835 - -	440	2,787	694	612	661	407	1,268	6,959
Total - £.	2,507	14,377	3,467	3,526	7,210	2,285	6,596	39,968

Balance - - £.1,420

Cette Balance est actuellement employée à reconstruire une des maisons près du séminaire.

	£.
Au total £.4,849 de la recette du lac des Deux Montagnes, il faut ajouter £.1,691, produit des moulins de cette seigneurie, qui sont compris dans le total £.5,562 du produit des moulins, cy. - - -	5,540
Au total £.3,467 de la dépense courante du dit lac, il faut ajouter £.3,300, employés à bâtir un moulin, et faire un chemin, demandés l'un et l'autre par les censitaires; à réparer un ancien moulin, et à faire arpenter et borner la seigneurie: les £.3,300 sont renfermés dans le total £.7,210 des constructions et reparations, cy. - - - - - - - - - - - - -	6,767
Ce qui présente pour cet établissement un excédent de dépense de - - - - - £.	1,227 (def.)

Non compris le vestiaire des prêtres qui y résident, lequel est porté à l'article des dépenses courantes du séminaire.

No. 3. College and Schools.

No. 3.—COLLÉGE ou Petit Séminaire.

14 Maîtres.

Prix de la pension et de l'enseignement - - - £. 18. 7. 6. par an.

Prix de l'enseignement pour les externes - - - 1. 15. 0. par an.

Plusieurs élèves obtiennent des remises; un certain nombre est réçu gratuitement.

Années.	Nombre d'Élèves.	Recette.	TOTAL.	Fourni par le Séminaire.	Dépense.
		£. s. d.	£. s. d.	£.	£. s. d.
1831	139 pensionnaires -	1,527 2 6	1,624 14 3	503	2,127 14 3
	92 externes - -	97 11 9			
1832	135 pensionnaires -	1,345 9 8	1,435 14 6	900	2,335 14 6
	104 externes - -	90 4 10			
1833	116 pensionnaires -	1,427 6 -	1,513 9 -	579	2,092 9 -
	115 externes - -	86 3 -			
1834	94 pensionnaires -	820 4 4	990 12 9	932	1,922 12 9
	123 externes - -	170 8 5			
1835	101 pensionnaires -	1,452 17 6	1,553 6 9	612	2,165 6 9
	103 externes - -	100 9 3			

Écoles

Appendix (A.)

Statistical Account of the Seminary.

No. 3. College and Schools.

Écoles Protegées par le Séminaire.

LIEUX.	Nombre des Maîtres ou Maîtresses.	Nombre des Elèves.	Secours fournis par le Séminaire.
Ecole vis-à-vis le Séminaire, (gratuite).	3	190	Logement et tout le reste.
Bonsecours - - - - -	2	43	Logement, bois, &c.
Récollets - - - - -	3	192	- - ditto.
Ditto, Orphelins (gratuite) -	1	25	- - ditto.
Orphelins chez les Sœurs Grises (gratuite)	1	41	Tout.
Faub. Quebec, rue de la Visitation (gratuite)	3	160	Logement, bois, &c.
Rue des Voltigeurs - - -	1	46	- - ditto.
Courant St. Marie - - -	1	23	Loger et secours.
Faub. St. Laurent, Grande Rue (gratuite).	3	158	Logement, bois, &c.
Rue St. Charles - - -	2	46	- - ditto.
Faub. St. Antoine, rue St. Bonaventure.	1	75	- - ditto.
Ditto - - ditto - - -	1	18	- - ditto.
Faub. St. Joseph - - -	2	79	- - ditto.
Côté des Neiges - - -	2	57	- - ditto.
Côté St. Luc - - - -	1	35	Secours en argent.
Tanneries St. Henry - -	1	56	Logement, bois, &c.
Ditto - - ditto - - -	1	15	- - ditto.
Côté la Visitation - - -	2	48	- - ditto.
	31	1,307	

Dans les écoles non gratuites plusieurs élèves ne payent rien. Pour ceux qui payent, le prix varie depuis 1 *s.* jusqu'à 2 *s.* 6 *d.*

	Maîtres.	Élèves.
ollége - - - - - -	14	204
Ccoles - - - - - - -	31	1,307
TOTAL - - -	45	1,511

No. 4.—Membres du Séminaire de *Montréal.*

No. 4. Members of the Institution.

Depuis 1828, il n'a été agrégé aucun nouveau membre au séminaire. Cinq des membres alors existans ont été emportés par la mort, MM. Le Saulnier, Roux, Malard, Humbert et Sattin, nés en France, mais naturalisés.

Tous les membres actuels sont sujets Britanniques.

MM.	Roque, né en	France, agrégé au séminaire du Montreal en	1796.
—	Hubert - - - - - -	Canada - - - - - - - -	1783.
—	Saurage de Chatillouet -	France - - - - - - - -	1794.
—	Rousse - - - - - -	Canada - - - - - - - -	1814.
—	Dufresne - - - - - -	Canada - - - - - - - -	1824.
—	Richards - - - - - -	Etats Unis - - - - - -	1817.
—	Compte - - - - - -	Canada - - - - - - - -	1818.
—	Quiblier - - - - - -	France - - - - - - - -	1825.
—	Foy - - - - - - - -	France - - - - - - - -	1823.
—	Léry - - - - - - - -	France - - - - - - - -	1828.
—	Lefebvre de Bellefeuille -	Canada - - - - - - - -	1821.
—	Bonin - - - - - -	Canada - - - - - - - -	1821.
—	St. Pierre - - - - -	Canada - - - - - - - -	1823.
—	Baile - - - - - - -	France - - - - - - - -	1825.
—	Phelan - - - - - -	Irlande - - - - - - - -	1825.
—	Durocher - - - - -	Canada - - - - - - - -	1828.
—	Larkin (John) - - - -	Angleterre - - - - - -	1827.
—	Larré - - - - - - -	France - - - - - - - -	1828.
—	Leonard - - - - - -	France - - - - - - - -	1828.
—	Arraud - - - - - -	France - - - - - - - -	1828.

Appendix (A.)

Statistical Account of the Seminary.

No. 4. College and Schools.

Non agrégés au Séminaire:

MM. Macdonald	Ecosse, travaillant depuis		1807.
— Larkin, Felix	Angleterre		1831.
— Archambault	Canada		1835.
— Beauregard	Canada		1836.
— O'Connell	Irlande		1836.

Tous les membres nés en France et venus en Canada avec la permission du Gouvernement de S. M. étaient, ainsi que Mr. John Larkin, agrégés à St. Sulpice de Paris, et ont été agrégés au séminaire de Montreal, à leur arrivée en ce pays.

Permission fut donnée par le Lord Bathurst le 2 Janvier 1823, au Rt. Rev. Dr. Poynter, évèque de Londres, pour quatre prêtres, laquelle permission fut signifiée à Lord Dalhousie le 12 Mars 1823.

Nous avons les deux lettres.

Appendix (B.)

Documentary Evidence.

Appendix (B).

DOCUMENTARY EVIDENCE.

From the Seminary of St. Sulpice.

Rev. Mr. *Quiblier.* 5 July 1836.

Le séminaire de Montréal, considérant que les droits seigneuriaux, principalement le droit de *lods et ventes*, sont généralement regardés comme un obstacle au commerce, a l'honneur de soumettre le projet suivant, qui semble devoir être le plus conforme aux désirs de l'autorité ecclésiastique, le plus adapté aux besoins du commerce, et le plus propre à concilier les intérêts de l'établissement.

Sa Majesté emaneroit ses lettres patentes, autorisant les ecclésiastiques du séminaire de St. Sulpice de Montréal, comme corporation, à jouir en *franc alleu* des propriétés foncières qu'ils possèdent, et à décharger leurs censitaires des droits féodaux moyennant une indemnite.

Par les mêmes lettres Royales, le séminaire seroit autorisé à placer tout le montant des indemnités en acquisition d'immeubles dans l'étendue le la cité ; de vendre ses immeubles, et d'en acquérir et acheter d'autres en remplacement, et du même prix.

Le séminaire seroit tenu à affranchir des charges féodales tous ceux de ses censitaires qui le demanderoient, et aux conditions suivantes :—

1°. Droits de *lods et ventes.*—Les emplacements dans les limites de la cité, et chargés de bâtisses d'une valeur de cinq cents livres courant, ou au dessus seroient affranchis du dit droit pour le vingtième, une fois payé au séminaire, de la valeur totale des dits terreins et bâtisses.

Les emplacements dans les limites de la cité, et chargés d'aucunes bâtisses, ou de bâtisses dont le prix seroit moindre de cinq cents livres courant, et aussi tous les terreins et emplacements en dehors des limites de la cité, ou dans les campagnes, les uns et les autres seroient affranchis du dit droit pour le douzième une fois payé au séminaire, de la valeur totale des dits terreins et de leurs améliorations.

2°. *Cens et rentes.*—Les censitaires qui voudroient s'affranchir de ce droit, payeroient une fois au séminaire, le capital représenté par les rentes respectives.

3°. *Banalité.*—Les terreins dans les limites de la cité, et affranchis du droit de *lods et ventes*, seroient par là même affranchis de la double charge imposée par le droit de banalité, c. à. d. de l'obligation de moudre aux moulins banaux, et de la défense de bâtir ou ériger moulin à farine sur les dits terreins.

Les terreins hors des limites de la cité, et affrachis du droit de *lods et ventes*, seroient par là même affranchis de la première charge de la banalité ; mais il ne pourrait être construit sur iceux moulins à farine, sans le consentement du séminaire, et sans une indemnité capable d'aider à l'entretien des moulins banaux que la loi oblige les seigneurs à fournir à leurs censitaires. Cette dernière clause cesseroit d'être de rigueur, dès que l'affranchissement seroit devenu général.

(signed) *J. Quiblier,*
Supérieur du Séminaire.

Montréal, 5 Juillet 1836.

From *James Duncan Gibb.*

J. Duncan Gibb. 11 July 1836.

The adjustment of the claim of the Seminary of St. Sulpice is the most important subject for immediate adjustment in which the inhabitants of the island of Montreal are interested.

In expressing an opinion that that body is not the legal proprietor of the seigneury of Montreal, I do not overlook that clause in the Articles of Capitulation under which they pretend to claim it, and which I will state at length.

Article 34.—All the communities and all the priests shall preserve their moveables, the property and revenues of the seigneuries and other estates which they possess in the colony,

of

of whatever nature they be, and the same estates shall be preserved in their privileges, rights, honours and exemptions.

"Granted."

The exceptions which may be stated to their claim are positive in the two following clauses:

Article 32.—The communities of nuns shall be preserved in their constitutions and privileges; they shall continue to observe their rules; they shall be exempted from lodging any military, and it shall be forbid to molest them in their religious exercises or to enter their monasteries; safeguards shall be given them if they desire them.

"Granted."

Article 33.—The preceding article shall likewise be executed with regard to the communities of Jesuits and Récollets, and of the house of the priests of St. Sulpice, at Montreal; these last and the Jesuits shall preserve their right to nominate to certain curacies and missions, as heretofore.

"Refused till the King's pleasure be known."

The King's pleasure was never known as confirming the 33d article of the treaty; but we may infer his pleasure as being in contradiction to it, for by the 8th section of the Act of Parliament of Great Britain, 14 Geo. 3, c. 83, (1774,) it is enacted, that all His Majesty's Canadian subjects within the province of Quebec, *the religious orders and communities only excepted*, may also hold and enjoy their property and possessions.

The negative contained in that Act to the holding of properties and possessions by the religious orders and communities, is a positive rejection of the ungranted 33d article of the treaty, wherein a stipulation is made to preserve the communities of Jesuits and Récollets, and of the house of the priests of St. Sulpice at Montreal, *their constitutions and privileges*, in the manner granted by the 32d article to the nuns; and it also rejects the pretensions sought for by that article to preserve to the house of the priests of St. Sulpice at Montreal, and the Jesuits, their right to nominate to certain curacies and missions as theretofore.

Their corporate capacity is therefore not maintained, but denied, and the priests of the seminary can only be regarded as the agents of the corporation of St. Sulpice in France. The seminary being therefore but a branch establishment of a foreign corporation, have no corporate existence here, and consequently no legal right to the enormous sums of money they have collected.

The improvement of Montreal, the principal commercial city of British North America, has been most cruelly retarded by the incubus of seigneurial and feudal exactions. The feelings of the British and Irish Protestants who settled here have been much mortified in being compelled to submit to demands of such an oppressive nature, for the support of French Catholic churches and colleges, while no attention was given by the British Government to the establishment of scholastic institutions for the benefit of the Protestant community. The purposes to which they have been therefore compelled to contribute, and the seigneurial pretensions under which the money has been collected, have been objectionable to the Protestant settlers, who, encouraged by the King's proclamation, had flattered themselves they should be subject to no oppression in this country which they did not suffer in the land of their birth.

The King's proclamation, dated at St. James's, the 7th October 1763, contains the following clauses:—

"And being desirous that all our loving subjects, as well of our Kingdoms as of our Colonies in America, may avail themselves with all convenient speed of the great benefits and advantages which must accrue therefrom to their commerce, manufactures and navigation."

"And whereas it will greatly contribute to the speedy settling of our said new Government that our loving subjects should be informed of our paternal care for the security of the liberty and property of those who are and shall become inhabitants thereof, we have thought fit, &c.

"And we have also given power to the said Governors, with the consent of our said councils and the representatives of the people, so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes and ordinances for the public peace, welfare and good government of our said colonies, and the people and inhabitants thereof, as near as may be agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and in the meantime, and until such assemblies can be called as aforesaid, all persons inhabiting in or resorting to our said colonies may confide in our Royal protection for the enjoyment of the benefit of the laws of our realm of England."

Notwithstanding these kind assurances, the conduct of the King's Government has been oppressive and injurious to British settlers in regard to seigneurial claims. The religious orders of the Jesuits and the Récollets having become extinct, their vast estates became vested in the Crown. Here was an opportunity for the King, independent of the colonial legislature, to have fulfilled to the British settlers the promises contained in the proclamation; but instead of doing so, Government agents were appointed, and the settlers had to comply with all those obnoxious demands which French feudal law only could justify. Was this then according to the promises held out to them, and are *cens et rentes, lods et ventes, droits de banalité, droits de chasse, droits de pèches* and *droit de rétrait* to be considered as a proof of the King's paternal care for the security of the liberty and property of the British settlers, and as a substitute for the Royal protection for the enjoyment of the benefit of the laws of the realm of England?

The priests of the seminary of St. Sulpice, remaining in possession of the property there-

Appendix (B.)

Documentary Evidence.

Mr. *J. Duncan Gibb*, 11 July 1836.

tofore belonging to that order, proceeded to collect the seigneurial dues. Whether they were doubtful of the legality of their claim, or felt more humane in the exercise of it, I cannot pretend to say, but the British settlers found them kinder masters than the agents of the Government were in other seigneuries; and well knowing that if a strong remonstrance was made to Government to eject the priests of St. Sulpice from possession, the management of the seigneury would be assumed by Government through its agents, who would demand the full extent of lods et ventes, while the priests in amicable settlements were satisfied to receive five, instead of eight and one-third, per cent., the British settlers preferred, therefore, to be the feudal vassals of the priests of St. Sulpice than of the British Government.

The wrongs we have suffered in this respect have at last become known to His Majesty, and Royal Commissioners have been sent to examine into our complaints; we therefore look with confidence to our early emancipation from all seigneurial and feudal burthens.

It may be necessary to state the manner in which lods et ventes are created and how collected by the priests. On every sale, a mutation fine of one-twelfth of the value of the property, including improvements thereon, is claimed by the priests. The priests of St. Sulpice seldom institute actions, as plaintiffs, for the recovery of lods et ventes; their claim under seigneurial privilege may lay dormant after one or several sales, even until 30 years, or until the property is brought to a sheriff's sale: they then put in an opposition *à fin de censives*, and obtain payment from the proceeds returned by the sheriff, of their claim of eight and one-third per cent. on the amount of each preceding sale; or, when a purchaser by private sale advertises his deed of acquisition for a judgment of confirmation, according to the provincial statute, they file their claim, which if the purchaser will not admit, he cannot obtain a confirmed title.

Frequently purchasers refuse to pay the balance due to vendors, unless the latter pay the seigneurs their arrears of lods et ventes. A property sold 12 times by private sale, without having made payment of lods et ventes, if brought to a sheriff's sale, the seigneurs will claim lods et ventes on each sale, and recover a sum equal to the whole amount of the proceeds of sale, without impairing their pretensions to similar future exactions.

When proprietors voluntarily pay the priests their lods et ventes, the latter will take 5 per cent., but if the proprietors are not monied men, and the claim is ultimately enforced by the means before stated, the seigneurs exact the full sum of eight and one-third per cent.

Another complaint may be alluded to: large sums of money are stated to have been sent to Catholic institutions in foreign countries, instead of being kept for expenditure here, as expressed in the confirmation granted by the King of France to the deed of donation held by the St. Sulpiciens, viz.—

" A ces causes, bien informés que nous ne pouvions rien faire de plus avantageux pour la propagation de la foi, et pour l'établissement de la réligion Chrêtienne dans nos états *dans la nouvelle France.*"

With regard to the character of the priests of the house of St. Sulpice at Montreal, I am happy to express my high sense of their public and private virtues; their conduct has always been such as to ensure them the good will of all classes of the community. Irritations have arisen with regard to claims they have enforced, but only so when acting in a seigneurial capacity.

Montreal, 11 July 1836. (signed) *James Duncan Gibb.*

Sir, Committee of Trade Room, Montreal, 12th July 1836.

Mr. *T. Mitchell Smith*, 12 July 1836.

I HAVE been directed to acknowledge the receipt of your letter of the 9th instant, addressed to Geo. Auldjo, Esq., the late Chairman of the Committee of Trade, putting certain queries respecting the commutation of the seigneurial dues in the city and island of Montreal.

In reply to the first question in your letter, the Committee of Trade have no hesitation in saying that a very great and very general anxiety prevails amongst the proprietary to obtain the means of freeing themselves, on reasonable terms, from these dues.

In answer to your second inquiry, the Committee are of opinion that 10 per centum of the assessed value would not be more than an equitable compensation to the seigneurs for the relinquishment of their rights, provided the time of effecting a commutation and of taking an assessment for that purpose be left entirely to the holders of the property. The Committee, however, direct me to add, that if a limited period only were allowed to commute, for instance, three years from a given date, in such case five per centum might be considered a fair equivalent.

It has also occurred to the Committee that a sum might be fixed upon, payable immediately, with an advancing scale for every year that might be allowed to elapse without the proprietor availing himself of the privilege to commute. Such an arrangement would have the effect of creating the new tenure more rapidly, and would not be felt as a hardship, if the seigneurs were willing to arrange for the payment by a *rente rachetable* on the property.

The following gentlemen, who are extensive proprietors, are well qualified by their intelligence to afford information to His Majesty's Commissioners on this subject: Thomas Cringan,

Cringan, Charles Lamontagne, Turton Penn, Benjamin Holmes, George Auldjo, Esquires, Dr. Robertson, and Mr. John Redpath.

I have, &c.

T. F. Elliot, Esq. &c. &c. &c.

(signed) *T. Mitchell Smith*, Secretary Montreal Committee of Trade.

Appendix (B.) Documentary Evidence.

Sir, Montreal, 13 July 1836.

I HAVE been honoured with your letter of the 9th instant, wherein I am requested, as a member of the Executive Council resident in Montreal, to impart to His Majesty's Commissioners of Inquiry any knowledge I may possess, or opinion I may entertain, on two questions respecting the carrying into effect a plan for relieving this city and island from the *seigneurial* dues to which they are subject.

Hon. *D. Mondelet*, 13 July 1836.

I have now the honour to state my humble opinion as follows:

On the first question:

An anxiety to be freed from *seigneurial* claims, and more particularly of the right of *lods et ventes*, on reasonable terms, prevails amongst the generality of the inhabitants of this city and island. I am not aware of any diversity of opinion on this matter.

On the second question:

The proportion of one-fifth of the assessed value of the property intended to be freed from seigneurial burthens, to which the *seigneur* would be in strictness entitled, does not appear to me to be exorbitant.

I am, however, of opinion that it is proper to allow to the *seigneur* and censitaire the option of agreeing upon terms of commutation with each other, and that such course will be decidedly advantageous to the latter.

From my knowledge of the disinterestedness of the gentlemen of the seminary of Montreal, I feel confident that their conditions will be most liberal. I am much mistaken if the compensation which they will be disposed to receive, will not prove more reasonable than the most sanguine hopes of the inhabitants could lead them to expect.

The other *seigneurs* of *fiefs* in the island of Montreal might not be prepared to make sacrifices to the same extent, and it might not be fair to expect it at their hands.

Thomas Frederick Elliot, Esq. &c. &c. &c.

I have, &c.

(signed) *D. Mondelet.*

Mr. *Turton Penn.*

THE injurious tendency of the laws affecting real estate in force in this province, and especially of the rights enjoyed by the seigneurs, is too obvious to require anything more than a passing notice. A bare recital of the various burthens to which landed property is subjected, will, in itself, without comment or remark, convey all that needs be said on the subject; and as this information can be drawn from the law books, I consider it unnecessary to enter into the details, and shall confine my observations to matters of a local character, bearing upon the negotiation now pending between His Majesty's Government and the seminary of St. Sulpice.

Mr. *Turton Penn.*

An opinion has very generally obtained with the British and Irish population of this city, that the Government is in possession of legal opinions showing that the right of property to the estates held by the seminary is vested in the Crown; and it is understood that instructions were transmitted to Lord Aylmer to require a surrender of the property, and in the event of a refusal, to bring the matter to an issue in the courts of law. I am not prepared to discuss the question in a legal point of view, but would remark that the doubts as to the sufficiency of the seminary's title have acquired additional force from the result of a suit at law, in which the seminary was the plaintiff, which was carried by appeal to Quebec, with the intention on the part of the defendant, if unsuccessful there, to appeal to England. The judges in appeal at Quebec were divided in opinion, and no judgment was obtained, although it is stated that the chief justice of the province was opposed to the seminary's claim. If more accurate information on this subject is required, I beg to refer to the Hon. James Stuart, late attorney-general of the province, who conducted the case for the defendant.

The British population generally have been under the impression that the seminary had no legal right to the property held by it, and knowing that the subject was under the consideration of His Majesty's Government, they have patiently awaited the result, in the fullest confidence that the final adjustment would be determined upon equitable principles, and with a due regard to the interests of all classes of the population. Hitherto they have not benefited, or at the most, in a very slight degree, under the system of education established by the seminary of St. Sulpice, and in any arrangement which may be made consequent upon the exercise of the rights of the Crown, they trust that their claims to participate in the revenues allotted for purposes of education will not be overlooked. Whether this end shall be brought about by introducing a system of education divested of all sectarian tests, or by separate and distinct appropriations for Catholic and Protestant purposes, will naturally form a subject of deliberation. It cannot be denied that it would be a work of more than ordinary difficulty to mature a system of education which would

Appendix (B.)

Documentary Evidence:

Mr. *Turton Penn.*

extend its advantages in an equal degree to all, without exciting the jealously, or offending the prejudices of any religious sect; still, should a contrary principle prevail, it is much to be feared that the classification which must ensue would tend to confirm the distinctions and differences which at present unhappily exist.

I now proceed to answer the second question of the Commissioners; viz. should the rights of the seminary be recognized by the Government, the conditions on which their rights should be surrendered.

In this case I conceive the best plan would be to give an equivalent to the seminary in the shape of a fixed annual revenue. The principal sum might be assessed on the real estate within the seigneury, leaving it optional with the censitaires either to discharge the amount they were assessed, or to pay interest. The principal sum as paid in might be loaned to the province, and could be advantageously employed in improving the navigation of the St. Lawrence, or in any other work of public utility.

I cannot undertake to say what sum the seminary should receive as an equivalent, as I conceive it should be regulated by a reference to the sum required to keep up its schools and establishments. The present revenue of the seminary has been spoken of as amounting to about 6,000 *l.* per annum.

I am aware that another plan has been suggested, leaving to the seminary the collection of the back dues, and authorizing it to receive a commutation of 5 per cent. from the censitaires, and to invest the monies so received in landed estate.

So far as the interest of the censitaires is concerned, the commutation appears to be reasonable; but the proposed manner of investing the money is open to many serious objections.

I have it in charge from the proprietors and inhabitants generally of the ward in which I reside, to state to the Commissioners that their interests are injuriously affected, and the public exposed to much inconvenience and annoyance from the large extent of unconceded land held by the different religious communities, and comprehended within the city limits. To give to the seminary of St. Sulpice the right of acquiring more land, would be to increase the evil of which they complain.

Independently of the objections of a general character to mortmain property, which have occasioned general discontent wherever property of that kind exists, there are other and special reasons against it in the present case.

Without meaning in the slightest degree to detract from the character of the ecclesiastics of the seminary of St. Sulpice, and cordially adding my testimony to that of others, as to the high estimation in which they are held by the community at large, still it cannot be expected that in temporal affairs they or any other body of the clergy can be actuated by the same desires, or influenced by the same feelings which animate an active and enterprizing commercial population. The consequence has already been, both in respect to the seminary and the other religious communities holding unconceded lands, that great discontent and dissatisfaction have been manifested by individual proprietors. The religious communities refuse to unite with the other proprietors in their neighbourhood, to carry into effect public improvements, although those improvements would materially enhance the value of their lands. In the ward of St. Ann's, the proprietors and inhabitants, besides paying assessments, have contributed within the last five years from their own funds nearly 4,000 *l.* to repair the streets and public places; whilst the different religious communities holding large quantities of land, each of whom has benefited more than all the individual proprietors conjoined, have contributed nothing. I ought also to mention that the lands referred to, although from their advantageous situation they would no doubt before this have been disposed of as building lots, had they been placed under different ownerships, are still kept by the religious communities as farm lands. There is a growing feeling of discontent from this cause, and unless something is speedily done to satisfy the reasonable expectations of the public, I am satisfied that heats and animosities will ensue, leading, not improbably, to a state of things still more to be deprecated.

There are other reasons of a more general nature, which show the impolicy of continuing the seminary and the other religious communities in possession of the unconceded land now held by them.

From the many local advantages possessed by the city of Montreal, it can scarcely be doubted that it is destined to become a large commercial emporium; and when the tenure of the land is changed, and certain obnoxious laws affecting real estate repealed or modified, it may be expected to advance rapidly in population and wealth, and as a natural consequence, the value of land will be proportionably increased. The time is probably not very far distant when the revenues and profits arising from the unconceded land held by the seminary would clothe that body with a power and influence which, if improperly directed, would be dangerous, and against which the Government itself might find it no easy task to contend. However merited may be the confidence bestowed on the present ecclesiastics of the seminary of St. Sulpice, it by no means follows that their successors will be equally entitled to esteem; and when it is considered that they exercise an uncontrolled power over the revenues of the seminary, or if controlled at all, that it is by the house in Paris, and that they are not bound to render an account to the public of their expenditure, I think it will be admitted that it would be impolitic to continue to them the privileges they seek.

On behalf of a numerous body of the population of British and Irish descent, whose prospects must be deeply affected by the issue of this question, I express an earnest wish that whatever remuneration the Government may make to the seminary for the surrender of

of its rights, the unconceded land situated within the city, with the exception of what may be required for the purposes of the establishment, may be sold. If the seminary is permitted to apply to its own use the amount which the property may realize, it would perhaps obviate one of its objections to the measure, were the sale made *en constitut*, bearing interest at the best rate of 6 per cent.

I cannot state with precision what a commutation of 5 per cent. and the arrears of *lods et ventes* would produce, but I furnish a statement founded on such documents as are within my reach.

The amount of assessment on real estate within the city of Montreal, for the current year, being at the rate of 2 ½ per cent. on the rental, is 4,150 *l.* This would give a total rental of 166,000 *l.*; and as buildings are supposed to pay on an average 8 per cent. interest, therefore

	£.
8 : 100 :: 166,000 - - - - - -	2,075,000
Add, for farms, orchards and vacant lots, either not assessed, or assessed at a rental below their real value - - - - - - - -	100,000
The island of Montreal, exclusive of the city, contains about 140,000 acres, comprising several villages. I consider an average of 10 *l.* per acre as a fair valuation - - - - - - - - - - - - -	1,400,000
	£. 3,575,000
Commutation of 5 per cent. on 3,575,000 *l.* is - - - - - - - -	178,750
Lods et ventes being payable by the purchaser, and the seminary not having been in the habit of enforcing its rights, I should suppose there are but few properties where at least one mutation fine is not due, and it is no uncommon thing to find three, four, or upwards, accumulated on the same property. I know of no means to ascertain what the arrears amount to, except from the seminary books, but as a matter of opinion, I should say there could not be less on an average than one mutation fine due from all the property within the seigneury. This, at 5 per cent., being the rate at which the seminary has been in the habit of commuting, will give - -	178,750
	£. 357,500

Say, three hundred and fifty-seven thousand five hundred pounds. Add to this the grist-mills and water privileges owned by the seminary, which might be made to yield a large revenue, and the landed estate to which allusion has already been made, and which is of great value, and deduct for three or four small fiefs held by other religious communities and by individuals, the value of which I cannot state, although I do not think it will materially affect the result as shown in the preceding calculation.

In answer to additional questions proposed by the commissioners, I wish it to be understood that, in speaking of the terms on which seigneurial rights might be commuted, I merely mean to state that it would be more to the advantage of the censitaires to accept those conditions than to remain as they are. I do not suppose for an instant that the Government will enter into an arrangement with the seminary of St. Sulpice, leaving it so large an amount of disposable funds as a commutation on the terms stated would produce.

The commutation of cens et rentes cannot be regarded as a matter of public interest. There is no hindrance to the improvement of the country in the payment of a fixed annual rent; and the rents being partly paid in various kinds of farm produce, there would be some difficulty in fixing a cash value. The settlement of this question might be left open to a private arrangement between the parties interested; or should the extinguishing the right be deemed important, the commutation might be determined by arbitrators duly appointed for that purpose.

If the right of the seminary to the arrears is confirmed, it will not be necessary to connect their payment with the proposed commutation of feudal rights, as the seminary could at any time enforce its claim through the courts of law; but as a simultaneous demand upon all the censitaires for so large an amount of arrears might lead to difficulties and embarrassments, it would be well to restrain the action of the seminary in that respect, and provide for the gradual liquidation of the debt.

The general feeling of discontent from the large quantity of lands within the city held by the seminary and other religious communities, does not originate in the circumstance that those lands are held by Catholic communities, but would exist in the same degree were they the property of any other religious corporation. The irritation on this subject will not excite surprise when the facts are known. The inhabitants are denied a direct access to the port and river, and nearly the whole trade of the city has to pass by a circuitous route, for the want of streets which any individual proprietor would open for his own benefit. Every owner of real estate in the vicinity of mortmain lands is injured in his prospects; and unless measures are taken to remove this constant source of irritation, I much fear that it will in the end lead to acts of violence and outrage.

Should it be decided that the religious communities are to continue to enjoy the benefit of the lands now held by them, one easy method of affording relief would be to require

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that they should be sold within a limited period, leaving the purchase money as an unredeemable mortgage, bearing interest. This would yield an immediate and permanent revenue to the communities.

Before expressing an opinion as to the expediency of making certain concessions to the seminary of St. Sulpice, on the supposition that the right of the Crown cannot be readily or certainly established, I wish to make a few observations. I have hitherto abstained from discussing the right of the Crown to the property, knowing that the commissioners were in possession of legal opinions on that point. In deviating from that rule, it is not my intention to do more than allude to one argument, by no means the most forcible that could be adduced, but to which, it is possible, sufficient importance may not hitherto have been attached.

In the capitulation entered into on the 8th September 1760, between Major-General Amherst and the Marquis of Vaudreuil, the 34th article, on which the claim of the seminary of St. Sulpice is founded, is as follows:

"All the communities and all the priests shall preserve their moveables, the property and revenues of seigneuries and other estates which they possess in the colony, of what nature soever they be, and the same estates shall be preserved in their privileges, rights, honors and exemptions."—"Granted."

The preceding article, 33, claimed for "the communities of Jesuits and Récollets, and of the house of the priests of St. Sulpice at Montreal," to be "preserved in their constitions and privileges."

"Refused till the King's pleasure be known."

We here see that the three religious communities are placed on the same footing, and consequently that the Government possessed the power, without infringing any of the articles of capitulation, to pursue the same course in regard to the St. Sulpicians, which it did adopt towards the Jesuits and Récollets, when by refusing permission to any new members to join their community, their property would have reverted to the Crown.

The Royal proclamation, dated at St. James's, the 7th October 1763, after setting forth that "it will greatly contribute to the speedy settling of our new government that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are and shall become inhabitants thereof," and declaring "that all persons inhabiting in, or resorting to, our said colonies, may confide in our Royal protection for the enjoyment of the benefit of the laws of our realm of England," goes on to say, "We have also thought fit, with the advice of our Privy Council as aforesaid, to give unto the governors and councils, &c. &c. full power and authority to settle and agree with the inhabitants of our said new colonies, or any other person who shall resort thereto, for such lands, tenements and hereditaments as are now, or hereafter shall be, in our power to dispose of, and them to grant to any such person or persons, upon such terms, and under such moderate quit-rents, services and acknowledgments, as have been appointed in other colonies."

It has already been shown that "Our power" did extend to the properties and possessions of the three religious communities, and was exercised in respect to two of them; and it is but reasonable to suppose that the Act 14 Geo. 3, c. 83, s. 8, which confirmed the right of all His Majesty's Canadian subjects "to hold and enjoy their property and possessions," "the religious orders and communities only excepted," was intended to confirm to "all persons inhabiting in or resorting to our said colony," the rights they had acquired under the Royal proclamation, and that "such lands, tenements and hereditaments as are now, or hereafter shall be, in our power to dispose of," comprehending the properties and possessions of the three religious communities, shall be granted "upon such terms, and under such moderate quit-rents, services and acknowledgments, as have been appointed and settled in other colonies."

I know not the precise facts and arguments on which the seminary of St. Sulpice grounds its claim to continue in the enjoyment of its property and possessions; but since they cannot be drawn from the articles of capitulation, nor from the treaty of cession, they must rest, I should suppose, on some assumed recognition by His Majesty's Government; in other words, whatever right the seminary does possess, must have been derived from the Crown. If any document of this nature does exist, it is in manifest contradiction of the Royal proclamation, and of the spirit of an Act of the Imperial Parliament; and it is fair to assume that whatever rights and privileges it may convey, it was not intended to subject "persons inhabiting in or resorting to our said colony," to any other than "such moderate quit-rents, services and acknowledgments as have been appointed and settled in other colonies."

The English inhabitants claim as of right to be relieved from all feudal exactions according to the spirit and intent of the Royal proclamation; and they submit for the consideration of the Government their right to participate, in common with other of His Majesty's subjects, in any appropriation for education drawn from the commutation of seigneurial dues within the possessions at present held by the seminary of St. Sulpice.

It is difficult to conceive that their claims in either case would be denied by the Imperial Parliament, even supposing the first named could be evaded in the courts of law. The time has gone by when it was held that corporate property was without the reach of legislative interference. In ecclesiastical corporations, more particularly created and endowed for benevolent purposes, it is competent to Parliament to introduce such modifications as the change of times and the different circumstances of the people may require.

But

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But although confident that the claims of the British inhabitants would ultimately be established, I am not unwilling to admit that it may be advisable somewhat to relax in asserting their extreme rights; to what extent it might be expedient to give way I am not prepared to say, nor can I form an opinion, without being made acquainted with the facts and evidence which are before the commissioners.

If it should be determined upon to give to the seminary of St. Sulpice a corporate character, and to acquire from it by an amicable arrangement the seigneurial property and possessions, the least objectionable mode of carrying the arrangement into effect would be by indemnifying the seminary by a fixed annual income, and permitting it to dispose of the unconceded lands, subject to an annual rent-charge.

My opinion as to the impolicy of permitting the seminary to acquire other landed estate may be collected from the remarks I have made as to the land now held by it; and it would be a matter of deep regret, if in removing one evil, another should be created which would grow in the end to be almost as intolerable.

From the Seminary of *St. Sulpice;* 22 July 1836.

Rev. *J. Quiblier,* 22 July 1836.

Le séminaire en ne demandant pour l'affranchissement des charges féodales que le 20ème de certaines propriétés et le 12ème des autres, à compté sur le montant de ses arrérages. Ces arrérages deviennent en quelque sorte son seule moyen d'existence pendant plusieurs années. Ils sont loin néanmoins de monter à la somme que l'on suppose:

	£.	s.	d.
D'après un relevé assez correct, fait en 1833, et qui est encore exact aujourd'hui, les lods et ventes de la ville, estimés d'après notre mode ordinaire de perception ne se montent pas, en bonnes dettes, au dessus de 13 ou - - - - - - - - - - -	14,000	–	–
Sur 500 emplacemens que contient la ville, 220 environ, d'après notre terrier, sont quittes, jusqu'à ce jour de tout droit de lods et ventes.			
Les emplacements des faubourgs ont été, jusqu'ici, d'un beaucoup moindre prix. L'on ne s'éloigne guères de l'exactitude en estimant les arrérages dont ils sont chargés à la somme de - - - - -	8,000	–	–
Sur les 1,300 terres de l'isle de Montreal, plusieurs sont insolvables par leur peu de valeur. Un grand nombre sont quittes. Les arrérages ne peuvent être estimés au dessus de 10 à - - - - - -	12,000	–	–
	£. 34,000	–	–

Ce qui pourra rentrer de ces arrérages, fera exister le séminaire pendant quelques années; mais ne seroit il pas nécessaire et equitable que ceux qui, après cinq ou six ans, voudraient affranchir leurs propriétés payassent deux cinquièmes en sus du prix demandé d'abord par le séminaire? Ces deux cinquièmes ne pourraient être employés qu'a la subsistance du séminaire, et exciteraient les censitaires à presser les affranchissemens.

Propriétés dont le Séminaire conserve le domaine.

Les propriétés possédées par le séminaire ainsi que les arrérages dûs, ont toujours été exceptés de tout projet d'arrangement. Le Gouvernement de sa Majesté n'a jamais voulu qu'ils fussent en rien contestés au séminaire. Les censitaires ne peuvent se plaindre. C'est leur faute s'il y a des arrérages. Les propriétés possédées par le séminaire sont moins importantes qu'on ne pourrait imaginer.

En ville, outre le séminaire et le collège, nous possédons des écoles et maisons vis-à-vis au séminaire, et un moulin à vent avec emplacement.

La ferme de St. Gabriel que nous livrerons à l'usage du commerce dès qu'un arrangement nous permettroit de lever la main morte de dessus nos propriétés, environ 300 arpents, dont la seule partie voisine du canal peut être utilisée.

La ferme de la Montagne qui sert une fois la semaine à la promenade des messieurs du séminaire, et des élèves du collège. Les produits ne couvrent pas la dépense, environ 180 arpens.

En campagne, deux petites prairies, ensemble 40 arpens.

Le bois, ou ferme, du saut, qui fournit du bois de chauffage au séminaire, et dont le sol est très mauvais, 8 à 900 arpens.

Trois moulins à eau avec leurs emplacements: deux moulins à vent de nulle valeur aujourd'hui, et deux ou trois ilets ou rochers dans la rivière des Prairies.

Dans la Seigneurie de *St. Sulpice.*

Trois moulins à eau avec dependances, et une terre à bois pour l'usage des meuniers, laquelle contient 100 arpents d'un sable sterile.

Appendix (B.)

Documentary Evidence.

Seigneurie du *Lac des Deux Montagnes.*

Rev. *J. Quiblier*, 22 July 1836.

Auprès de la mission un bois de 12 à 15 milles de superficie que nous sommes obligés a conserver pour fournir aux sauvages du bois, du foin, des grains, et un peu de chasse.

Trois petits moulins à eau et un moulin à scie, avec leurs dépendances, et une terre basse qui donne naissance à la Belle rivière ou rivière du Chêne dont les eaux sont necessaires aux habitans de la seigneurie du Lac et aux habitants de la seigneurie voisine.

(signed) *J. Quiblier*, Supr.

Montrèal, 22 Juillet 1836.

Mr. *Auldjo*; 22 July 1836.

Observations on the Feudal Tenure of Lands.

Mr. *Auldjo*. 22 July 1836.

The feudal tenure by which lands are held in the seigneuries of Lower Canada, appears to me to fall heaviest on the population of the cities; but I perceive that the Canadians themselves are now taking the matter up in the country parishes, with a view to getting relieved from this odious burthen. The charge would be a burthensome one, even on the unimproved soil, and several of our French Canadian lawyers contend that this is all that was contemplated in the original grants from the Crown of France; but a commercial city like Montreal cannot remain unimproved, and the fine therefore falls with aggravated force when it comes to be paid on the costly warehouses with which Montreal now abounds. I will give an instance of this. I myself purchased at sheriff's sale a vacant piece of ground in the commercial part of this city, about three years since, for the sum of 1,100 *l.*, although in the state it then was, the ground was totally unproductive. Warehouses have since been erected upon it, which now yield an annual rent of 500 *l.*, or the interest of 8,000 *l.* at 6 per cent. per annum; and the property therefore might fairly be considered to be of that value. Let His Majesty's Commissioners contemplate to what an enormous amount the revenue of the seigneurs would eventually run, if it went on improving even in the present ratio.

I was told of an instance that occurred the other day in the Court of King's Bench, of a property having been brought to sale by the sheriff under an execution, and when sold it was found that there were seven mutation fines due upon it, or 58½ per cent. of the money levied by the sheriff, and if the intermediate sales were for the full value of the property, it is probable that the seigneurs would carry off the whole amount levied by the sheriff, for it seldom happens that property sells so well at sheriff's sale, as when sold by private bargain. In such a case therefore the sueing creditor, or indeed any other creditor, would get nothing. I have heard it strongly doubted by an eminent lawyer and others, whether the priests of the seminary of St. Sulpice could be legally entitled to be considered as seigneurs of the island of Montreal; but if they are not, the King certainly is, for I believe it is a maxim of French law that there is "nul terre sans seigneur."

I have heard of the terms of surrender offered by the gentlemen of the seminary, and it becomes a question if the like terms of surrender would be obtained from the Crown. I myself think not; but then the Crown in my opinion would not appropriate the money in the exclusive manner that the seminary will do.

In the aggregate, the commutation of five per cent. on the assessed value of property appears reasonable, but taking detached cases where property has recently been improved to a great extent it would bear hard. For instance, in my own case the seigneurs would now get 400 *l.*, when three years ago they would only have got 55 *l.*

Montreal, 22d July, 1836. (signed) *George Auldjo.*

Mr. *Benjamin Holmes*; 25th July 1836.

Mr. *B. Holmes*. 25 July 1836.

Having had communication of a letter addressed to the Board of Trade by Mr. Elliot, on behalf of the Commissioners, inquiring, first, to what extent an anxiety prevails on behalf of the inhabitants to obtain the means of freeing themselves from seigneurial dues; and secondly, what commutation would be generally considered equitable and desirable, and the mode of assessing property for the purpose of creating a fund to extinguish the seigneurial rights claimed and exercised by the gentlemen of the seminary of Montreal; I now beg leave to submit to the Commissioners the opinions I entertain on the subject.

The seigneury of the island of Montreal, having been vested in a body, and for the advantage of a population purely Roman Catholic, the diversified character of its present inhabitants and the fact of the grand object of the establishment (the conversion to Christianity of the savage tribes) having long ceased to exist, or draw from its revenues any portion of the tribute now levied upon His Majesty's subjects of all creeds and all classes, have created, in addition to the objections arising out of what is considered their more than doubtful title, a strong feeling; and a general desire prevails on the part of the British and Irish inhabitants, of freeing themselves from a burden which tends to suppress improvements and paralyze their efforts, industry and enterprize.

To the feudal tenure is ascribed (and I believe most justly) the comparatively slow advance in the improvement of property on the island of Montreal when compared with other

other cities on this continent possessing fewer local advantages; under the existing burthens few are willing to invest their means, or dedicate their industry to the acquisition of landed property.

An opinion is generally entertained that the titles of the religious communities exercising the rights of seigneurs are in themselves defective; but knowing that the subject had engaged the consideration of His Majesty's Government, the determination on the question is anxiously awaited, and with the confident hope that a settlement will speedily be effected, upon principles advantageous to all classes, and making at the same time ample provision for the personal wants of the present incumbents.

It is understood that the gentlemen of the seminary have expressed their readiness to treat for a commutation provided His Majesty's Government will give its sanction to the investment of the monies arising therefrom in lands, or real estate within the province. To this I strongly object.

The holding of lands in mortmain is obnoxious, however beneficial may be the object which may induce such investment, in bodies corporate composed of private individuals, who enter into the spirit of, and act upon the views and feelings of the age: it is doubly so when the bodies corporate are ecclesiastical. The changeless character of a religious community interferes with the public prosperity, and ultimately engenders feelings of hostility against the members of such corporations; it cannot be supposed that an ecclesiastical body can partake of, or be actuated by the same spirit of activity which governs a commercial population.

Property in the country is all improvable, and its value rapidly increasing with the progressive settlement and augmentation of our population; and it is to be borne in mind that the foundation of an evil, as great, if not greater, than that of which we now complain, would be laid, if the investment and re-investment of the avails of a commutation, such as is now contemplated, were permitted.

I have understood the gross revenue of the gentlemen of the seminary from all sources amounts to about 6,000*l.* per annum: this at the legal interest of the province exhibits a requirement of 100,000*l.* to meet the commutation; in that annual revenue are included the rents arising out of the vast extent of property held by the communities within and immediately adjoining to the city.

Without entering into the discussion of, or admitting the justice or the propriety of continuing to the gentlemen of the seminary the enjoyment of revenues dedicated in a great measure to an exclusive system of education, but drawn, I may with confidence assert, equally from classes entertaining opposite religious opinions, I would, nevertheless, as a matter of expediency, subscribe to the formation of a fund to secure to those gentlemen an income adequate to their wants, and equivalent to their assumed present income.

The clergy, of all denominations, and in all countries, possess, and exercise no small influence, which influence may be used with equal advantage or injury to the state; it therefore becomes an object of paramount necessity in a colony, especially to attach the clergy to the parent state, and this, I humbly conceive, will best be accomplished by identifying their interest with a continuance of the connexion; I would, therefore, recommend that such a sum of money as will insure the return of the amount stipulated for in the proposed arrangement be invested in the British funds, and secured to the present incumbents and their successors, so long as the province shall continue a portion of the British empire.

If, however, it be held to be indispensable that the investment should take place within the colony, I would recommend that the money be lodged with commissioners, for the purpose of being invested in works of public utility, such as canals, railroads, or improvements generally, in all of which we are immeasurably behind the neighbouring states, and indeed even our sister colony of Upper Canada.

In recommending an immediate adjustment of this question by securing to the gentlemen of the seminary a revenue adequate to their wants, and equivalent to their assumed present income, I must urge the absolute necessity of avoiding the continuance of the existing evil, by the disposal of all lands and other real estate not necessary to their personal comfort, or for their scholastic establishment, of which considerable blocks are variously situated within the city limits, and large farms adjoining it, the holding of which by a religious corporation is very generally considered detrimental to the public interest, and is looked upon with that jealousy and irritation which will ultimately, if the evil be not corrected, break out into acts of direct hostility and violence.

The disposal of their lands on constitut and by public sale might be considered a means of avoiding a result which will, in my opinion, sooner or later, inevitably ensue, should their properties be retained by the religious communities; and on the part of these communities I can see no sufficient reasonable objections, as it will give an immediate and material increase to their present revenues.

Having expressed my views on the subject of the proposed adjustment of claims which are considered peculiarly obnoxious, and injurious to the advancement of improvements, and to the commercial prosperity of the city especially, it remains merely to decide upon the best plan of raising a fair equivalent, and this would I conceive be most equitably accomplished, should the Crown assume all the seigneurial rights and property now held and exercised by the gentlemen of the seminary of St. Sulpice in Montreal, and cause a

Appendix (B.)

Documentary Evidence.

Mr. *B. Holmes.*
25 July 1836.

sufficient assessment to be levied on the individual proprietors, to furnish the principal sum requisite to complete the arrangement.

I have understood that 5 per centum would be considered by the gentlemen of the seminary a satisfactory equivalent; but to them that 5 per cent. would be productive of a sum far beyond what I am informed they state their income to be. I submit a calculation founded on a commutation of 2½ per centum, and I take the assessment books for the current year for my guide.

	£.
The assessment is based on 2½ per cent. on the rent of the premises, and amounts to four thousand one hundred and fifty-four pounds, some odd shillings; but take 4,000 *l.*, which will give a yearly rental of 160,000 *l.*, and it is generally calculated that buildings pay 8 per cent.; this will give the total value of the assessed property in the city as 2,000,000 *l.*, a commutation of 2½ per cent. on which yields the sum of - - - - - -	50,000
The value of the island, exclusive of the city, may fairly be estimated at 840,000 *l.*, allowing about 140,000 acres as its superficies, at 6 *l.* an acre on the average, 2½ per cent. on which is - - - - - - - - -	21,000
Without any means of ascertaining the exact amount of back dues, which can only be known to the seminary, I should suppose that on an average at least one mutation fine upon all properties is in arrear, and I am induced to think so, because the seminary has not been in the habit of sueing, and lods et ventes being paid by the purchaser, it is not probable that voluntary payments would be tendered; besides I know that several unpaid lods et ventes have accumulated on properties. Supposing one lods et ventes on the average to be due, and this to be settled at the usual rate of 5 per cent., the back dues on 2,840,000 *l.*, will amount to - - - - - - -	142,000
Halx. Cy. - - -	£. 213,000

More than double the sum which it is said the seminary would be satisfied to receive, and which I think proves a commutation of 2½ equivalent to the required sum. Should the arrears actually collected not exceed one-fourth of the amount at which they are estimated, say only 35,500 *l.*, this, with 50,000 *l.* on the city, and 21,000 *l.* for the country, gives 106,000 *l.*, exclusive of the value of the grounds in the city, and the farms in its vicinity now held in mortmain.

In the above calculation I make no allowance for under-valuations of vacant lots, gardens, orchards, &c. within the city and suburbs, neither has any notice been taken of grist and other mills, and millseats, which with the landed estate should be immediately sold, and which would yield no inconsiderable sum.

Hardly a doubt exists in my mind that in three years after the contemplated arrangement shall have gone into effect, the whole British and Irish population (and under that class is comprized all who are not of French descent) will have availed themselves of the opportunity of enfranchising their property; indeed few months would I think elapse before a very considerable part came forward to commute; but among the French the same energy and commercial enterprise does not exist, and numbers hold property without the least desire or expectation of ever making it a source of wealth, but merely as producing a subsistence to their families; these will not avail themselves of the advantages derivable from a change of tenure. Something, therefore, equivalent to a graduated scale would be advisable, or a proviso, that unless within three years the commutation fee shall have been paid, the fine shall be burthened in addition with legal interest on its amount from the date of the adjustment of the question to the period of its final liquidation.

I cannot close these suggestions without bearing testimony to the high respect and regard for the public and private character of the gentlemen of the order of St. Sulpice universally entertained by all classes of our mixed population; and I am free to admit that a commutation of even 5 per cent., combining a settlement of all arrears, to be calculated at the same rate, would be hailed, if decided upon, as a satisfactory adjustment, provided always that the avails of that commutation be not re-invested in landed estate, and that the properties now held (not requisite for their individual comfort, and the accommodation of their schools) be sold, as previously expressed, on constitut, or perpetual ground-rent.

Most respectfully submitted.

(signed) *Benjamin Holmes.*

Montreal, 25 July 1836.

Mr. *Cringan*; 26 July 1836.

Mr. *Cringan.*
26 July 1836.

I SHOULD not consider that it would be necessary for me to state to the Commissioners of Inquiry, were I even equal to the task, the various feudal rights which are exercised in this province, and with which they must be already familiar.

The striking and unfavourable contrast between Montreal and commercial cities in the United States may chiefly be attributed to that cause, joined to the want of register offices for enregistering the transfers and incumbrances of real estate.

These

Mr. *Cringan.*
26 July 1836.

These feudal burthens constitute a powerful and continual obstacle to enterprize, industry and improvement; and the want of registries, and consequent want of security, drives to the United States much of the British capital originally brought to this province, with the intention of vesting it in real estate in this city or neighbourhood, as well as in some other parts of the province.

The large extent of domain or unconceded land within the limits of the city in possession in mortmain of the seminary of St. Sulpice and the other religious communities, is another great evil and obstacle to the advancement of Montreal.

Improvements, and streets of communication, which are urgently required for the benefit of commerce, have been refused, the growth of the city is impeded, and individual proprietors injured in their prospects from this cause, and, as a natural consequence, considerable irritation has been produced.

The exercise of devotion need not be rendered injurious to the interests of trade and navigation. Those who are religiously inclined may pass their lives as usefully and happily, and edify and improve their fellow-creatures by their piety and precepts as greatly, if they be one or more furlongs from a navigable channel as if they occupied a nearer and more obstructive position.

But for the erection of warehouses, the establishment of wharfs, and other facilities of commerce, a location at the water's edge, and at the head of navigation, may be indispensably necessary.

The interests of the city only, whatever may be their importance, are not alone to be considered in the views to be taken; but we ought also to weigh, as connected therewith, the interest of extensive regions to the west, which would more than proportionably benefit by the increasing trade of Montreal, or suffer by the checks to its advancement.

For these reasons, it must be gratifying to every friend of order and improvement to see that it appears now proposed to enfranchise the lands by amicable adjustment.

In any arrangement entered into with the seminary of St. Sulpice and with the other religious communities, the proprietors, and inhabitants engaged in commerce generally, earnestly wish that the lands and properties in mortmain may be sold, with the exception of what may be indispensably necessary for the purposes of the different establishments.

I think that the best and most effectual means of providing for the enfranchisement of the inhabitants from the obligations of the feudal tenure would be for Government to acquire, or resume the possessions at present allowed to be held by the St. Sulpicians, for a fixed sum, and then to assess that sum on the censitaires.

I cannot offer an opinion as to the rapidity with which the censitaires in the city would enfranchise themselves, were it left optional, under any reasonable terms of commutation; but I take it, that that portion of the community who know the advantages of free lands, would lose no time in paying for the enfranchisement of what they possess. I am not sufficiently acquainted with the laws of the country to point out the legal means of giving effect to any amicable arrangement between the Government and the seminary; but I take it for granted any supposed difficulty may be obviated by an Act of the Imperial Parliament. If, as is generally believed, the property and estates of the seminary of St. Sulpice belong to the Crown, the only difficulty in the way of a satisfactory arrangement with the censitaires will be removed.

(signed) *Thomas Cringan.*

Hon.
F. W. Primrose,
28 July 1836.

EXTRACT of a Letter from Honourable *F. W. Primrose*, Inspector of King's Domain, to Sir *George Gipps*, dated Quebec, 28 July 1836.

THE Act of Fealty and Homage of the 3d February 1781, does not contain any unusual form of reservation. The priests of the seminary were received in the usual form, "Sauf les droits du Roi en autres choses, et de l'autrui en toutes." I have certainly understood difficulties had occurred as to their reception, but there is no correspondence of that date in my office, nor anything from which it can be inferred.

In 1829, during Sir James Kempt's administration, the seminary petitioned not to perform fealty and homage *under the present circumstances*, to which he acceded, and which was communicated to my office by Colonel Yorke, the civil secretary.

Rev. Mr. *Quiblier,*
9 August 1836.

QUESTIONS proposed to the Seminary, with their Answers, as delivered in Writing, 9 August 1836.

1. WAS the arrêt of 1677 followed at any time by an act or instrument on the part of the seminary at Paris, constituting the seminary at Montreal a community?

2. If not, under what instructions or rules did the ecclesiastics at Montreal first begin to act as a community, and under what instrument, besides the arrêt of 1677, would they now consider themselves to be a community, according to the legal sense of the term?

Answer to Nos. 1 and 2.

Une communauté, pour former une filiation, l'autorisation obtenue, et la dotation assurée, n'a qu'à envoyer des membres, et leur nommer un supérieur. Tel a été l'usage constant de St. Sulpice.

Appendix (B.)

Documentary Evidence.

Rev. Mr. *Quiblier*, 9 August 1836.

Le séminaire de Montréal existoit *defait* avant l'arrêt de 1677; l'arrêt ne fit que lui donner l'existence légale. Dès lors le séminaire commença à agir comme corporation. Le 20 Septembre 1677 le conseil supérieur de Québec registra l'arrêt et le contrat " pour servir aux dits séminaires de St. Sulpice de Paris et de Montréal." Le séminaire de Montréal existoit donc déjà de la même manière que le séminaire de Paris. (Edits, page 85.) Le 28 Octobre 1678, l'évêque de Québec érige la cure de Montréal, et l'unit au séminaire de Ville Marie (Montréal) à perpetuité. Le 3 Août 1694, le dit évêque, 1°, unit au *séminaire de Montréal* toutes les cures de l'isle, et donne au supérieur du dit séminaire la nomination à toutes ces cures; 2°, il nomma le *supérieur* du séminaire de Montréal et ses successeurs supérieurs curés à perpetuité de la paroisse de Ville Marie, (archives de l'évêché de Québec.) Toutes ces ordonnances de l'évêque sont confirmées par l'arrêt de 1702. (Ce dernier arrêt rappellant celui de 1677, porte " permettant aux dits ecclésiastiques d'établir comme ils ont fait une communauté *et séminaire* dans le lieu de *Ville Marie*, (Edits. p. 304.) Le 9 Decembre 1694, (Notaire Adhémar,) le supérieur du séminaire, M. Dollin, en sa qualité de supérieur de Montréal, fesant pour lui et ses successeurs, supérieurs du dit séminaire, à perpetuité, prend possession de la cure de Ville Marie.

Le séminaire de Montréal est imposé par le Gouvernement du Roi pour les fortifications. Il exerçoit la haute justice, (Edits, pages 290 et 338); il traite avec le Gouvernement du Roi en mainte occasion; il fait, et n'a cessé de faire par milliers, des actes de corporation.

3. Upon what ground is it supposed that Lord Halifax, as Secretary of State, signified to the French Ambassador that the British Government would not object to such a cession as was made in 1764 by the seminary of St. Sulpice at Paris to the seminary at Montreal?

Answer to No. 3.

Sur un extrait certifié des délibérations du séminaire de St. Sulpice de Paris, par lequel il conste que le 13 Mars 1764 il fut lu une lettre du Marquis de Guerchy, qui ecrivait, " que My Lord Halifax," &c. &c. &c. C'est en conséquence de cette lettre qu'a été faite la cession du 29 Avril 1764.

Extrait.

" My Lord Halifax lui a dit que, quoique le Roi d'Angleterre se fût engagé, par le traité, à laisser en Canada le libre exercice de la réligion Catholique et Romaine, suivant les lois d'Angleterre, il ne s'ensuivoit pas que des biens fonds, situés en Canada, pussent continuer d'appartenir à des Français, vivant en France, et sujets du Roi de France. Que S. M. B. consent que les prêtres du séminaire de Montréal continuent à en jouir, mais sans dépendance du séminaire de Paris." Collationné à l'original par nous, Antoine Ducloux, Supérieur Général du Séminaire de St. Sulpice.

(Les signatures visées par D. R. Morier, Consul Général de S. M. Brittannique.)

(Pour vrai extrait.)

(signed) *J. Quiblier*, Supérieur.

4. In reference to parts of two seigneuries, Bourchemin and St. Hermand, which appear, by the deed of 1764, to have been included in the property of the seminary at that time, can any information be given of the manner in which they were lost?

Answer to No. 4.

Les deux parties de seigneuries de Bourchemin et de St. Hermand, données au séminaire par Mgr. Dosquet, évêque de Quebec, par acte du 19 Octobre 1735, furent saisies par le shériff en 1796, avec celle de Ste. Hyacinthe; le séminaire omit de faire opposition à la saisie, par là il perdit ses droits aux deux dites parties de seigneuries.

5. What proportion of the value of the property has the seminary in practice taken for *lods et ventes* in the town and the country?

Answer to No. 5.

Dans la ville et les faubourgs le séminaire se content de 5 par cent, (aliàs le 20eme,) pour son droit de lods et ventes sur les propriétés de la valeur de 500 *l.* et au dessus; sur les propriétés au desseus de 500 *l.*, et sur toutes les propriétés de la campagne, il prend 6 pour cent, (aliàs le 16eme); mais quand il est obligé de faire des poursuites légales, ou des oppositions en cour, il exige toujours le 12eme.

6. What is the rate of *cens et rentes* in the city and suburbs of Montreal, and in the country?

Answer to No 6.

La plus grande partie des emplacemens de la ville, et tous ceux des faubourgs, payent trois deniers (a quarter sol) par arpent en superficie. Un petit nombre des emplacemens de la ville payent six deniers (one farthing) par chaque toise quarrée. Les terres de la campagne payent généralement une pinte de blé et one farthing par arpent en superficie; quelques unes des premières concessions payent quelque chose de moins.

The following documents are requested:—

A Return of the Arrière-fiefs, the dates of their concession, their extent and situation, and the names of the present owners.

Voyez le Rapport, No. 1.

A General

Appendix (B.)

Documentary Evidence.

A General Statement of the Revenue and Expenditure of the Seminary for the last few years, not in detail, but classified.

Voyez le Rapport, No. 2.

A Return of the Schools maintained by the Seminary, number of Scholars, pay, &c. &c.

Voyez le *Rapport*, No. 3.

Rev. Mr. *Quiblier*, 9 August 1836.

A Return of the number of Scholars in the Petit Séminaire, the expense, the receipts from Scholars, &c. &c.

Voyez le susdit Rapport, No. 3.

A Return of the present Members of the Seminary, showing when they were admitted into the body, where they came from, or of what country they were natives or citizens.

Voyez le Rapport, No 4.

Montréal, 9 Août 1836. (signed) *J. Quiblier*, Supérieur.

N.B.—For the four Returns which accompanied this Evidence, *vide* Appendix (A.)

(signed) *T. F. E.*

Sir, Montreal, 17 Sept. 1836.

Mr. *A. Buchanan*, 17 September 1836.

Occasional absence from Montreal, and other unavoidable avocations, have hitherto prevented me from answering the letter with which, at the desire of His Majesty's Commissioners, you were pleased to honour me in the month of July; but my delay in obeying their commands will, I trust, be considered the less culpable, as, in truth, my exclusive attention to strictly professional pursuits has deprived me of any confidence in my opinion regarding matters not within the pale of jurisprudence.

Wishing, however, to exhibit a desire of conforming to the wishes of the Royal Commissioners, I beg to submit for their consideration my thoughts, perhaps unmatured, on the two questions propounded to me.

1. I believe that great anxiety prevails amongst the inhabitants generally of this city, and, I dare say, amongst those of British or of kindred origin holding lands within this island, to obtain, on reasonable terms, the means of emancipating themselves and their property from the effects so destructive of the spirit of industry, of the *servitudes* (to use a civil-law expression) which the remnants of the feudal law, still practised here, have imposed upon the soil and its owners.

2. With respect to the city of Montreal and its immediate environs, upon which valuable improvements have been made, I conceive that five per centum upon the assessed value of the property would be a just equivalent for enfranchisement from seigneurial rights.

I do not think that even in the country parts of the seigneury of Montreal a greater indemnity should be allowed, for there the mutations are much less frequent, although the privileges of *banalité* may enhance the value of the seigneurial rights; but in all events, I think that the usual mutation fine of one-twelfth, taken throughout the country parts, would rather exceed than fall short of due compensation.

I have, &c.

T. F. Elliot, Esq., &c. &c. (signed) *A. Buchanan.*

Appendix (C.)

ORAL EVIDENCE.

W. Walker, Esq., called in; and Examined, 9 July 1836.

Appendix (C.)

Oral Evidence.

W. Walker, Esq. 9 July 1836.

You are a member of the bar of Montreal?—Yes.

You are the gentleman who was deputed to visit England by the petitioners from Montreal last year?—I am.

Will you state what terms of commutation you believe would be likely to be generally deemed equitable, and at the same time advantageous to the community?—I believe that in the committee of the Constitutional Association, of which I was a member, it was the opinion of a majority, if not of all, that the payment of the 20th part of the assessed value of any given property in order to exempt it from any future liability to the feudal burthens; leaving to the gentlemen of the seminary the right of collecting any arrears due to them, upon the principle of reduction heretofore acted upon when payments were made promptly. I understand that in effecting a change of tenure at Quebec, with respect to property the dues upon which fall to the Crown, a distinction is always taken between property within the limits of the city and suburbs, and other property without; and should a distinction be insisted upon here, the commutation with respect to property in the city and suburbs of Montreal, the principal value of which is derivable from improvements made without view to future mutation or advantages upon sale or re-sale, should proceed upon the most favourable scale. In such a case, for property in the country, where the improvements bear a comparatively limited proportion to the value of the soil, I should think that one-tenth of the value might be reasonably exacted.

Do you think that the desire to obtain the means of commutation upon reasonable terms prevails generally?—The desire of enfranchising property from the feudal burthens, or obtaining the means of commutation, I believe to be universal among the British population of the city. The wealthier inhabitants of French descent concur in opinion with them; among the

Appendix (C.)

Oral Evidence.

W. Walker, Esq. 9 July 1836.

the smaller proprietors there is an indifference upon the subject. To facilitate the commutation to those classes who have not the means of prompt payment, an annual free-farm rent, in proportion to the assessed value, and liable to be redeemed, might be acceptable. This rent would be equivalent to legal interest upon the 20th part of the assessed value, which I have suggested as an equitable standard of commutation; and it should be redeemable at any time by paying up the principal. The Commissioners are, no doubt, aware that there are tracts of land within the island, and properties even within the limits of the city of Montreal, held *en fief* or *arrière fief*, or by other equivalent titles, by religious and lay proprietors, under titles proceeding from the seminary of Montreal, from the community of St. Sulpice, or from their predecessors. The fief Nazareth and other properties are held by one of the congregations of nuns. The Hon. M. Pothier and the representatives of the late Mr. Fortier are also holders of fiefs. I entertain no doubt that the ladies of the congregation would promptly accede to any arrangements which had received the sanction of the seminary; but it is unlikely that the lay proprietors would consider the terms suggested with respect to the seminary to be by any means a fair equivalent for the beneficial interests they would be called upon to relinquish. The locality of these latter properties, however, is not highly advantageous, and holds out comparatively few inducements to extensive improvement; and the existence of the feudal burthens, in so far as those estates are concerned, would not for some time sensibly affect the prosperity or advancement of the city. It might be added, that these lay proprietors would, perhaps, consult their interest by placing their properties upon the desired footing, and holding out the same inducements to improvement as would be done by the seminary of Montreal, inasmuch as the lands yet unconceded or undisposed of within the limits of their respective fiefs, would, in such case, at a period not very far distant, rise considerably in value, in consequence of the impulse given to improvement around them. It is fitting to observe, that any change or modification of the existing tenure in the island of Montreal, or generally throughout the province, would not be productive of the desired advantages, unless accompanied by a law of registry.

Do you think there is a disposition in any quarter to take advantage of any defect in the title of the seminary, or any hope to escape by means of it from the feudal burthens without any compensation to the supposed proprietors?—I think not. Some individuals may be persuaded by interested considerations to impugn the title of the seminary, overlooking the fact that in the event of that title being shown to be defective, the property would revert to the Crown, with all the feudal incidents which attach to seigneurial property. I am aware that an opinion is entertained by some, that the conflicting pretensions of His Majesty's Government and the gentlemen of the seminary should have been set at rest soon after the conquest, and that if the latter had failed to establish their alleged rights, the Government, in fulfilment of a pledge conveyed in the proclamation of 1763, was bound to abolish the feudal tenure throughout the island of Montreal, and to substitute that of free and common soccage. That the Government, however, has not taken this view of the matter, may be collected from its conduct with respect to other seigneurial property, particularly within the district of Quebec, of which it has for years possessed the undisputed control.

Do you consider it competent to the seminary here to enter into composition with the Crown, without reference either to the Roman-catholic bishop or the Legislature?—As to the competence of the seminary to enter into a negotiation with the Crown for a relinquishment or modification of their rights as seigneurs, without the sanction of the higher ecclesiastical authorities or of the Legislature, I cannot speak without some hesitation. The property was indubitably bestowed upon the seminary for public purposes, expressed in the original Act of endowment and "*lettres d'amortissement*." If the title of the seminary can be sustained upon legal grounds, an adjustment or commutation, upon the principles and to the extent required by the necessities of the population, might possibly be considered as tantamount to an alienation of property "*amorti en perpetuité*," to which the gentlemen of the seminary are clearly not competent. It might be regarded as a wasting of property or sources of revenue conferred upon the foundation for specific purposes, which their successors, immediate or remote, would not be bound to respect or uphold. I am not aware that any visitatorial power with respect to the seminary of Montreal is, or can be exercised by the bishop, or that any alienation of its supposed rights by that body would require to be preceded by his sanction, in the same manner as a control is exercised by the ordinary, or other ecclesiastical authorities in England. I should infer the contrary from the various edits and declarations of the kings of France having reference to the purposes for which the corporation of St. Sulpice was permitted to acquire and retain the property, and to the services required at the hands of its members; and from the independence of censorship and control in several instances assumed and exercised without opposition by incorporated religious associations in France, I should say that the authority of the bishop with respect to the seminary was purely *spiritual*; that he could exercise no control in *temporal* matters. I am satisfied that the successors of the present incumbents would not venture to disturb any compact between the Crown and their predecessors; but, as respects the Assembly, the subject is environed by many difficulties, and it would undoubtedly be more satisfactory if an Act of the Legislature were superadded to any transaction between the Crown and the seminary. I understood that the gentlemen of the seminary have expressed a determination not to conclude any arrangement without the participation of the ecclesiastical authority; but the Right Rev. the Bishop of Quebec, on the 11th of February 1834, declared before a committee of the House of Assembly that it would give him the greatest satisfaction to see the Legislature pass an Act which would authorize the seminary of Montrea

treal to come to an arrangement with their censitaires for the claim of *lods et ventes*, at the same time that it authorized it to acquire other real property to the amount of the price of that redemption, and that such a measure would be in perfect accordance with the wishes of all his clergy.

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In what form, or by what instrument, do you consider that any such arrangement as is contemplated could be carried into effect, so as to secure the rights of the seminary against dispute?—The desired arrangement might be carried into effect by letters patent from the Crown, confirming the title of the seminary, and prescribing the conditions of recognition, or by a surrender from the seminary to the Crown, followed by a regrant, imposing upon the seigneurs the obligation of assenting to the terms of the proposed arrangement. As between the gentlemen of the seminary and the King's Government there are two questions, the corporate character, which the former assert, and the right of property, which are intimately connected with each other. I am not prepared to declare that their reputed possession of a corporate character would be conclusive to decide in their favour one or both of the questions at issue, but I do think that the existence of a corporate character and capacity in the seminary has been recognised by the sovereigns of France upon more than one occasion before the conquest and treaty of cession. I would refer to letters patent of May 1677, confirming the donation of 9th March 1663, made for the purpose of endowing a seminary at Montreal; to an edit of March 1693; to letters patent of June 1702; to an edit of 1714, and to arrêts of 1716 and 1722. The letters patent of May 1677 confer upon the seminary of St. Sulpice the right of establishing *a community and seminary* of ecclesiastics in the island of Montreal, and in furtherance of that object the King sanctions the donation of the 9th March 1663, and wills that the property which it embraces shall enure to the seminary of St. Sulpice *and their successors in the community and seminary to be established*. The edit of March 1693 recognises the existence of a foundation or seminary of ecclesiastics of St. Sulpice in the island of Montreal, and in accepting a relinquishment of the *droit de justice* appertaining to them in right of the seigneury, confers upon the ecclesiastics of the seminary *established upon the island*, as an indemnity, the nomination of the first *juge royal*, and the appointment, in perpetuity, of the clerk or *greffier*. The letters patent of June 1702 again recognise the existence of *a community and seminary in the island of Montreal*, established by the ecclesiastics of St. Sulpice, and confirm the annexation by the Bishop of Quebec to the Ville Marie, or Montreal, of certain enumerated curacies in the island and at the côte of St. Sulpice. It was for the purposes of *the seminary established at Montreal* that the property comprehended in the donation of the 9th of March 1663 was *amorti en perpetuité*, and from that period the possession of this property has resided in the seminary of Montreal, which has all along exercised, and continues to exercise seigneurial rights. In 1717 the then governor and intendant of the colony granted to the ecclesiastics of the seminary of St. Sulpice, *established at Montreal*, the seigneury du Lac. I think that even were it admitted that the original title was in the corporation of St. Sulpice at Paris, and that nothing was or could be exhibited to show that it had formally transferred its rights to the seminary of Montreal, still the uninterrupted possession by the latter of the seigneury in question for nearly 200 years, its exercise during all that time of seigneurial rights, the fact that the endowment was made or sanctioned for the purposes of *the seminary of Montreal*, or that the seminary was created to fulfil the objects of the endowment, are considerations entitled to weight. In England corporations exist by leave of the Government, either express or implied. In the civil law they were generally called *colleges, universities, or communities*. The ecclesiastics of the seminary established at Montreal are invariably spoken of as a community, and the grant of 1717 shows that they were considered a body capable of acquiring property. It is undeniable, I think, that the seminary was in existence as a religious foundation and ecclesiastical community at all, or some of the periods specified. The corporation of St. Sulpice, under the different edits and declarations alluded to, could only hold the property now in question by means of its establishment in Canada. The seminary of Montreal, from the date of its establishment, has had a legal existence as a seminary and community. I consider the letters patent of May 1677 to be a charter of foundation. But if this were denied, it might still be shown that the corporation of that body, if not created, has been approved and confirmed by letters patent of the King of France. It has, I think, been justly stated, that the conquest and retention of the province by Great Britain severed the previously existing relations between the St. Sulpiciens at Paris and the seminary of Montreal; that the former were rendered aliens, and could retain nothing, and their rights vested in those members of their body who became subjects of England, and who, with respect to the British Government, formed the whole body of St. Sulpiciens. If the title was in the St. Sulpiciens of Paris, to the exclusion of the seminary of Montreal, still they had the power, under the 35th article of the capitulation, of selling a large property, receiving its value, and transmitting the proceeds to France. They waived their right, then, in favour of the original objects of the endowment, which were in harmony with the then feelings and necessities of the people.

You would, then, leave the title of the seminary as it is, merely barring the Crown, as far as possible, by letters patent, from asserting any adverse right of its own?—I would. Considerations of policy, as well as of equity; of what is due to the feelings of the Canadian population, require, in my opinion, that His Majesty's Government should not, at this late period, and after having tacitly, if not by some of its acts, conferred a sanction upon the pretensions of the gentlemen of the seminary, disturb their possession by legal proceedings.

Would it not still remain competent to private individuals, by bringing into question the corporate character of the seminary, to dispute their right to dues?—I admit that letters

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patent, committing the Government to abstain from impugning the title, could not validate that which was invalid before, nor confer retrospectively a corporate character upon the seminary, supposing none to have lawfully existed up to the date of the letters patent. I should entertain no fears of opposition on the part of individuals, for the power of enfranchising property upon the terms of the proposed arrangement would prove a temptation to recognise the title of the seminary, which few, if any, persons would be found to resist.

In the letters patent that you have read, dated in May 1677, by which the land was "*amorti en perpetuité*," do you consider that the seminary have the right of alienating?—No; if the projected arrangement is to be regarded as tantamount to an alienation, the difficulty might be obviated by a surrender into the hands of the Crown, followed by a re-grant, imposing certain rules for the administration of the property and revenues, or by an Act of the Provincial Legislature, authorizing the seminary to accede to the demands of the population.

Do you propose to leave it to every individual to fix his own time for enfranchising his land?—I do not see that any limit can, with propriety, be assigned. I think it ought to be left to individuals to select their own time. I would render it compulsory upon the seminary to accept the commutation of one-twentieth, or five per cent. upon the assessed value when tendered, but leave it to the choice or discretion of holders of property when to come forward. I think it probable that the commutation would come in slowly at first. The holders of property likely to enhance progressively in value would undoubtedly hasten forward, inasmuch as, with respect to them, the commutation, the longer it is deferred, would be the heavier in amount. By many the payment would be deferred until a sale of the property was in contemplation, or until the party in possession had it in view to make improvements calculated to enhance its value. With respect to some properties, an advance in value or change of hands might be regarded as a very remote or improbable contingency, and to impose upon the holders of such the necessity of coming forward within a definite period, would be to subject them to a regulation infinitely more oppressive in its character than any of the existing feudal burthens, of which the practical effects to them are nearly unknown. As an inducement to commute promptly, let it be distinctly understood that the feudal dues shall continue to be exacted upon their present footing until a commutation is effected. Were such a rule laid down, and rigidly adhered to, a considerable, if not an entire, revolution in the tenure of landed estate in the city and suburbs of Montreal might be counted on in a few years.

How do you propose the valuation to be made?—By mutual agreement, if practicable; if not, by means of *experts*, to be nominated by the parties respectively, with power to choose a third.

Who should bear the expense of arbitration?—The expense should, in all cases, be borne by the censitaire, or tenant applying to commute.

Have you assumed any data from which you could calculate the value of the property in Montreal subject to the feudal burthens, and also the probable rapidity with which commutations would be effected?—I estimate the value of the property in the city and suburbs of Montreal held by feudal tenure at 1,500,000 dollars, or a million and a half currency. This estimate, in my apprehension, would be rather within than above the mark. There does exist a standard by which the value may be ascertained with something approaching to certainty; I allude to the annual assessment books, under a law which imposes an assessment of 2½ per cent. upon the estimated annual value of property for certain local and municipal purposes. I hardly think that more than one-eighth, if so much, of the landed property in the city of Montreal would be enfranchised in the first three years; but within the first ten years, if the resources of this and the adjoining province continue to be developed in the same ratio as we have witnessed during the last preceding ten years, the most valuable part of the city would be enfranchised.

Can you form any estimate how often within the city and suburbs of Montreal *lods et ventes* become payable, taking the average recurrence on the whole property in the city?—It would be difficult to hazard a conjecture based upon anything approaching to certain data as to the average recurrence of *lods et ventes* upon property. I am satisfied, however, that the sum annually received by the gentlemen of the seminary in the form of *lods et ventes* upon mutations within the city and suburbs cannot fall short of 5,000 *l.* for the last eight or ten years. This, supposing that they uniformly and in every instance limited their demands to one-twentieth in place of one-twelfth, would exhibit 100,000 *l.* as the amount of property changing hands in the course of the year. This estimate, nevertheless, would not convey a very accurate idea of the extent of property annually changing hands, or offer any satisfactory reply to the query, for there are many mutations, the fines upon which are not spontaneously proffered to the seminary.

Have you any idea of the rate, on the average, at which property is improving in value in Montreal from the mere growth of the prosperity of the city, and without any outlay of property more than to keep up the necessary repairs?—I should say that, judging from circumstances, the value of real estate, except in business localities, and in some favourable situations, has not been augmenting during the last ten years; on the contrary, many persons are of opinion that it has retrograded. I think, however, that it has arrived at the minimum of depression. There are parts of the city and suburbs where property during that period has very rapidly increased in value; and if a commutation of the tenure were accompanied by a comprehensive law of registry, the value of property generally would rise. The present system operates as a restraint upon investment, and the progress in value and improvement of real property is not in consequence commensurate with the increased

creased and increasing commercial resources of the city. Taking it for granted that the reasonable desires of the British population in respect of the tenure and of a registry system will be carried into effect, property must progressively augment in value, in which case it would obviously be the interest of every censitaire, possessing the means of payment, to enfranchise his property without delay.

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Would you give no more than a twentieth in the country?—This is answered, in substance, by my response to a preceding query. In the country parts the entire of the improvements bears but a small proportion to the value of the soil, and, if insisted upon, one-tenth, with respect to rural possessions, could not be regarded as unreasonable.

You are aware that there are great arrears due to the seminary?—The arrears due to the seminary are large, not less, at the lowest estimate, than 36,000 *l.*; by some they would be estimated at double or triple. There are many individuals to whom the payment of those arrears would be a very serious consideration, but the necessity of settling up those arrears would not prove an obstacle to the proposed commutation. To such persons as are unable to make speedy payment the amount of arrears might be allowed to remain as an hypothèque or incumbrance upon the property, carrying interest; and with respect to the great bulk of proprietors, I may safely say that the disadvantage of being liable to be called upon would be more than compensated by the advantages of a settlement in the increased and increasing value of the property.

Would not the necessity of compounding for these arrears be an obstacle to the proposed commutation?—The tenant would make the best terms he could. I refer to the last preceding answer.

Do you know any instance in which arrears have been recovered against the will of the owner, except upon the occasion of a sheriff's sale?—No.

Do you know of any instance in which the seminary, having claimed at sheriff's sales, has failed to recover its dues?—None; although it is possible that some isolated cases of resistance may be adduced. The gentlemen of the seminary have invariably stepped in as opposing creditors, and within my experience of 15 years, no individual interested in monies arising out of the forced sale of real estate upon the island has ventured to contest their claim or title. The distribution of the monies levied is not referred to the discretion of the sheriff, but takes place by authority of court. In any conclusion at which the Commissioners may arrive, it ought not to be overlooked that there are extensive water privileges attached to the seigneury of the Island of Montreal, which ought to be rendered accessible to individual competition and enterprize.

Monday, 11 July 1836; Rev. *J. Bethune.*

Rev. *J. Bethune*, 11 July 1836.

Have you ever, as a resident in the city of Montreal, considered the terms on which it would be at once equitable and advantageous to the inhabitants to be enabled to free themselves from the feudal obligations here?—I have not given much consideration to the subject.

Are you a proprietor of land or houses here?—I own very little. I will state frankly that I have heard a report that the seminary offered to commute their rights on payment of five per cent. on the value of property; and if this be true, I do not hesitate to say that I think the proposal exceedingly liberal and advantageous to the city.

Does it occur to you that any difficulty would arise from the collection of arrears which might be expected to accompany any such adjustment as is contemplated?—I think not; there ought to be the power of collecting arrears.

Do you believe that the seminary have been lenient in the exercise of their seigneurial rights?—Undoubtedly. They are the best landlords in the country; and I believe them to be in all respects a very respectable body of men, entirely deserving of esteem.

Do you see any objection to their re-investing the proceeds in real property?—No. I have heard it objected to on the same grounds usually urged against holding lands in mortmain. But seeing the great and increasing value of the property they surrender, it would be highly unreasonable to object to their taking an indemnity in property of the same description.

Wednesday, 13 July 1836.

Mr. *J. D. Gibb*, 13 July 1836.

Mr. *J. D. Gibb*, of the city of Montreal, appeared, and stated that he is the son of a person who came out to this country in 1774, and who, in 1785, acquired property in the city, which has remained ever since in the family. He himself is a native of Montreal, and has been engaged in business as a merchant-tailor since 1815, having been placed in his father's firm in that year.

Mr. Gibb then read and handed in a paper respecting the exaction of seigneurial dues in Montreal, which is filed and numbered.

The following questions were then put to Mr. Gibb, and his answers taken down.

Do you think an equal degree of anxiety exists amongst the Canadians as amongst the English inhabitants of Montreal to relieve themselves from the burthen of seigneurial dues?—I have not conversed on this subject so much with Canadians as with English inhabitants, but I think it is very much desired by them also.

Are you prepared to offer an opinion as to the terms on which an equitable arrangement might be made between the seminary and the inhabitants of Montreal, so as to get rid of these seigneurial dues?—I would allow them to collect all the arrears now due to them, and if not paid within five years, I would give them every facility for the recovery of them by law, understanding, however, that they are to recover only five per cent., as now; as to the

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Mr. *J. D. Gibb*, 3 July 1836

commutation, it should be compulsory on the seigneurs, but voluntary, or at the convenience of the censitaires, and it should not exceed five per cent. throughout the whole island.

Have you made any calculation as to the amount that the seminary would have to receive under such an arrangement?—I have.

Mr. Gibb then handed in a paper, from which it appeared that he valued the whole property in the town and suburbs of Montreal at two millions currency, and the remainder of the island at 705,600 *l.* The sum, therefore, which would arise from a commutation, at five per cent., would be 135,280 *l.*, and the arrears now due Mr. Gibb estimates at 100,000 *l.*

The value of the commutation would, of course, depend, in great measure, on the rapidity with which the payments would come in. Have you made any calculations on this head?—They would come in quicker in the town than in the country. The burthen on property being removed, sales would become more frequent, and more money would be vested in improvements.

What proportion of the whole property in the town and suburbs would you expect to be commuted in the first three years?—About one-tenth in the first three years, and in three years more, two-tenths additional, making three-tenths in six years; at the end of 10 years nearly one-half would, I think, be commuted; and after 20 years I do not think more than a quarter of the whole property in the town and suburbs would remain uncommuted. In the event of registry offices being established, the commutations would be effected in a much shorter period.

In any case where the party wishing to commute had not the immediate means of making the necessary payment, the sum due might remain as a mortgage on the property?—A mortgage would be preferable to the establishment of a quit-rent. The amount of commutation must be determined by experts, except where bargains could be amicably adjusted.

The sum which you have mentioned as the probable amount of arrears is very large. Even though such a sum should be due, do you think it could be collected?—In some cases rights may have been lost by prescription, but in all others I think the full amount might be collected. I have no means of ascertaining the exact sums due, but from my knowledge of individual cases I think the whole amount due must be equal to what one fine would be on the whole property. The books of the seminary alone can show exactly.

Do you think much money is lost to the seminary by their delay in calling for it, or barred by prescription?—Though they give long credit, they in the end get their dues in the great majority of cases, in almost all.

How often on the average do you suppose mutation fines become due within the town and suburbs of Montreal?—Once in 12 or 15 years on the average throughout the whole property.

And in the country how often do mutations occur?—The average is not more than once in 20 years, or perhaps in 25.

If the terms of commutation were to be strictly calculated according to the value of the fine on each mutation, and without any regard to the leniency in the collection of their dues which has hitherto been exercised by the seigneurs, what do you think would be a fair rate?—If the seigneurs had a full and indisputable title, such a title for instance as a lay individual proprietor would hold, the commutation ought, I dare say, to be 10 per cent. in the town, and eight in the country; but if the seigneurs of Montreal had been in a condition to exact their full legal rights, the oppression would have been so great that the Government must have interfered a great many years ago; people would have resisted long ago such an exaction. *Lods et ventes* should never have been permitted in cities or towns, under any circumstances.

Supposing it possible at once to purchase the seigneury from the priests of the seminary, what sum of money do you think it would be fair to give them for it, the seigneurs only retaining what they now actually make use of as their domain; as for instance, the seminary, the college, the priests' farm, and perhaps a few small properties of the same nature?—I would give them 100,000 *l.*; but as to the way in which the money should be invested, I am not prepared at the present moment to speak. (Further information promised.)

Would you make a payment of all arrears a condition precedent to commutation?—I should not object to it; it would be only fair to the priests.

How would you propose to carry into effect the arrangements which you have detailed, so as to enable the seminary to collect their arrears and their commutation money?—By letters patent from His Majesty, confirming to the seminary the right to sue for their arrears, and to claim a further five per cent. in lieu of all future *lods et ventes*.

In the paper that you have read and handed in a quotation is made from the King's proclamation of the 7th October 1763, in which a promise was held out, that "persons resorting to Canada may confide in our Royal protection, for the benefit of our laws of our realm of England." Is it your intention to infer that if the seigneury of Montreal had become the property of the Crown by the extinction of the religious community, His Majesty would by the terms of this proclamation have been bound to remit to the inhabitants the payment of *lods et ventes* and other seigneurial dues?—I mean to say, that in my opinion the King was bound by his promise of 1763 to remit to the inhabitants the payment of seigneurial dues on the property of the Jesuits, Récollets, &c. so soon as that property came into the possession of the Crown, and of course I think that the same thing ought to have been done in the seigneury of Montreal, had it been taken possession of by the Crown, as it ought to have been many years ago.

Mr. *J. D. Gibb*, 13 July 1836

Is this a general feeling amongst the general inhabitants of Montreal?—It is my individual opinion, and I think will be approved by the association by which I am deputed, and the Protestant community generally.

You think then that the payment of seigneurial dues is inconsistent with the enjoyment of the benefit of the laws of England?—I think the exaction of them tended to retard the settlement of the country, for which object the benefit of the laws of England was promised by the proclamation, and although it was out of His Majesty's power at once to substitute English tenures for French in the seigneurial districts, I think he was bound to remove the obnoxious parts of the feudal system, wherever he had the power to do it, without even the assistance of the Legislature.

You have also handed in a copy of a declaration, filed in October 1835, in the Court of King's Bench, by the priests of the seminary for the recovery of *lods et ventes* against Mr. and Mrs. Lunn; do you know the circumstances under which the action was commenced by the seminary, and what was the result of it?—Mr. Lunn was only the nominal defendant, as being in possession of the property on which the *lods et ventes* were due; the person really owing the money was Mr. Allen, and Mr. Bain (a friend of mine) acted for him. The money had only been due six years and a half, and it is certainly not their usual practice to sue for it so soon. Why they were in this case induced to do so, I cannot exactly say. It might have been that they knew Mr. Bain would not resist; in fact payment was made by him of the debts and of costs before the writ became returnable. I have heard that at the time the action was instituted the priests were using great exertions to get in their debts. They were dunning a great deal, but whether any other similar actions were instituted I cannot say. I heard of this accidentally from Mr. Bain.

What evidence have you of money being furnished by the priests of the seminary to foreign Catholic institutions, as stated in the paper which you have handed in?—I have no information on the subject so positive as to enable me to make special reference, but I have heard it spoken of without reserve by persons of high respectability and good information, as well of French as of English origin.

Saturday, 16 *July* 1836.

Mr. *Penn*. 16 July 1836.

Mr. *T. Penn* appeared and delivered in a written statement, which is filed amongst the papers of the Commission.

Mr. *M'Cord*.

Mr. *M'Cord* appeared and begged to express the anxious desire of the inhabitants of the fief Nazareth, that it should be included in any arrangement made between the Crown and the seminary of Montreal. The fief Nazareth has been granted by the seminary to the nuns of the Hotel Dieu, *in arrière fief*, and Mr. M'Cord holds it under a lease (*bail amphytéotique*) of 99 years, of which 65 are yet to run. By agreement with the nuns, Mr. M'Cord is entitled to make grants on a *rente foncière perpetuelle*, at 3*l.* per acre, payable to him during his lease, and afterwards to the nuns. The same parties are equally liable to *cens et rentes* and *lods et ventes*, which go direct to the nuns. Two-thirds of the fief Nazareth are occupied.

The following questions were then put to Mr. M'Cord:—

Since you hold by lease, and are not liable to *lods et ventes*, have you a personal interest in settling terms of commutation for this fief?—My personal interest is indirect. If reasonable terms of commutation were secured, the unconceded portions of the fief would become more valuable to me, and also more wealthy persons would establish themselves there, were the tenure improved.

Could any one already a censitaire in the seigneury go to the seigneur and demand any of the unconceded land at the ordinary *cens*?—No; there has been some question whether the law would enforce such a right; but in practice it has become obsolete.

Is there any unconceded land in the hands of the seminary?—None, that they call by that name. There is only what they style their domain, by which term they mean that which they occupy for their own use.

Is the unimproved land which lies beyond the fief Nazareth included in that description?—So much of it as belongs to the seminary. The seminary consider it to be part of their domain. What belongs to the communities of nuns has been granted to them for specific purposes.

Are you aware of the practice of the nuns as to the receipt of their *lods et ventes* in the fief Nazareth?—They used to exact 8 per cent.; but within the last five years, have reduced the payment they take to 6 per cent.; being still 1 per cen more than the seminary.

Can you describe the state of feeling of the censitaires in the fief Nazareth regarding these dues?—There is a feeling of irritation greater than in any other part. They have had meetings, have contemplated resistance to the right, and have spoken of subscribing money for the purpose; but the question has never been brought to legal issue.

Could you inform us of the frequency with which, on the average, *lods et ventes* become payable on property?—I will endeavour to supply an accurate answer to that question as respects the fief Nazareth; the changes of property are far more frequent there than anywhere else.

Have you ever considered what terms of commutation would be reasonable and likely to give satisfaction?—I have not thought much of it; but in the situation of the censitaire I should think it worth while to pay 8 or 9 per cent.; and I think that would be fair for the nuns.

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Oral Evidence.

Mr. *M'Cord*, 16 July 1836.

Do you think that the time of effecting the commutation should be left entirely to the censitaire?—It would be best left to the censitaire; but it is my opinion that the whole of the property I am now speaking of would be commuted very rapidly.

Have you any opinion as to the terms proper for the whole city?—It is right I should mention that M. Comte of the seminary stated to me the offer of that body, and I deem it very fair.

Would you object to their reinvesting the proceeds of commutation in real property?—I think it would be equitable, and I see no objection to their investing the money in houses or land in Montreal.

You do not think that the probable increase in the value would be a sufficient objection to their acquiring such property?—I do not think it.

What has been the practice of the seminary as to recovery of their dues?—They have never sued that I know of. They have waited patiently for sheriffs' sales, and preferred their claim by way of opposition.

22 *July* 1836.

George Auldjo, Esq. 22 July 1836.

George Auldjo, esq., appeared and delivered in a written statement of his views on the feudal tenure in Montreal.

The following questions were put to Mr. Auldjo:—

Supposing that to contest the title of the seminary might lead to a long and doubtful suit, should you think it a strong additional reason to desire an amicable arrangement?—I think a law-suit should be avoided if possible.

You are aware that objections are entertained to investing the proceeds of the seminary's commutations in real property?—I am. I should prefer that they should invest those monies in the British funds; but sooner than there should be any barrier to an amicable adjustment, I would waive the objection.

If permission then were given to invest the money in real property, should you think it better they did so in the towns or the country?—I think the inconvenience would be greatest in the towns. We have too much mortmain property already in Montreal.

Can you state any particular instance of inconvenience in the towns arising from property being held in mortmain?—It meets us wherever we turn. We cannot get streets opened out. The Grey nuns and the nuns of the Hotel Dieu occupy properties so completely in the heart of the commercial portions of the town, that they necessarily interrupt communications where they are most wanted. It might be supposed that they would be more comfortable themselves elsewhere.

Have you ever thought of purchasing their property with that view?—We would willingly pay the most liberal price, if they would remove to some spot that might be more eligible for them. The commercial inhabitants would do anything; but they are always met by objections. These societies seem not to appreciate the use of improvements.

Can you give any opinion on the frequency with which *lods et ventes* become due on the same property?—I have taken some pains to arrive at a correct knowledge of that fact, but I find that it is impracticable.

Have you any idea what is the amount of arrears due to the seminary?—None, except from what I have heard. I have heard that they amount to 100,000 *l.*

Have you ever thought of the legal means by which to give effect to any amicable arrangement between the seminary and the government?—I should think an Act of the Imperial Parliament. After the long difference as to the right, I should fear that no lesser authority would be satisfactory to either party.

19 *July* 1836.

Turton Penn, Esq. called in; and Examined.

Turton Penn, Esq. 19 July 1836.

Will you specify more distinctly the inconveniences which in the 8th page of the paper handed in by you are referred to as arising from the want of direct communication in the streets?—The property of the Grey nuns interposes between the parts severally allotted for the foreign and the internal commerce of the country; and for want of streets leading through their property, the distance, and of course expense of cartage, is increased.

Can you point out any more inconveniences of the same nature?—Not particularly as to the opening of streets; but the large quantities of land held by religious communities within the city, and kept as farms, is very injurious to the interest of other landed proprietors.

In reference to your remark that the religious communities are not in the habit of subscribing to local improvements, are you aware of no instances to the contrary?—The seminary in one instance subscribed to fill up a street bounding its college property; but the conditions of their subscription were such as to throw nearly the whole expense on the proprietors. The arrears of *lods et ventes* were required to be paid up, of which the seminary kept one-half for its own benefit, and expended the other on the street. Now seeing that the seminary has not been in the habit of enforcing the collection of the *lods et ventes*, as they may be said generally to remain 12 or 14 years or upwards in the hands of the censitaire, and do not bear interest, the present payment of half the *lods et ventes* taking interest into view, was nearly equal to the reversionary payment of the whole. The seminary also, I am informed, has lately subscribed 150*l.* towards the improvement of that part of the Place d'Armes which fronts the Roman Catholic parish church.

Supposing

Supposing that, contrary to the sentiments you have expressed it, were found, or at any rate considered, inevitable to allow the seminary a right of making investments in real property, without altogether excluding advantage from the gradual increase of value, can you state what mode of investment you should deem preferable?—I have not given the subject any great consideration; but it seems to me at the moment, that the least objectionable course would be to let them invest property in buildings on their unconceded lands.

22 *July* 1836.

J. C. Grant, Esq. called in; and Examined.

ARE you aware whether there exists a general desire among the inhabitants of Montreal to obtain the means of freeing themselves on reasonable terms from the feudal burthens?—A very general feeling.

Do you suppose that this exists equally among French Canadian inhabitants as those of English origin?—I know of many French Canadian gentlemen who have that wish, so far as respects the town. I cannot undertake to speak of all the French Canadian classes so confidently as I can of the English. But though opposed to a change of tenure in the country, I believe it is very generally admitted amongst them that in the cities it is desirable.

Could you state what terms of commutation you would consider equitable to the seigneurs and advantageous to the community?—I understand that the seminary has proposed that a payment of 5 per cent. on the value of improved, and 8 per cent. on that of unimproved property, should effect a release from the seigneurial obligations. I consider this very liberal. Of course, I assume that it is not to be compulsory on the censitaire to commute, but that he should choose his own time.

Could you form any estimate with what rate of rapidity the city would be likely on such terms to be enfranchised?—I apprehend that unimproved property would be freed very quickly. It is of course not to be expected that any one would enfranchise improved property until either its sale was contemplated, or some further improvements on it.

Do you believe it to be generally the wish of the inhabitants that the domain lands should be parted with by the seminary as well as their rights over other lands?—As regards the farm of St. Gabriel, which adjoins the common, I think there would be a very general desire that it should be parted with.

How is the common situated with respect to proprietorship and tenure?—There was a common of 40 acres conceded to the city by the seminary in 1651 in a situation which has since been built upon, including the new market and college, and the present common was granted as a substitute for the other. As no deed could be found affecting the transaction, three justices of the peace were authorized by the Act of 1 Will. 4, c. 10, to receive a grant of the existing common in the name of the city of Montreal. It has for many years been the property of the city, without being employed for pasturage or other uses of common, but neither has it been built upon for the benefit of the city. I have understood that some improvement of it, or a sale of lots, was contemplated by the late corporation, but it was not carried into execution.

Do you not anticipate that there might be some difficulty in getting the seigneurs to give up their domain of St. Gabriel; and that it might seem rather a hard measure to exact it from them?—Individually speaking, I admit that it might seem rather hard; but the inhabitants of the city towards that quarter are very solicitous on the subject.

Does any particular plan suggest itself to you for accomplishing the object?—None.

Have you formed any opinion of the amount of the arrears due to the seminary?—It is difficult to obtain any data for an estimate. They must be very considerable.

What is your opinion as a lawyer as to the prescription against claims for *lods et ventes*?—A period of 30 years constitutes a prescription against *cens et rentes* or *lods et ventes* actually accrued due.

What would be the effect of giving the seminary greater power, at least in appearance, than now, to enforce the payment of their arrears, and do you think any modification might be requisite on this subject?—Although from the liberality of the gentlemen of the seminary heretofore, I should not expect any harshness from them, I do think that inconvenience might arise from any extensive proceedings to recover arrears.

Would it be reasonable to modify the right, as for instance, to provide that if only one mutation fine were due, it should be payable by three yearly instalments; and if two were due, by five yearly instalments, and if more than two, by seven?—I do not see any better mode in which, if the right of recovering arrears be not left absolute, it could be justified.

What provision should you make for the reinvestment of the money the seminary would obtain by commutation?—I know there is a strong feeling against their reinvesting it in real property; but I must confess, I do not see in what other manner it could well be reinvested in this country.

What do you take to be the foundation of that feeling?—The apprehension that they would monopolize property, and favour one class of persons. I do not speak this as my individual opinion, but I mention it as what I conceive to be the ground of the general objection.

Do you think the objection would be diminished by prohibiting them from investing money in real estate in any of the principal trading towns on the St. Lawrence?—It probably would.

Do you mean that you think the objection to their investing money in real property in the country would be less than if in the town?—Yes: I think there would be objections either way; but less if the investment were made in the country.

Appendix (C.)

Oral Evidence.

J. C. Grant, Esq. 22 July 1836.

Do you think it would be possible so to modify the system of education in the seminary, as to admit Protestants to a larger share in it?—I apprehend it would be very difficult, and probably impolitic. The compulsory attendance of the boys on the Roman Catholic worship might be dispensed with, as regards Protestants, and some arrangement made for their attendance on their own church. Independently, however, of any feasible improvements of the system of the seminary, there is a strong desire, at any rate, for some sufficient provision for the endowment of a university or college for the Protestant portion of the community.

You do not expect that any part of the funds of the seminary would be applied to that purpose?—The main object is to have a provision for this end; if no other source could be found, the English inhabitants might expect it to be effected from the revenues of the seminary, which are very large, and received under a title that is not supposed to be properly valid.

Do you think that the *arrière fiefs* in the hands of the nuns and others ought to be included in any arrangement made with the seminary?—Any arrangement between the government and the seminary cannot affect the rights of persons holding under the latter body. The seminary, however, should be authorized to commute with the proprietors of fiefs the same as with censitaires; and the tenants of those proprietors of *arrière fiefs* should be authorized to commute with them. It would be desirable, though not absolutely necessary, that the seigneurs of the *arrière fiefs* should be induced to include themselves in the arrangement made with the seminary.

Does it not occur to you, that by including the nuns, we should require the consent of the Roman Catholic bishop, and that, by including the *arrière fiefs* in the hands of lay proprietors, we should require their consent, and that of all who are immediately or remotely interested in the property?—For the property of the nuns the consent of the Roman Catholic bishop would be necessary; and for the others, that of the proprietors themselves; but not, I apprehend, of any except the immediate possessors of the property.

By what means, then, do you contemplate that the arrangement we have been discussing with the seminary, should be carried into effect?—By a confirmation, to a certain extent, of the title of the seminary, on the terms which should be agreed upon.

By what instrument would you accomplish it?—I apprehend that it would require an act of the legislature to give complete effect to the arrangement.

Do you mean the provincial legislature?—By either; but I have apprehensions it might be difficult to get such an act passed in the province.

Supposing an act of provincial parliament to be necessary, do you think, according to their standing orders or usages, they would pass a bill affecting the rights of the proprietors of the *arrière fiefs* in this seigneury, without obtaining the consent of the whole, or the major part of them?—I am not aware of any standing rules or usages to which the Assembly invariably adheres.

3 *August* 1836.

Mr. *Quesnel*, King's Counsel at Montreal, called in; and Examined.

Mr. *Quesnel*. 3 August 1836.

You were on the special committee which reported to the House of Assembly, in 1833, on the amendments required in the law of tenures?—I was.

Do you remember who were on the committee at the same time?—As well as I remember, M. A. Stuart, M. Girouard and M. Viger, were on the committee.

What had led to this committee?—Various petitions during the present and former sessions, some of them calling absolutely for the abolition of the feudal obligations.

The property held by the seminary of Montreal came under the view of the report?—It did.

Have you formed any opinion on the right to that property?—I have. The law of nations materially influences the question. A capitulation must be held sacred, as the expression of the conditions on which a nation or a province is surrendered. In Canada, in the capitulation of 1760, it is stipulated, that the religious communities shall hold their property, moveables, seigneuries, &c. &c.; and this was granted. The subsequent treaty of peace, in 1763, contained nothing to alter the capitulation; but, on the contrary, by its silence, acquiesced in that agreement. How the Imperial Legislature afterwards, in 1774, in recognizing the laws and property of the country, made an exception of the *religious communities*, is to me inexplicable. The law is strong, and I suppose we must defer to it; but I cannot feel that by that Act, passed so long after the solemn capitulation, which had been tacitly confirmed by the succeeding treaty of peace, the seminary could justly be deprived of its property.

Were not the lawyers, consulted at Paris, of opinion, that a corporation of aliens could not, by French law, claim to be holders of land?—I do not remember; my own opinion is, that a corporation of aliens could not become holders of land; but it was competent to the seminary of Montreal to divest themselves of the capacity of aliens by continuing resident in the province.

But are you of opinion that a corporation unquestionably of aliens, as, for instance, the seminary of St. Sulpice, at Paris, could hold lands in Canada?—I think they could not. They would only have been entitled to dispose of their lands by virtue of the treaty of peace, within the period of eighteen months allowed for that purpose.

Is it your opinion that it was the seminary at Paris, or at Montreal, which was seigneur at the time of the conquest?—The seminary at Paris had the title; but that title had been given for the express purpose of creating and maintaining a Canadian and local establishment; and that establishment existed *de facto* at the time of the conquest, was in possession

session of all its revenues, and maintained the religious instruction of the Indians, and the French inhabitants of Montreal, according to their original destination. As an existing religious community, at the time of the conquest, it was comprised in the capitulation which secured to such bodies their property.

With reference to the deed of gift of 1764, by which the title to the seigneury of Montreal was transferred from the seminary of Paris to the seminary of Montreal, would not that deed have required confirmation by letters patent under the French law, in the same way that the donation of 1663 was confirmed by letters patent?—Had Canada remained under the King of France's dominion, such letters patent might have been necessary; after the conquest, the capitulation and the subsequent treaty were, in my opinion, equivalent to any letters patent that might have been granted.

Will you state, generally, your opinion whether that deed of gift in 1764 was a valid and effectual instrument?—I am of opinion that it was.

Would you define the meaning of the word communaute?—It is nearly analogous to the word corporation: taken alone, it is always understood to mean a religious community; if it import a society of artizans, &c. their description is always added, as, for instance, communauté de marchands, communauté d'habitants, &c. &c. By the French law, to constitute a religious community capable of holding property, you must have either the Pope's or the bishop's authority to erect communities according to the nature of such communities, and the King's authority to enable them to hold lands. The King's pleasure was usually signified by letters patent.

Do you find in the arrêt of 1677 any words expressing that the community at Montreal is to be capable of holding property?—I am convinced that, considering the arrêt in all its parts, it was the intention to confer to the seminary of Montreal the right of holding such property as had been given for its support.

Do you think the arrêt of 1677 of itself constituted the community at Montreal, or did it only give permission to the seminary at Paris to constitute it, so that some Act on their part would have been necessary for its creation?—In my opinion the arrêt constitutes the community, or gives that legal existence which it had not before.

Did not the treaty made in 1763 by the two Crowns of France and England, giving an unqualified permission of sale, supersede all difficulties as to mortmain which were intended to be provided for by the arrêts of 1743 and 1747?—Yes; I am of that opinion.

Upon what authority do you say that an alien corporation could not hold lands in Canada?—The law of France would prohibit an alien corporation from holding lands in France.

Could an alien individual hold lands in Canada?—That doctrine has been supported in the courts. Such was the law of France at the time of the conquest; aliens could hold and sell property, but could not bequeath it by will to their heirs, except in some cases specially provided by law.

Supposing it to be good law that an alien individual could hold lands, what distinction would you make between his case and that of a corporation?—The corporation would not be able to sell or alienate like the individual. The Crown would not have its fiscal rights as in the case of a natural person's death intestate.

Were the Jesuits suppressed in France before the conquest of Canada?—No; they were suppressed in 1764.

When did the Récollets cease to exist in this country?—I do not exactly remember.

Has there ever been any feeling in the province that the Crown acted harshly in assuming the property of the Récollets?—I am not aware of it. As to the Jesuits, there was dissatisfaction. It was observed that in France, and in all Catholic countries in Europe where they had been suppressed, their property was not taken possession of by the government for its general use, but continued to be applied to purposes similar to their original destination.

If it were the opinion that the religious communities were confirmed in their property, how did it happen that there was no complaint in the case of the Récollets?—Their property was small; they were few, and at that time of no great use. There was not, I believe, much to excite sympathy with them. They were allowed to retain their property until the order became extinct.

Is it your opinion that a general, by a capitulation, can ensure to a people, after they shall eventually become subjects of his own country, privileges or conditions contrary to the laws of his own country?—Generally speaking, I think that whatever contracts (I am now using the words of Blackstone,) the King of England engages in by his ambassadors or generals, no other power in the kingdom can legally delay, resist or annul. To prevent this plenitude of authority from being abused to the detriment of the public, the constitution has interposed a check by the means of Parliamentary impeachment for the punishment of such ministers as, from criminal motives, advise or conclude any treaty which shall afterwards be judged to derogate from the honour and interest of the nation. I am however of opinion that there may be cases in which conditions entered into by a general could not be binding on the nation; such, for instance, as would tend to destroy the natural, civil or religious rights of a British subject.

Is not every capitulation liable be altered by a subsequent treaty of peace?—I certainly think that the definitive treaty of peace made by the two sovereigns may qualify, by express provisions, the terms of any previous capitulation.

Appendix (C.)

Oral Evidence.

Mr. *J. D. Gibb*, 18 August 1836.

18 *August* 1836.

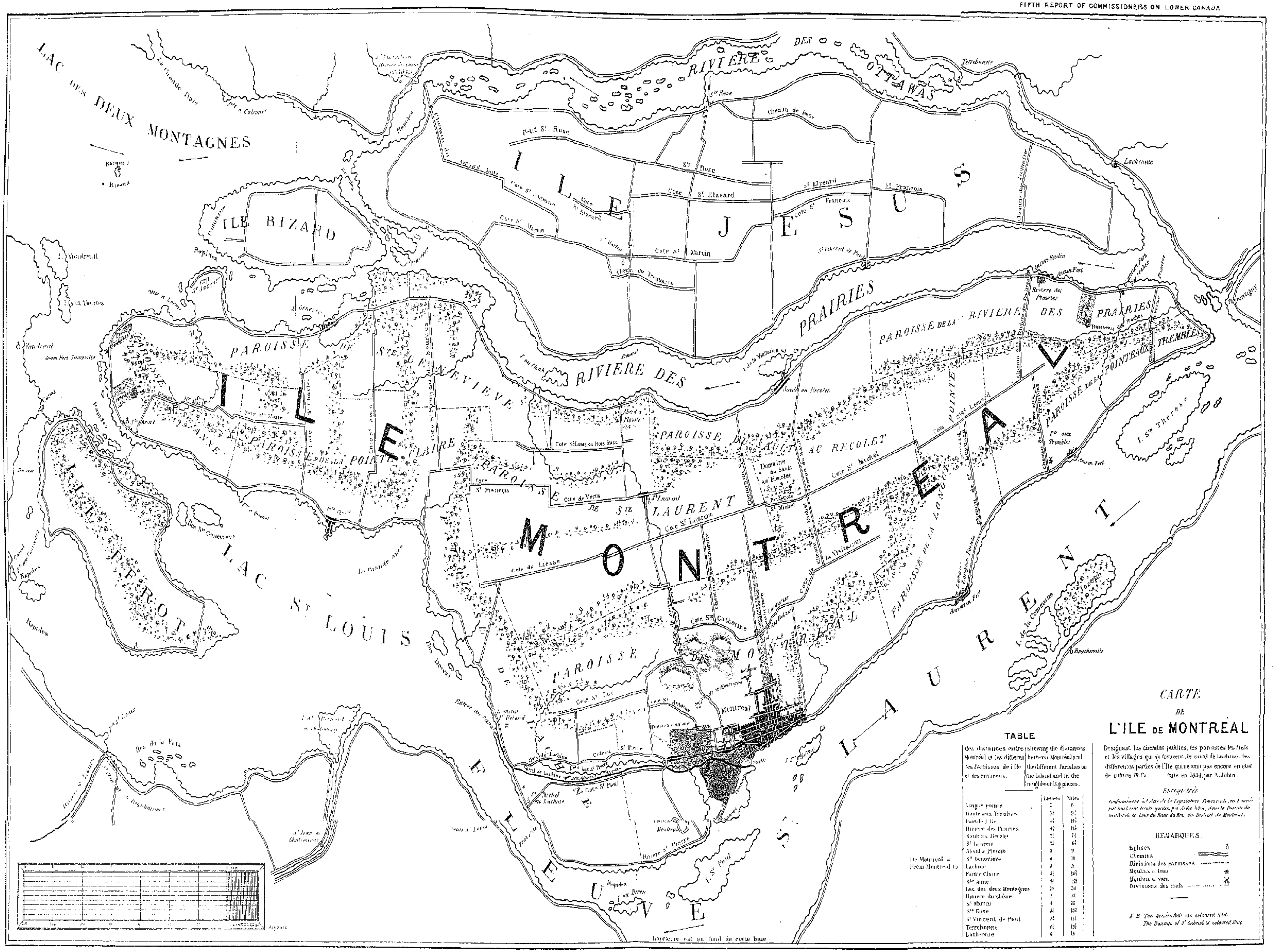
Mr. *J. D. Gibb*, (supplementary remarks.)

WITH regard to the settlement with the priests, although the censitaires would, I conceive, be willing to pay 5 per cent. as a commutation and general discharge from all further seigneurial dues, the money so collected and the large amount of arrears of *lods et ventes* now due, would be far more than requisite for the wants of their ecclesiastical establishments; and the general feeling among the Protestants appears to be a desire that the property of *the seigneury of the island of Montreal* be assumed by His Majesty's Government, and that from the proceeds (not exceeding the terms I have already stated) a yearly income be settled on the gentlemen of the seminary.

Without having reference to documents, I think I may state that their annual collections do not exceed 5,000 *l.*; and, as I do not desire that their circumstances should be straitened by the proposed change, I would not hesitate to say that an income of 6,000 *l.* should be secured to them. Of this sum any revenues to be derived from the sale of their farm and property adjoining the St. Ann's suburb should form a part; but they should be fairly allowed to keep their property at the Mountain without molestation.

Public report mentions the views of the seminary with regard to the commutation as claiming a privilege to invest the money, in real estate, in the individual names of the priests. The feelings of the Protestant community are quite against such a privilege being granted them, or indeed any privilege for the extension of French ecclesiastical properties. The great wealth of such a body would enable them to be the highest bidder of every property coming to public sale. Englishmen would in future be thereby restricted in their purchases, and the island of Montreal, instead of increasing with a mixed population, would have more the tendency of a French national character; while the proprietors or managers of so much ecclesiastical wealth would have a too powerful influence throughout the island.

Such is the growth of wealth which is contemplated, if our political troubles are settled by His Majesty's Government, and registry offices introduced.



CARTE DE L'ILE DE MONTRÉAL

Désignant les chemins publics, les paroisses les fiefs et les villages qui s'y trouvent, le canal de Lachine, les differentes parties de l'Ile qui ne sont pas encore en etat de culture &c. &c. faite en 1834, par A. Jobin.

Enregistrée conformément à l'Acte de la Legislature Provinciale en l'année mil huit cent trente quatre, par A. Jobin, dans le Bureau du Greffier de la Cour du Banc du Roi, du District de Montréal.

TABLE

des distances entre Montréal et les differentes Paroisses de l'Ile et des environs. | shewing the distances between Montréal and the different Parishes on the Island and in the neighbouring places.

De Montreal a / From Montreal to

	Lieues	Miles
Longue pointe	2	6
Pointe aux Trembles	3[illegible]	9[illegible]
Bout de l'Ile	4[illegible]	14[illegible]
Riviere des Prairies	4[illegible]	14[illegible]
Sault au Recolet	2[illegible]	7[illegible]
St Laurent	2[illegible]	6[illegible]
Abord a Plouffe	3	9
Ste Genevieve	6	18
Lachine	3	9
Pointe Claire	5[illegible]	16[illegible]
Ste Anne	7[illegible]	22[illegible]
Lac des deux Montagnes	10	30
Riviere du chêne	7	21
St Martin	4	12
Ste Rose	5[illegible]	15[illegible]
St Vincent de Paul	3[illegible]	11[illegible]
Terrebonne	6[illegible]	19[illegible]
Lachenaie	6	18

REMARQUES.

Eglises
Chemins
Divisions des paroisses
Moulins à feau
Moulins à vent
Divisions des Fiefs

N.B. The Arriere fiefs are coloured Red.
The Domain of St Gabriel is coloured Blue.

Ordered, by The House of Commons to be Printed. 1837.
James and Luke G. Hansard & Sons, Printers.

GENERAL REPORT

Of the COMMISSIONERS for the INVESTIGATION of all GRIEVANCES affecting His Majesty's Subjects of *Lower Canada*.

SCHEDULE.

GENERAL REPORT.

MAY IT PLEASE YOUR LORDSHIP, Quebec, 15 Nov. 1836.

1. WE propose in our present communication to submit a General Report on those of the subjects referred to us by your Lordship's Instructions of 17th July 1835, on which we have not yet stated our conclusions.

2. In a Report, dated the 23d of January 1836, we described the conditions we should recommend to be annexed to a Cession of the Crown Revenues, and these involved a statement of our views on the Independence of the Judges, the Establishment of a Court for the Trial of Impeachments against Public Functionaries, the Settlement of a Civil List, and the continuance of a few Life Charges to which the funds under the control of His Majesty are subject.

3. While we continue to adhere generally to the opinions we then delivered, as being suited to any amicable arrangement for the Cession of the Crown Revenues, we have been compelled to explain in a Report dated the 12th March, and shall have to mention again, in the course of the present communication, how far we think that different financial arrangements of a more special character would be requisite, in order to meet a state of emergency, such as now exists.

4. In our Report of the 3d of May last, we submitted our opinions on the Executive Council; and in a subsequent letter of the 12th of May, we pointed out some modifications which we think might be made with advantage in the statutory rules affecting the Legislative Council.

5. We transmit separately a Report on the Feudal Tenures in the City and Island of Montreal, and on the Rights of the Ecclesiastics of St. Sulpice, as seigneurs of that important fief.

6. The subjects referred to us by your Lordship's Instructions of 17th July 1835, on which it still remains for us to offer a final Report, may be enumerated as follows:

I. The Legislative Council.
II. The State of the Representation of the People.
III. The Settlement and Management of Wild Lands, and the Use and proper Limits of Land Companies.
IV. The Tenures of Land in the Province, to which must be added,
V. The Establishment of Registry Offices.
VI. The Apportionment of Customs' Duties between Upper and Lower Canada, and the Canada Trade Act.
VII. The Execution of the Recommendations of the Canada Committee of 1828.
VIII. Education.

7. On the Clergy Reserves, and on some important Petitions recently received on other matters, we shall submit our opinions hereafter.

I.—THE LEGISLATIVE COUNCIL.

I. Legislative Council.

1. THE Constitution of the Legislative Council is not only in itself a matter of the highest interest, but one to which an additional degree of importance is now attached, in consequence of an alteration in it having been set forth in all the late proceedings of the popular party as the essential reform, without which all others would be of no avail, and the House of Assembly having gone to the extremity, within the last few weeks, of declaring that they will never resume their functions, until their demands for a fundamental change in it are complied with. A simple reference to the documents put forth by the Assembly since 1833, would be sufficient to prove the reality of their determination in this respect; while a reference to documents produced before the first Committee of

I. Legislative Council.

the House of Commons, and to others, which emanated from the Assembly previously to 1833, would prove that up to that year no formal demand for a fundamental change in the Constitution of the Council had been made.

2. Without entering into an examination of all these records, we may observe, that on the 28th of January 1831, an address from the Assembly to the Governor, signed by Mr. Papineau, the Speaker of the House, contained an assurance to the following purport:—"It will be our earnest desire that harmony may prevail between the several branches of the Legislature, that full effect may be given to the Constitution as established by law, and that it may be transmitted unimpaired to our posterity." And towards the close of the same year, a Bill passed the House of Assembly constituting the Legislative Council a court for the trial of impeachments, without any demand being put forward that it should be made elective. The conciliatory Despatch of Lord Ripon, dated 7th July 1831, was, moreover, received in the Province in a manner that might have seemed to encourage the hope, that a more harmonious state of public feeling was on the point of being restored.

3. But, notwithstanding these appearances, the hostility which had long existed between the two legislative bodies was not really abated, for on the 8th of March in that very year, 1831, two resolutions were carried in the Assembly (though they were afterwards struck out of a petition to the King, into which they had been designed to be inserted), declaring that "the appointment by the Executive of legislators for life was fatal to the tranquillity and prosperity of the Province, and incompatible with good government." On the 29th of March also, the Council, on their part, placed on their journals a series of resolutions aimed at the most important privileges of the Assembly, and particularly at the one that, after a contest of many years' duration, they had just succeeded in establishing; we mean the exclusive right to control the financial concerns of the Province. And it is not unworthy of remark, that in the very first of these resolutions, they lay down as a positive law, a practice which (however salutary) rests, we believe, in England only on a resolution of the House of Commons, adopted like any other of their standing orders, at their own discretion, and revocable at their own pleasure. By a subsequent resolution, the Council likewise assumed to itself the dangerous right of judging what the contingent expenses of the representatives of the people ought to amount to.

4. With these signs, therefore, of a continued hostility before us, we are disposed to ascribe the fact of no formal demand for an Elective Council having been made before 1833, simply to the expectation entertained by the popular party, that in consequence of the recommendations of the Committee of 1828, very essential alterations in the composition of the Council were on the point of being effected. An alteration was indeed produced in 1832. The judges ceased to take any part in its proceedings, and 13 new members, unconnected with the Government, were added in the course of the year; but that these new nominations were unsatisfactory to the Assembly, and that the disappointment they felt at the alterations in the Council, was the cause of their fresh proceedings against it, may be inferred from the fact, that in the next session of the Legislature was voted the first address in which a demand for an Elective Council was put forth. The nature of the expectations that had been raised in the minds of the prevailing party in the Assembly, respecting the nomination of these members, may probably be correctly gathered from the 92 resolutions of 1834, and particularly from the 24th of them, in which it is asserted that "such of the recently appointed councillors as were taken from the majority of the Assembly, and had entertained the hope that a sufficient number of independent men, holding opinions in unison with those of the majority of the people and of their representatives, would be associated with them, must now feel that they are overwhelmed by a majority hostile to the country." We certainly do not think that either the recommendation of the Committee of 1828, or anything that subsequently issued from a competent source, warranted an expectation that the Legislative Council was to be made entirely to harmonize with the feelings of the Assembly; nevertheless, that something of the kind was expected by the popular party does seem beyond dispute. We do not feel called on to pronounce an opinion on the propriety of the appointments in question; and the less so, as they were narrowly scanned in the cross-examination of Mr. Morin, before the Committee of 1834; but we may, we think, venture to say, that whilst they satisfied the terms of the recommendation made by the Committee

mittee of 1828, as far as the matter of pecuniary independence of the Crown was concerned, they scarcely produced an alteration in the political character of the body to which the new members were aggregated.

5. Having thus, for the sake of showing the actual state of the question, referred to the latest proceedings in this controversy, we shall now, in order to enable us to report, according to your Lordship's Instructions, our opinion how far the Legislative Council of Lower Canada has answered the purpose for which it was instituted, proceed to take a short retrospect of a few of the leading points in Canadian history, and of the changes in the policy by which it has been governed since it became a portion of the British Empire.

6. The principle on which the Province of Quebec was governed for the first 11 years subsequent to 1763, seems to have been that of making it entirely British. The laws and language of England were to be introduced into it; and whatever might have been the harshness in the first operation of the change, it is no doubt probable that, could it have been steadily persisted in, the present state of the Province would have been far more easy and settled than we find it.

7. During the progress, however, of the contest in which England became engaged with her Colonies, this system was (doubtless for sufficient reasons) departed from; the Quebec Act of 1774 restored the old civil laws of the Province, secured the virtual supremacy of the Catholic religion, and though it gained for the English Government the affections of the people, tended, as far as an Act of Parliament could, to prevent the adoption by them of English manners and English institutions. We have no means of ascertaining, with any correctness, what might have been the number of persons of British origin, who, during the period of 17 years, up to the next change of the Constitution, settled in Lower Canada; but it is certain that by far the greater number, both of loyalists from the old colonies and of emigrants from home, passed (as it was natural that they should) beyond the limits of a country thus occupied by a people whose laws and language were foreign to them, and fixed themselves in what is now the Upper Province, where, moreover, a climate less rigorous than that of Lower Canada invited them.

8. By the separation of the Provinces, effected in 1791, this state of affairs was confirmed and perpetuated. Nearly everything that the extended territory of Quebec had contained of English, was then collected into a distinct body, and Lower Canada was again forced, we may say, by Act of Parliament, to be French. A Constitution, too, was, under these circumstances, given to it, confessedly on the model of our own, in which the House of Representatives was endowed with powers analogous to those of the House of Commons, whilst, from the very nature of things, the great majority of the members of this House could be no other than French Canadians. In scarcely any instance since the existence of the House of Assembly, has the majority of French Canadians over English been so little as two to one; and, of late, it has far exceeded that proportion. We have even heard the speeches of the minister of the day referred to, to prove that it was his intention to keep the Province French; a construction, however, which we consider erroneous. Mr. Pitt always expressed his desire that Lower Canada should become ultimately English, though he thought the best means towards that result was not to do violence to the predilections and customs of the original inhabitants; and it was certainly, we apprehend, no part of his plan to discourage English settlers. For many years, indeed, after the establishment of the Constitution of 1791, a vague sort of idea seems to have existed, that by the introduction of new settlers, the numerical disproportion between the two races would be made to disappear, and the English even to predominate; and so, perhaps, in spite of all opposing circumstances, they ultimately may; but the progress has been much slower than was expected, and at the present moment the highest calculation of the inhabitants of British descent does not make them more than one-fourth of the whole.

9. The House of Assembly was not slow to perceive the importance of the functions which had been assigned to it by the Constitution; the Government alone was slow to perceive it, or, if perceiving, to acknowledge it, and to provide with prudence for the consequences. Instead of shaping its policy so as to gain the confidence of that House, it adopted the unfortunate course of resting for support exclusively on the Legislative Council. The existence of a majority of French Canadians in the Assembly, seems to have been thought a sufficient reason that there should be a majority of English in the Council; for the principle observed

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in the first nominations, of making it of equal numbers, French and English, was early departed from, and thus the Council and Assembly were constituted on antagonist principles almost from the commencement.

10. For a number of years the Council, keeping as it did, in close union with the Executive, prevailed; but in process of time the inherent force of a popular Assembly developed itself, and in the great contest that ensued about money matters, the Assembly came out completely successful. During this financial struggle, continued as it was for more than a quarter of a century, it was only natural that other collateral causes of difference should arise, and if we were to examine into these, we believe we should also find that in every one of them the Assembly has carried its point. As a few instances, we will mention the right of the House to accuse and bring to trial public officers; their right to appoint an agent in England, and their right to control their own contingent expenses; their demand for the withdrawal of the Judges from political affairs, or from seats in the Legislative Bodies or the Executive Councils, and for the surrender of the proceeds of the Jesuits' estates. All these are points on which contests have taken place between the two Houses, and in every one of them the popular branch has prevailed, and the Council been successively driven from every position it had attempted to maintain. The Assembly, at the same time, by attacking abuses in the Administration, and bringing charges against numerous officers of the Executive, succeeded scarcely less in exposing the weakness of the Government than that of the Council. Both the Council and the Government have been worsted in many a struggle that they never ought to have engaged in; and if the Assembly has, in consequence, grown presumptuous, we apprehend that such is only the ordinary effect of an unchecked course of success.

11. In the course of these protracted disputes, too, it has happened that the Assembly, composed almost exlusively of French Canadians, have constantly figured as the assertors of popular rights, and as the advocates of liberal institutions, whilst the Council, in which the English interest prevails, have, on the other hand, been made to appear as the supporters of arbitrary power, and of antiquated political doctrines; and to this alone we are persuaded the fact is to be attributed, that the majority of settlers from the United States have hitherto sided with the French, rather than the English, party. The Representatives of the counties of Stanstead and Missisquoi have not been sent to Parliament to defend the feudal system, to protect the French language, or to oppose a system of registration. They have been sent to lend their aid to the assertors of popular rights, and to oppose a Government by which, in their opinion, settlers from the United States have been neglected, or regarded with disfavour. Even during our own residence in the Province, we have seen the Council continue to act in the same spirit, and discard what we believe would have proved a most salutary measure, in a manner which can hardly be taken otherwise than to indicate at least a coldness towards the establishment of customs, calculated to exercise the judgment and promote the general improvement of the people. We allude to a Bill for enabling parishes and townships to elect local officers, and assess themselves for local purposes, which measure, though not absolutely rejected, was suffered to fail in a way that showed no friendliness to the principle.

12. It may be, perhaps, scarcely necessary to observe, that, in our opinion, the prosperity of a country, or the facility of governing it, cannot be advanced by making two branches of its legislature the antagonists of each other; and although the system of checks and balances is often considered the peculiar feature of the British Constitution, we hope there are not at present any elements of discord in it of the nature of those which unfortunately exist between the two branches of the Canadian Legislature. The British Government is not, on the one hand, a mere machine sustained by one power, and owing its regularity to the due subordination of all its parts, neither is it, on the other, a system of antagonist forces, keeping each other in order by their mutual repulsion. It is a system, we would rather say, of bodies, which, though in their origin they acted repulsively on each other, have been brought into harmony by a conviction of slow growth, that to combine is better than to compete; and we would say that they are now withheld from attempting the destruction of one another, not so much by the artificial aid of checks and balances, as by the mutual forbearance which a long experience has shown them the necessity of exercising, and by the constant action on them of an enlightened public opinion.

13. If

13. If we were simply to inquire how far the Council has acted beneficially as a balance to, or a check on, the other branch of the legislature, we should, we fear, be forced to confess that it has hardly been an efficacious one. By its support to the Local Government it retarded undoubtedly, but did not ultimately prevent, the acknowledgment of the right of the Assembly to control the whole expenditure of the Province; and there can scarcely now be a doubt that if the dispute had been brought to an earlier termination, an adjustment more favourable to the Executive might have been effected. If, on the other hand, we were to inquire in what degree the demands of the English have been advanced by its means, we doubt whether we should not find that the advocacy of the Council has tended rather to defeat, than to promote, the measures which the commercial classes have demanded, and continue to demand, with the greatest earnestness; for instance, the commutation of tenures, the establishment of registry offices, the settlement of the wild lands, and the facilitating of commercial intercourse.

14. In the revision and correction of Bills sent up to them by the Assembly, we have no doubt, however, that the Council has often rendered valuable services to the country, and has no less fulfilled one, perhaps, of its peculiar functions, by its rejection of measures which the Constitution would not admit, thereby relieving the Representative of the King from the duty of withholding the Royal Assent to them: such as Bills in which the Assembly encroached upon the Royal prerogative, tacked to their grants of money conditions deemed in England unparliamentary, or took it upon themselves to attempt the repeal of a British statute. Much obloquy has also, we must assert, been unjustly attempted to be thrown on the Council for the rejection of Bills sent up to them late in the session, when there were no longer the means of forming a House in the Assembly to take into consideration any amendments that might be made on them.

15. We have as yet only spoken of those causes of imperfection in the Upper Chamber which were of an adventitious nature, depending upon the mixed quality of the population, or growing out of the false position which the Council assumed, when it charged itself with the duty of supporting the political ascendancy of a minority; to which we might have added, the damage it received from the frequent and injudicious compliments that were in former times paid to it at the expense of the Assembly, in the speeches at the prorogation of Parliament, or on other public occasions. We have still to notice the more essential disadvantage, that highly respectable and well qualified as are many of the individuals who might be found to fill the place of councillors, yet in a new country, where there are no distinctions of title, and few of fortune, it is difficult for the mere nomination of the Crown to confer upon any person sufficient importance to maintain him with effect in the position of a legislator; that in such a country the people will be little inclined to respect any legislative body which does not emanate from themselves; and that this effect must be enhanced in Lower Canada by the example of the powerful States which flourish so immediately in her neighbourhood. For these considerations, though we feel ourselves forced to pronounce our opinion against the expediency of an Elective Council, we would by no means be understood as opposed to the institution on principle, so far, at least, as any country in America is concerned. We will even say, that under more favourable circumstances, at an earlier time, or had less animosity been excited, we can conceive that good might have resulted from the introduction of a principle of election; by appointing a class of electors with a raised qualification, and also providing, in order to secure a due permanence of interest in the Province, that the individuals to be elected should be possessed of a substantial quantity of real estate; but we cannot advise the experiment now.

16. The division of parties, confirmed as it is, and rendered conspicuous and more likely to last, by a difference of race, the violence that has been aroused, the almost uncontrollable power the measure would confer on the party which has lately risen into so great ascendancy, but has not yet, we fear, learned to enjoy its advantage with moderation; all are facts which combine to make us think it undesirable that an Elective Council should be bestowed upon Lower Canada. The concession of it in the present excited state of public feeling would afford a triumph to one portion of the population, which, we have no hesitation in saying, would be fraught with danger.

17. The maintenance, on the other hand, of the principle on which the Council is actually constituted, affords no triumph to either party; it is but the maintenance of that Constitution, which, five years ago, all parties in the Province were

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emulous in praising; it is but the maintenance by England, in one of her favoured Colonies, of institutions modelled, as far as they can be, on her own. Great Britain, in giving those institutions to Canada, intended to bestow upon it the best gift that was in her power, and it is not yet proved, at least we have yet seen no proof that, under existing circumstances, a benefit would be derived from changing them.

18. We are extremely unwilling on this or any other occasion, to say anything that might be considered as disrespectful towards the House of Assembly of Lower Canada, or towards that large body of the people who form the constituents of its majority. There is one assertion, however, which we cannot pass over without sacrificing the integrity of our own purpose; the assertion, we mean, so often repeated, that a change in the constitution of the Legislative Council is demanded by the whole population of Lower Canada, without distinction of origin, and that the only opponents of it are the holders of office and their dependants. We are forced in justice and in truth to state that this assertion is unfounded. The great majority of the people of direct British descent, while they are firmly united in opposition to an Elective Council, are nearly as unconnected with the holders of office as are the body of French Canadians; and the office-holders themselves, beyond the sphere of their own immediate duties, are little remarkable for anything but the exemplary patience with which they have borne the severe sufferings inflicted on them by the Assembly. We do not know where any persons are to be found of British descent who enjoy any influence in society, and at the same time wish for an Elective Council; whilst of the higher class of French Canadians, there are several who have no desire for it. And if we look to the poorer classes of the community, we shall find, that the feeling is equally intense, to say the least, in the British population, against the proposed change, as it is amongst the French Canadians in favour of it. The French Canadians of this description, or by far the greater part of them, give their whole confidence to their leaders; and when we consider how often they have been exposed to hear assertions that the Executive Government is corrupt, that the eminent individuals who have been their Governors have robbed the public treasury, and that in the distribution of Wild Lands, the settled inhabitants of the country have been denied their due proportion, we cannot but suppose that such representations must have their influence in urging many to assent to the demand for a change in the Constitution. But we have greatly misunderstood the character of the Canadian "habitans," if they do not, in general, cherish a feeling of loyalty to the King, and a sentiment of gratitude for the undisturbed enjoyment under their present Government, of all they hold most dear; of their ancient habits, their laws, and, above all, of their religion.

19. Indeed, any stranger unacquainted with the political dissensions of the Province, might well ask in amazement for the cause why French Canadians should quarrel with British protection. Though a majority in Lower Canada, they form not only a very small minority in the immense family of North America, but even a minority in the British parts of it. Surrounded as they are becoming every day by superior numbers of a race more enterprising in their habits than themselves, speaking a different language, and following a different creed, it is scarcely possible to suppose that if the protection of the Home Government were withdrawn, they could avoid being swept away by the torrent that would pour in upon them. Had Canada in 1776, or even in 1812, become a State of the American Union, no one can doubt that she would have been ere this less Canadian than she is.

20. Turning now to the consequences of an Elective Council, we are not to suppose that the party now so violent in demanding it would sit down in quiet thankfulness and submission if it were granted. It is looked to we must consider, not as an empty name, but rather as a means towards further ends. Neither are we left entirely in the dark as to what those ends may be. We will not enter upon the field of conjecture as to the various steps which might mark the progress of their demands, but simply point out that two at least have already been announced, which, it appears to us, whilst England has a shadow of authority, it must be impossible, because dishonourable, to grant.

21. The first is, the Repeal of the Tenures' Act, without a guarantee for the titles that have been acquired under it; the second, the Abrogation of the Charter of the Land Company; and to these, though it be of minor importance, we may add the sacrifice of three or four individuals to whom, either as compensation for abolition

abolition of office, or in consideration of meritorious services within the Province, pensions have been assigned out of Canadian funds by the Crown. It is true, indeed, as we have heard suggested by some of those who prefer such demands, that England might make compensation to the parties injured, and that the amount of such compensation would be too small to be felt; but unless that can be proved, which we think cannot, namely, that the power of the British Parliament and of the King was exceeded in any of these Acts, we can imagine nothing more derogatory to the supreme authority of the nation than receding from them on such dictation.

22. There are other demands, too, which we believe to be so incompatible with the unity of the Empire as to be almost equally inadmissible. One of them is the demand, that the whole local affairs of the Province shall be conducted by a Ministry responsible to, or, in other words, removable at the pleasure of the House of Assembly. They do not indeed ask that the Governor should be made directly and professedly responsible to them, but they require that he shall be supposed to be always acting under the advice of his Ministers; by which means it is sufficiently plain, that though shielded from responsibility to the Assembly, neither could he remain responsible towards the King and the Imperial Parliament. We trust that we have, in our separate Report on the Executive Council, sufficiently exposed the impossibility of granting this request, and maintaining, at the same time, the dependence of the Province on Great Britain. There might continue to exist a sort of federative union between them with some degree of duty annexed to it from the weaker to the stronger power; but the relation of dependence, one on the other, would, in our opinion, be destroyed.

23. Whether, in the progress of a colony towards entire self-government, some intermediate state of this sort might not be devised, we will neither affirm nor deny. The means by which a colony can be advantageously released from its state of dependence, and started into being as a nation by the voluntary act of the parent state, is an unsolved problem in colonial history, and one in respect to which we have not been asked for our advice. We consider that it is our duty to look at Canada as a portion of the British Empire, and as long as she is such, we think it would be idle to aim at bestowing on her powers incompatible with that state. To Canada institutions have been given analogous to those of England, but they can be analogous only, and not identical, because the conditions of the two are not the same; a republic might place itself voluntarily for a time under the protection of a monarchy, but it would appear to us a contradiction to say that it could form part of it.

24. When we look at what Canada is, and still more when we think on what, but for her political dissensions, she might be, we must deny that the condition of a British colony is an unenviable one; every inhabitant of it, if he be of an ardent or aspiring character, has a wider field for the exercise of his ambition (being a British subject) than he could have under any other dominion in the world; and if content with the humbler occupations of life, there is no part of the globe where he can pursue them more safely than here, or with a more certain prospect of his industry finding its reward. There is no country in which taxation is lighter, or individual security greater; none more exempt from physical or moral evil; and to the enjoyment of this state one condition only, and by no means an onerous one, is attached, that of a due submission to the easy authority that protects and upholds it.

25. Having thus shown that we cannot recommend a compliance with the demands of the Assembly, we feel that it is necessary for us to offer some suggestions on the mode of carrying on the Government of the country under the opposition which has been threatened, should the wishes of that House not be acceded to.

26. With this view, the first consideration to be attended to consists of the accumulated claims of the public servants. Not only are these claims in themselves of the most urgent nature, but His Majesty's Ministers have so unequivocally pledged themselves to their discharge, that no scruple ought, we think, to prevent our avowing the opinion, that until they be liquidated, the Government must not expect to command the respect of the Province. We do not see how this payment could be better effected, out of Canadian funds, than by an enactment in England similar to what we recommended in our Second Report, authorizing the Local Government to make use of the sums accumulated in the

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provincial treasury since the passing of the 1 Will. 4, c. 20; and to apply, for a limited time, the proceeds of the 14 Geo. 3, c. 88, to the support of the civil establishment.

27. Should His Majesty's Ministers not deem it expedient to apply to Parliament for the Bill which we have proposed, or should it not be well received by the House of Commons, there will be no way that we are aware of by which the public servants can be paid their arrears, except by a grant from the House itself. But supposing those arrears discharged, as the funds still within the control of the Provincial Government would be adequate to the payment of the civil list, which we in our First Report recommended, and would even leave a small surplus applicable to any other urgent expenses; we will not undertake to assert that, under such circumstances, it would be found impossible to carry on the administration, even though Parliament should decline to make any provision for the future by Imperial Authority. In that case, however, it would at least be indispensable that resolutions should be passed, such as we shall presently suggest as advisable, at any rate, in order to impress the Provincial Legislature clearly with the sentiments of Parliament on the leading questions in debate.

28. Another grave consideration is the fate of the Acts about to expire. The recent declaration of the House of Assembly, that they will adjourn their sittings until their demands are granted, leaves scarcely room to hope that it will be possible to get the various temporary Acts which will terminate in 1837, renewed by the Local Legislature in time to prevent the confusion which must arise from their expiration. Amongst these Acts there are several of great importance; those, for instance, which constitute the charters of all the banking companies in the Province; and also one under which the courts of law in the townships are regulated. We are not yet sufficiently acquainted with the exact amount of inconvenience that might be felt in the Province from the non-renewal of these Acts, to pronounce an opinion on the propriety of continuing them by an Act of the Imperial Parliament. We think it right, however, here to state the probability of a short Bill being wanted to continue, for a year, at least, the Acts that will expire in 1837. When one branch of the legislature has declared that it will suspend its sittings until the Constitution to which it owes its existence is changed, we think it will be admitted, that if ever Imperial intervention would be justified for local purposes, it is now.

29. With respect to both the preceding topics, and, indeed, to the affairs of the Province generally, we cannot too strongly express our opinion that the effect of any Acts passed in the Imperial Parliament, will mainly depend upon the majorities with which they are carried through the House of Commons. The very same measures which, passed by a considerable majority, might restore tranquillity to the Province, would, perhaps, only increase agitation if passed with difficulty; and we need scarcely say, that if any proposals of a decided and comprehensive character be introduced, and fail, matters would be rendered worse than they are. It is from such a view of the case that we are almost tempted to say, that the best measure for Canada will be that which can be passed through Parliament, and especially through the House of Commons, by the largest majority.

30. Whatever else be done in the Imperial Parliament, we apprehend that it is highly desirable that resolutions should be passed by both Houses, expressive of their opinions on the main points at issue. Everything has already been said, in order to bring the popular party to moderation, that can be said, either in the name of the Government or the King, but the Houses of Parliament have not yet spoken to them; and it may, perhaps, be thought that they should do so in a friendly and warning voice, before they proceed to any important step of legislation. This course, moreover, would have the advantage of letting the predominant party in the Assembly know the exact state of opinion respecting their demands, in the only body whose authority they at the present moment show any disposition to look on with respect. We would, of course, wish to see any resolutions proposed with the present object, couched in the most liberal terms towards Canada, but we would respectfully suggest that they should be firm, as well as liberal.

31. It might be expressed as the opinion of Parliament, that Canada should be left to govern itself in everything that concerned its own internal affairs; but that while it remained a dependence of the British Crown, it was impossible to grant to it institutions incompatible with the unity of the Empire.

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The right of the Crown to the uncultivated lands should be asserted, and the legal possessions of the Land Company declared inviolable.

A willingness might be expressed to repeal the Tenures Act, provision being made for the security of titles under it.

An opinion might be pronounced against the Elective Legislative Council, on the ground that the state of the Colony would not allow of it.

A Local Administration analogous to a Ministry, such as would destroy the responsibility of the Governor towards the King and the Imperial Parliament, should be refused; for the reason that it would be inconsistent with the connexion with the mother country.

32. Whilst we have above pointed out a few specific measures which seem open to the choice of Government in respect to the claims of the public servants, and the fate of the provincial laws about to expire, we cannot conclude without acknowledging that great doubts may exist, whether a total suspension of the Constitutional Act might not be a less objectionable measure than any partial revocation of, or interference with, privileges which have been conferred on the Provincial Legislature, even though it should extend only to privileges recently conceded, or to those which the House of Assembly acquired under an inferred engagement which it has not as yet fulfilled. The arguments for or against such a measure, as far as they rest on abstract grounds, or on general political reasoning, may be as well understood in England as in Canada, and we do not perceive in the state of parties or of public feeling in the Province, any peculiar circumstances other than are known to your Lordship, which it is necessary for us to point out as bearing on the question.

33. We, of course, offer the preceding recommendations, or rather suggestions, without departing from what we have already advised respecting the Executive and Legislative Councils in our Third Report, and in our letter of the 12th of May last; and we cannot refrain from expressing our anxious hope, that in the future selection of individuals for either of these important bodies, the greatest care and caution will be exercised. An early addition to the Legislative Council will, we think, be found desirable. We do not, however, enlarge upon this part of the subject, because it appears one on which advice may more appropriately be offered by the Governor-in-chief in his executive capacity.

II.—THE REPRESENTATION OF THE PEOPLE.

II.
Representation of the People.

1. The next subject to which we have to request attention is the Representation of the People, on which your Lordship's Instructions to us are contained in the 73d, 74th, 75th and 76th paragraphs of the Despatch No. 1, dated the 17th July 1835. The complaints on this head proceed from the inhabitants of British origin. After stating that the powers of the Assembly had been exercised by the leaders in that body with a spirit of exclusion and proscription against His Majesty's subjects not of their own origin, and even against those of their own origin who were not disposed to support them in their views, the Petitions to His Majesty, in 1835, proceed as follows:

"Your Petitioners humbly represent that at the late general election this spirit of exclusion and proscription has been carried to the extent that, although the population not of French origin amounts to more than one-fourth of the population, it has not been able to return more than 14 members of the choice of the electors, or representing their views and interests, out of a House composed of 88 members, and that the whole of the population not of French origin in the cities and counties of Quebec and Montreal, although they nearly equal the French population in number, have not been able to return one member of their choice out of 12.

"This result, which, in fact, leaves a population having great and permanent interests in the Province, and contributing a very large proportion of the public revenue, without even the power of being heard in the legislature of the country by any person of their choice, or responsible to them, has been facilitated by an unjust and faulty distribution of the elective franchise; by including the new and growing settlements of persons not of French origin in counties where that origin predominates, and where their votes are lost; and by the incessant and systematic efforts of the leading characters in the House of Assembly to depress

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and vilify the population not of their origin, with a manifest tendency to subject their persons and property, and the whole country, to the arbitrary rule and control of these characters, through the instrumentality of a majority acting and held together under the impulses of national prejudices and feelings."

2. The complaints on this subject are also set forth, with great particularity, in a statement delivered to us by Mr. Gibb, who appeared before us on behalf of some of the associations whence the above-cited petitions emanated. Mr. Gibb did not allege evils without offering a suggestion of measures by which he would ask for their removal; and although we are not able to lend our support to his recommendations, we shall have frequent occasion to refer to the clear and elaborate exposition in which they are embodied.

3. Before entering into details, it is necessary to offer one remark of a general nature upon the complaint that, although the population of British origin forms, as they assert, though it is denied by their opponents, more than a fourth of the population, it does not return nearly a corresponding number of members. On this subject we must observe, that in any country it must be exceedingly difficult to bestow on a minority, consisting of a given proportion of the people, living interspersed among the rest, the exact share of representation which their relative numbers would entitle them to. So far as they are gathered into separate communities, which in Lower Canada is the case in the district called the Eastern Townships, it is easy to confer upon them their due number of representatives; but where the two parties are mixed, as in other parts of the Province and in the cities, it is not possible, by any usual plan of voting, to secure to them a weight exactly proportioned to their numbers. A want of correspondence, therefore, between the numbers of representatives and the numbers of the two races in Lower Canada, would not, in itself, constitute a proof of unfairness; and the merits of the existing system can only be determined by observing whether, in the details and local arrangements, justice is done.

4. By a Table which we have appended to this Report (Appendix Representation, No. 1), and to which we would invite your Lordship's attention, as calculated to elucidate the inquiry generally, your Lordship will observe that, according to the census of 1831, the number of the population was 509,591, while that of representatives was 88, producing an average proportion of 5,791 souls to each representative. The census does not exhibit the numbers of each race, nor will the classification according to religion answer that purpose, because of the numerous Irish settlers who are Roman-catholics, and also because of the acknowledged incorrectness of the census in this respect; but we believe that out of the cities, and with some other exceptions that will appear in the course of our statements, the division into seigneuries and townships must be admitted to be as fair a guide as can be obtained for trying the equity of the alterations made in electoral districts in the year 1829. The inhabitants of the seigneuries may, for general purposes, be reckoned as French by origin; the inhabitants of the townships as English. Now, it appears by the Table to which we have just referred, that in the counties composed exclusively of seigneurial population, or containing a majority of that description of inhabitants, the proportion of people to each representative was in the former 6,201, and in the latter 6,883; and that in counties containing a majority of population settled in townships, or composed exclusively of such inhabitants, the proportion of people to each representative was 3,394 and 3,543. Thus the inhabitants of counties in which the townships predominated had nearly twice as many representatives, in proportion to their numbers, as the inhabitants of counties principally or entirely seigneurial. We only mention this fact for the purpose of showing that it would be erroneous to suppose that any certain inference against the present electoral system is to be drawn from general considerations. We shall now proceed to examine that system more minutely.

5. The first division of the country into counties was made under authority of the Constitutional Act, by Sir Alured Clarke, in a Proclamation issued on the 7th of May 1792. This division was, as to territorial extent, extremely unequal, being apparently based upon no other principle than that of the then existing population. Thus, for instance, the Isle of Orleans, containing only 69 square miles, was made a county of itself, and three other counties were established which contained only about 200 square miles each, whilst others were made of a size entirely disproportionate, as, for instance, Huntingdon, which contained about 1,200; Richelieu, 2,200, and Buckingham, nearly 6,000 square miles.

miles. These extensive territories, too, consisted either entirely, or for the greater part, of land fit for cultivation; and if we turn to the counties composed principally of barren lands, we find some of still larger extent. That of York contained upwards of 35,000 square miles, and Northumberland perhaps not less than 80,000.

6. It is evident that such a system of division, however fair it might have been in 1792, was of a nature to require alteration as the country became more densely peopled. The increase of population in the townships, where the loyalists from the former colonies and emigrants from the United Kingdom had settled, caused applications to be made, urging their right to be duly represented in the Assembly; and, accordingly, after various unsuccessful attempts at legislation, a Bill was at length agreed to by the two Houses of Legislature, and received the Royal Assent in 1829. It forms the Statute 9 Geo. 4, c. 73. This Act did not make an entire new division of the Province, but only went to increase the representation by dividing the great counties, and leaving the small counties as they were:—

Ten counties were left unaltered, and therefore still form - - -	10
Seven were divided, each into two, and consequently now form - -	14
Two were divided, each into three, and consequently now form -	6
One (Richelieu) was divided into - - - - - -	4
One (Buckingham) was divided into - - - - -	6
	40

Thus the 21 old counties were increased to 40; of which seven, as will be seen by the Table forming Appendix No. 1, either contain a majority, or consist exclusively of population resident in townships.

7. By an examination of its provisions, we are led to infer that the framers of the Act of 1829 proceeded on the principle of leaving unaltered all the counties in which the population was less than 20,000; of dividing into two all those of which the population was more than 20,000 but less than 30,000; and into three or more, those of which the population exceeded 30,000 souls. The only exceptions we can find to this rule appear to have been made in favour of the remote and very extensive counties of Northumberland and Gaspé, which were each divided into two, though their population was comparatively small. The circumstance of new names having been given to most of the counties whose limits were not changed, may, perhaps, have given rise to an idea that much more extensive alterations were effected. The Table No. 2, in the Appendix, shows the old and new names of the counties, as well as the population of each.

8. The principle on which representatives were allotted to the new counties appears to us to have been, in the Bill as it left the House of Assembly, to give one member to each county of which the population was supposed to be less than 10,000, with the exception of the county of Megantic, which, as the population was supposed to be very small, was annexed to that of Beauce; two members to those which were supposed to have a population exceeding 10,000, but falling short of 15,000; and three members to all which had a population above 15,000; though, probably, from their having no accurate census before them, the allotment, if such were the rule, was not quite correctly made. There was no provision in the Bill by which errors in this respect might be amended, nor was there any for an increase of members corresponding to a future increase in their population.

9. This part of the Bill, however, was entirely altered by the Legislative Council, and, in lieu of it, a general provision inserted, that all counties should have two members, whose population then amounted to 4,000 or upwards, or should afterwards amount to that number; and that those under 4,000 should have one member only until they should attain that number. It was generally supposed that these amendments would have caused the rejection of the Bill by the Assembly, but, contrary to expectation, the amendments were adopted without discussion. The county of Megantic is the only one that now remains entitled to no more than one member; and the general effect of the alteration made by the Council is, as far as we can judge of it, to give six representatives to those counties in which a township population prevails, more than they would

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have had under the Bill as it left the Assembly, and five less to those which are principally inhabited by French Canadians. It is, perhaps, worthy of remark, that no alterations of importance were made by the Council in that part of the Bill which related to the new division of counties; some few townships only being taken from the county of Drummond (the name of which in the original Bill was St. Francis) and given to the county of Sherbrooke.

10. We may remark, that before this measure reached the Legislative Council, one on the same subject had originated in that House likewise. The Bill which emanated from thence proposed to leave the original 21 counties unaltered, except by detaching from them the townships and a few seigneuries in which a British population was supposed to predominate; and, in this method, it went to create 18 new counties. Four of these were to be to the north of the St. Lawrence, and in the neighbourhood of the Ottawa; one was to be formed out of the lands which have since been made the county of Beauharnois; and 13 new counties were to be formed out of what are usually called the Eastern Townships, with the addition of a few seigneuries near the Province line and on the Richelieu, inhabited principally by persons of British descent. Each of these new-formed counties was to have one representative so soon as it should attain a population of 1,000 souls, and two when the population should reach 3,000. The Bill was sent down to the Assembly, and there read for the first time on the 6th February 1829, but was not further proceeded with.

11. In delivering our opinions on the Act of 1829, as it passed the Legislature, we shall, in great measure, throw them into the shape of comments on Mr. Gibb's statement, both because he has expressed his views with considerable distinctness, and because, as he appeared on behalf of a large body of those who remonstrated against the state of the representation, it may be presumed that the objections he urges are generally current.

12. The first remark of Mr. Gibb on the Act of 1829 was as follows:

"Complaints have been made with regard to this division. Territories inhabited principally by persons of French origin have been divided into numerous small counties, when others where a large body of those of British origin resided were so divided, that by joining that territory with another more numerous in French inhabitants, the votes of the British were rendered ineffectual.

The county of Laprairie contains	- -	238 square miles.
— Acadie	- - - -	250 —
— Beauharnois	- - -	717 —

The population of the latter is nearly one-half of British and Irish descent. The census of 1831 estimates the total number of souls of that county at 16,857, of whom 9,349 only were Catholics, including Irish, and the remainder, 7,508, were Protestants. These last and the Irish included in the number of Catholics will make up nearly one-half of the county."

13. On this statement we have to remark, that the four smallest counties now existing are not new counties created by the Act of 1829, but old counties remaining unaltered; viz. Orleans, Montreal, Chambly (formerly Kent) and Verchères (formerly Surrey). It may possibly be wrong to allow them to continue unaltered, but it would be a mistake to suppose that they were created by the new division, in order to give an undue preponderance to the population of French origin. Acadie and Laprairie are the two smallest counties created by the new division, and Laprairie, the smallest of the two, is larger than the largest of the above-named four. Acadie, Laprairie and Beauharnois formed the old county of Huntingdon; and though Beauharnois was made so much larger than the other two together, we see no reason for believing that this was done with any unfair intention, for the county of Beauharnois could not conveniently have been made smaller without dividing the seigneurie of the same name, and placing parts of it in different counties. Acadie and Laprairie might, it is true, have been united in one county, instead of being formed into two; but in that case the extent of it would have been, as we have already seen, more than double that of some of those which previously existed, and its population nearly three times as great as that of the average of other counties.

14. With respect to the county of Beauharnois, we have further to remark, that the population in it of British or of Irish descent, we have good reason to believe, either exceeds already that of French descent, or must shortly do so. The county comprehends four townships and only one seigneury, and for this a commutation

a commutation of tenures has been obtained under the Act of 1825. It, moreover, is a property on which there can be no doubt that every encouragement will be held out to the establishment of British settlers. If either party have to complain in Beauharnois, it is likely that instead of about 7,500 persons of British origin liable to be outvoted by a French population, it is, or will shortly be a population of between 7,000 and 8,000 French Canadians, liable to be outvoted by a majority of British descent; but, as we have already said, such occurrences must be unavoidable where the different classes are much intermixed, and we are glad to think, that there ought not to be any real opposition of interest between them to give the fact importance.

15. Mr. Gibb's next observation is:

"The county of Two Mountains contains upwards of 6,500 inhabitants of British or Irish origin, but they are outvoted by a large majority of French."

16. The county of Two Mountains and the county of Ottawa were formed out of that portion of the great county of York, which lay to the east of the Ottawa river. The fact stated by Mr. Gibb is, we believe, correct, but we do not see how this portion of territory could have been divided into two counties in a manner more advantageous to the British population. According to the census of 1831, the population of the townships contained within the whole district to be divided was 7,814, and that of the seigneuries 17,865; and it has been divided into two counties, of which the members for one (Ottawa) are returned by a majority of English; and those for the other (Two Mountains) by a majority of French Canadians; it does not seem therefore, that any very glaring injustice has been committed, even though one of the seigneuries (Argenteuil) comprised in the county of Two Mountains, is known to contain a considerable British population. Instead of two, however, this portion of territory might, perhaps, without injustice to the rest of the country, have been divided into three or even into four counties, as Mr. Gibb, in another part of his paper, has proposed; indeed, it appears to us that an improved division might be made of all the counties in this part of the district of Montreal, that is to say, the part that lies north of the Ottawa and the St. Lawrence. But it could not have been done without making greater alterations in prior boundaries than it was the intention of the Act in 1829 to effect, the alteration on that occasion being confined, as we have already observed, to those counties which, from their size, required division, and leaving integral and untouched those which were not so large or populous as to require change. Terrebonne (formerly Effingham) was one of these, and it could not have been kept entire had an alteration of the kind we have alluded to been effected.

17. Mr. Gibb concludes his objections to the existing division with the following remark, accompanied by an enumeration of counties and towns in support of it:

"French majorities exist also in the cities of Quebec and Montreal, and the towns of Three Rivers and William Henry, and in every county in the Province where lands are held under seigneurial tenure, and these occupy the entire borders of the River St. Lawrence, Richelieu and Ottawa, excepting only the county of Ottawa on the last-named river."

18. This statement we believe to be correct, except in so far as the case of Beauharnois might call for some qualification. In the seigneurial counties, where French Canadians form the vast majority throughout the whole, they constitute, as Mr. Gibb truly alleges, a majority within each, nor do we see how it could have been otherwise. It is also probable, that in the cities and towns they still retain a majority of votes. But that even at this moment they have no very confirmed preponderance may sufficiently appear from the keenness with which some of the principal elections in the cities have been contested; and whatever may be the case at present, these are obviously the places at which the superiority in number of the French Canadians is least likely to be enduring. As soon as the scale turns, they will be under the same inconvenience of which the English complain now, and we apprehend that it is one, as we have already said, inherent in all existing plans of election. If it admit of cure, it is only by a suggestion we shall presently mention, but which is too new, we conceive, in its character to be fitted for immediate adoption by a whole people, and too recently proposed to render it discreet, that it should be recommended without allowing more time for the light necessarily thrown on such topics by public discussion. (*Vide infrà*, par. 27.)

19. On the whole, we arrive at the opinion that the division of counties and

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towns in 1829 cannot justly be charged with unfairness. Although the counties to the north of the St. Lawrence and of the Ottawa appear to us susceptible of an improved distribution, we have already observed that it could not have been effected by the Act of 1829, without departing from the basis on which that measure was constructed. And in like manner, while it appears an obvious impropriety that the Isle of Orleans, with a territory of only 69 square miles, and a population of only 4,349, should be allowed to return two members, yet, when it is remembered that this was the direct consequence of a general provision, not objected to otherwise, we think that any impression of unfairness must disappear. By the Bill, as it left the Assembly, only one member was allotted to Orleans, and it owed the other to the general rule inserted by the Council, expressly with a view to the advantage it must, on the whole, confer on the new British settlements, that counties with a population of more than 4,000 should return two representatives.

20. We now come to the examination of a plan proposed by Mr. Gibb, on behalf of the English inhabitants of Montreal, for an alteration in the division of counties. Mr. Gibb proposes: 1st, to unite some of the smaller counties, in which the inhabitants are almost exclusively of French origin, so as out of the five counties of Acadie, Laprairie, Richelieu, St. Hyacinthe and Rouville, to form only three, separating, however, a small portion of the last-named county, for the purpose of throwing it into the neighbouring one of Missisquoi, as the population of that part of Rouville is said to be of British origin; 2d, to subdivide the most extensive of the present counties where the land is held in free and common soccage, so as out of the seven counties of Ottawa, Missisquoi, Shefford, Stanstead, Drummond, Sherbrooke and Megantic, to form 14. The effect of this arrangement would be to diminish immediately the number of members returned by the seigneurial counties by four, and to augment ultimately the townships' representation by 14.

21. The population of the seven counties which Mr. Gibb would divide, was, according to the census of 1831, collectively - - - - - 29,921
Mr. Gibb would add the southern part of the county of Rouville - 4,775
And the parish of Sylvester, in the county of Lotbinière, this parish being said to contain a majority of English inhabitants - 1,323

Making a Total Population of - - - 36,019

Dividing this into 14 counties, the average population of each would be 2,644.

The population of the five counties which Mr. Gibb proposes to condense into three, was, in 1831, as follows:—

Acadie - - - - - - - - - -	11,419
Laprairie - - - - - - - - -	18,497
Richelieu - - - - - - - - -	14,149
St. Hyacinthe - - - - - - - - -	15,366
Rouville - - - - - - - - - -	18,108
	77,539
Deduct part of Rouville, added to Missisquoi - -	4,775
	72,764
Average, if reduced to three counties - - -	24,255

Thus the three counties formed by Mr. Gibb's process of condensation would each contain nearly ten times as many souls as would be contained in each of the 14 that he would form upon his principle of division.

22. Such being the result of our examination of Mr. Gibb's proposal, we are forced to come to the conclusion that it is one we cannot recommend; though, at the same time, we do not think the actual division of the Province and apportionment of members, viewing it substantively, and not merely as a further division of counties previously laid out, is altogether free from objection.

23. A difference of opinion may naturally enough arise as to the best principle on which a territory can be divided into counties or electoral districts, but we are inclined to think that the least objectionable one for a country in the condition of Canada, with a considerable extent of unoccupied land, and an increasing

population, would be to divide it, as far as natural boundaries and circumstances would permit, into counties of nearly equal extent, or rather, perhaps, into portions apparently capable of supporting a nearly equal population, and to allot to these divisions a number of representatives calculated to increase, up to a certain point, in proportion to the number of their inhabitants. This, in fact, would be proceeding on what has been often alluded to in discussions of Canadian affairs, under the name of the compound basis of territory and population. A considerable advantage of such a division would be, that, when once established, it might remain for a long while unaltered; whereas, we believe it to be generally admitted, that the system now adopted in Lower Canada must be one of constant alteration. For instance, although we cannot go the length of saying that the time is yet arrived for dividing the great county of Sherbrooke into two or more counties, there can be no difficulty in hazarding an opinion that the time will very soon come when it ought to be done, and that, sooner or later, the same will be the case with several others, such as Ottawa, Megantic, &c.

24. Another good argument for an early division after the manner we have mentioned, is that a distant and recently-occupied country has a reasonable claim to some favour in respect to representation, or to have more members allotted to it than its population alone would entitle it to, because a new district may be expected to have more wants than an old one, and at the same time to have fewer facilities of a general kind for making those wants felt by the Government or the Legislature. But as we know of no rule by which any definite proportion of extent to population has yet been established, or by which an excess in the one can be held to compensate for a deficiency in the other, and as we are not ourselves prepared to lay one down, it is out of our power to say whether the principle in question has or has not been sufficiently adhered to in this Province. That it has not been entirely overlooked, however, is evident from the fact, that in the seven new counties (being the same which Mr. Gibb would divide into 14) the average number of constituents to each member or representative is now about 3,500, whilst in the old counties the average is about 6,500, and in the district of Gaspé, which is the most remote from the seat of Government, the average is as low as 2,578.

25. Finally, whatever may be our opinions in the abstract on the best method of laying out a territory for the first time, we cannot forget that the remodelling of a long-established settlement is a very different undertaking. It may be easy to carve out existing allotments, as was done in Lower Canada in 1829, into smaller divisions, but entirely to obliterate the boundaries familiar to the people, and attempt an entirely fresh distribution of the country, is an effort almost too large to be expected in ordinary times of any Legislature, and certainly too complicated to be executed without the risk of creating many more jealousies than it can remove.

26. We have entered with great detail into the state of the representation, on account of the importance which has been attached to the subject by one portion of the population. It now remains for us only to state that we cannot make any specific recommendations on the subject. There is no case established, in our opinion, for appealing to the authority of the Imperial Parliament; and even if the whole of the objections which we think well founded were removed, the effect would be very trifling, and scarcely go to alter the relative strength of parties in the House of Assembly; we, therefore, think it best that such alterations as may be required should be brought about by the influence of fair discussion, acting on the sense of justice of the Legislature, than that any attempt should at present be made to hasten it in the only constitutional way in which it could be done, namely, by a message from the Throne to the House of Assembly.

27. Before quitting this part of the subject however, we wish to mention a view of the subject which is taken by one of the Commissioners. Fearing that the adverse feelings of the British and the French Canadian parties are not likely to subside, and that wherever the latter have a majority, however small, there will be no chance of the minority being permitted under the established and usual law of voting, to elect a representative, he is of opinion that the most practicable remedy would be to limit each voter to one vote, no matter how many representatives should have to be elected, and that it would be advantageous to give to each electoral district, which according to the census of 1831 had a population of 15,000 and less than 20,000, three representatives; and to those which had 20,000 and less than 25,000, four; and to those which had 25,000, five; and that

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the cities of Quebec and Montreal should each constitute only one electoral district. He does not think this alteration would be agreed to by the Assembly of Lower Canada, and he would not recommend any application to be made to the British Parliament for this object alone; but if it should become necessary for the Parliament to make a general adjustment of the affairs of Canada, which should still leave only one Legislature for the whole Province, he proposes that a Bill or clause should be introduced to effect the alteration in the laws of election which we have mentioned. An idea of this kind was thrown out for the first time, if we are rightly informed, in the late session of Parliament in England, in reference to the Irish Corporation Bill. We confess that some such plan would appear to us the best method of protecting the sentiments of a minority in the state from being almost altogether merged, by the operation of elections, in those of a majority perhaps not much exceeding it in numbers. No mere territorial divisions could ever secure with equal accuracy or with equal permanence a correct proportion between the number of representatives and the number of voters participating in the same opinions. But the proposal, as we have already had occasion to observe, is very new; and the majority of us think that it is peculiarly one on which public opinion ought to have time to form itself before any positive step be taken. We are also unable to agree that the Imperial Parliament could properly interfere for the purpose. In order to repress too eager or too ambitious a pursuit of change in the Constitution which it has bestowed upon Lower Canada, the controlling authority of Great Britain may justly be exerted; but to apply it to enforcing an innovation, avowedly on the presumption that the Local Parliament would not consent to it, and with the certainty that the people could give it no welcome, as it would be perfectly strange to them, would appear to us quite contrary to the spirit in which the Supreme Legislature ought to make itself felt in this Province. We deem it enough, therefore, to throw out a statement of the proposition, but to leave its success to the chance of its either finding immediate favour in Canada itself, or being hereafter so far supported by the experience or deliberations of other countries as to lead to its adoption here also.

28. We now revert to Mr. Gibb's statement, for the purpose of considering some remarks and suggestions which he has offered on other points connected with the representation, besides the arrangement of electoral districts.

29. On the subject of qualification, Mr. Gibb submits that in the cities of Quebec and Montreal the qualification of electors should be doubled; but we have heard no reason to suppose that the change would be of sufficient importance, or of such evident advantage as to render it worthy of being made the subject of an express recommendation from the Throne to the Legislature.

30. Mr. Gibb further recommends that a qualification should be established for representatives as well as electors, which is not the case at present. This is a point so much in dispute (as far as the general principle is concerned), that we fear we must dismiss it in the same way as the last suggestion, by saying that though even it be desirable, it is hardly fit to be made the subject of a recommendation from the Throne. It is certainly conformable to ancient practice in England to require a qualification as a sort of security, that persons only who have some stake in the country should be called on to legislate for her interests; but on the other hand we would not willingly attempt to refute the doctrine which teaches, that the only proper qualification is that of possessing the confidence of the persons represented. It is observable also that in the United Kingdom the practice on this head is not uniform; for in Scotland no qualification at all is required, while even in England, where the law demands it, it has never been rigidly or successfully enforced.

31. Mr. Gibb next proposes that the wages of members (which are fixed by law at two dollars per diem), if continued at all, should be paid by a levy on the districts they represent, instead of out of the general funds of the country. We are of opinion that in a new country where few people are found who can afford to give their time to public affairs without remuneration, the allowance of wages is reasonable. On general principles we agree that the payment ought rather to be raised by the district, for it would tend to produce watchfulness over members, and a greater appreciation by constituents of the value of public time; but finding the other system of making the payment out of the common revenue of the country established in Lower Canada, we do not think that a change is so important as to render it necessary that it should be particularly urged on the Legislature by the Government.

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32. A general registration of votes would no doubt have the advantage of conducing to shorten elections, and to render disputed returns less frequent; but the requisite machinery of the system would not be easily supplied in this Province, the expense would be considerable, and we know not how far the country would be disposed to bear it.

33. The plan of making elections simultaneous throughout the whole country is a distinct suggestion, on which we will only say that we think as many considerations might be urged against it as for it, and that under the law as it now stands, we believe so wide a discretion is left to the Governor with respect to the commencement of polls as would enable the Executive to make any approach to the proposed course which circumstances might show to be really desirable.

34. The establishment by law of a fixed time of the year for the meeting of Parliament is a proposal which will probably, on the face of it, be sufficiently seen to be inadmissible.

35. With respect to the complaint on part of a recent election law, 4 Geo. 4, c. 28, s. 27, by which co-proprietors are excluded from voting for any property, unless they be co-heirs, we must say that we think the enactment a partial one, calculated to bear unjustly on the commercial interest, and to favour one class at the expense of another; the provision however can fortunately have no more than a temporary existence, as it is contained in an Act of which the King's disallowance is expected to be signified, and which at any rate expires in 1840.

36. As connected with the Constitution of the Assembly, though not immediately with the state of the representation, it seems to us a serious inconvenience that the existing law of the Provincial Parliament requires 40 members, or only four less than a moiety of the Assembly, to be present to constitute a House. The consequence is that it has constantly happened of late years, that before the Governor has desired to prorogue the Parliament, its proceedings have ceased for want of a sufficient attendance of members of the Assembly; and as the custom has prevailed of not sending up some of the most important measures to the Legislative Council until a very late period of the session, the Council, after the stoppage of proceedings in the Assembly, has had only the alternative of adopting without amendment, or of rejecting the Bills. The large number which must be present to constitute a quorum also contributes to depress still further the influence of any minority; and to enable the majority to deprive it, we may almost say, of its Parliamentary privileges, by rendering the transaction of business impossible, except when it may suit the convenience of the stronger party to allow of it. We have little hesitation in offering an opinion that an advantage to the public would be derived from fixing a lower quorum.

37. Having now gone through with great minuteness all the proposals which have been brought forward for an alteration in the election laws of the country, we are led to conclude that though there may be many things in them capable of amendment, and one or two instances in which the allotment of members to electoral districts, or the distribution of those districts, are not such as could be wished, there is no sufficient case made out for any specific recommendation from the Throne to the Provincial Legislature, and still less for any interference on such a subject by the Imperial Parliament.

III.—THE WILD LANDS AND KING'S DOMAIN.

III. Wild Lands and King's Domain.

1. On the important subject of the Wild Lands, we shall commence by examining the complaints made by the Assembly, and shall offer our views on the best method of carrying on the settlement of the country, as well as endeavouring to guard against the monopoly of lands by speculators; we shall then proceed to make our observations on the agency by which the management of the Crown Lands and Wild Lands is conducted; and shall conclude with expressing our opinions on the effect of the Land Company, and on the expediency of such institutions in general.

2. The principal complaints on the part of the Assembly may be comprised under the following heads:—

That the Wild Lands have been made a source of revenue independent of the Assembly:

That they have been lavishly granted to favourites and dependants on the Government:

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That the old inhabitants of the Province are shut out from any hope of obtaining them on the terms they like, or on the tenure to which they are attached:

That a large tract of them has been assigned to a Land Company, contrary, it is said, to the privileges of the Provincial Legislature.

3. Before examining these complaints separately, we must make some remarks on the assumption implied in the last of them. The claim of the House of Assembly to direct and control the management of the Crown or wild lands seems to be founded on abstract principles rather than on any particular act of the British Parliament, or any analogy derived from British practice; and the only way in which any serious argument can be maintained in favour of what they claim, may perhaps be set forward somewhat in the following manner: That in any new discovered or newly occupied country the land belongs to the Government of the nation taking possession of it, and that settlers in it, so long as they retain the character only of emigrants from the mother country, can claim no more than what has been granted to them as individuals; but that when a distinct boundary has been assigned to them, and they come to be incorporated into a body politic, with a power of legislation for their internal affairs, the territory within their boundary becomes, as a matter of right, the property of the body politic, or of the inhabitants, and is to be disposed of according to rules framed by their Local Legislature, and no longer by that of the parent state.

4. This proposition rests, as we understand it, entirely upon abstract grounds, and we believe that we are authorized in saying that it never has been entertained by Great Britain or any other colonizing power. That the ungranted lands in any colony remain the property of the Crown has, on the contrary, we believe, been the universally received doctrine in Great Britain, and although the Constitutional Act does not expressly assert a right of which its framers probably never contemplated a doubt, the lands of the Province are mentioned in the 36th clause as being thereafter to be granted by His Majesty and his successors. While, therefore, we are quite ready to admit, that in the disposal of the ungranted lands the interests of the first settlers ought never to be lost sight of, and also that the wishes of the Local Legislature should be consulted, provided they are made known to His Majesty in a constitutional manner, we cannot recognize in any way the abstract principle set up for it in opposition, not merely to the general laws and analogies of the British Empire, but to the clear meaning of the Act by which alone the body preferring the claim has its existence. It must, we apprehend, be the main object in every scheme of colonization that the parent state should have the right to establish her own people on such terms as she may think fit in the country colonized; and at present perhaps her North American Colonies are more valuable to England as receptacles for her surplus population than in any other way. We cannot, therefore, believe that England will consent to a doctrine that will go to place at the discretion of any Local Legislature the terms on which emigrants from her shores are to be received into her Colonies. An argument is, we are aware, occasionally adduced, that at the time when the Province of Quebec was divided into Upper and Lower Canada, an intention was expressed of separating the French from the English settlers, and giving the Lower Province to the former, whilst the Upper one was to be exclusively reserved for the English. We, however, believe, that though the idea of separating the people of different origin might have had weight with the framers of that Act, they never had in view any greater separation than one that should have the effect of confining the French tenure of lands, the French civil law, and the special privileges conferred on the Roman Catholic religion, to the Lower Province; and that it could never have been intended that England should give up her right to regulate as she might think proper, the settlement of the unoccupied parts of the country. Some of Mr. Pitt's speeches prove the reverse.

6. Whilst, however, we thus unhesitatingly assert the right of the Crown of Great Britain to the disposal of the ungranted lands, we are no less desirous of explaining ourselves on one or two principles, subject to which we consider that it ought to be exercised.

7. First, we think, that though a revenue may very properly be drawn from the wild lands, they should not be disposed of solely, or even principally, for the

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the sake of revenue, and still less for the sake of a revenue with which to make in ordinary times the Executive independent of the Local Legislature; and, secondly, that whatever revenue is derived from them should be applied to the uses of the Province, and, like all other revenue, be placed under the control of the Local Legislature, so soon as that legislature shall have made provision for certain permanent expenses of the executive government in a manner satisfactory to the parent state, or shall have provided a satisfactory civil list. Until this be done, however, we cannot but regard this revenue as at the disposal of the head of the parent state, both because it is in no way to be considered as a tax on the inhabitants, and because it would be inconsistent with the dignity, or rather with the duty of any state, to allow a government to be carried on in its name, without taking some security for its efficiency. We scarcely think it worth while to notice the argument, that the King cannot have a right to the whole of the wild lands, because he has expressly reserved to himself a seventh of them only; the reservation of this seventh, under the name of Crown reserve, was only a regulation of management, and has been revoked by the same authority that made it.

8. These are the impressions with which we proceed to the more detailed consideration of the complaints that have been made of the administration of the wild lands within the province of Lower Canada.

9. With respect to the first complaint, that they have been made the source of revenue independent of the Assembly, it is evident that, under our view of the subject, this was very properly the case, so long as certain definite revenues were taken by the Executive for the maintenance of the civil government, and the deficiency made good by Great Britain. When, however, a compact was proposed by which the whole expenses of civil government were to be borne by the Province, and the revenues theretofore at the disposal of the Crown were to be placed under the control of the Local Legislature, in exchange for a competent civil list, we think it would have been far better that the revenues derived from the sale of wild lands, and from other similar sources, under the name of hereditary, territorial or casual revenues, had not been excepted, and that the attempt had not been made to separate from the territorial revenue the monies derived from the sale of wild lands and from licences to cut timber. We have in our first Report proposed that all the revenues of the Province, or all monies derived in any way from a Canadian source, should be placed at the disposal of the Local Legislature so soon as a very moderate civil list shall be permanently provided, and we entirely adhere to that recommendation.

10. With regard to the improvident or partial grants which form the subject of the second complaint, we know not how we can more fully express our opinion of the justice with which it is made, than by saying, we adopt your Lordship's own view on the subject. The circumstances under which the grants were made, may be pleaded in extenuation of their evil, but the fact of their being prejudicial cannot, we apprehend, be denied.

11. With respect to the third complaint, that the original inhabitants have no means of obtaining land on the tenure which alone they like, we are anxious to express our opinion that, as the people of French origin in Lower Canada have long since been admitted to all the rights of Englishmen, they are not only as much entitled to a share in the wild lands as any other class of our fellow-subjects, but that they have, as the first occupiers of the country, a peculiar claim to an extension of their grants, when such extension is rendered necessary by their increasing numbers. We certainly would not recommend the creation of new seigneuries on the model of the old ones, nor do we think we should meet the wishes of any part of the Canadian population, if we were to propose to make new grants subject to the payment of the feudal dues, called *Lods et Ventes*, or the *Droit de Banalité*. We are well aware that the system of quit-rents has failed very generally in British settlements, and we undoubtedly, *cæteris paribus*, prefer a tenure of free and common soccage to any other: but it should, we think, be borne in mind that the desire so strong in British settlers to possess an undivided interest in the land they cultivate, is scarcely felt by Canadians of French origin; and that, as they have been always accustomed to the payment of a small ground-rent, they might not object to take

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new lands, if freed from the feudal burthens, subject to some increase of rent; and also that such rents might successfully be collected from them, notwithstanding the difficulty experienced with persons less accustomed to a similar system, especially if new parishes could be laid out, to which bands of related families might remove, with the sanction and under the care of their spiritual pastors. We are aware that great objections might be urged against the introduction of a new tenure of land in a country where difficulties already exist in consequence of a diversity of tenures, and we also feel the necessity of granting no greater advantages to settlers in one district than in another, or to settlers of one class more than to those of another. We therefore do not wish that any attempt of the sort should be made solely on our recommendation. We desire merely to express an opinion that, in the event of such an arrangement, or any other of a similar nature, being proposed to the Executive by those who are better acquainted with the wants and wishes of the Canadian population than we can pretend to be, and sufficient security be given against the evils that we have hinted at, the proposition should be received with willing attention by the Government; and in this we apprehend we are doing no more than following up the principle that was sanctioned by Lord Ripon, when, in the last paragraph of his Despatch of the 21st November 1831, he invited the House of Assembly to offer their advice to the Government in the management or disposal of the wild lands.

12. We are aware that there are yet in the seigneuries very extensive tracts of unoccupied lands, as appears in the memorandum we place in the Appendix No. 4, and also that the crowded state of the old settlements in them is in great part to be attributed to the genius and habits of the French Canadians, which prompt them to remain in this crowded state rather than remove to new localities or mix with new neighbours; but, on the other hand, it is to be remembered that great portions of the unoccupied parts of the seigneuries are decidedly unfit for settlement; and that with respect to the better lands, the seigneurs being able, since the old laws of the country have fallen into disuse, to demand their own terms for them, settlement is scarcely more easy on them than on the wild lands of the Crown; to which considerations it may also be added, that by the operation of the Tenures' Act, some of the best of these tracts have already been converted into soccage lands, on terms highly advantageous to the seigneurs, and that more of them may be expected to follow the same fate as commutations become more easy.

13. On the complaints that have been made by individuals respecting delay in giving out land patents, and the amount of the fees charged upon them, our opinions will appear in the observations we shall have to submit upon the departments concerned in managing the Crown lands and wild lands.

14. A copy of the last regulations issued by the Secretary of State for the disposal of the wild lands, dated 7th March 1831, is placed in the Appendix, together with the directions of August 1834, respecting military and naval settlers. We approve of these regulations. It is a common complaint, we must allow, that land is too dear; but we are by no means convinced that it would be for the general or the permanent advantage of the settler to make it cheaper. The arguments adduced in Lord Ripon's Despatch, addressed to Lord Aylmer on the 21st of November 1831, are, in our opinion, very powerful; and since that Despatch was written, the acquisition of land has been much facilitated to the poor emigrant, through the instrumentality of the North American Land Company. The Company will not, we apprehend, sell cheaper than the Government; on the contrary, it will perhaps sell much dearer; but it will offer to the settler, and indeed does now offer, as we shall have occasion hereafter to explain, advantages of another kind, which the Government never can. The result, therefore, of the consideration which we have given to this subject is, that in the present mode of disposing of land there are but two particulars in which we would recommend a change.

15. We think the practice of accepting payment of the purchase money of land by instalments decidedly objectionable. The collection of the instalments is very expensive; the collection of the interest nominally charged on those which are unpaid has been found impossible; and though the land becomes legally forfeit for a breach of the engagements on this head, it is not surprising that

that in a case wherein the whole population of settlements is often involved, so extreme a remedy has never been resorted to. The tendency of the system is to lead people to purchase more land than they want, to disperse the settlers over a wider tract than they can beneficially occupy, and to bring them all into the predicament of a population of debtors, with the probability of long remaining so. And even were the indulgence less injurious than we think it is, the operations of the Land Company may be expected to drain off the greater number of emigrants of the poorer class, being that class for whose convenience credit may be supposed to have been allowed. Another evil is, that parties who wish to cut timber are enabled to bid at the auctions and pay a first instalment, then cut the timber, and give themselves no further concern about either the land or the instalments. In this manner they get the timber at about a shilling an acre, and find it answer better than to buy a licence; so that there is a double loss, the Government loses in the timber fund, and, according to established custom, a period ensues, during which, from the uncertainty as to the title, the land can neither be bought nor used. These considerations induce us to recommend that the Government sales of wild lands should continue to be made by auction as at present, but for ready money.

16. The other point on which we would suggest some modification is the regulation that persons desirous of obtaining land in places not already surveyed, must previously pay for the expense of survey, and the price of the land be fixed according to its quality and situation. The operation of this rule is to discourage enterprise, and cause dissatisfaction to persons who, in remote parts, being unable to have a survey without great expense and trouble, find themselves reduced to choose between appropriating without title the lot of wild land they want, or letting it remain waste, to the loss of the neighbourhood and the advantage of no one. And even those who may be in a position to pay for a survey, are exposed to great delay by this regulation. If any person wish to occupy unsurveyed land or surveyed land in townships or districts where no auction shall have taken place for two years before, nor be determined to be held within six months to come, we think he should be allowed, on paying half the current price of wild lands (for instance, at present, about half a dollar an acre), to receive from the office a memorandum of his payment, and to take possession; and the regulation ought to be that when the survey shall have come up to him, and one-third of the land in the township been disposed of, either by auction or to other settlers, on the same terms as those on which he holds his own, he should have notice to complete his purchase, by paying half a dollar per acre more; or, in the event of the average price of land sold by auction in the townships being less than a dollar, by the payment of such a sum per acre as shall make up that average price; and in the event of his not doing this within a year, he should be subject to the land being put up and sold by public auction at the upset price of half a dollar, in which case, whatever it should fetch beyond half a dollar per acre, should be paid to, or retained for, the party who made the original deposit and received the memorandum of its payment. Notice should, moreover, be given by the Crown agent that, in the event of two or more individuals being desirous of occupying unsurveyed land on these terms in the same township or district, the Government can only guarantee to them their respective quantities in the order in which they have lodged their applications; but that, in the event of there being a deficiency, their deposit money on the quantities deficient will be returned to them.

17. This arrangement, it may be presumed, would only be made use of by persons of some capital, who might propose to occupy and improve so much land as would make it an object to them to be sure of a right of pre-emption at the upset price, whenever the regular progress of settlement might overtake them. On the other hand, the majority and poorer kind of settlers, where no regular survey existed, would probably be content to take possession of the land for themselves without any licence at all. This is the class so expressively termed squatters; and we confess we cannot think them a race to be discouraged; for in the more remote parts of the forests of this country, it is impossible for a man to establish a human habitation, and not do more good than harm. In respect then to them, we recommend that, although they

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should not have an established right of pre-emption of the whole of their lands at a fixed price, like those who had taken out a licence, they should have a preference at the general price to the extent of 25 acres, and should not be ejected, even from the remainder, without a fair allowance for their improvements. This, we believe, would be very much in consistency with the existing practice, as we are informed that it is usual either to permit an actual occupant to buy his lot, if he have the means, at the general upset price of the district, or otherwise to give him a consideration for any addition he has conferred on the value of the land.

18. Notwithstanding the general nature of the instruction that the land should be sold at auction, a practice seems to have arisen with respect to land that had once been put up and not bought, of disposing of it at the upset price to settlers who might desire to purchase in the intervals between the public sales. An indulgence of that nature is permitted by the Secretary of of State, in his regulation, dated 15th August 1834, to military and naval officers settling in the colonies, and we think that it is proper in their case; not that we can admit that any one class ought to be more considered than another as to the mere saving of time, but because, from the nature of the allowance made to officers in acquiring land, it is of more importance to them than it can be to any others, that the price should be fixed. It is fair to presume that the motive of extending further the modification was to avoid delay and inconvenience to individuals; but seeing the risk there always is of the abuse of any such discretionary proceedings, and the discontent and complaints which they commonly produce, we think it better to adhere strictly to the system of public competition, which is so much the surest test of purity in the administration of the lands. We are glad, therefore, that, with the exception made by the Secretary of State in behalf of military settlers, the present Governor-in-chief has established an unqualified conformity to the rule on this subject, providing at the same time for the accommodation of settlers by directing that sales should take place once a month, instead of at the longer intervals which had previously been customary.

19. In considering the settlement of a new country, the attention cannot fail soon to be drawn to the endeavours which have been so common to prevent the retention by individuals of large tracts of land without getting them into cultivation. Various attempts have been made with this view in different countries and at different times, but we believe that none of them have been successful. There were several arrêts of the King of France to prevent persons from keeping lands in Canada in a wild state, but they did not preclude the practice. The English Government subsequently sought to attain the same object by imposing certain duties of settlement, and latterly by the establishment of a Court of Escheats, all of which have hitherto been found ineffectual. The project of a tax on wild lands in Lower Canada has also been debated, especially by the House of Assembly in the year 1834, but none has hitherto been established.

20. In the United States there are, if we are correctly informed, neither settlement duties, nor any tax imposed for the purpose of forcing people to cultivate their lands, but every one is free to hold as much as he chooses, and as long as he chooses. Wild lands are, however, subject to assessment, not because they are unproductive or uncultivated, but for the reason that they constitute property, and that all property, be its nature what it may, is equally considered to be rateable and taxable.

21. In Upper Canada, too, uncultivated lands are by a Provincial Act (59 Geo. 3, c. 7,) rateable like other property for local purposes. Each acre of cultivated land is assessed at 20 *s.*, and each acre of wild land at 4 *s.*, without further reference to its marketable value; and the magistrates at quarter sessions have the power of ordering rates to be levied not exceeding in any year one penny in the pound on such valuation. Under this law, therefore, the utmost tax that can be levied on 1,000 acres of wild land will be 200 pence, or 16 *s.* 8 *d.* per annum. Notwithstanding the moderate amount of this tax, land is, we understand, frequently taken in execution for the nonpayment of it; but whether it operates as a check to any extent on the spirit of speculation in wild lands is very doubtful.

22. In

22. In Lower Canada there are not as yet assessments for local purposes; should they ever be established, and the lands be rated for such objects as the maintenance of roads, schools, &c., we think it would be right that wild lands owned by individuals should be included amongst the rest; but we cannot help doubting the expediency of subjecting them to a tax solely because they are uncultivated; and where they have been purchased unconditionally and *bonâ fide* paid for, we think it would be unjust. In cases where lands have been granted on conditions of settlement duties, and that those duties have not been performed, the substitution of a tax in their stead would not perhaps be objectionable in principle, but it would be found difficult in practice, and would create an invidious distinction, without being sufficiently extensive to produce any important advantage. The measure under the consideration of the Assembly in 1834, was for a general tax on land, as in Upper Canada, whether cultivated or uncultivated. We think that the subject is essentially one for the treatment of the Local Legislature; and in the meanwhile we would merely observe, that, as will more fully appear when we come to speak of the Court of Escheats, the danger against which all these remedies have been directed, does not appear to us so great as has been so generally assumed in the formation of new settlements.

23. With a view to ascertain the extent to which the acquisition of great tracts of wild lands by individuals had been carried, we obtained the Return in the Appendix No. 3; but it is very defective, owing to the practice which existed up to 1826 of making grants from the Crown to bodies of fictitious persons. The lands were assigned to one man, as a leader, with a number of nominal associates, who only lent or sold their names to the principal, without any real intention of settling, in order that he might be enabled to acquire more land. We need scarcely say that the mere difficulty of procuring a correct statistical return is one of the least of the evils which so pernicious a practice was calculated to produce.

24. From the subject of wild lands, we now propose to pass to that of the domain of the Crown; and we would premise, that the distinction between the two appears to have been uniformly maintained. They have always been under separate management, and the revenues derived from them been considered to belong to distinct funds; but although it is not unnatural that two such different offices as those of settling the wild lands, and of managing the Crown property in the most anciently occupied parts of the country should have fallen into different hands, we confess we do not see therein a sufficient reason for the distinction that was made in the destination and appropriation of the funds arising from the two sources, both being equally, in our opinion, parts of the territorial revenue, as we have already stated in par. 9. Whatever practice be observed with regard to one of them in point of finance, ought, we think, to be extended to the other.

25. The domain of the Crown, in the sense in which the term at present is received in Canada, applies only to property in which the Crown has seigneurial estate, consisting almost entirely of reservations of rights upon land or of revenues growing out of it. They consist of the *Droit de Quint*, being the fine of one-fifth the value, payable to the Crown on every alienation of lands held under it *à titre de fief*; of the *Droit de Lods et Ventes*, a fine of one-twelfth, payable in a similar way on every alienation of lands held under the Crown *à titre de cens*; and of the rents which have been reserved to the Crown on certain grants below high-water mark on the River St. Lawrence. Comprised in the same department, also, are the forges of St. Maurice, which are at present under lease for a term of ten years from March 1834, at 500 *l.* currency per annum, and the tract of country styled the King's Posts, which is under lease for twenty years from July 1822, at the annual rent of 1,200 *l.* currency.

26. On the revenue arising from lots below high-water mark on the St. Lawrence, we have to observe, that nearly all the wharfs and quays in the town of Quebec, and some in that of Three Rivers, are constructed on ground thus conceded by the Crown, and there would be little difficulty, we believe, in proving that these grants have in many cases been made on terms much less favourable to the Crown than might have been obtained. A remarkable instance of the kind attracted the notice of the present Governor soon after his arrival in the Province, where a lot subsequently ascertained to be worth

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1,293 *l.* was on the point of being parted with for 764 *l.* Whilst all existing bargains of this nature must of course be maintained, we conceive that in future, except where proprietors of the neighbouring lands may claim a reasonable indulgence on the principle conceded in Mr. Stanley's Despatch of the 10th September 1833 (*see* Appendix No. 9), the full value of such lots may with propriety be required in as great a degree as when any other property of the Crown is parted with for the convenience of the public. It will be seen by a letter, dated 4th July 1833 (Appendix No. 9), from Mr. Ryland, who held for many years the office of Civil Secretary in the Province, that there is in the neighbourhood of Quebec an extensive tract of the shore or beach of the St. Lawrence, over which the riparian proprietors have no equitable right; and in looking into the case we have just alluded to, we have not found that the circumstances under which the parties applying for the water lot had acquired the adjoining strip of land were such as to constitute a claim for indulgence, on the principle laid down by Mr. Stanley. Of the indulgence to be so granted to the riparian proprietor, we do not see who can be the judges except the Governor and his Executive Council, subject, of course, to the approval of the Secretary of State.

27. The Inspector of the King's Domain was not until very lately charged with the duty of collecting these rents, but every holder of a water lot was left to make his payment to the Receiver-general entirely at his own discretion; and it is not surprising that under such a system great numbers of them were found in arrears, as will be seen to be the case by a Return which we annex (Appendix No. 2). By an instruction, dated 17th February 1836, the present Governor has charged the Inspector-general of the King's domain, as above intimated, with this duty, and it is therefore to be hoped that more regularity will prevail in future.

28. The greater part of the property held *en roture* under the Crown is situated in the towns of Quebec and Three Rivers, and the proprietors are consequently under the same liability to the payment of *lods et ventes* to the Crown that the inhabitants of Montreal are to the priests of the seminary of St. Sulpice. By regulations established since the year 1826, certain facilities have been afforded to the censitaires or tenants of the Crown in Quebec and Three Rivers for the conversion of the tenure of their lands into that of free and common soccage, but the terms are not so favourable as those which have been proposed for Montreal by the seminary of St. Sulpice. According to the former, the commutations take place upon payment of 10 per cent. on the value of the property; according to the other, no more than five per cent. would be required under similar circumstances. In the event of any arrangement being concluded between the seigneurs and censitaires of Montreal, such as we have recommended in our Report of the 24th of October on that subject, we think it will be only right that the inhabitants of Quebec and Three Rivers should be allowed equal facilities of enfranchising their lands. In the meanwhile, however, we must point out the great amount of arrears which appear to have accrued in this branch of revenue, forming no less a sum, according to a Return we have placed in the Appendix No. 1, than 31,000 *l.*; and notwithstanding the opinion we entertain, that whenever the great object of extinguishing feudal dues can be extensively furthered by a sacrifice of revenue on the part of the Crown, such sacrifice ought to be made, we do not see any reason for it when no object of such general utility is to be promoted. Without attempting to lay down any specific proposition on the rules to be observed in the collection of those arrears, or of the accruing revenue under the same head, we must observe, that it is a subject well worthy the attention of the Executive Government, and one on which by possibility it might be necessary to apply for the aid of the Provincial Legislature.

29. We now proceed to state our view on the departments concerned in the management of the wild lands and Crown property in this Province.

30. A distinct officer is entrusted with the collection of the revenues of the King's domain, bearing the titles of "Inspector-general of the King's Domain," and "Clerk of the Land Roll." The question has naturally occurred to us, whether his department ought not to be comprehended in, or at any rate made subordinate to, that of the Commissioner of Crown Lands, and we have come to

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to the conclusion that such an arrangement would be advantageous. We would not press this as a matter of immediate necessity, but whenever a new appointment to the situation may be required, or a favourable opportunity may otherwise present itself, we think the general superintendence of the King's domain and of the wild lands should be entrusted to the same person; by which means not only a wholesome subordination will be established conducive to uniformity and despatch, but also some saving in respect to salary may be effected. The present emoluments of the Inspector-general of the King's Domain appear, by a statement in the Appendix No. 7, to be about 325 *l.* sterling per annum; and even though it might be requisite to appoint a clerk expressly to this duty under the Crown Commissioner, his salary need not exceed that of an ordinary clerk of the first class.

31. We also feel it necessary to notice the office of Surveyor-general: The duties and responsibility of this officer were materially reduced by the appointment, in 1826, of a Crown Commissioner. The Surveyor-general is no longer charged with any serious responsibility, nor has he ever had the conduct intrusted to him of any extensive scientific operations. His principal duties at present are, to give directions for such surveys as may be required of him by the Crown Commissioner, to furnish technical descriptions of all lots of land intended to be granted by patent, and to keep a record of the same, in which duty he may be said to act in some degree as a check on the Crown Commissioner. The surveys are, however, executed, not by his immediate officers, for he has none (except two clerks), but by country surveyors, who are paid by the job or by the day; and as the check is instituted only for the purpose of securing accuracy in the technical descriptions of the lands granted, and in the registering of them, and not on any part of the money transactions of the Crown Commissioner, we do not see but that it might be rendered equally, or even more, efficient though the Surveyor-general were placed in subordination to him. Should any extensive surveys ever be undertaken by the Province, similar to the surveys in Great Britain and Ireland, which are in course of execution under the Board of Ordnance, an officer of a higher rank would be required for the performance of them; but whilst his duties are limited as at present, there appears no reason on the score of rank why the Surveyor of Crown lands should not be subject to the authority of the Crown Commissioner. As this change, however, is one of detail, we would only recommend, as we have done in the case of the Inspector of the King's domain, that it should be carried into effect when a convenient opportunity for so doing may present itself.

32. The patents conferring titles to land still pass through a great number of offices, and are subject to what we must consider needless forms; but we are released from the necessity of saying much on this subject, as a proposition has already been submitted to your Lordship by the Governor-in-chief in a despatch, dated 28th July 1836, in which it is our duty to state that we entirely concur. Should the Governor's recommendations be adopted, the office of Auditor of Land Patents will be abolished, and the formality of having the patent nominally drawn up by the Attorney-general be dispensed with; and should moreover the Surveyor-general's department be placed under that of the Crown Commissioner, as we have already expressed our opinion that it ought to be, the whole business of passing a patent will be confined to the Crown Commissioner and the Provincial Secretary, acting of course subject to the controlling power of the Governor, who, in the event of any complaint of unnecessary delay, will be in a position to ascertain the truth of the charge, and apply a proper remedy. Before quitting this subject, it is no more than just to repeat the observation contained in the Governor's despatch above cited, that in the parts of the United States where there are lands to be disposed of, as in Michigan, Illinois, Missouri, Mississippi, the delay in obtaining a patent is much greater than in this province, a notification being generally made at public sales that purchasers will not receive their titles for two years. This is rendered necessary by the great pressure of business in the land department of the United States.

33. With respect to fees, the Schedule which we annex (Appendix No. 8), will show that they are scarcely to be considered exorbitant, being, on an ordinary grant of 100 acres of land, only 2*l.* 7*s.*, and on one of 1,000 acres, only

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3 *l.* 3 *s.* 7 ½ *d.*; and by the alterations proposed by the Governor, these sums will eventually be reduced respectively to 1 *l.* 10 *s.* and 1 *l.* 19 *s.* Unless fees are to be abolished altogether, we do not see how they can reasonably be reduced much lower; and when we consider the difficulties which have so long existed in obtaining payment of the salaries of public officers, we cannot undertake to recommend that any of the few who now derive a remuneration, in whole or in part, for their services in fees, should be placed on another footing.

34. With respect to the Court of Escheats, we do not think that the grounds, origin and nature of the institution could be more perspicuously set forth than in the Report we have obtained from the gentleman who presides over it, Mr. Cochran (Appendix No. 14), to which Report, accordingly, we beg leave to refer your Lordship. We cannot, however, agree in the result to which it would lead, namely, that the court ought to be maintained and put into active practice.

35. In the first place, we are inclined to think that the evil against which principally the existence of the court is directed has been much exaggerated. The word "monopoly" especially appears to us misapplied. There may exist a good deal of speculation, but there can be no monopoly of wild land in Lower Canada, even if we speak only of land in reasonably favourable situations. The article is too abundant, and capital too scarce, to admit of monopoly; and as to speculation alone, we confess that we do not see that any very great evils have resulted, or can result from it. It is impossible to deny that grants of land were formerly very improvidently made, or that the feelings of dissatisfaction which were excited by a system of favouritism exist to this day; or, lastly, that as far as the marketable value is concerned of the lands so given away, the Province has been a loser; but when we have said this, we believe we have summed up the amount of the evil. There are many, we believe, of the present holders of wild land, who would be glad to sell at the same price that land is sold by the Government, if they could find purchasers. When, moreover, we find it remarked in the able Report we have under consideration, that such a court as exists here is not equally wanted in the United States or Upper Canada, where the soil and climate are better, and capital is more plentiful, we cannot help drawing the obvious inference that it is the inferior soil and climate, and the want of capital, and not any monopoly of lands, which is the impediment to cultivation in Lower Canada; and inasmuch as no revesting of land in the Crown will supply climate, soil or capital, we are not inclined to think that a Court of Escheats ever has promoted cultivation or ever will. The fact must be stated that, in Lower Canada, physical circumstances afford a much plainer reason for the slow advancement of cultivation, than any perverse disposition of individuals to accumulate property without rendering it productive.

36. We are far, however, from meaning to say that no case exists in which it is desirable that there should be means of making the owner of waste lands come forward. Grants in former times were thought so lightly of that they were taken, in some instances, by persons who left the country and cared no more about them; and under the vicious system of paying by instalments, as we have already mentioned, purchases have sometimes been made, and one instalment paid for the sake of cutting the timber, and then nothing more been thought of the land. In this way there may be a good deal of land derelict, or of which the owner is not known. It is true that by the reservations in the patents public roads may be made over any lands without the leave of the owner, but this is far from removing all the evils of land being left without a master and in a state of wilderness; and where it is left to any considerable extent, we can readily believe it to be desirable that a remedy should be attainable.

37. The powers, however, conferred on the Court of Escheats are far more extensive than would be requisite for this purpose alone. The case merely of lands left derelict, and obstructing settlement or public improvement, might easily be met by a provincial enactment, should the Legislature think it expedient, providing that, after due notice and citations had been published, and no claimant had appeared within a reasonable time, to be named in the Act,

the lands should be vested in the Crown. Seeing the long course of years during which the Government has acquiesced in an almost universal neglect of the duties of settlement, and the number and extent of the possessions which would be affected now by an enforcement of forfeitures for breach of the dormant conditions, it can hardly be questioned that any indiscriminate measure of that kind, to act retrospectively, would be most harsh; and, we may add, it would be unjust if the proprietors of soccage lands only were proceeded against, while the holders of wild lands in the seigneuries were allowed to escape, in consequence of the old laws respecting duties of settlement in them having been allowed to fall into desuetude. But if a choice be allowed of the cases for prosecution, we do not hesitate to say that the powers conferred upon the Court of Escheats are greater than any Government ought to possess, or venture to accept. With the mere exception of the sales made within the last few years, all the soccage lands in Canada have been granted on condition by the Crown; and there is hardly a landowner in the townships against whom the Attorney-general might not file an information, and by a notice in the Gazette call upon him to prove before an inquest of office, that the conditions of the original grant of his estate have been performed, without provision for costs if the Attorney-general should fail, and without any limitation of time within which the information is to be filed. And although the Executive, with a proper sense of the utter unfitness of such a discretion as this, might attempt to lay down the semblance of a rule by declaring, as has been proposed, that proceedings should only take place when public inconvenience was occasioned by the lands not being improved, we think it will be apparent how indefinite and arbitrary must be the application of such a principle in practice. In the case of water and beach lots, granted upon condition, or lots upon which reserved rents were charged, yet stronger objections might be urged; but we do not state them because we cannot adopt the opinion that the Court of Escheats was intended to have jurisdiction in respect to grants of that nature. Such being the reasons which seem to us to exist against the use of the Court of Escheats, as regards the past, we will not deny that, with a very precise limitation of the time within which it should be put in force against property, and a steady and general application of it to all cases of default equally, such an institution might be useful for the future, if the system of granting lands upon condition were still to be continued. It might be wanted under that method, as a sort of supplementary arrangement to keep parties to their engagements. But since the mode of disposing of land by sale has been established, and since we cannot think that conditions could with any fitness or advantage be attached to titles to be acquired in that manner, there is no room for deriving the prospective benefit we have mentioned from the Court of Escheats.

38. We come to the conclusion, therefore, that it ought not to be put into activity, and that there would be no objection to revoking the enactments by which its creation was authorized, although, as they are merely permissive, there is not any reason for doing so, unless the repeal of the statute in which they are embodied (the Tenures' Act, 6 Geo. 4, c. 59,) should hereafter be thought proper on other grounds. In recommending that the institution should not be rendered effective, we cannot but regret the hardship with which the conclusion is likely to press upon the present Commissioner, Mr. Cochran. This gentleman, after having held for some years the office of Civil Secretary, the most laborious and one of the most important in the Province, was placed in the Executive Council, and received various offices, from which, collectively, he derived an income of a little more than 1,000 *l.* per annum. One by one, in the progress of the reforms recently introduced, these situations seem on the point of being taken away from him, without the shadow of an imputation on his integrity or ability, but merely by the nature of the places he happened to occupy. In making a recommendation, therefore, which is calculated to strip him of his last employment of much emolument, we feel bound to render this testimony to the merits of the individual, and to remark that, to any consideration due to him for past services, we conceive that the Report we have annexed from him proves that he adds the further claim of eminent capacity for public business.

39. We have not failed to turn our attention to the question suggested to us by your Lordship, whether it would be expedient to form a Board for the

 management

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management of the whole of the Crown property, somewhat on the model of that of the Commissioners of Woods and Forests in England; but we confess that, in the discharge of this very important function, we think more is to be gained by concentrating than by dividing responsibility, and that there are many reasons why an imitation of the system in England would not be successful in this Province.

40. It now remains only for us to speak of the Land Company, and in doing so we are happy to be able to express an opinion, founded on actual observation, that it is effecting much good in the country. When we lately visited the scene of its operations, we found that upwards of 200 families during the present summer had been located in one direction; and this number will probably be much increased before the close of the season. The total number of persons settling in the townships will, it is expected, in this year, exceed 5,000, which is a very much greater number than in any preceding year. The Company have adopted the very judicious plan of providing employment for all settlers willing to work. They assist each settler to clear his land, and build for him, if he choose, a log house on it at a fixed charge; and they also provide, and will continue to do so through the winter, all necessary supplies at a reasonable cost. These are the advantages that we had in view when we said, in paragraph 15, that the Land Company would probably continue for a considerable time to attract all settlers of the poorer class, as it offered facilities to them which the Goverment could not; by which, of course, we meant facilities or advantages that it would not be prudent or proper for the Government to offer. If any of its officers were to be entrusted with such discretionary powers, it would be scarcely possible to provide against the abuse, or at any rate against the reputation of the abuse of them. And here, in reference to the objection which has been urged against the creation of a Land Company, that it delegates to private individuals some of the functions which ought to be exercised by Government, we must observe that it does not, in our opinion, delegate to others those functions which can, but only those which cannot, be advantageously exercised by the Government.

41. With respect to another objection urged against the institution of Land Companies, viz., that they tend to draw out of the country, in the shape of profits, wealth that ought to remain in it, we think it enough to remark, without stopping to seek a reply from more general principles, that if the members of such companies carry away their profits, it will only be because they have previously brought in their capital, and that the latter operation, or the introduction of the money, is positive and immediate, whereas the other is more remote, and necessarily much less extensive than the first. If the effect of the Company were such as to prevent, or even to check the introduction of any other capital than its own, there would, we allow, be some force in the objection; but we are thoroughly convinced that the contrary is the case, and that not only is there no reason to suppose that the shareholders will for a long time to come derive greater profits from their investments than what ordinary capitalists may reasonably look for in this country, but also that other capital will be attracted to and fixed in this country in greater quantities, and at a much more rapid rate than would be the case if no Company existed.

42. Whilst we feel ourselves thus bound to express our opinion of the manner in which the Company appears to us to act beneficially for the Province, and we believe for all interests in it, we must not conceal from ourselves, nor from your Lordship, that there are some points in which it may not altogether be free from grounds of apprehension as to its ulterior effect. There does not appear to be, either in the Charter or in the Act of Parliament by which the Charter was confirmed, any limit introduced as to the duration of its privileges, or any precaution against the retention by it for an immoderate period of large tracts of country. These seem to us to be in themselves defects. But whatever inconveniences might possibly arise from them, they are unquestionably very remote, and could not accrue till far beyond any times for which great solicitude need now be felt.

43. Besides the existing Company, we have been called upon by your Lordship to report our views on the propriety of creating any additional companies of the same nature in Lower Canada, or on the limits to which the Imperial Government

Government should confine itself in any such exercise of its authority. We have little hesitation in saying that we think one Company of this nature sufficient for the Province, especially as it appears to be essential that the Government should retain sufficient land in its own hands to prevent the possibility of the Company's ever obtaining a real monopoly. So long as the Government has land at its disposal, it can always, by throwing a greater or less portion of it into the market, prevent the exaction by the Company of an exorbitant price for what they hold; but this power can exist only so long as the Government has land under its own control; nor would the competition of different bodies answer the same purpose, as they might, and most probably would, combine; and for these reasons, though we have expressed our concurrence in the arrangement that sales of wild land should be made more frequently than hitherto by the Government, we by no means intend to recommend that larger quantities of it should be sold; on the contrary, we think that the quantity brought to market should be regulated by the demand, meaning thereby the demand for purposes, not of speculation but of actual settlement; and also that sales should be diminished in the event of the Land Company's continuing to be itself the principal purchaser, as it appears to have been on late occasions.

44. We see no objection to the pecuniary terms of the agreement with the Company. The general nature of the bargain was that they should pay 3 *s.* 6 *d.* an acre for all reserved lands of the Crown, or, in other words, for all lands which, though uncultivated, were in the neighbourhood of and interspersed with improved lands, and 3 *s.* per acre for the tract or block of land that was altogether unimproved, and theretofore inaccessible; and on this basis (an allowance being made for barren lands and land covered with water to the extent of 96,000 acres), the whole sum to be paid by the Company was fixed at 120,000 *l.* It was also part of the agreement that half this amount, or 60,000 *l.*, should be expended by the Company, under the direction or with the approval of the Government, in making roads and other improvements, either on the lands sold or in the neighbourhood of them. With respect to this last condition, it may not be superfluous to remark that, although, as far as regarded the settlement of the country, it was without doubt one of the most advantageous parts of the transaction, and in every point of view deserving of approbation, we think it must be deemed an appropriation of so much of the proceeds of wild lands; so that if at any future time the application of those land revenues should be conceded to the Assembly, it would not be competent to the Government to enter into any new agreements of the same nature without the consent of the Legislature. The case might be different in England, where we believe that it is customary to apply, at the discretion of the Commissioners of Woods and Forests, some portion of the rents derived from Crown lands to purposes of improvement, and only to bring the proceeds to account after the amount of such outlays has been deducted; but, as we have already said, we cannot venture to recommend, amidst the jealousies and discontents of this Province, that the practice of the English department of Woods and Forests should be taken as a model for Lower Canada. The whole of our observations, however, on this part of the agreement, which we entirely approve in the existing instance, would only apply to the contingent case of another Company being created, and of the Crown revenues having been previously given up.

45. Your Lordship will find in our Appendix some Returns connected with the management of the Crown property, to which we only think it necessary to refer by naming them.

1. Arrears of Revenue in the King's Domain.
2. Arrears of Revenue arising from Water Lots.
3 (*a*, *b* and *c*). Return of all Grants and Sales since the Conquest, exceeding 5,000 acres; and of all Grants of Townships, half or quarter Townships, to Leaders of Associates.
4. Memorandum of Amount of Conceded and Unconceded Lands in the Seigneuries.
5. Return of Surveyed Crown Lands.
6. Return of Unsurveyed Crown Lands.
7. Emoluments of the Inspector of the King's Domain.

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8. Schedule of Fees on Land Patents under the existing Tariff, and under one proposed by the present Governor.

9 (*a*, *b* and *c*). Despatches and Letters on the Management of Water Lots.

10. All Sales of Crown Lands in the Years 1834, 1835 and 1836, up to the present Month.

11. All Sales of Clergy Reserves for the same period as above.

12. Abstract of the Land Accounts of the Commissioner of Crown Lands from 1832 to the latest date to which they can be completed.

13. Abstract of the Timber Accounts of the Commissioner of Crown Lands from 1832 to the latest date to which they can be completed.

14 (*a* and *b*). Reports on the Court of Escheats by the Commissioner of the Court, and by the Attorney-general.

15. Regulations for the Sale of Lands.

IV.—TENURES OF LAND.

IV. Tenures of Land.

1. In reference to the 49th and following paragraphs of our instructions, we now turn to the subject of tenures of land. We have already submitted a special report on the important questions connected with the seigneurial rights over the city and island of Montreal, and we shall notice separately, under the head of Registry Offices, several laws and customs much complained of by the commercial class, which, though long associated with the French institutions of Lower Canada, are not necessarily a part of them. On the present occasion we have, in the first instance, to offer a few remarks, in obedience to your Lordship's commands, on the comparative effects of the feudal tenure, and that in free and common soccage; we shall then advert to the complaints which have been made of the Imperial Statutes passed with a view to facilitate the commutation of tenure; and shall conclude by expressing our own opinions on the best means of contributing to that end.

2. There is little difficulty in perceiving a marked difference between the people who live on the lands held under the two prevailing tenures of this Province, but it is not so easy to determine how much of this is attributable to their law of property, and how much to other circumstances. Much, for instance, of what is observable in the French Canadians, who are the principal occupants of the seigneurial lands, must be ascribed to the stock from which they are sprung, to the spirit of their religion, and the extent to which they are devoted to it, and much also to the political circumstances in which they have been placed upon this Continent. On the other hand, many of the peculiarities which characterize the English and Anglo-American settlers are to be accounted for by difference of race and other causes distinct from mere law. If the seigneurial population be frequently too dense, crowded, if we may use the expression, in the midst of almost unbounded space, the chief reason is probably to be found in the customs of the people attaching them to their usual residence, and binding them by many links of social and religious interest to remain with the same community in which they are brought up. And when the settlers of the other class spread themselves to great distances, and are content often to form solitary establishments in the heart of the forest, it is not assuredly the nature of a tenure, but the restlessness of their race, their solicitude to acquire, and comparative indifference to society, which prompt them to make efforts so opposite to the habits we have just before described.

3. With respect to the incidents of the two tenures, we will make a few summary observations. The modes of conveyance under the French customs are simple, expeditious and cheap, and if they were open to objection on the score of secrecy, that objection is removed in the townships by the establishment of a system of registry under the Provincial Act 10 & 11 Geo. 4, c. 8. We may also state, that the French rules of descent are much preferred to the law of primogeniture by the people of all origins on this Continent. By a Provincial Act passed in 1829 (9 Geo. 4, c. 77), to remedy in part what were stated to be the evils of the Tenures' Act, it was enacted, that conveyances of soccage lands might be made either according to the law of England or by notarial act, according to the laws of the Province; and thus whatever advantage there may

may have been under the former system in this matter is preserved to the inhabitants of the townships. But with respect to descent, the same Statute merely provided retrospectively, that where a proprietor of soccage lands had died without partitioning his land by will or otherwise, it should be inherited according to the old laws of the country; so that, in the absence of any such enactment respecting the future, we presume that the law of England must prevail, as was directed by the Tenures' Act, and that the rule of primogeniture ought to be in use. It is, however, we are informed, repudiated by the inhabitants of the townships, principally, as we are inclined to think, from an attachment to the other custom of having a division made amongst the family, though possibly in part also from a want of sufficient knowledge of what the law really is. We need scarcely say how desirable we think it that the present contradiction between the desires, and even the practice, of the people, on the one hand, and the law, on the other, should be terminated, and that the rules for the succession of their property should be adapted to their wishes. Whilst, however, we look thus favourably on the application of the French methods of conveyance and descent to the tenure in free and common soccage, we would anxiously exclude their law of hypothecation from that class of lands. By the 3d and 4th sections of the Provincial Act above cited, it is provided, that all mortgages and hypothèques previously created on soccage lands, according to the laws of the Province, should be valid, and that all such mortgages and hypothèques should be valid in future, provided the lands subjected to the claims be specially set forth in the instrument creating them. So far as deeds are necessary to the making of mortgages, their specialty and publicity are secured in the townships by this enactment taken in conjunction with the Registry Acts; but according to the French law many hypothèques can be formed without any deed at all, and we fear that it is susceptible of doubt whether, under the clauses we have just quoted, the latter class of mortgages may not still extend to lands holden in free and common soccage. The nature of these mortgages and their inconveniences will more fully appear in our Report on Registry Offices. In the meanwhile we will merely throw out the remark, that it might be beneficial, were it only to quiet doubts on the subject, expressly to exclude by provincial enactment such claims from taking effect on lands in free and common soccage, unless created by deed, and thus subjected to the salutary regulations which have been provided respecting incumbrances imposed by that method in the townships.

4. The feudal tenure, as it was first introduced into Canada, appears to us to have been in some particulars well adapted to the settlement of a new country, and its advantages for that purpose were strongly insisted on by many persons of weight and consideration in the Province, who appeared before a Committee of Assembly on the subject of wild lands in the year 1820. The seigneurial system offered the poor settler easy terms for the acquisition of a permanent interest in the soil, and at the same time operated by other circumstances (independently of the character of the people, which had the same tendency,) to prevent the early dispersion, which is an evil usually to be apprehended from too great a facility in obtaining lands; it also imposed on the seigneur certain important duties towards his censitaires, and in that manner conferred on the latter advantages (at some probable expense, we must admit, to their self-reliance) which no settlers in the English Colonies ever enjoyed. But the time has passed when these would be felt as benefits; the same circumstances that may originally have been useful to prevent dispersion, can now only serve to increase too great a concentration of the people; the duties imposed on the seigneurs necessarily carried with them correlative privileges, which must daily become more unsuited to the condition into which the Province is advancing; and the advantage of the low ground-rent is in our mind outweighed by the heavy fines on alienation. We are aware that if an individual have not occasion to part with his property he may suppose himself a pure gainer by the small rent, and believe that he escapes the operation of the check upon transfers of estate, but in reality he must suffer by the prevalence of the impediment all around him. The uses of an easy relinquishment of land by those who find themselves unable to cultivate it advantageously, and of its easy acquisition by those who are better prepared to carry on the undertaking, in short, the uses of a free circulation of property in land as well as in anything else, are too important to be sacrificed

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without the inconvenience being general. Improvements will languish and difficulties will accumulate in neighbourhoods where all are placed under a strong discouragement to sell their land at moments when prudence would otherwise dictate it; and although the pressure of the tax may not fall distinctly on each, the effect on the community will be too great to allow of gain to the individual.

5. We believe, however, that the injurious tendency of heavy fines on the transfer of property, as well as of other obstacles to its free transmission, are beginning to be generally acknowledged, and that in reality there is less difference on this point than might at first sight appear, so that if the evils of the feudal tenure had not unfortunately been seized as topics for political declamation, and thrown into the general mass of subjects of party contest, they would probably receive an early remedy by common consent. In the views now expressed by leading Canadians of French origin, there is no desire whatever to perpetuate the onerous parts of the tenure, and the people have been moved in some cases to represent the inconvenience. In a petition addressed to the House of Assembly in 1834, from the seigneury of Lotbinière, it was prayed that thenceforward *lods et ventes* should only form a mortgage on the land next after any mortgages which might exist at the time when they fell due; we have seen notice of meetings in the country this year, at which the *lods et ventes* have been more decidedly condemned; and some of the public prints, supposed to be more particularly connected with French Canadian interests, have recently dwelt upon the inconveniences of the burthens as they now exist. A Committee of Assembly, also, in 1834, in a Report to which we shall advert more particularly hereafter, exhibited a feeling very favourable to the extinction, on reasonable terms, of the burthens of the seigneurial tenure.

6. Having been led to this brief statement of the disposition which appears to exist on the subject, we shall proceed without further delay to consider the objections that are made to the British enactments passed with a view of facilitating commutations.

7. The first provision on the subject consisted of two clauses of the Canada Trade Act (3 Geo. 4, c. 119, s. 31 & 32), by which His Majesty was empowered to agree with all seigneurs for the commutation of their dues to the Crown, and also to commute with such censitaires as held immediately of the Crown, and to regrant both to one class and the other their lands in free and common soccage. It was soon perceived to be a capital defect in this arrangement, that while it provided a means for the release of all seigneurs from their feudal obligations to the Sovereign, no censitaires had the benefit of the law except the few who held immediately of the Crown. The 6 Geo. 4, c. 59, commonly called the Tenures' Act, was then passed, by which it was enacted, that when a seigneur had commuted with the Crown, his censitaires should in like manner be entitled to demand from him a commutation on terms to be assessed, if necessary, by arbitrators, and that all the lands thus released from feudal burthens should be converted into free and common soccage; and in order to remove doubts which were recited to exist as to the incidents of that tenure in Lower Canada, it was declared that they should be the same as of the like tenure in England. This last clause, however, we may remark, appears to be so expressed as to have only a prospective effect. There were some other enactments comprised in the same Statute on miscellaneous matters, but the foregoing are as many as related to tenures.

8. On the two laws we have above described, complaints have been made on the following grounds:

1st. That the subject of tenures is one of internal arrangement, in which the Imperial Parliament ought not to interfere, and on which it could not possess sufficient knowledge to legislate without falling into error.

2dly. That the Act of 1825, in a part of it purporting to be declaratory, established a law different from what had prevailed in practice, and unsettled various rights of property.

3dly. That it was far too favourable to the seigneur, whilst it did very little for the censitaire, as the latter could not under it demand a commutation of tenure, except in cases where his seigneur had previously commuted with the Crown; also, that it went to deprive the censitaire of a right which he formerly possessed to claim any unconceded lands in a seigneury on the same terms as those on which lands had previously been conceded; and further, that

that in cases where the seigneury was held in mortmain, it afforded no hope to the censitaire of ever being able to obtain a commutation, for a surrender of the estate into the hands of the Crown being a necessary preliminary to its being regranted in free and common soccage, and the seigneurs holding in mortmain being precluded from making such a surrender by their inability to alienate, they could never take advantage of the Act.

9. With respect to the first objection, we think there is reason for it, and that the interference of the Imperial Parliament in matters of this nature ought if possible to be avoided. As an example of the inconvenience which it is liable to create, we may state that, most probably from an insufficiency of local knowledge in the framers of the measure, it has been found lawful to commute for the unconceded parts only of seigneuries in two cases out of three that have occurred under the Tenures' Act. This circumstance was alluded to in the 57th Resolution of the House of Assembly in 1834, and the explanation of it is, that in those cases the parts for which commutations were obtained were held, not under the original grant, but under distinct titles, as augmentations to the seigneuries first granted; and it is remarkable that these very tracts which now are discharged from all settlement duties, seigneurial or otherwise, would have been subject to forfeiture under the French law for having no settlers on them. The seigneury of Beauharnois, belonging to the Right Hon. E. Ellice, is the only one in Canada on which the subtenants or censitaires have as yet acquired the right to enfranchise their own land under the clause which was introduced for their benefit into the Act of 6 Geo. 4, c. 59.

10. The second objection was also, in our opinion, well founded. The words of the 9th clause of the Tenures' Act, which is the one commonly, though not quite accurately, called declaratory, would lead to the supposition that it was intended to be prospective only; but it makes no reservation of many existing rights of a hypothecary character which must have been liable to be affected by the passing of this enactment, and questions arose whether the mortgages of the French civil law, conveyances according to the French forms, and inheritances which had taken place by their rule of partition, were valid. We conceive, too, that the unqualified introduction of the English law of real property was at any rate not suited to the circumstances or to the wishes of any class of the people. The Provincial Act, 9 Geo. 4, c. 77, was passed to remedy these inconveniences, but not, we regret to say, effectually, as we have already had occasion, in par. 3, to state the confusion that continues to prevail on many points, as well as to mention the nature of some of the further provisions that would appear to us expedient. Doubts, moreover, have existed whether this Provincial Act is not invalidated by the Royal Assent having been given to it after the period fixed by the Constitutional Act. The question will be found very well stated in the Evidence appended to this Report (Evidence on Tenures, Solicitor-general). We believe that the validity of the Act has been recognized in the Court of King's Bench at Montreal, but nevertheless as there is much room for difference of opinion, and as the subject is of great importance, it would perhaps be convenient to set it at rest by legislative authority. This, however, must be a question for the discretion of the Provincial Legislature. There would probably be admitted to be an incongruity in an Imperial Statute to declare what was or was not law by provincial enactment; while, on the other hand, a local Act, purporting to decide that a former one passed by the same authority was valid, notwithstanding a contravention of the rules prescribed by the Constitutional Act of 1791, would be at the least equally objectionable; but we cannot doubt that these difficulties might be got over, should the Legislature of the Province deem it advisable, by something in the nature of a re-enactment of the Bill of 1829, with such provision as might be considered requisite to secure rights and immunities acquired in the interval; and to such a measure the Royal Assent could be immediately signified, by virtue of the Imperial Act 1 Will. IV, c. 20. The same opportunity might also be taken of introducing the amendments, should they be thought eligible, which we have suggested respecting mortgages and succession.

11. The third objection of the Act having been too favourable to the seigneur, whilst it conferred little or no benefit on the censitaire, is also, we think, founded in fact, though we do not consider it open to the further objection of having deprived the latter of any right of which he could avail himself at the time the British Act was passed. This is a question, however, on which such

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various opinions have been expressed, that we shall describe the state of the case as far as we have been able to ascertain it.

12. The concession of a tract of land "*en seigneurie*" or "*à titre de fief*," under the French system, though it conferred upon the grantee an estate of inheritance, gave him only a very qualified right of property in the soil. The seigneuries were generally of vast extent, frequently containing several hundreds of square miles, and the seigneurs, instead of being the absolute proprietors of them, might be looked upon rather as the agents of the Crown for their settlement; for after any seigneur had selected a domain for himself, he was under the obligation of conceding all the remaining parts of his grant to any of the King's subjects who might demand land of him, on terms which were generally specified in his patent. It is a common supposition in the Province that there was a fixed rate of concession for all the seigneuries in the country, but this is not the case; the rate is not the same in all grants, whilst there are some in which no rate at all is mentioned. All the grants, however, that we have seen impose on the grantee the obligation of conceding his lands "*à titre de redevances*," that is to say, upon the usual seigneurial tenure, without exacting from his subtenant anything in the nature of price or gratuity for the concession, and the Intendant, or Intendant's Court, had the power of stating what those redevances should be in cases where the terms of them were not specially set forth in the grant of the seigneury. Infractions, however, of this general condition appear soon to have occurred, and the practice to have obtained amongst the seigneurs, both of refusing concessions for the purpose of retaining wild lands in their own possession, and of exacting premiums on their grants, or, in fact, of selling the lands. It is against such practices that several arrêts of the King of France were issued, particularly those of the 6th July 1711 and the 15th March 1732, under which the censitaire could, up to the time of the Conquest, obtain a remedy against his seigneur in the Court of the Intendant. There are several judgments of the Intendant or of the Superior Council of Quebec on record in the Province in such matters *, but as after the cession of the Province the office of Intendant ceased to exist, there was no longer any tribunal, except the Court of King's Bench, before which cases of the sort could be carried, and the laws gradually fell into disuse, probably owing to the expensiveness of proceedings in the King's Bench; so that, long before the passing of the Tenures' Act, seigneurs had in general established the practice of asking any price they liked for their concessions, or of refusing them altogether, if they preferred to keep their lands in a state of nature. The last proceedings in the Court of King's Bench of which we have any knowledge took place about eighteen years ago, and will be found described in the Evidence. (Evidence of Solicitor-general.)

13. A feeling of discontent on the subject has been kept alive amongst the seigneurial population, of which examples may be seen in petitions presented to the House of Assembly from various censitaires on the 16th of March 1825, and in 1834 from those of the seigneury of Lotbinière, praying for the re-establishment of the ancient laws of the Province. On the whole, we are not surprised that some dissatisfaction should exist; first, on account of the old laws having fallen into disuse, although that of course is a matter for which the Executive Government cannot be considered to be especially accountable; and, secondly, on account of the favour that was shown to the seigneurs, instead of the censitaires, in the passing of the new laws in 1823 and 1825. It was doubtless with a view to securing the Royal interest in the quint, that commutation between the Crown and the seigneur was made a condition precedent to any relief to the censitaire; but we think that it was nevertheless unnecessary; and the way in which it was calculated to exclude from all benefit the censitaire in seigneuries held in mortmain, was in itself no small objection to

* We have been only able to refer to the original Record in one case, the others having been, as it is said, destroyed by fire. *See*, however, Introduction to second volume of Edits and Ordonnances.
Page XXXIII. Arrêt of 29 May 1713.
— L. Judgment of 28 June 1721.
— LXXV. Judgment of 23 Jan. 1738.
The above three are in favour of censitaires; there are vast numbers of judgments against them under the other arrêt of 6 July 1711, which by the Solicitor-general is said to have been also frequently enforced since the Conquest.

to the enactment in a country where so large a portion of seigneurial property is in the hands of religious communities. That no inconvenience has arisen in this particular respect is, we believe, attributable solely to the fact of the laws having remained to this day almost a dead letter. Only three instances have occurred of commutations under it between seigneurs and the Crown, and no instance whatever of a commutation between a seigneur and his censitaire. The only commutations on the part of censitaires have occurred in the towns of Quebec and Three Rivers, where the lands were held *en roture* from the Crown, without the intervention of a seigneur. The Return in Appendix No. 1, will show all the commutations which have taken place under the British enactments, and the terms on which they have been effected.

14. Having thus concluded a review of the Tenures' Act, we beg to submit our opinion that, in order to make a sufficient provision for the commutation of tenure, the censitaire should be able to commute, even though his seigneur may not have done so. The censitaire, and not the seigneur, is the person who has the principal interest in the land, and the class to which he belongs is by far the most numerous, and, consequently, we may perhaps be permitted to add without offence, the one in whose well-being that of the Province is most inseparably and certainly involved.

15. The present state of the law does not even admit of voluntary commutations between the seigneur and censitaires. We believe that there are few who would not be willing to remove this bar to enfranchising the lands by agreement, and that the only question on which there would be much difference is, whether the censitaire should be empowered to demand the change as a right.

16. In favour of allowing of voluntary commutations, we are happy to be able to refer to a Report of a Committee of the Assembly in 1834. In consequence of a resolution of the House, declaring it to be expedient that further and more effectual provision should be made for the extinction of feudal burthens, a Special Committee was appointed, and brought in its Report on the 1st March 1834, to the following effect:—That the existing restrictions on commutation by private contract between the seigneur and the censitaire should be removed by law, an indemnity being secured to His Majesty for the dues which the Crown would lose by such enfranchisements of land, and that the benefits of the arrangement should be extended to seigneuries held in mortmain.

17. In the recommendation on behalf of the tenants of lands in mortmain, we need scarcely say that we entirely concur; but with respect to the *droit de quint*, or rather to the proposed compensation for the *droit de quint*, in cases of voluntary commutation between seigneurs and censitaires, we would humbly venture to submit that it would be better to give it up. It has already been recommended by the Committee of the House of Commons in 1828, that this right should not be suffered to stand in the way of commutation. A remission of it in cases where the agreement was effected between the seigneur and his tenant would be considered as an act of grace to the seigneurial population; and when the small produce of it is considered, the loss would be of little importance in a financial point of view, either to the Crown or the Province. If the impediment which is presented by the *droit de quint* were thus surmounted, nothing would be more easy than the arrangement of voluntary agreements between seigneurs and censitaires for the discharge of lands from the dues and services of their actual tenure. The diminution which would thus be made in the value of the seigneur's wife's dower would require to be considered; but we cannot suppose that some satisfactory provision on this head could not be introduced into any well-digested measure.

18. Should it further be judged desirable to make the commutation compulsory on the seigneur at the demand of the censitaire, we do not see any great difficulty in the way even of such a course. With reference to the means of securing fairness in the arbitrators, or *experts*, who would in that case be necessary, we would request attention to the answers we received from the Attorney-general and the Solicitor-general to questions put to them on that subject [*see* Evidence]. And if any additional security to the seigneur should be deemed requisite, though we by no means undertake to assert that it would be so, it might, perhaps, be afforded on the principle of the *droit de retrait*, one of the conditions of the feudal tenure, by which, in order to prevent fraudulent mis-statements of the price, a sort of right of pre-emption

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is afforded to the seigneur, whenever lands on his seigneurie pass by sale from one person to another. In the same manner, it might be provided, in cases of commutation, that the seigneur should have the right of taking the land on payment to the censitaire of a sum which should be fixed at a certain number of times the amount of that awarded to him by the *experts;* so that, in setting the system in operation, it would only be necessary that the Legislature should fix how many times the one sum should be a multiple of the other. For instance, supposing that one-tenth of the selling price of the property were assumed by the Legislature after inquiry to be an equitable rate for the fine on commutation, the seigneur might be empowered, if dissatisfied with an arbitration, to purchase the property on payment of a sum of money equal to nine times the amount of the compensation awarded to him. A memorandum wil be found in the Appendix No. 1, in illustration of our meaning, liable of course in any practical measure to be corrected as to its results by the far more various and complete information of the Local Legislature.

19. In the preceding observations we have not taken into consideration the *cens et rentes* or any feudal burthens beyond *lods et ventes.* The *cens et rentes* being a fixed payment, they may either be left as a charge on the property, or the value of them be calculated, so as to redeem them at so many years' purchase; the others are so trifling that the payment of compensation for the *lods et ventes* under the award of arbitrators might reasonably be made to cover them all.

20. There is every reason to hope that, whenever a better understanding may be established between the Local Legislature and the Provincial Government, there will be no objection on the part of the former to pass some measure for the gradual discharge of lands from feudal dues and services, if not in a manner obligatory on the seigneur, at least by voluntary agreement; and whenever such a measure may be passed, we have no hesitation in saying that, in our opinion, the Tenures' Act of 1825, and the clauses in the Trade Act of 1822, which relate to tenures, should be repealed; of course, making it a condition of the repeal that all titles and advantages acquired under either of the Acts, are to be held valid.

21. On the subject of the Court of Escheats which was created by the Tenures' Act, our opinions have been offered in the 34th and following paragraphs of our Report upon the Wild Lands.

22. Before we quit the present subject, we think we should allude to a proposal which has been under our notice, that any land for which a commutation of tenure has been obtained, should thenceforward be held in *franc aleu roturier*, or *franc aleu simple*, in lieu of free and common soccage. If considered simply as a tenure, we believe *franc aleu* to be equally good with free and common soccage; but the difference would be, that whilst under the Tenures' Act free and common soccage lands are still subject to the incidents of the English law, the lands held in *franc aleu simple* would be subject to the incidents of French law. In the Report, to which we are now immediately proceeding, on Register Offices, we shall have to point out some of the most prominent evils to which land under the *coûtume de Paris* is subject; such, for instance, as the indeterminate *hypothèques* created on it in favour of married women, minors and interdicted persons; but, at the same time, we are not without hope that the chief part of these evils may be got rid of; and, should this be the case, and a general system of registration be established, we can see no objection whatever to the proposal of substituting *franc aleu roturier* for free and common soccage. The truth is, that if that were done as regards *franc aleu*, and, on the other hand, free and common soccage divested, as we have suggested it should be, of the rule of primogeniture, there would not remain any appreciable difference between the two. In the meanwhile, however, and until something be effected to remedy the present evils of the *hypothèques* created by the French law, or *coûtume de Paris*, we do not think it would be advisable to substitute in any way *franc aleu* for the English tenure of free and common soccage.

V.—REGISTRY OFFICES.

1. The want of Registry Offices has long been one of the principal complaints set forth by the population of English or kindred origin, and more especially by the persons who compose the commercial interest in the Province of Lower Canada. In consequence of the want of a registry, and the indeterminate character of mortgages, or of claims having the effect of mortgages under the French law, it is alleged, and we believe with justice, that it is impossible to discover the encumbrances which may exist upon real property, and consequently that it is unsafe either to buy real property or to lend money on its security in the Province. The impossibility of obtaining money, even when good security under a different state of the law might be offered for it, is also said to operate very prejudicially on the owners of fixed property, who see their estates frequently taken from them and sold in execution for a trifling debt, which it would have been easy for them to discharge if capitalists were not deterred by the state of the law from lending money.

2. On the other hand it is maintained by some, that the introduction of Registry Offices would be productive of more evil than good; that the trouble and expense of them would be very considerable, and the consequent exposure of private affairs, not only unpleasant but mischievous; and that, in consequence of the numerous claims which, under the law of the Province, take precedence of mortgages, a registry would not of itself afford the desired security, but that it would be necessary, in order to make it efficient, to alter great part of the law of the land, and the very part of it to which the people are from long habit most attached, and which they understand the best, the part on which all their domestic arrangements depend, which regulates their marriages, makes a provision for their offspring, ensures the due guardianship of minors, and protects the interest of those who are incapable of acting for themselves.

3. In order to put this in a clearer point of view, it must be explained that the word "hypothèque" has a far more extensive meaning than that of "mortgage" in England. The English mortgage, as is well known, is a conveyance of the legal estate, whilst hypothecations, under the Civil Law, are effected in several other forms, and sometimes without any form at all. In Canada, hypothèques are implied by far the greater number of pecuniary obligations which an individual can lie under, not only such as he has contracted voluntarily before a notary, but the most important of those which devolve upon him from his station in society, as well as all which may be imposed upon him by any judgment of a competent court; and, according to these three general distinctions, hypothèques have, by some writers, been divided into conventional, legal and judicial.

4. These different sorts of mortgage affect the whole of a man's possessions, and extend not only to all property which he had at the time of contracting the obligation, but to all which he may subsequently acquire. There is nothing to secure their publicity, but, on the contrary, the law even favours secrecy by imposing it on notaries before whom hypothèques are passed; so that a person who has been in long possession of an estate, and believes it quite secure, is liable to find it suddenly wrested from him by the production of a deed, the existence of which he had no means of discovering at the time he acquired it. The evidence appended to this Report contains ample statements and illustrations of the inconvenience arising from the circumstances we have just described.

5. The evil is the more unqualified in Lower Canada, because the Criminal Law of England having been introduced, while the Civil Law remains as before, the punishment which was applied by the French Criminal Code to persons making false declarations that their estate was free from incumbrance, has ceased to exist. It is disputed how far this law (denominated Stellionat) was efficient in France, and certainly the frequent complaints and reforms attempted of the system in that country, would appear to show that the check was far from adequate; but whatever may have been the extent of its operation in Lower Canada, it is wanting. A Bill for establishing it passed the Assembly this year, but late in the session, and it did not reach a decision in the Legislative Council. We would not be understood to convey any opinion on the merits of the law of Stellionat; our object here is merely to note the fact that it does not exist in Canada.

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6. We will now mention some of the most prominent in each of the three classes of hypothèques above-named.

7. Conventional hypothèques. In these are comprehended not only what we call mortgages, but every other species of obligation, bond or security that a man can voluntarily enter into or acknowledge, provided he do so formally before a notary. As an instance of the extent to which they are carried, we find it in evidence before a Committee of the Legislative Council, that a certain country merchant was in the habit of calling in a notary at the end of every year, and causing all his customers to pass acts before that functionary for the balance of their year's accounts, every one of which acts had the force of a general mortgage upon the property of the persons passing it, though perhaps none of them might have been aware of what they were doing. (*See* Evidence given by Mr. J. Fraser before the Committee of the Legislative Council, 1836.)

8. Legal hypothèques, called also " tacit."

In this class are comprehended all the obligations on property that the simple action of the law imposes upon a man as a member of society. The most important of them may be enumerated as follows:—

1st. The dower of his wife, unless barred by an antenuptial contract.

2d. Security to his ward, in the event of his being appointed guardian to any minor, which he may be without his own consent, the office being, in many cases, compulsory.

3d. The same obligation in the event of his being named curator, that is trustee or administrator of any interdicted person, which office likewise may be compulsory.

4th. The obligation of an heir entering on his inheritance subject to the payment of the debts of the person from whom he received it, or "*sans benefice d'inventaire.*"

5th. And, lastly, the liability of public servants for the due performance of their trusts.

The wife's dower, moreover, is the inheritance of the children of the marriage, and consequently an entail is created by it as well as a life-interest. The customary dower is one half of all the real property possessed by the husband at the time of contracting the marriage, and of all that he may acquire by inheritance afterwards.

9. Judicial hypothèques. These comprehend all judgments given against a person in a competent court of justice; and they have each the force of a general mortgage on the whole of his property. They are registered, however, in the office of the prothonotary of the court, and must necessarily have, to a certain extent, a publicity which hypothèques of the other two classes need not have.

10. From the preceding review, it is clear that the extent of vague, general and undetermined hypothèques, is immense; and it seems obvious that the number of husbands, guardians, curators and persons accountable for public monies, must far exceed borrowers of money upon mortgage.

11. This state of the law has not continued without some attempt to remedy the inconveniences arising out of it. An Act was passed by the Local Legislature in 1829 (9 Geo. 4, c. 20), for the discovery of secret incumbrances, and for the confirmation of titles to persons acquiring real property by purchase. This measure was intended to provide a substitute for the old process of " Décret Volontaire," or voluntary sheriff's sale, by which means, though in a more expensive manner, a good title might previously have been sought for; and the Act was in great measure modelled on an edict published in France in 1771. Under its provisions, a person applying to the Court of King's Bench for a confirmation of title, must go through certain formalities, and advertisements must be issued for a certain length of time, after which, if no opposition is made, a confirmation is obtained from the Court, securing the proprietor against all secret incumbrances, save those which may have their origin in dower, or in the rights either of married women or heirs in entail, or, lastly, in rent or feudal dues to the seigneur.

12. This Act has been extensively called into operation, and decidedly productive of good, but it is still much short of what is required. In the first place, as

as by its nature it is confined to cases of sale, it can only be useful to the actual purchaser of real property, and can afford no security to the lender of money on mortgage; nor can the difficulty be surmounted by a fictitious sale, for no such proceeding could be resorted to on seigneurial land, without giving to the seigneur a claim to the heavy fine of one-twelfth on the mutation of property. In the next place, an important class of tacit or legal mortgages, as above-stated, remains unextinguished. And lastly, the time requisite to obtain a confirmation of title, even without opposition, is not less than four months, at an expense of at least 10 *l.*, which expense and delay must of course be largely increased by opposition.

13. In order to complete a view of the law as it at present stands in the Province, it is necessary to state, that by the local Act 9 & 10 Geo. 4, c. 77, mortgages on soccage lands were made special; and by the 10 & 11 Geo. 4, c. 8, offices were established in the five counties of Drummond, Sherbrooke, Stanstead, Shefford and Missisquoi, for the registration of all deeds or instruments affecting immoveable property held in free and common soccage; and all such deeds or instruments then existing were required to be registered within 12 months from the passing of the Act, and future deeds were not to be valid until enregistered. The same provisions were extended to the counties of Ottawa, Beauharnois and Megantic, by a subsequent Act of 1 Will. 4, c. 3; and to the counties of Two Mountains and Acadie by the 4 Will. 4, c. 5. All these Acts, however, as they are confined to lands held in free and common soccage, go but a small way towards attaining a general system of registration; and, moreover, by a practice too common in this country, they are all temporary, and expire in 1838; so that if the legislation of the Province be subjected to the suspension threatened by recent proceedings of the Assembly, they will fall to the ground. It is needless to point out the confusion which must ensue in the rights of property in the townships, should such prove to be the event.

14. In addition to the Acts above recapitulated, we may observe, that, notwithstanding the popular objections we have already alluded to as being urged against Registry Offices, and others of a more latent nature, to which we shall subsequently advert, the necessity has been repeatedly admitted by both branches of the Legislature, of giving more publicity to acts passed before notaries, and of affording greater security to creditors having claims on real property.

15. In 1823 the House of Assembly resolved to take into their consideration "The passing of a law for the public registration of instruments conveying, charging or affecting real property, with a view of giving greater security to the possession and the conveyance of such property, and to commercial relations in general." In December of the same year a Bill passed the Council, and was committed in the Assembly, "For the enrolment (*insinuation*) of deeds and instruments affecting property by way of mortgage or hypothèque."

16. Early in the year 1825 the House of Assembly resolved, "That it was expedient to provide that more ample publicity to certain acts passed before notaries bearing mortgage (*hypothèque*) be afforded in district subdivisions."

17. In 1826 the House of Assembly resolved:—

"1. That every purchaser of real property has the indubitable right of ascertaining what charges and mortgages encumber the property which he is purchasing.

"2. That every creditor is entitled to ascertain what real property of his debtor is liable to the payment of his credit, and the charges and mortgages with which such property is encumbered.

"3. That the existing laws do not give purchasers of real property any means of ascertaining what charges and mortgages encumber the property which they are purchasing.

"4. That the existing laws do not give creditors any means of ascertaining what real property of their debtors is liable to the payment of their credits, nor what are the charges and mortgages which encumber such property.

"5. That from the want of means of procuring for purchasers a knowledge of the charges and mortgages which encumber the real property which they are purchasing, and for creditors a knowledge of what real property of their debtors is liable to the payment of their credits, and what are the charges and mort-

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gages which encumber such property, there have resulted, and do daily result, frauds, destructive of all confidence, the ruin of *bonâ fide* purchasers and creditors, the depreciation of real property, contempt of the laws, and the deterioration of public morals in this Province.

" 6. That it is expedient to make legislative provision for giving to purchasers of real property the means of ascertaining the charges and mortgages which encumber the property they are purchasing, and for giving to creditors the means of ascertaining what real property of their debtors is liable to the payment of their credit, and what charges and mortgages encumber such property."

A Bill founded upon these resolutions was read twice, committed, and dropped.

18. In February 1827, a similar Bill, " For making privileges and mortgages public, and for the security of creditors and of purchasers of real property," was introduced, and likewise failed.

19. Seeing, then, the just and liberal views expressed by the Assembly more than 10 years ago, we think it fair to presume that the want of any satisfactory provisions on this important subject should be attributed to the state of political dissension in which the Province has continued since 1823, and to the fact that the question has unfortunately always been considered one of party, rather than to a desire in any part of the Legislature to adhere to institutions no longer fitted to the intelligence of the age and the wants of the people.

20. We regret that we cannot make this statement without adding that there are, nevertheless, some symptoms of a latent apprehension that the ultimate effect of the introduction of Registry Offices will be to deprive the present landholders, of French origin, of a portion of their possessions in the seigneurial counties on the banks of the St. Lawrence, and transfer them to British settlers. It certainly is very probable that the introduction of Registry Offices, and the facilitating commutations of tenure, may have the effect of introducing a greater number of English settlers into the seigneuries; but we cannot admit the supposition that such a result would be disadvantageous to the population of French origin already established there; on the contrary, we should confidently expect that the flow of capital into these districts, and the emulation consequent thereon, would lead to the improvement of their agricultural system, the development of the resources of the country, and the ultimate advantage of all classes of its inhabitants. We think the inhabitants of the seigneuries could not fail to derive benefit from a system that would tend to raise the value of property, to supply the wants of agriculture, and to afford to landholders a prospect of obtaining loans of money at a lower rate of interest.

21. There is, however, we must confess, one discouraging feature in the prospect, which we would mention, not for the purpose of exciting ungenerous or unjust suspicions against any class, but as an illustration of the manner in which unequal laws are liable to operate with a like injuriousness to all parts of a community, as well those to whose benefit they might, at first sight, appear conducive, as the rest. By the Act of 1774, confirmed in that particular by the one of 1791, Roman-catholics in all the seigneuries are required to pay a tithe to their clergy of one twenty-sixth of their produce in corn, whilst Protestants are exempt (partly by the same Acts and partly by custom) from any payment of tithe whatever. That such an inequality in the law must tend to create a desire, not only on the part of the receiver, but also on the part of the payers of tithe, to keep Protestants out of a parish, is sufficiently obvious; for, if half of the lands in any parish were to pass into the hands of Protestants, the support of the Catholic clergy would fall, of course, with very increased weight upon the occupiers of the other half. Until some alteration be made in this respect, it cannot be expected that any measure will be well received which is supposed to promote the introduction of Protestants into the seigneuries.

22. Having thus reviewed the existing state of the law, and adverted to the disposition of the Legislature, we have to express our opinion that a very efficient improvement of it, and the introduction of a system of registry, is most desirable. In France, in Louisiana, and, we believe, in every country where the law originally admitted of such extensive hypothèques, something has been done to correct the evil of them by registration. An account of the main features of the reformed

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reformed system in France may be found in the Appendix, in the Evidence of the Solicitor-general, and in a paper communicated to us by Mr. Walker, a distinguished member of the bar at Montreal. In the latter paper also, is contained an account of the law, as it has been amended in Louisiana.

23. In this Province a Bill was passed by the Legislative Council during the present year, but lost in the Assembly, containing provisions to the following effect:

To make mortgages and hypothèques of every kind special, except such as should be created by judgment in a court of law.

To abolish customary dower, and require that in marriage-settlements on the wife or offspring, any immoveables to be charged should be specially described, and the sum of money for which they are pledged be set forth.

To extend the Provincial Act of 9 Geo. 4, c. 20, so as to extinguish by the same process every description of encumbrances, save only of heirs in entail, seigneurial dues, or such as may be reserved in the act of confirmation itself.

A copy of the Bill, as well as of the Committee's Report, and evidence on which it was founded, is contained in the Appendix.

24. And in Mr. Walker's paper above referred to, as well as in some clear and able letters published by Mr. Badgley of the Montreal Bar, under the signature of "Civis," will be found a detail of various other alterations proposed as improvements of the existing law. We do not think it necessary to describe them here. They will be seen very well stated by their authors themselves in the Appendix.

25. Our notice has further been drawn to a suggestion, that although the establishment of a complete system of registry in the seigneuries may be unattainable, the custom of the Province in respect of encumbrances of land, might be improved by being somewhat assimilated to that of England; for instance:

That conventional hypothèques should be made to consist always of a conveyance of the legal estate, with an equity of redemption, or of a deposit of the title-deeds with a like equity, or of a confession of judgment.

2dly. That judgments should be docquetted, as in England, under the statute of 4 and 5 Will. & Mary, c. 20.

3dly. That for legal hypothèques and customary dower, should be substituted a power in the King's Bench of each district, to assign reasonable maintenance to widows, to appoint guardians in the manner in which it is done by the Court of Chancery in England, and to do other acts for obtaining those ends, by the pledging of a specific portion of a man's lands, which now are provided for by causing all his estates, present and future, to be pledged secretly and generally, and for a contingency which may never arise.

26. Inasmuch as the subject is one which we cannot at present recommend to be dealt with except by the Provincial Parliament, we think it needless to enter into a comparison of the merits of the several suggestions that have been made. It seems to us enough on this occasion to submit our opinion that the present system is highly objectionable; that the establishment of a well-digested law of registry is very desirable, and that at an early opportunity after the restoration of union and efficiency to the institutions of the Province, this subject should be strongly recommended from the Throne to the attention of the Provincial Legislature.

VI.—APPORTIONMENT OF CUSTOMS' DUTIES BETWEEN THE TWO PROVINCES, AND EFFECTS OF THE CANADA TRADE ACT.

VI.
Apportionment of Duties and Canada Trade Act.

1. We have inquired into this subject, in obedience to the directions contained in paragraph 83 of our Instructions. The disagreement between Upper and Lower Canada on the subject of revenue, led to the project of reuniting the Provinces in 1822; and, when that was abandoned, to the Canada Trade Act. Under this Act, the duties of customs being levied entirely at the Ports of Quebec and Montreal, are afterwards divided between the two Provinces by arbitrators appointed for the purpose once in every four years.

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2. The difficulties that would arise on the subject of customs' duties were foreseen and urged by Mr. Lymburner, when the division of the Provinces was still only a project; and they did commence within a twelvemonth after the separation took place. At first, however, and for several years afterwards, they were met by a series of agreements between Commissioners appointed from time to time by the two Legislatures, according to which agreements Lower Canada imposed many fresh customs' duties, but Upper Canada was always admitted to a definite share of their produce. This proportion was progressively increased from one-eighth to one-fifth of the revenue. But in 1819 the subsisting agreement between the two Provinces having come to an end, it was found impossible to form a new one; claims, moreover, of the Upper Province had grown up for certain arrearages, and had already been for some years in dispute; and when Commissioners were called together in 1821, they were obliged to separate without effecting anything, and manifested their impression that all further attempts to negociate would be fruitless. Petitions were then presented to His Majesty from Upper Canada, and the matter, accompanied by an infinity of labour and contention in the two Provinces, was carried into the Imperial Parliament, where it brought on, as we have above stated, an attempt to unite the Provinces, and afterwards the Act of 3 Geo. 4, c. 119.

3. The following are the awards that have been made under this Statute to Upper Canada:—

For arrears due at the time the Act was passed, and for the subsequent period up to the 1st July 1824, one-fifth of the whole duties.

For two periods of four years, from 1st July 1824 to 1st July 1832, one-fourth of the same.

For four years, from the latter date to the present time, one-third of the duties.

The next period for making an award will be in Spring 1837. These arbitrations are all supposed to have been made on the basis of population only, and it does not appear that data exist on which to proceed according to any other principle. The awards are not, we believe, satisfactory to either party; and it will be seen by the Evidence of the principal officers of customs (Mr. Jessop and Mr. Hall) that they consider the Upper Province to receive at present more than its due proportion.

4. During the last session of the Legislature of Lower Canada, an Act, called "The Inland Customs' Act," was passed, (6 Will. 4, c. 24,) into which a clause was introduced for the purpose of ascertaining the exact quantity of goods passing from the Lower to the Upper Province, by means of the custom-houses established on the two principal lines of communication, the St. Lawrence and the Ottawa: a copy of the clause is placed in the Appendix. In the opinion, however, of Mr. Jessop and Mr. Hall, the enactments are insufficient to attain the object in view; and even though the Act were amended in the way suggested by them, we think it extremely doubtful whether both provinces would be satisfied with an arbitration based upon the result, or prefer it to the present mode of proceeding on the basis of population only.

5. As Upper Canada can obtain a communication with the sea only through Lower Canada, or some of the United States, she would probably, if we suppose her for a moment in the condition of an entirely independent state herself, be made to pay, in some way or other, for the privilege; as, for instance, by a transit duty on the merchandize which would have to pass through a foreign country in order to get in or out of her territory. And if Upper and Lower Canada had both been independent states when they disagreed about the apportionment of these duties, one of three things must have happened: the intercourse between them must have been suspended, and the external commerce of the Upper Province turned through a less convenient channel, or they must have sought the arbitration of a friendly power to settle that for them which they could not settle for themselves; or, finally, they must have gone to war about it. We cannot, therefore, but consider it fortunate for both provinces, that the right, or rather the duty, of interference existed in, and was exercised by Great Britain, as the head of the empire to which they belong.

6. In the part of the Trade Act, therefore, that relates to arbitration, we can see nothing to complain of. It appears, indeed, that Upper Canada cannot claim her

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her share of any British duties, except those levied under the Act of 14 Geo. 3, c. 88, and we have not been able to discover a reason for the exclusion; but by a Report we annex from the collector of customs (Appendix No. 1,) the amount affected does not seem to be considerable, and unless there be some better ground for it than we can hear of in the Province, we doubt not it will be readily removed at the first convenient opportunity. With the exception of this defect, as it certainly would seem to be, although the information we can obtain on it is too scanty to allow us to offer a positive opinion, the principles on which the clauses respecting arbitration are framed seem to us equitable: England had no object of her own in view in the enactments, and there is no idea of enforcing them a day longer than is necessary for the good of the parties concerned.

7. There are, however, other clauses in the Bill, which, although they may be equally justified by the necessity of the case, are, nevertheless, open to more serious objections at first sight: we mean the 28th and 29th sections, by which the Lower Province is virtually deprived of the power of altering the duties levied in her ports; and neither Province has the power singly of increasing or taking off any impost. The prohibition extends to all duties of customs levied under the authority of the Provincial Legislature; it therefore has had the effect of making permanent taxes which were only imposed for a limited period, and has even recalled into existence some that had expired when the Act was passed. The "*ad valorem*" duties of 2½ per cent., imposed by the Provincial Parliament on certain goods, by the Act of 55 Geo. 3, c. 2, would have ceased in 1823 had it not been for the operation of the clauses in question, under which they have been continued to the present day; and by the retrospective effect of the Act, other duties on tea, wines, spirits and molasses, which had expired in 1819, were revived, and have been equally continued ever since. They were levied under an Act of 53 Geo. 3, and amended by 55 Geo. 3, c. 3, both Provincial Acts. To illustrate the operation of the inconvenience in the other direction, we may remark that the Legislature of Upper Canada had occasion to apply in 1824 for an increase of duty on several articles, but was refused.

8. Since the whole of the revenue of Lower Canada is, with few exceptions, raised by duties of customs, the House of Assembly is by the operation of the Trade Act essentially cramped in the exercise of one of the most important functions of a representative body. They have a larger revenue than they want for any of the ordinary purposes of Government, without the power of reducing it by taking off taxes; and this superabundant revenue is consequently applied by them to many purposes, which perhaps, in their own opinion, and certainly in ours, would be better provided for either wholly or in part by local assessments, such for instance as the expenses of gaols, the maintenance of schools, and the repair of highways, bridges, &c.; and thus it happens that the inhabitants of parishes or districts are first prevented from having in their own hands the management of the affairs in which they are immediately concerned, and then reproached by their political opponents with an incapacity for public business. We cannot help making these remarks, because we think that, in the present particular at least, the leaders of the popular body have shown a laudable desire to get out of what has been called the French system, a system which made the Government everything and the people nothing; and that their opponents have laboured, and are still labouring, to perpetuate the vices of a condition, the evils of which, as far as they hurt themselves, they are ever loud in denouncing. We need scarcely say that we allude to the frequent failure of Bills for the election of township and parish officers, and for the management of other matters of local concernment.

9. Every reason therefore concurs to make us wish that each Province could be enabled to raise and regulate its own revenue, but the difficulties that stand in the way are greater than we have heard any good suggestion how to surmount. While we should be happy to see any plan by which the two Governments could be made independent of each other in this respect, we are forced to acknowledge that we cannot propose one. We adopt the conclusion then that the necessity of the present arrangement justifies its continuance; and that until a better method can be pointed out of guarding against the confusion and disagreement which preceded the Trade Act, it could not be repealed without far more injury than benefit to the Provinces.

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10. Before we leave the subject of the trade of Canada, we feel it right to notice a hardship, of which complaint has, we think, with reason, been made to us. Cattle, grain, potash and other articles of agricultural produce are admissible in Canada, free of duty, from the United States; but the same articles, if of Canadian growth, are charged with a heavy duty on passing into the States. It was represented to us in the townships that persons crossing the frontier, for business or for pleasure, were sometimes charged with a duty for the horses on which they rode; and we have even heard it asserted that, in the case of a person who happened to possess property on both sides of the frontier, an attempt had been made to charge him with duty when he removed his cattle from one pasture to the other.

11. With respect to the general state of duties, we would beg to refer to the evidence of the officers of customs, and to point out that they agree in thinking that the tobacco duties require alteration.

VII.—EXECUTION OF THE RECOMMENDATIONS OF THE CANADA COMMITTEE in 1828.

VII. Execution of recommendations of Canada Committee in 1828.

1. In the 84th and 85th paragraphs of your Lordship's Instructions, the question proposed to us is: "Whether the recommendations of the Canada Committee of 1828 have, to the full extent of His Majesty's authority and legitimate influence, been carried into complete effect, or whether there is any, and, if any, which part of their advice, which it yet remains with His Majesty to execute?" And in calling upon us for this inquiry, your Lordship has put us in possession of a Minute by your immediate predecessor, embodying the result of an investigation into the same question while he held the seals of the Colonial Department.

2. After carefully examining into the subject, the principal point on which we can find that any doubt could be raised on the question proposed to us, is the fulfilment by the Government of the recommendations respecting the Legislative Council. The opinion expressed by the Committee was, that a more independent character should be given to the Council, that the majority of its members should not consist of persons holding office at the pleasure of the Crown, and that any measure which tended to connect this branch of the Constitution more intimately with the interests of the Province, would be highly advantageous. If these recommendations are satisfied by the appointment of a large number of new councillors, none of them dependent on the Government for their income, but all living by their own means, and possessing property or engaged in pursuits connected with the general interests of the country, we have to report that the advice of the Committee has been followed. But if, on the other hand, their words be taken to imply that a change ought to have been made in the political character of the body, we can only repeat what we observed in paragraph four of our preceding Report on the Council itself, that there does not appear to have been an alteration effected in that respect. We, however, have already remarked in the passage in question, that there is no ground to assume that the Committee intended it to be understood that the Council should be made to harmonize in every respect with the Assembly. On the Judges' seats in the Council the advice of the Committee has been executed. With respect to the Chief Justice, however, it may be doubtful whether, when the Committee recommended that he should be left in the Council, because his presence there might "be occasionally useful," it was contemplated that he should be continued there as Speaker.

3. Having made these observations, in order to guard against any misconstruction on the preceding topic, we have to state that, after our investigations on the spot, we can confirm the general accuracy of the statements in Lord Aberdeen's Minute, and, consequently, the accuracy of his Lordship's conclusion, that His Majesty has, to the utmost extent of his constitutional power and influence, fulfilled and displayed his willingness to go beyond the recommendations of the Canada Committee in 1828.

4. In

4. In this declaration we would not wish to be understood as conveying the result of a general review of the whole conduct of Government since 1828, or an unqualified approval of everything that has passed subsequently to that period, but simply a statement of the fact that the Executive Government has done all within its power to fulfil the advice of a Committee of the House of Commons, which was admitted, at the time, to present a just, impartial and liberal view of what was requisite for the good of the Province.

VII. Execution of recommendations of Canada Committee in 1828.

VIII.—EDUCATION.

VIII. Education.

1. We feel that we ought not to close our General Report without saying a few words on the state of education in the Province, though we regret that it is not in our power at present to go into the subject at any length.

2. On the 21 December 1829, a Despatch was addressed to the Secretary of State, by Sir James Kempt, to which we would refer (Appendix No. 1), as exhibiting a correct view of the means of public instruction then existing in Lower Canada; since which time, although great liberality has been evinced on the part of the Provincial Legislature, and a strong desire to advance the cause of general education manifested by the Executive, we regret to say that the progress has not been, as far as we can judge, such as might have been expected. The entire proceeds of the Jesuits' estates have been dedicated by Government, since the date of Sir James Kempt's despatch, to the advancement of education; and a total sum has been appropriated to the same purpose by the House of Assembly, of 172,519 *l.* 5 *s.* 9*d.*, being on an average 24,645 *l.* 14 *s.* 3 *d.* per annum, or about one-fifth of the total revenue of the Province. The Royal Institution, partly owing to the extensive operations carried on by the Legislature through different channels, and partly from other circumstances, has fallen into neglect, and we fear that any attempt to revive it or make it efficient would be unavailing. The allowance of 2,000 *l.* per annum for the support of its schools, continued to be made by the Legislature up to 1832, but in the latter year the grant was reduced to 1,265 *l.*, and has since been discontinued altogether. The schools, however, under the management of the institution, may still, under certain conditions, receive the allowancethat is made generally to all elementary schools in the Province.

3. By the Despatch which we have referred to it will be seen, that an Act was passed in 1829, for the encouragement of elementary education, which was to be in force three years; and we find that Acts were passed, amending and explaining its provisions, in the two following years, 1830 and 1831. In the latter year, also, a Standing Committee was appointed in the House of Assembly, to report, from time to time, on all subjects connected with education, by which Committee, renewed, as it has subsequently been, at the commencement of every session, several very valuable Reports have been presented to the House. The views entertained in them appear to us generally so judicious, that we can only lament that they have not been more extensively acted on by the House to which they were addressed.

4. The system established in 1829, was further continued, by successive enactments, to the 15 May in the present year; but a Bill which would again have continued it failed in the late session, so that the elementary schools are left for the present without any support from the Government. We find that as the grants made by this Bill were far more extensive than in any that went before, and would, in the whole, have amounted to nearly 40,000 *l.*, it was thrown out by the Council, principally on the ground that if it had passed, sufficient money would not have been left in the Provincial treasury to discharge the long arrears of salaries due to the public officers. In the Report, however, which the Committee of the Council made on this Bill, additional reasons for rejecting it are set forth, based on the ill success of the former grants, on the danger of liberality degenerating into prodigality, and on the extent of the powers that the Bill bestowed upon county members. A copy of this Report, and of certain resolutions founded upon it by the Council, is placed in the Appendix No. 3.

2 W. 4, c. 26.
4 W. 4, c. 9.
4 W. 4, c. 34.

VIII. Education.

5. But though this Bill was lost, two others respecting education were passed; one under which special grants were made to particular schools or colleges to the amount of 7,620 *l.* sterling; another by which Normal schools, or schools for the formation of teachers, were established in the cities of Quebec and Montreal.

6. We have placed in the Appendix an extract from Lord Aberdeen's Despatch of 1 January 1835 (Appendix No. 2), explaining the grounds on which the Royal Assent was refused to a Bill that had passed in 1834, for very generally conferring a corporate capacity on all institutions for education in the Province. A Bill of somewhat a similar nature, but framed apparently with an advertence to Lord Aberdeen's objections, was passed this year, but it received some amendments in the Council, and was not returned to the Assembly till after there had ceased to be a quorum in attendance.

7. The general system of elementary education established by the successive enactments we have described, commencing in 1829, may be stated as follows. The whole Province is divided into school districts, which, under the Bill that expired in May last, amounted to 1,344, and by the Bill which was lost in the first session of this year, would have been increased to 1,657, notwithstanding the repeated comments of the Standing Committee of the Assembly upon the excess in their numbers. In each district a school may be established at the discretion of the visitors, and an additional one for girls in each parish; a parish generally containing several districts. Every school may receive from the funds of the Province a grant of 20 *l.* per annum, provided no greater charge than 2 *s.* per month is made for the education of each scholar, and that 20 scholars, at least, have been in regular attendance during a certain portion of the year. In any school where there are not less than 20 scholars paying this sum for instruction, the trustees have power, under certain restrictions, to admit a proportion of poor children gratuitously. Half the expense of erecting school-houses is often granted, provided such half does not exceed 50 *l.* The sum of 10 *s.* per annum is allowed to be distributed in each school by the visitors, in prizes or rewards amongst the children.

8. Visitors are appointed for each county, consisting of the following persons: the resident members of the Legislative Council, the members of Assembly returned by the county, the superiors and professors of all colleges in it, the presidents of all societies for promoting education; to whom are added in each parish, but for the parish only, the minister of the most numerous religious denomination, the senior justice of the peace, and the senior militia officer. These visitors (or any three, or latterly two, of them,) are required to visit annually all the schools in their respective counties, and must certify all the documents which are necessary to obtain the various grants of money which have been enumerated; public examinations are also to be held by them once a year.

9. In each school district, moreover, there are three trustees, chosen by persons qualified to elect members of the Assembly, and empowered to hold the property which may belong to the school, and to receive benefactions and bequests, within certain limits, notwithstanding the laws of mortmain.

10. The Bill of 1836 further went to authorize school districts to assess themselves, with the consent of a majority of the persons qualified to vote at elections for Members of Parliament, for the erection of school-houses or the support of schools; and the Bill also provided for the establishment of one superior or model school in each parish, the master of which might be paid out of the public funds a salary of 50 *l.* a year, provided an additional sum of 20 *l.* were raised for him by the parish.

11. That the system of which we have given this rapid outline has been much abused, is sufficiently shown in the valuable Reports which we have already mentioned of the Standing Committee of the House of Assembly. The principal defects seem to have been, the want of a central board or authority to direct and control the working of the system, a want of qualification in the teachers, and the want of attendance in the children; the want of sufficient exertion on the part of parents in general, arising perhaps from the too prevalent impression that the education of their children is a matter of concern for the Government, and not for themselves; and, lastly, the want of power to raise money for the support of schools, even where there might exist amongst the majority of the inhabitants a desire to

subject

subject themselves to assessments for the purpose. The Standing Committee, in their first Report for 1836, expressly state that the liberality of the Legislature in support of some societies "had paralyzed their efforts instead of stimulating them."

12. The failure of the Board of Education, which was instituted under the name of the Royal Institution, might at first be regarded as a fact tending to discourage any future plan for the creation of a central authority, to be entrusted with the control of all establishments for elementary education in the Province; but we think that errors were committed in the formation of that Board which would now be avoided; and if we are not deceived in the hope we entertain that the laudable efforts, lately begun, to introduce a general system of education in Ireland are proceeding successfully, we would recommend that the fullest information respecting the working of that system should be sent to Lower Canada; for where such abundant proof exists of a willingness to engage in the generous enterprise, we cannot doubt that any hints to be derived from successful practice in other countries would be well received *. We are happy to be able here to add, that the Report of M. Cousin on the state of education in Prussia, as well as several works on the subject of education in the United States, are beginning to attract notice in the Province.

13. We do not think that the system of supporting schools entirely, or even principally, out of the general revenue of any country is a good one. We think, on the contrary, that the funds for elementary education should be supplied from the following sources:

First. From a general assessment on all property within the parish or school district, on the principle that as education is a matter in which the public good is concerned, every inhabitant ought to contribute to it in proportion to his means; and also because the expenditure of money, raised in part by local assessment, is likely to be better superintended and more carefully watched by persons on the spot, than the expenditure of money supplied entirely out of the general revenue.

Secondly. By a grant from the public purse of the Province, which grant, however, should never exceed the amount of what is levied by local assessment. The general revenue in Canada being sufficient, and more than sufficient, for all ordinary expenses of Government, it is but reasonable that a portion of it should be applied to reduce the amount of local assessments.

Thirdly. By payments from the children themselves, or rather from their parents, for the reason that what people get for nothing they are apt not to value highly.

14. With respect to the superintendence of the elementary schools, we think trustees and inspectors should be elected by the rate-payers in each parish or school district, who should correspond with, and be in subordination to, a central board established in each of the districts into which the Province is divided. In Quebec and Montreal we think that the board ought to be composed, at least in the commencement, of the persons who have been already constituted a committee for the management of the Normal schools, and that in the other districts boards should be formed, as nearly as possible on the same principle. The control exercised by the visitors appointed by the recent Acts of the Legislature, has been, as far as we can judge, neither satisfactory nor efficient. That it was insufficient to check jobbing and malversation, appears to be admitted in the Reports made to the Assembly, whilst the possible employment for political purposes of the patronage, which was afforded by it to members of the Assembly, is objected to, and we conceive not without reason, by the Council.

15. With respect to the very important question, how far elementary schools should be charged with the duty of affording religious instruction, we must confess frankly, that we have not sufficient information to enable us to express a decided

* Since this passage was written in our Report, we have had the satisfaction of learning that the Rev. Mr. Holmes, one of the Roman-Catholic clergy in this city, and a very intelligent and active member of the seminary of Quebec, has gathered much information on the subject in Ireland during a visit to Europe in which he is now engaged, with a view to the promotion of education.

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a decided opinion. As a general principle, we cannot hesitate to declare, that as it is highly important that such schools should be as comprehensive as possible, so is it, in our opinion, desirable that the religious instruction imparted in them should embrace only such general doctrines as all who are Christians may agree in; but whether a plan of this sort would be suitable to the present state of Lower Canada is a question on which we are not prepared with an answer. There is a deep sentiment of religion spread, we believe, over the whole population of the country, and we are happy to bear testimony so cordially as we can do, that it is accompanied with fewer feelings of acerbity of the followers of one creed towards another, and particularly of Protestants towards Catholics and Catholics towards Protestants, than perhaps in any country where distinctions so marked and so numerous exist. From this we might not unreasonably be led to expect that a system of education founded on the truly Christian principle of toleration and general charity would not be unattainable; if we further, however, venture to express a hope that such a plan may be prosecuted to completion, we feel that in doing so we ought to add, that the best chance of its being realized may, as far as we ourselves are concerned, depend on our here dismissing the subject, rather than attempting to prescribe to those who must be engaged in the great and gratifying work of carrying it into execution, the means that they are to employ.

16. Upon the subject of the higher class of schools we cannot enter at present; though, as we have received applications for assistance from the Trustees of M'Gill College in Montreal, we must prepare ourselves to do so hereafter; as also to turn our attention to the subject of the establishment of a university in the Province, to which all classes of its inhabitants might resort for the attainment of the higher branches of education, and the general cultivation of science. This latter we believe to be an object of earnest desire amongst persons of influence in the Province, and one which, we apprehend, is every way befitting the care of the Imperial as well as the Local Government.

We have the honour to be your Lordship's most obedient humble servants.

(signed) GOSFORD,
GEO. GIPPS,
CHAS. EDWD. GREY. *

A MINUTE delivered to the Secretary by Sir *Charles Grey*, upon signing the Sixth or General Report of the Commissioners, on Thursday the 17th of November 1836.

Minute of Sir C. Grey.

I. The Reports of the Commissioners have been drawn up in pursuance of their Instructions, by the Secretary to the Commission.

For this purpose papers have been supplied to the Secretary by the Commissioners upon which, when any material difference of opinion has appeared, it has been determined by the Secretary's bringing it to the notice of the Commissioners, and when it has not been waived, by taking the decision of the majority of the Commissioners. Some differences of opinion have been dependent, perhaps, on temporary circumstances, and the posture of affairs at the moment, and the course of events has obliterated some of these, and I think it will have that effect upon others. But in complying with our instructions by signing the General Report, it is necessary that I should in some way obviate the usual inference which might be drawn from the signature.

I shall be excused for not criticising expressions, political sentiments or general principles which may not correspond with my own; and for avoiding even in our recommendations a pointed controversy with my colleagues. I shall fully satisfy my own wishes upon the present occasion, when I shall have opportunities of giving any fuller explanations which may be required, if I can so indicate my views that they may be available for any good purpose, and may prevent the supposition of my having come to conclusions which I disapprove: and I would rather leave any opposition of opinions to be perceived in the general tenor of our statements, than fix attention to it by marked comments.

II. There are three powers, by one or other of which legitimate changes may be made in the method of government, the laws and institutions of the Province; namely, the prerogative and executive power of the Crown, the power of the Provincial Legislature, and that of the British Parliament. The Instructions of His Majesty's Ministers direct the attention of the Commissioners chiefly to the redress of grievances, which may be effected by the first two

* I sign this Report subject to a statement of a difference of opinion, which is delivered to the Secretary to go home with the Report.

17 November 1836. (signed) *Chas. Edw. Grey.*

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two powers; and although it has struck me that there have been occasions when a timely application to the House of Commons might have saved some trouble, I should regard it in present circumstances as a wise resolution to make, either no application at all to the Imperial Parliament, or one for a comprehensive and permanent adjustment. At the same time, I am obliged to say that I have no hope of the troubles of the Province, as it is at present constituted, being settled by the existing Canadian Legislature. A year's residence in the country has convinced me that without a perpetual dissension, the British in Lower Canada cannot legislate in forensic affairs for the French Canadians, nor the French Canadians for the British, or for a province and a river which are the heart and life-blood of the British American commerce and colonies; nor is there any chance that, under the present laws of election, the two parties will be so blended in the Houses of Legislature as to make those bodies effective instruments of imperial government.

Two courses appear to me to be open for the choice of His Majesty's Ministers. The one that of exercising firmly though temperately the powers of the Crown, and developing its resources, by which, without affecting the existence or privileges of the Houses of Legislature, but without expecting from them much assistance for some time to come, I think that the Government might be carried on, and all interruption of public tranquillity might be prevented; the other that of laying the affairs of Lower Canada before the British Parliament, with comprehensive views, and for great and permanent objects, which would bring interests so many, so various, and of so much weight to bear upon the principal questions as to sustain beneficial measures by their combined support, and to put down any vexatious opposition which should be advanced under frivolous pretexts or on formal grounds.

III. To bring before His Majesty's Ministers the information which might enable them, without further inquiry, to form an immediate judgment and to act upon it, it seems to me that the final Report of the Commissioners should comprise the following divisions of the subject.

1. The circumstances which led to the Commission; the tenor of it; the instructions by it was accompanied, and those which have since been sent to the Commissioners; and the resolutions, petitions and representations which have been brought to their own notice, or have been addressed to the Governor-in-chief, or to His Majesty or to the Imperial Parliament since the issuing of the Commission.
2. The form of government and system of laws in Lower Canada.
3. The most important statistics of the Province.
4. The parties and conflicting interests.
5. The real causes of the present discontents, and the extent to which they have a reasonable foundation.
6. The principles, general rules, and most obvious facts, which ought to be kept in view in the Report of the Commissioners.
7. The Executive Council.
8. The Legislative Council.
9. The House of Assembly.
10. The civil list.
11. The King's domain and hereditary revenue of the Crown.
12. The wild lands and forests.
13. The clergy reserves.
14. The British North American Land Company.
15. Emigration.
16. The aboriginal tribes or Indians.
17. The judicial branch of Government: the proposed institution of a Court of Impeachments; the Court of Appeal; the Court of Escheats; the fees of the officers of the courts.
18. The police, the prisons, and the conservation of the peace.
19. The law of real property; the lands in possession of the Roman Catholic religious communities; the incidents of tenure in free and common soccage; the right of commuting the tenures *en fief* and *en roture* into soccage; the *disme* or tithe; the inconveniences of the seigneurial tenure; the proposals for the general establishment of offices of land registry, to obviate the mischief of secret encumbrances, and of the French law of hypothèque; the law respecting aliens.
20. The seigneury of Montreal and the King's censive of Quebec.
21. Institutions for religion and education.
22. The apportionment between Upper and Lower Canada of the receipt of import duties; and the question as to a union of the two Provinces.
23. The means by which effect might be given to the improvements required under each of the preceding heads of policy. Of the organization of townships and parishes for local purposes; and the establishment of subordinate legislatures or municipal districts.
24. The future instructions of governors.
25. The just limits of imperial legislation.
26. The relations of the Province with foreign states.

Of these divisions of the Report, from the 7th to the 22d inclusive, a subdivision might be made under the following heads:

1. The instructions of the Commissioners.
2. The complaints which have been made on the particular subject of inquiry.

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3. A narrative of the circumstances of which a knowledge is requisite for the right understanding of the subject.
4. The real extent of the grievance.
5. The plans which have been proposed for the remedy of it.
6. The recommendations of the Commissioners.

To fill up this outline more time would be wanted. From six to ten months might be sufficient for Lower Canada, but inasmuch as it is one of the most essential considerations that the affairs and interests of the British American colonies on the Gulf and River of St. Lawrence should be regarded as one whole, and that the institutions of no one province should be such as to disturb the peace or impede the improvement of the others, it seems to me that, after finishing their inquiries in Lower Canada, some of the members of the Commission, with the advantages of recently acquired information, might go forward into Upper Canada, New Brunswick, Nova Scotia, Newfoundland and Labrador, and might be required also to visit such of the United States as are conterminous to the British territories, for the purpose of informing themselves accurately of some of their institutions; bearing in mind the wise and appropriate suggestion of Mr. Burke, in the debate of the 11th May 1791, that "the great examples to be considered were the constitutions of America, of France, and of Great Britain. To that of America great attention was due, because it was of importance that the people of Canada should have nothing to envy in the constitution of a country so near to their own*."

* 29 Hansard's Parl. Hist. p. 345.

In this Minute I do not consider myself entitled to touch any other of the subjects I have enumerated than those on which opinions have been expressed by the Commissioners in the present or in some former Report.

IV.—THE EXECUTIVE COUNCIL.

Without meaning to say anything in disparagement of individuals, I think there has been some foundation for the complaints, that the Executive Council has not comprised amongst its members a sufficient number of persons residing occasionally in different parts of the Province, or who have been of sufficiently various qualifications, acquirements, connexions, professions and occupations, but has consisted principally of holders of office under Government, resident at Quebec, and has been almost ostentatiously blended with the Legislative Council.

I would suggest that instead of the Executive Council constituted as it is at present, the Governors-in-chief should be empowered at all times to appoint provisionally such and so many persons to be Executive Councillors, during the periods of their own government, but no longer, as to them may seem meet, such appointments to be subject to confirmation by His Majesty, and to cease entirely and be vacated by every vacancy in the office of Governor-in-chief; that the President of the Court of Appeal (to be constituted as hereinafter is mentioned under the head of "The Judicial Branch of Government," &c.) should be, *ex officio*, a member of the Executive Council*; that the existing members of the Executive Council should retain their seats for the period of the present Governor-in-chief's government, in like manner, and upon the same conditions, as if they were newly appointed by him, but that no person holding any office or appointment, the duties of which require that he should collect or receive uncertain amounts of public money, and should account for the same, nor any person holding any office or appointment other than that of Speaker under the Legislative Council or House of Assembly, shall at any time hereafter be appointed to the office of Executive Councillor; that with the exception of the Registrar or Secretary to the Council, and his clerks or messengers, no salary or emoluments of any sort shall be attached to, or connected with, the office of Executive Councillor, unless it should be enacted by the Canadian Legislature to establish some salaries or emoluments for the members of the Council during the life of His Majesty, or for a term of years not less than seven.

That no person, after being appointed an Executive Councillor, shall, during the period for which he has been appointed, be dismissed from office by the Governor otherwise than as now, provisionally, and on account of being unfit for His Majesty's service.

That in the month of January in every year there shall be one full meeting of the Executive Council, to which all the members shall, if possible, be summoned, which meeting shall continue as long as to the Governor-in-chief shall seem fit; and for the purpose of supplying vacancies in a Legislative Council with a fixed maximum of numbers, it shall be the first duty of every such meeting to prepare a fresh list of 10 persons duly qualified (according to the recommendations under the head of "The Legislative Council") to hold the office of Legislative

* This may appear, at first sight, to be the reverse of what was proposed by me on a former occasion; but what is stated in a subsequent part of this Minute, under the head of the "Judicial Branch of Government," &c. will show that the object is the same, namely, that the Court of Appeal should consist chiefly of the most experienced of the legal profession, and that they should not previously advise as to the expediency and propriety of measures, on the legality of which they are afterwards called upon to decide. The reason for recommending that which I now propose is, that if necessary it may be effected by the power of the Crown alone, without calling upon the British Parliament.

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Legislative Councillors, and who shall be known to the persons who recommend them to be willing to accept the same; and that thereupon the list of the by-gone year shall be superseded and cancelled.

That except upon the occasion of the one full meeting in January, it shall not be necessary for the Governor to summon more than four members to any one meeting, of whom the President of the Court of Appeal, if he be known to be within 10 miles of the place of meeting, shall be one; but that the President shall not in any case be required or be competent to advise as to the mere expediency of any measure, or in any other matters than matters of law, or questions as to the compatibility of any proposed measure or proceeding with the constitution of the Province, or its relations with the United Kingdom; and that on such points the Governor may always require, or the President may give, the advice in writing, which advice it shall be lawful for the Governor to lay before either House of Legislature.

That one of the Executive Council shall from time to time be appointed provisionally by the Governor, and finally by His Majesty during pleasure, to be Auditor-general of the revenue and of all public accounts, and shall be paid an annual salary of 400 *l.* out of the proceeds of the hereditary revenue, and 600 *l.* out of the duties collected under 14 Geo. 3, c. 88, and other Acts imposing duties of customs, by virtue and under the authority of the words in the 1 & 2 Will. 4, and other Acts, to the effect that the monies shall be appropriated by the Legislature, except so much of such monies as shall be necessarily defrayed for the charges of raising, collecting, levying, recovering, answering, paying and accounting for the same.

That it shall be lawful for any meeting of the Executive Council to refer any matter to one, two or more members of the Executive Council to consider and report thereon to the Governor-in-chief in Council, and that once a year a reference shall in this way be made for the purpose of obtaining a General Report upon the state of the Province, and especially upon all alleged grievances, which Report shall be sent home to His Majesty's Ministers. Finally, that the Executive Council shall no longer be a Court of Appeal, or that its functions in that respect shall be regulated according to the plan proposed in this Minute, under the head of the "Judicial Branch of Government," &c.

By these alterations, the whole of which I conceive to be within the prerogative and lawful authority of the Crown, it would appear to me, that the objections which have been made to the present composition and functions of the Executive Council would be answered; that the Governor-in-chief would be enabled to bring into his councils the most eminent persons of the Province of every profession and class; might acquire an increased influence in every part of it, and open easy channels of communication with himself to every order and description of its inhabitants, whilst, without giving to the members of the Council any undue immunities or privileges from responsibility, the Governor could scarcely be put to the inconvenience of having to change the whole of his advisers upon a demand of the Assembly.

In the present posture of affairs, it is of some importance, also, that this plan, at the same time that it would provide for an efficient audit of accounts, would be compatible with some reduction of those estimates for which it is held that annual appropriations by the House of Assembly should be obtained.

V.—THE LEGISLATIVE COUNCIL.

I AM convinced that no change in the composition of the Legislative Council would satisfy the Assembly which should not reduce the Council to a state in which it would support the measures to which the Assembly has pledged itself by the 92 resolutions, and by its last address to His Majesty; and that no plan of electing a Legislative Council could, for a long time to come, as the Province is at present constituted, have any other result than that of creating a French Canadian majority in both Houses, the proceedings of which would so threaten the mercantile and British interests with vexatious laws as to produce immediate irritation, and gradually a deep-rooted discontent and alienation of affection from the United Kingdom. The Government, instead of holding the poor advantages even of its present position, would be brought into collision with the two other branches of the Legislature united against it. Either it is unnecessary to yield more at present to the importunities of the Assembly than reason recommends, or it would be impossible to refuse anything afterwards, however unreasonable.

That the Council should be firmly opposed to the demands of the Assembly, seeing what those demands are, so far from being a disposition which is to be blamed or lamented, is necessary for the prevention of confusion; it would be produced at once by taking from the Council this character. The British interests are scarcely at all represented in the Assembly; and it is only the different organization of the Council, and its appointment by the Crown, which enables it, without any danger to liberty, to check and stop the evil which may be bred from the forms of our constitution when filled up with the crude and discordant materials of an infant state. I do not pretend, however, to say, that a British majority in the Council, and a French Canadian majority in the Assembly, will make a good and efficient Legislature for the Province, but only that this is less injurious than to make two French Canadian Chambers. In the one case the Government may have to stand still, but in the other it would go to ruin. Whatever line of policy may be resolved upon for the affairs of Canada, whatever partial changes in the structure of the Government or of the Province may take place, I would recommend instead of the principle of election, that of an open recom-

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mendation be made use of for the construction of the Legislative Council for the general legislature of the Province. This principle of recommendation might be brought to bear in one of the two ways, either by having a large and open Executive Council, of which it should be the duty to prepare annually for the information of His Majesty's Ministers, and, perhaps, even to publish, a fresh list of persons fitted to supply vacancies in a Legislative Council with a fixed maximum of numbers; or, if the commercial towns of Montreal and Quebec had good effective charters given to them, and if the rest of the Province was divided into at least three municipal districts, with a view of leaving to the French Canadians their own laws and regulations and judicial tribunals, and to the British theirs, the election of individuals to the municipal councils and principal offices of these towns and districts would be so many recommendations of the parties to the notice of the Crown for the occasions of vacancies in the number of members of the Council of General Legislature for the Province. I think it would be desirable to provide further, that every member of the Legislative Council, upon the opening of each session of the Provincial Parliament, should make a solemn affirmation that, after allowing for the payment of all his just debts, he is lawfully possessed of property to the amount of 5,000 *l.*, or of a life income of 500 *l.* by the year.

That not more than one-tenth of the members of the Legislative Council should be capable at any one time of holding any office or appointment of emolument at the pleasure of the Crown; and that no member should be capable of holding any office or appointment in or under which he should have the receipt or collection of uncertain amounts of public money for which he should be liable to account.

That it should be lawful for His Majesty to revoke and cancel the appointment of any member of the Legislative Council, upon his being convicted of any crime or misdemeanor, and that it should be lawful for any member of the Legislative Council to resign his seat, and for the Governor provisionally, and for His Majesty finally, to accept and confirm the same.

VI.—THE HOUSE OF ASSEMBLY.

The principal complaint which is alleged against the constitution of the House of Assembly is, that by a new arrangement of electoral districts in 1829, under the Provincial Act of 9 Geo. 4, c. 73, if the six counties of Megantic, Missisquoi, Ottawa, Shefford, Sherbrooke and Stanstead are excepted, which return 11 members, all the rest of the population of Lower Canada were either placed or left in minorities, as compared with the French Canadians. Such, I believe, was the fact. The census of the population of the Province taken in 1831 shows that, in every other of the electoral districts but those six counties, the majority of the population were Roman-catholics; and though amongst these, in some districts, there was a class of Irish, I am not aware of any in which they were so numerous as to make the population of British origin a majority of the whole; if in any, it was in Drummond, a township-county, which had then a scanty population, returning one member to Parliament, and has only lately exceeded the number of 4,000. The population of the whole Province was given by the census of 1831 as rather more than 500,000, out of which the number of French Canadians, at the time of this census, cannot be rated so high as 400,000; but by the arrangement of electoral districts they were empowered to elect 77 members out of 88; that is to say, they, being less than four-fifths of the people, were enabled to return seven-eighths of the representatives. To state it according to another fact: they being in a minority in 69 out of 319 subdivisions, according to which the census was taken, or in more than one-fifth of the whole, yet, of the electoral districts they were left in a minority in six only out of 46, or less than one-seventh. To put it still more forcibly: not so many, perhaps, as 2,000 of the French Canadians out of 400,000 were left in a situation to be outvoted by those of a different origin and religion; but more than 50,000 out of 100,000 of the rest of the population remained liable to be outvoted by the French Canadians. These may appear in England to be trifles; but they are not so. Few cases could better illustrate, by its consequences, the political truth, that in representative governments it is essential to the well-being of all parties, and to none more than the numerical majority, that the minor parties and interests should have means, in proportion to their numbers at least, of being heard in the Legislature. If this had been the case in Lower Canada, the indignation and impatience of the British party, and especially of the commercial interest, would have been less; they would not have renounced all desire to sit in the Assembly; the mutual repulsion of the two "origins" would not at this moment have been quite so strong. If there had been a steady opposition party of about 20 in the Canadian House of Assembly during the last seven years, the proceedings of that Chamber might either have been more moderate or more fully appreciated.

There have been at times such indications of more considerate views being entertained by some of the French Canadian majority than by others, as to lead me to believe, that on some important occasions a considerable portion of them might have acted with a temperate opposition party of respectable strength, if it had existed. The Assembly would thus, perhaps, have avoided the reproaches which are now cast upon it, and the disfavour with which it is regarded, for its repeated refusal of the appropriations necessary for the support of the executive and judicial branches of Government in their ordinary functions; for its informal condemnations of several of the judges; for its demands from the Crown of impossible concessions; for its declarations of the invalidity of Acts of the Imperial Parliament, upon which extensive

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extensive rights of property depend; for its entertaining Bills of which the Provincial Legislature is not competent to make enactments; and, finally, for its recent declaration, which has been regarded as a resolution that, unless it can enforce its demands for a change in one of the principal branches of the constitution, it will no longer assemble for the purposes of legislation.

I have no inclination to urge these charges against the Assembly. Many causes, operating through a long series of years, have brought matters to the pass at which they now are; and great allowances are to be made for the feelings of the French Canadians of all classes and descriptions, still more for the circumstances in which they are involved. They are not more to blame than any policy would be which should fix them in their present false position. They represent the numerical majority of Lower Canada, it is true; but that Province is one of five British American Colonies, the principal one, the only one which possesses both banks on any large portion of the River St. Lawrence, which is the common property of them all; it includes the principal fortification, and is, in fact, the citadel and key of the whole. But all the rest of these Provinces are inhabited by a population almost entirely of British origin; the Protestant religion is decidedly predominant in them; the laws, institutions and manners are British; the pursuits chiefly commercial. The persons of that class who are within the boundaries of Lower Canada are supposed to amount to 150,000; and being in communication, on all sides, with the other colonies and the United States, every pain which they sustain vibrates through the kindred and surrounding population. All these circumstances combined would not, in my opinion, at all justify any measure by which the French Canadians should be obliged, against their own consent, as they have been in some other cases on the North American continent, to give up their peculiar laws and institutions. But is it reasonable or possible within a British Province, so situated, that they should constitute the two Houses of Legislature? Placed in the curule chairs of the capitol of British America, the task which they would be required to perform comprehends interests, and I may say destinies, for the guidance of which a diversity of objects of pursuit and interest, a difference of religion, law, customs, manners and language, and a general want of community of purpose and sympathy of feeling, on either side, much more than any want of talent or of good intention, would unfit them. The Assembly is, even now, in this extremity; and its extraordinary sallies and determinations indicate a struggle with something which it cannot compass, and a sense of its being impossible that it should rule the policy of the United Kingdom on the American Continent; yet no other station compatible with its distinct existence is provided for it. Even the superiority of numbers of the French Canadians over the rest of the population within the boundaries of Lower Canada is gradually and, I believe, surely decreasing. In 1831 they were four to one; now they are not more than three to one. As they lose their numerical advantage, however, they feel the necessity of being more united and energetic. The British party believe the French Canadians to be now not more than 450,000, and that themselves are 150,000; yet, at the last general election, the British Protestant and mercantile interest could not return one member out of eight for the cities of Montreal and Quebec; and the British party in the divisions of the House of Assembly has not numbered more than from 8 to 11 out of 88. In such a state of things, and considering the adverse temporary interests and bitter feelings of the two parties, and the measures threatened by the Assembly, it is a natural consequence that the British should regard the prospect of any change in other branches of the constitution being conceded to their opponents with irritation; they would do so with despair, if they did not feel the impossibility of its being permanent. Another defect in the constitution of the Assembly, besides that arising from the system of elections, is, that the existing law requires 40 members to be present to constitute a House. This obviously aggravates the grievance to those of British origin, of being inadequately represented. If they returned members in proportion to their numbers, or if the Assembly could act with a less numerous House, they might sometimes bear a tolerable proportion to the whole number present; but as matters stand, they are upon all occasions necessarily insignificant. Another consequence is, that it has almost always happened of late years, that before the Governor has desired to prorogue the Parliament its proceedings have ceased, from the want of sufficient attendance in the Assembly to constitute a House; and as an usage has prevailed of not sending a considerable part of the Bills to the Legislative Council until a very late period of the session, the Council, after the stoppage of proceedings in the other House, has had only the alternative of adopting without amendments, or of rejecting the Bills *in toto*.

The present qualification of electors for counties is one which, without any system of registration, affords an easy opportunity for deception at the poll; and it is alleged that many unqualified persons vote, and that other irregularities are frequent at the elections.

However difficult and delicate might be the question, as to any steps being taken by a Governor, or by His Majesty's Ministers, for the removal of these grievances, it certainly is by no means impossible, nor very difficult, to state provisions by which, even if the constitution were to remain in other respects unaltered, they might be remedied, provided the Legislative body were ready to enact them.

A system of registry of votes might be established without any extraordinary difficulty. A qualification, involving residence as well as notoriety of property within the electoral district, might be required; and the presence of one-fifth of the members of the Assembly might be declared sufficient to constitute a House.

To give a fair opportunity to the British population of having a share in the representation proportionate to their numbers, a new division of counties has been proposed as the only remedy; but there would not be any chance of carrying that measure through the Provincial Parliament, nor, even if the Imperial Parliament should be obliged to interfere, could it be

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expected to entertain the discussion of provisions, the justice of which would so much depend upon minute facts and details of so local a character, that they scarcely could be ascertained with accuracy anywhere but in Canada.

There are two ways, by either of which the object might be more easily effected, and which rest upon a principle much more than upon any local facts or circumstances. The one, that of increasing considerably the number of representatives, and giving one to every two or three parishes or townships. This plan prevails in Vermont, one of the adjoining states of the American Union, in which there is a representative for every township. The other course, and the one which I should prefer, would be to leave the electoral districts as they are, or to make them larger, by the consolidation of some of them, and to give more representatives to the more populous ones, so as to proportion, in some degree, the number of representatives to the number of registered voters, but to allow to each voter only one vote, no matter how many representatives might have to be chosen for the electoral district.

Unless by acting on one of these two principles, or by dividing the Province into new districts, with distinct municipal constitutions, and the power of making laws for their internal affairs, I know not how a minority of the people, where party feelings run so high, can have its fair share of representatives, a point of such essential importance to prevent the majority from oppressing or harassing, by partial and imperious laws, the less numerous parties. It is a conviction of its being a vital principle of freedom, that minorities should be represented, that leads me to suggest an innovation which I do not expect will be received with favour, though I know it to be susceptible of forms which would secure the most exact proportion between the numbers of the voters of different parties, and the number of their representatives. It is so certain that no change whatever, which should be favourable to the British party, would be agreed to by the Provincial Assembly at present, and it appears to me that it would be so mischievous to agitate insulated points of Canadian policy in the British Parliament, that I am induced to recommend, upon the whole, that if the necessity of going before the Imperial Parliament should not arise out of other circumstances, the present unequal state of the representation should be borne with.

The evils, however, of which it is productive, and the difficulty of finding a remedy under the present structure of the Province, impress more deeply the settled conviction on my mind, that nothing less than a change, as decided as that of 1791, will effectually remove the impediments which now stand in the way of good government. I am anxiously desirous, however, to mark the distinction between an alteration of the constitution and a suspension of it. The necessity for the first will be manifest ere long, and, if it depended upon myself, it should take place now; but I would remove nothing until something better had been provided. There should be additional supports for liberty and for the laws before the old ones were displaced; and I know of nothing which can occur that would reconcile me to the Province being left, even for a day, without a constitution.

VII.—THE CIVIL LIST.

The declarations of the Assembly, in the short session which ended on the 4th of October 1836, must have satisfied most persons that it is very desirable to use lawful means, if there be any, of paying the arrears of the Civil List, and of carrying on, without an absolute dependence on the votes of the Assembly, those executive and judicial functions of the Government which are provided for in the United Kingdom without the annual appropriations of the House of Commons, and which are necessary for the protection of the lives and prosperity of the people. An enactment, that when the two Houses of the Provincial Legislature have been unable to agree as to the mode of appropriating the duties which, until very lately, were appropriated by the Crown alone, that power of the Crown shall revive for the particular occasion, would provide both for the payment of the arrears of the civil list, and for the future expenditure of the Government; but in order that there may be a larger choice of expedients, and inasmuch as it is plainly unadvisable to apply to the British Legislature upon single points, I shall proceed to state some other means by which it seems to me that the case might still be met without the necessity of an immediate application to Parliament.

The arrears, by the 10th of April next, will have amounted, perhaps, in round numbers, to 115,000*l.* or 120,000*l.* beyond what can be discharged out of the annual proceeds of the hereditary revenue, and other monies which are at the disposal of the Executive. But to an amount considerably exceeding this, there will be in the Receiver-general's hands the proceeds of duties of customs, which are considered to require for the disbursement of them an annual Act of Appropriation. These, probably, by the refusal of the Legislative Council and of the Government to give their sanction to any other appropriation of them, will be retained in the Receiver-general's hands until the Assembly applies them to the discharge of the arrears, and there may be retained yearly, in the same way, additional monies which will be sufficient to cover interest on the principal sum. An amount is in this way secured, which, with a reasonable Legislature, insures the means of discharging ultimately the arrears, or of repaying with interest any sums which may be advanced by way of loan to His Majesty's Government in Lower Canada, for the purpose of discharging them; these, however, cannot be made available otherwise than by the concurrence of the three branches of the Provincial Parliament. In the meantime I am not aware of anything which need prevent His Majesty's Government from borrowing, upon the security of the wild lands and forests, and of the King's

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King's domain and hereditary revenue of the Crown, a sum sufficient to discharge what has been repeatedly acknowledged to be due to the ordinary executive and judicial officers. If the matter were before Parliament, and if the resources which are under the management of the Commissioners of Woods and Forests in England should admit of it, I would recommend that an enactment should be proposed to empower and direct the Commissioners to advance, from time to time, by way of loan to His Majesty's Government in Lower Canada, upon the security of the wild lands and forests comprised within the boundary line of that province, and being at the disposal of the Crown, any sums not exceeding in the whole a fixed sum of 150,000*l.* or 200,000*l.*, to be repaid in 10 years with interest, at the rate of four or five per cent. per annum; of which sums a sufficient portion should be applied as soon as received, for the complete discharge of the arrears of the civil list, and statements and accounts of the management of the wild lands and forests in Lower Canada might be submitted annually during the 10 years, or until the repayment of the loan, to the inspection of the Commissioners of Woods and Forests in England. Of course it would be necessary to stipulate that this mortgage or pledge should not prevent the disposal of the wild lands by the Government of Lower Canada, according to established regulations; but subject to these, the security would be amply sufficient. I should deem this to be a satisfactory provision for the liquidation of the arrears, and if the plan were to be steadily persisted in, I should look forward with some confidence to the whole transaction being closed before the 10 years had elapsed, by the Canadian Legislatures approving of it, and appropriating the monies retained in the Treasury to the repayment of the loan. If the present state of the affairs which are under the management of the Commissioners of Woods and Forests in England, should not admit of such a loan being made, or if it should be thought inexpedient that the Imperial Parliament should enter at present into the subject of Canadian affairs, I do not conceive that Ministers would find any difficulty in obtaining the loan at any time from other quarters upon the same security. Supposing the arrears to be disposed of and settled, the principles on which a provision might be made for the necessary expenditure of the executive and judicial functions of Government seem to me to be, first, that until a civil list is established by an Act of the Legislature, it is lawful for the Crown, without any vote of appropriation by the Assembly, to apply the whole hereditary revenue and proceeds of sales of wild lands in paying the executive and judicial officers of Government, and to apply also, as it has hitherto done, to the same purposes, the sums permanently appropriated by the Assembly to the general uses of the Civil Government. These different revenues taken altogether, according to the statement in the Appendix to the first Report of the Commissioners, amounted, in the year 1834, to more than 28,000*l.*, if the payment of the Land Company is taken into account.

Secondly, I apprehend that the superior courts of justice have a lawful power of establishing such reasonable fees as will in themselves provide for the unavoidable expenses of the courts, and afford the subordinate officers a reasonable remuneration for the duties they perform; thirdly, that the inhabitants of the townships, parishes, counties or districts of Lower Canada require at most only the permission of a Canadian Legislature, to enable them, by self-assessment, to form a system for the conservation of the peace in their own neighbourhood, and for the prosecution of felons; and that until such permission is obtained, a moderate assistance from the hereditary revenue would probably enable them to attain the same objects under the direction and with the countenance of the executive power. If, upon these suppositions, an examination is made of the civil establishment of Lower Canada, with the object of ascertaining, first, what part of it is now, or may lawfully be, paid out of the public revenues before they are handed over to the Receiver-general; secondly, for what parts of it any permanent appropriations have been made by the Legislature; thirdly, what offices or appointments may be abolished or consolidated; fourthly, to what offices and services the monies which are lawfully at the disposal of the Executive may, for the purposes of Government, be most effectually applied; and lastly, what others may be provided for by the fees on law proceedings, or by voluntary assessments imposed upon themselves for local purposes, by the inhabitants of the subdivisions of the provinces; it will be found that a sufficient civil establishment for the protection of life and property, and for the ordinary functions of the executive and judicial branches of Government, may be supported in Lower Canada, without any extraordinary revenue or aid from the annual votes of the Assembly, though not without considerable inconvenience. I trust I shall not be supposed to wish that the necessity should continue for the Government acting, as it were, on the defensive, and resting on the resources of the Crown alone; but I consider the possibility of its doing so to be so certain and clear, that it is unnecessary to enter at any length into a consideration of other resources to which I conceive His Majesty's Ministers and the Government of Lower Canada might lawfully have recourse. The expenses of postage in the Secretaries' office, which are estimated at 1,300*l.* per annum, might be saved by an arrangement with the Post-office; it would deserve an inquiry which would be better conducted in England than in Canada, whether the net revenue, if there be any, derived from Canadian postage, might not be carried to the account of the hereditary revenue in Canada, and whether this might not also be done with a trifling revenue arising out of the old Crown duties, which are now understood to be carried to the account of the consolidated fund in England?

There are several ways in which the wild lands and forests, Crown lands, and rights of the Crown, especially as they regard the banks or bed and navigation of the St. Lawrence, and the other great rivers, might, without doubt, be made to produce a larger revenue than they do at present, if means could be provided of applying capital to them under skilful and

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economical management; and it appears to me that it not only would be unobjectionable, but that on many accounts it would be both just and expedient that a part of the salaries of the heads of Government in territories dependent on the British Crown should be defrayed out of the British Treasury, for the reason that the Governor at least is an immediate officer and servant of the Imperial Crown, and that a part of his duties are not merely provincial, but consist in preserving and conducting the relations of the dependent territory with the empire.

No necessity, however, would exist at present for resorting to these means. It is unwillingly that, even in the present circumstances of Lower Canada, I exhibit in any form distinct from the co-operation of the representatives of the people, the permanent resources which the principles of the British constitution supply for the maintenance and execution of the laws; but the occasion demands it; and for this reason, above all others, that whatever alterations may be required, it shows it to be unnecessary that the constitution which has been given to the Province should be either annulled or suspended.

VIII.—THE KING'S DOMAIN AND HEREDITARY REVENUE OF THE CROWN.

Two Papers, namely, No 1. (A.), and No. 4, of the Appendix to the First Report of the Commissioners, have already exhibited to His Majesty's Ministers a statement of the hereditary revenue in Lower Canada. Although I conceive the property of the Crown in the domain to be a distinct thing from the prerogative of the Crown as to the wild lands and forests, it appears to me that, whether any division into legislative districts takes place or not, the receipt and management of the whole might be advantageously consolidated and brought under one department, of which the principal officer, though his duties would be of a very important character, yet, as a person in the receipt of uncertain amounts of public money, and liable to account for the same, ought, according to the opinion I have expressed under the head of "The Executive Council," to be incapable of being a member of the Executive Council, Legislative Council, or House of Assembly, and should be required to find sureties to a sufficient amount. If it should be necessary to apply to the Imperial Parliament on other accounts, I would recommend that an enactment should be proposed that the officer above mentioned, under the control of the Governor in Council, should have the powers which by the British Statutes are vested in the Commissioners of Woods and Forests in England; but that an account should be rendered half-yearly to an auditor-general of accounts, to be appointed as I have stated, under the head of the "Executive Council." There is not any probability at present of the House of Assembly of Lower Canada assisting in giving a more effective control of the domain to the officers of the Crown. If the suggestion which I have made under the head of "The Civil List," as to the wild lands and forests being made available as a security for a loan, should be acted on, it might deserve consideration whether the King's domain should not form a part of the security. But at all events, if Canada is to be saved from a dissolution of Government, one of the points to be most carefully watched is the retention and improvement of the hereditary revenue, permitting not the less the annual proceeds of it to be thrown for a given period into the general revenue, whenever the representatives of the people will appropriate for the same period a sufficient portion of that revenue to the support of the executive and judicial branches of Government.

IX.—THE WILD LANDS AND FORESTS; THE BRITISH AMERICAN LAND COMPANY.

I CANNOT perceive any ground for raising a question as to the right of disposal of the wild lands and forests. The forty-second (42d) section of the 31 Geo. 3, c. 31, by which its present constitution was given to Canada, has prevented all doubt. The prerogative of the Crown is not only asserted, but His Majesty is even precluded from giving the Royal Assent to any Bill of the Provincial Legislature which may affect that prerogative, until it has been submitted for 30 days to both Houses of the British Parliament. My present object therefore is only to recommend a little more strongly than my colleagues have done, a simpler and easier method of exercising in this respect the power of the Crown. I have not heard any complaint of the manner in which the licences to cut timber are granted, or that in this respect any new regulations are required. But as to wild lands, I would do away with nearly the whole of the existing system of sales by auction, of payment by instalments, and the consequent keeping of accounts, and of compelling parties who wish to settle upon unsurveyed lands to wait till the survey is made, and to pay the expenses of it. Of course many persons who find employment and emolument under the existing system, will be inclined to uphold or even to extend it or render it more artificial; but it is complicated, ineffective, expensive, dilatory, founded on wrong principles, and stands in the way of settlement instead of promoting it. The first thing to be done is to remove the prejudice of harm being done either to the Crown or to the people as a body or to individuals, by grants of wild lands being made to others. This is contracted from the habitual impression in old countries of the value of land. But in countries abounding with desert tracts every body is benefited by the grants made to others. There is no want of waste land; and if there was, cultivated land

land is better than waste, and either the one or the other is just as easily to be bought after grants are made as they were before. When a revenue indeed is raised from the sales of wild lands, they cannot be given away without depriving the Treasury of the amount they would have brought at auction; but that is the whole extent of the evil. Some few instances may be found of individuals who desire to invest a sum of money in waste lands, and to keep them waste, and to wait till, by the surrounding improvements, an increase of value is given to the purchase; and in a colony, there will always be some cases in which waste land is bought, and is afterwards neglected and forgotten, so that the owner cannot easily be found: but these instances are never so common as really to create a public inconvenience, and may be entirely prevented by some very simple expedients, which are in use in the United States. The real interest of the people is that cultivation should go forward as speedily as it can, without detriment to morals and civilization. To promote this, it is desirable to make it as safe and as easy as possible to apply capital to land; and instead of obstacles being thrown in the way of enterprize or even of speculation, every facility should be afforded to them. We could not do better than adopt at once the method which in the United States seems to answer all main purposes, and to give satisfaction to that vast and not easily contented community. It has been productive of a very considerable revenue, and I have heard no complaint against it, except that it is attended with a great deal of speculating in land, the evil of which, beyond that of speculating in merchandize or in the funds, I have been unable to discover. In conformity with what I believe to be the general outline of that plan, I would propose that an office should be opened at each of the towns of Quebec, Three Rivers, Montreal, Hull, William Henry, and either at Kamouraska or in Gaspé, and of course that an officer should be appointed for each. The surveys now in the offices of the Surveyor-general and the Commissioner of Crown Lands should be divided amongst these, and the further surveys of the waste lands of each district should be proceeded in and completed with as much expedition as possible. No payment by instalments should be allowed, but land should be sold, if required, in parcels of 50 or even 25 acres. One uniform price should be set on all wild lands, by which means the good lands are sold first, and the settlement and cultivation of these brings up the prices of the inferior spots in the neighbourhood. The present upset prices at the auctions are too high; that of the United States, which is a dollar and a quarter, would also be too high for the less genial climate and less fertile tracts of Canada. I would recommend that at first, and for the present, the price be fixed at a dollar; it might, perhaps, be lowered after the best lots had been disposed of at this rate. The utmost facilities and simplicity of arrangement should be established as to the mode of obtaining a grant. A plan should lie in the office, on the face of which every one should be able to see what surveyed lands are granted, and what are vacant: when his own mind is made up, a purchaser should have nothing to do before obtaining his certificate of purchase, but to produce and pay as many dollars as he wants acres of ungranted and surveyed land; and the certificate, drawn up according to an uniform precedent, should be handed to him without further expense, or delay or difficulty of any sort, a duplicate being of course prepared and registered in the office. The period required for perfecting the patent is not of much consequence, if the certificates of purchase are duly registered. I would venture further to recommend that in the patents the Crown should waive the reservation of mines and timber; it never yet in this colony has produced anything for the Crown, and yet it is to the owner of the land an unpleasant qualification of his estate. If any one wishes to occupy unsurveyed land, he should be allowed, upon paying half price, that is, half a dollar an acre, to lodge in the office a petition for the land, and memorandum of his payment, and to take possession; and the regulation ought to be, that, on the survey coming up with him, he should have notice to complete the purchase within a given time, on pain of having the land put up and sold by public auction at the upset price of half a dollar, in which case, whatever it should fetch beyond half a dollar per acre, should be paid to or retained for the party who made the original deposit and lodged the petition. If this plan were strictly adhered to, the whole duties, including the accounts, would be extremely simple: the money should be paid in quarterly to the Receiver-general, and carried to the land and timber fund; the accounts and the register of land sold should be sent quarterly or half-yearly to the Auditor-general, and the Provincial Secretary, who should register the grants and have them published in a gazette, in which also all persons taking possession of unsurveyed lands should be obliged to publish, or pay for the publication of the particulars of their petition, deposit and occupation of the land. A gazette in Canada might be made extremely advantageous for this and other purposes, and in some departments, and under an accurate system, it might almost render other records useless.

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X.—THE JUDICIAL BRANCH OF GOVERNMENT; THE PROPOSED COURT OF IMPEACHMENTS; THE COURT OF APPEALS; THE COURT OF ESCHEATS.

The circumstances in which the Judges of Lower Canada are placed are deplorable. They hold their offices during the pleasure of the Crown. Their salaries, though they might be lawfully paid out of the hereditary revenue, have been allowed to depend on the annual appropriations of the Legislature. These are far in arrear, and great inconvenience, to say the least of it, has in some instances been the consequence. The party feelings of the two races are so exacerbated, that many of the French Canadians repose little confidence in the

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British Judges—the British as little in the French. There is an eagerness on each side to push new Judges of their own party on to the bench; each dreads its coming into the undivided possession of the other "origin." Two languages are indiscriminately employed in the Courts in interpreting and enforcing two systems of law, diversified by the provincial statutes, which for the most part are enacted only for a few years at a time, to be then varied or suffered to expire, or in some cases to be simply renewed. The profession of an advocate comprises the whole business which, in England, is divided between the two professions of barrister and attorney or solicitor. The duties of the notaries are distinct. There are a great many, in proportion to the whole numbers of the French Canadian advocates and notaries, who are members of the House of Assembly; and for some years no session has passed without the appointment of committees to inquire and report as to the conduct of some of the Judges; charges are made and evidence is brought forward without the presence of the party accused, and addresses are preferred to the Government, vilifying the characters of those on whose integrity, impartiality, learning and sense of justice, property and life are allowed daily to depend. These papers are necessarily despatched to the Home Government. For a time the judge who is arraigned must keep himself ready for a voyage to England; sometimes he is called upon to defend himself, sometimes the attack dies away, sometimes it is repeated annually. For the sake of that independence which is necessary for uprightness, it seems to me that the very first application of the proceeds of the hereditary revenue should be to the steady and punctual discharge of the salaries of the judges, and that their tenure of office should be as nearly as possible the same as it is in England, and that by some well-considered declaration on the part of His Majesty, in the form of instructions to the Governor or a message to the House of Assembly, the irregular warfare against them should be discouraged, whilst other modes should be proposed of hearing and deciding any considerate and formal accusations. The Assembly has long been calling for a Court of Impeachments, but has latterly appeared to have resolved to be satisfied with no other court than their own House. I see no difficulty which could be felt by a wise legislature, in constituting a very respectable and sufficient court out of the Legislative Council by taking annually five members from that body by lot, and allowing the Governor to appoint a president, who should be either another member of the Council or a judge or professional lawyer of 20 years' standing. Such a court should not be capable of awarding punishment in any other manner than by a recommendation that the party accused should be removed from office. It is to be remembered that provision is to be made only for that sort of accusation which is properly tried by impeachment, on account of its not being easily tangible by law; when a heavier punishment is called for, the accusing party should be referred to the ordinary courts of justice. This tribunal of impeachments, like other remedies which I have had occasion to propose, will not, I fear, be established by the existing Legislature of Lower Canada. The Court of Appeals is another part of the judiciary system which requires alteration. By the imperial statute of the 31 Geo. 3, c. 31, s. 34, it was made to consist of the Governor and the Executive Council, appointed by His Majesty, but subject to such further or other provisions as might be made by the Provincial Legislature; and the Provincial Act of the 34 Geo. 3, c. 6, s. 23, enacted that the Governor and Executive Council, with the two Chief Justices, or any five of them should constitute the court. Under this Act the Chief Justice of Montreal sits in the court, without being a member of the Executive Council. All parties agree in thinking that this is not as good a Provincial Court of Appeals as they might have. The principal objection is, that the members of the Executive Council are not only not professional lawyers, but in some other respects are not the fittest persons to sit as judges, inasmuch as they must necessarily, in the conduct of the affairs of the Province, become connected with the subjects in which they have to pronounce judicial decisions. Parties who, for whatever reason, suppose themselves to be not favourably regarded by the Government, will not be persuaded that they must not be viewed with disfavour by the members of Government, though sitting in a judicial capacity. A striking instance of the jealousy of the French Canadians in this respect, extending even to so grave and considerate a body as the ecclesiastics of the Seminary of Montreal, is afforded by Mr. O'Kill Stuart's report of the case of Fleming against the Seminary of Montreal (O. Stuart's Reports, Part ii. p. 184), in which a rule on the appellant was obtained to show cause why the opinions of two members of the Court of Appeal should not be reckoned as one, on account of their being brothers-in-law, and the point was earnestly supported upon grounds of French law by two gentlemen who were afterwards placed on the bench. Another objection made against the Court of Appeals is, that each of the two Chief Justices having to decide upon the cases tried by the other, some opinion must in course of time be pronounced which makes that law in the first instance, in each Court of King's Bench, which will not be held to be law upon appeal. In a former paper I suggested that His Majesty should be empowered to appoint judges of appeal who are not members of the Executive Council, and that it might be a source of advantage to both Provinces, if there was only one court of appeal for Upper and Lower Canada. I am still of that opinion, and ultimately I should hope to see a court of this sort entirely distinct from the Executive Council; but in the meantime, as a measure which may be carried into effect by the sole authority of the Crown, I would recommend that the other alteration in the Council being made which I have suggested under the head of the Executive Council, all the judges of the superior courts of both Provinces should be appointed members of both Executive Councils, but with the understanding that it is for the purpose only of forming a Court of Appeal in each; and at the fixed times for holding the two Courts of Appeal, each of which, I apprehend, might even now sit at any place within the Province for which it is held, as many of the whole number of judges should be summoned as with convenience could attend. The provincial statute of Lower Canada, 36 Geo. 3, c. 6, s. 23, would

would not present any obstacle to this arrangement, and though, unless some fresh enactment should be made, the members of the Executive Council who are not lawyers would still be entitled to sit as members of the Court, it is probable that they would not claim the privilege; and if they did, the presence of several judges would draw the superintendence and decision of the causes into their hands. In this way, besides the advantage to be derived by the judges of each Province having frequent opportunity of comparing the laws of the other Province with their own, an impartiality and freedom from connexion with the previous proceedings in the cause would be secured as to some of the judges at least, and the tribunal would resemble in principle the constitution of the court of appeal of the Exchequer Chamber in England. Minute of Sir C. Grey.

The Court of Escheats in Lower Canada is an anomalous institution, though not without precedent in British America. I am of opinion, perhaps more decidedly than my colleagues, that it never ought to be brought into operation; that in the present state of Lower Canada it would be impossible to make it act with impartiality; that it would be difficult in many instances to find jurors whose own estates would not be liable to be taken from them by inquests similar to those on which they would be called upon to sit; that a forfeiture of an estate for non-performance of conditions is not an escheat nor a forfeiture, properly so called, or of such a class that it can be adequately tried by inquest of office; that if the patents of the Crown are to be revoked, the appropriate form of proceeding is *scire facias*.

XI. THE SEIGNEURY OF MONTREAL.

I AGREE with all that is said in the Report of the Commissioners as to the extent of inconvenience which is occasioned to the inhabitants of Montreal by the tenure *en roture*; as to the advantages which would be obtained by putting the possessions of the seminary upon some better understood and more solid footing; and, unless ill-advised assertions of a legal title in the seminary, should render this course necessary, as to the inexpediency of the Crown asserting, by legal proceedings, a claim to the valuable property which under its authority has been enjoyed by the ecclesiastics of the seminary for 70 years; as to the fairness, in most respects, of the terms on which the ecclesiastics have proposed to give their assent to a commutation of the seigneurial dues, and as to the esteem and respect in which those gentlemen are held by all classes of society at Montreal. But I deem it to be incumbent on me to state a more decided opinion upon the title to the seigneury than that which is expressed in the Report, and in some respects a different one.

The ecclesiastics of the seminary of St. Sulpice at Paris had been established as a community of Roman-catholic priests in 1645; and in 1663, an association which had subsisted for some time for the conversion of the Indians of New France, made to them, by a registered contract in Paris, a donation of all their right of property in the Island of Montreal, upon condition that the domain and property of the island should be inseparably united to the seminary.

In this instrument the seminary declared their domicile to be at Paris. In 1677, the King of France, by letters patent, gave permission to the above-mentioned community to establish a community and seminary of ecclesiastics in the Island of Montreal, whither they had already sent some priests, and intended to send more to the number of 14; which new community was to be for the conversion and instruction of subjects of the crown of France; and, to facilitate this establishment, the king confirmed the donation of 1663, and put for ever into mortmain the *lands and seigneury of Montreal*, as consecrated to God, and to be enjoyed by the members of the seminary and their successors, free of all rights or claims of the crown, from which they were declared to be released.

As it seems to have been stated in 1826, as the opinion of M. Dupin*, a very celebrated Parisian lawyer, that the effect of these letters patent was to give the lands and seigneury to the new community at Montreal, it is necessary to remark, that the tenor of the letters patent is not, of themselves, to establish the new community, but only to give authority to the community at Paris to establish it; and that, so far from separating the seigneury from the community at Paris, the letters patent confirmed the donation of 1663, which in distinct terms forbad any such separation. Some public documents of a later date put it beyond all doubt, that the community at Paris retained its seigneury. An edit of 1693, recites the title to the entire seigneury of "the ecclesiastics of the seminary of St. Sulpice *of our good city of Paris*," and mentions the documents which *they* derive from the administration of justice, which forms a considerable part of the foundation of *their* seminary in the island. Other letters patent of 1714, prove the same thing. An arrêt of the council of state of 15th May 1716, describes the ecclesiastics of the seminary of St. Sulpice, *at Paris*, as seigneurs of the Island of Montreal, and recites another arrêt of 1711, for reuniting to the domain of the said seigneurs certain lands formerly conceded by them. The instrument of 1704, executed by the seminary at Paris, under the authority, it is said, of the British Ministers of the day, and accepted by the seminary at Montreal, established the same point. Therefore, notwithstanding the opinion of M. Dupin, I consider it as clear and certain that, at the time of the capture of Montreal in 1760 by the British army, the right of property to the seigneury of the island of Montreal was in the community of ecclesiastics of the seminary of St. Sulpice at Paris; but although no formal instrument is now to be found by which it was done, it appears by the words of an arrêt of 1702, and another of 1716, that the Parisian community, under the permission given by the king, had established a

* *See* Report of a Committee of the House of Assembly of Lower Canada, 1 March 1834.

1 Edits & O. 289. 325. 337. 339.

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community at Montreal, somewhere betweeen 1677 and 1702, most likely immediately after the letters patent of 1677; and the arrêt of the 5th May 1716, which imposed a tax of 2,000 livres upon the seminary at Montreal for the repair of the fortifications, styled that seminary the "seigneur *direct*" of the island. In 1760, therefore, at the time of the surrender of Montreal, there were two communities, the one domiciled at Paris, who were the seigneurs of the island of Montreal, and the community at Montreal who were in the actual occupation of the seigneury, and in the immediate receipt of its revenues, but who had been created by, and were subordinate to, the community at Paris, and to whom it was a legal impossibility that the Parisian community could have transferred the whole of their seigneurial rights. The Montreal community being the creation of the other, could not well, in its corporate capacity, have been a member of it without some reconstruction of the parent society, which does not appear to have taken place; but it seems that all the individuals of the Montreal community were members of that at Paris. They exercised the right of appointing the registrar or greffier of the King's Court at Montreal, and their own places of residence were exempt from the jurisdiction of the King's Courts: *See* 1 Edits & O. p. 289. By the capitulation of Montreal* in 1760, a demand made in article 33, that "the communities of Jesuits and Récollets, and *the house of the priests of St. Sulpice at Montreal*, should be preserved in their *constitutions and privileges*, was, by the general commanding the British army, "refused, until the King's pleasure be known." But by the 34th and 35th articles, it was granted that all the communities and all the priests should preserve their moveables, the property and revenues of the *seigneuries and other estates which they possessed* in the colony, of what nature soever they were; and that the same estates should be preserved in their privileges, rights and exemptions. By the definitive treaty of 10th February 1763, Canada, with all the rights of the crown of France, was ceded to His Britannic Majesty, who, by the 4th article, agreed to grant the liberty of the Catholic religion to the inhabitants of Canada, and to give the most effectual orders that his new Roman-catholic subjects might profess the worship of their religion, according to the rites of the Romish church, as far as the laws of Great Britain permitted. His Britannic Majesty further agreed that the French inhabitants or others who had been the subjects of the most Christian King, in Canada, might during the period of 18 months, retire with all safety and freedom wherever they should think proper, and might sell their estates, provided it should be to subjects of His Britannic Majesty. At this point it is desirable to consider in what position the two communities of the seminary at Paris and the seminary at Montreal were left by the capitulation and the treaty. General Amherst, when he assented to stipulations respecting the permanent enjoyment of immoveable property, which could not be construed otherwise than as extending beyond the period of the war, allowed the limits of a capitulation to be exceeded, and it does not require any argument to show that conditions granted by a general cannot be valid to any extent beyond what the laws of the nation for which the general is acting, will permit. This indeed was intimated in the answer to the 41st and 42d articles of the capitulation, and more distinctly in the 4th article of the definitive treaty. But inasmuch as it is certainly within the authority of a general to grant to a capitulating party the property in their moveables, and as General Amherst's assent respecting the permanent enjoyment of real and immoveable property, was blended in the same article with that respecting moveables, if the British Government meant to repudiate any of the stipulations respecting the permanent possession of real estate, it was incumbent on them to do so at the first opportunity, or at all events in the definitive treaty. Not having done so otherwise than by expressing, what must always have been implied, that the liberty of the Catholic religion was not to exceed what the laws of Great Britain permitted, it seems to me that, subject to that proviso, the 33th and 34th articles of the capitulation of Montreal have always been binding, in honour at least, as lasting conditions; and that they must be looked to, even now, as a part of the grounds on which all claims respecting the seigneury of Montreal must be argued. From this opinion, however, I exclude those words in the 34th and 35th articles which relate to "privileges" and "honours" of estates, as repugnant to the 33d article, which referred all "privileges" to the pleasure of the King. Two somewhat discordant stipulations then were to be reconciled after the ratification of the definitive treaty. By the one the constitutions and privileges, as far as Canada was concerned, both of the community at Paris and of that at Montreal, were made dependent on the King's pleasure; by the other the communities and priests were promised the permanent possession of their seigneuries, as far as the laws of Great Britain permitted, but with the liberty to sell their estates within 18 months to any subjects of His Britannic Majesty, under which term were included those Roman-catholic inhabitants of Canada who should choose to remain there, and give their allegiance to the British Crown. Now the point on which the whole case

* It must be remembered that the capitulation of Montreal did not take place until a year after that of Quebec, so that the demands of the garrison, probably, were in some degree foreseen, and the remoteness of the Province both from England and from France, and the difficulty of bringing to the notice and understanding of the authorities in Europe the interests of the inhabitants of Canada, may account for, and perhaps justify, the fact that the capitulation resembles rather a set of preliminary articles of peace than the mere capitulation of a town. It certainly has been considered, both in Canada and in England, as having effect beyond the occasion on which it was made. It is published at the head of the volume of Public Acts, which is regarded as comprising the fundamental laws of the colony, and is referred to in the opinions of the Crown law officers, even in recent times, as bearing on the present interests of the parties to the questions respecting the seigneury of Montreal.

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case turns is, whether the laws of Great Britain at that time permitted the recognition in Canada of the constitutions of the seminary of St. Sulpice at Paris and of the seminary at Montreal, or of either of them; and it seems to me they did not, which makes it unnecessary to take any notice of the question which might otherwise arise, according to recent decisions, respecting the rights of aliens to hold real estate in Canada. The two constitutions of the seminary at Paris and of that at Montreal, as they are disclosed to us in the letters patent of 1677, and every other document which relates to them, equally established the temporal pre-eminence, authority and jurisdiction in Canada of a corporation domiciled at Paris; and in this respect each of those constitutions was incompatible with the supremacy of the British Crown. I know not how the constitution of a corporate body can in law be so separated into parts, as that one of its pervading principles may be vicious and void as repugnant to the universal law of the empire, and the others stand good: and as the constitution of the seminary at Montreal appears to have been in substance that it should occupy the property and discharge vicariously the duties of the Parisian community, under its directions, I come to the conclusion that the definitive treaty of peace of 1763 determined and put an end, as far as Canada was concerned, to the powers and rights of the seminary at Paris, and to the corporate capacity and legal existence of the seminary at Montreal, excepting that both were to remain capable for 18 months to dispose of their property if the members of them should choose to do so. Having stated this opinion, which, I am confident, it is better for all parties should be distinctly brought forward, I am desirous of stating, with equal plainness, that the 34th article of the capitulation having been in no way repudiated by the treaty, nor qualified otherwise than by a restriction of the liberty of the Roman-catholic religion to what the laws of Great Britain would permit, and the objects and purposes of the seminary having always been considered to be laudable and beneficial, the Crown appears to me to have been bound, according to every generous construction of the law of nations, to give, within that limit, to those ecclesiastics of the two seminaries who remained in Canada as full an enjoyment of the ordinary seigneurial profits of what had been their property or their possessions, as they had before, and this not merely for their natural lives, as private and unconnected individuals; but, seeing that the objects of the community had been praiseworthy, to give it to them as nearly as might be in the same manner as they would have enjoyed it if the constitution of their community, which was now at an end, had continued to subsist as a legally recognized institution. This would not include such franchises as the appointment of the greffier of the King's Court at Montreal, nor an exclusive jurisdiction within their own walls and within the farm of St. Gabriel, both of which they had enjoyed, and have since at one time claimed; but it would, by a liberal construction, include and account for the permission, which was given to them by the Crown, to admit new persons (even foreigners) into their society: and I feel some confidence that if the whole subsequent history of the possession and the claims of the seminary on the one hand, and of the conduct of the British Crown on the other, not only towards this seminary, but towards the other ecclesiastical Roman-catholic communities of Lower Canada, be examined from this point of view, they will admit of a consistent explanation which cannot otherwise be obtained. In this separate Minute, which does not lay claim to the authority of a Report of the Commissioners, it would be considered superfluous for me to go minutely through the whole series of subsequent events, but in the opinion which I have expressed I have had in view:

1. The Proclamation of October 1763.
2. The Instructions to Governor Murray, 1763.
3. The Letter of Monsieur de Guerchi, of 1764; given in the 1834 Report of the Assembly of Lower Canada.
4. The Instrument of 1764, executed by the St. Sulpicians at Paris.
5. The difficulties stated by Sir James Marriot, at p. 122 of his Report of a Plan of a Code of Laws for the Province of Quebec, 1774.
6. The Statute of 14 Geo. 3, c. 83, s. 13.
7. The Instructions to Governor Carleton, 3d January 1775.
8. The Act of Fealty and Homage on the part of the Seminary, 1781.
9. The Claims on the part of the Seminary, and opinions of the Crown Law Officers in 1789.
10. The introduction of some Priests from France in 1794, and upon subsequent occasions, with the sanction of the British Government.
11. The assumption by the Crown of the property of the Jesuits and of the Récollets, and the proceedings from 1770 to 1801, respecting an intended grant to Lord Amherst of the Jesuits' estates. (*See* the Report, with an Appendix, from a Select Committee of the House of Commons in 1817, on the Regulations of Roman-catholics in Foreign States.)
12. The Opinions of the Crown Law Officers on questions respecting the Seigneury in 1806 and 1811.
13. The Instructions to the Governor-in-Chief, Sir George Prevost, in 1811.
14. The case of ——— Fleming against the Seminary of Montreal, which is taken notice of in Mr. O'Kill Stuart's Reports, Part 2, p. 184.
15. A correspondence and negociations which have been going on at intervals for nearly the last 20 years between the Seminary and the Provincial Government and the Colonial Office, during which the opinions of the Law Officers have been taken both in England and in Canada.
16. An Address to His Majesty from the House of Assembly of Lower Canada in 1830. (*See* Journals of the Assembly of that year, p. 259; and Return to an Address of the British House of Commons, 30 June 1830.)

REGISTRY OFFICES.

No. 3.

In fact the establishment of registry offices in some portions of the province has already admitted their utility. If beneficial to a portion, why should not their benefits be extended to the whole?—"Because," say the adversaries of the measure, "the enregistration of all titles and encumbrances relating to real estate, is incompatible with certain important branches of our laws; viz. customary dower, the rights of minors against their tutors, and perhaps some others."

The question if put upon this footing may assume two different forms, first, Is it true that such incompatibility exists? Second, if it exist, are the advantages of the proposed law sufficiently great to justify a modification or a repeal of the existing one?—In reference to the alleged incompatibility, it may be doubted whether it be so absolute and irreconcileable as has been imagined.

But without now dwelling upon this part of the subject, we proceed to inquire whether the advantages of the proposed law be sufficiently great to justify the repeal of the existing one?—We think they are, for the following reasons; in considering which, it will always be necessary to remember that the evil is great, and the remedy proposed the most effectual that has been devised.

The reasons then are these:—First, That the laws which are incompatible with the proposed one, originated in a society essentially different from our own in its character, its policy and its wants, and, as applied to a new country, where the transfer from hand to hand of all objects and rewards of enterprize should be unrestricted, are essentially bad; they ought therefore to be repealed or modified for this reason alone.

Second, That, even if they were good laws in themselves, they operate to the benefit of only a particular portion of the community, namely, married women and minors, and should therefore yield to a law which would be beneficial to the whole; and it may be added, that these particular classes would themselves benefit by the change, as the value of real property would be increased, and thereby their security be rendered better.

Third, That the minor's interests may be protected by another mode combined with the proposed law, as perfectly as by the existing law.

Fourth, That in reference to the rights of married women, the parties may make a law to themselves by contract of marriage, and if they do not avail themselves of this right, ought not to benefit under a law which operates hardly upon all other classes.

It is not new to the laws of Canada that the rights of married women should be superseded and destroyed by other interests. The *decret* of real property for the satisfaction of *lods et ventes* extinguishes the right of *douaire non encore ouverte* upon such property.

If then the interests of married women are but secondary to the interests of one class of society, the seigneurs, and are made to yield for their protection, with how much more propriety may a modification be demanded, which will afford protection to all classes, and tend to the general benefit.

What is sought in this respect is only the extended application of a principle already recognized.

Fifth, That the system of law now in force offers facilities for, and temptations to, fraud. It is consequently injurious to morals, and likely to influence unfavourably the character of the people, and should on broad principles be so modified as to lose this tendency and assume a contrary one.

If, then, the existing laws, incompatible with the proposed one, ought to be changed, what changes would be requisite and advisable for best removing this incompatibility?—As to customary dower, it might be altogether abolished, and the parties left to their contract, which should be enregistered, in so far as it might affect real estate.

This is a simple and effectual course, and one which we strongly recommend.

More difficulty might perhaps be anticipated in disposing of the minor's security against the tutor. But this difficulty does not appear to be insuperable; it may be overcome by obliging the tutor to give security for a certain sum, dependent on the value of the minor's estate, or the mortgage, which is now general upon all the tutor's property, for the amount of the *compte de tutelle* might be made special, and be enregistered at the diligence of the sub-tutor; or the mortgage might still remain general, and be for an unlimited amount, yet subject to enregistration.

In this last case, however, the party interested would be able merely to ascertain the existence of the encumbrance, not its amount.

These remarks are applicable to curators also.

The provisions made by the *Code Napoleon*, and fully explained and commented upon by *Merlin*, in his *Répertoire de Jurisprudence*, under the words "*Inscription*" and "*Transcription*," have given to France, whence our law is derived, the advantage of a system of registration; but in place of adopting all the formalities observed in that country, we recommend the modification of the law of this province, proposed by the bill passed by the Legislative Council last session, and sent to the Assembly, "for making all mortgages and *hypotheques* special, for abolishing customary dower (*douaire coutumier*), and for other purposes," and the adoption of the system of registry established in the adjoining provinces, and in the neighbouring States of America.

2. Are you aware of the objection which has sometimes been made, that with a system of registry, and the facilities which it would give to the borrowing money on landed security, the real estate of the province would soon pass out of the hands of the French Canadian portion of the community; and

3. What, in point of fact, do you conceive would be the result of the system in that respect?—We are aware that the objection stated in the first of these questions is urged by those hostile to the introduction of a system of registry, and that an apprehension of the result there alluded to is frequently affected.

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perilously opposed to each other. The division has, up to this time, prevented so extreme a danger; but from the old roots a similar state of circumstances to that which was alleviated in 1791 in the old province of Quebec, has been reproduced in Lower Canada; and instead of weakening the French Canadian party by an advance to a balance of numbers, the more rapid increase of the British seems to have the effect of compacting them into a harder mass, as if to resist the dissolution with which they are threatened. The jealousy with which they watch over the preservation of their laws, customs, manners and language, is the same as ever, and the same remedies are required for the state of repulsion and antipathy towards each other (no gentler terms will convey the truth) in which, as far as all questions of internal policy are concerned, the two parties exist; nor would the change be a difficult one to effect. It is not without a due sense of the grave and momentous considerations which are connected with the task of altering a constitution that I say this; but if the Act of the 31 Geo. 3, c. 31, be divested of its ecclesiastical provisions, it will be perceived that it is not of a very difficult or complex structure, yet might serve as a precedent for what would be now wanted. To discern the occasion for bringing forward such a measure, to be sure that the innovation is suited to the emergency, are the points at which the risk is run; and, with a consciousness of that which I incur, I venture to propose that Lower Canada be divided into several subordinate Legislatures, with one general and controlling one. To each of the towns of Quebec and Montreal a charter should be given, calculated to suit a place of commerce. Sherbrooke and Hull might each be the seat of a municipal Legislature for all the contiguous soccage lands, and Three Rivers of one for the whole seigneurial lands of the Province; and there should be a provision that commutations of either tenure into the other might take place upon the borders of the adjoining districts, and that upon such occasions the land should be added to that district of which it should have been subjected to the prevailing tenure. In these subordinate Legislatures the Council or Upper Chamber might be appointed as the councils or upper chambers of the English municipalities are, by election, without any violation of the principles of the British constitution, whilst I would cautiously and firmly guard and preserve to the Crown the right of appointing the members of the Upper House of the general Legislature. It seems to me that in this alteration all parties would find their account; and if we could recall to life the statesmen who debated in 1791 on the affairs of Canada, it would be found to coincide with the principles to which they looked; its consonance with the words of Mr. Pitt I have shown. The pervading laws of election and representation, and of criminal justice, the preservation of soccage tenure and of the British laws of property in the districts of Sherbrooke and Hull, the unimpaired power and dignity of the Crown, would be an adherence to the British constitution; the federal character of the subordinate districts, an adoption, to a small extent and on a reduced scale, of the spirit of American institutions: the security of the Roman-catholic religion, and of the ancient civil law and customs of Canada, and of the seigneurial tenures, a preservation of the institutions of old France, of which he was to so great an extent an admirer, which would satisfy Mr. Burke's recommendation, that something should be drawn from the constitutions of all those three states: nor if he could at this day extend his care to Canada, would Mr. Fox desire that the principle of electing the Upper Chamber should be now extended further than to the subordinate Legislatures.

The commercial interest of Canada would acquire the prevailing influence which it ought to possess in the two ports of Quebec and Montreal. The British American Land Company, relieved from the attacks on its stability and credit with which it is now assailed, would rapidly colonize and establish in social order and prosperity the eastern counties. The townships on the Ottawa, surrounded by at least as fine a country, and having the advantage of immediate access to a river second only to the St. Lawrence, might soon rival the possessions of the Company.

The French Canadians, who would retain on both sides of the St. Lawrence a solid territory of much greater extent, population and agricultural improvement, than any of the others, with an undisturbed enjoyment of their religion and laws, would have only themselves to blame, were they not to maintain a footing of at least perfect equality with all their compatriots. My hope would be, that when the two races ceased to be opposed to each other upon questions of interest and domestic regulation, they would begin to feel the advantages of co-operation on all subjects of common interest; and would desire to be assimilated and to support an union from more generous schemes of politics, than the succession of quarrels which has marked the history of Lower Canada for the last quarter of a century.

The moving and most immediate cause of the animosity which exists, is the apprehension which each entertains that its adversary meditates destructive designs against its interests and institutions, and this feeling is exacerbated as the parties approach to a balance of strength.

The French Canadians proclaim their settled determination to have the charter of the British American Company annulled, and never to recognize the Tenures' Act by which the British law was declared to be an incident of soccage tenure, and on which the title to so many soccage estates depends. The British, on the other hand, urge on too eagerly the general adoption of registry offices, with the scarcely-concealed expectation that it will lead to the dissolution of the seigneurial system, and to an extensive transfer of the lands; in which is involved the whole structure of the civil law of the French Canadians, and the temporal interests of the Roman-catholic priesthood.

There are pretensions on either side which must be repressed; let this then be effected by placing each system under the care of its separate and peculiar Legislature; the alarm will subside, and with it the greater part of the hostility; and I should not despair of the adverse parties being immediately capable of acting together in a general Legislature for the greater

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objects of mutual interest, especially such as regard the navigation of the St. Lawrence and the revenue, and the settlement of those vast tracts of wild land and forest, in which all its subjects have an equal claim on the Imperial Crown to be allowed to participate.

Though I would not have it attempted immediately, Upper Canada might perhaps be inclined to come under the same system at no distant period, and ultimately, perhaps, the other provinces of British America.

That general legislature, of which I have spoken, might be constituted of a Governor-in-chief, a Legislative Council appointed by the Crown, and a Lower House, consisting, in the first place, of 10 members from each district, and of 10 more for every successive 100,000 of population in each district, so that a district containing 200,000 would send 20 members in the whole, one of 300,000, 30 members, and so on. It would be a matter of secondary importance where the general Legislature should sit, but it would probably be found advantageous that it should not be either at Quebec or Montreal, and the town of William Henry, at the confluence of the Richelieu and the St. Lawrence, combines many advantages of a central and very defensible position, and of easy and rapid communication with Europe, either by the way of New York or Halifax; and, as it is situated in a small domain of the Crown, there would be facilities for constituting it at once a distinct and peculiar jurisdiction. I will not go further into the details of a measure which I scarcely should have thought myself at liberty to suggest, if the opinions which I have felt compelled to state as to the unfitness of the existing Legislature for the great and various and important functions assigned to it, did not appear to me to require that I should point out some other course by which the inhabitants of Lower Canada may have a Legislature capable of acting for their benefit. I have pointed out two plans; one, that of an economical, cautious, restricted government, contenting itself with maintaining the laws and public tranquillity, not expecting any assistance from the Legislature, but relying on the limited resources of the hereditary revenue; the other, that of proceeding to reconstruct the Canadian Legislature with somewhat different arrangements, but according to the leading principle of the Act of 1791, and with a view to the introduction of improvements which were then recommended, but not attained; but, above all other considerations, with a design to strengthen the connection with the United Kingdom, at the same time that securities are given to the French Canadians for the preservation of all their ancient institutions that are dear to them. By either of these plans it seems to me that the Province may be governed; that by the latter its prosperity may be incalculably augmented. But that if there were to be an attempt to rule it by the means of two majorities of French Canadians in the Houses of Legislature, it would not be long before it would be manifested that such an administration of affairs is incompatible with the interests of British America.

* The very short time which circumstances permit me to dedicate to this Minute must be my apology for many defects of arrangement and expression; but the main propositions which it is intended to set forth, are the fruits of reflection, and the deliberate conclusions to which my mind has come.

17th November 1836. (signed) *Chas. Edw. Grey.*

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* To complete the explanation of the points on which my opinion is different from that which has been expressed in our Reports by the other Commissioners, this Minute was intended to have comprised the subjects of,—

1. The British American Land Company.
2. The Law of Real Property; including,
   - (*a*) The possessions of the Roman-catholic religious communities;
   - (*b*) The incidents of the tenure in free and common soccage;
   - (*c*) The rights of commuting the tenures *en fief* and *en roture* into free and common soccage;
   - (*d*) *Dime* or tithe;
   - (*e*) Inconveniences of the seigneurial tenure;
   - (*f*) The proposals for the establishment of Registry Offices, and the inconveniences of the French law of hypothèque.
   - (*g*) The law respecting aliens.
3. Institutions for religion and education.
4. The apportionment between Upper and Lower Canada of the proceeds of duties of import, and the question of an union of the two Provinces.

My notes on these points are prepared, and require only to be copied; but it has been impossible that this should be done in the interval which has elapsed between the completion of the Report and the hour at which it is necessary that it should be despatched, in order to go to England by the New York packet of the 24th instant.

I propose, therefore, to put into the hands of the Commissioners, before I sail for England, some additional notes on the subjects above mentioned.

17 November 1836. (signed) *Chas. Edw. Grey.*

* STATEMENT delivered by Sir *George Gipps* to the Secretary, 15 December 1836, to be placed upon the Minutes of the Commission and transmitted to the Secretary of State.

Statement by Sir George Gipps.

I AM desirous of entering, as shortly as I can, on our Minutes, a few observations on the paper that was delivered by Sir Charles Grey to the secretary, on the day on which the last Report of the Commissioners was forwarded to England.

The fact of Sir Charles Grey's not having signed any one of our Reports without an expression of dissent, is, I think, calculated to produce an impression that a wider difference of opinion between Sir Charles and the other Commissioners has existed, than in reality is the case; my object, therefore, in the present entry, will rather be to point out the cases in which the Commissioners are agreed, than those in which they disagree. I shall enter into no detail on any subject, not only because a difference of opinion on minor points is of but little importance, but in order that, by confining my remarks to the leading features of each case, I may run the less risk of misrepresenting the opinions which I suppose to be held by Sir Charles.

FINANCE.

On the subject of Finance, Sir Charles, I believe, agrees with the other Commissioners, that the first thing to be done is to pay the public officers, as we all think, that until they are paid, the King's authority cannot be respected in the province. He agrees also, that if their arrears are to be paid out of Canadian funds, there is no better way of doing it than by resuming, under authority of a British Act of Parliament, the funds which, up to 1831, were at the disposal of the Crown, and which were only then relinquished in the confident expectation, I may almost say under an implied promise, that a competent civil list would be provided by the Local Legislature.

Sir Charles thinks, and so do his colleagues, that money sufficient to pay the public servants might be obtained on the credit of the Crown Lands; but his colleagues do not particularly recommend this plan, because they think, if borrowed without a guarantee from the British Treasury, it would not be obtained upon advantageous terms, and if done under the guarantee of the British Government or Imperial Parliament, it would seem to them nearly the same thing as if Parliament were to authorize the payment in any other way, or out of funds of its own.

Sir Charles further agrees with the other Commissioners in thinking, that if these arrears of salaries were once got rid of, the government of the province might by possibility be carried on, even though the Imperial Parliament should be indisposed to authorize the future application by the executive of any revenues beyond those which have, since 1831, been at its disposal. But in order to do this, Sir Charles would rely principally on an enforcement of some of the prerogatives of the Crown not usually put in action; the stricter collection of the hereditary and territorial revenues; the exertion of some powers inherent, as he says, in all courts of justice to exact fees sufficient to cover their own expenses, and a strict interpretation of those revenue laws under which deductions may be made from the sums collected, not only of the expense of collecting them, but also of accounting for them. The other Commissioners, rather than see the executive driven to support itself by such means, would ask for a declaration from the Imperial Parliament, of the terms on which the provincial government is to be conducted, believing, or at any rate hoping, that any firm expression of the opinion of Parliament, and especially of the House of Commons, though conveyed only in the shape of resolutions, would be received with respect by the province; and the other Commissioners do not think that any attempt at government by the means recommended by Sir Charles, would be successful, unless some expression of the opinion of the House of Commons were made in support of it.

On the next financial question, viz. the amount which ought to be provided for a civil list, after the immediate difficulties respecting the arrears of public officers shall have been removed, and some degree of harmony restored between the different branches of the Legislature. Sir Charles Grey is of opinion, that a larger civil list will be required than the one recommended in the First Report of the Commissioners; his colleagues, however, adhere to their former recommendation, and the more so as they think it to be in harmony with the measures which either already have been, or which are on the point of being recommended to some of the sister provinces in North America.

2. LEGISLATIVE COUNCIL.

The Commissioners all agree in not recommending a compliance with the demand for an elective council, though some would object to the measure absolutely, and others only under present circumstances.

They also agree in some minor recommendations, having for their object to enable Legislative Councillors to resign, or in certain cases to be removed by His Majesty. They further agree in thinking, that the Legislative Council, either in whole or in part, ought to be declared a court for the trial of impeachments.

With respect to the appointment of Legislative Councillors, Sir Charles Grey has proposed (apparently as a sort of substitute for popular election) that recommendations of persons fitted for the situation, should be made by the Executive Council; but he submits this proposal, if I understand him rightly, only in the event of the Executive Council being constituted on a new plan, also proposed by himself. The other Commissioners have not joined

* *This Statement was written after the departure of Sir Charles Grey for England, who cannot therefore be assumed to acquiesce in the view therein given of his opinions.*

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joined in the recommendation of the last-named plan, neither do they think that it would prove advantageous to relieve the Governor from the principal responsibility for the appointment of proper persons to the Legislative Council. The other Commissioners, on the supposition that no greater change will be made in the constitution of the Executive Council than the one they have recommended, think that the nominations made by the Governor, of persons for the Legislative Council, should be submitted to the Executive Council before they are transmitted home, and that either the Executive Council as a body, or the members of it individually, should make such observations as they might choose on the nominations; but they think the plan of making such nominations to originate with the Council, would relieve the Governor from much of the responsibility which now seems properly to attach to him, without giving to the appointment of Legislative Councillors any of the popularity derived from the principle of election.

Sir Charles Grey is perhaps inclined to view, with more indulgence than his colleagues, what he nevertheless allows to have been the faults of the Legislative Council; and in the additions hereafter to be made to it, he would make, perhaps, his selection somewhat (though not essentially) different from what the other Commissioners would think proper.

For my own part, I do not hesitate to declare, that though I would not go the length of making the Legislative Council harmonize entirely with the present feelings of the Assembly, or proceed on the principle of making the Council and Assembly two bodies, in which the interests of the French Canadian party should entirely predominate, I do strongly feel the necessity of adding to it men of a popular as well as independent character.

The opinion I now express may perhaps be considered somewhat at variance with what I stated in the concluding part of the 13th paragraph of an entry made by me on our Minutes, on the 14th March 1836, and transmitted to England with our Second Report. Events, however, have occurred, both in this province and the neighbouring one, since last March, to make me look not only with less apprehension than I then did on the consequences of a vigorous measure, but also with more hope of support for any measures of Government from a considerable portion of the French Canadian party, provided only that such measures shall be adopted under the sanction of the British Parliament, and especially of the House of Commons. I expressed in March last, an apprehension that no good would result from an attempt to improve the constitution of the Legislative Council by the introduction of new members into it from the popular party; and I should be still of this opinion, if it were proposed as a single measure; but if adopted as part of a system of measures, and done under the sanction (any way expressed) of the Imperial Legislature, I should hope for a good result from it.

3. House of Assembly and State of the Representation.

On this head, perhaps, a greater difference of opinion exists between Sir Charles and his colleagues, than on either of the two former ones; but even here we are all agreed, that though the English inhabitants may not have the share in the representation that their numbers would entitle them to, the means do not exist within the province of procuring it for them, if a sense of justice in the House of Assembly itself will not afford it.

Sir Charles undoubtedly considers the degree of disadvantage which the English inhabitants labour under as much more serious than I do; and he also considers the Act, by which a change in the representation was effected in 1829, much more objectionable than I do. I am prepared to maintain that an impartial view of both these subjects is taken in the Report.

Sir Charles, in enumerating the counties in which the English interest prevails, omits Drummond, Beauharnois and Gaspé. Drummond elected, in 1830, a staunch constitutionalist (Colonel Heriot), and there is no doubt that the same gentleman might have continued to represent the county to the present day, had he not resigned his seat, which he did on the 31st of January 1833, without waiting for a dissolution of the Parliament*. The political principles of his successor (an Irishman) were not known when he was elected, and though he has since voted with the majority in the House of Assembly, had it been known that he would do so it is generally supposed he would not have been elected; lastly, at a new election, held within the course of last month, on the occasion of the county becoming entitled to a second member, a constitutionalist has been returned as I may say, by acclamation, though he only came forward on the very day of the election.

The circumstances respecting the county of Beauharnois are accurately stated in our Report; I will therefore only add that, from the best information I could collect on the spot, especially from Mr. Ellice's agent, I have every reason to believe that the persons in it of English origin do form at the present moment a majority, and even did at the period of the last general election. Beauharnois was always considered by the English party as in their interest, until by some mismanagement, as it would seem on their part, it returned members who voted against them; in proof of its being so considered, I might refer to the evidence taken on the subject of the state of representation prior to the passing of the Act of 1829 (*Vide* Appendix to Journals of the House of Assembly, 1829, G. G.), and to the Bill which in the same year was introduced into the Council, which, though it professed only to be a Bill to give representatives to the townships, would have made

* About the same time (or 11th February 1833) the solicitor-general resigned his seat for Three Rivers; had he not done so, it is generally believed that, on account of his personal popularity, he might have been re-elected at the last general election.

made Beauharnois a new county, with exactly the same limits as were afterwards assigned to it by the Bill that passed both Houses.

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The omission of Gaspé by Sir Charles seems more worthy of notice, as it not only always has, but does actually at present return one Englishman, who is a staunch constitutionalist, and another gentleman, Mr. Le Boutillier, a native, I believe, of Jersey, who, though not so fixed in his political opinions as his colleagues, voted against the 92 resolutions in 1834, against the address to the King in 1835, and for the supplies in 1836, and who decidedly is not a regular adherent of the political majority of the Assembly. Before 1832, the population of the county of Gaspé entitled it only to one member, but he was always a constitutionalist. In the district of Gaspé, which since 1829 has been divided into the two counties of Gaspé and Bonaventure, there is a mixture of British, French Canadians, Acadians or French emigrants from Nova Scotia, and of settlers from Jersey and Guernsey, and it is so remote that it is difficult to ascertain which party prevails, but undoubtedly the French Canadians do not form a majority of the whole. If the Canadians and Acadians are to be considered as one party, and the British and Jerseymen another, the latter will probably be found to preponderate in the county of Gaspé (proper) and the former in Bonaventure.

Sir Charles omits to draw any attention to the important fact, that of the 11 members which he admits to be returned by majorities of British origin, three are in the habit of voting with the Anti-British majority. The six counties which he enumerates as the only ones where British majorities exist are Ottawa, Sherbrooke, Shefford, Megantic, Stanstead and Missisquoi; but the two members for Stanstead, and one of the two returned for Missisquoi, vote with the majority in the Assembly, which facts are mentioned and accounted for in the Report. It is also not unworthy of remark, that according to the census of 1831, the population of these two counties (Stanstead and Missisquoi) was 19,107, whilst the population of the other four was only 19,257.

One reason that the inhabitants of English origin have fewer members in the Assembly than their numbers would entitle them to, evidently is, that they are not so firmly united as the French Canadian party is. They have doubtless been more united latterly than at any former period, but there is still an American party, or a party composed principally of settlers from the United States, that is opposed to them.

If the whole population of English descent were as compact, and under as effectual management as the French Canadians showed themselves at the last general election, there can be little doubt that they could at the present moment return 16 or 17 members instead of eight. They ought to be able to command majorities in

Sherbrooke, which returns	2
Shefford	2
Drummond	2
Megantic	1
Stanstead	2
Missisquoi	2
Ottawa	2
Beauharnois	2
Gaspé	2
	17

There is, moreover, another county, Bonaventure, in the district of Gaspé, which might perhaps return a constitutionalist. At an election too that has occurred since the last general one, the English party returned a member for the Upper Town of Quebec, and though accidental circumstances probably contributed to the event, a constitutionalist of liberal principles would at another general election have, I think, a fair chance of success, not only in the Upper, but also in the Lower Town of Quebec, and probably even in one of the wards of Montreal. It does not seem therefore at all unreasonable to suppose that if the population of British origin were firmly united, they could return even as many as 18 or 20 members, though this would be the very utmost that they could do, out of a House that will hereafter consist of 90.

With respect to the portion of the British population mixed with the French Canadians in the seigneuries, Sir Charles agrees with the Report in thinking that there is no way in which any influence can be given to them but by the introduction of some novel principle, as for instance, by confining each elector to one vote, and by making the electoral districts larger than they are. Now the Report does not declare itself unfriendly to this principle, and I, for my own part, should be glad if, after fair discussion, an adaptation of it could be made to suit the province; but to ask that, as a first attempt, it should be forced by the Imperial Parliament on Lower Canada, would, I must confess, appear to me rather unreasonable.

A Table is appended, which I have prepared to show how the principle might be expected to act, of giving to each elector one vote only, or any number of votes less than the number of representatives to be returned.

Sir Charles Grey, after all, seems to conclude that not even the Imperial Parliament can effect any improvement in the representation of the province, without making an essential alteration in the constitution of it, and accordingly, Sir Charles suggests, as an ultimate remedy, the division of the province into five or more municipal districts. The

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proposal for making the electoral districts much smaller than they are at present, in imitation of what has been done in the neighbouring state of Vermont, and thereby greatly increasing the number of representatives, will, I apprehend, find little favour with any party.

4. Executive Council.

On the subject of the Executive Council, a decided difference of opinion certainly does exist between Sir Charles and his colleagues; but as the different grounds on which we form our separate opinions have been sufficiently stated in our Third Report, and in the papers that were sent home with it, I shall make here only one additional remark, which is, that if all the Executive Councillors are to go out of office on the removal of a Governor, the first act of every Governor will be to appoint new ones, and that he will thus have to determine on the relative claims to his confidence of all the men of influence in the province before he can have had time to become acquainted with any of them.

5. Wild Lands.

The only difference of any importance between Sir Charles and his colleagues respecting the management of the Crown lands is, that Sir Charles would entirely do away with the system of selling by auction, which the other Commissioners would retain. When Sir Charles says that we could not do better than adopt the American system, he appears to have overlooked the fact that a sale by auction forms a part of their system. It is only what remains unsold at public auction that is afterwards sold at the fixed price of 1¼ dollar per acre, in the United States.

This portion of the American system*, I confess, I should be disposed to recommend for adoption in Canada, were it not for the consideration, that in a country where accusations are so readily entertained against public officers, I think the only security in the disposal of the wild lands that can put the officers of the executive above the suspicion of a want of integrity, is the rigid observance of the rule of selling every thing by public auction.

6. Court of Appeals, and Court of Escheats.

Upon these two points there does not appear to me any further difference of opinion than that his colleagues cannot concur with Sir Charles in recommending that there should be but one Court of Appeals for the two provinces. In matters growing out of the French Civil Law, or "Coutume de Paris," it does not seem to me probable that the French Canadians would look upon the English judges of Upper Canada as competent to decide. Inter-provincial jealousies might also arise from such an arrangement, which it would seem the duty of a prudent government to avoid.

7. Seminary of St. Sulpice.

Upon this point all the Commissioners are agreed in thinking that the effect of the conquest of the country was to leave the Seminary of St. Sulpice entirely dependent on the pleasure of the Crown for its continuance; and we are also agreed that though so placed at the discretion of the Crown, and without any legal claim to the continued enjoyment of the former possessions of the society of St. Sulpice, the branch of that society which was established at Montreal had an equitable claim on the Crown for the continued enjoyment of them. We are further agreed that the Crown has, by a long series of Acts, extending from the conquest to the present time, so far confirmed these possessions to the existing seminary of Montreal, that under existing circumstances, nothing but the most urgent necessity,—a necessity, that is say, stronger than any that has been yet shown to exist, could justify His Majesty's Government in seeking to re-establish the King's rights in a court of justice. One slight shade of difference only appears to me to exist amongst the Commissioners on all these points, which is that in estimating the various circumstances that combine to form an equitable title in favour of the seminary, Sir Charles would give somewhat more weight than his colleagues to the 34th article of the capitulation of Montreal.

There may be probably some more recondite points of difference between the statements in the Report, and the more elaborate one made by Sir Charles, but I must confess, that neither in conversation, nor in the perusal of his paper, have I been able to discover them.

The Commissioners are moreover of one opinion as to its being desirable to conclude an arrangement on the terms offered by the seminary; and it is only as to the means by which the arrangement can be carried into execution that there is any essential disagreement. The other Commissioners think it not only desirable that the adjustment should be effected under the authority of the Local Legislature, but that it would be wrong to seek the settlement of it by other means, until such an attempt has been made and shall have failed. Sir Charles, I believe, thinks, not only that there is no chance of its being effected by bringing the matter before the Assembly, but that new obstacles to an adjustment will be created by appealing to that body.

Changes

* The practice, that is to say, of selling at a fixed price any land that remained unsold after having been exposed to public auction.

8. Changes in the Constitution of the Province.

Statement by Sir George Gipps.

The Commissioners have not, in any of their Reports, recommended a change in the fundamental principles of the constitution, though in the 32d paragraph of their Report on the Legislative Council, a doubt is expressed, whether a suspension of the Constitutional Act might not be judged less objectionable than the specific measure recommended by them; the meaning of which is (at least the meaning in which I understood it when I subscribed to it), that it may be doubtful whether, on general political grounds, it is not better to suspend for a time, either in whole or in part, the Constitutional Act of 1791, upon the broad ground that the dissensions arising out of antipathies between Canadians of French and those of British origin, have rendered the working of the constitution impossible, than to break in, even in appearance, upon a principle which, since the declaratory Act of 1778, has been constantly looked on as a leading rule in the policy of England towards her Colonies, the rule, that is to say, of leaving them to dispose as they please of their own money.

Upon this point I must confess I have still some doubt, and also some apprehension, as to the result of a measure that should repeal or suspend the 1st & 2d Will. 4, c. 23, though less certainly than I had in the month of March last, when I hazarded some speculations in the 6th, 7th and 8th paragraphs of a Minute appended to our Second Report, upon the way in which any legislative Act that should resume the proceeds of the 14 Geo. 3, c. 88, might be received in the province. Many circumstances have occurred to make me look with less apprehension upon the consequences of a repeal of the 1 & 2 Will. 4, c. 23, now than I did in last March; the progress that has been made in gaining the good will of all but the extreme party in the Assembly, is of course one of these, and I should not now be afraid to resort to a strong measure, provided only it could be passed through Parliament in a decided manner.

The project, however, brought forward by Sir Charles Grey for an alteration in the constitution, is quite of a different nature; and though it has often been spoken of by the Commissioners amongst themselves, is one on which they have not ascertained the opinions of any leading party, or even of any leading individuals in the province.

The measure recommended by Sir Charles would have the effect of breaking up the province of Lower Canada into five or more districts or divisions, each of which should have a qualified jurisdiction, or some inferior legislative powers of its own, whilst a general legislature would regulate the affairs that were common to all, so that the whole province would form a sort of federal union, and bear a resemblance, in miniature, to the neighbouring States of North America. Of these five subordinate districts or states, the population of two, viz. Sherbrooke and Hull, would be almost entirely of British origin; the former might contain about 50,000 inhabitants, but the latter not more than from 12 to 15,000. Three Rivers would be almost entirely French Canadian, with any amount of population that might be thought proper to give to it, as by giving to it more or less territory, the population might be made anything not less than 50,000 or more than 130,000.

In the municipalities of Quebec and Montreal, the French Canadian interest would also prevail, however small might be the extent of territory annexed to each city, and the superiority of this interest would be more or less permanently secured, in proportion to the extent of territory over which the municipality was made to extend.

Whether it may not be prudent ultimately to make some arrangement of this sort, is quite a different question from that of its immediate adoption. Like the project for the re-union of Upper and Lower Canada, it is, I think, a measure that never ought to be resorted to without its being first demanded by a considerable proportion of the people. It is therefore one that requires time and discussion; and whatever may be, its merits, and particularly as laying the foundation for a more extended federal union of all British America, it is evidently not of a nature to meet the immediate emergency which we have to provide for.

Of other projects for a different territorial arrangement, it would also be premature for me to speak on this occasion; but whilst upon the subject I may perhaps be permitted to observe, that the idea of annexing the island of Montreal to Upper Canada for the sake of giving it a sea-port, would seem to me an act of very questionable justice. Montreal is the shipping port of a district of Lower Canada, which contains a population not much (if at all) inferior to the whole population of Upper Canada; and though the banks of the St. Lawrence might offer many favourable situations for the foundation of a new commercial city (as, for instance, the point where the Richelieu falls into it), it would appear to me a strange sort of justification for taking away the present town from the people of Lower Canada, to plead that they have the power of building another. A fairer sort of arrangement might be, I think, to declare Montreal an absolutely free-trading port, making it contribute to the general revenue, in some other shape, an equivalent for the loss that would be sustained by the remission of import duties on all articles consumed within it; or if this could not be done for the whole city or island, to do it for a portion of it that should be well divided from the rest.

In the concluding part of Sir Charles Grey's paper, he intimated an intention of furnishing some further observations on the subjects that he then left untouched, such, for instance, as commutation of tenure, the establishment of registry offices, the apportionment of duties between the two provinces, the state of education, &c. &c. In the expectation of receiving this supplementary paper, I have waited until the present moment to make the entry of my own remarks; but as it has not yet come to hand, and we have reason to believe that Sir Charles has sailed for England, I do not think it right to incur any longer delay in entering my present Minute, and requesting that it may be transmitted to England.

TABLE referred to in Page 69 of the preceding MINUTE, on the Subject of the REPRESENTATION of the PEOPLE.

Number of Representatives to be returned by the whole Body of Electors.	EACH ELECTOR TO HAVE ONE VOTE. Number of Representatives to be returned by the Minority.								EACH ELECTOR TO HAVE TWO VOTES. Number of Representatives to be returned by the Minority.							
	1	2	3	4	5	6	24	49	1	2	3	4	5	6	24	49
2	1/3															
3	1/4	–	–	–	–	–	–	–	2/5							
4	1/5	–	–	–	–	–	–	–	2/6							
5	1/6	2/6	–	–	–	–	–	–	2/7	2/6						
6	1/7	2/7	–	–	–	–	–	–	2/8	2/7						
7	1/8	2/8	3/8	–	–	–	–	–	2/9	2/8	3/8					
8	1/9	2/9	3/9	–	–	–	–	–	2/10	2/9	3/9					
9	1/10	2/10	3/10	4/10	–	–	–	–	2/11	2/10	3/10	4/10				
10	1/11	2/11	3/11	4/11	–	–	–	–	2/12	2/11	3/11	4/11				
11	1/12	2/12	3/12	4/12	5/12	–	–	–	2/13	2/12	3/12	4/12	5/12			
12	1/13	2/13	3/13	4/13	5/13	–	–	–	2/14	2/13	3/13	4/13	5/13			
13	1/14	2/14	3/14	4/14	5/14	6/14	–	–	2/15	2/14	3/14	4/14	5/14	6/14		
14	1/15	2/15	3/15	4/15	5/15	6/15	–	–	2/16	2/15	3/15	4/15	5/15	6/15		
15	1/16	2/16	3/16	4/16	5/16	6/16	–	–	2/17	2/16	3/16	4/16	5/16	6/16		
16	1/17	2/17	3/17	4/17	5/17	6/17	–	–	2/18	2/17	3/17	4/17	5/17	6/17		
17	1/18	2/18	3/18	4/18	5/18	6/18	–	–	2/19	2/18	3/18	4/18	5/18	6/18		
18	1/19	2/19	3/19	4/19	5/19	6/19	–	–	2/20	2/19	3/19	4/19	5/19	6/19		
19	1/20	2/20	3/20	4/20	5/20	6/20	–	–	2/21	2/20	3/20	4/20	5/20	6/20		
20	1/21	2/21	3/21	4/21	5/21	6/21	–	–	2/22	2/21	3/21	4/21	5/21	6/21		
30	1/31	2/31	3/31	4/31	5/31	6/31	–	–	2/32	2/31	3/31	4/31	5/31	6/31		
40	1/41	2/41	3/41	4/41	5/41	6/41	–	–	2/42	2/41	3/41	4/41	5/41	6/41		
50	1/51	2/51	3/51	4/51	5/51	6/51	24/51	–	2/52	2/51	3/51	4/51	5/51	6/51	24/51	
60	1/61	2/61	3/61	4/61	5/61	6/61	24/61	–	2/62	2/61	3/61	4/61	5/61	6/61	24/61	
70	1/71	2/71	3/71	4/71	5/71	6/71	24/71	–	2/72	2/71	3/71	4/71	5/71	6/71	24/71	
80	1/81	2/81	3/81	4/81	5/81	6/81	24/81	–	2/82	2/81	3/81	4/81	5/81	6/81	24/81	
90	1/91	2/91	3/91	4/91	5/91	6/91	24/91	–	2/92	2/91	3/91	4/91	5/91	6/91	24/91	
100	1/101	2/101	3/101	4/101	5/101	6/101	24/101	49/101	2/102	2/101	3/101	4/101	5/101	6/101	24/101	49/101

Number of Representatives to be returned by the whole Body of Electors.	EACH ELECTOR TO HAVE THREE VOTES. Number of Representatives to be returned by the Minority.								EACH ELECTOR TO HAVE FOUR VOTES. Number of Representatives to be returned by the Minority.							
	1	2	3	4	5	6	24	49	1	2	3	4	5	6	24	49
2																
3																
4	3/7															
5	3/8	3/7	–	–	–	–	–	–	4/9							
6	3/9	3/8	–	–	–	–	–	–	4/10	4/9						
7	3/10	3/9	3/8	–	–	–	–	–	4/11	4/10	4/9					
8	3/11	3/10	3/9	–	–	–	–	–	4/12	4/11	4/10					
9	3/12	3/11	3/10	4/10	–	–	–	–	4/13	4/12	4/11	4/10				
10	3/13	3/12	3/11	4/11	–	–	–	–	4/14	4/13	4/12	4/11				
11	3/14	3/13	3/12	4/12	5/12	–	–	–	4/15	4/14	4/13	4/12	5/12			
12	3/15	3/14	3/13	4/13	5/13	–	–	–	4/16	4/15	4/14	4/13	5/13			
13	3/16	3/15	3/14	4/14	5/14	6/14	–	–	4/17	4/16	4/15	4/14	5/14	6/14		
14	3/17	3/16	3/15	4/15	5/15	6/15	–	–	4/18	4/17	4/16	4/15	5/15	6/15		
15	3/18	3/17	3/16	4/16	5/16	6/16	–	–	4/19	4/18	4/17	4/16	5/16	6/16		
16	3/19	3/18	3/17	4/17	5/17	6/17	–	–	4/20	4/19	4/18	4/17	5/17	6/17		
17	3/20	3/19	3/18	4/18	5/18	6/18	–	–	4/21	4/20	4/19	4/18	5/18	6/18		
18	3/21	3/20	3/19	4/19	5/19	6/19	–	–	4/22	4/21	4/20	4/19	5/19	6/19		
19	3/22	3/21	3/20	4/20	5/20	6/20	–	–	4/23	4/22	4/21	4/20	5/20	6/20		
20	3/23	3/22	3/21	4/21	5/21	6/21	–	–	4/24	4/23	4/22	4/21	5/21	6/21		
30	3/33	3/32	3/31	4/31	5/31	6/31	–	–	4/34	4/33	4/32	4/31	5/31	6/31		
40	3/43	3/42	3/41	4/41	5/41	6/41	–	–	4/44	4/43	4/42	4/41	5/41	6/41		
50	3/53	3/52	3/51	4/41	5/51	6/51	24/51	–	4/54	4/53	4/52	4/51	5/51	6/51	24/51	
60	3/63	3/62	3/61	4/61	5/61	6/61	24/61	–	4/64	4/63	4/62	4/61	5/61	6/61	24/61	
70	3/73	3/72	3/71	4/71	5/71	6/71	24/71	–	4/74	4/73	4/72	4/71	5/71	6/71	24/71	
80	3/83	3/82	3/81	4/81	5/81	6/81	24/81	–	4/84	4/83	4/82	4/81	5/81	6/81	24/81	
90	3/93	3/92	3/91	4/91	5/91	6/91	24/91	–	4/94	4/93	4/92	4/91	5/91	6/91	24/91	
100	3/103	3/102	3/101	4/101	5/101	6/101	24/101	49/101	4/104	4/103	4/102	4/101	5/101	6/101	24/101	49/101

Note.—Whenever the fraction in the Table comes out without a remainder, one must be added; whenever there is a remainder it must be reckoned as one; as for instance: 2/5 of 1,000 must be reckoned as 201, and 1/3 of 1,000 must be reckoned 334.

Explanation.

Statement by Sir George Gipps.

The fraction in the Table shows the portion which the minority ought to form of the whole constituency, in order to return any required number of representatives, less than half of what the whole constituency returns.

By the ordinary method of giving to each elector as many votes as there are representatives to be returned, it is well known that a majority (however small) may return them all. If four members are to be returned by a constituency of 1001 electors, and each elector have four votes, a majority of 501 may return the whole four, and the minority of 500 remain unrepresented. But the Table shows that if each elector had only three votes instead of four, a minority of 3/7 of the whole constituency would suffice to return a member; if they had only two votes, a minority of 3/6 would do the same; and lastly, if they had but one vote, the Table shows that a minority of 1/5 would be enough.

Applying these numbers to the case above supposed of a constituency of 1001 electors, a minority of 3/7 of 1001 will be 429; but here, as there is no remainder after the division by 7, *one* must be added, and instead of 429 we must say 430*. Again, if the electors have but two votes each, 2/6 of 1001 will be 334; and lastly, if the electors be limited to *one* vote, a minority of 1/5 of 1001, or 201, would be sufficient to return one member.

* See the note at the foot of the Table.

It thus appears that if each elector were limited to one vote, the minority would in fact acquire more than their due weight, for in the latter case we see that 1/5 of the electors would be able to return 1/4 of the elected.

This advantage would be still greater if only two representatives were to be elected instead of four, for in such case a minority of 1/3 of the electors would be able to return one half of the elected. In a constituency of 1001 a minority of 334 would be able to return one member, and consequently have as much weight in the representation as the majority of 667.

It is in order to reduce this undue advantage to the minority, that it has been stated as advisable, in any adaptation of this plan of voting, to make the electoral districts, and the number of members returned by each, larger than at present. If the districts were so arranged as to return five or six members each, the advantage to the minority would almost disappear.

APPENDIX TO GENERAL REPORT.

REPRESENTATION.

— No. 1. —

STATE of the REPRESENTATION of *Lower Canada.*

Bank of the St. Lawrence.	Number of the County.	Name of the County.	Superficies in Square Miles, according to Mr. Bouchette's Topographical Dictionary.	Population of the Seigneuries.	Population of the Townships.	Total Population in 1831.	Number of Representatives.	Number of Constituents to each Representative.
North	1	Saguenay (*a*)	72,700	8,385	- -	8,385	2	6,201 *
	2	Montmorency (*a*)	7,396	3,743	- -	3,743	1	
	3	Orleans	69	4,349	- -	4,349	2	
	4	Portneuf (*a*)	8,640	12,350	- -	12,350	2	
	5	Champlain	783	6,991	- -	6,991	2	
	6	Terrebonne	3,100	16,623	- -	16,623	2	
	7	Montreal	194	16,467	- -	16,467	2	
South	8	La Prairie	238	18,497	- -	18,497	2	
	9	Chambly	211	15,483	- -	15,483	2	
	10	Vercheres	192	12,319	- -	12,319	2	
	11	Rouville	384	18,108	- -	18,108	2	
	12	Richelieu	367	14,149	- -	14,149	2	
	13	St. Hyacinthe	477	15,366	- -	15,366	2	
	14	Yamaska	283	9,496	- -	9,496	2	
	15	Lotbiniere	735	9,194	- -	9,194	2	
	16	Dorchester	342	11,946	- -	11,946	2	
	17	L'Islet	3,034	13,518	- -	13,518	2	
	18	Rimouski	8,840	10,061	- -	10,061	2	
North	19	Quebec (*a*)	13,200	8,000	123	8,123	2	6,883 †
	20	St. Maurice (*a*)	9,810	12,891	18	12,909	2	
	21	Berthier	5,760	20,196	29	20,225	2	
	22	L'Assomption	208	11,458	1,309	12,767	2	
	23	Lachenaye	299	9,333	128	9,461	2	
	24	Two Mountains	979	17,039	3,866	20,905	2	
	25	Vaudreuil	316	12,835	276	13,111	2	
South	26	Beauharnois	710	9,555	7,302	16,857	2	
	27	L'Acadie	242	11,070	349	11,419	2	
	28	Nicolet	475	12,377	127	12,504	2	
	29	Beauce	1,987	11,675	925	12,600	2	
	30	Bellechasse	581	13,455	73	13,528	2	
	31	Kamouraska	4,320	14,461	96	14,557	2	

(*continued*)

The Counties marked thus (*a*) contain vast tracts of land unfit for cultivation.

* These 18 Counties are classed by themselves, because, by the Census of 1831, their population is represented as entirely Seigneurial. Some Townships, nevertheless, have been laid out in them, in which a population of British descent is now beginning to collect behind the Seigneuries. In the Seigneuries, too, there is a population (in some of them considerable) of British descent, interspersed with that of French.

† These 13 Counties form a class, in which there is a mixture of Seigneuries and Townships; but the population of the Seigneuries far exceeds that of the Townships. The proportion is about as 11 to 1; or, if Beauharnois be omitted (on which see the Remarks in Par. 14 of the Report), the proportion will be nearly as 21 to 1. But, in addition to the population of the Townships contained in these Counties, there is in the Seigneuries, in the same manner as in those of the Counties of the first Class, and probably in the same proportion, a population of British mixed up with that of French descent.

Bank of the St. Lawrence.	Number of the County.	Name of the County.	Superficies in Square Miles, according to Mr. Bouchette's Topographical Dictionary.	Population of the Seigneuries.	Population of the Townships.	Total Population in 1831.	Number of Representatives.	Number of Constituents to each Representative.
North	32	Ottawa	34,669	826	3,948	4,774	2	3,394 *
South	33	Missisquoi	360	3,021	5,780	8,801	2	
South	34	Shefford	749	-	5,087	5,087	2	3,543 †
	35	Stanstead	632	-	10,306	10,306	2	
	36	Sherbrooke	2,786	-	7,104	7,104	2	
	37	Drummond	1,674	-	3,566	3,566	1	
	38	Megantic	1,465	-	2,283	2,283	1	
South	39	Gaspé	-	-	-	10,312	4	2,578 ‡
	40	Bonaventure						
Cities	-	Quebec	-	-	-	55,347	8	6,918 §
		Montreal						
Boroughs	-	Three Rivers	-	-	-	6,000	3	2,000
		Sorel						
		TOTAL	-	385,237	52,695	509,591	83	5,791

* These two Counties are classed by themselves, because they are the only two of mixed Seigneurial and Township population, in which the Seigneurial is less than the Township. There is reason, however, to believe that even the Seigneurial population is for the most part of British origin.

† In these five Counties there is no Seigneurial population. The county of Drummond, however, contains a good many French Canadians.

‡ These two remote Counties are inhabited by a very mixed population, chiefly engaged in the fisheries.

§ The numbers in the Cities and Towns are assumed as approximate only, as the Returns afford no accurate information. The majority is, as yet, of French descent, but the English population, perhaps, augments the most rapidly.

The Remarks which are appended to each class of Counties in the foregoing Table, will explain why the Total of the Township population is not to be taken as the Total of the population of British descent. The numbers interspersed with the population of French descent are variously estimated from 50,000 to 80,000 souls; of whom from 20,000 to 30,000 are in the Cities and Towns. The remainder are dispersed about the country, but always overborne (as in the Towns and Cities), with the exception, perhaps, of Beauharnois, by majorities of French origin. In the County of Two Mountains, and behind the Seigneuries on the north bank of the St. Lawrence, perhaps the inhabitants of British descent may be found sufficiently condensed to claim, under another rule of division, to form separate electoral districts; but in general they are so dispersed as scarcely to make it possible for their influence to be felt in elections, except by the adoption of some novel principle, such as that to which allusion is made in the 27th Paragraph of the Report.

General Remark.—The Census of 1831 has been adopted in framing this Table, not only because it is the most recent, but the only one that has been made according to the new division of Counties. The framers of the Act of 1829 could, of course, only have had before them the Census of 1825, which was made according to the old division of Counties; and that it was very incorrect there can be no doubt.

— No. 2. —

No. 2. TABLE showing the DIVISION of the PROVINCE before and after the Provincial Act of 1829; also the NUMBER of REPRESENTATIVES allotted to each County by the Bill as it was sent up by the Assembly, and as it was passed with the Amendments of the Council.

OLD NAMES of COUNTIES.	Population according to the Census of 1825.	NEW NAMES of COUNTIES.	Population according to the Census of 1831.	N° of Members proposed by the Bill as passed by the Assembly.	N° of Members by the Act as passed.
Quebec, exclusive of the City.	8,237	Quebec	8,123	2	2
Hampshire	13,312	Port Neuf	12,350	2	2
Warwick	15,935	Berthier	20,225	3	2
Effingham	14,921	Terrebonne	16,623	3	2
Montreal, exclusive of the City.	14,628	Montreal	16,467	3	2
Kent	10,890	Chambly	15,483	3	2
Surry	11,573	Vercheres	12,319	2	2
Hertford	14,044	Bellechasse	13,528	3	2
Orleans	4,022	Orleans	4,349	1	2
Devon	11,934	L'Islet	13,518	2	2

The boundaries of these 10 counties were not altered.

The population of the counties of Quebec and Montreal is given as exclusive of the cities of the same names, which have representatives of their own.

OLD NAMES of COUNTIES.	Population according to the Census of 1825.	NEW NAMES of COUNTIES.	Population according to the Census of 1831.	N° of Members proposed by the Bill as passed by the Assembly.	N° of Members by the Act as passed.
St. Maurice	*21,066	St. Maurice	12,989	3	2
		Champlain	6,991	2	2
Leinster	19,757	Assomption	12,767	2	2
		Lachenaye	9,461	1	2
Bedford	23,654	Rouville	18,108	3	2
		Missisquoi	8,801	1	2
Dorchester	19,707	Dorchester	11,946	2	2
		Beauce	12,600	1	2
Cornwallis	20,012	Kamouraska	14,557	3	2
		Rimouski	10,061	1	2
Gaspé	†6,425	Gaspé	10,312	2	4
		Bonaventure			
Northumberland	11,210	Saguenay	8,385	2	2
		Montmorenci	‡3,743	1	1
York	30,096	Two Mountains	20,905	3	2
		Ottawa	4,774	1	2
		Vaudreuil	13,111	2	2
Huntingdon	39,586	Beauharnois	16,857	2	2
		Acadie	11,419	3	2
		La Prairie	18,497	3	2
Richelieu	36,256	Richelieu	§14,149	3	2
		St. Hyacinthe	15,366	3	2
		Shefford	5,087	1	2
		Stanstead	10,306	2	2
Buckingham	33,522	Yamaska	9,496	2	2
		Drummond	3,566	1	1
		Nicolet	12,504	2	2
		Lotbiniere	9,194	1	2
		Sherbrooke	7,104	1	2
		Megantic	2,283	‖0	1
		Cities and Towns		11	11
Number of Representatives by the Bill as it was sent up to the Council by the Assembly				89	
Present number under the Act as passed					¶88

* Exclusive of the town of Three Rivers, estimated at 4,000.

† The counties of Northumberland and Gaspé were divided in consequence of their vast extent, and of their remoteness from the seat of government.

‡ The counties of Montmorenci and Drummond have acquired their right to the second representative, and will have each two in the next session.

§ The population of the county of Richelieu is given exclusive of the town of Sorel.

‖ Megantic was for purposes of election to be united to the neighbouring county of Beauce.

¶ To this number of 88, two are already to be added for the counties of Drummond and Montmorenci, and one more will in course of time be added for Megantic.

N.B. The alterations made by the Council, and afterwards assented to by the Assembly, may be considered to have taken five members from the counties in which French Canadians prevail, and added six to those principally occupied by persons of British descent.

— No. 3 *a*. —

STATEMENT delivered in Writing, by Mr. *J. D. Gibb*, 16 August 1836, on REPRESENTATION of the PEOPLE.

No. 3 *a*.

THE state of the representation of the people in the Provincial Assembly of Lower Canada, is one of the subjects upon which the inhabitants of British and Irish origin have complained as being deprived of their fair share, and has been referred for consideration to His Majesty's Commissioners of Inquiry.

Before entering into details for suggesting a remedy, I shall point out the enactments relative to it.

By the Act of the Parliament of Great Britain, 14 Geo. 3, c. 83 (1774), intituled, "An Act for making more effectual provision for the Government of the Province of Quebec, in North America," a council was constituted and appointed for the province of Quebec, to consist of such persons resident there, not exceeding 23, nor less than 17, as His Majesty, his heirs and successors should appoint, to which council power and authority was granted to make ordinances for the peace, welfare and good government of the said province, with the consent of His Majesty's Governor, or in his absence of the Lieutenant-governor, or Commander-in-chief for the time being.

The said council exercised its powers until the year 1790, when the British Act, 31 Geo. 3, c. 31, intituled "An Act to repeal certain parts of an Act passed in the 14th year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government

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of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" came into force.

By this Act the province of Quebec was divided into two separate provinces, called the Province of Upper Canada and the Province of Lower Canada, with a Legislative Council and an Assembly to each province respectively, to be severally comprised and constituted as therein set forth, and it was provided that the whole number of members to be chosen in the province of Upper Canada, should not be less than 16, and those of Lower Canada not less than 50 members.

On the 7th May 1792, a proclamation was issued by Sir Alured Clarke, Lieut.-governor, dividing the province of Lower Canada into counties, cities and towns, to be represented as follows:

The several counties of 1. Cornwallis, 2. Devon, 3. Hertford, 4. Dorchester, 5. Buckinghamshire, 6. Richelieu, 7. Surrey, 8. Kent, 9. Huntingdon, 10. York, 11. Montreal, 12. Effingham, 13. Leinster, 14. Warwick, 15. St. Maurice, 16. Hampshire, 17. Quebec, and 18. Northumberland, shall and may be represented in the said Assembly by two members each, making - - - - - - - - - - - - - - 36

And the counties of Gaspé, Bedford and Orleans, by one member each - - - 3

And the cities or towns of Quebec and Montreal respectively by four members or representatives for each, to wit, two for each division thereof - - - - - 8

And the town or borough of Three Rivers by two members - - - - - - 2

And the town or borough of William Henry by one member - - - - - - 1

50

The whole of which members were returned by French majorities of the people.

The increase of population in the townships where the Loyalists from the former colonies had settled, and the constant accession to their numbers by emigration from the British Isles, caused an application to be made upon their right of being represented in the Provincial Assembly.

An Act was passed by the Provincial Legislature in the year 1829, 9 Geo. 4, c. 73, intituled, "An Act to make a New and more convenient Subdivision of the Province into Counties, for the purpose of effecting a more equal Representation thereof in the Assembly than heretofore," which Act establishes the division of 40 counties now existing, viz.

Thirty-seven counties containing respectively a population of 4,000 souls each and upwards, two members each - - - - - - - - - - - - - - 74

Three counties, Drummond, Megantic and Montmorenci, containing upwards of 1,000 each, but less than 4,000, one member each - - - - - - - 3

City of Quebec - - - - - - - - - - - - - - - - 4

City of Montreal - - - - - - - - - - - - - - - - 4

Town of Three Rivers - - - - - - - - - - - - - - 2

Town of William Henry - - - - - - - - - - - - - - 1

88

The following STATEMENT will show how this Division was made.

OLD COUNTY DIVISION.	Number of New Counties in the Old ones.	New County Division by the Act of the Provincial Parliament of 1829.
Bedford - - - -	2	Rouville and Missisquoi.
Buckingham - - -	6	- - Yamaska, Drummond, Nicolet, Lotbiniere, Sherbrooke and Megantic.
Cornwallis - - - -	2	Kamouraska and Rimouski.
Devon - - - -	1	L'Islet.
Dorchester - - - -	2	Beauce and Dorchester.
Effingham - - - -	1	Terrebonne.
Gaspé - - - - -	2	Bonaventure and Gaspé.
Hampshire - - - -	1	Portneuf.
Hertford - - - -	1	Bellechasse.
Huntingdon - - -	3	Acadie, Beauharnois and La Prairie.
Kent - - - - -	1	Chambly.
Leinster - - - -	2	L'Assomption and Lachenaye.
Montreal - - - -	1	Idem.
Northumberland - - -	2	Montmorenci and Saguenay.
Orleans - - - -	1	Idem.
Quebec - - - -	1	Idem.
Richelieu - - - -	4	- - Richelieu, St. Hyacinthe, Shefford, and Stanstead.
St. Maurice - - - -	2	St. Maurice and Champlain.
Surrey - - - -	1	Vercheres.
Warwick - - - -	1	Berthier.
York - - - - -	3	Two Mountains, Vaudreuil and Ottawa.
TOTAL - - -	40	- - New Counties into which the 21 Old Counties are divided.

Complaints

Complaints have been made with regard to this division; territories inhabited principally by persons of French origin have been divided into numerous small counties, while others where a large body of those of British origin resided were so divided, that by joining that territory with another more numerous in French inhabitants, the votes of the British were rendered ineffectual.

The county of La Prairie contains 238 square miles.
— Acadie — 250 —
— Beauharnois — 717 —

The population of the latter is nearly one half of British and Irish descent.

The Census of 1831 estimates the total number of souls of that county at 16,857; of whom 9,349 only were Catholic, including Irish, and the remainder 7,508 were Protestants.

These last, and the Irish included in the number of Catholics, will make up nearly one-half of the county.

The county of Two Mountains contains upwards of 6,500 inhabitants of British and Irish origin, but they are outvoted by a larger body of French. French majorities exist also in the cities of Quebec and Montreal, and the towns of Three Rivers and William Henry, and in every county in the province wherein lands are held under the seigneurial tenure, and these occupy the entire borders of the rivers St. Lawrence, Richelieu and Ottawa, excepting only the county of Ottawa, on the river last named.

Throughout the whole of the seigneurial lands, the cities of Quebec and Montreal, and the towns of Three Rivers and William Henry, members are returned by French majorities.

The state of the representation is as follows:—

Thirty-two counties of French majorities, returning two members each; viz. 1. Beauce, 2. Beauharnois, 3. Bellechasse, 4. Berthier, 5. Bonaventure, 6. Chambly, 7. Champlain, 8. Dorchester, 9. Gaspé, 10. Kamouraska, 11. L'Acadie, 12. Lachenaye, 13. La Prairie, 14. L'Assomption, 15. L'Islet, 16. Lotbiniere, 17. Montreal, 18. Nicolet, 19. Orleans, 20. Port Neuf, 21. Quebec, 22. Richelieu, 23. Rimouski, 24. Rouville, 25. Saguenay, 26. St. Hyacinthe, 27. St. Maurice, 28. Terrebonne, 29. Two Mountains, 30. Vaudreuil, 31. Vercheres, and 32. Yamaska.

	British.	French.
Say 32 counties, returning two members each, by French majorities - - - - - - - - - -	- -	64
2 Ditto - - ditto, one each (say, Montmorenci and Drummond) - - - - - - - - -	- -	2
1 English majority, Megantic - - - - - -	1	—
5 Ditto - - - Sherbrooke, Stanstead, Missisquoi, Ottawa and Shefford, 2 each - - - - -	10	—
Total 40 Counties.		
Two cities, French majority, Quebec and Montreal, 4 each -	- -	8
Two towns, - ditto, Three Rivers, 2; and William Henry, 1 - - - - - - - - - - - -	- -	3
	11	77

Total 88 Members.

The two members from Gaspé voted with the English minority, and the two members from Stanstead voted with the French majority.

The member from Drummond was elected by a French majority of votes, although the English have a majority in the whole county.

The following is an extract from a letter on that subject, dated Grantham, 12th January 1836:—

"It is my firm conviction that the freedom of election would be better consulted by having the poll holden in townships inhabited by English people. The last election was well contested by a constitutional member, or candidate, who would have carried his return if it had not been that the numerous irresponsible French Canadians, without a colour of title, were encouraged to give their votes by the Papineau party; and it cannot be supposed that they would take the trouble to go to a distance for that purpose, in the uncertainty of their votes being received.

"They were kept as a corps of reserve, and were brought forward to swell the lists of the adverse candidate where the difficulty of coming to the poll debarred many constitutional votes from supporting the cause."

A plan for a new division of counties is respectfully submitted with this Report. The changes are as follow:

The county of Ottawa is divided into three counties. The five counties of Two Mountains, Terrebonne, Lachenaye, L'Assomption and Berthier are formed into five other counties, of which two will be of British and three of French majority.

The counties of La Prairie and Acadie are joined and formed into one county.

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The counties of Richelieu, St. Hyacinthe and Rouville are formed into two counties, with the exception of the seigneuries of Sabrevois, Foucoult and Noyau, at the south part of the county of Rouville, containing a British majority, which are transferred and added to the county of Missisquoi.

The three counties of Shefford, Missisquoi and Stanstead, with the three seigneuries abovementioned from Rouville, to be formed into four counties. The counties of Drummond and Sherbrooke to be formed into five counties. The county of Megantic, with the parish of St. Sylvestre transferred to it from the county of Lotbiniere, to be formed into two counties. The county of Orleans, being only 69 square miles in extent, and not sufficient in comparison with other counties, is added to the county of Montmorenci, to be called the county of Montmorenci.

The Return of Members will be as follows:

	British Majority.	French Majority.
District of Montreal:		
19 counties, one city, one town - - - - - -	14	25
District of Three Rivers:		
9 counties and two towns, including two members for the town of Sherbrooke, being the court town of the inferior district of St. Francis - - -	6	11
District of Quebec:		
14 counties and one city - - - - - - -	2	26
District of Gaspé:		
2 counties - - - - - - - - - -	- -	4
Total - 44 Counties.	22	66

Say 22 British and 66 French. Total 88 members, being the same number as the existing division.

In this statement, the population of the first division of Megantic, in conjunction with the parish of St. Sylvestre transferred to it from the county of Lotbiniere, exceeds 4,000 souls, and two members are therefore inserted.

The above number of 22 British will, I trust, not be considered unreasonable, as their share in comparison with the number of 66 members of French majority, when the number of British and Irish is computed as 150,000 to 350,000 French inhabitants.

The census of 1831, in giving the total population at 511,917, stated the number of Roman-catholics to be 403,472, leaving therefore the number of 108,445 to be protestants, none of whom would be of French origin.

Of the catholics above stated, we may reasonably infer that 50,000 are of other origin than French, and the statement must therefore be satisfactory that the total number of British and Irish, and others not French, exceed 150,000, and this without estimating the increase by emigration, vast numbers having settled throughout the province since the year 1831.

On a census being again taken, the population will be correctly ascertained, and when the newly formed counties will have acquired sufficient to entitle them to the return of two members each according to the existing law.—*See* Provincial Statute, 9 Geo. 4, c. 73.

"That each and every county now formed, or which shall or may hereafter be formed, the population of which shall amount to 1,000 souls, shall be represented in the provincial parliament by one member, and when the population of such county or counties as aforesaid shall amount to 4,000 souls, the said county or counties shall be represented by two members; and when any county now formed or hereafter to be formed, shall contain less than 1,000 souls, the said county or counties shall be attached to the next adjoining county in which there shall be the smallest number of souls."

The returns in the course of years may be expected as follows, viz.:

	British.	French.
Members according to present population - - - -	22	66
Further anticipated:		
From the county of Ottawa - - - - - - - -	1	—
— Hull - - - - - - - -	1	—
— Clarendon - - - - - - -	1	—
— Kilkenny - - - - - - -	1	—
— Enfield - - - - - - - -	1	—
— Middlesex - - - - - - -	2	—
— Worcester - - - - - - -	1	—
Second division of Megantic - - - - - -	2	—
Carried forward - - -	32	66

	British.	French.
Brought forward - - -	32	66
The new county of Drummond has a French majority, but on the lands being settled as is supposed by British emigrants, it will ultimately have a British majority, and therefore diminish one (*see* page 5) from the French and add two to the English number - - - - - - - - - -	2	1
	34	65

In making the foregoing divisions, regard has been had to territorial extent, as well as population.

I had wished also to divide all the seigneurial lands from those of free tenure, but could not entirely carry out that principle. In making a division of the county of Two Mountains, by separating the seigneury of Argenteuil from the east part of that county, and forming it into a new county with the townships on the west, a separation has been made of the British and French people, which will prevent a recurrence at future elections of those tumults which cannot be recollected without regret.

The British and Irish settlers residing in the southern part of the county of Rouville, have complained of being unrepresented, being swamped in the French majority of the northern part. The present division, uniting them with the county of Missisquoi, will no doubt correct the evil.

A large body, of the same origin, in the county of Lotbiniere, had the same cause of complaint, and the parish of St. Sylvestre has therefore been added to the county of Megantie.

The qualification for electors according to the 20th, 21st and 22d sections of 5 Geo. 4, c. 33, is as follows:

For counties. Proprietor of an estate of the yearly value of 40*s.* sterling, or 44 *s.* 5 ¼ *d.* currency.

For cities, towns or boroughs. Proprietor of a lot of ground and dwelling of the yearly value of 5 *l.* sterling, or 5 *l.* 11 *s.* 1 ¼ *d.* currency.

For the same. A tenant paying 10 *l.* sterling per annum, or 11 *l.* 2 *s.* 2 ½ *d.* currency.

In a commercial community, the interests of commerce, independently of territory and population, ought to be represented; and as those interests centre in the principal cities, the members allotted to them should be increased. The commercial interests of the empire are affected by the system of taxation resorted to in the province, as well as by various local regulations, and they are therefore entitled to be heard. The right reserved to the King to disallow any Act within two years after its having become law, does not adequately protect the interests in question. I would therefore suggest that when the city of Montreal shall have acquired a population of 45,000 souls, that it should have two additional members, and that the existing qualification of voters for cities, towns or boroughs should be doubled.

As an additional safeguard to the principles of the constitution, and against persons not having a sufficient stake or interest in the province becoming members of the Assembly, it is recommended to establish a qualification of residence and property for each candidate thereto, of at least 50 *l.* of clear annual revenue, arising from real estate in the county, city, town or borough wherein he may reside.

Where we see securities are considered necessary for every public office or employment, and that even an ensign of militia must by law be qualified in a certain amount of property, with how much more reason should that principle be extended to a legislator?

The payment of members of the House of Assembly wages out of the general revenues of the country, appears highly objectionable; and if payment is continued, it should be borne by the counties, cities, towns or boroughs for which they are elected.

In the cities of Quebec and Montreal, the county of Two Mountains, and other parts of the province where difference of feeling exists from national origin or political views, dissensions have arisen to an alarming height at the places of election.

Persons not qualified have voted and taken the oath required by law, leaving the opposing candidate no remedy but that very useless one of prosecuting for perjury. To prevent such abuses, I would recommend that all votes be registered previous to the period of election in the manner adopted in England. It would be advantageous to the public peace that the general election should be had simultaneously throughout the province, in order to check the facility of persons being elected for two places, and also to prevent agitators interfering with elections not in their own locality.

It is also desirable that a fixed period for the meeting of the legislature should be established by law, unless under extraordinary circumstances. The early part of the month of January would perhaps be found the most convenient for the public interest.

The objections so often made to a recent amendment of the election law must be again alluded to.

The 27th section of the 28th chapter of the Provincial Statute William 4, 18th March 1834, intituled, "An Act to regulate the manner of proceeding upon contested Elections of Members to serve in the House of Assembly, and to repeal certain Acts therein mentioned," contains the following clause: "Nor shall any one of any number of persons being proprietors in common (*par indivis*) of any immovable property, vote at any such election as being qualified by his undivided share of such property, unless such persons shall hold such property as co-heirs." This clause is a direct violation of the elective rights of a large

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No. 3 *a*.

portion of the mercantile body of British and Irish inhabitants of this province, whose valuable real estate being in copartnership, they are disfranchised from voting for members to represent them in the provincial Assembly.—(*See* copy of Resolutions passed in the West Municipal Ward of the City of Montreal on the 15th September 1835, presented on the 12th August 1836 by a deputation to His Excellency the Right Honourable the Earl of Gosford, Governor-in-chief.)

Another important subject for consideration must be noticed, the large quorum of the House of Assembly as established by that body. It consists of a majority of 88 members, and is therefore 45.

The experience of the last two sessions has proved to what extent the power thus assumed by a majority of that House, can be exercised. A body of the members having retired almost simultaneously, the House was left without a quorum, and therefore rendered as incapable of continuing its legislative proceedings as if it had been prorogued in due form. To prevent similar occurrences, it is desirable that the quorum be established by law, and not to exceed the number of 20.

How different is the system in the British House of Commons, where with 658 members they established the moderate quorum of 40?

All which is respectfully submitted.

Montreal, 16 August 1836. (signed) *James Duncan Gibb.*

Alterations and further remarks:

Only one of the members from Gaspé voted with the English minority, and one of the members from Missisquoi voted with the French majority.

The township of Farnham is taken from the county of Shefford and added to the county of Missisquoi; the population of Shefford being therefore but 3,317, entitles that county to the return of only one member.

In order to insure the new counties an early return of members according to population, it is recommended that a census be taken annually therein until the number of souls shall amount to 4,000, to entitle them to two members respectively.

The information of the supposed population in March 1836, was derived from letters received in reply to circulars addressed in December last and subsequently, by Henry Dyer, Esq., chairman of a sub-committee appointed by the executive committee of the Constitutional Association, to inquire into the state of the representation of the people; one of which circulars is delivered herewith.

— No. 3 *b*. —

J. D. Gibb, Esq. 16 August 1836.

No. 3 *b*.

Mr. J. D. Gibb having delivered a written paper on the State of the Representation of the People, and having given explanations of it, illustrated by a reference to the map, the following questions and answers passed.

With reference to the resolutions in the West Municipal Ward of Montreal, passed in September 1835, and presented to the Governor in August 1836, which you have mentioned in your paper, can you point out any other documents in illustration or confirmation of the views you have stated?—I think that a petition to the King to disallow the Act of Will. 4, c. 28, on account of the 27th clause precluding co-partners from voting, was presented to the Governor during the last session, to be transmitted to His Majesty. I am certain that such a petition was presented to the King, and I think through the Governor.

On what documents do you found your statement that there is a majority of British and Irish in the county of Drummond?—I learned it from John Ployard, Esq., a resident at Grantham, in that county.

You are aware that in Drummond, by the census of 1831, there is a majority of Roman-catholics?—Yes.

In reference to a statement in your paper respecting Drummond, are there any other instances in which you think that elections have been carried by voters not properly qualified?—I have heard that it takes place in the new settlements to a considerable extent from squatters.

What violence do you allude to in your paper, at the election at Two Mountains?—I have been informed that there was great excitement and some show of violence, and I understand that the British party was kept away from the poll at St. Eustache. The greater number of the British polled at St. Andrew's.

At what other places have you heard of any example of violence?—There were cases at William Henry and at Quebec.

Besides the members for Stanstead, does not Mr. Knight, one of the members for Missisquoi, vote with what is termed the French party in the Assembly?—He does.

What do you take to be the present number of the population, including the increase since the census?—As regards the province at large, I have not studied that question particularly. In the statistics appended to my paper, I have derived my statement of the population in the new settlements from letters which, as secretary to a sub-committee of the Constitutional Association, I received from residents in those townships.

Do you suppose that since 1831, the proportion of persons of British origin to others, has

has increased?—Yes, because they have the increase by emigration to add to the natural increase.

Can you state why for present purposes, and without reference to future population, there is any reason to take extent of territory into consideration in dividing the country into electoral districts?—The local wants of inhabitants, difference of situation, climate, &c., and probably corresponding peculiarities of interest.

Would it not be a sounder principle to proportion the number of representatives to the number of voters, than to the number of the whole population, including women and children?—That is a difficult question regarding points of abstract politics, into which I would wish to be excused from entering on the present occasion.

Does your plan provide against the inequalities which may arise from increase of numbers, or against the occurrence of minorities of one origin in counties?—My plan particularly guards against inequalities, for the counties being made of equal extent, all will be alike. With respect to the existence of minorities in counties who will not return the representatives, no system, that I am acquainted with, can guard against that.

But do you think that under your system of division the province would approach to a state in which each county would contain inhabitants of only one origin?—There will be 13 counties according to my plan, which in time would be nearly all English.

If there were a system established for the registration of titles, should you contemplate a considerable influx of English into the seigneuries?—In the district of Montreal, but not, I think, in Quebec, except as regards merchants settling in the towns. The climate is too severe.

Supposing the province divided into electoral districts, each of which returned 10 representatives, and that each voter had only one vote, do you not perceive that it would ensure the minority having representatives whilst your plan leaves them unrepresented?—I think it would if they were sufficiently united, but I should anticipate difficulty as to the detail. There would be always apprehensions in the minority that the practical operation of the system would not do full justice. I must observe also, that I come here only to give opinions founded on the old, or usually received, systems of representation, and I am scarcely prepared to discuss new principles.

PAPER delivered by Mr. *Gibb* in Illustration of his Proposed Subdivision of Counties in the Province of *Lower Canada*, for the Return of Members to the House of Assembly.

	Territorial Extent in Square Miles.		POPULATION. Census of 1825.	POPULATION. Census of 1831.	POPULATION. Supposed Population in March 1836.	ORIGIN. British and Irish.	ORIGIN. French.
District of Montreal: The county of Ottawa to be divided into three counties.							
1. To be called the county of Ottawa, to consist of	Miles.	100th part of a Mile.					
The seigneury of Petite Nation	232	35	512	826			
The township of Lochaber and its augmentation or Gore.	106	60	23	236			
Buckingham	96	59	158	570			
The townships of Derry and Rippon	200	00					
And other townships to the boundary in the rear of the province (not exceeding Portland and its rear).							
Total	635	54	693	1,632			
2. To be called the county of Hull, to consist of the townships of							
Templeton	116	40	55	270	390	247	143
Hull	96	71	563	2,059	2,700	2,640	60
Eardley	106	00	185	214	200		
Portland, in rear	101	00					
Wakefield (not surveyed, suppose)	100	00					
Washer	100	00					
And the territory extending to the rear boundary of the province.							
Total	620	10	803	2,543	3,290		

	Territorial Extent in Square Miles.		POPULATION.			ORIGIN.	
			Census of 1825.	Census of 1831.	Supposed Population in March 1836.	British and Irish.	French.
DISTRICT OF MONTREAL—*continued.*							
3. To be called the county of Clarendon, to consist of the townships of	Miles.	100th part of a Mile.					
Onslow	121	00	- -	79	147		
Bristol	56	70	- -	96	445		
Clarendon	115	30	- -	257		no intelligence.	
Litchfield, in rear	41	67	- -	55		no intelligence.	
Mansfield	100	00	- -	112	422		
Huddersfield, (not surveyed, suppose)	100	00	- -	- -	4		
With the territory in rear, and on the north-west to the boundary of the province.							
TOTAL	534	67	- -	599	Exceeds 1,018.		
The five counties of Two Mountains, Terrebonne, Lachanaye, L'Assomption and Berchier, to be newly divided and formed into the five following counties:							
1. The county of Chatham, to consist of the townships of							
Grenville (and its augmentation)	119	90	563	1,262	1,450	1,250	200
Chatham	179	02	880	2,604			
The seigneury of Argenteuil	73	14	2,050	2,596			
The township of Chatham Gore, in rear	- -	-	106	473			
Wentworth - ditto	97	30					
Harrington - ditto	100	00	- -	- -	100	100	
Arundel - ditto	100	00					
Howard - ditto	100	00					
And the remaining territory in rear, until the lines of the county of Ottawa and that of the county of Kilkenny meet at an angle.							
TOTAL	728	50	3,599	6,935			
This calculation of 728 miles is made by the boundary lines of the whole county.							
2. The county of Terrebonne, to consist of the parishes of							
St. Scholastique	- -	-	2,684	3,769			
St. Benoit	- -	-	4,115	4,431			
St. Eustache	- -	-	4,833	4,830			
Lake of Two Mountains	- -	-	907	614			
Isle Bizarre	- -	-	668	799			
Parish of St. Martin	- -	-	2,895	3,022			
St. Vincent de Paul	- -	-	1,808	1,934			
St. Francois	- -	-	664	788			
St. Rose	- -	-	2,169	2,229			
Terrebonne	- -	-	1,682	1,563			
New Glasgow	- -	-	- -	479			
St. Anne des Plaines	- -	-	3,213	1,412			
St. Threse	- -	-	2,648	2,703			
Riviere du Nord	- -	-	313	473			
TOTAL	563	20	28,699	29,046			
3. The county of L'Assomption, to consist of the parishes of							
Lachanaye	- -	-	1,016	1,068			
Muscouche	- -	-	2,152	2,276			
St. Roch	- -	-	3,622	2,517			
St. Lyn	- -	-	- -	1,583		- - the number not included in the census of 1825.	
St. Esprit	- -	-	1,754	1,889			
And the parish of L'Assomption	- -	-	3,621	3,865			
St. Sulpice	- -	-	1,464	1,040			
Repentigny	- -	-	1,571	1,703			
St. Jacques	- -	-	4,073	4,850			
TOTAL	376	60	19,273	20,791			
4. The county of Berchier, as it now is, less the township of Kildare on the west side, the population of which is not given in the census	8,410 61	00 63					
TOTAL	8,348	37	15,935	20,225			

	Territorial Extent in Square Miles.		POPULATION.			ORIGIN.	
			Census of 1825.	Census of 1831.	Supposed Population in March 1836.	British and Irish.	French.
5. The county of Kilkenny to consist of the townships of	Miles.	tooth part of a Mile.					
Abercrombie	81	74					
Kilkenny	83	18					
Rawdon	92	16	480	1,309			
Kildare	61	63					
Howard, in rear	100	00					
Wexford, ditto	100	00	- -	128			
Chertsey, ditto	100	00					
And the territory in rear, running parallel to the side lines, north-westerly to the boundary of the province.							
TOTAL	618	71	480	1,437			
The two counties of Laprairie and l'Acadie to be formed into one county, called the county of Laprairie; viz.							
Laprairie	238	00	19,254	18,497			
Acadie	250	00	- -	11,419			
TOTAL	488	00	- -	29,916			
The two counties of Chambly and Vercheres to be formed into one county, called the county of Chambly; viz.							
Chambly	211	00	16,351	15,483			
Vercheres	198	00	11,573	12,319			
TOTAL	409	00	27,924	27,802			
The three counties of Richelieu, St. Hyacinthe and Rouville, to be newly divided:							
1. To be called the county of Richelieu, to consist of							
The actual county of Richelieu	373	00	15,896	16,149			
And all that part of the county of St. Hyacinthe lying and being eastward and northward of the riviere La Tortue and its discharge into the Yamaska river; consisting of the parishes of							
St. Pie	- - -		- - -	2,294			
St. Hughes, St. Simon, And extra-parochial places, &c.	199	70					
TOTAL	572	70					
2. The county of Rouville to consist of that part of the county of St. Hyacinthe which is not included in the last-mentioned county; being the parishes of							
St. Damase	- - -		1,705	2,045			
St. Hyacinthe	- - -		6,600	3,960			
La Presentation	- - -		1,712	1,646			
St. Cessaire	277	30	1,764	2,796			
Also that part of the old county of Rouville which lies northward of the seigneury Blenrie; viz. the parish of							
St. Mary	- - -		4,096	5,362			
St. Hilaire	- - -		973	1,106			
St. Matthias	- - -		2,193	2,431			
St. Jean Baptiste	308	84	1,967	2,150			
TOTAL	586	14	21,010	21,496			
The remaining part of the old county of Rouville to be added to the county of Missisquoi; viz. the seigneuries of							
Noyau.							
Foucault.							
Sabrevois.							

	Territorial Extent in Square Miles.		POPULATION. Census of 1825.	Census of 1831.	Supposed Population in March 1836.	ORIGIN. British and Irish.	French.
DISTRICT OF MONTREAL—*continued.*							
The three counties of Missisquoi, Shefford and Stanstead, with the south half of the old county of Rouville, to be formed into four counties:							
1. The county of Shefford, to consist of the townships of	Miles.	100th part of a Mile.					
Milton	100	00	- -	148	190		
Roxton	101	25	- -	- -	50		
Ely	88	35	- -	25	131		
Granby	111	75	297	797	991		
Shefford	101	25	891	1,176	1,470		
Stukeley	100	00	250	388	485		
Farnham	45	30	138	1,314	1,642		
	647	90	1,576	3,846	4,959		
Deduct Farnham	45	30	138	1,314	1,642		
TOTAL	602	60	1,438	2,532	3,317		
2. The county of Missisquoi, to consist of the townships of							
Stanbridge	86	10	1,638	2,380			
Durham	87	40	1,929	2,220			
Seigneury of St. Armsrod	82	08	2,654	3,021			
Noyau	-	-	-	1,839	2,428		
Foucault (From the old county of Rouville.)	120	16	928	1,222			
Sabrevois	-	-	550	1,125			
	376	18	9,538	12,396			
Add Farnham	45	30	138	1,314	1,642		
TOTAL	421	48	9,676	13,710			
3. The county of Brome, to consist of the townships of							
Sutton	101	25	730	2,180			
Brome	101	25	718	1,239	1,548		
Polton	97	91	187	1,005			
Bolton	119	62	945	1,170			
West of the Lake Memphramagog.							
TOTAL	420	03	2,590	5,594			
4. The county of Stanstead, to consist of the townships of							
Barford	58	86	- -	84			
Barnston	96	23	1,409	2,221			
Stanstead	111	11	3,160	4,226			
Hatley	109	86	1,387	1,600			
East of the Lake Memphramagog.							
TOTAL	376	06	5,956	8,131			
DISTRICT OF THREE RIVERS:							
The counties of Drummond and Sherbrooke to be formed into five counties.							
1. The county of Drummond, to consist of the townships of							
Upton	116	55	- -	434	400	- -	400
Grantham	114	16	354	620	850	400	450
Wickham	106	00	188	378	450	350	100
Acton	103	50					
Wendover	81	69	28	76	80	50	30
Simpson	100	44	32	55	60	40	20
Horton	210	00	- -	12	12	- -	12
Aston			27	72	50	- -	50
Bulstrode	113	89	- -	97	230	10	220
Stanfold	129	75					
Warwick	154	68					
Archabaska							
TOTAL	1,230	66	629	1,744	2,132	850	1,282

	Territorial Extent in Square Miles.		POPULATION. Census of 1825.	Census of 1831.	Supposed Population in March 1836.	ORIGIN. British and Irish.	French.
DISTRICT OF THREE RIVERS—*continued.*	Miles.	100 part of a Mile.					
2. The county of Sherbrooke, to consist of the townships of							
Durham	109	09	334	746	1,000	950	50
Melbourne	71	82	479	864	1,280	1,250	30
Brompton	88	43	214	248	350	350	
Orford	129	16	202	230	320	300	20
Ascott	94	06	756	1,155	1,800	1,650	150
Compton	82	22	965	1,510	2,020	2,000	20
TOTAL	574	78	2,950	4,753	6,770	6,500	270
3. The county of Enfield, to consist of the townships of							
Kinsey	96	27	279	879	1,100	650	450
Shepton	126	85	834	1,313	1,900	1,800	100
Windsor	111	34	138	129	220	200	20
Tingwick	105	96	83	180	300	300	
Chester	121	20	- -	9	12	12	
Wotton	93	20	- -	8	10	10	
Ham	117	59					
Woolfstown, and its augmentation	132	68	- -	- -	12	12	
TOTAL	905	09	1,334	2,518	3,554	2,984	570
4. The county of Middlesex, to consist of the townships of							
Stoke	140	54					
Dudswell	83	10	151	242	342	342	
Weedon	92	16					
Garchly	109	27					
Westbury	68	33	42	67	100	100	
Bury	81	70	- -	- -	15	15	
Longwick	94	67					
Stratford	115	03					
Hampden	209	37					
Part of Gayhurst	0	00					
Marsdon	110	70					
TOTAL	1,104	87	193	309	457	457	
5. The county of Worcester, to consist of							
Eaton	93	31	760	985	1,500	1,500	
Newport	96	81	- -	- -	150	150	
Ditton	97	11	86	120			
Chesham	118	62	76	70	100	100	
Clinton							
Clifton	93	60					
Aukland	91	49	- -	- -	10	10	
Emberton	46	75					
Hereford	103	50	- -	171	250	250	
Drayton	40	00	- -	- -	350	350	
TOTAL	781	19	922	1,346	2,360	2,360	
DISTRICT OF QUEBEC:							
The county of Lotbinière, as it now is	735,						
Less the parish of St. Sylvestre, to be added to the county of Megantie.							
The county of Megantie to be formed into two counties.							
1. To be called the county of Megantic, to consist of the parish of St. Sylvestre, from the county of De Lotbinière.			- -	- -	1,323		
The township of Somerset	91	71					
Nelson	97	03	- -	16	50	50	
Halifax	99	27	- -	71	150	130	20
Inverness	114	47	- -	853	950	950	
Leeds	140	00	84	754	740	740	
Ireland, and its augmentation	143	70	165	440	500	490	10
TOTAL	656	18	249	3,457	—	—	—

	Territorial Extent in Square Miles.		POPULATION. Census of 1825.	Census of 1831.	Supposed Population in March 1836.	ORIGIN. British and Irish.	French.
DISTRICT OF QUEBEC—*continued.*							
2. To be called the county of to consist of the townships of	Miles.	100th part of a Mile.					
Chetford	94	00					
Broughton	85	14					
Colraine	80	04					
Adstock	63	65					
Tring	90	82	- -	38			
Winslow	68	73					
Oulney	36	62					
Thelney	100	48					
Gayhurst	72	35					
Dorset	107	31					
TOTAL	799	14	- -	38			
The two counties of Montmorenci and Orleans to be united, and called the county of Montmorenci.							
Montmorenci	7,396 69						
TOTAL	7,465						

Note.—The township of Wolfstown and its augmentation are by this arrangement included in the district of Three Rivers.

RESULT of the SUBDIVISION of COUNTIES.

	Extent in Square Miles.	ORIGIN. British and Irish.	French.
DISTRICT OF MONTREAL:			
Counties: Ottawa (besides waste lands)	635	1	
Hull - - (ditto)	620	1	
Clarendon - (ditto)	534	1	
Chatham (including some waste lands)	728	2	
Terrebonne	563	- -	2
L'Assomption	377	- -	2
Berchier (of which 7,839 square miles are waste lands, less those in rear of township of Kildare)	8,348	- -	2
Kilkenny (besides waste lands)	618	1	
Chambly	409	- -	2
Laprairie	488	- -	2
*Beauharnois	717	- -	2
*Venudreuil (including Isle Perrot)	330	- -	2
Richelieu	572	- -	2
Rouville	586	- -	2
Missisquoi	421	2	
Shefford	602	2	
Brome	420	2	
Stanstead	376	2	
Montreal, city:—Eastward	- -	- -	2
— Westward	- -	- -	2
— *County	197	- -	2
Town or borough of William Henry	- -	- -	1
TOTAL	- -	14	25
DISTRICT OF THREE RIVERS.			
Counties: *St. Maurice (of which 9,386 square miles are waste lands)	9,810	- -	2
*Champlain	783	- -	2
*Yamaska	283	- -	2
*Nicolet	487	- -	2
Drummond	1,230	- -	1

Note.—The counties marked (*) have not been affected by the present arrangement.

REPRESENTATION.

No. 3 *b*.

	Extent in Square Miles.	ORIGIN. British and Irish.	ORIGIN. French.
DISTRICT OF THREE RIVERS—*continued*.			
Counties: Sherbrooke	574	2	
Enfield	905	1	
Middlesex	1,104		
Worcester	781	1	
Town of Three Rivers	- -	- -	2
Sherbrooke, being the court town of the inferior district of St. Francis	- -	2	
TOTAL	- -	6	11
DISTRICT OF QUEBEC.			
Counties: *Beauce (of which 1,037 square miles are waste lands)	1,987	- -	2
*Bellechasse (of which 1,202 square miles are waste lands)	1,775	- -	2
*Dorchester	348	- -	2
*Islet (of which 2,608 square miles are waste lands)	3,044	- -	2
*Kamouraska (of which 3,891 square miles are waste lands)	4,320	- -	2
Lotbinière (735 miles, less the parish of St. Sylvestre)	- -	- -	2
Megantic, 656 miles, besides the parish of St. Sylvestre	- -	2	
— (second division)	799		
Montmorenci, including the island of Orleans, (of which 6,820 square miles are waste lands on the north shore)	7,465	- -	2
*Portneuf (of which 8,068 square miles are waste lands)	8,640	- -	2
Quebec city, Upper Town	- -	- -	2
Lower Town	- -	- -	2
*County (of which 13,780 square miles are waste lands)	14,240	- -	2
Counties: *Remouski (of which 7,554 square miles are waste lands)	8,840	- -	2
*Saguenay (of which 72,123 square miles are waste lands)	72,700	- -	2
TOTAL	- -	2	26
DISTRICT OF GASPÉ.			
Bonaventure	4,108	- -	2
Gaspé, including the Magdalen Islands on the Gulph { 3,188 / 93 }	3,281	- -	2
TOTAL	- -	- -	4
PROVINCE OF LOWER CANADA.			
District of Montreal	- -	14	25
Three Rivers	- -	6	11
Quebec	- -	2	26
Gaspé	- -	- -	4
TOTAL	- -	22	66

For further particulars see Report of this date.

Note.—The counties marked thus (*) have not been affected by the present arrangement.

Montreal, 16 August 1836. *James Duncan Gibb.*

WILD LANDS.

— No. 1. —

WILD LANDS.

No. 1.

Sir, Quebec, 14 October 1836.

In consequence of your letter of the 16th May last, requesting me to furnish you, for the information of the Royal commissioners, with a statement of all sums now due to the Crown on account of the King's domain; and also with a return of the ordinary revenue of the King's domain, that is to say, a return of the rent-roll, or what the annual income would be, if every thing due were paid within the year; I have the honour now to send you the statement and return you require in the best form and as accurate as circumstances

WILD LANDS.

No. 1.

enable me to do. I wish at the same time to explain that I have delayed making the return for so long a period, from having such imperfect materials from which to compile it, that I was conscious I could not give you the information you desired in a manner satisfactory to myself; I was anxious therefore, although at the expense of considerable personal labour, to endeavour to make it as complete as possible; but even now its accuracy cannot be depended upon in many particulars, from there being no perfect terrier of the King's domain in my office, and although attempts have been made to form one, both here and at Three Rivers since 1828, such obstacles have occurred in the course of its completion that it may be considered merely as commenced. I had hopes that before now a plan would have been adopted by the Government, the outlines of which I had the honour to recommend in a report to his Excellency the Governor-in-chief, of the 5th May 1835, which would have facilitated the formation of a papier terrier, and tended as well to the recovery of the arrears as to the future regular collection of the revenue, on principles of liberality towards the censitaires; but circumstances, I presume, have retarded the putting this plan in operation, although I had understood it was nearly matured.

In consequence of this want of a terrier, and of many notaries neglecting to furnish the extracts of sales, which they are bound to do by law, the amount of the arrears due, as well as that of the annual revenue, is, to a considerable degree, conjectural, but I believe the statements I have made would in the result be found not far from the truth.

In respect to Three Rivers, the dues accruing within the King's domain there, have never been collected as they ought, and have amounted since the conquest to a mere trifle; I have been unable to obtain from thence an estimate of the probable amount of either the arrears or the annual revenue; but from what general information I have on the subject, I should conceive the arrears could not fall short of 10,000 *l.*, and that the annual income, if collected, would average from 700 *l.* to 1,000 *l.* per annum.

I have, &c.

To T. F. Elliot, Esq.
Secretary, Royal Commissioners,
&c. &c. &c.

(signed) *F. W. Primrose*, J. G. D. R.

ARREARS.

	£.	s.	d.
Amount of arrears of dues, regulated and ascertained by the inspector-general of the King's domain, to the 10th October 1836 - - - (Lods et ventes, due at Three Rivers, not included.)	13,423	8	5
Amount ascertained due from notarial extracts furnished during the last 10 years, when the parties have not produced their titles - - - (Three Rivers, as above, not included.)	9,659	8	5
Quints due, for which neither titles nor extracts have been produced, about - - - - - - - - - - - - - -	1,980	–	–
Probable amount due upon titles neither produced nor of which extracts have been furnished - - - - - - - - - - (This sum very conjectural, most probably much under the real amount.)	5,000	–	–
£.	30,062	16	10
Arrears of annual payments not included in the above :			
Custom House Wharf, three years to May 1836 - - - - -	750	–	–
Forges of St. Maurice, 1½ year to July 1836 - - - - -	637	10	–
Small Rents - - - - - - - - - - - -	60	3	2
Currency - - £.	31,510	10	–

Of these arrears, the undersigned is of opinion that if proper measures were adopted there might, without any improper pressure on the debtors, be collected as follows; viz.

Amount of the foregoing account that might be collected :	£.	s.	d.
1. Of the sum of 13,423 *l.* 8 *s.* 5 *d.* - - half, or - - -	6,711	14	2½
2. Of the sum of 9,659 *l.* 8 *s.* 5 *d.* - - three-quarters, or -	7,644	11	4
3. Of the sum of 1,980 *l.* 0 *s.* 0 *d.* - - the whole - - -	1,980	–	–
4. Of the sum of 5,000 *l.* 0 *s.* 0 *d.* - - half, or - - -	2,500	–	–
£.	18,836	5	6½
5. Of the sum of 750 *l.* 0 *s.* 0 *d.* - - the whole - - - (The buildings on this property are a full guarantee for the debt, but the rent, I believe, more than the lease is worth.)	750	–	–
6. Of the sum of 637 *l.* 10 *s.* 0 *d.* - - the whole - - -	637	10	–
7. Of the sum of 60 *l.* 3 *s.* 2 *d.* - - the whole - - -	60	3	2
£.	20,283	18	8½

WILD LANDS.

No. 1.

MEMORANDUM of the AVERAGE PAYMENTS into the Receiver-General's Hands on Account of Quints, Lods et Ventes, &c., accruing within the King's Domain.

	£.	s.	d.
Average of 10 years from October 1817 to October 1827 - - -	2,575	11	–
Average of 5 years from October 1822 to October 1827 - - -	1,765	15	8
Average of 8 years from October 1827 to October 1835 - - -	3,372	12	2
Average of 5 years from October 1830 to October 1835 - - -	2,921	3	–

Note.—The two first averages are taken for the periods immediately preceding the undersigned entering into office; the two last since his appointment.

(signed) *F. W. Primrose*, J. C. D. R.

HEADS of REVENUE or ANNUAL INCOME of His Majesty's Domain in *Lower Canada*.

	£.	s.	d.
1. King's Posts - - - - - - - - - - - -	1,200	–	–
2. Forges of St. Maurice - - - - - - - - - -	425	–	–
3. Water and Small Rents - - - - - - - - -	195	–	–
4. King's and Custom House Wharf - - - - - - - -	250	–	–
5. Quints, Lods et Ventes, &c., average of last 8 years - - -	3,372	–	–
£.	5,442	–	–
Add probable additional amount of Seigneurial Dues at Quebec, if regularly collected - - - - - - - - - - -	2,000	–	–
Ditto, Three Rivers - - - - - - - - - - -	1,000	–	–
TOTAL - - - £.	8,442	–	–

Land and Timber Fund not included.

Quebec, 14th October 1836. (signed) *F. W. Primrose.*

— No. 2. —

MEMORANDUM of the SUMS now owing on Account of Rents of Town and Water Lots in or near *Quebec* and *Three Rivers*.

No. 2.

Date of the Grant.	Description.	——	Situation.	Amount now Due.
				£. s. d.
7 Feb. 1824 -	Water Lot	C. Fortur - - - -	Three Rivers	58 13 4
26 April 1824 -	- ditto -	H. Rientord - - - -	- ditto -	28 6 8
12 May 1824 -	- ditto -	L. Lassissiraie - - -	- ditto -	45 6 8
*29 — 1824 -	- ditto -	J. Chillas - - - -	Quebec -	none.
31 — 1824 -	- ditto -	Monro and Bell - - -	Three Rivers	176 13 4
31 — 1824 -	- ditto -	Monro and Bell - - -	Quebec -	136 13 4
31 — 1824 -	- ditto -	G. Carter - - - -	Three Rivers	46 – –
26 Oct. 1824 -	- ditto -	H. Atkinson - - -	Quebec -	46 – –
27 May 1825 -	- ditto -	Heirs Brehaut - - -	- ditto -	23 16 8
30 — 1832 -	- ditto -	Rev. Jos. Signay - -	- ditto -	none.
31 Oct. 1831 -	- ditto -	William Walker & J. B. Forsyth	- ditto -	none.
26 Sept. 1832 -	- ditto -	William Sheppard - -	- ditto -	37 9 4½
26 — 1832 -	- ditto -	Grant and Greenshields - -	- ditto -	65 11 –
11 Feb. 1833 -	- ditto -	J. S. Campbell - - -	- ditto -	none.
2 April 1833 -	- ditto -	Gillespie, Finlay & Co. - -	- ditto -	none.
7 Nov. 1833 -	- ditto -	Grant and Greenshields - -	- ditto -	– 10 –
†28 — 1833 -	- ditto -	F. Buteau - - - -	- ditto -	5 17 8
19 June 1834 -	- ditto -	William Walker & J. B. Forsyth	- ditto -	18 15 7
3 Sept. 1834 -	- ditto -	Hon. J. Molson - - -	- ditto -	11 15 6
15 May 1835 -	- ditto -	F. Buteau - - - -	- ditto -	none.
21 July 1835 -	- ditto -	F. Buteau - - - -	- ditto -	none.
21 Aug. 1835 -	- ditto -	W. Phillipps - - -	Pointe Levi -	none.
28 Dec. 1835 -	- ditto -	W. and George Pemberton -	Quebec -	none.
28 — 1835 -	- ditto -	W. and Henry Sharples -	- ditto -	none.
		Currency - - - £.		701 9 1½

* The arrears upon this grant were paid up on the 16th July 1835, upon a commutation of tenure by the present proprietor, Mr. Thomas Hunt, and the rent itself is now extinguished.

† The rent reserved upon this lot according to the letters patent as enrolled at the Provincial Secretary's Office, which I have inspected, appears to be 2 *l.* 18 *s.* 10 *d.* currency per annum, instead of 5 *s.*, as stated in the projected return accompanying this.

Quebec, 13th May 1836. (signed) *F. W. Primrose*, J. C. D. R.

WILD LANDS.

No. 3 *a*.

— No. 3 *a*. —

GRANTS and SALES to Individuals exceeding 5,000 Acres.

List of Grants to Individuals in Free and Common Soccage, exceeding 5,000 Acres.

TOWNSHIPS, &c.	GRANTEES.	Number of Acres.	DATE of the Patent.
Tract of land to the south of Chaleur Bay and mouth of the River Caraquet in Nova Scotia.	John Martieth - -	20,000	10 February 1764.
Tract of land adjoining the River des Loups.	- - Richard Murray and Malcolm Fraser.	6,000	7 May 1766.
Potton - - - -	Lauchlan M'Lean - -	6,000	31 October 1797.
Eaton - - - -	Isaac Ogden - - -	6,000	1 March 1804.
Westbury - - -	Henry Caldwell -	12,000	13 March 1804.
Sherrington - - -	Francois Baby - -	7,600	22 February 1809.
Ditto - - - -	- - Jacob Mountain, Lord Bishop of Quebec.	7,800	22 February 1809.
Stanstead, Barnston and and Compton.	- - Sir Robert Shore Milnes, Lieut.-governor.	48,062	12 March 1810.
Godmanchester - -	- - Robert Ellice, in trust for himself and the heirs of the late Alexander Ellice.	25,592	10 May 1811.
Leeds - - - -	George Hamilton, esq. -	7,900	7 December 1812.
Durham - - - -	- - Eleanor Bernie, widow of the late Arthur Davidson, esq.	11,600	3 April 1815.
Ditto - - - -	Hon. J. Richardson, esq.	29,800	7 December 1815.
Stukely - - - -	Hon. Thomas Dunn -	11,600	17 May 1816.
Ely - - - - -	Isaac W. Clarke, esq. -	11,000	18 May 1816.
Potton and Sutton - -	William Osgood, esq. -	12,000	16 May 1817.
Ascot - - - -	Hon. W. B. Felton - -	5,200	31 May 1824.
Brandon - - - -	Edward Antrobus - -	9,700	8 January 1827.
Granby, Shefford, Stukely, Hatley, Compton, Barnston, Stanstead and Shipton.	François Languedoc -	9,000	30 June 1827.
Jersey - - - -	Edward Bowen, esq. -	5,200	21 July 1829.
Ascot, Brompton, Hatley and Orford.	Hon. W. B. Felton, esq. -	5,013	20 November 1830.

Secretary's Office,
Quebec, 18 August 1836.

(signed) *D. Daly*,
Secretary and Register.

N.B.—For many years subsequent to 1796 a practice obtained of granting large blocks of the waste lands of the Crown to a leader and associates, as it was termed. In many of these cases, it is believed that the names of the associates were only introduced for the purpose of augmenting the grant to the leader; they having previously arranged with him, for some trifling consideration, to relinquish their shares after the issue of the letters patent, by which means the leader became possessed of the whole grant.

It is therefore apparent that this return cannot convey a correct idea of the number of persons who have acquired grants from the Crown exceeding 5,000 acres, nor is it possible from the records of this office to give a correct statement of the grants over 5,000 acres which have been thus obtained.

(signed) *D. Daly*, Secretary and Register.

WILD LANDS.

No. 3*a*.

SALES of Crown Lands and Clergy Reserves, between 1 September 1828 and 30 June 1836, in which the Quantity sold to each Individual or Company exceeds 5,000 Acres.

PURCHASERS.	CROWN.	CLERGY.	TOTAL.
British American Land Company - -	726	100,056 ½	100,782 ½
Hon. Matthew Bell - - - - -	5,000	- - -	5,000
Humphries and Webb - - - -	22,888	5,331	28,219
Kea and Kempton - - - - -	4,300	4,200	8,500
Lieut.-Colonel M'Dougall - - - -	1,713	5,053	6,766
Tyler Harvey Moore - - - -	38,101 ¾	17,384 ¼	55,486 ¼
Charles R. Ogden - - - - -	3,200	11,600	14,800
Hon. John Richardson - - - -	- - -	5,600	5,600
Randolph Isham Routh - - - -	6,599	- - -	6,599
Thomas Ryan - - - - - -	10,500	1,800	12,300
Thomas Allen Stayner - - - -	10,700	7,448	18,148
Total - - -	103,727 ¾	158,472 ¼	262,200 ¼

Office of Crown Lands,
Quebec, 20 August 1836.

(signed) *John Davidson*,
Acting Commissioner of Crown Lands.

— No. 3 *b*. —

No. 3*b*.

LIST of the Leaders of Townships, to whom, conjointly with their Associates, Lands were originally granted in the undernamed Townships in *Lower Canada*.

LEADERS' NAMES.	TOWNSHIPS.	REMARKS. Average Quantity granted.
Gilbert Hyatt - - - -	Ascott - -	Nearly half a township.
Elizabeth Gould - - -	Auckland -	Half a township.
John Gregory - - - -	Athabaska -	Quarter of a township.
Calvin May - - - -	Bury - -	Ditto - ditto.
Patrick Langan - - -	Bulstrode -	Half a township.
Isaac Winslow Clarke - -	Barford - -	Exceeding half a township.
Robert Lester and Robt. Morrough	Barnston - -	About half a township.
William Barnard - - -	Brompton -	A township.
Henry Junken and William Hall	Broughton -	Half a township.
Asa Porter - - - -	Brome - -	A township.
Nicholas Austin - - -	Bolton - -	Ditto.
Jane de Montmollin - - -	Wentworth -	Quarter of a township.
John Frederick Holland - -	Clinton - -	Ditto - ditto.
Simon M'Tavish - - -	Chester - -	Ditto - ditto.
Jesse Pennoyer and Nath. Coffin	Compton - -	A township.
Hon. Thomas Dunn - - -	Dunham - -	Ditto.
Minard Harris Yeomans - -	Ditton - -	A quarter township.
Thomas Scott, esq. - - -	Durham - -	Half a township.
John Black - - - -	Dorset - -	A township.
Josiah Sawyers - - - -	Eaton - -	Exceeding half a township.
Isaac Ogden - - - -	Ditto - -	About one-eighth of a township.
Amos Lay, jun. - - - -	Ely - - -	Quarter of a township.
Samuel Gale - - - -	Farnham - -	Half a township.
Jane Cuyler and John Allsopp -	Ditto - -	One-third of a township.
Peter Edward Desbarats - -	Frampton -	Quarter of a township.
William Grant - - - -	Grantham -	Half a township.
John Jones - - - -	Hunterstown -	Township of small dimensions.
Henry Cull and Ebenezer Hovey	Hatley - -	About half a township.
Benjamin Jobert - - -	Halifax - -	Quarter of a township.
James Rankin - - - -	Hereford - -	Half a township.
Philemon Wright - - -	Hull - -	About quarter of a township.
William M'Gillevray - - -	Inverness - -	Quarter of a township.
Joseph Frobisher - - -	Ireland - -	Ditto - ditto.
Pierre Paul M. de la Valtree -	Kildare - -	Ditto - ditto.
George Longmore - - -	Kingsey - -	Ditto - ditto.
Isaac Todd - - - -	Leeds - - -	Ditto - ditto.
Henry Ruiter - - - -	Potton - -	About three-fifths of a township.
Nathaniel Taylor - - -	Newport - -	A quarter township.
Simon Fraser Ferguson - -	Tingwick -	About half a township.
Mervin Nooth - - - -	Thetford - -	Ditto.

(*continued*)

WILD LANDS.

*No. 3 *b*.

LEADERS' NAMES.	TOWNSHIPS.	REMARKS. Average Quantity granted.
Isaac Ogden	Stanstead	About half a township.
Samuel Willard	Stukely	Ditto - ditto.
John Savage	Shefford	About three-quarters of a township.
Hugh Finlay	Stanbridge	A township.
William Lindsay	Wickham	Half a township.
Henry Caldwell	Westbury	About a quarter of a township.
James Cowan	Stoke	A township nearly.
P. Conroy and H. Best and others	Sutton	Ditto - ditto.
Luke Knowlton	Orford	Quarter of a township.
Elmer Cushing and Wm. Barnard	Shipton	A township.
Kenelin Chandler	Stoneham	About half a township.
Capt. G. Wulff and D. Letourneau	Tewkesbury	Ditto - ditto.
Nicholas Montour	Wolfstown	Quarter of a township.
John Bishop	Dudswell	Ditto - ditto.
Abraham Steel and others	Warwick	Half a township.
M. Gaspard and A. C. de Lotbinière	Newton	Ditto - ditto.
J. Richardson, J. Forsyth and others	Onslow	Ditto - ditto.
Henry Caldwell	Melbourne	Exceeding half a township.
William Voldenvelden	Lingwick	Exceeding quarter of a township.
George Walters Alsopp and others	Maddington	About a quarter of a township.
Archibald M. M'Millan	Lochaber	Exceeding a quarter of a township.
Archibald M. M'Millan	Templeton	About one-fifth of a township.
Jenkin Williams	Stanfold	Half a township.
George Walters Allsopp	Acton	Ditto - ditto.
Gother Mann	Ditto	Ditto - ditto.
Major Holland's Family	Kingsey	Quarter of a township.
David Alexander Grant	Upton	About half a township.

N. B.—It is, I believe, generally known that the leaders of townships, or parts of townships, in many instances, did take a reconveyance from their associates to the extent of 1,000 acres, in consideration of the expenses incurred and borne solely by the leaders, for surveys and patent fees, upon the issue of warrants of survey in favour of such leaders and their associates, which warrants were directed by the Governor to His Majesty's surveyor-general of the province, to cause the same to be carried into execution, and contained the condition that all the expenses should be borne by the parties applying. The deputy provincial surveyors, who received the instructions from the surveyor-general's office, to carry those surveys into execution in the field, were also enjoined to transmit to the said office a faithful and exact report of their surveys, with plans and field books of their operations.

Previous, however, to the year 1795 the expenses of survey of the exterior lines of townships were borne conjointly by the Government and the leaders of townships; several of the leaders, however, did not conform to this rule. It is proper here to state, that a township of ten miles square contains about 44,000 acres of grantable land; and a township of nine miles front by twelve miles depth (being the dimensions of a township fronting on a river) is about 48,000 acres, more or less, according to its locality (exclusive of the usual reservations for Crown and clergy); according to which data the townships and parts mentioned in the foregoing list will bear a proportion or nearly so.

Surveyor-General's Office,
Quebec, 4 Nov. 1836.

(signed) *Jos. Bouchette*,
H. M. Surveyor-General, Lower Canada.

— No. 4. —

No. 4. GENERAL STATEMENT by DISTRICTS of the Conceded and Unconceded LANDS within the Seigneuries and Fiefs in the Province of *Lower Canada*.

DISTRICTS.	Contents in Arpents.	Quantum of Arpents Conceded.	Remaining Unconceded.
Quebec	6,181,740	2,204,278	3,977,462
Three Rivers	1,444,863	505,364	939,499
Montreal	3,380,537	2,425,400	955,137
TOTAL	11,007,140	5,135,042	5,872,098

The first column of this statement is from correct data; and the second and third are calculated from the best general information that could be collected, as well as from correct data in many seigneuries, and the information contained in my *Topographical Dictionary* of this province. It appears there remains about the aggregate quantity of 5,872,098 superficial arpents of unconceded land in the three districts, including the whole of the island of Anticosti; but exclusive of that island, about 4,059,098 superficial arpents unconceded, one-third part of which quantity, at least, may be considered as unfit for cultivation, and at least seven-eighths of the island of Anticosti is considered unarable.

Surveyor-General's Office.
Quebec, 23 Nov. 1832.

— No. 5. —

STATEMENT exhibiting the actual Condition of the WASTE LANDS OF THE CROWN comprised within the Surveyed Districts, including the Reservations set apart for the support of a Protestant Clergy, as they appear on the 26th day of December 1835.

District.	County.	Township.	Quantity of Surveyed Land, Subdivided into Lots, now remaining Vacant and Disposable.		Extent of the part remaining Unsurveyed in each Township.	Total of Vacant and Disposable Land, including the Reservation for the Clergy.
			Crown.	Clergy.		
Montreal	Ottawa	Litchfield	33,654	6,421	- -	40,075
		Clarendon	24,409	7,342	16,800	48,551
		Bristol	35,114	6,030	- -	41,144
		Onslow	600	1,876	41,325	43,801
		Eardley	19,713	5,870	- -	25,583
		Hull	10,050	8,217	- -	18,267
		Wakefield	54,215	9,035	- -	63,250
		Templeton	33,939	9,021	- -	42,960
		Buckingham	16,700	8,785	- -	25,485
		Portland	11,000	2,140	46,200	59,340
		Lochaber and Gore.	14,071	5,515	11,200	30,786
	Two Mountains	Grenville and aug.	16,526	5,550	- -	22,076
		Harrington	40,050	7,898	- -	47,948
		Wentworth	35,194	7,158	- -	42,352
		Chatham	3,400	1,300	- -	4,700
	Terrebonne	Abercrombie	- in dispute.		—	—
	Vaudreuil	Newton and aug.	1,804	2,344	- -	4,148
	Lachenaye	Kilkenny	10,775	7,235	- -	18,010
	L'Assomption	Rawdon	11,500	8,500	- -	20,000
	Berthier	Kildare and aug.	1,300	3,490	- -	4,790
		Brandon	8,005	7,980	5,120	21,105
	Beauharnois	Hinchinbrooke	- -	1,170	- -	1,170
		Hemmingford	- -	8,075	- -	8,075
	Missisquoi	Stanbridge	2,093	4,785	- -	6,878
		Dunham	1,706	5,375	- -	7,081
		Sutton	4,825	8,533	- -	13,358
St. Francis	Stanstead	Potton	- -	3,028	- -	3,028
		Bolton	- -	7,981	- -	7,981
		Stanstead	- -	5,205	- -	5,205
		Hatley	- -	3,475	- -	3,475
		Barnston	- -	2,617	- -	2,617
		Barford	- -	600	- -	600
Montreal	Shefford	Farnham	- -	6,142	- -	6,142
		Granby	- -	2,968	- -	2,968
		Milton	- -	3,200	- -	3,200
		Shefford	- -	7,147	- -	7,147
		Brome	- -	2,935	- -	2,935
		Stukeley	- -	2,713	- -	2,713
		Roxton	- -	1,566	- -	1,566
		Ely	- -	3,000	- -	3,000
Three Rivers	St. Maurice	Hunterstown	- -	400	- -	400
		Caxton and aug.	4,168	443	- -	4,611
Quebec	Portneuf	Alton.	—	—	—	—
	Quebec	Stoneham	31,800	8,700	- -	40,500
		Tewkesbury	33,900	9,100	- -	43,000
	Saguenay	Seltrington	2,593	3,189	- -	5,782
Three Rivers	Drummond	Upton	3,458	3,975	- -	7,433
		Acton	8,963	2,508	- -	11,471
		Grantham	4,487	4,551	- -	9,038
		Wendover and Gore.	1,948	450	- -	2,398
		Simpson	319	478	- -	797

WILD LANDS.

No. 5.

District.	County.	Township.	Quantity of Surveyed Land, Subdivided into Lots, now remaining Vacant and Disposable.		Extent of the part remaining Unsurveyed in each Township.	Total of Vacant and Disposable Land, including the Reservation for the Clergy.
			Crown.	Clergy.		
Three Rivers —*continued.*	Drummond— *continued.*	Wickham	7,111	971	- -	8,082
		Kensey	1,722	5,450	- -	7,172
		Durham	1,255	6,441	- -	7,696
		Aston and aug.	15,352	8,416	- -	23,768
		Horton	774	320	- -	1,094
		Bulstrode	24,430	5,281	- -	29,711
		Stanfold	7,682	8,136	- -	15,818
		Warwick	12,867	8,400	- -	21,267
		Arthabaska	2,600	2,000	16,510	21,110
		Tingwick	4,760	8,154	- -	12,914
		Chester	6,583	8,400	- -	14,983
		Ham and aug.	7,160	32,190	16,800	56,150
	Nicolet	Maddington	7,578	3,481	24,200	35,259
		Blandford	7,221	420	- -	7,641
St. Francis	Sherbrooke	Shipton	- -	8,294	- -	8,294
		Wendover	- -	9,703	- -	9,703
		Melbourne	- -	4,477	- -	4,477
		Brompton	- -	5,116	- -	5,116
		Orford	- -	8,725	- -	8,725
		Stoke	- -	6,000	- -	6,000
		Ascot	- -	2,610	- -	2,610
		Compton	- -	4,060	- -	4,060
		Eaton	- -	2,644	- -	2,644
		Dudswell	- -	1,000	- -	1,000
		Newport	- -	600	- -	600
		Weedon	- -	200	- -	200
		Clifton	- -	400	- -	400
		Hereford	- -	8,400	- -	8,400
		Auckland	- -	600	- -	600
		Bury	- -	200	- -	200
Quebec	Megantic	Somerset	17,034	5,869	- -	22,903
		Nelson	16,437	6,819	- -	23,256
		Halifax	- -	7,600	- -	7,600
		Leeds	- -	4,103	- -	4,103
		Ireland	9,600	7,900	- -	17,500
		Inverness	4,200	3,500	- -	7,700
		Wolfestown	28,400	9,000	- -	37,400
		Thetford	2,200	31,000	- -	33,200
		Broughton	8,400	7,900	- -	16,300
		Tring	16,300	8,800	- -	25,100
		Shenley	32,831	5,309	- -	38,140
		Dorset	5,412	10,625	- -	16,037
	Beauce	Frampton	2,800	6,432	- -	9,232
		Cranbourne	27,985	9,103	- -	37,088
		Watford	10,717	1,787	- -	12,504
		Jersey	1,030	1,036	- -	2,066
	Bellechasse	Buckland	10,850	4,201	15,400	30,451
		Standon	20,072	4,700	- -	24,772
		Ware	19,703	5,529	- -	25,232
		Armagh	44,455	9,300	- -	53,755
	L'Islet	Ashford & aug.	14,896	2,178	57,498	74,572
		Lessard	5,408	- -	8,112	13,520
	Kamouraska	Irworth	300	1,400	51,000	52,700
		Woodbridge	11,066	- -	34,460	45,526
	Rimouski	Matane	63,537	10,600	- -	74,137
		St. Denis	31,169	5,103	- -	36,272
	Gaspé	Cap Chat	5,800	1,200	64,291	71,291
			999,976	568,099	408,916	1,976,991

(signed) *William B. Felton,*
Commissioner of Crown Lands.

Quebec, 26 December 1835.

— No. 6. —

AN ESTIMATE of the Quantity of WASTE LANDS in the Province Unsurveyed, of the Quantity fit for Cultivation, of the Forest and Quality of the Timber.

On which side of the St. Lawrence.	District.	Descriptive Outline of the Tract.	Quantity of Waste Land.	Estimated Quantity of Waste Land fit for Cultivation.	Quality of Timber.
North -	Montreal	- - In the country north and east of the Ottawa, from the rear of Grenville to a point about 100 miles above the Falls of the Chaudiere, in Hull, extending back from the surveyed tract about 30 miles.	- - about 4,500 square miles.	Unknown -	- - Principally pine of two sorts, red and white; extensive lumbering transactions are carrying on in this tract.
		A strip of land lying in the rear of the present townships on the margin of the above-described tract, with the average depth of three quarters of a township, or seven miles and a half, making about fifteen townships.	- - -	900,000	- - Mixed timber; some white pine, spruce and hard wood.
South -	Quebec -	- - The country on the river St. John, comprised within the disputed territory.	5,000,000	- - -	Spruce and white pine.
		In the rear of the seigneuries south of the St. Lawrence, on the average depth of half a township, or five miles, by a length of about 90 miles.	unknown -	208,000	- - Principally spruce timber.
North -	Quebec -	- - The Saguenay country surrounding the Lake St. John.	- - Supposed about 2,000,000.	- - Climate supposed to be too severe for wheat.	Spruce.

Quebec, 26 December 1835.

(signed) *William B. Felton*,
Commissioner of Crown Land.

— No. 7. —

STATEMENT of the Average Annual Emoluments of the Inspector-general of the King's Domain and Clerk of the Terrars or Land Roll of the King's Domain (Greffier du papier Terrier.) No. 7.

THE emoluments of the inspector-general of the King's domain consist of an allowance of 7½ per cent. on the gross amount of all quints, lods et ventes, and all other seigneurial dues paid into the hands of the receiver-general. The average annual amount of these emoluments for the last five years is 195 *l.* sterling.

The emoluments of the clerk of the terrars, or land-roll of the King's domain (Greffier du papier Terrier,) consist of a yearly salary of 90 *l.* sterling, and fees payable by individuals for *actes* of fealty and homage (foi et hommage,) for copies of proceedings and records, and for reports on applications for change of tenure. These fees for the last five years have averaged annually 40 *l.* sterling.

N.B. There is no regular tariff of these fees to the knowledge of the present incumbent, except for the last (one guinea), which is regulated by an order in council. The others appear to be established by custom, and the present incumbent has been guided by the Return made by his predecessor to the governor-in-chief in 1821, and published in the journals of the House of Assembly.

RECAPITULATION.

Average annual emoluments of the inspector-general of the King's domain, £. 195. sterling.

Average annual emoluments of the clerk of the terrars or land-roll of the King's domain, (Greffier du papier Terrier) - - - - - salary, 90 —
fees, 40 —

Total average annual emoluments - - - - £. 325 sterling.

Equal in currency to - - - - - - - - - 361 —

Civil Secretary's Office, 15th October 1836.

— No. 8. —

MEMORANDUM showing the Amount of Fees taken under the present Tariff, on a Patent granting Land; and the Amount that will eventually be payable should the alteration proposed in Lord *Gosford's* Despatch of the 28th of July 1836, be carried into effect.

	FEES Payable under the existing Tariff of 1831.						Fees that will be payable under the proposed alteration.	
	Attorney-General.	Surveyor-General.	Auditor.	Clerk of the Executive Council.	Provincial Secretary.	Total Amount.	Provincial Secretary.	Total Amount.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.
100 acres, and under	– 10 –	– 5 –	– 1 –	– 1 –	1 10 –	2 7 –	1 10 –	1 10 –
Over 100, and not exceeding 200	– 10 6	– 5 3	– 1 – $\frac{1}{3}$	– 1 – $\frac{1}{3}$	1 11 –	2 8 10	1 11 –	1 11 –
– 200, — — 300	– 11 –	– 5 6	– 1 1	– 1 1	1 12 –	2 10 8	1 12 –	1 12 –
– 300, — — 400	– 11 6	– 5 9	– 1 1 $\frac{2}{3}$	– 1 1 $\frac{2}{3}$	1 13 –	2 12 6 $\frac{1}{2}$	1 13 –	1 13 –
– 400, — — 500	– 12 –	– 6 –	– 1 2	– 1 2	1 14 –	2 14 4	1 14 –	1 14 –
– 500, — — 600	– 12 6	– 6 3	– 1 3	– 1 3	1 15 –	2 16 3	1 15 –	1 15 –
– 600, — — 700	– 13 –	– 6 6	– 1 3 $\frac{1}{3}$	– 1 3 $\frac{1}{3}$	1 16 –	2 18 – $\frac{1}{3}$	1 16 –	1 16 –
– 700, — — 800	– 13 6	– 6 9	– 1 4	– 1 4	1 17 –	2 19 11	1 17 –	1 17 –
– 800, — — 900	– 14 –	– 7 –	– 1 4 $\frac{2}{3}$	– 1 4 $\frac{2}{3}$	1 18 –	3 1 9 $\frac{1}{2}$	1 18 –	1 18 –
– 900, — — 1,000	– 14 6	– 7 3	– 1 5 $\frac{1}{3}$	– 1 5 $\frac{1}{3}$	1 19 –	3 3 7 $\frac{1}{2}$	1 19 –	1 19 –

It is proposed to abolish the fees payable to all the officers who now receive them, excepting those of the provincial secretary, allowing, however, a compensation to the present incumbents, taking the fees for a fee-fund so long as they continue to hold office.

— No. 9 *a*. —

No. 9 *a*.

My Lord, Downing-street, 20 Feb. 1833.

I HAVE the honor to acknowledge the receipt of your Lordship's despatch, No. 6, of the 11th January last.

On perusing the copy therein enclosed of the proceedings of the Executive Council of Lower Canada for the last half year, my attention has been arrested by the report of that board of the 2d August last, on the valuation of some beach and water lots applied for by Mr. Campbell. As the principle of sale by public competition has been established in all cases in the disposal of the Crown lands in British North America, I am at a loss to understand, without a previous reference to your Lordship, what may be the reason, if indeed any should exist, for exempting water lots from the operation of this system. I should therefore feel obliged if your Lordship will favour me with any explanation which you may have to offer upon this subject.

Lieut.-General Lord Aylmer, K.C.B. &c. &c. &c.

I have, &c.
(signed) *Goderich.*

— No. 9 *b*. —

No. 9 *b*.

Sir, Executive Council Office, Quebec, 4 July 1833.

I HAVE to acknowledge the receipt of your letter of the 1st instant, enclosing to me by direction of his Excellency the Governor-in-chief, a copy of a despatch from Lord Viscount Goderich, dated 20th February last, in which his Lordship inquires "what may be the reason, if indeed any should exist, for exempting water lots from the operation of public sale established in all cases in the disposal of the Crown lands in British North America," and you request by desire of his Excellency that I will communicate to you such explanation on the subject as I can procure.

Having held the situation of governor's secretary in this province during a period of 20 years, and that of clerk of the Executive Council for upwards of six and thirty, it is reasonable that I should be expected to answer this inquiry satisfactorily; yet as far as my recollection and the records of my office enable me to speak on the subject, I can only say that from the cession of Canada to the present time, beach and water lots on the Rivers St. Lawrence and St. Charles have not been considered in the same light, or put on the same footing with regard to the disposal of them, as the waste lands of the Crown.

Prior to the conquest of this country, these beaches, to a certain extent, had been conceded under the French Government, either to corporate bodies or to individuals, consequently all that remained for His Majesty's Government to concede, was an extension of these lots to low-water mark, with a view to the erection of wharfs for commercial purposes, which required a very considerable outlay on the part of the grantee. The terms therefore of these concessions have hitherto been left to the discretion of the Governor and Executive Council.

Till

Till within these few years, they were given, as I may say, almost gratuitously on payment of some small fees to the officers concerned in passing the patents, and under an obligation to erect wharfs within a limited time. Latterly the addition of a small annual reditus to Government has been stipulated for in the grant. But the encouragement of commerce, rather than a trifling revenue, has invariably been considered as the main object of the Crown.

It is necessary I should further observe, that the water lots applied for by Mr. Campbell were in continuation of beach lots extending only to high-water mark, which he had previously acquired by purchase from a corporate body. Had this continuation been offered to sale by public competition, it would have been within the power of any individual who became the purchaser, to exclude Mr. Campbell from his communication with the river, and to render the beach lot previously held by him of little or no value, and the same observation will apply to every other case where the extension of a beach lot has been prayed for. I know of no instance in the vicinity of Quebec where "the principle of sale by public competition" of water lots could be acted upon without injustice to individuals, except it be on the shore of the St. Lawrence, situated between the river St. Charles and Montmorency. Here is a shore of four or five miles in extent, with a depth in its whole length of several acres, from the boundaries of the original grants to low-water mark, affording ample space for a large commercial city, if laid out in lots for streets, buildings and wharfs; and these lots might without doubt be disposed of at public sale to great advantage, as well with regard to the creation of a public revenue, as for the relief of the redundant population compressed within the walls and suburbs of Quebec.

I trust I shall be excused for thus freely offering my opinion on this occasion.

I have, &c.
(signed) *H. W. Ryland.*

Lieut.-Col. Craig, Secretary to his Excellency the Governor-in-Chief, &c. &c. &c.

— No. 9 *c.* —

No. 9 *c.*

My Lord, Downing-street, 10 Sept. 1833.

I HAVE the honour to acknowledge the receipt of your Lordship's despatch, No. 75, of the 3d of August last, in which with reference to the mode of disposing of water lots, brought under the Earl of Ripon's notice by some entries in the minutes of Council for the year 1832, you enclose an explanation from the clerk of the Council on that subject.

When my predecessor addressed you on this point, he seems to have been under the impression that the term "water lots," designated lands on the banks of rivers or harbours, and not, as is now explained, the space between high and low-water mark in front of such lands. Mr. Ryland's report is quite satisfactory; and I am entirely of opinion that water lots, in the sense described by him, ought to be conveyed on very easy terms to the proprietors of the adjacent ground, taking care of course that navigation be not obstructed, and that in any cases where an interference for the maintenance of towing paths or other public purpose of that kind might be requisite, the necessary rights should be reserved to the Crown.

I have, &c.
(signed) *E. G. Stanley.*

Lieut.-General Lord Aylmer, K.C.B. &c. &c. &c.

— No. 10.—

STATEMENT showing the Quantity of Acres of CROWN LANDS Sold, whether to private Individuals or to the British American Land Company, with the Average Price per Acre, in the Counties of *Drummond, Stanstead, Sherbrooke, Shefford, Two Mountains, Ottawa, Beauharnois, St. Maurice, Kamouraska, Missisquoi, Berthier, Megautie, Beauce, Bellechasse, Bonaventure, Vaudreuil, Nicolet, L'Islet.*

1834.				
COUNTIES.	Private Persons.		Land Company.	
	Acres.	Average.	Acres.	Average.
		s. d.		
Drummond	6,879	4 7½	—	—
Stanstead	533	8 10	—	—
Sherbrooke	860	8 9	—	—
Shefford	900	4 11½	—	—
Two Mountains	1,450	2 3¾	—	—
Ottawa	13,103	4 7½	—	—
Beauharnois	117	3 9	—	—
St. Maurice	—	—	—	—
Kamouraska	—	—	—	—
Missisquoi	100	10 5½	—	—

1834—*continued.*				
COUNTIES.	Private Persons.		Land Company.	
	Acres.	Average.	Acres.	Average.
		s. d.		
Berthier	—	—	—	—
Megantie	1,400	4 7½	—	—
Beauce	1,652	2 9½	—	—
Bellechasse	8,026	2 3½	—	—
Bonaventure	7,929	1 7½	—	—
Vaudreuil	—	—	—	—
Nicolet	70	4 —¼	—	—
L'Islet	—	—	—	—
TOTAL	43,019	—	—	—

1835.

COUNTIES.	Private Persons.		Land Company.	
	Acres.	Average.	Acres.	Average.
		s. d.		s.
Drummond	63,936	3 5	700	5
Stanstead	30	12 9	—	—
Sherbrooke	650	6 —	—	—
Shefford	—	—	—	—
Two Mountains	3,850	2 6	—	—
Ottawa	13,284	5 1¼	—	—
Beauharnois	—	—	—	—
St. Maurice	27,908	2 6¾	—	—
Kamouraska	400	2 9½	—	—
Missisquoi	—	—	—	—
Berthier	—	—	—	—
Megantic	15,472	3 10¼	—	—
Beauce	993	4 —	—	—
Bellechasse	2,742	2 —¼	—	—
Bonaventure	12,517	1 5¾	—	—
Vaudreuil	—	—	—	—
Nicolet	—	—	—	—
L'Islet	—	—	—	—
TOTAL	141,782	—	700	—

1836.

COUNTIES.	Private Persons.		Land Company.	
	Acres.	Average.	Acres.	Average.
		s. d.		s.
Drummond	11,164	4 7	1,000	5
Stanstead	—	—	—	—
Sherbrooke	148	7 6	—	—
Shefford	—	—	—	—
Two Mountains	—	—	—	—
Ottawa	6,726	6 5½	—	—
Beauharnois	—	—	—	—
St. Maurice	—	—	—	—
Kamouraska	—	—	—	—
Missisquoi	—	—	—	—
Berthier	200	2 —	—	—
Megantie	8,027	3 11¼	—	—
Beauce	—	—	—	—
Bellechasse	—	—	—	—
Bonaventure	—	—	—	—
Vaudreuil	1,220	7 6	—	—
Nicolet	9,428	4 —½	—	—
L'Islet	2,700	2 6	—	—
TOTAL	39,613	—	1,000	—

Remarks.—These include all sales made within the province, and the above-mentioned counties are only specified because they happen to be all in which sales of Crown lands took place within the period named.

November 1836. (*Certified.*) (signed) *J. Davidson.*

—No. 11.—

STATEMENT showing the Quantity of Acres of CLERGY RESERVES Sold, whether to private Individuals, or to the British American Land Company, with the Average Price per Acre, in the Counties of *Stanstead, Shefford, Sherbrooke, Drummond, Ottawa, Two Mountains, St. Maurice, Beauce, Missisquoi, Megantie, Bellechasse, Vaudreuil,* and *Nicolet.*

1834.

COUNTIES.	Private Persons.		Land Company.	
	Acres.	Average.	Acres.	Average.
		s. d.		s. d.
Stanstead	4,762	6 10¾	5,308	4 7¾
Shefford	1,127	5 3¼	17,440	4 11¼
Sherbrooke	3,312	6 7½	28,037	4 6¼
Drummond	2,282	4 3	7,655	4 2
Ottawa	1,691	4 8¾	—	—
Two Mountains	2,100	2 —¼	—	—
St. Maurice	9,946	2 8½	—	—
Beauce	2,100	3 —½	—	—
Missisquoi	174	8 11½	—	—
Megantic	900	4 5¼	—	—
Bellechasse	477	6 2¾	—	—
Vaudreuil	—	—	—	—
Nicolet	—	—	—	—
TOTAL	28,871	—	58,440	—

1835.

COUNTIES.	Private Persons.		Land Company.	
	Acres.	Average.	Acres.	Average.
		s. d.		s. d.
Stanstead	1,829	5 6½	12,651	4 7¼
Shefford	2,884	5 2¾	8,871	4 11¼
Sherbrooke	12,834	4 9	20,238	4 6¼
Drummond	27,938	3 5	—	—
Ottawa	2,093	5 8¼	—	—
Two Mountains	700	1 11½	—	—
St. Maurice	—	—	—	—
Beauce	—	—	—	—
Missisquoi	175	12 6	—	—
Megantie	5,140	3 5¾	—	—
Bellechasse	—	—	—	—
Vaudreuil	136	7 6	—	—
Nicolet	5,740	4 —	—	—
TOTAL	59,469	—	41,760	—

1836.

COUNTIES.	Private Persons.		Land Company.	
	Acres.	Average.	Acres.	Average.
		s. d.		s. d.
Stanstead	100	4 —	832	4 7¾
Shefford	723	5 —	450	4 11¼
Sherbrooke	3,207	5 5¼	15,033	4 6¼
Drummond	11,430	4 2½	2,200	4 2
Ottawa	244	6 5½	—	—
Two Mountains	—	—	—	—
St. Maurice	—	—	—	—
Beauce	—	—	—	—

1836—*continued.*

COUNTIES.	Private Persons.		Land Company.	
	Acres.	Average.	Acres.	Average.
		s. d.		s. d.
Missisquoi	—	—	—	—
Megantie	1,371	4 —	—	—
Bellechasse	—	—	—	—
Vaudreuil	—	—	—	—
Nicolet	1,466	4 —	—	—
TOTAL	19,041	—	18,515	—

Remarks.—These include all sales made within the province, and the above-mentioned counties are only specified because they happen to be all in which sales of Clergy Reserves took place within the period named.

November 1836. (*Certified*) (signed) *J. Davidson.*

—No. 12.—

ABSTRACT of the Half Yearly Accounts for LAND, of the Commissioner of Crown Lands in *Lower Canada*, between the 5th day of January 1832 and the 6th day of August 1836.

1. Half Year ending	2. Number of Townships in which Sales were made.	3. Number of Acres sold.		4. Average Price per Acre.	5. Amount of the Sales.	6. Remitted to Half-pay Officers on account of Purchases made by them under the Regulation of the 1 Aug. 1831.	7. Remitted to other Persons under special Authority from the Governor, or Secretary of State.	8. Amount paid by the Purchaser at the time of Sale.	9. Amount collected in the course of the Half Year on account of former Sales.	10. Amount collected in the course of the Half Year for Interest on Instalments not paid up.
			Lots.	*s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	
1832:										
June 30 - -	28	14,925 ¾	134	5 -¾	3,790 16 11¾	111 2 2	nil.	695 10 5	485 19 1¾	nil.
December 31 -	23	9,187	59	5 2	2,377 5 1½	444 8 10	nil.	448 1 6½	456 8 3½	nil.
1833:										
June 30 - -	22	10,389	66	4 8¾	2,463 9 7½	222 4 5	436 16 8	343 3 4	497 14 5½	nil.
December 31 -	35	32,180	78	3 1¾	5,085 11 9½	1,277 8 2	nil.	1,632 7 7½	291 5 8	nil.
1834:										
June 30 - -	25	14,184 ½	70	4 6½	3,174 15 6	1,498 14 4	nil.	568 8 7	530 6 6	nil.
December 31 -	30	28,928 ½	212	3 2½	4,647 19 6	1,066 15 6	218 8 -	992 19 5½	546 8 4½	nil.
1835:										
June 30 - -	29	26,404	138	2 9½	3,670 8 8½	719 5 10	nil.	812 - -¾	508 3 -½	nil.
December 31 -	36	110,043	113	3 3½	18,101 19 2	3,460 12 3	- -	3,628 9 8	1,304 11 4	nil.
1836:										
August 6 - -	6	8,520	25	4 8	1,690 8 8	555 7 9	- -	373 1 6	3,118 18 6	nil.

11. Amount collected in the course of the Half Year on account of Rent for Lands on Lease.	12. Amount collected in the course of the Half Year on account of Quit Rents.	13. Amount collected in the course of the Half Year for the Redemption of Quit Rents.	14. Total collected in the course of the Half Year, being the Amount of Columns 8, 9, 10, 11, 12 & 13.	15. Contingent Expenses deducted by the Commissioner before the Monies are brought to account.	16. Amount paid in the course of the Half Year by the Commissioner to the Receiver General.	17. Balance remaining in the hands of the Commissioner at the end of the Half Year.	18. Amount of Instalments and Quit Rents unpaid, though actually due to the Commissioner at the end of the Year.	19. Amount of Instalments accruing, though not due at the end of the Year.	20. Amount of Capital outstanding on *Quit Rent* on Interest at Five p' Cent.
£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*	£. *s. d.*
81 8 3	172 15 10½	78 18 1	1,514 11 9½	128 5 8	800. - -	1,060 13 2¾	- - -	- - -	—
66 16 5	292 13 3	176 5 -	1,440 4 5	244 15 -	2,200 - -	56 2 7¾	1,431 14 8¾	3,538 11 6	—
21 8 10½	198 - 2	89 7 2	1,149 14 -¼	137 12 2	1,000 - -	55 7 11½	- - -	- - -	—
76 6 5½	202 19 9	88 6 3	2,287 5 8½	135 2 6	1,700 - -	507 11 2	3,418 14 1½	5,033 10 1¾	—
nil.	193 6 7	53 3 1	1,345 4 9	139 2 9½	1,200 - -	508 19 4½	- - -	- - -	—
76 2 3½	87 4 6¼	118 19 1	1,821 13 9	159 - 1	1,800 - -	359 8 6¼	5,060 19 4	6,233 8 5½	—
nil.	308 2 7	120 9 4	1,748 15 -¼	206 6 5½	1,600 - -	276 17 1¾	5,947 9 9	10,601 1 5¾	21,175 5 -¾
80 15 11½	130 12 6	110 12 -	5,255 - 5	857 6 10	4,343 - -	432 13 7	8,385 12 2	19,663 1 3	24,384 13 -
74 17 6	271 6 -	62 9 2	3,900 12 6	617 16 3	3,000 - -	160 13 4	5,266 13 8	20,625 - -	24,321 14 1

TOTAL of the Outstanding Debt due to the Crown for Land, being the Amount of Columns 18, 19 and 20 - - £. 50,213. 7. 9.

The above Abstract is compiled from two Returns; the first, up to 30 June 1835, certified by the signature of Wm. B. Felton, Commissioner of Crown Lands; the second, by that of John Davidson, Acting Commissioner of Crown Lands.

(signed) *T. Fred. Elliot.*

From the foregoing Table the following Results may be deduced:

Average number of Acres sold per annum, 56,614.
Average price per Acre, 3 *s.* 6 ¾ *d.*, nearly.
Average Amount of Annual Sales, £. 10,067. 5. 7.
Average Annual Amount remitted to Half-pay Officers, £. 2,079. 11. 0.
Average Annual Amount actually paid into the provincial Treasury, £. 3,920. 13. 4.

WILD LANDS.

No. 13.

—No. 13.—

ABSTRACT of the Yearly Account for Timber of the Commissioner of Crown Lands, and Surveyor General of Woods and Forests in *Lower Canada*, between the 1st day of January 1832 and the 31st day of December 1835.

1. Year ending	2. Number of Licences granted to cut Timber on the Waste Lands of the Crown.	3. Oak Timber, Feet.	4. Red Pine, Feet.	5. White Pine, Feet.	6. Number of Saw Logs.	7. Amount of the Sale of Licences.
						£. s. d.
31 December 1832	45	35,271	525,323	411,190	88,400	3,840 7 –
31 December 1833	22	1,190	347,596	152,950	5,000	1,574 7 4
31 December 1834	32	612	929,054	78,750	72,754	4,649 19 3
31 December 1835 †	45	- - -	580,000	190,000	146,500	5,054 3 4

8. Amount paid at time of Sale.	9. Amount collected in the Year on account of former Sales.	10. Total collected in the course of the Year, being Amount of Columns 8 & 9.	11. Expense of Collection deducted before the Monies are brought to account.	12. Amount paid in the course of the Year by the Commissioner to the Receiver General.	13. Balance remaining on hand at the end of the Year.	14. Amount of Duties unpaid, though actually due to the Commissioner.	15. Amount of Dues accruing, though not actually Due.
£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.
450 – –	2,396 12 8	2,846 12 8	193 – –	2,842 18 6	3 13 11	1,079 18 8	2,310 8 4
93 10 2	1,388 18 1	1,482 8 6	nil.	1,500 – –	13 17 7 overpaid.	2,188 13 4	1,407 14 8
2,697 16 4	1,434 17 8	4,332 14 –	216 5 7	4,042 – 9	307 12 10	1,753 7 –	3,835 4 2
1,268 10 10	- -	Remaining Columns not filled up, the Returns being incomplete.				- -	3,785 12 6

† For this last period the Abstract is taken from the account of the King's Auctioneer; the yearly account of the Commissioner of Crown Lands and Surveyor General of Woods and Forests not being yet made up.

Owing to the circumstances which prevent Column 14 from being filled up, the Total Outstanding Debt for Timber at this time cannot be stated; but on the 31st day of December 1834, it was £. 5,588. 11. 2.

The above Abstract is compiled from two Returns; the first, up to 31 December 1834, certified by the signature of Wm. B. Felton, Commissioner of Crown Lands; the second, by that of John Davidson, Acting Commissioner of Crown Lands.

(signed) *T. Fred. Elliot.*

— No. 14 *a* —

No 14 *a*.

Sir, Quebec, 24th October 1836.

I SHOULD sooner have complied with the desire of the Commissioners of Inquiry conveyed to me in your letter of the 13th August, calling for a Report respecting the Court of Escheats, but that I was shortly afterwards made aware of the intention of the Commissioners to leave Montreal, and I thought it better to await their return to Quebec; since which period I have been prevented by other public business and by circumstances beyond my control from preparing the Report which I now proceed to make.

I am, in the first place, required by your letter to state "the causes which have in my opinion rendered the Court of Escheats inoperative."

The only cause of which I am aware that has rendered that court inoperative since the 1st of August 1831, has been that the government has abstained from putting it in operation, except in December 1834 and January 1835.

Before the 1st of August 1831 circumstances existed which may in some degree account for the Government having allowed the court to remain inoperative until then. It was not until February 1828 that instructions were received from the Secretary of State, as to the amount

amount of the salaries of the officers to be appointed, and the manner in which the whole expenses of the court should be provided for. The Commissioners and clerk were appointed in July 1828, and instructions were immediately given to the law officers of the Crown at Quebec and Montreal to commence proceedings in certain cases; these instructions had not been acted upon when Sir J. Kempt assumed the government in September 1828. His Excellency having, in 1829, called upon the Commissioner of Crown Lands and myself to report to him on the general system best to be adopted for the escheat of lands, our suggestions were submitted to the Executive Council in July 1830, and that body reported in October 1830 (a copy of which Report is herewith enclosed), on some points relating to the general course of proceeding to be followed; but advised that in the first place a proclamation should be issued announcing the establishment of the court, and fixing a period after which the Government would take proceedings for the escheat of lands, in cases in which it should be expedient so to do. That period was subsequently fixed at 1st August 1831.

From that date there was nothing, to my knowledge, that could prevent the adoption of such proceedings; on the contrary, by Lord Goderich's despatch of 21st November 1831, the Governor was directed, by a strict enforcement of the existing law, to endeavour to correct the evil arising from former large grants of land remaining still uncultivated. In June 1833, the late Governor-in-chief instructed the law officers of the Crown to institute proceedings for escheating land, but they were delayed for causes not known to me, nor, I believe, to the Governor, for in June 1834 his Excellency, in apprising me of the instructions he had then again given for the commencement of proceedings, informed me that he did not know for what reason this court had been left inoperative.

It is perhaps unnecessary for me to state that it did not belong to me as commissioner of escheats, either to commence proceedings or to urge the adoption of them.

In December 1834 and January 1835, inquisitions were taken according to law before the Commissioner and a jury; and certain lands in the districts of Quebec and St. Francis were found forfeited and escheated to His Majesty for non-performance of the conditions of the original grants. These inquisitions being returned, as required by the statute, into the Court of King's Bench at Quebec and at Sherbrook, an attempt was made by motion in the Court of King's Bench at Quebec, to set aside the inquisitions affecting lands in this district. This application failed; but as I have no exact information of these proceedings I cannot state the grounds either of the application or of the judgment rejecting it.

The inquisitions in these cases remain in full force, and the lands consequently are revested in the Crown. Objections being also taken to the inquisitions returned into the Court of King's Bench for the district of St. Francis, they were quashed in September 1835 (on mere motion, and without any formal traverse or pleading by any party interested), by a judgment which I have seen reported in one of the newspapers, and of which the principal grounds appear to have been that the information filed in the Court of Escheats was insufficient; that the inquest ought to have been held in the district of St. Francis where the lands lay, and not in the district of Quebec; and that the transcript of the proceedings returned into the court of St. Francis was imperfect in consequence of not setting forth the precept to the sheriff to summon the jury, the return thereto, and the publication of the notice required by the statute. As these last are the only grounds of the judgment as reported, which touch the regularity of my proceedings as Commissioner, and as that judgment rendered the proceedings of the Court of Escheats inoperative in the particular cases therein referred to, I think it proper to state, First, that conceiving myself to be only acting ministerially, I directed the officer of the court to make up the transcript or return according to the instructions he should receive from the Attorney-general, who conducted the proceedings on the part of the Crown, and whose duty it would be to support it elsewhere; and I believe this was done. But, Secondly, it was also and still is my own opinion that the transcript was correctly made up, and I have reason to believe that it was conformable to the practice pursued in the like matters at Nova Scotia, where such proceedings have for a long period of time been in use, and are governed by the course and practice of the law of England. Thirdly. That as it appears to me the court of St. Francis, whose jurisdiction in the matter was given and limited by statute, exceeded its legal jurisdiction in quashing the inquisition on motion, when the statute only gave authority to proceed upon a formal traverse. Fourthly. That so far as regards the alleged imperfections of the transcript, the proper course would have been to cause them to be amended, or the alleged defect to be remedied, on *certiorari* or otherwise, instead of quashing the inquest of the jury.

I enclose a newspaper containing a report of the judgment alluded to, with some notes on the different grounds stated in it.

Your letter having further called upon me to furnish any observations I may have to offer on the court itself, or on the best means of attaining the object for which it was created, I beg leave to submit herewith, in a Quebec newspaper, some general observations on the object, the origin and the general course of proceedings of the court, which I addressed to the first jury summoned to hold an inquest under the statute. The regulations of the French government constituting the ancient law of the province relating to the forfeiture or resumption of uncultivated lands, will be found in the following public Acts, in the first volume of the Collection of the Provincial Edicts and Ordinances.

WILD LANDS.

No. 14 *a*.

Arrêt of the Royal Council of State		4 June 1672
1 Edits and Ordonnances	p. 61	—
Arrêt of the French King in Council		4 June 1675
1 Edits and Ordonnances	p. 71	—
Another Arrêt		9 May 1679
Ibid	p. 247	—
Arrêt of the French King in Council		6 July 1711
Ibid	p. 321	—
Another Arrêt of the same date		—
Ibid	p. 323	—
Another Arrêt		4 Sept. 1732
Ibid	p. 487	—
Royal Declaration		17 July 1743
Ibid	p. 533	—
Another Royal Declaration		1 Oct. 1747
Ibid	p. 557	—

The system established by these regulations, however well suited to the circumstances of the colony at that time, or to the arbitrary principles of the existing government, would have ill agreed with those notions of the sacredness of proprietary rights, and of the necessity of securing them from any invasion, except by a public, formal and well-guarded proceeding, which prevail under the administration of English law and government.

But the system itself became impracticable of execution in consequence of the introduction of an entirely new course of judicature, and the impossibility of following up any proceeding in the existing courts for enforcing the forfeiture of land on account of the non-performance of the conditions of cultivation prescribed by the grant, is shown in the Report of the provincial law officers of the Crown in 1823, which is appended to the Report of a special committee of the Assembly on the waste lands of the Crown.—(Journals of Assembly 1824, Appendix R.)

Other proceedings of the Assembly relative to the escheating of uncultivated lands will be found in the Journals of the Assembly, 6th March 1823.

It may be proper here to state, that the highest law authority in the province had expressed an opinion, in a Report dated 26th May 1824, that the establishment of a Court of Escheats was desirable, but that though legislative provision to that end might be more efficacious, a commission under the Great Seal of England, and under the authority of the 14th Geo. 3, c. 83, would be adequate to all the purposes of government.

The Bill for establishing a Court of Escheats, which was introduced in the Assembly in 1824 and 1825, in consequence of Lord Dalhousie's message of 1823, submitting the above mentioned Report of the law officers, suggesting such a measure, was in its general provisions similar to the enactments of the Imperial statute passed in 1825, except that it contained a clause restraining the prerogative of the Crown in the granting of the waste lands, which would have rendered it necessary to obtain the sanction of the two houses of the Imperial Parliament, under the 42d clause of the Constitutional Act, before the measure could become a law.

In submitting my views "as to the best means of attaining the object for which the court was created," I beg leave to premise, that the immediate object of the creation of this court was to enforce the forfeitures of land granted under conditions by the Crown, when the conditions of the grant have not been performed. The more remote and general object must have been to promote the settlement and cultivation of the country, by preventing or checking the monopoly of large masses of waste land in the hands of individuals. There are three classes of grants by letters patent containing conditions, with the penalty of escheat and forfeiture annexed. First. Grants in freehold of the waste lands properly so called, on condition of settlement and cultivation; or with a special condition (as in the single case of the grants on the Kennebec road) to maintain a public road. Secondly. Grants of beach and water lots, and town lots with rents reserved, and on condition of building wharves, or of doing or permitting other things for the benefit of the public. Thirdly. Grants for a term of years of portions of the Crown lands, with rents reserved, on condition of making certain improvements.

The two last-mentioned descriptions of grants, though not so frequent heretofore as grants of the waste lands, are becoming every year of more common occurrence; and those for beach and water lots in particular relate to a most important part of the Crown property, with respect to which it is of essential public advantage that the Crown should have the power of enforcing with vigour and effect the forfeiture of the grant for breach of its conditions. But it is principally with respect to gratuitous grants of the waste lands, and especially those of old date, that the operation of a system of escheat and forfeiture would become applicable.

As to the expediency and necessity of enforcing the forfeiture resulting from the non-performance of the conditions of such grants, there scarcely seems to be any difference of opinion. In all the existing North American colonies the evil of land monopoly has been felt, and the forfeiture of the land for non-cultivation has been enforced, and in this province the Government, the popular branch of the legislature and the public at large were agreed as to the necessity of applying this remedy to the evil. Three methods presented themselves for attaining the object in view. The ordinary tribunals of the country might be

be resorted to; but though their jurisdiction was clear, it was found on consideration and experiment to be utterly impracticable to carry on such a proceeding in those tribunals under the existing laws and practice by which they were and still are governed. Another course was to alter, by legislative enactments, the law and practice of those tribunals (in regard to this particular matter), and to mark out a new line of proceeding; but to effect this object, and to meet all the difficulties presented by the constitution of those courts and by the laws regulating their process and pleadings, the new legislative enactments must have been minute and complex, and the whole purpose might have been defeated by imperfection in one unforeseen point.

It seemed to be a less innovation, and a more simple, expeditious and effectual means of attaining the desired object, to adopt the measure of establishing a special tribunal. The highest authority in the provincial judicature and the law officers of the Crown concurred in approving of this measure. It was adopted and introduced into the Assembly under the authority of a special committee, who had been investigating the evil which it was designed to remedy; and it had the advantage of being a proceeding actually in use in other colonies, where its easy and beneficial operation had been experienced, and where it was governed by the established and known rules of English law. In the bill which was discussed in the Assembly (and which it is probable would have been carried through that branch in 1825 but for the accidental absence of the Attorney-general, who had it in charge), the course of proceeding to complete the forfeiture of the land was even more summary and final than that existing in England and in the neighbouring colonies, as it allowed no traverse of the inquisition in any other court.

Whether any better measure might be devised for attaining the object for which the Court of Escheats has been created, is a matter of speculation on which it is not for me to pronounce an opinion. The sufficiency of the measure that has actually been adopted, can only be ascertained upon a full trial of its operation. So far as can be judged from the proceedings in 1834 and 1835 (the objections to which turned upon matters of form alone), the provisions of the law under which the court is established, appear to be efficacious and sufficient for the purpose in view. Those provisions were copied from an Act framed by Lord Eldon (when Attorney-general), to be adopted in Prince Edward's Island, and they are entirely similar to the course of proceeding established and followed in Nova Scotia from 1759 to the present time; and I believe that any attempt to conduct such a proceeding through the existing courts of original jurisdiction, under the present state of the law and practice by which they are governed, would be found, as before, utterly impracticable, and that any alteration of that law and practice, in all the points necessary to be altered, would require so many new regulations and be attended still with such difficulties as would render the efficiency and success of the measure extremely doubtful.

Viewing the establishment of a system of escheat as having for its more remote and general object to promote the improvement and settlement of the country, by preventing or checking the monopoly of waste lands, it is again a question of theory and speculation whether any better means of attaining that object might be found. Experience may thus far furnish an answer, that wherever the plan of enforcing the forfeiture of the granted waste lands of the Crown for non-cultivation, has been fully and fairly brought into operation, it has succeeded both in breaking up the monopoly of land and in promoting the settlement of the country.

I refer for instances to the provinces of Nova Scotia, New Brunswick and Prince Edward's Island, where nearly 4,000,000 of acres have been in this manner revested in the Crown, and re-granted to actual settlers or to persons who, having obtained their grants under such circumstances, do not venture to leave them unimproved.

In Prince Edward's Island, where this remedy has only been resorted to in a limited extent, the agricultural population are now pressing the government to bring the measure into more active operation, and in this province the execution of this law has been called for not only by individual but by general representations from different parts of the province.

A tax on wild lands has been suggested as a means of attaining the same end, and as an auxiliary measure it might be useful, but by itself it has not been found effectual.

It is to be observed, that wherever such a tax exists on the American continent it is found only as part of a general direct tax or assessment on all property. It has been adopted, not with the view of enforcing the cultivation of wilderness land or to destroy monopoly, but as a municipal fiscal measure for the maintenance of roads and of the ordinary expenses of the local divisions of the inhabited country. In the United States, where this system universally prevails, the evils of monopoly and speculation in land are yet only checked by the commercial spirit of the nation, by the activity of enterprise, and the diffusion of capital.

In Upper Canada, the only British colony where such a tax exists, and where capital and enterprise, though more abundant than in the other provinces, are not found in sufficient degree to act as a corrective, the forfeiture and periodical sales of land for non-payment of the tax have produced speculation and monopoly of land more extensive and injurious than ever existed under the system of gratuitous grants. In this province a tax on wilderness land, though often proposed, has never found favour in the legislative bodies. As a fund for the improvement of roads, it would probably be found even more signally ineffective than it has proved in Upper Canada. Whether imposed for this purpose, or to compel the settlement of uncultivated lands, to be just it must be equal and universal, applying to the lands of all persons whether in the townships or seigniories; and to be

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effective as a means of enforcing cultivation and settlement, it must be onerous; and being universal, must thus bear so hardly on the actual settler as to be in fact an obstacle to its own design.

A well-ordered system for the sale of all the Crown lands at an upset price, at fixed times and places, with permission to purchase at any other time at the price obtained at the last sale for lands of the like quality and advantages, would seem to be the most effectual means of ensuring the application of capital and labour to the cultivation of the Crown lands so granted; but it may be a question whether even this will prevent the engrossing of large tracts in the hands of individuals, unless purchasers are required to bring the land into cultivation within a reasonable time. Until the present slow influx and diffusion of capital and population from abroad into this province shall give place to a different state of things, there can be no comparison or analogy of reasoning between its circumstances and those which we witness in the United States, or even in Upper Canada; nor is the tendency to land monopoly subject here to the same remedy and restraint which operate there to reduce its extent and its evils.

But the future sale of the waste lands affords no remedy for the existing monopoly, if it does not even aggravate the injury by constantly increasing the actual value of the uncultivated lands held in large masses by individuals.

During the last two years immense tracts of wild land, which had been granted 30 or 40 years ago, have been sold as a mere article of speculation, and are now held at prices greatly enhanced by the progressive sale of the Crown lands during the last eight years. But in addition to this abiding effect of the old system, upwards of 3,000 gratuitous grants have been made within the last four years for tracts varying from 100 to 2,000 or 3,000 acres, subject only to conditions of settlement and cultivation, and other grants are still in progress.

Is it, then, proposed that the Government should proceed to resume, by the means of the Court of Escheats, all the grants which are liable to escheat for non-performance of the conditions of cultivation? Far from it. But if the powers given by the law are to be enforced at all, no more just rule or limit, as it appears to me, could be found, nor any that would be more beneficially applicable to the present circumstances of the province, than that indicated by the late Governor-in-chief to the Assembly, "That the process of escheat should be resorted to in those cases where tracts of land, long neglected by the grantees or owners, impede the opening of roads, the formation or extension of actual settlements, or are otherwise prejudicial to the improvement of the country."

On the general regulations contained in the Report of Council of 1830 for putting the Court of Escheats into operation, I have only two observations to offer. That Report recommends that inquests should be holden only in the three principal towns. I was then of opinion, and still am, that inquests should be taken as near as possible to the lands to which they relate, and in any part of the country where a considerable population and an intelligent jury might be found.

The Council also overruled a suggestion that Government should proceed to the escheat of lands on the application of individuals desirous of obtaining grants thereof. I was then of opinion, and still am, that this plan might have been adopted with propriety and good effect, subject always to such a limitation and control on the part of Government as should prevent it from running into abuse. It will be seen by the bill introduced in the Assembly in 1824 and 1825, that this method of proceeding (on the application of individuals desirous of obtaining grants) was particularly provided for in that measure; and I am now more than ever persuaded, that if it had been adopted in 1830 (as it long has been in the other colonies, without injury or complaint) the Court of Escheats might at once have been put into safe and easy operation, in a manner beneficial to the country, and satisfactory to all except those who have engrossed and desire to hold large tracts of uncultivated land.

With respect to the expense attending such proceedings, I will only observe, that I am satisfied from experience that, under proper regulations, a contingent expense of 300 *l.* or 350 *l.* per annum would be found more than adequate to carry on such proceedings as it would be advisable to adopt for some years to come.

In recapitulation of these observations, I beg leave to state, that in my opinion the Court of Escheats has been inoperative because it has been left so by the Government. That the partial failure of some of the proceedings adopted in 1834 and 1835 for the escheat of lands was caused, not by any defect inherent in the system, but by extrinsic and accidental causes; that the provisions of the law establishing the court, which were founded on the representations of the popular branch of the legislature after deliberate and laborious investigation, and were supported by the opinions of the highest law authorities in the province and in England, and recommended by the practice and experience of other colonies, appear to me sufficient, if fully and fairly carried out, to attain both the immediate and more remote objects for which the court must be presumed to have been created; and that it is to me doubtful at the best whether by any other measure the same objects could be as effectually attained.

I have, &c.

(signed) *Andrew Wm. Cochrane*,
Commissioner of Escheats.

T. F. Elliot, Esq.
Secretary to His Majesty's
Commissioners of Inquiry.

REPORT of the Executive Council, 9th October 1830, respecting the Court of Escheats. WILD LANDS.

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Present:—The Hon. Mr. Justice Kerr, Mr. Smith, Mr. Lee Lery, Mr. Stewart, and Mr. Attorney-General.

THE Committee have perused with attention the documents which accompany the order of reference, and though they foresee that the difficulties which are apprehended by the commissioner of Crown lands may arise in the exercise of the powers vested in the Court of Escheats when they shall be called into action, yet they are of opinion that those difficulties ought to be no obstacle to carrying the court into operation; and they humbly recommend that notice be given, by an order in Council, to be inserted in the official gazette, that the operation of the Court of Escheats shall commence at a future specified term, to be fixed by the order in Council, and sufficiently distant to carry with it full notice to the parties to be affected. In answer to the question proposed by your Excellency, whether it might not be expedient that the court should be opened and held in the vicinity of the lands to be proceeded against, or that the sittings of the court should be confined to the three principal towns of the province, the committee do not hesitate to advise, that they should be held in the first instance at Quebec, Montreal and Three Rivers. This would be more convenient to the Crown officers or counsel conducting the inquests, and in all probability prove less expensive to the public; besides it would be a more certain means of obtaining an intelligent and impartial jury. In respect to a tariff of fees for the officers of the court, the committee beg leave respectfully to advise, that previously to their suggesting what amount of fees should be allowed to the respective officers, the commissioner of escheats be desired to lay the draft of a tariff before your Excellency. And in offering their opinion on this branch of the reference, the committee feel obliged to say, that they cannot approve of the plan suggested to your Excellency, that an individual shall be allowed to institute proceedings against lands with an understanding that on bearing all expenses, they shall be repaid by a reasonable grant of lands escheated, in the event of the prosecution being successful, as such an arrangement would in their opinion be derogatory to the dignity of the Crown, and hold out a temptation to evil disposed persons to institute groundless proceedings, and to prosecute the suit to final judgment by unfair and unworthy means.

As the funds at the disposal of the provincial government for this purpose are inconsiderable, the committee presume to hope that the commissioner of escheats will modify the tariff, by assigning only a fair remuneration for the service of each officer, so that a course of proceeding founded on such obvious principles of public justice and policy may not be impeded or rendered fruitless.

The committee have no doubt that the difficulties anticipated will be surmounted by a prudent and liberal exercise of the powers vested in the court.

ESCHEAT CASES.

COURT OF KING'S BENCH. DISTRICT OF ST. FRANCIS, Monday, 31st August 1835.

Present:—The Hon. Mr. Justice Bowen, the Hon. Mr. Justice Vallières de St. Real, the Hon. Mr. Justice Fletcher.

The King v. *William Walsh.*

JUDGMENT.

THIS case is one of the first which has occurred under a recent statute, 6 Geo. 4, c. 59, establishing a Court of Escheats and Forfeitures of Land for the province of Lower Canada, a species of tribunal hitherto unknown in the law of this country, though a like remedy for re-uniting to the domain of the Crown, lands which are or may be liable to forfeiture had antecedently existed, and might have been enforced in our Courts of King's Bench as by law constituted (1).

(1) It was well known to every lawyer who had at all considered the subject, that it was almost impossible to enforce this remedy in the Courts of King's Bench as at present constituted, in any case which the parties interested should choose to contest.

It may not therefore be improper to enter into a fuller detail than might have been necessary in more ordinary cases, of the reasons and grounds upon which the present judgment of the court is founded, for the purpose of avoiding any misapprehension with regard to the principles which it has felt it right to adopt.

The 10th and 11th sections of the statute enact, that it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the government of the province of Lower Canada, by and with the advice of the Executive Council thereof, to constitute and appoint, by a commission under the great seal of the said province, one or more person or persons to be a commissioner or commissioners of escheats and forfeitures of land within the said province, which said commissioner or commissioners is and are thereby authorized and empowered, from time to time, on information being made and filed before him or them by the attorney-general or solicitor-general of the said province, or

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other person appointed for that purpose, on behalf of His Majesty, his heirs or successors, concerning the performance or non-performance of the conditions of any grants or letters patent, by which any such land as aforesaid shall at any time have been held, to enquire on that part and behalf of His Majesty, by the oaths of twelve good and lawful men to be duly summoned by the sheriff for that purpose, upon a precept to be issued and directed to him from the office of the secretary of the province, whether the lands mentioned in the said information are or shall be liable to escheat and be forfeited to His Majesty, by reason of the non-performance of any of the conditions of the respective grants or letters patent thereof; and the said commissioner or commissioners shall proceed in the cognizance of the matters aforesaid, as nearly as circumstances will admit, according to the rules, course and practice of the law of England in the like cases, and shall have power and authority to summon witnesses to attend and give evidence before the said inquest; and the testimony on oath of one or more competent witness or witnesses either before the said inquest, or taken in writing before a person or persons to be appointed for that purpose, by the said commissioner or commissioners, and returned and exhibited before the said inquest, shall be good and sufficient evidence of the matters alleged in such information; and the said commissioner or commissioners shall duly return the inquisitions, which he or they shall from time to time take by virtue of that act, under his or their seals and the seals of those by whose oaths he or they shall have taken the same, into the office of the secretary of the province within thirty days after the taking thereof; and also within the same time return a transcript thereof, and of the whole proceedings relating to the same, into the Supreme Court of original jurisdiction holding civil pleas in the district in which the lands and premises comprised in the information shall be situate; and thereupon such lands and premises as are thereby found to be forfeited to His Majesty for non-performance of any of the conditions on which the same shall have been granted, shall be and they are thereby declared to be revested in His Majesty, his heirs and successors, any former grant or letters patent thereof notwithstanding: provided always that no new grant of such lands shall be made for the space of one year from the date of such inquisition, except to the person or persons holding or claiming the same under the former letters patent thereof, or by a lawful title derived under the same.

And it is further enacted, that the clerk of the said Court of Escheats and Forfeitures, to be appointed in like manner as the commissioner or commissioners, shall within fourteen days after the filing of such information, insert in the Quebec Gazette published by authority, a notice signed by him, and shall as soon thereafter as may be, cause the same to be posted up on a public place as near to the lands mentioned in the said information as circumstances will admit, thereby notifying to all persons interested in such lands, that such information has been filed for the purposes aforesaid; and of the time and place of holding an inquest of office before the said commissioner or commissioners concerning the matter therein alleged, which time shall not exceed four or be less than two calendar months, from the publishing of such notice; and such notice being so published, and proof thereof made to the satisfaction of the said commissioner or commissioners, shall be instead of all other notice, process, writ, summons or other proceeding whatever for the notification and appearance of the person or persons interested in such lands, and shall conclude all persons for ever; provided that it shall be lawful for all persons interested in or entitled to such lands as are comprised in any office or inquisition so made and returned as aforesaid, to traverse the same in the court into which it shall have been returned within three calendar months from the date thereof; and the notice therein before required, and the inquisition so to be taken in pursuance thereof, shall be deemed sufficient and conclusive notice to the traverser and all others concerned in such traverse; and such court shall thereupon hear, try and determine the said traverse as nearly as circumstances will admit, according to the rules, course and practice of the law of England in like cases, and the judgment of the said court thereon shall be final.

The attention of the court in the present case has been directed to the form and course of procedure which have been adopted on behalf of the crown with regard to the alleged forfeiture of certain lands in the township of Wolfestown, heretofore situate in the district of Three Rivers, but now forming part of this district of St. Francis, and which were originally granted by letters patent to William Walsh and other individuals, on certain conditions of settlement and cultivation which are stated to have been broken, and by the non-performance whereof the lands so granted are alleged to have become liable to escheat and forfeiture.

From a perusal of the 10th and 11th clauses of the statute, it is manifest that it was the intention of the British Legislature that the proceedings in the Court of Escheats in Canada should be assimilated, as nearly as circumstances would permit, to the rules, course and practice of the law of England in like cases.

The objections taken during the last term to the proceedings had on the part of the Crown, founded on certain supposed informalities and defects appearing on the face of documents then transmitted to this court (being the supreme court of original civil jurisdiction for the district within which the lands in question are situate) induced the court to grant a rule to show cause on the first day of the present term, why the transcript of the informations, inquisitions and other proceedings had before the escheator at the city of Quebec, on the fifth day of January now last past, should not be set aside and annulled.

The case has been ably argued in the present term by counsel on both sides, and we have given to it mature consideration.

It has, amongst other matters, been urged on behalf of the Crown, that this court cannot judicially notice any of the supposed nullities or imperfections in the proceedings had before

before the commissioner of escheats and forfeitures, as appearing upon the transcript returned to it, but that its duty is confined to the mere recording of such transcript, leaving to any person interested in traversing the same to controvert its validity at a future period, and that if it be not so controverted, His Majesty, after the expiration of twelve months, will be at liberty to regrant the lands to which the inquest may relate to any other person.

The court feeling it right to dispose of this preliminary point in the first instance, has weighed the objection to its jurisdiction, and is of opinion that it is wholly without foundation, and were it suffered to prevail, it would lead to consequences equally injurious to the honour of the Crown and the security of the subject (2).

(3) But authorities are not wanting in support of the course which this court has adopted, and which appears even at so early a period as the 5 Edw. 4 to have been recognized as sound law: see the Lord Chancellor's decision in the Year Book, Michaelmas Term, 5 Edw. 4, (anno 1465) "that where an inquisition of office is insufficient by reason of matter appearing upon the face of it, any one may be admitted as *amicus curiæ*, to point out the insufficiency to the Court, though no certain person had traversed or shown in what manner the office might operate to his prejudice, (in the same manner as in the case of an insufficient indictment or a writ of outlawry against an individual against whom it did not lie,) inasmuch as the Court itself, on being apprised of the insufficiency, would, *ex officio*, have quashed such a proceeding as null and void. And the inquisition in the case which is now referred to, was accordingly holden to be null and void, and quashed accordingly."

(2) Whatever might be the consequences, if the statute limited the powers of the court of King's Bench to the trying a traverse, to be put in by a party interested, for the purpose of disputing the facts found by the jury or the legality of the inquisition, they were not borne out in entertaining or deciding on a mere suggestion (by a stranger) of alleged irregularities.

(3) It is undoubted law that, in England, both in the Court of Chancery (proceeding at law) and in the Court of Exchequer, this course might be adopted; but in this province the Court of King's Bench, acting under the statute respecting escheats, stands in a very different relation to the Court of Escheats, and has not the same powers with respect to its proceedings, as the Court of Chancery has with respect to inquests of office, or the Exchequer with respect to inquisitions and extents. The whole proceedings in England respecting inquests of office for escheats, begin in Chancery, and end there; those for extents begin and end in the Exchequer; the proceedings, ("As the inquisition is engrafted on and becomes part of the record it may, for defects of this nature on the face of it, be demurred to or set aside, on motion to the court." Chitty on Prerogative, 269,) are therefore as records of those courts respectively, from first to last, and the courts are considered in law to have knowledge and control over them in every stage, and may exercise that control *ex officio* for manifest irregularity in the process; but in proceedings for escheat in this province, the process does not issue in the first instance out of the King's Bench, nor has that court any knowledge or cognizance of the proceedings, from first to last, until the transcript of them is returned into the King's Bench thirty days after the inquest is held: and the statute declares, that that return being made, the lands comprised in the inquisition are revested in His Majesty, without any proceeding in the King's Bench being necessary to give effect to that in the Court of Escheats. The only purpose, under the statute, for which such transmittal of the proceedings into the King's Bench is required, is to enable parties interested in or entitled to the lands, to traverse or contest the inquisition within a limited time, either by raising an issue of fact or by a demurrer as to the law; and the court of King's Bench is required by the statute to try the traverse according to the course of English law. The statute did not intend that the King's vested right under the inquisition should be defeated by any less formal course than that thus prescribed; but quashing the inquisition, on motion of a party not alleging any interest, is a very different thing from trying a traverse or regular issue. It is a maxim in law, says Lord Coke, that whensoever any man is amoved from his possession by any inquest that is traversable, he must traverse the inquest in the court where it is returned; and, "no man shall have lands out of the King's hands without making a title:" here the lands were revested in the King as soon as the inquisition was returned into the King's Bench.

In England such a traverse from the Court of Chancery is triable in the King's Bench; but there is no instance of the King's Bench, on motion, setting aside the proceedings had on the inquest or in Chancery, for irregularity, instead of trying the traverse.

It is observable also that the authority on which the Court of King's Bench founded its proceedings in this case, was long anterior to the statute of Edward 6, by which Act the law on the subject was much altered; and though, on the one hand, it was made more beneficial for the subject, on the other the course of proceeding was more strictly defined, by which that benefit to the subject was to be secured.

The statute having created a Court of Escheats and Forfeitures of Land, this court considers itself bound to notice the appointment of the commissioner without such appointment being

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being specially shown, in the same manner as it would notice any other judicial appointment in the province. The commissioner being directed duly to return into the office of the secretary of the province the inquisitions which he from time to time shall take under his seal and the seals of those by whose oaths he shall have taken the same, within thirty days after the taking thereof, and also within the same time to return a transcript in question, notwithstanding it has not been delivered into the court by the commissioner in person, or by the clerk of the escheats, but has been certified to this court under the hand and signature of the commissioner, as a transcript of the whole proceedings had relating to the four inquisitions therein mentioned.

It has been doubted whether the court could legally have possession of any such transcript until it had been so delivered by the commissioner or the clerk of escheats in person, or sent to the court out of the office of the secretary under the seal of the province or under the seal of the court of escheats, but the statute does not seem to have contemplated any other formality in the return of the transcript than such as has been observed by the commissioner.

The transcript shows (not an inquest of instruction where the King's title is already found by matter of record,) but an inquest of institution for the purpose of entitling the King (who can only take by matter of record) to certain lands said to have been forfeited by reason of the non-performance of the conditions of cultivation and settlement set forth in the letters patent or grant thereof, and it is necessary so to entitle His Majesty, that the provisions of the statute, which tend to protect the grantee or his assigns, should be strictly and literally complied with.

To constitute a legal inquest under the statute, it is necessary—

1st. That there be a sufficient information on behalf of the Crown, setting forth the nature and extent of the grant and the conditions under which it was made; the subsequent breach thereof, and the consequent forfeiture, with the appropriate and sufficient conclusions for the holding of an inquest of office.

2ndly. That there be a precept to the (4) sheriff of the district in which the lands mentioned in the information are situate, (we have no county divisions of the province, except for the purpose of returning members to parliament; the province for all judicial purposes has been divided into the five districts of Quebec, Montreal, Three Rivers, Gaspé and St. Francis,) commanding him to summon a lawful jury to take such information, and that there be due return made by the sheriff to such precept.

(4) The words of the statute simply are "twelve good and lawful men to be summoned by the sheriff for that purpose.

3rdly. That there be due notice in the Quebec Gazette, published by authority, to inform all persons interested in the lands, of the time and place of holding such inquisition.

4thly. That there be proof of such notice having been posted up on a public place as near to the lands mentioned in the information as circumstances will permit.

5thly. That there be a jury of twelve good and lawful men taken from the district (4) (at least,) in which the lands are situate.

(4) The words of the statute simply are, "twelve good and lawful men to be summoned by the sheriff for that purpose."

6thly. That there be a sufficient verdict finding the non-performance or non-fulfilment of the conditions of the grant and the consequent forfeiture thereof to the Crown, and that the inquest be sealed by the commissioner and the jurors taking the same.

And lastly. That there be due return thereof made into the office of the secretary of the proviuce, and a transcript thereof returned to the supreme court of original civil jurisdiction for the district in which the lands lie within the time prescribed by the statute.

(5) In the transcript before the Court, the information does not aver the nature of the grant, no *habendum* is set forth, whether it was a grant for one or more lives, or a grant to William Walsh, his heirs or assigns for ever or otherwise, and this Court has not the letters patent before it to discover either the nature of the grant, or the conditions upon which it was made.

(5) This and the following objection relate to the manner in which the information was drawn by the Crown officer, and not to the proceedings of the commissioner; but it may be observed that the information was in the form followed in Nova Scotia for half a century, and found sufficient; it set forth as much of the grant as was necessary by way of premises on which to found the conclusion which it drew; it averred that the land was granted to *A. B.* on condition that he or his heirs or assigns should cultivate it; and that he or his heirs and assigns had not cultivated it. These were the only facts material to be averred. The Court went out of its way to suppose that the estate granted might have been only for one or more lives; had it even been so, it could have made no difference in that which was the gist of the information, viz. that the estate, to whomsoever granted, was granted on condition, and that the condition had not been performed.

(6) It may be possible that at the time the informations were filed, the lands therein respectively designated were supposed to be within the district of Quebec, for the informations pray that the inquisitions "thereof so taken as aforesaid, under the hands and seals

(6) The defect here alleged is, in substance, that the information did not pray that the inquisition should be returned into the Court for the district of St. Francis, in which district the lands lay, and where the inquest ought to have been held.

When

seals, as well as of the said commissioner as of the jurors aforesaid, may be returned into His Majesty's Court of King's Bench for the district of Quebec," instead of praying that they be returned into the office of the secretary of the province, and transcripts thereof returned into His Majesty's Court of King's Bench for the district of St. Francis, within which the township of Wolfestown is situate.

When the grant was made, the lands were in the district of Quebec, and were so described in the patent; but when the inferior district and Court of St. Francis were erected, the township, within which the lands lay, was included in that jurisdiction: that inferior district was made a district by an Act passed in 1833; but by another Act of 1830, the township had been included in the district of Quebec. At the present moment an offence committed in that township would be cognizable in the courts at Quebec; for some purposes, therefore, even of judicature, the township is still to be considered as within that district.

The commissioner, however, though not answerable for the correctness of the information, directed the clerk of the court to apprize the attorney-general that the township in question might be considered as in the district of St. Francis. The attorney-general, it is believed, went upon the ground that the Crown had the right to have the jury and trial in any of its Courts of King's Bench, as, upon a traverse of an inquisition in England, the King, it is said, may try an issue where he pleases; but issues on extents are always tried at Westminster.

The transcript also purports to be of the whole proceedings relating to the inquest (7) as directed by the statute, and yet contains no precept to the sheriff (8), either of this or any of the other districts of the province; no return thereon is shown; no notices, as directed by the statute, are made apparent(9) (and which alone would be sufficient to render null and void the whole proceedings). The inquest has been taken not by 12 good and lawful men of the district of St. Francis, in which the lands are situate, (Staundf. Præ. Regis, cap. 176, fo. 51,) but by a jury "of the county and district of Quebec," at the Court-house, in the city of Quebec, nearly 100 miles from the lands in question, and nearly twice that distance from this court (10).

(7) The first of these statements is incorrect; the certificate appended to the transcript by the commissioner was carefully worded in a different manner; viz. that it was a "transcript of the inquisitions of the information, and of the entries made by the commissioner in the register of the court, of the whole proceedings relating to the inquisitions."

(8) The omission of the precept to the sheriff, and of his return, is made a defect in the transcript; but when the statute says that "all the proceedings relating to the inquisition" shall be transcribed, what does it intend? The proceedings themselves, in the literal sense, could not be transcribed; but the record made of those proceedings might be and was transcribed. The proceedings intended by the statute must have been those of the court; but neither the precept to the sheriff nor the return was a proceeding of or in the court. The precept, by law, issues from the provincial secretary's office; and the return of the sheriff is only a list of the jurors summoned, annexed to the precept.

The commissions appointing the commissioner and clerk, which issued in like manner from the provincial secretary's office, and were read at the opening of the court, were in one sense proceedings relating to the inquisitions. So also were the proceedings in swearing in the jury and the witnesses; the examinations of the latter, the letters patent given in evidence, relating to the lands in question, and other documents which were in a more particular sense proceedings in the court itself, relating to the inquisitions; yet it will hardly be maintained that all these ought to have been set forth in the transcript.

It was however set forth, among the entries of proceedings transcribed, that the sheriff brought into court a precept from the provincial secretary's office for summoning a jury, with a panel annexed; and that that jury were sworn and gave their verdict; and no less credit was due to this part of the transcript and return, than to other parts which the court have assumed as correct.

The expression of the law, "the whole proceedings relating to the inquisitions," is too vague, and may again give rise, as in this instance, to difficulties; but a reasonable construction would seem to limit it to proceedings within the court, beginning and ending there, and reduced to writing before the jury separated. Anything else would appear not to be a proceeding of the court; which in truth only exists as a court when the jury is empannelled before the commissioner.

(9) In the objection that "no notices are made apparent in the transcript," there is either an error in fact, or (the expression being ambiguous) the court should seem to have forgotten that by the statute it is expressly left to the commissioner to judge whether the notices given were sufficient, and that the rule of law is, that, until the contrary appears, the inferior jurisdiction must be taken to have proceeded regularly. Here the contrary should have been made to appear to the court by a distinct pleading or allegation of a party having interest, supported by affidavits

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of some irregularity in the publication, or in the proof of the notices required by the statute. The fact that such publication of the requisite notices was proved "to the satisfaction of the commissioner," was distinctly certified in the transcript; it was a matter within his competence, and the court were bound to presume in favour of and not against the regularity of the proceeding.

(10) The observations in note 6, apply generally to this objection; with respect to the distance which the court introduces by way of aggravation of the error, it is only to be remarked that the lands lie about equi-distant from Quebec and Sherbrooke, where the Court of King's Bench of St. Francis gave its judgment.

It is clear, therefore, that in these particulars, and others which might be alluded to, the proceedings had before the commissioner were and are illegal, and not such as are contemplated by the statute; that the transcript in itself is defective in not setting forth the whole of the proceedings relating to the inquest of office; and that it has been found by a jury wholly unqualified to render a verdict affecting lands without the district of Quebec.

The judgment of the court, therefore, is, that the said transcript remaining of record in this court be, for the causes assigned and others appearing on the face thereof, set aside and quashed, and declared and adjudged to be utterly null and void to all intents and purposes whatsoever.

Similar judgments were also given in the following cases: *The King* v. *John Murphy. The King* v. *Luke Gaul. The King* v. *William Gaul.*

COURT OF ESCHEATS.

The King v. *Divers Lands in the Townships of Halifax and Ireland.*

Friday, December 19.—This day being fixed for the argument on the declinatory plea filed by James M'Gill Des Rivières, esq., curator to the vacant estate of the late Joseph Frobisher, esq., in which the above lands are included:

Mr. R. S. M. Bouchette stated that the plea disclosed two grounds of objection, both of which went directly to the person of the commissioner who presided in that court. The first had reference to the seat occupied by the Hon. Andrew W. Cochran, in the Executive Council of Lower Canada; the second to the office he held as auditor, in which capacity he was entitled to certain fees or perquisites, upon the auditing of the letters patent under which the waste lands of the Crown were granted in the province. Upon the first objection it was argued that there existed an incompatibility of office, inasmuch as all grants of land made by the Crown to individuals in this country, were so made with the advice and consent of the Executive Council; and the commissioner of escheats, as a member of that body, was participant in all grants of this description made by the Crown, and as such should be unconnected with any proceeding involving their forfeiture. The reason was that the lands forfeited were subject either to sale or regrant; that, in the first case, they formed the fund out of which the Court of Escheats was paid; in the latter, the forfeiture and the regrant came, in some measure, under the same control. Mr. Bouchette was going on to state, that as executive councillor, the commissioner had also a right to sit as judge in the Court of Appeals, where the subject matter before the Court of Escheats might eventually be brought from the Court of King's Bench; but, upon reference to the Act, to which his attention was called by the commissioner, it was found that the decision of the Court of King's Bench, upon the inquests held by the Court of Escheats, was to be final.

Upon the second point, it was contended that the Hon. A. W. Cochran had a clear interest in the forfeiture of lands to the Crown, since, upon the subsequent sale or regrant, he, as auditor, was entitled to a stated fee upon such sale or regrant; and that he could not, therefore, sit in that court as a disinterested judge. The offices were incompatible, and though the one was not immediately under the control of the other, the emoluments of the office of auditor were contingently increased by the forfeitures declared by the escheator. Upon this subject authorities were cited from Comyn's Digest.

The attorney-general objected the plea altogether, as to a proceeding irregular and not sanctioned by any precedent in the English law. He considered the facts upon which the plea rested as insufficiently proved; it was sworn to by a party in the proceeding, but he would nevertheless show its inadmissibility upon other grounds. The English law he exclusively appealed to upon this point, as the rule laid down by the Act; and he found there nothing to support that plea. A judge could not be recused or challenged in England. The *recusatio judicis* of the civil law, adopted also by the French law, could not be applied to the present case. (The attorney-general here quoted the 3d vol. of Black. Com., and vol. 2 Brown's Civil Law.) He also contended that it was the prerogative of the Crown to nominate whom it thought fit to office, and that if a person were appointed to two offices, incompatible, the second appointment vacated the first *de jure* (quoted Chitty on Prerogative). The remedy, if an inferior court assumed an unlawful jurisdiction, was by prohibition; but here, in fact, the commissioner acts more as a ministerial than a judicial officer; that the facts within the cognizance of this court were established by a jury. There appeared to him altogether no ground for the exception put in; it was not recognized by English law, and should be overruled.

Mr.

Mr. Bouchette stated that the facts uttered in the plea were sworn to, that the commission of A. W. Cochran, esq., as auditor, was filed, and that he was unable to summon witnesses, had it been necessary, for the further proof of the facts alleged, owing to the absence of subpœnas, the clerk of the court not having been prepared (as yet) to furnish him with them. However, the facts he considered such as, with the proof already before the court, the commissioner was bound to notice. He admitted that the *recusatio judicis* of the Roman law was more analogous to the challenge to the juror, (as explained in vol. 2d Brown's Civil Law, quoted by the attorney-general,) but he still contended that some similar remedy was reserved in England to the parties when a judge interested thought fit to sit in judgment. Without this remedy, how could the rule of law be enforced, that "none can be judge in his own cause." (4 Com. D. 419.) or that "if any judge has an interest, he or his deputy cannot hear the cause, or sit in court?"—(*Ibidem*). A plea to the jurisdiction is a measure precedent to an application for a prohibition, which can only be obtained in term, upon a rule to show cause. The present plea he considered the only mode of stopping an irregular plea *in limine*, and he, in conclusion, begged to state, that he considered the facts disclosed in the plea as of a nature to check the decision of the court upon its merits, the Hon. A. W. Cochran being a party thereto and interested in its fate.

The attorney-general was of opinion it could not amount to an estoppel.

Per Curiam.—From what has been said, it appears I am not expected to pronounce on this plea; I therefore abstain from giving any opinion on the subject.

The court adjourned till the following day.

Saturday, Dec. 20th.—The commissioner this morning disposed of the plea. He stated substantially to this effect, that he had taken time to consider how far it could be disposed of by another tribunal, but not finding how far that could be done, he felt called upon to decide upon it himself. He observed that the facts of the plea had not been satisfactorily proved; that the court was conusant of the facts without such proof, he held insufficient; and the oath of the party who had sworn to the plea, was the oath of a party in his own cause. He thought the facts and the plea itself could not amount to an estoppel; nor, indeed, did it appear to be so considered by the learned counsel who framed the plea, the conclusion to which prayed for the consideration of the court thereon, and whether the party was bound to answer, &c. The consequence of the court being estopped in this case, might become general, and there was no certainty that the proceedings of the court might not be entirely interrupted by similar measures. He would consider the law on the subject, and express his reason why he proceeded. It had been admitted that the English law was to be appealed to in this case; but even by the French law the plea was defective in form and substance; for by the French law, a whole bench could not be recused; the commissioner sat alone, and therefore constituted that whole bench. This was viewing the commissioner as a judge, a character which he denied he had (referred to Coke). He would inquire whether in England there was no remedy against a judge sitting in his own cause? There was a remedy: he did so at his peril, and was responsible to the party. The commissioner, however, was not a judge; a judge's office was to try, determine and give judgment; the commissioner performed no such office. A mere question of fact was to be proved by an inquest of twelve jurors, and he presided there merely to maintain order, and to record the fact of the finding of the jury. The jury was not bound to follow the directions or injunctions of the commissioner; his office was more assimilated to that of sheriff or of coroner. The Court of the Sheriff in the county had extensive powers—the proceedings there could, however, be revised, under a writ of false judgment; here, it can be done by traverse in the Court of King's Bench. The style of the tribunal as a court, was no argument to make him a judicial officer; he sat there merely to preserve order, and to certify the inquisition held conjointly with the jurors. In doing so, he acted merely ministerially; but could he as such sit on his own cause?—certainly not. If he did, the remedy lay in the Court of King's Bench. The plea does not make out such interest as would exclude his sitting: it ought to be a direct and not a contingent interest. The first ground stated in the plea had reference to the office of executive councillor, which it alleged was held by the commissioner; but, allowing the fact to stand proved, which he conceived was not proved, there was no interest made out or alleged. The plea stated that it was by the advice and consent of the Executive Council that the Crown lands were granted; but when? Are they so now? The reverse would appear by the appointment of the commissioner of Crown lands, who was publicly known to have taken that branch of the administration out of the control of the Executive Council. As to the second point, objecting to the commissioner as auditor, he found no proof of the fact of his receiving the fee stated in the plea. The filing of the commission might be proof of his holding the office, but there was nothing to show that he received or was entitled to fees. Suppose the commissioner should know facts contrary to those stated in the plea, was he to stop? He denied that the auditor was entitled to such fees on the regrant of lands: a document or declaration would be put upon record to that effect, establishing the fact. Upon these grounds the court overruled the plea.

The court then proceeded to business, when the commissioner delivered a lucid and able charge to the jury explaining the objects for which that court was constituted, and the duties they were called upon to discharge.

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No. 14 *a*.

December 22, 1834.—The commissioner, on the jury being sworn, addressed them in French to the following purport:—

In opening the proceedings of this court, which, though it has been constituted by law for several years, is only now for the first time called into active operation, it would seem proper that, before the matters which the Crown officer has to bring before the court are given you in charge, I should explain to you in a general way, the origin, grounds and nature of the jurisdiction which you are authorized to exercise in this court.

You are aware that in this province, since it became a part of the British Empire, and more particularly since the year 1795, the waste lands of the Crown have been granted by the King's letters patent, to individuals applying for them, upon the modified feudal tenure, known by the name of the tenure in free and common soccage, free from all onerous payments, rents, duties and services, and subject only to such conditions and reservations on the part of the Crown as were necessary for the public security, convenience and advantage. Among these are the reservations of a right of making highways, the right to mines and minerals, the right of constructing works of military defence, and the conditions of settlement and cultivation imposed upon the person receiving the grant. These conditions form the subject which requires our more particular attention on the present occasion. The grantee is required by the terms of the letters patent, to clear, settle, and effectually cultivate, within a time fixed by the letters patent, a certain quantity of the land granted to to him; and it is declared that in default of his performing this condition, the grant shall become absolutely null, and the land granted shall escheat and revert to the Crown, and be vested in it as fully and effectually as if the grant thereof had never been made.

The utility of this condition is obvious, and the necessity of it is illustrated by the history of almost every colony on this continent of which we have any knowledge. In the original settlement of these colonies where the land, in a wilderness state, is easy to be obtained, not only those having capital, but others of a poorer class, have been actuated by a general eagerness to engross more of it than they had the means of cultivating. The injurious effects of this monopolizing spirit have been felt in all the northern colonies, and in none more than in this. To guard against it however, as far as possible, and to provide a remedy for the evil when it should inevitably arise, the Crown, as the proprietor of the waste lands, and bound to administer this public property for the public advantage, caused these conditions of actual settlement and cultivation to be inserted in its grants. The like conditions springing from the same policy were also inserted in the seignorial grants made by the crown of France in this province, by which the grantee was required to cause the land to be settled upon, to oblige his tenants to actual residence, and to clear or cause it to be cleared; and to cause the like conditions to be inserted in all grants to be made by him to his tenants; and in default of such actual settlement the grant was to be null and void. To this day accordingly, the seignior in conceding his land exacts the same conditions of the tenant who takes it; nor were these mere nominal or formal conditions, but, as appears from the public records of the province, the crown of France frequently interfered to enforce them by acts of legislation and of judicial administration.

Several arrêts were passed by the French monarch (which are collected in an Appendix to a Report of a Committee of the Assembly of this Province in 1821, on the Management of the Crown Lands), by some of which the provincial authorities were enjoined to insert these conditions in all grants made by them; by others, uncleared grants were revoked; and the lands re-united or escheated to the Crown; by others, grants which were too extensive were reduced, or a further time was given to the inhabitants, in some cases, to bring their grants into cultivation, in default of which they were to be forfeited; and by others, a summary course of proceeding for effecting such forfeitures was marked out.

These acts are to be traced to within a few years of the cession of the province to Great Britain, and they were followed up within the province by frequent proceedings of the local tribunals (both before and since the cession), for re-uniting to the domains of different seigniories the concessions of such censitaires as had not fulfilled the conditions of their grants.

In the neighbouring provinces of New Brunswick, Nova Scotia and Prince Edward's Island, the Crown has at various times enforced the forfeiture of large tracts of waste land for non-performance of the conditions of settlement and cultivation contained in the Royal grants; and in the province of Nova Scotia alone, out of 6,000,000 of acres which had been granted, down to the year 1828, more than two millions of acres (or one-third of the quantity granted) had been at that period revested in the Crown by inquests of office in the provincial Court of Escheats.

In this province, the necessity of adopting a similar course of proceeding with respect to the grants in free and common soccage, made since the cession of the province, had long been felt. From the year 1791 to the year 1816, those grants amounted to about two millions and a quarter of acres, which were held by individuals in large tracts upon which nothing had ever been done towards the performance of the conditions of settlement upon which alone the lands were granted. To remedy the evil of these improvident grants, His Majesty's Government directed, in 1816, that proceedings should be adopted for revesting these uncultivated lands in the Crown, but in consequence of changes in the local government, and difficulties as to the course of proceeding, nothing was done until the year 1823, when several actions were brought in the Court of King's Bench on the part of the Crown, for the purpose of endeavouring to effect the escheat of certain lands in the neighbourhood of those against which proceedings are now instituted in this court,

but

but it was found that the ordinary forms and course of proceeding presented difficulties (arising partly from the form of the grants, and partly from the impossibility of bringing the actual grantees or actual owners into Court), which rendered it impracticable to effect the object desired. The subject was accordingly brought by the local Government before the Legislature in the following year, with a view to the removal of these difficulties, by the erection of a separate tribunal for causes of escheat and forfeiture of land, as recommended by the law officers of the Crown, whose opinions were laid before the Legislature. The subject of the uncultivated grants of land had already occupied the attention of one branch of the Legislature in the years 1821, 1822 and 1823, and had been thoroughly investigated in a special committee of the Assembly, whose reports have been already referred to, and upon whose recommendation the Assembly, on 6th March 1823, had adopted a resolution, "That the Provincial Government had not enforced the conditions of actual settlement contained in all grants made of the waste lands by His Majesty, and upon breach of those conditions that no legal measures had been taken for the escheating of the said lands, whereby the gracious intentions of His Majesty in that behalf had been frustrated, the grantees of the Crown encouraged in their neglect, and the settlement of the waste lands retarded."

And when the report of the Crown law officers on the subject of the establishment of an efficient tribunal and course of proceeding for the escheating of lands, was brought before the Legislature in 1824, the same committee of the Assembly recommended "That the most effectual legislative aid should be afforded to the Provincial Government, to enable it to carry into effect the wise and beneficent measures suggested by it;" and a Bill was thereupon proposed to the assembly by that committee, containing provisions (similar to those of the Act under which this court is now constituted) for the erection of a Court of Escheats, and for otherwise giving effect to the measure; but it was no further proceeded upon at that time, nor in the following year 1825, though it was then again introduced. But in that year His Majesty's Government thought fit to make provision for the erection of a Court of Escheats, by an Act of Parliament which was then passing, relating to other matters concerning this province; and under that Act of Parliament you are now called upon to perform the important public duty which it imposes.

The Act of Parliament empowers the government of the province to constitute one or more commissioners of escheats and forfeitures of land, who shall have authority, upon information filed before him or them, by the law officers of the Crown, touching the performance or non-performance of the conditions contained in letters patent, or grants of land in free and common soccage, to inquire on the behalf of His Majesty, by the oaths of a jury, whether the lands comprised in such information are subject to escheat and become forfeited to His Majesty, by reason of the non-performance of any of the conditions on which such grants were made. The commissioner is to proceed in the cognizance of these matters, according to the law, course and practice of the law of England in like cases, as nearly as circumstances will admit. He has power to summon witnesses to give evidence before the jury; and the testimony of one or more witnesses before the jury, or taken in writing before a person appointed for that purpose by the commissioner, is declared to be sufficient evidence of the facts alleged in the information. The inquisitions are to be made under the seals of the commissioner and jurors, and deposited in the office of the provincial secretary, and a transcript to be sent in to the Court of King's Bench for the district in which the lands are situated; and on the inquest being found, the lands comprised in it and declared to be subject to escheat for non-performance of the conditions of the grant, are by the Act declared to be re-vested in His Majesty. But to enable the Government to mitigate, if it sees fit, the rigour of the law, on an equitable consideration of the claims of parties interested, the Act provides that no new grant of the land escheated shall be made within a year, except to the original grantee, or to some person claiming under title from him; and it is further provided that parties interested in or entitled to such lands may traverse the inquisition in the Court of King's Bench, into which it shall have been returned, within three months after such return, and that the judgment of that court thereon shall be final.

With respect to the notification or summoning of the parties interested, it is provided that within 15 days after the filing of any such information, the clerk of the court shall publish in the Gazette (and cause to be posted up in some public place, as near as circumstances will admit to the lands comprised in such information,) a notice to all persons interested of the filing of such information, and of the time and place of taking the inquest, which time shall not be less than two nor more than four months after the publication of such notice, and such public notification shall be instead of all other notice, process, summons, or other proceeding whatever for the notification and appearance of the parties interested in such lands, and shall conclude them for ever.

The powers vested in Government by this law have not as yet been called into actual exercise until the present occasion; but the principle upon which they will be carried into effect has been stated by His Majesty's representative in this province, to one of the branches of the Legislature, in answer to a request for information on this subject, and that principle appears to be, that the process of escheat will be resorted to in those cases "where tracts or lots of land long neglected by the grantees or owners, impede the opening of roads, the formation or extension of actual settlements, or are otherwise prejudicial to the improvement of the country."

In executing the provisions of the law by virtue of which you are impanelled, your duty, gentlemen, will be to weigh and consider the proofs that are laid before you, touching the performance or non-performance of the conditions of settlement and cultivation contained

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in the letters patent, by which lands have been granted to any individual, and you will find the fact according to those proofs. In considering them, you will bear in mind that the letters patent do not require that the conditions of settlement or cultivation should be performed by the original grantee himself, or even by his heirs; but if he has assigned over his interest to other persons, and any one of the persons lawfully representing him, or in the words of the patent, "of his assigns," has performed the necessary cultivation, the conditions of the patent are sufficiently complied with.

If, on the other hand, the proofs which shall be laid before you establish the fact that cultivation and settlement have not been performed according to the terms of the letters patent, by the original grantee or his heirs, or his lawful assigns, then your province is merely to find that fact, and by your finding the forfeiture is complete to the Crown, which thereupon by operation of law, and according to the terms of the grant, becomes fully invested with the property and possession of the land to which your finding shall relate.

It only remains for me to state to you, gentlemen, that it will be my duty as commissioner, to preserve proper order and regularity in the proceedings had in this court, according to the terms of the Act, and the rules and course of the law which governs us, and that I shall be ready to give you any information or assistance that you may require from me in the performance of your duties. The Attorney-general will now open the cases to you and call his witnesses.

No. 14 *b*.

— No. 14 *b*. —

Sir, Montreal, October 22d, 1836.

In compliance with the request of the Royal Commissioners, signified in your letter of the 13th August last, I have considered the provisions of the Act of the Imperial Parliament by which a Court of Escheats of Land was erected in this province, and have the honour of stating that I do not see anything in the Act by which the Court can be rendered inoperative. Some difficulties, it is true, occurred to prevent the recourse on the part of the Crown from being attended with success, with regard to lands situated in the district of St. Francis. Those difficulties are set forth in the accompanying Report made by Mr. Buchanan, King's counsel, of the proceedings had on the quashing by the Court of King's Bench for the district of St. Francis, of four inquisitions taken before the commissioner of escheats.

It would appear from that Report, that the main ground for quashing the inquisition was, that the inquisition was taken before jurors not belonging to the district within which the lands are situate, summoned under a precept directed to the sheriff of the district of Quebec.

In my humble apprehension, the precept should have been directed to the sheriff of the district of St. Francis, as it may be implied from the terms of the Act, that the sheriff of the district within which the lands are comprised is the proper officer to whom the precept should be addressed; a procedure which would be consistent with the usual rules of judicial practice. The other objections to those inquisitions are of a merely technical character and may in future be easily avoided, so as to secure to His Majesty his right of causing to be declared legally forfeited such lands as may be liable to escheat.

T. F. Elliot, Esq.
Secretary, &c. &c. &c.

I have, &c.
(signed) *C. R. Ogden*, Attorney-Gen.

Sir, Montreal, October 12th, 1836.

In your communication to me, in the month of August 1835, the commands of His Excellency Lord Aylmer, that I should proceed to Sherbrooke to shew cause against certain rules granted by the Court of King's Bench for the district of St. Francis, for quashing and setting aside four inquisitions of office taken before the Honourable Andrew William Cochran, His Majesty's commissioner of escheats and forfeitures of land in the province of Lower Canada, I repaired to that place for the purpose of performing the duty confided to me.

The individuals whose lands had by those inquisitions been found forfeited were Luke Gaul, William Gaul, William Walsh, and John Murphy. The rules were similar in the four cases.

"The Court sitting this (6th March 1835) day, Henry Black, esq., one of the advocates practising in His Majesty's courts of judicature in this province, appeared and prayed leave to suggest to the court, as *amicus curia*, certain objections to the inquisition and transcript of the proceedings in this cause before the said commissioner, and appearing on the face of each transcript as certified by him; which request appearing to the court to have been heretofore sanctioned by the usage and practice of His Majesty's courts of judicature in England in the like cases, and being acceded to accordingly by the court, the said Henry Black suggests, that the said inquisition and transcript ought to be set aside and quashed for the following amongst other reasons:—

"1. Because the said commission, in the cognizance of the matters in the information in the said inquisition mentioned, contained, hath not proceeded as nearly as circumstances will

will admit according to the rules, course and practice of the law of England in the like cases, and because, on the contrary, the information and the proceedings thereupon had, have been wholly and altogether repugnant to the law of England in like cases.

"2. Because the said information is altogether insufficient, and doth not set forth any legal or sufficient grounds for the escheating of the lands therein mentioned.

"3. Because no legal or sufficient notice, notifying all persons interested in the said lands that the said information had been filed, and of the time and place of holding the said inquest of office, as required by law in that behalf, appears to have been inserted and published in the Quebec Gazette by authority, and posted in a public place as near to the lands mentioned in the said information as circumstances would admit.

"4. Because the precept issued and directed to the sheriff of the district of Quebec, from the office of the secretary of the province, for the summoning of the jurors, ought to have been directed to the sheriff of the district wherein the said lands lie; and because the said precept was not so directed, but is erroneously and illegally directed to the sheriff of the district of Quebec, who hath not nor ever had by law any power in the premises; and because the finding and verdict of the jurors so illegally empanelled was and is null and void.

"5. Because the said jurors ought to have been summoned from the body of the county wherein the said lands lie, and not from another and different county and district; and because the array of the said jury was and is against law and right.

"6. Because no inquest could lawfully be had by reason of all or any of the matters and things set forth and contained in the said information elsewhere than in the county where the said lands lay; and because the said inquest hath been illegally taken in another and different county, to wit, at the city of Quebec, in the county and district of Quebec.

"7. Because by the law of the land title to lands cannot be brought into controversy, nor any other proceedings had to entitle the King to enter or seize the lands of the subject out of the district where such lands lie.

"8. Because the said office inquisition, and all the proceedings had in relation thereto, were and are irregular, illegal, insufficient, vexatious and oppressive, and subversive of the law of the land and of the security of His Majesty's subjects in their property and inheritance.

"And hereupon the court having inspected the said transcript now remaining of record, and having heard the said Henry Black in support of his said suggestion, It is ordered, that the said inquisition and transcript be set aside and quashed as informal and illegal, and in itself null and void, unless good and sufficient cause be shown to the contrary on Saturday the 25th day of August next, being the first day of the ensuing term; and it is further ordered, that notice of this rule be given to His Majesty's commissioners of escheats and forfeitures, and His Majesty's attorney-general of this province, on or before the 31st day of May next."

According to the instructions signified to me, I showed cause against the rules, but not anticipating that any full reports of the arguments ever would be required, I did not cause them to be recorded. During the same term the court rendered their judgment, quashing the inquisitions in the following language.

[Here occurs the judgment, which, as it is annexed to Mr. Cochran's report, dated 24th October 1836, is not inserted again here.—*T. Fred. Elliot.*]

This is the only report which I am enabled at this moment to give of the proceedings in question.

I have, &c.

Chas. Rich. Ogden, Esq.
His Majesty's Attorney-General, Quebec.

(signed) *H. Buchanan,*
King's Counsel.

—No. 15.—

REGULATIONS for the DISPOSAL of LANDS belonging to the Crown in the British North American Provinces. No 15.

Colonial Office, 7th March 1831.

THE lands are no longer to be given away by free grants, but are to be sold.

The commissioners of Crown lands will, at least once in every year, submit to the governor a report of the land which it may be expedient to offer for sale within the next ensuing year, and the upset price per acre at which he would recommend it to be offered; the land so offered having been previously surveyed and valued in one or more contiguous tracts of those which are most adapted for settlement, according to the local peculiarities of the province, and in proportion to the number of deputy-surveyors who can be employed.

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No. 15

The lands to be laid out in lots of 100 acres each, and plans of such parts as are surveyed are to be prepared for public inspection, which plans may be inspected in the office of the surveyor-general, or in that of his deputies, in each district, on payment of the fee of 2*s.* 6*d.*

The commissioner of Crown lands will proceed to the sale in the following manner:

He will give public notice in the official gazette, and in such other newspapers as may be circulated in the province, as well as in any other manner that circumstances will admit, of the time and place appointed for the sale of lands in each district, and of the upset price at which the lands are proposed to be offered; he will give notice that the lots will be sold to the highest bidder, and if no offer should be made at the upset price, that the lands will be reserved for future sale in a similar manner by auction.

The purchase-money will be required to be paid down at the time of sale, or by four instalments with interest; the first instalment at the time of the sale, and the second, third and fourth instalments at intervals of half a year.

If the instalments are not regularly paid, the deposit money will be forfeited, and the land again referred to sale.

Public notice will be given in each district in every year, stating the names of the persons in each district who may be in arrears for the instalments of their purchases, and announcing that if the arrears are not paid up before the commencement of the sales in that district for the following years, the lands in respect of which the instalments may be due will be the first lot to be exposed to auction at the ensuing sales; and if any surplus of the produce of the sale of each lot should remain after satisfying the Crown of the sum due, the same will be paid to the original purchasers of the land who made default in payment.

The patent for the land will not be issued, nor any transfer of the property allowed until the whole of the instalments are paid. The lands sold under this regulation are not to be chargeable with quit rents, or any further payment beyond the purchase money and the expense of the patent.

Persons desirous of buying land, in situations not included in the tracts already surveyed, must previously pay for the expense of survey, and the price must of course depend upon the quality of the land and its local situation.

The Crown will reserve to itself the right of making and constructing such roads and bridges as may be necessary for public purposes, in all lands purchased as above; and also to such indigenous timber, stone and other materials, the produce of the land, as may be required for making and keeping the said roads and bridges in repair, and for any other public works.

The Crown further reserves to itself all mines of precious metals.

The regulations for granting licences to cut timber will be learned by application to the surveyor-general's office, in the respective colonies.

INFORMATION for the Use of Military and Naval Officers, proposing to settle in the British Colonies.

Colonial Office, 15 August 1834.

1st. Annexed * is a statement of the regulations according to which, with such modifications as local circumstances may render necessary, lands belonging to the Crown are disposed of in the several British colonies in North America.

2d. Under these regulations military and naval officers cannot receive free grants of land, but in buying land they are allowed a remission of the purchase money, according to the under-mentioned scale.

	£.
Field officers of 25 years' service and upwards, in the whole	300
Field officers of 20 years' service and upwards, in the whole	250
Field officers of 15 or less years' service, in the whole	200
Captains of 20 years' service and upwards, in the whole	200
Captains of 15 years' service or less, in the whole	150
Subalterns of 20 years' service and upwards, in the whole	150
Subalterns of seven years' service or less, in the whole	100

Regimental staff officers and medical officers of the army and navy will be deemed to come within the benefit of this rule.

3. Officers

* Same statement as above.

3. Officers of the army or navy, who propose to proceed to the colonies in order to take advantage of this indulgence, should provide themselves with certificates from the office of the general commanding-in-chief, or of the Lords Commissioners of the Admiralty, showing that their emigration has been sanctioned, and stating exactly their rank and length of service. No document from the office of the Secretary of State is necessary.

4. Officers on half-pay, residing in the colony, when hey propose to settle, may be admitted to the privileges of military and naval settlers, without referring to this country for testimonials, provided they can satisfy the Governor that there is no objection to their being allowed the indulgence, and that their return of their rank and length of service is accurate, and provided, if they belong to the navy, that they produce their letter of leave of absence from the Admiralty.

5. Military chaplains, commissariat officers, and officers of any of the civil departments connected with the army, cannot be allowed any privileges on this subject of land. Pursers, chaplains, midshipmen, warrant officers of every description, and officers of any of the civil departments connected with the navy, must also be considered as not qualified for those privileges. Although members of these classes may have been admitted formerly, and under a different state of circumstances, they must now be excluded.

6. Gentlemen who have ceased to belong to His Majesty's service cannot be allowed the advantages to which they were entitled while in the army and navy. It is not, however, proposed to affect by this rule officers who desire to quit the service for the express purpose of settling in the colonies; it is only required that when they resign their commissions they should apply for a certificate from the general commanding-in-chief, or from the Lords Commissioners of the Admiralty, that they do so with a view of emigrating; and such certificate, if produced to the Governor of any colony within one year from its date, but not otherwise, will be a sufficient warrant for allowing the bearer the same advantages as officers of His Majesty's service.

Officers who have sold out within the last 12 months preceding the date of this memorandum will be allowed the usual privileges, notwithstanding their want of the certificate required by these regulations, if they present themselves to the Governor of the colony within a year from the present date. And all officers who have already been recommended by the general commanding-in-chief, will be entitled to their privileges without regard to any obstruction which might otherwise be offered by the regulations now established.

7. Officers cannot be allowed advantages in the acquisition of land in any colony, unless it be their intention to fix their residence in that colony. In order to insure the observance of this rule, it has been determined that the titles to lands obtained by officers who take advantage of the peculiar regulations existing in their favour, shall be withholden for a period sufficient to prove that they have not repaired to the colony for the mere purpose of gaining possession of a portion of land and then departing. Two years is the period for which it has been decided that the titles shall be kept back; this delay will be sufficient for the salutary object in view, and will not constitute any very serious inconvenience to the *bonâ fide* settler.

8. By the annexed regulations for the disposal of Crown lands, it will be observed that the general sales will take place periodically. But in order to prevent inconvenience to the officers who may arrive in the intervals between those sales, and be desirous at once to obtain an allotment, the Governors of the colonies are authorized to allow officers to acquire at any time, on payment of the upset price, lands which have been previously offered for sale, at some general sale, and not been bought.

Officers will thus be relieved from delay at the time of establishing themselves in the colony. They will also be enabled by this arrangement, which will permit them to obtain their land at a fixed price, to choose such a quantity as shall be exactly equivalent to the amount of the remission to which they are entitled, instead of being liable to be called upon to pay a balance, which must be the case if they bid for lands at a sale by auction.

9. There being little or no Crown land available in Prince Edward's Island, officers cannot be offered any privileges in the acquisition of land in that colony. In Cape Breton, an island in which the natural inducements for the settlement of officers are not very considerable, it is necessary, from local circumstances, that there should not be a remission of purchase-money as in other colonies; to such officers as may wish to settle in this island, allotments of land will be granted on the same scale and conditions as before the general introduction of the system of selling the Crown lands; viz.

To a lieutenant-colonel	1,200 acres.
To a major	1,000 —
To a captain	800 —
To a subaltern	500 —

TENURES.

—No. 1.—

TENURES. No. 1.

MEMORANDUM on the Means of forming a General Estimate of the Rate at which Censitaires might equitably demand Commutations of Tenures from their Seigneurs.

WITHOUT pretending to offer any accurate calculation of what the payment for a release from the seigneurial dues ought to be, it may be remarked, that if commutations are to be voluntary on the part of the censitaire, he will, of course, choose the time for making them which is most advantageous to himself, the time, for instance, when he contemplates an extensive improvement on his land, or is on the point of selling it; and, therefore, that in no case ought the commutation fine to be less than one ordinary fine, or "lods et ventes," on a change of tenancy; on the contrary, that it ought to exceed the amount of such a fine, by the present value of all the reversionary fines to which, if the tenure remained unaltered, the land would be subject. Now, if it is assumed that a change of tenancy occurs once in every 20 years (and the average recurrence, in point of fact, would be ascertained by inquiry in the Legislature), the present value of all the reversionary payments will be obtained by calculating the values successively of a payment made 20 years hence, of another 40 years hence, another 60 years hence, and so on; and if this be done on the principle of allowing compound interest at six per cent., the total value of all the reversionary payments will be found equal to nearly one-half of a present fine; that is to say, equal to one-half of an ordinary payment of "lods et ventes," so that a present payment of a "lods et ventes" and a half, would be required to exonerate the land from all future as well as present demands. But as a "lods et ventes" is equal to one-twelfth of the price or value of the property, a "lods et ventes" and a half will be equal to one-eighth of the same; and consequently, if this calculation be correct, the seigneur ought to have the option of taking the property on payment of seven times the sum awarded to him by the arbitrators, as a compensation for his rights.

This calculation, however, has been made rather for the sake of elucidating the subject than in the hope of arriving at any very correct result; and in supposing property to change hands once in every 20 years, it has probably been considered, especially in the agricultural districts, as subject to too frequent mutations; moreover, no allowance has been made to the censitaire for the remission by the Crown of its "droit de quint," the benefit of which remission (if made) should not be given to the seigneur alone, but divided between him and the censitaire. When, therefore, these two circumstances are taken into consideration, it may perhaps be found that, in voluntary commutations, one-tenth of the actual value of the property will be a sufficient compensation to the seigneur for the rights which he surrenders, provided he has this tenth clear of any deduction on account of the "quint" due to the King.

It may be observed, that in the preceding estimate no allowance is made for the cens or rente, or for any feudal burthens beyond "lods et ventes." The "cens et rente" being a fixed payment, the value of them may easily be calculated, and redeemed at so many years' purchase, or they might be left as a charge upon the property. The other seigneurial rights are so trifling, that the payment of compensation, under the award of arbitrators, might probably be made to cover them all.

—No. 2.—

Attorney-General's EVIDENCE.

No. 2.

1. DOES any doubt exist as to the Provincial Act 9 Geo. 4, c. 77, relative to tenures being in force in the province, and what is your own opinion?—Doubts are entertained by some persons whether that Act be in force in this province; but I differ in opinion from those individuals. I conceive that the statute 1 Will. 4, of the Imperial Parliament, was an implied repeal of the 31 Geo. 3, as far as regarded the necessity of the King's giving his consent to that Act within two years from the period when it was passed by the Legislative Council and Assembly; this statute of the 1 Will. 4, having notoriously been passed in order to enable His Majesty to sanction the Provincial Act, notwithstanding the repugnance of its provisions

provisions to the laws of England, as confirmed here, with respect to soccage lands, by the 6 Geo. 4, c. . Two decisions of the Court of King's Bench, for the district of Montreal, have, as I am informed, given operation to the Provincial Act, which was proclaimed by the Governor-in-chief in September 1831. It is said that the question will be brought before the Provincial Court of Appeals, and a difference of opinion may prevail in that tribunal. But as innumerable transactions and settlements of property have been entered into and made by His Majesty's subjects, under the well-founded belief that the 9 Geo. 4, duly proclaimed, was law, and without any supposition that the Executive Government could even accidentally lead them into error, I venture to suggest whether it would not be an act of justice, if not matter of duty, in His Majesty's Government to set these questions at rest, and quiet men's minds as to their titles, by recommending an Act to be passed by the Imperial Parliament, declaratory of the Act 1 Will. 4, or containing such new enactments as would obviate the great evil likely soon to be felt, if such a remedy be not applied.

2. Supposing that Act to be in force, does it, in your opinion, provide an efficient remedy for the alleged imperfections of the Imperial Tenures' Act, touching the descent, alienation and transfer of lands held in free and common soccage?—Supposing the Provincial Act 9 & 10 Geo. 4, c. 77, to be in force, I do not conceive it provides an efficient remedy for the alleged imperfection of the Imperial Tenures' Act. The abolition of the right of primogeniture, the regulation of dower and the other rights of married women, making them nearly conformable to those enjoyed in other sections of this country, where a different tenure prevails, and the rendering the forms of conveyance less intricate and less expensive, would seem to be what the provincial legislature would have in view in modifying the English law. Now, although the Provincial Act, besides confirming past transactions, contains provisions as to the forms of voluntary conveyance in future, and although it settles retrospectively the mode in which soccage lands shall be held affected by rights of inheritance, dower, &c., yet no prospective regulations are made as to the descent of lands, or the nature of the dower which shall affect them, and thus the privilege of primogeniture must still exist; and the important question, whether such lands form part of the stock of the *communaute de biens*, or copartnership between man and wife, is left open for litigation. As far as the forms of voluntary conveyance are concerned, I consider that the Provincial Act has provided a sufficient remedy.

3. It has been complained that the Tenures' Act was too favourable to the seigneur, and went to deprive the censitaires in any seigneuries of the advantages which they formerly enjoyed under an arrêt of the 6th July 1711, and another of 15th March 1732. To what extent are you of opinion that the arrêt went in securing privileges to the censitaires, as, for instance, the privilege of obtaining unconceded lands on the *taux ordinaire*; and further, are you of opinion that the said ordinances are at present in force in the province?—One effect of the Tenures' Act has been the depriving of the King's subjects here of the right of compelling the seigneurs to grant to them the wild lands within their seigneuries, in consideration of annual rent (cens et rentes), and of the usual seigneurial servitudes or burthens, such as *lods et ventes, droits de banalité et retrait, &c. &c.*, advantages, if they can be so termed, which persons willing to be *censitaires* enjoyed under the arrêts of the King of France of the 6th July 1711 and 15th March 1732, promulgated in consequence of the abuse practised by the feudal landholders of holding their lands for sale, which prevented the speedy settlement of the province, the colonists at that period not having the means of advancing or of obliging themselves to pay a capital sum; I am of opinion that those *arrêts* are in force as to all seigneuries, concerning which no commutation has been effected under the Tenures' Act.

4. Are you aware of any proceedings that have been had in the courts of Canada to enforce those arrêts, or any applications to the Governor on the same subject; if so, can you state the result, and whether there has been a uniform course of decision on the subject?—I am not aware of any application to the Governor to enforce those *arrêts*, but I know that proceedings under them have been had in the Court of King's Bench for the district of Montreal, and I have reason to believe the opinion of that tribunal was, that the *arrêts* were in force. It cannot however be said that there has been a uniform course of decision on the subject, because I doubt whether the arrêts were more than two or three times the subject of discussion. As to the *taux ordinaire*, it would be difficult to define it, for it would appear to be unjust, considering the changes in the value of money, to compel the seigneur to accept now a rent which 150 years ago might have been a just equivalent, but which at this time would be a merely nominal consideration.

5. Do you think that, under the present state of the law, it is possible for seigneurs and censitaires to make voluntary commutations where the seigneur has not commuted with the Crown?—Under the present state of the law in the province, I do not think that, where the seigneur has not commuted with the Crown, the seigneur and his *censitaire* could voluntarily commute. Such a proceeding would be tantamount to a *démembrement de fief*, and lead to a forfeiture in favour of the Crown of the seigneur's feudal interest in the land.

6. Supposing the power not to exist at present, would it, in your opinion, be desirable to give it to them; and in such case what would you do with respect to the rights of the Crown, whose interest in the quints that might thereafter become due would be diminished; and what, with the rights of the seigneur's wife and heirs, liable to be affected by the commutation?—I fear that the interests of the Crown, with regard to quints, could not be secured by allowing the seigneur to commute with his *censitaire* without a previous commutation of the King's rights. As respects the rights of the seigneur's wife; in either case it would be difficult, if not impossible, to devise any remedy except that of compelling the seigneur; if he had not prevented the necessity of so doing by his marriage articles, to invest part of the price of commutation in real estate, to be subject by representation to the same burthens as

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would have attached to the territorial property. Heirs-at-law, under our modified system of law, the *légitime* having been abolished, have no indefeasible rights, and therefore commutation on the part of the seigneur never could be disturbed by those claiming his succession.

7. Do you think it desirable to grant to the *censitaire* the right of demanding commutation even where the seigneur is not disposed to commute?—I think it is desirable that the *censitaire* should chiefly, in all towns and villages, have the right of demanding a commutation, notwithstanding any reluctance of the seigneur to grant that advantage.

8. Would it be difficult to guard this right so as to secure the seigneur from injury through too low assessment of his property by experts or juries, mostly belonging to the class of *censitaires*?—In my opinion it would be difficult to guard the just interest of the seigneur, if the assessment of the indemnity due to him were left to experts or juries mostly belonging to the class of censitaires. I am inclined to think that the finding of the indemnity could be more safely trusted to three sworn *experts*, one chosen by the seigneur, another chosen by the censitaire, and a third by a court of justice, judge or other officer of high standing.

9. Under the present Tenures' Act would it be possible for any religious bodies (in mortmain) to commute with the Crown? If not, are the *censitaires* of such seigneuries shut out from any hope of benefit under the present Tenures' Act; and would it not be proper to afford them the means of commuting?—Under the present Tenures' Act I think it more than doubtful if religious bodies holding seigneuries in mortmain, and therefore not having the right of free alienation, could commute with the Crown; and as the *censitaires*, having lands in those seigneuries, would thus in all probability be deprived of the advantages within the reach of *censitaires* holding of other *seigneuries*, I think it proper that these obstacles to the emancipation of lands situated within seigneuries, owned by religious communities, should be removed.

(signed) *C. R. Ogden*,
Attorney-General.

Quebec, 26 September 1836.

— No. 3. —

Solicitor-General's Evidence.

No. 3.

1. Does any doubt exist as to the Provincial Act 9 Geo. 4, c. 77, relative to tenures being in force in the province, and what is your own opinion?—Doubts do exist as to the Provincial Act 9 & 10 Geo. 4, c. 77, being in force in this province.

In venturing my humble opinion on this important question, I do so with a great deal of diffidence, because I am aware that it is at variance with judicial decisions, which, from the great learning and ability of those by whom they have been given, are entitled to the highest respect. The bill, which became the 9 & 10 Geo. 4, c. 77, was presented for His Majesty's assent, and reserved for the signification of His Majesty's pleasure thereon, on the 14th March 1829. On the 11th May 1831 it was assented to by His Majesty in Council. The Royal assent was signified by the proclamation of his Excellency the Governor-in-chief on the 1st September 1831.

A period then of more than two years elapsed between the time the bill was presented for His Majesty's assent and the date of the Governor's proclamation. Such a bill therefore, according to the 32d section of the Imperial Act of 31 Geo. 3, c. 31, cannot have any force or authority in this province, for in the express terms of that section, "no such bill which shall have been so reserved as aforesaid shall have any force or authority within either of the said provinces respectively, unless his Majesty's assent thereto shall have been signified as aforesaid within the space of two years from the day on which such bill shall have been presented for His Majesty's assent to the Governor," &c. &c.

But it is said that, notwithstanding this section, the Royal assent was duly given to the bill in question under and by virtue of the Imperial Statute 1 Will. 4, intituled, "An Act to explain and amend the law relating to lands holden in free and common soccage in the province of Lower Canada." This Act, after reciting the 43d section of the 31 Geo. 3, c. 31, and the 8th section of 6 Geo. 4, c. 59, and stating that doubts had arisen how far it was competent to His Majesty, with the advice and consent of the Legislative Council and Assembly of Lower Canada, to make and enact any laws or statutes establishing rules respecting the descent of lands held in free and common soccage, &c. &c., and that it was expedient that such doubts should be removed, proceeds thus: "Be it therefore enacted, &c. that it shall and may be lawful for His Majesty, his heirs and successors, to assent to or authorize his or their assent to be given to any bill or bills, which hath or have heretofore been, or which may hereafter be passed by the said Legislative Council and Assembly for regulating the descent, grant, bargain, &c. &c., of any lands which are now, or which may hereafter be holden in free and common soccage within the said province of Lower Canada, &c. &c., any repugnancy or supposed repugnancy of any such regulations to the law of England, or to any of the provisions in the before recited Acts of Parliament, or either of them, contained to the contrary in anywise notwithstanding."

It would seem from the preamble and enacting part of this statute, as well as from the clauses of the 31 Geo. 3 and 6 Geo. 4, which it recites, that its sole object was to remove all doubts as to the power of the subordinate legislature of the province to make regulations repugnant to and at variance with Acts of the Imperial Parliament respecting the descent, &c. &c. of lands in free and common soccage, without intending any alteration as to the period within

within which the Royal assent should be given to any bill from the Legislative Council and Assembly, containing such regulations, and reserved by the Governor for the assent of His Majesty; no intention to make such alteration is expressed. If by the 1 Will. 4 it had been intended to make any such alteration, it is natural to suppose that that Act would have also recited the 32d section of the 31 Geo. 3, or would at least have made mention of it; no such intention can be implied, for there is nothing in the 9 & 10 Geo. 4 which is either repugnant, or can be supposed to be repugnant, to the provisions of the said 32d section.

To say that we must presume that the Imperial Parliament must have known of the existence of the bill, now the 9 & 10 Geo. 4, and therefore intended to make it lawful for His Majesty to assent to it, would be to fall into a *petitio principii*. But it is said that, by the 1 Will. 4, His Majesty was authorized to give the Royal assent to any bill or bills which had theretofore been passed, and that therefore it was lawful for His Majesty to assent to the bill in question.

If it be considered that under the words "any bill or bills which hath or have been passed," the Royal assent could have been lawfully given to the bill in question, notwithstanding the lapse of more than two years, it must be granted on the other hand that under these other words, "any bill or bills which may hereafter be passed," the Royal assent may be as lawfully given to any bill of a similar character which may hereafter be reserved for His Majesty's pleasure, and may be allowed to remain quiescent for a similar period, or any indefinite period of time. The words of the enacting part of 1 Will. 4, are certainly as strong in a prospective as they are in a retrospective sense; the one interpretation necessarily implies the other; there is no medium. It would follow then as a matter of necessity that, with respect to bills of the description of the 9 & 10 Geo. 4, the said 32d section has been abrogated *in toto*.

But those who contend that the 9 & 10 Geo. 4 has the authority of law are not prepared to go thus far; and yet it is difficult to see how, upon their own showing, such a conclusion is to be avoided. They admit that the provisions of the said 32d section are of the utmost importance to the province. This section they say is not repealed, but an exception is made by the 1 Will. 4 in favour of the 9 & 10 Geo. 4. Where, it is respectfully asked, is such an exception to be found? Certainly not in the preamble, nor in the enacting part of the 1 Will. 4.

It may then, it is humbly conceived, be inferred that the 1 Will. 4 only gave to His Majesty the power of assenting to a bill or bills of the description of the 9 & 10 Geo. 4, such bill or bills being in every other respect susceptible of receiving such assent. Now, if it cannot be shown that an exception has been made in favour of the bill in question, it follows that it had ceased to exist as a bill when the 1 Will. 4 was passed. The limitation of time mentioned in the said 32d section had gone into operation, and had produced its effect with as much certainty as the limitation of time mentioned in the 31st section of the 31 Geo. 3, c. 31, would have done with respect to the right of His Majesty to declare his disallowance of a bill which more than two years previously had been assented to by the Governor, &c. &c.

If this be a correct position it must be also correct to infer from it, that it would have required express terms in the 1 Will. 4 to have called again into existence the bill of the 9 & 10 Geo. 4, cap. 77, and to have made it thus susceptible of receiving His Majesty's assent.

If the above objections can be considered as affording any reasonable ground for the doubts which exist as to the 9 & 10 Geo. 4, c. 77, being in force in the province, it is respectfully suggested that a declaratory law would be highly desirable to remove all uncertainty touching a question of so much importance to the holder of lands in free and common soccage.

2. Supposing that Act to be in force, does it, in your opinion, provide an efficient remedy for the alleged imperfections of the Imperial Tenures' Act, touching the descent, alienation, and transfer of lands held in free and common soccage?—I think it does.

3. It has been complained that the Tenures' Act was too favourable to the seigneur, and went to deprive the censitaires in any seigneury, of the advantages which they formerly enjoyed under an arrêt of the 6th July 1711, and another of 15th March 1732. To what extent are you of opinion that the arrêt went in securing privileges to the censitaires, as, for instance, the privilege of obtaining unconceded lands on the *taux ordinaire*; and further, are you of opinion that the said ordinances are at present in force in the province?—An arrêt of the 6th July 1711 made it incumbent on the seigneurs to grant perpetual leases to the *habitants* (*conceder*), of the lands which had been granted to them *à titre de seigneurie*. Those leases could be made *à titre de redevance* only, that is to say, subject to a perpetual seigneurial rent, *cens et rentes*, and to *lods et ventes* upon every mutation by sale, or by any act equivalent to a sale. The seigneur was not allowed to receive from the *censitaire* any sum of money as a consideration for such lease. If the seigneurs neglected to lease out their lands, the habitants were allowed to make a formal demand of them, and upon the refusal of the seigneurs to apply to the Governor-in-chief and the *intendant*, who were empowered to concede or lease out the lands demanded, subject to the same rights, *aux mêmes droits*, as those under which the other lands had been conceded, which rights were to be paid by the new *censitaires* to His most Christian Majesty, to the exclusion of the seigneurs.

The seigneurs having continued, notwithstanding this arrêt, to sell their uncultivated lands, *terres en bois de bout*, instead of simply conceding them *à titre de redevance*, it was enacted by the arrêt, dated the 15th March 1732, enregistered in the month of September following, that all sales made by seigneurs of waste lands, or *terres en bois de bout*, should be considered null and void, and that the *censitaires* should have a right of action to recover the

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sums paid in consequence of such sales. The other provisions contained in the preceding arrêt, were by this latter one confirmed and ordered to be enforced.

These arrêts have been considered by the Court of King's Bench for the district of Montreal, as being still in force in this province. I am not aware of any application having been made to the Governor to enforce the arrêt of 1711, nor do I think that if such an application were made it could be granted by him.

Prior to the conquest, such an application could only be granted by the Governor and the *intendant*, the highest judicial functionary in the colony, who, in that capacity, would, no doubt, have first declared the land demanded in concession by the *habitant*, to be forfeited to the King.

By the Provincial Statute 34 Geo. 3, c. 6, s. 8, all the powers of the *intendant* were vested in the Court of King's Bench in each district. I am informed that, in 1818, one *Lavigne* brought an action against a seigneuresse, to compel her to concede to him a farm, subject to the same rights as the other farms already conceded in the *seigneurie*. The court maintained the principle of the action, and admitted the parties to proof, but as it appeared in evidence that the plaintiff had already no less than four farms in the same *seigneurie*, the action was dismissed.

Somewhat about the same time, an action was brought under the arrêt of 1732, by one *Therien*, against a *seigneuresse* and her agent, for the purpose of setting aside the deed of sale of a certain farm.

The seigneuresse, with a view of evading the law, as it was stated, conceded a farm, *en bois de bout*, to her agent, that the agent might sell it. The agent sold it to *Therien*, and the latter brought his action to have the deed of sale set aside. The court admitted the parties to proof, but as the knowledge of the facts alleged rested entirely with the parties themselves, the plaintiff was driven to the examination of the defendants upon their oaths, by a proceeding well known in our law, that is, by exhibiting interrogatories upon *faits et articles*. The defendants resisted the examination, but the court, upon view of the interrogatories, declared them to be pertinent and relevant, and ordered the defendants to answer.

This judgment was appealed from and was reversed, because it was held by the Court of Appeals that the defendants being accused of fraud, could not be compelled to commit themselves, upon the principle that *nemo tenetur prodere se ipsum*. The action therefore failed, not because it was unfounded in law, but because there was no evidence to support it.

As a further proof that those *arrêts* are still in force, I beg leave to observe, that there is another arrêt of the 6th July 1711, which was made entirely for the purpose of protecting the interest of the seigneurs.

It frequently happened that several *habitants*, after having obtained deeds of concession, satisfied themselves with cutting down a few acres, imagining that such an act of possession, combined with their titles, was sufficient to constitute them proprietors, and gave themselves no farther trouble about the cultivation of the soil. As this evil retarded the progress of agriculture, and the advancement of the colony, it was provided by the last-mentioned arrêt, that all *habitants* who did not reside on the lands which had been ceded to them, should be held within a year and a day to keep *feu et lieu* thereon, and to improve the same; and failing so to do, that such lands should be forfeited to the seigneur, and re-united to his domain.

The last-mentioned arrêt was frequently acted upon before the conquest, and has been frequently enforced since.

As this law in favour of seigneurs has been hitherto maintained, it is but just that the laws in favour of the *habitants* should be considered in force also.

4. Are you aware of any proceedings that have been had in the courts of Canada to enforce those arrêts, or any applications to the Governor on the same subject; if so, can you state the result, and whether there has been a uniform course of decision on the subject?—This question is answered by my answer to the preceding one.

5. Do you think that under the present state of the law it is possible for seigneurs and censitaires to make voluntary commutations where the seigneur has not commuted with the Crown?—I do not. Such voluntary commutations would be null and void. The seigneur cannot diminish the rights of the Crown by commuting with the *censitaires* according to the principle "*Le vassal ne peut pas se jouir de son fief.*"

6. Supposing the power not to exist at present, would it, in your opinion, be desirable to give it to them, and in such case what would you do with respect to the rights of the Crown, whose interest in the quints that might thereafter become due would be diminished, and what with the rights of the seigneur's wife and heirs, liable to be affected by the commutation?—From what I have said in my answer to the preceding question, it would be wholly subversive of the rights of the King, as sovereign lord, *seigneur suzerain*, and therefore not desirable to grant to the seigneurs and censitaires the power of making voluntary commutations amongst themselves, without a commutation between the Crown and the seigneur, because, without such commutation, the transactions between the seigneurs and the *censitaires* would, by extinguishing the *censive*, leave nothing to His Majesty as *seigneur dominant*, for there would be no longer a *seigneur* under him, and of course there would be no quints to be disposed of.

If commutations were to be made between His Majesty and the seigneurs, I think that the monies arising from such commutations ought to be applied towards the administration of justice, and the support of the civil government of the province. In commutations between a seigneur and his censitaires, I see no other method of protecting the rights of the seigneur's wife, whether as to dower, or to her *reprises matrimoniales*, for which she has a mort-

gage

gage from the day of her marriage, than to make it necessary that a *tutor, ad hoc,* should be appointed to her, whose duty it would be to see that the sums of money arising from commutation should be so invested as to secure her rights, and those of her children inheriting from her.

7. Do you think it desirable to grant to the *censitaire* the right of demanding commutation, even where the seigneur is not disposed to commute?—I should not wish to venture my humble opinion upon a question affecting the rights of property to so great an extent; it is one which, above all others, seems to call for the exercise of the wisdom of the Legislature.

8. Would it be difficult to guard this right so as to secure the seigneur from injury through too low assessment of his property by experts or juries mostly belonging to the class of *censitaires*?—If such a right of demanding a commutation were granted to the *censitaire,* I think the interests of the *seigneurs* might be secured from injury by the selection of proper persons to act as *experts* (whom I would prefer to jurors) from adjacent seigneuries, not of the class of *censitaires,* or from the townships or cities, according to the situation of the parties. Two would be chosen by the parties commuting, these two would name a third *expert*; they would be governed in their estimate by the recent sales of lands of a similar description, either in the seigneurie, or in the adjoining seigneuries, and by the average rents, issues or profits, during the last 10 years, the state of the buildings, &c. I think an appeal ought to be allowed from the decision of the experts to the Court of King's Bench.

9. Under the present Tenures' Act, would it be possible for any religious bodies (in mortmain) to commute with the Crown?—I do not think it would.

10. If not, are not the *censitaires* of such seigneuries shut out from any hope of benefit under the present Tenures' Act, and would it not be proper to afford them the means of commuting?—They are; and I think it would be proper to afford them the means of commutation by an Act of the provincial Parliament, which would empower religious bodies holding seigneuries to commute with the Crown, and would provide for the investment of the commutation monies paid by the censitaires, in order to secure to the public the continuation of such institutions.

Montreal, 30 August 1836. (signed) *M. O'Sullivan.*

—No. 4.—

Mr. *Quesnel*'s Evidence.

9 August 1836.—*F. A. Quesnel,* Esq., called in; and Examined.

Have you thought of any principle on which it could equitably be made compulsory on the seigneur to commute with his tenants?—I should object to any law rendering commutation compulsory on either party, either the seigneur or the censitaire, at any rate until the effect had been tried of permitting both to enter into voluntary agreements for the purpose. On the same principle, I cannot approve of that provision of the Imperial Tenures' Act which obliged seigneurs who had previously commuted with the Crown to commute afterwards with any of their censitaires who might demand it.

Are you of opinion that the local Act of 9 Geo. 4, c. 77, changing the effect of the Imperial Tenures' Act, is invalidated by the circumstance of the Royal assent having been given after the time prescribed by law in other cases?—The Court of King's Bench for the district of Montreal has expressed a contrary opinion; for in the case of Wright *v.* Spark, decided, I believe, in April 1832, it recognised the validity of the Act.

Supposing the local Act of 9 Geo. 4, c. 77, to be in force, would it provide a sufficient remedy for the objections which have been taken to the effect of the Imperial Statute on the incidents of property, such as descent and alienation?—I believe it would.

Has anything been done by the Legislature, since the Report of the Committee of the House of Commons in 1828, to render mortgages special?—Nothing as to the province generally. Mortgages have been made special in the townships by a provincial Act for the purpose.

Has the Act 9 Geo. 4, c. 20, for the extinction of tacit incumbrances, been called into beneficial operation?—It is in daily operation, and very beneficial. The only objection is the costs.

What is the usual amount of costs?—From 12*l.* to 25*l.*, according to circumstances.

To what extent are incumbrances discharged by the process prescribed by this statute?—All the incumbrances (the dower excepted) existing at the period of the last sale of the property, are discharged by the operation of the said Act.

Is it the case, that as a sale is necessary to the operation of the statute, it can only be employed for the security of a purchaser, and cannot be used, when property has been long in the same hands, to give any assurance to a lender of money on mortgage?—It is so. Nor could fictitious sale be resorted to for avoiding the difficulty, as the process would carry with it a payment of "lods et ventes."

Can you state the objections that have been taken to establish registry offices, except in the townships, and your own opinion as to any means of obviating those objections?—The principal objections are, the necessity of altering the old laws of the country, which by many are thought beneficial, such as the law of dower and general mortgages, the embarrassment

TENURES.

No. 4.

created by a new system, which even in France is allowed to be intricate, the expense attending the same, the danger of exposing private transactions and family compacts to the public eye, and many other reasons which I do not at present recollect. My own opinion is, that a registry law would be beneficial, but that the Canadian population is not at present sufficiently prepared for its reception. Such a law can only be passed by the local legislature; and I believe that few years will elapse before the majority will be convinced of the necessity of adopting a measure of this nature.

Do you consider the two arrêts of 1711 and 1732 to be in force in the province?—They have been laws, but have fallen into disuse.

Have there been many cases in which censitaires have preferred claims in court under those arrêts and failed?—I do not recollect.

Have there been any such cases in which the censitaires have succeeded, or is the course of decision in the courts uniform?—Not to my knowledge.

Do you consider that "lods et ventes" were intended, as they are now usually claimed in practice, to be chargeable on the value of improvements?—I do; and I think that the low terms on which lands were originally conceded are explained by this.

If you had an Act passed by which the seigneurs and the censitaires would be empowered to commute by agreement, how would you provide for the quint of the Crown?—I would give it up.

After these commutations, on what tenure would you have the enfranchised land held?—I would not have the English laws introduced.

Setting aside descent and the rights of dower, will you state what difference there is between franc-alleu and free and common soccage, as to tenure?—There would be little if, besides the rights of descent and dower, the property held in common soccage could be transferred and mortgaged according to the French laws.

What is your opinion of the existing provision for a Court of Escheats?—I think the principle on which the Court of Escheats was established not wrong, provided it were enforced with lenity, as under the French law; but I would have the rules fixed, and not left to the discretion of the attorney-general.

Is there anything you would wish to add or alter in reference to the opinions expressed in the Report on Tenures, in which you concurred as member of the committee of the House of Assembly in 1834?—No.

Can you state whether the English laws of descent and conveyance are considered in force in the townships?—It depends on the question, whether the provincial Act of 9 Geo. 4, c. 20, is in force.

What is your opinion generally as to the system of laws in force in the colonies, or is there any amendment of a general character you think called for?—As to our civil laws, I am of opinion that some beneficial changes could be introduced, particularly as to the law of dower. The English criminal laws require a reform; and a law of bankruptcy adapted to the situation and trade of the country is much desired by all classes of commercial men.

In the system of judicature, is there anything which you think calls peculiarly for amendment?—I approve generally of the Judicature Bill which was before the Legislature last session, and which was framed on one I had myself prepared.

Did you then contemplate a repeal of the provisions for an appeal to the Privy Council, without replacing them in some other way?—No. If that be the case, I should suppose it must be by mistake.

Did you include in your bill all the amendments you thought the administration of the law required?—I did.

What do you think as to the fees and costs in Lower Canada?—I think the disbursements not proportioned to the means of the province, or the importance of the causes. The judges who have all the responsibility, have a fixed salary, sufficient indeed to the purpose, while the prothonotary, the sheriff and other officers of the court, whose responsibility is much less and duties less arduous, may receive half as much again.

Has it occurred to you that, as to the prisons, any reform is necessary?—They require system, in which at present they are defective. I should be favourable to the introduction of the plan of penitentiaries.

Were you in the provincial Parliament when the Representation Bill of 1829 was passed?—I was.

Do you think it requires improvement?—No. I agreed in it. Every individual is represented in this province as fully as in England. The majority elects, as everywhere else; and I do not conceive upon what principle and by what laws the minority, however respectable it may be, can be converted into a majority.

— No. 5.—

Attorney-General's REPORT on COMMUTATIONS in *Beauharnois*, &c.

Sir, Quebec, 13 October 1836.

No. 5.

I HAVE the honour to acknowledge the receipt of your letter of yesterday's date, referring to a statement which is said to have been made, "that no seigneur has yet commuted the settled parts of his seigneury, but that in St. Ann's and Beauharnois it is only of the unsettled parts that the tenures have been converted, so as to evade the right which the Tenurest Act

Act would confer upon the censitaire to demand an enfranchisement from the owner of a seigneury released from its obligations to the Crown," and acquainting me that you are directed by the commissioners of inquiry to request that I would furnish you, for their information, with a report on the subject, stating how the fact is, and adding any explanation it may seem to me to require. In compliance with the request thus conveyed, I have the honour to acquaint you, for the information of the Royal commissioners, that the statement mentioned in your letter, so far as the same has reference to the commutation of the fief and seigneury of Beauharnois (of which I have a personal knowledge), is incorrect, and that it was not limited to the unsettled parts of that seigneury, nor was the tenure so converted as to evade the right of the censitaire to demand, under the Tenures' Act, an enfranchisement from the seigneur, but, on the contrary, was made to embrace not only the unconceded parts of his seigneury, amounting to about 120,000 arpents, but likewise the *droit de quint*, the *droit de relief*, and all other feudal rights and burthens to His Majesty upon or in respect *of the said fief and seigneury* of *Villechauve* or *Beauharnois*, now called *Ann-field*; and that Mr. Ellice, the present seigneur, his heirs and assigns, and all and every the lands comprised in the said fief and seigneury, have been released from the said *droit de quint, droit de relief*, and all other feudal burthens to grow due thereupon to His Majesty, his heirs and successors, of what nature or kind soever, *from henceforth for ever*. It is therefore manifest, that in respect of the commutation of the seigneury of Beauharnois, there has been no evasion of the right of the censitaire to commute with the seigneur, the application for which is now, and has been for the last four years, open to him under the Act in question.

As respects the commutation of St. Ann's, I have only to observe that it took place before I had the honour of holding the office of attorney-general; but if I am correctly informed, and I have no reason to doubt the accuracy of the information, it only had reference to the augmentation of the seigneury of St. Ann's, which was a distinct territory held by a distinct title, and in which no concession had been made, so that in this case, there being no censitaire, there could be no evasion of his rights.

I have, &c.

Thomas Frederick Elliot, Esq. &c. &c. &c. (signed) *C. R. Ogden*, Attorney-General.

— No. 6. —

RETURN of all COMMUTATIONS under the Act 6 Geo. 4.

CHANGES of TENURE effected under the 6 Geo. 4, c. 59, commonly called the "Canada Tenures' Act."

NAMES of the GRANTEES.	Date of Letters Patent.	DESCRIPTION OF THE PROPERTY.	Previous Tenure.	Amount paid for Commutation. £. s. d.
Hon. Edward Bowen	25 July 1829	Lot of ground, Upper Town, Quebec	à titre de cens	25 — —
Hon. John Hale	11 Aug. —	Ditto - - - ditto - - -	- ditto -	135 — —
Robert Shaw	8 June 1830	Ditto - - - ditto - - -	- ditto -	62 10 —
Alexander Simpson, esq.	27 Aug. —	Lot of land, St. Louis-road, Quebec	- ditto -	120 — —
Hon. John Hale	28 Dec. —	Fief and seigniory, St. Ann's	à titre de fief-	70 11 3
Robert Patterson, esq.	8 Feb. 1831	Lot of ground, Upper Town, Quebec	à titre de cens	54 18 9
B. C. A. Gugy, esq.	19 Aug. —	Ditto - - - ditto - - -	- ditto -	88 8 8
Eliz. Newton and others	14 Sept. —	Lot of ground, Lower Town, Quebec	- ditto -	150 — —
Elzear Bedard, esq.	19 April 1832	Lot of ground, Upper Town, Quebec	- ditto -	7 10 —
Edward Burroughs, esq.	3 May —	Ditto - - - ditto - - -	- ditto -	12 10 —
Jean Baptiste Giroux	30 May —	Farm at Sans Bruit, Quebec	- ditto -	72 — —
John Munn	21 Feb. 1833	Lot of land, St. Roch's suburbs, Quebec	- ditto -	120 — —
Edward Ellice	10 May —	Seigniory of Villechauve or Beauharnois, now called Annfield.	à titre de fief-	1,622 19 10½
Louis Lacroix	30 July —	Lot of land, St. John's suburbs, Quebec	à titre de cens	40 — —
William Price, esq.	1 Nov. —	Lot of land, Wolfesfield, near Quebec	- ditto -	145 — —
Messrs. Grant & Greenshields.	21 Nov. —	Ditto, and Beach Wolfe's Cove, Quebec	- ditto -	180 — —
Joseph Hove Shaw, esq.	8 Dec. 1834	Lot of land, St. Foy-road, Quebec	- ditto -	76 — —
George Campbell	6 May 1835	Lot of land, St. Roch's suburbs, Quebec	- ditto -	300 — —
Thomas Hunt & Elizabeth Chillas.	27 June —	Certain lots of land, Lower Town, Quebec.	- ditto -	286 10 6
Robert Wood	10 July —	Land & premises, Upper Town, Quebec	- ditto -	220 — —
John Fraser, esq.	10 Nov. —	Land & beach, L'ance de Mères, Quebec	- ditto -	222 8 9
Gustave Joly, esq.	21 Dec. —	Seigniory of Lotbiniere	à titre de fief-	432 3 7
		TOTAL CURRENCY - - £.		4,443 11 4½

— No. 7. —

TENURES. SHERBROOKE PETITION ON STATE OF THE TOWNSHIPS.

No. 7

To the Royal Commissioners appointed to inquire into the Condition of Lower Canada, &c. &c. &c.

The Petition of the Executive Committees of the Constitutional Associations of the Northern and Southern Divisions of the County of Sherbrooke,

Sheweth,

That while your petitioners, representing the loyal population of this county, composed almost entirely of persons of British and American origin, yield to no other body of their fellow-subjects in attachment to the British constitution, and in a desire to continue connected with the mother country, they nevertheless deem it not incompatible with their allegiance, freely to make known their conscientious opinions, and to advocate any measures of constitutional reform which they may consider necessary.

Sympathising as they most cordially do with their brethren of the Constitutional Associations of Quebec, Montreal, and other parts of the province, in their several complaints relative to the existing state of public affairs, they nevertheless deem it uncalled for here to advert to those general grievances, oppressing them as well as the other friends of the Government in this province, which have been so well explained to your Royal Commission by some of those associations.

There are, however, several other subjects of complaint of a local nature affecting the eastern townships in particular, which your petitioners consider themselves called upon by their duty to this their adopted country, to make known to the high functionaries deputed by His Majesty to inquire into the same.

1. They beg leave to represent that the share which the eastern townships enjoy in the representation of the province, is very unfairly apportioned to the extent of country and population which they contain, as compared with the more favoured parts of the province having French inhabitants: a fact which they conceive will be apparent when it is considered that only ten representatives are allotted by the law as it now exists, to the large territory comprised within the limits of the eastern townships, in which the county of Sherbrooke in particular contains no less than 32 townships, containing a large population.

2. They would call to your notice that the wellbeing of this part of the province demands the permanent establishment of a local court of judicature, instead of its being, as at present, a temporary provision, renewed from time to time, and exposed at the stated periods of its expiring to some degree of uncertainty in its renewal; a state of things which checks that improvement in the country, and increase in the value of property, which a more stable system for the administration of justice would undoubtedly occasion. The non-continuance even of this temporary provision has been but recently threatened in the House of Assembly, by the loss of the bill which would have extended its duration for a further term of years, though your petitioners can scarcely allow themselves to apprehend that the representative branch of the legislature can seriously wish to annul this district, or re-annex it to other distant ones, and thus in either case deprive them of a due provision for the administration of justice.

3. Your petitioners consider as of nearly equal importance with the subject last adverted to, the establishment of registry offices in the several counties of the district of St. Francis; they too are only founded upon temporary acts, and on them depend the prosperity and advancement of this portion of the province, in as essential a degree as upon the local administration of justice. Your petitioners however have not yet had any well-grounded reason for apprehending the non-renewal of the Act in question, and trust that so glaring a departure from good government will not be contemplated by the Legislature.

4. The hostility evinced by the inhabitants of the province of French origin, and particularly by the branch of the Legislature in which that class has a preponderance, towards the Imperial Act of Parliament, commonly called the Tenures' Act, an Act which all other classes in the province consider a boon from the mother country, as confirming the existence of the freehold tenure, fills your petitioners with reasonable alarm, lest any modification should be made therein, tending to deprive them of the advantages of the freehold, and to subject them, even in the slightest degree, to the exploded usages of the feudal tenure prevailing in the French part of the province. On this head they conceive that they are principally concerned, that this enactment was wisely made by the British Legislature, to adapt the tenure of the townships to its inhabitants, who, though mixed in their origin, were equally versed in enlightened forms of government, and that the manner in which their French fellow-subjects oppose its existence is a captious interference on their part, to sacrifice the wishes of this community chiefly interested therein to their own prejudiced and national views.

5. Your petitioners also think themselves authorized to complain of the same class of their fellow-subjects, and of the body in which they are principally represented in their unconstitutional efforts to annul the charter granted by the Imperial Land Company. In this likewise they deem their individual interests to be concerned, more exclusively if possible than in the subject comprised under the fourth head, and they have no hesitation in declaring their opinion, that no event has occurred since the settlement of the eastern townships,

so

so conducive to their rapid advancement, as the formation of the said company. Through their exertions the interests of agriculture, emigration, internal commerce, the settlement of the country, and the improvement of internal communications, with many other objects of local importance, will be forwarded, while the disadvantages of the monopoly vested in them, exist only in a commodity of little or no present value. The lands possessed by the company in question are almost exclusively situated in the counties of Sherbrooke, Stanstead and Shefford, a large majority of whose inhabitants are decidedly favourable to its existence; they possess but a few acres in the French part of the province, acquired as private individuals through the ordinary process of negotiation; yet are the inhabitants of the latter those who are made, through their representatives, to protest against the company in question. TENURES No. 7.

6. The fact is further adduced as a grievance by your petitioners, that the several applications made to the Legislature by the inhabitants of these townships, for charters for the different railroad companies, which were in contemplation, were rejected by the House of Assembly, although the works were to be completed at the expense, not of the province, but of the petitioners, and nothing more was asked for than the mere charter. The inhabitants of these townships, while they have failed to imbibe revolutionary doctrines from their southern neighbours, have nevertheless learnt from that source that it is the right of a free people to put into operation undertakings for their local benefit when unanimously desired, and chargeable only on their own resources.

7. It is a cause of dissatisfaction to your petitioners that the Act renewing the tax upon emigrants has received the sanction of two branches of the Legislature, and is likely to become part of the law of the land. They regard it as an encroachment upon the liberty of the subject, effected in the only part of the province and of the North American continent not immediately interested in the course of emigration, to the prejudice of every other portion of His Majesty's American dominions. They feel that this rising part of the province is essentially injured by this enactment, and they earnestly request your Royal Commission to remonstrate with His Majesty's Government against the continuance of so partial and unjust a measure adopted at its suggestion.

8. The Code of Civil Law to which your petitioners are subject, as inhabitants of the province of Lower Canada, being principally founded upon "The Coutume de Paris," now discarded from the statute book of the nation from whom it was derived, does not accord with the ideas of your petitioners, reared in the more enlightened schools of Great Britain and America. They are convinced that many of its enactments tend to retard the progress of civilization, to discourage the spirit of enterprise, to impose burthens and restrictions upon property, to mystify and confuse the titles to real estate, and to be often opposed to the principles of equity.

These several local grounds of dissatisfaction, originating principally in the popular branch of the Legislature, your petitioners take the liberty of representing to you, His Majesty's commissioners, in the hope that you will take them into your serious consideration, and that the steps which you, in your wisdom, may think necessary for their redress, may be included in any system of provincial reform which you may recommend in your capacities as advisers of His Majesty.

It may perhaps be considered inconsistent with the respect which is due from your petitioners to the Royal authority with which you are clothed, if they presume to suggest any plan for that redress, but whilst they disclaim the least intention of so offending, they beg leave to state that, anxious as they are to retain the essential principles of the present constitution, and to remain connected with the parent state, yet they cannot but perceive a distant possibility that their being joined under one local government with their fellow-subjects of French origin will be found incompatible with peace and unanimity and good government. In this case they avow that a dependency in some other form upon the mother country would have their preference, whether as a distinct province, or connected with some other or all of the British Colonies of North America.

And your petitioners, as in duty bound, will ever pray.

(signed) *Samuel Brookes*, President.
T. S. Walton, Sec. S. D.

— No. 8. —

SHERBROOKE PETITION ON STATE OF THE TOWNSHIPS.

To the Royal Commissioners appointed to inquire into the Condition of the Province of Lower Canada, &c. &c. &c. No. 8.

The Petition of the Executive Committee of the Constitutional Association for the Southern Division of the County of Sherbrooke,

Sheweth,

That we your petitioners were honoured with your reply of the 28th March last to our petition, and have endeavoured to the best of our ability to act upon the suggestions contained therein, by "the collection of the fullest information procurable on the population of

TENURES.

No. 8.

that part of the province, as well as any practical examples of the inconveniences said to be felt there from the existing system of civil law."

The population of this county amounted, in the year 1831, to 6,814 souls, according to the census then taken, to which must now be added, according to the best estimate the committee has been able to form, 8,937, of which number at least one-half has accrued during the present year, making a total at the present moment of 15,751. Referring, however, to a larger share in the representation, based on the great territorial extent of this county, to which this statement of the population is intended to lead, we are aware that it would not produce any decided or immediate result, for the increased number of our representatives would still be lost in the overwhelming numbers of a hostile body; but a perfect remedy being wanting, it would effect a partial one to the defects of which we complain.

With regard to the injurious influence of the French civil law upon the interests of this part of the province, we beg to remark that the inhabitants are principally composed of persons of British and American origin, who naturally regard its provisions, belonging to the unenlightened age of a people ever less enlightened than themselves, with repugnance. The extraordinary anomaly exists here of the people being ruled by laws of which both the government (it is believed) and the governed disapprove, where, while both the sovereign and the subject are of British descent, a system of judicature is borrowed from a French "*coutume*," now obsolete, contrary to the wishes of all concerned, and this merely because the said laws are guaranteed to a conquered foreign portion of the inhabitants, occupying a distinct part of the province.

Among the many inconveniences arising from this code of laws, we have to point out in particular the effect of the widow's dower and rights of minors upon real estate, from which it cannot be freed by any existing process, neither are there any certain means of ascertaining that such exist. In this way *bonâ fide* purchasers may be ejected from possessions, the validity of the title of which they had adopted every possible step to ascertain, and the settlement of the country materially checked in consequence. This is an evil very sensibly felt in these townships, in which the inhabitants, deriving their origin as above mentioned, never contemplated the existence of such an enactment in British territory, and have unconsciously become liable to its inconvenience.

Upon the subject of municipal institutions, for the management of the internal affairs of the chief districts of the province, our best acknowledgments are due for your inviting its discussion. We humbly conceive, with little hope however of deriving so advantageous a measure from the provincial legislature, that the formation of local councils, composed of several members, and nominated by the Crown, to whom should be entrusted the complete control of roads and bridges, and fences adjoining the same, the superintendence of police, founded upon rules framed by constituted authority, the conducting of the general sessions of the peace, and the usual duties of the magisterial office, would be productive of great and general benefit, particularly in the latter instances, as very great inconvenience has been repeatedly felt by the imperfect organization of our present courts of general sessions, by the consequent want experienced at the present moment in this immediate neighbourhood of qualified justices of the peace, and by the expense incurred by individuals in bringing offenders to justice.

We would not be understood to feel less alive to the other grievances to which our previous petition called your attention, nor to consider them as of minor importance than the subjects upon which they have here entered into further detail in compliance with your desire; on the contrary, we consider them more than ever important to the wellbeing of loyal British subjects in this province, and we avail ourselves of this opportunity of earnestly pressing them once more upon your serious attention, adding some further remarks upon subjects of local interest.

1st. The influence of Acts of a temporary nature will be found, we apprehend, to be productive of endless confusion and individual injury, and as particularly applicable to the eastern townships, we would enumerate those establishing the district of St. Francis, the erecting of courts for the trial of small causes, and the establishing of registry-offices throughout this country. In the latter case we are particularly sensible to the bad effects to be expected from its non-renewal, which, from the general hostility evinced by the House of Assembly to every measure tending to our prosperity, we have every reason to fear, as it will become a matter of doubt whether transactions which are now rendered legal under its provisions, would not bear a totally different stamp, and incur loss and ruin to an incalculable extent.

2d. The continued attempts of the House of Assembly to subvert the British American Land Company: with regard to this subject, we respectfully direct your notice to the stirring scene of business and prosperity that presents itself in every direction, and by which you are at this moment surrounded, to the thriving condition of our internal commerce, our farming interests, and all the respective branches of industry, to the recent acquisition here of a valuable emigration from the mother country, to the total absence of want or dependance upon charity among our population, to the abundance of money, and to the countless numbers of labourers employed on every side,—for all of which the country is indebted to the beneficial influence of a liberal land company; and while we respectfully ask whether a state of proportionate prosperity has presented itself to you in any other part of the Lower Province, we cannot hesitate to declare that should the Home Government allow itself to be influenced by these unjust attempts on the part of the revolutionary branch of the legislature, it will be considered by the inhabitants of these townships, who solely are concerned in the land company, a shameful neglect of their immediate and future welfare, and will tend greatly

greatly to weaken the feelings of loyalty and attachment to their Sovereign, which are at present their boast.

3d. The unjust stipulations of the Normal School Act, passed in the last session of the Legislature, are such as cannot but have attracted your attention. The extraordinary preference granted to instructors educated and examined at virtually French seminaries of learning, and the almost entire exclusion of those whose qualifications, often of the highest order, are derived from the celebrated institutions of Great Britain and America, is naturally looked upon with indignation by our population.

To avert these threatened and existing evils, we solicit your powerful aid and influence in recommending to the Imperial Government such measures as you may think most conducive to that end.

From the above statements, as well as from many other circumstances which must have come under your notice during your sojourn in the province, you will have perceived that the inhabitants of the British and French parts of the province form a union of too incongruous materials to lead to harmony and good understanding; and we deem ourselves called upon to repeat our opinion, that a complete and permanent cure for our wants and dissatisfaction will not be found in any less general measure than constituting us a distinct province, re-uniting the provinces of Upper and Lower Canada, or connecting under one government all the British possessions of the continent of North America; for, bound by the ties of loyalty to Great Britain, attached to her laws and institutions, and constituted her subjects by more binding obligations than the fortune of war, we have yet to be convinced of the expediency or justice of being in a great measure degradingly dependent upon a class of the inhabitants to whom none of these attributes belong.

(signed) *S. Brooks,*
President of the Constitutional Association of the Southern Division of the County of Sherbrooke.

J. M'Kenzie,
President Northern Division.

Sherbrooke, 10 Sept. 1836.

— No. 9. —

Evidence taken at *Sherbrooke.*

Sherbrooke, 10th September 1836:—Messrs. *Brookes, Mackenzie, Walton* and *Hale,* examined.

In what way does the law of dower operate to your inconvenience here?—A reference to the registry does not afford the means of ascertaining whether there be a charge of that description; there is a considerable difficulty in practice in learning whether land is chargeable with dower.

Can you state any instance?—A young gentleman is at this moment in Sherbrooke, who was on the point of completing the purchase of a property, when he discovered, just in time, that it was chargeable with dower.

Are you aware of the proceedings of a committee of the Legislative Council on this subject last session?—We are not.

In order to remove the evil of which you complain, is it your proposal that customary dower should be abolished or made subject to registry?—Either would equally remedy the obstruction to settlement. Objections might be entertained to the entire abolition of the right, and our opinions are not unanimous on the point; but the greater number of those who are now present would prefer that it should be abolished.

In the event of customary dower being abolished, could you substitute any other provision for the widow?—We think they should have a share of the inheritance, meaning thereby, a share of what the husband possesses at the time of his death.

Do you mean that this share should only be taken in case of the husband dying intestate?—We should wish it confined to what he dies possessed of, but a share of that to go to the widow absolutely, and by law.

Is there anything in the law of succession which you complain of or wish to see altered?—We think the nearly equal division among the children by the French law equitable, and adapted to the state of the country. A perfectly equal division is what we should deem best.

Will you explain somewhat more fully the complaint in the petition respecting the want of magistrates?—There is at present not a magistrate in the neighbourhood of Sherbrooke, except Mr. Justice Fletcher and Mr. Felton; and we scarcely know of any who have qualified in any part of the county within our acquaintance.

The magistrates have omitted to prove their qualification under the new Act passed last session, and they previously gave very rare attendance at the general sessions. The reason of both, we conceive, is the want of some competent presiding magistrate with sufficient professional knowledge. The remedy would be, the appointment of such a person to be chairman, with a suitable salary.

Would there be any objection to providing the salary by assessment?—No.

In reference to the observation in the petition respecting a municipal council, will you

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state your opinions on the mode of appointment for municipal officers?—We suggested appointment by the Crown, in reference to the council for the whole district, but township officers might be most advantageously named by election.

What are your opinions of the measure which has from time to time been before the Legislature for the establishment and election of parish and township officers?—We are not acquainted with the details, but we see no objection to the principle of such a bill, so far as regards township officers.

Has not the want of township officers been felt?—It may be difficult to state the precise extent, but the introduction of such officers would no doubt be an advantage.

What grounds have you for the apprehension that the laws of registry and the law under which the district court of St. Francis exists, will not be renewed at the expiration of the period for which they are passed?—We apprehend it from what we believe to be the hostility of the Assembly to this part of the province, and its disposition to discourage the influx of British settlers. Another reason is, the opposition we experienced last year to the renewal of the St. Francis District Act.

Would not the Judicature Bill, if it had passed, have superseded the necessity of the Act for your district court?—We believe it would.

Will you mention the grounds on which you allude to the hazard that the Land Company may be abolished?—We do not mean that we can suppose it likely, but we see great efforts making towards that end; and we presume, with some hope that they may succeed. We therefore express the feeling which their success would produce. Some of the organs of the party which aims at that object have openly avowed it. Sentiments of the same kind have appeared in reports of the debates in the Assembly. Their agent demands the subversion of the company. Hand-bills have been printed and distributed, warning persons against purchasing property from the Land Company, on the ground that they could not confer secure titles.

In respect to your complaints on the Normal School Act, have you good schoolmasters at present?—We have not for the elementary schools; at any rate not thoroughly educated; we may hope, however, to supply the defect from England. One of us is aware at this time of some teachers who are likely to come out. Many teachers also come into the province from the United States; some of them not adequate, but others very competent.

Into what number of school districts were you divided in this county under the elementary school Acts?—Between 50 and 60.

Do you think that you are likely to get desirable teachers for that number of schools?—From Scotland alone we apprehend that a sufficient number of even highly qualified persons might be derived.

How many of the elementary schools have been discontinued since the withdrawal of the vote?—In some townships almost a half; in others, scarcely any.

How is their continuance provided for?—By voluntary contributions.

Under ordinary circumstances, what proportion of children at the proper age do you think actually attend school?—Almost all. About the villages there are some idle people who do not send their children to school, but throughout the district, probably nine-tenths attend.

Do you think there would be any advantage in making it compulsory?—Decidedly not.

Do you think it preferable that instruction should be entirely gratuitous, or that the parents should pay something for the children they send to school?—We think that in general, though not without exception, there should be some payment by the parent.

Have you extended your inquiries on the increase of population to any other county than Sherbrooke?—No. We may observe, however, that the increase in other parts cannot have been proportioned to that in Sherbrooke last year; previously the increase may have been about commensurate. In the township of Barnston, in Stanstead, the population has been ascertained to have nearly doubled since the last census.

Is there much communication between Sherbrooke and Megantic?—Very little. Now and then an individual takes some cattle that way to Quebec.

How do you account for the election in the adjoining county of Stanstead being favourable to that majority of the Assembly which you describe as hostile to the interest of this part of the province?—The low qualification of electors, the attachment of recently arrived Americans to republican institutions, and the efforts of agents from a party in the Assembly to excite the population. The greater part of the population in Stanstead is from the United States.

What would be your expectations of the result of another election in Stanstead?—The present representatives would have less support than before, though they might be elected.

Besides the members for Stanstead, how do you account for the circumstance that two other members from the townships are of the same party as the majority of the Assembly?—One, the member for Missisquoi, was elected under the belief that he was a constitutionalist. The other is member for Drummond, a mixed county, in which the French Canadians out-number the British.

How often in the year, and where does the district court sit?—Five times at Sherbrooke, and twice at each of three other places in the district.

How long is it since there has been any general sessions?—Nearly a twelvemonth; but there seems no prospect of the ensuing one. The sessions ought to be twice in the year.

Do you mean the Commissioners to understand that you have not at the present moment any magistrate to whom you could resort for a warrant to take up a man under any offence whatever?—None, except Mr. Justice Fletcher, who declines to act, and Mr. Felton, who hitherto has seldom been here. We have heard that Stanstead is in the same condition.

What

What view do you take of the Small Cause Act of last session?—We approve it as diminishing expense; but we should think it better that the judges should be paid.

Has there often been vexations by an improper use of the visits of the small cause court?—A great deal has been said of that, but we do not know of much evil from it. There used to be oppressions under the commission courts, when the principal jurisdiction was at Three Rivers.

In reference to the opinion expressed in your memorial, that the Land Company is highly beneficial, what answer would you make to the broad objections commonly taken to conferring land on large corporate bodies?—They pay and expend too much to allow of their repaying themselves by any other means than selling their lands. The filling up of the remainder of the country is too distant a prospect for the company to hold back their property with that view, and their block is too extensive to admit of it.

The danger, if any, is remote, as well as doubtful; the advantage immediate and certain.

With respect to waste lands, and also to clergy reserves, have you any representation to make?—We have nothing particular to observe on that head.

Can you state whether any inconvenience has occurred as regards the conservation of the peace, by the stoppage of the supplies, from which source in this province expenses in that matter are defrayed?—The functions have gone on as usual. There must, however, have been advances from private individuals, independently of the stoppage of the salary of the clerk of the peace.

Furniture and fuel for the court-house, and charges for witnesses, must all have required expenses from time to time, without which the public business must have come to a stop.

Do you think it would be acceptable to the townships that a power should be conferred on them of electing officers for the purpose of rating themselves, each township having the option of rating itself or not?—We think it would be acceptable.

Supposing there were an executive officer appointed by the Government for each county, and a power amongst yourselves, as just proposed, of rating each township for local purposes, including the administration of justice, would that be generally acceptable to the inhabitants of the townships?—We think it would; probably the more so if the appointment of the executive officers required to be renewed from year to year.

Would it be desirable that religion should be connected with education by placing schools under the superintendence of ministers?—They should be eligible for trustees in like manner with laymen.

Do you believe that the emigrant tax has been imposed with a view hostile to emigration?—That is our impression.

Are you aware that it was imposed at the instance of the Government at home?—We are.

Do you then think that the object of the Government at home was hostile to emigration?—Not so; but we speak of the part that the Assembly took in it.

Being then of opinion that the law proposed by the Government for the benefit of emigration was passed by the Assembly, because they believed it would injure emigration, which, in your opinion, will really be the effect of the law?—Most of us think it will injure emigration.

Are you of opinion that the cause of emigration would be promoted if there were no provision for emigrants on their arrival?—There ought to be a provincial grant.

Would you prefer that the accommodation of emigrants should depend on the annual bounty of the Assembly, which you represent as hostile to the influx of British settlers, or rather on a lasting law?—We would prefer it by a lasting law, if the money were derived from some other source than the emigrants themselves.

But supposing that no appropriation could be obtained, either by permanent law or annual grant, from any other sources than the emigrants, would you have the existing provision or none?—Seeing the disadvantage which must accrue from the entire absence of a fund, we may somewhat differ in that point; the majority of us would be against the tax, but would rather trust to voluntary contributions, when a public grant should be wanting.

You doubtless remember that occasions have been known when 50,000 emigrants have passed through Quebec in a season, 10,000 have landed in a week, and 2,000 in a morning. These people do not remain at Quebec, nor many of them at Montreal, but they proceed to the townships, to Upper Canada, and often to the United States. Under these circumstances, do you conceive it likely that either the means or the charitable disposition of the two cities would long sustain private individuals in making adequate provision for the sick or the indigent among such multitudes as pass through them on their way to other places?—Emigration reached that great extent suddenly. If the tax had not been imposed the people might have organized themselves better, and established societies on a more systematic mode. We are not, however, unanimous on this point.

Does it occur to you that, for the encouragement of emigration, it is as important, or more so, that people should be able to have some feeling of security when they leave the other shore, as that in case of need the relief should actually be given; and if so, do you think that this object could be accomplished as effectually by trusting to the chances of private charity, as by a certain and legal provision, known to the emigrants before they start?—That is a consideration no doubt in favour of a provision by law.

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— No. 1. —

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Evidence by the *Attorney-general.*

Of what nature are the liabilities of "Tuteurs," which are said to create claims which take precedence of mortgages, or any other claims or liabilities of the same kind relating to married women or others; could not these claims or liabilities, whatever they be, be made special, or registered as well as mortgages?—The real estate of tutors to minors, and of curators to the property of absentees, of curators to persons of insane minds, and of curators to successions vacant for the want of known heirs, is hypothecated or mortgaged indefinitely for the payment of any balance of monies or assets which remain, or which should be in their hands at the time of the termination of their administrations. Such *Hypotheque* or mortgage, which is technically called a legal or tacit hypotheque, should date from the period when the administration is accepted, and that date is the day on which the oath for the faithful discharge of duty was administered by the judge making the appointment.

The preference in the matter of hypotheques depends wholly on priority of date, without reference to the fact of the conflicting claims being vested in married women or others; so that if the day of the taking of the oath of office by a tutor or curator preceded that on which the tutor or curator, by articles of marriage, settled any express pecuniary dower on his wife, the minor, absentee, lunatic, or those claiming a vacant succession would be preferred.

I consider that the indefinite extent of the liability, and the uncertainty whether at the end of the administration any liability at all should exist, evince the almost total inutility of special registration of such claims, although they are susceptible of registration in general terms; unless, indeed, it should be found expedient to limit to a certain amount, at the discretion of the judge, or by the assessment of the relations and friends, after whose advice the judge makes the appointment, the responsibility of the persons appointed to such offices.

There is, however, a difficulty connected with the subject independent of the safeguards to be afforded by registration, and that is the improbability, on the adoption of enregistration in other respects, that persons holding property on which other incumbrances could be discovered, would voluntarily accept of offices rendering their real estate liable for a debt which, even if it be definite, cannot be discharged before the lapse of their administrations; and I doubt whether it would be considered tolerable in any country enjoying free institutions, to make compulsory the acceptance of offices not only occupying the time, but encumbering the property of those subject to such constraint, which latter evil does not attend the execution of duties of justices of the peace, jurors, &c. &c., which necessity renders imperative.

It has occurred to me, and I believe a similar view, after much experience, has at last been taken of the subject by jurists in France, that some public officer should for a proper remuneration, and under such security as may seem advisable, be entrusted with the custody of the estates of minors and others labouring under disabilities, whose duty it should be to advance to the guardians or curators of minors and lunatics the means of supporting the persons under their charge, leaving that officer to retain the sole administration of the property of absentees, and of the successions of persons dying without heirs and intestate subject to account to those interested.

Quebec, 26 September 1836. (signed) *C. R. Ogden*, Attorney-general.

Secret Incumbrances.

1. Can you state what on the average is the expense of putting in force the Provincial Act 9 Geo. 4, c. 20, for the discovery of secret incumbrances?—I think the average expense of putting in force the Provincial Act 9 Geo. 4, c. 20, &c. is, as nearly as possible, 10*l.* currency.

2. Is this Act frequently resorted to, and by what class of persons?—This Act is often resorted to, but chiefly by persons purchasing property in the cities where mutations are more frequent, property more valuable, and where purchasers, having in general more means, are desirous of ascertaining the existence of any secret incumbrances before they risk their money in the improvement of their newly-acquired property. It is probable that upon an accurate

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accurate computation it will be found that, of the persons who avail themselves of the Act, the greater number, in some degree, are of the class of persons of British or of kindred origin.

3. Is it not the case that as a sale is necessary to the operation of the statute, it can be used indeed for the security of a purchaser, but can afford no assurance to a lender of money on mortgage, if the property continue to be in the same hands?—A sale, exchange, or other mutation of the property, is necessary to the operation of this statute, and, therefore, it can be used by those only who by such means have become invested with proprietary rights. In this country, at least in so far as the lands held by the seigneurial tenure are concerned, the rights of a lender of money under a notarial obligation consist of a mere lien, and is not real estate. It is clear, therefore, that such lender of money cannot employ the provisions of this statute in order to obtain any additional security.

There is a possibility of the lender's securing himself, though in an imperfect manner, and with a mere diminution of risk, by stipulating with the borrower that the mere loan of money shall not be paid until the borrower shall proceed under the Act to show that he has a title in his own person clear of all previous incumbrances. But it is to be observed, that these proceedings have in any case the effect only of purging away mortgages or hypotheques, and that they cannot destroy any right of property, or even a right of way, or other servitudes or easements, and, therefore, in the present state of things, as well a purchaser as a mortgagee may be defeated by rights of a person having an estate of prior date, which would continue unaffected by the judgment of confirmation obtained under the statute by a later purchaser or mortgagee.

4. If so, can you suggest any remedy for its defect in this respect?—There is no remedy which I can suggest for the defects of this Act in not foreclosing rights of property and discovering prior incumbrance, but that of establishing offices for enregistering titles and instruments creating mortgages or *hypotheques*. Some difficulties would necessarily be encountered in adapting the system of enregistration to the state of the laws respecting property in those parts where the seigneurial tenure prevails, or in making such changes in the laws themselves as will render the erection of register offices more easily practicable. That these objects are attainable I do not question; but the consideration of the difficulties to be overcome would occupy much time, and would demand the entering into many details not suited to the present occasion.

Quebec, 26 September 1836. (signed) *C. R. Ogden*, Attorney-general.

— No. 2. —

Evidence by the *Solicitor-General*.

No. 2.

1. Can you state what on the average is the expense of putting in force the Provincial Act 9 Geo. 4, c. 20, for the discovery of secret incumbrances?—The average costs on obtaining a confirmation of title, when the property is in the city, is about 10*l.* 10*s.*; and if in the country, from 12*l.* 10*s.* to 16*l.*, according to the distance the bailiff has to travel to make his publications. This is under the supposition that there are no oppositions to be contested; in such case there would be a detailed bill on each contestation.

2. Is this Act frequently resorted to, and by what class of persons?—It is frequently resorted to by purchasers of real property.

3. Is it not the case that as a sale is necessary to the operation of the statute, it can be used indeed for the security of a purchaser, but can afford no assurance to a lender of money on mortgage, if the property continue to be in the same hands?—The presumption is a perfectly correct one.

4. If so, can you suggest any remedy for its defect in this respect?—I can suggest no such improvement in the Act, as that mentioned in this question. The relief desired could only be obtained by establishing register offices; and that is a measure which should be the subject matter of a distinct and separate Act of the Legislature.

(signed) *M. O'Sullivan.*

Of what nature are the liabilities of "tuteurs," which are said to create claims which take precedence of mortgages, or any other claims or liabilities of the same kind relating to married women or others; could not these claims or liabilities, whatever they be, be made special or registered as well as mortgages?—The mortgages which are established in favour of married women and minors are called legal mortgages.

Legal mortgages, according to the present state of the law, extend to the whole of the real or immoveable property possessed by the husband and the tutor at the time of the marriage contract, or at the day of the celebration, if there be no contract, or of the acceptation of the tutorship *(tutelle)*, and the whole of the real and immoveable property which they may afterwards acquire.

As prescription or limitation of time can begin to operate against the legal mortgages of a married woman during her coverture, or that of a minor during his nonage, it appears to me that the legal mortgage of a minor could be rendered special without violating those principles of justice which watch over his rights until he himself became of sufficient age to defend them. When the tutor or sub-tutor have completed an inventory of

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the estate of the deceased, the family council, by whom the tutor has been appointed, could be again called, and they would upon their oaths point out the immoveables to which the legal hypothec of the minor should attach. The tutor is generally a member of the family; he is named by his relations, who must be well acquainted with the full extent of his fortune, and for whom it must be an easy matter to determine what portion of his real property should be registered to secure the rights of his pupil. To render thus special the legal hypothecs of minors is less repugnant (if repugnant at all) to the principles of public law which relate to *tutelles* than the provisions of the provincial Act of the 9 Geo. 4, c. 20, s. 7, by which minors are bound to file an opposition within a certain time, in order to preserve their privileges and hypothecs in and upon immoveables in respect of which a sentence or judgment of confirmation may be applied for; and in default of so doing, such privileges and hypothecs are declared to be extinguished. A still more rigid enactment in that behalf is to be found in the edict of 1771, upon which the last-mentioned statute is predicated.

The legal hypothec of a married woman extends to—

1st. Her dower.

Dower is either customary or conventional. Customary dower consists in the one half of the real or immoveable property possessed by the husband on the day of the celebration of his marriage, and the one half of the real or immoveable property which he may inherit in a direct line during the marriage.

Conventional dower is that which is agreed upon between the contracting parties. It generally consists of a sum of money.

The usufruct of the one and the interest of the other, constitute the right of the wife, the right of property and the capital belonging to the children, if they should renounce to the succession or estate of their deceased father.

2. Her *dot dos*, which comprises all that is given to her by her parents in her marriage contract.

3. Her matrimonial stipulations (conventions matrimoniales), which comprise all the advantages conferred on her by her marriage contract by her husband besides her dower, such as the *préciput gain de saisie*, &c.

4. Her *reprises*, that is to say, her right to the reimbursement of all sums of money which may have fallen to her during her marriage as *propres*, and have passed into the hands of her husband, and to the reimbursement of all sums of money which the husband may have received by the sale of her immoveable property, &c. &c. &c.

2d. Her right to be indemnified against all obligations which she has contracted with her husband.

One of the extraordinary effects of this right of indemnity is, that the creditor who has the signature of the wife with that of her husband, is preferred in the distribution of the proceeds of the immoveable estate of the husband to a mortgage creditor many years older, who has only the signature of the husband, because he who has the signature of the wife exercises her rights, and, by virtue of her legal hypothec, goes back to the date of the marriage contract.

I have obtained in the Court of King's Bench of this district a decision confirmatory of this principle.

Thus, according to the present state of the law, though *A.* may have a mortgage on the property of *B.* of 10 years' standing under the obligation of *B.* alone, *B.* may, in collusion with *C.* after a lapse of 10 years, give an undue preference to *C.* by prevailing on his wife to sign with him an obligation in favour of *C.*, who, exercising the rights of *B.*'s wife, will be preferred to *A.*, and paid before him out of the proceeds of *B.*'s immoveable property.

I think that the legal hypothecs of married women ought to be divided into two classes; viz.

1. Into those which should take rank from the date of the marriage contract, or the day of the marriage in the absence of a contract.

2. Into those which should only date from subsequent periods.

I should say that *dower* and *dot* and matrimonial conventions ought to belong to the first class, and whatever should come under the denomination of *reprise* to the second.

I would suggest the abolition of the customary dower.

This species of dower has been found to be productive of the most ruinous consequences, after many years of apparent security. The *douaire préfix*, or conventional dower, might be well substituted in its stead, and a special mortgage granted upon a part of the immoveable property of the husband.

If the husband have no immoveable property, then let the enregistration take place with respect to that which he may acquire, and the mortgage take place from the day of the marriage contract.

The legal hypothecs of the second class should only take rank from the date of their existence, and should not be carried back to the period of the marriage contract, or the day of the celebration of the marriage. Thus, the legal hypothec for an indemnity should only exist from the day the wife became bound with her husband for the payment of a debt; and the purchase-money of an immoveable belonging to the wife and sold by the husband, from the day of the sale, or the day of the receipt of the price. The legal hypothec for a *donation* proper to the wife would only date from the day it was made, and so forth.

With respect to the registration of legal hypothecs, no provisions can be more wise than those of the French *Code Civile*.

By

By that code the legislator has imposed upon the tutor and the husband the express obligation of enregistering all legal mortgages upon their immoveable property.

He has enjoined the sub-tutor, upon his own personal responsibility, to see that the hypothec be regularly inscribed. He has foreseen the case of the tutor, the sub-tutor and the husband omitting to do their duty in this respect, and has invited the law officers of the Crown, the parents, the members of the families of the married woman and the minor to supply their places. Finally, in the event of the sale of any of the immoveables of the tutor or the husband he has ordered,

1. That the purchasers should deposit a copy of the deed of sale at the office of the prothonotary of the highest tribunal in the district or *arrondissement* where the property is situated.

2. That he should, by an instrument in writing, notify as well the wife as the sub-tutor, and a law officer of the Crown, of such deposit having been made.

3. That an extract of such instrument in writing should be posted up in the court-house for two months.

4. That during that time the married woman and the minor, or in default of their so doing the persons above mentioned, should cause the legal mortgages to be inscribed upon the books of the register.

5. That in the event of no inscription being made within two months, the property sold should pass to the purchaser free from any charge or incumbrance, and that *quoad* such property, the legal mortgage of the married woman or the minor should be completely extinguished; saving to them their recourse against the husbund and the tutor. It would be difficult, if not impossible, to add to this solicitude and these injunctions for the suppression of legal hypothecs.

— No. 3. —

Evidence by Messrs. *Moffatt*, *Penn*, and *Day*.

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1. You are of course aware of one objection which has been urged to the establishment of a system of registry, that it would be inconsistent with liens, such as those affecting husbands, tuteurs and curators, which under the French law attach of themselves to real property. Is it your opinion that obligations of that nature could be, and that they ought to be, made subject to registration?—It is difficult to reply satisfactorily to this question without entering at some length upon a discussion of the character and tendency of the laws of this province relating to incumbrances on real estate, and pointing out their peculiar and pernicious influence on the interests of society, as here constituted.

We shall, nevertheless, confine our remarks within a very narrow limit.

It will be admitted that in most countries in which the principles of government and legislation have attracted attention, and been made the subject of serious study, it has been considered a matter of paramount importance that titles to lands should be rendered secure, and landholders be protected from all occult claims which might interrupt their possession, or interfere with their perfect and permanent enjoyment of the rights of property; and, in fact, it can scarcely be denied that any system of laws which should fail to provide such security and protection, must be regarded as in a high degree defective and unsafe.

This truth seems to have been felt even in those countries in which general and tacit mortgages have always been looked upon with a feeling of hostility; and in France (where unhappily for us such a feeling did not prevail) the multiplied and various efforts made in different parts and from time to time, to render mortgages public, evidently show that the state of law in this respect, was there considered essentially defective and bad; but bad as it may justly have been considered in France, it is worse both in its character and operation in Lower Canada. It is worse in its character, because to the hidden incumbrances arising from the mere authority of the law, are added the equally hidden mortgages which the dishonest are by the absence of all penal check on the crime of *stellionat* encouraged to create. It is worse in its operation, because its tendency is to check the transfer of real estate, and prevent it from becoming an object of commerce; and this tendency, whatever may have been said of it in France, where it was probably designed, is peculiarly injurious to a new country, in which every legitimate object of commercial and agricultural enterprize should be thrown, without reserve, into the market, and every means afforded to aid the energies and stimulate the industry of its inhabitants.

The application of these remarks to the subject of *the question* will be made apparent by a moment's reflection.

It may then be assumed that the evils arising from the present state of the law are undoubted and great. What should the remedy be?—It is fairly to be inferred from the number and variety of the measures adopted and modified, abolished or disused in ante-revolutionary France, all of which have been superseded under the new *régime*, that they were found inadequate to their contemplated object.

As to three of them, *Decret Forcé*, *Decret Volontaire*, and *Ratification of Title*, we can speak from experience, and unhesitatingly declare them to be totally ineffective for protecting the mortgagee or securing the purchaser in the enjoyment of his rights.

The legislation of the most enlightened countries in the world, France herself included, justifies the opinion that public enregistration is the simplest, cheapest and most effective remedy which can be devised.

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In fact the establishment of registry offices in some portions of the province has already admitted their utility. If beneficial to a portion, why should not their benefits be extended to the whole?—"Because," say the adversaries of the measure, "the enregistration of all titles and encumbrances relating to real estate, is incompatible with certain important branches of our laws; viz. customary dower, the rights of minors against their tutors, and perhaps some others."

The question if put upon this footing may assume two different forms, first, Is it true that such incompatibility exists? Second, if it exist, are the advantages of the proposed law sufficiently great to justify a modification or a repeal of the existing one?—In reference to the alleged incompatibility, it may be doubted whether it be so absolute and irreconcileable as has been imagined.

But without now dwelling upon this part of the subject, we proceed to inquire whether the advantages of the proposed law be sufficiently great to justify the repeal of the existing one?—We think they are, for the following reasons; in considering which, it will always be necessary to remember that the evil is great, and the remedy proposed the most effectual that has been devised.

The reasons then are these:—First, That the laws which are incompatible with the proposed one, originated in a society essentially different from our own in its character, its policy and its wants, and, as applied to a new country, where the transfer from hand to hand of all objects and rewards of enterprize should be unrestricted, are essentially bad; they ought therefore to be repealed or modified for this reason alone.

Second, That, even if they were good laws in themselves, they operate to the benefit of only a particular portion of the community, namely, married women and minors, and should therefore yield to a law which would be beneficial to the whole; and it may be added, that these particular classes would themselves benefit by the change, as the value of real property would be increased, and thereby their security be rendered better.

Third, That the minor's interests may be protected by another mode combined with the proposed law, as perfectly as by the existing law.

Fourth, That in reference to the rights of married women, the parties may make a law to themselves by contract of marriage, and if they do not avail themselves of this right, ought not to benefit under a law which operates hardly upon all other classes.

It is not new to the laws of Canada that the rights of married women should be superseded and destroyed by other interests. The *decret* of real property for the satisfaction of *lods et ventes* extinguishes the right of *douaire non encore ouverte* upon such property.

If then the interests of married women are but secondary to the interests of one class of society, the seigneurs, and are made to yield for their protection, with how much more propriety may a modification be demanded, which will afford protection to all classes, and tend to the general benefit.

What is sought in this respect is only the extended application of a principle already recognized.

Fifth, That the system of law now in force offers facilities for, and temptations to, fraud. It is consequently injurious to morals, and likely to influence unfavourably the character of the people, and should on broad principles be so modified as to lose this tendency and assume a contrary one.

If, then, the existing laws, incompatible with the proposed one, ought to be changed, what changes would be requisite and advisable for best removing this incompatibility?—As to customary dower, it might be altogether abolished, and the parties left to their contract, which should be enregistered, in so far as it might affect real estate.

This is a simple and effectual course, and one which we strongly recommend.

More difficulty might perhaps be anticipated in disposing of the minor's security against the tutor. But this difficulty does not appear to be insuperable; it may be overcome by obliging the tutor to give security for a certain sum, dependent on the value of the minor's estate, or the mortgage, which is now general upon all the tutor's property, for the amount of the *compte de tutelle* might be made special, and be enregistered at the diligence of the sub-tutor; or the mortgage might still remain general, and be for an unlimited amount, yet subject to enregistration.

In this last case, however, the party interested would be able merely to ascertain the existence of the encumbrance, not its amount.

These remarks are applicable to curators also.

The provisions made by the *Code Napoleon*, and fully explained and commented upon by *Merlin*, in his *Répertoire de Jurisprudence*, under the words "*Inscription*" and "*Transcription*," have given to France, whence our law is derived, the advantage of a system of registration; but in place of adopting all the formalities observed in that country, we recommend the modification of the law of this province, proposed by the bill passed by the Legislative Council last session, and sent to the Assembly, "for making all mortgages and *hypotheques* special, for abolishing customary dower (*douaire coutumier*), and for other purposes," and the adoption of the system of registry established in the adjoining provinces, and in the neighbouring States of America.

2. Are you aware of the objection which has sometimes been made, that with a system of registry, and the facilities which it would give to the borrowing money on landed security, the real estate of the province would soon pass out of the hands of the French Canadian portion of the community; and

3. What, in point of fact, do you conceive would be the result of the system in that respect?—We are aware that the objection stated in the first of these questions is urged by those hostile to the introduction of a system of registry, and that an apprehension of the result there alluded to is frequently affected.

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The existence of any such feeling among the Canadians generally may be fairly doubted, and from the information which has come within our reach, we are disposed to believe that all the apprehension felt on the subject is confined to that class of the rural population of the province which is engaged in other than agricultural pursuits. The men of this class exercise a powerful influence over the minds of the Canadian farmers, and in too many instances exercise it for selfish ends.

In fact, under present circumstances, the farmer is in a great measure dependent upon them; he becomes in almost all instances, more or less indebted to them for those necessaries and comforts of life which are not the produce of his own farm, and moreover he is frequently obliged to apply to them for seed grains, and in some instances for small sums of money; upon advances so made an enormous usury is demanded.

Upon the loan of seed grain the rate is rarely if ever less than two bushels for one, and frequently more.

The interest upon cash advances cannot be so easily ascertained; but there is reason to believe that it is scarcely less extortionate.

When it happens, as it often does, that the debtor is unable to realize means for satisfying the debt he has contracted, he gives to his creditor an obligation or bond, imposing a mortgage upon his farm; and when this mortgage becomes due, if not paid, which is too frequently the case, a new obligation with new usury is taken.

Thus the amount, at first probably small, is augmented to a sum at least sufficient to enable the creditor to sue in the court of superior jurisdiction. Costs are added to the debt, amounting perhaps to 10*l.* or 20*l.*, the land is brought to sheriff's sale (of course a cash sale), the neighbours of the unfortunate debtor have no command of money, many of them perhaps are in the same situation as himself, the land is disposed of at the parish church door, and the plaintiff becomes the buyer at one tithe of its value, and probably much less than the amount of his debt.

This is a process constantly going on, and one which, it is evident, a class of the community considerable in wealth, numbers and influence has a most direct and powerful interest in perpetuating.

It is among these men that a sincere apprehension is felt of the effects likely to arise from the establishment of a system for securing the publicity of mortgages.

It is among them that such a system is feared; because it would afford the farmer a facility in raising money upon fair terms, and at once take him from their hands.

The facts upon which the foregoing remarks are founded, are not of a doubtful character; they are a matter of common notoriety, and cases might be pointed out in which individuals have thus become possessed of 20, 30 and 50 farms, wrested from the poorest and most needy of the country inhabitants.

It would be too much to say that these men have not by artful workings upon the simplicity of the Canadian character, availing themselves of a seclusion from all sources of true information, and of the national prejudices which unfortunately exist among us, induced the people to believe that the effects of a system of registry would be such as alluded to by the second question; but we are fully convinced that after a short experience of its operation, all feeling of distrust would be dissipated, and they would regard the institution as fraught with the highest advantages.

Thus far the second and third questions have been answered in reference merely to the existence of any feeling of apprehension on the part of the Canadian people.

We would now remark that such apprehension, however generally it might be supposed to operate, is totally groundless.

It is hoped that the introduction of a system of registry will bring with it an increase of capital, give an impulse to enterprise, and render immoveable property of a greater, more certain, and more available value than it now is; that is to say, it will render every Canadian farmer who is the proprietor of the land which he tills, a richer man; and it is difficult to comprehend by what process of reasoning it can be shown that increasing a man's means will be likely to ruin him.

The same causes which will give him a facility in borrowing, will also afford him a like facility in paying; and further, these same causes will go far to remove the necessity for borrowing at all; and if through misfortune or improvidence it should sometimes happen that the debtor's farm must be sold, he will at all events have the benefit of a competition in the market, and will enjoy a better chance of obtaining its reasonable value than he can now have.

This argument against a system of registry appears almost too absurd to be combated, for it amounts, in fact, to an assumption that the increased prosperity of the province and the enhanced value of its lands will be injurious to them, by whom far the greater portion of those lands are held, and whose interest is the most broadly and deeply involved in that of the country.

But if the apprehensions alluded to were well founded, it cannot be conceded that they constitute any reasonable argument against a system of registry.

It is admitted even by those most hostile to the measure, that its effect will be to introduce capital into the country.

It is capital that we require, "but," say our opponents, "it will do more, it will introduce a British population, who will become possessed of our lands." This might be fairly urged, if Canada were a dependence of the crown of France instead of that of Great Britain. But surely a measure, the worst features of which, even as stated by its adversaries, is, that it will introduce British capital and British subjects into a British colony, is not open to any grave objection. It is undoubtedly the duty of the Government to place all its sub-

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jects upon an equal footing, and to secure to all equal rights and advantages; if with this perfect equality one individual, or one class of individuals, obtain superiority in wealth or power, it is the natural and just meed of superior industry or intelligence; and it certainly will not be contended that the probable existence of such superiority can justify the perpetuation of a state of things obviously hostile to the prosperity of the province, and at variance with the rules of common honesty.

4. Have you any statements you wish to adduce in answer to any of the other objections commonly urged to the institution of registry offices, such, for instance, as that they would be very expensive and troublesome, repugnant to the feelings and habits of the people, and lead to the disclosure of the affairs of private families?—Registry offices are sought because they would lessen the trouble and expense. We cannot see wherein they can be repugnant to the feelings or habits of the people; they would only be resorted to by persons desirous of borrowing money, or acquiring property, and would facilitate their operations in obtaining the loans they might require.

5. Do you adhere generally to the provisions of the bill passed by the Council last session, but lost in the Assembly, "for making all mortgages and hypotheques special, for abolishing customary dower (*douaire coutumier*), and for other purposes"?—Information on the point referred to in this and other questions may be collected from the evidence taken by the Legislative Council, a copy of which has been handed in to the commissioners.

6. Are there any improvements you could suggest in the bill, or do you think there are any modifications which might conduce to passing it through the House of Assembly, without sacrificing what you consider its usefulness?—The objects of that bill were to prepare the way to the establishment of registry offices, and to enable persons to acquire undoubted titles to landed estate, and any modification of the bill which would interfere with those objects, would impair the usefulness of the measure.

7. Is not the abolition of customary dower one provision which would be viewed with dissatisfaction generally by the inhabitants of French origin?—In point of fact, customary dower is at present abolished in many if not in most instances, by the parties entering into a marriage contract.

8. Since the establishment of registry offices in the townships, has capital flowed into them in greater abundance than before?—Yes; and the value of lands therein has nearly trebled, a result not to be exclusively ascribed to the establishment of registry offices, but which they have most essentially contributed to produce.

9. Are there as yet any banks established in the townships?—There are two bank agencies in the townships, one at Stanstead and one at Sherbrooke, recently established.

10. Is more money lent on mortgages there than in the seigneuries?—There can be no question that money would be lent on mortgage much more readily where registry offices exist, than where they do not; and as one instance in proof of this, it may be stated that Mr. Moffatt having been lately entrusted with a sum to invest in mortgage security, for the benefit of a third party, after making inquiries found it necessary, in justice to the party interested, to make the investment in Upper Canada.

11. Have the farmers any facility of obtaining money on their notes of hand, or on the credit of their growing crops?—Not that we are aware of any further than has been explained in the answer to the second question. In reference to the fourth question in the general interrogatories on this subject, we should prefer the remedies being applied by the provincial legislature, and did we entertain any hope that relief could be afforded from that source, we should deprecate any interference in the local affairs of the province by the Imperial Parliament; but past experience deprives us of the hope that the wants of the public in this respect will be attended to by the assembly of the province; and in the absence of a general and comprehensive measure, such as the union of the provinces of Upper and Lower Canada, which would in time afford adequate protection to the great interests of the colony, we see no way of obtaining the system of registration required in the province, except by the intervention of the Imperial Parliament.

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PAPER on HYPOTHEQUES, communicated to the COMMISSIONERS of INQUIRY by *W. Walker*, Esq., *Montreal.*

No. 4.

THE system of hypothecation which obtains in this province, has no necessary or acknowledged connection with the feudal holding of lands therein, and may be amended and modified to the extent required by the British population, without assailing any justly cherished principle of its institutions, or operating a detriment to the real interests of any class of its people.

Aware of the gross frauds perpetrated by debtors under the existing system, the petitioners are desirous of rendering such frauds impracticable for the future; and they see no other means of doing so, than by giving to the *hypotheque* a certain *public* and *special* character, that is to say, requiring that every description of *hypotheque*, with the exception of that which is created by the judgment or *sentence* of a *competent* court of justice, and which is known to the laws by the denomination of the "*hypotheque judiciare*," should be *special* upon property *particularly designated*, and that the existence of every description of *hypotheque* should be susceptible of being made known by means of an inscription upon a public register or registers.

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The hypotheque ought to result not merely from the nature or character of the debt, or the instrument by which the obligation is contracted, except in particular cases which partake of a privileged character, but also from an adherence to the formality of an inscription.

The principle of giving *publicity* and *speciality* to *hypotheques* is conservative of property; it tends to the promotion of public and private credit, of morality and good faith.

The general and clandestine *hypotheque*, sanctioned by the laws in force, impairs the value of property, and is destructive of confidence and good faith.

Without rendering inscriptions of *hypotheques special*, and giving to them publicity, the security contemplated to the creditor and to the public at large is illusory. An immoveable is taken as a pledge to secure the payment of a debt, or the fulfilment of an obligation; but the precaution is useless if unaccompanied by an entire security; and this is impracticable, unless the creditor has it in his power to verify the incumbrances, if any, to which the property is liable.

Under the present system, the *hypotheque* extends over all the property of the debtor, *present* and *future*. Its defects have been endeavoured to be met here, as they were in monarchical France, by letters of ratification. These letters, in both countries, have proved insufficient; and in the latter country, more efficient provisions have been recently introduced.

The faculty of creating a legal or conventional *hypotheque*, ought, in every instance, to be limited to the property *present*. The security of the future property can be obtained by means of proceedings which the creditor is at all times at liberty to adopt; the credit of the debtor ought not to be paralyzed by an excessive or unlimited hypothecation. Property, as it is successively acquired, ought to be the common pledge of all the creditors then in being; none of them in principle ought to possess a preferable or exclusive claim upon a security not in existence when he contracted.

In requiring a general system of registry, the British population are not alone guided by what is due to the interests of trade. They are not desirous that commerce should draw to itself all the capital which is susceptible of being laid out. They think it fitting that agriculture and other branches of industry, which equally conduce to the prosperity of a people, should possess a facility of drawing to themselves a portion of the disposable property of a country. They consider that a wise government has an interest in every class of its subjects; that the husbandman, the mechanic, and the gentleman, as well as the merchant, fill their places, have their provinces in society, and ought equally to be the objects of its attention and favour.

This province is agricultural as well as commercial. Capital is as necessary to one branch of industry as another, and its legislation should be so directed as to secure to each equal facilities in raising means for its successful prosecution.

In any system of registry which may be adopted, the following objects ought to be kept in view; namely, that the purchaser of real estate should know himself to be secure, and be afforded the means of promptly, and without hazard, discharging the obligations he may assume towards the vendor; that the latter equally should be enabled to receive promptly, and without sacrifice, the consideration of the sale; that, in the event of incumbrance, he should have it in his power, promptly and without sacrifice, to appropriate in whole, or in part, such consideration in discharge of any *hypotheques* he may have created upon the property; that the proprietor of an unencumbered real estate should possess all the credit and advantages derivable from a public knowledge of its being free from burthen; that the owner of an immoveable, hypothecated for the security of a debt, should derive from the system a means of acquiring a credit equivalent to the value of such property, over and beyond the claims by which it is encumbered; that the capitalist desirous of investing his funds, and all others entering into engagements, should find a prompt and effectual way of arriving at a knowledge of the means of those with whom they deal; that the law should assure to them the guarantee which they may acquire; that such regulations should be adopted, as that the man of bad faith could not dispose of what did not belong to him, nor delude the party with whom he transacts by a fictitious credit; that solvent debtors should have the means of establishing their solvency to the satisfaction of their creditors, and thereby avoid the ruinous consequences attendant upon the enforcement of legal remedies.

Any system which shall offer the foregoing advantages, and remove the risk to purchasers and capitalists, would render real estate more greedily sought after, would increase the competition at public sales, and raise every property to its true value, with reference to its local and other advantages; and capitalists finding a perfect security for the loan of money upon immoveables, would be satisfied with a smaller premium. Hence a double advantage would arise; the wants of agriculture would be more readily supplied, and the interest of money would diminish in proportion as the securities for its repayment were enhanced.

The desired advantages can only flow from adopting the principle of rendering mortgages *special*, and giving to them *publicity*.

A system approaching to that which is desired by the British population was not a novelty, even in those countries where the laws were akin to those of this province; it existed in many parts of France, *coutumier*, at an early period; in some of the provinces which were added to France in the reign of Louis 14, and in several of the countries conquered by the arms of the republic. It has frequently been sought to restore this system in France, of which an example will be found in an edit of Louis 14, of the month of March 1673; but the endeavours of public spirited men in that country were defeated by prejudices, by the times, and by the selfish interests of extensive landed proprietors, seeking to evade their creditors.

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If any inconvenience can attach to the system which establishes the publicity of *speciality* of *hypotheques*, the same is common to both systems, and are more sensibly felt in that which admits of *general* and *clandestine* hypothecation.

The latter system, in fact, defeats the very objects which are contemplated by a system of hypothecation.

In commercial transactions, the comparatively brief duration of the loan, the superior advantages, the greater promptitude by which satisfaction can be enforced, and the odium which attaches to a breach of engagement, will always draw to commerce a large share of capital for investment.

These advantages must operate to the depression of agriculture, and the other interests of society, if in loans upon the security of real estate, and the other transactions which are referable to that description of property, the inferiority of advantage is not met and compensated by the facility and security of the investment.

Real estate is included in the transactions of society for the purposes of alienation, to secure the payment of money lent, or to ensure the fulfilment of obligations, and it is essential for all these purposes to give to the transaction a character of safety, without expensive and embarrassing forms.

In consequence of the total absence of security to lenders or purchasers of property under the present laws, instances are without number where the farmer or agriculturist, unable to obtain a temporary advance of money, has been prosecuted for amounts infinitely below the actual value of his property, and has seen his real estate sacrificed for the satisfaction of the debt and costs established against him, a calamity which a proper system of registry would, in almost every instance, have protected him against.

There are three descriptions of *hypotheques* known to the laws of this province, the legal, the conventional, and the judicial. In the first class, for their number and importance, are the *hypotheques légales*. Amongst them are,

1st. That of the wife upon the property of the husband, for the security of her various rights.
2d. That of the minor, or of the interdicted, upon the property of the tutor or curator.
3d. That upon the heir accepting a succession *sous benefice d'inventaire*.
4th. That upon the public servant for the fulfilment of his trust.

In the second class are the *hypotheques conventionelles*, which may be subdivided into engagements for a sum certain, and obligations undetermined, either on the score of amount or extent, or because they are dependent upon an uncertain condition or event. Of the latter description are the obligations of guarantee, in the event of a total or partial eviction in the cases of sale or *partage*; obligations contracted upon a condition uncertain, suspensive or resolutory, and obligations susceptible of being ascertained at a period more or less distant, or of being determined with more or less certainty.

In the third class are the *judicial hypotheques*, whereof a great number are undetermined or uncertain. They are undetermined when the judgments carry a condemnation for sums to be afterwards liquidated, for restitution of *fruits*, or for damages and interests, for the rendering of an account, for eventual guarantees of an uncertain extent.

The judicial *hypotheques* which are uncertain, are those under judgments which, by means of appeal, may be reduced or set aside.

Hence it is clear, that the extent of vague, general and undetermined *hypotheques* is immense, and that the husbands, tutors, curators, and those accountable for public monies, far exceed the borrowers upon mortgage, or those who are likely to become such.

From the nature of the obligations which are guaranteed by *legal hypotheques*, the latter are, of necessity, of long continuance.

The obligations created in favour of the wife only cease with the rupture of the nuptial tie; those in favour of minors, at the time when the *compte de tutelle* has been rendered and settled; those in favour of the interdicted, during all their lives; those to the state, so long as the public servant is in office, or proves a defaulter.

The conclusion is obvious, the larger share of immoveable estate, under the existing system, is encumbered with indeterminate *hypotheques*, and consequently it is difficult, if not impracticable, to arrive at the situation of the greater number of properties. None of the undetermined *hypotheques* can be reduced to anything approaching to certainty by an estimation. To give them a mere *publicity*, without rendering them also *special*, would accomplish but little for *third* parties, to whom it would be useless to know of the existence of an *hypotheque*, without also declaring its amount or extent.

It is certain, that in some parts of the Netherlands, where the *hypotheque* was required to be exhibited upon a public register, and the immoveable designated, neither the *hypotheque judiciare*, as created by a judgment or *sentence*, nor the *hypotheque conventionelle*, as arising from a notarial act, was recognized. The hypotheque of Belgium partook of the English mortgage; it was a species of alienation, attended with most of the results of an absolute sale. In that county also, the *hypotheque légale* or *tacite* was nearly, if not altogether, unknown.

An edit of 1611 assumes no other *hypotheque tacite* to have existed in Flanders and the other Belgic provinces than that of the *fisc*.

In Prussia a like system obtained; there were public registers containing a description of every real property, with its mutations; all *hypotheques*, as being assimilated to alienations, were inscribed thereon.

The formalities required in the Belgic provinces imprinted upon the *hypotheque* a character of publicity and of *speciality*, which afforded to all persons acquiring property or accepting obligations a means of testing the existence of incumbrances.

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An edit of Louis the 14th, of the month of March 1673, aimed at extending to France some of the advantages of the Belgic legislation in this respect. This edit established public offices, where creditors by *hypotheque* were bound to register the amount and nature of their claims. Hypotheques enregistered upon the property *present* of the debtor, within four months from the date of the titles of acquisition, and within a like period from the time when other property subsequently came to the debtor, took precedence of *hypotheques* anterior, or even *privileged*, which had not been enregistered. Creditors, by virtue of an *acte authentique*, were allowed a delay of four months, in the case of the debtor's decease, to obtain, by means of enregistration, a preference over other creditors. The *hypotheques*, not enregistered, ranked in the order of date upon the remaining property of the debtor. From the necessity of enregistration, however, were exempted the *legal hypotheques* upon the properties of husbands, tutors, and those accountable for public monies. This law proved inoperative, the most extensive class of claims being those which were uncertain and undetermined.

The edit in question was revoked by another promulgated in the following year, in opposition to the sentiments of the most enlightened statesman of the day, but in deference to popular prejudice. The acknowledged abuses arising from the revival of the old system led to the use of the *decret volontaire*, in imitation of the *decret forcé*. It protected, to a certain extent, the interests of purchasers; but the risks which attached to the lender upon the security of real estate were in no degree diminished.

An edit, similar in some respects to the provincial statute now in existence for the ratification of titles, was promulgated in 1771.

This edit required purchasers to give notice of their acquisition during two months, and to signify their contracts to such creditors as should have lodged their oppositions within that period; the proceeding closed in letters of ratification. This edit, however, excluded certain *hypotheques légales* from its operation. Letters of ratification, under the edit of 1771, in like manner as under the provincial statute, extinguished all claims, whether of minors, of interdicted persons, of absentees, of communities in mortmain, of wives under coverture, saving the recourse of all against the tutors, curators, administrators or husbands, who had neglected to protect their rights. There was, however, an exception in favour of the *douaire non ouvert*, whether customary or conventional; and the rights of the substitute, during the lifetime of the party *grevé*, as partaking of a right of property, were also protected.

This edit was framed to protect the *sale only*, and not the *hypotheque* of property; but it is assuredly as practicable to inscribe an *hypotheque* as to file an opposition to a confirmation of title.

There are three different systems of hypothecation which may be adverted to. That of the Roman law, which admitted neither of *publicity* nor *speciality*, and which, modified by the provincial Act for the ratification of titles, is the system of law actually in force in Canada.

That of the edit of 1771, which, for a limited object, that of securing the purchaser, admitted the *publicity* without the speciality, and which, to a like extent, has been lately introduced amongst us; and that of the reformed system of France, which admits equally of *publicity* and *speciality* in the case of the *hypotheque conventionelle*, and of publicity in the cases of the *hypotheque légale* and the *hypotheque judiciare*, excepting only the *hypotheque légale* of the minor, and of the interdicted upon the tutor, and of the wife for her dowry and matrimonial conventions upon the property of the husband, which subsist independently of inscription.

The latter and most effective of the three systems, if adopted here in its fullest extent, would prove inadequate to the exigencies of the country; it affords an unnecessary degree of protection to the *hypotheque légale*. In no instance should any transaction in society, except in the case of a judgment, operate a general and undistinguishing hypothecation of property *present* and future.

The following are the principal features of the system of *hypotheque* recognized by the present Code of France:

Of privileged claims upon real estate, there are,

1st. The vendor for the payment of the price.

2d. The lender of money towards the acquisition.

3d. Co-heirs upon the property of the succession for the guarantee of the partage or division, and the *soulte* or *retour*.

4th. Architects, builders, masons and other workmen employed to construct, rebuild or repair, but only provided a *proces verbal* shall have been previously drawn up, establishing the state of the property, and the extent of the alterations or repairs; and also provided that an estimation shall have been made within six months after the completion of the work, the privilege, in no case, to extend beyond the improved value of the property.

5th. The lenders or those who shall have advanced money to pay or reimburse the builder, &c. Amongst creditors the privileged claims can have no effect upon the immoveables, unless rendered public by an inscription; and they rank only from the date of such inscription.

The co-heir or *co-partageant* preserves his privilege upon the shares which have fallen to the others for the *soulte et retour*, or the price of the licitation, by an inscription effected within 60 days from the *partage* or adjudication, during which interval no *hypotheque* is allowed to take preference to his prejudice.

The privilege of architects, builders, &c. dates from the inscription of the *procès verbal*, which precedes the work; but to render this effectual, both *procès verbaux*, that which precedes and that which is required after the completion of the work, must be enregistered.

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Creditors and legatees demanding a separation of the property of the deceased, preserve their claims thereon in preference to the creditors of the heirs or other legal representatives, provided such claims are enregistered within six months from the date of the succession deferred; previously to which period the property of the succession cannot be affected to their prejudice.

The assignees of any of the claims enumerated stand in the situation of those from whom they deduce title.

All these claims continue to partake of an hypothecary character, although the formalities required to their validity have not been fulfilled; but they only take effect against third parties from the date of the inscription.

The *hypotheque légale* or *judiciare* attaches upon the property of the debtor, *present* and *future*. No *hypotheque conventionelle* is valid, unless in and by the instrument which establishes the debt or obligation, or by another posterior to it, the property upon which it is intended to attach shall be specially designated. Property in *futuro* is thereby excluded, but the *hypotheque* may, by a subsequent instrument or instruments, accompanied by inscription, be rendered available upon other property, as it is successively acquired by the debtor.

To the validity of the *hypotheque conventionelle*, it is also essential that the debt should be to an amount certain, and established by the instrument; but if the claim is conditional or contingent, or undetermined as to extent, the creditor is held to enregister to an amount estimated and declared.

Amongst creditors the *hypotheque* in general dates only from the inscription.

The *hypotheque*, as already stated, exists independently of inscription in favour of the minor or interdicted from the day of the tutor or curator's acceptance of the trust; of the wife for her dotal property and effects, and matrimonial rights, from the day of the celebration of the marriage; but with respect to *dotal effects* accruing by inheritance or succession, or donation made during the marriage, the *hypotheque* only ranks from the period of the succession deferred, or of the donation taking effect; for her indemnity on the score of obligations contracted, or the replacement of her *propres* alienated, from the date of the obligation or sale. Husbands and tutors are bound to give publicity, by means of inscription, to the legal *hypotheques*, which in those characters attach upon the property, and failing to do so they incur the penalties of *stellionat*.

The subrogé tutor is also bound to attend to the inscription of the *hypotheque légale* upon the property of the tutor. Failing any neglect in this respect, the duty of inscription devolves upon a public officer.

The relations of the husband or wife, those of the minor, the wife, and minor themselves, may cause the inscription to be effected.

It is competent to the parties in and by the contract of marriage to limit the *hypotheque* to certain property, to the exclusion of the rest. The same restriction may be adopted in the case of tutors, with the assent of the friends and relatives assembled.

While there exists no inscription upon the property of the husband or tutor, it is still in the power of the purchaser to extinguish the *hypotheque* in favour of the wife for her *dotal* property, *reprises et conventions matrimoniales*, and of the minor for his tutor's gestion, by a compliance with the forms enumerated in the 2194th and 2195th articles of the code.

From the above synopsis it appears that, under the present system in France, the conventional *hypotheque* is *special* and *public*.

Neither specialty nor publicity is required to give effect to the *hypotheque légale* of the minor or interdicted, or of the wife; their claims, however, except that of the wife for *douaire non ouvert*, are *subject* to be *barred* by a compliance with the formalities indicated in the 2194th and 2195th articles of the code.

The *hypotheque judiciare* must be rendered public by inscription.

The *hypotheque* of the wife for every claim except dower, and of the minor or interdicted upon the property of his tutor, may be extinguished by a proceeding somewhat analogous to that by which a confirmation of title is obtained in Canada.

Two reasons have been assigned, and correctly, for restraining the generality of *hypotheques*, the facility with which they are in general assented to by the party contracting, without reflecting that they must impair his credit, and operate to the detriment of the public interest, which is best consulted by removing obstacles to the transmission of estates, and the accumulation of several *hypotheques* upon the same property, with the consequent accumulation of expenses attendant upon a discussion.

Conscious of their inability to sustain the system now in force in Lower Canada, its partizans recognize the necessity of publicity; from which, however, they would withdraw the *hypotheques légales* and *judiciares*; but if publicity is advantageous, it should extend to every description of encumbrance, and the *hypotheque légale*, as well as the *conventionelle*, should be special.

No amendment of the system which shall exempt legal and conventional *hypotheques* from *publicity* and *specialty*, and the *hypotheque judiciare* from *publicity*, will meet the views of the committee. Husbands and tutors form no inconsiderable part of society; and the unknown and undetermined *hypotheques* which attach to their respective characters, do actually embrace a large portion of the real property of the country. If, however, specialty should be denied to the *hypotheque légale*, it ought not to extend to the property *present*.

In the opinion of this committee the following rules might be adopted with safety. The nature and situation of the immoveable should be indicated in the instrument which creates the *hypotheque conventionelle*. From this it would follow that the future property could not be

be hypothecated by the same instrument. A like exclusion of the future estate ought also to be pronounced with respect to the *hypotheque légale* or *tacite*.

With respect to the judicial *hypotheque*, it may safely be permitted to extend to all the property of the debtor, present and future, within the limits of the district or county where the creditor shall cause his judgment, or other act creative of a judicial *hypotheque*, to be recorded.

With respect to the *hypotheque légale*, it would be expedient to specify the property upon which it shall attach, and the party for whose benefit the right is created should be precluded from taking any other or additional security by way of *hypotheque*.

It is fitting that the *hypotheque*, which is acquired upon the property of a tutor or husband, and every other legal *hypotheque*, should be determined by an inscription, and be confined to the property designated therein. In such a case the tutor or husband, or other party liable, would retain a credit upon the score of his unencumbered estate; but if the *hypotheque* continues general as it now is, his means of borrowing or acquiring credit must depend altogether upon the impression of his personal integrity.

Whenever, by the contract of marriage, it is provided that no *hypotheque* shall be created upon the property of the husband, or only upon one or more immoveables designated, to the exclusion of the rest, then and in such case it would follow that the real estate of the husband, or such part thereof as may have been not designated, would be free and exempt from any hypothecation in favour of the wife for her dotal property or effects, *reprises* and *conventions matrimoniales*, and all other rights.

The same principle ought to apply to the case of the tutor whenever in and by the *acte de tutelle*, the *hypotheque* in favour of the minor or interdicted person is limited to such real estate as may be designated therein.

It is by no means so difficult as it is generally imagined to record an *hypotheque* upon the property of a husband or tutor.

In the one case the relatives of the parties assist at the writings, the property of the husband can hardly fail to be known to them. In the other case the tutor is generally a member of the family, selected by its other members, who ought to be acquainted with his means. They also ought to know upon what property the *hypotheque* should attach.

With respect to the husband, the property upon which the *hypotheque* is created should be designated in the contract of marriage; and with respect to the tutor, in the act creative of the *tutelle*, subject in either case to be reduced upon due cause shown, at the instance of the husband or tutor, or of their creditors respectively.

The hypotheque for the benefit of minors and interdicted persons should attach upon the property of the tutor or curator from the day of his acceptance of the trust, provided the *acte de tutelle* or curatelle be enregistered within four months thereafter; but in no instance should an hypotheque be allowed upon the property of the subrogé tutor.

The hypotheque in favour of married women for the restitution of their dotal property and effects, *reprises et convention matrimoniales*, should attach upon the property of the husband, specially designated from the day of the marriage, provided the contract of marriage be enregistered within four months thereafter; and the hypotheque for indemnity on the score of obligations contracted with or at the instance of the husband, if such should be retained in consideration of the protection which is due to a woman under coverture, should take effect from the date of the obligation, provided the same be inscribed within four months thereafter, and not otherwise; reserving to the wife, however, under every circumstance, the benefit of any inscription made by the creditor in whose favour she has obliged herself upon the property of her husband.

It shall be imperative upon all husbands and tutors to give publicity to the hypotheques created upon their property, by inscribing the contracts of marriage and *actes de tutelle*, by means whereof such *hypotheques* have arisen upon the register of hypotheques in the same manner as may be required for other *hypotheques*.

Although it may be said that under the proposed reforms neither the wife nor the minor would have any security, inasmuch as the duty of inscribing the *hypotheque* would attach to those whom it is intended to affect, that is to say, the husband and the tutor, it is to be remarked that under the edit of 1771, both the wife and the minor lost their remedy, if those to whom their interests were confided failed to oppose the granting of letters of ratification.

If it is objected that neither the husband nor the tutor have any interest in registering the respective acts, it might be rendered incumbent upon the notary who receives the marriage contract, to give it the necessary publicity by means of inscription, and upon the public officer who receives the *acte de tutelle* to do the like.

If for the security of an *hypotheque*, whether conventional or legal, the inscription shall be found to embrace an excessive mass of property, the debtor or party liable, or any other creditor interested, should be at liberty to reduce the security, consideration being had for the amount of the claim, if fixed, or for its probable extent, as in the *hypotheques légales*, already described; and in the case of the judicial *hypotheque* when uncertain or undetermined.

The privilege of the *bailleur de fonds* upon the immoevable sold for the price, should in every particular be assimilated to an *hypotheque conventionelle*, and be subjected to the formality of registration.

The privilege of the builder, "entrepreneur," of the workman or repairer, "ouvrier," and of him who has contributed to the purchase, should also be assimilated to an *hypotheque conventioncle*, and be subjected to the formality of registration.

The deed or instrument of concession of land from a seignior to a "*censitaire*," should be

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enregistered, as in the case of all *hypotheques conventionelles*, and the mutation creative of *lods et ventes* inscribed in like manner, unless that with respect to the pecuniary obligations imposed upon the *censitaire* by the deed of concession, a prescription much shorter than that which is now admitted by law, shall be introduced.

Every instrument creative of an *hypotheque*, whether legal or judicial or conventional, should be liable to re-inscription at the expiration of every *ten* years, failing which the hypotheque arising from the first inscription should be divested, and the claim of the particular creditor postponed to those of other creditors, using diligence to inscribe.

The petitioners, aware that petitions were in the last session presented to two branches of the legislature upon the subject which this inquiry embraces, have given their attention to the proceedings had upon those petitions, and in particular to a bill introduced into the Legislative Council, having for its object the making of all "mortgages and hypotheques special, for abolishing the customary dower, and for other purposes."

The proposed law provides that from and after the 1st day of January 1837, no contract of marriage, donation, act, deed in law, or instrument in writing, to be made and executed before notaries or a notary and witnesses, according to the laws of the province, shall have the effect of creating a privilege, mortgage, *hypotheque*, or incumbrance upon any real estate in parts of the province where register offices are not as yet by law established, in fief or seigniory, *en franc-alleu noble* or *en roture*, or under any other denomination of seigniorial tenure, or where the original tenure has been converted into that of *free and common soccage* or *franc-alleu roturier*; or where immoveables are held under the soccage tenure, unless the writing shall specially set forth and describe the property intended to be made subject to privilege, mortgage, hypotheque, or other incumbrance; and also set forth and contain the specific sum or sums of money intended to be secured; that from and after the same date, no marriage shall have the effect of creating the customary dower, but that from thenceforth the same shall cease to exist; that no writing, such as alluded to, whereby a special prefix dower, *douaire*, dowry, *dot*, shall be stipulated or provision made for any other marriage rights, shall create any incumbrance upon real estate in respect of dower, dowry, matrimonial reprises and stipulations, or other marriage rights, unless the immoveables whereon the same are intended to attach shall be specially set forth and described, and the sum or sums of money for the security, whereof the security is established, declared; that all immoveables which from and after the 1st of January 1837, shall be sold under execution, or in respect of which any sentence or judgment of confirmation of title shall be rendered, shall from the date of such sale or confirmation respectively be liberated from all privileges, mortgages, hypotheques and other incumbrances, save only such as shall be specially reserved in the deed of sale or confirmation, the rights arising from entails, "substitutions," and the *cens et rentes*, and other seigniorial burthens.

The British population of the province would gladly receive a law to the above effect, as an instalment of the claims they have put forward. It may not be irrelevant in this place to allude to the law of mortgage or hypotheque as it exists or did lately exist in the state of Louisiana.

Mortgages *there* are, as with us, of three classes; first, conventional, as resulting from an express agreement in writing between the debtor and creditor; judicial, resulting from a judgment against a debtor; and tacit or legal mortgages, which exist by virtue of the law alone; as for example, that of the minor upon the property of the tutor, which takes effect from the day of his appointment; that of the wife on her husband's estate, for the restitution of her dowry and dotal effects, and for her security and indemnity in other respects. Many other tacit mortgages of a similar description are enumerated in the revised code of the state.

Conventional and judicial mortgages have no effect against third persons until recorded or registered in the office of the recorder of mortgages; no public notice by registry is required to give *legal* mortgages effect against third persons.

These last attach upon the immoveables *present* and *future* of the debtor; the evil however was partially remedied by legislative enactments in 1803.

Mortgages are either general or special; general when they affect all the immoveables of the debtor, *present* and *future*; special, when they affect only special property.

On failure of payment of the sum secured by mortgage, the remedy of the creditor varies according to the evidence of his right and the situation of the property.

If the contract be evidenced by an authentic act, that is, an act passed before a notary public and two witnesses, it is considered as importing a confession of judgment, and the creditor, on making oath that the debt is due, obtains from a judge in chambers a summary order of seizure and sale, and the property is sold as under legal process. This course is pursued when the property is still in the possession of the debtor; but if alienated, a judgment must be first obtained, even when the title is authentic, and the seizure must be preceded by the oath of the creditor as to the existence of the debt. A previous notice must be given to the third possessor, who has a limited time to declare his option of paying the debt, or relinquishing the property to be sold.

Any provision to carry into effect the views of the British population would prove ineffectual, unless an office for the registration of all instruments in writing, by which immoveable property shall or may be transferred, disposed of, or encumbered in any way, were established in each district or county of the province; and it should be rendered imperative upon every person now entitled to rank upon real estate, either by mortgage, *hypotheque*, or privilege, to record his or her claim within a certain period.

All acts, deeds in law, or instruments in writing, intended to convey, alienate, bind or affect immoveable property to be executed from and after the passing of any law which the

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wisdom of the legislature may adopt, should be enregistered; failing which, they should prove ineffectual as respects the security contemplated by the parties.

The machinery of any law of this description may be partly drawn from the Act of the 11th Geo. 4, c. 8, intituled "An Act to establish Registry-offices in the counties of Drummond, Sherbrooke, Stanstead, Shefford and Missisquoi," amended by an Act passed in the 1 Will. 4, c. 3. As collateral to the question discussed in the preceding pages, attention ought to be directed to the consequences which, in numberless instances, flow from the matrimonial community of property, "*communauté de biens*," in rendering the husband who, by successful personal exertions and unwearied efforts, has accumulated an easy competence, liable upon the decease of his wife, and in the absence of any issue of their marriage, to admit her heirs to a participation of his property, and to enrich strangers at the expense of one-half of his earnings; the obligation to return the, perhaps, unfilial conduct of his children by accounting to them for one moiety of his estate in right of their mother. The tacit incumbrance created upon his property by his administration of the share accruing to his minor children in the same right, which, in the case of him who has embarked in commercial pursuits, and eventually proved unfortunate, enable his children to sweep the whole of his remaining property from the hands of his just creditors, who may be ignorant of his domestic engagements.

The petitioners submit it as their opinion, that the community of property, "*communauté de biens*," should be abolished with respect to all marriages to be hereafter contracted; that all real and personal estate, which, under the present system, would fall into the community, should be held and taken to be the property of the husband, to be liable to all his engagements, to form a part of his succession, and to be subject to his last testamentary dispositions; and that the power of testamentary bequest which is now enjoyed by the wife should be confined to property accruing to her "*en nature de propre*," and such personal estate as may be bequeathed or gifted to her own separate use, and invested in such a manner as that the distinction between her property and that of her husband may be preserved, so as not to effect injuriously the obligations contracted by the latter, on the strength of property apparently subject to his disposal and control.

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Report and Evidence of Legislative Council on Hypotheques.

The special committee to whom was referred the petition of certain inhabitants of the city and district of Montreal, respecting the state of the law relating to the creation of incumbrances upon real estate in this province, and praying for the establishment of register offices therein, with instructions to inquire into the subject matter of the said petition, and to report thereon by bill or otherwise, and to whom was also subsequently referred, the petition of certain inhabitants of the city of Quebec on the same subject, having attentively considered the said petitions, and weighed the testimony upon the subject, derived from various individuals resident in different parts of the province, have agreed upon the following report:—

Your committee, without conceiving it necessary to enter into any lengthened reasoning upon a subject whose determination mainly depends upon conclusions to be drawn from facts, beg to state, generally, that whatever conduces to prevent fraud, expose deceit, and render the daily transactions between man and man secure and certain, is an object of the greatest importance.

Your committee consider that the introduction of foreign capital into a new country, whose principal wealth consists in its agricultural and natural products, must materially promote its general prosperity, by encouraging the active energies of its inhabitants, and extending their means of improvement, not only to land actually under cultivation, but likewise to the unsettled portions of the country; and that the advantages derivable from its introduction will be greatly increased, by means being at the same time afforded for its retention within the country.

The general results of agriculture and commerce are so blended and connected together, that any increased facilities extended to the one become sensibly felt by the other, while depression in the like manner is equally influential in its effects upon both.

If, therefore, the landed property of a country could be made to contribute to the advancement of its general interests, and the introduction of foreign capital could promote that desirable object, it clearly becomes expedient to render its transfer from hand to hand secure, expeditious and economical; for this purpose it is requisite, that the written documents upon which titles to land in every civilized community depend, and to which the capitalist looks for protection, as well as proof of the holder's right beyond the fact of his possession, should not be liable to be defeated, either by other documents being kept out of sight, or by the impossibility of procuring all the information necessary to ascertain the validity of the title, and the freedom of the property from tacit or conventional incumbrance. It also follows, that means should be afforded by the law for the protection of capitalists against the effect of any documents which, for the want of the use of such means, have not been brought to their knowledge.

Your committee conceive, that the establishment of offices in the seigniorial parts of the province for the registration of titles to land, and the incumbrances created thereon, is

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the only effectual mode of attaining the above-mentioned objects, and of remedying the evils of which the petitioners complain, but they are also sensible that their establishment would be encompassed with difficulties, unless previous modifications are made in certain particulars of the existing law relating to real estate, which would in a great degree remove the obstacles to the general measure, without endangering existing interests, or creating too sudden an innovation in a long established system of jurisprudence.

Even if the introduction of these modifications should be productive of more inconvenience, or attended with greater difficulty than your committee now see any reasonable ground to apprehend, they still believe that the inconvenience and the difficulty will be greatly counterbalanced by the benefit to accrue from the change.

In order to assist their inquiries upon the subject matter contained in the petitions submitted to them, your committee have extensively circulated amongst persons whose knowledge and experience were considered useful, a series of questions relating to the general measure, and the matters of detail connected with it; the substance of the evidence and information derived from these various sources, your committee now submit to your Honourable House.

It is generally admitted that under the existing system of law it is impossible to ascertain the freedom of any landed property in the seigniorial parts of the province from incumbrance, or the extent to which it may be incumbered, and that the only means available to persons desirous of purchasing real estate or of lending money on the security thereof, are 1st, The integrity and honour of the seller or borrower; 2d, The general report respecting his estate or property; 3d, The proceeding of a *décret* for a sheriff's title by suit at law; and, lastly, The obtaining of a judgment of confirmation of title under the act for the more effectual extinction of secret incumbrances. The two former means are evidently not to be relied upon, from numerous instances of fraud and destructive loss detailed in the testimony adduced before your committee, and the two latter are also equally inefficacious from affording no relief against the operation of dower, an evil which has been productive of serious injury, and which is generally admitted to be of the greatest magnitude. The delay and expense of both these measures are so great, that they are resorted to only where the real estate is of considerable value, and it is established that even these limited means of protection are not participated in by the inhabitants of the country parts from the operation of the above causes. The evils of the present system are moreover fully proved by the numerous hypothecary actions constantly instituted against the possessors of real estate, who were in profound ignorance of the existence of the incumbrance until the action was instituted against them.

In consequence the resort to the act for a judgment of confirmation, or to a suit at law, for a *décret* is but partially efficacious in its operation, limited in practice to real property of considerable value, not available to the inhabitants of the country parts, does not disencumber real property from the worst evil of the present system, and is attended with great expense and loss of time.

Nor can the searches and investigations which are made use of previous to investments being effected by loan or purchase, satisfactorily ascertain the safety of the title or the freedom from the incumbrance of the real property in question, because prudence cannot guard against representations whose falsehood it is at the time impossible to discover. It is moreover stated that from the expense and delay with which these investigations are attended, they are generally neglected by the peasantry, to the ruin of themselves and families in many instances, and that transfers of real estate are not only impeded but frequently prevented.

By the establishment of registry offices, means would be afforded of arriving at a knowledge of all incumbrances on real property and the recurrence of fraud be prevented. By substituting a safe, ready and economical mode of transfer in the place of the present cumbrous and expensive system, capital would be attracted to and retained in the country, and real estate, now much depreciated, be enhanced in value, while the great interests of agriculture and commerce would be promoted and the general welfare advanced.

The disclosure which would be afforded by these offices is considered by the evidence in general as most desirable, while its disadvantages would be of temporary duration, only—operate in individual instances and solely affect the fraudulent and dishonest. That though it might be productive of pain and mortification in some cases, the general good is of paramount importance, and that the apprehensions entertained of unnecessary exposure are ill-founded and futile; for it is in evidence from the registrars of the counties where the registry system prevails, that though few transactions of any amount take place in the counties without reference to the books of registry, no instance has occurred in their experience since the establishment of those offices, of the disclosure of mortgages or incumbrances having been required except for actual purposes of sale or loan; they also state, that great and universal satisfaction is entertained by all who have occasion to take advantage of the registry, that real estate in all the counties has been greatly enhanced in value, transactions therein much facilitated, and that its expense is trifling and no delay is incurred.

It is further urged, that the partial advantages resulting from the necessity of the present public registration in the several prothonotaries' offices of wills, donations and other legal instruments bearing substitutions, demonstrate that neither inconvenience nor evil can arise from disclosure.

It is generally stated in evidence, and it must be evident that a character of suspicion has from these causes been cast upon landed property in general, whether incumbent or not, by the difficulty of ascertaining the existence of this fact, and many instances are recorded

recorded in the evidence of the total inability of obtaining loans upon real estate the most free and unincumbered.

It is the general impression of those who from personal knowledge and experience are most competent to judge, that the difference in the habits, manners, language and laws of the inhabitants of Lower Canada, are of partial effect only in inducing emigrants to prefer settling themselves in Upper Canada and the United States, and that this marked preference proceeds principally from the want of security for their investments in this country, and from the delay and expense incident to the obtaining of even the partial protection of a *décret* or a judgment of confirmation.

The evidence forcibly insists on the advantages that would result from the rendering of all mortgages special, the abolishing of customary dower and particularizing marriage rights of every kind. Customary dower has been the fruitful source of many of the evils complained of, and though it might have been intended to assure a provision for the widow and the orphan, it will be apparent by reference to the testimony that its retention is inapplicable to the present condition of this province.

The evils of the present system regarding tutors and curators are also exhibited, and the remedy proposed consists in requiring specific security to be given by both.

Your committee have thus laid before your Honourable House, the substance of the testimony adduced before them; they also have exhibited the evils of the existence of general and legal mortgages, the preference so often afforded to fraud and deceit, over honesty and integrity, the liability of land in the hands of a *bonâ fide* purchaser, to incumbrances both tacit and conventional, of which he had no notice; that these evils surround all transactions of sale and loan, as regards real estate, with great hazard and difficulty, and that the only legal means of relief, the *décret* and judgment of confirmation of title, are, from the great expense and delay incident to both, not generally resorted to, and only afford partial security.

Your committee are sensible of the advantages to flow from the establishment of register offices in the seigniorial parts of this province, but at present they are only disposed to prepare for their introduction in the removing of the obstacles in their way, by making such modifications and changes in the law, as are best fitted to attain the desired end; namely, 1st. By rendering all mortgages special. 2d. By entirely abolishing customary dower, and making all marriage rights of whatsoever nature special and particularized. 3d. By requiring that all claims, by privilege or mortgage, under any title or by any means whatever, including dower, upon real property advertised for sale by the sheriff, in virtue of a writ of execution, or advertised for a judgment of confirmation of title, shall be brought forward by opposition, within the time now limited by law in such cases. 4th. By allowing no mortgage or incumbrance to be created by deed or instrument in writing, unless the same shall have been executed by a notary resident in the county, in which the real property intended to be mortgaged is situated; and lastly, By requiring notaries to furnish certified statements of mortgages upon proper application made to them for that purpose.

Your committee, therefore, submit the expediency of introducing a bill before your Honourable House, providing for the modifications of the law above suggested, which, if adopted by the legislature, would prepare the way for the admission of the general measure of registrations, whenever it shall be deemed expedient to bring it forward.

With respect to the other reference made to your committee, the measure herein recommended will embrace the prayer of the petition of certain inhabitants of Quebec, so far as it is at present deemed expedient to advance towards the attainment of the more limited application of the system of registration prayed for in this instance.

All which is, nevertheless, humbly submitted.

Committee Room, (signed) *G. Moffatt*, Chairman.
16 February 1836.

Sir, Committee-room, Quebec, 19th January 1836.

I am directed by the special committee of the Legislative Council, to whom has been referred the petitions of certain inhabitants of the cities and districts of Quebec and Montreal, respecting the state of the law relating to the creation of incumbrances upon real property, and praying that register offices may be established, to transmit to you the questions herewith enclosed, and to request that you will be pleased, at your earliest convenience, to send me your answers thereto, for the information of the committee.

I have, &c.

(signed) *Charles de Léry*, jun., C. A. L. C.

SERIES of QUESTIONS ordered to be put by the Select Committee of the Legislative Council, respecting the State of the Law relating to the Creation of Incumbrances upon Real Property, &c.

1. Is it possible in the present state of the law in this province, as it regards incumbrances on real property in the seigniories, to be certain that a property is not subject to mortgages or incumbrances, or to what extent it is so subject?

2. Are there any and what means of discovering that every instrument affecting the title,

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or creating or producing an incumbrance on the property, has been produced, or is known to purchasers or persons intending to lend money on the property?

3. Have you known instances where parties purchasing real property, or lending money on the security thereof, have been subjected to loss or the risk of loss, or have been deprived of such property or of their security thereon, by the discovery of prior mortgages or incumbrances, not disclosed to them by the venders or debtors, and which they could not discover at the time of purchasing the property, or of lending the money on the security thereof?

4. Are there not many *actions hypothecaires* instituted in every superior term of the King's Bench of this province, and in a large proportion of such actions are not the defendants ignorant of the mortgages which such actions are intended to foreclose?

5. Is it not the practice, in very many cases, to resort to the act provided for the extinction of secret mortgages or incumbrances on lands, or to adopt other means, and incur considerable expenses to obtain protection against secret or concealed mortgages or incumbrances?

6. Are not numerous searches, inquiries, and investigations of titles and family arrangements made previously to any purchase or mortgage, for ascertaining as far as possible the safety of the title and the freedom from incumbrance?

7. What is the expense incurred in obtaining a confirmation of title under the Act 9 Geo. 4, c. 20, to provide for the more effectual extinction of secret incumbrances on lands, and the time usually consumed in obtaining the judgment of the court?

8. Would or would not a county register, showing, with respect to lands in the county, what mortgages, charges or incumbrances, or other conveyances have been made, and which of them have been satisfied or cancelled, afford a protection against the risk arising to purchasers or mortgagees from the concealment of such incumbrances? State the grounds of your opinion for the affirmative or negative of this question.

9. Would not the operation of such a register tend greatly to prevent or to check the commission of frauds by such concealment of mortgages or incumbrances? State the grounds of your opinion for the affirmative or negative of this question.

10. Would not such a register tend very much to diminish the time and expense attending the obtaining a secure title on purchasing property, as well as on lending money thereon.

11. Do you consider that the disclosure which a register would afford of mortgages and incumbrances would be productive of more evil or good? State your reasons for an affirmative or negative opinion on this question, with any particular facts on which such opinion may be grounded.

12. Do you think that the disclosure, by such register, of family arrangements and settlements, would be productive of more evil or good? State your reasons for an affirmative or negative opinion on this question, with any particular facts on which such opinion may be grounded.

13. Have you known evils to arise, or have you not on the contrary known advantages to be derived from the facilities afforded by the necessity of enregistering wills, donations and other instruments, in ascertaining the dispositions of real property, or incumbrances thereon? State your reasons for an affirmative or negative opinion on this question, with any particular facts on which such opinion may be grounded.

14. Would not such a register be beneficial in aiding creditors to ascertain the true circumstances of the real estate of their debtors?

15. Have you known instances were parties were unable to obtain money on the security of their real property, though actually unincumbered, or only partially incumbered, by reason of the impossibility of satisfying persons who would otherwise have been willing to lend money, that such property was not subject to incumbrance, or was only so in part?

16. Would the establishment of register offices in the seigniories favour commerce at the expense of agriculture, or to conduce to the prosperity of both?

17. Are you not of opinion that the impositions and frauds to which the difficulty of discovering mortgages and incumbrances gives rise, and the delay incident to the obtaining of confirmations of title, prevent emigrants from the United Kingdom settling in greater numbers in the seigniories, and induce them to give a preference to Upper Canada and the United States, were register offices are universally established?

18. Would it be productive of more good or evil to provide by law, that in future mortgages shall be special and not general?

19. Is it advisable to retain the *douaire coutumier*, or to abolish it, and to provide by law, that in future all rights of dower shall be particularised and be specially applied?

20. Have you known instances of the fraudulent application or dissipation of estates confided to the management of tutors and curators elected in conformity with the existing law, and of losses thereby occasioned to the persons for the care of whose property such appointments were made?

21. Would the object of the law be more effectually attained, if tutors and curators were required to give special security by themselves or sureties in the amount required by the judge?

22. Would it not be productive of much public convenience, and facilitate transactions, in real property, if the judgments rendered in the several districts and the ministerial acts performed by the judges, whereby mortgages or incumbrances on real property are created by the operation of law, were required to be registered without delay in the prothonotary's office in the district of Quebec?

ANSWERS

ANSWERS of *James Holmes.*

To the 1st Query.—It is not possible.

To the 2d.—There are no means.

To the 3d.—I have known many such instances, but am not sufficiently master of the facts to be able to detail them.

To the 4th.—I am unable to speak to these questions.

To the 5th.—It is usual so to resort or to adopt other means incurring expenses, in order to obtain the limited protection, which the law now affords.

To the 6th.—Without doubt.

To the 7th.—I cannot say.

To the 8th.—The concealment of such incumbrances being prevented by the enregistration, protection against risk would necessarily be afforded.

To the 9th.—Concealment being prevented by the registry, the commission of frauds would be prevented.

To the 10th.—It would.

To the 11th.—I can see no evil of which it would be productive: those only would complain who were desirous to practise fraud.

To the 12th.—I can see no evil that would arise from such registry. Individuals might desire that family arrangements should not be disclosed, from motives of delicacy, but certainly no evil could thence arise. A great good should not be prevented by mistaken feelings of delicacy on the part of a few individuals.

To the 13th.—It is palpable that advantages must be derived from such facilities.

To the 14th.—Certainly. It would be the means of preventing the recurrence of frauds which grow out of the present system.

To the 15th.—I have; great injury is done to the possessors of real estate from that impossibility: they are thereby deprived of the means of improving their property by the erection of buildings or otherwise.

To the 16th.—In my opinion, no doubt can exist that both interests would be benefited.

To the 17th.—I am of that opinion, and the evil is a subject of general conversation and reprobation.

To the 18th.—It would be productive of much good, and I cannot discern how evil can be apprehended.

To the 19th.—It is highly desirable to provide by law for the particularization and special application of all rights of dower.

To the 20th.—I have no personal knowledge of such instances.

To the 21st.—I should think so.

To the 22d.—Registry offices would not afford the same advantages, unless some measures of this kind were adopted.

ANSWERS of *H. Hughes,* Esq.

To the 1st Query.—The present law as it is, it is impossible to know what incumbrances are on real property.

To the 2d.—The only means of discovering any incumbrance on property would be by enregistering all sums borrowed on property.

To the 3d.—I heard of several instances of the kind.

To the 4th.—I believe there are.

To the 5th.—I cannot say.

To the 6th.—I believe so.

To the 7th.—I cannot say.

To the 8th.—I believe a county register would be highly beneficial.

To the 9th.—I certainly think it would.

To the 10th.—Certainly.

To the 11th.—It would be productive, in my opinion, of more good than evil.

To the 12th.—Certainly of good to an honest person.

To the 13th.—Cannot say.

To the 14th.—Certainly yes.

To the 15th.—I have not, but have heard the case often represented.

To the 16th.—I should think it would be advantageous to both.

To the 17th.—Cannot say.

To the 18th.—Should say yes.

To the 19th.—Yes.

To the 20th.—No.

To the 21st.—Cannot say.

To the 22d.—I think it should be registered by the prothonotary of each district.

ANSWERS of the Hon. *H. W. Ryland.*

All that I can say at the present moment, in answer to the foregoing questions, generally, is, that I am decidedly of opinion the establishment of offices for the enregistration of all incumbrances and mortgages on real property throughout the province, is in the highest degree desirable, and that such establishments would greatly contribute to the welfare and prosperity of His Majesty's subjects in the province of Lower Canada.

REGISTRY OFFICES.

No. 5.

ANSWERS of *Jos. F. Perrault*, Prothonotary at *Quebec*.

To the 1st Query.—Yes, by making inquiries in the offices of notaries residing in places where the properties are situate, and by the informations which the parties interested ought to give.

To the 2d.—Yes, as above.

To the 3d.—No, or if instances of this have happened, it must have been by the fault of the creditor, who must have neglected making the proper researches.

To the 4th.—I cannot answer this question. I am not at the head of the prothonotary's office for the superior term; it is Mr. Burroughs.

To the 5th.—Same answer as the last.

To the 6th.—I do not think so.

To the 7th.—I am not aware.

To the 8th.—It might for the first years, but after a few years the expense of making these researches would be so considerable that no one would have recourse to this means.

To the 9th.—Undoubtedly, but not with greater effect than the law of Stellionate.

To the 10th.—Not in my opinion.

To the 11th.—It would certainly injure the merchants in debt, and deprive them of the means of retrieving themselves from their difficulties by their labours.

To the 12th.—I think so. The secrets of families ought to be kept concealed. A disclosure would destroy the peace, and be the dishonour of families.

To the 13th.—These enregistrations are productive of good and often of evil, as the animosities of law suits.

To the 14th.—They could no more do so than at present.

To the 15th.—I know of no instance of this; there are, however, lenders of money so cautious that they take many securities when they lend, besides their mortgages.

To the 16th.—I do not think that the establishment of register offices would be favourable to either.

To the 17th.—I cannot think that.

To the 18th.—I am of opinion that a special mortgage without derogating to the general is the best.

To the 19th.—I am in favour of the *douaire coutumier*, such as it is established by law.

To the 20th.—I do not recollect of any at the moment, but the thing is possible.

To the 21st.—Yes, by means of securities, but always recollecting that the father and mother are the natural tutors to their children, who cannot be under a safer care.

To the 22d.—The enregistration of these public acts cannot be productive of evil by the great publicity that that would have given them.

Mr. *Edward Burroughs'* ANSWERS.

To the 1st Query.—It is not possible, I think, in the actual state of the law in this province, as it regards incumbrances on real property in the seigniories, to be certain that a property is not subject to mortgages or incumbrances, or to what extent it is so subject.

To the 2d.—There are no other means of ascertaining that an instrument affecting a title, or creating an incumbrance on property, has been produced, or is none, to purchasers or persons intending to lend money on property, except by examining the repertoires of all the notaries of the province, and many other public documents authenticated, deposited of record in the offices of the different clerks of the province.

To the 3d.—As prothonotary, I have had occasion to know of several cases where parties having purchased real property, or lent money on the security thereof, have been subjected to loss, or the risk of loss, and have been deprived of such property, or of their security thereon, by the discovery of prior mortgages or incumbrances, not disclosed to them by the vendors or debtors, and which they could not discover at the time of purchasing the property, or of lending the money on the security thereof.

To the 4th.—Yes.

To the 5th.—In many cases it is the case.

To the 6th.—Yes; there are many.

To the 7th.—The expenses incurred in obtaining a confirmation of title under the Act 9 Geo. 4, c. 20, amount to the sum of 5*l.* 6*s.* 8*d.*, which is paid to the printer, attorney, prothonotary and bailiff, inclusive of the printer's bill; and four months, and sometimes more, are required to obtain the said judgment.

To the 8th.—A county register for the purposes specified in this question, would afford to purchasers protection against the risk arising from concealed mortgages and incumbrances. The details ordered by the different laws regulating register offices in this part of England where they are established, in France, and in the United States, and particularly in the part called New England, are not sufficiently known by me; but having always heard those who have the benefit of such establishments speak most advantageously of them, I am in favour of them, provided they are established on a principle which will meet the general object of the society, both commercial and agricultural.

To the 9th.—Most undoubtedly it would, provided that the law establishing new register offices do require that all secret incumbrances now existing, and those to be hereafter enacted, be entered, and the abolishment of all tacit incumbrances, by which all hypotheques to be hereafter created, would be special hypotheques.

To the 10th.—I think it would.

To the 11th.—I believe that such a register giving the means of making the discovery of mortgages, would cause more good than evil, inasmuch as the capitalist would be enabled

to

to learn with more certainty whether real estate, upon which he should feel disposed to lend money, or other securities, was anywise incumbered anterior to the date of his mortgage. The advantage in a country like this, of bringing the nominal value of real estate into circulation, under proper checks, must be evident, in my opinion, to the most superficial observer. To me, it appears that vast and rapid improvement would immediately follow, in increasing the value of the individual estate upon which such advances and securities shall have been made, thereby rapidly increasing and extending the real value of the *fonds*, and creating greater security for the creditor. It would be particularly beneficial in a commercial point of view, in affording the young enterprising and hardy subject of the country, where capital is yet so difficult to be obtained, the means of competing to the extent of his capacity with our more fortunate, but no more deserving, neighbours.

To the 12th.—I do not think that the discovery by such a register of family arrangements, or even of the arrangements of companies formed for commercial purposes, as it may be found necessary to enrol, can in the aggregate be injurious, but, on the reverse, beneficial. The object of such an office must be considered, when looked at in its enlarged and liberal sense, for the public good, and in acceding to which, families and companies ought to be considered as private individuals, subject to bow with submission to such an effect. The honest and upright, in his individual capacity, or as a member of a firm or company, can have very little objection to expose to the scrutiny of the world, when and where necessary, the state of every fair and honest transaction. None others ought to be protected by law, to the prejudice of the whole community.

To the 13th.—I am of opinion that no inconvenience whatever has resulted from the necessity of enrolling last wills and testaments, donations and other instruments, now by law required to be enrolled in this province, in establishing a disposition of real estates, or of mortgages thereupon; and I am of opinion that great inconvenience has resulted therefrom, in affording to individuals interested in obtaining such information, a point certain where to apply and obtain the information requisite, applicable to such matters.

To the 14th.—I am of opinion that such registers will be found advantageous in putting creditors in a position to establish the real and true situation of the real estate of their debtors.

To the 15th.—It has often come to my knowledge that individuals having extensive real property have not been enabled to raise money to any considerable amount upon the security thereof, arising out of the impossibility or great difficulty there exists in establishing that such estate was free from mortgage, to the extent required of the security in question, such circumstances come to my knowledge incidentally in my official situation almost daily.

To the 16th.—I am of opinion that the establishment of one office of this description, in a central situation in each of the districts or counties of this province, would not tend to favour commerce at the expense of agriculture, but would tend on the reverse greatly to extend the former, with the increase of the latter.

To the 17th.—I can only give an opinion upon this question founded on general rumour, that from the idea which is gone abroad, and obtains, particularly in Great Britain, capitalists of every description, under the view that money cannot be safely placed on real estate in this country, in consequence of the great difficulty of discovering mortgages and other real incumbrances affecting such estate, are not disposed to any extent to give preference to this province over Upper Canada or the United States, where register offices are universally established.

To the 18th.—My opinion is strongly in favour of mortgages, hereafter to be created, becoming special in the place of general as at present; proper provision being, however, first made by law to secure, in an efficient manner hereafter, a variety of rights at present secured under the head of tacit mortgages.

To the 19th.—A special enactment, in default of a written contract of marriage, might with propriety be made, whereby a *douaire* either *coutumier* or *préfix*, might be created upon a certain portion of the real estate possessed by the husband upon the day of his marriage, as, and for a partial support and protection of his wife and children, subject, however, to such limitations and restrictions as the legislature should devise.

To the 20th.—I have no personal knowledge of the matters or fact contained in this question; there is, however, in my opinion, a great laxity in the law of the country, particularly so far as regards the security which ought to be given by tutors and curators for the faithful discharge of their duties as such, and in the want of proper authority and a particular tribunal, before and to which they should be frequently required to account and exhibit an entire *etat* or statement of the interest subjected to their administration in such quality; for the want of some such provision (and this opinion is derived from my official position), I am satisfied that great losses are incurred by minors and others whose estates have been administered by tutors and curators in this province, under the existing laws, without adequate security.

To the 21st.—I am of opinion that legislative provision may be so made as to secure the due execution of the duties of tutors and curators, in requiring them to give proper security, and in pointing out the manner in which their duties, in a general point of view, shall be performed, and also in requiring them to frequently lay before a proper officer or tribunal a clear but concise view in all things relating to the estate committed to their administration.

To the 22d.—In all cases where judgments and ministerial acts of a judge, whereby it is intended by law that mortgages should be created, shall have been given or rendered, it would very much tend to public and private convenience, that such judgments and acts should be duly enrolled in some one office, for that purpose designated by law.

REGISTRY OFFICES.

No. 5.

ANSWERS of *S. Gerard*, Esq. of *Montreal*.

To the 1st Query.—I do not think it possible.

To the 2d.—There is no means of ascertaining that every instrument affecting the title, or creating an incumbrance on property, has been produced, for there may exist incumbrances on it of which the actual proprietor and the previous possessor were ignorant.

To the 3d.—I know many instances where the parties have sustained heavy losses by purchasing and lending money on real property, owing to the concealment of prior mortgages and incumbrances, and have suffered considerably in both respects.

To the 4th.—I believe there are; but as I seldom attend the court, I cannot say to what extent.

To the 5th.—Such a course is very generally, but not invariably, pursued.

To the 6th.—People are much stricter now than they formerly were in their inquiries into the safety of titles, but they are not unfrequently influenced in their purchases and investments by their previous acquaintance with the character and fortune of the seller.

To the 7th.—It costs about 10 *l.* to 12 *l.* to obtain a confirmation of title, and five to eight months are consumed in obtaining the judgment of the court.

To the 8th.—A county register, for the purposes specified in this question, would afford to purchasers and mortgagers the fullest protection against the risks arising from concealed mortgages and incumbrances. The negligence and omissions of those on whom it is incumbent to cause them to be registered, might occasionally produce injury to families, but by no means commensurate with the benefits that the establishment of county registers would produce.

To the 9th.—Undoubtedly it would, for there could be very little inducement to commit a fraud which could not remain long concealed.

To the 10th.—It would abridge both loss of time and expense.

To the 11th.—I consider that such disclosure would produce much good, as it would give solidity to the credit of the proprietor, and remove the doubts and uncertainty that exists on the mind of the lenders. It would enable the former, should he require it, to obtain wherewith to improve his property or discharge family claims on it, and the latter would be able to place his money in security.

To the 12th.—I do not think that the disclosure by such register would produce any evil, for those who have no interest in family arrangements and settlements might be debarred access to them, and those who have, ought to be allowed to inspect them.

To the 13th.—I have not known evils to arise from the necessity of enregistering wills, donations and other instruments, but it prevents fraud and concealments by executors and others.

To the 14th.—It would.

To the 15th.—I have known many instances where parties were unable to obtain money whose property was only partially incumbered, because that fact, but not the extent, was known; and many people dislike questioning a person about the state of his affairs. I have repeatedly declined making large investments for my friends in England for the reasons I have assigned.

To the 16th.—It would undoubtedly conduce to the prosperity of both.

To the 17th.—I am of opinion that the want of confidence in titles in the Lower Province is a strong inducement for emigrants, who would otherwise settle in it, to proceed to the Upper Province and the United States, where register offices are established.

To the 18th.—It would be productive of good to provide by law that in future all mortgages shall be special.

To the 19th.—It is advisable to abolish the *douaire coutumier*, and to provide by law that all future rights of dower shall be particularized, and be specially applied.

To the 20th.—I know many instances of loss occasioned to persons when estates were confided to tutors and curators, elected in conformity with the existing law, owing to their wasting and mismanaging the property entrusted to them.

To the 21st.—The law would be more efficient than it is if tutors and curators were required to give reasonable security for the faithful discharge of their trust, and if *héritiers sous bénéfice d'inventaire* were subject to a similar regulation, it would be a great relief to creditors, whose property they get possession of.

To the 22d.—I do not think it indispensably necessary that the judgments rendered, and the ministerial acts performed by the judges in the several districts, should be registered at Quebec, as they can be obtained at the prothonotaries' offices in the districts where they were rendered and performed, without much trouble or inconvenience.

ANSWERS of *J. D. Gibb*.

Sir, Montreal, 25th January 1836.

I have to acknowledge the receipt of your letter, dated the 19th instant, directed to me by order of the special committee of the Legislative Council, to whom was referred the petitions of certain inhabitants of the cities and districts of Quebec and Montreal, respecting the state of the law relating to the creation of incumbrances upon real estate, and praying that register offices may be established, and I now beg leave to hand you annexed my answers to the questions proposed for the information of the committee.

I am, &c.

(signed) *James Duncan Gibb*.

Charles De Léry, jun. Esq. C.C. L.C. Quebec.

To

To the 1st Query.—It is not possible in the present state of the law, applicable to lands held under seigniorial tenure in this province, to be certain that property is not mortgaged or incumbered. The existence of simple mortgages for debts contracted may be discovered by a purchaser advertising for a judgment of confirmation on his deed of acquisition, but this proceeding gives him no relief from the claims of dower or from substitutions.

To the 2d.—There are no means of discovering that every document has been produced and made known at the time a holder of property is borrowing money on mortgage.

To the 3d.—Numerous instances have occurred where parties purchasing real property or lending money on the security thereof, have been subjected to loss, and if all such had been recorded there would be sufficient to form a volume.

My father, many years since, lent Major Murray 800*l.*, and took a mortgage on the seigniory of Argenteuil; when the property was sold, mortgages of older date were produced, and my father lost his debt. He lost many large sums in nearly a similar manner, which he often spoke of. I was then very young, and particular cases have escaped my recollection, except that of Major Murray.

Several properties were brought to sheriff sale last year at the suit of De Rouville, plaintiff, against Monjeau, curator to the late Philip Byrne; part of his claim was a very old mortgage which he always thought secure, but I had an older one, being balance of an obligation per 1,000*l.*, dated in 1816, and was therefore paid first by the judgment of distribution in June last, leaving the plaintiff but a small sum on account of his claim.

In the year 1832, I was induced to advance 50*l.* upon a transfer of part of the balance due on a sale made by Mrs. Stansfield to Alexander Kirk, of a property on the Papineau-road, near this city; but finding since, that there exists a previous mortgage of 60*l.*, I doubt the possibility of collecting the sum due me.

To the 4th.—I cannot say to what extent *actions hypothecaires* are instituted in the superior terms of the Court of King's Bench of this province, but think there must be a great many. I instituted one against Michael O'Meara for a mortgage due me by John Bland, which was not made known by the latter to the former at the time of the sale; I obtained a judgment against him on the 19th October 1831, for 54*l.* 18*s.* 9*d.* with interest and costs, which he was thereby condemned to pay, unless he, the defendant, chose rather to quit and deliver up, abandon (*délaisser*), the said lot of land to be sold in due form of law in the possession of the curator, who shall be appointed to the *délaissement* to the highest and best bidder, to the end that out of the proceeds of the said sale the plaintiff may be paid the principal sum, interest and costs of the suit, or part thereof, according to the sufficiency of the said proceeds, and that in default of the said defendant abandoning the said piece or parcel of land within 15 days from the service upon him of the judgment, execution do accordingly issue against him the defendant for the satisfaction of the said judgment.

To the 5th.—The practice is prevalent to resort to the Act providing for the extinction of secret mortgages or incumbrances on lands, and there is no relief to be had by any other means. I have three advertisements in "The Quebec Official Gazette," notifying my intention to apply to the Court of King's Bench in this district, in conformity with the provisions of that Act, for judgment of confirmation on three lots of land I purchased. These will relieve me from the future claims of simple *hypotheques*, such as mortgages for money lent, or balance due on lands sold, or judgment of the court, or debts contracted, but they will not relieve me from the risk of demands in relation to dower and substitutions not yet open.

To the 6th.—All prudent persons would, I conceive, be anxious to investigate and inquire into as far as possible the titles and family arrangements on property before purchasing or lending money on mortgages thereon, but there is very little scope for arriving at a just conclusion. The owner of the property may say it is free of privileged incumbrance, having been acquired by him and his wife by purchase during marriage, and that having made no marriage contract the property is clear of dower. But this may be untrue, and the children, issue of that marriage, may after the death of their parents, and on obtaining their majority, produce their parents' contract of marriage, containing a *douaire préfix* for a larger amount than the property is worth, and therewith by an action at law dispossess the holder of it, notwithstanding any sheriff's sales or judgments of confirmation it may intermediately have undergone.

To the 7th.—I have heard that the expense is about 8*l.* on each deed; the time occupied is four months for advertising, and thence during the next term of the Court of King's Bench.

To the 8th.—A county register would, I conceive, afford ample protection to persons purchasing property or lending money on mortgage, from the frauds so long complained of. It would save many a family from ruin, who by being enabled to borrow money on sufficient security, might be relieved from a suit at law. The property of a person in Sanguinet-street, named Christian Grotte, is advertised to be sold by the sheriff on the 1st of February ensuing, for a debt of about 40*l.* It is worth 250*l.*, but no person has confidence to lend him while the present system of uncertainty exists.

I would recommend that there be a separate register office for the cities of Quebec and Montreal, the town of Three Rivers, and the borough of William Henry respectively.

To the 9th.—The operation of a register office for sales of property and mortgages thereon would put an end to the fraudulent practices which have so long operated to the ruin of persons, and to the scandal of the province.

To the 10th.—Most assuredly, it would remedy every evil of that kind.

To the 11th.—The disclosure of sales, mortgages and incumbrances, which would be made through the register offices, would be productive of much good to the public; fraudu-

REGISTRY OFFICES.

No. 5.

lent sales would be prevented, purchasers would not be harassed with doubts, nor disturbed in their possession, and money would be lent with confidence. As regards delicacy of feeling towards mortgagers, I must observe that even under the present vicious system the existence of mortgages must eventually become known, whether in consequence of an action to be instituted by the mortgagee to bring the property to sale, or in the event of its being sold at the suit of another plaintiff, by an opposition *à fin de conserver* upon the proceeds returned by the sheriff.

To the 12th.—I do not think that the disclosure of family arrangements by the registry system would be an evil, when it is considered that legal instruments, the most secretly executed, must at some period come before a court of justice to be rendered operative.

To the 13th—I know of no evil arising to any party from the enregistering of wills; on the contrary, I think it highly proper to secure to minor children the benefits of the legacies and substitutions made by testators in their behalf.

To the 14th.—Certainly.

To the 15th.—I have known many such instances, and will allude to Christian Grotte, referred to in my 8th answer.

To the 16th.—The establishing of register offices in the seigniories would favour commerce, by affording security and confidence in giving credit. It would favour agriculture, by enabling farmers to keep their produce when at a depressed price, and to acquire loans of money to aid their other transactions.

To the 17th.—I am decidedly of that opinion.

To the 18th.—It would be beneficial to the public that all mortgages should be special, except as regards the *douaire préfix*, and those created by the operation of law upon the property of tutors and curators, referred to in my 19th and 21st answers.

To the 19th.—The *douaire coutumier* should be abolished, and all contracts of marriage containing a *douaire préfix* or other matrimonial settlement, should be registered in a separate book, as a general mortgage upon all the immoveable property of the husband, until by the direction or sanction of a public guardian to minors, or a judge of the Court of King's Bench, to be empowered for that purpose, the dower could safely be made to apply specially on a particular property, relieving all other properties from that charge.

To the 20th.—I have heard cases of the kind mentioned, but do not at the present moment recollect particulars; *see* my next answer.

To the 21st—If the register system was in operation, it would afford the means of obtaining security from tutors and curators, but now, though the liability exists, their solvency is doubtful. The immoveable property of tutors and curators should be responsible to minors and others concerned, on the same principle as stated in my 19th answer in regard to the *douaire préfix*.

To the 22d.—Judgments of the Court of King's Bench should be registered in the same place and manner as any other simple mortgage. The plaintiff should have the right of registering his judgment against any property he thought proper belonging to the defendant, but the general mortgage created by a judgment should only have effect upon the properties against which it is specially enregistered. I see no good reason for restricting the enregistering of judgments and the ministerial acts performed by the judges, whereby mortgages or incumbrances on real property are created by the operation of law, to the prothonotary's office of the district of Quebec, but rather regard it as an useless formality inconvenient to the public interest.

In conclusion: I conceive that all deeds of sale and mortgages on property should continue to be executed before notaries, but the injunction on them to secrecy should be abolished.

All contracts of marriage containing or stipulating *douaire préfix* or other settlements should be duly enregistered at the city or town of the district where the superior courts are held, at the diligence of the notary before whom they are executed; and all nominations of curators or tutors should be in like manner enregistered by the prothonotary of the district, under penalties in case of default. If the husband, tutor or curator has property in any other district of the province, the enregistering of the contract of marriage, tutelles or other instruments in that district, should be at the diligence of those concerned.

Honourable Mr. *Heney's* ANSWERS.

To the 1st Query.—I do not think so.

To the 2d.—Neither do I think so; besides there are tacit mortgages.

To the 3d.—This may happen, and happens very often, particularly with regard to dowers.

To the 4th.—I am inclined to think that such is the case; but as I do not practice at the bar, I cannot positively say whether instances of this occur often.

To the 5th.—Yes.

To the 6th.—Prudence ought to induce one to make them. I am not aware, however, if they are made often.

To the 7th.—I have no knowledge whatever.

To the 8th.—A register intended merely for the enregistration of acts bearing mortgage would not be sufficient, because there are mortgages created without any acts. The dower exists without a marriage contract. The tutorship, the curatorship establish a right upon the property of the tutor or curator until the rendering of account. These mort-

gages

gages not appearing in the register, might lead one into error, by inducing the belief that there are no other charges than those stated in the register.

To the 9th.—It might have a good effect with regard to lands in free and common soccage, subject to the English civil laws, but could not have as ample an effect with respect to those subject to the French law, on account of dowers and tacit mortgages.

To the 10th.—Answered by the two preceding answers.

To the 11th.—It might be very just if no persons but those really interested were allowed access to this register. But under the pretext of interests ill-will might lead a man to scrutinize the affairs of other people, and induce him to find out and buy up the debts of another to whom he might owe a spite, with the intention to vex and deprive such other of his property.

To the 12th.—All I can say on the subject is, that in family affairs or transactions of a delicate nature, persons always employ, by preference, the most prudent and discreet notary.

To the 13th.—I can say nothing positive on this subject.

To the 14th.—Yes, regard being had to preceding observations.

To the 15th.—I cannot positively say that instances of this have occurred, but it is evident that the thing can happen.

To the 16th.—In general I would suppose it would be more useful or advantageous to commerce than to agriculture; I am not well convinced that it would be advantageous to give a too great facility to agriculturists to get into debt by means of loans.

To the 17th.—I have already said, in my 9th answer, that this would be more advantageous to lands in free and common soccage, not because there would be register offices there, but rather on account of dowers and tacit mortgages affecting property by the French law.

To the 18th.—I think that it would be better.

To the 19th.—The *douaire coutumier* is closely interwoven with our laws. It is often the only resource of the widow and her children, and would require the strongest reasons and a well established necessity to authorize its abolition.

To the 20th.—I cannot positively answer in the affirmative.

To the 21st.—The *assemblée de parens* is, I think, the best remedy. Should there be any doubt as to solvability of the tutor or curator, he may be either displaced or obliged to give security.

To the 22d.—I do not at all understand why the judgments or ministerial acts of the judges of the different districts of the province, should be enregistered in Quebec.

ANSWERS of *J. Neilson*, Esq.

To the 1st Query.—It is possible in some instances, in many it is nearly impossible, or very difficult and expensive.

To the 2d.—The *décret volontaire*, or voluntary sheriff's sale, purges many *hypotheques*; but it is expensive, and does not give entire security.

To the 3d.—Yes. In a case where I was guardian, the sum lent was lost in consequence of prior claims, of which it would have been very difficult to have any knowledge.

To the 4th.—I believe it is so.

To the 5th.—Yes.

To the 6th.—Yes.

To the 7th.—I cannot say.

To the 8th.—It would.

To the 9th.—Yes

To the 10th.—Yes.

To the 11th.—There can be no danger of disclosure to any honest man.

To the 12th.—A repetition of former question.

To the 13th.—I have no experience on this head.

To the 14th.—Yes.

To the 15th.—No.

To the 16th.—I think it would be beneficial to both; but I do not think it safe or practicable in the present state of the law and education, when almost every one is a proprietor.

To the 17th.—It may have that effect.

To the 18th.—I think general mortgages are the fairest. A person who lends, in fact lends on the security of all the unincumbered property of the borrower at the time, and the latter ought not to be enabled to apply the money out of the reach of the lender after the date when it was lent.

To the 19th.—The *douaire coutumier* is a portion of property set apart for the children who may be born of the marriage, and it is very proper that people should not marry without making a provision out of the property they have at the time for their children, so that they may not be burthensome to the community. It ought to apply, like a mortgage, to all property, from its date.

To the 20th.—Not within my personal knowledge.

To the 21st.—Tutorship is an onerous charge imposed by election of the family and friends of the deceased. Their choice depends on their knowledge and the sanction of an oath. The charge is compulsory. I do not see how sureties can be exacted, when there

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is nothing but burthen on the person required to furnish them. As to curators, I believe a per centage is allowed, but the acceptance, in case of security being required, ought to be voluntary.

To the 22d.—I believe they are now so enregistered in each district, and it is no difficult matter to become acquainted with them throughout the province. They are public.

Mr. *E. Glackemeyr's* Answers.

To the 1st Query.—That is impossible.
To the 2d.—No.
To the 3d.—Yes.
To the 4th.—Sometimes.
To the 5th.—Yes.
To the 6th.—Often.
To the 7th.—From 10*l.* to 15*l.* These expenses are considerably increased, as I understand, by the existence of a rule of court which compels any person applying for the confirmation of title to employ an advocate.
To the 8th.—Without a total change in the law relating to mortgages, these registers will not attain the object in view; this change is very desirable.
To the 9th.—Answered by the foregoing answers.
To the 10th.—Ditto.
To the 11th.—Ditto.
To the 12th.—
To the 13th.—These enregistrations being but partial, could not afford any security in transactions; and unless all mortgages be enregistered, the present evil will not be removed.
To the 14th.—
To the 15th.—Often.
To the 16th.—See the answer to the 8th question.
To the 17th.—It may in some measure contribute to it.
To the 18th.—I cannot venture answering this important question, upon which the most celebrated lawyers have disagreed.
To the 19th.—There must certainly be a total change in the law of dower; to reject entirely the *douaire coutumier* and subject the *douaire conventionel* to special mortgages would probably be an advantage.
To the 20th.—Seldom.
To the 21st.—That might be a remedy.
To the 22d.—See my reply to the 8th question.

Answers of *Noah Freer*, Esq.

To the 1st Query.—I think it is not possible, unless by great delay and at a great expense.
To the 2d.—I conceive there are no means of discovering correctly incumbrances on property, but by reference to an office where all titles should be required to be enregistered.
To the 3d.—I have known many instances where parties have been subject to loss by the discovery of prior mortgages or incumbrances.
To the 4th.—I believe so.
To the 5th.—It certainly is.
To the 6th.—Certainly; but in many cases the inquiries are very unsatisfactory for want of register offices.
To the 7th.—I believe from 10*l.* to 15*l.*, according to the extent of property to be described by advertisement; and the time usually consumed in obtaining the judgment of the court is from four to six months.
To the 8th.—I am fully of opinion a county register would be desirable, as affording a protection against the risk arising to purchasers or mortgagees from the concealment of any incumbrances.
To the 9th.—The operation of such a register would certainly tend to prevent and to check the commission of frauds by such concealment of mortgages or incumbrances.
To the 10th.—Certainly.
To the 11th.—I do consider that the disclosure which a register would afford would be productive of much good; for no one with honest intentions could object to show the mortgages and incumbrances on his property to those with whom he may be in treaty, and who have a right to obtain this information.
To the 12th.—This question is replied to by my last answer, with this addition, that it is highly expedient that family arrangements and settlements producing mortgages should be enregistered as well as all other incumbrances.
To the 13th.—I have known great advantage to be derived from the facilities afforded by the necessities of enregistering wills, donations and other instruments.
To the 14th.—It certainly would.
To the 15th.—I have known many instances.
To the 16th.—I am of opinion that the establishment of register offices in the seigniories would conduce to the prosperity of commerce and agriculture.

To

To the 17th.—I am of opinion the difficulty of discovering mortgages and incumbrances, and the delay incident to the obtaining of confirmations of title, do prevent emigrants from the United Kingdom settling in greater numbers in the seigniories, and induce them to give a preference to Upper Canada and the United States, where register offices are universally established.

To the 18th.—I am of opinion that it would be productive of more good to provide by law that in future mortgages shall be special and not general.

To the 19th.—It would, in my opinion, be desirable to abolish the *douaire coutumier*, and to provide by law that in future all rights of dower shall be particularized and be specially applied.

To the 20th.—I cannot say that I have known instances of the fraudulent applications or dissipation of estates confided to the management of tutors and curators elected under the existing law, but I have reason to believe that losses have been occasioned to the persons for the care of whose property such appointments were made.

To the 21st.—Tutors and curators should be required to give special security by themselves, as well as further sureties in the amount required by the judges.

To the 22d.—I am of opinion that it would be productive of much public convenience, and facilitate transactions in real property, if the judgments rendered in the several districts and the ministerial acts performed by the judges, whereby mortgages or incumbrances on real property are created by the operation of the law, were required to be registered without delay in the prothonotary's office in the district of Quebec.

ANSWERS of *L. M'Pherson*, Esq.

To the 1st Query.—It is impossible to ascertain the mortgages and incumbrances on any real property in this province, either in the seigniories or elsewhere, except only within the limits of a few counties in the townships, where register offices are established by law.

To the 2d.—There are no means whatever of discovering this.

To the 3d.—Instances of this kind are of very common occurrence, and are severely felt by all classes of the community.

To the 4th.—The records of the King's Bench at each superior term will show this to be the case.

To the 5th.—Yes; and still no proceeding or process of law whatever can extinguish the secret rights of minors and married women, on immoveable property.

To the 6th.—Yes; but the professional man can only report upon the titles and documents submitted to him, without there being anything to direct him as to deeds and papers affecting the property not produced. The condition, ability and character, as to general report, of the vender or mortgagee, are the principal dependence of security in the matter.

To the 7th.—The expense varies according to circumstances; 12*l.* is about the ordinary cost, and with opposition and contestation, it may cost about 24*l.*; the time usually consumed is four or five months. The matter must be advertized four months; and, in cases of contestation, eight to ten months may be consumed in obtaining the judgment of the court.

To the 8th.—County registers would for the future avert all the evils before mentioned. The grounds of my opinion are before stated. The evil is known to all, and register offices would effect the remedy.

To the 9th.—This question I conceive is answered in my reply which precedes.

To the 10th.—Such a register would obviate all delay in obtaining a secure title, and afford security in all matters relating to landed property, would encourage industry and enterprise, and would generally, more than any one other measure, tend to the improvement and prosperity of this province, and to develope its great natural resources.

To the 11th.—The disclosures which a register office would afford, would more particularly affect the fraudulent actors under the present hidden system, but in a general point of view, it would only partially affect the truly honest and prosperous, whilst it would establish a perpetual wholesome order of things, add value to landed property, and tend to immediate general permanent good.

To the 12th.—This question I conceive answered in my reply to the preceding.

To the 13th.—I know of no evils which have arisen from the enregistering of deeds of gift, or other deeds requiring enregistration, and my opinion is in favour of enregistering all deeds affecting immoveable property for the causes before stated.

To the 14th.—Most undoubtedly.

To the 15th.—I have known many instances of this kind; they occur to me almost daily in the ordinary course of my business. Persons possessing landed property worth several thousand pounds, and unincumbered, wanting to borrow money for a particular object, cannot procure the smallest sum on loan at six per cent. interest, or on any terms, although persons are found, possessing money, desirous of lending it at six per cent. interest, but object to part with it from the uncertainty of the title to landed property, by reason of the absence of a registry.

To the 16th.—It would undoubtedly conduce to the prosperity both of agriculture and commerce.

To the 17th.—It is certain that this difficulty prevents emigrants from the United

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Kingdom settling in the seigniories, and induces them to give a preference to Upper Canada and the United States, where registry offices are universally established.

To the 18th.—It would be productive of much good; and whether it be effected by a general system of registry, where all mortgages must necessarily be special, or by a statute to that particular end, guards must be provided in lieu of those which the general mortgage now affords.

To the 19th.—The *douaire coutumier* may have suited the primitive times in which it was established, but all its advantages have long passed away; it is only a clog in the transactions of the present day wherever it affects, and cannot too soon be effaced from the custom having force of law in this province.

To the 20th.—There are many instances of this kind: the only security which the minor, creditor or others interested, have in this respect, is the general mortgage on the property of the tutor or curator for the due administration of his charge, and if he, as it not unfrequently happens, is worth nothing, and dissipates the property confided to his management, there is no remedy.

To the 21st.—Tutors and curators ought to be held to give good and sufficient special security in the necessary amount.

To the 22d.—The registry of the matters here mentioned would be productive of much public convenience, but I think it should be made in the county registers in the same manner as deeds, &c. affecting landed property, to which end the necessary matter might be transmitted by the prothonotaries to the registrars.

ANSWERS of *J. H. Lambe*, Esq.

To the 1st Query.—It is not possible to be certain that a property is not mortgaged.

To the 2d.—No; there is not any.

To the 3d.—I have known many instances of parties purchasing property or lending money on the security thereof, having been deprived of such property, or lost the money so lent, in consequence of prior mortgages, incumbrances not disclosed to them by the venders or debtors, and which they could not have discovered at the time they made the purchase or loan.

To the 4th.—There are many such actions; in most of which the defendants, previous to the institution of the actions, were ignorant of the existence of any such mortgage.

To the 5th.—It is.

To the 6th.—Doubtless there are; but many persons in consequence of the known impossibility of ascertaining the existence of all incumbrances on such estate, neglect the opportunities actually within their power of investigating the titles and family arrangements of the vender or mortgagee, confiding, in preference, in his supposed integrity; and under the present system of iniquitous laws, many unsuspicious persons will still continue to so confide and be deceived.

To the 7th.—A professional man can answer this question best. A *décret volontaire* used to cost about 10*l.* or 15*l.*; a confirmation of title usually about 8*l.* or 10*l.* The time requisite for obtaining either is not less than five months.

To the 8th.—It certainly would; many instances have occurred within my personal knowledge, of persons having sold real estate and securities thereon, declaring that no mortgage had ever been effected by them on same, and that the property was unincumbered, whereas it was afterwards discovered that the said parties had themselves mortgaged said property, and were cognizant of many other incumbrances thereon. Had a registry-office been in existence such frauds could not have been committed, and persons desirous of acquiring real estate, or of advancing money on mortgage, could have done so with safety.

To the 9th.—No doubt it would, for the reasons partially stated in my last answer; it would also prevent a fraud more common than is generally supposed, and against which no person can be secure, I mean the fraud of ante-dating *actes* passed before a notary, which fraud it is almost impossible to prove.

To the 10th.—Certainly.

To the 11th.—The disclosure of mortgages and incumbrances might possibly inconvenience some few individuals, but would tend to the advantage of the public in general. For by the present system, a person possessed of considerable real estate, desirous or obliged to pay off a particular incumbrance thereon, or desirous of purchasing an addition thereto, or of rebuilding thereon, is unable to prove that his estate is unincumbered, or only incumbered to a certain extent, or to prove that a certain publicly known incumbrance has been cancelled, and in consequence cannot, either by sale or mortgage, raise money for the contemplated object, but instead of benefiting and improving his estate, he may from his inability to discharge claims thereon, have it eaten up in legal contest.

The benefit derivable from a registry of all deeds, is further deduceable from the fact that real estate in Lower Canada, although the country is daily and rapidly improving, seldom, at public auction, sells at more than 10 years' purchase, whereas in England real estate sells readily at public sales, at 30 to 35 years' purchase on the rental, and money can be obtained on landed security at three and a half to four per cent., and that notwithstanding the great expense of all deeds of conveyance of property. There, it is almost impossible, without instant detection, to make a fraudulent deed, all mortgages and marriage contracts being specially applied and forming a part of the title deed of every estate, are handed to the purchaser or mortgagee at the time of the execution of the deed.

Could

Could money be safely invested in this province on landed estate, large sums would be transmitted from England to be applied to that purpose; for added to the difference of rate of interest, the high rates of exchange would, at particular times, induce capitalists to invest their funds in this country.

To the 12th.—Such disclosures would be of general advantage, for reasons stated in my last answer; it would also enable heirs or other persons having an interest in any estate or succession, to dispose of the same at its full value, and not be compelled as they now are, to sell at a great disadvantage, from their utter inability to show the intended purchaser the real state of the estate.

To the 13th.—I have known evils to arise from wills, donations, &c. not being registered, but on the contrary never from their having been.

To the 14th.—Certainly.

To the 15th.—Many instances have come within my personal knowledge.

To the 16th.—Registry-offices, by increasing the capital employed in agriculture, would thereby favour commerce and promote the prosperity of both; but most assuredly not at the expense of agriculture.

To the 17th.—Great numbers of emigrants from the United Kingdom and elsewhere have, from the insecurity of title to landed estate in this province, consequent on the want of registry-offices, proceeded to Upper Canada and the United States, where register-offices are universally established.

To the 18th.—It would be productive of good and not evil, if all the mortgages in future were special, and general mortgages declared illegal.

To the 19th.—All dowers in like manner should be specially applied and particularised. and the *douaire coutumier* should be abolished.

To the 20th.—I have no personal knowledge of the matters in this question; public report, however, says that frequent cases have occurred of the improper application of estates confided to the management of tutors and curators.

To the 21st.—I apprehend great difficulty would be found in compelling tutors and curators to give sufficient security, but certainly, if attainable, it would further the object of the law.

In case where a curator or a tutor is to be appointed, the relatives resident in the vicinity, and in the absence of relatives the friends of the deceased, or absent person or minor, as the case may be, should be summoned and their attendance enforced; inquiry should then be made of them individually as to there being other or nearer relatives; and if so, their attendance should be also required, so that the judge may be properly advised in the appointment of a tutor or curator.

It is notorious that incompetent persons are frequently appointed curators to estates without the advice of any of the relatives, or actual intimate friends of the deceased person, although it is publicly known that he has many relatives residing in the immediate vicinity of the place where the appointment of curator or tutor is made.

To the 22d.—Great public advantage would be derived from such registry.

ANSWERS of *J. M'Cord*, Esq.

To the 1st Query.—It is scarcely possible.

To the 2d.—There are no means of ascertaining that *every* instrument affecting the title or incumbering the property has been produced.

To the 3d.—I have known many instances in which mortgage creditors have lost their claims on the real estate of their debtors, from the circumstance of prior mortgages, not disclosed to their creditors; I have also known instances where (the debtor acting in good faith) the creditor has still lost his claim by the operation of *tacit mortgages*, which at the moment of borrowing the money from his creditor, the debtor was probably not aware of. I allude to tacit mortgages created by the acceptance of the offices of executor, tutor and curator. I will cite a case of some note, from the large sums claimed and still pending in the Court of King's Bench for this district, Nos. 786 and 787. Desrivières, plaintiff, *v.* Hon. P. M'Gill, curator to Simon M'Gillivray, and divers opposants, where the proceeds of the estate of the defendants were insufficient to pay the claims of many mortgage creditors, in consequence of tacit mortgages, such as I have mentioned, the defendants having many years prior to the borrowing of any money, accepted executorships, the one to the will of D. M'Dougall, the other to that of Mrs. Gregory. These executorships never having been closed, the proceeds of the defendants' estate were adjudged to the heirs of M'Dougall and Gregory. In this case I am perfectly assured that the defendants were acting in good faith, and were not aware of the effect in law, created by the assumption of those offices.

To the 4th.—Hypothecary actions, such as referred to in this question, are of frequent occurrence.

To the 5th.—It is almost universally the practice to have recourse to the Act mentioned in this question, previous to the loan of money on the security of real estate.

To the 6th.—Yes, very commonly; for which investigation it is necessary to disburse fees from one guinea to five, over and above the expenses referred to in the next answer.

To the 7th.—From 10*l.* to 15*l.*, according to the length of the advertisement, and the circumstance of the publications being made in town or country.

To the 8th.—In my opinion, it would.

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To the 9th.—There is no doubt of it.

To the 10th.—Certainly.

To the 11th.—The disclosure of such mortgages and incumbrances might certainly, in individual cases, produce evil to such persons as had obtained a greater credit than the value of their estates warranted, but the evil could only be partial and temporary, the good to result, general and permanent.

To the 12th.—I do not see any evil which could result from such register; donations and wills, carrying substitutions, are now by law required to be registered, and are open to the inspection of the public; I never heard of any evils arising therefrom; on the contrary, much good, and these generally certain,—the most private of family transactions.

To the 13th.—In the course of my practice I have seen instances where good has already resulted from the register offices established in the townships.

To the 14th.—Yes.

To the 15th.—Many; I know professionally, that it is customary with capitalists to decline lending on the security of real estate, unless they can obtain the transfer of the obligation held by the *bailleur du fond*. Where no such privileged mortgage could be given, I have known many refusals, even when the parties having capital have been most anxious to invest, but were deterred, from the impossibility of ascertaining whether secret incumbrances existed or not.

To the 16th.—It is my opinion that it would conduce to the prosperity of both.

To the 17th.—Such is my opinion.

To the 18th.—It would, I think, be productive of good.

To the 19th.—It is very inadvisable to retain the *douaire coutumier*, which is a fruitful source of strife and litigation.

To the 20th.—A few such instances have come within my knowledge.

To the 21st.—Tutors and curators should be bound to satisfy the judges appointing them, that they are possessed of sufficient real estate to answer the amount they are likely to have the administration of.

To the 22d.—I do not know whether the plan suggested in this question would be productive of public convenience.

ANSWERS of *A. Simpson*, Esq.

To the 1st Query.—Under the existing laws of the province there is not, I believe, any mode of ascertaining with any degree of certainty, the mortgages and incumbrances on property.

To the 2d.—There is no means of discovering that every instrument affecting the title, or creating or producing incumbrances on property, has been produced or is known to the purchasers or persons intending to lend money on property.

To the 3d.—I have known instances where persons have not only run a very great risk of loss, but have been deprived of the property which they purchased and paid for, in consequence of secret mortgages having been brought forward.

To the 4th.—I believe so.

To the 5th.—Yes.

To the 6th.—Yes, lent in most cases fruitlessly.

To the 7th.—The expense of obtaining a confirmation of title is very heavy—advertisements, &c., but the exact amount I cannot state at this moment. The time usually consumed in obtaining judgment is from four to six months.

To the 8th.—I conceive that register offices would be of the greatest benefit, as persons either wishing to purchase or lend money on property would, on reference to the county register, be able to see at once the extent of all incumbrances on the property.

To the 9th.—Register offices would certainly tend greatly to prevent the commission of fraud, and would be a protection to purchasers and mortgagees.

To the 10th.—There cannot be a doubt of it.

To the 11th.—The disclosure which a register of mortgages would afford would be of the most essential benefit to the honest part of the community, as proprietors would then be able to raise moderate sums of money on their property to meet pressing demands. Whereas under the present system many respectable families are sold out, and their property sacrificed at public sale, when a loan of 50 *l.* or 60 *l.* on a property well worth several hundred pounds would have satisfied all claims against them, and left them in comfortable circumstances.

To the 12th.—Many persons might feel some delicacy about making their family arrangements and settlements public, still the evil, if it can be so called, would be overbalanced by the good to be derived from such a disclosure, as it would give confidence to intending purchasers or persons ready to loan money; and those not anticipating the necessity of either selling or mortgaging property, might keep their secrets to themselves.

To the 13th.—I cannot say much on this point.

To the 14th.—Most certainly.

To the 15th.—I have known many instances where persons possessed of real property in value many thousand pounds, if at all, very partially incumbered, could not raise as many hundreds, the persons willing to lend being afraid of secret incumbrances on the property.

To the 16th.—I feel satisfied that register offices, in every county, whether in the seigniories or not, would be conducive to the prosperity both of commerce and agriculture.

To

To the 17th.—I have good reason for being of this opinion, having known personally many very respectable emigrants in good circumstances, who would have preferred settling in Lower Canada to going up the country, had it not been for the danger and delay of securing sure titles to property in the Lower Province. Indeed all emigrants appear to consider it unsafe to purchase property in Lower Canada.

To the 18th.—I am of opinion that all mortgages ought to be special and not general, as at present.

To the 19th.—I do not clearly understand the nature of this, but consider that claims of every description should be included in any act of registration.

To the 20th.—I have known of some and heard of many fraudulent applications of estates confided to the management of tutors and curators.

To the 21st.—Persons appointed curators to vacant estates at their own request, as is very frequently the case, ought certainly to be required to give special security, but it would be rather a hard case to demand security from tutors appointed by the court, who are compelled to act, even without their consent if once appointed, which I am led to believe is often the case.

To the 22d.—I think it would be a public convenience were all judgments rendered in the several districts required to be registered, without delay, in some public office in the province, where persons interested could at all times have reference.

ANSWERS of *R. J. Routh*, Esq.

To the 1st Query.—As far as I know, it is not possible.

To the 2d.—

To the 3d.—I understand that it frequently occurs.

To the 4th.—I understand this to be the case.

To the 5th.—Certainly, it would be very imprudent to omit this precaution.

To the 6th.—Same answer.

To the 7th.—

To the 8th.—My previous habits and experience are in favour of such a measure. I think it would be advantageous to both parties. The property would not be depreciated by the uncertain tenure of the sale. It would be open to public valuation, without any apprehension of fraud to deter competition.

To the 9th.—As I understand the nature of a register, that no mortgage would be valid that was not recorded, and that the deed of mortgage must be signed by the registrar, I see no possibility of fraud.

To the 10th.—It would avoid it altogether.

To the 11th and 12th.—No actual evil but much good would come from it, not only to the public but to the individual. The first object of all laws, is to prevent the commission of fraud, and the second to punish it. The law, therefore, that makes the commission of a crime impossible, must be beneficial. This argument affects future transactions, but a disclosure of existing incumbrances might certainly be painful to the feelings of many families, yet no one (not even they themselves) could assert that it would be unjust. If profusion or misfortune compels a man to resort to mortgages which he cannot redeem, sooner or later the disclosure must be made. If soon, there may be yet sufficient means to retrieve his affairs; and if late, loss of character may be added to the evil; and perhaps the sudden and unexpected ruin of a whole family, brought up and educated in the expectation of a large succession.

To the 13th.—I think these advantages stand to reason, all conducing to public integrity.

To the 14th.—Certainly.

To the 15th.—I am told that such instances occur repeatedly.

To the 16th.—It appears to me that commerce and agriculture are two sister sources of wealth. Agriculture must languish without commerce, which stimulates industry, and absorbs the surplus produce. It insures to the farmer a market constantly open to him, an object of first utility, and trade derives a new source of speculation and enterprise. I think, therefore, that the protection so conferred must be mutual, and conduce to the prosperity of both.

To the 17th.—Certainly, the fact has experience for it.

To the 18th.—I am of opinion that mortgages should be special, because it carries with it a proof that the property particularised shall be equal to the value of the mortgage, and it is a clear and tangible transaction which does not affect any subsequent acquisitions of property.

To the 19th.—As far as I understand this question, I conceive it ought to be particularised, for many donations are made on marriage by individuals without means or property whatsoever; and in case of death or failure, the creditors of the party are defrauded of their just demands.

To the 20th.—I have heard generally of many instances sufficient to influence strongly my opinion against the practice. It appears to me the law is very open to abuse, which it would be desirable to remedy.

To the 21st.—Certainly; but might not this indispose many fit persons to be tutors?

To the 22d.—I am under the impression that all judgments are registered of necessity in the prothonotary's office; but I conceive that this ought not to supersede the record in the county register, where the information would be more easy of access, and of more convenient reference.

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ANSWERS of *B. Wagner*, Esq.

To the 1st Query.—To the best of my knowledge and belief it is not possible, these laws applying to the past and present, to the living and dead.

To the 2d.—I neither know of any such means, nor do I believe any such means to exist.

To the 3d.—These instances are innumerable, and I have myself had serious and tedious, as well as expensive, proceedings therefrom.

To the 4th.—If not in every such term, certainly in very many of them; and I believe that in nine-tenths of these actions the defendants were unaware of the existence of those legal mantraps and snares.

To the 5th.—I believe it to be the practice with every intelligent and prudent purchaser, but Europeans never suspect these dangers, and are frequently let in by purchasing without precaution.

To the 6th.—If these researches, &c. are not made, the purchaser or mortgagee may expect to have ample cause to regret his negligence.

To the 7th.—I believe both the expense of time and money to be considerable, but being utterly averse to the laws, delays and expenses, I prefer making a sacrifice in the first instance, and looking out for the future, therefore cannot state the sum.

To the 8th.—Every county register, if regularly kept, and under due responsibility, would afford the best possible protection against concealment or deceit, if the statutes creating such office were made clear, explicit, and without ambiguity, and beyond the reach of legal quibble.

To the 9th.—Most indubitably it would; and in my opinion a clause might be very desirable in the Act, authorizing if not requiring public exposure in all cases of manifest fraud, as well as legal redress.

To the 10th.—Most certainly; both time, money, and great trouble and mortification would be spared thereby.

To the 11th.—These disclosures would, in my opinion, be of great benefit to the honest part of the community, and detrimental only to the lovers of fraud and deceit. My reasons are, because truth is preferable to falsehood, light to darkness, and honesty to knavery.

To the 12th.—Those disclosures would doubtless be productive of some inconveniences to needy and distressed proprietors; but in a moral as well as political view, whatever is based on fraud and deceit is bottomed on a false foundation, and as such ought to be discountenanced by every wise and good government.

To the 13th.—I can say very little on this subject from personal experience, but, as a matter of opinion, I think much fraud would be prevented by the enregistration of wills, donations and other dispositions of real property, &c.

To the 14th.—I decidedly think it would, to a certain degree.

To the 15th.—I have known and felt this personally, although perfectly unincumbered by debt or mortgage.

To the 16th.—These lovely handmaids of prosperity always flourish best together, and delight in everything that is founded on industry, truth and integrity, and the very opposites of fraud, deceit and concealment.

To the 17th.—In some degree these are the causes, but the principal ones, in my opinion, are the confusion of laws, languages and customs in the Lower Province, to which add climate.

To the 18th.—I think it would decidedly be productive of far more good than evil, and is very desirable.

To the 19th.—I think its abolition is very desirable under the legal provision alluded to.

To the 20th.—Not of my own positive knowledge, but I have been informed, and believe many such instances to exist.

To the 21st.—I think certainly this object would be much more effectually obtained.

To the 22d.—I decidedly think such enregistration in the district prothonotary's office is very desirable.

ANSWERS of *B. Holmes*, Esq.

To the 1st Query.—It is, I believe, impossible.

To the 2d.—There are, I believe, no means of ascertaining that every instrument creating incumbrances on property has been produced.

To the 3d.—Instances have come within my knowledge in which mortgage creditors have lost their claims on the real estate of their debtor, in consequence of prior claims not disclosed; there are frequent instances where, even when the debtor has acted in good faith, a tacit mortgage has lost to the creditor his claim; tacit mortgages created by the offices of curator, tutor or executor, are peculiarly liable to injure the creditor.

To the 4th.—Actions, such as described, are of frequent occurrence.

To the 5th.—It is very generally the practice to resort to the Act named in this question previous to investing money on the security of real estate, and also to adopt other means, at considerable expense, in search of protection against secret mortgages.

To the 6th.—Yes; and these investigations are attended with considerable expense.

To the 7th.—I think it cost me about 15 *l.* or 18 *l.* to obtain a confirmation of title under the Act 9 Geo. 4, c. 20, and near six months elapsed in the process, although I was informed that but three months would be necessary for the proceedings.

To

To the 8th.—It would; the grounds of such opinion being, that when an individual has all necessary knowledge or information upon a given subject in which he is interested, that he will in all probability use it to his own advantage. Under the existing law that knowledge is beyond his reach.

To the 9th.—There can be, in my opinion, no question of the check to fraud which would be produced by county or district register offices.

To the 10th.—Most assuredly.

To the 11th.—The disclosure of all mortgages or incumbrances might in individual cases be productive of some injury, but the evil could be only partial. The concealment of incumbrances generally cannot be necessary to honest intentions; on the contrary, the means of obtaining certain knowledge of these gives facility to transfers, and does away the temptation to fraud; the good which would result from a register would be permanent and general.

To the 12th.—I cannot suppose any evil would result from such register.

To the 13th.—It is, I believe, admitted that good has resulted to the townships by the late introduction there of registers; every incumbrance or mortgage of any or whatsoever kind, if not enregistered, should take rank, not according to date, but after all that are registered; the evils arising out of the want of such a law are innumerable; among others, I cite a case: Judgment rendered, April Term 1830. Ermatinger, a mortgage creditor of De Witt, brought the estate to sale; to the distribution of the monies levied, a claim was preferred by the widow of De Witt claiming *douaire coutumier*. De Witt had married in the United States, and brought her to Canada. The court granted her claim to dower in preference to all the mortgage creditors since her marriage, by means of which the *bailleur du fond* and dower were paid, and all the mortgage creditors choused out of their just demands. Similar and worse cases are notoriously of frequent occurrence.

To the 14th.—Yes, certainly.

To the 15th.—I know that capitalists are very unwilling to lend money on the security of real estate. I was employed to negotiate for a loan of about 20,000 *l.* currency, which I could have obtained at five per cent. interest, but when the parties were informed that offices for the register of mortgages did not exist in seigniorial Canada, they stated that no rate of interest would induce the investment, and this when the parties were most anxious to lend their money; they were deterred solely by the impossibility of ascertaining whether secret incumbrances existed or not.

To the 16th.—Commerce and agriculture are so intimately blended in their successful results, that the establishment of register offices could not be injurious to either, but conduce to the advantage of both.

To the 17th.—I have had personal knowledge that such is the case, and as respects emigrants of the more wealthy order, very few can be induced to remain in Lower Canada, owing to the impositions and frauds to which the difficulty of discovering mortgages and secret incumbrances gives rise.

To the 18th.—It would be productive of vast good.

To the 19th.—All rights should be particularised; all mortgages made special; the retaining the *douaire coutumier* is the retaining a fruitful source of litigation.

To the 20th.—I have no personal knowledge, but believe such cases are not uncommon.

To the 21st.—Tutors and curators should satisfy the judges appointing them, that they possessed property adequate to insure the just and faithful discharge of all claims to which, as administrators, they were liable.

To the 22d.—I answer it would, in my opinion, be productive of much good and public convenience if all judgments or other acts performed by the judges, whereby mortgages or other incumbrances are created by the operations of the law, were required without delay to be enregistered at an office for that purpose located at the seat of government.

Answers of *A. Paterson*, Esq.

To the 1st Query.—I conceive it perfectly impossible.

To the 2d.—There are no means at present that I am aware of.

To the 3d.—Frequently; and in one instance I knew of a person who applied to the notary who passed the deed of sale, to know if he (the notary) was aware of any incumbrance being on the property, and received for answer that he could not tell; a short time after the last payment was made a mortgage appeared, granted before this very notary; the land was seized and sold, and the poor man lost all he was worth, and more, having actually borrowed a sum to enable him to make up the last payment.

To the 4th.—Yes.

To the 5th.—Very frequently.

To the 6th.—Yes; purchasers, of course, try to ascertain as far as practicable; still this is frequently without effect, and purchasers often find out, when too late, their error, as stated in my answer to the third question.

To the 7th.—I cannot say what the expenses are, but it is something considerable; it generally requires from five to six months.

To the 8th.—Most decidedly; and until county registers can be established, I consider there is no security to purchasers or mortgagees.

To the 9th.—There cannot be a doubt but that the establishment of registry offices would greatly prevent frauds.

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To the 10th.—It would.

To the 11th.—I do consider that the disclosure which a register office would afford would be productive of much benefit to the public, and would afford not only security to purchasers and mortgagees, but frequently prevent fraud.

To the 12th.—I think the disclosure of family arrangements would produce no evil, but might be productive of much good, and enable proprietors when in want to borrow money at a moderate rate, which frequently cannot be done at present.

To the 13th.—I have never known any evil arise, but on the contrary.

To the 14th.—Most certainly it would.

To the 15th.—This, I believe, is frequently the case.

To the 16th.—I consider that register offices would very much tend to the prosperity and advancement of both.

To the 17th.—I do; and am aware that the difficulty and delay to be encountered in obtaining good titles to landed property in Lower Canada prevents emigrants of capital from the United Kingdom settling here, preferring Upper Canada and the United States, where registry offices are established.

To the 18th.—I am decidedly of opinion that all mortgages should be special, and not general.

To the 19th.—I think it would be better to abolish it; but this being a point of law, I regret to say I cannot satisfactorily answer this question.

To the 20th.—I have known instances of misapplication of tutors and curators, and have also known, instead of the person placing the funds belonging to minors in the hands of a person where it was safe, lose the whole, from the want of register offices; and a case of this nature has very lately happened in this district: the poor tutor went to consult a person of large landed property, and who was reputed to be wealthy, in what way he would advise him for security to dispose of some money he held belonging to minors (upwards of 300 *l.* currency), when he answered, that being himself at that time in want of a little money, he would take it, and grant a mortgage on his property for the amount, and that he would repay it when wanted; to which the tutor consented; and it turns out that he is likely to lose the whole, the property having before been mortgaged for far above its value.

To the 21st.—Yes.

To the 22d.—I think that all judgments should be registered at the register-office of the county where the party resides against whom judgment was obtained; this, it appears to me, would be better than the prothonotary's-office, as it would show at once what incumbrances are on the property, without applying at two offices.

ANSWERS of *J. Molson*, Esq.

To the 1st Query.—I think it impossible.

To the 2d.—I consider there are no means.

To the 3d.—I know of several instances, one of late occurrence, wherein I was the purchaser for account of my late father, last summer; I obtained at a *décret volontaire*, and was on the point of paying the purchase-money, when I discovered a prior claim upon the same for minors' rights; my father has sustained a loss in another case, arising from this cause.

To the 4th.—They are of frequent occurrence, and have happened to myself.

To the 5th.—I consider it necessary to resort to it in all cases, and to make other researches at considerable expense.

To the 6th.—There are.

To the 7th.—I have paid 10 *l.* and upwards, and six months have elapsed in procuring the same.

To the 8th.—It would afford great protection, and, in my opinion, create confidence, and induce many persons from the mother country to invest large sums of money in this country, and would offer an opportunity to many of employing money that otherwise would be locked up, and it would enhance the value of real estate very much.

To the 9th.—It would.

To the 10th.—There cannot be a doubt.

To the 11th.—I do consider it would be productive of no real evil, and that it would ecure many from considerable loss or utter ruin.

To the 12th.—I am not aware that any evil would arise, but think that much good would result.

To the 13th.—I think it would be beneficial to enregister them; no cases have come under my notice on these points that I have any recollection of.

To the 14th.—Very much; I have met with many losses from the want of the information which would have been afforded by such a register.

To the 15th.—I know it to be the case.

To the 16th.—I think it would benefit both to a great extent.

To the 17th.—I am confident it has done so to a great degree.

To the 18th.—I think it absolutely necessary.

To the 19th.—I think the *douaire coutumier* ought to be abolished, and that all rights of dower should be particularised, and specially applied.

To the 20th.—I do not know of any.

To the 21st.—I think tutors and curators ought to satisfy the judge that they are sufficiently responsible for the charge they undertake.

To

To the 22d.—I think it would be very desirable that they should be registered without delay in the prothonotary's office in the district of Quebec, but I think they ought also to be registered in the district register-office, where the mortgages or incumbrances are created, if an office be there established.

ANSWERS of Mr. *Chandler.*

To the 1st Query.—I consider it, in many cases, impossible to know the extent of mortgages.

To the 2d.—I know of no certain means of discovering every instrument affecting real property.

To the 3d.—I have heard of many losses incurred by purchasers of properties, as well as by loans thereon, in consequence of prior undiscovered mortgages.

To the 4th.—I believe them to be common occurrences.

To the 5th.—Yes; but I do not consider even that proceeding can fully secure a purchaser.

To the 6th.—Yes.

To the 7th.—That may depend on circumstances, as oppositions are liable to contestation.

To the 8th.—I think it would have that effect, because reference to the register would afford the information required.

To the 9th.—I consider a register could not fail to prevent many frauds that are now practised.

To the 10th.—No doubt exists in my mind that it would.

To the 11th.—I am not aware of evil that could result to the honest man; it might possibly affect a well-intentioned one, desirous of speculating beyond his means.

To the 12th.—I cannot conceive real evil would result; it might affect duplicity, vanity or false pride.

To the 13th.—Advantages have been derived in many cases, which proves that if all acts were similarly situated, corresponding additional benefit would be reaped.

To the 14th.—I am decidedly of opinion it would.

To the 15th.—I fear it is too frequently the case, to the manifest injury of the honest farmer.

To the 16th.—I think they would be favourable to both.

To the 17th.—I think there can be no doubt on the subject.

To the 18th.—I think such a measure calculated to simplify transactions and save litigation.

To the 19th.—The present law of dower is complicated, and affords openings for unjustifiable practices, which the artful avail themselves of; it is therefore advisable it should be modified; the remedy proposed appears feasible.

To the 20th.—I fear the case is too common.

To the 21st.—Certainly.

To the 22d.—Yes; but if it were practicable to cause all registers to be made in the same county with the property, it might greatly facilitate the obtaining information when required.

ANSWERS of the Hon. Mr. *Primrose.*

To the 1st Query.—It is not possible.

To the 2d.—There are no such means.

To the 3d.—I have known many such instances.

To the 4th.—Many.

To the 5th.—Yes.

To the 6th.—Yes, where the value of the property is considered.

To the 7th.—The expense varies from 7 *l.* to 10 *l.* currency in ordinary cases. The time, when no oppositions are filed, from four to six months. If oppositions are filed, on which contestations arise, the period will be protracted the same as in suits of a similar description.

To the 8th.—It would operate as a great protection, but not a complete one, as it could not be made to the prejudice of married women, minors, children entitled to dower, (*non-ouverte*), &c.

To the 9th.—It would greatly so tend in my opinion.

To the 10th.—I am of opinion that it would.

To the 11th.—I consider that such a disclosure would be productive of more good than evil. I think the facility of obtaining credit injurious to both debtor and creditor, generally speaking; of which the proceedings in the Insolvent Debtors' Court in England afford a multitude of striking examples. It is adverse to the spirit of economy; the parent of riches to the one, and induces speculation and often harsh treatment from the other. When credit is given on a false notion of the means of the debtor, these evils, in my opinion, are aggravated.

To the 12th.—The same answer as to the last.

To the 13th.—As far as any circumstances of this nature have come under my observation, I consider advantages to be derived from these dispositions of the law.

To the 14th.—I think it would.

To the 15th.—I have known such instances.

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To the 16th.—I do not consider that register offices would favour commerce at the expense of agriculture; I believe that both would be equally benefited by such a provision.

To the 17th.—I believe that emigrants not only fear incumbrances, but many are averse to the seigniorial tenure; both of these operate to deter them from settling in the seigniories. The want of register offices, I believe, prevents many capitalists from embarking their means in the purchase of seigniorial lands otherwise than at sheriff sale.

To the 18th.—I think it would be highly advantageous.

To the 19th.—I am adverse to the abolishing of the *douaire coutumier*, as it would in many instances leave wife and children wholly unprovided for.

To the 20th.—I have known instances of the kind.

To the 21st.—I think all tutors and curators should be obliged to give security, and that such appointments and suretyships should be registered in such a manner as to be easily searched for and ascertained to exist.

To the 22d.—I think these registers should be made reciprocally in all the districts, and that when judgments are satisfied, and liabilities creating incumbrances by operation of law become extinct, entries should be made vacating such judgments, &c. in such registers.

Answers of *William Patton*, Esq.

To the 1st Query.—Yes.

To the 2d.—No.

To the 3d.—I have suffered very seriously, and have known a great many instances where others have also suffered.

To the 4th.—Yes.

To the 5th.—Yes.

To the 6th.—Yes.

To the 7th.—From 10 *l.* to 12 *l.*, according to the length of the advertisement.

To the 8th.—There could be no doubt but a county register would have the desired effect.

To the 9th.—Yes, with such an office the many frauds daily practised would be prevented.

To the 10th.—Yes.

To the 11th.—I am of opinion that the circumstances of mortgages being known would enable the honest man who had property to obtain money at a reasonable rate of interest, which is not the case at present.

To the 12th.—I cannot conceive how the disclosure of family arrangements and settlements could be productive of evil, but on the contrary would be a great public benefit by such register.

To the 13th.—I have known very great benefit arise from the enregistering of wills in the United Kingdom.

To the 14th.—Yes.

To the 15th.—Instances occur very frequently where the property of families is sacrificed, although unincumbered, from their not being enabled to raise money upon the same, which would not be the case could capitalists be secure.

To the 16th.—There can be no doubt of an establishment of the kind assisting both commerce and agriculture, and would tend very much to the settlement of the new concessions by the Canadians from the seigniories, for it cannot be expected the Canadian youth will leave home and go into the woods without some assistance from their parents, who cannot at the present time give it to them, not being able to borrow money upon their farms.

To the 17th.—Almost every season since my arrival in Canada, now 16 years, instances have come before me from letters of introduction, where emigrants with capital have declined remaining in the Lower Province from being unable to invest their money with security, and consequently went to Upper Canada and the United States; this accounts for our emigrants remaining in the Lower Province, being almost exclusively without capital.

To the 18th.—Yes, decidedly.

To the 19th.—All rights of dower should be particularised and be specially applied.

To the 20th.—Yes, in many instances.

To the 21st.—Yes.

To the 22d.—Yes.

In conclusion, I beg leave to state to the committee, independent of the benefits referred to above in the answers, the establishment of register offices would protect the inhabitants from the acts of fraudulent or negligent notaries, some of which, I regret to state, have come under my observation; and in one part of the county of Dorchester, where I am well acquainted, I am afraid there is not one farmer in ten who is aware how his property is circumstanced, from the negligence of a notary now deceased.

Answers of Mr. *Cottrell*.

To the 1st Query.—There are no means that I know of to ascertain whether property in the seigniories is not incumbered with mortgages. Property may be incumbered for double its value, and no certain means to ascertain it.

To the 2d.—None that I know of, except bringing the property to sheriff's sale.

To the 3d.—I have known several instances where persons purchasing property and paying

paying the full value, have been obliged to pay mortgages which were not disclosed by the venders. I myself have in three several instances, after paying the full value of property, been obliged to pay mortgages which were not disclosed, and which I had no means of ascertaining that such mortgages were in existence.

To the 4th.—I have known several such actions in the King's Bench of Three Rivers. Some instances where persons after paying the full value of their property, have been compelled to abandon it in consequence of secret mortgages coming upon the property; and others have been obliged to pay when able to do so.

To the 5th.—It is the practice in many cases, but to what extent I am not able to say.

To the 6th.—It is the general practice when a person is to purchase property, to make every inquiry possible, to examine titles and previous family arrangements, to ascertain as far as possible whether the property is free of incumbrance.

To the 7th.—I have no personal knowledge what may be the expense.

To the 8th.—Such a county register would afford a protection against the risk arising to purchasers or mortgagees from the concealment of such incumbrances, because the purchaser or mortgagee could by access to the register office ascertain whether the property was incumbered, and to what amount.

To the 9th.—It would, because a greater facility would be afforded of ascertaining any mortgages or fraudulent transaction.

To the 10th.—It would.

To the 11th.—I do not consider that the disclosure would be attended with evil, because a man acting upon honourable principles, would have no objection that the incumbrances upon his property should be known. Besides, if he wanted to raise money upon the security of his property, the lender by knowing the state of such property, would be able to know whether he would be safe in advancing any more upon it; on the contrary, if no register office exists, one may presume that a property is fully covered with incumbrances.

To the 12th.—I do not think that the disclosure would be attended with evil, because I should have no objection to have my own family arrangements disclosed, and ought to presume that others should be equally open if acting honourably.

To the 13th.—I cannot speak upon this with any personal knowledge.

To the 14th.—It would most assuredly.

To the 15th.—I have known several instances where persons were unable to obtain money on the security of real property of large value, and perfectly unincumbered, because it was impossible to satisfy the person who was willing to lend, if he could have been satisfied that such property was free from incumbrance, or that he would have been safe and secure in lending.

To the 16th.—The establishment of register offices in the seigniories would favour and conduce to the prosperity of both commerce and agriculture.

To the 17th.—I am fully of opinion that the want of register offices has a great tendency to prevent emigrants from the United Kingdom purchasing in the seigniories, and induces them to go to Upper Canada or the United States where register offices are established. Several emigrants of a good standing have called upon me for information respecting the purchase of property, and finding the difficulty of getting secure titles, and the tenor under which such property was held, they would not purchase.

To the 18th.—I should consider that all mortgages ought to be special and not general.

To the 19th.—I am of opinion that the *douaire coutumier* ought to be abolished, and to provide by law that all rights of dower should be particularised and be specially applied.

To the 20th.—I have known several instances when tutors and curators have been elected in conformity with the existing laws, and where a handsome property has been dissipated, and left the minors nothing, or very little.

To the 21st.—I should consider that tutors and curators to attain more effectually the object of the law, should be required to give solvable security, specially or by sureties, in an amount required by the judge.

To the 22d.—I consider that judgments rendered, and ministerial acts performed by the judges, whereby mortgages or incumbrances on real property are created by the operation of the law, ought to be enregistered somewhere. Perhaps the establishment of county register offices would answer a better purpose than having them enregistered in Quebec exclusively.

ANSWERS of *G. Pemberton*, Esq.

To the 1st Query.—It is not.

To the 2d.—I know of no means.

To the 3d.—Many such instances have come to my knowledge during my residence in the province.

To the 4th.—I cannot say of my own knowledge whether such is the case, but I have heard that they are of frequent occurrence.

To the 5th.—It is a very general practice.

To the 6th.—Yes.

To the 7th.—I cannot say.

To the 8th.—In my opinion certainly, and that opinion is grounded on my knowledge of the effects produced by registry offices in other countries.

To the 9th.—Answered in the foregoing.

To the 10th.—Undoubtedly.

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To the 11th.—I cannot conceive that a register could be productive of evil to any but dishonest persons; no honest person can wish to deceive by an appearance of wealth, which in reality he does not possess.

To the 12th.—I have never known any evil produced by registers in Ireland, with which country I am best acquainted, and where family arrangements and settlements can be learned for 2 *s.* 6*d.*

To the 13th.—The same remarks as given in the two preceding answers, apply in this case also.

To the 14th.—Certainly.

To the 15th.—I have known many, and I believe they occur every day.

To the 16th.—In my opinion it would conduce to the prosperity of both.

To the 17th.—I am decidedly of that opinion, and have heard many instances of it mentioned, of the truth of which I entertain no doubt; and from personal knowledge I can assert that many wealthy emigrants have stated such as their reason for not settling in Lower Canada.

To the 18th.—In my opinion registry offices, if established, would render all general mortgages unnecessary.

To the 19th.—I believe that much inconvenience and uncertainty arise from the *douaire coutumier*, but I am not prepared to say that it ought to be abolished.

To the 20th.—I have known such instances and suffered loss therefrom.

To the 21st.—I think so as regards curators who are paid, but with respect to tutors who are not paid, and whose duties are very onerous and compulsory, it would be impracticable.

To the 22d.—I think in the event of registry offices being established, that such judgments should be registered there as well as in the prothonotary's office, in order that all incumbrances affecting real property could be seen at one glance.

ANSWERS of Mr. *Castle.*

To the 1st Query.—I do not think it possible to be certain that the property is free from incumbrances.

To the 2d.—The above answer applies here.

To the 3d.—I do not at the present moment recollect any instances occurring within my personal knowledge.

To the 4th.—Fortunately having no acquaintance with the courts of law, I am unable to offer any personal opinion hereon.

To the 5th.—I cannot say.

To the 6th.—Invariably.

To the 7th.—I cannot say.

To the 8th.—It would certainly afford protection against all future and ordinary mortgages, but not against dowers, minors' claims or tutorships, until the present existing laws on these points be repealed.

To the 9th.—For the future it most certainly would, because no payments would be paid nor loans effected on real estate until the same was registered, hence doing away with the inducement to keep mortgages concealed.

To the 10th.—Unquestionably.

To the 11th.—"Of good," because on a good title property would be worth its full value, and prices would be enhanced one-third.

Because loans could readily be obtained on an undoubted title, and because by this means, as well as permanent investment, much foreign capital would find a home among us, which would be profitably employed in commerce and agriculture.

To the 12th.—"Of more good," because it cannot injure any family arrangements or settlements, and cannot weaken their title or claim on the property. Whereas to a purchaser or lender such registry greatly increases his security and confidence.

To the 13th.—

To the 14th.—Most certainly.

To the 15th.—Indeed I have; without descending to particulars, nine proprietors out of ten have at one time or another been subject to inconvenience on this subject.

To the 16th.—"To the prosperity of both," because farmers with capital would purchase and settle, and this purchase money would be added to our commercial capital.

To the 17th.—Certainly, certainly—nothing else.

To the 18th.—Special mortgages would, I think, be best, though they would be useless until the dower system, &c. be abolished, which is a general mortgage.

To the 19th.—It is advisable that everything should be "clear as the noon day," and that all claims and rights of whatsoever nature should be enregistered.

To the 20th.—I have known instances where tutors have dissipated estates, to the loss of minors or others.

To the 21st.—I think tutors and curators would not like to give special security, and that in most cases they think too lightly of the general mortgage they give in assuming a tutorship.

To the 22d.—In the event of registry offices being established, I should consider the enregistration of judgments imperative, and the judgment of non-effect till so registered.

ANSWERS of *J. Fraser*, Esq., of *Montreal*.

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To the 1st Query.—I know of no means of ascertaining the fact.

To the 2d.—None.

To the 3d.—Several to a large amount. I would state the case of the late Wm. Grant, with Brickwood and Daniel, of London; the case of three brothers, Caron, of Rivière du Loup, who, purchasing three farms in a state of nature, after many years' labour and improvement on them, were dispossessed by John Blackwood, sen., of Quebec, swearing on a general mortgage held by him from Mr. Phineas, the person from whom they purchased; the case of Callaghan, who purchased from St. George Dupré, and paid the amount agreed on, and was obliged to abdicate from a heavy claim by mortgage coming against the property, executed by the same notary who made out the deed of sale to him (*quitte et nette*), and in presence of the party holding such incumbrance. There are many others that I could state; one is now before the court, the heirs Dubois, against a property sold and paid for by the late Thomas Delvechio, some 30 years ago.

To the 4th.—There are.

To the 5th.—It is; but latterly considered by many lawyers insufficient.

To the 6th.—It is generally done.

To the 7th.—I cannot state, as it varies from circumstances.

To the 8th.—There would be a difficulty of enregistering all incumbrances, as the French law constitutes so many, for instance, the acceptance of executor or tutorship, or in short, all *actes* passed before only a notary, cause mortgage; and the general practice with country merchants, is to call in a notary once a year, and cause him to take notes for the balances agreed on by their customers, who, in general, have no intention to, nor are they aware that they are incumbering their property.

To the 9th.—I certainly think it would; although, as I before stated, it would require to be very voluminous to engross them all.

To the 10th.—It would; as every day's experience shows the impossibility of rendering real estate available from the obscurity of title.

To the 11th.—I cannot for a moment suppose that any evil could be produced by such disclosure, but on the contrary, it would render property as tangible as any other commodity, and shield the capitalist, who would then be able to invest his means with that security, the reverse of which, from the frequent uncertainty of title in Lower Canada, obliges many who would prefer domesticating themselves in it, to go where they can with more confidence invest it.

To the 12th.—It would, in my opinion, protect integrity, and be a bar to the daily impositions that the mere occupancy of property (already secretly incumbered for much more than its value,) practises on the liberality of the mercantile body, who shell out their effects on fallacious representations, which, the sequel too often shows, were made but to deceive.

To the 13th.—From experience, I am of opinion, that in every instance it has been productive of good.

To the 14th.—I think, as I stated in my answer to the 12th interrogatory, it certainly would.

To the 15th.—Many.

To the 16th.—From my own experience, I do not hesitate to say both would be beneficial to a great degree; as from the uncertainty entertained by commercial men of the state of the agricultural tenure, the liberality and indulgences which casualties might render beneficial to the one, are withheld, and the backwardness of the other attributed to any but the real cause.

To the 17th—I know it to be a fact, as stated in my answer to the 11th interrogatory.

To the 18th.—I am of opinion that the special mortgage would be beneficial, inasmuch as large possessions being rendered untangible for sometimes very small considerations, is attended with, at least, great inconvenience.

To the 19th.—I should be of opinion that the *droit coutemier* should give way to one defined and particularized, and not left to the party to accept or not, at will.

To the 20th.—Many; and one is still in our court here, by which the property of minors, involving some thousands, has been embezzled.

To the 21st.—I think it would be proper that satisfactory security should be required, as, how often does it occur, that of the seven persons picked out of the lobby of the court house, and denominated *assemblé de parens*, there are amongst them who neither know the minors nor the persons they are about to elect; but are whispered to by the active person in the transaction, that they wish *such* a person to be elected.

To the 22d.—I am of opinion it would.

ANSWERS of *John Frothingham*, Esq.

To the 1st Query.—I have had very little experience in this matter; my opinion, however, is that it is very difficult.

To the 2d.—I am not much acquainted with the subject.

To the 3d.—Have heard of many such, but am not personally acquainted with the circumstances of but one case. Some years since three gentlemen were authorized by the Commissioners of the British and Canadian School to purchase a lot of ground for the erection of a school-house, said lot being advertised for sale at the church door, for the

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support of minor children; four or five years after the purchase a claim was made on the property by reason of a mortgage, altogether unknown and unsuspected.

To the 4th.—Do not know.

To the 5th.—Unacquainted with the subject; but believe it to be the case.

To the 6th.—It would seem to be necessary.

To the 7th.—Do not know.

To the 8th.—If all deeds and mortgages were registered, a purchaser could see at once if the property he was buying were free or not, which I believe it is very troublesome to ascertain at present.

To the 9th.—I am not personally knowing of any frauds under the present system; but think a regular register of all deeds and mortgages would prevent any.

To the 10th.—It would be attended with no expense either of time or money worth naming.

To the 11th—Of inevitable good; I believe if a register, such as is common in New-England, were once established here, so as to be simple and intelligible, that real estate would advance 50 per cent. all over the country, and find buyers too; permanent loans could be obtained by holders of real estate, and those who want to place money safely at interest would then place it in the province instead of going out of it.

To the 12th.—I am not enough acquainted with the subject to say.

To the 13th.—I have had no experience on the subject.

To the 14th.—Certainly.

To the 15th.—I have not known any, but presume it is a thing of course.

To the 16th.—It would promote agriculture and commerce both.

To the 17th.—I have no doubt that the difficulty of obtaining clear titles here prevents many an emigrant from settling amongst us, as well as many who are not strictly emigrants.

To the 18th.—More good, I should think, though I do not pretend to be much acquainted with the subject in its details.

To the 19th.—I am unacquainted with the subject.

To the 20th.—No.

To the 21st.—I believe this is the custom among our neighbours. There they have a judge of probate and wills, &c. who looks after the interests of estates, directs the amount bond, security, &c.

To the 22d.—It seems absolutely necessary; for, if the register does not give all the loans on a man's property, it would be a delusion.

ANSWERS of *T. S. Brown*, Esq.

To the 1st Query.—In small communities the circumstances of individuals are generally known as well as the incumbrances upon their real property, but a degree of uncertainty must remain, especially to persons not intimately acquainted with the condition of particular families, inasmuch as information must be obtained from private sources instead of from public record.

To the 2d.—I am not aware of any by which absolute certainty can be insured; one party must depend greatly upon the honour and integrity of the other.

To the 3d.—This has been made an outcry for party purposes; but I believe that losers have generally been indebted to their own rashness in making advances without seeking for such information as might have been easily obtained.

To the 4th.—I have had no experience in the effects of such suits.

To the 5th.—It is; but I am not aware that the expense is disproportioned to the other exorbitant charges of our courts.

To the 6th.—Yes; and generally a person may discover much real property that it is unsafe to buy or lend upon.

To the 7th.—Having never obtained a title in this manner, I do not know the precise time or expense.

To the 8th.—It would; but the propriety of establishing register offices depends upon the question, whether land shall be considered dead property, from which families and their descendants can draw only a certain annual revenue, or whether it shall be considered active capital, to be made available whenever circumstances require. I consider that whatever may have been the wisdom of European policy in making a distinction between capital invested in land and capital invested in other property, that no reason exists for such distinction in republican America. I consider that in advancing the resources of a new country, where no privileged class is recognised, all the capital that it contains should be made directly available to encourage the energy of the people, and that an exchangeable value should be added to the real value of land. I know not why there should be any difference of obstacles creating a difference between sales of real and sales of personal property. In one, a sale may be confirmed and ownership established by delivery; in the other, it cannot; and consequently a public office is only necessary, in order that all things affecting titles of real estate may be established, ratified and preserved. The abundance of capital in old countries permits the proportion which is in real estate to be withdrawn from circulation, and locked up; but in a new country the inhabitants cannot thus divest themselves of these active resources without paralysing their own advancement, and retarding general prosperity.

To the 9th.—It would. Publicity is the surest preventive of fraud.

To

To the 10th.—Certainly.

To the 11th.—Decidedly of more good; while uncertainty remains attached to the situation of real property a person may hold a vast amount quite clear from incumbrances, and yet be generally classed among others in less favourable circumstances. The temporary mortification that first disclosures might inflict upon the pride of a few individuals should not be weighed against the advantages of the great measure in question; security of property and confidence between man and man in all transactions are indispensable in the attainment of natural prosperity.

To the 12th.—Of more good, for the reasons above-mentioned, and because acts of this nature affecting the descent of real property belong, not to the families above, but in a certain degree to the whole community.

To the 13th.—Everything relative to the dispositions of real estate should be publicly enregistered, for reasons given in answer to No. 8.

To the 14th.—The question requires no answer.

To the 15th.—I have known many. The vast quantity of valuable ground in this city now unemployed is sufficient evidence. Were there no uncertainty in regard to titles, it would be easy to borrow money upon the security of the ground, by means of which these lots could be built up and made profitable to their owners.

To the 16th.—They would conduce to the prosperity of both, so much are the commercial and agricultural interests of the province identified.

To the 17th.—This argument has been used for party purposes, and is true to a certain extent; but emigrants go to the States and Upper Canada, not for register offices, of which they know little, but for a better climate. There can be no doubt that the establishment of register offices would bring into and retain in the province an immense amount of foreign capital to be invested in, or loaned upon real estate, whereby the fixed property of the country would become of greater use and profit to its owners.

To the 18th.—All mortgages should be special. The conditions and precise amount of all claims should be enregistered.

To the 19th.—They should be particularised and specially applied.

To the 20th.—I have had no experience in these matters.

To the 21st.—Same answer.

To the 22d.—I would deprecate partial legislation; we should have offices in every parish or township for the registration of all acts creating incumbrances on real estate. They should cause no expense and afford no patronage to Government; but before their establishment many laws should be modified, and the relative rights of censitaires and seigniors should be established and settled. Any attempt to establish register offices previous to a settlement of these questions, would appear influenced by other motives than by a desire to advance the welfare of the province. The exchangeable value given to real property would so enhance the nominal price, that any plan afterwards adopted for the equitable extinction of feudal privileges would become much more onerous to the great body of the people.

ANSWERS of *W. Yule*, Esq.

To the 1st Query.—It is not possible; I have sustained losses myself, and known many who have suffered great losses from that cause.

To the 2d.—The means of ascertaining whether there are incumbrances on property or not, are unknown to me.

To the 3d.—I have known many instances, experienced losses myself, and have also run the risk of loss, by discovering prior mortgages and incumbrances, although assured by the bondsmen there were none at the time of lending the money.

To the 4th.—Many such actions have been instituted, of some of which I have had personal experience.

To the 5th.—It is almost the universal practice, being the only protection against secret mortgages.

To the 6th.—Every possible inquiry is made by those who effect purchases, or lend money on mortgages, but their inquiries very often prove ineffectual.

To the 7th.—I cannot say, as the expenses incurred, and the time usually consumed in obtaining the judgment of the court, are equally unknown to me.

To the 8th.—A county register, affording the means of detecting many of the frauds and impositions at present practised, would be of the greatest utility.

To the 9th.—Unquestionably, as the parties interested would have a register to refer to.

To the 10th.—In my opinion, the time and expense attending the obtaining of a secure title to property would, by means of a register, be greatly diminished.

To the 11th.—The disclosure would be productive of a great deal of good, and of no evil whatever, excepting to those whose intention was to deceive, in which case a register would be the means of preventing them from doing so.

To the 12th.—I can perceive no evil that could arise from the registry of family arrangements, a register being the best reference in case of doubt or difficulty.

To the 13th.—I have known no evils to arise therefrom, on the contrary many advantages to accrue, particularly to those who wished to purchase property, lend money, or give credit, having it in their power to ascertain their security for so doing.

To the 14th.—Most undoubtedly it would.

To the 15th.—I have known many instances in both cases.

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To the 16th.—The establishment of register offices would advance the prosperity of commerce and agriculture.

To the 17th.—I consider the want of register offices to be one of the causes why emigrants from Britain do not settle on the seigniories in Lower Canada.

To the 18th.—I would say, that a special mortgage would be more beneficial to the bondsman, but perhaps not so much so to the lender.

To the 19th.—

To the 20th.—I have known several instances.

To the 21st.—I certainly think that the object of the law would be more effectually attained were tutors and curators required to give security.

To the 22d.—Great advantage would accrue from the judgments and acts of the judges being registered in the prothonotary's office, Quebec.

ANSWERS of *W. Walker*, Esq.

To the 1st Query.—Real property in the seigniories may now be subject to mortgages to an unlimited extent without any possibility of its being discovered.

To the 2d.—There are no efficient means.

To the 3d.—A great many.

To the 4th.—Yes.

To the 5th.—Yes.

To the 6th.—Yes.

To the 7th.—

To the 8th.—The establishment of a county register would certainly afford the protection alluded to.

To the 9th.—The access that all intending purchasers or mortgagees would have to such a register, must of course greatly tend to prevent the commission of fraud.

To the 10th.—It would.

To the 11th—As such disclosure would tend to check imposition and protect honesty, I am of opinion it would be productive of much more good than evil.

To the 12th.—Although such disclosure might be inconvenient and disagreeable to some families, this consideration ought to be sacrificed to the public good.

To the 13th.—As far as I have been able to observe the system of enregistration, both in Scotland and Upper Canada, has been productive of good only to all whose intentions were honest.

To the 14th.—It certainly would.

To the 15th.—I have.

To the 16th.—It would favour capital and honesty at the expense of subterfuge and fraud, and thus conduce to the general prosperity of all interests.

To the 17th.—I have no doubt of it.

To the 18th.—I am very much in favour of mortgages being special and not general.

To the 19th.—

To the 20th.—I have; but as tutors have numerous duties to discharge without remuneration, it would be unreasonable to ask them to give security; but as curators are paid for the duties they perform, they ought certainly to be required to give security.

To the 21st.—Answered by the preceding.

To the 22d.—Yes.

ANSWERS of *W. Shepperd*, Esq.

To the 1st Query.—Mortgages and incumbrances on the seigniorial lands are not easily discovered by intending purchasers.

To the 2d.—There are no effectual means that I know of.

To the 3d.—I purchased a property some 25 years ago, in Montreal, and having re sold it, I have lately been called on by the purchaser's heirs to pay the rights of minors. A property bought here was discovered to be liable for the debts of a third person, in consequence of a guarantee given by the seller, not disclosed at the time of sale: by each of these transactions I lost money.

To the 4th.—I can give no information on this point.

To the 5th.—It is a very general practice where doubts exist.

To the 6th.—There are.

To the 7th.—I cannot say.

To the 8th.—I have not the least doubt that a county register would be highly useful to purchasers of real property; by such means he would be enabled to discover all incumbrances thereon, provided it be incumbent on holders to cause all incumbrances of whatever nature to be enregistered.

To the 9th.—It would; intending purchasers would by reference to such register, check any intention to commit fraud on the part of the holder.

To the 10th.—It would tend much to lessen time and expense in ascertaining the state of the property.

To the 11th.—Good would undoubtedly be produced by such disclosures; no honest man need apprehend evil by the state of his fixed property being known.

To the 12th.—The last answer applies with equal force to this question.

To

To the 13th.—The only practical experience that I have on this subject, has been derived from the establishment of registers within these few years in the townships where I have property, and have had wills and other deeds enregistered; as yet certainly not attended by any evil, but from which I anticipate advantage.

To the 14th.—It would.

To the 15th.—I cannot cite any such case.

To the 16th.—The establishment of register offices would conduce to the prosperity of all classes, and certainly not at the expense of the agriculturist.

To the 17th.—I have understood this to be the case, and have heard it asserted in a general way.

To the 18th.—I am clearly of opinion that good, and not evil, would ensue were mortgages and all other obligations made special and not general.

To the 19th.—It would be advisable to have the rights of dower applied in a special manner.

To the 20th.—I am not aware.

To the 21st.—Cannot give an opinion on this point.

To the 22d.—This kind of incumbrance should undoubtedly be enregistered, and if such be not possible in the county wherein the property lies, perhaps best in the prothonotary's office.

ANSWERS of Mr. *Guillet*.

Sir, Bastican, 29th January 1836.

I have had the honour to receive the letter you addressed to me, by order of a committee of the Legislative Council, with divers questions respecting the law on mortgages. Without entering into the details, I would submit to the honourable committee as my opinion, that register offices are not necessary, and that they would be more inconvenient than useful to the inhabitants of the country parishes. That it appears to me that the only thing required would be that notarial acts creating mortgages should be considered public acts, and the notary obliged to communicate the same to any person applying for information. That special mortgages ought to be preferred to the general, or these entirely suppressed; and lastly, that the *douaire coutumier* should be abolished as given by law, leaving it in force when the contracting parties may think proper to stipulate it.

I am, &c.,

C. De Léry, Esq. (signed) *T. Guillet*, N. P.

ANSWERS of *T. Boutillier*, Esq.

To the 1st Query.—I think it is very difficult in the present state of the law, as it regards seigniories in this province, to be certain in all cases that a property is not subject to mortgages or incumbrances, or to what extent it may be so subject.

To the 2d.—I do not think that there exists (save the declaration of the proprietor) any means of discovering whether an instrument affecting the title, or creating or producing an incumbrance on property, has been produced or is known to purchasers or persons intending to lend money.

To the 3d.—I have known instances where parties having purchased property or lent money on the security of mortgages, have been subject to the risk and loss by the discovery of mortgages prior to their purchase or loan, which had not been disclosed to them, and which they had no means of discovering.

To the 4th.—I think that many *actions hypothecaires* are instituted in the superior terms of the Court of King's Bench, and in which defendants are ignorant of the mortgages or incumbrances which such actions are intended to foreclose.

To the 5th.—In many deeds of sale the confirmation of title is stipulated as one of the conditions; it is required in other cases without any stipulation to that effect; of six sales which I have made of immoveable property, three of the purchasers have asked, at their own expense, and obtained a judgment of confirmation.

To the 6th.—I have been obliged myself to relinquish, last winter, a profitable sale of immoveable property on account of the numerous investigations to be made in different parishes, of titles, marriage contracts, settlement of accounts, acquittances, &c. &c. demanded by the purchaser's advocate, and which would have occasioned a delay of two or three months, and possibly more. I consider, however, my titles of this property as good as any that can be obtained in this province.

To the 7th.—As far as I can judge from what has passed to my knowledge, the expense incurred in obtaining a confirmation of title is about 10 *l.* in ordinary cases, and the judgment of the court cannot be obtained in less than four months; it sometimes happens that the judgment of the court is not rendered before eight or twelve months from the time of the application, especially when there are oppositions.

To the 8th, 9th and 10th.—A register in each county affording at all times information with respect to all mortgages and charges, cancelled or existing, with which any immoveable property in the county might have been and might then be affected, would doubtless protect purchasers or lenders against the risk arising from concealed charges, would

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materially contribute to prevent the commission of frauds which may result therefrom, and would diminish the time and expenses necessary to obtain a secure title on purchasing properties, or lending money on the security of mortgages. I conceive, moreover, that the difficulty does not exist in the proper operation of the register-office, when once well organized, but in the changes which it would be necessary to make in the existing laws, in order to adapt them to this new institution.

To the 11th.—This disclosure might be disadvantageous to persons whose property would be greatly mortgaged, but not beyond the value of the property. Some creditors might get uneasy and force the sale of properties at ruinous prices for the proprietors, who otherwise might have honourably acquitted themselves of their obligations.

To the 12th.—Without being productive of great evil, the disclosure by such register of family arrangements and settlements, &c. might displease and raise obstacles to the establishment of register-offices; perhaps for the interest of this measure it would be better to introduce them by degrees, and not to give them immediately a retroactive effect; at least the retroactive effect ought to be optional to the parties concerned; the thing might be done in the following manner: supposing that an Act passed by the Legislature enjoin the enregistration of all charges, &c. created after a given date (say from the enforcement of the bill), another or the same Act might in the meanwhile provide to the establishment of a new *décret*, which I shall name for the moment the *décret de purgation*, to distinguish it from the present *décret* of confirmation. The object of this *décret* would be that any proprietor, desiring to avail himself of it, may, by an advertisement during a certain time, such as practised with regard to the *décret* of confirmation, besides all other process deemed necessary, oblige all persons having any claims, &c. against him, to present them within a certain period at the register-office of such county, in order that they may be enregistered according to their respective dates, declaring at the same time that such or such immoveable property situate in that county, will not, after the delay prescribed, be affected with mortgages, &c., but from the date of their subsequent enregistration which shall not have been then presented. In order to avoid frauds, an advertisement of six or even twelve months, published in journals of the district as well as in the Official Gazette of Quebec, might be required; my informations in the law not extending beyond what I have been able to acquire in the ordinary course of business, I shall not enter into the details of such a plan. I will merely observe that since in cases of a sale, we have afforded the purchaser the means of compelling all persons to make known, within a certain time, any claim they may have on a property, I do not see what inconvenience would arise from giving the same facility with regard to his own immoveable property, to a proprietor not disposed to sell, but desirous of borrowing, or who for the interest of his family and his own, would wish to free his property from any charges which might be unknown to him; and as it is probable enough that all persons whose property is not mortgaged, or who might be desirous to sell or to borrow, would resort to this means in order to make known the real state of their properties, the result would be that in a few years all properties would be enregistered with both their ancient and recent incumbrances.

To the 13th.—I have had no opportunity of knowing any advantage or disadvantage resulting from the enregistration of wills and donations.

To the 14th.—Such a register would enable creditors to ascertain the true circumstances of the real estate of their debtors.

To the 15th.—I have known instances when individuals were unable to obtain money on the security of their property, because they had not the means to prove that the same was unincumbered, or only partially incumbered.

To the 16th.—I think that the establishment of register-offices in the seigniories would favour agriculture just as well as it would conduce to the prosperity of commerce.

To the 17th.—I think that the fear of frauds, the difficulty of discovering mortgages, &c. and the delay incident to the obtaining of confirmations of title, sometimes prevent emigrants from settling in seigniories; but I also think that these inconveniences have frequently been exaggerated. By the *décret* of confirmation, and with the assistance of an advocate, emigrants can always make secure purchases.

To the 18th.—I am inclined to think that if mortgages were for the future special and not general (with certain provisions), the public would not be worse off than at present.

To the 19th.—I have often observed that the *douaire coutumier* (as well as the marriage contract in community,) would occasion differences and law-suits in families, and sometimes between the creditors; however, with the little information I possess on this matter, I will not take upon myself to state that it would be expedient to change or to abolish a practice to which the majority of the people of this country adhere so generally.

To the 20th.—I have had no knowledge of particular instances, at least I do not recollect any at present, where estates confided to the management of tutors or curators appointed in conformity with the existing law, have been fraudulently applied or dissipated, and that losses have thereby been occasioned to the persons for the care of whose property such appointments had been made.

To the 21st.—I should think that, generally speaking, the object of the law might be attained as effectually if tutors and curators were required to give special security by themselves or sureties in the amount required by the judge.

To the 22d.—In the present state of things I do not see what public convenience would result from the enregistering in the prothonotary's office, in the district of Quebec, all judgments rendered in the several districts and the ministerial acts performed by the judges, whereby mortgages or incumbrances on real property are created by the operation

of

of law; for the knowledge one would have of the existence of these charges alone, could not suffice to dispense with the judgment of confirmation, which would make them known if they were not so before: it seems to me that with a register-office these acts ought to be enregistered in the counties where the properties thereby affected would lie.

ANSWERS of *P. A. Degaspe*, Esq.

To the 1st Query.—It is almost morally impossible to be certain of it.

To the 2d.—I know of none.

To the 3d.—In the course of my practice as a lawyer, and since, I have seen several sad examples of it.

To the 4th.—I know that several *actions hypothecaires* have been instituted.

To the 5th.—Yes, and sometimes the expenses are very considerable.

To the 6th.—Yes, very often.

To the 7th.—A practising lawyer could answer this question in a precise manner; I cannot do so.

To the 8th.—Certainly; my answers to the preceding questions form the basis of my opinion on this subject.

To the 9th.—Certainly; for by referring to such a register it would be easy to discover secret mortgages.

To the 10th.—I have no doubt of it.

To the 11th.—I think that such a register would be very advantageous, because every one would then act with safety.

To the 12th.—The wisest laws sometimes produce abuses, so would the present register with respect to certain family arrangements and settlements; but the general good must prevail over partial inconveniences.

To the 13th.—I have no knowledge of such inconveniences; quite the contrary.

To the 14th.—I firmly believe it.

To the 15th.—I have known many instances of it.

To the 16th.—I believe that such register-offices would conduce to the prosperity of both.

To the 17th.—I think so.

To the 18th.—According to my opinion, it would be productive of more good than evil.

To the 19th.—To my knowledge the *douaire coutumier* has produced evil consequences; I should think it would be expedient to abolish it.

To the 20th.—I have known such instances.

To the 21st.—I think so.

To the 22d.—Each court of justice enregistering its own judgments; I see no advantage in having them enregistered in the office of the prothonotary for the district of Quebec; however, it would facilitate the said transactions.

ANSWERS of *G. Marchand*, Esq.

To the 1st Query.—It is possible; we must confide to the honesty of the vender or the debtor. To demand information from notaries who are the depositaries of mortgages, would be asking them to violate their oath of office.

To the 2d.—I know of none.

To the 3d.—I have myself sustained, last winter, a loss of 100 *l.* that I had lent to a person to enable him to complete the payment of a property, over which he gave me mortgage; but which, however, was of no avail to me, because this person being dead, when I wanted to exact the payment thereof, the widow presented a marriage contract, giving her a dower of 500 *l.*, of which I had not been informed, although both the man and wife had assured me that their property was unincumbered. I know many instances of persons having been ruined by similar transactions.

To the 4th.—There are many *actions hypothecaires* instituted in the superior terms, and it is seldom that mortgages unknown to defendants are not disclosed.

To the 5th.—Few persons resort to this means on account of the delay, the inconvenience, and the expense that it occasions.

To the 6th.—I do not think that the country people are much in the habit of making these researches; they generally act without precaution until arrived at a state of ruin, caused by the system of concealed mortgages.

To the 7th.—From 10 *l.* to 15 *l.*, a sum still too high for the generality of the people, and probably greater than what the Act intended it should be; but as the thing cannot be done without an advocate, it cannot be obtained for less, and without a delay of some months.

To the 8th, 9th and 10th.—Such a register would afford sure and honest means of preventing frauds, and would shield purchasers from the risk they run with the system of concealed mortgages now in use, for every one would have the means and be enabled to ascertain the state of properties without loss of time and the expenses now required.

To the 11th.—I do not see how a register-office, which would give an easy means, and without much expense, of discovering mortgages, could be productive of evil. This manner of affording to the public so necessary informations could only be productive of good, since it would establish honesty and justice. I am aware at the same time that many persons think it would be better to maintain the system of concealed mortgages; but as I have always considered as frivolous, illiberal and often dishonest, the reasons adduced by them, I cannot adopt them.

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To the 12th.—This disclosure would put an end to a number of law-suits founded on doubtful and frequently on dishonest principles, and consequently could not have but a good effect.

To the 13th.—I do not know of any inconvenience, and think that the enregistering of wills, &c. must have been productive of advantages, although I cannot cite any particular case.

To the 14th.—Such a register would be very advantageous, for it would enable creditors to ascertain the true circumstances of their debtors.

To the 15th.—Very often.

To the 16th.—Register-offices, in affording greater security to commerce, could not fail to give it more extent, and as it appears to me that experience tells us that it is commerce which calls forth, with the greatest advantage, the resources of agriculture, I firmly believe that nothing but good would result from both.

To the 17th.—I have often heard myself emigrants, who had a little money, express themselves on the danger of investing their money on estates in Lower Canada, on account of the difficulty and even the impossibility of ascertaining the real state of properties.

To the 18th.—I think it would be better if mortgages were special.

To the 19th.—It is advisable to abolish it, and to enact that in future all rights of dower shall be special, and applied on an estate free from all incumbrances; otherwise they shall be null and void.

To the 20th and 21st.—There is an instance of this in this parish; an estate which, according to the inventory, ought to have given to each child 8–8000 livres (*francs*), has in the space of two years been squandered away by the tutor, so that the heirs got almost nothing; the tutor not being worth anything, the inheritance has been lost; for this reason I think it would be proper to require special security.

To the 22d.—I think this would be inconvenient, and that the enregistrations should take place in each district.

ANSWERS of *G. Boisseau*, Esq.

To the 1st Query.—We have the *décret* and the confirmation of title that can be obtained, &c. which purge all mortgages, except dower, not declared, &c.

To the 2d.—There are no other means than by obliging the parties in the Act; but the vender may deceive as well as the debtor; we have the surety which we can demand.

To the 3d.—Yes, to my knowledge several persons have paid twice, there being dowers not declared, and of which the venders themselves were ignorant.

To the 4th.—I reside at too great a distance from the towns to answer this question.

To the 5th.—Yes; but this is done only in cases where properties are of a certain value, and persons distant from the towns in many instances prefer rather not to make transactions than to give themselves the trouble.

To the 6th.—Yes; but this is what parties in country parishes frequently neglect to do.

To the 7th.—The expense incurred in obtaining a confirmation of title is not excessive, but the delay of four months is too great; besides, this is very inconvenient for persons at a great distance from the towns, and is not equal to a register-office established in each county, by which we could ascertain previous to lending money what security we could have.

To the 8th.—Yes, such a register is very desirable; for it often happens that a transaction fails because purchasers do not wish to apply for a *décret* or ratification of property, on account of the trouble and expense; and persons in need of money would, from the security afforded to persons lending, obtain it much easier if such a register were established in each county.

To the 9th.—Yes, for the reasons given in my 8th reply.

To the 10th.—Yes.

To the 11th.—Such a register would produce more good than evil, because the person in need of money would obtain it more easily by the lenders knowing the state of the borrower's affairs. I know of several persons in my parish who have money, and from the want of such a register keep it in their chest.

To the 12th.—It would certainly be productive of more good than evil; for he who is unable to obtain money for the want of security is much to be pitied.

To the 13th.—The enregistering of wills, donations and other instruments, would be to a certain degree advantageous to parties, and although these enregistrations would not purge ancient mortgages, they would facilitate the discovery of these anterior mortgages, and after these discoveries the lender would decide.

To the 14th.—Yes.

To the 15th.—Yes.

To the 16th.—Yes, it would contribute to the prosperity of both.

To the 17th.—I think that a register-office would facilitate the settling in this province of emigrants from the United Kingdom.

To the 18th.—I think that the special mortgage joined to the general would be preferable to the special alone.

To the 19th.—The present law relating to a dower is very wise.

To the 20th.—No.

To the 21st.—This might be proper.

To the 22d.—This would answer for the towns only; country parishes require register-offices.

ANSWERS

ANSWERS of *Wm. Berckzy*, Esq.

REGISTRY OFFICES.

No. 5.

To the 1st Query.—I think that it is difficult, and in many instances impossible, to ascertain all mortgages affecting real property in seigniories; however, this regards more particularly mortgages which can be purged by the *décrets*. The rights of minors and dowers can, in the greater number of cases, be known by making the necessary researches.

To the 2d.—I do not know any means whereby we could ascertain the object of this question.

To the 3d.—I think that losses have very seldom been sustained by the means in question, if it is not by the negligence of persons lending or purchasers; for my part I have known only the latter to have suffered in that way, and they were few in number.

To the 4th.—I have too little to do with the courts of justice to be able to answer this question.

To the 5th.—He who is prudent ought, of course, to resort to this act in order to secure his titles, though I know many instances where this precaution was not taken. The expense which it necessitates is, I believe, the principal reason for neglecting it.

To the 6th.—I do not know, but I conceive that such researches must necessarily be made by persons who do not like to run the risk of losing their money.

To the 7th.—I do not exactly know; but I do not think that it is less than 10 *l.* or 12 *l.*

To the 8th and 9th.—If there were not difficulties attending the adoption of this system to the laws of the country (a thing which I cannot take upon myself to say), I believe that register-offices would be vastly useful, and would afford the means of ascertaining with very little expense the charges affecting properties upon which a person might be disposed to place his money, for by obliging every individual desirous of securing his deeds of purchase, mortgages or others, to enregister the act in virtue of which he acquires his rights, every one would know where to apply to ascertain what risk he would run either in purchasing estates or lending money on the security thereof; besides this would be the means of checking concealed mortgages, as no mortgages would be valid when not enregistered.

To the 10th.—Undoubtedly, for the reasons given in the preceding answer.

To the 11th and 12th.—I do not see what bad effect such a disclosure could produce, either generally or with respect to family arrangements or settlements. Experience on the contrary has convinced me that nothing was more useful than the means of ascertaining the real state of properties, on the security of which one would wish to place money; and I have no knowledge that any such disclosure has ever been injurious to any person whatever who did not intend to defraud. It might, however, sometimes be unpleasant for the parties concerned to disclose their arrangements; but this would happen seldom, and ought not to prevent a measure so generally advantageous.

To the 13th.—I do not recollect any particular facts bearing on this question. I see no inconvenience to be derived from enregistering wills; on the contrary, it seems to me that we ought to render these acts as public as possible; besides, my answers to the 8th, 9th, 11th and 12th questions are here applicable.

To the 14th.—Undoubtedly.

To the 15th.—I do not recollect at present any instances similar to this in question, but it is easily conceived that when there is any doubt as to the unincumbrance of a property, and that the proprietor cannot at once satisfy persons that his property is unincumbered, he must find it more difficult to obtain money than if he were differently situated.

To the 16th.—I apprehend that if register offices favour commerce they must be beneficial to agriculture; these two branches of human industry are so connected with one another that the evil accruing to one must be felt by the other. For my part I think that they would contribute to the advantage of both.

To the 17th.—I am convinced that the reasons alleged in this question do not prevent emigrants from remaining in this province, for I am inclined to think that most of them are ignorant of them; but many do not settle here from the prejudices they entertain against this country and all its institutions; besides, they would find themselves more or less strangers in our country parishes, not knowing the language of the majority of the people; and being for the most part Protestants, they would be deprived of the comfort of the religion to which they belong; and moreover they consider the soil and climate of Upper Canada and the United States more favourable to agriculture, and the laws and customs of the people of those countries more analogous to their own. Besides, they already have their friends and relations established there, and on leaving Europe generally have made up their minds as to the place of their future residence.

To the 18th.—If means could be devised to render mortgages special and not general, I think it would be very advantageous; besides, the system of enregistration would seem to necessitate the abolition of general mortgages.

To the 19th.—I cannot venture to answer this question for want of sufficient legal information.

To the 20th.—I do not know of any parallel case; but many such have doubtless often happened.

To the 21st.—I cannot answer this question.

To the 22d.—I do not see the utility of such a measure, but I conceive, on the contrary, that it would be very inconvenient, if it became absolute necessary, to resort to the office of the prothonotary at Quebec for information, or to obtain such documents as we might require.

ANSWERS of *E. Mayrand*, Esq.

REGISTRY OFFICES.

No. 5.

To the 1st Query.—It is impossible in the present state of the law in this province to be certain that a property is not subject to mortgages and incumbrances.

To the 2d.—I know of no legal means to discover whether an instrument affecting the title, or creating or producing an incumbrance on the property, has been produced, or is known to purchasers or persons lending money on the property.

To the 3d.—I know of many instances where individuals having purchased properties have been obliged to abandon them; others possessing sufficient means have been obliged to buy properties twice over, and at considerable prices, on account of the improvements they had made; all this caused by ancient mortgages which had not been revealed by the vender at the time of the purchase,—and others who lent money lost it, capital, interest and costs.

To the 4th.—Yes, many *actions hypothecaires* are instituted in the superior terms of the Court of King's Bench in this province; I think that in most of these actions, defendants are ignorant of the mortgages which such actions are intended to foreclose.

To the 5th.—It is the practice in many cases to resort to the Act providing for the extinction of secret mortgages or incumbrances on lands, but it frequently proves after considerable expenses to be of no great service, since the law does not free from the mortgage produced by the dower.

To the 6th.—Yes, numerous researches are made; but are they not fruitless?

To the 7th.—The expense incurred in obtaining a confirmation of title under the Act above mentioned varies from 20*l.* to 30*l.*; and what is extremely important is the delay of eight or twelve months previous to obtaining an ordinary judgment of the court, which for all that cannot afford a complete protection.

To the 8th.—There is no doubt that a county register, showing with respect to lands in the county, what mortgages, charges or incumbrances have been made, would afford more security in transactions, and would be the means of putting an end to a great number of vexatious proceedings.

To the 9th.—The operation of such a register would, undoubtedly, have the effect of making known mortgages which remain concealed; it is the only means which we can adopt to create mortgages without any fear; by having recourse to the register, one might then confidently rely upon acts which very often are worthless scraps of paper.

To the 10th.—Such a register would have the effect of diminishing the expense and time frequently spent to no purpose, and would engage persons to lend their money more liberally from the safety of the mortgage they would have.

To the 11th.—I am inclined to think that such a register would be productive of more good than evil; it would encourage honesty and afford the means of creating mortgages with less apprehensions.

To the 12th.—I am of opinion that the disclosure by such register of family arrangements and settlements would be productive of more good than evil, inasmuch as it would show what degree of confidence they could mutually repose in each other.

To the 13th.—I am of opinion that all acts ought to be enregistered; this would prevent frauds, and afford more effectual investigations of papers which are frequently to be found in the hands of inconsiderate notaries, and are often destroyed; and would make known the dispositions of acts such as they were passed.

To the 14th.—Such a register would be highly advantageous, inasmuch as creditors could ascertain the true circumstances of the real estate of their debtors.

To the 15th.—It has happened very often that persons wishing to borrow money could not obtain any, because the individuals were afraid that their properties were affected with prior mortgages.

To the 16th.—Register offices in the seigniories would favour commerce and encourage agriculture by reason of the lending of money which would take place with more safety.

To the 17th.—I am of opinion that the impositions and delays incident to the discovery of mortgages and to the obtaining confirmations of title, deter emigrants from settling in greater numbers in seigniories, and induce them to give the preference to places where register offices are to be found; being then certain not to be troubled by ruinous law suits.

To the 18th.—I think it would be productive of more good than evil, if mortgages were special.

To the 19th.—I am of opinion that the *douaire coutumier* is a scourge which we ought to get rid of entirely, and that all rights of dower ought to be special and particularised; we would thereby avoid a number of unpardonable proceedings.

To the 20th.—I know many instances where estates confided to the management of tutors or curators, appointed in conformity with the existing law, have been dissipated, and thereby occasion considerable losses. I have at present a similar case in hand.

To the 21st.—I am convinced that a law requiring tutors and curators to give security would prevent a number of losses which minors sustain.

To the 22d.—I think that the researches of judgments rendered in a district would take less time, if the ministerial acts of judges were enregistered in the office of the prothonotary of the district.

ANSWERS of *E. Desberats*, Esq.

To the 1st Query.—No.
To the 2d.—No.
To the 3d.—I have.
To the 4th.—Actions of this kind are often instituted.
To the 5th.—Yes, but the expenses are not very considerable.
To the 6th.—I should think so.
To the 7th.—From 8 *l.* to 10 *l.*, sometimes more.
To the 8th.—Yes, because this would tend to protect the purchaser from mortgages.
To the 9th.—I should think so.
To the 10th.—Yes.
To the 11th.—I do not think that such a disclosure would be productive of more evil than good, provided that no person should be allowed to see the register without the consent of the party whose property would be mortgaged.
To the 12th.—I do not see what evil it would produce with the restrictions mentioned in my last reply.
To the 13th.—Advantages must necessarily have thereby been derived; I cannot, however, cite any particular case.
To the 14th.—Yes.
To the 15th.—I have no personal knowledge; however, I think that this may have happened.
To the 16th.—It would facilitate the borrowing of money.
To the 17th.—No; I think that emigrants prefer Upper Canada and the United States on account of the climate, I do not think that either register offices or the fear of mortgages induce them to prefer one country to another, for they are unacquainted with both on arriving; I should rather think that this preference is due to what I have already observed, and to their partiality to the English laws.
To the 18th.—I do not think that this would occasion any evil.
To the 19th.—I think it would be proper to abolish it.
To the 20th.—I have no personal knowledge of this, but I should think that they may happen.
To the 21st.—The remedy proposed in this question seems to me to be impracticable. It might besides cause very great injustice where the amount of the security would be insufficient to cover the amount of the balance of the tutor's account.
It must be observed that the office of tutor is a public one, which no person can refuse to accept, save in certain cases provided by law. It might happen that the person appointed tutor could not find securities, and it is difficult to conceive how a person would wish to render himself responsible for another who undertakes to administer an estate over which he has no control. I do not think it necessary here to propose any remedy.
To the 22d.—Judgments are always enregistered in the prothonotary's office. The enregistration of ministerial acts would not produce any other advantage than that of establishing the existence of a mortgage, but it would not show the amount of the debt.

ANSWERS of Mr. *George Black.*

To the 1st Query.—I have always understood that it is not possible.
To the 2d.—I am not acquainted with any such means.
To the 3d.—Many. I have now been engaged in business in this country for the last 15 years, and have been deterred from making considerable investments upon real securities by the uncertainty of the titles.
To the 4th.—I have reason to believe that there are many such actions brought against purchasers ignorant of the property being mortgaged when they made their purchases.
To the 5th.—It is.
To the 6th.—Yes.
To the 7th.—I never had occasion to prosecute the confirmation of a title under this statute, and cannot say what the expense may be.
To the 8th.—Certainly.
To the 9th.—I think there could be no doubt that the operation of a registry system would prevent frauds; I have myself suffered from the want of such registry.
To the 10th.—Yes.
To the 11th.—I consider that it would be productive of good to the industrious and honest, and I do not think it an evil that it should deprive the dishonest of the means of deception.
To the 12th.—I think that a man applying to another to borrow money upon the security of real estate, ought to disclose to the lender all his family arrangements and settlements affecting his real property, and the register acts do no more.
To the 13th.—I have not any particular means of information upon the subject matter of this question.
To the 14th.—Yes.
To the 15th.—Instances of this kind are not unfrequent.
To the 16th.—It would conduce to the prosperity of both.
To the 17th.—Yes.
To the 18th.—I think they ought to be special.

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To the 19th.—I am aware that the dower as at present regulated, often produces uncertainty in titles; but it would be for persons who have made the law a study to say how this matter ought to be regulated.

To the 20th.—In the line of my business I am not in the way of obtaining information upon the subject of this question, but I believe great losses have occurred.

To the 21st.—The object of the law would be more effectually attained if tutors and curators were obliged to give security; but I think it would be hard to require security from tutors, whose duties are burthensome and compulsory.

To the 22d.—Whatever contributes to the disclosure of incumbrances upon real estate I consider beneficial, but I am not sufficiently acquainted with legal matters to be able to say whether the judgments and ministerial acts mentioned in this question ought to be enregistered at Quebec or not, but I believe it would do much good.

ANSWERS of *P. Vezina*, Esq.

To the 1st Query.—It is impossible.

To the 2d.—I know of no means of discovering this.

To the 3d.—I have known many instances when venders and people lending money have been subjected to loss by the discovery of mortgages which had not been revealed, and which they could not discover.

To the 4th.—I cannot say that there are many *actions hypothecaires* instituted in each term, but this happens frequently, and it seldom occurs that there are not many every year.

To the 5th.—It is the practice to resort to that Act, but this occasions great expense and does not lead to the discovery of dowers, and entails which are not opened.

To the 6th.—This is what prudent purchasers do, or ought to do, but they are nevertheless often deceived.

To the 7th.—The expenses incurred in obtaining a confirmation of title under the Act 9 Geo. 4, c. 20, are rather considerable, and the judgments thereof cannot be obtained in less than four months, and frequently not within that time, if there happen to be oppositions.

To the 8th.—Such a register would be advantageous, and necessary to prevent frauds.

To the 9th.—I think so.

To the 10th.—I think so.

To the 11th.—Such a register cannot be productive of evil, and would be advantageous to the community in general.

To the 12th.—A register which would lead to the discovery of family arrangements and settlements must be advantageous to society.

To the 13th.—There must result advantages from the enregistering of wills, donations and other instruments containing the dispositions of real property or incumbrances thereon.

To the 14th.—I believe so.

To the 15th.—I have never known instances of this kind, but similar instances have doubtless occurred.

To the 16th.—A register office in this province would contribute to the prosperity of commerce and agriculture.

To the 17th.—This is possible, but I have no personal knowledge of it.

To the 18th.—I think that greater advantages would be derived if mortgages were special.

To the 19th.—I do not think so; moreover, this a matter which requires to be well considered before anything is done.

To the 20th.—I have known many instances where minors have been ruined by the fraudulent application and dissipation of their property by their tutors.

To the 21st.—Yes, by requiring special sureties.

To the 22d.—I see no advantages in enregistering such acts and judgments in the office of the prothonotary for the district of Quebec; they ought to be enregistered in each district where there could be a register for that purpose, to which any one might have access.

LETTER of *William Badgley*, Esq.

Montreal, 27th January 1836.

Gentlemen,

A committee of the Legislative Council has directed a series of questions to be proposed to a number of persons here, for information on the subject of the operation of the present system of mortgage law, as securing the title to real estate in this country. I have not been honoured by the committee on the subject, but as I am desirous of submitting to them my views upon this interesting and important point, may I beg you to lay before them my remarks in any manner you may think most advisable.

As a general truth, it cannot be doubted, that capital will only be applied where there exists a probability of either a satisfactory return for its employment or a valid probable security for its reimbursement; where neither profit nor repayment are secured, it is clear that money will not be invested. The legislature with the view of giving confidence to purchasers of real estate passed the law of 9 Geo. 4, c. 20, but though a remedial statute, its machinery is very clumsy, a title cannot be ratified in less than four months, a period generally extending to six; the expense to applicants is considerable, but still does not relieve

relieve them from incumbrances which, from their very nature, being latent as well as indefinite in amount, cause the greatest and best founded apprehensions; in fact it has not in any effectively advantageous manner changed the old system of the *décrêt forcé*, except in the particulars of relieving the purchaser from the payment to the sheriff for the cost of a title as well as his per centage upon the amount of the sale, and specially from the necessity of paying down the amount of the adjudication; in these three points, the 9 Geo. 4 has been of service, particularly in the last object, but it has not rendered real property more secure than before its existence; upon the whole I conceive the present equally as expensive and dilatory as the old course whose improvement it had in view, with this sole difference, that the expense goes into other pockets. The statute is also objectionable from its exclusive nature, being confined to purchasers, and offering no security to capitalists disposed to embark their capital for the sake of revenue only.

If it were possible to conceive that the increase of population in any country could by any possibility in a few years cover its cultivable lands with an active and busy population in its whole extent, a plausible, though by no means a conclusive, argument might be offered against holding out inducements for the use of foreign capital; but in that case, the climate, the soil, the natural advantages, or if I may be allowed the expression, the natural capital or wealth of the country, must all conjointly have existence in an extreme degree of advancement previous to the population acting upon these sources; as these advantages are not applicable to this province, it follows, that introduced or imported capital must be of the greatest possible importance to the lender; the condition of his agreement will be in his own favour, and if he really require the money he would not hesitate to perform the condition; the advantages of this system, I think, would in a few years be so apparent that it would become general, without opposing too forcibly the fears or the prejudices of the opponents of the measure.

The necessity of that species of security for holders of real estate at present is most unquestionable, because occasions are of frequent occurrence of mortgages of old date having been brought forward, which have frequently deprived *bonâ fide* purchasers, and holders of property, of that property whose full price they have paid, and besides this, upon which they have laid out large sums of money in its improvement.

The preceding remarks apply to mortgages for advances of money. As to purchasers, the present statute might be so amended as sufficiently to protect them; few or no cases occur where mortgagees of real property reside out of the province; if there are any of that description of persons, their agents in the province are careful of their interests; the period of four months for a ratification of title, as at present, is unnecessary, as being too dilatory; one month is ample for every purpose of information and notification, and two instead of four advertisements, at a week's interval, would also much reduce the expense. I would retain the present law with this amendment, and further improve it by striking out the 8th clause of the statute, which I think unnecessary and in some part contradictory of the preceding clause. The retaining of the ratification system for purchases is advisable, because it prevents fraudulent sales for less than the real value of property, by enabling mortgagees to bid up the estate sold, to cover its incumbrances, or at least high enough to make the sale for the true value.

There are two remaining points respecting mortgages which are of no great importance, namely, mortgagees under judgments of the courts, and by every notarial acknowledgment of debt; the better plan in both cases would be to cut off the mortgage security, but as that might be objected against, I would only give to them the effect of a mortgage where that right is stipulated in the deed or claimed in and by the judgment; in both the ingredients of date and amount are specific, that of the realty to be affected by them is alone required; if litigants or parties to the deed require the security of a mortgage let them demand it.

You perceive that my register system applies only to the future introduction of capital, but it has a retroactive effect by means of the privilege which I propose to give to the registered special mortgage over every other general mortgage; if holders of general mortgages are disposed to procure for themselves the same security as the special mortgagee, they shall be entitled to the privilege by adopting the same means*.

I believe the greatest evil of the present course of law is the *indefinite amount* of many mortgage claims, as for example in customary dower, community of property between husband and wife, tutorships, curatorships, executorships and others; it is impossible under the existing laws to avoid inconvenience from the occurrence of some of these cases; and if a mode could be adopted of rendering all those claims of limited amount, great difficulty would be removed and much done to destroy the impediments of prejudice or interest. I cannot perceive any chance of escape from these inconveniences and evils but by a system of registration.

It is generally admitted by the opposers of a registry that dower and the preservation of the claims of children, &c., under the ministerial offices of tutors, curators and executors, present the greatest and almost the only difficulties to the adoption of the general register bill proposed; these objections may, I think, be removed without inconvenience. Few cases have of late years come before the Court of King's Bench in Montreal, where dower was claimed; as a mortgage upon which an action was instituted, its right is acknowledged and supported, and the courts in the province generally have constantly maintained it under the clear and explicit terms of the law.

In April term, 1830, the Court of King's Bench here rendered a judgment upon my application

* My plan is shortly this:—1st. Render every claim for dower special, in other words, to the province, and that every possible means should be adopted to render its security effectual

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cation for dower; this is, I believe, the last case in point, and being the first of its particular nature, and embracing points of some importance, I take the liberty of submitting it to you, to exhibit the extent of the privilege granted by law to dower, and the necessity of limiting its amount to a specific sum. Jobez D. De Witt, born in the United States since the declaration of independence, settled in Canada in 1801, where he acquired real property; in 1811 he returned to the United States, was married there without marriage contract, returned to Montreal, and there lived until his death in 1827; he died insolvent. On behalf of his widow I claimed dower, which the court granted, although contrary to the expressed opinions of every member of the bar, whose opinion was worth having. In that case the court held that the dower was due, although the widow was a foreigner, and although the marriage had been contracted in a foreign country; that her claim was privileged before all mortgage claimants, except the *bailleurs du fonds*; this dower was the customary dower of Lower Canada, because there was no contract of marriage. In this case *communauté de biens* did not exist, because the latter is a civil and municipal regulation, whereas dower is of the nature of a contract, and may consequently be made by the parties anywhere. This case strongly exhibits the inconvenience of the system in general, and has neither been questioned nor contradicted.

Latent mortgages are a source of great annoyance and injustice, not so much from the nature of the claim as from their *indefinite amount*, and their general unlimited range of effect. That minors and others incapable of protecting themselves should be protected by the state, is a principle which has been consecrated in the laws, and by the recorded wisdom of every civilized country, and by none so effectually and beneficially as in England; there the Crown assumes the responsibility, and the highest law officer of the government undertakes the office of imperial guardian. Great advantages have flowed from this system, as the Court of Chancery, in its appointments of assistants in discharging the subordinate functions of its guardianship, selects the most responsible and capable, while in the meantime the Government itself stands pledged for the security of the estate. I would advise engrafting such parts of that system as may be required upon our jurisprudence, and giving to the Courts of King's Bench a similar power to that of the English Chancery; the court would then be enabled to tie down tutors and curators, &c., to specific amounts, and the inconveniences of a general and indefinite claim would be avoided; individuals would readily be found to undertake these duties under these responsibilities, and the public officers accountable to the public, and acquainted with the duties of their office, would direct them. This plan would require a machinery adequate to perform the required duties; the appointment of a responsible master or clerk is sufficient for every purpose, when appointed for this particular duty, under the superintendence of the court. I cannot conceive that any objection can be offered to this.

I confess I think these two preliminary points must be settled before a satisfactory register law can be formed: abolish the customary dower, retain the specific dower, *douaire préfix*, of a sum of money, as under this present law, and give to the Courts of King's Bench superintendence and control over ministerial officers for specific amounts, and a register-office law may then be immediately framed, because all mortgage claims would then be for specific amounts, and the date and sum being ascertained, there would only remain the third requisite, the description of the particular property upon which to attach it, otherwise the law could not but be defective.

I would also advise that the registry law should not make registrations compulsory; the great object being to give to capitalists a security for their investments, the end would be attained as efficiently by giving to the registered mortgage upon specific real estate a privilege and preference over general mortgages of every description; thus by making it optional with the borrower to benefit from the capital of others, which he seeks by adopting this easy and ready mode of securing the words, make it a *douaire préfix*, if left optional, give to the customary dower no more privilege than to a general mortgagee.

2d. Render all ministerial offices liable for specific amounts only.

3d. Give to the special registered mortgage a privilege and preference over every enregistered or general mortgage, and to every registered general mortgage the same preference over every unregistered mortgage.

By this means lenders of money, or persons desirous to invest, would be rendered secure in their investments.

The statute 9 Geo. 4, amended as I have proposed, would sufficiently secure purchasers; these two classes of persons are at present the principal sufferers, whose security I consider might be rendered effectual by the working up of the foregoing remarks.

I shall be happy to know that this has reached you safely, and that I have been fortunate enough to coincide with you in any part of the plan I have proposed; if among the many opinions which have been transmitted to the committee, I shall have been instrumental in discovering anything efficient I shall be most happy, but at the same time I must apologise to you for the trouble I have given to you, and remain your obedient servant.

The Hon. George Moffatt, Esq., and
Peter M'Gill, Esq., &c. &c. &c.

(signed) *W. Badgley.*

ANSWERS of *J. D. Lacroix*, Esq.

To the 1st Query.—No.

To the 2d.—There are no other means than by the *décrêt* forced or voluntary.

To the 3d.—In the course of my practice of 34 years this happened frequently, and even several times in the same year.

To the 4th.—Yes, very often.

To

To the 5th.—Yes, and even this remedy, although very expensive, does not secure individuals from dower or entails.

To the 6th.—Yes, but at great expense.

To the 7th.—From 10 *l.* to 15 *l.*, and often more, according to the number of oppositions that are filed.

To the 8th.—Yes; and that would be the means of preventing country people from selling their lands at low prices, not being able to borrow money but at 20 or 25 per cent.; for frequently these poor people, unable to borrow 12 *l.*, sell a farm worth 200 *l.* or 300 *l.* for the small sum of 75 *l.* or 80 *l.*

To the 9th.—Yes; and my opinion is founded on 30 years' experience.

To the 10th.—I conceive that it would be a sure means attended with little expense, and which would doubly augment the value of property, and more.

To the 11th.—The advantage thereby derived would be incalculable in every respect, inasmuch as that would afford proprietors the means of preserving their properties, and would secure to lenders their money, and rid the country parts of usurers.

To the 12th.—No; but this question cannot be answered without entering into a long argument.

To the 13th.—All would be to the advantage of society, and cannot but promote the general good by affording the necessary informations to persons wishing to lend or to borrow.

To the 14th.—Yes; and particularly to those unfortunate individuals who wish to borrow, but cannot do so, because the public opinion is that their properties are affected with mortgages.

To the 15th.—Yes; and I can say that this occurs every day, and some are ruined, not being able to satisfy persons that their property is unincumbered; if there were a remedy the borrower would gain by it, but the usurer would be the sufferer.

To the 16th.—On the contrary, such an establishment would favour both agriculture and commerce.

To the 17th.—Yes, and very justly; for how can it be supposed that the emigrant will bring his money where there is no security; and, moreover, as that stranger is not acquainted with the laws where he settles, he must necessarily be more mistrustful and not anxious to risk his money.

To the 18th.—For the good of society general mortgages ought never to exist.

To the 19th.—The *douaire coutumier* is a public nuisance.

To the 20th.—This has happened, and not very long ago.

To the 21st.—Yes; and for the execution of public trusts this precaution ought to be taken.

To the 22d.—Yes, and the advantage thereby resulting would be invaluable.

ANSWERS of *H. Griffin*, Esq.

To the 1st Query.—It is not possible.

To the 2d.—There are no means whatever of discovering all incumbrances affecting real property; *décret volontaire* and ratification of title are resorted to for such purpose, but the effect is only partial, as the former bars not dower or minors' rights which cannot be ascertained, and may be claimed after a lapse of many years; the latter is again doubtful on this point; but admitting that either mode would effectually purge all incumbrances, still the system of tacit or secret mortgage, by which all future acquisitions, as well as the present, are held, would prove objectionable to money being loaned to a holder of just title, on the faith thereof.

To the 3d.—Many instances have come to my knowledge of the nature referred to in this third question.

To the 4th.—Yes; very common.

To the 5th.—It is a very common practice, and incurs a considerable expense, and in case of sale puts the purchaser, and oftentimes the seller, to much inconvenience and loss of interest by the delay created in the payment of the purchase-money waiting a ratification title; the delay also tends to protract improvement.

To the 6th.—Yes, generally.

To the 7th.—For lands situate within the parish of Montreal the expense referred to is from 8 *l.* to 9 *l.*, of which from 2 *l.* 15 *s.* to 3 *l.* 5 *s.* is for publishing in the Quebec Gazette, 1 *l.* 5 *s.* the bailiff's fees, 5 *s.* the prothonotary, remainder to the attorney employed to obtain judgment of confirmation; for lands situate in the country parishes the bailiff's fees are much higher, they have been known to exceed 5 *l.*

To the 8th.—Most decidedly it would, because a purchaser or mortgagee would then ascertain to a certainty the amount of previous mortgages, and would regulate himself accordingly. A county register would establish confidence between seller and purchaser, lender and borrower; mutation would be more frequent, monies on loan more readily obtained, and improvements consequently more rapid.

To the 9th.—A register would no doubt tend to prevent frauds, as none could take place except with the connivance of the registrar, which ought not to be supposed.

To the 10th.—It certainly would, and would do away with the necessity of obtaining a judgment of confirmation of title as at present practised (except in the commencement).

To the 11th.—I can see no evil that a disclosure can make as far a registry is necessary, but be productive of much good, as it would tend greatly, 1st, to make some men honest, and, 2dly, See my answer to the 8th question.

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To the 12th.—This question leads me to offer an opinion, that family arrangements need not be disclosed beyond the desire or wish of the parties interested, as the fulfilment of any condition in a specific sum secured on a property specially described may be inserted, and a memorial of such *acte* only be registered; which memorial should simply set forth the title of the *acte*, date, names of the parties, and their description, amount of obligation, and precise or verbatim description of the property mortgaged, and the notary's name before whom the *acte* was passed, this memorial to be signed by the parties certified by the notary public; thus family arrangements may be kept private, whilst all the advantages of a registry be attained.

To the 13th.—

To the 14th.—A county register beyond all doubt would be most beneficial, and often would be the means of a debtor falling into temporary embarassment recovering himself by obtaining from his creditors more lenient terms than he probably would do, if without the power of obtaining the precise state of his real property.

To the 15th.—Instances of the nature referred to in this question are of almost daily occurrence; I know it, and speak personally to the fact, that if registry offices were established the question would not have arisen.

To the 16th.—It would, and must conduce to the prosperity of both, by creating a permanent and mutual confidence between the agricultural and commercial classes, which the present system cannot by any possibility effect except temporarily.

To the 17th.—I am fully aware, in the course of my practice, that the impositions of frauds practised under and encouraged by our present system, to which the difficulty of discovering mortgages and incumbrances, if any, and to what extent, gives rise, and the delay incident to the obtaining of confirmations of titles, prevent emigrants from the United Kingdom, and particularly capitalists settling in greater numbers in the seigniories, and induce them to give a preference to Upper Canada and the United States.

To the 18th.—It is in my humble estimation the only correct system that can be adopted for the general benefit of the country at large (as regards real estate), viz. that no general undefined mortgage shall have weight, and that all future mortgages shall be special only.

To the 19th.—It is most advisable that the *douaire coutumier*, as it affects real estate, shall be abolished, providing by law that in future all rights of dower shall be particularized and specially applied.

To the 20th.—

To the 21st.—I should deem it more effectual that tutors or curators be required to give special security in the amount deemed advisable by the judge, in proportion to the value of the estate and property likely to come under their charge or administration.

To the 22d.—No judgment or ministerial act by the judges should be allowed to create a mortgage or incumbrance on real estate, except the same be described in the judgment or ministerial act, and then not until registered in full where all special mortgages are registered, viz. in the county register, where the land described is situate; making a registry of the prothonotary's office or of any other, apart from the county registry, would only tend to create confusion.

APPENDIX to Answers by *H. Griffin*.

1st. That from and after the establishment of register offices by law, no notarial *acte* or instrument in writing, no probate, tutelle, curatelle, judgment of the Court of King's Bench, or any *acte* ministerial or otherwise, to be held, deemed or considered to be a mortgage on real estate, unless made in conformity with this act, notwithstanding the laws now in force in this province.

2d. That no deed of sale, contract of marriage, donation or obligation, either by way of transfer or mortgage, shall have effect, or be deemed valid or effectual upon or against real estate, unless the form shall contain a correct description of such real estate, and such *acte* or a memorial thereof be registered according to the provisions of this act, and thereupon to have effect from the day and hour of such registry.

3d. That executions sued out against real estate, or any judgment of the Court of King's Bench, bearing a specific description of such estate against which such execution may issue, may be registered, and thereby only create a mortgage from the day and hour of such registry.

4th. That all wills and codicils substituting real property in general terms, and not specially described, shall be enregistered in full with an appendix, signed by the parties interested before a notary, describing the real property thereby substituted; which appendix may be made by extract from inventory of the estate of testator.

5th. That in consequence of the superficial manner in which real estate within the seigniories in this province is described, and to the end of rendering the object of a registry more effective, that each county register shall be furnished with a correct plan or map of the fiefs and seigniories, or part or parts thereof, within its jurisdiction, setting forth the distribution by commissions and forms, and regularly numbered, and that such number shall be part of the description of the farm or lot in all future transfers there for mortgages thereon, which plans, certified by a sworn surveyor, to be furnished by seigniors, proprietors or possessors of the fiefs and seigniories respectively; provided always, that the seigniories of Montreal and Quebec shall not be held to include in their plans that portion of their seigniories within the banlieues of the cities of Montreal and Quebec.

6th

6th. That in order to afford to all parties interested in real estate every possible security, be it understood, that this act shall not be held to authorize transfers or mortgages or other *actes* affecting real estate being executed *sous seing privé*, but that the same shall be as heretofore made and passed before notaries public, and the certified copy in the usual form, or memorial, according to the future provisions in this act contained, shall be registered.

7th. That all deeds of sale or conveyance, whether absolute or in trust, all obligations and mortgages, or other *actes* intended to carry a mortgage, may be registered by memorial, which shall set forth the date, before what notary, and in whose notariat the minute is deposited, the names and description of the parties verbatim, purchase-money or amount of debt, and how payable, with the servitudes, if any, and a verbatim description of the real estate sold or mortgaged, or intended to be; memorials to be regularly filed by registrar, who shall grant certificates of such registry indorsed on the *acte* or copy of the *acte* registered, or whereof a memorial has been registered. Deeds of sale by the sheriff, or sales by licitation, to be registered in full.

8th. That from and after all sheriffs' sales and judgments of confirmation of titles by the Court of King's Bench shall set aside and novate all mortgages (*hypothecaires*) of every description affecting such estate so sold, unless mentioned by opposition in due and legal form.

9th. All acquittances and discharges or other *acte* cancelling any mortgage registered, shall also be registered, and thereby have full force and effect, and whereof certificates may be granted by registrar.

The foregoing principal items for a register bill are most respectfully submitted, with the annexed answers to questions by

(signed) *H. Griffin.*

ANSWERS of *C. E. Casgrain*, Esq.

To the 1st Query.—The thing is generally impossible

To the 2d.—By the *décret volontaire*; and yet this mode is long, expensive, insufficient and ineffectual, inasmuch as it does not make known dowers not opened.

To the 3d.—Yes, very frequently.

To the 4th.—Yes, I believe so.

To the 5th.—Often; but, as I have already observed, this mode is long, expensive, insufficient and ineffectual.

To the 6th.—Yes, and particularly previous to acquiring property of great value.

To the 7th.—I do not exactly know, but I think that the expense carries from 7 *l.* to 20 *l.* and that from four to six months are consumed in obtaining a confirmation of title.

To the 8th.—Yes, and it would facilitate the sale and mutation of real property, which is deprecated by reason of the impossibility of ascertaining to what degree it may be incumbered.

To the 9th.—I am of opinion that the operation of such a register would prevent or tend greatly to check the commission of frauds. But I will observe that a purchaser, without any bad faith on the part of the vendor, is frequently exposed to considerable losses, for want of the operation of such a register, by the subsequent disclosure of ancient mortgages and incumbrances unknown to the vendor himself.

To the 10th.—I think so. Perhaps that, in the present circumstances, this innovation in our laws might at first be considered onerous and inconvenient; but I am convinced that after a certain time, and when we would have surmounted the first difficulties of this new system, we would appreciate the advantage of such a register.

To the 11th.—The disclosure that such a register would afford of mortgages and incumbrances on real property would produce a good effect in the province, inasmuch as it would thereby be easy to ascertain the mortgages and other incumbrances affecting real estates, the sale and mutation of which would be facilitated; it would also be easier for a proprietor to borrow money.

To the 12th.—I think that this disclosure would in general be productive of good; for it is the interest of society that all transactions in life be founded on good faith and upon established and sure principles, and consequently that these transactions which interest the public should be known.

To the 13th.—I believe that advantages have been derived without any material evils having resulted, from the communication the public can obtain of such instruments affecting the property therein mentioned.

To the 14th.—Yes, but the access to this register must be easy and not expensive.

To the 15th.—Yes, and I have known cases where rich proprietors of real estates, little or not incumbered, have been unable to borrow small sums, considering their fortunes, without giving many sureties.

To the 16th.—I am of opinion that it would be to the advantage of both the one and the other, although the innovation might at first be considered onerous and inconvenient, as I have observed it in my answer to the 10th question.

To the 17th.—I think that this may be one of the causes which prevent them from settling in the seigniories. But in the lower part of the district where I reside, this reason does not much influence them; for the severity of the seasons, together with a population composed solely of Canadians, I mean of people speaking the French language only, having usages and habits different to theirs, are sufficient to prevent them.

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To the 18th.—If register offices were established, it would then be better that mortgages should be special, except those created by the judgments of courts of justice, which ought to be general.

To the 19th.—I am of opinion that it would be advisable to particularize the dower, and to have it specially applied. It is one of the greatest obstacles to the sale of property in this country, and which tends to depreciate it very much, for the purchaser of real estates is always afraid of discovering afterwards, notwithstanding all his precautions, some similar incumbrance on his estate. It would perhaps be advisable to allow the wife to renounce to her dower in certain cases, or to apply it on other property, under certain formalities and conditions sufficient to protect her.

To the 20th.—Yes; and the thing sometimes happens.

To the 21st.—It would be very hard, if not unjust, to require tutors and curators to give sureties, when they are obliged by law to accept these onerous offices, and generally accept them but with reluctance; I think it is better that the relations, friends and others interested, should adopt the usual course to have them removed when guilty of gross negligence or misconduct.

To the 22d.—I think it would; and perhaps it would be advisable to enregister these acts in each locality where properties thereby affected would lie, and where register offices would be established.

ANSWERS of *A. Dionne*, Esq.

To the 1st Query.—Yes, I think it is possible in the present state of the law in this province, to discover mortgages on real property in seigniories, except in a few cases.

To the 2d.—The means of discovering whether a property is mortgaged is never to purchase or lend to the proprietor without seeing his marriage contract, deed of donation, &c. &c.

To the 3d.—I know of instances where individuals having bought properties, or lent money on the security of the same, have sustained losses by the discovery of mortgages or charges, which had not been disclosed to them by the venders or debtors.

To the 4th.—I know of several actions *en declaration d'hypotheques* instituted in the Court of King's Bench, and in many cases the defendants were ignorant of the mortgages.

To the 5th.—It is the practice in certain cases to resort to the voluntary *décret* (*décret voluntaire*) when we are not very certain and convinced of the vendor's solvability, in order to purge mortgages. This process necessitates considerable expenses.

To the 6th.—When purchasers or lenders take the precautions stated in this question (which often happens), losses are seldom sustained.

To the 7th.—The expense incurred in obtaining confirmations of title under the Act 9 Geo. 4, c. 20, is from 9 *l.* to 10 *l.* currency; the time required to obtain the same depends upon the number of oppositions and their discussion; if there be no oppositions, confirmation of title can be obtained in four months' time.

To the 8th.—Such a county register would certainly make known mortgages and charges, and would benefit capitalists to the detriment of small proprietors; but all would depend upon the conditions of the enregistration, which I cannot anticipate.

To the 9th.—The operation of such a register would certainly tend to prevent frauds, if other frauds still greater did not produce more evil than those which it would remedy.

To the 10th.—Such a register, with certain precautions in the passing of the law, would doubtless tend to diminish the time and expenses attending the obtaining a secure title on purchasing property, as well as on lending money thereon.

To the 11th.—Yes, as I understand the thing, I conceive that this register would produce more evil than good; but it is impossible for me to state the reasons or the particular facts upon which I ground my opinion, not being acquainted with the project of such a law.

To the 12th.—I think that great inconvenience would result by the disclosure of certain family arrangements, if we are obliged to enregister them.

To the 13th.—I do not know the evils or advantages arising from the enregistering of wills, donations and other instruments containing the dispositions of real property or mortgages thereon.

To the 14th.—Yes, such a register would be advantageous to creditors, and would enable them to ascertain the true circumstances of the real estates of their debtors.

To the 15th.—I am not aware of individuals having been unable to obtain money on the security of their real property. I think nevertheless that this must have happened several times.

To the 16th.—I cannot say that the establishment in seigniories of register offices would favour commerce to the prejudice of agriculture, or that it would contribute to the prosperity of both, being without *data* certain upon this head.

To the 17th.—No; I am not of opinion that the impositions and frauds relating to mortgages and other charges are the reasons which induce emigrants from the United Kingdom to go and settle in Upper Canada and the United States, rather than establish themselves in seigniories; I know that they go to those countries in preference, but I do not know why they do so.

To the 18th.—I think it would be productive of more evil than good, if it were provided by law that in future mortgages shall be special and not general.

To the 19th.—It would be very proper to abolish the *douaire coutumier*, and to enact that in future

future the *douaire prefix* alone will be allowed to be stipulated in marriage contracts; moreover it would be prudent to impose certain restrictions to it.

To the 20th.—I have no knowledge of tutors or curators having been guilty of misconduct in the execution of their duties.

To the 21st.—It would be hard to oblige tutors or curators to give security for the discharge of an office which they are compelled to accept gratis. It is for the relations to make a proper choice, and observe them cautiously.

To the 22d.—I think that much good would result if the judgments rendered in the different districts, and other ministerial acts performed by the judges, whereby mortgages or incumbrances on real property are created, were enregistered in the office of the prothonotary for the district of Quebec.

ANSWERS of *M. Cressé*, Esq.

To the 1st Query.—No, it is impossible, owing to the rights of proprietors of seigniories, who are allowed to demand 29 years of arrears of *cens et rentes* and *lods et ventes*, which is injurious both to commerce and to the public in general, particularly when the country people are in the habit of neglecting their affairs; for the advantage of the public as well as of commerce, arrears of seigniorial dues ought to be prescribed after two or three years.

To the 2d.—Yes, by the *décret*, which is a very good way; but the costs are taxed too high, indeed they are excessive.

To the 3d.—Yes, very often, especially by the discovery of *constituts*, dowers and *separation de biens*, which a woman, after having contributed to ruin her husband, has the right of claiming, having a mortgage from the date of her marriage contract. This latter right and all the others are very injurious both to the public and commerce, and have caused the ruin of many families.

To the 4th.—Yes, very often, and principally for the reasons mentioned in my answer to the 3d question.

To the 5th.—Yes, and this is a very wise act; but the costs are too considerable, as well those of the advocates, prothonotaries, sheriffs, bailiffs, as those of the printers; as to the publications, they ought, for the advantage of the public, be given to the printer who would do them cheapest. The Quebec Gazette, published by authority, is a complete nuisance from its enormous charges; the subscription price being 23*s.* 4*d.* yearly, and 4*s.* for postage, while other newspapers cost less, though published three times a week.

To the 6th.—Sometimes, but generally by strangers.

To the 7th.—I do not know what the expense is, but it is very great, and the delay generally much too long.

To the 8th.—A register in seigniories cannot by any means answer as long as there is no law. 1st. For the prescription of arrears of *cens et rentes* after two or three years. 2d. To abolish *constitutions et rentes*. 3d. To abolish rights of entails. 4th. To abolish dowers. 5th. To prevent separations between man and wife after marriage; that is, to abolish the right that the wife has of suing her husband *en separation de biens* after her marriage, and to take away the right of mortgage which she has had from the date of her marriage contract, thereby occasioning the loss of debts lawfully due to creditors. 6th. A law for the prescription of interests; that is, arrears of interests after two years.

To the 9th.—No, we want first a new law on the different subject mentioned in the above six clauses as requiring to be abolished or amended.

To the 10th.—No, on the contrary, it would produce a bad effect in seigniories so long as the above-mentioned amendments are not made.

To the 11th.—Yes, a register would be productive of more evil than good with the laws now in force. Previous to making the necessary alterations, it might be proper to refer to the remarks made in my answer to the 8th question.

To the 12th.—Yes, this disclosure would be productive of more evil than good, for the reasons above mentioned.

To the 13th.—The law with respect to enregistrations is injurious and prejudicial; it occasions much useless expense to the public, without producing any good.

To the 14th.—It would first be necessary to alter the law, such as I have already stated in my answers to the 3d and 8th questions.

To the 15th.—I am of opinion, from the knowledge that I have of business, that an honest person with good morals, of a good behaviour, saving and industrious, can obtain as much money as he wants, without great difficulty, and at all times.

To the 16th.—No; on the contrary, it would be prejudicial and injurious.

To the 17th.—I think that emigrants can safely establish themselves here, provided they apply to honest people; but the reasons contained in the answers to the 3d and 8th questions are injurious.

To the 18th.—The remarks contained in my answers to the 3d and 8th questions ought before to be taken into consideration.

To the 19th.—Yes; dowers ought to be for ever abolished, &c.

To the 20th.—Yes; and tutors and curators, executors and administrators generally act in a fraudulent manner.

To the 21st.—Yes; great advantage would be derived if tutors, curators, executors of

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wills, &c. &c. were required to give good security, accepted with great care, in order to ensure a proper discharge of their duty.

To the 22d.—Register offices with the law as it now stands would be productive of much more evil than good, and would be injurious to the public and to commerce.

ANSWERS of *De Bellefeuelle*, Esq.

To the 1st Query.—Impossible.

To the 2d.—I know of none; because often dishonest notaries and the creditors of the individual whose property is mortgaged, keep the thing secret in the hope of getting paid by the purchaser. Besides it frequently happens that those who mortgage their property, repair to some distant notary to have the acts passed, so that even the neighbours know nothing of the transaction.

To the 3d.—I reside in my seigniory since 1815; I have known about 30 cases where individuals have been obliged (after completing all payments) to pay dowers and other dues concealed by the vendors.

To the 4th.—I do not know.

To the 5th.—I do not know.

To the 6th.—Researches are made; but as I have stated it in my answer to the 2d question, interested creditors and notaries anxious to preserve their practice, prevent our discovering the truth.

To the 7th.—I do not know.

To the 8th.—I am for the affirmative, for this simple reason, that the moment a county register would be established, it would be impossible to conceal mortgages or incumbrances on properties.

To the 9th.—I am for the affirmative, for this reason, that the operation of a register would make individuals afraid of having their impositions detected and losing their character.

To the 10th.—Most assuredly.

To the 11th.—My opinion is, that such a disclosure could not but produce a good effect. Honest people could not suffer from it; on the contrary, if they wanted to borrow money to make improvements on their properties, they would much more readily obtain it, the lender seeing (by the register) that he runs no risks.

To the 12th.—I think that religion, morals and honour oblige every man to pay his debts, and that no family arrangement can authorize the defrauding of a person lending money or a purchaser.

To the 13th.—Advantages must thereby be derived, inasmuch as that would prevent frauds.

To the 14th.—Most certainly; it would be advantageous to creditors and debtors.

To the 15th.—I know many instances of this kind; amongst others, the following: a wealthy person from England, came here in 1833, I think, to place 30,000*l.* on property; not finding any security, he has taken back his money.

To the 16th.—Agriculture cannot prosper without commerce, and *vice versâ*. Both would profit by it.

To the 17th.—I am strongly of opinion that the want of register offices prevents the emigration into this country of wealthy people; a proof of this is the growing prosperity of Upper Canada, where as much as 100,000*l.* are brought out every year, and where the forests are daily disappearing to make room for towns and villages.

To the 18th.—I would be in favour of special mortgages.

To the 19th.—That they shall be specially applied.

To the 20th.—I have known many instances, and often in the higher classes of society, where minors have been defrauded by their curators or tutors.

To the 21st.—Many tutors and curators having their property mortgaged, would afford no security to minors; for that reason I would prefer sureties in the amount required by the judge.

To the 22d.—I would rather have them enregistered in the office of the prothonotary of each district; it would be less expensive for the persons concerned.

ANSWERS of *H. Mount*, Esq.

To the 1st Query.—With regard to this question, I answer, there is no certainty at all; and I have reason to believe that the evil is extensive indeed.

To the 2d.—I am aware of no means of discovering and making public such discovery.

To the 3d.—There are many such instances, which I can substantiate by the best authority.

To the 4th.—I know that such actions are very numerous and expensive.

To the 5th.—Certainly; this is the frequent practice, and is also attended with much inconvenience and expense.

To the 6th.—I know them to be innumerable, attended with much trouble and expense, and are often fruitless.

To the 7th.—To this query I feel incompetent to give an answer.

To the 8th.—To this, I answer in the affirmative. The experience of ages is in its favour, and it has uniformly accompanied the growth and progress of civilization itself.

To

To the 9th.—Upon this subject, there cannot, I think, exist a single doubt.

To the 10th.—Upon this subject also, I cannot entertain a single doubt.

To the 11th.—I humbly conceive that such disclosure could affect the interest of no honest man, and it might indeed reveal and defeat the intrigues and projects of the dishonest; but in exact proportion that it did this, good would result to the community at large.

To the 12th.—I am convinced that this arrangement would be productive of the greatest good, and of no evil whatever; and that above all it would increase the tide of emigration, and bring a vast income of capital into the province.

To the 13th.—I have reason to think that the advantages to be derived from the facilities in question are innumerable, and that the evils consequent thereon are imaginary and groundless.

To the 14th.—Certainly. I have not a single doubt upon the subject.

To the 15th.—Certainly, I know that inconveniences are of daily occurrence.

To the 16th.—In answer to this query, I have no hesitation in declaring it to be my opinion, that in this case there is no rivalship whatever between the claims of commerce and agriculture, and that wherever the interests of both are well understood, it will be found that whatever favours the one cannot fail to favour the other.

To the 17th.—This question is closely connected with the whole feudal system, which is absolutely an *incubus* upon the prosperity of the province. We need not appeal to Upper Canada and the United States. The flourishing condition of the townships in this the Lower Province is a palpable case in point.

To the 18th.—This, as I conceive, being a question of law, is referred to the learned gentlemen of the bar.

To the 19th.—I am of opinion that the abolition of the *douaire coutumier* would be advantageous, the latter part of the proposition follows of course.

To the 20th.—I cannot cite from my own personal knowledge any such cases, but I have learnt and have reason to believe that they are numerous.

To the 21st.—I have no doubt that such special securities would guarantee the safety of much valuable property.

To the 22d.—I am firmly of opinion, that everything which tends to enlighten the public mind upon subjects of property would be the greatest security and safeguard to such property.

ANSWERS of *H. De Rouville*, Esq.

To the 1st Query.—This question is answered by the answers to the other questions.

To the 2d.—There are none at present, but means could be devised, as it will hereafter be stated.

To the 3d.—Yes; but I conceive it would be easy to remedy this, by prohibiting general mortgages, and putting in force the penalty upon persons guilty of stellionate.

To the 4th.—This law does very well in all cases where property is purchased, but the expense it occasions is too great. It might be rendered more simple, as sure, and not attended with much expense, by enacting that the notary who passes the act shall cause to be inserted in certain newspapers a notice of the sale during three months at least, and the said notice to be published on the four last Sundays of the said three months at the vendor's place of residence, as also at the place where the immovable property sold is situated, apprising all persons having claims upon such property, that the purchaser will deposit the amount of the purchase-money at the said notary's office, on such a day and at such an hour, and that those who shall not come forward shall forego any claim they may have on such property; leaving them their personal recourse against the vendor. I even think that this mode might be adopted with regard to the lending of money, &c. in not delivering money lent, effects or merchandize sold, until after the accomplishment of these formalities. The notary annexing to the original act remaining of record, the certificate of notice, oppositions or claims filed, if any there be, or a certificate that there are none. The notary to be subject to severe penalties, if guilty of any misconduct. If oppositions or demands required the decision of the legal authorities, the whole might be referred to two of the judges of the Court of King's Bench to be summarily decided, and that their judgment sent to the notary to be annexed in like manner to the original remaining of record, and form part thereof. A tarif for these different proceedings might be made in order to avoid the exactions of notaries, advocates, prothonotaries, &c.

To the 5th.—

To the 6th.—These researches are useless in many cases, mortgages being general; another proof of the necessity of prohibiting altogether general mortgages.

To the 7th.—From 10*l.* to 15*l.* or thereabouts, which is too much, and beyond the means of a great number of purchasers; for this reason I would prefer the mode proposed in my fourth answer above written; besides sometimes not less than five and even twelve months are consumed in obtaining a confirmation of title under the Act 9 Geo. 4, c. 20.

To the 8th.—The advantages to be derived from such a register would not equal the injury which it might occasion, inasmuch as it is impossible to put this system of enregistration in practice, under the existing laws of the country.

To the 9th.—That is impossible according to our laws.

To the 10th.—Yes, if the system were practicable with our laws.

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To the 11th.—I have no doubt that it would be productive of evil from the confusion and disorder it would cause in families.

To the 12th.—Answered by the 11th question.

To the 13th.—Wills and donations are enregistered in the greffs of the different districts, where any one can see them.

To the 14th.—That might be, if register offices were practicable.

To the 15th.—I do not consider this to be an evil, for it has the effect of preventing many false speculations, but at all events this might be obviated by putting in force the penalty imposed by law upon persons guilty of stellionate.

To the 16th.—It would most certainly injure agriculture or the agricultural class, without doing much good to commerce, that I can see.

To the 17th.—I do not think so, but I believe that the cheapness of prices induce them to go to other countries; good properties here being dearer than elsewhere; for those who have enough of money generally establish themselves in this country.

To the 18th.—I would much prefer special mortgages.

To the 19th.—I should like to see the *douaire coutumier* entirely abolished, and all dowers prefixed and specially applied on one or several properties.

To the 20th.—No.

To the 21st.—Yes, as insolvent tutors are but too frequently elected.

To the 22d.—These acts remain of record in the office of the prothonotary of each district, where any one can examine them on paying the prothonotary's fee.

ANSWERS of *T. C. Aylwin*, Esq.

To the 1st Query.—As the law now stands it is impossible to ascertain whether real property in the seigniories be free from all mortgages and incumbrances, or the precise extent to which property is encumbered.

To the 2d.—There are but two modes of discovering instruments affecting the title to real property, or creating or producing incumbrances upon it; the first is by *décret* or sheriff's sale, the second by suing for ratification of title in the manner prescribed by the statute 9 Geo. 4, c. 20, these modes, except in the "*coutume de nantissement de vest. et de vest.*" were practised in France under the old laws, and although acknowledged to be imperfect, were superseded by a better and more effective process, only after the French Revolution, firstly by the law of the 11th Brumaire an. 7, and then by the Code Civil of Napoleon. My experience has convinced me that the old system is as ineffectual and injurious here as it was found to be in France, if not more so. It will be observed that persons intending to lend money on property can only resort to the *décret* and a *bail de fonds*, that can lend only to the purchaser of property at sheriff's sale, getting an "*acte de declaration d'emploi*," and even then their security is no greater than that of the owner, whose sheriff's title does not afford him immunity from incumbrances of *titre clerical*, dower and matrimonial rights in certain cases, and substitutions or entails; the ratification of title is applicable only to the case of a purchaser, and cannot be resorted to by a capitalist desirous of lending his money on real estate. I beg leave to notice that this question is limited to incumbrances, created or produced by title, but incumbrances created by mere operation of law are similarly situated.

To the 3d.—I have known of many such instances to the great discredit of the law of the country, and I am ready to specify the cases if desired by the committee.

To the 4th.—There are many hypothecary actions instituted at every superior term of the Court of King's Bench at Quebec. The prothonotary who classifies the action instituted, might, if required, state with precision the exact number and *garans* and *arrière garans* are called in, who sometimes are as ignorant of the mortgages put in suit as the holder of the land *tiers detenteur* is himself.

To the 5th.—The Act of the 9 Geo. 4, c. 20, is frequently resorted to by purchasers for protection against secret mortgages, and ineffectual as it is for the purpose, it has been of service as it has certainly tended to narrow down the chances of the existence of such mortgages. As I have before stated, it is inapplicable to the cases of lenders on real property, and it is singular that the two contradictory provisions contained in it respecting dower should have been suffered to deface that statute so long, and that other inaccuracies in it should not have been removed.

To the 6th.—Yes, by prudent persons.

To the 7th.—The expense varies according to the length of the advertisement printed, and upon an average does not exceed 12 *l.* The time usually consumed before the judgment of the court can be obtained is usually about five months, any inaccuracies in the proceedings (and these frequently occur), of course render it necessary to recommence them *ab initio*.

To the 8th.—Yes, such a registration would afford protection, if regulated by sufficient laws, because, as has been found in France, it supplies the defect of the system of *ratification de titre et de décret*, both of which are unavailable to lenders, and are insufficient for the protection of purchasers.

To the 9th.—Certainly it would, if properly regulated, put a stop to many fraudulent practices, particularly to that committed to an alarming extent by irresponsible persons, who become security for large sums of money under colour of owning real property which is encumbered above its value. I instance this species of fraud because in many cases it is compulsory

compulsory upon individuals to accept security, though well convinced of the insolvency of the surety.

To the 10th.—Most certainly, the very delay and expense attending the suing out of *lettres de ratification* detract immediately from the advantage of that proceeding, and in many cases, when money is required upon short notice, render it useless.

To the 11th.—It may be both pleasant and profitable sometimes to shut out the truth from the world at large, and even from ourselves, but I consider the knowledge of the truth under all circumstances to be invaluable, and to be the paramount interest of all to attain. Every concealment of fact must mislead, and is therefore bad. I think, therefore, that the disclosures effected by the system of registration, though they might be injurious to some, would be generally advantageous to the public. I do not think that society is benefited by maintaining the credit of individuals beyond their means; moreover the number of those who suffer from injurious suspicions created by the present system, and who would profit by a change, in my opinion, bears a proportion to the number of those, who, owing their credit to a system which encourages imposture, would lose it by a return to truth.

To the 12th.—I think that this disclosure will be productive of good. Family arrangements would be more honestly made than they now are, and these family settlements are frequently asked for by creditors, lenders and purchasers. The reasons given in my answer to the last question likewise influence me in forming an opinion upon the present one, besides many of these family settlements are now subject to insinuation, and no person complains of that species of enregistration.

To the 13th.—The enregistering of wills, donations, and marriage contracts must be advantageous, but to a limited extent, because the officer who performs the duty of registrar is the clerk of the court, who has too many other duties to perform. The instruments enregistered by him are not rendered as public as they would be, if entrusted to a distinct officer, charged with this duty exclusively. I have known advantages to arise from insinuation, having seen the vendors of property take intending purchasers to the greffe to see their marriage contracts, and I recently in this manner obtained for a client the knowledge of an instrument effecting certain property of great value to him, and which knowledge, but for the insinuation, he would not have been able to obtain. On the other hand, the defective system of insinuation is productive of disadvantage, because the presumption of publicity, which the law derives from the insinuation not being borne out by the fact, fraudulent donations are made and insinuated without the knowledge of unsuspecting creditors. This, of course, is an argument for the reform of the system.

To the 14th.—Unquestionably, it would, if properly regulated by law.

To the 15th.—Yes.

To the 16th.—I think that register offices would conduce to the prosperity both of agriculture and commerce, but more particularly to that of commerce.

To the 17th.—Yes.

To the 18th.—This question is one which was treated with great ability by the *redacteurs* of the Code Civil. The discussions on the subject will be found in the seventh volume of the Conference *du Code Civil, avec la discussion particulière du Conseil d'Etat, et du tribunal avant la redaction definitive de chaque projet de loi.* Napoleon, as it is well known, decided in favour of special mortgages, in opposition to the opinions of many distinguished lawyers, and experience has shown that he was right.

To the 19th.—The reasons which require that mortgages should be special, appear to me to apply to *douaire* with at least as much force, and perhaps more.

To the 20th.—Yes, I have seen such instances.

To the 21st.—The present mode of appointing tutors and curators is very defective; this was felt in France, and has been remedied by the Code Civil. The system of *conseil de famille* and the *regime hypothécaire* have been discussed, established and brought to perfection by the labours of very celebrated jurists, and they are annulled together in consequence of the mortgages which minors have upon the property of those under whose guardianship they are. I am not prepared to state that in this country it would require special security from tutors, and certainly would pause before I should recommend that the amount of such security should be left to the discretion of the judge. With such materials for framing useful provisions to regulate the two titles of law, *de tutelis et de hypothecis* as are furnished by the Code Civil, it would not be difficult to form a perfect system, which would do honour to the country. But I apprehend that the legislative bodies of the colony are not better fitted for the business of law reforms than the corresponding bodies have been found to be in France, in England, in the States of Louisiana, New York and Massachusetts. I should, therefore, with all the respect and deference which I owe to the committee, recommend the appointment of a commission similar to that which is now engaged in law reforms in England and in the State of Massachusetts, as I am firmly convinced that it can only be by such a commission that the discordant materials, comprising our laws, may be wrought into a regular and systematic body of law, and certainly no country has ever afforded better or more ample materials for creating a system as perfect as human wisdom can effect.

To the 22d.—I am convinced that both judgments and the discharge of judgments, and all other judicial acts creative of mortgages, should be enregistered, but I am not prepared to say that the enregistration should be done by the prothonotary. I should think that unity in the system of registration is invaluable, and that to be effective there should be one central office for the enregistration of all mortgages, and that the prothonotary could do justice to such an office.

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ANSWERS of *W. C. H. Coffin*, Esq.

To the 1st Query.—It is scarcely possible.
To the 2d.—It would be difficult to find any.
To the 3d.—There have been similar instances to my knowledge.
To the 4th.—Yes.
To the 5th.—I believe it is customary to resort to the said act, but I cannot state whether the expenses are considerable, knowing merely the prothonotary's fees, which amount to a few shillings.
To the 6th.—I am inclined to think so.
To the 7th.—I refer to my answer to the 5th question.
To the 8th.—Having never occupied myself with this very important measure, which requires much consideration, reflection and time, I am not able to answer this question.
To the 9th.—The same answer as to 8th question.
To the 10th.—Ditto.
To the 11th.—Ditto.
To the 12th.—Ditto.
To the 13th.—I know nothing of the advantages or disadvantages in question.
To the 14th.—If it had that effect I would consider it beneficial.
To the 15th.—I do not know.
To the 16th.—Same answer as to the 8th question.
To the 17th.—I should think so.
To the 18th.—Same answer as to the 8th question.
To the 19th.—Ditto.
To the 20th.—As far as I can recollect similar instances have occurred, but I cannot particularize them.
To the 21st—The office of tutor or curator being a very onerous one, I do not think that they would easily find sureties.
To the 22d.—It is not for me to answer this question.

ANSWERS of *P. L. Letourneau*, Esq.

To the 1st Query.—There are no other means than by the *décret*.
To the 2d.—I know of none except by the voluntary *décret*.
To the 3d.—Considerable sums must have been lost in this manner.
To the 4th.—Hypothecary actions (*actions hypothecaires*), which have caused the discovery of mortgages concealed to the parties concerned, must have been frequently instituted.
To the 5th.—We often resort to the voluntary *décret* for this purpose.
To the 6th.—Researches are certainly made; they are more or less numerous and difficul according to what the people making them know of the country, and the customs and habits of its inhabitants.
To the 7th.—The expense attending the voluntary *décret* is from 8*l.* to 10*l.* currency, and it can be obtained in four or six months.
To the 8th.—Such a register would be extremely advantageous to a certain number o. persons, but in the present state of the country it would be disadvantageous to the greatest part of the inhabitants. I refer, in relation to this subject, to my remarks at the end of these answers, and which are intended to form part of them.
To the 9th.—The operation of such a register would certainly prevent frauds; I refer, however, to my remarks.
To the 10th.—Yes, certainly, the thing would be excellent if there were no incumbrances resulting from it. I refer to my remarks.
To the 11th.—I decline expressing my opinion on so delicate and important a question. I will merely observe that I was strongly in favour of registry offices, until I read a celebrated author, Edmund Burke, I believe, who says that he was doubtful yet whether registry offices had produced more good than evil. Inasmuch as this question relates to this country, I refer to the remarks hereunto annexed.
To the 12th.—With respect to this, I refer to my preceding answers and to my remarks.
To the 13th.—I think that in general little attention is paid these enregistrations which, however, are frequently useful.
To the 14th.—Yes, certainly; however, I refer my remarks.
To the 15th.—Register offices would certainly facilitate the borrowing of money; but would this be more advantageous than injurious to the great body of the people? that is the question; see my remarks.
To the 16th.—In all countries, registry offices, in my humble opinion, must be favourable to the rich and to speculators, but injurious to the poor, who are the most numerous, and therefore must favour commerce to the detriment of agriculture.
To the 17th.—The thing is possible and even probable; this is an inconvenience to which we must submit on settling in a country where one is a stranger to the laws, customs and habits of the people inhabiting that country.
To the 18th.—I cannot say.
To the 19th.—In my humble opinion, dowers ought to be conventional and specially applied.

To

To the 20th.—I do not recollect at the moment any particular instance of this kind, but the thing must have happened sometimes; nevertheless I do not see what remedy we could apply.

To the 21st.—The thing seems to me impossible. Who would consent to be tutor or curator on these conditions?

To the 22d.—Such enregistrations might be advantageous to the public, but in that case they ought to be established in all the districts of this province.

Mr. *Letourneau's* Remarks.

If we were required to give a code of laws to a new country not having any, then perhaps might we at once introduce register offices; still there would exist some doubts as to the expediency of this measure, for the reasons alleged in my 11th and 16th answers.

In my humble opinion the laws against stellionate are in force in this country, and are sufficient, I conceive, to remedy the evils which we pretend obviating by the adoption of register offices. If I am wrong (and this opinion is entertained by the first jurisconsults in the country), and that these laws are no longer in force, why not re-establish them? I humbly conceive that the country is not prepared to receive this innovation, even admitting that it is a good one. 1st. Because in a new country like this, where property is of little value, and where money is scarce, all would be to the advantage of the rich, the speculator, and consequently of the smaller number, and to the disadvantage of the poor and the majority of the people, whose greatest interest it is to preserve as long as possible the inheritance transmitted to them by their forefathers. It is true that property would be more valuable, but no one would be the richer for that; he who is rich is so merely because he possesses more than others, more than his neighbours, &c. Let all the farms in the country be worth tomorrow 25 or 50 per cent. more than they are now, who will be the richer for that? Nobody.

2d. Because as long as situations are not given by the people, by means of elections, there is every reason to believe that the choice will be for the future as it has been for the past, that is to say bad, and always made, not with the view of promoting the happiness of the people, but with the view of domineering over them, witness the great majority of the justices of the peace, of the late commissioners of small causes, and the civil officers of government, in whom the people of the country have no confidence.

The whole humbly submitted.

(signed) *P. L. Letourneau.*

Answers of *D. B. Papineau*, Esq.

Sir, Petite Nation, 2d February 1836.

I did not receive until the 30th of January, your letter of the 19th of the same month, containing 22 questions, relating to the state of the law of mortgages and other incumbrances created on real property, and requesting me to send you my answers to the same for the information of the special committee of the legislative council, to whom were referred the petitions of divers inhabitants of the cities and districts of Quebec and Montreal in relation to this object.

Before I answer these questions, or any of them, I beg leave to make a few general and preliminary observations, which may serve as the basis of the opinions which I shall afterwards emit.

I shall then commence by stating that I have always considered as absurd the idea of transferring any system of laws from one country to another. And this absurdity appears to me greater, if possible, when it relates to the laws of a country long established, which we wish to apply to a new country almost in a state of nature, and with quite a different climate. It is evident that at the moment of the establishment of a colony, the colonists bring along with them general rules of conduct or laws to govern themselves in their new state; it is also evident that the state which establishes a colony at a distance, the mother country and the colonists themselves must naturally prefer adopting those laws to which the one and the others are accustomed. But this order of things can only last as long as the colony has not acquired a certain stability (and this observation is applicable to all young societies), or until the plurality of the inhabitants of that colony or society have grown into a state of ease, if not of independence, as to their subsistence. Then must necessarily come a new order of things. The difference of climate, if any difference exist, of the locality, the general parity of fortunes create new wants, new habits, and new ideas. We begin to feel a certain social uneasiness which soon makes us see the absurdity and experience of continuing to be governed by institutions introduced at the time of the establishment of the society, and which are no more in harmony with the actual wants of the colonists. To modify these institutions of an old society, and to harmonize them with the wants of a new society, it is absurd to wish to refer everything to the legislative power of the mother country, more especially if this mother country is at a great distance. In fact, how can a legislator perfectly unacquainted with an order of society, contrary

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to all his ideas, to his notions of government, and the wants of the society which he has until then governed, legislate with any success, justice and equity on subjects of which he is entirely ignorant, or on which he can have but a very superficial knowledge.

It is contrary to experience to expect that the institutions of a society will always subsist without modifications. The history of all the Europeon societies formed for the most part after conquest, proves that a very short time after their establishment, it was necessary to modify the one by the other, the institutions of the nations conquering and conquered. That these institutions have been constantly modified since, and that they are every day modified. If in these societies the legislative power be ruled and governed by public opinion, these modifications and changes are made gradually without commotion, and as they are required. The state is happy and prosperous, and the majority of the people enjoys a great share of political and civil liberty.

If on the contrary the legislative power be placed in the hands of individuals upon whom the public opinion has little or no influence, or if there be but a few privileged classes who can exercise some influence upon the legislative power, then these changes and these modifications can only be made by revolutions more or less sanguinary; these revolutions cause the annihilation of the privileged classes, if it is by their influence that the modifications demanded by the people have been retarded or refused. It is useless to refer for proof of these facts to all the revolutions which have taken place in England and in France. That which took place under Charles the First, and which brought about the death of that monarch and the abolition of the House of Lords, proves that which I advanced in the case where the privileged classes have the ascendancy; and the Revolution of 1688, as well as the passing of the Catholic Emancipation Bill, and the Parliamentary Reform Bill, proves what takes place when the public opinion has influence upon the legislative power. In one case the revolution was terrible, sanguinary, and shook society to its foundation; in the other case it was tranquil, and it was only those who profited from the abuses which had crept in the state who suffered, and even then very slightly.

From what has been said it follows that the political laws of society, that is to say, those laws which regulate the rights and the duties of society towards individuals, and of individuals towards society, and which in consequence regulate and define the attributes of the legislative, executive and judiciary powers, ought to be considered as the basis and founda tion of the whole social edifice. If this foundation be solid, if the legislative power be composed of materials homogeneous and well put together, the system of civil laws, that is to say, the laws which regulate rights and duties, in a word, the relation of individuals amongst themselves, although intrinsically imperfect, will always be sufficient to provide against actual wants; the legislative power being always able to modify it according to the exigencies of the times. But if the legislative power has been constituted so as not to harmonize in all its parts, it follows that the wants of society are so much augmented from the absence of any remedy applied to the abuses which may have crept in, that a new codification becomes necessary. Codification will be the more necessary according to the different elements from which population will be composed, that is to say, of persons subject previous to their arrival to a new country to different systems of legislation. When codification takes place then society is in a state of transition. A part of the ancient institutions must be abolished, others modified, and others in fact entirely created. The traditional knowledge of the laws, the basis of the attachment which we bear them, and of the preference which we give them, is not yet established. The legislative power not being able to foresee everything, ought, therefore, to be always ready to consolidate its work, until at last the new system being put into practice, the population obtains a traditional knowledge of it and can attach itself to it.

After all these observations it may be asked if this be the proper time to make considerable changes in the civil institutions of this country. No person can be ignorant that all the parts of a system of law are necessarily connected together; that it is difficult to make great changes in some parts without being felt by the other parts, and that the modification of one part is not attended with the modification of many others. And how can these modifications obtain general consent in a country where the component parts of the legislative power, far from being in harmony, are in complete discordance one with the other. The most pressing want of society in this country is not then that of partial modifications to certain parts of her legislation; it is to settle the attributes of the legislative power in all its branches. When once harmony exists in the different parts composing the legislative power, all the rest will be comparatively easy.

I shall now answer, as well as I am able, the 22 questions.

To the 1st Query.—The fact that so few have been the particular cases where individuals have actually suffered losses from there being no register offices established, that it has not become a general subject of complaint, would tend to prove that prudent persons can easily arrive at this certainty; that is to say, can be sure whether real properties are or are not affected by mortgage.

To the 2d.—It is not very difficult when notaries state in contracts, as they do for the most part, the persons from whom the vendor derives property, and make mention of the former titles. We can also very easily know if there has been a marriage contract or not, and if there is *douaire coutumier* or *préfix*.

To the 3d.—No such fact has come to my personal knowledge; I should not doubt, however,

however, that the fact has happened; it would yet remain to be known whether the loss has been caused from want of prudence in the persons interested, or from the absence of sufficient legislative provisions.

To the 4th.—The question can only be answered by those who are versed in the proceedings of courts of justice.

To the 5th.—The same answer as to the preceding question.

To the 6th.—It cannot be doubted that under every system of law some researches of this kind will be necessary.

To the 7th.—The answer to this question can only be given by the public officers in the offices of the courts, and by the advocates who practice.

To the 8th.—I have always been of opinion that with certain restrictions such offices might be useful, it yet remains to be known if, after the observations above made, this be the proper time to make these changes. The establishment of such offices ought to be preceded or immediately followed by great alterations in all our hypothecary system.

To the 9th.—The same as the preceding.

To the 10th.—Answered by the eighth answer.

To the 11th.—Such a register would do more harm than good if it were opened without any restriction, and indifferently to all those who would wish to consult it by curiosity or otherwise, and without the consent of the interested party. I have heard some persons from Upper Canada complain, that owing to the facility with which the register could be consulted, some persons had taken advantage of this circumstance to acquire property below its value, in causing to be transferred rights of mortgage, and in sueing the individuals who had created such mortgage, that which the original creditors perhaps would not have done themselves.

To the 12th.—With the restriction mentioned in the foregoing answer, I do not think that any inconvenience would result; on the contrary, advantages would follow from the establishment of such a register office.

To the 13th.—Answered by the preceding answer.

To the 14th.—Answered by the preliminary observations and by the answer to the eighth question.

To the 15th.—I have no knowledge of any instance where individuals could not borrow money upon the security of their immovable property, by the impossibility of proving that such borrower could assure the repayment of the money lent, in showing that the property was unincumbered or only mortgaged in part. I have frequently heard vague complaints made that it was more difficult to borrow money upon mortgage since the establishment of banks than it was before. Is it because individuals, not reflecting that the banks only lend for very short periods, distrust those who seek to borrow, when wishing to have money payable after a long term they cannot apply to the banks?

To the 16th.—To reply pertinently to this question it would require an *enquête* well directed upon the effect of this measure in the townships where it is established. An individual without authority cannot do it with success; experience in such a case is worth more than all the reason in the world.

To the 17th.—The difference of language, manners and religion, appear to me to be the strongest reason which prevent emigrants from establishing themselves in the province. Is it necessary in order to settle them here in greater numbers, that a pre-existing society should be deprived of its institutions? The laws of the country modified according to the actual wants, made with the general consent, printed in the two languages, in making known to the intelligent and influential class of emigrants the laws by which they are to be governed in their new country, would induce the majority of emigrants, who in all countries are guided rather by motives of confidence towards certain individuals than by their personal information, to establish themselves more readily in this country.

To the 18th.—It would be a desirable reform if it were not an isolated measure, and independent of others quite as useful.

To the 19th.—This customary dower is in many cases sufficient to secure the subsistence of families; and principally in countries long established. In a new country where property is of little value it becomes an obstacle to the transfer of property, and may afterwards become a source of spoliation. It would, therefore, be better to abolish it, and to enact that for the future all rights of dower should be particularized and specially applied, not only by a notarial act, but even by the act of the celebration of marriage. The minister receiving the consent of the parties ought to be required to demand the intention of the parties upon this subject, and to insert it in the act of marriage. There should be no dower unless the person who wishes to constitute it possess real property of equal value to the dower he wishes to establish.

To the 20th.—I have known no such instances.

To the 21st.—It appears to me that this would be impossible. Tutorships and curatorships being often burthensome charges of themselves, it would not be proper to render them more onerous.

To the 22d.—The greater the distance at which the enregistration of the transactions in real property, as well as the judgments rendered in the different districts, and ministerial acts of judges, in virtue of which mortgages are created upon real property by operation of law, occurs from the place where these transactions have taken place, the less you will be able to attain the object proposed. It would, perhaps, be better to give to such as (I mean the judgments and the ministerial acts of judges,) a desirable publicity, that a journal in which all the judgments and ministerial acts of judges would be inserted should be published at the expense of the province, and distributed gratis to all judges,

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justices of the peace, notaries, advocates, *fabriques* and the militia officers. Every one could then inform himself without expense upon any of these matters which might interest them.

I have, &c.
(signed) *D. B. Papineau.*

Turton Penn, Esq., Answers when called in and examined before the Committee.

To the 1st Query.—Secret incumbrances may exist, for when discovered, no means are afforded under the present system of law.

To the 2d.—The possessor of real estate has no means of establishing his title or of removing doubts as to previous incumbrances.

To the 3d.—I have heard of many such instances.

To the 4th.—I cannot answer from my own knowledge.

To the 5th.—It is attended with considerable expense to obtain the limited protection which the law now affords, and it is usual to adopt one or other of the courses alluded to.

To the 6th.—I should suppose no person would purchase real property or lend money on the security thereof, without observing these precautions.

To the 7th.—I cannot answer this question without referring to paper, which I have not with me.

To the 8th.—It is the concealment of mortgages, charges and incumbrances, which affords the opportunity to practise frauds which the establishment of registry offices would effectually prevent, accompanied by a modification of the existing law.

To the 9th.—This question is answered by the preceding.

To the 10th.—The expense and delay in procuring titles are entirely occasioned by the absence of register offices, founded on the principles which prevail in other parts of the North American continent.

To the 11th.—I cannot see what evil would arise, concealment only operates to encourage fraud.

To the 12th.—I am not aware that the disclosure of family arrangements has formed a subject of complaint in those countries where register offices now exist; were it otherwise, a mistaken feeling of delicacy on the part of a few individuals should not prevent a measure which would be highly advantageous to the community at large.

To the 13th.—The enregistering of wills, donations, and other instruments affecting real property, is a necessary part of a registry system.

To the 14th.—It would be the means of preventing the recurrence of frauds which grow out of the present system.

To the 15th.—The improvement of the country is retarded, and great distress occasioned to individuals from this cause; I have known many instances in corroboration of this.

To the 16th.—It would be beneficial both to commerce and to agriculture; and I do not see that it could by possibility injuriously affect any of the great interests of the colony.

To the 17th.—The affirmative is a matter of notoriety.

To the 18th.—Unless all mortgages are made special, the usefulness of a system of registry will be greatly impaired if not destroyed, and I cannot see any evil that would arise from it.

To the 19th.—This question I consider is answered by the preceding.

To the 20th.—I have heard of such cases, but I cannot enter into the particulars.

To the 21st.—The interests involved in this question are considered to be adequately protected in other countries, without a special provision of this nature; the mode pointed out would, however, be far preferable to the existing law.

To the 22d.—The advantage of a registry system would be materially diminished unless accompanied by some provision of this nature.

The four following Questions were also put; viz.

Q. 23. Would you deem it advisable that judgments, whereby mortgages are created on real property, should be registered in the county register in which the property is situate?

Q. 24. What immediate advantages might be expected to result from the establishment of an efficient system of registration, whereby the possessors of real estate would be enabled to exhibit a clear title, and to give undoubted security upon such estate?

Q. 25. Is there not at present much difficulty in negotiating the transfer of mortgages or securities on real property, which would be removed by the establishment of an efficient system of registration, and operate much convenience in the administration of trusts as well as to persons engaged in the agriculture and commerce of the country?

Q. 26. Have you ever been charged with the administration of the estates of minors or absentees; and if so, have you experienced difficulty in making investments from time to time of the funds accruing from such administration, and whereby a loss of interests was occasioned to the party for whom you acted?

ANSWERS.

To the 23d.—Certainly; it would be a matter of convenience to all parties.

To the 24th.—It would enable the possessors of real estate to relieve themselves from pressing debts by obtaining loans on landed security, and would prevent the compulsory sales of their property under judgments of the courts, attended with legal expenses and sacrifice which at present prevail. It would also enable proprietors to prosecute improvements which they are now unable to perform for want of pecuniary means.

To the 25th.—The same difficulties exist in negotiating the transfer of mortgages or securities on landed property as in obtaining mortgagee loans, the cause in both instances being a general distrust in such title and securities; the effects of an efficient system of registration would be to increase the circulating medium of the country, to invite the introduction of foreign capital, and to afford a secure investment for monies which under the present system are not unfrequently withdrawn from the colony. I consider that mortgages in such cases would pass current as scrip and public securities do in England.

To the 26th.—I cannot cite any particular instance bearing upon this question, but as a general principle it is self evident that a loss of interest from this cause must accrue to such estates.

SERIES of QUESTIONS ordered to be put to the Registrars in the Counties where Register Offices are established.

1st. When was the register office established for the county for which you are a registrar, and what is the opinion generally entertained by the community as to its advantages or disadvantages?

2d. Are you aware whether the establishment of registry offices has or has not tended to enhance the value of real property, and facilitate transactions respecting the same, in the counties in which they have been established, and particularly in your own?

3d. Have you any reason to believe that resort is had to the books of the register office for information respecting incumbrances on or transfer of real property, by any other person than such as have an intention of purchasing, or are in treaty for lending money on such property?

4th. What is the charge allowed by law, for enregistering deeds, &c. in your office, and for a search with and without a certificate?

5th. What is the average price of enregistering a deed or mortgage in your office?

6th. What is the charge made for copies of deeds or other documents transcribed from your register?

ANSWERS of the Registrar of the County of *Stanstead.*

To the 1st Query.—The registry office for the county of Stanstead, for which I am registrar, was established at Georgeville, 3d August 1830. The opinion generally is very favourable to their establishment, and the advantages arising from them are developed more and more every day. In transactions before me as notary, and connected as I am with the office, I have heard the parties say, "There you see the benefit of a register office."

To the 2d.—I am aware that the establishment of registry offices, and particularly in the county in which I reside, have had a tendency to enhance the value of real property, the certainty of a good title will always have that effect, it cannot be otherwise. I speak from experience, because I have known money loaned on farms which could not have been obtained had it not been for the registry office.

To the 3d.—I have never known an instance in my office of resort being had to the registry books for information respecting incumbrances or transfers of real property, other than by those who were particularly interested. People in this part of the country are not so fond of paying their money for what does not concern them. Thirteen years' practice has confirmed this.

To the 4th.—The charge allowed by law for enregistering a deed, not over 600 words, is 3*s.* currency, and for every 100 words over, 6*d.* per 100; a search and certificate, 1*s.* I charge no more for both, than if the certificate was not required, that is to say, if a search, only 1*s.*, and if the certificate is asked, for the same price.

To the 5th.—I am unable to state positively, but I should judge the average price to be about 4*s.* 6*d.*; certainly not over 5*s.*

To the 6th.—The charge made for the copies is the same as that made for the original registry; viz. 3*s.* for every deed that does not exceed 600 words, and 6*d.* for every 100 words over, the certificate included.

ANSWERS of the Registrar of the County of *Beauharnois.*

To the 1st Query.—Decidedly of great advantage in this section of the county, in not having any public notaries, all acts are made legal, or the same as by notaries, heretofore within the reach of every one, and at much less expense, &c.

REGISTRY OFFICES.

No. 5.

To the 2d.—In this country I am fully aware of the real property being enhanced, and of capitalists settling among us since, that otherwise would have been doubtful.

To the 3d.—I have no knowledge since my appointment to the office, or before, of any such, and conceive it always in the power by judicious management of the registrar to detect such at all times.

To the 4th.—By the Act establishing registry offices, the tariff of fees are 2*s.* 600 words, 6*d.* every 100 words over, and 1*s.* for certifying; search 1*s.* with or without certificate; a discharge 1*s.* 3*d.*

To the 5th.—Upon what we call township's deeds under the free and common soccage tenure, average over 5*s.*; notarial deeds, or those drawn by notaries, will average nearly 7*s.* 6*d.*

To the 6th.—That depends much upon the length of the document, the law requiring every instrument to be enregistered (verbatim); a good deed can be drawn and is done for 5*s.*; of course a copy would cost less, unless accompanied with a certificate, which would be 1*s.* more.

ANSWERS of the Registrar of the County of *Two Mountains.*

To the 1st Query.—The registry office was established in the county of Two Mountains by commission, bearing date the 25th day of November 1834.

The public opinion of all classes of people in the county affected thereby is most favourable, and the result as yet has proved most advantageous.

To the 2d.—I am well aware that since the establishment of a registry office in this county, as well as in the county of Ottawa, that the value of lands are greatly enhanced, that many sales have taken place in consequence thereof at an advanced rate, that lands effected by the register office and lands upon seigniories of the same quantity, divided only by a line, clearly proves the advantages arising from or by a register office, which result is one-half in value; also money can usually be raised on lands effected by the register office, when the neighbours residing on seigniorial lands cannot obtain a loan of money, nor any other credit on their farms, lands or improvements.

To the 3d.—There has not a single instance occurred of that nature in my office, by persons disinterested.

To the 4th.—The charges allowed by law for enregistering a deed or any other instrument in writing is 2*s.* for the first 600 words, and 6*d.* for every 100 words over and above; 1*s.* for a search, also 1*s.* for a certificate.

To the 5th.—The average price, from the best estimation I am able to make, is about 6*s.*, most of the deeds being by lease and release, and lengthy.

To the 6th.—That depends altogether upon the length of the document; I think they average about 7*s.* 6*d.*

ANSWERS of *R. Dickenson.*

To the 1st Query.—Registry-office established in Shefford county, 23d day of July 1830, and but one opinion appears to exist in favour of the many advantages derived from the establishment of the office.

To the 2d.—The establishing of registry-offices and particularly in this county, has a decided tendency to enhance the value of real estate and facilitate transactions, inasmuch as it has already induced men with capital to settle in the county and advance large sums of money on landed security, which prior to the office being created was not the case.

To the 3d.—Few transactions of any account have taken place since the establishment of registry-offices in this county, without a reference being first made to the books, if any and what incumbrances affected the property about to be disposed of; I am not aware that any references have been made without having the object of purchasing or advancing money on the property.

To the 4th.—The charge allowed by law for enregistering a deed or other instrument, is 2*s.* for every document containing 600 words, and 6*d.* for every subsequent 100 words, and 1*s.* for a certificate, 1*s.* for a search, and if a certificate should be required, 2*s.*

To the 5th.—The average price of enregistering a deed is 5*s.*; a mortgage 3*s.* 9*d.*

To the 6th.—The charge for copies is at the rate of 6*d.* for every 100 words.

ANSWERS of *J. Meyer,* Esq.

To the 1st Query.—Registry-offices were first established by 10 & 11 Geo. 4, c. 8, and the benefit of that Act was extended to the county of Megantic by the 1 Will. 4, c. 3. The general opinion is that it is very advantageous.

To the 2d.—Decidedly it has as far as relates to this county.

To the 3d.—Applications are frequently made to ascertain whether particular lands are enregistered, and if any and what incumbrances affect the same, and are often followed by deeds of transfer or mortgage for enregistration.

To the 4th.—The charges allowed are set forth in the 10 & 11 Geo. 4, above referred to in answer to the 1st question.

To the 5th.—Generally the amount of charge is from 3*s.* to 4*s.*; in rare instances an extension of price is charged, depending on the length of the document.

To the 6th.—The same as for enregistration.

No. 5.

ANSWERS of Mr. *William Robins.*

To the 1st Query.—This office was opened on the 9th of August 1830, and since its establishment there appears to be a greater confidence manifested in the purchase of property, the certificate from this office being generally decisive.

To the 2d.—I am of opinion that the value of real property has increased in proportion to the security afforded by the Registry Act, and there can be no doubt but that transactions are much simplified by the present course.

To the 3d.—The only instances I can cite are those in which creditors have been anxious to ascertain what and how great the possessions or property of their debtors may be.

To the 4th.—The Act allows for each instrument in writing placed upon record, when not exceeding 600 words, 2 *s.*; for each succeeding 100 words 6 *d.*, with 1 *s.* for each certificate of registry; search without certificate, 1 *s.*; with a certificate, 2 *s.*

To the 5th.—I cannot state precisely the average price, the ordinary cost is generally from 3 *s.* to 15 *s.*; some few, such as general patents, according to English forms, containing figurative plans or diagrams, being voluminous, greatly exceed that price, but in general the price may be averaged at 5 *s.*

To the 6th.—Few registry copies are required, and when so the charge is similar to that of the original entry.

ANSWERS of *P. H. Moore,* Esq.

To the 1st Query.—There is but one opinion generally entertained by the enlightened community of the advantages and utility of register-offices, which are decidedly in their favour.

To the 2d.—In consequence of purchasers being able to refer to the books containing the records of real property, and detect all incumbrances, capitalists and persons desirous of purchasing real estate give a decided preference to land where an undoubted title can be obtained, and consequently it facilitates the sale and enhances the value thereof, which has been the case particularly in this county.

To the 3d.—Searches are made almost daily and certificates given for the information of purchasers, and persons wishing to loan money and take real estate in security, which proves to a demonstration their usefulness.

To the 4th.—Two shillings currency for a document containing 600 words, and 1 *s.* for the certificate, and 6 *d.* for every 100 words above the first 600; 1 *s.* for a search, and 1 *s.* 3 *d.* for search and certificate.

To the 5th.—Four shillings and four pence currency.

To the 6th.—Sixpence the hundred words.

ANSWERS of *E. M. Leprohon,* Esq.

IN order to answer the complicated questions put to me by the special committee of the Legislative Council, to whom had been referred the petitions of certain inhabitants of the city and district of Quebec and the city and district of Montreal, relative to the law of real property, I should require informations, and to have made a particular study of the law and its provisions; and as the career I have hitherto pursued has not required such an application on my part, or that I should make researches on civil matters appearing in our courts of justice; it is therefore quite impossible for me to answer without exposing myself to commit many inaccuracies.

I must remark, however, that in my humble opinion a law which would have the effect of making known mortgages and other incumbrances created on real property ought to be appreciated, and must produce great advantages to capitalists, who often do not know how to invest their capitals; but that in this country the state of the fortunes are such that it would not be prudent to ask for register-offices, as they would tend to injure the feudal laws of this country and destroy the great advantages procured by the French civil laws, which make the admiration of England and procure the prosperity of this our most happy country. The whole submitted to the special committee of the Legislative Council with profound respect.

— No. 6. —

BILL.—AN ACT for making all Mortgages and *Hypothèques* Special, for Abolishing Customary Dower, *Douaire Coutumier,* and for other Purposes.

No. 6.

WHEREAS great uncertainty and risk prevail in transactions relating to the purchase of real property in the parts of the province held under seigniorial tenure, or to the lending of money upon the security thereof, by reason of the difficulty of ascertaining the existence of mortgages and incumbrances thereon, arising from the operation of general and tacit *hypotheques,* mortgages, and from claims of customary dower, and other rights of married women and children, and it is necessary to adopt such modifications of the existing laws as shall tend hereafter to produce greater certainty and security in such transactions; Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower Canada, constituted

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stituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled "An Act to repeal certain parts of an Act passed in the 14th year of His Majesty's reign, intituled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America', and to make further provision for the Government of the said Province;" and it is hereby enacted by the authority of the same, that from and after the 1st day of January which shall be in the year 1837, no contract of marriage, donation, act, deed in law, or instrument in writing, to be made and executed before notaries or a notary and witnesses, according to the laws of this province, shall have the effect of creating a privilege, mortgage, *hypotheque* or incumbrance, on any immoveables now held, or which shall be hereafter held in the parts of this province in which no register-offices are now by law established in fief or seigniory, *en franc-alleu noble*, or *en roture*, or under any denomination of seigniorial tenure, or shall charge or subject any immoveables to privilege, mortgage, *hypotheque* or incumbrance, in any such fief or seigniory, whereof the original seigniorial or other tenure has been or shall be commuted into the tenure of free and common soccage, or *franc-alleu roturier*, or which immoveables are or shall be held under the tenure of free and common soccage in the parts of the province before mentioned, unless such contract of marriage, donation, act, deed or instrument, shall specially set forth and describe the immoveables thereby intended to be made subject to privilege, mortgage, *hypotheque* or incumbrance, and unless the said contract of marriage, donation, act, deed or instrument, shall set forth and contain the specific sum or sums of money for the security whereof such immoveables are thereby intended to be made subject to such privilege, mortgage, *hypotheque* or incumbrance.

2. And be it further enacted by the authority aforesaid, that from and after the said 1st day of January next, no marriage which may be thenceforth solemnized within this province, shall have the effect of creating the customary dower, *douaire coutumier*, now and heretofore established and created by the laws of this province; but that from thenceforth, the said customary dower, *douaire coutumier*, shall be, and the same is hereby abolished.

3. And be it further enacted by the authority aforesaid, that no contract of marriage, donation, act, deed or instrument, which shall be made and executed before notaries, or a notary and witnesses aforesaid, from and after the said 1st day of January next, in contemplation of marriage, whereby a special prefix dower *douaire préfix*, or dowry *dot* shall be stipulated, or for the settlement of any other marriage rights, shall have the effect of creating a privilege, mortgage, *hypotheque* or incumbrance upon any immoveables as aforesaid in respect of the wife's dower, dowry *dot*, matrimonial reprises and stipulations, *reprises et conventions matrimoniales*, or any other marriage rights as aforesaid, unless the immoveables intended to be made subject to privilege, mortgage, *hypotheque* or incumbrance, shall therein be specially set forth and described, and unless the said contract of marriage, donation, act, deed or instrument, shall likewise set forth the sum or sums of money for the security whereof the said immoveables are thereby intended to be made subject to such privilege, mortgage, *hypotheque* or incumbrance.

4. And be it further enacted by the authority aforesaid, that all immoveables, which from and after the said 1st day of January next, shall be sold under execution by the sheriff of any district in this province, and all immoveables in respect of which from and after the said last-mentioned day, any sentence or judgment of confirmation of title shall be rendered by any court of competent jurisdiction in this province, under and by virtue of an Act passed in the 9th year of his late Majesty's reign, intituled "An Act to provide for the more effectual extinction of such Incumbrances on Lands than was heretofore in use in this Province," shall from the date of such sale by the sheriffs, or of such sentence or judgment of confirmation respectively, be liberated and wholly discharged of and from all privileges, mortgages, *hypotheques*, and other rights, claims and incumbrances, under any title or by any means whatsoever to which such immoveables may have been subject, before such sale or such sentence or judgment of confirmation, of what nature or kind soever they may be, save and except only such as shall be specially expressed and reserved in the deed of sale from the sheriff, or in the sentence or judgment of confirmation, shall have been obtained under the said Act, and save and except also the rights arising from entails (substitutions), and save and except also the right of the proprietors of any fief or seigniory in relation to the *cens et rentes foncieres* and other seigniorial and feudal rights and burthens, in respect of which no opposition is by the said Act required to be filed by such proprietors to the sentence or judgment of confirmation.

5. And be it further enacted by the authority aforesaid, that no contract of marriage, donation, act, deed or instrument, to be made and executed as aforesaid, from and after the said 1st day of January next, shall charge or subject to privilege, mortgage, *hypotheque* or incumbrance, any immoveables in the parts of this province where no register-offices have been and are by law established, which immoveables are now held or shall be hereafter held under any such feudal or seigniorial tenure as aforesaid, or which have been or shall be commuted into the tenure of free and common soccage, *franc-alleu roturier*, or which are or shall be held under the tenure of free and common soccage, unless such contract of marriage, donation act, deed or instrument, shall be made and executed before a notary or notaries, actually domiciled and resident in the country in which such immoveables are situated; provided, nevertheless, that nothing herein contained shall prevent the making and executing of any such contract of marriage, donation, act, deed or instrument by a notary or notaries as aforesaid, resident out of the county in which such immoveables thereby intended to be made subject to privilege, mortgage, *hypotheque* or incumbrance, shall be situate; but that the said contract of marriage, donation, act, deed or instrument, shall not have the effect of creating such privilege, *hypotheque* or incumbrance upon any such

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such immoveables, unless an authentic copy of such contract of marriage, donation, act, deed or instrument, duly certified according to law, shall have been deposited, *déposé*, in the office of a notary resident in the county in which such immoveables are situated, to remain with him as an original *minute*, to which recourse shall be had as fully as if the same had been originally made and executed in the office in which the same shall be deposited, *déposé*, as aforesaid.

6. And be it further enacted by the authority aforesaid, that the privilege, mortgage, *hypotheque* or incumbrance, intended to be created by such contract of marriage, donation, act, deed or instrument executed out of the county in which the immoveables intended to be thereby made subject to such privilege, mortgage, *hypotheque* or incumbrance are situate, shall only rank in order of time from the day in which such certified copy of such contract of marriage, donation, act, deed or instrument shall be deposited, *déposé*, as aforesaid, in the office of the said notary, to remain with him as an original *minute*, as aforesaid, and the said notary shall make an act of such deposit, *acte de dépôt*, specifying the day, whether the same was in the morning or the afternoon, the month and year in which the said copy shall be deposited.

7. And be it further enacted by the authority aforesaid, that each and every notary in this province shall, when thereunto required, furnish to any person making the declaration hereinafter mentioned, a statement certified by him of all privileges, mortgages, *hypotheques* or incumbrances affecting any immoveables to which such declaration shall relate, which shall have been created or made by any contract of marriage, donation, act, deed or instrument made and executed before such notary, and whereof the original minute shall remain with him, or whereof a certified copy as aforesaid shall have been deposited, *déposé*, as aforesaid, in his office, to remain with him as an original minute as aforesaid, and shall specify in such statement, if required, the names and descriptions of the parties to such contract of marriage, donation, act, deed or instrument, the sum or sums of money for which such privilege, mortgage, *hypotheque* or incumbrance shall have been created, the description of the immoveables affected thereby, and all and every other particular relating thereto, which the party requiring such information shall demand in the precise terms and manner expressed and set forth in the said contract of marriage, donation, act, deed or instrument.

8. Provided always, and be it further enacted by the authority aforesaid, that before any notary shall furnish to any person applying for the same any such statement as aforesaid, the person so applying for the same shall sign and deposit with such notary a declaration to the purport or effect that such statement is required in respect of immoveables to be therein mentioned, in which the party so applying has or claims some beneficial interest, right, title or estate, or that he is a barrister at law, advocate, attorney or notary, employed by some other person to be named and described, and that such statement is required on behalf of such other person in respect of immoveables, in which such other person has or claims to have some beneficial interest, right, title or estate as aforesaid, and in every such declaration, the person making the same shall likewise state his name, residence and profession, or calling.

— No. 7. —

REMARKS on Register Offices, by *William Badgley*, Advocate, M. L. L. A.

No. 7.

The following papers were written in numbers for the "Montreal Herald," and published in that journal under the signature of "Civis," but as it was suggested that their utility would be increased by their re-publication in the form of a pamphlet, the writer has adopted the suggestion, in the hope that some advantage to the province, however small, may result from his labours.

Montreal, 15 September 1836. *W. Badgley.*

Remarks on Register Offices.

(No. 1.)

Sir,

As party ascerbity has in some degree abated of its sharpness, and given way to a less pungent feeling, the consideration of a question of importance to the future prosperity of Lower Canada may be allowed to claim some attention at present, in consequence of the early session of the Legislature; but especially, as the silent wisdom of the delegates has concealed their projected plans of provincial improvement from the knowledge of their constituents; and still more so, as the Royal commissioners are, at last, allowed to be disposed, as well as desirous to obtain every possible information upon the conflicting interests, wants and wishes of the inhabitants of this province, which their Royal master commanded them to visit.

The present stagnant condition of Lower Canada must be an object of solicitude to every class of her inhabitants; her farmers suffering from want of capital and a succession of bad harvests; her merchants partaking in the pressure upon the agriculturists; and all others, more or less, affected by the evil consequences arising out of this unfortunate state

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of things. Ruinous indeed will be the result of another agricultural year similar to the former, nor can any general improvement be anticipated from more favourable harvests alone.

It is in vain that the merchants in Lower Canada calculate upon support and assistance from Upper Canada. The inhabitants of that province are daily making a market for themselves; and, if higher remunerating prices for their produce can be obtained in the United States, and the present want of facilities to the intercourse between the two provinces is continued, the timber and corn of Upper Canada, her staple produce, will be carried across the line to our neighbours: deprived of the bulk of our exports, the amount or value of our imports may be ascertained with the greatest facility, and the inevitable consequences to this province, in such an event, may be easily anticipated. The inhabitants of Lower Canada will be cast on their own resources; to them, therefore, the consideration of the question assumes an important aspect, because it is by them that its consequences must be attentively examined and its results carefully applied.

The French Canadian agriculturists of Lower Canada, who constitute the greatest portion of her inhabitants, and who possess the largest part of the landed property of the country, cultivate little besides grain, and a bad season cuts off all their crops at once, leaving nothing for their support but their credit with the merchant, whose interest compels him, for his own protection, to deprive them in the end of the only capital they possess, and upon which their credit is founded; first, their implements of husbandry, then their farming stock, and finally, their last resource, their farm itself. In the meantime, seigniorial dues and parish tithes must be paid out of the proceeds, until penury and famine, with all their horrors, stare the luckless farmer in the face. These evils, under no common circumstances of agricultural distress alone, could become so fearful if the farmers had the power of relieving themselves from the pressure of present necessities, by obtaining temporary assistance from the superabundant and unproductive capital of others. By means of loans, upon the sufficient security of their real estate, they would be relieved from distress and destruction, enabled to preserve their property and stimulated to increased exertion and additional industry.

They should likewise bear in mind, that every improvement in the implements of industry, in the farming stock, and even in the farm itself, is not only a saving of expense, but becomes an actual profit far beyond the amount of the first outlay in procuring them. Instead of the ricketty harrow, stuck full of wooden teeth, the harness made of old rope or horsehair, two or three teams upon one farm, and a very large amount laid out for labour which, in a new country, is always extremely expensive, capital would enable the cultivator at once to procure the necessary improvements in his implements and stock; and by rendering his land richer and more easily cultivated, make one team and a less outlay of capital paid for labour amply sufficient for his purposes. By this means his wealth would augment, he would become a capitalist instead of a borrower, and enabled to advance his children by locating them upon new farms, where they might obtain similar advantages.

The commercial community, another great class interested in this question, are so well aware of the important advantages to be derived from the introduction into this province of foreign capital, that it is idle to urge it upon their consideration, and, indeed, every enlightened or even commonly intelligent person must be persuaded of this truth, that money brought into and expended in the province, must necessarily lead to the present improvement and future prosperity of the country at large. Individuals may suffer, but the public will be benefited; the mere speculator may be ruined, but the country will be improved. By imported capital, labour will be employed in internal improvements, opening out the country, facilitating the intercourse between remote parts of the province as well as with the neighbouring government; it will create public and private enterprize, and cause a general diffusion of wealth over every quarter of Lower Canada.

To use the language of the report of the Legislative Council, of the 16th of February last, on the subject of register offices.

"The introduction of foreign capital into a new country, whose principal wealth consists in its agricultural and natural products, must materially promote its general prosperity, by encouraging the active energies of its inhabitants, and extending their means of improvement, not only to land actually under cultivation, but likewise to the unsettled portion of the country; and the advantages derivable from its introduction will be greatly increased, by means being at the same time afforded for its retention within the country.

"The general results of agriculture and commerce are so blended and connected together, that any increased facilities extended to the one become sensibly felt by the other, while depression, in like manner, is equally influential in its effects upon both."

It is not, therefore, surprising, that the general question of the introduction or attraction of capital, into this province, should have been frequently, and particularly of late years, a subject of very great interest. The securities to be afforded for the attainment of this desirable object, and the manner of retaining it in the province, have not only partaken largely of this interest, but have, unfortunately also, given rise to violent controversy, suspicion and jealousy, in the midst of which, the real advantages to accrue from the employment of imported capital have been altogether disregarded, and only fruitless attempts made to remove the difficulties in the way of its introduction.

(No. 2.)

Having stated the necessity for the introduction of foreign capital into this province, and its consequent advantages, it is just that the objections to the measure, whether in principle or in detail, should be considered.

There is only one great objection to the principle, and it has been raised either without sufficient consideration of the question, or to support interested views of it; is this, "That the agriculturalist in Lower Canada would eventually be deprived of his property by foreigners." To answer this specious but unfounded objection, it is only necessary to consider, that imported capital could, by no possibility, be spread at once and universally over the surface of the province; it would extend itself gradually; first, to the wants of the cities or more extensive villages, then to extensive landholders, afterwards to individuals generally, and finally to sections of the province and the province at large. The benefit resulting to the borrower would be participated in by the farmer, independent of his having the same means at hand for relieving his own necessities, in case of need. A greater quantity of labour would necessarily be required, a greater demand for the produce of the soil would follow, and higher prices would, of course, be given; his gains being thus increased, he would employ a yet larger portion of labour, with a view to yet further gains; and so, a perpetual progress would be made. In like manner also, capital invested in sectional and provincial securities, and affording increased facilities for the establishment and support of sectional and general works of utility, in clearing land, draining swamps, making and improving roads, constructing bridges, laying down railroads, excavating canals, founding schools, establishing markets, erecting churches, court-houses, gaols, &c., would, likewise, create a greater demand for agricultural produce, and cause higher prices; the supply would follow, of course, because the more food was raised, the more would be required; the farmer's capital would increase, and as industry is limited by capital, if a capital grows faster in proportion to its increase, as 100 *l.* would increase faster in proportion than 10 *l.*, a large capital must, of necessity, afford increased employment at a quicker rate than several small ones. Thus, on every side becoming more wealthy, instead of being compelled to dispose of their present possessions, they not only would retain them, but be enabled to establish their descendants upon new farms, or if so inclined, they might obtain high cash prices for their land, and place themselves where competition, their interest or other inducements might lead them.

If we look abroad to other countries, for instance, to the United States, a country whose policy and wisdom, both practical and theoretical, is upon all occasions exhibited for imitation; whether, in general, correctly or not is not now the question, but certainly with the greatest propriety in this instance, a refutation of the objection will also be apparent. That country is somewhat similarly situated with this province. She receives a very large annual amount of immigration; but, unlike this province, she not only receives but likewise appropriates a large amount of foreign capital. With it have all her improvements, canals, railroads, &c. been commenced and completed; and yet complaints are never heard, because none exist, of old settlers being driven from their farms and property by foreign capitalists; on the contrary, that country is progressing in wealth and capital, in a degree surpassing the most sanguine or extravagant expectations. The imported foreign capital is gradually spreading and expanding through every part of its extent, and all classes of her inhabitants feel its invigorating influence; while the farmer is a participator in its benefits, in the high prices he obtains for all his agricultural produce. It is true, that the luxuries and some of the necessaries of life are costly, but this is easily to be accounted for by causes which cannot influence this province, namely, protecting duties, for the encouragement of her manufactures, and the support of an extensive, but at the same time complicated and very expensive machinery of state and general government. In the consideration, therefore, of the objection, both at home and abroad it has been shown to be unfounded, and at variance with common sense and reason as well as experience; and affords a sufficient relief to the apprehension of some, otherwise well disposed persons, that with register offices and facilities of borrowing on landed security, the real estate of the province would pass to strangers.

The general objection being removed, the next object for consideration is the necessity of pointing out the means of retaining the foreign capital in the province; and it is here that the difficulty principally lies; for as the investment of capital upon real property will only be made upon sufficient security, that real property becomes the means of extensive improvement or otherwise, according as it offers the means of such sufficient security; or, in other words, as it can be brought into the market free or incumbered, and easily transferable; and, as a consequence, according as the title to it is clear and undoubted. In the language of the report before referred to, "If the landed property of a country could be made to contribute to the advancement of its general interests, and the introduction of foreign capital could promote that desirable object, it clearly becomes expedient to render its transfer from hand to hand secure, expeditious and economical; for this purpose it is requisite that the written documents upon which titles to land in every civilized community depend, and to which the capitalist looks for protection, as well as proof of the holder's right, beyond the fact of his possession, should not be liable to be defeated, either by other documents being kept out of sight, or by the impossibility of procuring all the information necessary to ascertain the validity of the title, and the freedom of the property from tacit or conventional incumbrance. It also follows, that means should be afforded by the law for the protection of capitalists against the effect of any documents which, for want of the use of such means, have not been brought to their knowledge."

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(No. 3.)

The necessity of affording sufficient security for the investment of capital having been shown, the mode and manner of accomplishing this object remain to be pointed out.

Independently of the inhabitants of this province by whom this imported capital is to be employed, there are only two classes of individuals interested in this subject; the lender of capital and the purchaser of real property in this province. The main object, therefore, is to satisfy both by affording to them sufficient security for their investments, either by loan or purchase; and in consequence, the general measure of a system of registration of titles to land has been proposed, as the only certain and efficacious mode of accomplishing this desirable object.

The question of register offices has been agitated for several years past. The subject has frequently been submitted to the consideration of the popular branch of the provincial legislature, and as frequently has it been either abandoned or defeated.

In 1823 the House of Assembly resolved to take into their consideration, "The passing of a law for the public registration of instruments conveying, charging or affecting real property; with a view of giving greater security to the possession and the conveyance of such property, and to commercial relations in general." In December of the same year a bill passed the Council and was committed in the Assembly "for the enrolment (*insinuation*) of deeds and instruments affecting property by way of mortgage and hypotheque."

Early in the year 1825 the House of Assembly resolved, "That it was expedient to provide that more ample publicity to certain *actes* passed before notaries bearing mortgage, *hypotheque*, be afforded in district subdivisions."

In the same year, 1825, the House of Assembly resolved,

"1. That every purchaser of real property has the indubitable right of ascertaining what charges and mortgages encumber the property which he is purchasing.

"2. That every creditor is entitled to ascertain what real property of his debtor is liable to the payment of his credit, and the charges and mortgages with which such property is encumbered.

"3 & 4. That the existing laws do not afford to the purchasers of real property, or to creditors, the means of ascertaining the charges and mortgages which encumber real property purchased by them or made liable to their creditors.

"5. That from the want of means of ascertaining the incumbrances upon real property, there have resulted, and do daily result, frauds, destructive of all confidence, the ruin of *bonâ fide* creditors and purchasers, the depreciation of real estate, contempt of the laws, and the deterioration of public morals in the province.

"6. That it is expedient to make legislative provision to afford means of ascertaining such incumbrances." A bill founded upon these resolutions was read twice, committed, and dropped. In February 1827 a similar bill, "for making privileges and mortgages public, and for the security of creditors and of purchasers of real propoerty," was introduced and likewise failed. During this time bills were annually sent from the council for the establishment of register offices in the townships, which resulted in the laws now in force for that purpose, and the 10 & 11 Geo. 4, c. 77, intituled "An Act for rendering valid conveyances of lands and other immovable property, held in free and common soccage within the province of Lower Canada, and for other purposes therein mentioned."

This question, therefore, is no novelty in provincial legislation. The House of Assembly has not only deliberately admitted that evils exist, from the present system of defective legislation, but has likewise itself solemnly declared its opinion of the absolute necessity of register offices—1st, by its own recorded resolutions, and 2d, by establishing these offices in the townships of the province. The refusal to make them co-extensive with the whole province cannot be viewed in any other light than as a highly exclusive and unjust system of legislation.

The great objection to the principle of registration having been disposed of, those that remain are, to use the language of a celebrated modern writer, "Merely trivial, such as that there is no experience how such a thing would work, though there is the favourable experience of every nation in Europe, not to mention Scotland and Ireland; that every man's debts would be generally known; as if credit could not exist without tricks of concealment and mystery, or as if the whole world would crowd to the register office from mere idle curiosity; that no man would be able to borrow money on his own individual securities and deeds; as if these would not be verified and confirmed, and greater security given to the lender." And in France, from which we derive our legal civil system, registration is in force and approved of; there the necessity and moral obligation of establishing such a mode of security have been felt and appreciated; and in that country modern legislation, breaking through the barriers of antiquated notions, has confirmed the maxim, that "All laws are made for the convenience of the community," and that "What is legally done should be legally recorded, that the state of things may be known; and that where evidence may be requisite, evidence may be found. For this reason, the obligation to frame and establish a legal register is enforced by a legal penalty, which penalty is the want of that perfection and plenitude of right which a register would give. Thence it follows, that the objection to the present insecurity is not an objection merely legal, for the reason on which the law stands being equitable, makes it an equitable objection."

The general objections to the principle of registration being, therefore, untenable, they can only be discovered to exist in the defects of the system of law in force in this province;

province; and it is here that they appear to be well founded, because before such a registration could be rendered efficient, the impediments in its way, arising from the present system of jurisprudence, must previously be removed, and some changes must be introduced.

The report before referred to thus proceeds:—

"That the establishment of offices in the seigniorial parts of the province, for the registration of titles to land, and the incumbrances created thereon, is the only effectual mode of rendering the transfer of landed property secure, economical and expeditious, and of remedying the evils complained of; but the committee are also sensible that their establishment would be encompassed with difficulties, unless previous modifications are made in certain particulars of the existing laws relating to real estate, which would, in a great degree, remove the obstacles to the general measure, without endangering existing interests, or creating too sudden an innovation in a long established system of jurisprudence."

It is unquestionable that innovations in any established system of jurisprudence should be avoided as much as possible; but where the general wants of a country, and equity and justice combine to require them, they should be immediately and spontaneously conceded. *Etsi nihil facile mutandum ex solemnibus, tamen ubi æquitas posxit, subveniendum est.* Inconveniences in individual cases must be anticipated, but these should never be allowed to impede the general good.

"Even if the introduction of these modifications should be productive of more inconvenience, or attended with greater difficulty than the committee now see any reasonable ground to apprehend, they still believe that the inconvenience and the difficulty will be greatly counterbalanced by the benefit to accrue from the change."

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Previous to entering into an explanation of the details of the contemplated changes and modifications above alluded to, it is expedient to examine cursorily the origin, extent and modifications of the law regarding mortgages, in order that their whole system may be appreciated and distinguished, and facilities afforded for comprehending any project by which contracts of this description may be rendered at once expeditious, economical and secure.

It is a fundamental principle which admits of no diversity of opinion, that the contractor of a debt is bound to discharge it by means of all, or such portions of his property, moveable and immoveable, present and future, as may be necessary to complete the payment. The consequence of this principle is, that his credit is composed not only of all his actual, real and personal property, but also of all that his good conduct, his industry, and the natural order of successions might lead him to expect; and the reason is evident, because so long as his debt endures, so long will the liability of his actual as well as his future property for its discharge subsist also.

In the intercourse of civil life, it is well nigh impossible not to borrow and lend; we borrow sometimes from necessity, sometimes for the sake of anticipated profit; and we are compelled to lend either from expected profit upon the loan or to prevent our money remaining unemployed. Such considerations have made this kind of contract very common. But all obligations are not founded on similar principles, nor are they similar in quality; wherefore, difficulties frequently arise among creditors of the same person, touching their preference, privilege or concurrence upon their debtor's property; moreover, as loans are only effected on condition of reimbursement, and, as good faith is not always to be found among debtors, creditors have sought different modes of obtaining security, by the pledge or engagement of their debtor's property; yet whatever were the contracts made, or precautions taken, it was frequently found to be impossible to ascertain the precise situation of the debtor's affairs, or to discover his solvency or insolvency at the time of making the contract.

Personal obligations were first employed, but having been found not to be sufficiently solid and permanent, real obligations were adopted, by which at first the thing pledged, whether real or personal, was actually transferred to the creditor. This mode of security upon real estate was also, in time, found to be very inconvenient, because, as money is a commercial commodity and constantly changing hands, every new loan occasioned the necessity of the actual tradition or transfer of the land itself to the new possessor, and new engagements were required to be made; great loss and depreciation in the value of real property were caused by these means. The possession of the creditor being uncertain and insecure, he took no pains or trouble to cultivate and improve the land; the debtor could not cultivate it himself, because he could not make the ameliorations he intended, without the consent of the creditor; in a word, he could not give to the land that constant care which preserves and improves real property; while, on the other hand, the creditor must likewise have felt a repugnance and dislike to cultivate the property of another, and to give to it that attention which he applied to his own. This led the way to the introduction of the existing system of mortgage, which becoming more fitted to the requirements of the times and the progress of commerce and civilization, did not dispossess the debtor of the property mortgaged, but prevented its disposal, unless with the incumbrance due to the existing creditor, who was authorized to claim it, even after the land had passed into the hands of third persons, and whose right was only lost by means of prescription. Thus, the creditor had, from the moment of contracting the engagement, a real right upon the property mort-

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gaged; a right considered as accessary to the engagement, and which consequently attached upon the debtor's real property, whether in possession or in expectancy. From this arose the preference of the hypothecary before the personal creditor, and that of the first mortgage before others later in date.

This system applied to conventional mortgages; but there were also engagements which, from their object and from principles of humanity or justice, claimed a preference before all other contracts; from such motives, these claims became like privileges, and were separated into a distinct class. The rules of equity with respect to them must have been as imperious as certain, because they are to be found in all ages and in all codes.

There are also engagements formed without convention, by the sole authority of the law, which intervenes at a time when it becomes necessary to preserve to creditors a right which the obligation of maintaining public order fully warrants; from the moment that this legal right is established, it should no longer be in the power of the debtor to give to any person, by means of a simple convention, any valid preferable right of mortgage over those already existing. Such is the mortgage of the wife upon her husband's property, that of minors upon the property of their tutors, &c.

The power or force of judgments would also have been perfectly illusory, if the party withholding his consent, and requiring the creditor to be at the expense and trouble of obtaining a judgment of condemnation against him, could afterwards, by a simple conventional mortgage, give a preferable right upon his property; wherefore it became absolutely necessary that judgments, like legal mortgages, should rank, according to their date, among the number of mortgage debts.

If, on the one hand, this conventional manner of contracting appeared so commodious and easy to debtors, on the other, it became very dangerous to creditors, from the difficulty of effecting secure loans or making purchases without fear of eviction. It therefore became an object of great importance for the prevention of frauds and deceits, which daily increase from public necessities, to discover some effectual manner of preventing a debtor's hypothecating his property beyond its real value, and of giving security to loans and purchases.

Although contracts of purchase and sale, and of loan, have been in use among all nations and in all ages, it would appear that, until registration of deeds became practised, useless efforts were made to give the required assurance, under a simple mortgage.

In Greece, whence the mortgage system is originally derived, marks or visible signs, placed on some conspicuous part of the real property, declared its engagements, when it was not actually transferred into the possession of the creditor. At Athens, a mortgage had a special character of notoriety and publicity, well adapted to prevent frauds so often practised upon the good faith of creditors and purchasers; it was there made manifest, by small columns placed before the mortgaged land, with an inscription upon them, declaring the obligations of the proprietor. This mode of publicity, which was suitable for a limited territory and for a people but little advanced in civilization and commerce, gave occasion to much abuse and inconvenience in a great empire, where the demand for credit rises in proportion to the necessity of expense, caused by luxury and commercial operations of great extent, to the latter of which especially, extensive population are compelled to devote themselves for subsistence.

This mode of publicity among the Greeks, as well as the actual tradition of the real property, were practised for a long time by the Romans; but commerce and the want of money having increased with the greatness of Rome, and ambition having led individuals into great enterprizes, for whose accomplishment immense loans were required, the difficulty on the part of the debtor to give up his possession, and on that of the creditor to make the transferred land available, caused the real tradition to be abandoned, and subsequently, the use of signs and visible marks of the mortgage, not only fell into disuse under the Roman Emperors, but was at last abolished by express laws. The mortgage, from that time, became occult, resulted from the convention of the parties, and was secured to the earliest in date, except in cases of preference from privileges as above mentioned.

Mortgages were introduced into France in nearly the same form as they existed in Rome, except that they did not attach upon moveables unless in certain localities, as for house-rent, &c.; that they were the effect of every convention executed before notaries, and that private writings or instruments could not create a mortgage, until after having been duly acknowledged by an authentic instrument, executed by a public officer or before a court of justice. Thus in France mortgages became occult as in Rome.

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Although the modified hypothecary system before described, was adopted in France, its occult and clandestine character was justly reproached both by ancient and modern French jurists, with having lent itself to the commission of a multitude of frauds, not only against the creditor, but against the purchaser imprudent enough to pay his purchase-money, without having previously purged his purchase from mortgage. Complaints were loudly made against a system so vicious and unprincipled, and whose results were so disastrous, particularly as the old laws of France had, until the promulgation of the *Edit des Hypotheques* in 1771, scarcely contemplated the possibility of obtaining a secure discharge from incumbrance.

In fact it was found, that mortgages constituted for the benefit of individuals, became injurious eventually to the interests of the state, which requires every possible improvement of real property from its possessors, as its produce is the principal, not to call it the only wealth of the state.

Indeed,

Indeed, the purchaser of real property, the price of which he has paid, when troubled by mortgage creditors, of the existence of whose rights he was in profound ignorance, will of course neglect the cultivation of his purchase, the more so, as his improvements would awaken them to increased vigilance.

By securing as much as possible the interest of individuals, with a view to that of the public, useless attempts were made in the reigns of the French kings Henry the 3d and 4th, and Louis the 14th, to correct these abuses; but so inveterate was the evil, that one remedy alone was brought into operation, which at best could only be considered as a palliative, namely, the use of *lettres de ratification*, by means of which purchasers were made acquainted with the situation of the immoveable, except as regarded dower not open and substitutions. These *lettres* were partial in their effect, as they afforded no security to engagements in general.

This partiality and the general evils of the system became so urgent, that the attention to French legislators was forcibly directed to the discovery of means to secure honest citizens against injury, and afford them precautions against persons disposed to defraud them. Their deliberations resulted in stamping upon mortgages a character both public and special; that is to say, that a reference to the public registers should without difficulty exhibit the dates and amount of all incumbrances upon a particular property, while the debtor should be held to designate and describe the special immoveable subjected to the mortgage; with this information in hand, capitalists would be enabled to consent or refuse to treat with applicants.

The idea of the publicity of mortgages was no novelty in France; it is the basis of the mortgage system of modern France, and several unsuccessful attempts were made to introduce it into the old French jurisprudence. An edict of Henry 3, in 1581, erected offices for the *controle* registration of all deeds, and as a penalty for non-registration, deprived them of their mortgage effect. This edict, although nominally intended to complete a system of publicity, was actually converted into so grievous a fiscal burden, that it was done away with in a few years, without regret, inasmuch as the *controle* could not be made to exhibit in a certain manner the existence of deeds to parties interested in knowing them.

In 1673, during the administration of Colbert in the reign of Louis 14, an edict was promulgated, founded upon that of Henry 3, which also erected offices of registration for the preservation of the preference of mortgages. In virtue of this edict, mortgages registered against property in actual possession, or after actual possession, against that subsequently acquired, were preferred upon that property before mortgages not registered; the unregistered followed in the order of their dates upon any other property. The legal mortgages of women and minors were protected and preserved. This edict excited the displeasure of the great, whose credit it destroyed, and so violent an outcry was raised against it, that it was revoked in 1674; thus the clandestinity of mortgages remained the common law of France, and publicity existed only in certain provinces, known by the name of *pays de saisine* or *nantissement*.

The clandestine and vicious hypothecation system above described, which has been so much and so justly abused in France, is fostered and protected as the existing law of Lower Canada. Modern France has felt its abuses and has entirely rejected it; she has boldly and honestly proclaimed the triumph of publicity. In 1795 a change was accomplished; by a law of that year, officers were appointed in every *arrondissement*, who were charged with the registration of mortgage titles, and the existence of the mortgage was made to depend upon the usage of this formality. In 1799 another law was made, which may be considered in almost every particular as the basis of the present French code upon this subject; its fundamental principles were publicity and speciality; it preserved the formality of registration required by the law of 1795, and subjected every mortgage creditor, even women and minors, to the formality of registration for the security of the preference of their legal mortgages. The French code, at a later period, established similar principles; it secured legal mortgages arising from *tutelles* and marriage conventions, without registration, but compelled the husband and tutor to effect the registration of these mortgages, under the penalty of being deemed *stellionataires*, and subjected to corporal punishment for non-compliance with the law.

By the preceding observations it has been shown, that the theory of speciality and publicity is not new; that its institution reaches to remote antiquity; that it was the general law of Greece, adopted by the Romans, and formed part of their jurisprudence until the time of the later emperors. It might readily have been shown, had it been necessary, that it was for a long time the law of two-thirds of customary France, and never ceased to govern a great portion of those conquests by which Louis the 14th extended the French monarchy; and that it continued through the republic, the consulate, and the empire, to the restoration of the monarchy, and the present period.

It has likewise been shown, that the wisest of the statesmen and ministers of France, Sully and Colbert among others, endeavoured to restore this institution to France, and it has been seen how it was repelled by prejudice and intrigue, and particularly by the necessities of landed proprietors, which compelled them to continue to impose upon the public, and to deceive their creditors.

If some inconveniences belong to the system of publicity and speciality, it may be easily shown that the same also exist in the clandestine and occult system, and that they are more injurious and vicious in the latter; and finally, that the latter possesses peculiar inconveniences, which not only render it unavailing in practice, but which absolutely destroy the essential objects of every legislator in establishing a mortgage system, namely, the security of the investment.

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The law at present in force in France respecting mortgage rights, is founded upon two general principles: 1st, that no mortgage or privilege shall be effectual without registration; and, 2d, that creditors shall be satisfied with a special mortgage, except in the cases of the legal mortgages of married women and minors, and for some petty claims which humanity and the law regarding as privileges of a special nature, has exempted from the necessity of registration; such as the legal, funeral and last medical expenses, and limited amounts of servants' wages, and debts due for subsistence.

The unknown amount of these petty privileges is necessarily so small as never to cause any difficulty; they were exempted, therefore, from registration; but legal mortgages, which have been most carefully and wisely protected, being from their nature unsusceptible of estimation, are, notwithstanding, made public, as far as the law can compel their publicity, with a due regard to the protection of the rights of the mortgagees, by the husbands or tutors being required to effect their registration; and these persons are subjected to severe penalties in case of their remortgaging their real property without declaring its pre-existing incumbrances. In default of the husband or tutor making the registration, the married women and minors themselves, or their relatives and friends, or the Crown officer or *subrogé* tutor, may complete the formality. It is also to be observed that the parties to a marriage contract, if of age, and the tutor by *avis de parents*, at the time of his appointment, may limit the general mortgage incurred in both these instances; and both, moreover, have the right to demand this special limitation when the property subjected to the general mortgage is known to exceed in value a sufficient guarantee for the charge; when the value of the incumbered realty exceeds the amount of the mortgage a reduction is also granted.

Conditional, eventual and undetermined mortgages are likewise estimated and specialized, and an excessive estimation renders them subject to reduction.

Finally, customary dower has been totally abolished.

This state of the modern French law affords good security for investments, because the capitalist is enabled to ascertain the existence of all mortgages upon any particular property; and although the amount of legal mortgages may be unknown, their existence being ascertained, gives him the power of making himself sufficiently acquainted with their details, to judge with accuracy of the security of his investment.

As a purchaser, the law authorizes him to obtain the freedom of his purchase from incumbrances of every kind, and even from the legal mortgages of married women and minors, after a public transcription and special notification to all the parties interested, expressive of his intention to obtain that relief, within the time limited by law, and requiring them to file their claims against the purchase within that limited period.

These details have been entered into to show that no serious impediments exist to the introduction of changes in the hypothecary system of this province, and that if these changes should be introduced, they need not necessarily interfere with old prejudices or disturb existing rights.

The institutions and jurisprudence of Lower Canada are not so deeply impressed with a character of unchangeableness as to be beyond the range of innovation; nor has real property been subdivided into so many and minute interests as in older settled countries. Not only have the inhabitants of Lower Canada been undergoing the great process of transition, but her laws and institutions have been constantly suffering positive changes.

The custom of Paris was originally established in this colony at a time when the numerical amount of her population was extremely limited; and from that time to the conquest it is well known that the people were governed rather by regulations of police than by any positive and satisfactory system of law rightly and duly administered. The history of Lower Canada, of that period, shows that it could not be otherwise.

The Act of 1784, 14 Geo. 3, c. 83, secured, or rather re-established the law of the custom of Paris in this colony; and it is, in truth, only from that period that the colonists became capable of appreciating a settled system of jurisprudence, or were made aware of the previous existence of such a system. From the conquest to the present time, innovation and change have been working their silent but steady course, and have extended themselves either by decisions of the provincial courts of justice, or by imperial or provincial enactments, throughout the entire body of our jurisprudence.

It cannot be denied in principle, that laws, like more positive institutions, suffer changes either from their incompatibility with innovations introduced into the institutions, or alterations produced in the habits of a people, or from various other causes; hence, the laws which were known to the original French colonists and their immediate descendants, were modified to accord with the peculiar circumstances of the colony, even previous to the conquest; and since that time they have been more materially altered, to meet the various changes which have been made in the political as well as commercial state of the province, and the circumstances of its inhabitants.

It is idle to assert that the French Canadians are so wedded to their ancient laws, that they require and will allow of no innovations in them. The answer is to be found in the constitution of the provincial legislature, in the criminal law, trial by jury, rules of evidence in commercial matters, power of devising, in the judiciary authorities conferred upon magistrates, commissioners, &c. *cum multis aliis*, not to omit the ratification of title act; all of which are great innovations in the former state of things, and have not only been adopted, but are still in practice, to the satisfaction of the country at large.

Proceeding to the state of the provincial law, with respect to the security to be afforded

to

to mortgages, it will be found to be the same vicious and unprincipled system which was so long and so justly reprobated in France, and which did not afford the least security to lenders or creditors; by the introduction of the ratification of title act, some facilities of little importance beyond the requirements of the sheriff's sale, or *décret*, have been extended to purchasers, but their security has not been at all improved. It may not be improper to mention, that the ratification of title act is a translation almost *seriatim et literatim* of the French *Edit des Hypotheques* of 1771, which was founded upon the older edict of 1673.

The report of the legislative council supports these assertions, and states, "That under the existing system of law it is impossible to ascertain the freedom of any landed property, in the seigniorial parts of the province, from incumbrances, or the extent to which it may be incumbered; and that the only means available to persons desirous of purchasing real estate, are—1st, the integrity or honour of the seller; 2d, the general report respecting his estate or property; 3d, the proceeding of a *décret* for a sheriff's title by a suit at law; and, lastly, the obtaining a judgment of confirmation of title under the Act for the more effectual extinction of secret incumbrances. The two former means are evidently not to be relied upon, and the two latter are equally inefficacious, from affording no relief against the operation of dower, an evil which has been productive of serious injury, and which is generally admitted to be of the greatest magnitude. The delay and expense of both these measures are so great that they are resorted to only where the real estate is of considerable value; and it is established that even these limited means of protection are not participated in by the inhabitants of the country parts, from the operation of the above causes. The two latter are in consequence but partially efficacious in their operation, limited in practice to real property of considerable value, not available to the inhabitants of the country parts, do not free real property from the worst evil of the present system, and are attended with great expense and loss of time."

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It has been asserted that the punishment of *stellionat* inflicted under the old French law was amply sufficient to prevent fraudulent conveyances and mortgages. The experience of French jurists, and the unsuccessful attempts to amend and correct the hypothecary system of France, up to the period of the revolution in that kingdom, are a sufficient refutation of this allegation.

The term as well as the crime and punishment are all derived from Roman jurisprudence. By this law, *stellionat* was applied to every kind of fraud practised in contracts and false declarations in deeds.

By the French law, *stellionat* is restricted to a false declaration of the freedom of real property from incumbrance.

In Rome, the punishment was arbitrary; in France, it depended upon the gravity of the offence and the circumstances of the transaction, and the usual punishments were fine and banishment, sometimes whipping and *amende honorable*. It was, under the old law of France, a criminal proceeding, "*On poursuivait autrefois le stellionat par la voie criminelle, mais on ne prend aujourd'hui cette voie, que lorsque le dol est accompagné de circonstances très graves.*" In all cases it was punished by corporal imprisonment. A French jurist of eminence says, that as fraud always proceeds from debtors, who, notwithstanding their knowledge of their own insolvency, continue to borrow and to hypothecate their real property as long as their credit lasts and they can conceal their necessities, it appeared to him very proper to adopt the Roman practice, that is, arbitrary punishments, "*Si l'on en usait en France de cette manière, le desordre ne serait pas si grand.*" Stellionat was therefore found to be ineffectual for the prevention of frauds in France, nor can it be rendered more efficacious in this country.

By the Act of 1774 the criminal law of England was established in this province, "to the exclusion of every other rule of criminal law or mode of proceeding therein, which did or might prevail before the year 1764." By the same law, the custom of Paris, for the regulation of civil rights, was likewise re-established; and consequently the criminal part of the customary or French jurisprudence gave way to that of England. Stellionat forming no part of the English criminal law, and its penalties not having been enacted by our provincial legislature, it has ceased altogether to exist in this country.

Having shown that *stellionat* is no part of the provincial law, and that even if it were in force, it would be insufficient for the prevention of frauds in mortgages, we are thrown back upon the system of publicity and speciality, which has been adopted into the jurisprudence of France as the only effective general mode of security for transactions of the nature under consideration, and as the only means of preventing a multitude of *décrets*, because arrangements with debtors would be made with greater facility when their debts are known not to exceed the value of their property.

An objection to registration may here be mentioned, which has been passed over unnoticed, "That it would lead to the exposure of family affairs." In reply, it may be sufficient to refer to the preamble of the edict of 1673, which offers as the reasons for its enactment, that "By means of publicity by registration loans might be made with security, and purchases effected without fear of eviction from anterior mortgages, and that creditors would be made certain of the fortunes of their debtors, without the apprehension or uneasiness of losing their claims." Later writers declare "That the publicity of mortgages was considered by the French tribunals as the *chef d'œuvre* of wisdom, as the protection and security of property, as a fundamental right, the use of which had constantly produced

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the happiest results, and established as much confidence as facility in transactions between individuals; that the principle of publicity and speciality is essentially a conservator of property, a creator of public and private credit, a regenerator of good faith and morality." These are the recorded opinions of men of eminence, as well as of the principal legal tribunals in France; and when publicity is found to be so much applauded in that kingdom, where the ramifications of private interests and rights are so minute, not only no doubt should exist against the continuance of the clandestine system, but the necessity for that continuance should be clearly demonstrated to allow of its protracted existence in this province, where real property is but little divided.

Too much space would be occupied in detailing the various powerful reasons for publicity; it may suffice to state generally, that, at present, contracting parties are not placed on an equal footing. The borrower knows his previous engagements, and acts in bad faith, the lender is ignorant of those engagements and compelled to trust to the integrity of the other party. On the one hand, unincumbered property needs no concealment, while on the other, incumbered property should not, in common honesty or good faith, be permitted to deceive the lender.

The provincial public registration *insinuation* in the several prothonotaries' offices, of wills, donations and other legal instruments bearing *substitutions*, entails, demonstrates that neither inconveniences nor evil arise from disclosure; and as neither complaints nor objections have been made to this branch of the formality of registration, it is fair to conclude, that it is neither troublesome nor repugnant to the habits and feelings of the people.

As the expense of the registration of mortgages would of course be regulated by enactment, it would no doubt be made as economical as possible.

It has also been asserted that mortgages are property; if so, an actual or a constructive possession must have been given to the mortgagee, to enable him to be repaid the amount of his mortgage, and then the public have a right to demand that concealment should not be practised nor fraud allowed, to the injury of the lender, who, seeing the possession in the borrower, is justified in concluding that the property is in him also.

The report before mentioned refers to the objection of disclosing private affairs, and states, that

"The disclosure which would be afforded by register offices is considered in general as most desirable, while its disadvantages would be of temporary duration, operate in individual instances and solely affect the fraudulent and dishonest. That though it might be productive of pain and mortification in some cases, the general good is of paramount importance, and that the apprehensions entertained of unnecessary exposure are ill-founded and futile; for, it is in evidence from the registrars of the counties, where the registry system prevails, that though few transactions of any amount take place, without reference to the books of registry, no instance has occurred in their experience since the establishment of those offices, of the disclosure of mortgages or incumbrances having been required except for actual purposes of sale or loan. They also state, that great and universal satisfaction is entertained, by all who have occasion to take advantage of the registry, that real estate in all the counties has been greatly enhanced in value, transactions therein much facilitated, and that its expense is trifling and no delay is incurred."

It is only necessary to refer to the example of Louisiana, a former French colony, governed by a system of jurisprudence similar to our own, where no difficulty to the removal of impediments in the way of publicity was experienced, and where registration prevails, and to the resolutions of the House of Assembly adopted in 1825, mentioned in No. 3, to convince every unprejudiced mind of the evil of clandestinity and the necessity of change.

(No. 8.)

Assuming that the principle of publicity and speciality possesses advantages over that of clandestinity, so powerful and important as to require its introduction into our provincial system of civil jurisprudence, the question arises, in what manner or by what means this is to be accomplished.

It has been previously stated, that all the property of a debtor, real and personal, is a pledge or security for the payment of his debts, and that its value should be equally distributed among all his creditors, unless legal causes of preference exist.

Individual freedom would have been restrained and injustice committed, if in the intercourse of civil life, a person were prevented from entering into any engagements or making any contracts, not contrary to good morals or to society, which his wants or inclinations might suggest to him; and as a consequence of this personal freedom, he was at liberty to dispose of his real as well as of his personal property in any manner he might consider most conducive or advantageous to his interest. This freedom of disposition introduced the class of mortgages denominated conventional, from being founded upon the agreements or conventions of the parties.

Conventions to create mortgages, according to the jurisprudence of this province, are entered into in deeds, *actes* executed by public officers, called notaries, or a notary and witnesses, which contain an express or implied engagement of the real property of the debtor for the security of the debt. The facility and celerity with which these instruments are completed, and the safeguard afforded by the public character of the notarial office, are so great and at the same time so evident, that it would be idle to offer any argument in favour of a continuance of the present form or mode of executing them, while the simplicity

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of the operation, in comparison with the cumbersome forms of other countries, precludes any possible difference of opinion upon the subject.

Admitting the facility with which conventional mortgages are created, it must likewise be allowed, that it would be the extreme of injustice, to deprive any creditor of a participation in privileges granted to others by the voluntary convention of the debtor, because of his unwillingness or refusal, under the influence of bad faith, to assent voluntarily to similar privileges in favour of the unsecured creditor: hence, the compulsory consent, conveyed in the judgments of competent courts of justice, has given to them a mortgage character also. This class is denominated the judicial.

While the voluntary and compulsory consent of the parties thus gave assurance to some creditors, it was equally just and reasonable that the claims of an extensive class of individuals, who, from principles of public policy, are incapacitated from making engagements for their own protection, and whose interests the best and most powerful feelings of humanity have placed under the protection of society, as well as those public rights which the necessity of maintaining public order guarantees, should also be guarded and preserved from exposure to possible loss or destruction, either from fraudulent connivance or from baser motives: hence the class of mortgages called the legal.

These several kinds of mortgages, the legal, judicial and conventional, are based upon an express or implied agreement, namely, by the parties themselves in the conventional, by the court of justice, acting for the unwilling debtor, in the judicial, and by the law, acting for the unprotected claimant and the public, in the legal.

Considering mortgages only in respect to their effect, it may be said with strict propriety, that they are all of one kind; for the effect of every mortgage is to give to the creditor a right upon the real property of his debtor, for the security of his debt; but there are some claims, which, in addition to the general effect of the mortgage, are entitled to a peculiar preference from the nature of the transaction or debt; these are called privileges, from being founded upon the cause of the debt; they are not regulated or ranked in order, according to dates like mortgages, but carry a preference for their discharge, over all other mortgages even anterior in date, and in consequence the rule *prior tempore potior jure* is inapplicable to them. Among privileged creditors, the preference is regulated by the more or less favourable quality of the privilege, and those of the same quality concur equally in the value of the reality.

Mortgages and privileges, therefore, are the causes of preference which exist to prevent the equal distribution of the debtor's property among all his creditors.

Conventional mortgages are from their nature and form of the same description; the judicial, in like manner, are also substantially similar to each other; the legal are those of married women, minors and persons interdicted, and that of the public against public officers.

Applying to these different classes of mortgages the principle of publicity and speciality, it will be obvious that the conventional, without any difficulty, admits of its application, because the deed may be made to contain, not only the precise amount of the debt, but also the specific realty upon which that debt is to be secured; the judicial, from possessing the character of a compulsory liquidation or determination of a certain amount, or from ignorance of the debtor's real property, upon which to apply the judicial mortgage in general, cannot extend to the realty, and only specifies the amount of the condemnation; and the legal, from their peculiar nature, must remain undetermined in amount and unlimited to any specific realty.

Both conventional and judicial mortgages may be easily rendered determinate; the former, by an estimation or amount to be agreed upon by the parties; in the latter, by a compulsory or voluntary valuation, or by a penalty in damages for non-compliance with the judgment.

Legal mortgages are not susceptible of determination until after the death of the husband, the majority of the minor, the removal of the interdiction or death of the interdicted persons, and the termination of the office of the public servant; this class of mortgages must, therefore, remain unlimited in amount, as well as unspecialized as to property, because until after the marriage is terminated, rights which, during its existence, may become the objects of mortgage upon the husband's property, cannot be appreciated or ascertained, and because, for the same reason, during the existence in office of the tutor, curator or public officer, their responsibility is not less extensive and uncertain, nor less difficult to estimate at a precise amount.

(No. 9.)

Having shown in the preceding number, that conventional mortgages may be made to express, not only the precise amount of the debt, but also the specific realty, and that the judicial is limited to the specification of the actual or possible amount of the condemnation, while the legal cannot be made susceptible of either specific amount or realty, it is proper to observe, that the conventional mortgage is the positive agreement of the parties, who always have the power of stipulating a precise amount, or fixing upon some estimation or valuation of the mortgage claim, even if it should be conditional, eventual or undetermined; because, individual interests would always tend to the determination of a precise sum, for which the registration might be made, without necessarily limiting the debt to the amount specified; and it will readily be perceived, that this accessory stipulation would, from its utility, become a necessary formality of the deed, *une clause de style.*

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It is also necessary that this class of mortgages should express the actual realty, that is, the realty in possession, upon which the mortgage is to be secured, otherwise it should not exist, because, from being a real right, it must, at the time of the agreement, have been based upon some real foundation, especially as the end and final object of the mortgage is the sale of the realty pledged for the payment of the debt.

These general pledges or mortgages of all real property, actual and future, for the payment of debts, and which are, in almost every instance, unknown to third parties, and whose amounts are very uncertain, decoy creditors into entering into negociations with men whose circumstances are in a state of ruin, although apparently very solvent. The credit of debtors themselves, by this means, not only suffers but is destroyed, because engagements are either not made at all, or at least not without security: publicity and speciality have, for these reasons, been deemed the most efficient remedy for these abuses; and to make that remedy as perfect as possible, the conventional mortgage should be made to express the precise amount and the specific realty, otherwise it should be inapplicable to property in possession, and, without a new engagement, to that afterwards acquired.

The effect of conventional mortgages is to give to creditors a real right upon their debtor's real property for the security of the debt, whence it must be allowed, that when no real property is possessed, no mortgage could exist or have effect, and that the protection of the mortgagee may be left to his own interest, to discover and secure his claims against his debtor's property subsequently acquired, if the creditor have been so unwise as to make his contract without sufficient actual security. Without these requisites, it would be quite impossible to work out speciality, which is one of the fundamental bases of the hypothecary system.

Judicial mortgages establish in a compulsory manner the amount of the debtor's engagement, either without or against his consent, and do not specialize the realty to secure the amount of the condemnation; their security and advantage would be illusory and totally defeated, if a general mortgage were not allowed to the judicial creditor. Publicity, by means of registration, should alone be required for these mortgages. As has been already mentioned, publicity and speciality should be positive and rigorous conditions of conventional mortgages, but publicity alone suffices for judicial mortgages, inasmuch as speciality is incompatible with the nature and effect of a general mortgage.

Nor should successive registrations be required for judicial mortgages, because otherwise a debtor would be always armed with unjust favour to some creditors at the expense of others; the first informed would be the first enregistered against subsequent acquisitions, and rights attached to hypothecary registration would be prizes of speed for first reaching the register offices.

In reply to the allegation that real property not in possession should not be affected by the real right given to the formality of registration, it may be said, that the mortgage, and not the inscription, attributes the real right to the creditor; the latter is the perfection of the former, and only insures its publicity.

The judicial mortgage seizes or attaches upon the realty, from the moment of its becoming the debtor's property, and no new judgment should be required to vest it. In like manner the registration once completed should exercise its influence and produce its effect, from the moment that newly acquired property vests in the debtor; all that should be required of the judicial creditor, is to secure the order of his mortgage by a regular registration.

Legal or tacit mortgages are granted and established by the law without the consent of parties or express stipulations, or they proceed from the disposition and will of the law without any convention of parties; they are allowed either by special favour and privilege, or in consideration of the person of the creditor or the cause of the debt; because, when a person does that, for which the law grants a mortgage, he is presumed to have tacitly consented to the same mortgage upon his realty, which the law has established, although no express stipulation had been made; and although this is accomplished by a legal fiction, yet the legal or tacit mortgage produces the same effects as the conventional and express. So that, as regards the law, they are considered express, and as regard the parties, they are always deemed tacit mortgages, because they do not proceed from any act of the parties.

These legal mortgages are principally threefold: 1st, those of married women upon their husbands' property; 2d, those of minors and interdicted persons upon the property of their tutor; and, 3d, those of the state and of communities upon the property of their servants.

The state of dependence in which married women are placed, with respect to their husbands, and the legal incapacity of minors and interdicted persons, have established in their behalf the peculiarly cogent and favourable rights which humanity and society have united to sanction and preserve. This very favourable consideration has given a retroactive effect to the mortgage of the married woman, as far as the husband's influence over her was supposed to extend, namely, to the date of the marriage contract, or to that of the solemnization of the marriage.

Minors and interdicted persons participate in these sanctions of humanity, and efficient security is afforded to them, by dating their mortgages from their public guardian's entry into office.

Legal mortgages against state accountants interest the whole state. Experience teaches us, that no inconvenience can exist, in making the state revenues dependent upon the fidelity and care of its servants, when proper safeguards are used, and that it is possible for the government officers as well as for individuals, to make themselves acquainted with the property of these public accountants, however distant may be the situation of their realty from their residence. The same remarks apply to officers of communities. As both

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offer great facilities of peculation and of escape from discovery, the legal mortgage is granted against them from their acceptance of office.

Besides these three classes of individuals, to whom, what may be called this exorbitant prerogative, the legal mortgage, is granted, there are a few others which need not be mentioned, inasmuch as they consist of privileges or rights of property upon special real estate.

(No. 10.)

The interests of posterior creditors and the security of their rights are the essential motives of the principle of publicity and speciality; wherefore, the hypothecation system should be made to repose upon these two bases. The observance of either one should not relieve from the accomplishment of the other, because by showing to third persons the incumbrances upon property, a knowledge is conveyed to them of the object and foundation of the mortgage; and, though it is true that registration exhibits the nature and situation of the realty, it is the work of the creditor, and means should be afforded to third parties to verify its correctness: this can only be accomplished by a reference to the title constituting the mortgage, whence, it must be apparent, that the requisites for the full efficiency of the principle are, first, public registration, and, second, the specification of the amount of the mortgage and the actual realty upon which the security is to attach.

Registration applies with facility to conventional and judicial mortgages, because the parties interested in them will, of course, be desirous to render their security complete, by the execution of every required formality. But legal mortgages are encompassed with difficulty; the persons beneficially interested in them are prevented by law from employing any protective means for their own security, and as long as they are thus incapacitated from securing themselves by their own act, the omission of that act should not deprive them of the rights and privileges which are vested in them by the law.

To require the execution of the formality of registration for legal mortgagees by other persons, would be futile, because their interests are not concurrent; and, moreover, this formality might not be completed, and then the legal mortgage would exist only in name.

It should not, therefore, be made to depend upon registration, unless the most certain precautions are offered of its being always indubitably completed; and legal mortgagees should not be deprived of their security by any abrupt clandestine change of their debtor's property.

Principles should not be destroyed by the want of a formality, the execution of which, the persons most interested in the security, are prevented from effecting.

To give to any registration law an impression of civil justice, it is necessary to reconcile conflicting interests; but civil justice is averse from casting back upon the married woman, minor, &c., the consequence of a neglect which they had not the power of preventing. This principle should not, therefore, be sacrificed to the wish, however laudable, of making transactions more secure, and the advantage of simplifying a law must not be purchased at the price of injustice.

Indeed too much simplicity in legislation is, in general, an enemy to property. Laws cannot be made very simple without cutting the knot instead of untying it, and abandoning many things to arbitrary uncertainty.

Nevertheless, civil justice is the basis of law: every one is convinced that personal rights repose upon immutable principles, whereas all respect for property is lost when it is subjected to chances which transfer it with facility, but without reason, from hand to hand. Legal mortgages have everywhere been considered as emanating from and identifying themselves with the engagement which produced them; this principle in the registration system must be made accordant with the security of purchasers and lenders. The law, by this means, would be less simple, but more conformable with the principles of civil justice.

Little advantage would have followed from the mere public registration of conventional and judicial mortgages, if information of the precise amount of the mortgage debt had not been imparted; wherefore, if the conventional claim resulting from the deed, or the condemnation conveyed by the judgment, be conditional in existence or undetermined in amount, both should be estimated previous to their registration: this may be accomplished without any difficulty.

Legal mortgages cannot be rendered determinate even by an approximate estimation, because of the impossibility of appreciating rights, which, during the entire course of the marriage or the existence of the office, may become the object of mortgage.

All mortgages in this province are general in their effect, and only subject to the greater or less privilege of certain creditors. This generality was made a principle of law, in violent contradiction to the rules of justice and equity; and was based upon a legal fiction that the mortgage conveyed property. This, as a general principle, was a fallacy, because no fiction could have conveyed what was not existing even as a right, and no conventional mortgage could convey a real right, *jus in re*, where no realty existed upon which to found it.

As long as debtors have no realty, their voluntary engagements by deed should only be considered as positive acknowledgments of debt, and never be permitted to precede the subsequently and similarly acknowledged claims of others, or the compulsory consent of a judgment of a competent tribunal.

The general mortgage may be maintained in effect by means of proceedings which the creditor is free to adopt, but the debtor's credit should not be paralyzed by excessive registration; as realty becomes the property of the debtor, it becomes the pledge of all his existing creditors, but no creditor could have obtained possession of real estate previous to

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its existence as the property of the debtor; the priority of debts in this respect is, therefore, quite indifferent.

In fine, safe dealings are never entered into without the warranty of property in possession, future property is too uncertain, and it is a well known fact, that the greater part of notarial deeds executed in this province, specify the realty to which the transaction applies, and upon which the security is established. In this respect, therefore, the proposed restriction is not repugnant to the habits of the people.

Conventional mortgages should always express the special realty mortgaged, and the judicial and the legal should be relieved from this necessity.

From the preceding observations, it will appear,

1st. That conventional mortgages should be liable to the principle of publicity and speciality in all its extent.

2d. That judicial mortgages should extend only to publicity; and

3d. That legal mortgages should be relieved from both.

The registration and specification of the conventional, and the registration of the judicial mortgage, convey sufficient information that incumbrances exist, specially in the former case, and generally in the latter upon the debtor's realty.

No doubt can exist of the propriety of affording similar information of the existence of legal mortgages; but as the mortgagees are prevented from accomplishing this object, and are at the same time secured against the effects of omission or neglect, the public might obtain this information if the law were made to allow them, their friends and relatives, or the *subrogé* tutor, to make the registration, or to compel the husband or tutor to complete the formality under severe penalties, or to require the officer of the court registering the appointment of the tutor, or the notary executing the contract of marriage, or the clergyman officiating at the marriage, to make the registration. By this means the publicity of the legal mortgage would be attained and information of its existence would be afforded to the creditor, without injuring the rights of the legal mortgagees.

In framing any general system of registration, regard should be had to the removal of every impediment, which might prevent or impede its effect.

The report of the legislative council states, that "customary dower has been the fruitful source of many of the evils complained of, and though intended to secure a provision for the widow and orphan, that its retention is not applicable to the present condition of the province."

An examination of the spirit of the hypothecary system discovers that the end of the mortgage is the prosecution to sale of the mortgaged realty, for the payment of the mortgaged debts out of the proceeds, and that every hypothecary creditor should be prepared to be collocated in order for the amount of his claims.

By our law, dower is the only exception to these principles, it is not removed by *décret forcé* or a judgment of confirmation of title; and the very distant period of its becoming open, namely, after the husband's and father's death, the conditional nature of the right itself, the uncertainty of the final partition of the endowed realty, and the general inconvenience of customary dower, render it impossible to reconcile the interests of the claimants of dower with the security of the purchaser or lender.

For these reasons customary dower should be entirely abolished in this country, as has been done in France for dower generally, and persons of great practical information in this province entertain this opinion; among the number D. B. Papineau, esq., a brother of the speaker of the Assembly, thus answers the question of the legislative council upon this point: "Customary dower is in many cases sufficient to secure the subsistence of families, and principally in old established countries. In a new country, where property is of little value, it becomes an obstacle to its transfer, and may afterwards become a source of spoliation. It would be better to abolish it, and to insist that for the future all rights of dower should be particularized and specially applied, not only by a notarial deed, but by the act of the celebration of the marriage. The clergyman receiving the consent of the parties, should be required to ascertain their intention upon the subject, and insert it in the act of marriage. There should be no dower, unless the person constituting it possesses real estate of equal value to the dower which he is desirous to establish." This opinion may serve to show that this innovation would not be opposed by the people at large.

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The changes contemplated in the previous numbers would entirely relieve lenders from the apprehension of loss of their investments by loan upon the security of real estate; and purchasers might also be secured, by amending the common law as well as the act for judgments of confirmation of title, and requiring, after a special notification to the parties interested, that dower, which is the only exception to the relief afforded by these laws, should also be made known and claimed by opposition, like all other mortgage claims, within the allowed legal periods; in this manner both purchasers and lenders would be protected; the former by a full measure of legal relief, and the latter by having such information given to them as would free them from the apprehension of other mortgages which might have been kept out of sight.

These opinions were embodied in a bill which passed the legislative council during the last session of Parliament, and were intended to be introductory to the establishment of register offices in the seigniorial parts of the province. Its provisions were, 1st, making mortgages special; 2d, abolishing customary dower and particularizing all marriage rights;

rights; 3d, requiring that dower shall be claimed upon real property sold by *décret forcé*, sheriff's sale, or under the statute for the confirmation of title. The bill, in addition, required that the mortgage effect should only belong to deeds executed in the county of the situation of the realty, and that notaries should furnish certified statements of mortgages.

The last two provisions of the bill would not be required if registration were fully established in practice, but it must be conceded that the three former, whether with or without registration, are especially serviceable and necessary.

Previous to terminating this part of the subject, the testimony of Mr. D. B. Papineau will again be adduced, as bearing out the preceding observations. That gentleman says, "That a register would do more harm than good, if it were open without restriction to all who, from motives of curiosity or otherwise, would wish to consult it; but that with certain restrictions he did not think that any inconvenience would result; on the contrary, that advantages would follow from its establishment." To the question, whether it would be productive of more good or evil to provide by law that in future mortgages shall be special, and not general? he answers, "That it would be a desirable reform, if it were not an isolated measure, and independent of others quite as useful." And to the question, whether a county register would not afford protection against concealed incumbrance? he answers, "he had always been of opinion that, with certain restrictions, such offices might be useful, and that their establishment ought to be preceded, or immediately followed by great alterations in all our hypothecary system." The opinion of such a person should go far to satisfy the most violently opposed to registration that its introduction must be attended with the greatest advantage.

It is the misfortune of this province to be prevented from enjoying, or deprived of the advantages of measures, by the interests of classes, by petty difficulties originating either in the appellations of measures, or from jealousy of their introducers or proposers. It is time that such motives should cease; that all parties should firmly unite in the great end of the advancement and improvement of the country, and lay aside every other consideration but the public prosperity.

The introduction of capital into the province, it is conceived, is sufficiently stimulating to support even this quixotic notion; and as the interests of the generality become better understood, those of a class would be made subordinate, and treated as such.

Capital and its retention in the province have been shown to be extremely desirable; and to effect this object it has been established that changes or modifications must be made in our hypothecary law.

It is conceived that the following provisions would meet with general approbation, and remove every impediment:

The establishment of *bureaux*, or offices for the registration of deeds, in every county.

All conventional mortgages to be by notarial deeds, as at present.

Conventional and judicial mortgages to rank in order only from date of registration.

Legal mortgages to be exempt from registration; but for the sake of publicity, persons not interested to make the registration, and the husband, tutor, &c. compelled to register under a penalty.

Registered to rank in order of payment before unregistered, and unregistered before chirographary creditors.

Registered mortgages only for determinate amounts, exception as to legal mortgages.

Conventional mortgages upon subsequent acquisitions to rank only from date of registration.

Judicial and legal mortgages to be general mortgages.

All registered mortgages to rank in order from date of registration; the non-registered from date of the deeds.

Prescription only from date of registration.

Tutors to register for claims of their wards, or to be accountable.

Indemnity, &c. of married women, as at present, from date of contract or of marriage.

Creditor of husband and wife to rank from date of wife's marriage or contract of marriage.

Separees de biens, like other creditors.

A severe punishment for false declaration of existence or non-existence of mortgage upon realty.

Privileges to be registered like mortgages.

Excessive registration may be reduced, if necessary, and general registration may be limited.

The foregoing, more in detail, with the provisions of the bill above-mentioned, namely, the abolition of customary dower, particularizing all marriage rights, speciality of conventional mortgages, and dower to be claimed in sales by *decrét forcé* and ratification of title, would, it is conceived, be sufficient to insure the publicity and speciality so much required, and would not be inconsistent "with liens affecting husbands, tutors and curators, which attach upon real property."

Finally, privileges and mortgages existing previous to the promulgation of the proposed law, should be registered within one year after, otherwise to rank only from the date of the registration.

If registration be adopted in the manner above-mentioned, it will give life and being to public and private credit; if not, distress and destruction must follow.

This province is agricultural as well as commercial; capital is necessary for both, and legislation should facilitate the application of that capital to both these sources of national prosperity.

The expectation of great profits promptly realized, the dispatch with which money trans-

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actions are completed, the short duration of loans, the quick return of funds, the impossibility of failure in engagements without dishonour and loss of credit, are powerful attractions to embark large and numerous capitals in commerce, which would soon absorb all, to the destruction of agriculture and the other wants of society, if, in mortgage loans, and other real transactions, the inferiority of these advantages is not compensated by the facility and solidity of the investment.

Real estate enters into transactions either for sales or for the security of the payment of loans and the execution of obligations. The object, then, of the hypothecation system should be to procure to this double species of transaction the greatest solidity, without altering its essence or incumbering its form.

In the proposed plan the purchaser will find security in his purchase, and facility as well as security in freeing it from incumbrance. The seller will find the means of quickly and without expense receiving the price of the unincumbered realty which he has sold; he will be enabled to pay as expeditiously, and without expense, creditors to whom he had mortgaged the realty which he has sold. The proprietor of an unincumbered realty will enjoy the whole of the credit which his property will give to him, while the owner of an incumbered realty will obtain a credit equal to the excess of its value beyond the mortgage claims. The capitalist who is desirous to lend, or any other person contracting with the debtor or borrower, will have a sure and infallible means of ascertaining the fortune of the contracting party; and, above all, it will afford a certainty that he will not be deprived of the warranty which he has obtained; from all this, the necessary consequence will be, that a man acting in bad faith will never be able to sell what does not belong to him, nor offer the capitalist a fallacious security or credit. If the proposed plan give all these advantages, it would be idle to call it perfect, or to say that it would remove every inconvenience; but it may be asserted with confidence that, in comparison with the present system of provincial legislation on this subject, it will approach nearer to perfection, and offer, in comparison, many less inconveniences.

To conclude, the proposed system offering more advantages, and incurring fewer risks to proprietors and capitalists, would collect a greater number of purchasers at sales, and greatly increase the value of the realty, by competition; and the capitalist having a perfect security in his loans upon realty, would be content with a less return; a double advantage would be the result, the first, that the wants of agriculture would be easily satisfied; the second, that the interest of money would be reduced in proportion as the risks of the lender are diminished.

2 September 1836. *Civis.*

CANADA TRADE ACT.

— No. 1. —

AMOUNT OF DUTIES Collected at *Quebec* and *Montreal*, from 1831 to October 1836.

CANADA TRADE ACT.

No. 1.

Sir, Custom's, Quebec, 4 November 1836.

IN compliance with the request contained in your letter of the 28th ultimo, I have the honour to transmit, for the information of the Commissioners of Inquiry, a statement of the duties levied at this port and at Montreal, under Acts passed subsequent to the 18 Geo. 3, from the year 1831 inclusive, to the 10th October last, in the proceeds of which Upper Canada does not participate.

The gross produce of these duties, as shown by the statement, 37,161 *l.* 14 *s.* sterling, only 6,187 *l.* 14 *s.* 6 *d.* of which has been paid to the colonial treasurer, the remainder having been applied to the payment of salaries, and a part of the incidents of the two establishments made chargeable against this branch of revenue by Treasury Order, dated the 12th December 1825, no charge whatever being made for the expense of collection, or for salaries, either against the duties levied under the 14 Geo. 3, c. 88, or any of the provincial laws, a proportion of the proceeds of which is paid to the Upper Province.

I would here beg to remark that this branch of revenue is on the decrease, a very great proportion, in fact all the staple articles of the neighbouring states, such as flour, beef, pork, &c., formerly chargeable with duty under these laws, being now admitted free, nor has any payment whatever under this head been made to the colonial treasurer for the last 12 months, the proceeds being barely adequate to meet the expenses chargeable against them, and I do not think that in future the amount collected will be sufficient for that purpose, and therefore, although in some years past a small amount has been paid in, it is very doubtful whether in time to come there will be again any net proceeds under this head against which the province of Upper Canada could found a claim.

I have, &c.

(signed) *Henry Jessopp*, Collector.

No. 1.

A STATEMENT of the DUTIES levied at the Ports of *Quebec* and *Montreal*, under Acts subsequent to the 18 Geo. 3, from the Year 1831 inclusive, to the 10th October last, and the Charges to which they have been subject.

Total Amount Received.	Paid in Salaries.	Paid for Incidents.	Paid to the Colonial Treasurer.
£. s. d.	£. s. d.	£. s. d.	£. s. d.
37,161 14 –	31,716 13 1	224 10 8	6,187 14 6

Note.—The amount of payments apparent over the amount of receipts, is a balance from the year prior to the above statement.

Customs, Quebec, 4 Nov. 1836. (signed) *Henry Jessopp*, Collector.

T. F. Elliott, Esq., &c. &c. &c.

— No. 2. —

EVIDENCE of Mr. *Hall*, Collector of Customs at *Montreal*, August 1836.

No. 2.

1. Is the apportionment of duties between the Upper and Lower Province still regulated under the Canada Trade Act or 3 Geo. 4, c. 119?—The apportionment is still regulated by the 3 Geo. 4, c. 119.

2. When was the last arbitration made, and when will the time come for making another?—The last arbitration was made in 1833; the time for making another, spring 1837.

3. What has been the portion allotted to the Upper Province under the several arbitrations that have been made since the passing of the Act in 1822?—The proportion allotted since the passing of the Act in 1822; on the first arbitration, to the best of my knowledge, one-fifth; on the second, one-fourth; and on the third and last that has taken place, one-third.

4. Do you know on what general principle or principles, the arbitrations have proceeded?—On population.

5. Do you think that in general the award to the Upper Province has been too great or too small?—Too great.

6. What are the principal disadvantages of the present mode of dividing the duties?—The principal disadvantages are—1st, There is not sufficient data on which a just apportionment can be made; 2dly, It requires that a census of the provinces should be taken every four years, which is expensive, in order to afford some data to go on, under the present uncertain mode of dividing the duties.

7. Do you think that sufficient data exist, on which at present to make an unobjectionable award?—I do not think sufficient data exist at present to make an unobjectionable award.

8. Was not an Act passed in the last session of the local legislature for the purpose of collecting data?—An Act was passed, the 6 Will. 4, c. 24, for the purpose of collecting data.

9. Do you think the provisions of that Act sufficient, or in what do you think the Act defective?—I do not think the provisions of the Act sufficient; it is defective in the following points:—First, The places appointed for the entry of goods exported to Upper Canada, are inconvenient to the trade, and there is no sufficient check upon the cargoes of the boats or carriages to ensure correct returns being given. I should, therefore, recommend the following amendments. 1st, That the boats or carriages and goods for Upper Canada should be entered with the collector of customs at Montreal, it being the place of shipment; and where a proper check could be put to secure correct returns being made by the forwarders and merchants. Second, That the statement required by the 10th section of the Act 6 Geo. 4, c. 24, should be declared to by the forwarders or merchants, under the penalty of 100*l.*, if the declaration is untrue in any particular. Third, In case the collector should not be satisfied with the declared value given of any goods, it shall be in his power to detain the same until satisfactory proof be given that the value declared to, is correct, by the production of the invoices or other documents. No statement or entry of goods shipped on board any boat, or in any carriage for Upper Canada, shall be valid unless the goods shall have been properly described in such entry by the denominations, and with the characters, according to which such goods are charged with duty. All goods loaded in any boat or carriage not corresponding or agreeing, in all respects, with such entry or statement thereof, or not properly described in the same, shall be forfeited. All boats or carriages for Upper Canada, to be laden under the inspection of the officers of customs, on forfeiture of the goods which shall be so laden without the presence of an officer. All goods which shall be found laden on board any vessel, boat or carriage, proceeding to Upper Canada, which shall not have been duly entered at the custom-house at Montreal, as aforesaid, shall be forfeited, together with the vessel, boat or carriage, horses or other cattle, in or by which such goods shall be conveyed.

10. Supposing the Act to be amended in the way you propose, do you think it would

CANADA TRADE ACT.

No. 2.

afford sufficient data for calculating the proportion that ought to be paid to Upper Canada, and at what expense could it be effected?—If the Act was amended in the way I propose, I do think it would afford sufficient data for calculating the proportion that ought to be paid to Upper Canada, at an expense of about 600 *l.* to 700 *l.* per annum.

11. If such a system were adopted, do you think the restrictions imposed by the Canada Trade Act on the local legislature could safely be taken off; the restrictions, I mean, which at present prevent the legislature from altering the amount of duties?—The restrictions might in part be taken off; so far as prevents the local legislature imposing any duties. I do not think it would be safe to take off the restrictions respecting the present duties.

12. Is there any particular article on which you think the duty at present levied is injurious or inconvenient?—On leaf and manufactured tobacco and tea.

13. What were the temporary duties which were made permanent by the Trade Act; and can you state the times at which they would have expired, but for that Act?—The duties collected under the 53 Geo. 3, as amended by the 55 Geo. 3, c. 2, and the 55 Geo. 3, c. 3, which are as follows: Under 53 Geo. 3, 2 ½ per cent. *ad valorem* on all goods on which no previous duty was imposed. Under 55 Geo. 3, c. 3, on Bohea tea, 2 *d.* per pound; on Souchong, or other black tea, 4 *d.* per pound; on Hyson tea, 6 *d.* per pound, other green teas, 4 *d.* per pound; 3 *d.* per gallon on all spirits or strong liquors; 3 *d.* per gallon on all wines; 2 *d.* per gallon on molasses. 53 Geo. 3, as amended by the 55 Geo. 3, c. 2, would have expired on the 15th April 1823. The 55 Geo. 3, c. 3, expired on the 1st of May 1819.

14. Are the duties now precisely what they were in 1822?—The same.

15. Is any considerable portion of the trade between Upper and Lower Canada carried on in winter?—A very inconsiderable portion of the trade is carried on in winter.

16. Might not an increase in the winter trade be expected under an altered system?—I do not think any increase could take place by an altered system.

17. Could the winter trade be brought efficiently under custom-house control, the country being in winter passable in all directions over the snow or ice?—I do think it could for the purpose of ascertaining the quantity and value of goods taken from the Lower Province to Upper Canada, as there could be no object gained in evading the custom-house regulations.

18. In what articles does the principal contraband trade take place between the United States and Canada, and is this trade greatest in the Upper or the Lower Province?—The principal articles are tea, tobacco, silks, sperm oil, and fancy goods. The contraband trade is greater in Upper Canada than in the Lower Province.

19. What are the principal articles smuggled from Canada into the United States?—Fine woollens, carpeting, refined sugar.

20. Do you think that the balance of the smuggling trade is in favour of Canada, or of the United States?—The balance, I am informed, is much in favour of the United States.

21. What do you think would be the effect if trade were made much freer than it now is, between the two Canadas and the United States, or made entirely free, and permission given reciprocally by Canada and the United States, for internal navigation, upon payment of equal dues for all?—It would have the effect of throwing all the trade of Upper Canada into the hands of the American merchants.

22. Without going the length of making trade and navigation entirely free, are there, in your opinion, any relaxations in the present prohibitory system that could be advantageously introduced?—Great advantages would be derived, both to the Canadas and the British shipping, if tobacco, the produce of the United States of America, imported by land and inland navigation, could be placed on the same footing on importation into Great Britain, as American ashes and timber, imported in the same manner through the Canadas, that is subject to no higher duty than the same articles, the produce of the Canadas. Upwards of 15,000 hogsheads would be brought from the states of Ohio, &c.

23. Have you any reason to think that the trade between the two provinces is impeded by any unwillingness on the part of the legislature of the Lower Province to make the necessary improvements of its lakes or rivers?—It does not appear to me there is any unwillingness on the part of the legislature of the Lower Province to make the necessary improvements on the lakes or rivers, to meet those of Upper Canada; as there are at present commissioners appointed under a provincial act of last session, and a sum of 1,000 *l.* voted to make the necessary surveys.

24. Do you consider the amount of duties levied under 14 Geo. 3, c. 88, likely to increase or decrease?—To decrease.

25. Can you state the gross amount of duties collected within each of the last seven years, distinguishing the inland duties from those of the seaports?—I can only state for the last six years the imports by sea, from the documents in my possession.

QUEBEC AND MONTREAL.

	£.	s.	d.
Year ending 5 January 1831	147,564	2	–
— 1832	166,629	19	1
— 1833	158,802	5	8
— 1834	177,887	2	11
— 1835	128,485	8	9
— 1836	147,164	3	3

I cannot give the collection of the inland duties.

26. Will

26. Will you give in a succinct manner, a list of the articles on which the duties are most productive?—Brandy, gin, rum, wine, sugar and tea.

27. If trade were perfectly free and no advantage afforded to either party, save that which is derived from the facility of communication, do you think any considerable portion of the produce of the states on the Ohio, Mississippi, &c. might be expected to pass by way of the St. Lawrence?—I do not think any considerable portion of the produce of the Ohio, Mississippi, &c. would pass by way of the St. Lawrence.

(signed) *W. Hall*, Collector Customs.

—No. 3.—

EVIDENCE of Mr. *Jessopp*, Collector, *Quebec*. No. 3.

Sir, Customs, Quebec, 14 September 1836.

I HAVE the honour to enclose my answers to the queries transmitted to me by desire of the Commissioners of Inquiry, in your letter dated Montreal the 16th ultimo, together with a return of the produce of the revenue raised under 14 Geo. 3, c. 88, in every year since 1816; also a statement of the successive alterations that have taken place in the duties on rum since 1774; with the required remarks on each, and likewise showing the proportion of the present duty on rum, which is raised under Acts passed subsequent to the Imperial Act 18 Geo. 3, c. 12.

I have, &c.

Thos. Fred. Elliott, Esq. &c. &c. &c.

(signed) *Henry Jessopp*, Collector.

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1. What has been the proportion of customs' duties allotted to the Upper Province under the several arbitrations that have been made since the passing of the Canada Trade Act, 3 Geo. 4, c. 119?—The proportion of customs' duties allotted to Upper Canada was up to 1 July 1824, one-fifth; 1 July 1824 to 1 July 1832, one-fourth; 1 July 1832 to this date, one-third.

2. Do you know on what general principle or principles the arbitrations have proceeded?—According to the relative numbers of the population of the two provinces.

3. Do you think that in general the award to the Upper Province has been too great or too small?—In Lower Canada the award is generally thought too great.

4. What are the principal disadvantages of the present mode of dividing the duties?—By awarding the proportion of duties according to population, I think it probable that Upper Canada gets a larger proportion of the duty on heavy articles, such as salt, spirits and wine, than her consumption of these articles would seem to warrant; with the duties on British merchandize it may be otherwise, but I have no data to enable me to speak more distinctly on that head.

5. Do you think sufficient data exist, on which at present to make an unobjectionable award?—I do not.

6. Was not an Act passed in the last session of the local legislature for the purpose of collecting data?—A clause (sec. 10) was introduced last session of the provincial legislature into the Inland Customs' Bill (6 Will. 4, c. 24,) for that purpose.

7. Do you think the provisions of that Act sufficient, or in what do you think them defective?—I do not consider its provision sufficient, because the information is required to be given by persons who do not of themselves possess it, "the person in charge of any batteau, boat, &c. conveying goods to Upper Canada;" such persons, I presume, are merely furnished by their employers with an account of the cargo so far only as may be necessary for the purpose of collecting their freight. And because these persons are mostly, if not all, uneducated, and incapable of preparing the schedule, even if the necessary information was given them, a penalty of 40 *s.* for default is also imposed, to be levied, "with costs," on their goods and chattels, a description of property which few, if any of them, possess. The penalty could not, even under any circumstances, be easily enforced; many of the conductors, or "persons in charge," being Indians whose homes and names are unknown, and others resident in Upper Canada, and beyond the reach of the law. I therefore consider the Act to be wholly defective.

8. Supposing the Act to be made as perfect as the case will admit; do you think it would afford sufficient data for calculating the proportion that ought to be paid to Upper Canada, and at what expense could it be effected?—I do not consider that an Act could be made, even if made as perfect as the case will admit, that would afford sufficient data for calculating, with any degree of accuracy, the proportion of duty that ought to be paid to Upper Canada. If such, however, be contemplated, it appears to me that with respect to goods going out of Lower Canada to Upper Canada, a system nearly similar to the regulations in force as to goods coming into Lower Canada, and upon which duties are payable, would be both the most simple and the most efficient; 1st, That the owner of the goods, or his agent, should deliver to the proper officer such description thereof as if duty were to be paid thereon; viz. goods liable to duty on importation, *ad valorem*, the description and value thereof to be given; goods liable to duty on importation, by weight, tale or measure, the weight, tale or measure thereof to be given; in default whereof, or in the event of a false description or value being given, a small penalty to attach, leviable on the owner or his agent, in a summary manner; the goods to be detained until the penalty,

CANADA TRADE ACT.

No. 3.

with all costs and charges, shall be paid. The person in charge of any batteau, boat or carriage, &c. to deliver to the proper officer, in duplicate, (the duplicate to be returned to him, signed by the officer,) a report or manifest, in writing, showing the marks, numbers and contents of every package and parcel of goods he has in conveyance, as far as any of such particulars can be known to him; in default of which, or if an untrue account be given, a small penalty to be levied on the person in charge, and the batteau, boat, carriage, &c. to be detained until the penalty, with all costs and charges, be paid. Under the above, or similar regulations, it appears to me that an account of the goods, as nearly accurate as possible, might be obtained, and at probably very moderate additional expense to the public; perhaps not amounting to 500 *l.* currency per annum. I conceive it, however, to be very doubtful whether, if even such an account were obtained, it would afford data sufficiently correct upon which to found an award of the proportion of duty which ought to be paid to Upper Canada, although perhaps it might afford an approximation thereto. Amongst other objections which might be made to the accuracy of the account so obtained, it may be mentioned, that the duty on spirits imported is levied by measure, without reference to strength, and which article I have heard it said is often, if not always, both reduced and adulterated before it is sold for Upper Canada; so that although the cask contains the same number of gallons, it contains a less quantity of spirits than when the duty upon its importation was paid. Care would also be necessary to distinguish between home-made spirits and spirits upon which duty has been paid. Again as to goods paying duty *ad valorem*; the duty upon importation is paid upon the "first, or sterling cost," exclusive of the cost of packages, shipping charges, export duty in England, freight, insurance, &c., whereas the value which would be given on their being sold and forwarded to Upper Canada will include all these, with the addition of the duty paid here, charges, profit, &c., thus making an immense difference in addition to the amount upon which the duty was paid. These objections and difficulties, with others which no doubt could be stated by persons more conversant with the nature of the trade than I am, as well as the natural unwillingness of merchants to lay open the extent of the profits they derive from their business, together with the inconvenience, trouble and delay which such a system would inevitably occasion, appear to be subjects for serious consideration before the enactment of any law which in its operation might tend to embarrass or check the free intercourse of commerce between the two provinces.

9. If such a system were adopted, do you think the restrictions imposed by the Canada Trade Act on the local legislature could safely be taken off; the restrictions, I mean, which at present prevent the legislature from altering the amount of duties?—If such a system were adopted, I do not think that under the existing state of the financial affairs of the province, the restrictions of the Canada Trade Act could be safely taken off.

10. Is there any particular article on which you think the duty at present levied is injurious or inconvenient?—I am not aware of any particular article on which the duty at present levied is injurious or inconvenient.

11. Is any considerable portion of the trade between Upper and Lower Canada carried on in winter?—A very small proportion of the trade with Upper Canada is carried on in winter.

12. Might not an increase in the winter trade be expected under an altered system?—I do not consider that any change of system would increase the trade.

13. Could the winter trade be brought efficiently under custom-house control; the country being in winter passable in all directions over the snow or ice?—I think it would be difficult to bring the trade in winter efficiently under custom-house control without an increase of preventive officers, which the smallness of the winter trade would not warrant.

14. In what articles does the principal contraband trade take place between the United States and Canada, and is this trade greatest in the Upper or the Lower Province?—The contraband trade between the United States and Canada is chiefly in tea, tobacco, silk manufactures, whiskey and sperm oil, and is carried on to a greater extent in Upper than in Lower Canada.

15. What are the principal articles smuggled from Canada into the United States?—The principal articles smuggled from Canada into the United States are woollens, hardware and refined sugar.

16. Do you think that there is more smuggling from Canada into the United States, than from the United States into Canada?—There is more smuggling from the United States into Canada than from Canada into the United States.

17. What do you think would be the effect if trade were made much freer than it now is between the two Canadas and the United States, or entirely free and permission given reciprocally by Canada and the United States for internal navigation upon payment of equal dues for all?—The trade between the United States and Canada as respects the British enactments, is now nearly altogether free, the only articles of commerce prohibited being tea, fish, oil and books "first composed or written, or printed in the United Kingdom, and printed or reprinted in any other country, imported for sale." The staple products of the United States are free when imported into the Canadas; viz. ashes, grain, flour and meal, beef, pork, wood and lumber, tar, rosin, &c. the duties being chiefly on tobacco, whiskey and manufactured articles, while the products of the Canadas and all manufactured articles are heavily taxed in the United States. I am not aware that the trade would benefit from any further change in the British laws, although these provinces might occasionally benefit by a relaxation of the American tariff.

18. If trade were perfectly free, and no advantage to either party, save that which is derived

derived from the facility of communication, do you think any considerable portion of the produce of the states on the Ohio, Mississippi, &c. might be expected to pass by way of the St. Lawrence?—The trade being already free as respects the importation into the Canadas of the staple products (except tobacco,) of the states on the Ohio, Mississippi, &c. the advantages to be derived from the facility of communication are already open to the trade by the St. Lawrence.

19. Without going the length of making trade and navigation entirely free, are there in your opinion any relaxations in the present prohibitory system that could be advantageously introduced?—By my answer to par. 17, it will be seen that the "present prohibitory system" as respects the British laws, is applicable only to but few articles, and as therein stated, I am not aware of any change that could be advantageously introduced.

20. Have you any reason to think that the trade between the two provinces is impeded by any unwillingness on the part of the legislature of the Lower Province to make the necessary improvements in the navigation of its lakes or rivers?—I am not aware of any cause for unwillingness on the part of the Lower Canada legislature to make the necessary improvements in the navigation of its lakes and rivers for facilitating the trade between the two provinces.

21. Do you consider the amount of duties levied under the 14 Geo. 3, c. 88, likely to increase or decrease?—The revenue under the 14 Geo. 3, c. 88, I think is likely to decrease, the duties imposed by that Act being on Foreign, West India and British spirits, the importation of which has much fallen off; and I conceive will still continue to fall off, in consequence of the great increase in the distillation of untaxed spirits in Upper and Lower Canada, which is sold at a cheaper rate than the imported spirits.

Customs, Quebec, 14 Sept. 1836. (signed) *Henry Jessopp*, Collector.

PORT OF QUEBEC.

A RETURN of the REVENUE raised under the 14 Geo. 3, c. 88, in every Year since 1816.

YEAR.	Amount in Sterling.			YEAR.	Amount in Sterling.		
	£.	s.	d.		£.	s.	d.
1816 - - - -	13,183	10	9	1827 - - - -	28,946	15	10
1817 - - - -	13,922	12	6	1828 - - - -	30,933	1	9
1818 - - - -	14,048	-	5	1829 - - - -	33,406	13	4
1819 - - - -	15,320	5	11	1830 - - - -	40,066	18	7
1820 - - - -	13,955	6	9	1831 - - - -	44,937	6	4
1821 - - - -	8,645	16	11	1832† - - - -	32,713	10	11
1822 - - - -	19,087	6	10	1833 - - - -	29,288	7	10
1823* - - - -	26,280	14	7	1834 - - - -	22,444	9	6
1824 - - - -	27,480	1	3	1835 - - - -	22,724	3	3
1825 - - - -	30,361	9	1	1836 to the 5th July -	7,623	10	3
1826 - - - -	27,009	5	11				

* 28 Geo. 3, c. 39, repealed; duty on rum from England by 3 Geo. 4, c. 119.
† Montreal a separate port.

The increase of these duties, after passing of the Canada Trade Act (3 Geo. 4, c. 119), is not attributable to that Act, but to the repeal by an Act of the same session (3 Geo. 4, c. 44) of the Act 28 Geo. 3, c. 39, which "allowed the importation of rum or other spirits from His Majesty's colonies or plantations in the West Indies into the province of Quebec, without payment of duty, under certain conditions and restrictions."

Customs, Quebec, 14 Sept. 1836. (signed) *Henry Jessopp*, Collector.

A STATEMENT of the ALTERATIONS in the DUTIES on RUM since 1774.

1788.—The Act 28 Geo. 3, c. 39, was passed; "An Act to allow the importation of rum or other spirits from His Majesty's colonies or plantations in the West Indies into the province of Quebec, without payment of duty, under certain conditions and restrictions." Repealed by 3 Geo. 4, c. 44 & 119.

1809.—The Act 49 Geo. 3, c. 16, was passed; "An Act to allow the importation of rum and other spirits from the island of Bermuda into the province of Lower Canada without payment of duty, on the same terms and conditions as such importation may be made directly from His Majesty's sugar colonies in the West Indies." Repealed by 3 Geo. 4, c. 119.

1811.—The Act 51 Geo. 3, c. 48, was passed; "An Act to permit rum or other spirits, the produce of the British colonies in the West Indies, to be imported into Lower Canada from Nova Scotia and New Brunswick, and the Islands of Cape Breton, Prince Edward and Newfoundland." Repealed by 6 Geo. 4, c. 1115.

CANADA TRADE ACT.

No. 3.

The duty on rum, under the 14 Geo. 3, c. 88, now remains as at first imposed in 1774.

I am not aware that any material change in the trade between Canada and the West Indies was produced, either by the repeal of the 28 Geo. 3, c. 39, or by the duty of 6 *d.* per gallon imposed by the 3 Geo. 4, c. 119, on rum from England; the trade in question appears more to be regulated by the state of the markets than by the rate of duty. A very small proportion of the present duty on rum, is raised under the Acts, passed subsequent to the 18 Geo. 3, c. 12.

For the three years prior to Montreal being a separate port, average 2,475 *l.* sterling.

For the five years since Montreal became a separate port, average 503 *l.* sterling.

Customs, Quebec, 14 Sept. 1836. (signed) *Henry Jessopp*, Collector.

EDUCATION.

—No. 1.—

Sir *J. Kempt*'s Despatch on Education.

Castle of St. Lewis, Quebec,
21 December 1829.

Sir,

EDUCATION.

No. 1.

In obedience to the commands conveyed to me in your Despatch, No. 73, of the 3d of September last, I have the honour to transmit to you herewith a Return (No. 1.) of the places for the instruction of youth of the Protestant and Roman Catholic persuasion, in this province, and of the funds by which they are supported.

The Protestant institutions for education consist, as you will observe, of the two grammar schools, one at Quebec and one at Montreal, and of a seminary lately established at Chambly, under the auspices of the Lord Bishop of Quebec, where, in addition to the ordinary course of classics, young men are instructed in divinity preparatory to taking holy orders. The institution is, however, entirely of a private nature, and solely supported by the students attending it. There are also some academies in the towns of Quebec, Montreal and Three Rivers, where instruction is given in the classics, though the course of study is probably not carried so far as at Chambly. These are altogether private, and of course depend upon the scholars for their support.

There are six Roman Catholic seminaries or colleges in the province, including the two establishments that are under the direction and principally maintained by the funds of the seminaries of Quebec and Montreal; these two bodies are possessed of considerable estates, though not by their endowment specially appropriated to the purposes of education, and those of the latter in particular, as you are aware, are of very great value.

Of the four other Roman Catholic seminaries, only one, that at Nicolet, has been erected by letters patent, and all four are principally supported by voluntary contributions, or by the price paid by the students for their instruction.

Of all these seminaries, both Protestant and Roman Catholic, the two grammar schools at Quebec and Montreal alone receive any permanent assistance from the public funds. The school at Quebec, as shown in the return, receives an allowance of 200 *l.* a year, and 90 *l.* for the rent of a school-house, from the funds accruing from the estates heretofore belonging to the late order of Jesuits; that at Montreal 200 *l.* a year, and 54 *l.* for the rent of a school-house, from the same revenues. The course of instruction followed at both those schools is explained in the return.

A landed estate to the value of 10,000 *l.*, and a like sum in money was bequeathed by the late Mr. M'Gill, of Montreal, in the year 1811, for the establishment of a college in the neighbourhood of that city, but the validity of the bequest having been disputed by his relatives, and other obstacles that were explained in my Despatch, No. 108, of the 5th of November last, have hitherto prevented this design from being carried into effect, although the college was incorporated, by a Royal charter, in the year 1821.

The only funds in the province, independent of the legislative appropriations for elementary schools, from which any aid is given for the promotion of education, are the revenues arising from the estates heretofore belonging to the late order of Jesuits, and this aid, as already stated, is confined to the two Royal grammar schools at Quebec and Montreal.

real. By an account made up to the 10th of November last, the gross revenue of these estates, for the year ending on that day, amounted to 1,884 *l.* 4 *s.* 11 *d.*:—

	£.	s.	d.
The authorized charges for management and collection - -	544	17	6
Allowances to grammar schools, retired allowances, authorized salaries, &c. - - - - - - - - - - -	980	10	1½
	£. 1,525	7	7½
Leaving only a balance of - - -	£. 358	17	3½

From which the building and repairs of mills, and other expenses that must be incurred for the improvement of the estates, are to be defrayed, and there are no other revenues in the colony at the disposal of Government which could be made available for the purposes of education.

The Protestant and Roman Catholic seminaries, above mentioned, and the academies alluded to, being the only institutions in Lower Canada where the classics or the higher branches of learning are taught, the information which is furnished respecting them may be probably sufficient for the object you had in view in desiring to receive a return of the places for the instruction of youth in the province. But as it may be satisfactory to you to be informed of the provision made for the maintenance of the common elementary schools in the country, I have added to the return a statement of the schools of this description, under the direction of the Royal Institution, and of those that have been established in the country under an Act passed in the last session of the provincial legislature, "for the encouragement of elementary education;" and I have annexed thereto two papers, Nos. 2 and 3, explanatory of the system under which they are established in the return, a list of elementary schools in the towns of Quebec, Montreal and Three Rivers, for which special appropriations were made in the last session of the legislature, and the amount granted to each.

The paper, No. 2, is a memorandum respecting the Board of Royal Institution, showing the time of its foundation, the objects for which it was incorporated, and the principles upon which it has been conducted. I have every reason to believe that the rules therein stated, as having been laid down for its guidance, particularly the regulations to prevent any interference with the religion of the children at the several schools, have been strictly attended to, but, nevertheless, it cannot be denied that the Royal Institution has never been viewed with any cordial good will by the Roman Catholic part of the community.

A proof of this feeling may be found in the reluctance with which the Roman Catholic bishop acceded to the arrangements first proposed in the year 1826, (No. 2, page 5,) for a division of the Board into *two* distinct and *equal* committees, consisting respectively of Protestants and Roman Catholics for the superintendence of each of the schools of its own persuasion, and in his refusal to accede to a modified arrangement when legal difficulties were found to exist that rendered the plan to which his assent had been obtained impracticable. The Protestant Dissenters are also by no means favourably disposed towards the Royal Institution, and the Act passed for the encouragement of elementary education in the last session of the legislature, by which the superintendence of the schools is entirely confided to trustees to be annually chosen by the inhabitants of each parish, being exceedingly popular in the country, and schools having been established under it in every part of the province, I have no very sanguine expectation that the provincial allowance of 2,000 *l.* per annum hitherto made to the Royal Institution for the maintenance of schools under its direction will be much longer continued.

The paper, marked No. 3, is explanatory of the provisions of the Act passed in the last session for the encouragement of schools in the country parishes.

I have, &c.,
(signed) *James Kempt.*

P. S.—It may be necessary to mention that the two grammar schools at Quebec and Montreal, that receive an allowance from the Jesuits' estates, were established in the year 1826. Three gentlemen having arrived from England in that year, appointed by the Secretary of State to superintend them, as well as a grammar school in Upper Canada. The authority for the amount of salary allowed is conveyed in a despatch from Lord Bathurst, dated 24th February 1827.

The salary for the master of the grammar school in Upper Canada, was ordered by your despatch of the 2d of June 1828, to be transferred to that province, but a demand has been lately made upon the Jesuits' estates for the arrears of his salary for 18 months prior to that period; the claim is correct, but the estates are at present unable to pay it.

J. K.

The Right Honorable Sir George Murray, G. C. B.,
&c. &c. &c.

EDUCATION.

No. 1.

(1.)—RETURN of the INSTITUTIONS for the INSTRUCTION of YOUTH in *Lower Canada*.

PROTESTANT.

COLLEGE, or SCHOOL.	FUNDS by which Supported.	REMARKS.
1.—Royal Grammar School, Quebec.	- - 200*l.* a year, and 90*l.* a year for the rent of school-house, paid from the funds accruing from Jesuits' estates, under an authority from Lord Bathurst, dated 24th February 1817.	- - by the rules of the foundation 20 free scholars are to be admitted. There are also at present 11 who pay for their tuition, — all day-scholars. Terms for those under 12 years of age, 8*l.* per annum; for those above 12 and under 13, 10*l.* per annum; for those above 13, 12*l.* per annum. The French and English languages are taught; and the course of instruction in the classics, &c. is the same as in the grammar schools in the United Kingdom.
2.—Royal Grammar School, Montreal.	- - 200*l.* a year, and 54*l.* a year for the rent of school-house, from the funds arising from the Jesuits' estates, under an authority from Lord Bathurst, dated 24th February 1817.	- - by the rules of the foundation 20 free scholars are to be admitted. At present there are 15 scholars also who pay for their education,— all day scholars. Terms of instruction for the higher branches, 10*l.* per year; for the lower, 8*l.* The course of instruction is the same as in the grammar-school at Quebec; and this school is in possession of an extensive apparatus for experiments in natural philosophy.
3.—Seminary at Chambly.	Contributions of students - -	- - a private institution lately established under the patronage of the Lord Bishop of Quebec. The rate for board and tuition, according to the age of the student, is fixed at 40*l.*, 50*l.* and 75*l.* per annum; for day-scholars, at 15*l.* and 20*l.* per annum. There are at present 17 boarders and nine day-scholars. Instruction is given in divinity, as well as in the same branches of learning as are taught in the best institutions of the same description in the United Kingdom. Those students who pay 75*l.* per annum are young men studying for holy orders, and others finishing their education. It is proposed to reduce the terms paid for tuition in this establishment.

CATHOLIC.

1.—Seminary of Quebec	- - no revenues specifically appropriated to the purposes of education, but is possessed of the following estates: The seigneury of Beaupré, 15 leagues in front by 6 leagues in depth, on the River St. Lawrence, below Quebec. Seigneuries of Isle aux Coudres, Isle du Cap Boulé, Coulanges, St. Michel, Sault au Matelot (in the town of Quebec), Isle Jesus (in district of Montreal). The precise value of these estates is unknown, but by an avien and denombrement, made many years ago, it was computed at 1,249*l.* a year, besides large contributions in grain, and the lods et ventes on mutations of property, which, in the fief of Sault au Matelot, containing about 180 houses in the town of Quebec, may probably amount to a considerable sum. The seminary was stated to be in debt to a large amount, the beginning of the present year.	- - the seminary of Quebec is at present attended by 188 students. The terms paid for tuition and board are 17*l.* 10*s.* per annum; for tuition only 1*l.* per annum. Children, whose parents are unable to pay for their education, are instructed gratis. The instruction consists of the usual course of classics, English and French literature, mathematics, &c. The seminary of Quebec was erected by letters patent of the French Crown, dated in April 1663.
2.—Seminary at Montreal.	- - the seminary is in possession of the following estates:— Seigneuries of the Island of Montreal, St. Sulpice, Lake of the Two Mountains. The value of these estates is unknown; by an avien and denombrement, made many years ago, it was calculated to be about 2,000*l.* a year, besides large contributions in grain, and lods et ventes on mutations of property, which, in the seigniory of Montreal, comprehending the whole of the town, must amount to a large sum.	- - attended by 260 students; the terms paid for board and tuition per annum, are 21*l.*; paid for tuition only, 1*l.* 15*s.* The course of instruction is the same as at the seminary of Quebec. The ecclesiastics of St. Sulpice at Paris were authorized to establish a seminary at Montreal, and allowed to hold the Island of Montreal in Mortmain, by letters patent of the French Crown, dated in May 1677.

COLLEGE, or SCHOOL.	FUNDS by which Supported.	REMARKS.
CATHOLIC—*continued.*		
3.—Seminary at Nicolet	- - principally by the contributions of individuals, the small landed property in the neighbourhood, of which it is possessed, being stated to be of very little value.	- - the number of students, or the price paid for tuition, not known. The course of instruction is stated to be the same as at Quebec. The seminary of Nicolet was erected by letters patent, dated 10th December 1821, and by that instrument is authorized to acquire property to the amount of 2,500 *l.* currency.
4.—Seminary at St. Hyacinthe.	- - by a small property possessed by the Rev. Mr. Girouard, the proprietor, and the contribution of individuals. Received a grant from the legislature in the last session.	- - no return made of the number of students, or the price paid for tuition. The course of instruction is understood to be the same as in the other seminaries. Application was lately made for the establishment of this seminary by letters patent, but refused.
5.—Seminary at Chambly.	- - contributions of scholars; received a gratuity from the Legislature of 250 *l.* last Session.	- - a private seminary, under the direction of the Rev. Mr. Mignault, Roman Catholic rector of Chambly.
6.—College of St. Ann	contributions of scholars - -	- - a private college situated on the south of the St. Lawrence, about 60 miles below Quebec, established this summer. The course of instruction is intended to be the same as at the other seminaries.

ELEMENTARY SCHOOLS attended indiscriminately by Protestants and Catholics.

Under what Authority.	From what Funds Supported.	REMARKS.
Royal Institution, 78 schools.	- - an annual appropriation of 2,000 *l.* from provincial legislature.	- - for an explanation respecting the Royal Institution, *see* Paper, No. 2.
Provincial Act, 9 G. 4, c. 46, 191 schools.	- - contributions of scholars and funds appropriated by the Act.	- - for an explanation respecting these schools, *see* Paper, No. 3.

The following elementary schools, established by different societies in the towns of Quebec, Montreal and Three Rivers, received also special grants of money from the provincial legislature in the last session; the provisions of the Act 9 Geo. 4, c. 46, are explained in Paper No. 3, extending to only those in the country parishes:—

	£.	s.	d.
Montreal British and Canadian school - - - - - - -	300	-	-
Montreal National Free-school - - - - - - -	200	-	-
Trustees, Quebec, British and Canadian school, to build a school-house, and support of the School - - - - - - -	550	-	-
Trustees, Chapel of St. Andrew, Quebec, to build a school-house -	400	-	-
For a school-house at Three Rivers - - - - - -	500	-	-
Quebec Society of Education for past claims, to build a school-house, and support of it for the present year - - - - - - -	683	10	-
Quebec National school - - - - - - - - - -	100	-	-

(2.)—MEMORANDUM respecting the BOARD of ROYAL INSTITUTION, established by the Provincial Act, 41 Geo. 3, c. 17.

THE Royal Institution is established under an Act of the Provincial Legislature, passed in the year 1801, entitled "An Act for the establishment of free-schools, and the advancement of learning in this province."

By this Act, the person administering the government of the province was empowered to erect a corporation, under the title of "The Royal Institution for the advancement of learning," and to this corporation the management of all schools and institutions of Royal foundation in the province was to be committed.

The steps pointed out by the Act for the establishment of schools are as follows:—

The majority or a certain number of the inhabitants of any parish or district are required to present a petition to the person administering the government, praying that a school may be established therein. His Excellency then appoints commissioners, who

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fix upon a piece of ground for the erection of a school-house, which, when completed, is conveyed to the Royal Institution: a schoolmaster is then appointed, and a salary assigned to him.

Under this Act schools were at different times established by the several governors, but until the year 1819, without any regular system, and at a great expense to the province. By a return made in the year 1818, the number of schools in the province was stated to be 37, attended by only 1,048 scholars, and maintained at an expen $\frac{s}{a}$ to the public of 1,883 *l.* 10 *s.* sterling.

Up to that time the Royal Institution had never been regularly established; but on the 8th of October 1818, an instrument issued, under the great seal of the province, appointing certain persons therein named, to be trustees of the schools of Royal Institution in the province, and by subsequent instruments issued on the 13th of December 1819, 20th July 1822, 27th June 1823, and 17th November 1824, several other persons were added to the members originally appointed.

The Lord Bishop of Quebec was named the principal of the institution, and the Board of Trustees being appointed, drew up rules and regulations for the management of the schools, which received the sanction of the local government.

By these regulations the regular superintendence of the schools was provided for as follows:—

The school was placed under the immediate inspection of the clergy of that religion professed by the inhabitants of the spot, or when the inhabitants might be of different persuasions, the clergy of each church had the superintendence of the children of their respective communions.

A regular superintendence of the schools was also assigned to visitors named by the corporation (one of whom to be the clergyman of the parish or township, according to the rule above described), who were to report to the corporation, every six months, the number and progress of the scholars, the conduct of the master, and generally on the state of the school.

The schools of the Royal Institution have hitherto been supported by an annual vote of the provincial legislature of 2,000 *l.* currency.

In the year 1826, it was suggested by the Royal Institution that considerable advantage might be expected from a different constitution of the board, and it was proposed that a further number of Roman Catholic members should be added, for the purpose of enabling the board to divide itself into two distinct and equal committees, consisting respectively of Protestant and Roman Catholics, for the separate and exclusive superintendence respectively of the Protestant and Roman Catholic schools.

This proposed measure was announced to Lord Bathurst, then Secretary of State, by Lord Dalhousie, in a despatch dated 27th May 1827.

To carry the plan into effect, the resignation of some of the Protestant members of the board was obtained, and after some negotiation with the Roman Catholic bishop, the necessary details being arranged, the attorney-general of the province received orders, on the 13th of August 1828, to prepare the necessary instrument for carrying the arrangement into effect by revoking the commissions under which the trustees were appointed, and by appointing the same persons trustees, with the exception of those whose resignation had been obtained, seven in number, and in whose stead the Roman Catholic members were to be appointed.

The attorney-general having, in proceeding to execute these orders, examined the Act under which the Royal Institution was established, reported his opinion that no such instrument could legally issue, the power of the Governor being limited by the terms of the Act, after the appointment of the first trustees, to removing them, if he should think fit, and to appoint successors to those who should be so removed, or to any who might die or resign their trust, but that the Act gave him no power to add to their number, and that, consequently, the several letters patent issued subsequently to the 8th October 1818, by which successively it was intended to increase and enlarge the number of members of the Royal Institution, could not be considered legal.

Under this view of the matter, the only persons legally members of the Royal Institution were the individuals named in the instrument of the 8th of October 1818, and it became therefore impossible to carry into effect the plan for the two committees in the manner originally proposed.

The Roman Catholic bishop having declined to accede to another proposal, by which two committees might have been formed, but consisting of a smaller number of persons, it became necessary to make an application to the legislature to revise the Act of 1818, that some additional trustees might be appointed.

With this view a message was sent to the Provincial Parliament on the 13th February 1829, recommending the subject to their attention, but the session having approached to a close before anything was determined upon, the consideration was postponed till the next session, and the usual sum of 2,000 *l.* currency appropriated for the schools of the Royal Institution for the year.

Number of schools under the Royal Institution on 1st July 1829, was -	78.
Number of scholars - - - - - - - - - - -	3,772.

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(3.)—MEMORANDUM in Explanation of the Provisions of the Act 9 Geo. 4, c. 46, for the MANAGEMENT of ELEMENTARY EDUCATION.

IN the last Session of the Provincial Legislature, an Act was passed (9 Geo. 4, c. 46), intitled "An Act for the management of elementary education," which, as regards schools established in the country parishes, is to continue in force for three years.

By this Act an allowance of 20 *l.* a year is granted to the teacher of every school in the country parishes, not being under the Royal Institution, that may be attended by 20 scholars; and, in all cases, when 20 pauper children may receive instruction at a school, a further gratuity of 10 *s.* for each child, to the number of 50, is allowed.

A sum of 2,000 *l.* a year is also appropriated by this Act towards the erection or purchase of school-houses, one-half of the price of any building for this purpose being paid by the government, provided such half should not exceed 50 *l.*

By the 4th section of the Act, it is required that five persons should be annually elected by the inhabitants of each township, seigneury or parish, as trustees under whom all schools therein established, since the passing of the Act, are to be placed.

To enable the inhabitants of any place to receive the allowance granted for a school-house, it is merely required that the full price paid for the building should be certified by the trustees; a certificate from the trustees is also required as to the correctness of the return made half-yearly by each teacher of a school, and upon these certificates the gratuity allowed by the Act is immediately paid.

Schools in the country parishes, established prior to the passing of the Act, are not required to be placed under trustees, but are entitled to the allowances granted by the Act on the certificate of the proprietor. Allowances have been paid under this Act in the present year.

J. K.

— No. 2. —

No. 2.

EXTRACT from a DESPATCH from the Earl of *Aberdeen*, dated 1st January 1835, so far as it relates to the Reserved Bill "for the further and permanent Encouragement of Education."

IT is not without the deepest concern that His Majesty finds himself under the necessity of postponing his decision on the bill for the further and permanent encouragement of education. Deeply impressed with the extreme importance of the object in view, and anxious to encourage, by the utmost exercise of his authority and influence, the growth of sound learning and religious knowledge in every part of his dominions, and especially in a province where those advantages are so essential to the right use of the extensive franchises and political rights enjoyed by every class of society, His Majesty could not be induced by any slight motives or ordinary difficulties to defeat, or even to delay the establishment of a system devised by two branches of the legislature for the attainment of that great end. In the present case, however, the impediments which present themselves are neither few nor inconsiderable.

I do not adopt an opinion which appears to have been entertained by some persons in the province, that this bill is objectionable because it creates corporate bodies, thus calling on the Governor to concur in a measure not contemplated by his commission or instructions. It is, indeed, true that His Majesty has not thought it necessary or expedient to delegate to your Lordship the prerogative by which His Majesty himself can incorporate voluntary societies for various general or specific purposes; but the motives which have forbidden the transfer of this power to the Governor of Lower Canada, in his executive capacity, have no application whatever to acts to be done by him in his legislative character. The Constitutional Act of 1791 confers on the Governor of the provinces, as a member of the legislature, powers large enough for this purpose; and although the same Act enables the King to instruct the Governor as to the exercise of those powers, yet His Majesty has not hitherto found, and does not now perceive any reason for fettering your Lordship's discretion to assent to any bills which may be tendered to you for the erection of corporate bodies in the province.

Neither am I disposed to attach any real importance to the unlimited power which this bill would confer of holding in mortmain rentcharges of any amount for the objects of the proposed corporations. With the changes which time has introduced in the state of society and public opinion throughout Christendom, have passed away the greater part if not all of the solid reasons by which our ancestors were induced to contend against the immoderate growth of ecclesiastical and collegiate foundations; and maxims which might be just and useful in the densely peopled states of Europe, possessing territories of comparatively narrow extent, would be altogether delusive if transferred to the continent of North America.

But I observe that the bill imparts a corporate character to every institution in the province, which at the date of its enactment may be possessed of any lands devoted to the purposes of education. It is not, as far as I perceive, requisite that the whole of the lands and revenues should be devoted exclusively to this purpose. It must therefore remain a matter of conjecture rather than of certain knowledge, what is the number or what the nature of the associations which may be able to avail themselves of this privilege.

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It is even possible that private partnerships or private families, or even individuals, may, since the first public notice of this measure, have qualified themselves to assume a corporate character, so soon as the bill shall have passed, on the very easy condition of appropriating eight acres, or even a smaller quantity of land, to the purposes of education, to be conducted by themselves. Improbable as I admit such an abuse to be, the mere possibility of it appears to me to demonstrate the necessity of a careful revision of this measure.

Further, the bill contains no single clause or enactment respecting the constitution or the mode of government of the corporate bodies it would create, nor any provision subjecting them to any visitatorial authority, nor any declaration of the liability of the charters to forfeiture by the judgment of the courts, even in case of the most flagrant abuse of of their powers. In the absence of these usual and indispensable restraints, it is difficult to exaggerate the danger of the perversion of this law to purposes entirely remote from the design of its authors.

Again, the permanent line by which all existing and all future institutions for the education of youth are to be distinguished from each other, merits peculiar attention. The one would be corporate bodies, capable of acquiring property without limit, and of transmitting and defending it without difficulty; the other would labour under all the disabilities and disadvantages of voluntary societies. The liberal and tolerant spirit of the legislature of Lower Canada is so directly opposed to every narrow principle which would foster peculiar religious opinions by exclusive civil privileges, that the possibility of so injurious a construction of their motives has probably not occurred to themselves; yet I fear that the Protestant minority of the province, watchful as they most properly are against the slightest encroachment on their religious liberty, might complain or surmise that this retrospective legislation was intended to confer an undue advantage on the Roman Catholic majority of their fellow colonists. They might yield to the suspicion that the language and the literature of France, and the religious institutions derived from that kingdom, had been the objects of partial regard, and that existing scholastic foundations were preferred to those which might arise hereafter, because the first are principally under the control of the Roman Catholic clergy, and the second may be expected to flourish and expand with the influx of a new population from Great Britain, and with the increase of British capital and settlements in Lower Canada. Your Lordship will, I am sure, concur with myself, not only in reprobating as unjust any suppositions of this nature, but in deprecating as impolitic an enactment which might but too readily give birth to them in minds strongly excited by party spirit, whether national or religious.

Finally, the terms of this bill are so chosen, that I apprehend they would terminate the question so long in debate, whether the corporate character asserted by the priests of the seminary of St. Sulpice really belongs to them or not. The decision of that question in favour of the seminary would involve consequences which every Canadian, whatever his national origin or religious persuasion, would alike have reason to deprecate. Such are, the necessity of holding a great commercial city upon a feudal tenure so strict as to prevent the foundation of quays, mills, wharfs and warehouses, and the improvement of buildings dedicated to commerce, which would otherwise have been multiplied, the consequent retardation, and perhaps the ultimate prevention of that commercial greatness and prosperity which might be ensured to the city of Montreal by its natural advantages in the absence of these artificial restraints; the dedication of a vast territory to purposes now become in a great measure obsolete, and for which, to the advantage of every class of society, other public objects of the same general character might be substituted; and the necessity of continually recruiting, by aliens introduced from France, the members of a corporation which ought to be identified in the highest possible degree with the interests and feelings, not of the French inhabitants of a foreign country, but of the Canadian people. I do not overlook the clause which secures the rights of the Crown, but neither do I think that it was meant or could be construed in such a sense as to obviate the consequences I have mentioned. The pretensions of the St. Sulpiciens and of the Jesuits to a corporate character in Lower Canada should have been expressly mentioned as claims with which the bill did not in any sense interfere.

Notwithstanding these objections, His Majesty cannot so far overlook the importance of the great object to the advancement of which the measure is directed, as to adopt any decision unfavourable to it. His Majesty earnestly trusts that a further bill will be passed by the two Houses to obviate the difficulties I have pointed out; and in that event His Majesty's assent will be given with the highest possible satisfaction to the present as well as to any such supplementary enactment.

— No. 3. —

Resolutions and Report of Committee of the Legislative Council on Education, 15 March 1836.

No. 3.

Report.—The Committee to whom was referred an Act, intituled "An Act to repeal certain Acts therein mentioned, and to provide for the further Encouragement of Elementary Education in this Province," respectfully report to your Honourable House:—

That in the execution of the duties entrusted to them, your committee have thought it desirable to enter into a general view of the objects which the legislature has had in view in former measures of the same description, and of the results which have ensued from the system

system hitherto pursued; and they have proceeded to consider the reports of the committees of the House of Assembly on education and schools for several years past adopted by that house, and the appropriations made by the legislature of this province for the encouragement of education, with a full sense of the importance of the subject, and of the peculiar difficulties with which it is at the present moment encompassed.

For several years the legislature has recognized the necessity and expediency of providing means for the support and encouragement of the education of the people of this province, and Parliamentary grants have been at various times most liberally made for those purposes. But the committee cannot conceive it to have been the intention of the legislature to perpetuate this expenditure, nor to do more than lay a foundation on which the people of the province should gradually be enabled to raise a system of education to be supported ultimately, at least in great part, by themselves.

In pursuing their inquiries, your committee have avoided as much as possible the consideration of all extraneous questions. Their sole object has been to consider the principle upon which it is expedient to grant public money in aid of general education, and the best manner of applying that principle.

After the most anxious deliberation, your committee are of opinion that the present establishments for the support and encouragement of elementary education, though abundantly numerous, are inadequate as a permanent system of general education; and their insufficiency, your committee have reason to believe, is very imperfectly supplied by the liberal legislative aids which have been granted for several years past for their support. They regret to be compelled to state, that the benefits anticipated from that legislative assistance have not been at all commensurate with the hopes and expectations which induced the legislature to make such bountiful appropriations of the public funds for this object.

The measures relating to this important subject have originated in the Assembly, and their operation having necessarily attracted the peculiar attention of that body, your committee have been induced to examine with particular care the results which have been developed and brought under the consideration of that house.

Your committee find, that by the report of the committee of the House of Assembly on education of the 15th day of March 1831, adopted by that house, it is stated, "The committee being persuaded that it is the wish of the house to continue for some time longer the encouragement afforded by its former liberality in all cases where the petitioners show by their contributions that they are zealous in favour of promoting education and knowledge, recommend certain appropriations. They cannot, however, but regret that they have had in evidence, that in several instances too much dependence has been placed in legislative aids, and in some cases to a degree which has relaxed the exertions which were formerly made. They cannot too strongly impress on the house the mischiefs which would result from such a dependence. That upon the present system in a few years the payments for education alone would absorb a sum about equal to the amount of the whole net revenue of the province, upon an average for the last ten years. They recommend that the provision for elementary schools should not be abolished before a better system could be introduced. That among the enormous sacrifices made by the legislature in favour of education, they consider the abuses and corruption which uniformly attend the lavish expenditure of public money as the most pernicious. Education itself suffers in the estimation of the public. False ideas are spread among the people that education is rather an object which concerns the community than themselves individually, and it is undervalued. To draw the money from the people by taxes, to be restored to them for those purposes, after undergoing all the diminution of the expenses of collection, management, repayment and waste, would soon impoverish them, without effecting the object in view so well as they can do it themselves with legal facilities and moderate public aid and superintendence. That the elementary education of the people is, however, effected in the cheapest way in common schools. That it becomes a common concern of the localities, and the common expenses ought, like any other unavoidable expenses, to be provided for in common."

That by the report of the committee on education and schools of the House of Assembly of the 25th January 1832, it is stated, "That the present state of the funds of this province, as well as the increasing applications for public money in favour of particular localities, rendered it necessary for the committee to lay down certain rules for their guidance, with a view to an impartial discharge of their duty, to the reduction of the expenditure, and a warning to the public that less reliance than heretofore must be placed in aids from the general funds, and more from the localities immediately interested. Among the rules which the committee formed, the first was, to grant no new allowances excepting on the most urgent grounds, but rather to diminish those already granted."

That by the first report of the standing committee of education and schools of the House of Assembly of the 23d February 1833, adopted by that house, it is stated, "Your committee regret that the applications during the present session for aids for education, and purposes connected therewith, have been nearly as numerous and great in amount as in the previous session; the extraordinary efforts which were made by the legislature in a prosperous state of the public funds, have wisely spread abroad the idea that the expenses of the education of youth were to be defrayed out of the public revenues. The present state of the public funds will, however, force a return to more correct notions and practice. Your committee cannot conceive that it will ever be considered expedient to draw money

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from the industry of the people by an expensive process, to be returned to them in greatly diminished amount for objects for which they can at once apply it more certainly, more equitably, and with greater economy under their immediate control."

That by the second report of the standing committee of education and schools of the 14th January 1834, adopted by the House of Assembly, it is stated, " Your committee, acting upon the rules which were laid down for the guidance of the education committee in their report of the 22d January 1832, have in no instances increased the allowances made last year, and they regret that present circumstances have appeared to them not to warrant a greater reduction at present. Your committee trust that the time is not far distant when the whole country will be persuaded that it is much better to trust to themselves for the discharge of the duty of affording useful instruction to their offspring rather than depend upon legislative appropriations."

That by the first report of the standing committee on education of this the present session, adopted by the House of Assembly, it appears, that " the said committee thought it right not to make any new grant except in cases of urgency, and to diminish as much as possible those made in former years." They state, " that the liberality of the legislature, far from having stimulated the efforts of the members of institutions connected with education, appears, on the contrary, to have paralyzed them." They also state, " although the number of the school districts fixed by the law appears to your committee to be extremely liberal, and in some places more than proportionate to the population, new demands for new districts have been made in great number. It is to be remarked, that these applications do not, generally speaking, come from places which appear by their population to be entitled to a greater number than that now allowed them, but, on the contrary, from places where the proportion of the number of school districts is four times greater than some others. The single fact that a school district is asked for a place in which there are only three families will be sufficient to satisfy your honourable House of the necessity of examining applications of this nature with the most scrupulous attention. Your committee have come to the determination to recommend that, for the future, the number of school districts in each county be regulated by its population."

Your committee beg leave to state, that notwithstanding the foregoing reports of the committees of the House of Assembly on education and schools concurred in by that honourable House, the number of school districts is by this bill considerably augmented, and the public expenditure for this object, which has already reached the amount of 150,000 *l.*, is very greatly increased, as nearly 40,000 *l.* currency will be required annually for four years ensuing to cover the appropriations specified therein. Your committee, while expressing their concurrence in the propriety of assisting education in its progress, at the same time fully coincide with the general tenor of the reports above alluded to, that its support by the people themselves would be more effectual in its results than under the present system of lavish expenditure, which even for so desirable an end will ultimately lead to apathy and indifference.

That the system of management proposed to be continued, and in some points extended by this bill, if persevered in, must lead to consequences which your committee cannot but regard as productive of evil consequences. The direction and superintendence of the sums appropriated by this bill are entrusted in effect to the county members of the House of Assembly. This power your committee consider to be an object of extreme importance for good or for evil, as the persons in whose hands it is placed may be influenced on the one hand by a pure sense of duty, or on the other by the opinion or feeling of party, or by other improper motives. Your committee think it necessary to point out the powers, as contained in this bill, upon which they found their apprehensions that some abuses may result from its operation.

1st. The certificate of the trustees, by means of which the schoolmaster is to be paid, is to be transmitted to the county member.

2d. The certificate of the qualification of masters of the superior schools, by means of which they receive their salary, is to be transmitted likewise to him.

3d. The county member is to make the pay-list of the county schools and masters, by means of which the masters' salaries are to be paid by the receiver-general.

4th. All alterations in the school districts are subject to the approval of the county members, or may in some cases, as provided by this bill, be made by them of their own authority.

5th. Large sums of money are to be intrusted to them for distribution as rewards of excellence to scholars.

6th. The county member is to demand, recover and receive all sums of money remaining unpaid from former appropriations of sums for prizes, and for this purpose may require the assistance of the law officers of the Crown.

7th. The elections of trustees of schools by heads of families are to be transmitted to the county member.

8th. They are not required to support by vouchers their account of monies intrusted to them as are other persons.

9th. They are among the number of school visitors.

10th. Finally,

10th. Finally, these powers of the county members "shall, in case of a dissolution of Parliament, continue to be vested in them until their successors shall be elected, any law to the contrary notwithstanding."

Your committee believe that your honourable House will see in these provisions sufficient grounds for the apprehension they have expressed, that abuses may result from the operation of the measure.

From the experience of past years, as well as from the appropriations made by this bill, your committee apprehend that liberality may at last degenerate into prodigality, and the object sought for be as far from attainment as before. Under these circumstances, your committee suggest the propriety of suspending all further appropriations until some general effective system of education can be judiciously planned and carefully executed, whereby the provincial revenue will be relieved from so heavy an annual demand upon it, and the people be influenced to take a more decided interest in the prosperity of institutions for the education of themselves and children.

Independently of these general considerations affecting the merits of the measure, your committee conceive that there are others growing out of the particular circumstances of the finances of the province, which demand the serious attention of your honourable House, they think it necessary to point out.

That your honourable House resolved, on the 6th day of March instant, "That it was inexpedient to concur, during the present session of the provincial Parliament, in appropriations of monies to a greater extent than will leave in the public chest a sum equal to the discharges of the sum of 30,519 *l.* 4 *s.* 2 *d.* advanced and paid out of the funds of the United Kingdom, by His Majesty's order, for the support of this government and the administration of justice in this province, and of the sum of 83,445 *l.* 8 *s.* 11 *d.* still due and owing to the judges and other officers of His Majesty's government in this province, employed in the administration of justice therein, and to other servants of the Crown and individuals as therein mentioned, for which sums no appropriation or provision has hitherto been made."

That as your honourable House has already concurred in Acts for the appropriation of nearly 12,000 *l.* for the encouragement of educationin this province; that as no act providing for the sums of money mentioned in the preceding resolution has hitherto been sent up by the House of Assembly for the concurrence of this honourable House; and as your committee conceive that the state of the provincial revenue, due regard being had to the payment of the sums above mentioned which remain unprovided for, will not warrant the increased appropriation required by this bill, your committee urge upon your honourable House the propriety of proceeding no further with the bill, intituled "An Act to repeal certain Acts therein mentioned, and to provide for the further encouragement of elementary education in this province."

In pursuance of the views hereinbefore expressed, your committee have adopted certain resolutions on the subject-matter referred to them, which they submit, with this their report, to your honourable House.

All nevertheless humbly submitted.

(signed) *P. M'Gill*, Chairman.

Committee-room, 15 March 1836.

RESOLUTIONS.

1. Resolved, That the profuse liberality with which grants of the public money have been made during the last seven years for elementary schools in this province, amounting at the present period to upwards of 150,000*l.*, has induced the inhabitants of this province to rely too much upon public aid, and to relax in their own exertions for the support of schools for the education of their children.

2. Resolved, That the appropriations which have during that period been annually made by the legislature for that object have been sufficient to lay a foundation for the establishment of a system of elementary education, to which it now becomes the duty of the legislature to require the inhabitants of the province to contribute more largely by their own voluntary exertions, and with their own means.

3. Resolved, That it is inexpedient that the public revenue should any longer be charged, as it has been during the last seven years, with nearly the whole burthen of maintaining and supporting popular education, and that grants for this purpose should either be confined in future to places where, from the poverty of the inhabitants, no effectual exertions can be made by them for this object, or be regulated in all other cases by the extent of the contributions of the inhabitants of the country.

4. Resolved, That the system of management heretofore established by the Acts for encouraging elementary schools has been inefficient for the purpose intended, has led to waste and misapplication of the public money, and has a tendency to generate other abuses.

5. Resolved, That it is expedient in any future measures which may be adopted by the legislature for the encouragement of elementary schools, that a permanent and efficient

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system of regulation should be adopted, either by the organization of a central board or by boards in the several districts, or by some other mode of general, uniform and steady superintendence, by which the course of instruction may be more effectually ascertained and directed, and the expenditure of the public money be more usefully applied and more effectually checked than by the plan hitherto pursued.

6. Resolved, That in addition to these considerations, the present state of the public finances, and of the demands upon them, renders it more especially necessary to prevent the large expenditure which must ensue if the bill now before the Legislative Council, intituled "An Act to repeal certain Acts therein mentioned, and to provide for the further encouragement of elementary education in this province," should become a law, and that it is therefore not expedient that the Legislative Council should now proceed further upon the said bill.

Legislative Council, Tuesday, 15 March 1836.

Ordered, That the said bill, as received from the Assembly, with the said report and resolutions agreed to by the House, be printed in both languages.

Attest,

(signed) *Wm. Smith,* Clerk, L. C