

**CIHM
Microfiche
Series
(Monographs)**

**ICMH
Collection de
microfiches
(monographies)**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

© 1994

Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

☒ Coloured covers/
Couverture de couleur

☐ Covers damaged/
Couverture endommagée

☐ Covers restored and/or laminated/
Couverture restaurée et/ou pelliculée

☐ Cover title missing/
Le titre de couverture manque

☐ Coloured maps/
Cartes géographiques en couleur

☐ Coloured ink (i.e. other than blue or black)/
Encre de couleur (i.e. autre que bleue ou noire)

☐ Coloured plates and/or illustrations/
Planches et/ou illustrations en couleur

☐ Bound with other material/
Relié avec d'autres documents

☐ Tight binding may cause shadows or distortion along interior margin/
La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure

☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/
Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.

☐ Additional comments:/
Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

☐ Coloured pages/
Pages de couleur

☐ Pages damaged/
Pages endommagées

☐ Pages restored and/or laminated/
Pages restaurées et/ou pelliculées

☒ Pages discoloured, stained or foxed/
Pages décolorées, tachetées ou piquées

☐ Pages detached/
Pages détachées

☒ Showthrough/
Transparence

☐ Quality of print varies/
Qualité inégale de l'impression

☐ Continuous pagination/
Pagination continue

☐ Includes index(es)/
Comprend un (des) index

Title on header taken from:/
Le titre de l'en-tête provient:

☐ Title page of issue/
Page de titre de la livraison

☐ Caption of issue/
Titre de départ de la livraison

☐ Masthead/
Générique (périodiques) de la livraison

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	14X	18X	22X	26X	30X
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12X	16X	20X	24X	28X	32X

The copy filmed here has been reproduced thanks to the generosity of:

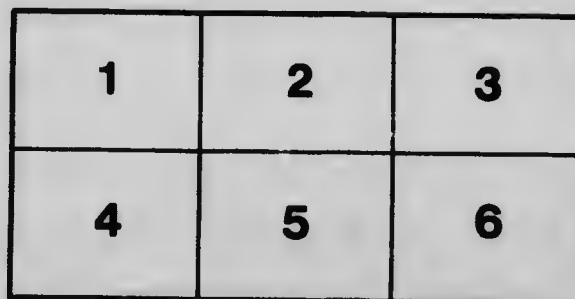
National Library of Canada

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol \rightarrow (meaning "CONTINUED"), or the symbol ∇ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

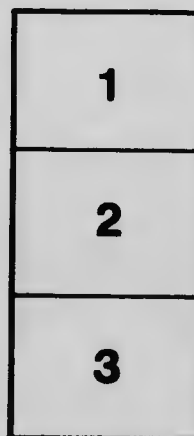
Bibliothèque nationale du Canada

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

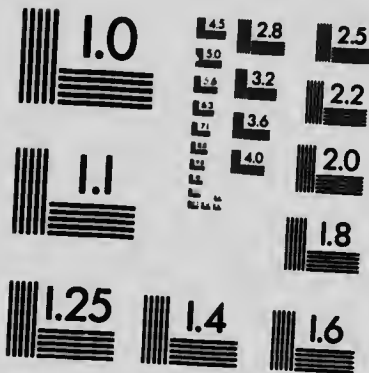
Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole \rightarrow signifie "A SUIVRE", le symbole ∇ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.



MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



APPLIED IMAGE Inc

1653 East Main Street
Rochester, New York 14609 USA
(716) 482 - 0300 - Phone
(716) 288 - 5989 - Fax

**SOURCES AND DEVELOP-
MENT OF THE LAW OF
THE PROVINCE OF QUEBEC**

BY W. J. WHITE, K.C.

152

THE SOURCES AND DEVELOPMENT OF
THE LAW OF THE PROVINCE OF QUEBEC

—BY—

W. J. WHITE, K.C.



1903

THE GAZETTE PRINTING COMPANY
MONTREAL.

KEQ 735

W55

1903

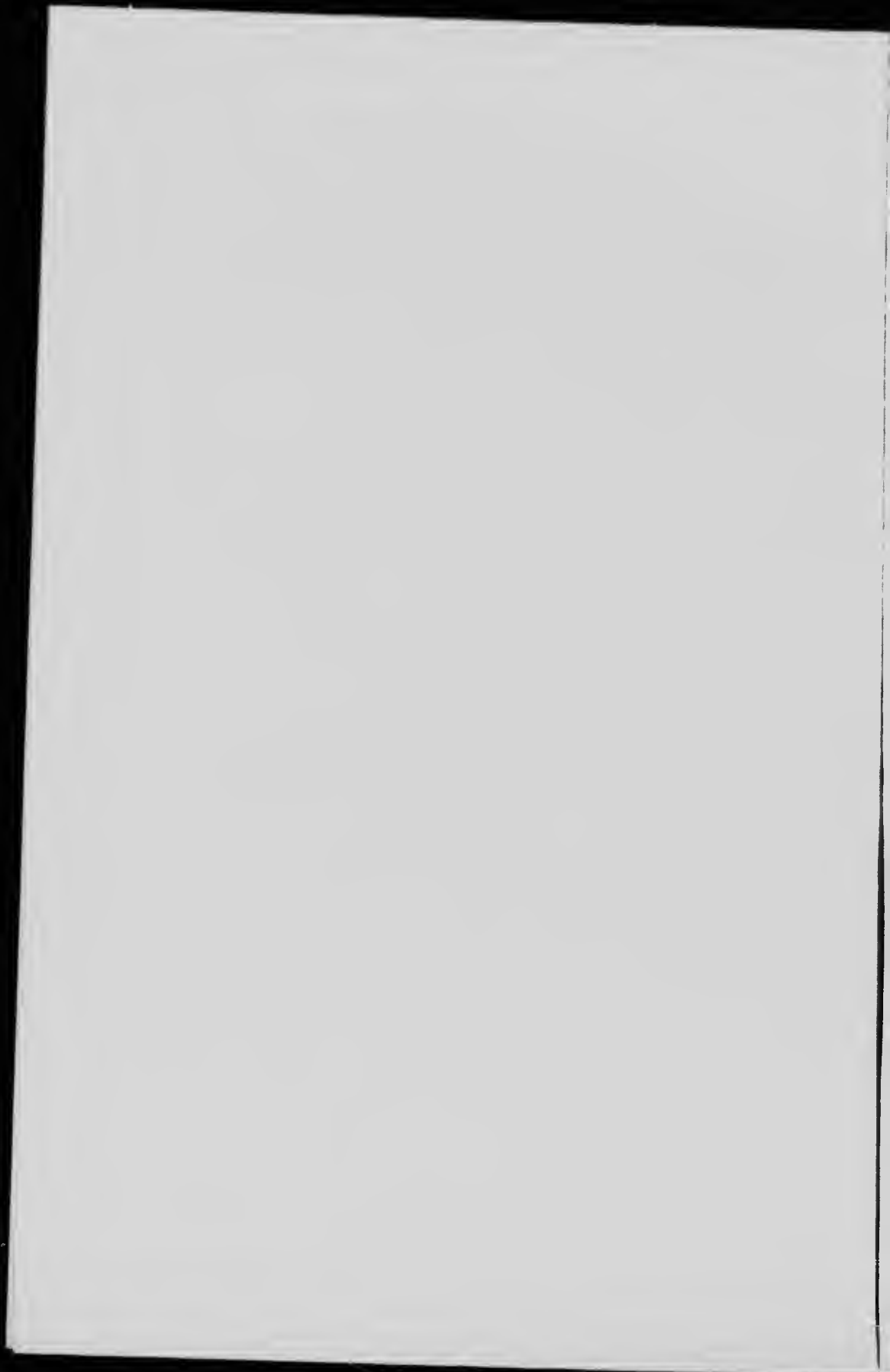
PREFACE.

The following notes were prepared for the meeting of the Illinois State Bar Association, which took place in Chicago last July

The lack in the past of exact information as to how and why the French language and the French laws were given an official status in the Province of Quebec, led to many requests for a copy of the paper, and in preparing the matter for pamphlet form, some slight alterations have been made. As the text of the old documents is not usually accessible, it has been thought advisable to print as an appendix the article of the Treaty of Paris which relates to Canada, as well as the terms of the capitulations of Quebec and Montreal. At the same time, Mr. John Reade, F.R.S.C., has been so kind as to contribute some notes on the recognition of the French language by the Imperial Parliament and to trace the legislation which established that language in Canada as an official tongue.

Montreal, 1st June, 1903.

W. J. W.



NOTES ON THE SOURCES AND DEVELOPMENT OF THE LAW OF THE PROVINCE OF QUEBEC.

LAST fall the Bar of the District of Montreal had the honor to entertain your representative, the Hon. Mr. Justice Jesse Holdom, on the occasion of our annual dinner. In visiting the court house, Judge Holdom noticed that proceedings were conducted in the French as well as the English language, that counsel in addressing the court used both of these languages, and that in some cases, where both the parties spoke French, the trial proceeded in that language alone. When I had accepted the courteous invitation of your association to be present at this annual meeting, the judge was good enough to say that a few notes by way of explanation of the use of the French law and the French language in the British Province of Quebec might be of interest.

To those of you who have studied the history of this continent, or even of this State of Illinois, what I shall have to say may lack in novelty as it will be already more or less familiar. To those of us who have sought to learn something of the history of our own Province of Quebec, the early history of this State was naturally included in the research, because, strange as it may seem, the limits of the Province of Quebec at one time extended as far westward as the Ohio and comprised within its bounds what is to-day your prosperous and flourishing State of Illinois. You have preserved such names as Joliet, Marquette and Lasalle, pioneers in the field of exploration

and missionary enterprise. The first white men to tread the shores of your great lakes were either natives of or residents in the Province of Quebec, and made their way up the St. Lawrence and the Ottawa either to promote their commercial interests by the fur trade or to spread the gospel among the Indian tribes who then roamed the forests.

Up to the year 1763 all the territory to the north of the then British colonies owed allegiance to the King of France, and in the Province of Quebec the French law exclusively was administered. This, as you will remember, was before the systematizing spirit of Napoleon had created the code which bears his name and which remains one of the finest monuments to his brilliant genius. Even at that time there had been various codes, all deriving their inspiration from the great Code of Justinian and bearing the name of Coutumes or Customs, the chief of which was known as the Coutume de Paris, and furnished the statutory law for the northern and central part of France. This Coutume de Paris was the text-book of the Canadian lawyers, many of whom had been trained in France, as it was then the custom to send out the law officers and other officials administering the government of the province, and some of these were accompanied by their secretaries, also lawyers, or other students of the law, who had come to settle in the colony.

The government of Quebec under the French king was in the hands of a lieutenant-governor, associated with whom were an intendant and the bishop, and these formed what was called the sovereign council, from which you will see that at that time there was no cleavage between church and state. The sovereign council promulgated edicts and ordinances, either in-

troducing and enregistering French laws which were applicable to the province or legislating upon matters of local administration and interest. This period in Canadian history is extremely picturesque and would easily furnish material for a paper in itself.

It is not necessary to deal particularly with the French law which was in force in 1763, as such of it as remained will be referred to later on. As you will remember, England and France were at war, a British fleet had sailed up the St. Lawrence and was laying siege to the citadel of Quebec. General Amherst was marching upon Montreal. On the 8th of September, 1760, the Marquis of Vaudreuil, the governor and lieutenant-general for the King of France in Canada, submitted articles of capitulation at Montreal, which, after some modification, were agreed to by Major-General Amherst, commander-in-chief of His Britannic Majesty's troops and forces in North America. On the 18th of September in the previous year Quebec had fallen, and Mr. de Ramsay, the king's lieutenant, commanding the high and low towns of Quebec, chief of the military order of St. Louis, submitted terms of capitulation, which, being also modified, were finally granted by their excellencies Admiral Saunders and General Townshend, commanding the troops of His Britannic Majesty. The final treaty, known as the Treaty of Paris, was concluded on the 10th of February, 1763.*

The article of the treaty of peace with which we are concerned in the present enquiry is Article 4th, which provides: "His most Christian Majesty cedes and guarantees to His Britannic Majesty in full right

* For the articles of Capitulation of Quebec and Montreal see Appendix.

Canada, with all its dependencies, as well as the Island of Cape Breton and all the other Islands and coasts in the Gulf and River of St. Lawrence, and in general everything that depends on the said countries, lands, islands and coasts, with the sovereignty, property and possession, and all rights acquired by treaty or otherwise, which the most Christian King and the Crown of France have had till now over the said countries, islands, lands, places, coasts and their inhabitants, so that the most Christian King cedes and makes over the whole to the said King and to the Crown of Great Britain, and that in the most ample manner and form, without restriction and without any liberty to depart from the said guarantee under any pretense, or to disturb Great Britain in the possession above mentioned.

"His Britannic Majesty on his side agrees to grant the liberty of the Catholic religion to the inhabitants of Canada. He will consequently give the most effectual orders that his new Roman Catholic subjects may profess the worship of their religion according to the rites of the Romish Church, as far as the laws of Great Britain permit.

"His Britannic Majesty further agrees that the French inhabitants, or those who had been subjects of the most Christian King in Canada, may retire with all safety and freedom wherever they shall think proper, and may sell their estates, provided it be to subjects of His Britannic Majesty, and bring away their effects as well as their persons without being restrained in their emigration under any pretense whatever, except that of debts or of criminal prosecutions. The term limited for this emigration shall be fixed for the space of eighteen months, to be computed from the day of

the exchange of the ratification of the present treaty."

There is nothing beyond this in the treaty, and, as you will have observed, there is nothing whatever in regard to either the French language or the French law. I mention this particularly because of a very general misapprehension which exists in Canada itself that the French law in the Province of Quebec, and the use of the French language are founded upon treaty rights.

By the proclamation issued on the 7th of October, 1763, and intended to give effect to the provisions of the treaty, the English law was declared to be in force in Canada. The clause in the proclamation reads as follows:—

"And whereas it will greatly contribute to the speedy settling our new Governments, 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; we have thought fit to publish and declare, by this our Proclamation, that we have, in the Letters Patent under our Great Seal of *Great Britain*, by which the said Governments are constituted, given express power and direction to our Governors of our said colonies respectively, that so soon as the state and circumstance of the said colonies will admit thereof, they shall with the advice and consent of the Members of the Council, summon and call general assemblies within the said governments respectively in such manner and form as is used and directed in those colonies and provinces in *America* which are under our immediate government; 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 of 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*; for which purpose, we have given power under our Great Seal to the Governors of our said colonies respectively, to erect and constitute, with the advice of our said Councils respectively, courts of Judicature and public justice within our said colonies, for the hearing and determining all causes, as well criminal as civil, according to Law and Equity, and, as near as may be, agreeable to the Laws of *England*, with liberty to all persons, who may think themselves aggrieved by the sentence of such courts, in all civil cases, to appeal, under the usual limitations and restrictions, to us, in our Privy Council."

At this time the population of Canada was, approximately, 80,000; that is, exclusive of the Indian tribes. This entire population was French and Roman Catholic, with the exception of not more than 400 Protestants. The men of law for the most part were notaries, not as you understand the term in this State, but the notary of old France, the confidential adviser of families, the conveyancer, whose minutes, consisting of the original deeds between the parties bearing the signature of the notary, remain in his possession, and copies of which under the same signature and his seal were equivalent to authentic writings. You will

readily understand that under these circumstances the sudden change from the civil law of France to the common law of England was far from being an easy matter. It was but natural that the attempt to introduce the English law should lead to no little confusion. Some of the correspondence which is preserved in the Canadian archives makes interesting reading even at this date. For instance, on the 20th June, 1767, Lord Shelburne wrote to Governor Carleton as follows: "As the right administration of government in Quebec is a matter of the greatest importance to that province, the improvement of its civil constitution is under the most serious and deliberate consideration. . . . Every light which can be procured on this subject will be material, as well as every information which can tend to elucidate how far it is practicable and expedient to blend the English with the French laws, in order to form such a system as shall at once be equitable and convenient, both for His Majesty's old and new subjects, in order to the whole being confirmed and finally established by authority of Parliament." The old subjects referred to were, of course, the English people, who had come out after the cession, while the new subjects are the French Canadians. Much study was given to the question, and a number of reports by men of prominence and learning were submitted and duly considered by the British government.

Apart from that, merchants and others sent memorials and after much deliberation and a very interesting debate, an act was passed in 1774, in the last days of the session of the Imperial Parliament, known as the Quebec Act, 14 George III, Chap. 83. One feature which is particularly noticeable throughout all the

discussion is that both the old and new subjects agreed in their desire to preserve the English criminal law rather than the French system. Section 11 of the Quebec Act continues this system of criminal law in force, and states in the preamble to the section that "Whereas the certainty and lenity of the Criminal Law of England, and the benefits and advantages resulting from the use of it, have ben sensibly felt by the inhabitants from an experience of more than nine years during which it has been uniformly administered." Since that date, it has not been considered desirable to deviate from the English system in criminal matters, and consequently this is the law which is administered to-day in the Province of Quebec. Of course, at the present time, the Parliament of Canada has power to legislate in criminal matters, but it has been the almost invariable rule to endeavor to keep pace with the legislation of the Imperial Parliament. It is unnecessary for me to enlarge upon this branch of the subject, as I understand that your own legislators have also continued the system of criminal law which had been introduced before the Declaration of Independence.

It is in this act of 1774 that the boundaries of the Province of Quebec are defined and include, as was previously mentioned, the State to which you now belong. The full description comprises: "All the territories, islands and countries in North America belonging to the Crown of Great Britain, bounded on the South by a line from the Bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the St. Lawrence from those which fall into the sea, to a point in forty-five degrees of

northern latitude on the eastern bank of the River Connecticut, keeping the same latitude directly West through Lake Champlain until in the same latitude it meets the River St. Lawrence. From thence up the eastern bank of the said river to the Lake Ontario; thence through the Lake Ontario and the river commonly called Niagara, and thence along all the eastern and southeastern bank of Lake Erie, following the said bank until the same shall be intersected by the northern boundary granted by the charter of the Province of Pennsylvania, in case the same shall be so intersected, and from thence along the said northern and western boundaries of the said province until the said western boundary strike the Ohio, but in case the said bank of the said lake shall not be found to be so intersected, then following the said bank until it shall arrive at the point of the said bank which shall be nearest to the northwestern angle of the said Province of Pennsylvania, and thence by a right line to the said northwestern angle of the said province, and thence along the western boundary of the said province until it strike the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay, and also all such territories, islands and countries which have, since the 10th February, 1763, been made part of the government of Newfoundland, be and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said royal proclamation of the 7th October, 1763."

By the 5th section of the act, the religion of the

Church of Rome was authorized in the following terms:—

"And for the more perfect security and ease of the minds of the inhabitants of the said province, it is hereby declared that His Majesty's subjects professing the religion of the Church of Rome of and in the said Province of Quebec, may have, hold and enjoy the free exercise of the religion of the Church of Rome subject to the king's supremacy declared and established by an act made in the first year of the reign of Queen Elizabeth over all the dominions and countries which then did or thereafter should belong to the Imperial Crown of this realm, and that the clergy of the said church may hold, receive and enjoy their accustomed dues and rights with respect to such persons only as shall profess the same religion."

In the following section provision was made for the encouragement of the Protestant religion and the maintenance and support of the Protestant clergy within the said province. (A tract of land known as the Clergy Reserves was subsequently set aside for this purpose. Const. Act, Sec. 36, 31 Geo. iii, 1790.)

Section viii is one of the most important, and is as follows:—"And be it further enacted by the authority aforesaid, 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, together with all customs and usages relative thereto, and all other civil rights in as large, ample and beneficial manner as if the said proclamation, commission, ordinances and other acts and instruments, had not been made, and as may consist with their allegiance to His Majesty and subjection to the Crown and Parliament of Great

Britain; and that in all matters of controversy, relative to property and civil rights, recourse shall be had to the laws of Canada as the rule for the decision of the same; and all causes that shall hereafter be instituted in any of the Courts of Justice to be appointed within and for the said province by His Majesty, his heirs and successors, shall with respect to such property and rights be determined agreeably to the said laws and customs of Canada, until they shall be varied or altered by any ordinances that shall, from time to time, be passed in the said province by the Governor, Lieutenant-Governor or Commander-in-Chief for the time being, by and with the advice and consent of the Legislative Council of the same, to be appointed in manner hereinafter mentioned. 14 Geo. iii, cap. 83, sec. viii (1774).*

By the 10th section wills were authorized to be made and executed either according to the laws of Canada or according to the forms prescribed by the laws of England.

Then follows the 11th section, already quoted, which introduces the criminal law of England.

In regard to the civil law, provision was made for the appointment of a council in section 12, as follows:

"And whereas it may be necessary to ordain many regulations for the future welfare and good government of the Province of Quebec, the occasions of which can not now be foreseen, nor, without much delay and inconvenience be provided for, without intrusting that authority, for a certain time, and under proper restrictions, to persons resident there; and whereas it is at present inexpedient to call an Assembly, be it there-

* This section is not quoted in the paper as originally prepared.

fore enacted by the authority aforesaid,—That it shall and may be lawful for His Majesty, his heirs and successors, by warrant under his or their Signet or Sign Manual, and with the advice of the Privy Council, to constitute and appoint a council for the affairs of the Province of Quebec, to consist of such persons resident there, not exceeding twenty-three, nor less than seventeen, as His Majesty, his heirs and successors shall be pleased to appoint, and, upon the death, removal or absence of any of the members of the said council, in like manner to constitute and appoint such and so many other person or persons as shall be necessary to supply the vacancy or vacancies; which council, so appointed and nominated, or the major part thereof, shall have power and authority 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 subsequent sections provide that ordinances passed by the council must be submitted for the royal approbation and may be disallowed. There are provisions also as to who shall constitute a quorum of the council.

It is thus, then, that the legislative power was created in Quebec and the result of this grant of what was in effect local self-government was that commencing in 1777, various ordinances were passed, which had the effect of proclaiming, introducing or continuing the French law in regard to civil matters.

Since then the basis of our civil law has always been French, but this does not mean that the Legislature has been wholly influenced by legislation in France when amendments were being made.

It has also been a matter of some dispute as to just how the French language came to be used as the official language of the province, and one of the languages of the courts. As I have pointed out, this is not stipulated for in the treaty, nor is it specially provided for in the Quebec Act, but it appears that on the 15. of November, 1765, the Lords of the Council, that is, the Imperial Privy Council, had sent instructions for the publication of ordinances in French, for the admission to the law courts of French-Canadian jurors, similarly extending permission for advocates, attorneys, and proctors to plead in French.*

An ingenious argument appeals to the authority of international law for the proposition that the French-Canadians retained everything of which they were not deprived by the treaty; that the treaty did not abolish the use of the French language and consequently it was retained, as a sort of vested right. The terms of this treaty are sufficiently clear and indicate that Canada became British. The official language of Great Britain became the official language of this country. At the same time the use of the French language was not prohibited any more than the use of any other foreign tongue, but only upon similar conditions. The claim is for the official use of the French language and this appears to have no foundation in the treaty.

During the first third of the century after the conquest, in practice, the placarts, ordinances and other documents had to be translated into French and interpreted in French and the proceedings in the courts were necessarily largely in French. How far the use of their language might be understood to be included in the civil rights assured to the French-Canadians by the Quebec Act is an interesting legal question.

* Kingsford's History of Canada, Vol. 5, page 198.

In the Constitutional Act there is no reference to the subject—the language question being left for settlement to the course of events. The absence of definite provision soon gave rise to controversy in the Assembly. The Legislature of Lower Canada (the newly constituted province) met on the 17th December, 1792. The Hon. Wm. Smith, chief justice, was appointed Speaker of the Council. In the selection of a Speaker for the Assembly the advisability of the person chosen being able to understand both languages was reasonably urged. One of the members who spoke on that occasion was Mr. P. L. Panet. While he insisted on a knowledge of both tongues as essential to a right discharge of the Speaker's duties, Mr. P. L. Panet insisted with equal emphasis that the official language—the language of the state, the language to be used in addressing the Governor, as the King's representative, was English. He was, himself, a French-Canadian and French was his mother-speech, but he held that, in course of time, the French-Canadians must adopt the English language; but, till that "happy revolution" was accomplished, he thought it becoming that the Speaker on whom they fixed their choice should be able to express himself in English as well as in French. The choice fell upon the Hon. J. A. Panet, "an old and eminent advocate of the Québec Bar," who had been returned for the "upper town of Québec." It was confirmed by the Lieutenant-Governor.*

Thenceforward the business of the Assembly was carried on, the motions put, and the journals kept, in both languages.

On the 10th of February, 1838, the working of the

* See Christie's Hist. L. C., I. 127, etc.

Constitutional Act was suspended, and on the 23rd of July, 1840, the Union Act became law. By the 41st section of that Act it was distinctly enacted that, "after the said reunion of the said two provinces, all writs, proclamations . . . and all journals, entries and written or printed proceedings of what nature soever of the said Legislative Council and Legislative Assembly and each of them respectively . . . shall be in the English language only." This enactment did not, however, prevent "translated copies" being made, so long as such copies were not kept among the records or deemed to have the force of an original record.

By an act passed on the 14th of August, 1848, all that related to the use of the English language in the Union Act was repealed, so that the Legislature of Canada might make regulations on the subject as might be deemed advisable.

In reality, the Legislature had, in the first session of the first Union Parliament, made rules for the regulation of its own procedure which showed of how little avail the 41st section had been in restricting the use of French. A crisis was reached, however, in the session of 1844-45 when the Speaker refused a motion written in French as a violation of that section, and, on appeal to the House, his decision was sustained. The consequence was the agitation which ended in the amending act of 1848.

The framers of the British North America (Confederation) Act were determined that there should be no ambiguity regarding the use of the French language in the Federal Parliament, the Quebec Legislature and the Courts of the Dominion. According to section

133, "Either the English or the French language may be used by any person in the debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec, and both those languages shall be used in the respective records and journals of those houses; and either of those languages may be used by any person or in any pleading or process in or issuing from any court of Canada established under this Act, and in or from all or any of the courts of Quebec."*

At the present time there are two official languages standing on a footing of absolute parity and equality in the Province of Quebec, the English and the French languages. It is the custom to publish all official documents in both languages, while writs issuing from the courts and pleadings may be in either one language or the other. It is quite usual and customary in cases in which the parties are of different origin that the proceedings should be conducted in both languages, that is to say, some of the witnesses will be examined in English and some in French. One advocate will use the English language in addressing the court, while the other speaks the language of France. The judge, of course, speaks both languages. There is no interpreter necessary, nor are the proceedings interrupted by translations from one language to the other. Naturally there are two official stenographers, although some of these officials are able to take their notes in both languages.

It would perhaps surprise you to glance over the official law reports and to see how judgments are pub-

* References : Houston's Documents Illustrative of the Canadian Constitution, pp. 162, 175-6, 213 and notes ; Dent's The Last Forty Years, I. 43-46, II. 11-12, 135 ; Lareau's Histoire du Droit Canadien, II. 248, etc. ; Todd, Bourinot, Mignault and others.

lished in the language in which they have been rendered, some in French, others in English; how extracts from the testimony appear in the language of the witness; how the citations from the commentators on the Code Napoleon, which receive most respectful consideration from our judges, are reproduced in the original language, while the opinions of the English law writers and judges and your own jurisprudence appear in those words which clothe them in your courts. Even in the daily press the same system is followed in reporting judgments. The books kept by the clerks of the courts contain entries in the two tongues. The *Quebec Official Gazette* and the *Canada Gazette*, our Federal official publication, are printed in both languages; all bills introduced into the house of commons or the legislature of Quebec must be printed in both languages before they can be considered in committee; the statutes are issued in two editions, one English the other French, and any member may address the senate, the house of commons, the legislative council or the legislative assembly in either language.

It is possibly a digression, but I may add that the French spoken by the inhabitants or *habitants* in the Province of Quebec is neither that of the Boulevards of Paris nor of the Académie Française, but the language of their forefathers, the hardy, adventurous navigators of Normandy and Brittany, or the chivalrous courtiers of the Versailles of Louis XIV and men of the camp who loved and fought for the "few acres of snow" the great Prime Minister so inadequately appreciated. Blended with this we find a mass of words and phrases adopted from the English, technical terms learned from English foremen, or imported

from the great French-Canadian centres of the Eastern States. Naturally, this is the language of the masses only, for the taste for French culture has not disappeared, and there is an ever-widening circle, especially in the cities in which the style of Paris is cultivated, and the delights of her literature, her music and her arts are understood and appreciated. The people who speak French in Canada do not call themselves otherwise than Canadians—they are the children of the soil, and we who speak English are so called and not even English-Canadians. They have their separate schools, their churches, their newspapers, and they are interested in and out of this mundane existence by their own physicians, educated in their own University, and not infrequently also graduates of the University of France. The race has furnished to the Bar many brilliant advocates, the gift of fluency being almost universal, and eloquence of a highly poetical and emotional character by no means rare. A few have been such thorough masters of English, both in vocabulary and in style, and so deeply read in our literature as to achieve marked success as orators even in "the language of Shakespeare."

However, I wander from the text, and am in danger of trenching upon ground that would lead me into controversial by-ways.

I need not trouble you with the various constitutional acts, by which the boundaries of the Province of Quebec were gradually reduced to their present limits, and under whose provisions various modifications were made in the law, none of which, however, departed from the principle that the civil law should be French and the criminal law English. We pass on to the time when the law was codified. The first

step toward the codification of our laws was the introduction by the Hon. George Etienne Cartier of a measure for that purpose which became law on the 10th June, 1857. This statute, however, for upward of eighteen months was not acted upon.* In 1859 commissioners were appointed. The commissioners in all presented eight reports on the civil code, and completed their work on the 25th November, 1864. A bill was introduced on the 31st January of the following year, and on the 8th March, 1865, the bill became law. Under the provisions of the act, a proclamation was issued by the governor fixing the 1st August, 1866, as the date on which the civil code should come into force. Mr. McCord, one of the secretaries to the commissioners, thus concludes his preface to the 1st edition: "The English speaking residents of lower Canada may now enjoy the satisfaction of at last possessing in their own language the laws by which they are governed, and the Province of Quebec will bring with her into confederation a system of laws of which she may be justly proud, a system mainly founded on the steadfast, time-honored and equitable principles of the civil law, and which not only merits admiration and respect, but presents a worthy model for legislation elsewhere.

The same commissioners also prepared a code of civil procedure, which came into force about the same time.

I fear that I could not without wearying you attempt to discuss in detail the various titles included in our code, but it may be pointed out generally that the law relating to persons, such as the enjoyment of civil

* *Vide* McCord's preface.

rights, acts of civil status, domicile, absentees, marriage, parental authority, majority and curatorships, etc., are essentially based upon the civil laws of France. In the same class I should place the laws relating to property and dealing with ownership, usufruct, servitudes, successions, gifts, *inter vivos* and by will, obligations and marriage covenants. The commercial law, on the other hand, is derived from the English law, and includes such matters as bills of exchange, notes, cheques, merchant shipping, affreightment, insurance, common carriers, and bottomry and respondentia. The important subject of commercial corporations or company law is also based upon the English legislation. There is still a class of subjects which, while founded on the French law, has felt the influence of the English commercial law, such, for instance, as matters of partnership, mandate, loans, suretyship and commercial sales, etc. These modifications have been due chiefly to the influence of jurisprudence, which, as usual, has become crystallized from time to time in legislation.

One relic of the old French law which is gradually disappearing is the seigniorial system, the old feudal system under which large tracts of land had been granted from time to time for military and other services. The Island of Montreal, for instance, on a part of which the city has been built, was granted to the Gentlemen of the Seminary of St. Sulpice, and was known as the Seignior of Montreal. Those of you who have studied the feudal system will be familiar with the privileges and rights of the Seignior or Feudal Lord, and the obligations of his *censitaires* or tenants. The property within the Seignior was originally held under a leasehold from the Seignior, and transfers were made subject to the payment of the seigniorial dues.

In 1854 an act was passed abolishing the feudal rights and obligations and providing for the commutation of the rents. Under this act seigniorial property is being gradually converted into tenure by free and common soccage.

A remnant of the feudal idea still exists, however, in Quebec, and it is not at all likely to disappear for many years to come, that is the tithe or *dîme*. The right of the Roman Catholic clergy to collect tithes was introduced into the Province of Quebec in April, 1663, by an edict of the king of France relating to the Seminary of Quebec. They are collectible throughout the province and consist of a twenty-sixth part of certain crops which the parishioner is bound to reap, thresh, winnow and deliver at the presbytery of the *curé* at the cost and charge of the farmer. Tithes are not a charge on the property but are payable by the cultivator and are a movable and personal debt, from which, of course, Protestants are exempt. The grains on which tithes are due are wheat, buckwheat, corn, rye, barley and oats. It is also levied on peas. In various ancient judgments of 1641 and 1643, the motives or reasons for the tithe are thus stated:

1. No one can hold land exempt from tithes, the tithe being like a rent (*cens*) by privilege which is due to God in recognition of the universal domain which He has over all things. (It is difficult to give due value to the terms used, which all suggest the feudal idea, God being the Over-Lord of all, and every tiller of the soil His serf or *censitaire*). The *Curé* needs no other title to his tithes than that he is in the occupation of the church—*n'a besoin d'autre titre que son clocher*—literally his steeple. The ecclesiastical year is reckoned from the feast of St. Michel, or Michaelmass, and the

tithes are due and payable at Easter. The right to tithes can not be prescribed, but no action lies after one year from the date when they are due.

There are many other points I should like to touch upon, did time permit, but I wish to tell you something of our courts and of our bar, and must not unduly trespass on your patience.

The Bar of Lower Canada was incorporated on the 30th of May, 1849, by the Act 12 Vict., Chap. 46. It includes all lawyers in the Province of Quebec, who are usually styled advocates, but in their commissioin are also called barristers, attorneys, solicitors and proctors at law. The title, "King's Counsel," is an honorary one conferred under order-in-council by the Lieutenant-Governor and gives precedence in the courts with the right to wear the silk instead of the usual stuff gown with which all advocates are habited by rule of practice.

There is a general council, composed of the batonnier, or president, and three delegates from the section of Montreal, the batonnier and two delegates from the section of Quebec, the batonnier and one delegate from each of the sections of Three Rivers and St. Francis, and the batonnier of the sections of Arthabaska, Ottawa and Bedford. There is also a secretary-treasurer, appointed by the council. The attorney-general of the province is *ex-officio* a member of the general council.

Each of the sections named has also a local council, consisting of the batonnier, syndic, treasurer, secretary and other members, whose number varies in accordance with the importance of the section.

The by-laws in regard to discipline, which define what acts by members of the profession are considered

derogatory to the honor and dignity of the bar are passed by the general council. They are enforced by the councils of sections, the prosecuting officer, before whom complaints are lodged, being the syndic. From the decision of the local council there is an appeal to the general council, but there is no appeal to the courts, the Bar being absolutely self-governing.

Applicants for admission are required to pass a preliminary examination, unless they hold the degree of B.A. from recognized universities. They are then articled to a practicing advocate, and if they are graduates in law of recognized universities, the term of clericalure is three years, otherwise it is four. After this they must again present themselves for examination, the board of examiners being representative of the various sections of the Bar.

Roughly speaking, there are nearly 800 advocates in the Province of Quebec, of whom over 500 belong to the section of Montreal. The publication of the official reports is in the hands of the general council, and each section has its own library supported by the contributions of members of the section.

In regard to the administration of justice, there is first the Superior Court for Lower Canada, now known as the Province of Quebec, whose judges have jurisdiction throughout the whole province. The province is divided into districts, each of which usually comprises several counties, and there is a chief place for the district at which the court sits. The Superior Court in the cities has original jurisdiction in all actions in which the amount involved exceeds \$100, and in the country districts when the amount exceeds \$200. Cases in which the amount involved is less than \$100 or \$200 respectively are instituted in the Circuit Court, or, in

some cases, before the Commissioners' Courts or Recorder's Court, which have special jurisdiction in certain localities. The judges are appointed by the Federal government. Judges are appointed for life, subject, of course, to good behavior. A judge is usually assigned to a certain district, but, as I have said, each judge has jurisdiction throughout the whole province and they frequently sit in other districts than those to which they have been appointed. In the country districts the Superior Court judge presides over the Circuit Court, but in the city of Montreal three special Circuit Court judges have been appointed, whose jurisdiction is limited to that court. By recent amendments to the Code of Procedure, pleadings have been simplified, and the delays shortened, so that in the city of Montreal a Superior Court action can usually be brought to trial in from three to six months from the time when the writ of summons issues. The Superior Court sits almost constantly, and in Montreal there are frequently six or seven divisions sitting simultaneously. One judge occupies a central room, all the cases are called before him, and then distributed to the other judges. In this way applications for delays and other preliminaries are settled before the same judge. Another judge sits in the Practice Court and disposes of hearings in law, motions and petitions. In civil cases it is most unusual to see a jury, questions of law and of fact being decided by the judge. The parties are entitled to a jury, however, in all actions founded on debts, promises or agreements of a commercial nature, either between traders or non-traders, and also in all actions for the recovery of damages resulting from personal wrongs, or from offenses or *quasi* offenses against moveable property only, however, in cases in

which the amount claimed by the action exceeds \$400. The party desiring a jury trial must declare his option, and the costs and disbursements are considerably increased. I think I may say that in the city of Montreal, where thousands of cases are tried every year, there will hardly be on an average a jury trial once a month. You will thus see that we have not as yet developed to any extent a class of litigation which has received no little criticism and some severe comment on your side of the line. I refer, of course, to the actions of damages against corporations. As the judge is obliged to assign reasons and write his judgment, there is generally a delay between the trial and the judgment.

Our courts have no power to grant divorce. Marriage is always accompanied by a religious ceremony of some kind, as the registers of civil status are in the custody of ministers of the various religious denominations, and while it has been recognized as a civil contract, marriage can only be dissolved by a special act of the Parliament of Canada. The provincial courts grant separation from bed and board, but, although to all intents divorced, the parties cannot remarry as a result of such a judgment.

From the decisions of the Superior Court trial judge there is an appeal to three judges of the same court sitting in what is termed the Court of Review. The procedure in this court is simple. The case is inscribed and argued, counsel being obliged to submit a written factum in addition to the oral argument. As only five copies are required, this factum is usually typewritten, not printed.

From the Court of Review, the party aggrieved has the right of appeal either to the Court of King's Bench (appeal side) or to the Supreme Court of Can-

ada. The Court of King's Bench is a provincial court composed of five judges appointed specially to this court, and also exercising criminal jurisdiction, as one of these judges presides in the Court of King's Bench (crown side) at each term of this court. In the Court of Appeals the parties are required to submit a printed factum containing not only the argument and authorities which the counsel intend to cite, but also a copy of the record, including the pleadings, evidence and exhibits.

From the Court of King's Bench there is a further appeal, either to the Supreme Court of Canada or to the Judicial Committee of the King's Privy Council in England. The Supreme Court of Canada is a federal court, the judges being taken from the various provinces, the only special stipulation being that the Province of Quebec shall have two judges. Five judges usually sit, the chief justice and four puisne judges. The court sits at Ottawa, and has a special building, with an excellent library adjoining the parliament buildings. There is another federal court called the Exchequer Court, presided over by one judge, and intended for the trial of actions to which the crown is a party, although the jurisdiction is not exclusive, for such actions may be brought in the Superior Courts. In the city of Quebec there is a Court of Vice Admiralty, for the trial of maritime cases.

The most interesting court is the court of final resort, the Judicial Committee of His Majesty's Privy Council. It implies the exercise of what has so often been poetically described as the right of every British subject to take his complaint to the foot of the throne, to be heard by the King himself. The Judicial Committee consists of the Lord Chancellor and certain other

of the Law Lords of the Privy Council, who are appointed to hear suitors and to advise His Majesty. The judgments of the Privy Council are always in this form, not directory but informing the parties that their lordships will humbly advise His Majesty to such an effect. Recourse is had to this tribunal only in matter of importance involving large amounts, as the expense of such appeals is considerable. It is usual to have solicitors in London, who act as agents for the attorneys of record, and there are also certain counsel who devote their attention almost exclusively to this court, and whose assistance is naturally of value. However, it has become the practice more and more in late years for Canadian counsel to go to England and argue their own cases usually with an English barrister as counsel. The rules of this court require that the counsels shall be gowned and wigged, and outside the bar which separates the members of the committee from the counsel and their solicitors the greatest decorum is observed. The members of the committee themselves remind one of a board of directors rather than a court of law. They are habited in the most informal fashion, dressing from considerations of comfort and ease rather than dignity, and they sit around a large table, very much as I have said, like a board of directors. The argument is frequently conversational, and counsel are subjected to constant question and criticism. Of the ability of the members of this committee, it is unnecessary to say more than that they are selected from the brightest and most brilliant leaders of the bar in Great Britain. In most instances they come to this committee by promotion from the bench, and their judgments are monuments of clear, sound and lucid reasoning, couched in language which makes them masterpieces of English

style. Within the last few years the Chief Justice of the Supreme Court of Canada, Sir Henry Strong, has been a member of this committee, and has sat in cases involving Canadian law. This has led to much discussion, and is generally considered of doubtful advantage, as the law lords have shown themselves not only thoroughly versed in questions of commercial law and other matters derived from the law of England in our system, but learned and deeply read civilians, with a surprising mastery of the intricacies of the civil law.

Indeed, it seems to me that the system of the civil law cannot fail to attract the interest and admiration of any legal mind. Coming to us as it does from the Roman law, which even in the days of Justinian had attained a high degree of scientific accuracy and development on the lines of logical reasoning and clear expression, and passing thence through the channels of French jurisprudence, where it was again elaborated and refined, we have a system based on well-defined principles, well reasoned, logical and consistent, and unless marred, as it occasionally must be by local legislation, harmonious in all its parts. Side by side with this system of civil law, we have the English criminal law, and the commercial law of that great nation of shopkeepers, who are the largest traders the world has ever known. I might speak to you of our banking laws, and our laws governing corporations, but I fear that I have already exceeded the limits of the time which your committee has graciously placed at my disposal.

In conclusion, allow me to thank you for this opportunity of addressing this association, and to suggest that, if the subject has at all been attractive to you, much instructive reading is to be found in the textbooks of the civil law.

APPENDIX.

THE CAPITULATION OF QUEBEC.

Articles of Capitulation demanded by Mr. de Ramsay, the King's Lieutenant, commanding the high and low Towns of Quebec, Chief of the military order of St. Lewis, to His Excellency the General of the troops of His Britannic Majesty.—*"The Capitulation demanded on the part of the enemy, and granted by their Excellencies Admiral Saunders and General Townshend, etc., etc., etc., is in manner and form hereafter expressed."*

1. Mr. de Ramsay demands the honours of war for his Garrison, and that it shall be sent back to the army in safety and by the shortest route, with arms, baggage, six pieces of brass cannon, two mortars or howitzers, and twelve rounds for each of them.—*"The Garrison of the town, composed of Land forces, marines and sailors, shall march out with their arms and baggage, drums beating, matches lighted, with two pieces of french cannon, and twelve rounds for each piece; and shall be embarked as conveniently as possible, to be sent to the first port in France."*

2. That the inhabitants shall be preserved in the possession of their houses, goods, effects, and privileges.—*"Granted, upon their laying down their arms."*

3. That the inhabitants shall not be accountable for having carried arms in the defence of the town, for as much as they were compelled to it, and that the inhabitants of the colonies, of both crowns, equally serve as militia.—*"Granted."*

4. That the effects of the absent officers and citizens shall not be touched.—“*Granted.*”

5. That the inhabitants shall not be removed, nor obliged to quit their houses, until their condition shall be settled by their Britannic, and most Christian Majesties.—“*Granted.*”

6. That the exercise of the Catholic, Apostolic and Roman religion shall be maintained; and that safe guards shall be granted to the houses of the clergy, and to the monasteries, particularly to His Lordship the Bishop of Quebec, who, animated with zeal for religion, and charity for the people of his diocese, desires to reside in it constantly, to exercise, freely and with that decency which his character and the sacred offices of the Roman religion require, his episcopal authority in the town of Quebec, whenever he shall think proper, until the possession of Canada shall be decided by a treaty between their most Christian and Britannic Majesties.—“*The free exercise of the roman religion is granted, likewise safe-guards to all religious persons, as well as to the Bishop, who shall be at liberty to come and exercise, freely and with decency, the functions of his office, whenever he shall think proper, until the possession of Canada shall have been decided between their Britannic and most Christian Majesties.*”

7. That the artillery and warlike stores shall be faithfully given up, and that an inventory of them shall be made out.—“*Granted.*”

8. That the sick and wounded, the commissaries, Chaplains, Physicians, Surgeons, Apothecaries, and other people employed in the service of the hospitals,

shall be treated conformably to the cartel of the 6th of February, 1759, settled between their most Christian and Britannic Majesties:—"Granted."

9. That before delivering up the gate and entrance of the town to the English troops, their General shall be pleased to send some soldiers to be posted as safeguards upon the churches, convents, and principal habitations.—"*Granted.*"

10. That the King's Lieutenant, commanding in Quebec, shall be permitted to send information to the marquis de Vaudreuil, Governor General, of the reduction of the place, as also that the General may send advice thereof to the french Ministry.—"*Granted.*"

11. That the present capitulation shall be executed according to its form and tenour, without being subject, to non-execution under pretence of reprisals, or for the non-execution of any preceding capitulations.—"*Granted.*"

Duplicates hereof taken and executed by, and between us, at the camp before Quebec, this 18th day of September, 1759.

CHARLES SAUNDERS.
GEORGE TOWNSHEND.
DE RAMSAY.

THE CAPITULATION OF MONTREAL.

Articles of Capitulation between their Excellencies Major General Amherst, Commander in Chief of His Britannic Majesty's troops and forces in North America, on the one part, and the Marquis de Vaudreuil, etc., Governor and Lieutenant-General for the King in Canada, on the other.

ARTICLE I.

Twenty-four hours after the signing of the present capitulation, the British General shall cause the troops of his Britannic Majesty to take possession of the Gates of the town of Montreal; and the British Garrison shall not enter the place till after the French troops have evacuated it.—“*The whole Garrison at Montreal must lay down their arms, and shall not serve during the present war. Immediately after the signing of the present capitulation, the King's troops shall take possession of the gates, and shall post the Guards necessary to preserve good order in the town.*”

ARTICLE II.

The troops and the militia, who are in Garrison in the town of Montreal, shall go out by the gate of Quebec, with all the honours of war, six pieces of cannon and one mortar, which shall be put on board the vessel where the Marquis de Vaudreuil shall embark, with ten rounds for each piece; and the same shall be granted to the Garrison of the Three Rivers, as to the honours of war.—“*Referred to the next article.*”

ARTICLE III.

The troops and militia, who are in Garrison in the fort of Jacques Cartier, and in the Island of St. Helen, and other forts, shall be treated in the same manner, and shall have the same honours; and these troops shall go to Montreal, or the Three Rivers or Quebec; to be there embarked for the first sea port in France, by

the shortest way. The troops, who are in our posts, situated on our frontiers on the side of Acadia at Detroit, Michilimaquinac, and other posts, shall enjoy the same honours, and be treated in the same manner.—
"All these troops are not to serve during the present war, and shall likewise lay down their arms, the rest is granted."

ARTICLE IV.

The Militia after evacuating the above towns, forts and posts, shall return to their habitations, without being molested on any pretence whatever, on account of their having carried arms.—*"Granted."*

ARTICLE V.

The troops, who keep the field, shall raise their camp, drums beating, with their arms, baggage and artillery, to join the garrison of Montreal, and shall be treated in every respect the same.—*"These troops, as well as the others, must lay down their arms."*

ARTICLE VI.

The Subjects of his Britannic Majesty, and of his most Christian Majesty, Soldiers, Militia or Seamen, who shall have deserted or left the service of their Sovereign, and carried arms in North-America, shall be, on both sides pardoned for their crime; they shall be respectively returned to their country; if not, each shall remain where he is without being sought after or molested.—*"Refused."*

ARTICLE VII.

The Magazines, the artillery, firelocks, sabres, ammunition of war, and, in general every thing that belongs to his most Christian Majesty, as well in the towns of Montreal and Three Rivers, as in the forts and post mentioned in the Third article shall be delivered up, according to exact Inventories, to the commissaries who shall be appointed to receive the same in the name of his Britannic Majesty. Duplicates of the said Inventories shall be given to the Marquis de Vaudreuil.—*"This is every thing that can be asked on this article."*

ARTICLE VIII.

The Officers, Soldiers, Militia, Seamen and even the Indians, detained on account of their wounds or sickness, as well as in the hospital, as in private houses, shall enjoy the privileges of the cartel, and be treated accordingly.—*"The sick and wounded shall be treated the same as our own people."*

ARTICLE IX.

The British General shall engage to send back, to their own homes, the Indians, the Mornagans, who make part of his armies, immediately after the signing of the present capitulation, and, in the mean time, the better to prevent all disorders on the part of those who may not be gone away, the said Generals shall give safe-guards to such persons as shall desire them, as well in the town as in the country.—*"The first part refused."*—*"There never have been any cruelties committed by the Indians of our army: and good order shall be preserved."*

ARTICLE X.

His Britannic Majesty's General shall be answerable for all disorders on the part of his troops, and shall oblige them to pay the Damages they may do, as well in the towns as in the country.—*Answered by the "preceding article."*

ARTICLE XI.

The British General shall not oblige the Marquis de Vaudreuil to leave the town of Montreal before. and no person shall be quartered in his house till he is gone. The Chevalier de Levis, Commander of the land forces and colony troops, the Engineers, Officers of the Artillery, and Commissary of war, shall also remain at Montreal till the said day, and shall keep their lodging. The same shall be observed with regard to M. Bigot, Intendant, the Commissaries of Marines and writers, whom the said M. Bigot shall have occasion for, and no person shall be lodged at the Intendant's house before he shall take his departure.—*"The Marquis de Vaudreuil, and all these gentlemen, shall be masters of their houses, and shall embark, when the King's ship shall be ready to sail for Europe; and all possible conveniences shall be granted them."*

ARTICLE XII.

The most convenient vessel that can be found shall be appointed to carry the Marquis de Vaudreuil, M. de Rigaud, the Governor of Montreal, and the suite of this General, by the straitest passage to the first sea port in France; and every necessary accommodation shall

be made for them. This vessel shall be properly victualled at the expense of his Britannic Majesty; and the Marquis de Vaudreuil shall take with him his papers, without their being examined, and his equipages, plate, baggage, and also those of the retinue.—*"Granted, except the archives which shall be necessary for the Government of the country."*

ARTICLE XIII.

If before, or after, the embarkation of the Marquis de Vaudreuil, news of Peace should arrive, and, that by treaty, Canada should remain to his most Christian Majesty, the Marquis de Vaudreuil shall return to Quebec or Montreal; everything shall return to its former state under the Dominion of his most Christian Majesty, and the present capitulation shall become null and of no effect.—*"Whatever the King may have done, on this subject, shall be obeyed."*

ARTICLE XIV.

Two ships shall be appointed to carry to France, le Chevalier de Levis, the principal officers, and the staff of the Land forces, the Engineers, Officers of Artillery, and their domestics. These vessels shall likewise be victualled, and the necessary accommodation provided in them. The said officers shall take with them their papers, without being examined, and also, their equipages and baggage. Such of the said officers as shall be married, shall have liberty to take with them their wives and children, who shall also be victualled.—*"Granted, except that the Marquis de Vaudreuil and all the officers, of whatever rank they may be, shall faithfully deliver to us all the charts and plans of the country."*

ARTICLE XV.

A vessel shall also be appointed for the passage of Mr. Bigot, the Intendant, with his suite; in which vessel the proper accommodation shall be made for him, and the persons he shall take with him; he shall likewise embark with him his papers, which shall not be examined; his equipages, plate, baggage and those of his suite; this vessel shall be victualled as before mentioned.—“*Granted, with the same reserve, as in the preceding article.*”

ARTICLE XVI.

The British General shall also order the necessary and most convenient vessels to carry to France M. de Longueuil, Governor of Trois Rivières, the staff of the colony, and the Commissary of the Marine; they shall “*Granted.*”

embark therein their families, servants, baggage and equipages, and they shall be properly victualled, during the passage, at the expense of his Britannic Majesty.—“*Granted.*”

ARTICLE XVII.

The officers and soldiers, as well as of the Land-forces, as of the colony, and also the Marine Officers, and Seamen, who are in the colony, shall be likewise embarked for France, and sufficient and convenient vessels shall be appointed for them. The Land and Sea officers, who shall be married, shall take with them their families, and all of them shall have liberty to embark their servants and baggage. As to the soldiers and sea-

men, those who are married shall take with them their wives and children, and all of them shall embark their haversacks and baggage; these vessels shall be properly and sufficiently victualled at the expense of his Britannic Majesty.—“*Granted.*”

ARTICLE XVIII.

The Officers, Soldiers and followers of the troops, who shall have their baggage in the fields, may send for it before they depart, without any hindrance or molestation.—“*Granted.*”

ARTICLE XIX.

An hospital ship shall be provided by the British General, for such of the wounded and sick officers, soldiers, and seamen as shall be in a condition to be carried to France, and shall likewise be victualled at the expense of his Britannic Majesty. It shall be the same with regard to the other wounded and sick officers, soldiers and sailors, as soon as they shall be recovered. They shall have liberty to carry with them their wives, children, servants and baggage; and the said soldiers and sailors shall not be solicited nor forced to enter into the service of his Britannic Majesty.—“*Granted.*”

ARTICLE XX.

A Commissary and one of the King's Writers, shall be left to take care of the hospitals, and whatever may relate to the service of his most Christian Majesty.—“*Granted.*”

ARTICLE XXI.

The British General shall also provide ships for carrying to France the officers of the supreme council of justice, police, admiralty, and all other officers, having commissions or brevets from his most Christian Majesty, for them, their families, servants and equipages, as well as for the other officers; and they shall likewise be victualled at the expense of his Britannic Majesty. They shall, however, be at liberty to stay in the colony, if they think proper to settle their affairs, or to withdraw to France whenever they think fit.—“*Granted, but if they have papers relating to the Government of the country, they are to be delivered up to us.*”

ARTICLE XXII.

If there are any Military officers, whose affairs should require their presence in the colony till next year, they shall have liberty to stay in it, after having obtained the permission of the Marquis de Vaudreuil for that purpose, and without being reputed prisoners of war.—“*All those, whose private affairs shall require their stay in the country, and who shall have the Marquis de Vaudreuil's leave for so doing, shall be allowed to remain till their affairs are settled.*”

ARTICLE XXIII.

The Commissary for the King's provisions shall be at liberty to stay in Canada till next year, in order to be enabled to answer the debts he has contracted in the colony, on account of what he has furnished; but, if he should prefer to go to France this year, he shall be

obliged to leave, till next year, a person to transact his business. This private person shall preserve, and have liberty to carry off, all his papers, without being inspected. His Clerks shall have leave to stay in the colony or go to France; and in this last case, a passage and subsistence, shall be allowed them on board the ships of his Britannic Majesty, for them, their families, and their baggage.—“*Granted.*”

ARTICLE XXIV.

The provisions and other kinds of stores, which shall be found in the Magazines of the commissary, as well as in the towns of Montreal, and of the Three Rivers, as in the country, shall be preserved to him, the said provisions belonging to him, and not to the King; and he shall be at liberty to sell them to the French and English.—“*Every thing that is actually in the magazines, destined for the use of the troops, is to be delivered to the British commissary, for the King's forces.*”

ARTICLE XXV.

A passage to France shall likewise be granted, on board of his Britannic Majesty's ships, as well as victuals to such officers of the India company as shall be willing to go thither, and they shall take with them their families, servants and baggage. The Chief agent of the said Company, in case he should choose to go to France, shall be allowed to leave such person as he shall think proper till next year, to settle the affairs of the said Company, and to recover such sums as are due to them. The said chief agent shall keep possession of all the papers belonging to the said company, and they shall not be liable to inspection.—“*Granted.*”

ARTICLE XXVI.

The said company shall be maintained in the property of the Ecarlatines, and Castors, which they may have in the town of Montreal; they shall not be touched under any pretence whatever, and the necessary Licences shall be given to the Chief Agent to send this year his Castors to France, on board his Britannic Majesty's ships, paying the freight on the same footing as the British would pay it.—*"Granted, with regard to what may belong to the company, or to private persons; but if his Most Christian Majesty has any share in it, that must become the property of the King."*

ARTICLE XXVII.

The free exercise of the Catholic, Apostolic, and Roman religion, shall subsist entire, in such manner that all the states and the people of the Towns and countries, places and distant posts, shall continue to assemble in the churches, and to frequent the sacraments as heretofore, without being molested in any manner, directly or indirectly. These people shall be obliged, by the English Government, to pay their Priests and tithes, and all the taxes they were used to pay under the Government of his most Christian Majesty.—*"Granted, as to the free exercise of their religion, the obligation of paying the tithes to the Priests will depend on the King's pleasure."*

ARTICLE XXVIII.

The Chapter, Priests, Curates and Missionaries shall continue, with an entire liberty, their exercise and

functions of cures, in the parishes of the towns and countries.—“*Granted.*”

ARTICLE XXIX.

The Grand Vicars, named by the Chapter to administer to the diocese during the vacancy of the Episcopal see, shall have liberty to dwell in the towns or country parishes, as they shall think proper. They shall at all times be free to visit the different parishes of the Diocese with the ordinary ceremonies, and exercise all the jurisdiction they exercised under the French Dominion. They shall enjoy the same rights in case of the death of the future Bishop, of which mention will be made in the following article.—“*Granted, except what regards the following article.*”

ARTICLE XXX.

If by the treaty of peace, Canada should remain in the power of his Britannic Majesty his most Christian Majesty will continue to name the Bishop of the colony, who shall always be of the Roman communion, and under whose authority the people shall exercise the Roman Religion.—“*Refused.*”

ARTICLE XXXI.

The Bishop shall, in case of need, establish new parishes and provide for the rebuilding of his Cathedral and his Episcopal palace; and, in the mean time, he shall have the liberty to dwell in the towns or parishes, as he shall judge proper. He shall be at liberty to visit his Diocese with the ordinary ceremon-

ies, and exercise all the jurisdiction which his predecessor exercised under the French Dominion, save that an oath of fidelity, or a promise to do nothing contrary to his Britannic Majesty's service, may be required of him.—*"This article is comprised under the foregoing —"*

ARTICLE XXXII.

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; safe-guards shall even be given them, if they desire them.—*"Granted."*

ARTICLE XXXIII.

The preceding article shall likewise be executed, with regard to the communities of Jesuits and Recollects 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."*

ARTICLE XXXIV.

All the communities, and all the priests, shall preserve their moveables, the property and revenues of the Seignories 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, honours, and exemptions.—*"Granted."*

ARTICLE XXXV.

If the Canons, Priests, Missionaries, the Priests of the seminary of the foreign Missions, and of St. Sulpice, as well as the Jesuits, and the Recollects, choose to go to France, a passage shall be granted them in his Britannic Majesty's ships and they shall have leave to sell, in whole, or in part, the estates and moveables which they possess in the colonies, either to the French or to the English, without the least hindrance or obstacle from the British Government. They may take with them, or send to France, the produce of what nature soever it be, of the said goods, sold, paying the freight as mentioned in the XXVIth article; and such of the said Priests who choose to go this year, shall be victualled during the passage, at the expense of his Britannic Majesty; and they shall take with them their baggage.—*"They shall be masters to dispose of their estates and to send the produce thereof, as well as their persons, and all that belongs to them to France."*

ARTICLE XXXVI.

If by the treaty of Peace, Canada remains to his Britannic Majesty, all the French, Canadians, Acadians, Merchants and other persons who choose to retire to France, shall have leave so to do from the British General, who shall procure them a passage; and nevertheless, if, from this time to that decision, and French, or Canadian Merchants or other persons shall desire to go to France, they shall likewise have leave from the British General. Both the one and the other shall take with them their families, servants and baggage.—*"Granted."*

ARTICLE XXXVII.

The Lords of Manors, the Military and Civil Officers, the Canadians as well in the Towns as in the country, the French settled, or trading, in the whole extent of the colony of Canada, and all other persons whatsoever, shall preserve the entire peaceable property and possession of the goods, noble and ignoble, moveable and immoveable, merchandizes, furs and other effects, even their shops; they shall not be touched, nor the least damage done to them, on any pretence whatever. They shall have liberty to keep, let or sell them, as well to the French as to the British; to take away the produce of them in Bills of exchange, furs, specie or other returns, whenever they shall judge proper to go to France, paying their freight, as in the XXVIth article. They shall also have the furs which are in the posts above, and which belong to them, and may be on the way to Montreal; and, for this purpose, they shall have leave to send, this year, or the next, canoes fitted out, to fetch such of the said furs as shall have remained in those posts.—*Granted as in the XXVIth article.*

ARTICLE XXXVIII.

All the people who have left Acadia, and who shall be found in Canada, including the frontiers of Canada on the side of Acadia, shall have the same treatment as the Canadians, and shall enjoy the same privileges.—*“The King is to dispose of his ancient Subjects: in the mean time, they shall enjoy the same privileges as the Canadians.”*

ARTICLE XXXIX.

None of the Canadians, Acadians or French, who are now in Canada, and on the frontiers of the colony, on the side of Acadia, Detroit, Michillimaquinac, and other places and posts of the countries above, the married and unmarried soldiers, remaining in Canada, shall be carried or transported into the British colonies, or to Great Britain, and they shall not be troubled for having carried arms.—“*Granted, except with regard to the Acadians.*”

ARTICLE XL.

The Savages or Indian allies of his most Christian Majesty, shall be maintained in the lands they inhabit; if they choose to remain there; they shall not be molested on any pretence whatsoever, for having carried arms, and served his most Christian Majesty; they shall have, as well as the French, liberty of religion, and shall keep their missionaries. The actual Vicars General, and the Bishop, when the Episcopal See shall be filled, shall have leave to send to them new Missionaries when they shall judge it necessary.—“*Granted, except the last article, which has been already refused.*”

ARTICLE XLI.

The French, Canadians, and Acadians of what state and condition soever, who shall remain in the colony, shall not be forced to take arms against his most Christian Majesty or his Allies, directly or indirectly, on any occasion whatsoever; the British Government shall

only require of them an exact neutrality.—“*They become Subjects of the King.*”

ARTICLE XLII.

The French and Canadians shall continue to be governed according to the custom of Paris, and the Laws and usages established for this country, and they shall not be subject to any other imposts than those which were established under the French Dominion.—
“*Answered by the preceding article, and particularly by the last.*”

ARTICLE XLIII.

The Papers of the Government shall remain without exception, in the power of the Marquis de Vaudreuil, and shall go to France with him. These papers shall not be examined on any pretence whatsoever.—
“*Granted, with the reserve already made.*”

ARTICLE XLIV.

The papers of the Intendancy, of the offices of Comptroller of the Marine, of the ancient and new treasurers, of the King's magazines, of the offices of the Revenues and forges of St. Maurice, shall remain in the power of M. Bigot, the Intendant; and they shall be embarked for France in the same vessel with him; these papers shall not be examined.—“*The same as in this article.*”

ARTICLE XLV.

The Registers, and other papers of the Supreme Council of Quebec, of the Prévoté, and Admiralty of

the said city, those of the Royal Jurisdictions of Trois Rivieres and of Montreal; those of the Seignorial Jurisdictions of the colony; the minutes of the Acts of the Notaries of the towns and of the countries; and in general, the acts, and other papers, that may serve to prove the estates and fortunes of the Citizens, shall remain in the colony, in the rolls of the jurisdictions on which these papers depend.—“*Granted.*”

ARTICLE XLVI.

The inhabitants and Merchants shall enjoy all the privileges of trade, under the same favours and conditions granted to the subjects of his Britannic Majesty, as well in the countries above, as the interior of the colony.—“*Granted.*”

ARTICLE XLVII.

The Negroes and panis of both sexes shall remain, in their quality of slaves, in the possession of the French and Canadians to whom they belong; they shall be at liberty to keep them in their service in the colony or to sell them; and they may also continue to bring them up in the Roman Religion.—“*Granted, except those who shall have been made Prisoners.*”

ARTICLE XLVIII.

The Marquis de Vaudreuil, the General and Staff Officers of the land-forces, the Governors and Staff Officers of the different places of the colony, the Military and Civil officers, and all other persons who shall leave the colony, or who are already absent, shall have

leave to name and appoint Attornies to act for them, and in their name in the administration of their effects, moveable and immoveable, until the peace; and, if, by the treaty between the two crowns, Canada does not return under the French dominions, these officers, or other persons, or attornies for them, shall have leave to sell their manors, houses, and other estates, their moveables and effects, etc., to carry away or send to France, the produce thereof, either in bills of exchange, specie, furs or other returns, as is mentioned in the XXXVIIth Article.—“*Granted.*”

ARTICLE XLIX.

The inhabitants, and other persons, who shall have suffered any damage in their goods, moveable or immoveable, which remained at Quebec, under the faith of the capitulation of that city, may make their representations to the British Government, who shall render them due justice against the person to whom it shall belong.—“*Granted.*”

ARTICLE L., AND LAST.

The present capitulation shall be inviolably executed in all its articles, and *bonâ fide* on both side. notwithstanding any infraction, and any other pretence, with regard to the preceding capitulations, and without making use of reprisals.—“*Granted.*”

POSTSCRIPT.

ARTICLE LI.

The British General shall engage, in case any Indians remain after the surrender of this town, to pre-

vent their coming into the towns, and that they do not, in any manner, insult the subjects of his most Christian Majesty.—“*Care shall be taken that the Indians do not insult any of the subjects of his most Christian Majesty.*”

ARTICLE LII.

The troops and other subjects of his most Christian Majesty, who are to go to France, shall be embarked, at latest, fifteen days after the signing of the present capitulation.—“*Answered by the XIth Article.*”

ARTICLE LIII.

The troops and other subjects of his most Christian Majesty, who are to go to France, shall remain lodged and incamped in the town of Montreal, and other posts which they now occupy, till they shall be embarked for their departure; passports, however, shall be granted to those who shall want them, for the different places of the colony, to take care of their affairs.—“*Granted.*”

ARTICLE LVI.

All the officers and soldiers of the troops in the service of France, who are prisoners in New-England; and who were taken in Canada, shall be sent back, as soon as possible to France, where their ransom or exchange shall be treated of, agreeable to the cartel; and if any of these officers have affairs in Canada, they shall have their leave to come there.—“*Granted.*”

ARTICLE LV.

As to the officers of the Militia, the Militia, and the Acadians, who are prisoners in New-England, they shall be sent back to their Countries.

Done at Montreal, the 8th of September, 1760.

"VAUDREUIL."

Granted, except what regards the Acadians. Done in the Camp before Montreal, the 8th September, 1760.

"JEFFERY AMHERST."

The FOURTH ARTICLE *of the* DEFINITIVE
TREATY *of* PEACE,

CONCLUDED

Between the KINGS *of* GREAT BRITAIN *and*
FRANCE *on the* 10th day *of* FEBRUARY,
in the Year 1763.

CONTAINING

The Cession of Canada to the Crown of Great Britain.

His most Christian Majesty renounces all pretensions which he has heretofore formed, or might form, to Nova-Scotia. or Acadia, in all its parts, and guarantees the whole of it, and all its dependencies, to the King of Great-Britain.

Moreover, his most Christian Majesty cedes and guarantees to his said Britannic Majesty, in full right, Canada, with all its dependencies, as well as the Island of Cape Breton, and all the other islands and coasts in the Gulf and River of St. Lawrence, and in general, everything that depends on the said countries, lands, islands and coasts, with the sovereignty, property, possession, and all rights acquired by treaty or otherwise, which the most Christian King and the Crown of France have had, till now, over the said countries, islands, lands, places, coasts and their inhabitants, so that the most Christian King cedes and makes over the whole to the said King, and to the crown of Great-Britain, and that in the most ample manner and form, without

restriction, and without any liberty to depart from the said guaranty under any pretence, or to disturb Great-Britain in the possession above-mentioned.

His Britannic Majesty, on his side, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada; he will consequently give the most effectual orders that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Roman church, as far as the laws of Great Britain permit.

His Britannic Majesty further agrees, that the French inhabitants or others who had been the subjects of the most Christian King in Canada, may retire with all safety and freedom wherever they shall think proper, and may sell their estates provided it be to subjects of his Britannic Majesty, and bring away their effects, as well as their persons, without being restrained in their emigration, under any pretence whatsoever, except that of debt, or of criminal prosecutions; the term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratification of the present treaty.

